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The 1898 Dog Tax War as an Incursion on Māori De Recto Sovereignty

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ABSTRACT

In the Hokianga region of Northland in 1898, a war nearly broke out between Māori and the Crown, ostensibly over the Crown's imposition of a tax on dogs. This article explores some of the underlying issues that led to that crisis, focusing particularly on how various forms and dimensions of sovereignty were contested in the post-1840 colonial period in New Zealand. What the so-called 'Dog Tax War' exemplified was a trend during that era of encroaching Crown sovereignty into indigenous communities in the colony, coupled with efforts by Māori to resist that process. This work introduces the idea of Māori de recto sovereignty in connection with these incursions of Crown sovereignty, and examines the ensuing dynamics that emerged between different conceptions of sovereignty among Māori and the Crown, set against the backdrop of the trajectory of growing Crown power in the colony.

KEYWORDS

Sovereignty; Māori; Rangatiratanga; dog tax; Kīngitanga; treaty of Waitangi

Introduction

One of the ways of interpreting New Zealand's history in the post-Treaty of Waitangi (1840) colonial period is as a process of the Crown extending its de facto sovereignty – whether through imposition or acquiescence – to encompass all of the country's indigenous Māori population. Certainly, by the end of the nineteenth century, there were only a few very small pockets in New Zealand where that sovereignty did not prevail in practice (even though it had applied in law from 1840, as far as the Crown was concerned). Mostly, this failure by the Crown to assert its sovereignty over the entirety of the indigenous population can be attributed in some instances to the geographical remoteness of these populations from the instruments of state rule, coupled more occasionally with self-conscious assertions in some Māori communities of a degree of autonomy from the Crown's authority.

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This article examines one such case of Māori resistance to the sovereignty of the colonial state: the misnamed 'Dog Tax War' (a misnomer, as there was no direct fighting involved). This episode took place in the Northland region of Hokianga in 1898, and serves as an example of how the state's requirement for its sovereignty to apply universally in the country was confronted with an enduring desire by some Māori communities to assert their own de recto sovereignty (sovereignty by moral principle, or by natural right) in some areas. The tension between these competing forms of sovereignty remained unresolved at the end of the nineteenth century, even if the manifestations of them seemed to have been put to an end by that time.

The application of the concept of de recto sovereignty in the context of indigenous groups during the colonial era is still rare. While the de jure/de facto dichotomy features more prominently, the use of ideas around de recto sovereignty offers a layer of interpretive nuance to aspects of indigenous responses to colonisation.

Forms of Sovereignty

It is beyond the constraints of a single article to flesh out the numerous dimensions of sovereignty – especially what was essentially British colonial sovereignty – as it applied to New Zealand in the nineteenth century. As Jon Wilson and Andrew Dilley have noted, aspects of the forms of sovereignty Britain exercised in its colonies remained complex, 'mutually contradictory … [and] incoherent' during this era.[1]

From the perspective of nineteenth-century European imperialists, assertions of sovereignty were a means of 'justifying' and 'legitimising' expansion into other territories, and were tied in with the notion of extending European constructs of personal and property rights (under the then vague umbrella of international law) to these territories, albeit often in qualified forms.[2] In the decades following New Zealand's cession of sovereignty (which, at least, is how the British regarded the Treaty of Wautangi) in 1840, British sovereignty in the colony functioned in what Alan James has identified as an 'external' form – that is, one that originates from a separate jurisdiction, and is transposed to another territory.[3]

Such a form of what could also be termed 'colonial' sovereignty' immediately suggests a dilemma in New Zealand's situation: if Britain asserted sovereignty over the country in 1840, did this mean that the colony (and specifically, its indigenous population) had its sovereignty diminished accordingly (on the basis that it was the imperial power and not the colony that now wielded that sovereignty)? It would appear so, meaning that sovereignty in this context exists in a way that is analogous to energy in the law of thermodynamics: its properties cannot be diminished, but only transferred. This explains, to some extent, how sovereignty, which emerges from and owes its existence to a particular

society, can then be transposed to a people and territory where it has no precursor. The nature of that transposition is often fraught, reflecting the monumental ambition of establishing sovereignty in a different place and among a different people and culture, and necessarily diminishing the sovereignty exercised by that people to a proportionate extent.[4]

However, while the term sovereignty is frequently employed, especially in the context of the Treaty of Waitangi and Britain's colonisation of New Zealand, it eludes a straightforward application. As James Sheehan has observed, it is partly a political concept, but unlike, say, democracy or monarchy, is not necessarily fixed to a particular location. Neither is it vested exclusively in a specific institution, such as a parliament or bureaucracy.[5] Rather, Sheehan depicts it as a concept that is separate from any individual institution or location, but that depends on inhabiting them for its power to be given effect.[6]

One way of making sense of sovereignty, therefore, is to see it both as a doctrine and a set of activities – a 'way of thinking about politics and a form of political action',[7] as Quentin Skinner has proposed.

Ultimately, the concept referred to as 'sovereignty' is the agglomeration of 'claims made by those seeking or wielding power, claims about the superiority and autonomy of their authority'.[8] The formation (and re-formation) of states, and all that goes with that process, when seen in this light, is part of an effort to maintain or transfer sovereignty. Thus, while the history of some sovereign states may appear as being in a condition of perpetual transition, at its most fundamental level, this reflects the fluctuating strength of competing claims to sovereign authority.[9] The structures propping up or housing sovereignty may alter, but the notion of sovereignty itself remains regardless, and is hardly diminished by such processes. Any weakening of sovereign power typically occurs for one principal reason: the rise in strength of a competing sovereignty in the same location.

When it comes to British conceptions of sovereignty that were imported to New Zealand via the Treaty of Waitangi, Paul McHugh has usefully noted that the pedigree of the concept at that time extended back for at least two centuries, and (from a British standpoint, at least) incorporated the language of individual rights in relation to the state (as opposed to the unqualified power of the state asserted over individuals in it). McHugh outlines the gradual triumph in the wake of the Restoration of government by popular consent (displacing the near-absolute rule of monarchs through claims to Divine Right) as a process that vested sovereignty in British constitutional government.[10] And it was that form of sovereignty that nominally extended its reach to New Zealand from 1840, albeit with the representative element remaining in Britain, and with local British sovereignty exercised in a more authoritarian fashion.

This paradox – of the expansion of a constitutional democratically-based sovereignty into a colony in a strongly autocratic form – was resolved in part through the provisions contained in the Treaty, which, when considered in conjunction with the instructions on which the agreement was ostensibly based,

contained a broadly similar set of commitments – to Māori – of rights and protections.[11] These rights and protections were part of Britain's approach of expanding the geographical scope of its sovereignty through colonisation that Michael Belgrave has pointed out extended back at least to Britain's intervention in North America,[12] and that he succinctly suggests accounts for why some Māori perceived Queen Victoria (until the time of her death) as 'a distant guarantor of rights denied'.[13]

From the late 1830s and into the early 1840s, colonial officials gave considerable attention to the extent to which Māori communities might remain self-regulating (and therefore, retain some elements of sovereignty or self-determination). McHugh noted that '[t]his policy of the selective application of English law to aboriginal peoples in British colonies was essentially a mid-century one that was also being applied in other colonies in Australia and British North America. Governors of colonies were advised to temper the application of English law to tribal peoples with moderation. In retrospect this can be seen as a bridge between the legalism of the jurisdictionalism of the seventeenth and eighteenth centuries and the invasive legislative regimes that appeared in the late nineteenth'.[14]

In 184, James Stephen, the Under-Secretary of State for the Colonies, at the Colonial Office, attempted to clarify the delineation of the rights of Māori self-determination in the New Zealand colonial state, observing that '[t]hese people [Māori] may be the Queen's Subjects without being subject to the Law of England. I know not what hinders the Enactment of a Law declaring that in all their dealings and relations with each other they shall still live under Native Law and Native Custom, with an exception only of such Customs as are directly opposed to the universal Laws of morality; as for example Cannibalism and Human sacrifices. This may not be a perfect solution, but I believe it to be the best possible solution of this difficulty'.[15] He expressed that he did not know why the 'Native New Zealanders might not be permitted to live among themselves according to their National Laws or Usages, as is the case with the Aboriginal races in other British Colonies'.[16] It was a theme that persisted at least until 1852, when the British Parliament passed the New Zealand Constitution Act, which provided for self-governing Māori districts.[17]

McHugh draws an important distinction at this juncture between political and legal sovereignty. The former relates to the type of relationship that exists between the sovereign authority and its subjects, while the latter defines the sort of authority invested in the instruments of the sovereign state.[18] McHugh acknowledges, however, that the delineation is seldom clear-cut in practice. Thus, he admits the possibility that while Māori in the post-Treaty colonial period might no longer have had legal sovereignty, they may have reserved some political sovereignty for themselves (ironically through the process of ostensibly ceding legal sovereignty).[19] McHugh's assessment of the significance of the Crown possessing legal sovereignty is bluntly expressed:

'the Crown has legal sovereignty over New Zealand, this ultimate authority being vested in the Crown in Parliament. Nobody can legally set aside any legislation other than Parliament itself, so the courts cannot give the Treaty priority over any statutory provision'.[20] Tony Ballantyne has taken this line of thinking even further, arguing that the 'national' sovereignty' Māori possessed, and which the British Crown had recognised in some form since the 1810s, was 'extinguished' by the Treaty.[21]

Damen Ward (building on McHugh's examination of the nature of state authority in early colonial New Zealand)[22] has observed that in parts of Australia in the 1840s, when it came to the legal and governmental elements of sovereignty, there was no provision for plurality in these British colonies, even though the enacting of this uniform conception of British colonial sovereignty was sometimes contested and confused.[23] Moreover, Ward highlights that the two forms of sovereignty (legal and political) were co-dependent in colonial settings, with any weakness in legal authority, for example, potentially jeopardising the government's ability to implement its policies.[24] All these views, to a greater or lesser degree, tilt towards the indivisibility of the Crown's sovereignty when asserted in its colonial possessions in the nineteenth century, notwithstanding the distinctions between legal and political aspects of that sovereignty.

However, Paul Moon has made a case for a stronger delineation of political and legal sovereignty between the Crown and Māori in 1840. He argues that on the bases of the extreme improbability of Māori chiefs knowingly ceding either form of sovereignty in 1840, along with statements from the Colonial Office in the two years preceding 1840 that suggest British officials sought a treaty with these chiefs primarily to secure sovereignty only over 'Anglo Saxons' who had gone to live in New Zealand, that the Crown was comfortable (in the short term, at least) with the possibility of being one of two sovereign entities operating in New Zealand, and that the demarcation of sovereignty in the colony would exist in the interim largely along ethnic lines.[25]

Ned Fletcher has developed this argument substantially, adding a detailed legal and conceptual dimension to this historical position. Fletcher cites a 'pluralistic' approach to colonial sovereignty prevailing in Upper Canada at this time as an example and observes more generally that.

> [t]he extent to which aboriginal tribal government continued after assumption of British sovereignty varied from colony to colony and over time. There was no one imperial policy as can be seen from a brief survey of British dealings with native peoples in its possessions in North America, Australia, Guiana, West Africa, the Cape Colony, India and Ceylon.[26]

Moreover, as the British Government was disinclined in 1840 to allocate a budget for more than a handful of officials to administer British law over British subjects living in New Zealand, and as it expressed no inclination at

this time to govern Māori by applying its legal and political sovereignty to New Zealand's indigenous population,[27] (and as it anticipated only limited increases in British settlement in New Zealand in this period), a pluralistic (or perhaps more specifically, a dual-sovereignty) model prevailed in the colony in the immediate aftermath of the Treaty's conclusion.

Bain Attwood makes the important point that the British conception of sovereignty in colonies and potential colonias altered throughout the nineteenth century. Specifically, he notes that by the end of that century, the admission of the idea of dual sovereignty (accommodating British and indigenous elements of sovereignty existing side by side in a territory), which existed in the 1830s in the minds of colonial officials to some extent, had given way to a much looser form by the 1890s.[28] Thus, while memories of a dual sovereignty may have remained relatively fixed in the oral histories of hapū, from the perspective of colonial authorities in the colony, by the end of the nineteenth century, this duality had largely been displaced by a more singular form, wielded by the Crown.

De Recto Sovereignty

The Crown's sovereignty may have been (prematurely) proclaimed territorially over the colony in May 1840,[29] but this was an assertion of de jure rather than de facto sovereignty. This was a similar situation to that experienced in other colonies, where statements declaring European sovereignty over a territory were not immediately matched either by the means to fully execute that sovereignty, or with the consent of the indigenous peoples to be subject to that sovereign rule.[30] The result, from the indigenous perspective at least, was that the country's native inhabitants continued to exercise what Marren Sanders identifies as 'de recto sovereignty' (sovereignty by moral principle, or by natural right)[31] in the colony, even if the parameters of this sovereignty were rarely defined with any clarity.

De recto sovereignty is one of three general categories of sovereignty deployed particularly in some analyses of colonised peoples, although it should be pointed out that there remain a paucity of references to it in colonial contexts. The three categories – de recto sovereignty, de jure sovereignty, and de facto sovereignty – respectively can be summarised as 'sovereignty by moral principle or right, sovereignty by legal decree or legislative act, and sovereignty in practice'. The way indigenous groups in a colonial society might manifest these categories also helps to distinguish their purpose and application. Whereas indigenous influence in legislative processes in colonial states might be limited, and the opportunity for putting into practice sovereign authority is confined to narrow areas of activity of the indigenous body politic, generally, more latitude is afforded to assertions of de recto sovereignty, with these assertions often being less prone to sanction by the colonial state

(partly because they are generally less likely to threaten the interests of the coloniser).[32] De recto sovereignty in most cases bypasses issues of legal or political authority in favour of cultural expression, although in some instances (as with the case study that forms the basis of this article) there is room for overlap.[33]

Another feature of de recto sovereignty amongst colonised peoples is that while their de facto and de jure sovereignty may be appropriated by the colonising power, it is much harder for their de recto sovereignty to be denied or usurped. This is partly due to the fact that at its source, it is an expression of the moral rectitude of the values and principles of indigenous culture, and as such, it is more difficult for the colonising power to grapple with and contain. It is a dimension of sovereignty that can persist even when the de facto and de jure status of the indigenous group remains ambiguous in a colonial setting.

De recto sovereignty, as it applied to Māori in the nineteenth century, can be seen as an indigenous expression of values in reaction to colonial intervention. In other words, its source was from within Māori society, whereas de jure sovereignty derived from the culture of the coloniser, with its legislature, judiciary, and national head of state all serving as examples of non-indigenous aspects of sovereignty. It was a conception of sovereignty that did not rely primarily on imported institutions for the form of its expression. More generally, among indigenous communities confronting colonisation, it emerged as a form of moral right that was founded not on institutional supremacy, but on natural law, with its primary focus on the rights of peoples and cultures, and particularly, the 'inherent independence and autochthonous possession of Indigenous lands'.[34] Echoes of this form of sovereignty are clearly discernible in the Dog Tax War, which is the case study used here to explore the workings of this concept.

Ironically, Māori de recto sovereignty was (re-)affirmed in Te Tiriti of Waitangi (the Māori translation of the Treaty of Waitangi, 1840). Article Two of the agreement guaranteed the chiefs who signed it 'tino rangatiratanga'. This portion of te Tiriti translates loosely as 'the right of Maori to self-determination, that is, the right to make decisions over their land, their communities (villages), and those matters that relate to the preservation and advancement of their culture (treasures)'[35] (even if the boundaries of that self-determination are still heavily contested). The term 'self-determination' was not specifically used in the context of indigenous groups challenging colonialism until the twentieth century. However, it nonetheless encompasses the sentiment of that challenge in earlier periods. This, in essence, though not exclusively, is a guarantee of the rights encapsulated in the notion of de recto sovereignty: a 'sovereignty by moral principle or natural right'.[36]

One of the earliest translations of sovereignty into te reo Māori occurred in He Whakaputanga (the Declaration of Independence, 1835). The English version of Article Two of the Declaration commenced with the words 'All

sovereign power and authority'. In He Whakaputanga, this was translated as 'Ko te Kingitanga ko te mana', which is translated variously as 'that sovereignty . . . the authority', 'the kingly authority', or 'the sovereignty/kingship (Kīngitanga) and the mana'.[37] This was a 'paramount authority', which deferred to no greater political authority and was based on connections with the land ('whenua/wenua'). Māori authority derived *from* the land, as opposed to an expression that simply granted power *over* the land. Tribal land was the ultimate source of authority, and was based on Māori cosmology, in which mythology, deities, and various notions of tapu (sacredness) were interlaced with the bases and exercise of authority.[38] More specifically, as far as Māori were concerned, the land was where the mana of chiefs ultimately emanated from, and to which they had reciprocal obligations.[39]

A substantial account of how Māori de recto sovereignty was subsumed by the Crown's de facto sovereignty following the Treaty's conclusion appears in Alan Ward's seminal work, *A Show of Justice: Racial 'Amalgamation' in Nineteenth-Century New Zealand*.[40] What Alan Ward's 'amalgamation' theme revealed was that for the final six decades of the nineteenth century, Māori were gradually brought under the umbrella of British sovereignty in the colony. Sometimes this was achieved willingly, and at other times by force, but the trajectory in the extension of the Crown's de facto sovereignty to encompass all the residents of the country – indigenous and more recent arrivals (and therefore to accomplish the claimed de jure sovereignty dating to the treaty of cession in 1840) – was unmistakable.

Ward catalogues various instances that illustrate this gradual encroachment of the Crown's de facto sovereignty into Māori society in the colony – a process that was often accompanied by episodes of hesitancy on the Crown's part. One early example is contained in an 1842 recommendation that the magistrate Thomas Bunbury made to Governor William Hobson. After touring through several Māori communities, Bunbury advised the Governor that 'some trifling degree of deference might be paid to their [Māori] present state and condition, in order gradually to prepare and make them comprehend the more complex … forms of our civil institutions'.[41] Clearly, there was no sense at this time that British sovereignty had been universally applied in practice in the colony through the conclusion of the Treaty of Cession in 1840. And when the British Parliament passed the 1846 New Zealand Constitution Act, which would bring into being a General Assembly to govern the entire colony, the New Zealand Governor at the time, George Grey, suspended its implementation, predominantly on the basis of the challenges it would pose through giving 'to a small fraction of her [the Queen's] subjects of one race the power of governing the large majority of her subjects of a different race'. Grey added that 'there is no reason to think that [Māori] they would be satisfied with, and submit to, the rule of a minority'.[42] This, similarly, was a tacit concession that Māori maintained some degree of de recto sovereignty.

In roughly the same period, some Māori, for their part, were taking the need to (re-)assert their de recto sovereignty (and even imitate a de jure form of British sovereignty) by various means. The most prominent of these was through the formation of Kīngitanga: the King Movement from the late 1850s. Kingitanga's preference for greater sovereign autonomy positioned its leaders as opponents of Crown sovereignty in those parts of the colony where its Māori populations endorsed Kīngitanga.[43] As far as the Crown was concerned, this challenge was overcome (at least temporarily) at the conclusion of the Land Wars, after which Māori assertions of sovereignty took on alternative and generally less effective forms, including syncretic religious movements[44] and new political formations (many of which were oriented to pan-tribalism in an effort to consolidate Māori de recto sovereignty).[45] However, these were largely rearguard actions, and by the end of the nineteenth century, Māori had almost completely been 'subordinated to the settler political and legal system and asked to assume its obligations',[46] even if that system continued to treat Māori unequally.[47]

However, manifestations of Māori sovereignty were never completely extinguished in the latter half of the nineteenth century. And even into the following century, there were still small but determined sites of Māori resistance to the Crown's sovereign authority. The reasons for the particular forms of these ongoing manifestations of Māori sovereignty (many of which – such as Kingitanga – combined traditional with European approaches to the challenge of asserting forms of indigenous sovereignty in an increasingly colonised society) stemmed from the particular nature of formal encounters with the Crown.

From a Māori perspective, the Treaty had guaranteed the country's indigenous population the 'the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess' (in the English version of the Treaty, which was signed by 39 chiefs), and 'te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa' – 'the unqualified exercise of their chieftainship over their lands, villages and all their treasures' (in the Māori version of the agreement, signed by approximately 500 chiefs).[48] The term chieftainship ('rangatiratanga') conveyed notions of autonomy[49] along with the exercise of sovereign authority and independence.[50] Moreover, in a similar vein to earlier ideas on the authority of sovereign rulers in parts of Europe, Māori regarded the source of their own sovereign status as divinely ordained,[51] and as a concept ingrained with whakapapa (ancestry), mana (status, honour), hapū (community), whenua (land), kawa (ritual), tikanga (custom), and utu (revenge, reciprocity).[52] It was thus a term with much broader cultural dimensions than the more politically focussed notion of 'sovereignty' that the British relied on.

It would be unrealistic to believe that the convergence at Waitangi in 1840 of these two distinct realms and perceptions of sovereignty – indigenous and

introduced – somehow involved a neat transfer from one group to the other. As Moon and Fletcher contend, and as the Waitangi Tribunal has also asserted, at least in relation to the Ngāpuhi iwi (tribe), those chiefs who signed the Treaty did not consider in any way that they were ceding their own sovereignty through the process.[53]

Of course, this 'snapshot' of the possible ways in which sovereignty applied in New Zealand in 1840, by means of the Treaty, relies to some extent on an originalist interpretation of the agreement and the British colonial policies upholding it at the time (with all the shortcomings attendant to such an approach).[54] Moving from the constitutional and jurisprudential perspectives to the historical, Alan Ward's amalgamation motif is a useful model for accounting for the way in which Māori de recto sovereignty gave way to the Crown's de facto and de jure sovereignty. The efficacy of this model lies in part in the explanatory force it provides for the multitude of means but largely singular motive by which some Māori resisted Crown authority from the 1840s.

By the close of the nineteenth century, though, such resistance was often small in scale, brief in duration, or sporadic in influence – at least in comparison to the series of wars between some iwi and the Crown (which occurred between 1845 and 1872), which resulted in the deaths of around two thousand combatants and civilians and the confiscation of millions of acres of Maori land.[55] Thereafter, a combination of military defeat, substantial and on-going land loss, growing impoverishment, and a rapidly declining population,[56] altered the nature of Māori reaction to incursions into their sovereignty by the Crown. Devices such as petitions to Parliament, together with organisations such as rūnanga (iwi councils) assembling to discuss the challenges faced by Crown activity, and embryonic pan-tribal movements (such as Kotahitanga) which even attempted to run indigenous parliaments in the 1890s, along with existing pan-tribal entities such as Kingitanga, were part of an ongoing response to the challenges posed by Crown policies and actions. Many were comparatively short-lived, and most were ineffectual when it came to challenging in any significant way the decisions being made by governments in this era. However, such initiatives – many of which were ad hoc in nature – persisted.

One such example – which is the focus of this work – took place in the Northland community of Waimā, which in the late nineteenth century was one of six areas comprising the Rāwene Riding, and which had a population of around 200 people.[57] It was there that, in 1898, some Māori led a resistance campaign to Crown regulations that culminated in what became known as the Dog Tax War.

The Dog Tax War

The obvious point to make about the Dog Tax War[58] – and one that ought to be clarified from the outset – is that it was not a war. Although the event appeared in New Zealand's press at the time as an unexpected eruption of Māori

intransigence (with one newspaper breathlessly describing events as being led by 'fanatical' and 'threatening' Māori),[59] no actual fighting occurred. Moreover, far from being a spontaneous outburst, the antecedents of the confrontation extended back for generations and contained elements of what can loosely be identified as a parallel process of sovereignty-assertion and sovereignty-realignment among some Māori in the region.

The catalyst for this confrontation was the Crown's introduction of legislation in 1880, which aimed to curb 'unregulated hordes of ill-kept Maori dogs'.[60] The resulting Dog Registration Act imposed a fine of up to five pounds for any dog that was not registered[61] and was aimed at reducing incidents of 'sheep worrying, cat killing, [and] hen roost robbing'.[62] There was a particular emphasis on Māori settlements, where in some cases, large numbers of 'worthless Maori dogs' had allegedly been attacking flocks of sheep.[63] On a point of classification, prior to colonisation, the dogs that Māori knew were kuri. However, by the close of the nineteenth century, this breed had disappeared through cross-breeding with European dogs.

Dogs were an integral part of the economy. South Island Māori used dogs to catch mutton birds, and in the North Island, they were regarded as essential for catching wild pigs.[64] Moreover, dogs were a 'fundamental' part of pre-European Māori life throughout the country. They were the only animal that shared a living space with people; they travelled with them, and even were regarded as sacred in some instances.[65]

The institution of a tax on dogs therefore not only imposed an additional financial burden on many already-impoverished Māori communities,[66] but also represented an unwelcomed incursion into the culture and ways of living of those communities. Unsurprisingly, then, there was resistance to the tax. One significant example occurred in 1894, when some Māori were summonsed to appear before Police Court in the North Island settlement of Raglan for refusing to pay the dog tax. In response, the leader of Kīngitanga at this time, King Tāwhiao, instructed his Native Magistrate to reply by delivering a summons to the Clerk of Raglan County to appear before a Māori court.[67] On the surface, it may have appeared as an almost theatrical response to an alleged evasion of the dog tax, but it nonetheless underscored how Crown sovereignty had yet to be exerted throughout the colony, and how some Māori communities were yet to be reconciled to the notion of their own de recto sovereignty seemingly being undermined in this way.

Tension over this unpopular levy had also flared up in Northland, in 1892. The resident magistrate, Helyar Bishop, recorded in June of that year that a meeting of local Māori had recently been held at Waitangi, where there was an evident 'spirit of unrest', with the principal concern being the enforcement of the Dog Registration Act.[68] Additional efforts to enforce the tax had been made at the beginning of the year,[69] with some Māori urging non-payment as a means of resisting the tax, and implicitly, asserting their mana and

rangatiratanga (sovereignty) over an aspect of their existence they felt such sovereignty extended to.[70] The consequence, however, was charges laid in court for non-payment. What was ostensibly a tussle over a tax on dogs epitomised, on a greater scale, a fundamental difference in how some Māori and the Crown perceived their respective sovereign authority operating in the colony.

In April 1893, a compromise of sorts to the growing tension arising from this issue of contested sovereignty was suggested by a group of Northland chiefs. Writing to the Native Minister, Alfred Cadman, they pointed out that they had recently convened a meeting to tackle the vexed issue of the dog tax. Some of those present proposed 'to kill the policeman if he were sent there to arrest them'. However, the Member for the Northern Māori electorate, Wi Kātene, rejected this suggestion outright, and as an alternative, recommended to the Minister that Māori in the region would agree to pay the tax, and that the authorities would make this fact known to Europeans in the area.[71] There are various possible interpretations that can be applied to this proposed solution, but one is that it reveals that the object of Māori resentment was specifically the Crown's imposition of a tax on Māori communities for which no consent had been sought. This proposed acquiescence to the imposition of the tax was aimed at halting any escalation of tension in the area, but ultimately failed as it did not address the perceived unfairness of the tax, or the incursion into de recto Māori sovereignty that it exemplified to some Māori in the region.

Regardless of Māori pleas, though, local authorities (particularly those in Northland) remained fastidious in imposing and enforcing fines for breaches of the Act. In 1896, a journalist noted that '[n]o tax that has been invented by the ingenuity of Parliament has given such annoyance and cause of complaint to the Maoris of the North as the dog-tax', and that after some Māori refused to pay, the local magistrate organised for a contingent of Police to apprehend the offenders.[72]

Such measures, while serving as demonstrable assertions of the Crown's sovereignty, unavoidably left some Māori feeling that their own sovereignty, in turn, was being violated in the process. Moreover, the intransigence of those authorities when fining Māori for breaches of the dog registration law exacerbated the sense in some Northland communities that even the small residue of sovereignty that they had retained was now under threat. If the Crown could intrude this far into the sovereignty of Māori communities, were there really any vestiges of that sovereignty remaining that were beyond the reach of the Crown's sovereign expansionism?

Far from the authorities' firm-handed response advancing the cause of the state's sovereignty in the region, though, the effect was to harden the resolve of various Māori opposed to the impositions of the Dog Registration Act. The legislation became one of the most incendiary topics discussed at annual hui convened by Māori in the area. A journalist claimed that each year, authorities were forced to recover the tax 'at the point of the bayonet',[73] and

while such a claim was hyperbolic, it did point to difficulties in administering the law in locations in the colony that were remote from centres of European settlement, and where Māori populations were predominant. Demographic dominance was a key factor in fostering a sense of sovereign security.

The potential for the situation to become more aggravated, however, increased in 1897, when dog registration in the region fell under the responsibility of Henry Menzies – an official working for the Hokianga County Council. Menzies issued summonses aggressively and, on occasion, threatened those Māori who were reluctant to pay.[74] In return, there were reports that some local Māori had made comments about killing Menzies,[75] although whether this was bluster or something more serious is difficult to determine.

By April 1898, Māori in parts of Northland appeared to be becoming 'unusually disaffected' with the state's actions regarding the imposition of the dog tax.[76] On 29 April, the Police received intelligence that Māori in the vicinity of Rāwene (on the southern shore of the Hokianga Harbour) were threatening a 'hostile demonstration' in the town. This was in response to a number of Māori from the area who had recently been served with summonses for refusing to pay the dog tax. Rather than losing momentum and dissipating, as previous demonstrations of this nature had, this time, the opponents to the dog tax remained much more resolute, partly due to the leadership of Hōne Riiwi Tōia, who became the principal protagonist in this episode, and whom the press claimed was 'anxious for notoriety'. It was Tōia's alleged 'fanaticism' that 'lent most danger' to this defiant protest and convinced authorities 'that the Maoris would take extreme measures to evade the hateful tax'.[77] It is worth noting, however, that the language used by the press (including terms such as 'fanaticism') must be considered as part of a stylistic trope that dominated media depictions of the country's indigenous population in the nineteenth century.[78] One effect of this was that expressions of Māori de recto sovereignty risked being perceived by the public as anti-Crown activity and therefore deserving of a response by the government to curb them.

The threat Tōia posed was significant. He had assembled around 230 followers in his stand-off with the authorities, most of whom were 'well armed'. At the end of April, this group announced their intention to occupy Rāwene. Practically all of the town's occupants fled in anticipation of an attack, and authorities quickly organised for a force to be dispatched to the area to counter the threat.[79]

There was more to this forceful display of Māori sovereignty, though, than a sudden bout of bravado, as much of the press initially seemed to imply. Firstly, there was a strain of religious sentiment that formed part of Tōia's resistance to what he saw as an incursion of the state's sovereignty in the region. What is significant about this religious element in the context of this work is that it was previously drawn on by another opponent of Crown sovereignty in Northland in the mid-1840s: Hōne Heke.

Heke adhered to a syncretic sect known as Nākahi. According to the Matarahurahu kaumātua, Graham Rankin, Nākahi was a religion tailored specifically for a political and military leadership class within Ngāpuhi. Indeed, its character was arguably more temporal than spiritual, with an emphasis on motifs such a power, effective rule, and the requirement that people have absolute faith in their leaders. The image of the snake (nākahi in the Māori language) was popular because it combined elements of danger, cunning, persistence, wisdom, and most importantly, defiance. These were traits which Rankin suggested were valued by Māori in the pre-European period, and which could be adopted by followers of the faith as a means of preserving some of the sovereign authority that Māori previously possessed.[80]

During Heke's war with Crown forces in Northland (1845-1846), one of his closest confidants was Papahurihia, the Nākahi prophet and leader of the sect. Papahurihia embodied the new class of Māori religious leader (to be followed by the likes of Te Kooti, Te Whiti, Wiremu Rātana, Rua Kēnana, and others), whose movements they either created or led were inextricably tied to assertions of some degree of Māori sovereignty.[81]

Nākahi had largely lapsed by the 1870s (Papahurihia had become a Wesleyan in 1856), but elements of it remained as an influence on leaders such as Tōia, maybe not so much doctrinally, but certainly 'as a political-religious template for a religion of resistance'.[82] Onto this conception of Nākahi as a faith that supported assertions of Ngāpuhi sovereignty, Tōia grafted on the tenets of a sect he formed himself, which was informed partly by Wesleyanism and inspired by the prophets Te Whiti and Tohu, who had founded the Parihaka settlement in Taranaki in the mid-1860s (although Tōia noticeably rejected the principle of passive resistance, which Te Whiti and Tohu espoused).[83]

This hybridised approach to constructing a religious sect is suggestive of at least two things: that Tōia was interested more in a sect exclusive to him and his followers rather than the detailed consistency or coherence of the sect's doctrine; and that he saw the role of such a sect at least partially as serving political ends – specifically, to provide a form of religious legitimacy or even sanctity to the resistance movement he was leading. It followed that in trying to protect the remaining elements of sovereignty that he regarded as being held by Māori, Tōia would use a hybrid belief system – one that combined traditional and imported beliefs – insofar as the nature of the sort of sovereignty Tōia wished to defend was itself one that for decades had been contending with and adopting elements of an imported system of rule as well as having a traditional, indigenous basis. By drawing on an indigenous syncretic religious movement as a form of backing for the protest against the dog tax, it suggests that opposition to this financial imposition was more than a concern over cost. Rather, the appropriation of religious imagery or language is one of those elements of the manifestation of de recto sovereignty among indigenous people in colonised communities. It was a moral principle that was at stake as much as a legal one.[84]

This religious-based element of resistance to the Crown's sovereignty was complemented by a contemporaneous political movement that had come to prominence in this decade and that similarly combined elements of traditional Māori approaches to sovereign authority with structures adopted from the British. Known as Kotahitanga (unity), the group was pan-tribal, and had initiated its own parliament to help advance its sovereign ambitions. Formed against a backdrop of ongoing Māori land alienation, the Kotahitanga movement resisted some aspects of the colonial state (such as the work of the Native Land Court)[85] and sought to reinvigorate elements of Māori sovereignty by encasing them in parallel institutions to its colonial counterpart.[86] However, with the failure of the 1894 Native Rights Bill (which emerged from the Kotahitanga movement, and which sought to create a separate Māori parliament at a national level),[87] popular Māori support for Kotahitanga began to diminish, and a vacuum of sorts resulted when it came to who or what stood for Māori sovereignty in the final years of the nineteenth century.

Into this vacuum, individuals entered with their much more personalised efforts to preserve what they saw as their people's sovereignty. When Tōia was served with a summons over his refusal to pay the dog tax, he sought an adjournment of proceedings, which was granted until 11 May 1898. However, he used this time not to prepare his defence in court, but to build up opposition to the tax, and made various pronouncements on the issue, including, on one occasion, insisting that.

> [w]e will not pay the dog-tax … .We will not have anything more to do with your European laws. I will die, we will die on account of these European laws … .In former times, we allowed our young people to obey the law and to go to the gaol. They are now tired of that and will resist … .You must mot touch one of them, for THERE WILL BE DEATH.[88]

Then, stepping back from this degree of melodrama, Tōia qualified his threat, promising that women and children would be spared, but that he and his people would 'fight the law'.[89] This was all the warning that was needed, and the residents of Rāwene quickly abandoned the settlement to avoid falling victim to what looked like an imminent assault.

On 1 May, Tōia, with twenty of his armed supporters, entered Rāwene, insisting that they would remain until the Government promised to remove the dog tax, along with all other taxes imposed on Māori. Local police were too few in number to prevent this occupation, and so retreated from the settlement, as did Tōia and his men shortly afterwards. At this juncture, it seems that neither side had a clear idea of what their tactics ought to be, which accounts for this momentary stand-off.

The situation looked like it was escalating on 3 May, when a contingent of between 120 and 130 troops despatched by the government reached Rāwene on two steamers – *Gairloch* and *Hinemoa* – and occupied the town. The

troops encamped in the Waima schoolhouse, which had been deserted earlier in the day in anticipation of an imminent conflict between the two sides in this dispute,[90] while Tōia and his forces retreated to the outskirts of Waimā, from where he planned to forcefully defend any attempts made by the authorities to arrest them.[91] The circumstances seemed to suggest that an armed clash was the most likely outcome, especially when the British warship *Torch* reached Rāwene on 4 May to provide additional military support.[92]

Taking the initiative, the leader of the government contingent, Lieutenant Colonel Stuart Newall, advanced towards the small settlement of Māhurehure on 5 May. The troops were armed with rifles, two field guns and two rapid-fire guns, but despite outnumbering their opponents, and possessing more firepower, this force was nearly ambushed by around 80 of Tōia's followers. Two shots from the Māori side were accidentally fired, but at the last moment, Tōia himself issued an urgent order to ensure the government troops were not attacked, and a conflict was thus narrowly avoided. This was the closest that the episode got to constituting a 'war'. Tōia's reluctance to engage militarily was largely the result of the intervention of the Member of Parliament for Northern Māori, Hōne Heke Ngāpua.[93] Tōia had sent an urgent message to Newall requesting that the government troops halt their planned offensive until Ngāpua arrived to mediate. Ngāpua reached the area the following day, and as the government troops advanced towards Tōia's base, Ngāpua telegrammed Tōia, urging him and his men to lay down their weapons and return to their homes, and recommended that they petition Parliament as the best means of addressing their grievances. As a consequence of Ngāpua's intervention, Tōia and around 100 of his troops surrendered unconditionally.[94] Tōia, along with four of his soldiers, was arrested the following day, with a further eleven of his men arrested later on.

Ironically, it had been Ngāpua who had sponsored the Native Rights Bill four years early, and although he still harboured a preference for some degree of Māori self-government, he was not prepared to allow the consequences of armed resistance to Crown sovereignty in the country to proceed. These differences in approaches between Ngāpua and Tōia when it came to seeking ways of securing and restoring elements of Māori sovereignty are a good example of how the desire to protect aspects of de recto Māori sovereignty may have been uniform; however, there was considerable divergence among Māori in the region on the means of achieving it. In particular, it shows how Ngāpua, whose own sympathies extended to supporting Māori political independence,[95] saw Parliament as an institution that could assist as much as hinder the pursuit of certain forms of Māori sovereignty. It also reveals that – at least in Ngāpua's mind – de recto was not necessarily incompatible with the Crown's de jure sovereignty. One of the characteristics of this independence is that it was a reaction to the sense that the government was impinging on Māori de recto sovereignty. In this case, the tax being applied to dogs owned by Māoriled to a

perception among the affected hapū that their natural rights had been interfered with, regardless of what the law stipulated. t.

Sixteen of those involved in this encounter, including Tōia, were subsequently put on trial, facing the serious charge of 'forming an intention to levy war against Her Majesty the Queen'.[96] The wording of the charge is instructive in the context of this work, in that it reveals how it was government authorities as well as those Māori opposing the dog tax who saw this issue in terms of incursions on each other's sovereignty. Tōia and the others charged pleaded guilty and were sentenced to terms of imprisonment up to eighteen months (although Tōia and the others who were imprisoned were eventually released after serving nine months).[97] As James Belich put it, 'Empire, it seems, had finally arrived in the Far North',[98] albeit nearly sixty years after the empire had formally declared that 'arrival'.

Conclusion

One way (but by no means the only one) of interpreting this confrontation over the imposition of the dog tax in Northland in 1898, as Belich has suggested, is as one of the last breaths of a strain of Māori sovereignty that rejected the greater authority of that sovereignty exercised in the country by the Crown. The failure of Tōia to avoid the dog tax, but also the power of the state to imprison him and some of his followers as a result of his aborted rebellion, came to symbolise one of the final major advances of the Crown's sovereignty into Māori society. It was literally a defining moment – prescribing the limits of Māori sovereignty to the point where Crown sovereignty over Māori was as extensive as the sovereignty it applied to the colony's European subjects.

This episode certainly clarified how the state viewed issues of sovereignty around the close of the nineteenth century. Any guarantees of rangatiratanga expressed in the Treaty (however they were understood in 1840 by either party) had largely been subsumed by this stage by the Crown's overriding assertion of sovereignty throughout the colony. This, in turn, draws attention to the difficulty of an enduring system where sovereignty is jurisdictionally delineated between two groups in the same territory. At some point, sovereignty is almost inevitably going to orient itself towards existing in a more unitary form.[99]

Although the immediate impression is that the aftermath of the dog-tax episode in 1898 in Northland represented the termination of Māori sovereignty (at least in this part of the country), as Belich suggests, that would be an overestimation. Admittedly, there were no such subsequent equivalent displays of autonomy among Māori communities in the region, but that is not the same as saying that their sense of rangatiratanga and mana had been completely extinguished – 'suppression' would be a more accurate noun.

The argument here is that in terms of notions of sovereignty, the dog-tax confrontation can be seen as part of a broader transition process, with the

Crown fortifying its de jure sovereignty with de facto sovereignty, and with those Māori opposed to this encroachment losing their de recto sovereignty to a comparable extent. This episode also serves as an example of how sovereignty was a contested notion in the country throughout the nineteenth century (albeit in diminishing degrees), which in turn makes certain Crown actions – as in this case, over the refusal of some Māori to pay a minor tax – more coherent. And in the process, Crown sovereignty in the decades following the conclusion of the Treaty of Waitangi was continually being reimagined and reconfigured in its drive for universal application in the colony, along with the corresponding elimination of any challenges to that universality.

Notes

1. Wilson and Dilley, "The Incoherence of Empire," 191.
2. Fitzmaurice, *Sovereignty, Property and Empire*, 7–12.
3. James, "The Practice of Sovereign Statehood," 460–62.
4. Baker, *Inventing the French Revolution*, 122.
5. Sheehan, "The problem of sovereignty in European history," 1–3.
6. Ibid.
7. Skinner, "Meaning and Understanding in the History of Ideas," 2–3.
8. Sheehan, "The problem of sovereignty in European history," 3.
9. Önder and Ulaşan, "Ibn Khaldun's cyclical theory on the rise and fall of sovereign powers," 231–66.
10. McHugh, "The Lawyer's Concept of Sovereignty," 171–73.
11. Normanby to Hobson (14 August 1839), 729–39.
12. Belgrave, "Pre-emption, the Treaty of Waitangi and the Politics of Crown Purchase.".
13. Belgrave, "We rejoice to honour the Queen," 54.
14. McHugh, *Aboriginal Societies*, 171.
15. Stephen, James to Hope, George, 19 May 1843, cited in McHugh, *Aboriginal Societies*, 169.
16. Stephen, James to Shortland, Willoughby, 21 June 1843, CO209/16:457, 458–59, cited in McHugh, *Aboriginal Societies*, 169–170.
17. S. 71, New Zealand Constitution Act 1852 (UK).
18. McHugh, "Constitutional Theory and Māori Claims," 33–4.
19. McHugh, *The Māori Magna Carta*, 45.
20. McHugh, "The Lawyer's Concept of Sovereignty", 174.
21. Ballantyne, *Entanglements of Empire*, 248.
22. McHugh, "Law, History and the Treaty of Waitangi," 38–57.
23. Ward, "Constructing British Authority," 485.
24. Ibid., 483.
25. Moon, *Te Ara Ki Te Tiriti*, 98–102.
26. Fletcher, "A praiseworthy device for amusing and pacifying savages?" 217.
27. Ibid., 573–674.
28. Attwood, *Empire and the Making of Native Title*, 116.
29. Hobson, "Proclamations.".
30. Beaton, "De facto and de jure Crown Sovereignty," 25–6; McNeil, "Sovereignty and indigenous peoples in North America," 94–102.

31. Sanders, "De Recto, De Jure, or De Facto," 171.
32. Holmes, *Globalized Spaces and Places of Sovereignty*, 89.
33. Kalt and Singer, "Myths and Realities," 6–7.
34. Lee and Schelly, "The Inflation Reduction Act," 1–2; Ermine, "The Ethical Space," 193–99.
35. Wilson, "The Reconfiguration," 18.
36. Holmes, *Globalized Spaces and Places of Sovereignty*, 89.
37. Waitangi Tribunal, *Report on Stage 1*, 174–5.
38. Henare, "Tapu, mana, mauri, hau, wairua," 87–104.
39. Winiata, "Leadership," 212.
40. Ward, *A Show of Justice*.
41. Bunbury, in ibid. 45.
42. Grey, in Harrop, *England and New Zealand*, 85.
43. Ward, *A Show of Justice*, 107–9.
44. Rangiwai, "Māori Prophetic Movements," 130–192; Paterson, "Māori "Conversion" to the Rule of Law," 216–33.
45. Ballara, "Wāhine Rangatira," 127–39.
46. Ward, *A Show of Justice*, 305.
47. Banner, "Two properties, one land," 807–52.
48. Kawharu, "Translation," 319–20.
49. Hill, "People, Land and the Struggle," 26.
50. Mutu, "Mana Māori Motuhake," 269.
51. Ibid.; Bowden, "Tapu and Mana," 50–61.
52. Russell, "Contemporary Rangatiratanga," 20.
53. Waitangi Tribunal, *Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, xxii.
54. Wright, "Originalism and the Problem of Fundamental Fairness," 687–721; Berman, "Constitutional Interpretation," 408–420; Goldsworthy, "Originalism in Constitutional Interpretation," 1–50.
55. Thom, "Land loss," 556–65.
56. Sorrenson, "Land purchase methods," 183–99.
57. Registrar-General's Office, *Results of a Census*, n.p.
58. One of the earliest appearances of this name was in 1928, see *Northern Advocate* (23 August 1928), 3.
59. *Auckland Star* (2 May 1898), 3.
60. Ward, *A Show of Justice*, 283; Pitt, 24 June 1880, in *NZPD* 35, 477.
61. s. 4, Dog Registration Act 1880.
62. *Ashburton Guardian* (14 February 1880), 2.
63. *New Zealand Herald* (21 October 1891), 6.
64. Parata, 10 June 1886, in *NZPD* 54, 402–3.
65. Greig and Walter, "A re-assessment of the role of dogs," 755–64; Schwimmer, "Guardian Animals of the Maori," 397–410.
66. Ballara, "The pursuit of mana?" 519–41.
67. *Press* (3 April 1894), 5.
68. Bishop to Undersecretary, Native Department, 24 June 1892, 1.
69. Cumming, "The Hokianga Dog Tax Uprising," 27.
70. Scobie, Heyes, Evans, and Fukofuka, "Resourcing rangatiratanga," 405.
71. *Auckland Star* (13 April 1893), 5.
72. *New Zealand Herald* (14 January 1896), 5.
73. *Bruce Herald* (3 May 1898), 5.
74. Bogle, "New Zealand's 19th-century Dog Taxes," 78–107.

75. *South Canterbury Times* (3 May 1898), 3.
76. *Bruce Herald* (3 May 1898), 5.
77. *New Zealand Tablet* (13 May 1898), 31.
78. Thompson, "A dangerous people," 109–119.
79. *New Zealand Tablet* (13 May 1898), 31.
80. Graham Rankin, interview; Moon, "Nākahi: The Matarahurahu Cult of the Snake," 127; Rangiwai, "Māori Prophetic Movements," 141–45; Harlen, "Woven law," 265.
81. Binney, "Papahurihia," 309–320.
82. David Rankin, interview.
83. Head, "The Gospel of Te Ua Haumene," 8; Ward, "The Invention of Papahurihia," 169, 176.
84. Holmes, *Globalized Spaces and Places of Sovereignty*, 45, 89.
85. McRae, "Participation: Native Committees," 102.
86. Cox, *Kotahitanga*, 68–9.
87. Walker, "The Genesis of Maori Activism," 267–81.
88. Hōne Tōia, in *Auckland Star* (21 May 1898), 2.
89. Ibid.
90. Lee, *Hokianga*, 243; Duffy, "Hokianga Native Schools," 64–5.
91. *Auckland Star* (4 May 1898), 2.
92. "H.M.S. Torch at Rawene, 1898," in *The New Zealand Graphic and Ladies Journal*, 676.
93. Cowan, *The Maoris of New Zealand*, 235–36; Moon, *Ngapua*, 180–84.
94. *Press* (7 May 1898), 8.
95. Native Rights Bill,1894.
96. *New Zealand Herald* (6 July 1898), 3.
97. *New Zealand Mail* (14 July 1898), 28; *Evening Post* (23 March 1899), 5; Hill, *History of Policing*, 17.
98. Belich, *Making Peoples*, 268.
99. Kingsbury, "Sovereignty and Inequality," 599–625; Mongia, "Historicizing state sovereignty," 384–411.

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