

# Indigenous Title and The Doctrine of Discovery

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Indigenous Peoples believe they have held title to their traditional lands or territories from the moment their Creators placed them on that land (time immemorial) and bestowed them with the responsibility to care for it.....forever. But then European explorers arrived, placed flags, and laid claim to all they saw. How was that possible?

Because of the Papal “Bulls of Discovery” (Doctrine of Discovery). The Doctrine of Discovery was the framework Spain, Portugal, and England used for the colonization of many lands, including North America. This excerpt from Letters Patent (Feb 3, 1496) issued by King Henry VII to the explorer John Cabot And his sons for the discovery of new and unknown lands, shows the intent to assume ownership of “discovered” lands.



*“...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 to set up our aforesaid banners and ensigns in anytown, city, castle, island or mainland whatsoever, newly found by them. And that the before-mentioned John and his sons or their heirs and deputies may conquer, occupy and possess whatsoever such towns, castles, cities and islands by them thus discovered that they may be able to conquer, occupy and possess, as our vassals and governors lieutenants and deputies therein, acquiring for us the dominion, title and jurisdiction of the same towns, castles, cities, islands and mainlands so discovered...”*

## Christopher Columbus and the Doctrine of Discovery - 5 Things to Know

The Doctrine of Discovery was the international law that gave license to explorers to claim vacant land (terra nullius) in the name of their sovereign. Vacant land was that which was not populated by Christians. If the lands were not occupied by Christians they were vacant therefore could be defined as “discovered” and sovereignty, dominion, title and jurisdiction claimed.

However, North America was far from vacant when European explorers began arriving. When Christopher Columbus arrived in 1492, the lands were indeed occupied by 100 million Indigenous Peoples or one fifth of the world’s population at the time. But, as they were not Christians, they were not humans.

## 10 Elements

Here are the 10 elements that I think constitute the Doctrine and are useful in analyzing and comparing how settler/colonizer societies have used this international law against Indigenous peoples around the globe

- 1. First discovery.** The first European country to “discover” new lands unknown to other Europeans gained property and sovereign rights over the lands....
- 2. Actual occupancy and current possession.** To fully establish a “first discovery” claim and turn it into a complete title, a European country had to actually occupy and possess newly found lands....
- 3. Preemption/European title.** The discovering European country gained the power of preemption, the sole right to buy the land from the native people....
- 4. Indian title.** After first discovery, Indian Nations and the indigenous peoples were considered by European and American legal systems to have lost the full property rights and ownership of their lands. They only retained rights to occupy and use their land....
- 5. Tribal limited sovereign and commercial rights.** After first discovery, Indian Nations and native peoples were also considered to have lost some of their inherent sovereign powers...
- 6. Contiguity.** This element provided that Europeans had a Discovery claim to a reasonable and significant amount of land contiguous to and surrounding their settlements and the lands that they actually possessed in the New World....
- 7. Terra nullius.** Euro-Americans often considered lands that were actually owned, occupied, and being actively utilized by indigenous people to be “vacant” and available for Discovery claims if they were not being “properly used” according to European and American law and culture.
- 8. Christianity.** Under Discovery, non-Christian people were not deemed to have the same rights to land, sovereignty, and self-determination as Christians....
- 9. Civilization.** Euro-Americans thought that God had directed them to bring civilized ways and education and religion to indigenous peoples and often to exercise paternalism and guardianship powers over them.
- 10. Conquest.** It can mean a military victory. “Conquest” was also used as a “term of art,” a word with a special meaning, when it was used as an element of Discovery.”