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*During the period from 1840-1870, how did the Crown institute law to shift their relationship with Māori to impose greater control and sovereignty over Māori society and land?*

### ***I Introduction***

Writing in his position as Governor of New Zealand in 1847, George Grey outlined his policy for Māori as being “to convince the natives that their traditional customs had become obsolete and useless and that it would be to their own advantage to adopt our laws.”<sup>1</sup> Standing in opposition to Māori interpretations of the 1840 signings of the Treaty of Waitangi (the Treaty), this reflected the predominant Crown belief that lies at the heart of Crown-Māori relations and conflict over land, authority, and sovereignty: that Māori law and rangatiratanga must give way to British control and absolute sovereignty. As Claudia Orange argues, by 1870, this conflict was won decisively by the Crown, leading to the permanent ascendancy of British perspectives and dominion.<sup>2</sup> Therefore, this essay will argue that across this crucial 1840-1870 period, following an initial phase of autonomy for Māori, the Crown increasingly enacted legislation and policies which imposed greater control over Māori society and land to realise their supposed claim of absolute sovereignty over New Zealand. This essay defines “rangatiratanga” as the exercise of Māori chieftainship over their resources and lands. Following this introduction, part II examines the initial Crown-Māori relationship, which was characterised by mostly undisturbed Māori independence, protected by imperial institutions, with a growing British distaste for their autonomy and non-amalgamation. Part III details how, in response to settler demands for expansion and development, the Crown commenced policies imposing their law and ownership of land upon Māori. Responding to this dominating and land-alienating threat, part IV explains how Māori formed the

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<sup>1</sup> Shaunnagh Dorsett *Juridical Encounters: Māori and the Colonial Courts, 1840-1852* (Auckland University Press, Auckland, 2017) at 271.

<sup>2</sup> Claudia Orange *The Treaty of Waitangi* (2nd ed, Bridget Williams Books Limited, Wellington, 1995) at 160.

Kīngitanga to maintain the rights of rangatiratanga and ownership granted by the Treaty. Finally, in part V, this essay shall present the Crown's violent reaction to the Kīngitanga, enacting a sweeping programme of land confiscation and purchases in a war to ultimately enforce their proclaimed sovereignty.

## ***II Initial Crown-Māori Relations***

Following the Treaty, Māori remained largely independent from British authority and even received protection from Crown institutions aiming to ensure this, yet continuing Māori autonomy and non-amalgamation left the Crown and settlers dissatisfied. For Māori, the Treaty's signing meant a reaffirmation of their sovereign authority over their iwi and land while granting kāwanatanga, governorship, to the Crown in order to regulate its settlers.<sup>3</sup> The guarantee for retaining landownership was critical, given that the actual possession of land expressed one's rangatiratanga almost synonymously.<sup>4</sup> Therefore, throughout this initial 1840s period, Māori believed that they would maintain overall command, working with the Crown to keep peace between the two peoples. Conflicting with this view, however, was the common British perspective that all Māori were Crown subjects, having ceded "all the rights and powers of sovereignty" under the Treaty's English translation.<sup>5</sup> Though dominant, this belief in absolute Crown sovereignty remained dormant, and several government officials, like the first Chief Justice William Martin, followed the Māori translation and recognised rangatiratanga over all tribal lands.<sup>6</sup>

Genuine Māori sovereignty accordingly persisted, tolerated by the early Governors who held broad legislative and executive powers to implement laws and recognised the Crown's Treaty responsibilities.<sup>7</sup> This protective Crown-Māori relationship was assisted by several British institutions. Most importantly for Māori interests, the 1840 Land Claims Commission sought to investigate pre-Treaty land transactions. Many deals possessed extremely deficient terms, as sales were undertaken with a minority of collective owners or designated vague

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<sup>3</sup> Annabel Mikaere *Colonising Myths - Māori Realities: He Rukuruku Whakaaro* (Huia Publishers, Wellington, 2011) at 76.

<sup>4</sup> Danny Keenan *Wars Without End* (Penguin Books, North Shore, 2009) at 14.

<sup>5</sup> Treaty of Waitangi 1840, art 1.

<sup>6</sup> Orange, above n 2, at 154.

<sup>7</sup> At 140.

boundaries.<sup>8</sup> Totalling 66 million acres across 1,100 claims, the Commission received evidence from both European and Māori witnesses, causing “most of these to evaporate.”<sup>9</sup> Under the Treaty’s 2nd article, the Crown’s right of pre-emption for future land transactions allayed further conflicts over unscrupulous settler-Māori land purchases.<sup>10</sup> Furthermore, the position of the ‘Protector of Aborigines’ was assigned as an impartial defender of Māori welfare, serving as a governmental safeguard and voice for Māori.<sup>11</sup> Alongside these institutions, the Crown enacted policies to augment their protection of Māori rights. For example, Governor Robert FitzRoy passed the Native Exemption Ordinance of 1844, requiring that no warrant be issued for Māori outside settlements without the permission of two chiefs from the offender’s iwi, thereby limiting Crown control over Māori.<sup>12</sup>

As this relationship of Māori independence and limited Crown authority over iwi and land remained, many government personnel and settlers became increasingly disgruntled with the status quo. Holding a belief that the Treaty ultimately intended to unite settlers and Māori into a single nation and people, a policy of Māori amalgamation into the ‘superior’ British society was sought by the Crown.<sup>13</sup> Indeed, as Grey wrote during his first Governorship, the practice of tolerating “native customs” anywhere would surely promote their “savage state”.<sup>14</sup> By limiting protective institutions and gaining further control over Māori, it was hoped that amalgamation would become streamlined. Therefore, as the 1850s began, official pronouncements referencing the Treaty shifted in emphasis from its protective concerns for Māori toward demands to recognise the English Treaty and uphold governmental rights to absolute sovereignty.<sup>15</sup> Overall, this initial 1840s Crown-Māori relationship left Māori sovereignty largely unaffected and protected by Crown mechanisms.

### ***III Crown Attempts to Enforce Control Over Māori and Native Land***

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<sup>8</sup> Judith Binney, Vincent O’Malley and Alan Ward “Rangatiratanga and Kāwanatanga” in Atholl Anderson, Judith Binney, and Aroha Harris (eds) *Tangata Whenua: An Illustrated History* (Bridget Williams Books, Wellington, 2014) 220 at 228

<sup>9</sup> At 229.

<sup>10</sup> Treaty of Waitangi 1840, art 2.

<sup>11</sup> Orange, above n 2, at 93.

<sup>12</sup> Binney, O’Malley and Ward, above n 8, at 240.

<sup>13</sup> Orange, above n 2, at 138.

<sup>14</sup> Keith Newman *Beyond Betrayal: Trouble in the Promised Land - Restoring the Mission to Māori* (Penguin, Auckland, 2013) at 50.

<sup>15</sup> Orange, above n 2, at 136.

Exercising their claimed sovereignty in concert with settler calls for greater colonial growth and development, the Crown initiated a programme of policies seeking additional command over Māori and their land. Following a British Empire-wide impetus to establish local parliaments in the colonies, New Zealand received self-governance under the Constitution Act 1852.<sup>16</sup> Growing in number and desire for expansion, these now-represented settlers eagerly lobbied for greater control over Māori landownership and authority. Many observed the vast swaths of remaining Māori land that impeded settlement, which in turn led to parliamentary calls to alienate large sections of Māori land.<sup>17</sup> Consequently, Crown governance now shifted their relationship with Māori toward imposing dominion over iwi and land, disregarding humanitarian arguments, which became “overwhelmed by an essentially self-interested, land-hungry colony.”<sup>18</sup>

### ***A Implementing Control Over Māori***

Influenced by these settler demands and the beliefs that Māori societal amalgamation required increasing Crown control, the 1850s Governors and MPs sought to exercise British law and universal sovereignty upon Māori. Despite the new representative constitutional arrangement, Māori were already subject to British legislative control. This was due to Māori being almost entirely unable to vote for or participate in provincial or national elections, as the franchise required ownership of valued freehold land, which most communally dwelling Māori lacked.<sup>19</sup> Similarly exerting authority over Māori administration within the Native Districts Act 1858, Grey’s ‘Rūnanga System’ organised a structure of councils to provide Māori regions governance under the direction of British Magistrates.<sup>20</sup> Orange asserts that this system merely offered “indirect government thinly disguised as self-government,” as Grey hoped to supplant Māori sources of authority to further their amalgamation and Crown control.<sup>21</sup> Stemming from a Cook Strait land dispute which resulted in small-scale Crown-Māori conflict, Grey’s imprisonment of Te Rauparaha, a significant chief, displayed the actual enforcement of British sovereignty and law upon Māori. Though he proclaimed

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<sup>16</sup> Richard Boast *Raupatu: The Confiscation of Māori Land* (Victoria University Press, Wellington, 2009) at 196.

<sup>17</sup> Orange, above n 2, at 150.

<sup>18</sup> Boast, above n 16, at 193.

<sup>19</sup> Binney, O’Malley and Ward, above n 8, at 250.

<sup>20</sup> Orange, above n 2, at 162.

<sup>21</sup> At 162.

neutrality, Grey accused Te Rauparaha of assisting the resistance and subsequently captured him, revealing the government's power and universal jurisdiction over Māori.<sup>22</sup>

### ***B Attempts to Alienate Māori Land***

In a process Ranginui Walker described as converting Britain's 'notional' sovereignty into 'substantive' sovereignty over New Zealand's land and Māori, the Crown enacted several policies which proposed alienating vast areas of Māori held land for settlement. As mentioned, the early Crown acquisition of native lands was overseen by the Protector of Aborigines. Governor Hobson directed the appointees to purchase only land which Māori could sell "without inconvenience", organising measures to identify boundaries and gain the consent of the various collective owners.<sup>23</sup> By gaining clear Māori approval, this relationship provided property while minimising conflict; however, later Governors criticised the system as impeding colonial expansion.<sup>24</sup> Accordingly, throughout the 1850s, government agents ignored these measures, instead utilising "underhand methods" by negotiating purchases with one or a few owners against the majority will of collective possessions.<sup>25</sup> Yet, as time progressed, such deceitful practices failed to satiate governmental and settler hunger for land. Intending to streamline these desired alienations, Grey abolished the obstructive Protectors, replacing them with Extinguishment Commissioners.<sup>26</sup> Commencing 'blanket purchases' of Māori land, the commissioners expanded North Island Crown holdings to comprise a quarter of available land.<sup>27</sup> Similarly, agents obtained almost all of the South Island for £14,750, leaving Ngāi Tahu "virtually landless" across disconnected and meagre reserves.<sup>28</sup> Combining this push to escalate governmental authority over Māori society and their land in service to settler demands, the Crown displayed a pronounced shift away from tolerating Māori autonomy toward establishing its perceived absolute sovereignty.

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<sup>22</sup> Binney, O'Malley and Ward, above n 8, at 237.

<sup>23</sup> Ranginui Walker *Ka Whawhai Tonu Mātou = Struggle Without End* (2nd ed, Penguin, Auckland, 2004) at 105.

<sup>24</sup> At 105.

<sup>25</sup> D.G. Herron "The Maori King Movement, 1858-1885" in M.P.K Sorrenson (ed) *Ko Te Whenua Te Utu / Land is the Price: Essays on Maori History, Land and Politics* (Auckland University Press, Auckland, 2014) 106 at 109.

<sup>26</sup> Walker, above n 23, at 106.

<sup>27</sup> At 105.

<sup>28</sup> Binney, O'Malley and Ward, above n 8, at 248.

#### *IV Māori Resentment and the Kīngitanga*

Holding firm to their recognised Treaty rights of rangatiratanga over their lands and resources, increasingly aggrieved Māori established the Kīngitanga to unify iwi against the Crown's enforcement of authority and vast alienations. As the 1850s proceeded, most Māori became progressively disconcerted by government activities which contradicted their supposed autonomy and territorial control under the Treaty.<sup>29</sup> As illustrated by Ngāi Tahu's fate, numerous iwi were outmanoeuvred by covetous and often dishonest land agents, receiving scant compensation for the taking of extensive holdings. Consequently, dispossessed Māori and those fearing alienation and coercion grew opposed to the Crown, worrying that the resultant outcome would mean not only the loss of their land but the destruction of Māori self-determination and agency itself.<sup>30</sup> Moreover, despite expanding their administration, the Crown failed to address local Māori issues. Wiremu Tamihana, for example, consistently voiced concerns about alcoholism, yet the government ignored these pleas and actively aggravated the issue by admitting "bush licences" for alcohol traders deep in Māori territory.<sup>31</sup> This dual peril of an inability to legislate for themselves and a government which continually asserted its sovereignty over Māori society and land heightened tensions in what was clearly becoming an unequal Crown-Māori relationship. What materialised was a rising feeling of Māori nationalism, as many perceived the divided iwi as uninfluential and too weak for effecting change.<sup>32</sup> If unified, Māori could pursue combined action as a counter to British domination, preserving their rangatiratanga and addressing shared concerns.

Crystallising amidst a series of 1850s meetings, North Island Māori debated this unification of iwi into a single polity, concluding that Rangatira should merge their mana under the command of a Māori king.<sup>33</sup> Taking centre stage within discussions and essential to the Kīngitanga Movement was the necessity to restrict rampant land alienation to protect the scope of rangatiratanga. Indeed, as D.G. Herron detailed, the creators of this system were averse to transferring land "on any terms whatsoever," underlining the crucial factor of land

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<sup>29</sup> Orange, above n 2, at 143.

<sup>30</sup> Binney, O'Malley and Ward, above n 8, at 250.

<sup>31</sup> Herron, above n 25, at 112.

<sup>32</sup> Walker, above n 23, at 111.

<sup>33</sup> Michael King *The Penguin History of New Zealand* (Penguin Books, Auckland, 2003) at 212.

possession to express rangatiratanga.<sup>34</sup> Within the Māori Treaty terms, the Kīngitanga could function, as rangatiratanga provided authority over Māori people and lands, while kāwanatanga gave the Crown control over their population. Through this ‘conjoint administration’, rather than overthrowing the British Queen, the two monarchs could work cooperatively on equal footing while providing governance for all.<sup>35</sup> Having garnered support, King Pōtatau Te Wherowhero was crowned at Ngāruawāhia in May 1858.<sup>36</sup> Holding “widespread” sympathies among Māori, Orange comments that within only two years, Pōtatau had amassed “substantial” North Island support.<sup>37</sup> Accordingly, the Kīngitanga set about exercising their unified rangatiratanga to prescribe policies benefiting local Māori. Most importantly, land sales immediately ceased, and when, in one instance, European squatters sought Crown support over a territorial dispute, the Kīngitanga had them removed in a plain example of the movement's resistance to British alienation.<sup>38</sup> Similarly, when facing social issues which the Crown neglected to ameliorate, the Kīngitanga enacted legislation on such matters as theft or controlling alcoholism.<sup>39</sup> Therefore, acting in response to the government’s failings to protect Māori wellbeing and their Treaty rights to rangatiratanga and tribal lands, Māori attempted to re-equalise their Crown relationship by unifying under the Kīngitanga in conjoint rule.

### ***V War Upon the Kīngitanga and the Full Imposition of Crown Sovereignty***

Enacting the culmination of its supposed absolute sovereignty over all territory and Māori of New Zealand, the Crown waged war against tribal rangatiratanga and landownership as represented by the Kīngitanga, instituting laws which confiscated or streamlined alienation of native lands. Burgeoning with British migrants, many in Auckland and Taranaki desired rapid acquisition of land to allow for societal expansion and development.<sup>40</sup> Therefore, when the Kīngitanga halted the region’s steady stream of purchases, settlers became suspicious and then indignant when this so-called ‘land league’ failed to subside.<sup>41</sup> As Orange argues, such

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<sup>34</sup> Herron, above n 25, at 107.

<sup>35</sup> Newman, above n 14, at 69.

<sup>36</sup> Pei Te Hurinui Jones *King Pōtatau: An Account of the Life of Pōtatau Te Wherowhero the First Māori King* (Huia Publishers, Wellington, 2010) at 14.

<sup>37</sup> Orange, above n 2, at 142.

<sup>38</sup> Herron, above n 25, at 115.

<sup>39</sup> Binney, O’Malley and Ward, above n 8, at 252.

<sup>40</sup> King, above n 33, at 212-13.

<sup>41</sup> Orange, above n 2, at 143.

opinions and animosity toward the Kīngitanga's restrictions generated widespread criticisms that the movement aimed to overthrow imperial authority and sovereignty, as opposed to merely expressing rangatiratanga within the Treaty.<sup>42</sup> Governor Browne mirrored these claims, dispatching a letter to the Kīngitanga demanding "submission without reserve to the Queen's sovereignty" while attacking their refusal land alienation.<sup>43</sup> This straightforward request that the Kīngitanga must surrender their rights and adhere to the English Treaty's granting of absolute sovereignty signalled the Crown's shift toward war. The Kīngitanga's lands were now to become "the battle ground upon which the question of the Queen's authority in New Zealand must be settled."<sup>44</sup>

Before the conflict began, however, the Crown instituted the Native Lands Act 1862, containing within its preamble a purpose to "promote the peaceful settlement of the Colony" through assessing and converting Māori customary titled land into freehold titles.<sup>45</sup> Combined with the waiving of the Crown's right to preemptive purchase, these conversions would allow Māori land to be openly traded. This reintroduced the possibility for settlers to purchase land under vague or exploitative terms and accelerated the loss of Māori land and impoverishment.<sup>46</sup> The Native Lands Act 1865 reproduced this significant shift in Crown-Māori relations with the additional institution of the Māori Land Court. Overseen by British officials who generally favoured individualist concepts of ownership, the Court was required by s 23 to identify a list of only ten owners amongst communally held titles. Richard Boast details that the section's "fatally vague" statutory language neglected to define whether those ten served as trustees or fee-simple owners who could sell at will despite opposition.<sup>47</sup> As Orange simply states, these statutes represented the "most serious attack on Māori landownership so far."<sup>48</sup>

Issuing the Kīngitanga an ultimatum to submit to the Queen's sovereignty and invading in 1863, the Crown's war upon the Waikato concluded with British victory and hundreds

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<sup>42</sup> At 143.

<sup>43</sup> Binney, O'Malley and Ward, above n 8, at 260.

<sup>44</sup> At 264.

<sup>45</sup> Native Lands Act 1862, preamble.

<sup>46</sup> Richard Boast "The Evolution of Māori Land Law 1862-1993" in Richard Boast (ed) *Māori Land Law* (2nd ed, LexisNexis, Wellington, 2004) 65 at 76.

<sup>47</sup> At 75.

<sup>48</sup> Orange, above n 2, at 162.



dead.<sup>49</sup> Māori rangatiratanga and their ability to govern autonomously was eliminated across a vast area of former Kīngitanga lands. This was chiefly facilitated by the New Zealand Settlements Act 1863, which allowed for the confiscation of Māori land where the Governor was “satisfied” that rebellion had taken place.<sup>50</sup> Even before the act had come into force, Crown surveyors were busily engaged in delineating settlements to cover the eventual 1.2 million acres of seized Waikato territory.<sup>51</sup> The confiscations expressed the unequivocal imposition of Crown authority over Māori and their native title. Implementing these enactments targeting Māori land-ownership and authority, the 1860s campaign and devastation of the Kīngitanga by the government, therefore, represented the final stage in Crown-Māori relations, the full application of absolute Crown sovereignty.

## *VI Conclusion*

In conclusion, this discussion has sought to investigate how the Crown instituted law to shape their relationship with Māori throughout the decisive post-Treaty period of 1840-1870. Across four key developments within this association, this essay has argued that British rule followed a clear path toward asserting the English version of the Treaty and its supposed absolute sovereignty, progressively imposing greater authority over Māori society and land. Firstly, maintaining the Treaty recognised rights to govern their land and resources through rangatiratanga, Māori initially enjoyed extensive autonomy, which left the Crown ultimately dissatisfied. Secondly, desiring Māori amalgamation into British society and responding to settler demands for land, the Crown began policies attempting to enforce their law and landownership upon iwi. Thirdly, acting in response to these rights-diminishing and alienating threats, Māori unified their mana to bolster rangatiratanga under a Māori king who acted to halt land sales and legislate for Māori. Finally, observing the Kīngitanga Movement as a threat to Crown authority, the government finally established absolute sovereignty over Māori through a war for control and enactments which alienated vast swaths of native land.

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<sup>49</sup> King, above n 33, at 216.

<sup>50</sup> New Zealand Settlements Act 1863, s 2.

<sup>51</sup> Binney, O'Malley and Ward, above n 8, at 267.