“UNFIT FOR PUBLICATION”: RAPE, ASSAULT, AND ASSAULT WITH INTENT IN
COLONIAL AOTEAROA NEW ZEALAND, 1842-1872

by

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Abstract

In Aotearoa New Zealand between 1842 and 1872 British colonial judges, juries, and reporters expressed their particular understandings of what constituted “rape” in the contexts of Supreme Court trials. Both white and Maori women encountered scepticism in court and a share of the responsibility for provoking the crimes carried out against them, although Maori women faced particular vilification. While judges frequently declared their strong aversion to the crime of sexual assault, they rarely backed their rhetoric up with strict sentencing practices, even when the male perpetrators were Maori. As a result, an important distinction arose between hypothetical scenarios of rape, characterized by judges and the press as egregious, and real life cases, which rarely met the high standards of rape according to definitions recorded in the press. Through the primary use of newspaper reports on Supreme Court trials contained in the Papers Past database, this thesis explores the contours of these hegemonic definitions of sexual violence in a formative moment of British colonization efforts in New Zealand. It traces the struggle between British masculinity and Maori resistance efforts, and how this struggle played out in heterosexual rape trials tried according to British colonial law. While Maori tribes successfully resisted the British colonial take-over of both their cultural autonomy and land, the British responded by softening the boundaries of race and strengthening the bond of masculine power. In this moment, rape became a symbol of both social chaos through a failure of controlled Victorian masculinity, and representative of men’s nearly limitless access to women’s bodies.
Preface

This thesis is entirely the original, unpublished, and independent work of the author, Caitlin Ann Cunningham.
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“Unfit for Publication”: Theoretical and Historiographic Groundings

Historical examinations of rape necessarily require a distinction between women’s experiences of harm and legal or social constructions of that harm. What has become apparent in the course of this narrow study on colonial Aotearoa New Zealand, between 1842 and 1872, is the importance of distinguishing between them.¹ In the following pages, I speak relatively little about the emotional aftermath or even the socioeconomic ramifications of rape and rape charges. This is largely because women’s voices were persistently silenced in the records, most profoundly evidenced in the colonial news reports that omitted women’s rape testimonies on the grounds that they were “unfit for publication.”² Despite this, I argue that news reports on Supreme Court trials do allow some access to women’s experiences, even if they are the kinds of sources that historian Alain Corbin warned us against, those paroxysms that offer only “momentary access to an underlying reality.”³ Withstanding Corbin’s cautionary advice – he argues that our focus ought to be on those who have left no traces at all – I maintain that it is

¹ The Maori name for New Zealand is Aotearoa, which is commonly translated as “land of the long white cloud.” I will use both New Zealand and Aotearoa interchangeably in an effort to reconnect with what it means to “colonize” the territory of others. For more on the lasting impacts of research, continued colonization, and universalizing of “Indigenous peoples” see: Linda Tuhiwai Smith, Decolonizing Methodologies: Research and Indigenous Peoples (Dunedin: University of Otago Press, 1999).
possible, if not necessary, to use recoverable but inevitably flawed sources to suggest something much deeper about rape as elemental to women’s everyday existences.4

To do this, I refocus on structural and social responses to rape in colonial Aotearoa. My intention here is to interrogate the cultural logic, or process, by which the presence of rape in society becomes, at least in appearance, a normative characteristic of gender relations. Apprehending just how this logic works is to begin to comprehend how the powerful reinforce their positions of superiority.5 I am also interested in how this very logic takes on important meanings for many, even if it empowers a relative few. The ways in which women’s charges of rape were (mis)construed in colonial courtrooms, through insinuations of both their immorality and secret consent, suggests more than colonial articulations of white male power. The hostility and scepticism expressed by both judges and reporters point at collusion in a larger process of hegemonic male power that tempered women’s very access to justice and vindication.6

Examining colonial New Zealand offers a window into British attempts to transport a variation of hegemonic, Victorian male power into a new social setting. Official consolidation of Aotearoa into the British Empire began only after 1840. Before this, whalers and missionaries made up the majority of the territory’s relatively small Pakeha population.7 But as more British

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7 James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Honolulu: University of Hawai’i Press, 1996), 137. Early whalers in Aotearoa were dominated by the French, British, and Americans, but included those
colonials arrived, they brought with them what the literary and social critic Raymond Williams, drawing on the work of the Marxist philosopher Antonio Gramsci, has defined—possibly more articulately than anyone—as hegemony. This, Williams argued, is nothing less than a “culture,” albeit one that is inevitably inflected by vectors of unequal power, “a whole body of practices and expectations,” and a “…lived system of meanings and values—constitutive and constituting” that, in this case, worked to cement gendered relations of domination and subordination.  

White incomers to New Zealand, then, brought with them their social understandings of the world around them, confirming in practice what they already understood to be true. But these understandings of place and space imported by British colonial officials, and white American, Australian, and various European men, were not imported into empty space. The realities of Maori resistance to British rule and life in colonial Aotearoa offered some challenges to unquestioned white male power, challenges that white men manipulated to fit into their internalized vision of gender hierarchy.

As a result of this internalized gender hierarchy, women often found themselves shouldering blame when they accused a man of sexual violence. White and Maori women alike faced scepticism and responsibility for allowing themselves to become victims at all, although courtroom assumptions of Maori women’s immorality were certainly more pronounced than in cases involving white women. Furthermore, although judges frequently declared their strong aversion to the crime of sexual assault, proclaiming it one of the worst possible crimes a person

heralding from Portugal, the Netherlands, Canada, Germany, and Denmark. Other groups also arrived in New Zealand with aims of conversion and scientific exploration. From 1840 on, British colonization efforts increasingly dominated the interests of others. All of these white populations are and were referred to in New Zealand as “Pakeha.”

could commit, they rarely backed up these assertions with lengthy sentences. While men were charged, convicted, and punished for rape or assault with intent to commit rape, their relatively lenient sentences, and the sympathy that they frequently met in court stands in stark contrast to the scepticism and slander that a woman could expect. Moreover, public acknowledgement of the crime could be immensely damaging to a woman’s reputation regardless of the trial’s outcome and could severely circumscribe her marriage capabilities, and thus means of subsistence, for the rest of her life. In this way, wide hypothetical condemnations of rape coexisted with the reality that real life cases rarely met the high standards of “true” rape, at least according to legal definitions, and left women open to charges of false accusation.

Ultimately, the women whose sexual assault cases are accessible to me now, over one hundred years since the events transpired, managed, at least in part, to claim the rights to justice reserved for crimes deemed legible by police, judges, juries, the public, and the journalists who reported on them. Their claims, then, frequently adhered to scenarios that translated into in the legal and social assumptions of the period. As a result, when I reference “rape” here, I am referring to the limited definition of New Zealand’s colonial jurists, who defined the act of rape

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9 See for example: “Supreme Court,” Wellington Independent, June 6, 1862, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=WI18620606.2.4&srpos=3&*
10 On September 9, 1844 a New Zealand newspaper, The New Zealand Gazette and Wellington Spectator, quoted Justice Chapman asserting in a Supreme Court sitting that rape by “common consent of mankind as well as by the law of England, is held in especial abhorrence.” “Supreme Court, Wellington,” New Zealand Gazette and Wellington Spectator, September 11, 1844, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=NZGWS18440911.2.4.2&srpos=1&*
11 Cozens, “‘The Shadow Only Be Their Portion,’” 276. Charges of sexual violence first went through a local Police Magistrate then the County Court. If the charges were not dismissed at either of these levels, then at that point they were escalated to the Supreme Court; Bronwyn Dalley, “‘Fresh Attractions’: White Slavery and Feminism in New Zealand, 1885-1918,” Women’s History Review 9 no. 3 (2000): 585-606, http://www.tandfonline.com/doi/pdf/10.1080/09612020000200255. Women were vocally resistant to gender violence, particularly after the period that I discuss here.
as the entry of a penis into a vagina amidst ongoing struggle and resistance. Further to this point, the confines of this definition stretched beyond just penetration, as most cases here involve a woman raped by a stranger, in a seemingly “random” encounter, usually in a public space.

Whiteness also impacted imaginings of rape, evidenced by the small minority of my sample cases that involve Maori women accusing either white or Maori men. This skewed sample suggests the greater vulnerability of Maori women in the New Zealand colonial space, whose complexions impacted their abilities to convincingly translate their personal experiences of rape into socially comprehensible narratives. Beyond race, markers such as economic standing and social position, age, location of the assault, and the identity of the accused, all contributed to assessments of socially legible rape.

The driving impetus of this thesis is to interpret these imaginings of legible rape in colonial Aotearoa. To plot the cultural logic that rendered certain assaults “rape” to witnesses, reporters, and jurists, I first try to access how these colonial New Zealanders defined it. To determine this, I assume that juries, reporters, and judges represent some element of broader (primarily male, but ultimately hegemonic) opinions of what constituted rape. I then test the boundaries of explicit juridical definitions of rape by exploring the implications of race and gender to legal assignations.

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12 “Supreme Court, Wellington,” New Zealand Gazette and Wellington Spectator, September 11, 1844, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=NZGWS18440911.2.4.2&srpos=1&. This article reports on Justice Chapman’s discussion the logistics of penetration and the role of the hymen in determining penetration during a Supreme Court trial.

13 Kevin Denys Bonnycastle, Stranger Rape: Rapists, Masculinity, and Penal Governance (Toronto: University of Toronto Press, 2012). Women who are raped by strangers are “ideal” rape victims, or the most socially comprehensible and therefore legally believable. The sample of cases I explore below offer some insight to how this proved consistent in colonial New Zealand.


15 I will provide more detail on the nature (and limitations) of my sources shortly.
of blame, using this as launching grounds to test the limits of male access to women’s bodies in the colonial New Zealand contact-zone.\textsuperscript{16} All of this, I hope, will cast some light on what kinds of scenarios translated to legible rape in the eyes of juridical authorities and reporters throughout this period.\textsuperscript{17} Finally, to bring these elements together, I examine a widespread concern amongst white men over “social mischief.”\textsuperscript{18} In this section, I hazard that the general rationale for concern regarding sexual assault remained limited by the underlying perception of harm. Colonial officials, judges, and reporters all expressed anxiety about social mischief, or any kind of chaos sparked by disagreement between colonial constituents. This anxiety, in turn, translated to a generalized fear amongst white New Zealand’s inhabitants that British colonial officials were failing to maintain law and order. At times, concern about social mischief featured more prominently in courtrooms than emotional or physical harm experienced by female plaintiffs.

Due to the erasures of women’s testimonies in the records, I have had to acknowledge a limitation in my sources. While few Supreme Court records survive for the period between 1842 and 1872 – the period on which I focus – the National Library of New Zealand/Te Puna Mātāuranga o Aotearoa has digitized many colonial newspapers and made them available online in the Papers Past database. Further, scholars in the Faculty of Law at the Victoria University of Wellington have worked to account for the legal cases that passed through early colonial New Zealand courtrooms to compensate for the loss of the original trial files. The resulting database, \textit{The Lost Cases Project} (only available between 1842 and 1869), also has proved an important resource to cross reference with news reports. Withstanding the limitations of digitized sources, the online availability of news articles from New Zealand’s colonial period has made this project

\textsuperscript{16} Mary Louise Pratt, \textit{Imperial Eyes: Travel Writing and Transculturation} (London: Routledge, 1992).
\textsuperscript{17} Butler, “Performativity, Precarity and Sexual Politics,” i-xiii.
\textsuperscript{18} At least those white men in positions to have their views memorialized in the written record.
possible. With this cross-section, I have been able to chart a sample of cases to identify trends in areas such as sentencing, acquittals, and musings on female morality. I found the sentencing patterns of my ninety-case sample particularly intriguing, as they indicate the many ways that judges and juries brought their own conceptions of what constituted sexual violence to bear on the cases that they tried.19

The historian Tony Severinsen, in an unpublished M.A. thesis, used many New Zealand newspapers to understand intimate physical attacks on the one hand and the reality of prosecution processes on the other.20 For the purposes of his study, he excluded girls below the age of consent (British colonial law set the age of consent at ten during this period), while also maintaining a focus on the contexts of the judicial system. Indeed, he asserted that factors such as “the events leading up to and including a sexual assault: the combination of such factors as environment, power relations, acquaintance, attitudes toward women and sexuality, and so on” were irrecoverable because of the assumed muteness of his sources.21 But I read the sources, some of which overlap with Severinsen’s, rather differently. One of my driving arguments is that through the newspaper reports on criminal trials, we are offered a view into the construction and cementation of attitudes toward female sexuality and power in the context of colonial societies. I

19 Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2006). In her work on heterosexual rape in early America, Block specifically avoided noting the verdicts of sexual assault trials in an effort to move away from an understanding of guilt based on these outcomes. While I agree with the motivation behind Block’s choice here, ignoring the specifics of sentencing in New Zealand would have shrouded one of the most interesting findings of my research. However, I should note that I do not take the verdicts of colonial New Zealand courtrooms as any indication of innocence or guilt. Indeed, I read these outcomes as a product of particular attitudes of rape on the part of jurists specifically, and colonial officials more generally.
20 Tony G. Severinsen, “‘Easy to charge, hard to disprove’: Responses to Sexual Assault on Women in New Zealand, 1860–1910” (M.A. thesis, Victoria University of Wellington, 1995). The *Papers Past* database was launched in 2001, so it was unavailable at the time of Severinsen’s research.
21 Severinsen, “‘Easy to charge, hard to disprove,’” 1.
posit that in these flashes of reporting on sexual assault, we can begin to see through the wall of patriarchy, and into the “logic” that bolstered, reinforced, and concretized it into the workings of everyday interactions.

Since Severinsen, historians such as Angela Wanhalla and Erin Ford Cozens have studied sexual assault in Aotearoa. Cozens’s work points to a “lack of anxiety surrounding white women’s sexual vulnerability” in the sources; this is an anxiety, she argues, that “appeared with such frequency in other colonial settings.”22 But Cozens does more: she offers a view into mapping this difference in the New Zealand environment, which remained centrally driven by principles of British law while it developed a modicum of legal pluralism in response to its particular context.23 While Cozens highlights little concern over white women’s sexual safety, Wanhalla focuses on the 1860s to explore the “cultural meaning attached to rumours of interracial rape” as a way to map how these rumours incited fears over the “limits of colonial governance” and British law in New Zealand.24 Taken together, these important works use examinations of sexual violence to help develop a picture of the complex anxieties, or lack thereof, plaguing New Zealand society in the formative years of its colonization.

More generally, historians of New Zealand frequently define 1840 as the starting-point of the British colonial period. As James Belich points out, “stories of Maori-European relations are

23 Cozens, “‘The Shadow Only Be Their Portion,’” 269.
usually balanced on the fulcrum” of this year and, although there are some sound reasons for this, “the year is in some respects an artificial watershed.”\(^{25}\) But in large measure I have chosen to reproduce this periodization here, for the first case of sexual assault tried in accordance with British law in New Zealand, at least so far as the record shows, in fact heralds from 1842. In some sense, fixing precise years is less important than settling on approximate dates: after all, the year 1840 also marks a period of significant expansion of colonial settlement. In this year Edward Gibbon Wakefield’s New Zealand Company invigorated its settlement recruitment and some, (although notably, not all) Maori tribes entered into a formal treaty with representatives the British Crown when they signed the Treaty of Waitangi.\(^{26}\) Shortly after, in 1841, a new British law commuted the maximum punishment for rape from death to life imprisonment.

This said, there is no doubt that important interactions between Maori and Pakeha individuals had begun much earlier than the 1840s. Explorers – invaders – arrived in New Zealand long before large-scale European settlement began, some participating in Captain Cook’s circumnavigation of New Zealand in 1769.\(^{27}\) And we know that some Europeans traded in the currency of sex.\(^{28}\) While few historians have worked to assess the extent of coercion in these sexual interactions, many have discussed the different sexual behaviours of Pacific Islanders and

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\(^{26}\) The Treaty remains an area of contention in contemporary Aotearoa, not least because Maori representatives (who did not represent all Maori tribes) signed a Maori-language text while the British representatives signed a different English-language document.
\(^{28}\) Further to this point, the history of Aotearoa is much denser than the description I am able to provide here.
European explorers. But more formal colonization, under the directives of the British Crown and with the ultimate goal of officially absorbing the region into the Empire, did not begin in earnest until the 1830s. Indeed, with British visions of moving from small-scale relationships of trade to a direct consolidation of territory came real changes through formal social structures and increased migration. From scattered, Maori-integrated settlers in 1814 to a doubling in the Pakeha population each decade from 1830-1870, both private and colonial efforts to populate the region with British settlers were largely successful. The official importation of British law into New Zealand in the 1840s brought with it the Crown’s desire that its rules be meaningful in the lives of the growing nation’s inhabitants, both Pakeha and Maori alike. I therefore begin my story in 1842 to account for the first legal cases of rape reported in colonial newspapers, and to acknowledge this particular period of population influx and power consolidation.

The last cases considered here date from 1872. From the signing of the Treaty of Waitangi until the early years of the 1870s, the Maori resisted British colonial control. A series of wars began when the ink was still fresh on the Treaty in the early 1840s, became particularly violent through the early years of the 1860s, and resumed between 1864 and 1872. Perhaps related to that violence, my sample indicates a dramatic increase in the number of sexual assault charges tried in the Supreme Court after 1860. Although until 1872 the Maori held to British sovereignty at bay, as Belich notes, in “the decades after the wars, real empire finally marched, flooded or crept into even the innermost sanctums of independent Aotearoa.” The intriguing

31 The majority of the sample that I used to reconstruct views of sexual violence in colonial New Zealand herald from the 1860s. The dates of particular cases are noted in text.
struggle of the Crown’s representatives to cajole, force, and manipulate Maori men to identify with ideals of British masculinity, patriarchy, and the New Zealand colonial project during the 1860s, in particular, allows us to consider a moment when women’s bodies, white and brown, became a violent part of that colonization effort. While many Maori tribes successfully resisted the British colonial take-over of both their cultural autonomy and land, the British responded by softening the boundaries of race and strengthening the bonds of masculine power. This did not last long. But, in this moment, rape became both the material embodiment and symbol of social chaos in the failure of civilized, controlled masculinity, and also an opportunity to demonstrate a common ground of male dominance.

**Defining Rape in Colonial Aotearoa**

In the sample of sexual assault cases tried in the New Zealand Supreme Court between 1842 and 1872 examined here, judges, prosecutors, defendants, juries, and even accusers repeatedly demonstrated their commitment to the distinction between “rape” and “assault with intent.” In 1844, during the first Supreme Court rape case tried under British law in colonial New Zealand, Justice Chapman demonstrated the centrality of penetration to rape cases, and how failure to prove that it occurred discredited the charge of rape altogether. He defined rape as “the carnal knowledge of a woman against her will,” which required proof of forced penetration of the

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33 I could not find any reports in the English-language press on rape cases involving either Maori men or Maori women before the 1860s.

34 Cozens notes that the British perceived Maori men to be “inherently masculine.” Cozens, “‘The Shadow Only Be Their Portion,’” 136.

accuser’s vagina by the accused.\textsuperscript{36} He further outlined his disgust of the crime, but suggested that it was easy to charge and very difficult for the accused to disprove, and as a result cautioned the jury to carefully consider all of the mitigating factors relevant to the case.\textsuperscript{37} He went on to provide those “facts” necessary to substantiate a charge of rape, which were: “actual penetration,” absence of consent, the “identity of the accused,” and the reputation of the accuser.\textsuperscript{38} Beyond the clear challenge a woman could have proving absence of consent – read: ongoing struggle with an offender, often with no witnesses – or penetration, women’s cases hinged on the central, subjective, features of reputation and identity.

A woman’s charge of attempted rape did not require proof of penetration, but this reduced the seriousness of the crime in the eyes of the law. For example, while judges spoke about rape as an egregious crime, next only to murder, assault with intent to commit rape was, as Justice Johnston put it in 1862, “only a misdemeanour, though one of a very grave kind.”\textsuperscript{39} This distinction provided judges with the opportunity to avoid recognizing the crimes that they ruled on totally abhorrent, and likely contributed to their willingness to allow defendants and their representatives to fixate on factors that undermined women’s credibility in court. Namely, if a woman proved unable to demonstrate penetration, the charge transformed from a capital crime to a misdemeanour, and an image of order prevailed. The trivializing of sexual assault charges in

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\textsuperscript{37} Cozens, “‘The Shadow Only Be Their Portion,’” 263-264; Severinsen, “‘Easy to charge, hard to disprove,’” 1. Chapman quotes Lord Hale, a seventeenth-century jurist, whose thoughts on rape heavily influenced judges in colonial New Zealand.
\textsuperscript{38}“Supreme Court, Wellington,” \textit{New Zealand Gazette and Wellington Spectator}, September 11, 1844, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=NZGWS18440911.2.4.2&srpos=1&.
\textsuperscript{39}“Supreme Court,” \textit{Wellington Independent}, June 6, 1862, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=WI18620606.2.4&srpos=3&.
\end{flushright}
colonial courtrooms, whether explicit or not, allowed for a general trivialization of sexual assault in the colony more broadly.

Unsurprisingly, then, women were required to offer not only proof of penetration but also of ongoing resistance during the assault. Many frequently struggled to categorically demonstrate either penetration or that they had vehemently resisted attack, although doctors occasionally testified in court on the findings of their post-assault examinations. Evidence of bruising and lacerations also helped to substantiate women’s charges to juries and judges. Importantly, markers of struggle on the visible body parts of both an offending man and an attacked woman offered further credibility to the validity of a rape accusation. These perceptible manifestations of harm indicated to judges, juries, and the public of the potential of corresponding evidence of trauma in women’s non-visible areas. But ultimately it was the most hidden part of a woman’s body upon which an entire rape charge hinged: her vagina.

Although proving vaginal trauma and absence of consent were difficult in colonial Aotearoa, it is important to note that juries generally acquitted only a small minority of the accused. Even within an environment of hostility and distrust towards women’s claims of assault, and frequent reminders from judges that sexual assault was “most easy to charge, most hard to disprove,” juries were not quick to offer men complete exoneration from wrongdoing.

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40 I have been unable to find exact descriptions of medical examinations of rape victims, so I am not sure what these entailed. In court, medical examinations are occasionally cited as evidence and included in news reports, which is why I know that they were administered at all.

41 “Supreme Court, Wellington,” New Zealand Gazette and Wellington Spectator, September 11, 1844, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d= NZGWS18440911.2.4.2&srpos=1&.

42 As far as I discovered, in the cases that involved one male attacker and one female victim listed in the Lost Cases Project (1842-1869), only six defendants were acquitted and one case was dismissed.

Indeed, in some cases acquittal sparked fervent protests in the press, and compelled colonial officials to take further steps to bring perpetrators to justice.\textsuperscript{44} As a result, the colony had proportionately high numbers of convictions during the period for charges of rape or assault with intent; however, sentences rarely approached the maximum punishment of incarceration for life.\textsuperscript{45}

Understanding the colonial logic that fostered high rates of guilty verdicts but frequent lenient sentences entails a deeper comprehension of what characteristics of both accusers and accused were considered important by judges and juries, and then, in turn, reported in newspapers. In particular, racial markers were relevant in the Supreme Court, although not always in the ways one might assume. Maori women faced pointed hostility during trials, and due to a general acceptance of their “‘natural’ immorality,” white male defendants put their chastity and sex lives on trial, too.\textsuperscript{46} Incongruously, when white women accused Maori men of rape and the cases went through the courts, evidence suggests that Maori men were treated quite leniently.\textsuperscript{47} Of course, the number of interracial rape cases tried in the Supreme Court in this
period was significantly smaller than for rape involving only Aotearoa’s white colonizers, in part because Maori communities often preferred to settle such allegations outside of the colonial legal system.48

Although judges did not speak explicitly about race as instrumental to determinations guilt or punishment in sexual assault cases, media accounts reveal its centrality. When Makaora and Waiata, two Maori men, were charged with raping a European woman named Elizabeth Dew, first reported in the press on June 6, 1862, it was the first time in New Zealand that any Maori man had “been charged with the offence of rape upon a European woman.”49 Justice Chapman, the presiding judge in the Supreme Court at the time, stressed this in his address to the jury and seemed particularly motivated to explicate the difficult nature of rape cases “to prevent false impressions” amongst both European and Maori constituents.50 The explanations he offered served to highlight his concern over notions of violence in the colony, proclaiming the crime of rape to be very serious, while downplaying its prevalence. Taking a hypothetical firm stance against rape allowed Chapman to verbally condemn such violence, but the details of particular cases offered both him and his colleagues the opportunity to abdicate responsibility to punish extensive interactions of Maori and European colonials – indicates the level to which these crimes must have been largely handled outside of colonial legal structures, if handled at all. As I focus here on British colonial treatments of rape, I leave this aside.

49 “Supreme Court,” Wellington Independent, June 6, 1862, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=WI18620606.2.4&srpos=3&. At least to the knowledge of the presiding judge.
50 Ibid.
accordingly. His careful assessment of the crime also nodded at deeper concerns amongst 
European colonizers of maintaining law and order in these colonial spaces.51

The Bond of Masculinity: The Roles of Race and Gender in British Colonization Efforts

Since official English colonization in the 1840s, Maori communities had largely 
continued to handle their own legal affairs independent of the Queen’s legal system.52 Through 
the 1850s, colonial newspapers commented, with self-congratulation, on the benefits of 
“civilization” that Europeans had brought to Maori populations.53 In 1852, one reporter 
expressed happiness in being “amongst the first to acknowledge… [and] hail the improvement” 
of the Maori populace, through “various civilising and elevating influences, which the 
government and the settlers, in their respective spheres, have brought to bear upon them.”54 But 
not all of his colleagues or fellow colonizers expressed such optimism. Governor George Grey

52 Wanhalla, “Interracial Sexual Violence in 1860s New Zealand”; “Supreme Court,” Wellington Independent, June 6, 1862, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=W118620606.2.4&srpos=3&. Even as late as 1862 reports on 
the Supreme Court sittings noted that a Maori community debated for two days whether they 
would turn accused perpetrators over to the police to be tried in the English court of law.
53 “New Zealand Spectator, and Cook’s Straight Guardian. Saturday, April 6, 1850,” New Zealand Spectator and Cook’s Strait Guardian, April 6, 1850, 
http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=NZSCSG18500406.2.3&srpos=5&. In 1850 one editorial 
postulated that encouraging the Maori to engage in cultivation would benefit the colony in two 
primary ways: first, by adding to its wealth by increasing the production of agricultural goods; 
and second, by keeping them too busy to engage in skirmishes with the voraciously expanding 
European colonial class. For comparison, see: Sarah Carter, “Two Acres and a Cow: ‘Peasant’ 
54 “The New-Zealander,” The New Zealander, August 16, 1851, 
http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=NZ18510816.2.6&srpos=1&.
laid out his plan of reducing conflicts between colonizers – who were rapidly encroaching on Maori lands – and resistant, armed Maori tribes in “The New Zealand Constitution Act” (1852).55 As he explained in the dispatch:

It was necessary that active measures should…be taken, without delay, for the amalgamation of the two races— that the confidence of the natives should be won—that they should be inspired with a taste for the comforts and conveniences of civilized life—that they should be led to abandon their old habits—that the chiefs should be induced to renounce their right of declaring peace and war, and that the whole of the native race should be led to abandon their barbarous modes of deciding disputes and administering justice, and should be induced for the future to resort to our Courts for the adjustment of their differences and the punishment of their offenders.56

Here, Grey illustrated his aim to convince Maori populations of the benefits of the English legal system as a means of breaking down their resistance to colonial governance. In 1858, an article in the Daily Southern Cross printed a speech of a government official that elaborated on the topic at length and stressed the import of Maori confidence in the court as a way to encourage them to make use of it.57 Such efforts on the part of the colonial government to cajole Maori tribes into accepting British justice influenced understandings of race and gender in colonial New Zealand, and set the stage for the trials of the 1860s.58

55 Governor George Grey was governor of New Zealand from 1845-1853, and again in 1861.
58 Notably, the page following the Wellington Independent report on the trial of two Maori men (discussed below) expounds on the desire to avoid “plunging the colony into a war which must last for many years and ruin all the Northern Island Provinces,” as gold speculation in the North had caused ongoing clashes between the Maori and Pakeha populations. “Summary,” Wellington
In lieu of racial likeness, officials bartered on the shared ties of masculinity, which impacted Maori men who faced charges in British colonial courtrooms throughout the 1860s. For example, when Makaora and Waiata faced the Supreme Court in 1862, Justice Johnston noted that their presence was a testament “to the feeling prevalent among their chiefs that they would get as large a measure of justice from the Queen’s Court, than they would from any runanga [traditional assembly] or court of their own.”

He took obvious pains to ensure they were served with proper justice. When the men were found guilty of rape, Johnston took their trial as an opportunity to paternalistically inform them that in Europe the crime of rape was generally considered “one of the gravest that can be committed” and, until only just previously, punishable by death. For all the gravity in Johnston’s speech he sentenced them to only two years of hard labour. Here, as elsewhere, juridical denunciations of rape lay almost solely on the level of rhetoric, while lenient sentencing patterns spoke of another, hidden, narrative of commitment to gender power.

Outcomes like this were characteristic of trials that involved Maori perpetrators in the 1860s. Also in 1862, Wirihana Mohara, a Maori man, was charged with assault with intent to

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59 “Supreme Court,” Wellington Independent, June 6, 1862, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=WI18620606.2.6&srpos=1&.


61 Ibid.

62 Ibid.
commit rape on thirteen-year-old Annabella Lind, a white colonist. She testified that while she walked on a road ahead of her father, Mohara attacked her, tried to remove her clothing, and fled when her father approached the scene.\textsuperscript{63} Mohara evaded arrest for quite some time, so he was not tried in the Supreme Court until 1864. Despite his long-evasion from justice and the clear sexual implications of his attack on Lind, the jury found him guilty of common assault rather than assault with intent and the judge charged him with six months of hard labour.\textsuperscript{64} Perhaps an indicator of the powerful protective forces that allowed Mohara to evade his charges in the colonial court for so long, the judge handed down only minimal punishment.

This pattern of leniency also held true in a case where Maori men attacked a Maori woman, although to a lesser degree. In 1865 Tauri, a Maori woman who lived with a white man named James Bradshaw out of wedlock, charged three Maori men with raping her on the side of the road.\textsuperscript{65} Restrained and taken some distance away by one of the assailants, Bradshaw witnessed Tauri’s struggle, as did another traveller. This traveller came upon the group after the attack and testified in court that Tauri’s “clothes were torn and disordered, and her face covered with dirt and perspiration.”\textsuperscript{66} Even in light of these witness accounts, the defence argued that that Tauri “was a consenting party.”\textsuperscript{67} Two of the three men were found guilty of rape, but handed “comparatively light” sentences of four years penal servitude.\textsuperscript{68} Cases like these evidence a

\begin{footnotesize}
\textsuperscript{63} “Supreme Court,” \textit{Wellington Independent}, June 9, 1864, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=WI18640609.2.15&srpos=1&.
\textsuperscript{64} Ibid.
\textsuperscript{65} Individuals with Maori-language names are usually referred to in the newspapers with just a single moniker. “Criminal Sessions,” \textit{Hawke’s Bay Herald}, February 4, 1865, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=HBH18650204.2.3&srpos=1&.
\textsuperscript{66} Ibid.
\textsuperscript{67} Ibid.
\textsuperscript{68} Ibid.
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certain similarity between interracial cases involving both white and Maori perpetrators that foraged a bond of masculine power at the expense of both white and Maori women.

Such leniency notwithstanding, it does appear as though judges and newspaper editors often disagreed on how cases involving Maori perpetrators should be handled. In 1865 the *Daily Southern Cross* decried that “murder, cannibalism, rape, robbery, and rapine go unpunished” in the colony, and accused colonial officials of weakness in enforcing the law “for fear of offending the natives.”69 To be sure, a fear of provoking Maori resistance appeared to have an impact on the proceedings against Maori men whose cases were tried through the Supreme Court. Further, judges legitimated doling out deliberately light sentences to Maori men based on the rationale that they did not share European cultural aversion to forced sexual contact. Jurists, presuming confusion on the part of Maori men regarding white sexual mores, expressed compassion for the perpetrators, even when victims were white and married. Taken together, the details of the available interracial sexual assault cases reveal broad official colonial commitments to gaining legitimacy in the eyes of the nation’s male population and a parallel fear of inciting Maori ire, which played out to the overwhelming detriment of women’s bodily autonomy.

Cases of white men assaulting Maori women offer further insight on the social logic informing juridical treatments of rape. Indeed, official British commitments to amicable male relations across racial boundaries offer inroads to the hidden narratives informing assumptions of culpability. William Hughes, a European accused of attempting to rape a Maori woman, appeared in the Supreme Court in 1862 on the same day as Makaora and Waiata. Justice Johnston, the judge for the case, informed the Maori perpetrators that he was much more lenient

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with them than with the Pakeha man tried earlier. Yet this was not strictly so. Mary Ann Webb’s case against Hughes appeared cut and dry: strangled, bleeding, with torn clothing, and clearly distraught, Webb informed a police officer and another passerby immediately after her attack of what had occurred. With these, she fulfilled the usual obligations demanded by the British colonial court of a rape victim, even leaving scratch marks on her perpetrator as proof of her resistance. Regardless, the prosecution implicated that she had consumed alcohol and accepted money for the sexual exchange, calling on witnesses who testified of her “very bad character for chastity throughout the neighborhood [sic].” The jury found Hughes guilty of the charge, but the Judge sentenced him to only twelve months hard labour.

The leniency of the courts in Hughes’ case suggests that short sentences in rape cases cannot be so easily chalked up to the desire of English colonial officials to convince Maori tribes of the fairness of the Queen’s justice. As Wanhalla has argued, “the burden of proof was set much higher for Maori women, whose immorality was assumed in sexual assault cases brought before the courts.” Indeed, questions of Webb’s morality heavily undermined her testimony, even despite her distraught and dishevelled appearance when reporting the crime to the police. Further, the defence intimated that Hughes naturally presumed that Webb, by virtue of asking him for directions, could be considered sexually available. Once she struggled, Hughes’ representation claimed, the defendant gave up his task immediately. While Webb’s testimony attested to the contrary, defendants and their representatives frequently relied on the tactic of

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70 “Supreme Court,” Wellington Independent, June 6, 1862, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=WI18620606.2.4&srpos=2&.
71 Ibid.
72 Ibid.
73 Wanhalla, “Interracial Sexual Violence in 1860s New Zealand,” 79.
74 “Supreme Court,” Wellington Independent, June 6, 1862, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=WI18620606.2.4&srpos=2&.
undercutting a woman’s reliability through, at times unsubstantiated, allegations of sexual behaviour. Where short sentences for Maori men represented a commitment amongst colonial officials to protecting all male subjects under the law, regardless of race, this commitment did not extend to Maori women. This may also indicate why so few Maori women brought their charges to colonial authorities during the period.

Two important conclusions can be drawn from these nearly universal under-sentencing practices. First, when either white or Maori women accused white men of rape, individuals who were presumably aware of the English legal system and proponents of the European culture that verbally decried sexual coercion, it was rare for these men to receive a sentence anywhere near the maximum life sentence. Reciprocally, cases that involved a female Maori accuser usually corresponded with the shortest sentences, and a much wider system of white male violence to Maori women’s bodies undoubtedly took place outside of the British colonial justice system. Second, short sentences handed down to Maori men illustrate that Maori resistance to colonial rule pushed representatives of the British Empire to demonstrate a commitment to patriarchy that extended beyond racial boundaries. During the 1860s, amidst ongoing warfare and the struggle for power between the forces of the British Empire and successfully resistant Maori tribes, colonial officials looked to non-militarized means of pacifying Maori chiefs, which included convincing them of the benefits of colonial rule. In women’s everyday lives, both Pakeha and Maori, this arrangement subverted female rights to bodily autonomy and legal

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75 I will discuss age shortly, as it appears to have been an important factor in pushing a sentence closer to the maximum term of life imprisonment.
76 In five available and known cases of assault of Maori women in the 1860s the longest sentence was four years, the remainder did not exceed twelve months.
77 I am borrowing here from Judith Bennett’s discussion about the consistency of women’s marginalization within patriarchy’s norms, or the “patriarchal equilibrium.” See: Judith M. Bennett, History Matters: Patriarchy and the Challenge of Feminism (Philadelphia: University of Pennsylvania Press, 2006).
redress in the interest of bolstering masculine power and community. The cultural logic to this ultimately benefited a larger white, colonial structure of patriarchy, but – at least in these instances – allowed Maori men limited access to a system of male privilege.

The Limits of White Male Access to White Women’s Bodies

Identification as Pakeha in New Zealand did not necessarily protect women from the trial of personality in the Supreme Court, but whiteness did impact the implications and treatment of rape by British colonial courts. On Tuesday, September 1, 1846, Justice Chapman oversaw the trials of two cases of sexual coercion in the Supreme Court. In the first, white colonist Edward Steep was indicted for the assault of Frances Phelan, a white married woman. Charged for assault with intent to “ravish” and common assault, he was found guilty of the former charge and sentenced to twelve months imprisonment with hard labour. 78 The second case involved an older, white, widowed woman, Ann Cording, who charged Henry Hodges, a white soldier for the British army, with rape. 79 Before the jury handed down its verdict, the Judge reminded the court that the death penalty, which had formerly been the punishment for the crime of rape, “had within the last few years been changed to transportation for life” as a way of removing “the reluctance which often existed in finding a bill when the punishment affected the life of a fellow creature.” 80 The jury found Hodges guilty of rape and he received a sentence of life imprisonment.

79 Ibid.
80 “Supreme Court Sittings,” New Zealand Spectator and Cook’s Straight Guardian, September 2, 1846, http://paperspast.natlib.govt.nz/cgi-
Chapman believed these to be the first prosecuted cases of sexual assault in the New Zealand colony by British colonials under English law, although colonial newspapers reported on rape as early as 1842. Nevertheless, they evince some of the particular factors that informed how grave the jury and public considered the offence of rape, and how the English colonial court defined it. In addition to race, legal representatives engaged a plethora of other mitigating factors to demonstrate either the credibility or falsity of a rape accusation. As will become clear, details like the socioeconomic or marital status, age, alcohol consumption, and reputation of the female accuser; evidence of a pre-existing relationship between the prosecutor and accused; and location of the alleged crime all influenced trials and sentences of white heterosexual sexual violence in mid-nineteenth century New Zealand.

The Cording and Phelan cases also reinforce the important distinction British colonial judges and juries made in the period, between “rape” and “assault” or “assault with intent.” Significantly, even white women had to prove that penetration was not consensual by providing markers of their resistance and ensuing distress. It is unclear, as newspapers never reprinted testimonies of the moment of attack, if the crime of rape also depended on male ejaculate as proof. Many of the cases I examine here indicate that medical examination “proved” or “verified” the assault, although what exactly this means is vague as newspapers habitually censored the testimonies they deemed “unfit for publication.” The sentences of the two accused

81 There are few examples that indicate how the Maori handled rape prior to European contact in English language colonial newspapers.
82 This recurs frequently in newspaper reports on rape cases. One such instance among the many: “Supreme Court,” Wellington Independent, December 7, 1865,
rapists in the Supreme Court on September 1, 1846 point to a trend, which lasted through the Wars of the 1860s, of making a heavy distinction between a “minor” assault of bodily harm, and the more serious offence of rape if the rapist succeeded in his intent to penetrate the victim.

The importance of penetration is particularly clear in Phelan’s charge of attempted rape. The wife of a soldier, Phelan knew the prisoner socially and had spent the evening with him and a few other women in her home. After her guests had left, Steep returned and spent approximately half an hour forcibly trying “to take liberties” with Phelan, who testified that she screamed for help and struggled with her assailant. The *New Zealand Spectator and Cook’s Straight Guardian* printed Phelan’s statement in court:

> The prisoner’s intention was to get the better of me; I thought at the time he intended to violate my person; and I think he would if assistance had not arrived; I never gave prisoner liberties; he has been frequently at my house, he never took liberties with me; he knew my husband for several years previous: he visited me on account of such knowledge; the prisoner had been drinking but he was not intoxicated.  

Although the newspaper report omitted the questions put to Phelan during her testimony, her words hint at the line of questioning, which included how much alcohol she had consumed, the status of her relationship with her husband, the fact that she owed money to the accused, and how they arrived in the back room of the house in the course of the attack. When Phelan’s husband returned home and saw his wife “disordered in her appearance,” he went to find a constable to issue a warrant for the arrest of the assailant. 

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84 Ibid.
In comparison, Cording’s statement recounting the night of the June 23, 1846, when she was returning home from dropping off fish at the home of a man named Mr. Blathwayt, offers a counter example to Phelan’s case.\textsuperscript{85} Unwell and injured, Cording lost her way in the dark and was concerned about getting trapped in a swamp near the road. She stopped, hoping that “some of the police would be at the gaol and come by and put [her] on the road to Wellington.”\textsuperscript{86} When Hodges came upon her, she asked for directions. Cording then described how he pulled her down to the ground, said that “he would pay himself” for the trouble of directing her home, and threatened to kill her if she yelled out.\textsuperscript{87} A story run by a newspaper noted that a “witness proved the commission of the offence,” which indicates that a medical professional likely examined her vagina for signs of violence since no witnesses were present at the time of the attack.\textsuperscript{88} Although her exact age is not stated, Cording refers to herself as injured, frail, and unwell – so much so that she did not remain conscious while Hodges raped her – and as explicitly “old.”\textsuperscript{89} Her sobriety, swift reporting of the assault, noted distress, and advanced age seemed to satisfy the jury of her sincerity.\textsuperscript{90}

\textsuperscript{85} Ibid. His relationship to Cording is unclear.
\textsuperscript{86} Ibid.
\textsuperscript{87} Ibid.
\textsuperscript{88} “Westland Supreme Court,” \textit{West Coast Times}, May 13, 1869, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=WCT18690513.2.10&srpos=18&. Doctors were occasionally called to offer testimony on the issue of penetration, and this is one such example.
\textsuperscript{89} William Watt, who testified as a witness in court, was in the militia and was on sentry duty with Hodges on the night of the attack. He noted that Hodges went in response to Cording’s calls, was gone for about half an hour, and upon returning described her as “some old lady” who he put on the road to Wellington. “Supreme Court Sittings. Tuesday, September 1, 1846. Before Mr. Justice Chapman,” \textit{New Zealand Spectator and Cook’s Straight Guardian}, September 5, 1846, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=NZSCSG18460905.2.8&srpos=1&.
\textsuperscript{90} Ibid.
The parallels between these two cases provide some important indications of what kind of rape scenarios were most widely comprehensible in colonial New Zealand. While both men were convicted, a number of important differences shaped their respective punishments and the environment of scepticism in the courtroom. First, likely because she proved forced vaginal penetration, Cording’s assailant received a much harsher sentence of life imprisonment. Steep, on the other hand, received a mere twelve months for his attempt. While both women struggled with attackers who inflicted physical and emotional harm, the singular question of penetration downgraded one sentence but not the other. An important technicality, inability to prove penetration often had the impact of reducing the sentence of an assailant and further circumscribed women’s access to meaningful justice.

The age of both the accusing and accused parties also acted as a mitigating factor in New Zealand’s sexual assault trials. While Frances Phelan never explicitly stated her age during her testimony, the detail that she was newly married indicates her youth in comparison to the widowed, older Ann Cording. Reports in the English-language press reveal that Phelan endured a much more involved line of questioning on matters of chastity and habits, including alcohol consumption. The presence of alcohol in her home, alongside her familiarity with her assailant in her husband’s absence, indicates public concern over any expressions of female sexuality, intended or not. In cases similar to Phelan’s, the defence, juries, and judges frequently equated behaviour that did not fit with the imagined ideal of demure and chaste femininity with culpability in assault. A bold woman socializing outside of the protective embrace of her father or husband might, to their line of thinking, invite sexual advances that she should be faulted for. Cording walked alone in the dark and on a public road at the time of her assault, but did not endure the same concern over her culpability. A presumption that her sexuality and thus sex
appeal had expired with her advanced age seems to have cleansed her, in the eyes of the court, of responsibility in her attack.91

A case involving another elderly widow some time later offers further evidence that a woman’s potential sexuality played a defining role in New Zealand rape trials. In the trial of William Lucas and Thomas Jones in 1858, both of the assailants were soldiers who attacked the widowed Mary Ashton in her home.92 Each was charged with rape and burglary. Ashton, “raped” according to the nineteenth-century colonial definition of the crime by both men, was “upwards of 60 years of age” at the time of her attack.93 The judge spent two hours, declared the Taranaki Herald, summing up the case before releasing the jury to deliberate their verdict. After the jury declared the assailants guilty, he passed sentence:

    His honour dwelt upon the enormity of the crime of which they had been convicted which but a few years since would have sent them to the scaffold. That penalty had been mercifully abated, but the safety of society demanded exemplary punishment. The sentence of the Court was penal servitude for 15 years.94

The fifteen-year sentence was the third longest sentence for rape or assault with intent in the cases examined here, topped only by the life sentences of Henry Hodges and a serial offender by the name of Thomas Gorman. Although only two reported cases in this period involved women who were definitively elderly, the fact that both of the perpetrators were handed much longer sentences than nearly any others in this period has important implications. Namely, the rape of women whose sexuality was unfathomable to judges and juries garnered the long sentences that judges frequently threatened, but rarely gave. The harsh treatment of men who sexually attacked

91 Ibid.
92 “Supreme Court,” Taranaki Herald, December 25, 1858, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=TH18581225.2.9&srpos=1&.
93 Ibid. It was later stated that her age was seventy-four.
94 “Supreme Court,” Taranaki Herald, January 1, 1859, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=TH18590101.2.18&srpos=1&. (Emphasis mine.)
elderly women reveals a hidden narrative that rendered logical the contradiction between colonial rhetorical condemnation of rape and juridical leniency in court.

But at the other end of the spectrum, girls below the age of consent were not obviated from insinuations of their sexual misconduct by the defence. When eight-year-old Clara Jean Croft took the stand in a case against William Clout in 1865, being well below the age of consent did not protect her from intense questioning in court. The defence attorney questioned her as to why she delayed reporting the crime, which was corroborated by a medical examination, and questioned the validity of her claims of resistance. In fact, his closing remarks directly implicated her in the attack by fourteen-year-old Clout: “the girl was a consenting party to the assault; …she did not resist, nor cry out, nor even inform her parents when she got home of what had been done to her, and …altogether her evidence was unworthy of credence.” Croft, reportedly distraught on the stand, said that she did not tell of the assault as she thought that her mother would punish her. Her apparent shame and fear over the incident, even before she was accused of consenting to the attack, speak to broader cultural traditions that placed women and girls in positions of responsibility with regards to chastity and cleansed men and boys from responsibility for their sexual voracity. Indeed, the charge of rape was dropped when Clout’s mother proved that he was not yet aged fourteen at the time of the assault, and “according to the law of England…no male

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95 “Supreme Court,” Wellington Independent, December 7, 1865, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=W118651207.2.12&srpos=1&; This is despite clear notation that British law did not require determinations of culpability in girls below the age of ten, as they were “deemed incapable of legal consent – consent in such a case [did] not obviate criminality.” “Supreme Court, Wellington,” New Zealand Gazette and Wellington Spectator, September 11, 1844, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=NZGWS18440911.2.4.2&srpos=1&.

under 14 years of age could be found guilty of rape.\textsuperscript{97} He was charged instead with common assault. Bemoaning the lack of proper reformatories for “a boy of such tender years,” the Judge expressed his distaste with putting Clout “among a crowd of criminals,” and deferred judgement.\textsuperscript{98}

In cases where the female accuser was within the age of consent, juries often looked to the reputations of both the accuser and the accused to ascertain guilt. The Judge’s sympathy for Clout’s youthful error and hesitance to commit to a punishment indicates the ease with which compassion could extend to an assailant.\textsuperscript{99} In more standard cases where both parties were considered adults, a woman’s reputation could sway a jury to or from a guilty verdict, just as the perceived social role of the perpetrator could convince them of his innocence. In the 1867 case of Robert Austin and Edmund Austin, a witness testified that they observed the plaintiff, Ann White Smale, intoxicated in public, which played a defining role in the outcome of the trial. Further, Mary Ann Griffiths testified that she witnessed Smale with her arms around the neck of Robert Austin, acting “very indecently.”\textsuperscript{100} Other neighbours attested that they heard no screams that would indicate that sexual contact was non-consensual. Following this, Robert Austin’s representative addressed the court: “in an open house on an open street – was it possible that any man in his senses would have selected such a scene as that for debauching or doing injury to a

\textsuperscript{97} Ibid. This is a clear double standard, which merits emphasis: a boy under the age of fourteen couldn’t even be implicated as a perpetrator in a sexual assault, yet despite the laws of consent supposedly designed to protect young females, the defence mobilized implications of eight-year-old Croft’s consent to sex to negate the charge of sexual assault.

\textsuperscript{98} Ibid. It is not completely clear what Clout’s punishment was in the end, but the judge suggested that it would be best if he were simply released into the care of an adult.

\textsuperscript{99} Ibid.

\textsuperscript{100} “Supreme Court – Criminal Sittings,” \textit{Wellington Independent}, December 12, 1867, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=WI18671212.2.11&srpos=1&.
woman?” In his view, “things of this kind were always done in secret.”101 Between their assertions of the presence of alcohol, implications of physical affection, and without hearing any verbal cries for help, witnesses in the case severely undermined Smale’s credibility. In light of this, the defence argued, the jury “must consider the woman’s character.”102 It seems that the jury did consider her character, and their acquittal of the prisoners served to reflect the import of a socially comprehensible scenario to the general believability of a woman’s rape charge.

The general scepticism reported in the courtroom during Smale’s testimony also belied the influence that her public behaviour had on wider perceptions of her sexual availability. Her neighbours testified to her use of alcohol and her uninhibited interaction with non-familial men, at times implying that she may have engaged in prostitution to subsist.103 The fact that Smale was married would not clear her name, nor would the Judge’s urgings that the jury consider the credibility of her statements: with little deliberation, the jury returned a verdict of “not guilty.”104 Unlike many other crimes, character assassinations such as this carried particular weight in sexual assault cases, as they generally relied on the word of the accusing woman against the word of the accused man. As the representation of the defence alluded, witnesses to the actual moment of penetration – the most important moment in nineteenth-century New Zealand rape trials – were a rarity.105

101 Robert Austin’s representative followed this with the postulation that, since it is highly unlikely that “men would engage in such practices in each other’s presence,” Smale had must have accused them for other purposes. The wording here should be noted: a man “in his senses” is intelligent enough to be subtle and private in his sexual coercion, thereby ensuring that any resulting allegations from his victims remain difficult to prove. Ibid.
102 Ibid.
103 Ibid.
104 Ibid.
105 In some circumstances, a victim’s testimony could even be prohibited in court. For example, a judge barred Ann Aisher, aged five, from testifying, on the grounds that “she had been taught something about her Father in Heaven, but did not know who he was.” “Criminal Sessions,”
Perhaps capitalizing on this gap in evidence, representatives for the defence reportedly took advantage of the importance placed on an accusing party’s reputation in rape trials. In the case of Smale, the freedom with which she socialized with her neighbours indicated a particular socioeconomic status, which resulted in the courtroom’s focus on her sexuality.\textsuperscript{106} Prostitutes, individuals who represented a particularly feared articulation of working-class female sexuality, apparently charged men with rape on occasion and had their cases brought to trial.\textsuperscript{107} However, the fact that Justice Arney had to admonish the jury in 1865 that whether or not the accuser was “one of the unhappy persons who obtained their living in the middle of the night, the law would still protect her,” indicates the kind of assumption of guilt such a case may have received by the viewing public and the jury.\textsuperscript{108}

Conversely, the judge, the jury, and court reporters expressed considerably more concern over the welfare of Margery M’Donnell, who accused Patrick O’Rourke of rape in 1869. Shocked by the details of the attack, M’Donnell’s attorney explained in court that it was “a peculiar case, of a kind not often met with,” and Justice Johnston described it to the jury as “peculiarly painful, inasmuch as it was upon a married woman.”\textsuperscript{109} Married to Cumberland M’Donnell, the owner of Bull’s Hotel in Rangitikei, Margery M’Donnell was asleep upstairs in her room with her children while her husband attended a meeting downstairs in the hotel. She

\textit{Hawke’s Bay Herald}, February 4, 1865, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=HBH18650204.2.3&srpos=2&.
\textsuperscript{107} To my knowledge, none of the cases in the sample that I examined involved a woman proven to be working as a prostitute.
\textsuperscript{108} “Supreme Court,” \textit{New Zealand Herald}, December 2, 1865, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=NZH18651202.2.16&srpos=1&.
\textsuperscript{109} “Supreme Court,” \textit{Wellington Independent}, June 3, 1869, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=WI18690603.2.22&srpos=1&.
awoke to find Patrick O’Rourke on top of her, putting enough pressure on her throat and chest so as to render her unable to yell for help. She struggled, managed to escape, and alerted her husband who, with the help of some of the male guests at the hotel, apprehended O’Rourke.

Upon hearing the evidence, Johnston “characterised the act of the prisoner as a ‘gross, immoral, violent, and abominable fraud.’” In fact, the judge was so appalled by the case that he directly advised the jury to find the accused guilty of rape.\(^{110}\)

The support for M’Donnell in the context of her trial demonstrates a circumstance where rape became socially legible. Judges, juries, prosecutors, and the media understood this scenario as rape: an attack on a married woman, in the confines of her marital bed, her husband merely a floor below, and in the presence of her sleeping children. The most prominent image of the crime in the course of the case begins with M’Donnell as a picture of maternity, sleeping safely in the domain of her husband, and ends when O’Rourke shatters this image of ideal settler morality by transgressing the property and progeny of the hotel’s proprietor, Mr. M’Donnell. The near-universal disgust expressed in the press’ accounts of this trial help to provide a distinction between what many viewed to be misunderstanding or miscommunication, and out-and-out sexual attack. In this case, withstanding the circumstances and location of the attack, it seemed that even the representative for the defence could not claim that M’Donnell had enticed such sexual advances.

Yet despite his vocal expression of scandal over the “painful” and “disgusting” case and admonishing the prisoner that he would be liable to a term of penal servitude between three years and life imprisonment, the Judge passed a sentence of only four years. Regardless of the “shocking” nature of the case, of “having a man about a house, a respectable married woman in

\(^{110}\) Ibid.
her bed and her husband below stairs, and such a crime committed in such a bold manner,” the punishment did not approach the maximum sentence of life imprisonment. As noted, sentences for sexual assault rarely did: of the ninety cases examined here, where the verdict was known, only ten accused received sentences of more than six years and only two were handed life imprisonment. In spite of frequent expressions of disgust by judges and threats to punish criminals, most rape cases contained some mitigating factor that helped these same judges to rationalize short sentences.

Rape and Social Mischief

When Justice Chapman presided over the first Supreme Court rape trial in New Zealand in 1844, he quoted an oft-repeated phrase regarding the ease of accusing another party of rape, and the difficulty that an accused faced when proving his innocence.111 The full text, credited to the writings of Sir Matthew Hale, a seventeenth century legal theorist, and repeated often in courtrooms, reads:

It is true rape is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered, that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho [sic] never so innocent.112

Contained in a conclusion in a section of his work devoted to the requirements of proof to convict rape, these words were often taken out of context. Along with “unfit for publication,” iterations of “easy to charge, hard to disprove,” crop up insidiously in the speeches of judges to juries, and therefore in colonial news reports. While quoting Hale’s words out of context, judges

also applied the concept out of context, hesitating to pass down lengthy sentences except in exceptional circumstances.

The contradiction between judges’ assessment of rape as a lamentable crime and leniency in sentencing belies the underlying anxiety that tempered reactions to rape charges in colonial Aotearoa. As Chapman further identified in his speech in 1844, a particular division between injury inflicted upon a woman and “consequent mischief done to society” split the implications of rape in two directions.113 Social mischief generally manifested as the appearance of both weakness in the efficacy of British colonial rule and failure of British colonial law. As a result, maintaining the appearance of social calm, or, preventing cries of social mischief, seems to have taken precedence over prosecuting sexually motivated attacks upon women throughout the period in question.

In the case of Wirihana Mohara, for example, the perils of social mischief were explicitly noted in the press. As you may recall, when white, fifteen-year-old, Annabella Lind had gotten ahead of her father on the road back to their home, Mohara, a Maori man, attacked her.114 The approach of Lind’s father caused Mohara to flee before he accomplished “his base purpose,” but that was not the end of the scandal.115 Reporters expressed explicit outrage when a Maori policeman was unable to apprehend the culprit, “stating that, from the temper displayed by the natives, he did not dare to.”116 In fact, Mohara’s Maori community was so successful in

115 Ibid.
protecting him that he escaped justice for quite some time.\textsuperscript{117} When colonial officials attempted to forcefully wrest the accused from these protective forces, the clash became violent.\textsuperscript{118}

At this point in the case, the inability of European officials to apprehend Mohara became a significant point of contention in English-language newspapers. One reporter lauded it as “so utterly flagitious and daring, that abhorrence of the attempted deed is swallowed up in amazement at the daring of the perpetrator.”\textsuperscript{119} To demonstrate colonial aptitude in managing the populations of New Zealand, officials exerted every effort to try Mohara under English law.\textsuperscript{120} But when, at long last, the perpetrator was tried in the Supreme Court court, the jury did not find him guilty of assault with intent to rape. Instead, Mohara was found guilty of the much more menial crime of common assault. It is unclear how the judge eventually punished him, although some news reports suggest that he was required to pay a monetary fine.\textsuperscript{121} Indeed, the \textit{New Zealand Herald} mused that the “Government dared not – DARED NOT – run the risk of setting the whole of the North of Auckland in a blaze and producing rapine, and bloodshed, and misery…for the sake of punishing this man.”\textsuperscript{122} While forcing Mohara into a trial represented a symbolic victory for the cause of British Empire-building over the resistant Maori, it was a symbolic victory alone.

\begin{thebibliography}{99}
\bibitem{117} “Local Intelligence,” \textit{Wellington Independent}, April 14, 1864, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=W118640414.2.7&srpos=1&. Mohara’s trial did not take place until two years after the first report of the crime.
\bibitem{118} Ibid.
\bibitem{120} “General Assembly of New Zealand,” \textit{New Zealand Herald}, September 1, 1865, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=NZH18650901.2.18&srpos=1&.
\bibitem{121} Ibid.
\bibitem{122} Ibid., (capitals in original).
\end{thebibliography}
Before his trial, Mohara’s escape from justice acted as a lynchpin upon which many newspaper reporters hung their grievances of the evasion of Maori men from English law. Lind, within the age of consent and alone on a remote road, may have just as easily been vilified by the press on the grounds of her potential sexuality and for putting herself into a position of vulnerability. But the social symbolism of a Maori male boldly attacking a young white woman in broad daylight – and so sure of his escape – seemed to irk reporters to no end.123 Wrestling him from the protection of the Maori community to try his case under the English justice system proved to be a more difficult task, and a more distinct power struggle, than many public commentators had anticipated.124 Yet despite formal victory for the colonial legal system, Mohara did escape full justice for the sexual assault of Lind. The court, still concerned about further inflaming Maori resistance efforts, stayed true to its campaign of leniency toward Maori perpetrators of crime during his trial.125 Broadly, the jury discredited Lind’s testimony by finding the prisoner not guilty of the crime of which she had accused him.

Some time later, in 1871, reporters expressed similar outrage when the Resident Magistrate of Invercargill sent two “half-caste boys,” Albert Isaiah and William Wakefield, to an Industrial School as punishment for a “criminal assault on a little girl.”126 Their public cries for proper justice resulted in extensive reporting on the topic that extended far beyond local newspapers, and eventually into the purview of the colony’s governor, who in turn reversed the

124 Ibid.
125 “General Assembly of New Zealand,” New Zealand Herald, September 1, 1865, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=NZH18650901.2.18&srpos=1&.
magistrate’s decision and issued warrants for the boys’ arrests. Justice Chapman presided over resulting the Supreme Court trial. Because Wakefield was under the age of fourteen, the jury necessarily acquitted him on the charge of sexual assault, but found him guilty of common assault. Chapman issued a sentence of six months of imprisonment without hard labour. Isaiah, over the age of fourteen at the time of the assault, received a guilty verdict from the jury but it “recommended him to mercy on account of his youth,” and Chapman sentenced him two years hard labour.

Although the sentencing patterns here are not an exception to the general trend of sentences for sexual assault in colonial Aotearoa, it remains notable that public outcry stimulated a trial on an already-closed case. The excitement of “considerable indignation,” expressed in the pages of colonial newspapers, brought on the involvement of the highest sanctum of British colonial officials: the Governor. To this end, the interest of the colony’s governor and the eventual Supreme Court trial suggests a commitment of British colonial officials to demonstrating their management capabilities. In cases where particular violence, youth, or advanced age stimulated public disgust and threatened the stability of order, the execution of a trial, almost alone, seems to have reassured worried colonial settlers of the status quo.

The response of British colonial officials when faced with public cries of impunity intimates the importance that they placed on reducing perceptions of “social mischief.” In light

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129 Ibid. Isaiah’s labour sentence had the stipulation attached that he would not labour in the roads.
130 The Governor at this time was Sir George Bowen, who served from 1868-1873.
of the ease with which reporters decried social mischief - and by proxy the failure in British law and order - not to mention the tendency of rape trials to breed such claims of mischief, it is hardly surprising that some took it upon themselves limit women’s access to justice. As the Lake Wakatip Mail reported in 1871, one member of the Christchurch General Assembly took this a step further, and promised to introduce a bill that stipulated punishment for women found guilty of falsifying charges of rape or indecent assault.\textsuperscript{131} It is clear that the author of the bill and, no doubt, many jurists, reporters, and members of the public, viewed accusations of sexual assault, above and beyond the perpetration of such assaults, as a significant problem. Considering the volume of mitigating factors employed in colonial rape trials to ascertain guilt and the lengths to which a woman had to defend her reputation and innocence as a prosecutor a case, such a bill would have, presumably, further discouraged rape charges. A threat of legal retribution against women who accused men of rape, if the courts deemed their rape charges as false, could do nothing other than cement the boundaries between women, both Maori and white, and avenues of socially sanctioned justice.

\textsuperscript{131} “Untitled.” Lake Wakatip Mail, May 10, 1871, http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search&d=LWM18710510.2.7&srpos=11&. Christchurch is located on New Zealand’s South Island.
Conclusion

By narrowly defining rape, shrouding women’s testimonies, questioning women’s sexual morality, and focusing on the ills of social mischief caused by rape trials, colonial judges and reporters circumscribed women’s routes to justice. More often than not, women’s total absolution from blame became impossible, as the veracity of their testimonies were unravelled in antagonistic courtroom environments and assailants very rarely received harsh punishments. These factors were particularly exaggerated in cases involving Maori women. The women who did pursue legal redress, such as it was, were in many ways exceptional, and I hazard that only in rare events did they get what they wanted from the ordeal. Beyond the difficult-to-access impact of emotional harm, their reputations were always on the line, and a rape charge probably followed each of them, in different ways, for the rest of their lives.

Women navigated these difficulties in a variety of ways. Some likely chose to hide the assault to save face, rescue a reputation, or avoid the ordeal of vying for legitimacy in the eyes of hostile juries, judges, reporters, neighbours, and family members. These women’s voices are not part of the historical record; they are, as Alain Corbin frames it, amongst the “myriads of the disappeared.”¹³² Those women who reported sexual assault are clearer in the historical record, and provide some indicators of the ways that rape operated in the colonial sphere. For example, women may have demanded justice while hiding that forced penetration, “rape” according to colonial definitions, had occurred. As Justice Johnston said in the New Zealand Supreme Court in 1862, “in point of immorality… [attempted rape] may be as bad as [rape] in the eye of the law,” but it should not be considered “nearly so grave, inasmuch as the injury inflicted upon the woman and the consequent mischief done to society is not by any means so serious as when the

¹³² Alain Corbin, *The Life of an Unknown*, xiii.
full offence is perpetrated.” Women must have been distinctly aware of these important social and legal implications between rape and attempted rape – particularly considering that the space between these assaults consistently proved a significant juridical distinction, as did the separation between attempted rape and “common” assault. It is therefore possible, if not probable, that some women charged male attackers with attempt where penetration did, indeed, occur.

It follows that an attempted rape provided a woman with a chance at moral and social forgiveness, or even occasional absolution. A rape, even when proven to the satisfaction of a judge and jury, did not necessarily offer the same. Further, the implication inherent into an attempt of assault lay in the ability of the woman to properly fight back and prevent penile penetration. If she struggled violently, yelled for help, and ultimately proved unable to protect her body from the crime, she had failed. The contours of women’s failures were multifaceted in the purview of judges, juries, neighbours, witnesses, and reporters. Perhaps the attacked woman had unwittingly walked into a vulnerable social situation, a situation she should have been cautious enough to avoid. Alternatively, they thought, it was feasible that she had invited the attack by virtue of her insufficiently subdued sexuality or that her Maori blood made her particularly immoral and open to sexual advances. To them, it was possible that her previous behaviour of living with men out of wedlock or consumption of alcohol indicated her poor moral fibre and thus rendered her deserving of the harm. Yet, in spite of the daunting obstacles between women and effective prosecution, the privileging of male assessments of morality and blame, and a general ambivalence in legal and social definitions of what constituted rape, many women still navigated the pathways to justice. Several did so convincing enough to garner the time and attention of colonial New Zealand’s Supreme Court.

While enough women pursued such justice to form a significant sample of cases, I still consider them an exceptional minority that represent a larger silent majority of sexually coerced women in colonial Aotearoa. I have used the examples of this minority to access the broader processes that made sexual violence an element of women’s everyday lived experiences – experiences riddled with shame, secrecy, and misplaced blame. Indeed, a general environment of concern and outrage over rape charges presided in the period between 1842 and 1872, at least amongst those who had access to the means of expressing their opinions. Yet beneath this general characterization of rape as a heinous crime rested a limited juridical commitment to prosecuting it. At times many seemed to find the possibility that a particular woman had been raped unbelievable, for combinations of reasons including race, age, location, marriage, and alcohol use. From my sample here, elderly white women were an even smaller number within this minority who could expect to have their charges broadly legitimated by long sentences.

Indeed, I have used the length of sentences for accused perpetrators of sexual violence as a means of approaching how colonial judges understood the severity of rape to individual women and to society at large. Examining these revealed a division between rhetoric and action. On the one hand, judges condemned rape hypothetically and encouraged their jurors to do the same, but rarely punished perpetrators to the full extent that the law allowed. On the other hand, juries seemed relatively willing to convict men of some assault charge – if not rape then assault with intent or common assault. Such details exhibit a general willingness of New Zealand’s white colonizers to convict their accused counterparts. But these conclusions must be drawn with some degree of caution, as the cases that could reach the Supreme Court were, by necessity, cases with a high degree of evidentiary support.
Numerous persons, from parents, husbands and community members, to police magistrates and local circuit courts – many of whose contributions to helping or hindering cases remain largely obscured in the record – heeded some women’s charges of rape enough to take them to the highest judicial powers. Evidently, some women were able to translate their experiences of sexual coercion into enough of a socially legible script to claim legal attention. While a lengthy sentence may not have been the ultimate form of “meaningful justice” to a female accuser, prosecution and conviction under British law was demonstrably important to many, from powerful officials to reporters. Examining how those men in positions of relative power explained, reacted to, and chose to punish rape in colonial New Zealand offers little toward reconstructing how women experienced this kind of violence. But the actions and reactions of white men spell out the logic that allowed them to walk, without contradiction, between enthusiastic verbal condemnations of such crimes as abhorrent, and a simultaneous acceptance of coercion as a natural expression of male sexual dominance over women.

This paradox informed the way that judges talked about and understood the idea of rape and how they encountered and reacted to it in the face of actual cases. I would further argue that the paradox emblematized the cultural logic of rape in Colonial New Zealand. But the Supreme Court cases dating from 1842 to 1872 also attest to the limits of power of men who transgressed certain sexual boundaries in particularly public or heinous ways. These boundaries rarely served the larger goal of protecting women’s bodily autonomy, but rather pushed men to exhibit a certain degree of self-control over their own sexual desires. After all, if numerous men violated the bounds of sexual control and engaged in the rape of women and girls, then the ensuing “social mischief” could threaten general confidence in the British colonial project.
Many decried rape as a horrendous crime of the uncivilized, both jurists and reporters alike, and raised alarms in protest when perpetrators (primarily Maori perpetrators) went unpunished. But overly strict punishment also had the potential to incite claims of “social mischief.” As a result, judges exhibited a certain reluctance to wield the full extent of their powers to punish rape perpetrators in the Supreme Court of colonial New Zealand. To do so may have forced them to acknowledge that women’s bodies should not be open to the whims of male desire, or that women themselves had little to do with instigating the sexual attacks. In fact, harsh punishments may have forced judges, juries, and the public to concede that male perpetrators alone were responsible for their actions.

Yet sexual coercion in New Zealand lay not solely in the enactment of bodily harm of a man against a woman, although I have sought to speak to this violence, but also in efforts to manipulate or silence the voices of women who named the harm done to them. The heavy-handed ways in which men in positions of power manipulated the bodily autonomy of female accusers hide in plain sight. In reality, the moments where news editors deemed the details of a woman’s testimony as “unfit for publication” are so frequent as to be almost banal. However, this moment of silencing sits at the core of the systemic and endemic structure of patriarchy manufactured in colonial contexts. Much can be gleaned about how men in positions of power over female rape accusers constructed intimate violence of this nature and set its mutable boundaries; little can be accessed about how women self-constructed these experiences.

The widespread silencing of women’s voices profoundly evinces a persistence of hegemonic male power. While reporters explicitly rationalized their omissions as protection of the delicate sensibilities of their readers, their choices served to isolate women from the power of shared experience, public acknowledgement of a larger social problem, and any chance at total
absolution from culpability. The general culture of silence and suppression of rape in early colonial New Zealand perpetuated a cycle of scepticism of women as victims, and encouraged perceptions of their natural vindictive dishonesty. These hidden narratives were not always explicit, but perpetually came to bear on Supreme Court rape or attempted rape trials in colonial New Zealand, and on constructions of women and their bodies at large. Here the cultural logic of rape lay in the uncertainty that it existed at all, except in rare circumstances. Instead, the logic follows, men had almost unlimited access to women’s bodies, and the power to manipulate the circumstances of force to implicate women as perpetrators of their own downfall. These deeply ingrained perceptions of gendered bodies in colonial spaces put sexual violence at the heart of processes of power and hierarchy, the details of which are certainly fit for publication.
Afterword: The Past in the Present

In this thesis, I have argued that New Zealand, one of the British Empire’s later colonial conquests, offers a useful window into how representatives of the British colonial project first set the groundwork for, then policed the boundaries of, race and gender-based power structures. The conquest of the two islands by the British colonial machine suggests continuities in the nature of colonial projects elsewhere. Indeed, I have approached this discussion of the region with an eye on other British Pacific colonies, including Canada, early America, and Australia. As a relatively small geographic area for the British to infiltrate and populate with white “settlers,” the occupation of New Zealand did not occur in isolation from the processes of conquest, and failed conquest, elsewhere. In taking on this project as a non-New Zealander, I have hoped to draw the space away from the periphery of international historical examinations of colonialism, and into the centre of a larger, interconnected process of British empire-building.

In a related way, I also have been interested in locating sexual coercion at the core of empire-building processes. Contradictory colonial rhetoric regarding the vulnerability of, usually white, women in frontier colonial spaces to the violence of unruly men, next to accusations of their culpability in the sexual attacks made against them, becomes comprehensible only when considered from inside the “logic” of the colonial process. Indeed, historical examinations of sexual assault offer particular insights into the varied vulnerabilities of women and the ways that they frequently contradict one another. Details as obvious as a woman’s skin colour, age, economic position, reputation, marital status, and – real or reported – alcohol consumption, and as obscure as the physical location of an attack, the number and nature of bruises inflicted on both parties, and the social position and complexion of the accused, impacted women’s reliability as victims. When and how a woman’s charge of sexual coercion was accepted by a
judge and jury as “true,” reveals much about embedded colonial power politics. The sheer volume of factors deemed relevant by New Zealand colonial courts in rape trials indicates the complex ways in which they were interpreted and judged.

While such conclusions point to what may seem to be startling contemporary parallels, feminists, historians, and feminist historians who have explored the historical dynamics of sexual coercion have been unable to agree on how to best explain and understand “rape.” Indeed, many discussions regarding rape in contemporary settings get caught up in constructions of dichotomies, which in many respects boil down to familiar men/women and good/evil binaries.134 These conversations often begin with Susan Brownmiller, who identified rape as a tool of gender power, or “a conscious process of intimidation by which all men keep all women in a state of fear.”135 Others, like Catherine Mackinnon more recently, oppose such an approach, worrying that “in the feminist whitewash, [rape] becomes just another instance of aggression by all men against all women all the time, rather that what it is, which is rape by certain men against certain women” and obscures the specifics of who did what to whom and why.136 Yet rape-as-power balanced against rape-as-individual-act, as Ann Cahill has pointed out, is ultimately dissatisfying and leaves the ways that both of these can ring true simultaneously largely unresolved.137

137 Cahill, Rethinking Rape, 4; For an example of work that acknowledges both of these narratives see: Constance Backhouse, Carnal Crimes: Sexual Assault Law in Canada, 1900-1975 (Toronto: The Osgoode Society for Canadian Legal History, 2008); For rape in everyday lives see: Linda G. Mills, Insult to Injury: Rethinking Our Responses to Intimate Abuse (Princeton: Princeton University Press, 2003), 23.
Perhaps indicative of how difficult it is to adequately define “rape,” or account for the lived experiences of individual women, historical examinations often reveal a similar problem. Indeed, many historians have focused on disproving the continuity thesis that Brownmiller offered in her 1975 publication of Against Our Will: Men, Women, and Rape. The use of Brownmiller’s work as a so-called “starting point” for historical studies of rape has cemented the binary construction of either a change-over-time approach or, as Brownmiller argued, the continuity of rape as a tool of patriarchy in differing times and spaces. However, neither change nor continuity histories are particularly capable of capturing the complex ways that the people in positions of power defined and redefined rape to suit their particular ends. Nor do they help when both change and continuity are detectable over time and geographical space.

One of my solutions here was to accept that both change and continuity are simultaneously possible. Judith Bennett’s “patriarchal equilibrium,” a theory she fashioned without specific reference to sexual coercion, is particularly useful to this end. I take this equilibrium as a way to understand the similarities in the cases that I have discussed to those cases discussed by others. And I have tried to understand much of what I have explored in colonial New Zealand from within a framework that includes the interesting, albeit deeply concerning, overlaps with contemporary conceptualizations of rape by the media, social organizations, individual commentators, and, of course, various international legal systems. Ultimately, the concept of

138 Other feminists had discussed the centrality of rape to the status quo of gender relations before Brownmiller’s work, but Against Our Will is important for the way it is remembered, and recalled, by feminists and historians alike.
139 Bennett, History Matters: Patriarchy and the Challenge of Feminism.
140 The merits of transnational legal comparisons are of particular interest withstanding that “From the earliest years, New Zealand legislators and draftsmen frequently drew ideas and assistance from the legislation of other British colonies or former colonies.” Spiller, Finn, and Boast, A New Zealand Legal History, 85; Mills, Insult to Injury, 33-49, also provides some contemporary examples of rhetoric that fails to address real-life scenarios, much as I have argued was so in colonial New Zealand.
patriarchal equilibrium, which I have tried to interrogate, provides a way to understand both continuity and change; what constitutes rape has been understood differently in varied times and spaces, but the work that this form of violence does to maintain the shifting boundaries of racialized patriarchy operates in an equilibrium.

Along with the concept of patriarchal equilibrium, I have moved flexibly between seeing individuality in rape cases and considering the larger structural processes at play with help from Judith Butler’s discussions of performativity and precarity.141 In colonial New Zealand, an assaulted woman carried the responsibility of rendering her experience legible within the overarching language of patriarchy if she expected legal acknowledgment of the crime.142 Indeed, sentencing for rape relied on an intersection of social, political, and – abstractly – structural acknowledgement of a coherent crime.143 By this I mean that, in colonial New Zealand, a woman had to map her social experience in a way that was not only acceptable (“proven”) but also comprehensible in the language of the dominant social/legal culture to have her charge of rape taken seriously.144 In my view, such mapping signals that rape is a particularly damaging and insidious form of violence, which has been, uniquely, only socially comprehensible under a set of specifically intersecting circumstances.145

141 Butler, “Performativity, Precarity and Sexual Politics,” i-xiii.
142 Ibid.
143 Ibid.
144 On the topic of proving rape, MacKinnon notes: “No other crime against humanity has ever, once other standards are met, been required to be proven nonconsensual,” pointing at the unique concern over the issue of consent that has long befuddled jurists in rape cases. MacKinnon, Are Women Human?, 243.
145 Butler, “Performativity, Precarity and Sexual Politics,” i-xiii.Using the United States as her foundation, Butler developed the theory that a state does not deem everyone deserving of protection, an indication of precarity, but their ability to translate their claims into the dominant language, or perform, bolsters their claim on those rights. This relationship between an individual’s social precarity and ability to perform is not only relevant as a component to the way
Butler and Bennett, then, helped me to navigate one of the biggest challenges of this project. I struggled to leave behind the baggage of either continuity or change theses, and to make this project about something other than rape as power, or rape as individualized experience. As a result, to the best of my ability, I put aside the present in my understanding of Aotearoa’s colonial past, but without losing sight of the political importance of making connections across spaces and time. In many ways, recognizing similarities as examples of patriarchal equilibrium facilitated the process. I have endeavoured, for the sake of the women at the heart of this exploration, to be as true to their social worlds as I could be and to make sense out of the structures that impacted their everyday lives. In attending to the available particulars of their individual experiences, I observed reverberations of the structural hostilities that they faced as such hostilities continue to function in the present.

Ultimately, I do believe that taking on a historical exploration of heterosexual sexual assault involves, even if only implicitly, addressing a wider international debate regarding both the definition of “rape” and its significance. Many of the questions that I applied to colonial New Zealand could have been asked in more contemporary settings. While working on this thesis, I felt a continuous discomfort with the resonance of the past in examples of sexual power in the present. In New Zealand in 2014, for example, Tania Rose Billingsley’s agreement to waive her right to name suppression and speak publically on the prosecutorial failures that followed her charge of sexual assault powerfully underscored the continued deficiencies of the justice system. Numerous parallel cases in the United States also pushed me to think carefully about the intersecting privileges of gender, race, and status. It gave me pause when Anna, a first-year

\[\text{146 Dubinsky, Improper Advances, 1. Dubinsky articulated similar sentiments in her introduction to Improper Advances in 1993, a further illustration of patriarchal equilibrium in the present.}\]
university student at Hobart and William Smith Colleges in central New York, allowed her first name to be printed in a 2014 *New York Times* cover story on her rape that detailed the failure of the colleges to bring her perpetrators to justice. Similarly, when the media broadcast, in error, the name of an assaulted high school student in Steubenville, Ohio, in 2012 and reporters expressed sympathy for her perpetrators, I could not help but draw comparisons. Even farther afield, I noted parallels in the media attention that turned on India, when a woman was raped by numerous perpetrators on a bus in New Delhi in 2012.

In all of these cases, and many others, assaulted women faced widespread scepticism, vilification, and the partial or total impunity of their attackers. In all, the violence extended far beyond the act or acts of rape, and to the conscious or unconscious shortcomings of reporters, representatives of the legal system, and members of the larger public – all shaped by a peculiarly modern, though none less powerful, hegemonic, patriarchal culture. Without a doubt, the prevalence of gendered violence in the present formed the backdrop to my examination of the past. The similarities that I discovered nodded at the persistence of particular iterations of power, and the lasting impacts of colonial constructions of culpability, sexual access, gender, race, and the law.
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