

Vatican Renounces Euro-supremacist “Doctrine of Discovery”

When Will Supreme Court Do Likewise?

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More than five centuries after it was formulated in a series of papal decrees, the Vatican issued a formal announcement on March 30 repudiating the Euro-supremacist “Doctrine of Discovery.” In essence, the “doctrine” said that all lands not occupied by “Christians” passed into the hands of the European conquerors as soon as they were “discovered,” and their inhabitants enslaved.

Composed of decrees issued between 1452 and 1497, it served as the quasi-legal justification for the expropriation of entire continents in the name of spreading the Catholic faith. The repudiation by the Pope is the culmination of decades of struggle by Indigenous peoples in the United States, Canada and around the world demanding its withdrawal.

But while the Pope has now renounced it, the U.S. Supreme Court has not. The high court continues to treat the “doctrine” as an integral basis of U.S. law, particularly in regard to the rights — or lack thereof — of Native peoples.

Most notable in recent times was a 2005 decision authored by the late liberal Justice Ruth Bader Ginsburg which invoked the “Doctrine of Discovery” in her majority ruling against the Oneida Indian Nation. The Oneidas were seeking to recover lands and rights in central New York State guaranteed to them under the 1794 Treaty of Canandaigua treaty with the U.S., signed by George Washington, then president.

The Oneidas, one of the six nations of the Haudenosaunee (Iroquois) Confederacy were awarded 300,000 acres “in perpetuity” by the treaty. By the 20th century, nearly all of that land had been taken over. In the 1970s, the Oneidas began buying small parcels on what had been their reservation land, including in the small city of Sherill, New York. They objected to the demand by the city that they pay property taxes on the basis that they were

a sovereign nation. While the Oneidas won in lower federal courts, the Supreme Court ruled against them 8-1, with Ginsburg authoring the decision:

“Under the Doctrine of Discovery, 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 . . .

“Given the longstanding non-Indian character of the area and its inhabitants, the regulatory authority constantly exercised by New York State and its counties and towns, and the Oneidas’ long delay in seeking judicial relief against parties other than the United States, we hold that the tribe cannot unilaterally revive its ancient sovereignty, in whole or in part, over the parcels at issue.”

In 2020, the Supreme Court by a 5-4 vote upheld the right of Native nations to reservations that would have included nearly half of Oklahoma. While this was a victory for a coalition of Native nations, right-wing justice Neil Gorsuch wrote the majority opinion upholding the government’s power to deny the right of self-determination to Indian peoples.

“Once a reservation is established, it retains that status until Congress explicitly indicates otherwise,” wrote Gorsuch. “Only Congress can alter the terms of an Indian treaty by diminishing a reservation, and its intent to do so must be clear and plain.”

How did a loathsome “doctrine” authored in feudal times come to have what liberal and conservative Supreme Court justices alike consider a legitimate basis in U.S. law?

It was the Supreme Court itself that incorporated the “doctrine” into U.S. law, which became foundational in dealing with Native nations, in a key 1823 case, *Johnson v. McIntosh*.

The decision by Chief Justice John Marshall, declared that, in keeping with the “Doctrine of Discovery,” Native people had only the “right to occupancy” of land and not the right to title or ownership. Only the federal government, Marshall ruled, could own and sell Native lands and that “the principle of discovery gave European nations an absolute right to New World lands”

Following the Vatican’s repudiation, the struggle will intensify for the U.S. government to do the same.

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