

# Doctrine of Discovery

**A Review of Its Origins and Implications for Congregations  
in the PC(USA) and Support for Native American Sovereignty**



As submitted to the 223<sup>rd</sup> General Assembly (2018)



# The Doctrine of Discovery: A Review of Its Origins and Implications for Congregations in the PC(USA) and Support for Native American Sovereignty

## Report to the 223<sup>rd</sup> General Assembly (2018)

At the 222<sup>nd</sup> General Assembly in 2016, the Presbyterian Church (USA) adopted recommendations for action on the Doctrine of Discovery. Recommendation 7 of Item 11-24 calls upon the PCUSA to “confess its complicity and repudiate the Doctrine of Discovery, and direct the Presbyterian Mission Agency and the Office of the General Assembly, in consultation with ACREC [Advisory Committee on Racial Ethnic Concerns], to initiate a process of review of the Doctrine of Discovery.”<sup>1</sup> This process includes the preparation of a report that: (1) describes the Doctrine of Discovery and explains its history; (2) makes recommendations of how congregations in the PCUSA can support Native Americans in their ongoing efforts for sovereignty and fundamental human rights; (3) describes how relationships with specific Native American individuals and tribes can be developed; and (4) suggests specific ways in which congregations may recognize, support, and cooperate with Native American individuals, tribes, and nations who reside within their communities. With this action the PCUSA joins other denominations who have taken actions to repudiate the doctrine of discovery.<sup>2</sup>

This report was prepared in consultation with a committee of PCUSA staff and Native American consultants who represented or had served on the following PCUSA bodies: ACREC, Native American Consulting Committee; Synod of Lakes and Prairies, Synod of the Southwest, Synod of the Northwest, Dakota Presbytery, Yukon Presbytery, Office of Racial and Intercultural Justice, Presbyterian Mission Agency; Assistant Stated Clerk and Manager for Equity and Representation, PCUSA. [please make additions and corrections]

The Presbyterian Church, in all its various formations in the United States, has been in relationship with Native American peoples for over 300 years. In 2000, the General Assembly Task Force on Native American Ministries presented an historical report to the 212<sup>th</sup> General Assembly (2000) entitled “Mission and Ministry with Native American Peoples: A Historical Survey of the Last Three Centuries.” This longer report was summarized in the “Comprehensive Strategy for Ministries with Native Americans” (Minutes 2000, 22.229-.230) as historical background for the Task Force recommendations for Native American ministries in the PCUSA.<sup>3</sup> Major themes emerged in the preparation of the 2000 historical report, one of which has specific relevance for this report:

First, at least 200 years of the Presbyterian relationship with Native American peoples have been years in which the Presbyterian Church was active in the formation and implementation of government policies affecting Native American peoples. Because major Indian policy in the United States has focused on the land rights of Native peoples in these 200 years, Presbyterian work among Native Americans is largely linked to Native American land. (p.1)

A conversation on the doctrine of discovery will always entail a discussion of Native American or Indigenous lands. Moreover, because the doctrine has been a central part of U.S. law regarding tribal lands, the Presbyterian Church has played a major role historically in the implementation of the doctrine.

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<sup>1</sup> Overture 11-17, from National Capital Presbytery, specifically addressed the doctrine of discovery. Item 11-24, was the “Churchwide Conversation on Race, Ethnicity, Racism and Ethnocentricity Report” from the Presbyterian Mission Agency. The General Assembly answered Item 11-17 with action on Item-24, incorporating portions of Item 11-17 into Recommendation 7. See <https://www.pc-biz.org/#/search/3000074> for the full text of Overture 11-17.

<sup>2</sup> See PCUSA website on Doctrine of discovery for information on other denominational actions, found at: <https://www.presbyterianmission.org/ministries/racial-ethnic-and-womens-ministries/gender-and-racial-justice-ministries/doctrine-of-discovery/>

<sup>3</sup> The historical report was not included in the General Assembly minutes in its entirety.

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As the National Capital overture stated, “[d]uring all ... periods of American history, Christian churches ... have accepted and supported the various forms of the Doctrine of Discovery. ... We have participated both actively and passively throughout our history in discriminatory behavior directed against Native Americans. We have stood by while Native Americans were killed and their lands taken, while the story of their participation in the history of our country was distorted and suppressed.”<sup>4</sup>

Additionally, through its mission work outside of the United States, the Presbyterian church has had relationships with Indigenous peoples on all continents of the world. Thus, an understanding of the origins and modern-day manifestations of the doctrine of discovery, including its impacts on Indigenous peoples in the United States and around the globe, is essential to meaningful “recommendations of how congregations in the PCUSA can support Native Americans in their ongoing efforts for sovereignty and fundamental human rights.”

After a discussion of the doctrine as currently understood, and its origins, this report will identify contemporary manifestations of the doctrine of discovery among native peoples and sets forth recommendations called for in Recommendation 7 of Item 11-24.

### Doctrine of Discovery in the United States

In its current United States domestic iteration, the doctrine is a principal of law by which “fee title to the lands 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.”<sup>5</sup> This principle as U.S. law was first articulated in *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543 (1823). The U.S. Supreme Court interpreted “discovery” to mean that when European, Christian nations “discovered” lands unknown to Europeans, they automatically gained sovereign and property rights in the lands. This was so, even though Indigenous people had occupied and used the lands for millennia. This real-property right was subject only to the continuing use and occupancy rights of the Indigenous peoples.

*Johnson v. McIntosh* involved the attempted purchase of land in Indiana and Illinois from Piankashaw and Illinois Indians by private land speculators in Philadelphia and Baltimore. After nearly fifty years of attempts to have the titles acquired by these purchases legislatively recognized, the Companies sought judicial recognition in the federal district court for the District of Illinois.<sup>6</sup> They received an adverse decision and appealed. The U.S. Supreme Court decided against the land speculators. Writing for the Court, Justice Marshall concluded that the companies had no recognizable title because (1) the Illinois and Piankashaws had no fee title to convey; upon discovery, fee title passed to the discovering European sovereign, Britain, and (2) the tribes only possessed an occupancy right which they could sell only to the same sovereign or its successor in interest (the U.S.).<sup>7</sup> Justice Marshall set forth what has been quoted as the doctrine of discovery in U.S. law:

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<sup>4</sup> See n.1 supra.

<sup>5</sup> *City of Sherrill v. Oneida Nation of N.Y.*, 544 U.S. 197 (2005).

<sup>6</sup> The case was the result of an act of collusion between the two parties. Also problematic was that Justice John Marshall had large real estate holdings that would have been affected if the case had been decided contrary to those interests. See discussion in, Gonnella Frichner, “Preliminary study of the impact on Indigenous peoples of the international legal construct known as the Doctrine of Discovery,” UN Permanent Forum on Indigenous Issues, February 4, 2010 (E/C.19/2010), paras 25-26.

<sup>7</sup> See Lindsay G. Robertson, “John Marshall as Colonial Historian: Reconsidering the Origins of the Discovery Doctrine,” 13 J.L. & Pol. 759, 778 (1997), where Robertson argues that the Discovery Doctrine depended and continues to depend on John Marshall's (mis)characterization of British colonial policy in *Johnson v. McIntosh*.

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They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it.<sup>8</sup>

The principles established in *Johnson* have remained “cornerstones of the concept of original Indian title.”<sup>9</sup>

The same passage provides that the discoverer gained sovereign governmental powers over the native peoples and their governments, which restricted tribes' international political, commercial, and diplomatic powers. This transfer of rights was accomplished without the knowledge or consent of native peoples. *Johnson* has been cited and relied on by Australian, New Zealand, and Canadian courts, and thus had a major impact on all Indigenous peoples who have experienced the colonial impacts of the British crown.<sup>10</sup>

### From Christian Roots of Doctrine to Secularization<sup>11</sup>

Although commonly referenced as a secular legal doctrine in the United States, the doctrine of discovery has roots in European medieval Christianity. This section provides a summary of the Christian roots of the doctrine, its secularization, and eventual journey from Europe to the United States, leading to its American articulation in *Johnson v. McIntosh*.

#### Medieval Crusades and Christian Warfare

Scholars have traced the development of the doctrine to the Crusades to the Holy lands in 1026-1271. In justifying the Crusades, the Church established the idea of a worldwide papal jurisdiction which “vested a legal responsibility in the pope to realize the vision of the universal Christian commonwealth.”<sup>12</sup> This papal responsibility and power led to the idea of justified holy wars by Christians against Infidels.<sup>13</sup>

In 1245 the canon lawyer Pope Innocent IV wrote a legal commentary on the rights of non-Christians that proved very influential in the development of the Discovery Doctrine. He focused on the central legal problem raised by the medieval crusades and Christian warfare against non-Christian societies: “Under what circumstances might Christians legitimately dispossess pagan peoples of their *dominium*- that is,

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<sup>8</sup> *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543 at 574 (1823).

<sup>9</sup> Felix Cohen, *Handbook of Federal Indian Law*, 2d Ed. (1982), p. 488. See also, William C. Canby, Jr., *American Indian Law in a Nutshell* (2009, 5<sup>th</sup> Ed.) pp. 410-415; and Getches, Rosenfelt and Wilkinson, *Cases and Materials on Federal Indian Law* (1979), pp. 143-148.

<sup>10</sup> See discussion in Robert J. Miller, “The International Law of Colonialism: A Comparative Analysis,” 15 *Lewis & Clark L. Rev.* 847 (2011) (“In discussing Discovery, one is forced to use a comparative analysis to examine how the legal regimes of England, Spain, and Portugal developed the international law of European expansion and colonization, and then how they applied the Doctrine in Australia, Brazil, Canada, Chile, New Zealand, and the United States.”)

<sup>11</sup> This section references the work of Robert A. Williams, Jr., *The American Indian In Western Legal Thought*. Oxford University Press, 1990; James Muldoon, *Popes, Lawyers and Infidels*. University of Pennsylvania Press, 1979; and Miller, *supra*, n. 10. S. James Anaya, *Indigenous Peoples in International Law*. Oxford University Press, 2000, also provides helpful background on the early natural law discourse and the guardianship doctrine.

<sup>12</sup> Williams, *supra*, p. 13, n. 8.

<sup>13</sup> Miller, *supra*, note 9 at 855; Williams, *supra* at 29-30.

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their lordship and property?”<sup>14</sup> He first interpreted Christ’s instructions to Peter to “feed my sheep”<sup>15</sup> to be a justification for the papal jurisdiction over both Christians and infidels: “Both infidels and the faithful belong to Christ’s flock by virtue of their creation, although the infidels do not belong to the sheepfold of the Church, and so it seems from the aforementioned that the pope has jurisdiction over all men and power over them in law but not in fact.”<sup>16</sup> Then through a series of theological and legal arguments, Innocent IV concluded that it was legal for Christians to occupy territory invaded “because in such cases the legal title reverted to the Church and to the pope who represented all men.”<sup>17</sup> Thus, the Crusades were “just wars” fought for the “defense of Christianity” and to reconquer lands that had once belonged to Christians. With this commentary, Innocent IV provided a broad legitimizing mandate for wars of conquest and colonization in the lands of other peoples for medieval Europe.

In the early 1400’s, Innocent IV’s commentary on the rights and status of infidels was revived in the context of a dispute between Poland and the Teutonic Knights. The Council of Constance heard the arguments and issued its decision in 1417: the Church and Christian princes had to respect the natural law rights of pagans to property and self-government, but not if they strayed too far from European normative views. This gave Spain and Portugal great license as they formulated their “colonizing discourse” for Africa and the New World and the legality of seizing the lands and rights of non-Christians.<sup>18</sup>

### Issuance of Papal Bulls

Competition between Portugal and Spain to control the Canary Islands beginning in the 1300’s led to a ban of both nations from the islands in 1434 by Pope Eugenius IV. Portugal appealed to the Pope, arguing that Portugal’s discovery and conquest was motivated by its guardianship duty to the infidels. This led to a new doctrine based on Portugal’s rights of discovery and conquest that stemmed from the alleged need to protect Indigenous peoples from the oppression of others and the need to convert them. Eugenius IV consulted canon lawyers, who opined that “[a]lthough possessing *dominium*, if infidels demonstrated an incapacity to comport their conduct according to natural law, the pope could interfere with their rights under his indirect Petrine guardianship responsibility to shepherd and care for all the sheep of God’s flock.”<sup>19</sup> He issued the papal bull *Romanus Pontifex* in 1436 and authorized Portugal to convert the Canary Islanders and to control the islands on behalf of the papacy. In 1455, Pope Nicholas V additionally granted Portugal title to the lands of Indigenous peoples in Africa that Portugal had “acquired and that shall hereafter come to be acquired,”<sup>20</sup> and authorized Portugal “to invade, search out, capture, vanquish, and subdue all Saracens and pagans” and place them into perpetual slavery and to seize all their property.

Spain thus had to look elsewhere for lands to exploit. This laid the groundwork for King Ferdinand and Queen Isabella to sponsor Christopher Columbus’s westward passage to the Indies. After Columbus “claimed” the lands that he encountered in the New World, Isabella and Ferdinand sought papal ratification of their ownership of these lands. In May 1493, Pope Alexander VI obliged the Spanish Crown’s request by issuing the bull *Inter caetera divinai in May 1493*, ordering that the lands, which

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<sup>14</sup>See discussion in Muldoon, *supra*, note 8, pp. 6-14, which contains numerous citations from Pope Innocent IV’s *Commentaria doctissima in Quinque Libros Decretalium*; Williams, *supra*, at 13, note 4: Innocent framed the question as follows: “[I]s it licit to invade a land that infidels possess, or which belongs to them?”

<sup>15</sup> Although there is no citation in Williams or Muldoon, this appears to be the gospel of John 21:17.

<sup>16</sup> Williams, *supra*, p. 50, n. 5.

<sup>17</sup> Muldoon, *supra*, p.14.

<sup>18</sup> See discussion of this dispute in Williams, pp. 58-67, and Muldoon, pp. 107-119.

<sup>19</sup> Williams, *supra*, p. 72. See discussion in Muldoon, pp. 120-131.

<sup>20</sup> English translation found at: <http://www.nativeweb.org/pages/legal/indig-romanus-pontifex.html>

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"hitherto had not been discovered by others," and were now found by Columbus, belonged to Ferdinand and Isabella, along with "free power, authority, and jurisdiction of every kind."<sup>21</sup> The Pope also granted Spain any lands it might discover in the future, provided they were not "in the temporal possession of any Christian owner."

Portugal protested the geographical reach of *Inter caetera I*, after which Spain requested another bull. Pope Alexander obliged and issued *Inter caetera II*, drawing a line of demarcation 100 leagues west of the Azores. Spain was to have title to all territory west of this line, securing nearly all of North and South America. This line was later adjusted by the 1494 Treaty of Tordesillas between Spain and Portugal to a point 370 leagues west of the Cape Verde Islands. With this bull, Spain was given "the wherewithal by which [Spain] may be able to pursue [its] holy and laudable work [conversion], pleasant to immortal God ... and the expansion of the Christian Rule."<sup>22</sup>

Miller observed that, by 1494, the Doctrine of Discovery stood for four points, as defined by the Church, Portugal, and Spain: (1) the Church possessed the authority to grant Christian kings title and sovereignty over Indigenous peoples and their lands; (2) European exploration, conquest, and colonization was designed to assist the papacy in exercising its guardianship over the entire earthly flock; (3) Portugal and Spain held exclusive rights over other European countries to colonize the world; and (4) the mere discovery of lands by Portugal or Spain in their respective spheres of influence, and engagement in symbolic acts of possession on these lands, was sufficient to establish their ownership rights.<sup>23</sup>

### Secularization of the Doctrine

Clearly the doctrine of discovery had Christian roots, leading some to label it the "Christian doctrine of discovery." However, such a focus may discount the manner in which sixteenth century legal discourse merged theology and law. In Renaissance Spain, canon lawyers and theologians spent considerable time addressing the justice of Spanish rule in the Americas, focusing on related themes of papal claims to universal secular jurisdiction and the application of natural law principles to all human relationships, especially between nations. In 1532, Franciscus de Victoria (1480-1546), a Dominican scholar, delivered a three-part lecture entitled "On the Indians Lately Discovered,"<sup>24</sup> in which he provided a secular rationalization for discovery and conquest. He believed that the Indians possessed certain autonomous powers and entitlements to land, which Europeans were to respect. However, he methodically set forth rationale by which European Christian nations could "validly" acquire Indian lands or assert authority over them.<sup>25</sup> With Victoria systematically "desacralizing" the discourse on discovery, it became ripe for Protestant England after the English Reformation of Henry VIII to employ the doctrine for Britain's purposes.

### The Doctrine as Applied by the Protestant British Empire

In the 1823 *Johnson v. McIntosh* case discussed earlier, Justice Marshall referenced a 1497 patent issued by King Henry VII to John Cabot to illustrate the origin of the "principle" of "discovery."<sup>26</sup> Although the first discovery voyage did not take place until 65 years later, under the reign of his

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<sup>21</sup> English translation found at: <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>

<sup>22</sup> Williams, p. 81.

<sup>23</sup> Miller p. 860.

<sup>24</sup> Williams, p. 97. The lectures were not published until 1557.

<sup>25</sup> See discussion in Anaya, supra, n. 11, pp. 10-12.

<sup>26</sup> *Johnson v. McIntosh* at 576.

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granddaughter, Queen Elizabeth I, this patent demonstrated English interest in America as a possible colonial empire. Henry VII's charter of conquest notably limited Cabot's patent to avoid lands which had been granted to Portugal by the pope; he was to sail only to lands "unknown to all Christians" in the north, south, west and east—avoiding Africa to the south.<sup>27</sup> Henry VII issued other patents which also prohibited colonizing lands recognized to be under the papally granted sovereignty of the Portuguese Crown.

Britain, with the Reformation of Henry VIII and consequent shifts in the Empire's international and colonial priorities with changes in the Crown, took a more circuitous route to join Spain, Portugal and others in colonization of the New World. However, after practicing Spanish-influenced colonizing techniques in Ireland, Britain would easily transplant its Protestant crusade to the New World.<sup>28</sup> In the words of legal scholar Williams, "[t]he genealogy of the legal discourse of the Protestant crusade against the infidels of America traces a process by which the mediaeval discourses of the Catholic Church were domesticated and combined with other discursive practices appropriated from a variety of English and non-English sources."<sup>29</sup> Thus, for Indigenous Peoples worldwide, the impacts of discovery have been equally destructive whether they are based on Christian – be they Catholic or Protestant—or secular discourses of conquest.

In 1883, the Board of Foreign Missions described its work among the Native peoples as they transferred their work to Home Mission, in language reminiscent of 16<sup>th</sup> century colonial rationalizations for conquest.<sup>30</sup>

The [missions] were established in view of the spiritual state of the Indians. Their condition as lost sinners and their need of Christ as their savior, led our churches to seek their salvation. It was soon perceived that as a heathen people, and as speaking languages of their own, the same kind of missionary efforts were required for them as for the people of Africa and China. ... These efforts took the form of preaching, teaching in schools, training native missionary laborers, translating portions of the scriptures, etc., very much as if they lived in Syria or Persia. ... Many hundred of the Indians were brought to their Savior by his grace, lived exemplary Christian lives and triumphed at death in the hope of the Gospel.<sup>31</sup>

The United Nations Permanent Forum on Indigenous Issues has recognized that "[i]n all its manifestations, "discovery" has been used as a framework for justification to dehumanize, exploit, enslave and subjugate Indigenous peoples and dispossess them of their most basic rights, laws, spirituality, worldviews and governance and their lands and resources."<sup>32</sup> While the doctrine has been rejected by some international and domestic bodies, it continues to have life. As the United Nations Permanent Forum on Indigenous Issues has stated, it's "resilience remains because it is embedded in colonizing cultures and maintained in State laws, policies, negotiations and litigation positions."<sup>33</sup>

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<sup>27</sup> Williams, p. 121, citing *Documents of American History* 5-6 (H.S. Commager 8<sup>th</sup> ed. 1968).

<sup>28</sup> See discussion on Britain's brutal colonization of Ireland in Williams, pp. 136-146.

<sup>29</sup> Williams, p. 122.

<sup>30</sup> 2000 G.A. Task Force Report, p.208.

<sup>31</sup> See 2000 Report, p. 208.

<sup>32</sup> UN Permanent Forum on Indigenous Issues, "Study on the impacts of the Doctrine of Discovery on Indigenous peoples, including mechanisms, processes and instruments of redress," February 20, 2014 (E/C.19/2014/3)

<sup>33</sup> *Ibid.* para 2.

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## Contemporary Manifestations of the Doctrine

In 2005, the U.S. Supreme Court demonstrated the resilience of the doctrine, in *City of Sherrill v. Oneida Nation of N.Y.*<sup>34</sup> In this chapter of the Oneida Nation's ongoing efforts to regain its aboriginal lands, the Oneida Nation challenged taxes owed on parcels of land that were within their aboriginal lands. They argued that when they purchased land parcels and gained fee title, these parcels were "unified" in title with other lands recognized as their ancient reservation land by the Supreme Court,<sup>35</sup> so that the Oneida nation could assert sovereignty over these parcels and not be subject to state taxation. The Supreme Court, in rejecting their claim, made explicit reference to the Doctrine of Discovery as part of federal Indian law: "It very early became accepted doctrine in this Court that although fee title to the lands 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 - a right of occupancy in the Indian tribes was nevertheless recognized."<sup>36</sup> *City of Sherrill* presented a stark reminder to Native Nations, Native scholars and activists that the doctrine is alive and well in U.S. law, and that Indigenous peoples in this country and elsewhere will continue to suffer the impacts of this racist and discriminatory doctrine.

## Impacts of the Doctrine of Discovery on Native American Congregations in the PCUSA

As discussed earlier, Protestant denominations have played a large role in the materialization of the doctrine in the United States, beginning with the purported "discovery" by the English Crown. Legal and historical scholars agree that the expansion of the United States from its first European settlements was largely based on the doctrine.<sup>37</sup> Miller, for example, traces the metamorphosis from the Doctrine of Discovery into Manifest Destiny, as the elements of discovery were readily adopted into Manifest destiny. President Jefferson, for example "utilized Discovery in the Louisiana and Oregon Territories when he launched the Lewis and Clark expedition; when he made the Louisiana Purchase, even though he thought his actions were unconstitutional; and when he took steps to acquire the Pacific Northwest for the United States."<sup>38</sup>

As the 2000 G.A. Task Force report documents, the Presbyterian Church joined other religious denominations in assisting the U.S. government with its mandate of manifest destiny.<sup>39</sup> Throughout the nineteenth century, "the geographic expansion of the Presbyterian mission work among Native Americans often foreshadowed the movement of Euro- Americans to Native American lands,"<sup>40</sup> whether by presence as U.S. government agents to supervise the newly created Indian reservations as part of Grant's "peace policy," or as missionaries. Presbyterians joined other denominations in supporting the 1887 Dawes Act, under which the largest loss of Indian land occurred. In 1884-1847 Christian denominations who gathered yearly at Lake Mohonk Conference grounds in New York gave their strong support for the Dawes Act "solution," by which each Indian was to be given an allotment of land, thereby undermining the concept

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<sup>34</sup> 554 U.S. 197 (2005), n.1.

<sup>35</sup> *County of Oneida v. Oneida Indian Nation of N. Y.*, 470 U. S. 226, 234 (1985) (Oneida II).

<sup>36</sup> Ginsberg, writing for the majority, cited an earlier Oneida case: *Oneida Indian Nation of N. Y. v. County of Oneida*, 414 U. S. 661, 667-668 (1974) (Oneida I).

<sup>37</sup> See, e.g., Vine Deloria, Jr. and Clifford M. Lytle, *American Indians, American Justice* (1983); Robert A. Williams, Jr., *supra.*; Robert J. Miller, *Native America, Discovered and Conquered: Thomas Jefferson, Lewis & Clark, and Manifest Destiny* (2006) at 45-48, 64-71, 121-59.

<sup>38</sup> Robert J. Miller, *supra.*, note 3.

<sup>39</sup> See 2000 Report, pp. 208-211.

<sup>40</sup> G.A. Task Force Report 2000.

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of communally held tribal land. The Dawes Act opened the way for the federal government to declare all unallotted land as surplus and open for sale. Lands were allotted from 1887 to 1934. By the time the policy ended in 1934, with the passage of the Indian Reorganization Act, American Indians had lost 90 million acres of land.

Taking this theme into the 20<sup>th</sup> century, historian Fixico provided case studies to illustrate “Indian-white competition for natural resources in Indian Country,”<sup>41</sup> arguing that American Capitalism, deriving from a tradition of Eurocentrism, continued through the 20<sup>th</sup> century to exploit tribal nations for their natural resources. Case studies include the allotment of Muskogee Creek lands, the Osage murders and oil, Pueblo water rights in the Southwest, termination of the Klamath and timberlands in the Pacific Northwest, Chippewa fishing and hunting rights in the Great Lakes, and the quest for gold in the Dakota Black Hills. In almost all the case histories documented by Fixico, Presbyterian Native Americans were impacted.

### [Regional Stories of Presbyterian Support of Native Americans](#)

As the committee assigned to write this report deliberated, stories of Presbyterian presence to support Native American efforts to regain lands and maintain sovereignty emerged. While the Presbyterian Church may have been complicit in the Assimilationist policies and Manifest destiny in the United States, some stories of resistance serve as valuable precedents and models for support of Native Americans in their ongoing efforts for sovereignty, to regain aboriginal lands, and for fundamental human rights. Often the support grew out of understanding of Native peoples based on shared experiences and the ability to set aside a Eurocentric world view in order to appreciate the perspectives of Native peoples. Here then are some of those stories.

### **Worcester, Advocate for Cherokee Nation**

Samuel Austin Worcester (1778-1859), a Presbyterian minister who lived among the Cherokee people, played a crucial role in one of the most important cases regarding tribal jurisdiction in the United States, *Worcester v. Georgia*,<sup>42</sup> decided in 1832. Worcester moved to Cherokee Territory in 1828, where he worked to translate the Bible into Cherokee, using Sequoyah's alphabet, and assisted Elias Boudinot in publishing the *Cherokee Phoenix*, the first Indian newspaper in North America. He opposed removal of Cherokees west of the Mississippi River, as Georgia took Cherokee lands and dismantled Cherokee government in the face of inaction by the federal government. Worcester was arrested and convicted for disobeying Georgia's law restricting white missionaries from living in Cherokee territory without a state license. He and eleven other ministers published a resolution in protest of the Georgia law. Worcester knew that obeying the law would be tantamount to surrendering the sovereignty of the Cherokee Nation. Worcester was arrested on July 7, 1831 and quickly brought to trial and convicted. He stuck to his beliefs and was sentenced to prison on September 16, 1832.

On appeal of his conviction, the U.S. Supreme Court held that Georgia's law was unconstitutional. Chief Justice [John Marshall](#) wrote in his opinion that the federal government had an exclusive relationship with the Indian nations and recognized their sovereignty, above state laws. However, both President [Andrew Jackson](#) and Governor [George Gilmer](#) ignored the ruling, and Worcester served two

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<sup>41</sup> Donald L. Fixico, *The Invasion of Indian Country in the Twentieth Century: American Capitalism and Tribal Natural Resources* (1998).

<sup>42</sup> 31 U.S. 515.

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years of hard labor in prison. Under a subsequent Governor, he was pardoned and thereafter moved to Indian Territory, where he continued his work of preaching, translating and publishing.<sup>43</sup>

### Dirk Lay, Advocate for Pima People

Rev. Dirk Lay (1886-1944), a Presbyterian missionary who served the Pima people in Arizona, was largely responsible for legislation for the Coolidge Dam, which restored some of the water to the Pima or Akimel O'odham, "River People," that had been taken by white settlers. He moved to Sacaton in 1910 to serve for a year, to support the mission work of Charles Cook, and ended up staying for 24 years. "At once I saw the terrible need of the Indians because of lack of water for the fields,"<sup>44</sup> he said. "This was in a region where, in 1696, when Kino came from Mexico to this country, there was a surprising irrigation system built by the Indians, of miles of ditch, with all necessary laterals. But when I went there I found that the white people had gone to lands to the east, and had tapped the supplies of water. They took all; none was left for the Indians, who were barely existing."<sup>45</sup> He became a fierce advocate for Pima water rights.

He and his wife Elizabeth visited Congressmen and Senators in Washington as well as churches in the East, and urged their members to write and wire their senators and representatives in Congress. Testifying before a House subcommittee in 1923, Lay said: "The first Arizonan killed in action in France in the World War was a full-blood Pima Indian, a volunteer. When the telegram came on the reservation that he had been killed, six acres of wheat, the only means of support of his widowed mother, were drying up because this Government had permitted others of our race to take her water." In 1924, the Pima Indians did not have status as U.S. citizens and so could not use the courts to assert their water rights.<sup>46</sup> Construction of the Coolidge Dam started in 1924. It was finished in 1928 and dedicated in 1930.<sup>47</sup> Unfortunately, the water lasted only five years. Speculators had bought up desert land under the dam and sold it with water rights. Irrigation water decreased; in response, farmers began to drill so many wells and run so many hundreds of pumps day and night that the water table sank almost out of reach. The Gila River people would not have a dependable supply of water until after the Central Arizona Project canal was built and Congress passed the Arizona Water Settlements Act in 2004. Rev. Lay did not live to see this happen. He is remembered fondly by the O'odham people to this day.

### Self-Development of People and North Slope Borough

In 1972, the Arctic Slope Native Association was awarded funding by Presbyterian Self-Development of People (SDOP) to support a land rights and governance project. The North Slope of Alaska, which lies between the Brooks Range and the Arctic Ocean, covers an area of 228,800 square kilometers, 15 percent of the land area of the state. About 70 percent of these people are Inupiat Eskimos.<sup>48</sup> In 1990, Barrow, the largest village, had 3,400 residents, about 40 percent of whom were non-Inupiat. A Presbyterian church was established in Barrow in 1890.<sup>49</sup> In 1972, after oil was discovered in Prudhoe Bay on the North Slope, the people of the eight North Slope villages voted to establish a borough, a form of regional

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<sup>43</sup> An online biography can be found at <http://www.okhistory.org/publications/enc/entry.php?entry=WO020>

<sup>44</sup> An online biography can be found at <https://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=38443470>

<sup>45</sup> Ibid.

<sup>46</sup> 68th Congress, 1st Session, Senate, Report No. 129, San Carlos Federal Irrigation Project in Arizona, February 7, 1924, available online at: [http://water.library.arizona.edu/body\\_1\\_div.44.html](http://water.library.arizona.edu/body_1_div.44.html)

<sup>47</sup> See a 1924 video on the water project at <https://mail.aol.com/webmail-std/en-us/suite>

<sup>48</sup> Gunnar Knapp and Thomas A. Morehouse, "Alaska's North Slope Borough Revisited," a Report prepared for the *Polar Record*, Institute of Social and Economic Research University of Alaska Anchorage (1991).

<sup>49</sup> For a brief history of Presbyterian mission work in Alaska, see <http://alaskaweb.org/religion/presby.html>

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government, in order to tax the oil companies and build government infrastructure. Oil companies threatened any business who would help in this effort, and a political and legal battle ensued. The Native Association approached the Presbyterian SDOP for assistance with their legal challenges and were awarded \$85,000. They eventually won, established the North Slope Borough, and began collecting property taxes from oil field developments. Within a few years, the North Slope Borough became one of the richest local and regional governments in the United States as measured by taxable wealth and tax revenues per capita.<sup>50</sup> After the Native Association won their case, they returned the funds to SDOP with interest.<sup>51</sup> North Slope Borough government has provided the Alaska arctic Inupiat with means to greater political self-sufficiency.

### Santa Fe Presbytery and Mount Taylor

In 2014 Santa Fe Presbytery sold a church camp property on Mt. Taylor to the Pueblo of Laguna. The Laguna United Presbyterian Church, established in the 1870's, is the only Native American congregation in Santa Fe Presbytery. This sale represented an important return to the Pueblo of its aboriginal lands. The creation of national forests and national parks around the country involved the taking of Indigenous lands, including those of Pueblo peoples in New Mexico.<sup>52</sup> Through the Forest Reserve Act of 1891 the [President of the United States](#) set aside forest reserves from the land in the “[public domain](#)” without recognition of Indigenous ties to the land. In 1905, management of approximately 21 million acres of public lands in New Mexico and Arizona, almost one-eighth of the surface area of these states, was transferred from the Interior Department to the Bureau of Forestry. This included thousands of acres of aboriginal lands of peoples, including the Pueblo of Laguna. Later the establishment of Cibola National Forest, which included Mt. Taylor (“Tsibiina” to Laguna people) included aboriginal lands of Laguna Pueblo and other tribes. Efforts to regain these lands in the courts had failed.

In 2009, the Pueblo, along with four other tribes (Pueblo of Acoma, Zuni Tribe, Hopi Tribe and Navajo Nation), sought the support of the PCUSA as they sought to protect the sacred mountain landscape from harmful development and advocated for designation of Mt. Taylor as a Traditional Cultural Property under New Mexico law, after it was listed as eligible for the National Register of Historic Places. Citing a denominational social witness policy to support Indigenous peoples and land-based theologies, Stated Clerk Clifton Kirkpatrick submitted a letter of support for the designation. Although the 2009 designation was challenged in court, the tribes eventually prevailed in the New Mexico Supreme Court in 2014.<sup>53</sup>

### PCUSA and Standing Rock

Perhaps the most well-known instance of an Indigenous effort to claim aboriginal lands in contemporary times is that of the Standing Rock Sioux Tribe. From 2016 to 2017, the fight to resist placement of an oil pipeline under the Missouri River, a major source of water for Standing Rock, drew international attention for its human rights implications. The PCUSA offered support to the “water

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<sup>50</sup> In 1990 Prudhoe Bay and neighboring fields produced more than 1.7 million barrels of oil per day, or nearly a quarter of total U.S. oil production.

<sup>51</sup> Interview with Rev. Curtiss Karns. See also, “Coordinator for Presbyterian Committee on the Self-Development of People retires: Cynthia White reflects on 37 years of ministry around the world,” found at [www.pcusa.org/news/2016/3/1/coordinator-presbyterian-committee-self-development/](http://www.pcusa.org/news/2016/3/1/coordinator-presbyterian-committee-self-development/)

<sup>52</sup> See, e.g., Burnham, P., *Indian country, God's country: Native Americans and the national parks*. Washington, D.C.: Island Press, 2000.

<sup>53</sup> See <https://www.abqjournal.com/349263/top-court-upholds-mt-taylor-designation.html>

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protectors” in numerous ways, in person and through financial and in-person support.<sup>54</sup> In November 2016, representatives from the PCUSA joined a 500-person-strong gathering of interfaith clergy and lay leaders at the Oceti Sakowin prayer camp.

All these stories demonstrate the wealth of possibilities for supporting Indigenous peoples in their ongoing efforts for sovereignty and all the rights attached to it. They also demonstrate the power of one person’s willingness to set aside Eurocentric paradigms and live out the Gospel of Jesus Christ in new ways. Native peoples continue to live land-based theologies that center the lands they call home and seek out healthy lives despite being inheritors of generations of oppression. The UN Permanent Forum on Indigenous Issues has recognized that the impacts of the Doctrine of Discovery continue to be devastating, far-reaching and intergenerational.<sup>55</sup> Indigenous Peoples also experience ongoing adverse effects relating to “health; psychological and social well-being; denial of rights and titles to land, resources and medicines; conceptual and behavioural forms of violence against Indigenous women; youth suicide; and the hopelessness that many Indigenous peoples experience, in particular Indigenous youth.”<sup>56</sup>

### Implications for Future Engagement with Native Peoples

Many have observed that an enduring aspect of the Standing Rock resistance was the opportunity it afforded for education on international human rights of Indigenous Peoples. In numerous instances during media coverage, the UN Declaration on the Rights of Indigenous Peoples was cited, with particular focus on the rights to self-determination (Article 3), to lands (Articles 25-28) and the right to free prior and informed consent (Article 19). Indigenous peoples will no doubt continue to fight for their lands, water, and self-determination in numerous ways. The UN Declaration, and more recently the American Declaration on the Rights of Indigenous Peoples, have added frameworks for action aiming at the full protection and implementation of the rights of Indigenous peoples. The UN Permanent Forum in its 2014 “Study on the impacts of the Doctrine of Discovery on Indigenous peoples, including mechanisms, processes and instruments of redress,” emphasized that “[f]or both Indigenous peoples and States, there are compelling reasons to go beyond repudiation. It is essential to replace the colonial Doctrine of Discovery with contemporary international human rights standards and engage in just and collaborative processes of redress.”<sup>57</sup> Importantly, the Permanent Forum calls for a “clear shift of paradigm ... from colonial doctrines to a principled human rights framework, consistent with the United Nations Declaration on the Rights of Indigenous Peoples.” This should be the foundation for future PCUSA engagement with Indigenous peoples in the U.S. and elsewhere. Repudiating the doctrine of discovery may, so far, be merely a recognition of bad things that happened in the past, while remaining blind to current thought-and-actions, and their consequences.

Currently, 92% of the PCUSA membership is Caucasian and still (mostly-unconsciously) guided by the same trajectory of thought that is reflected in the doctrine of discovery. Guidance into a new way of thinking must come from sources outside the dominant culture. Today there are 95 Native American congregations in the PCUSA, a decrease of 15 since the GA Task Force Report was delivered in 2000. The Task Force anticipated that the number of Native congregations would decrease if systematic issues were not faithfully addressed by the denomination. Organizational patterns and methods reflect the

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<sup>54</sup> See, e.g., <https://www.pcusa.org/news/2016/8/29/pcusa-offers-support-standing-rock-sioux-protest/>; <https://www.presbyterianmission.org/story/pcusa-faith-leaders-join-standing-rock-solidarity-gathering/>; and <https://stonypointcenter.org/get-involved/latest-news/11-latest-news/266-standing-with-the-standing-rock>

<sup>55</sup> “Study on the impacts of the Doctrine of Discovery on Indigenous peoples, including mechanisms, processes and instruments of redress,” supra, n. 30., para 10.

<sup>56</sup> Ibid, para 11.

<sup>57</sup> Ibid., para 4.

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cultural thinking behind them. We know that the current PCUSA system does not serve Native American constituencies well, and continues to reflect some of the same blind spots that are endemic to the doctrine of discovery. On the one hand, our official PCUSA policy is for self-determination to guide Native American ministry. In reality leadership systems still are not effective in providing for the self-determination of Native American ministries, especially in times when funding shortfalls force unhelpful decisions from the top—unhelpful for staffing for Native American Ministry, for the development and nurture of upcoming Native American leaders, for Native American discipleship programs, or for Native American control over funding.

### **How PC(USA) congregations can support Native Americans in their ongoing efforts for sovereignty and fundamental human rights:**

1. Create denominational resources for education on racism which addresses the themes in this report, involving Native American Presbyterians and congregations.
2. Encourage the articulation of Native American theologies within the PCUSA and in PCUSA schools and seminaries, in contravention to historic actions to silence these contributions to the denomination.
3. Review the 2000 G.A. Task Force Report, including its supplemental recommendations, regarding all aspects of Native American ministry.
4. Direct the Presbyterian Mission Agency to create a speaker's bureau on Indigenous issues and publicize the list to the church
5. Direct the Office of the General Assembly to amend the Standing Rules of the General Assembly so that each meeting of the assembly begins with an acknowledgement of whose land the assembly is meeting on and that greetings to the assembly include a welcome from those Indigenous peoples currently living on the land.
6. Direct the programs, committees and agencies of the Presbyterian Church (U.S.A.) to begin each meeting with an acknowledgement of whose land they are meeting on and that greetings to the assembly include a welcome from those Indigenous peoples currently living on the land.
7. Encourage mid councils to begin their meetings with an acknowledgment of whose land they are meeting on and that greetings to the assembly include a welcome from those Indigenous peoples currently living on the land.
8. Encourage the Presbyterian Publishing Corporation to create resources that address the realities faced by Indigenous peoples in the United States and worldwide.
9. Encourage education on the human rights of Indigenous peoples as part of preparation for all mission workers.
10. Direct the Presbyterian Historical Society to identify and highlight resources related to Presbyterian Church (U.S.A.) and its relationships with Indigenous peoples.
11. Direct the Theology, Formation and Evangelism ministry to do a survey of courses taught in Presbyterian related seminaries and schools that focus on the histories of Indigenous peoples and current issues facing Indigenous peoples, identifying specific instructors, courses, texts and syllabi when possible.
12. Direct the Theology, Formation and Evangelism ministry to study the Book of Confessions, identify how our confessions may support the Doctrine of Discovery, how our confessions may challenge the Doctrine of Discovery, how our confessions provide evidence for ways the church can change, and the generational nature of our confessions, and report to the 225<sup>th</sup> General Assembly (2020).

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13. Direct the Presbyterian Mission Agency to include the Doctrine of Discovery and the histories of Indigenous peoples and current issues facing Indigenous peoples in its antiracism and training efforts.
14. Encourage mid councils to request that when they contract outside antiracism trainers that the trainers address Indigenous issues and include Indigenous trainers, adjusting the content to be appropriate to the context in which the training takes place.
15. Direct Unbound, in consultation with Native American Consulting Committee (NACC) to devote an issue to the Doctrine of Discovery, histories of Indigenous peoples and current issues facing Indigenous peoples.
16. Direct the PMA, OGA, in consultation with NACC to create, or identify existing, study resources on the Doctrine of Discovery, histories of Indigenous peoples and current issues facing Indigenous peoples.
17. Direct the Presbyterian UN Office (PUNO) to include monitoring of Indigenous Issues in the United Nations and to include coverages as part of PUNO reporting.
18. Support funding for the Native American Consulting Committee so that it can fully carry out its role in serving as a consulting body for the denomination on issues of Native American ministry and issues regarding Native Nations.

### Background:

*2016 Referral: Item 11-24. Churchwide Conversation on Race, Ethnicity, Racism and Ethnocentricity Report. Recommendation 7. Call the Presbyterian Church (U.S.A.) to Confess Its Complicity and Repudiate the Doctrine of Discovery, and Direct the Presbyterian Mission Agency and the Office of the General Assembly, in Consultation with ACREC, a. to initiate a process of review of the Doctrine of Discovery that would commence at the end of the 222<sup>nd</sup> General Assembly (2016) and that would i. include a comprehensive review of the history of the Doctrine of Discovery; ii. include a review of actions taken by other denominations and religious groups to repudiate the Doctrine of Discovery, including the explanatory and educational materials created and recommendations developed by these groups related to the Doctrine of Discovery; iii. include contacting Native American tribes and individuals in order to understand how this doctrine impacts them. b. Prepare a report that i. describes the Doctrine of Discovery and explains its history; ii. makes recommendations of how congregations in the Presbyterian Church (U.S.A.) [PC(USA)] can support Native Americans in their ongoing efforts for sovereignty and fundamental human rights; iii. describes how relationships with specific Native American individuals and tribes can be developed; iv. suggests specific ways in which congregations may recognize, support, and cooperate with Native American individuals, tribes, and nations who reside within their communities. c. Engage in dialogue with ecumenical partners concerning the doctrine. —From the Presbyterian Mission Agency (Minutes, 2016, Part I, pp. 46, 57, 299–302 of the print copy, 787–801 of the electronic copy).*