

“Unspoken Conspiracy”

Living within the Resonance of the Doctrine of Discovery

May-Lisbeth Brew



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<http://www.duo.uio.no>

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Abstract

This thesis analyze the perceptions of the Doctrine of Discovery, a religious principle incorporated into law during the “Age of Discovery” among people within religious organizations and traditional indigenous peoples in, what is today known, as the United States of America. The Doctrine of Discovery originated from 15th century papal bulls, and the directive from the Vatican in the papal bull *Dum Diversas* was that the Christian duty of explorers (sent out by their Christian Monarchs) was to “*invade, search out, capture, vanquish and subdue*” all non-Christians wherever placed. While the Doctrine of Discovery’s presence in courts has been documented by research there has not been much investigation on what the perceptions of the effects of this doctrine is in today’s world.

The thesis begins with a summary of the worldview behind and the principles set forth in the papal bulls known as *Dum Diversas* (18 June, 1452), *Romanus Pontifex* (January 8, 1454) and *Inter Caetera* (May 4, 1493) as well as the historic background for these papal bulls. It thereafter continues to investigate how the doctrine is perceived among people working with the theme within religious organizations and among traditional indigenous peoples in, what is today known as, the United States. The different perceptions of the effects of the doctrine rests in different worldviews, especially the different ways traditional indigenous and peoples within religious organizations conceive of land. The effect is that people within religious organizations tends to view the Doctrine of Discovery as a doctrine diminishing indigenous peoples human rights, and rights of sovereignty and self determination while the effects seen by traditional indigenous peoples also see the doctrine as diminishing the rights of the environment itself, which is perceived as a living entity with intrinsic value. This difference in perception of the consequences of the Doctrine of Discovery therefore highlights the way religious worldviews have confronted each other in the meeting between “the old world” and “the new world”, and how these differences is still present today.

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1 Introduction

The history of the doctrine and legal principle, today known as “The Doctrine of Discovery” (DOD), can be said to begin with a series of papal bulls sent out from the mid 1400s. These bulls laid a foundation for one of the first examples of international law in Europe, and through these bulls and their subsequent expansions, the established principle emerged legitimating that the first *Christian* nation who discovered non-Christian “new land” could claim the land for themselves in the name of God and by the “Right of Discovery”. This is how I begin my explanation when people ask me what I am writing about for my master’s thesis. Immediately, they are surprised as they did not know that the pope, or God, had anything to do with “the Age of Discovery”, but they also assume that this must mean that I am writing a thesis about something that happened long ago – and that I am reading and analyzing ancient Latin texts. So when I continue by saying: Then in May 2012 the United Nations Permanent Forum on Indigenous Issues (PFII) had “*The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests*”¹ as its special theme, they get confused. How have papal bulls and principles laid down 500 years ago anything to do with the rights of indigenous peoples today? In this thesis, I seek to answer that question, and to investigate how the impact of the Doctrine of Discovery is perceived among traditional indigenous peoples and religious communities in, what is today known as, the United States.

1.1 The *Christian* Doctrine of Discovery: Thematic Focus and Research Questions

The main title of this dissertation “Unspoken Conspiracy” is a quote from my interview with Faithkeeper Oren Lyons of the Onondaga Nation, part of the Haudenosaunee Confederacy², who uses this term to describe the different states’ acceptance of DOD. This is, as he later states, his interpretation, but this quote leads directly to the main issue of this thesis. DOD has been written about by legal scholars and historians who have investigated how it has influenced the legal system in the U.S and the rest of the British colonies. However, to my

¹UN, PFII, “Eleventh Session of the Permanent Forum”

<http://undesadspd.org/IndigenousPeoples/UNPFIIISessions/Eleventh.aspx> [Accessed July 30, 2014]

² Also known as the Iroquois Confederacy or the Six Nations Confederacy. In this thesis I will consequently use Haudenosaunee Confederacy as this is how the people of Onondaga Nation name their confederacy

knowledge nobody has tried to investigate how DOD is perceived and understood among people working with it today. No scholars have studied how religious communities who are now repudiating the doctrine relate to it and whether the religious communities and traditional indigenous peoples see the same consequences of DOD today.

Steven Newcomb³ who has done a lot of research and awareness work on DOD consequently names it the *Christian Doctrine of Discovery* due to the origin of the worldview behind DOD was influenced and promulgated by the Catholic Church in the 1400s⁴. As more and more churches are repudiating the doctrine⁵, and the history of the doctrine is gaining a wider audience, I found myself wondering, then what? It is easy to repudiate a doctrine or an old court decision, but what comes next? What kinds of changes are called for once one repudiates the doctrine? Does one see it as distancing oneself from an historical fact that does not have much influence today? Is one calling for a great change in American Indian Law? All of these questions popped up as I was working with the theme, and I could not find any answers to them. I found myself asking: What do people consider the relevance of the doctrine to be today? This thesis cannot answer all the above questions, nor can it be said to be speaking for all traditional indigenous peoples in the U.S. as they are an extremely diverse group. The same thing goes for the religious organizations. In addition to this it of course also exist indigenous peoples who are practicing Catholics, Episcopalians or even secular. So what can it do? It can give insight into how people within certain groups think about these issues. It can answer the question on whether these people see the same consequences of DOD today or if there are individual differences. It can tell us about different or similar perspectives on what DOD is, its effects, and hopes for the future.

To understand the present impact, and understandings, of the effects of the Doctrine of Discovery, one first has to realize that it is representative of a worldview. The doctrine is not the beginning or the end of this worldview – but it is a very explicit expression of the worldview of Christians’ “rights” vs. the non-Christians “lack of rights” as it was among the

³ Steven Newcomb (Shawnee/Lenape) is indigenous law research coordinator for the Sycuan Band of the Kumeyaay Nation in San Diego County, California. He is co-founder and co-director of the Indigenous Law Institute, a fellow with the American Indian Policy and Media Initiative at Buffalo State College in New York, and a columnist in the newspaper *Indian Country Today*. He has taught in legal studies at the University of Massachusetts, Amherst and in political science at the University of Colorado, Denver.

⁴ In this thesis “Christianity” describes the belief system, while “Christendom” is used when talking about the amalgamation of churches and states.

⁵ A list of repudiations of the discovery doctrine, made by different religious groups, that I have come across during my research are included in the appendix.

Christian Nations of Europe during the “Age of Discovery”. This thesis, then, enters the territory where the history of ideas mix with religion, where politics and law are entangled with history, and tries to investigate and understand how this is relevant for all of us today.

My main research question is:

How do different religious groups and traditional indigenous peoples perceive the Doctrine of Discovery and its consequences today?

1.1.1 Structure of the Thesis

In order to provide the reader with an outline of the thesis this section provides a breakdown of its structure and content. Chapter 2 presents the theoretical and methodological framework, which will be used to analyze the material. Chapter 3 gives the historical background of the origin of DOD, and continues to show how the doctrine is still in use in U.S. courts today. Chapter 4 gives an account of statements on DOD made by different religious groups, and traditional indigenous peoples. In Chapter 5 and 6 different conceptions and perceptions of DOD – both historically and its continued effects today are presented and discussed. In Chapter 7, these different ways of perceive DOD and its effects are recapped, contextualized and analyzed in relation the research objectives presented in Chapter 1, and the theory in Chapter 2. Lastly Chapter 8 gives a summary of the findings in in this thesis.

2 A Comparative Perspective from the History of Religions

The field of religious studies draws upon a variety of different cross-disciplinary perspectives, theories, and methods. And so perspectives from sociology, anthropology and critical theory influence this thesis, besides being grounded in a history of religion tradition. From the beginning, I have had a comparative perspective as a strategy, and although this is not a method in and of itself – it has influenced how I have interpreted the material. This is a strategy with a long tradition in the History of Religions, from the time of Max Müller: “*he who knows one, knows none*”⁶. However, as Michael Stausberg argues, to compare is a natural cognitive strategy⁷. Comparing is a way to make sense of the new and unknown, with comparing it to what one already knows, or to find differences and similarities between what Object A and Object B say. And already we entering some of the deeper theoretical and methodological challenges for this dissertation; it is clear, that what the researcher already knows will influence what is seen and, thereby, what is found in the material of this thesis. Theories are always models of reality and can never encompass all of reality; consequently, I found it difficult to choose a theoretical foundation that did not feel like a “straight jacket” upon my material. Through a toolbox approach, I have combined different theories that have allowed me as much freedom as possible when interacting with the research material. Still the theoretical choices have influenced this thesis to a great extent, also indicating the choice of method. The borderline between method and theory is a fluent one, and it is difficult to pinpoint where theory ends and methodology begins.

2.1.1 Comparative Worldviews

The term “worldview” often shows up in academic literature without much ado. For instance, in the book *Religion; The Social Context*⁸, the term is used without an explanation. When looking at the glossary one gets the following definition: “*a comprehensive meaning system, locating all experiences of the individual or social group in a single general explanatory arrangement*”⁹. When I first thought that to use the “worldview” to explain my findings would be a good idea, my comprehension of the term was that it was easy and settled. And it

⁶ Friedrich Max Müller quoted in Stausberg, Michael, “Sammenligning” in *Metode i Religionsvitenskap*, ed. Siri Kraft and Richard Natvig, Pax Forlag, Oslo, 2006 pp. 29- 50, 30

⁷ Ibid: 32

⁸ McGuire, Meredith B: *Religion, The Social Context*, 5th ed. Wadsworth Group, USA, 2003

⁹ Ibid, 338

would be easy to find theory explaining the different effects of a worldview or how you could analyze it. Instead it turned out that I entered into a field where academics have worked to formulate different terms, explaining different parts or different conceptions of what a worldview is. After carefully examining the history of “worldview”¹⁰, it became apparent that the scholars had tried to convey something slightly different by renaming and reframing the term, or they tried to get rid of the preconceptions entangled in the term. “Worldview” can be a problematic concept and may end up being a model explaining everything without taking the individuals agency seriously¹¹. “Worldview” is deeply connected to the term *Weltanschauung*, according to linguist James W. Underhill, Wilhelm von Humboldt’s version of worldviews differentiated between *Weltansicht* and *Weltanschauung*. *Weltanschauung* are visions of the world that situate humanity in the world – such as ideologies or faiths, and one can live in a world of several competing *Weltanschauung* at the same time. On the other hand, *Weltansicht* is exclusive and language bound¹². “A worldview as-*Weltansicht* is the capacity which language bestows upon us to form the concepts with which we think and which we need in order to communicate”¹³. The same writer states that words are not innocent: instead, they are shaped and limited by reigning political systems, ideologies and faiths. Words that describe conceptions are, to a great extent, taken over and integrated into the “worldview of a dominant conceptual paradigm”¹⁴.

Michel Foucault wrote about *epistemes* instead of worldviews, and he writes: “In any given culture and at any given moment, there is always only one episteme that defines the conditions of possibility of all knowledge [...]”¹⁵. Still, Foucault is eager to separate his *episteme* from “worldview” In the introduction of *The Archaeology of Knowledge and The Discourse of Language*, he decisively writes that an *episteme* can be suspected of being something like a worldview, but it is not as he has no intention of using “categories of cultural totalities”¹⁶ to impose structural analysis on history. Other academics, for instance

¹⁰ Naugle, David K: *Worldview: The History of a Concept*, Wm. B. Eerdmans Publishing Co, Michigan, 2002 and Neville, Robert Cummings “Worldviews”, *American Journal of Theology & Philosophy*, Vol. 30, No 3, 2009, 233-243

¹¹ Naugle, 2002, 331-332

¹² Underhill, James W, *Humboldt, Worldview and Language*, Edinburgh University Press, 2009, 54

¹³ *Ibid*, 56

¹⁴ Underhill, James W, *Creating Worldviews, Metaphor, Ideology and Language*, Edinburgh University Press, 2011

¹⁵ Foucault, Michel *The Order of Things: An Archaeology of the Human Sciences*, Vintage Books, New York, 1994 [1970], 168

¹⁶ Foucault, Michel: *The Archaeology of Knowledge and The Discourse of Language*, Vintage Books, New York, 2010 [1972], 15

historian of religions Gavin Flood, prefers to turn to narrative theory¹⁷ to describe people's ways of relating to the world around them. It became clear that using the "worldview" was not something I could do without reflections on the matter. Why not choose narrative theory or discourse theory instead? Nonetheless, I found the "worldview" useful because it conveys its sense of meaning – it's a way of looking at the world. And while all individuals have their own unique worldview this is heavily influenced by their culture¹⁸. Different cultures have different dominant cultural ways of looking at the world. However, the individual can reject and accept parts of this worldview, and you will be hard pressed to find two people who have the exact same view of the world. Still, one cannot escape the dominant cultural worldview completely as your mind to some extent is modeled on the values, narratives and *epistemes* in mainstream culture. Even when rejecting a part of the dominant worldview, you are in a sense relating to it. My reason for finally using "worldview" as an analytical term was quite frankly that I found it a wider term than narrative theory¹⁹ and because the term was used by several of the people I interviewed on their own volition.

2.1.2 What are the characteristics and effects of a Worldview?

But what does a worldview entail? Or rather, for *this* thesis, what does a worldview entail? Although most agree that a worldview entails how an individual or group looks at the world²⁰. What then, are the effects of a worldview? Well, as Foucault pointed out knowledge is constructed, and so are humans' evaluations of what is false and true, valid and invalid and so forth. Foucault illustrates this point with what happened to Mendel, arguing that nineteenth-century botanists and biologists could not see the truth of Mendel's findings because they were themselves within a perspective where they could not accept that "hereditary traits" was a new object within their field that demanded new conceptual tools. "*Mendel spoke the truth, but he was not dans le vrai (within the true) of contemporary biology discourse*"²¹. In other words, what Foucault suggests is that the discourse itself has limits for its communication, and statements made are not just understood, but categorized and labeled after what "is within" the true, false, valid and invalid domains of the specific

¹⁷ See: Flood, Gavin: *Beyond Phenomenology: Rethinking the Study of Religion*, Continuum, London, 2007 [1999], 118-141

¹⁸ Underhill, 2011, 5-7

¹⁹ Neville states that worldview "is a useful vague notion that facilitates communication in multi-disciplinary and multi-cultural contexts" he continues to enrich this vague notion with by defining a worldview as: "a cultured set of signs for orienting intentional behavior that has a spectra of (1) scale, (2) sophistication, (3) valuation, (4) identity, and (5) commitment". Neville, 2009, 233-234.

²⁰ See for instance: Naugle, 2002, Underhill 2011, Neville, 2009, McGuire 2003

²¹ Foucault, 2010 [1972], 224

discourse. My understanding of the effects of worldview follows this model. The worldview integrated in our culture shapes the limits of our discourse and our understandings; it shapes the boundaries of how our own personal worldview is formed. So why is this relevant for this thesis? Historian of religions Philip Arnold writes, “*How land is understood to be “owned” is a key consideration in how distinctive native and modern worldviews understand their religiousness*”²². As this thesis investigates how religious groups (modern worldviews) and indigenous peoples (native worldviews) in the U.S understand and relate to DOD – a Doctrine concerned with land rights – it is natural to have “worldview” as an analytical tool for the material gathered.

2.1.3 What is DOD and the Framework of Domination?

The Doctrine of Discovery is an analytical discursive concept used to describe a value system which is in direct opposition of traditional indigenous understandings of what land is, how one inhabits the world, and understandings of being human. DOD, although not explicitly named at the time, was the foundation for the colonization of "the New World" during "the Age of Discovery". It originated from 15th century papal bulls, and the directive from the Vatican was that the Christian duty of explorers (sent out by their Christian Monarchs) was to “*invade, search out, capture, vanquish and subdue*”²³ all non-Christians wherever placed.²⁴ This theological principle led directly to the legal principle: the Doctrine provided "under established international law, that newly arrived [Christian] Europeans immediately and automatically acquired property rights over native lands and gained governmental, political, and commercial rights over the ["heathen"] inhabitants without the knowledge nor the consent of the indigenous peoples."²⁵

The Discovery Doctrine is still an active principle in the law in the U.S today. In this thesis, I will use Robert Miller’s definition of the legal elements constituting the Doctrine of Discovery. These elements are: 1. First Discovery, 2. Actual occupancy and current possession, 3. Preemption or European title, 4. Indian title, 5. Tribal limited sovereign and

²² Arnold, Philip “Sacred Landscapes of New York State and the Problem of Religion in America” in *Sacred Landscapes and Cultural Politics, Planting a tree*, ed. Philip Arnold and Ann Grodzins Gold, 2001, 170.

²³ *Dum Diversas* in Davenport, Frances Gardiner: *European Treaties bearing on the History of the United States and its Dependencies to 1648*, the Carnegie Institution of Washington, Washington D.C, 1917, 12.

²⁴ Doctrine of Discovery, “Doctrine of Discovery? What’s that?” <http://www.doctrineofdiscovery.org/> [Accessed 23.08.2014]

²⁵ Miller, Robert J, *Native America, Discovered and Conquered, Thomas Jefferson, Lewis & Clark, and Manifest Destiny*, Greenwood Publishing Group, U.S, 2008, 1. Words within [] are my additions if not specified otherwise.

commercial rights, 6. Contiguity, 7. Terra Nullius, 8. Christianity, 9. Civilization and 10. Conquest²⁶.

Another important perspective comes from Steven Newcomb. He presents a well-founded argument, namely the U.S government has denied indigenous nations a free existence and has expropriated indigenous land by means of a dominating conceptual system – the framework of dominance²⁷. This conceptual system originates within a religious framework, beginning with the Old Testament and later with the pope claiming spiritual and temporal *dominion* of the world. The papal bulls sent out in the 1400s further develop this idea and are part of the basis of early international law: the law of nations. In these papal bulls, there is a clear division of humanity into the categories “heathen” and “Christian”. Newcomb argues that this dominating conceptual framework still exists, albeit dressed in secular language, in U.S law. A key point of his book *Pagans in the Promised Land* is to show how “*discovery, dominion, domestic dependent nation, tribe and so forth, are cultural and cognitive products of the dominating society*”²⁸. These concepts are part of a larger worldview that has been integrated into U.S legal systems²⁹. The central point is 1) that DOD rests squarely on these preconceptions, part of which can be traced back to the narratives in the Old Testament, and 2) that the framework of dominance is so present in legal, political and individuals’ conceptual systems within Western societies that people generally are unaware of it. It would not be far fetched to interpret Newcomb as saying that Western legal systems have met their Mendel-problem when faced with DOD. Lately, Newcomb has also criticized one of the UN’s definitions of indigenous peoples. This definition asserts:

Indigenous or aboriginal peoples are so-called because they were living on their lands before settlers came from elsewhere; they are the descendants - according to one definition - of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means.³⁰

²⁶ For a definition of all the elements see: Miller, 2008, 3-5.

²⁷ The Framework of Dominance is a term later used to describe Steven Newcomb theory on how the dominant conceptual system has used categories to exert dominion over Indigenous Peoples. See for instance: Newcomb, “On Dina Gilio-Whitaker’s Colum, “Moving From Sovereignty to Autonomy” <http://indiancountrytodaymedianetwork.com/2014/03/23/dina-gilio-whitakers-column-moving-sovereignty-autonomy> [Accessed 30.06.2014] or United Nations, Economic and Social Council, PFII “Preliminary study of the impact on indigenous peoples of the international legal construct known as the Doctrine of Discovery” 4. Feb. 2010 <http://www.un.org/esa/socdev/unpfii/documents/E.C.19.2010.13%20EN.pdf> [Accessed 30.06.2014]

²⁸ Newcomb, Steven T: *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery*, Fulcrum Publishing, Golden, 2008, 18

²⁹ For more information see: Newcomb, 2008

³⁰ Icelandic Human Rights Centre “No. 9 The Rights of Indigenous Peoples (Rev.1) <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/generalcomments/unfactsheets/No.9therights/> [Accessed

Newcomb criticizes this because it rests within the same framework of dominance as the Doctrine of Discovery itself. According to Newcomb, the UN defines indigenous peoples as those who are under domination, and it presumes domination by sovereign states: to be indigenous is, in essence, to be dominated. This perspective will be examined more closely as I scrutinize the UN Declaration of the Rights of Indigenous Peoples (UNDRIP), as well as perspectives from people from Onondaga Nation on citizenship and sovereignty in chapters 6 and 7.

2.1.4 Chosen People, Manifest Destiny and American Exceptionalism

In the introduction to his book *Chosen Peoples*³¹, Anthony D. Smith writes that he was struck in his research about nationalism by the importance of biblical backgrounds and pre-modern traditions. He states that belief inherited from the Old Testament about chosen peoples and sacred territories was a part of forming a sense of national identity in the early modern epoch, both in Europe and in America. This, Smith writes: “*had implications for nationalism. As a European ideology and movement, it owed much to biblical and religious motifs and assumptions [...]*”³². He further makes the case that these beliefs are still a part of modern society, although in a secularized form and that they are “*essential to the way we see our modern world, a world divided into peoples and national states*”³³. This worldview, Smith argues, still influences the world, which is seen in the international system made up of sovereign national states. The author separates between seeking the origin of the concept of national identities and seeking answers about the how nations and national identities endure. Smith sees religion as vital both to the origin of nationalism and its endurance:

What is vital for nationalism and the nation, therefore, [... is] the very core of traditional religions, their conception of the sacred and their rites of salvation. This is what the nationalists must rediscover and draw upon in fashioning their own ideals of community, history and destiny.³⁴

Tracing different aspects of nationalism and national identity, Smith focuses specifically on the idea of a chosen people. He traces this idea back to the “*Divine Covenant*” and states that

18.06.2014] This definition has changed somewhat, but to some extent Newcombs argument still stands as pre-conquest, pre-colonization, or pre- present state boundaries are included in the new definition. For the new document see: United Nations, Office of the High Commissioner, Fact Sheets, “Indigenous Peoples and the United nations Human Rights System”, 2013

<http://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf> [Accessed 18.06.2014]

³¹ Smith, Anthony D: *Chosen Peoples – Sacred Sources for National Identity*, Oxford University Press, Oxford, 2008 [2003], VIII, 5

³² Ibid, VIII

³³ Ibid, VIII

³⁴ Ibid, 15

the chosen people act like a model “*or exemplum of what it means to be holy, and hence like God*”³⁵. The biblical prototype for the divine covenant and chosen people is connected to the story of Abraham. The story of the Hebrews being a chosen people continues with the biblical stories of Moses and Joshua. Smith also states that being a chosen people also contains a separation from other peoples (Egyptians or Canaanites) as the Israelites are to follow the laws of holiness³⁶. This idea of being a chosen people is forceful “*and even in later epochs, powerful echoes of that belief continued to be heard*”³⁷. Newcomb sees this echo in DOD and the papal bulls, writing that the model of “chosen people – promised lands” was an important part of the “*conceptual and religious backdrop of the “right of discovery” in the Johnson ruling.*”³⁸. He reads the story of Abraham in the Old Testament as a “Colonial Adventure Story” that served as a model for the colonial enterprise of settling America. The Lord gave the Israelites a divine land grant, and this can be seen as analogous to a papal bull and the charters sent out by Christian monarchs. The land of Canaan was, after all, inhabited by the Canaanites and vanquished by the Israelites³⁹. Newcomb stresses the fact that Christian discoverers saw themselves as having a divine right to take possession of the territory of the “heathens” as a direct result of “*their belief that God had previously commanded the Hebrews to take possession of Canaan and that they, as Christians, had “become” God’s “new chosen people”*”⁴⁰. All “heathen” lands became from Christendom’s worldview “promised lands”. The difference from the Old Testament version is that instead of it being God granting this divine right it is his representative on earth (the pope or the divine king), which has taken over this responsibility. That this idea was present in the English colonies Newcomb exemplifies by quoting Sir Henry Summer Maine⁴¹:

In North America, where the discoverers of the new colonists were chiefly English, the Indian inhabitants were compared almost universally to the Canaanites of the Old Testament, and their relation to the colonists was regarded as naturally one of war almost by Divine ordinance⁴².

That the U.S saw themselves as a chosen people can be seen for instance by a proposal of Benjamin Franklin⁴³. He suggests “*the image of Moses leading the Israelites across the Red*

³⁵ Ibid, 51

³⁶ Ibid, 59

³⁷ Ibid, 65

³⁸ Newcomb, 2008, 37

³⁹ Ibid, 39

⁴⁰ Ibid, 43

⁴¹ A british comparative jurist and historian in the 1800s

⁴² Sir Henry Summer Maine, quoted in Newcomb, 2008, 46

⁴³ Ibid, 53, to the Continental Congress in 1776

Sea should appear on the Great Seal of the United States”⁴⁴. Thomas Jefferson proposes that the same seal should depict “*the Israelites moving into the promised land guided by clouds and fire*”⁴⁵. Newcomb explains how this religious imagery has been used more recently by quoting a speech given by President Reagan on the 200th anniversary of the U.S constitution where the President describes the constitution as “*a covenant with the Supreme Being to whom our founding fathers did constantly appeal for assistance*”⁴⁶. Newcomb aptly points out that by using the word *covenant*, Reagan is indirectly pointing to the agreement between God and the Israelites. In the same speech, Reagan also states that George Washington⁴⁷ was “*thinking of the great and good fortune of this young land: the abundant and fertile continent given us*”⁴⁸. This narrative present in American culture, and revealed by Newcomb, is a commonplace theme and will be included as a background perspective throughout this thesis.

Another important term, “Manifest Destiny”, was coined in 1845 by John L. O’Sullivan as he wrote an editorial concerning the U.S annexation of Texas. In this editorial he took a stance towards foreign nations who were trying to interfere with the U.S expansion. O’Sullivan states that these foreign nations were⁴⁹ “*checking the fulfillment of our manifest destiny to overspread the continent allotted by Providence for the free development of our yearly multiplying millions*”⁵⁰. In the same year, O’Sullivan also wrote another editorial for the *New York Morning News* named “The True Title” which again used Manifest Destiny.⁵¹ However, Robert Miller⁵² documents in his book *Native America Discovered and Conquered* (2008) that even though the idea of westward expansion was not given a name before O’Sullivan dubbed it Manifest Destiny, the idea itself had deeper roots and can be traced all the way back to Thomas Jefferson⁵³. O’Sullivan writes in “The True Title” that the American continent by “*The God of nature and of nation has marked it for our own; and with His blessings we will firmly maintain the incontestable right He has given, and fearlessly perform*

⁴⁴ Ibid, 53

⁴⁵ Ibid, 53. For more examples see: Ibid, 51-58

⁴⁶ Ibid, 54

⁴⁷ He was commenting a quote from Washington who had stated that it has seemed that US independence had been guided “by some providential agency”. Ibid, 55

⁴⁸ Ibid, 55, my emphasis

⁴⁹ Miller, 2008, 118

⁵⁰ O’Sullivan quoted in Ibid, 118

⁵¹ Ibid, 118

⁵² Robert J. Miller is professor at the Lewis and Clark Law School and chief justice of the Confederated Tribes of the Grand Ronde in Oregon and a citizen of the Eastern Shawnee Tribe of Oklahoma.

⁵³ Miller, 2008, 77-86, 117-118, 120-161

*the high duties He has imposed*⁵⁴. The idea of Manifest Destiny is somewhat akin to the worldview behind the Doctrine of Discovery, as both draws on the rights of the Christians to “control the lands of non-Christian, non-European peoples in the alleged service of the Christian God”⁵⁵.

“American Exceptionalism” is a term that is used in different ways in the U.S. today. However, the term, no matter how it is used, has according to Patrick Deneen a theological underpinning and can be connected to the idea of Manifest Destiny⁵⁶. In his article “Cities of the Man on the Hill”, he describes three different types of political thinking that have in some form or other integrated the idea of American Exceptionalism. The general idea of this term is that America in some way or form is seen as having a “mission”⁵⁷. Deneen argues that from the beginning “America understood itself to occupy a providential place and role in the course of human and divine history”⁵⁸. Drawing on the writings of Ernest Lee Tuveson and Lawrence Towner, Deneen also connects the idea of American Exceptionalism to a chosen people–promised land model: “The American self-conception as “chosen people” occupying a “New Israel”, and thus, the consistent appeal of the image of a “city on the hill,” reflects the pervasive view of America’s special role in achieving a “New Jerusalem”⁵⁹. The idea of American Exceptionalism is not an historic term, it is still present in today’s U.S and in some sense can be said to have had a resurgence since the election of President Obama⁶⁰.

2.2 Methodology and Field Research

The main reason for choosing a qualitative method is based on the intent of the method, namely, to “gain understanding of a social phenomena”⁶¹. For this thesis, the purpose is to gain understanding on how traditional indigenous and religious people relate to DOD today. To accomplish this goal, one has to enter the realm of interpretation and contextualization,

⁵⁴ John L. O’Sullivan quoted in Ibid, 119

⁵⁵ Ibid, 119

⁵⁶ Deneen, Patrick J, “Cities of a Man on the Hill”, *American Political Thought*, Vol 1, No. 1, 2012, 46, 48-49

⁵⁷ What exactly this mission is will vary between groups and over the span of time.

⁵⁸ Ibid, 30

⁵⁹ Ibid, 30

⁶⁰ Ibid, 29

⁶¹ Thagaard, Tove: *Systematikk og Innlevelse – en innføring i kvalitativ metode*, 3.utg, Fagbokforlaget, Bergen, 2009, 11. “En viktig målsetning med kvalitative tilnæringer er å oppnå en forståelse av sosiale fenomener” (My translation).

and the best way of getting the material was to choose a method that is “grounded in the lived experiences of people”⁶² and has the possibility to grasp different layers of meaning.

2.2.1 Previous Research and Secondary Sources

There has been a lot of historical and juridical research on the Doctrine of Discovery⁶³. In fact, according to Joshua J. Jeffers, in the past two decades alone more than 750 articles and several books have had a critical look at a court case that is instrumental for the development of DOD in the U.S, *Johnson v. M’Intosh* (1823)⁶⁴. So needless to say, I have not had the opportunity to include all the work that has been done on the theme before. For the historical background of the papal bulls I have used, among others, the Catholic theologian Michael Stogre’s *That the World may Believe: The Development of Papal Social Thought on Aboriginal Rights* (1992) and *Popes, Lawyers and Infidels* (1979) by James Muldoon⁶⁵. Secondly, I have made use of academic literature about the origin of the Doctrine of Discovery and its influence in U.S courts. My main resources for this have been Robert Miller’s *Native America Discovered and Conquered: Thomas Jefferson, Lewis and Clark and Manifest Destiny* (2008) and Steven Newcomb’s *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery* (2008). Other secondary sources include B.A Hinsdales’ *The Right of Discovery* (2011 [1888]) and indigenous scholar Vine Deloria’s *God is Red: A Native View of Religion* (2003 [1973]). Lastly, a contribution that has been important for this work is the UN’s “Preliminary study of the impact on indigenous peoples of the international legal construct known as the Doctrine of Discovery” (Preliminary study). For the thesis, this work has been central as the different scholars have deconstructed American law and traced its historical origin back to the papal bulls. Newcomb especially has taken this approach, while Miller has penetrated American Indian Law and found and defined 10 legal elements included in the doctrine. Miller has also edited a book looking into how the Doctrine of

⁶² Marshall, C and G.B Rossman: *Designing Qualitative Research*. 5th ed. SAGE Publications Inc, California, 2011, 2

⁶³ To mention some: Williams, Robert A, *The American Indian in Western Legal Thought: The Discourses of Conquest*, Yale University Press, New Haven, 1990, Robertson, Lindsay Gordon *Conquest by Law: How the Discovery of America Dispossessed Indigenous people of their Lands*, Oxford University Press, New York, 2005, Kades, Eric “The Dark Side of Efficiency: *Johnson v. M’Intosh* and the Expropriation of American Indian Lands” *University of Pennsylvania Law Review*, 148 U. PA.L. REV. 1065, 2000

⁶⁴ Jefferts, Joshua J, “Of Laws and Land: The Doctrine of Discovery in History and Historiography”, *Maryland Historical Magazine*, Vol. 108, 2013, pp 91- 115

⁶⁵ As well as James Muldoon’s article “Papal responsibility for the infidel: Another look at Alexander VI’s Inter Caetera” *Catholic Historical Review*, 64, 1978, pp 168-184

Discovery has been used by other British colonies⁶⁶. The Preliminary study on the other hand collects a range of examples of how the doctrine of discovery is present in U.S legal cases. This force of indigenous scholarship has been highly influential on this thesis. However, they are all focused on how DOD has influenced law. This makes sense as the legal scene is where the Doctrine of Discovery is made explicit and the groundwork had to come from the legal scene. However, I have not found any previous research that investigates people's conceptions of the Doctrine of Discovery – or how it is perceived today.

2.2.2 Primary Sources

The primary sources in this thesis consists of five main groups: first there is the historical material, namely, the three papal bulls, *Romanus Pontifex*, *Dum Diversas* and *Inter Caetera*⁶⁷ as they have been translated in *European Treaties bearing on the History of the United States and its Dependencies to 1648* and *The charter granted to John Cabot by Henry VII*⁶⁸. Then there are collections of legal material: various court documents from the U.S. as well as the petition Onondaga Nation filed against the United States with the Inter-American Commission on Human Rights (IACHR) in April 2014⁶⁹. Thirdly, there are the religious groups' responses, including repudiations, statements, and letters relating to DOD. Furthermore, I have also gathered material by being present on two listservers, the tworow-listserve and the DOD-listserve over time⁷⁰. Here I have received press releases that will be used in this thesis. These listservers have also been great conveyers of relevant news that is included as primary material. Finally, the greatest part of my primary sources is in-depth interviews.

2.2.3 Selection

For this dissertation, I have limited the selection of religious groups down to three, the Episcopal Church (E), The Society of Friends (RSF) and the Catholic Church (C). The

⁶⁶ Miller, Robert J, Jacinta Ruru, Larissa Behrendt and Tracy Lindberg; *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies*, Oxford University Press, Oxford, 2010

⁶⁷ Due to my limited skills in Latin I had to use Davenport's translation for my analysis: Davenport, Frances Gardiner: *European Treaties bearing on the History of the United States and its Dependencies to 1648*, the Carnegie Institution of Washington, Washington D.C, 1917

⁶⁸ Yale Law School, The Avalon Project: Documents in Law, History and Diplomacy, "The Letters Patents of King Henry the Seventh Granted unto Iohn Cabot and his Three Sonnes, Lewis, Sebastian and Sancius for the the Discouerie of New and Unknowen Lands" February 3, 1498

http://avalon.law.yale.edu/15th_century/cabot01.asp

⁶⁹ The court cases used in this thesis are listed in the bibliography

⁷⁰ Two Row Wampum Announcements tworowrenewalannounce@lists.riseup.net and Doctrine of Discovery DOD_STUDY_GROUP@listserv.syr.edu.

Episcopal Church and the Society of Friends were among the earliest church denominations in the U.S. to make public statements repudiating DOD. While the Religious Society of Friends wanders in the outskirts of denominations that can be identified as “Christian”, the Episcopalians are mainstream Protestants. The fact that these denominations are very different both in theology and organizational structure made me curious as to how they had begun their repudiations processes and how they were working with the theme today. The Episcopal Church is also relevant because they have a shared history with the Church of England who has been the state Church of England during the time when the British Monarch were giving out charters to vast areas in the United States. The Catholic Church, on the other hand, is natural to include in this thesis as a Christian group of particular interests as the Doctrine of Discovery has strong historical roots in the papal bulls sent out by the papacy in the 1400s and several of the elements defined as constituting DOD are formulated in the papal bulls: *Dum Diversas* (1452), *Romanus Pontifex* (1455) and *Inter Caetera* (1493). Lastly, I wanted indigenous perspectives on the Doctrine of Discovery, but I was highly uncertain as to whether this would be a possibility due to limited field research. I was aware that the Haudenosaunee Confederacy had run into the Doctrine of Discovery in the case of *City of Sherrill v. Oneida Indian Nation* (2005)⁷¹ and had knowledge on the issue. My reason for wanting to interview indigenous people was that I wanted to ground my thesis in how people perceive DOD today. In the end, I got three interviews with people from the Onondaga Nation of the Haudenosaunee Confederacy.

2.2.4 The Catholic Church, The Episcopal Church, and The Religious Society of Friends

I will not write as extensively on the structure of the Catholic Church as the other religious groups, as the Catholic Church is the biggest of the three main branches within Christianity and a well-known religious organization⁷². The pope is considered the leader of the community as the Code of Canon Law assigns to him universal power of the church as a whole. Therefore the Pope is the supreme leader of the entire Church and runs it together with his curia in the Vatican⁷³. The Vatican, which is the smallest international recognized independent state in the world, also has observer status in the United Nations: the Permanent

⁷¹ The Doctrine of Discovery is the first quotation in the opinion of the court in this case.

⁷² Halvorsen, “Den katolske kirke” http://snl.no/den_katolske_kirke [Accessed 12.06.2014] and Allen “The Catholic Church” <http://www.jstor.org/stable/25462355> [Accessed 12.06.2014]

⁷³ Den Katolske Kirke “Organisasjon” <http://www.katolsk.no/organisasjon> [Accessed 12.06.2014]

Observer Mission of the Holy See to the United Nations. Through this role the Vatican has attended the PFII where the Doctrine of Discovery has been a theme several times⁷⁴.

The Episcopal Church is the descendant of the Church of England and a part of the Anglican Communion. The point of departure for the Church of England happened as the monarch repudiated the papal authority and established himself as the Head of the Church in 1534⁷⁵. After the American War of Independence (1775-1783), the Episcopal Church in the U.S had a problem as English canon law prevented “*the consecration of any clergymen who would not take the Oath of Allegiance to the English Crown*”⁷⁶. But after pressing the matter the law was changed and the Church of England offered consecration to churches outside of England at the end of the 1700s. The Episcopal Church in the US has an organizational structure consisting of two houses, the House of Bishops and the House of Deputies. These two houses meet every three years in a General Convention – which is the governing body of the Episcopal Church in the US⁷⁷. The House of Bishops consists of all bishops of the Episcopal Church, whether they are active or retired, and the Presiding bishop is president⁷⁸. The House of Deputies consists of clergy and lay members; they are elected to the House of Deputies through their diocese. Each diocese chooses up to four clergy and four lay members as their representatives to the General Convention⁷⁹. To adopt new legislation for the Church a resolution must be passed in both houses at a General Convention⁸⁰.

The Religious Society of Friends (RSF)⁸¹ is the “youngest” of the religious groups in this study. The movement began in the 1600s in England when George Fox traveled the English countryside preaching about his revelations. RSF has quite an egalitarian structure. One of

⁷⁴ The Permanent Observer Mission of the Holy See to the United Nations <http://www.holyseemission.org/> [Accessed 01.08.2014] and United Nations “Permanent Observers” <http://www.un.org/en/members/nonmembers.shtml> [Accessed 12.06.2014]

⁷⁵ The Episcopal Church, “History of the English Church” <http://www.episcopalchurch.org/page/history-english-church> [Accessed 15.05.2014]

⁷⁶ The Episcopal Church, “History of the American Church” <http://www.episcopalchurch.org/page/history-american-church> [Accessed 15.05.2014]

⁷⁷ The Episcopal Church, “President of the House of Deputies” <http://www.episcopalchurch.org/page/president-house-deputies> [Accessed 15.05.2014]

⁷⁸ The Episcopal Church, “House of Bishops” <http://www.episcopalchurch.org/page/house-bishops> [Accessed 15.05.2014]

⁷⁹ The Episcopal Church, “President of the House of Deputies” <http://www.episcopalchurch.org/page/house-deputies> [Accessed 15.05.2014]

⁸⁰ The Episcopal Church, “House of Bishops” <http://www.episcopalchurch.org/page/house-bishops> [Accessed 15.05.2014]

⁸¹ I will also use the term Quakers when speaking of this group. The reason for this is that even though Quaker was a derogatory term used about this group in the past, many of my informants from RSF named themselves Quakers and/or Friends, I will therefore use these terms interchangeably

the fundamental elements of George Fox's teachings is that direct revelations are available to all. Accordingly, when Fox died there was no crisis of leadership within the movement, as its basis was "*collective apostolic succession, requiring neither priests nor the primary authority of text*"⁸². In the 1800s, the first split within Quakerism took place, and Pink Dandelion describes three major branches: deism, rationalism and evangelism aside from what was at the time seen as mainstream Quakerism⁸³. The important thing to note for the purposes of this thesis is that there is pluralism within the Religious Society of Friends in the United States; some meetings have pastors although this is not the norm. Several of my informants pointed this out: they even said that as each meeting decides who can be members, there is diversity among different meetings on what it takes before a person is an accepted member. For this thesis, there are two levels of RSF decision-making which are of interest: the Monthly Meeting, which is a local Meeting where one attends worship, and the Yearly Meeting⁸⁴, which is an annual, regional gathering of people from different Monthly Meetings. The process for approving a minute⁸⁵ is the same at both levels. A committee⁸⁶ brings a draft of the minute to the Meeting. Consensus is required for approval. Anyone may offer suggestions and contribute to as many drafts as are needed, until the Meeting reaches consensus. There is no voting. There are sometimes persons who say they cannot "unite with" the minute, even after many drafts, and those persons may "stand aside". Such exceptions do not invalidate the consensus, and the minute is considered approved. The people I interviewed belonged to the New York, New England, Baltimore, Philadelphia and Intermountain Yearly Meeting. There is no national level for the RSF, and so the Yearly Meeting is the most centralized forum for Quaker decision-making. Another important element to note about the Religious Society of Friends is that although Quakerism has clear Christian roots, not all Friends view themselves as Christians. However, as they have clear Christian roots from 1600s England, and as William Penn "*took several tracts of land [in the*

⁸² Dandelion, Pink: *An Introduction to Quakerism*, Cambridge University Press, United Kingdom, 2007, 22

⁸³ For more information see: Dandelion, 2007, 80 - 117

⁸⁴ They also have Quarterly meetings, which is smaller than the Yearly Meeting, but this level is not very relevant for this thesis as it was never brought up in the interviews – and I have not been able to find statements made of DOD from this level. One of my informants stated that the Quarterly Meetings do not have much importance anymore – but is more a legacy from back in the days when smaller regions could meet together as meeting up at the Yearly Meetings could take a long time when traveling by horse.

⁸⁵ Analogous to a resolution

⁸⁶ What the committees are named varies from meeting to meeting, but there are several committees with different areas of focus, here are some examples from Cambridge Monthly Meeting: Peace and Social Concerns Committee, Friends for Racial Justice Committee and Cambridge Quaker Earthcare Witness Committee: Friends Meeting at Cambridge, "Witness Committees and Groups" <http://fmcquaker.org/about-2/witness/> [Accessed 12.06.2014]

U.S.] from the Crown, and named them after his father in creating his “Holy Experiment””⁸⁷ they are still a very relevant faith group when discussing DOD.

2.2.5 The Haudenosaunee Confederacy and Onondaga Nation

Onondaga Nation is a member nation in the Haudenosaunee Confederacy. The Haudenosaunee Confederacy consists of six nations: Seneca, Cayuga, Onondaga, Oneida, Mohawk, and Tuscarora⁸⁸ Nations. The Onondaga Nation is known as the “Central Fire” as it is located in the middle of the Confederacy, which stretches from upstate New York into parts of Quebec and Ontario to the north, and Pennsylvania to the south. Dating the origin of the Confederacy is still an item for scholarly debate, but one of the more accepted datings is 1142 C.E.⁸⁹ The Confederacy was founded by the shores of Onondaga Lake, where the Seneca, Cayuga, Onondaga, Oneida, and Mohawk were convinced by the Peace Maker to lay down their arms and to cast them beneath the roots of the Great Tree of Peace and to follow The Great Law of Peace. According to historian of religions Philip Arnold “*out of the 565 tribal entities recognized by the U.S Federal Government today only 3 are still governed by their ancient, pre-American, traditional systems. All 3 are Haudenosaunee, and one of these is the Onondaga Nation*”⁹⁰. The Haudenosaunee Confederacy was an important inspiration for the Founding Fathers when they developed the U.S. constitution, which was acknowledged by the U.S. Senate in 1988⁹¹. The Onondaga Nation upholds their claim to be a sovereign nation and the Haudenosaunee Confederacy has its own passports and national team in Lacrosse⁹². Today, Onondaga Nation consists of 7,300 acres a little south of Syracuse, New York and considers itself to be one of the oldest participatory democracies in the world.⁹³

⁸⁷ Dandelion, 2007, 49

⁸⁸ The Tuscarora Nation was the sixth nation to join the confederacy in 1720 after coming north from South Carolina.

⁸⁹ Mann, Barbara and Jerry F. Fields “A sign in the Sky: Dating the League of the Haudenosaunee” *American Indian Culture and Research Journal*, 21:2, 1997.

⁹⁰ Personal communication from Philip Arnold, Professor History of Religion, Syracuse University, e-mail, Feb 22, 2014

⁹¹ United States Senate, “Concurrent Resolution” October, 5, 1988
<http://www.senate.gov/reference/resources/pdf/hconres331.pdf> [Accessed 12.06.2014]

⁹² Kaplan, Thomas “Iroquois Defeated by Passport Dispute”
<http://www.nytimes.com/2010/07/17/sports/17lacrosse.html?pagewanted=all&r=0> [Accessed 17.06.2014]

⁹³ Onondaga Nation, “Facts” <http://www.onodaganation.org/aboutus/facts/> [Accessed 17.06.2014] and Onondaga Nation, “Today” <http://www.onodaganation.org/aboutus/today/> [Accessed 24.08.2014]

2.2.6 Finding contacts

My field research was conducted during the month of February 2014. This is a very short timeframe for a field research, so I tried to communicate with contacts and informants before I left. To find relevant religious organizations and persons, I used the DOD-listserve extensively. The response was, fortunately, positive in these interactions, so I had some interviews booked when I arrived. The other interviews were usually generated by this initial contact, where the people I had contacted forwarded my e-mail to other persons in their community they thought could be of interest for me to interview, or gave me contact information so I could contact people myself. I had problems connecting with Catholics. I tried several approaches; I contacted Catholic groups that had issued statements on DOD and if several catholic organizations were mentioned of supporting the press release, I contacted them all. I got help from a contact within a Catholic organization in Norway who sent an e-mail on my behalf to several bishops and a priest in the U.S. They replied very politely, but negatively; they had no relationship to, or knowledge of, DOD. Lastly, I sent an e-mail to the Vatican's U.N delegation. Of these approaches only one was successful. Through the Loretto Community⁹⁴, I got an interview with a person who had been active in working to get their press release done. However, this person was not a catholic, as one does not have to belong to Catholicism to be a member of the Loretto Community – even though it is centered around the Sisters of Loretto. To make a long story short, I ended up with two interviews of three Catholics – all on the grass root level, a married couple in the only group interview I conducted, and with a member of the Catholic group *Pax Christi*.

Some of the interviews would not have taken place without the assistance of my co-supervisor Philip Arnold, who runs the DOD-listserve. He used his network of contacts and put me in contact with members of the Onondaga Nation who agreed to be interviewed for my thesis. In addition, he invited people to his home giving me the opportunity to present my research to a wider variety of people. It was through this meeting that I was put in contact with the Catholic *Pax Christi* member and got my second Catholic interview. At this meeting, the group was also invited to Longhouse⁹⁵ at Onondaga Nation by Tadodaho Sidney

⁹⁴ Loretto Community, "Religious Groups Ask Pope Francis to Stand with Indigenous People", <http://www.lorettocommunity.org/religious-groups-ask-pope-francis-to-stand-with-indigenous-people/> [Accessed 17.05.2014]

⁹⁵ Traditional governmental form of the Haudenosaunee. The entire confederacy has 50 chiefs (hoyane). The Longhouse at Onondaga Nation consists of 14 Hoyane. The Chiefs are all considered to have an equal

Hill⁹⁶ the week after. This was something that allowed me to present my research and some of my reflections to the council, hear their thoughts on the theme and their response to my presentation. Secondly, it was interesting as several of the people in the group were members of religious communities themselves. Observing and participating in this form of dialogue was an experience that gave new insights on the theme of the thesis (although it is not directly quoted or used as I am uncertain as to whether it would be ethical to use this meeting where I got the feeling that I was invited as a guest, not a researcher). The end result was that during my field research in the U.S. I had interviewed five members from the Religious Society of Friends, three Catholics, three Episcopalians, and three members of the Onondaga Nation. After arriving in Norway, I also had an interview per e-mail with the Presiding Bishop of the Episcopalian Church, Katharine Jefferts Schori.

2.2.7 Methodological and Ethical issues

I chose early in the process to write this dissertation in English, even though it is not my first language. My main reason for this decision is twofold. Firstly, I wanted to help spread knowledge about the Doctrine of Discovery, and as I am writing about DOD in the U.S., it made sense to write in a language that would make it accessible to people living there. Secondly, as this thesis is based upon interviews, I wanted to give the people I interviewed access to the finished work. As an ethical issue, I found this important, and if I have misinterpreted the people I have interviewed, they will have the opportunity to protest my representation and provide me with a response. I could sometimes feel the limitations of interviewing in a foreign language. However, I was not the only one that sometimes felt the barrier of language. Translating from one language to the next created a barrier in one of my interviews with a person from the Onondaga Nation, and sometimes made explicit. The person I interviewed could state that a term lost some of the meaning in the translation from Onondaga to English. However, the informant from Onondaga Nation seemed to be aware of this problem. When it arose, the issue was presented to me, and sometimes I was given more than one English word to convey the sense of the term, or told that the English words could not convey the entire meaning of a term.

voice and an equal responsibility. For more information see: Onondaga Nation, "Chiefs"
<http://www.onodaganation.org/government/chiefs/> [Accessed 17.06.2014]

⁹⁶ Tadodaho is the hoyane who presides over the Great Council of the Haudenosaunee Confederacy. However for passing decisions in the council, all have to be in agreement, or as the Haudenosaunee would say: "Of one mind".

Another clear methodological limitation for this thesis is the short period of time for conducting the field research. In an eventual PhD on the same theme it would be preferable to have several trips to the U.S. talking to people over time, and it would include participant observations as a method of collecting data. For many of my informants, it was the first time they were asked to articulate themselves on these themes⁹⁷, and it would be interesting to conduct several shorter interviews over time to see if there were some changes in the way they spoke and thought on the matter. Furthermore, it would be preferable to have several informants from all the groups chosen. If there had been more time available, I would have worked to get an equal representation from all the religious groups (and include other religious groups), and include other indigenous voices from nations other than Onondaga.⁹⁸

The most pressing methodological issue is the selection of interviewees. The people from religious groups that I have interviewed for this thesis cannot be said to be representative for their faith community. A lot of the interviewees are people who have worked actively in their faith groups to repudiate the Doctrine of Discovery. This means two things. Firstly, their knowledge of the Doctrine of Discovery will likely be above the level of the general member within their faith communities. Secondly, the people I have interviewed are resourceful people with an amount of influence within their faith communities. They are to some extent, agents of change within their own communities. Still, both the Episcopal Church and a lot of the Monthly and Yearly Meetings within the Society of Friends have repudiated the Doctrine of Discovery, and so the members from these groups are not dissenting from the view of their religious groups. However, this is not the case within the Catholic Church. The informants belonging to the Catholic Church are speaking about an issue that the official church structure engages little in; although as we shall see there have been some groups of Catholics sending out statements on the matter in recent times.⁹⁹

When it comes to the interviewees of traditional indigenous people, they are all from a single nation, Onondaga Nation. They cannot be said to represent all of the traditional indigenous peoples within the United States as the nations and peoples are very diverse with different languages, governments, society structures, and strategies. However, they can be seen as representatives for the Onondaga Nation, as two of my interviewees are elected Chiefs for the

⁹⁷ The interview guide for the religious groups is included in the appendix

⁹⁸ The thesis and the gathering of material have been reported to Norsk Samfunnsvitenskapelig Datateneste (NSD).

⁹⁹ See Chapter 4.

National Council of Chiefs, while my last informant Tonya Gonella Frichner has been active as a special rapporteur in the UN, serving the Permanent Forum on Indigenous Issues. However, this also means that the persons I have spoken to are not necessarily representative of the general awareness of DOD among the Onondaga. Secondly, it is important to note that the wide variety among traditional indigenous peoples is only the beginning. It does of course exist people who are both indigenous and catholic, or secular for that matter, among indigenous peoples within today's U.S.

Lastly, there is a problem with both gender and age representation among the people I interviewed. As the timeframe of the project was tight, I had to go for convenience samples among the people I interviewed, and the criteria for my selection was that they had to have working knowledge of DOD and preferably know how their communities were working with the theme. As my informants are not anonymized, I will not give the single individuals ages, but none of my informants is below 45 years of age or above 88. This means that I do not have any voices from the younger generations. Due to the different issues surrounding representativeness, I would like to stress that the interviewees should be seen as individuals within their communities not as representatives or spokespersons for the entire community to which they belong.

2.2.8 The Researchers role and outlook

Coming from Norway, it is obvious from the outset that I was an outsider during my field research in the U.S. This outsider status was not based solely on my nationality. Most of my informants asked whether I was myself religious – or belonged to a religious community in Norway. I then honestly stated that, I do not belong to any religious community (although I am registered in the State Church of Norway), and that the closest thing to a definition I have of my own religiosity is that I am religiously confused. Most also asked me why I was writing about the Doctrine of Discovery and how I had come to learn about it. As to how I learned about DOD, it was a suggestion given to me by one of the persons who was an academic staff member in my department at the University of Oslo. And as to why, well, there they were really asking me about my agenda. When I first read about DOD and the impact the papal bulls still had on American Indian Law, I was incredulous. My initial agenda was to look at the material for myself, criticize, elaborate, or debunk the argument that DOD was still present in American Indian Law. However, my perspective gradually

changed as I was collecting material and conducting my research. Today, I am writing about the Doctrine of Discovery because I think it is important to investigate how the ideology of discovery continues to be present in our mindsets and legal systems. I also found it important to examine this topic because the Doctrine of Discovery is relevant when indigenous nations make demands of self-determination or when they demand being granted an equal voice when the U.N is having a conference on the world's indigenous peoples.¹⁰⁰

I think that being a “non-American” was a clear advantage in this work. First of all, people often began describing aspects of American society they saw as relevant for me to know about, and they did not take for granted that I knew what they knew about American history. This made the interviews long, but it also meant that people were speaking about things they might not have thought of bringing up had I been an American. Furthermore, as I was from Norway and was honest with my informants about English being a foreign language, most of my informants made it explicit if I asked a question that was unclear to them and had both patience and an understanding for my need to sometimes pause for a little while to find the words I needed in our conversations. Thirdly, from most of the people I interviewed, they expressed a certain gratifying attitude because a student all the way from Norway found their work important enough to write a dissertation on the theme. Lastly, I learned everything I know about DOD, indigenous peoples in the U.S today, and how different religious groups have responded to DOD while doing research for my thesis. I do believe that this has allowed my approach to the material gathered to be flexible, open-minded and profoundly curious¹⁰¹ – while at the same time I have had a distance to what I was researching while reading and writing from Norway.

2.2.9 Anonymization?

All of my informants were given a presentation of the project and informed about their rights before the interview began. This included the right to remain anonymous. Before I left for the states, I was convinced that I would end up with a thesis where the informants wanted to be anonymous, but I wanted them to decide. I was surprised to find that none of my informants

¹⁰⁰ See: United Nations, “World Conference on Indigenous Peoples, a High-Level Plenary Meeting of the General Assembly,” <http://wcip2014.org/> [Accessed 22.06.2014] and Toensing, Gale “A World Conference on Indigenous Peoples With No Indigenous?”

<http://indiancountrytodaymedianetwork.com/2014/02/03/world-conference-indigenous-peoples-no-indigenous-153383> [Accessed 22.06.2014]

¹⁰¹ Thargaard, 2009, 77

expressed any wish to be anonymous, and two even said that a precondition for giving the interview was *not* to remain anonymous. I gave all my informants the opportunity to change their minds, but if they did, they would have to contact me by e-mail before March 1, 2014. As nobody used this opportunity, I decided to let the people interviewed be on the record. Anonymity would have been difficult to maintain, partly because a lot of the interviewees know each other, and it would be hard to keep the specifics from the interviews while at the same time not revealing their identity to other persons engaged within the discourse surrounding DOD. Lastly, I chose not to anonymize because it is a matter of being able to test the validity of this thesis, and the people I interviewed were confident in their wish to be on the record.

2.2.10 Conducting interviews

Before my field research, I had never conducted an academic interview; unsurprisingly, I found the first interviews to be very challenging. I was prepared with a way to massive interview guide, and so my first interview lasted almost four hours. I quickly modified the interview guide, and as I got more comfortable as an interviewer, I also became better on picking up on what people were talking about and better able to control the conversation. All my interviews have the form of a semi-structured interview to allow the informants to speak freely, but on the same themes. As I became a better inquirer, the interviews usually took around 1.5 - 2 hours and took on more of the form of a conversation. The locations for the interviews varied. Due to different issues there were also two interviews done by Skype and one by phone. I found these interviews much more challenging than when I met people face to face, mostly because of the reduced ability to use and observe body language. However, these interviews are included in this thesis as they contributed to the gathered material. I always asked for permission to record the conversation, which was granted by all the interviewees. This gave me the opportunity to listen to what people were saying and to take relevant notes, often about something I wanted them to come back to, or expand on, later in the interview. The interviews with the members of Onondaga Nation were very different from the religious groups. I did not have an interview guide, and the three interviews I conducted became different, both in themes and forms. In some ways, this poses a methodological problem, but at the same time, having a more free form these interviews gave me different approaches to ways of thinking about the consequences of DOD today. In the

end, I think it was better to be more flexible in form than too rigid as it allowed the individual more freedom to articulate what he or she saw as relevant to the Doctrine of Discovery today.

2.2.11 Informants

Faithkeeper Oren Lyons: He is Faithkeeper of the Turtle Clan of the Onondaga Nation and a Chief of the Onondaga Nation Council of Chiefs of the Haudenosaunee Confederacy. In 1982, he had a part in establishing the Working Group on Indigenous Populations at the United Nations. In 1992, he opened the International Year of the World's Indigenous People at the U.N's General Assembly. Oren Lyons has also been an author of books, among these *Exiled in the Land of the Free*, co-authored with John Mohawk. He has served in a teaching position with the University of Buffalo and was named a SUNY Distinguished Service Professor¹⁰² and Professor Emeritus of American Indian Studies¹⁰³. Date for interview: February 25, 2014.

Chief Jake Edwards: He is a Chief of the Onondaga Nation Council of Chiefs (Eel Clan), of the Haudenosaunee Confederacy. He has done a lot of work spreading knowledge of the Onondaga Nation, the Haudenosaunee Confederacy and their treaties, and was central in the Two Row Wampum campaign¹⁰⁴. Date for interview: February 27, 2014.

Tonya Gonnella Frichner: She is a member of Onondaga Nation (Snipe Clan) of the Haudenosaunee Confederacy. She is a lawyer holding a doctoral degree from the City University of New York, and she is an activist who has pursued the issue of human rights for indigenous peoples throughout her career. She was a member of the Permanent Forum on Indigenous Issues from 2008 to 2010 and served as Special Rapporteur. She was also appointed as the North-American representative. She is President and Founder of the American Indian Law Alliance¹⁰⁵. In 1987, she served as Legal Council to the Haudenosaunee at UN Sub-Commission on Human Rights' Working Group on Indigenous Populations, and has worked with drafting the UN Declaration on Rights of Indigenous Peoples. Date for interview: February 17, 2014.

¹⁰² Wuetcher, Sue "Oren Lyons Named SUNY Distinguished Service Professor" <http://www.buffalo.edu/news/releases/2006/06/8011.html> [Accessed 17.08.2014]

¹⁰³ Syracuse University, "Oren Lyons" <https://www.syr.edu/alumni/awards/arentsawards/oren-lyons.html> [Accessed 17.08.2014]

¹⁰⁴ Two Row Wampum Renewal Campaign <http://honorthetworow.org/> [Accessed 17.08.2014]

¹⁰⁵ An NGO in Consultative Status with the United Nations Economic and Social Council

John Dieffenbacher-Krall: He is an Episcopalian living in Maine. He has been a central lay-member in his own community serving as Senior Warden in his local church, St. James. He was crucial in getting his church, then the Diocese of Maine, to repudiate the Doctrine of Discovery. He has also given several sermons on the theme of Doctrine of Discovery and is a member on the Indian Committee of St. James. Finally, he was also one of the drafters behind the World Council of Churches statement on the Doctrine of Discovery from February 2012. Date for interview: February 5, 2014.

Brenda Hamilton: She is a member of the Episcopalian Church living in Maine, and served as a deputy to the General Convention in 2009 where the Episcopal Church repudiated the Doctrine. She was a sponsor of the bill to repudiate DOD at the 2009 national convention. Date for interview: February 12, 2014.

Dr. John Chaffee: Episcopalian living in New York state. He was a deputy to the General Convention in 2009 and involved in the drafting of the resolution passed by the Episcopal Church repudiating DOD on a National Level. Date for interview: February 18, 2014.

Presiding Bishop Katharine Jefferts Shori: She is Presiding Bishop of the Episcopal Church. She issued a “Pastoral Letter on the Doctrine of Discovery and Indigenous Peoples”¹⁰⁶ in May 2012 and was present at the United Nations Permanent Forum on Indigenous Issues when they had DOD as their theme. E-mail received: March 27, 2014.

Mary Gilbert: She has been a member of the Society of Friends for 35 years and lives in Arlington Massachusetts, attending Cambridge Monthly Meeting¹⁰⁷. She is also a member of Quaker Earthcare Witness (QEW) and is their representative to the United Nations. She writes for the member magazine of QEW BeFriending Creation. Date for interview: January 31, 2014.

¹⁰⁶ Presiding Bishop Katharine Jefferts Schori “Pastoral Letter on the Doctrine of Discovery and Indigenous Peoples” <http://www.episcopalchurch.org/notice/episcopal-presiding-bishop-katharine-jefferts-schori-issues-pastoral-letter-doctrine-discover> [Accessed 17.08.2014]

¹⁰⁷ Belonging to New England Yearly Meeting

Elizabeth Koopman: She is a member of the Society of Friends and an attendant of York Monthly Meeting in Pennsylvania¹⁰⁸. She initiated the minute made by the Philadelphia Indian Committee in 2009 where they renounced the Doctrine of Discovery; this was the first minute on the matter of DOD within the Society of Friends. Koopman has served on the Philadelphia Yearly Meeting Indian committee for over a decade, and she is currently a member of the American Friends Service Committee Wabanaki Program committee. Date for interview: February 22, 2014.

Paula Palmer: She is a member of the Boulder Friends Meeting¹⁰⁹ and director of "Toward Right Relationship" project of the Indigenous Peoples Concerns committee of the Boulder Friends Meeting (where she also serves as a clerk). She is the creator and facilitator of the workshop titled "*Roots of Injustice, Seeds of Change: Toward Right Relationship with America's Native Peoples*". This workshop is offered to religious groups and other communities around the United States. Date for interview: February 10, 2014.

Kate DeRiel: She is clerk of the Philadelphia Yearly Meeting Indian Committee. She co-clerked the committee in 2009 as they passed the minute where they renounced the Doctrine of Discovery. She has also worked on the Declaration on the Rights of Indigenous Peoples (UNDRIP) minute that was passed the summer on 2013 stating the Society of Friends support for the declaration. Date for interview: February 15, 2014.

Joan Savage: She is a member of the Syracuse Friends Meeting¹¹⁰ and a lifelong member of the Religious Society of Friends. Joan has worked to spread knowledge about the Doctrine of Discovery among several monthly meetings in New York, who are represented through the New York Yearly Meeting. In July 2012 the Indian Affairs Committee Co-clerk Susan Wolf proposed a minute that repudiated DOD that was passed at the New York Yearly Meeting. Date for interview: February 13, 2014.

David E. Pasinski: He was a Catholic priest for 13 years, working in the Syracuse area for 9 years and 4 years in Bolivia and Venezuela. David is presently a Chaplain serving at a hospice ministering to and accompanying persons who are dying and their families, in their

¹⁰⁸ Belonging to Baltimore Yearly Meeting

¹⁰⁹ Belonging to Inter Mountain Yearly Meeting

¹¹⁰ Belonging to New York Yearly Meeting

homes or in institutions. He is a local member of the Catholic group *Pax Christi* and is still active within the Catholic Church serving on the Justice and Peace committee at his local Catholic Church, St. Lucy's. Date for interview: February 20, 2014.

James and Audrey Mang: James was a Catholic priest in the Buffalo (NY) diocese for 12 years. He has spent the following 38 years working with the Center for Justice, the Western New York Peace Center and the SSJ¹¹¹ Sister Karen Klimczak Center for Nonviolence. Jim also chaired the Social Justice Committee of St. Joseph University Parish and the Earth Justice Committee of the Buffalo Sisters of St. Joseph. As Associates and Justice Ministers for the Sisters, Jim and Audrey share responsibility for representing the local congregation at the national C/SSJ Federation. Audrey worked on environmental/health issues for five years with Dr. Rosalie Bertell and has worked together with Jim for 38 years at the same three peace and justice organizations. She has facilitated workshops for the Alternatives to Violence Project (AVP) for the past 24 years in the community, in schools and in state correctional facilities. As an Associate of the Sisters of St. Joseph, Audrey has served on various committees for the congregation. Date for interview: February 9, 2014.

¹¹¹ Sisters of St. Joseph

3 The History of DOD and the Colonial era

To understand the connection between the Christian principles of discovery and the international legal construct known as the Doctrine of Discovery, we must begin by exploring the religious background of this doctrine. This will be done by having a closer look at the papal bulls *Dum Diversas* (18 June, 1452), *Romanus Pontifex* (January 8, 1454) and *Inter Caetera* (May 4, 1493). Christianity had a long tradition of relating to non-Christians before these papal bulls, and we are speaking of a continuing debate within Christendom as to what rights Christian kings and princes had when relating to non-Christians. The mentioned papal bulls are a continuation of this tradition, and the debate is a prerequisite for the authority of the papal bulls¹¹². After giving a short presentation of this background I will present relevant papal bulls for the development of DOD. Furthermore, I will present how England adapted to this situation and joined in the venture of claiming lands in the Western Hemisphere. Lastly, we will have a brief examination of how the principles of DOD have been utilized in U.S courts and how they are still present today.

3.1.1 Is it ever licit to invade lands which are held or owned by “infidels”?

Innocent IV was pope from 1243 till his death in 1254. In his work *Apparatus*, Innocent discusses the Christian-“Infidel” relationship in the context of asking questions relating to the theme of holy war¹¹³. He asks the question: “[...] is it ever licit to invade lands which are held or owned by infidels?”¹¹⁴. Innocent answers by stating that the earth is the Lord’s, but that God gave *dominium* over the world to rational creatures “[...] for whom he made all things”¹¹⁵. He continues that as the pope is the vicar of Christ, and Christ had dominion over all humanity, the pope has dominion (power and jurisdiction), not only over the faithful, but also non-Christians “[...] *de jure* even if not *de facto*”¹¹⁶. By this interpretation of the dominion of Christ, and the story of Genesis 19 where God punishes the Sodomites, Innocent IV invokes a papal right to be the judge of the non-Christians by their laws, which he deems to be the law of nature. The logic of Innocent being: God can punish the “infidels” (Sodomites) if they break natural law → Christ is also God → the pope is the vicar of Christ

¹¹² For information about this relationship see: Muldoon, 1978, Muldoon, James, *Popes, Lawyers and Infidels*, University of Pennsylvania Press, USA, 1979 and Greer, Thomas H and Gavin Lewis: *A Brief History of the Western World*, 9th ed. Wadsworth Cengage Learning, USA, 2005, 3-4

¹¹³ Reichberg, Gregory, Henrik Syse and Endre Begby. *The Ethics of War: Classic and Contemporary Readings*. United Kingdom, Blackwell Publishing, 2006, 152

¹¹⁴ Innocent IV quoted in Reichberg, Syse, Begby, 2006, 152

¹¹⁵ Ibid, 152

¹¹⁶ Ibid, 153

→ the judgments of God must serve as a model → the pope can judge and punish the “infidels”. Ergo, according to Innocent, the pope has temporal as well as spiritual power over all humanity, and can act as judge and persecutor when dealing with non-Christians if they break the laws of nature¹¹⁷. Furthermore, even though he acknowledges the non-Christians right to dominion and jurisdiction, this right has several exceptions¹¹⁸. By claiming the authority to be judge and persecutor if non-Christians break the laws of nature *and* keeping the power to define what the laws of nature are – there arises a potential for dispossessing non-Christians. Ultimately, this meant that anything that the pope defined as a law of nature had to be followed by the non-Christians, or they would risk meeting the force of the secular arm of Christendom. Simply put, Innocent makes a distinction between temporal and spiritual jurisdiction, but the spiritual order is superior to the temporal order. So even though he declares that non-Christians have a right to temporal jurisdiction, which the pope or some other Christian prince does not have the right to deprive them of, this right can be retracted if the non-Christians are “sinning” against God (or natural law), because in the end the pope has the right to intervene and encourage temporal force against them. Not because they cannot possess true temporal dominion, but because they would be interpreted as breaking the laws of the spiritual domain.

3.1.2 “Infidels”, but not a threat

When pope Clement VI granted the Canary Islands to Luis de la Cerda something new was happening within the papal courts¹¹⁹. There had been previous occasions on which the pope had granted away the lands of “infidels” in papal history¹²⁰. The new aspects of this grant was firstly that the non-Christians living on the Canary Islands could not be said to be a threat to

¹¹⁷ Ibid, 153

¹¹⁸ One of these exceptions is that non-Christians have to be willing to receive missionaries. If missionaries are denied there is a foundation for invading the lands of the “infidels”. See: Ibid, 153

¹¹⁹ For a closer look at the history of the papacy in this period, and to read about the Great Schism that arose around this time I refer to Muldoon, 1979. It is central to get an understanding on the limits on papal power and how the pope at the time had several challenges to his authority. This case of papal donation is definitively of interest as it has been seen by scholars as a foreshadowing of the role the papacy would come to have in the “Age of Discovery” For more information see Muldoon, 1979, 120

¹²⁰ A case worthy of attention is a conflict between Poland and the Teutonic Knights of whom had the right to control pagan Lithuania. This case was settled in the Council of Constance in 1414, which concluded: “infidels possessed the same natural law rights to sovereignty and property as Christians but that the pope did have the authority to order invasions to punish violations of natural law or to spread the Gospel” Miller, 2008, 10. For more information about these previous cases see James Muldoon, 1979, especially 30-36 & 56-68 and Miller, 2008, 10

Christianity, and secondly the Islands were newly discovered¹²¹. Unlike the earlier crusades, this conquest was not a papal initiative. Rather the pope was approached with a suggestion of conquest from Luis de la Cerda. In the end, this expedition came to naught, and because Luis never entered into possession of the isles, Portugal and Spain continued their dispute as to which of them had the rights to the islands. Around 1333-1334 at the request from a bishop of the Canary Islands, who reported that a Portuguese raiding party had attacked a village of converted Canary islanders, Pope Eugenius IV (1431-1447) banned further expansion to these isles¹²². According to James Muldoon the letters that Eugenius produced around this time shows that he had received information about the canary way of life and stated that these non-Christians were living in accordance with the law of nature¹²³.

In 1436, the pope was approached by King Edward I¹²⁴ of Portugal regarding the Canary Islands. King Edward wanted Eugenius to restrict the ban of expansion to the islands that held the convert canaries. Again the motivation given from the requestor was the wellbeing of the islanders, and the king's desire to convert them to Christianity and bestow on them "civil laws and the means to live in a polity"¹²⁵. Eugenius' response to the King's request came in the shape of the papal bull *Romanus Pontifex*¹²⁶ (September 15, 1436) where: "Eugenius stressed his role as Christ's vicar on earth. Because the earth and its fullness belonged to Christ, the pope, His vicar, could exercise Christ's authority over all and everything on earth."¹²⁷ In this papal bull the pope authorized the Portuguese to "oversee the conversion of the remaining infidels in the Canary Islands, regardless of where they lived".¹²⁸ Muldoon states that the king's letters avoided the theme of the Canary islanders' right to jurisdiction and property. Nor does the papal bull mention this¹²⁹, but the concession of the process of conversion among the Canary islanders into the Portuguese crown is a vital point for the development of the papal bulls sent out by the successors of Eugenius. Miller describes the dialogue taking place regarding the rights of the natives and Portugal, as a refinement of Europe's definition of the Doctrine of Discovery and writes that:

¹²¹ Stogre, Michael, *That the World may Believe: The Development of Papal Social Thought on Aboriginal Rights*, Editions Paulines, Sherbrooke, Canada, 1992, 64

¹²² Davenport, 1917, 10

¹²³ Several papal bulls have this name. See: Muldoon, 1978, 177-178

¹²⁴ Also named King Duarte. Muldoon, 1979, 121

¹²⁵ Letter from King Edward I, quoted in Muldoon, 1978, 179

¹²⁶ This papal bull named *Romanus Pontifex* is not the same as the papal bull of the same name sent out by Nicholas V in 1455.

¹²⁷ Muldoon, 1979, 129

¹²⁸ Ibid, 128

¹²⁹ For more information about this bull, see Muldoon, 1979, 121-130

This new argument for European and Christian domination of pagans and their lands was not based on the infidels' lack of dominion or natural rights but was instead based on Portuguese rights of discovery based on the perceived need to protect natives from the oppression of others and to lead them to civilization and religious conversion under papal guidance.¹³⁰

Muldoon hypothesizes that for the papacy there were more than juridical aspects and morals at stake; it was its status within Christian Europe and their power in international relations. Regardless of the political situation, the fact remains that the papacy chose to legitimize a Christian kingdom that wanted the right by discovery of a “no-threat-to-Christianity” area, held by non-Christians. This decision would have consequences far into the distant future. However, this did not end the dispute between Spain and Portugal who both claimed the Canary Islands by virtue of discovery. Both continued to claim ownership of the Canary Islands, and this question of ownership was not settled until 1479, when after the Treaty of Alcacovas Portugal gave over their claims of ownership to Spain¹³¹. Something happened between Eugenius IV's papal bull *Romanus Pontifex* and the treaty of Alcacovas. When Eugenius IV gave Portugal the right and responsibility to convert the islanders, the question of the “infidel's” right to dominion was still hidden in the background, although not explicitly mentioned one way or the other. But somewhere along the way to 1479 this right was extinguished so that the two kingdoms could settle the matter of ownership between themselves (and without papal jurisdiction). So what happened to the non-Christians' right to dominion? To answer this question we will have a closer look at the papal bulls sent out by Nicholas V and Alexander VI.

3.2 “Infidels” are the Enemies of Christ.

In the following decades the Portuguese crusade against North Africa persisted. In many ways this was an extension of the crusade of re-conquering the Iberian Peninsula¹³². The Portuguese crusade against the Moors in North Africa could be justified within the papal tradition as a defensive war. However, a monumental change in the papal tradition on the rights of non-Christians arises when the papal bull *Dum Diversas* from 1452 sees the light of day. In *Dum Diversas*¹³³ sent out by Pope Nicholas V, the classification among different sorts of non-Christians has almost disappeared. This is a central point in the development of the

¹³⁰ Miller, 2008, 11

¹³¹ Davenport, 1917, 10

¹³² Beazley, C. Raymond: “Prince Henry of Portugal and the African Crusade of the Fifteenth Century” *The American Historical Review*, vol 16, No 1. 1911, pp. 11-23.

¹³³ Unfortunately I have not been able to find an English translation of this papal bull. In Davenport, 1917, a part of this papal bull is quoted in Latin however.

church's conceptualization of the world. Whereas pope Innocent IV clearly distinguished between the Saracens and other non-Christians¹³⁴, now the only separation between the groups is that the Saracens are especially mentioned. In *Dum Diversas*, pope Nicholas V granted King Alfonso “*general and indefinite powers to search out and conquer **all pagans, enslave them and appropriate their lands and goods***”¹³⁵. The bull classifies all non-Christians as enemies of Christ¹³⁶, and as enemies they are automatically targets for just war and conquest. In addition to this there are no limitations on where the Portuguese king has the right to take this jurisdiction over non-Christians. Lastly, it is explicitly stated that he can “*invade, search out, capture, vanquish and subdue*” all non-Christians wherever placed. Simply put: *Dum Diversas* authorized King Alfonso to make war on all pagans, anywhere.

Romanus Pontifex was sent out by the same Nicholas V in 1455. In this bull, Nicholas was called upon to settle a dispute¹³⁷, and here some of the basic principles of DOD are formulated. *Romanus Pontifex* begins by stating that the Roman Pontiff as the vicar of Jesus Christ:

[...] upon careful deliberation those things which he sees will be agreeable to the Divine Majesty and by which he may bring the sheep **entrusted to him by God** into the single divine fold, and may acquire for them the reward of eternal felicity, and obtain pardon for their souls.¹³⁸

Here we can see that Nicholas V invokes the theological image of all mankind being the sheep of God. The pope, as the vicar of Christ, is responsible for bringing all the Lord's sheep into *the single divine fold*. This image was also part of the logic when Innocent IV stated that as the pope is the vicar of Christ, and as Christ had spiritual dominion over all humanity, the pope has dominion (power and jurisdiction), not only over the faithful, but also non-Christians¹³⁹. After Nicholas V begins the bull *Romanus Pontifex* with the aforesaid proclamation, the bull immediately continues:

This we believe will more certainly come to pass, through the aid of the Lord, if we bestow **suitable favors and special graces** on those Catholic kings and princes, who, like athletes and intrepid champions of the Christian faith, as we know by the evidence of facts, not only restrain the savage excesses of the Saracens and of **other infidels**, enemies of the Christian name, but also for **the defense and increase of the faith vanquish them and their kingdoms and habitations, though situated in**

¹³⁴ For instance when Innocent IV discusses the validity of reclaiming the Holy Land v. the right of non-Christians to dominion and jurisdiction over their own territories

¹³⁵ *Dum Diversas* in Davenport, 1917, 12. My emphasis

¹³⁶ “[...] Sarracenos, paganos, infideles, et Christi inimicos [...]” *Dum Diversas* in Davenport, 1917, 17. My translation.

¹³⁷ Again between Portugal and Spain on which of them had the right of discovery to the Canary Islands.

¹³⁸ *Ibid*, 20-21. My emphasis.

¹³⁹ Innocent IV quoted in Reichberg, Syse and Begby, 2006, 153

the remotest parts unknown to us, and subject them to their own temporal dominion, [...]¹⁴⁰.

Again, there is no distinction made between the “Saracens” and other groups of “infidels”. They are all labeled together as enemies of Christianity, even though it is clear by the following statement: “*though situated in the remotest parts unknown to us*” that this may very well be “infidels” whom the pope did not even know about at the time. Nicholas then continues by stating that for the “*increase of the Christian faith*” Catholic kings and princes can vanquish non-Christians and subject them to their own temporal dominion. Another interesting part of this quote is the “*suitable favors and special graces*” that the pope decides to bestow on the “*champions of Christianity*”. It turns out that these favors and special graces are a monopoly on the right to travel to and trade with the non-Christians. This becomes clear when the pope after presenting the conquests of the Portuguese crown continues by saying that he has been informed that the Portuguese crown are worried that other forces may come to harvest the fruits of their work, something which may interfere, hinder, or halt the conquest. To avoid this Nicholas establishes a Portuguese monopoly:

[...] under certain most severe penalties then expressed, [the pope] have prohibited and in general have ordained that none, unless with their sailors and ships and on payment of a certain tribute and with an **express license** previously obtained from the said king and infate, should presume to sail to the said provinces or to trade in their ports [...]¹⁴¹.

To minimize the chance of conflict with other Christian nations and to ensure King Alfonso of his rights to the subjugated areas, the pope decrees that the Portuguese crown has monopoly on travel and trade in these areas. The effect was that anyone who wanted contact with the non-Christians in these areas had to get a license directly from the crown, even if they were Christians. Finally the bull restates, in an even more explicit language the rights the papacy has granted to Portugal to:

[...] – invade, search out, capture, **vanquish**, and **subdue** all Saracens and **pagans whatsoever, and other enemies of Christ wheresoever placed**, and the kingdoms, dukedoms, principalities, dominions, possessions, and all movable and immovable goods whatsoever held and possessed by them and **reduce their persons to perpetual slavery**, and to **appropriate to himself** and his successors the kingdoms, **dukedoms, counties, principalities, dominions, possessions, and goods, and to convert them to his and their use and profit** [...]¹⁴².

At the same time, Nicholas V expressively excludes other Christian nations and people from the area under the threat of excommunication, and for communities breaking the ban - the interdict. Lastly, the bull also explicitly states that these areas “*belonged and pertained, and*

¹⁴⁰ *Romanus Pontifex* in Davenport, 1917, 21. My emphasis

¹⁴¹ *Ibid*, 22. My emphasis

¹⁴² *Ibid*: 23. My emphasis

forever of right belongs and pertains, to the said King Alfonso, his successors, and the infante, and not to any others”¹⁴³. In other words, the pope grants these areas to King Alfonso and his successors in perpetuity. In *Romanus Pontifex* we have *the right of conquest* being claimed as a basis for new Christian dominion in non-Christian territory. The non-Christians existing, but limited right to dominion, is completely wiped out as Nicholas V deems all non-Christians to be enemies of the faith and, therefore, a legitimate target for Christian conquest. The Christian conquest is seen as an apostolic mission where the goal is to vanquish all non-Christians and put them under Christian dominion – while at the same time the Portuguese King is given the responsibility and authority to minister the conversion of the non-Christians in the new non-Christian areas discovered. As the pope is the spiritual ruler of humanity, he has the authority and responsibility to bring all of mankind into the single divine fold of Christendom. By this authority he can also judge mankind, and in *Romanus Pontifex* and *Dum Diversas* Nicholas V judges all Saracens and pagans whatsoever and wheresoever placed to be “enemies of Christ”. Because non-Christians are the enemies of Christ, the right of conquest can be invoked. To protect the Christian King responsible for these conquests as the secular arm of Christianity, the pope decides to bestow upon him special favors and graces in the form of a monopoly. Furthermore, the king has the right to capture and enslave non-Christians, deprive them of their possessions and dominion, and put them forever under the king’s jurisdiction. As the areas acquired through this conquest are under the Portuguese crown’s jurisdiction according to this papal bull, it is also within the crown’s jurisdiction to trade the Canary Islands with Spain, as Spain and Portugal indeed did in the Treaty of Alcacovas from 1479¹⁴⁴. As non-Christian territories were ceded to Portugal in the papal bull *Romanus Pontifex*, Portugal by this power had the authority to grant away the Canary Islands to Spain without the need of papal blessings, it was another province under the crown – and therefore under Portuguese jurisdiction.

3.2.1 *Inter Caetera* and the news brought by Columbus

The very same year that Spain fulfilled the Reconquista of the Iberian Peninsula with the defeat of the Moorish ruler in Granada, Christopher Columbus was sent out and “discovered” the Americas. The “discovery” of new land in the Western Hemisphere led to a new impetus in the disagreements between Portugal and Spain as to which territories belonged to whom.

¹⁴³ Ibid: 23-24. My emphasis

¹⁴⁴ This treaty was proclaimed by the nations long before it was given a papal sanction by Pope Sixtus IV in 1481. See: Davenport, 1917, 34, 49.

Because this new discovery led to a new rivalry between Spain and Portugal, and there already was a precedent from the conflict regarding the Canary Islands to call on the pope to adjudicate in this sort of conflict, Pope Alexander VI was called upon to give a resolution to the dispute. The resolution came in the form of *Inter Caetera* dated the 4th of May 1493¹⁴⁵. This papal bull is infamous as it drew the line of demarcation between Spain and Portugal and, in effect, divided the world between the two kingdoms. However, it has been argued that this line of demarcation was *not* a division of the world between Spain and Portugal, but rather an exclusion of Portugal from the newly discovered territories in the west¹⁴⁶. So, let us have a closer look at the famous papal bull.

Inter Caetera begins by presenting the pope and the recipients of the bull, King Ferdinand and Queen Isabella of Spain, and continues by stating that

Among other works well pleasing to our Divine Majesty and cherished of our heart, this assuredly ranks highest, that in our times especially the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that **barbarous nations be overthrown and brought to the faith itself**. [...] recognizing also that you have long since dedicated to this purpose your whole soul and all your endeavors – as witnessed in these times with so much glory to the Divine Name in your recovery of the kingdom of Granada from the yoke of the Saracens [The papacy therefore grant and wish the Monarchs ...] be enabled for the honor of God himself and the spread of the Christian rule to carry forward your holy and praiseworthy purpose so pleasing to immortal God.¹⁴⁷

Here we can see the papacy states its motivation for giving its blessings to the Spanish. The motivation given is the importance of the Christian religion being “*exalted and be everywhere increased and spread*”, to overthrow the “*barbarous nations*”, bring them to the faith and spread “*the Christian rule*”. It is interesting that the pope chose to connect the Reconquista of Granada to this donation. The newly found peoples of the Americas could not be mistaken for Saracens under any circumstance, and being on the other side of the Atlantic, they could not be said to be a threat to the stability of Christianity in Europe. However, seen in the context of the rest of the bull, this might simply be the pope excusing the Spanish as to

¹⁴⁵ There were actually several papal bulls, namely the bulls *Inter Caetera* (May 3, 1493), *Eximiae Devotionis* (May 3, 1493) and *Inter Caetera* (May 4, 1493). According to Davenport the first *Inter Caetera* granted lands discovered or to be discovered to Spain in the newly discovered territories in the west, while at the same time reconfirming the previous rights granted to the Portuguese, but the division was vague and without any set borders. Although *Eximiae Devotionis* has the same date as *Inter Caetera I* this papal bull was not expedited until July the same year. Following Davenport *Eximiae Devotionis* in a “[...] somewhat more precise and emphatic terms [...]” (Ibid, 64) restated the grants made to Spain in *Inter Caetera I*. However, the two first papal bulls were replaced by *Inter Caetera* of May 4th. Davenport, 1917, 71

¹⁴⁶ This might be true as other European kingdoms after a while traveled west to the Americas to settle and trade, and clearly felt that the papal bulls did not relate to them. For more information see: Stogre, 1992, 70.

¹⁴⁷ Davenport, 1917, 75-76. My emphasis

why they had not begun the enterprise of seeking out more territories before. Nevertheless, the connection between the spread of Christianity, the validity of throwing the Moors out of Spain, and that of overthrowing the “barbarous nations” for the spread of “Christian rule” in the “New World” was made by the pope. That this bull is about the new discoveries to the west is made clear when the pope continues by stating that he knows that the Spanish have long intended to search out and make their own discoveries, but have been hindered by the more pressing matter of reclaiming the kingdom of Granada. Now, however, they had sent out Columbus on this mission:

[...] and they [...] discovered certain very remote islands and even mainlands that hitherto had **not been discovered by any others**; wherein dwell very many peoples **living in peace**, and, as reported, going unclothed, and **not eating flesh**. Moreover, as your aforesaid envoys are of opinion, these very peoples living in the said islands and countries believe in one God, the Creator in heaven, and seem **sufficiently disposed to embrace the Catholic faith and be trained in good morals**.¹⁴⁸

Here we have several admissions of the harmlessness of the peoples discovered: they are “*living in peace*” and “*not eating flesh*”. It is also explicitly acknowledged that the people talked about are “*living on the said islands and countries*” that have been “discovered”. The inhabitants they met are reported to believe in one God and appear “*sufficiently disposed to embrace the Catholic faith and be trained in good morals*”. It is interesting when we look back to the papal tradition introduced by Innocent IV to see how arguments then used for not going to war have now been turned around to be an argument for overthrowing the “*barbarous nations*” and “*bring them to the faith*”. That the inhabitants are peaceful and seem, with their faith in the one Creator, likely to receive missionaries is not considered as a limitation for the Christian powers. The arguments for a just war in the traditional sense are gone, but the mandate to overthrow the “*barbarous nations*” is still given. The bull continues by stating that the pope by virtue of his apostolic power “*give, grant and assign*” to the Spanish “*all their dominions, cities, camps, places and villages, and all rights, jurisdictions, and appurtenances*” in the lands discovered. It follows logically that because the Spanish and the indigenous inhabitants of the Western Hemisphere cannot both have all rights, jurisdictions and appurtenances to the same areas, the pope by granting this to the Spanish at the same time deprived the peoples of the Americas of their dominion of their territories, at least so far as Christian Europe was concerned. Pope Alexander VI proceeds in *Inter Caetera* by stating that the areas are given:

[...] With this proviso however that **none** of the islands and mainlands, found and to be found, discovered or to be discovered, beyond that said line towards the west and south, be in **actual**

¹⁴⁸ Ibid, 76. My emphasis

possession of any Christian king or prince [...]. And we make, appoint, and depute you and your said heirs and successors lords of them with full and free power, authority, and jurisdiction of every kind; with this proviso however, that by this our gift, grant, and assignment **no right acquired by any Christian prince, who may be in actual possession of said islands and mainlands prior to the said birthday of our Lord Jesus Christ, is hereby to be understood to be withdrawn or taking away.**¹⁴⁹

Here the pope is defining the importance of first discovery (and to some extent actual occupancy) for the Christian Kingdoms, as it is stated that everything west of this line will rightfully belong to Spain, as long as it by Christmas 1493 is not claimed by any other *Christian* king or prince. The papacy donates away the lands of the non-Christians in the Americas, but does not donate away *potential* lands claimed by a *Christian* king or prince. Lastly, there is one other aspect of this papal bull which should be mentioned: Alexander VI charges the Spanish rulers with the responsibility for overseeing the ecclesial work to be done in the areas now donated to them. This is interesting for two reasons. Firstly, the responsibility to oversee the expanse of Christianity had traditionally been a papal responsibility. And while Alexander VI was not the first pope to give an ecclesial mandate to a crown, the new aspect is in the detail and how clearly the given mandate for the crown to take charge of the conversion of the newfound non-Christians are, as Poole describes it he: “*carried the system a step further by imposing a religious vicariate and laying the basis for a closer union of throne and altar*”¹⁵⁰. And secondly, the validity of the donation from the pope was based on the divine authority to spread Christian religion and Christian rule – and both these responsibilities Alexander VI delegates away to the Spanish crown together with the territories¹⁵¹. With *Inter Caetera* the so far developed principles of DOD are clearly transferred to the Americas. The basic idea was that these papal bulls granted the Catholic monarchs ownership over new territories and initiated a new state where the native population was under the jurisdiction of the European powers. In addition to this, the Christian nations who claimed ownership had monopoly on trade and contact with the non-Christians living in the discovered lands.

The Portuguese king was not satisfied with the line of demarcation drawn up in this papal bull, something that resulted in the Treaty of Tordesillas in 1494. In this Treaty, a new line of

¹⁴⁹ Ibid: 77. My emphasis.

¹⁵⁰ Poole, Stafford, Robert Choquette and Charles Lippy: *Christianity Comes to the Americas 1492-1776*, Paragon House, USA, 1992, 9

¹⁵¹ “*Moreover we command you in virtue of holy obedience that, employing all due diligence in the premises, as you also promise – nor do we doubt your compliance therein in accordance with your loyalty and royal greatness of spirit – you should appoint to the aforesaid mainlands and islands worthy, God-fearing, learned, skilled and experienced men, in order to instruct the aforesaid inhabitants and residents in the Catholic faith and train them in good morals.*” Davenport, 1917, 77.

demarcation was suggested. As was the case in the Treaty of Alcacovas , after the Monarchs had been granted the vast areas in perpetuity it was possible for the two kingdoms to come to an agreement between themselves without needing the sanction from the papacy¹⁵². As a consequence, the Church's interests for the expanse of the faith, and the Spanish and Portuguese political and economical interests, had been solidified, and all three participants embraced the Doctrine of Discovery.

3.2.2 England joins the venture

As we have seen, the secularization of the Doctrine of Discovery had begun with the Treaty of Alcacovas in 1479 and the Treaty of Tordesillas in 1494. However, how the English Crown and France could join the venture may seem a bit strange. The answer is that England's legal scholars developed a somewhat different legal theory concerning how one was to interpret the papal bulls. The argument presented was that as long as England only claimed lands not yet discovered by any other Christian prince they would not be violating the papal bulls. Under this interpretation, the charter granted by Henry VII to John Cabot was made.¹⁵³ In the Cabot charter, we can find the same rhetoric's and mindset that are found in the papal bulls, such as when King Henry VII decrees that:

Be it knowen that we haue giuen and granted, and by these presents do giue and grant [... the] sayd Iohn, and to the heires of them [... the right], to seeke out, discouer, and finde whatsoever isles, countreys, regions or prouinces of **the heathen and infidels** whatsoever they be, and in what part of the world soeuer they be, which before this time haue **bene vnknown to all Christians**¹⁵⁴

In the mid-1500s, England added a new element to further their rights of discovery, namely, that the land had to be *possessed* by a Christian prince as well as discovered. It is easy to see how this could make sense, as the different Christian nations of Europe could claim the right of first discovery to the same areas. Miller writes, "*this type of problem, and the problems created for France and England from the papal bulls, were solved by the requirement of actual occupation and current possession*"¹⁵⁵. The argument of current possession seems to have been adapted to a degree by the Spanish King. In 1523, he used the argument against the

¹⁵² Ibid, 85

¹⁵³ Miller, Robert J, "The Doctrine of Discovery" in Robert J Miller, Jacinta Ruru, Larissa Behrendt and Tracy Lindberg: *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies*, Oxford University Press, Oxford, 2010, 18.

¹⁵⁴ Yale Law School, The Avalon Project: Documents in Law, History and Diplomacy, "The Letters Patents of King Henry the Seventh Granted unto Iohn Cabot and his Three Sonnes, Lewis, Sebastian and Sancius for the the Discouerie of New and Unknowen Lands" February 3, 1498

http://avalon.law.yale.edu/15th_century/cabot01.asp My emphasis

¹⁵⁵ Miller, 2010, 18.

right of first discovery that Portugal claimed to Maluco. This does not mean that the new principle of occupancy was accepted by Spain without further ado. In the mid-1500s, Spanish negotiators wrote the King to say that they could not convince the French to stop trading in the discovered Spanish or Portuguese territories, stating that the French were only willing to consent not to go to areas actually possessed by the Portuguese. Spain and Portugal, on the other hand would not agree to treaties that would allow England and France to take possession of areas they did not possess but had been granted under the papal bulls.

All in all, the Christian nations of Europe tended to use the principles of Doctrine of Discovery that would best benefit their specific claims¹⁵⁶. This shows that during the “Age of Discovery”, the Christian powers had a pragmatic approach for appropriating as much land as they possibly could hold themselves. The one thing they all agreed on was that upon the discovery of a “heathen” land, the Christian powers of Europe gained rights on behalf of the native “heathens” already living there. They developed principles expanding on the principles laid forth in the papal bulls to gain legitimacy for their own claims, as well as in an attempt to find a framework on how to relate to each other’s claims, and prove the validity of their own claims.

3.2.3 Elements of DOD found in the Papal Bulls

Miller's first point on his list of the elements of the Doctrine of Discovery is first discovery which is defined as “*the right of the first European country to “discover” new lands unknown to other Europeans and by this gaining property and sovereign rights of the lands*”¹⁵⁷. As we saw earlier, pope Alexander VI, in order to avoid strife amongst the Christian nations of Europe, developed this basic principle. In the bull *Inter Caetera* he divided the world in areas the different nations could travel to, discover, and claim as long as they were not at the time in actual possession of any Christian king or prince.

Other elements present in the papal bulls are Preemption or European title, Indian title, and Tribal limited sovereign and commercial rights. I will treat these elements from Miller’s list together; as they are interlinked with each other from the time of the papal bulls, I find it efficient to collect them together and look at them as a group of rights or loss of rights. As we saw in the bull *Romanus Pontifex*, pope Nicholas V granted discoverers the right to a

¹⁵⁶ Ibid, 18-21.

¹⁵⁷ Miller, 2008, 3

monopoly regarding trade and diplomatic relations with non-Christians. This is clearly a limitation on tribal sovereign and commercial rights. The pope, by granting the Christian monarchs dominion and jurisdiction of the lands of “heathens” in all three papal bulls above, clearly gives them a title. As European thinking about title is that two parties cannot both have full title (jurisdiction and dominion) over a said territory, it logically follows that already in the papal bulls some of the indigenous title to their own lands are diminished from the Christian-European point of view.

Furthermore, we have the element of Terra Nullius¹⁵⁸. This is a concept one can find in Roman law, and so the concept itself is not of papal origin. Hinsdale, explains how “*Roman law consisted, to a considerable degree, of artificial definitions of res nullius*” which is to say that the Romans used the law to a considerable degree on non-vacant land. “*Thus the “habit of regarding an enemy’s property as “nobody’s” property originated in “the assumption that communities are restored to a state of nature by the outbreak of hostilities [...]”*”.¹⁵⁹ According to the Roman definition of *nullius* the people loosing their lands had to be defined as enemies – in order to be able to claim their lands as *vacant lands*. However, Hinsdale states that the Christian powers of Europe did not:

“[...] acknowledge the savages as their enemies, or plead the conqueror’s rights in relation to their Western claims. “*The English possessions in America were not claimed by right of conquest, but of discovery,*” says Chief Justice Marshall, “*and such was the claim of the other powers that divided the New World*”¹⁶⁰

So in this new way, where discovery, not conquest, was being used to appropriate new lands, how could the powers of Europe use the concept of *nullius* to claim that the lands were vacant? The answer lies in the new adaptation of the Roman concept of *nullius*. While in Roman law a person (and his property) was deemed as *nullius* after one had overcome the enemy in battle, the Catholic Church supplied a new definition of *nullius* through the papal bulls: “*The new definition of nullus was, a heathen, pagan, infidel, or unbaptized person*”.¹⁶¹

Two more elements that relate to the papal bulls are Christianity and Civilization. In the papal bull *Inter Caetera*, the pope charges the *Christian Monarchs* to spread the Catholic faith and Christian religion. Furthermore, the monarchs are told to overthrow barbarous (in

¹⁵⁸ “*a land or earth that is null or void. The term vacant domicilium was also sometimes used to describe this element, and this term literally means an empty, vacant, or unoccupied home or domicile*”. Miller, 2008, 4

¹⁵⁹ Hinsdale, Burke Aaron, “The Right of Discovery” *Ohio Archæological and Historical Quarterly*, December, 1888, pp. 349-379. Reprint from The University of Michigan Libraries, 15

¹⁶⁰ Ibid, 16

¹⁶¹ Ibid, 16

other words uncivilized) nations, thereby civilizing them. Lastly, they are told to bring these nations to the faith¹⁶². Already from this point, a connection is being made between bestowing Christianity and civilization. This dichotomy between Christian – “heathen” is a recurring theme throughout the papal bulls, and it is adopted into U.S. law via British colonial practices¹⁶³. From the papal bulls, the pope charges the different discovering nations of Europe to bring Christianity and civilization to the “heathens”. The European nations, at the time of the papal bulls, are seen as champions of the faith, and in exchange for bringing the Christian faith to the “heathens”, they are given rights (among these the right of monopoly) as compensation for the costs of traveling and spreading the faith.

The last element on Miller’s list is conquest. This may appear contradictory to Hinsdale’s statement (see terra nullius) about it being discovery claims, not claims of conquest that was used. However, both Miller and Newcomb interpret the element of conquest¹⁶⁴ different from an actual conquest. This other significance of conquest is called “*a term of art*” by Miller, and “*pretend conquest*” by Newcomb¹⁶⁵. The basic analysis from both are that America was not conquered, but that U.S courts viewed first discovery to “*be in essence like a military conquest because the European discovering country claimed political, real property and commercial rights over the native people*”¹⁶⁶ upon discovering their lands. This is in accordance with Hinsdale’s interpretation, namely, that the Christian powers of Europe did not claim the lands by conquest, but by first discovery. This takes us all the way back to the papal bulls to find the origin for the Christian powers’ logic when it comes to claiming a conquest of the Americas. To conclude, it is at least possible to claim that out of the 10 elements defining the Doctrine of Discovery¹⁶⁷, 8 of them have their direct origin, at least partially, in the papal bulls.

¹⁶² “Among other works well pleasing to our Divine Majesty and cherished of our heart, this assuredly ranks highest, that in our times especially the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself.[...]” *Inter Caetera* in Davenport, 1917, 75-76

¹⁶³ We will have a look at how this is present in US law shortly.

¹⁶⁴ Although Miller acknowledges that the element of conquest also *can* mean conquest in the traditional form. See: Miller, 2008, 6-7

¹⁶⁵ Miller, 2008, 5 and Newcomb, 2008, 99-101

¹⁶⁶ Miller, 2008, 5

¹⁶⁷ See: *Ibid*, 3-5

3.3 The Postcolonial Life of DOD

Here I will shortly present three cases in which the Doctrine of Discovery has been used in the postcolonial life of the U.S. I have chosen three cases from different time periods to show that the doctrine has been used over a long period of time and is still present in American Indian Law. There is a substantial amount of scholarly work that has been done documenting the presence of DOD in U.S courts¹⁶⁸. I will therefore give a short description of each case.

3.3.1 1823

In 1823, a case that was to be instrumental for the development of American Indian Law ended. *Johnson v. M'Intosh*¹⁶⁹ (Johnson) has been cited in later cases that rely on this opinion of the Supreme Court. The Johnson ruling is interesting because it shows how the United States interprets its colonial past and how the court interpreted DOD in postcolonial U.S. In the Court opinion written by Chief Justice John Marshall, we get thirty-three pages of a juridical account concerning how a unanimous Supreme Court of the United States interpreted the rights of indigenous peoples and nations in relation to the rights of the newly founded federation¹⁷⁰. The opinion of the court in the Johnson case was “*that discovery gave title to the government, by whose subjects, or by whose authority it was made, against all other European governments*”¹⁷¹ (granting monopoly) and that this title was consummated by possession. The court, on this basis, furthermore constructed an Indian title of mere “occupancy”. As we shall see when we look at the next case from 1955, the argument that Indian title consists of mere occupancy has been used to argue that the Indian title is a temporary right, inferior, and subject to the dominion¹⁷² of the United States¹⁷³. In Johnson, Marshall states that England, by the Cabot charter, had a complete recognition of the principle of discovery: “*Thus asserting a right to take possession, notwithstanding the occupancy of the natives, who were heathens, and at the same time, admitting the prior title*

¹⁶⁸ See for instance: Newcomb, 2008, Miller, 2008 and 2010, Williams, 1990, Robertson, 2005, Kades, 2000, and Jefferts, 2013.

¹⁶⁹ *Johnson v. M'Intosh*, 21 U.S (8 Wheat.) 543 (1823)

¹⁷⁰ For a more detailed analysis of the *Johnson* case please see: Newcomb, 2008, Miller, 2008 and 2010, and Jefferts, 2013.

¹⁷¹ *Johnson* at 576

¹⁷² Marshall writes that although the European powers respected the rights of the natives as occupants: “they asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in the possession of the natives.” *Johnson* at 574

¹⁷³ John Marshall (and his family) was himself a man with large real estate holdings that would have been affected by the decision of the Supreme Court in *Johnson*. See: Peter d’Errico, ““John Marshall: Indian Lover?” *Journal of the West*, 2000.

of any *Christian* people who may have made a previous discovery”¹⁷⁴. In this opinion from the U.S Supreme Court, the religious justification is to some degree implicit, but as we can see from the above quote the religious worldview embedded in DOD are at certain points made explicit. A central aspect of this opinion rests on the “*character and religion*”¹⁷⁵ of the Indians “*who were heathens*” and that “*The potentates of the old world found no difficulty in convincing themselves that they made ample **compensation** to the inhabitants of the new, by **bestowing** on them **civilization and Christianity** in exchange for unlimited independence*”.¹⁷⁶ In Johnson, we can see that Christianity and civilization are linked together, as what the discovering nations have to “offer” the natives. The element of civilization is also one that is present when the court mentions the “character” of the natives. This way of reading the opinion of the court is supported when looking to Justice Joseph Story¹⁷⁷ who explicitly writes:

The Indians were a savage race, sunk deep in the depths of **ignorance and heathenism**. If they might not **be extirpated** for their want of **religion and morals**, they might be reclaimed from their errors. They were bound to yield to the superior genius of Europe, and in **exchanging** their wild and debasing habits for **civilization and Christianity** they were deemed to **gain more** than an equivalent for every sacrifice and suffering¹⁷⁸.

In the Johnson ruling, we can find all 10 elements of DOD described by Miller, and the case has been important in U.S history because it paved the way for Western expansion and the idea that would be named Manifest Destiny twenty-seven years later. As Miller eloquently shows in *Native America, Discovered and Conquered*, the idea of Manifest Destiny was clearly present in contemporary American culture at the time of Johnson¹⁷⁹. The Indian was “the savage wolf” and would slink away or adapt to European “civilized” society as the forests gave way to civilization and Christianity¹⁸⁰.

3.3.2 1955 and 2005

In 1955, the Supreme Court handed down its decision in *Tee-Hit-Ton Indians v. The United States*.¹⁸¹ The Tee-Hit-Ton people had sued the United States, arguing that they were the “sole owners” of the land that the United States had sold the rights of “*all harvestable in the*

¹⁷⁴ *Johnson* at 576. My emphasis

¹⁷⁵ *Johnson* at 573

¹⁷⁶ *Johnson* at 573. My emphasis

¹⁷⁷ A justice of the Supreme Court during the Johnson-case

¹⁷⁸ Joseph Story, quoted in Newcomb, 2008, 82. My emphasis.

¹⁷⁹ Miller, 2008, 77-86

¹⁸⁰ George Washington conceptualized this idea. See: *Ibid*, 78

¹⁸¹ *Tee-Hit-Ton Indians v. The United States* 384 U.S 272 (1955)

Tongass National Forest” to the Ketchikan Pulp and Paper Company. The Tee-Hit-Ton people were asking for compensation for the losses and damages for the taking, plus interest¹⁸². The United States filed a brief for this case and delivered it to the Supreme Court (1954). This brief is of particular interest as the argument was founded, at least partly, on the Doctrine of Discovery and explicitly makes use of papal bulls. The U.S attorneys even cited Genesis (1:28, 9:1) and passages from the book of Psalms (115: 16) that had been integrated in the Massachusetts Colonial government as part of the support for the U.S. argument¹⁸³. In the brief, the United States begins by quoting the Johnson case and states that the Indians right of occupancy was retained “*only by the grace of the sovereign*”¹⁸⁴. Furthermore, during the argument in the brief, the US referred back to the papal bull *Romanus Pontifex*:

[...] in 1344, Clement VI had granted the Canary Islands to Louis of Spain upon his promise to lead the islanders to the worship of Christ, and following the discovery of the New World by Columbus, Alexander VI in 1493 and 1494 issued bulls granting to Spain all lands not under Christian rule [...]. The latter papal grant, because of the breaking down of papal authority and the vastness of the territory covered, was not accepted by the other nations or even greatly relied upon by Spain, and it was necessary for the **civilized, Christian** nations of Europe to develop a new principle which all could acknowledge as the law by which they could regulate, as between themselves, the right of acquisition of territory in the *New World*¹⁸⁵, which they had found to be inhabited by Indians who were **heathens and uncivilized** according to European standards¹⁸⁶

The majority decision of the Supreme Court in this case rested on the Doctrine of Discovery and states that Congress does not regard occupancy as ownership. Therefore, the right of occupancy is regarded as granted by the sovereign. The court concludes that this also meant that the right of occupancy could be extinguished by the sovereign (i.e., the U.S) “*without any legally enforceable obligation to compensate the Indians*”¹⁸⁷.

¹⁸² United Nations, Economic and Social Council, PFII “Preliminary study of the impact on indigenous peoples of the international legal construct known as the Doctrine of Discovery” 4. Feb. 2010 <http://www.un.org/esa/socdev/unpfii/documents/E.C.19.2010.13%20EN.pdf>, 16. [Accessed 17.08.2014]

¹⁸³ Tee-Hit-Ton Indians v. U.S. 1954 WL 72831 (U.S.) (Appellate Brief) at 15

¹⁸⁴ Tee-Hit-Ton Indians v. U.S. 1954 WL 72831 (U.S.) (Appellate Brief) at Summary of Argument A

¹⁸⁵ This interpretation by the U.S in this case is disputed by for instance Robert Miller, who states that England did not so much dispute the principles and authority laid down in the papal bulls as finding “loopholes” in these documents and expanding on the principles. See chapter 3.2.2

¹⁸⁶ Brief for the United States in *Tee-Hit-Ton Indians v. United States*, 348 U.S 272, 279 (1955), quoted in United Nations, Economic and Social Council, PFII “Preliminary study of the impact on indigenous peoples of the international legal construct known as the Doctrine of Discovery” 4. Feb. 2010

<http://www.un.org/esa/socdev/unpfii/documents/E.C.19.2010.13%20EN.pdf>, 17. [Accessed 18.08.2014] My emphasis

¹⁸⁷ *Tee-Hit-Ton Indians v. The United States* 384 U.S 272 (1955) at 279

The last court case that I want to mention here is from 2005: *City of Sherrill v. Oneida Indian Nation*¹⁸⁸. The case was about taxation rights. The Oneida had bought back ancestral territory on the open market that had been unlawfully acquired by New York State and wanted to apply the sovereignty status of the Nation over the reacquired ancestral land. The first quotation in this opinion written by Supreme Justice Ginsberg states “*Under the “doctrine of discovery,” [...] 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*”¹⁸⁹. This means that the principles of DOD has been actively used and referred to as late as 2005.

3.3.3 Plenary Power

“*It is undisputed (1) that the proposed flooding will infringe Indian rights acquired by treaty in 1794, 7 stat. 44, and (2) that Congress can authorize a taking by eminent domain despite the treaty*”¹⁹⁰. When I read this passage in a court case where the U.S. wanted to break a treaty and take large parts of the Seneca lands, I got curious. Why was it undisputed that Congress can break treaties due to eminent domain? To find the answer, I followed the citations from this case. This led me¹⁹¹ to the case of *United States v. Kagama* (1886) where it is stated that:

[...] Indians are **within the geographical limits** of the United States. The soil and the people within these limits are **under the political control of the Government of the United States**, or of the States of the Union. There exist within the broad domain of sovereignty but these two. There may be cities, counties, and other organized bodies with limited legislative functions, but **they are all derived from, or exist in, subordination to one or the other of these**. The territorial governments owe all their powers to the statutes of the United States conferring on them the powers which they exercise, and which are **liable to be withdrawn, modified, or repealed at any time [...] by Congress** What authority the State governments may have to enact criminal laws for the Indians will be presently considered. But **this power of Congress to organize territorial governments, and make laws for their inhabitants**, arises not so much from the clause in the Constitution in regard to disposing of and making rules and regulations concerning the Territory and other property of the United States, **as from the ownership of the country in which the Territories are, and the right of exclusive sovereignty** which must exist in the National Government, and can be found nowhere else¹⁹².

In this quote, we can see that plenary power is used, arguing that indigenous sovereignty is under the jurisdiction of the United States to extinguish or modify. The reason given for the

¹⁸⁸ *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005)

¹⁸⁹ First quotation, *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005). My emphasis

¹⁹⁰ *Seneca Nation of Indians v. M Brucker* 262 F.2s27 (1958) No. 14488. My emphasis

¹⁹¹ Through the case *Cherokee Nation v. Southern Kansas Ry. Co.*, 135 U.S. 641 (1890) where the U.S broke their treaty with the Cherokee to build a railway.

¹⁹² *United States v. Kagama*, 118 U.S. 375 (1886). My emphasis

U.S. government having this power over indigenous territories and governments is *ownership*, because the territories of indigenous nations are seen as being within the geographical limits of the U.S. The opinion continues:

Following the policy of the European governments in the discovery of America towards the Indians who were found here, the colonies before the Revolution and the States and the United States since, have recognized in the Indians **a possessory right to the soil** over which they roamed and hunted and established occasional villages. But they **asserted an ultimate title** in the land itself, by which the Indian tribes **were forbidden to sell** or transfer it to other nations or peoples without the consent of this paramount authority. [...] With the Indians themselves these relations are equally difficult to define. They were, and always have been, regarded as having a **semi-independent position when they preserved their tribal relations; not as States, not as nations, not as possessed of the full attributes of sovereignty**, but as a separate people, with [...] the power of regulating their internal and social relations, and **thus far** not brought under the laws of the Union or of the State **within whose limits they resided**.¹⁹³

Here we can see that the court argues that the monopoly (established already in the papal bulls) is proof that the indigenous nations are under the dominion of the U.S. To underpin this stance, the opinion quotes another famous case whose opinion again is written by Chief Justice John Marshall, *The Cherokee Nation v. The State of Georgia* (1831):

The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. [...]. The Indian Territory is **admitted to compose a part of the United States. In all our maps, geographical treatises, histories, and laws, it is so considered.** In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens¹⁹⁴

Following the line of argument presented in U.S. courts, it seems that the reason for it being “undisputed” that Congress has the right to exercise the principle of eminent domain in “Indian territory” is that this territory is included as a part of the United States by the right of discovery. As the U.S. had a title to the land based on discovery, it was included in the maps of the U.S. The other part of the reasoning presented by Marshall in the last quoted case is that the U.S. has had “the right” to exercise a monopoly over indigenous nations within the territory claimed by discovery, a principle that goes all the way back to the papal bulls.

3.3.4 Remains of a Religious Worldview in U.S. courts

In the court cases presented above we can see that the courts repeatedly make a connection between being Christian and being civilized. This link between Christianity and civilization is a very clear element in the concept of Manifest Destiny where God had “gifted” the “promised land” to the newcomers for them to civilize and spread the Christian faith by

¹⁹³ *United States v. Kagama* at 12. My emphasis

¹⁹⁴ *Cherokee Nation v. Georgia*, 30 U.S. 1 (5 Pet.) (1831), 16-17. My emphasis.

converting the “heathens”¹⁹⁵. The Johnson case was written down in a time period where the statements later made by Joseph Story were acceptable and, to some extent, also promoted by the Presidents of the United States. Newcomb states that the Johnson case relies on the same conceptual patterns found in the Old Testament story regarding Abraham and names as one example:

[...] that the Christian European potentates assumed the “ultimate dominion” to be “in themselves” with regard to the newly “discovered” lands of the hemisphere. Similarly, the story of the Lord promising the land of Canaan to the chosen people portrays him as possessing and exercising dominion in relation to “the promised land”. We find an identical pattern in the Johnson ruling when Marshall said that the Europeans “claimed and exercised as a consequence of ultimate dominion, a power to grant the soil while yet in the possession of the natives” Similarly, the Old Testament portrays the Lord (*dominus*) as a conqueror who “claimed and exercised as a consequence of this [his] assertion of ultimate dominion, a power to grant the soil [to Abram and the chosen people]” while yet in the possession of the [Canaanites]¹⁹⁶

Based on the worldview formulated in the Old Testament and the papal bulls, namely that one as a Christian, has an extra set of land rights in “heathens” lands, and as “heathens” you are at the jurisdiction of the Christians¹⁹⁷, is very much still present in U.S. courts. The doctrine of Plenary Power must be said to, at the very least, be resting partially on DOD. And lastly, it is possible to see direct references to DOD in contemporary court cases.

¹⁹⁵ McSloy, Steven Paul, “Because the Bible tells me so: Manifest Destiny and American Indians”, *St. Thomas Law Review*, Vol 9, Fall 1996

¹⁹⁶ Newcomb, 2008, 40. The [] was in use by Newcomb.

¹⁹⁷ That in return will civilize you and bring you to the Christian faith

4 Statements on DOD

4.1 The Catholic Church

As of this time, the Catholic Church has not offered any official repudiation or statement on the Doctrine of Discovery, or the papal bulls¹⁹⁸ sent out in the 1400s. While there is no official Catholic stance on the Doctrine of Discovery or the relevant papal bulls per se, there are some recent statements from recent times regarding indigenous peoples and the Catholic faith coming to America. In 2007, pope Benedict XVI visited Latin America, and at the Inaugural Session of the Fifth General Conference of the Bishops of Latin America and the Caribbean, he said:

[...] what did the acceptance of the Christian faith mean for the nations of Latin America and the Caribbean? For them, it meant knowing and welcoming Christ, the unknown God **whom their ancestors were seeking, without realizing it**, in their rich religious traditions. Christ is the Saviour for whom they were **silently longing**. It also meant that they received, in the waters of Baptism, the divine life that made them children of God by adoption; moreover, they received the Holy Spirit who came to make their **cultures fruitful, purifying them and developing** the numerous seeds that the incarnate Word had planted in them, thereby guiding them along the paths of the Gospel. In effect, the proclamation of Jesus and of his Gospel did not at **any point** involve an **alienation** of the pre-Columbian cultures, nor was it the **imposition** of a foreign culture. [...]The Utopia of going back to breathe life into the pre-Columbian religions, separating them from Christ and from the universal Church, would not be a step forward: indeed, **it would be a step back**. In reality, it would be a **retreat** towards a stage in history anchored in the past.¹⁹⁹

Indigenous groups reacted and in the end even the Catholic Church's own advocacy group (Cimi) in Brazil felt the need to distance themselves from the statements made. Father Paulo Suess (advisor, Cimi) told *Reuters*, "*The Pope doesn't understand the reality of Indians here, his statement was wrong and indefensible*"²⁰⁰. The reaction from indigenous communities led to pope Benedict modifying his earlier statements from Brazil, and back in Rome, he acknowledged that "*unjustifiable crimes*"²⁰¹ were committed during the European conquest of the Americas. However, according to *New York Times* the pope, while acknowledging the crimes done in the name of conquest still upheld the narrative that Catholicism had shaped indigenous culture in South America in a favorable way for the last 500 years. He tried to

¹⁹⁸ Papal bulls are here used as a collective term about the papal bulls *Dum Diversas*, *Romanus Pontifex* and *Inter Caetera* which we had a closer look at in Chapter 3.

¹⁹⁹ Benedict XVI, The Vatican, "Inaugural Session of the Fifth General Conference of the Bishops of Latin America and the Caribbean. Address of his Holiness Benedict XVI", http://www.vatican.va/holy_father/benedict_xvi/speeches/2007/may/documents/hf_ben-xvi_spe_20070513_conference-aparecida_en.html [Accessed 10.06.2014]. My emphasis

²⁰⁰ Colitt, "Brazil's Indians offended by Pope comments" <http://www.reuters.com/article/2007/05/14/us-pope-brazil-indians-idusN1428799220070514> [Accessed 10.06.2014]

²⁰¹ Fisher, "Pope Softens Remarks on Conversion of Natives" http://www.nytimes.com/2007/05/23/world/europe/23cnd-pope.html?_r=2 [Accessed 10.06.2014]

create a distance between the colonization and the spread of the Gospel by stating, “*While we do not overlook the various injustices and sufferings which accompanied colonization, the Gospel has expressed and continues to express the identity of the peoples in this region [...]*”²⁰².

Other formal positions regarding the Doctrine of Discovery and the papal bulls can be found; the Holy See, for example, has observer status in the United Nation, and has participated and made statements in the PFII. While I have not been able to trace the original statements, references to them are made in the press releases provided by the UN. In one of these press releases from 2010, it says that the representative from the Holy See, Kuriakose Bharanikulangara, stated that the Vatican views the papal bulls as abrogated along with other doctrines and that the process around the second Vatican council had also refuted the papal bulls who are the foundation of the discovery doctrine²⁰³. Still, it is not possible to find the statement in its entirety on the homepages of either the Vatican, the Holy See’s homepage for their UN observers, or the UN. However, I have been able to acquire a letter sent out by the Permanent Observer Mission of the Holy See to the United Nations to Faithkeeper Oren Lyons of the Haudenosaunee Confederacy.

4.1.1 Letter from the Permanent Observer Mission of the Holy See to the United Nations to Faithkeeper Oren Lyons, 2007

In this letter, Archbishop Celestino Migliore writes that The Holy See views the papal bull *Inter Caetera* as abrogated for several reasons: the Treaty of Tordesillas, Portugal’s expansion into Brazil without being excommunicated from the Church and the French king’s expansion into the territories of North America and the Caribbean. Furthermore, the Holy See views *Inter Caetera* as abrogated by later papal bulls, explicitly mentioning *Sublimis Deus* from 1537, and the *Immensa Pastorum* issued in 1741. Lastly, the Archbishop points to Canon 6 of the Code of Canon Law from 1983 which is a general law where the Church views the canon law from 1917 and any other “*universal or particular laws contrary to the*

²⁰² Pope Benedict XVI quoted by Fisher, “Pope Softens Remarks on Conversion of Natives” http://www.nytimes.com/2007/05/23/world/europe/23cnd-pope.html?_r=2 [Accessed 10.06.2014]

²⁰³ United Nations, Economic and Social Council, PFII “Preliminary Study shows “Doctrine of Discovery” Legal Construct Historical Root for Ongoing Violations of Indigenous People’s rights, Permanent Forum told” <http://www.un.org/News/Press/docs//2010/hr5019.doc.htm> [Accessed 18.08.2014] and response by Newcomb can be found here: Newcomb, “The Holy See’s response misses the point” <http://indiancountrytodaymedianetwork.com/2010/05/07/newcomb-holy-sees-response-misses-point-81688> [Accessed 10.06.2014]

prescripts of this Code”²⁰⁴ to be abrogated. The Archbishop states that the Catholic Church therefore views *Inter Caetera* as “a historic remnant with no juridical, moral or doctrinal value”²⁰⁵. In addition to this, the Archbishop states that the Second Vatican Council overturned the doctrine of the temporal power of the papacy, thereby overturning the view that the wars of conquest in order to convert non-Christians were just. He thereafter continues by mentioning the status of the Doctrine of Discovery in U.S. law; he states that after it was incorporated in 1823 the doctrine:

[...] acquired a life of its own, quite independent of the fact that for the Church the document has had no value whatsoever for centuries. The refutation of this doctrine is therefore now under the competence of American politicians, legislators, lawyers and legal historians²⁰⁶

The Archbishop ends his letter by restating that the Holy See confirms that the papal bull *Inter Caetera* has been abrogated, that they consider the bull without any doctrinal or legal value, and that the Holy See is concerned with indigenous peoples land rights (and that they are supporting the Declaration of the Rights of Indigenous Peoples). In other words, in this letter the Holy See distances itself from the influence its past papal bulls have had on international law – and consequently on U.S. law. Stating that the church, viewing the papal bulls already abrogated, have no reason for publically repudiating their old papal bulls today. The Holy See received an answer to this letter from indigenous groups with replies to the statements put forth in the letter,²⁰⁷ but so far these²⁰⁸ indigenous groups have not received a response to their letter from the Holy See.

4.1.2 Catholic groups calling on the pope to repudiate DOD

Even though there has been no statement about the Doctrine of Discovery or the relevant papal bulls from pope Francis, the newly elected pope has received letters and statements from various religious groups within the structure of the Catholic Church calling on him to publically rescind the papal bulls and repudiate the Doctrine. The Vatican and the pope have so far received these letters in silence. Still, this movement within the Catholic Church just began in late October 2013, when the local Pax Christi group in Maine sent out their

²⁰⁴ Archbishop Celestino Migliore, “Letter to Chief Oren Lyons”, 2. 16 July, 2007. Attached in full in the Appendix.

²⁰⁵ Ibid, 2.

²⁰⁶ Ibid, 3

²⁰⁷ The Indigenous Law Institute; American Law Alliance and Tonatierra, “Memorandum”, April 2008, to Archbishop Celestino Migliore, Apostolic Nuncio, Permanent Observer Mission of the Holy See to the United Nations. Attached in full in the appendix.

²⁰⁸ These groups being the Indigenous Law Institute, American Indian Law Alliance, and Tonatierra

statement renouncing DOD²⁰⁹. Several other groups followed. The Passionists²¹⁰ at the UN sent a letter to pope Francis on November 1st, 2013²¹¹ calling on him to revoke the papal bulls before the UN General Assembly's Conference on the Rights of Indigenous Peoples in the autumn of 2014. In addition to this, the Loretto Community sent out a press release in late November 201, on behalf of themselves and 13 other Catholic groups calling on the pope for a formal rescission of the papal bulls²¹². The Loretto Community also wrote a letter directly to the pope explaining their views, namely that the:

[...] patterns of dominance and dehumanization they [the papal bulls]²¹³ promulgated have remained the foundation for many unjust religious and civil actions, as well as political and legal systems, over the past 500 years. In the United States (as recently as 2005), cases relying on the patterns found in the papal bulls and on the claimed Right of Discovery has been issued by the U.S Supreme Court²¹⁴

They end by asking the pope to rescind the papal bulls from the fifteenth century and the Doctrine of Discovery. The last letter addressed to the pope from a Catholic group that I have been able to find, was sent out by the Sisters of St. Joseph and Associates of Buffalo New York (SSJ) in November 2013²¹⁵. This letter brings up the papal bull *Sublimis Deus* from 1537, which stated that:

In the desire to remedy the evil which has been caused, We hereby decide and declare that the said Indians, as well as any other peoples which Christianity will come to know in the future, must not be deprived of their freedom and their possessions – regardless of contrary allegations – even if they are not Christians and that, on the contrary, they must be left to enjoy their freedom and their possessions^{216 217}

The letter from SSJ continues by pointing out that this bull was issued over four decades after *Inter Caetera* and that during these 42 years, millions of indigenous people was decimated. Furthermore, it stresses the use of “*the Christian Doctrine of Discovery*” in U.S courts from

²⁰⁹ Harrison “Pax Christi Maine asks Pope Francis to renounce Doctrine of Discovery” <http://bangordailynews.com/2013/10/31/religion/pax-christi-maine-asks-pope-francis-to-renounces-doctrine-of-discovery/> [Accessed 11.06.2014]

²¹⁰ Together with other non-governmental (religious) organizations(NGO)

²¹¹ Included in the appendix

²¹² Loretto Community “Thirteen Catholic Groups in Solidarity with Indigenous People Join Their Request to Ask Pope Francis to Rescind Papal Bulls from 15th Century” <http://www.lorettocommunity.org/wp-content/uploads/2013/11/Papal-Bull-Press-Release-11-25-2013.pdf> [Accessed 10.06.2014]all the groups who joined in this statement is listed in the appendix.

²¹³ One thing to note is that the Loretto Community in their letter only mention *Dum Diversas and Inter Caetera* when naming the papal bulls

²¹⁴Sister Pearl McGivney, “Your Holiness”November 18, 2014 <http://www.lorettocommunity.org/wp-content/uploads/2013/11/Papal-Bull-Letter.pdf>, 1[Accessed 10.06.2014]

²¹⁵ The letter is included in the appendix

²¹⁶ For more information on *Sublimus Deus* see: Stogre, 1992, 178

²¹⁷ Steven Newcomb explains his stance towards this papal bull here: Newcomb, “Misinformation From the Permanent Observer Mission of the Holy See” <http://indiancountrytodaymedianetwork.com/2014/05/04/misinformation-permanent-observer-mission-holy-see> [Accessed 11.06.2014]

the case of *Johnson* to the case from 2005²¹⁸. It ends by calling upon the pope to repudiate and rescind the papal bulls from the fifteenth century, to support the rights of indigenous peoples, stating “*On our part we will continue to work for justice whenever and wherever necessary*”.²¹⁹

As we can see from this short presentation of statements issued from the Catholic community on DOD there are several approaches to this issue within the Catholic Church. While the Vatican and their representatives in the UN have not shown an interest in repudiating the papal bulls from the 1400s, or DOD in General²²⁰, several Catholic organizations consisting of religious men and women have pressed the issue during the last year. This is a recent development, and it would not be surprising if there were more similar statements released from Catholic organizations in the future as knowledge of DOD spreads.²²¹

4.2 The Episcopal Church

The first movement to repudiate DOD within the Episcopal Church began in Maine, where lay-person John Dieffenbacher-Krall brought the issue to the Indian Committee of St. James and the held a sermon on DOD in 2006. After that he worked with the Episcopal Diocese of Maine Committee on Indian relations to get the Episcopal Diocese of Maine to denounce DOD, which they did in 2007. After this the diocese of Central New York did the same in 2008, and in 2009 the Episcopal Church nationally made a statement calling for a repudiation of DOD. The resolution was a grassroots’ initiative coming from lay-people in the House of Deputies. The House of Bishops also passed the resolution, and it became the official stance of the Episcopal Church. After this repudiation, the Church developed its own webpage dedicated to DOD and also sermons of lament on the issue. According to a communication officer in the Episcopal Church, Neva Rae Fox, the church followed up on the resolution from the General Convention in 2009 by informing both President Obama and the U.S. Congress about the stance the church had taken on the issue. As of 31 March 2014, they had

²¹⁸ See chapter 3.

²¹⁹ “Pope Francis” letter from the Sisters of St Joseph and Associates of Buffalo, New York, pp. 2. Letter included in the appendix.

²²⁰ As they view the papal bulls already abrogated, and the presence of the Doctrine of Discovery in American Indian Law to be a secular issue, relevant for lawyers, politicians and legislators.

²²¹ The Leadership Conference of Women Religious, made up of Catholic women religious, voted to adopt a resolution calling on the pope repudiate the papal bulls *Dum Diversas*, *Romanus Pontifex* and *Inter Caetera*, August 14, 2014. Stockman, “LCWR members set sights on justice for indigenous peoples, environment” <http://ncronline.org/news/peace-justice/lcwr-members-set-sights-justice-indigenous-peoples-environment> [Accessed 22.08.2014]

not received a response²²². Interestingly enough, in the statement from the Episcopal Church from 2009, the church stresses the matter of the Cabot-charter from 1496 and how the structures from this doctrine are still relevant today, but they do not mention the papal bulls at all; instead they focus on DOD as being promulgated by a general Christian worldview:

This doctrine, which **originated with Henry VII in 1496**, held that Christian sovereigns and their representative explorers could assert dominion and title over non-Christian lands with **the full blessing and sanction of the Church**. It continues to be invoked, in only slightly modified form, in court cases and in the many destructive policies of governments and other institutions of the modern nation-state that lead to the colonizing dispossession of the lands of indigenous peoples and the disruption of their way of life [...] ²²³.

In other words, the official statement of the Episcopal Church official statement regarding the Doctrine of Discovery identifies the origin of the doctrine to be the Cabot charter. While this charter can definitely be said to be the origin of the presence of DOD in the *legal* system of the United States today, it does not take into account the general worldview that had been present among different Christian Nations in Europe. This made the charter part of an already existing “legitimizing” the Christian monarchs’ claims to distant lands. Another thing worth noticing is that the church states that Christian sovereigns asserted dominion over non-Christian people with “the full blessing and sanction of the Church”. Here they hint at the Church of England of which the Episcopal Church in the U.S. is a direct descendant. In 1496, however, Britain was still part of the Catholic Church²²⁴ and made use of loopholes that British law interpreters had found to grant “*by the grace of God*”²²⁵ lands discovered by the Cabot’s in “the new world” to the discoverers. Still, that the Episcopal Church focuses on the adaptation of DOD in English law is understandable, especially as there were no changes in the formulations in the later charters given out by the British monarchs after the Church of England was founded²²⁶.

²²² Personal communication by e-mail from Neva Rae Fox, 31st March 2014

²²³ The Episcopal Church, “Repudiate the Doctrine of Discovery” 2009. My emphasis. Entire resolution included in the appendix

²²⁴ Church of England, “A reformed Church” <http://www.churchofengland.org/about-us/history/detailed-history.aspx> [Accessed 22.06.2014]

²²⁵ Yale Law School, The Avalon Project: Documents in Law, History and Diplomacy, “The Letters Patents of King Henry the Seventh Granted unto Iohn Cabot and his Three Sonnes, Lewis, Sebastian and Sancius for the the Discouerie of New and Unknowen Lands” February 3, 1498 http://avalon.law.yale.edu/15th_century/cabot01.asp [Accessed 23.06.2014]

²²⁶ As seen among other charters for instance: Yale Law School, The Avalon Project: Documents in Law, History and Diplomacy “Charter for the Province of Pennsylvania” (1681) http://avalon.law.yale.edu/15th_century/cabot01.asp [Accessed 23.06.2014] and “The First Charter of Virginia” (1606) http://avalon.law.yale.edu/17th_century/va01.asp [Accessed 23.06.2014]

4.2.1 Pastoral Letter from Presiding Bishop Katharine Jefferts Schori

They have misunderstood what it means to exercise **dominion** toward life in the garden. Through the millennia, many of their offspring have continued to misunderstand dominion, or to willfully twist the divine **intent of dominion toward the conceit of domination**. [...] The result has been enormous destruction, death, despair, and downright evil – what is more commonly called **sin**²²⁷

In her pastoral letter Presiding Bishop Katharine Jefferts Schori immediately focuses on the concept of domination as a foundational problem and as the framework for thinking about DOD and indigenous peoples today. In the rest of her letter, she describes that the divine intent behind giving dominion to humans should be seen as giving humans stewardship responsibility over creation rather than a right and duty to dominate it. She connects the concept of domination directly to the notion of discovery. Stories from the Bible, she writes, tell of people with a hunger for land who were willing to use violence to occupy and possess it; this mentality she connects to the Crusades to the Holy Land²²⁸. As the “new world” was discovered, the explorers went with “*religious warrants*” that led to death, dispossession and enslavement of indigenous peoples on several continents. The presence of this mentality and their following legal basis, DOD “*underlie U.S decisions about who own these lands*”²²⁹ and the “*ongoing*” dispossession of indigenous peoples. The Bishop states that principles formulated by DOD “*give the lie to*” biblical understanding, namely, that humans reflect the image of God. She continues by saying that all humanity should be grieving for the injustice visited upon indigenous peoples for generations and that there can be no peace, nor healing, before justice has been restored. In the end of her letter, she describes the work being done by the church with regards to DOD as:

[...] focused on education, dismantling the structures and policies based on that ancient evil, support for the United Nations Declaration on the Rights of Indigenous Peoples, and challenging governments around the world to support self-determination for indigenous peoples.²³⁰

She also points out that the church’s understanding of their mission has changed, today the Episcopal church sees their mission as “*healing brokenness in the world around us*” – doing this in a variety of ways including “*revising structural and systematic injustice; and caring*

²²⁷ Presiding Bishop Katharine Jefferts Schori “Pastoral Letter on the Doctrine of Discovery and Indigenous Peoples, May 16 2012 <http://www.episcopalchurch.org/notice/episcopal-presiding-bishop-katharine-jefferts-schori-issues-pastoral-letter-doctrine-discover>. [Accessed 22.07.2014] My Emphasis.

²²⁸ She also points out that other groups did the same, even though they were not Christians, specifically mentioning Genghis Khan and the empire of Alexander the Great

²²⁹ Ibid.

²³⁰ Ibid.

*for this earthly garden. We will partner with any and all who share a common vision for healing, whether Episcopalian or Christian or not*²³¹.

4.3 The Religious Society of Friends

Many Quaker Meetings have made statements on the Doctrine of Discovery²³². For this thesis, I have decided to focus on the minutes that are the most articulate when it comes to the Doctrine of Discovery. I examine minutes passed by Yearly Meetings and two minutes from Monthly Meetings, which includes both the regional and local levels. In the statements coming from RSF, testimonies are very often mentioned. These testimonies could be said to be spiritual or moral codes that Quakers try to abide by:

The Doctrine of Discovery violates Christian teachings, from their foundation in the Ten Commandments to their expression in the life of Jesus. **It also violates our Quaker testimonies** of equality, peace, integrity, community and stewardship²³³

The issuing of minutes regarding DOD within the Religious Society of Friends (RSF) is quite recent. In 2010 the New York Yearly Meeting published a minute, followed by the Baltimore Yearly Meeting in 2012 and the New England Yearly Meeting in 2013.²³⁴ However, the first minute on DOD passed by the Religious Society of Friends was by the Indian Committee of Philadelphia Yearly Meeting in September 2009. Elizabeth Koopman took the initiative to the Indian Committee after being inspired by the repudiation of DOD that the Episcopal church had done on a national level the same year. The Indian Committee wrote that they renounce:

[...] the Doctrine of Discovery, the doctrine at the foundation of the colonization of Indigenous lands, **including the lands of Pennsylvania**. We find this doctrine to be fundamentally inconsistent with the teaching of Jesus, with our understanding of the inherent rights that individuals and peoples have received from God, and inconsistent with **Quaker testimonies** of Peace, Equality, and Integrity²³⁵

²³¹ Ibid

²³² In my list in the appendix over groups that have repudiated DOD, I have included the Monthly Meetings of the RSF if their Yearly Meeting has not yet reached a minute on the issue. I have also included Yearly Meetings outside of the U.S who have passed minutes on the DOD in this list.

²³³ Boulder Monthly Meeting, "A Minute to Repudiate the Doctrine of Discovery and to Affirm the U.N. Declaration on the Rights of Indigenous peoples"

http://www.quakerearthcare.org/sites/quakerearthcare.org/files/attachments/minute_approved_by_boulder_meeting_march_13_2013.pdf [Accessed 25.06.2014]. My emphasis.

²³⁴ In addition to this there are also several other organizations within the Quaker community that have made statements/minutes on the issue, among these the Friends Committee on Maine Public Policy in 2010 (In a letter Directed to the Department of State urging the US government to endorse the UNDRIP-declaration) and the group Quaker Earthcare Witness in 2012.

²³⁵ Philadelphia Yearly Meeting, Indian Committee. "2009 Minute of the Indian Committee of the Philadelphia Yearly Meeting of the Religious Society of Friends". My emphasis. Minute included in the appendix. My emphasis.

Here we have an example of members from the RSF in their statement on DOD linking it with the charter granted to William Penn – by highlighting that the land grant of Pennsylvania is directly related to DOD. The mention of this charter is also included in the background document of the Cambridge Monthly Meeting resolution where they repudiate DOD, and in their minute they also acknowledge that the Quakers have “*been in error and contributed to physical, spiritual and cultural damage to Indigenous Peoples*”²³⁶. However, in all the other repudiations made by the Religious Society of Friends that I have access to this aspect is not included. There is rather a focus on the general consequences of this doctrine, as for instance shown in the New York Yearly Meeting’s statement from June 2012:

The Doctrine of Discovery mandated the seizure of lands belonging to any non-Christian peoples and encouraged the enslavement, exploitation, or eradication of those peoples. We cannot accept that the Doctrine of Discovery was ever a true authority for the forced takings of lands and the enslavement or extermination of peoples. It is **reprehensible** for the United States to **use** the Doctrine of Discovery as a legal doctrine to compel jurisdiction over Indigenous Peoples or their lands.²³⁷

This statement is forceful, and it also includes a condemnation on the “use” of the Doctrine of Discovery written in a present tense, indicating that the implications of DOD are still ongoing. The Boulder Monthly Meeting is even more explicit in their formulation of DOD as a current issue when they state in their minute:

Consciously or unconsciously, we benefit from historical and **ongoing** injustices committed against the Native peoples of this land. Because the Doctrine of Discovery was embedded in the legal foundations of the United States and other countries, **it continues to be cited** as a precedent. **Even today** it is used to deny Indigenous Peoples their rights.²³⁸

The minutes passed by Quakers subtly vary and are, to some degree, adapted to local contexts. So, it makes sense that Friends in Colorado when repudiating DOD focus on the impact of the discovery doctrine in Colorado rather than the charter granted to William Penn for the area of Pennsylvania. While in Philadelphia, the grant of Pennsylvania is explicitly mentioned. However, almost all the statements on DOD from various Meetings of Friends state that the papal bulls are the origin of the doctrine. They also state that the principles migrated to the British the royal charters and that the discovery doctrine is still relevant today.

²³⁶ Friends Meeting at Cambridge, “Repudiation of the Doctrine of Discovery and Affirmation of the UN Declaration on the Rights of Indigenous Peoples”. Included in the appendix.

²³⁷ New York Yearly Meeting, “Minute on the Doctrine of Discovery”, July 25, 2012, http://www.nyym.org/sites/default/files/Minute_Doctrine_of_Discovery.pdf [Accessed 26.06.2014]

²³⁸ Boulder Monthly Meeting, “A Minute to Repudiate the Doctrine of Discovery and to Affirm the U.N. Declaration on the Rights of Indigenous Peoples” http://www.quakerearthcare.org/sites/quakerearthcare.org/files/attachments/minute_approved_by_boulder_meeting_march_13_2013.pdf. [Accessed 26.06.2014] My emphasis

4.3.1 Material on DOD by RSF

The different meetings have produced a lot of material on the Doctrine of Discovery. For instance, the New York Yearly Meeting has a page that gives a timeline of the development of DOD. Furthermore it states what the Meeting sees as the most relevant principles belonging to the term, and an extensive recommended reading list to learn more about the issue.²³⁹ The Cambridge Monthly Meeting sent out background information about DOD together with their statement on the matter. On this background sheet, they present the doctrine, and the request for repudiation made by indigenous peoples across the world via the PFII. They also have an own paragraph named “*Being Quaker*”, distinguishing between

[...] what “we” have done as Americans and what “we” have done as Quakers. Although Quakers have benefited from land-claiming practices, it is also true that Quakers have tried to live their values. In many past instances the respect Quakers showed to, and honesty in their dealing with the indigenous peoples they encountered ran counter to more general societal trends of dishonesty and brutality, and this has been recognized. However we are living now and feel neither pride nor wallowing in guilt is helpful. We acknowledge the general responsibility of privilege, and accept responsibility for learning the real history and working to ensure that such cruelty and genocide cease. **As we take our testimonies seriously and try to live our values today, we are freeing ourselves.**²⁴⁰

As we have now seen in several of the quotes from both statements and background material produced by the Religious Society of Friends, the Quaker testimonies are often brought up, either in the statement itself, or in material relating to the minute. This connects the repudiation to their faith and to some extent, to the call to be a “good” Quaker.

4.4 Indigenous Responses

The repudiations of the discovery doctrine among different religious group has gotten coverage in indigenous media, especially the national repudiation by the Episcopal Church. *Indian Country Today* interviewed both the people involved from the Episcopal Church about the process towards repudiation, and the prominent indigenous activist and scholar Steven Newcomb on the matter.²⁴¹ Newcomb stated that the repudiation by the Episcopal Church was an “*historic event*” and promoted his own “*deep appreciation*” for the people who had

²³⁹ New York Yearly Meeting, “What Is the Doctrine of Discovery? Why Should It Be Repudiated? (factsheet)” http://www.nyym.org/index.php?q=doc_of_disc_factsheet [Accessed 27.06.2014]

²⁴⁰ Friends Meeting at Cambridge “Background to the request for repudiation of the Doctrine of Discovery and affirmation of the UN Declaration on the Rights of Indigenous Peoples”. My emphasis. Included in the appendix

²⁴¹ Toensing, “Episcopal Church repudiates Doctrine of Discovery” July 26, 2009 <http://indiancountrytodaymedianetwork.com/2009/07/26/episcopal-church-repudiates-doctrine-discovery-82239> [Accessed 13.06.2014]

advocated for the passage of the resolution²⁴². When the Indian Committee of Philadelphia Yearly Meeting followed up by repudiating the Doctrine of Discovery later the same year, this also received attention. Elizabeth Koopman told *Indian Country Today* that she had been surprised to receive a phone call related to the repudiation by indigenous leader Oren Lyons.

On the other hand, there also has been an indigenous response to the letter sent Lyons from the Permanent Observer Mission of the Holy See²⁴³. In the response from Indigenous Law Institute, American Indian Law Alliance and Tonatierra,²⁴⁴ they go through the argumentation from the Vatican calling for an explicit repudiation of the papal bulls and the Doctrine of Discovery. They argue that neither the Treaty of Tordesillas or the papal bull *Sublimis Deus* abrogated the papal bull *Inter Caetera* as this bull forever gifted and granted the “newly discovered lands” to the Spanish kingdom. They ask Archbishop Migliore

[...] given that the horrible atrocities sanctioned by *Inter Caetera* were carried out against the Indian peoples of the Americas for forty-four years after 1492 when Cristobal Colon first sailed to the lands now called the Americas, is not the Holy See responsible for authorizing the historical foundation of bloody repression in the region?²⁴⁵

This letter also responds to the statement that as the Doctrine of Discovery became part of U.S. law it took on a life of its own, and that the refutation of the Doctrine that indigenous people seeks is now the responsibility of U.S politicians, lawyers, legal historians and legislators. Their view on the matter is this:

[...] that because the Holy See granted rights of conquest to Catholic monarchs for the propagation of the Christian empire, and called for the subjugation of Indigenous nations on the basis of claimed rights of discovery and domination, the Holy See has a responsibility to publically acknowledge this historical fact and set a high moral standard by openly renouncing the doctrine of Christian discovery and domination. This responsibility, and the significance of an explicit renunciation, are analogous to disavowals and apologies for slavery in the states of the United States and are equally, if not more significant.²⁴⁶

Here we can see that these indigenous interest groups draw a clear parallel between the history of slavery and the history of DOD. Furthermore, they demand that the Catholic Church denounces the papal bulls explicitly and publically, and acknowledge their

²⁴² Ibid.

²⁴³ Toensing, “Quaker Indian Committee disavows Doctrine of Discovery, affirms Declaration” December 14, 2009. <http://indiancountrytodaymedianetwork.com/2009/12/14/quaker-indian-committee-disavows-doctrine-discovery-affirms-declaration-82504>, [Accessed 13.06.2014]

²⁴⁴ The Indigenous Law Institute; American Law Alliance and Tonatierra, “Memorandum”, April 2008, to Archbishop Celestino Migliore.

²⁴⁵ Ibid, 6

²⁴⁶ Ibid, 9-10

responsibility for the subjugation of people in the new world. They further conclude their letter by stating that the pope has

[...] tremendous influence through his use of moral suasion. Thus, if the pontiff were to be “an outspoken “moral voice” that calls for an end to the use of the Doctrine of Discovery and Dominion against Indigenous nations and peoples, this would be highly influential indeed. The pope could do this in a formal ceremony with Indigenous elders and representatives.²⁴⁷

All in all, in their response to the letter on the Doctrine of Discovery the request is clearly articulated. The Holy See is given concrete examples on how it can follow up its self-proclaimed attention to “*the relationship of indigenous peoples to their lands and resources*”²⁴⁸. Case in point: upon the election of a new pope in 2013, Onondaga Nation immediately called for the next pope to repudiate DOD stating that “*There are over 500 million indigenous people throughout the world – they’d like a response from the Holy See*” and that Onondaga elders have tried to get the Catholic Church to revoke the doctrine since 1992.²⁴⁹ According to Tonya Gonnella Frichner these talks with the Vatican “*were reduced to, “Well this is old history*”.²⁵⁰ In addition to bringing up the Doctrine of Discovery in the media and letters, the issue of DOD was a main theme in the UN PFII in 2012.²⁵¹ It is clear that indigenous people continue to challenge the Vatican, and the international system on DOD, it’s history and effects today. Another example of the indigenous focus on DOD is that in May 2014 there was a new study presented at the PFII at the United Nations.²⁵² In this study, it is specifically noted that

[...] the Holy See reported that an “abrogation process took place over the centuries” to invalidate such nefarious actions. Such papal renunciations do not go far enough. [...] At the same time, there is a growing movement among faith-based bodies to repudiate the doctrine of discovery.²⁵³

In April 2014, Onondaga Nation filed a petition against the United States through the Inter-American Commission on Human Rights.²⁵⁴ In the material they present relating to this

²⁴⁷ Ibid, 10.

²⁴⁸ Archbishop Celestino Migliore, “Letter to Chief Oren Lyons”, 3.

²⁴⁹ Frichner, quoted in Brown, “Native Americans to new Pope: Recant the “Discovery Doctrine,” which gave Catholics dominion over New World” <http://www.nydailynews.com/news/world/natives-pope-treat-humans-article-1.1287151> [Accessed 15.04.2014]

²⁵⁰ Frichner, quoted in Ibid.

²⁵¹ Where the Holy See was represented.

²⁵² United Nations, PFII, “A Study on the impact of the Doctrine of Discovery on indigenous peoples, including mechanisms, processes and instruments of redress, with reference to the Declaration, and particularly to articles 26-28, 32 and 40”, <http://undesadspd.org/IndigenousPeoples/UNPFIIISessions/Thirteenth/Documents.aspx> [Accessed 03.07.2014]

²⁵³ Ibid, 4

²⁵⁴ Onondaga Nation, “The Onondaga Nation Files Petition Against United States with Inter-American Commission on Human Rights 4/15/14”, <http://www.onondaganation.org/news/2014/the-onondaga->

petition on their own web page, they have an own sheet of information regarding the Doctrine of Discovery. Included on this sheet is a timeline of some of the repudiations made by religious communities of the Doctrine of Discovery²⁵⁵. By using the repudiations made by religious groups as a part of the presentation of DOD, the nation is implicitly embracing at least these particular statements.

4.5 Final remarks regarding statements

The statements by different faith-based groups repudiating the Doctrine of Discovery are often together with, or followed up with, minutes or statements where they explicitly support the UN Declaration on the Rights on Indigenous Peoples (UNDRIP)²⁵⁶. As the UNDRIP declaration is not a legally binding document, but rather an inspirational one, the different faith-groups are by expressing their support for this document encouraging the United States to follow up on the Declaration. The Boulder Monthly Meeting writes in their minute, “*Just as Quakers played a role in promoting the passage of the Declaration by the UN General Assembly in 2007, we acknowledge that we must also labor to implement it*”²⁵⁷. The UNDRIP declaration and DOD is perceived to be in a contradictory relationship to each other, as the rights and protection Indigenous Peoples given in the UNDRIP declaration is seen as impossible to obtain within a system where DOD continues to be utilized. By specifically endorsing the UNDRIP declaration while at the same time (or earlier)

[nation-files-petition-against-united-states-with-inter-american-commission-on-human-rights-41514/](#) [Accessed 02.06.2014]

²⁵⁵ For Instance: the 2009 repudiation by the Episcopal Church, repudiations from 2012 by the Unitarian Universalist Assembly, the World Council of Churches, the United Methodist Church and the New York Yearly Meeting of the Religious Society of Friends. See: Onondaga Nation, “The Doctrine of Discovery and its Enduring Impact on Indigenous Peoples”

<http://www.onondaganation.org/mediafiles/pdfs/un/Doctrine%20of%20Discovery.pdf> [Accessed 02.06.2014]

²⁵⁶ Among others in the 2009 resolution from the Episcopal Church, the 2010 resolution from the Indian Affairs Committee of the New York Yearly Meeting (RSF), the 2012 Baltimore Yearly Meeting of Friends minute, and so forth. Though it is of interest to note that among the Catholic Statements from different religious groups only one of the three statements/letters found have included the support of UNDRIP, and this was the letter sent from the Sisters of St. Joseph and Associates of Buffalo, New York. This may be because the Vatican in their official stance as an observer state to the UN have expressed their support of the UNDRIP. See: The Permanent Observer Mission of the Holy See to the United Nations “Interventions”, May 16, 2007. <http://www.holyseemission.org/statements/statement.aspx?id=177> [Accessed 02.06.2014]

²⁵⁷ The Boulder Monthly Meeting “A Minute to Repudiate the Doctrine of Discovery and to Affirm the U.N. Declaration on the Rights of Indigenous Peoples” http://www.quakerearthcare.org/sites/quakerearthcare.org/files/attachments/minute_approved_by_boulder_meeting_march_13_2013.pdf [Accessed 13.06.2014]

denouncing the Doctrine of Discovery the religious groups making these statements are taking a clear moral and political stance on the rights of indigenous peoples.

Another commonality between the statements is that they are recent; before 2009 the only statements produced were on local levels. Furthermore, most of the statements relate to faith: in the Episcopal statement, it is said that DOD is renounced as “*fundamentally opposed to the Gospel of Jesus Christ*”²⁵⁸. In the letter to pope Francis from the Loretto Community it is stated, “*Whatever reasoning led to the language of dominance and subordination found in those original bulls, we must now be guided by ethical norms more in harmony with the Gospel*”.²⁵⁹ Statements from different groups of the Religious Society of Friends explain that the Doctrine of Discovery is in opposition with Quaker testimonies of equality, peace and integrity. Furthermore, all the religious groups do to some degree also take responsibility for what they perceive as their own part in promulgating the DOD. The Catholic communities writing statements on the matter focus on the role of the papal bulls, the Episcopal Church names the royal charters, and Quakers address the charter granted to William Penn. The Catholic Church’s official stance on the Doctrine of Discovery stands out in this regard as they tend to highlight the spread of the Gospel as a positive thing for the indigenous peoples of the Western Hemisphere, and separates clearly between the spread of the Gospel and the “conquest” by (Christian) European Monarchs.

The statements produced by various religious groups²⁶⁰ regarding the Doctrine of Discovery have been well received by indigenous peoples working with the theme, and one can begin to see indigenous peoples incorporating these statements when they present their arguments about DOD today, both on the legal scene and in the United Nations.

²⁵⁸ The Episcopal Church “Repudiate the Doctrine of Discovery”. Attached in the appendix

²⁵⁹ Sister Pearl McGivney, “Your Holiness” November 18, 2014 <http://www.lorettocommunity.org/wp-content/uploads/2013/11/Papal-Bull-Letter.pdf>, 2 [Accessed 06.07.2014]

²⁶⁰ With the exception of the statements made by the Holy Mission to the U.N both in the U.N PFII and the letter sent to Faithkeeper Oren Lyons.

5 Religious Perspectives

In this chapter, I will present the findings from my interviews with persons from the Religious Society of Friends (RSF), the Episcopal Church (E) and members of the Catholic Church (C). I will present the general perspectives that several of the interviewees brought up, as well as more individual notions. When I refer to the interviews the dates of the interviews are listed in chapter 2.2.11. It became clear throughout my interviews that most of the people I talked with had read some of the same material. The work done by Steven Newcomb was often mentioned. Although there is diversity in how much research the particular individuals had done, Newcomb was a name that almost all of my religious informants brought up at one point as a source for their information and perspectives. This common source of information has clearly influenced the response from all the interviewees in this group.

5.1 What is DOD?

All of the religious informants connect the term Doctrine of Discovery to the papal bulls sent out by the pope in the 1400s, and they address how the English Monarch had adopted this principle as he granted charters to explorers. All acknowledged that DOD was not only a historical artifact but also something that is present in U.S. law today, and several of the people I talked with mentioned the case of *City of Sherrill vs. Oneida Indian Nation* as an example. This summary of how the Doctrine of Discovery is understood is representative of all my informants within the different religious organizations:

My understanding of it, it obviously goes back to the papal bulls, [...] and the idea that the explorers exploring for their King and those countries could be rewarded by unlimited acquisition and that this had a religious justification too. This was something, [...] that was going to be endorsed by both the Church and the state. [...] But it was the legal justification for imperialism, for the early colonial expansion, and it was one that was never repudiated. And [...] it was then built into the charters in the American colonies; it was systematically built in as a justification for the lands they were taking. [...] I gather that the doctrine has continued to be used as justification, you know, for the denial of Native American claims in American Courts. (Interview, John Chafee, E)

Although it is dangerous to generalize with such a small selection of informants, some tendencies were present among the different religious groups. The Episcopalians focused especially on the Cabot charter sent out by King Henry VII, while members of the Religious Society of Friends more often mentioned the charter granted by the king to William Penn. The Catholics I talked with focused more on the papal bulls sent out by the pope and the need for the Vatican to rescind those bulls, as well as the presence of DOD in American law. This

is in accordance with how the different faith communities have formulated their own statements of repudiation based on the locality and history of their faith traditions. One of the informants expressed his reason for focusing on his own denominations history as such:

One thing I have been very careful about, though these papal bulls are, you know, the Catholic Church. I don't like to...do this thing where I guess we could say: "Oh, Well. That's the Catholics, but us good Episcopalians". Because Episcopalians have culpability,[...] a big culpability. [...] So don't go throwing stones at the Catholics, because we have our **own** stuff to deal with. (Interview, John Dieffenbacher Krall, E)

While the Episcopalians and Catholic interviewees focused on their own churches' histories and responsibilities in the spread of the Doctrine of Discovery, Friends tended to focus on the general injustice of the discovery doctrine and not so much on their own religious group's history or responsibility. A reason that Friends do not focus on their own religious group's history and responsibility to the same extent might be that members of RSF do not necessarily identify as Christians, although they acknowledge having a Christian legacy. Furthermore, while both the Episcopal Church and the Catholic Church have (in different ways) a direct historical lineage to the development of DOD, the Religious Society of Friends has never been connected to sovereigns in the same way.

5.1.1 Reactions and Motivations

My first reaction was: Are you kidding? Do we have to go back and read all this stuff from the popes of the 15th century? Why do we have to do that? But I very quickly learned why. (Interview, Paula Palmer, RSF)

I always asked the religious informants about their initial reaction when they learned about the doctrine, and a great variety exists in how people replied. The most common expressions were surprise, shock and disbelief. But several of the interviewees also described learning about DOD as an articulation of something they might have suspected to some degree, but never had the words for:

I was surprised, and not yet surprised. [...] I was intrigued because I had not been aware of it as a doctrine. I was aware of the general principle, you know, that the explorers claimed lands for their kings and so forth, for their countries. But the formal doctrine itself... I thought it was very interesting. I thought it was perhaps outrageous that it had never been repudiated, and that it was certainly time to do so. (Interview, John Chaffee, E)

A commonality for most of my religious informants (though not all) is that they had direct relations to indigenous people who have made them interested in the Doctrine of Discovery. Several of the people in my interviews described their awareness of DOD as a gradual process, and they could not pinpoint exactly when they had learned about the doctrine. They

could, for instance, say that they learned about the consequences of DOD first and then later about its history.²⁶¹ Some of my informants also presented their reactions when learning about the doctrine as a kind of betrayal, or at least a hurt, in their relationship to their own religious traditions. The most explicit reaction in this direction came from Audrey Mang:

I was disgusted. Angry and disgusted. When you are raised in a certain church with certain principals and ... promoting itself as being the way Jesus would have you live. And then to find out that the authority of that church was used to damage people, kill them, take them slaves, whatever. It ... just didn't seem right. (Interview, Audrey Mang, C)

This deep sense of disgust that Audrey articulates focus on what she describes as hypocrisy in the church. Finding out that the Catholic Church had been involved in formulating these papal bulls and their principles were clearly very upsetting to her. Interestingly, I found that my interviewees divided themselves into two groups here. Approximately half of the group (A) expressed some sense of betrayal or disgust that their church and/or religion had been used this way. The other half (B) had the view that this is what happens when religion becomes intertwined with power, and/or that religion always have been used to legitimate actions – good and bad:

He [Steven Newcomb] want's to call it the Doctrine of Christian Discovery, and a lot of people do. Because that's its history, it was, you know, set in motion by popes, but I think these countries was ready to go out and plunder anyway! But this was the formal permission. (Interview, Mary Gilbert, RSF)

How they reacted and interpreted this also had an influence in what they gave as their own motivation in working with the theme. The group split in two where the one part (B) was more generally involved in seeking justice. This group often gave religion credit as being part of their backdrop for seeking this justice and ended the explanation of their own motivations there. The other group (A) wanted to work for justice while giving a religious or religiously inspired ethical position as motivation for their will to seek this justice. But they also had another element in their motivations:

[...] I just have this sense of indignation and ... yeah, a sense of justice fuels me in this. How can we as **Christians**, followers of Jesus of Nazareth who commanded us to love one another, say that in the name of God we can go into some peoples land, and if they don't immediately capitulate and convert to Christianity, that we can take all their possessions, take their land, enslave them, and kill them, and do that in the name of God. That's just heinous. That's so **repugnant** to me. (Interview, John Dieffenbacher Krall, E)

Here we can see that he names both a sense of justice and outrage that religion, his religion, has been used to justify and legitimize DOD. We also see a need to distinguish his Christian faith from the way of thinking that is present in this doctrine. This group's need to distinguish

²⁶¹ This sentiment was expressed in various ways in different interviews with John Dieffenbacher- Krall, Brenda Hamilton, Paula Palmer and Elizabeth Koopman.

their own view of their own religion as fundamentally opposite of DOD was something that was present in my interviews across religious traditions. Group B instead specified how their religion for them was an underlying motivation for doing good, healing or wanting to participate for justice in the world in general, and then they connected this with the work on DOD. This is not to say that group B does not want their religious traditions to repudiate DOD, they wanted the repudiation process of DOD to continue within the faith based communities. However, as I understand the issue, their focus is more on doing this to assist indigenous people seeking justice rather than to do it to make up for their own religions history. While the second group (A) tended to view it as a specific religious responsibility due to the history of DOD and also to see a need for their own religion to face their past to a greater extent. Still, what both these groups have in common is the sense that religion in some sense works as a driving force in their motivation to see DOD repudiated and to allow a healing process begin:

It comes out of a theology that says, what this religion, Christianity, is about to me, its about healing human experience, healing the human race, healing the earth – through a relationship with the divine, that brings about our best potential. (Interview, Brenda Hamilton, E)

5.1.2 The Analogy to Slavery and/or Apartheid

One of the more surprising elements in several of my interviews was that the interviewees themselves drew a parallel between the Doctrine of Discovery and slavery or the Civil Rights Movement calling for an end to “Separate but equal”. This was not a question in my interview guide but something that was brought up by 5 of my religious informants in our conversations²⁶². The fact that the interviewees themselves draw this analogy was interesting. All the Episcopalians made use of this analogy – as well as two of the Catholics. Usually, the matter came up when I asked about the future of the doctrine, how to address the matter today, or why they saw the Doctrine of Discovery as important. The most direct analogy drawn was by John Dieffenbacher-Krall (E):

“We need to repeal, that needs to get out... That to me, is the present day ... Probably the most important Supreme Court decision passed in our country’s history to date is *Brown vs. Topeka, Kansas 1954* that struck down *Plessy vs. Ferguson* which upheld “separate but equal”. Which was a horrific, you know, that was the basis for Jim Crow laws in the south and, you know, institutionalized discrimination against African-Americans. Too me, **this** is now the one that is most screaming out, you know, in terms of justice, in terms of fulfilling the vision that we have in the Declaration of Independence, in the U.S Constitution, but even more importantly, in the U.N Declaration on the Rights of Indigenous Peoples, or the 1948 UN Declaration on the Rights of Peoples. This one has to go **down**, *Johnson vs. M’Intosh*.” (Interview, John Dieffenbacher-Krall, E)

²⁶² This analogy is also drawn by Peter d’Errico. See D’Errico, Peter, “Foreword” in *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery*, by Steven Newcomb Fulcrum Publishing, Golden, 2008, pp. xi

5.2 Chosen People and Promised Lands

I asked my religious informants about what they thought of when I said the terms Manifest Destiny and American Exceptionalism. Most of the informants clearly connected Manifest Destiny to DOD. When asked about American Exceptionalism, on the other hand, I got a variety of answers. Some did not know the term from before and preferred not to answer, some did not know the term but said what they thought it meant, while others knew it from before, and some saw it as clearly connected to Manifest Destiny and DOD. Lastly, John Chaffee (E) saw American Exceptionalism in connection to other states' ideas of exceptionalism. When it came to the term American Exceptionalism, therefore; I cannot speak of a singular or a group-divided understanding of the term. As the ideas of Chosen People and Manifest Destiny historically are connected to the westward expansion in the U.S., it was natural that we entered into the theme of ideas of ownership and dominion during this part of the interviews in different ways.

5.2.1 Manifest Destiny and American Exceptionalism

God wanted us to reach the whole, to the Pacific, and to have everything. Our Manifest Destiny was to travel and fill up this empty land. It was not being used. Properly. In the English style. It was being wasted. It was empty" [...] I learned about Manifest Destiny at school. It was not presented as something that had ended. It was part of **Americas glorious history**. (Interview, Mary Gilbert, RSF)

Most of my informants were familiar with the concept of Manifest Destiny through the school system and presented a view similar to that expressed above by Mary Gilbert. The interviewees said that it was presented to them as "part of Americas glorious history" as a "fact" or as something "inevitable" by the education system when they went to school, but a few had a very technical understanding of the term as being the westward expansion without much reflection on it. It is worth restating the fact that the people I interviewed were all above 45 years old, and it is very possible that there has been some development in how this is taught in U.S schools today. Still, that this idea was taught in schools when they went to school shows that the idea of Manifest Destiny did not end in the 1800s. And as people, for instance the judges on the Supreme Court are in the same age group as my informants, it is likely that they too have grown up learning about Manifest Destiny in a kindred way. Besides noting that they had been taught this concept in school, several people connected the term of Manifest Destiny directly to DOD, by saying it was a similar idea:

Manifest Destiny is really obviously connected with Doctrine of Discovery. [...] Manifest Destiny comes out of the Puritans in Massachusetts thinking that as Christians God had **given them** this destiny, to build the city on the hill. Which in Wikipedia shows up under American Exceptionalism too. The idea, this idea is like: “We are going to build this glorious place, God told us to do it and this is where we are going to do it”. So American Exceptionalism, once I knew the thread, I mean, Doctrine of Discovery to Manifest Destiny, I got, I knew that. But American Exceptionalism I was like “oh, okay, that fits”. (Interview, Joan Savage, RSF)

Joan Savage asked to get the questions for interview before we met. She told me when we got to the part on American Exceptionalism that she had not known the term from before. Still, she said, she felt that she ought to have known about it and had, as we can see from the above quote, looked it up on Wikipedia before we met. However, she clearly had her own reflections on the matter and linked it herself with the idea of Manifest Destiny:

I am curious about how American Exceptionalism comes up in this conversation. Because it might just be the conventional first cut of, if we think we are exceptional then that’s Manifest Destiny and that becomes a part of this sort of myth that comes along with the Doctrine of Discovery, it’s like this... we were sort of given this to do. So that’s the first cut. But what I am saying is that, awkwardly I think a lot of people that think they don’t believe in Manifest Destiny might still have a sense of exceptionalism. (Interview, Joan Savage, RSF)

This line of thought Savage offers is in accordance with what Patrick J. Deneen writes in his article on American Exceptionalism²⁶³ concerning the theological foundations of the term, but also that the term has a contemporary function in American politics and mindsets. Another interviewee who both connected American Exceptionalism to Manifest Destiny and as relevant in contemporary policies was David Pasinski:

I knew you were going to go to that one, because I do see them as so tightly related, I think that’s the modern expression of it [Manifest Destiny]. [...] that whole sense that this country has been from that time of the shining city, or the city on the hill, [...], that we are an exceptional nation, we are not like other nations. We are gifted, we are, you know, again it is sometimes a little more subtle than that, but that we are the necessary nation and therefore what we do can’t be examined the same way as other nations. (Interview, David Pasinski, C)

These two quotes are in accordance with many of my other interviews, although some of them do not connect the idea of American Exceptionalism to Manifest Destiny themselves. The interviewees who talked about American Exceptionalism clearly saw it as a contemporary matter. Some classified it as an attitude of “*we make the rules, so we can do what we want*”²⁶⁴ or the U.S being exceptional due to being “*the world’s superpower; we are the worlds’ cop, we’re the greatest democracy, we’re the greatest people*”.²⁶⁵ Several of my informants after presenting how they conceived this term were eager to specify that they did

²⁶³ Deneen, 2012, 29

²⁶⁴ Interview, The Presiding Bishop Katharine Jefferts Schori

²⁶⁵ Interview, John Dieffenbacher-Krall

not see themselves as America bashers and that the U.S. also had many qualities they appreciated.

5.2.2 Dominion and Ownership

And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and **subdue** it: and have **dominion** over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.²⁶⁶

In the interviews, many of my religious informants entered into the domain of thoughts around dominion and ownership. In her pastoral letter, the Presiding Bishop wrote about two models she sees present in Christianity: the stewardship and dominator model²⁶⁷. When asked to elaborate on these two models, and if she saw both these models present within contemporary Christianity, she answered:

[...] These two modes of approaching “care of the garden” – **domination** (using whatever one pleases, for whatever uses one pleases, with little or no regard for others’ claims) and **dominion** [as prudent and conscious care of the creation, for the benefit of the whole system (ecosystem, planet, or community)]. Domination has been the more normal attitude, not necessarily in such an extreme form. Indigenous peoples more often hold up the prudent use and caretaking model, which I call dominion (housekeeping or husbanding). Yes, both modes exist in Christianity, in the same way that some Christians formerly upheld slavery as biblically appropriate while others saw (and see) it as counter to the gospel. (Interview, Katharine Jefferts Schori, E)²⁶⁸

This second understanding of dominion within Christianity is clearly very different from the models of dominion that Newcomb describes within Christendom. The first mode of dominion she describes clearly fits his approach to the theme. Newcomb in describing the conqueror model describes *dominion* associated with the word’s origin:

A prototypical conqueror is implied in the Latin term dominus (“he who has subdued”), which is derived from the Sanskrit domanus (“he who subdues”). Both these terms suggest that it is the idealized conqueror’s very nature to **subdue** and **dominate** [...] ²⁶⁹

For Newcomb there is, as far as I can understand, no distinction between domination and dominion. However, the Presiding Bishop clearly distinguishes these two terms, and articulates that dominion is a state of stewardship, while domination is a state of dominance.

²⁶⁶ Genesis 1:28, King James Bible. My emphasis.

²⁶⁷ “The blessings of creation are meant to be stewarded, in the way of husbanding and housekeeping, for the true meaning of dominion is tied to the constellation of meanings around house and household. There have been strands of the biblical tradition which have kept this sacred understanding alive, but the unholy quest for domination has sought to quench it, in favor of wanton accumulation and exclusive possession of the goods of creation for an individual or a small part of the blessed family of God.” Presiding Bishop Katharine Jefferts Schori in “Pastoral letter on the Doctrine of Discovery and Indigenous Peoples” <http://www.episcopalchurch.org/notice/episcopal-presiding-bishop-katharine-jefferts-schori-issues-pastoral-letter-doctrine-discover> [Accessed 20.07.2014]

²⁶⁸ My emphasis

²⁶⁹ Newcomb, 2008: 23. My emphasis

However, as we can see in Genesis 1:28, God tells the first humans to both subdue and have dominion over the earth and all living things. By connecting subjugation and dominion together this way, it is clear that Newcomb does have a point in seeing the connection between *dominus* and subjugation, and quite possibly dominion and subjugation. Still, the meaning we give words change over time. By specifying and denouncing the domination interpretation of dominion, the Presiding Bishop is giving weight to an interpretation of taking care of creation that is in line with the stewardship model present within different environmental movements. It reflects a different worldview in how to relate to creation and its inhabitants than the domination model, that she perceives as having been the more “normal” one throughout the ages.

When the conversation centered on the theme of ownership of land and dominion, the interviewees usually talked about what they perceived to be the indigenous point of view of ownership and dominion. Furthermore, they mentioned how the Western concepts affected indigenous people. They also stated that they thought that indigenous peoples had rights of ownership to their land, but that their concept of ownership was different from the Western one. It was not common for the interviewees to reflect on the Western concepts of ownership/dominion in and of itself. In this context, three of my informants stood out. All of them are members of the Religious Society of Friends. One of them connected this specifically to a Quaker worldview:

There are different models of caring for the earth. And one is called stewardship. And many Quakers think that stewardship says it. But implied in the word stewardship are two things. One is that God has put us in charge of **it**. The hierarchical thing with God being sort of like a being, an actual being, who has given us a responsibility, so that we are autonomous. And the Creation may be beautiful and may be an expression of God, but its... Creation is an **it**, the world, the Universe. What we usually say, what most of us at Quaker Earthcare Witness say, is that it is seamless and we are a part of it. Now to me personally the physical universe is God. The flesh of God, if God had a flesh. So what I am, walking around, is a little functioning atom of actual God. Because it is all holy. It's **all** holy. (Interview, Mary Gilbert, RSF)

Mary Gilbert was in her interview clear on the Quaker position that every day is holy and how they do not have churches within her community, as everywhere is holy. This theological aspect of Quakerism may be part of what shapes her worldview, where nothing is more or less holy than everything else. Furthermore, she thinks that stewardship does not quite give, from her perspective, the right relationship to creation. This is because stewardship for her suggests a hierarchical relationship to creation and she perceives creation as the body of God. This distinct worldview was not repeated by any of the other Quakers I interviewed, but it had great consequences for Mary Gilbert's way of relating with creation.

She said that in her mind a she was not more “valuable” than an “earthworm”, because everything in creation was an aspect of God. This worldview shares some characteristics with the Onondaga worldview, who has an emphasis on that humans are the environment, not separate from it. One of the other members of the Religious Society of Friends described an insight she had gotten from an indigenous friend of her:

I kept putting this [DOD] in the framework of the impact on Native Americans [...]. And she said: “Take a step back. Who were the first people effected by the Doctrine of Discovery?” And I realized she was helping me see that the first people who were affected by the Doctrine of Discovery were the Europeans themselves. And that it was because of the **impact of the Doctrine of Discovery on the mindsets of European people** [...] anybody who lived on European soil, it was the way that **this idea of superiority and domination** took root in all of those, in all European people.[...] So my friend **helped me see** that the main problem is the impact of this idea of the Doctrine of Discovery on Europeans and people now of European decent, myself included. And so the instruction I received from her, in this very kind way, was: look into your own heart, look into your own thinking, see the roots of... all of these injustices that have occurred, from which Native people have suffered, see those roots, and those attitudes that has been passed on for generations [...] ²⁷⁰ (Interview, Paula Palmer, RSF)

In the foreword to *Pagans in the Promised Land* Peter D’Errico writes, “*Cognitive theory also suggests that people resist challenges to their worldview unless or until it is obviously not functional*”²⁷¹. It is therefore interesting that Paula Palmer, after she learned about DOD, still did not see the effects of the doctrine on herself or people of European decent. And how the conceptual patterns of the doctrine were still unconsciously present, until an indigenous friend pointed it out to her. This might also explain why most of my informants kept conceptualizing DOD in the form of impact it had on the indigenous population and their concepts, not on themselves or Western concepts. All of my informants agreed that the Western concepts of ownership (and/or dominion) had consequences for indigenous peoples. One of the more articulated lines of thought in this regard came from the Presiding Bishop, Katharine Jefferts Schori, of the Episcopal Church:

The Western concept of land ownership is indeed part of the developed world’s legal constructs. Indigenous peoples, who often understand the land as **a collective resource and responsibility**, rather than an individual fiefdom, usually struggle against those Western concepts, both for self-determination relative to lands historically “theirs” and to lands that are currently in or under their control. (Interview, Katharine Jefferts Schori, E)²⁷²

To some extent, it is clear that the people I interviewed within the different religious organizations understood the problem of ownership and dominion for indigenous peoples as being connected to a different understanding of land rights, and not fitting within the concept of the Western definitions of rights to land. In short, they acknowledged, although not

²⁷⁰ My emphasis

²⁷¹ D’Errico, 2008, xi

²⁷² My emphasis

explicitly, that part of the problem today rests in the difference in worldview between Western concepts of ownership of, and indigenous concepts of responsibility to, land.

5.2.3 Chosen People, Promised Land and DOD

Early during my field research, I met a person who drew a strong analogy between the Old Testament and the mentality of the early settlers in the U.S., linking the narrative directly to the story of Joshua and the Battle of Jericho²⁷³. In this biblical story, God promises the Israelites the city of Jericho, even though people already live there. After Joshua has done what God had instructed him to do, the walls around the city falls and the Israelites slaughter all the Canaanites living there, which includes old men, women, and children²⁷⁴. I incorporated this statement into my other interviews, telling the people I talked to that I had met a person who drew this parallel and asked them what they thought on the matter. One interesting reflection came from John Dieffenbacher-Krall:

One thing that does trouble me though is ... this whole idea of Gods chosen people. I find it kind of problematic. [...] Because who are you displacing off the land, you know, to come in and take that land? I don't know enough about that history, but you see some of those peoples named, the Canaanites and these others. Why is this, you know, this God that we believe is all just and righteous, but why is one people being given permission or authority to displace others? I don't know, that is kind of troubling to me. I don't know, I haven't dealt with it a whole lot. But that's some of the whole mischief of the Doctrine of Discovery's idea that we are a chosen people, that we have this divine right of God to go into this place. [...] I don't understand it, but it bothers me. (Interview, John Dieffenbacher-Krall, E)

Here we can see that he draws a parallel of the chosen people in the Old Testament and the idea of being a chosen people as a part of what is embedded in the Doctrine of Discovery. For Krall, the whole idea of being a chosen people by God is something he is ambivalent about. He also stated that he did not know too much about this specific element from the Bible and that he would like to study it more closely because it might contain aspects of this idea of a chosen people that he is not aware of. Still, the reflection shows us that for Krall the idea of a chosen people has made its way into DOD, and that it is an aspect within his own faith that he finds difficult to relate to. Another approach to this came from another Episcopalian, John Chaffee, who stated:

Obviously, if you look back through the history of the Jewish people, you know, the Promised Land, the land promised to Abraham was not an empty land, the Canaanites were there. And it wasn't just Jericho they went in and created Israel, for their people. [...] So, in a sense that's a much earlier doctrine, but that would be a kind of a parallel one. You know, for that [DOD]. And it is interesting, you know, because when you take it out of the bible, you know, a holy book to people, and to some people a book that can do no wrong, the word of God etc. [...] Yes, I think there certainly are parallels with that. Now,

²⁷³ A member of the United Unitarian Church, and as such not included as part of my field research in this dissertation.

²⁷⁴ Except for one woman and her family that have helped the Israelites spies. Joshua 5 – 6:27

having said all of that, you know, a part of what we see is just a part of a long term historical process where migrations and so forth did displace people, again as an historian everywhere you look you see that, that as a process. [...] I think that in a sense the Doctrine of Discovery does address these ancient issues or timeless issues, about people in conflict with each other, about movements of people, about the seizure of land, usually by violence. And then the consequence of them and how you create a moral society coming to terms with that past, without doing huge violence to people in the present either. (Interview, John Chaffee, E)

In this explanation, we can see acknowledgements similar to the previous quote, specifically how the idea of being a chosen people is part of the DOD mindset. Still, Chaffee has a fundamentally different perspective on the matter. For him, the effects of being a chosen people are connected to historical processes that happened everywhere, not only in Jewish history. He admits that using religion for this purpose, by creating the idea of being a chosen people selected by God, is a forceful legitimizing factor in the displacement of other populations. However, Chaffee turns toward the present and the future by asking the following question: How do you create a moral society that can come to terms with this past without doing violence to people in the present?

5.3 The Role of Religion – “Maybe God is moving?”

Part of my interview-guide focused on the future. What did the interviewees see as the next step after repudiation? What did they think the role of their faith group should be after this?

²⁷⁵ What are seen as the important aspects for people to learn about DOD? The most common theme that came up during this part of the interviews was the importance of education to be able to change people’s mindsets:

I think that’s the key, is educating people about this. It should be taught in schools, even to little kids. People that “discovered” America, **I always put that in quotation marks now**, because they didn’t “discover” [...] I think educating people is the first step, and hopefully from that we will rise up a partnership with native people, saying “what would make things better for you? (Interview, Kate Elisabeth DeRiel, RSF)²⁷⁶

Here we can see that Kate DeRiel exemplifying the importance of education on her own thinking by stating that she *now* puts “discovered” in quotation marks, which implies a difference in perception from how she used to conceive “the discovery of America”. Joan Savage (RSF) also valued this theme several times during my interview and stated that “*The big change is going to be if you change peoples minds, the way they see it, then the laws will*

²⁷⁵ The Episcopalans and members of the Religious Society of Friends. The Catholics I asked whether they thought the church would repudiate the doctrine.

²⁷⁶ My emphasis

follow rather than precede them”²⁷⁷. The Catholic James Mang was quite positive when looking to the future, stating that the interest and number of churches and people who knew about DOD had grown these last years and drew an analogy to the civil rights movement: *“The African-Americans were speaking out and going on marches, and doing all kinds of things trying to... But it wasn’t until the whites began, the pastors and so forth, began joining those marches that things really got started.”*²⁷⁸ This optimism was shared by several of the interviewees, and Krall stated that he saw the faith group’s repudiations and the indigenous scholarship on this theme as the beginning of a movement:

I do think a movement has started. I think, you know, it’s going to take people like me, Robert Miller, Steve Newcomb, Sarah Augustine and others [...] we going to have to nurture and keep pushing it. It won’t happen as photosynthesis happens by plants you know, but, you know, **maybe God is moving**. Not to put you off, you know, pope Francis, there is an opportunity there. [...] If you get the Catholic Church that’s going to be huge. (Interview, John Dieffenbacher-Krall, E)²⁷⁹

Many of my informants from all across the different faith groups mentioned pope Francis as an opportunity and shared Krall’s hope that he might move the Catholic Church towards repudiation of DOD. The reasons given for the focus on the Catholic Church was partly because it is the single biggest Christian community; they are global and have the possibility to use their power and position to promote knowledge of the discovery doctrine, its past and its continuing influence today. For Audrey Mang, what she thought people should know about the doctrine was connected to her faith:

I think people should know that the doctrine ... basically says that there are some people, some human beings who are inferior. I think they should know that’s basically not true. And that we are really called, if we are talking on a faith basis, were really called in terms of the Gospel to deny that and undo that. And do whatever we can, so that the influence of that thinking... can’t continue. We talk about it being in law, but it is also an attitude and that’s even harder to erase. (Interview, Audrey Mang, C)

By speaking of changing attitudes, Mang is also speaking of changing mindsets, which was the common response for most of my informants when asked about the future. Lastly, Brenda Hamilton when asked about her church’s role and the value of repudiations done by religious groups stated:

For us to make a formal statement of repudiation, set some precedent to let others take the next legal steps to pursuing things in a civil legal way... [...] **Does it undo anything? No**. But it acknowledges what’s happened and it allows those that are trying to undo the effects sort of the next step to stand on. (Interview, Brenda Hamilton, E)²⁸⁰

²⁷⁷ Interview, Joan Savage, RSF

²⁷⁸ Interview, James Mang, C

²⁷⁹ My emphasis

²⁸⁰ My emphasis

Unbeknownst to me while conducting these interviews in February, what Hamilton states in this quote would become part of the case for Onondaga Nation as it approached the Inter-American Commission on Human Rights²⁸¹. Onondaga Nation, in relation to this case, has mentioned several of the repudiations done by different religious groups. In this regard, the Nation is trying to do what Brenda Hamilton here states, namely, to use the repudiations (in part) as a stepping-stone. By her statement Brenda Hamilton shows interest for the repudiation of the doctrine from her church to have a legal effect in the future, and help spread knowledge of its background.

5.3.1 The Catholic Church

As the Catholic Church has not repudiated the Doctrine of Discovery yet, the work within the church is different. So When I asked my Catholic informants of what they thought about the Doctrine of Discovery and the church in the future – the reply was:

If they do not deal with this..... it is going to be difficult for movement in the UN, to move forward on the Declaration [on the rights of Indigenous Peoples]. Almost back to status quo. It will reflect upon the church and their relationship to indigenous peoples around the world. (Interview, James Mang, C)

Here we can see that James Mang is worried about two different cases if the Catholic Church does not repudiate the discovery doctrine. Firstly he is worried about the progress for the rights of indigenous people and how UNDRIP will not cause real changes. He lays a big responsibility on the doorstep of the Vatican by saying that if the Catholic church does not deal with this it will be harder to make progress on the matter in the UN. Secondly, he is worried about the reputation of the church itself. That by doing nothing, it will reflect negatively on the church and make it harder for it to have legitimacy in indigenous communities around the world. So for James Mang the two points he focuses on is the continuation of the UNDRIP declaration to implementation (going beyond the status quo) and the reputation of the church if they do not join this cause. Audrey Mang was very much focused on the potential impact of the Catholic Church when asked on the future of the Doctrine of Discovery within her faith community, and she stated that according to the Gospel values the church had a responsibility to “*undo as much of the damage as possible. What is done is done. And it could. It got that kind of influence*”²⁸². When asked whether they thought the church would officially repudiate the Doctrine of Discovery, this was a harder question for the Catholic interviewees to answer. They said that they hoped so, that with pope

²⁸¹ We will have a closer look on this case in the next chapter.

²⁸² Interview, Audrey Mang (c)

Francis there might be some possibilities. But they also stated that they thought that the theme of the discovery doctrine was not what the Church as a whole had on the top of their agenda. David Pasinski said that the repudiations that had come so far, should be seen as repudiations with a limited impact on the Vatican's policies:

Will this [Statements of Repudiation from religious men and women within the Catholic Church] filter down and affect the general "zeitgeist"? The Sisters of Loretto is a progressive group. Pax Christi has minimal influence in the church as a whole. A lot rests on who the pope will appoint as Bishops. (Interview, David Pasinski, C)

The Catholic interviewees seemed hopeful, as there has been movement among religious men and women of the Church to repudiate the doctrine and because they have hopes that pope Francis can move the Vatican closer to repudiation. However, as David Pasinski states, an eventual movement with the Church on this matter is seen as closely connected to whom the pope will appoint as bishops.

5.4 Final remarks

As we can see in the material presented above, the response of people belonging to different religious groups to the doctrine is not singular. Even among people belonging to the same religious community, there are differences in worldviews regarding land and land ownership. There are differences in how the interviewees perceive the discovery doctrine. Several see it as the modern day "separate but equal" problem in U.S courts. Others perceive it as a matter of constructing a new relationship to land. Some see it as something they work with because their religious community has a lot to make up in relation to indigenous peoples, and/or because they feel a sense of injustice in today's legal system towards natives. In short, while the religious interviewees do share a common understanding of the history of DOD, this does not mean that they have the same perceptions of the effects of the doctrine today. Most of the informants kept formulating the discovery doctrine as something that had a big influence on indigenous people, but they failed to explicitly see the effects the doctrine has had on the majority of society in the U.S. However, as most of these interviewees did see a need for an education process both within and outside of their churches among the mainstream society in the U.S., I would argue that they see how this history influences their perceptions of indigenous rights and the history and identity of the United States. In general, by admitting that there is a great need for education on this matter, bringing this history to the front of people's minds, the interviewees implicitly state that mainstream society in the U.S needs to have a part of their history taught in a different way to create room for future changes.

6 Onondaga Perspectives

Probably, somewhere along their way – organized religion lost their spirituality. And when, I heard my uncle respond to that question, oh – well he said – That’s, you are talking about religion, we are talking about our way. No, he said, We don’t have any religion, we have a way of life. We have a spiritual law, spiritual rules, we live by every day. It’s a way of life, it’s not a religion. (Interview, Oren Lyons)

The quote above gives a good introduction to another perspective on DOD and it’s impact. It is important to emphasize Oren Lyons’ remarks that the Onondaga do not have a religion; their “way of life” is interconnected and impossible to separate from law and life in general. The separation between different spheres indicated in the word “religion” as something set apart from society is not present. This holistic perspective is an important background for how DOD is perceived by the informants from Onondaga. Jake Edwards, one of my interviewees, spoke about the Doctrine of Discovery as an octopus that had tentacles growing out in different directions. His point was that if you only dealt with a tentacle, the octopus would only grow a new one if you were not prepared to fill the space with a remedy. This picture of an octopus gives an insight into his perspective of the Doctrine. All three of the interviewees included in their perception of the doctrine a criticism of Western worldview, as their holistic approach leads to a more fundamental evaluation of the doctrine and its consequences. This criticism also included a self-identification of what makes the Onondaga perspective different from a Western perspective. For instance, Edwards stated that Onondagas are *not* environmentalists, the Onondagas *are* the environment. This way of relating to the natural world, spirituality and law is very much present in two of my interviews, while the third interview with Tonya Gonnella Frichner was the first interview I did, and was more focused on the UN, the UNDRIP declaration and practical consequences of DOD today.

6.1 What is DOD?

As I had done with my informants from different religious groups I also asked all the persons I interviewed from the Onondaga Nation what the Doctrine of Discovery was. Although all three interviewees connected DOD to the papal bulls, and law, they tended to focus on the principles and effects of the doctrine more than the specifics. I asked Frichner whether she saw the perceptions of the doctrine to be the same among people working with the theme, and she stated that there were probably differences: “[...] *but there are consistencies. And the*

consistencies are domination.”²⁸³ This domination has, according to Frichner, its root in that indigenous peoples (or unbaptized people) is considered:

[...] a lower level human being, or not even a human being. So you’re a pagan, a Saracen, you know, the list goes on. So if you are any of those things, you don’t have any rights, you certainly don’t have a collective right or a human right. And you can be pushed aside or removed from your land, and it can be taken over, because basically the land is empty, it’s empty of human beings. So then the Church and the state, because they worked hand in hand, can do what they need to do, to expand their empires. (Interview, Tonya Gonnella Frichner)

This understanding of the doctrine, that because they were non-Christians they did not have the same rights as Christians, and as such was considered a lesser form of human beings, or “*less than human*” was a recurring theme that all three interviewees presented as a foundation of DOD. Oren Lyons while talking about this aspect made a point of the fact that this way of conceiving non-Christians was not something new:

[...] It was old. They just, extended it over to a new land that’s all. [...] But he [the pope in *Inter Caetera*] said something else, which really put us **not** as human beings. He said, further if there are people there and they are not Christians, they do not have a right of title to land. He was very specific about that. If they are not Christians they do not have a right of title to land. Well. Does that lay it down enough? They have only, only the right of occupancy. The same right as a rabbit running on the ground, the same right as a deer, or a buffalo, or a turkey or an Indian. He put us in that regard. **Less than human.**” (Interview, Oren Lyons)²⁸⁴

As we saw when we had a closer look at the papal bulls, the bulls *did* grant rights to Christians on the behalf of non-Christians. Edwards elaborates on his understanding of the doctrine as something more than a loss of human rights for the native population; according to him, the doctrine is:

[...] a land grabbing machine. Regardless of who is there. If you look at the words of it, and terms that they call other human beings... it is less. They don’t look at the gratitude of the food provided, the shelter provided, at these places. It seems as though they can survive off of material things, and feed their diets off of material things by the looks of these documents. **They don’t consider life. They consider personal gain.** [...] The values of the Rainforest, It’s still being allowed to be clear cut, cut down, over economic gain, personal gain for the corporations. These are the other tentacles that needs to be addressed, in this doctrine. (Interview, Jake Edwards)²⁸⁵

Here we can see that even though Edwards shares Frichner’s and Lyons’ understanding of the doctrine as something that reduced (from the Christian European perspective) the rights of indigenous peoples, he continues by focusing on how he perceives the doctrine today. For him, part of the mindset of the doctrine has to do with the fact that corporations can own land and exploit it for economic gain, even though the land, the trees and the animals themselves have value and are to be considered valuable forms of life. For Edwards, the premise that the

²⁸³ Interview, Tonya Gonella Frichner

²⁸⁴ My emphasis

²⁸⁵ My emphasis.

Western worldview do not consider the life of others, whether it is humans or a tree, something that is deeply connected to the worldview present in the doctrine itself. This view of the intrinsic value of life, whether it is plants, the earth, or humans, is connected to what was described to me as the Law of Nature.

6.2 The Law of Nature

The Law of Nature was not something I brought up during the interviews. Instead it was something that Edwards and Oren Lyons brought up at different points, as an integral part of their way of relating to the world. When I interviewed Oren Lyons the Law of Nature came up as we were entering the theme of the future:

So, the prevailing law, the only law that is I would say beyond challenge, is the law of nature. That's the prevailing law. It does not pay any attention whatsoever to any species on this earth. It responds. And it does not listen. It responds. So now, nature is responding to the activities of a species. 7 billion people. Way out of balance. Soon to be 8, soon to be 9, and at the loss of everything else: no more fish, no more elephants, no more tigers, no more lions, just people. Nature's not got to let that happen. So, survival then is predicated on understanding the laws of nature. And that's where indigenous people are number one, that's why we have ceremonies, that's why we have all these things so we give thanks to maintain that [...]. Be grateful, be thankful, be careful. That's what it's all about. 7th generations, that's the rule. That's the statement coming from our leaders. That's who you are looking out for. If you do that then you yourself will have peace. That means to share. Fundamentally means to share. Share the good, share the bad - Equally. (Interview, Oren Lyons)

The Law of Nature, at least the way it is presented by Oren Lyons here, contains a philosophy, or a worldview if you like. We can also see how this philosophy is connected to spiritual life as ceremonies are described as a way of giving thanks to nature. Another important aspect described here, is the principle that one is to look after the seventh generation to come. This principle charges leaders to think ahead, beyond what would be the best for the present to what would be the best for the future. The management of future generations is an essential part of the Onondaga relationship to the earth, to the land, and their way of thinking. The aspect here described by Oren Lyons contains a worry for the future as humans grow in numbers, without the mindset of looking out for future generations. Climate change is seen in relation to this as he later states: "*Nature is on the move now. Nature is on the march. [...] People are always saying to me, why are you talking about the law of nature, and I say "You can't negotiate with a beetle" And that's it*"²⁸⁶. Edwards also spoke about the Law of Nature, although in a different way. He spoke about how the Onondagas had to develop rites for reburial, after getting their ancestors bodies back:

²⁸⁶ Interview, Oren Lyons

We don't hide our ancestors bodies. We don't hide them. We let the natural grass grow over them. So that they can travel about in peace as we walk here. What do you call... We're the ones left [speaks Onondaga]. We are left here to survive. We're left behind to survive, to walk about. You hear about it as they walk about on, and the word **on** isn't even in there, but on Mother Earth [speaks Onondaga]. Here, it don't say walk on, it says walking **about here with Mother Earth**. That's what makes us the environment. We don't separate our beings from the plant life, from the medicines, from the animals. **There is no separation**, when we say our mother we don't separate, the deer's mother, the eagle's mother. Because they need the same. They survive on what we survive on, what our mother provides for us. It's really simple, the Laws of Nature. (Interview, Jake Edwards)²⁸⁷

This takes us back to Edwards' previous statement on the intrinsic value of life when he was speaking of the doctrine. From this point of view, we can begin to see the importance of his statement that the doctrine has no regard for life – only material gain. We can also understand his perspective concerning why he sees the principles of the doctrine as relevant in regard to the destruction of the Rainforest today. This is because the Onondaga worldview puts forth a conceptualization of human existence as being totally contingent on the land and the environment. At the same time land is, from the at least the time of the papal bulls, clearly viewed as a commodity that can be bought, developed and used by individuals, states, and private companies, for personal or economic gain by the Western world. This classification of land/ environment clearly differs from with the Onondaga worldview grounded in the Law of Nature.

6.2.1 History, His story – Education

We are not assimilated, as they intended. [...]. I don't know the term that they used for the Boarding Schools, but they pretty much said that they were going to civilize us. And in turn, civilization when you look at that word, again leaves out the environment, leaves out the respect for the birds and what tree they nest in. (Interview, Jake Edwards)

I found this to be an important observation about the difference in worldview between the Onondaga and dominant Western society. As Edwards so clearly states the idea of civilization marks a distance from the natural world. The culture/nature dichotomy developed in Europe, established that the “wilderness” was something that should be subdued; this is not part of the Onondaga worldview. The Onondaga Nation does not see itself as having dominion over nature;²⁸⁸ they (and all other humans) are part of the Laws of Nature – not above it. In the interviews with Lyons and Edwards, education became a theme, Edwards entered on this theme as he was speaking of mistrust from the Onondaga towards the U.S. government, based on their experiences and broken treaties:

²⁸⁷ My emphasis

²⁸⁸ Genesis 1:28, at least not dominion understood as “ruling”, as defined by Merriam Webster dictionary, “Dominion”, <http://www.merriam-webster.com/dictionary/dominion> [Accessed 19.07.2014]

The mistrust in this day and age comes from improper education. It comes from, as my mum used to say when I brought home my homework from school: "Why are they saying this and you guys are telling us this, they don't match". And she says, "Well if you took that word of your class and broke it in half, what does it sound like to you?" And my class was history. So I broke it half and it is **his story**. Not necessarily what had happened, but that's his story. So if you want to pass the grade, pass the class, you listen to his story. If you want to survive, you listen to your elders, the indigenous people; you listen to the environment, that's who we are. Not to disrespect the teachers, they can only teach you what they know. (Interview, Jake Edwards)

Here we can see two points. Firstly that Onondaga children are presented with a narrative in schools that does not coincide with the Onondaga narrative. For Edwards, however, this narrative was counteracted by what he learned from his mother, his elders and the environment. He learned to distance himself from what he learned in history class, as it was *his story* – not what necessarily happened. Secondly, in the above statement Edwards expresses mistrust due to what people are taught in school, and non-indigenous people do not have the same access to the Onondagas' historical experiences. As an example, we can reflect on how the religious informants talked about Manifest Destiny as a term they had learned in history class. This term was presented in different ways, from a cold fact, to a part of Americas "glorious" history, but never from an indigenous point of view. For Edwards, education is one of the more important "tentacles" of the doctrine; as he described it, education must come out from the heart of the environment, not out of a desire for economic or personal gain:

There's so many tentacles to this machine, this monster of greed. The roots of this doctrine is greed. Selfishness. So Oren put out this statement, How do you instruct 11 billion people of their connection to the environment? [...] I guess, putting the proper education out, from the heart of the environment. The rest don't matter. Government structure, decision making, that don't matter, if we don't have the teachings from the heart of the environment. Because we coexist together. The trees need the air, just as well as you. They need the water, just as well as you. Same with the deer, same with the eagle. When you leave them out of the equation you're unbalanced. When you are unbalanced there is no proper decision coming out of your administration, no matter how well intended it is, or how well intended it looks. You must maintain balance with your mother, Mother Earth. She has the answers, she provides for you. Just like your own actual mother. She's not going to leave you in the cold without a blanket, and she's not going to leave you unfed. She'll find a way. An obviously she did, we're her, as well as my mother, same with our Mother Earth. But if you stepped in, or some person stepped in, **with a doctrine saying blankets all belong to me, and took it from your mother, then you're both cold**. And you got to bow at that doctrine's feet for warmth and whatever table scraps they leave you. That's what you survive on, that's the condition we're in today as indigenous people. Intentionally put at the feet. You go down to Syracuse, there is a statue of Christopher Columbus, and at his feet are heads, of Native-Americans, just the heads not the body, just the heads. (Interview, Jake Edwards) ²⁸⁹

Here again we can see that Edwards is drawing the line between the mindset of the doctrine and how this mindset breaks the law of nature, by removing the value of the environment, and viewing land as a commodity. Furthermore we can see another interesting aspect of his

²⁸⁹ My emphasis. Picture of the Columbus statue referred to included in the appendix.

view of the impact of the doctrine: it is not “only” the indigenous people who are left “cold” and without “blankets” due to the doctrine, it has the same effect on mother earth herself. Lastly, there is frustration in his description of being “intentionally put at the feet” by this doctrine. This leads us to another aspect of it’s consequences: sovereignty and self-determination for indigenous peoples.

6.2.2 Sovereignty and Self Determination

That’s a very important designation, that 1924 citizenship act, of course. [...] that’s an Onondaga chief, Jesse Lyons, my great uncle [...]. Saying to the United States, no we are not citizens of the United States, and here is why. And that was reported in the New York Times in 1925, because that’s where he was. And those belts on his arms and so forth, are his proof of who we are. Nothing to do with the United States. And we said at that time, thank you, but no thanks. We don’t accept that. (Interview, Oren Lyons)

In 2010, the National Lacrosse team of the Haudenosaunee did not get the opportunity to attend the World Championship for Lacrosse in England. The reason for this was that the Haudenosaunee Confederacy used their own passport. The problem rested in the fact that the U.S. decreed in 1924 that all indigenous peoples in the U.S. were, and are, U.S. citizens.²⁹⁰ The Haudenosaunee declined. Members of Onondaga Nation still do not accept U.S. citizenship, and Onondaga Nation maintains that they are a sovereign nation. While conducting one of my interviews, in Onondaga Nation territory, I was explicitly told:

Right now, where you’re sitting, you are not in America, you’re not in the United States, you’re not in Onondaga colony, you are not in New York state. You are in **Onondaga Nation**. Never ever been taken, we’ve never been conquered, we are not going anywhere, and this land is not for sale. Because we have future generations to look out for. (Interview, Jake Edwards)

All three of my interviewees state that Onondaga Nation is a sovereign nation. Lyons argued that the treaties that they had with, and their involvement in the development of, the U.S. federation clearly expressed their sovereignty²⁹¹:

The Iroquois were right in the middle of that whole thing all the way through. And clearly independent of it. And clearly the treaties say that. So, they are wrong. They are wrong, and we are right.

²⁹⁰ Later the U.S issued a waiver for a one-time travel, but the answer from the U.K was that the Haudenosaunee passports did not meet international standards. The team would not travel on their Canadian/U.S passports and missed the World Championship in 2010 . See: Time Warner Cable News, “Iroquois lacrosse team still waiting for visas” <http://centralny.twcnews.com/content/510990/iroquois-lacrosse-team-still-waiting-for-visas/> [Accessed 19.07.2014], McAndrew, “Iroquois Nationals: 'Our plan is still to make it to the games’” http://www.syracuse.com/news/index.ssf/2010/07/iroquois_nationals_our_plan_is.html [Accessed 19.07.2014], and Kaplan, “Iroquois Defeated by Passport Dispute” <http://www.nytimes.com/2010/07/17/sports/17lacrosse.html?pagewanted=all&r=0> [Accessed 19.07.2014]

²⁹¹ The Haudenosaunee influence on the Founding Fathers were acknowledged by the Senate in 1988, see: United States Senate, “Concurrent Resolution” October, 5, 1988 <http://www.senate.gov/reference/resources/pdf/hconres331.pdf> [Accessed 20.06.2014]

So we are drawing the line now. Now, they are going to have to deal with that. Now there is nothing wrong with being independent sovereigns as far as we are concerned. Nothing wrong with being the allies, the first allies with the United States, nothing wrong with that. But it is wrong for their side if they expect to have us under their jurisdiction. We said, no, never were, not now, never will be. (Interview, Oren Lyons)

Frichner on the other hand make the argument that sovereignty is inherent and that sovereignty itself cannot be a grey area, you either have sovereignty or you do not:

Sovereignty is an end of itself. Nobody can give you sovereignty that is something that you obtain into yourself as a government. [...] So, Canada and the U.S are all trying to skirt the issue, you know, get around it, and say: Yes you have sovereignty, but you have a form of sovereignty, so it's not complete. Well... you either have sovereignty or you don't. I don't think there is a grey area of sovereignty, just from the definition of the word. And if you as a people declare that you have sovereignty over your land and your resources, and you apply the principles of the Declaration on the Rights of Indigenous Peoples, you can very easily come to the conclusion that yes we have control over our territories and resources because of our right to self-determination. (Interview, Tonya Gonnella Frichner)

Lyons' and Frichner's statements should be seen as elaborating on each other's arguments, where Frichner is using the UNDRIP to argue the nation's right to sovereignty, and Lyons focuses more on the fact that the Haudenosaunee Confederacy and the Onondaga Nation pre-exist the U.S., and as such their sovereign status is completely independent of the U.S. The issue of sovereignty and self-determination is perceived by both people as clearly linked with DOD. If we go back to *Johnson v. M'Intosh* one of the statements from the ruling is as follows: "*An absolute title to lands cannot exist, at the same time, in different persons, or in different governments. An absolute, must be an exclusive title, or at least a title which excludes all others not compatible with it*"²⁹². Onondaga Nation has not acknowledged this, or other principles stemming from DOD, and it continues to view itself as a sovereign nation. As Lyons said in the first quote of this chapter, the Onondagas have a way of life, spiritual laws that they live by every day. We saw this when we had a closer look at some of the principles: the law of nature and taking care of the 7th generation to come; these spiritual laws are connected to taking care of the environment. As I interpret the interviewees' statements it is not dominion that is important when they are asserting their sovereignty, but it is important to be sovereigns to have autonomy, and the right to execute their spiritual duties and obligations as stewards of the land. As I understand this, it is impossible to separate the Onondaga spiritual life, political life and law. The issue of sovereignty is, therefore, also an issue of having religious freedom, to live life as guided by their spiritual laws – by protecting the land.

²⁹² *Johnson* at 588

6.3 Challenging DOD in International Courts

In 2005²⁹³ the Onondaga Nation filed a lawsuit in U.S federal court. In this lawsuit the claim was that New York State, Onondaga County, Syracuse and five private companies, in violation of federal law and previous treaties between the Six Nations and the United States, had unlawfully acquired Onondaga territory when there was negotiated treaties in violation of federal law²⁹⁴. The 22nd of September 2010 the case was dismissed by Lawrence E. Kahn, a federal judge for the Northern District of New York on the basis that previous, similar, cases in the U.S legal system had been dismissed because they were not brought forward soon enough²⁹⁵. After the hearing of the case in 2006 Tadodaho Sidney Hill, a member of the Onondaga Nation's Council of Chiefs published a declaration related to the claim made by the Nation. In this declaration he mentions some of the Haudenosaunee worldview when he says: *"Our entire way of life and culture is tied to the land, the water and the natural world of the plants and animals [...]"*²⁹⁶

The case was finally dismissed in the U.S system in 2010²⁹⁷, and in April 2014 Onondaga Nation announced that they had filed a petition to the Inter-American Commission on Human Rights. They stated that the U.S legal system had failed to provide a remedy for the loss of Onondaga territory, and that this failure has been disruptive to the relationship between the Nation, N.Y state, and the U.S. The petition furthermore states that Onondaga nation and its people have: *" a unique spiritual, cultural and historic relationship with the land, which is embodied in the Gayanashagowa, the Great Law of Peace"*²⁹⁸. In the petition the Doctrine of

²⁹³ For more information of the historical process of this case see Petition to the Inter-American Commission on Human Rights by the Onondaga Nation: Onondaga Nation, "Onondaga Nation Files Suit in World Court", <http://www.onodaganation.org/land-rights/onondaga-nation-files-suit-in-world-court/> [Accessed 20.07.2014]

²⁹⁴ Manno and Powless "Brighting the Covenant Chain: The Onondaga Land Rights Action and Neighbors of the Onondaga Nation" in *Governance for Sustainability: Issues, Challenges, Successes* https://www.iucn.org/news_homepage/news_by_date/?2372/Governance-for-Sustainability-Issues-Challenges-Successes [Accessed 20.07.2014]

²⁹⁵ McChesney, "Judge throws out Onondaga Nation's land-claim lawsuit", http://www.syracuse.com/news/index.ssf/2010/09/judge_throws_out_onondaga_nati.html [Accessed 20.07.2014]

²⁹⁶ Tadodaho Sidney Hill, Onondaga Nation, "Declaration of Tadodaho Sidney Hill, Onondaga Nation", 5-6 http://www.onodaganation.org/mediafiles/pdfs/lgl_alrtssiddecl.pdf [Accessed 21.07.2014]

²⁹⁷ McChesney, "Judge throws out Onondaga Nation's land-claim lawsuit", http://www.syracuse.com/news/index.ssf/2010/09/judge_throws_out_onondaga_nati.html [Accessed 20.07.2014]

²⁹⁸ Onondaga Nation, "Petition to the Inter-American Commission on Human Rights" I. Introduction: 4 <http://www.scribd.com/doc/218374474/PETITION-to-the-INTER-AMERICAN-COMMISSION-ON-HUMAN-RIGHTS-submitted-by-THE-ONONDAGA-NATION-and-THE-HAUDENOSAUNEE-against-THE-UNITED-STATES> [Accessed 20.07.2014]

Discovery, together with the Doctrine of Plenary Power is discussed in some length, stating that the Nation attempts to have the U.S governments address their case:

Have been hampered by legal and historical doctrines such as “plenary power” by which the United States purports to exercise complete control over Indian nations, and the historical “Doctrine of Discovery,” which posited that indigenous peoples lacked rights to their lands²⁹⁹

By taking their case to the Inter-American Commission on Human Rights (IACHR) the Doctrine of Discovery, and the Doctrine of Plenary Power, will for the first time be reviewed by the international legal scene. When I conducted my field research I did not know about the intention of taking this case to the IACHR, however I did ask the informants about the case that had been through the U.S courts. When asked if it was not a contradiction that a Nation who maintains that they are sovereign, are using the legal system of the U.S to promote their land rights, Chief Jake Edwards answered:

It was more showing... how the American people: New York state government, United States government, and corporations, violated their **own** laws by intruding on our agreements with George Washington administration from 1794, and that we would maintain jurisdiction over our lands [...]. So we weren't looking to follow their laws, and become incorporated under their laws. We were looking for a declaratory judgment stating how their own laws was violated by their own people. Therefore title still remains with us, as we know it, as we believe it. (Interview, Jake Edwards)

This strategy walks a fine line between seeking justice and still maintaining the Nations own sovereignty. The petition to IACHR still have this as a background strategy, and they are asking for the Inter-American Commission to declare that the U.S have not followed their own laws. In addition to this element they are also bringing the Doctrine of Discovery and the Doctrine of Plenary Power to the IACHR, two doctrines that according to the Nation has no legitimacy over them. For the purpose of this thesis it is interesting that these doctrines will now be tested in an international forum – and when the Nation includes these doctrines in its petition, it shows how relevant they perceive them to be, even today.

6.4 Tentacles of DOD and the Future

For the interviewees from the Onondaga Nation a recurring theme was that it is great that churches are repudiating the discovery doctrine and are lending their voice to the indigenous movement working with this theme. On the other hand all three informants were very much in agreement that while repudiating the doctrine is a great first step, it is only that, a first step *“Repudiating the Doctrine of Discovery has to have remedies. Has to have it's own tentacles*

²⁹⁹ Ibid, D. at 76, more information on how the Onondaga Nation present the Doctrine of Discovery at 76-78

of remedies. To replace the tentacles of economic tentacles across the world, that the land has been exploited to."³⁰⁰ Both Frichner and Lyons were insistent on the importance of getting the Holy See to repudiate the doctrine. Frichner stated that one will not achieve change by putting "a band aid on, you got to get to the source of the infection, and many of us believe that source is dealing with the parties involved. And that is the Catholic Church, the Monarchy and the Government"³⁰¹

So I think, that probably a discussion with, with the new pope, may be a change of attitude. But what they have to do, they have to publically, today, renounce, rescind and explain. Because they're the ones that started this whole thing. And they can't simply walk away and say, well we walked away from that years ago. Not when somebody brings it up again in 2005, not when somebody brings it up in 2007. You can't walk away from that, you got a responsibility to that. Now that's what we are saying to them, you have to publically renounce that. [...]But basically, yeah, they have to publically renounce, and explain why, and instruct their people, they need not just renounce, they have to **instruct** their people to change their ways, to support what they purport to support. (Interview, Oren Lyons)

Both Frichner and Lyons in different ways, stated that since the Doctrine of Discovery originated with the Holy See they have a special responsibility to renounce the doctrine and educate their followers on it's history and consequences today. If the church does not stand behind this doctrine today – they need, according to Frichner and Lyons, to publically state that, and deal with the history directly. To use the second Vatican council or the bull *Sublimis Deus* is not enough. This is not to say that the Government and Monarchies is exempt from their criticism, merely that they hold the Vatican responsible at the same level. They are both promoting the potential power of the Catholic Church, and the influence it could have on it's followers in this matter.

"[...]the source is the Holy See. They will say that is a historical remnant, or that they overturned those papal bulls, well, how they did that I don't think is clear to indigenous people. It is not clear to me. And it has to be addressed. And I think my final statement would be: Confession is good for the soul, and I would address that to the Holy See." (Interview, Tonya Gonnella Frichner)

Looking towards the future, and the potential for change Tonya Gonnella Frichner drew an analogy from the work with DOD to the Civil Rights Movement.

When civil rights did not exist in this country for African Americans, something had to be done. And we are talking about the beginning of the United States. An economy based on slave labor [...]. But the African American scholars and intellectuals, they took it on. And it took them a long time. [...] But in 1965 the Supreme Court said, this is not constitutional, separate but equal is not constitutional. And that changed everything in the country; there was a 180 degrees turn. [...] But it had to happen, or this country couldn't go forward, and guess what, it did. And it made this country a better place. So if you make the analogy of the doctrine of discovery, which really effect indigenous people, but later on it helped justify slave labor. Where do you come up with the idea that Africans are less human than you? Did it just come out of the blue? This is like a century old thinking process, that justify slave labor. (Interview, Tonya Gonnella Frichner)

³⁰⁰ Interview, Jake Edwards

³⁰¹ Interview, Tonya Gonnella Frichner

As we can see she argues that the abolishment of slavery, in an economy that was based, and a country that was built, on slave labor, was a tremendous restructuring of the United States. And the Civil Rights Movement was built over time. It seems clear that Frichner views the work with the discovery doctrine to be a continuation of the same discourse that formed the civil rights movement, and likewise that it has the potential of also issuing a great change of the U.S. Lastly, she makes a point of the fact that the same papal bulls that are a part of the foundation of the discovery doctrine also were part of the legitimization of the slave trade.³⁰²

For Lyons being able to change the aftermath of DOD is connected to two other doctrines, that also has to be challenged, as he explains it:

Well there's three concepts that has to be challenged, or investigated or elucidated [...] One is the doctrine, the doctrine of discovery, and the doctrine of – well, the political question doctrine. [...] and then the plenary power doctrine. Those are the three that has to be elucidated. Who said so? Who said that? [...] My observation to that political question doctrine is simple, what does it mean? It means, because I said so. It is the same thing as the King said. You know, you have to define doctrine. What does doctrine mean? All right, and then you have the theory, you know. It's a theory. Not really law. (Interview, Oren Lyons)

We had a closer look on the legal doctrine of plenary power in chapter four, but the political question doctrine, as Lyon names it, was new to me. As far as I can understand it “the political question doctrine” goes all the way to the Johnson case of 1823 where Supreme Justice John Marshall writes: *“It is not for the courts of this country to question the validity of this title or to sustain one which is incompatible with it”*³⁰³. By this statement John Marshall is implicitly saying that it is up to the political sphere to “question the validity of this title” as he does not see it as a responsibility for the juridical sphere. In the above quote Lyons is pointing out that his perspective is that these laws and doctrines are only theories and definitions. Definition made a long time ago, when the indigenous population of the Western Hemisphere did not have an input on what the content of these definitions would be. And as long as the systems just uphold status quo without answering and adapting to the challenges, they are still maintaining the domination³⁰⁴ mindset: “It means, because I said so”. And according to Lyons, this mindset needs to be thoroughly challenged.

³⁰² Dum Diversas and Romanus Pontifex were after all written for Portugal's expansion into Africa.

³⁰³ *Johnson* at 589

³⁰⁴ This again relates to the conqueror model presented by Steven Newcomb

6.5 Final Remarks

“So, the underlying issue of everything that you are talking about there, why, if you ask that question, why is that? And it is land. Always have been. All around the world. The whole deal has always been: New Lands.” (Interview, Oren Lyons)

*“The Doctrine of Discovery’s main purpose was to obtain land. What is the environment? What does that mean without land?”*³⁰⁵ These two quotes goes straight to the core of what I perceive to be the understanding the Onondaga have of the discovery doctrine, and it’s most important consequence today. The purpose of the doctrine based on Christian discovery was to claim new lands. By claiming lands the Christian conquerors reduced both land and the peoples in status. Land became a commodity, and “heathens” were not seen as having the same rights as Christians. For a people such as the Haudenosaunee, where they view humanity *as* the environment, this worldview is still imposed through the courts in the U.S. and is in direct opposition with their understanding of themselves, as well as their understanding of land and the environment. The people I interviewed were clear on their challenge towards legal systems that have incorporated the Doctrine of Discovery. In the following quote Lyons are talking about the riots in Kiev³⁰⁶ and connecting this to his view of law in general:

“So, what you are looking at is the perennial and forever question [...] if the government makes the rules and the laws, and there’s no way to challenge those laws, except by physically challenging them. And they are legal documents as far as the country is concerned. Then legal becomes a terminology. What does it means? Legal becomes, uhm, becomes a leverage [...] So rule of law becomes the challenge. Whose rule? Whose law? **And is it right, simply because it’s law? That’s the question.**” (Interview, Oren Lyons)

This different perspective on DOD challenges not only the doctrine itself. It also challenges more deeply held convictions in the Western legal system and worldview such as the right to own land or how humanity situates itself in relation to nature. These questions that are of great interest also when seen in a climate change discourse. The Onondaga worldview is radically different, and because of this – when they speak of the consequences of the discovery doctrine – the effects seen and pointed out are formulated in a different context. The Onondagas do not only see the effects of the doctrine, according to them they live with the effects, marked both in relation to their continued struggle for recognition as a Nation independent of the U.S, and the effects on land and water from private companies “owning” their ancestral territories. Accordingly, if one take a human centered approach on the consequences of DOD, and the doctrine’s effects today, one reduces the criticism that the

³⁰⁵ Interview, Jake Edwards

³⁰⁶ While this interview was conducted in February 2014, there were riots in Kiev, Ukraine.

interviewees of Onondaga Nation puts forth as a vital point of the continuing effects of DOD. These effects being present in how one views nature and the climate.

7 Comparative Worldviews

In this chapter I will have a look at the different responses from my interviews and connect it to the theory chosen and the worldviews expressed. Secondly, we will have a look on how DOD, the way it is still practiced today is in fundamental opposition the Onondaga worldview. Furthermore, I will present how some indigenous scholars relate to the UNDRIP declaration of the United Nations. I will continue by presenting the controversy concerning the High Level Plenary Meeting of the General Assembly (GA) of the UN – to be known as the world conference on indigenous people, which will be held in September 2014 – and connect both the UNDRIP declaration and the GA to the discourse around the Doctrine of Discovery. Lastly, I will present the perception that DOD is what one of my informants named an “Unspoken Conspiracy” and contextualize this statement with the rest of the material collected in this thesis.

7.1.1 Myths, Nation building and the Role of Religion today

Robert Bellah is the man who coined the term *civil religion*, and he did so in an American context. Civil religion is a term that is made out of a Durkheimian perspective and seeks to find the elements that “*binds Americans together*”³⁰⁷. According to Meredith McGuire civil religion can be seen as “*the expression of the social cohesion of the nation*”³⁰⁸ and its function is to work as a transcending framework³⁰⁹ with rituals that commemorate important national events and renew its citizens commitment to society. These rituals can be seen as religious because they often represent the nation and the people, “*as a higher more valuable reality than mere (i.e., human) social contract and convention*”³¹⁰. Within civil religion there are myths and saints. McGuire turns to presidents, military – and folk heroes, like Washington, Jefferson, MacArthur and Davy Crockett to name saints. And as an example of myth: the American Dream, while examples of valued traits and images can include the rags to riches genre, and the image of the frontier. Biblical religion has influenced American civil religion, and yet – American civil religion remains distinct from Christianity. Some of the themes in American civil religion still have biblical symbolism at its heart and an example of this is the Chosen People - Promised Land narrative present in America’s civil religion. However, the baseline is that civil religion and Christianity have separate functions. While

³⁰⁷ Davie, Grace: *The Sociology of Religion*, Sage Publications, London, 2007, 154

³⁰⁸ McGuire, 2003, 202

³⁰⁹ Transcending ethnic, denominational and religious boundaries

³¹⁰ Ibid, 202

civil religion is appropriate for events in the official sphere, religions, including Christianity, have their main function in the private sphere³¹¹. This account may give the impression that American civil religion is a more unified and static than what is actually true though. Even though civil religion can be an element in the process of shaping a national vision and identity by sacralizing “*the ideas and “destiny” of a people*”³¹² it does not mean that there are not conflicts as to achieving hegemony in formulating how society, and thereby also civil religion, should be formed. In other words it may be a good idea to see civil religion as a cultural resource selectively used by the state, interest groups, and individuals rather than a “*fixed institutional entity*”³¹³.

Another view within the sociology of religion is that there may be no unifying civil religion in the U.S and that it may be better to conceptualize this form of civil religiosity as “*competing legitimating myths*”³¹⁴. Legitimizing myths are “*stories out of which people live and which they use to justify their values, actions, and identity*”³¹⁵. In this way you can explain images of America consisting of a “chosen people” having a “manifest destiny” as cultural resources, which people may draw on both for mobilizing collective sentiments and personal meaning, which indeed was done in the U.S - especially in the era of the westward expansion. Professor Anthony D. Smith actually draws directly on myths when defining a nation as: “*a named human population occupying a historical territory and sharing common myths and memories, a public culture, and common laws and customs for all members*”³¹⁶.

Myth is also present in his definition of national identity:

[...] the maintenance and continual reinterpretation of the pattern of values, symbols, memories, myths, and traditions that forms the distinctive heritage of the nation, and the identification of individuals with that heritage and its pattern³¹⁷

It is clear then, that several sociologists see myth, in one way or another, as an important element of national identity and as a part of shaping a community. As to the question of what exactly a myth is, or how it functions, one can enter into a long debate³¹⁸. The point I want to make here is simply that myth and collective national identity can be seen as linked, and that

³¹¹ Ibid, 203

³¹² Ibid, 206

³¹³ Ibid, 205

³¹⁴ Ibid, 204

³¹⁵ Ibid, 204

³¹⁶ Smith, 2008 [2003], 24

³¹⁷ Ibid, 25

³¹⁸ For a quick overview see: Bowie, Fiona: *The Anthropology of Religion: An Introduction*, 2nd ed. Blackwell Publishing Ltd, Oxford, 2006, 267-298

myths can be used to legitimate a narrative presented in the nation. In this way I see myths as a part of the way of constructing, maintaining, or expressing a worldview, and an important element in building national identity and nation building at large.

It comes back to that [...] John Winthrop 1620 [...] America is to be the city on the hill, and this has been cited over and over and over, as one of the fundamental myths of America, the city on the hill. Ronald Regan added shining to that and people have repeated it as if that is what Winthrop said [...], but the notion nonetheless has pervaded American history, that we are to be the New Jerusalem, we are The Chosen People. So that's been, as I said, the Predominant American Myth. (Interview, David Pasinski, C)

In the interviews conducted, the interviewees were asked about the myths of American Exceptionalism, Manifest Destiny and of being a Chosen People. Many saw a clear relationship between the myth of Manifest Destiny and the discovery doctrine – and a few also connected this to the myth of American Exceptionalism. The Chosen People narrative is part of the background of both the discovery doctrine, the myth of Manifest Destiny and the idea of American Exceptionalism. All these myths have been central in the foundation of the new nation state, known as the U.S. Most importantly the discovery doctrine and Manifest Destiny, as they provided legitimization for the settlers to claim lands, and Manifest Destiny continued to serve as a story out of which people lived, and used to justify their values, actions, and identity, especially during the age of the westward expansion.

Interestingly enough, most of my religious informants did see the connection between the discovery doctrine and the idea of Manifest Destiny. Their reflections on the matters of these myths and narratives shows a critical attitude toward what is seen as a consensus way of thinking. This challenge for the religious informants is often closely tied together with their experience of being a religious person, and having the need to live out what they perceive the ideals in their faith to be. This brings us back to the fundamental difference between civil religion, or legitimizing myths, and religion mentioned above. While the religious denominations are now working with this theme among their own members, awareness of the history of DOD and its consequences have not been dealt with by the court systems, or mainstream media. It could be that several Christian denominations in the U.S today have begun a movement putting pressure on the “legitimizing myths” of the U.S to come to terms with the origin of Christendom in its Nation-building. However, the main perspective from the informants belonging to different religious groups was that this was something one had to do, because the indigenous peoples in the U.S: A) asked them to, B) deserve to get justice, or C) the religion needs to come to terms and make up for its past.

Sometimes there's important things [...] that you need to do with the group that has been oppressed or hurt by racism or racist institutions, but there's also sometimes work that you just need to do on your own. To me, this was something that was screaming to me, that this is something **Christians** need to undo. We need within our own churches to look at this legacy of the Doctrine of Discovery and dismantle it, take it apart, and be really clear that **nothing** that the church stands for can ever be justified by the Doctrine of Discovery. (Interview, John Dieffenbacher-Krall, E)

Lastly another point that was vital for the interviewees belonging to religious organizations was to distance the worldview in their religion, as they perceive it, from the religiously oriented worldview presented in the papal bulls.

7.1.2 A way of life – and responsibilities to the land

A central book when it comes to explaining indigenous relationship with land is *God is Red: A Native view of Religion* (1973) by Vine Deloria Jr. Already in the introduction of Deloria's book a connection between religion and land is made. Deloria begins his book by telling us:

Almost any tribe can be examined and the result will be a bevy of stories about how people used spiritual powers to live, and these powers are almost always made available to us in a sacred place where time and space do not define the terms of the existence.³¹⁹

The fact that a book by a native scholar made to present a native view of religion also can be used to explain the relationship with land shows that there is some sort of relationship here between land and religion. The great distinction made by Deloria between native conception of the sacredness of land, and Christianity's notion of a holy land (or Jerusalem being a holy city) is that for indigenous peoples the sacred site is not just about remembering a holy miracle that had occurred before. Instead a sacred site can be used for a constant reenactments (ceremonies) and provide new communication with the spirits who resides on the specifically sacred site³²⁰. This close relationship between space and religion is one of the reasons that Deloria dubs Native-American religion as being "spatial religion", and accordingly he dubs Christianity a "temporal religion" due to Christianity's linear timeline³²¹. A simplified way of presenting the different perspectives of temporal and spatial religion is: "[...] whether we consider the reality of our experience as capable of being described in terms of space and time – as "what happened here" or "what happened then"³²². Philip Arnold has made another distinction between "land based practitioners" and "faith-based practitioners". As "land based practitioners" the focus is shifted away from the intellectual

³¹⁹ Deloria Jr, Vine: *God is Red: A Native View of Religion*, 3rd Ed. The Putnam Publishing Group, New York, 2003 [1973], xvii.

³²⁰ Ibid, 66-75.

³²¹ For more information see: Ibid, 61-76/97-132.

³²² Ibid, 77

exercise of faith/belief towards “the materiality of religion”³²³. This is a radically different approach to the material world, than the traditional “faith-based” way of relating to creation within the Abrahamic religions. The Abrahamic religions have tended to have a relationship to a divine deity through the media of sacred texts, prayers and confession of faith, houses of worship, and religious edicts to follow, “land-based practitioners” do not have a relationship to an otiosus deity, they have instead a relationship to the material world, the land. For them land is land, not a commodity, not something to be segregated and parceled out – land is, to use the terminology of Jake Edwards – your Mother. This radical difference in worldview is partly what forms the backdrop of the different conceptions of DOD among traditional indigenous peoples and people within religious organizations.

One major reason for the indigenous insistence on the importance of land, following Deloria reasoning, is that the religious structure “*is taken directly from the world around them, from their relationship with other forms of life*”³²⁴ The ceremonies that Indigenous peoples perform often involve the “other peoples” of this world either directly or indirectly– because: “*In the religious world of most tribes, birds, animals, and plants compose the “other peoples” of creation*”³²⁵. The ceremonies are performed at sacred sites and often the goal of the ceremonies is that “*the earth and all it forms of life might survive and prosper*”³²⁶. The relationship between different sort of animals and the tribe can be viewed in parts of the society structures: for instance if we have a look at Onondaga Nation, the different clans are made up of animals: for instance the snipe clan and the eel clan³²⁷. When the interviewees from Onondaga Nation spoke about the Law of Nature it was formulated that the spiritual self of humans is no more or less important than any other spiritual self, be it the deer, the rabbit or the grass. There can be no doubt that the Onondagas are “land-based practitioners”, their relationship to the law of nature is an intimate one, and their legal complaint of the land rights opens with the following words:

*“The Onondaga People wish to bring about a healing between themselves and all others who live in this region that has been the homeland of the Onondaga Nation since the dawn of time. The Nation and its people have a unique spiritual, cultural, and historic relationship with the land, which is embodied in Gayanashagowa, the Great Law of Peace. This relationship goes far beyond federal and state legal concepts of ownership, possession, or legal rights. **The people are one with the land, and consider themselves***

³²³ Arnold, Philip, *The Urgency of Indigneous Religions*, Unpublished book, Syracuse University, 127. Private copy, received Febrary 22, 2014

³²⁴ Deloria, 2003, 65

³²⁵ Ibid, 278

³²⁶ Deloria: 2003 [1973], 279

³²⁷ Onondaga Nation, “Culture” <http://www.onondaganation.org/culture/> [Accessed 10.08.2014]

stewards of it. It is the duty of the Nation's leaders to work for a healing of this land, to protect it, and to pass it on to future generations."³²⁸

7.1.3 Human Rights, Land Rights, or Both?

A clear distinction between people I interviewed from religious groups and Onondaga Nation is that there was a much greater focus from the indigenous interviewees on the rights of the environment (including land). Their criticism of DOD had two major points, firstly that the doctrine devaluated their status and did not view them as human beings, this criticism was also the foremost of the doctrine among the interviewees from different religious denominations. Secondly, the interviewees from Onondaga saw the discovery doctrine as paving the way for viewing the environment as a commodity – to be used for economic gain and sold and used by corporations, by this criticizing the western notion of ownership of land the way it is practiced today:

We all have rights to what's provided for us. We don't have ownership. If I were outside in the garden, and gave you a handful of that garden soil, and said: "There, you can own this land". How long do you think you could own it? Take home with you some Onondaga sovereign soil. Can you own that land? A handful, a plateful, a truckload. You can't **own**, you can work with it, you can put a seed in it, you can put it in a flowerpot, you can grow corn, you can eat from it, but you cannot **own** it. And if you neglect it, and forgot it in your pocket, and put it through the wash, what happens to it? It goes back in to everybody's possession, like it's supposed to. It goes down the drain, down into the creek, down into the sea, and helps feed the fishes, helps feed growth. So that people a hundred miles away from you, might catch that fish that ate that soil that you thought was yours because I gave it to you. You can't control it. You can admire it. As long as it stayed right there you could share it, you could use it. As soon as you turn your back on it and it rains on it, you're all done with it. It goes back to everybody; so it starts out as everybody's. (Interview, Jake Edwards)

This basic difference in how one views the consequences of the discovery doctrine are connected to worldviews and how one structures and relates to the world. From a Western point of view one has the notion that land exists as private property – and is subservient to the owners will. The close connection that the Onondaga have to the environment is different from how other non-indigenous peoples are used to conceptualize the world. However, as I mentioned in chapter 2, worldviews does not preclude individual worldviews. In my interviews there were some among the religious groups who criticized other consequences from the doctrine: Mary Gilbert expressed a worldview that conceptualized her human self as no more important than an "earth worm". Another Quaker, Joan Savage took up the idea of top-down control and sovereignty as ideas deeply intertwined with the doctrine:

I think it's like a, it's so embedded in the worldview that I think it's going to take a **long** time to change it. In terms of just practically saying, is it going to continue in the future? It's like, a version of this is going to be around as long as people have a motivation to use it. I think it'll be easier to repudiate the

³²⁸ Onondaga Nation, "The Complaint", <http://www.onondaganation.org/land-rights/complaint/> [Accessed 10.08.2014]. My emphasis.

Christian aspect of it because that will seem to be in the past. I think it is going to be much harder to eradicate this concept of sovereignty³²⁹ and top-down control. (Interview, Joan Savage, RSF)

This shows that what one conceptualizes as effects of DOD has to do with how one relate to land, does one see the earth and animals as being here for people to use, or do one perceive of the environment and the earth as a living creature – with an intrinsic value, regardless of humanity? All in all, the general tendency was that while the indigenous interviewees highlighted that DOD had violated both indigenous human rights *and* the environment, interviewees from religious groups tended to focus on the rights of indigenous peoples, including *their* rights to *their* land and sovereignty.

7.1.4 The UN

As mentioned in the beginning of this thesis there has been established a United Nations Permanent Forum on Indigenous Issues (PFII) and the UN has adapted the UNDRIP. The importance and the kind of support for indigenous peoples that the UNDRIP declaration gives, is perceived somewhat different by indigenous scholars. When asked about the consequence of the UNDRIP declaration Frichner said that it:

[...] protects our rights of self-determination, the right to protect our resources... Principles will have to be followed, and laws will have to be followed when dealing with us. Whether our free, prior, and informed consent that you have to get before you work with us. [...] But now you got to have our consent. So, this [...] brings us on a level playing field, where we are equal partners at the table. We are sitting at the table with everybody else. (Interview, Tonya Gonella Frichner)

However, Newcomb is more skeptical towards the declaration. In his column in Indian Country Today, he criticizes both the working definition of “Indigenous Peoples” used in the UN:

Indigenous communities, Peoples and Nations are those which have a historical continuity with pre-invasion and pre-colonial societies... The terms “pre-invasion” and “pre-colonial” refer to the original free and independent existence of nations and peoples, prior to the onset of domination through invasion, colonialism, and so forth. The terms implicitly refer to an original context and existence, before (“pre”) domination” and before colonization, or, in other words, to an original free existence. Those characterized as being “indigenous,” says the definition, “consider themselves distinct from other sectors of the societies now prevailing...” (emphasis added). The definition tells us that those peoples termed “Indigenous” “form at present non-dominant sectors of [the prevailing] society...” Words such as “invasion,” “colonial,” “prevailing,” and “non-dominant” serve as carriers of a paradigm of domination.³³⁰

³²⁹ As I understood her, this concept of sovereignty is closely linked with the idea that the government is the ultimate land owner in the U.S., so for instance if you die without any heirs your property reverts back to the government, or the fact that the government can expropriate your lands in order to build a road.

³³⁰ Newcomb, “U.N. Rights Pamphlet: “Indigenous Peoples” Means Dominated, Oppressed”, <http://indiancountrytodaymedianetwork.com/2013/06/26/un-rights-pamphlet-indigenous-peoples-means-dominated-oppressed> [Accessed 11.08.2014]

In addition to his focus on definitions of indigenous people used by the U.N-system, he also criticize article 46³³¹ in the UNDRIP, stating that it cancels out much of the document:

Stated differently, limitations on the exercise of the rights set forth in the U.N. Declaration may be imposed by states in order to 'secure' "recognition for the rights and freedoms of" ...those defined as non-Indigenous. There is another way of stating this: the exercise of the rights set forth in the declaration shall only be limited if and when states deem such limitations necessary to "secure" and "respect" the rights and freedoms of a given non-Indigenous society. Furthermore, such state-imposed limitations shall be placed on the exercise of the rights enumerated in the U.N. Declaration when such limitations are deemed by states to be necessary "for meeting the just and most compelling requirements of a democratic society." It is anybody's guess what the phrase "just and most compelling requirements of a democratic society" means, or, for that matter, who shall decide what that phrase means.³³²

For Newcomb and Onondaga Nation there are two factors that are extremely central to their understanding of the consequences of DOD. Firstly that the people living in the Western Hemisphere were free and independent people, with the right to sustain their own governmental systems, regardless of the discovery doctrine that the Christian kingdoms of Europe used to appropriate sovereignty over the land and "title" to it, as the "heathens" were not seen as having the same rights as Christians. And secondly – that indigenous peoples continue to be free and independent: their status independent of the U.S. Following this logic, Lyons in the 2014 UN PFII stated:

As affirmed in Article 3 of the UN Declaration on the Rights of Indigenous Peoples, affirming our right to self-determination and our right to determine our political status, we continue to maintain our traditional governance structure and we have never sold or otherwise relinquished our lands or rights to self-determination. 3. As Chiefs of these Nations, it is our duty to deal with international relations with other Nations and their organizations. We have been involved with dialogue with the various member nations and bodies of the United Nations over the decades and with the League of Nations before the UN existed. We have maintained these nation-to-nation relationships as an active expression of our right to self-determination and our position has always been and continues to be that we are equal to all peoples and nations.³³³

In other words the indigenous relationship to the U.N and the UNDRIP declaration is not unilaterally positive, or negative. This complex relationship, where the U.N, at least by some, are considered to work within the same framework of dominance that the UNDRIP is perceived to counter, has lead to reactions from indigenous peoples. One example is that the

³³¹ Article 46 states, among other things, that: "*Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States*". See United Nations Declaration on the Rights of Indigenous Peoples, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf [Accessed 11.08.2014]

³³² Newcomb, "The Limitations of the U.N. Declaration on the Rights of Indigenous Peoples", <http://indiancountrytodaymedianetwork.com/2014/03/13/limitations-un-declaration-rights-indigenous-peoples> [Accessed 05.08.2014]

³³³ Onondaga Nation, "Oren Lyons Presents at U.N. 5/15/2014", <http://www.onodaganation.org/news/2014/oren-lyons-presents-at-u-n-51514/> [Accessed 10.06.2014]

United Nations General Assembly is scheduled to convene a High Level Plenary Meeting (HLPM) regarding the U.N. Declaration on the Rights of Indigenous Peoples. This meeting is “to be known as” a “World Conference on Indigenous Peoples.”³³⁴

This gives the mistaken impression that it is a UN World Conference. It isn't. A genuine world conference is usually nine to ten days long, whereas the U.N. High Level Plenary Meeting is going to be about 180 minutes long in its entirety, over a two-day period in New York.³³⁵

When I asked Frichner on the matter of this conference during the interview, she stated: “What happened in Alta³³⁶ was Indigenous Peoples were addressing that [...]. You can't have a conference without us, without our whole participation, because you are violating the principles of the Declaration on the Rights of Indigenous Peoples.”³³⁷ So, how is this HLPM connected to DOD and it's consequences? Well, the North American Indigenous Peoples Caucus (NAIPC) called for:

a systemic analysis of the causation of colonization, domination and subordination be undertaken, that continued work be done on issues related to the use and impact of the racist Doctrine of Discovery that has allowed states to steal Indigenous lands and resources, and that a statement be drafted on the Doctrine of Discovery and that the Doctrine be repudiated in the HLP WCIP Outcomes Document.³³⁸

After it became clear that indigenous peoples would not be granted a full and equal participation of the process leading up to, and in forming the outcome-document of the HLPM, NAIPC called for cancellation of the United Nations conference and encouraged other regions to join in a global consensus to stop it from taking place.³³⁹ This was restated during the UN PFII in May 2014³⁴⁰. As it stands today the NAIPC maintains its position

³³⁴ United Nations, World Conference on Indigenous Peoples (WCIP), <http://wcip2014.org/> [Accessed 10.06.2014]

³³⁵ Newcomb, “The Limitations of the U.N. Declaration on the Rights of Indigenous Peoples”, <http://indiancountrytodaymedianetwork.com/2014/03/13/limitations-un-declaration-rights-indigenous-peoples> [Accessed 05.08.2014]

³³⁶ There was held a Indigenous Preparatory Conference in Alta in 2013, see the Alta Outcome Document: WCIP, “Alta Outcome Document” <http://wcip2014.org/wp-content/uploads/2013/06/Adopted-Alta-outcome-document-with-logo-ENG.pdf> [Accessed 10.06.2014]

³³⁷ Tonya Gonella Frichner

³³⁸ NAIPC, “03a-Decisions and Recommendations Regarding the UN High-Level Plenary Meeting to be called a World Conference on Indigenous Peoples -North American Indigenous Peoples' Caucus. March 1, 2 and 3, 2013 in the traditional territory of the Kumeyaay Nation” World Conference on Indigenous Peoples|Indigenous Peoples Resolutions and Declarations|Regions Preparatory Meetings 2012-2013 <http://www.docip.org/greenstone/cgi-bin/library.cgi?a=q&c=cendocdo&q=Donna%20GOODLEAF> [Accessed 16.06.2014]

³³⁹ Toensing, “NAIPC Says UN Indigenous Conference Insults Indigenous Peoples” <http://indiancountrytodaymedianetwork.com/2014/03/12/naipc-says-un-indigenous-conference-insults-indigenous-peoples-153946> [Accessed 18.07.2014]

³⁴⁰ NAIPC, Debra Harry, “Statement on item 6 – WCIP” Permanent Forum on Indigenous Issues|2014|06-Discussion on the World Conference on Indigenous Peoples, <http://www.docip.org/greenstone/cgi-bin/library.cgi?a=q&c=cendocdo&q=Debra%20HARRY> [Accessed 18.07.2014]

calling for cancelation. However, several groups of indigenous peoples in North America are still participating in the preparation for the HLPM.

7.2 “Unspoken Conspiracy”

So, when the doctrine of discovery, the ground work, from what I have, from my understanding was being done in South-America. The heavy investigation was being done by indigenous people, and leaders in Chile and Peru. And that they had found this Doctrine of Discovery, they had finally, were putting together, what I call a “unspoken conspiracy”: they didn’t have to talk to each other, but they agreed. This is an unspoken conspiracy between the states, to contain the activities of indigenous people. And we were challenging them right where they live. And so, we found out. (Interview, Oren Lyons)

In this narrative, finding out about the Doctrine of Discovery is uncovering an “unspoken conspiracy”. From an indigenous point of view the Doctrine has been, and continues to be used by various states as a way to contain indigenous people – without articulating why they claim this right. Today, a lot of indigenous scholars have challenged, and continue to challenge this system built upon the roots of Christendom and a mentality of being privileged on the behalf of “heathens”. It is brought to the U.N, it is repudiated by different religious denominations, and it is challenged in the juridical scene. Still, the majority of the western world does not know of this doctrine. Lyons does not see this as the states being without knowledge. In his perspective the Doctrine of Discovery is an “unspoken conspiracy”, first to claim lands, and thereafter maintaining the status quo. With the recent court cases in the U.S it cannot be claimed that the juridical system does not know of the historical origin of the doctrine – but so far this have not changed the way the courts relate to indigenous claims. As we have seen the consequences of the discovery doctrine is perceived to be a serious impediment on the Onondagas cultural and spiritual life, and also a violation of the rights of land itself. According to Frichner the change will have to come “*from the inside*” of the halls of power:

People who are victims of this thinking, why is it our responsibility to do something that the whole world think is wrong? You can bring attention to it, you can make all the arguments you want. But... people of color are on the outside; they are not installed in the halls of power. And those are the folks that are responsible for taking this on, for having a dialogue that is transparent, and all parties are equal. But, you can’t ask a rape victim to figure out how to solve women being assaulted. That’s not her responsibility. (Interview, Tonya Gonella Frichner)

7.3 Further Research

A master thesis has a limited scope, and this limitation is felt when dealing with a big theme such as DOD. It would be interesting to investigate more thoroughly, through a bigger selection of people, different perceptions of DOD and its consequences. There are several

religious organizations that could not be included in this work, but would be natural to approach³⁴¹ in an eventual expansion of this research. Moreover it would be intriguing to investigate how indigenous peoples, both traditional and non-traditional relate to and perceive DOD. There is still much research that could be pursued from the perspective of history of religions on DOD, it would, for instance, be relevant to interview people working with American Indian Law to see how people working within the legal system in the U.S. perceive it. Last, but not least, it would be highly interesting to expand the research done on DOD to other nations, for instance Sweden and Norway, to see if DOD has been used by the states towards the Sami people.

³⁴¹ See appendix for list of religious organizations that have repudiated DOD.

8 Concluding Remarks

In his book, *Pagans in the Promised Land*, Newcomb shows how Federal Indian Law in the U.S has its basis in a Christian European perspective. This worldview entails that at the time that the basis of American Indian Law were formulated, the fact that indigenous peoples were seen as “heathens” and not having the same lifestyle of the Christian Europeans, provided a rationale that Christian “civilized” people – had legitimate claims of dominion over indigenous peoples of the Western Hemisphere due to the “character and religion” of their inhabitants. The internalization of superiority in society and law has allowed for an imagined separation of the religious, racial and imperialist discourses which is at the foundation of U.S Indian Law, and before indigenous scholars started to call attention to the Doctrine of Discovery there was little to no attention given to the discovery doctrine. Joshua J. Jefferts writes that in the case of *Johnson vs. M’Intosh* “*race and racial hierarchy were integrated into the very nature and legality of land ownership*”³⁴² And while I do not disagree with Mr. Jefferts I would dare to add that a religious hierarchy was also integrated into the very nature and legality of land ownership, and this continues to affect people, both indigenous and non-indigenous to this day. The Doctrine of Discovery has yet to be overturned in U.S courts and according to James Underhill “*Influential cultures tend to imagine they understand the cultures they dominate*”³⁴³. The U.S. position is that indigenous nations have the right to self-determination, meaning that they have the right to internal self-determination. This is in direct opposition to what for example the Onondaga Nation continue to assert – they maintain that they are a sovereign Nation, continue to travel with their own passports, and state their right to take care of their own international relations.

Throughout this thesis I have investigated how people of different religious organizations and traditional indigenous peoples perceive the Doctrine of Discovery and it’s consequences today. Several religious organizations have joined indigenous nations and scholars, and are calling for repudiation of DOD. Although there is great consensus on what DOD is, this does not necessary mean that one sees the same consequences of the doctrine. As we have seen during this thesis the perceptions of the lingering effects of this doctrine varies between individuals. There are different perspectives based on what worldview the individual has. Moreover the motivation given for working with the discovery doctrine varies. For some it is

³⁴² Jefferts, 2013

³⁴³ Underhill, 2011: 60

about redeeming their own religion and to help bring justice to indigenous peoples. For others it is a calling for justice, based in spiritual and moral values anchored in their faith that lead to the call for repudiation of the doctrine. From the perspective of the Vatican the discovery doctrine is something they see as irrelevant for them to deal with, as they view it as a legal doctrine today, and not a religious one – while lay members of the Catholic church feels it is imperative for the church to take a stance against it and publically repudiate it. Most of the informants from religious organizations kept formulating the discovery doctrine as something that had a big influence on indigenous people, but they did not consider effects of the doctrine on the other parts of society, which was brought up by the Onondaga interviewees. In other words most of the individuals within the religious organizations see the resonance of the Doctrine of Discovery in relation to the rights of indigenous peoples, and *their* right of sovereignty and self-determination.

According to the indigenous people I interviewed, a public repudiation by the Holy See was very much called for. The reason given for the importance of this was that the papacy is seen as “the ones to initiated it [DOD]”³⁴⁴. When looking at the consequences of the discovery doctrine, as perceived by the Onondaga interviewees, it becomes clear that DOD formulated a nearly complete rejection of their own worldview as presented through the Law of Nature. The cultural and religious forces at work during “the Age of Discovery” gave rise to modernity, but demonized indigenous people and their traditions. DOD laid a religiously based foundation for establishing a “new world” where the Christian colonizers were entitled to indigenous lands. For the Onondaga interviewees land is a living reality and maintaining the vitality of this living presence is a core value, therefore the very idea of private or corporate ownership clashes with the worldview laid forth in the Law of Nature:

I am not that very versed on the names of all of these things, and I haven't read them all. I put it down after seeing what disrespect it showed the world, and what survives, and what it takes to survive as humans, as animals, as rabbits, as berries, and waters. It's not included in there in any way, and no term of equity for life – other than gain for the authors of it, and their servants, their governors, their kings. (Interview, Jake Edwards)

This gives rise to two deep challenges to post colonial governments. Firstly, the rights of indigenous peoples, their right to sovereignty and self-determination. Secondly, how the modern world conceptualizes the environment. The Law of Nature challenges the modern conceptualization of nature and the environment as commodities to be used to serve

³⁴⁴ Interview, Tonya Gonella Frichner

humanity. The Onondaga interviewees perspectives addresses vital concerns for the preservation of nature and the environment, in a modern world built upon the values of early colonial times. The Onondaga conceive the earth as a living entity, having its own intrinsic value, independent of humanity. The same way they view Onondaga Nation of being a sovereign nation, independent of the status of the U.S. For indigenous scholars and traditional indigenous people I interviewed, the resonance of the Doctrine of Discovery is something they live with every day, continuously present in their lives. They are calling for a repudiation of this doctrine in all channels available to them – and continue to assert their independence.

There are certain attitudes that are shared across religious traditions, indigenous/non-indigenous and where the interviewees lived. Firstly, everybody I talked to was skeptical of the status quo and wanted change. Secondly, for this change to come about education was the central theme. There was a common belief that education and re-education of people is where the change has to start. There were variations of what people wanted the change to be, but from several of the non-indigenous interviewees a healing and a bettering of the relationship between “settlers” and indigenous peoples, and a decolonization of the relationship between the U.S. and indigenous nations were mentioned:

Ultimately, I like to think that we can live here all together, settlers and indigenous people. And I like us to get rid of the colonial attitude, you know, that we have to be in control and have real... I don't think the tribes are saying, you know, again, go back to a map of 1491. But I think they want to have a lot more power, I believe they deserve it. To be in control of their affairs, they shouldn't be wards of the State of Maine.” (Interview, John Dieffenbacher-Krall, E)

One perception that seems to be shared by all the interviewees interviewed for this thesis is the following, and I will let this be the final words of this thesis: “[...] *It is certainly up to religions to renounce it [DOD][...], but it's up to **everybody** to renounce it, and say: this should not be the basis for any American law anymore.*”³⁴⁵

³⁴⁵ Interview, Kate Elisabeth DeRiel, RSF

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Friends Meeting at Cambridge ”Background to the request for repudiation of the Doctrine of Discovery and affirmation of the UN Declaration on the Rights of Indigenous Peoples”. Attached in the appendix

Migliore, Celestino “Letter to Chief Oren Lyons”. 16 July, 2007. Attached in the appendix.

Passionists International, Sisters of Charity Federation, Partnership for Global Justice, Congregations of Saint Joseph, Sisters of Notre Dame of Namur, Medical Mission Sisters, Unanima International, Curia Generalizia Agosiniana, Augustinians International, Missionary Oblates of Mary Immaculate “Holy Father Francis”, November 1, 2013. Attached in the appendix.

Philadelphia Yearly Meeting, Indian Committee. “2009 Minute of the Indian Committee of

the Philadelphia Yearly Meeting of the Religious Society of Friends“. Attached in the appendix

Sisters of Saint Joseph and Associates of Buffalo New York, “Pope Francis”, 2013, Letter from the Sisters of St Joseph and Associates of Buffalo. Attached in the appendix

The Episcopal Church “Repudiate the Doctrine of Discovery”, 2009. Attached in the appendix

The Indigenous Law Institute; American Law Alliance and Tonatierra, “Memorandum”, April 2008, Letter to Archbishop Celestino Migliore, Apostolic Nuncio, Permanent Observer Mission of the Holy See to the United Nations. Attached in the appendix.

Listservers:

Two Row Wampum Announcements tworowrenewalannounce@lists.riseup.net

Doctrine of Discovery DOD_STUDY_GROUP@listserv.syr.edu.

Appendix

List over regional/national religious groups that have repudiated the Doctrine of Discovery

1. The Episcopal Church (U.S), 2009³⁴⁶
2. The Unitarian Universalist Assosiation, 2012³⁴⁷
3. The Christian Church (Disciples of Christ, the U.S and Canada), 2013³⁴⁸
4. The World Council of Churches, February 2012³⁴⁹
5. New York Yearly Meeting (Religious Society of Friends) 2012³⁵⁰
6. Philadelphia Yearly Meeting (Religious Society of Friends), 2009³⁵¹
7. Baltimore Yearly Meeting (Religious Society of Friends) 2012³⁵²
8. United Methodist Church, 2012³⁵³
9. Pax Christi, Maine 2013 (Catholic Organization)³⁵⁴
11. The United Church of Christ, 2013³⁵⁵
12. Boulder Friends Meeting, 2013³⁵⁶
13. General Synod of the Anglican Church of Canada, 2010³⁵⁷

Joint statement:

Press release sent out by The Loretto Community, November 2013 (Catholic groups):

³⁴⁶ Entire resolution attached

³⁴⁷ <http://www.uua.org/statements/statements/209123.shtml>

³⁴⁸ <http://www.disciples.org/GeneralAssembly/Business/Resolutions/1324ReflectiononChristianTheologyandPolity/tabid/864/Default.aspx>

³⁴⁹ <http://www.oikoumene.org/en/resources/documents/executive-committee/2012-02/statement-on-the-doctrine-of-discovery-and-its-enduring-impact-on-indigenous-peoples>

³⁵⁰ http://www.nyym.org/sites/default/files/Minute_Doctrine_of_Discovery.pdf

³⁵¹ The statement is attached at appendix E

³⁵² http://www.bym-rsf.org/what_we_do/committees/indian/discovery.html

³⁵³ <http://calms2012.umc.org/Text.aspx?mode=Petition&Number=831>

³⁵⁴ <http://bangordailynews.com/2013/10/31/religion/pax-christi-maine-asks-pope-francis-to-renounces-doctrine-of-discovery/>

³⁵⁵ <http://uccfiles.com/pdf/gs29-1.pdf>

³⁵⁶ http://www.quakerearthcare.org/sites/quakerearthcare.org/files/attachments/minute_approved_by_boulder_meeting_march_13_2013.pdf

³⁵⁷ <http://archive.anglican.ca/gs2010/resolutions/a086/>

13 Catholic Groups in addition to the Loretto Community itself are mentioned in the press release: Sisters of Mercy of the Americas, the 19 member congregations of Dominican Sisters Conference, the Sisters of St. Francis (Rochester, Minnesota), Sisters of St. Joseph (Concordia, Kansas), Sisters of St. Joseph (Philadelphia), Sisters of Charity of Leavenworth (Kansas), the Congregation of Sisters of St. Agnes (Fond du Lac, Wisconsin), Institute of the Blessed Virgin Mary (Casa Loreto, Rome), Sisters of St. Joseph and Associates of Buffalo New York, Pax Christi International, the 8th Day Center for Justice (founded by 34 congregations of religious men and women), and the Franciscan-founded Nevada Desert Experience.³⁵⁸

A) Letter to the Pope, Passionists International 2013 (Catholic Organization), “Holy Father Francis” November 1, 2013

9 religious non-governmental organizations in the United Nations in addition to the Passionists signed the letter to the pope: Sisters of Charity Federation, Partnership for Global Justice, Congregations of Saint Joseph, Sisters of Notre Dame of Namur, Medical Mission Sisters, Unanima International, Curia Generalizia Agosiniana, Augustinians International, Missionary Oblates of Mary Immaculate. In this letter they call for the Pope to “act with courage and holy resolve to formally revoke the Papal Bulls quoted above” the papal bulls mentioned are *Dum Diversas* (1452), *Romanus Pontifex* (1455) and *Inter Caetera* (1493).

³⁵⁸ <http://www.lorettocommunity.org/religious-groups-ask-pope-francis-to-stand-with-indigenous-people/>



211 East 43rd Street, Suite 704
New York, NY 10017

1st of November 2013

Holy Father Francis,

Greetings in God's good peace and with prayerful hope for the blessing of good health along with courage and wisdom in your mission!

We, the undersigned **religious non-governmental organizations in the United Nations**, write to you in resolution from conversations with our indigenous brothers and sisters, having taken place annually at the Permanent Forum for Indigenous Peoples in UN.

In this letter, we want to express a concern that has been pressing upon us for a long time, a concern, we believe, that also needs your attention and wise deliberation. We wish to indicate our deep distress for Indigenous peoples throughout the world. Bringing you our request, we have every confidence that your shepherd's heart would also share our worry.

We begin by calling to mind the reality of which you are already too aware. Indigenous peoples are living representatives of the world's oldest continuing cultures. Sadly they are also among the most dispossessed people in the world. They are tragically over-represented in categories that measure poverty and social exclusion – life expectancy, decent housing, completed education, health, and levels of incarceration, joblessness and discrimination.

The phenomenon of colonization in the “new world,” from the fifteenth century onwards, was marked by the expropriation of lands and natural resources of the original inhabitants. Looking back, we can only conclude that this phenomenon of colonization resulted from a racist mentality. Even more tragically, the negative effects of colonization were reinforced by religious edicts that gave misguided moral authority to these secular policies. Indigenous peoples were seen as inferior to European settlers. This mentality had the equally tragic consequence of devaluing and too often violating these peoples' full humanity, infringing upon their cultural practices and spiritual expressions. The abominable practice of slavery flourished for centuries.

To support their policies and practices, colonizing nations adopted the ‘doctrine of conquest or discovery’ that shaped relationships between governments and traditional peoples in the Americas, Africa and Oceania. Particularly regrettable is the sadly unavoidable fact that these doctrines can be traced directly to the Papal Bulls: *Dum Diversis*, June 18, 1452; *Romanus Pontifex*, January 8th 1455 and *Inter Caetera*, May 4th 1493. Pope Alexander VI in *Inter Caetera* says to Ferdinand and Isabella:

*this assuredly ranks highest, that...the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself. You have purposed to bring under your sway the said mainlands and islands with their residents and inhabitants and to bring them to the Catholic faith.*¹

As you know only too well, Holy Father Francis, the papal decrees gave Spain and Portugal dominion over lands that indigenous peoples had occupied for thousands of years. What was, perhaps, an unintended consequence, however, gave credence to the European age of “Discovery” and the theft of entire continents.

It is lamentable that more than 500 years later, these notions continue to influence how people live, think and relate to one another. They still provide an archaic moral

¹ Pope Alexander VI. *Inter Caetera*. May 4, 1493. <http://www.nativevcb.org/pages/legal/indig-inter-caetera.html>

justification for states' jurisdiction over traditional peoples. We acknowledge the statements made by your own representative here at the United Nations, the Permanent Observer Mission of the Holy See, that "the bull *Inter Caetera* is a historic remnant with no juridical, moral or doctrinal value,"² however we must remember that these histories matter in the hearts and minds of many. Decisions can easily be derived from past racist notions of the superiority of one race or religion over another therefore still negatively affects indigenous lives. In this place and time, the sad and unavoidable conclusion is that these documents, regardless of legal stature, are seen as supporting the continued institutionalization of harmful attitudes that wound indigenous peoples. Nation states holding and promoting these attitudes prevent indigenous people from being both esteemed and treated as equal before the law in relation to their lands, their resources, and in shaping their own culture, education, spirituality and community.

In light of the above, dear brother Francis, we come with great concern and with hopeful expectation to ask you to continue to champion the God-given dignity of our indigenous brothers and sisters. We come to plead that before the world Conference on Indigenous Peoples in UN (September 2014) you act with courage and holy resolve to formally revoke the Papal Bulls quoted above. We recognize that this would be a symbolic gesture; however symbols are very meaningful and powerful in the Church and in the world.

Such an act of moral leadership from you would proclaim a dignity and respect too long denied the indigenous peoples throughout the globe. Additionally, it would challenge the governments to repudiate the policies that brought prosperity to them but untold suffering to the indigenous peoples. At the same time, will promote that governments and the Churches explore how they might contribute to restorative justice in the face of five centuries characterized by dispossession and alienation.

We thank you in anticipation and pray for you in your weighty task of service to all people.

The following religious non-governmental organizations in the United Nations,

PASSIONISTS INTERNATIONAL.

CONGREGATION OF THE PASSION OF JESUS CHRIST.

SISTERS OF THE CROSS AND PASSION.

HIJAS DE LA PASION DE JESUCRISTO Y MARIA DOLOROSA.

SISTERS OF CHARITY FEDERATION.

PARTNERSHIP FOR GLOBAL JUSTICE.

CONGREGATIONS OF SAINT JOSEPH.

SISTERS OF NOTRE DAME OF NAMUR.

MEDICAL MISSION SISTERS.

UNANIMA INTERNATIONAL.

CURIA GENERALIZIA AGOSTINIANA. AUGUSTINIANS INTERNATIONAL.

MISSIONARY OBLATES OF MARY IMMACULATE.

² Permanent Observer Mission of the Holy See. 9th Session of the Permanent Forum of Indigenous Issues. Agenda Item 7 "Impact on Indigenous Peoples of the International Legal construct known as the Doctrine of Discovery, which has served as the Foundation of the Violation of their Human Rights" and "Indigenous Peoples and boarding Schools: A Comparative Study". April 27, 2010

B) Letter from Sisters of Saint Joseph and Associates of Buffalo New York, to Pope Francis, “Pope Francis” 2013



SISTERS OF SAINT JOSEPH
General Administration

10324 Main Street
Clarence, NY 14031
(716) 759-6454
(716) 759-6415 (Fax)

Pope Francis,

Our Community, the Sisters of St. Joseph and Associates of Buffalo, New York, works daily to bring to the world our charism of unity, reconciliation and nonviolence.

For many years our congregational Justice Committee has worked with the Seneca Nation of indigenous peoples on many justice concerns. Since 2007 the Doctrine of Discovery has been our focus. The Doctrine has fed five hundred years of religious prejudice but, much worse even than that, it has been incorporated into the laws/legal systems of some countries.

The Doctrine got its first expression in 1452 when Pope Nicholas V issued a papal bull to Portuguese King Alfonso V authorizing the King “to invade, capture, vanquish and subdue all Saracens and pagans and other enemies of Christ and to reduce such persons to perpetual slavery” and further “to take away all their possessions and property.” This bull was issued as Portuguese ships began colonizing areas of Africa occupied by millions of indigenous non-Christian peoples.

Forty years later—soon after the Christopher Columbus voyage across the Atlantic sparked an imperialist rush by European powers to control the so-called New World—Alexander VI issued *Inter Caetera*, a new papal bull that granted European monarchs the right to claim sovereignty over these newly “discovered” lands occupied by non-Christian “barbarous” nations. In the *Inter Caetera* document, Pope Alexander stated his desire that the “discovered” people be subjugated and brought to the faith.

It is important to recognize that the grim acts of genocide and conquest by Columbus and his men against the peaceful Native people were sanctioned by the above-mentioned documents of the Catholic Church.

Historian Steven Newcomb writes that “in 1537, after intense campaigning by priests the Vatican issued *Sublimis Deus* stating that Indians and all other people that later may be discovered by Christians are by no means to be deprived of their liberty or the possession of their property.” Newcomb continues, “This means that as positive as *Sublimis Deus* seems, four decades elapsed from the time of *Inter Caetera* bull and the issuance of *Sublimis Deus*.” According to Bartolome de Las Casas, millions of indigenous people were decimated during those four decades.

In 1823, the Christian Doctrine of Discovery was quietly adopted into United States law by the Supreme Court in a unanimous decision by the John Marshall Court [*Johnson v. McIntosh* (8 Wheat., 543)]. Since then, many U.S. legal cases have been based on this decision, including one as recently as 2005 which denied the Oneida Indian Nation of New York its right of sovereignty. Today, it is still being applied to indigenous peoples worldwide and is often marked by violations of cultural practices and spiritual expressions and by expropriation of lands and resources.

On September 13, 2007, after 20 years of debate the United Nations adopted the *Declaration on the Rights of Indigenous Peoples*. The United States initially voted no, along with Canada, New Zealand and Australia; however, all four countries have since signed on.

To help the implementation of this declaration of rights, the United Nations created a permanent forum which has conducted 12 official meetings since 2007. The 11th meeting—which focused on the Doctrine of Discovery—took place during the month of May 2012.

Many indigenous groups, Christian churches and concerned citizens from around the world have sent statements of support to the Permanent Forum on Indigenous Peoples for the full implementation of the *Declaration on the Rights of Indigenous Peoples* and the repudiation of the Doctrine of Discovery. Included in this group are the World Council of Churches, the Episcopal Church, the Quakers, the Methodist Church and the Unitarian Universalist Church.

The Executive Committee of the World Council of Churches issued a statement calling the Doctrine of Discovery “fundamentally opposed to the gospel of Jesus.” The Presiding Bishop of the Episcopal Church said on May 16, 2012, the “Doctrine of Discovery work in this Church is focused on education, the dismantling the structures and policies based on that evil and [on] support for the *United Nations Declaration on Indigenous Peoples*.” The statement of the New York Yearly Meeting (Quakers) said, “We cannot accept that the Doctrine of Discovery was ever a true authority for the forced taking of lands and the enslavement or extermination of peoples. We find it reprehensible for the United States to use the Doctrine of Discovery as a legal doctrine to compel a jurisdiction over indigenous Peoples or their lands.”

Students from Salamanca High School in southwest New York State also sent a statement that reads in part: “Last year Pope Benedict spoke to immigrants and said he hoped for a future where all people consider themselves as part of one human family. It is our belief that our creator intended for all people in the world to have love for one another. We understand all people of earth are connected. Isn’t this like Christian brotherhood? Why does a person and a religion that speaks of brotherhood still hold on to the Doctrine of Discovery? Finally, we talk to the Pope. We ask you on behalf of your people to meet with Indigenous Peoples to hear what a 500-year-old statement means today. We know that if you listened with a good mind you would not let it continue. Therefore, we ask the pope to apologize for the Doctrine of Discovery.”

How can this injustice to Indigenous Peoples be ended? Most important, Pope Francis, is for you to publicly repudiate and rescind these papal bulls and to support the rights of Indigenous Peoples. On our part we will continue to work for justice whenever and wherever necessary.

Peace,

Jim Mang, Chair, Earth / Justice Committee
For the Sisters of St. Joseph and Associates of Buffalo, New York, USA

C) Letter from the Permanent Observer Mission of the Holy See to the United Nations to Oren Lyons, Faithkeeper of Onondaga Nation, "Dear Oren Lyons", July 16, 2007

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PERMANENT OBSERVER MISSION
OF THE HOLY SEE
TO THE UNITED NATIONS

25 East 39th Street, New York, NY 10016-0903
Phone (212) 370-7885 Fax (212) 370-9622
e-mail: office@holyseemission.org

N. 3572/07

16 July 2007

Dear Chief Lyons,

I would like to thank you for the interesting and constructive discussion that we had at the United Nations, on 16 May 2007.

As the General Assembly approaches the end of its 61st session and as discussions continue over the Declaration on the Rights of Indigenous Peoples, I am sending you this note regarding the Holy See's position on the Papal Bull *Inter Coetera*.

- 1) As a source of International Law, the division of lands between Castile-Aragon (Spain) and Portugal was first of all abrogated by the Treaty of Tordesillas the following year (7 June 1494). Circumstances have changed so much that; to attribute any juridical value to such a document seems completely out of place.
- 2) As a source of Canon (Church) Law, since it excommunicates *latae sententiae* those who do not respect its dispositions, *Inter Coetera* has also been abrogated by the facts, first and foremost by the unsanctioned immediate expansion of the territory of Brazil to the west well beyond the Treaty of Tordesillas and by the colonization of North America and the Caribbean by the King of France.

Chief Oren R. Lyons.
Faithkeeper
Onondaga Nation/Haudenosaunee
Nedrow, New York

- 3) It was also abrogated by other bulls, for example *Sublimis Deus* in 1537 which states, "Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and the possession of their property; nor should they be in any way enslaved; should the contrary happen, it shall be null and have no effect." This view was expanded upon and reinforced in *Immensa Pastorum* of Benedict XIV of 20 December 1741 and a number of other Papal Encyclicals, statements and decrees.
- 4) If any doubt remains, it is abrogated by Canon 6 of the Code of Canon Law of 1983 which abrogates in general all preceding penal and disciplinary laws. Canon 6 paragraph 1 states, "When this Code takes force, the following are abrogated: 1) the Code of Canon Law promulgated in 1917; 2) other universal or particular laws contrary to the prescripts of this Code unless other provision is expressly made for particular laws; 3) any universal or particular penal laws whatsoever issued by the Apostolic See unless they are contained in this Code; 4) other universal disciplinary laws regarding matter which this Code completely reorders."

As you may gather from the above, this abrogation process took place over the centuries according to the legal maxim: *Lex posterior derogat priori*, i.e. a subsequent law imports the abolition of a previous one. Therefore, for International Law and for the Catholic Church Law, the bull *Inter Coetera* is a historic remnant with no juridical, moral or doctrinal value.

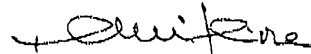
Further, the doctrine of the temporal power of the papacy, upon which *Inter Coetera* rests, was finally overturned by the Second Vatican Council: see *Lumen Gentium* n.36; *Gaudium et Spes* n.76, *Ad Gentes* n.12; see also the *Catechism of the Catholic Church* n.912 and 2245.

Finally, the doctrine of forced conversion of non-Christians was contested and changed by the Junta Teologica de Valladolid (1550-1551), not long after the bull of Alexander VI, and was also condemned by Vatican II: *Gaudium et Spes* n.21; *Ad Gentes* n.13; *Dignitatis Humanae* n.2, 4, 10, 14. Further, the assertion that wars of conquest are justifiable in order to convert non-Christians was completely overturned by the documents of the second Vatican Council (see above) and by the general condemnations of war: see *Gaudium et Spes* n.n.78-80; the *Catechism of the Catholic Church* n.2302 ff.

The fact that the federal jurisprudence of the United States may employ the "Doctrine of Discovery" as a juridical precedent is therefore now a characteristic of the Common Law system. Once it was incorporated into the sources of US law in 1823, it acquired a life of its own in that legal system, quite independent of the fact that for the Church the document has had no value whatsoever for centuries. The refutation of this doctrine is therefore now under the competence of American politicians, legislators, lawyers and legal historians.

With this explanation, I hope the following becomes clear: 1) The Holy See confirms that *Inter Coetera* has already been abrogated and considers it without any legal or doctrinal value; 2) The Holy See, in accordance with Catholic social teaching, is consistently paying particular attention to the relationship of indigenous peoples to their lands and resources; 3) The Holy See, as demonstrated also by our support for the recent Declaration of the Rights of Indigenous Peoples, will continue to be an outspoken moral voice in support of the dignity and rights of indigenous peoples.

Please accept the assurances of my high consideration,



Archbishop Celestino Migliore
Apostolic Nuncio, Permanent Observer

D) Letter by the Indigenous Law Institute, American Indian Law Alliance, Tonatierra, to Archbishop Celestino Migliore “Memorandum” April, 2008.

April 2008

Memorandum

From: The Indigenous Law Institute; American Indian Law Alliance, Tonatierra

To: Archbishop Celestino Migliore, Apostolic Nuncio, Permanent Observer Mission of the Holy See to the United Nations

Re: Letter of 16 July 2007 to Chief Oren Lyons from the Permanent Observer Mission of the Holy See to the United Nations

Archbishop Migliore, we appreciate your detailed letter explaining the Holy See’s position “that *Inter Caetera* has already been abrogated and...[is therefore] without legal or doctrinal value.” We suppose that from your perspective this ought to result in us ending our call upon Pope Benedict XVI and the Vatican to formally revoke the *Inter Caetera* papal bull. After all, what would be the point of the pope revoking a document that has already been, in your view, abrogated on numerous occasions and in numerous ways? However, as this memorandum explains in detail, it is our position that at no time in the past has the Holy See ever explicitly overturned the doctrine of Christian discovery and dominion that it expressed as a grant of indigenous non-Christian or infidel lands “forever” in the *Inter Caetera* papal bull and other such Vatican documents of the fifteenth and sixteenth centuries.

“1) As a source of International Law, the division of lands between Castile-Aragon (Spain) and Portugal was first of all abrogated by the Treaty of Tordesillas the following year (7 June 1494). Circumstances have changed so much [since that time] that; to attribute any juridical value to such a document seems completely out of place.”

Indigenous Response:

In the *Inter Caetera* bull of May 4, 1493, Pope Alexander VI said that he had “by the favor of divine clemency...been called to this Holy See of Peter.” We find this most interesting given that Archbishop Migliore is the Apostolic Nuncio of the Permanent Observer Mission of the Holy See to the United Nations. Based on Pope Alexander VI’s mention in the *Inter Caetera* bull of him being called to “this Holy See of Peter” we draw the inference that it was “this Holy See of Peter” that issued the *Inter Caetera* papal bull, and other such documents, that authorized war and imperial expansion against indigenous nations. This tells us that we are communicating with the correct door of the Vatican.

From our perspective, the issue we are raising is not the “division of lands” in the *Inter Caetera* bull between Castile-Aragon (Spain) and Portugal. Rather, it is Pope Alexander VI’s call for “*barbarous nations [to] be overthrown [deprimantur, from deprimio “to press down”] and brought to the faith itself.*” Another translation reads “that barbarous nations be subjugated and brought to the faith itself.” (John Boyd Thacher,

Christopher Columbus: His Life, His Works, His Remains, Vol. II, 1903, New York: G. P. Putnam's Sons, The Knickerbocker Press). Rather than being focused on the "juridical value" of the Inter Caetera bull and other such Vatican documents, one might say that we are focused on the "imperial value" and "subjugating value" of those documents.

In our view, the Vatican's call and authorization for indigenous nations to be "overthrown" or "subjugated" was an authorization for the monarchies of Aragon-Castile-Leon (Spain) and Portugal to wage war against non-Christian indigenous nations living in the Western Hemisphere. This papal authorization for Christendom to wage war against indigenous nations and peoples, and to engage in imperial expansion, was not "abrogated" by the Treaty of Tordesillas made between the monarchies of Castile and Aragon (Spain) and Portugal in June of 1494.

Our mention of the "imperial expansion" of Christendom is documented by Pope Alexander VI's statement that he was "rightly led, and hold it as our duty, to grant you [the monarchs of Aragon and Castile-Leon]. . . those things, whereby. . . you may be enabled for the honor of God himself and the spread of the Christian rule to carry forward your holy and praiseworthy purpose so pleasing to immortal God." The original Latin text for "the spread of the Christian rule" is, "*et imperii Christiani propagationem prosequi valeatis*," which refers to "the propagation of the Christian empire." The Treaty of Tordesillas certainly did not "abrogate" the Holy See's endorsement of the propagation of "the Christian empire." In that treaty, the monarchies agreed to respective spheres or zones of influence for Aragon-Castile-Leon (Spain) and Portugal within the context of "The Conquest" on behalf of the Catholic-Christian empire.

Elsewhere, Pope Alexander VI said to the Catholic monarchs of Aragon-Castile-Leon (Spain) "you have proposed with the favor of divine clemency to bring under your sway the said countries and islands with their residents and inhabitants, and to bring them to the Catholic faith." The Latin text of this passage reads: "*terras et insulas predictas illarumque incolas et habitatores, vobis, divina favente clementia, subijcere et ad fidem Catholicam reducere proposuistis*." The Latin terms "*subijcere*" and "*reducere*" translate into English as "subject" and "reduce" respectively.

The *Inter Caetera* bull of 1493 was issued by Pope Alexander VI in order to fully support the proposal of the monarchs to subdue and reduce non-Christian indigenous peoples living in the lands "discovered and to be discovered." This Vatican support for the subjugation and reduction of Indigenous peoples was not abrogated by the 1494 Treaty of Tordesillas. Pope Alexander VI very specifically told the monarchs of Aragon and Castile "nor at any time let dangers or hardships deter you therefrom, with the stout hope and trust in your hearts that Almighty God will further your undertakings."

Pope Alexander VI further said to Queen Isabella and King Ferdinand: "And, in order that you may enter upon so great an undertaking with greater readiness and heartiness endowed with the benefit of apostolic favor, **we**. . .out of the fullness of our apostolic power, **by the authority of Almighty God** conferred upon us in Blessed Peter and of the vicarship of Jesus Christ which we hold on earth, *do by tenor of these presents*

give, grant, and assign forever to you and your heirs and successors, kings of Castile and Leon, all and singular the aforesaid countries and islands thus unknown and hitherto discovered by your envoys and to be discovered hereafter, provided however they at no time have been in the actual temporal possession of any Christian owner, together with all their dominions, cities, camps, places, and villages, with all rights, jurisdictions, appurtenances of the same.” (emphasis added).

The above language in bold type explicitly states that the pope’s grant of non-Christian lands and dominion over them is to be “forever” and extends in perpetuity to the “heirs and successors” of the monarchs Ferdinand and Isabella. This papal grant of Christian dominion was not abrogated by the 1494 Treaty of Tordesillas.

The Pope continued by protecting rights previously conceded by the Vatican to the monarchy of Portugal: “And we invest you and your aforementioned heirs and successors with them, and make, appoint, and depute you *lords* of them with full and free power, authority, and jurisdiction of every kind, *with this proviso however, that by this our gift, grant, assignment, and investiture no right acquired by any Christian prince is hereby understood to be withdrawn or taken away.*” (emphasis added). It is important to notice that the papal bull does not, however, acknowledge or protect the rights of non-Christian indigenous nations or peoples.

Toward the end of the *Inter Caetera* bull of 1493 Pope Alexander VI stated: “We trust in Him from whom empires and governments and all good things proceed, that should you with the Lord’s guidance pursue this holy and praiseworthy undertaking, in a short while your hardships and endeavors will attain the most felicitous result, to the happiness and glory of Christendom.” The Latin translation of “governments” is “*dominationes*” or dominations. Thus, it follows that the Latin term for one government is “domination.”

In the bull *Dudum Siquidem* of 26 September 1493, Pope Alexander VI confirmed the bull *Inter Caetera* of May 4, 1493, and “extended it so as to secure to Spain any lands discovered by her in the westward navigations, even though they [the lands] should be in the eastern regions and belong to India, [and] excluded the subjects of all other crowns from navigating or fishing or exploring in those parts without license from Spain, and revoked all the earlier papal grants to Portugal which might seem to give her claim to lands not already actually possessed by her in those regions.” (Davenport, p. 79).

Importantly, none of the abovementioned passages from the *Inter Caetera* bull were “abrogated” by the 1494 Treaty of Tordesilla. That treaty addressed the relative claims of the parties to lands involved in the Papal imperial authorization and did not call into question the authorization itself.

“2) As a source of Canon (Church) Law, since it excommunicates *latae sententiae* those who do not respect its dispositions, *Inter Caetera* has also been abrogated by the facts, first and foremost by the unsanctioned expansion of the territory of Brazil

to the west well beyond the Treaty of Tordesillas and by the colonization of North America and the Caribbean by the King of France.”

Indigenous Response:

Pope Alexander VI stated: “Furthermore, under penalty of excommunication *late sententie* to be incurred *ipso facto*, should anyone thus contravene, we strictly forbid all persons of whatsoever rank, even imperial and royal, or of whatsoever estate, degree, order or condition, to dare, without your special permit **or that of your aforesaid heirs and successors**, to go for the purpose of trade or any other reason to the islands and mainlands, found and to be found, discovered and to be discovered, towards the west and south, by drawing and establishing a line from the Arctic pole to the Antarctic pole,....”

Notice above the pope’s mention of the “heirs and successors” of the Catholic monarchs. This, along with the pope’s statement that his grant as pontiff was being made “forever,” indicates that, as mentioned previously, it was the Holy See’s intention to grant rights of discovery and dominion in perpetuity. This, of course, contradicts the claim by the Permanent Observer Mission of the Holy See to the United Nations that “*Inter Caetera* has also been abrogated by the facts, first and foremost by the unsanctioned expansion of the territory of Brazil to the west well beyond the Treaty of Tordesillas and by the colonization of North America and the Caribbean by the King of France.” Without further explanation of the point, we are unable to grasp the claim being made by Nuncio Migliore.

The phrase *ipso facto* is said to denote the automatic character of the loss of membership in a religious body by someone guilty of a specific action. According to one source, within the Roman Catholic Church, the phrase *latae sententiae* is more commonly used than *ipso facto* with regard to ecclesiastical penalties such as excommunication. It indicates that the effect follows even if no verdict (in Latin, *sententia*) is pronounced by an ecclesiastical superior or tribunal.

Thus, we are unable to make sense of the claim that the entire *Inter Caetera* papal bull of 1493 was abrogated by “the unsanctioned expansion of the territory of Brazil to the west well beyond the Treaty of Tordesillas and by the colonization of North America and the Caribbean by the King of France.” If the *Inter Caetera* bull was abrogated as a result of such contraventions of the pope’s decree, then it would stand to reason that the anathema would be abrogated along with the rest of the document. If the anathema was abrogated then any violators of the decree would not be excommunicated. The claim put forth by Nuncio Migliore seems to suggest that the anathema was self-executing until it was violated, but that once it was violated it was also abrogated, along with the rest of the document, and thus no longer in effect. In short, the proposition that an anathema is abrogated by being violated is nonsensical.

Another part of the anathema found at the end of the *Inter Caetera* bull states: “Let no one, therefore, infringe, or with rash boldness contravene this our exhortation, requisition, *gift, grant, assignment, investiture*, deed, constitution, *deputation*, mandate,

inhibition, indult, extension, enlargement, will, and decree. Should anyone presume to do so, be it known to him that he will incur the wrath of Almighty God and of the blessed apostles Peter and Paul.” (emphasis added).

To correctly understand how the above terms “gift, grant, assignment, investiture” and so forth are to be understood in relation to the anathema, we must identify how those terms are used in the main body of the *Inter Caetera* bull. We find these words in the following sentence: “And we *invest* you and your aforementioned heirs and successors with them, and make, appoint, and *depute* you lords of them [the aforesaid countries and islands thus unknown and hitherto discovered by your envoys and to be discovered hereafter] with full and free power, authority, and jurisdiction of every kind, with this proviso however, that by this our *gift, grant, assignment, and investiture* no right of any Christian prince is hereby to be understood to be withdrawn or taken away.” (emphasis added).

Thus, the papal bull admonishes that no one ought to “infringe, or with boldness contravene” the pope’s decree that Queen Isabella and King Ferdinand are the “lords” of the non-Christian countries and islands “discovered...and to be discovered with full and free power, authority and jurisdiction of every kind.” However, given that the grant was multi-generational and included the “heirs and successors” of the Catholic monarchs, it follows that none of these terms of the *Inter Caetera* papal bull were “abrogated by the expansion of the territory of Brazil to the west well beyond the Treaty of Tordesillas and by the colonization of North America and [the colonization of] the Caribbean by the King of France” in defiance of the anathema found in the papal bull.

In the bull *Dudum Siquidem* of September 1493 we also find: “that under penalty of excommunication *latae sententiae*, which such as contravene are to incur *ipso facto*, no one without your [the Spanish monarchs] express and special license or that of your aforesaid heirs and successors shall, for no matter what reason or pretense, presume in any manner to go or send to the aforesaid regions for the purpose of navigating or of fishing, or of searching for islands or mainlands—notwithstanding apostolic constitutions and ordinances, and any gifts, grants, powers, and assignments of the aforesaid regions, seas, islands, and countries, or any portion of them, mad by us or our predecessors to any kings, princes, infantes, or any other persons, orders, or knighthoods...” and etc. Pope Alexander concluded: “Wherefore should any such gifts or grants have been made, considering their terms to have been sufficiently expressed and inserted in our present decree, we through similar accord, knowledge, and fullness of our power do wholly revoke them and as regards the countries and islands not actually taken into possession, we with the grants to be considered of no effect, notwithstanding what may appear in the aforesaid letters, or anything else to the contrary.”

“3) It [the Inter Caetera bull] was also abrogated by other bulls, for example *Sublimis Deus* in 1537 which states: ‘Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and

possession of their property; nor should they be in any way enslaved; should the contrary happen, it shall be null and have no effect.”

The bull *Sublimis Deus* was issued forty-four years after the papal bulls of 1493. Thus, for more than four decades the Vatican did nothing during a period of time when the Spanish committed some of the most horrific crimes against the Indigenous peoples. The Vatican allowed the Spanish to carry out in the most brutal and rapacious fashion its papal decrees authorizing the “subjugation” of “barbarous nations” and the presumption of dominion, rule, and jurisdiction over non-Christian lands. According to Las Casas, these were decades of savage brutality and genocide on the part of the Spaniards, yet, by all accounts, the Holy See remained mute until 1537. We know of no evidence to the contrary.

Furthermore, to our knowledge, the Vatican has never made the claim that the bull *Sublimis Deus* overturned or abrogated Pope Alexander VI’s grant in the *Inter Caetera* bull (and other bulls of 1493) of *dominion* and *lordship* over non-Christian lands “discovered and to be discovered.” Thus, we ask the question: Is it the position of the Holy See that the bull *Sublimis Deus* overturned or abrogated Pope Alexander VI’s grant in the *Inter Caetera* bull (and all other bulls of 1493) of dominion and lordship over non-Christian lands and indigenous peoples “discovered and to be discovered”?

It has been our understanding that the papal bull *Sublimis Deus* did not abrogate the terms by which Alexander VI purported to “give, grant, and assign forever to you and your heirs and successors, kings of Castile and Leon, all and singular the aforesaid countries and islands thus unknown and hitherto discovered by your envoys and to be discovered hereafter, provided however they at no time have been in the actual temporal possession of any Christian owner, together with all their dominions, cities, camps, places, and villages, with all rights, jurisdictions, appurtenances of the same.”

It has also been our understanding that *Sublimis Deus* did not abrogate the terms of the *Inter Caetera* bull by which Pope Alexander VI stated: “And we invest you and your aforementioned heirs and successors with them, and make, appoint, and depute you lords of them with full and free power, authority, and jurisdiction of every kind, with this proviso however, that by this our gift, grant, assignment, and investiture no right acquired by any Christian prince is hereby understood to be withdrawn or taken away.”

If we are in error on these points, please specify how the award of perpetual title and governmental authority announced in *Inter Caetera*—the root of present-day title and governmental authority in the region—was abrogated by a statement of Indian rights in *Sublimis Deus*. Further, given that the horrible atrocities sanctioned by *Inter Caetera* were carried out against the Indian peoples of the Americas for forty-four years after 1492 when Cristobal Colon first sailed to the lands now called the Americas, is not the Holy See responsible for authorizing the historical foundation of bloody repression in the region? If we are mistaken on this point, please explain why we are mistaken?

As positive sounding as the papal bull *Sublimis Deus* is, it is our understanding that the presumption of Christian lordship (sovereignty) and dominion within the Americas is the political context of *Sublimis Deus*. Did that papal document recognize that indigenous or Indian *nations* had an original free and independent existence that deserved to be respected by the Spanish crown? Did it explicitly recognize that Indigenous nations had the right to exist *as nations*? Certainly *Sublimis Deus* explicitly recognized the rights of Indians as persons and forbade their enslavement, a positive development to be sure. However, from our perspective, as supported by the above arguments, the doctrine of Christian discovery and grants of lordship [were not overturned by *Sumblimis Deu*] and notice [also] that *Sublimis Deus* referred to: “Indians and all other *people* who may later be discovered by Christians...” (emphasis added). [The term “[p]eople” indicates individual persons and not distinct *nations* with collective rights within their respective territorial boundaries, particularly the right to remain free and independent of the claims of imperial lordship made by the Spanish or the Portuguese crowns with the full support of the Vatican. If we are mistaken in these views, please explain why.

The Permanent Observer Mission of the Holy See to the United Nations has further said that the process of abrogating the papal bull *Inter Caetera* “took place over the centuries according to the legal maxim: *Lex posterior derogate priori*, i.e., a subsequent law imports the abolition of the previous one. Therefore, for International Law, and for the Catholic Church Law, the bull *Inter Caetera* is a historic remnant with no juridical, moral or doctrinal value.” However, from our perspective, as supported by the above arguments, the doctrine of Christian discovery and grants of lordship and dominion to Christian monarchs expressed in the *Inter Caetera* papal bull and other allied documents have never been explicitly abrogated or overturned by the Holy See. If we are incorrect on this point, please explain why. [and point us to the documents that abrogated or overturned the *Inter Caetera* bull].

In our view, the doctrine of Christian discovery and dominion (“lordship”) is exemplified by an inter-related set of Vatican documents that provide the larger conceptual context for all four papal bulls issued by Alexander VI in 1493. One such document is the bull *Dum Diversas* issued by Pope Nicholas V to King Alfonso V of Portugal in 1452. In this document, Pope Nicholas V granted King Alfonso V of Portugal “free and ample faculty” to “invade, capture, vanquish, and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed.” The Holy See further authorized the king to take over all the lands, “possessions, and all movable and immovable goods whatsoever held and possessed by them [non-Christians] and to reduce their persons to perpetual slavery.”

This specific language was reaffirmed by the Vatican in Pope Leo X’s Bull *Preclerae Devotionis* dated 3 November 1514. This document was issued to rescind Pope Alexander VI’s September 1493 revocation of papal concessions to the Portuguese monarch. Pope Leo X stated quite clearly that he was issuing the *Preclerae Devotionis* because the king of Portugal, “following the example of his predecessors, the kings of Portugal, has striven, and ever more zealously strives...in order that the barbarous

hostility of the Moors and of other infidels...may be entirely restrained and blotted out, and that the Christian religion may by peaceful means be advanced and promoted in all longed-for ways.”

Pope Leo X further said: “We deem it fitting and expedient constantly to guard and protect those concessions which we have learned were granted by our predecessors, the Roman pontiffs, to the aforesaid predecessors of the said King Emmanuel, fortified by the further munificence of the aforesaid Apostolic See....A short while ago, divers letters of the following tenor were issued by our Predecessors Pope Nicholas V. and Sixtus IV., of happy memory. [Here follows the bulls of June 18, 1452...of January 8, 1455...and of June 21, 1481...which includes the bulls of January 8, 1455, and of March 13, 1456...and the part of the treaty of Alcacovas related to Guinea...]”

The pope continued: “We, therefore,..from the plenitude of apostolic authority, approve and renew and confirm by the apostolic authority and by the tenor of these presents, the aforesaid letters, all and singular, regarding their contents, all and singular, and whatever has followed thereupon as established and acceptable,...and we decree that they [these presents, the aforesaid letters] ought to be *permanently* valid.” (emphasis added). Thus, by the above statement, in 1514 Pope Leo X “permanently” approved, renewed, and confirmed the bracketed documents above, such as the bull *Dum diversas* of 1452, that authorized the monarchy of Portugal to travel to non-Christian lands and to “capture, vanquish, and subdue, all Saracens, pagans, and other enemies of Christ, to put them into perpetual slavery and to take away all their possessions and property.”

Pope Leo X went on to say: “And for greater security and by virtue of the authority and in the terms mentioned above, we newly [and permanently] grant everything, all and singular, contained in the aforesaid letters, and all other empires, kingdoms, principalities, duchies, provinces, lands, cities, towns, forts, lordships, islands, harbors, seas, coasts, and all property, real and personal, wherever existing, also all unfrequented places, recovered, discovered, found and acquired from the aforesaid infidels, by the said King Emanuel and his predecessors, or in future to be recovered, acquired, discovered, and found by the said King Emanuel and his successors, both from Capes Bojador and Nao to the Indies, and in any place or region whatsoever, even although perchance unknown to us at present; and we also extend and amplify the aforesaid letters, and their contents, all and singular, to the aforesaid concessions, and in virtue of holy obedience and under penalty of our wrath, by the authority and in the terms aforesaid, we inhibit all faithful Christians, even though adorned with imperial, royal, or any other rank, from presuming to hinder in any way the said King Emmanuel and his successors [this takes the concession into the future in perpetuity] in respect to the aforesaid concessions, and from furnishing aid, counsel, or favor to the said infidels.”

4. If any doubt remains, it [the Inter Caetera bull] is abrogated by Canon 6 of the Code of Canon Law of 1983 which abrogates in general all preceding penal and disciplinary laws. Canon 6 paragraph 1 states, “When this Code of Canon Law takes force, the following are abrogated: 1) the Code of Canon Law promulgated in 1917; 2) other universal or particular laws contrary to the prescripts of this Code unless other

provision is expressly made for particular laws; 3 any universal or particular penal laws whatsoever issued by the Apostolic See unless they are contained in this Code; 4) other universal disciplinary laws regarding matter which this Code completely reorders.”

Indigenous Response:

The Vatican has yet to acknowledging to the world community that the Holy See supported and called for the “subjugation” of non-Christian indigenous nations and peoples, while purporting to grant and donate their lands to the monarchs of Spain and Portugal, and, in the case of Portugal, fully and repeatedly authorized the enslavement of non-Christians, as well as the taking away of their property. The above revision of the Vatican’s Code of Canon Law fails to specify and address these issues.

5. “The fact that the federal jurisprudence of the United States may employ the ‘Doctrine of Discovery’ as a juridical precedent is...now a characteristic of the Common Law System. Once it was incorporated into the sources of US law in 1823, it acquired a life of its own in that legal system, quite independent of the fact that for the Church the document has had no value whatsoever for centuries. The refutation of this doctrine is now under the competence of American politicians, legislators, lawyers, and legal historians.” This statement contains the following claims:

- 1) If it is true that the United States employs the ‘Doctrine of Discovery’ as a juridical precedent, as indigenous representatives claim, it is now a characteristic of the Common Law System.
- 2) When the ‘Doctrine of Discovery’ was “incorporated into the sources of US law in 1823 it acquired a life of its own in that legal system.
- 3) However, for the Church the *Inter Caetera* bull has had no value for centuries.
- 4) The issue is now under the purview of “American politicians, legislators, lawyers, and legal historians.

Indigenous Response:

The upshot of the above four points made by the Permanent Observer Mission of the Holy See to the United Nations is that this issue has nothing at all to do with the Vatican or the Holy See. If, in other words, Indigenous nations and peoples wish to overturn the ‘Doctrine of Discovery’ in U.S. law then they need to take the issue up with “American politicians, legislators, lawyers, and legal historians.” However, it is our view that because the Holy See granted rights of conquest to Catholic monarchs for the propagation of the Christian empire, and called for the subjugation of Indigenous nations on the basis of the claimed right of Christian discovery and dominion, the Holy See has a responsibility to publicly acknowledge this historical fact and set a high moral standard by openly renouncing the doctrine of Christian discovery and dominion. This

responsibility, and the significance of an explicit renunciation, are analogous to disavowals and apologies for slavery in the states of the United States and are equally, if not more significant.

6. The Holy See “in accordance with Catholic social teaching, is consistently paying particular attention to the relationship of indigenous peoples to their lands and resources.”

Indigenous Response:

We are also glad to know that the Holy See is now demonstrating its “support for the recent Declaration on the Rights of Indigenous Peoples,” and “will continue to be an outspoken moral voice in support of the dignity and rights of indigenous peoples.” While the authority of the Holy See is not integrated with the present legal system of the United States, that legal system rests upon and deploys historical doctrines announced, propounded, and enforced by the Holy See. Pope Benedict XVI certainly has tremendous influence through his use of moral suasion. Thus, if the pontiff were to be “an outspoken “moral voice” that calls for an end to the use of the Doctrine of Discovery and Dominion against Indigenous nations and peoples, this would be highly influential indeed. The pope could best do this in a formal ceremony with Indigenous elders and representatives.

As a final note, Anthony Paden—in his book “The fall of natural man: The American Indian and the origins of comparative ethnology” (Cambridge: Cambridge University Press, 1982)—said that King Ferdinand was most interested in “the political message of the bulls” of 1493. “And it seems probable,” says Pagden, “that Ferdinand’s reiterated claims to possess the right to not only occupy America in return for sending missionaries there, but also to enslave the Indians for his own purposes, derives from the *Eximie devotionis*.” “Like its successor *Dudem siquidem*,” wrote Pagden, “this bull [*Eximie devotionis*] was an attempt to avert the impending conflict between Spain and Portugal over their respective spheres of influence. In order to maintain the balance of power between the two nations “Alexander [VI] had conceded to Spain all ‘the graces, privileges, exemptions, liberties, facilities and immunities’ formerly granted to the king of Portugal, a list which could not fail to cover the right conceded by Nicholas V to Alfonso V (in 1455) to reduce to perpetual slavery the inhabitants of all the African territories from Cape Bojador and Cape Nun ‘and. . . hence all southern coasts until their end’.” As late as 1512, King Ferdinand made “implicit reference to *Eximie devotionis* and the concessions he had received from it. He referred to “the rights that we have in the islands. . .and the justification by which these Indians should not only serve us as they do now but may be held in even greater slavery’.” If the papal bulls of 1493 had been abrogated by the Treaty of Tordesillas in 1494, then it would have made no sense for Ferdinand, eight years later, to reference the papal concessions made in those documents, in this case, specifically the bull *Dudem siquidem*.

E) Resolution No.: 2009-D035 “Repudiate the Doctrine of Discovery” The Episcopal Church

*FINAL VERSION – Concurred

Resolution: D035

Title: Repudiate the Doctrine of Discovery

Topic: Reconciliation

Committee: 09 – National and International Concerns

House of Initial Action: Deputies

Proposer: Dr. John Chaffee

Resolved, the House of Bishops concurring, That the 76th General Convention repudiates and renounces the Doctrine of Discovery as fundamentally opposed to the Gospel of Jesus Christ and our understanding of the inherent rights that individuals and peoples have received from God, and that this declaration be proclaimed among our churches and shared with the United Nations and all the nations and peoples located within The Episcopal Church's boundaries. This doctrine, which originated with Henry VII in 1496, held that Christian sovereigns and their representative explorers could assert dominion and title over non-Christian lands with the full blessing and sanction of the Church. It continues to be invoked, in only slightly modified form, in court cases and in the many destructive policies of governments and other institutions of the modern nation-state that lead to the colonizing dispossession of the lands of indigenous peoples and the disruption of their way of life; and be it further

Resolved, that The Episcopal Church review its policies and programs with a view to exposing the historical reality and impact of the Doctrine of Discovery and eliminating its presence in its contemporary policies, program, and structures and, further, that this body directs the appropriate representatives of the House of Bishops and House of Deputies, to inform all relevant governmental bodies in The United States of its action and suggest similar and equivalent review of historical and contemporary policies that contribute to the continuing colonization of Indigenous Peoples and, further, to write to Queen Elizabeth II, the Supreme Governor of the Church of England, requesting that her Majesty disavow, and repudiate publicly, the claimed validity of the Christian Doctrine of Discovery; and be it further

Resolved, that each diocese within the Episcopal Church be encouraged to reflect upon its own history, in light of these actions and encourage all Episcopalians to seek a greater understanding of the Indigenous Peoples within the geo-political boundaries claimed by the United States and other nation states located within the Episcopal Church's boundaries, and to support those peoples in their ongoing

efforts for their inherent sovereignty and fundamental human rights as peoples to be respected; and be it further

Resolved, that the 76th General Convention direct the Office of Government Relations to advocate for the U.S. government's endorsement of the "United Nations Declaration on the Rights of Indigenous Peoples," which the United States has refused to endorse (only the U.S., Canada, New Zealand, and Australia have failed to sign on).

E) Minute of the Indian Committee of the Philadelphia Yearly Meeting of the Religious Society of Friends

2009 Minute of the Indian Committee of the Philadelphia Yearly Meeting of the Religious Society of Friends

On this day, September 19, 2009, the Philadelphia Yearly Meeting Indian Committee, renounces the Doctrine of Discovery, the doctrine at the foundation of the colonization of Indigenous lands, including the lands of Pennsylvania. We find this doctrine to be fundamentally inconsistent with the teaching of Jesus, with our understanding of the inherent rights that individuals and peoples have received from God, and inconsistent with Quaker testimonies of Peace, Equality, and Integrity. In like spiritual discernment, we now affirm and support the 2007 United Nations Declaration of the Rights of Indigenous Peoples.

Further, the Indian Committee of Philadelphia Yearly Meeting conveys to the Peace and Concerns Standing Committee, this disavowal. Appreciating that under this discovery doctrine English, Canadians, and Americans, including Friends, settled in the lands of Indigenous peoples, removed them from their homelands, broke treaties made with these peoples, and aided in multiple ways in the destruction of their sacred cultures, languages, and spiritual practices, the Indian Committee believes that for us to continue to remain silent would be tantamount to our giving continuing approval to these abusive acts of theft and cultural genocide. We request thus that Peace and Concerns Standing Committee support us in urging Philadelphia Yearly Meeting to minuted a disavowal of any claimed validity of the Doctrine of Discovery. We request also that Peace and Concerns Standing Committee support us in urging Philadelphia Yearly Meeting to minuted its endorsement of the 2007 United Nations Declaration of the Rights of Indigenous Peoples, thus adding our Quaker voice to those urging the United States to endorse the United Nations Declaration of the Rights of Indigenous Peoples. (Currently only the US, Canada, and New Zealand have voted "No" to the endorsement of this UN declaration! These countries are also primary inheritors of the philosophy and practices of the Doctrine.)

It is the hope and aspiration of the Indian Committee that Philadelphia Yearly Meeting, may officially convey these expressions of Quaker concerns to other Yearly Meetings of North America, including Canada Yearly Meeting, to New Zealand Yearly Meeting, and to Britain Yearly Meeting for their consideration and their determination of means to disavow historical practices based on the Doctrine of Discovery. In so doing Quaker witness may become consistent with our beliefs in peace, nonviolence, and reverence for that of God in all persons.

It is the hope and aspiration of the Indian Committee that each monthly meeting within Philadelphia Yearly Meeting be encouraged to reflect upon Quaker historic and present kindnesses, injustices, and ignorance vis a vis Indigenous Peoples, that Philadelphia Yearly Meeting encourage all Friends within Friends General Conference to cultivate joyful and meaningful relationships between Friends and Native Peoples of their region and of North America and to support them in their ongoing quest for survival, respect, and inherent sovereignty.

These above actions would put the Religious Society of Friends on record supporting Indigenous Peoples' calls for revocation of historic Royal Charters and Papal Bulls and make official our rejection of the Doctrine of Discovery. Such actions would also acknowledge and make visible to ourselves and to others that our past practices, done in the context and mentality of the times, were in error and contributed to sequelae of spiritual and cultural genocide of Indigenous peoples. Such actions would also serve as a continuing reminder of our need to support and to lead in practices of healing and restorative justice, to walk faithfully with our Native brothers and sisters as they seek healing and justice in the 21st century, including standing with them against the continuation of judicial and legal injustices being perpetrated today, the foundation for which continues to be The Doctrine of Discovery.

(Inspired by the actions of the Episcopal Church of the United States, July, 2009)

F) Friends Meeting at Cambridge – background and repudiation of DOD

Background to the request for repudiation of the Doctrine of Discovery and affirmation of the UN Declaration on the Rights of Indigenous Peoples

There is no written document called the Doctrine of Discovery. The phrase refers to the “right” claimed by European kings involved in the colonization of “discovered” lands. It dates back to the 15th century when Papal bulls gave Portugal and Spain authorization to lay claim to any territory not already claimed by “another Christian prince,” to seize the property of, and to enslave or kill, any non-Christian people they encountered there.

In succeeding centuries this self-assigned “right” has been used by many countries, including England, to justify European domination of much of the world, without reference to the Catholic Church. In 1681 the English king gave a land charter to William Penn. Later on, in this country, an 1823 court decision stated that the US had “inherited” the right from England when it became independent. This decision established a legal precedent, which has been cited as recently as 2005.

Very often, colonization has meant genocide. This has been a matter of both greed and racism. Indigenous peoples see what is happening today, as corporations claim land for resource extraction and agriculture, as an unbroken continuation of colonization.

Indigenous peoples succeeded in getting UN approval in 2007 of the *Declaration on the Rights of Indigenous Peoples* (UNDRIP) At <http://www.iwgia.org/human-rights/international-human-rights-instruments/undeclaration-on-the-rights-of-indigenous-peoples> you can find discussion of UNDRIP, history of its creation, a full text and a “plain language” text. The Canadian Friends Service Committee has been an important supporter.

The request for repudiation of the Doctrine of Discovery comes from the Indigenous Peoples of the whole world via the Permanent Forum on Indigenous Issues (PFII) at the UN and from various spokespersons for their own tribal nations. The double reason for their request is both to bring attention among the non-indigenous to what has happened and continues to happen, and to let indigenous peoples know they are not alone. In our country indigenous nations are not trying to take back the land where our homes are, but they do want our support in requiring that treaties signed by the tribes and the US Government be honored. All Indigenous Peoples can benefit from our awareness of what is happening and our support in their ongoing struggles to retain their lands, their health and their ways of life.

Others who have published statements of repudiation include: the General Assembly of the UN, the Episcopal Church, the Anglican Church of Canada, the United Church of Christ, the World Council of Churches, and a growing number of Quaker Yearly and Monthly Meetings.

Being Quakers

In discussion Friends identified a distinction between what “we” have done as Americans and what “we” have done as Quakers. Although Quakers have benefited from land-claiming practices, it is also true that Quakers have tried to live their values. In many past instances the respect Quakers showed to, and honesty in their dealings with, the indigenous peoples they encountered ran counter to more general societal trends of dishonesty and brutality, and this has been recognized.

However we are living now and feel that neither pride nor wallowing in guilt is helpful. We acknowledge the general responsibility of privilege, and accept responsibility for learning the real history and working to ensure that such cruelty and genocide cease. As we take our testimonies seriously and try to live our values today, we are freeing ourselves.

Some Friends asked to know of current struggles in the United States:

- The Canadian movement Idle No More, that protests tar sands mining for oil and gas, has been joined by many US tribes through whose lands the petroleum would pass to reach refineries.
- There is an indigenous blockade against Powertech Uranium Corp’s proposed uranium mining near the Pine Ridge reservation in the Black Hills of South Dakota.
- There is also a protest demanding acknowledgment and reparation for sickness and death caused by abandoned uranium mines on native land.
- A Chippewa blockade is preventing a Gogebic Taconite LLC iron mining project in northern Wisconsin near Lake Superior.
- Maine has set up a Truth and Reconciliation Commissions to work with the Wabanaki tribes. Quakers are instrumental in this work. Volunteers are wanted. <http://mainewabanakireach.org/>

In addition to other actions to which they are led Friends may wish to consider such symbolic acts as wearing a black armband on Columbus Day or participating in the National Day of Mourning in Plymouth on Thanksgiving Day.

The minute below is brought for your consideration by the following committees: Cambridge Quaker Earthcare Witness (CQEW), Friends for Racial Justice (FORJ), Peace and Social Concerns (P&SC).

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**Repudiation of the Doctrine of Discovery and
Affirmation of the UN Declaration on the Rights of Indigenous Peoples
by Friends Meeting at Cambridge**

At the request of Indigenous Peoples, and in company with other religious groups, Friends Meeting at Cambridge repudiates the *Doctrine of Discovery*, the historic rationale for the colonization and expropriation of indigenous lands and natural resources. We find the *Doctrine of Discovery* to be fundamentally inconsistent with our understanding of the inherent rights of peoples and individuals, and contrary to Quaker testimonies of Peace, Equality and Integrity and Simplicity. We also affirm our support for the 2007 United Nations Declaration on the Rights of Indigenous Peoples.

We acknowledge that some historic practices, done in the context and mentality of the times and in which some Quakers participated, were in error and contributed to physical, spiritual and cultural damage to Indigenous Peoples, and also opened the way for ongoing assault on the natural environment of their lands. We recognize that in the short term we continue to benefit economically, while Indigenous Peoples in the United States and elsewhere continue to suffer as nation-states, corporations and other powerful entities continue to use the assumptions of the Doctrine of Discovery to exploit natural resources while disregarding the concerns of Indigenous Peoples.

As a Meeting and as individuals we recognize our responsibility to support the causes of Indigenous Peoples, in this country and elsewhere, and to participate in building respect for the rights of Indigenous Peoples including land rights. We will respectfully ask Indigenous Peoples for their recommendations about how we can help, and will continue to work against racism in ourselves and in the broader community. We will examine how our consumption practices support irresponsible exploitation of natural resources. We will continue to work as a Meeting and as individuals to name and dismantle the systems of oppression and exploitation that affect us all.

27 March, 2014

G) Pictures of Columbus statue in downtown Syracuse



H) Interview Guide: Religious Groups

- 1) What can you tell me about the Doctrine of Discovery?
- 2) When/How did you become aware of this doctrine? Why have you been working with this?
- 3) Do you know when/ how your church /religious community became aware?
- 4) Do you think the Doctrine of Discovery is relevant today?
- 5) What are your thoughts on the future of the Doctrine of Discovery?
- 6) What do you think is the most important for people to know about the Doctrine of Discovery?
- 7) What are one to do with the knowledge of this doctrine?
- 8) Do you have knowledge of the WCC statement on the Doctrine of Discovery?
- 9) How have your religious community worked with this theme? Why did you become involved?
- 10) How is the general knowledge of the Doctrine of Discovery in your religious community?
- 11) What do you think when I mention the terms: Manifest Destiny / American Exceptionalism