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Comparative Legislation for the Protection of Birds.

The Gold Medal Essay

OF THE ROYAL SOCIETY FOR
THE PROTECTION OF BIRDS

With Preface by

The Right Hon.
Sir Herbert Maxwell, Bart., F.R.S.

London :

THE ROYAL SOCIETY FOR THE
PROTECTION OF BIRDS,
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Legislation

FOR THE

Protection of Birds

BY
A. ^{Arthur}HOLTE MACPHERSON,
B.C.L., F.Z.S., M.B.O.U.,

AND
Lt.-Colonel GUSTAVUS ALBERT MOMBER,
F.Z.S.

Being the Essay for which the GOLD MEDAL of the ROYAL SOCIETY
FOR THE PROTECTION OF BIRDS was awarded in 1909, with
Extracts from the Essay which obtained the SECOND PRIZE.

With Preface by
The Right Hon. Sir Herbert Maxwell, Bart.,
F.R.S., LL.D.

LONDON :

The Royal Society for the Protection of Birds,
23, Queen Anne's Gate, Westminster, S.W.

1909.

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SOCIETY'S NOTE.

The Gold Medal of the Royal Society for the Protection of Birds was offered in 1908 for an Essay or Treatise on Comparative Legislation for the Protection of Birds, the Essay to take the form of an epitome of the Legislation in force in the various countries of Europe (Great Britain excepted), together with a comparison of this legislation with the Laws and Regulations in Great Britain, the Model Law of the United States of America, and the proposals of the International Convention for the Protection of Birds useful to Agriculture signed at Paris in 1902.

The following points were suggested for consideration :—

1. The Close Time appointed for all Wild Birds, or its limitation to certain species.
2. The protection afforded (*a*) to Birds throughout the whole or part of the year; (*b*) to what Birds; (*c*) to Nests and Eggs; (*d*) to special areas or sanctuaries.
3. The prohibition of the sale or possession of protected Birds, Eggs or Plumage.
4. The schedules of "useful" or "injurious" Birds published by any Government or under Protective Laws, and the basis upon which such lists are and should be drawn up and published.
5. The local option allowed for the adoption or modification of the Law of a country within its several States, Provinces, Districts, or Municipalities.
6. The working of the existing Laws for the Preservation of Wild Birds, and their enforcement by the Police and Courts, nature of penalties, forfeiture of nets, guns, etc.
7. The permission to take specimens for Public Museums.
8. The injury caused by the wholesale destruction of Migratory Birds when on migration.
9. The comparative economic value attached to particular species of Birds in different countries.

The competing Essays were sent in on the last day of 1908 ; and at the Annual Meeting of the Society on February 18th, 1909, the Gold Medal, with accompanying honorarium of Twenty Guineas, was presented by the Duchess of Portland, President, to Mr. A. Holte Macpherson, B.C.L., F.Z.S. (London), and an award of Ten Guineas to Lieut.-Colonel G. A. Momber, F.Z.S. (San Remo). On the same occasion Mr. Macpherson was elected a Life Fellow, and Colonel Momber a Life Member of the Society in recognition of the service rendered to the cause by their work. Both these gentlemen have generously returned the money awards to the Society, for the furtherance of its objects.

The Judges appointed by the Council of the Society included the Right Hon. Sir Herbert Maxwell and Mr. H. E. Dresser (author of "The Birds of Europe").

PREFACE.

THOSE who have watched with satisfaction and, each in his measure, done their best to promote the growth of modern feeling in favour of protecting wild birds cannot have failed to feel some dissatisfaction at the complexity of the legislation which is the outcome of that feeling. Besides the Game Laws there are, as Mr. Holte Macpherson has pointed out (p. 18), eight public Acts in force in the United Kingdom applying to bird-protection, "in addition to endless County Protection Orders and the enactments of the local legislative bodies of the Channel Islands and the Isle of Man." Herein, if anywhere, is a crying case for codification, and Mr. Macpherson has rendered excellent assistance to any one who shall be charged to undertake it by his careful abstract of the laws in force in foreign countries. For, in dealing with so mobile a population as birds, legislation in one country ought to dovetail with that of other countries. For instance, the Dutch law which prohibits the capture, killing or sale of peewits (p. 6), if it is to secure protection for that most beneficent species, ought to have a parallel in the United Kingdom, where tens of thousands of peewits are offered for sale annually in London, to be eaten in restaurants as golden plovers. Again, the French edict for the Department of the Seine, prohibiting the placing of nets or traps for taking birds *en masse* ought to be reflected in a British edict which should put a stop to the destructive shore nets, whereby ruffs and reeves, once so abundant, have become one of our rarest species, and many other desirable kinds of fowl are massacred every winter indiscriminately. Inasmuch as most of the birds of Western Europe pass seasonally from one country to another in that region, it follows that protective legislation, to be effective, should be homogeneous.

When we come to deal with local option in protection within the United Kingdom, the complexity of regulation is still more apparent. Mr. Macpherson's observations on this point are particularly well worthy of perusal (pp. 33-36). He neither overlooks nor underrates the hardship which would be inflicted upon fruit-growers in certain districts by enforcing uniform protection, say, of bullfinches, although that beautiful bird may be encouraged in other districts where corn and turnips are the principal.

To mention another instance: upon no class of birds has protective legislation taken more notable effect than upon gulls. Various species of gull have multiplied to such an extent in certain districts as to cause serious destruction of other desirable forms of life; for gulls are practically omnivorous. It would be unreasonable to enact that, because gulls are innocuous in Middlesex and Warwickshire, that they are not to be interfered with when they assemble in multitudes, as I have often seen them, on the shallows of Scottish salmon rivers in April and May, picking out thousands of salmon smolts descending to the sea. To enforce their protection when so engaged is to bring discredit upon all bird-protection whatsoever.

When I was conducting the Act of 1904 through the House of Commons, I was strongly urged to make the restrictions uniform throughout the United Kingdom. I declined to do so, for the very reasons so well expressed in Mr. Macpherson's essay; and although I cannot complain of his criticism of the discretion of some County Councils in exercising their powers of local option, on the whole I consider that their action has been beneficial and that, as time goes on and experience accumulates, still better results may be expected. I have known several County Councils anxious for guidance in drafting regulations and most willing to accept advice from experienced ornithologists, such as are to be found in most counties.

I am very glad that the Society has decided to print extracts from Colonel Momber's essay as well as Mr.

Macpherson's. I can only say that, although I have had weightier and more irksome tasks, I never had a more difficult one in proportion to its scope than was assigned to me by the Council of the Society when they invited me to act as umpire between the competing essayists. All of them, and especially the winners of the first and second prizes, may feel satisfied that they have done good and useful service to the cause which the Society has undertaken.

HERBERT MAXWELL.

Monreith, 17th June, 1909.

The Council of the Society, while strongly urging consideration of these Essays, do not hold themselves responsible for the exactitude of the statements regarding foreign laws, nor do they necessarily endorse every opinion expressed within these covers.

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COMPARATIVE LEGISLATION

FOR THE

PROTECTION OF BIRDS,

BY

A. HOLTE MACPHERSON,

Winner of the Gold Medal Essay Competition, 1908.

THE subject of the protection of birds has in recent years assumed a position of considerable importance chiefly owing to the recognition of the great effect exercised by birds upon agricultural conditions. Not only have the legislatures of most European countries devoted attention to the subject, but both on the European Continent and in the United States of America we find Governments seriously working at the subject through their Departments of Agriculture. Whether a given bird should be protected or not is usually a hard problem to decide ; but it is still harder to determine the extent of the protection to which it is entitled ; and when we further come to approach the question of how to give the requisite protection, the problem presents difficulties which are almost insuperable owing to our woeful ignorance.

In years to come no doubt we may have learnt more of the relationship between birds and their surrounding conditions, and more of the effect of the disturbance caused directly and indirectly to the balance of Nature by the destruction of some mammal, bird or insect, or by the introduction of some insect, bird or mammal. But at present the best that can be done is to observe and collect facts, and to watch the character and effect of the legislation for the protection of birds in other lands, in hopes of being able to build a surer foundation for future legislation in our own country.

In a recent address to the Bar Association of New York State, the British Ambassador referred to the difficulty of modern legislation owing to the complexity of modern life, the growth of commerce and industry and of new methods of production and distribution. Many problems, he pointed out, are too difficult and involved even for the abler members of legislative bodies to master, and it has become "desirable to have some organised system for the gathering and examination of materials for legislation, and especially for collecting the laws passed in other

countries on subjects of current importance." To no subject are Mr. Bryce's words more applicable than to legislation for the protection of birds.

It is obviously impossible within the limits of this treatise to give more than a very brief sketch of the legislation of Europe on such a subject. We shall in most cases, therefore, merely give an outline of the laws in force, only touching upon details when the particular enactment referred to is of special importance. We shall then be in a position to compare the extent of the protection given to birds on the Continent with that afforded to them by our own laws ; with that advocated by the " Convention pour la Protection des Oiseaux utiles à l'Agriculture," signed at Paris in March, 1902 ; and with that recommended by the model law prepared in America in 1886.

NORWAY.

Commencing with the north of the Continent, the position in Norway rests on the Shooting and Trapping Act of the 20th May, 1899. This gives the owner of ground the sole right to trap and shoot on his property*. All birds are protected from shooting and trapping from the 15th March to the 15th August ; formerly the close time extended to the 14th September†. Exceptions are however made in the case of birds of prey, Ravens, Crows, Magpies and certain other species which are deemed harmful ; and it is also permitted to kill birds of the protected species in the close season when they are doing injury to gardens, corn-fields or fruit trees‡. The use of steel traps and certain other contrivances for trapping is forbidden, though to catch a bird of prey, a steel trap may be used, provided it is carefully covered and placed at a height of at least two yards above the ground§. Nests may not be disturbed, nor eggs taken off the property of another ; nor may the owner of the ground take or allow the eggs of protected birds to be taken. On common land or high mountains, all nests and eggs are protected, except those of the birds which are excepted from the close season prescribed by Sec. 17||. The penalties for infringement of the law are fines of varying amounts.

There is not much shooting or trapping of birds in Norway ; and as far as small birds are concerned, they are not often destroyed or taken. The law provides no exceptions for persons who collect for public museums or for scientific objects.

* Sect. 1. † Sect. 17 as amended by Law of the 14th May, 1902.
 ‡ Sect. 17. § Sect. 22. || Sect. 28.

SWEDEN.

In Sweden the governing law is that of 1907 :* it makes it an offence punishable by fine to catch or kill certain birds between the 1st March and the 15th September, while certain birds of the wading class are protected between the 1st March and the 20th July. The list of birds in the first class contains some Owls, the Woodpecker, Hoopoe, Goatsucker, Nuthatch, Swallow, Martin, Creeper, Flycatchers, nearly all the Warblers, Stonechat, Whinchat, Wagtails, Pipits, Goldfinch, Chaffinch and Starling ; also the White and Black Storks. The second list contains the names of most of the commoner waders. The passing of the law seems to have been the result of a wish to conform to the terms of the Convention of Paris ; but, as in Norway, there is very little destruction of bird life, and certainly the smaller species are but rarely disturbed.

RUSSIA.

In Russia there has been, apart from local regulations, no legislation on the subject since 1892, when the last edition of the Agricultural Code was issued. Under this Code game birds of all sorts have close seasons provided ; and all other birds, with the exception of birds of prey, are nominally protected from the 1st May to the 15th July.† It is also forbidden during the whole year to trap birds of the genus *Tetrao*, Partridges, Francolins or Pheasants, or to destroy the nests or remove the eggs or young of any wild birds other than birds of prey.‡

There is, nevertheless, a considerable destruction of bird-life in Russia ; and Moscow has long been well-known for its bird-market, where in spring large numbers of small birds are offered for sale.§

DENMARK.

In Denmark the chief regulations are that "singing birds" may not be shot at any time ; but exceptions are made in the cases of the Thrush and the Fieldfare, which are granted a close season from the 1st February to the 16th September.

The Starling may only be destroyed between the 1st July and the 20th August, and then only in gardens where it is injurious to the fruit. Swallows are protected at all times. For Seagulls

* Law dated 27th March, 1907. † See Article 169, Code of Laws of the Russian Empire, Vol. XII., Part 2.—Statute on Agriculture.

‡ Article 170. § See Otto Herman's Historical Sketch relating to the Paris Convention (Budapest, 1907), p. 78.

there is a close season from the 1st February to the 1st October, and for Terns from the 1st February to the 16th September. Sparrows, Rooks and Crows receive no protection. Fines varying from two to two hundred kroner (2s. 3d. to £11) are inflicted for infringement of the law, while the culprit has the option of imprisonment instead of paying the fine.*

BELGIUM.

The subject is dealt with in Belgium by a Royal Ordinance of the 15th August, 1906. This is a consolidating measure, very comprehensive in its scope, bringing the law into harmony with the terms of the Paris Convention of 1902 and repealing various prior enactments.† Bird protection had been dealt with by legislation in Belgium for a good many years, the first law having been made over thirty years ago,‡ and by a Game law of the 28th February, 1882, the Government was expressly empowered to prevent the destruction of insectivorous species.§

The Royal Ordinance of 1906 forbids the taking, shooting, exposing for sale, hawking and transporting of insectivorous birds, as well as their eggs and young.||

The list of birds considered insectivorous is divided into two parts.¶ First, those which are to be considered insectivorous at all times; these include the Cuckoo, Goatsucker, the Swallows, Swift, Hoopoe, the Tits, Warblers, Wryneck, Woodpeckers, Nuthatch, Wagtails, Redstarts and others. Secondly, all other wild birds apart from those named in Article 6, except from the 15th September (included) to the 15th November (excluded). The birds referred to in Article 6 are the diurnal birds of prey, the Eagle, Owl, the Jay, the Magpie and the Crows; also exotic species, water and shore birds, and those birds to which certain sections of the Game Law of 1882 applies. Certain further exceptions are made in favour of live birds and Linnets and Chaffinches destined for prize competitions. Birds on the property of another may not be taken, shot or destroyed at any time or in any way without his consent,** nor any Owls, lime, traps or gins be used to take birds. Certain exceptions to this are allowed with regard to Thrushes generally, which may be taken in the manner described by the Articles in question from the middle of September to the middle of November; while the taking of Fieldfares and Mistle

* Law of the 11th May, 1894. † These repealed enactments are dated 14th August and 5th September, 1889, 28th April, 1891, 6th September, 1896, 6th June, 1904, and 16th January, 1906. ‡ 21st April, 1873. § Law of the 28th February, 1882, Article 31. || Article 1.

¶ Article 2. ** Article 3.

Thrushes is permitted up to the end of the hunting season. The right is reserved to owners and occupiers of destroying the birds' eggs and young in their establishments and gardens.* The Minister of Agriculture can grant special permits for scientific objects or for the advantage of certain localities, but he must define the duration of the authority and specify the appliances which may be used.†

In a Circular Letter which was sent to the Governors of the various Provinces by the Minister of Agriculture,‡ it was explained that this Article could be utilised not only for work for scientific objects, but also for "la tenderie aux ortolans," and to enable certain birds to be destroyed, such as Sparrows, Starlings, Wood-pigeons and Rooks in cases where their numbers are so great as to become a local danger to gardens, orchards and fields.

In addition to fines for infringement of the law, it is provided that traps and appliances illegally used are to be confiscated,§ and so are the birds illegally killed or taken or exposed for sale.|| It is worth noticing that there is no provision for the confiscation of eggs taken in contravention of the law.

HOLLAND.

In the Netherlands the chief law is that of 1880¶ for the Protection of Animals useful for Agriculture and Forestry, as amended by the law of 1886.** It is prohibited to catch, kill, remove, sell or offer for sale, deliver, or have in stock for sale or delivery, any birds useful to agriculture or forestry. It is further forbidden to collect, destroy, carry away, or deal in the eggs of protected birds, or to destroy or disturb their nests.

Exemption from the penalties for the infringement of the law is given to the owner and occupier of isolated properties (*i.e.*, gardens or fields surrounded by a substantial wall, fence, hedge or ditch).

This law of 1880 also provides that the birds and eggs taken and all articles used for the commission of any detected offence shall be confiscated, and captured birds, if alive, are to be set at liberty.†† The punishments are fines of fifty cents to twenty guildens. A repetition of the offence within two years, or repeated offences, may be dealt with by doubling the maximum fine or by imprisonment for from one to seven days.

By the combined operation of further enactments‡‡ certain birds

* Article 5. † Article 7. †‡ Dated the 16th August, 1906.
 § Article 8. || Article 9. ¶ 25th May, 1880 (Staatsblad, No. 89).
 ** 15th April, 1886 (Sect. 64). †† Article 7. ‡‡ These are
 laws of 24th October, 1892 (Sect. 236); 9th June, 1893 (Sect. 87);
 14th April, 1898 (Sect. 105); 3rd February, 1902 (Sect. 15).

are to be considered useful to agriculture and forestry throughout the year. These include the Cuckoo, the Swallows, Martins, Swift, Nightjar, Tree Creeper, Warblers, Pipits, Hedge Sparrow, Golden and Fire-crested Wrens, and the Tits; while the Black-bird, Song Thrush and Skylark are to be considered useful during the first nine months of the year.

There is also an old Hunting Law of the 13th June, 1857, in force in Holland, by which, amongst other things, it is prohibited—*

- (a) To catch, kill, transport, sell or offer for sale or to have in stock for sale, Peewits or Nightingales;
- (b) To disturb or destroy the nests of Nightingales;
- (c) To lay traps to catch or kill Nightingales or Peewits†;
- (d) To place traps for catching Thrushes within a certain height from the ground;
- (e) To catch Thrushes, Larks or Finches on another man's land without the permission in writing of the owner or in his company.

This law also prohibits‡ collecting or dealing in the eggs of wild birds; this prohibition, however, does not apply to Wild Ducks. Eggs of aquatic game birds and Peewits may, however, be taken during February, March and April in the presence of the owner of the land or with his permission. No eggs of the Peewit may be bought, exposed for sale, or removed after the 5th May.

Provision is made for persons who have special leave to collect for scientific purposes.§

The Dutch laws have a special interest from the fact that Holland was one of the European Powers not a party to the Paris Convention, though her representative had signed the Minutes submitted to the Conference on Bird Protection at Paris on the 25th June, 1895, which formed the basis of the terms of the Convention.

The Dutch legislation is more elaborate than that of any country which did not subscribe to the Articles of the Convention, except that of Great Britain. It is also important from its recognition of special rights appertaining to owners and occupiers of land, a feature to which we shall have occasion to refer shortly.

GERMANY.

In Germany the position is somewhat peculiar; the protection of birds is governed by the Imperial Law of 1888,|| but there are

* Article 21. † As to catching Nightingales and Peewits in Holland, see Rev. H. A. Macpherson's History of Fowling, pp. 124 and 464.
 ‡ Article 22. § Law of 1880, Article 4. || Sanctioned on 22nd March, 1888.

also local laws (*Landesgesetze**) which remain in force as well as the Imperial Law. The latter is an extremely interesting enactment, and, curiously enough, contrary to the general practice, contains a Schedule not of useful species but of noxious ones. This comprises the diurnal birds of prey (except Falcons), the Eagle, Owl, Shrikes, Crossbill, Sparrow, Crows, Pigeons, Moorhens, Coots, Herons, Goosanders, Gulls, Cormorants and Grebes. The Act also forbids generally the destruction of nests and the taking of eggs and young birds and all traffic in them. No general protection is extended to the eggs of shore-nesting birds, including Gulls, and Terns and also Lapwings.

No bird-catching of any kind may take place by night. The Act also fixes a general close season from the 1st March to the 15th September, to which exceptions may be made in special cases.

The local regulations in the various Federal States and towns are numerous, and some are of considerable antiquity, as the following facts will show.†

Of the more important of these local laws, that of Alsace-Lorraine protects at all seasons, among other species considered useful, the Rook, the Jackdaw and the Starling. Baden‡ protects as useful very much the same birds as Switzerland; of Thrushes, the Fieldfare alone may be shot. Bavaria§ protects practically the same birds as Baden. In the Grand Duchy of Hesse|| it has long been forbidden to destroy birds useful to agriculture. Crows and Sparrows are not included in this category. Eggs and nests are protected, and the practice of hedge-clipping is restricted by a later Act. In Prussia nobody may take birds (other than game birds) or their eggs or young, or destroy nests, on property which does not belong to him. The law of Saxony¶ exempts the Thrush during part of the year, and all small singing birds from the operation of its stringent Game Law; but no protection is extended to Crows, Pigeons or Sparrows. Würtemberg** protects the same birds as Bavaria, but excludes the Storks as harmful. It is worthy of mention that in Bremen the Sparrow is protected.

The net result of these various federal laws is that 152 species are locally protected as useful. The Falcons, which are considered worthy of protection under the Imperial Law, are not protected in a single case; while some Federal States have

* The chief of these is the "Preussische Feld-und Forstpolizeigesetz" of the 1st April, 1880. † This list and much of the information as to the law in Germany is taken from Herman's Historical Sketch relating to the Paris Convention, previously referred to. ‡ Law of 13th July, 1888. § Decree of 19th November, 1889. || Law of 7th April, 1837. ¶ Law of 22nd July, 1876. ** Decree of 1st October, 1890.

extended protection to the Crow, the Moorhen and the Hawfinch, all of which species are under the Imperial Law branded as noxious !

It would be out of place in such a treatise as this to enquire deeply into the historical side of the question under discussion, but it seems to be generally recognised that the present position of bird-protection in Europe originated in the movement with this object started in Germany in 1868. In the early part of 1908 a great discussion took place in the German Imperial Parliament on the question of the abolition of the springe-traps used so much for capturing Fieldfares on their autumn migrations. The debate, which ended favourably to those who desired to have the use of the trap forbidden, was chiefly remarkable on account of the strength with which the humanitarian side of the question was argued. The Chancellor in this connection stated that the protection of animals from cruelty was to be regarded not only as the outcome of a love of Nature, but as a matter of moral education.* The abolition of this cruel trap is, however, only part of a far wider scheme for the better protection of birds in Germany which has been the subject of consideration by a Committee appointed by the Reichstag ; the deliberations of this Committee resulted in the preparation of a measure forbidding the taking or destruction of nests, eggs or young birds and the sale, transit, export and import of nests, eggs or young birds of European species, exceptions being made in the cases of birds nesting on buildings and of the eggs of plovers and gulls. Great restrictions are also placed on bird-catching, while the use of cruel devices, such as poisoned food and blinded decoys, is absolutely prohibited. The measure also proposes to establish a close time from the 1st March to the 1st September, during which the taking, killing, sale, purchase, import, export, transit and transport of all European birds, dead or alive, is forbidden.† Tits, Nuthatches and Treecreepers are to be protected at all times. Game birds and certain other species are not affected by the measure, though these may not be trapped or snared. We do not at present know the fate of this measure, but the mere fact of its preparation is a good and significant omen.

* This was the subject of an animated article by Dr. Ludwig Staby in the "Berliner Lokal Anzeiger" of the 17th May, 1908. The learned Doctor declares that the result of the division on this question of the springe-trap shows his countrymen to be in advance of all civilised nations. Our Pole-trap Act was, however, passed in 1902, and an Act to prevent the taking of birds by hooks has been passed this year (1908).

† The framers of this clause had obviously Sect. 1 of the American Model Law (hereinafter referred to) in their minds.

FRANCE.

France is a country which has until recently done but little practical work for the protection of birds, although she has taken an important part in discussions on the subject. At the International Conference which met at Paris in June, 1895, the French Government presented a draft Agreement which had been carefully prepared for the consideration of the delegates of the various Governments represented. This draft was taken away for consideration by the delegates, and eventually formed the basis of the Convention signed at Paris in 1902. Up to this time little had been done in practice to prevent the killing and taking of birds, though laws on the subject existed, but since the date of the Convention various decrees have been issued by the Prefects of Departments for the protection of species useful to agriculture, and the number of "garde-forestiers" has been increased.

The chief law is that of the 3rd May, 1844, as amended by the law of the 22nd January, 1874, by which it is provided that the Prefects of Departments shall resolve and determine not only the time for taking birds of passage (other than the Quail) but also the names of the birds to be treated as migratory, and the various methods of taking them.* The older enactment also gave the Prefects a general power to make decrees to prevent the destruction of birds; while the latter law added the words: "ou pour favoriser leur repeuplement." When the original measure became law two Circulars were published by the Government, dated the 8th and the 20th May, 1844, which show that even at that time grave fears were entertained in some quarters as to the result of the persecution to which the birds of France were subjected. These circulars draw attention to the fact that there were a large number of Departments where the increase of insects was such that whole areas were devastated, and that this fact was attributable to the destruction of birds. The position is therefore this. It rests with the Prefects to publish local decrees for the protection of birds, fixing at the same time (*a*) the dates at which the shooting of migratory birds is to begin and end; (*b*) what birds are to be considered migratory; and (*c*) what means may be employed to destroy or take them. These local regulations when enforced are construed very strictly. For instance, it has been decided that authority to use a net for taking birds of passage will not justify the capture in that net of a sedentary species.† Again, where a man has been caught

* Article 9.

† By the Court of Cassation, 26th July, 1897; reported in the Dalloz Repertory, 1898, Part I, p. 89.

taking larks with a mirror at migration season* after the close of the time for general sport, but during the time appointed by the Prefect for the taking of birds of passage, it is no defence to prove that he was taking a migrating species in the season appointed for that purpose, unless the Lark is specifically mentioned as a bird of passage in the Prefect's regulation.†

On the 30th June, 1903, another law was passed approving of the terms of the Paris Convention. "Le président de la République est autorisé à ratifier et, s'il y a lieu, à faire exécuter la Convention." Since this date more interest seems to have been taken in the subject, and, as already stated, a good many Prefects have issued decrees prohibiting the killing, taking, export, import, hawking and sale of certain birds deemed useful to agriculture. One of such Departmental Decrees is now before us, and well repays study.‡ It is most complete in its provisions. It fixes the periods and methods of chase relating to water-game and birds of passage; contains a list of protected birds, which includes, besides those named specifically, all small birds of a size inferior to that of the Quail, Thrush or Blackbird; extends protection to the eggs, nests and young of the protected species, and prohibits the placing of traps§ of any kind for the purpose of taking birds "en masse." The decree further gives a list of birds which are to be considered harmful, and contains regulations as to their destruction by the owners and occupiers of the properties affected, who may obtain special permits to shoot Sparrows in cases where this bird—which is not included in the list of harmful species—causes "par sa surabondance un réel dommage à l'agriculture." Sparrows, however, which have been thus destroyed may not be sold.

Hunting birds at a prohibited time and the use of prohibited implements are punishable by fines ranging from fifty to two hundred francs and in addition by imprisonment from six days to two months.||

SWITZERLAND.

In Switzerland the law for protecting useful birds is very definite and stringent. For a good many years past the subject

* For the use of mirrors to attract Larks in England see Pennant's *British Zoology*, Vol. I., pp. 299-300. The mirror is also used for this purpose in Italy and in Russia, as well as in France.

† Decided by the Court of Rennes on 20th May, 1863; reported in Dalloz, 1865, p. 71.

‡ The Decree for the Department of the Seine of the 19th August, 1907.

§ This article of the Decree in question (9) only prohibits "la pose" of traps. Article 3 of the Convention of 1902 prohibits "la pose et l'emploi"; apart from this difference the two articles are identical.

|| Law of 1844, Article 12.

has received much attention, and though the Republic was a party to the Paris Convention of 1902, laws were at that date already in existence in Switzerland which went quite as far as those which the signatory Powers recommended. The law now in force is the "Loi Fédérale sur la chasse et la protection des oiseaux" of the 24th June, 1904, taken in conjunction with the Regulations for carrying it into effect (Règlement d'exécution) of the 18th April, 1905. The provisions of these combined are so comprehensive that, notwithstanding the small amount of space at our command, they deserve examination in some detail. Certain birds are protected; they may not be killed or taken, and the protection is extended to their eggs and young. The list of protected birds comprises all the small insectivorous species, the Lark, Starling, all Thrushes (except the Fieldfare, the Redwing and the Mistlethrush), many of the Finches, the Cuckoo, Tree-creeper, Nuthatch, Wryneck, Hoopoe, all the Woodpeckers, the Jackdaw, Roller, Kestrel, all nocturnal birds of prey (except the Eagle Owl), Storks and Swans. The destruction of Starlings, Blackbirds and Thrushes, which do damage to the vines and orchards, may be authorised in autumn, but must not be continued after the vintage or fruit picking is over.* Moreover, the birds so killed may not be sold or purchased.†

The importation and transportation of protected birds is prohibited, though the Department of the Interior may grant exceptions in certain cases in respect of a limited number of birds to be kept in cages.‡

Bird-catching, whether by means of traps, decoy birds, little Owls,§ limed twigs, or any kind of snare, is strictly forbidden.||

The authorities of the various Cantons may give facilities to persons for collecting birds, eggs and nests for scientific objects, provided they do not make a trade of it.¶

The penalties for breaking the law are fines ranging from ten to sixty francs; ** and confiscation of the birds and eggs and of the implements used.††

There is also an interesting clause‡‡ which provides that children should be taught which birds are protected, and encouraged to spare them.

* Article 17 of the law. † Article 18 of the Règlement d'exécution.
‡ Article 17 of the Règlement.

§ The use of Owls by fowlers to attract birds, which is here prohibited, is not only a very old custom, being described by Aristotle (History of Animals, Book IX., Chap. 2, Sect. 3), but is also very widespread, being well-known in almost every European country and commonly practised in Japan.

|| Article 19 of the law. ¶ Article 20 of the law. ** Article 21 of the law. †† Article 24 of the law. ‡‡ Article 18 of the law.

AUSTRIA-HUNGARY.

In dealing with Austria-Hungary it is necessary to take the two portions of the Empire separately. The central governing body of Austria is the Reichrath, but the separate Austrian Provinces have their own Diets (Landtage) with local legislative powers. The local laws in force for the protection of birds have not undergone much change recently, and these laws are so numerous that for present purposes we must rest content with a reproduction of an extract from the Report on European legislation which was presented to the Ornithological Congress at Budapest in 1891 by Professor Liebe and Herr von Wangelin:—

I. In Istria, Dalmatia, the seaboard and the Tyrol, the destruction of nests and taking of eggs is forbidden, but in autumn and winter bird-taking is permitted by license. Parishes have a monopoly in the taking of birds, and impose a tax which ranges from two to nine florins.

II. In Bukovina, Görz, Gradiska, Carniola or Krain, Moravia, Silesia, Vorarlberg and Upper Austria, the laws forbid the destruction of nests, and distinguish between the useful and noxious birds. Bird-catching is conditional on producing a license.

III. In Bohemia, Galicia, Carinthia or Kärnthen, Salzburg, Styria and Lower Austria, the laws forbid the taking of useful birds, which are scheduled, and the taking of other species is restricted.*

The chief laws are those of Bohemia of 1870 and 1882†; Dalmatia, 1874 and 1895‡; Görz-Gradisca, 1870, 1890 and 1892§; Carinthia or Kärnthen, 1870, 1883 and 1908||; Lower Austria, 1899 and 1908¶; Upper Austria, 1890**; Salzburg, 1888 and 1899††; Tyrol, 1899‡‡; and Trieste, 1892§§. It is clear from

* The above extract is taken from Herman's work on the Convention of 1902.

† Gesetz, 30th April, 1870; L. G. Bl., No. 39; and 9th January, 1882; L. G. Bl., No. 9.

‡ 20th January, 1874, L. G. Bl., No. 5; and 14th January, 1895, L. G. Bl., No. 6.

§ 30th April, 1870, L. G. Bl., No. 37; 21st November, 1890, L. G. Bl., No. 9; and 11th September, 1892, L. G. Bl., No. 26.

|| 30th November, 1870, L. G. Bl., No. 54; 28th March, 1883, L. G. Bl., No. 11; and 12th April, 1908, L. G. Bl., No. 10.

¶ 28th August, 1899, L. G. Bl., No. 27; and 10th March, 1908, L. G. Bl., No. 42.

** 6th February, 1890, L. G. Bl., No. 6.

†† 31st July, 1888, L. G. Bl., No. 29; and 26th August, 1899, L. G. Bl., No. 20.

‡‡ 18th June, 1899, L. G. Bl., No. 34.

§§ 28th August, 1892, L. G. Bl., No. 25.

this that Austria has long appreciated the importance of bird-protection, but only two provinces have since 1902 passed measures which bring their laws more into harmony with the recommendations of the Paris Convention, namely, Lower Austria and Carinthia.

In Hungary the question of bird-protection has received much careful consideration by the Government. The chief Act was until recently that of 1894,* but a Circular Decree of great importance, which had the force of law, was issued on the 18th March, 1901, by the Royal Hungarian Ministry of Agriculture. By this, certain mammals and birds are to be afforded due protection. The list of birds is of considerable dimensions, comprising 132 names.† The taking of the eggs and nests or young of the protected species, or exposing them for sale, without leave from the authorities, is made a penal offence.‡ Facilities are given for the taking of specimens alive, killing and taking eggs and nests for scientific objects and for their transport, but licence must be obtained from the authorities, and the restrictions under which the necessary leave will be granted are somewhat severe.§

On the 26th January, 1906, sanction was given to an Act by which the whole terms of the Paris Convention became incorporated in the law of Hungary.||

PORTUGAL.

Little or nothing is done to protect useful birds in Portugal; this is all the more disappointing because Portugal signed the Paris Convention. There are, it is true, laws for the protection of game birds at certain times of the year, but the penalties provided by these laws are not only very light but are rarely rigidly enforced.

SPAIN.

The chief Spanish law dates from 1902,¶ and the rules made for its application came into force in 1903.** The sale of insectivorous birds is entirely prohibited, with the exception of certain species, which are only protected during a specified portion of the year.

The shooting of birds which are considered to be at all times insectivorous is absolutely forbidden. A list of the birds deemed to come within this category is given, and includes the Kestrels,

* Act XII. of 1894. † Sect. 1 of Decree of 1901. ‡ Sect. 2 of Decree. § Sects. 3-8 of Decree. || Act I. of 1906. See also Herman, *op. cit.*

¶ La Ley de Caza of 16th May, 1902.

** Reglamento para la aplicacion de la Ley de Caza of 3rd July, 1903.

Honey Buzzard, Buzzard, nocturnal birds of prey, Goatsucker, Swift, Martins, Swallow, Oriole, Bee-eater, Hoopoe, Wren, Tree-creeper, Wall-creeper, Nuthatch, Tits, Pipits, Wagtails, Warblers, Redstarts, Chats, Flycatchers, Cuckoo, Wryneck and Woodpeckers.

The law further provides that certain species may be shot between the 1st September and the 31st January. The list of these contains Buntings, Finches, Larks, Crows, Thrushes and Starlings; while the Thrush and Starling may during this period be exported.

The destruction of nests of any kind of bird is forbidden; and if an offender is an infant, the parent or guardian must pay the fine.

Traps and decoy birds used for the purpose of catching protected species are liable to be confiscated and destroyed.

In all adult schools notice-boards must be exhibited calling attention to the law for protecting insectivorous birds.*

Birds in Spain, therefore, would, as far as the law is concerned, appear to be fairly well protected. In practice, however, the law is not very strictly observed. Large numbers are killed to be eaten, and eggs taken in considerable quantities for the same purpose.

ROUMANIA.

In the Kingdom of Roumania the practice of killing birds for food is extensively carried on. There is a law in force, which was only passed in 1906,† but it seems to be of little or no effect.

SERVIA.

In the Kingdom of Servia there is a Shooting Law, by one clause of which‡ the pursuit and killing of useful animals and birds is only allowed when carried out with a gun and dog. Catching birds by means of lime, traps, nets and all other like means, is prohibited; the catching and chasing of birds during heavy snowfalls and the destruction of eggs and nests are also forbidden. Penalties of fines from five to one hundred and fifty dinas (francs) are imposed, or one day's imprisonment for every five dinas. But the killing and trapping of birds is not as extensively practised in Servia as in the neighbouring countries.

* There has been a law in force in favour of insectivorous birds in Spain for twelve years. The reference on the notice-boards in schools is to Sect. 2 of the Law of 19th September, 1896.

† Law of 28th March, 1906, with rules of 28th May, 1906. ‡ Article 7.

BULGARIA AND MONTENEGRO.

In the Principality—or perhaps we should say Kingdom—of Bulgaria there are no laws on the subject of bird-protection and birds of all kinds are shot, trapped and eaten in large numbers; nor are there any protective laws in the Principality of Montenegro.

TURKEY.

In Turkey there is practically no protection of birds; and the laws on the subject, such as they are, are treated with but scant respect. It is true that a license to shoot is necessary, and the trapping and snaring of small birds, other than the Quail, is prohibited. But those who break the law are rarely interfered with. In the neighbourhood of the towns birds of all kinds are shot and caught for food in large numbers, and the practice seems to be increasing; while in the country districts shooting and catching are mainly practised by professional hunters.

Even in the close season, which extends from the middle of March to the middle of August, game birds can generally be bought in the open market.

The Turk is said to regard the man who liberates a captive bird as virtuous, though he does not hold the converse view and consider it wrong to rob a bird of its liberty.

GREECE.

The state of affairs is no better in Greece. There are various game laws, but these are not observed. Outside the large towns nearly every man has his gun; the license to carry firearms costs, roughly, three shillings and eight pence, but few trouble to pay for a license, and nobody enforces the law, which is openly disregarded. Birds of all kinds are regularly destroyed, and most of them find their way into the native dish of "pilaff." There is also a good deal of trapping in addition to the ceaseless shooting, the clapnet being in common use. This is all the more disappointing as Greece was a party to the Convention of Paris. An attempt was indeed made to make the recommendations of the Convention law, but the measure met with such spirited opposition in the Legislative Assembly that it was eventually withdrawn by the Government.

ITALY.

Of the kingdoms of Europe it only remains for us to consider the position in Italy. This country has always been the stumbling block in the way of any effectual protection of useful birds on the Continent. Her position on a great highway of migration gives

her an immense importance ; so much so that it is no exaggeration to say that no legislation on the subject in Central Europe can be really effective unless the stream of bird-life which passes through Italy is properly protected. From time immemorial the Italians have been inveterate fowlers. With the curious exception of the duck-decoy* there is hardly any known apparatus or device for encompassing the destruction of birds with which the Italian is not familiar ; while the number of victims annually claimed by the "Roccolo" and the "Brescianella" is almost incredible. It is not merely that the Italian peasant is poor and eagerly welcomes any addition to his pot, but the catching of birds is in him a deep-rooted instinct, a habit inherited from his ancestors.

There is a popular belief that there are no regulations in Italy which bear on the subject of the protection of birds ; this, however, has no foundation in fact. On the contrary, many of the Provinces have laws, and some of these are of considerable antiquity, dating from the period prior to the unity of the Kingdom. Thus, in the Venetian Provinces there are still in force laws of 1804, 1805 and 1816 ; in Tuscany, a law of 1856 ; in the Duchy of Parma, laws of 1824, 1828 and 1835 ; in the Duchy of Modena laws of 1815 and 1826 ; in Naples and Sicily, the law dates from 1819 ; in the Papal States there are laws of 1826 and 1839 ; Piedmont, Lombardy, Sardinia and Marches have laws of 1836, 1844, 1845 and 1853 respectively. A perusal of these laws will disclose that close seasons are provided for breeding birds, and that licenses are necessary for permission to catch or destroy ; but not only is there no uniform law applicable to the whole sixty-nine provinces, but there is no really effective law in any single one of them. The result is that wholesale massacre of useful birds continues, especially at the seasons of migration and in the northern provinces.

It should be mentioned that by Section 217 of the Communal and Provincial Law, approved by the Italian Parliament on the 4th May, 1898, Provincial Councils are given power to fix the months within which shooting is forbidden ; but this tends to produce less uniformity than ever.

In spite of this unsatisfactory state of affairs, Italy has on various occasions considered the question of putting her own laws on a uniform scientific basis, and has also shown some sympathy with international schemes for the protection of birds. When the Austro-Hungarian Government endeavoured to call attention to the subject in 1869 Italy expressed her approval ; in 1875 she even signed a joint Declaration by which Austria

* See Macpherson's "History of Fowling," p. 255.

Hungary and Italy declared themselves in favour of strict and comprehensive legislation with a view to securing the protection of birds useful to agriculture. On the occasion of the First International Ornithological Congress at Vienna in 1884, however, her enthusiasm seemed to have somewhat cooled, while the name of her representative is not to be found amongst the signatures appended to the Paris Convention. There is, however, some reason to believe that among the better educated Italians bird-protection is slowly making headway, and several publications now advocate the cause.

MONACO, SAN MARINO, AND LUXEMBURG.

To make this short survey of European legislation more complete mention should perhaps be made of the small Republics of Monaco and San Marino and the Grand Duchy of Luxemburg; of these neither of the two first mentioned are of sufficient size to be of much importance. Monaco is only about three miles long and one and a-half miles broad, and as the ground is to a great extent covered with buildings, birds are not much molested. The representative of Monaco was, however, one of those who signed the Paris Convention.

San Marino is a miniature Republic in the hills near Rimini, has an area of rather more than thirty square miles, and is under the protection of Italy. The inhabitants carry on the usual Italian pursuits, including that of bird-catching, without restriction.

The Grand Duchy of Luxemburg covers an area of a little under a thousand square miles. In 1867 it was declared by the Treaty of London to be neutral territory under the sovereignty of the King of the Netherlands. On his death in 1890 it passed to the Duke of Nassau. In so far as the land is not devoted to the production of iron ore it is mostly agricultural, and the Grand Duchy is an advocate of the principles laid down by the Paris Convention, which was signed by her representative.

The legislation in two British possessions should also be referred to, for each occupies a commanding geographical position on a well-marked route of European migration.

GIBRALTAR.

One is Gibraltar, where nobody may kill, take or use a decoy or any kind of instrument for the purpose of taking any bird without leave.*

CYPRUS.

And the other is Cyprus, where there is a close season for birds during the locust season, from the middle of February to the

* Ordinance of 1885.

beginning of August* ; while to export skins or eggs of any bird without permission is forbidden.† There are also in Cyprus several areas in which birds are absolutely protected, though the killing of birds and taking of eggs may be allowed even in these areas by the High Commissioner for scientific objects.‡

GREAT BRITAIN.

The chief laws on the subject in Great Britain will shortly be referred to. It is sufficient here to say that we have now in force, apart from Game Laws, Statutes of 1880, 1881, 1894, 1896, 1902, two of 1904§ and one of 1908, in addition to endless County Protection Orders and the enactments of the local legislative bodies of the Channel Islands and Isle of Man.||

On paper the number of laws to ensure the protection of birds in Europe appears perfectly astounding. If we except Turkey, Greece and the Balkan States, the subject has everywhere been more or less seriously treated by legislation, and this has been especially the case in Central Europe. In practice, however, birds cannot be considered adequately protected in the southern parts of the Continent, and any laws which exist there seem to be "more honoured in the breach than the observance."

CLOSE TIME PROTECTION TO BIRDS.

The idea of protecting birds by the establishment of a close season is by no means modern. It originated with sportsmen, who long ago recognised the fact that unless the objects of chase were allowed to reproduce their kind without interference, sport would soon be either seriously curtailed or would entirely cease.

It is not within the restricted scope of this treatise to consider the historical side of the question of bird-protection, though it is interesting to note that a close season was first established in England as far back as the reign of Henry VIII. by an Act "to

* Act of 1883 (No. 2). † Act of 1904 (No. 13). ‡ Act of 1895 (No. 3).

§ These two Acts of 1904 are not of any very general importance ; the first made the use of the pole-trap illegal, while the second has enabled protection to be given in the Island of St. Kilda to the eggs of the insular form of Wren and the Fork-tailed Petrel.

|| In Jersey an Act of 1879 protects sea-birds and forbids their sale or transport from 1st April to 1st August ; and Gulls may not at any time be destroyed. In the Isle of Man an Act of 1868 prohibits the killing of all Gulls and the taking of their eggs (" Gulls " includes the Gannet, Shag, Guillemot and Skua). Another Act of 1887 makes a general close time for all wild birds and extends protection to their eggs and nests from 1st February to 1st September, and forbids nets, snares or traps being at any time used to take them.

avoid destruction of wilde-fowle.”* But our birds, apart from those classed as game, did not obtain any protection from Parliament until the Sea-birds Preservation Act of 1869,† which has since been repealed.

Of the Statutes now in force, the Wild Birds Preservation Act of 1880‡ is the earliest and in most respects the most important—“the Magna Charta of British Birds,” as it has been called.§ The provisions of this Act with regard to a close season are shortly as follows :—

It established a close time for all wild birds between the 1st March and the 1st August. The Schedule which is appended to the Act contains a list of species in respect of which an infringement of the law is to be punished with a heavier penalty than in the case of species not so included.

The close time is established by the third section of the Act, a section which is in some ways very curiously framed, as we shall see later. It should, however, be noted that to a certain extent it does not apply to owners or occupiers of land; these persons and their agents being at liberty to kill or take any wild birds on their land, provided that they are not included in the Schedule. It will be observed that the close time is “between” the 1st March and the 1st August, not “from” one date to the other; so that neither of the two dates mentioned are included in the period to which protection is extended.

Power is given to a Secretary of State in Great Britain and the Lord Lieutenant in Ireland, on the application of the Justices in Quarter Sessions assembled in any county, to vary the close time; but no power to alter or add to the Schedule was given till an Act of 1894,|| though the small addition of “Lark” was made to the list of birds named in the Schedule by a short Statute in the following year.¶

The terms of the Convention of Paris do not extend to all species. Article 1 says :—

“Les oiseaux utiles à l’agriculture spécialement les insectivores et notamment les oiseaux énumérés dans la liste No. 1 annexée à la présente Convention laquelle sera susceptible d’additions par la législation de chaque pays, jouiront d’une protection absolue, de façon qu’il soit interdit de les tuer en tout temps et de quelque manière que se soit, d’en détruire les nids, œufs, et couvées.” This was *the* recommendation of the Convention; the Articles which followed only suggested measures to be adopted

* 25 Henry VIII., chap. 11. † 32 & 33 Vict., chap. 17. ‡ 43 & 44 Vict., chap. 35.

§ By Sir Digby Pigott, C.B., in a paper read at the Fourth International Ornithological Congress held in London in 1905.

|| 57 & 58 Vict., chap. 24. ¶ 44 & 45 Vict., chap. 51.

temporarily until the sweeping proposal contained in the first portion of Article I could be carried into effect.

“En attendant que ce résultat soit atteint partout, dans son ensemble, les Hautes Parties Contractantes s’engagent à prendre ou à proposer à leurs législatures respectives les dispositions nécessaires pour assurer l’exécution des mesures comprises dans les articles ci-après.”

The parties to the Convention included Austria-Hungary, Germany, Belgium, Spain, France, Greece, Portugal, Sweden and Norway and Switzerland. The Grand Duchy of Luxemburg and the Principality of Monaco were also represented. In spite of the Convention several of the signatory Powers have failed to pass laws based on the principles they undertook to adopt.

In 1886 a model law for the Protection of Birds was propounded in America by a Committee of ten members appointed by the American Ornithologists’ Union. This model law, with slight modifications approved by Mr. William Dutcher, Chairman of the Committee on Protection of North American Birds, was adopted by the Audubon Societies, and its claim to the attention of State legislatures was strenuously urged. As a result, it has formed the basis of the laws which many of the States have since passed.* It gives protection throughout the year to all species, except the English Sparrow and game birds.† This has the disadvantage of necessitating a statement of what are to be considered as game birds. Such a statement is indeed discreetly supplied by the law; in practice, however, the definition is apt to become somewhat widened. To give a single instance, *Dolichonyx orizivorus*, the Bobolink or Reedbird, which is carefully preserved in the Northern States, is treated as a game bird as soon as it makes its appearance further south in its autumn plumage. It is there slaughtered for food in large numbers, although it is no larger than a Sparrow. But the matter does not end here, for enormous masses of other small birds are at the same time indiscriminately killed, and are all put on the market under the name of Reedbirds.‡ So the effect of careful protection of a species in one place during its nesting season may be thus nullified by the treatment received elsewhere on its subsequent migration.

We have therefore several examples of protection by close season represented. First, that in Great Britain, limited in

* Laws in many respects somewhat similar have also since been made in various Provinces of Canada, *e.g.*, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Quebec.

† Sects. 1 and 7.

‡ T. S. Palmer on Legislation for the Protection of Birds (Washington, 1902).

duration but universal in the species to which it applies, subject to the right of the owner and occupier of land to kill unscheduled species; secondly, that recommended by the Convention of 1902, unlimited in duration but limited in its application to species useful to agriculture; and, thirdly, the close season of the American Model Law, unlimited in duration and universal in its application to all species, except the English Sparrow and game birds. The objection to the last form of protection has already been touched upon: the recommendation of the Convention, which has been adopted in Switzerland, Hungary, Belgium and elsewhere, rests entirely on utilitarian principles, is regardless of all claims to protection based on æsthetic or sentimental grounds, and leaves a good many species unprotected which we should be sorry to lose; while our law is the most comprehensive so long as the close season lasts, but in a country inhabited during the winter by birds much in demand for the feather trade or for food, such a law as that of 1880 would not by itself have the desired effect, for the end of the close season would be the signal for the commencement of slaughter.

TO NESTS AND EGGS.

Much animated discussion has taken place and various opinions have been expressed on the question of the protection of eggs and nests. Many authorities say: "Protect only the birds, and the eggs, or enough of them, will be hatched." Certainly it would appear that if the choice merely lay between protection of the birds on the one hand and protection of the eggs on the other, preference should be given to the former course; many species are fairly common although their eggs have long been largely taken. The old Levitical law said: "If a bird's nest chance to be before thee in the way, in any tree, or on the ground, whether they be young ones, or eggs, and the dam sitting upon the young or upon the eggs, thou shalt not take the dam with the young."* A very learned authority† referring to the old Act of 1534, to which we have already alluded, has pointed out that it made it a penal offence to take the eggs of Herons, Spoonbills (Shovelars), Cranes, Bitterns and Bustards, though the parent birds might be killed with impunity even in the breeding season. All these species, except the Heron, have passed away from the list of British breeding birds.

The last record of the Spoonbill breeding in England is probably Sir Thomas Browne's reference (1662, *circ.*) to their

* Deuteronomy XXII., 6.

† The late Professor Alfred Newton. Article "Spoonbill," *Encycl. Brit.*, XXII., 430.

nesting at Trimley in Suffolk. Cranes bred in Fenland in the time of William Turner (1544), who writes "earum pipiones scœpissime vidi," but they had probably ceased to nest in this country by the end of that century. The Bittern bred in England throughout the greater part of the nineteenth century and would probably do so still if permitted, while the Bustard is said to have vanished from Norfolk, its last British stronghold, in 1838. Perhaps some of these grand species might still have remained with us had the birds and not merely their eggs been protected by the old law.

Those who are opposed to protection being given to eggs usually base their views upon the assumptions that if the first set of eggs are taken more will probably be laid and that the second set will be hatched. With this view we venture to disagree. The first assumption may be true enough, but, unfortunately, it cannot safely be assumed that the second set of eggs will be left undisturbed. An unscrupulous collector has just as little hesitation in appropriating the second clutch as the first; while another more scrupulous collector may come along and discover the second clutch and take it, not knowing the parents have previously been robbed.

There can be no doubt that the eggs of many of the larger and rarer species in our country have suffered terribly, and few will deny that in certain cases at any rate protection should be extended to them.

Each year a large and perhaps increasing number of men invade certain parts of the British Isles in order to obtain clutches of the eggs of our rarer nesting species. These eggs, destined either for the collection of the raider or for sale or exchange, are taken in defiance of the law, sometimes by men who have travelled long distances at great expense for the express purpose, sometimes by poor local shepherds, to whom half-a-guinea is an irresistible temptation. In neither case does the risk of a small fine act as the slightest deterrent; while the rarer the bird has become the greater is the value set upon a British-taken clutch of its eggs and the fiercer the competition to acquire specimens before the extinction of the bird as a nesting species.

Protection of eggs is not mentioned in the Act of 1880; it was not till the Act of 1894 that the present law on the subject came into existence. It provided that a Secretary of State may, after the passing of the Act,* upon application by a County Council, make an Order prohibiting—

- (1) The taking or destroying of any wild birds' eggs in any year or years, in any place or places within the county;

* *i.e.*, after the 20th July, 1894.

(2) The taking or destroying the eggs of any specified kind of wild birds within the county or part or parts thereof.*

Under the Convention of 1902 the same absolute protection is to be given to eggs, nests and broods as to the birds themselves†; but it will be recollected that this merely affects the species useful to agriculture.

The Act proposed in America runs as follows:—"No person shall, within the State of * * *, take or needlessly destroy the nest or the eggs of any wild bird other than a game bird, or have such nest or eggs in his or her possession, except as permitted by this Act."‡ The last exception referred to is that made by a later section§ in favour of collectors for scientific purposes. The proposed law therefore resembles the suggestion of the Convention in that both provide protection to the eggs and nests of all protected species.

On comparing the laws of the various European countries, it will be seen that wherever the subject has been seriously treated protection has generally been extended to eggs and nests.

A suggestion has been made that since so many difficulties present themselves in carrying our law into effect—difficulties in identifying the eggs and in connection with boundaries—it would be better if we adopted the principle of the Dutch and Norwegian laws, which recognise the right of owners and occupiers in respect of eggs on their land.|| An owner of land has always been legally considered to have a qualified right of property—"ratione soli"—in the wild animals on his land, and this right has to some extent been recognised by the Sect. 3 of our Act of 1880, by which it will be recollected that the owners and occupiers are exempt from punishment for the offences mentioned in the section in respect of wild birds not included in the Schedule to the Act. But whether the land owners and occupiers in this country could be trusted to give proper protection to the eggs, if they were to be regarded as being as much their property as fruit, may be open to question. Difficulties have sometimes arisen in connection with prosecutions of bird-catchers, who, when caught in the close season trapping in a wholesale manner birds not included in the Schedule to the Act of 1880, have shown that they were acting with the full authority of the owner of the land. Now, owners were given a special right under the Act of 1880 in order to protect their crops and fruits; it is an abuse of privilege to carry on a business for profit in the

* 57 & 58 Vict., Chap. 24, Sect. 2 (1), (2). † Article 1. ‡ Sect. 2. § Sect. 5.

|| See Sir Digby Pigott, C.B., *op. cit.*, p. 594; also in "Times," 13th April 1894; see also "Zoologist," 1894, p. 179, *et seq.*

birds killed or taken under such circumstances. By Article 6 of the Paris Convention or under a law such as that of Switzerland specimens so obtained cannot be sold. Perhaps one day Sect. 3 of our Act of 1880 will be amended by adding a similar proviso. It may well be urged that an owner who abuses his rights in connection with the birds on his property is not likely to properly protect the eggs ; but as far as Holland is concerned, and also in Norway, the principle of recognising rights in an owner over the eggs on his land seems in practice to work well.

TO SPECIAL AREAS.

The formation of protected areas or sanctuaries in this country was initiated by the Wild Birds Protection Act of 1896, introduced by Lord Jersey.* Before the passing of this Act very beneficial results had followed various private efforts to protect birds in certain districts in the breeding season ; the Farne Islands may be mentioned as an instance. The new Act extended the powers of a Secretary of State under the Act of 1880, enabling him by Order to prohibit the taking or killing of all wild birds in particular places. It also extended to Councils of County Boroughs the powers already given by the Act of 1894 to County Councils. Lord Jersey's Act, however, does not apply to Ireland.†

Neither the Convention of Paris nor the Model American Law suggest the formation of sanctuaries ; as we have seen, they respectively advocate absolute protection to the species deemed useful to agriculture or to those not included in the category of game. The idea of establishing such areas does not appear to appeal strongly to continental nations. In the United States, however, the famous Yellowstone Park and the Mount Rainier National Park form examples of the finest sanctuaries which legislation has anywhere established,‡ and there are in the States ten other such parks, covering with the two named an area of upwards of 70,000 square miles.§ No doubt the establishment of sanctuaries of such size is a splendid thing in a country in which wide tracts of wild uninhabited land exist ; but even in our own densely crowded land much good work has been done on a modest scale during the nesting season, especially in the eastern counties. It is remarkable, however, that the splendid.

* 59 & 60 Vict., Chap. 56. † Sect. 6.

‡ Yellowstone Park is governed by an Act approved on 7th May, 1894 (28 Statutes at Large, pp. 73-75), and Mount Rainier Park by an Act approved on 2nd March, 1899 (30 Statutes at Large, pp. 993-995).

§ Palmer, *op. cit.*, p. 70, n.

efforts of the watchers at such places as Wolferton, Blakeney and Cley, Wells and Breydon, to name but a few, are entirely supported by the voluntary subscriptions of a comparatively small number of bird-lovers. It is not always realised how much can be done in this way by land owners in England merely enforcing the law of trespass without the aid of any Acts of Parliament for the protection of wild birds. The smallest covert carefully shielded from trespassers as a pheasant preserve becomes a little sanctuary for many small species.

PROHIBITION OF SALE OR POSSESSION.

The question of the sale and possession of protected specimens, whether of birds or eggs, has received a good deal of attention all over the world. Our law* makes it penal to expose or offer for sale or to have in control or possession after the 15th March any wild bird "recently killed or taken." It is worthy of notice that this does not apply to skins or plumage, but only to any "wild bird recently killed or taken." The use of such a vague expression as "recently killed" in a Statute cannot be too severely deprecated. What is meant by "recently" has never been clearly established, but, as already pointed out, the other offences referred to in the same section become penal after the 1st March, so that "recently" probably was intended to mean "within a fortnight."†

In 1881, however, it was provided that to a charge for exposing or offering for sale, or having control or possession of a recently killed bird after the 15th March, it should be a good defence to prove either that the bird had been lawfully killed here or that the bird had been killed abroad and imported; and if the accused can now prove it was imported, the onus of proving it was killed here is thrown on the prosecution.‡ To any but a lawyer this may appear involved. The effect is as follows. A man may kill a hundred Lapwings in April in defiance of the Wild Bird Protection Act of 1880, send them abroad, get them sent back to him, and then expose them for sale at Leadenhall Market. When prosecuted, all he need do is to prove that they came to him from abroad, and leave his accusers to prove that the birds were killed in a place to which our Act of 1880 extends. How often the prosecution could perform such a feat may be left to the imagination.§

* 43 & 44 Vict., Chap. 35, Sect. 3.

† See Marchant and Watkins' Wild Birds Protection Acts, pp. 40-41.

‡ 44 & 45 Vict., Chap. 51, Sect. 1.

§ The law on this point had previously gone through various changes.

Prior to 1880 exposing for sale during the prohibited season was a penal offence, and under the Act of 1876 (one of those repeated in

From what we have already said on our law of 1894, which established protection for eggs, it will have been observed that the offences which the County Councils may prohibit are "taking" and "destroying." The penalty clause to Act, Sect. 5, however, goes a little further, and adds to the list of persons who may be punished anybody who shall "*incite* any other person to take or destroy" the protected eggs. Many people think it a pity that the Act did not go a step further still, and, following the lines adopted in America, make it a punishable offence to possess, sell or expose for sale or to exchange any eggs illegally taken. At this suggestion the indignant, but unscrupulous, collector will perhaps exclaim: "That would mean that if I put up my valuable collection for sale, containing British clutches of the eggs of the Kite and other protected species, which I have acquired at great trouble and expense, the collection could be raided and the prizes seized and forfeited." The reply of the equally indignant protectionist is: "Why not? It is a criminal offence to receive stolen goods, knowing them to be stolen; why should a man be allowed to receive, possess or perhaps make a profit by selling illegally taken eggs, knowing them to have been illegally taken?" Of course specimens of many kinds of birds and eggs may be illegally acquired without endangering the stability of the species; the gravity of the offence committed by the collector or dealer who has defied the law varies according to the status of the species involved. In many directions we think our law has extended protection quite unnecessarily; but, on the other hand, it is hardly possible to deal out too severe punishment to the wretches who have helped in recent years to reduce such birds as the British Kites, White-tailed Eagles and Ospreys to their present pitiable plight.

Under the Paris Convention one of the Articles* provides that it shall be forbidden from the 1st March to the 15th September to sell or offer for sale any of the birds mentioned in Schedule of useful species. The importation and delivery and transportation of these birds is also to be forbidden within the same dates. Another article† forbids the importation of nests, eggs and nestlings, their colportage or exposure for sale, their sale and their purchase.

1880) it was held to be no defence to prove that such birds had been bought or received from abroad. (*Whitehead v. Smithers*, 2 C. P. D., 553). This case was decided in 1877. Then came the Act of 1880, under which it was held in 1881 that birds killed abroad could not be exposed for sale in England after the 15th March by a person who had bought them from a dealer in Leadenhall Market, who had received them from abroad (*Taylor v. Rogers*, 50 L. J. M. C., 132).

* Article 5. † Article 3.

It must, however, be remembered that the first article is the important one, the following clauses merely containing recommendations to be carried into effect temporarily until the absolute protection given by Article 1 can be enforced.

Turning to the American Model Law, we find it most far-reaching and explicit; its prohibitions relating to protected species extend to (a) having them in possession, living or dead; (b) purchasing, selling or exposing them for sale; (c) transporting or shipping them within or without the State; and (d) selling or having in possession for sale any part of the plumage, skin or body.* In addition to this, possession of the nest or eggs of any protected species is an offence.†

The mention of plumage is of interest partly because it reminds us of the omission of all reference to plumage in our own Act of 1880, and partly because it calls attention to one of the chief points in connection with the subject—the appalling massacre of what our American friends call “plume birds” for millinery purposes. This subject has not up to the present received the attention it deserves in Europe.

In a discourse on the legislation for protection of birds it would be out of place to give many details of the horrible and loathsome extent of the butchery which takes place to meet the demands of fashion; the records of the wholesale slaughter of nesting egrets in order to obtain their nuptial plumes, of Gulls, Terns, Grebes and other birds are only too familiar to all of us. Nobody possessing a spark of humanity can read the well-known account by the American naturalist Mr. W. E. D. Scott of his visit in 1887 to the nesting ground of the beautiful and once numerous *Ardea egretta* in Florida without acute pain and disgust.‡ But though recent legislation has done something to protect plume birds in America, the massacre goes on gaily in many other parts of the world.

Each year fabulous numbers of bird-skins and packets of feathers are imported and sold in London; and though our resident birds do not suffer very much, the demand for the destruction of Seagulls for millinery purposes has apparently not been stamped out, although without doubt the Sea Birds Act of 1869 and subsequent legislation have done much to check their slaughter, which was a profitable trade.§ The records

* Sect. 1. † Sect. 2.

‡ See “The Auk,” 1887, pp. 135-144, 213-222, 273-284; 1888, p. 128. There is special legislation now in Florida to protect plume birds; but the stable door has been shut after most of the horses have left.

§ See Rev. Julian G. Tuck, “Zoologist,” 1903, pp. 353 and 395; also article “Kittiwake” in Nelson’s “Birds of Yorkshire,” Vol. II., p. 689.

clearly point in the cases of many of the imported skins to the speedy extermination of the species involved.* And all to satisfy cruel and thoughtless female vanity!

The attention of the British public has been drawn to this important matter by the Bill introduced into the House of Lords in the spring of 1908 by Lord Avebury. By the time it left the House of Lords after its third reading, it was a Bill prohibiting the possession for the purpose of sale or exchange of imported birds or their plumage; it did not, however, apply to the plumage of Ostriches or Eider Ducks. Exceptions were also made in favour of wild birds imported for use as articles of diet, imported birds held under licence of the Board of Trade for supplying museums or for scientific research, plumage forming part of the wearing apparel of any person entering the United Kingdom, and plumage imported for use solely in the manufacture of flies for the capture of fish.

In spite of its critics, the Bill was a long step in the right direction, and the greatest credit is due to those responsible for its introduction. We are sure it "hit the right nail on the head" in making "possession" the key note.

The objection most strongly put forward against the Bill was that such a law would not affect its object so long as markets for sale in other lands remained open. This objection is probably more specious than real; at any rate such a law would go a long way towards the accomplishment of its object by destroying the best market of this revolting and detestable trade.

Appalling evidence was given before the Select Committee appointed to consider Lord Avebury's Bill showing the enormous extent of the sales of skins and feathers. The catalogues of feather sales in the Commercial Sale Rooms in London in 1907 contained entries of over 28,000 skins of Birds of Paradise, and the feather packages catalogued during the last half of that year contained the plumes of 115,000 birds, mostly Herons. The figures given to the Committee were subjected to somewhat severe criticism by representatives of the millinery trade, and no doubt considerable allowance must be made for the fact that articles not sold at one auction are frequently included in the catalogue of the next; but it was clearly proved that wholesale butchery takes place on a scale so gigantic, so sickening, that it makes the brain reel to think of it.

It is of course true that many of these feathers are sent here from countries over which Great Britain has not control, and

* How near some of the Birds of Paradise are to extinction was shown by Mr. Walter Goodfellow at the meeting of the British Ornithologists' Club on 19th June, 1907.

from which we cannot prohibit exportation. But if the importation into our country is stopped other Governments may follow suit. Representations to foreign countries are much more likely to be effectual if made by a Government which has had the courage of its convictions, and has already put its principles into practice. Unfortunately, owing to pressure of other business, the Bill has not succeeded in receiving a second reading in the Lower House.

The wearing of plumes for ornament is a survival of a barbaric age; just as much as the wearing of such adornments as nose-rings and ear-rings, which usually entail mutilation. It will be a long time before such forms of female decoration cease, but when the point is reached at which the extermination of rare and beautiful species is threatened, interference on scientific and humanitarian grounds is amply justified. Nevertheless great care must be exercised in interfering with any practice which is ancient and widely spread. Not very long ago a South American tribe was found whose members wore no clothes whatever, but they hung shells from the nose, ears and under-lip, and stuck a Macaw's feather into a hole made at each corner of the mouth.* Now those Macaw's feathers represent the fashion of feather ornament for the head in its simplest form. How great a distance separates them from the last link in the chain of development—the "Merry Widow" hat!

There is no reason why the preparation of the plumage of birds used as articles of diet and the manufacture of artificial feathers should not between them provide in the future all that fashion can demand and give employment to at least as many hands as are now engaged in the millinery trade. Judging by the development of artificial flowers for the same purpose, the manufacture of feathers appears to be an industry which has hitherto been neglected, and one which should have a considerable future. Moreover, unless the fashion greatly changes, it is one of the few futures bound to come; for even if the present perpetual massacre cannot be checked by law, it must sooner or later cease, as the late Professor Newton said, "for want of victims."

SCHEDULES OF "USEFUL" OR "INJURIOUS" BIRDS.

In much of the legislation on the subject an attempt has been made to indicate by lists or schedules the particular species of birds deemed to be worthy of protection or otherwise. The former course is the one generally adopted, though, as we have

* See Dr. E. B. Tylor's "Anthropology," p. 241.

seen, in Germany the Imperial Law of 1888 took the more unusual line of simply declaring what species should be considered noxious. It is merely a matter of convenience which course to adopt, although personally we are not much in favour of schedules of "noxious" birds, for the publication of a list of birds branded as "noxious" is apt to cause their wanton slaughter by thoughtless and ignorant persons. Almost all legislation on the subject is framed with the ultimate object of preserving something of use or value to men. This gives rise to the question—Valuable in what way? Now birds are valuable in various ways. They often have a very distinct æsthetic value, for in most cases their flight is beautiful; their forms are often lovely beyond all powers of human description; their colours are frequently exquisite, and their songs mean sometimes more to us than anything which our own language can convey. Think for a moment of the Blackcap singing on its first arrival in an English spring. Who has had the fortune to listen to that song and not felt unworthy of the privilege? Birds have also a great economic value. Those of certain orders are regular articles of food throughout the universe, and have been objects of the chase as long as hunting has existed. The value of birds has, moreover, now become generally recognised in relation to agriculture in its wider sense, including forestry and horticulture. The sportsman has for many generations insisted on his game being sufficiently preserved during the breeding season; the legislation in favour of birds useful to agriculture has practically all come into existence during the last century, while protection given by law on æsthetic or humanitarian grounds has been granted quite recently, such legislation being the result of disgust at the ruthless slaughter of certain beautiful and harmless species.

Speaking generally, it is by devouring insects that birds are most directly useful to agriculture, and the majority of the schedules proceed upon the basis of including as useful all insectivorous species. It is not, however, always easy to say whether a species should be included in a schedule of useful birds. It may be considered decidedly useful in one district and decidedly harmful in another; or, as is more usually the case, partly harmful and partly useful in each. In the latter case the evidence must be very carefully weighed. To take a common instance, Skylarks are often accused, and rightly so, of attacking freshly-drilled oats and autumn-sown wheat; but in many districts hardly any wheat or oats are grown, and everywhere they destroy large numbers of insects and seeds of weeds. Or again, let us take the case of the Chaffinch, a bird of which many

complaints are made. We are told by one student of economic ornithology that the Chaffinch does great harm to fruit by destroying buds* ; another authority refers to the damage it does to young turnips, radishes and similar crops.† But there is equally no doubt that it is a great consumer of insects, and it is interesting to see that Mr. Hewitt in his Report to the Waterworks Committee of the Corporation of Manchester, referring to the damage done by the ravages of the Larch Sawfly in the plantations of the Thirlmere district, advocates as a remedy the encouragement of the Chaffinch and certain other birds.‡ Our own view, based on careful observation, happens to be somewhat strongly in favour of this bird, but there is evidently a good deal to be said on the other side. Mr. Theobald, an impartial judge, says : " There seems so much difference of opinion in regard to this Finch that it is probably best left in its present condition, but any undue increase must of necessity be checked by shooting the birds after their nestlings are mature."§ Such cases as those of the Skylark and Chaffinch, both very common birds, are sufficient to illustrate the kind of difficulty which arises at every turn in the compilation of a schedule of useful or insectivorous species.

Our Act of 1880 is provided with a rather curious Schedule. The Act itself, it will be remembered, provides a close season for all wild birds ; an offence in respect of a scheduled species being more heavily punished than an offence with regard to a species not included in the Schedule. Now, if we peruse this Schedule, we look in vain for the names of any Warblers other than the Nightingale ; and insect feeders, such as the Swallow, Robin, Wheatears, Flycatchers, Wagtails, are all omitted. The Schedule horrifies some of our neighbours on the Continent, who do not perhaps appreciate the fact that so many insectivorous birds find a paradise in England, and that a large portion of our country swarms with them throughout the summer months.

The Schedule to the Act of 1880 seems in fact to include chiefly the larger birds, which are the more likely to be interfered with ; the numerous species of small insectivorous birds being omitted, partly, no doubt, because they are so numerous, and partly because they can under prevalent conditions very well

* F. Smith, " The Fruitgrower and the Birds " (Maidstone, 1906).

† Charles F. Archibald, " Wild Birds Useful and Injurious," Journ. Roy. Agric. Soc., 1892.

‡ C. Gordon Hewitt's Report to Waterworks Committee of the Manchester Corporation, November, 1907.

§ Fred V. Theobald, Economic Ornithology in " Science Progress," October, 1907, p. 274.

look after themselves. The number of thick hedges and woods in this country, combined with the large amount of the land given up to game preserving, enable innumerable small insect-eating species to breed practically undisturbed.* These species have no need of legislative protection in this country; and, with certain notable exceptions, we have but few small birds which do require it. In spite of the criticism levelled at it, we venture to think that under existing circumstances the Schedule of our Act has not much wrong with it.

The Paris Convention has a Schedule of the birds for which it recommends absolute protection; it also has a provisional Schedule of noxious birds. These Schedules have, generally speaking, formed the basis of the laws of such countries as have carried out the obligation they undertook in 1902 to bring their laws into conformity with the terms of the Convention within three years.

The Schedule of species designated by the Convention for special protection is however somewhat limited. The Cuckoo, for instance, is mentioned for special protection in almost every country in Europe in which there has been important legislation. It is named not only in the Schedule to our Act of 1880, but also in the Hungarian Decree of 1891 and in the laws of many of the Federal German States; it is particularly selected for protection in the Belgian enactment of 1906, in the Swiss law of 1904, in the amended Dutch law of 1880, and in the Spanish law of 1902. Yet when we look for the name of the Cuckoo in the first Schedule to the Convention, we search in vain!

Allusion has been made to the position in Germany, where the Imperial Statute gives merely a list of noxious birds, leaving the rest by implication to be protected as useful; whereas most of the Federal German States have their own independent laws with list of species to be protected as useful. This leads to a confusing result in many cases. For, as already pointed out, some species are not included as "noxious" in the Imperial Act, and are therefore impliedly worthy of protection as useful; but neither are they included in the Schedule of any federal law as useful, and are therefore by implication noxious!

The American Model Law has no Schedule as it gives universal protection except to game birds, which are otherwise provided for, and to the Sparrow. This method requires, as already pointed out, a definition or a list to show what is included in the term "Game." Such comprehensive terms are apt to be too widely construed; we know, for instance, what a generous interpretation our gamekeepers give to "vermin."

* See Report of Select Committee appointed by House of Commons on Wild Birds Protection, 1873. Appendix, pp. 188-193.

On the whole, the balance of practical opinion in Europe seems in favour of Schedules of protected species being confined to those which are insectivorous; to which a few which deserve protection for æsthetic or scientific reasons should be added. But in every country of large extent there is such variety in the physical features and in the nature of the cultivation, and consequently in the avifauna of the various districts, that considerable scope should be allowed in all legislation for altering the Schedule either by omission or additions, in order to suit the needs of particular localities.

Notices of schedules of protected birds, together with the prohibitions relating to them, should be conspicuously posted throughout the districts affected; and local names of the birds should be always given to prevent offenders pleading the excuse of ignorance.

LOCAL OPTION FOR ADOPTION OR MODIFICATION OF LAWS.

We have already indicated the futility of protecting a species while nesting in one country, if it is destroyed in another country through which it has to pass on migration to reach or leave its breeding ground. No international system of bird protection can be really successful unless there is some uniformity in its application. And what is true with countries holds good on a smaller scale with counties. We find advantage has been taken in most British counties of the power to apply for Protection Orders. Even had we space at our command for the purpose no useful object would be served by a comparison of the various Orders applied for and obtained by the various Councils of counties and country boroughs.* The applicants are bodies of men who rarely have much knowledge on the subject, few of them "know a Hawk from a handsaw," and in the end we see a vast number of Orders, many of them astounding in themselves but still more peculiar when compared with the Orders in force in the surrounding counties. It is impossible to refrain from doubting whether the economic side of the question has been considered at all by some of these Councils. The Bullfinch, for example, is undoubtedly terribly destructive. One of our best field-naturalists, Mr. J. Whitaker, tells us how he once gave the Bullfinch a "free run," and describes the result:—"Not a dozen gooseberries did we get, and we have not had a score of plums in ten years, in fact two good trees are half dead, the result of not only almost all the flower buds being taken

* See Sir Digby Pigott, *op. cit.*, pp. 604-606.

but half the leaf ones, and this year they gave the apple trees a good dressing, and when the flowers were just opening the ground underneath was covered with shattered buds. Some say they are taking those which have an insect in them, but I think they take the buds because they like to eat them. I find the only ones left are those on the end of the thin twigs, which they cannot reach.”*

It would be difficult to find a fruit-grower express any other opinion. Yet the eggs of the Bullfinch are protected by Orders obtained by County Councils in a considerable number of districts. It is pleasant to think that it is so, for so handsome a bird is a pleasure to see. But it is impossible to discover any principle underlying the treatment which this and other species receive in the various counties.

In Scotland the Protection Orders show far more uniformity and intelligence than in England. There can be no doubt that within certain limits it is desirable to have power to exclude or modify the operation of a general law to meet the requirements of a particular district. This fact, which has been recognised, as far as birds are concerned, by our Act of 1896,† had previously been recognised with regard to eggs by the Act of 1894.‡

The Paris Convention contains a clause§ by which owners of vineyards, orchards and gardens are to be allowed to shoot birds which are harmful, but the right is merely to be temporary. It is provided|| that exemption from the protection given by the Convention may be granted in the case of birds deemed injurious to sport and birds considered injurious to the agriculture of any country. Apart from this, there is no special provision for partial adoption or modification of the terms of the Convention.

Nor do we find any provision for modification in the American Model Law, though it is, of course, open to any State to enlarge or curtail the definition of game birds which is contained in Sect. (1) and to omit or add to Sect. (7), which excludes the Sparrow from protection. The remarks which originally accompanied the proposed law, however, urged its adoption as prepared. This advice was perhaps due to the great danger in allowing local option to control the adoption or modification of laws of this nature, owing to the crass ignorance of the average persons or bodies to whom the exercise of such option is generally entrusted.

In theory such local option is excellent; for counties, and even

* “Notes on the Birds of Nottinghamshire,” p. 102.

† 59 & 60 Vict., Chap. 56, Sect. 1.

‡ It is interesting to compare one of the English County Orders with a French Departmental Decree.

§ Article 6. || Article 9.

districts within a county, often vary enormously in their physical features and in their agricultural conditions, and consequently present various problems of economic ornithology. But local Councils should always act in such matters on competent advice of those who are acquainted, not only with the needs of the county or district in question, but also with the position in regard to bird-protection in the neighbouring counties. Moreover, an ideal system should be elastic, so as to enable alterations to be made when and where required. For the number and distribution of any given species are liable to considerable variation within a comparatively short space of time. We are constantly hearing sad accounts of the disappearance of this or that bird from some district in which it was once common, but there are other species which are undoubtedly increasing, and these are not always birds which can be considered useful to agriculture.

Let us consider, as an example, the case of the Hawfinch, which not long ago was looked upon as an autumn or winter visitor to the British Isles. Whether, on account of its supposed rarity or otherwise, the Hawfinch has been given a special close time in many parts of England, and its eggs have also been protected in many districts. Now, though this bird takes a certain number of caterpillars and insects, chiefly for feeding its young, the damage it does to green peas is astounding, while there is also unanswerable evidence of the great havoc wrought by it on apples, pears, damsons and nuts. A well-known authority says: "There certainly does not seem any evidence to entitle it to the protection afforded it by some County Councils."* We have rarely heard a good word said for the Hawfinch by the gardener who has received visits from it. Speaking of its ravages on the kitchen garden, Mr. Whitaker says: "I don't hesitate to say, and I speak from experience, that where peas are not protected, or birds not shot, fully half the crop will be taken."† And yet, possibly to a certain extent on account of protective legislation, the Hawfinch has increased enormously in numbers and has also increased its range. To the west it is rapidly spreading through Wales, while to the east it has now extended as a breeding species to Northumberland, where it was first found nesting in 1901, and even to Scotland, where its nest was discovered in 1903 near Newport in Fife. When it is possible for the status of a species to completely alter in the course of a few years, the advisability of giving local bodies a certain amount of latitude, within which to exercise their discretion, becomes evident; but the exercise of that discretion

* F. V. Theobald, *op. cit.* See also Bulletin British Ornithologists' Club, Vol. XXIII, p. 24. † J. Whitaker, *op. cit.*, p. 86.

should be based on evidence carefully weighed by those competent to deal with it, and should, we think, be subject to the supervision of a central authority.

THE WORKING AND ENFORCEMENT OF PROTECTIVE LAWS.

In spite of the mass of legislation for protecting birds which exists in Europe, the laws are apt to be disregarded, and to depend for their enforcement upon the energy of a few individuals who are interested in the subject. This is certainly the case in our own country, where but for the efforts of a few enthusiastic persons and societies the proportion of offenders brought to justice would be infinitesimal. We must, remember, however, that not only has the person who assumes the rôle of prosecutor to undergo considerable inconvenience, but that in many cases great difficulties have to be encountered, and that our law is in some respects very imperfect and confusing.

Imagine, for instance, proceedings against a man who has taken the eggs of the Cole-Tit in Derbyshire—a county in which the eggs of this species were the subject of a Protection Order, while those of the Blue-Tit were not. Unless the prosecutor in such a case had actually seen the bird on the nest, how could he swear to which species the eggs belonged? How many oologists would care to face the always unpleasant ordeal of cross-examination on such a subject?

Again, it is difficult to imagine anything more likely to cause perplexity and confusion than the chief section of the most important Act, that of 1880. Only those who have carefully read Sect. 3 realise that it is not an offence under the Act to kill a wild bird except by shooting it; nor is it an offence to take it, though it is forbidden to use any lime, trap, snare, net or other instrument for the purpose of taking.

The form of this section is all the more curious when it is seen that under the earlier Statutes of 1872 and 1876, which were both repealed by this Act, "taking" is made an offence.

No doubt it was intended to make the taking of birds punishable under our Act of 1880; the marginal note to the section is, "Penalties for shooting or taking wild birds," but in construing an Act of Parliament the marginal note may not be considered as part of the Act.*

Now it is quite true that under the first section of the Act of 1896 an Order may be made prohibiting the taking or killing of

* *Att. Gen. v. G.E. Railway Co.*, 11 Ch. Div., 449.

all wild birds in a given district. But no penalty is fixed by this Act for the infringement of such an Order, and there are no penalties under any earlier existing Act either for taking wild birds or for killing, except by shooting them; therefore a man may in these respects infringe the Order and go unpunished.*

Another point which frequently arises is the difficulty of proving the birds in the possession of the person charged to be wild birds.

Over twenty years ago we remember a man being charged under the Act of 1880 with having in his possession some young Wild Duck in down from the nest. It was believed he would in defence allege that they were the young of one of his own domestic ducks. An ornithologist friend and ourselves were visited by the officer in charge of the prosecution, who required us to state then and there whether one of the wretched little downy dead birds produced to us was of wild or domestic origin. We had not seen the nest from which it had been hatched, and we had no specimens for comparison. We hurriedly referred to a few standard books on birds, which helped but little, and to Darwin's great work on "Animals and Plants under Domestication," and took some measurements. We both inclined to the belief that the specimen was a recently hatched duckling of *Anas boscas*, but would have been sorry to have been asked to swear to the fact without further investigation and consideration. The officer, however, did not require our presence at the tribunal before which the case was to be tried, but merely wanted an opinion in writing. A very guarded expression of our view was therefore written, with which he contentedly retired. We afterwards heard that any difficulties presented by the case were overcome by the possessor of the birds pleading "guilty." We have often since wondered to what use it was intended to put that unsworn opinion in the absence of the persons who wrote it. It is said that nearly four hundred cases under the Wild Birds Protection Acts are heard each year, and that convictions result from about half of them. How interesting it would be if the evidence upon which all these convictions are obtained was published!

The penalties fixed by the Act of 1880 are very light, the maximum fine is only one pound for each scheduled bird in respect of which an offence has been committed, and in respect of each unscheduled bird a reprimand and payment of costs on the first offence, and a maximum penalty of five shillings for every subsequent offence.† The punishment for taking, destroying or inciting any other person to destroy eggs protected under the Act of 1894 extends to a fine of one pound for every egg taken or destroyed.‡

* See Marchant and Watkins, *op. cit.*, p. 34.

† Sect. 3.

‡ Sect. 5.

The Statute of 1896 went a step further in giving the Court power on a conviction, in addition to any fine, to order any trap, net, snare or decoy bird used for taking any wild bird to be forfeited.* And more recently still, in 1902, another Act was passed, still further extending the power of ordering forfeiture to the birds or eggs illegally taken.†

The Paris Convention does not suggest any particular form of penalty; it simply leaves the contracting parties to enforce the terms in such manner as they may think fit. But under the American Model Law the penalties suggested are severe; fines in respect of each offence and additional fines in respect of each specimen unlawfully taken, or imprisonment, or both.‡ Imprisonment is a drastic punishment, and has, as far as we know, never been proposed in Great Britain, though it might well be added to our list of penalties for second or very gross offences, and, as we have seen, imprisonment can be ordered in some cases in France. The introduction of forfeiture of specimens in 1902 was, however, a most salutary move, and this punishment is likely to prove a more effectual deterrent than the infliction of fines. Much of the havoc among birds, and even more so among eggs, has been wrought either by amateur collectors in comfortable circumstances, to whom a small fine means nothing, or by the professional dealer, to whom it only means slightly raising the market value of the specimen.

In the matter of punishment, our law is now on very much the same footing as that of Switzerland, where, as we have seen, in addition to fines, the specimens taken and the traps and implements used for the purpose may be confiscated. It will be remembered that similar provision is made by the laws of various other lands—by Spain, Belgium and Holland.

In America, as in England, a great deal of work in the cause of bird-protection has been done by Societies; but we have here nothing to correspond to the Wardens in the United States of America or the Field-Police of Hungary; or, in our own colonies, to the Rangers in Queensland, the Wardens in some parts of Canada, or the Inspectors in West Australia, whose duty it is to see that the law is observed.§ It is, unfortunately, the fact that many of the private individuals most enthusiastic in their support of bird-protection have a not unnatural horror of legal proceedings, and are insufficiently informed in the laws relating to the subject; they are therefore not competent to procure convictions even in cases where the law has been flagrantly broken. However stringent a law on any subject may be, it

* 59 & 60 Vict., Chap. 56, Sect. 4.

† 2 Ed. VII., Chap. 6. ‡ Sect. 3.

§ See page 50.

is worse than useless if it is allowed to become a dead letter, and not until the subject of the protection of birds is more seriously considered in this country, probably not until it has a department of the Board of Agriculture exclusively devoted to it, as ought to have been the case long ago, are we likely to have any organised system for bringing offenders to justice or for better disseminating amongst those engaged in agriculture and horticulture reliable information upon a matter which touches them far more nearly than they at present realise.

PERMISSION TO TAKE SPECIMENS FOR MUSEUMS, Etc.

However closely any country may preserve its wild birds, there can be no two opinions as to the advisability of making exceptions in favour of bonâ fide collectors for museums or for other directly scientific purposes. This fact has been widely recognised for some time past; we find provision made for the scientific collector as long ago as 1837 in the laws of the Grand Duchy of Hesse, and this matter was alluded to in the proceedings at the International Economic Congress at Vienna in 1873, and was the subject of Sect. 8 of the Declaration between Austria-Hungary and Italy in 1875, to which allusion has already been made. In countries where the law compels the attention of children and students, as in Switzerland and Spain, to be drawn to the subject of bird-protection, reference to specimens must not only be most useful but almost a necessity. In our own country "Nature-study" has made considerable advance, and the value of well-arranged museums is becoming recognised; and yet our law, with characteristic disregard of the claims of science, permits of no exceptions in favour of the scientific collector.

The Paris Convention* provides that authorities should have power to grant exemptions from the enactments of the Convention for scientific purposes in particular cases, after taking all necessary precautions to prevent abuse of the privilege; and permits may be extended to the taking of wild birds for breeding and keeping them in captivity. Permits to persons with scientific objects may, as we have seen, be obtained now under the laws of various European countries, for instance, in Belgium, Holland, Hungary or Switzerland.

It is somewhat surprising to find that about one-third of the American Model Law is devoted to this subject, and its provisions are very elaborate. Certificates may be obtained by persons of fifteen years of age or upwards. Such certificates are to be

* Article 7.

granted on the recommendation of two well-known scientific men, and the collector must enter into a bond in the sum of two hundred dollars, with two responsible sureties. These certificates are to be issued on payment of a fee of one dollar, and are to remain in force for one year only. If the privileges granted by the certificate are abused, the bond is to be forfeited, the certificate rendered void, and penalties may be exacted.* In practice, upwards of thirty States give facilities to the scientific collector, and in most cases certificates are issued as recommended by the Model Law. Some States, however, grant them for three years (*e.g.*, Maine), others for less; some limit the number of permits in force at any one time. Colorado, Maine, Minnesota and Wisconsin issue certificates only on condition that the specimens collected shall be kept or exchanged, and not sold or disposed of by gift; in Michigan they can neither be exchanged nor sold. Again, the minimum age for the holder of a certificate varies from that of fifteen, recommended by the Model Law, to twenty-one, required in Massachusetts and New Jersey.† But in one form or another the suggested law has been very generally adopted. The restrictions placed by some States upon the sale and exchange of specimens collected is a noteworthy and wise precaution, for it is obvious that the liberty to collect might be abused by the subsequent disposal of the specimens, a point which has not altogether escaped notice in Europe.‡

It is certainly a flaw in our own law that no facilities are given to the collector for museums, though it may be doubted whether the system of certified collectors prevalent in America could be successfully established in a land which is small and mostly cultivated. At any rate such certificates should specify the nature and number of specimens to be obtained; added to which the number of certificates in force at any one time would have to be very limited, and the utmost care and discrimination exercised in their issue, otherwise the professional dealer would soon be masquerading as the disciple of Science in order that he might supply greedy and often very unscientific collectors with British-taken specimens.

* Sects. 5 and 6 of Model Law.

† For Maine, see Public Laws of 1901, Chap. 222, pp. 231–233, Sect. 7; for Colorado, see Laws of 1897, Chap. 8, pp. 40–49, Sect. 31; for Minnesota, see General Laws of 1897, Chap. 221, pp. 413–427, Sect. 41; for Wisconsin, see Laws of 1901, Chap. 156, pp. 190–191, Sects. 5 and 6; for Michigan, see Public Acts of 1901, No. 217, pp. 335–339, Sect. 21; for Massachusetts, see Supplemental Public Statutes, 1882–1888, Chap. 276, p. 435, Sect. 4; and for New Jersey, see Laws of 1901, Chap. 76, pp. 176–178, Sect. 5.

‡ *E.g.*, Switzerland has provided against this possible abuse in Article 20 of the law of 1904.

WHOLESALE DESTRUCTION OF MIGRATORY BIRDS.

When a bird is considered useful for food, we usually find that it is slaughtered, and the farmer has to do without its services however useful it may be to agriculture. In such cases the slaughter generally takes place during migration, when the members of the species are gregarious; and the deadly certainty with which migration follows the same routes year by year has rendered the task of the fowler with regard to many species a comparatively easy one, and the success which attends his efforts is often staggering.

In England this wholesale destruction of migrating birds, as practised in some parts of the European Continent, does not take place. Time was when in autumn there was a great capture of Wheatears for food on the South Downs, but these birds are not now taken in large numbers; and though in certain places many birds are still netted for caging, it is doubtful whether this is done on the same scale as formerly, when near Worthing alone over 1,100 dozen Goldfinches were said to have been caught annually.*

The Paris Convention forbids the construction and employment of traps, cages, nets, lime-twigs and any other instruments used to facilitate the capture or destruction of birds "en masse."† This provision has no parallel in our law, but is amply justified by what goes on in South Europe, and to a lesser extent even in France, where, as we have seen, "la chasse des oiseaux de passage" receives statutory recognition.

An instance may be given of the havoc played amongst the Thrushes in the Bouches-du-Rhone, which has been recorded by two French authors.‡ The birds, chiefly Song Thrushes, are practically all obtained on their autumn migration during the last week of September to the middle of October. It was calculated that 326,000 are annually shot, while many thousands more are caught by bird-lime. But these figures, startling as they are, fade into insignificance when we turn to the records of North Italy. It has been stated by Professor Vallon that in October,

* "Zoologist," 1860, p. 7144.

† Article 3. See also evidence of W. Swainsland in Report of Select Committee of House of Commons on Wild Birds Protection, 1873, pp. 102-108; also G. D. Rowley, Ornithological Miscellany, Vol. II., p. 84.

‡ Jaubert and Barthelemy-Lapommerage in "Richesses Ornithologiques du Midi de la France." See also "Zoologist," 1898, p. 285, on the report of Mr. Consul Hearn on the trade of Bordeaux, in which he comments on the disastrous effects on the vineyards of the destruction of insectivorous birds; also E. C. Mitford in "Zoologist," 1889, p. 185, as to slaughter of birds in Biarritz.

1890, alone, over 400,000 small birds passed through the hands of the customs-house officials at Brescia, and Count Salvadori has shown that a single Italian "roccolo" has in twenty years been responsible for the destruction of over 135,000 small birds.* When one considers the number of these apparatus in North Italy and the various other devices employed regularly and at almost every suitable point at the season of migration, along each of the recognised routes, it becomes evident that massacre must take place on a scale which is too appalling to contemplate. It is a second nature to the Italian to repair annually to the neighbouring valley to destroy the migrating flocks of birds; yet he can only ply his trade successfully owing to the even more firmly rooted hereditary instinct which leads those flocks—never profiting by experience—year by year, at the same season, through the same valleys.

No discussion on the slaughter of migratory birds can omit reference to the wholesale capture of Quails which takes place in the south of Europe. This bird is a poor flyer, and, crossing the Mediterranean Sea in spring at its narrowest points, arrives exhausted and is easily taken. Some cross to Spain by the Straits of Gibraltar, some cross the Ægean Sea to Greece and Turkey, and the main body cross to Italy. Wherever they land after their journey they are caught in thousands. The captures on the return journey in autumn are also enormous. A large volume might be written on the catching of the Quail. This bird has been celebrated as an article of diet from time immemorial. There has admittedly been a great reduction in their numbers, and the only wonder is that any Quails exist. Some years ago a well-known French naturalist, the Baron d'Hamonville, wrote: "Si les gouvernements ne prennent pas des mesures pour empêcher cette destruction périodique la Caille dans peu d'années ne sera plus qu'à l'état de souvenir."† Eighteen years have elapsed since this was written, and still large, though diminished, numbers are taken. The mortality of the birds in the long narrow cages in which they are transported is sufficient evidence of the misery they must endure.

In America the Model Law, with its sweeping protective provisions, makes, of course, no specific reference to wholesale destruction of migratory birds, but in some of the Southern States hideous slaughter of certain species still takes place, and no more terrible instance of the effects of the wholesale massacre of a

* These figures are quoted from Herman's work on the Convention of 1902, previously referred to. Instances could be multiplied almost indefinitely. See also Professor Giglioli's "Avifauna Italica," Part III. (Firenze, 1891), pp. 2-36.

† See "La Vie des Oiseaux," p. 217.

species can be given than the case of *Ectopistes migratorius*, the Passenger Pigeon of America. To realise the vast hordes in which this bird was found is quite beyond the bounds of human imagination. Their movements were not due to the familiar impulse of seasonal migration, but seemed to be governed solely by abundance of food. A nesting colony in Michigan in 1877 was twenty-eight miles long and three or four miles wide in a thickly wooded district; yet every tree had a nest, and many trees were covered with them. But the birds were attacked wholesale. In one year, 1881, no less than five hundred men were engaged in netting these pigeons in Michigan, and they are said to have captured 20,000 birds apiece during the year. A few years ago we heard of the countless millions in which this species existed; now we hear of the likelihood of its absolute extermination!*

According to Mr. Palmer†: "In some sections of the south, particularly in New Orleans, all kinds of small birds, even Thrushes, are considered legitimate game, and are offered for sale in the markets." He also quotes Professor H. Nehrling, who says: "One main cause of the fearful decrease of our small migratory birds must be looked for in our Southern States. There millions of all kinds of birds are killed to satisfy the palate of the gourmand." The species which suffers most is the well-known Thrush commonly called the American "Robin" (*Turdus migratorius*), which it is legal to kill in North Carolina from the 1st November to the middle of March, and which is slaughtered in large quantities just before its northward migration begins. "With open seasons in winter in Alabama, Georgia, North Carolina and Tennessee the smaller birds receive but little protection during their sojourn in the South."‡

When we contemplate the number of noxious insects which may be consumed by a bird in a single hour and the rate at which most insects can increase in numbers; and when we further consider the rate at which most birds can under suitable circumstances increase, it becomes possible to appreciate how terribly the balance of Nature must be upset by the wholesale slaughter of birds during their migratory wanderings.

COMPARATIVE ECONOMIC VALUE ATTACHED TO SPECIES.

As far as legislation in Europe has gone it has proceeded but little on æsthetic grounds. Virtually all the birds protected are those deemed useful to agriculture and those deemed useful

* See W. Brewster, "The Auk," October, 1889. p. 29. † T. S. Palmer, *op. cit.*, p. 56. ‡ T. S. Palmer, *op. cit.*, p. 56.

for food, the latter being dealt with by game laws. Even as an article of diet a particular species may be held in esteem in one place and disregarded in another. Let us take the case of the Starling. Few care to eat Starlings here, though in the south of Europe they are considered quite a dainty. Pennant stated that "their flesh is so bitter as to be scarce eatable."* Old Willughby said: "Stares are not eaten in England by reason of the bitterness of their flesh; the Italians and other outlandish people are not so squeamish, but they can away with them and make a dish of them for all that."† And the taste for Starlings is not confined to Europe, for the inhabitants of North West Africa kill and eat thousands of them in winter, when they arrive in vast hordes to feed on the ripe fruit in the date forests.‡ This same bird, looked at from an agricultural point of view, has also caused considerable difference of opinion. On the one hand, the damage Starlings do to cherry orchards is said to be enormous, and they do much harm to the trees and plantations in which they roost in huge flocks in winter§; on the other, the amount of injurious insects and small molluscs which they consume is very great, so great indeed that, except in districts almost entirely devoted to fruit, it is generally admitted that they do far more good than evil.||

Sparrows are so assertive and so numerous that they have more enemies among mankind than any other species. Wherever they have been introduced they have upset the balance of Nature. They have been honoured with a separate clause of the American Model Law, a clause which deprives them of all protection. The case of the sparrow is a reminder to those who would attempt to vary local fauna, and shows that introduction of a foreign bird may do as much harm under certain circumstances as destruction of a species which is indigenous. Those responsible for the introduction of the Sparrow into America never dreamt of the disastrous effect of their action. The report published in 1889 under the direction of Dr. C. Hart Merriam, Ornithologist to the United States Department of Agriculture, is a warning to those who would improve on Nature.

* British Zoology, Vol. 1, p. 255.

† Ornithology of Francis Willughby by John Ray (London, 1678), p. 196.

‡ See the late Canon Tristram, "Ibis," 1859, p. 293.

§ At Kammerforst in Germany the extensive cherry orchards are said to escape from the attentions of the thousand Starlings which nest in boxes in the adjoining wood. Facilities are provided to enable the Starlings to rear their young early in the season, and the birds are said to leave the district before the cherries ripen.

|| See Observations in France by M. Florent Prevost, "Zoologist" (1863), p. 8762; also J. Cordeaux, "Zoologist," p. 9280; also Riley Fortune in "Ornithology in relation to Agriculture and Horticulture," p. 134.

Yet even for the Sparrow there is occasionally something to be said. We have all heard how a price was once set on its head in the vicinity of Baden, and how subsequently the Cockchafer and other insects increased so much that the very men who had sought its destruction offered a still higher price for its re-introduction. There is no doubt that they consume a good many insects during portions of the year, though in most places they are far too numerous, and in districts devoted to corn crops the damage they do is sometimes incalculable. In such places the numbers should be reduced by destruction of the requisite number of eggs, not by killing the birds; if the farmers of a district declare war on the birds and begin to shoot them, all small brown birds are likely to be indiscriminately destroyed as Sparrows. It is curious to find that in Germany the Imperial Law schedules the Sparrow as noxious, while that of Bremen protects it as beneficial.

The truth is, as already pointed out, that whether the benefits which a bird confers on mankind outweigh the evils is a question which can only be answered by considering the surroundings and circumstances in each district inhabited by it.

A species may have claims to protection on scientific, æsthetic or economic grounds. Assuming the guiding principle of the Paris Convention to be right, and that in general, protection should be extended for economic reasons to such species as are useful to agriculture, we are still confronted with the very great difficulty of ascertaining the position which a species occupies in relation to agriculture. Now, the chief service rendered by birds to agriculture appears to be, as already indicated, in the destruction of insects, but even this may be stating the case too broadly. We must not generalise and assume that all insects are injurious: some undoubtedly perform useful services. Moreover, insects which are common in one district may be rare in another; while crops, fruit and trees common in one district may not be cultivated or wanted in another; and a bird which chiefly devotes its attentions to a particular insect in one place may in another partake of an entirely different food. It follows that to compare the economic value attached in different places to any one species is in most cases a very hard and discouraging task, and often ends in hopeless confusion. A statement showing the treatment of each species by the various laws now in force throughout Europe would be most interesting could we be sure that such treatment was the result of exact study; but as matters stand such a comparison would be futile and profitless, for it is impossible to assign adequate reasons for the differences of treatment. Many curious cases can be cited, but we search in

vain for rational explanations. Why, for instance, do we find the Jackdaw protected by the Hungarian Decree, and in some of the German Federal States and in Switzerland, when it is not recommended as worthy of protection by the Convention and when the German Imperial Law of 1888 actually convicts it of being noxious? Again, why should this same German Imperial Law brand the Crossbill as noxious, when the bird is said to be worthy of special protection by the Paris Convention? And why, when the signatories to that Paris Convention refused to place the Bullfinch in their Schedule of useful birds, did Hungary extend protection to it by her Decree of 1901? Or why did the Hungarian Decree protect the Redwing, when Switzerland, by her law of 1904, particularly excluded this bird from the list of protected species? We can only attribute these facts either to a great variation in the birds' habits in different places or to the lack of a uniform scientific basis to the legislation. Probably the latter is the origin of most of the apparent differences in the estimate of the economic value of so many species. Even in cases where European legislation displays practical unanimity it would be rash to assume that throughout the Continent the economic value of the species has been carefully studied by experts in each locality, and that the legislation simply follows a verdict uniformly favourable or the reverse. The treatment of the Blackcap will serve as an illustration. Taking the more important European enactments, we find that in Switzerland "toutes les espèces de fauvettes" are included in the protection given to insectivorous birds, and all the Warblers are protected in Belgium. They are omitted from the Schedule of noxious birds appended to the German Imperial Law of 1888, and therefore by implication are to be protected as useful in Germany. The Hungarian Circular specifically directed their protection, and the Schedule of useful species appended to the Paris Convention includes "fauvettes de toutes sortes." In many districts in our country the Blackcap has had special favours extended to it; in some places this bird has been given a special close time, and in others its eggs are also protected. Yet in the face of all this, there is a strong body of opinion among those who in this country have studied economic ornithology in condemnation of the Blackcap on account of the damage done by it to raspberries and currants and other fruit.* It is one of the few species which Mr. Theobald considers clearly proved guilty of doing more harm than good.† Now it may be, and

* See F. Smith, *op. cit.*, and Charles F. Archibald, *op. cit.*

† See article on Economic Ornithology in "Science Progress," 1907, p. 276. This is not, however, the opinion of Mr. O. V. Aplin; see "Ornithology in relation to Agriculture and Horticulture," p. 150.

probably is, the case that in places where fruit is not much grown, the Blackcap's insectivorous habits are more conspicuous, and it is there considered undoubtedly useful; but a perusal of the list of districts in which special protection has been given to it in this country will certainly not support the natural inference that these must be districts in which fruit is not grown. One is therefore driven to the conclusion that the estimate of economic value is not always based upon a study of the facts, it is often purely arbitrary or founded possibly on sentiment.

CONCLUSION.

When we presume to interfere with a species, it should be remembered that in the course of time Nature has arrived at her own natural level; and when we declare that some particular bird is too numerous for us, it has usually become so because man has upset the natural condition of things. In considering the protection of birds we have perforce had to confine ourselves chiefly to legislation which deters their *destruction*, though we have also alluded to the important kindred subject of their *introduction*. A treatise of very limited dimensions can but deal with the fringe of so gigantic a subject, and many important matters must be left practically untouched. Thus there is a wide field for discussion on the closely allied question of the *encouragement* of species in order to re-establish the balance of Nature in places where their presence is valuable, but where they have become scarce, often owing directly to the action of man. We refer to cases in which mere protection is insufficient; cases in which the useful resident species should be directly and physically encouraged to reside and to breed by feeding them in winter, when their natural food is hard to obtain, by planting suitable trees and shrubs in which they may nest, or in some cases by the supply of nesting boxes. How much can be done in this way is difficult to say, but there can be little doubt that the vast numbers to which the Starling has attained are due to a great extent to the encouragement it has received. For many years past it has had nesting places prepared for it in parts of Germany, Scandinavia and Russia,* and we all know how speedily it avails itself of similar opportunities here. In Germany especially this branch of our subject has received much attention, chiefly through the energy of Baron Hans von Berlepsch. And wonderful results are said to have followed the fixing of artificial nesting-boxes on stakes on sandhills in

* See Dresser, "Birds of Europe," Vol. IV., p. 411.

North Germany, nine out of ten of the boxes being tenanted by Tits, which had previously been rare in the district. The fact that in Hungary the manufacture of artificial nesting-boxes has actually been started under Government support, while there are several factories in Germany and at least one in Switzerland, sufficiently indicates the importance which is elsewhere attached to a branch of the study of bird-protection which is with us still in its infancy.*

When we make laws to regulate bird life we must remember that the selection of one species for special preservation, or another for destruction, is an act which entails no slight responsibility, for it is a very dangerous thing to upset the balance of Nature. It is easy to do it, but it is supremely difficult to accurately estimate the results. Destroy one species and another may become too numerous. If a species becomes too numerous for its means of subsistence, it is either apt to change its habits and devote its attention to some new article of diet, or it may have to spread to new districts where its presence is not desirable. Birds of prey are in most cases considered harmful; many kinds have been practically exterminated in this country chiefly owing to the ignorance of game-keepers. To what extent the vole plague, which did such damage in South Scotland in 1892, was due to the destruction of Hawks and Owls and Weasels we cannot tell, but the Report of the Departmental Committee of the Board of Agriculture, after taking the evidence of a large number of persons on the subject, stated that "nearly every witness who was examined" gave it as his belief that the outbreak was due to the destruction of the natural enemies of the voles.† Now, the only object of those who destroyed the "vermin" was no doubt the preservation of game; the devastation of large tracts of land by voles probably never entered their minds as a possible result of their action. Such matters cannot be successfully studied from a single point of view; on the other hand they cannot be studied in all their aspects, for there is no limit to their number. For the better protection of birds in general and the prevention of their senseless destruction there is no doubt that education may be an important factor. Boys are born hunters; their natural instincts lead them to destroy. And whether a boy is destined to become a jockey, jeweller, bookmaker, bishop, poet or politician, much good can be done by training him to acquire a proper attitude towards Nature. The importance of education in this respect was publicly

* In connection with this matter see "How to Attract and Protect Wild Birds," by M. Hiesemann (London), 1908.

† p. VIII. of Report.

advocated as long ago as 1873 by Dr. Alfred Brehm at the International Agricultural Congress at Vienna. Teaching on the subject has, as we know, since become compulsory by law in some European countries, as in Switzerland; while in America, laws have been enacted for the observance of "Bird and Arbor" days in Wisconsin, Minnesota, Connecticut, Delaware and Ohio. A similar institution was introduced in Hungary in 1906 by decree of the Minister of Public Instruction; and in Great Britain the importance of this question of education is by slow degrees becoming generally appreciated, and we hear more and more of the advantages of "Nature-study."*

But training the children in this way will not do all that is wanted. It is certainly hopeless to expect to arrive at anything like a satisfactory conclusion as to which birds to protect or how to protect them until the main points of the situation—and especially the food of birds—have been widely and methodically investigated. Up to the present time there has been practically no such systematic study in this country. Good work has certainly been accomplished on a very small scale by a few energetic individuals—Mr. John Gilmour's paper in the Journal of the Highland Agriculture Society for 1906 may be cited as an instance—but the subject is far too vast to be tackled except by a considerable number of men working methodically and in concert. Such investigations are not likely to be carried out until the Board of Agriculture has a department which devotes its attention entirely to the subject.† Until such work has for some years been done in this country as is being carried on in the United States and Hungary, we shall not possess the materials for satisfactory legislation. Nevertheless, our laws have on the whole proved fairly effective. The increase in many species can undoubtedly be traced to them, and if they were relaxed many birds would at once have a very hard time. Only this year *Larus ridibundus* was removed from the list of species whose eggs were protected in Cumberland. What was the consequence? It is said that the immediate result was a raid on its breeding stations, the eggs being gathered for local consumption or despatched to London as Plovers' eggs, the poor birds being driven to fresh nesting grounds.‡ But although our Statutes have produced some good results, there are far too many of them and they are too cumbersome. We cannot but envy the concise enactments by which the subject is regulated in such countries as Switzerland and Belgium.

* See page 50.

† The importance of the study of this subject was urged at the recent meeting of the British Association at Dublin by Mr. C. Gordon Hewitt.

‡ See T. Harrison in "Field," 1st August, 1908 (p. 238).

In revising and consolidating our laws we would suggest amendment of the Act of 1880, so as to make it an offence to take or kill wild birds in the close season ; abolition, or at any rate definition, of the "recently taken" puzzle ; extension of Sect. 3 of the Act so as to make it cover possession not only of any wild bird illegally taken but possession of the skin or plumage of any such bird, and also extension of the Act of 1894 to cover possession of eggs which have been illegally taken ; prohibition of any dealings for profit in unscheduled birds which have been killed or taken by owners or occupiers of land or their agents during the close season ; provision for the granting of permits under most stringent and limited conditions to the *bonâ fide* collector for museums or definite scientific objects ; and thorough investigation, and where necessary drastic revision, by a central expert authority of the numerous existing Protection Orders. We would further advocate a large increase of the maximum fines and the additional penalty of imprisonment without the option of a fine in the event of a second or a flagrant offence. Such a revision of our laws on the subject would, we believe, accomplish as much as can be at present expected for the reasonable protection of birds.

We must not, however, lose sight of the fact that in our present state of crass ignorance the stricter enforcement of our existing laws is quite as important as their alteration or revision. This being so, a considerable number of trained officials might with advantage be appointed to enforce observance of the law and to assist those private individuals and societies upon whom this burden has hitherto so largely fallen. Beyond this, careful observation should be kept on the nature and practical working of the laws of other countries, and much study should be devoted to the food of birds and to their relationship to the animal and vegetable world around them.

NOTE.—In reference to Mr. Macpherson's comments on certain branches of Bird Protection work, it should be mentioned that the Royal Society for the Protection of Birds includes a special Watchers Committee for the appointment and payment of watchers (p. 38) ; supplies nesting-boxes for the encouragement of useful birds (p. 47) ; and has introduced "Bird and Arbor" day into Great Britain by means of County Challenge Shield Competitions (p. 49).

Extracts from the Essay by

LT.-COLONEL MOMBER,

Winner of the Second Prize in the Gold Medal Essay
Competition, 1908.

The need of Bird Protection is an inevitable sequel to increasing population. In wild nature, the balance of necessary and superfluous takes good care of itself. But when a country becomes populated its features alter; and the felled forest, the drained marsh, the cultivated land are only the beginning of the change worked by man upon fauna and flora. Agriculture and pasturage further certain kinds of insect and plant life, whilst hindering others, with an immediate effect on the birds dependent on them, since, in general, the numbers of birds of each species are proportionate to the supply of the particular food the species depends upon for subsistence.

Perhaps no class of statutes is harder to enforce than that relating to wild creatures and plants. When person and property are offended against, when there is assault or fraud or theft, the injured individual and his house do their utmost to further the conviction of the offender. In the more serious crimes all society bands itself against the culprit, and everyone has a personal interest in helping the law to punish. But the stake in Nature, which is every man's birthright, must be made clear to him before he will trouble himself to defend it.

The haunts of birds are not the haunts of the police, nor much affected by the public. The public is indifferent, and disinclined to go to pains to institute proceedings against the misdoings it may witness. The great majority of offences is unwitnessed; the victims lay no information; and only afterwards the silent groves and desecrated banks chant a mute threnody to the ornaments they have lost. It is for this reason that the people require to be told, and often retold, what are the claims of birds on man, and why most birds require to be jealously guarded against persecution, whether thoughtless or rapacious or malicious.

Wild birds should be everywhere, as they are under the Audubon Societies' laws, the property of the State; an asset and a benefit in which every citizen may share, and to help in preserving which benefit every citizen should be taught and encouraged. For, indispensable as are laws of protection, they can only be effective if the public itself co-operates to carry them out.

ITALY,

No less than twelve different kinds of licences for different kinds of fowling are sold, ranging in price from 6 lire, for carrying about a decoy bird and limed twigs, to 100 lire, for every hectare of ground occupied by springes and nooses and for flight nets along the sea shore. The licence to carry a firearm costs 18 lire; other permits cost respectively 15, 20, 25 and 40 lire, and their sale brings in a considerable revenue to the Government. The President of each "Deputazione provinciale" issues every summer the rules for the following season, specifying the dates of close time for various species. These rules, which seem based on the agreement of 1875 between Italy and Austria, are printed on posters and exposed in certain public offices; and they differ in each Province as to dates and details. There is no doubt that the compilers of the laws, the "Deputazione," are accessible to the mayors of the communes; who, in their turn, do their utmost to maintain their popularity with their electors; and these latter are the sportsmen against whose excessive sport the laws are framed. In the Province of Naples the close season for 1908 was April 1 to August 31, but Quail were excepted until the end of May; and "birds of passage" until the end of July along the seashore and on uncultivated lands; the object being presumably to protect the crops from trespassers whilst granting the fullest possible licence to sportsmen. The taking of nests of any kind is forbidden at any time and place; also the killing of Swallows and Swifts, and the use of nooses, trammels, and certain kinds of nets. A reward is promised the police and customs officers for the greatest number of convictions of illegalities.

The following is a translation of the laws prescribed for 1907 in the Province of Porto Maurizio, and may be taken as a fair sample of any of the others:—

1. The caccia is prohibited on the territories of this province from February 1 to August 31, 1907, both days inclusive. Exceptions: The pursuit, with the gun only, of Quail, Turtle Dove, Ortolan, and of Lapwing, Thick-Knee, and other waders, as also of aquatic birds and birds of passage, will be permitted along the banks of rivers and streams beyond the 2 kilometres of the seashore. For Ortolans permission remains to use the "retina," clap net and trench. The pursuit of Thrushes, with the gun only, is allowed until March 31 inclusive.

2. The taking of Orioles at a fixed spot will be permitted from August 1. The fowler must declare the stand he intends to take up two days beforehand at the Communal Office. Whoso is found exercising the pursuit away from this spot, or off roads or beaten tracks, will be punished according to law.

3. Fowling with limed twigs, either stationary or ambulatory, is permitted from October 1 to November 30 (tree and decoy for robins).

4. Fowling with limed grass, with nets, and the use of limed twigs in bushes and shrubs is permitted only on the day of December 25.

5. The pursuit of Partridges with caged call birds ends September 16. A reward of 30 lire for information leading to conviction of destroyers of nestlings and brooding birds, and of persons using limed grasses and nets.

A reward is offered of 10 lire for information resulting in conviction of hunting in close season, or of selling or being in possession of game.

During the close season it is forbidden to expose for sale, to sell, buy, carry or keep any kind of game. Any person discovered in the country off the roads or paths, carrying nets or trammels of any description, or with decoy birds, foods, or baits, or any other artifice for taking wild creatures (*selvaggina*), during the close season, or without a regular permit, will be considered in the act of hunting.

Here we have many words, but little meaning. The bold fiat of Rule 1 is qualified by exceptions so vague and so loosely worded, that it is sapped of most of its force. The birds excepted are not harmful, rather the contrary, but they are sizeable and esculent, and obviously it is the fowler, not the fowl, who is studied.

"Aquatic birds" is a wide term to legislate with, and as for "birds of passage," what bird is not, at some time or another? It is clear that here are endless loopholes for escape, and opportunities to raise technical difficulties. What chance of nesting is left to the survivors of the birds named?

Rule 2 is commonly disregarded; nor is its significance apparent. Moreover, the months of March, April, and May are specially allowed gunners to patrol streams—along which there is always a right of way—and such places are favourite resorts of most kinds of birds.

Some of the Italian fowling devices are elaborately prepared. The "roccolo" consists of a shrubbery—sometimes with a pool—some 15 metres in diameter, surrounded by nets 3 metres high. In the centre is a tree, at the foot of which are caged or braced decoys. The passage birds, attracted by the call of the decoys, which often are blinded, pitch in the shrubs or on the tree, from the top of which a dummy Hawk can be made to appear, which scares the birds into the nets. Or an Owl is fastened on the ground, and some caged Thrushes placed near by, whose harsh cries attract the migrating wild birds. This practice is much in vogue in the provinces of Turin, of Alessandria, and Novare.

The "passata" is still more complicated, and there exist permanently three celebrated ones in the Brescia district, which annually make immense captures during the spring and autumn migrations. Springes and nooses, sometimes baited with live insects, and skilfully placed in those districts among the mountains, where birds are known to pass, are responsible for the taking of great numbers of songbirds. Any and all of these

appliances may be seen at suitable places over most parts of Italy. An Italian military officer in uniform has been seen pursuing small birds with a fowling piece, and the late Pope was reported much addicted to liming the warblers in the Vatican gardens. It must be seen to be realised to what an extent fowling is a national pastime of Italians, whether with a licence or without one, and what a drain on the avifauna of Europe Italy must be. Hunting, formerly the pastime of the great, has degenerated into birding, the amusement and profit of the masses, and the mal-practice seems to have gained in popularity of late years. Even when they emigrate, the Italians take their ornithophagous propensities with them. In the United States of America they give so much trouble that some of the Audubon Societies issue and disseminate leaflets, printed in Italian, exhorting the immigrants to respect the laws and to conform to the usages of their hosts, and appealing to them to practise kindness, not cruelty, to wild creatures. These leaflets seem to have good results. It has been found necessary in some States to impose a 15-dollar gun licence on non-naturalised aliens.

The one good law in Italy—if only it were enforced—is that prohibiting the selling, buying, carrying, or possessing every sort of “cacciagione”—hunnable creatures—during close season.

Totally inadequate as the Italian legislation is in every respect, it is chiefly unsatisfactory in that it seems based on no sort of recognition of either the utility of birds, or of their beauty or moral value. No effort is made to retain the choicest songster. Goldfinch and Blackcap and Robin, at one penny each, hang in bunches in the markets.

The refusal of the Italian Government to agree to the articles of the Paris Convention in 1902 is difficult to reconcile with its attitude during the initial stages which led to that Convention.

Some allowance for their insufficient legislation must be made to the Italians, if it is remembered how young a country is United Italy; in many other respects besides birds, their laws are not united into one code.

Lovers of Nature must hope that the Italian Government will no longer delay to protect the people against itself, and will initiate, by a wise legislation, the stamping out of customs which are an anachronism and a stain on the civility of the nation, besides constituting a grave injustice to other nations.

The importance of the question and the conditions under which migratory birds pass, make it imperative that there should be general international agreement for their protection when on migration. And no scheme of international protection can be efficacious without the co-operation of Italy.

A crumb of comfort lies in the fact that the customs we now so deplore in Italy were pretty general all over Germany 150 years ago. A book published about the middle of the eighteenth century—Naumann: *Der Vogelsteller*—gives explicit instructions for the taking of almost every kind of bird, explains many methods still in vogue in Southern Europe—some of them very cruel—describes the table merits of different species, and even recommends the most approved mode of burning out the eyes of call birds. So let us not abandon hope.

FRANCE.

A noteworthy instance of the failure of the 1902 Convention, so far as France is concerned, occurred in the Basses Pyrenees in the spring of 1908. Yielding to representations made by communal Mayors, the Prefect extended the open season, nominally for the hunting of Larks, with the result that all small birds were mercilessly persecuted until late spring. Owing to the poaching proclivities of the French peasant—who generally has an old gun, ready loaded, handy—in some Departments killing goes on almost throughout the year.

In the Departments of the Centre, larks are taken in enormous numbers in drag nets at night, and in horsehair nooses. In the south, especially in the Lot-et-Garonne, millions of insectivoreæ are taken in nets and nooses—Warblers, Larks, Swallows, and also Goldfinches. M. Henri de Parville in *Le Correspondent*, June 10, 1892, states that in two communal forests of Meuthe-et-Moselle, there were destroyed in a season a total of 15,544 birds, of which 13,999 might rank as useful insect-eaters. These include 10,015 Warblers, Nightingales, Robins, Redstarts, Wrens, and Goldcrests, 2900 Tits, 1180 Blackbirds and Thrushes. The *Journal des Debats*, April 30, 1908, publishes an article quoting M. Xavier Raspail, who opines that the unusual meteorologic phenomena of 1907 are not more responsible for the dearth of birds this year than the deplorable destruction which increases despite the Convention of 1902. He continues:—

“The weakness, the culpable complaisance of the administration, will do more for the extinction of birds than the weather. In 1906 in Loir-et-Cher, under pretext of hunting Larks, thousands of small birds were destroyed, and picked up in sacksful and sold at 25 to 30 centimes a dozen. One peasant declared that he alone had taken a hundred dozen, and, as he could only dispose of half, the remainder had been thrown into the manure. If one reflects that these appalling hectacombs are effected in the east, centre, and south of France, and in Italy, during the spring and autumn migration, one may expect to see, in the near future, the disappearance of those birds which are the best auxiliaries to the prosperity

of agriculture. The consequences of this furious destruction, which has lasted for years, are visible everywhere. Around Paris birds are rare. In our days the number of Nightingales and Swallows unceasingly diminishes."

It is difficult to foresee how any improvement on this state of things can come about whilst the vicious circle remains complete, and the paid deputies and paid mayors dance to the piping of the proletariat. There are even signs of matters becoming worse. At the present moment (November, 1908) a congress of "chasseurs," deputies and mayors of Bayonne and district is being organised with the object of doing away with all restrictions on shooting and netting. Argument: that all birds are bred in other countries and killed in other countries, and so they had best be killed here. The mayors and deputies attend, of course, to catch votes. It is bad that there is little law, but it is worse that its enforcement is a figment. Corruption and favouritism quash the prosecution for offences against the game and bird and cruelty to animals laws to such an extent that the police and keepers do not trouble to look into matters, as their papers disappear in the waste basket. A keeper in the Alderdes district this year took out twenty-five summonses for illegal trout netting, and obtained one conviction, and in this case the offender was fined because the clerk of the court was away, so that the legal document which had to pass through his office went on to headquarters, and the law took its course.

TURKEY.

In Turkey, where hunting in all its branches is controlled by a police regulation of December 30, 1882, a 10 piastre permit (equals about 1s. 9d.) is all that is necessary to hunt wild animals and birds on Government lands, woods, and forests. Each province fixes its own date for beginning and ending the season. Close time is usually from April 1 to July 31. Bird-lime, nets, and snares are allowed only for Quail. To the provincial authorities is allotted the prohibition of the destruction of birds useful to agriculture, and of others. The sale, purchase, and transport of all game during the close season is punishable with a fine of T£1 to T£5; as is also the trespass in search of game, and the taking of the eggs of partridges and pheasants. Land-owners may hunt on their own land at all seasons; but Turks are not great poachers. Villagers hunting, for their own consumption, in the communal woods and pastures, require no licence; and officers and men of the Imperial navy and merchant service are allowed to shoot aquatic birds on sea, lakes, rivers, and

streams, for pleasure or profit, after obtaining a *tezkere*, or authorization.

In the case of Grebes, Cormorants, and other birds utilised in any industry, twenty per cent. of their value, or a fifth part in kind, must be paid to the Government. It is forbidden to destroy passage birds on the lakes which are administrated by the State, but the State is generally willing to lease these lakes. The laws are not enforced, and there is practically no bird protection in Turkey.

GREECE.

The actual laws prohibit the killing of birds from March 15 to July 20 ; hares, partridges, etc., from February 1 to July 20. But no notice is taken of either of these laws, and killing goes on all the year round.

BULGARIA.

Article 4 of the Game Laws imposes a fine of from 5 to 100 francs on anyone killing the following birds useful to agriculture or taking their nests, eggs, or broods :—Vultures, the Kestrel tribe, the smaller Owls, the Woodpeckers, Roller, Bee-Eater, Hoopoe, Cuckoo, Nightjar, all small singing birds, Starling, Rosy Pastor, Turtle, and also marsh birds, with the exception of those the law allows to be hunted.

FINLAND.

The Russian Code does not obtain in the Grand Duchy of Finland, but the Swedish Code of 1734, modified by a number of more recent regulations. Birds are divided into three classes : (a) Useful game, which includes all birds usually considered such ; (b) noxious birds, specifying Eagle, Osprey, Vulture, and Eagle Owl ; (c) birds not in the two previous classes.

A close season from March 15 to July 15 protects classes (a) and (c), and special dates are fixed for certain species of class (a), namely, all the Tetraonidæ, the Grey, Red-legged and Mountain Partridge, Swans, Geese, Eider, all Wild Duck, Woodcock, and Double Snipe.

In a law passed June 20, 1870, sanction is given to hunt the white male Eider Duck throughout the year, a decree strangely at variance with the Scandinavian statutes. The close season allowed wild fowl in Russia seems surprisingly inadequate—six weeks to Woodcock and sixty days to Geese and Swans, which take half that time to incubate, and whose young require

the guidance of both parents for months. The hostility to Owls, too, seems unaccountable.

WORKING OF LAWS.

A glance at the above summaries suffices to show that Austria, Hungary, Germany, and Switzerland are the countries of Europe that have the most complete and sufficient schemes of bird-protection. In respect, too, of the education in bird lore of the school children excellent work has been, and is being, carried on. It is in these countries, too, that the laws are observed. The nations that treat wild birds as food or vermin are also indifferent as to the laws, whether they are upheld or not. So that the esteem in which birds are held seems to give a scale by which the civilization of a people can be measured.

EXCEPTIONS IN FAVOUR OF SCIENCE.

The statutes of the four above-named countries, equally with those of the Audubon Societies, allow for the exceptional taking or killing of specimens for scientific purposes, and there seems every reason to believe that these regulations are answering well. They all compare well with our Wild Birds Protection Act.

THE LAWS IN FORCE IN GREAT BRITAIN.

It is not surprising that foreign ornithologists should be puzzled at the British schedule omitting most of the best songsters, and most of the specially useful insect-eaters, whilst it includes many fish-eaters considered noxious in other countries. For elasticity the Act is unsurpassable, because of the powers given the Secretary of State to extend the time of protection, or to protect any species for any period or in particular places, on application from local authorities giving special reasons. The basis of the Act is local option, but it may well be doubted whether in our small populous island this system affords to birds the protection they need. It certainly complicates the administration of the law, and renders prosecution difficult in cases of offences committed on the borders of districts having different laws.

That a general legislation will not always meet a local requirement is undoubtedly true. But, instead of allowing local authorities to ask for increased legislation, when they deem it necessary—a process entailing certain delay and possible refusal—better

protection would surely be attained in having central and more comprehensive legislation, and in allowing individuals to obtain permission to defend crops or stock from depredation, as is done in Central Europe. With the present Act in force, there is a risk of losing one or another species of the rarer summer migrants, whose increasing scarcity has been frequently commented on of late years. These birds do not invade England at a venture during the spring migration : but the birds reared in a district return to it. If adverse meteorologic conditions and other untoward influences combined to destroy all, or nearly all, the emigrants of one autumn, there might possibly be no immigrants in the following spring, and the species would be in jeopardy of being lost to our isles. Moreover, if those summer migrants which are abundant on the Continent, but only exceptional in England, the Oriole, Hoopoe, Black Redstart, Bluethroat, were preserved in earnest, there is every reason for believing that they would nest with us, that their descendants would return in spring and that with time we should be the gainers of some beautiful and useful species. By the Mediterranean no bird is safe from being cooked. In England no bird is safe from being collected. An epitaph might read :—

Whether to fill a glass bell or a pot,
In being stuffed each bird must find his lot.

Legislation will come too late if it waits for a general demand for it. The fullest protection should be accorded now.

The penalties for offences under the British Act are light compared with the fines and imprisonment meted out in Central Europe and in the United States of America. In view of the difficulty of obtaining convictions, it seems trivial to reprimand for a first offence, and to fine subsequent offences five shillings, or, in the case of the scheduled species, one pound. In Hungary, where money is certainly no cheaper than in England, the taking or selling of eggs or young of the scheduled species is fixed up to 100 crowns (£4 3s. 4d.). In America the lowest fine is five dollars for the offence, and five additional dollars for each bird or part of a bird.

At home, there is a large and growing demand for the rarer birds of our list as cage exhibits at shows, which entails rearing nestlings by hand, with the attendant mortality. Whole broods of young are taken and lost, in the attempt to rear a few to maturity ; and districts have been depleted of certain species through the systematic taking of their nests and fledglings by professional bird-dealers. The toll levied on the commoner and hardier varieties, too, the snaring of Linnets, Larks,

Chaffinches, is excessive, and the usages in vogue inflict much unnecessary suffering besides waste of life. Thousands of these seed-eaters, overcrowded and ill-tended, die whilst still in the shops of the catchers and dealers; and few long survive their sale, because of the want of knowledge and want of care of the purchasers. A Linnet and a cage complete for sixpence—*vide* the advertisements in the trade journals. How many last three months in their mouse-trap prisons? Large numbers of Goldfinches, Siskins, and also insect-eaters, are imported from abroad. Austria has now prohibited the export of wild birds, but nevertheless they still arrive thence in London, usually mixed with canaries, to give colour to the description of the consignment. Woodlarks, those superlative songsters, never common anywhere, are imported from Belgium during October, and retailed in London at eighteenpence each. They are delicate larks, ill-adapted for popular keeping, and those from Belgium usually bear traces of bird-lime, which in itself seems to break the spirit of the more fragile species, and from which they often do not recover; just as cats will pine from disgust after having become soiled with a substance they cannot remove.

As is well known, many wild birds will thrive for long years as cage pets, and it is not the taste for chamber birds that needs discouraging, but the wholesale catching of them, and dealing in them, and the lessened value and appreciation caused thereby. The present writer lately saw in the shop of a London dealer a Hoopoe, which had been sold to a lady a few days previously. She had brought it back dead, saying she had tried it with every kind of seed, but it would not eat. Such an abuse of a beautiful creature would hardly be possible in Austria-Hungary or Germany, where the taking and keeping of song birds, in itself justifiable, is properly restricted and controlled.

A side issue of the question of preservation has received recognition in some parts of Germany by the imposition of a tax on cats. Ornamental as a cat is in a parlour, and useful as it may be in a stable or warehouse, in the garden and in the country it is an inveterate hunter; and by reason of its agility and incredible patience it is very destructive, especially as a nest robber. A boon would be conferred on men and ground game, on birds and on cats, if such a tax were made general in all countries. Cats themselves would gain in being better cared for, and the payment of the tax could be easily controlled by issuing a numbered metal disc, of different colour or shape each year, to be affixed to the animal's collar. Stray cats, generally half-starved, often mischievous to poultry, etc., would thus soon become rare. In Germany the tax is only one mark for the first cat, two for the second, and so on.

SANCTUARIES.

The increase of special areas of protection will presumably become more marked in the future. The recognition of the importance of preserving bird life, and the difficulty of reconciling it with large and increasing population, make sanctuaries desirable, even necessary. In Switzerland they have long existed for game, and chains of such districts are being established in the United States of America. In Great Britain the number of large estates, usually also game preserves, must have done much in the past to uphold our avifauna, notwithstanding the shortcomings of keepers. And, with the growing interest in ornithology, let us hope that in the future owners and keepers will more generally respond to the needs of the wild birds that are not game. No State action could be so effective as the well-directed sheltering and watching carried out on large private estates, and at the present day there must be many such sanctuaries available by the use of a little diplomacy and arrangement.

CONVENTION, 1902.

One would like to know Great Britain's reasons for holding aloof from the Paris Convention. The moral weight of British support would have done service to the cause; in fact, the whole scheme is weakened and made ineffective by the want of unanimity among the Powers. To this may probably, in part at least, be ascribed the fiasco the Convention made in France, which would hardly have stultified itself as it did after signing the Convention, if England and Italy had endorsed the proposals. The stultification lay in the passing of the "tolerance project of resolution" of November 20, 1906, eighteen days before the Convention proposals became law; which "resolution" virtually strangled the law at birth. England, Russia, and Italy hold back from the international scheme. The geographical positions of the former two, and the usages of their people, make their concurrence of slight importance to the European avifauna compared with the concurrence of Italy, one of the high roads of migration and a winter sojourn of many species of European birds. This is the real severed artery in Europe's avine circulation.

The greater part of the proposals of the 1902 Convention was already in force as law in Austria-Hungary, Germany, and Switzerland before the Convention was signed. If all Europe would codify this scheme into law, the cause of bird-preservation would be assured.

Article 9 wisely admits of each Power making its own exemptions ; and bird-lovers would like to see the true Falcons omitted from the black list, if only for the sake of their flight, which is an added beauty to the landscape, and the apotheosis of motion. Nature offers no more graceful spectacle of power and skill than their soaring ; nothing comparable to their stoop, for speed, and headlong impetuosity. " Their very crimes are deeds of daring." None of these birds are so common that their nesting season should not be respected. The short-winged Hawks are more destructive, and could better be dispensed with. And, owing to the rewards paid by pigeon clubs in Germany, and by local authorities in Scandinavia, these are in some districts heavily suppressed. The *Tiere Borse* states that in 1907 premiums were paid in Germany for the feet of 103 Peregrines, but of 1152 Goshawks and 2152 Sparrow Hawks.

AUDUBON SOCIETIES' PROPOSALS.

No laws could be more concise, complete and drastic than those proposed by the Iowa Audubon Society, and adapted by most of the United States of America. They declare all wild birds to be State property, and after defining the winged game, which have a special legislation of their own, they decree that no bird shall be taken, killed, conveyed, sold, or bought, nor its nest and brood interfered with, nor any part of the bird or its plumage sold, under a fine of five dollars for each offence, and an additional fine of five dollars for each bird or part of a bird, or nest or set of eggs. Permits, under binding conditions, are granted accredited persons to collect for scientific purposes ; birds may be taken and kept as pets, but not sold, exchanged, or transported. The list of unprotected species contains three or four names only, amongst them the European Sparrow. The several States differ in the names of the few species which land occupiers may kill in defence of property. No European legislation can vie with this for thoroughness. Its comprehensiveness leaves the critic no word, and causes the bird-lovers to rejoice that one country has had the courage to make such an experiment. The Act claims to have stood the test of the courts. It remains to be seen whether it will stand the test of time, and whether amendments will become necessary later on.

USEFUL AND INJURIOUS BIRDS.

Experience shows that certain kinds of birds can become over numerous under protection ; but the question as to which birds

are to be proscribed has been a stumbling stone at every ornithological congress, and the wide differences of opinion among experts has led to heated debate, and a regrettable postponement of the matter at issue.

THE COMPARATIVE ECONOMIC VALUE ATTACHED TO PARTICULAR SPECIES IN DIFFERENT COUNTRIES.

The contradictory pronouncements for and against certain birds, in different countries of Europe, are almost startling. Russia bans all Owls. Switzerland will none of the Missel Thrush. Hungary holds the Brambling useful, which Germany classes with the harmful Sparrow. The Convention, Schedule I., enrolls among the useful birds Bee-Eater and Crossbill. Germany holds the Crossbill noxious, as also the Hawfinch, which the Convention and Hungary ignore. Denmark proscribes the Rook. The Convention upholds all the Crows but the Raven. Austria protects the Jackdaw, and bars the Great Tit. The poor, beautiful Kingfisher is in favour with no one. The Convention condemns it, and so does Austria, equally with the Dipper. But in Austria and Hungary legislation is somewhat microscopic, witness the excepting of the Water-Shrew from the protection decreed for the other Shrew-Mice. In Holland it is forbidden to shoot the Lapwing, no doubt in recognition of its services to agriculture, and of the already heavy tribute laid upon it in the collecting of its eggs.

A number of groups of the small Passerines, the Chats, Wag-tails, Pipits, Goldcrests, the large family of Warblers, Swallows, Accentors, Flycatchers, are so entirely insectivorous as to preclude any doubt as to their beneficence. Similarly, some of the smaller Finches and Buntings are above suspicion, and are known as consumers of weed seeds. In every legislation the Eagle, Owl and the diurnal Raptores share with the Crows the brunt of public odium, chiefly, it may be assumed, because of their destructiveness to game; the Heron tribe and the fish-eating Palmipeds being equally branded for the harm they cause fish. The fish-eaters, however, seem to be more tolerated in Great Britain, perhaps because pisciculture is not a serious industry there, as in inland countries with less seaboard. Winged game and a few species, such as the Eider Duck, apart, it may be said that, in general, European legislations value birds as they profit agriculture.

In Germany there has been much examination of crops and stomachs, and research of this kind is to-day being carried on in

England. But scientific inquiry into the mode of living of certain debatable birds—debatable as to their usefulness or harmfulness—will never conclusively settle the question, because of the impossibility of weighing the profit against the loss, and because the adaptability of Nature defies a rigid category. Certain birds are useful in some countries and some seasons, and harmful in others. They change their habits and their food with their circumstances—like men. Here, again, it would seem that the laws of the Audubon Societies are right in making no long roll of noxious *aves*.

Harm to the household of man is done by birds only when they assemble in large numbers. Rudolf Blasius insists that those birds that remain with us throughout the year are the most important as insect destroyers, especially those that nest in hollows—Tits, Nuthatch, Creeper; and he rules the summer migrants in a secondary place. But the winter birds are perforce more omnivorous than the typical fine-billed migrants. The fact that these migrants and the imagos of most insects appear simultaneously, each ready for the reproduction of its kind, and that they disappear synchronously, gives a clear hint as to the uncompromising encouragement they should receive. Who shall say which is the better friend to man, they, or the stay-at-homes?

Sometimes a little rough must be taken with the smooth. Agriculturists would not banish the sun because at times the crops are scorched, nor the rain because floods have brought disaster. There has been, in the past, too great a readiness to take hasty reprisals against birds which, though at most times useful, do on occasion work harm, or, as often happens, are thought to work harm. Song and beauty and counterbalancing good should be taken into account in judging.

INJURY CAUSED BY WHOLESALE DESTRUCTION ON MIGRATION.

The legislation of one country sometimes tends to a certain harshness towards the migrants from other countries. It is the wish to be good to oneself at someone else's expense, or to get something gratis. In France, and throughout Southern Europe, wherever birds pass, there the pot shooter and the netter and the limer await them; more especially in autumn, when the travellers make a leisurely progress, with frequent stops by day for food and rest. The spring migration is a rush for the breeding haunts, and less is seen of the birds on their way. The heartless slaughter done in France; the carefully prepared gardens of

death, the roccolo and passaia of Northern Italy, have been referred to.

In the Pyrenees wild pigeons are netted in quite a scientific way. Nets some 20 metres high, and 20 metres broad at the top, and 30 metres broad at the bottom, are stretched between two specially selected trees, in valleys where the pigeons habitually pass. The approach of a flock is signalled by outposts some 2 kilometres off, and the direction, right or left or centre, is indicated by calls on a bugle. Boys with flags, posted on the hills, guide the flocks in the required direction. As the birds arrive at the nets, men lying in wait in huts throw a wooden "disquin," rather resembling a palm-leaf fan, into the air, and the Pigeons, mistaking these for some peril, possibly Hawks, dive into the nets. Many see the net, and rise over it, and big catches are made only when Rock Doves are flying with the Ring Doves. Then the Rock Doves always lead, and they plunge into the nets, and are followed by the Ring Doves. At Sau, at the foot of the Rhune, there were caught in this way on three successive autumn days of 1907 fifty-six dozen, sixty-four dozen, and ninety-six dozen respectively. On the last day the head man, on one occasion, signalled with his whistle not to throw the disquin, as he feared the nets would be broken down or torn. A 4-centimetre mesh is used, probably because a smaller mesh would not entangle the pigeons. It is curious that small birds, which pass in large numbers, take no notice of the flag scouts, and invariably fly over or round the nets. Nevertheless it is their adherence to the same route and to the same passes through mountainous districts which leads to their greatest destruction. Thrushes are taken in Liguria in a similar way to the Pyrenean, but without the signallers and flag scouts. The birds roost in the woods on the hills, and swing down the narrow ravines on their way to the olive trees at daybreak, returning at sunset, still flying low, and the nets, sometimes of great length, are stretched across the ravines. The practice is illegal in most provinces, but nevertheless poachers find it profitable all through the winter. In some parts of Italy, where wild Pigeons are known to pass on migration, there are cordons of stone-built towers commanding the valleys along which the flights usually take place, and the procedure is similar to that of the Pyrenees, just described. A favourite sport for boys and minor sportsmen in Liguria is Robin hunting. It is legalised by a 6-lire licence—usually dispensed with—and the operator carries a robin in a cage surrounded by limed twigs. At a likely spot he sets it down, and the wild Robins, numerous during October and November, perch upon the cage, are limed, and duly eaten with

polenta. Large numbers are taken. In the south gunners often carry an assortment of tiny cages containing blinded decoys—Chaffinches, Greenfinches, Linnets—which call and sing incessantly, and, by attracting their kind, save the gun a deal of walking, while securing sitting shots. They leave few survivors of the birds that come every winter to the shelter of the coast, especially Goldfinches, Siskins, and Blackcap Warblers. Every few years an immigration of Coal Tits takes place, and these are so easy to catch with lime that they are sold by hundreds, and one wonders whether any ever get out of the country again.

Civilization will have made a good advance when man throughout the globe can endorse the welcome to the spring birds we read in "May Day," and can—

“ Greet with joy the choral trains,
 Fresh from palms and Cuba's canes.
 Best gems of Nature's cabinet,
 With dews of tropic morning wet.
 Beloved of children, bards, and spring,
 O birds, your perfect virtues bring.
 Your song, your forms, your rhythmic flight,
 Your manners for the heart's delight.
 Nestle in hedge, or barn, or roof,
 Here weave your chamber weather-proof.
 Forgive our harms, and condescend
 To man, as to a lubber friend,
 And, generous, teach his awkward race
 Courage, and probity, and grace ! ”

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