

ACCIDENTAL FORTUNE: NATURAL RESOURCES AND CREATION OF PROPERTY REGIMES IN THE AMERICAS*

FORTUNA ACCIDENTAL: RECURSOS NATURALES Y CREACIÓN DE RÉGIMENES DE BIENES EN LAS AMÉRICAS

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¿Por qué algunos países de Latinoamérica son pobres a pesar de sus grandes riquezas? De la colonia a la república, muchas economías latinoamericanas se han concentrado en la extracción de recursos naturales.

En el siguiente artículo, el autor desarrollará un análisis histórico de la conquista española. Enfocándose en el caso peruano, se explica cómo esta historia creó un régimen de propiedad centralizado, teniendo efectos que han trascendido en el tiempo.

Para explicar esta "Fortuna Accidental", se hará una constante comparación entre la conquista española de América y la colonización británica de Norte América. El autor muestra como los recursos encontrados en el suelo guiaron cada caso por distintas direcciones.

PALABRAS CLAVE: Regímenes de propiedad; recursos naturales; minería; colonialismo.

Why are some countries of Latin America poor despite their great wealth? From the colony to the republic, many Latin American economies have focused on the extraction of natural resources.

In the following article, the author will develop a historical analysis of the Spanish conquest. Specially focusing on the Peruvian case, the author will explain how this background shaped a top-down property regime with longstanding effects.

To duly explain the "Accidental Fortune", a constant comparison will be made between the Spanish conquest of the Americas, and the British colonization of North America. The author will show how the found resources guided each case into different directions.

KEYWORDS: Property regime; natural resources; mining; colonialism.

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I. INTRODUCTION

Before the 1500s Peru had a well settled civilization, the Incas. North America, on the other hand, had a scattered and dispersed population. Before the 1500s the Incas had developed sophisticated infrastructure, such as Macchu Picchu or Ollantaytambo, whilst native Americans had only basic shelters. Before the 1500s Peru had the wealthiest mines in the world, whilst North America had only vast amounts of empty land.

Nowadays, the United States is arguably the most powerful country in the orb and Peru is a developing economy (not to say a third world country). What happened in the middle? In the 1500s European civilization landed in America; Spain in Peru and Great Britain in the United States rewrote the destiny of both countries and their people.

Francisco Pizarro stepped in Peruvian land for the first time on 1528¹, in the proximities of what is now called the port of Paita. From his arrival he proclaimed that all the newly discovered land was part of the crown of Spain, not only as a jurisdiction but as a domain. However, the lands of Peru were already occupied by the Inca Civilization. After a bloody war between the Spaniards and the Incas, Francisco Pizarro was finally able to raise the Spanish flag over Peruvian soil, consolidating the Spanish Viceroyalty of Peru.

The Viceroyalty last until 1821, when Juan Jose de San Martin proclaimed the independence of Peru. Throughout these 300 years the Viceroy and the crown of Spain had one principal goal: bullion. The main commercial activity of the Spanish empire was mining gold and silver, and after the independence of Peru the tradition was carried along into the new Republic.

On the 28 of July of 2016, almost 500 years after the arrival of Pizarro to the beaches of Peru, one of the promises of the newly elected president of Peru was to industrialize the country, trying to replace the centenarian dependence on basic mining with alternative industries². It seems that Peruvians learned too well from the Spaniards.

Meanwhile, the settlers of the British American colonies didn't find any gold or silver in their voyages, but tremendous amount of available land. The native civilizations they found didn't cover all the territory of the New World, nor were they as populated as those the Spaniards found in Peru or Mexico. They couldn't use Indian labor efficiently, and there were also no mines to use it in.

After a fond deception, the British empire redirected its goal in their colonies: production and commerce instead of gold and silver. Conquering by contract, using force only when necessary, North America gradually received many British colonizers who acquired pieces of land and worked on them. Their oath being the production of wealth, their agriculture and manufacture eventually mutated into industrialization. First under the British crown, and later after the independence, the United States grew strong.

This story does not only involve the American colonies, but also the European colonizers. After the discovery of Mexico, and then Peru, Spain became the principal provider of gold and silver in the world in the 1500s. Nonetheless, it was destined to soon fall into a great economic recession, finalizing in bankruptcy. On the other hand, Great Britain, even after losing its North American colonies almost 50 years before the Spaniards did, grew strong. Today the difference in power between Spain, which is just getting out of the worst recession in its history, and Great Britain is extremely clear.

Many authors have tried to explain why the development of the Spanish empire and its colonies fell behind. Different arguments have been brought on the table: lack of character of the Spanish Emperors³, excessive economic pressure due to political goals⁴, wrong establishment of institutions⁵ or dependence on different economies⁶, all these arguments ought to be consider. This paper considers all these as secondary effects of the same cause: the Spanish discovery of the Peruvian and Mexican natural resources in their American colonies.

In the beginning of the American fever, all empires were looking for the same: gold and silver. The only difference between the Spanish Empire and

¹ Pizarro arrives to the northern part of Peru 1528. In: ERLICHMAN, Howard. "Conquest, Tribute and Trade". New York: Prometheus Books. 2010. p. 156.

² See: <http://peru21.pe/economia/ppk-apuesta-impulso-industrializacion-minera-2251954>

³ HAMILTON, Earl. "The Decline of Spain". In: *The Economic History Review* 8. 1938.

⁴ ELLIOT, John. "The Decline of Spain". In: *Past and Present* 20. 1961.

⁵ ACEMOGLU, Daron; JOHNSON, Simon, and James Robinson. "Reversal of fortune: Geography and institutions in the making of the modern world income distribution". In: *The Quarterly Journal of Economics* 117. 2002.

⁶ KANEMAN, Henry. "The Decline of Spain: a historical myth?". In: *Past and Present* 81. 1978.

the British Empire in this regard is that Spain found bullion and the British (and the French) did not. As it will be explained, this accident drew different destinies for the colonizers and the colonized. It is not the case that the British were smarter than the Spaniards, but just that they had to be more creative to survive. Without noticing, this fortune rooted deeply in the countries above mentioned, until the date hereof.

Antonio Raimondi was a well-known Italian researcher that came to Peru 1850, just 29 years after the independence of Peru. Raimondi fell in love with Peru, amazed by its history and the natural resources it had to offer. Tradition has it that in one of his trips he said that “Peru is a beggar sitting on a bench of gold”. Through Peruvian history this has been interpreted as the inability of Peruvians and of the Peruvian government to transform that bench of gold into prosperity for the country. However, as it will be explained hereafter, it looks like the reason for Peru becoming a beggar is the bench of gold itself.

Taking into account the mentioned above, section II will develop the formation of the accident: the Spanish conquest of Peru. The land, mines and people that were encountered and acquire by the Spaniards created the accidental fortune, including the creation of a top-down property regime which affected Peru and Spain. Section III and IV will then respectively analyze the effect of our accidental fortune theory in the cases of Spanish and Peruvian.

II. SPANISH CONQUEST OF PERU: THE ACCIDENTAL FORTUNE

During the Spanish conquest of Peru, the Spanish crown acquired not only the land and mines of the discovered land, but also the labor of the Indians that were occupying such land.

As explained in the present section, due to the resources encountered by the Spanish and the British in their colonies, their property structures were different. The Spanish adopted a top-down property regime whilst the British adopted a bottom-up one. These random findings, would change the destiny of the Spanish, Britain, and their colonies.

A. Acquisition of land

In 1528 Francisco Pizarro landed in the beaches of the shore of Peru, close to what today would be the beach of Colán. The conqueror jumped onto the sand and declared the discovered land as part of the Spanish Empire’s⁷ domain. Why was he entitled to do so? Because the Spanish crown had a special authorization from the Pope Alejandro VI. Fernando and Isabel, the Catholic kings of Spain, requested to the pope the authorization to occupy and acquire the new lands to be discovered in south America. The pope issued the corresponding *Bula* on May 4th of 1493, authorizing the Spaniards to go spread the catholic faith to the Americas and, while doing it, acquiring all the land that they would discover. The pope said specifically in the *Bula* that the Catholic church “donated” the land in favor of the Spanish empire⁸.

The Spanish recognition and interpretation of the *Bula* is to be found in the “Recopilación de Leyes de los Reynos de las Indias” (here after, “Recopilacion de Indias”), which included all the laws enacted by the Spanish monarchs in their colonies since the beginning of the conquest. Published for the first time in 1681 by King Carlos II⁹, the recompilation acknowledges the new discoveries as property of the Spanish crown “Por donación de la Santa Sede Apostólica”¹⁰. According to the *Bula*, the Recopilacion de Indias also established the spread of the Catholic word to the new world as the principal goal of the conquest¹¹, preaching the Catholic faith among the Indians.

⁷ ERLICHMAN, Howard. “Conquest, Tribute and Trade”. New York: Prometheus Books. 2010. p. 156.

⁸ “[...] con declaración, que por esta nuestra donación, concesión, y asignación no se entienda, ni se pueda entender que se quite, ni haya de quitar el derecho adquirido a ningún príncipe Christiano, que actualmente huviere poseído las dichas islas y tierras firmes hasta el susodicho día de Natividad de nuestro señor Jesu-Christo”. In: “Bula del Papa Alejandro VI en favor de los reyes de España”. In: ZAVALA, Silvio. “Las Instituciones Jurídicas en las Conquista de América”. Ciudad de México: Editorial Porrúa. 1971. p. 215.

⁹ Even though the Recopilacion de Indias was published in 1681, the Laws that this recompilation contained were enacted in many cases since the beginning of the viceroyalty. The Recopilacion de Indias didn’t create new Laws, but collect all the applicable Laws to the Spanish Empire colonies instead.

¹⁰ “Por donacion de la Santa Sede Apostolica y otros justos y legitimos titulos, somos senor de las Indias Occidentales, Islas, y Tierra firme del Mar Oceano, descubiertas, y por descibir, y estan incorporadas en nuestra Real Corona de Castilla. Y porque es nuestra voluntad, y lo hemos prometido y jurado, que siempre permanezcan unidas para su mayor perpetuidad y firmeza, prohibimos la enagenacion de ellas”. In: “Recopilacion de Leyes de los Reynos de las Indias”. Fourth edition. Volume I. Book III. Title I. Law I. Madrid: La Viuda de Don Joaquín Ibarra. 1791. p. 523.

¹¹ “Porque el fin principal, que nos mueve a hacer nuevos descubrimientos es la predicacion, y dilatacion de la Santa Fe Católica, y que los Indios sean enseñados, y vivan en paz y policia [...]”. In: “Recopilacion de Leyes de los Reynos de las Indias”. Fourth edition. Volume II. Book IV. Title I. Law I Madrid: La Viuda de Don Joaquín Ibarra. 1791. p. 1.

Juan de Solorzano, one of the compilers of the *Recopilacion de Indias*, wrote a book named *Politica Indiana* in 1647, commenting what was to be published in the *Recopilacion de Indias*.¹² There, Solorzano explains that the correct interpretation of the recompilation was that of the acquisition of property rights over the land to be discovered¹³. The question underlying these statements though is whether the pope had the power and jurisdiction to transfer property rights over land occupied by the Indians in America¹⁴. As explained, the supposed intention behind the pope's grant was the spread of Catholic religion. At this point in history, particularly, to teach the Indians the Catholic word was equivalent to saving their souls. The mission of the Church was to expand their word as far as possible, to save as many souls as they could.

Behind this romantic perspective, however, from the most rudimentary legal standard it is obvious that the pope did not have the power to transfer the land of the new world to Spain, especially considering that such territory was already held by the natives. This donation was not enforceable against the Inca empire because the pope didn't have jurisdiction over their land, nor their property, nor them. The *Bula*, though, was an endorsement to the Spanish crown and an excuse to conquer America. The *Bula* allowed the conquerors to use force to protect their rights, instead of using it to gain a new right.

As one can imagine, when Pizarro came to Peru and declared that some kings of a father land were the owners of all the Inca empire, war became a reality. The Spanish conquerors, in Peru with Pizarro and in Mexico with Cortes, didn't bargain for the land, they took it by sword; their government had authorized them too do so. They had the best ex-

cuse, they were doing it not in the name of men, but in name of god.

After the conquerors pacified a piece of land, they would split it, assigning pieces of land to the Spaniards that were to stay in such locality. The *Recopilacion de Indias* mandated this, in order to incentivize the newcomers to keep expanding the Spanish empire¹⁵.

It is true that the Spanish spread the catholic word in the Americas; you just have to walk around cities such as Arequipa, Trujillo, Cusco or Ayacucho and count the colonial churches you find. Blanco recounts in this sense one of the chronicles of Bernardo Diaz del Castillo, one of Cortes' soldiers, who said that in "almost every encounter between Cortes' band and native society concludes with the conquistador's injunction for the leaders' "idols" to be smashed, and for an image of the virgin Mary to be erected in their place¹⁶". Soon after the arrival of Pizarro in the northern part of Peru, the building of a church in Colán was ordered, becoming the oldest church in all of South America (concluded around 1535). However, its undeniable that such spiritual conquest had a political aim all along, the expansion of the Spanish empire and, with it, its economic power.

From an objective perspective, the Spanish crown had the perfect alibi to acquire the discovered land for free, killing the native forces that would rise against them. In other words, the Inca empire lost their land without knowing it, and without getting paid for it.

This process was very different from the British experience. As explained by Stuart Banner, the

¹² As the reader may notice, *Politica Indiana* was published 34 years before the *Recopilacion de Indias*. Moreover, the *Recopilacion de Indias* was even published after the death of both of its authors (Antonio de León Pinelo, 1660 and Juan de Solorzano, 1655). This can be explained because, first, the compilation was a collection of all the applicable Laws in the Spanish colonies, thus, such laws existed before the *Recopilacion de Indias* was published. Second, in order to publish the *Recopilacion de Indias*, it was necessary the political approval of the King and the printing of the *Recopilacion de Indias*, this may had created a delay that exceeded both of the authors lives.

¹³ SOLORZANO, Juan. "Política Indiana". Tomo I. Madrid: Fundación Jose Antonio de Castro. 1996. p. 139. Also view, ZAVALA, Silvio. "Las Instituciones Jurídicas en las Conquista de América". Ciudad de México: Editorial Porrúa. 1971. p. 215. p. 30.

¹⁴ For different interpretations see ZAVALA, Silvio. "Las Instituciones Jurídicas en las Conquista de América". Editorial Porrúa: Ciudad de México. 1971. pp. 15-29 and MURO, Antonio. "Lecciones de historia del Derecho Hispano- Indiano". Ciudad de Mexico: Purrúa. 1989. pp. 31-45.

¹⁵ "Porque nuestros vasallos se alienten al descubrimiento y poblacion de las Indias, y puedan vivir con la comodidad, y conveniencia, que deseamos: Es nuestra voluntad, que se puedan repartir y repartan casas, solares, tierras, caballerías, y peonías a todos los que fueren a poblar tierras nuevas en los Pueblos y Lugares [...], les concedemos facultad, para que de allí adelante los puedan vender, y hacer de ellos a su voluntad libremente, como cosa suya propia; y asimismo conforme su calidad, el Gobernador, o quien tuviere nuestra facultad, les enconiente los Indios en el repartimiento que hiciere para que gocen de sus aprovechamientos y demoras, en conformidad de las tasas, y de lo que esta' ordenado". In: "Recopilacion de Leyes de los Reynos de las Indias". Fourth edition. Volume II. Book IV. Title XII. Law 1. Madrid: La Viuda de Don Joaquín Ibarra. 1791. p. 39.

¹⁶ BLANCO, John. "Our Lady of Anarchy". In: *Coloniality, Religion, and the Law in the early Iberian World*. Nashville: Vanderbilt University Press. 2014. p. 243.

British colony in North America¹⁷ and in New Zealand¹⁸ respected the ownership of the Indians who occupied the land. As said by Pagden, the British preferred settlement instead of conquest¹⁹. The British would buy land from the Indians, “conquering” the land by contract instead of by sword. This gave the British a much more pacific occupation of the land, using force only when necessary. In this sense John Locke would say “Indeed it often makes way for a new frame of a Common Wealth, by destroying the former; but without the consent of the people, can never erect a new one”²⁰.

What would have happened if the British found an empire like the Aztecs or the Incas instead of plain land? Would their methods had been the same? As we will explain in section III, probably not. At the beginning of imperial expansion, which was around 100 years before John Locke wrote the *Two Treatises of Government*, all the empires and colonizers wanted to follow the trail drawn by Spain²¹. Only when the other empires noted that there wasn’t another Mexico or Peru did the philosophy of colonization change²².

Nonetheless, we can see the difference between the acquisition of property rights in the British versus the Spanish colonies. The British settled and bought the land from the Indians, whilst the Spanish fought in the name of Christ, acquiring all the land by force. Also, the British colonizers bought the land for themselves, paying an agreed value, while the Spanish conquered the land for the crown, dividing it later between the conquerors as concessions. This is of great importance; the conquerors in the Spanish colonies didn’t have property rights as did the British colonizers, but instead a grace from the crown. As they would get a grant of land by the authorities, the authorities could also

take it away. This is a constant in all the rights that were given during the Spanish colonies: property was not absolute.

We can note, however, a common area between the creation of rights in favor of the Spanish and British empire. In both cases the empires implemented legal systems that were strange for the natives. In the case of the Spanish, they took the land away from the natives, as a generalized expropriation of land decided by the central government. In the case of the British, they forced the natives into a western Lockean view of property rights, based on who had control over goods. Though the Spanish spilled more blood, both measures were impositions.

B. Acquisition of mines

Mining has a special place in this story. The *Recopilaciones de Indias* itself declared that gold and silver were the “main economic nerve” of the Spanish Empire²³. From the beginning of the conquest, the Spanish realized that the land in Peru and Mexico (New Spain during the colonies) was rich in minerals. As Francisco Xavier de Gamboa said, New Spain had “mountains of gold and silver”²⁴ to offer. The Peruvian case was even greater, at the time people would say that “The world revolved around the two economic poles of Potosí and Huancavelica”²⁵. Potosí with its silver, and Huancavelica with its mercury, were considered the center of bullion for the world. At this point in history, all Empires were eager to find bullion, and Spain got what it seemed to be an inexhaustible source of it.²⁶

Equal to land, the *Recopilacion de Indias* mandated that mines were owned by the crown, but could be

¹⁷ BANNER, Stuart. “How the Indians Lost Their Land: Law and Power on the Frontier”. In: ELLICKSON, Robert, Rose, Carol and Bruce Ackerman. “Perspectives on Property Law”. Cambridge: Belknap Press of Harvard University Press. 2005. pp. 10-48.

¹⁸ BANNER, Stuart. “Conflicting Paradigms of Entitlement and Exchange. Two Properties, one land: Law and space in the nineteenth-century New Zealand”. New York: Aspen Law & Business. 2002. pp. 321-333.

¹⁹ PAGDEN, Anthony. “Lords of All the World”. New Haven: Yale University Press. 1995. p. 86.

²⁰ LOCKE, John. “Two Treatises of Government”. Second Treatise. Cambridge. p. 403. Quoted by: PAGDEN, Anthony. “Lords of All the World”. New Haven: Yale University Press. 1995. p. 86.

²¹ PAGDEN, Anthony. “Lords of All the World”. New Haven: Yale University Press. 1995. p. 67. Also see Elliot, John. “Empires of the Atlantic World”. New Haven: Yale University Press. 2006. p. 88.

²² PAGDEN, Anthony. “Lords of All the World”. New Haven: Yale University Press. 1995. p. 68.

²³ “Ordenamos y mandamos a los Vireyes, Presidentes, y Gobernadores, que tengan mucha cuenta, y cuiden con especial atencion del beneficio, y labor de las minas descubiertas, y procuren aplicar toda su diligencia en que se busquen, descubran, y labren otras nuevas, porque la riqueza, y abundancia de plata, y oro es el nervio principal, de que resulta la de aquellos, y estos Reynos [...]”. In: “Recopilacion de Leyes de los Reynos de las Indias”. Fourth edition. Volume II. Book VIII. Title XI. Law 1. Madrid: La Viuda de Don Joaquin Ibarra. 1791. p. 493.

²⁴ DE GAMBOA, Francisco Xavier. “Comentarios a las ordenanzas de minas”. Madrid. 1761. Preface.

²⁵ MURO, Antonio. “Lecciones de historia del Derecho Hispano - Indiano”. Ciudad de Mexico: Purrúa. 1989. p. 300.

²⁶ ELLIOT, John. “Empires of the Atlantic World”. New Haven: Yale University Press. 2006. p. 88.

exploited by its subjects.²⁷ This is also recognized by the Peruvian Ordenanzas de Minas²⁸ and the New Spain Ordenanzas de Minas²⁹.

The Spanish crown would receive from its subjects in exchange *el Quinto* of all the production of the mines, being a tax of 20% over the obtained mineral according to the Recopilacion de Indias³⁰. Because all the mineral that was taken from the ores had to be marked with the *Quinto* before it was traded,³¹ it was easier to get paid for such tax. *El Quinto* was paid without taking into account the actual costs of extracting the mineral, so it was 20% of the gross income of the miners.

The comparison with the British colonies in north America is quite simple in this case, because they didn't find equivalent mineral sources. This would later compel the British to change their perspective toward the economic activities of their colonies.

The abundance of precious metals in the Spanish conquests gave the Spanish crown a special urgency to regulate and protect the bullion, urgency that the British Empire didn't have. From the discovery of Cristobal Colón, to the first landing of Pizarro in Peru, there were always signs of the minerals because of their use by the natives. As Elliot explains

"The early discovery of gold in the Spanish Caribbean introduced an urgency into the establishment of some form of state control which was not felt in British Atlantic world that seemed to offer little more than fish, furs, timber and a few bales of tobacco"³².

This also explains the different property regimes installed in each colony. At the beginning, Spain encountered a big treasure which she ought to protect, while the British were not sure of what they could do with their colonies, hoping to find a new Peru or Mexico.

C. Acquisition of labor

In order to complete the economic cycle, the Spanish empire needed labor to exploit the mines, and they found it: the Peruvian and Mexican vicerealties had as many Indians as minerals in the ground³³.

Once again, religion became the principal excuse to use the sword, pacify the natives, and teach them the word of god. To this extent, the Recopilacion de Indias indicated that the corresponding Spanish authorities in each locality would give a number of natives to the conquerors that were to stay in their land³⁴, keeping a register of

²⁷ "Es nuestra merced y voluntad, que todas las personas, de qualquier estado , condicion, preeminencia , a' dignidad , Espanoles , e Indios , nuestros vasallos, puedan sacar oro, plata, azogue, y otros metales por sus personas, criados , o esclavos en todas las minas, que hallaren, o donde quisieren, y por bien tuvieren, y los coger, y labrar libremente sin ningun genero de impedimento, habiendo dado cuenta al Gobernador , y Oficiales Reales para el efecto contenido en la ley siguiente, por manera, que las minas de oro, plata, y los demas metales sean comunes a todos , y en todas partes, y terminos , con que no resulte perjuicio a los Indios , ni a otro tercero ni esta permission se extienda a los Ministros, Gobernadores , Corregidores , Alcaldes mayores , y sus Tenientes Letrados, Alcaldes , y Escribanos de minas , ni a los que tuvieran especial prohibicion : y cerca de senalar, tomar las minas , y estacarse en ellas, se guarden las leyes , y ordenanzas hechas en cada Provincia, siendo por Nos confirmadas". In: "Recopilacion de Leyes de los Reynos de las Indias". Fourth edition Volume II. Book IV. Title XIX. Law 1. Madrid: La Viuda de Don Joaquín Ibarra. 1791. p. 68.

²⁸ "Primeramente, por quanto los minerales son propios de la Magestad, y derechos realengos por leyes, y costumbres, así los da, y concede a sus vasallos, y súbditos donde quiera que los descubrieren [...]". In: DE NAVARRA, Melchor. "De las Ordenanzas del Perú". Title I. Law I. Lima. 1752. p. 224.

²⁹ See articles 1, 2 and 3 of the "Reales Ordenanzas para la Dirección, Régimen y Gobierno del importante cuerpo de la Minería de Nueva España, y de su Real Tribunal General". Madrid. 1783.

³⁰ "Mandamos que todos los vecinos, y moradores de nuestras Indias, que cogieren, o sacaren en qualquier Provincia, o parte de ellas , oro, plata , plomo , estano, azogue , hierro, u otro qualquier metal, nos hayan de pagar , y paguen la quinta parte de lo que cogieren, o sacaren neto, sin otro ningun descuento [...]". In: "Recopilacion de Leyes de los Reynos de las Indias". Fourth edition. Volume II. Book VIII. Title X. Law 1. Madrid: La Viuda de Don Joaquín Ibarra. 1791. p. 480.

³¹ "Prohibimos y defendemos a todos universalmente, de qualquier estado, o condicion, que puedan vender, tomar , prestar , empenar , ni en otra forma contratar en oro en polvo, ni tejuelos , ni otro ninguno que no este fundido, ensayado, y quintado, pena de perderlo, aplicado por tercias partes, las dos a nuestra Camara y Fisco , y la otra al Denunciador. Y mandamos a los Vireyes , y Audiencias, que ordenen como mejor puedan, y mas convenga, que la misma prohibicion se guarde con los Indios". In: "Recopilacion de Leyes de los Reynos de las Indias". Fourth edition. Volume II. Book IV. Title XXIV. Law 1. Madrid: La Viuda de Don Joaquín Ibarra. 1791. p. 93.

³² ELLIOT, John. "Empires of the Atlantic World". New Haven: Yale University Press. 2006. p. 113.

³³ Even though the Spaniards brought diseases to their colonies which killed many natives, as shown by Vincent Gay, the amount of natives was kept as an important amount throughout time. Please refer to GAY, Vicente. "Leyes del imperio Español". Universidad de Valladolid. 1924. p. 25.

³⁴ "Luego que se haya hecho la pacificacion, y sean los naturales reducidos a nuestra obediencia , como esta ordenado por las leyes, que de esto tratan , el Adelantado , Gobernador , o Pacificador , en quien esta facultad resida, reparta los Indios entre los pobladores , para que cada uno se encargue de los que fueren de su repartimiento, y los defienda , y ampare, proveyendo Ministro , que les ensene la Doctrina Christiana, y administre los Sacramentos , guardando nuestro Patronazgo , y ensene a vivir en policia , haciendo lo demas , que esten obligados los Encomenderos en sus repartimientos, segun se dispone en las leyes de este libro". In: "Recopilacion de Leyes de los Reynos de las Indias". Fourth edition. Volume II. Book VI. Title VIII. Law 1. Madrid: La Viuda de Don Joaquín Ibarra. 1791. p. 249.

it³⁵. This system was called “encomiendas”. The exact translation of “encomiendas” would be “custody”. The Spanish who received Indians were supposed to teach them the word of god and take care of them. In exchange, the Indians were to work for the Spanish.

Even though the written position of the Spanish Empire in the Recopilacion de Indias was to protect the natives of the New World³⁶, reality overcame such intentions. The pressure to obtain bullion, united with the temptation of using the thousands of Indians at hand, naturally concluded in systematic exploitation. As Elliot says, “[...], [“encomienda”] which was supposed to carry with it certain spiritual and moral obligations [...] was liable to be no more than a license to oppress and exploit”³⁷.

As Solorzano recounts in his Political Indiana, the crown even abolished the encomienda in 1542, but was urged to reenact it on 1547 due to their economic need³⁸. The crown, in its pursuit of not enslaving the Indians, tried to limit their work through the Law³⁹, but reality made the same legal body authorize, and endorse, forced labor to help the mines⁴⁰.

While reading these passages one can feel a legal schizophrenia, but it makes absolute sense when we remember the crown’s ultimate economic goal: bullion. After all, as said by Antonio Muro, the Indians were “always the most abundant, most acclimated to the varied geography, and furthermore, the cheapest”⁴¹. The Spanish empire practically didn’t need African slaves because they had abundance of Indians⁴². You had to pay for slaves, you didn’t have to pay for the Indians, you only had to “custody” them. Furthermore, the Indians were accustomed to the height of the mountains, were the mines were principally placed.

Indians could be used to perform any labor, but mining was the toughest. Readapting an ancient Inca system of labor called the “mita”⁴³, the Indians were forced to work. The Ordenanzas of Peru given by the viceroy Francisco de Toledo in 1573 recount the fatalities he found in the mines of the viceroyalty of Peru. Between others, Indians wouldn’t get paid⁴⁴ or they weren’t allowed to drink water while they were in the mines, dying of thirst⁴⁵. Francisco de Gamboa, commenting on the ordenanzas of the viceroyalty of New Spain encounters similar situations⁴⁶. As said by Erlichman while commenting

³⁵ “Los Vireyes y Presidentes tengan libro general de todos los repartimientos de Indios, que hubiere en sus Provincias, declarando quien los posee, si estan en primera, o segunda vida, el numero de Indios, y cantidad de sus tasas, el qual se guarde en el Archivo con los demas papeles del gobierno, y en todas ocasiones nos envien relacion firmada de su propia mano de los que han vacado, y las personas en que los hubieren encomendado , y por que causas”. In: “Recopilacion de Leyes de los Reynos de las Indias”. Fourth edition. Volume I. Book III. Title III. Law 1. Madrid: La Viuda de Don Joaquín Ibarra. 1791. p. 560.

³⁶ “Habiendo de tratar en este libro la materia de Indios, su liberta, aumento, y alivio, como se contiene en los titulos de que se ha formado: Es nuestra voluntad encargar a los Vireyes, Presidentes, y Audiencias el cuidado de mirar por ellos, y dar las ordenes convenientes, para que sean amparados, favorecidos , y sobrellevados [...]”. In: “Recopilacion de Leyes de los Reynos de las Indias”. Fourth edition. Volume II. Book VI. Title I. Law 1. Madrid: La Viuda de Don Joaquín Ibarra. 1791. p. 189.

³⁷ ELLIOT, John. “Empires of the Atlantic World”. New Haven: Yale University Press. 2006. p. 89.

³⁸ SOLORZANO, Juan. “Política Indiana” [1647]. Tomo II. Madrid: Fundación Jose Antonio de Castro. 1996. pp. 623-631.

³⁹ SOLORZANO, Juan. “Política Indiana” [1647]. Tomo I. Madrid: Fundación Jose Antonio de Castro. 1996. pp. 188-196.

⁴⁰ SOLORZANO, Juan. “Política Indiana” [1647]. Tomo I. Madrid: Fundación Jose Antonio de Castro. 1996. pp. 357-409.

⁴¹ MURO, Antonio. “Lecciones de historia del Derecho Hispano - Indiano”. Ciudad de Mexico: Purruá. 1989. p. 292.

⁴² GAY, Vicente. “Leyes del imperio Español”. Universidad de Valladolid. 1924. p. 25.

⁴³ Mita is an Inka’s Word, that could be translated to “from time to time”. Originally it consisted in temporal work that Indians would perform in the mines as to please the Inka. The Spaniards took this institution and used it to exploit the mines and, obviously, the Indians also. For further comments please refer to MURO, Antonio. “Lecciones de historia del Derecho Hispano - Indiano”. Ciudad de Mexico: Purruá. 1989. p. 299.

⁴⁴ “Y porque ceden los fraudes que hasta aquí ha habido en no pagar los jornales a los indios, que se reparten en la plaza, como en detenerlos algunos días, y otros en darles menos de lo que está estatuydo, y otros llevando más indios de los que han meneste para reservillos, haciéndose sobre esto algunas contradicciones ilícitas”. In: DE NAVARRA, Melchor. “De las Ordenanzas del Perú”. Title X. Law I. Lima. 1752. p. 274.

⁴⁵ “Otro si, por quanto una de las cosas más necesarias al sustento humano, es la bebida, y en las ordenanzas del señor virrey D. Francisco de Toledo está mandado, que los dueños de las dichas minas, y sus mineros sean obligados a tener a las bocas de las minas, y socavones botijas de agua suficiente, y las que fueren necesarias para todos los indios que con ellos trabajan, en lo qual ha habido notable descuydo, y no solamente no tienen agua, pero los dichos mineros no consenten a los dichos indios que vayan por ella”. In: DE NAVARRA, Melchor. “De las Ordenanzas del Perú”. Title XI. Law 8. Lima. 1752. p. 282.

⁴⁶ “Es verdad, que la crueldad de muchos al tiempo de la Conquista, y acaso no pocos en el estado actual, por las Minas, y riquezas, no la sufren los oídos; pero ni la Nación los apoya, ni quedan impunes en las Leyes, ni deslucen la regular conducta, que se mira en las indas. Desdichados, pues, aquellos, que oprimiendo con sus violencias al Indio, hacen padecer a toda la Nación, como dice nuestro Sabio Español, que tanto la ha ilustrado con sus escritos. Y feliz, decimos nosotros, la Nación toda, que descubrió en Indias tanto campo para su gloria”. DE GAMBOA, Francisco Xavier. “Comentarios a las ordenanzas de minas [de Nueva España]”. Madrid. 1761. p. 8

mining work in the Potosi Mines, “Most of these tasks were performed by native Americans and most of these workers eventually succumbed to overwork, brutal conditions, and/or diseases”⁴⁷.

As it can be seen, regardless what the *Recopilacion de Indias* said, the Spanish conquerors owned the Indians and their labor. Bakewell explains referring to the *Ordenanzas de Peru* issued by the viceroy Toledo, “These rules must have been dead letter from the day they were issued”⁴⁸. According to Zavala, in order to exploit the New World, the Spaniards took the land and the Indians, establishing “dominion over the inhabitants of America”⁴⁹.

Did the British do the same to the natives in North America or New Zealand? Not as a general practice⁵⁰. The British didn’t have mines to exploit, and also they didn’t find enough natives to make using them worthwhile. One traditional explanation may be that it went against their principals, following a Lockean philosophy, but as explained, these arguments didn’t exist at the beginning of the colony, when they thought they could still find a new Peru or Mexico.

As the Spaniards didn’t enslave the Indians because of god, but because of greed, the British didn’t enslave the Indians because they would not get an efficient result out of it. There were no economic incentives for the settlers in North America to enslave the Indians; the fight was not worth the prize.

D. Creating Property Regimes: Bottom up and top-down

As seen in sections A, B and C, the Spaniards acquired the land, the mines and the Indians themselves on the name of god in their colonies. The British, in exchange, did only acquire land through bargaining. Why do we see this difference? Due to fortune, accidental fortune.

In 1500s all empires wanted gold and silver, and the Peruvian and Mexican mines where enormous sources of it. Because Spain had the “fortune” of

getting these mines through random chance, they implemented many measures to protect them. On the other hand, because the British and French did not find equivalent sources of precious metals in their American colonies, they didn’t impose strong government measures over their colonies at the beginning.

The above mention is not only logical, but is the economic basis of the creation of property rights⁵¹. When you have a scarce resource, and you value it highly, then reasonable people are willing to invest in exclusion methods to protect their good. The peculiarity here is that the potential “owner” were the empires. The application of this rational to the commented scenario translates into the strong government intervention of Spain in its colonies from the start, and the lack of it from the British empire in theirs. Most probably than not, if the British would have found Peru or Mexico, they would had become Spain.

This “accident” marked two radically different method of creation of property rights. As Carol Rose explains, we can have bottom up or top-down property rights regimes⁵². While the former supposes the recognition in the legal system of the control a person has over certain resource (a Lockean view of property rights), the latter has the legal system through the state as the creator of property rights, distributing, but also creating and revoking such rights.

It seems that the establishment of these different property systems turn the rudder of economies in different directions. If the government assigns and deallocates the property rights available (especially if it includes persons as goods), resources are going to be held by the individuals who value them most⁵³. In other words, people that get goods for free do not value them as people who did pay. At the same time, as the good is assigned for free, it could be deallocated for free too, discouraging secondary market transactions. The mixture between this tendency for mediocrity, and the fact that the government can take away such rights at any time, creates weak entitlements, causing resources to

⁴⁷ ERLICHMAN, Howard. “Conquest, Tribute and Trade”. New York: Prometheus Books. 2010. p. 259. For further comments of the mining labor in the mines of Potosi please refer to BIGUELOW, Allison. “Women, Men, and the Legal Languages of Mining in the Colonial Andes”. *Ethnohistory*. 2016. p. 364.

⁴⁸ BAKEWELL, Peter. “Miners of the red Mountain”. Albuquerque: University of New Mexico Press. 1943. p. 152.

⁴⁹ ZAVALA, Silvio. “Las Instituciones Jurídicas en las Conquista de América”. Ciudad de México: Editorial Porrúa. 1971. p. 44.

⁵⁰ Is known that there were some cases of slaved Indians, but this were in any case exceptions of the general rule.

⁵¹ DEMSETZ, Harold. “Toward a Theory of Property Rights”. In: *The American Economic Review* 57. 1967. pp. 347-359.

⁵² ROSE, Carol. What governments can do for Property (and vice versa). In: *The Fundamental Interrelationships Between Government and Property*. Stamford: Jai Press Inc. 1999. pp. 210-212.

⁵³ COASE, Ronald. “The Problem of Social Cost”. In: *The Journal of Law and Economics* 3. 1960. pp. 1-28.

remain unexploited. The accidental luck of the Spaniard becomes tragedy, and the misfortune of the British becomes virtue.

However, the virtue of the Lockean property structure may also have a dark side. After the independence of the United States, the former colonies took different paths than the British to slavery. While the British were limiting the exploitation of slaves, concluding with the abolishing of slavery by the slave trade act in 1807, slavery became stronger in the United States. The mistreatment of the slaves in America and their rocky path to obtain equality between whites and blacks is a well-known and covered story. Just the assassination of Abraham Lincoln and Martin Luther King give a sense of how deep rooted was this discussion. Why did this happen in the United States, with all the liberal ideals of the founding fathers, and did not happen in the former Spanish colonies or in Great Britain herself?

At the same time, is interesting to think about the impact of the stamp act, which indirectly taxed trade for the first time in all of the existence of the British American colonies⁵⁴. Before the stamp act, no income tax was paid, nor any tax equivalent to it. This would finally evolve in the independence of the United States itself.

One possible answer could be the implemented structure of property rights in the foundation of the British American colonies. The Lockean view of property supposes that the legal system recognizes the power and control that a person has over its goods. This structure, as can be easily guess, implies a special resistance of the private players of the system towards any government intervention over their property.

It seems that the British American colonies adopted the Lockean system in its purest model. Because at the beginning of the settlement the British Empire was not sure of what to do with the discovered land, considering that they didn't find any gold or silver as in Peru or Mexico, they

remained for a long time as a mostly hands-off government for the colonies. This gave the private enough space to create property through imposing bargain on the Indians or by controlling free land in its most natural way.

Abolishing slavery meant the destruction of former existing property rights. Even though today we consider that such entitlements over people should have never exist, reality is that there were enacted and later they were destroyed. At some point, it was even possible to constitute a pledge over a particular slave⁵⁵.

The stamp act, while taxing the use of paper, was indirectly taxing transactions that were made (contract) or enforce (judicial proceedings) over that paper. At the same time, while indirectly taxing transactions, the stamp act was also taxing property that was going to be disposed through those transactions.

As strong the concept of bottom-up property rights a system may have had, as strong was the response against government intervention and, simultaneously, broader the concept of "disposing" of an owned good (sadly including slaves).

III. SPANISH ACCIDENTAL FORTUNE

A. Dependency in the Spanish Empire

What happened with Spain after the acquisition of their colonies in America? At the beginning it experienced a sustained bonanza due to the precious metals they obtained in Peru and Mexico, but a great depression followed afterwards.

There is not a settled date among historians for the start of such recession⁵⁶, however, its agreed that it began after the reign of Fernando and Isabel, the Catholic Kings (1474-1516)⁵⁷. By the mid seventeenth century the Spanish Empire was almost in bankruptcy. As said by Elliot, this meant "the end of the Spanish hegemony in Europe and the relegation of the second-rate powers"⁵⁸.

⁵⁴ For further analysis over the stamp act and its effects over the colonies institutions, please refer to DURIVAGE, Justin and Claire Priest. "The Stamp Act and The Political Origins Of American Legal And Economic Institutions". In: *Southern California Law Review* 88. pp. 875-912.

⁵⁵ Act for the More Easy Recovery of Debts in his Majesty's Plantations in America (Parliament, 1732).

⁵⁶ Please refer to: KANEMAN, Henry. "The Decline of Spain: a historical myth?". In: *Past and Present* 81. 1978. p. 28; HAMILTON, Earl. "The Decline of Spain". In: *The Economic History Review* 8. 1938. p. 169; ELLIOT, John. "The Decline of Spain". In: *Past and Present*. No 20. 1961. p. 73; and, ISRAEL, Jonathan. "The Decline of Spain: A historical Myth?". In: *Past and Present* 91. 1981. pp. 178-180.

⁵⁷ Please refer to: KANEMAN, Henry. "The Decline of Spain: a historical myth?". In: *Past and Present* 81. 1978. p. 28; HAMILTON, Earl. "The Decline of Spain". In: *The Economic History Review* 8. 1938. p. 169; ELLIOT, John. "The Decline of Spain". In: *Past and Present*. No 20. 1961. p. 73; and, ISRAEL, Jonathan. "The Decline of Spain: A historical Myth?". In: *Past and Present* 91. 1981. pp. 178-180.

⁵⁸ ELLIOT, John. "The Decline of Spain". In: *Past and Present*. 20. 1961. p. 56.

The great event that happened during the kingdom of the Catholic kings was the discovery and acquisition of the Spanish colonies in America, with all their gold and silver. Why then did the Spanish empire fall into economic distress while the British, which didn't find any precious metal, rose stronger?

Classically, it was said that Castilian society, which controlled the Spanish Empire, "was a militant society, imbued with the crusading ideal, accustomed by the Reconquista and the conquest of America to the quest for glory and booty, and dominated by a church and an aristocracy which perpetuated those very ideals least propitious for the development of capitalism"⁵⁹. It has also been said that this distress was due to "the progressive decline in the character of the rulers from Philip II until the advent of the Bourbons"⁶⁰. Hamilton, in this regards, claims that this variation in the attitude of the rulers, which was present also in the subjects of the empire, was caused by the wealth found in America, triggering an illusion of abundance that created "aggressive foreign policy, contempt for manual arts, vagrancy, vagabondage, luxury, and extravagance, which led to the economic decadence of the seventeenth century"⁶¹. When the output of gold and silver shrank, the bubble popped.

The Spanish Empire held loans with foreign banks to fund the government. When in 1640 the mining revenues fell, the crown was tied.⁶² In desperation, the crown had to raise taxes, killing the businesses of merchants that existed in Castile⁶³. Spain generated an economic dependence over other powers in Europe and their colonies which ended up in recession⁶⁴.

The Spanish Empire reached a point where it would have to import most of the goods that it consumed⁶⁵. In order to pay for such goods they would obtain loans from foreign markets⁶⁶ (adding to the loans needed to fund wars), and in order to pay the loans they would need the bullion

from their colonies in America⁶⁷. When there was a shortage in silver, everything fell as in a chain of dominos. In words of Kaneman, "The peninsula became colonized through its Indies"⁶⁸.

Even with the Bourbon reforms, the Spaniards were not able to destroy dependency from bullion. As explained by Pagden, "throughout the history of the Spanish empire in America, the extraction of precious metals continued to be the crown's principal economic concern. Even the Bourbon reforms of the 1770s and 1780s, which were based in part on Colbertian mercantilism and limited free-trade principles, were disproportionately concerned with reinvigorating American silver production"⁶⁹.

B. Cause of the Dependency

Dependency brought ruin to the Spaniards, but why did they fall in it? As said at the beginning of this section, the external effect that decompensated the Spanish Empire was the founding of the precious metals of their colonies in America. Why did the Spanish Empire develop a dependence with the manufacture of other markets instead of using the bullion to create their own? The simple lack of ideas from the Spanish kings in contrast to the British and French doesn't seem to be a feasible answer to that question. At the beginning of the conquest for the new world all the empires wanted to imitate the Spanish⁷⁰. In words of the humanist chronicler Pedro Martir de Angleria, "it is to the south, not the icy north, that everyone in search of fortune should turn"⁷¹.

The only reason the other empires didn't follow the same path of Spain was because they didn't find equivalent mines to exploit. The British were forced to create a different system to make their colonies worth it. It seems that the different paths came more from an accident than from political and economic conviction. As Pagden says, "It was only when it became obvious that there was no new Mexico or Peru to be conquered, that both

⁵⁹ ELLIOT, John. "The Decline of Spain". In: *Past and Present* 20. 1961. p. 66.

⁶⁰ HAMILTON, Earl. "The Decline of Spain". In: *The Economic History Review* 8. 1938. p. 174.

⁶¹ HAMILTON, Earl. "The Decline of Spain". In: *The Economic History Review* 8. 1938. p. 177.

⁶² ELLIOT, John. "The Decline of Spain". In: *Past and Present* 20. 1961. p. 70.

⁶³ ELLIOT, John. "The Decline of Spain". In: *Past and Present* 20. 1961. p. 71.

⁶⁴ ELLIOT, John. "The Decline of Spain". In: *Past and Present*. 20. 1961. p. 62.

⁶⁵ KANEMAN, Henry. "The Decline of Spain: a historical myth?". In: *Past and Present* 81. 1978. pp. 44-48.

⁶⁶ ELLIOT, John. "The Decline of Spain". In: *Past and Present* 20. 1961. p. 70.

⁶⁷ KANEMAN, Henry. "The Decline of Spain: a historical myth?". In: *Past and Present* 81. 1978. p. 42. (pass through of gold)

⁶⁸ KANEMAN, Henry. "The Decline of Spain: a historical myth?". In: *Past and Present* 81. 1978. p. 43.

⁶⁹ PAGDEN, Anthony. "Lords of All the World". New Haven: Yale University Press. 1995. p. 67.

⁷⁰ PAGDEN, Anthony. "Lords of All the World". New Haven: Yale University Press. 1995. p. 67.

⁷¹ ELLIOT, John. "Empires of the Atlantic World". New Haven: Yale University Press. 2006. p. 88.

Cartier's "Saguenay" and Raleigh's 'Large, Rich and Beautiful Empire of Guinea' were fictions, that the British and the French turned, half-reluctantly, to regard their colonies as sources not of mineral or human, but of agricultural and commercial wealth⁷².

Out of this deception, the British implemented agricultural and commercial sources of wealth, while the Spaniards keep extracting mineral from their mines. By the mid seventeenth century "silver had spilled across most of Europe, increasing the continent's money supply nearly fivefold. Spain, indeed, was the **Fountain of money**, contemporaries noted, this treasure passed from them as if it were conveyed by a channel⁷³. The Spanish used the bullion of their indies for consumption, but not for production. Why? Because production and trade was to give them what they already had: gold and silver.

When Spain was entering the dependency and recession explained in the section A, the world turned to see its disgrace, and claimed as the source of it the discovery of the "mountains of gold and silver". As recollected by Barth, "In 1711 Whig MP Arthur Maynwaring argued that the English discovery of gold and silver mines "would only destroy our industry, and make us such a lazy Generation as the Spaniards." Far better, he argued, was the mercantilist alternative of "exchanging our Goods for Bullion." Money, then, was still ultimately in view. "Trade is a richer and more durable Mine than any in Mexico or Peru", one author declared in 1696; English commerce, wrote another in 1725, was proving "better than the Mines of Peru and Mexico [...] an inexhaustible Fund of Wealth"⁷⁴.

In a way, Spain did what many countries do today while they face financial distress, they issued coin. Gold and silver were only symbols to made trade possible; they would represent a value, and this

value was based on their scarcity⁷⁵. As has happened in many economies, when the government prints coin in excess to overcome financial distress, inflation takes place. The precious metals were not wealth itself, but only an abstraction of wealth.

This was noticed by the British and the French. Adam Smith would say "The same passion, which has suggested to many people the absurd idea of the philosopher's stone, has suggested to others the equally absurd one of the immense rich mines of gold and silver. They did not consider that the value of those metals has, in all ages and nations, arisen chiefly from scarcity"⁷⁶. Montesquieu, equivalently, considered "Gold and silver...a wealth of fiction or of sign. These signs are very durable and almost indestructible by their nature. The more they increase, the more they lose of their worth, because they represent fewer things. When they conquered Mexico and Peru, the Spanish abandoned natural wealth in order to have a wealth of sign which gradually became debased"⁷⁷.

But these critiques not only came from outside Spain, but also from inside the Empire. The *Arbitristas* would notice and questioned the economic policies that were to conclude in an entangled dependency from other markets⁷⁸. The declaration of Sancho de Moncada in 1619, saying that "the poverty of Spain has resulted from the discovery of the Indies"⁷⁹ is quite graphic: the *Arbitristas* considered necessary to divert the economy in commercial activities other than mining.

Why then couldn't the Spaniards turn the rudder? Because they thought they didn't need it at the beginning, and when they realize they did, dependency was in place; it was too late. More probably than not neither the Catholic Kings nor Carlos I nor the French nor the British thought that obtaining all these precious metals for almost nothing would create this outcome after the discovery of America, but it did.

⁷² PAGDEN, Anthony. "Lords of All the World". New Haven: Yale University Press. 1995. p. 68.

⁷³ BARTH, Jonathan. "Reconstructing Mercantilism: Consensus and Conflict in British Imperial Economy in the Seventeenth and Eighteenth Centuries". In: The William and Mary Quarterly 73. 2016. p. 263

⁷⁴ BARTH, Jonathan. "Reconstructing Mercantilism: Consensus and Conflict in British Imperial Economy in the Seventeenth and Eighteenth Centuries". In: The William and Mary Quarterly 73. 2016. p. 267.

⁷⁵ PAGDEN, Anthony. "Lords of All the World". New Haven: Yale University Press. 1995. p. 69.

⁷⁶ SMITH, Adam. "An inquiry and courses of the wealth of nations". Volume II of the Glasgow Edition of the Works and Correspondence of Adam Smith. Oxford. 1976. p. 563. Quoted by: PAGDEN, Anthony. "Lords of All the World". New Haven: Yale University Press. 1995. p. 69.

⁷⁷ MONTESQUIEU, Charles de Secondant. "De L'Esprit des Louis, XXI, 22". In: MONTESQUIEU, Charles de Secondant. "Oeuvres completes". Volume II. pp. 645-646. Quoted by: PAGDEN, Anthony. "Lords of All the World". New Haven: Yale University Press. 1995. p. 69.

⁷⁸ See HAMILTON, Earl. "The Decline of Spain". In: The Economic History Review 8. 1938. p. 179, and, ELLIOT, John. "The Decline of Spain". In: Past and Present 20. 1961. p. 65.

⁷⁹ KANEMAN, Henry. "The Decline of Spain: a historical myth?". In: Past and Present 81. 1978. p. 30.

C. The Outcome

The discovery of the indies supposed the greater and the worst luck for Spain. Installing a top-down structure of property over land, mines and Indians, and finding abundant precious metals and Indian labor, they acted as if they found an endless source of wealth. However, because gold and silver were only a symbol of wealth, and were limited to the production of the mines, the Spaniards did not develop a strong agriculture and manufacture economy, creating instead dependency with other markets and becoming a source of bullion.

When its sustained for hundreds of years, this kind of top-down system, or colonial economy in terms of Kaneman, creates a bias difficult to overcome. It underlies what the people perceive as normal, even though the "normal" leads to an ultimately bad destiny. As recounted by Barbara and Stanley, "In 1788 Floridablanca joyfully reported that Spain's exports to America had tripled between 1778 and 1788 and that customs revenue had doubled. "Sir", protested an official who knew the truth behind the statistics, "it's all a fable; we stand like fools before the rest of the world"⁸⁰.

This accidental set of rights, characterize by the particular context explained in section II, draws a hidden line that Spain had followed without noticing for many years. Kaneman traces the line until Franco's regime as follows, "The perennial problem of an unfavorable balance of payments caused by underproductivity, for example, was in the mind of Rodrigo de Lujan in 1516, Cortes deputy in 1548, of Luis Ortiz in 1558, of Floridablanca 1788, of Franco's ministers in the 1960s. Apparent growth was a cosmetic over the country's basic industrial weakness"⁸¹.

To these accounts we can add the terrible Spanish economic crisis that occurred in 2008 and, for many, exists until the date hereof. The over investment in public infrastructures by the government created

apparent growth that was only "cosmetic over the country's basic industrial weakness". Even after centuries, and having now a modern legal system, the effects of the accidental discovering of Peru and Mexico's may still remain in Spanish economy.

IV. PERU'S ACCIDENTAL FORTUNE

A. The Peruvian and North American Colonies

If the discovery of the indies had such an intense effect over the Spanish crown, it is easy to imagine that the impact in the colonized civilizations was even greater. Before the conquest of Peru and Mexico, the Incas and Aztecs were strong civilizations, which presented sophisticated constructions, political regimes and populous cities. On the other hand, areas like North America (including what would now be the United States and Canada) presented scattered and dispersed populations with very basic organizational regimes. However, 500 years after, the latter are in a considerable better standing than the former, to say the least.

Many authors have studied this phenomenon⁸², which Acemoglu, Johnson and Robinson called the reversal of fortune. Acemoglu, Johnson and Robinson even created a coefficient of development between civilizations that used to be well settled before the European intervention and the ones that weren't, finding a correlation between them⁸³. The countries that were "richer" in the 1500s are equivalently poorer nowadays compared to the civilizations that were "poorer".

During the time of the Peruvian viceroyalties the Spaniards exploited the land, mines and Indians that were available. Because the land was already occupied by the Indians, there was no need for the Spaniards to send labor from Europe to Peru. The vast majority of Spaniards that came to America worked as supervisors, or land or mine owners. This created a small but selected and powerful elite⁸⁴. The Indians were simply not seen as equals,

⁸⁰ STEIN, Stanley and Barbara. "Concepts and Realities of Spanish Economic Growth, 1759-1789". *Historia Ibérica*. 1973. pp. 107, 115. Quoted by: KANEMAN, Henry. "A Rejoinder". In: *Past and Present* 91. 1981. p. 185.

⁸¹ KANEMAN, Henry. "A Rejoinder". In: *Past and Present* 91. 1981. p. 185.

⁸² ACEMOGLU, Daron; JOHNSON, Simon, and James Robinson. "Reversal of fortune: Geography and institutions in the making of the modern world income distribution". In: *The Quarterly Journal of Economics* 117. 2002. p. 1231, or, SOKOLOFF, Kenneth and Stanley Engerman. "Institutions, Factors Endowments, and Paths of Development in the New World". In: *The Journal of Economic Perspectives* 14. 2000. p. 217.

⁸³ "The coefficient of -0.38 in column (1) implies that a ten percent higher population density in 1500 is associated with a four percent lower income per capita today. For example, the area now corresponding to Bolivia was seven times more densely settled than the area corresponding to Argentina; so on the basis of this regression, we expect Argentina to be three times as rich as Bolivia, which is more or less the current gap in income between these countries." In: ACEMOGLU, Daron; JOHNSON, Simon, and James Robinson. "Reversal of fortune: Geography and institutions in the making of the modern world income distribution". In: *The Quarterly Journal of Economics* 117. 2002. p. 1248.

⁸⁴ SOKOLOFF, Kenneth and Stanley Engerman. "Institutions, Factors Endowments, and Paths of Development in the New World". In: *The Journal of Economic Perspectives* 14. 2000. pp. 221-222.

even taking into account what the Recopilacion de Indias said about such treatments.

The elites in the Peruvian Viceroyalty presented an additional peculiarity, economic and governmental power was held together⁸⁵. Because of how the conquest was made, the conquerors, who represented the crown, would acquire extensive resources in the colonies. They, representing the government of Spain, decided who owned what, and, as it can be imagine, they were the principal owners⁸⁶.

Meanwhile, the British Empire at the beginning did not take much attention to their colonies, letting the colonizers to settle in this new land. Because they didn't find any mines, they didn't incentivize the governmental control that the Spaniards had over Mexico and Peru. Also, because they didn't find a populous civilization, they didn't see a valuable source of labor in the Indians.

When the British turned their goals from finding mines to creating wealth through manufacture and agriculture, they started to send many colonizers to settle. In contrast to what we find in the Spanish colonies, in north America white people were not only the ruling class, but also the most common race in the land. The British recreated a new Great Britain in North America, instead of creating a submissive regime as the Spaniards did in their colonies. Or, from another perspective, the Indians that were to be submitted in North America where by far a minority.

The usage of words always says much about a particular reality. Even though in British and North American academia the word "colonizers" is used indistinctly for the Spanish and the British occupation in the New World, in Spanish and Latin Ameri-

can academia you would find a marked difference. The British in America would be called "colonizers", while the Spaniards in America would be call "conquerors". The colonizers were to settle, occupy the land and make it produce. The conquerors were to fight and acquire by force what the Indians were not willing to surrender.

B. An explanation of Fortune

As said in section D, these differences derived from the imposition of a top-down property system in the Peruvian viceroyalty and a bottom-up property system in the North American colonies. In other words, the European intervention provided the necessary ingredients in Peru for the foundation of an extractive economy (extraction and selling of raw materials), while in North America it gave the basis for the foundation of a productive economy (production and selling of renewable goods).

The institutions that were put in place in Spanish American colonies and British American colonies were radically different⁸⁷. In Spanish America, all entitlements depended on the government; the crown was to decide who owned what, and who ought to lose what. In contrast, the British American colonies recognized what each of the settlers acquired, either by settling on open land or by buying it from the Indians. The government was not to seize land, but to respect and protect the one already gained by the people.

Arguments like the geographical hypothesis, which based the economic development of countries such as Peru on climate conditions, or the reviewed geographical hypothesis, which based the lack of development on the scarcity of resources needed for new technologies⁸⁸, seem to be more creative

⁸⁵ SOKOLOFF, Kenneth and Stanley Engerman. "Institutions, Factors Endowments, and Paths of Development in the New World". In: *The Journal of Economic Perspectives* 14. 2000. p. 230.

⁸⁶ For example, Solorzano supra note 49, at 623-631 (providing an example of the rebellion of the "encomenderos", led by Gonzalo Pizarro, Francisco Pizarro's brother, in 1544. Pushed by Bartolome de las Casas, the Kings of Spain issued "las Leyes Nuevas", which limited the scope of the "encomiendas" to protect de Indians. The Viceroy of Peru at the time, Blasco Núñez Vela, enforced the new laws, which provoked the complaints of the elites entitled with Encomiendas. Gonzalo Pizarro managed to succeed in the rebellion, decapitating Blasco Núñez Vela in Quito and been proclaimed Governor of Peru in 1544. However, this didn't last for long. The Spanish crown sent a priest, Pedro la Gasca, as president of the "Real Audiencia de Lima" with the title of "Pacificador" of the indies. La Gasca suppressed Pizarro's forces and decapitated him. For many years the skull of Gonzalo Pizarro, accompanied by the skulls of Francisco de Carbajal and Francisco Hernandez Giron (both also rebels of the Spanish crown), was hanged in a cage in the central plaza of Lima as a remainder of the power of the Spanish crown. However, as mentioned by de Solorzano, "las Leyes Nuevas" were abolished in 1547 due to the economic need of the Crown). Also refer to Juan Perez de Tudela y Bueso (ed.), *Documentos relativos a don Pedro de la Gasca y a Gonzalo Pizarro: contribución al XXXVI Congreso Internacional de Americanistas* (Real Academia de la Historia 1964).

⁸⁷ SEE NORTH, Douglass and Barry Weingast. "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England". In: *The Journal of Economic History* 49. 1989. pp. 803-832, and, ACEMOGLU, Daron; JOHNSON, Simon and James Robinson. "Reversal of fortune: Geography and institutions in the making of the modern world income distribution". In: *The Quarterly Journal of Economics* 117. 2002. p. 1235.

⁸⁸ ACEMOGLU, Daron; JOHNSON, Simon and James Robinson. "Reversal of fortune: Geography and institutions in the making of the modern world income distribution". In: *The Quarterly Journal of Economics* 117. 2002. p. 1259. Climate for new activities, resources for new activities, climate and its influence in work effort

than persuasive. Between the many different arguments that could be made against these theories, the most factual one is that the development of Peru is not the same as the development of the Peruvian economic elite. It has been a recurrent motif of the Spanish colonies that wealth has been constantly held in the hands of few, but there was wealth, lots of it.

The problem all along was that such wealth was created under the legal and economic structure already commented: an extractive economy. The set institutions outlined the destiny of these civilizations, and such institutions were given by accident, by the context of each of these civilizations when discovered by the European powers.

The Spaniards ended up installing an extractive economy in their colonies because it was cheap: they had the resources and these were free. They had land, mines and labor. They didn't create new productive economies, or implemented new technology because it wasn't worth it. Implementing new sources of wealth, or installing new technologies, implies to invest in the initial cost. With mining, the Spaniards almost didn't have an initial cost.

It is interesting to see how different reasons obtained the same result in other civilizations. For example, the lack of colonizers in Africa, due to the various existing illnesses, created economies that were similar to the ones in Spanish America⁸⁹. In Spanish America there was a reduced number of conquerors because there was enough native labor already to accomplish their goals. However, in both cases extractive economies were developed, having a reduced and selected elite of European colonizers.

In countries like Russia and Austria-Hungary, on the other hand, the political elites resisted industrializing their economies because it implied giving opportunities to the people outside of the group of control⁹⁰. In the Spanish colonies, however, they didn't care for industrialization because they didn't need it: they had bullion instead. As a result, these

economies stayed relegated in comparison with the industrialized countries.

The Peruvian economy, together with the Spanish Empire economy, fell into financial distress, as explained in section II. This extractive economic tradition wasn't overcome. Even though the Bourbon reforms⁹¹ led to an apparent period of bonanza in America⁹², the focus on an extractive economic tradition was never left⁹³, and neither were its effects.

Even though the separation between civilizations under the reversal of fortune effect was going to broaden during the late eighteenth century, this was not more than the natural outcome caused by the development of technology. Before industrialization, former poor economies were already performing productive activities, while the former richer economies were principally dedicated to extractive activities.

C. The Outcome

The discovery of Peru by the Spaniards was no doubt the worst accident for the Inca civilization: their land, mines, and people was taken away. Across the years of the viceroyalty of Peru, an extractive economy was established while building what would later become a country. Such economic model, based on a top-down property regime, has been under the consciousness of Peruvian society throughout its history.

In 1792, less than 30 years before the independence of Peru, many citizens of Arequipa asked the viceroy of Peru for permission to create a mining society. Peruvian elites had internalized the Spanish practice, principally because they were descendants of the Spaniard (all the signers of such petition had a Spanish surname). Within the petition, they analyzed the possibility of constituting a company in the manufactured or agricultural sector, but they preferred mining because it would "enrich the country", relegating the other activities to the future⁹⁴.

⁸⁹ ACEMOGLU, Daron; JOHNSON, Simon and James Robinson. "The Colonial Origins of Comparative Development: An Empirical Investigation". In: *The American Economic Review* 91. 2001. p. 1370.

⁹⁰ ACEMOGLU, Daron and James Robinson. "Economic Backwardness in Political Perspective". In: *The American Political Science Review* 100. 2006. p. 125. [same argument that reversal fortune but for equals, different than the colonies].

⁹¹ For further explanation on the Bourbon reforms please refer to: MACLACHLAN, Colin. "Spain's Empire In the New World". Los Angeles: University of California Press. 1988. p. 67-88, and, KUETHE, Allan and Kenneth Andrien. "The Spanish Atlantic World in the Eighteenth Century". Cambridge: Cambridge University Press. 2014. pp. 231-304.

⁹² MACLACHLAN, Colin. "Spain's Empire In the New World". Los Angeles: University of California Press. 1988. p. 93.

⁹³ Pagden, Anthony. "Lords of All the World". New Haven: Yale University Press. 1995. p. 67.

⁹⁴ "No hay duda, que se presentan otros varios objetos útiles, y compatibles de una Sociedad económica; pero ocurren obstáculos invencibles por ahora, que no permiten estas importantes atenciones. Procúrese primero la erección de una Sociedad, o Compañía, que pueda enriquecer el país, y entonces podrán sus hijos, y vecinos, pensar con oportunidad en otros beneficios públicos [...]". In: De la Fuente y Loayza and other citizens from Arequipa. "Proyecto y ordenanzas de la sociedad mineralógica de Arequipa". Lima. 1792. p. 45.

As said by Sokoloff and Egerman, “Elite families generally acted as local representatives of the Spanish government in the countryside during the colonial period and maintained their status long after independence”⁹⁵. Independence didn’t return the country to the Inca empire, nor did it rid the Peruvian economy from extractive practices. Instead, the process of independence was led by descendants of the conquerors; the elite was kept protected.

According to Pedro Benavides’ 1827 *Manual del Abogado Americano* (Manual of the American Lawyer), after independence, the mines were owned by the government⁹⁶ instead of the crown. Just as during the Peruvian viceroyalty, people could exploit the mines paying a tax to the government in exchange (during the viceroyalty, this tax was paid to the Spanish Empire). For this reason, the Civil Code of 1836 didn’t regulate mines as a good, because it had an independent treatment establishing the rights of the government over it⁹⁷.

As the government had ownership and control of what supposedly was the greatest Peruvian resource, the mines, the economic elite kept becoming tangled with the political rulers. It is the case that from 1821 to 2001, Peru never had an indigenous president of Andean descent, with most of them being Spanish-looking and from the coast instead. When Alejandro Toledo was proclaimed president of Peru in 2001, he held a special ceremony in Macchu Picchu, Cusco, honoring the past of the Inca culture⁹⁸. He declared that, given this radical outcome after almost 200 years, “Hoy se reinicia el reencuentro de todas las sangres” (“Today the reunion of all linebloods is restarted”).

The elite was kept as a small group for a long time. As Vicente Gay recounts⁹⁹, around 1924 the Peruvian population was divided as follows: 13% White, 1.9% Black, 57.6% Indian, 24.8% Creole, and 1.9% Asian. Seventy-seven years passed between Vicente Garay’s demographic study and Alejandro Toledo’s presidential election, but the continuing claim is to push industrialization forward, as noted by Pedro Pablo Kuczynski¹⁰⁰, the president elected for

the period 2016 to 2021. Underlying this reality, we can still find a hidden bias in Peruvian society: mining is still, by far, the most important source of income for the country.

V. CONCLUSION

The encounter of Europe and America deeply changed the future of both. The development of the Spanish colonies in Peru and Mexico was radically different from that of the British colonies in North America. Spain found land, mines and labor almost for free, while the British found vast amounts of available land to settle.

The early envy of all the empires towards the Spanish crown was soon turned into scorn due to the imposition of the extractive economy which caused them bankruptcy. Spain created top-down property rights in their colonies, while the British recognized bottom-up entitlements. This accidental fortune was to cause different paths for the future of Great Britain, Spain, the United States, and Peru.

As Raimondi once said, “Peru is a beggar sitting in a bench of gold”. It seems that the beggar became a beggar because of its bench, which everybody wanted but him. After all these years, it is about time for the beggar to stand and walk to its future. 🏠

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⁹⁵ SOKOLOFF, Kenneth and Stanley Engerman. “Institutions, Factors Endowments, and Paths of Development in the New World”. In: *The Journal of Economic Perspectives*, 14. 2000. p. 222.

⁹⁶ “Aunque las minas de oro, plata, demás metales y sal, pertenecen al estado, no obstante el que las descubre se hace dueño de ellas con solo la carga de pagar al Estado cierta pensión”. In: BENAVIDES, Pedro. *Manual del Abogado Americano*. Paris. 1827. p. 75.

⁹⁷ See chapters I and II of the Civil Code of Santa Cruz.

⁹⁸ See <http://elcomercio.pe/politica/gobierno/antes-28-recuerdalos-ultimos-cambios-mando-presidencial-noticia-944266> and <http://www.emol.com/noticias/internacional/2001/07/29/61694/toledo-realizo-historico-juramento-en-machu-picchu.html>

⁹⁹ GAY, Vicente. “Leyes del imperio Español”. Universidad de Valladolid. 1924. p. 25.

¹⁰⁰ See: <http://peru21.pe/economia/ppk-apuesta-impulso-industrializacion-minera-2251954>

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