"Restoring the Mana of the Whenua": The Battles over the Birds

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While all around us ancient ills
Devour like blackberry the hills,
On every product of the time
Let fall a poisoned rain of rhyme,
Sings Harry.
But praise St Francis feeding crumbs
Into the empty mouths of guns.
from Denis Glover, *Sings Harry*

The New Zealand government has recently announced ambitious long-term targets for the elimination of several introduced predatory mammalian species in order to enable populations of native vertebrates to recover. The debate which the project has already engendered raises philosophical questions about the proper place of species, the "rights" of animals and the rights of mankind to alter natural systems further, even if only in attempts to repair earlier damage. More narrowly administrative and legal questions concern the status of the pests concerned, the operations of the Department of Conservation, the appropriateness of the government's proposed Crown entity model, and the statutory powers necessary for any pest-exterminating organisation. The elimination of predators and recovery of native species, if actually

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achieved, will introduce new practical issues, but must be regarded as a very positive and hopeful development for human as well as non-human New Zealanders.

1. THE SCENE

As all New Zealanders know, New Zealand's native plants and animals evolved in the almost complete absence of mammals. The seas around the country's coasts held seals, whales and dolphins, but our only terrestrial mammals — if "terrestrial" can be said to be the entirely correct adjective for flying creatures! — were several species of small bat. Instead, an amazing diversity of birds filled the ecological niches occupied elsewhere by mammals. Our avifauna has been described as "the most extraordinary, indeed unbelievable, assemblage of birds. Nothing like it was found anywhere else on Earth … One hundred and sixty-four species have been recorded, a large number of which were flightless."[1]

It was of course this very flightlessness which made so many of these species, previously exquisitely adapted to their environment, highly vulnerable to the predations of human settlers and their various mammalian companions when first Māori, about seven or eight centuries ago, and then Europeans, some two centuries ago, began to colonise these islands. Māori brought with them the Polynesian rat, the kiore, and the dog; Europeans gradually introduced a rather larger range of mammal species. As a consequence of human hunting, mammalian predation and habitat degradation and destruction, some 40 per cent of the terrestrial and freshwater bird species native to the New Zealand mainland has become extinct in the last two thousand years.[2] About 33 bird species became extinct after Polynesian settlement; another 12 species and a subspecies since the year 1800. Seventeen more species now survive only on offshore islands.

Native birds are not the only creatures to have suffered in consequence of predation and habitat destruction. Three of an original six species of native frogs have become extinct in the last millennium, and populations of the three remaining species are seriously threatened. The remarkable lizard-like tuatara now survives only on offshore islands, and New Zealand's lizard species have also suffered to an extent still not fully comprehended.

The prevention of further extinctions and the recovery of threatened populations has therefore long been a major preoccupation of the New Zealand

1 T Flannery *The Future Eaters* (Reed, Chatswood, 1994) at 55.

2 K-J Wilson *The Flight of the Huia* (Canterbury University Press, Christchurch, 2004) ch 5 "Extinction of New Zealand Vertebrates"; Table 5.1 at 120 provides a convenient summary.

conservation movement. Yet the precise means by which this object could be achieved has long escaped identification. Mere legal protection of the species themselves against human taking is clearly completely inadequate. At a bare minimum, active human intervention to establish predator-free sanctuaries on offshore islands or "mainland islands" is necessary to ensure species survival. But such islands, whether surrounded by ocean or land, are always vulnerable to the return of predators. Unceasing surveillance is necessary, even on islands. The boundaries of "mainland islands" must always be defended by trapping and poisoning.

Funding allocated by Parliament to the Department of Conservation is never likely to be adequate to make possible the recovery of all endangered species. Research by Dr Mark Seabrook-Davison concluded that the Department of Conservation's budget for species management and recovery — $33 million at the time — was only one tenth of what was needed for recovery programmes for all endangered species.[3]

Recognition of the inadequacy of public protection and restoration efforts has prompted the creation of various mainland "sanctuaries" surrounded by predator-proof fences and from within which all predators, including even mice, have been eliminated. These sanctuaries are usually run by a trust with trustees drawn from local landowners and supporters, conservationists, local government, tourism interests and local iwi. There may be some public funding from local or even national sources. Perhaps the most successful and best-known of these sanctuaries is Zealandia, formerly known as the Karori Wildlife Sanctuary, in the city of Wellington. The largest sanctuary, the Maungatautari Island Ecological Reserve, near Cambridge, in the North Island, covers 34 square kilometres, and is surrounded by a fence 47 kilometres in length. It includes private land as well as public reserve.

There is a general hope that such sanctuaries may become self-funding, through fees paid by visitors or through the provision of conservation services. But predator-proof fences are extremely expensive to construct, and also require constant surveillance if breaches are not to go unremedied and reinfestation by predators is not to occur. In 2015, for example, the entire population of South Island saddleback living in the Orokonui Ecosanctuary near Dunedin — some 30 birds — was believed to have been killed by a stoat which may have climbed over the fence after a heavy snowfall. The sanctuary is 307 hectares in size; the surrounding fence is 8.7 kilometres long, and cost $2.2 million to erect. The cost of establishing the saddleback population was around $200,000.[4]

3 MNH Seabrook-Davison *An Evaluation of the Conservation of New Zealand's Threatened Biodiversity*: *Management, Species Recovery and Legislation* (Massey University, Palmerston North, 2010).

4 Newshub, TV3, 18 September 2015. The *Otago Daily Times* a year later (Dunedin, 23 September 2016) reported the trapping of two more stoats in the reserve. Staff were

Zealandia's initial projections of expected income proved unrealistic; it required regular ratepayer support, and in 2012 a report recommended merging the sanctuary with the capital's zoo and botanic garden "in a bid to solve its ongoing funding problems". One city councillor, John Morrison, described this proposal as "good news" because "[w]e can't keep on throwing ratepayer money into a bottomless pit, which is what we've been doing".[5] Such financial problems seem to bedevil most sanctuaries. Ratepayers are thereby placed in an awkward position. To refuse funding would allow a popular facility and tourist attraction to founder, and would of course also countenance the disappearance, by one means or another, of populations of precious and much-loved endangered species. But to continue funding may be to throw money into Mr Morrison's bottomless pit.

It is this same recognition of the continuing inadequacy of funding, whether by ratepayers or by taxpayer funds directed to the Department of Conservation, that has prompted calls for changes to legislation to enable private persons and organisations to conduct their own conservation and breeding programmes, and to be allowed to benefit financially by doing so. Such "privatisation" or "commercialisation" of endangered species would of course be controversial; but, as Mr Gerry Eckhoff, then an ACT Member of Parliament, once asked in the House, what would the species itself prefer if its only choice were between extinction and rescue by private interests? Would it prefer to be "dead or privately bred"?[6] There can be only one answer to such a question. Nevertheless the idea of handing over of native species — which must, surely, be considered the inheritance and responsibility of all — to private interests, who may not necessarily be particularly conservation-minded, and who will certainly be motivated by financial considerations as well as love of nature — is understandably controversial.

2. THE DEPARTMENT OF CONSERVATION

Where, in all of this, is the Department of Conservation? Remarkably, among the Department's functions, listed in s 6 of the Conservation Act 1987, no specific mention is made of any duty to prevent extinctions of native species or to foster the recovery of threatened or endangered populations. The nearest the

"unsure" how they had entered; a culvert and 150 heat deflectors on the fence canopy were being replaced as a precaution.

5 Radio New Zealand report, 24 March 2012.

6 The debate is described (in much more detail) in DJ Round "The Lion, the Nurse and the Weasel: Law and Policy concerning Endangered Species in New Zealand" (2011) 15 NZJEL 147. This article also contains much more detail about the current status of threatened and endangered fauna.

list comes to it is in s 6(a), which gives the Department the duty to "manage for conservation purposes, all land, and all other natural and historic resources". "Conservation" is defined as:[7]

> the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations

But especially given the implacable reality of budgetary constraints, a mere duty to "manage" is surely so wide as to be non-justiciable except in the most egregious circumstances.

An often unnoticed detail of the Conservation Act should also be noted at this point. Section 2 of the Act contains not only the definition of conservation just quoted, but also a definition of "nature conservation". Nature conservation is rather more focused on native species:

> **nature conservation** means the preservation and protection of the natural resources of New Zealand, having regard to their intrinsic values and having special regard to indigenous flora and fauna, natural systems, and landscape

The functions of the New Zealand Conservation Authority include the investigation of "nature conservation or other conservation matters [it] considers … of national importance"; but the functions of the Department itself only concern the rather wider function of "conservation". Some may find this surprising. When the Conservation Act was but a Bill the absence of any specific preference for indigenous species was a cause of some concern, but it was generally accepted that to speak only of indigenous flora and fauna would from time to time result in an unfortunate ignoring of introduced plants and animals of value, and that the Act would be sensibly administered with an indigenous preference where appropriate. The definition of "nature conservation" was inserted by the Conservation Law Reform Act 1990, which created a New Zealand Conservation Authority to replace the National Parks and Reserves Authority and the Nature Conservation Council.

The absence of any duty on the Department to "*nature* conservation", however, must reinforce the argument that no absolute legal duty of the Department exists to prevent extinctions of native species or to work towards the recovery of threatened or endangered populations. The government's proposal, considered in this article, to establish an entirely new agency to

7 Conservation Act 1987, s 2.

eliminate predators must also be taken to be recognition of the current absence of such a duty.

That said, there is nothing now in the Conservation Act which would actually *prevent* the Department from such actions if it were so minded. The words of s 6 would cover predator control operations, at least on the public conservation estate. Such operations occur in places now. It could indeed be argued — although statutory clarification would be useful — that the Department's responsibility to "conservation" does countenance the total elimination of these predators not just from the public conservation estate but from the whole country. In any case, the Department might be thought to be the obvious choice to take on any job of total predator elimination. It is remarkable that the government now proposes to establish an entirely new agency to do what the Department already can do (at least on the public conservation estate) and should be doing.

3. THE ANNOUNCEMENT

Much pleasure, anyway, not unmingled with surprise and indeed (from certain quarters) a modicum of cynicism, greeted the announcement of the then Prime Minister, the Rt Hon John Key, and the Minister of Conservation, the Hon Maggie Barry, on Monday 25 July 2016 that the government had set the year 2050 as the "target" date by which New Zealand would be completely free of possums, rats, mustelids (stoats, weasels and ferrets) and most, anyway, feral cats.[8] The Prime Minister said that these predators kill an estimated 25 million native birds every year. The economic cost to the country every year — not only for predator control and species recovery programmes, but also costs associated with the control and prevention of bovine tuberculosis, which is carried by possums and mustelids, and also more general losses caused by rats, in particular — he stated to be around $3.3 billion.

Lest this be thought merely "aspirational", and 2050 absurdly remote, the Prime Minister also announced four interim goals. By 2025 the government aims to have:

- 1 million hectares of land where pests are suppressed or removed
- a scientific breakthrough making it possible to remove one small mammalian predator
- demonstration that areas of 20,000 hectares can be kept predator-free without the use of fences

8 "2050, NZ's 'predator-free' target" *The Press* (Christchurch, 26 July 2016).

- complete removal of all introduced predators from offshore island nature reserves.

Accordingly:

> The government has set up a new Crown Entity — Predator Free New Zealand Limited — to drive the programme alongside the private sector. Predator Free New Zealand would be responsible for identifying large, high-value predator control projects and attracting co-investors to boost their scale and success. … The Government would look to provide funding on a "one for two" basis — that is for every $2 local councils and the private sector put in, the government would provide $1.

There would be an initial "$28 million funding injection into a joint venture company to kickstart the campaign".[9]

The complete removal of these predators, once and for all, would of course render the establishment and maintenance of sanctuaries and refuges of any sort almost completely unnecessary. Several minor predators — hedgehogs, for example, and mice, which have both been observed attacking ground-nesting birds — might be considered to require further action, but, in the case of hedgehogs anyway, are less likely ever to be a significant problem. The expense, and controversy, of continued predator control would also disappear.

Delight at the Prime Minister's announcement was not, however, universal. Mr Kevin Hague of the Green Party (which did not itself have such a target among its policies) welcomed the announcement, but raised the question of cost, which he estimated to be about $9 billion. He criticised the government for "once again put[ting] out the begging bowl to the private sector to fund what should be taken care of by the Government". The Labour Party's response was even more muted, its conservation spokesperson Nanaia Mahuta saying that the proposal lacked long-term funding and had to "be considered alongside years of funding cuts that have blunted the work of the Department of Conservation".[10] This would have to be considered fair comment. Mr Richard Prosser, however, the spokesperson for outdoor recreation for the New Zealand First Party, simply responded by claiming that the Minister of Conservation was "totally ignoring the serious risks of using 1080".[11]

Mr Prosser is not the only opponent of the use of 1080. (The existence of a perhaps small but nevertheless vocal lobby group opposed to the poison's use was highlighted, perhaps unfairly, by a widely publicised threat to poison milk

9 "2050, NZ's 'predator-free' target", above n 8.

10 "2050, NZ's 'predator-free' target", above n 8.

11 R Prosser "Minister Seriously Misleading Public Over 1080" (press release, New Zealand First Party, 28 July 2016).

powder on sale to the public with the substance. After very thorough police investigations of any number of innocent anti-1080 activists, the author of the threat was discovered to be a businessman with a financial interest in a rival poison available for possum control.)[12] Sincere opponents of the use of 1080, the poison principally used at present and in the near future, were dismayed by the Minister's announcement.[13] She has since been at pains to defend 1080 as a necessary and safe poison,[14] and to emphasise that as a consequence of research into new methods of eradication, 1080 is very likely soon to be superseded by the use of cunning new traps, powerful lures, and even genetic intervention.[15]

4. THE DOUBTS

But before considering several interesting legal questions, it is necessary to describe one further aspect of the political and philosophical landscape. Doubts about the entire predator-free project, doubts perhaps amounting almost to opposition, were not limited to opponents of 1080, but came also from some surprising sources. A much-respected and thoughtful newspaper columnist, Chris Trotter, wrote of the "anachronistic desire to restore New Zealand's natural environment to its pristine — that is to say, pre-human — status" and concluded that "[s]adly for the extreme conservationists, the conquests of the

12 K Dennett "Man guilty of 1080 blackmail plot named as inventor of rival poison Jeremy Kerr" *Stuff: Business Day* (New Zealand, 22 February 2016) at <http://www.stuff.co.nz/business/77128851/Man-guilty-of-1080-blackmail-plot-named-as-inventor-of-rival-poison-Jeremy-Kerr>.

13 For example, T Orman "Conservation Minister Maggie Barry and her 'impossible' predator-free dream" *The Press* (online ed, Christchurch, 2 August 2016) at <http://www.stuff.co.nz/the-press/opinion/82717863/Conservation-Minister-Maggie-Barry-and-her-impossible-predator-free-dream>. Orman ("Marlborough-based conservationist, outdoorsman and farming journalist") disputes figures of native bird deaths and economic costs of pests, argues that "predators already exist in native populations" — for example, falcon, morepork, kea, weka, and kiwi ("prey[ing]" on worms and other invertebrates) — and also argues that the current disappearance of birds in native forests has been brought about by 1080, not by the predators 1080 is attempting to control.

14 The Parliamentary Commissioner for the Environment, Dr Jan Wright, had previously concluded that "[a]lthough … other methods … are effective in particular situations, the only practical and cost-effective option that is available for controlling possums, rats and stoats in large and inaccessible areas is an aerially delivered poison. And there is no alternative poison available now or in the near future that could be used aerially and would be preferable to 1080." *Evaluating the use of 1080: Predators, poisons and silent forests* (PCE, Wellington, June 2011) at 66.

15 "Predators will feel full force of science" *The Press* (Christchurch, 27 July 2016) and "Plan means 1080's days are numbered" *The Press* (Christchurch, 12 August 2016).

ecological imperialists cannot be rolled back".[16] The acute Joe Bennett wrote of an impossible "return to a lost Eden".[17]

But more surprising, perhaps, was the unexpected sympathy among scientists for that point of view. Several scientists have spoken privately to this author along these lines. Their point of view is, as explained below, a philosophical position — how *should* we treat the natural world? — rather than a purely scientific one, and it is in tune with the new popular understanding that the earth has entered a new geological era, the "Anthropocene".[18] There are debates over the concept of the Anthropocene era, which do not so much focus on the physical question of whether or not humankind has affected the earth in ways which will remain embedded indefinitely in geological evidence, as they do on philosophy. Some argue that humankind, although responsible for profound changes, is (because of those changes' disastrous effects) unlikely to be around and in a position of mastery over the earth for much longer.[19] The comet which hit what is now the Yucatan Peninsula and caused the great extinction event of 65 million years ago is recorded in geological strata, but we do not speak of the "Cometocene Era"; the comet was merely a disaster ushering in a new age, and so will be mankind. But others are more optimistic. They perceive a battle between "green modernists" (or "eco-pragmatists") and a camp of "green traditionalists" whose message of "doom and gloom" is tired and redundant.[20] Instead, they believe that we should embrace the Anthropocene and make it a "good one". One such person, when asked what she did for Earth Day, answered: "Nothing. I think turning out the lights for Earth Day sends the wrong message. I want to see the lights go on all over Africa."[21] Perhaps this is sensible and achievable pragmatism. Perhaps it is completely unwarranted optimism, and an insane refusal to face dire planetary realities.

Dr Jamie Steer, whose doctoral dissertation was titled "The Reconciliation of Introduced Species in New Zealand",[22] and who currently holds the position

16 C Trotter "Life in the city drab without exotic trees" *The Press* (Christchurch, 16 August 2016).

17 J Bennett "Like Trump, we're attempting a return to a lost Eden" *The Press* (Christchurch, 16 August 2016).

18 SC Finney and LE Edwards "The 'Anthropocene' epoch: Scientific decision or political statement?" (2016) 26(3) GSA Today 4.

19 For example, John Michael Greer, the author of the blog The Archdruid Report and numerous printed works.

20 The terms are those of Keith Kloor; see "Facing Up to the Anthropocene" *Discover Magazine* (20 June 2014) at <http://blogs.discovermagazine.com/collideascape/2014/06/20/facing-anthropocene/#.WE9I0fl96Uk>.

21 J Curry "Pondering the anthropocene" Climate Etc. (22 June 2014) at <https://judithcurry.com/2014/06/22/pondering-the-anthropocene/>.

22 J Steer "The Reconciliation of Introduced Species in New Zealand" (PhD Dissertation, The University of Auckland, 2015).

of senior advisor in the Biodiversity Department of the Wellington Regional Council,[23] would seem to share this readiness to embrace a new age where humans are very much in charge, and where the restoration of the past is not only pointless but foolish. He was recently interviewed on Radio New Zealand's popular *Saturday Morning* magazine programme.[24] He agreed that the question was "one of values" — and he himself accepted that "science does not tell us how to manage the environment". This could surely be considered to deprive his thesis of any scientific value and reduce it to the status of a mere debatable philosophical proposition. But his argument, whatever classification might be given to it, ran along these lines:

1. Change is happening to New Zealand's forests, as everywhere else. Change is inevitable.
2. It is not necessary to eliminate pests throughout the entire country in order to ensure good populations of all still surviving native bird species.
3. It is impossible to restore any part of New Zealand to its pre-human state, because many of the species which then existed are now extinct. Whatever "natural state" any restoration aims for will inevitably therefore be arbitrary and artificial.
4. The question which we should be asking ourselves is how we want our forests to look in the future, not, at least initially, how they were in the past.
5. We should be prepared to "accept some level of extinctions".
6. We have a responsibility to introduced species. This responsibility means that "we owe them more than a humane death".
7. There is no "proper place" for a species. To say that there is, is akin to old-fashioned ideas about the "proper place" of women and servants, for example. It is not inherently bad to move species around.
8. If we do succeed in eliminating possums, rats, mustelids and cats then we will not stop there but just "move on to the next".

We could probably all agree with the first two propositions. As to the third, it could be replied that the desired restored state is not an arbitrary matter of philosophy, but is determined by a simple factual situation. The aim should be to restore, in places anyway, all species of plant and animal which still survive. That is not to make any decision about any particular date; it is a simple question of fact about what still remains. His fourth point is at one level sensible, but leaves open the possibility that we might want future forests to resemble past ones as far as possible. His fifth point might seem to be unnecessary if we

23 Dr Steer did emphasise that the views he was expressing were his own and not necessarily, at least, those of his employer.

24 Radio New Zealand, Saturday Morning Live with Kim Hill, Saturday 20 September 2016 at 9.34 am. All quotations given are from this radio interview.

accept his second. His sixth point seems to suggest that we owe a duty to any successful established species to tolerate its continued existence. This duty presumably exists even if the same species exists safely and successfully elsewhere in the world. This is surely a contentious proposition. It is also, surely, as remarked above, in no sense a statement or conclusion proper to science. Moreover, without further clarification, this proposition leaves several questions unanswered. Would such a duty to an introduced species allow any culling at all? If populations of introduced deer species, for example, grew to such numbers that overpopulation led to habitat degradation and starvation, would our duty of toleration forbid human intervention to reduce populations to sustainable levels? Dr Steer prefers to speak of possums *changing* the structure of our forests, rather than of reducing the range of species. This suggests that he might perhaps argue — if not he, others would — that the forest and deer should be left to find their own new equilibrium.[25]

5. THE "PROPER PLACE" OF PESTS

In this approach Dr Steer would, paradoxically, be of the same non-interventionist camp that Michael Pollan, for example, wrote of in his essay *The Idea of a Garden*.[26] That essay described the debate over the future of Cathedral Pines, a famous 42-acre old-growth forest near the middle of the author's New England town, which was destroyed by unusual tornadoes in July 1989. The town's citizens mostly wanted to salvage and use the toppled timber rather than allow it to go to waste, and to tidy up an unsightly eyesore rather than live with tumbled piles of decaying logs for a generation or more. But the land's owner, the Nature Conservancy, insisted that the toppled forest be left exactly as it was for natural processes to occur.

Michael Pollan argued that in fact the "old-growth" original forest was actually no such thing, but rather the product of human interference in past centuries. It was already a cultural artefact. He pointed out that this little forest was no longer surrounded by a wilderness of more forest, but by a modern town, and by as many introduced plants as native ones. Few native plants were

25 It must be added that other scientists were much more sanguine about predator-free prospects. Dr James Russell, of the School of Biological Sciences and Department of Statistics at The University of Auckland, is reported in *The Press* (Christchurch, 8 August 2016) as saying that "[t]he overwhelming evidence from our offshore islands shows that scaling this model of conservation to [the] North and South Islands is the best return on investment we can make not only in conservation, but also for the social and public health benefits … 2050 seems a reasonable goal …".

26 M Pollan "The Idea of a Garden" in *Second Nature: A Gardener's Education* (Delta, New York, 1991) at 200.

left nearby as a seed source. If the forest were left entirely to itself, introduced plants might prevail over the native. Would that be a "natural process" at all? That would depend on one's definition — are introduced plants to be considered "natural"? Moreover, Nature does not follow only one path; much is the consequence of chance. "Nature will condone an almost infinite number of possible futures for Cathedral Pines." All this being so, he suggested that there was a place for human beings, as gardeners, to manage Nature, in a proper spirit of humbleness, and so to bring it to greater fruitfulness to enrich both human beings and Nature itself.

In our own argument over predator elimination, Dr Steer's laissez-faire opposition to much human intervention in order to assist endangered native species would, in one sense anyway, put him on the same side of Michael Pollan's debate as the environmental purists in the Nature Conservancy opposing any human interference with "natural processes". If, however (to revert to the question above), Dr Steer were to allow culling of a population for the species' own sake, then why would it be impermissible to cull a population for the sake of another species? How is it that the successful predator species is the one we must tolerate? To tolerate that species is surely to choose to allow it, and not its prey, to win in the struggle for existence. Must we always prefer winners? Dr Steer, as mentioned in point 7 above, believes that those favouring predator extermination are importing into wildlife management an old-fashioned and "Victorian" attitude about the "proper place" of different species. By the same token it could be suggested that his own attitude is at least compatible with a less pleasant political idea now enjoying greater public prominence, that species, like human beings, must all take their own chances in the great struggle for existence, and devil take the hindmost.[27] It could also be

27 Dr Steer's dissertation observes that "[i]n contrast to the relatively static and human-exclusive constructions of nature in the past, many authors now emphasise a nature characterised by indeterminacy, flux, interconnectedness and hybridity". This is undoubtedly the attitude; yet Denis Worster, in *The Wealth of Nature: Environmental History and the Ecological Imagination* (1994), suggests that scientific understandings of ecosystems may actually subconsciously be influenced by and reflect general human social understandings. Modern scientific doubt as to whether "ecosystems" actually exist, rather than being artificial concepts imposed by humans on a chaotic war of individual against individual, may reflect modern political arguments that "there is no such thing as Society". The scientific consensus of two generations ago that ecosystems tended towards stability, with a long-term future for all constituent species, reflected the more communitarian and compassionate political thought of the time. In the same way, Dr Steer's argument that to speak of species having their proper place is "Victorian" and that it is not inherently bad to move species about is open to the reply that his own attitude reflects a school of political thought opposed not only to social hierarchies but also to controls on human immigration. Dr Steer actually compared attitudes to introduced species to attitudes to new human immigrants. Such a comparison does not necessarily strengthen his case. One might add that his conception of the Victorian era as a time of unchanging hierarchy and stability

said to reflect a common Victorian view which almost implied a moral weakness in native species which had allowed themselves to "degenerate" in soft predator-free conditions and were therefore unfit for and unworthy of survival.

Would a duty to tolerate other species, introduced or for that matter indigenous, disallow any human interactions with species even if they were necessary for human life? Vegetarians — of whom there are many among those adhering to the idea of "animal rights", the mirror image of the idea of human duties to animals — would argue that the consumption of animal flesh is not necessary for human health and life. But even leaving the question of animals as food to one side, what of animals as vermin? What if the destruction of vermin — epitomised, of course, by the rat — is necessary for the survival of human vegetarian life? To deny a human right of self-defence against verminous species would be to place humans in a position not equal to, but actually inferior to, all other species, who do not hesitate to defend themselves. But then, if we are equal to all other species we may surely claim the right to eat them also, just as other species do …

Professor Tom Regan is among those who have argued, if not for the toleration of vermin, at least for the liberation of laboratory rats, which are "the subjects of a life in the sense explained, and so have inherent value, if we do". Our duty, "according to the rights view", is "not to use animals in science" at all. From the rights of the laboratory rat to the rights of the verminous rat may not be a very large step. Professor Regan argues for:[28]

- the total abolition of the use of animals in science;
- the total dissolution of commercial animal agriculture;
- the total elimination of commercial and sport hunting and trapping.

In fairness, he does not consider New Zealand's unique situation, where the survival of native species depends on the at least local elimination of introduced predator species. It is nevertheless impossible to overlook the weaknesses and absurdities — as well as the utterly impractical and unrealisable idealism — of the arguments for animal rights.[29]

is also a preposterous caricature at odds with the facts. The era saw amazing change and rapid evolution in every department of human activity.

28 Emeritus Professor of Philosophy, North Carolina State University, and author of, inter alia, *The Case for Animal Rights* (1984). He summarises his arguments in his essay of the same name in Peter Singer (ed) *In Defense of Animals* (Perennial Library, 1985) at 13.

29 The arguments, of course, as described here only touch the edges of a much larger debate.

6. THE LEGAL STATUS OF PARTICULAR PESTS

Lawyers cannot solve these controversies. Law is only a part of the general background and social setting, and a tool to serve chosen public policies. It is a servant, not a master. But the debates do raise some more narrowly legal issues worthy of consideration.

The first question is that of the legal status of rats, mustelids, feral cats and possums. All these animals are listed in the fifth schedule of the Wildlife Act 1953 as "Wildlife not protected".[30] This schedule is different from the sixth schedule, "Animals declared to be noxious animals subject to the Noxious Animals Act 1956", and which lists therein all species of deer, as well as chamois and tahr and wild goats and pigs. The Noxious Animals Act, even though still mentioned in the Wildlife Act's schedule, has of course been repealed and replaced by the Wild Animal Control Act 1977, which defines "wild animal", again, as deer, chamois, tahr and wild goats and pigs, but which speaks of "controlling" wild animals rather than exterminating them. "Wild animals" are only to be eradicated "locally where necessary and practicable as dictated by proper land use".[31] It is interesting to note that s 4(2)(a) speaks of "ensur[ing] concerted action against the damaging effects of wild animals on vegetation, soils, waters, *and wildlife*".[32] At present, this phrase — in a statute concerning only certain listed herbivores, and therefore not germane to present purposes — is one of probably only two statutory recognitions of the harm done by introduced mammals to native wildlife. The other would be s 41 of the Wildlife Act. It empowers the Minister to "co-ordinate the policies and activities of departments of State, local authorities, and public bodies in relation to the protection, management, control, and conservation of wildlife and the eradication of harmful species of wildlife",[33] and for that purpose "to

30 The mustelids are listed by individual species — ferret, stoat and weasel. The schedule also lists the polecat as a separate species. The polecat is the ancestor of the ferret, and whether ferret and polecat are different creatures or exactly the same thing may be difficult to say; but since they both appear in the same schedule, the point for present purposes is immaterial.

31 Wild Animal Control Act 1977, s 4(1). The Act was created when venison recovery operations and deer farming were making it apparent that deer had economic value, and when older beliefs that deer alone were responsible for earth instability and soil erosion were being replaced by the understanding that New Zealand was naturally a more geologically fragile country than previously supposed. Section 4(2) therefore provides that having regard to the general purpose of control, the Act shall be administered so as to not only ensure concerted action against the damaging effect of wild animals on vegetation, soils, waters, and wildlife (s 4(2)(a)), but also "to achieve co-ordination of hunting measures" and to "provide for the regulation of recreational hunting, commercial hunting [and] wild animal recovery operations …" (s 4(2)(b) and (c)).

32 Section 4(2)(a) (emphasis added).

33 Wildlife Act 1953, s 41(1)(c).

establish and carry on any operations or industry relative to the conservation, management, or control of wildlife or the eradication of harmful species of wildlife".[34]

Our predator pests, therefore, are "wildlife" which is "not protected". They are not domesticated, and no one owns them. The original sentence of outlawry was that the outlaw should "bear the wolf's head" — that like the wolf, he could and should be killed on sight. Our predators might seem to fall into the same general category. It should be added, however, that the mustelids, listed along with the other pest predators in the Wildlife Act's fifth schedule, are also all listed in the Act's eighth schedule, "Wildlife not protected but may be kept, bred, or farmed in captivity pursuant to regulations made under principal Act or by Minister's direction", under which permits could be issued for keeping them in licensed and controlled premises. Ferrets used to be farmed under the Wildlife (Farming of Unprotected Wildlife) Regulations 1985; their fur was marketed as "fitch". But despite the best efforts of Ferret PAWS (the New Zealand Ferret Protection And Welfare Society) ferrets are now unwanted organisms under the Biosecurity Act 1993. They are unambiguously undesirable.

The ferret is the only one of the pest species under consideration to have this status of "unwanted organism". Weasels and stoats do not; rats and possums do not. Given the harm these species do, and the ability of the Department of Conservation under s 101(2) of the Biosecurity Act to declare organisms unwanted, this is perhaps surprising.[35] But the same cannot be said of cats, pests in the wild but also common and much-loved domestic pets. New Zealanders are believed to own about 1,134,000 domestic cats; the stray cat population is estimated at about 196,000, and estimates for feral cats range from 2.4 million up to 14 million.[36] It is notorious that the distinctive personality of the cat means that it is not a pet exactly as a dog is: the cat still retains its own personality and independence; and in the same way its legal and indeed political situation still lies in contested territory. Dogs are subject to strict regulation; they have their own statute, the Dog Control Act 1996, a whole part of the Conservation Act 1987[37] and even a special mention in the Wildlife Act.[38] Even if they do no more than wander harmlessly, they and their owners may be liable to various official procedures and penalties. But the cat is a different kettle of fish. Dogs receive 12 pages in the first volume of the first edition of Halsbury's Laws of England,[39] but the cat is mentioned only once, with the dog among the animals

34 Section 41(2)(b).

35 But see part 9 of this article below.

36 *The Press* (Christchurch, 22 September 2016) quoting the National Cat Management Strategy.

37 Conservation Act 1987, pt 5C, "Control of dogs".

38 Wildlife Act 1953, s 71A, "Control of dogs".

39 *Halsbury's Laws of England* (Butterworths & Co, 1907).

which were not the subject of larceny at common law — "dogs of all kinds, cats and animals of a base nature".[40] Dogs and cats do share two common positions, however, in that neither of them is to be counted as a member of the genus "cattle" for whose trespass an action in cattle trespass may lie,[41] and both were classified as animals *mansuetae naturae* for the purposes of the now-abolished *scienter* rule.[42]

The ambiguity of the cat's position is well illustrated by the once little-known Trap, Neuter, Release (TNR) policy of the Royal New Zealand Society for the Prevention of Cruelty to Animals (SPCA), whereby stray cats, instead of being euthanased by the Society, are rather neutered and then released back into the wild.[43] This policy, which the SPCA was following in at least several parts of the country, was publicised in 2013 by Mr Gareth Morgan, who described the practice as "despicable" and suggested that it was "open to legal challenge as cruelty to animals" and also a "violation of the Biosecurity and Wildlife Acts".[44] The path to a conviction under the Wildlife Act is perhaps not entirely clear; s 56(1)(ab) makes it an offence to "liberate or turn at large, or allow to go at large any wildlife", but "wildlife" includes all species protected in one way or another by the Act as well as the species the Act lists but does not protect. The words of the Act are wide enough to cover the release of cats which had originally been taken from the wild, but arguments could perhaps be raised about Parliament's precise intention. Liability under s 52 of the Biosecurity Act 1993, "Communication of pest or unwanted organism", would depend on whether or not cats have been so classified in any part of the country, and so far this does not seem to be the case. It would surely be fair to say, though, that the release of predators, whether neutered or not, into the wild is contrary to the spirit, at least, of the Wildlife Act. It also places the SPCA in the very peculiar position of favouring some animals — cats — over other animals — most notably native birds and lizards and introduced birds. Mr Morgan would

40 "Animals", heading 804. The editors of the seventh edition of *Winfield on Tort* remark that "this piece of pedantry has been long exploded" (at 483, "Cattle Trespass").

41 *Winfield on Tort*, above n 40; S Todd (ed) *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, Wellington, 2016) at ch 9 "Trespassing on Land" [9.4.01(2)].

42 Abolished by the Animals Law Reform Act 1989.

43 *New Zealand National Cat Management Strategy Implementation Summary Consultation Draft Document* (21 September 2016) at 3: "At least 50,000 cats are rehomed, euthanased or trap-neuter-returned by veterinarians and animal shelters annually." The report appears to recognise the existence of "managed cat colonies" (at 6).

44 R Vaughan "'I do not hate cats,' says Gareth Morgan" *The National Business Review* (New Zealand, 29 January 2013) at <https://www.nbr.co.nz/article/i-do-not-hate-cats-says-gareth-morgan-rv-135065>.

seem to be reasonably accurate in referring to the society as the "Society for the Protection of Cats".[45]

After almost two years of work, however, a National Cat Management Strategy Group[46] has released its National Cat Management Strategy.[47] Its "strategic outcomes" include public understanding and compliance with the obligations of "responsible cat ownership". As part of its strategic goal of the "enhance[ment] of the protection of native species and ecosystems" its strategic outcomes include the complete disappearance of stray and feral cats. More specific recommendations include nationwide mandatory micro-chipping and chip registration, "nationwide responsible cat ownership education programmes", various "de-sexing initiatives", and the "increasing acceptance and implementation of cat containment, especially in areas of high conservation value". A new National Cat Management Act would authorise local councils to make bylaws covering such possible issues as "cat curfew, containment and restriction in ecologically sensitive areas", limiting the number of cats per household, removing stray cats and a "cat colony management register".

Any number of considerations may have motivated the authors of the report to make the recommendations they did. But the report is certainly timely, and its recommendations very much in tune with the times. They would, obviously, fit in very well with the government's target of removing all feral cats. Adopting the recommendations would not necessarily degrade or reduce the status of domestic cats. The cat's status could actually be enhanced thereby, as in certain progressive parts of the United States of America. On 11 July 2000 the City Council of Boulder, Colorado voted unanimously to replace all references in the city's ordinances to pet "owners" with the phrase pet "guardians". This did not in itself grant pets any greater rights than they had previously; the ordinances defined a guardian as an owner. But it is considered a "small, but positive, step",[48] and in the following nine years another 18 American cities made the change. The San Francisco, California Department of Animal Care and Control and the San Francisco Society for the Prevention of Cruelty to Animals have entered into an agreement whereby the Department will not

45 "Gareth Morgan: Killing people's pets? That's not what I said" *The New Zealand Herald* (online ed, Auckland, 25 January 2013) at <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10861224>.

46 The Group's members include the SPCA, New Zealand Veterinary Association, New Zealand Companion Animal Council, Local Government New Zealand, the New Zealand Veterinary Association Companion Animal Society and the Morgan Foundation. The Strategy was officially released on Wednesday 21 September 2016.

47 *New Zealand National Cat Management Strategy Implementation Summary Consultation Draft Document* (21 September 2016).

48 R Morgan "Only in Boulder: A home for pet 'guardians'" ColoradoDaily.Com (29 March 2009) quoting Alan Boles, an assistant city attorney at <http://www.coloradodaily.com/ci_13116998?source=most_viewed>.

euthanase any "adoptable" cat or dog, and will if need be deliver these animals to the Society. Both organisations will work towards ending the euthanasia of any "treatable" animal — one which could be rehabilitated — and only the "non-rehabilitatable" will be put down.[49] A San Francisco pet would therefore seem to enjoy greater chances of avoiding euthanasia than many healthy but elderly human inhabitants of the Netherlands. The San Francisco Animal Welfare Commission has also proposed a ban on all sales of pets within the city,[50] prompted by concerns that initially enthusiastic owners may later tire of them; but it appears that this proposal has not become law.

According to the *New Yorker* magazine,[51] pets in New York can be registered as "emotional support animals", and if a pet owner has a card certifying a pet as such, then the pet may be taken just about everywhere. Some confusion exists as to the precise extent of the law, but many officials are not well-informed, and are reluctant to offend. Ivanka Trump — perhaps pushing the boundaries — brought her pet — a Yorkshire terrier, admittedly, not a cat — with her to the fashionable Altesi Ristorante, on the Upper East Side. The dog was even allowed to climb onto the table. Observing this, the *New Yorker* reporter then acquired emotional-support cards for a whole range of animals, including a turkey, snake, turtle and alpaca, and took them to shops, art galleries and other public places all over the city. A cat should surely be eligible to enjoy emotional-support status under these rules, and its management, although not without problems, should surely present no more problems than managing a turkey.

7. THE PLACE OF 1080

The principal weapon currently employed by the Department of Conservation in its battles against predators is the poison 1080, dropped from the air over very wide areas after preliminary ground baiting with similar but non-toxic feed pellets. Although at present the most effective and cost-effective method of control, the poison is not without its drawbacks. The report of the Parliamentary Commissioner for the Environment[52] acknowledges that deaths from 1080 can

49 Agreement between the SF/SPCA and SF/DACC 1 April 1994.

50 C Tyler "SF considers ban on pet sales" abc7 News (26 May 2010) at <http://abc7.com/archive/7463602/>.

51 P Marx "Pets Allowed: Why are so many animals now in places where they shouldn't be?" *The New Yorker* (online ed, New York, 20 October 2014) at <http://www.newyorker.com/magazine/2014/10/20/pets-allowed>.

52 PCE, above n 14, at 53.

be painful, more so for some species than others; "but [it] is not the most inhumane pest control poison".[53]

There is abundant anecdotal evidence, though, that 1080 deaths can sometimes, at least, be excruciating, and this briefly raises the question of whether 1080's use might effectively be forbidden by animal welfare law. The Animal Welfare Act 1999 was amended in 2015 to make it an offence wilfully or recklessly to ill-treat a wild animal or an animal in a wild state.[54] Previously, no law governed the humaneness or cruelty of hunting. It is a defence, however, that "the conduct alleged to constitute an offence is or is part of a generally accepted practice in New Zealand for the hunting or killing of wild animals of that type or animals in a wild state of that type".[55] Pest control, of course, is not hunting. But s 30B of the Act explains that not only does nothing in the Act forbid hunting or killing, but that nothing in the Act makes it unlawful to hunt or kill any wild animal or pest in accordance with the provisions of the Wildlife Act, Wild Animal Control Act, Conservation Act, Biosecurity Act or any other Act.[56]

The Parliamentary Commissioner's report also suggests that "[t]he suffering of animals killed by 1080 can be reduced in two ways. First, baits can be designed to contain enough 1080 to ensure that [animals] eat enough to die as quickly as possible. Second, painkillers may be added to baits. Currently baits contain doses at levels that increase the likelihood of a fatal dose, but painkillers are not added to them."[57] Already, the Department of Conservation sometimes adds deer repellent to 1080, at extra expense, in order to avoid opposition from deerstalkers.

As mentioned above,[58] there is general acknowledgement that 1080, although necessary at present, is not the perfect solution, and a general expectation that it will soon be replaced by other poisons and techniques. Aerial poison drops, of one poison or another, may still be needful for some time, but potent lures and traps that reset themselves for multiple catches will reduce the need. At Harts Hill, beside the Kepler Track, a network of Goodnature rat traps, which reset themselves, has already been successful in reducing rat numbers to, and maintaining them at, undetectable levels.[59]

53 At 53.
54 Animal Welfare Act 1999, s 30A.
55 Section 30A(3).
56 Section 30B(1)(b).
57 PCE, above n 14, at 52.
58 See nn 14 and 15 above.
59 Department of Conservation *Rat Control (100m x 50m) Harts Hill — Fiordland Project Report* (DOC-2562031).

8. THE CROWN ENTITY MODEL

It will hardly come as a surprise to be told that the Prime Minister's announcement of the 2050 target for a predator-free New Zealand only followed growing environmental concern over a considerable number of years. The Royal Forest and Bird Protection Society launched its campaign "Restoring the Dawn Chorus", which has since morphed into the "Battle for the Birds", about the year 2006. Public interest in predator-proof sanctuaries, such as Wellington's Zealandia or at Maungatautari, has been developing over some years. Whether because of higher summer temperatures or not, the last couple of summers have been good mast years, where native beeches have flowered and seeded abundantly. The abundance of mast — beech seed — leads in the normal course of things to an abundance of rats and mice, which in its turn leads to a surge in the population of mustelids. When the mast is gone the rats turn to birds, and when the surge of rats is gone the increased numbers of mustelids also prey on birds. For this reason the Department of Conservation has enlarged the scale of its 1080 operations.

An organised and comprehensive operation to eliminate predators entirely would seem therefore to be no more than an obvious next step. What is not so obvious, however, is the precise form that the governing body of this campaign should take. The former Prime Minister announced that "the government has set up a new Crown entity — Predator Free New Zealand Limited — to drive the programme alongside the private sector. Predator Free New Zealand would be responsible for identifying large, high-value predator control projects and attracting co-investors to boost their scale and success."[60] In fact the Department of Conservation registered the Predator Free New Zealand Trust with Charities Services (formerly the Charities Commission) as a charitable trust on 10 June 2013.[61] The precise status of a Predator Free New Zealand Limited (PFNZ) as a Crown entity under the Crown Entities Act 2004 is, at the time of writing, still uncertain.

The uncertainty, at one level, arises because this Crown entity appears still to be in the throes of creation.[62] But in certain quarters, anyway, there are misgivings as to whether a Crown entity is the appropriate legal form which the Predator Free New Zealand project should take; and underlying those concerns about legal forms are different views on the organisation, the funding, and therefore the success of the entire project. These concerns have been articulated by Les Kelly, who might, as much as anyone, be considered the founder of the

60 "2050, NZ's 'predator-free' target", above n 8.

61 Registration number CC49533.

62 Letter to Les Kelly from Sonia Wansborough, Project Manager, Predator Free 2050 (17 October 2016): "The government … considers that a Crown company is the appropriate form for the entity *being created*" (emphasis added).

specific Predator Free New Zealand movement. In 2008/09 he and his fellow enthusiasts, including Paul Jansen, formerly of the Department of Conservation, coined the name, established a website and email address under that name, and have since, at considerable expense, developed professional and practical plans to achieve their ends.[63] It was Jansen and Kelly who in 2011 at the Victoria University of Wellington interested the late Sir Paul Callaghan in the idea, and it was Callaghan who in his turn enthused the Prime Minister.

Mr Kelly, while of course happy that the predator-free idea is becoming popular, believes that "if it is to be successful, a predator-free New Zealand organisation must stand alone and be quite apart from government involvement".[64] He offers two reasons for this. One is:[65]

> [W]e believe that the Department, although undoubtedly doing a great deal of absolutely splendid work, has also become compromised in numerous ways. No one can believe that it is absolutely committed to conservation and nothing else. In part, this is simply because the Department has in effect to serve a number of masters. In part, it may simply be because bureaucracies, however commendable their designated purposes, develop their own ethos, attitudes and procedures. But whatever the precise reasons, we believe that the ongoing and enthusiastic public support vital to [the Prime Minister's] vision can only be achieved by distancing the project from the other work of the Department of Conservation.

Although one might perhaps perceive a suitably constituted Crown entity as being sufficiently distanced from the Department, there can surely be little argument with the contention that the Department has "become compromised in numerous ways". The Department, for example, is at present appealing to the Supreme Court against a decision of the Court of Appeal which would prevent it from revoking the classification of "conservation park" from 22 hectares of the Ruahine Forest Park, not for any valid conservation reason but rather in order that that land, its status thereby reduced to "stewardship land", could then be alienated to an irrigation company.[66]

In mid-2016 the Department and the aviation industry were "accused of colluding over ramped up numbers of helicopter landings" on the Ngapunatoro ice plateau in the Darran Mountains in Fiordland National Park. Federated Mountain Clubs (FMC) had asked the Ombudsman to intervene after "information acquired under the Official Information Act cast doubt on DoC's

63 Les Kelly, numerous pers comms.

64 Les Kelly, letter to the Rt Hon John Key (17 October 2016).

65 Les Kelly, letter to the Rt Hon John Key (12 October 2016).

66 *Royal Forest and Bird Protection Society of New Zealand v Minister of Conservation and Hawkes Bay Regional Investment Company Ltd* [2016] NZCA 411.

ability to regulate the tourism industry". The information included evidence of "a number of closed-door workshops and conversations" between the Department and the tourist aviation industry. FMC believed that the dispensation to increase the number of flights from 14 to 80 landings a day on the ice plateau was actually in breach of the Fiordland National Park Management Plan.[67] In the opinion of the Ombudsman, Professor Ron Paterson, who investigated another complaint by FMC against the Department:[68]

> the decision in 2013 of a Department of Conservation delegate of the Minister of Conservation — to grant a new concession to Routeburn Walks Ltd, on terms permitting the concessionaire to increase from 24 to 40 the number of its overnight guided walkers entering the Routeburn Track each day — was unreasonable. The decision flew in the face of the limits set in the newly promulgated Mt Aspiring Plan. There had been a careful and extensive public consultative process and general endorsement of the provisions of the new Plan. As the complainant states, the decision to approve the increase in overnight guided walker numbers makes a "*mockery*" of the process of public consultation in the development of the Plan and undermines public participation.

A considerable number of other examples could be given of the Department's readiness to at least push the boundaries of its legal powers and duties, and legitimate public expectations, in the service of other ends than conservation. *Quis custodiet ipsos custodes*? Even within the wider public "conservation community" the Department, regrettably, is the subject of mixed feelings. It is easy to imagine that a Crown entity, inevitably linked to the Department in its formal administration and informal attitudes, might not enjoy the widespread and unstinting public support which a PFNZ project needs — requiring, as it would, access to larger areas of private land all over the country and also general public agreement that the extermination of the selected predators is undoubtedly a good thing.

Mr Kelly also has another reason for doubting the wisdom of the Crown entity model. This reason lies, not in New Zealand law, but in overseas laws. The signatories to the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions agree, in the first paragraph of the first article, that:[69]

67 M Taylor "DoC slammed for flights trial" *Otago Daily Times* (Dunedin, 6 July 2016).

68 R Paterson, Ombudsman *Investigation of DoC renewal of Routeburn Track concession* (ref no 361523, December 2014) at 2 (emphasis in original).

69 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted 17 December 1997, entered into force 15 February 1999), art 1(1).

> [e]ach Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

Giving money to a public entity in another country for the purpose of predator control operations might not, prima facie, be considered within the Convention's ambit. But legislation made to comply with the Convention can be a little more ambiguous. Section 6 of the Bribery Act 2010 (UK) forbids gifts intended to "influenc[e] foreign public officials" in the performance of their functions. Admittedly, the gifts must also be made in order to obtain or retain "business"; but it is not difficult to imagine how a generous overseas donor might have distinct views as to how the predator-free project should be carried out. It is not unreasonable to expect that a donor would want to have some say in the most effective use of its generosity, and it is not impossible to imagine that respect for the donor's views might involve a preference for one business over another. "Business" is defined to include trades and professions.

Rather wider is the Foreign Corrupt Practices Act 1977 (US). This prohibits offering anything of value to any foreign official for the purpose of, inter alia, influencing any official act or decision "in order to assist … in obtaining or retaining business for or with, *or directing business to*, any person".[70] Many grants which came with conditions as to how they were to be spent could arguably, at least, be considered to involve "directing business" in a certain direction.

Mr Kelly is concerned, therefore, that even the possibility of an accusation of bribery might make many potential generous overseas donors wary of donating even to as respectable an institution as a New Zealand Crown entity. More generally, potential donors might be more hopeful of efficient use of funds and good results from a business-like private entity than from a state bureaucracy, whatever its precise constitutional status.

Such a dearth of overseas generosity might be said not to matter. The recovery of a nation's endangered species could well be argued to be a natural and proper duty of the state itself. But states are generally considered to have many other duties as well — duties to their human inhabitants which, some would argue, should take precedence over duties to wild creatures. States generally never have enough money to do all of the things they are called upon

70 Foreign Corrupt Practices Act 1977 15 US Code § 78dd–1, "Prohibited foreign trade practices by issuers" (emphasis added).

to do. The government's proposed funding for PFNZ is a mere initial grant of $28 million, and thereafter funding on a "one for two basis" — for every $2 local councils and the private sector put in, the government would provide $1.

Local councils usually have many and much more pressing matters to hand than predator control. The private sector will doubtless contribute something; in the past Comalco has offered financial support for the kākāpō, the Bank of New Zealand for the kiwi and Mainland Cheese for the yellow-eyed penguin. But that support, generous though it might be, is still but a fraction of what would be needful for research and extermination in the field; and it might be that even these corporations would be less willing to donate in future if their generosity were not to be identified prominently with one particular species and project, but merely recorded as one donation among others towards one very large project. The fear of bad publicity, however unfair, about killing predators could also easily deter local private donors.

Mr Kelly believes — and general observations would support him — that there are, worldwide, many very well-endowed, generously intentioned and environmentally minded funds, institutions and trusts which would be only too ready to donate to a project, imaginative, exciting and yet, with a little time and will-power, actually achievable, to restore an island nation's remaining biodiversity. In fact, his opinion — perhaps excessively optimistic, perhaps not — is that an independent PFNZ could attract such support from private donors that financial support from the New Zealand government might actually become unnecessary. It seems perverse, then, that the government should arrange matters so as to eliminate this possibility at the outset. Why should the New Zealand taxpayer fund anything when strangers are volunteering to do so? There will always be plenty of other calls on the taxpayers' dollars.

Mr Kelly has over the years spoken to the then Deputy Prime Minister, the Hon Bill English, and the then Minister of Conservation, the Hon Dr Nick Smith. He recently suggested to the former Prime Minister that this might be one of those rare and special occasions where a royal charter would be appropriate to establish the new organisation.[71] Otherwise an Act of Parliament would do. Both statutes and charters can create private entities. A charter or statute would contain the organisation's own objectives, principles and methods. Both statute and charter would establish PFNZ as something special, important and trustworthy. At the time of writing, however, it appears that a government decision has been made to adopt the Crown company model, and the current Minister of Conservation "is not prepared to re-litigate the Government's decisions".[72] Time will have to tell if those decisions are changed; time will tell if whatever model adopted was the right one.

71 Kelly, above n 65.

72 Letter to Les Kelly from Sonia Wansborough, above n 62.

9. THE EXISTING STATUTORY FRAMEWORK

Regardless of the form and constitutional position that the PFNZ organisation eventually assumes, its basic function of course involves the elimination of predators on the ground. Here, in particular in relation to private land, another set of legal issues arises. Apart from the duties imposed on owners and occupiers of land under the Health Act 1956,[73] there is no general statutory obligation to keep one's land free of rats, cats, possums or mustelids. Only the ferret is an unwanted organism under the Biosecurity Act 1993, but that status does not of itself impose any duty of extermination on anyone.

In order to achieve its aim of a predator-free New Zealand, what legal powers — to engage in extermination programmes itself, and to require others to do so — would a PFNZ organisation have to have? From what source would such powers spring? Obviously, if the organisation were to be created by some new statute, then that statute might provide for the matter. No more can be written here about that possibility. But some law on the matter already exists, and it might well be that the powers of any new PFNZ organisation draw upon existing law. How appropriate is that law?

By s 41(1)(c) of the Wildlife Act 1953, the Minister may "co-ordinate the policies and activities of departments of State, local authorities, and public bodies in relation to the protection, management, control, and conservation of wildlife and the eradication of harmful species of wildlife", and, by para (e) may prepare and issue plans and publications for that purpose. Subsection (2)(b) authorises the Minister to establish or carry on "any operations or industry" for those purposes. These are very general provisions, and one wonders how far such policies and activities can extend. It appears, though, that they could extend to pest extermination on private land, for s 59(1) provides further that:

> If in the opinion of the Minister any wildlife is causing or is likely to cause injury or damage to … any other wildlife, or to any trees, shrubs, plants, or grasses, the existence of which may tend to protect the habitat of any absolutely protected wildlife … [then the Minister] may authorise in writing … any … officer or servant of the Department, to enter at any time and from time to time on any land under the control of any local authority or public body or any Maori land or private land … for all or any of the following purposes:
> …
> (b) to catch alive or to hunt or kill any such wildlife …

73 Health Act 1956, ss 29(c) (which defines "nuisance" to include "premises … in such a state as to harbour … rats or other vermin") and 30 (which declares the creation or allowing of nuisances to be an offence).

Subsection (4) does however require the entering officer, where possible, to give reasonable notice of the intention to enter thereon.

Where there is a multiplicity or complexity of land titles, however, or where swiftness of delivery is essential, the requirement of notice of intention to enter may become burdensome. Moreover, these sections *do* require there to be actual or likely injury or damage to wildlife. They were not intended to cover, and cannot cover, the situation where a pest, in the place where it is, is doing no harm to wildlife — possibly, for example, because there is no wildlife there any more. Section 59 simply does not cover the possibility of a pre-emptive strike in places where, although pests exist, they are in that particular place doing no harm to wildlife at present. The section may authorise the removal of pests from a wild habitat inhabited by wildlife being harmed, but it simply does not cover the removal of pests from other areas.

The other statute is the Biosecurity Act 1993, pt 5 of which deals with "Pest management". By s 54, its purpose is to "provide for the eradication or effective management of harmful organisms … present in New Zealand by providing for … the development of effective and efficient instruments and measures that prevent, reduce, or eliminate the adverse effects of harmful organisms". The responsible Minister must provide leadership through a national policy direction, in order to achieve consistency and efficiency.[74] This proposed national policy direction is open to public submissions. Pest management plans may be prepared. They may be national plans,[75] or regional ones.[76] (There is no reason why a plan for nationwide extermination of a particular pest could not start off as a regional plan, before being extended to other regions.) In the case of national plans, it is worthy of note that "[t]he first step in the making of a plan is a proposal made by … a Minister; or a person who submits the proposal to a Minister".[77] So from the beginning the possibility is contemplated that a private party of one sort or another may drive a pest management programme.[78] Regional plans, likewise, may be initiated by such persons.

The matters the proposal for a national plan must cover are spelt out in s 61, which runs to just over two pages. As well as describing the reasons for the plan, the adverse effects, the objectives, and principal measures, the benefits and costs, the reasons why a national plan is more appropriate than a regional one, the rationale for the proposed allocation of costs and, if it be proposed that the Governor-General in Council should impose a levy, many

74 Biosecurity Act 1993, s 56.
75 Sections 59 to 67.
76 Sections 68 to 78.
77 Section 61(1).
78 "Person" is defined in s 2 as including "the Crown, a corporation sole, and a body of persons (whether corporate or unincorporate)".

details concerning that levy — as well as all of that, and rather more, there must also be information about monitoring or measuring achievements, the actions expected of local authorities, the basis of any payment of compensation, the anticipated costs of implementing the plan, how it is proposed that those costs be funded, the period for which it is proposed the plan be in force, and any public consultation and its outcomes.

The Minister must then be satisfied,[79] inter alia, that the plan will be effective, that the benefits will outweigh the costs, that there will be "adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years", that the plan would not be contrary to our international obligations, and that its rules would assist in achieving its objectives and "would not trespass unduly on the rights of individuals". Then, after being satisfied that all proper consultation has been properly done,[80] the Minister may approve the *preparation* of a plan.[81] (Everything described hitherto has referred not to a plan but to a *proposal* for a plan.) The plan must cover many things — as well as the perhaps more obvious ones, it must cover "the sources of funding for the implementation of the plan",[82] the powers in pt 6 of the Act ("Administrative provisions") to be used to implement the plan,[83] the rules (if any) to be made,[84] and also "the actions that local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation".[85]

Section 64 was inserted in 2012 by the Biosecurity Law Reform Act of that year. Its reference to the "sources of funding for the implementation of the plan" might be thought to assume a better-funded PFNZ than one receiving money from local bodies and local donors; any PFNZ funded only locally may be too financially constrained to tackle any but the most modest of projects. On the other hand, the reference to possible funding by local authorities seems to fit in very nicely with the government's proposals for future funding. On yet another hand, perhaps the government is just waiting to see what happens, as governments sometimes do, and perhaps should do more often. If it should appear that the PFNZ project is indeed adopted enthusiastically by the nation, then a future government might well be open to persuasion to increase funding.

79 Section 62.
80 Section 63.
81 Section 64.
82 Section 64(3)(e).
83 Section 64(3)(g).
84 Section 64(3)(h). Rules included in pest management strategies prevail over a local authority's bylaws where the two are inconsistent: s 60(1).
85 Section 64(3)(j).

Such is the general scheme of national pest management strategies. A broadly similar approach, *mutatis mutandis*, applies to regional pest management strategies.[86]

Not content with such detail, the Act then goes on to consider the implementation of plans.[87] The "management agency" specified in the plan, be it a national or regional plan, pest management plan or pathway management plan, must be a department of state, council, territorial authority, or body corporate; and this management agency, within three months of the specified commencement date of the plan, must then produce an *operational* plan. So the initial detailed proposal is followed by an actual detailed plan, and after that is approved another detailed plan has to be produced …The portion of pt 5 considered so far, concerning all these plans, runs to 54 printed pages, and a great amount of detail. A phenomenal amount of paperwork must be got through before a single pest dies, and doubtless a phenomenal number of innocent but legally fatal mistakes could be made en route. It is hard to believe that the Act's arrangements could not be somewhat simplified. As it is, it would seem to be only a large experienced bureaucracy that could be confident of handling the Act's requirements well — if ponderously. Would it be preposterous to suppose that these complex requirements are not necessarily displeasing to interested government departments anxious not to be superseded by possibly lean and innovative newcomers?

Several remaining sections of pt 5 deal with several things. One matter is compensation, a matter that might affect cat owners, in particular, since the issue may arise in the case of "domesticated organisms whose feral or wild population is a pest to which a pest management strategy applies".[88] Then there are sections about levies, which may be imposed only by Order in Council, and funding from rates; regional councils must decide the extent to which they should fund the implementation of their various regional plans and national plans. It appears that the councils do not have to fund such strategies, but they do have to consider whether they might fund them. If the plans happened to be their very own regional ones which they had developed it might seem perverse not to fund them.

It would be tedious to survey pt 6 of the Act, "Administrative provisions", in any great detail. Suffice it to say that properly authorised officers are given very substantial powers enabling them to detain persons for various reasons, search people, inspect and search premises, copy documents and information, use dogs, seize and destroy various classes of goods, seize evidence, intercept

86 The Act then goes on to speak of "pathway management plans", both national and regional, which deal with the management of goods and craft into or in New Zealand which have the potential to spread harmful organisms (ss 79–98).

87 Sections 99–100W.

88 Section 100I(2)(a)(iii).

risk goods, examine organisms, and co-opt assistants. It may well have been in Parliament's contemplation that many of these powers would likely be exercised only in extreme situations requiring extreme remedies — as, for example, during an outbreak of foot-and-mouth disease.[89] The declarations of controlled areas and erection of road blocks, cordons, or checkpoints are likelier to happen then.[90] Nevertheless, as long as all is properly done, these powers could where appropriate be used in a predator control programme. Of particular interest, perhaps, are s 109, which authorises inspectors to inspect "any place" in order to confirm the present or past presence or absence of any pest, pest agent, or unwanted organism, and s 114, whereby authorised persons may enter any place do anything necessary or expedient to eradicate (inter alia) any pest or unwanted organism. If, however, the place to be entered is a dwellinghouse or associated with a marae, entry may only be with the occupier's permission or with a warrant. If the operation in question were, say, for the elimination of rats from residential areas, and some householders were reluctant to cooperate by allowing access to the exterminators, then a certain amount of delaying paperwork would be necessary before compulsory access could be got. But as scientists develop more and more potent lures, the necessity of entering smaller blocks of private property will presumably diminish. Perhaps on the whole, though, just a little statutory streamlining might serve to lubricate the wheels of pest administration.

10. NEW PROBLEMS IN FUTURE

So. New Zealand's last rats and stoats have joined the dodo in death. The almost legendary saddleback nests in private gardens (as already it has been reported as doing in the city of Wellington, near but outside Zealandia), flocks of kākā and parakeets chortle and cavort in the trees, and perhaps, as was recorded in the 19th century, little country schools are occasionally forced to cancel lessons because the teachers' voices cannot be heard over the birdsong … Has paradise been established*? Et in Arcadia ego*. Everything comes at a cost. There is no such thing as a free lunch. Even a predator-free New Zealand comes at a cost, and ushers in a new set of problems; problems practical and therefore, in the last report, legal. What might they be?

A glimpse of future problems may already be got in Wellington, the home of the Zealandia sanctuary, where not only saddleback now wander beyond the reserve. Six North Island kākā, the bush parrot, *Nestor meridionalis septentrionalis*, the brother species of the mischievous kea, the mountain parrot,

89 *Absit omen*.

90 Biosecurity Act, ss 130–134.

were reintroduced to the Karori Wildlife Sanctuary, as it then was, in 2002.[91] Subsequent translocations and local breeding have led to a current population which would by now number over 250 birds. They range widely outside the sanctuary's borders. It is difficult to see any reason why their population will not continue to grow.

This is of course a great conservation success. In most parts of the New Zealand bush the sight of a single distant kākā is rare and memorable, and here are flocks of them in the public and private gardens of the capital city. But like the kea, the kākā is — to judge it by human standards — destructive. In order to feed on tree sap and bark-dwelling insects, kākā severely damage a wide variety of tree species, both native and exotic. They may gouge trunks and large branches, or rip off areas of bark. This is no laughing matter. The damage can compromise the trees' structural integrity and leave them vulnerable to branch fall. Long weak secondary growth is also liable to be weak and prone to fall. Diseases may be introduced. Tree crowns may die back.

This damage is already significant. In the botanic garden many notable trees and those of historic value have been damaged. Eucalypts are gouged in city parks. Kākā also damage trees in private gardens, and eat fruit and nuts growing there. Kākā are not even drawing the line at damage to vegetation. They are also damaging joinery, cladding and chimneys. This should not surprise us, as their mountain cousin the kea is notorious for attacking sheep for their kidney fat, damaging motor cars and poisoning themselves as they play with the lead flashing and lead-head nails of mountain huts. It seems inevitable that these problems will grow as kākā numbers continue to increase, and there is already evidence — if evidence were needed — that bad experiences with bird damage can induce negative attitudes to birds and bird conservation.[92] Kea are certainly still occasionally killed, quite possibly by the victims of their depredations.

What is to be done? If residents refrained from feeding kākā they might be less attracted to the city. As their numbers continue to grow, though, and as the commendable practice of replanting native trees continues, that may not make much difference. More supplementary feeding in Zealandia itself has been suggested; but that will not stop kākā from roaming, and supplementary feeding will encourage healthy populations to breed. At present, it might be possible to

91 Unless otherwise acknowledged, the following facts are all drawn from KE Charles "Tree damage in Wellington as a result of foraging for sap and bark-dwelling invertebrates by the North Island Kaka" (2012) 59 Notornis 171–175.

92 KE Charles and WL Linklater "The Role of Environmental Engagement in Tolerating Urban Bird Problems" (2015) 20(2) Human Dimensions of Wildlife 99–111. The authors do observe that attitudes are connected with people's engagement with the environment, such as planting for and feeding birds and visiting greenspace, and biodiversity knowledge and awareness. Positive experiences with birds may increase tolerance of bird damage. But they observe also that many bird problems are still, at present, relatively minor; and many people, of course, sadly or gladly, simply do not engage positively with the natural world.

trap particularly troublesome birds and release them in the wild to establish new populations there. But it may be that no particular birds are doing the damage, but it is rather a natural part of all kākā behaviour; and in any case that solution would be no solution if kākā were abundant everywhere. The conclusion which some have already reached is that wild nature is not always compatible with people. Dr Wayne Linklater, Associate Professor of Conservation Sciences and Director of the Centre for Biodiversity and Restoration Ecology at Victoria University of Wellington, believes that "conservationists must learn from the Wellington kaka experience. Wellington is now a city, not a forest. Just because kaka lived here once it does not follow logically that they should live here again. Conservationists should consider people before native species are restored." He fears a backlash against conservation if property damage by kākā grows. He loves kākā. "But their introduction to Wellington City [was] a mistake."[93]

This does not augur well for continuing popular enthusiasm for native species after predators are eliminated and native species reappear everywhere. Most bird species will probably be inoffensive, but those that do do damage may do significant damage. Nineteenth-century settlers killed large numbers of parakeets in defence of their orchards; Mr Explorer Douglas chronicled the mischievous cunning of the woodhen, or weka; and this author knows from his own experience of the damage which just a few wood pigeons (kererū or kūkupa) can do to apricot and plum trees.[94]

The problem will indeed extend beyond selected bird species. The New Zealand fur seal, or kekeno (*Arctocephalos forsteri*), is a species whose population has recovered spectacularly with the assistance of absolute legal protection. The current population is about 200,000.[95] The abundance of seals around the Kaikoura Peninsula and Kaikoura coast, for example, is an undoubted part of Kaikoura's tourist attractiveness as a place to view marine wildlife. Even from the state highway, travellers can peer at breeding colonies, and walkers on the high track around the peninsula can see thousands of seals lying on the shoreline pastures below. Yet when this author visited Kaikoura as a boy one offshore reef was the only place where seals could reliably be expected, and to encounter one on the mainland coast was a noteworthy experience.

93 W Linklater "Kaka conflict: conservation icon to pest" *Stuff* (New Zealand, 10 May 2016) at <http://www.stuff.co.nz/environment/79817641/kaka-conflict-conservation-icon-to-pest>.

94 The author has been obliged to dig out apricot and some plum trees because pigeons constantly ate the leaves and green fruit, broke branches and introduced disease, most notably silverleaf. The author could guard against possums, but not against creatures arriving by air.

95 Department of Conservation Information Sheet "New Zealand fur seal/kekeno" at <http://www.doc.govt.nz/nature/native-animals/marine-mammals/seals/nz-fur-seal/>.

But the population has not yet reached pre-*human* levels, estimated to have been about two million. European sealers found large seal populations only in the south, around Fiordland, Foveaux Strait and Stewart Island; but this was because Māori hunting had diminished their numbers elsewhere, not because seals would not live elsewhere. Seals have been breeding in the North Island since 1991, and now breed as far north as the Coromandel Peninsula.[96] There is no reason to suppose that their numbers will not continue to increase. Research in Otago and the Nelson/Marlborough region has shown recent population increases of about 25 per cent per annum.[97]

Yet problems are already beginning to appear in the human–seal relationship. Fishermen complain of competition with seals for the same fish, and although much of the seal's diet appears to be of squid and small mid-water fish, seals undoubtedly also take larger commercial species. The decline in West Coast seal populations, indeed, when all other populations are increasing, is attributed to the number of mature females taken in nets in the winter hoki fishery. There are occasional nips of children and tourists, none as yet particularly nasty. More far-reaching in possible consequences is seal obstruction of State Highway 1. Especially during heavy seas, seals haul out of the ocean and lie on the road. In particular they are said to favour several notable rock tunnels through which the state highway passes. Their presence there has sometimes surprised motorists; dead seals, hit by motor vehicles, are not uncommon after storms. The New Zealand Transport Agency (NZTA), the Crown entity responsible for administering state highways (the successor to Transit New Zealand, itself the successor to the National Roads Board), is investigating possible methods of keeping seals off the highway. Methods being considered include not only solid barriers but also, in some places anyway, electric fences.

At present it cannot be said that there is any significant pressure to remove or alter the seal's absolutely protected status. Several recent incidents of gratuitous seal-slaying have been greeted with widespread public disapproval. But in the past Sir Tipene O'Regan has claimed that fur seals are a nuisance to commercial fisheries and should be "harvested" by Māori because they are no longer endangered,[98] and the ill-advised "cultural harvest" proposals put forward some years ago by the New Zealand Conservation Authority[99] would also have covered Māori taking of seals.

96 Department of Conservation, above n 95.

97 Department of Conservation, above n 95.

98 David Round *Truth or Treaty? Commonsense questions about the Treaty of Waitangi* (Canterbury University Press, Christchurch, 1998) ch 6 "The Natural World".

99 *Maori Customary Use of Native Birds, Plants and Other Traditional Materials* (New Zealand Conservation Authority, 1994). There was a second discussion paper in 1997. The issue has faded from public view since then, but is not dead and is unlikely to die. *Ko*

With a population of about 200,000, increasing — except on the West Coast — at about 20 per cent or 25 per cent per year, absolute protection could be argued to be no longer necessary; at least, for practical purposes. But any culling of seals, whether for racially defined "cultural" purposes or mere population control, would be not only extremely controversial but fraught with practical difficulties. Any cull aiming for population control would have to concentrate on female seals as they come ashore to give birth and nurse their young — and mate again — during the breeding season. The scenes of slaughter transmitted to the televisions and living rooms of the nation would be so heart-rending that it is probably safe to say that they will not occur until seal numbers are considerably larger than at present and the nation has altered its general consensus somewhat.

Future Māori "cultural harvest" might well aim not at breeding females but at selected superfluous males. Such killing would still be ugly, though, and therefore controversial. It would also at once destroy the aura of sanctity which currently surrounds that particular species. And then race will enter the argument. Once some people of one racial inheritance may kill an otherwise protected species, people of other races will begin to ask why they may not. The species, they will say, cannot be endangered; if it were, then surely no one would be allowed to kill it. Subtleties of population management — assuming they exist — will be ignored. Some people of other races may even kill out of racial resentment, but plenty of others will be able to produce their own cultural reasons. Europeans, after all, were serious sealers. There will be some very ugly scenes in courtrooms if some people are convicted as criminals for doing no more than certain other people, distinguished only by race, can do quite lawfully. The Department of Conservation is wise not to hasten consideration of the issue.

Is it possible that the removal of predators will result in bird populations so large that legal protection is no longer necessary? That is hard to believe. A population of several million people, armed where desired with all the sophistication and cunning of modern firearms, could easily dent large bird populations. There will always have to be some legal protection, but very possibly not absolute protection. But what form would it take? It would be prudent to avoid racial distinctions if possible. The racial issue could perhaps be sidestepped if landowners, say, were to have certain limited rights to take species on their own property. That would have the effect of allowing Māori takings on Māori land. But such a law would place all landowners in a special category, and would therefore be a step towards the establishment here of the

Aotearoa Tenei, the Waitangi Tribunal's Report on the Wai 262 Claim, lays the groundwork for those of Māori descent to act as kaitiaki ("cultural guardians") towards "taonga species", and clearly contemplates that that would involve such ancient cultural practices as killing and eating the species.

English and Scottish game laws, privileging landowners, which early settlers were determined not to allow here. If the taking of birds were to be allowed anywhere, though, the logical place to allow it would be on private property rather than the public conservation estate.

Section 5 of the Wildlife Act creates "partial protection" for some species, which are absolutely protected unless they do damage to land or property, when the occupier of land may kill them. This approach also privileges landowners, and (as currently phrased) covers only the killing of destructive species for the purpose of preventing destruction. Privileging landowners less, and therefore more in accord with New Zealand's egalitarian principles, would be game laws which only regulate taking — for example, by insisting upon the particular devices (firearms, most obviously) — that might be used, bag limits, open and closed seasons and suchlike.

None of these legal regimes seems to hold the complete answer.

11. HOPE

Sufficient unto the day is the evil thereof. Let the future wrestle with its own problems. We already have more than enough to be going on with, and extinction is surely a greater problem than abundance. Faced with a choice between the extinction or the excessive abundance of species, surely the only rational choice is the latter.

The gravest problems beset the world, and our own country is not exempt. Everything being connected, we human creatures are doomed to share the fate of the earth. The problems afflict not only the earth but the human creatures who, everything being connected, are doomed to share its fate. Nearly all of New Zealand's environmental trends are in the wrong direction, and at the same time our mental and physical health continues to decline; our lives become more frantic, and we increasingly fail to see meaning and purpose in our own lives and in life itself. But meaning is as fundamental to the lives of men and women as food and shelter. Without it we perish. If life has no particular purpose then why should suicide — of the old, or for that matter of the young — be so wrong? The growth of the voluntary euthanasia lobby group, however humane its official purpose, is only possible because we are already half in love with death. And if our own suicide, our own extinction, is nothing to perturb us greatly, then neither will the extinction of anything else.

Yet where is meaning to come from? The good news of the gospels is now hardly heard or heeded. No one can predict whence the next new, and yet so old, message of hope and salvation will emerge, just as no wise Roman in the age of Tiberius would have predicted that salvation would have come from the Jews. Is it impossible that a predator-free New Zealand will enrich not only native

species but also our own lives? May it not be that the repair of these islands — the undoing, as much as possible, of the destruction we have wrought — the re-establishment of native life in all its remaining potential abundance — the restoration of the mana of the whenua,[100] the integrity and dignity of the land which has patiently borne our abuses for so long — is it impossible that this ambitious, exciting, and achievable project might also unite an increasingly diverse and fractured country, and enable human New Zealanders to rediscover innocence and meaning and life never perfect, but still beautiful and abundant? Then we may walk in the footsteps of Denis Glover's Harry, who began as a wild young man on a farm, but at the end knew to:

> Sing all things sweet or harsh upon
> These islands in the Pacific sun,
> The mountains whitened endlessly
> And the white horses of the winter sea.
>
> from Denis Glover, *Sings Harry*

100 To employ the slogan of Mr Hugh Best (formerly of the Wildlife Service and the Department of Conservation, now self-employed and consultant to Mr Kelly's PFNZ).