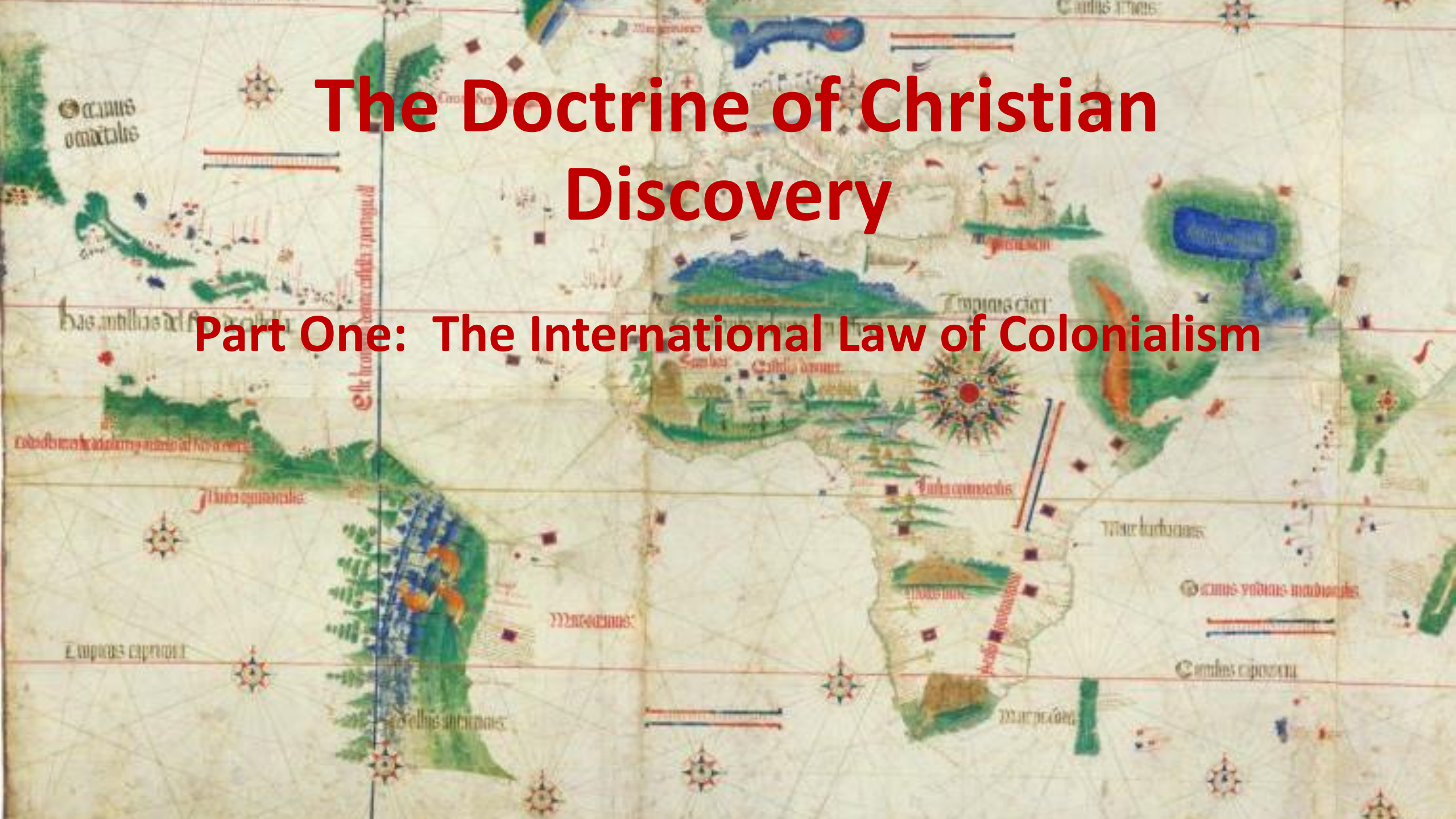


The Doctrine of Christian Discovery

Part One: The International Law of Colonialism



Disclaimer

A historic difference has arisen between the teachings of Christ and the political and institutionalized doctrines of a church-state complex operating in the name of Christ. We call this complex Christianity, a belief system institutionally developed by Christian religions over the past 2000 years. Christendom was the Christian mission to convert everyone in the world to Christianity. European Christian monarchs and popes together developed the Doctrine of Christian Discovery to further that goal.

Uncovering the lies of the Doctrine of Christian Discovery is not an attack on Jesus or Christianity. Rather, we go back into history to learn how the Christian vision of a world-wide Christendom and the monarchial lust for land and wealth has inflicted and continues to inflict untold miseries upon non-Christian Native and racialized people and their lands.

The majority of the non-European world was colonized under an international legal principle that is known today as the Doctrine of Christian Discovery.

The Doctrine is one of the very first international law principles and established the ritual of discovery for Christian European nations to claim the lands and rights of peoples in the newly discovered western hemisphere and around the globe.

By this Doctrine, European sovereigns automatically acquired property rights in native lands and gained governmental, political, and commercial rights over the Indigenous inhabitants without their knowledge or consent.

This legal principle was created and justified by the belief in Christian and European superiority over non-Christians and other civilizations.





The Doctrine of Christian Discovery was developed in Europe over many centuries by the Roman Catholic Church, Portugal, Spain, England, and France.

The Church framed the enslavement, genocide, theft of land, and other abuses inflicted upon non-Christians as acts that glorified God because Christian Europe made salvation possible for heathen souls through the love of Christ.





Roots of the Doctrine of Christian Discovery

The international law that regulated nearly six hundred years of European colonization of most of the world can be traced in church law and world history to at least the Crusades (1096-1271) to reclaim the Holy Lands for Christianity.

Pope Innocent IV in 1245 established that the papacy's "divine mandate" superseded any non-Christian's natural right claim to governmental sovereignty and property. Non-Christian property ownership and stewardship, therefore, was unilaterally declared void upon Christian conquest.

The "just war" philosophy did not stop at contemplating and justifying the interactions between fellow humans, but also applied to human values of, land, resources, and property.

This Christian mandate made holy the invasion and plunder of the Arab world during the Crusades.

Principle papal bulls defining the Doctrine of Christian Discovery.

A series of papal bulls were issued by the Vatican when the Atlantic-facing nations of Europe began to make sovereign claims of non-European lands.

These papal bulls and decrees added a level of brutality to the pursuant colonialism that was supported by the Catholic Church, and had the effect of sanctioning genocides of indigenous populations and abolishing the rights of those who were left.



1452: Dum Diversas

As Portugal expanded its explorations and claims down the west coast of Africa, it convinced Pope Nicholas to issue Dum Diversas in 1452 to legitimize its enslavement of Africans.

Pope Nicholas V decreed:

We grant you by these present documents, with our Apostolic Authority, full and free permission to invade, search out, capture, and subjugate the Saracens and pagans and any other unbelievers and enemies of Christ wherever they may be, as well as their kingdoms, duchies, counties, principalities, and other property [...] and to reduce their persons into perpetual servitude.



1455: Romanex Pontificus

Romanex Pontificus expanded the Doctrine of Christian Discovery. It gave the Portuguese Catholic sovereign the right to “invade, search out, capture, vanquish, and subdue” non-Christian lands:

The papacy authorized the holy work of Portugal to :

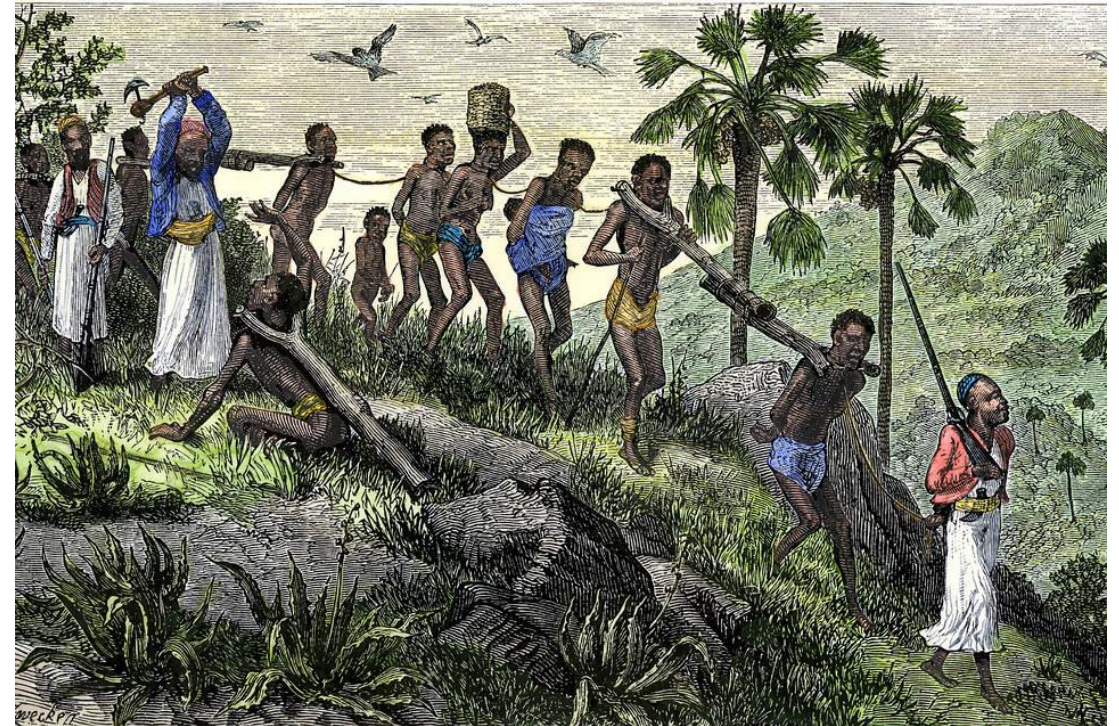
“invade, search out, capture, vanquish, and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed, and the kingdoms, dukedoms, principalities, dominions, possessions, and all movable and immovable goods whatsoever held and possessed by them and to reduce their persons to perpetual slavery, and to apply and appropriate to himself and his successors the kingdoms, dukedoms, counties, principalities, dominions, possessions, and goods, and to convert them to his and their use and profit”



Extension of Christendom

The bull recognized the pope's interest to bring all humankind to the one true religion, authorized Portugal's work toward Christian conversion and civilization. Prince Henry and King Alfonso V had now shrouded Portuguese slave trade activities in a cloak of pious devotion to the church's work.

“In order that King Alfonso himself and his successors and the infante may be able the more zealously to pursue and may pursue this most pious and noble work, and most worthy of perpetual remembrance (which, since the salvation of souls, increase of the faith, and overthrow of its enemies may be procured thereby, we regard as a work wherein the glory of God, and faith in Him, and His commonwealth, the Universal Church, are concerned) in proportion as they, having been relieved of all the greater obstacles, shall find themselves supported by us and by the Apostolic See with favors and graces.”



Spain and Doctrine of Christian Discovery

Columbus' idea of a westward passage to the Indies struck a resonant chord with Spanish King Ferdinand and Queen Isabella. Isabella agreed to sponsor the venture, and Spain sent Columbus forth under a contract that declared he would be the Spanish Admiral of any lands he we “discover and aquire.”

Under the precedent of Discovery, the papal bulls, and this contract, he claimed that his “discovery” of already inhabited islands in the Caribbean meant that the islands had become Spanish possessions.

Spain immediately sought to obtain papal ratification of these discoveries.



1493: Inter Caetera



After Columbus claimed the lands that he encountered in the New World, Queen Isabella and King Ferdinand of Spain sought papal ratification of their ownership of these lands.

In May 1493, Pope Alexander VI issued the bull *Inter caetera* ordering that the lands, which “hitherto had not been discovered by others,” and were now found by Columbus, belonged to Ferdinand and Isabella, along with “free power, authority, and jurisdiction of every kind.”

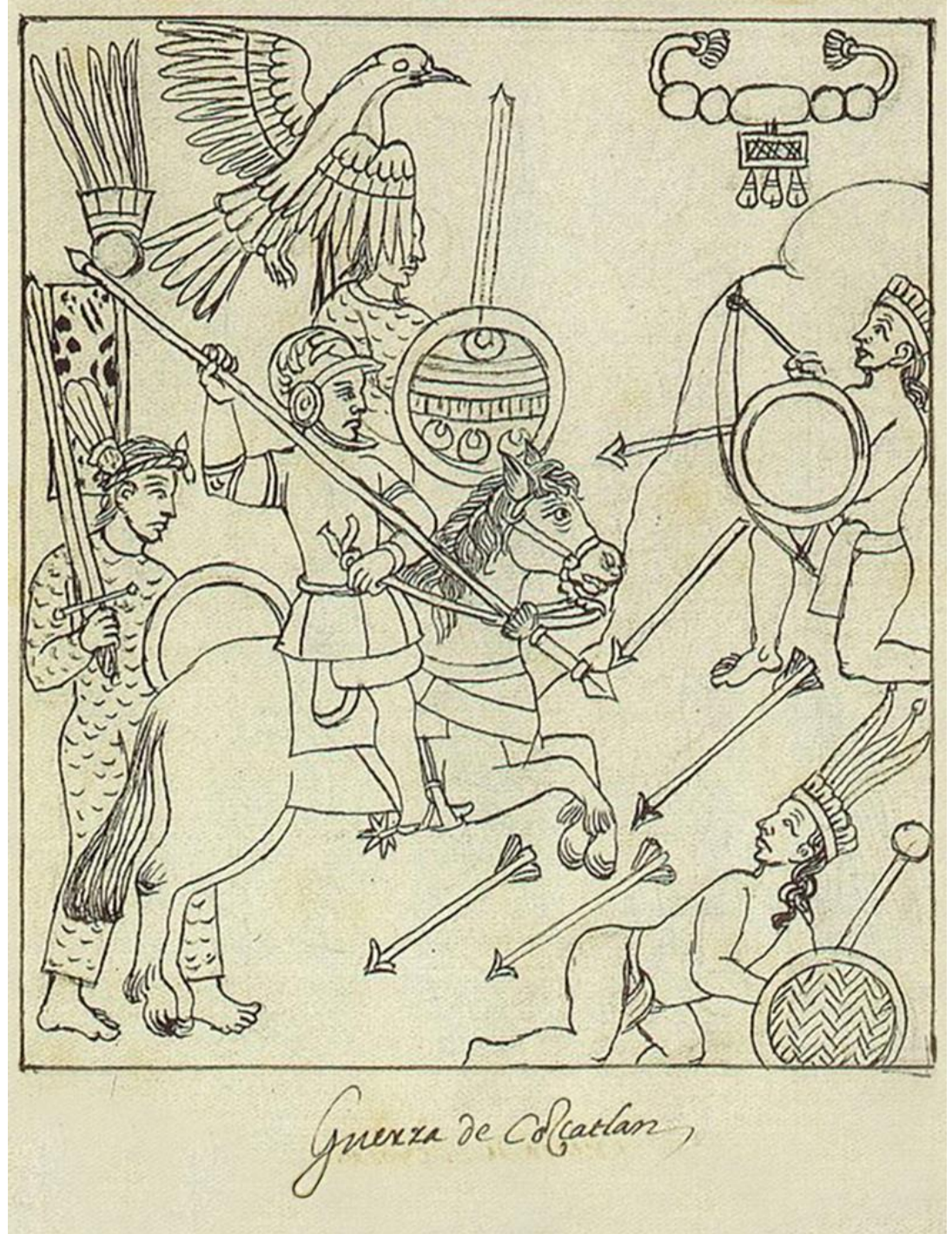
The Bull stated that Spain was assigned the “holy and laudable work” to contribute to “the expansion of the Christian rule.”

Consequently, the Doctrine of Discovery landed in the New World. The idea that the Doctrine granted European monarch ownership rights in native lands and sovereign and commercial rights over native people due to a “first discovery” by European Christians was now established international law.

Requerimiento of 1513

The Requerimiento informed native people that they must accept Spanish missionaries and sovereignty or be annihilated. It was required to be read aloud to natives before hostilities or a “just war” could legally ensue. The Requerimiento informed natives of their natural law obligation to hear the gospel and told them that their territory had been donated to Spain. If the natives refused to acknowledge the Catholic Church and Spanish rule and to admit priests, then Spain was justified in waging war on them.

Some explorers feared that the natives might accept the terms of the Requerimiento, thus depriving them of conquest. It was sometimes read to the land from their ships.



English Christian Right of E

England was a Catholic country in 1493, wanting to “discover” some land in the New World, but did not want to infringe the papal bulls issued to Portugal and Spain and bear the consequence of excommunication.

England came up with the theory that Catholic King Henry VII of England would not violate the bulls if his explorers only claimed lands that had not yet been discovered by any Christian prince.

Consequently, when Henry VII chartered John Cabot from 1496–1498 to explore and claim the east coast of North America, he ordered Cabot to “discover . . . countries, regions, or provinces of the heathen and infidels . . . which before this time have been unknown to all Christians.”



England claimed that John Cabot's 1496-98 exploration and first discoveries of North America, from Newfoundland to Florida, gave England priority over any other European country, even Spain's claim of first discovery of the New World via Columbus in the Caribbean in 1492.



By the early 1500's, the Doctrine of Discovery had become International Law. The first European country to discover lands unknown to other Europeans acquired property and sovereign rights over the lands and Indigenous peoples. First discovery alone, however, was often considered to create only an incomplete title.

English Christian Right of Discovery – Occupation

By the 16th century, however, the English Crown, no longer tied to the Catholic Church, revised the established international law of Doctrine of Christian Discovery into a more secularized tool of conquest to circumvent the Roman Catholic Church's authority to claim rights to non-European lands.

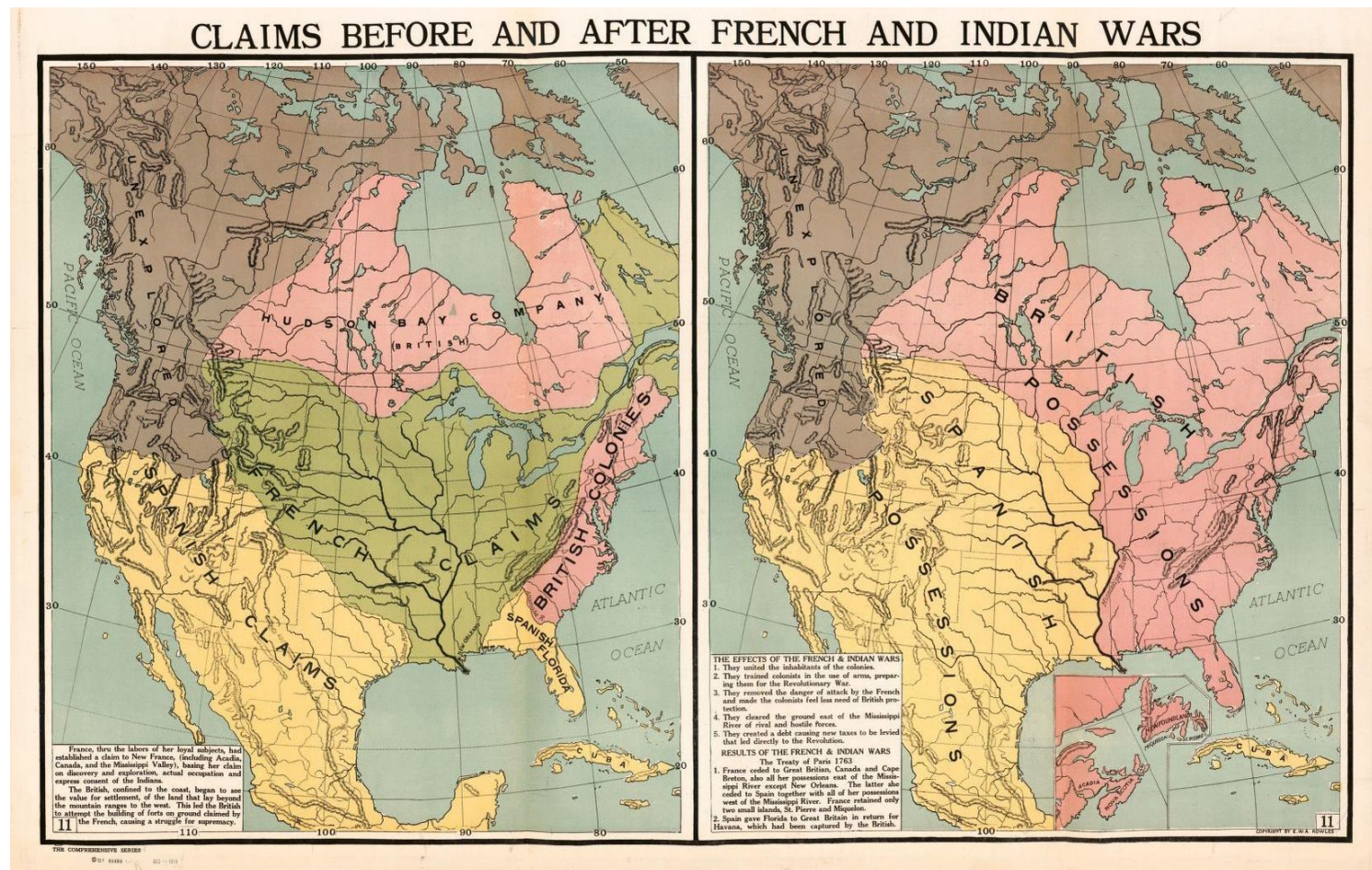
Protestant Queen Elizabeth I and her advisers argued that the Doctrine required a European country to actually occupy and have current possession of non-Christian lands to perfect a Discovery title to newly found lands.

To turn a first discovery into a full title of ownership that would be recognized by other European countries, England developed in the 1570s the element that a European country had to actually occupy and possess the lands it claimed via a first discovery. Occupancy was usually proved by building forts or settlements. The physical occupancy and possession had to be accomplished within a reasonable amount of time after making a first discovery.

This revision justified the English claim to North America by John Cabot in 1496.



Rival Claims

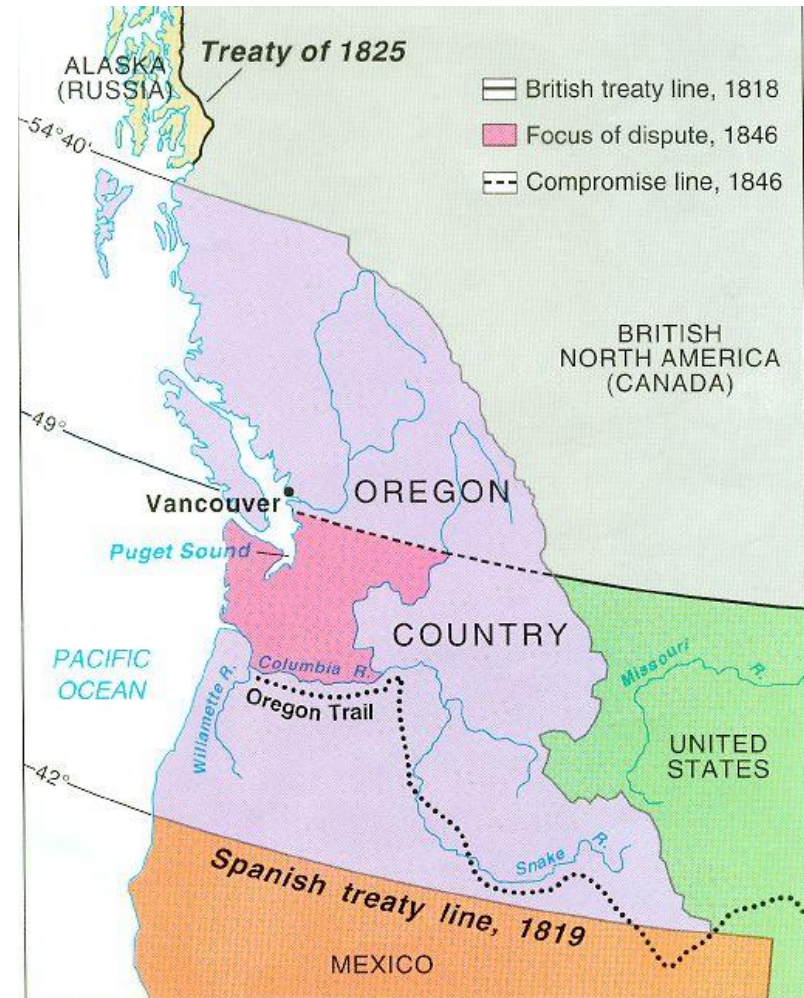


France also used that same theory as England and claimed lands that were to become Canada and the Great Lakes region. Ultimately, these contesting discovery claims were settled by the French and Indian War (1754-1763.)

The Treaty of Paris in 1763 that ended the French and Indian War and the Royal Proclamation of 1763 reasserted European superiority of property rights of indigenous lands.

Oregon Country Discovery Claims

The United States also relied on first-discovery claims. The United States argued with England, Spain, and Russia for more than four decades that it had made the first discovery of the Oregon Country and thereby owned that region. All sides claimed the Oregon Country based on first discovery.





Terra Nullis

One last element in the Doctrine of Christian Discovery developed by England to justify their alleged right to the lands of native people is *terra nullis*, or unoccupied land. This element stated that lands that were not occupied by any person or nation, or which were occupied but not being used in a fashion that European legal systems approved, were considered to be empty wasteland and available for Discovery.

Europeans did not recognize the sovereignty of “non-civilized” people to the land they occupied; thus they regarded North America and Australia as vacant land that could be claimed by the right of Discovery.



Colonial Charters

In the American English colonies, England imbedded the superior right to colonize and settle land not occupied by Christians in legal charters of individuals such as John Cabot and Sir Walter Raleigh, and private settlement companies such as the First Charter for the Virginia Company.

King James I alleged in the charter for the Virginia colony in 1606 that he had established the colony for “propagating of Christian Religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages . . . to human Civility.”

He also granted the 1620 charter for the colony of New England “to advance the in Largement of Christian Religion, to the Glory of God Almighty . . . [and for] the Conversion and Reduction of the People in those Parts unto the true Worship of God and Christian Religion.”

Robert Miller, chief justice of the Confederated Tribes of the Grande Ronde in Oregon and a citizen of the Eastern Shawnee Tribe of Oklahoma, identified the elements of the Doctrine of Discovery to help understand the Doctrine. These elements are plainly evident in the histories and modern-day laws and policies of all settler societies. These elements were used, and are still being used, to justify limitations on the sovereignty, property, and human rights of Indigenous Nations.



1. Christianity

Religion was a very significant aspect of Discovery Doctrine. Starting with the Crusades and then the papal bulls of the 1400s, Christians claimed that indigenous peoples did not have the same rights to land, sovereignty, self-determination, and human rights as did Christians. Furthermore, Europeans claimed a right and duty to convert non-Christians.

The thirteen American colonies relied heavily on their right and duty to convert the pagans to the one true religion to justify their attempts to control native people.

In the 1870s, the United States even turned over the operation of many reservations and the education of Indian children to Christian denominations, and even granted tribal lands to churches.

American Indian religious beliefs and ceremonies were officially suppressed and outlawed for over one hundred years.



2. Civilization



Europeans believed God had directed them to bring their superior civilization, education, and religion to indigenous people, and to exercise paternalistic and guardian powers over them.

From the beginning of North American colonization, the English monarchy and colonists justified the domination of American Indians on the assumption that they possessed the superior civilization and that Indians were savage barbarians. King James I in his charter to the Virginia directed the colonists to “bring the Infidels and Savages . . . to human Civility, and to a settled and quiet Government.” The charters for other America colonies show the same thinking.

The American states and the United States also applied this Discovery element against American Indians. These governments actively attempted to destroy Indian cultures, legal systems, and governments to civilize them. Over the centuries, the United States worked to assimilate Native Americans into American culture and society, and as one Indian boarding school superintendent stated: “Kill the Indian in him, and save the man.”

3. Preemption

Euro-American countries that claimed the rights of first discovery also claimed the power of preemption, that is, an exclusive right to buy the lands of indigenous nations and peoples. This is a valuable property right similar to the modern-day real estate principle called a right of first refusal, which is the right to be the first person allowed to purchase another's land when they choose to sell.

In 1763, King George III asserted his sole ownership through the preemption power over Indian-land purchases west of the Allegheny and Appalachian Mountains. The king expressly forbade all purchases of Indian lands without royal permission because those lands were reserved to the Crown under preemption.

When the United States acquired independence from England, the new thirteen states immediately assumed the powers of preemption over Indian lands. Many of the thirteen states drafted constitutions and laws in which they expressly claimed preemption.

Congress then issued a proclamation in 1783 to exercise its right of preemption over Indian lands. The proclamation stated that no one could settle on or purchase Indian lands “without the express authority and directions of the United States in Congress assembled” and “that every such purchase or settlement, gift or cession, not having the authority aforesaid, is null and void.”

In 1790, the first Congress under the new U.S. Constitution expressly used the word “preemption” in a law that applied the element of preemption to Indian lands and restricted tribal real-property rights and sales of land to any person or entity other than the United States. This law was reauthorized and amended by Congress many times over the intervening years and is still federal law today.

4. Indian or Native Title.

After a first discovery, European and later White American legal systems claimed that Indigenous Nations automatically lost the full ownership of their lands and only retained what is called the “Indian title” or “native title,” a property right to occupy and use the lands. These rights could last forever if Indigenous Nations never consented to sell to the European country that claimed first discovery and preemption or to the United States. But if Indigenous Nations did choose to sell, they were to sell only to the European country or later to the United States government that held the preemption right.



5. Limited Indigenous sovereign and commercial rights

Based on the 1493 papal bull, Europeans and United States claimed that Indigenous Nations and Peoples lost their sovereign rights to engage in international diplomacy, treaty-making, and trade after a first discovery. Europeans and later the U.S. government claimed that Indigenous Nations could only interact politically and commercially with the government that had discovered them, or in the case of the United States, had assumed that sovereignty through revolution.

President George Washington enacted this element in 1795 when he urged Congress to create federal trading houses to totally control the Indian trade and to exclude private traders. Government trading houses were ultimately operated at 28 locations across the frontier from 1795–1822.

Furthermore, in hundreds of treaties the federal government and tribes agreed that the United States would take “the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as [the United States] think proper.”

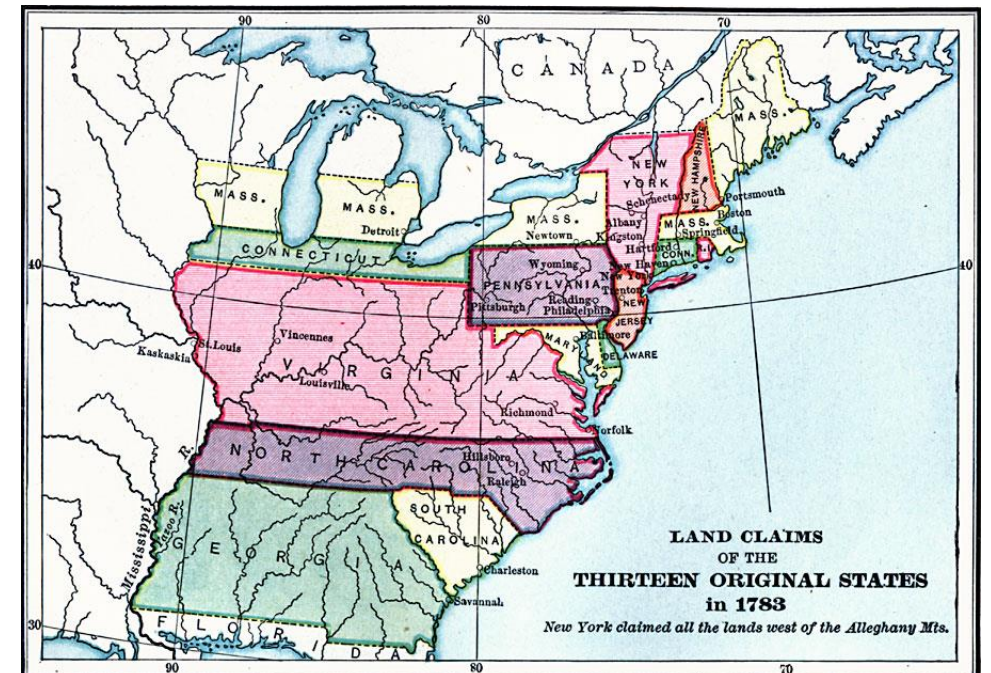
The U.S. Supreme Court came to interpret these provisions as creating a trust responsibility that limited tribal sovereign powers, because they required the federal government to care for tribes in a ward–guardian relationship, and defined Indian tribes as “domestic dependent nations.”

6. Contiguity

Contiguity was implied by the 1493 papal bull which gave discovery rights over places the discovering nation had not even seen.

This element provided that Europeans had a claim to a significant amount of land contiguous to their actual discoveries and settlements. This element became important when European countries had settlements somewhat close together. In that situation, each country was deemed to hold rights over the lands to the halfway point between their settlements. Contiguity also meant that the discovery of a river mouth created a claim over all the lands drained by that river, even if that was thousands of miles.

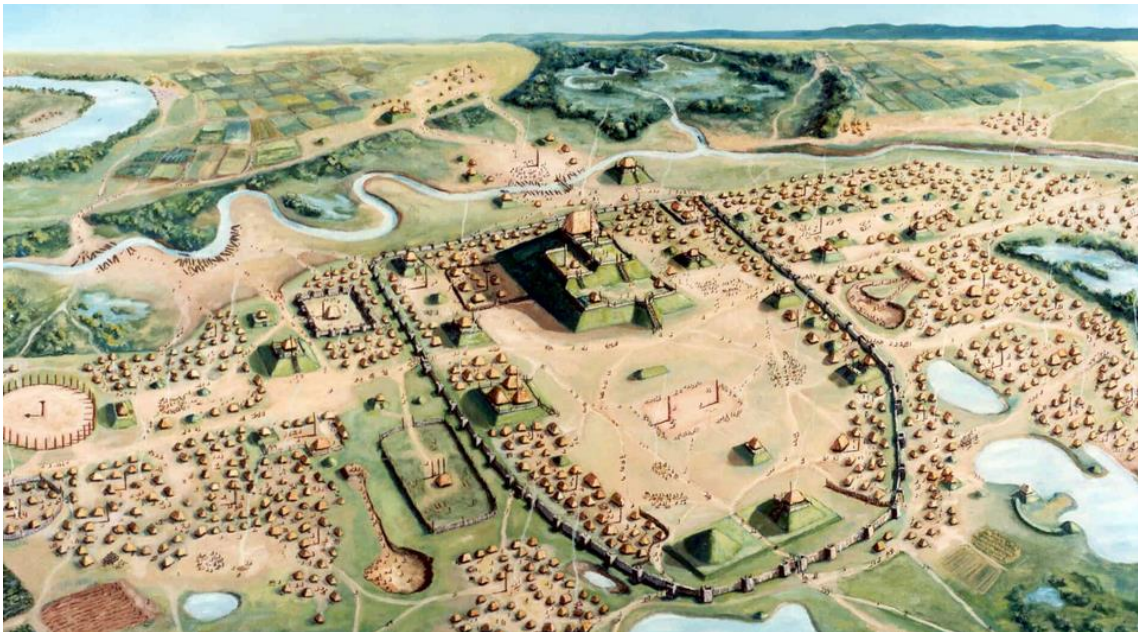
Thereafter, the American colonies claimed their borders to the furthest degree possible based on contiguity.



7. Terra nullius.

This Latin phrase means a land that is vacant or empty. Under this element of the Doctrine, if lands were not occupied by any person or nation, or even if they were occupied but they were not being used in a manner that European / American legal systems recognized or approved, then the lands were considered empty, vacant, and available for Discovery claims. Europeans and Americans often considered lands that were actually owned, occupied, and being used by Indigenous Nations to be *terra nullius*.

The English Crown and its colonists used *terra nullius* to claim the lands of American Indians. The Crown claimed the authority to grant rights in the “Deserts” and in the “deserted,” “waste and desolate,” “hitherto uncultivated” lands “which are not inhabited already” in America as stipulated in the royal charters of New England, Maryland, and Georgia. England did not consider the societies that occupied the land worthy of recognition as governments.



Cahokia in modern-day Illinois, had a population of 20,000 at its peak around 1100-1150 A.D.

8. Conquest.

The papal bulls authorized Portugal and Spain to engage in wars of conquest against all pagans.

Europeans and Americans claimed they could acquire through military victories the absolute title and ownership of the lands of Indigenous nations. Conquest was also used as a term-of-art to describe the property and sovereign rights European and Americans claimed to acquire automatically over Indigenous nations and Peoples just by making a first discovery.

After the French and Indian War, English colonies in 1761 argued that the Indian tribes who had supported the losing French side had forfeited their lands due to the element of conquest.

The U.S. Congress expressly placed the element of conquest in the Northwest Ordinance of 1787, which stated that a “just” war can take Indian title. In 1848, the United States Congress applied the Northwest Ordinance and the element of conquest to the Oregon Country. The United States Supreme Court defined this element in 1823, and the federal courts have relied on it as part of Discovery ever since.

In 1955, the United States Supreme Court stated that “[e]very American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that . . . it was not a sale but the conquerors’ will that deprived them of their land.”



European countries and their colonists pursued the Doctrine of Christian Discovery-influenced mission and the directions of the papal bulls, to destroy the cultures, laws, rights, and governments of Indigenous peoples. The campaign to civilize the “others” by making illegal the practice of Indigenous lifeways and governments was executed through the means of law and the Doctrine of Discovery.

The Doctrine is not just a relic of the distant past for European settler societies and for the Indigenous peoples who today live in these countries but is still alive and evident in the laws and policies of these settler societies. The Doctrine is embedded in the laws and values of many countries. It legitimizes the continuing suppression of indigenous communities and culture.

Further, it makes the co-stewardship of nature and natural resources by indigenous peoples impossible during a time when unsustainable development, supported by the Doctrine of Christian Discovery diminishes biodiversity and contributes to climate change.

The future of the United States was and is stigmatized by the very means used to secure it.



Resources

Charles, M., & Rah, S. (2019). *Unsettling truths: the ongoing dehumanizing legacy of the Doctrine of Discovery*. Intersivity Press.

Miller, Robert, (2019). *The Doctrine of Discovery: The International Law of Colonialism*; Indigenous People's Journal of Law, Culture, and Resistance.

Miller, Robert J., *The International Law of Colonialism: A Comparative Analysis* (August 30, 2011). Lewis & Clark Law Review, Forthcoming, Lewis & Clark Law School Legal Studies Research Paper No. 2011-23, Available at SSRN: <https://ssrn.com/abstract=1920009> .