"Our Particular Abhorrence of These Particular Crimes": Sexual Violence and Colonial Legal Discourse in Aotearoa / New Zealand, 1840–1855

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In July 1844 members of the Legislative Council of New Zealand meeting at Auckland began to debate the Native Exemption Ordinance, which was designed to encourage the Māori population to "yield a ready obedience to the laws and customs of England" through a very gradual imposition of British law.[1] Governor Robert FitzRoy proposed altering section 6 of the bill so that not only murderers but also rapists would be denied bail. "As we intended to make them [Māori] acquainted with our laws," FitzRoy argued, "it would be as well to mark our particular abhorrence of these particular crimes."[2] The motion carried, and the final text of this section of the Ordinance reads: "Be it enacted that where any person of the aboriginal race shall be charged with any crime or offence other than the crimes of rape or murder, and where such person would otherwise have been committed to take his trial, every such person shall be allowed to go at large on making or procuring to be made a deposit in manner and to the amount hereinafter mentioned as a security."[3]

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[1] The introductory material of this bill includes the following statement: "Whereas it is greatly to be desired that the whole aboriginal native population of these Islands, in their relations and dealings amongst themselves, be brought to yield a ready obedience to the laws and customs of England: And whereas this end may more speedily and peaceably be attained by the gradual than by the immediate enforcement of the said laws, so that in course of time, the force of ancient usages being weakened and the nature and administration of out laws being understood, the Native population may in all cases seek and willingly submit to the application of the same" ("No. 18.—Native Exemption Ordinance," *Nelson Examiner and New Zealand Chronicle*, 26 October 1844, 4).

[2] "Legislative Council Thursday. July 11," *Daily Southern Cross*, 20 July 1844.

[3] "No. 18.—Native Exemption Ordinance."

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Several years later, the *New Zealand Spectator and Cook's Strait Guardian* reported that a bill for rape committed against a Māori woman was due to be heard at the 1 September sitting of the Supreme Court. (In the legal terminology of this period, a bill refers to a case brought before the Supreme Court. A finding of "no true bill" meant that the Supreme Court had not found sufficient evidence for an indictment.) This rape, "alleged to have been committed in February by one of the Armed Police on a native woman living at Waikanae," is one of the very few cases in the colonial record where a European man was tried for sexually assaulting a Māori woman. And yet despite this fact and despite having made it all the way to the Supreme Court, the case received relatively little attention.[4] Other than being briefly mentioned in the *Spectator*, the case received no further coverage in court records or newspaper reports.

These two examples of the treatment of sexual violence—one a result of discussions concerning the governance of the nascent colony, one the result of legal action undertaken in the colonial court—paint an intriguing picture of the multiple meanings of rape that circulated in colonial New Zealand society and the ways in which the policing or tolerance of such sexually transgressive acts helped to imagine and enact civilized spaces within the nascent colony. In attempting to gradually guide Māori toward a more English system of law, Governor FitzRoy and the Legislative Council wanted to convey to both the Māori and settler populations which crimes were considered most transgressive by English standards; by including rape alongside murder, FitzRoy and the others were reaffirming middle-class British legal and moral discourses concerning the reprehensible nature of sexual violence in a civilized society. The imposition of British law was part of what was perceived as the inevitable amalgamation of the Māori with the British population; the Treaty of Waitangi, which brought the islands of New Zealand under formal British control, even granted "the full Rights and Privileges of British Subjects" to Māori. This amalgamation of the two groups was the goal of some early British officials and colonial theorists such as Edward Jerningham Wakefield.[5] As Shani D'Cruz has argued, rape directly violated the developing principles of a middle-class mindset that emphasized the moral purity of women and the importance of protecting

[4] "Supreme Court Sittings," *New Zealand Spectator and Cook's Strait Guardian*, 2 September 1848.

[5] For more on British ideas concerning amalgamation in New Zealand, see Edward Jerningham Wakefield, *The British Colonization of New Zealand: Being an Account of the Principles, Objects, and Plans of the New Zealand Association, Together with Particulars Concerning the Position, Extent, Soil and Climate, Natural Productions, and Native Inhabitants of New Zealand* (London: John W. Parker, 1837), 29. As Alan Ward argues, however, policy in actuality more closely resembled assimilation than a true blending of cultures (A Show of Justice: Racial "Amalgamation" in *Nineteenth Century New Zealand* [Auckland: Auckland University Press, 1995]).

that purity through social, medical, and legal means.[6] On the other hand, however, the rape of a Māori woman by a *pākehā* (European) man received only a passing newspaper mention and, according to extant court records, never resulted in a trial; this legal silencing of a Māori woman's experience is suggestive of the lack of legislative and social importance accorded to indigenous women and their sexuality during the early years of the colony. These interconnected discourses surrounding rape in nineteenth-century New Zealand provide a window into the ways in which ideas about gender were conveyed in this emerging colonial landscape, and they highlight the concerns of colonists and their supporters in the metropole that New Zealand be seen as a colony of order and law, a respectable middle-class counterpart to Australia's lawlessness. This article explores how sexual violence threatened that hoped-for colonial social order and investigates the ensuing legal and public responses to those transgressions.

In particular, I argue that those combatting sexual violence in this period viewed it as a threat to the stability of the emerging colonial society and that narratives surrounding sexually violent transgressions served to create and then reify cultural constructions of civilization, sexuality, and gender in the early years of formal colonialism in New Zealand. Criminal prosecution of sexual violence helped to reinforce English ideals of middle-class moral womanhood while at the same time underscoring the masculine domination of British women's bodies in the colony. By the middle of the nineteenth century, the English middle class was increasingly defining itself in opposition to both the working class and the landed gentry with emphasis on women's place in the domestic sphere and their role as the moral foundation of the family—a moral foundation that was defined in large part by evangelical Christianity. Social commentators insisted that moral womanhood was under constant threat from the lasciviousness of the lower classes and from the sexual violence perpetuated by men of all classes; they supported the prosecution of crimes of sexual violence in order to protect and define female virtue.[7] This concern over the sexual purity and safety of women did not extend to the women of colonized populations, however. As I will demonstrate, the same legal system that helped to enshrine English middle-class concerns over moral (white) womanhood into legal codes tended to silence Māori women who had experienced sexual coercion. In other words, the treatment of sexually violent acts in New Zealand during this formative period—what was policed and what was

[6] Shani D'Cruz, *Crimes of Outrage: Sex, Violence and Victorian Working Women* (DeKalb: Northern Illinois University Press, 1998).

[7] Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class 1780–1850* (London: Hutchinson, 1987); Jane Hamlett, "'The Dining Room Should Be the Man's Paradise, as the Drawing Room Is the Woman's': Gender and Middle-Class Domestic Space in England, 1850–1910," *Gender & History* 21, no. 3 (2009): 576–91; and Anna Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (Berkeley: University of California Press, 1995).

ignored—reveals the colonists' deeply gendered (and racialized) definitions of civilization.

Writing about rape in a historical context can be controversial because it presents a challenge to feminist theories that define rape as a transhistorical phenomenon that transcends any particular time and setting.[8] Scholars interested in rape as power tend to concentrate on the discourses surrounding sexual violence, leaving aside the lived experiences of actual rape victims. Others argue that historical works on rape should be empowering and that to strive for objectivity is to run the risk of treating the subjects involved voyeuristically.[9] In contrast, my approach here is to account for and represent the lived experiences of the women who appear in colonial Supreme Court records—and to try to point to some of the silences in those same records—while simultaneously considering the discursive ways rape was represented in contemporary legal and social writings. To that end, I have included the real, full names of all the participants involved in order to underline the reality of these experiences, and, following the example of Sharon Block's work on rape in colonial America, I have elected to refer to the women by their first names.[10]

The Imperial Metropole: Rape and Sexual Violence in Nineteenth-Century England

Although English law concerning sexual violence evolved significantly over the seventeenth and eighteenth centuries, rape was always considered a serious offense and was punishable by death.[11] In his influential 1736 treatise on English law, lawyer and judge Matthew Hale defined rape as "the carnal knowledge of any woman above the age of 10 years against her will, and of a woman-child under the age of ten years with *or* against her will."[12] Though Hale's basic definition continued to influence English law regarding rape

[8] The most influential attempt to describe rape as a transhistorical phenomenon is Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Fawcett Columbine, 1975), 15.

[9] Shani D'Cruz, "Approaching the History of Rape and Sexual Violence: Noted Towards Research," *Women's History Review* 1, no. 3 (1993): 378.

[10] See Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2006).

[11] For discussions of rape in the seventeenth and eighteenth centuries, see Laurie Edelstein, "An Accusation Easily to Be Made? Rape and Malicious Prosecution in Eighteenth-Century England," *American Journal of Legal History* 42, no. 4 (1998): 351–90; Antony E. Simpson, "Popular Perceptions of Rape as a Capital Crime in Eighteenth-Century England: The Press and the Trial of Francis Charteris in the Old Bailey, February 1730," *Law & History Review* 22, no. 1 (2004): 27–70; and Garthine Walker, "Rereading Rape and Sexual Violence in Early Modern England," *Gender and History* 10, no. 1 (1998): 1–25.

[12] Matthew Hale, *Historia Placitorum Coronae*, 2 vols. (London: Printed by E. and R. Nutt, and R. Gosling for F. Gyles, 1736), 628. Hale also argues at length the impossibility of rape within marriage. English law of the time did not prosecute rape within marriage.

through the end of the nineteenth century, by the early 1800s there was a notable shift in the discourse surrounding acts of sexual coercion and the sexual regulation of women in response to the Victorian interest in the notion of separate spheres. The rise in evangelical Protestantism during this period was a key element of this shift, as a growing emphasis on women as the moral center of the home and family became a central tenet of the new Victorian domestic ideology. The encoding of morality within domesticity, with its specific definitions of sexual purity, meant that moral respectability could be and was used by middle-class women to buttress charges of domestic and sexual violence. As the recipients of philanthropic moralizing by these middle-class women, working-class victims of sexual assault also used this language of moral purity when making accusations of rape.[13] In other words, rape continued to be treated seriously, but the meanings associated with the act and the modes of its prosecution underwent changes that reflected larger social, cultural, and religious shifts. While in the eighteenth century it was mostly women who decried the dangers of rape, by the nineteenth century most commentaries addressing the protection of women's virtue and the policing of women's bodies were written by men, and women's voices were increasingly silenced in print and in court records. Over the course of the 1800s, a variety of modes of discursive control (including those produced by religious and medical professionals) reified both the expectation of middle-class women's chastity and the condemnation of sexual deviance, including violent sexual assault.[14] At the same time, women who accused someone of rape were in a very precarious position; they were subject to public attacks on the morality of their character, their personal history, and the veracity of their accusation. The development of a Victorian, Christian moral sensibility that demanded purity and innocence of middle- and working-class women meant that relatively few cases of sexual violence were heard in front of England's courts.[15] Assaults of all kinds, particularly rape, were underreported during this period.[16] But even the relatively low numbers of reported rapes prompted legislators, lawyers, and moralists to pay ever more attention to sexually violent crimes.

[13] Middle-class women regularly engaged in charity work among the poor, during which they served as examples of moral womanhood for the lower classes. See Catherine Hall, *White, Male and Middle Class: Explorations in Feminism and History* (Cambridge: Polity Press, 1992), 75–93.

[14] Anna Clark, *Women's Silence, Men's Violence: Sexual Assault in England 1770–1845* (London: Pandora Press, 1987), 59, 66. For an excellent discussion of sexuality and social mores in England in the late nineteenth century, see Judith R. Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: University of Chicago Press, 1992).

[15] Clark, *Women's Silence*, 64. For the earlier period, see J. M. Beattie, *Crime and the Courts in England 1660–1800* (Oxford: Oxford University Press, 1986), 126–27. Beattie's research shows that an average of only one case of rape every four years went to trial in Sussex between 1660 and 1800.

[16] Beattie, Crime and the Courts, 124.

Legislation concerning rape and sexual violence evolved throughout the first half of the nineteenth century. The Act for Consolidating and Amending the Statutes in England Relative to Offences against the Person was passed in 1828 in order to simplify a slew of legislation having to do with personal physical harm. Section 16 of the act confirmed earlier statutes prescribing the death penalty in cases of rape: "And be it enacted, That every Person convicted of the crime of Rape shall suffer Death as a Felon."[17] The following section confirmed that "if any Person shall unlawfully carnally know and abuse any Girl under the Age of Ten years, every such Offender shall be guilty of Felony" and would thus also be subject to the death penalty. Those who violated a girl under the age of twelve were subject to imprisonment "with or without hard labour."[18] However, this 1828 legislation departed from earlier laws in not requiring proof of emission (ejaculation) in order to secure a conviction; section 18 specified that in cases of rape, sexual abuse of a girl under ten, and "buggery" (here meaning an act of sodomy with either a person or an animal), "it shall not be necessary . . . to prove the actual Emission of Seed in order to constitute carnal Knowledge, but . . . the carnal Knowledge shall be deemed complete upon Proof of Penetration only."[19] In theory, this stipulation made convictions of rapists more likely, since proving ejaculation in a time before modern forensic technologies tended to be extremely difficult.[20] However, the sentence of death proved too much of a disincentive for many juries, and despite a rising number of rape trials, convictions for rape remained at previously low levels.[21]

The laws concerning rape changed again in 1841, only one year after the signing of the Treaty of Waitangi (which formally brought New Zealand into the British Empire). In a statute entitled An Act for Taking Away the Punishment of Death in Certain Cases, and Substituting Other Punishments in Lieu Thereof, capital punishment for the crime of rape was abolished. Instead, a person convicted either of rape or of sexually abusing a girl under the age of ten would "be liable to be transported beyond the Seas for the term of his natural Life."[22] The proportion of convictions rose significantly in the period immediately following the abolition of the death penalty for rape in 1841, and it rose even higher through the remainder of the 1840s.[23]

[17] Act for Consolidating and Amending the Statutes in England Relative to Offences against the Person, 1828, 9 Geo. 4, c. xxxi, § 16.

[18] Ibid., § 17.

[19] Ibid., § 18.

[20] Clark, *Women's Silence*, 62–63.

[21] Martin J. Wiener, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge: Cambridge University Press, 2004), 87.

[22] An Act for Taking Away the Punishment of Death in Certain Cases, and Substituting Other Punishments in Lieu Thereof, 1841, 4 & 5 Vict., c. 56, § 3. The penal transportation system to Australia began in 1788, when the First Fleet reached Sydney. It was formally abolished in 1853. Prisoners served as laborers for settlers or for colonial administrative projects for the duration of their sentence.

[23] Wiener, *Men of Blood*, 87.

These shifts in legislation are reflective of the influence of Evangelical Christianity and its emphasis on the role of women as the moral center of the Victorian family.[24] While the traditional emphasis on women's procreative importance and their household skills was maintained, the obsession with women's moral influence placed a premium on men's role in protecting women. These social attitudes combined with concerns about the morality of the penal system in Britain's far-flung colonies to produce changes to punishments for sexual crimes—from the death penalty to transportation and, later, from transportation to punishment in the metropole.[25]

British Colonialism and Sexual Violence

Sexuality offers a particularly useful lens through which to explore intersections of power, race, and gender dynamics in a colonial setting, and the ways in which sexual transgressions were policed speak to broader imperial anxieties within the liminal space of the frontier.[26] Interracial sexual violence was a particular concern in British colonies and within the popular culture of the metropole, and scholars of colonialism have persuasively argued that narratives concerning the sexual abuse of white women by indigenous men came to be one of the justifications for the violent and oppressive nature of colonial rule.[27] A deep anxiety about rape in imperial settings reverberated through British colonial legal approaches to sexual violence, as is clear in the extensive commentary left by judges, lawyers, and newspapers throughout the empire. With New Zealand's entry into the British Empire in 1840, settlements like Wellington and Auckland became microcosms of developing narratives about gender and civilization, and the development of the colonial court system created a legal framework that was specific to the needs and anxieties of the colony. The influence of evangelical Christianity—first brought to New Zealand in 1814 by Samuel Marsden and the Church Missionary Society (CMS), followed by other Protestant missions—also played a part in the development of colonial attitudes toward sexual violence.

These interconnected legal, moral, and religious ideas circulating throughout the colonial world heavily influenced discourses about rape, but, as in many colonies within the British Empire, New Zealand also developed its own rhetoric on sexual coercion. Complicating this picture were the

[24] Hall, *White, Male and Middle Class*, 86.

[25] Miranda Morris, "In Peralious Waters: Single Female Migration to Post-penal Tasmania," in *Nineteenth-Century Worlds: Global Formations Past and Present*, ed. Keith Hanley and Greg Kucich (New York: Routledge, 2008), 232.

[26] See Ann Laura Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule* (Berkeley: University of California Press, 2002); and especially Angela Woollacott's chapter on interracial sexual assault in her *Gender and Empire* (New York: Palgrave Macmillan, 2006), 38–58.

[27] For example, see Catherine Hall, *Civilising Subjects: Colony and Metropole in the English Imagination, 1830–1867* (Chicago: University of Chicago Press, 2002).

differences among the settlers: the colony was made up of English, Irish, Scottish, and Welsh emigrants, each of whom had their own dialects and ways of viewing sexual violence. Furthermore, the unique status of Māori within New Zealand colonial society also added to the complexity of the colonial situation; the Treaty of Waitangi made all Māori legal subjects of the British Crown, and many British proponents of colonization saw Māori as being in desperate need of "civilization."[28] Māori culture's condemnation of acts of sexual violence also influenced legislation concerning rape, though customary Māori practices toward criminal activity are difficult to determine, since pākehā society ignored them during the early years of the colony.[29] We do know, however, that traditional Māori practice viewed criminal activity from the perspective of reciprocity. The concept of *utu*, or reciprocal actions within society (in this case, revenge for wrongs done), governed Māori response to sexual violence and to crimes such as murder and theft—the wronged person or group could exact payment (which could take a variety of forms) for the crimes committed. Māori do not seem to have viewed rape with the "particular abhorrence" that English courts attached to the crime, instead placing it along a continuum of behavior that threatened the *mana* (power) of a chief or the integrity of an *iwi* (tribe) or *hapū* (subtribe).

The lack of particular approbation attached to rape is apparent in the language that Māori used to describe it. There is no single word in Māori that corresponds to European words for rape. Rather, a small group of words count sexual violence among their multiple meanings. For example, Herbert W. Williams's nineteenth-century dictionary lists the third definition of the word *pāwhera* as a verb meaning "to violate a woman." *Tūkino*, a common word in Māori, means "to do violence to, to ill-treat," and depending on the context, it could also refer to sexually violent acts. Some modern sexual crisis helplines in New Zealand refer to sexual assault as *tukinga hokaka* (violent desire) or pāwhera.[30] The difficulty is knowing which of these words were in common use during the period of initial Māori contact with Europeans. One of our earliest sources for written Māori texts, missionary-run Māori-language newspapers, mention adultery often but do not explicitly refer to rape. Additionally, as with other forms of criminal activity involving only Māori, cases of rape where the accuser and defendant were both Māori were often dealt with by the iwi or hapū involved. Despite the Māori population's status as British subjects and the efforts of colonial government officials to bring British law to Māori communities,

[28] Wakefield, *The British Colonization*, 29.

[29] See Ward, *A Show of Justice*, 52–60; and John Pratt, *Punishment in a Perfect Society: The New Zealand Penal System 1840–1939* (Wellington: Victoria University Press, 1992), 27.

[30] "Sexual Assault or Rape," Family Planning, accessed 1 September 2010, http://www.familyplanning.org.nz/OurClinics/NeedHelpNow/SexualAssaultorRape.aspx.

most Māori courts acted independently, ignoring British legal categories.[31] Until well after the 1850s, Māori only sought pākehā involvement in cases of sexual violence when one of the parties involved was not Māori, as in the case of Hannah Marsden (a Māori woman who was raped in 1840 by a "coloured," or nonwhite, non-Māori man).[32]

RAPE IN EARLY COLONIAL NEW ZEALAND

There are no reliable statistics on crime for the majority of the 1840s in New Zealand. In the early years of the colony, each major settlement produced a Blue Book of important statistics for that area (detailing things like import-export information, rates for postage, government expenditures, and appointed government officials), and these data were compiled into a general account of the state of the colony as a whole, but few of the regions tracked crime statistics. Crime statistics were occasionally published in newspapers, generally to boast about falling crime rates. For example, the *New Zealand Guardian and Wellington Spectator* reported that fourteen criminal cases had been heard by the Supreme Court in April 1843, as compared to seven in the same month of 1844.[33] Such publications were sporadic, and for the majority of the years in question much of the information about criminal trials at the County or Supreme Court level is scattered throughout judge's notebooks, the internal correspondence and recordkeeping of various colonial and legal officials, and the above-mentioned newspaper reports. Together, these resources have been compiled under the auspices of the Lost Cases Project at Victoria University, which serves as a hugely valuable database of legal cases tried at the Supreme Court level throughout this early period.[34] While we will likely never know the complete extent of the cases of rape and sexual assault heard in New Zealand during this timeframe, the extant sources do allow for a window into the ways that sexually violent crimes were prosecuted and reported on during this formative period.

Prior to 1841, Governor of New Zealand William Hobson dealt with the majority of serious crimes. The colonial Supreme Court was then established to hear major cases in 1841, with William Martin serving as chief justice.[35] Like many colonial officials, Martin was sent directly from London to take

[31] Paul Moon, *The Edges of Empire: New Zealand in the Middle of the Nineteenth Century* (Auckland: David Ling Publishing Limited, 2009), 46.

[32] R. Davis to the Colonial Secretary, 11 August 1840, Registered Files, Colonial Secretary's Department, Head Office 1840/352, Archives New Zealand, Wellington (hereafter cited as ANZ).

[33] "Supreme Court. Wellington," *New Zealand Guardian and Wellington Spectator*, 11 September 1844.

[34] For more information on the Lost Cases Project at Victoria University, see http://www.victoria.ac.nz/law/nzlostcases/.

[35] Peter Spiller, Jeremy Finn, and Richard Boast, *A New Zealand Legal History* (Wellington: Brooker's Ltd., 1995), 191.

up his post, and he shared the common desire of the British colonists to make New Zealand an organized, civilized, British colony. The Supreme Court began sitting in both Wellington and Auckland in 1842, with occasional visits to other larger centers of European population. In a letter penned in 1841, for example, the police magistrate of Auckland wrote to the colonial secretary's office requesting advice on the alleged rape of a servant in the house of a Mr. Nagle of Great Barrier Island. Hobson replied that "Mr Nagle is to be appointed a magistrate & he then can take information & treat the case according to law."[36] Once the colonial judicial system was established, however, the bulk of sexually violent crimes were seen first at the police magistrate level and then sent to the County Court. At this point, if the charge was actually rape (as opposed to assault with intent or one of the other crimes used to denote sexual assault), the County Court either dismissed the case or sent it to the Supreme Court. The lower levels of the judicial system did not deliver verdicts in cases of rape, though they did so in the case of common assault and assault with intent.

Convictions for sexual assault were no more common in New Zealand than they were in the metropole in the 1840s, though as the population of the colony steadily increased throughout the decade, so too did the number of rape cases brought before the Supreme Court. New Zealand justices generally looked to England for precedent. In his address to the a grand jury in Wellington in 1844, for example, Justice Chapman relied upon English codification of definitions of rape when he explained that "the crime of rape, gentlemen, may be shortly defined, the carnal knowledge of a woman against her will. A girl under ten years of age is deemed incapable of legal consent—consent in such a case does not obviate criminality." Echoing FitzRoy's description of British law's "particular abhorrence of these particular crimes" in the Legislative Council of New Zealand's debate of the Native Exemption Bill, Chapman described rape as a "crime which by common consent of mankind as well as by the law of England, is held in especial abhorrence—I mean the crime of violating the person of a woman." He reminded the jury that while proving penetration was important, this could be done "without regard to the state of the hymen." He also tellingly reiterates English middle-class notions concerning the character of the woman making the accusation of rape, informing the jury that "here I must observe, that if the prosecutrix be a person of good repute—(and it is seldom that any thing to the contrary is disclosed to the Grand Jury)—her oath alone is legally sufficient to justify you in sending a bill [indicting the defendant]."[37]

Chapman also spent some time discussing the British 1841 abolition of the death penalty for rape, offering his opinion that the law substitutes "for it, what I believe to be a more efficacious punishment, namely—transportation

[36] J. Joseph to the Colonial Secretary, 7 May 1841, Registered Files, Colonial Secretary's Department, Head Office 1841/487, ANZ.

[37] "Supreme Court. Wellington."

for life."[38] Summing up the problematic aspects of capital punishment for rape, he insisted that the new punishments were more efficacious:

> I say *more* efficacious, because so strongly did the tide of public feeling set against death punishment, that Juries became unwilling to convict. They entered the Jury box predetermined to try and give a verdict—not against the crime, but against the punishment; and instead of looking impartially and conscientiously at the evidence, they were induced by the awful responsibility which the law cast upon them, to seek about for some little doubt which humanity might strain beyond the law's intent, and justify an acquittal. Thus excess of punishment grew into impunity—an evil which the recent amendment of the law, has diminished, if not removed.[39]

Chapman's message was clear: as in England, rape should be viewed as a serious offense to be punished severely; convictions were more likely if the crime was no longer punishable by death; and, at the same time, the moral character of the accuser should always be taken into account. As newspaper coverage of cases throughout the 1840s and 1850s demonstrates, these admonishments had a considerable effect on the rape trials that made it to the Supreme Court.

Between its first sitting in 1842 and 1855, the Supreme Court in New Zealand tried fifteen cases of sexually violent crime.[40] Prior to this, no official records were kept of sexual assaults in the colony, though the internal government correspondence of 1840 and 1841 contains a very few mentions of rape, such as the case of Hannah Marsden mentioned above. Most of the rape cases brought before the Supreme Court up to 1855 involved charges brought against pākehā men. The single exception was the 1854 conviction of a Māori man named Waka for assault with intent to commit rape upon a ten-year-old pākehā child. Of the fifteen defendants, only three were convicted of the crime of rape; seven were indicted for assault with intent to commit rape or common assault upon a child under the age of twelve; while five were indicted for assault with intent or assault upon an adult. Only one case resulted in a verdict of not guilty. The rate of conviction in Supreme Court cases of rape between 1841 and 1855 was thus 93 percent (though the vast majority escaped being found guilty of the crime of rape and instead were convicted on lesser charges such as assault with

[38] Ibid. New Zealand followed British legal precedent regarding transportation. Prisoners sentenced to transportation in New Zealand were sent primarily to Van Dieman's Land (Tasmania) as laborers assigned to settlers or as workers in a labor gang. For more on transportation as a punishment in New Zealand, see Robert Burnett, *Penal Transportation: An Episode in New Zealand History* (Wellington: Victoria University of Wellington, Institute of Criminology, 1978).

[39] Ibid., emphasis in the original.

[40] Two Pākehā men were also convicted of assault with intent to commit sodomy and intent to commit "unnatural acts," respectively.

intent to commit rape and common assault). This differs dramatically from the rate of conviction in England during a comparable time period, where the conviction for rape stood at 33 percent between 1841 and 1845.[41] Of course, these statistics tell us very little about the role of sexual violence within frontier society.

It is also important to remember that for every case that proceeded to the Supreme Court in the 1840s, there were many more that went unreported or never progressed beyond the lower levels of jurisprudence. In all the major centers of population in the 1840s, the majority of cases of all crimes were seen at the County Court level or dealt with by the police magistrate of the area. In Wellington, for example, the police reports show evidence of a great many crimes that were dealt with at the police level either through dismissal, fines, or imprisonment in the local jail. This lower level of jurisprudence applied to the crimes of assault with intent and common assault only, as all cases of rape that were not dismissed were sent to the Supreme Court. Not every case of rape that was sent to the Supreme Court was actually heard, however, as the case discussed at the start of this article demonstrates. Those that were heard nonetheless offer a small window into how discourses on civilization, gender, and middle-class morality intersected in New Zealand during this period.

"Unlawfully Carnally Knowing a Child": Child Rape in New Zealand

The British legislation on sexual assault involving a child was clear: no female under the age of ten was capable of giving consent, so any sexual contact must be considered an act of sexual coercion. Though the age of consent shifted over the course of the nineteenth century (it was raised to thirteen in 1875 and to sixteen in 1885), the rhetoric surrounding the innocence and vulnerability of children remained consistent.[42] The courts depicted children who became victims of crimes of sexual violence as incontrovertibly innocent. Furthermore, by the end of the nineteenth century children were increasingly depicted as the key to Britain's imperial future and therefore in need of judicial protection, particularly from sexual assault. At the same time, British society often saw female children who were victims of sexual violence as no longer pure, and that impurity necessarily put them at odds with Victorian notions of respectable middle-class womanhood.[43] The stain upon a child's character incurred by admitting sexual contact (even if it was forced) dissuaded many people from bringing cases of sexual violence toward children to court. Nonetheless, in both New Zealand and England,

[41] Clark, *Men's Violence*, 60.

[42] Louise Ainsley Jackson, *Child Sexual Abuse in Victorian England* (London: Routledge, 2009), 12–14.

[43] Ibid.

the cases that were tried provide fascinating examples of these competing ideas of innocence, morality, and the heinousness of this particular crime.

There were eight separate cases of sexual assault on children tried at the Supreme Court level between 1842 and 1855, and of these, seven resulted in a guilty verdict in one or more of the charges brought against the defendants. All but two of these cases concerned a child under the age of ten, with the youngest victim being under the age of seven at the time of the assault. We have even less information about these cases than about cases of sexual assault committed against "adults" (or those females over the age of twelve), since newspapers typically shied away from reporting the details of crimes of this nature. While most newspaper accounts of sexually violent assault brought before the Supreme Court often refrained from publishing "indecent" content in the form of details of the crime, this decision seems to have been most consistently applied in cases of child victims. Interestingly, this caution concerning details did not extend to the publication of the victims' names. While newspapers seemed to think the identity and moral character of the victim was a vital piece of information necessary to understand the trial, the explicit sexual details of a given case represented an affront to Victorian moral sensibilities and so were often left out.

The earliest case of sexual assault of a child to be heard before the colonial Supreme Court took place on 1 September 1849. The accused was a man named Thomas Appleby, an "elderly man . . . a labourer" who was charged with assault with intent to commit rape upon eleven-year-old Emma Nicklen. Emma herself offered the primary testimony against him, while her mother and various medical doctors offered corroborating evidence. Though the *New Zealander* reported that "the evidence of the former [Emma] was, for the most part, clear, strong, and, as many thought, conclusive of the prisoner's guilt," Appleby was nonetheless found not guilty of all charges. The remaining details of the case are sparse. As the *New Zealander* put it, "The evidence that was given was of a nature not fit to be published."[44] The records make clear, however, that the rousing defense given by Thomas Appleby's lawyer, a Mr. Whitaker, was the primary reason for a verdict of not guilty in the face of overwhelming evidence and expert opinion.[45] It is also interesting to note, in light of the modification made to the Native Exemption Ordinance, that after his arrest Appleby was set free on only one hundred pounds bail despite the nature of the charges.[46]

The tendency of newspapers to avoid reporting specific details of cases of the sexual coercion of children prevailed throughout this period. In 1852, when Hugh Duffy was indicted for the rape and common assault of Catherine Howard (a nine-year-old girl from Wanganui), the *New Zealand*

[44] "Supreme Court," *New Zealander*, 4 September 1849.

[45] Most likely a reference to settler Frederick Whitaker, a prominent lawyer and politician in the Auckland area.

[46] "Supreme Court—June 2," *Daily Southern Cross*, 9 June 1849.

Spectator and Cook's Strait Guardian simply reported that the details of the trial were unfit to print, while the *Wellington Independent* offered an account of the trial that refrained from reporting the most explicit elements. Duffy was found not guilty of the crime of rape but guilty of the lesser charge of common assault; he was sentenced to two years' imprisonment. Convictions of lesser charges such as common assault were fairly common in cases involving sexual violence. The year after Duffy was convicted, Joseph Brown, a soldier in the Sixty-Fifth Regiment of the British Infantry, was also indicted for assault with intent to commit rape and for common assault. Brown's accuser was seven-year-old Catherine Carty, the daughter of a soldier in Brown's regiment. The assault was said to have taken place "in the barrack, at Mount Cook" in Wellington, but further details were not given of the particulars of the crime. Like Duffy, Brown was convicted of the second, lesser account of common assault and sentenced to six months' imprisonment and hard labor.[47]

The severity of punishments given to men convicted of sexually assaulting a child ranged widely. In 1855 William Samuel Tidmarsh was accused of assault with intent. The *Daily Southern Cross* reported on the trial and named the accuser as nine-year-old Harriet Hewson but provided no other information other than the fact that Tidmarsh was found guilty of assault only ("intent not proven"). Upon his conviction, Tidmarsh was fined a meager five pounds.[48] Not every trial ended with a conviction of common assault, however. In 1854 William Ludwell pled guilty and was sentenced to three years' imprisonment with hard labor for assault with intent to commit rape upon Mary Jones. Mary was described as being "a child under twelve years of age." As in the case of Emma Nicklen, the court adhered to British law, which called for the imprisonment of any man who sexually assaulted a child between the ages of ten and twelve. Ludwell had originally been indicted for rape as well as assault with intent, but the grand jury threw out the more serious charge before the trial.[49] Neither court records nor newspaper accounts provided many details. As in previous cases, the transgressive nature of sexual assault upon children led to a reticence to discuss the details in public forums.

In none of the above cases was the accused convicted of rape; instead, the grand juries chose the lesser charges of assault with intent and common assault. The same can be said of the trial of Waka in 1854. In many of the particulars, Waka's case was quite similar to those mentioned above. This case, however, represents a departure from all other cases of sexual crime tried by the colonial Supreme Court during this period, because Waka was

[47] "Supreme Court," *New Zealand Spectator and Cook's Strait Guardian*, 3 September 1853.

[48] "Supreme Court," *Daily Southern Cross*, 6 March 1855.

[49] "Supreme Court," *New Zealand Spectator and Cook's Strait Guardian*, 6 September 1854.

the only Māori man indicted in the court for rape or assault with intent. Waka pleaded guilty to the charge of assault with intent to commit rape on a ten-year-old child.[50] The newspaper report is careful to specify that it was a European child that Waka was alleged to have raped; in no other report on this type of case was the racial background of the victim mentioned. Yet there were also similarities between the coverage of Waka's trial and that of the five pākehā men accused of sexually assaulting children. Like the cases of Joseph Brown, William Ludwell, and William Samuel Tidmarsh, few details of the case were offered in the newspaper report of the trial. Waka's sentence—two years' hard labor—was not significantly harsher than the punishments for other men convicted of similar crimes, and Ludwell was imprisoned for considerably longer. Rather than the sexual and social panic that one might think would surround the case of a Māori man sexually assaulting a European child, the case appears to have gone unremarked upon. Other cases of sexual assault sometimes included coverage in several newspapers and lengthy descriptions of the court proceedings, but only the one abovementioned newspaper report notes Waka's case, and it does so perfunctorily, simply stating the plea and punishment. Given what we know about the high conviction rates of rapes committed by men of color upon white women in various colonial contexts, Waka's conviction is unsurprising. But the fact that both popular and legal reactions to this incident were similar to those of cases where it was white men who had assaulted white children highlights the various competing narratives that governed social and intercultural relations in the first two decades of major settlement in New Zealand. If one of the goals of British colonialism in New Zealand was amalgamation with the Māori people (and many English writers on antipodean colonialism explicitly expressed that goal), then Waka's case can be read as demonstrating that the establishment of legal and moral ideologies within the colonial justice system was more important to those involved than the creation of racial divisions.

These eight cases of intent to commit rape upon a child were spread over a six-year period. Considering that the colony only had a population of around 115,000 settlers and Māori in 1858 and that bringing such cases to court still presented enormous obstacles, this is an astonishingly high number. While cases of child rape made up about a third of all rape cases in England,[51] they represented one-half in early colonial New Zealand. This is evidence that sexual violence toward a child represented a transgression of the imagined colonial space that British administrators and settlers were working so hard to create and that the courts were the primary venue for reinforcing the ideals of a moral and well-ordered colony.[52] Furthermore,

[50] "Supreme Court," *Daily Southern Cross*, 9 June 1854.

[51] Beattie, *Crime and the Courts*, 128.

[52] For a discussion of how marital issues brought before the court played a similar role in establishing and maintaining colonial social norms, see Megan Simpson, "The Action

that courts and newspapers seemed to shy away from recording the disturbing details of these cases points to a deep concern with colonial middle-class morality and to the small and close-knit nature of early colonial society. By stating the general nature of the crime, newspapers reinforced social disapprobation of sexually violent acts, but by withholding the specific details, newspapers at the same time protected the reputations of the victims and witnesses who were members of small communities where everyone was acquainted with everyone else.[53] This reticence to discuss particulars of a given case in a public format along with a high conviction rate demonstrates how seriously settler courts took children's protection; if the colony was to succeed, the innocence of white children must be socially controlled both in terms of exposure to "indecent" rhetoric (via newspapers, for example) and in terms of the criminal prosecution of those who committed acts of sexual violence on children.

"Hard to Be Proved": Assault with Intent to Commit Rape

If trials concerning sexual violence toward children served to reinforce Victorian ideas about the importance of childhood innocence and the threat that sexual deviance posed to the colonial order, cases involving adult victims spoke to English concerns about fraudulent accusations of rape, the importance of moral character, and the centrality of masculine power. Many of the same elements appear in the records of these cases and in those dealing with the sexual assault of children; however, the newspaper and court reports concerning cases involving adults were more likely (though not guaranteed) to include more complete testimony of the parties involved, and there were fewer redactions of information considered "unfit to print." For example, in 1846 Edward Steep was indicted for common assault and "assault with intent to ravish" Frances Phelan, wife of William Phelan (a private in the Ninety-Ninth Regiment of the British Infantry) and resident of Te Aro flat in Wellington. Frances gave extensive (and fairly graphic) testimony about Steep's actions: "He kissed me, and took me into a back room and tried to get me up the stairs. . . . [W]hen he found he could not get me up the stairs he threw me down in the kitchen; he was trying to take liberties with me."[54] William Phelan, Francis Cattell (in whose home the assault took place), and Patrick Carthy (a character witness against William Phelan who testified to his desertion from his regiment) all offered statements as well, and Steep was found guilty of the more serious charge of assault with intent. Although he was sentenced to twelve months' hard labor for his crimes,

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for Breach of Promise of Marriage in Early Colonial New Zealand: Fitzgerald v Clifford (1846)," *Victoria University of Wellington Law Review* 41, no. 3 (2010): 473–91.

[53] Ibid., 475–76.

[54] "Supreme Court Sittings," *New Zealand Spectator and Cook's Strait Guardian*, 5 September 1846.

this punishment was significantly lighter than some of those given to others convicted of assault with intent. In 1849 Thomas Chipchase was accused of raping and assaulting Jane Crighton, and he was eventually convicted of the lesser crime. Perhaps due to the unpleasant nature of the act (in this case, the *Daily Southern Cross* chose to "abstain from giving the evidence in its detail"), Chipchase received two years' imprisonment with hard labor.[55]

Even when the proceedings of a given Supreme Court trial were deemed unfit to print, details of the incident have sometimes survived in other forms. When Joseph Martin was indicted for assault with intent to rape in 1850, the *Daily Southern Cross* continued to shy away from printing the full details of the trial.[56] The original police report and trial in the Resident Magistrate's Court, however, had been described in an earlier edition of the paper, published on 12 July of that year. This extensive description of the event provides many of the details that so many of the reports of these cases do not, describing the struggles of the victim, Frances Hair, in great depth. Martin had come to her home and "addressed her in terms which she considered as indicating an improper purpose." Frances then made an attempt to escape, but she was "overtaken by her ruffianly assailant—thrown down, and the attempt charged [*sic*] made with the greatest brutality and violence. After a most severe and persevering struggle, she however, succeeded in baffling the prisoner's purpose, and after recounting to her neighbour the ill-usage she had received, returned home, where she was found by her husband in great distress of mind and bodily pain."[57]

The evidence given in this case conforms to the prescribed English standards of securing a conviction in a charge of assault with intent to commit rape: the victim struggled violently and had the physical marks to show for it; the crime was reported immediately to someone who could verify her testimony; and Frances Hair was painted as a wife and mother of reputable character. It is no wonder that this case was recommended to the Supreme Court and that a guilty verdict was returned (despite Martin's plea of "not guilty"). However, the case did not end there; once in front of the Supreme Court, witnesses for the defense testified on Martin's behalf, asserting that they "had seen the prisoner at various times during the day; that they were in the neighbourhood of Hair's house at the time the assault was sworn to have been committed; —that, it being a very calm day, had there been any cries as of one in distress, they must have been heard—that none were heard." By implying a lack of struggle against her assailant, this testimony called Frances Hair's accusations into question, since proof of vigorous resistance was essential to securing a conviction for rape. Martin's defense attorney knew the importance of these facts for the outcome of the case, and according to the *Daily Southern Cross*, he "did not omit to dwell at

[55] "Supreme Court," *Daily Southern Cross*, 2 June 1849.
[56] "Supreme Court.—Crim. Session," *Daily Southern Cross*, 3 September 1850.
[57] "Resident Magistrate's Court," *Daily Southern Cross*, 16 July 1850.

considerable length in his address to the jury" on them.[58] The jury returned a verdict of guilty for the lesser charge of common assault, and Martin was sentenced to imprisonment for eighteen months with hard labor.

These cases of attempted rape on an adult woman share many of the same features as those involving children. In trials where the accusers were adults, however, more emphasis was placed on the moral character of the victim. The innocence of children was assumed, as was their need for protection. Adult women, on the other hand, were required to be respectable for their accusations to be considered valid. The attempted rape of Frances Hair met all the requirements for veracity: the accuser was of good character, she immediately reported the crime, and she had physical marks to prove the truth of her statement. Both the legal requirements and the modes of argumentation provide examples of how colonial courts strove to police transgressions of the colonial social order. They asserted the centrality of middle-class ideas about pious and moral womanhood while at the same time explicitly condemning those who committed crimes of this nature. That each of these Supreme Court trials ended in conviction is indicative of the social mores the court was trying to impress upon the populace of the young colony. Attempted rape indeed proved to be a difficult crime to prove in colonial New Zealand, but the judges and juries involved treated the crime very seriously, thus reinforcing English middle-class ideas about appropriate behavior for both men and women.

"A Most Detestable Crime": Rape Convictions in New Zealand, 1842–1855

While the majority of cases before the Supreme Court ended in convictions of assault with intent or common assault, three men were convicted of the actual crime of rape between 1842 and 1855. These three trials represent an interesting counterbalance to the ones discussed above in terms of both media coverage and the severity of the punishments. The first case was brought to trial in September 1846, when Henry Hodges (a private in the Ninety-Ninth Regiment) was brought before the Supreme Court in Wellington to answer a charge of raping a widow named Ann Cording. The actual rape took place several months earlier, on 23 June, and Hodges was charged on 26 June. At the time of the arrest, Ann Cording herself offered a deposition on the sexual assault, which was corroborated by a Corporal Graham and other witnesses. Ann testified that she was a housekeeper for a Mr. Brandon. At the time of Hodges's arrest, Ann deposed that she had been returning from a Mr. Blathwayt's house late in the evening when she "lost her way, and sat down on some flax bushes thinking that some person would pass that way." After a time Hodges approached and offered to escort her back to Wellington. When almost there, he asked for money, and Ann told him that her employer

[58] "Supreme Court.—Crim. Session."

would pay Hodges when he had delivered her home. At that point, Ann reported, Hodges "knocked her down, and put his knee upon her breast and drew from his side a bayonet, and told her if she called out he would kill her; and then he accomplished his purpose."[59] Hodges apparently offered no defense on his own behalf at the time of arrest and was subsequently put in jail until the next sitting of the Supreme Court in Wellington.

The case came to trial on 2 September, on the same day as the court heard the charges brought against Edward Steep for assaulting Frances Phelan. As the *New Zealand Spectator and Cook's Strait Guardian* reported, the prosecutor presented a comprehensive case, offering testimony "of the prosecutrix; of one person who could state the state of the prosecutrix; and another person who could prove that the prisoner was the person committing the offence." Ann Cording repeated the description of the events of that night that she had given in her deposition. While admitting that she had been recently unwell and under a doctor's care and that she had had brandy and water while at Mr. Blathwayt's house, she insisted that she was sober and in her right mind at the time of the assault. Ann said she had pleaded with Hodges, asking him to "think of his mother, and not use [her] ill in [her] old age."[60] The other witnesses corroborated her account, and Corporal Graham testified that at the time of the arrest, Hodges claimed that Ann had insulted him and called him names for not assisting her the entire way to her destination. No other defense of Hodges or his actions was offered during the trial. The grand jury returned a verdict of guilty, with a recommendation for mercy. This recommendation appears to have been disregarded, and Henry Hodges was given the sentence of transportation for life to Van Dieman's Land (Tasmania), the standard penalty for the crime of rape according to British law.

In December 1848 another indictment for rape resulted in the conviction and subsequent transportation for life of the accused. In this instance, William Wright was tried for raping fifteen-year-old Fanny Jenkins of Urui, up the coast from Wellington near Waikanae.[61] On 17 September of that year, William Wright (also living in Urui) forced his way into the residence of William Jenkins, Jr. (Fanny's brother), and sexually assaulted Fanny. During the trial, Fanny testified: "He then took my hand and dragged me in the bedroom and put me on the children's bed. He told me to pull up your clothes, I would not and he pulled them up. I screamed out but no one heard me. He had connexion with me."[62] Her brother and father also

[59] "Police Office," *New Zealand Spectator and Cook's Strait Guardian*, 27 June 1846.

[60] "Supreme Court Sittings," *New Zealand Spectator and Cook's Strait Guardian*, 5 September 1846.

[61] Urui is not identifiable in historical maps of New Zealand. This is likely a reference to Te Uruhi, a settlement near the Waikanae River. See W. C. Carkeek, *The Kapiti Coast: Maori History and Place Names* (Wellington: A. H. & A. W. Reed, 1966).

[62] Notebook entitled "Criminal trials No. 5," 1847–49, MS-0411/013, pp. 75–84, Hocken Library, Dunedin.

testified on her behalf, and after brief deliberation, the jury returned a verdict of guilty. Wright attempted to escape on his way out of the courthouse, and he would later actually succeed in escaping from Van Dieman's Land after his punishment of transportation had gone into effect.[63] Wright's transportation was the second such penalty for rape handed out within a two-year period, and it would be the final one of the decade.

In 1854 James Ingham was indicted for rape and assault with intent, but unlike the two previous convictions, he was not sentenced to transportation to Van Dieman's Land. After pleading guilty to both counts, he was sentenced to two years' imprisonment for assault and to "penal servitude for life, for rape."[64] The details of Ingham's crime have not survived. We know only that he was not transported for his crime; given that his conviction fell after the pronouncement of the Secondary Punishment Act in September 1854, which abolished transportation, but before the new law actually came into effect on 1 January 1855, the judge was allowed to exercise his discretion and chose not to order transportation.[65] Ingham was nonetheless given one of the most severe punishments available at the time. We cannot know if James Ingham did spend the remainder of his life in penal servitude, but the severity of the original sentence speaks to how the legal system in colonial New Zealand framed acts of proven sexual violence. Such transgressions of the social order threatened the moral stability of the colony and were accordingly punished very harshly. Transportation was the most severe penalty inflicted upon convicted rapists, and both Wright and Hodges received this sentence. James Ingham's sentence of a life of penal servitude was less severe but still represented the harshest sentence available to the convicting judge. Together these three cases reveal the degree to which New Zealand courts considered rape to be a crime so heinous as to threaten the very stability of society in the colony. By reaffirming the importance of female honor and the male role of protecting female purity, the harsh sentences served as a means of morally policing the behavior of both genders while buttressing English moral values.

Competing Narratives, Colonial Space

What can these legal narratives about sexual coercion tell us about how New Zealanders understood rape and sexual violence in the 1840s and 1850s and about how ideas about sexuality and gender informed the colonial project? On the one hand, trials prosecuting sexual offenders did seem to reinforce English ideas about morality and gender roles in the

[63] "Supreme Court Sittings," *New Zealand Spectator and Cook's Strait Guardian*, 6 December 1848.

[64] "Supreme Court," *Daily Southern Cross*, 5 December 1854.

[65] Walter Monro Wilson, *The Practical Statutes of New Zealand* (Auckland: Wayte and Batger, 1867), 972.

colony; both the alleged sexual transgression and the moral character of the female accuser were, in some ways, put on trial. However, neither the trials themselves nor the newspaper accounts about them display rhetoric about the sexual vulnerability of white women or their sexual purity that was common in the moral panics surrounding other colonial conflicts, such as the Morant Bay Massacre in Jamaica and the Indian Uprising of 1857, two instances when British colonial power was violently challenged by the colonized population. Both places saw an attendant rise in rhetoric in newspapers and popular literature surrounding the sexual danger these colonized populations posed to white women. Scholars of colonialism have linked such sexual panic to moments of intense social anxiety brought on by a violent threat to British power. The absence of similar rhetoric here indicates that such anxieties did not feature as prominently in early colonial New Zealand. This is not to suggest that the colonial government was not anxious about Māori aggression; Māori leaders like Te Rauparaha and Hone Heke violently contested British power throughout the 1840s, often successfully resisting British efforts to subdue them militarily, and various colonial officials worked hard to disguise the Māori victories in skirmishes throughout the colony.[66] Nonetheless, in the 1840s power hierarchies were still very much in flux, and Māori numerical superiority, possession of land, and access to raw goods ensured that British colonial power was mostly nominal outside of small settler communities. While episodes of violence occurred sporadically throughout the years in question, sustained conflict between the two cultures did not fully manifest until later with the start of the New Zealand Wars of the 1860s. Up until then, pākehā colonial officials were preoccupied with financial stability, with the acquisition of land, and with the policing of European settlers. While the colonial government was certainly interested in sending the appropriate message to Māori about the seriousness of sexually violent crimes (as we can see from the Native Exemption Ordinance), neither the lawmakers nor the newspapers (nor, for that matter, those people writing immigration tracts in London) seemed interested in creating a narrative about vulnerable white women and sexually violent indigenous men in New Zealand. Newspaper reports and judges' notes even seem to take the conviction of the Māori man Waka in stride: they offered neither excessive leniency nor condemnation of the act or its perpetrator. The dominant narrative of sexual violence in New Zealand, which treated rape as a threat to the establishment of an English middle-class moral society rather than as an assault on colonial power or an attack on British racial superiority over the indigenous population, thus differed from that of other British colonies.

If the morality of white settlers was put on display in these trials, Māori are essentially absent; they are rarely mentioned in the records as witnesses,

[66] James Belich, *Making Peoples: A History of New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Honolulu: University of Hawai`i Press, 1996), 207.

defendants, or accusers. While this fact contrasts with the rhetoric around dangerous indigenous sexuality prevalent in other colonies, the absence of Māori in cases involving sexual assault is also indicative of the silence surrounding the sexual coercion of indigenous women within colonial settings. Nowhere in the Supreme Court records from this period is there an instance of a full trial of sexual assault involving a female Māori accuser. Work done on other colonial settings suggests that the sexual assault of indigenous women was the least reported and prosecuted of sexually violent crimes in the British colonies.[67] Although sexual exploitation was common in the colonies in Africa, the Americas, and the Pacific, white male perpetrators of sexual violence rarely suffered legal consequences for their actions. As Pamela Scully effectively demonstrates in her article on rape in South Africa, convictions of rape could even be overturned if new information about the racial background of those involved became available. One man's conviction of rape was retracted when it came to light that the woman who accused him was not in fact white but rather of a mixed racial background.[68] In other words, while the vast majority of rape cases went unreported, cases of white men raping Māori women were even less likely to be prosecuted.

An incident from the first year of formal colonization in New Zealand demonstrates the influence of racism on prosecutions for sexual violence. In 1840 (before the establishment of the colonial court system) Reverend Richard Davis (a CMS missionary) wrote to the governor concerning the rape of a Māori woman by a "coloured man" named Humphrey. The victim was the wife of a chief named Tangahi, and the assailant was himself married to a Māori woman. Davis seemed less concerned about the assault itself than about the resulting tensions between various Māori chiefs, and his letter asks for advice on how to proceed with the case in such a way as to defuse tensions. The Māori woman, Hannah Marsden, is mentioned only briefly at the end of the letter, when Davis writes that "she was unable to proceed to the Bay—the natives say her illness originated from the bruises she received from the man when he wished to commit his vile purpose." Had the incident not caused dissension among the chiefs, Davis would not have reported it: "Could I with any propriety, as their teacher, have dismissed the case," he writes the governor, "I should have done it and not have troubled your Excellency with it."[69] The issue at hand was not the sexual vulnerability of a Māori woman but rather the efforts to keep the peace in a still-fragile colonial setting.

As the above example demonstrates, though few cases ever came to trial, there is considerable evidence that Māori women were often the victims of European sexual assault. Māori chiefs even occasionally brought charges of

[67] Pamela Scully, "Rape, Race, and Colonial Culture: The Sexual Politics of Identity in the Nineteenth-Century Cape Colony, South Africa," *American Historical Review* 100, no. 2 (1995): 337.

[68] Ibid., 336.

[69] Davis to the Colonial Secretary, 11 August 1840.

sexual misconduct against missionaries. CMS missionary Christopher Davies allegedly sexually assaulted a Māori woman under the guise of a medical exam in the early 1850s, while in 1835 a group of Māori chiefs accused William White of attempting to rape a Māori woman, resulting in White's dismissal from the Methodist mission.[70] In 1843 a case appeared before the police magistrate that involved the attempted assault of a Māori woman; the defendant, William Hedge, a marine from the HMS *North Star*, was sentenced to only seven days' imprisonment after two officers from his ship testified to his good character and drunkenness at the time of the crime.[71] The 1844 case with which I began this article also featured a Māori woman as the accuser, and the fact that the case was dismissed further indicates that these cases were not taken as seriously as cases where the victim was white. The silence of court and other records on the prevalence of sexual violence against Māori women makes it impossible to know the frequency and nature of these acts of violence. There are no newspaper accounts of these crimes similar to those about white men convicted of committing rape or assault with intent. This absence must be contextualized with reference to the particular social atmosphere of frontier colonial society. For instance, while missionaries often wrote about the licentious sexual behavior that whalers and early settlers encouraged among Māori women, they rarely referred specifically to sexual violence. While they morally condemned all acts of sexual violence against white women, they were silent on the issue of rape perpetrated upon Māori. Colonial authorities relied upon the policing of sexual violence as a means of establishing acceptable norms of behavior for both genders, but despite the rhetoric of amalgamation circulating at the time (both in New Zealand and in England), this censure did not extend to sexual violence involving indigenous women. While considering Māori to be promising candidates for civilization, the lack of concern about female Māori victims of sexual violence demonstrates that colonial officials refused to accord them the same social (or legal) status as Europeans.[72]

As Angela Wanhalla has compellingly shown, the latter half of the nineteenth century saw a marked change from earlier attitudes toward sexual violence.[73] While in the 1860s the majority of cases concerning sexual violence continued to involve white male accusers and white female victims, the rhetoric surrounding rape shifted dramatically. As conflict between the

[70] For more on these examples and other forms of interracial sexual encounters in New Zealand, see Angela Wanhalla, "'The Natives Uncivilize Me': Missionaries and Interracial Intimacy in Early New Zealand," in *Missionaries, Indigenous Peoples and Cultural Exchange*, ed. Patricia Grimshaw (Portland: Sussex Academic Press, 2009), 32.

[71] "Police Court," *New Zealand Guardian and Wellington Spectator*, 21 October 1843.

[72] For more on sexual violence toward Māori women, see Michelle Erai, "In the Shadow of Manaia: Colonial Narratives of Violence against Māori Women, 1820–1870" (PhD diss., University of California, Santa Cruz, 2007).

[73] Angela Wanhalla, "Interracial Sexual Violence in 1860s New Zealand," *New Zealand Journal of History* 45, no. 1 (2011): 71–84.

British colonial administration and Māori iwi increased and formalized, resulting in a period of sustained conflict during the 1860s, the colonial press began to depict Māori men as serious threats to white women's sexual purity (even though very few Māori men were indicted for rape during this period).[74] As in Jamaica and India, a threat to British colonial power resulted in anxiety about white women's sexual vulnerability; such anxiety was conspicuously absent in earlier decades in New Zealand. As I have argued above, rather than worrying about protecting white women from sexually violent natives, early British concerns lay with policing the sexual activities of settlers. In the minds of colonial officials, New Zealand's success as a colony depended upon the maintenance of social order and upon effective legislation to uphold moral values. The treatment of sexual violence in the colony was thus more than just an aping of the metropole's; in the liminal space that constituted the first fifteen years of formal European settlement in New Zealand, the treatment of cases of sexual violence was part of a moral foundation upon which the colony wanted to build. Rape and sexual violence toward white women were aggressively prosecuted, and convicted men received severe sentences. The trials of these crimes conveyed ideas about appropriate behavior for settler men and women by forcefully policing violations of that behavior. Court cases and their coverage in colonial newspapers displayed implicit guidelines for the public discussion of sexuality in the new colony: in order to preserve decency, details of cases were often not conveyed; the moral character of white women was painted as of supreme importance; and proven sexual aggression on the part of white men was condemned. Sexual violence toward indigenous women, however, seems to have gone largely unremarked upon, indicating the disruption between discourse and—particularly for Māori—lived experience within this colonial space. Thus the treatment of rape and other acts of sexual aggression held a different meaning in the early years of colonial New Zealand than it would in later periods, when British colonial authorities began to solidify authority—authority that was then threatened by Māori physical aggression. In the early years of the colony, policing sexual violence was one of the myriad ways by which the British maintained social order, an order in which white—but not Māori—women's moral purity was the cornerstone.

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[74] Ibid., 72.

Author: The typesetter inserted the macron over the "a" in the instance of "Maori" highlighted above because it was the only one without that diacritic & it's not in a quote. Is that OK?