The United States and most of the non-European world were colonized under an international legal principle known as the Doctrine of Discovery, which was used to justify European claims over the indigenous peoples and their territories. The doctrine provides that "civilized" and "Christian" Euro-Americans automatically acquired property rights over the lands of Native peoples and gained governmental, political, and commercial rights over the indigenous inhabitants just by showing up. This legal principle was shaped by religious and ethnocentric ideas of European and Christian superiority over other races and religions of the world. When Euro-Americans planted their flags and religious symbols in lands they claimed to have discovered, they were undertaking well-recognized legal procedures and rituals of discovery that were designed to establish their claim to the lands and peoples.

The European colonists in North America, and later American colonial, state, and national governments, utilized the doctrine and its religious, cultural, and racial ideas of superiority over American Indians to make legal claims to the lands and property rights of Indians. For example, President Thomas Jefferson expressly ordered the Lewis and Clark expedition to use the principles of the Doctrine of Discovery to make American claims over Native peoples and lands across the continent. Later, the idea of American Manifest Destiny incorporated the Doctrine of Discovery to justify U.S. western expansion, and it continues to be used today to limit the governmental, sovereign, and property rights of American Indians and Indian nations.

Ten elements constitute the doctrine as defined by the United States Supreme Court:

1. **First Discovery.** The first European country to discover land unknown to Europeans claimed that it automatically acquired property and sovereign rights over the lands and inhabitants. First discovery alone, however, only created an incomplete claim of title.
2. **Actual Occupancy and Current Possession.** To turn first discovery into a complete title, a Euro-American country had to actually occupy and possess the newly found lands. This was usually done by building forts or settlements within a reasonable amount of time after a first discovery.

3. **Preemption/European Title.** The discoverer acquired the right of preemption, that is, the exclusive right to buy the land from the indigenous owners.

4. **Indian Title.** Indian nations were considered to have lost the full ownership of their lands after first discovery. They only retained the right to occupy and use their lands, although those rights could last forever if they never consented to sell.

5. **Limited Tribal Sovereign and Commercial Rights.** Indian nations were also considered to have lost some of their inherent sovereign powers such as the rights of free trade and international diplomatic relations. Thereafter, they were only supposed to trade and interact with their Euro-American discoverer.

6. **Contiguity.** Europeans claimed significant amounts of land contiguous to their actual settlements in the New World. In fact, this element provided that the discovery of the mouth of a river created a claim over all the lands drained by that river, even if that was thousands of miles of territory.

7. **Terra Nullius.** Terra nullius is land that is null, void, or empty. This element provides that if land was not occupied by anyone, or if it was occupied but was not being used or governed in a fashion that European legal systems recognized, then the land was considered empty.

8. **Christianity.** Religion was a major aspect of justifying and applying the Doctrine of Discovery. Non-Christians were not deemed to have the same rights to land, sovereignty, and self-determination as Christians.

9. **Civilization.** Euro-Americans’ belief that God had directed them to bring “civilized” ways to indigenous peoples was an important part of the doctrine.

10. **Conquest.** First, the United States Supreme Court stated in *Johnson v. M’Intosh* that the United States and European countries could legally acquire Indian titles in just and necessary wars. But the court also defined a first discovery as a form of “conquest” because it automatically transferred some sovereign and property rights to Euro-Americans.

All European countries that engaged in overseas exploration and
colonization utilized the Doctrine of Discovery to justify their claims. As Patricia Seed shows in *Ceremonies of Possession*, official rituals were developed to try to prove first discoveries and to establish which country could legally claim the rights of discovery. Many people misunderstand the rituals European explorers performed when encountering new lands and think they were just thanking providence for a safe voyage. In reality, the explorers were primarily engaging in the legal rituals required by discovery to establish their country’s claims.

In the 1400s, for example, Portuguese explorers erected stone and wooden crosses on the coasts of Africa and Brazil to assert their Crown’s sovereignty and rights to the lands they claimed to have discovered. In April 1500, Pedro Cabral landed in Brazil and conducted an official ceremony to take possession of the land. He named the country, proclaimed that the land belonged to Portugal, had priests conduct mass, unfurled the banner of Christ, and erected an enormous wooden cross to establish Portuguese sovereignty. All of these acts of possession, or rituals of discovery, were designed to legally establish Portugal’s claim.

The Spanish government and its explorers also developed ritualized ceremonies to claim new lands and establish Spain’s legal rights. Thus, Columbus, who traveled under a contract with the Spanish king and queen, was designated the admiral of any lands he would “discover and acquire” and engaged in discovery rituals and official ceremonies on the islands he encountered in the Caribbean. He always planted the Spanish flag and the cross to establish Spain’s ownership. In fact, Spain appealed to the pope in 1493 to validate Spain’s rights over the lands Columbus discovered and claimed through the discovery rituals.

Furthermore, in 1513, when Balboa crossed Panama and found the Pacific Ocean, he claimed the entire ocean and all its adjoining lands for Spain. He also engaged in discovery rituals and acts of symbolic possession by having a priest sing the *Te Deum* (a Christian hymn), and by having his men erect a stone monument, cut a tree into a cross, and mark other trees with crosses. In 1536, Cortez made Spain’s first claim to the Pacific in North America on the west coast of Mexico. He also claimed the lands by engaging in the rituals of discovery. Thereafter, Spain occupied several locations on the west coast of Mexico and engaged in other ritual acts of possession on the coasts of Mexico, Baja, and modern-day California in 1539–1602.

Subsequently, Spanish naval and land-based explorers engaged in dis-
covery rituals and symbolic and actual occupation of lands in the American Southwest, modern-day California, and as far north as Alaska to claim Spain's title. In 1774, a captain was ordered to leave written proof of his discovery and to "take possession, using the standard form attached to his instructions, and erect a large wooden cross supported by a cairn of stones hiding a glass bottle... containing a copy of the act of possession." Numerous other expeditions were sent north to counter the growing Russian presence in North America and to prove Spain's ownership and discovery rights by conducting the rituals of erecting crosses, conducting masses, planting flags, cutting cross designs on rocks, and taking "possession of these lands with all the required formalities." Spain was certain that its claim to the North Pacific was secure "by virtue of previous discovery and symbolic acts of possession."

Russia also used the elements and rituals of discovery in North America. In 1786, Catherine II ordered an expedition "to affirm the right of Russia to all lands discovered by Russian seafarers... in the Pacific Ocean" and to engage in the ritual acts of "placing or fastening of crests and burying of metals inscribed in Russian and Latin in suitable places." She expressly claimed her rights "on the basis of prior discovery by Russia." For decades thereafter, Russian fur traders were ordered to perform acts of possession and rituals of discovery and were given metal plaques and royal crests to mark the areas Russia claimed by first discovery and possession. Ultimately, Russians buried up to thirty separately numbered metal plates from 1787 to 1811 in Alaska and as far south as San Francisco Bay to establish their claims of "discovery and possession."

French ventures in North America also included discovery rituals. In 1749, for example, a French expedition traveled throughout the Ohio Valley burying lead plates to reassert France's claim to own the area due to first discovery in 1643. A French expedition also claimed land in Alaska in 1786 by "taking possession of the land with the usual formalities" by burying a bottle with a written inscription describing the act of possession.

In addition, England used discovery rituals to claim new lands under international law. In 1579, Francis Drake allegedly landed on the California coast north of San Francisco Bay and "proclaimed the territory part of his Queen's realm... and lay claim to the territory on the basis of prior discovery." Drake engaged in a symbolic act of possession by setting "on a large post his famous plates of brass." England claimed for centuries that Drake's first discovery and discovery ritual gave it ownership of the west coast of North America.

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Centuries later, Captain James Cook continued the English use of the rituals of discovery. Cook was even ordered by the British Admiralty on all three of his round-the-world voyages to engage in these rituals:

You are also with the consent of the Natives to take possession, in the Name of the King of Great Britain, of convenient Situations in such Countries as you may discover, that have not already been discovered or visited by any other European Power, and to distribute among the Inhabitants such Things as will remain as Traces and Testimonies of your having been there; But if you find the Countries so discovered are uninhabited, you are to take possession of them for His Majesty by setting up proper Marks and Inscriptions as first Discoverers and Possessors.13

In 1770, Cook claimed eastern Australia for England when he planted a flag and carved a tree near present-day Sydney, and then he conducted another ritual at what is called Possession Island in northeast Australia. On his third voyage in 1778, Cook engaged in discovery rituals on three occasions in modern-day Alaska to claim the lands for England. Cook personally performed the first ritual on Keyes (Kayak) Island by depositing a bottle containing an inscription with his ship’s name and the date and two English coins.14 Cook later had officers perform the rituals. On June 1, 1778, Lt. King undertook an act of possession in modern-day Cook’s Inlet. Cook called the location Point Possession, which is its present-day name. Lt. King and his men hoisted the English flag, drank a toast to the king’s health, and claimed to take possession of the country in the king’s name by burying a bottle containing English coins and a paper containing the ship’s name and the date.15 On July 16, 1778, Lt. Williamson conducted another ritual when he “clim[ed] the highest hill [and] took possession of the Country in His Majestys name, left on the hill a bottle in which was in[s]crib[ed] on a piece of paper, the Ships names date &c and name[d] the Promontory Cape Newenham.”16

Incredibly, even as late as the 1930s, the United States, England, and Germany were still engaging in discovery rituals to claim islands in the Pacific by posting signs and raising flags. On some occasions in the 1920s, English and American representatives flew over remote islands and dropped flags from their planes, claiming that this act established their countries’ ownership.
The United States and Discovery

The establishment and expansion of the United States relied heavily on the elements of the Doctrine of Discovery. English claims to eastern North America were based on John Cabot’s first discoveries of the coast in 1496–98 and the subsequent occupation of these areas by English colonies. The American Founding Fathers were well aware of these discovery claims and utilized them while they were part of the English colonial system. Understandably, they continued to use the doctrine in the creation and operation of the United States. From George Washington and Benjamin Franklin onward, American leaders utilized this legal principle to justify claims of property rights and political dominance over the Indian nations. The elements of discovery and their legal impact on Indian nations and Indian peoples are evident, for example, in the United States Constitution of 1787, federal laws from 1781 onward, and federal judicial decisions, most notably when the U.S. Supreme Court adopted the Doctrine of Discovery in *Johnson v. M’Intosh* in 1823,17 as well as in numerous state constitutions, laws, and court decisions.

Thomas Jefferson, in particular, applied discovery against Indians during his political career. In addition, Jefferson’s launch of the Lewis and Clark expedition in 1803 was purposely targeted at the mouth of the Columbia River in the Pacific Northwest to strengthen the United States’ discovery claim to that area.18 Thereafter, the United States negotiated with Russia, Spain, and England for four decades over who owned the Pacific Northwest under international law. The United States argued in diplomatic negotiations that it owned the region due to its first discovery and naming of the Columbia River by Robert Gray in 1792, the first exploration and occupation of the region by Lewis and Clark in 1805–6, and then by John Jacob Astor’s construction of the permanent settlement of Astoria in 1811 at the mouth of the river.

Not surprisingly, the Lewis and Clark expedition engaged in discovery rituals and used several of the elements of discovery to establish the American claim to the Northwest. Meriwether Lewis, for example, carried a branding iron (“US Capt. M. Lewis”) that was apparently not utilized while the expedition was in the Louisiana Territory. But once the expedition crossed the Rocky Mountains the branding iron was used multiple times to mark the landscape to prove the expedition had traversed the Oregon country. Furthermore, William Clark and other men carved their names on trees and sandstone cliffs in the Oregon country. On November
19, 1805, Clark traveled several miles up the coast of present-day Washington and carved on a tree, “William Clark November 19, 1805. By land from the U. States in 1804 & 1805.” These actions were clearly attempts to emulate European rituals of first discovery. Furthermore, the construction and occupation of Fort Clatsop at the mouth of the Columbia River from December to March 1805–6 was an obvious attempt to fulfill the second element of discovery and to claim that Americans occupied the territory.

Finally, when the expedition departed Fort Clatsop on March 23, 1806, Lewis and Clark drafted the Fort Clatsop memorial, leaving a copy at the fort and providing copies to Indian chiefs to convey to visiting sea captains. The memorial listed the expedition members, marked their route, and explained that the “object of this list” was that “through the medium of some civilized person . . . it may be made known to the informed world” that the U.S. expedition had crossed the continent and stayed at the mouth of the Columbia River. The memorial was designed to strengthen the U.S. discovery claim to the Oregon country.

The doctrine is also plainly visible in American law and politics in 1817–18, when Secretary of State John Quincy Adams and President James Monroe used discovery principles to reacquire the port of Astoria on the Oregon coast. England had captured the post in the War of 1812 but was required to return it to the United States by the treaty that ended the war. After much delay, Monroe and Adams dispatched American representatives to retake symbolic possession of Astoria under the elements of discovery to reassert America’s claim to the Pacific Northwest. They described this as asserting the American “claim of territorial possession at the mouth of [the] Columbia river.” Adams wrote that the purpose was “to resume possession of that post [Astoria], and in some appropriate manner to reassert the title of the United States.”

In 1817, the president and secretary of state dispatched John Prevost and Captain James Biddle to take symbolic possession of Astoria using actions that relied on discovery rituals. In fact, Monroe and Adams ordered Biddle and Prevost to sail to the Columbia and to “assert there the claim of sovereignty in the name of . . . the United States, by some symbolical or other appropriate mode of setting up a claim of national authority and dominion.”

Biddle and Prevost arrived at separate times. Biddle raised the U.S. flag on the north side of the mouth of the Columbia River, and in the presence of Chinook Indians, turned over some dirt with a shovel and erected a lead plate which read, “Taken possession of, in the name and on the behalf of the United States by Captain James Biddle, commanding the United States
ship Ontario, Columbia River, August, 1818. He then moved upriver and repeated the rituals on the south side, by using the exact rituals that European explorers had utilized for centuries.

In October 1818, when John Prevost arrived at Astoria a joint ritual was staged. The English flag was lowered and the United States flag was raised in its place. The English troops fired a salute, and an English captain and Prevost signed papers of transfer. The American claim to the Pacific Northwest was again legally in place.

**Manifest Destiny**

Manifest Destiny, the phrase coined in 1845 to describe the predestined and divinely inspired expansion of the United States across North America, relies on the same rationales and justifications that created the Doctrine of Discovery.

Historians generally define Manifest Destiny as exemplifying three distinct aspects that justified American continental empire. First, the United States possesses unique moral virtues other countries do not possess. Second, the United States has a mission to redeem the world by spreading republican government and the American way of life around the globe. And, third, the United States was divinely ordained to accomplish these tasks. But these ideas were not new in 1845 and had pervaded American political thought long before they were given the name Manifest Destiny. This kind of thinking, which replicates fifteenth-century ideas, arises from an ethnocentric view that one’s own culture, government, race, religion, and country are superior to all others.

The term Manifest Destiny was not applied to American expansion until 1845. But the idea that it was the destiny of the United States to control North America was manifest long before then. Manifest Destiny became even more certain after the Louisiana Purchase in 1803 and the Lewis and Clark expedition of 1803–6. In fact, Thomas Jefferson had this very goal in mind when he ordered Meriwether Lewis to travel to the mouth of the Columbia River to strengthen the United States' 1792 first discovery claim to Oregon.

It is worth noting that it is difficult to even understand the statements made by presidents, secretaries of state, congressmen, newspapers, and citizens about Manifest Destiny if one does not also understand the Doctrine of Discovery. The advocates of Manifest Destiny used the elements of discovery to bolster their arguments that it was America’s destiny and
right to expand to the Pacific. The Doctrine of Discovery became, in essence, Manifest Destiny.

The journalist John O'Sullivan first used the phrase "Manifest Destiny" in a July 1845 editorial about the annexation of Texas. He used the term again on December 27, 1845, in a very influential editorial in the New York Morning News about the Oregon country entitled "The True Title." This editorial and the term Manifest Destiny justified the idea of American expansion.

O'Sullivan used the Doctrine of Discovery in formulating his argument that the United States already owned the title to Oregon:

Our legal title to Oregon, so far as law exists for such rights, is perfect. Mr. Calhoun and Mr. Buchanan [U.S. secretaries of state] have settled that question, once and for all. Flaw or break in the triple chain of that title, there is none. Not a foot of ground is left for England . . . unanswerable as is the demonstration of our legal title to Oregon . . . we have a still better title than any that can ever be constructed out of all these antiquated materials of old black-letter international law. Away, away with all these cobweb tissues of right of discovery, exploration, settlement, continuity, &c. . . . were the respective cases and arguments of the two parties, as to all these points of history and law, reversed—had England all ours, and we nothing but hers—our claim to Oregon would still be best and strongest. And that claim is by the right of our manifest destiny to overspread and to possess the whole of the continent which Providence has given us for the development of the great experiment of liberty and federated self-government entrusted to us. . . . [In England’s hands, Oregon] must always remain wholly useless and worthless for any purpose of human civilization or society. . . . The God of nature and of nations has marked it for our own; and with His blessing we will firmly maintain the incontestable rights He has given, and fearlessly perform the high duties He has imposed.

O'Sullivan's use of discovery, that "black-letter international law," and such elements as civilization, religion, the right of discovery, exploration, settlement, and continuity demonstrate that he was fully conversant with the elements of the international law of discovery, and that he used the doctrine to justify America's legal title to the Oregon country.

American expansion across the continent was alive long before the use of the phrase Manifest Destiny. In fact, Thomas Jefferson's push for

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a continental American empire prompted U.S. expansion toward the Pacific. He was the primary architect of the 1803 Louisiana Purchase, the 1803–6 Lewis and Clark expedition, and economic and political activity that targeted Louisiana and Oregon. One of Jefferson's prime objectives for the Lewis and Clark expedition was unquestionably the expansion of the United States.

It is not surprising that the United States worked to bring the Oregon country under American control basing its legal claim on first discovery due to the American Robert Gray's discovery and naming of the Columbia River in 1792, Lewis and Clark's exploration of that river and their occupation of Fort Clatsop in 1805–6, and John Jacob Astor's construction in 1811 of the trading post Astoria, the first permanent settlement at the mouth of the river. The United States relied on these factors and the elements of international law to argue that it owned the Oregon country in negotiations with England, Spain, and Russia.

Secretary of State John Quincy Adams used the Doctrine of Discovery in treaty negotiations with Spain and Russia and extinguished these nations' competing claims to Oregon in treaties in 1821 and 1824. In treaties from 1818 and 1827, England and the United States agreed to jointly occupy the Northwest, but they could not reach a conclusion on which country had the strongest legal claim. Adams believed that the 1821 treaty with Spain guaranteed American Manifest Destiny and wrote that "the remainder of the continent should ultimately be ours."28 These negotiations between the United States, England, Spain, and Russia reflect just how commonly understood the elements of discovery were and their common acceptance as part of international law.

Congress also used the Doctrine of Discovery and Manifest Destiny to claim Oregon. In December 1820, a House committee studied the possibility of the United States occupying the Columbia River. The committee issued a report in January 1821 and proposed a bill that the United States occupy the Northwest and "extinguish the Indian title."29 This report, filled with lengthy discussions of the elements of discovery, justified American control of the Pacific Northwest.

Members of Congress demonstrated how widespread the understanding of discovery was and how it related to Manifest Destiny and American expansion. In 1838, Senator Lewis Linn told the Senate that the United States needed to occupy Oregon because "discovery accompanied with subsequent and efficient acts of sovereignty or settlement are necessary to give title."30 Linn also believed that Robert Gray's 1792 discovery of the
Columbia and Lewis and Clark's expedition were "an important circumstance in our title... that was notice to the world of claim," and that Lewis and Clark's "solemn act of possession was followed up by a settlement and occupation, made by... John Jacob Astor." Linn believed that the U.S. right was based on the "certain ground of prior discovery." Also in 1838, Congressman Caleb Cushing stated that the "priority of discovery, therefore, is clearly with the United States... the United States claim the Oregon Territory by right of discovery." Cushing argued that the contiguity element of discovery and the proximity of Oregon to the Louisiana Territory gave the United States rights in the Pacific Northwest and "a claim of title superior to that of any other nation." He also argued that Lewis and Clark's occupation of Oregon was significant because they "erected the works called Fort Clatsop, and in the most formal and authentic manner asserted the rights of the United States in and to the whole country." For Cushing, John Jacob Astor's building of Astoria "extended the bounds of empire [and he believed that] we have the original title of the United States by discovery, fortified by the rights of France, continued by the exploration of Lewis and Clark, by the formal taking of possession, and by regular occupation, and completed by the recognition of Great Britain."

By 1844, the United States was gripped by an expansionist fever that led the country to finally settle the Oregon and Texas questions. The annexation of Texas was a boiling point in American politics for over two decades, and desires to occupy Oregon had fermented even longer. The Democratic Party presidential platform of 1844 confirmed that "our title to the whole of the Territory of Oregon is clear and unquestionable; that no portion of the same ought to be ceded to England or any other power; and that the re-occupation of Oregon and the reannexation of Texas at the earliest practicable period are great American measures."

James K. Polk campaigned vigorously on this platform, and his slogan "54-40 or fight" claimed the entire Pacific Northwest, including much of present-day British Columbia, Canada. When Polk won, he claimed a mandate for expansion.

Polk's inaugural address in 1845 discussed Oregon, discovery, and Manifest Destiny. He called Oregon "our territory" and stated that the U.S. "title to the country of the Oregon is 'clear and unquestionable,' and already are our people preparing to perfect that title by occupying it." He believed that the opening of the Pacific Northwest for American settlement and the "extinguishment [of the] title of numerous Indian
tribes to vast tracts of country" was a beneficial development because expansion strengthened the Union.

In December 1845, Polk delivered his annual message to Congress, discussing the Oregon question at length. He stated that "our title to the whole Oregon Territory . . . [is] maintained by [irrefutable] facts and arguments," and he asked Congress to maintain "our just title to that Territory." Polk suggested Congress grant land to the "patriotic pioneers who . . . lead the way through savage tribes inhabiting the vast wilderness." He was confident that "the title of the United States is the best now in existence" and that under applicable international law England did not have a valid claim "to any portion of the Oregon Territory upon any principle of public law recognized by nations."

Many American politicians wholeheartedly agreed. Senator Stephen Douglass, for example, stated in 1846 that "we do hold the valley of the Columbia in our own right by virtue of discovery, exploration, and occupation, and that we have a treaty-right in addition through the Louisiana and Florida treaty." He also expressly relied on the Doctrine of Discovery and Manifest Destiny ideals of converting and civilizing the Indians in the Oregon country, and he utilized the principle of *terra nullius* when he claimed that the United States had rights to "the vacant and unoccupied part of North America." Secretary of State James Buchanan foresaw America's "glorious mission . . . [of] extending the blessings of Christianity and of civil and religious liberty over the whole of the North American continent."

The Doctrine of Discovery had truly become Manifest Destiny.

For forty years or more, American politicians, citizens, and newspapers used the Doctrine of Discovery to justify Manifest Destiny and the expansion of the United States to the Pacific Ocean. Under these ethnocentric justifications of discovery, Americans believed they possessed the only "valid" religions, civilizations, governments, laws, and cultures, and that Divine Providence allegedly intended Americans and their institutions to own North America. As a result, the human, governmental, and property rights of indigenous peoples and the Indian nations were almost totally disregarded.

**Notes**


4. Ibid., 58.

5. Ibid., 97.

6. Ibid., 97–98.


8. Ibid., 129.


12. Ibid., 22.


15. Ibid., 368.

16. Ibid., 399–400.


22. Ibid.

23. Ibid., 372–73.


31. Ibid., 146.

32. Ibid.


34. Ibid.

35. Ibid.

36. Ibid.


39. Ibid.

40. Ibid., 392–93.

41. Ibid.

42. Ibid., 394–95.


44. Ibid.


Suggested Readings


