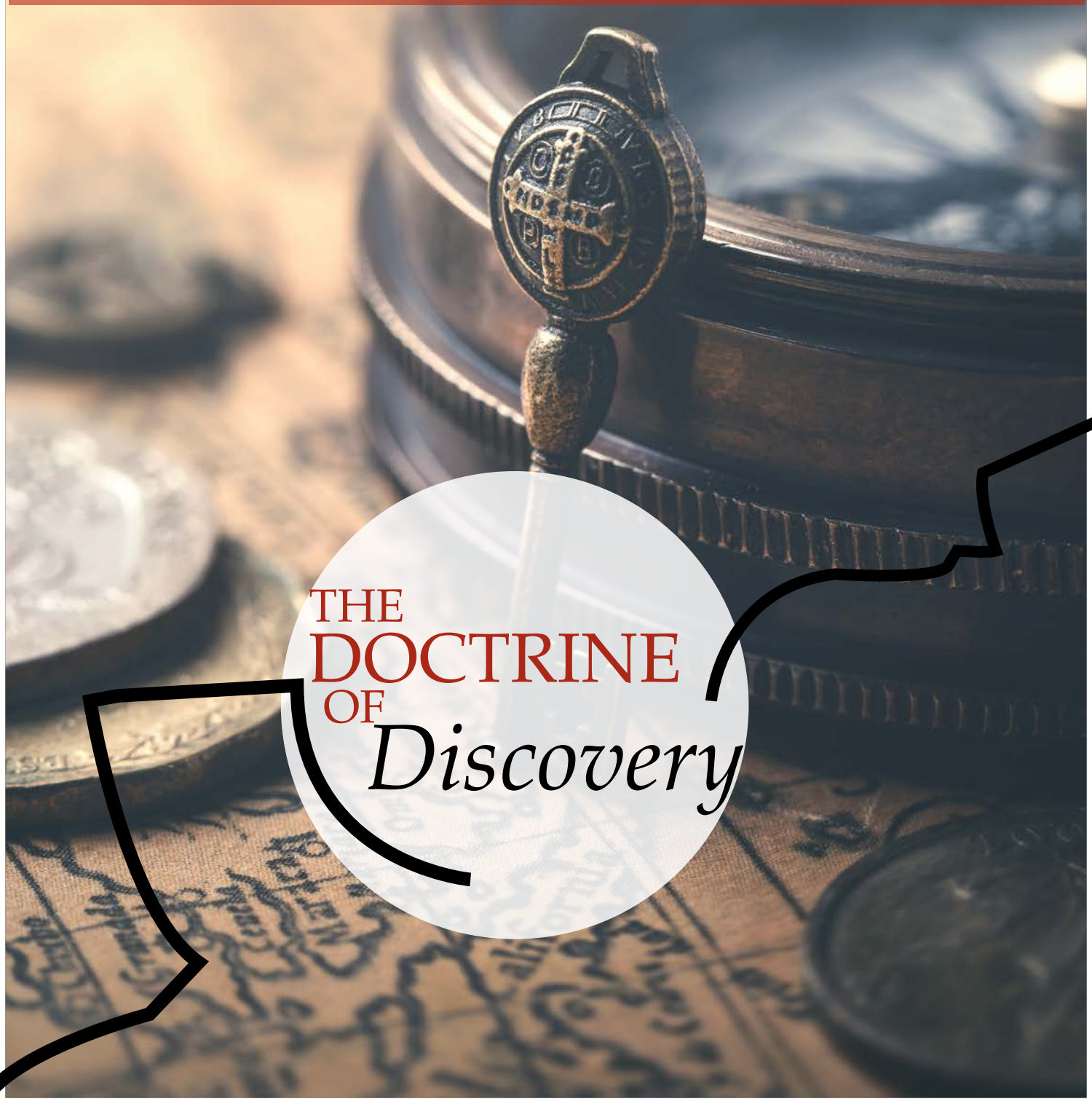
AMERICAN INDIAN LAW ALLIANCE



THE DOCTRINE OF *Discovery*

Great Tree of Peace by Oren Lyons

Dedicated to the Seventh Generation.

Table of contents:

American Indian
Law Alliance

Working with Indigenous Nations in our struggle for sovereignty, human rights, and social justice

www.aila.ngo

Preface
By Gaeñ hia uh, Betty Lyons

Papal Bulls issued in the 15th century provided Christian explorers the imagined right to assert that the lands they "discovered" were now under the authority of the Christian Monarchs of Europe. The Papal Bulls asserted that any land that was not inhabited by Christians was available to be "discovered", claimed, and exploited. If the "pagan" or "saracen" inhabitants could be converted, they might be spared. If not, they could be enslaved or killed. The legacy and horror of these Papal Bulls is still impacting Indigenous nations and peoples today.

With a flag and on bended knee these evil acts were sanctified and made them lawful in the eyes of the churches and crowns of Europe. The notions that all parts of the globe that weren't Europe like the African Continent and Turtle Island/Abya Yala was "discovered" and "terra nullius" [null and void] are theological and legal fictions which are still exercised as law today and weaponized against Indigenous nations and peoples denying them land, rights, and resources.

The United States Supreme Court in 2005, relying on a series of Indian law cases going back to 1823, specifically cited the Doctrine in its decision denying the right of the Oneida Indian Nation of New York to regain its territory. Justice Ruth Bader Ginsburg wrote in the 2005 decision. "Under the Doctrine of Discovery … fee title to the land 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."

In fact, the Doctrine of Discovery is the basis for all Indian land law in the United States and Canada, and it has imposed similar burdens on indigenous peoples all over the world – Australia, New Zealand, in Africa, in Latin America and in the island nations of the Caribbean and Oceania.

Presently more than 500 million Indigenous peoples around the globe live today with the effects of the Doctrine's oppressive racism.

Origins of the Transatlantic Slave Trade

The Doctrine of Discovery as the basis for land theft and the genocide of Indigenous peoples is well known in international legal circles, what is perhaps less well known is that it is also the origins of the Transatlantic slave trade.

After the church and crown were bankrupt from the crusades and from killing their own Indigenous peoples. They turned their attention to the colonizing and committing genocide against the Indigenous nations and peoples of the African continent. The church and crowns greed and lust for blood and gold unsatisfied they turn to looking for new lands to dominate and new peoples to dehumanize.

In this process 12 million enslaved Africans were brought to Turtle Island (David Stannard, *American Holocaust*). Europeans Christians saw Indigenous Africans as a expendable and exploitable commodity and the 12 million Indigenous peoples of Turtle Island as terranullus. Therefore the genocides Indigenous peoples of Turtle Island was no different than clearing the land for extraction. **www.aila.ngo**

The Doctrine of Discovery & The Haudenosaunee
By Gaeñ hia uh, Betty Lyons

A painting by Dioscoro Puebla, Christopher Columbus is shown arriving in the New World, the West Indies, on Oct. 12, 1492. (Wikimedia Commons)

Part of the Haudenosaunee and Onondaga lived history of the Doctrine of Discovery is the Sullivan Clinton Campaign.

The campaign was ordered and organized by George Washington and his staff believed it was necessary to destroy the Haudenosaunee Confederacy and violate the treaties in order to expand the colonies and pay colonial troops. The Sullivan Clinton campaign was conducted in the lands of the Haudenosaunee Confederacy.

More than 40 Onondaga villages and stores of winter crops were burned and destroyed.

George Washington wrote to John Sullivan:

'taking the war home to the enemy to break their morale…' But you will not by any means listen to any overture of peace before the total ruinment of their settlements is effected. Our future security will be in their inability to injure us and in the terror with which the severity of the chastisement they receive will inspire them."

- Every president to this day is known as Hanadagá:yas.

- Learn More about the Sullivan Clinton Campaign at: sullivanclinton.com.

The United Nations Preliminary Study on the Doctrine of Discovery
By Gaeñ hia uh, Betty Lyons

The "Preliminary study on the impact on indigenous peoples of the international legal construct known as the Doctrine of Discovery" (E/C.19/2010/13) presented at the Ninth Session authored by Tonya Gonnella Frichner, Esq. (Onondaga Nation), former North American Representative to the UN Permanent Forum on Indigenous Issues. We recognize the legal construct known as the Doctrine of Discovery has global implications. As established in the preliminary study and reaffirmed in the more recent study, as mentioned above, the Doctrine of Discovery has been invoked as a justification for the ongoing exploitation of our lands, territories and resources which violates UNDRIP Article 7, the collective right to live in freedom and shall not be subjected to any act of genocide or violence including forcibly removing children of the group to another group.

The installation of the Carlisle Indian Industrial School in Pennsylvania was a US government initiative focused on "Killing the Indian to save the man" a theory and practice advanced by Brigadier General Richard Henry Pratt to exterminate over 12 million Indigenous peoples.

The American Indian Law Alliance (AILA) recognizes the Doctrine of Discovery and its long-term effects on the Haudenosaunee Confederacy and all Indigenous peoples led to the atrocities Indigenous peoples faced in residential and boarding schools, both in Canada and the U.S. We note the insufficiencies and shortcomings of the Truth and Reconciliation Commission of Canada. We take note of the apologies extended to Indigenous Peoples by Australia, Canada and New Zealand regarding their implementation of boarding schools. In light of these things AILA will continue to push calls for a study on boarding schools for Indigenous children in the United States. These children suffered the same injustices, violations and persecutions and deserve apologies and reparations.

Despite these violations of Indigenous nations' individual and collective human rights, Indigenous nations maintain the right to self-determination and applying the principle of free, prior and informed consent over our lands, territories and resources as affirmed under the UNDRIP. We call upon article 27 to be enforced for our rightful adjudication of our lands.

Resources:

- Read the report: link.aila.ngo/prelim
- Learn more about the Doctrine of Discovery at doctrineofdiscovery.org

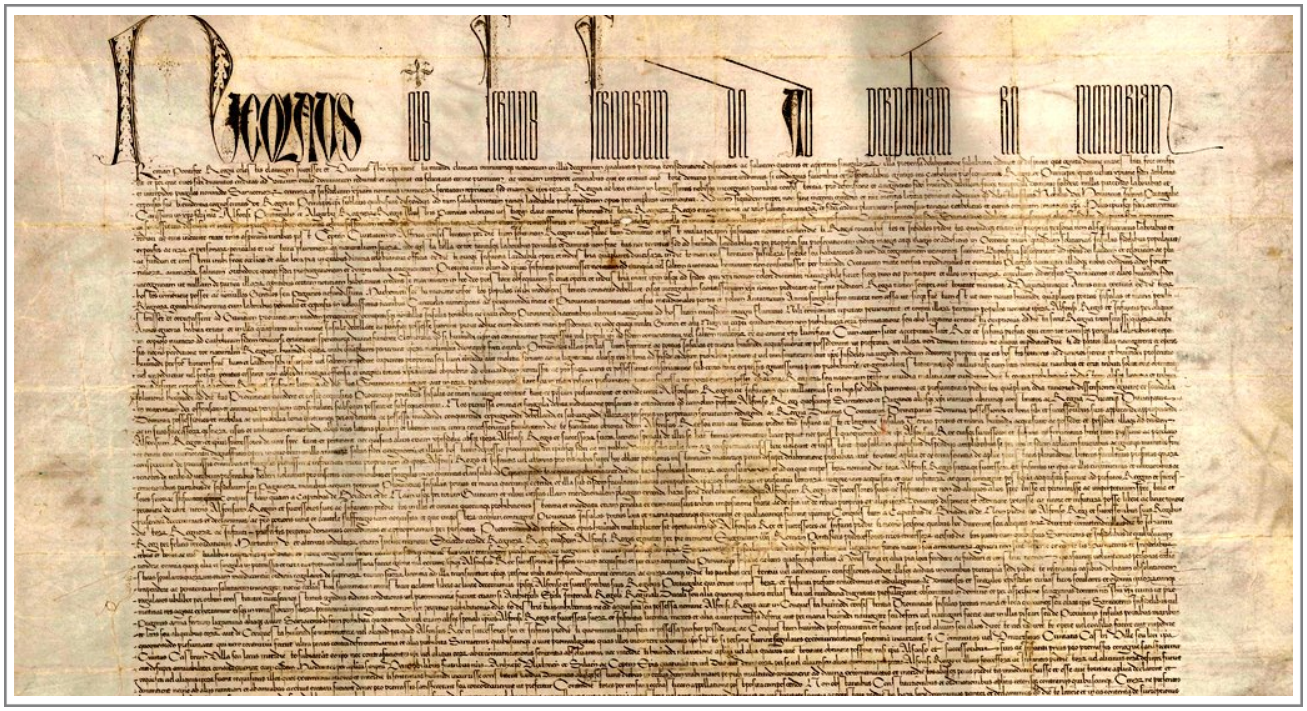
Papal Bull: Dum Diversas (1452)

Pope Nicholas V (1610 ca.)
Portrait by Peter Paul Rubens
(via Wikimedia Commons)

Pope Nicholas V issued the papal bull Dum Diversas on 18 June, 1452. It authorised Alfonso V of Portugal to reduce any "Saracens (Muslims) and pagans and any other unbelievers" to perpetual slavery. This facilitated the Portuguese slave trade from West Africa. The same pope wrote the bull Romanus Pontifex on January 5, 1455 to the same Alfonso. As a follow-up to the Dum diversas, it extended to the Catholic nations of Europe dominion over discovered lands during the Age of Discovery. Along with sanctifying the seizure of non-Christian lands, it encouraged the enslavement of native, non-Christian peoples in Africa and the New World. "We weighing all and singular the premises with due meditation, and noting that since we had formerly by other letters of ours granted among other things free and ample faculty to the aforesaid King Alfonso – 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 – by having secured the said faculty, the said King Alfonso, or, by his authority, the aforesaid infante, justly and lawfully has acquired and possessed, and doth possess, these islands, lands, harbors, and seas, and they do of right belong and pertain to the said King Alfonso and his successors". In 1493 Alexander VI issued the bull Inter Caetera stating one Christian nation did not have the right to establish dominion over lands previously dominated by another Christian nation, thus establishing the Law of Nations. Together, the Dum Diversas, the Romanus Pontifex and the Inter Caetera came to serve as the basis and justification for the Doctrine of Discovery, the global slave-trade of the 15th and 16th centuries, and the Age of Imperialism.

Read more:
doctrineofdiscovery.org/dum-diversas/

Papal Bull: Romanus Pontifex (1455)



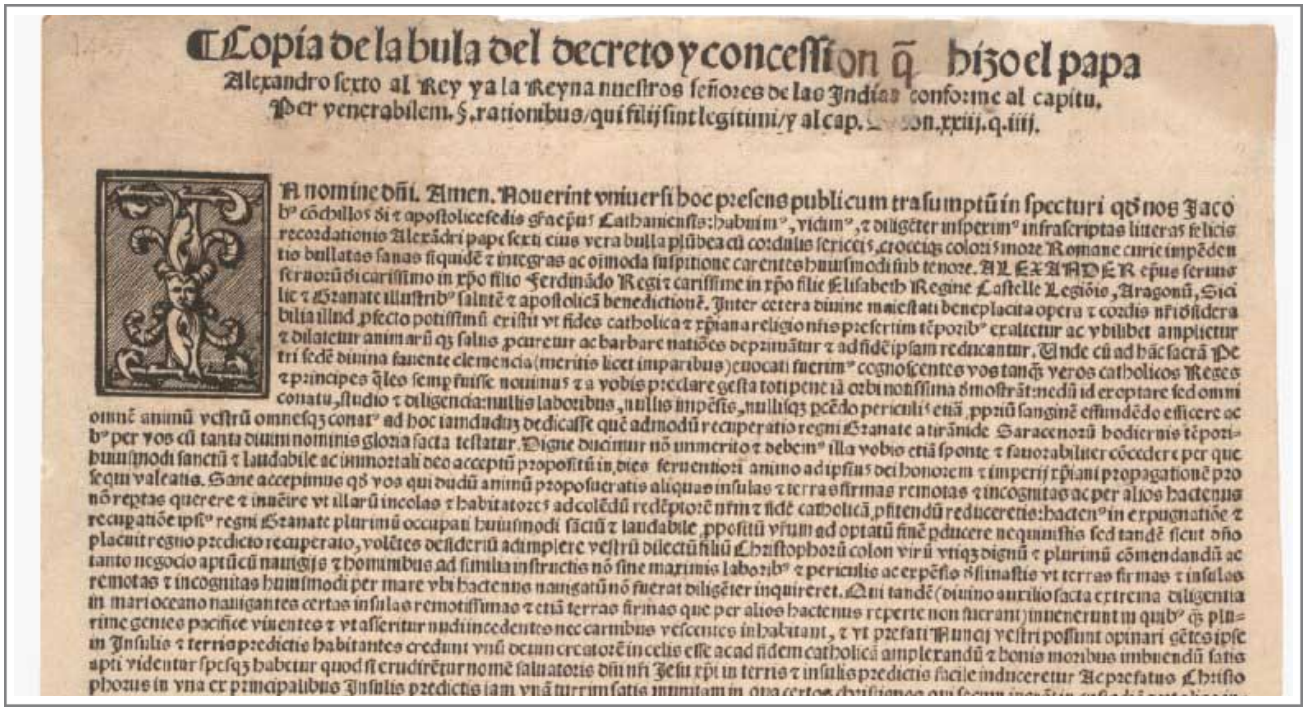
Pope Nikolaus V. (1397–1455), bull "Romanus Pontifex", 1455; source: Portuguese National Archives Torre do Tombo, PT/TT/BUL/0007/29.

We [therefore] weighing all and singular the premises with due meditation, and noting that since we had formerly by other letters of ours granted among other things free and ample faculty to the aforesaid King Alfonso — 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 ...

From The Bull Romanus Pontifex issued by Pope Nicholas V, January 8, 1455

Read more:
doctrineofdiscovery.org/romanus-pontifex/

Papal Bull: Inter Caetera (1493)



Copia de la bula del decreto y conceſſion q̃ hizo el papa
Alexandro ſexto al Rey y a la Reyna nueſtros ſeñores de las Indias conforme al capitu.
Per venerabilem. §. rationibus/qui filij ſint legitimi/y al cap. [illegible] xxiij.q.iiij.

A nomine dñi. Amen. Nouerint vniuerſi hoc preſens publicum traſumptũ in ſpecturi qđ nos Jaco
bꝰ cõchillos di t apoſtolice ſedis gracia Lathanenſis: habuimꝰ, vidimꝰ, t diligẽter inſperimꝰ infraſcriptas litteras felicis
recordationis Alexãdri pape ſexti cius vera bulla plũbea cũ cordulis ſericeis, croceisq; coloris more Romane curie impẽden
tis bullatas ſanas ſiquidẽ t integras ac omnoda ſuſpitione carentes huiuſmodi tenore. AL EXANDER epus ſeruus
ſeruorũ dei cariſſimo in xpo filio Ferdinãdo Regi t cariſſime in xpo filie Elizabeth Regine Caſtelle Legionis, Aragonũ, Sici
lie t Granate illuſtribꝰ ſalutẽ t apoſtolicã benedictionẽ. Inter cetera diuine maieſtati beneplacita opera t cordis nr̃i deſidera
bilia illud profecto potiſſimũ exiſtit vt fides catholica t xpiana religio nr̃a preſertim tẽporibꝰ exaltetur ac vbilibet amplietur
t dilatetur animarũ qz ſalus procuretur ac barbare nationes deprimãtur t ad fidẽ ipſam reducantur. Vnde cũ ad hãc ſacrã pe
tri ſedẽ diuina fauente clemencia (meritis licet imparibus) euocati fuerimꝰ cognoſcentes vos tanq̃ veros catholicos Reges
t principes q̃les ſemp fuiſſe nouimus t a vobis preclare geſta totipene ad orbis nouiſſima ꝺmoſtrat: nedũ id exoptare ſed omni
conatu, ſtudio t diligencia: nullis laboribus, nullis impẽſis, nullisq; pẽdo periculis etiã, ppriũ ſanguinẽ effundẽdo efficere ac
omnẽ animũ veſtrũ omneſq; conatꝰ ad hoc tamdudum dedicaſſe quẽ admodũ recuperatio regni Granate aturãnde Saracenorũ hodiernis tẽpori-
bus per vos cũ tanta diuini nominis gloria facta teſtatur. Digne ducimur nõ immerito t debemꝰ illa vobis etiã ſponte t fauorabiliter cõcedere per que
huiuſmodi ſanctũ t laudabile ac immortali deo acceptũ propoſitũ in dies feruentiori animo adipſius dei honorem t imperij xpiani propagationẽ pro
mouere valeatis. Sane accepimus qđ vos qui dudũ animũ propoſueratis aliquas inſulas t terras firmas remotas t incognitas ac per alios hactenus
nõ reptas querere t inuẽire vt illarũ incolas t habitatores adcolẽdũ redẽptorẽ nr̃m t fidẽ catholicã, pſitendũ reducerentis: hacten⁹ in expugnatione t
recuperatione ipſius regni Granate plurimũ occupati huiuſmodi ſanctũ t laudabile ppoſitũ vſum ad optatũ finẽ pducere nequiuiſtis ſed tandẽ ſicut dño
placuit regno predicto recuperato, volentes deſiderium adimplere veſtrũ dilectũ filiũ Chriſtophorũ colon virũ vtiq; dignũ t plurimũ cõmendandũ ac
tanto negocio aptũ cũ nauigijs t hominibus ad ſimilia inſtructis nõ ſine maximis laboribꝰ t periculis ac expẽſis ꝺſtinaſtis vt terras firmas t inſulas
remotas t incognitas huiuſmodi per mare vbi hactenus nauigatũ nõ fuerat diligẽter inquireret. Qui tandẽ (diuino auxilio facta extrema diligentia
in mari oceano nauigantes certas inſulas remotiſſimas t etiã terras firmas que per alios hactenus reperte non fuerant) inuenerunt in quibꝰ ꝺs plu-
rime gentes pacifice viuentes t vt aſſeritur nudi incedentes nec carnibus veſcentes inhabitant, t vt prefati Nuncij veſtri poſſunt opinari gẽtes ipſe
in Inſulis t terris predictis habitantes credunt vnũ deum creatorẽ in celis eſſe ac ad fidem catholicã ampleandũ t bonis moribus imbuendũ ſatis
apti videntur ſpeq; habetur quod ſi erudirẽtur nomẽ ſaluatoris dñi nr̃i Jeſu xpi in terris t inſulis predictis facile induceretur Repreſatus Chriſto
phorus in vna ex principalibus Inſulis predictis iam vnã turrim ſatis munitam in qua certos chriſtianos ex ſuorum [illegible]

Pope Alexander VI's Demarcation Bull, May 4, 1493. Via Gilder Lehrman Collection

"... Out of our own sole largess and certain knowledge and out of the fullness of our apostolic power, by the authority of Almighty God conferred upon us in blessed Peter and of the vicarship of Jesus Christ, which we hold on earth, do by tenor of these presents, should any of said islands have been found by your envoys and captains, give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south, by drawing and establishing a line from the Arctic pole, namely the north, to the Antarctic pole, namely the south, no matter whether the said mainlands and islands are found and to be found in the direction of India or towards any other quarter, the said line to be distant one hundred leagues towards the west and south from any of the islands commonly known as the Azores and Cape Verde. With this proviso however that none of the islands and mainlands, found and to be found, discovered and to be discovered, beyond that said line towards the west and south, be in the actual possession of any Christian king or prince up to the birthday of our Lord Jesus Christ just past from which the present year one thousand four hundred ninety-three begins. And we make, appoint, and depute you and your said heirs and successors lords of them with full and free power, authority, and jurisdiction of every kind..." —Pope Alexander VI, "Inter Caetera"

Read more:
doctrineofdiscovery.org/inter-caetera/

Expanding on the Papal Bulls: Treaty of Tordesillas (1494)

Casas del Tratado de Tordesillas by Julio Garcia (via Wikimedia Commons)

That, whereas a certain controversy exists between the said lords, their constituents, as to what lands, of all those discovered in the ocean sea up to the present day, the date of this treaty, pertain to each one of the said parts respectively; therefore, for the sake of peace and concord, and for the preservation of the relationship and love of the said King of Portugal for the said King and Queen of Castile, Aragon, etc., it being the pleasure of their Highnesses, they, their said representatives, acting in their name and by virtue of their powers herein described, covenanted and agreed that a boundary or straight line be determined and drawn north and south, from pole to pole, on the said ocean sea, from the Arctic to the Antarctic pole. This boundary or line shall be drawn straight, as aforesaid, at a distance of three hundred and seventy leagues west of the Cape Verde Islands, being calculated by degrees, or by any other manner as may be considered the best and readiest, provided the distance shall be no greater than abovesaid.

And all lands, both islands and mainlands, found and discovered already, or to be found and discovered hereafter, by the said King of Portugal and by his vessels on this side of the said line and bound determined as above, toward the east, in either north or south latitude, on the eastern side of the said bound provided the said bound is not crossed, shall belong to, and remain in the possession of, and pertain forever to, the said King of Portugal and his successors. And all other lands, both islands and mainlands, found or to be found hereafter, discovered or to be discovered hereafter, which have been discovered or shall be discovered by the said King and Queen of Castile, Aragon, etc., and by their vessels, on the western side of the said bound, determined as above, after having passed the said bound toward the west, in either its north or south latitude, shall belong to, and remain in the possession of, and pertain forever to, the said King and Queen of Castile, Leon, etc., and to their successors.

Read more:
doctrineofdiscovery.org/tordesillas/

Patent Granted by King Henry VII to John Cabot and his Sons (1496)

John Cabot patent (via Wikimedia Commons)

For John Cabot and his Sons.

The King, to all to whom, etc. Greeting: Be it known and made manifest that we have given and granted as by these presents we give and grant, for us and our heirs, to our well beloved John Cabot, citizen of Venice, and to Lewis, Sebastian and Sancio, sons of the said John, and to the heirs and deputies of them, and of any one of them, full and free authority, faculty and power to sail to all parts, regions and coasts of the eastern, western and northern sea, under our banners, flags and ensigns, with five ships or vessels of whatsoever burden and quality they may be, and with so many and such mariners and men as they may wish to take with them in the said ships, at their own proper costs and charges, to find, discover and investigate whatsoever islands, countries, regions or provinces of heathens and infidels, in whatsoever part of the world placed, which before this time were unknown to all Christians.

We have also granted to them and to any of them, and to the heirs and deputies of them and of any one of them, and have given licence our aforesaid banners and ensigns in any town, city, castle, island or mainland whatsoever, newly found by them.

Note:
The patent given by Henry VII to John Cabot was built upon the prior Papal Bulls and served as an expansion and continuation of the Doctrine of Discovery

Read more:
doctrineofdiscovery.org/cabot/

Expanding on the Papal Bulls: Requerimiento [Requirement], 1514

Landing of Columbus by John Vanderlyn (1847). In the US Capitol Rotunda. (via Wikimedia Commons)

"…I certify to you that, with the help of God, we shall powerfully enter into your country, and shall make war against you in all ways and manners that we can, and shall subject you to the yoke and obedience of the Church and of their Highnesses; we shall take you and your wives and your children, and shall make slaves of them, and as such shall sell and dispose of them as their Highnesses may command; and we shall take away your goods, and shall do you all the mischief and damage that we can, as to vassals who do not obey, and refuse to receive their lord, and resist and contradict him; and we protest that the deaths and losses which shall accrue from this are your fault, and not that of their Highnesses, or ours, nor of these cavaliers who come with us."

Read more:
doctrineofdiscovery.org/requerimiento/

Note: The Requirement claimed the colonizers imagined divine right to rule over Indigenous nations and peoples. The document argues if God created the world, then the Roman Catholic Church is God's emissary on earth. The Pope is the head of the church, therefore the entire world belongs to the Pope. Thus, the soldiers as agents of the Roman Catholic Church and the Spanish Crown have religious and political authority over the western hemisphere. The Requirement was to be read allowed in Latin by the soldiers whenever they encountered Indigenous nations and peoples in order to inform Indigenous nations and peoples that the Church and Crown were the ones in charge. If Indigenous nations did not accept their authority, they would be put to death or enslaved. Sometimes the Requirement wasn't even read allowed on it would be read allowed on the ship. The true function of the Requirement was to provide a theological and political justification for Spaniards by Spaniards to try and alleviate the soldiers guilt about the atrocities they were going to commit.

The Doctrine of Christian Discovery and Domination
By Steven Newcomb (Shawnee/Lenape)
Indigenous Law Institute

Introduction

This short essay is designed for young people and adults who are just beginning to learn about the Doctrine of Discovery and Domination. We will start with some basic information and continue from there.

Let us begin by providing ourselves with a context for our discussion. That context or setting begins with an acknowledgment that our nations and peoples were originally living free and independent for thousands of years. That free existence of our ancestors and our nations extends back to the beginning of time through our oral histories and traditions. Every time we speak the original language of our Native nation, we are connecting with many thousands of years of our original free existence as a distinct nation or people. We are connecting with our own nationhood, lands, language, culture, spiritual traditions, child rearing practices and education, economy, and spiritual way of life.

Next, we need to acknowledge the contrast between our original free existence and the system of domination that was carried across the water by sailing voyagers who were representing different monarchs of Christendom. The word "Christendom" is the name that the Western European world of Christians applied to themselves. Those Christian voyagers were sailing across the ocean from the geographical area where Christendom, or the Christian world, was the dominant power at that time.

A Path of Liberation

Today, we are on a path of liberation when we teach ourselves to reflect upon and mentally return to the starting point of our original free and independent existence and realize that our free existence was invaded by people from across the ocean.

Our nations and peoples today live with the dire consequences of the domination system from Christendom being mentally and physically imposed on us. We have been taught to believe that we are rightfully subject to the thoughts and ideas of that domination system. We have been taught to believe that as soon as the invaders created ideas on paper, our nations and peoples supposedly became immediately became subject to those ideas, against our will. But as soon as we understand that we have the right and the opportunity to challenge the ideas and arguments of the invaders, it then becomes a matter of figuring out what arguments we are going to use and express in order to challenge the invaders' ideas.

We have to do more than simply report what the U.S. Supreme Court has said in a given decision. We have to figure out what counter argument or arguments we are going to use in order to respond to what the U.S. Supreme has said. Take, for example, what the U.S. Supreme Court has said in the Johnson v. McIntosh ruling: which is that the United States has adopted the ancient rule of "ultimate dominion" (i.e., a right of domination) in relation to Native nations.

What is our response? Do we even have one? If not, what response could we develop? And once we have developed that response, how shall we use it in a liberating manner in our interactions with the United States government and with the non-Native society generally?

Assessing Our Situation

We need to take stock of our situation by asking ourselves, "In what ways and to what extent do we experience the domination system in our daily lives? What negative effects and destructive impacts has the domination system had and continue to have on our health, our economy, our languages, cultures, and spiritual traditions, as well as on our sacred sites and significant and ceremonial places?" As a mental exercise: Think of how healthy our ancestors were and our spiritual way of life was before the invasion of our nations, and then compare that to the ill health and disease that we experience on a daily basis.

One way to work on our mental health and our mental strength, is by creating counter-arguments that powerfully respond to the ideas and arguments of the invaders. These days, we are expected to passively accept the idea system of domination. We are not expected to know how to recognize and response to the domination code and the domination system that exists all around us and in our everyday lives. This essay is designed to enable people to recognize those patterns, while acquiring the skills necessary to challenge the domination system of the invaders.

The Intention of the Christian Invaders

When we study certain documents written by the scholars and rulers of Christendom, such as documents issued by various popes during the 1400's, we are able to identify words and ideas that let us know what they thought they were doing and what they were trying to do. The invading people from Western Europe were sailing in search of lands where Christendom world had not yet imposed its system of domination. The documents show that Christendom fully intended to impose its domination system wherever the Christian voyagers traveled and in whatever lands they said they "discovered." Today we live with the centuries-long consequences of their intentions and their actions. It's our job to examine the history of this overall process and learn to understand the techniques and the ideas that were used against our ancestors and our nations, and continue to be used against us to this day.

The rulers of Christendom told those voyaging invaders to find places where people were still living free from the Christian system of domination, places where Christendom had not yet been established. Because our ancestors were still living free from domination, the Christian world called them "wild." They said our ancestors were "running around wild," meaning that our ancestors were still "running around free from domination." They wanted to destroy the free and independent way of life of our ancestors and our nations and profit from our lands and territories.

The Christian rulers gave themselves permission to claim a right of domination over all places in the world and over all the nations and peoples in those places who were still existing free from domination. They said their system of domination was "civilization."

Let us now examine some key words and phrases from one of the old documents from Christendom. It was written in 1452 by one of the popes to tell the king of Portugal what his voyagers could do when they located non-Christian lands and peoples. The words in the document reveal the true intentions of those rulers who described themselves as "Christians." It said when the king's men located non-Christian peoples, they could "Invade, capture, vanquish, subdue, reduce to perpetual slavery, and take away all their possessions and property." Clearly, those words and phrases don't sound very "Christ-like." They express a strong intention to establish domination over free and independent nations and peoples.

Domination

Domination has been defined as "living under the arbitrary power of another," and, "having to conform one's actions to a will external to one's own." The Supreme Court of the United States picked up the theme of domination when it decided the case of Johnson v. McIntosh in 1823, which was a case about Native peoples' lands. Ever since it was issued, the Johnson ruling has been considered the starting point for the system of ideas used by the United States government against Native nations and peoples. That system of ideas and arguments is typically called "federal Indian law."

Chief Justice John Marshall said that Native nations and peoples did not own their own lands because Christian Europeans had claimed a right of domination ("ultimate dominion") over and to those lands. He said the reason for them not owning their own lands, from the viewpoint of the United States, was their "character" and non-Christian "religion," as judged by the earliest invaders from Europe.

Chief Justice Marshall said that the Christian invaders considered the Native peoples "to be a people over whom the superior genius of Europe might claim an ascendancy." Webster's Third New International Dictionary (1996) defines "ascendancy" as "controlling influence, governing power, DOMINATION." In other words, the invaders considered the Native peoples to be "a people over whom the" Christian Europeans "might claim," and did claim, a right of domination. The United States now claims to possess that right of domination against the original nations and peoples of this continent known as North America.

In other words, not only does the Johnson v. McIntosh ruling still serve today as the premise or starting point for U.S. federal Indian law and policy. It also begins with a clear statement that the "nations of Europe" claimed a right of domination over Native nations and peoples. Chief Justice Marshall said that the monarchs of Christendom "asserted the ultimate dominion to be in themselves." The word "dominion" traces to a Latin word meaning "to dominate," and the idea of domination.

The Right of Discovery Means "A Claimed Right of Domination"

In the Johnson v. McIntosh ruling, Chief Justice Marshall traced what he called the "right of discovery" to a number of royal documents from the king of England telling his invaders what to do. Marshall pointed out that the documents said the invaders should look for lands "unknown to all Christian people," and when they found such lands they were to "take possession [of them] in the name of the King of England." Marshall called this a Christian "right to take possession." I call it the claim by Christians that they had a right of domination over non-Christian places. The king of England said it didn't matter that there were already Native peoples in those lands because they "were heathens." Marshall also pointed out that the English king told his invaders they were not to take possession if another "Christian people…had made a previous discovery" (had previously claimed a right of domination there).

Let's look at this more closely. Marshall talked about a "principle," meaning a rule or premise of an argument. He called that rule the "right of discovery." By using this phrase he said that the Christian king of England claimed a "right" to have his men locate lands where "heathens"—i.e., non-Christians, were living, and claim to have a right of domination over those lands, unless another Christian king had already claimed this.

Lands that had not been "discovered" (located) by "Christian people" were lands where no Christian monarch had previously claimed a right of domination or "ascendancy." What Marshall referred to as the "right of discovery" or "possession" was, in actuality, the claim of a right of domination over lands that were inhabited by "heathens," meaning non-Christians. The whole purpose of "discovery" was to locate or find non-Christian lands over which such a right of domination could be claimed by Christians, and where such a right had never been previously claimed.

Additional Evidence

Do we have additional evidence that this analysis is correct? Most certainly, and it is in another US Supreme Court decision issued in 1955, Tee-Hit-Ton Indians v. United States. In that case, Justice Stanley Reed said that "after the coming of the white man" the Native peoples could stay on their lands only by "permission from the whites." He said this rule is "rationalized by the legal theory that discovery and conquest gave the conquerors sovereignty over and ownership of the lands." And Reed cited what he called "the great case of Johnson v. McIntosh." Justice Reed also said in a previous case from 1946 that the Johnson ruling "put forth" the theory "that discovery by Christian nations gave them sovereignty [domination] over and title to the lands discovered."

This same "principle" of a claimed right of domination over Native peoples and lands was stated again in the 2005 US Supreme Court case, City of Sherrill v. Oneida Indian Nation. The decision in that case said that the lands of the Oneida Nation were subject to non-Oneida taxation. Why? Justice Ruth Bader Ginsberg said the reason for this decision began with "the doctrine of discovery."

She said that this ownership right of domination was later transferred to the United States.

The point of studying these cases is to understand that the line of reasoning in US law today traces directly back to the initial claims expressed in the Vatican documents and the royal orders. That line of reasoning begins with the idea that a "Christian people" supposedly had "the right" to claim a right of domination ("ownership") over the lands of "Native peoples "who were heathens." This was the claim of a right to destroy the original free and independent existence of our nations and peoples. This claimed right continues to be the premise of US federal Indian law and policy, and the system of ideas that we must develop the skills to challenge.

The Claim of a Right of Domination Based on the Bible and Christianity

When Justice Stanley Reed said that the Johnson ruling put forth the theory "that discovery by Christian nations gave them sovereignty over and title to the lands discovered," he was thereby tacitly admitting that the Bible and Christianity serve as the premise of that argument. The word "Christian" is meaningful in the context of the Bible and the Christian religion.

The argument that "a Christian people" has the right to locate and assume a right of domination ("ultimate dominion" and "ascendancy") over newly located "heathen" lands, and over any "heathen and infidel" nations and peoples living there, is a religious argument premised on the Bible and Christianity. Since U.S. government officials are not going to point this out, it is up to us to make this connection and begin to challenge it as a religious argument being made by the United States.

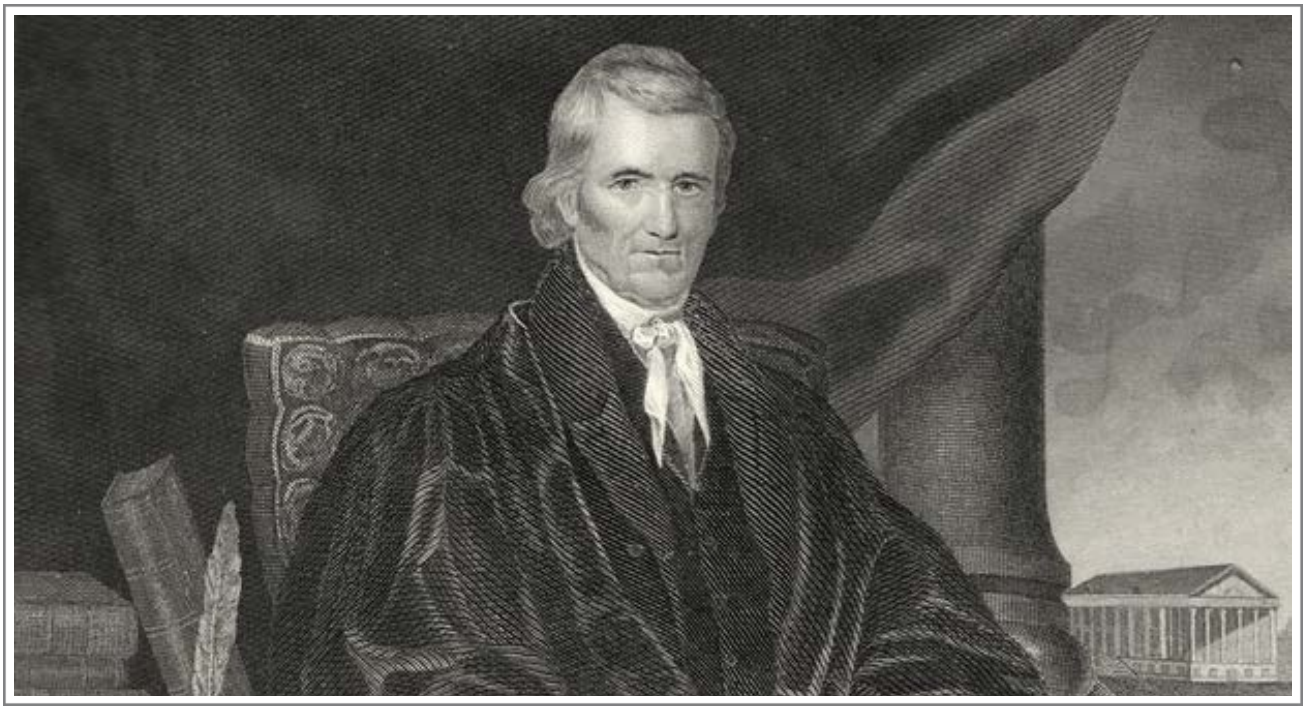
Many Native people who consider themselves Christian do not feel comfortable making the argument that U.S. federal Indian law is premised on the claim by Christians that they have the right to hold non-Christians ("heathens" and "infidels") under and subject to a system of domination. Perhaps this is because if they make that argument this will make them appear to be arguing about "religion." It is a cardinal rule among Native people that you never argue against someone's religion, which is why there is no history of religious wars on the continent among Native nations and peoples.

In this case, however, we are simply pointing out the religious argument, based on the Bible and Christianity, which the United States government has used and continues to use against our original nations and peoples. One way to respond to this argument is to say to the Christian world: You are perfectly entitled to believe in your religion, but that does not then entitle you to use your religion, or your religious categories, as a weapon against our nations and peoples under the color or pretense of U.S. "law."

Resources:

- *Pagans in the Promised Land Book* by Steven T. Newcomb
- *The Doctrine of Discovery: Unmasking the Domination Code,* Directed by Sheldon Wolfchild, (Dakota) and co-produced by Steven T. Newcomb (Shawnee, Lenape). Stream online: link.aila.ngo/domination-code.

Law: Johnson v. McIntosh, 21 US 543 (1823)



Steel engraving of John Marshall by Alonzo Chappel. Justice Marshall delivered the below opinion. (via Wikimedia Commons)

"The Indians were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but **their rights to complete sovereignty, as independent nations, were necessarily diminished**, and . . . **Discovery gave exclusive title to those who made it.**

[T]he different Nations of Europe . . . 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."

"**However extravagant** the pretension of converting the discovery of inhabited country into conquest may appear, if the principle has been asserted in the first instance, and afterwards sustained; if a country has acquired and held under it; if the property of the great mass of the community originates in it, **it becomes the law of the land, and cannot be questioned**." (id., at 591.)

Excerpted by Joseph J. Heath, Esq.
Onondaga Nation General Counsel.

Read more:
doctrineofdiscovery.org/jvm/

Law: Tee-Hit-Ton v. U.S., 348 US 272 (1955)

Portrait of Justice Stanley Forman Reed by Charles Hopkinson. Justice Reed delivered the below opinion. (via Wikimedia Commons)

"This position of the Indian has long been rationalized by the legal theory that discovery and conquest gave the conquerors sovereignty over and ownership of the lands thus obtained… The great case of Johnson v. McIntosh,… denied the power of an Indian tribe to pass their right of occupancy to another. It confirmed the practice of two hundred years of American history 'that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest.'"

…

"The line of cases adjudicating Indian rights on American soil leads to the conclusion that Indian occupancy, not specifically recognized as ownership by action authorized by Congress, may be extinguished by the Government without compensation."

"Every American schoolboy knows that **the savage tribes** of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, it was not a sale but **the conquerors' will** that deprived them of their land." (*Id.*, at 289-290.)

(Emphasis added).
Excerpted by Joseph J. Heath, Esq.
Onondaga Nation General Counsel.

Read more:
doctrineofdiscovery.org/tee-hit-ton/

Law: City of Sherrill v. Oneida, 544 US 197 (March 29, 2005)

2016 Official Portrait of Justice Ruth Bader Ginsburg. (via Wikimedia Commons)

Footnote #1

"**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." (*Id*., at 203)

Note:
This majority opinion was written by noted liberal and progressive Justice Ruth Bader Ginsburg.

(Emphasis added)
Excerpted by Joseph J. Heath, Esq.
Onondaga Nation General Counsel.

Read more:
doctrineofdiscovery.org/sherrill/

Law: Cayuga Indian Nation v. Pataki, 413 F. 3d 266, (2nd Cir. June 28, 2005)

Hiawatha Belt

"We understand *Sherrill* to hold that equitable doctrines, such as laches, acquiescence, and impossibility, can in appropriate circumstances, be applied to Indian land claims, **even when such a claim is legally viable and with in the statute of limitations**…"

"One of the few incontestable propositions about this unusually complex and confusing area of law is that doctrines and categorizations applicable to other areas do not translate neatly to these claims**."**

(Emphasis added)
Excerpted by Joseph J. Heath, Esq.
Onondaga Nation General Counsel.

Read more:
doctrineofdiscovery.org/cayuga-v-pataki/

Law: Oneida Indian Nation v. County of Oneida, 617 F. 3d 114, August 9, 2010

Hiawatha Belt

"We have used the term laches here, as a **convenient shorthand** for the equitable principles at stake in this case, but the term is somewhat imprecise for the purpose of deciding those principles. . . .

The Oneidas assert that the invocation of a purported laches defense is improper here because the defendants have not established the necessary elements of such a defense. This omission is not ultimately important, as the equitable defense recognized in *Sherrill* and applied in *Cayuga* does not focus on the elements of traditional laches."

(Emphasis Added)
Excerpted by Joseph J. Heath, Esq.
Onondaga Nation General Counsel.

Read more:
doctrineofdiscovery.org/617/

Law: Onondaga Nation v. NY, 500 Fed. Appx, 87 (Argued October 12, 2012, decided October 19, 2012)

Hiawatha Belt

"This appeal is decided on the basis of the equitable bar on recovery of ancestral lands in *Sherrill*, and this Court's cases of *Cayuga* and *Oneida*.

Three specific factors determine when ancestral land claims are foreclosed on equitable grounds:

1. the **length of time** between an historic injustice and the present day;
2. the **disruptive nature** of the claims long delayed; and
3. the degree to which these claims **upset the justifiable expectations** of individuals far removed from the events giving rise to the plaintiffs' injury."

(Emphasis added)
Excerpted by Joseph J. Heath, Esq.
Onondaga Nation General Counsel.

Read more:
doctrineofdiscovery.org/500/

The Human Mind and the Claim of a Right of Domination in U.S. Federal Indian Law

By Steven Newcomb (Shawnee, Lenape)
Indigenous Law Institute

Introduction

All licensed attorneys in the United States who attended U.S. law schools, including Native people who have become attorneys, have taken an oath to operate on the basis of the U.S. Constitution and U.S. law. They have been trained and conditioned to accept, pretty much without question, the conceptual foundation (*the ideas*) of U.S. federal Indian law. By taking that oath, they have agreed to identify themselves as, and to operate as, sworn officers of the U.S. court system. This is perhaps the main reason why the vast majority of attorneys are profoundly ill-equipped to assist Native nations to advocate on behalf of their original free and independent existence.

The political and legal system of the United States is premised on the assumption that *the right* of Native nations to live a free and independent existence was destroyed long ago. The ideas and arguments that make up U.S. federal Indian law and policy seem designed prevent anyone from even expressing the argument that Native nations continue to have an inherent and fundamental right to live free and independent of U.S. political domination.

This essay is an effort to explain why U.S. federal Indian law has been designed by the United States government as a system of domination, created and maintained by the mind of the White man. It is a system that has been created to use against our Native nations and peoples on behalf of the government and society of the United States, a country which its own U.S. Supreme Court has on two occasions has called, "the American empire."

The Mind of the White Man as a Source of Ideas

When we reflect upon the oppressive reality that Native nations and peoples, such as the Haudenosaunee ("Six Nations"), have experienced for centuries on this continent, now typically known as "North America," we tend to not think of the role that *the mind of the White Man* has played in creating that destructive experience of reality. When we think of the scorched earth campaign that George Washington ordered Major General John Sullivan and Brigadier James Clinton to wage against the Six Nations in 1779, or think about various massacres such as Sand Creek, or Washita, or Gnadenhutten, or Bear Creek, or Wounded Knee, and so forth. The mind of the White man (his attitudes, values, and beliefs) was front and center every single time.

Today we as Native people are able to examine the ideas and arguments found in various U.S. Supreme Court rulings, while realizing that they comprise the idea-system which has served and continues to serve as the basis for the unjust treatment of our Native ancestors and our Native nations at the hands of the United States. Yet we do so, however, we seldom specifically focus on the fact that the mind of the White Man is *the source* of all those ideas and arguments.

I believe it was this connection between the human mind and the system of ideas called "U.S. law" that led Lumbee scholar Robert Williams to title his first book *The American Indian in Western Legal Thought* (1990). Williams focused on how intellectuals from Western Europe thought about the American Indian and explained why the tradition of ideas developed by those intellectuals later became the basis for U.S. federal Indian law and policy.

Williams' amazing work is an invitation for us as Native people to focus our attention on the *mentality* of Western Europe.

This raises the possibility of an important question: How did our existence as Native nations and peoples end up being controlled to such an extent by the mind of the White man, or, in other words, by his ideas and arguments? The answer has to do with elite and mentally skilled groups of humans beings, many of whom were the descendants of colonizers from Western Europe, having the ability to use human consciousness (their thoughts and ideas) to create a reality of political domination that has provided the society of the United States with ever greater amounts of wealth and power.

This leads to a second question: When we as Native people do a self-assessment, have we developed the most powerful arguments to oppose the way in which, and the extent to which, our lives and our nations have been controlled by *the mentality* (ideas and arguments) of the White man? I believe if we are honest with ourselves, the answer is "no, we have a long ways to go." I think this is partly the result of having relied too heavily on lawyers who are sworn to uphold the idea-system of domination we ought to be opposing.

Without seeming to notice it, Native people living in the context of the United States have too often accepted the notion that the White man's *ideas and arguments* are "the law" and therefore must be followed. A young Native person who attends a U.S. law school probably does not focus on the fact that the ideas and arguments he or she is studying in U.S. Supreme Court rulings came out of the minds of various White men seated on the Supreme Court of the United States.

It is as if we as Native people have spent generations passively wandering around in the mental artifacts (thoughts and ideas) of the White man, so to speak, reading and reacting to the written record of his thoughts and arguments, which is found in legal decisions and policy statements that the White man has developed to use as weapons against us.

During that entire time, encompassing many generations, we have unwittingly and passively accepted the premise of the White man's system. That premise begins with the presumption that our Native ancestors and our nations somehow became rightfully subject to the thoughts and ideas of the Christian world ("Christendom")—and later the United States—as soon as its representatives managed to identify and ritually lay claim to the geographical location of our Native ancestors and our nations.

The people of Western Europe from centuries ago, and their present day descendants, have used the power of the human mind (their language, ideas, and behavior) to create a system of reality that has interpreted our nations and peoples as being rightfully subject to the mind (the language and ideas) of the White man. As a result, we as Native nations and peoples are still living to this day with the outcome of the White man's reality-construction process.

Robert A. Williams

Robert Williams's detailed examination of the historical record of Western thought provides insight into the ideas and arguments that the world of Western Christian Europe used its mentality against our free and independent Native ancestors. Williams marshalled an impressive amount of the historical record of Western thought (ideas) regarding American Indians. His study reveals that our nations and peoples have been living for more than five centuries under and subject to a form of Western mind control.

There is another way of expressing this: Our existence as Native nations and peoples has been and continues to be effectively controlled by the mentality (thoughts and ideas) of the White man. Once we as Native people have come to the realization that the United States government has been using its mentality to control our existence, the question becomes, what can we do about this?

In other words, what ideas and arguments can we develop on the basis of our own Indigenous mentality (our thoughts and ideas), in order to effectively challenge the system of domination the United States have been using against our nations and peoples? A necessary first step that we must take is to identify and respond to one central argument used by the dominating society of the United States.

Here's an accurate expression of that central argument: The society of the United States is perfectly entitled to control the reality and existence of our Native nations because representatives of the Christian world managed to sail here centuries ago and obtain what was for them new knowledge of the geographical location of our nations and peoples. This has often been called "the doctrine of discovery," but it is more accurately termed "the doctrine of new Western knowledge." The question remains, how can we most effectively respond to the central argument behind that doctrine?

A Closer Examination of the Colonizers' Central Argument

Ever since the colonizers from Western Europe arrived by ship to the shores of our coastal Native nations, and to our part of the planet, they have for centuries used the power of the human mind (their words and ideas), in an effort to establish and maintain a form of control over our existence as Native peoples. They have gotten away with this by referring to their *metaphorical thoughts and ideas* as "the law."

Because of the mental conditioning we have been subjected to in the English language, it is quite easy for us to lose sight of the fact that the colonizers have been operating on the assumption that our nations and peoples are rightfully subject to their ideas and arguments they call "the law." So let's pause and ask ourselves: What has enabled the United States to utilize the argument that they were perfectly entitled to control the existence of our Native nations? *They made that argument on the basis of the fact that representatives from the Christian world sailed to this part of the planet centuries ago and became knowledgeable of ("discovered") the geographical location of our nations and peoples*.

The United States ended up treating the argument made on that basis as being unquestionable because the argument had been made by the white men seated on the U.S. Supreme Court of the United States. Specifically, the argument invented by Chief Justice John Marshall in the *Johnson v. McIntosh* ruling of 1823 could be accurately called, "The Doctrine of New Western Geographical Knowledge."

The Ability of Christian Europe to Shape and Create Its Own Reality

So how could Western Europeans sailing across the Atlantic Ocean to this part of the world, and becoming newly knowledgeable of the geographical location of our nations and peoples, have entitled the monarchs of Europe, and their successors, to use their thoughts and ideas to control the existence of our Native nations and peoples? The answer is to be found in the ability of the Christian Europeans to shape and create their own form of reality wherever they went, combined with the intention they had formed before they even set sail from Western Europe.

Numerous papal decrees and royal documents expressed an intention to establish a reality-system of Christian domination over any newly located islands or mainlands as soon as they had been located.

An example of that intention is found in the prerogatives and privileges that King Ferdinand and Queen Isabella issued to Cristopher Columbus in 1492. That document specifically said that once Columbus had located any islands or mainlands in the ocean, toward the Indies, he was supposed to endeavor to "conquer" and "subdue." In other words, he was instructed and expected to establish a form of Spanish domination over those places and over the peoples living there.

To understand the entire process requires that we examine the power of assumption. The colonizers simply had to assume that they had the right to establish a system of domination wherever they sailed, and then, by means of their thoughts and behavior, they were able to create a system of domination by infusing powerful and intensified energy into that assumption. This is a particular kind of skill used by a dominating society: First, use the human mind to assume that something is true. Second, put sustained brutality, energy, and focus into that assumption until a reality system of domination has been manifested on that basis.

Chief John Marshall identified this pattern in the 1823 *Johnson v. McIntosh* ruling, which he wrote on behalf of an unanimous U.S. Supreme Court. The first step of the process is to use the human mind to create what Marshall called an "extravagant pretension." Then continue to assert of that pretension over an extended period of time, perhaps a number of generations, until it is perceived as not only "true," but also "the law of the land" that may not to be questioned. Marshall expressed this process in the *Johnson* ruling as follows:

> However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear; if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it, it becomes the law of the land and cannot be questioned.

Marshall's mention of "converting [transforming] the discovery of an inhabited country into conquest" adds another factor for our consideration. Having accurately translated "discovery" as meaning "new knowledge," we are able interpret Marshall's wording about a "pretension" to mean that the goal of the society becomes "pretending to convert new knowledge into a conquest." However, for Christian nations to invade non-Christian nations and peoples living their own free and independent existence on their own lands would constitute a wrongful domination of their existence rather than a conquest.

For this reason we are able to further translate Marshall's phrase "pretension of converting the discovery of an inhabited country into conquest" as meaning, "pretension of converting new Christian European knowledge of some geographical area into a claim of a right to force that place under a system of Christian domination, and then calling the outcome a "conquest."

Did the Claim of a Right of Domination Have Any Merit?

Regarding the question of whether the colonizers' claim of a title to the soil of the continent was at all justified, based on the Christian European world having obtained new geographical knowledge of the continent's whereabouts by sailing there, U.S. Supreme Court Justice Joseph Story stated the following in his *Commentaries on the Constitution of the United States* (1833):

> This is not the place to enter upon the discussion of the question of the actual merits of the titles claimed by the respective parties [colonizing powers] upon principles of natural law. That would involve the consideration of many nice and delicate topics, as to the nature and origin of property in the soil, and the extent, to which civilized man may demand it from the savage for uses or cultivation different from, and perhaps more beneficial to society than the uses, to which the latter ["savages"] may choose to appropriate it.

Given the highly questionable nature of the colonizers' claim of (or pretension to) a right of domination over some vast geographical area, based on having obtained new geographical knowledge of the location of that place by sailing there from across the ocean, it would seem best for the colonizing society to disallow any questioning of its claim of a right of domination. Three years after the publication of Story's *Commentaries*, Henry Wheaton, who had been the official Reporter for the Supreme Court at the time of the Johnson ruling, released his *Elements of International Law* (1836). In the chapter on Property, Wheaton states:

> . . . the constant and approved practice of nations shows that, by whatever name it be called, the uninterrupted possession of territory, or other property, for a certain length of time, by one State, excludes the claim of every other; in the same manner [just] as, by the law of nature and the municipal code of every civilized nation, a similar possession by an individual excludes the claim of every other person to the article of property in question.

Christian European intellectuals refused to apply the above principle of prescription to Native nations. For they knew that if this principle were applied to Native nations, such as the Haudenosaunee, then the long and uninterrupted possession of the territories of our Native nations by our ancestors prior to the Christian European invasion of the continent, would absolutely exclude every claim of a right of Christian domination over the territories of our nations.

A Principle of Theoretical Physics and Federal Indian Law

The idea that the prior presence of our Native nations on the continent would rightfully exclude any claim of a right to establish Christian domination on the continent seems suggestive of a principle of physics: Two things cannot occupy the same space at the same time, for the one necessarily excludes the other. Marshall seemed to invoke this kind of principle on behalf of the Christian Europeans by saying that two "absolute titles" "cannot exist at the same time in different persons or in different governments." Why? He answers:

> An absolute must be an exclusive title, or at least a title which excludes all others not compatible with it. All our institutions *recognize* the absolute title of the Crown, subject only to the Indian right of occupancy, and *recognize* the absolute title of the Crown to extinguish that right [of Indian occupancy]. This is incompatible with an absolute and complete title in the Indians. (emphasis added)

The terms "cognize" (as in "recognize") and "discovery" are two ways of expressing knowledge and mental activity. Cognition is defined as "the mental action or process of acquiring knowledge and understanding through thought, experience, and the senses." Discovery is defined as "the action or process of being discovered," meaning that knowledge has been acquired as a result of something having been found or located.

(*cont…*)

The Colonizers Mentally Recognize Themselves as Possessing an Absolute Title to the Soil

Marshall said that because U.S. institutions "recognized" (thought of) the British Crown as having "absolute title" to the lands of the continent. According to the logic of the system they were maintaining, this U.S. recognition of an "absolute title" as being in the Crown logically excluded our Native ancestors from being recognized by the U.S. as having any form of title that would contradict the premise of an absolute title of the Crown, and, later, of the absolute title of the United States.

What Marshall termed "absolute title" has also been called "fee title." In the 2005 U.S. Supreme Court ruling City of Sherrill v. The Oneida Indian Nation of New York, Justice Ruth Bader Ginsberg mentioned "fee title" in footnote number one of the decision she wrote for the majority. She stated:

> Under the "doctrine of discovery," County of Oneida v. Oneida Indian Nation of N. Y., 470 U. S. 226, 234 (1985) (Oneida II), "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," Oneida Indian Nation of N. Y. v. County of Oneida, 414 U. S. 661, 667 (1974) (Oneida I).

In other words, by means of the *metaphor* or *idea* of "absolute title" (or "fee title") the mind of the White man (or the mind of a Jewish woman in the example of the *City of Sherrill* decision) was able to create the perception ("pretension") that an "absolute title" to the soil had become "vested" in "the sovereign" United States.

Each and every one of these ideas is a metaphorical construct that the highest intellectual class of the United States began to use against our nations and peoples when very few if any of our ancestors understood how to read or write the language of the White man.

Justice Ginsberg supported her use of the "doctrine of discovery" in part by citing the case *County of Oneida v. Oneida Indian Nation of N. Y.* The following is a pertinent section of Justice Powell's decision in that 1985 County of Oneida case regarding the doctrine:

> With the adoption of the Constitution, Indian relations became the exclusive province of federal law. Oneida I, supra, at 414 U. S. 670 (citing Worcester v. Georgia, 6 Pet. 515, 31 U. S. 561 (1832)). From the first Indian claims presented, this Court recognized the aboriginal rights of the Indians to their lands.

The phrase "the aboriginal rights of the Indians to their lands" is simply another way of referring to the *non-Native* (White man's) *mental* concept of an "Indian right of occupancy," a concept which was created by the mind of Chief Justice John Marshall when he wrote the *Johnson v. McIntosh* ruling:

> The Court spoke of the "unquestioned right" of the Indians to the exclusive possession of their lands, Cherokee Nation v. Georgia, 5 Pet. 1, 30 U. S. 17 (1831), and stated that the Indians' right of occupancy is "as sacred as the fee simple of the whites." Mitchel v. United States, 9 Pet. 711, 34 U. S. 746 (1835). This principle has been reaffirmed consistently. See also Fletcher v. Peck, 6 Cranch 87, 10 U. S. 142-143 (1810); Johnson v. McIntosh, 8 Wheat. 543 (1823). . .

(*cont…*)

In his decision, Justice Powell did not say the Oneida Nation was claiming an *Oneida right* to the lands at issue in the case. Instead he said the Oneida's were claiming a U.S. "federal right" to those lands. This contradicts the very idea that the Oneida's were wanting to acknowledge those lands as being Oneida lands. And returning again to the concept of "fee title," Justice Powell went on to say: "The 'doctrine of discovery' provided . . . that [the] discovering nations held fee title to these lands, subject to the Indians' right of occupancy and use."

Powell did not acknowledge that the "Indian right of occupancy" was an idea created by the mind of the White man. He wrote his opinion on the basis of the underlying assumption that the *White-man-created* "Indian right of occupancy and use" was *subject* to the idea of "the sovereign's" "fee title." This means that the White man's concept of Indian "occupancy" was defined as being *beneath* and *subject* to the U.S. government's *claim of a right of domination* to the lands of the Oneida Indian Nation, and to the lands of other Native nations, based on the *Johnson v. McIntosh* ruling.

In other words, from an Indigenous perspective we are able to understand how Christian European intellectuals created a system of ideas and arguments which refused to recognize Native nations and peoples, such as the Haudenosaunee, as having the right to retain their lands and their own free and independent way of life. That Christian European created system of ideas and arguments was designed to make certain that Christian European colonizers were able to claim an unchallenged right of domination over, and "absolute title" to, the immense space and several billion acres of the continent where Native nations had been living for countless generations.

The Basis of the Claim of a Right of Domination

On what basis did the people from Western Christendom mentally create a system of ideas which assumed that non-Christian nations and peoples were required to give up their own free and independent existence? The Christian world *mentally* categorized our Native ancestors as "destined by God" to be compelled to live in subjection to the *thoughts and ideas* of Christian world. By imaginatively projecting metaphorical terms onto the original Native nations and peoples of the continent, the representatives of what U.S. diplomat Henry Wheaton called "the States of Christendom" continuously operated on the assumption that Native nations and peoples were subject to the mentality (thoughts and ideas) of the Christian world. This notion still prevails today when it comes to the relations between Native nations and the United States.

Self-Enforcing Our Subjection

When we as Native people uncritically repeat the Christian European ideas of domination from the past, such as those we find expressed in the Johnson v. McIntosh ruling, we are thereby helping to maintain a framing of reality that emerged from the Western mentality of the White man, and a mentality premised on Christendom's ancient claim of a right of domination over our nations. Every time we uncritically repeat those narratives, we are thereby helping to reconstruct and reinforce our own oppression. This is why it is highly problematic for Native students to attend the law schools of the White Man. Native law students are not taught how to challenge the conceptual foundation of the system of ideas they learn in law school. They are taught that if they are going to succeed as attorneys they must accept and work within the White Man's system of ideas. Although that system is premised on the U.S. government's claim of a right of domination over Native nations and peoples, they as students are being conditioned to never recognize and challenge that premise.

Human Consciousness and Reality Construction

Roger Jones' Physics as Metaphor (1982), Jones examines the relationship between the central concepts of physics and human consciousness. Since physics is a system used to think about and study what we consider to be the physical world (much of which is metaphorical), Jones calls attention to what he calls "the central role of consciousness in reality" formation. As just one example, the reality of "federal Indian law and policy" was formed by means of the White man's human consciousness, which means it was created on the basis of the metaphorical constructs and other cognitive operations of the brain.

After all, it is human consciousness that makes human observation of the "physical" world possible, and Jones makes the point that metaphor is an aspect of consciousness that creates the meaning human experience has for us. He defines metaphor as "an act of consciousness that borders on the very creation of things," and he sees the central concepts of physics—space, time, matter, and number—as creations of the human mind. As such, they are, as he puts it, "guaranteed no objective external status by physics." If space, time, matter, and number are creations of the human mind, then it cannot be sensibly said that they exist independent of the human mind and consciousness.

Along similar lines, legal philosopher Steven Winter has defined the human mind as "an embodied process formed interaction with the social and physical world." He too sees metaphor as constitutive of the human experience of reality. He points out, for example, that we imaginatively use the mental imagery of our human embodiment as a basis for thought. Stated differently, the mental images we form as humans are based to a large extent on the features and activities of our human body.

When we think of society as a "body politic," for example, we are using the human body as an analogy for society. Society is sometimes thought of and spoken about in terms of other parts of the human body, such as the arms. This is evident in the expression "taking up arms," meaning "going to war." Human hands result in the imagery evident in the expression "let's give them a hand" meaning let's use the hands to applaud for them, or, alternatively, let's provide them with physical assistance to perform some task.

The ability of the human mind to apprehend or understand something is sometimes thought of and spoken about in terms of the human hand being able to "grasp" a physical object. This imagery is used to talk about the mind being able to "grasp" an idea, which leads to the expression "I grasp what you're saying," or, alternatively, "I don't grasp what you are saying." The metaphor Ideas Are Objects results in the metaphorical expression "could you say that again, it [the idea as 'object'] went right over my head."

The metaphor IDEAS ARE OBJECTS can also result in an image of human thought as "seeds," such as when we talk about "propagating" (planting) ideas. Pope Alexander VI used this metaphor in the papal bull of May 4, 1493, when he expressed his desire that the Christian empire be "propagated," meaning "planted," and "everywhere increased and spread."

We use the physical embodiment (our bodies) to walk along physical paths. We then use our mental imagery about walking along paths as a basis for talking about "following the steps of a process." Or we can think about studying a subject in terms of hiking over a terrain and exploring that mental landscape to learn what it is we want to know. This is based on the metaphors A Process is A Path and Life is A Journey, which can lead to a title such as the Beatles' song "The Long and Winding Road."

Metaphors and the Brain

Typically, we ordinarily spend little if any time thinking or talking about these kinds of poetic idioms or expressions. They generally remain examined reference points in the background of our everyday lives, so to speak. Because the judges of the U.S. court system have human minds, they use the tradition of these kinds of poetic concepts and metaphorical expressions to write their legal opinions. Looking back at the historical record, we are able to see that a key part of that tradition is made up of the concepts and metaphors of domination that have been used against our Native nations.

It is important for us to draw attention to the dimension of poetics in U.S. federal Indian law and policy. In other words, it is not a body of knowledge based on the "objective" findings of U.S. judges. Because U. S. federal Indian law is a system of domination that human judges have created by means of human thoughts and ideas, it is a system that is subject to being challenged. When, for example, Chief Justice Marshall claimed that Indian "rights to complete sovereignty, as independent nations, had been necessarily diminished," he was using the idea of "diminishment" as a poetic figure of speech, not as some scientific or objective finding.

Diminishment implies the use of a system of measurement to know what the size or extent of something was prior to it being diminished, and its size or extent after its diminishment. Chief Justice John Marshall provided no explanation of the kind of measurement he had used to determine what the size and extent of the Indians' "rights" had been before, and, what percentage of that size and extent remained after the supposed diminishment of those rights. That expression was Marshall's metaphorical (mental) projection onto Native nations, which he expressed as a taken-for-granted truth without proof, which to this day is still treated by the political and legal system of the United States as being true.

Upon reading that statement about the supposed "diminishment" of the rights of Native nations, the brain interprets it as if it were a physical fact because the statement was made by the U. S. Supreme Court.

Another example is found in the term "Indian." The people of this part of the world are being analogized to the people who were living in place known as "The Indies," which was a geographical location that Western Europeans understood as existing in the direction of India and Asia. The inhabitants of the Indies were referred to in the Spanish language as Indios. The text of the papal bulls of 1493 refer to islands and people existing "toward the Indies."

Our Native ancestors came to be called "Indians" in English as a result of them being thought of and spoken about metaphorically as being analogous to the inhabitants of the Indies. Eventually, the Europeans carried over the ocean the name that they had previously applied to the people of the Indies, "Indios." They then applied that name to our ancestors.

This was a process of metaphorical projection. One meaning of the word "metaphor" is "to carry over," and the people of Western Christendom carried words and ideas by ship over the Atlantic Ocean and applied them to our ancestors. The colonizers used metaphor as a critically important tool in the process of world-building and colonization in distant lands.

Much of What We Believe to be "the Physical World" is Metaphorical

Here's a critically important point: A great deal of what we consider to be the physical world of matter is a result of the metaphorical, and, therefore, imagistic processes of the human mind. For as Roger Jones has pointed out, "science itself no longer views matter as substance."

The non-physical (metaphysical) ideas that make up the area of knowledge called "federal Indian law and policy" have no physical substance. Jones adds:

> Atoms are not hard little balls. They are not even vague clouds or waves of probability as some texts are fond of saying. (Probability as such does not exist in and occupy space. Nor can probability itself be measured.) They are fundamentally unpicturable in the spatio-temporal terms we apply to gross matter. Notions of solidity in physics ultimately rest on such hypotheses as the Pauli Exclusion Principle (a generalization of the idea that two things cannot occupy the same space at the same time) or the existence of repulsive forces, the very notion of which already conceals within it the idea of extension or occupancy of space, and which therefore begs the question of solidity [assumes the existence of solidity].

Once we as Native people have understood that the knowledge system of the White man has no physicality, because it is made up of non-physical ideas and metaphors produced by the White man's consciousness, we have a means of challenging the White man's of ideas and metaphors of domination to control our existence as Native nations and peoples. For we are then able to understand that our minds as Native people are to a great extent being held captive by the rigid mental patterns we have internalized, mental patterns that were created by non-Native intellectuals such as Chief Justice John Marshall, Justice Joseph Story, and scores of others.

The System of Knowledge Called Federal Indian Law Is Based on a Trick of the Mind

During the course of many generations, we as Native people became conditioned to think of the imaginative and mental constructs of the dominating society as if those mental constructs were physically real. In actuality, those mental constructs (thoughts and ideas) are metaphorically (mentally) real. The extent to which we have been learned to treat thoughts and ideas as if they are physically real is the extent to which we have been deceived by a trick of the mind.

Take the idea of "conquest" as a prime example. The intellectuals of the dominating society wrote words on paper in order to imaginatively project the mental construct of "conquest" onto the existence of our Native nations and peoples. A variety of inferences necessarily followed. By using the concept of "conquest" against us, the U.S. government has been claiming a right of domination over our nations and peoples. Clearly, the greatest trick that the White man ever played on us was getting us to believe that we are subject to his thoughts and ideas simply because his ancestors sailed across the Atlantic Ocean and show up to this continent many centuries ago with the intention of establishing their system of domination here.

Take, for example, the ritual act of "possession" engaged in by the Columbus and so many other colonizers. Was the ceremony performed with soil and water a physical act of possession or a symbolic and therefore metaphoric act? It was impossible for a few colonizers to physically hold hundreds or even thousands of square miles of land in their physical hands. But it was possible to metaphorically symbolize those hundreds or thousands of square miles of land and water by holding a bit of soil in one's hand, or piling up some stones, or sprinkling some water, and then saying a few prayers, while having a notary public with an official seal record the entire procedure.

Once the ritual had been performed, it was then possible to use that symbolic act as a "toe hold" for further "steps" in the process (path) by using acts of brutality and coercion to appropriate the entire geographical area for the colonizing power. Those ritual acts of domination resulted in an intergenerational legacy of domination.

This leads to another point. We are not "Indians" independent of the colonial language that has declared us to "be" "Indians." We have been perceived as "Indians" as a direct result of the colonizers using the human mind and their colonial language to metaphorically name us "Indians." This point goes to the heart of the process and means by which human reality is constructed and maintained. The ideas and arguments that comprise the dominating system called U.S. federal Indian law and policy are metaphorical creations of the human mind, or, more specifically, metaphorical creations of the mind of the White Man.

The oppression and domination of our Native nations and peoples has been constructed and maintained on the basis of the mental activities of the intellectuals of the Christian European world, activities which are premised on their claim that they have a right of domination over our nations and our lands. When we as Native people read a legal decision issued by the court system of the United States, we are examining a cultural artifacts produced by a system of domination that originated in Western Europe and which was carried over the ocean to our part of Mother Earth.

The fact that I am writing this essay in the English language of the foreign colonizers demonstrates the extent to which the ancestors of the dominating society successfully carried out a process of genocide in an effort to destroy our nations, and to permanently cut us off the language and mentality our own ancestors. It would appear that the one sure way for us to be able to understand the mentality of the colonizers, is by pouring ourselves into and studying the ideas and arguments of that society, and thereby allowing that mentality to enter into us, so to speak, at least to the extent necessary to gain insight into the intricacies of the dominating society's system of domination.

"By this directive [The Doctrine of Discovery], *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."*

OREN LYONS

ONONDAGA NATION FAITHKEEPER

AMERICAN INDIAN LAW ALLIANCE

THE DOCTRINE *of Discovery*

American Indian Law Alliance

Working with Indigenous Nations in our struggle for sovereignty, human rights, and social justice

www.aila.ngo

www.aila.ngo