

# FACT SHEET – DOCTRINE OF DISCOVERY

## What is the “Doctrine of Discovery?”

the “Doctrine of Discovery” is a philosophical, legal and political framework that extend from a series of papal laws starting from the 15th century. These papal laws gave Christian governments moral and legal rights to invade and seize Indigenous lands and dominate Indigenous Peoples. Over time, those who invaded and seized Indigenous land established colonial governments which maintained these systems of domination, and these colonial governments were founded upon the same entitlements and assumptions of the original papal bulls, namely:

- The supremacy of Europeans and European Christianity over non-Europeans and non-Christians
- The entitlement of European Christians to seize non-European lands, waters, and possessions
- The entitlement of European Christians to exploit lands, waters, and people for the purposes of profit
- The political and physical domination of Non-Europeans

While human rights have progressed over time, many of the patterns of oppression and privilege that persist today can be traced back to the oppressive and racist entitlements granted through the Doctrine of Discovery.

## How did the Doctrine of Discovery move from religious laws to being about governments and legal systems?

The Doctrine of Discovery was based upon racist theories that Non-Europeans were not human, and therefore had no property or human rights, and could not safely govern themselves. Based upon that theory, Europeans ignored native property and political rights, and set up governments on Indigenous lands. In most cases, these colonial governments were established to place Europeans in positions of power so that they could regulate and allocate land ownership. In this way, the Doctrine of Discovery became the basis of colonial governments. After establishing governments, colonists also established legal systems which took the racist papal laws and used them as the basis of racist domestic laws, and racist domestic legal findings. One of the most famous courtcases that did this in the United States was *Johnson vs McIntosh* in 1823. In that courtcase, Chief Justice John Marshall said that “the principle of discovery gave European nations an absolute right to New World lands”, extinguishing the native Piankeshaw land rights.

These findings were then used as a legal precedent in New Zealand by Chief Justice James Prendergast in the 1877 case *Wi Parata vs Bishop of Wellington* to extinguish Māori land rights. In this way, the Doctrine of Discovery explicitly made its way into the New Zealand legal system, and was then used as a precedent for numerous other courtcases that extinguished native title. In the US the Doctrine of Discovery was legally reapplied as recently as 2005, and in Aotearoa *Wi Parata vs Bishop of Wellington* was only conclusively overturned in 2003 by Chief Justice Sian Elias in *Ngati Apa vs Attorney General* (more commonly known today as the “Foreshore and Seabed” case). The effect of Chief Justice Elias’ decision was subsequently overturned by the *Foreshore and Seabed Act 2004*, demonstrating that even when the New Zealand legal system attempted to annul the Doctrine of Discovery, the New Zealand government was not ready to do so.

## How does the Doctrine of Discovery relate to racism?

Numerous scholars have written about the Doctrine of Discovery as playing a foundational role in shaping the dominant form of racism that influences the world today. This is in part because it was tied to a time of global imperial expansion by European powers, which allowed for the rapid export and entrenchment of these racist ideas across the globe, and technological advancements which allowed the racist ideas to be enforced by military might. Gomes De Zurara, a scribe that accompanied early discovery expeditions, theorised that native peoples (of the African continent) were savage beasts,

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incapable of self-governance, and destined to be slaves. These theories were then used to justify the establishment of the European and Trans-Atlantic slave trade which displaced nearly 15 million Africans. De Zurara's theories of whiteness and blackness as racialised categories with associated characteristics and destinies profoundly shaped racist philosophies for centuries to follow.

## **Does the Doctrine of Discovery only apply to religious, legal and political systems?**

No, the Doctrine of Discovery, as a philosophical framework, is also present in our social systems, in our education systems, and in our economic systems. After centuries of living in societies shaped by these laws, the racist ideas became embedded in our ways of thinking, and are still present today when people make personal judgements around capability or character based upon racialised characteristics such as skin colour, physical features, hair, or language. From the 17<sup>th</sup> century, at a time referred to as the "Enlightenment Period", philosophers and scholars also took racist ideas from the likes of De Zurara and developed them into social science theories. Many of these scholars and philosophers are still present in today's university syllabi and the body of work they produced forms the basis of modern intellectualism. Importantly, in their own time, the racist science that was produced by them was used as the intellectual justification for establishing and maintaining racist governments, racist, legislation and racist policies.

Many of these policies and legislation were directly or indirectly aimed at acquiring Indigenous land and resources. The colonial acquisition and exploitation of Indigenous land and resources formed the basis of domestic and international economies, and still underwrites domestic and international economies to this day.

## **Why are Indigenous Leaders asking for the Doctrine to be rescinded?**

While religious and political systems around the world have shifted over the centuries, the entitlements that were granted by the original papal bulls have consistently remained and, as the Doctrine of Discovery, have become what the United Nations now terms as the "driver of all Indigenous dispossession". In 1537 Pope Paul III attempted to revoke the bulls with another papal bull (*Sublimis Deus*) however, that was only in place for a year and after complaints by colonial forces, it was annulled, allowing the force of the Doctrine to continue. Indigenous peoples around the world have called upon the Vatican to officially revoke the papal laws, in order to "systemically undercut" the force of the Doctrine within the broader international system, and to set a precedent for colonial governments to follow. Colonial governments are also being called upon to formally repudiate (reject) the Doctrine of Discovery, and where necessary rescind it from legal and political systems. The UN Declaration for the Rights of Indigenous Peoples refers to such doctrines as "racist, scientifically false, legally invalid, morally condemnable and socially unjust" and in 2012 the United Nations Permanent Forum for Indigenous Issues formally recommended that all member states repudiate the Doctrine of Discovery. To date, no member states have reported back on that recommendation.

It's important for colonial governments in particular to officially repudiate the Doctrine of Discovery as a commitment to Indigenous justice and the elimination of colonial racism.

## **What is the New Zealand Governments Position on the Doctrine?**

The New Zealand Government's position can best be described as "passively supportive of the Doctrine remaining in New Zealand legislation, policy and practice."

In a 2023 TV3 interview, Prime Minister Hipkins said,

*"When the previous Government signed us up to the United Nations Declaration on the Rights of Indigenous People, it was specifically mentioned under the section that was about the*

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*Doctrine of Discovery is that New Zealand's position is that the Doctrine of Discovery is not relevant to New Zealand and that the Treaty of Waitangi and that the processes we have around that are what's relevant to New Zealand. So that continues to be our position."*

As mentioned above, the Doctrine provided the rationale for the Foreshore and Seabed legislation which extinguished Māori rights to those lands.

In 2007 the Helen Clark/Margaret Wilson led government abstained from supporting the UN vote for the UN Declaration on the Rights of Indigenous Peoples because "it was not consistent with our domestic legislation". The government clearly wanted to protect legislation that enabled them to discriminate against Māori and not be required to protect indigenous rights.

In 2010, while Peter Sharples was announcing in the UN that New Zealand now supports the Declaration, John Key and Chris Finlayson told the country that "nothing will change." This is political speak for "we will continue to hold onto our legislation that enables us to discriminate against Maori."

At the recent IUCN World Conservation Congress held in Marseille, France 3-11 September 2021, of which the Department of Conservation is the state party representative for New Zealand, there was an opportunity to clarify the role and status of the doctrine of discovery in NZ's conservation policy through voting for Motion 048 – Renunciation of the Doctrine of Discovery to Rediscover Care for Mother Earth. The Motion was subsequently passed (53 States voted for, 15 against and 56 States abstained.) In an Official Information Act request, the Department confirmed that NZ had abstained from this vote commenting that, "We were supportive of Motion 048 in principle but were unable to vote in support without engaging with Māori, consulting across government and negotiating at the Congress. This was not undertaken given the constraints of participating in the Congress this year caused by COVID-19 restrictions." It should be noted that the Department had 18 months to engage with Māori on this Motion prior to the Congress if it had wished to do so and that a vote in support of this Motion would have put an end to any contention that the doctrine of discovery still had currency within the public policy process. The abstention together with the failure to engage with Māori is of deep concern to iwi leaders.

In 2022 the government abandoned a programme to develop and implement a national plan of action for the Declaration through fear of legislative changes that might upset right wing opponents who were already agitating around the concept of co-governance.

Successive governments have not had the courage to actually protect Indigenous rights even though they say they support them "in principle." It is much easier for them to continue to passively support the Doctrine of Discovery.