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New Zealand: An Antipodean Exception to Master and Servant Rules*

CANADIAN ACADEMICS Douglas Hay and Paul Craven have assembled a monumental work on the development and experience of master and servant law in *Masters, Servants, and Magistrates in Britain and the Empire, 1562–1955*. There is, however, a notable omission in its coverage, especially considering the sensibility of readers in the antipodes. While it documents and assesses the development, operation and demise of this law in England, the Canadian provinces, Britain's early North American colonies, the Caribbean, Britain's western, eastern and southern African colonies, British India, Hong Kong and Australia, the work offers only a few peripheral remarks about Britain's far distant but hardly negligible colony of New Zealand.[1] The likely reason for this omission is the almost complete absence of research, until very recently, on the subject in New Zealand.[2] This gap may be attributed to a perception that the law was not applied in New Zealand, particularly with regard to the matters of the law's greatest notoriety. These matters were the recovery and penal punishment of absconding servants, the criminalizing of work indiscipline and the unequal remedies applying to master and servant in relation to breaches of the provisions of the law.

New Zealand does have a place in the overall story of master and servant law, though it will be hardly surprising that this is as an exception. The law was applied in New Zealand. But, with some partial similarity to Nova Scotia and New Brunswick (which are considered in *Masters, Servants, and Magistrates*), the application was particular and limited. The New Zealand legislature did not enact any local master and servant law and recourse to the English law (in the sense of an available default) was rare and sporadic, particularly when compared to the incidence of master and servant prosecutions in New Zealand's neighbouring Australian colonies.[3] There are several reasons for this more temperate experience. In part, Hay and Craven indicate these in describing the reasons why the law was adopted so widely through the empire and why it was less frequently applied in Nova Scotia and New Brunswick. A further reason, not canvassed by Hay and Craven, is the special influence of Edward Gibbon Wakefield and his theory of systematic colonization on New Zealand.

Master and servant law arrived in New Zealand with the establishment of British sovereignty in 1840. Initially, the master and servant laws of New South Wales applied to New Zealand by virtue of its inclusion in an extended New South Wales colony.[4] The application proved to be only short-lived, however, and the English law became the applicable law in 1842. The change followed the establishment of New Zealand as a separate colony and a transitional period in which the governor and Legislative Council introduced New Zealand ordinances to substitute for a number of the New South Wales ordinances that

had been in force.[5] There is no available evidence of any attempt to establish a New Zealand master and servant law in this transitional period. Certainly none succeeded.[6]

The first of these master and servant laws, the 1828 New South Wales statute, sought 'the better regulation of Servants Laborers and Work People'. In cases of absence from service, refusal or neglect to work, and the return or quitting of work before completion, the statute provided for committal 'to the common gaol there to remain without bail or mainprize for any time not exceeding six calendar months or . . . to some house of correction there to remain and to be kept to hard labour for any time not exceeding three calendar months'. The statute also allowed for the forfeiture of wages due or owing.[7] As the term 'correction' implies, the purpose of hard labour was not merely to punish but to force a change in behaviour by the harshness of the penalty.[8] Of its other provisions, the statute provided for: a monetary penalty for those found employing runaway workers; the payment by workers of double the loss to their masters of property spoiled, destroyed or lost by them and the imprisonment of the workers for no less than one and no more than six months in the event of a delay or an inability to pay; and a monetary payment by 'any master or mistress' of no more than six months' wages to a worker found to be subject to 'ill-usage', and the cessation of the contract to serve.[9] Michael Quinlan's essay on Australia in Hay and Craven notes that the law made no provision for wages recovery, but the omission seems unlikely to have impeded such actions.[10]

The New South Wales statute was repealed in October 1840 and replaced by new, more comprehensive legislation which applied by extension to New Zealand from that date until 1842. The new Act changed the primary remedy for unlawful absences, refusing or neglecting work, and returning or quitting work before completion. Instead of imprisonment, workers forfeited 'all or such part of the wages or such part of the wages or pay which at the time of such conviction shall be due or owing' and also risked the payment of double the damages due to the master for loss caused by the servant. Still, the threat of incarceration remained real. In the event that the servant was unable to pay the damages (not an unlikely prospect given the forfeiture of wages), the servant could be committed 'to the common gaol there to remain without bail or mainprize for any time not exceeding three calendar months unless the same [that is, the double damages awarded] be sooner paid'.[11] The statute specifically made the failure to work after the taking of advances of wages punishable by up to three months' imprisonment with hard labour; increased the sanction in cases where workers were responsible for loss to their masters of property spoiled, destroyed or lost, by adding the mandatory requirement that the offender, if male, 'shall be committed to gaol . . . for any period not exceeding three months'; and retained a monetary penalty for those found employing runaway workers. Women were not subject to the punishment of imprisonment under the statute. Unlike the 1828 Act, the new statute provided for the resolution of wages claims and the enforcement of judgements. Masters failing to pay due debts were liable to be committed 'to the common gaol for any time not exceeding three calendar months unless the distress be sooner satisfied'.[12]

From 1842, the British master and servant law of 1823 applied in New Zealand. The Act covered a number of matters pertaining to the actions of servants, artificers and other workers: failure to commence an agreed contract, absence from work, neglect to fulfil contracts and 'any other Misconduct or Misdemeanor'. These offences were all punishable by committal 'to the House of Correction, there to remain and be held to hard labour for a reasonable Time, not exceeding Three Months'. The servant, artificer and other worker also lost wages and livelihood as well as liberty. The court was able 'to abate a proportionable Part of his or her Wages, for and during such Period as he or she shall be so confined in the House of Correction, or in lieu thereof, to punish the Offender by abating the Whole or any Part of his or her Wages, or to discharge' the worker from his or her contract. Similar provisions applied to apprentices. The statute also provided for the settlement of other disputes, including the recovery of wages.[13]

News reports, extant court records and parliamentary debates indicate these imported statutes were poorly understood and infrequently and erratically used in New Zealand. The confusion is well illustrated by *New Zealand Journal*'s reports on what may be the only master and servant case during the colony's first few years. In early 1841, in reference to the New South Wales statute of 1840, the *Journal* noted that 'we observe very lately that an act for the purpose of enabling the master to tyrannise over his work men has been extended to New Zealand'.[14] As noted above, the new New South Wales legislation was not the first master and servant statute to apply in New Zealand. The penalties in the new statute were different from those in the previous statute, but it is hard to argue that they were necessarily harsher. Later, the *Journal* briefly reported that 'Richmond and Samuels, sawyers in the employ of Mr. Mair, were sentenced to two months' imprisonment for absconding from their hired service' and provided further criticism, both attacking the new New South Wales master and servant statute and praising the English law. It stated that: 'The Council of Sydney has been too long in the habit of legislating for convict labourers to permit them to appreciate and do justice to free men. The whole character of Sydney legislation, between employer and employed, accordingly, loses sight of the idea of a contract of hiring and service, such as our law contemplates, and such, moreover, as our labouring classes are accustomed to, and arms the master with powers of coercion which convert him at once into a tyrant over slaves.' The *Journal* added that servants and artificers under the New South Wales law were treated as felons for what in Britain was 'simply a breach of contract', and expressed surprise that any would emigrate to New South Wales with such a prospect.[15] Of course, the *Journal* misrepresented the English law, which quite plainly did provide criminal sanctions for breaches of service requirements. Whether deliberate or not, the criticisms were probably of some use to the *Journal*'s sponsor, the New Zealand Company. The company keenly wanted to separate New Zealand from New South Wales. The break promised to free New Zealand from the unsavoury association with the penal colony and allow the company to more effectively market its New Zealand settlements as superior destinations. Breaking free of Sydney was also vital to hopes of establishing Wellington as New Zealand's political and administrative centre.[16]

For the most part, extant court records and newspaper reports indicate that the law was not applied.[17] There were, however, at least two particular areas of exception. From 1846 onwards the Nelson court heard a number of master and servant cases. The first of these involved David Nioriso, who, having being hired 'from week to week', by Richard Kincleisley, was charged with having 'absconded and deserted from the services of' Kincleisley. The outcome was not recorded. Other cases were recorded in 1848 and 1849. In these cases, the court's decisions were noted. One employee of Renwick and McAlister, possibly a brewing firm, was sentenced to 14 days with hard labour for being drunk at work and then leaving without notice. The employee was not required to return to complete his service. Another case, taken by Hugh Martin, a farmer, against Andrew Henderson for failing to complete a promised 12 months of service as a husbandry labourer, was withdrawn on the understanding that Henderson return to work until a replacement labourer was found. In the case of an absconding apprentice carpenter, the apprentice was fined. And in yet another case, John McDonald complained that his labourer, George Gipps, had 'absented himself without consent' and 'contrary to the provisions of the Statute'. The 'boy' defended his action. He feared he was going to be whipped because he had been late back with McDonald's cows. The magistrate sentenced Gipps to 14 days' hard labour.[18]

On average one or two cases a year appear in the extant Nelson records to 1854, most without any recorded decision. In two cases where the decisions were recorded severe sentences were handed out. Henry Martin took a case against Thomas Hopgood, a 'Servant in Husbandry' engaged at 10s a week for a 12-month term, for refusing to plough with bullocks. Hopgood, who appears to have previously absented himself from his work, offered to carry out the work if paid 16s. a week, an offer Martin refused. Hopgood was imprisoned for one month with hard labour. An even more severe sentence was passed on Charles Haycock. His master, William Jones, had hired him on a six-month contract at a salary of £20. For being absent 'before the term of his contract' had 'been fulfilled' and refusing to complete the contract, Haycock was sentenced to three months' imprisonment with hard labour.[19]

The Wanganui records also show a brief flurry of actions against servants under the 'Hired Servants Act' from late 1851 to early 1853. The actions seem to involve the mistaken application of the New South Wales master and servant legislation.[20] Two cases taken by James MacDonnell resulted in Joseph Pickering and John Howard being 'Convicted and committed to jail for a week with hard labour'. One other case resulted in a fine of 5s. Of the remaining cases, four resulted in reprimands only, two were dismissed and one was settled out of court.[21]

Beside these cases, the Reverend E. Simeon Elwell's reminiscences of life in early South Canterbury indicate a possible threat to act against servants under master and servant law.[22] In addition, there is a remarkably full record of a case in 1867 involving an action taken by a local storekeeper on the Chatham Islands. The complaint is occasionally confusing but appears to have centred on three factual elements: the labourer had 'complained about being sick — from the effects of a wound in the American War'; he had said he was going

to a doctor; and he 'got drinking' and refused to go to work. In his defence, evidence was given by the local physician that the labourer had been 'effected with swelled testicles and Slight Inflammation', and needed a short period of rest of two days. It also appears that his left testicle had to be removed. The Resident Magistrate ordered the labourer to return to work after two days' rest and pay 4s. costs.[23]

These cases demonstrate that some masters did utilize the provisions of the master and servant law against their workers in New Zealand. It is likely that, in time, further cases will be uncovered which will provide additional texture to our understanding of the application of the law in New Zealand.[24]

Parliament's debates in relation to the failed attempt in 1864 and 1865 to enact a local master and servant statute, however, confirm the wider truth that the law was poorly understood in the colony in general, and applied only sporadically and without particular rigour. Introducing the bill in December 1864, John Cracroft Wilson, the member for Christchurch, noted 'that the law between employers and employed should be clearly understood'.[25] Indicating the law had not been active but seeking maintenance of this status quo, William Buckland argued that: 'The moment the House interposed between master and servant difficulties would arise'. On the other side, Hugh Carleton spoke for the bill: 'It seemed not to be generally known what really was the present law on the subject — what the English Acts were which applied. The present Bill relaxed those Acts, and had the further advantage of making the law known to all.' William Thomson thought that 'some law should be laid down for Justices of the Peace to be guided by in cases brought before them'. James Fitzgerald, the Minister for Native Affairs, stated that 'He knew many Justices of the Peace who were in the habit of giving judgement' under master and servant laws, but also 'others who would not do so'. He further stated that 'There were statutes on the Statute Book of England which were more stringent than the one before them; but it was doubtful whether they were practically in operation in this colony.'[26] Fitzgerald, who had arrived as a Wakefield settler in the early days of the Canterbury settlement, strongly opposed the bill.[27]

The various reasons Hay and Craven identify for the development and application of master and servant law in Britain and its other colonies provide a useful starting point for explaining the exceptional New Zealand experience. In general terms, the study shows that the 'clear aim of much master and servant legislation was to make labour supply and performance more reliable and, especially in the case of migrant labor, cheaper than it could be obtained otherwise, if it could be obtained at all'. Alongside this broad generalization, Hay and Craven also specify a range of functions that reflected differences between the circumstances and objects of British labour history and those of its separate colonies. These included: promotion of the long-distance movement of servants and the safeguarding of investments in the purchase of indentured servants and convicts; strengthening the administration of justice in relation to convicts; prolonging the unfree service of former slaves; compelling labour into waged work especially for large overseas-owned industrial concerns; and attracting, controlling and directing labour flows into economic activities that would not be profitable without penal labour. Further, the legislation marked

and reinforced racial and cultural divisions in the workforce. In such cases the application of the law was commonly justified on the grounds that it educated subject groups in the ways of 'contractual, market relations' or, more crudely, provided 'a necessary transitional state in the natives' journey out of savagery'. The law also enabled masters to defeat the market and hold on to skilled and experienced workers, undermined strikes and trade unions and underpinned discipline, thus enhancing production and 'preserving social order and relations of superordination and subordination'.[28]

Quinlan adds some specifics to the Australian context where the early master and servant regulations 'made special provision for assisted immigration brought to the [Australian] colonies under indenture' to alleviate labour shortages. He also notes that the expectations that underpinned the peculiarly 'prescriptive and punitive' character of convict era master and servant regulations for New South Wales 'were even carried over to neighbouring free colonies through legislative imitation' and that, because Australian workers had more bargaining power than their English counterparts, master and servant law was retained to redress the '"imbalance" and maintain orderly production, especially in those remote areas which were a critical source of colonial exports and wealth generation'. Further, the colonies sought to stop poaching by masters, one from the other, to enable masters to recover losses from their servants, to aid masters to achieve their due of subordination and deference and to undermine unions and strike action.[29]

The general course of New Zealand history differed significantly from the paths of many of its sibling colonies and a number of the factors identified by Hay, Craven and Quinlan clearly did not apply to New Zealand. There was no tradition of owning black slaves to attempt to prolong; no convict labour force requiring special attention; no attempt to subjugate and compel a Maori labour force; no practical vision of large industrial or plantation operations that might have been realized with the intensive application of cheap manpower; and no particularly important threat to masters from trade unions, at least until the end of the nineteenth century. The lack of these help in understanding why master and servant law was less prominently adopted and applied in New Zealand than in Britain and its other colonies.

The absence of these motives, however, does not fully explain the difference between New Zealand and Britain's other colonies, especially its Australian counterparts. In particular, New Zealand was the most distant of all Britain's colonies and seemingly a likely candidate to resort to at least some use of indentured labour. New Zealand was also not obviously immune from other general concerns identified as important in the Australian context. Was labour, for example, generally more plentiful in New Zealand? Did Australian workers have more bargaining power, generally, than their New Zealand counterparts? Was there less need in New Zealand to stop poaching by masters? Were New Zealand masters any less determined to extract their due of subordination and deference? Even if not the most pressing, there would seem to be enough reasons to expect New Zealand to have easily tripped down the well-worn master and servant path.

In discussing the specific application of master and servant law in Nova Scotia and New Brunswick, Craven provides another perspective from which to look at New Zealand's relatively distinct experience. While markedly different from most of Britain's colonies, New Zealand's experience does share some similarities with those of Nova Scotia and New Brunswick. Craven notes and shows that both Nova Scotia and New Brunswick adopted a number of local master servant statutes, dating back to the mid-eighteenth century,[30] but that application of the law was very limited, particularly in the nineteenth century. As above, he partly explains the limits on the use of the law in the eastern Canadian colonies by reference to the limited effect of various factors. In particular these colonies 'were not destined to become lands of plantation agriculture'; native Canadians generally 'did not form a substantial part of the wage labour force'; and the colonies did not 'depend to an appreciable extent on African slavery'. But Craven also directly and positively cites the actual type of colonial settlement that developed in the region. The settlements, according to Craven, 'were overwhelmingly white settler colonies, peopled largely by smallholders and other producers seeking to establish a degree of economic independence by accumulating capital towards family-based commodity productions . . . . Long term contracts were rare. People took casual, occasional, or seasonal work to clear debt or complete a purchase; their long-term attachment was not to paid employment but to clearing or improving the family farm and acquiring property to settle their children.'[31] Emphasizing the limited application of master and servant law particularly in New Brunswick and Nova Scotia, Craven notes that the number of cases in the major towns of these colonies, Halifax and Saint John, was far fewer than in the major towns of Toronto and Montreal in neighbouring provinces. In referring back to the struggling smallholding communities, Craven adds that 'the whip of hunger was a more important enforcer of employment bargains than the justice of the peace'. [32]

One of Craven's main concerns in his study of the Canadian colonies is to reconcile what appears to be an inconsistency. Clearly there was a 'proliferation of master and servant statutes, many of them at least occasionally enforced', and yet 'these acts did not play a central part in regulating the labor market or disciplining workers'. For Craven, the 'solution proposed' to the problem is that while master and servant law had only a marginal effect on the labour markets directly, it had value in 'its side effects'. These included the 'occasional exemplary prosecution' which reminded Canadian colonists, who might otherwise be influenced by their American neighbours, of their place in society, whether on the basis of class or racial distinction. The law, Craven also argues, was sought by 'some English employers . . . to bolster their symbolic authority over British indentured servants in Canada'. The evidence supplied by Craven suggests that the law was a major disappointment for its sponsors in terms of its overall practical effect.[33]

It is not difficult to see New Zealand in the application of master and servant law in New Brunswick and Nova Scotia. There are obvious similarities in the general types of settlement and the low level of resort to the law. Yet there is a clear difference in the adoption of master and servant regulation, even if it

mainly had only symbolic purpose in the two Canadian colonies. Regulations of one form or another were introduced more than a dozen times in Nova Scotia and New Brunswick, but not once in New Zealand. This cannot be put down simply to the fact that the settlement of the Canadian colonies started earlier and their legislation represented the mores of a different time. They continued to revise and add to the law through to and including the 1850s. Further, the absence of any local master and servant law in New Zealand also indicates less interest in the possible advantages of 'symbolic authority' than in the Canadian colonies.[34]

In summary, Hay and Craven's arguments have clear implications for our understanding of New Zealand's distinct experience of master and servant law, namely, that the experience was associated with a lower threshold of need for this particular law. Many of the matters that provided strong motives for the adoption and use of master and servant law in other colonies did not apply to New Zealand. A reduced need to apply the provisions of the law was also a generic characteristic of a small settler society. Yet the analysis also throws up some difficult questions that show that this is not the whole answer. There is a sufficient basis on balance to expect New Zealand to have adopted master and servant law, as South Australia did for example.[35] There should be some further explanation as to why this did not happen.

Fortunately, this problem is easily and sensibly accounted for by the specific promotion of New Zealand as a free labour colony by Edward Gibbon Wakefield.[36] Not only was there a lesser need for the law, but there was also a special ideological predisposition amongst the early New Zealand colonisers and colonists against forced servitude. While not alone in his contribution to contemporary free labour discourse, Wakefield's importance lies in his provision and promotion of a popular theory, systematic colonization, that set out his particular views on the supply of labour to colonies, and his involvement in the organization of various schemes to implement his ideas that were directed very specifically at New Zealand.[37]

Wakefield presented and promoted his scheme of systematic colonization in a number of publications from 1829 to 1849.[38] In general, his argument revolved around three key points: the need for concentrated settlement; the deficiencies of existing forms of supplying labour to and controlling labour in the colonies and the absolute necessity of his new scheme as the means of labour supply and control. The last two points are of particular pertinence.[39]

Wakefield condemned the existing forms of supplying and controlling labour in various ways. In attacking 'black slavery', Wakefield spoke of its 'damnable cruelties', saying it was 'far more unjust, and therefore more cruel' than 'white slavery' and that it was a 'foul blot' on the American nation.[40] He also regarded it as more costly and less productive than other forms of labour.[41] Nor would convict labour do. Wakefield called convicts 'the scum of the mother country, comparatively useless as labourers' and 'an idle and vicious population almost wholly unacquainted with the business of agriculture'.[42] Convict labour was inefficient, limited as an effective supply of labour to the colonies, immoral as a form of slavery, not conducive to the development of cultivated society, and dangerous.[43] Wakefield criticized the supply of indentured labour by stating that

it 'has never afforded any considerable relief to the miserable classes in Britain, and it never can'. The system, he said, always disadvantaged either the master or the indentured servant, 'for, either the indentured emigrant is not held to his bond, in which case the capitalist who has paid for his passage is a loser; or, if he be held to his bond, his condition is not bettered'.[44] Wakefield presented the system as an exercise in futility excepting that 'capitalists in America' managed only 'by an excessive tyranny, to hold indentured emigrants to their bond'.[45] Underpinning his attack, Wakefield also stressed the impracticalities of forcing labourers to work out set terms of employment. He argued that reluctant servants were better let go than kept. The use of penal punishment, including whipping, to enforce specific performance was counterproductive. Wakefield observed that the servant, even 'though apparently subdued . . . might contrive to do less than three shillings worth of labour per day, in which case the produce of his labour would be a loss; and this without manifestly departing from the bond. He might also — and this is no uncommon case — secretly do more than three shillings worth of injury per day to his master's property.'[46]

The perfect alternative to these deficient forms of labour supply and control, according to Wakefield, was systematic colonization which used the device of the 'sufficient price' to control the sale of colonial land. In brief, the price of land was to be set at a high enough level to prevent labourers from easily purchasing their own land and quickly leaving the labour market.[47] This would ensure that there was always sufficient labour available to meet the needs of the colony without resorting to unfree labour and, in cases where masters, and particularly landowners, were unable to retain the services of particular servants and labourers, that they would be able to promptly find replacement workers. The sufficient price had the virtue of also providing revenue to the government (or the colonizing agency) to fund and control the rate of the free emigration of labour to the colony to offset the medium- and long-term movement of labour into land ownership as the colony expanded economically.[48] Effectively, Wakefield proposed the replacement of failed regimes whereby labour was forced to work directly for specific masters, whether in contractual or other relationships, by a new, more modern-looking regime. In the new regime, labour was still controlled, but it was to be done indirectly through the management of the labour market.

On balance, it appears that Wakefield's scheme represented a significant innovation in thinking about colonial labour supply, though certainly not all agreed that it constituted a shift from unfree to free labour.[49] G. Poulett Scrope, economist, member of parliament and Wakefield contemporary, described Wakefield's scheme 'as a specious and ingenious attempt at establishing a sort of modified white slavery'.[50] Marx also saw in it an oppressive form of wage slavery.[51] Wakefield might have agreed if the controlled labour market only offered the certainty of starvation or employment at marginal subsistence levels. Wakefield's vision of the colonies operating under his scheme, however, was of employment at attractive wages in prosperous developing economies.[52]

It is not clear how far Wakefield was motivated by a genuine concern for the poverty of the British working class, the redundancy of a significant proportion of the middle class and the failings of colonial development. The suggestion is

that he may have been primarily self-interested (especially in the regaining of some position in British society following his imprisonment for abduction and in the making of his fortune).[53] Whatever drove him, though, he was not merely the author of systematic colonization but also a persistent and dynamic activist who directed his ideas very specifically in the direction of New Zealand.[54]

Wakefield initially sought to apply systematic colonization to South Australia, but fell out with his fellow organizers in 1835 over their readiness to compromise his principles.[55] Subsequently, without Wakefield's involvement, the South Australian colonists resorted to the use of indentured labour, and one of the first statutes the colony enacted was a draconian master and servant law, which was put to immediate use. The Colonial Office in London later disallowed the statute and the Secretary of State for the Colonies described the Act as 'better suited to a penal colony than one which boasted of being a free society'.[56] Wakefield, for his part, followed his disassociation from the South Australian scheme with a shift in attention to New Zealand. He subsequently organized the formation of the New Zealand Association and the New Zealand Company and, through the company, guided the establishment and settlement of Wellington, New Plymouth and Nelson.[57] He followed this activity with encouragement to the Otago and Canterbury Associations, which founded the settlements of Dunedin and Christchurch in 1848 and 1850 respectively.[58] Aside from Auckland, these were the main centres of early settlement in New Zealand after the establishment of British sovereignty.

The influence of Wakefield's ideas on the New Zealand colonists is indicated in various ways. One of these is the very coincidence of the special lack of master and servant law both in the absence of colonial legislation and in the limited application of the assumed English law, especially in contrast to the developments and practice in relation to master and servant law in the only marginally older South Australian colony. Further, there is no evidence of the introduction of indentured labour to New Zealand, again in contrast to South Australia. But there are also other matters indicating Wakefield's impact. The keen knowledge and interest shown by the colonizers and colonists alike in the implementation of systematic colonization, the colonists' successful opposition to convict labour, the expectations of the working-class settlers and the achievement of the eight-hour day, and the arguments against the law in the master and servant debates of 1864 and 1865 all played their part.

The Wakefield colonizing agencies all sold land at a high price and revenue from the sales funded emigration to each of the settlements.[59] In promoting Wellington, John Ward, the secretary of the New Zealand Company, clearly connected the sale of land at a 'sufficient price', if it 'be not too low', to the new way of controlling labour in the settlement. He said that 'by compelling every labourer to work for wages, until he has saved the only means of obtaining land,' the price would ensure 'a supply of labour for hire' and obviate 'every species of bondage'.[60] The *New Zealand Journal* for its part emphasized that labour was simply to be 'conveyed to the Colony' and that '[a]t the moment of landing the individual labourer is at liberty to make what bargain he pleases. In like manner, as part of the proposed plan, neither the Government nor a Colonising Company could become a party to any contract for securing

service as the price of passage.' The *Journal* added that while indentured contracts were legally enforceable in theory, they were impossible to enforce in practice. It also stated that if the contracts were 'at lower wages . . . the labourer invariably deems himself cheated — and so he is'. According to the *Journal*, the situation was very clear: 'The only fair contract is an agreement to employ at current wages'.[61] William Cargill, the central figure in the Otago colonization effort, declared that the colony would be settled according to the principles of systematic colonization and that the labouring man would 'with economy and industry . . . within three or four years, become himself an owner of property, and independent of working for wages'.[62] In its first two issues, the *Otago Journal* supplemented the promotion work by describing the virtues of settlement under Wakefield's scheme and reported a meeting of 'the friends of the Otago Scheme' in Edinburgh. The meeting emphasized the weight placed by the colonizers on the freedom with which the emigrants went to New Zealand. In promoting the 'sound and liberal principles' of the scheme and the advantage of emigration in dealing with the problem of a growing population and the associated distress in the United Kingdom, the 'friends' categorically resolved that 'No emigration is salutary that is not voluntary.'[63] Similar statements were made in support of the Canterbury settlement. Wakefield produced a further volume, the *Art of Colonization,* to aid the new venture, again attacking the use of unfree labour and promoting the use of the sufficient price as the alternative means of controlling labour. [64] Wakefield stressed the purpose of the scheme by noting that 'the only object of selling instead of giving is . . . to prevent labourers from turning into landowners too soon'.[65] He also stated that masters would retain their servant labourers if they treated them with 'kindness and consideration for their human pride as well as their physical want', and that it would be 'the frowns of society' that would prevent masters from poaching their neighbours' servants.[66]

The Canterbury Association's initial published plan generally promised that the settlement would 'not have the economic gain, with the moral degradation, of a slave population, to develop the riches of the country'. Rather, it would have gain without degradation because 'the immigration fund will supply a larger amount of free labour to the capitalist than has hitherto been procurable in recent British settlements'.[67] The association's regulations in 1850 added that the emigrant labourers would be at liberty on arriving in the settlement to 'engage themselves to any one willing to employ them, and to make their own bargain for wages'.[68] In a speech delivered in May 1850, the association's selected bishop for the Canterbury settlement, the Reverend Thomas Jackson,[69] rejected the use of labour 'furnished from the workhouse and the gaol'. He added: 'We do not want the mother country to put us off with its waifs; we do not want to be over-run with needlewomen one year, and the next year with a party of lads fresh from the military discipline of Parkhurst and its iron cells; launched with new clothes and careless hearts, on the boundless liberty of a new settlement.'[70] Dr Samuel Hinds, the Bishop of Norwich and a member of the Canterbury Association, noted very generally 'that the time had now come when the spirit of colonization had freed itself from these debasing associations'.[71] These remarks assured their audiences that Canterbury would not be like the penal colonies of Australia.

The enthusiasm for systematic colonization was also evident within the settlements. Charles Heaphy, a New Zealand Company draughtsman, told the readers of his travel book after the first year of the Wellington settlement that: 'The happy effect of the "Wakefield system" has been to cause the supply of labour and the demand to be at all times equal, and neither have the rate of wages been high, or the labouring classes in want of employment.'[72] The Wellington and Nelson newspapers published similar reports in 1842.[73] Local support for Wakefield's theory continued even after the central New Zealand settlements began to suffer serious economic difficulties from the end of 1842. Rather than finding fault with the theory, the *Wellington Spectator* and the *Nelson Examiner* found fault with the New Zealand Company's misapplication of the scheme and obstruction on the part of the colonial government.[74] With a recovery in the economic fortunes of the settlements by 1845, a comment from John Wicksteed, leader of the New Plymouth settlement, also suggests the continuing legacy of Wakefield's ideas. Wicksteed noted, as wages began to rise, that the labourers' determination to obtain higher rates was 'an evil which will not be diminished except by an importation of labourers'.[75]

A letter written in 1848 by William Fox, 'an enthusiastic disciple' of Wakefield, New Zealand Company agent, and eventually a four-time premier of the colony, provides a very clear illustration of Wakefield's influence amongst the settlers in the colony.[76] The letter's main concern was that the workmen arriving in the colony with the assistance of the company's emigration fund should pay back some of their passage money once they had made good in the settlements. In expressing this, Fox distinguished his proposal from redemptionism. The object was to recover debt, not force labour. He stated: 'Nothing can be more true than that it is useless to attempt to force labour from an unwilling labourer, but it is not useless to extract money from an unwilling debtor.' Fox enclosed copies of extracts from *A Letter from Sydney* and *England and America* with his letter.[77]

The leaders of the Otago and Canterbury settlements also connected the control of labour with the maintenance of the sufficient price and persisted with their high land prices as long as they could.[78] Henry Sewell, who accompanied Wakefield to New Zealand, and Charlotte Godley, wife of John Godley — the leader of the Wakefield settlers in Canterbury, reflected Wakefield's advocacy in the *Art of Colonization* of reasonableness by masters as the key to retaining servants.[79] The Canterbury Provincial Council's immigration plan in 1854, in response to a labour shortage resulting from a gold rush to Australia, indicates a clear preference for general control of the labour market as the primary control of labour. The council, under the leadership of James Fitzgerald, proposed the assisted passage of immigrant labourers. Assistance was granted on the basis that costs would be part remitted if the labourer stayed in the settlement for 12 months, and fully remitted if the labourer stayed for three years. Of course, under gold rush conditions, the sufficient price was no barrier to movement out of the labour market; the labourer's motive was gold not land. The significant similarity here between the c`ouncil's scheme and Wakefield's theory was the object to retain generally workers inside the local labour market, rather than to bind the labourer to a particular master by using a device such as an indenture.[80]

Opposition to the introduction of convict labour to New Zealand and any related prospect that New Zealand might come to resemble the penal colony of New South Wales was widely expressed. Besides the comments made by the *New Zealand Journal* in relation to the application of the New South Wales master and servant law and the remarks of Jackson and Hinds, as cited above, the Wellington *Spectator* was much aggrieved by the news of the arrival of about 60 boys, previously inmates at Parkhurst Prison in England, in Auckland, in 1842. It responded that: 'This is another modification of transportation, against which one and all must protest. It is a monstrous way of using the emigration fund, for we think it can be shown that a worse way of flooding us with convicts could not be conceived.'[81] Reflecting the strength of opposition, the British government agreed later not to send any further boys.[82] Similar protests occurred in Otago and Canterbury. A public meeting held in Dunedin in May 1849 condemned a general British government proposal to send convicts to any of its colonies where labour was in short supply. It stated that truly reformed convicts would be regarded and used as a source of cheap labour and not paid equitably and, conversely, contact with the great majority of convicts, who would not be reformed, would result in the 'moral contamination' of both the European settlers and 'the natives'. The meeting noted the willingness of the workmen generally 'to compete with the labour of natives, and of Europeans, who had joined the settlement at their own expense, but not with men in the urgent circumstances of exile convicts'.[83] The *Otago Witness* recorded its opposition to the introduction of convict labour in an editorial in March 1851. The *Witness* was convinced that the cheap labour it appeared to offer was completely outweighed by negative consequences. The list of these consequences included: 'insecurity of life and property', excessively expensive policing, a loss of political freedom, 'moral taint and stigma' and 'the pain of daily witnessing . . . fellow creatures degraded to a state of slavery'.[84] The points bore considerable resemblance to those made by Wakefield in *A Letter from Sydney*.[85] The *Lyttelton Times* demanded the freedom 'of Australian colonies from the abominable opprobrium of being the cess-pool of British crime', at least partly because of concern that there was a 'filtration' of convicts and ex-convicts from convict colonies to non-convict colonies.[86] Sewell, in 1854, worried about the importation of a 'criminal class' with the return of labourers from Australia after the gold rush and the consequent need to establish a mounted police force.[87] Convicts continued to be sent to Australia until 1868.[88]

It is possible that the labouring emigrants, being less literate, were thus less well informed about Wakefield's principles than those who travelled to become the social, economic and political élite in the new settlements. There is evidence, nonetheless, that his ideas were pervasive enough to ensure that labourers, too, believed that the settlement of New Zealand would generally involve a new thinking on labour. Nelson workmen may well have understood the vital role of supply and retention of labour in Wakefield's system when they threatened to leave the settlement in response to the New Zealand Company's cut in their relief provisions. They warned the company: 'We at present are the only circulating medium', adding 'If you refuse to stand by the working

men of Nelson you Sign its Death warrant and seal its doom.'[89] Sam Shaw, the leader of dissatisfied workmen in Otago, very clearly understood that the high land price in Otago was designed to prevent labour from leaving the labour market. He complained that the price was in fact so high as to prevent labourers ever escaping and warned 'that it will never make labor cheap or benefit the colony'.[90] A new outlook in the settlements in relation to labour is also indicated in the establishment of the eight-hour day. It seems to have been forced on the Wellington settlement by workers arriving with expectations far beyond those of most English workers.[91] The Otago workmen may have arrived expecting an eight-hour day as well but had to wait nearly a year until this could be claimed.[92] Observance of the standard similarly applied in New Plymouth, Nelson and Canterbury.[93] The eight-hour day in the New Zealand settlements was well in advance of Britain and of the neighbouring Australian settlements.[94] A letter written by Caleb Williams further illustrates the expectations of the labourers that a high wage rate was agreed 'to by all the "free and easy" passengers on board', and that they had arrived 'having first taken the precaution to draw lots for the choice of employers'.[95]

The parliamentary debates in 1864 and 1865 relating to the master and servant law indicate the influence of Wakefield. The proponents of the bill argued a 'special' necessity 'at the present time . . . . as works of great magnitude would soon be entered into'.[96] They added that similar bills 'had been passed in all the provinces of Australia'. The supporters of the bill also traversed the need for clarity and increased equity for masters against servants who breached their contracts. John Williamson, for example, approved of the bill and stated that: 'It would be an advantage to persons coming to New Zealand to know that there was one law for all.'[97] The supporters included Henry Sewell, who had shifted from being an ally to an opponent of Wakefield during the latter's last year of public life.[98] Sewell argued that while 'A great deal had been said about contracts between masters and servants being made binding equally on both, and about civil proceedings, which sounded very well . . . . the contract between master and servant was generally one-sided.' He explained further that because the master had capital and the servant did not: 'In civil proceedings, therefore, the servant could always obtain recompense, while the master could seldom obtain such.' The provision for the imprisonment of servants was seen as rectifying the imbalance. Thus, Sewell stated, '[t]he Bill was conceived in a perfectly fair spirit'.[99]

When the vote was finally taken, however, it was the opponents of the bill who narrowly won the day. Their argument during the debates referred frequently to issues of freedom and equality. Of the opponents, James O'Neill attacked the 'very first clause' because it allowed, he said, 'two Justices of the Peace' to 'bring up an unfortunate servant and dispose of him in their own private room if they liked.' He said 'That would hardly be fair, in a free country.' Colenso criticized the bill on a number of points, including the making of oral agreements binding and the excessive length of service allowed. Generally, he said, the 'Bill bore too much upon the labourer, and left the master at freedom; it made the servant amenable to the law for the most trifling faults, and under it he might be prosecuted for slamming a door, or for retaining his hat on

his head in a room'. Thomas Henderson and Buckland both declared that as experienced employers they had never had any difficulties in dealing with their employees and that, accordingly, the legislation was 'notorious' and 'quite uncalled-for and unnecessary'. Of all the opposition speakers Fitzgerald, the early Wakefield associate and settler, provided the most direct connection back to Wakefield. In particular, he noted the similarity of the bill to legislation already in place in 'the Australian colonies' and reminded his listeners of their past. They were, he said, 'accustomed to slave labour — slave labour in the persons of the convict element with which they had been tainted, and [to] the [master and servant] legislation with regard to which they carried on . . . their relations to the free labourers.' More generally: 'In the earlier times of history the idea of slavery had crept into all the relations of the servant with the master; but, as civilization advanced, that idea of compulsory service had gradually been eliminated.' He argued that labourers should be allowed to sell their labour as 'an article of commerce', and any breach of agreement to labour should be dealt with as a civil action, not through a criminal trial. It was unfair that the labourer should be subject to criminal charges and the possibility of 'two or three months' in gaol for a breach and the master would be subject only to civil action. Again referring to the past, he said that 'they knew that in old times a servant who broke his contract was treated as a criminal, but he denied that in this colony and in these days they should go back to those times'.[100]

Wakefield, of course, was not the only English voice in favour of 'free labour' in the first half of the nineteenth century. Already abolitionists had achieved an end to the British slave trade to the Americas and an end to slavery, at least formally, in the British West Indies.[101] Criticism of the transportation of convicts for use as colonial labour dated back to the sending of convicts to the American colonies, before the settlement and commencement of the practice in Australia.[102] Political economists, including Adam Smith and David Ricardo, promoted a free labour market, though in doing so the freedom on which they focused principally was from combinations, poor laws and wage regulations.[103] Contemporary British working-class radicals also pressed for freedom of labour and equality of justice.[104] There is no clear reason, however, why these voices should have had a singular direct impact in relation to master and servant law only on New Zealand. Certainly there was no decisive impact on Australia or in Britain. The use of convicts and indentured labour, and the enactment of master and servant laws and the application of their penal provisions, were all alive and well in Australia well past the commencement of the colonization of New Zealand. The same applied to master and servant law in Britain.[105] There is on the other hand a clear set of reasons why Wakefield's ideas and activity were at least partly and specifically responsible for the distinct experience in New Zealand. These were his direct and detailed criticism of unfree labour, ranging from black slavery to coercion of labour through the threat and imposition of criminal sanctions; the direct promotion of these ideas to the early New Zealand colonists; his leadership role in the colonization of New Zealand; and the reception of his ideas in New Zealand.

Hay and Craven describe master and servant law as 'one of the many legal ligaments that helped make the British Empire a thinkable whole'.[106] For several

reasons, the connection was of far less significance to New Zealand than it was to other British colonies, and to Britain itself. New Zealand could and did feel bound into the empire, but master and servant law was not a significant part of its view of the common identity.[107] Although it had some experience of master and servant law, unlike almost all of Britain's other colonies, the task of telling the New Zealand story mainly involves explaining why the experience was so weak, not strong. While other colonies legislated prolifically, even Nova Scotia and New Brunswick, New Zealand rejected its only bill. While others used the courts with considerable frequency, New Zealand masters relatively rarely and only in certain areas took advantage of the master and servant law provisions available under the generally imported English law.

Despite the absence of a study of New Zealand, Hay and Craven provide valuable analysis which indicates that the exceptional experience was at least partly the result of a low threshold of need for the law. The great motives apparent in many of the other British colonies were not factors in New Zealand labour relations, and generally work relations in predominantly small settler societies were not of the types that required substantial legal intervention. This analysis does have some shortcomings, however. It does not, for example, explain why indentures and master and servant law were not adopted for New Zealand, unlike South Australia, to deal with the generic problem of sending and holding labour in distant locations, in the case of New Zealand, the most far distant of all Britain's colonies. What more than adequately fills this explanatory lacuna is Wakefield's promotion of his ideas and interest in 'free labour' in the particular direction of New Zealand. These ideas clearly arrived in New Zealand as prominent and integral parts of his scheme of systematic colonization and were most distinctly reflected in: the New Zealand colonists' explicit support for the scheme; their general desire to be legislatively different, in particular from New South Wales (contrary to the tendency to imitation of the other Australian colonies); the expectations of the colony's workers; and later parliamentary opposition to master and servant law. In short, Wakefield ensured the addition to the paucity of strong imperatives to act and impose the law of another important factor, opposition in principle. To further define Wakefield's dynamic contribution, it is also possible to see quite different qualities in these respective causes of New Zealand's exceptional experience. In the first case, the general smallness of need provided an essentially passive and prosaic basis for the limited use of master and servant law. In contrast, Wakefield's involvement — active, liberal and laudable — required the curtailment of the possibilities of the law along with its companion piece, unfree labour.

New Zealand was not without those who sought and used master and servant law against servants, labourers and other workers. But on balance the colony's legislative programme and overall practice in relation to this law and the liberty of workers were very clearly at the progressive end of the spectrum. Indeed, these are triumphs to be remembered, at the very least, alongside the early settlers' first minimum wage and their much-vaunted eight-hour days.

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NOTES

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1 Douglas Hay and Paul Craven, *Masters, Servants, and Magistrates in Britain and the Empire, 1562–1955*, Chapel Hill and London, 2004, p.2.

2 See Jon Henning, 'A Rejection of Bondage', MA Thesis, University of Otago, 2004.

3 Hay and Craven, p.8; Michael Quinlan, 'Australia, 1788–1902', pp.239–40; Christopher Frank, 'Britain, 1844', p.420 in *Masters, Servants, and Magistrates*.

4 N.A.Foden, *New Zealand Legal History*, Wellington, 1965, pp.147–51.

5 J. Hight and H.D. Bamford, *The Constitutional History and Law of New Zealand*, Christchurch, 1914, pp.158–65; A.H. McLintock, *Crown Colony Government in New Zealand*, Wellington, 1958, pp. 98–103; Foden, pp.159–62. Cf. English Laws Act (NZ), 1858.

6 Quinlan, p.230, refers to a New Zealand law that served as a model for a South Australian 'Labour Enticement Bill'. He cites two South Australian sources of November 1840 and January 1841. This appears to be an error. The New Zealand ordinances passed in this period are listed in Hight and Bamford, pp.158–9, and do not include any labour laws.

7 9 *Geo* IV, no. IX, s.1.

8 Hay, 'England, 1562–1875', in *Masters, Servants, and Magistrates*, p.92f.

9 9 *Geo* IV, no. IX, ss.2–4.

10 Quinlan, p.225. Nineteenth-century Otago court records clearly show actions to recover wages without any specific reference to master and servant law. See, for example, the Dunedin District Court Plaint Book, 1859–1861, *passim*, Archives New Zealand (ANZ), Dunedin.

11 4 *Vic* 23, s.2. The 1840 New South Wales statute was replaced in 1845 and the penalties for these particular offences changed again. The new statute enabled 'Justices to commit every such person [that is the offending servant] to the house of correction there to remain for a reasonable time not exceeding three months or in lieu thereof to punish the offender by abating the whole or any part of his wage and to discharge such servant from his contract service or employment Provided it be the desire of such master employer or employers or his or their manager agent or overseer that such servant shall be so discharged but not otherwise.' 9 *Vic* 27, s.2.

12 4 *Vic* 23, ss.3–4, 6–7, 10.

13 4 *Geo* IV, c.34, ss.I, II, IV.

14 *New Zealand Journal* (NZJ), 27 February 1841. The part of the New South Wales magistracy in this tyranny is discussed in David Neal, *The Rule of Law in a Penal Colony*, Cambridge, 1991, p.131.

15 NZJ, 22 May 1841. The *Journal* also sought to emphasize the liberal employment conditions espoused by the company by printing adverse reports of conditions in Tasmania. On 20 June 1840, it reported, for example, that 'the Colonists [in Van Diemen's Land] were extremely anxious that the whole of the proceeds [from land sales] should be applied to the purposes of emigration; they appear to wish, also, that the labourers so emigrating should be bound down to remain three years in the island, stating, that if this is not done, they will probably be importing emigrants for the benefit of Port Phillip, labour being much higher in that Colony'. The *Journal* also reported on 19 June 1841 that servants in Van Diemen's Land were flogged for neglecting their duties.

16 McLintock, pp.99, 127.

17 This could not have been the result of a general absence of master and servant conflict. For example, William Cargill, the leader of the Otago settlement, reported to London that while capitalists could bring their own servants to Otago, 'they should be generally dissuaded, for their own sake, from the exercise of this privilege'. Cargill stated that: 'With one solitary exception, every such engagement has been dissolved, and most of them with bitterness on both sides.' *Otago Journal* (OJ), November 1849, p.69. Henry Sewell expressed a similar view shortly after his arrival in New Zealand with Wakefield in 1853, W.D. McIntyre, *The Journal of Henry Sewell: 1853–57*, Vol.I, Christchurch, 1980, p.203.

18 Nelson: Records of Depositions, 1842–71, ANZ, Wellington.

19 ibid.

20 *Parramatta Chronicle*, 18 May 1844, referred to the 'Hired Servants Act' in describing a master and servant case. This statute, presumably the 1840 New South Wales master and servant law, ceased to apply to New Zealand in 1842.

21 Wanganui Police and Petty Sessions Court — Fines, 1845–1853, ANZ, Wellington.

22 Reverend E. Simeon Elwell, *The Boy Colonists*, London, 1878, pp.149–50.

23 Chatham Island Record Book, 1867–80, ANZ, Wellington.

24 Cf., for example, W.E. Minchinton (ed.), *Wage Regulation in Pre-Industrial England*, Newton Abbot, 1972, p.21f.

25 *New Zealand Parliamentary Debates* (NZPD), 1864–1866, pp.69–70. The bill was discharged shortly after its first reading on the basis that there was too little time left in the session for the measure to be fully considered. The required full consideration was left to the following session, NZPD, pp.70, 169. For convenience sake, the legislative drafts presented to Parliament over the two sessions are referred to in this text as 'the bill'. John Cracroft Wilson, with a considerable background in the Indian Civil Service, settled permanently in Canterbury from 1859 and became a substantial employer 'with a reputation for paying low wages'. Tessa Kristiansen, 'Wilson, John Cracroft', in *The Dictionary of New Zealand Biography* (DNZB), *Vol. One, 1769–1869*, Wellington, 1990, pp.602–3. The severe character of Indian master and servant law is indicated in Michael Anderson, 'India, 1858–1939', in *Masters, Servants, and Magistrates*, ch.14.

26 NZPD, 1864–1866, pp.630–1.

27 His close association with Edward Gibbon Wakefield and the origins of the Canterbury settlement are described in Philip Temple, *A Sort of Conscience*, Auckland, 2002, pp.440f. Fitzgerald's opposition is described more fully below.

28 Hay and Craven, pp.4, 6–8, 15, 21, 23–25, 29, 33, 35, 37.

29 Quinlan, pp.224–5, 227, 230, 235–6, 243, 246–8.

30 Hay and Craven, p.569.

31 Craven, 'Canada, 1670–1935', in *Masters, Servants, and Magistrates*, pp.178–9.

32 Craven also considers the law in relation to seamen and notes the strong action taken against seamen leaving their ships and service. A similar state of affairs is illustrated in the letter books of the Otago magistrates Strode and Gillies. In a settlement that appears to have had no master and servant cases against land-based workers, actions against seamen in Otago were relatively common. Strode's letter book for 1848 to 1850 indicates action in relation to at least seven groups of desertions involving 24 seamen. Gillies also remarked in a letter written in April 1858 that most of those in the Dunedin gaol were there 'for breaches of the Merchant Shipping Act'. In a further letter written shortly after, he adds that: 'Our prisoners hitherto have been chiefly seamen deserting from their ships and of these I find there was on one occasion not fewer than 26 in prison'. Craven explains that the difference in relation to the incidence of master and servant cases and seamen cases in Nova Scotia and New Brunswick was the special imperial interest in the enforcement of service against seamen. Craven shows that the Canadian colonial authorities clearly understood their obligations to conform and advance this interest, Craven, pp.183–5, 217. Illustrated by Strode's return of four seamen's tickets to London on 5 February 1849 (as required under the *Merchant Seamen's Act*, 7&8 *Vic* 112), the explanation may apply equally well to New Zealand. Alfred Rowland Chetham Strode, 'Letter Book, 1848–1850', MS33; 'Letters of A.C. Strode and J. Gillies, Resident Magistrates 1852–60', MSS, Vol.89: both Hocken Library (HL), Dunedin.

33 Craven, pp.214–8.

34 As discussed above, it is possible to see some exemplary impact arising locally in Nelson in the application of English master and servant law. In Wanganui, however, the trend in master and servant cases appears to have quickly fallen into a non-punitive pattern.

35 See below.

36 Bernard Semmel, *The Rise of Free Trade Imperialism*, Cambridge, 1970, p.110.

37 The significance of Wakefield's influence on the development of New Zealand has been extensively debated. Recent substantial contributions to this debate include Friends of the Turnbull Library, *Edward Gibbon Wakefield and the Colonial Dream: A Reconsideration*, Wellington, 1997 and Erik Olssen, 'Mr Wakefield and New Zealand as an Experiment in Post-Enlightenment Experimental Practice', *New Zealand Journal of History* (NZJH), 31, 2, (1997), pp.197–218.

38 These include, most notably, *A Letter from Sydney* (1829), *England and America* (1833), and the *Art of Colonization* (1849).

39 For an account of the argument for concentrated settlement see Wakefield, *A Letter from Sydney*, in M.F. Lloyd Prichard, *The Collected Works of Edward Gibbon Wakefield*, Auckland, 1969, p.154f. All references in this article to Wakefield's work relate to Lloyd Prichard unless otherwise indicated.

40 *A Letter from Sydney*, pp.110–12; *England and America*, pp.470–1.

41 *England and America,* pp.428–9.

42 Wakefield, *Founding a Colony in Southern Australia*, pp.282, 295.

43 *A Letter from Sydney*, pp. 105–7, 113, 121, 127, 136–8. Also see Wakefield, *Facts Relating to the Punishment of Death in the Metropolis*, p.265, and *England and America*, p.522.

44 E.G. Wakefield, *A Statement of the Principles and Objects of a Proposed National Society for the Cure and Prevention of Pauperism by means of Systematic Colonization*, London, 1830, p.9.

45 ibid., pp.10–11. Also see *England and America*, pp.552–4.

46 *A Letter from Sydney*, p.109.

47 The problem of workers buying their own land and leaving their masters was highlighted in the 'failure of the late settlement of Swan River' in Western Australia. This occurred after the publication of *A Letter from Sydney* and became an effective illustration of Wakefield's argument in *Founding a Colony in Southern Australia*, pp.289–90.

48 For a fuller explanation of Wakefield's scheme, see Henning, p.21f.

49 Lionel Robbins, *Robert Torrens and the Evolution of Classical Economics*, London, 1958, pp.153–65; Donald Winch, *Classical Political Economy and Colonies*, London, 1965, pp.73–89. Marx was among those who have tended to diminish Wakefield's originality: Karl Marx, *Capital* (translation of third edition), London, 1887, p.791n. Possible sources for Wakefield's scheme are also discussed in Henning, pp.26–55.

50 Cited in Semmel, p.117.

51 Marx, pp.790–800.

52 See, for example, *England and America*, pp.339, 342, 344, 347–9, for comments on the enslaved state of impoverished workers in Britain. On the other hand, Wakefield also argued with regard to the difficulty of holding onto workers in the colonies, that masters could engage and bring out with them to the colony any number of 'labourers or domestic servants', but they could not be retained 'without some kind of slavery'. The need for slavery could only be done away with through an effective 'sufficient price'. E.G. Wakefield, *The New British Province of South Australia*, London, 1834, pp.113–15f.

53 For some of the views expressed on Wakefield's self-interest see: Douglas Pike, *Paradise of Dissent*, London, 1957, p.53; Keith Sinclair, *A History of New Zealand*, Harmondsworth, 1969, p.61; Semmel, p.114; Olssen, p.197; Ngatata Love, 'Edward Gibbon Wakefield: A Maori Perspective', in *Edward Gibbon Wakefield and the Colonial Dream*, p.3; Temple, pp.193–4.

54 Wakefield made the claim after the New Zealand settlements had begun to flounder that he was 'only a generalizer or theorizer'. This, however, belied his clearly dynamic and well-recognized activity in promoting and generally managing and persuading others to implement his scheme, Temple, p.260.

55 ibid., p.158.

56 John Cashen, 'Social Foundations of South Australia, II, "Owners of Labour"', in Eric Richards, ed., *The Flinders History of South Australia: Social History*, Adelaide, 1986, pp.105–6. The disallowed statute was replaced by another master and servant law in 1842 that still allowed for a punishment for failure to serve, of 60 days' imprisonment and forfeiture of wages: *Victoria*, c.10, 1842, *South Australian Statutes*, s.2. For further discussion of these developments see Henning, pp.124–32.

57 A.J. Harrop, *The Amazing Career of Edward Gibbon Wakefield*, London, 1928, p.92; Temple, pp.175–6. Wakefield's earlier awareness of the possibilities of New Zealand is indicated in *England and America*, p.579n, and J.S. Marais, *The Colonisation of New Zealand*, Oxford, 1927, p.26. The Plymouth Company, which initially undertook the work of establishing a settlement at New Plymouth, had only a short-lived existence before being merged with the New Zealand Company at the end of 1840, Raewyn Dalziel, 'Popular Protest in Early New Plymouth', NZJH, 20, 1 (1986), p.5.

58 Tom Brooking, *And Captain of Their Souls*, Dunedin, 1984, ch.2; L.C. Webb, 'The Canterbury Association and its Settlement', in James Hight and C.R. Straubel, eds, *A History of Canterbury*, Vol.I, Christchurch, 1957, pp.150–1.

59 John Ward, *Information Relative to New Zealand*, London, 1840, pp.127–9. Marais, p.55. B. Wells, *The History of Taranaki*, New Plymouth, 1878, pp.51–52; Ruth Allan, *Nelson: A History of Early Settlement*, Wellington, pp.50–51; McLintock, *The History of Otago*, pp.206–7; *Plan of the Association for Founding the Settlement of Canterbury*, 1848, pp.13–14; Canterbury Association, *Terms of Purchase*, 1 January 1850, *Canterbury Papers*, London, 1850, pp.41–44.

60 Ward, pp.129–30. Ward referred his readers to *The British Colonisation of New Zealand*. which also provided an outline of systematic colonisation, E.G. Wakefield, *The British Colonisation of New Zealand*, London, 1837, ch.1.

61 NZJ, 2 January 1841; Ward, p.159.

62 William Cargill, *Free Church Colony at Otago in New Zealand*, London, 1847, pp.7–9.

63 OJ, January 1848, p.13; June 1848, pp.18–19.

64 E.G. Wakefield (ed. James Collier), *A View of the Art of Colonization*, Oxford, 1914, pp.53, 140–1, 174–5, 180–1, 324.

65 ibid., p.376; also see pp.127–8.

66 ibid., pp.372–3.

67 *Plan of the Association*, p.13.

68 Colin Amodeo, *The Summer Ships*, Christchurch, 2000, p.43.

69 Jackson went to New Zealand, but was considered 'unfit of business' and never formally took up his post. He returned to Britain after a mere six weeks in the new settlement, Webb, pp.179–83.

70 *The Speech of the Rev. Thomas Jackson, M.A*., Ipswich, 30 May 1850, p.3, Hocken Pamphlets, Vol.32, No.12, HL.

71 'Public Breakfast to the Departing Colonists', 30 July 1850, *Canterbury Papers*, p.178; Hight and Straubel, pp.242–5.

72 Charles Heaphy, *Narrative of a Residence in Various Parts of New Zealand*, Dunedin, 1968, p.68; Temple, p.238.

73 *Nelson Examiner* (NE), 19 March 1842; *New Zealand Colonist*, 1 November 1842.

74 NE, 17 December 1842, 22 July 1843, 1 March 1845; *Wellington Spectator* (WS), 2 February 1843, 9 December 1843, 7 February 1844, 16 March 1844, 10 April 1844.

75 Dalziel, p.25.

76 Raewyn Dalziel and Keith Sinclair, 'Fox, William', in DNZB, *Vol.One*, pp.134–8.

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82 'Great Britain Parliamentary Papers Relating to New Zealand', vol.6 (1845), 337/116.

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88 W.D. Borrie, *The European Peopling of Australasia: A Demographic History 1788–1988*, Canberra, 1994, pp.28–29, 49, 53.

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94 W.R. Cornish and G. de N. Clark, *Law and Society in England, 1750–1950*, London, 1989, pp.307–8; Patmore notes that some Australian craft unions obtained the eight-hour day in the 1850s, but that working weeks of between 55 and 72 hours were still common in the 1880s: Greg Patmore, *Australian Labour History*, Melbourne, 1991, pp.57–58. See also Charles Fox and Marilyn Lake, eds, *Australians at Work*, Ringwood, 1990, pp.93, 110.

95 ON, 7 July 1849. For a further illustration of the high expectations of the Wakefield settlers, see *The Journal of Edward Ward: 1850–51*, Christchurch, 1951, p.73.

96 NZPD, 1864–66, p.69. The work referred to by Wilson appears to have been improvements to the port and perhaps the construction of the Provincial Council Chamber which included the use of stone from Wilson's quarry, W.H. Scotter, 'Developments of the Mid-1860s' in Gardner, Vol.II, pp.126–9.

97 NZPD, 1864–1866, pp.69–70, 252.

98 McIntyre, Vol.II, pp.61, 78, 87. Wakefield's contributions to the issue of the price of land and other colonial matters came to an end when he became seriously ill in December 1854. He died in Wellington in 1862, Temple, pp.517–26.

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106 Hay and Craven, p.2.

107 Sinclair, p.213f.