



**Markkula Center**  
for Applied Ethics  
*at Santa Clara University*

The Revocation of Inter Caetera

Anthony Mejia  
Santa Clara University

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## **I. Modern Call for Revocation**

The purpose of this paper is to argue for the Catholic Church to formally revoke the 15th century papal bull, Inter Caetera. This bull paved the way for what has been deemed the “Age of Discovery”, or as history has justifiably demanded to be renamed, the “Age of Conquest”. It is important to note the difference between the actual papal bull, Inter Caetera, and the ideals and practices it set in motion. Throughout this paper I will be referring to the tradition of legal thought that was developed in case law after the promulgation of Inter Caetera as the “doctrine of discovery”. The argument for revocation will proceed in the following fashion: first, with a discussion of contemporary calls by indigenous peoples for the revocation of the bull; second, an analysis of Inter Caetera and its interpretations by the conqueror nations; third, a brief history of the nature of the conquest of the new world; fourth, an analysis of the influences of the papal bull on historical and modern day Brazil; fifth, an argument based on the legal ramifications of the bull’s status in international relations; sixth, an argument from a human rights perspective; and lastly with an argument based on theological consistency within the Catholic Church and revocation’s symbolic impact.

One of these groups appealing to the Catholic Church in recent years has been called the Long March to Rome. This group is composed of representatives from the Confederacy of Haudenosaunee, the Assembly of First Nations Canada, Canada’s Truth and Reconciliation Commission, and the Yakima nation. The Long March carries the weight of 370 million indigenous people from around the globe and through the Six Nations Iroquois Confederacy represents 634 First Nations from Canada. Their call for revocation is based on the idea that the existence of Inter Caetera set the stage for hundreds of years of abuses towards indigenous people and that it fundamentally violates contemporary human rights legislation. This movement

is built on the tenets that the papal bulls that later made up the doctrine “were a blueprint for the conquest of the New World, provided moral justification for the enslavement and conquest of indigenous peoples worldwide, are an ongoing violation of human rights legislation, and communities currently struggling to preserve their lands are threatened by modern-day ideologies of inequality that are rooted in these bulls.”<sup>1</sup> The Long March to Rome provided these as justifications in their 2016 visit to the Vatican where they met with the Pontifical Council for Justice and Peace and expressed their goal to “abolish” the papal bulls that inspired oppressive action for centuries.<sup>2</sup>

The delegation, in their fight against the bull, called on the Church to not only revoke all bulls that have been interpreted or used to disenfranchise indigenous peoples but to also take action in an attempt to begin to repair some of the damage that had been caused by the ideologies and legal precedent rooted especially in the 1493 document known as *Inter Caetera*. The Long March to Rome also cites the fact that the United States, Canada, New Zealand, and Australia have all utilized the “doctrine of discovery” to “buttress their legal system” through the invocation of the bulls and their ideals in regular legal discourse concerning indigenous people.<sup>3</sup> Examples of these have been through cornerstone cases such as *Johnson v. M’Intosh* in the United States as well as *Mabo v. Queensland* in New Zealand. Specifically the delegation references the Marshall Trilogy, a group of Supreme Court rulings affirming the doctrine, as being particularly problematic. For this reason, the delegation asked that the Vatican officially notify the aforementioned nations that their use of the doctrine is not supported by the Catholic Church and also asked the Church for aid in establishing diplomatic relations to secure “rightful

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<sup>1</sup> Long March to Rome, *Long March to Rome* [website], <http://longmarchtorome.com/> (accessed 26 May 2020)

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

ownership” for indigenous people. The call of the Long March to Rome also includes the request of the freedom to travel the original territories of Indian nations as well as the appeal for church support to include these Indian nations under the list of nations of the United Nations observer status list, giving them more organized international support in their future disputes. Along with their demands for the Catholic Church, the Long March to Rome also emphasizes the idea that in order to actually repair the current circumstances rooted in the doctrine, voices from within the Indigenous community need to be considered in the restorative actions that they hope would follow revocation.

The Long March to Rome hopes to be able to establish a meeting with the Holy See to develop a plan of rejecting and dismantling all instances of case law that invoke the doctrine of discovery on an international level. This would take substantial efforts on the part of the Church and of the delegation aiding in achieving this complete removal of precedent from various legal systems around the world. However, the Long March finds that it is vital in providing restorative justice to the indigenous peoples of the world after hundreds of years of oppression grounded in the ideals set forth by the doctrine of discovery. Many of the modern issues that have given rise to serious discourse surrounding the rights of indigenous people have been tied to climate change and in recognition of that the Long March has also asked that a forum, comprised of the church and indigenous groups, be created in order to “protect the natural world” and address the destruction of natural resources and access to clean water which is a fundamental human right.

## II. Inter Caetera

On May 4th, 1493, shortly after Columbus' discovery of the Americas, Pope Alexander VI released a papal bull commonly known as *Inter Caetera*. These bulls were formulated in an attempt to send forth the Spanish people into the new world and spread the gospel of the Catholic Church. *Inter Caetera* focuses on an extension of religious dominion but established a foundation for the types of colonialism and conquest that took place shortly after, many of which were done in the name of the bulls or used the bulls as a justification. Alexander VI expresses his utmost support for the cause of evangelization and provides colonizers with an enthusiastic endorsement to conquer “barbarous nations” and ensure that they be “overthrown and brought to the faith itself.” In understanding the ways in which *Inter Caetera* was utilized by colonialist nations to justify their behaviour towards indigenous peoples and their attitude toward colonialism in general, it is important to first grasp the actual meaning of the original document.

*Inter Caetera* begins with the recognition of the royal powers of the time, Ferdinand and Isabella, and immediately expresses the idea that “among other things” (the phrase for which the document was named) that are pleasing to the Divine Majesty, the spread and exaltation of the Catholic faith and the evangelization of barbarous nations ranks highest. The marriage of Ferdinand and Isabella in 1469 unified Spanish kingdoms into the powerful Spanish nation and then began the project of imperialist expansion.<sup>4</sup> They became known as the Catholic monarchs because of their religious zeal that would lead to a ban of all religions aside from Roman Catholicism in order to strengthen and gain favor from the Church. And then the commencement of the Spanish Inquisition enforced this religious uniformity and expulsion of Jewish citizens.<sup>5</sup>

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<sup>4</sup> Tarsicio de Azcona, ‘Ferdinand II King of Spain’, *Britannica* [website] <https://www.britannica.com/biography/Ferdinand-II-king-of-Spain> (accessed 26 May 2020)

<sup>5</sup> *Ibid.*

Alexander commends the monarchy on its zealous efforts toward this end, specifically citing its “recovery of the kingdom of Granada from the yoke of the Saracens” as an exemplary evangelical accomplishment on which to build. The Pope then states that the crown had long intended to seek out certain new islands and mainlands that were undiscovered in order to bring them “the worship of our Redeemer and the profession of the Catholic faith their residents and inhabitants,” and that Columbus was chosen by God for this. In reference to the undiscovered nature of the populated Americas that Columbus came upon, the document claims that the dwellers of the land lived in peace and were “sufficiently disposed to embrace the Catholic faith and be trained in good morals.”

Alexander VI grants the colonial power divine favor in the objective of discovering new lands and bringing them and their residents to the Catholic faith while not being deterred by any dangers or hardships. This “praiseworthy purpose” was given apostolic favor in that Alexander, with his power as Pope, uses this bull to:

“give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south”<sup>6</sup>

The only conditions to this authority were that none of these lands could be in the “actual possession” of any Christian king and a geographical line was to be established so that Spain could only discover lands towards the west and south from the Azores and Cape Verde. This new authority granted to Spain by Pope Alexander VI called for the appointment of virtuous Catholics who could instruct the inhabitants of newly discovered territories in the Catholic faith

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<sup>6</sup>Pope Alexander VI, ‘Inter Caetera’, 1493 [website] <https://www.papalencyclicals.net/alex06/alex06inter.htm> (accessed 26 May 2020)

and train them in good morals. This provision also explicitly forbade the inclusion of any person, regardless of rank or title, to go on these evangelical expeditions for the purpose of trade or any other purpose that was not extending the Catholic faith. Inter Caetera therefore established a foundation for colonial expansion solely for the purposes of religious expansion and granted sole and full authority to those who would undertake the challenge, such as Columbus, and who would do so with Apostolic favor. Alexander VI describes his pronouncement as a “recommendation, exhortation, requisition, gift, grant, assignment, constitution, deputation, decree, mandate, prohibition, and will,” all in one bull.<sup>7</sup>

An important consideration that aids in the comprehension of the connection between the actual words of Inter Caetera and its implementation on behalf of colonizers is the context in which Inter Caetera was introduced to the Spanish crown by Pope Alexander VI. First of all, it is significant to note that the way in which papal bulls were understood at the end of the fifteenth century compared to preceding centuries lent itself to Alexander’s bulls having “greater hermeneutical weight” (27). This meant that Alexander’s bulls would have been taken with recognition of the Pope as a supreme power whose ruling had great bearing on political and juridical processes of the era. Not only did the bulls come at a time of great papal credibility and influence, but they also came at a time of significant conflict within the Spanish empire that ultimately ended in victories for the crown.

These national, religious victories came in the form of Catholic domination of the country through the military removal of Muslims from Granada as well as the expulsion of Jewish peoples, both occurring in 1492.<sup>8</sup> The newly crowned monarchy in an attempt to establish

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<sup>7</sup> Ibid

<sup>8</sup> Jewish Virtual Library, ‘Modern Jewish History: The Spanish Expulsion (1492)’, Jewish Virtual Library: A Project of Aige [website] <https://www.jewishvirtuallibrary.org/the-spanish-expulsion-1492> (accessed 26 May 2020)

Catholicism as the national religion and “unite” the country persecuted and expelled all non-Catholic peoples, specifically Jewish and Muslim citizens, from the country.<sup>9</sup> Alexander VI clearly underscores the significance of the ejection of the Muslim population from the country by explicitly endorsing its success as well as using it as an example for what the Spanish people ought do to spread Christianity. The year prior to the implementation of Inter Caetera included a complete restoration of Spanish Catholic rule over the nation as well as the discovery of the new world of Christopher Columbus. These events, no doubt, had a significant influence on the interpretation of the powers granted through Inter Caetera as they were given to an already flourishing nationalist, religious state that would then be likely to try to prolong its prosperity.

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<sup>9</sup> Ibid.

### **III. Interpretation of Inter Caetera**

Using the understanding of the actual provisions of the papal bulls issued by Alexander VI as a foundation, it is now important to examine how Inter Caetera was interpreted after its implementation. This analysis also takes into consideration the aforementioned context of the document's proclamation as Spain was in an era of conquest and expansion, a process only exacerbated by an endorsement from the Catholic Church. Spain, after Columbus' discoveries, "wasted no time" in seeking papal support and legitimization that then came in the form of Inter Caetera.<sup>10</sup> The colonialism that arose from Inter Caetera was merely an extension of the nationalism of the time period. These sorts of religious and governmental engagements were not only significant for Catholicism but in many instances these joint efforts informed, or even became, international law. Because of these implications it is important to understand the sort of precedent that the interpretations of the doctrine set for future international actions concerning new lands and indigenous groups.

At the time of implementation Pope Alexander was operating under an assumption of "universal papal jurisdiction" which would have technically permitted his granting of lands that were not under his direct jurisdiction. Universal papal jurisdiction extended the power of the Pope to do this. However, it is also important to note that this universal papal jurisdiction was not without restriction. There was an inner conflict built into Alexander's decree in that Inter Caetera presupposed universal papal jurisdiction even though before this, in the fifteenth century, Catholic moral principles were expressed that upheld the rights of non-Christian peoples over against the more extreme claims of such jurisdiction. In 1414, the Council of Constance

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<sup>10</sup> 89 NEb. L. Rev. 819, \*832, p.10

established certain moral ideals, one of these being that non-Christian people could not have their land taken from them and that they had rights that were not to be violated by the Church. This inner conflict set the stage for debate surrounding the validity of the claimed jurisdiction and authority of *Inter Caetera* that would be realized later on, especially in the arguments explicated by Francisco Vitoria in the 16th century who emphasized this discrepancy.

In 1493 after the doctrine's implementation, Columbus quickly began not only Spanish colonization of the islands of Hispaniola but also commercial activities on the island leading to a system of forced labor that killed thousands of indigenous people.<sup>11</sup> The Crown denounced this behavior and removed Columbus from his post and installed Nicolas de Ovando as the new governor. They also ordered the creation of a system of labor using the natives to mine gold and “carry out the other works which we have ordered.”<sup>12</sup> This fact is not only significant in the examination of the ways in which colonialism harmed indigenous people but it is also important in terms of the interpretation of *Inter Caetera*. The Spanish Crown, almost immediately, by implementing systems for commercial gain exemplified the ways in which their interpretation of the papal bull began to sway from the original words of the document. *Inter Caetera* restricted the discoveries being used for economic gain when it said “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 or mainlands.”<sup>13</sup> Despite this, as was discussed, commercialization was a clear motive for further colonization of the new world. The Spanish “encomienda” or forced labor system coupled with the very minimal number of priests

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<sup>11</sup> Ibid p.12

<sup>12</sup> Ibid

<sup>13</sup> Pope Alexander VI, ‘*Inter Caetera*’, 1493 [website] <https://www.papalencyclicals.net/alex06/alex06inter.htm> (accessed 26 May 2020)

who actually travelled to the new world showed dubious execution on the part of Spain of the powers granted to the nation. <sup>14</sup>

This is not to say though that it is only the “flawed interpretation” of the bull that is the problem with the bull’s implementation because the language of Inter Caetera in itself had a significant role in itself in legitimizing the rampant colonialism of the era. After the Catholic monarchs sent Columbus to discover and acquire the new lands, they “took the initiative and went to see the Holy See to convince the pope to back their titles of ownership...they got more than what they asked for...”<sup>15</sup> From this, they received Inter Caetera which gave the Spanish the authority to “expropriate those lands found by Spanish navigators.”<sup>16</sup>The missionary charge in Alexander VI’s bulls carried a “donation in perpetuity” of discovered and to be discovered lands to the Spanish monarchy. <sup>17</sup> This missionary task implies political hegemony as it came out of a transaction between the Pope and the Monarchy without the knowledge and will of the native peoples of the lands involved in the grant. <sup>18</sup> The document came to a fruition in a context of nationalism and of disputed papal authority surrounding non-Christian peoples that ultimately built the foundation upon which colonialism grew.

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<sup>14</sup> 89 NEb. L. Rev. 819, \*832. p.12

<sup>15</sup> Rivera, Luis N. *A Violent Evangelism*. (Louisville, Kentucky: Westminster/ John Knox Press, 1990)p.12

<sup>16</sup> Ibid

<sup>17</sup> Ibid p.29

<sup>18</sup> Ibid

#### IV. Conquest

The colonization that followed the implementation of Inter Caetera had devastating consequences for the native people of the Americas as the Catholic Church supported colonial powers' means of evangelization. The Spanish Crown, first through Columbus then through every appointee that followed, commissioned conquest using papal decree and evangelizations as justification for their treatment of indigenous people. Because of the nationalist tone of the era in which this took place, this evangelical mission was completely clouded by dreams of expanding the Spanish empire as well as advancing commercial opportunities to bolster the already robust nation. The instrumental usage of the native people of the Americas was the means through which Spain would achieve these goals and their acts would be permitted by the Catholic Church through its complicity and inaction of enforcement of the Catholic ideals that conquest went against.

The conquest of the Americas, spearheaded by Spain between 1492 and 1600, led to the deaths of approximately 56 million people.<sup>19</sup> These deaths came from a plethora of new diseases introduced to the newly discovered lands including smallpox, measles, and influenza, while the rest come from warfare, famine, and other atrocities committed during the time period.<sup>20</sup> The key institution of Spanish enslavement of indigenous peoples, the *encomienda*, created a labor system that treated natives as a mere means to the material and economic benefit of Spaniards.<sup>21</sup> These methods of conquest and enslavement became subjects of great debate for political and theological minds of Spain as it did receive a substantial amount of criticism. These criticisms mostly cited previous sacred doctrine that established the rights of indigenous people everywhere

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<sup>19</sup> Cook, N. D. (1998). *Born to die: disease and New World conquest, 1492-1650* (Vol. 1). Cambridge University Press.

<sup>20</sup> *Ibid*

<sup>21</sup> Rivera, Luis N. *A Violent Evangelism*. (Louisville, Kentucky: Westminster/ John Knox Press, 1990).p.114

and emphasized how the *encomienda* was in direct violation of these principles. However, this immediate commercialization of the new land was consistently supported by the Crown despite the conflict between conquistadors and the moral status of the persons whom they were mistreating. In 1542, 39 years after the Crown sanctioned the apportioning of indigenous peoples, meaning that they could be utilized by colonizers for slave labor, a new law was implemented to stop this harmful practice of commercialization and abuse.<sup>22</sup> But after some resistance from colonizers, only three years later, this law was revoked and slavery was reinstated.<sup>23</sup>

The Catholic Church, specifically through papal decrees, had a deep involvement in the unfolding of the systematic mistreatment of indigenous peoples in the new world. Spain, “in its dual role as state and church” gave salvation of souls as the initial legal and theological justification for the armed domination of the new world.<sup>24</sup> The church’s influence at the time was intertwined with that of the Spanish state and so there was always a direct link between the two, meaning that they were not mutually independent and each institutions’ decisions were informed by the others’. Taking this into consideration, it is important to examine the ways in which the church and state were continually involved in the process of domination. One of the clearest interventions was in the form of the *requerimiento* which established a new stipulation to the evangelization of the indigenous people. The *requerimiento* essentially used the threat of slavery against those people who did not accept Spanish sovereignty and the Christian faith and therefore were in opposition to the Spanish nation.<sup>25</sup> The 1504 document that instated the *requerimiento* established a direct link between the papal donation of land and the requirement of obedience

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<sup>22</sup> Ibid p.126

<sup>23</sup> Ibid

<sup>24</sup> Ibid p.24

<sup>25</sup> Ibid p.104

and the Spanish right to war and enslavement of native people.<sup>26</sup> The *requerimiento* basically opened the door to the enslavement of any indigenous person who in any way was deemed to “battle the Spanish, who refuse to accept Castilian sovereignty and Christian faith”.<sup>27</sup> This decree only exacerbated the violence used in domination as it gave colonizers a justification for violence that they then took advantage of in that they abused this stipulation by claiming that any instance of opposition fell under this provision and so nearly all violence was justified and validated by the church and state. Dominican theologian Bartolomé de Las Casas, vehement opposer of *Inter Caetera* in the decades following its creation, points out this fallacious category mistake committed by colonizers when he asks how people who are not subjects to the state can be rebels to it. Las Casas challenges the idea of an assumed dominion over non-Christian peoples based on other Catholic teachings asserting the freedoms of non-Christian peoples and therefore does not think that they ought to be labelled “rebels” because these peoples were never under legitimate Spanish rule. Because *Inter Caetera* gave, granted, and assigned the free power, authority, and jurisdiction of every kind over these new lands to Spain, it was only the next logical step for the Spanish Crown to claim the inhabitants of the land as subjects to the Crown in order to justify their maltreatment.

The *requerimiento* was an instance of further religious state involvement that approved the conquest of the Americas and gave colonizers fodder to further construct ways to persecute native people. The time of disagreement between theologians and conquistadors, in which the *requerimiento* arose, was conducive to state and/or church intervention for positive change and would have been a time to stop violence and reiterate the rights of indigenous peoples. However rather than take a stance that would be internally consistent with Catholic ideals, the intervention

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<sup>26</sup> Ibid

<sup>27</sup> Ibid

only failed and continued to give colonizers more dominion over a land that was not theirs and a group of people who were not their subjects.

## V. Contemporary Legal Uses

One of the main reasons in favor of revocation is the fact that Inter Caetera's effect is not isolated to the period of rampant colonialism. In fact, the bull has been invoked in contemporary legal battles and disputes in the modern age around the globe. Many of these instances involve not just citation of the document but dependence on the papal bull in substantial cases that established sophisticated and modern grounds for the violation of the rights of indigenous peoples. Inter Caetera informed much of the internal interactions surrounding land and property for centuries involving colonialism. The role of Inter Caetera is not specific to just Spanish-Portuguese colonial tradition, as years after colonization these newer nations invoked these same ideals in their legal practices, taking what was once custom and legitimizing it through case law. This process of further legitimization of Inter Caetera became especially noteworthy in Anglo-American law in the form of the early 19th century United States Supreme Court case known as *Johnson v. M'Intosh*, which opened the door for other nations to continue utilizing the bull and its ideals as it became known as the "doctrine of discovery". This transition from sacred document to international case law did not happen overnight as international law typically is established through years of alternating practices and evolving norms that finally become legitimized as a matter of custom or law.<sup>28</sup>

*Johnson v. M'Intosh*, a case typically taught to law students first learning about property, invokes Inter Caetera explicitly, making it more widely known as the "doctrine of discovery" and used it to justify the violation of the land rights of a Native American tribe. The case set the course for the presumptions of American Indian law for the last centuries. *Johnson v M'Intosh* involved a dispute over the land of the Piankeshaw Native American tribe which spanned 43,000

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<sup>28</sup> Anaya, S. James. "Indigenous Rights Norms in Contemporary International Law." *Arizona Journal of International and Comparative Law*, vol. 8, no. 2, 1991, p. 1-40. HeinOnline. p.3

square miles of rural land in Indiana and Illinois.<sup>29</sup> Johnson purchased this land directly from this tribe and passed on title to the land to his descendants whereas M'Intosh received a land grant from the federal government for the supposed same land. In 1823, the Court ruled in favor of M'Intosh, with John Marshall citing the doctrine of discovery and colonization in multiple instances in his argument. Marshall made the claim:

“their [The Piankashaw’s] rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it.”<sup>30</sup>

Here Marshall disregards the sovereignty of Native American tribes using the doctrine of discovery, not just as influence for his decision, but as a legal precedent -- a precedent surely drawing on assumptions set forth in Inter Caetera. *Johnson v M'Intosh* claimed that any sort of title to land or grant to private individuals that was made by an Indian tribe or nation could not be recognized in the United States Supreme Court.<sup>31</sup> Marshall discussed the European nations who had granted the right of dominion and appropriation over lands to their discoverers and for that reason the exclusive right of the United States to “extinguish their title and to grant the soil has never... been doubted.”<sup>32</sup>

The ruling of the court mimicked Inter Caetera not only in the assertion of absolute land rights to the discoverer but in its assumption of the lower moral and human status of indigenous peoples. Marshall, in his decision, said that the “Indians” inhabiting the country were “fierce

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<sup>29</sup>Heath, Joseph J. *Statement on the Historic Use of the Doctrine of Christian Discovery by the United States Supreme Court Since 1823*. Syracuse, NY. May 2014. p.14

<sup>30</sup> *Johnson v M'Intosh* 21 U.S. 543 (more) 8 Wheat. 543; 5 L. Ed. 681; 1823 U.S. LEXIS 293

<sup>31</sup> *Ibid* p.562

<sup>32</sup> *Ibid* p.586

savages, whose occupation was war,” and that leaving the possession of their lands to them would be to leave “the country a wilderness.”<sup>33</sup> This lower status ascribed to the Native people of the United States invoked *Inter Caetera* directly in asserting that the right of discovery granted by discovery was “confined to countries “then unknown to all Christian people,” and undermining the occupancy of the natives “who were heathens”.<sup>34</sup> The Marshall Court legitimized the Catholic document in a landmark case that would set the precedent for American Indian property law. In essence, the foundation of property law in the United States is based on problematic ideals set forth by a document whose use and implementation was fueled by nationalistic fervor.

*Inter Caetera*, especially through the *Johnson* ruling, has not only contributed to the diminishment of native rights in the United States, but has also influenced the definition and treatment of indigenous land rights in Australia, Canada, and New Zealand.<sup>35</sup> Australia, Canada, and New Zealand all showed numerous instances of citing either the doctrine of discovery explicitly or a version of it labelled as “the American” doctrine of discovery. This shows that the *Johnson* case was notable in its legal legitimization of the Catholic document in a more modern context. The United States invoking it made it acceptable for other nations founded on colonialism to cite the document’s ideals for their own purposes of holding down indigenous groups.

The most notable uses of the doctrine in Australian jurisprudence occurred only 13 years after the *Johnson* case and similarly involved a group of land buyers attempting to purchase land through a direct transaction with a group of Native peoples.<sup>36</sup> John Batman’s land purchase was

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<sup>33</sup>Ibid p. 590

<sup>34</sup>Ibid

<sup>35</sup> Watson, Blake A., *The Impact of the American Doctrine of Discovery on Native Land Rights in Australia, Canada, and New Zealand* (April 1, 2011). Seattle University Law Review, Vol. 34, No. 2, p. 507, 2011. Available at SSRN: <https://ssrn.com/abstract=1815332>, p.508

<sup>36</sup> Ibid p.512

blocked by British officials based on the Australian accepted doctrine of *terra nullius*, “the most extreme form of the doctrine of discovery.”<sup>37</sup> *Terra Nullius* was more entrenched through the description of New South Wales as being “practically unoccupied” despite the abundance of aboriginal groups settled there.<sup>38</sup> The transaction was obstructed by government officials because it was a direct transaction between Native peoples and private citizens, which was unacceptable to the government. With the same logic as the Marshall court, members of the government involved with the *Batman* case proclaimed that any treaty, bargain, or contract with Aboriginal Natives “is void and of no effect against the rights of the Crown.”<sup>39</sup> The parties involved representing the state cited the *Johnson* decision as an endorsement of the decision to halt the land purchase. The Colonial Secretary Lord Glenelg reaffirmed the crown’s decision by stating that they should “consult very ill for the real welfare of that helpless and unfortunate Race by recognising in them any right to alienate to private adventurers the Land of the Colony.”<sup>40</sup> These are clear instances of *Inter Caetera*, especially when paired with the concept of *terra nullius*, seeping into the judicial branches of world powers, perpetuating problematic ideologies and legitimizing them as law.

While Australia emphasized *terra nullius* in their denunciation of the rights of native peoples other nations, like New Zealand, more closely applied the doctrine of discovery highlighted in *Johnson v. M’Intosh* with some slight variation. In New Zealand *The Queen v. Symonds* (1847) was the first instance of *Johnson* being cited outside of the United States and still granted it substantial weight as precedent.<sup>41</sup> This case involved an attempt by European

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<sup>37</sup> *Ibid*

<sup>38</sup> *Ibid* p.518

<sup>39</sup> *Ibid* p.514

<sup>40</sup> *Ibid* p.516

<sup>41</sup> *Ibid* p.518

settlers to purchase substantial portions of land directly from the Maori people; however this was stopped by the Crown. The government stated that Her Majesty would not acknowledge as valid any title to land that is not derived or confirmed by a grant through “Her Majesty’s name and on her behalf.”<sup>42</sup>The argument was that the Maori lacked the capacity and authority to dispose of their land. To this the representative of the Maori people, in the legal battle, claimed that such direct land transactions had occurred in the past and that that argument was null. However the New Zealand government cited “the celebrated case” of *Johnson v. M’Intosh* adding that the Maori did not have individual possession and that it was not independence but civilization that granted this right.<sup>43</sup> By saying this they were asserting that although the Maori people were an independent group of people, they were not “civilized” according to the standard set by colonizers and therefore did not merit actual legal possession of their own lands.

These instances of clear, sometimes explicit, intrusions of the document and its influences are evidence for the impact that revocation would have. *Inter Caetera*, since its implementation, has never been a solely sacred document. For centuries it has been a cornerstone in colonial power, serving as a justification for the appropriation of indigenous lands and lives. The document has served as both moral and legal support for conflicts between indigenous groups and more powerful, colonial nations. Revocation would remove a crutch that colonial nations have used to bolster their arguments for their own interests and be a crucial first step for levelling the playing field for indigenous peoples fighting for their own rights, especially their property rights.

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<sup>42</sup> Ibid .p.520

<sup>43</sup> Ibid p.522

## VI. Brazil

A nation whose history is rooted in Inter Caetera is Brazil. In the 15th century the Portuguese government was hard at work in expansion at the same time that Spain was, and also directly benefited from Alexander VI's papal bulls. In this process of expansion, Portugal laid claim to Brazil, but it was not until years later that they began to officially attempt to colonize and occupy the country.<sup>44</sup> The Portuguese were working under the requirements of ownership outlined by the doctrine in that they emphasized their right of "first discoverer" in order to stake their claim.<sup>45</sup> The papal bull of 1493 also emphasized the "actual and real possession" required by a Christian kingdom in order to assert dominion over a land and so the Portuguese also ensured that they would meet this papal requirement by sending over private merchants and traders to begin settling and creating outposts.<sup>46</sup> However when this was not enough to establish their control over the region, the Portuguese sent over a governor with 3000 Portuguese citizens to occupy the landmass of Brazil.<sup>47</sup>

The occupation and initial conquest of Brazil was obviously regulated by the requirements of dominion outlined by Inter Caetera. However, the practices of the 15th century whose repercussions are most felt today involved the leasing and distribution of land to private merchants and settlers. The power of preemption, or "the power to control all acquisitions of land from native peoples," was exercised by Portugal in parceling out Brazilian land to private merchants as well as in the licensing of the use of Brazil's natural resources.<sup>48</sup> Colonizers were prohibited from making any direct land purchases from indigenous tribes and even the use of

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<sup>44</sup> Robert J. Miller & Micheline D'Angelis, *Brazil, Indigenous Peoples, and the International Law of Discovery*, 37 *Brook. J. Int'l L.* (2011), p.40

<sup>45</sup> *Ibid.* p.43

<sup>46</sup> *Ibid.* p.47

<sup>47</sup> *Ibid.* p.51

<sup>48</sup> *Ibid.* p.57

these lands was not to occur without authorization from the crown as all physical land and assets in Brazil were solely property of the Crown and could only be distributed by royal authorities.<sup>49</sup> This governmental mediation through preemption was the norm for post-conquest Brazil and the lands of its indigenous people; even after Brazilian independence from the Portuguese crown, it did not change.

We can see the consequences of this prevailing logic playing out in current day Brazil in the bloody, frequent battles over land throughout the amazon. Pope Francis spoke to this logic of justification in a speech he gave in January 2018 in Peru when he said that “the native Amazonian peoples have probably never been so threatened on their own lands as they are at present.”<sup>50</sup> Most currently we see the influences of the doctrine of discovery in the ways in which the rights of indigenous groups in Brazil, specifically in Amazonia, have been neglected for governmental gain. The clearest example of this has been in Brazil’s demarcation process that includes the designation of lands as belonging to indigenous peoples as distinct from belonging to the federal government. In Brazil, this process, under the guise of aiding indigenous groups, has actually yielded problematic results. In May of 2020 Brazil opened up 38,000 soiree miles of indigenous land making it easier for invaders like ranchers, loggers, and soy growers to claim title to the property and exploit the land.<sup>51</sup> This land needed to be recognized as indigenous, as per Brazil’s 1988 constitution. However, Bolsonaro’s government has delayed this process of demarcation leaving thousands of indigenous people in demarcated lands in danger for their land

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<sup>49</sup> Ibid. p.58

<sup>50</sup> “The Synod on the Pan-Amazon Region.” *The Synod on the Pan-Amazon Region*, [www.sinodoamazonico.va/content/sinodoamazonico/en/synod-for-the-amazon/synod-for-the-amazon.html](http://www.sinodoamazonico.va/content/sinodoamazonico/en/synod-for-the-amazon/synod-for-the-amazon.html) (Accessed 4 June 2020)

<sup>51</sup> Scherer, Glenn. “Brazil Opens 38,000 Square Miles of Indigenous Lands to Outsiders.” *Mongabay Environmental News*, 8 May 2020, [news.mongabay.com/2020/05/brazil-opens-38000-square-miles-of-indigenous-lands-to-outsiders/](https://news.mongabay.com/2020/05/brazil-opens-38000-square-miles-of-indigenous-lands-to-outsiders/). (Accessed 4 June 2020)

and lives.<sup>52</sup> In order to do this, new policy has been set in motion that will allow claims for certificates of land ownership to be issued even if the area is “in the process of being recognized as indigenous.”<sup>53</sup> In the same way that US case law was influenced by the inherited rights of conquest, Brazilian governmental action expresses the principles established by the doctrine’s use.

The doctrine of discovery, as practiced in international law, made it so that at the moment of European arrival the property rights of indigenous peoples were immediately stripped away, with the discoverer gaining preemption.<sup>54</sup> This diminishment of indigenous property rights in tandem with the concept that land transactions could not happen directly between indigenous groups and private citizens without governmental authorization set the foundation for a modern day Brazil that disregards the land rights of its indigenous population. Indigenous Brazilians today are limited in selling or leasing their lands as the Brazilian government plays a significant role in those transactions.<sup>55</sup> The preparatory document for the Catholic Church's 2019 Amazon synod acknowledges the colonial roots of the modern day Brazilian indigenous land battles in saying that “traces still exist of the colonizing project, which gave rise to attitudes that belittle and demonize indigenous cultures.”<sup>56</sup> These anti-indigenous attitudes weaken indigenous social structures and allow for their knowledge and means of expression to be stripped away and drastically damage their harmonious relationship with their land and with the environment.

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<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Robert J. Miller & Micheline D'Angelis, Brazil, Indigenous Peoples, and the International Law of Discovery, 37 *Brook. J. Int'l L.* (2011) p.60

<sup>55</sup> Ibid p.59

<sup>56</sup>“Preparatory Document for the Synod for the Amazon.” *Preparatory Document for the Synod for the Amazon*, [www.sinodoamazonico.va/content/sinodoamazonico/en/documents/preparatory-document-for-the-synod-for-the-amazon.html](http://www.sinodoamazonico.va/content/sinodoamazonico/en/documents/preparatory-document-for-the-synod-for-the-amazon.html). (Accessed 4 June 2020)

## **VII. Argument From Legal Precedent**

Inter Caetera set the foundation for global colonization, primarily for the Spanish and Portuguese, by granting dominion and power over “undiscovered lands” to Christian nations. It also provided a stipulation that lands that were not possessed by any Christian king in the traditional European sense, were free to be colonized, or discovered, and that the discoverer could then lay claim to that land’s title. This bull did not formally enter into Spanish or Portuguese law in an explicit way through ratification or any sort of juridical process. However, due to the Church’s heavy influence on, and almost partnership with, the Spanish crown it was binding on the Spanish and Portuguese as religious law that regulated their actions. Inter Caetera informed and justified European conquest abroad by establishing a hierarchy, placing Catholic nations at the top and natives of lands that were undiscovered by Europeans at the bottom. The ways in which Inter Caetera established this colonial environment of conquest created a dangerous precedent by allowing developed Christian nations to exploit and abuse indigenous peoples who were original owners of the lands discovered by these European nations. The doctrine of discovery, by granting total dominion and land rights to the discoverer, necessarily disregarded and stripped away any rights indigenous people had to their land.

The destructive events of conquest and colonization that were justified using the tenets of the doctrine of discovery started the process of turning these ideals into international practices. 15th century international exploits were typically not governed by any form of explicit international law and so the ways in which international interactions and enterprises were governed were primarily by customary law and practice. Inter Caetera heavily informed the practices of colonization, so much so that it was the standard to which European nations were held in order to prove their possession of a land. This is clear in Portugal’s conquest over Brazil

as they struggled to legitimize their reign over the newly discovered nation and it was not until they had truly begun occupation and usage of the territory as outlined by the doctrine that they were able to legitimately have a claim to Brazil, in the eyes of the other European super powers.<sup>57</sup> This is an example of how the doctrine established what land ownership and domination entailed and gave powerful nations a guideline on what conquest meant.

*Johnson v M'Intosh* and the subsequent cases that followed created a culture of oppression informed by the introduction of the ideals set forth by Inter Caetera. These colonialist misconceptions of land rights and the status of indigenous peoples found their way into formalized legal systems worldwide. These injustices that are based on flawed Catholic doctrine ought not be included and further legitimized in formal legal practice that perpetuates the oppression of indigenous people everywhere and continues to undermine their fundamental legal protections as citizens and as humans.

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<sup>57</sup> Robert J. Miller & Micheline D'Angelis, *Brazil, Indigenous Peoples, and the International Law of Discovery*, 37 *Brook. J. Int'l L.* (2011) p. 59

## **VIII. Argument From Human Rights**

In calling for revocation of Inter Caetera one of the most important perspectives to take, especially in dealing with its repercussions through multiple centuries, is the human rights perspective. In recent years human rights have come to the forefront of humanitarian discourse especially after various worldwide organizations have formally established what ought to be considered comprehensive lists of universal human rights. The promulgation of these declarations was not the complete solution to worldwide humanitarian issues they hoped to address; however, they still hold extraordinary value. This value comes in being utilized as a standard by which to evaluate the interpersonal and inter-institutional interactions of the world. By using metrics, like the UN Declaration of Human Rights, to evaluate actions we can then inform our intuitions that tell us that certain acts are atrocities or, as commonly referred, human rights violations. By considering contemporary human rights standards the grounds for the revocation of Inter Caetera become more apparent. Moreover, we see that these grounds can be derived not just from insights gleaned from contemporary human rights standards but also from the fact that these contemporary standards point toward norms within the Catholic tradition that had been articulated, if incompletely, at the time of Inter Caetera. These sorts of declarations did not arise out of the observation of virtuous acts between humans, but instead were drafted as responses to never before seen atrocities and crimes against humanity. The United Nations, and subsequently the Declaration, were established after the Second World War, where the world encountered truly evil acts that they could otherwise have not imagined. The UN and the Declaration of Human Rights were created in order to prevent further damage to humanity and to

establish a comprehensive list of inalienable, universal human rights that ought always to be respected.<sup>58</sup>

In subsequent decades the concept of human rights has been expanded upon and because of violations pertaining specifically to groups of indigenous peoples, the United Nations opted to extend their conception of human rights and declare a separate list of human rights specific to indigenous people, calling it the United Nations Declaration of the Rights of Indigenous Peoples. This document, accepted into UN jurisdiction in late 2007, became a cornerstone of human rights arguments in support of the unalienable rights of indigenous groups worldwide who had faced violations against them.<sup>59</sup> At the beginning of the document, the UN general assembly takes the time to affirm that indigenous peoples are equal to all other peoples and builds upon that. In order to justify this specific declaration, the assembly expresses concern that indigenous peoples have suffered from “historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories, and resources,” which has in turn prevented them from fully developing their rights catered specifically to their own needs and interests.<sup>60</sup> This document, although without substantial bodies of enforcement, attempts to formally place indigenous peoples into the greater sphere of international law and that these rights be upheld on a global scale in order to protect indigenous groups and prevent further injustices towards these groups.<sup>61</sup>

The United Nations Declaration of Human Rights of Indigenous Peoples(UNDRIP) is comprised of 46 different articles that outline and explain the rights deemed essential to

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<sup>58</sup> “History of the Document.” *United Nations*, United Nations, [www.un.org/en/sections/universal-declaration/history-document/index.html](http://www.un.org/en/sections/universal-declaration/history-document/index.html). (Accessed 4 June 2020)

<sup>59</sup> United Nations Declaration on the RIGHTS of Indigenous Peoples. *United Nations Permanent Forum on Indigenous Issues*. 2007. (A/RES/61/295)

<sup>60</sup> Ibid

<sup>61</sup> Ibid

indigenous peoples that ought to never be violated and should always be upheld. Although the influences of Inter Caetera run deep through all of society's interpretations of the needs and rights of indigenous people, there are a few specific articles that are of great significance to the matter of the repercussions felt by indigenous peoples set forth by the doctrine of discovery and aid in bolstering the argument for its revocation. The chosen articles are of vital importance because they are the rights directly violated not only by Inter Caetera originally but also by the subsequent actions taken by various nations in their acts of suppression of indigenous peoples.

The first article promulgated by the UNDRIP that has been violated by various international actions including those of Brazil, the US, Australia, New Zealand, and many more, is Article 10. Article 10 reads as follows:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 10 emphasizes the informed consent of indigenous groups in the ways in which their lands and territories, and by default *resources*, are used. This typically involves both private interactions as well as those transactions with their respective federal governments. In the previously analyzed international cases of federal governments attempting to regulate land usage, most instances involved the government attempting to prevent transactions between private citizens and indigenous groups. This concept of federal dominion over lands occupied and owned by indigenous groups comes directly from the original document of Inter Caetera and has only been exacerbated and reaffirmed in the actions and declarations of many nations worldwide.

Another article heavily tied to the influences of Inter Caetera that emphasizes land rights as well as rightful ownership of resources on behalf of indigenous groups is article 25, which reads:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Remnants of article 25 can be found in Pope Francis' preparatory document for the Amazon synod as well as in his speeches on the importance of environmental justice and justice for the guardians of the environment. This article is simply a reaffirmation of the ownership and right to titleship of lands to indigenous peoples. It is expanded upon with Article 26 that directly asserts the right of proper, and legal, land ownership to indigenous groups and even calls for their preservation. It is important to view these articles in tandem as well as understand all of the articles in the greater context of UNDRIP and its purposes. Article 26 makes various affirmations of the way land ownership ought to work for indigenous peoples in saying:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 26 adds much needed emphasis to the rights of indigenous people concerning their lands, territories and resources and attempts to grant true dominion to the indigenous groups and give them the control over the lands that they should have. Violations of this article have been

rampant, with multiple examples seen in the previous sections, and have been taking place since Inter Caetera's implementation.

The human rights perspective is an important one to take into consideration in arguing for the revocation of the doctrine of discovery because it shows how the world has clearly acknowledged the rights that ought to be allotted to indigenous groups worldwide and that should not be violated.

## IX. Theological Implications of Revocation

One of the goals of the Amazon Synod that occurred recently was to uplift the voices of indigenous groups in the region and learn from them as to how the Church could best serve and protect God's children in the Amazon. Coming out of the Synod, the Catholic Church recognized the "injustice and crime" that is the failure to uphold the land rights of indigenous peoples.<sup>62</sup> The Church, in language similar to the human rights documents concerning indigenous peoples, emphasized that failure to respect their rights to their land, its boundaries, and to self determination and prior consent is unacceptable and expressed the sentiment that the Church "cannot allow globalization to become 'a new version of colonialism'".<sup>63</sup> The post-synodal document expresses the Church's concern for the indigenous groups of the Amazon and discusses their ecological, social, cultural, and ecclesial "dreams" for these people.<sup>64</sup> This concern and awareness of the issues is refreshing. However, it is not enough to truly change the tide of oppression and affirm the voices of the indigenous communities worldwide. In this effort, the Church has set forth its vision for justice for the indigenous in striking and powerful terms. But I believe even the bold steps coming from the Synod on the Amazon do not negate the importance of revoking *Inter Caetera* and in fact only emphasize the importance of revocation in order to bring justice to indigenous peoples.

Revocation would be meaningful theologically as well as it would show the growth of the Catholic Church as well as be an example of remaining true to the Church's fundamental values and ensuring its actions are reflective of them. The call for revocation is not a new or secular

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<sup>62</sup> *Post-Synodal Apostolic Exhortation of the Holy Father Francis, "Querida Amazonia"*, Holy See Press Office, 2 Feb. 2020, [press.vatican.va/content/salastampa/en/bollettino/pubblico/2020/02/12/200212c.html](https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2020/02/12/200212c.html). (Accessed 4 June 2020) p.10

<sup>63</sup> *Ibid.* p.11

<sup>64</sup> *Ibid.* p.5

request. The petition against the doctrine is rooted in Catholic tradition and beliefs that all people are deserving of human dignity and respect. Since its creation the document has faced much scrutiny from Catholic theologians, one of whom expressed the document's flawed placement into Catholic doctrine immediately and vehemently.

Bartolome Las Casas was a Spaniard who was a member of the Catholic Church serving as a priest and bishop and was among the first Europeans to expose the oppressive nature of colonization on indigenous peoples.<sup>65</sup> Las Casas, as a Spanish theologian used Church doctrine and precedent in his arguments against the original papal bulls; recalling previous assertions of indigenous rights made by the church, Las Casas saw *Inter Caetera* as the “entrusting of a missionary responsibility with an implied political sovereignty that has to be balanced by the right of the Indians to self-determination”<sup>66</sup> This responsibility was obviously misconstrued, clearly seen through the devastating effects of colonialism on the lives and cultures of indigenous groups. Arguments against *Inter Caetera* were widely and passionately made, but what makes Las Casas a striking example is not just his passion but more importantly his assertion that the document went against what Catholicism stood for. Las Casas expressed three lines of thought: one on the *requerimiento* system, one on the insincerity of the colonial response to Spanish laws requiring the protection of indigenous groups, and an acknowledgment that the sovereignty of the Spanish crown was widely disavowed in practice by colonizers. He saw the *requerimiento*, which allowed for the enslaving of and waging war against indigenous peoples in the new world, as unjust, irrational and absurd and claimed that “it made a mockery of truth and justice and [is] a great insult to our Christian faith and to the piety and charity of Jesus Christ...”<sup>67</sup> Las

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<sup>65</sup> Dussel, Enrique. “Bartolomé De Las Casas.” *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 5 Sept. 2019, [www.britannica.com/biography/Bartolome-de-Las-Casas](http://www.britannica.com/biography/Bartolome-de-Las-Casas). (Accessed 4 June 2020)

<sup>66</sup> Rivera, Luis N. *A Violent Evangelism*. (Louisville, Kentucky: Westminster/ John Knox Press, 1990). p.32

<sup>67</sup> *Ibid.* p.37

Casas up to his last days denounced the doctrine of discovery and advocated against it based on its conflict with Catholic ideals. He cites the doctrine as being a corrupting force for royal officials who made their way to the New World to enforce the Spanish laws and continue to oppress the native peoples.<sup>68</sup> Something important that is noted in Las Casas' later works occurs after the Spanish Crown attempts to implement laws to "protect" indigenous peoples. He rightly points out that those in charge in the new world did not comply with those laws as they did not want to "abandon the usurped haciendas they have, or grant freedom to the indians they hold in perpetual captivity," and that "they kill them little by little with personal services and other unjust and intolerable demands."<sup>69</sup> Las Casas then writes: "and up to now the king is not powerful enough to stop it."<sup>70</sup> What is so important in this quotation is the idea that the Spanish Crown could not reverse what had been set in motion by the doctrine of discovery. The colonizers of the new world were ingrained in their beliefs about their total dominion as discoverers and the dehumanization of indigenous people set forth with Inter Caetera was so much so that not even new laws could stop their oppression.

The Church was more than just an influence on the Crown at this point in history and served a very important role in the political actions of the era. This role is what led to the legitimization and use of Inter Caetera as international practice and then law. The Church's authority, manifest through the bull, legitimized the taking of land and therefore it is the Church's authority now that should be used to delegitimize it. Attempts at secular law to reaffirm rights of Indigenous groups did nothing as noted by Las Casas, and although we have come a

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<sup>68</sup> Ibid. p.205

<sup>69</sup> Ibid. p.203

<sup>70</sup> Ibid

long way in 2020 much of our law and actions with indigenous groups is still rooted in the ideals established by the doctrine.

Revocation of the doctrine is not the Church going back on its word or changing its ideals. It is moreso a validation of the Church's values and a reflection of deeper insight into Christian law. The doctrine of discovery did not coincide with many of the tenets of the church including the rights of non-Christian people to sovereignty and poverty affirmed at the Council of Constance in the 14th century and so revoking it would be reaffirming the Church's more fundamental values that *Inter Caetera* did not live up to. One might think of the analogy of the beliefs of a child as these matured into the mind of an adult; so, too, goes the development of the moral principles of Catholic Christianity.<sup>71</sup> True development "corroborates, not corrects, the body of the thought from which it proceeds."<sup>72</sup> Revocation of the doctrine of discovery is exactly that; it is a corroboration of the fundamental values of the Church and an affirmation of the human rights and dignity of indigenous people everywhere.

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<sup>71</sup> Noonan, John T. "Development in Moral Doctrine." *Theological Studies*, vol. 54, no. 4, Dec. 1993, pp. 662–677, doi:10.1177/004056399305400404. p.670

<sup>72</sup> *Ibid.*

## X. Conclusion

Inter Caetera is responsible for the tragic events of colonialism and the repercussions that followed for indigenous people for centuries. The doctrine of discovery created a dangerous legal precedent that seeped its way into international law, legitimizing the abuses of the land rights of indigenous groups everywhere. Analyzing the doctrine from both an ethical and theological perspective, the best solution to produce justice is revocation. Papal bulls are not infallible statements of doctrine and so can be revoked by the Church. This revocation would not be a contradiction of the church's values but instead an affirmation of the fundamental beliefs of the Church reflective of moral development. The Catholic Church has expressed time and time again their concern for the treatment of indigenous groups and after the Amazon Synod described their "dream" for indigenous peoples. In order to step toward actual justice for these groups and to achieve this dream of peace and humanity for indigenous people, revocation of the doctrine that began their mistreatment is necessary.

One of the main reasons for revocation is the document's role in the establishment of international law and custom that oppressed indigenous groups for centuries. This sacred declaration not only informed the initial conquest of the new world but in doing so created a hierarchy with Europeans at the top and indigenous people at the bottom, necessarily granting political hegemony to the conquerors. This relationship of conqueror and the group being conquered did not cease after colonization; it instead just continued to become legitimized. This legitimization came from international case law like *Johnson v M'Intosh* and many more such instances that used the spirit and principles of Inter Caetera to justify their discrimination against indigenous people. The role of the doctrine of discovery in the establishment of this dangerous hierarchical precedent is undeniable, and further inaction on behalf of the Church not only

perpetuates these ideals but reflects a complacency for the injustices committed in the name of the doctrine. Due to its catastrophic legal consequences, revocation is necessary. This is not to say that what necessarily follows from revocation is a dishevelment of all policies or cases that have invoked the doctrine or its ideals in some way. Instead, revocation will lead to a questioning of what values our institutions are built on, and will be a substantial step into bringing awareness and change for justice for all indigenous people.

The influences of the doctrine of discovery on land and property laws have clearly been shown through the analysis of its emergence in legal doctrine and practice beginning with *Johnson v M'Intosh* in the United States, making its way through the legal proceedings of other developed nations. Due to its legal ramifications and legitimization of ideals that suppress the development of indigenous groups and because of its role in establishing the foundation for these oppressive institutions, the best recourse is to revoke the doctrine. The impact of removing the cornerstone of the property law imposed on indigenous people should lead to a reconfiguration of land rights and title that would no longer disregard the humanity and status of indigenous peoples everywhere. By revoking the doctrine of discovery, the Catholic Church would be taking the weight away from legal arguments, influenced by the document, that have been made in attempts to take advantage of the lands and resources of indigenous groups. *Inter Caetera* has been used as a justification for the encroachment on the rights and lands of indigenous people everywhere for centuries and so removing it would be a vital step in reaffirming the humanity and respect due to all human beings.

From an ethical perspective the doctrine's existence and role in the oppression and injustice against indigenous groups is morally wrong. Human rights have given us a standard or framework with which accountability can be achieved. The United Nations Declaration of

Human Rights and the UN Declaration of the Rights of Indigenous people did not come out of debates or high contestation. These rights were not created by these announcements; they were just agreed upon and made explicit. This is not to say that they only have bearing post their establishment. The Catholic Church appeals to much of the language used in these UN declarations and its values coincide with much of the doctrines and so using a humanitarian perspective can be useful in showing us where discrepancies lie. A prime example is how Inter Caetera fundamentally violates Article 10 of the UNDRIP, which holds that there be no forced removal of indigenous people without their informed consent. Inter Caetera is a flaw in the Church that does not belong among the rest of Catholicism's teachings that express fundamental human worth and rights and revocation is a viable solution toward more ethical consistency.

Human rights serve as a framework through which we can express just why the doctrine of discovery and all of its products are problematic in nature and undermine the fundamental humanity of the all indigenous persons involved. The only way to truly begin to reaffirm the human rights of indigenous peoples and not undermine their authority is to focus on the root of the issue. All of the violations of the tenets of the UNDRIP are rooted in flawed misconceptions of the status of indigenous peoples and their rights which have been disregarded for centuries. The issues of land ownership can be tied back to Inter Caetera as many of the countries violating the land rights of indigenous groups have cited the document in defending their actions. The ideals and problematic beliefs about indigenous peoples set forth by Inter Caetera have contributed to these subsequent infractions against this group of people. Thus, in order to truly make a difference in affirming the rights of indigenous groups and in turn improving their status and treatment, the doctrine of discovery ought to be revoked because of its role in undermining those rights in the first place and setting a dangerous precedent for future violations.

Moral consistency and integrity lead into the third argument concerning theological consistency within the Catholic Church. The identity of the Church lies in its fundamental assertions of Christ's love for all of his creations and our intrinsic worth as human beings. These values among many others have been cherished since the Church's establishment and so retaining this identity of love and equality is important. As has been shown, the Church affirmed the rights to life and property of indigenous people in the Council of Constance, which were not upheld with the establishment of Inter Caetera. Revocation is an act of integrity and self-consistency in that it would reaffirm the Church's commitment to its most fundamental beliefs and rid itself of a declaration that goes against what it stands for. Integrity can be seen as remaining steadfast to commitments and standing for something for a moral purpose, all of which are vital in retaining self-consistency and supporting the identity of the Church. Some might argue that the doctrine has been *de facto* revoked due to inattention and the Church's new projects concerning indigenous groups; however, this is not enough. Actions, not just words, directly concerned with Inter Caetera and its role in the oppression of indigenous people, are the only way for justice to be done. Apologies are important and serve the purpose of attempting to reverse a wrong, but the best way to even attempt to balance the scales of justice is to revoke the doctrine outright. *De facto* nullification will never be enough. Inaction does not work toward justice; accountability and responsibility do. The Church has recently been concerned with creating better conditions through achieving their dreams for indigenous people, but so long as the Inter Caetera is not revoked, the potential for a complete apology will never be fulfilled. The revocation of Inter Caetera would be a crucial step in correcting wrongs that led to centuries of suffering.