

Beyond Citation: The Doctrine of Discovery, White Possessive Sovereignty and Mana Motuhake in Aotearoa New Zealand – A Response to Paul Moon

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Abstract

This article responds to Paul Moon's claim that the Doctrine of Discovery had little or no bearing on British colonisation in Aotearoa New Zealand. It argues that Moon's analysis is constrained by an evidentiary frame that treats the Doctrine as a discrete historical instrument, whose relevance depends on explicit citation in British colonial documents. Against this narrow historicist approach, the article reframes the Doctrine of Discovery as a wider colonial grammar of possession, adapted through imperial law, discovery claims, Crown pre-emption, radical title, native title, waste lands policy and paternal governance. Drawing on Kaupapa Māori analysis, Aileen Moreton-Robinson's theory of white possessive sovereignty and scholarship on mana motuhake, the article demonstrates that the Doctrine's significance in Aotearoa lies not in proving direct papal authority over Protestant Britain but in tracing how its operative logics were secularised and enacted. Two sites are central to this argument: the Crown's assertion of sovereignty over Te Waipounamu and Rakiura by right of discovery and the paternalist assertion of authority over Māori, including non-signatory hapū and iwi who never ceded mana motuhake. The article conceptualises the latter move as a 'right of paternalism', that is, the Crown's claimed authority to govern Indigenous peoples while recognising their presence but denying their equal jurisdiction. It concludes that Moon's functionalist account risks reproducing colonial innocence by fragmenting colonisation into contingent motives while leaving the structure of possession intact. Mana motuhake exposes this structure and demands a historiography attentive to colonial enactment, beyond mere citation.

Introduction: The problem with Moon's evidentiary frame

Paul Moon's (2022) *The Historicity of the Doctrine of Discovery in New Zealand's Colonisation* makes a direct historical claim: that the Doctrine of Discovery, understood principally through the 1493 papal bull *Inter Caetera*, had little to no bearing on British colonisation in Aotearoa New Zealand. For Moon, the growing use of the Doctrine in scholarship on Aotearoa is a recent development, drawn largely from North American and Canadian Indigenous rights literatures and applied onto New Zealand's colonial history. He argues that this interpretive move supplies an attractive but historically weak "first cause" for colonisation that allows scholars to explain British intervention as the outcome of a long-standing doctrine of Indigenous domination rather than a more contingent and uneven process. Moon distinguishes between what he calls "intentionalist" and "functionalist" interpretations. The intentionalist position, in his account, views colonisation as driven by prior ideological commitments to domination, whereas the functionalist position understands British intervention as emerging from a complex interaction of motives, pressures, administrative decisions, commercial interests, settler demands and imperial contingencies. Moon favours the latter view, arguing that the documentary and circumstantial evidence does not support claims that the Doctrine of Discovery played any meaningful role in Britain's intervention in New Zealand.

This article acknowledges the importance of evidentiary care but questions Moon's narrow evidentiary framework. The central issue is that Moon treats the Doctrine of Discovery as if its relevance were contingent on locating explicit British citations of *Inter Caetera*, direct papal authority or a clear documentary chain connecting 15th-century Catholic legal theology to 19th-century British colonial policy. This framing easily dismisses the Doctrine. Britain was Protestant; *Inter Caetera* was Catholic; New Zealand was not in the geographical scope of the original papal bull; and British officials rarely, if ever, had to invoke papal authority to justify their actions. However, this response contends that the approach confuses source with structure. The question is not whether British officials cited *Inter Caetera* but whether British law and colonial policy replicated the Doctrine's operative logics of discovery, possession, Indigenous diminution and Crown superiority.

Moon's (2022) argument is only compelling if the Doctrine of Discovery is reduced to explicit papal citation. When the Doctrine is understood as a legal and racial structure of colonial possession, its application to Aotearoa becomes much more difficult to dismiss. The Doctrine was not confined to a single papal text; it became part of a larger European and imperial grammar that allowed Indigenous lands to be claimed, Indigenous authority to be weakened and European sovereignty to appear legal. In the British context, this grammar was not typically expressed through obedience to Rome but instead secularised using terms such as 'discovery', 'occupation', 'improvement', 'pre-emption', 'radical title', 'native title', 'waste lands' and 'Crown protection'. Far from simple

administrative tools, these were legal and political mechanisms that enabled colonisation while allowing the Crown to portray itself as lawful, hesitant, benevolent and civilising.

The distinction between citation and enactment is crucial. Colonial doctrines do not operate solely when they are named. They also function when their assumptions are incorporated into legislation, policy, jurisdiction and institutional common sense. The absence of the words 'Doctrine of Discovery' from a Colonial Office document does not imply the absence of discovery logic. Nor does the Protestant separation from papal authority demonstrate that Britain was outside the broader European tradition of Christian possession, territorial acquisition and Indigenous subordination. To focus solely on explicit citation is to overlook how colonial power spreads: through legal inheritance, adapted imperial vocabularies, administrative habits and the Crown's authority to define what constitutes land, property, sovereignty, consent and civilisation.

This article does not contend that British officials in Aotearoa New Zealand mechanically applied *Inter Caetera*. Nor does it imply that the Vatican was directly responsible for British colonial policy in 1840. Instead, it argues that the Doctrine of Discovery is better understood as an adaptive colonial structure with consequences traceable to British imperial practice. In Aotearoa New Zealand, these effects manifest in two interconnected ways. First, the Crown used discovery and terra-nullius reasoning to assert sovereignty over Te Waipounamu and Rakiura rather than relying on Māori cession. Second, they appear in the Crown's paternalist assertion of authority over Māori, including non-signatory hapū and iwi, whose mana motuhake was never ceded but was nonetheless subject to the Crown's claimed jurisdiction (Simon, 2016, 2022, 2023, 2024a, 2024b, 2025, 2026a, 2026b).

The second form is particularly important. Moon's (2022) account is heavily based on the idea that British intervention in New Zealand was driven by consent rather than discovery. However, the argument is unstable when viewed from the perspective of non-signatory hapū and iwi. Tūwharetoa and others argue that the issue goes beyond whether 'Māori' signed Te Tiriti; the question is whether the Crown can legitimately claim sovereignty over peoples and territories that have not consented to such authority. In my previous work, I argued that non-signing is a significant constitutional issue that challenges Crown narratives that view Te Tiriti as validating state sovereignty and Treaty principles as sufficient recognition of Māori political authority (Simon, 2016, 2022, 2023b, 2024a, 2024b, 2025, 2026a, 2026b). This perspective suggests that the Crown's authority over non-signatory hapū and iwi required a different logic: the paternalistic containment of Māori authority rather than the erasure of their presence.

The examination advances via a Kaupapa Māori framework that transcends merely incorporating Māori viewpoints into a standard narrative of colonial history. Kaupapa Māori necessitates an examination of the epistemological legitimacy underlying the construction of colonial history, particularly the presumption that Crown archives, legal classifications, and administrative documents serve as impartial or adequate proof of

Māori political standing. This article critically examines colonial sources in conjunction with Māori histories, tikanga, whakapapa, hapū and iwi political authority, and the constitutional status of non-signatory groups, as informed by G. Smith (2012), Jones (2016), Jackson (2009) and Mikaere (2011). This methodology does not dismiss archival or legal evidence; instead, it challenges the elevation of Crown-produced evidence as the ultimate determinant of the existence, cession, or continuation of Māori sovereignty.

Mana motuhake offers the relevant political and constitutional perspective from which that evidence is evaluated. In this article, mana motuhake is not regarded as power conferred by Crown acknowledgement, Te Tiriti principles, or the structures of the settler state. It pertains to Māori political power rooted in whakapapa, whenua, tikanga, hapū, and iwi connections, along with inherited duties that exist prior to and are not established by Crown sovereignty (Simon, 2016, 2024b, 2026a, 2026b). A mana motuhake-focused examination thus enquires not merely if the Crown acknowledged Māori rights, but rather on what grounds the Crown asserted jurisdiction over Māori initially. This differentiation holds significant relevance for hapū and iwi that are not signatories. When examined collectively, Kaupapa Māori and mana motuhake redirect the evidentiary inquiry from whether British officials explicitly referenced the Doctrine of Discovery to how colonial legislation and governance transformed existing Māori jurisdiction into forms of authority that could be acknowledged, constrained, and managed by the Crown.

There are seven parts to the article. It first examines Moon's (2022) evidentiary framework, arguing that the relevant issue is colonial enactment, not citation. Next, it takes the Doctrine of Discovery beyond *Inter Caetera* and places it within a larger legal-theological and imperial structure of possession. The third section applies the theory platform of Crusader Colonialism to Moon's arguments. The article then investigates discovery and terra nullius-like practices in Te Waipounamu, demonstrating that British claims to sovereignty and land were based on more than consent. In the fifth section, Moreton-Robinson's theory of white possessive sovereignty is discussed alongside mana motuhake, demonstrating how Crown law transformed Māori authority into state-manageable recognition. The sixth section introduces 'right of paternalism', which explains how the Crown claimed to protect Māori while asserting authority over them. In its last part, the article returns to Moon's functionalist account to argue that, while useful for identifying contingency and complexity, it risks reinforcing colonial innocence by failing to examine the deeper structures of possession.

The stakes are not solely historical but constitutional and political. If the Doctrine of Discovery is dismissed because British officials failed to cite a papal bull, the more in-depth work of colonial law is lost. Mana motuhake, also known as Indigenous sovereignty, necessitates a distinct historiography that recognises that colonial possession frequently uses the language of consent, protection, improvement and law.

The task is not only to look for *Inter Caetera*'s archival footprint but also to investigate how discovery became common, secular and governmental in Aotearoa New Zealand.

What counts as evidence? Archive, law and Indigenous critique

Moon (2022) relies on a particular theory of evidence. He concludes that the Doctrine did not meaningfully inform Britain's colonisation of Aotearoa New Zealand because British officials did not explicitly invoke *Inter Caetera* and the phrase 'Doctrine of Discovery' does not appear as a guiding term in the principal Colonial Office documents. This is important evidence that should not be ignored. Documents, institutional context, chronology and causation are needed for historical argument. Nonetheless, Moon's approach is problematic because it requires too much explicit citation. It assumes that doctrines not named in the archive did not inform law, policy or colonial practice.

This assumption is challenged here because citation is not enactment. Colonial law can reproduce discovery logic without citing the Doctrine of Discovery. Inherited legal assumptions, jurisdictional habits, racialised categories and administrative common sense often underlie possession doctrines. The question, then, is whether Britain's legal and territorial practices aligned with the Doctrine's structure, including claims of sovereignty, land regulation, Indigenous authority reduction and Māori political rights.

This distinction matters because the Doctrine of Discovery was never one text. European powers organised claims to non-European lands and peoples using a travelling legal and theological grammar. This grammar was adapted for discovery, settlement, occupation, improvement, pre-emption, native title and Crown sovereignty in English colonial language (Miller et al., 2010; Simon et al., 2027). Papal authority was not needed for its operation; British imperial law was able to secularise older Christian-European claims into pragmatic, technical and jurisdictional common law categories. Thus, an exclusive search for papal citation risks missing the more important question of how colonial possession became normal.

In common law colonies, legal methods that recognised Indigenous presence but denied Indigenous jurisdiction created this ordinariness. Crown radical title allowed the Crown to claim land based on sovereignty. Native title could be recognised as a burden on Crown title rather than an independent Indigenous legal order (McHugh, 2004; Parsonson, 2017; McNeil, 2018; Williams, 2003; McClean & Quentin-Baxter, 2017). Crown pre-emption also limited Indigenous land alienation to the colonial state and made the Crown the sole legitimate purchaser. These ideas did not need the name of 'Doctrine of Discovery' for European sovereignty to become the organising principle, while Indigenous authority became occupancy, use, custom, interest or property.

Moon's (2022) 'historical' and 'legal' evidence distinction is too rigid here. He is right that law and history are different, and legal reasoning can sometimes use precedent in ways that bother historians. Colonial law was a key tool of colonial history, and treating legal categories as later jurisprudential artefacts risks separating the archive from the

institutions that colonised Indigenous lands and authorities, including radical title, pre-emption, native title and waste lands policy. Their practicality shaped land purchases, settlement, governance and the Crown's territorial authority.

This article does not claim that British officials explicitly invoked the Doctrine of Discovery but shows that colonisation in Aotearoa followed its logics. This formulation changes the evidentiary question from intention to enactment. Intention asks whether actors knew they were applying the Doctrine. Enactment asks whether the legal order they created replicated the Doctrine's main effects, namely, the elevation of European sovereignty, the diminution of Indigenous authority, the conversion of Indigenous land relations into property interests and the claim that the Crown had superior jurisdiction to define, manage, extinguish or protect those interests.

Aileen Moreton-Robinson's (2015) white possessive theory shows that possession goes beyond formal ownership. The nation is naturalised as a white possession through its epistemological, legal and political structure. The state need not deny Indigenous existence in this context; it protects itself by only recognising Indigenous peoples on terms that do not challenge its possessive claim (Simon 2016, 2024b). Thus, recognition, protection, consultation, settlement and rights may acknowledge Indigenous presence while confirming the Crown as the authority that determines its scope and consequence.

This is Aotearoa New Zealand's core. I have argued that the traditional Crown-centred narrative of Te Tiriti views the agreement as validating state sovereignty and making Treaty principles the primary means of recognising Māori rights (see Simon 2016, 2022, 2024a, 2024b, 2026). This framing is incorrect for non-signatory hapū and iwi, such as Tūwharetoa, because it assumes nationalised Māori consent that many never gave (see Simon, 2024b). Mana motuhake evidence goes beyond Crown documents (Simon, 2016). Further additions to the colonial archive should not include iwi memory, hapū political authority, whakapapa, tikanga, non-signatory positions or Māori accounts of relationship to whenua (Simon, 2016, 2020, 2021, 2023b, 2024b) as they belong in the archive of Indigenous sovereignty instead.

Kaupapa Māori critique alters the evidence frame. Linda Tuhiwai Smith (2012) reminds us that imperialism is embedded in political institutions and knowledge production, including disciplines that define evidence. Kaupapa Māori analysis does not reject archival research but challenges the idea that colonial archives are neutral truth-bearers. Powerful regimes create colonial archives, keeping a record of some intentions, hiding others and recording Indigenous peoples through state categories. For mana motuhake, the archive must be analysed against its own assumptions and alongside Māori legal, historical and epistemological sources.

Carwyn Jones (2016) demonstrates that Māori law and constitutional thought are not unfamiliar traditions awaiting state recognition. Colonial institutions have displaced, constrained and reinterpreted their normative orders. Ani Mikaere (2011) notes that colonisation involves land loss and political dominance but also law, gender, authority and civilisation myths. These insights help assess Moon's evidence: if the Crown's

archive is the privileged site for determining colonial possession, the analysis has already accepted one of colonisation's central achievements, namely, the relocation of authority from Indigenous legal orders to Crown documentary power.

Thus, the methodological task is to expand the meaning of historical evidence. To fully understand the Doctrine of Discovery in Aotearoa, one must consider imperial legal doctrine, common law categories, land policy, Crown administrative practice, Māori histories, the positions of non-signatory iwi and the ongoing political assertion of mana motuhake. Only then can the question be correctly framed, not as whether Moon's historicist threshold is met by how frequently 'Doctrine of Discovery' appears in the archive but as whether colonial law allowed other discovery.

The Doctrine beyond *Inter Caetera*

Moon's (2022) analysis depends on keeping the Doctrine of Discovery closely tied to *Inter Caetera*, a 15th-century papal bull issued in a Catholic imperial context and concerned principally with Spain's claims in the Atlantic world after Columbus. It was geographically specific, politically contested and soon modified by the Treaty of Tordesillas. It was not a direct instruction to Protestant Britain in the 19th century, and no serious account of British colonisation in Aotearoa New Zealand needs to claim that Hobson, Normanby or the Colonial Office were simply obeying papal authority. Moon is correct that Protestant Britain was not straightforwardly governed by Rome. However, this does not mean that Britain stood outside the wider European legal-theological structure of discovery, Christian possession, occupation, improvement and Indigenous diminution.

Moon's (2022) framing treats the Doctrine as historically relevant only insofar as it appears as a fixed and cited papal source. Yet scholarship on the Doctrine of Discovery has long approached it as more than a single document, that is, as a layered structure of colonial legality. Its first layer is papal and theological, stating Christian authority to claim, divide and govern non-Christian lands. Its second layer is the European law of nations, establishing discovery, occupation, conquest, territorial priority and the classification of Indigenous peoples as politically diminished. Its third layer is a British imperial adaptation into royal charters, Protestant discovery, improvement, pre-emption, Crown title and the idea that Indigenous land relations can be recognised only within a jurisdictional order defined by the Crown. Its fourth layer is colonial legal afterlife in the form of native title, radical title, waste lands, Crown sovereignty and paternal governance.

This layered approach matters because colonial doctrines do not remain unchanged as they move across empires. They are translated, secularised and adapted. The English and later British imperial tradition did not need to reproduce Spanish Catholic legal theology word for word to inherit its core structure (see García-Salmones & Eslava, 2010). As Armitage (2000) argues, the ideological formation of the British Empire unfolded through a complex adaptation of legal, Protestant, commercial and imperial arguments. MacMillan (2006) similarly shows that English claims in the New World

were developed through legal concepts of sovereignty and possession rather than a clean break from earlier European frameworks. In this sense, Protestantism did not abolish discovery logic but made it available in a different idiom.

The point is not that all European empires were identical. Spanish, Portuguese, Dutch, French and British imperial formations differed in law, theology, economy and administrative style (García-Salmones & Eslava, 2010; J. Smith, 2005; Emmer & Gommans, 2020; Bell, 2009). However, these differences should not obscure the shared grammar through which European powers claimed superiority over Indigenous peoples and lands (L. Smith, 2012; Wolfe, 2006; NZ Human Rights Commission, 2022). Williams (1990) traces this grammar through Western legal thought, showing how Christian-European assumptions about civilisation, sovereignty and law structured the legal diminution of Indigenous peoples. Anghie (2005) makes a related argument in international law: sovereignty was not developed separately from colonial encounter but through it. European law defined itself partly by deciding which peoples counted as fully sovereign and which could be governed, protected, converted, improved or dispossessed (also see Simon, et al., 2027).

This is where Moon's (2022) account becomes unstable. He acknowledges that some literature defines the Doctrine more broadly, including papal bulls beyond *Inter Caetera*, racial superiority, arbitrary territorial acquisition and the political domination of non-European lands and peoples. Still, his conclusion returns to a much narrower standard: because British officials did not explicitly cite *Inter Caetera* and Britain was Protestant and commercially motivated, the Doctrine played no meaningful role in the colonisation of New Zealand. The wider definition is noted but not followed through. However, once the Doctrine is understood as a colonial structure rather than a single papal source, Protestant distance from Rome no longer resolves the question; it only shifts attention to the ways Britain adapted discovery into its own imperial law.

This is why the English colonial charters are important. They show that the English Crown developed its own idiom of discovery and possession, often grounded in the distinction between Christian and non-Christian possession. As Seed (1995) demonstrates, European empires developed distinctive ceremonies and legal forms for claiming possession, but these differences were variations within a broader imperial field. England's version was not papal obedience but Crown-centred, Protestant, legalistic and increasingly commercial. Nonetheless, it depended on the claim that European discovery, occupation, improvement and jurisdiction could transform Indigenous lands into objects of imperial title. This is part of what Moana Jackson describes as the British 'Culture of Colonisation' (see Simon, 2016).

By the 19th century, this structure had become more secular, but not less colonial. The language of Christian possession increasingly gave way to the language of civilisation, improvement, settlement, title and jurisdiction. Land that did not conform to European expectations of cultivation or alienable property could be described as waste (Schmidt, 2012, 2014; Young, 2020; Brooking, 1996). Indigenous authority could be recognised as

custom or occupancy, but not as equal jurisdiction. Indigenous land could be protected in theory, but only through the Crown's authority to determine its status, purchase, extinguishment or conversion. The Doctrine had not disappeared; it had become embedded in the ordinary techniques of imperial governance.

This broader understanding also clarifies the relationship between discovery and native title. In the common law world, native title did not simply affirm Indigenous authority; it typically recognised Indigenous occupation while locating the ultimate source of legal authority in the Crown. McHugh (2004) shows that Aboriginal title in common law jurisdictions developed through a history of sovereignty, status and colonial recognition, in which Indigenous rights were made legally visible only within a framework of Crown authority. Miller et al. (2010) likewise argue that the Doctrine of Discovery in English colonies operated through related mechanisms, such as first discovery, pre-emption, native title, limited Indigenous sovereignty and European claims to territorial priority. These are precisely the kinds of mechanisms that matter in Aotearoa (Miller et al., 2010; Simon, 2016).

The Doctrine beyond *Inter Caetera*, then, is not about direct papal control but about structure. This article asks how European and British law made Indigenous land available for possession, how Indigenous sovereignty was reduced, and how colonial states presented their authority as lawful (see Simon, 2016). In Aotearoa New Zealand, the relevant question is therefore not whether the Crown cited a papal bull but whether Crown law and policy reproduced discovery's central movement: the elevation of European sovereignty over Indigenous authority. That movement appears in the Crown's assertion of sovereignty, its control over land alienation, its reliance on pre-emption, its development of waste lands policy and its transformation of Māori authority into rights recognisable only through Crown law.

Nonetheless, there are significant constraints regarding the application of the Doctrine of Discovery in Aotearoa New Zealand. The assertion presented does not regard the Doctrine as a singular, immutable legal tenet mechanically passed from *Inter Caetera* to nineteenth-century British colonial policy, nor does it imply that British officials were merely executing papal power. Aotearoa ought not to be uniformly defined as *terra nullius*, and the unique colonial histories of Te Ika-a-Māui, Te Waipounamu, and Rakiura should not be amalgamated into a singular framework of dispossession. The Doctrine should not be regarded as the sole or definitive "first cause" of colonisation, as this undermines the importance of commercial interests, missionary endeavours, settler influence, New Zealand Company aspirations, imperial circumstances, or Māori political agency. Its analytical significance resides in recognising a historically flexible colonial framework that enabled the portrayal of European territorial supremacy, Crown authority, and the erosion of Indigenous political power as legitimate. Academics and teachers referencing the Doctrine in Aotearoa must meticulously consider historical particularities, institutional frameworks, and the specific processes by which discovery logic was implemented, instead of using the Doctrine as a blanket rationale for colonisation. Understanding the Doctrine in this qualified sense also makes it necessary

to examine the longer political and legal culture from which these adaptable forms of possession emerged.

Crusader colonialism and the secularisation of discovery

Crusader colonialism reinforces the critique of Moon's (2022) argument by revealing the limits of treating the Doctrine of Discovery as a discrete papal doctrine rather than as part of a longer Christian-European grammar of conquest, possession and Indigenous diminishment (see Simon et al., 2027). Moon's (2022) analysis relies on limiting the Doctrine to *Inter Caetera*, explicit Catholic authority and direct documentary citation in British colonial policy. On this basis, he argues that the Doctrine was largely irrelevant to Aotearoa New Zealand because Britain was Protestant, Aotearoa New Zealand was outside the geographical scope of the 1493 papal bull, and British officials did not explicitly invoke the Doctrine in their decision-making. The problem with this approach is not only that it underestimates the afterlife of *Inter Caetera*: Moon's timeline starts too late, given that the Doctrine was not the origin of Christian-European colonial possession. It was one legal articulation of a much older crusader-colonial structure (Simon et al., 2027).

This is the deeper structure we call crusader colonialism (Simon et al., 2027). Mediaeval crusading was not merely about wars over holy territory; it helped shape a Christian-European political imagination in which non-Christian peoples could be classified, governed, converted, conquered, enslaved or eliminated in the name of a divine and civilisational order (Mastnak, 2002; Muldoon, 1979; Tolan, 2002; Murphy, 2025). The categories produced by crusading were not simply religious descriptors. They were categories of jurisdiction and of property. They helped decide whose land could be taken over, whose authority could be defied, whose resistance could be punished and whose incorporation could be presented as salvation, protection, civilisation or improvement (Simon et al., 2027; Murphy, 2025). Scholarship on mediaeval race and crusading shows that religious difference was central to the racialisation of Muslims, Jews, pagans and later Indigenous peoples, establishing a hierarchy of humanity that would become foundational to colonial modernity (Robinson, 1983; Heng, 2018; Bartlett, 1993; Simon et al., 2027).

This genealogy undercuts Moon's (2022) papal reductionism directly. If the Doctrine of Discovery is treated as just *Inter Caetera*, then the lack of explicit British citation is decisive. But when the Doctrine is read as part of a longer crusader-colonial grammar, the evidentiary question changes from whether Protestant Britain obeyed Rome to whether British imperial law inherited and secularised the Christian-European assumptions that made discovery, occupation, improvement, protection, pre-emption, native title, radical title, waste lands and Crown sovereignty seem lawful (see Walker, 2004; O'Malley, 2011). Protestantism did not get rid of discovery logic; it re-rendered it in another imperial idiom. English and later British traditions of possession developed through legal, commercial, Protestant and imperial vocabularies that differed from papal

authority but were not separate from the wider European structure of Christian possession (Armitage, 2000; Seed, 1995; MacMillan, 2006).

Consequently, Moon's (2022) functionalism is inadequate. He contends that British involvement was driven by practicality rather than ideology, citing commercial interests, administrative circumstances, missionary influence, settler aspirations, and imperial uncertainty as proof that the Doctrine of Discovery did not significantly influence colonisation in Aotearoa. This establishes a misleading dichotomy between theory and application. Crusader colonialism refers to the enduring Christian-European framework that categorised populations and lands based on their potential for conversion, conquest, enslavement, settlement, or eradication, while portraying the ensuing violence as legitimate, civilising, or redemptive (Mastnak, 2002; Muldoon, 1979; Bartlett, 1993; Simon et al., 2027; Murphy, 2025). It was not a uniform policy rigidly enforced in the same manner throughout different times and locations. It was, instead, a flexible framework of governance that linked Christian dominance to land ownership. In the mediaeval crusading context, non-Christian groups were initially viewed as pagans open to conversion; however, their refusal to convert or accept Christian authority could result in their designation as adversaries, legitimising warfare, dispossession, and territorial domination.

The Baltic crusades exemplify this flexibility: missionisation, military domination, and settler encroachment were not conflicting rationales for expansion but rather varied methodologies within the singular Christian-colonial endeavour (Bartlett, 1993; Christiansen, 1997). In a comparable manner, the text permitting the domination of "Saracens and pagans" in *Dum Diversas* linked theological categorisation directly to conquest, enslavement, and ownership, while subsequent discussions regarding Indigenous humanity in the Americas reformulated that framework into discourses on civilisation, rationality, natural servitude, and imperial stewardship (Muldoon, 1979; Brunstetter and Zartner, 2011).

Crusader colonialism illustrates how ideology becomes commonplace through practical application. By the nineteenth century, British colonisation no longer necessitated officials to explicitly reference crusades, papal power, or holy wars. The traditional Christian-European hierarchy has been transformed into secular administrative and legal notions like enhancement, civilisation, safeguarding, colonisation, and structured governance. These ideas executed in a tangible manner what previous crusading classifications had achieved in a theological context: they characterised European authority as progressive, safeguarding, and legitimate, while relegating Indigenous authority as inadequate, juvenile, or hindering. Commercial acquisition, missionary endeavours, settler proliferation, and administrative intervention were therefore not substitutes for doctrine. They represented the tangible manifestations of its ingrained beliefs. Crusader colonialism manifests not in the reiteration of a specific papal decree but in the persistent transformation of Christian-European dominance into legal jurisdiction, ownership, and sovereign power (Williams, 1990; Anghie, 2005; Miller et al., 2010).

This has direct implications for Aotearoa. Te Waipounamu and Rakiura were places where discovery was evident, in the Crown's claim to sovereignty by right of discovery. In Te Ika-a-Māui, discovery was less about claiming the emptiness of land than about the paternalist construction of Māori as governable subjects (Simon, 2016, 2024). This difference is theorised by crusader colonialism. Colonial power did not necessarily entail the erasure of Indigenous presence. Sometimes, it meant that Indigenous peoples were to be classified as present but politically immature, capable of occupying but not sharing jurisdiction, deserving of protection but not of full constitutional authority (Simon et al., 2027). That is the logic of paternalism: the Crown asserts jurisdiction over Indigenous peoples by disguising itself as protector, civiliser, guardian and source of lawful order (Simon, 2016, 2024b, 2026b).

Paternalism is thus not outside the Doctrine of Discovery but an adaptive form of it. Where terra nullius dispossesses land, paternalism dispossesses people. Discovery claims territory by arrival, naming and assertion, while paternalism claims jurisdiction by protection, improvement and governance (see Simon, 2024b). This is exactly why Moon's (2022) consent framework is insufficient. The Crown's use of Te Tiriti does not demonstrate that the logic of discovery was absent. Rather, the Crown's subsequent transformation of Te Tiriti into the basis for general sovereignty indicates how consent can become a colonial technology. The problem is most acute for non-signatory hapū and iwi. If Crown sovereignty rests on consent, then those who did not sign are an unresolved constitutional challenge (Simon et al., 2024b, 2026a, 2026b). If, however, they were not required to consent to Crown sovereignty, some other logic gave authority to the Crown's jurisdiction. Crusader colonialism helps name this logic: Indigenous authority was recognised only to be converted, contained, protected, improved or subordinated. This paternalistic interpretation of discovery is explored in greater detail below through what I refer to as the "right of paternalism. The differentiation is crucial: while the discourse presented identifies paternalism as an element of the secularisation of crusader-colonial authority, the subsequent examination reveals how this rationale functioned constitutionally in Te Ika-a-Māui, especially concerning Te Tiriti and hapū and iwi that did not sign.

This also explains the relationship between crusader colonialism, the white possessive and mana motuhake. Moreton-Robinson's (2015) theory of the white possessive reveals how settler states protect themselves not only by denying the existence of Indigenous peoples but also by acknowledging them on terms that uphold their own sovereignty. This possessive structure has a longer genealogy in crusader colonialism. This suggests that colonial recognition has often been organised around a salvific and civilising logic: Indigenous peoples can be included, protected, converted, educated, consulted or settled with, but only if their authority is made compatible with the dominant order (Simon, 2027). In Aotearoa, this is evident in the translation of mana motuhake into rights, tikanga into custom, hapū and iwi jurisdiction into interests and Te Tiriti into Treaty principles administered by the Crown (Simon, 2024b).

Crusader colonialism thus sharpens the central critique of Moon's (2022) argument, which can only eliminate the Doctrine of Discovery by reducing it to explicit papal citation. Once the Doctrine is situated within the broader history of crusader colonialism, this dismissal is no longer tenable. On this question, Aotearoa is not outside the history of the Doctrine. It is one of the places where crusader colonialism was secularised into the vernacular of the law of the Crown.

Discovery and terra nullius in Te Waipounamu

Te Waipounamu is the pressure point in Moon's (2022) thesis. If the Crown asserted sovereignty there by discovery, then the claim that discovery was irrelevant to British colonisation in Aotearoa cannot stand without significant qualification. This does not mean that Aotearoa New Zealand should be described simply or wholly as *terra nullius*. This would flatten the differences between Te Ika-a-Māui, Te Waipounamu and Rakiura, and it would overlook the Crown's simultaneous reliance on Te Tiriti, cession, purchase and protectionist language. The more precise point is that Te Waipounamu was not always named as *terra nullius*, but Crown practice repeatedly produced *terra nullius*-like effects.¹

Hobson's May 1840 dual declaration of sovereignty is the starting point. The cession of North Island was proclaimed through Te Tiriti o Waitangi, while the South Island and Stewart Island were discovered (McHugh, 1991; Orange, 2011; Simon, 2016, 2024b). This distinction shows that the Crown did not rely on a single consensual basis for sovereignty over Aotearoa. It used treaty consent when available, while discovery could be resorted to for tenuous, incomplete or administratively inconvenient evidence. Thus, 'right of discovery' is not incidental. It identifies a legal and imperial claim that allowed the Crown to treat Te Waipounamu and Rakiura as territories accessible to British sovereignty without cession.

Moon later countered this interpretation by asserting that Hobson's May 1840 declaration ought to be viewed chiefly as a proactive measure against the New Zealand Company rather than as a bid to obtain Te Waipounamu via the Doctrine of Discovery. He also highlights the ongoing gathering of signatures from rangatira in Te Waipounamu post-proclamation as proof that the Crown persisted in its quest for consent. This historical background is significant, yet it fails to address the problem presented here. The prompt political impetus for releasing the proclamation and the legal foundation outlined within it are analytically separate. The New Zealand Company's influence might elucidate Hobson's perception of the urgency in asserting sovereignty; however, this does not diminish the reality that sovereignty over Te Waipounamu and Rakiura was declared based on discovery.

The ongoing quest for signatures does not demonstrate that consent and discovery were

¹ Despite this point I have used the term "*terra nullius*" in previous research and consider this useage also acceptable. (See Simon, 2016, 2022, 2023b, 2024a, 2024b, 2025, 2026; Simon, et al., 2027).

incompatible. This conclusion presupposes the very binary that this article challenges. Colonial power could pursue further approval, acquisition, acknowledgement, and political validation while concurrently asserting dominance through alternative imperial strategies. Subsequent treaty-making following the proclamation can thus be interpreted as indicative of the simultaneous existence of various colonial legitimisation strategies rather than as evidence that the principle of discovery had become obsolete. The functional rationale of the Moon aids in comprehending the precise timing of Hobson's action, yet it does not fully encompass the legal and colonial framework that enabled that action.

Jackson's concept of a British "Culture of Colonisation" is useful in this respect: the existence of competing motives and institutional interests does not preclude those actors from operating within a shared colonial political culture, a point developed below in relation to the New Zealand Company. The concept of *terra nullius* requires meticulous consideration. The contention is not that British authorities merely perceived Te Waipounamu as *terra nullius* or believed Māori to be physically nonexistent. Instead, reasoning akin to *terra nullius* functioned through colonial evaluations of whether Indigenous habitation, agriculture, and property relations were adequately discernible within European legal and economic paradigms. Māori land utilisation that failed to align with settler anticipations of cultivation, enhancement, or transferable property could thus be regarded as legally inadequate, underutilised, or subject to colonial appropriation, notwithstanding ongoing ties of occupation, seasonal utilisation, *mahinga kai*, *whakapapa*, and political dominion. Banner (1999, 2007) illustrates that the colonisation of Aotearoa in the nineteenth century entailed the conversion of Māori connections with *whenua* into property classifications that settlers and the Crown could identify, acquire, and restructure land.

Here, waste lands policy is key. The term 'waste' was ideological and went beyond land description. Land was judged. It was assumed that land not improved by European agricultural or settlement standards could be transformed. Schmidt's (2012) analysis of Lockean views in Aotearoa New Zealand reveals how colonial observers interpreted Māori occupation through assumptions about cultivation, improvement and productivity. The land was not vacant, but a legal imagination that only valued certain kinds of use as politically significant could notionally vacate it, turning Māori relationships with *whenua* into occupancy, native title, reserve or extinguishable interest rather than independent jurisdiction (McHugh, 2004; Miller et al., 2010; Evison, 2006).

This common rationale is also apparent in the connection between Wakefieldian systematic colonisation and Crown intervention. The settlement society relied on land that the New Zealand Company aimed to obtain, survey, appraise, and sell to fund immigration and structured settlement (Wanhalla, 2016; Fry & Wilson, 2018; Schrader, 2016; Birchall, 2021). Wakefield's framework was predicated on the commodification of land and the belief that settler labour, agriculture, and structured habitation would yield value. In this context, Māori governance of land was deemed inferior to the expected

economic and civilising advantages of colonisation (Barber, 2020; Binney et al., 2021; Fermanis, 2020).

The New Zealand Company and the Crown, however, sought divergent institutional objectives and did not necessarily possess the same motivations. The Company advocated for swift, privately coordinated systematic colonisation, while the Crown progressively aimed to oversee settlement and place it under imperial authority (Burns, 1989; Belich, 1996). These distinctions, nonetheless, ought not to be misconstrued as proof of inherently conflicting colonial endeavours. Moana Jackson's notion of a British "Culture of Colonisation" is beneficial in this context as it does not necessitate colonial agents to function under a unified purpose or institutional agenda. Conversely, various entities and interests might function within an expansive political, legal, and cultural framework that legitimised British beliefs regarding sovereignty, property, advancement, civilisation, and the rightful governance of Indigenous populations and territories (refer to Simon, 2016).

From this viewpoint, the discord between the New Zealand Company and the Crown primarily revolved around the rightful authority to orchestrate and govern colonisation and the conditions thereof. The Company aimed to obtain and commercialise Māori land for organised settlement, whereas the Crown intended to impose imperial authority and regulate the legal frameworks governing land alienation and settlement arrangements. Their discord regarding methods, power, and timing did not exclude either from the broader Culture of Colonisation. Both functioned within a political structure that allowed Māori land to be allocated for settler use and Māori authority to be externally defined and regulated.

This differentiation is especially crucial for evaluating Moon's functionalist perspective. The aspirations of the New Zealand Company might elucidate the specific timing and conditions of Crown intervention, while not negating the existence of a broader colonial framework. Contingency and structure are not incompatible. Commercial motivations, missionary objectives, settler demands, administrative adaptability, and imperial prudence may vary in their impetus yet coexist within the same Colonial Culture. The pertinent inquiry is not whether all colonial agents followed the same agenda, but rather how their varied actions shaped a political and legal framework that rendered British sovereignty progressively presumptive while Māori jurisdiction became more reliant on Crown acknowledgement, regulation, and displacement.

This structure included Crown pre-emption, which was thought to protect Māori by preventing private settlers from making exploitative purchases. However, it confirmed the Crown as the gatekeeper of land alienation. Māori could only sell to the Crown. Māori title recognition required a colonial legal order under Crown jurisdiction. Pre-emption, far from mere protection, was a control technology. Within its framework, Māori diplomatic and commercial authority was limited, land transactions were facilitated by the Crown, and the state controlled territorial transfer (McHugh, 2004; Miller et al., 2010).

The Crown additionally asserted radical title, which only strengthened this logic, claiming sovereignty over all land, while Māori interests were recognised as customary or native title. Although Māori occupation was not denied, it was subordinated to the Crown's legal framework. Indigenous authority burdened Crown title instead of providing law. Native title may acknowledge Māori presence but reduce their jurisdiction. It could acknowledge Māori land interests but deny their existence within a separate legal framework (see Williams, 1999; Walker, 2004; Boast, 2017; Singh, 2025). This is how discovery logic survives without naming itself.

The Ngāi Tahu purchases demonstrate the materialisation of ideologies. The Crown acquired large areas of Te Waipounamu between the 1840s and 1860s, such as the Ōtākou purchase, Kemp's Canterbury purchase, and later transactions on the West Coast and elsewhere. According to Evison (2006), the Ngāi Tahu deeds reveal the colonial process that led to the Crown acquiring Māori title in the southern half of Aotearoa. Land alienation was not the only issue. The transactions took place within a framework of Crown sovereignty, land alienation authority, legal title control and Māori relationship interpretations through purchase, reserve, occupation and extinguishment categories.

Kemp's Deed draws attention to the vast territory and contested agreements regarding reserves, mahinga kai and Ngāi Tahu's relationship with their whenua. The land could be considered available for systematic settlement once discrete Māori interests were identified, reserved or purchased, following a terra-nullius logic. However, Māori view whenua as inalienable property, and mahinga kai and seasonal use are not peripheral to occupation. Authority, sustenance, whakapapa and responsibility are interconnected. The Crown's failure thus went beyond transactions; it was epistemological and jurisdictional: Māori land relations were framed in a colonial property framework that obscured their political significance (see University of Otago, 2026; Fisher, 2023; Waitangi Tribunal, 1991).

Thus, Te Waipounamu is crucial to the argument. Moon (2022) stresses consent, treaty-making and the lack of papal citation. But the case of the South Island reveals a more complex colonial formation. The Crown could use consent and discovery. It may protect land while controlling alienation. It could acknowledge Māori title while claiming radical title. Discovery could be used to justify Crown sovereignty and reject papal authority. These are not contradictions if colonisation is seen as an adaptive structure rather than a single doctrine. Britain being Protestant did not exempt Te Waipounamu from the Doctrine. One of the most apparent discoveries was there. A colonial order based on the Crown's right of discovery, waste lands thinking, pre-emption, radical title and massive land purchasing made Māori authority weak and Crown authority presumptive. Terra nullius-like effects did not require declaring the land terra nullius per se, as the Crown only had to deem land relations insufficient unless recognised, translated, purchased or extinguished by the colonial state.

The South Island is Moon's (2022) thesis's pressure point. If discovery established sovereignty over Te Waipounamu and Rakiura, it cannot be ignored in Aotearoa's

colonisation. The question is not whether this corresponded to papal *Inter Caetera*. Discovery was already part of British imperial law's structure of colonisation; it was an adaptable possession vocabulary (Simon, 2016), which was practical in Te Waipounamu and became territorial, legal and material.

Te Ika-a-Māui and paternalism as an act of discovery

While Te Waipounamu illustrates the Crown's territorial claim through discovery, the case of Te Ika-a-Māui demonstrates that paternalism is another aspect of colonial grammar. This is crucial because Moon's (2022) argument hinges on the distinction between discovery and consent. According to Moon (2022), British intervention in Aotearoa New Zealand was not influenced by the Doctrine of Discovery because the Crown sought Māori agreement through Te Tiriti instead of asserting sovereignty through discovery. This contrast is too clean as it assumes that consent and discovery are exclusive. It posits that discovery logic disappears when the Crown speaks of protection, treaty-making and native consent. Contradicting this, discovery in Te Ika-a-Māui did not primarily involve declaring the land empty but instead declaring Māori politically governable.

I call this 'the right of paternalism'. It presumes that Indigenous peoples are present but politically deficient, capable of occupancy but not of full jurisdiction, entitled to protection but not to equal constitutional standing. It does not appear in *Inter Caetera* or require that British officials consciously applied papal doctrine in 1840. Instead, it is a doctrinal adaptation to European and British colonial culture. Where terra nullius empties land, paternalism shrinks people. Discovery claims territory by arrival, paternalism by protection. It recognises Indigenous presence in a Crown-manageable form.

I refer to this as the "privilege of paternalism. It delineates a colonial rationale wherein Indigenous populations are recognised as existing yet portrayed as politically inadequate: able to inhabit but not to possess complete authority, deserving of safeguarding but not of equivalent constitutional status. In this context, discovery transcends mere identification or territorial assertion; it categorises political power by establishing which jurisdiction will be deemed comprehensive, sovereign, and legally legitimate. The principle of paternalism is not explicitly present in *Inter Caetera*, nor does it necessitate that British officials were aware of their application of papal doctrine in 1840. It signifies a modification of a prior colonial grammar to suit European and British imperial contexts. In areas where terra nullius vacates territory, paternalism undermines Indigenous political power. Discovery asserts territorial precedence via arrival and declaration; paternalism asserts authority through safeguarding, administration, and enhancement. It recognises Indigenous existence while making that existence politically controllable by the colonial government.

This differentiation holds significant relevance in Te Ika-a-Māui as Crown authority has traditionally been articulated via Te Tiriti. The conventional Crown perspective regards Te Tiriti as the constitutional event that granted Māori consent for British sovereignty

(see Simon, 2024b). Moon (2022) utilises a variant of this distinction to differentiate Aotearoa from the Doctrine of Discovery: while the Crown pursued consensus via treaty formation, discovery ostensibly loses its significance. From the viewpoint of mana motuhake, this dichotomy between consent and discovery is precarious. Tūwharetoa and various hapū and iwi did not endorse Te Tiriti, and their constitutional status cannot be seamlessly integrated into a broader narrative of Māori approval (Simon, 2016, 2022, 2023b, 2024a, 2024b, 2025, 2026a, 2026b).

Te Ika-a-Māui should not be perceived as the antithesis of the discovery narrative present in Te Waipounamu. The Crown was not required to create Te Ika-a-Māui as devoid of substance. Māori political power was prominently displayed, systematically structured, and adept in diplomacy. The issue of colonialism was fundamentally one of political diversity: hapū and iwi wielded power via political affiliations, normative frameworks, and jurisdictions independent of the Crown. Paternalism offered a way to address the political existence of Indigenous peoples without negating the existence of Māori. The Māori could receive recognition, safeguarding, and integration while their political power was concurrently relegated to an ostensibly superior Crown authority.

The constitutional importance of this is more apparent when Te Tiriti is examined from the perspective of non-signatory hapū and iwi. Non-signatory stances contest accounts that generalise Te Tiriti by assuming all Māori political power experienced an identical constitutional occurrence in 1840. Such accounts pose a danger of generalising the Te Taitokerau experience of Te Tiriti among hapū and iwi with varying histories and iwi with varying histories and constitutional affiliations (Simon, 2024b). The Waitangi Tribunal's Stage 1 Te Paparahi o Te Raki investigation is noteworthy as it determined that the chiefs who endorsed Te Tiriti in February 1840 did not relinquish sovereignty (Waitangi Tribunal, 2014; Te Kawariki and Network Waitangi, 2012). That discovery does not clarify the constitutional status of every hapū or iwi, yet it diminishes any simplistic narrative suggesting that Te Tiriti represented a universal transfer of Māori sovereignty to the Crown (see Simon, 2024b).

The ensuing issue regarding Crown sovereignty is consequently significant. If consent is required to legitimise Crown jurisdiction, the situation of non-signatory hapū and iwi is still ambiguous. If their approval was not required, then Crown authority over them must have relied on an alternative colonial rationale. The primary inquiry thus revolves not merely around whether specific rangatira endorsed Te Tiriti, but rather how the Crown converted a geographically disparate, politically diverse, and contentious array of relationships into a broad assertion of sovereignty over Te Ika-a-Māui. The significance of paternalism emerges analytically in this context. It recognises the presumption that the Crown could rightfully expand its jurisdiction over Indigenous populations without their political authority being commensurate with its own.

Paternalism facilitated this change by portraying the Crown as a protector, guardian, civilising force, and the ultimate arbiter of legal acknowledgement. Western jurisprudence has consistently utilised civilisational differentiations to undermine

Indigenous legal authority (Williams, 1990), whereas common law's acknowledgement of Indigenous title often preserved Crown sovereignty as the paramount source of legal power (McHugh, 2004). Protection may thus serve as a secondary means of ownership. Instead of negating the existence of Māori, the Crown claimed the power to define the legal standing and boundaries of Māori territories, interests, and political affiliations. Indigenous political systems may be recognised yet categorised as traditional, regional, insufficient, or ultimately dependent on Crown acknowledgement.

By "conversion," I refer to the legal and political alteration of established Māori authority into classifications defined by the Crown. Paternalism does not merely stifle Indigenous sovereignty; it reconfigures it into modalities that align with settler administration. Mana motuhake transforms into "rights"; tikanga is rendered as "custom"; hapū and iwi authority is interpreted as interests that may be acknowledged, consulted, or accommodated. Māori political diversity can thus be reduced to the administrative classifications of "Māori" or "indigenous" groups under Crown oversight and authority. Paternalism thus represents the recognition of Māori as colonial subjects: groups to be safeguarded, enhanced, civilised, integrated, and administered rather than political entities with autonomous legal and constitutional frameworks separate from the Crown. While this procedure contrasts with the territorial application of discovery in Te Waipounamu, both function within the same overarching colonial framework.

The non-signatory dilemma reveals the ongoing repercussions of this procedure. From this viewpoint, the Crown's constitutional account integrates diverse histories, genealogies, and political powers within a national Treaty structure that ultimately bolsters state legitimacy. A mana motuhake perspective asserts that Indigenous political authority cannot be confined to a singular narrative centred around the Crown (Simon, 2024b, 2026a). Crown acknowledgement does not establish mana motuhake. Mana motuhake originates from genealogy, land, customs, and ongoing obligations to forebears and descendants. Jones (2016) illustrates that insufficient acknowledgement by the state of Māori legal and constitutional traditions does not invalidate their existence. Indigenous normative frameworks endure in spite of colonial efforts to limit or reinterpret them.

Logic	Colonial move	Māori effect
Terra nullius	Land treated as empty, waste or insufficiently occupied	Māori land relations are denied or reduced
Discovery	The Crown claims priority through European arrival and naming	Māori authority is subordinated to imperial title
Paternalism	Māori presence is acknowledged but rendered governable	Mana motuhake is converted into Crown-managed rights

Table 1: Acts of The Doctrine of Discovery

This is also where Kaupapa Māori evaluation becomes crucial. If Crown documents, classifications, and legal acknowledgement form the entirety of the evidentiary framework, the Crown essentially maintains the power to delineate Māori political existence. Recognition politics can consequently perpetuate colonial dynamics, wherein Indigenous populations are incorporated into political structures that maintain the fundamental sovereignty of the settler state (Coulthard, 2014; Simon, 2024b; Johnson, 2024). Biculturalism may serve a comparable role in which Māori sovereignty is acknowledged solely within a Crown-regulated constitutional framework (Simon 2022, 2024b, 2025, 2026). The principle of paternalism identifies the underlying rationale governing these structures: Indigenous existence may be recognised, yet Indigenous sovereignty is inferior to the state's authority that dictates the conditions of that acknowledgement.

This further exemplifies the limitations of Moon's (2022) functionalist account. Functionally, it can explain settler pressure, commercial interests, imperial caution, missionary influence, administrative improvisation and inconsistencies of British policy. It cannot of itself explain how these contingent pressures produced a durable structure of Crown superiority over Māori, or how a supposedly consensual relationship could authorise jurisdiction over hapū and iwi that did not sign Te Tiriti or cede mana motuhake. If consent was constitutionally required, then the Crown's consent narrative excludes non-signatory hapū and iwi. Where no consent was needed, the Crown's power was based on an assumption which existed prior to that time, that it had the right to rule Māori without their consent. Missing logic is supplied by paternalism and the discourse of consent, protection and benevolence is translated into a claim of superior Crown jurisdiction (Simon, 2016, 2024b, 2026a, 2026b).

The stakes go beyond history, and the issue spans generations. An ethic of mokopuna asks more than whether the Crown can defend its constitutional arrangements by selectively reading Te Tiriti or the colonial archive. The question is whether those arrangements are suitable for future generations. How will mokopuna fare if Indigenous authority is mediated by Crown institutions, recognition, settlements and partnerships? What is justice if mana motuhake is only recognised when it is compatible with the state that denied it?

The Te Ika-a-Māui story cannot be reduced to consent; it also involves the Crown's alleged discovery of Māori as governable subjects. The case of Te Waipounamu demonstrates the Crown's territorial discovery use, while Te Ika-a-Māui illustrates its jurisdictional use. They show that the Doctrine of Discovery did not need to be a papal command in Aotearoa. It was a flexible colonial grammar: discovery for land claims, paternalism for the governance of peoples and recognition for the containment of mana motuhake.

From discovery to denial: law, history and colonial innocence

The central methodological issue with Moon's (2022) argument is not that the historical details he invokes were wrong or that British officials indeed mechanically invoked papal authority; it is that Moon's evidentiary frame produces colonial innocence. The Doctrine of Discovery, when reduced to *Inter Caetera* (i.e. to direct Catholic authority and a limited search for first-cause intentionalism), renders British colonisation pragmatic, reluctant, secular and legally careful. Rather than whether British officials invoked a 15th-century papal bull, the question should be whether British law and policy reproduced the Doctrine's operative logics of discovery, Crown superiority, Indigenous diminution, territorial acquisition and the conversion of Indigenous authority into conditional occupancy (see Williams, 1990; Miller et al., 2010; Simon, 2016).

Crusader colonialism sharpens this critique by showing that Moon (2022) starts too late. The Doctrine of Discovery was not the originating point of Christian European colonial possession; it was one legal expression of a much older crusader-colonial grammar. During the Middle Ages, crusading helped to create a Christian-European political imagination that enabled the categorisation, governance, conversion, conquest, enslavement or elimination of non-Christian peoples in the name of divine and civilisational order (Mastnak, 2002; Muldoon, 1979; Tolan, 2002; Simon et al., 2027; Murphy, 2025). These categories were about jurisdiction and possession, defining who could occupy whose land, whose authority could be denied, whose resistance could be punished and whose incorporation was salvation, protection, civilisation or improvement. Studies of mediaeval race and crusading reveal the contribution of religious difference to the racialisation of Muslims, Jews, Pagans and, later, Indigenous peoples, producing hierarchies of humanity that shaped colonial modernity (Robinson, 1983; Bartlett, 1993; Heng, 2018).

This genealogy illuminates Moon's (2022) reductionism to the papacy. If the Doctrine is limited to *Inter Caetera* alone, then the lack of express British citation seems determinative. If, however, the Doctrine is understood as part of a longer crusader-colonial grammar, the evidentiary question changes to whether British imperial law secularised Christian-European presumptions that made discovery, occupation, improvement, protection, pre-emption, native title, radical title, waste lands and Crown sovereignty lawful (Williams, 1990; McHugh, 2004; Miller et al., 2010; Williams, 1999). Far from doing away with discovery logic, Protestantism translated it into another imperial idiom. English and later British traditions of possession, however connected to papal authority, developed through legal, commercial, Protestant and imperial vocabularies separate from European Christian possession (Armitage, 2000; Seed, 1995; MacMillan, 2006).

This genealogy shows evidence of Protestant exceptionalism and absence. Colonial power is often enacted through inherited assumptions that no longer have to be

articulated. A theory of colonial possession can function even if older theological language is replaced by protection, civilisation, waste lands, improvement, Crown pre-emption, native title or orderly settlement (McHugh, 2004; Miller et al., 2010). Moon's (2022) functionalism faces the same problem. Commercial interests, administrative contingencies, missionary pressures, settler demands and imperial hesitation do not disprove doctrine; they demonstrate how doctrine becomes ordinary. By the 19th century, the older language of holy possession could function through secular colonial administration. 'Improvement', 'civilisation', 'protection', 'settlement' and 'orderly government' were not neutral terms. They were vocabularies that celebrated European sovereignty and diminished Indigenous authority (Williams, 1990; Anghie, 2005; Miller et al., 2010). Moon (2022) asks whether officials intended to use a papal decree, overlooking the sharper question of whether their legal world already presumed European priority over Indigenous title and jurisdiction.

An additional limitation lies in the overreach of consent. Moon's (2022) focus on Te Tiriti risks turning consent into an alibi for the wider colonial project. Te Tiriti cannot soak up the unevenness of British acquisition, particularly with regard to Te Waipounamu and non-signatory hapū and iwi. Discovery and Crown assertion were particularly evident in Te Waipounamu and Rakiura. In Te Ika-a-Māui, discovery took a different form in the paternalistic construction of Māori as governable subjects rather than the emptying of land (Orange, 2015; McHugh, 2004). This shift is theorised by crusader colonialism. Colonial power did not always mean the absence of indigenous presence; sometimes, it meant instead that Indigenous peoples were present but politically underdeveloped, able to occupy but not equal in jurisdiction, entitled to protection but not to full constitutional authority (Williams, 1990; Anghie, 2005).

Where terra nullius leaves off with land, paternalism leaves off with people. Discovery claims territory by arrival, naming and assertion. Paternalism claims jurisdiction by protection, improvement and administration. This is why Moon's (2022) consent framework backfires. The Crown's appeal to Te Tiriti is not evidence of the absence of a discovery logic. The later transformation of Te Tiriti into a basis for general sovereignty shows how consent could be turned into a colonial tool (Palmer, 2008; Waitangi Tribunal, 2014). If Crown sovereignty is founded on consent, non-signatory hapū and iwi present an unresolved constitutional challenge.

The problem is constitutional at its root. Crown sovereignty underpins Māori rights, Treaty settlements, co-governance arrangements, consultation duties and Treaty principles (Palmer, 2008; Simon, 2016, 2024, 2026). The Doctrine of Discovery's importance lies not in whether British officials cited *Inter Caetera* or mentioned the doctrine by name but in the Crown's ongoing power to set the terms on which Māori political life can be acknowledged. The limits of this grammar are revealed by mana motuhake: it is not a right conferred by the Crown but Indigenous sovereignty that has been inherited from whakapapa, whenua, tikanga, hapū and iwi authority and obligations to ancestors and mokopuna (Simon, 2016, 2024b). While Crown recognition may acknowledge aspects of Māori authority, recognition is not the source of this

authority and can act as a site of both affirmation and containment of mana (Coulthard, 2014; Moreton-Robinson, 2015; Simon, 2024b).

The non-signatory hapū and iwi are important. Treaty-centred constitutional narratives often assume that Te Tiriti can carry the weight of the whole country's political framework. Te Tiriti is frequently read as giving Māori consent, authorising Crown sovereignty and providing the basis for Māori rights. Yet this narrative cannot explain the case of hapū and iwi who did not sign it, nor can it escape continuous argument over sovereignty, kāwanatanga and tino rangatiratanga among those who did (Waitangi Tribunal, 2014; Simon, 2024b). I contend that non-signatory hapū and iwi have been marginalised in mainstream Treaty scholarship, which re-affirms state authority through Crown-centred narratives while simultaneously obscuring enduring mana motuhake (Simon, 2024b). If Te Tiriti is the basis of Crown sovereignty, then non-signatory positions are awkward exceptions, not constitutional challenges (see Simon, 2024b).

The treaty principles complicate this problem. Although they appear to be flexible, pragmatic and conciliatory, this flexibility shifts the focus away from the texts, contexts and Māori political authorities of Te Tiriti and towards state-controlled abstractions such as partnership, protection, participation, redress, consultation and good faith (Palmer, 2008; Mikaere, 2011; Simon, 2024a). These principles may offer some protection, but they also enable the Crown and courts to decide the shape of Māori authority within the state. I have argued elsewhere that Treaty principles can allow the white possessive state to remain sovereign while recognising Māori rights (Simon, 2016, 2024a). Thus, principles can become a surrogate for tino rangatiratanga, translating Māori authority into administrable rights, creating Māori authority that is consultative rather than jurisdictional, participatory rather than constitutional and recognised rather than inherent.

Moreton-Robinson's (2015) theory of the white possessive identifies the possessive structure underpinning this recognition. The white possessive state does not just possess land by overtly taking it. It also does so by defining the conditions under which Indigenous peoples can be represented in law and policy. Crusader colonialism offers a longer genealogy for this possessive structure, whereby indigenous peoples may be included, protected, converted, educated, consulted or settled with, but only when their authority is made compatible with the dominant order. In Aotearoa, Māori are recognised as partners, stakeholders, rights-holders, kaitiaki, co-governors and Treaty claimants, and the scope and consequences of these roles are defined by the state (Palmer, 2008; Moreton-Robinson, 2015). Within this possessive framework, mana motuhake is translated into state-recognised rights, tikanga is reduced to legally cognisable custom, hapū and iwi jurisdiction is reframed as interests to be balanced against others, and Te Tiriti is transformed into Crown-defined Treaty principles. In each case, Indigenous authority is rendered legible to, constrained by, and ultimately administered through the institutions of the Crown.

Moon's (2022) account is open to historical challenge because it reduces the Doctrine to papal citation and downplays discovery, terra nullius-like effects, paternalism and the secularisation of crusader-colonial power. Yet the Doctrine lives on wherever the Crown asserts itself as the source from which Māori authority must be recognised before it can count: when Treaty principles are elevated above the mana of hapū and iwi, when co-governance is lauded while jurisdiction remains with the state and when non-signatory positions are incorporated into national Treaty narratives they did not authorise (Simon, 2016, 2024b, 2025, 2026a, 2026b; Moreton-Robinson, 2015).

A mana motuhake-centred analysis does not accept Crown recognition as the horizon of justice. Who has authority before the Crown recognises it? What political orders existed pre 1840 and persist despite colonisation? What would it mean for hapu and iwi jurisdiction to be treated as primary rather than derivative? These questions cannot be answered by Treaty principles alone because Treaty principles are the products of the legal order whose authority is at issue (Palmer, 2008; Simon, 2024b). This does not mean turning away from Te Tiriti but refusing its Crown-centred use aiming to naturalise state sovereignty. Although Te Tiriti still has currency as a record of relationship, obligation and Crown limitation, it cannot validate Crown sovereignty over those who did not sign it, nor can it subordinate mana motuhake to a national settlement story (Waitangi Tribunal, 2014; Simon, 2024b).

The colonial grammar of discovery remains a present form of political imagination. It tells the state to see itself as the organiser of law, land, rights and recognition. It educates the public to conceive of Māori authority as negotiated after, rather than before, and not exceeding, Crown sovereignty. Mana motuhake shatters this grammar by asserting that Māori authority is not generated by the Crown, consumed by Te Tiriti, trapped by Treaty principles or satisfied by symbolic recognition (Simon, 2016, 2024b, 2026a, 2026b). It is the ongoing right of hapū and iwi to govern by tikanga, have jurisdiction over whenua and wai and decide political futures for mokopuna, not a doctrine that can be quoted and affirmed or denied. From this perspective, the Doctrine of Discovery is not a 16th-century doctrine. It is a name for the structure that always translates Indigenous authority into something less than itself.

Conclusion: The Doctrine as colonial grammar, not archival footnote

Moon (2022) is correct to caution against a simplistic view that the Pope was directly responsible for New Zealand colonisation. Such an argument risks reducing complex imperial histories to a single theological origin point. However, Moon's own narrowing of the Doctrine of Discovery is also overly restrictive. By treating the Doctrine as if the citation of a 15th-century papal bull is all that matters, his account confuses citation with operation and source with structure. The Doctrine's relevance in Aotearoa New Zealand lies not in a direct line from *Inter Caetera* to every colonial decision but in its implementation. Its logics emerged from discovery, waste lands reasoning, radical title, Crown pre-emption, native title and paternalism. Te Waipounamu's grammar included

terra nullius assumptions that made land available for Crown acquisition despite Māori authority. Te Ika-a-Māui, particularly for non-signatory hapū and iwi, asserted the Crown's right to govern while claiming to protect Māori. Consent became the language by which possession was normalised.

This is where Moon's (2022) argument reaches its logical conclusion. It looks for explicit papal citations when it should examine colonial structure. It enquires whether British officials consciously applied Catholic doctrine but not whether British imperial law secularised and adapted the Doctrine's more intricate grammar of Christian-European possession. The end result is a kind of colonial innocence: colonisation appears to be lawful, pragmatic, reluctant and consent-based rather than possessive, racialised and structurally violent. Mana motuhake debunks this fiction by affirming that Crown sovereignty is not established simply because it was declared, administered or later narrated as lawful. Te Tiriti does not make it morally innocent, given that many hapū and iwi did not sign it and Crown practice exceeded its own claimed agreement. Importantly, the Doctrine of Discovery helps identify the colonial grammar that denied Indigenous sovereignty while making Crown sovereignty appear natural. A mana motuhake historiography must recognise possession even when speaking in terms of consent, protection and law.

Acknowledgements

This article is written in memory of Prof. Whatarangi Winiata, he tauira, he wānanga kua ngaro atu rā ki te pō, moe mai e Pā, okioki atu ki a rātou mā.

Funding details: The author reports no funding associated with this research.

Conflicts of interest: The author reports no competing interests to declare

Ethics Statement: No Human Ethics approval was required for this research.

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