

1858

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The legal history of money

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A central bank's stock in trade is money. This is no less true in New Zealand than in any other country. It is perhaps not surprising, therefore, that the Reserve Bank takes more than a passing interest in the historical development of notes and coins in New Zealand.

This article summarises the legal history of money in New Zealand, beginning in the early days of colonisation and tracing the key developments through to the modern era. Although the focus of the article is on the development of the legal framework governing notes and coin, rather than other aspects of money, it also discusses some of the economic and social issues that shaped these legal developments.

The history of money law in New Zealand is an example of how an emerging country developed an area of law necessary for the state to function, and how those laws were influenced by social and economic factors. In this article, we look at five key periods in the history of money in New Zealand:

- The period of legal uncertainty (1840 to 1844)
- Experimentation (1844 to 1861)
- Privately issued money (1861 to 1893)
- Periods of financial stress (1893 to 1933)
- Nationalisation of the currency (1933 to the present)

1 Introduction

The legal history of money in New Zealand from 1840 to the present time demonstrates the evolution over time of the laws connected with a commodity that every successful sovereign state must have – an acceptable means of exchange and store of value. The evolution of laws in New Zealand relating to money was affected by many factors. These included the effects of laws imported from the colonial power, the practical necessity of developing a local currency, the impact of economic events in New Zealand and worldwide, and experimentation. As well as being an interesting story in itself, the history of money law in New Zealand is an example of how a new country developed an area of law necessary for the state to function, and how those laws were influenced by social and economic factors, and changing views on currency theory.

This article provides a brief summary of the key stages in the development of the legal framework relating to money in

New Zealand. Section 2 discusses the legal uncertainty surrounding the development of money in New Zealand from the time the Treaty of Waitangi was signed, in 1840, to 1844. Section 3 traverses the period from 1844 to 1861, when the authorities launched a number of initiatives to foster the development of a viable local means of payment and store of value. Section 4 describes the period between 1861 and 1893, when privately issued money, backed by legal authority, came into use. Section 5 covers the period from 1893 to 1933, when a series of adverse economic and political circumstances forced the government to intervene and use its legal powers to underwrite fully the private money issuers. Section 6 discusses the period from 1933, when the issuance of currency in New Zealand became a state monopoly and its transition to a pure fiat currency (with no convertibility to precious metals or other currency) was achieved. Section 7 draws some conclusions.

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2 Legal uncertainty

Key events:

- 1840 British and foreign gold and silver coins in circulation under an uncertain legal basis.
- 1840 Union Bank of Australia begins issuing banknotes in New Zealand (under English law).
- 1844 Ordinance for facilitating proceedings by and against a certain Joint Stock Bank Company, called the Union Bank of Australia and for other purposes therein mentioned. Required that notes issued in New Zealand by the Union Bank be redeemable in specie (specie = gold and silver coin and bullion) and denominated as at least 1 Pound. (Union Bank evolved into the ANZ Bank in 1955.)

At the time of the signing of the Treaty of Waitangi there was no legal, or even commonly accepted, currency in New Zealand. The value of coins in circulation depended largely on their gold or silver content. Coins in circulation, that had mainly been brought to New Zealand by whalers and traders, included English, Spanish, American, Dutch, Portuguese and French coins. Following the signing of the Treaty there was still no provision for a separate or distinctive coinage, although British coins were assumed to be legal currency.¹ The applicability of English law (including law about coinage and currency) seemed to remain legally uncertain for a considerable time after the signing of the Treaty.

In the years immediately following the signing of the Treaty, the colonial government was hampered by practical and financial difficulties. The mechanics of state were rudimentary, the government's effective powers very limited, and there was no reliable source of income for the government. One of the problems was the lack of sufficient currency.

The experience of the Government during the first few years after the proclamation of British Sovereignty bore ample testimony to the difficulties arising from the lack of banking facilities and a sufficient currency.²

¹ R P Hargreaves *From beads to banknotes* (McIndoe, 1972) p27.

² H D Bedford, *History and practice of banking in NZ* (unpub Univ of NZ thesis, 1915) p58.

A serious shortage of coins developed in New Zealand in the early 1840s. Consequently, foreign coins continued to circulate in New Zealand until the late 1840s; a situation that the colonial government was forced to accept.³ Foreign coins were officially listed and recognised in government records. There were more Spanish coins in circulation than there were coins from Britain or New South Wales.⁴ Official despatches reveal that, while successive governors officially recognised foreign gold and silver coins, no action was taken to obtain the consent of the imperial authorities to these coins being proclaimed as legal tender in New Zealand. (Legal tender is a legally defined means of settling a debt. A creditor is not obliged to accept legal tender, but cannot further pursue the debt if the offer of legal tender is refused.)

The first bank established in New Zealand, a branch of the Union Bank of Australia (an English company formed in 1837), began issuing notes under English law from a shed at Petone, near Wellington, in March 1840.⁵

The colonial government's first legal move in relation to money was an Ordinance⁶ in 1844 that introduced some regulation applicable to the Union Bank, requiring notes to be redeemable in specie and that the minimum denomination of notes be one pound.

3 Experimentation

Key events:

- 1844 *Ordinance to authorise the governor of New Zealand to issue debentures and to make the same legal tender.* Issue of New Zealand government debentures in small denominations – declaration that these are legal tender – disallowance of ordinance by imperial authorities in 1845.
- 1847 *Ordinance to authorise establishment of a Colonial Bank of Issue by the government of New Zealand, to make and issue a paper currency, and to prohibit*

³ A Sutherland *Numismatic History of New Zealand* (NZ Numismatic Society, 1941) p56.

⁴ Sutherland, above, p57.

⁵ S J Butlin *Australia and New Zealand Bank* (Longmans, 1961) p154.

⁶ Union Bank of Australia Ordinance 1844 7Vict Private 1.

the making and issuing of paper money by private individuals. This established the Colonial Bank of Issue (CBI), whose notes were legal tender and redeemable – CBI was granted a monopoly over note issue from 1852, when the issuing rights of Union Bank were withdrawn under the Ordinance.

1856 *New Zealand Colonial Bank of Issue Winding-Up Act.* This disestablished the CBI and provided for redemption of its banknotes.

1856 *Paper Currency Act.* This authorised the Union Bank to issue notes that were redeemable (in coin), and authorised banks incorporated by royal charter in England and approved by the governor of New Zealand to issue redeemable (method undefined) banknotes. (The Oriental Bank was approved in 1857, but ceased operations in 1861.)

1858 *English Laws Act.* This retrospectively applied the laws of England as existing on 14 January 1840, including the Coinage Act 1816 (UK), which resulted in British coins being retrospectively legal tender in New Zealand, eliminating legal uncertainty.

When Governor FitzRoy arrived in 1843, he had to deal with a financial crisis. The colonial government was deep in debt, the civil service had not been paid for six months, FitzRoy was not able to draw bills on the British Treasury, there was no ability to levy taxes, and the supply of money in circulation was inadequate. An innovative solution was needed.

The shortage of coins and the parlous financial state of the colonial government caused Governor FitzRoy to try the issue of government debentures in small denominations. An Ordinance⁷ to allow issue of the debentures and to declare them legal tender was passed by the Legislative Council in 1844. The issue of debentures was begun immediately, although the Ordinance required the Queen's assent to become law, because it was a government, rather than a private, Ordinance. The issue failed to achieve public confidence because the debentures were printed on poor quality paper, they were easily forgeable, were not backed by gold and there were doubts about their legality.⁸ The

debentures traded at a discount to their face value, and in most cases were only accepted as payment because there was no other alternative means of exchange available. The Ordinance was disallowed by the imperial government in 1845 because of, in the words of the Colonial Secretary, an "assumption by the local legislature of a power which they did not really possess".⁹ The debentures were withdrawn from circulation.

FitzRoy has been both criticised and praised for his actions. Criticised, because it appears he was aware of the probable illegality of his actions, and deliberately delayed seeking imperial approval for the Ordinance to provide time for the debentures to be issued. Praised, because his actions, although legally dubious, saved the colonial government from financial and political collapse.¹⁰

FitzRoy did not dispatch the Debentures Ordinance to London for approval until four months after it was approved by the Legislative Council. It took a further 16 months for the Ordinance to reach London, be considered by the British authorities, and the reply disallowing the Ordinance to be returned to New Zealand. It has been suggested that FitzRoy knew that the Ordinance would probably be disallowed, and deliberately relied on the slowness of communications to allow time for the debentures to be issued and circulated in New Zealand.¹¹ FitzRoy was aware that the issuing of the government debentures was probably beyond his powers. He had instructions from London that no government paper currency was to be issued without British Treasury approval.¹² In New Zealand, the practical demands of the situation meant that legal correctness had to be overlooked.

Despite being sent home in official disgrace for failing in his colonial administration duties, it was recognised in unofficial circles that FitzRoy's expedient actions had prevented a potential financial and political disaster. At the time of his departure, the citizens of Auckland presented him with an address that complimented him on his financial actions, and

⁷ Debentures Ordinance 1844 7Vict 4.

⁸ R P Hargreaves *From beads to banknotes* (McIndoe, 1972) p40.

⁹ Hargreaves, above, p44.

¹⁰ Hargreaves, above, p44.

¹¹ Hargreaves, above, p44.

¹² A Sutherland *Numismatic History of New Zealand* (NZ Numismatic Society, 1941) p309.

others in New Zealand and London wrote letters of support. It has even been suggested that the legally dubious measures he took were the only practical way to maintain the fragile British institutions in New Zealand and to enable the colonial government to continue to assert British sovereignty over New Zealand.¹³ FitzRoy also pioneered the concept of a paper currency that was backed, not by specie, but solely by legal authority. It was not until the 20th century that such currency came into general usage.

FitzRoy was replaced as Governor by George Grey at the end of 1845. Soon after his arrival, Grey published the disallowance of the Debenture Ordinance. Unfortunately, Grey caused a public panic by not also announcing how the debentures were to be redeemed, and he was forced to make a subsequent statement a couple of days later that the Colonial Government would pay out in a combination of specie and new debentures sanctioned by London. However, the problem of a lack of sufficient currency remained, so another solution was required.

This solution was to be a state-owned bank with a monopoly on note issue. The idea of a state-owned bank of issue was not Grey's, but originated from the Colonial Office in London, and was embodied in the Bank Charter Act 1844 (UK). The concept was that a mixed coin-paper currency should be made to operate in the same way as a coin-only currency. The paper currency would not be used to enlarge the amount of money in circulation, but would just be a substitute for coin. Thus, notes could only be issued if fully backed by gold and silver coin deposited in the issuing bank. Grey had specie shipped to New Zealand to form such a deposit. In addition, New Zealand was considered an ideal place to test new currency theories because there were no vested commercial interests that would be affected (except the Union Bank).¹⁴

The Colonial Bank of Issue (CBI) was established by an Ordinance¹⁵ in 1847 that subsequently gained the Queen's assent. The objective was to establish a stable currency in New Zealand. The CBI was given a monopoly over note

issue from 1852, when the right of the Union Bank to issue notes was withdrawn. The Union Bank responded by not paying out CBI notes that it took in, but presented them each day to the CBI for redemption in gold. This caused some strained relations between the Union Bank and the government.¹⁶

The CBI was an innovative institution for its time, being a type of very early central bank, which was only tried in other countries many years later. However, the CBI had only a brief existence. There was little public confidence in its notes. The public had bad memories of FitzRoy's debentures, and some considered the measure as a dangerous experiment. Those who owned, or wished to own, private banks resented the monopoly on note issue given to the CBI.

In 1854 a Committee of the House of Representatives reported that "*The existence of any Government issuing its own paper exclusively is injurious to free commercial enterprise.*"¹⁷ The New Zealand Parliament passed an Act¹⁸ in 1856 winding up the CBI.

The principal reason why both the government debentures and the CBI ultimately failed appears to be a lack of confidence in the colonial government by the settler population. The public was suspicious of the government's initiatives. The early colonial governments commanded much less general respect, and had much less effective powers, than is the case with government today. In the mid-19th century it was not seen as the role of the government to involve itself with commercial activities that would compete with or limit private enterprise. There was also a powerful lobby for private enterprise, including within Parliament itself. Attempts by the British authorities to impose their will on New Zealand also caused some resentment. With the abandonment of attempts to impose government solutions in the area of currency, the way was now open for private enterprise to take over the issue of paper money in New Zealand. Parliament merely had to provide the legal environment necessary to ensure that a sufficient and legally sound currency was available.

¹³ Sutherland, above, p309.

¹⁴ R P Hargreaves *From beads to banknotes* (McIndoe, 1972) p55.

¹⁵ Paper Currency Ordinance 1847 10Vict 16.

¹⁶ Hargreaves, above p57.

¹⁷ Hargreaves, above, p60.

¹⁸ New Zealand Colonial Bank of Issue Winding-Up Act 1856.

The Paper Currency Act 1856 allowed the Union Bank to resume issuing notes, and opened up the possibility of banks incorporated by royal charter in England also to issue notes. The coinage situation was clarified by the English Laws Act 1858 that extended the laws of England, including the Coinage Act 1816 (UK), to New Zealand, thus retrospectively giving undoubted legality to the use of British coins in New Zealand.

In 1840, the British Treasury had drawn up some regulations, including provisions about the issue of bank notes, that were to apply to banking companies incorporated in the colonies.¹⁹ These regulations were amended in 1846, but were not adopted in New Zealand until 1851 by an Ordinance.²⁰ However, because of the establishment of the CBI, the provisions relating to bank notes were not included.

During the 1850s and 1860s, there were some private issues of paper currency. This was possible because the Paper Currency Ordinance 1847 and the Paper Currency Act 1856 defined bank notes as being payable on demand. The private issues were not payable on demand and so avoided any legal restriction. They were issued in places where there was usually a shortage of legal bank notes, particularly in the South Island. However, their practical and economic importance was of little significance.

4 Privately issued money

Key events:

- 1861 *The New Zealand Bank Act*. This established the Bank of New Zealand with the right to issue redeemable (in specie) banknotes.
- 1861 *Bank of New South Wales Act*. This established the Bank of New South Wales in New Zealand with the right to issue redeemable (in specie) banknotes (changed name to Westpac Banking Corporation in 1982).
- 1864 The Bank of Australasia (incorporated by royal charter) began issuing redeemable banknotes in

terms of the Paper Currency Act 1856 (evolved into ANZ Bank in 1955).

- 1873 *National Bank of New Zealand (Ltd) Act*. This established the National Bank of New Zealand with the right to issue redeemable (in specie) banknotes.
- 1874 *Colonial Bank of New Zealand Act*. This established the Colonial Bank of New Zealand with the right to issue redeemable (in specie) banknotes (absorbed into BNZ in 1895).

Following the abolition of the Colonial Bank of Issue, the Paper Currency Act 1856 was only a partial solution to the need for a sufficient volume of publicly acceptable paper currency to be circulated. In addition to the Union Bank, the Oriental Bank (incorporated by royal charter) was the only other bank approved by the colonial government to issue notes under the Paper Currency Act, but it ceased business in 1861.

There were clearly commercial opportunities for further banks to be established in New Zealand to compete with the Union Bank. The discovery of gold in the 1860s gave a big boost to the New Zealand economy. Banks that began operations in New Zealand between 1861 and 1874 and operated successfully comprised the Bank of New Zealand, Bank of New South Wales, National Bank of New Zealand and Colonial Bank of New Zealand (with the Commercial Bank of Australia being a latecomer in 1913). The promoters of each of these banks were able to persuade the New Zealand Parliament to pass a private Act²¹ specific to each bank, authorising their operation, including the issue of notes by these banks. The wording of the legislation was similar in each case. For example, The New Zealand Bank Act 1861 (establishing the Bank of New Zealand) says:²²

"It shall be lawful for the said Corporation to make issue and circulate at or from any city town or place...any bank notes or bills for one pound or five pounds sterling or for any greater sum...but not for any fractional part

¹⁹ G R Hawke *The Evolution of New Zealand Currency* (Victoria University of Wellington) 1984, p9.

²⁰ Bank Charters Ordinance 1851 14Vict 14.

²¹ The New Zealand Bank Act 1861, Bank of New South Wales Act 1861, National Bank of New Zealand (Ltd) Act 1873, Colonial Bank of New Zealand Act 1874, Commercial Bank of New Zealand (Ltd) Act 1913.

²² The New Zealand Bank Act 1861, s V & s VI.

of a pound... All such notes shall bear date at the city town or place...issued and...in all cases be payable in specie to bearer on demand..."

The use of the term "pounds sterling" indicates that the currency was not a distinctive New Zealand currency but was the currency of England authorised for circulation in New Zealand. The prohibition on fractional notes was so that small value notes did not become an alternative to coins. The issue of coins remained a lucrative monopoly of the British Crown.

There were also three other banks established in 1863-64 by private Acts²³ of Parliament that issued bank notes, namely, Bank of Otago, Commercial Bank of New Zealand and Bank of Auckland. However, each of these banks failed after a short time, and the note issues of each were of limited and short-term significance.²⁴

Another bank of interest was a Bank of Aotearoa associated with the Maori King Movement during the 1880s. It is not clear that it ever properly functioned, and it certainly did not operate in the non-Maori economy. Fragmentary records exist, including some printed bank notes.²⁵

As banks were privately owned, the notes were private money, and only as good as the creditworthiness of the banks that had issued the notes. However, the notes issued by the surviving authorised banks (that from 1864 included notes issued by the Bank of Australasia under the Paper Currency Act 1856) gained public acceptance.

In contrast to the public distrust of the government, the public seemed to have trust in the institutions of private enterprise. Notes issued by the privately owned banks provided a period of currency stability. There were powerful influences that favoured private enterprise over government. Parliaments of the time were dominated by men who were involved in commerce and used Parliament to assist commercial interests. Private Acts of Parliament that helped establish commercial enterprises were relatively common in the 19th century.

²³ Bank of Otago Act 1863, Commercial Bank of New Zealand Act 1864, Bank of Auckland Act 1864.

²⁴ R P Hargreaves *From beads to banknotes* (McIndoe, 1972) p111.

²⁵ G R Hawke *The Evolution of New Zealand Trading Banks mostly until 1934* (Victoria University of Wellington, 1984) p8.

There was also one attempt by a provincial council (ie regional government) to issue its own paper currency. The Southland Provincial Council had undertaken public works that it needed to finance, and was unable to obtain loans from any bank. In 1864, the Southland Executive ordered the printing in Dunedin of large numbers of "Southland Treasury Notes". The notes were printed with the royal arms and as being "Payable at the Treasury, Invercargill". The printing was done with the knowledge of the Provincial Executive, although not officially approved by the Provincial Council, and the printing was kept secret from the Southland public.

However, the *Otago Daily Times* broke the story, describing the notes as a "palpable fraud" and as "utterly useless", and urged the Provincial Council not to issue the notes.²⁶ With the notes suspect as to their worth and legal standing even before they were issued, the Southland Provincial Council had to abandon its attempt to issue its own currency. The eventual bankruptcy of the Province of Southland forced a reunion with Otago in 1870.

5 Financial stresses

Key events:

1893 *Bank Note Issue Act*. This required that the notes of all existing banks be redeemable in gold, and enabled the government to declare an individual bank's notes to be legal tender.

1895 Under the provisions of the Bank Note Issue Act the notes of the BNZ were declared legal tender when BNZ encountered financial difficulties

1897 *Coinage Act 1870 (UK)* applied to New Zealand by Proclamation. This prohibited the circulation of coins other than those struck by the Royal Mint and applied the coinage laws of England to New Zealand.

1913 *Commercial Bank of Australia (Ltd) Act*. This established the Commercial Bank of Australia with the right to issue redeemable (in gold) banknotes (absorbed by Westpac Banking Corporation in 1982).

²⁶ R P Hargreaves *From beads to banknotes* (McIndoe, 1972) p76.

1914 *Banking Amendment Act*. This ended redeemability in gold and enabled all bank notes of authorised banks to be declared legal tender – immediately implemented because of WW1.

The 1890s was a period of economic depression in New Zealand and elsewhere. In the early part of this decade, the banks operating in New Zealand, particularly the Bank of New Zealand, were in financial difficulties. According to Sinclair²⁷, the banking crisis was caused by the banks supporting speculative ventures in real property, the price of which fell. Bedford saw three main causes for the crisis:²⁸

"1. The Public Works and Immigration Policy inaugurated by Sir Julius Vogel.

2. The pressure unceasingly exerted on the banks by the public to depart from legitimate banking in order to secure more liberal accommodation.

3. The competition of the numerous Loan Companies."

Bedford comments that, from the beginning of settlement, the colonists wanted more loans from the banks than the banks were prepared to give, such loans being required to finance the development of infrastructure. The government was borrowing beyond its available means of repayment, relying on exploitation of the latent wealth of the colony to make future repayments. The banks, taking their lead from the government, did the same.²⁹ Unfortunately, the means of repayment did not eventuate as readily as anticipated.

The government's response to the banking crisis was the Bank Note Issue Act 1893 that required the notes of all banks to be redeemable in gold, so maintaining public confidence in the notes.³⁰ In addition, the Act enabled the government to declare an individual bank's notes to be legal tender. The Act stated:³¹

" [A]ll notes payable on demand...by any bank...shall be payable in gold... [B]y Proclamation...the notes payable on demand by any bank therein named...shall be everywhere within the said colony a good and legal tender of money..."

The Bank of New Zealand's troubles continued, and in June 1894 the bank informed the government that unless the state came to its aid it would have to close its doors.³² The government acted quickly and put a Bill³³ through its three stages in a night so that the bank could open the next day with a government guarantee of its capital. *" The banks were 'consulted' to the extent that they were summoned during the dinner adjournment of Parliament to hear the substance of a bill which the government proposed to pass through all stages forthwith"* ³⁴

In 1895, the notes of the Bank of New Zealand were declared legal tender when the bank was again near to collapse. These government policy measures succeeded in saving the bank.

The Banking Amendment Act of 1914 enabled the government to end redeemability in gold and declare all privately issued bank notes in circulation to be legal tender. With the onset of World War 1, the Act was invoked to maintain financial stability.

Redemption of bank notes in gold was referred to as the "gold standard". New Zealand adopted the gold standard about the same time as Britain, and like Britain, suspended it at the beginning of World War 1. However, in a sign of the growing independence of New Zealand, the gold standard was not reinstated in New Zealand after the war, although it was in Britain. The retreat from the gold standard reflected a change in thinking about currency. Gold coins were no longer to form the basis of the currency, with this role being taken over by paper currency that had legal tender status.³⁵

In the area of coinage, the Coinage Act 1870 (UK) was made applicable to New Zealand in 1897. The effect of this was

²⁷ K Sinclair *Open Account* (Whitcombe & Tombs, 1961) p126

²⁸ H D Bedford, *History and practice of banking in NZ* (unpub Univ of NZ thesis, 1915) p160.

²⁹ Bedford, above, p163-171.

³⁰ R P Hargreaves *From beads to banknotes* (McIndoe, 1972) p2127.

³¹ Bank Note Issue Act 1893, s 3 & s 5.

³² K Sinclair *Open Account* (Whitcombe & Tombs, 1961) p126.

³³ Bank of New Zealand Share Guarantee Act 1894.

³⁴ S J Butlin *Australia and New Zealand Bank* (Longmans, 1961) p312.

³⁵ G R Hawke *The Evolution of New Zealand Currency* (Victoria University of Wellington, 1984) p16.

to limit legal tender coins to those struck by the Royal Mint, and to regulate the types of coins that could be circulated.³⁶

6 Nationalisation of the currency

Key events:

- 1933 *Coinage Act*. This provided for a distinctive New Zealand coinage and the removal of legal tender status for British coins.
- 1933 *Reserve Bank of New Zealand Act*. This established the RBNZ with monopoly powers of note and coin issue – notes and coins to be legal tender, redeemable (in legal tender coin) and convertible (into Sterling).
- 1938 *Sterling Exchange Suspension Notice*. This was a regulation issued under the RBNZ Amendment Act 1936. The convertibility requirement was dropped.
- 1964 *Reserve Bank of New Zealand Act*. Legal tender notes to be issued solely by the Reserve Bank.
- 1964 *Decimal Currency Act*. This provided for decimal currency as legal tender and for the removal of redeemability of bank notes – coins to be issued by the Minister of Finance with notes continuing to be issued by the Reserve Bank. It came into force in 1967.
- 1989 *Reserve Bank of New Zealand Act*. This provided for legal tender notes and coins to be issued solely by the Reserve Bank.

The initial nationalisation of the currency in the 1930s was driven by two main causes: economic factors and a growing feeling that New Zealand had matured to the point that it should now have its own distinct currency.

New Zealand was the last major part of the British Empire to introduce its own distinctive coinage. Canada did so in 1858, Australia in 1910 and South Africa in 1923. Until the 1930s there was no popular demand for a New Zealand coinage.

³⁶ A Sutherland *Numismatic History of New Zealand* (NZ Numismatic Society, 1941) p259.

However, the economic difficulties of the 1930s created circumstances that made a distinct New Zealand coinage an economic necessity. Relative changes in exchange rates resulted in an inflow of Australian coins and an outflow of British coins. It was estimated that, by 1931, 40 per cent of the coins in circulation in New Zealand were Australian coins, despite these coins not being legal tender in New Zealand. Another advantage of a New Zealand coinage was that if New Zealand minted its own coins it would be able to receive the full profit from this process, instead of this going to the British Government.³⁷

Despite the abolition of the Colonial Bank of Issue in 1856, the idea of a state monopoly over note issue remained a constant political theme. There were various attempts in Parliament to revive the concept. The issue was debated in 1871 and 1881; a private Bill was unsuccessful in 1886; a Parliamentary Committee of the Legislative Council considered the question in 1910; a government Bill was introduced in 1911 but lapsed with the defeat of the government in elections the following year. By the early 1930s the idea had come to be widely accepted as a necessity, as the economic depression deepened.³⁸

By this time, the banks that were issuing their own notes were not particularly concerned about losing their right of note issue. They claimed that the issuing of notes was so heavily taxed that it was unprofitable. What they were concerned about was the proposal that they would be compulsorily required to sell their stocks of gold to the government at a price determined by the government. The banks' resistance crumbled when the government threatened to repeal the legal tender status of outstanding private bank notes, which could have had serious consequences for the banks.

The creation of a state monopoly on the issuing of bank notes was fuelled by a public perception that the banks were exploiting the nation. Hawke states that:³⁹

“By 1934 the trading banks were widely distrusted, suspected of causing or at least intensifying the

³⁷ R P Hargreaves *From beads to banknotes* (McIndoe, 1972) p141.

³⁸ Hargreaves, above, p162.

³⁹ G R Hawke *Between Governments and Banks* (Government Printer, 1973) p25.

Depression. And there were various acts of the banks during the Depression which attracted valid criticism, especially from the Government. It was in this context that the proposed Reserve Bank was debated."

The Coinage Act 1933 replaced British coins as legal tender with distinctive New Zealand coins. The Reserve Bank of New Zealand Act 1933, which established the Reserve Bank, provided that the Reserve Bank (which was initially privately owned) would have a monopoly on the issue of notes in New Zealand. From that time, the currency in use became New Zealand pounds, rather than pounds sterling issued in New Zealand. The Reserve Bank of New Zealand Act 1933 stated that:⁴⁰

"(T)he Reserve Bank shall have the right to issue bank-notes in New Zealand, and thereupon the authority of every other bank to issue bank-notes in New Zealand...shall cease and determine... (T)he banks shall redeem their outstanding notes only in Reserve Bank notes or in subsidiary coin... On presentation...of notes of the Bank,...it shall be the duty of the Bank...to give in exchange for such notes sterling for immediate delivery in London... The tender of a note of the Bank, expressed to be payable on demand shall be a legal tender."

The primary duty given to the new Reserve Bank by the Act was to maintain the stability of the value of its bank notes and to exercise control over monetary policy towards that end. Although this legislation provided that the Reserve Bank's notes could be converted into pounds sterling on demand, this conversion provision was ended in 1938 and any effective redeemability was lost.

The Reserve Bank of New Zealand Act 1964 restated the Reserve Bank's right to be the sole issuer of legal tender notes. The Decimal Currency Act 1964 established the legal basis for decimal currency and provided that the Minister of Finance would issue legal tender coins.

Decimal currency was first considered in 1933 when a committee of government officials was appointed to investigate whether, in view of the creation of a distinctive New Zealand currency at the time, it was opportune to

decimalise the new currency. It concluded that, with an economic depression occurring, the conversion costs would be too high. In 1957 another committee was formed to look at the issue, and this committee reported that it agreed in principle that a change to decimal currency was desirable. The Government announced in 1963 that the change-over would occur in 1967.

The reasons for the change were economic – savings in time and resources and increased efficiency in many areas, which were ongoing benefits. The only significant disadvantages were the cost of the conversion and the need for public education – both of which were temporary factors.

In 1967, when the Decimal Currency Act 1964 came into force, even nominal redeemability of bank notes was removed. The Reserve Bank no longer "promised to pay", as the notes were only printed with words indicating that they were "legal tender".

The most recent development occurred with the Reserve Bank of New Zealand Act 1989 which states that⁴¹ "The Bank shall have the sole right to issue bank notes and coins in New Zealand... Every bank note issued...under this Act shall be legal tender..."

7 Conclusions

The legal history of money in New Zealand from 1840 can be divided into successive chronological periods, each with its own characteristics and influences. The development of money law also illustrates themes, some of which are specific to money law and some of which are more general in nature.

For the first few years after the colonial government was established, its practical ability to govern was limited by a lack of the mechanics of state and financial difficulties. Another issue was the lack of legal certainty that applied – ie to what extent did the laws of England apply in New Zealand and what was the legal basis for the application of such laws. The colonial government was also hampered by its remoteness from Britain and the slow speed of communications. Consequently the government was forced to rely to a significant extent on legal expediency in the area of currency during the early days of the colony.

⁴⁰ Reserve Bank of New Zealand Act 1933, s 15, s 16 & s 20.

⁴¹ Reserve Bank of New Zealand Act 1989, s 25 & s 27.

As the colony developed, commercial enterprise grew, necessitating that commercial laws needed to be developed. New Zealand was an ideal environment for experimentation and innovative currency legislation because there were no existing entrenched commercial interests to oppose new ideas. The issue of inconvertible government debentures as currency and the establishment of a state-owned bank to have a monopoly on note issue, can be seen as either failures, because both were superseded by other solutions, or as successes that temporarily carried the colony through difficult times until more acceptable solutions were found.

The ultimate unacceptability of the government debentures and bank of issue can be attributed to the settler population having little confidence in the abilities of the colonial government to solve commercial problems. The role of the government was much more limited, and confidence in government effectiveness less than it is today.

By contrast the settler population preferred to trust private institutions rather than government institutions. The notes issued by private banks gained widespread acceptance, and were seen as being on a sounder economic footing than government issued currency.

There were also private interests that promoted private enterprise over government intervention. Parliament in the 19th century frequently acted to assist private commercial interests, as many parliamentarians were active in commercial

enterprise and used their position to limit government competition. Some members of Parliament had obvious and widespread conflicts of interest between their public and private interests.

By the end of the 19th century economic policies were beginning to be implemented through legislation. The way the government dealt with the banking crisis of the 1890s was to impose its will on banks through legislation, unilaterally changing the legal status of the private money issued by the banks. Public policy at this time also started to diverge from that of Britain, as evidenced by the different line that the New Zealand government took to the gold standard.

In the late 19th and early 20th centuries there was a growing sense of nationalism. This started to have an impact on legislation in the currency area. This growing sense of nationhood, combined with economic developments, led to legislation to establish a distinctive New Zealand currency and to the formation of a central bank with a currency monopoly.

A successful currency system is an essential element of a successful sovereign state. The laws about money in New Zealand have evolved to meet this need, reflecting the commercial forces of the time and the influence of social and political issues.