

Background

The “doctrine of discovery” is a theological justification of colonization that later became nationalistic justification. Initiated when European monarchies invasively arrived in the Western Hemisphere in the 15th, 16th and later centuries, during the so-called “Age of Discovery,” they claimed the lands, territories and resources of the indigenous peoples, asserting that the monarchies had a right to appropriate on behalf of Christendom. The monarchies’ claims of a Christian dominion (dominance) over indigenous peoples and their lands served them pragmatically to fend off competing monarchies and to de-legitimize the long-established autonomous indigenous peoples’ governments.

The doctrine of discovery is a key premise for non-indigenous government claims to legitimacy on and sovereignty over Indigenous lands and territories. It is used in particular by former British colonies, specifically Canada, Australia, New Zealand and the United States of America.

What is found in the doctrine of discovery?

1. Criteria for claiming land.
 - a. European monarchies treated indigenous land as “unoccupied,” as long as Christians were not present. Status of a “human” was based on religion.
 - b. Land deemed “unoccupied” was, therefore, “discovered” as if it had been previously unknown to humankind, and the land thus claimed by the “discovering” Christian European “sovereign.”
2. Transfer of the land. A Christian government’s claim to sovereignty over the territory of an indigenous nation or people could be transferred by a treaty with another Christian government, such as treaty between the British Crown and the United States.
3. Government by agent or proxy. Sovereign monarchs gave royal charters of “discovery” to companies or individuals to delegate the work of claiming indigenous lands.
4. Coercion and subjugation of whole peoples. Christian governments sought to subdue, enslave and convert peoples.
5. Incorporation of a diminished and impermanent status into secular laws. In the 1823 ruling *Johnson v. McIntosh*, the U.S. Supreme Court ruled that Indian nations had no legal title to their lands and were entitled only to the right of “occupancy.” This decision stripped Native nations of any and all sovereignty agreed to in treaties with

the United States. This decision has never been overturned and is still referred to in legal decisions (as recently as 2010 in federal courts).

6. Double standard among international conventions. The doctrine of discovery is used to diminish validity and significance of international treaties between indigenous Nations and the United States, Canada, New Zealand and Australia.
7. Foundational to U.S. policies on immigration and migration. Preventing indigenous peoples from crossing the U.S.-Mexico border to inhabit lands that are historically theirs.

For more than 500 years, the interpretive framework of the doctrine has been institutionalized and rationalized heinous behaviors against Indigenous peoples through the centuries. Forced removals such as the Trail of Tears, the seizure of natural “resources,” the destruction of traditional languages and cultures, the sterilization of Indian women and the disruption of indigenous communities are examples of implementation of the concepts of “discovery” and “dominance.” The Vatican papal bulls of the 15th and 16th centuries actively encouraged the subjugation of indigenous nations, and the secularization of the doctrine in the United States and elsewhere perpetuated subjugation and its consequences.

What effect does the doctrine of discovery have?

1. The doctrine of discovery’s assumption about who is sovereign allows policies to develop without the full knowledge and prior informed consent of indigenous peoples.
2. Diminished protection of human rights is evident. (For example, there is no indigenous jurisdiction over crimes committed on reservations by non-natives.)
3. The diminished and impermanent status of indigenous peoples under the doctrine of discovery is contrary to the right of Indigenous peoples to sustain themselves in perpetuity as distinct peoples, a right affirmed in the U.N. Declaration on the Rights of Indigenous Peoples.
4. The doctrine’s concept of occupancy (“Indian title”) is inconsistent with the constitutional status of treaties. Treaties are the highest law of the land, equal to the constitution. Treaties are made between sovereign states.
5. Self-determination of indigenous peoples brings them into conflict with governments and corporations that rely on the legal lineage of the doctrine to assert claims to natural resources, such as coal, oil, uranium, natural gas and water.

United Nations Declaration on the Rights of Indigenous People

Overwhelmingly passed in 2007 after two decades of work, the U.N. repudiated the doctrine of discovery and called upon the nations of the world to respect land claims of their indigenous people and treaties made with indigenous peoples. This was a positive and comprehensive international human rights instrument addressing economic, social, cultural, spiritual and environmental rights of indigenous people. The United States is one of four countries in the world that voted against the declaration. Since 2007, the countries endorsed the declaration but have made no action to implement the declaration.

ELCA Conversations and the Memorials

The American Indian Alaska Native Ministries program director along with the American Indian Alaska Native Lutheran Association has gathered in conversation for several years when our denominational and ecumenical partners started to repudiate the doctrine of discovery in 2009. The ecumenical partners who have already repudiated the doctrine of discovery are the Evangelical Lutheran Church in Canada, The Episcopal Church, the United Church of Christ, The United Methodist Church and the Moravian Church.

In October 2015, information was shared with the Conference of Bishops, which resulted in several Bishops and leaders drafting a model resolution. This resolution was taken by the American Indian Alaska Native Lutheran Association, distributed amongst the synods and congregational partners.

Many recognize that to this day the doctrine of discovery and its legal ramifications still have profound effects on the issues of migration, racial and economic justice for indigenous people. It is important to acknowledge there is a profound brokenness of our relationship with indigenous people that is deeply embedded in our identity as the

Evangelical Lutheran Church in America that calls us to a path of healing and reconciliation. Of particular note is the memorial from the Alaska Synod Assembly. It provides an invaluable teaching moment for our congregations to understand systemic and continuous impact of racism on the daily lives of indigenous peoples in the United States. Action regarding this memorial could provide a means of educating people about the doctrine of Christian discovery and its continuing effects on indigenous nations and peoples.

The final resolve is intended to eliminate the doctrine of discovery within the church's contemporary politics, programs, outreach, structures and engagement with Native communities. It resolves to no longer missionize indigenous communities and instead to take the opportunity to grow and journey with indigenous communities, through

partnerships with congregations and synods within the ELCA, and to promote efforts of indigenous communities within our congregations and synods. One way to assist in true accompaniment with current and developing American Indian and Alaska Native ministries within the ELCA is to grow the existing Native American Ministry Fund endowment.