

READ THE SUMMARY SECTION AT
[HTTP://UPSTANDERPROJECT.ORG/FIRSTLIGHT/DOCTRINE](http://upstanderproject.org/firstlight/doctrine)
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COMPELLING QUESTION

How did European explorers and colonial settlers use the Doctrine of Discovery to justify the taking of Native peoples' land in what became the United States?

Excerpt from *Native America, Discovered and Conquered: Thomas Jefferson, Lewis and Clark, and Manifest Destiny*, a book by Robert J. Miller, pp. 2-5, 12, 25.

The legal and factual evidence of American history proves that the expansion of the United States from the 13 original colonies, or states, in 1774 until 1855, when the Pacific Northwest was acquired by the United States, was rationalized on the basis of the Doctrine of Discovery. Our Founding Fathers were well aware of the Doctrine and utilized it while they were part of the colonial English system. They then naturally continued to use Discovery under the flag of the new United States. From George Washington and Benjamin Franklin on, American leaders utilized this legal principle to justify making claims of property rights and political dominance over the Indian Nations and their citizens. Thomas Jefferson, in particular, demonstrated a working day-to-day knowledge of Discovery and used its legal principles against the Indian Nations within the original 13 colonies, in the trans-Appalachia area, the Louisiana Territory, and the Pacific Northwest....

After the Lewis and Clark expedition in 1804-1806, American history was dominated by an erratic but fairly constant advance of American interests and empire across the continent under the principles of the Doctrine of Discovery. This was not an accident but was instead the expressed goal of Thomas Jefferson, James Madison, James Monroe, John Quincy Adams, and a multitude of other American politicians and citizens. "Manifest Destiny" is the name that was ultimately used in 1845 to describe this relentless, predestined, and divinely inspired advance across the continent....

There are 10 elements to Discovery:

1. ***First discovery.*** The first European country to "discover" new lands unknown to other Europeans gained property and sovereign rights over the lands....
2. ***Actual occupancy and current possession.*** To fully establish a "first discovery" claim and turn it into a complete title, a European country had to actually occupy and possess newly found lands....

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

The Doctrine of Discovery is one of the earliest examples of international law, that is, the accepted legal principles that apply to the conduct of nations vis-à-vis other nations. The Doctrine was developed by European, Christian countries to control non-European countries and was used as a justification for the domination of non-Christian, non-European peoples....

The Doctrine of Discovery was the international law under which America was explored and was the legal authority the English Crown used to establish its colonies in America. Discovery passed to the Crown the “title” to Indian lands, preempted sales of these lands to any other European country or any individual, and granted sovereign and commercial rights over Indian Nations to the Crown and its colonies.

Discussion questions

- Define the purpose of the Doctrine of Discovery.
- How did the Founding Fathers use the Doctrine of Discovery?
- Choose one of the ten elements to Discovery and explain how you think it was applied to dispossess Native peoples of their land.