Regulating Sexuality in Early Otago, 1848–1867

TIME AND SETTING SHAPE SEXUALITY IN FUNDAMENTAL WAYS. In general, the study of sexuality has 'tended to define itself by geography or by sub-genre', characterized by a focus on one aspect or activity, such as homosexuality, prostitution or birth control.[1] Recently, though, historian Robert Aldrich has called for 'more studies of sexual cultures in particular cities or regions, works that bring together, in documentation and analysis, marriage and extra-marital relations, homosexuality and heterosexuality, European and non-European practices and attitudes'.[2] Taking in a wide range of sexual practices, within a particular place and time, allows for a comparative examination of a number of human sexual activities and their regulation, a focus which this essay adopts. An analysis of colonial Otago, drawing on a range of sources – including ecclesiastical and secular court materials, newspaper reports and case studies – in order to explore attitudes towards the regulation of sexual behaviours, answers Aldrich's call for contextualized histories of colonial sexuality that pay attention to locality and region. In colonial Otago, sexual practices, attitudes and cultures, as well as structures for their regulation, were imported from Britain and given further shape in the local setting. Religion, class and gender played an especially important role, because the settlement had strong religious foundations, and the dominant Scottish Free Church regulated sexual behaviour to some extent, especially in the early years. Notions of respectability and acceptable sexual practice differed by class, while gendered ideals profoundly influenced the ways sexuality was expressed and regulated.

This article examines sexual morality in early Otago, from the arrival of the first sponsored settlers in 1848 until the introduction of the Offences Against the Persons Act at the end of 1867.[3] In examining the regulation of a number of sexual behaviours by competing religious and secular authorities between 1848 and 1867, it is possible to trace the connection between sexual morality and evolving concepts of public decency and order at a time of transition in the colony. Treatment of irregular marriage, cohabitation, adultery and bigamy by the church authorities, for instance, highlights the importance placed by the settlement's leaders on marriage and the family unit in colonial Otago. Church and secular courts both took an interest in the outcomes of illicit sex: illegitimacy and infanticide. Through these a shared discourse on codes of female morality and respectable behaviour can be mapped.

Although conceived as sinful by the church, non-procreative sex – including sodomy and bestiality, sexual assault and rape, and prostitution – came under the authority of the criminal justice system. A broader approach helps to expose the complex, evolving structures that have governed sexual behaviour. By the 1860s, secular forms of regulation had begun to replace the church's role in regulating behaviour, including sexuality, in colonial Otago. This transition was marked not only by a change in the mode of regulation, but also by a change in the types of behaviour being regulated, as the church and secular authorities focused on different transgressions. At the same time, morality retained its complexity: there was no single standard against which sexual behaviour would be judged. Instead, a mesh of ideas and practices reflected the varied experiences and beliefs of the community's members.

Religion and the regulation of sexual morality in colonial Otago

Religion's impact has been somewhat neglected in the New Zealand historiography, but religious institutions helped establish sexual morality in colonial communities.[4] Yet, as Jenny Jochens puts it, 'sexuality is perhaps the sphere where Christianity has most profoundly influenced human behaviour. In all areas of the world where it held sway, Christian thinking imposed itself on every aspect of sexual life, from regulations of marriage to proper coital positions.'[5] Colonial Otago was no different, for although the New Zealand Company, a private colonization company, purchased the Otago Block from local Ngāi Tahu chiefs in 1844, the Presbyterian Free Church of Scotland played a pivotal role in the establishment of Otago. Its leaders sought to ensure the settlement would have a specific Scottish Free Church character by appointing the minister and proposing the selection of immigrants on religious grounds. Such a community would undertake to self-regulate the behaviour of its members because they would all 'have individually and collectively internalised "correct" patterns of thought and activity, which they regard as legitimate, "natural", "moral", even inevitable'.[6] Nearly 350 settlers arrived on the *John Wickliffe* and the *Philip Laing* in March and April 1848, and they were soon joined by 12 from the *Victory* in early July, approximately 160 from the *Blundell* in mid-September and over 50 from the *Bernicia* in December.

Religion was at the forefront of the establishment of Otago. The original leaders of the Otago settlement assumed a common acceptance of the moral principles of the Free Church among the settlers, which would guide their actions and provide them with a common understanding of 'sin'. Moral suasion would positively influence the behaviour of the settlers, and temptation to sin would be removed if the balance of settlers was ensured and

the sanctity of the family was respected. The settlement's leaders brought with them the structures for enforcing morality amongst the communicants of the church. The Free Church provided an infrastructure to baptise, marry and bury the settlement's population and also to monitor the sexual behaviour of its congregation. This infrastructure included a hierarchy of church courts, known as kirk sessions, made up of members from the congregation. The Presbyterian Church had a formal system of social regulation based on the hierarchical structures of Calvinism.[7] Congregations took responsibility for maintaining order and discipline among their members, supported by a hierarchy of church courts: the local kirk session, the presbytery and the synod. Consisting of the parish minister and a number of male elders, the kirk sessions had responsibility for parish business, including disciplinary cases, education and poor relief. At the kirk sessions the behaviour of individuals within the congregation was discussed and appropriate punishments for those who transgressed the Free Church's teachings were determined. In being punished and forgiven for their sins, church members gained the chance to regain respectability, while public monitoring ensured continuing compliance.

The main source of information about the regulation of non-criminal activities – and its effectiveness – is the minutes of the kirk sessions, which served as the ecclesiastical courts in Otago. The survival of these records for the period under examination has been relatively good for the majority of the early parishes in Otago, most being complete from their foundation.[8] An examination of the surviving session minutes from Otago for the period from 1849 to 1865 suggests that there was a focus on ensuring the reputation of the church, the morality of the congregation, and the morality of the individual concerned, sometimes in that order.

The Kirk Session for the First Church met for the first time on 26 April 1849, following the election of elders to support the work of the minister, Reverend Thomas Burns. Despite this early introduction of established kirk structures, the system had limitations: it could only work on those who were full communicants, adherents of the church, and those who approached to join the church. People who did not wish to answer to the kirk sessions for their behaviour could join other churches and have the ordinances of baptism, marriage and burial carried out by local missionaries, such as the Wesleyan Charles Creed, who began to hold services in the gaol in early 1849. Members of the community outside of the Free Church could not be punished, although they could be publicly censored. This was not so much of a problem in Scotland, with a relatively homogeneous population sharing common religious beliefs and well-developed networks between parishes and presbyteries, but in a settlement such as Otago its sphere of influence

could be limited. English precedents, for instance, formed the basis of New Zealand's laws and legal infrastructure, while Otago already had a resident population of Māori, as well as European and American whalers and their mixed-race children, and from the early 1860s, gold miners from culturally diverse backgrounds.[9] These groups often took a pragmatic approach to managing their intimate ties, which might include eschewing the formalities of Christian marriage, or following alternative moral and sexual codes.

Despite the male-dominated structure, the kirk sessions tended to deal evenly with both male and female purported sinners when handing out punishments. This is significant because antenuptial fornication, or sexual intercourse prior to marriage, formed the main focus of the Otago sessions. Of the 106 surviving instances of discipline undertaken by the kirk sessions of Otago between 1849 and 1865, 48 (45%) related to the sin of antenuptial fornication.[10] Instances generally came to the notice of the session when baptism was requested for a child born within nine months of a marriage. Whatever their motivations, whether out of religious conviction or seeking reassurance that their baby would receive a Christian burial and have a safe passage in the afterlife, most parents valued baptism and sought its benefits for their children, regardless of their level of commitment to the church.[11] Most ministers appeared willing enough to baptise the children of couples prepared to demonstrate their Christian faith through regular church attendance and adherence to the teachings of the church, provided they were not guilty of any obvious sin, such as adultery.[12] The couple may have been suspended from church privileges for a short while, during which time the minister would speak to them of their sin. The couple then appeared before the kirk session, confessed their guilt, showed due penitence for the sin and expressed a desire to be readmitted to the church. The minister rebuked them, absolved them from 'the scandal of their sin' and formally restored church privileges to them. Ministers never withheld baptism of the resulting children on the basis of the sin of antenuptial fornication alone; the sin could not be repeated because the couple had been married, and nothing would be gained from further punishment.

In terms of gender, there is no evidence that either partner was considered morally weaker or more at fault in a case of antenuptial conception. In other cases of fornication, however, women usually faced punishment alone. The church had dealings with the men in only five of the 27 cases (19%), mostly because a large number of the cases involved single women who gave birth to illegitimate children while on the voyage to Otago or shortly after arrival, or whose partners had left Otago. Still, even though a number of unmarried women faced punishment by the kirk sessions, it appears the wider

community rarely stigmatized them. For example, Sarah Fleming gave birth to a daughter in January 1854, shortly after arriving in Otago. Over the next two years her daughter was boarded out with another family.[13] The fact she was a working-class woman and had the support of another working-class family is probably significant here. Sarah went on to marry in about 1857, and her husband accepted her illegitimate child as part of their household.

The relationship between gender and class is striking. Working-class support structures overlooked or ignored these women's sexual behaviour, in contrast to the kirk sessions, which reflected a middle-class morality where women were 'custodians of family welfare and respectability and dedicated and willing subordinates to and supporters of men'.[14] After all, as Peter Matheson has argued, the Free Church was a middle-class institution that brought a 'confident sub-culture, that of the aspiring middle-class in Lowland Scotland' to Otago.[15] The church could be indifferent to the realities of working-class experiences. For instance, many single mothers had to raise their children without the family networks available to them back home in Britain, and local networks were crucial. Single mothers such as Jessie Robertson relied on family and neighbours to provide childcare while they worked to support their offspring. As in the case of Sarah Fleming, the fact Jessie had a child out of wedlock did not prevent her from marrying. At the age of 20, she married widower David Hutcheson at her father's residence in Dunedin in April 1853, and they set up a home together in North East Valley.[16]

These examples not only illustrate the kirk sessions' concerns with maintaining the centrality of marriage and the family unit within the settlement; they also help begin to identify the different attitudes to sexual morality held by members of different classes. By focusing on cases of antenuptial conception and fornication, the kirk sessions were punishing individuals whose behaviour was contrary to the teachings of the church and middle-class ideals of respectability. However, these ideals appear to have been perceived as flexible by the more working-class sectors of the community, who were willing to overlook these sexual transgressions among members of their own families and immediate neighbours.

The secularization of sexual morality

Regardless of the expectations of the Free Church authorities and the active involvement of the kirk sessions in attempting to impose a moral order, the state had the ultimate authority to define what constituted a crime within Otago. Within seven months of the first settlers' arrival the settlement had a gaol, albeit a flimsy weatherboard hut that became the butt of jokes,[17] and by

the end of 1848 the police force had grown to seven. The need for this level of law enforcement seems strange for a colony with such a small population, especially given the leaders' adherence to a church-based system of social regulation. Looking back in 1898, Reverend William Bannerman recorded that 'the only job the police had was to round up sailors who had been hooked by the eyes of a beautiful immigrant girl or who were looking for a different Captain'.[18] Although coloured by the passage of time, Bannerman's statement illustrates the essentially law-abiding nature of the early settlement, which is borne out by the evidence of early convictions. The majority of the early offenders within the settlement were charged with being drunk and disorderly. The Return of Prisoners in the Gaol of Dunedin for the period September to December 1851 listed a total of nine prisoners: five for drunkenness, one for drunkenness and theft, one for desertion and two for debt. Four of them were Scottish and professed adherents of the Free Church, if not members.[19]

The secular courts played a growing role in the regulation of behaviour from the 1850s, leading up to the 1860s when concerns over public disorder resulted in the establishment of new laws, notably the provincial Vagrant Ordinance of 1861, which was used to regulate and punish 'abnormal' sexual activity. Gender and class, though, remained just as significant as they had before. Men dominated the secular judiciary: lawyers, judges, juries, court recorders and court reporters were always men. Under civil law women tended to be treated differently from men. A woman's reputation was a key issue, especially in cases of sexual assault. In 1867 one Supreme Court judge cautioned the jury as follows: '[T]he question of whether an offence had been committed depended exclusively upon the testimony of the woman … and the evidence of [this] witness, if believed … was sufficient to justify a Petite Jury in convicting. Of course, it was necessary that the Petite Jury should watch with care the evidence of the woman, as she gave it in Court; and it was always desirable that there should be some testimony to corroborate her – something that should at least show, if not by direct circumstances of corroboration, that she was the witness of truth.' This judge clearly articulated the difficulties such cases presented to juries. The judge stressed the jury needed to carefully consider the evidence presented by the female victim of the assault, and to determine her reliability as a witness. By bringing a charge of sexual assault against a man, a woman immediately brought her character into question.[20] Social class, work and respectability were important elements of a woman's identity and influenced how she interpreted and talked about an assault.[21] Class also shaped perceptions of women's reliability and respectability.[22]

Thirty cases of sexual assault or rape against European women or girls came to trial between 1848 and 1867 in Otago. Eight involved victims under

the age of ten; in four the victim was between ten and 15; in seven the age was unknown; and the remaining eleven victims were known to be over 15. The actions of the victim during and after the assault and evidence relating to their moral character were key factors in all the cases involving victims over the age of ten.[23] A number of cases of sexual assault heard in Otago courts resulted in either a not guilty verdict or the dismissal of the case before all the evidence had been heard. In each of these cases the jury examined the moral character of the woman, her sobriety and her actions during the supposed assault, and found them wanting.[24] Several historians have identified the importance of the physical resistance by the victims as a key factor in whether their stories were believed.[25] The evidence from Otago's courts supports such a contention. The young teenage victim in the case against John Christie, accused of rape in 1863, emphasized the defence she put up: 'I struggled with him for some time and screamed out … I tried to resist him as much as ever I was able but he was too strong for me. I was not well at the time. When I screamed out he told me to be quiet or he would kill me … I was struggling with him for about half an hour. I screamed a great deal.'[26] The girl's evidence and age were likely to be contributing factors in the jury's finding Christie guilty. Her loud struggles and screams attracted attention and provided further witnesses to the assault.[27] The local Free Church minister, the Reverend William Will, heard the shouting of one 15-year-old victim: 'I heard screams about a quarter of a mile from my house … I listened particularly and looked in the direction whence the screams proceeded, and for some time could see nothing. I afterwards saw two persons, male and female, apparently struggling together. I sent my man sometime afterwards to see what was the matter.'[28] A witness with such social standing, one who could corroborate the statement of the victim, virtually ensured a conviction for assault. It was clearly expected that victims would do everything in their power to resist an assault, and girls and women spoke to these expectations when providing evidence. Any suggestion a victim did not resist or fight off her attacker could leave her open to accusations of complicity.[29]

The actions of a victim prior to an assault could be used to question her respectability despite her attempts to defend herself during the assault. In one case from 1863 the victim and the accused were passengers on board a brig going to Launceston, Tasmania. The victim's consumption of alcohol, in this case two glasses of brandy during the evening, brought her character into question.[30] She claimed she had not held out 'any inducements for him to come into [her] berth' and she insisted she resisted his assault.[31] Despite the victim's evidence, the Crown Prosecutor withdrew the charges. The role of alcohol in undermining the character of some victims of sexual assault

contrasts with the use of alcohol to defend the actions of some of the men who perpetrated the assaults. A number of the prisoners used the excuse that they were drunk or had been drinking prior to the alleged assaults: 'Mr Howarth … on behalf of his client, [admitted to] the minor charge of a common assault. He had been at a sale at the Taieri on the day in question, and the prisoner had partaken too freely of spirits, and although it was no legal excuse, he hoped the jury, as men of the world, would take all the circumstances into consideration.'[32] In another case the defendant read 'a fairly composed statement' in his own defence. He did not deny that he made an attempt to have sexual intercourse with the victim, but used the excuse that 'he was inflamed with drink taken in the prosecutrix's shanty'.[33] Each of these examples illustrates a gendered double standard, as historian Joanna Burke explains: 'On the one hand, the consumption of alcohol is viewed as making women *more* responsible for their own rape: by choosing to get drunk, women are deliberately increasing their risk and should be prepared to face the consequences. On the other hand, male consumption of alcohol is viewed as making them *less* responsible for their actions: by choosing to get drunk, men increase the chance of inappropriate behaviour and should *not* therefore be required to pay the price for their actions.'[34] Such a double standard illustrates the difficulty that all women faced in having their cases examined fairly: they were perceived differently from men under the law.

Laws designed to punish attackers encoded the perception that the victims of sexual crimes were morally loose.[35] In several cases, including the 1859 case against John Hislop for assault with intent and the 1863 case against John Christie for rape, the judges spent some time on the points of law surrounding the use of force. For an assailant to be found guilty of indecent assault he needed to be 'determined to accomplish his purpose [and] to do so at all risks … at all events, and under all circumstances'.[36] An examination of the victim and her behaviour determined whether she was in any way consenting, as illustrated in the following quote from a Supreme Court judge's address to a Grand Jury in 1863: 'The crime of attempting to commit a rape is not constituted, if a man enters the room of a woman with intent to induce her to yield – not by using force or fraud – and desists when he finds that her will is opposed, and that she will not consent. It is necessary for the crime that he should use violence against her wishes. Or there may be rape, although not against the will of the woman; if she has been stupefied by any liquor or drug, or if she be sleeping, so that the will is dormant.'[37] This judge suggested that the actions of both the man and the woman must be considered. However, the victim's will was the key factor, as the man's actions appear to have been determined by the woman's willingness to 'yield'. Despite this legal necessity

to determine the will of the victim, the attitude taken by the members of the male-dominated courts constituted an attack on the moral character and virtue of female victims.

The nature of the legal process, the male-dominated courts and the perception that 'good' women did not talk about sex all undermined the law's effectiveness in deterring sexual violence. These factors suggest the existence of strong views towards the role and place of women within the community. Such views, although not excusing sexual violence, questioned the morality of women who become its victims. These women were perceived to have transgressed boundaries and put themselves in situations where the inherently 'unruly' nature of their female sexuality had exposed them to sexual advances. Victims were required to show how they conformed to traditional ideals of the moral woman. Of course, some women did not conform with social expectations. While not a sexual violence case, the instance of Margaret McPherson, charged with concealing the birth of her child at the end of March 1865, clearly illustrates this nonconformity. McPherson, aged 27, gave birth to a child in the Immigration Depot the night she arrived in Dunedin from Glasgow. Her fellow passenger Mary Scott, aged 26, assisted her and was later charged with aiding and abetting the concealment. It appears the baby was born dead. It is unclear who gave information about the concealment to the police, although it may have been another fellow passenger, Mary Macgregor, the primary witness, who provided assistance to McPherson and Scott during the night and again when they left the depot in the morning.

Macgregor's evidence at the trial suggests she was involved in the concealment along with the two prisoners, to the point of suggesting that they dispose of the body somewhere on their journey after leaving the depot.[38] Between them the women agreed not to seek medical assistance, although they had discussed it. McPherson claimed she had been seen by the doctor on board the *St Vincent* but he had not told her she was pregnant, and she claimed to have been unaware of the fact herself.[39] Although the reporting of this case in the local newspapers at the time was matter-of-fact, there is a suggestion of sympathy for McPherson when she appeared in court: 'Margaret McPherson being evidently suffering from great bodily weakness, was accommodated with a seat during the proceedings.'[40] This sympathy may have carried over to the Supreme Court hearing two months later. The judge, Mr Justice Richmond, 'warned the jury against undue sympathy with the prisoners. He had some doubt, at first, whether the charge of concealment of birth could be sustained, seeing that the occurrence took place in what might be called a public dormitory. But there seemed to have been no communication to any person as to what was going on, except to Mary M'Gregor; and if the jury

believed that that communication was intended as a means towards keeping from the world at large a knowledge of the birth, then it would be quite competent for the jury to convict the prisoners.'[41]

An examination of the wording of this speech suggests that the judge 'had some doubt' about the charge and was willing to voice it to the jury. Ironically, three months later, the same judge presided over another case of concealment, which was 'ignored' by the Grand Jury.[42] In his opening remarks to the jury in that case, Mr Justice Richmond stated that concealment was not a grave crime, classing it alongside larceny, burglary and making a false declaration under the Marriage Act.[43] In this it is not clear if his words reflected his own views or those of the wider community. Although these women stepped outside the bounds of social expectation, they appear to have been judged as having broken only the letter of the law and their actions, while hardly respectable, elicited more sympathy than condemnation.

Respectability could also be an issue for men when they appeared in court. Their background might play a role in sentencing. The longest sentence for assault with intent to commit rape handed down in Otago illustrates this point. In May 1862 a judge sentenced Thomas Davis, the captain of the schooner *Flying Squirrel*, to two years with hard labour, the maximum available sentence, for an attack on a married woman who purchased passage to Hobart on the schooner.[44] Although the defendant's solicitor attempted to question the virtue of the victim, the judge, Mr. Justice Gresson, remarked in his summing-up that 'the imputations against the virtue of the prosecutrix were amply refuted by her laudable and significant conduct, in so frequently escaping from the prisoner'.[45] In passing sentence, Justice Gresson suggested the gravity of the crime was compounded by Davis's position of authority as captain of the ship, and his duty to transport the victim to Hobart. By suggesting the victim was a willing participant, Davis further compounded his crime.

The case of Alexander Ross, heard at the Supreme Court in June 1864, also underscored the importance of respectability. Ross was arrested after attempting to have anal sex with a 13-year-old stable hand in a hotel in Dunedin. On the face of it, the evidence presented in court appears to confirm the guilt of the prisoner.[46] However, as Netta Goldsmith has suggested, the biases of judges as well as the appearance of witnesses heavily influenced juries' perceptions about the reliability of evidence.[47] Mark Pendry, the victim of the assault, turned up as key witness in this case. By his own admission, his father had evicted him for 'bad behaviour' and he turned to work as a stable boy 'amongst the hotels of Dunedin' while living in a house 'confessedly not of a high character'.[48] The judge felt unable to 'conceive any life more likely to corrupt, than that to which this boy was left, whether by his own fault or his misfortune'.[49] Pendry admitted

that the accused offered to take him to Canterbury with him and buy him new clothes.[50] It also appears money changed hands, with the prisoner handing Pendry 5/-, but it is unclear when this happened and why. Pendry claimed he was given it the next day and asked 'not to say anything about it'.[51] The other witness claimed it was immediately after the sodomy attempt.[52] Whatever the timing, the exchange of money suggests the possibility that Pendry had agreed to some form of contact. The other major witness, a 'coloured man' and shoeblack called Thompson, shared a bedroom with the accused and the victim. In his summing-up of evidence the judge spent some time focusing on the witness's race and instructed the jury on its irrelevance to the case: 'His Honor, in summing up, said he would first invite the jury to consider the character of the witnesses …. Then consider the character of the black man. God forbid that color should weigh with him. It did not in the least. As he had remarked in a previous case that day, many men of the negro [sic] race were living here as respectable and highly worthy citizens in their own spheres.'[53] In colonial Otago, ethnicity and class may have been significant factors in the ways juries – if not the judge in this case – assessed the respectability of a witness. It seems most cases of attempted sodomy, and similarly bestiality, involved working-class rather than middle-class men.[54]

Women who engaged in prostitution made up another marginalized group. Colonial officials were constantly aware of the moral threat posed by unprotected women – those without a male protector, whether father or husband – who, in 'straitened circumstances', might turn to prostitution.[55] The existence of prostitution undermined the European middle-class female ideal and represented a highly visible form of sexual behaviour; it has also traditionally been the most publicly regulated. The middle of the nineteenth century, when Otago was colonized, marks a time when the regulation of prostitution was at its height within Britain and its empire.[56] Furthermore, a number of factors combined in New Zealand during the 1860s – including a social fear of female sexual promiscuity, primarily that of working-class women, and a shortage of female domestic servants – to influence gendered middle-class attitudes towards working-class women. These factors led to debates around the sponsored immigration of single women and the introduction of the Contagious Diseases Acts, which were exacerbated by the gender imbalance within the colony. Although the exact number of men who arrived in Otago in the years immediately after the discovery of gold in 1861 is unclear, it is claimed that as many as 85,000 men arrived in 1862 alone.[57] The resultant sex imbalance was as high as 944 eligible bachelors over the age of 15 for every 100 spinsters aged between 15 and 40.[58] Such a high number of males meant opportunities for heterosexual encounters,

whether casual, commercial or more enduring, were very limited: men had to find sexual partners where they could, whether with other men, as Alexander Ross did, or among prostitutes. The regulation of prostitution in Otago reflects social concerns over public order and middle-class attitudes towards working-class female sexuality, both of which reflected the 'heavily gendered and discriminatory practices' of previous centuries.[59]

In Otago, at least, 1861 marks a watershed with regard to prostitution and the regulation of 'loose women'. With the sudden and sizeable increase in the population, the provincial government introduced a Vagrant Ordinance in October 1861 as a measure to 'control the lower elements' of society, and the conviction of women for drunkenness and vagrancy increased.[60] Under the Ordinance those convicted could be subject to up to three months' imprisonment, with or without hard labour, and its targets included 'any person having no visible lawful means or insufficient lawful means of support', those convicted of drunkenness three times within a year, women using indecent language, and those occupying a house 'frequented by reputed thieves or persons who have no visible lawful means of support'.[61] The Ordinance also specified 'common prostitutes', and imposed a gaol sentence of up to three months for anyone convicted of behaving riotously or in an indecent manner. Courts imposed penalties of up to six months, with or without hard labour, on 'any person wilfully or obscenely exposing his person in any street, road, or public highway, or in the view thereof, or in any place of public resort', thereby putting those charged alongside housebreakers, gamesters and petty thieves.[62] It should be noted that although the pronouns 'he' and 'his' are used throughout, the ordinance applied to women as well, with 257 men and 120 women charged under the Ordinance between 1861 and 1869.[63]

The newspaper coverage of court cases involving Otago's prostitutes provides a sense of the ways locals perceived the 300 prostitutes working in Dunedin in 1864.[64] The following example tells of a young girl who had strayed slightly but was also well conducted and quiet: 'Fanny Markie was charged with the offence of soliciting prostitution. The girl made a mistake in speaking to a constable in mufti, who, instead of acceding to her blandishments, took her to the station house.'[65] In contrast, Mary Ann Archibald, tried in December 1861, lived on the streets and neglected her child.[66] She appears in the historical record as a woman who fell a long way from the ideal of femininity and motherhood. The reporting of her case reflects the nineteenth-century fascination with the 'Magdalene' image.[67] However, the harshest criticism is reserved for the women who were identified as 'notorious prostitutes', such as Mary Allen, Barbara Weldon or Anne Dunbar, all women 'well known to police'.[68]

These Otago cases indicate the often sympathetic way the courts and community perceived the less notorious of these women, like Fanny Markie, and what steps, if any, the wider community took to punish them. A flexible morality, in which women's temporary involvement in prostitution was accepted, challenges the idea of a single widely accepted morality based on middle-class ideals of female sexuality. The communities these women were a part of formed a section of the wider settlement willing to ignore or overlook the formal processes for regulating public order, where different standards of behaviour were tolerated. After 1861, tents housed miners and their followers in the area of Walker and Stafford Streets, and many women associated with prostitution lived and worked in this tented community. Many claimed they earned a respectable income by taking in washing or doing needlework.[69] Home to a very mobile and fluid population – and geographically close to town – this community developed its own norms and standards of behaviour, some of them at odds with middle-class ideologies of acceptable female sexual behaviour. Many residents accepted the presence of these women and accessed their sexual services, and conflict only arose if men thought they had been robbed. Respectability and public order featured as a major concern for middle-class residents of Dunedin but did not necessarily rule over these women and their associates.

Conclusion: A multitude of communities and attitudes

Religion, ethnicity, class and gender informed how individuals perceived others around them whilst also providing common bonds of understanding and a shared sense of community. This is not to suggest there was one single community to which all settlers belonged, for as people moved into or out of an area the nature of the community changed, and its underlying belief systems may have been relatively fluid. Patterns of migration influenced these communities differently. The views and beliefs of community members reflected their own cultural traditions, and these groups were not mutually exclusive: settlers could feel part of several communities at once.[70] A middle-aged Presbyterian woman married to a labourer in North East Valley, for instance, could belong to a community of working-class families living in the same area, a community of the First Church congregation, and a local group of women who provided each other with support. Their dominant cultural traditions related very much to the place of origin of their members, and also reflected similar communities throughout Britain and its colonies. These settlers' experiences were both specific to Otago and a constituent part of a global network of communities with shared values or beliefs. The Otago context provides a complex environment in which to examine the

interrelatedness of religion, class, gender, race and place in relation to the regulation of sexual activities: prostitution, sex between men or sex between women, sex outside of marriage, sodomy, sexual assault and rape.

Despite the diverse ways settlers perceived sexual behaviour, the majority of community members accepted the centrality of marriage to sexual expression and family formation. However, the gender imbalance, economic hardship and personal inclinations meant not everyone within the community either was able to marry or even wanted to do so. Men who had been in Otago before 1848 and the miners who arrived after 1861 had diverse attitudes toward sexual behaviour. Some women engaged in sexual activities, such as prostitution, deemed by the majority to be disorderly or criminal, and others, like the shoeblack Thompson, did not condemn illegal activities. These individualized reactions are reflected in the way people reacted to certain behaviours and gave evidence in court cases. Juries and judges, in turn, interpreted evidence in varied ways. Ideals of social position, appearance and character influenced people's perceptions of those accused of sexual transgressions and those who accused them. These ideals influenced the workings of the judicial system, the actions of the police in maintaining public order, and the attitudes of the wider population towards the more obvious examples of sexual transgression, including single mothers and prostitutes.

Otago did not have, and never could have had, a single overriding attitude towards sexual behaviour. The life experiences of the community's members, as well as their race, gender, religious affiliation and class, all had an influence. These layers of interpretation slid and shifted as events both within the colony and in other regions transformed society. Differing attitudes came to prominence when the members of the colony responded to the realities of establishing the settlement – the initial years of hardship and political division, increasing stability, and then upheaval associated with the discovery of gold. From 1861 state involvement in policing social behaviour increased, as greater numbers of police on the beat and increased funding for police demonstrate. Laws were introduced, first locally, with the Otago Vagrancy Ordinance in 1861, and then nationally, with the 1867 Offences Against the Person Act, which redefined specific behaviours as criminal. By the end of the 1860s the religious and social principles of the colony's foundation had been overtaken by a broad concern for public decency and order, in which the policing of sexual behaviour was regarded as essential to producing and maintaining respectability.

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NOTES

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