The Permanent Rationalities of the Doctrine of Discovery In Canada

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Abstract

In the Truth and Reconciliation's Final Report, four of the 94 calls to action referred to the repudiation of concepts which have justified claims of European sovereignty while implicitly refuting claims that dismiss the legitimacy of Indigenous land ownership prior to European contact. This paper demonstrates how the concepts of *terra nullius* and the Doctrine of Discovery have prevented the recognition and affirmation of Indigenous peoples' sovereignty in Canada historically and presently. This article will first introduce the concepts of the Doctrine of Discovery and *terra nullius* as religious constructs and demonstrate how these concepts became integrated into the colonial mentality of European countries by drawing from Andrew Crosby and Jeffery Monaghan's concept of "settler governmentality." These two concepts, in particular, justified the false pretensions of European countries to assume they could occupy, 'discover' and take the land from Indigenous peoples. By acknowledging Indigenous sovereignty is inherently connected to their relationship with the land, this article will conclude by analyzing the work of contemporary academics and reports that argue Indigenous laws cannot be adequately acknowledged under the current Canadian legislation.

Keywords: Doctrine of Discovery, terra nullius, Indigenous sovereignty, Canadian legislation

Introduction

The Truth and Reconciliation Commission (TRC) was established as one of the five elements comprising the Indian Residential School Settlement Agreement (IRSSA) in Canada. The IRSSA emerged as a response to settle the substantial amount of class action lawsuits and litigation claims submitted by residential school survivors - directed towards the federal government and churches - who sought compensation for the harmful effects of their experiences from these schools.[1] The TRC, therefore, sought to compile a comprehensive historical record acknowledging the impact and experiences of residential schools for Indigenous peoples in Canada.[2]

[1] J.R. Miller, "The Parties Negotiate," in *Residential Schools and Reconciliation: Canada Confronts Its History* (Toronto: University of Toronto Press, 2017), 142: "Indian Residential Schools," Government of Canada, updated February 21, 2019, https://www.rcaanc-cirnac.gc.ca/eng/1100100015576/1571581687074#sect1.

[2] Schedule "N" - Mandate for the Truth and Reconciliation Commission, *Indian Residential Schools Settlement Agreement*, (May 8, 2006), http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf.

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From this commission, 94 calls to action were released in the Final Report to provide practical steps for addressing the legacy of residential schools as well as fostering reconciliation with Indigenous peoples in Canada. In four of these calls to action - numbers 45, 46, 47, and 49 - the federal, provincial, territorial, and municipal governments, as well as all religious denominations are called to "repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and *terra nullius*."[3] While several religious denominations have released statements in response, there has been little discussion or attention demonstrating how the Doctrine of Discovery and *terra nullius* are evident within the operations of the different levels of government and the formulation of Canadian law.[4] However, a sufficient amount of literature from academic scholars and activists for Indigenous rights have highlighted the lasting implications of these two concepts upon the lives of Indigenous peoples.

This article aims to identify the common themes presented by Indigenous-Canadian and Canadian scholars and activists in demonstrating the existence, integration, and continual impact of the Doctrine of Discovery and *terra nullius* within Canadian law. In "The Doctrine of Discovery and Canadian Law", Jennifer Reid seeks to demonstrate how European assumptions of sovereignty during the era of colonial expansion were formulated through the Doctrine of Discovery, and how these same assumptions remain entrenched within the Crown's rationale to justify their ownership and underlying title of Indigenous peoples' lands. She states that "sovereignty is presumed to reside in the Crown, and thus the Crown has the right to own [Indigenous] land."[5] Furthermore, she argues this claim distorts European perceptions of Indigenous peoples by disregarding their capacity to own or assert underlying title over the land. Therefore, this article does not seek to reiterate what Reid has already stated. Rather, it builds upon Reid's argument by demonstrating how these particular perceptions of sovereignty, underlying title, and ownership to land are grounded in the Doctrine of Discovery.

Once the Doctrine of Discovery and *terra nullius* are defined, this article takes up Andrew Crosby and Jeffrey Monaghan's concept of 'settler governmentality.' This theoretical perspective supports an understanding of how the governing rationalities and specific technologies utilized by the Crown have continued to permit the possession, and acquisition of Indigenous peoples' lands in Canada and how these rationalities align with the assumptions derived from the Doctrine of Discovery.[6] Next, this article focuses on how legal scholars have brought forward arguments related to the existence of the Doctrine of Discovery in Canada through the legal court case *Tsilhqot'in Nation v. British Columbia*. Finally, this article considers how the United Nations Declaration of Rights of Indigenous Peoples (UNDRIP) and additional studies conducted by the Permanent Forum on Indigenous Issues have sought to challenge contemporary understandings of the rationalities of the Doctrine of Discovery. This is of special importance since Reid's article does not address the formation of these documents; thus, the conclusion provides perspective on developments on this issue in the last decade.

History and Canadian Context: Doctrine of Discovery and *terra nullius*

Derived primarily through religious edicts, the Doctrine of Discovery was a series of legal principles grounded in Christian doctrine to justify the 'righteous' and 'rightful' occupation of new and 'empty' foreign territory during the era of European colonial expansion. Also referred to as the Doctrine of Dominance and the Doctrine of Christian Discovery, the Doctrine of Discovery was first introduced in 1240 by Pope Innocent IV. He deemed that the act of Christians invading the lands of 'infidels' during the Crusades was justified for two reasons: first, these actions defended the Christian faith and second, they upheld the pope's responsibility to oversee the spiritual needs of all humanity. These same sentiments were reiterated in 1455 by Pope Nicholas V through the Papal Bull Romanus Pontifex and then applied to North America by Pope Alexander VI in 1493.[7] Through the Papal Bull Inter Caetera, Pope Alexander VI validated the expansion of Spanish and Portuguese

[3] Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg, MB: Truth and Reconciliation Commission of Canada, 2015), 5

[4] "Beyond 94: Truth and Reconciliation in Canada," CBC News, updated September 11, 2020, https://newsinteractives.cbc.ca/longform-single/beyond-94.

[5] Jennifer Reid, "The Doctrine of Discovery and Canadian Law," *The Canadian Journal of Native Studies* 30, no.2 (2010), 351.

[6] Andrew Crosby and Jeffrey Monaghan, "Settler Governmentality in Canada and the Algonquins of Barriere Lake," *Security Dialogue* 43, no.5 (2012), 425; Jeffrey Monaghan, "Settler Governmentality and Racializing Surveillance in Canada's North-West," *The Canadian Journal of Sociology* 38, no.4 (2013), 493

[7] Sylvia McAdam, "Dismantling the Doctrine of Discovery: A Call to Action," in *Wrongs to Rights: How Churches Can Engage the United Nations Declaration on the Rights of Indigenous Peoples*, ed. Steve Heinrichs (Canada: Mennonite

explorers ventures into remote and unknown lands to 'civilize' and 'Christianize' barbarous nations.[8]

During this time, religious imperialism predominantly influenced imperial law since the Catholic popes were revered and perceived to possess the authority and supremacy of God manifested on Earth. Since the Catholic church presumed legal responsibility in its effort to formulate a "universal Christian commonwealth,"[9] other European nations, besides Spain and Portugal, began to formulate and use international laws to legitimize their ability to subjugate, dominate, and conquer uncharted territory without disrespecting or violating the pope's decrees. Consequently, the concept of *terra nullius*, or 'no man's land,' emerged as an element of the Doctrine of Discovery to justify monarchical European Christian nations' claims to lands which were deemed to be 'empty', unpossessed or occupied by uncivilized populations.[10]

These vast uncharted territories were, since time immemorial, and have continued to be, occupied by Indigenous peoples. Recognizing themselves as the original inhabitants of the land, inherited from their ancestors, Indigenous peoples view their relationship to the land as ongoing, reciprocal, and the source of their sovereignty as a nation. Contemporary legal scholars, like Tracey Lindberg, have argued that Indigenous peoples' relationship to the land has been separated from their identity as sovereign nations: Lindberg argues that this should never have occurred.[11] Yet, the implementation and implications of imperial laws, formulated by European settlers, influenced by the principles of Doctrine of Discovery and *terra nullius*, allowed for this separation, or disconnect, of Indigenous nations from the land they occupied on Turtle Island, or North America.[12] This separation hinders contemporary understandings for Indigenous peoples to be recognized as independent, sovereign nations in Canada.

Governmentality and Settler Governmentality

Building upon Michel Foucault's theory of 'governmentality' as well as David Short's 'colonial governmentality,' Andrew Crosby and Jeffrey Monaghan develop the concept of 'settler governmentality' through their analysis of the specific security mechanisms of the Canadian authorities deployed against the Algonquins of Barriere Lake. As a brief overview, Foucault's concept of 'governmentality' recognizes the rationalities and technologies utilized by institutions in 'governing', or directing the behaviour of distinct groups of people, or populations.[13] Colonial theories have frequently drawn upon this Foucauldian theory to demonstrate how the implementation of specific techniques, or technologies, of European nations continually sought to change the behaviour of Indigenous populations to align with European norms, behaviours, and values. David Short builds upon these core elements of governmentality in describing the concept of 'colonial governmentality' as "a form of power that utilizes a range of strategies that support the civilizing project by shaping and governing the capacities, competencies, and wills of the governed."[14]

As noted by Crosby and Monaghan, Short's analysis, however, excludes settler-colonial societies and primarily focuses on countries where European settlers comprise a minority population in contrast to the majority Indigenous populations. In settler postcolonial nations, such as Canada, where Indigenous populations are recognized as an 'isolated minority population,' there is a primary interest in eliminating competing sovereignties which may challenge the Crown's assertion of authority over Indigenous lands and people through the process of dispossession and repossession, or acquiring the land of Indigenous populations.[15] This is why Crosby and Monaghan created the concept of 'settler governmentality,' in order to distinguish

Church Canada, 2016), 143; Robert J. Miller, "The International Law of Colonialism: A Comparative Analysis," *Lewis & Clark Law Review* 15, no.4 (2011), 854-856; Reid, "Doctrine of Discovery and Canadian Law," 337-338; Robert J. Miller, Jacinta Ruru, Larissa Behrendt and Tracey Lindberg, eds., "The Doctrine of Discovery,"

[8] Pope Alexander VI's Demarcation bull, granting Spanish possession of lands discovered by Columbus, 4 May 1493, GLC04093, The Gilder Lehrman Institute of American History Collection, New York, United States.

[9] Miller, "International Law," 855.

[10] Miller, Ruru, Behrendt, and Lindberg, "Doctrine of Discovery," 7-8.

[11] Lindberg, "Doctrine of Discovery in Canada," 89-91.

[12] Kathleen Mahoney, "The Roadblock to Reconciliation: Canada's Origin Story," in *Who Founded Canada?* (Montreal, Association for Canadian Studies, 2016).

[13] Michel Foucault, "Governmentality", in *The Foucault Effect: Studies in Governmentality: With Two Lectures by and an Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 102.

[14] David Scott, *Refashioning Futures: Criticism after Postcolonialism* (Princeton: Princeton University Press, 1999), 83.

[15] Crosby and Monaghan, "Settler Governmentality in Canada," 425

the experiences of Indigenous peoples in settler-colonial nations from colonial nations.

Situating the Doctrine of Discovery and '*terra nullius*' within settler governmentality

This concept of settler governmentality has significant parallelisms with the assumptions and principles of the Doctrine of Discovery and *terra nullius*. The Doctrine of Discovery, *terra nullius*, and settler governmentality all focus primarily on the acquisition of Indigenous lands in settler-colonial nations, including Canada. Because of this primary focal point, discussions on the permeance of the Doctrine of Discovery in settler-colonial nations are able to be framed within discussions of governmentality. Furthermore, this allows us to understand how the rationalities of the Doctrine of Discovery have been encoded over time within the present conceptualizations of Canadian and Western law.[16] This understanding also builds upon Short's argument of colonial governmentality in his analyses of the political targets, operations and rationalities of colonial power, or the "historically constituted complexes of knowledge/power that give shape to colonial projects of political sovereignty."[17] In short, it is not only legal rationalities which are embedded into these systems of colonial power but religious rationalities as well. These religious rationalities predate the formulation of the legal rationalities which are analyzed in literature focusing on governmentality.

The parallelisms between these two concepts – the Doctrine of Discovery and *terra nullius* – also allow us to understand the implementation of how different technologies or strategies were utilized by the Canadian, American, and Australian governments in their attempts to reinforce the rationalities of these colonial powers. For example, in the United States, the Doctrine of Discovery is specifically mentioned in Johnson v. M'Intosh, a prominent legal case which concluded that European nations who 'discovered' the lands occupied by the Indigenous nations acquired both sovereignty and title of such lands.[18] Robert Miller, an American professor of law, describes the enforcement of the Doctrine of Discovery within colonial nations through ten stages: discovery, actual occupancy and current possession, pre-emption of European title, Native title, limited sovereign and commercial rights of Indigenous peoples, contiguity, *terra nullius*, Christianity, civilization, and conquest. Miller argues these stages have, and continue to be, utilized by settler-colonial nations in the colonizing efforts of Indigenous peoples.[19]

Tracey Lindberg, a professor of law at the University of Ottawa argues that the effects of Miller's stages reflect an American interpretation of how the Doctrine of Discovery was applied. Therefore, Lindberg develops a Canadian model to describe the distinct characteristics of the Doctrine of Discovery as it was implemented in Canada. This model is divided into four sections: 1) the 'Savage' Period, 2) Ownership, 3) Awareness of Obligations, and 4) Narrowing of Obligations. This first stage accounts for initial European claims to 'discovery,' nation-to-nation negotiations between Europeans and Indigenous nations, and the occupation and possession of land by Europeans. After this stage, Europeans began to create and assert title, or ownership, over Indigenous peoples and the land followed by the government's attempt to assimilate and 'Christianize' Indigenous peoples and the forced limitations upon their sovereign rights. Lindberg argues that these notions of sovereignty, rights, and title with respect to Indigenous nations have become conceptualized within Canada's limited legal framework.[20] Although these models look different, they both seek to demonstrate how the Doctrine of Discovery is embedded within the Canadian and American legal systems. Furthermore, since these technologies are grounded in colonial understandings of sovereignty, this demonstrates how the Doctrine of Discovery has continued to be a driving force to nullify the presence and existence of Indigenous nations in settler-colonial states, including Canada.

The Doctrine of Discovery and *Terra Nullius* Rationalities in Legal and Policy Discourses

After identifying the previously mentioned parallelisms, this next section will highlight how Indigenous-Canada and Canadian legal scholars have drawn connections between the rationalities of the Doctrine of Discovery and *terra nullius* and understandings of Indigenous sovereignty, underlying title and ownership to land. This will be demonstrated by thoroughly analyzing the court case Tsilhqot'in Nation v. British Columbia.

Tsilhqot'in Nation filed a lawsuit against British Columbia's provincial government for granting commercial

[16] Crosby and Monaghan, "Settler Governmentality in Canada," 426.
[17] David Scott, *Refashioning Futures*, 25.
[18] Kent McNeil, "The Source, Nature, and Content of the Crown's Underlying Title to Aboriginal Title Lands," *Canadian Bar Review* 96, no.2 (2018), 279: Miller, "International Law," 851.
[19] Miller, "International Law," 853-54.
[20] Lindberg, "Doctrine of Discovery in Canada," 97.

logging licenses to extract resources from over 438,000 ha (4,380 km2) of the nations' traditional land. The primary goal of the lawsuit for the Tsilhqot'in Nation was to exercise Aboriginal title and define Aboriginal rights with respect to the land.[21] Following an initial 339-day trial in 2002, the trial judge ruled in favour of the Tsilhqot'in Nation's right to occupy and own the land in agreement with their legal traditions. When the case was appealed however, British Columbia's Court of Appeal overturned the trial judge's initial ruling, claiming the Tsilhqot'in Nation was only entitled to the small portions of land where they resided. As a result of these two opposing verdicts through two different trials, this case was appealed again to the Supreme Court of Canada who affirmed Tsilhqot'in Nation's title over the land on June 26, 2014.[22]

This specific court case is significant within this argument on the Doctrine of Discovery and *terra nullius* because the Supreme Court denied the existence of the doctrine of *terra nullius* within Canada in the concluding remarks of *Tsilhqot'in Nation v, British Columbia*.[23] This statement has been the primary focus for various legal scholars in discussions pertaining to the Doctrine of Discovery. Since *terra nullius* is intrinsically linked to the Doctrine of Discovery, this statement has been interpreted as an implicit denial of the existence of the Doctrine of Discovery in Canada by the Supreme Court. This has been vehemently denied by Indigenous groups as an inaccurate claim.[24] At the same time, legal scholars, like John Borrows, have noted the contradictory conclusions brought forward by the Supreme Court who recognized Tsilhqot'in peoples' title to the land before the arrival of European settlers, yet also claimed that "at the time of assertion of European sovereignty, the Crown acquired radical and underlying title to all the land in the province."[25] As described by Felix Hoehn, a law professor with the University of Saskatchewan, the decisions of *Tsilhqot'in Nation v. British* Columbia reflects "a manifestation of the past because it applies the immoral and discriminatory doctrine of discovery to the prejudices of Indigenous peoples. At the same time, it points the way to the future, because it implicitly recognizes the sovereignty and territories of Indigenous nations."[26]

Although the Supreme Court of Canada acknowledges the title of the Tsilhqot'in people, the conclusions drawn from this case demonstrate how the rationalities of the Doctrine of Discovery and *terra nullius* still influence contemporary understandings of Indigenous title in Canada.[27] Furthermore, the conclusions from Tsilhqot'in Nation v. British Columbia challenges us to consider if the Supreme Court should have the capability to define Indigenous sovereignty and title since the rationalities of these institutions sought to reinforce and justify European sovereignty over Indigenous people and to delegitimize their claims to the ownership, usage, and occupancy of their land. Challenges against these supposed capabilities of the Supreme Court and federal government have been raised by scholars who argue that traditional Indigenous land rights and claims of sovereignty prior to European settlement cannot be adequately acknowledged under the current Canadian legislative institution.[28]

Since Canada originated as a settler-colonial state, the present structure of Canadian legislation continues to be founded upon discriminatory concepts, such as the Doctrine of Discovery and *terra nullius*.[29] Therefore, it would be impossible for Indigenous peoples to exercise their rights as a distinct, separate governing authority completely separated from the present provincial and federal governing bodies. John Borrows argues that "Canadian law will remain problematic for Indigenous peoples as long as it continues to assume away the underlying title and overarching governance powers that First Nations possess."[30] Scholars have also urged Indigenous peoples to separate themselves from the settler-colonial mindset and the institutions which inform their current thought patterns to authentically redefine themselves as sovereign nations. In his article

[21] Tsilhqot'in Nation v. British Columbia, [2014], 2 S.C.R. 257, SCC 44 (CanLII).

[22] John Borrows, "The Durability of *Terra Nullius: Tsilhqot'in Nation v. British Columbia*," *UBC Law Review* 48, no.3 (2015): 707, 709-711; *Tsilhqot'in Nation v. British Columbia*, 2014.

[23] Tsilhqot'in Nation v. British Columbia, [2014], 2 S.C.R. 257, SCC 44 (CanLII).

[24] Assembly of First Nations, "Dismantling the Doctrine of Discovery," January 2018, https://www.afn.ca/wp-content/uploads/2018/02/18-01-22-Dismantling-the-Doctrine-of-Discovery-EN.pdf.

[25] Borrows, "Durability of *Terra Nullius*," 720; *Tsilhqot'in Nation, supra* note 7 at para 69, citing *Guerin, supra* note 4.

[26] Felix Hoehn, "Back to the Future – Reconciliation and Indigenous Sovereignty After *Tsilhqot'in*," *University of New Brunswick Law Journal* 67 (2016), 109-110.

[27] Schedule "N" - Mandate for the Truth and Reconciliation Commission, *Indian Residential Schools Settlement Agreement*, (May 8, 2006), http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf.

[28] Taiaike Alfred, "Sovereignty: An Inappropriate Concept and Colonial Mentalities," in *Peace, Power, Righteousness: An Indigenous Manifesto* (Oxford University Press), 80; Borrows, "Durability of *Terra Nullius*,"

[29] Lindberg, "Doctrine of Discovery in Canada," 100.

[30] Borrows, "Durability of *Terra Nullius*," 742.

"Sovereignty: An Inappropriate Concept and Colonial Mentalities," Taiaike Alfred describes the implications for Indigenous peoples if they were to attempt exercising their sovereign rights under the persisting underlying influence of the Canadian government as: "the culmination of white society's efforts to assimilate Indigenous peoples."[31] Eve Tuck and K. Wayne Yang propose a similar argument to Alfred in that the solution to decolonization efforts would be a complete repatriation of European settlers from Indigenous lands.[32] These extreme solutions presented by Alfred and Tuck and Yang emphasize the perpetuation of colonization that cannot be separated from the subjugation of Indigenous peoples and their rights within settler-colonial states.

These suggested measures have not been implemented, however there has been a substantial amount of growth with acknowledging Indigenous peoples' inherent rights on an international scale. On September 13, 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This declaration acknowledges the fundamental freedoms and human rights of Indigenous peoples around the world, their right to self-determination and prohibits the enforcement of colonial efforts that have prevented the ability for Indigenous peoples to exercise these rights. While neither the Doctrine of Discovery or *terra nullius* are explicitly mentioned in UNDRIP, the Declaration affirms that "all doctrines, policies, and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racists, scientifically false, legally invalid, morally condemnable and socially unjust [emphasis added]."[33] More specifically, the United Nations' Permanent Forum on Indigenous Issues has specifically addressed the implications of the Doctrine of Discovery upon Indigenous peoples first with a preliminary study conducted in 2010, followed by another study in 2014.[34] The United Nations advocates for settler-colonial states to eliminate the effects of these doctrines "through constitutional and legislative reforms, policies, and government negotiation mandates" to engage in processes of decolonization with Indigenous peoples.[35]

The United Nations 2014 study acknowledged the Supreme Court decision to identify the need, in Canada, to reconcile "pre-existing aboriginal sovereignty with assumed Crown sovereignty."[36] However, the *Tsilhqot'in Nation v. British Columbia* case was under appeal at the time this study was published. So, although we see the Supreme Court attempting to acknowledge the existence of Indigenous sovereignty in Canada, it simultaneously refutes these claims by rejecting the existence of doctrines such as *terra nullius*. In the panel discussion which concluded the Truth and Reconciliation Commission (TRC), it was determined that "it is factually apparent that at Canada's formation, there was no first discovery on the part of the Crown that would justify displacing Indigenous law."[37] Regardless of the sequencing of these various publications, the conclusions drawn from the United Nations, the TRC and academic literature argue that these principles, like the Doctrine of Discovery and *terra nullius*, which were developed to justify the colonial actions of European settlers should not be continuing to enforce European values and social structures upon Indigenous peoples. These conclusions have raised awareness to the colonial injustices which have been imposed upon Indigenous peoples. Furthermore, they have also provided the Canadian government, in addition to religious organizations, with practical, proactive steps towards the recognition of Indigenous peoples' rights and claims to sovereignty in Canada.[38]

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[31] Alfred, "Sovereignty," 83.

[32] Eve Tuck & K. Wayne Yang, "Decolonization is not a metaphor," *Decolonization: Indignity, Education &* Society 1, no.1 (2012), 21.

[33] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 1/2, UN GAOR, 61st Sess., U.N.Doc. A/RES/61/295 (2007), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

[34] Permanent Forum on Indigenous Issues, *Preliminary study of the impact on indigenous peoples of the international legal construct known as the Doctrine of Discovery* UN Doc. E/C.19/2010/13 (4 February 2010)) [Submitted by the Special Rapporteur].

[35] Permanent Forum on Indigenous Issues, *Study on the impacts of the Doctrine of Discovery on indigenous peoples, including mechanisms, processes and instruments of redress* (UN Doc. E/C.19/2014/3 (20 February 2014)) [Study by Forum member Edward John], 21.

[36] *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, para 20 in Permanent Forum, *Impacts of Doctrine of Discovery*, 9

[37] "Dismantling the Doctrine of Discovery: The Road to Reconciliation Panel," YouTube video, 1:03:21, posted by CFSCVideo, June 12, 2015, https://www.youtube.com/watch?v=1NrjoaFuXk4.

[38] Hoehn, "Back to the Future," 114-117, 144

Conclusion

Overall, this paper demonstrates how religious tenets, or rationalities, of the Doctrine of Discovery and terra nullius continue to have legal implications which affect the Supreme Court, and the Crown's conceptualizations of Indigenous sovereignty in Canada. Despite the perceived secularization of Canada's legal system from Christian values, the legal history of this country, as a settler-colonial nation, remains deeply entrenched within these religious rationalities which continue to permeate colonial understandings which sought to establish Christianity as a universal religion. To this day, these divisions continue to influence people's attitudes, perceptions and practices within our country. Future research initiatives should aim to broaden our understanding of these legal concepts, specifically research related to the specific technologies utilized to legitimize the Crown's sovereignty in settler-colonial states. For now, the future implications for how the Canadian government will address recommendations pertaining to these legal constructs will be determined as Euro-Canadians seek to account for and amend these colonial practices and strive to recognize and affirm the rights of Indigenous peoples.

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