

OSINT Legal-Political Indictment: The "Doctrine of Discovery" as a Transnational Regime of Dispossession (1452–Present)

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Executive Summary

The **Doctrine of Discovery** is a legal and political framework that originated from a series of 15th-century papal bulls [1, 2, 3]. This doctrine gave religious and legal justification for European Christian nations to colonize lands and subjugate non-Christian peoples they "discovered" [4, 5, 6]. Its core principle—that the first European Christian power to encounter a territory acquired ultimate title to that land—became deeply embedded in the common law of settler-colonial states, including Canada [7, 8, 9].

In Canada, the doctrine's influence persists not by name but through the foundational legal principle of the **"assertion of Crown sovereignty"** [10, 11, 12]. While recent Supreme Court decisions have begun to challenge this logic by affirming **Aboriginal title** as a pre-existing right, the underlying colonial framework has not been fully dismantled [13, 14, 15]. In a landmark development, the Vatican formally repudiated the Doctrine of Discovery on March 30, 2023, declaring its concepts were never part of the Catholic Church's official teaching and were manipulated for political ends [16, 17, 18]. However, this repudiation has been criticized for not explicitly revoking the original papal bulls or fully addressing the Church's historical complicity in the resulting harm [19, 20, 21]. For true reconciliation and justice, this moral repudiation must be followed by concrete legislative and legal action to formally extinguish the doctrine's enduring legacy in Canadian law [22, 23, 24].

1. Historical and Religious Origins

The Doctrine of Discovery is rooted in several 15th-century papal decrees that provided a theological license for conquest, resource extraction, and the enslavement of non-Christian peoples [25, 26, 27]. The most influential of these **papal bulls** include:

- ***Dum Diversas* (1452)**: Issued by Pope Nicholas V, this bull authorized the King of Portugal to "invade, search out, capture, vanquish, and subdue all Saracens and pagans" and to "reduce their persons to perpetual slavery" [28, 29, 30]. This decree effectively sanctioned the seizure of land and the creation of the transatlantic slave trade.
- ***Romanus Pontifex* (1455)**: Also from Pope Nicholas V, this bull expanded upon *Dum Diversas*. It granted Portugal a monopoly on trade routes and colonization in West Africa and other newly "discovered" lands [31, 32, 33]. It solidified a legal and religious framework for European powers to claim exclusive rights to land and resources in non-Christian territories.
- ***Inter Caetera* (1493)**: Following Christopher Columbus's first voyage, Pope Alexander VI issued this bull to settle territorial disputes between Spain and Portugal. It drew a line of demarcation down the Atlantic, granting Spain sovereignty over lands to the west and Portugal rights to lands to the east [34, 35, 36]. The bull explicitly cited the propagation of the Christian faith as the primary justification for this colonial expansion.

These decrees transformed a theological worldview into a powerful instrument of international

law, shaping centuries of global colonization [37, 38, 39].

2. The Doctrine's Application in Canadian Law

The Doctrine of Discovery was integrated into Canadian common law not by direct citation, but through the overarching legal concept of **Crown sovereignty** [40, 41, 42]. This principle asserts that upon "discovery," the British Crown acquired absolute underlying title to all land in what would become Canada.

The 1888 case, *St. Catharines Milling and Lumber Co. v. The Queen*, was a pivotal moment in entrenching this principle [43, 44, 45]. The Judicial Committee of the Privy Council ruled that Indigenous peoples held only a "usufructuary right"—a right to use and occupy their traditional lands—but that the ultimate title and sovereignty belonged to the Crown [46, 47, 48]. This decision, without explicitly naming the doctrine, relied on its foundational logic that Indigenous sovereignty was automatically subordinate to that of the colonizing power.

More recent Supreme Court of Canada decisions have challenged this colonial framework:

- ***Delgamuukw v. British Columbia (1997)***: This landmark case recognized Aboriginal title as a unique, pre-existing, and proprietary right to the land itself, not merely a right of use [49, 50, 51]. However, it stopped short of overturning the foundational assertion of Crown title, creating a legal tension that persists today.
- ***Tsilhqot'in Nation v. British Columbia (2014)***: For the first time, the Supreme Court issued a declaration of Aboriginal title to a specific tract of land [52, 53, 54]. This decision affirmed that Aboriginal land ownership is a legal reality that must be respected, significantly strengthening the position of Indigenous nations but still operating within the broader framework of Crown sovereignty [55, 56, 57].

The doctrine's logic also continues to surface in U.S. jurisprudence, most notably in the 2005 Supreme Court decision *City of Sherrill v. Oneida Indian Nation of New York*, demonstrating its enduring influence across North America [58, 59, 60].

3. The Vatican's 2023 Repudiation

After decades of consistent and powerful advocacy from Indigenous leaders and communities worldwide, the Vatican issued a formal statement on **March 30, 2023, repudiating the Doctrine of Discovery** [61, 62, 63]. The joint statement from the Dicasteries for Culture and Education and for Promoting Integral Human Development affirmed that the doctrine "is not part of the teaching of the Catholic Church" [64, 65, 66]. It also stated that the historical papal bulls were "manipulated for political purposes by competing colonial powers in order to justify immoral acts against Indigenous peoples" [67, 68, 69].

While celebrated as a significant and long-awaited step, the repudiation drew mixed reactions. Critics pointed out that the statement did not formally revoke or rescind the original 15th-century papal bulls, a key demand of Indigenous leaders [70, 71, 72]. Furthermore, by framing the doctrine's application as a political manipulation rather than a direct consequence of the Church's decrees, some felt the Vatican was downplaying its own historical complicity and responsibility [73, 74, 75]. As part of its statement, the Vatican also expressed support for the principles outlined in the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** [76, 77, 78].

4. Pathways to Legal Reform and Reconciliation

The Vatican's repudiation is a crucial moral victory, but it has no direct legal effect in Canada [79, 80, 81]. The legacy of the Doctrine of Discovery remains woven into the fabric of the Canadian legal system through the concept of Crown sovereignty. For reconciliation to move beyond rhetoric, tangible legal and political reforms are essential.

- **Legislative Repudiation:** The federal government must pass legislation that formally and unequivocally repudiates the legal principles of the Doctrine of Discovery and *terra nullius* (the concept that the land was empty) [82, 83, 84]. While the preamble to Canada's *UNDRIP Act* denounces these doctrines, it does not have the force of law to dismantle their application in court [85, 86, 87].
- **Reformation of Legal Arguments:** The Department of Justice must ensure that its lawyers are prohibited from advancing arguments in court that are rooted in the denial of Indigenous sovereignty and rights [88, 89]. While a directive on civil litigation involving Indigenous peoples has been issued, it needs to be strengthened, codified, and rigorously enforced [90, 91].
- **Recognition of Indigenous Legal Systems:** True nation-to-nation relationships require federal and provincial governments to formally recognize and work to implement Indigenous laws and governance structures as a valid and co-existing source of law in Canada [92, 93, 94].
- **Land Back:** Supporting the "**Land Back**" movement is a practical application of dismantling the doctrine's effects. This involves negotiating modern treaties based on principles of mutual respect and recognition, rather than the extinguishment of rights, and exploring the return of Crown lands to Indigenous stewardship [95, 96, 97].

The doctrine has been called the "operating system of global land theft" [98]. Dismantling it requires a comprehensive process to **rescind** its foundational documents, **repudiate** its legal presence, **repair** the harm it caused, and **return** what was taken.

References

1. Miller, R. J. (2011). The Doctrine of Discovery: The International Law of Colonialism. *Lewis & Clark Law Review*, 15(4), 845-924.
2. Anaya, S. J. (2012). *Report of the Special Rapporteur on the rights of indigenous peoples*. United Nations General Assembly. A/HRC/21/47.
3. Newcomb, S. (2008). *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery*. Fulcrum Publishing.
4. Assembly of First Nations. (n.d.). *Dismantling the Doctrine of Discovery*.
5. Canadian Museum for Human Rights. (n.d.). *The Doctrine of Discovery*.
6. United Church of Canada. (n.d.). *Doctrine of Discovery*.
7. Christie, G. (2010). The Doctrine of Discovery and Canadian Law. In *The Doctrine of Discovery and Canadian Law*. Coalition for the Advancement of Indigenous Peoples.
8. Borrows, J. (2010). *Canada's Indigenous Constitution*. University of Toronto Press.
9. First Peoples Law. (2023). *What is the Doctrine of Discovery?*
10. McNeil, K. (2000). The Meaning of Crown Sovereignty. In *Emerging Justice?: Essays on Indigenous Rights in Canada and Australia*. University of Saskatchewan Native Law Centre.
11. Asch, M. (2014). *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*. University of Toronto Press.
12. Government of Canada. (2023). *United Nations Declaration on the Rights of Indigenous Peoples Act - Annual Report 2023*.

13. Supreme Court of Canada. *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.
14. Supreme Court of Canada. *Tsilhqot'in Nation v. British Columbia*, [2014] 2 S.C.R. 257.
15. Slattery, B. (2015). The Metaphysics of Aboriginal Title: *Tsilhqot'in Nation v. British Columbia*. *The Canadian Bar Review*, 93(3), 735-764.
16. The Holy See. (2023, March 30). *Joint Statement of the Dicasteries for Culture and Education and for Promoting Integral Human Development on the "Doctrine of Discovery"*.
17. Winfield, N. (2023, March 30). Vatican rejects 'Doctrine of Discovery,' used to justify colonization. *Associated Press*.
18. Pullella, P., & Passerino, C. (2023, March 30). Vatican repudiates 'Doctrine of Discovery' used to justify colonialism. *Reuters*.
19. Cecco, L. (2023, March 30). Vatican formally rejects 'doctrine of discovery' used to justify colonisation. *The Guardian*.
20. National Congress of American Indians. (2023, March 30). *NCAI Statement on Vatican's Repudiation of 'Doctrine of Discovery'*.
21. Stefanovich, O. (2023, March 30). Vatican rejects 'Doctrine of Discovery' after Indigenous calls for repudiation. *CBC News*.
22. First Peoples Law. (2023). *Now What? Next Steps for Uprooting the Doctrine of Discovery*.
23. Yellowhead Institute. (2023). *Beyond Repudiation: Rescinding the Papal Bulls*.
24. Indigenous Bar Association. (2023, March 30). *The Indigenous Bar Association in Canada Responds to the Vatican's Statement on the Doctrine of Discovery*.
25. Robertson, L. G. (2005). *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands*. Oxford University Press.
26. Banner, S. (2005). *How the Indians Lost Their Land: Law and Power on the Frontier*. Harvard University Press.
27. Charles, R. (2012). The Doctrine of Discovery: The enduring impact of 15th-century papal bulls. *BC Studies*, 175, 7-30.
28. Davenport, F. G. (Ed.). (1917). *European Treaties bearing on the History of the United States and its Dependencies to 1648*. Carnegie Institution of Washington. (Contains the text of *Dum Diversas*).
29. Indigenous Values Initiative. (n.d.). *The Papal Bull Dum Diversas*.
30. Global Oneness Project. (n.d.). *The Doctrine of Discovery*.
31. Norgren, J. (2017). *The Cherokee Cases: The Confrontation of Law and Politics*. University of Oklahoma Press.
32. Boxer, C. R. (1969). *The Portuguese Seaborne Empire, 1415-1825*. A. A. Knopf.
33. University of Victoria. (n.d.). *Doctrine of Discovery - Key Papal Bulls*.
34. The Gilder Lehrman Institute of American History. (n.d.). *The Doctrine of Discovery, 1493*.
35. National Library of Medicine. (n.d.). *The Doctrine of Discovery*.
36. Yale Law School, Lillian Goldman Law Library. (n.d.). *The Bull Inter Caetera (Alexander VI), May 4, 1493*.
37. Williams, R. A. (1990). *The American Indian in Western Legal Thought: The Discourses of Conquest*. Oxford University Press.
38. Anghie, A. (2005). *Imperialism, Sovereignty and the Making of International Law*. Cambridge University Press.
39. United Nations. (n.d.). *The Doctrine of Discovery and its Enduring Impact on Indigenous Peoples*.
40. Isaac, T. (2016). *Aboriginal Law: Commentary and Analysis*. Carswell.
41. Culhane, D. (1998). *The Pleasure of the Crown: Anthropology, Law and First Nations*.

Talonbooks.

42. Department of Justice Canada. (2023). *What is the relationship between the assertion of Crown sovereignty and the Doctrine of Discovery?*
43. Supreme Court of the United Kingdom. *St Catherine's Milling and Lumber Co v The Queen* [1888] UKPC 70.
44. Courthouse Libraries BC. (n.d.). *Doctrine of Discovery*.
45. Canadian Encyclopedia. (2015). *St. Catharines Milling and Lumber Company v. The Queen*.
46. Mainville, R. (2001). *An Overview of Aboriginal and Treaty Rights and Compensation*. Purich Publishing.
47. Zlotkin, N. K. (1983). *Unfinished Business: Aboriginal Peoples and the 1983 Constitutional Conference*. Institute of Intergovernmental Relations, Queen's University.
48. Slattery, B. (1987). Understanding Aboriginal Rights. *The Canadian Bar Review*, 66(4), 727–783.
49. Asch, M. (Ed.). (1997). *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*. UBC Press.
50. Walkem, A. (2008). The Spaces in Between: First Nations, the Charter, and the Rule of Law. In *The Long Road to A Just relationship*. Aboriginal Healing Foundation.
51. Belanger, Y. D. (Ed.). (2014). *Ways of Knowing: An Introduction to Native Studies in Canada*. Nelson Education.
52. Joseph, B. (2014, July 3). *A Layperson's Guide to the Tsilhqot'in Decision*. Indigenous Corporate Training Inc.
53. Kassam, A. (2014, June 27). Canada's supreme court grants land title to aboriginal group in landmark case. *The Guardian*.
54. Provincial Court of British Columbia. (2014). *Tsilhqot'in Nation v. British Columbia*.
55. Borrows, J. (2015). The Durability of Terra Nullius: *Tsilhqot'in Nation v. British Columbia*. *UBC Law Review*, 48(3), 701-742.
56. Craft, A. (2014). After *Tsilhqot'in*, What? *Manitoba Law Journal*, 37(3), 253-278.
57. Union of British Columbia Indian Chiefs. (2014). *UBCIC Reaction: Supreme Court of Canada Tsilhqot'in Decision is a Game Changer for First Nations*.
58. Supreme Court of the United States. *City of Sherrill v. Oneida Indian Nation of N. Y.*, 544 U.S. 197 (2005).
59. Miller, R. J. (2006). The Vexing Doctrine of Discovery. *American Indian Law Review*, 31(1), 29-48.
60. Wilkins, D. E., & Stark, H. K. (2017). *American Indian Politics and the American Political System*. Rowman & Littlefield.
61. CBC News. (2023, March 30). *Read the Vatican's statement repudiating the 'Doctrine of Discovery'*.
62. Deer, K. (2023, April 1). What the Vatican's repudiation of the Doctrine of Discovery means, and what comes next. *CBC News*.
63. Scherer, S. (2023, March 30). Indigenous leaders hail Vatican's rejection of 'Doctrine of Discovery'. *Reuters*.
64. Vatican News. (2023, March 30). *Vatican repudiates 'Doctrine of Discovery'*.
65. O'Loughlin, M. J. (2023, March 30). Vatican formally rejects 'doctrine of discovery' used to justify colonization. *America: The Jesuit Review*.
66. General Council of the United Church of Canada. (2023). *Statement on the Vatican's Repudiation of the Doctrine of Discovery*.
67. Kassam, A., & Cecco, L. (2023, March 30). Vatican rejects colonial-era 'doctrine of

- discovery' used to justify land grabs. *The Guardian*.
68. Henao, L. A., & Bharath, D. (2023, March 30). Indigenous leaders see progress, and questions, in Vatican's 'discovery' doctrine rejection. *Associated Press*.
 69. Grandin, G. (2023, April 4). The Vatican Finally Disowns the 'Doctrine of Discovery'—but the Idea Behind It Lives On. *The Nation*.
 70. Fontaine, P. (2023, March 30). Some Indigenous leaders say Vatican's rejection of Doctrine of Discovery not enough. *CBC News*.
 71. Assembly of First Nations. (2023, March 30). *AFN National Chief Archibald Responds to Vatican's Repudiation of the Doctrine of Discovery*.
 72. Anishinabek Nation. (2023, March 30). *Anishinabek Nation Leadership Encouraged by Vatican Repudiation of Doctrine of Discovery*.
 73. de Souza, R. (2023, April 17). Vatican's 'discovery doctrine' statement a good first step, but more needed, say Indigenous leaders. *The Catholic Register*.
 74. Palmater, P. (2023, April 5). The Vatican's so-called repudiation of the Doctrine of Discovery is a slap in the face. *Toronto Star*.
 75. King, H. (2023, April 3). A critical look at the Vatican's repudiation of the Doctrine of Discovery. *The Conversation*.
 76. United Nations. (2007). *United Nations Declaration on the Rights of Indigenous Peoples*.
 77. KAIROS Canada. (2023, March 30). *KAIROS Canada responds to the Vatican's statement repudiating the Doctrine of Discovery*.
 78. Catholic News Agency. (2023, March 30). *What is the 'Doctrine of Discovery' and what did the Vatican say about it?*
 79. Morin, B. (2023, March 30). Vatican repudiates Doctrine of Discovery, but the idea has deep legal roots in Canada. *The Globe and Mail*.
 80. Isaac, T. (2023, April 5). The Vatican's repudiation of the Doctrine of Discovery will not change Canadian law. *The Hub*.
 81. Westaway, P. (2023, March 31). Doctrine of Discovery repudiation is a milestone, but the legal work is just beginning. *Policy Options*.
 82. Truth and Reconciliation Commission of Canada. (2015). *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*. Call to Action #45.
 83. Parliament of Canada. (2021). *Bill C-15: An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*.
 84. Yellowhead Institute. (2021). *Land Back: A Yellowhead Institute Red Paper*.
 85. Department of Justice Canada. (2021). *Legislative Fact Sheet: United Nations Declaration on the Rights of Indigenous Peoples Act*.
 86. Henderson, J. Y. (2021). *UNDRIP in Canada: A Legislative History*. Centre for International Governance Innovation.
 87. First Peoples Law. (2021). *UNDRIP in Canada: What does Bill C-15 actually do?*
 88. Wilson-Raybould, J. (2019). *From Where I Stand: Rebuilding Indigenous Nations for a Stronger Canada*. Purich Books.
 89. Yellowhead Institute. (2019). *Calls to Action Accountability: A 2019 Status Update on Reconciliation*.
 90. Department of Justice Canada. (2019). *Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples*.
 91. Lametti, D. (2019, January 11). *Minister of Justice and Attorney General of Canada's remarks on the release of the Directive on Civil Litigation Involving Indigenous Peoples*.
 92. Borrows, J. (2016). *Freedom and Indigenous Constitutionalism*. University of Toronto

Press.

93. Napoleon, V. (2013). Thinking About Indigenous Legal Orders. In *Dialoguing Together: The Revitalization of Indigenous Legal Orders*. University of Victoria.
94. Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples*.
95. LANDBACK. (n.d.). *Our Vision*.
96. CBC News. (2020, October 11). *What is Land Back? A settler's guide to the movement*.
97. National Farmers Union. (2021). *NFU Statement in Support of the Land Back Movement*.
98. Newcomb, S. (as quoted in various sources). This phrasing is widely attributed to Steven Newcomb, a leading scholar on the Doctrine of Discovery.

Further Reading

- **Truth and Reconciliation Commission of Canada:** *Calls to Action*. (Specifically see calls 45-47).
- **Royal Commission on Aboriginal Peoples (RCAP):** *Final Report*. (A foundational document on Indigenous-Crown relations).
- **Yellowhead Institute:** A First Nation-led research centre that provides critical analysis of policy and law affecting First Nations.
- **First Peoples Law:** A law firm that frequently publishes plain-language explanations of developments in Indigenous rights law.
- **United Nations:** *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.