

The Ideology of Tenurial Revolution: The Pacific Rim 1850-1950

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This article takes the changes to Māori land tenure initiated by the Native Lands Acts of 1862 and 1865 as an example of a global trend, and links this change to equivalent processes elsewhere around the Pacific rim. It proposes that the common origin of these widespread changes lies in European developments dating back at least to the expulsion of the Jesuits by the Bourbon monarchies in the eighteenth century. Nevertheless, there were some major differences between New Zealand and the Spanish American republics, in that in the latter it was seen as important to reduce ecclesiastical landownings as it was to remodel indigenous tenures. In New Zealand, ecclesiastical landholdings were not perceived as an issue of importance. This article argues for the importance of investigating the beneficiaries of tenurial change, as outcomes in this respect differed greatly in Spanish America, and in Australia and New Zealand, and that, notwithstanding the tendency towards individualisation, there was also a counter trend that was distrustful of the liberal tenurial project. By the end of the nineteenth-century, the counter-tendency had become important, and it led to a return to collectivism in the twentieth century.

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This article takes as its starting-point the tenurial changes to Māori customary tenures that took place in nineteenth-century New Zealand: the acquisition of large areas by Crown purchase deeds, the confiscation of land from Māori deemed to be in rebellion against the Crown, and finally – and most importantly – the establishment of a system of conversion of Māori customary land, to Crown-granted freeholds via the mechanism of the Native Land Court (established by the *Native Lands Acts* of 1862-1865). All three processes are staples of New Zealand historiography. They are, moreover, a central focus of the inquiries by the Waitangi Tribunal, a unique semi-judicial institution initially established in 1975 and now regularly engaged in inquiring into and reporting on Māori historic claims. The Tribunal's reports and the related historiography that has grown up around them will not be considered here. Rather, my objective is to draw attention to the ideology underpinning New Zealand's *Native Lands Acts* and to relate this to the ideological foundations of arguably similar processes of tenurial change that took place around the Pacific at more or less the same time. On the whole, the discussion of tenurial change in nineteenth-century New Zealand has somewhat neglected the role of ideology. Comparative studies are also weakly developed, and those that do exist tend to site New Zealand's experience amongst that of other superficially similar 'settler colonies', notably Canada, Australia and the United States.¹ In this article I seek to widen the terms of discussion, and in particular to connect developments in New Zealand with equivalent trends in the Spanish American republics.

New Zealand's *Native Lands Acts* of the 1860s took three pivotal steps. Firstly, the legislation expressly waived Crown pre-emption, that is to say the standard practice, whether known by that name or not, that

¹ For example, P.G. McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status and Self-determination* (Oxford: Oxford University Press, 2004). It is of course the case that the settlers of New Zealand came from the British Isles, as did the settlers of Australia and (for the most part) of western Canada. To see these connections as pivotal to the history of the New Zealand polity and its particular economic and political structure today, is to make an assumption that the ethnicity of the incoming settlers (as opposed, to, say, the ethnicity of the colonised population), and broader legal traditions (common law as opposed to the Civil/Roman law of Spanish America), are what really matter. Both assumptions may be true, but they require examination in my view. Similarities in statute law between, say, New Zealand and Mexico, and the underlying assumptions such statutes reflect, may in fact be more important than wider legal traditions.

only the Crown could legally extinguish customary titles to land.² Secondly, the legislation set up a special judicial institution, the Native Land Court. This continues to function as the Māori Land Court, today a busy and important institution in the Māori world.³ Thirdly, there was the particular process that the Acts were designed to facilitate: the Native Land Court was charged with the specific responsibility of investigating customary titles and providing a mechanism by which such titles, once investigated, could be turned into Crown-granted freehold tenures. These grants turned Māori customary land, held by Māori tribal units or various sub-groupings as defined by Māori custom, into surveyed blocks of land held not by collective bodies, but by individually named owners. The Court soon began functioning on a massive scale, and was at its height roughly from 1865-1900, bringing about a massive tenurial change and creating a particular kind of tenure, known as Māori land or Māori freehold land, which remains of great practical importance in New Zealand today.⁴

The practical consequences have been enormous. The legislation was initially built on the assumption that once land had 'passed the Court, Māori entered the land market on the same terms as everyone else, and could sell their land, or undivided shares in it, to private purchasers. One result was massive land alienation, both to private purchasers and the colonial state. Another was the radical change of the tenurial system relating to that part of the land investigated by the Court that has stayed in Māori hands. This residue of investigated land is what is known as Māori freehold land in New Zealand land law: it is land that has been individualised, held as a tenancy in common, has been in continuous Māori possession, and – another consequence of the original legislation – is subject to New Zealand's version of the Australian Torrens system of registered and state-guaranteed titles. To all intents and purposes there is no customary or 'native title' land left in New

² Crown pre-emption, which was included in the Treaty of Waitangi of 1840, was expressly waived in the Preamble to the *Native Lands Act* 26 Vict. No. 42 (1862) (NZ): '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'.

³ *Native Lands Act* 1862, s. 4; *Native Lands Act* 29 Vict. No. 71 (1865) (NZ), s. 5. The Native Land Court, today the Māori Land Court, is and always has been a Court of record.

⁴ On the Native Land Court see R.P. Boast, *The Native Land Court 1862-1887: A Historical Study, Cases and Commentary*, (Wellington: Brookers/Thomson Reuters, 2013).

Zealand. Māori freehold land covers about twelve per cent of the North Island. The creation of this form of land tenure is one reason why the ordinary common law of native title, so dominant in Australian and Canadian legal discourse, is of little practical relevance in New Zealand.

The legislation thus has all the hallmarks of being ideologically driven. It cannot have been driven simply by a desire to make land in Māori ownership more readily available to the land market. If that were so, the tenurial status of land remaining in Māori hands would not need changing. Many complex and difficult questions arise with this legislation. For the purpose of this discussion my focus is on just one of these: the ideological similarities with what happened elsewhere. In the mid nineteenth century many countries and colonies around the Pacific rim and throughout the world began to do the same kinds of things with respect to their laws relating to land tenure. The term used for this process in English is usually ‘individualisation,’ that is of converting collective tenures to individual (or sometimes family-based) legal interests; in Spanish the usual term is *desamortización*, often translated as demortgaging or disentailment.

Seen from this perspective, New Zealand’s tenurial revolution as exemplified by the *Native Lands Acts* of 1862-63 was not at all an isolated phenomenon. Strikingly similar policies can be found all around the Pacific rim at more or less the same time – in, for example, Hawai’i, the United States, and practically everywhere in the newly-independent Spanish American republics. Developments in the latter were connected with events in Spain itself, and ultimately with the French revolution.⁵ It seems obvious that this remarkable legal convergence cannot have been accidental. Direct influences, can, however, be ruled out: this is not to imply that colonial legislators in, say, New Zealand and Mexico, consciously emulated one another. Exploring the precise links between this legal convergence, and analysing their differences as well as their similarities, would require a

⁵ In Spain the principal target of the privatisation or individualisation statutes (an aspect of a policy known as *desamortización*, as in Spanish America), were church lands and common lands. The principal statute was the *Ley Madoz* (1855), named after a prominent radical Progressive politician from Catalonia. See Josep Fontana, ‘La Epoca del Liberalismo’, *Historia de España* (Crítica and Marcial Pons, Barcelona and Madrid, 6 (2007): 277-282. For a useful collection of essays on liberalism and tenurial change in Spanish America see Robert H. Jackson, ed., *Liberals, the Church, and Indian Peasants* (Albuquerque: University of New Mexico Press, 1997).

full-length monograph. My aspiration with this short discussion is essentially to establish that there *is* a wider ideological context to New Zealand's own brand of tenurial revolution, and to suggest that understanding it fully will require this context to be addressed.

Hostility to lands that were perceived as 'entailed' or 'dead' is an important strand in European and Latin American liberalism. The central notion has never been better conveyed than by Eric Hobsbawm:

The great frozen ice-cap of the world's traditional agrarian systems and rural social relations lay above the fertile soil of economic growth. It had at all costs to be melted, so that that soil could be ploughed by the forces of profit-producing private enterprise.⁶

Land, writes Hobsbawm, should be made 'free'; moreover 'it had to pass into the ownership of a class of men willing to develop its productive resources for the market and impelled by reason, i.e. enlightened self-interest and profit'.⁷ In England it was standard discourse to equate freehold tenures with liberty and progress, and customary tenures with despotism and poverty. Schooled in their own distinctive historical traditions and the philosophy and historiography of Harrington, Locke, Hume, Robertson and Adam Smith, English and Scottish thinkers were convinced that (as JGA Pocock puts it) 'it was the mark of a true "oriental despotism" that the subject possessed no free tenure, no property in his goods, and no law to protect either'.⁸ Or, as the distinguished authors of a classic account of the early American republic have written, the English-speaking world's vision of the civic humanism that derived originally from Renaissance Italy came to rest on two main foundations – the right of citizens to bear arms and 'freehold property as the fundamental safeguard and guarantee of the citizen's independence of judgment, action, and choice'.⁹

⁶ Eric Hobsbawm, *Age of Revolution* (London: Vintage, 1996), 149.

⁷ Hobsbawm, *Age of Revolution*, 149.

⁸ J.G.A. Pocock, *Barbarism and Religion: Volume Two: Narratives of Civil Government* (Cambridge: Cambridge University Press, 1999), 239. These words capture fairly accurately how Māori customary tenures were perceived by nineteenth-century liberals.

⁹ Stanley Elkins and Eric McKittrick, *The Age of Federalism: The Early American Republic, 1788-1800* (New York: Oxford University Press, 1993), 9.

A tendency to idealise individualised tenures developed also in eighteenth-century Europe, especially in the 'enlightened monarchies' of Bourbon France and Spain. From the beginning, however, the principal object of attack was the landed wealth of the Catholic Church, and in particular, the properties of the regular orders and of the Society of Jesus. One important step in the more specifically European development was the expulsion of the Jesuits from Portugal (1759), France (1764) and Spain (1767) and their respective colonies, and the sequestration and redistribution of the Society's lands by the Portuguese, Spanish, and French Crowns. The pace-setter in the expulsion was Portugal, dominated at the time by the Marquês de Pombal, who had become convinced that it was necessary to expel the Jesuits from the Portuguese possessions in South America in order to make the empire more profitable to the Crown.¹⁰ The Jesuits were brutally expelled in 1759 and Society's properties in Portugal, South America, and Asia were seized by the state. Spain soon followed suit. In 'stunningly swift and secret operations', 2,800 Jesuits were evicted from Spain and another 2,200 from the empire.¹¹ Their schools and colleges were closed or made available to the secular clergy. The expulsion had major repercussions for the Indigenous peoples of the Americas. Along with their 'schools, colleges and estates, Jesuits had ministered to some 300,000 Indians in 220 missions in Spanish America at the time of their expulsion – more than any other religious order'.¹² The process was brought to full circle by the Papacy itself. In 1773 Pope Clement XIV ordered the suppression of the Society.

These actions, regarded as momentous at the time, created a precedent for the acquisition and redistribution of Church lands by reforming

¹⁰ There is a vast literature on the suppression of the Society of Jesus in Portugal and her colonies. For a guide to the historiography see Kenneth Maxwell, 'The Spark: Pombal, the Amazon, and the Jesuits', *Portuguese Studies*, 17 (2001): 168-73. On the Jesuit colonies in the Paraguay-Paraná region and the causes and consequences of the expulsion of the Jesuits from this region by Portugal and then by Spain see Alberto Armani, *Città de Dio e Città del Sole: Lo 'Stato' Gesuita dei Guaraní (1609-1768)* (Rome: Vita Nova, S.P.A. Edizioni Studium, 1977) (Spanish translation by Marcos Lara, *Ciudad de Dios y Ciudad del Sol: El 'Estado' Jesuita de los Guaraníes (1609-1768)* (México D F: Fondo de Cultura Económica, 1982).

¹¹ David Weber, *Barbaros: Spaniards and Their Savages in the Age of Enlightenment* (New Haven: Yale University Press, 2005), 109.

¹² Weber, *Barbaros*, 110. Those who were expelled included great scholars and historians such as the Mexican creole Jesuit Francisco Javier Clavigero (or Clavijero).

governments acting in the name of modernisation and economic efficiency. These ideas were pushed to an extreme limit during the French Revolution when, Hobsbawm argues, 'peasant pressure and Jacobinism pushed agrarian reform beyond the point where champions of capitalist development would have wished it to stop'.¹³ An anticlerical, certainly anti-Catholic, tone was a key dimension of liberalism in France, Italy, Spain, and the Spanish American republics. Interconnections between land reform, revolution, and hostility to, and defence of, the Church has continued to play out in France, Spain, Italy and Latin America in the nineteenth and twentieth centuries.¹⁴ The links between the expulsion of the Jesuits, the ideals of the French revolution, and tenurial reform gave the latter a particular character in Spanish America which differed in important ways from policies pursued in common Law jurisdictions such as New Zealand.

An obvious component of the tenurial revolutions that took place in nineteenth century Spanish America and in the Pacific is the legal means by which this transformation took place. New Zealand's *Native Lands Acts*, the *Kuleana Act* in Hawai'i, the *General Allotment Act* in the United States, and the *Ley Lerdo* in Mexico have a basic element in common: they are all statutes passed by national legislatures. There is a clear link between the development of national sovereign legislatures and tenurial reform. One important precedent was the French Napoleonic Code of 1804 (*Code Civil*), with its emphasis on individualism and protection of private property rights, seen at the time as a liberal and emancipatory break with the suffocating traditions of the *ancien regime*. The *Code Civil* turn became the foundation of new civil codes in Spain, Portugal, and in the Italian peninsula. The nineteenth century was an age of codes, constitutions, and enlightened legislation, accompanied by a great deal of wishful thinking on the part of liberal elites about the importance of legislation and its value as a means of instructing the unenlightened as to how they should behave.

Criollo elites in pre-independence Spanish America could not translate their ideals into statute law because statute law emanates from sovereign legislatures, and there were no legislatures in the

¹³ Hobsbawm, *Age of Revolution*, 155.

¹⁴ The author intends to explore these themes elsewhere. On the religious policies of the French revolution see Nigel Aston, *Religion and Revolution in France 1780-1804* (Washington DC: Catholic University of America Press, 2000).

viceroyalties – which can be contrasted, for instance, with the British North American colonies. In the Spanish viceroyalties (*virreinos*), law making was in the hands of the Crown, the viceroys, and the judges of the *audiencias*. If by ‘legislation’ is meant *parliamentary* legislation, that is, formal law-making by representative bodies (as opposed to royal ordinances and decrees and so forth), then there was no parliamentary legislation in the Spanish empire, although there was certainly a great deal of law. Independence meant not only independence from Spain, but the establishment of sovereign legislatures run by liberal elites, who now had a means ready to hand of translating their programmes and policies into law. Liberal leaders in Central America such as Francisco Morazán and Mariana Gálvez believed that ‘enlightened legislation could make Central America a modern, progressive republic, according to liberal tenets’.¹⁵ New Zealand reveals the same pattern. Indigenous land policy during the Crown colony period (1840-1852) remained highly traditionalist, based on the standard concept of Crown pre-emption. As in New Zealand’s counterparts in Australasia, South Australia and Victoria, the Crown colony period in New Zealand was brief and the advent of representative institutions rapid. Once the institutions were in place, liberal colonists swiftly took control of them and began enacting statutes. No Crown or Tory party existed in the New Zealand colonial parliament. Liberals, moreover, were parliamentarians and legislators.

In the Australasian colonies it is notable that land law, quintessentially a product of English common law, was recast on solidly statutory formations, and thus under the control of politicians and legislatures. Legislation can be changed and supplemented at the whim of legislatures, which meant that in a key field such as land tenure the enacted law could quickly become amazingly intricate. John Weaver found that by 1900, New South Wales had over 100 statutes which dealt with land tenure and land transactions.¹⁶ New Zealand could not have been far behind. The *Native Lands Acts* and their various re-enactments, amendments, and supplementary statutes were a famously intricate jungle in their own right. The law relating to confiscation of

¹⁵ Ralph Lee Woodward, *Rafael Carrera and the Emergence of the Republic of Guatemala* (Athens, GA: University of Georgia Press, 1993), 48.

¹⁶ John Weaver, *The Great Land Rush and the Making of the Modern World* (Montreal: McGill-Queen’s University Press, 2003), 64.

land from Māori in a 'state of rebellion' is another example.¹⁷

The supremacy of statute implies that all citizens are subject to the national law. The law is the state's law, given effect by statute. The advent of the modern state has a legal component: the triumph of the state's laws over extra-territorial codes and internal customary codes and practices, whether this be regional customary codes, canon law, or entrenched behaviours such as the blood feud in Corsica. The law now applies to all citizens alike. The universal application of general law applicable to all citizens and in the same manner lay at the heart of the ideals of the French Revolution. In the *ancien regime*, 'commercial law' meant the law that applied to a particular order of society: it was understood as something like the law relating to privileges and functions of a kind of guild, those who were engaged in commerce and subject to special courts and a separate jurisdiction. In the liberal state, while there still might be a commercial code and commercial courts, the law relating to contracts was designed to be applicable to all, and set out in codes and statutes binding on all citizens.

The supremacy of statute presupposes effective sovereign control of the entire national territory. During the colonial period much of Spanish America was to all intents and purposes completely outside the control of the Crown and the viceroys.¹⁸ The advent of independent autonomous republics after 1820, however, implied the full control of each over their respective national territories, and the supreme authority of the statute law of the legislatures over all citizens. Empires, focused on the metropolis, can tolerate zones of defacto autonomy provided that the structure holds together. Independent liberal republics have a different perspective. The Spanish empire was now a collection of autonomous republics each animated by the ideals of the French revolution. Each was open to the outside world, in which public ideologies no longer revolved around Crown, the Church and the defence of Catholic orthodoxy, but rather the centrality of the state, legal equality, and the subjection of all citizens to the law.¹⁹ Instead of

¹⁷ See R.P. Boast, "An Expensive Mistake": Law, Courts, and Confiscation on the New Zealand Colonial Frontier', in *Raupatu: The Confiscation of Maori Land*, eds. R.P. Boast and R. Hill (Wellington: Victoria University Press, 2009), 145-68.

¹⁸ Weber, *Bárbaros*, 12.

¹⁹ The Spanish empire was not easy for foreigners to gain access to, but with independence came a new openness to the outside world, especially with France,

belonging to corporate groups (native towns, or regulated missions), indigenous people were now autonomous citizens of the republic. In 1848, for example, Paraguayan president Carlos Antonio López abolished what remained of the special framework of the Paraguayan missions, the last remnants of the famous Jesuit *Estado*, and decreed that the Guaraní mission Indians were now free and autonomous citizens of the Republic of Paraguay.²⁰

For much of the nineteenth century the creation of a unitary republican regime remained an aspiration, rather than a reality (this is just as true of New Zealand, where parts of the North Island remained autonomous and under de facto Māori control until the 1890s). The process of securing control over national territory was slow and costly. As late as 1879, even a modern and economically expanding country like the Republic of Argentina was still engaged in a military conquest of its own national territory, the so-called Conquest of the Desert: ‘subduing and killing Indians, [the army] ‘cleansed’ the southern and western pampa to Patagonia’; those who survived ‘endured a program of forced acculturation, euphemistically called regeneration, which included the dissolution of tribal governments, prohibition of native languages, and forced labor at menial work or obligatory service in the national guard or the navy’.²¹

Some Argentinian essayists, notably Vicente Fidel López, theorised that the Argentinian republic had taken over the responsibility of the supposedly ‘Aryan’ Inca state to conquer and rule the ‘barbarians’ of the

Britain, and the United States. It is no accident that awareness amongst the scholarly community and the educated public respecting the great ancient civilisations of the Americas (the Maya, for example) developed rapidly in the early nineteenth century with independence: see Ian Graham, ‘A Brief History of Archaeological Exploration’ [i.e. in the Maya area], in *Maya*, eds. Peter Schmidt, Mercedes de Giza, and Enrique Nada (New York: Rizzoli, 1998), 30-31.

²⁰ Armani, *Ciudad de Dios y Ciudad del Sol*, 210.

²¹ Weber, *Bárbaros*, 273. See also Vanni Blengino, *La Zanja de la Patagonia: Los Nuevos Conquistadores, Militares, Sacerdotes y Escritores* (Buenos Aires: Fondo de Cultura y Económica de Argentina, 2005) (reflections on a proposal to build a massive fortified ditch more than 600 kilometres long from the Andes to the Atlantic to separate the settled regions of Argentina from the Indian peoples of the far south). For a very different interpretation of Argentine history, however, see Abelardo Levaggi, *Paz en la Frontera: Historia de las Relaciones Diplomáticas con las Comunidades Indígenas en la Argentina (Siglos XVI-XIX)* (Buenos Aires: Universidad del Museo Social, 2000).

desert.²² The Mapuche people of southern Chile had maintained their independence against Spain for centuries, but were finally crushed by the Chilean army during a long and grim campaign from 1867-1883. Similarly the Yaqui people of northwestern Mexico, who had similarly held their own against the Spanish, were defeated by the Mexican army in a bitter campaign in 1885-86, ending with the execution of the Yaqui leader Cajeme by firing squad in 1887.²³

Campaigns of this kind also allowed for the expansion of rural settlement and thus economic growth. The expansion of the frontier in Argentina during the late nineteenth century allowed the state to add some thirty million hectares of land to the national economy.²⁴ There are therefore obvious connections between statutory authority and effective military and policing control over a country. This was a project in which countries as diverse as New Zealand, Chile, Argentina, Mexico, Brazil and the United States were actively engaged during the nineteenth century, and which had been more or less achieved by around 1900.

There are, then, as this brief discussion has shown, interconnections between liberal policy, national independence, effective control over the national territory, and statute as a preferred means of law-making. Statutes are intended by sovereign legislatures to apply to all citizens in a territorial state, which implies not merely theoretical but in fact real control over the citizenry and national territory. Statute law also has many advantages as an instrument for legislative policy, but its effectiveness depends in its turn on the power and authority of national legislatures.

Who were the principal beneficiaries of the historical transformations described above? After all, land that passed out of the hands of Indigenous peoples or the Catholic Church ended up in the hands of someone. It is with this question that the value of comparative history

²² See Carmen Bernand, *Un Inca Platonicien: Garcilaso de la Vega 1539-1616* (Paris: Fayard, 2006), 324.

²³ On the campaigns against the Yaqui nation, see Evelyn Hu-Dellart, 'Yaqui Resistance to Mexican Expansion', in *The Indian in Latin American History: Resistance, Resilience, and Acculturation*, ed. John E. Kicza (Lanham, MD: S R Books, 2000), 213-41.

²⁴ Jorge Álvarez, 'The Evolution of Inequality in Australasia and the River Plate', unpublished paper presented at the 16th World Economic History Conference, Stellenbosch University, South Africa, July 2012, 17.

is once again apparent. The outcomes in Latin America in this respect as compared with liberal British colonies such as South Australia, New Zealand or British Columbia, were in fact very different. In the former, the principal beneficiary was the existing wealthy landowning oligarchy. While British colonies possessed landowning oligarchies as well, they were not as powerful or as pervasive as in Mexico, Central America, and Chile, and instead much more of the land prised out of the hands of the Indigenous communities ended up in the hands of the small settler. It is also the case that much more land in the latter cases ended up in possession of the state.

Taking a broader perspective, New Zealand and Australia stand out as countries where governments made a great deal of effort to prevent land aggregation and to pursue the goal of closer settlement. Latin American visitors noticed this immediately. In 1923 the Argentinian economist Raúl Prebisch, at that time at the beginning of his long and distinguished career, visited New Zealand and Australia and was immediately struck by the fundamental differences between these two countries and Argentina and Chile. Notwithstanding many attempts at land reform in his own country, no homesteading policy had ever been introduced there, and land ownership remained concentrated in the hands of a narrow oligarchy.²⁵ Prebisch believed that the policies pursued in Australia and New Zealand had been remarkably successful and deserving of emulation in South America.

One Latin American country which has strong structural similarities to New Zealand is Uruguay. Uruguay emerged as an independent republic in 1828 and gained its first constitution in 1830. Like Australia and New Zealand, it attracted high rates of immigration from Europe in the nineteenth century. In the late nineteenth and early twentieth century, Uruguay and New Zealand successfully built prosperous agricultural economies largely based on exports to Britain. These similarities have been emphasised by two Uruguayan economic historians, Jorge Álvarez

²⁵ On Prebisch's visit to New Zealand (where he met Malcolm Fraser, the government statistician who was an internationally prominent figure in the discipline of statistics at that time) and Australia in 1923, see Edgar J. Dosman, *The Life and Times of Raúl Prebisch* (Montreal: McGill-Queen's University Press, 2008), 48-51. Prebisch, sometimes regarded as the J.M. Keynes of Latin America, is a key figure in modern economics; despite on the whole being a political moderate, he was a strong believer in economic justice and policies that would break the dependency status of countries such as Argentina on Europe and the United States.

and Luis Bertóla, who have pointed out that New Zealand and Uruguay share 'a temperate climate, an abundance of land in relation to a relatively small settler population, and a high rate of immigration of people of European origin'.²⁶ Both share a tradition of state involvement in economic development and a commitment to a welfare state. Yet over the course of the twentieth century, New Zealand has performed much better than Uruguay (although the position of both countries has declined in relative terms).

One problem that confronts Uruguay is the monopolisation of its rural land by a small landowning oligarchy. In Uruguay 'the young state was financially and politically weak for most of the nineteenth century, which made it impossible to distribute land in any rational or systemic manner'.²⁷ As early as the 1870s most of the country was already in private hands. Nor did – or does – Uruguay possess any equivalent to the Torrens system of title registration, pioneered in South Australia, and quickly adopted in New Zealand, which has made conveyancing of property both cheap and reliable in New Zealand. Political and fiscal reforms designed to break up large estates have been tried in Uruguay

²⁶ Álvarez and Bertóla, 'So similar, so different: New Zealand and Uruguay in the World Economy', in *Settler Economies in World History*, eds. Christopher Lloyd, Jacob Metzger and Richard Sutch (Leiden and Boston: Brill, 2013), 493. See also Jorge Álvarez, Ennio Bilancini, Simone D'Alessandro and Gabriel Porcile, 'Agricultural Institutions, Industrialization and Growth: The Case of New Zealand and Uruguay in 1870-1940', *Explorations in Economic History*, 48 (2011): 151-68. See also J.E. Álvarez Scanniello, *Instituciones, Cambio Tecnológico, y Distribución del Ingreso: Una Comparación del desempeño económica de Nueva Zelanda y Uruguay (1870-1940)* (Montevideo: Tesis de Maestría en Historia Económica, Facultad de Ciencias Sociales, Universidad de la Republica Oriental de Uruguay, 2008). On recent developments in Uruguayan historiography set against the wider Rioplatense region (i.e. Argentina, Paraguay, and southern Brazil) see William Acree, 'Uruguay, Gateway to Nineteenth-Century Cultural History of the Río de la Plata', *History Compass*, 11 (2013): 292-304.

²⁷ Álvarez and Bertóla, 'So similar, so different', 511. See also Álvarez et.al, 'Agricultural Institutions', 157, noting that because of 'continuous political instability' and other reasons, the Uruguayan state 'lost its control over public lands in favour of latifundia, being unable to determine precisely their extension and localization in the national territory'. By 1940 'land ownership is substantially more concentrated in Uruguay than in New Zealand': Álvarez et.al, 'Agricultural Institutions', 163. From 2000-2010 there has been yet further concentration (and also 'foreignisation') of land ownership in Uruguay as mega-companies have been allowed to purchase or lease vast areas: see Diego Piñeiro, 'Land Grabbing: Concentration and "Foreignisation" of Land in Uruguay', *Canadian Journal of Development Studies/Revue Canadienne d'Etudes de Développement*, 33 (2012): 471-89.

but 'were frustrated, which contrasts with what happened in New Zealand'.²⁸ The example of Uruguay again underscores the point that it is as important to understand the distribution of land acquired from Indigenous populations as it is to understand the effects and means of its initial acquisition. In New Zealand's historiography, the former has in recent times been somewhat neglected in comparison to the latter.²⁹

A counter-trend began to make its presence increasingly felt towards the end of the nineteenth century, born in part from the failures of the liberal dream. A counter-trend had always been present in British colonies, stemming in part from opposition to parliamentary enclosure in the British Isles. In the late nineteenth and early twentieth centuries, this led in some countries to a tendency to idealise the mores and values of Indigenous cultures, and even towards a re-assessment of traditional varieties of tenure. In 1883, for example, Gladstone's Liberal government, largely in response to crofter protest in Skye and other areas, set up the Napier Commission (Royal Commission on the Crofters and Cottars of Scotland) to review the circumstances of the impoverished crofters of the Scottish Highlands and Islands. The result was the *Crofters' Holdings (Scotland) Act* 1886, which protected crofters by granting security of tenure, provided for rights of compensation in the event of removal, recognised the distinctive nature of Gaelic customary tenures, and provided for arbitration by a Crofters Commission.³⁰ The legislation was modelled on the *Irish Land Act* 1881.

²⁸ Álvarez and Bertóla, 'So similar, so different', 511.

²⁹ In fact I am unaware of any published account that focuses in detail on the allocation of land to purchasers. For a general account of the state and the Māori land market, see Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865-1921* (Wellington: Victoria University Press, 2009).

³⁰ Crofters could not be removed except for breaching conditions set out in the statute (including failure to pay the rent, assignment of the lease, damaging the buildings, or sub-letting the property without the permission of the landlord: see *Crofters' Holdings (Scotland) Act* 1886, s. 1. Section 8 provided for compensation for permanent improvements. Part VI of the Act set up the Crofters Commission. The legislation did not apply to all of Scotland but only to the 'crofting counties': Shetland, Orkney, Caithness, Sutherland, Ross and Cromarty, Inverness, and Argyll. The Commission was replaced by the Scottish Land Court, established originally by the *Small Landholders (Scotland) Act* 1911 and which applied to all of Scotland. The Court is still in operation under the *Scottish Land Court Act* 1993, the *Crofters (Scotland) Act* 1993, and related legislation. The Scottish government has been operating a comprehensive land reform programme since 2007. As well as the crofts, in the strict sense, there are

The *Act* only went some way to redressing the grievances of the crofters, and Scottish historians have debated its effectiveness and objectives. Yet the legislation does show that laissez-faire and property rights were now no longer in vogue in quite the same way that they had been at mid-century. The political agitation in the Scottish highlands, the grievances of the crofters, Crofters Commission, the legislation of 1886 and, more generally, the bitter memories of the Highland clearances, were well-traversed subjects in New Zealand and were the subject of a great deal of newspaper comment. Given the amount of Scottish settlement in the country this is hardly surprising. John McKenzie, Liberal Minister of Lands, himself from Ross and Cromarty, one of the seven crofter counties, was intensely aware of the dramatic events in Scotland.³¹ The newspapers also reported plans to assist the crofters to migrate to Canada and to New Zealand.³²

The new mood was also important in Latin America. Although Latin America shares with the United States and New Zealand a tradition of hostility to Indigenous collective tenures, the counter-movement has nevertheless also been influential, especially in the period from around 1910 to around 1980. This counter-current has been especially important, politically and culturally, in Mexico, where the spectacular artistic and cultural legacy of the great pre-Columbian civilisations has always been a powerful presence. Nineteenth-century Mexican liberals had 'dismissed the Aztecs as mere barbarians and viewed contemporary Indians as a hindrance to their country's

also nearly 500,000 hectares of crofters' common grazing areas still extant in the Scottish Isles and Highlands.

³¹ See Tom Brooking, *Lands for the People? The Highland Clearances and the Colonisation of New Zealand*, (Dunedin: University of Otago Press, 1996), 271-72.

³² See. 'The Hebrides Crofters: Landlords Refuse to Give Way', *Marlborough Express*, 14 January 1888, 2 ('Lady Matheson, who owns large estates in Lewis, has refused the demand of the Crofters' Land League, that the Crofters shall have their old holdings restored to them at reduced rentals, and suggests the crofters should emigrate'); *Ashburton Guardian*, 28 August 1888, 2 (reporting that 'Dr McDonald, hon. treasurer of the Crofters Aid Society, is organising a deputation of crofters to visit Australia and New Zealand for the purpose of raising funds for immigration purposes'); *Nelson Evening Mail*, 15 August 1891, 3 ('England will settle 6,000 crofters, all Naval Reserve Men, at Vancouver, as the nucleus of a force in the Pacific'). The newspapers in New Zealand also contained a great deal of comment about parliamentary enclosure in England and Scotland.

modernization'.³³ By the early decades of the twentieth century the mood had shifted towards a strong identification with the pre-Columbian past as the foundation of Mexican identity; this cultural reversal could also involve a defence of communal land ownership.³⁴ The Mexican revolution of 1910-1920 had an enormous impact on the development of *indigenismo* not only in Mexico but in Latin America as a whole. In the Mexico of President Lázaro Cárdenas, president from 1934-40, and as exemplified by cultural icons such Manuel Gamio, Diego Rivera, and Frieda Kahlo, this renewed interest in indigenous collectivism fused with Marxism, Mexican *indigenismo*, and a certain amount of admiration for the Soviet Union, to produce a cultural climate which was very receptive to re-establishment of collective tenures in the form of the government's *ejido* programme.

Indigenismo was not confined to Mexico. It was a cultural and literary movement which had important impacts in many Latin American countries.³⁵ It also had connections with Latin American Marxism. After Mexico, the country where this cultural, political and literary movement had the greatest impact was Peru. Like Mexico, Peru was heir to a long history of pre-Columbian high civilisations and a rich literature relating to the Spanish conquests and their aftermath. A key Peruvian figure was José Carlos Mariátegui (1894-1930), whose book *Siete ensayos de interpretación de la realidad peruana* 'is a cornerstone of the indigenist movement to this day'.³⁶ Mariátegui and other Peruvian essayists such as Luis Valcarél explored the connections between the supposedly 'socialist' pre-Columbian Inca state and contemporary Marxism.³⁷

³³ David Brading, 'Manuel Gamio and Official Indigenismo in Mexico', *Bulletin of Latin American Research* 7 (1, 1988), 75-89, 75.

³⁴ Brading, 'Manuel Gamio', 76-77.

³⁵ For general surveys see René Prieto, 'The literature of *Indigenismo*' in *The Cambridge History of Latin American Literature: Vol. 2: The Twentieth Century* ed. Roberto González Echevarría (Cambridge: Cambridge University Press, 1996), 2: 138-63; Rebecca Searle, *The Return of the Native: Indians and Myth-Making in Spanish America, 1810-1930* (Durham: Duke University Press, 2007). *Indigenismo* was much less significant in the Rio de la Plata countries, where the indigenous population was relatively small or even (in the case of Uruguay) basically completely absorbed, and which were dominated by large-scale immigration from southern Europe in the nineteenth century.

³⁶ Prieto, 'The literature of *Indigenismo*', 149.

³⁷ See Carmen Bernand, *Un Inca platonicien: Garcilaso de la Vega 1539-1616* (Paris: Fayard, 2006), 325-26. European Marxists, as Bernand notes, were also interested in

Mariátegui 'saw in the survival of the *ayllu* (the basic structure of the communal system of the Inca empire) the key to synchronize economic structures with Marxism'.³⁸ These ideas have dominated Peruvian scholarship on the Inca state until very recently. (The Nahua *calpulli* inspired similar aspirations and hopes in Mexico.³⁹) Another key figure in Peru was the novelist, anthropologist and essayist José María Arguedas (1911-1969), the subject of an important intellectual biography by Mario Vargas Llosa.⁴⁰ If *indigenismo* was most important in Mexico and Peru, it also had effects in a number of other countries.⁴¹ Other key figures elsewhere in Latin America were the Central American writers Rosario Castellanos and Miguel Angel Asturias.⁴² However, it was in Mexico that this revalorisation of collectivism and collectivist tenures had the most important impact on the formation of policy, with the creation of the *ejido* system under Cárdenas.

A similar spirit characterised United States policy under President Franklin Roosevelt. The key figure was John Collier, who can be said to be the single most important figure in the history of federal Indian law in the United States. He exemplified a new era in federal Indian policy as the chief architect of the *Indian Reorganization Act 1934 (IRA)*.⁴³

the 'socialist' Incas, including Louis Baudin, author of *L'Empire Socialiste des Incas*, which appeared in Paris in 1928. For a detailed study of these themes see Juan José Villarí Robles, *El sistema económico del imperio inca: Historia crítica de una controversia* (Madrid: CSIC, Colección Tierra Nueva y Cielo Nuevo, 1998).

³⁸ Prieto, 'The literature of *Indigenismo*', 149-50.

³⁹ In fact in Mesoamerica the basic unit was not the tribe or clan but rather the city state, in Nahua *altepetl* ('the water, the mountain'). The Toltecs (*Tolteca*) were the people of the city of Tollan, the Chalca the people of Chalco and so on: see Christian Duverger, *L'origine des Aztèques* (Paris: Éditions du Seuil, 1983), 126. The *calpulli* (plural *calpultin*) were sub-units of the city state, not 'tribes'.

⁴⁰ Mario Vargas Llosa, *La Utopía arcaica: José María Arguedas y las ficciones del indigenismo* (México D F: FCE, 1996).

⁴¹ APRA took power in Peru for the first time in 1985.

⁴² Asturias (born in Guatemala in 1899) is most famous for his great novel *Hombres de maíz* (Men of Maize) (1949). See especially the critical edition by Gerald Martin, ed., Miguel Ángel Asturias, *Hombres de maíz*, (Paris: Colección Archivos, 1996).

⁴³ On Collier see Lawrence Kelly, *The Assault on Assimilation: John Collier and the Origins of Indian Policy Reform* (Albuquerque: University of New Mexico Press, 1983); Kenneth R. Philp, *John Collier's Crusade for Indian Reform* (Tucson: University of Arizona Press, 1977); E.A. Schwartz, 'Red Atlantis Revisited: Community and Culture in the Writings of John Collier', *American Indian Quarterly* 18 (1994): 507-31. Collier

Collier had earlier led an attack on the allotment system originally introduced into the reservations by the *General Allotment (Dawes) Act* 1887.⁴⁴ He founded the American Indian Defence Organization in 1923, and always opposed assimilation. In 1933, Roosevelt took the bold step of appointing Collier to the position of Commissioner of Indian Affairs, placing federal Indigenous administration under the control of one of its most prominent critics. Collier and his officials, including Felix Cohen, 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, although it must also be conceded that the legislation has attracted some recent criticism.⁴⁵ Collier was well aware of the new mood of *indigenismo*, land reform, and socialism emanating from Mexico, and was an open admirer of Cárdenas and his policies, including building up the labour unions, agrarian reform, and nationalisation of the petroleum industry. (American business leaders and conservatives were notably less enthused about these policies, nor were they fond of *IRA*.) Collier was also personally friendly with Manuel Gamio.⁴⁶ The two worked together on the Inter-American Indian Institute, established after a major international conference in 1940 at Pátzcuaro. Collier wrote in 1947 that '[t]his hemisphere does not contain a broader-minded man or a spirit more devoted than Manuel Gamio'.⁴⁷ 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 had the right to their own forms of cultural expression, but it was more than that: those cultures embodied ethical

began his career helping to organise immigrant workers in New York.

⁴⁴ General Allotment Act 25 USC § 331-354 (Dawes Act).

⁴⁵ Critical interpretations include Russel Lawrence Barsh and James Youngblood Henderson, *The Road: Indian Tribes and Political Liberty* (Berkeley: University of California Press, 1980); Lawrence C. Kelly, 'The Indian Reorganization Act: The Dream and the Reality', *Pacific Historical Review* 44 (1975): 291-312.

⁴⁶ Gamio is listed in the acknowledgments to John Collier, *Indians of the Americas* (Washington DC: Mentor Books, 1947) (along with Felix Cohen, Nathan Margold, Harold Ickes and others).

⁴⁷ Collier, *Indians of the Americas*, 175. Collier also admired the great Brazilian Indianist and reformer Candido Rondon.

ideas which were valuable in their own right.

No equivalent of *IRA* was ever enacted in New Zealand. It is doubtful whether policy makers in New Zealand in 1934 even knew about it. The closest New Zealand equivalents of Collier and Gamio were Sir Apirana Ngata, Minister for Māori Affairs (1928-34), and Sir Peter Buck (Te Rangihirua). Ngata was very conservative in many respects and had to contend with much official hostility to his Māori land development schemes, while Buck fled the then stultifying conformity and isolation of New Zealand for a professorship at Yale University and later directorship of the Bishop Museum in Honolulu. Some academics, such as I.L.G. Sutherland at the University of Canterbury, a cultural anthropologist who trained originally at the University of Glasgow and who worked closely with Ngata, may have become influenced by the new indigenist and relativist mood.⁴⁸ Indeed it has been suggested that a conflict between the revalorisation of 'tribalism' and a commitment to the open society may be an explanation for the tensions which emerged between Sutherland and Karl Popper at Canterbury University College.

World War Two resulted in some important changes in policy, but these were quickly negated in the 1950s – a period which saw an active effort to reactivate assimilation and which witnessed further efforts to remodel Māori land tenure in the direction of what was euphemistically described as 'title improvement'. Policy in New Zealand eventually swung back to an attempt to revive collective tenures, but this did not gain much traction until the 1970s. Even then, it required massive Māori political mobilisation, including demonstrations and land occupations, to bring it to full realisation. These ideas, not exactly novelties when they began to influence policy in New Zealand, now strongly mark the current legislation (1992), and the current practice of the Māori Land Court. Whether the current restrictive regime is progress is, of course, the question.

Internationally, the wheel has turned yet again. International agencies have become enamoured of land titling and privatisation, having convinced themselves that by such means rural Latin America can be lifted out of the poverty trap in which it remains enmeshed. It is likely

⁴⁸ On Sutherland see James Ritchie, 'Sutherland, Ivan Lorin George 1897-1952, Ethnologist, university professor', *Dictionary of New Zealand Biography* (1998) 4: 506; and Oliver Sutherland, *Paikaea: The Life of I.L.G. Sutherland* (Christchurch: Canterbury University Press, 2013).

that the neo-Malthusian analysis of Garrett Hardin and other like-minded theorists have played an influential role in laying the foundations for this recent ideological shift.⁴⁹ In Mexico, the old arguments of the Liberals and the *Científicos* of last century have re-emerged in another guise, although at the present day the ideological fountainheads for the neoliberal line of thinking are the World Bank, Food and Agriculture Organization of the United Nations, 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'.⁵⁰

A major World Bank policy statement on land reform research by Klaus Deininger arguing along these lines was released in 2003 and has had significant effects on lending policies.⁵¹ The benefits seem, however, to be no less elusive than New Zealand's great privatisation experiment of the nineteenth century.⁵² A particular problem has been that Indigenous owners of newly-titled plots of land in countries such as

⁴⁹ See G. Hardin, 'The Tragedy of the Commons', *Science* 162 (1968): 1243-48; and 'Extensions of "The Tragedy of the Commons"', *Science* 280:5364 (1998): 682-83. One cannot even begin to engage with the immense literature relaying to the so-called 'tragedy' here. A foremost critic is the anthropologist Elinor Ostrom: see Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (New York: Cambridge University Press, 1990).

⁵⁰ Monique Nuijten, 'Family Property and the Limits of Intervention: The Article 27 Reforms and the PROCEDE Programme in Mexico', *Development and Change*, 34:3 (2003): 475-97, 476. There is a large and somewhat critical literature examining the effects of land titling and privatisation programmes in Mexico and Central America, programmes driven to a significant degree by World Bank policies: see e.g. Liza Grandia, *Enclosed: Conservation, Cattle and Commerce Among the Q'eqchi' Maya Lowlanders* (Seattle: University of Washington Press, 2012); Megan Ybarra, 'Violent Visions of an Ownership Society: The Land Administration Project in Petén, Guatemala', *Land Use Policy* 26 (2008): 44-54 (a study of phase one of the World Bank's land administration project in northern Guatemala); Ybarra, 'Slashed and Burned: The Debate Over Privatization of Q'eqchi' Lands in Northern Guatemala', *Society and Natural Resources: An International Journal* 24 (2011): 1027-1041.

⁵¹ K. Deininger, *Land Policies For Growth and Poverty Reduction: a World Bank Policy Research Report* (Washington DC: World Bank; Oxford: Oxford University Press, 2003).

⁵² In fact some commentators have argued that it is private titling rather than customary management of communal lands which is significantly responsible for the loss of forest cover and environmental degradation generally in such regions as northern Guatemala: see e.g. Grandia, *Enclosed*, 85.

Guatemala, very often sell them to ranchers and other wealthy individuals or corporations. In New Zealand that experiment was ended, belatedly, by legislation enacted in 1974 and 1992. Now, these achievements, if that is what they are, are under attack. A renewed liberal discourse is in the ascendant, in New Zealand as elsewhere, and it is certain that the law relating to Māori freehold land will soon feel its effects.

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