

TRUTH IN LOVE

How to Understand Doctrine of Discovery,
International Law of Colonialism, and Key
1823 Supreme Court Case

(Second of 3 Parts)

By Parris J. Baker

May 2022

Editor's note: Following is the third in an ongoing series of articles by new Jefferson Educational Society Scholar-in-Residence Dr. Parris J. Baker, an associate professor at Gannon University. It is also the second of a three-part series on Critical Race Theory.

To illustrate the interconnections and influences of the Doctrine of Discovery requires much more space than allotted for this essay. However, it is important to dispel the romanticized conceptions of the international law of colonialism, like those captured in the popular rhyme "In 1492":

In fourteen hundred ninety-two Columbus sailed the ocean blue. He had three ships and left from Spain; He sailed through sunshine, wind, and rain. He sailed by night; he sailed by day; He used the stars to find his way. A compass also helped him know; How to find the way to go. Ninety sailors were on board; Some men worked while others snored. Then the workers went to sleep; And others watched the ocean deep. Day after day they looked for land; They dreamed of trees and rocks and sand. October 12 their dream came true, You never saw a happier crew! "Indians, Indians!" Columbus cried; His heart was filled with joyful pride. But "India" the land was not; It was the Bahamas, and it was hot. The Arakawa natives were very nice; They gave the sailors food and spice. Columbus sailed on to find some gold. To bring back home, as he'd been told. He made the trip again and again, Trading gold to bring to Spain. The first American? No, not quite. But Columbus was brave, and he was bright.

There is nothing romantic or poetic concerning colonization. At the heart of the Doctrine of Discovery is the fervent ideology of conquest designed to increase personal and national wealth and establish hegemonic control, subjugation, and enslavement of black and brown indigenous groups. Authorized by the Vicars of Christ (Pope Innocent IV, 1243; Pope Nicholas V, 1455; Pope Alexander VI, 1493)

the Doctrine of Discovery and the concomitant International Laws of Colonialism guided the exploration, seizure, and exploitation of non-European territories and subjugated the sovereign powers of inhabiting indigenous people groups.

Robert Miller, a professor at Lewis & Clark Law School, identifies 10 tenets of the Doctrine of Discovery: (1) First discovery – the first European country to discover lands unknown to other Europeans acquired property and sovereign rights over the lands and the indigenous people groups. (2) A European country had to permanently occupy and possess discovered territories. (3) Property right of preemption – the sole right to buy the land from the indigenous inhabitants. (4) After first discovery, indigenous nations lost full property rights and only retained occupancy rights. They could only sell land to the European government with preemptive rights. (5) Limited sovereign and commercial rights – could only interact legally with the discovery government.

They continued. (6) Contiguity – When two European countries had contiguous settlements the land rights extended to the halfway point between the settlements. (7) Terra Nullius – land deemed empty or void, even if occupied by indigenous persons, if the property is not being used in a manner approved or recognized by a European legal system. (8) Non-Christians were not deemed to have the same rights to land sovereignty and self-determination as Christians. (9) European standards of what constituted civilization were superior to non-Christian natives. Belief that God directed Europeans to bring Christian civilization, religion, and education to the barbaric, ignorant infidels. (10) Conquest – Europeans could secure property and sovereign rights by military takeovers or by making first discovery.

From the 15th through 20th centuries various militaries and mercenaries from Spain, France, Holland, and England were charged with defending the cause of Christ and advancing the interests and profits of said kingdoms. Papal jurisdiction justified the premise of conquest to establish the universal Christian commonwealth, to defend Christianity against the barbarians and the infidels and, when possible, to convert indigenous people to Christianity.

With the conversion of indigenous people arose a new problem: Are all Christians created equal? To address the question of equality, Pope Alexander VI, in 1496 sanctioned the statute, *limpieza de sangre*, initially instituted by Spain and Portugal, to distinguish “Old Christians” from “New Converts” (Muslim and Jews). The literal translation of *limpieza de sangre* is “cleanliness of blood” or “purity of blood.” This method of social stratification, one of the first instances of establishing race and class distinctions, granted Old Christians status, prestige, and privileges not extended to the “New Converts.”

The intersections of power, pigmentation, and privilege had been birthed. White supremacy, as an ideology, can be traced to the Crusades in Muslim-controlled territories and in the Protestant colonization of Ireland. According to historian Roxanne Dunbar-Ortiz, “The institutions of colonialism and methods for relocation, deportation, and expropriation of land had already been practiced, if not perfected, by the end of the 15th century.” (p.33) The structures of a racial caste system became the framework of Great Britain’s colonization of North America.

The Doctrine of Discovery directed the colonization, dispossession, and divestiture of existing people and their land. Moreover, the doctrine condoned the near genocide of entire first nation societies and the elimination of the human

and civil rights of indigenous people of the West Indies and North and South America. David E. Stannard in his “American Holocaust: Columbus and the Conquest of the New World,” wrote, “Elie Wiesel is right: the road to Auschwitz was being paved in the earliest days of Christendom. But another conclusion now is equally evident: on the way to Auschwitz the road’s pathway led straight through the heart of the Indies and of North and South America.”

The significance of the Doctrine of Discovery was legally established in *Johnson & Graham’s Lessee v. McIntosh*, (1823): 1. When the United States became independent from Great Britain, the American federal government assumed the powers of preemption over Indian lands. The ruling of this U.S. Supreme Court case was based on the tenets of the Doctrine of Discovery. Land purchased from the Piankeshaw Indian Tribe by Thomas Johnson in 1775 and subsequently bequeathed to his heirs was sold by Congress to William McIntosh in 1818.

The Johnson heirs sued McIntosh to recover property rights. The unanimous decision was that the Piankeshaw Indian Tribe did not have the right to sell to Thomas Johnson and therefore the land purchase was invalid. Moreover, McIntosh’s claim was superior because the purchase was made from the preemptive government. Chief Justice Marshall ruled that the federal government had the sole right of negotiation with the Piankeshaw Indian Tribe.

Part 3 will discuss dismantling racist systems.

ABOUT THE AUTHOR

Dr. Parris J. Baker is an Associate Professor at Gannon University, where he is the Social Work, Mortuary Science and Gerontology Program Director. An alumnus of Gannon, Baker received his graduate degree from Case Western Reserve University, Jack, Joseph, & Morton Mandel School of Applied Social Sciences and his doctorate from the University of Pittsburgh, School of Social Work. Presently, Baker serves as the Senior Pastor of Believers International Worship Center, Inc. He is married and has five children.



Dr. Baker can be reached at: baker002@gannon.edu.

References & Suggested Readings

Dunbar-Ortiz, R. (2014). *An indigenous peoples’ history of the United States*. Boston: Beacon Press.

Marzollo, Jean. (1991). In 1492. Scholastic.

Miller, R. J. *The International Law of Colonialism: A Comparative Analysis*. *Lewis & Clark School Legal Research Paper Series, Paper No. 2011-23*.

Papal Encyclicals Online. It is available [here](#). Retrieved on May7, 2022.

- a. Pope Innocent IV – *Qui iustis causis*
- b. Pope Nicolas V - *Romanus Pontifex*
- c. Pope Alexander VI – *Inter Caetera*

Stannard, D. E. (1992). *American Holocaust: The Conquest of the New World*. New York: Oxford University Press.

Wilkins, D. (2018), Deconstructing the doctrine of discovery. *Indian Country Today*. It is available [here](#). Retrieved on May 7, 2022.

Subscribe to JES Publications Emails!

Subscribe to Book Notes Emails!

In Case You Missed It

[Truth in Love: Whiteness Must be at Center of Discussions on Critical Race Theory \(Part One\)](#) written by Jefferson Scholar-in-Residence **Dr. Parris J. Baker**

[Book Notes #101: Baseball Music: A Primer \(Part Two\)](#) written by Jefferson Scholar-in-Residence **Dr. Andrew Roth**

[Gridley Park: Bay Rat Retreat with Dose of Naval History](#) written by Jefferson Scholar-in-Residence **Dr. David Frew**

[James Justice: Erie's Forgotten Singer, Actor, Composer](#) written by Johnny Johnson (Burleigh Legacy Alliance), **Dr. Chris Magoc** (Mercyhurst University), and **Melinda Meyer** (Erie Yesterday)

[Culture Wars Key to Elections: Part Three](#) written by Director of the Brock Institute for Mega Issues Education **Rev. Charles Brock**

Jefferson Educational Society | jeserie.org

