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Editorial

We live in strange times: the election of a fascist government in the heart of the Empire, the drift toward fascism in Europe, India and the Philippines, our own government where a minor party imposes a racist, neo-liberal agenda on its bemused and vacant coalition partner, a live-streamed genocide proceeding without real intervention from a seemingly impotent global order... hardly the setting for a Merry Christmas. Yet the energy and manaakitanga of the hikoi provided a glimmer of hope.

I have been attempting to write the text for an exhibition at the Blackball Museum devoted to the future. It has been both daunting yet strangely simple. The climate crisis has to take precedence – if the planet ceases to be liveable for homo sapiens and a great number of other species, then the journey to that conclusion is going to be very unpleasant: refugees, starvation, resource wars, endless disasters – we know the story, for it's beginning to unfold.

So where is there hope? It becomes obvious that we have to look beyond capitalism and the project of modernity to find the solutions: community empowerment and action, co-operatives, indigenous knowledge and restoration of mana, and of course, union power. In terms of the latter, I was taken back to the 1972 Lucas Aerospace corporate plan designed by the shop floor stewards and the discourse of that struggle: the shop floor worker is intelligent, knowledgeable and creative, workers should choose what is made on the grounds of the social usefulness of the product, the power structure of investor/management/state/bureaucracy has to be overthrown...

But this collation of information remained inert. It was just information, until I went to Brecht's political poems and began to insert quotes from the words written during the 1930s in fascist Germany, written from the point of view of a cadre on the move in a politically hostile environment – that edge, that urgency, brought the exhibition to life. And the lesson for me is that this cadre energy is what is now required.

This edition is a selection of both research which gives a refined knowledge of the past (Dave Welch's account of the Christchurch Trammies' strike, Doug Munro's argument that worker unfreedom is a continuum rather than an either-or and Greg Lloyd's astute essay on the differences in resolution of disputes between the old Labour Relations Act and the current Workplace Relations Act), and accounts of current projects amongst union, working-class and mana whenua communities, in particular Rebecca Macfie's moving Stout lecture, which began the Poverty By Design conference, and the review of Lyndy McIntyre's 'biography' of the Living Wage Movement.

Brecht wrote of discovering 'the thought of the feeling' and 'the feeling of the thought' and there are two thought/feelings that stand out here: Rebecca's *court of aroha* and Lyndy's *community tenderness*.

These are important as we seek the feeling structure of a new and necessary struggle.

[Paul Maunder](#)

Chairperson's Report

2024 has been a relatively quiet year for the Project. The committee had proposed to hold a symposium in February 2025 but organising an event at this time proved unsustainable due to the workloads and other commitments of committee members in early 2025. Work has continued on our normal events and in particular the Rona Bailey lecture which is tentatively scheduled for November 2025. We will also be seeking a speaker for our annual general meeting in July. The main, admittedly low key, project for 2024 has been a gradual updating of the Project's website. Once we get the website up to date we hope to look at improving it as a central source for those seeking information on labour history.

While the Project did not hold a symposium in 2024 some members of the Committee did attend the two-day conference *Pakukore: Poverty by Design*, organised by the Stout Centre for New Zealand Studies at Victoria University of Wellington, Te Herenga Waka. I think it can be safely said that this was one of the most informative and well-structured conferences that I have been lucky to attend over an academic lifetime. The organisers (Rebecca Macfie and Brigitte Bönisch-Brednich) did an outstanding job in balancing solid academic research with a number of papers dealing with real life experiences of poverty and some of the many extraordinary projects being carried out to attempt to alleviate at least some of the many problems resulting from or caused by poverty. The Stout Centre is planning to make the various presentations available online in the near future and I would recommend readers take advantage of the opportunity to hear, or rehear the various speakers.

The key message that came through clearly was that poverty is a choice, not as neoliberals would suggest, a choice by the poor, but rather a deliberate choice by governments since the 1980s, if not earlier. In this report I will mention just the two papers in the opening session. The presentation by Craig Rennie (NZCTU) made it clear that New Zealand has not only the economic capacity to largely eliminate poverty but also that doing so would result in major positive economic gains for the country as a whole. The presentation by Dr Jin Russell, a paediatrician, clearly demonstrated the health and psychological cost of poverty born by children in deprived families in their first five developmental years and also in their teens. A later paper by Bill Rosenberg demonstrated the massive shifts in wealth in New Zealand over the last 35 years that has led to the high level of contemporary poverty. As the title of the conference makes clear, a policy of poverty by design.

Among other things, the work of the Project is "to promote and encourage a greater understanding of trade union and labour history in New Zealand." An understanding of that history over the last four decades does much to explain the increase in poverty and in particular the appalling level of in-work poverty.

As always, the Committee welcomes new members and also welcomes suggestions as to how we may better deliver on our objectives of promoting and disseminating labour history.

Gordon Anderson

News

New research project

Jared Davidson

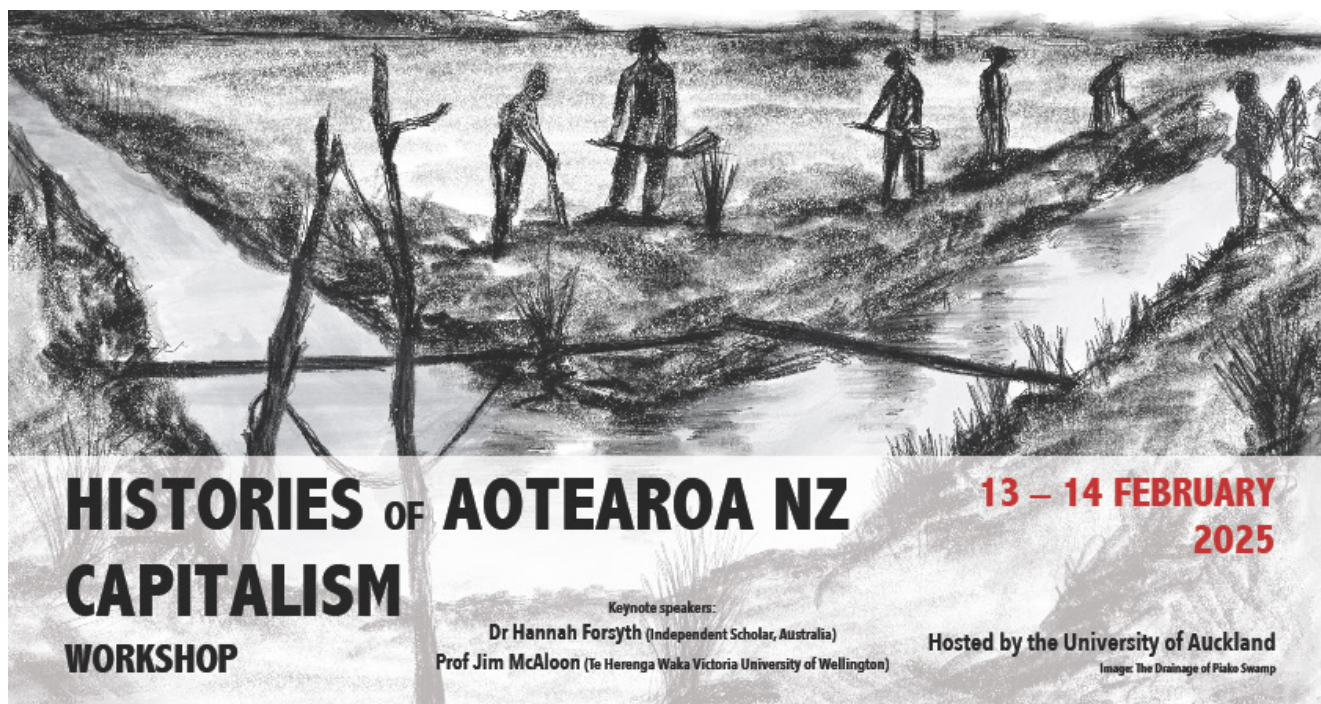
Jared has embarked on a relevant and fascinating research project:

Heavy metal: Forced labour, commodity frontiers and highways through Aotearoa's central plateau.

Link: <https://garagecollective.blogspot.com/2024/11/heavy-metal-forced-labour-commodity.html>

You can also read or download a PDF version of this paper at Scribd, Academia or Issuu.

Jared writes: Building on my book *Blood and Dirt*, this research charts the construction by prisoners of State Highways 4, 46, 47 and 48 through the central plateau (and Tongariro National Park in particular). However, this is more than just a story of unfree roadmaking. Viewed through the lens of infrastructural and commodity frontiers, these highways illustrate the inseparable nature of capital and the state, imprisonment and 'improvement', colonisation and commodity frontiers. The beneficent language of development and modernisation smooths over the colonial dispossession, forced labour and class antagonism at the heart of these highways. The study of prison-built infrastructure also reveals the dialectical nature of appropriation and exploitation, extra-human and human, within the web of life.



HISTORIES OF AOTEAROA NZ CAPITALISM WORKSHOP

**13 – 14 FEBRUARY
2025**

Keynote speakers:

Dr Hannah Forsyth (Independent Scholar, Australia)
Prof Jim McAloon (Te Herenga Waka Victoria University of Wellington)

Hosted by the University of Auckland

Image: The Drainage of Piko Swamp

Call for Papers

Capitalism has been a subject of historical inquiry for many decades, but recent 21st century crises have given rise to a wave of international scholarship that aims to problematise and historicise capitalism in new ways. While this 'New History of Capitalism' has emerged as a sub-field of History in the United States, the United Kingdom, and Australia, scholars have yet to develop an equivalent sub-field in Aotearoa.

This workshop will provide a forum for historians and other scholars to share, discuss and refine new research relating to the history of capitalism in Aotearoa.

We invite scholars, including postgraduates and early career academics, to present original papers on a diverse range of topics. This may include: capitalist transformations, ideology, historical materialist methodology, colonisation, racism, gender, rangatiratanga, iwi and hapū histories, the rise of the far-right, war, climate change, imperialism in the Pacific, and alternative economies. This is, by no means, an exhaustive list of possible topics – all ideas are welcome!

The workshop will be held in a single stream over two days.
Limited spots available.

SUBMIT YOUR PROPOSALS

Your proposal must include:

- an abstract of 200-250 words
- your name and contact details
- institutional affiliation (if applicable)
- a short biography of no more than 100 words

Send proposals to:

meghan.williams@auckland.ac.nz

by Friday 29 November 2024

The second National Conference of the New Zealand Federation of Socialist Societies was held on the Saturday and Sunday of Labour Weekend 2024 in Te Whanganui-a-Tara.

Angus Crowe



Close to 100 attendees registered for the conference, which was held across a number of venues in the central Wellington suburb of Te Aro. The main hub was the Wellington Socialist Society's home base Bedlam & Squalor. Evening keynote events were held at Thistle Hall, and Wellington Trades Hall served as a second venue for the parallel sessions of the main proceedings.

Speakers were asked to engage with the conference theme of 'the dual crisis in Aotearoa'. At the opening of the conference Wellington Socialist Society member Tom Smith elaborated on the theme, explaining how at various periods in Aotearoa's history crises have broken out in both the capitalist and colonial foundations of the country, giving rise to periods of rupture and interregnum, before a new political-economic paradigm emerged. The 1890s, 1930s, and 1980s were all such periods. Clearly, given the long economic and social malaise following the Global Financial Crisis, the shock of the COVID-19 pandemic, attacks on Māori and Te Tiriti o Waitangi, and the rise of both left and right-wing populism and talk of some sort of 'post-neoliberal' phase of capitalism in other parts of the globe, the moment appears

ripe to open discussion about how the dual crisis is manifesting itself again today.

This theme was taken up enthusiastically by speakers and attendees alike in more than a dozen talks, panels, and other events over the weekend. Talks covered unionism, the anti-globalisation movement, imperialism, the crisis in tertiary education and more.

The keynotes were a particular highlight. On the Saturday evening a panel on 'Te tiriti and the struggle for socialism' brought together experienced Tino Rangatiranga activists Catherine Love (Te Ātiawa, Taranaki, Ngāti Ruanui, Ngā Ruahinerangi), Kassie Hartendorp (Ngāti Raukawa, Ngāti Tūwharetoa), and Dougal McNeill. Ably moderated by Wellington City Councillor Nikau Wi Neera (Ngāti Toarangatira, Kāi Tahu), the panellists discussed questions ranging from the current coalition government's attacks on Māori, the evolution of the struggle for Tino Rangatiranga, whether the real motivation for ACT's Treaty Principles Bill is to remove barriers to further privatisation and deregulation, and the compatibility of the Pākehā concept of socialism and Te Ao Māori.

On the Sunday evening, Pablo Abufom, a fourth-generation Palestinian living in Chile who has been involved in the struggle against neoliberalism in Chile for nearly 20 years, spoke to 'Resisting neoliberalism in Latin America: The 2019 Chilean revolt and the struggle for constitutional reform'. Pablo briefly outlined the historical background to struggles against neoliberalism in post-dictatorship Chile – of which the student movements of the 2000's and new social movements and demands from civil society (particularly feminist demands) were of note – before giving an account of the events and eventual failure of the movement for constitutional reform. He reminded us that neoliberalism is not so much a 'perverse plan' implemented by a sadistic ruling class, but more a strategy designed to 'keep the loop of accumulation going'. This does not mean the consequences are any less severe, indeed he spent some time discussing the crisis of subjectivity in neoliberalism as working-class communities have disintegrated. If anything, he was saying that the only way out is through – there is no going back to the 'golden age' of capitalism, and a society in transformation will require a transformed form of struggle itself. Although he and others ultimately failed in Chile, we can all learn

to fail better next time by thinking through the contours of what neoliberalism actually is.

Overall, the conference was a great success and we'd like to

thank all those who helped, spoke, and attended for their effort and engagement. Please feel free to get in touch at wellingtonsocialistsociety@gmail.com if you have any further questions or want to keep up with future events.



Vijay P: Indian historian and author Vijay Prashad on 'Hyper Imperialism and the Ensnared World', moderated by Tom Roud, at Bedlam & Squalor.

J.D. STOUT LECTURE, 21 NOVEMBER 2024

(reproduced with the kind permission of the author)

HARDSHIP & HOPE: STORIES OF RESISTANCE IN THE FIGHT AGAINST POVERTY IN AOTEAROA

Rebecca Mcfie

Tēnā koutou, tēnā koutou, tēnā tātou katoa.
Tēnā koe e matua Taku i tōu mihi whakataua.
Tēnā koe e Nic, inarā i tōu āwhina i tēnei hui.
E mihi ana e Callum, tēnā koe i tōu whaikōrero kaha.
Kei te mihi tātou i Te Rūnanga o Toa Rangatira, tēnā koutou i te rangapū o tēnei hui.
E mihi ana tātou i Taranaki Whānui hoki.
Kei te mihi au i te Stout Research Centre whānau, inarā Brigitte Bönisch-Brednich, e Debbie Levy. Tēnā kōrua e hoa.
Tēnā rawa atu i te Stout Trust whānau, inarā e Stephanie Gillbanks, mo tōu kaitiaki o te JD Stout Fellowship.
Tēnā koutou i ngā kaikōrero katoa o tēnei hui. Tēnā koutou.
Tēnā koutou i ā tātou kaiāwhina marea.
Kei te mihi tātau i ngā kaimahi o tēnei whare.
Tēnā koutou katoa.

Hardship & Hope: Stories of resistance in the fight against poverty.

Tuatahi, ko wai au?
He aha au i mohio o pakukore?
Who am I?
And what on earth would I know about hardship, and about poverty?
As a journalist, it was always a given that you didn't bring yourself into the story. You were just an observer, a questioner getting answers.
Who you were didn't matter.
Three-plus decades into my career, spending time in communities, on marae, in schools, with whānau, grass roots leaders and NGOs, I've had to profoundly rethink that.
I want their stories and to know their journeys, and that requires relationships of trust.
And so I have come to realise that, in order to build and honour that trust, I need to be clear about my own story, and where I've come from.
So, who am I, and what is my business coming in to places with my notebook and recorder, taking the words and knowledge of those who do know poverty and who do the real work?
These questions have weighed on me since I began this project, coming up to three years ago when my friend Scott Gilmour laid out a challenge – and support – to direct my journalism towards

deepening public understanding of the causes and harms of poverty in this country.

And so I'm going to start this talk by trying to address those questions, and how I've tried to make sense of what I've been doing, and whether I have any business doing it.

I am a 64 year old Pākehā baby boomer.

I grew up on a sheep farm in South Otago.

I am a beneficiary of a benevolent state.

My father served on a naval destroyer in the Indian Ocean for the last two years of WWII.

He was a town boy from Ōamaru, and when he was discharged he was entitled to become part of a scheme to resettle returned servicemen on farms.

He worked on many properties, he got an 'A' grade certification, and put in for 40 rehabilitation farm ballots.

And in 1951 he drew the property on which he and mum raised me and my brothers and sisters.

Dad was barely 26 when he drew the farm. He had zero money and zero business experience. His sheep dogs were his only assets. But, he was supported by the benevolent state: the State Advances Corporation provided a mortgage, a living allowance and budget supervision.

Our farm was among about 1.4 million acres acquired by the State for the purpose of rehabilitating servicemen.¹

And we had neighbours who had got their places the same way as Dad.

We grew up on this story: The benevolent state helped rehabilitate the servicemen who served in the war.

Only in recent times have I learned that this story was not true.

THE PRICE OF CITIZENSHIP

When it came to post-WW2 rehabilitation support, there was unequivocal assurance from the State that Māori and Pakeha would have 'equal opportunities'.

The State spoke of Māori being 'treated in exactly the same way as Pakeha returned soldiers'.²

As I now know from Terry Hearn's work for the Waitangi Tribunal's Veterans' inquiry, that promise of 'equality' was false.

Even Māori veterans who were 'A' grade, like Dad, were excluded from ballots for Crown sections, because of an alleged 'inability of

Māori to manage their financial affairs'.³

It was assumed also that iwi would use the little land still in Māori ownership to cheaply settle Māori servicemen.⁴

Access for Māori veterans, writes Hearn, was 'significantly constrained'.⁵

Many gave up waiting for that sweet promise of 'equality', and joined the wave of migration to the cities to search for waged work.⁶

Yes, servicemen who had answered Ngata's call to pay 'the price of citizenship'. Men of the Māori Battalion, in which the casualty rate was 50% higher than the average for New Zealand battalions.⁷

I grew up on the story that New Zealand had the best race relations in the world. The merits of assimilation and inter-marriage sort of floated in the cultural ether as 'good things'. I think Dad – who, unusually for a farmer, was a life-long Labour supporter – genuinely believed this to be true.

I didn't know what Ngāi Tahu was as a kid. Like other Pākehā of my era, I was raised ignorant of our history.

I grew up in a time of cultural and historical erasure.

My four year history degree didn't alter that.

I learned about Ngāi Tahu in the 1990s through the treaty claim story, which I did some reporting on, and how a series of 'dishonest and in some cases fraudulent'⁸ land purchases left them landless and impoverished.

The thing about erasure is that it deprives you of the structural building blocks of accurate historical knowledge.

Because you don't have the basic facts, you can't easily join accurate dots in order to form and develop an accurate narrative of your own place.

And so – this is just one very personal example of this – it is only just this year I have finally clocked that our farm was almost certainly within the southern boundary of the largest of those dishonest and fraudulent purchases from Ngāi Tahu – the 1848 Kemp purchase.

There were 6 of us kids growing up on the farm.

In 1956, when mum was 25, with two toddlers and pregnant with my twin brothers, she contracted polio and was left quite significantly disabled.

I and my younger sister were born later.

So. Heaps of kids. Isolated location. A stoic, hard working young mum struck by an awful disease that seriously impaired her movement. A husband out 'til all hours fencing, draining gullies, lambing, on the tractor. But no-one turned up at the farm to uplift us into care.

No. We were raised up by the benevolent state.

I had no concept that the state could be a threat to my liberty or wellbeing.

As a teenager hanging out on the streets of Balclutha, drinking under age, getting into cars with drinking speeding drivers, experimenting with weed, I don't recall interacting with the police. Certainly nothing like I saw when I was just a little older, at 24 and

working for the Police Association, when I was sent by my boss, Bob Moodie, to South Auckland to find out if there was racism in the police.

I rode round in the back of cop cars on late shift. They would slow down and stop alongside Māori and Pasifika teenagers walking along the street, and the driver and his partner would say to each other: 'Turn them over?', before getting out and doing just that.

The benevolent state educated us.

It didn't belt us for speaking our language.

For me, that benevolence included five years of free university education. When I needed work to pay the rent on my student flat, the benevolent state provided student job schemes.

I graduated with zero student debt, as would most of my contemporaries, many of them now in positions of power in the law, in business, in government, in politics, in medicine.

When my husband and I bought our first home in 1988 in Christchurch – a 3 bedroom wooden bungalow – it cost \$92,500.

At that time average house prices were under three times the average income.⁹

Our income was not very high – I was a first-year journalist on a dying afternoon paper, and my husband was a young engineer in a construction industry on its knees after the sharemarket crash.

But when we bought, the state had been an active participant in the housing system for 50 years. It provided mortgages to low income families buying first homes, and there had been mechanisms like the capitalisation of the family benefit, that enabled people to put a deposit together.

And of course the state built state houses. In 1991 it had a portfolio of 70,000 homes. That's roughly the same as the state owns now, for a population 1.8 million larger.

So, purely by an accident of demography, we have been able to accumulate wealth and lifelong housing security, from which our children have also benefited.

You could say we're 'sorted'.

In 1992, the housing system that created the conditions that prevailed when we bought that house was smashed. And the conditions were set for today's catastrophe:

- a society divided between those who own houses and those who don't;

- a collapse in the construction of low-cost homes¹⁰, about which I'm sure you'll hear more of from Kay Saville-Smith on Saturday;

- one of the highest rates of homelessness in the world;¹¹

- compounding harms caused to those condemned to be tenants, and therefore second class citizens:

- *subject to eviction at short notice – with every move potentially meaning the kids have to change schools;

- *subject to uncapped rent rises and the judgement of property managers turning up for three-month inspections of the lawns and the state of the toilet bowl.

43% of kids under 15 live in rentals¹², and are thus denied fundamental stability in their lives.

So, back to that question: what do I know of hardship?

I've never had to go to a food bank.
I've never paid 60% or 70% of income in rent.
I've never queued at WINZ.
I've never experienced the humiliating, shaming, careless, violent state.

But I've worked as a journalist for 36 years.
Journalism is grounded in a perpetual state of inquiry and curiosity.
It's fuelled by doubt and skepticism.
You live in a state of discomfort, about why things are the way they are, and who decided they should be that way; about who benefits and who pays and who decides how that equation falls.
That doubt and discomfort is what sends us out to look and ask.
It also puts us in a position of great privilege.
Journalists can go places and say: please start at the beginning; help me understand; tell me about you, and who you belong to; tell me about how you think this has come to be.

And so, everything I know about hardship is learned from others through this window of journalistic privilege; always knowing I can never fully understand, always fearful of doing more harm; and now deeply aware that the benevolent state that I grew up believing in, and benefiting from, is a violent and oppressive state for others.

Hardship & Hope: stories of resistance in the fight against poverty in Aotearoa – is a project that got off to a slow start nearly three years ago. Scott Gilmour, who has led the I Have a Dream project in New Zealand for over two decades, threw down the challenge: How about I start writing about inequality and poverty in a way that would encourage people to think about it, understand it, see its harms, and motivate them to support change.

I struggled to see how I could contribute anything worthwhile. The evidence and reports and data was already out there by the truck load.

Anyone who didn't know or care didn't want to.
And what could I do that wasn't just more poverty porn?

One day I talked to the wonderful Tracey McIntosh – who you will hear from tomorrow – about whether or how I could make a useful contribution.

She made the comment: 'There has to be hope to create change. There have to be spaces of hope.'

The idea of hope gave me a hand-hold, a kind of permission to get going.

But even then, who was I to say what hope was for people on minimum wages working to exhaustion scrubbing floors in the middle of the night, yet still having to go to the food bank; or single parents with the impossible task of stretching a benefit across power, rent, food, petrol; or the person ensnared by debt, having money sucked from their earnings under an attachment order imposed without their knowledge by the courts.¹³

I feared winding up writing saccharine 'good news stories' that would make people with the kind of advantages I've had feel better

about 'the poor people'.

But I came across a passage by Rebecca Solnit, writing in the context of climate change and climate activism, and which resonated equally in the story and struggle against poverty: **Hope is not optimism. Optimism assumes the best, and assumes its inevitability, which leads to passivity, as do the pessimism and cynicism that assume the worst.**

Hope, like love, means taking risks and being vulnerable to the effects of loss.

It means recognizing the uncertainty of the future and making a commitment to try to participate in shaping it.

So that was it for me. Provided I came to the work with uncertainty and discomfort and an open heart, there was something worthwhile for me to contribute, and which was part of my commitment to that future.

And so, I have been spending time in communities, trying to learn why things are the way they are in that place, and learning about the action, resistance, innovation, risk-taking and vulnerability rising up from that place, and how that can help shape the future.

I'm going to take you to three of those stories. Two have been published and one not yet written.

I met three wahine last year at Papakura Marae with an amazing Ngāti Porou woman, Angie Tangaere.

Angie is part of the Southern Initiative, which is dedicated to supporting South and West Auckland to become places where whānau can thrive.

Papakura is one of the most deprived areas in the country.

I learned from talking to Colleen, Rā and Crystal that they carried the various traumas of constant scarcity, grief, housing precarity, poor health, racism, of working themselves to exhaustion to survive, and being judged and shamed by agencies of the state instead of supported.

They became part of a group of whānau who would work together at the marae with the local bosses of government agencies to prototype new ways of doing things in Papakura.

They were in the room as equals and as leaders, with powerful people from the very agencies that had often perpetuated their hardship.

Angie had helped create a place where whānau were safe, empowered and welcome.

The powerful people in the room had no lanyard advertising their power. Just their name. Same as the whānau. This was not an exercise in consultation: you know, turn up at this location at 3pm and you'll have 5 minutes to speak so someone can tick a box.

Angie calls it an 'intentional sharing of power and space' that collapses the hierarchical distance between people.

So, what was the objective? Colleen said it was: 'To better myself, to better my family and to better the whole community.'

Which sounds like an everyday aspiration, but one that is commonly blocked in deprived communities.

As Angie says, the first questions are usually: 'What's wrong with

you?’ or ‘Why don’t you...?’, not ‘What do you think can work and what’s working for you now?’ She said much of this work was ‘about figuring out what was working and building on that’. She told me that for lots of the whānau involved, this was the first positively reinforcing experience they had had as adults.

I’m being very brief here in telling this story, but here’s one part of it that I found especially compelling: One of the prototypes that emerged was Te Aratake: one-on-one relationships between whānau and a person from one of the agencies.

For whānau, it was about aspiration, and having the support to move towards achieving that. For an agency person it was learning from an expert about the community they were delivering services for.

One important lesson I’ve learned is that behind every data point recording deprivation is a story of talent and skill and productivity that’s being oppressed by constant scarcity, constant stress, and the powerlessness of being forced to engage with a harsh judgemental state for survival.

In the context of this safe, tikanga-based environment where whānau were leaders and equals, their skills and talents came to the fore.

Colleen went out and reinvigorated a local netball club, got more kids involved, and they won the competition.

Crystal pursued her desire to connect with her whakapapa, went on a land trust, and got involved in a papakāinga project on ancestral whenua.

All three did tertiary level study, and Rāwinia was deciding between midwifery and social work.

They became leaders in community support through the lockdowns, designing and delivering support packs, and strengthening local relationships.

One of them said to me: ‘We’re living proof that something can happen if the power is shifted. Giving power back to the people. Don’t demoralise them because of how they are living, or how they are being brought up, or their past.’

This is not a sweet ‘good-news story’.

It doesn’t cure the housing catastrophe, or deliver a fair tax system, or fix frightening levels of school disengagement, or rain thousands of safe Living Wage jobs down on Papakura.

But it gives us a glimpse of what can be unlocked with tikanga, manaakitanga, whanaungatanga and aroha as the framework for action.

It’s a glimpse of what hope looks like: risky, uncertain, vulnerable to setbacks and loss, and aching with the possibility of a better future.

STORY 2

This is Malcom Northover from Hawkes Bay. He’s looking a bit grass-flecked because he’d been on the weed-eater before he sat down to talk to me.



Malcom Northover, who was tasked by his father, Joe Northover, in the 1980s with finding out what had happened with ancestral whenua to which his tipuna had obtained native land title in the 1860s. It is on a small parcel of this land that Puke Aute papakāinga has been developed over the last few years.

And this is Malcom’s cousin Zack Makoare.



Zack Makoare, a former freezing worker, who leads Te Taitimu Trust focused on Rangatahi wellbeing, and has led the development of Puke Aute papakāinga on ancestral whenua at Te Hauke, inland Hawkes Bay.

Malcom was 18 when his father asked him in 1985 to look into what was happening with ancestral whenua to which his tipuna had been granted title by the Native Land Court in the 1860s. By then about half the land in Hawkes Bay had been acquired by the Crown for a pittance and on false promises, and on sold to speculators and settlers.

The Native Land Court largely finished off the job of dispossession. It was explicit. Justice Minister Henry Sewell in 1870 described its purpose as: to ‘bring the great bulk of lands in the Northern Island

within the reach of colonisation' and the 'detrribalisation of the Māori – to destroy, if it were possible, the principal of communism upon which their social system is based and which stands as a barrier in the way of all attempts to amalgamate the Māori race into our social and political system'.¹⁴

Malcom's task 120 years later was to find out what was left of his tipuna's land; what had survived what historian Richard Boast described as 'fraud and dubious dealings' and the 'economy of speculation and graft' unleashed by Te Kōti Tango Whenua – the land-taking court.

Malcom's work took years.

He worked his way through documents in the Māori Land Court, and traced the fragmentation of the whenua down through the generations: blocks partitioned, blocks sold, land taken by council and government for public works.

Eventually he found there were 323 hectares left, fragmented across 23 blocks from one acre to 90.

It was all farmed by Pākehā under low-rent leases overseen by the Māori Trustee, which were rolled over without consultation.

If any whānau had wanted to build homes on it, the obstacles were virtually insurmountable: council rules forbade building houses on small blocks; banks wouldn't lend on multiply owned land; there was no infrastructure; it was leased to farmers; descendants were

scattered far and wide.

They were so alienated from their own whenua that when Malcom got everyone together in 1998 to visit it, aunties and uncles wept – they had never before stood on their own land.

But, things can turn.

Some councils – especially Hastings District Council, fired along by the formidable Ngāhiwi Tomoana – loosened the constraints on building papakāinga on ancestral whenua.

Tentatively, and inadequately, a trickle of finance has come through Kiwibank; there's been some infrastructure funding from government; and more significantly, a boost through the Whai Kainga Whai Oranga scheme in 2021.

And now, on a 2.8 hectare block of that ancestral whenua, there is this: Puke Aute.

Zack Makoare has been the driving force of this papakāinga.

It took years of persistence. This is hard, complicated, and under-resourced work.

But around Hawkes Bay papakāinga are popping up. Whānau are starting to build homes on their own land.

When I called in to see Zack a couple of months ago, he was out in his garage with a whānau group who had come for advice



Te wharehenui o Te Ari Taua Pitama at Ngā Hau e Whā marae, in Ōtautahi, where Te Koti Rangatahi sits each fortnight to support and monitor Rangatahi who have been charged with offences.

on building their own papakāinga, bringing their whānau back together on their own whenua.

It will get harder again – the Whai Kainga Whai Oranga money has largely run out and there is no more in this climate of austerity. But the possibility and potential is there to be seen now. Skills have accumulated, and people like Zack are sharing. I have a feeling the momentum will endure.

STORY 3 – Te Kōti Rangatahi – Rangatahi Court.

NGĀ HAU E WHĀ

This is Ngā Hau e Whā marae – an urban marae in Aranui, Christchurch.

I've been coming here most fortnights this year to learn about a space of hope and innovation that has grown from within the community of the judiciary, in partnership with marae.

Judge Heemi Taumaunu led the first Te Kōti Rangatahi – Rangatahi Court – in Gisborne in 2008.

There are 16 of them now, and two Pasifika courts.

They are part of the Youth Court.

These courts don't unplug young people from the mainstream youth justice system.

But they seek to address the foundational causes of offending and stop these children being fed into the pipeline of incarceration, and feeding our shameful over-representation of Māori behind bars.

It does this through tikanga, whanaungatanga, manaakitanga.

Lawyers might be uncomfortable with my use of the word 'child' here.

As I said, this is the Youth Court, and the young people I see come into the marae – at Ngā Hau e Whā, and at Manurewa Marae and Hoani Waititi Marae in West Auckland where I've also observed – are aged 14 to 17.

So, they are classed as Youth.

As a mother and grandmother, I see children. Vulnerable, still in development, easily harmed, and yet also capable of causing harm.

I've been in lots of courts over my decades in journalism.

I have never been in a court like this.

At Hoani Waititi one day recently, watching Judge Ophir Cassidy engaging with these children, naming their strengths and potential, acknowledging the work of their whānau and supporters, building their cultural connection, holding them to account for what they have done to victims, and ending their appearance with hongi and a deep, long hug, I scribbled down in my notebook: *The Court of Aroha*.

For most of these children, Te Kōti Rangatahi is their first experience of the beauty and power of the marae.

First, there is the powhiri: the call of the kaikaranga welcoming everyone – the young people, their whānau, lawyers, education outreach and social workers, youth aid police, mentors, and others onto the marae.

And the reply from the kaikaranga whakautu, for the manuhiri.

Inside the wharenui, whaikōrero, and reply from the manuhiri.

And waiata from the hau kainga and the manuhiri.

Then, whakawhanaungatanga – no matter how many people, everyone stands and offers their pepeha.

Often connections are made across the wharenui as people realise they are related.

Then, there is shared kai, before each young person comes before the judge and kaumatua.

Many of these children are so self-conscious at the start they can barely speak their names.

Over time you see their confidence build. They return regularly for monitoring against their Family Group Conference plan, adding lines to their pepeha, starting to gain an understanding of their whakapapa, explaining what they have done to meet their accountability plan.

Many go from their hanging their heads and holding their bodies curled into the chair as if trying to make themselves invisible, to looking in the eye of the judge and kaumatua, and being able to kōrero with people of mana who are exhibiting aroha and concern for them.

This work – this court of aroha – is not an aberration or a bolt-on to the mainstream. It's an expression of the objectives that guide the Youth Court itself – to seek solutions and help heal the causes of offending.

I'm sure you'll hear much more on this from Principal Youth Court Judge Malosi tomorrow, but I just want to mention something important:

Youth crime is not rampant.

In 1989, when the Children and Young Peoples Act came into being and the Youth Court began, 10,000 kids appeared on charges.

At the end of last year, there were 1,071 active cases before the court.¹⁵

Yes, there has been a post-Covid rise, but the number of young people engaged in offending is still less than it was ten years ago.¹⁶

Does Te Kōti Rangatahi make a difference?

There is evidence that it does reduce reoffending.¹⁷

But I'm inclined to be wary of linear cause and effect: these kids come to the marae, and to the Youth Court more generally, having suffered all kinds of harm – trauma, poor mental health, sometimes addiction, care and protection concerns, neurodiversity, and –

almost always – complete disconnection from education.

A few months of exposure to tikanga via Te Kōti Rangatahi can't heal all of that.

But, going back to that scribble in my notebook at Hoanai Waititi a few weeks ago: The Court of Aroha.

I've spent a total of around 15 days in Rangatahi courts this year, and it is impossible not to feel that the intimacy, the manaaki, and awhina that takes place is making some degree of difference, is shifting the trajectory.

To finish up

I've been on the winning side of our history all my life, and I still am.

My privilege as a journalist is allowing me into these spaces of hope, and I'm gaining more than anyone. It gives me urgent cause to overcome that erasure I grew up with, and to learn our historical truths.

This week I heard Tracey use the expression 'productive discomfort'.... I think that's what I've learned to live with...feeling utterly out of my depth, just as I should be.

For the first time, this year, I have dared to stand and begin my pepeha with:

Ko Tangata Tiriti ahau, and I've begun to understand what that means.

I've seen manaakitanga, aroha, whanaungatanga, tikanga at work, and seen a glimpse of the power.

I cannot imagine going back to a time when, not only was te reo stolen from those to whom it belongs, but from all of us.

I can't imagine going back to a time when we were denied its richness and the window it provides on other ways of being together.

Especially now:

- as opportunists seek to drive a poisoned wedge between us; who seek power by exploiting that erasure, and through those old tools of gaslighting and denialism;

- as we try to redesign our way out of the extractive prison of neoliberalism;

- as we try to rethink our systems and ways of living here together in these magnificent, fragile islands;

As we meet the threats and risks that can seem insurmountable:

- obscene inequality;

- shameful levels of deprivation;

- climate change and ecological degradation.

What these stories have taught me, a Pākehā baby boomer, is that we have answers and initiative.

We have ingenuity and innovation.

We have determination and vision.

We have kotahitanga.

To reference Rebecca Solnit again: we can be vulnerable and take risks and feel uncertain, and in all of that, we can be part of a better future.

We are hope.

¹ Terry Hearn, *The Economic Rehabilitation of Maori Military Veterans*, May 2018, Commissioned by the Waitangi Tribunal for the Military Veterans Kaupapa Inquiry (Wai2500), 477.

² Hearn, 263, 273.

³ Hearn, 765.

⁴ Hearn, 474.

⁵ Hearn, 592.

⁶ Hearn, 766.

⁷ <https://nzhistory.govt.nz/war/maori-and-the-second-world-war/impact>

⁸ Doug Graham, Ngai Tahu Claims Settlement Bill, 30 September 1998 Third Reading Speech. <https://www.beehive.govt.nz/speech/ngai-tahu-claims-settlement-bill>

⁹ Shamubeel Eaqub and Selena Eaqub, *Generation Rent: Rethinking New Zealand's Priorities* (Bridget Williams Books, 2015), 14.

¹⁰ Kay Saville-Smith, *Revitalising the Production of Affordable Housing for Productive, Engaged & Healthy Lives: Integrated Report*, Building Better Homes Towns and Cities

National Science Challenge: Revitalising the Production of Affordable Housing for Productive, Engaged & Healthy Lives, November 2019.

¹¹ Thomas Coughlan, "NZ among world's worst developed countries for homelessness as Chris Bishop says action on Bill English report 'very soon'", *New Zealand Herald*, 20 May 2024.

¹² Charles Waldegrave, Broken Homes Today: State Investment in Housing and Intergenerational Wellbeing 1950-2024, Stout Research Centre Seminar 3, Poverty, By Design Seminar Series, 31 July 2024.

¹³ Jake Lilley, A Decade of Debt, Stout Research Centre Seminar 6, Poverty, By Design Seminar Series, 28 August, 2024.

¹⁴ Te Ara, <https://teara.govt.nz/en/te-ture-maori-and-legislation/page-3>

¹⁵ Chief Justice of New Zealand, Annual Report for the period 1 January 2023 to 31 December 2023, 43.

¹⁶ Ministry of Justice: *Youth Justice Indicators: Summary Report*, June 2024.

¹⁷ Ministry of Justice: *Reoffending analysis of Rangatahi and Pasifika Court participants 2010-2012*, December 2014.

Articles

Reimagining Aotearoa, Together

Richard Wagstaff President, NZCTU

Ten days after the 2023 election, the NZCTU Te Kauae Kaimahi held its biennial conference, where delegates attending reaffirmed our commitment in a conference statement to continue to build trade union organisation and develop an alternative vision for Aotearoa.

Reimagining Aotearoa Together is what we called the initiative to develop that vision which sets out an alternative political, industrial, social, and economic policy direction for Aotearoa New Zealand.

Unions are painfully aware of the prevailing neoliberal policy hegemony that has afflicted our decision makers in government since the mid-1980s, and despite our poor performance economically and socially, successive governments to a greater or lesser degree have broadly stuck with it.

The emergence of industry bargaining in the form of Fair Pay Agreements is the single most important exception to this prevailing policy mind-set, and that was so short-lived, we didn't even get time to come close to settling a single agreement.

With the change of government in 2023, unions now face the most reactionary right-wing government since the 1990s, who have made it their priority to undermine workers' rights and public services, while advantaging big business and their corporate lobbyists.

A host of anti-worker law changes were made within the first 100 days of the new government including, repeal of Fair Pay Agreements Act, extension of 90-day trial periods to all workplaces, minimum wage adjustments below the rate of inflation, and large-scale cuts to public services resulting in mass redundancies. There has also been a winding back of critical infrastructure projects, including the cancellation of the new iReX Cook Strait ferries and the downscaling of the new Dunedin hospital.

In addition, the new government has attacked Te Tiriti o Waitangi, the very foundation of our nation, by advancing a Treaty Principles Bill in parliament.

Aotearoa is now on a path heading in the wrong direction at an accelerated rate. Reimagining Aotearoa Together is designed to set out a suite of policies that will set us right and put people and the planet ahead of profit. These are policies that take in the longer term and work for the many, not just the few.

We have broken the discussion into four pou, all of which are underpinned by a commitment to honour Te Tiriti. That means we will have to find a way that includes all people and supports the crown to honour its obligations to iwi and hapu.

Mahi Amaru/Good Work

As a trade union movement, we are especially concerned about the quality of work in Aotearoa. For too long, labour has been treated as a commodity to be traded in the marketplace like any other commodity, with little or no access to freedom of association and collective bargaining for many workers, and without proper regard for the human and social consequences. As a result, work in Aotearoa New Zealand is individualised, insecure, undervalued, dangerous and without the dignity it so richly deserves. The COVID lockdown may have exposed the critical value of essential work in our health service, transport sector, public service, food and grocery sector, cleaning, security and so on, but our 'labour market' keeps these workers on low pay with poor conditions.

The NZCTU is calling for a commitment to create good work in Aotearoa New Zealand. 'Good Work' includes a basic requirement that work become more secure, with better pay and conditions, and with collective bargaining available to all workers at an industry-wide level. Our vision for Good Work goes well beyond these basic expectations. Good Work very much involves creating workplace cultures that allow workers to thrive both individually in terms of development and careers, and within the social context of work. Workplaces need to become places where workers enjoy a high-trust environment, build confidence and collegiality, and experience respect and dignity. Unfortunately, due to a lack of management acumen, far too many workers today experience the opposite. They work in a culture that is characterised by a management style that is more 'command and control' and based on old-fashioned notions of a 'master-servant' relationship. This leaves workers feeling undervalued, vulnerable, and lacking confidence and respect.

Whakahou i a Aotearoa / Rebuilding Aotearoa

Our economy continues to be managed according to neoliberal orthodoxy and consequently Aotearoa continues to slide relative to other OECD nations in economic performance. Deregulation, low tax, limited government investment and intervention approaches have become even more prevalent in recent times, with both major

political parties going into the last general election promising to rein in public debt levels, borrowing and any tax reform to generate additional income and investment.

After several decades of this approach, we are left with low levels of productivity, an under-resourced public service, crumbling and insufficient physical and social infrastructure, and a chronic shortage of decent housing stock. These ongoing problems cannot be addressed without fundamental reform of our economic settings to allow greater investment in the longer term through tax reform and greater public debt and borrowing.

Mana Taurite / Ending Inequality

Rapidly growing inequality has also been a feature of our lopsided economic policy settings, where the limited gains that have been made are not shared. Instead, there are tens of thousands of children living below the poverty line, many who come from whānau who are in paid employment. Wages are too low, taxes are not collected from many sources of income and yet the current government has prioritised handing out tax cuts to wealthy landlords. There is also a need to address other forms of inequality by strengthening efforts to implement pay equity on gender and ethnicity grounds and to introduce pay transparency. As trade unions, we know it is workers who are doing the hard work, but over time seeing their share of the total economy shrink.

Te Anga Whakamua / Securing Our Future

We understand the challenges facing workers and their communities in the future of work. We need to navigate our

way through climate change, technological change, demographic change, and globalisation and arrive at a low-emissions, high-wage, high-skill productive economy. Achieving the outcomes we want will only come about by deliberate and decisive action. Government policy can no longer put off these challenges till a later date. We need to commit to a 'just transition' approach to transforming industries that are fit for the future. A just transition policy demands we engage the social partners and communities in key decisions, and we leave no one behind. With strong government support, we can transition workforces through training and support, while encouraging employers to move investment away from high emissions industry to modern production methods.

We have been discussing these ideas with thousands of union members in meetings throughout Aotearoa. We have also engaged community allies who share a sense of justice and fairness. These conversations have all contributed to developing our thinking. They have also strongly affirmed our call for an alternative vision for Aotearoa.

Reimagining Aotearoa Together is new and current, while also being what unions have always done. We have always backed policy approaches that are inclusive and put people first. Right now, these policies couldn't be more relevant as we face the headwinds of a conservative government hell bent on their old anti-union agenda. Our plan is to get opposition parties to adopt policies that reflect our vision and be ready to implement them once elected to Government. There is no time to lose!



Richard Wagstaff at launch of Reimagining Aotearoa, Together in Wellington

Christchurch Trammies' strike of 1932

Dave Welch

Reprinted from the Press, 1 May 1982, under creative commons license.

Outside Lancaster Park about 4,000 people blocked the roadway. The protesters were in a boisterous and unruly mood, and several bottles had already been thrown. The crowd chanted the names of the widely condemned rugby players. They wanted blood. The players were trapped in the grounds until more protection was available. Police reinforcements arrived and batons were drawn. With a speed born of recent experience, a flying wedge of burly policemen easily cleaved a passage to the gate. Few demonstrators cared to argue with the batons. The black Maria was backed through the divided crowd and right up to the changing room doors. The players were asked to board quickly.

There is nothing new under the sun. This dramatic slice of local history comes not from 1981 and the anti-tour demonstrations but from 50 [1982] years ago. On May 1, 1932, Christchurch tramwaymen voted to strike in what was to prove the most bitterly fought industrial dispute in the city's history. Jock Mathison, the union president, warned before the strike that the district 'will be plunged into the first instalment of an industrial war'. It proved a grimly apt prediction. From the onset of the depression, the Tramway Board had been seeking ways to cut costs in line with falling income. In 1931, exploiting a legal loophole in the arbitration system, the board had attempted to introduce drastic cuts in wages and working conditions.

When the union said these were unacceptable the board dismissed the entire traffic staff and called for applicants under the new conditions. Though this was eventually settled under an independent chairman who found largely in the union's favour, these tactics left a sour aftertaste.

In early 1932, to avoid redundancies, the union grudgingly and against its standing (if inconsistent) policy agreed to rationing of work for two months. When the board sought to extend this, the union refused and the board announced that it was dismissing 12 men, including Jock Mathison, the popular union president. Such a move was highly provocative and it is hard to believe it was not deliberately intended to be. The trammies saw it as victimisation, and at a Sunday morning meeting, voted to strike on Wednesday if the dismissal notices for the 12 men were not rescinded.

When the tramwaymen left their meeting that Sunday morning none could doubt the spirit which would prevail during the strike. Outside Trades Hall about 700 unemployed and labour militants were gathering with their red flags and banners for a march through the city to Cranmer Square, the venue of a well-publicised May Day rally. Although police had warned shopkeepers to secure windows and remove their contents, the march proved peaceful

and the May Day rally an astounding success. The Press estimated that 10,000 people overflowed the south end of Cranmer Square to hear resolutions and speeches. Never in local history had there been such a display of working-class strength and unity. At the same time the Tramway Board was cabling the Government for a suspension of the Act requiring certified motormen on trams. On Monday morning advertisements appeared in the papers calling for new staff, and notices were sent to all relevant employees saying that failure to report for work on Wednesday would mean immediate dismissal. A last-minute offer by the union to renegotiate job rationing if the dismissals were rescinded was rejected by the board.

The first day of the strike passed peacefully. The board was able to offer a much-reduced daylight-only service under police protection. The identity of the crews — including 39 men who had refused to join the strike — were noted and discussed by the several hundred strikers and supporters who gathered to watch the trams go out at 6 a.m.



The Ballet of the headless mob, strikers and police clash, The Sun, May 3, 1932

On Thursday, police reported that there were many incidents — mainly minor — intended to impede the service. These included unsuccessful attempts to puncture trolley bus tyres with tacks, and shorting overhead wires with a length of steel. Homes of many 'scabs' were visited by threatening groups of unionists.

On Friday the first tram heading up Fitzgerald Avenue was met by a hail of rocks which smashed many windows and injured the driver. A double line of police met in hand-to-hand fighting with the attackers, some of whom were armed with home-made clubs. When it was obvious that they were outnumbered, the police played their trump card; at a signal the tram barn disgorged dozens of previously sworn-in 'special' constables who had been assembled in the early hours of the morning. Faced with such a

force the attackers turned and fled into the predawn darkness; nineteen people, five of them board employees, were arrested.

This event shocked Christchurch as never before. Church leaders joined forces to bring the parties together. On the other hand, the widespread sympathy for the trammies was strengthened by news of the attack. When 300 strikers held a silent march to Cathedral Square that afternoon they were met by a mainly sympathetic crowd of more than 4,000.

It was the most volatile moment of the strike and police wisely refrained from using the already unpopular specials. For more than an hour a section of the crowd milled around blocking tram lines, moving when asked, only to settle on other lines. Then tempers began to fray and punches flew. The police were forced back into a corner by the Post Office. Batons were drawn and after a short but violent melee the crowd was driven back and the arrested were driven off in commandeered taxis. There was no question that the police, by not over-reacting, had defused a potential riot.

On Saturday morning a bus-load of police was able to forestall an attack on the tram in Hagley Park. Assorted clubs and weapons were found where they had been hastily discarded. At noon, the parties finally came 'together' (each in separate rooms) for the beginning of the long search for a settlement formula. The problem was the new men to whom the board had promised permanent employment. It would not renege on this promise, and the union would not call off the strike until these men were dismissed. It was not until 1.30 a.m. on the Tuesday that it was agreed to pass this question to a tribunal with representatives from both parties and Arthur Donnelly, Q.C., as chairman with the casting vote.

Much of the antagonism was now directed towards the 'specials'. These were citizens sworn under oath to act under regular police officers and equipped with arm bands, batons and tin helmets. Though they were ostensibly enrolled purely to uphold law and order, inevitably they were seen by the strikers as a partisan force – members of the middle class with no sympathy for the trammies' cause. Three who were held in particular contempt by the strike camp were rugby idols, the All Blacks Jack Manchester, Beau Cottrell and George Hart.

On Saturday afternoon about 7,000 people — many more than normal — went to Lancaster Park to watch the Christchurch R.F.C., the team of Hart, Manchester and Cottrell, play Merivale-Papanui. After a game marked by noisy chanting and jeering more than half the crowd formed the demonstration outside described at the beginning. Several trams, with very little police protection, found themselves unexpectedly in the midst of this antagonistic assembly. In a skirmish a conductor was punched in the face and the contusion received was left untreated, causing blood poisoning. On May 29, three weeks later, the conductor, George Victor Laing, died from the resulting complications.

On Sunday night rocks were thrown through the windows of shops owned by two special constables. On Monday night, a rock was thrown through a tram window, and it was decided to place steel mesh over all tram windows. A high barbed wire fence was

built around the tram barn later in the week but by then most of the violence had abated. Busloads of tin hats and regular police continued to patrol the suburbs, the sandhills and Hagley Park. On Tuesday, May 10, the strike was called off.

The Tribunal held its hearing and in his report Donnelly made no attempt to apportion responsibility for the strike. But he did say he found it without 'necessity or excuse' and described the differences between the board and union immediately before the strike as being 'unimportant in principle and insignificant in fact'. The board, Donnelly found, was unwise in dismissing the president of the union and should have foreseen that 'a charge of victimisation would be made which in the circumstances could neither be proved by the union nor refuted by the board.'

The biggest bombshell for the union was Donnelly's decision that 60 of the new men were to be retained and the balance of staff made up of strikers with 20 surplus staff and a rationing system. Consequently not 12 but 40 lost their jobs. Jock Mathison, in a move not uncriticised, had already accepted employment elsewhere.

In 1933 a Labour ticket, including Jock Mathison, had a landslide victory in the Tramway Board election. The board set as its first priority the re-employment of all men dismissed as a result of the strike. As vacancies became available they were offered to the dismissed men. By 1935 all who wished to return had done so, and many subsequently gave many years of loyal service to Christchurch's public transport system.

Further reading:

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Mary-Ann Graham, "The Christchurch Tramway Strike, 1932", MA thesis, University of Canterbury, 1978.

Indentured Labour and Slavery: differences and similarities

Doug Munro

Two spaced-apart episodes prompted me to write this essay on the differences and overlaps between slavery and indenture. Some 15 years ago I was chatting to a friend and the conversation somehow got to Australia's South Sea Islander community, who are made up of the descendants of the Melanesians – the *kanakas* – who were brought to Australia (overwhelmingly to Queensland) on three-year contracts of indenture. The vast majority of those 62,000 indentured labourers worked as field labourers in the canefields.¹ My friend described them as slaves and was in high dudgeon when I pointed out they were indentured labourers, not slaves. I was accused of engaging in 'semantics', which was true in the sense that I believe that the meanings of words should be unambiguous. I wish I had thought to ask whether she considered the tens of thousands of indentured workers from Britain and continental Europe to the Americas – the 'poor protestants of Europe' as they were once called² – could also be considered slaves in the same sense as the Africans who were brought to ante-bellum plantations via the Atlantic Slave Trade.³ Ironically, many of the European indentured labourers in the United States, although resentful of their own mistreatment and lack of social status, were eager to dispossess native Indian tribes of their land.⁴

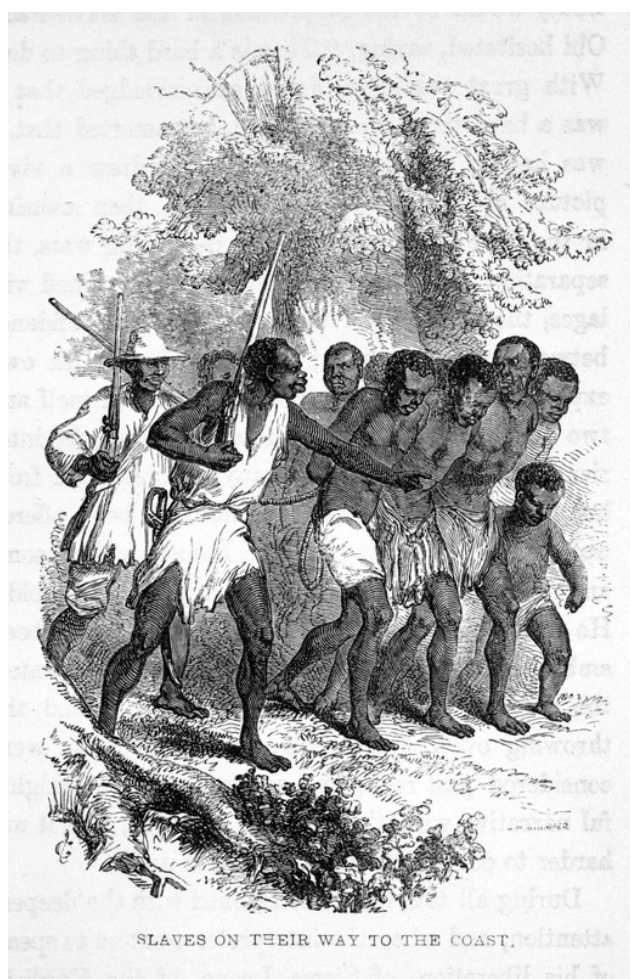
Fast forward to the early 2020s (I forget the exact year). I am at the Bristol Hotel in Wellington with my usual Friday night crowd, which includes Russell Campbell. Again in conversation, the question of indenture versus slavery reared its head, with Russell insisting that the forebears of Australia's South Sea Islanders were slaves. We stuck to the issues but our discussion was spirited, so much so that one normally loquacious member of our group could not get a word in edgewise. Worried that I might have impaired a valued friendship, I emailed Russell that night and sent him extracts from a journal article, outlining my position.⁵ He accepted that I had a point and he later suggested that I write this article.

It will be apparent that, as a historian of unfree labour (among other things), I have been frustrated that indentured labour has so often been equated with chattel slavery. Two different systems of bondage are being unthinkingly conflated. Yet, as I will go on to argue, the two are not entirely separate.

First, however, what are the diagnostic features of slavery and indenture? A working definition of chattel slavery goes as follows:

Slavery as it existed in the West Indies, South Africa and Mauritius until 1833, and in fifteen southern states of the United States of America until the Civil War of 1861–65, was a legal status lasting for life and transmitted to every child

of a female slave: the person of the slave was the property of his owner, capable of being sold, bequeathed, given as a gift, mortgaged or hired like any other chattel; incapable of entering any contract, owning property or giving evidence in court.⁶



Captured Africans Taken to the Coast (either Nigeria, 1853 or Liberia/Sierra Leone, 1840), Sarah Tucker, Abbeokuta; or, sunrise within the tropics: an outline of the origin and progress of the Yoruba mission (London, 1853)

Indenture, by contrast, was a system of unfree labour whereby individuals entered into contracts that bound them to an employer for a stipulated time, between two and five years in the Pacific



Group of Australian South Sea Islander women labourers on a sugarcane plantation near Cairns, Queensland, about 1895. John Oxley Library 63220

Islands, in return for wages and other specified conditions of labour. Indentured servitude usually derived its legal authority from the various Masters and Servants Acts, such as those of Queensland and Hawai'i, which ostensibly set out mutual rights and obligations but, in reality, provided criminal punishment for breaches of contract by workers – hence the indenture system sometimes being called the penal contract system. The purpose of indentured service was twofold: in providing for a fixed term of service it stabilised the workforce by preventing a high turnover; while the penal sanctions provided employers with a blunt instrument of control.⁷

According to these definitions, there is a clear distinction between slavery and indenture. Yet it is not so straightforward. Following the abolition of the Atlantic Slave Trade in 1834 indenture became the successor of slavery, at least in the British world. There was a brief intermediate stage called apprenticeship, ostensibly to enable a smooth transition between the two, but it was still an exploitative arrangement.⁸ Slavery and indenture did indeed share exploitative features and historian Hugh Tinker, in his famous

book *A New System of Slavery*, as the title suggests, argued that slavery and indenture were different only in that slavery was a permanent condition and indenture was a situation of temporary servitude.⁹ Many contemporaries would have agreed but, as Jonathan Connolly has shown, the post-emancipation indenture system was 'normalized' by being redefined and "increasingly viewed as a legitimate form of free labor and a means of preserving the promise of abolition".¹⁰

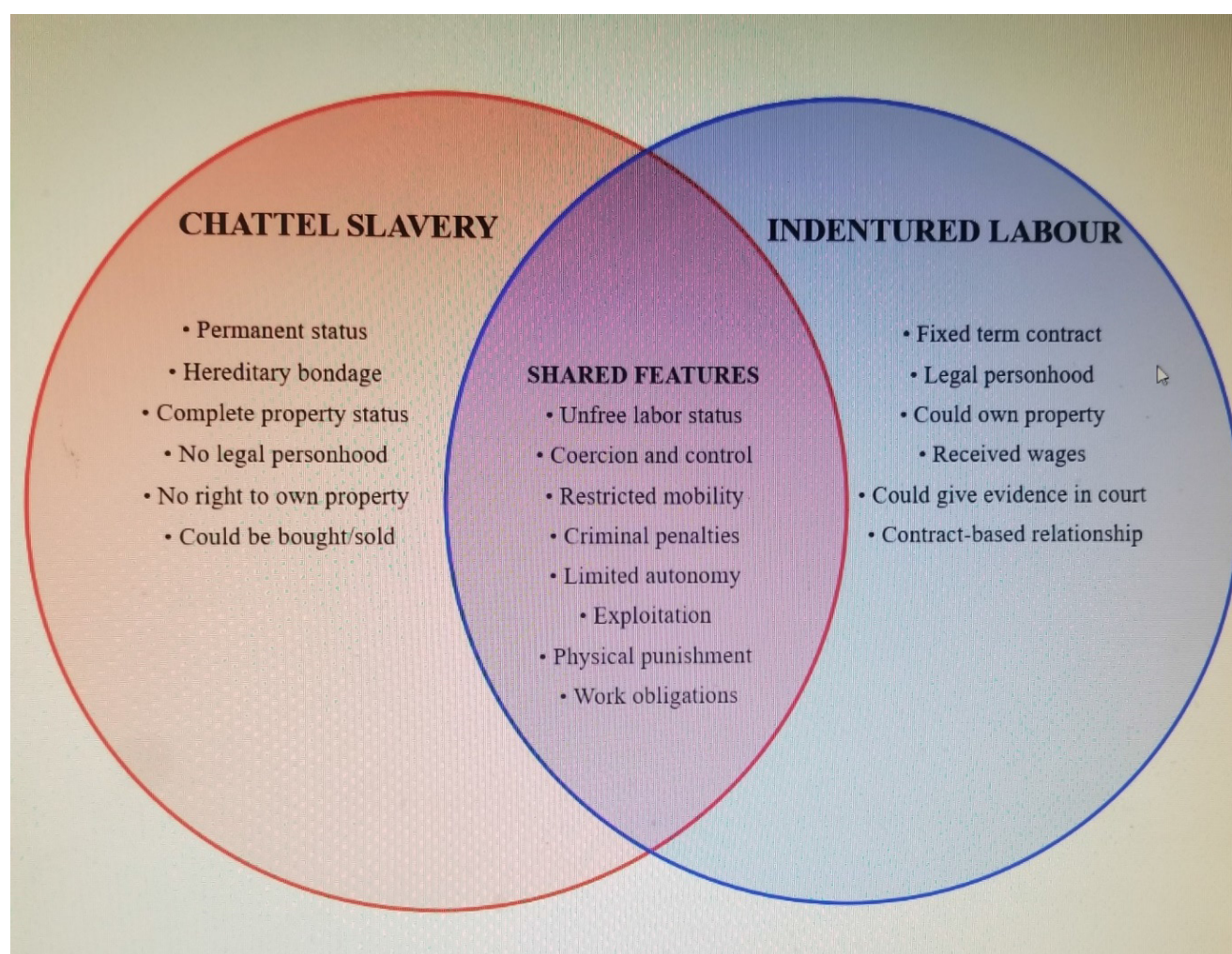
Another consideration is that there are different types of slavery and indenture. The trouble is that slavery, in the popular imagination, is viewed in the "Gone with the Wind" image of the big house and "King Cotton" – namely, that of an aristocratic planter class employing hundreds of slaves on large-scale cotton plantations. This is what the above definition of slavery is referring to. In reality, small holdings were as significant in their own way as the big plantations; sugar and rice were grown as well as cotton; industrial forms of urban slavery co-existed with their rural counterparts; and slave rebellions were few compared with other parts of the Americas.

Neither does the “Uncle Tom’s Cabin” image of ante-bellum slavery hold true. It was not a uniformly appalling experience for each and every slave. Every slave’s experience was different, and a great deal depended on the character and whims of masters and overseers. To give a small but telling example, by no means were all slaveholders as controlling as James H. Hammond (1807–64) who insisted on choosing the names of the offspring of his slaves.¹¹

If there were internal differences within the slave system, there were also variations between different slave systems over place and time. A graphic example comes of Roman slavery, demonstrating an episode that would not have been countenanced – not even considered – in the ante-bellum South. In A.D. 61 a Roman slave murdered his master. By Roman Law, if this happened in the master’s house, then every slave in the establishment was condemned to crucifixion whether complicit or not. Despite pleas for clemency, the letter of the law was upheld and some 400 slaves perished.¹² This would never have happened in the ante-bellum South because slaves were valuable property, not to mention a different scale of values being in operation. There are slave systems and slave systems and each operates according to its own logic.

The operation of the indenture system, and the experiences of

individual indentured labourers, was equally diverse,¹³ which further complicates comparisons between indenture and slavery. Without going into details, in the Pacific Islands the conditions of labour in places of employment varied over place and time, with a tendency for improvement as time went on. In the earlier years, the recruiting of workers from their home islands in the earlier years of this labour trade – the 1860s and 1870s – involved a good deal of kidnapping, or ‘blackbirding’. At this point a case can be mounted that indentured servitude amounted to slavery. The descendants of indentured labourers in Queensland often claim in blanket fashion that their forebears were slaves, and this is useful for political purposes. Indeed, it is something of an article of faith in Australia that indenture was either outright slavery or a form of slavery.¹⁴ Chattel slavery is not the same thing as indentured servitude but I do have sympathy for descendants who assert that their forebear was a slave if he was actually kidnapped. The same applies to the 3,000 or so Pacific Islanders who were taken to Peru in the early-1860s by force or deception. It was a disgraceful episode, especially as so few managed to get back to their home islands. Technically they were indentured labourers but in reality they were slaves and I have no compunction in describing them as such.¹⁵



Slavery and indenture may not be the same thing but have commonalities, precisely because they are two of many forms of unfree labour, along with peonage, debt bondage, serfdom and apprenticeships of various kinds. Convicts also belong to this category. Rather than trying to make rigid distinctions, it would be better to conceptualise the different forms of unfree labour in terms of a Venn diagram that shows their overlaps and distinction. It has been well put that:

Although differences between chattel slavery and free waged labour have been portrayed as transparent and self-evident, these distinctions have in social practice been murky. It would be more accurate to describe a continuous spectrum of coercion between free and unfree labor. A variety of coercions thrive within many ostensibly free wage labor relations, just as many slaves maintained degrees of control and limited autonomy as workers.¹⁶

Unfree labour in whatever guise involves elements of coercion and exploitation. Ill-treatment of workers is not a defining point because the same often applies in ostensibly free labour arrangements. Historians of indentured labour seldom stop to consider that working conditions in supposedly free labour systems in the Western world could be just as harsh and exploitative.¹⁷ Take child labour in British coal mines. It was only in 1842 that the Mines and Collieries Act stopped underground work for females of whatever age as well as boys under the age of 10. Further protective legislation was slow in coming and it took until 1900 before boys under the age of thirteen were prevented from going down the mines when the Mines (Prohibition of Child Labour Underground) Act came into force.

For indentured Indians in Fiji, the adult age was set at 10 before 1892, 12 until 1908 and 15 until the end of indenture in 1920.¹⁸

In any case, what actually is ‘free labour’? Consider the following statement:

Men always work within limits. When considering the plight of our distant workers, it is not entirely inappropriate to ask if

we ourselves are not bound by Household Finance Corporation or by the stock-sharing or retirement plans of the companies and universities we work for, which recruit us (bind us) through contributions and then threaten to withdraw their share if we try to ‘escape’. Given the nature of our society, we willingly choose such forms of peonage.¹⁹

The point is that trying to draw sharp divisions between the various forms of unfree labour, and between ‘free’ and unfree labour for that matter, is an exercise in futility. It is more fruitful to think in terms of continuums, spectrums and Venn diagrams where the commonalities as well as the differences can be identified. As well, one has to take into account changes over time and space. The ever-expanding definition of slavery does not make the task any easier. Twenty years ago, Suzanne Miers noted that the United Nations Working Group on Slavery:

Ha[d] considered slavery, debt bondage, forced labour, child labour, trafficking in persons, prostitution, pornography, sex slavery, sweated labour, the exploitation of contract and migrant labour, and of illegal aliens, as well as forced marriage, adoption for exploitation, and the use of child soldiers. If these practices all bear some relation to slavery, it takes a stretch of the imagination to include some of the other practices brought before the group. These include female circumcision, the honour killing of Muslim women by their relations, marriage practices which discriminate against women, incest and the killing of people in order to sell their organs for transplants. And so it goes on – an ever-widening definition of slavery to accommodate whatever human rights violations or labour practices are under attack.²⁰

Conflating all manner of ills into the orbit of slavery is helpful in combatting those ills but the term has been made to work too hard. Expanding the definition will ultimately render it meaningless, or rather meaning all things to all men and women. In the same way, unproblematically equating indenture with slavery muddles the issues. There are overlaps between the two but they are not the same.²¹

¹ Charles A. Price with Elizabeth Baker, “Origins of Pacific Island Labourers in Queensland, 1863–1904: A Research Note”, *Journal of Pacific History*, 11:2 (1976), 106–21.

² Warren B. Smith, *Colonial Servitude in Colonial South Carolina* (Columbia: University of South Carolina Press, 1961), 44–69.

³ An estimated 80,000 European indentured servants landed in Chesapeake in the 17th century alone. See Christopher Tomlins, “Reconsidering Indentured Servitude: European Migration and the Early American Labor Force, 1600–1775”, *Labor History*, 42:1 (2001), 10. Another 56,027 European indentured labourers went to the Caribbean and Hawai’i between 1831 and 1920. See David Northrup, *Indentured Labor in the Age of Imperialism, 1834–1922* (Cambridge: Cambridge University Press, 1995), 256. Broader discussions of indenture include Stanley L. Engerman, 1986. “Servants to Slaves to Servants: Contract Labour and European Expansion”, in P.C. Emmer (ed.), *Colonialism and Migration: Indentured Labour Before and After Slavery* (Dordrecht: M. Nijhoff, 1986), 263–94; M.L. Bush, *Servitude in Modern Times* (Oxford: Polity 2000), 28–38, 202–08; Douglas Hay & Paul Craven, *Masters, Servants and Magistrates in Britain and the Empire, 1562–1955*. (Chapel Hill: University of North Carolina Press, 2004).

⁴ Ethan Schmidt, *The Divided Dominion: Social Conflict and Indian Hatred in Early*

Virginia (Bolder: University of Colorado Press, 2015).

⁵ Doug Munro, “The Pacific Islands Labour Trade: Approaches, Methodologies, Debates”, *Slavery & Abolition*, 14:2 (1993), 87–108.

⁶ Clive Moore, *Kanaka: A History of Melanesia Mackay* (Boroka/Port Moresby: Institute of Papua New Guinea Studies, and the University of Papua New Guinea, 1985), 153.

⁷ A less accessible definition reads: “Stripped to bare transactional essentials, indentured servitude describes a contract committing one party to make a series of payments to or on behalf of the other – settlement of transport debt, subsistence over the (negotiable) contractual term, and final payment in kind or, less usually, cash at the conclusion of the term. In exchange the payee agrees to be completely at the disposal of the payor, or the payor’s assigns, for performance of work, for the term agreed. All aspects of performance of the transaction were secured by law”. Tomlins, “Reconsidering Indentured Servitude”, 6–7.

⁸ Anita Rupprecht, “From slavery to Indenture: Scripts for Slavery’s Endings”, in Catherine Hall, Nicholas Draper, Keith McClelland (eds), *Emancipation and the Remaking of the British Imperial World* (Manchester: Manchester University Press, 2015), 77–97.

⁹ Hugh Tinker, *A New System of Slavery: The Export of Indian Labour Overseas, 1830–1920* (London: Oxford University Press for the Institute of Race Relations, 1974).

¹⁰ Jonathan Connolly, *Worthy of Freedom: Indenture and Free Labor in the Era of Emancipation* (Chicago: Chicago University Press, 2024).

¹¹ Drew Giplin Faust, *James Henry Hammond and the Old South* (Baton Rouge and London: Louisiana State University Press, 1982), 88.

¹² Keith Hopkins, “Novel Evidence for Roman Slavery”, *Past & Present*, 138 (1993), 4–5.

¹³ See Peter Corris, “Pacific Island Labour Migrants in Queensland”, *Journal of Pacific History*, 5 (1970), 3–45.

¹⁴ E.g. Will Higginbotham, “Blackbirding: Australia’s History of Luring, Tricking and Kidnapping Pacific Islanders” 17 September 2017, ABC News, [abc.net.au/news/blackbirding-australias-history-of-kidnapping-pacific-islanders/8860754](https://www.abc.net.au/news/blackbirding-australias-history-of-kidnapping-pacific-islanders/8860754).

¹⁵ H.E. Maude, *Slavers in Paradise: The Peruvian Labour Trade in Polynesia, 1862–1864* (Canberra: Australian National University Press, 1981).

¹⁶ Gunther Peck, “Reinventing Free Labor: Immigrant Padrones and Contract Laborers in North America, 1885–1925”, *Journal of American History*, 83:3 (1996)

849 n.2.

¹⁷ An exception is K. Hazareesingh, *A History of Indians in Mauritius* (Port Louis: General Printing and Stationery, 1950), iii.

¹⁸ K.L. Gillion, *Fiji’s Indian Migrants: A History to the End of Indenture in 1920* (Melbourne: Oxford University Press in association with the Australian National University, 1962), 108n.

¹⁹ Arnold J. Bauer, “Rural Workers in Spanish America: Problems of Peonage and Oppression”, *Hispanic American Historical Review*, 59:1 (1979), 41.

²⁰ Suzanne Miers, “Slavery: A Question of Definition”, *Slavery & Abolition*, 24:2 (2003), 12. Closer to home is the recent lawsuit against Gloriavale for alleged slavery. See Jean Edwards, “Gloriavale: Former Members File Multi-Million-Dollar Slavery Lawsuit”, 23 July 2024, RNZ New Zealand, <https://www.rnz.co.nz/news/national/522833/gloriavale-former-members-file-multi-million-dollar-slavery-lawsuit>.

²¹ See also Victoria Stead and Lucy Davies, “Unfree Labour and Australia’s Obscured Pacific Histories: Towards a New Genealogy of Modern Slavery”, *Journal of Australian Studies*, 45:3 (2021), 404.

Personal grievances – the decline of access to justice

Greg Lloyd

It has been almost 35 years since the Employment Contracts Act (ECA) changed the face of industrial relations in New Zealand. While it survived only 9 years, its impact and legacy remain. That is largely because the Employment Relations Act (ERA), while softening some of the more egregious aspects of the ECA, retains much of its character. Arguably, the Fifth Labour government's attempt to change the ECA's individualist, contractual approach to industrial relations to a collective, relational one failed, in large part because the important role trade unions played in the pre-ECA era could not be revived. By the 2000s union density was well below 20% of the workforce. Consequently, the goal of the ECA, to ensure employment relationships are primarily centred around the individual employer-employee relationship has remained.

Nowhere was the true intent of the ECA more evident than in its stated purpose, which included the promotion of freedom of association by allowing employees to determine who should represent their interests. There is no mention of trade unions in the entire Act. Rather, the Act talks about employee organisations, which means any group, society, association, or other collection of employees, however described and whether incorporated or not, which exists in whole or in part to further the employment interests of employees.¹ Importantly, those employment interests are both collective and individual. Unions were relegated from being the exclusive voice of workers, representing their interests at a political, industry, enterprise and individual level, to just another organisation representing workers at an enterprise or individual level.

Before the ECA the statutory framework governing industrial relations was very much a tripartite model with unions being an equal part of the mix. Terms and conditions for industries were set by union-negotiated awards and agreements. Unions had a seat at the table with bodies such as the Tripartite Wage Conference² and Arbitration Commission.³ Disputes were resolved by dispute committees, comprising an equal number of union and employer representatives, with the state acting as the chair.⁴ As I will discuss in this article, the same was true of personal grievances. There was a statutory regime of grievance committees that required union support and early intervention of grievances.⁵ Unions, among other things, were able to act as a gatekeeper of sorts to ensure unmeritorious personal grievances were not pursued and those that had merit could be resolved early, without recourse to the various judicial and quasi-judicial bodies, thus adding to a more efficient and effective dispute resolution process. But most importantly, workers who had a genuine personal grievance were able to pursue

their claim without any of today's associated risks of, among other things, crippling financial costs.

It is not my intention to cover ground that has been covered much more authoritatively by others.⁶ Rather, I want to compare the ERA (which is a largely unchanged grievance process from the ECA with the pre-ECA grievance process, in particular that set out in the Labour Relations Act (LRA). By doing so I hope to demonstrate how the balance of power has dramatically shifted in favour of employers. It is particularly relevant given the ERA's stated purpose of acknowledging and addressing the inherent inequality of power in the employment relationship.⁷ I would argue that the ERA acknowledges the inherent inequality of power but by leaving the ECA personal grievance model largely unchanged, it does little to address it.

Given the low union density, for most people, be they employers, employees, lawyers or others occupying space in the employment relations arena, employment relations is most often concerned with the individual relationship between employer and employee. HR practitioners spend their time devising and enforcing ever more authoritarian policies to control the actions of employees, including outside of the workplace. The practices of most employment lawyers focus substantially on defending employers against individual claims of wrongdoing. There is a large number of "no-win no-fee" advocacy organisations. We have seen the rise of new, and very lucrative, areas of practice for lawyers and consultants such as undertaking so called "independent employment investigations". Most medium to large law firms have a specialist employment law team. There are thousands of lawyers and advocates working in the employment law space today. Ross Wilson (former President of the NZ Council of Trade Unions) once said that when he began practising law in the late 1970s there were maybe two or three lawyers in Wellington who you would have classed as specialist industrial lawyers.

It is my opinion that today's environment is a direct and inevitable consequence of the ECA. Those who bandy about terms like personal grievance gravy train and seek to perpetuate the myth that workers who challenge the actions of their employer are just out to make some easy money are either misguided or disingenuous. The same is true of the oft repeated trope that it is almost impossible to sack an employee. It is not. It is far more difficult for an employee to challenge a dismissal than it is for an employer to dismiss an employee in the first place.

As noted, this essay is not intended to be an authoritative analysis

of the lasting impacts of the ECA. Rather, I want to examine the personal grievance process that existed under the LRA, which was swept away by the ECA, with the current model. The purpose is to show that it has not only been the collective interests of workers that have suffered since the ECA, and continued under the ERA, but their individual interests as well, specifically, their right and ability to challenge unjustified actions of employers. The term that is used often today is access to justice. By any measure, the LRA model of grievance resolution provided for far greater access to justice than our current model.

I write this from the perspective of a lawyer whose practice is almost exclusively representing employees and who sees, every day, the reality faced by workers who have been unjustifiably dismissed, or otherwise treated unlawfully, at work. Workers who are faced with an almost impossible dilemma – do I take a chance and pursue a case against my employer in the hope that I might get some small amount of compensation, but risk having to spend thousands of dollars potentially for nothing. As Akrita Chakraborty writes:

Laws that cost too much to enforce are phony laws. A civil right that people can't afford to use is no right at all. And a society that turns justice into a luxury good is one no longer ruled by law, but by money and power.⁸

Personal grievance process under the LRA

The LRA limited personal grievance rights to union members. It allowed unions and employers to incorporate their own personal grievance procedure in awards or agreements, provided they were not inconsistent with the default legislative procedure set out in the Act. That legislative procedure was intended to ensure personal grievances were resolved at the earliest possible stage. Interestingly, the Bill that introduced the LRA also stated that the aim of the personal grievance procedure was to enable the parties to reach a conclusive settlement of the grievance without a strike or lockout,⁹ which seems unnecessary given the Act specifically made any strike in relation to a personal grievance unlawful.¹⁰ It was perhaps recognition of the link between industrial disputes (which workers could strike over) and the potential for punitive action against individual employees involved in such activities.

Step 1. Submission of the grievance

The first step of the process was for the employee to submit her grievance directly to the employer, as soon as possible after it arose, the purpose being to allow the employer to remedy the grievance rapidly and as near to the point of origin as possible.

This recognises that it was in everyone's interests to resolve grievances as early as possible.

Step 2. Notice to union

If step 1 failed to resolve a grievance the employee could request that the union pursue the grievance on their behalf. This was an important step for two reasons. Firstly, the employee was no longer required to deal directly with the employer, should the union agree to represent them, thus addressing any inherent

inequality of power between the individual employee and his employer. In fact, the employee was not even a recognised party to the grievance. Secondly, unions could play an important role in weeding out unmeritorious cases, thus preventing unnecessary cost, time wasting and potential fruitless litigation.

Step 3. Discussion between union and employer

Once a union determined that an employee's grievance had substance, they were obliged to take it up directly with the employer. There was no need for any formalities which meant the grievance could still be resolved at an early stage. Where a relationship of mutual respect existed between a union and employer it was likely that this informal process would resolve many grievances.

Step 4. Union's written statement

It was only once the direct discussions between the union and employer had been unsuccessful that the union was required to formalise the grievance in writing, setting out the nature and facts of the grievance and the remedies sought.

Step 5. Employer's response

At this stage the employer could either agree to the remedies sought by the union or, if not, within 14 days provide a written response setting out their views of the facts and why the remedies sought would not be granted.

Step 6. Grievance committee

If the union was not satisfied with the employer's response it could call for the setting up of a grievance committee, a committee comprised of an equal number of union and employer representatives (maximum of three each) and a chair who was mutually agreed or a mediator or a person appointed by a mediator. The committee would determine the matter by considering the written statements made by each party under steps 4 and 5, and any other evidence produced by the parties or the worker. It is important to note that the employee was not a party to the grievance once it had become a formal process, further ensuring the equitable balance of power was maintained. The committee had the power to call for independent advice, including from the Human Rights Commission. Presumably that was because the LRA introduced new human rights-based grounds for personal grievances, namely harassment and discrimination.

While the union and the employer were parties to the grievance, the employer was entitled to be represented by an employers' organisation.

The decision-making procedure was that the union and employer members of the committee were to reach a majority decision. If they could not the chair could determine the matter or refer it to the Labour Court for adjudication.

In the event the committee did make a decision, there were appeal rights available to the parties. Again, it is important to note that the parties to the grievance were the employer and the union, not

the worker herself. Therefore, the worker had no independent right of appeal. This acted as an important limiting factor on cases progressing to the Court.

If a party did exercise its rights of appeal the Labour Court would determine the matter with a three person panel, being a judge, and two laypeople, one being appointed from a workers' organisation and one from an employers' organisation.

The first thing that stands out under the LRA procedure is the emphasis on and practical application of early resolution provisions. The parties must, by law, have engaged in low level dispute resolution processes before a matter could progress to a more formal process. Secondly, there is a relative balance of power throughout the process, in part because the parties to the grievance are the employer and union, not the individual employee. Thirdly, the union determined whether the grievance would proceed to a formal process, thus weeding out unmeritorious cases. Fourthly, while the state retained the ultimate decision making power (Committee chair and Labour Court Judge) both unions and employer organisations had a role in the decision making process throughout.

Finally, while the outcome of a grievance process would obviously impact the aggrieved worker, win, lose or draw, they would not be out of pocket. In other words, the whole process came at no cost to the worker. The quid pro quo for those protections was that the employee lacked the right to determine whether or not their case would progress.

Personal grievance process under the ERA

The LRA process is a stark contrast to that of the ERA. Firstly, under the ERA the parties to a personal grievance are the employee and employer. The role of the union, should the employee be a union member, is as an advocate only. In most cases, from the outset the balance of power is skewed in favour of the employer.

Unlike the LRA the ERA provides for a strict timeframe in raising a personal grievance. It must be raised within 90 days of the grounds for it arising.¹¹ With some exceptions, failure to do so will result in the worker losing their right to pursue their grievance. No such arbitrary and restrictive time limits existed under the LRA.

The ERA contains a test for justification of the employer's actions as they relate to a personal grievance claim.¹² It asks the very general question, which requires an objective answer, were the actions of the employer those which a fair and reasonable employer could have taken having regard to all the circumstances? The Act then sets out what some of those circumstances are, such as whether an alleged wrongdoing of the employee was properly investigated and whether the employee was given the opportunity to comment before a decision is made. The test is vague and dependent on the specific circumstances of any given case. The obvious problem with this is that it provides no real certainty of outcome. That in turn places individual employees in the position of having no clear guidance on the merits of their case, which brings with it significant financial risk.

Unlike the LRA, which prescribed a mandatory informal resolution process, the ERA does not. Instead, it provides for a voluntary mediation process as the first formal step in resolving a personal grievance.¹³ If a party refuses to attend mediation the other party must commence formal proceedings in the Employment Relations Authority and seek an order directing the parties to attend mediation.

It is once a personal grievance gets to the Authority that the real contrast between the ERA and LRA emerges. That is in the form of cost. Remedies have increased somewhat but are still comparatively low. In the six months from January to June 2024 there were 67 awards of compensation under \$20,000 and 34 at or more than \$20,000.¹⁴

An employee considering taking a case to the Authority will have to consider the cost of engaging a lawyer or representative, unless they represent themselves, which will likely be in excess of \$10,000, and potentially more than any award of compensation they may win. They will also have to consider the implications of losing their case, which will be having to meet the full cost of their own representation plus a contribution towards the legal costs of the employer.¹⁵

Further, an award of compensation may be reduced if the Authority determines that the employee, despite having been unjustifiably dismissed or disadvantaged, in some way contributed to their own misfortune.¹⁶

The ERA presents a very different prospect for an employee than they would have faced under the LRA. The cost to an employee of representation under the LRA was zero. The cost under the ERA is likely to be thousands of dollars, even tens of thousands depending on the nature of the case.

The form of representation under the two Acts has also changed dramatically. Under the LRA representatives, certainly at the grievance committee stage, were paid union and employer organisation officials, who were unlikely to be legally trained. In 2022, 80% of employees and 72% of employers were represented by lawyers or advocates. Only 2% of employees were represented by unions.¹⁷ That low percentage of union representation is dramatic, but it perhaps reflects, at least to some extent, the fact that unions resolve a lot more personal grievance cases for members closer to the point of origin than is the case for non-union employees.

Reinstatement is a remedy that is available but rarely sought and even more rarely granted by the Authority. In 2022 there were 10 applications for permanent reinstatement made of which only two were successful.¹⁸ In the absence of reinstatement as a viable remedy the personal grievance process is almost exclusively focused on monetary remedies. This is despite the noble aims of the ERA to promote good faith relationships and actively build and maintain productive employment relationships.¹⁹

Legal aid, which is seen as an important feature of access to justice, is available in personal grievance claims, but is so infrequently accessed it is virtually irrelevant. In 2022 of the 408 Authority

hearings only 14 cases were legal aided.²⁰ That is in part due to the low fees paid by the Ministry of Justice which is a disincentive to lawyers becoming legal aid providers, and the low-income threshold for applicants which means very few employees are eligible for legal aid.

Conclusion

As stated, the purpose of this article was to highlight how the ECA (and its successor the ERA) have dramatically and

negatively impacted workers' ability to obtain justice in personal grievances. That is because we have transitioned from a tripartite model that ensured free access to justice for workers, and a process that enshrined a genuine balance of power in both the advocacy and the decision-making process, to an individualist model where employees are at a significant and often insurmountable disadvantage from the outset.

It was not just the collective rights of workers that were decimated by the ECA, but their individual rights as well.

¹ Section 2, Employment Contracts Act 1991.

² Section 121, Labour Relations Act 1987.

³ Section 261, Labour Relations Act 1987.

⁴ Schedule 6, Labour Relations Act 1987.

⁵ Schedule 7, Labour Relations Act 1987.

⁶ See Susan Robson, "The influence of the Legal Profession on Dispute Resolution after 1990", in G. J. Anderson et al., eds, *Transforming Workplace Relations in New Zealand 1976-2016* (Victoria University Press, Wellington, 2017).

⁷ Section 3, Employment Relations Act 2000.

⁸ Aditya Chakraborty, "Access to Justice is no longer a worker's right but a luxury", *The Guardian*, 28 March 2017.

⁹ Labour Relations Bill explanatory note.

¹⁰ Labour Relations Act 1987, s.234.

¹¹ Section 114, Employment Relations Act 2000.

¹² Section 103A, Employment Relations Act 2000.

¹³ Section 144, Employment Relations Act 2000.

¹⁴ Employment New Zealand data.

¹⁵ The Employment Relations Authority uses a tariff-based system of determining costs, which are \$4,500 for the first day of hearing and \$3,500 for any subsequent day.

¹⁶ Section 124, Employment Relations Act 2000.

¹⁷ Employment Relations Authority Annual Report 2022.

¹⁸ Employment Relations Authority Annual Report 2022.

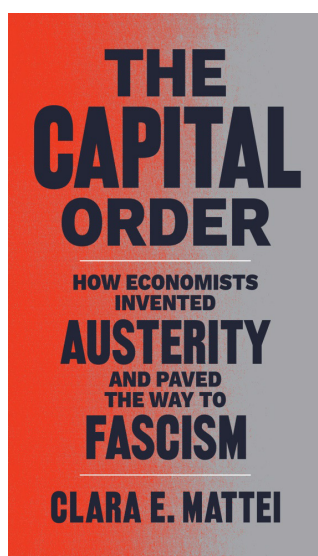
¹⁹ Section 4, Employment Relations Act 2000.

²⁰ Employment Relations Authority Annual Report 2022.

Reviews

Clara E. Mattei, *The Capital Order: How economists invented austerity and paved the way to fascism* (University of Chicago Press, 2022)

Linda Hill



Reviews for this Bulletin are typically of works of local labour history, but I strongly recommend, as background reading, this economic history of rising socialism and its repression in post-WW1 Britain and Italy. It offers an ‘austerity lens’ and class analysis that can be very usefully turned to our own history and present politics.

By austerity policies, Mattei doesn’t focus on death by a thousand spending cuts; she means the fiscal and monetary policies central to economic management,

plus industrial relations policy. These, she says, were used to deflate the economy, create unemployment and so defeat the rising working class and its socialist demands in both countries. “War collectivism” – i.e. states organising war efforts much more efficiently than any private sector could, and with higher wage rates – showed working people that a socialist alternative was possible. This was a real threat to private profits because it challenged the capitalist social relations at the core of production. She recounts, in highly substantiated detail, how the ruling elites in both countries used austerity economics to defeat the working-class movements, in order to re-privatise the economy and defend the capitalist status quo. This included British financial support for Mussolini. Monetary policy was shifted to ‘independent’ banks of issue and international institutions. Economics became the domain of ‘experts’, lifted clear of politics. Their expertise was based on assumptions of the capital order as natural, neutral and

the only society possible – as it is still presented today: capitalism as a social relation between wage workers and the 1%. Class and the labour theory of value disappeared from mainstream economic debate.

I dived into my bookshelves for links to our own depression from 1921 – the end of a ‘command economy’, falling primary produce prices in Britain, manpower losses from war deaths and Spanish flu, Pākehā soldiers settled on poor land. Easton, using an outputs/exports lens, blames the ‘soggy British economy’ and its failure to address high inflation – which Mattei points out helped erode labour costs back to pre-war levels. Here, public sector wages were cut by 7-10%.

Mattei’s last chapter covers recent instances of austerity policies – including the austerity through which US and EU taxpayers reimbursed the losses of the Global Finance Crash, and the low interest rates to support recovery of the productive economy after Covid, that were used to leverage private equity fund speculation.

As I read Mattei, my brain was pinging with dots joining up. Fiscal + monetary + labour. Using her austerity lens to think about New Zealand’s 50-year history of falling real wages and rising unemployment, there was the IMF advice before the 1985 devaluation and Rogernomics, then the 1991 benefit cuts and Fiscal Responsibility Act 1993. The Reserve Bank was given monetary policy and inflation to manage with one criterion and one tool. Although much of the rising costs post-Covid was caused off-shore, zig-zag manipulation of the Official Bank Rate has affected recovery of employment rates and our overpriced mortgages. TVNZ regularly invites commentary on the OBR from bank economists! The current government’s fiscal principle is to reduce spending, not increase revenue through fairer taxation – despite IRD research on the rich, despite banks, supermarkets and power companies making ‘excess’ profits. We are repeatedly told that ‘the country’ can’t afford or efficiently manage the kind of infrastructure, health, education, income support and

pensions that our great grandparents were able to build and pay for (following a major Depression and during another world war). Mainstream economic advice and government policies have now normalised our present near-5% unemployment and 12% under-utilisation rate, leaving many of our kids facing a precarious future in a foreign-owned gig economy. Seen through Mattei's lens, I have to agree: whether Keynesian or neoliberal, economics is class politics, designed to protect the capital order.

Highly recommended. I got the hardback through my local library, but the paperback goes on sale here in early January.

Power to Win: The living wage movement in Aotearoa New Zealand by Lyndy McIntyre

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Mary Roberts–Schirato



Power to Win traces the history of the Living Wage Movement in New Zealand from its first steps in 2011 to its established presence in 2024 as a recognized concept in the New Zealand workplace bargaining environment.

Lyndy McIntyre, a long-time union organizer, was involved in the movement almost from the very beginning and she frames the history presented in this book as a “personal story”. In addition to her involvement

in the movement and her own memories of its development over the past 13 years she has also been able to rely on a range of written speeches, on radio broadcasts and on 40 interviews she conducted with participants in the movement.

The Living Wage Movement (LWM) grew out of the experiences of key organisers, many of whom had been involved in similar, or related movements overseas and were able to bring those experiences to bear on the situation in New Zealand. McIntyre credits her then co-worker at the Service and Food Workers Union, John Ryall, with introducing her to the concept of the living wage based on his experiences in working with the London Citizens Workers Centre (LCWC) group in London in 2006.

After the introduction of the Employment Contracts Act in 1991, New Zealand workers lost much of their ability to negotiate on fair terms with their employers and workers in poorly paid jobs saw their take home pay steadily driven down over the following decades. The LWM was created to tackle this issue.

Although in part inspired by the experience of John Ryall and Muriel Tunoho (husband and wife) in the British movement with similar aims, the LWM also took inspiration from the American IAF (Industrial Areas Foundation) – which helped inspire the London Citizens Workers Centre) and the IAF’s experiences and

organizational framework had a strong influence on the LWM. The IAF was based on the belief in the importance of building strong bonds between groups who were affected by a given injustice. The groups they focused on were unions, community and faith groups: following this blueprint, these became the three strands of the LWM in Aotearoa. Three early organisers of the LWM visited the IAF in America and IAF personnel came to New Zealand to help with training LWM members. McIntyre’s descriptions of this process in a New Zealand context are fascinating and, on this level, the book functions almost as a handbook, or guidebook for those who might want to undertake this process in New Zealand.

McIntyre notes that the IAF process is to build the sectoral and community relationships first and to then establish the issue that most urgently requires attention. The LWM reversed this process. Having decided to focus on the living wage, they built the relationships in a deliberate way, convinced that this would give them the strength they needed for the struggle to come.

And struggle it was. The strategy that the LWM adopted was to target specific employers and engage with them to persuade them to become ‘living wage’ employers. The book focuses in depth on the battle to get Auckland, Porirua, Hutt City and Wellington city councils to become living wage employers. Although it was reasonably easy (in most cases) to get the staff directly employed by the organisation onto a living wage, it was much more difficult to get the same outcome for staff who were employed via contractors. This was usually the case for cleaners and often for security guards and parking officers as well. McIntyre’s detailed descriptions of the long drawn-out and tortuous (in most cases) process of persuading, cajoling and shaming councils into paying their contract staff properly are fascinating and also appalling to read. Appalling because of some council staffers’ blithe acceptance of the fact that while they were earning a living wage (and in some cases much more), they were responsible for, even if at arms’ length, employing people at wages that did not provide the minimum needed for a decent life.

Part of the concept of the LWM was that employers would have to be formally accredited in order to be able to use the branding of the LWM. The living wage itself, also had to be established at a given

level and regularly updated. Both these steps were achieved and slowly the concept of the living wage gained traction. McIntyre is able to document a satisfactory, though not sufficient, number of accredited Living Wage Employers in New Zealand by 2024. By now both big businesses, such as banks, and small businesses such as Petone's Miss Fortune Coffee Company have become living wage employers. McIntyre also, justifiably, counts as a win the facts that the concept of the living wage is now embedded in at least some areas of the New Zealand workplace and many New Zealanders are aware of the term albeit with a vague concept of its status in law (non-existent), and application (patchy).

This book is both an invaluable work of history and a personal memoir of a part of McIntyre's life that was obviously inspiring, energizing, exhausting, exhilarating and extremely fulfilling. As a union organizer she had come to the opinion that union tactics were not coping well with the changes to the New Zealand workplace: the post-1984 legislative framework within which employers and employees, with vastly differing degrees of bargaining power, were operating was disempowering workers. The IAF model with its triple focus on community, unions and faith groups, and its arguments based on ethical claims rather than transactional bargaining, provided an extremely satisfying alternative.

McIntyre quotes Chris Trotter's critique (published in the Press in 2013) of the LWM on the grounds that it relied on 'melting the hearts' of the employers rather than on a "large, strong and confident labour movement". While Trotter's analysis may well be

justified in some ways, it does not provide any guidelines as to what can be done when a labour movement of that size, strength and confidence does not exist. It is not easy to build such a movement – it cannot be whistled down out of the sky and the history of such movements teaches us how hard they are to develop and to sustain. McIntyre's argument is slightly different however; she argues that the LWM did develop solidarity but that it developed it in the community and not just in the "traditional union silos" (33).

As well as clearly tracing the overall development of the movement and the trajectories of major campaigns, McIntyre also studs the book with brief biographies of some of the main players within the movement over its lifetime to date. Each one of these brief portraits – of organisers, workers, politicians, faith leaders – brings a participant vividly to the mind of the reader and as well as being a pleasure to read they illustrate one of McIntyre's key points: the vital importance, in a movement of this kind, of bringing together a diverse range of participants and helping them to develop the collective strength to participate in this struggle.

An important historical record, an engagingly written narrative of people's lives, a personal memoir and a handbook for organisers: this book has elements of all of these approaches. Whether the reader chooses to focus on only one, some, or all of these aspects, they will be rewarded by the insights, based on deep experience that McIntyre is able to offer.



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