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# The New Zealand Sunday - Keep Sunday Free: An Historical Narrative of the Shop Trading Hours Legislation in New Zealand

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*This historical narrative analyses the changes in shop trading hour laws in New Zealand, to explore the reasons behind the acceptance of Sunday trading. Sunday trading is seen as out of the ordinary in many parts of the world and New Zealand was one of the earlier countries to introduce it. The narrative uncovers that New Zealand more closely mirrors the experience of the United Kingdom with Sunday trading laws, however less emphasis on religious aspects of the law may have contributed to its acceptance of the law before the United Kingdom.*

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Deregulation of shop trading hours in a country like New Zealand is hard to think amazing in retrospect, but at the time was a relatively forward law in the world. The United States was one of the first countries to deregulate trading in some of their major states (Ingene 1986). It does not seem intuitive, however, that New Zealand should be one of the first countries to follow in the footsteps of the United States. So how did a country like New Zealand, which valued weekend sport and family time (Gerbric 1980) as well as the 40 hour working week, void of hypermarkets and megamalls, come to a 24 hour, seven day, retail trading situation? This is the question that this historical narrative wishes to answer.

This historical narrative of the shop trading hours (S.T.H.) in New Zealand works through each of the major changes in S.T.H. laws with particular attention paid to the introduction of Sunday trading – through The Shop Trading Hours Act Repeal Act (1990). Table One gives an overview of the changes in opening hours as well as the changes in decision making power regarding flexible aspects of the law.

## THE BEGINNINGS OF SHOP TRADING HOUR REGULATION

Up until the mid 1880s there were no specific S.T.H. laws in New Zealand, and so Sunday trading was technically legal, although it was looked down upon by church members (Clarke 2004). Each town's Sunday

trading was policed through normative pressures. In the mainly Scottish Presbyterian city of Dunedin, trade was not undertaken (Clarke 2004), but gold mining and worker towns had Sunday trading (Natusch 1992). In 1884 the Police Offences Act prohibited trade in public places on a Sunday (Police Offences Act 1884), though these were the only restrictions to trading times. Trade was generally conducted between 8am - 6pm weekdays, and 8am - 10pm Saturdays (S.T.H. Advisory Committee Report 1988). The Shops and Shop Assistants Act (1894) decreased S.T.H.s in 1894, through mandatory closing from 1pm on one day of the week. It was not until 1904 that S.T.H.s were regulated specifically with trading hours needing to be set between 8am-6pm four days a week and 8am-9pm one day (Shops & Offices Act 1904).

Throughout the early formation of S.T.H. laws in New Zealand, it was recognised that geographically close groups of shops needed to have relatively uniformed hours. The decision making power for the more flexible parts of the laws – the late night opening and the half day – was constantly shifted. In the beginning, this was decided by the individual retailer. The local council was assigned the duty in 1894 (Shops & Shop Assistants Act 1894), and this power was again returned to retailers in 1908 (Shops & Offices Act 1908). The arbitration court was given the duty in 1920 and also considered shop's applications for exemptions (Shops & Offices Act Amendment 1920). Eventually, the half day of opening was generally accepted as being on a Saturday. In 1945, magistrates were given the decision making authority (Shops & Offices Act 1945) and were forced to consider union's views as well, from 1948 (Shops & Offices Act 1948).

Exemptions to the S.T.H. laws were also a constant part of the legislation. Under the very first prohibition of Sunday trading (Police Offences Act 1884), stock handling, milk, and hairdressers were allowed to work after 9am, and public transport platform bookstalls, emergency medical supplies, and post office services such as telegrams, throughout the day (Police Offences Act 1884). This list was significantly extended in the 1894 Shops & Shop Assistants Act with fishmongers, fruiterers, confectioners, coffee-houses and eating-houses. If the owner lived on the

**TABLE 1  
CHANGES IN SHOP TRADING HOURS AND GROUPS WITH AUTHORITY TO SET TRADING HOURS**

<b>Legislation</b>	<b>Change to Shop Trading Hours</b>	<b>Group with Authority to Set Trading Hours</b>
Police Offences Act 1884	No restrictions on shopping hours Monday-Saturday <ul style="list-style-type: none"> <li>• Shops to close Sundays</li> </ul>	
Shops & Shop Assistants Act 1894	No restrictions on S.T.H.s Monday – Saturday but <ul style="list-style-type: none"> <li>• Shops to close from 1pm one day of the week</li> <li>• Plus shops to close on Sunday</li> </ul>	<ul style="list-style-type: none"> <li>• District Council</li> </ul>
Shops & Offices Act 1904	Hours set to: <ul style="list-style-type: none"> <li>• 8am – 6pm four days of the week</li> <li>• 8am – 9pm one day of the week</li> <li>• Close from 1pm one day of the week</li> <li>• Shops to close Sundays</li> </ul>	<ul style="list-style-type: none"> <li>• District Council</li> </ul>
Shops & Offices Act 1908	No change	<ul style="list-style-type: none"> <li>• Majority of Shop Owners</li> </ul>
Shops & Offices Act 1920	No change	<ul style="list-style-type: none"> <li>• Arbitration Court</li> </ul>
Shops & Offices Act 1945	No change	<ul style="list-style-type: none"> <li>• Magistrates</li> </ul>
Shop Trading Hours Act 1977	Hours set to: <ul style="list-style-type: none"> <li>• 7am – 9pm Monday – Friday</li> <li>• Shops to close Saturday</li> <li>• Shops to close Sunday</li> </ul>	<ul style="list-style-type: none"> <li>• S.T.H.s Commission</li> <li>• Minister of Labour</li> </ul>
Shop Trading Hours Act Amendment 1980	Hours set to: <ul style="list-style-type: none"> <li>• 7am-9pm Monday – Saturday</li> <li>• Shops to close Sunday</li> </ul>	<ul style="list-style-type: none"> <li>• S.T.H.s Commission</li> <li>• Minister of Labour</li> </ul>
Shop Trading Hours Act Repeal Act 1990	No regulation of S.T.H.s apart from: <ul style="list-style-type: none"> <li>• Shops to close Good Friday, Easter Sunday, Christmas Day and for the morning of ANZAC day</li> </ul>	

premises they were also exempt from S.T.H.s law. Ten years later, in the Shops and Offices Act (1904), the list of exempt businesses increased to also include refreshment-rooms and bakers. In 1920 (Shops & Offices Act Amendment), smaller stores were added to the exempt list; if they did not employ any shop assistants, and could prove they would suffer hardship if closed. The tourism industry was also considered for the first time in 1920, with holiday resorts being allowed to apply for exemption to Saturday half day trading.

The context surrounding the early S.T.H. laws is one of large leaps in technology, which increased New Zealand's quality of life. Travel time across New Zealand had decreased to three days, due to better transport infrastructure, and refrigerated transport grew the country's exporting power for meat and dairy, along with the already growing trade in wool and grains. At the time, New Zealand had the highest living standards in the world (King 2003). In 1921 Britain started going into recession and as the major importer of New Zealand's goods, this led to the decline of the New Zealand economy as well. Although the Balfour Definition, which had been passed in 1926, gave

New Zealand the means to combat recession and enter into new trade agreements with other countries, they did not do this until 1928 with Japan. By this time, there had already been a drop in farm export prices, and the New Zealand economy continued to deteriorate as commodity prices decreased further through 1928-1931 (Cheyne, O'Brien & Belgrave 1997). While export prices fell by up to 40%, the Government also cut costs along with the minimum wage (King 2003).

So it was under these conditions that Michael Joseph Savage, an avid socialist, was made Prime minister with the Labour party in 1935, and implemented a Keynesian program (Condliffe 1959, Roper 2005). The party created a welfare state (Harris, Levine, Clark, Martin & McLeay 1994) through the introduction of many social policies including: free schooling, increasing the minimum wage to support a wife and three children, compulsory union membership, almost free health care, and a pension scheme, for both the native people of New Zealand - the Maori - as well as non-Maori (Cheyne et al. 1997, Sutch 1966).

On the soldiers return from World War Two there was

an increase in births, conservatism and materialism as the country moved towards more urban than farm oriented lifestyles (King 2003). This was coupled with an economic boom (GDP 4.47%), full employment (99.87%), high profits and productivity, low levels of inflation (5.46%) and rising real wages (Roper 2005). Finally in 1947, 16 years after most other countries, New Zealand ratified the Statute of Westminster. This allowed New Zealand complete autonomy from Britain in domestic as well as foreign affairs (Harris et al. 1994).

## **THE SHOPS & OFFICES ACT (1955)**

Some of the problems with the Shops and Offices Act (1948) were over enforcement (Nash 1955a). Its implementation proved difficult as a business needed two entrances, so that the non-exempt goods side of the shop could be shut off from the exempt goods being sold (Sullivan 1955a). There was a lot of illegal trading occurring (Sim 1955, Barnes 1955), and the lack of enforcement upset groups such as the Master Grocer's Federation (McDonald 1955, Barnes 1955). It was believed that by relaxing the law, a lot of the illegal trading would stop or become legal (Sim 1955).

The discussion of the Shops and Offices Bill (1955) centered on the exempt goods list (Sullivan 1955b, Howard 1955), as it was seen as the obligation of the Government to make sure that "the general public are able to obtain the necessary goods and services" (Sullivan 1955b, 2190). Especially travelers, and those partaking in outdoor activities at places such as the beach, who had forgotten essentials (Nash 1955b, Kinsella 1955, Sim 1955). Petrol station opening (Nash 1955b), the age and starting time of workers such as paper and milk delivery boys (Howard 1955, Kinsella 1955), the affect on the five day, 40 hour working week (Baxter 1947, Fox 1955), and penal rates (Fox 1955) were also of concern.

Stakeholders each had different views on the Bill. Unions wanted to protect the five day, 40 hour week (Sullivan 1955b, Fox 1955), while small shop keepers supported the Bill as it increased the amount of products they could sell, along with the number of hours they could sell them (Sullivan 1955b, Sim 1955). Chain grocery stores did not want S.T.H.s extended, though they did agree with extending the exempt goods list (Sullivan 1955b, Barnes 1955). The Associated Chambers of Commerce totally supported the Bill (Sullivan 1955b), while the Church at the time also supported the Bill, but asked for a limited extension of the exempt goods list (Somerville 1955).

The power for policing of Sunday closure moved from the Police to the Department of Labour with the Shops and Offices Act (1955). The list of exemptions had changed slightly too, and now only included: Tobacconists, Confectioners, Convenience stores called dairies, Automobile related shops, Fruit and vegetable shops, and florists (Shops and Offices Act 1955).

## **THE SHOP TRADING HOURS ACT 1977**

The 1970s brought with it a change in the public's attitude to weekend trading. This was due to increased mobility, increases in the number of married couples who were both working, and the rising number of friends sharing a residence (Wood 1977). Economic stagnation enveloped the country, with high inflation (7.45%), declining profit (Real GDP 2.08%) and incomes, and the largest level of unemployment since the 1930s (8.5% - Roper 2005). This decline was worldwide too, decreasing demand for New Zealand's exports (Roper 2005, Gould 1985, Skilling 2001). These problems were exacerbated when Sir Robert Muldoon became Prime Minister with the National party from 1975-1984. He introduced wage, price and exchange rate freezes, controlled rents, and forced interest rates down (King 2003). This extended regulation did not allow the New Zealand market to respond to global market forces (Treasury 1984), causing further inflation and an increase in New Zealand export prices. The unions at the time were very powerful as well, and their strike action stopped wage decreases, which were trying to compensate for dropping exports, and contributing to the high rates of unemployment (Roper 2005).

The decline in the economy coupled with changing views on weekend trading made up the climate in 1977 when the Shops and Offices Acts were split and the S.T.H. Act (1977) was introduced. The Bill was introduced because:

At the present time the law is obscure, and is to be found in the Act, in collective agreements, awards, decisions of the shops and offices exemption tribunal and the exempted goods list. Even lawyers have difficulty in finding and understanding the law. The committee urges a complete reappraisal and clarification of the law so that it may be easily found and understood by all those who are affected by it.

(Talboys 1977, 816)

The problems with the Shops and Offices Act (1955) were again that many businesses and consumers were breaking the law, and it was very hard to police (Faulkner 1977a, Gordon 1977). For instance, inspectors were even being physically obstructed from inspecting stores (Malcom 1977b). The fines were so small, that some businesses were treating them as a licensing fee (Gordon 1977). "Evidence was given before the committee that one hardware shop had 45% of its turnover on Saturday morning. It was trading illegally" (Gordon 1977, 759-60). Some retailers were even advertising their illegal trading hours (Malcolm 1977b). Six to seven hundred businesses were prosecuted in 1976 without much change in illegal trading rates (Luxton 1977).

There were many groups who supported the S.T.H. Bill (1977). A 10 000 person strong petition from the public urged parliament to extend trading hours (Malcolm 1977a).

Public opinion polls matched this view including the Heylen Poll (1971/6) and the Victoria University Poll of 1972, which was seconded by newspaper editors throughout the country (Malcom 1977b). A large international supermarket chain named Woolworths, as well as Fletcher Challenge, who owned many malls (Arthur 1977), also supported the Bill.

One concern over the Bill was the potential disruption to family life (Christie 1977, Batchelor 1977) because of the mostly female workforce (Rowling 1977b). Shops opening at 7am (as was permitted in the Bill), would both destroy and inconvenience family life and childcare arrangements for working mothers (Tirikatene-Sullivan 1977). Other concerns were for workers who may be forced to work unsociable hours, and the death of the traditional 40 hour working week (Gordon 1977, Batchelor 1977). The increased use of part timers, taking full-timers jobs, and decreasing the level of service to the public (Courtney 1977), was also discussed. Some evidence for this concern came with the Employers Federation Submission stating:

Variations in S.T.H. cannot be effected without corresponding adjustments to provisions in collective agreements concerning working hours, overtime, and holidays. This would require changes in working hours, penalty provisions with a view to a system of flexible working hours or shift work.

(Employers Federation 1977, 2)

Rising costs to retailers was also a fear for many (Batchelor 1977) as it was felt turnover would not increase, raising prices for consumers (Courtney 1977), resulting in a reduction in the number of retailers (Rowling 1977a). If turnover did increase, this could be due to credit and could plunge the nation into debt (Faulkner 1977b).

The final S.T.H. Act (1977) increased permitted S.T.H.s to between 7am and 9pm, Monday to Friday, while it now prohibited trade on both Saturday and Sunday. The S.T.H. Commission was set up to deal with exemption and disciplinary matters and consisted of three people. When considering exemptions, they had to reflect on the public interest and demand, price effects, family and social effects, the area and type of custom, economic planning, surrounding shops, the 40 hour week and limits on Sunday commerce (Gordon 1977). This extended the list of considerations from the list for the Shops and Offices Act 1955 which only considered public demand, the area, other shop owners and the public interest of those living nearby (Gordon 1977).

## **THE SHOP TRADING HOURS AMENDMENT ACT 1980**

With businesses' lobbying (Roper 1990, 1992, 1993), in 1980 the strict laws pertaining to Saturday trading were removed, allowing trading on Saturday from 7am-9pm

(S.T.H.s Amendment Act 1980). The Act also gave the Minister of Labour power to change items on the exempt goods list, without an Act of Parliament (S.T.H.s Amendment Act 1980). The Bill was introduced to decrease the regulatory control the Government had on New Zealanders (Bolger 1980a), without total deregulation (Burke 1980a).

Public support for Saturday shopping was mixed, and was shown through multiple polls. The Heylen Poll showed 54% support and 43% against Saturday trading. The National Research Bureau Poll showed 57% support and 28% against with the majority of people against the trading being older and retired. It was argued that the older population's views should not be taken into consideration though, as they were able to shop during week days as they did not have to work during those hours (Malcolm 1980a). The Bill was more for working people because "at present workers have difficulty in shopping for their requirements because their working hours correspond almost exactly with S.T.H." (Bolger 1980b, 3832). The National Research Bureau Poll also showed that 67% of people surveyed, felt a two day weekend was extremely important to them, and 79% thought it important to others. A majority of 64% of people stated they would not want to work on a Saturday if they already worked Monday to Friday. Further the poll said that of the 57% who supported Saturday trading, 41% of them thought that extending shop opening hours Monday through Friday would also suffice (Butcher 1980). A poll in the Daily Telegraph of Napier of 1000 people showed that 53.2% opposed Saturday trading and another poll in the Manawatu Evening Standard showed 3/5s of people surveyed opposed the Bill (Butcher 1980). Another poll in the Ashburton Guardian showed that of 1181 votes, 13.25% of people supported the Bill (Rowling 1980).

Unions (Malcolm 1980b), as well as some retailers did not support the Bill (Gerbric 1980). The Christchurch Star reported that, in a meeting of the Canterbury and Westland Retailers Association, 550 shops voted against the Bill with 16 in favour on July 22, 1980 (Rowling 1980). The National Council of Women also did not support the Bill, as it would affect women more, as the major group employed in retail (Isbey 1980b). Up to 90% of the submissions to the select committee opposed the Bill (Isbey 1980a). Potential consequences of the Bill included increases in prices by 15%, inflation, casualisation of the workforce, unemployment, destruction of the five day, 40 hour week, and detrimental affects to small businesses, family life and sport on weekends (Gerbric 1980). Increased S.T.H.s could also lead to demand for other related services on the weekends, such as banks, transport, cleaners and distribution (Isbey 1980a).

It was argued these concerns were unfounded as the law was only permissive, and did not force shops to open (Bolger 1980a). A happy equilibrium (between retailers and customers) would eventually be reached (Allen 1980). Some negated this claim, stating that shops would be forced to open to keep up with competition (Burke 1980b). Debate then questioned whether the Government was forcing

through the law when the country did not want it (Batchelor 1980). It was decided however, that “it is not the Government’s responsibility to create public opinion, or even to attempt to do so. It is the Government’s responsibility to reflect public opinion as far as possible” (Beetham 1980, 4912). It was believed that the public wanted Saturday trading and so with that, the Bill was passed into an Act.

## **SHOP TRADING HOURS ACT REPEAL ACT 1990**

In 1990 the S.T.H.s Act Repeal Act deregulated S.T.H.s so that shops could open 24 hours a day, seven days a week, apart from three and a half statutory holiday days. The context that led up to this started with rising inflation after the introduction of Saturday trading. In 1982 wages and prices were fixed to try to decrease it (Muldoon 1982, 1983), decreasing real wage costs for employers. To further benefit business, voluntary unionism was also introduced in 1983. When the fourth Labour party government came into power in 1984 they adopted a market liberalization scheme with disinflationary policies, tax reform, and industrial relations reform, to create a freer labour market (Roper 2005).

With the Labour party in power, many voters thought that they would start to introduce more social policies again, however they were mistaken (Kelsey 1993). The Labour Government held a neoliberal philosophy. It assumed that the economy was self regulating, and so tended toward an equilibrium of full employment of people as well as resources (Whitewell 1986). These assumptions meant that to reach full employment, there needed to be as little regulation and control from the Government as possible (Kelsey 1993, Roper 2005). These philosophies were not necessarily held by the Labour party to begin with, but they were certainly held by the Treasury. The Treasury then influenced the Labour party through their policy prescriptions (Roper 1990, Oliver 1989, Jesson 1989).

Some of the deregulation that Labour undertook included the deregulation of the financial market. The New Zealand dollar was floated, foreign exchange controls were removed, state owned enterprises were sold (Post, Telecommunications, Banking). Those that remained were expected to be run as a profitable business. While agricultural and consumer subsidies were phased out, a sales tax was introduced. These policies worked well though, decreasing inflation (7.18%) and national debt and increasing economic growth (Real GDP 0.39% - King 2003, Roper 2005). In 1987 Labour was again elected, but with the stock market crash of 1988 (King 2003), the economy went into another recession with unemployment rising again (Roper 2005; King 2003).

In the second half of the 1980s, more women were also joining the work force, weakening the traditional paradigm of women shopping on week days (S.T.H. Advisory Committee Report 1988, National Council of Women of

NZ Inc. 1988). Since the introduction of Saturday trading in 1980, there had been a change in the way that people were using shopping. Before, it was a necessity, but shopping soon became a form of entertainment and even a pastime (S.T.H. Advisory Committee Report 1988). To facilitate this, the number and size of malls and shopping arcades also increased, and many shopping areas were enclosed to protect shoppers from weather. Other forms of entertainment were added, along with parking, to entice shoppers on the weekend (Challenge Properties Ltd 1988). Specific store categories also thrived in this new environment, especially video stores and hardware stores, with many people starting to do their own home maintenance and redecoration (Treasury 1988, S.T.H. Advisory Committee Report 1988).

Retailers were also benefiting from increases in technology, such as scanning and EFTPOS (Kearns, Murphy & Friesen 2001), along with increased use of computers for ordering stock. This made sales channels more flexible, and centralised retailer’s skills. Advertising started to have more of an impact on sales of national brands, and while nationwide chain stores grew, small family stores suffered (S.T.H. Advisory Committee Report 1988). With these changes, retailers lessened their support of the S.T.H. Act (1977) seeing it as arbitrary, with no real purpose (New Zealand Employers Federation 1988). This led to multitudes of infringements of the Act which was generally not enforced.

The Government philosophy of deregulation also meant that many stakeholder groups were expecting S.T.H.s to be deregulated soon:

Well we’d been expecting it for quite some time and if you remember, well you might not remember, but of course the context was, we’d had six years of, of deregulation. Following on from sort of Rogernomics economic reforms and so that’s why we saw the repeal of S.T.H.s legislation as something that would happen inevitably.  
(Trade Union Representative, 5<sup>th</sup> November, 2008)

I mean the New Zealand economy had been turned over by the Labour Government between 84 and 90 and the New Zealand economy had been freed up in all sorts of ways, and this piece of what was essentially deregulation, in the minds of the people who were the principle figures in the Government of the day, this was just consistent with the general freeing up, you know, it’s an ideological thing as much as anything else.  
(National Party Representative, 4<sup>th</sup> November, 2008)

On 21<sup>st</sup> December 1987, an advisory committee was approved by the Minister of Labour to investigate the S.T.H.s Act 1977. The problem of the current Act was brought to the fore when many holidays in 1987 fell on a

Saturday causing all shops to close for up to four days in a row.

## Problems with The Shop Trading Hours Act (1977)

The first problem with the S.T.H.s Act (1977) was again enforcement, as well as exemption applications (Clarke 1989, Wellington Regional Retailers' Association 1988, New Zealand Employers Federation 1988). Shops were only inspected every five years (S.T.H.s Advisory Committee Report 1988), and if a shop was caught trading non-exempt items outside of trading hours, fines were not large enough to deter the stores from recommitting the offence: ranging from \$50-\$200 dollars with a maximum of \$1000 (Treasury 1988, Trade Union Representative, 5<sup>th</sup> November, 2008). Enforcers of the Act also felt that policing every single non exempt item seemed petty, and were less enthusiastic to fine stores for smaller numbers of non exempt item sales (S.T.H.s Advisory Committee Report 1988). Basically though, the Government was not adequately funding proper enforcement of the Act (New Zealand Distribution Workers Federation 1988, Central Distribution Union 1988).

The Commission had also been reduced to a single person who considered the exemption applications and who, between 1980 and 1987, received 582 applications. The application process was slow and cumbersome because of this, with a significant backlog (S.T.H. Advisory Committee Report 1988).

The exempt list was again a big problem with the S.T.H.s Act 1977. Unanticipated goods, whose benefit needed to be consumed close to purchase time, were allowed to be sold, such as food, personal goods, sporting and household goods and things to do with garden, home, and car maintenance (S.T.H.s Act 1977). While goods such as consumer durables, whose need could be anticipated, were not allowed to be on sale (S.T.H.s Act 1977).

The exempt goods list threw up many anomalies as well, such as dishwashing liquid being allowed to be sold but not shampoo (S.T.H.s Act 1977). There were also exemptions by shop category subject, shops not covered in the law (video hireage shops), and shops especially exempted by the Act such as Bazaars and booksellers at transport areas (S.T.H.s Act 1977).

As the Prime Minister from the time stated: "If you read the list of what could be sold on the Sunday and what couldn't be, what a [convenience store] could stock and what it couldn't... It was ridiculous...it's absolutely nuts I mean that's one of the big drivers in this law...You can't have a law you can't enforce" (Labour Party Representative, Personal Communication, 17<sup>th</sup> November, 2008). It was agreed that at a minimum something had to be done about the exempt goods list: "there wasn't a great deal of coherence about it all, there needed to be more consistency..and a better thought out set of rules that did

not rely upon local exemptions to work" (Terris, Personal Communication, 4<sup>th</sup> November, 2008).

## Outcomes Sought

Outcomes of fixing the current law, were to help retailers increase turnover in the current recession (Rotorua Business Association 1988, Wellington Regional Retailers' Association Inc 1988). It was felt that the law stopped retailers from trading to earn their livelihood in the financially hard times of the era, as well as limiting the amount of jobs that were available (Department of Trade & Industry 1988, Challenge Properties Ltd 1988).

Another outcome sought was an increase in tourists spending (New Zealand Business Roundtable 1988, New Zealand Distribution Workers Federation 1988, Retail and Wholesale Merchants Association of New Zealand Inc 1988, Clarke 1989).

... the Tourism industry is a big driver of this sort of law... Because there was a tradition in those days, tourists came to New Zealand and it was closed on the weekend you know...And Sunday trading was a bit of a picture of that, the lack of ability to trade on Sunday, so I think that, with this sort of, with the increased numbers of Tourists, it would've been a driver of this as well.

(Labour Party Representative, Personal Communication, 17<sup>th</sup> November, 2008)

Tourism was sustaining its growth in New Zealand at the time, and a significant employer. The then Minister for Tourism, Fran Wilde, stated that visitors to the country spent \$130 million a year in retail stores which would increase by a further \$150 million should store trading hours be extended (Wilde 1989, NZ Tourist & Publicity Department 1990). This coupled with an increasing number of visitors, decreases in import licensing, and reduction in tariffs, would contribute to a reduction in the cost of goods, which would boost the recession (Butcher 1989).

However, it was argued that tourists did not mind the regulation of S.T.H.s in New Zealand, and the basis of the argument was a misrepresented analysis of tourist figures.

The Government didn't have a leg to stand on, it had no rational reasons for what it was doing, the argument that Helen Clark was actually putting forward at the time had to do with tourists. And her own department had done a survey and it showed that a negligible number of tourists had some interest in Sunday trading, so it simply made no sense.

(Keep Sunday Free Representative, Personal Communication, 4<sup>th</sup> November, 2008)

Indeed the figures of the report found that the highest tourist spenders were dissatisfied with shopping hours, not

necessarily Sunday shopping, rather late night shopping during the week. One percent of Australian tourists wished for Sunday trading, while no other tourists supported it (NZ Tourist & Publicity Department 1986).

The public supported deregulation however, according to the large turnovers of illegally trading shops (Department of Trade & Industry 1988; New Zealand Tourist & Publicity Department 1988; New Zealand Clerical Workers Association 1988). Support was also seen through public petitions that accompanied exemption applications (S.T.H.s Advisory Committee Report 1988). As the Advisory Committee said of the public's opinion "...if the public will for the law is not strong and does not continue to communicate itself as being strong then there is no place for the law" (S.T.H.s Advisory Committee Report 1988, 62-63).

## Deregulation Trial

While the Advisory Committee report had been very thorough, the Government did not respond with any plans for change until a Bill was introduced in December 1989, a few days after an Executive Order was issued by the Minister of Labour [Helen Clark]. The Executive Order extended the list of exempted items to include nearly every consumer item (Executive Order 1989). This effectively deregulated S.T.H.s, and introduced Sunday trading. Explanations for the Executive Order were that the Commonwealth Games were being held in New Zealand in January (1990), and deregulation would help tourism (Palmer 1989) and Christmas sales (Terris 2008). Further, there were so many exemption applications, it was impossible for the commission to give each application a hearing, and so many businesses would not be given exemptions in time for Christmas trading. The outpouring of shops wanting exemptions was due to Manukau mall being given an exemption to trade a few Sundays before Christmas in 1988 with huge success (New Zealand Distribution Workers Federation 1990).

At the original time of the executive order there was some outrage at the way in which the trial had been enacted before the Bill had been evaluated:

In effect, a farce is being acted out under urgency on a Saturday morning. A bill is being introduced that will repeal the trading hours of shops as from 30<sup>th</sup> April 1990, but the effect of the Bill is in practice already, because the Government came out of cabinet earlier in the week, tore up the Statute, and threw it out. The Government published the approved notice for the trading hours of shops. (Bolger 1989, 14315)

There was much discussion that the Government had not allowed the public and businesses to have their say on the matter and was not following due process (Bolger 1989; Birch, 1989, NARGON 1990, Second New Zealand

Sweating Commission 1990). The counterargument from the Labour Government, was that the Executive Order was within the rights of the Minister of Labour and "It allows for the opportunity to evaluate the circumstances to which the law will relate in advance of that law governing it" (Palmer 1989, 14318).

However, according to the then Prime Minister's book (Palmer 1987), the way in which this law was "tried" (basically ensuring it would be enacted), and putting the Bill through under urgency, would be an example of the fast law making that exists in New Zealand, compared to the rest of the world. An example he used of quick law making showed that giving only two months for submissions was too short a time for stakeholder groups to voice their views (Palmer 1987). The date for submissions for the S.T.H.s Act Repeal Bill (1990) was from the ninth of December to the twelfth of February. At just over two months over the Christmas break this would be an example of 'bad' law making (Palmer 1987).

The Executive Order and speed of legislation also brought about some discussion of how the Government was weakening democracy in the country, especially surprising as it had been the Labour party who had introduced the deregulation:

...an example of what was wrong with democracy especially since this was being done by a Labour Government who's entire historical background, said that they opposed it and who had not said anything to the contrary when elected was bone jarring literally...it should never have been introduced by Labour. It was National who should have introduced it, but they didn't dare. That was the really funny thing. But Labour having been kind enough to do it, they weren't going to object. (Keep Sunday Free Representative, Personal Communication, 4<sup>th</sup> November, 2008)

It was found that Sunday trading after the Executive Order was not very widespread, and the trial did in fact help the committee with their recommendations (Foodstuffs 1990, Collins 1990). The trial started in December of 1989 and was at first set to finish on February 6<sup>th</sup> 1990, but was later extended to March 20<sup>th</sup>, and then April 29<sup>th</sup> 1990. At the time Helen Clark again defended the extension in the media this time saying it was "senseless to reimpose a restrictive regime...extending the current [trial]...will simply continue to give retailers and the public the opportunity to exercise choice in the matter" (1990).

## Stakeholder Viewpoints

There were only three submissions supporting the Bill in its entirety which were from the National Council of Women, New Zealand Tourist Industry Federation, and the New Zealand Motor Vehicle Dealers Institute.

The Keep Sunday Free Coalition, Save Our Sunday Campaign, Presbytery of Maitua, The Catholic Commission for Justice, Peace and Development and the Second NZ Sweating Commission along with 58 letters and several hundred post cards were in total opposition to the Bill. Their argument was to keep the day free from commercial activity to spend time: with families, sport, the community, and to relax (Keep Sunday Free Coalition 1990, Save Our Sundays Campaign 1990). The argument against this was that many New Zealanders were not Christian and so to create a law based on one religion was not appropriate (Treasury 1990). Another approach was that the day should be kept as a common, non-commercial day to spend time together (NZ Distribution Workers 1990, Catholic Commission for Justice, Peace & Development 1990, Joint Methodist-Presbyterian Public Questions Committee 1990, Foodstuffs 1990, Hume 1989)

It was thought that deregulation of S.T.H.s would initiate major negative impacts on: families and social patterns, economic planning - especially of transport - and other businesses who needed to service retailers (Second New Zealand Sweating Commission 1990, The Save Our Sunday Campaign 1990, NARGON 1990, Keep Sunday Free Coalition 1990). Increased prices to cover the increased wages was also a concern (Bolger 1989, Joint Methodist-Presbyterian Public Questions Committee 1990, New Zealand Distribution Workers Federation, 1990; Foodstuffs 1990, NARGON 1990, The Save Our Sunday Campaign 1990, Keep Sunday Free Coalition 1990). Many negative social effects could follow for employees too, including: stress and loss of time with family, inadequate childcare, decreased involvement in the community, as well as sports and religious groups, because financial compulsion would lead people to work (Second New Zealand Sweating Commission 1990, The Save Our Sunday Campaign 1990, NARGON 1990, Keep Sunday Free Coalition 1990, S.T.H.s Advisory Committee Report 1988). Further negative effects for employees were eventual removal of penal rates (Distribution Workers Federation 1990, National Council of Women of NZ Inc 1990, Second New Zealand Sweating Commission 1990) and casualisation of the workforce (Distribution Workers Federation 1990, Second New Zealand Sweating Commission 1990).

Statistics supported these worries with 40% of retail employees working less than 30 hours a week compared to 32.7% in 1980. They also showed an increase in the use of juniors during hours of penal pay and increased turnover of those staff (Treasury 1990). However it was pointed out that the total number of jobs in the retail industry were increasing, compared with other industries, and that both the number of part and full time workers were increasing in the retail industry, showing that full-timers' jobs were not being taken away from them (Treasury 1990).

The problem of casualisation extended further to the unions who felt it would then decrease their bargaining power more:

So when that happens [casualisation] that means your workforce is working over a longer period of time, uh it's harder for the union and for the delegates, the workplace delegates, to kind of get to a huge range of people because you are working all sorts of hours of the day and night. People who come in on uh people who are only working a few hours here and there don't have a primary commitment to the job or to the employer. So over time you would be likely to experience a sort of erosion of the, the bargaining strength and the sort of influence that you might be able to bring to bare in the workplace. Not that we had a lot in the first place because retail workers, not inherently a particularly sort of militant or highly energized bunch of people...

(Trade Union Representative, Personal Communication, 5<sup>th</sup> November, 2008)

Apart from employee concerns, one of the major concerns for many was the danger to small retailers if larger stores had unregulated hours. This would increase competition against small stores and it was felt, would lead to the demise of many small businesses (Institute of Fiscal Studies for the Auld Committee 1988, Joint Methodist-Presbyterian Public Questions Committee 1990, New Zealand Distribution Workers Federation 1990, NARGON 1990, Foodstuffs 1990).

The National Association of Retail Grocers and Supermarkets of New Zealand (NARGON) also opposed the Bill, but offered some amendments if the Bill were to proceed. It seems at the time there was not total agreement amongst retailers as to deregulation of S.T.H.s:

And if my memory serves me correctly there was a great big scrap amongst the grocery industry at that time because Foodstuffs was not supportive of trading on Easter Sunday. Now I may be wrong in that but that was my memory, so what I'm saying is that retailing had, there were different people despite the trade association having a specific view that probably reflected its philosophy at the time, different retailers would have different views on whether or not shops should open on Saturday let alone open on Sunday.

(Retailers Association Representative, Personal Communication, 10<sup>th</sup> November, 2008)

On the public front, the Heylen Research Centre Survey (commissioned by Foodstuffs NZ Ltd) showed that 50% of the 1000 people they interviewed did not see a problem with S.T.H.s as they stood. However of the 50% that did not approve of the current S.T.H.s, only 20% wanted Sunday trading specifically. Of the 1000 people interviewed, 52% did not see a problem with Sunday shopping in general however (Foodstuffs 1990). The National Research Bureau Poll showed a majority support for Sunday trading in Dairies, Garden Centers, Chemists,



Home Improvement stores and Supermarkets but not for Car Sales Yards, Travel Agents, Stationers, Furniture Shops and Dress Shops (S.T.H.s Advisory Committee Report 1988). The Charles Crothers and Allan Levett Poll, which was commissioned by the Distribution Workers Federation, showed overwhelmingly that 75.3% of the 500 people they surveyed wanted S.T.H.s to be extended. The Consumer Council Poll showed that 58% of people that they gave questionnaires to wanted shops to open on Sundays, with 50% of those wanting shops to only open from 1pm on Sundays (n=600). Of 173 shop keepers surveyed in Palmerston North only 16% of them stated they would open on a Sunday (Keep Sunday Free Campaign 1990).

Lastly, the Save our Sunday Campaign had a Poll conducted for them by the National Research Bureau of 2000 people. This showed a slightly different result from the other surveys as it was conducted in the 20 largest cities in New Zealand with 1000 females and 1000 males. It found that 50% did not want Sunday trading, 45% did and 5% were unsure. A petition was also given as a submission to the Advisory Committee from the Southern Distribution Union in which 92% of the 1554 people represented, stated they did not want any more shopping hours, and 95% stated that they did not want Sunday shopping (S.T.H.s Advisory Committee Report 1988).

On 28<sup>th</sup> June, 1990 the third reading of the Bill took place with opposition support. This meant that the S.T.H.s Repeal Act (1990) commenced on 1<sup>st</sup> August 1990 and stated that shops may open at any time other than Anzac day morning, Easter Friday, Easter Sunday and Christmas Day (S.T.H. Act Repeal Act 1990).

## **SUNDAY TRADING DEREGULATION COMPARISONS WITH OTHER COUNTRIES**

Now that this article has uncovered the circumstances surrounding the changes in S.T.H.s for New Zealand, especially the introduction of Sunday trading hours, it is time to compare their experience with other countries'. This section will first compare New Zealand's experience of Sunday trade deregulation with the United States (US) and Canada who were deregulated before (US), and at the same time (Canada), as New Zealand (NZ). It will then compare NZ with the experience in the United Kingdom (UK), which introduced Sunday trading after NZ.

### **The United States and Canada**

Sunday trading regulations are referred to as blue laws in the US, and had been steadily reduced over the years before NZ deregulated Sunday trading. In 1955, 33 states had blue laws (Ingene 1986), which lowered to 25 states by 1970, and 13 in 1984 (Price & Yandle 1987). Over this time, the blue laws regarding Sunday shopping hours were either repealed or struck down by the State courts (Ingene 1986). Cases brought against the blue laws labeled them

unconstitutional due to their religious bases (Barron 1965). The Supreme Court ruled however, that the blue laws were not unconstitutional, because they were not motivated by religious faith, but provided a common day of rest and recreation for the community (Barron 1965). Regardless of this ruling, later courts still struck down the laws in some states (Ingene 1986).

Price and Yandle (1987) found that some of the reasons for the decrease in the number of states with blue laws between 1970 and 1984, were due to more women entering the workforce. This increased the opportunity costs of shopping, and led to shared shopping duties within households, amplifying demand for Sunday trading. Chain stores thrived and grew in this environment, introducing larger numbers of products and further increasing demand. Sunday shopping was needed as a legitimate and low cost leisure pursuit for families, and the blue laws were preventing this (Gordon 1966). Originally, stores opposed Sunday trading because they felt they better utilised their space by compressing their business into six days. This changed, however, with consumer enthusiasm that Sunday trading would lead to a decrease in prices when retailer's fixed costs were spread over seven days instead of six. Concerns with Sunday shopping regarded the day of rest and spiritual revitalization it gave, and the feeling that another day of trade was not necessary. Even the unions' interest in defending the laws decreased (Price & Yandle 1987).

Canada had a similar experience to the US with their Sunday trading law, the Lord's Day Act (1906). In 1960, the Federal Parliament of Canada created the Canadian Bill of Rights, including freedom of religion. They also included a clause stating that any legislation not consistent with the Canadian Bill of Rights was invalid. Not long after this, in 1963, a case was brought against the Lord's Day Act (1906), accusing it of being against the freedom of religion. The courts did not agree, finding the effects of the law secular because they did not prevent religious practice. Any negative effect was only financial. Later, in 1985 though, the Act was found to be unconstitutional, and each province was given the right to decide their own Sunday trading laws (Barron 1965). Alberta was the first to allow Sunday trading in 1985, followed by Quebec in 1992, and Newfoundland in 1998, while the rest of the provinces have had either experimentation or some level of deregulation as well (Skuterud 2005).

Comparing these countries to NZ, it seems that the US and Canada mainly changed their Sunday trading laws because they were found to be unconstitutional, due to their religious underpinnings.

### **The United Kingdom**

We will now turn to a country that is more similar in political structure to NZ, the UK. In 1984, an official committee of inquiry, headed by Robin Auld, recommended total deregulation of S.T.H.s in the UK (Kay

& Morris 1987). The problems with The Shops Act (1950) were with the exempt list (Clements 1987, Kirby 1992, Barnard 1994, Richter 1994), and enforcement (Clements 1987, Barnard 1994, Richter 1994, Smith 1995, Kirby 1992), with the fine for breach being too low (Clements 1987, Barnard 1994), mirroring some of the problems with the S.T.H.s Act (1977) in NZ. The Shops Bill (1986) was then put forward by the Thatcher government and was defeated in the House of Commons at the second reading. The Bill was blocked by a coalition of churchmen, trade unions, retailers and some sections of the general public (Clements 1987, Richter 1994) due mainly to religious reasons (Richter 1994).

The concerns with Sunday trading in the UK mirror those of NZ such as: shops being forced to open to remain competitive (de Mezza 1984), doubts an increase in turnover would occur (de Mezza 1984, Richter 1994), concerns for price increases to compensate for increased retailer costs (de Mezza 1984, Kay & Morris 1987, Ingham 1992), pressure for employees to work unsociable hours (Richter 1994, Smith 1995, Kirby 1992), stress on families, and less time for social gatherings, recreation, and worship (Richter 1994, Kirby 1992), casualisation, and a decrease in penal rates (Richter 1994, Smith 1995).

Similar to NZ, the arguments for Sunday trading were that the option to trade meant retailers could work more efficiently (de Mezza 1984), and there would be many more jobs created (Richter 1994, Kirby 1992). Sunday trading would also help working people to be able to shop conveniently (Richter 1994, de Mezza 1984), and allow for family time while shopping (Richter 1994, Kirby 1992). Others argued that the day was needed as a day of rest and socializing, along with worship (Barnard 1994).

In 1993, an options Bill was put forward to parliament with three options for trading hour law reform. The first was total deregulation, the second was partial deregulation and the third option was tightening of the current laws (Barnard 1994). Option two was supported by the Shopping hours reform council, who were in turn supported by consumer representatives, tourist boards, manufacturers and many retailers as well as some unions (Richter 1994). The third option of partial deregulation was supported by the Keep Sunday Special Campaign who had allied themselves with other trade unions, The National Chamber of Trade, The British Retailers Association, The British Hardware Federation, The Council of Churches for Britain and Ireland, The Catholic Bishops' Conference, The Anglican Evangelical Assembly, The Conservative Family Campaign and some retailers (Richter 1994). The second option of partial deregulation, as advocated by the Shopping Hours Reform Council was chosen under a free vote. The final law states that shops under 280sqm, may open at any time, and larger shops may open for six hours in a row on a Sunday between the hours of 10am-6pm.

## CONCLUSION

Now, conclusions will be drawn from the comparison of other countries with the history of shop trading hour laws in NZ. It seems that the worker was the main priority for S.T.H. legislation in NZ in 1955. In 1977 though, there seemed to be a fundamental shift to supporting the consumer, which in turn supported business. Increased discussion of the rights of consumers, to be able to buy what they wished, when they wished, is found in the 1977, 1980 and finally 1990 discussion and final Acts, through larger exempt lists and wider hours of operation. It seemed that the main driver of the 1955 Act was to update a very outdated law, while for the 1977 Act it was to clean up the confusing Act and uniform the opening hours. The driver for the 1980 Act was to decrease some of the large amounts of regulation that had been introduced by Robert Muldoon. Boosting the economy by answering consumer's needs, drove the 1990 Act.

For all of the Bills, legalizing much of the then illegal trading, was a large reason for the changes in S.T.H. Retailers and consumers were the cause of illegal trade, facilitating it, so it could be said that their voices were the loudest considered. The decreasing power of unions also seems to coincide with each deregulation initiative. This is a very different story from the experience of the US and Canada who found that the religious basis of the law was its undoing. Far from mirroring this argument, there was not much mention of religion in the argument in NZ.

Religion was a factor in the blocking of the Shops Bill (1986) in the UK, but the power of the unions at the time was also a major factor. The UK's experience of deregulation more closely resembles NZ's journey. The arguments for and against the law seem to be very similar, however, there is more of an emphasis on the religious basis of the law in the UK (Richter, 1994), which again was not very present in the NZ experience. The religious basis can still be seen in the UK Sunday trade law which allows six hours of trade between 10am-6pm, most stores now open from 11am-5pm, allowing time for Sunday worship (Richter, 1994).

So the religious basis of the law was behind the deregulation of Sunday trade in the US & Canada. Religion was one of the main reasons for the protection of Sunday trade regulation in the UK, and the lack of emphasis on religion could be seen as a factor in NZ's adoption of Sunday trading at a relatively early time compared with the rest of the world.

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