THE EFFECTS OF TENURIAL CHANGE IN 19TH CENTURY SPANISH AMERICA AND NEW ZEALAND: A SEARCH FOR PARALLELS

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Resumen

Es posible identificar una creciente literatura especializada que compara y contrasta la historia económica moderna de Argentina y Uruguay, por un lado, y la de Australia y Nueva Zelanda, por otro. Esta literatura parte de la premisa de que los cuatro países eran sociedades de colonos en 1900, con economías basadas en la exportación de productos primarios a Gran Bretaña y dependientes de la inversión británica. También que en esa época fueron países con altas tasas de crecimiento y economías en rápido desarrollo. Este artículo sugiere que podría ser fructífero comparar Nueva Zelanda con otros países latinoamericanos porque Nueva Zelanda es diferente a Australia, en el sentido de que el pueblo indígena maorí ha sido durante mucho tiempo una presencia económica, política y cultural importante en Nueva Zelanda y sigue siéndolo en la actualidad, a diferencia de lo acontecido en el país vecino. Esta peculiaridad hace relevante comparar Nueva Zelanda con, por ejemplo, Chile, Guatemala y México. Este artículo también llama la atención sobre la relación entre el derecho y la historia económica, pero rechaza cualquier tendencia a vincular el crecimiento económico a los fundamentos supuestamente profundos o proto-capitalistas de la Common Law de origen angloamericano o de los sistemas de Derecho Civil de Europa Occidental y América Latina. En ambos casos, lo que realmente importa en términos de derecho no fueron las supuestas afinidades profundas entre los compromisos del derecho europeo y/o del Common Law con la libertad y la inviolabilidad de los contratos, sino que lo relevante fueron los estatutos específicos promulgados por legislaturas locales controladas por las élites que promulgaron leyes específicamente diseñadas para atraer inversión de capital y remodelar las tenencias colectivas existentes en materia de propiedad territorial. La importancia de la legislación es muy evidente en el caso de México (las leyes de Reforma), Centroamérica (las leyes cafetales) y en Nueva Zelanda (las leyes de tierras nativas de 1862 y 1865). La ideología que sustenta esta legislación, es decir, el capitalismo liberal, era en todos estos casos la misma. En general, el artículo apoya firmemente la comparación de las historias económicas de América Latina con las de Australia y Nueva Zelanda, pero sugiere que, dentro de ese marco comparativo, hay que tener en cuenta una serie de factores como la importancia política de los pueblos indígenas y en qué medida las políticas económicas liberales se vieron limitadas por otros compromisos políticos, como la creencia en las ventajas de la pequeña propiedad rural y de las explotaciones de tipo familiar.

Palabras clave: Sistemas de tenencia de la tierra, reformas liberales, pueblos indígenas, Nueva Zelanda, México y Centro América, abordaje comparativo, historia económica y jurídica.

Abstract

There is already a growing specialist literature that compares and contrasts the modern economic history of Argentina and Uruguay on the one hand and Australia and New Zealand on the other, starting from the premise that all four countries were settler societies as at 1900 with economies based on the export of primary products to Great Britain and dependent on British investment, and which all had generally high rates of growth and and rapidly developing economies at that time. This article suggests that it might also be fruitful to compare New Zealand with other Latin American countries as well, because New Zealand is fundamentally unlike Australia in that the indigenous Maori people of

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New Zealand have long been a significant economic, political and cultural presence in New Zealand and remain so today. That might mean that it could be instructive to compare New Zealand with, for example, Chile, Guatemala, and Mexico. This article also draws attention to the relationship between law and economic history, but rejects any tendency to link economic growth to the supposedly deep or proto-capitalist foundations of either Anglo-American Common Law or to the Civil Law systems of of Western Europe and Latin America. In both cases, what really counted in terms of law was not these supposed deep affinities between European and/or Common law commitments to the freedom and sanctity of contracts, but rather specific statutes enacted by elite-controlled legislatures that enacted statutes (leyes) specifically designed to attract capital investment and remodel existing collective tenures. The importance of legislation is very apparent in the case of Mexico (the Reforma laws), Central America (las leyes cafetales) and in New Zealand (the Native Lands Acts of 1862 and 1865). The ideologies underpinning this legislation, i.e. liberal capitalism, were in all of these cases the same. Overall the article strongly supports comparing the economic histories of Latin America and Australia and New Zealand, but suggests that within such a comparative framework a number of factors must be kept in play, including the political importance of indigenous people and the extent to which liberal economic policies were restrained by other political commitments such as a belief in the benefits of small proprietors and family farms.

Keywords: Land tenure systems, Liberal reforms, indigenous people, New Zealand, Mexico and Central America, comparative approach, economic and legal history.

1. Introduction

As Mario Vargas Llosa has remarked, while Latin America is a projection of the Occident, it has also acquired a number of features peculiar to itself, which give it a distinctive character of its own: "sí, América Latina es una prolongación ultramarina de Occidente, que, desde la colonia, ha adquirido perfiles propios, los que, sin emanciparla del tronco común, le dan una personalidad diferenciada" (Vargas LLosa 2007: xxvi.). Similarly, New Zealand, likewise an overseas projection of Western Europe, has also acquired its own distinctive personality, in part because of a long history of engagement with an indigenous non-European culture, as is the case with many Latin American countries (in varying degrees).

In this paper I wish to focus on a so far little-noticed parallel between Spanish America and New Zealand: the revolutionary changes in land tenure that took place in the nineteenth century. In both Latin America and in New Zealand these changes had enormous consequences for indigenous communities. There are other parallels. Of course, that could be explored, such as the tendency of settler governments to conclude an array of treaties with indigenous communities, common to both New Zealand (Boast 2006) and Argentina (Levaggi, 2000). While there have been a number of interesting books which compare developments in this area within the related jurisdictions of the Common Law world (Banner 2007), there has not been, to my knowledge, any sustained discussion of parallels beyond this.

Apart from the fact that New Zealand academics do not, on the whole, read Spanish, there is one obvious reason for this gap in the literature. New Zealand, annexed by Britain in 1840, historically the youngest of the British settlement colonies, and the Spanish American republics differ from each other not only culturally, historically, and in language, but also because they belong to different legal families (Glenn, 2010). Spanish intellectual and cultural traditions in university-level studies in Roman and Canon law were soon established in the viceregal capitals (Tormo Camallonga, 2020). Countries such as Brazil, Chile, Argentina and Mexico belong to the modern Civil Law world – in fact Mexico and Brazil the two largest Civil law countries in the world, and today Argentina and Chile are both veryprominent centres of Civil Law legal scholarship.

The key differences between the Civil law and Common law traditions are usually understood by comparative lawyers to include the importance of Roman law (pivotal in the Civil law, far less influential in the Common Law), the importance of legal codification in the 19th century in France, Spain, Germany and Italy (with Latin America following suit), the absence of a separate system of equity in the Civil

Law countries (Civil lawyers tend to be very puzzled by the Common law's distinctions between legal and equitable obligations), and distinct attitudes towards precedent and the relationship between courts and the legislature The Common Law's emphasis on the role of the Courts as law-making bodies in their own right is largely absent, at least theoretically, in the Civil Law world. Modes of trial procedure and the organisation of the legal profession are also quite different.

New Zealand legal scholarship, for the most part, has developed within a context of the Common law world and takes its inspiration from centres of legal scholarship the United Kingdom and the USA. New Zealand law faculties do offer survey courses on the Civil Law, but these introductory courses in comparative law tend to concentrate on Germany and France. Spanish American legal traditions and styles of legal scholarship derive from France, Spain and Italy[1] .

Common lawyers, then, and Civilians belong to distinct legal civilisations. New Zealand is definitely a part of the Common Law world. (Spiller, Finn and Boast 1995) Australian, English and Canadian caselaw is still routinely cited in the New Zealand courts (US caselaw far less so, however), and there is a strong sense of belonging to a shared legal family. Many areas of New Zealand private law, especially contracts and personal property, are very similar to English law, although other areas are more strongly affected by local statutes – examples being real property and the law of torts (déli, delito), the latter being very significantly by a statute-based system of accident compensation. New Zealand was the last major Common Law jurisdiction to abolish appeals to the Judicial Committee of the Privy Council in London, a step not taken until 2004, which also saw the establishment of the New Zealand Supreme Court as the highest court in the New Zealand legal hierarchy. This was quite a controversial step at the time. New Zealand also lacks a formal written constitution and the English theory of parliamentary sovereignty remains dominant in the country's political and legal traditions (administrative law, however, is highly developed), and as in England there is no civil code (code civil/ Código civil). On the whole when New Zealand lawyers look to overseas parallels to legal developments at home they have tended to look within the Common Law world, and indeed only to Canada, Australia and the United Kingdom, and not further afield[2].

2. Focusing the comparison between New Zealand and Spanish America

2.1. The classical comparison between Southern Settlers economies of Australasia and the River Plate countries

The term "Spanish" America is, of course, imprecise, and it is important to keep clearly in mind the differences between 'older' colonial countries (Cuba, Mexico, Guatemala, Chile) and countries dominated by comparatively recent immigration from Europe (Argentina, and Uruguay)[3]. Brazil, too, while long-settled, also received huge numbers of immigrants from Europe in the 19th century (as well as from other countries); Brazil, too, had its own liberal era but the Brazilian context is of course different in many respects, including very marked regional differences (Murilho de Carvalho (ed) 2012, Woodard 2009). In some respects, New Zealand is much closer to Uruguay and Argentina as a nineteenth-century settler colony than it is to, for example, Mexico or Costa Rica. In Australia and New Zealand the bulk of the modern population is descended from nineteenth-century European migration, from Spain and Italy in Uruguay and Argentina, and from the United Kingdom and Ireland in the New Zealand case[4]. There are many similarities between, for example, the development of Buenos Aires and Montevideo on the one hand and, for instance, and Melbourne and Auckland on the other, all four cities being largely built on 19th-century foundations and all four being significant ports specialising in the export of primary products and linked to their hinterlands by rail. Perhaps this might suggest that the comparative

1 One fascinating exception to that is the study of derecho indiano, still of great interest to specialists in Chile and other countries, a legal system which is unique to the Spanish world and appears to be of no interests to academics in France and Germany.

2 An exception is our electoral system, mixed-member proportional representation, or MMP, which has been borrowed from Germany

3 Of course, all Spanish American countries, including Cuba, the last Spanish American country to gain independence, have received substantial numbers of post-independence migrants from Spain, especially from Galicia and the Canaries.

4 There has been much more migration from southern Europe to Australia than there has been to New Zealand.

'quadrilateral', cought be expanded to take in southeastern Brazil (São Paulo, Paraná, Santa Catarina, and Rio Grande do Sul.) So a comparative political and economic history of Australia, New Zealand, southeast Brazil, Uruguay, and Argentina is another potential project.

The similarities between the Río de la Plata countries and Australia and New Zealand have already been noted in a number of detailed studies (Álvarez, Bértola and Porcile, 2007). These are richly suggestive studies, taking their starting-point from the fact that as at circa 1900 the relative positions of the four countries in the global economy were roughly the same, while since then there have been marked divergences between New Zealand and Australia on the one hand and Uruguay and Argentina on the other. On the other hand, there are also some parallels between 'old' Spanish American countries such as Chile, Costa Rica, and Mexico with New Zealand. In these countries there was a substantial indigenous population with a long history of interaction with Europeans, and who have preserved strong traditions of political autonomy. Maori people, who had access to modern weapons and who were skilled at building fortifications, were able to defeat the British army in open battle, and following the withdrawal of British forces in 1864 the settler regime in New Zealand was forced to make its own accommodation with Maori (perhaps here the closest equivalent of New Zealand in Spanish America is Chile).

An important aspect of the 'quadrilateral', however, which is not shared with Chile or any other Spanish American countries, is the historical importance of the British market. New Zealand was for most practical purposes an independent country by 1900, but, as with Australia, Argentina, and Uruguay, it was certainly an economic dependency of Great Britain. New Zealand did not even establish a Reserve Bank or print its own banknotes until 1934. Britain's accession to the European Community in 1973 was a heavy blow to New Zealand, as was the case for Uruguay and Argentina; since then New Zealand has been successful in diversifying its export markets. New Zealanders still have no very positive feelings about the EU, seeing it as nothing more or less than a European protectionist bloc, as no doubt Uruguayans and Argentinos do[5]. In addition to migration patterns and relations with native peoples there are also the patterns of economic development, investment, and exports. But even here it is not obvious that New Zealand's closest equivalents in Spanish America are only Uruguay and Argentina. While there are obvious similarities between New Zealand and, say, Uruguay's pattern of economic development in the nineteenth century, including British investment and the export of primary products to Britain, it could also be suggested that the heavy dependence of Costa Rica and Guatemala on the export of coffee has some similarities with New Zealand's no less heavy dependence on the export of bulk dairy products[6]. Nevertheless, just as the coffee monoculture has had severe ecological effects on the Central American countries, so too has the dairy industry in New Zealand, the reckless expansion of the industry having led to widespread deforestation and water pollution. Unfortunately, while the literature on the economic history of coffee in Central America is well-developed, the same cannot be said of New Zealand's giant and politically powerful export dairy industry.

A different kind of problem with the Argentina-Uruguay-Australia-New Zealand cuadrilátero is that it risks assuming that each set of 'twins' are much alike, that is, that Uruguay is more or less the same as Argentina and that New Zealand is more or less the same as Australia. In fact, Uruguay is radically different from Argentina in many ways (for example, in the former's creation of a welfare state and relative political stability and its cultural affiliations with Brazil (José Ortega 2000, Maiztegui Casas 2008), and by the same token Australia and New Zealand in ways are quite different. Firstly, the indigenous populations, Australian Aborigines and Maori, are quite unrelated, historically and linguistically, while the indigenous populations of Uruguay and Argentina do affiliate in some respects. Secondly, the legal doctrine of terra nullius, i.e. that Australia was 'empty' and thus its native peoples had no recognisable title to land, has never been the law in New Zealand. According to the evolutionist anthropology of the day, Maori, perceived as cultivators and ranked highly in the 19th century evolutionist scale, were recognised as the legal owners of New Zealand as at colonisation in 1840, meaning, firstly, that their

5 On the whold New Zealanders have been indifferent to the Brexit debate, and if British manufacturers are hopeful that Australia and New Zealand will become protected markets for post-Brexit exporters they will probably be disappointed.

6 Of course, Costa Rica has always been a poor country, and is distinctive not so much economically but rather in patterns of land ownership, political stability and a commitment to democratic state-building: sometimes described as the 'Switzerland' of Central America, economically Costa Rica is no Switzerland.

consent by treaty (i.e. the Treaty of Waitangi of 1840) had to be obtained as a prerequisite to annexation, and secondly, that their land titles had to be legally extinguished by either purchase or by means of a process of judicial title investigation. This did not prevent Maori from losing most of their lands during the 19th century, as this article will show, but the point remains that terra nullius doctrine has been of no practical relevance in New Zealand legal history or in the development of its society and economy.

Maori people have been able to vote in New Zealand since 1852 and special Maori electorates were first set up in 1867. Maori have also long been free to stand in general (non-Maori) electorates in New Zealand. In Australia, by contrast, indigenous Australians did not receive the right to vote in federal elections until 1862 (Commonwealth Electoral Act 1862, Aus.), albeit that New Zealand and South Australia were among the first to enfranchise women (1893 and 1894). Aboriginal Australians were not fully included in census results until 1971. The current indigenous (Aboriginal and Torres Strait islander) population of Australia is circa 798,000 (3% of the Australian population and is projected to reach 1.1 million people by 2031). This is about the same the New Zealand Maori population, but the percentages are different. The New Zealand Maori population is 775,836 (2018 census), comprising 16.5% of the population. To complicate matters, many Maori have migrated to Australia: there are now circa 142,000 Australians of Maori descent.

Other differences are that New Zealand's immigration patterns have differed from Australia's; Australia has a written constitution whereas New Zealand does not; the Australian economy is more dependent on mining than is the New Zealand economy; and – though Spanish-speakers may have trouble detecting this – the New Zealand and Australian dialects of English are not the same. Finally, there is the point that Australia is a large federal country, and its own states have significant variations in terms of political economy and electoral politics. Some Australian states, notably Victoria and South Australia are are closer to New Zealand than are others. South Australia is known for its unique and highly liberal (in both sense of that term) within Australia (Pike, 1957). As noted already, for example, South Australia and New Zealand enfranchised women at the same time, while the other Australian colonies took longer. In terms of economic history, for example, Victoria, like New Zealand, has always been somewhat protectionist, whereas New South Wales has tended to support free trade and the elimination of tariffs, this being explained by the political power of the export wool industry in New South Wales politics while Victoria has had relatively larger mining and manufacturing sectors (Blainey, 1984).

Australia, while having a longer colonial history than New Zealand, is in fact a newer country than New Zealand in a technical sense, as Australia came together as federation of six separate self-governing colonies in 1901, while New Zealand has in practice been an autonomous self-governing unitary state since at least the 1870s. New Zealand did have the option of joining the Australian federation, but chose not to. Australia remains a strongly federal country today, with certain areas of law-making restricted to the states by the Australian constitution of 1901, while New Zealand is non-federal and has no written constitution. On the other hand, Argentina does of course possess a written constitution, the first version of which was promulgated in 1853. Like Australia, Argentina was a combination of separate political entities and like Australia has a federal structure (although there are significant differences between Australian and Argentinian federalism[7]). By far the most economically powerful and fastest-growing of these southern hemisphere colonial English-speaking cities up to about 1920 was Melbourne, which rapidly developed factional Leftist politics and passionate suburban rivalries based on football teams (McCalman, 1984) and which later received significant numbers of migrants from southern Europe, suggesting a number of parallels with Buenos Aires. Melbourne's social history and working class politics have been explored in depth in Janet McCalman's richly detailed study of the inner-city suburb of Richmond (McCalman, 1984). The political history of Auckland, New Zealand's largest and most industrialised city, and like Melbourne a centre of banking and finance (Stone, 1973), has been much less exciting.

Moreover, returning to the Australia-New Zealand-Argentina-Uruguay cuadrilátero, maybe the two sets of gemeles might be arranged differently, bracketing New Zealand with Uruguay and Australia

7 A really thorough political and legal history comparing state building amongst settler colonies in the Rio de la Plata region (Argentina, Paraguay, Uruguay) with the Southwest Pacific (the Australian colonies, New Zealand) in the 19th century would be a very worthwhile project. So too might economic histories of southern hemisphere urban areas in the same period: Buenos Aires, Montevideo, São Paulo on the one had, and Sydney, Melbourne, Auckland and Johannesburg on the other.

with Argentina. Both sets of countries stand in much the same relation to the others economically and culturally, and the political cultures of New Zealand and Uruguay have a certain resemblance. Perhaps, more doubtfully, so also do those of Australia and Argentina, for example in the political power and prestige of pastoral landowners, (referred to in Australia as the 'squattocracy') and the long histories of neglect and mistreatment of their respective indigenous populations. Then again, the modern political and economic history of Argentina has been much more chaotic than that of Australia (Alberto Romero 1994). Both Uruguay and New Zealand, on the other hand, are welfare states, are culturally liberal and egalitarian, and Uruguayan batllismo has some affinities with the New Zealand style of social democracy[8]. Also, both New Zealand and Uruguay are alike in their struggles to escape the shade of their giant neighbours, while at the same time developing economies which are increasingly closely integrated to their larger neighbours (MERCOSUR one the one hand, and CER -Closer Economic Relations- on the other) while yet at the same time being strongly committed to global multilateralism. Also, while I must admit this is a somewhat subjective observation, Australian politics are more polarised, for example over indigenous land rights, and more unstable than is the case in New Zealand.

2.1 New Zealand, Mexico and Central America: a parallel history of the land rights of the indigenous populations.

It is, therefore, not necessarily obvious which Spanish American countries can most usefully be compared to New Zealand. Certainly Uruguay is a strong contender (so, however, might be Costa Rica). In this article the main focus is on Mexico and the Central American countries, mainly because of the striking ideological similarities between certain Mexican, New Zealand, and Central American statutes, and also because of the parallel histories of the land rights of the indigenous populations, who in New Zealand as in Mexico and Central America were sedentary cultivators with complex systems of land tenure, political organisation and property rights.

I would argue that while there are many fascinating parallels between Australia, New Zealand, Argentina, and Uruguay, that does not mean that there is no value or interest in comparing the historical trajectories of New Zealand, Mexico and the Central American republics. Moreover, New Zealand, like Mexico or Guatemala (or Paraguay), is a mestizo country in the sense that there has been a great deal of intermarriage between Maori and Pakeha (New Zealanders of European descent), meaning that an inceasingly high percentage of New Zealand's population is of mixed indigenous and European descent. This is not the case in Australia, where the indigenous population has long been, and remains, demographically insignificant, as in Uruguay and Argentina. Also the political formations of the Maori people have proved very robust and remain extant to a marked degree in New Zealand, in ways that are very similar to the continued cultural vitality of the indigenous communities of (for example) Guatemala or Chiapas. Maori are demographicaly and politically significant in New Zealand, shown by the 2020 general election results, at which out of 120 members of the new parliament at least 18 are Maori[9].

The seventeenth-century political philosopher Thomas Harrington, who published his classic work Oceana in England in 1656, is known especially for his attempts to link patterns of land-holding with republican liberty (Pocock, 1975: 285-93). That there is some connection between tenure and political liberty and stability seems to be borne out by empirical experience, as, for instance, is suggested by the contrasting histories of two adjoining Central American countries, Costa Rica and Nicaragua. The first, a land of small family farms and rural prosperity, rather like a Central American version of New Zealand, also stands out in its own region for a long history of democratic stability and levels of literacy and health care that are equivalent to the developed world. Costa Rica is also blessed with a remarkable public ideology of democratic republican nationalism and a strong sense of exceptionalism. While it must be admitted that prominent Costa Rican historians are beginning to wonder whether their country's unique brand of political and economic exceptionalism, "la excepcionalidad de Costa Rica", might now be under threat from the pressures of a globalised international economy, the contrast between these two countries

8 This facts suggests that another comparative option might be that of studying the political economies of New Zealand, Uruguay, and Costa Rica, all three being countries on the periphery which have succeeded in creating relatively robust traditions of social democracy, welfarism, egalitarianism and political stability

9 Readers of this journal may be interested to know that as a result of the 2020 election New Zealand now has its first member of parliament from a Latin American background, Ricardo Menéndez March, of Mexican-New Zealand descent.

remains very marked (Molina and Palmer, 2006: 122). Nicaragua, for much of its history a land of great estates and landless peons, has had an unhappy history marked by considerable instability, dictatorship and oppression. It remains one of the poorest countries in the western hemisphere. Yet ethnically Costa Rica and Nicaragua are very similar (whatever Costa Ricans and Nicaraguans themselves may say), both are small Central American countries lacking in mineral resources and heavy industry, and both have economies based on the export of coffee and other primary products. Many observers see differences in patterns of land-ownership as one of the key ingredients in understanding the contrasting fates of these two neighbouring Latin American republics. It seems from this example that patterns of tenure and land ownership have significant connections with national well-being in a broader sense.

In both New Zealand and in the Spanish American republics the influence of liberal ideologies on indigenous land rights was profound. In 19th-century New Zealand a substantial effort was made to convert lands held on indigenous customary tenures into modern and individualised forms of tenure recognisable in modern law. The vehicle for this change, a true tenurial revolution, was legislation of the colonial parliament, in particular the Native Lands Acts, but also the legislation relating to confiscation of land belonging to rebel Maori. The confiscation legislation, as I have argued elsewhere, was designed not only to take land from "rebels" but also to remodel the tenure of land regranted to those deemed not to be in rebellion. The effects of this tenurial revolution in New Zealand have been dramatic, and transformatory. In New Zealand, however, this transformation took place in a society which totally lacked a powerful body of Conservative opinion – there was no established Church, and no equivalent of a Tory party of landowners and bishops. A powerful landed Conservative party such as as existed in Colombia or Argentina (or Chile?) did not exist. Nor was there a powerful class of large landowners and policies were implemented to ensure that one did not arise. The land acquired from Maori ended up mostly being granted to small settlers for family farms. In New Zealand – as in Costa Rica - an ideology stressing the benefits of close settlement and the family farm has played an important role in national life and has had important impacts on policy. The various ways in which this ideology worked its way through into land acquisition and land settlement policy was one of the themes of my 2008 book, Buying the Land, Selling the Land (Boast, 2008).

In the nineteenth-century Spanish American republics, newly independent from Spain there was, as in New Zealand, a legal assault on indigenous lands held on customary tenures. This was accompanied by an attack on the extensive land-holdings of the Catholic Church. These Church lands included those belonging to the secular Church of bishoprics and parishes, and also the extensive land-holdings of the regular orders such as the Dominicans, Franciscans and Augustinians – the Bourbon monarchy having already prohibited the Society of Jesus and expropriated their properties in the eighteenth century. By contrast, however, the churches in New Zealand were not and never have been politically powerful or notably wealthy, and the disentailment of church lands was not an issue. In both the New Zealand and the Spanish American cases, nevertheless, these equivalent processes of change were driven by Liberal and modernising elite groups within colonial society who had seized political control at the local level, and in both cases the process of 'reform', if it deserves the name, was embarked on by a mixture of motives in which a hope to benefit directly from the alienation of indigenous lands and an ideological belief in the value of modern tenures in unlocking opportunities for development and modernisation were uppermost. Or to put more crudely, both greed and ideology plaid a role. Greed, alas, is a human constant in this fallen world. It is the ideological parallels which are the more interesting, and the more susceptible of inquiry by mere mortals. But to pursue matters further it is necessary to look more closely at our parallels.

3. Basic legal foundations: Indigenous Law, Common Law, Derecho indiano

Before addressing the principal statutory changes made in the 19th century, it is first necessary to consider the foundational legal systems of New Zealand on the one hand and the Spanish American countries on the other. New Zealand and Spanish America are alike in one important respect: in neither case is the law, either historically or operative today, wholly European. In both Spanish America and New Zealand there were pre-European systems of law which in each case have survived to the present day, notwithstanding the long history of colonisation. (No attempt will be made here to engage with the large literature on the anthropological understanding of "law" (droit/derecho), suffice it to say that

it is well-recognised today that non-European systems of law are often of great richness, complexity, and intellectual subtlety. With Spanish America and New Zealand the indigenous legal foundations are quite different.

In the case of Spanish America there were the many and varied legal traditions and cultures of the Native American peoples, some of which had developed powerful state formations, as the Valley of Mexico, the Maya region, and the Andes. New Zealand's indigenous people, the Maori, are Polynesians, who derive from the Lapita-era migrations to the Western Pacific around 1,000 BC and in turn from the great Polynesian exploratory voyages from the ancestral Polynesian homeland, often referred to in Polynesian languages as Hawaiiki, around AD 1,000. While "Polynesia" is still reognised as a valid ethnohistorical unit, and New Zealand can be said to be part of Polynesia, the formerly entrenched division between "Polynesia" and "Melanesia" is now recognised as an eseentially racist classification ((Tcherkézoff 2008) and has been superseded. The Polynesian voyages to New Zealand were roughly contemporaneous with the Polynesian settlement of Easter Island (Isla de Pascua/Rapa Nui), Tahiti, the Marquesas, and Hawai'i. Linguistically and culturally the Maori people of New Zealand have close affinities with other eastern Polynesians, to the extent that the Maori language of New Zealand is mutually intelligible with the Rapanui and Tahitian languages. Maori share with other Polynesians an extensive body of myth, tradition, and history – and also law (or 'customary' law. All through Polynesia, for example, the concept of rahui (Maori) or ra'ui (Tahitian) is widely known, meaning a prohibition or a ban ordered by a chief to protect scarce resources such as fishing grounds, forests, bird-nesting grounds etc. Like all Polynesians, the Maori people of New Zealand are expert sailors and boat-builders, skilled artists and carvers, and lived in highly organized chiefdoms able to direct the construction of large fortresses and other public works.

In New Zealand the indigenous customary system of law (coutume/juridique/derecho consuetudinario (Tau Anzoatégui, 2001)) has been overlaid, but not supplanted, by English Common law, as also by the statutes of the colonial legislature and the law of the modern New Zealand legal system and by contemporary legislation. On the foundation of the quite different customary systems of Spanish America, in much the same way, there is an introduced legal system, made up of its own components of Spanish law as codified in Las Siete Partidas and by colonial and modern legislation (loi/ley). However Spanish American legal history is characterised by the development of a great body of codified imperial law, derecho indiano, which is itself the focus of a great deal of legal commentary and modern analysis. The British empire never developed any equivalent to derecho indiano,i.e. a body of specifically imperial law which had as one of its aspects a protective or tutelary approach to indigenous peoples. In the British colonies, English Common Law rules relating to persons, property, and obligations (contracts and torts) applied, and the system of appeals from colonies such as New Zealand, Australia, Canada and Jamaica to the Privy Council in London did create a certain amount of legal uniformity across the British empire, but certainly no exact counterpart to derecho indiano ever emerged.

After independence, derecho indiano was repudiated in the Spanish American republics and remained legally relevant only in the remaining fragments of the Spanish colonial viceroyalties, that is in Cuba, Puerto Rico and the Philippines. The formal existence of derecho indiano as a legal system came to a final end as a result of the Spanish-American war of 1898 and Cuban, Filipino and Puerto Rican independence, albeit under varying degrees of domination by the United States. Nevertheless the cultural and intellectual heritage of derecho indiano. Spanish Civil law, on the other hand, is foundational everywhere in Spanish America, but largely through the medium of Civil codes modelled on the French Civil Code of 1804.

New Zealand's English legal heritage results in many important legal differences between Spanish America and New Zealand when it comes to the structure of the courts, the role of precedents, how cases are argued, and how judges are trained and appointed. In both Australia and New Zealand private law is uncodified and neither country has a civil code, codification of private law being antithetical to English Common Law. In terms of substantive law, probably the most pivotal difference between Spanish America and New Zealand is he English-law trust, which has no exact Civil Law equivalent. Trusts are of great practical importance in New Zealand, especially in the field of indigenous tenures. One of the few sustained attempts to merge Anglo-American Common Law and Spanish law occurred in Cuba during the first American military occupation from 1988-1902 but had to be given up as too difficult (Thomas 1988:461). The practical difficulties are shown also by the long-running problem of

the so-called 'Old Spanish grants'. These are land grants made by the Spanish Crown of New Spain or by the government of Mexico in what was to become the Southwest of the United States. Following the Treaty of Guadalupe Hidalgo (1848) United States Courts had to adjudicate as to the status of these land grants in US law. The legal difficulties proved formidable, including, but not limited to, the vague definition of boundaries in the original grants: that is, the grants might be valid in Spanish law but too to meet the requirements of American law. Litigation over these grants in New Mexico and Arizona is still continuing today. The leading decision on the "Old Spanish grants" is United States v. Sandoval 231 U.S. 28 (1913) in which a United States court attempted to apply colonial Spanish law to interpret a grant.

Although the Civil law and Common law traditions are distinct, these distinctions should not be exaggerated. Both systems are European, ancient, related, and complex; moreover English law was not wholly uninfluenced by the Civil law. As comparative lawyers well know, Conceptually the Common law and Civil law understanding of contracts is, while distinct, not fundamentally at odds, and both systems recognise certain types of special contracts (sales, insurance, leases, mortgages, bailments, conveyance of land, etc.) One illustration of this broad similarity is that the Civil Law and Common Law rules of property and contracts operated in exactly the same way to provide a legal foundation for the operation of plantation slavery in the West Indies, it making no practical difference whether the underlying rules derived from English Common Law, as in Jamaica and Barbados, the French variant of Civil Law (St Domingue, Guadeloupe, Martinique) or the Spanish version (Santo Domingo, Cuba). In terms of slave treatment and status there were, however, some variations arising from core legal rules in the Civil Law system and the French Code Noir.Slaves in English colonies were more at the mercy of planter-controlled legislatures until Spanish-American independence, but in terms of creating a vicious commerce based on buying and selling human beings, English Common Law and French and Spanish Civil law were equally serviceable and the fundamental rules of buying, selling, leasing and insurance were the same.

In this article I emphasise the role of statute, legislation, rather than basic legal doctrine, as it is at the level of legislation that many interesting similarities can be seen in statutes relating to indigenous tenures in New Zealand and Spanish America.

4. Centrality of legislation

There is now a wide, and indeed a somewhat stagnant, literature that seeks to link the emergence of capitalism to the structures of Western legal thought, a literature which tends to see both capitalism and Western legal thought in terms which can be readily criticised as naively roseate. This style of analysis is linked to 'cultural' explanations of Latin America's claimed economic backwardness - an analytical style which has little appeal to this author. Here I will argue that there is indeed a powerful connection between law and the emergence of modern capitalism, of which I am no particular admirer, but the connection is a quite simple (indeed, brutally simple) one, one that is easy to explain, once the significance of statute law is grasped at the outset. Capitalism, or at least neoliberal political economy, was in fact engineered into place by the statutory enactments of politicised legislatures, enactments that were designed to specifically favour those very ends.

A recent very-distinguished and acclaimed history of world history in the nineteenth century has identified five main features, or aspects, of settler colonialism, these being voluntary (i.e. not state-directed) settlement, the vital importance of a surplus of cheap land, the introduction of modern European conceptions of property, the 'ambiguous' relationship between settler colonialism and the colonial state (meaning here, the initial, or originating colonial state: France, Spain, Britain, the Netherlands, etc.), a tendency towards "semi-autonomous" state-building, and the massive transformative power of the whole process. (Osterhammel 2009: 172-175) To these five aspects, I would respectfully suggest a sixth, one that is clearly derived from the other five, a transformation of law-making moving away from the wider frameworks of the imperial law of the colonising powers to the statutory law made by the autonomous legislatures of the settler colonies. New Zealand very rapidly achieved full legislative independence, and all of its law relating to Maori land tenures was devised by its own legislature with scant reference to British precedents. Moreover, since New Zealand had no written constitution and no system of judicial review of legislation, statute law reigned supreme and the colonial legislature could create whatever

legal frameworks it liked. The first principal statutes relating to Maori landholdings were enacted as early as 1862-65. In this, there are strong similarities, with say republican legislatures in Guatemala or Costa Rica, politicians in those countries being free to enact whatever statutes they liked and which were likewise subject to no checks of any real significance. In theory a constitutional monarchy, in reality colonial New Zealand was an autonomous settler republic, emotionally and economically tied Britain, but not politically. Today the economic ties have gone, and the emotional ties are weakening, and there is some political support for ending the few remaining trappings of constitutional monarchy and for New Zealand to move from the status of a de facto republic to a republic de jure. Whether it does, or does not do so, is unlikely to make much difference to New Zealand's political culture or the way it is ruled.

If it can be accepted that statute is a form of law-making that is peculiarly receptive to shifts in the ideological and political climate, and indeed to the changing Zeitgeist of the times, then the study of the relationship between law and cultural and political history is significantly widened. More As the shifts in the political and intellectual contexts in Mexico, the United States and New Zealand had much in common, then significant similarities in the legal responses in the three countries are very apparent. In sum, legislation is more important than judicial decisions, legislation is by definition a product of a political process, and that shifts in politics are linked intimately to wider ideological and change.

It is a complete myth to believe that law-making by legislation necessarily creates tidy, clear, and comprehensible bodies of law. The reality is exactly the opposite. The law relating to indigenous tenures in Mexico, New Zealand and the United States soon became impossibly complex. The problem was not so much that the legislation was verbose and incomprehensible (although it usually was) but rather that it was so readily enacted and that it was typically aimed at single issues and problems. The United States, its constitutional law quite different from either New Zealand and Mexico, at least had a written constitution (Mexico did, but it never amounted to much more than fine-sounding words, whereas New Zealand did not at all). Nonetheless, even in the United States the statute law relating to native tenures became very confusing, and in both New Zealand and Mexico it formed an impenetrable thicket.

5. Tenurial change in 19th century New Zealand

In New Zealand it was assumed that the indigenous people held title to the entire soil of the country – a major difference with Australia, where the opposite assumption prevailed – and thus before land could be allocated to settlers from the British Isles, the Native title had to be extinguished somehow. Until 1862 this was done by what were known pre-emptive purchases or deeds: the Crown simply bought land off Maori and then handed it over to the provincial governments for allocation. These purchases were often of very large areas, and by this means about two-thirds of the customary title was extinguished, including virtually the whole South Island, a few inconsequential areas aside, and parts of the North. As at 1862, however, much of the most important and valuable land in the North Island – in the Waikato, Taranaki, Hauraki, the Bay of Plenty, East Cape, Gisborne and much of the North Island interior was still held by Maori under their traditional customary law. The Native Lands Acts coincided with a new phase of British settlement in the 1870s, the settlement of the "great bush" of the North Island interior, especially southern Hawke's Bay, the northern Wairarapa, as well as parts of the Waikato, Taranaki and the Bay of Plenty (Peterson 1965). It was these areas which were to be most affected by the new Native Land Court.

In 1862 the first Native Lands Act was passed, which switched from pre-emptive purchase to an entirely different approach. Maori title was converted to a Crown-granted tenure, held by Maori as named individuals (i.e. not by tribes or sub-tribes: 'iwi' and 'hapu'); once so-held it could be alienated to private purchasers or the State. Maori alternatively could keep such land in their own possession and often did so: Maori were free to alienate it or use it as they chose. The objectives of the Native Lands Acts can best be discerned from the preambles to the first two main statutes, that is the Native Lands Acts of 1862 and 1865. The preamble to the Native Lands Act 1862 states that it would:

> greatly promote the peaceful settlement of the colony and the advancement and civilisation of the natives, if their rights to land were ascertained, defined, and declared, and if the ownership of such land, when so ascertained, defined, and declared, were assimilated as nearly as possible to the ownership of land according to British law.

Here the emphasis is placed on (a) the ascertainment and definition of Maori rights to land, and (b) the assimilation of such rights "as nearly as possible" to English law tenures. With the 1865 Act, drafted by Francis Dart Fenton, these objectives were redefined and expanded. According to the Premable to the Native Lands Act 1865:

> It is expedient to amend and consolidate the laws relating to lands in the Colony which are still subject to Maori proprietary customs and to provide for the ascertainment of the persons who according to such customs are the owners thereof and to encourage the extinction of such proprietary customs and to provide for the conversion of such modes of ownership into titles derived from the Crown and to provide for the regulation of the descent of such lands when the title is converted as aforesaid and to make further reference in reference to the matters aforesaid.

The objectives, as can be seen, continue to be (a) the "ascertainment" of owners according "Maori proprietary customs" (or, as it would be phrased today, Maori customary law); but include as well (b) the encouragement of "the extinction of such tenures"; (c) for the "conversion" of customary titles into titles derived from the Crown (that is, Crown grants); and, this being a new departure from the 1862 Act, (d) the "regulation" of the "descent of such lands" (successions).

The 1862 and 1865 Acts had three main effects. First, the legislation amounted to a statutory waiver of Crown pre-emption; secondly, the legislation established a new judicial body, the Native Land Court, a purely statutory body with the power to make binding judgments in rem; and, third, the legislation set up a particular type of process, by which Maori customary titles could be converted into Crown-granted freehold titles. All these three core features of the legislation interconnect. The legislation marked a decisive shift, indeed a complete about-face, from the previous law relating to Maori land and Maori alienation, which until then had been governed by the common law doctrines of native or customary title and Crown pre-emption. The three main aspects of the legislation identified above will now be analysed in turn.

Firstly, there is the effect of the legislation on Crown pre-emption, which as seen was the standard practice in British colonies. A unique feature of New Zealand law is that the Crown has waived its general pre-emptive right to extinguish the native customary title, a step taken in no other jurisdiction as far as I am aware. This waiver is stated clearly in the preamble to the Native Lands Act 1862, which explicitly cancelled the right of Crown pre-emption set out in Article II of the Treaty of Waitangi:

> AND WHEREAS…Her Majesty may be pleased to waive in favour of the Natives so much of the said Treaty of Waitangi as reserves to Her Majesty the right of pre-emption of their lands.

Under the Native Lands Acts, once Maori had obtained a certificate of title to their lands and a subsequent Crown grant they were free to do what they liked with their land, include selling it in the open market if they wished. This was a complete reversal of the former policy of pre-emptive purchase by deed, and it takes an effort of the imagination now to grasp how radical a step this was. It is often said that the Native Lands Acts were contrary to the Treaty of Waitangi. In one sense this is certainly true, given that the doctrine of Crown pre-emption, waived in 1862, is set out in Article II of the Treaty. Whether Maori regretted the departure of Crown pre-emptive purchasing from the scene is, however, unlikely.

Secondly the legislation set up a new court, given the name of the Native Land Court. Section 4 of the 1862 Act allowed the Governor to establish by commission or Order in Council a "Court or Courts" that were to have the purpose of "ascertaining and defining who according to Native custom are the proprietors of any Native lands and the estate or interest held by them therein". Section 5 of the 1865 Act provided for the establishment of judicial body having the status of a Court of record, consisting of "one Judge…who shall be called the Chief Judge" as well as "other Judges" who were to hold office "during good behaviour" (i.e. the formula used for the superior Courts of record). The Native Land Court is a famous institution and has played an important, if controversial, role in New Zealand history. It is still in operation, as the Maori Land Court, and looks set to have still have a long future ahead of it. Talk of abolishing it and transferring its functions to the ordinary Courts, sometimes heard in recent decades, has disappeared. The Court has been in existence now for nearly 150 years. It is New Zealand's oldest specialist tribunal, and must be one of the most long-standing specialist institutions of its kind in the

world. Australia's Native Title Tribunal, established under the Native Title Act 1993, is a mere baby by comparison.

Thirdly, the Native Lands Acts established a process of title conversion, or title translation, setting up a procedure which gave to Maori the option of converting or translating their customary titles to a Crown-granted freehold tenure. It is important to understand that the process was a two-step process, only the first of which was carried out by the Native Land Court:

- First, the owners of the block could bring a block of land to the Court, where they had to show that according to Maori customary law they were its owners; if successful, they would be recorded as owners in the Court's records and issued with a Native Land Court certificate of title.
- Secondly, the successful claimants needed to produce their Court certificate of title to the Governor as the Crown's representative, in exchange for which they would receive a Crown grant to the same area in freehold. The grant was presumably intended to extinguish the customary title.

The process was supposedly voluntary. Maori were quite free to leave their lands in customary title if they wanted to, but if they did then they were alienable only to the Crown, the pre-emption rule remaining in force to that extent. This is still the law: Maori customary land, meaning land held under Maori customary title, is alienable only to the Crown. Once, however, the customary title had been "cooked" by the Native Land Court and Crown-granted, it was freely alienable: as with any freeholder, the owners could do as they pleased with their land, including selling it (or not). Such was the theory, although the reality soon became much more complicated, especially after 1873.

The Court's requirements under its empowering legislation were, in effect, contradictory. It was required to individualise land in Maori ownership, transferring land held hitherto on Polynesian customary tenures to named individuals who would receive severable alienable interests. The Court was required to make its determinations on the basis of Maori custom, but, and herein lies the fundamental contradiction, Maori custom did not have a concept of individualised tenure: land belonged to descent groups. (Boast 2008: 93).

Just as with similar schemes in other parts of the world, the net effect was rapid alienation. The Native Lands Acts also created a new type of land tenure: land that had always been held in customary ownership, but now held on a 'modern' and English-law tenure by named individuals. This category of land, now known as 'Maori freehold land', remains important in New Zealand, and accounts for about 12% of the North Island to this day. As the Maori Land Court, this Court, New Zealand's oldest specialist court, is still very much a going concern and remains important in the Maori world. The main transformations in New Zealand took from circa 1865-1886: it was the 1865 Act which was pivotal, and the Court did not really begin dealing which large blocks on an intensive scale until 1866; from then on the process of investigation and alienation was very rapid. As well as land alienation, another consequence of the legislation has been the problem of crowded titles: with the rapid growth of the Maori population in the twentieth century many Maori land blocks have ended up with thousands of owners, making efficient management very difficult. Maori land law is a recognised special field of study in New Zealand, and is taught as a law degree subject, has its own specialist bar and judges, and its own textbooks (Boast, Erueti, McPhail and Smith 2004).

6. Spanish American examples: Mexico and Central America

Turning to Latin America, we come at the outset to an obvious point of divergence: in New Zealand there is no parallel to the very lengthy Spanish colonial period, which in Mexico (New Spain), can be said to have lasted from 1521-1810, three hundred years of a vast and elaborate colonial edifice by which the religious, political and educational institutions of the mother country were transplanted to the New World. It is often forgotten in the Anglophone world that in 1800 the biggest city (by far) in North America was Mexico City – as it is today – and that the Universities in Mexico City and Lima are about a century older than Harvard. Learned works of theology were being published in Mexico City and Lima two hundred years before the American Revolution. Spanish territorial claims in the New World were founded not on categories familiar to Anglo-American legal historians – discovery, conquest, settlement

– but rather on an elaborate legal edifice, deriving from the Papacy's claims to universal jurisdiction, based on the papal grants of 1493 made by Alexander VI to the Crown of Castile, las bulas alejandrinas, which were embodied and and modified by the Treaty of Tordesillas between the kingdoms of Castile and Portugal in 1494.

The Spanish colonial empire in the New World was a vast edifice with marked regional divergences and large gaps between law and policy on the one hand, and colonial realities, on the other, and thus it is important not to over-generalise. It was a patrimonial society of castes, hierarchies and competing jurisdictions: a Baroque world in every way, as Octavio Paz so eloquently describes it in his celebrated study of the life and times of Sor Juana de la Cruz (Paz 1982). Paz points out that the Spanish empire was seen not as collection of colonies belonging to Spain, but rather a group of kingdoms – a group that included New Spain - owing allegiance to the Spanish Crown. New Spain "era otro de los reinos sometidos a la corona, en teoría igual a los reinos de Castilla, Aragón, Navarra o León". (Paz 1982: 31) Some Mexican patriots followed this line of reasoning through to argue that once the Spanish monarchy had been overthrown by France during the time of Napoleon the Spanish colonies recovered their independence: there was no Crown to unite them.

While it is true that the enslavement of indigenous peoples was forbidden by imperial law, the empire was also characterised by a wide range of oppressive and exploitative devices designed to extract surpluses from subject populations. The reality of exploitation and oppression has been documented in scores of detailed monographs relating to e.g. the Andean region (Spalding 1984, Calero 1997); Chiapas (De Vos 1980, García de Léon 1997,) New Mexico (Gutiérrez 1991, Kessell 2008), the Yucatán (Farriss 1984, Caso Barrera 2002)

Until the late 18th century the Spanish common law of the ius civile supplemented by the imperial law edifice of derecho indiano. But with the Enlightenment of the 18th century, which was not without its effects in Spain and the Americas, lawyers and jurists, formerly pillars of the baroque bureaucracies of Spain and the viceroyalties, became interested in new ideas relating to law. Lawyers now became critics of the despotic Bourbon regime, arguing that the law should be made rational, logical, set forth in clear statutes that all could understand. Jurists such as Francisco de Castro argued that the mix of Roman, Canon, and Royal (imperial law) was too disorderly and confusing and costly: to work out the law on all too many points required the necessity of wading through endless tomes of commentaries.; de Castro argued also that lawyers should only be trained in the law, but also in philosophy, theology, history and other scholarly disciplines. The ius comune was seen as irrational and chaotic, as was derecho indiano, a heap of particulars, and as for canon law, Church courts and indeed the Church establishment itself became the subject of a great deal of criticism. These tendencies became more pronounced and extreme with the French Revolution, and led ultimately to the French and German codification projects of the 19th century.

The Spanish-American revolutions of 1808-1820 and the wars of independence against Spain resulted in the creation of a group of independent republics, as the Spanish-American empire contracted only to Cuba and Puerto Rico; the Philippines also remained Spanish until 1898. The new republics were liberal from the beginning. The great historian of Mexican liberalism, Jesús Reyes Heroles, has written that in Mexico – and the same can be said of nearly all of the new republics of Spanish America (Peru might be an exception) – liberalism and independence are coextensive: "liberalism is born with the nation and develops along with it": 10 ("el liberalismo nace con la nación y ésta surge con él") (Reyes Heroles 1974, 10).

The political instability of such new republics as Mexico, Costa Rica, and Colombia was largely attributable to conflict between self-styled Liberals and Conservatives, but these groupings had much in common, differing mainly in their attitudes towards the Catholic Church (Liberals, taking their cue from the French Revolution, were anticlerical). There were different approaches toward Native peoples, Conservatives favouring a continuation of older Spanish paternalism, Liberals leaning to the elimination of racial distinctions and a rapid introduction of political equality.

Liberals and Conservatives, in the party-politics sense, were, therefore, sections of the elite. Each of these groups believed in private property and considered that only the propertied formed the true political nation. Leading jurists, such as José Maria Luis Mora (Mexico), José María Samper (Colombia), Andrés Bello (Venezuela) and Juan Bautista Alberdi (Argentina) all "advocated for a very narrow approach to political rights, and showed a decisive concern for property rights, which they considered indispensable

for the protection of national interests" Gargarella 2013: 29). Liberals were opposed to the paternalist systems used in the Spanish colonial empire to supervise and regulate Native peoples, and believed that colonial paternalism had only kept Indians in a state of bondage and had prolonged ethnic distinctions that could have no place in republics of free and property-owning citizens. Crucially, however, there was a connection between property and citizenship. One could not participate in the republican political order without property, meaning property held on European rather than customary tenures. (The general allotment process in the United States, the US equivalent to the Ley Lerdo, made a similar distinction: Native Americans could not be US citizens until their lands had been regranted on individualised tenures.)

Latin American Liberals were firm believers in desamortización, a somewhat untranslatable concept which carries the sense of unburdening or freeing land from corporate control, and in this way making 'dead' land free so as to generate wealth and investment. Particular concerns were the amount of land held by the Church, and the extent to which the Church controlled leases and mortgages. This was never an issue in New Zealand, which had no Church establishment, nor was the Church a revenue-collecting institution as it was in the Spanish viceroyalties (Gross Querol 2017). In Spanish America, liberal economic policies and doctrinaire liberal anticlericalism interlocked in ways that had no counterpart in New Zealand. Another liberal concern was the large amount land held by towns and Native communities on collective tenures. This land, too, was seen as 'dead'. Native American legal codes and tenurial rules, as noted, were of no interest to either Conservatives or Liberals. Nor was Maori customary law and practice of any interest to New Zealand politicians.

Probably the largest, and certainly the best-known of the Spanish American transformations was that which took place in Mexico. Even before the outbreak of the wars of independence in Mexico, some prominent liberals and intellectuals in New Spain has advocated abolishing legal distinctions between Indians and other citizens and for the abolition of church and communal lands. One source for this may have been the Bourbon monarchy's attack on the Jesuits; the other was probably the religious, agrarian and economic legislation of the French revolution and the establishment of a strict separation between Church and State in the independent United States. It is clear, however, that Latin America developed a pattern of anti-clericalism of the French type, also characteristic of nineteenth-century Spanish politics, which was much more extreme and polarising than anything that developed in the United States.

The main Mexican statutes, which built on on the earlier Ley Lerdo or Ley de Desamortizacion of 25 June 1856 drew on earlier repartitional laws in the Mexican states of Michoacan, Zacatecas and Guanajuato. The Ley Lerdo, named after the Mexican Liberal politician Miguel Lerdo de Tejada, was aimed primarily at endowed lands held by the Church, much of which was worked by tenant farmers. Later statutes enacted from 1863-1883 reflected the views of a group of highly placed technocrats within the Diaz regime after 1876, the so-called Cientificos, followers of Comptean positivism and strong believers in economic liberalism. Positivism, influential in Mexico and Brazil (Diacon 2004) was less significant in English-speaking countries such as New Zealand and Australia, but the "New liberalism" and progressivism of the 1890s was similar in many respects. Liberalism and liberal political and economic theory is pivotal to 19th Mexican history. As Jesús Reyes Heroles has put it, "[a]bordar el estudio del liberalismo en nuestros días significa, más que acercarse a una pura elaboración doctrinal, examinar una rica experiencia histórica" (Reyes Heroles 1974: 7). (The same is true of most other Latin American countries, and New Zealand as well.)

In Mexico and most of Spanish America Church lands and communal Indian lands were seen as archaic relics of the Spanish colonial empire and as obstacles to modernisation, and the period of the liberal "reforms" associated with the governments of Benito Juarez and Porfirio Diaz saw huge losses of Indian lands to private ownership during a period of rapid economic expansion. In the 20th century an ideology of indigenismo has flourished in Mexico, which tends to mean an attempt to portray the nation as a mestizo country born out of an encounter between Spain and the indigenous civilizations that created the Mexico of today. Sometimes this goes so far as to see the Mexican revolution against Spain as in fact a recovery of independence and as the revival of the ancient Aztec state, a perspective which, however appealing in some ways, is perceived by a Mexican intellectual such as Octavio Paz as nothing short of ridiculous. Indigenismo has certainly not always translated into beneficial outcomes for Mexico's actual indigenous peoples of today, such as the Maya communities of Chiapas and Yucatan, who are just as poor and marginalised as are indigenous communities in the United States and Canada. The complexity and scale of the primary sources (title deeds, survey plans, records of local judicial investigations etc.)

makes it very difficult indeed to fully grasp the effects of the Reforma at the local level, which has made many economic historians very cautious about making sweeping generalisations about its impacts (Menegus Bornemann 1880: 34): "La pobreza historiográfica… obedece, en gran parte, a las dificultades que presentan las fuentes extistentes para emprender el análisis de las comunidades, máxime cuando se pretende dar cuenta de su desarrollo económico y social"). This complexity is, as it happens, no less true of New Zealand, where the documentation relating to the Native Land Court and land confiscation is both on a vast scale and difficult to analyse systematically.. This documentary complexity is also true of Hawai'i, which experienced a tenurial revolution in the 1840s that had many similarities to what took placed in New Zealand from 1865-1910. The precise social-economic consequences in New Zealand, notwithstanding a great deal of published and unpublished research, have proved frustratingly difficult to chart.

The precise socio-economic effects of the Mexican Reforma continue to be much-debated in Mexican historiography. Statistical studies show that the effects were on the whole gradual. There is no real evidence that the purchase of disamorticized properties was dominated by by a rural propertied class: in the outlying sMexican states as well as in the Federal District most purchasers appear to have acquired one ot two properties (propriedades) only. (Bazant 1966: 196).

Land and land tenure issues continue to be important in Mexican politics generally today, as shown by the controversy in Mexico over the ejidos, lands held by communities and usually leased to local people by the municipality. What has happened in Mexico most recently is a re-emergence of the old programmes and old arguments of the Liberals and the Cientificos of last century, although at the present day the ideological fountainheads for the neoliberal line of thinking are the World Bank, FAO, and the Inter-American Development Bank. These institutions perceive "land titling, the setting up of land registries, and market-led reforms as central instruments in the fight against poverty in Latin America". (Nuitjen 2003: 476). Whether the rural poverty that continues to blight the lives of so many Latin American people today can be alleviated by such means remains to be seen, however.Too many Latin Americans still spend their lives living in those sad "casas de cartón" or "barracaos de zinco" Cardboard houses (Sp.) and tin shacks (Port.) Both these are popular songs in Spanish America and Brazil.

Although some countries, notably Brazil, have scored impressive achievements in the last few decades in lifting people out of poverty, whether neo-liberal ideologies of land tenure have much to do with such successes as there have been is the issue, however. I would add that one result of New Zealand's own land tenure policies was that by the 1920s and 1930s many Maori people were living in rural squalor in cardboard houses and tin shacks, or their equivalent, as well (Boast 2008: 443-453: it took the combined effects of the welfare state and the postwar economic boom to improve matters significantly. Liberal systems of land tenure did not ameliorate Maori rural poverty in any way; what did that was not liberalism but rather socialism and a programme of economic nationalism that began in the 1930s which involved public works, urban growth, and state investment in health and public housing. If New Zealand has an equivalent of José Batlle y Ordóñez (1856-1929), that person would be Michael Joseph Savage, the Australian trade unionist who became New Zealand's revered first Labour prime minister who took office in 1935. Indeed, the current Labour prime minister, Jacinda Ardern, often invokes Savage's legacy.

Guatemala, to take another example, achieved independence from Spain in 1821. More polarised than Mexico, the country was and still is characterised by sharp divisions between its large indigenous population, mostly ethnically Maya and speaking various Maya languages, and Ladinos, Spanish-speaking non-Indian Guatemalans. The Maya of the Guatemalan highlands, conquered by the Spaniards and their indigenous Mexican allies by Alvarado and other conquistadores from 1524-1540, continued during the colonial period to live in their traditional communities managing their communally-owned lands, protected by Spanish colonial law. In independent Guatemala, however, a political rhetoric developed during the 19th century whereby the culture and values of the Maya people became seen as antithetical to liberalism and economic progress. Maya groups tended to support the conservative dictator Rafael Carrera who defeated the Liberals in 1839 and established an authoritarian regime which lasted for twenty-six years. In 1871 Liberal groups regained control of the new republic and embarked on a comprehensive programme of title individualisation and related changes to labour and revenue law principally in order to encourage foreign investment in the coffee industry. In 1877 the Rufino Barrios administration ended the colonial system of rent payments by municipalities and at the same time enacted

legislation requiring all landowners to prove ownership by means of recognised legal titles. According to one historian, these steps led to a reduction of Indian communal lands by at least half by the early twentieth century. Those who benefited included coffee planters or "ambitious Ladinos capitalizing on the general ignorance and political vulnerability of the Indian" (Lovell 1992: 33). Communal lands have continued to decline during the twentieth century, although some Indian municipalities have managed to retain their lands to the present day. Indigenous political, religious and cultural movements continur to be significant in Guatemala today (Falla 2000, Grandin 2005, Lovell 2005, Montejo 2010), as they do in New Zealand. Collective tenures, as I understand the position, were not however abolished as such (as they were in El Salvador), but certainly Liberal regimes were hostile to such tenures and took steps to reduce their extent. Land and land tenure issues in Guatemala are no less important than in Mexico, but in Guatemala have a different twist: in the latter country the real issue is the radically unequal distribution of land in the country, which creates significant social problems and imposes major pressures on the Maya peoples of the Guatemalan highlands.

Another Central American country which underwent a similar process of tenurial transformation in the nineteenth century was El Salvador, which followed a very similar trajectory to Guatemala (Williams 1994). In El Salvador, today the most densely populated of the Central American republics, the main changes took place from 1879-1896, with the same objective of expanding the coffee industry. Following pressure from coffee growers, who wanted make lands held on collective tenures either by municipalities (tierras ejidales) or indigenous communities (tierras comunales) a series of laws were passed which began by requiring that collectively held hands be measured and surveyed off, then provided that municipalities allocate lands to those who wished to grow coffee, and which in 1881 went to the length of abolishing collective tenures completely, requiring communities to distribute in full ownership lands to those who were engaged in cultivation. This process of tenurial change in El Salvador has been analysed fully by the historical geographer David Browning (Browning 1971:144-221). Because Indian communities in El Salvador happened to live mostly in areas which were especially suitable for coffee growing – unlike Guatemala – one historian has judged that "the Salvadoran land reform was more harmful and virulent to Indian communities than the Guatemalan version" (Williams 1994: 76). El Salvador also stands out as having taken the unusual stance of claiming – until recently – that there are no indigenous people left in El Salvador: everyone was supposedly mestizo (Tilley 2005). Who is, and who is not "Indian" (indio) in Central America, and the connections between ethnic and national identity are contested terrain – as in New Zealand, although New Zealand is a far less edgy place, to put it mildly, than Guatemala or El Salvador.

As another example of is afforded by the history of Colombia in the 19th century. In Colombia protected Indian lands were known as resguardos (protections, protected lands), which were "properly titled Indian lands enjoying a limited amount of political autonomy" (Calero 1997: 132). In the 19th century Liberal laws and policies, combined with developments such as the quinine boom in the Valle de Cauca region, led to a legislative and political attack on the resguardos. Indigenous groups in Colombia resisted these policies, with varying degrees of effectiveness: "[t]hroughout the late nineteenth century, the threat to indigenous landholdings provoked a counterforce of resistance and protest against the expansion of estates onto native communal properties" Larson 1999:592). My understanding is that Colombia, however, is known today for having remarkably progressive policies with respect to its richly diverse indigenous peoples. And yet another example is Chile, where however the principal developments appear to have been mainly in the 20th century, following the enactment of the controversial law 4196 mandating division of Mapuche communal lands, promoted by President Ibáñez in 1927.

7. Labour controls

Labour controls such as encomienda and repartimiento are an important component of the economic history of colonial Spanish America; in fact controls on labour in some cases persisted into the era of republican liberalism. An example of republican labour authoritarianism is shown Ecuador under the repressive regime of Gabriel García Moreno (1859-1879), who sought to model himself on Napoleon III. Ecuador during his administration appears to be unusual in its reversal to coercive forms of labour control more reminiscent of the colonial era than of the nineteenth-century liberal emphasis on sanctity and freedom of contract (Larson 2004: 103-140).

It might be readily assumed that there must be a counterpart to controls of this kind in the history of colonial New Zealand, but this is not the case. Maori were left free to labour on their own properties or to seek employment as they liked. British settlers in New Zealand desired to acquire Maori land and work it themselves, not to control indigenous labour. Master-servant legislation did not exist in New Zealand, and the colonial government made no effort at all to introduce it or indeed to crate a plantation economy of any kind. New Zealand was a colony of free settlement, and incoming settlers had no machinery of coercive labour control that they could take advantage of. Those who wanted Maori labour had to pay for it at market rates. Certainly labour controls did exist in colonial Australia, and also in other parts of the Pacific such as New Caledonia (Merle and Muckle 2019) and in the Netherlands East Indies, as of course they did in South Africa, but have always been absent in New Zealand. Having successfully militarily resisted the British army in open battle, it is unlikely that Maori would have tolerated such controls, but probably the real reason for their failure to emerge in New Zealand is that they would have served no economic purpose. There is no reason to believe that British colonialists weregenerally any less averse to imposing labour controls than either the French or the Spanish, but this is not a feature of New Zealand economic history. After 1920 Maori became active in the trade union movement, especially the Shearers' Union and became involved in the social-democratic Labour Party. A plantation economy never emerged in New Zealand, the only exception being New Zealand's own tropical colonies in the Cook Islands, the Tokelau Islands, and Niue.

8. Revivals of collectivism in Mexico and the United States

Latin America may be a region which shares with the United States and New Zealand a tradition of hostility to indigenous collective tenures, but it is also a region in which a counter-movement has flourished. This counter-current has been especially important in Mexico, but it also echoed strongly in the United States in the 1930s and 1940s at a time when New Deal liberals, including John Collier and Felix Cohen, dominated the formation of Federal Indian policy under Roosevelt. In the Mexico of President Lázaro Cárdenas, Manuel Gamio, Diego Rivera and Frieda Kahlo this renewed interest in indigenous collectivism fused with Marxism, fashionable admiration for the USSR, and sympathy for the agrarian programmes of the beleaguered Spanish republic.

To American legal historians John Collier is a key figure in the history of Federal Indian law, the chief architect of the Indian Reorganisation Act 1934 (IRA) and the inspiration for a new era in Indian policy in the 1930s and 1940s. Wilcomb E Washburn has written that "Collier's work as commissioner of Indian affairs is probably the most impressive achievement in the field of applied anthropology that the discipline of anthropology can claim" (Washburn 1984: 287). Collier was friendly with the Mexican archaeologist, indigenist and secular liberal reformer Manuel Gamio, who had himself received part of his training in anthropology in the United States where he was one of a galaxy of distinguished students of Franz Boas at Columbia University, the founding father of cultural relativism and non-racist anthropology (Brading 1988). The two worked together on the Inter–American Indian Institute, established after a major international conference at Pátzuaro, Mexico, in 1940. Gamio and Collier were both "indigenists" in the sense that they were personally committed to community life and to the values and ethics of indigenous peoples as a counterweight to what they perceived as the selfish individualism of the modern world. Indians not only had the right to their own cultures: those cultures embodied ethical ideas which were valuable in their own right. Collier had led the attack on the allotment system originally introduced into the reservations by the General Allotment (Dawes) Act of 1884[10]. He founded the American Indian Defense Organization in 1923 and always opposed assimilation of the American Indians. In 1933 Roosevelt appointed Collier as Commissioner of Indian Affairs, and Collier and his officials immediately began work on the legislation enacted as IRA the following year. IRA was a milestone in American legal history and many of today's Indian governments were established under it.

Collier openly admired Lázaro Cárdenas, president of Mexico from 1934–40 and still today Mexico's most revered post–revolutionary president. The fact that a prominent United States government official and reformer could openly admire and esteem a Mexican radical politician like Cárdenas, who nationalised the ownership, production and distribution of petroleum and who was responsible for the return of vast areas of government lands to the indigenous communes under the ejido system illustrates

10 General Allotment Act 25 USC § 331-354 (Dawes Act).

the liberal and idealistic temper of American government under Roosevelt. For reasons that need not be explored here, following World War II United States policy entered a period characterised by support of authoritarian regimes in Central America and the Caribbean, the battle lines being regrettably hardened by events in Guatemala and Cuba in the 1950s. It is not coincidental that within the United States Federal Indian policy in the early 1950s also sharply reversed direction. The Indian New Deal and the work of Collier and his senior officials, including Cohen, had always faced congressional hostility. Following attacks by Western politicians on alleged favouritism to Western Indians as well as personal attacks on Collier himself, Collier resigned in 1945 and Indian policy was later placed in the hands of Dillon Myer — who had supervised the relocation of Japanese–Americans during the War, Collier having been a prominent critic of Myer's methods. In 1950 Myer embarked on a controversial policy of termination of tribal status and the phase of New Deal idealism in Federal Indian policy came to an end, to the great personal disappointment of New Deal idealists and intellectuals such as Felix Cohen (Cohen (1952-53) .

In the 1930s both Mexico and the United States pursued a similar anti–assimilationist path in indigenous policy, a major policy reversal for both countries, driven in both countries by progressive "indigenist" officials: principally Gamio in Mexico and Collier in the United States. As noted above, these two were friends who admired and respected one another. Collier always retained a hemispheric sense about indigenist policy, probably more than Cohen did. In the United States the main vehicle for new policies was IRA; in Mexico it was the ejido programme. Both had in common a rejection of earlier liberal models of individualising tenures — policies pursued in many countries, including New Zealand — and a return to automony and collectivist communal tenures. A repudiation of capitalistic individualism and a revalorisation of communal, if not "communist" tenures, places American and Mexican Indian policy of the day well on the left, exemplifying a kind of idealistic communalism which has had many antecedents in American and English radical history and which was to re–emerge in the idealistic environment of the new state of Israel after 1948 with its kibbutz movement. In nineteenth-century Russia Slavophile nationalists had taken a deep interest in the peasant rural commune, the mir or obshchina, extolling it as as “proof that the Russian people, allegedly lacking in the acquisitive ‘bourgeois’ impulses of western Europeans, were destined to solve mankind’s social problems” (Pipes 1995:17). Despite some claims to the contrary, however, the mir has little in common with the Soviet-era collective farms (kolkhozy).

None of these heady ideas had any impact in New Zealand, which went right on individualising customary tenures throughout the twentieth century until there was no land in Maori customary title left. There are a number of possible explanations for this difference, but to me the most obvious is that while nineteenth-century New Zealand, settled largely by politicised Anglo-Scottish liberals and politically aware rural people from southern England, was by no means cut off from the intellectual life of the day, this was not the case in the first half of the twentieth century. Twentieth century developments in such fields as anthropology and jurisprudence passed New Zealand by until after the Second World War.

James Belich has argued that twentieth century New Zealand in a sense re-colonised itself, economically and intellectually, in the twentieth century, only escaping from this self-imposed torpor in the 1970s (Belich 2001). This interpretation is borne out by Maori land policy, which remained astonishingly mediocre, conservative and unimaginative until the pivotal Maori Lands Amendment Act of 1974. This Act was the work of Matiu Rata, a Maori politician, who was also responsible for the Treaty of Waitangi Act enacted the following year. In 1929, admittedly, a new era half-dawned to some extent in New Zealand when Apirana Ngata became Native Minister and was able to put in place a programme of Maori land development financed by the state, but this was not accompanied by any formal changes to the tenurial system or any attempt to reverse the individualising tendencies of the Native Lands Acts. But in Mexico and the United States things were very different.

9. Strategies of resistance

The New Zealand wars of the 1860s coincided with the introduction of the Native Land Court in 1862-65, but the wars were not over the Native Land Court, but rather related to issues of land and sovereignty. Maori never did take up arms against the Native Land Court. They did, however, develop strategies of resistance in the Court, including filing multiple and overlapping claims or by making

jurisdictional arguments and at times obtaining professional legal advice. Maori also maintained areas or zones of autonomy in various parts of the North Island, principally in isolated forested districts, which were in effect outside the control of the colonial state and from which the Native Land Court was excluded. To bring these areas under government control the government had to conduct negotiations with tribal leaders and conclude special agreements from 1880-1990 which made concessions to local autonomy and which moderated some aspects of the Land Court system on a regional basis (Boast 2006). Maori, in other words, were sometimes able to force concessions from the colonial state. Maori also used lawyers to act on their behalf to take land related cases to appellate courts, including the New Zealand Court of Appeal in Wellington and the Judicial Committee of the Privy Council in London.

In Mexico, too, there were non-violent forms of resistance by indigenous peoples such as the Maya of the Yucatán and the Nahuas of central Mexico. These included maintaining zones of autonomy (Caso Barrera 2002), where government land land titling systems were unable to practically function. Another means of resistance was that of preparing títulos primordiales, these being essentially plausible reconstructions of colonial-era documents, maps, and titles that purported to prove clear titles to disputed lands (Ruiz Medrano, Barrera Gutiérrez, C., and Barrera Gutiérrez, F. 2012). In Mexico, while the Church strongly disliked the Reforma laws. Although it had no option but to formally comply with the law, many clerics and the Catholic laity developed elaborate strategies of resistance, using such devices as simulated sales or transferring property to trusted individuals to hold them temporarily in a kind of unofficial trust until such time as the ideological climate might change. (Knowlton 1969: 531.)

In New Zealand, of course, the issue of ecclesiastical properties was unimportant. But there are some broader parallels. It has been argued that the Reforma laws and the intransigence of the Church response was a major cause of political polarisation and the disasters of the Civil War, the foreign intervention in Mexico and the Empire. In Robert Knowlton's words, "[e]l choque entre los que estaban por "Consititución y Reforma" y los que apoyaban "Religión y Fueros" produjo sufrimiento, ansiedad, angustia, y penalidades inenarrables a los legos y a al clero, a individuos y corporaciones por igual" (Knowlton 1969: 534. In New Zealand, the political consequences of the tenurial upheavals of the1860s were also significant, especially the confiscations of the 1865-1870, which led to long-standard bitterness and resentment amongst the Maori wi (tribes) most affected and higher levels of Maori rural poverty in the most affected regions, Taranaki and the Waikato (both of which became the dominant centres of the New Zealand export dairy industry, New Zealand's most dynamic agricultural and exporting sector by far). Liberal dreams can, when implemented by legislation that no one can escape, can certainly have lengthy and unforeseen political consequences.

10. Parallels and dissimilarities

Mexico, Guatemala, El Salvador and Colombia are thus very different countries with quite different political cultures. But all four are alike in having witnessed very significant changes in land tenure and land ownership in the nineteenth century: the "ownership" and "tenurial" revolutions. And this is just as true of New Zealand. What does this reveal?

This paper is only introductory and my own thinking about the relationships between tenure, indigenous peoples, and national political ideologies is still evolving: where exactly this leads to is not yet clear to me, I have to admit. But some points can be made as a basis for further work and reflection. There are certainly some marked similarities between land tenure policies in Latin America and New Zealand, and this seems interesting and intriguing in itself, or so it seems to me at least. Direct influence can probably be ruled out. It is hard to imagine that the Rufino Barrios administration in Guatemala or the cientificos of the Porfiriato had heard of New Zealand's Native Land Acts, or that Chief Judge Fenton or Sir Donald McLean in New Zealand knew anything about Latin America – except perhaps from what they might have gained from reading Prescott's best-selling nineteenth-century histories of the conquests of Mexico and Peru. What these parallels indicate, rather, is a common source or set of ideas which can only originate in Europe – a belief that land held by the church, or held under traditional collective tenures, is in effect "dead" land, useless as a security and a brake on economic growth and political advancement. The Spanish term used for the process, especially with respect to Church lands, is "desamortización", which implies a sense of "freeing-up" or "bringing back to life" perhaps.

One pivotal key to nineteenth-century Latin American history is nineteenth-century Spanish history (just as in the twentieth century the political fall-out from the Spanish Civil War was of great importance in Latin America). While the agrarian legislation of revolutionary and Napoleonic France, which no doubt affected the policies and programmes of Liberals in 19th century Spain, must be important, nevertheless this does not explain an almost identical approach to land and tenures in Britain, Ireland, the United States, Hawai'i – and in New Zealand. French ideas, whether revolutionary or Napoleonic, exerted little influence in Britain and her colonial offshoots. Britain nevertheless had a tradition of parliamentary enclosure, of general enclosure acts, and of legislative abolition of what remained of customary tenures in Ireland and the Highlands and Islands of Scotland. From this tradition the Native Lands Acts in New Zealand may be said to originate. Nonetheless there is a clear convergence between countries as various as the United States, Guatemala and New Zealand which obviously derives from a common ideological source shared by all the European states and the colonies and former colonies. This remains to be rediscovered and understood before the entire evolution of the tenurial revolutions of the nineteenth century can be really understood. (There may also be connections as well with the endless debates over agrarian reform in 19th-century Russia.) A powerful ideology is clearly at work. But where did it come from?

The second general point is that it seems important to consider not only the process and ideology that driving legislative interference with ecclesiastical lands and with indigenous customary tenures, but also with the details of the process of reallocation. Title individualisation leads, almost inevitably, to land loss. Who, however, are the beneficiaries, and are they the same everywhere? What political and ideological underpinnings are there which impact on the process of alienation? In New Zealand, for example, the ideology of 'close settlement' – dense rural settlement, the 'small man' on the land – was very important. Even after the process of individualisation and privatisation that I have described, it was the State which was the major purchaser of Maori land, by a huge margin. The legal framework relating to Maori land tenures was but a part of a much larger legal framework relating to public lands, which was hostile to large estates and protective of the small settlers. New Zealand is not a country of large rural estates and landless rural labourers, but a country of family farms, close settlement, and a network of thriving and prosperous country towns. It is a country not of rural poverty, like so much of Latin America, but of rural wealth – like other parts of Latin America (Uruguay, southeastern Brazil, Argentina, Costa Rica). Clearly then policies relating to allocation and distribution of titled and regranted former customary lands are pivotal. Allocation is as important as privatisation and both must be understood before meaningful comparisons can be developed. A comparative perspective can particularly help elucidate the differences and similarities amongst a group of 19th century countries and help us all strive to grasp the varying consequences for wealth, poverty, and social development today.

To economic historians, perhaps the best-known aspect of New Zealand's recnt economic history is its radical experiment with neoliberalism and deregulation in the 1980s. The experiment was surprisingly begun by a Labour government, and was enthusiastically continued by governments of the conservative nNational party. Sectors such as academia and the trade unions were caught by surprise, and the scale of the experiment was unclear at first. The nation was numbed as various public sector agencies and the Ministry of Works and the New Zealand Forest Service were closed, the electricity generating system and national grid privatised, state-owned forests alienated by long term leases to private companies (some of them from overseas), and the management of state schools placed into the hands of amateur boards of trustees. The long-established system of wage arbitration was disassembled and the unions weakened by the introduction of a new system of labour law based much more on individual contracts than on collective bargaining. With this recent history, the Spanish American parallel with New Zealand that suggests itself is different again: (obviously Chile, albeit that Chile's slide into military dictatorship is unimaginable in New Zealand). In neither New Zealand nor Chile has the neoliberal millennium arrived. One legacy of the neoliberal era in New Zealand is that some sections of the national railway system, built by the state in earlier decades at enormous cost, were allowed to fall into disrepair. (The current Labour government is making an effort to upgrade and modernise the system.) The neoliberal attempt to turn schools into competing bodies run by trustees achieved nothing of any value, especially not for schools in poorer suburbs and rural areas, and has been abandoned.

In this context, however, one unique aspect of New Zealand's political economy, the relative size, political strength and tenacity of the indigenous population quickly became relevant. Maori fought the

excesses of neoliberalism and privatisation very successfully, far more than any other sector, fighting the government very effectively in the Courts and before the newly-established Waitangi Tribunal. Maori leaders did not attack neoliberal policies as such, but were alarmed at the possibility that the state's rapid divestment of its assets would impact on Maori ability to obtain redress for historic grievances. Injunctions were therefore taken out in the Courts to freeze the distribution of fishing quota and the privatisation of natural resources. Efforts to fully privatise fish stocks, mineral resources and forests were checked, although not completely halted, meaning that the neoliberal revolution was never quite finalised. Towards the end of this period there was another confrontation between Maori and the New Zealand government over ownership of the foreshore and seabed.The context of that particular crisis were unrelated to wider issues of economic policy, but it led to the emergence of an electorally significant Maori party.

Today, there is no nostalgia for the neoliberal experiment, widely seen by the electorate as a wrong turning, shown to some degree by the massive victory for the Labour Party in the 2020 general election. This was largely, and has been perceived internationally, a reward from the electorate to the Labour government for its effective management of the Covid-19 pandemic, but that was not the only factor in its crushing success at the polls. The conservative National Party campaigned on a stale policy of regressive income tax cuts and further deregulation (by, for instance, vowing to repeal the Resource Management Act, New Zealand's principal environmental protection law), but these policies no longer had any appeal to the electorate, if indeed, they ever did. New Zealand's fast-growing environmental movement particularly disliked National's evident intention to weaken environmental controls, which only added to its reputation as being far too friendly to the environmentally destructive dairy industry. Labour, on the other hand, has promised stricter environmental standards, programmes of government-built state houses, and public reinvestment in the country's railway network and in renewable electricity generation. In some ways Labour is returning to the policies of the welfarist and moderately socialist first Labour government of 1935-1949.

Maori politics, as is always the case in New Zealand, also played an important role. Maori and Pasifika (New Zealanders descended from recent migrants from other parts of the Pacific) voters overwhelmingly voted Labour, as they have historically tended to do, while one seat was taken by the Maori Party, which is itself Leftist. Maori and Pasifika loyalty to Labour was thus an important component of the Labour victory. So the election result, while of course influenced by the management of the pandemic, also reflected deeply-rooted aspects of New Zealand's political and economic structure. Labour, historically the party of the working class, was historically supported by Maori because Maori themselves are mainly working class and belong to unions. Today the New Zealand Labour Party is a typical modern social democratic party with both middle class and working class support, the conservative National Party drawing its support mainly from the upper middle class and from farmers.

There yet are other useful comparative trajectories that link New Zealand with Spanish America. One might be to study those countries on the global periphery that have built successful social democracies, welfare states and somewhat regulated economies: New Zealand, Uruguay, and Costa Rica. Another, developed in this article, is to examine the historical trajectories of those countries which have large indigenous populations and which pursued aggressive liberal land-tenure programmes in the nineteenth century: Mexico, New Zealand, Guatemala, and some of the other Central American states. This last set of parallels, I hope this article has shown, may be highly fruitful.

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