# The Alienation of Land in Ireland and in Aotearoa/New Zealand under English Colonization

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## I. Introduction

Ireland was one of England's first colonies and New Zealand was one of the last, yet the inhabitants of both suffered from the alienation of land in favour of British settlements.[1] The people of both countries were left with a deep sense of injustice and bitterness that continued through the generations. The societal structure of pre-colonial Ireland was similar to that of New Zealand and the colonizers' attitudes towards the existing populations reflected their own belief in the cultural superiority of the British. There are some stunning similarities between the methods used to alienate land in each country, even though the concentrated periods of land alienation were separated by over two centuries, and the Treaty of Waitangi and humanitarian interests supposedly protected Maori. Both countries lost land on the basis that it was empty or under utilized and then had legislation passed that allowed for confiscation of land for rebellion. In both countries there are examples of land sales that fell little short of compulsion because of the circumstances the existing peoples had been placed in by their colonizers. The experiences of Irish and Maori both reflect that the colonizers would always find a way to alienate land, even if that way was not entirely justified.[2]

## II. Background Similarities

Pre-colonial Irish and Maori societies were not as dissimilar as one might be led to believe. There were some key similarities between the two that were reflected in the methods and ideologies surrounding their colonization. Prior to the Norman invasion, Ireland already shared with its invaders the notion of a high king, however that king did not rule as such, and the real authority lay with around 150 individual chief kings each of whom ruled a *tuath* (tribal kingdom).[3] This picture of pre-colonial Ireland is akin to an image of pre-contact Maori

1 The colonisers of Ireland over the years were both English and Scottish and the colonisers of New Zealand were predominantly from the United Kingdom which included Ireland in the nineteenth century. Through this essay the term British will be used to refer to the colonisers in both instances.

2 It important to note that Irish history contains evidence of two groups who suffered from discriminatory policies: Irish natives and Irish Catholics. These two groups are not interchangeable. Although most Irish natives were also Catholics, there were also a large number of Old English Catholics who settled in Ireland after the Norman invasion, who later were discriminated against after the reformation and the reign of Henry VIII. Both groups at different times in history found their land alienated through biased English land policies.

3 Johnson, *Ireland: Land of Troubles: A History from the Twelfth century to the Present Day* (1982) 13-14.

society although Maori had no concept to parallel the role of the high king until the King Movement emerged midway through the nineteenth century. Furthermore, both the kings of Ireland and the chiefs of Aotearoa were limited in the exercise of their authority by customary law, including their ability to alienate land. In Ireland "the kings could not change the law: they could only interpret it."[4] The decentralized nature of Ireland made it "an easy country to occupy", but one that was "singularly difficult to conquer" just as New Zealand was.[5] However, the high concentration of rulers in these societies provided the ideal setting for a divide and rule colonial policy that marred so much of British colonial history.

These tribal societies also viewed land in a particular way. Both societies acknowledged political dominion over land but not actual ownership.[6] In Aotearoa this was reinforced by the fundamental belief that the land was both whakapapa and mother. Early land transfers in New Zealand have been criticized because Maori were not fully aware of what they were giving away, a misunderstanding that was facilitated by cultural differences between the colonized and colonizers. This same criticism of cultural misunderstanding was made concerning the Norman invasion of Ireland as "the Irish lords thought they were submitting under duress to a new political authority [whereas] the feudal invaders believed that they were acquiring a rigid, complete and perpetual ownership of the 'land', from the zenith to the uttermost depths."[7] While cultural misunderstanding was clear in both circumstances, the content of the misunderstanding was different. While the British might have believed that they were acquiring the ownership of land in both countries, in New Zealand, Maori did not think that they were submitting to a political dominant. On the contrary they believed that the Treaty of Waitangi was guaranteeing them their rangatiratanga, their land and their possessions. Their land deals were not seen as transfers of title, but rather a granting of a right to use land that they continued to have mana whenua over.

In early Maori and Irish understandings of land possession, the land belonged to the community as a whole and was not the property of the chief, however early Irish society did have more of an understanding of individual title. It was a "deeply engrained idea of the Irish that every free man should have the right to the secure occupation of the land which he requires for use," but the right to the land did not derive from the chief as it belonged to the whole clan.[8] This belief continued long after the Norman invasion. Just as in New Zealand, English law and control did not manifest immediately in Ireland and did not extend to all parts.[9] Even the Irish who did have relationships with the English may not have

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4 Ibid 14.
5 Kolbert & O'Brien Land *Reform in Ireland. A Legal History of the Irish Land Problem and its Settlement* (1975) 3.
6 Ibid 14.
7 Ibid.
8 Ibid 8.
9 Supra note 3 at 19.

understood the nature of that relationship and the consequences if they "objected or rebelled or had to be conquered" with their lands being forfeit to Anglo-Normans.[10] This relationship of English dominance when dealing with the Irish continued over centuries to be brought into colonial policies in New Zealand in the nineteenth century.

## III. Early Colonial Experiences

In both the Irish and Maori colonial experiences the colonizers came with an ingrained sense of cultural superiority. Irish natives were regarded as "more uncivill or uncleanly, more barbarous and more brutish in their customs and demeanures, than in any other part of the world that is known".[11] The Irish were themselves "without the law" and as a result the injuring or killing of an Irishman was not a recognized crime to the English and if an Englishman ever held land, no amount of occupation gave an Irishman good title to that land.[12] In some ways Maori were more respected than the Irish, perhaps as a result of the humanitarian thinking of the nineteenth century. While this humanitarian thinking was often paternalistic to a fault or alternatively ignored, it did provide some minimal protection to Maori and their lands. Even so Maori still found themselves the objects of derogatory rhetoric, being labelled "an inferior branch of the human family" that could only be saved by rejecting their culture.[13] Just as in Ireland, these views "became the basis for justifying policies which were designed to remove control of the land from Maori and destroy their identity as a people."[14]

The New Zealand Company held to the views of the Swiss Jurist Emerich de Vattel, that it was mankind's obligation to cultivate the earth and "those who did not cultivate the land had no right to it and those who took it to cultivate were obeying the laws of nature."[15] In the opinion of the New Zealand Company and many British settlers in New Zealand, Maori did not use the land effectively and therefore alienation of this land was only right. The Irish situation shows just how little had changed in two hundred years. In Elizabethan Ireland land was alienated because it stood "neither with Christian policy nor conscience to suffer so good and fruitful a country to lie waste like a wilderness."[16] In the 1580s a popular Roman law concept was res nullius which stated that land that was unoccupied or under-utilized was the "common property of humanity until it was brought into efficient use by enterprising people who might then become its owners."[17] This

10 Supra note 5 at 13.
11 Canny, *The Elizabethan Conquest of Ireland. A Pattern Established: 1565-1576* (1976) 127.
12 Supra note 5.
13 Yensen, "It went so well, what went wrong?" in Yensen, Hague & McCreanor (eds) *Honouring the Treaty: an introduction for Pakeha to the Treaty of Waitangi* (1989) 59-60.
14 Ibid 61.
15 Hutton & Riseborough *The Crown's Engagement with Customary Tenure in the Nineteenth Century* (1997) 8.
16 Supra note 11 at 119.
17 Canny, *Making Ireland British: 1580-1650* (2001) 133.

sort of thinking created an illusion of vast areas of wasteland that was free for plantation. This was repeated in New Zealand with the doctrine of terra nullius to rationalize the alienation of land from Maori because they did not occupy or use it. The concept of mana whenua extending to areas that were not occupied or cultivated ran into conflict with the supremacy of English common law, despite the guarantees of the Treaty of Waitangi.

Defective titles were a further way that land was alienated in Ireland. Defective titles were particularly exploited in the reign of James I by Thomas Wentworth who traced crown title back to the Norman invasion four centuries earlier with no regard paid to the fact that Irish people had occupied the land for centuries.[18] As a result Irish "were obliged to surrender a third or a quarter of their land, but given secure possession of the rest."[19]

Catholic holdings were reduced from three fifths in 1641 to one twentieth by the time of William III in the late seventeenth century.[20] Security of title in Ireland was no more effective than in New Zealand where "by 1880, despite the inalienation clause supposedly required in all Crown grants, practically the whole of the awards had 'passed into the hands of Europeans, either by sale or lease' [as] the Crown grants were 'only required in order to perfect the titles' of the European purchaser who had acquired the interest".[21] The focus in both Ireland and New Zealand was on getting the land out of the existing populations' hands and earning some revenue for the Crown.

The Treaty did ensure that the experience of Maori would be somewhat different. The British Crown's authority in New Zealand rested upon the Treaty, not conquest, although this authority did not mean much until the time of the New Zealand Wars. The Treaty recognized Maori rights to possession of their lands and in that respect it was not as easy to justify legally alienation of land as it had been in Ireland where the claim of conquest was made. Instead the Colonial Government adopted another method of land alienation also used in Ireland, legislation that allowed for the confiscation of land for rebellion. But first they had to find some rebels.

## IV. Confiscation Legislation

New Zealand and Ireland had almost identical legislation for the confiscation of land for rebellion, but there is an important distinction to be made between the two. The Irish actively rose up against British control. Leaving aside the question of whether the Irish were justified in rising or whether they were truly rebels, the Irish actively rose up against British rule several times over the centuries, often with bloody consequences. The New Zealand experience was worlds apart. The

18 Ibid 283.
19 Supra note 3 at 36.
20 Supra note 5 at 20.
21 Supra note 15 at 91.

Maori were resisting British control, but initially this resistance was in a passive form. Maori refused to sell further land and insisted on recognition of their rangatiratanga as guaranteed by the Treaty and it was this passive move that contributed to the New Zealand Wars. In short, the Irish experience was one of an armed rising from a repressed population, native or Catholic, whereas the New Zealand experience was one of a governmental declaration of war against a people who were considered rebels because they were not doing what the government wanted them to do.

The government in New Zealand had to find a justification for conflict that could in turn justify confiscation. The King Movement's assertion of independence on the basis of the Treaty of Waitangi was held to constitute treason and thus justify war.[22] Even in Ireland where claims of rebellion were much easier to make, soldiers in the sixteenth and early seventeenth centuries still:[23]

> [R]elished the prospect of Irish revolt which would provide opportunity of outright confiscation... and they sought eagerly for evidence of rebelliousness which might force the crown to take action against those they aspired to dispossess.

Three key pieces of legislation originally from Ireland were adopted in New Zealand in 1863: The New Zealand Loans Act, Suppression of Rebellion Act and the New Zealand Settlement Act. The Colonial Office accepted these three Acts and while they did impose some restriction on the implementation of the Acts, the Colonial Government largely ignored these restrictions.[24]

## 1. The New Zealand Loans Act 1863 (a.k.a. The Adventurers Act 1642)

The New Zealand Loans Act was modelled on the Adventurers Act 1642 and allowed for the sale of confiscated land to pay for the process of colonization.[25] Adventurers were the financial contributors behind the suppression of the 1641 rising in Ireland. The Adventurers Act allowed for the forfeiture of a rebel's property, its seizure and sale to Parliamentary supporters and prevented subsequent parliaments from pardoning or restoring the property to the said rebel.[26] The financial contributors under the Adventurers Act were predominantly parliamentarians who made confiscation in Ireland "a prominent part of English policy in a conquered Ireland."[27] Parliamentarian self interest was just as evident in nineteenth century New Zealand. Thomas Russell and Fredrick Whitaker were

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22 Orange, *The Treaty of Waitangi* (1987) 158.
23 Supra note 17 at 270.
24 Supra note 22 at 169-170.
25 New Zealand Waitangi Tribunal, *Waitangi Tribunal Report WAI 143: The Taranaki Report, Kaupapa Tuatahi,* (1996) 133.
26 Supra note 3 at 41.
27 Wheeler, *Cromwell in Ireland* (1999) 228.

prime examples of self-interested parliamentarians. They were both members of the Dommett Ministry that proposed war in the Waikato, were the owners of the Bank of New Zealand that funded the loan for the war and were partners in Whitaker and Russell, a firm of land agents.[28] New Zealand's land was a bank to pay off debts just as Ireland had been. What is disturbing about both these Acts is that land was promised before it was even established who was in rebellion and what land was liable for confiscation, resulting in some dubiously defined rebels.

## 2. The Suppression of Rebellion Act 1863 (a.k.a The Irish Act 1799)

The Suppression of Rebellion Act was taken from the Irish Act 1799, enacted to deal with the 1798 Irish rising led by Wolfe Tone "in circumstances entirely different from those in the Waikato of New Zealand."[29] The Suppression of Rebellion Act allowed for the "death, penal servitude or corporal punishment" of persons found to be in rebellion within the entire colony despite the fact the 'rebellion' only occurred in particular areas.[30]

Later the Act was repealed and an Indemnity Act was passed in its stead. This Henry Sewell viewed as significant because one was "a kind of plenary indulgence beforehand for violence or excesses of any kind or degree committed under colour of authority," whereas the other was "a Constitutional form of absolution for things done under special emergencies."[31] This distinction may have made the law look better and less draconian but the practical result was the same. The removal of legal protections was because the government felt threatened. Whether that threat was defined before or after the action occurred made no practical difference.

Indemnity Statutes also appear in Irish history. However, the Indemnity Act of the Restoration excluded its benefits from Catholics and as a result they were not entitled to the return of their estates.[32] In both countries the suspension of civil liberties such as habeas corpus was considered abhorrent by the standards of the time and yet it was justified by the circumstances. The Waitangi Tribunal noticed the irony that when the West Coast Commission criticized the Habeas Corpus Suspension Bill for Ireland because there was "no statesmanship in merely acts of force and acts of repression", it was just fifteen months before Parihaka was invaded and the New Zealand government passed its own legislation to suspend habeas corpus during peace time.[33]

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28 Simpson, *Te Riri Pakeha: The White Man's Anger* (1979) 146-148.
29 Ibid 147.
30 Supra note 22 at 166, 169.
31 Ibid 176.
32 Arnold, The Restoration *Land Settlement in County Dublin, 1660-1688. A History of the Administration of the Acts of Settlement and Explanation* (1993) 39-40.
33 Supra note 25 at 250.

## 3. The New Zealand Settlement Act 1863 (a.k.a Act of Settlement 1652)

The primary piece of legislation used in New Zealand to facilitate confiscation of land was the New Zealand Settlement Act that "did grievous damage to Maori-Pakeha relationships, for it left Maori people with a deep felt sense of injustice that still rankles."[34] The New Zealand Settlement Act was based on the 1652 Cromwellian Act of Settlement for Ireland which left the Irish with an all too familiar legacy of bitterness and betrayal. While the Cromwellian Settlements that followed the 1641 rising are bitterly remembered, the confiscation of lands from Irish rebels and redistribution of that land to those who had helped crush the rebellion can be found in the preceding two centuries.[35] Both Mary I and Elizabeth I confiscated land with no pretence of it being anything else, while the Stuart Kings introduced an "era of confiscation by legal subtlety and subterfuge" where "natives [Irish] learnt with terror that law could be made in times of perfect peace, and without any provocation being given, a not less terrible instrument that the sword for rooting them out of the soil."[36] This quote could equally have been made about the legislation that surrounded the invasion of Parihaka in 1881, and just as with Parihaka, there are examples in Irish history of attempts to provoke rebellion to attain land that the Crown did not otherwise have any legal title to.[37]

The confiscations made under the Tudor Queens and Stuart Kings built up resentment amongst the Irish that was unleashed in the 1641 rising, which was later crushed by Oliver Cromwell and led to a new wave of confiscations. Prior to 1641, the "discoverers" dispossessed the Irish by demanding documented proof of title that was usually non-existent amongst people used to traditional clan ownership. When four-fifths of Connaught was held liable for seizure the Irish rose up, only to be effectively put down.[38] While it was the Colonial Government who declared war in New Zealand the war was in part also caused by Maori unwillingness to part with any more of their land, which was falling more and more into the control of the British.

The New Zealand Settlement Act allowed for the confiscation of the lands of "evilly disposed" natives who were held to be in rebellion.[39] The previous premier Alfred Dommett originally drew up the Bill. Dommett considered that to set off the cost of war "it would be only 'just and reasonable'...to take all the Waikato and Taranaki lands best suited to English settlement, and banish the rebellious

34 Supra note 22 at 167.
35 Supra note 27 at 227.
36 Supra note 5 at 18.
37 Supra note 11 at 119
38 Supra note 5 at 19-20
39 Supra note 28 at 148.

tribes to 'the valleys and plains further up in the interior.'"[40] The Whitaker-Fox Ministry followed Dommett's model and passed the New Zealand Settlement Act into law on the basis that European settlements would overawe the Maori population and bring about peace.[41] The Treaty of Waitangi was relied on to facilitate the confiscation. The Native minister argued that Article Three proclaimed Maori as British subjects and because they were British subjects, under English law their land was forfeit if they rebelled.[42] However, other rights of English subjects such as the right to a fair trial were overlooked when the Suppression of Rebellion Act was passed. Furthermore, other parts of the Treaty of Waitangi, which guaranteed Maori their rangatiratanga and possession of their lands and which would have provided some protection for Maori, were ignored.

The preamble of the 1652 Act in Ireland stated that it aimed for the "suppression of the horrid rebellion" that had cost "much blood and treasure" and that "total reducement and settlement" of the nation was required.[43] The effect of the act was "to move the Irish Catholic gentry and landowners into the west of the country, resettling their lands with New Model soldiers", the "Hell or Connaught" policy.[44] The same was seen in New Zealand. In Taranaki all were affected, even non-combatants, because everyone's land was taken; people were relocated, land tenure was changed, and a whole new social order was imposed. The losses were physical, cultural, and spiritual. As Sir William Martin, our first chief justice, noted when opposing confiscation in 1864:[45]

> The example of Ireland may satisfy us how little is to be effected towards the quieting of a country by the confiscation of private land; . . . how the claim of the dispossessed owner is remembered from generation to generation and how the brooding sense of wrong breaks out from time to time in fresh disturbance and crime.

The aims and the effects of the New Zealand Act were closely correlated to those of Ireland. The Native Minister claimed the Act's purpose was to suppress the "present rebellion" and acknowledged that the "proclamation of confiscation over a district would have a blanket effect so that the lands of 'Natives [who] have not been in rebellion' could also be confiscated, but he stressed they would be entitled to compensation through a Compensation Court."[46] The Act stated that the "land of any tribe or section of a tribe 'or any considerable number thereof'" found to be in rebellion would be "eligible sites for settlements" and become "Crown land freed and discharged from all Title, Interest of Claim of any person whomsoever."[47] The result was that many Maori who had not taken part in the War, or even worse, who had fought on the side of the government, could lose

40 Supra note 15 at 81.
41 Ibid 82.
42 Supra note 25 at 131.
43 Supra note 3 at 47.
44 Ibid 47-48.
45 Supra note 25 at 13.
46 Ibid 110.
47 Hutton and Riseborough, The Crowns Engagement, supra note 15, 82.

their lands. "Only the lands of those in rebellion would be confiscated, the lands of 'really loyal natives' would just be taken."[48] There was a similar failure in Ireland to distinguish between loyal and rebel landholders. Criticism was made in Ireland during the reign of James I where no distinction was made between loyal and rebel landowners when renewing dormant crown titles.[49]

The idea of paying soldiers with land to settle on and thus providing a buffer zone to conflict was new to Ireland in 1652.[50] The New Zealand Settlement Act provided for the same sort of military settlement and prospective soldiers were signing contracts with the government months before the Act was passed into law.[51] The Irish experience had already informed the government that there would always be enough land, even if there were not enough rebels. Rebels could always be found. The Treaty of Waitangi did not provide any further protection. However, in both Ireland and New Zealand many of the would-be military settlers sold their land on to land speculators, sometimes at ridiculously low prices, leaving the land agents to go on and make an immense profit on sales.[52]

In the Settlement Acts of 1652, allowances were made for the return of confiscated land through compensation courts. Irish rebels had to forfeit part of their estate and possibly be moved from their remaining land to estates of equal value elsewhere in "such other places within the nation, as shall be judged most consistent with public safety" unless they proved as Protestants that they had "good affection" towards parliament and if Catholics that they had "constant good affection" during the rebellion.[53] This was not always an easy thing to prove. In New Zealand the lands of those "who had not themselves been in rebellion or aided, assisted, or comforted those who had" or who had surrendered by the appropriate date or were "well disposed natives" were only to be confiscated "as necessary for the security of the country, and then only against payment of compensation."[54] This was a bitter blow for some Maori. The Ngamahanga hapu on the West Coast also found that despite them being supporters of the Crown during the war, most of their land had been promised to military settlers.[55]

An 1865 amendment even allowed for compensation to be paid in land rather than money. However, this had more to do with the state coffers being empty than any desire to return the land as, after all, the land returned should not have been "lands of equal value somewhere else, but their own ancestral territory."[56]

The compensation court set up by the 1863 Act was riddled with flaws, including claimants having to travel long distances to courts, inability to claim

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48 Ibid.
49 Supra note 17 at 255.
50 Supra note 27 at 228.
51 Supra note 15 at 81-82.
52 Supra note 27 at 229; supra note 28 at 148.
53 Supra note 32 at 29.
54 Supra note 15 at 82-84.
55 Ibid 87.
56 Ibid.

unless they appeared in person and poor notification which was important as there was a six month limit within which to make claim.[57] All of the above mentioned factors helped facilitate the alienation of Maori land. Land that was returned was usually of poor quality compared to the land taken. In the Waikato 1,202,172 acres of the most fertile land was confiscated while the lands of Maniapoto who were clearly defiant of the government found their less fertile lands untouched.[58] The same pattern occurred in Ireland, where confiscations focused on the more fertile areas and the land that was returned was largely infertile.[59] In New Zealand the hundreds of thousands of acres of land that was returned, was returned under individual title which meant that it was only lost again as it was easier to alienate.[60]

## V. Compulsion to Sell and Limited Land Rights

Only a sixth of the land alienated in the North Island between 1861 and 1891 was confiscated, the rest was the result of sale.[61] Sale may imply that the land was parted with willingly but a closer examination has shown that circumstantial pressures on Maori contributed to their haste to sell.

Similar pressures were also evident in some Irish land sales. During Stuart rule some Irish Catholics who suspected that they would have their lands taken "were all too willing to part with these lands at bargain prices to Old English speculators before they became forfeit to the Crown through the process of plantation."[62] Ownership also passed from Irish Catholic hands because of a system of mortgages prevalent during the Stuart era particularly in Connacht where money was advanced to some needy Irish landholders who, failing to understand the commercial environment defaulted and found their land forfeit.[63]

Just as Irish lost their land to mortgage and sold up before it was taken, so some Maori tumbled into debt and were forced to sell their land as a result of the Native Land Court process which was both costly and time consuming.[64] The Native Land Court not only individualized title making it easier to alienate, it also fragmented these individual titles. The Papakura Rule set out by Chief Judge Fenton in 1867 under the benevolent claim of trying to reconcile Maori custom with a claim of succession stated that an estate should be divided equally amongst the deceased children if they died intestate, resulting in extreme fragmentation of estates over the generations.[65] The Gravelkind Act of the eighteenth century also forced Irish Catholics to divide their estates between their sons unless the eldest

57 Ibid 85.
58 Supra note 28 at 149.
59 Supra note 5 at 19.
60 Supra note 28, 152.
61 Belich, *Making Peoples- A History of the New Zealanders from Polynesian Settlement to the end of the Nineteenth Century* (1996) 259.
62 Supra note 17 at 412.
63 Ibid.
64 Williams , *Te Kooti Tango Whenua* (1999) 189.
65 Ibid 179-181.

son converted to Protestantism.[66] The lesson was the same; do it our way, the British way, or subdivide your land into nothing of use. The irony in the Irish situation was that Gravelkind and Tanistry which provided for the division of land between sons was old Irish law that was condemned during the reign of James I because it went against the "English principles of primogeniture and entailment."[67]

The notorious Gregory Clause that operated during the 1840's Irish Famine barred a person access to the minimal poor relief that was available if they possessed more than a quarter acre of land. Further land was alienated this way as necessity induced people to sell what they otherwise would not have. The poor law guardians who were also landlords "insisted that the heads of starving families relinquish their holdings before being allowed to enter the workhouse, or kicked out those who were not technically destitute".[68]

Various penal laws further restricted Catholics by limiting their use of land including the ability to purchase, transfer and lease as well as to make a profit from their land. If a Protestant was able to prove that a Catholic farm had made more than the allowable margin of profit then they could obtain legal possession of the farm."[69] Maori also found it hard to make a profit from their land as their collective title was not considered good security by banks and they were not loaned the money needed to develop their lands.[70] In Ireland an eldest son could reduce his own father to a life tenant and assume ownership of his father's land if he converted to Protestantism.[71] This was comparable to the ten owners system implemented by the Native Land Court which granted rights to those who conformed to the system (that is using the Land Court) while effectively destroying or at least minimizing the rights of others who had interests in the land. Maori and Irish were left to either adopt their colonizer's worldview, or suffer as second-class citizens within the imposed system.

## VI. Further Effects of Colonization

The alienation of land from the Irish and Maori had such a fundamental effect on the development of each culture that it is often easy to lose sight of the other impacts of British colonialism and further similarities between the Irish and Maori experience of colonization. Both Maori and Irish found themselves viewed as inferiors by their colonizers and they in fact seem to have existed on a similar plain on the hierarchy of the civilizations. For a dark skinned people the Maori were seen as "better blacks" and by some as descendants of the Aryan race just "as our own Anglo-Saxon race" was.[72] By contrast, the Irish natives were seen as

66 Supra note 3 at 54.
67 Ibid 34.
68 Supra note 3 at 88-89.
69 Supra note 5 at 23.
70 Supra note 61 at 260.
71 Supra note 5 at 23.
72 Belich, 'Myth, Race and Identity in New Zealand' (1997) *New Zealand Journal of History 31* (1), 18.

too barbarous and uncivilized to really be from the same stock as the English. Instead the Irish were more closely linked to other barbarians, the Tartars, Arabians and Scythians from the Black Sea area Even as late as the sixteenth century Fynes Moryson wrote that "some of the Irish are of the race of Scythians, coming into Spain and from thence into Ireland."[73] In short, the Maori were viewed as among the best of dark skinned peoples and Irish as among the worst of the fair-skinned ones. Either way, they were still seen as inferior to the British.

Running along with this observation of the cultural inferiority was the desire to civilize the natives and in both countries Christianity was to do its part. The Christian church already existed in Ireland before Henry II invaded in 1171 under papal bull. However, the Pope considered the existing church an inferior version of Christianity and in need of reform, although Henry never did fulfil the papal requirements or conquer the whole country.[74] In twelfth century Europe most invasions such as this one needed some sort of papal mandate because the influence of the church was so strong. Maori in contrast had never been introduced to Christianity, but the missionary and humanitarian movements of the early nineteenth century ensured that they soon were. The convertibility of the "heathens" in the South Pacific brought the missionaries, who also preached capitalism and a more superior way of life, down in droves.[75]

Until a population was civilized it was seen as irresponsible to allow them to vote because they could not understand so great a system. Unfortunately when civilization meant abandoning one's own worldview and submitting to another one, emancipation was often a long time coming and in the meantime laws were passed to inspire people to convert to that civilization. William Pitt as part of the Act of Union 1801 pushed for Catholic emancipation, but King George III refused. Pitt resigned in protest leaving Catholic emancipation to wait until 1829 when denying it might have caused civil war.[76] In New Zealand the Constitution Act 1852 required that property must be held individually to give rights to vote. This in effect disenfranchised Maori.[77] This was of course unless they abandoned their traditional way of life and adopted the civilized worldview of English common law property rights.

Both the Irish and Maori wished, at least at some point, to be the masters of their own destiny, but were denied. Under section 71 of the New Zealand Constitution Act 1852 Maori were entitled to have a separate system of government, yet they were repeatedly denied this right. In Ireland, the better part of a century was spent fighting for Home Rule. When Home Rule was on the verge of being achieved, the Protestant majority in the Ulster counties resisted, resulting in Ireland becoming self-governing only once it had been irreparably divided into two parts and so it remains today.

The early colonial experiences of both Maori and Irish were that British

73 Supra note 11 at 126-127.
74 Supra note 3 at 15-18.
75 Supra note 61 at 128-129.
76 Elliot, *British History Displayed: 1688-1950* (1955) 123, 168-169.
77 Supra note 13 at 64.

colonization did not mean much at all. In New Zealand Governor Gore Browne noted that while "English law has always prevailed in the English settlements, [it] remains a dead letter beyond them."[78] Two legal systems also existed in Ireland for centuries before traditional Brehon laws were wiped out.[79]

What is interesting about comparing early English law in Ireland and New Zealand is that in Ireland it was used to promote segregation and in New Zealand, assimilation. The 1366 Statute of Kilkenny forbade Anglo-Irish from adopting aspects of the "Irish enemies" culture upon pain of confiscation of property.[80] New Zealand colonial policy, once it got past the fatal impact theory, or perhaps because of it, promoted the speedy assimilation of the Maori race into that of the British. Assimilation was to be the absorption of one culture into another.

The Native School system was one means of facilitating this assimilation and one of the most effective ways of doing this was by alienating a people from their language. For a time Maori children were forbidden from speaking te reo at school and were punished for doing so. Yet, more importantly, some Maori supported this, wanting their children to learn English out of "economic necessity".[81] The decline of the Gaelic language shares with te reo the unfortunate reality that in part it was killed by the schools and in part from the inside out. The National Educations Scheme of 1831 had a "fatal effect on the Irish tongue" and prominent Irish nationalists such as Daniel O'Connell insisted that English be "the language of Irish nationalism".[82] In both cases however there were other factors that contributed to the decline of the indigenous languages which are not discussed here.

The Irish might not have had a Treaty of Waitangi but what they did have was a Treaty of Limerick made after the Battle of the Boyne where William III defeated James II. The Treaty promised Catholics, many of whom had supported James II that they would not have to take the Oath of Supremacy, in which they had to acknowledge the Church of England, and would only need to swear allegiance to William as King. But fear of the Catholics meant that the Treaty was not kept.[83] The Treaty also provided some protection from forfeiture to Catholic landowners, but the Dublin Parliament made up entirely of Protestants did not ratify the Treaty until 1697 and even then it was only as far "as may consist with safety and welfare of your Majesty's subjects of this kingdom".[84] Instead the "Treaty was shamefully broken" by Irish parliamentarians who had an interest in the "Cromwellian Settlements".[85] It seems to be the case in both New Zealand and Ireland that Kings and Queens were very good at making Treaties, and their Governments were very good at breaking them.

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78 Supra note 61 at 229.
79 Supra note 5 at 16.
80 Ibid.
81 Simon and Tuhiwai Smith (eds), *A Civilising Mission? Perceptions and Representations of the New Zealand Native School System* (2001) 146, 164.
82 Supra note 3 at 94.
83 Supra note 76 at 13.
84 Supra note 3 at 93.
85 Supra note 5 at 16.

With these extensive similarities between the Irish and Maori experiences of colonization, one would think that the Irish in nineteenth century New Zealand would be empathetic to the Maori struggle. Many renegades who fought with the Maori in the New Zealand Wars were Irish Catholics. However, perhaps over forty percent of the imperial troops were Irish Catholics and fought just as vigorously against Maori as "a key aspect of British Imperialism was persuading its victims to conquer each other."[86]

## VII. Conclusion

The colonization of Ireland and New Zealand was separated by centuries, yet the methods used to alienate land from the existing inhabitants were disturbingly similar. The British colonizers benefited from the decentralized nature of the indigenous societies and at first slowly alienated land by claiming that it was empty or under utilized and therefore free for colonization. When resistance grew amongst the Maori and Irish, whether passive or aggressive, the response of the colonizers was to pass legislation that justified the confiscation of land from rebels and then using this land to pay off the costs of war and military. The New Zealand Loans Act, the Suppression of Rebellion Act and the New Zealand Settlement Act passed in 1863 all had their origin in legislation that was passed to deal with the Irish colonial experience and the so-called rebels in both countries found tracks of land alienated under this legislation. Even when land was not confiscated or had been returned, both the Irish and Maori found that further land was alienated through sale or mortgage. Many of these sales were not as voluntary as they should have been; instead they were responses to pressuring circumstances created by their colonizers. In both Ireland and New Zealand the indigenous peoples found their own customs manipulated by the British to fragment ownership of the land, which then facilitated land alienation.

While the alienation of land was of fundamental significance to the development of the Irish and Maori peoples, it is important to not lose sight of the fact that the alienation of land was only one of many colonial experiences that the Irish and Maori shared. Both were viewed by the British as inferior and in need of civilizing and were denied the right to vote or rule themselves, despite what the Treaty of Waitangi guaranteed. Both also watched their language decline to near extinction for a time. British colonization was a harsh and unforgiving process in both Ireland and New Zealand, where people lost their lands and identity and had it replaced with a legacy of bitterness.

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86 Supra note 61 at 243.