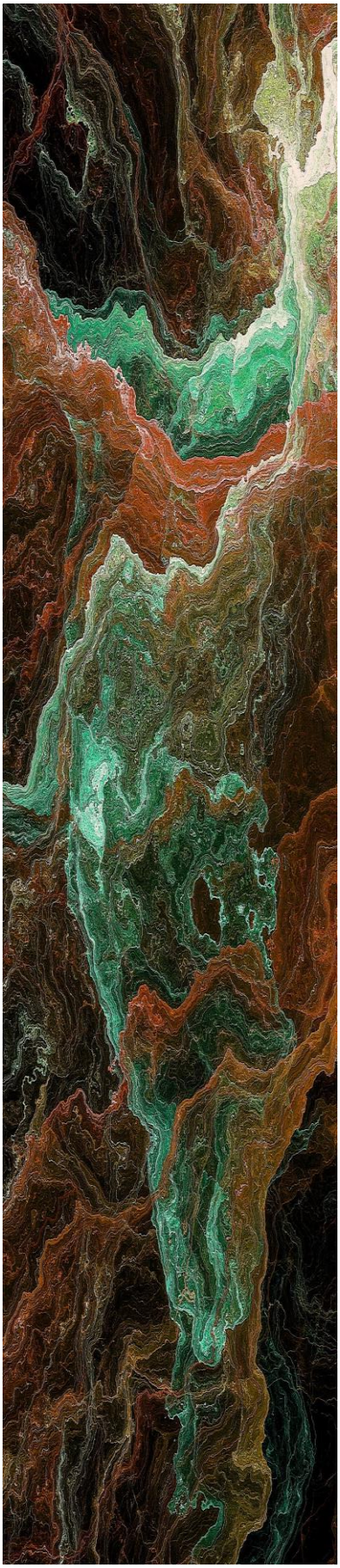

Challenging History

A Review of the Human Rights Commission's *Maranga Mai* Report on

The Doctrine of Discovery

Paul Moon

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Challenging History: A Review of the Human Rights Commission's *Maranga Mai* Report on the Doctrine of Discovery

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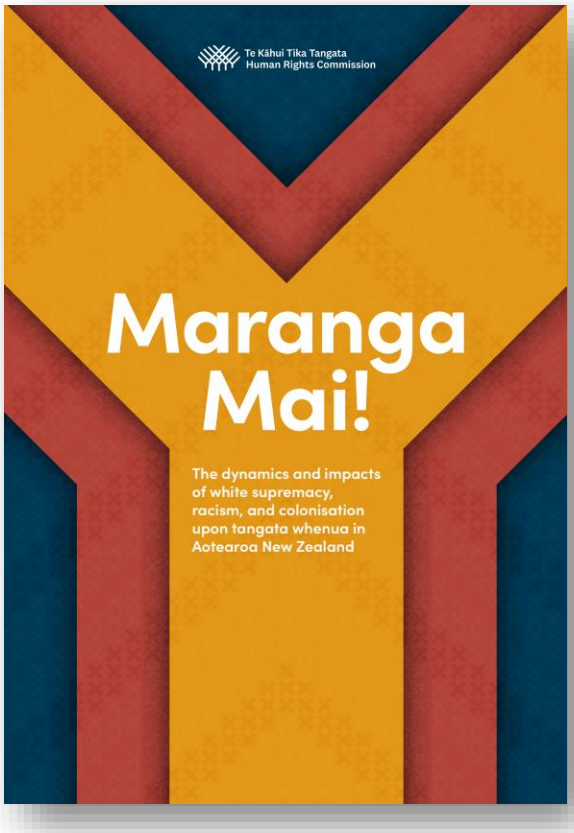
Introduction

Over the past several decades, New Zealand has not been immune from what have become known in other nations as the 'history wars'.[1] In various way, these 'wars' represent attempts to grapple with the nature and consequences of colonisation, and with the evolving conception of what it means to be indigenous. At its extreme, a few academics who have been drawn into this conflict, and 'driven by self-interest and political agendas…have variously suppressed, manipulated, distorted and fabricated the historical record'.[2] In some senses, while their resulting works display some of the apparatus of historical writing, they are not really histories in the accepted conventional sense of the term because they do not comply sufficiently with the established methods of the discipline, and do not aim primarily to achieve objectivity so much as the promotion and even imposition of concepts like 'social justice', 'equity', 'decolonisation', and so forth.[3] To this extent, such works are political rather than academic.
In November 2022, New Zealand's Human Rights Commission published an anonymously-authored report entitled *Maranga Mai! The dynamics and impacts of white supremacy, racism, and colonisation upon tangata whenua in Aotearoa New Zealand* [referred to in the review as *Maranga Mai*].[4] Parts of the report represent an example of what Lawrence McNamara has described as the manipulation and distortion of the historical record.[5]



Maranga Mai adopts a particular ideological interpretation of aspects of New Zealand history, including the claim that the so-called Doctrine of Discovery formed the philosophical and legal basis of the country's colonisation by Britain from the late eighteenth century. This review has been written to assist those interested in the accuracy of the report's allegations relating specifically to the Doctrine of

Discovery. It provides an evaluation of the historical statements contained in *Maranga Mai* relating to this topic, and explores the positions the report advocates stemming from those statements.
The historical claims and assertions that appear in *Maranga Mai* in connection with the Doctrine of Discovery are assessed here to determine if they fall into any of the following criteria: errors in fact; misrepresentation; errors of omission; errors in historiography; ideological interpretation or distortion; presentism; the rendition of subjective interpretations and opinions as objective material; and patterns of bias.

Issues of Historiography, Interpretation, and Error

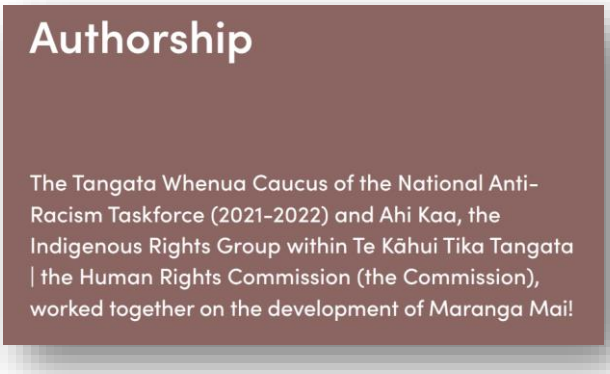
Disagreements among historians on the interpretation of extant evidence, the significance of that evidence, and its relationship with other evidence, are common features in academic history-writing. However, the parameters of such disagreements are fairly well defined, and it is within these that debates about history are usually carried out.[6] The authors of *Maranga Mai*, however, seem unaware of some of the accepted elements of the history that they are addressing. Thus, what appears to be asserted as fact, valid interpretation, or historiographical re-evaluation of a past event in the report sometimes falls into the category of a statement that lies outside the accepted range within which historical disagreements typically occur.
Errors can and do occur in historical work, but these tend to be minor (such as immaterially mistaken dates), or less frequently, moderate (such as errors of omission or misreading of a source). The most serious errors are those which involve a substantial misrepresentation of an event (or the significance of that event), the omission of sources or perspectives that would lend greater balance to the topic being addressed, the tendentious use of evidence, the use of false contingencies,[7] or the conflation of opinion or ideology with historical fact.[8] Whether such errors in this more serious category are intentional or inadvertent does not affect their distorting effect. In *Maranga Mai*, most of these types of error are present, albeit with varying frequency and severity.

The Authorship of *Maranga Mai*

It is unusual for substantive reports produced by government agencies to have the identities of the authors concealed. In the case of *Maranga Mai*, it remains unclear who wrote the work. The Human Rights Commission stated that it was the Ahi Kaa team which was responsible for the report's content, but offered no details on the composition or expertise of that team. The Commission further, and somewhat confusingly, claimed that 'Ahi Kaa interviewed the Tāngata Whenua Caucus and inserted their quotes into the report.'[9]

> we confirm that the Commission's Ahi Kaa team arranged authorship of the *Maranga Mai!* report. Ahi Kaa interviewed the Tāngata Whenua Caucus and inserted their quotes into the report.

However, in the report itself, Ahi Kaa and the Tangata Whenua Caucus are both listed under the heading of 'Authorship':[10]



The implication to be drawn from this is that one group of authors interviewed another group of authors, and then both produced the text of the report. This is a highly unorthodox approach to report-writing, and is made even more unusual because of the lack of clarity about who precisely was involved. When asked directly about the authorship of *Maranga Mai*, the Human Rights Commission responded:

> the Commission has made the decision to otherwise decline your first request. This decision is made on the following grounds:
>
> - to protect the privacy of the individual authors;[2] and
> - to maintain the effective conduct of public affairs through the protection of employees from improper pressure or harassment.[3]
>
> In particular, the Commission has made the decision to withhold the names of its individual staff members, employed and/or contracted by Ahi Kaa, who contributed to the authorship of the *Maranga Mai!* report. The Commission's staff are private individuals, whose names are not publicly available. We consider there is a privacy interest in protecting the identity of staff involved in drafting the *Maranga Mai!* report.

Section 9(2)(a) of the Official Information Act 1982 was cited by the Human Rights Commission as the authority for this decision to withhold the identity of the authors in order to protect their privacy. However, this section of the Act requires 'good reason' for such information to be withheld, and further

notes that 'the withholding of that information…[can be] outweighed by other considerations which render it desirable, in the public interest, to make that information available.'[11] The public interest right was arbitrarily overridden by the Commission in this instance. The Commission's position was that the 'mental and emotional wellbeing of its staff could be at risk if the authors' details were made known:

> The Commission considers that the public interest in disclosure does not outweigh privacy considerations, as we want to protect the mental and emotional wellbeing of our staff, including by reducing the risk that they might become the target of unwanted public attention or harassment arising from the *Maranga Mai!* report. We note that concerns for staff safety in this kaupapa are heightened at present, particularly following some of the incidents that have arisen from the Stop Co-Governance tour. It is important for the New Zealand public that Commission staff can perform their duties without such risk.

On the face of it, citing the example of the Stop Co-Governance tour might appear as a possible (albeit extremely tenuous) basis for concealing the identity of the authors of *Maranga Mai*. However, this is a post hoc justification, as the decision to hide names of the authors of the report was made before the Stop Co-Governance tour had commenced.[12]

Moreover, it is difficult to identify a single other example of historical research (which *Maranga Mai* purports to be) produced by any branch or agency of the Crown that has had its authorship concealed in this way. Perhaps the closest comparative example is the work of the Waitangi Tribunal, where all the authors of reports detailing aspects of the country's colonisation are listed, and where no evidence of threats to their 'mental and emotional wellbeing' or 'harassment' has been presented. On this basis alone, the Human Rights Commission seems to fail to meet the threshold of the 'good reason' test in the Official Information Act to withhold the identity of the authors of *Maranga Mai*.

The result of all this obfuscation by the Commission, together with the unusual reticence by the authors of *Maranga Mai* to be identified with the research they have published, leaves several unanswered questions about the qualifications, experience, and general credibility of the report's authors. For reasons known only to the Commission, it has opted to privilege the anonymity of the authors of *Maranga Mai* over legitimate public interest, with all the uncertainties about reliability and credibility which inevitably follow in the wake of such a decision.

Peer Review

For any work of the magnitude of *Maranga Mai*, and especially with the implications that flow from its content, some type of comprehensive formal peer-review process is more-or-less mandatory. This is particularly the case with research reports that are produced by a government agency, where there is an implicit expectation of reliability in the content and findings of such works. When an enquiry was made about the peer-review process used for *Maranga Mai*, the Commission's legal advisor, Philippa Moran, provided the following response:[13]

> we confirm that the Tangata Whenua Caucus of the National Anti-Racism Taskforce undertook editing and peer-reviewing responsibilities. Dr Taonui co-ordinated feedback from the Tangata Whenua Caucus into the draft *Maranga Mai!* report.
>
> Prior to publication of the *Maranga Mai!* and *Ki to whaiao, ki te ao Mārama* reports, the Commission sent both reports to the Tāngata Whenua and Tāngata Tiriti Caucuses of the National Anti-Racism Taskforce. The Tangata Whenua and Tangata Tiriti Caucuses met and discussed both draft reports.

There are several aspects of this response that are unusual. Firstly, Moran states that one of the peer reviewers was the 'Tangata Whenua Caucus of the National Anti-Racism Taskforce.' However, this

organisation is listed in *Maranga Mai* under the heading of 'Authorship'.[14] By definition, though, peer-reviewers cannot be the authors of the work being reviewed.[15] Furthermore, according to the *Maranga Mai* report, the Tangata Whenua Caucus of the National Anti-Racism Taskforce appears to have been in existence only for the duration of the period during which the report was being prepared, and seems to have be established exclusively to produce the report.[16]

In addition, the language used to describe the peer-review process used by the Commission is slightly ambiguous. Instead of confirming that the report was formally peer reviewed according to the accepted conventions of the process, the Commission stated that feedback was 'coordinated… from the Tangata Whenua Caucus into the draft Maranga Mai! Report.'[17] It is unclear whether this feedback was for review purposes or for supplying content to the report when in its draft stages. The situation is made even more opaque by the fact that instead of formally reviewing the report, the Tangata Whenua Caucus and National Anti-Racism Taskforce simply 'discussed' the draft.[18] No notes from that discussion are available for scrutiny, which is an additional unexplained irregularity.

For reports produced by government agencies, the peer-review process is often a non-blind one, meaning that the reviewers are identified. The reason for this is that it confirms that the reviews were undertaken by those who have expertise in the relevant fields. However, in this instance, not only are the reviewers not identified (and therefore their expertise cannot be established), but the process appears not to have been an independent one. Indeed, it seems there is some overlap between the authors of the report and its reviewers.

In order to clarify this matter, a request was put to the Human Rights Commission to supply evidence of any peer-review reports for *Maranga Mai* that were produced prior to the report's publication (with the names of those involved redacted if necessary, to enable the Commission to overcome its anxiety over privacy issues relating to the report).[19] This would at least have provided some certainty that the peer-review process was credible, even if its standards remained questionable by the concealment of the credentials or names of the reviewers. The response received from the Commission in November 2023 was that 'no formal peer-review reports were produced,'[20] which seemed to contradict its statement from August 2023, in which it confirmed that 'Tangata Whenua Caucus of the National Anti-Racism Taskforce undertook editing and peer-reviewing responsibilities'.[21] The Commission seems to rely heavily on an informal and apparently undocumented and anonymous peer-review process, which it acknowledges does not meet the threshold of a formal process, and for which no evidence of any form of review whatsoever is available.

Readers of *Maranga Mai* are consequently left to rely on the authority of the report's (anonymous) authors as the primary authority for its content. The following section surveys the specific claims about the Doctrine of Discovery contained in *Maranga Mai*, which form the basis for the ensuing review of this topic as it is presented in the Commission's report.

Claims about the Doctrine

Maranga Mai contains a sequential set of claims about the Doctrine of Discovery's purported role in New Zealand's colonisation, starting at its inception and concluding with alleged aspects of the Doctrine that have survived to the present day, and that purportedly continue to play a role in the country. The range of topics covered in the report is broad, their treatment generally superficial given the constraints of space, and the referencing certainly inadequate to support type of contentions made (the issue of the standard of research is addressed later in this review).

Assertions about the Doctrine of Discovery are dispersed through various parts of *Maranga Mai*, and in most instances, are generic in nature, and presented as statements of fact rather than interpretative claims. Furthermore, the scattered references to the Doctrine in *Maranga Mai* necessarily makes the report's analysis of it more fragmentary, and represents an organisational shortcoming of the report.

It is also worth noting that most of the claims made in *Maranga Mai* in relation to the Doctrine of Discovery are not supported by footnotes or direct reference to authorities, especially primary source material. In itself, this does not necessarily detract from the evidentiary value of the statements made, but given the contentious nature of the topic, it highlights a deficiency in terms of basic historical method. This absence of evidence also enables an ideological approach to history that is neither standard nor authoritative.

The principal assertions about the Doctrine of Discovery made in *Maranga Mai* can be grouped into four categories: its origin; its application to New Zealand; its status in international law; and its current status in New Zealand. These claims are summarised (with the relevant extracts from *Maranga Mai*) as follows:

Origin of the Doctrine

There were a series of papal bulls issued in the fifteenth century, which defined and prescribed the nature of subsequent European colonial intervention in the non-European world. Some of the references to these edicts in *Maranga Mai* include:

> 'The Doctrine of Discovery refers to a series of Papal Bulls (Catholic laws) made by the Vatican during the fifteenth century. These decrees provided the rationale for the conquest, colonisation and subjugation of Indigenous peoples and the seizure of their lands. These racist actions were premised on the basis that non-European, non-white and non-Christian peoples had forfeited their rights of independent sovereignty, ownership of land and natural resources to what was presumed to be a superior European power.'[22]

> 'The Romanus Pontifex (1455) legalised the taking of lands from Indigenous peoples in new worlds without their knowledge or consent. Alongside other Papal Bulls, this emerged as the Doctrine of Discovery that articulated a violent European Christian entitlement to seize 'discovered lands.'[23]

> 'The Dum Diversas (1452) encouraged the conversion of new peoples to Christianity, while also justifying, if necessary, their enslavement, subjugation, or destruction as 'enemies of Christ'.'[24]

The Doctrine applied to New Zealand

One of the central claims made in *Maranga Mai* is that European interest in New Zealand – and particularly the country's colonisation by Britain commencing in the eighteenth century – was shaped by the Doctrine of Discovery, both directly, as in the decision-making by Captain James Cook in 1769 and 1770, and later Lieutenant-Governor William Hobson in 1840, and more generally as part of a model of colonisation which the Netherlands and then Britain followed when intervening in New Zealand. The report makes the following assertions with respect to this period of colonisation:

> 'The arrival in Aotearoa of the explorers Abel Tasman in 1642 and James Cook in 1769, marked the transplantation of colonial imperial dominion, racism and white supremacy into Aotearoa.'[25]

> 'New Zealand was colonised by the British Crown under the authority of the Doctrine of Discovery. The doctrine and other Papal Bull decrees provided the rationale for the conquest, colonisation and subjugation of Indigenous peoples and the seizure of their lands.'[26]

> 'In Aotearoa, Lieutenant William Hobson under the doctrine, declared sovereignty over Te Waipounamu (The South Island) in 1840 and claimed it for the Crown. In 1840, The Treaty of Waitangi (English version) was partially signed and mainly by North Island rangatira. Nevertheless, the British Crown proclaimed sovereignty and cession under the doctrine and the treaty (Ruru J. & Miller R.J, 2008).'[27]

> 'Aotearoa New Zealand was first colonised by the British Crown under an international legal principle known as the Doctrine of Discovery….This was key to the authority by which the British Crown first gained its sovereign and property rights in Aotearoa.'[28]

The Doctrine's Status in International Law

The claim is made in *Maranga Mai* that the Doctrine of Discovery has an explicit and implicit standing both in international and domestic law. The report's authors contend that:

> 'The early decision of the New Zealand courts in R v Symonds (1847) (NZPCC 387) found that rights of land ownership "cannot be extinguished (at least in times of peace) other than by the free consent of the Native occupiers" (p.390). However, recognition of Māori customary title was rejected by Judge Prendergast in Wi Parata v Bishop of Wellington (1877) (3 NZ Jur (NS) 72) in favour of the Doctrine of Discovery (p.78).'[29]

> ''The doctrine became part of international law through a series of landmark cases, such as, Johnson v. McIntosh (1823) (21 US 543) in the United States, where judges ruled that Western states that had taken possession of Indigenous lands immediately acquired a radical title to the land and could extinguish Indigenous ownership at will (Stuart Banner, 2005).'[30]

> 'The authority New Zealand Governments use to exercise legal rights over Māori lands and to control Indigenous people derives from the Doctrine (Ruru J. & Miller R.J, 2008).'[31]

The Current Status of the Doctrine in New Zealand

Maranga Mai makes a case that the Doctrine of Discovery, as it allegedly applied to New Zealand, was not just a facet of the colonial era, but that it formed part of a process that continues to affect the country, and therefore must be brought to an end:

> 'The Doctrine of Discovery has never been rescinded.'[32]

> ''The doctrine is still recognised under international law and underpins the position of the New Zealand government and its legislation.'[33]

> 'The reliance on the Doctrine of Discovery, to validate the New Zealand colonial state, must also cease.'[34]

> 'Central to this reform would be the government condemning and rejecting the constitutional application of the Doctrine of Discovery to Aotearoa.'[35]

These, then, are the principal categories of assertions about the Doctrine of Discovery made in *Maranga Mai*. The following section tests these assertions against the historical in order to examine their veracity, and to determine if there are any errors of omission, misreading, or misrepresentation, or any instances of ideological conflation with historical fact, or false contingencies.

Analysing *Maranga Mai's* Claims

This section contains an analysis of the four principal categories of claims about the Doctrine of Discovery contained in *Maranga Mai* (which have been outlined in the preceding section of this review). Each category is evaluated in the context of the historical evidence that relates to it, and the historical methods applied to the interpretations offered in the report.

Claim One:

Papal Bulls defined and prescribed European colonisation from the fifteenth century

One of the overarching claims in *Maranga Mai* with respect to the Doctrine of Discovery is that a series of papal bulls shaped in a fundamental way the basis and form of European colonisation starting in the fifteenth century, and continuing for the following four hundred years. However, the authors of *Maranga Mai* omitted a great deal of context in relation to papal bulls in the relevant period, resulting in an absence of consideration of the force of these instruments of international policy, and the specific intent of the papal bulls relating to the Doctrine of Discovery. Without such background, there is a risk of subsequent references to these bulls being exposed to erroneous interpretation.

Three papal bulls are referred to in *Maranga Mai* – two directly (Dum Diversas, 1452, and Romanus Pontifex, 1455), and one alluded to (Inter Caetera, 1493). It is the 1493 Papal Bull that is most commonly associated with the Doctrine of Discovery, although for whatever reason, it is not explicitly mentioned in *Maranga Mai*. Part of the significance of this omission from the repot lies in the fact that it reveals an incomplete understanding of some of the seminal aspects of the Doctrine's emergence, and an inadequate awareness of the extensive literature on the topic.

General assertions are made about papal bulls in *Maranga Mai*, but these are sometimes done at the expense of nuances relating to the content or execution of these bulls. For example, defending Catholic territories from the Saracens (a term used to denote Muslims)[36] was one of the purposes of Romanus Pontifex,[37] but this fact is excluded from the analysis in *Maranga Mai*. This is not to say that these bulls were opposed to subjugation, as they plainly were not,[38] but that issues of religious rivalry, geopolitical clashes, internal European politics are among the considerations affecting the interpretation of these bulls, as is the fact that certain non-European groups were themselves engaged in similar acts of invasion and subjugation at this time.[39] Certainly, the selective presentism applied to the bulls is indicative of a deficient understanding of historical method, and compounds the interpretive shortcomings evident in analyses of these decrees.

More importantly, though, no mention is made in *Maranga Mai* of the fact that papal bulls had limited duration and could be superseded by other papal bulls or Church edicts.[40] There is an implicit presumption in *Maranga Mai* (although occasionally this is also made explicit) that papal bulls have enduring effect. As an example of this shortcoming, for whatever reason, the authors of *Maranga Mai* make no reference to Pope Paul III's 1537 Papal Bull, Sublimis Deus, which explicitly forbade Catholic nations engaging in wars of conquest in potential colonies.[41] Had they given the same weight to this 1537 bull that they gave to its predecessors, much of the case for the enduring effect of the Doctrine of Discovery would have been undermined.

In the case of the 1493 papal bull, Inter Caetera, its explicit purpose was to support Spain (at the time the strongest Catholic state in Europe) with its strategy to claim the exclusive right to certain territories discovered by Christopher Columbus the previous year.[42] The bull delineated the specific locations (one hundred leagues west of the Azores and Cape Verde Islands) that would be assigned exclusively to

Spain, and imposed a prohibition on other Catholic states approaching those territories without Spanish approval.[43]

The Vatican's view was that any territories that were not inhabited by Christians were open to claims of 'discovery' (and implicitly, some form of sovereignty) by whichever Catholic power first asserted sovereignty over these territories.[44] The bull was ambiguous in the need for the use of force to achieve such claims of sovereignty, but urged that 'the Catholic faith…be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself'.[45] Whether this overthrow was to be political or military (or both) was not clarified, but neither approach was explicitly ruled out. It is in bulls such as Inter Caetera where the genesis of the Doctrine of Discovery is found.

Such bulls are depicted in *Maranga Mai* as having so much force because national leaders in Catholic Europe supposedly held their allegiance to the papacy more highly than to their own national interests. However, this is incorrect, and as one historian has made clear in relation to these edicts:

> 'no such international scruples or papal hegemony existed'.[46]

Moreover, in the case of Inter Caetera, its function was as much about the involvement of the papacy in European politics as it was about asserting claims to territories outside the continent[47] – claims that were being made in this period without any need for the Vatican's blessing, let alone instruction.[48] None of this is mentioned in *Maranga Mai*, which leaves the misleading impression that these bulls exerted an influence that was far greater than was actually the case.

Moreover, the authors of *Maranga Mai* provide no analysis or even consideration of the legal or political force of the papal bulls they refer to. The result is a presumption that these bulls had the status of statutes, and that they were binding on the affected parties. Yet, the historical record is clear that Catholic powers openly bypassed the provisions of papal bulls, and that they held nothing like the influence alleged in *Maranga Mai*:[49]

> 'The prominent place given to the bull in standard history texts presupposes that it played some significant part in history, that it was obeyed by monarchs and therefore affected the course of events. This presumption, in turn, is part of a larger one – namely, the concept that European monarchs were truthful, law-abiding members of a civilized Christendom who respected international treaties, held legal systems inviolable, and valued allegiance to popes more highly than national interests. In fact, no such international scruples or papal hegemony existed.'[50]

Even in the era in which the bulls referred to in *Maranga Mai* were issued, however, scholars and jurists questioned aspects of papal jurisdiction when it came to colonisation, although their concern was not so much with the fact of claiming territories, but for the preference that the Pope showed towards Spain rather than other Catholic nations (particularly Portugal).[51] Of much more significance, though, is the fact that these bull did not guide the nature of intervention in the New World by Catholic nations so much as respond to incursions that were already well underway.[52]

Further evidence of Inter Caetera's limited duration and influence, for example, is found in the conclusion of the Treaty of Tordesillas in 1494, which superseded the papal demarcations laid out the previous year, and which shifted the 'legal' basis of Catholic imperialism from a religious to a temporal realm.[53] Thereafter, the already slight influence of papal bulls diminished further, and by the major age of European imperialism – roughly from the 1620s to the 1830s – not only had the Doctrine of Discovery not been in effect for more than a century, but even conceptually, its aim of Catholic proselytising had been supplanted by more mercantile motives, driven primarily by two Protestant powers: the Netherlands and Britain.[54]

It is a significant deficiency of *Maranga Mai* that none of these crucial aspects of the Doctrine are even mentioned. Their exclusion unavoidably distorts substantially the evaluation of the Doctrine in the report. It leaves the impression that these papal bulls had a power beyond what was actually the case, that their contents were binding (which was manifestly not so), and that they coalesced into an explicit

and enduring doctrine of discovery, which also conflicts with the historical evidence. The authors of the report also fail even to acknowledge, let alone account for any papal bull that espoused principles contrary to the Doctrine of Discovery, and do not engage with the extensive secondary literature dealing with these topics.

Claim Two:

The Doctrine of Discovery directed Britain's colonisation of New Zealand

Officials of the British East India Company knew about the existence and location of New Zealand from 1644, having received this intelligence from Dutch sources in Java.[55] And by the end of that decade, this information on New Zealand, along with maps and a few details about its terrain and peoples assembled from the 1642 Dutch expedition of Abel Tasman to the territory, was being widely circulated throughout Europe.[56] The actions of the Dutch Government and the Dutch East India Company can therefore be categorically ruled out as an example of New Zealand's colonisation through the Doctrine of Discovery. Having found and mapped the location of New Zealand for Europe, the Dutch effectively relinquished any opportunity to intervene in the territory in the manner prescribed by the Doctrine of Discovery. There was unequivocally no Dutch proclamation of sovereignty, and no effort to subjugate the territory's indigenous population. Yet, no acknowledgement of these facts appears in *Maranga Mai*. In addition, this error of omission is compounded by the ensuing misleading assertion in the report that:

> The arrival in Aotearoa of…Abel Tasman in 1642…marked the transplantation of colonial imperial dominion, racism and white supremacy into Aotearoa.'[57]

This particular allegation in *Maranga Mai* is categorically false. Tasman asserted no dominion whatsoever over the territory, and not having even set foot in the country, was unable as well as unwilling to transplant anything in the territory. It is odd that this particular episode is addressed, and these claims of transplanting 'colonial imperial dominion, racism and white supremacy' are asserted in *Maranga Mai* with no reference whatsoever to the established sources dealing with Tasman's visit to the country's shores in 1642. And neither is there any countervailing authority cited to support the claims.

A similar pattern of evidentiary distortion (although possibly even more egregious) occurs in relation to the next European encounter with New Zealand mentioned in *Maranga Mai*. In 1768, the Royal Society approached George III to support a planned expedition to the South Pacific, to be led by James Cook.[58]Among other directives, Cook was instructed by the Admiralty to visit New Zealand and to take possession in the name of the King any suitable locations that were 'uninhabited', or if already peopled, and if the location in question was considered desirable, to take possession 'with the consent of the natives'.[59] This insistence on obtaining indigenous consent as a precursor to any claims of territorial sovereignty is diametrically opposed to the precepts at the heart of the Doctrine of Discovery. Again, though, this critically important evidence is absent in *Maranga Mai*.

Significantly, there was categorially no religious basis to the Admiralty's instructions, let alone one concerned with spreading the Catholic faith to new territories (which was a central tenet of the Doctrine of Discovery). The latter injunction would be anathema to Protestant Britain, where there were obstacles in place – some official, others informal – preventing Catholics from entering the civil service and the armed forces, and serving as monarchs.[60] Indeed, there was no requirement to spread Protestantism in any of the plans for Cook's expedition. But even if the definition of the Doctrine of Discovery was broadened to depict it as an instrument aiming to spread Christianity more generally, then Cook's voyage, and the instructions he received for it, would still not meet the threshold of the concept.

Also, there was not even a hint in the instructions to Cook of Britain asserting sovereignty through discovery, which is an axiomatic element in the Doctrine of Discovery. On the contrary, British officials were explicit that the consent of resident indigenous populations was mandatory and would necessarily precede any assertions of sovereignty. Moreover, while Cook made a nominal claim of sovereignty over

some undefined portions of land, this was later dismissed by the British government,[61] and by the beginning of the nineteenth century, Britain was clear that it had no sovereign claim over any part of New Zealand. Cook's engagement in New Zealand proves precisely that the Doctrine of Discovery had no bearing whatsoever on British policy on the territory, which is the opposite to the allegations contained in *Maranga Mai*.

For more than six decades after Cook's first voyage to New Zealand, the British Government expressed no intention to colonise the territory, and by the 1820s, its policy had settled to one of minimal official involvement. It was only with the demands of a growing settler population in New Zealand, along with greater commercial attachments with the British colony of New South Wales from the late 1830s, that a shift was imposed on British policy on New Zealand.[62] This culminated in a decision to intervene formally in the country, with the nature of the involvement encapsulated in the instructions that Lord Normanby (the British Secretary of State for Colonies) issued to William Hobson in August 1839. The overarching aim of these instructions were to ensure that a treaty was concluded with Māori chiefs, who would agree to British sovereignty being established in the country only with their consent. The relevant passage from the Instructions is explicit on this point:

> 'The Queen…disclaims for herself and her subjects every pretension to seize on the Islands of New Zealand, or to govern them as a part of the dominions of Great Britain, unless the free and intelligent consent of the natives, expressed according to their established usages, shall be first obtained.'[63]

Official British intervention in New Zealand, and all that would come in its wake, was predicated on obtaining this 'free and intelligent consent', as opposed to any assertions of sovereignty based on discovery, which was a guiding precept of the Doctrine of Discovery.

Not only was there no policy for an arbitrary assertion of British sovereignty over the territory of New Zealand, but the British government went as far as to acknowledge the sovereignty and independence of Māori prior to the conclusion of a Treaty of cession. Normanby wrote that:

> 'I have already stated that we acknowledge New Zealand as a Sovereign and independent State, so far at least as it is possible to make that acknowledgement in favour of a people composed of numerous, dispersed, and petty Tribes, who posses few political relations to each other, and are incompetent to act, or to even deliberate, in concert. But the admission of their rights, though inevitably qualified by this position, is binding on the faith of the British Crown.'[64]

As had been the case for the preceding seven decades with respect to New Zealand, there was no reference to the Doctrine of Discovery by British officials, and neither did any of the Doctrine's tenets inform British policy towards this potential colony. On the contrary, instead of arbitrarily asserting absolute sovereignty over Māori territory on the basis that Māori were largely not Christian (as the Doctrine of Discovery required), a limited form of sovereignty was applied (British jurisdiction was to be confined to British subjects in the colony), and the sanctity of Māori sovereignty (rangatiratanga) and land ownership would be upheld through a treaty between the chiefs and the British Crown. The resulting Treaty of Waitangi guaranteed Māori:

> 'the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession.'[65]

and promised that the British Crown would:

> 'protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures.'[66]

This was about as far removed as it is possible to get from the non-consensual, invasive, proselytising seam that ran through the Doctrine of Discovery.

The consensus of historians attribute British intervention in New Zealand to the product of a complex web of individual motives without any long-standing overarching official intent to colonise the territory.[67] Indeed, the fact that it took Britain almost two hundred years from learning about New Zealand's location to deciding to conclude a treaty of cession with the country's indigenous chiefs, is strongly suggestive of the absence of any firm commitment to colonise the territory. It is telling, though, that practically all of the important sources on this matter are absent from the list of works used by the authors of *Maranga Mai*. Colonial Office documentation (particularly from the 1820s and 1830s) in particular confirms that the Doctrine of Discovery had no influence on policy-formation on New Zealand leading up to the planned treaty of cession.[68] The record on this is unambiguous, but surprisingly, is bypassed or deliberately ignored by the authors of *Maranga Mai*.

It is also especially instructive to consider that from an historiographical perspective, the major histories that deal with New Zealand's colonisation make no reference to the Doctrine of Discovery as having any role whatsoever in Britain's intentions for, and subsequent intervention in, New Zealand.[69] Such an omission, on such a mass scale, would be inconceivable if even the faintest trace of evidence of the influence of the Doctrine of Discover in New Zealand's colonisation existed. *Maranga Mai* fails to engage with this central historiographical issue, let alone adequately account for it.

The accusation in *Maranga Mai* that Britain exercised aspects of the Doctrine of Discovery when concluding a treaty of session with New Zealand rests on two documents that its authors use completely out of context. One of these is Normanby's instructions to Hobson, in which the Secretary of State for Colonies wrote:

> 'If the country [New Zealand] is really, as you suppose, uninhabited except by a very small number of persons in a savage state, incapable from their ignorance of entering intelligently into any treaties with the Crown….the only chance of an effective protection will probably be found in…the assertion, on the ground of discovery, of Her Majesty's sovereign rights over the island. But in my inevitable ignorance of the real state of the case, I must refer the decision in the first instance to your own discretion'.[70]

There are two crucial aspects to note about this statement in connection with the Doctrine of Discovery. Firstly, the threshold for these prescribed circumstances collectively was not met; and secondly, this segment of the instructions is explicit that the motive for this category of intervention would be the protection of indigenous peoples, not their subjugation. Neither of these points are mentioned in *Maranga Mai*, though. Instead, this decontextualised extract is cited as proof of the Doctrine of Discovery applying to New Zealand, when the document in its proper context proves the opposite.

The second document cited in *Maranga Mai* as supposed evidence that the Doctrine of Discovery applied in New Zealand in this era is Hobson's May 1840 Proclamation of Sovereignty over the South Island on the grounds of discovery. In this proclamation, Hobson stated that:

> 'I…assert…on the grounds of Discovery, the Sovereign Rights of Her Majesty over the Southern Islands of New-Zealand.'[71]

This has been mistakenly interpreted by the authors of *Maranga Mai* as confirmation that the Doctrine of Discovery was implemented in New Zealand. Such a conclusion, however, contradicts the evidence. Firstly, what is ignored in the report is that the decision to issue this proclamation was made to forestall the activities of the New Zealand Company, not to subjugate Māori. This is an important distinction, because it was the New Zealand Company that was actively engaged in acquiring Māori land, sometimes by dubious means. Thus, far from being an invasive instrument, Hobson's proclamation was designed specifically to protect Māori interests.

And secondly, a total of 56 rangatira from the South Island had signed the Treaty by June 1840, indicating that in practice, the Doctrine of Discovery was not regarded as the basis for the Crown's

assertion of sovereignty, but instead, that the Crown relied on 'free and intelligent consent.'[72] the proclamation served its purpose simply as a stalling tactic to prevent threats to Māori sovereignty over their lands until such time as the Treaty could be concluded with chiefs in the affected areas. It is also vital to keep in mind at this juncture that Hobson's Proclamation in no way affected his or his administration's recognition of Māori title to the land[73] – again, something that directly contravenes the central premise of the Doctrine of Discovery with respect to the dismissal of indigenous title. Once more, none of this crucially important history is included in *Maranga Mai*, resulting in material lack of balance in the way these events are depicted, and implying support for the suggestion that the British were implementing the Doctrine of Discovery when in fact the opposite was true.

It is important to stress at this point that the degree of error here cannot be attributed to a minor misreading of texts, or of a particular inference drawn from the extant evidence relating to British policy in this period. Instead, the *Maranga Mai* report misrepresents, manipulates, and excludes historical evidence to sustain its case.

Claim Three:

The Doctrine of Discovery is embedded in international law

The issue of the presence of the Doctrine of Discovery in international law is a major topic, and beyond the constraints of space in this review to allow for a full analysis. However, there are some general observations which can be made as a corrective for some of the assertions that appear in *Maranga Mai*.

It is academics working in the legal field who have been particularly inclined to advance the case for the Doctrine of Discovery applying to Britain's intervention in New Zealand. This has been possible in part because the discipline gives priority to the authority of preceding court decisions for the strength of its arguments, rather than the history on which those decisions might ostensibly have been based – 'ostensibly' because courts are not designed to settle matters of history, and because history itself is only one of the considerations that comes into play on decisions dealing with issues such the role of the Doctrine of Discovery from a legal perspective.

The pivotal point when the Doctrine of Discovery resurfaced as a serious consideration – in a legal context – in the role of European colonisation was 330 years after it was initially promulgated. In 1823, in the United States Supreme Court, the case of Johnson & Graham's Lessee v. McIntosh[74] was heard, with the Plaintiffs seeking to have certain land grants purportedly made by Indian chiefs recognised by the United States Government. In his judgment, on behalf of a unanimous court, Chief Justice John Marshall provided a potted and often extremely truncated history of European colonisation specifically in North America, and one which as far as British policy was concerned, bypassed any consideration at all of the workings of the British Colonial Office. Such omissions were perfectly fair, however, as the Court's attention was solely on aspects of European intervention in what became the United States that had some bearing on indigenous title.

In addressing the Doctrine of Discovery (or more accurately, the generic principle, as it was effectively characterised in the Court's decision), Marshall made no mention of the Doctrine of Discovery being predicated on papal bulls. On the contrary, the Court determined that the Doctrine of Discovery had emerged primarily from a practical arrangement between European powers engaged in colonising North America, by which

> 'discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession.'[75]

The Court further noted – in a more explicit distancing from the 1493 Papal Bull – that:

> 'Spain did not rest her title solely on the grant of the Pope.'[76]

This, perhaps inadvertently, drew attention to the questionable authority of papal bulls even at the time that they were issued. Examples of British royal charters in the sixteenth and seventeenth centuries were referred to in the judgment, but these had been drawn up increasingly as a means of delineating boundaries with other competing European powers, and only persisted until 1663. Thereafter, claims to territories in the country were largely between European powers rather than between an individual European power and the country's indigenous occupants.[77]

Significantly, the Court pointed out that the bases on which various European powers asserted claims to territory in what later became the United States did not involve an outright dismissal of native rights, as the advocates of the Doctrine of Discovery argue. Instead, Marshall noted that:

> 'the different nations of Europe respected the right of the natives, as occupants [and that although European powers] asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives…these grants have been understood by all, to convey a title to the grantees, subject only to the Indian right of occupancy'.[78]

This recognition of indigenous title, however diffuse in theory and abrogated in practice, differed fundamentally from the Doctrine of Discovery on the key point of the recognition of indigenous occupancy.

Moreover, throughout the judgment, Marshall was explicit that whatever principles or doctrines the Chief Justices were making their determination on applied only to the area of the United States. The geographical confinement of this judgment is critical because if principles drawn from it are to be applied to any other geographical region outside of the United States, then those undertaking that application have the burden of establishing a clear and incontestable chain of evidence with respect to such principles or doctrines being given effect in the territories they are addressing. There is also the accompanying requirement to verify the link between the original (Catholic) papal Doctrine of Discovery and, in the case of New Zealand, its application to eighteenth- and nineteenth-century (Protestant) British foreign policy on the country. *Maranga Mai* provides no evidence to satisfy these requirements.

It is a feature of much of the legal literature dealing with the applicability of the Doctrine of Discovery to New Zealand's colonisation that such evidentiary undertakings are effectively repudiated to some extent in favour of the greater weighting given to the legal significance of a judgment. The strength of a court's decision – especially one with the standing of the United States Supreme Court – is privileged over any concerns regarding the quality of history on which the Court's judgment was based. This is understandable to an extent, but it still does not remove the obligation of determining whether the historical evidence used in one jurisdiction (notwithstanding its laconic nature) can simply be transposed to another jurisdiction.

One of the examples of the Doctrine of Discovery being applied to New Zealand by legal scholars occurred in 2008, when Robert Miller and Jacinta Ruru published an article in the *West Virginia Law Review* which contained the following statement:

> '[w]hen England [sic. Britain] set out to explore and exploit new lands, it justified its sovereign and property claims over newly found territories and the Indigenous inhabitants with the Discovery Doctrine'.[79]

One of the first aspects of this statement to note is that it is supported by a reference. However, the source cited in the reference is by one of the authors of this statement, which supplies a circular form of authority for the assertion.[80] There is no other authority cited for this claim other than those making the claim. Another minor but telling point to observe is that reference is made to England rather than Britain. It was the latter which was the state actor responsible for policy on New Zealand, and had been since 1707.[81] This illustrates the diminished attention paid to history in this analysis.

Furthermore, if Britain did justify its sovereignty over other countries with the Doctrine of Discovery, as is claimed in this extract, then documentary evidence of this act of justification would exist and be

able to be referenced. However, no evidence is provided, and as with many other academics involved in the legal field, historical claims are not verified as they are positioned as being subordinate to the process of extracting legal principles and precedent from other jurisdictions.[82]
Occasionally, the process of interpreting the character of the Doctrine of Discovery in a legal sense can collide even more directly with its historical application. An example of this occurred in a 2010 analysis in the *Seattle University Law Review*, in which the author wrote that:

> 'British officials and jurists in New Zealand acknowledged that the indigenous inhabitants possessed limited property rights. Consequently, the discovery doctrine was applied in New Zealand'.[83]

British officials did indeed acknowledge Māori property rights prior to the Treaty of Waitangi. However, precisely because of that acknowledgement, Crown policy was formulated that went in completely the opposite direction of the tenets of the Doctrine of Discovery. Normanby had insisted, for example, that because New Zealand was likely to be subject to extensive European settlement in the future, there was a risk that:

> 'unless protected and restrained by necessary laws and institutions…[those settlers would] repeat unchecked in that quarter of the globe the same process of war and spoliation under which uncivilised tribes have almost invariably disappeared, as often as they have been brought into the immediate vicinity of emigrants from the nations of Christendom'.[84]

Far from the unbridled claims of Christian nations in non-Christian territories, which was at the core of the Doctrine of Discovery, in 1839, the British Government was cautioning explicitly against such threats coming from a Christian nation. Normanby went even further, highlighting:

> 'the dangers of the acquisition of large tracts of country by mere land jobbers…[and demanding that indigenous land only be obtained] by fair and equal contracts with the natives'.[85]

Thus, the 2010 allegation in the *Seattle University Law Review* that the Doctrine of Discovery was applied in New Zealand',[86] is demonstrably contrary to the historical record, which regretfully is treated in a manner that is more cursory than comprehensive in that article.
This tendency to relegate history in favour of legal arguments appears in another work on legal history published in 2010. In one of the chapters, entitled 'Asserting the Doctrine of Discovery in Aotearoa New Zealand:1840-1960s', the author writes about 'Captain James Cook's first visit to and circumnavigation of Aotearoa in 1779'.[87] Of course, Cook first visited the country and circumnavigated it a decade earlier, which may not be material to the argument about the Doctrine of Discovery per se, but suggestive of the subordinate role afforded to history when such arguments are formulated. The author then goes on to claim that from 1835, Britain 'set about [New Zealand's] annexation',[88] when in fact, the plans for annexation were not made for a further four years. And in a similar vein, the author of the chapter argues that '[T]he British Government recognised the Declaration [of Independence, 1835]'. This is narrowly true only in the sense that the British Government recognised the fact that the Declaration had been signed. It did not in any way ratify it, and it was so dissatisfied with the outcome of the Declaration that it eventually rejected it entirely (which in turn led to the policy being developed for Britain to have a treaty with New Zealand).[89] None of this is explained in the chapter, thus leaving a misleading impression of key stages in New Zealand's colonisation.
In what is perhaps tacit recognition of the absence of evidence, the author of the chapter argues that there was a 'Doctrine of Discovery mindset', and elsewhere, even more tellingly, that there were 'covert Doctrine of Discovery-type actions pursued by the British colonials [sic]'.[90] The documentary evidence from the British Colonial Office and from British officials in New South Wales, reveals no such 'covert' plot to enact its policies on New Zealand according to the Doctrine of Discovery, and as has been noted above, the opposite was the case in the six decades preceding the Treaty of Waitangi.

As a corollary to the arguments that have been made regarding the Doctrine of Discovery's status as some form of proto-international statute, reference is sometimes made to the authority of international law by those supporting the Doctrine of Discovery generally, and its application to New Zealand's colonisation from a legal perspective in particular.[91] However, this appeal often depends on the implicit presumption that international law, as it currently exists, has been fundamentally a constant presence over several centuries, and therefore both the force and authority of international law as it presently stands can be applied in a roughly similar way in previous eras.

The first point to note in this context is that when the Doctrine of Discovery was formulated, in the fifteenth century, international law – in the sense of a codified and widely agreed-upon body of rules and principles governing the relations between nation states – barely existed.[92] In most respects, 'modern international law arose in the last third of the nineteenth century'.[93] The work of Jeremy Bentham at the beginning of that century, and John Stuart Mill from the 1840s, in arguing for reform in the relations between nation-states, epitomised this embryonic stage, with legal theorists foreseeing a time when international law (as weakly developed as it then was) would be governed by more than the pursuit of trade and the avoidance of war.[94] Even into the mid-nineteenth century, the law of nations was still little more than the law of the jungle, while in the 1400s, devices such as papal mandates only tended to have effect if they coincided with the secular motives of dominant European powers.[95]

The legal scholars referring to the role of the Doctrine of Discovery from an international perspective in the context of New Zealand's colonisation do not make explicit claims of historical authority in their works. Instead, the deference to previous judgments, decisions, and arguments from various courts form the basis of their claims. However, for these claims to have any currency beyond the narrow confines of theoretical legal positions, they must possess some evidentiary basis in history. In surveying the texts that make these claims, what becomes apparent is not only that the international law arguments which are drawn on to apply the Doctrine of Discovery to New Zealand are largely inconsistent with the history of British colonisation of the country, but in several fundamental respects are completely at odds with it. In addition, the historical precedent cited in the 1823 United States Supreme Court decision applies exclusively to portions of North America, and have no connection whatsoever with New Zealand. Such challenges in reconciling historical evidence with legal argument remain problematic for those pursuing claims about the Doctrine of Discovery's role in New Zealand's colonisation from an international law perspective.

None of these considerations are given any attention at all in *Maranga Mai*. The report's authors fail completely to engage in any systematic analysis of this aspect of claims relating to the Doctrine of Discovery, and consequently the role of the Doctrine is severely misrepresented. Unfortunately, the clear pattern of consistent error in favour of this misrepresentation rules out the possibility of innocent error, and suggests a degree of intent to depict this history in a way that supports the ideological orientation of the report as a whole.

Claim Four:

The Doctrine of Discovery still functions in New Zealand

It is self-evident from this review that the Doctrine of Discovery played no part whatsoever in any aspect of Britain's colonisation of New Zealand in the eighteenth and nineteenth centuries. Notwithstanding this, though, assertions are made in *Maranga Mai* that the Doctrine not only underpinned British colonial intervention in New Zealand, but further, that it remains in effect in the country.

This contention about the current status of the Doctrine of Discovery is a fallacy on the basis that it is an a priori assumption without any empirical support. In addition, no evidence is provided that verifies the presence of the Doctrine of Discovery in government policies, statute, or any other area of state activity. Instead, the claim relies on a post hoc ergo proctor hoc fallacy, in which the many adverse effects of colonisation (some lasting to the present time) are assumed to be caused by the Doctrine of Discovery, and that the persistence of these adverse effects amounts to evidence of the correlative persistence of the Doctrine of Discovery.

Most puzzling of all, however, is the insistence made by the authors of *Maranga Mai* that the Doctrine of Discovery must be 'rescinded' in New Zealand. It is telling that how this would come about is not addressed. The fact is that there is no Doctrine of Discovery to rescind, and there is nothing in *Maranga Mai* that specifies where the Doctrine is allegedly implemented at the present time, nor of how this might be 'rescinded'.

Sources for *Maranga Mai*

Some mention has already been made in passing in this review about the quality of research that supports the material contained in *Maranga Mai*. It is worth providing a brief assessment of the nature and quality of these sources, encompassing their selective character, and some of the related historiographical issues that arise in consequence. Also, in a few instances, even the existence of some sources is brought into question.

Ideological Leaning

Maranga Mai's bibliography provides one explanation for the severe imbalance in the report. If a spectrum of ideological leanings of source material could be pictured, then the majority of sources used for the report are very much at one end of that spectrum. There is not even a token concession to a balanced body of literature from which material in the report could have been derived. Instead, the laconic range of sources ends up as a form of self-confirmation of the report's text. That is not a judgment of the value of those ideologies that are privileged in *Maranga Mai*, but instead, is a criticism of the inevitable lack of balance that results from such an ideologically narrow range of sources. So blatant is the bias in the bibliography that it serves almost as a case study in deficient historical method when it comes to the quality, range and nature of source material used for a text.

Practically all sources dealing with ideological interpretations of the past lack sufficient objectivity. Among the responses to this fact is a requirement for researchers firstly to acknowledge the subjectivity of the sources they are using, and then to place them in the context of the wider body of literature on the topic. Neither of these requirements are met in *Maranga Mai*, and the ensuing lack of range of source material inevitably contributes to confirmation bias that is evident throughout much of the report.

Paucity of Primary Sources

The reluctance by the authors of *Maranga Mai* to engage with primary sources is mystifying and an obvious deficiency in the report. Even for something as straightforward as reference to the New Zealand Constitution Act 1852, for example, the authors relied on a generalist website that interprets this Act, rather than referring directly to the statute in question. This is not to say that the website was in anyway misleading, but given the ready availability of the Act, and the fact that referring to it directly would yield more detail than a summary on a website, the decision not to scrutinise the legislation directly is an example of poor scholarship, particularly for a document that has such an important bearing on some of the content in *Maranga Mai*.

Likewise, the authors of the report ignored the primary sources associated with papal bulls (even though these have existed in published and translated forms for more than a century).[96] Similarly, *Maranga Mai's* authors have not referred directly to critical primary sources that relate directly to claims that New Zealand's colonisation was influenced in some way by the so-called Doctrine of Discovery. For example, one of the requisite sources that ought to have informed *Maranga Mai* are the secret instructions that Captain Cook received from the Admiralty in 1768 which prescribe the basis of any potential claims of sovereignty over New Zealand.[97] The importance of this document relies on the fact that it explicitly insisted that Cook obtain indigenous consent for any claims of sovereignty might make – something which disproves the allegation that Cook was somehow acting under the influence of the Doctrine of Discovery.

Another primary source of equal significance in charting the alleged role of the Doctrine of Discovery in Britain's colonisation of New Zealand is the set of instructions issued by Lord Normanby to William Hobson in August 1839.[98] These form the single most detailed account of British policy towards the country on the eve of its annexation, and are vital for any assessment of claims about the Doctrine of Discovery applying to this phase of British intervention. As with the secret Admiralty instructions to Cook, Normanby's instructions show clearly that the Doctrine had no bearing whatsoever on British policy towards New Zealand at this time. Inexplicably, the full instructions were bypassed altogether in *Maranga Mai*.

In addition to seminal primary sources such as these, the authors of *Maranga Mai* were either unaware of or deliberately chose to ignore entire collections of documents that are crucial to any consideration of the possibility of the Doctrine of Discovery applying to New Zealand's colonisation. There are no direct citations at all in *Maranga Mai*, for example, to the reports, minutes, memoranda, and correspondence emanating from the Colonial Office in the 1820s and 1830s. No balanced assessment of British policy in this period is possible without reference to these sources. Likewise, for whatever reason, the authors of *Maranga Mai* have not drawn on the comprehensive collection of documents from the New South Wales archives which, like all the other documents referred to in this section, confirm that the Doctrine of Discovery had no presence whatsoever in Britain planning for its intervention in New Zealand.[99]

Also missing from *Maranga Mai* is any reference to the two crucial select committees dealing with aspects of British colonisation in the late 1830s. The first of these is the *Report from the Select Committee on Aborigines (British Settlements)*,[100] which was released in 1837. A very clear sense of the development of British policy in this era is able to be derived from this report, and as with all the preceding material, it is abundantly clear that the Doctrine of Discovery had no influence or even presence whatsoever in this policy.

The other vital select committee report ignored by the authors of *Maranga Mai* is that of the House of Lords, which was completed in 1838, and which had New Zealand as its sole focus.[101] This report contains within it the assessments of a number of non-governmental actors, and reveals both the extent to which British policy was not driven by any particular doctrine, that the British government was extremely reluctant to intervene officially in New Zealand, and that it was especially hesitant about any assertions of sovereignty over the territory. Moreover, it is worthwhile noting that all the categories of sources referred to above are published, and easily accessible.

Another substantial and highly relevant body of literature that relates to claims about the Doctrine of Discovery in New Zealand's colonisation is that of the various sources produced by non-government agencies and individuals. These include significant works by settlers, traders, the accounts of newspapers, and reports submitted by various missionary organisations. These works span a period of several decades, and offer not only an alternative perspective on the nature of Britain's colonisation of New Zealand from official sources, but vitally in many instances, include indigenous voices and perspectives. This is particularly the case in works produced by various missionary organisations. Certainly, the absence of reference to this corpus of literature is a significant shortcoming of *Maranga Mai*.

Self-referential Sources

Although, as has been indicated earlier in this review, it is difficult to determine the precise authorship of *Maranga Mai*, the names of both Rawiri Taonui and Tina Ngata appear to have some connection either with the content or the review of the report. Both were also interviewed for the report. This is not necessarily irregular, but more details would be needed for self-referential content used as authorities for the text.[102] However, no details are provided on who did the interviews or where they were conducted. More importantly, though, is the lack of transparency about their content. The Human Rights Commission refused to provide the questions that formed the basis of these so-called 'formal interviews', and neither has it been able to provide a recording or transcript of them.[103] This makes it challenging to establish the nature of the evidence on which some of the content of *Maranga Mai* is based. It may well be that these 'formal interviews' might have yielded information on the Doctrine of

Discovery that could have helped substantiate some of the claims made in the report, but with the recordings, notes, or transcripts of these 'formal interviews' remaining concealed by the Commission, whatever evidentiary value they might have possessed remains unknown.
What was also irregular about these 'interviews' is the extent to which the Commission was prepared to go to conceal them. In particular, the Commission cited section 9(2)(a) of the Official Information Act 1982 as the authority for withholding any details at all about these putative interviews:[104]

> we confirm that the Commission does hold transcripts of the formal interviews conducted with Tina Ngata, Kingi Snelgar and Dr Rawiri Taonui in 2021.
>
> However, we have decided to refuse your request under:
>
> - section 9(2)(ba)(i) of the OIA, as the information you have requested was provided to the Commission under an obligation of confidence and providing the information would prejudice the supply of similar information in the future; and
> - section 9(2)(a) of the OIA, to protect the privacy of natural persons.

However, this section of the Act aims to protect people's privacy, yet in the case of the relevant interviews in *Maranga Mai*, the interviewees are identified by name.
Further claims are made by the Commission about the information in these 'formal interviews' being 'confidential' and 'sensitive', and that third parties could somehow be adversely affected by the transcripts being released. The Commission even alleged that concealing the content of these interviews was somehow in the public interest,[105] although no rational for this unusual stance was provided:[106]

> These interviews were conducted on the basis that the information collected would be used to inform *Maranga Mai!* but would otherwise be treated as confidential. The Commission considered that due to the sensitive nature of the information provided and the potential detriment to third parties if the full transcripts were disclosed, that it was necessary to maintain confidence over these transcripts.
>
> The Commission considered whether there were any other factors rendering it desirable in the public interest to make the transcripts publicly available. In the Commission's opinion, the public interest in promoting transparency, public accountability and public understanding of how external inputs have influenced *Maranga Mai!*, is satisfied by the clear references to the interviewees and their views throughout the report. In our opinion, it is very clear how and in what ways the interviews influenced the findings and recommendations of the report.
>
> We identified no other public interest aspects in support of disclosing the full interview transcripts. The Commission, however, did consider it in the public interest to maintain confidence over the transcripts as there is a real likelihood that releasing the information could prejudice the supply of similar information and inhibit the Commission's ability to carry out its statutory functions.

One of the fundamental issues with respect to these interviews is that they purport to be on matters of history, and so to that extent, the content must necessarily be based on pre-existing sources on the topic. The suggestion, therefore, that the content of these interviews is sensitive can only be justified if the material contained in them deviates from anything that is historically informed. Yet, even if this was the case, it is still unclear how someone being formally interviewed on a historical topic needs the content of the interview kept secret, especially when the identity of the person being interviewed is known. The simplest way for the Commission to avoid suspicion about the content or even the existence of these interviews would be to make them available, but for whatever reason, it has taken the opposite route.

Historiographical Failures

The selection of sources used for *Maranga Mai* raises a number of questions about the reliability of the report. Not only did its authors omit practically all of the primary sources which ought to have informed their analysis, but they also failed to draw on the substantial body of secondary published literature on the topics raised in the report, and consequently did not engage in any of the relevant historiographical arguments associated with this history. The sources ignored in the report are too numerous to list here, but encompass contemporaneous published works, current published books on history, journal articles, and theses dealing with aspects of this topic. The absence of reference to most of the seminal sources in these categories inevitably affects the historiographical interpretation of the topics being addressed in the report, and represents one of its more serious shortcomings.

Reputable historical work must take into account the evidence of sources even if it goes against the premise of the particular analysis. Indeed, the more implausible or unusual a contention is, the greater the burden on the historian to scrutinise the existing literature on a topic and justify why that literature might be in conflict with the contention being advanced. In *Maranga Mai*, though, the authors have limited the source material that informs the text to that which confirms the report's ideological leaning. The absence of countervailing views is telling throughout the report, but especially in topics such as the Doctrine of Discovery, where manifestly erroneous findings are the consequence of the exclusion of vital primary and secondary sources.

Findings

What is evident generally from this brief review about the arguments relating to the Doctrine of Discovery contained in *Maranga Mai* is that the balance of the report's content tilts strongly in favour of subjective interpretation and the selective depictions of events, rather than on objective evidential and contextual information. The following points are a summary of the findings based on this analysis:

- As has been demonstrated in this review, the general depiction of the Doctrine of Discovery, and its alleged application to New Zealand's colonisation in *Maranga Mai* is misrepresented, and that there are instances of presentism, errors both in fact and omission, and an obvious sense that some of the information has an ideological leaning.

- It is unusual that for a report that addresses a long span of colonisation, culminating in Britain's intervention in New Zealand, most of the seminal national and international literature on the topic has not been referred to. The consequence of this substantially diminished body of source material manifests itself in some of the evidentiary and interpretive deficiencies mentioned in this review.

- The binding force, endurance, and influence of papal bulls addressing modes of colonisation in the fifteenth century has been markedly overstated in *Maranga Mai*. As a corollary of this, no consideration is given in *Maranga Mai* of the fact that papal bulls could be and were superseded both by subsequent papal bulls, by other devices, such as bilateral treaties, or simply by evolving circumstances. In addition, considerations of papal jurisdiction are ignored, as is the fact that by the end of the fifteenth century, papal bulls addressing European colonisation of the non-European world tended more to reflect existing patterns of colonisation rather than guide them. Extraordinary evidence would have to be provided for papal bulls conceived in the fifteenth century to continue to direct colonial policies in non-Catholic countries several centuries later. No such evidence is provided in *Maranga Mai*.

- The intentionalist approach behind the arguments for the Doctrine of Discovery applying to New Zealand's colonisation relies excessively on causal fallacies,[107] with its primary appeal to authority based on first-cause elements (in this case, the Doctrine of Discovery itself), which because they precede the colonisation in question are argued to be causative. This fallacy has not been noticed or commented on by the authors of *Maranga Mai*.

- The Doctrine of Discovery was devised for a specific region, of which New Zealand was not a part, for a colonising power which never had any territorial claim to New Zealand, and at a time when New Zealand's existence was unknown to Europe – facts that are omitted in *Maranga Mai*.

- By the time Britain first became aware of New Zealand, in the mid-seventeenth century, the Doctrine of Discovery had effectively been in abeyance for around 150 years (partly due to its supersession by the Treaty of Tordesillas and subsequent papal bulls, and because by the seventeenth century, Catholic powers were being displaced in imperial strength and reach by Protestant nations such as the Netherlands and later, Britain).

- No reference is made in *Maranga Mai* to the source material relating to the journey made by Tasman to New Zealand, nor of the subsequent consideration of the territory by the Dutch East

India Company. These sources reveal that the precepts of the Doctrine of Discovery were completely absent in Dutch involvement in New Zealand.

- No reference is made in *Maranga Mai* to the Admiralty's secret instructions to Cook regarding the requirement to obtain consent from the indigenous occupants of New Zealand for any claims to territory. These instructions reveal that tenets of the Doctrine of Discovery manifestly did not apply to Cook's involvement in New Zealand in 1769-1770.

- No consideration is given whatsoever by the authors of *Maranga Mai* of the inherent aversion to Catholicism that was symptomatic of the British government and ruling classes in this period. Anything that even had a semblance of papal influence was shunned.

- There is no mention of or even allusion to the Doctrine of Discovery in any British Government document relating to New Zealand's colonisation, and neither did its precepts form part of British policy in this period. More than three centuries had elapsed from when the Doctrine of Discovery was formulated to when Britain began to develop a distinct policy on New Zealand. Over that time, the nature of European imperialism had altered dramatically, and precepts devised in fifteenth-century Rome had little bearing on the nature of British colonisation being devised in nineteenth-century London. For whatever reason, these facts are missing in *Maranga Mai*.

- The Doctrine of Discovery was explicitly based on the desire by the Catholic Church to proselytise. However, British intervention in New Zealand from the late-eighteenth century was largely secular in its motives. No consideration of this is given by the authors of *Maranga Mai*.

- In the approximately two years leading up to New Zealand's cession of sovereignty in 1840 via the Treaty of Waitangi, British policy on the territory was developed on principles that contravene the central tenets of the Doctrine of Discovery. This is especially important because it negates the argument that somehow, the general sentiment of the Doctrine of Discovery embedded itself in British colonial policy in the nineteenth century as a precursor to New Zealand's colonisation.

- Contrary to the Doctrine of Discovery's overriding requirement to acquire territory from indigenous peoples in conquered territories, formal British intervention in New Zealand was achieved through a treaty of cession which the signatories freely consented to, and crucially, which guaranteed those signatories the 'full, exclusive, and undisturbed possession' of their lands. This itself disproves the claim that the Doctrine of Discovery applied to New Zealand in any way.

- Hobson's May 1840 Proclamation, cited as evidence that the Doctrine of Discovery applied to New Zealand's colonisation, is actually proof of the contrary, as it did not subjugate Māori, did not affect Māori title to land, was directed at protecting Māori from the New Zealand Company, and was superseded by the consent of South Island Māori to the Treaty the same year.

- Because the Doctrine of Discovery played no role in New Zealand's colonisation, and certainly is not a feature of current government policy, legislation, or regulation, the recommendation by the authors of *Maranga Mai* that it be rescinded is a non sequitur.

- By the time that Britain commenced its colonisation of New Zealand, it had severed its ties with the Catholic Church for centuries. Moreover, Britain's imperial expansion in the eighteenth century occurred not according to any specific doctrine, but on the contrary, occurred 'in a fit of absence of mind', as the historian John Seeley famously put it.[108] In addition, the motives behind the Doctrine of Discovery were fundamentally religious and

territorial. British colonisation, on the other hand, was primarily secular, and focussed on trade instead of subjugating other peoples.

- *Maranga Mai* conflates Christianity with colonisation in a manner that admits no separation between the faith and the actions of governments acting in the name of the faith. Not only is this denigrating to the religion (which is incongruous for a work issued by the Human Rights Commission) but it relies on a degree of overgeneralisation that practically invalidates this argument of a political-religious nexus, particularly in relation to Britain's colonisation of New Zealand in the eighteenth and nineteenth centuries.

- The sources quoted directly in *Maranga Mai* represent a single and narrow side of the issue on the Doctrine of Discovery. This extreme selectivity in itself undermines the methodological integrity of the work, but it is compounded by the fact that all the quoted material is treated completely uncritically. Such an approach falls below the minimum standards of historical analysis. There is a substantial deficit and reference to the relevant seminal secondary sources, and practically complete absence of any reference to bodies of primary sources that are crucial in providing context and insight into the issues raised in the report. As a consequence of these deficiencies, there is in absence of any engagement with the historiography of the topic, leading to a jaundiced interpretation of much of the history that is being addressed around the issue of the Doctrine of Discovery.

The Commission's Response

The findings contained in this review were presented to the Human Rights Commission in June 2023. Four months later, the Chief Human Rights Commissioner, Paul Hunt, responded with 'a few informal, incomplete reflections.'[109] In general, these unfortunately failed to engage with the substantive historical criticisms of the report, and instead were more in the form of general observations, of which the following is typical:

> Paul, I'm definitely not an expert on the Doctrine of Discovery but, as I understand it, there are numerous really important prisms through which the Doctrine should be scrutinised, for example, history and international law. With respect, it seems to me that another prism is ideology by which I mean the Doctrine propagated a world view which extends far beyond its original conception. In my opinion, the impact of the Doctrine's world view needs careful attention.

Hunt's response to the review – after the Commission had several months to consider its contents – sadly offered no evidence that countered the material that the review contained. The result was that *Maranga Mai* was left largely undefended, with its multiple historical shortcomings continuing to be exposed.

There were, however, some efforts to defend *Maranga Mai*, but on the whole, these were unconvincing. For example, where the review noted that '[t]he binding force, endurance, and influence of papal bulls addressing modes of colonisation in the fifteenth century has been markedly overstated in *Maranga Mai*,' Hunt responded by saying 'I appreciate your nuance in those words: you are not saying the papal bulls are without influence on colonisation.' This was a strawman defence, in as far as no claim was ever made in the review that the papal bulls were without influence on colonisation. However, what was shown in the review, and what Hunt sidestepped in this segment of his response, was that these papal bulls and whatever doctrines followed in their wake had no bearing on Britain's colonisation of New Zealand.

One of the more troubling aspects of Hunt's response is that he conceded that the way that the historical material in *Maranga Mai* was assembled was to achieve certain 'objectives', one of which was to address what he described as 'white supremacy.'[110] Putting aside contentious nature of this concept, the fundamental flaw with such an approach is that history ends up being assembled for non-historical purposes (in this case, an overtly ideological one). It is at this point that the material produced no longer conforms to the methods of the discipline of history, and instead simply serves a fundamentally ideological objective, which only serves to weaken further the credibility of the history *Maranga Mai* purports to represent.

Conclusion

Many of the main historical claims and assertions made in *Maranga Mai* in connection with the Doctrine of Discovery variously show signs of errors in fact, misrepresentation, errors of omission, errors in historiography, ideological orientation, presentism, the rendition of subjective interpretations and opinions as objective material, patterns of bias, and a lack of awareness of the relevant primary sources and bodies of literature that ought to inform discussion on the topic. Both the range and seriousness of these deficiencies serve to undermine terminally the report's claims relating to the Doctrine of Discovery.

Notes

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16 Tangata Whenua Caucus, 2.

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19 P. Moon to Human Rights Commission (13 October 2023).

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21 P. Moran (Human Rights Commission) to P. Moon (23 August 2023), ref. 223821.

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