

The Doctrine of Discovery and its Enduring Impact on Indigenous Peoples

WHAT IS THE DOCTRINE OF DISCOVERY?

The Discovery Doctrine is a construct of public international law expounded by the United States Supreme Court in a series of decisions, initially in *Johnson v. M'Intosh* in 1823. It is based on a series of 15th century Papal Bulls that gave Christian explorers the right to claim title to the lands they “discovered” and lay claim to those lands for their Christian Monarchs. Any land that was not inhabited by Christians was available to be “discovered”, claimed, and exploited. If the “pagan” inhabitants could be converted, they might be spared. If not, they could be enslaved or killed.

“By this directive, by fiat, the European nations claimed for themselves the entire Western Hemisphere. It is a demonstration of the incredible arrogance of the time. This has resulted in the subjugation, genocide, relegating indigenous peoples to a subhuman status in international politics. Indigenous peoples have been laboring and suffering under that status right up until the U.N. Declaration on the Rights of Indigenous Peoples was established in 2007, which for the first time recognized Indigenous peoples as ‘peoples’. Up until recently, we were politically denied human rights.”

- Onondaga Nation Faithkeeper Oren Lyons

THE DOCTRINE OF DISCOVERY IS STILL USED TO DENY INDIGENOUS LAND RIGHTS

“Under the ‘Doctrine of Discovery’ ... fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign – first the discovering European nation and later the original states and the United States”

- Footnote #1, *City of Sherrill v. Oneida Indian Nation of New York* 125 S. Ct. 1478, 148384 (2005)

This decision resulted in the subsequent dismissal of the Cayuga and Oneida land claims and the Onondaga Nation’s Land Rights Action.

A GROWING MOVEMENT TO REPUDIATE THE DOCTRINE OF DISCOVERY



More information on the Doctrine of Discovery
can be found at doctrineofdiscovery.org

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400 years of hostility to Native Americans

By OREN LYONS

When Henry Hudson's Half Moon sailed into what is now called New York Bay 400 years ago, the natives he met had already been declared non-people for more than a century. That racist "Doctrine of Discovery" still resonates today in American courts of law.

Under the doctrine, issued in 1493 by Pope Alexander VI after Christopher Columbus kicked off a frenzy of transatlantic voyages, native lands "discovered" by European explorers were considered "unoccupied" because the people in those uncharted lands were not Christian.

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That doctrine, known in church law as *Inter Cetera*, forms the basis of Indian law in what was to become the United States, justifying in the minds and courts of white settlers that they could divide up land ownership without regard for the millions of natives who had lived here for millennia. The protections intended in the separation of church and state were conveniently not extended to the Indians.

When the leaders of the American Revolution pledged their honor and fortunes in the fight to break free from England, those fortunes in many cases were based on huge profits pocketed by land speculators like Washington, Jefferson and Adams, who relied on the doctrine to survey, subdivide and claim ownership of lands with no consideration for the indigenous people living on them.

The United States is one of only four nations ... to have voted against the U.N.'s 2007 Declaration on the Rights of Indigenous Peoples, which protects indigenous people's rights to culture, identity, language, employment, health, education and use and development of their land.

That is why we are calling on Pope Benedict XVI, who has committed to confronting past wrongs done in the Catholic Church's name, to formally renounce *Inter Cetera* as a critical step on the road to

right historic wrongs visited upon indigenous peoples here and elsewhere around the world where it was similarly applied.

Just last month, the Episcopal Church General Convention passed a resolution that "repudiates and renounces the Doctrine of Discovery as fundamentally opposed to the Gospel of Jesus Christ and our understanding of the inherent rights that individuals and peoples have received from God."

This is not ancient history.

"It continues to be invoked, in only slightly modified form, in court cases and in the many destructive policies of governments and other institutions of the modern nation-state that lead to the colonizing dispossession of the lands of indigenous peoples and the disruption of their

Please see **HOSTILITY B3** ►

HOSTILITY: Some still invisible

▼ CONTINUED FROM B1

way of life," the Episcopal Convention resolution stated.

The Doctrine was cited as recently as 2005 by Supreme Court Justice Ruth Bader Ginsburg in a decision denying land sovereign status to the Oneida Indian nation's purchase of property clearly within its historic boundaries as established by the 1794 treaties signed by the new U.S. government with the nations of the Haudenosaunee (or Iroquois) confederation. Those nations include the Mohawk, Oneida, Cayuga, Seneca, Tuscarora and the Onondaga, the nation of which I am part.

Ginsburg wrote that "fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign — first the

discovering European nation and later the original States and the United States."

She was applying longstanding law dating to a landmark 1823 decision in which Chief Justice John Marshall wrote that Piankeshaw Indians in Illinois could not freely sell their land because the federal government controlled it.

Citing the doctrine, Marshall noted that English explorer John Cabot was authorized to claim ownership of "discovered" lands "notwithstanding the occupancy of the natives, who were heathens, and at the same time, admitting the prior title of any Christian people who may have made a previous discovery."

Whether 1823 or 2005, it's clear who is left out — the people who

lived on the land for countless generations before Europeans arrived.

The United States is one of only four nations — along with Canada, Australia and New Zealand — to have voted against the U.N.'s 2007 Declaration on the Rights of Indigenous Peoples, which protects indigenous people's rights to culture, identity, language, employment, health, education and use and development of their land.

So as New York and the nation commemorate the 400th anniversary of Henry Hudson's voyage up the river that bears his name, it is not surprising that indigenous people are invisible in that commemoration. According to the Doctrine of Discovery, we didn't exist when he first arrived. Apparently, we still don't.

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World Council of Churches

A worldwide fellowship of 349 churches seeking unity, a common witness and Christian service

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STATEMENT ON THE DOCTRINE OF DISCOVERY AND ITS ENDURING IMPACT ON INDIGENOUS PEOPLES

WCC Executive Committee
14-17 February 2012
Bossey, Switzerland

1. Indigenous Peoples have the oldest living cultures in the world. Three hundred to five hundred million Indigenous Peoples today live in over 72 countries around the world, and they comprise at least 5,000 distinct peoples. The ways of life, identities, well-being and very existence of Indigenous People are threatened by the continuing effects of colonization and national policies, regulations and laws that attempt to force them to assimilate into the cultures of majoritarian societies. A fundamental historical basis and legal precedent for these policies and laws is the "Doctrine of Discovery", the idea that Christians enjoy a moral and legal right based solely on their religious identity to invade and seize indigenous lands and to dominate Indigenous Peoples.

2. Around the world, Indigenous Peoples are over-represented in all categories of disadvantage. In most indigenous communities people live in poverty without clean water and necessary infrastructure, lacking adequate health care, education, employment and housing. Many indigenous communities still suffer the effects of dispossession, forced removals from homelands and families, inter-generational trauma and racism, the effects of which are manifested in social welfare issues such as alcohol and drug problems, violence and social breakdown. Basic health outcomes dramatize the disparity in well-being between Indigenous Peoples and European descendants.

3. The patterns of domination and oppression that continue to afflict Indigenous Peoples today throughout the world are

found in numerous historical documents such as Papal Bulls, Royal Charters and court rulings. For example, the church documents *Dum Diversas* (1452) and *Romanus Pontifex* (1455) called for non-Christian peoples to be invaded, captured, vanquished, subdued, reduced to perpetual slavery and to have their possessions and property seized by Christian monarchs. Collectively, these and other concepts form a paradigm or pattern of domination that is still being used against Indigenous Peoples.

4. Following the above patterns of thought and behaviour, Christopher Columbus was instructed, for example, to "discover and conquer," "subdue" and "acquire" distant lands, and in 1493 Pope Alexander VI called for non-Christian "barbarous nations" to be subjugated and proselytized for the "propagation of the Christian empire." Three years later, England's King Henry VII followed the pattern of domination by instructing John Cabot and his sons to locate, subdue and take possession of the "islands, countries, regions, of the heathens and infidels . . . unknown to Christian people." Thereafter, for example, English, Portuguese and Spanish colonization in Australia, the Americas and New Zealand proceeded under the Doctrine of Discovery as Europeans attempted to conquer and convert Indigenous Peoples. In 1513, Spain drafted a legal document that was required to be read to Indigenous Peoples before "just war" could commence. The *Requerimiento* informed Indigenous Peoples that their lands had been donated to Spain and that they had to submit to the Crown and Christianity or they would be attacked and enslaved.

5. In 1823, the U.S. Supreme Court used the same pattern and paradigm of domination to claim in the ruling *Johnson & Graham's Lessee v. M'Intosh* that the United States as the successor to various "potentates" had the "ultimate dominion" or "ultimate title" (right of territorial domination) over all lands within the claimed boundaries of the United States. The Court said that as a result of the documents mentioned above, authorizing "Christian people" to "discover" and possess the lands of "heathens," the Indians were left with a mere "right of occupancy;" an occupancy that, according to the Court was subject to the "ultimate title" or "absolute title" of the United States. The *Johnson* case has been cited repeatedly by Australian, Canadian, New Zealand and United States courts, and the Doctrine of Discovery has been held by all these countries to have granted European settler societies plenary power (domination) over Indigenous Peoples, legal title to their lands, and has resulted in diminished sovereign, commercial and international rights for Indigenous Peoples and governments. Europeans believed this was proper based on their ethnocentric, racial and religious attitudes that they and their cultures, religions and governments were superior to non-Christian European peoples.

6. Consequently, the current situation of Indigenous Peoples around the world is the result of a linear programme of

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“legal” precedent, originating with the Doctrine of Discovery and codified in contemporary national laws and policies. The Doctrine mandated Christian European countries to attack, enslave and kill the Indigenous Peoples they encountered and to acquire all of their assets. The Doctrine remains the law in various ways in almost all settler societies around the world today. The enormity of the application of this law and the theft of the rights and assets of Indigenous Peoples have led indigenous activists to work to educate the world about this situation and to galvanize opposition to the Doctrine. Many Christian churches that have studied the pernicious Doctrine have repudiated it, and are working to ameliorate the legal, economic and social effects of this international framework. Starting in 2007, for example, with the Episcopal Diocese of Maine, followed by the Episcopal Diocese of Central New York in 2008, and in 2010 by Philadelphia Yearly Meeting of the Religious Society of Friends, individual churches began adopting resolutions and minutes repudiating the Doctrine. In 2009, at its 76th General Convention, the Episcopal Church adopted resolution D035 - “Repudiate the Doctrine of Discovery.” In 2010, the General Synod of the Anglican Church of Canada adopted resolution A086 - “Repudiate the Doctrine of Discovery.” In 2011, various Unitarian Universalist churches and Quaker organizations are adopting and considering adopting resolutions and minutes repudiating the Doctrine. This issue of the Doctrine of Discovery has also been brought to the forefront of world attention by Indigenous Peoples working with international bodies.

7. Considering the fact that the Doctrine of Discovery will be the theme for the 11th session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) in 2012, churches and the international community need to be sensitized on this issue. The Doctrine of Discovery: its enduring impact on Indigenous Peoples and the right to redress for past conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples) will be discussed at the UNPFII from 7 to 18 May 2012; this event will bring together representatives of Indigenous Peoples’ organizations and networks around the world. Churches and ecumenical networks of the WCC will be mobilized to be part of the 11th session of the UNPFII in 2012.

In this context, the executive committee of the World Council of Churches, meeting at Bossey, Switzerland, 14-17 February 2012,

- A. Expresses solidarity with the Indigenous Peoples of the world and supports the rights of Indigenous Peoples to live in and retain their traditional lands and territories, to maintain and enrich their cultures and to ensure that their traditions are strengthened and passed on for generations to come;
- B. Denounces the Doctrine of Discovery as fundamentally opposed to the gospel of Jesus Christ and as a violation of the inherent human rights that all individuals and peoples have received from God;
- C. Urges various governments in the world to dismantle the legal structures and policies based on the Doctrine of Discovery and dominance, so as better to empower and enable Indigenous Peoples to identify their own aspirations and issues of concern;
- D. Affirms its conviction and commitment that Indigenous Peoples be assisted in their struggle to involve themselves fully in creating and implementing solutions that recognize and respect the collective rights of Indigenous Peoples and to exercise their right to self-determination and self-governance;
- E. Requests the governments and states of the world to ensure that their policies, regulations and laws that affect Indigenous Peoples comply with international conventions and, in particular, conform to the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization’s Convention 169;
- F. Calls on each WCC member church to reflect upon its own national and church history and to encourage all member parishes and congregations to seek a greater understanding of the issues facing Indigenous Peoples, to support Indigenous Peoples in their ongoing efforts to exercise their inherent sovereignty and fundamental human rights, to continue to raise awareness about the issues facing Indigenous Peoples and to develop advocacy campaigns to support the rights, aspirations and needs of Indigenous Peoples;
- G. Encourages WCC member churches to support the continued development of theological reflections by Indigenous Peoples which promote indigenous visions of full, good and abundant life and which strengthen their own spiritual and theological reflections.