

The Doctrine of Discovery, Manifest Destiny, and Oregon

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North America was colonized under an international legal principle that is known today as the Doctrine of Discovery. When Europeans and Americans set out to explore and exploit new lands in the fifteenth through the twentieth centuries, they justified their governmental and property claims over these territories and over the indigenous inhabitants with the Discovery Doctrine. This legal principle was created and justified by religious and ethnocentric ideas of European and Christian superiority over the other cultures, religions, and races of the world. The Doctrine provided that newly arrived Europeans automatically acquired property rights in native lands and gained governmental, political, and commercial rights over the inhabitants without the knowledge or the consent of the indigenous people. When Euro-Americans planted their flags and religious symbols in these “newly discovered” lands they were not just thanking Providence for a safe voyage across the ocean. Instead, they were undertaking well-recognized legal procedures and rituals of Discovery designed to demonstrate their country's legal claim over the lands and peoples. Needless to say, indigenous peoples objected to the application of this international law to them, their governments, and their property rights.

Surprisingly, perhaps, the Doctrine is still international and American law today. In fact, Canadian, New Zealand, and Australian courts have struggled with questions regarding Discovery and native title to land just in recent decades, and the United States Supreme Court was faced in 2005 with a case that raised Discovery issues.¹ In addition, on August 2, 2007, Russia evoked the Doctrine of Discovery when it placed a titanium flag on the floor of the Arctic Ocean under the North Pole to claim the 10 billion tons of oil and gas estimated to be there.²

The English/American colonists and then the American state and federal governments all utilized the Doctrine of Discovery and its religious, cultural, and racial ideas of superiority over Native American peoples in staking legal claims to the lands and property rights of the indigenous people. The United States was ultimately able to enforce the Doctrine against the Indian Nations as Manifest Destiny led the U.S. across the continent and almost totally swept the Indian Nations from its path. Discovery is still

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¹ *City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197 (2005); *Delgamuukw v. British Columbia*, 3 S.C.R. 1010 [1997]; *Guerin v. The Queen*, 2 S.C.R. 335 [1984]; *Calder v. Attorney General*, S.C.R. 313 [1973]; *Mabo v. Queensland*, 107 A.L. R. 1 (1992) (Australian High Court); PATRICIA SEED, *CEREMONIES OF POSSESSION IN EUROPE'S CONQUEST OF THE NEW WORLD, 1492-1640* 9 & n.19, 69-73, 101-02 (1995).

² Robert J. Miller, *Finders Keepers in the Arctic?*, LOS ANGELES TIMES, Aug. 6, 2007, at A19.

the law today and it is still being used against American Indians and their governments.³

The legal and historical evidence proves that the expansion of the United States from its original thirteen colonies/states until 1855, when the Pacific Northwest was acquired, was rationalized on the basis of the Doctrine of Discovery. The American Founding Fathers were well aware of the Doctrine and had utilized it while they were part of the colonial system. It was only natural that they continued to use the Doctrine under the flag of the United States. From George Washington and Benjamin Franklin on, American leaders utilized this legal principle to justify claims of property rights and political dominance over the Indian Nations. Thomas Jefferson, in particular, demonstrated a working day-to-day knowledge of Discovery and used its principles against the Indian Nations within the original thirteen colonies, in the trans-Appalachia area, the Louisiana Territory, and the Pacific Northwest. In fact, Jefferson's dispatch of Lewis and Clark in 1803 was directly targeted at the mouth of the Columbia River in the Pacific Northwest to strengthen the United States' Discovery claim to that area. Meriwether Lewis and William Clark and their "Corps of Northwestern Discovery" complied with Jefferson's instructions and solidified the U.S. claim. The United States then argued with Russia, Spain, and England for four decades that it owned the Northwest under the principles of international law because of its first discovery of the Columbia River through Robert Gray in 1792, the first inland exploration and occupation of the area by Lewis and Clark in 1805-06, and then John Jacob Astor's construction of the first permanent settlement of Astoria in 1811.⁴

After the Lewis and Clark expedition, America's western history was dominated by an erratic but fairly constant advance of American interests and empire across the continent under the principles of the Doctrine of Discovery. This was not an accident but was instead the expressed goal of Presidents Jefferson, Madison, Monroe, John Quincy Adams, Polk, and a host of other American politicians and citizens. "Manifest Destiny" is the name that was ultimately used in 1845 to describe this predestined and divinely inspired expansion. I argue that Manifest Destiny was created by the rationales and justifications of the Doctrine of Discovery.⁵

Manifest Destiny is exemplified by three basic aspects that characterized the rhetoric of an American continental empire. These ideas had pervaded American political and cultural thinking long before they were given the name Manifest Destiny in 1845, and these aspects arose directly from the principles of the Doctrine of Discovery. Manifest Destiny first assumes that the United States has some unique moral virtues that other countries do not possess. Second, Manifest Destiny asserts that the United States has a mission to redeem the world by spreading republican government and the American way of life around the globe. Third, Manifest Destiny has a messianic dimension,

³ Robert J. Miller, *The Doctrine of Discovery in American Indian Law*, 42 IDAHO L. REV. 1, 21-75 (2006).

⁴ *Id.* at 21-103; ROBERT J. MILLER, *NATIVE AMERICA, DISCOVERED AND CONQUERED: THOMAS JEFFERSON, LEWIS & CLARK, AND MANIFEST DESTINY* 77-114 (2006).

⁵ MILLER, *NATIVE AMERICA*, at 115-62.

because it assumes America has a divinely ordained destiny to accomplish these tasks.⁶ This kind of thinking could only arise from an ethnocentric view that one's own culture, government, race, religion, and country are superior to all others. This same kind of thinking justified and motivated the development of the Doctrine of Discovery in the fifteenth century and then helped develop Manifest Destiny in the nineteenth century.

I have identified ten distinct elements of the Doctrine of Discovery.⁷ All of these elements became part of Manifest Destiny and were used to justify the United States acquisition of the Oregon country.

1. First discovery. The first European country to “discover” new lands unknown to other Europeans gained property and sovereign rights over the lands. First discovery alone, without a taking of physical possession, was often considered to create a claim of title to the newly found lands but it was usually considered to be only an incomplete title.

2. Actual occupancy and current possession. To turn a “first discovery” claim into complete title, a European country had to actually occupy and possess the newly found lands. This was usually done by building forts or settlements and leaving soldiers or settlers on the land. This physical possession had to be accomplished within a reasonable amount of time after the first discovery to create a complete title.

3. Preemption/European title. The discovering European country gained the power of preemption, that is, the sole right to buy the land from the native people. This is a valuable property right similar to an exclusive option on land. The government that held this Discovery power of preemption prevented or preempted any other European or American government or individual from buying land from the native owners.

4. Indian title. After first discovery, Indian Nations were considered by European and American legal systems to have lost the full property rights and ownership of their lands. They only retained rights to occupy and use their lands. Nevertheless, these rights could last forever if the native people never consented to sell. But if they did choose to sell, they could only sell to the government that held the power of preemption over their lands. Thus, “Indian title” was, and is today, a limited ownership right.

5. Tribal limited sovereign and commercial rights. After first discovery, Indian Nations and native peoples were also considered to have lost some of their inherent sovereign

⁶ WILLIAM EARL WEEKS, BUILDING THE CONTINENTAL EMPIRE: AMERICAN EXPANSION FROM THE REVOLUTION TO THE CIVIL WAR 60-61, 110 (1996); Robert W. Johannsen, *The Meaning of Manifest Destiny*, in MANIFEST DESTINY AND EMPIRE AMERICAN ANTEBELLUM EXPANSIONISM 10 (Sam W. Haynes & Christopher Morris eds., 1997); REPRINT OF DOCUMENTS: MANIFEST DESTINY AND THE IMPERIALISM QUESTION 10 (Charles L. Sanford ed., 1974); DEBORAH L. MADSEN, AMERICAN EXCEPTIONALISM 1-2 (1998); SAM W. HAYNES, JAMES K. POLK AND THE EXPANSIONIST IMPULSE 87-90, 99 (1997); BERNARD DEVOTO, THE COURSE OF EMPIRE 411 (1952); REGINALD HORSMAN, RACE AND MANIFEST DESTINY: THE ORIGINS OF AMERICAN RACIAL ANGLO-SAXONISM 86 (1981); ANDERS STEPHANSON, MANIFEST DESTINY: AMERICAN EXPANSION AND THE EMPIRE OF RIGHT 21-27, 46-47, 55-60 (1995).

⁷ MILLER, NATIVE AMERICA, at 3-5.

powers and the rights to free trade and international diplomatic relations. Thereafter, they could only deal with the Euro-American government that had first discovered them.

6. Contiguity. This element provided that Europeans had a claim to a significant amount of land contiguous to and surrounding their actual settlements in the New World.

Contiguity became very important when different European countries had settlements somewhat close together. In that situation, each country held rights over the unoccupied lands between their settlements to a point half way between their actual settlements.

Moreover, contiguity held that the discovery of the mouth of a river gave the discovering country a claim over all the lands drained by that river; even if that was thousands of miles of territory. Notice the shapes of the Louisiana Territory and the Oregon Country: they are the drainage systems of the Mississippi and Columbia Rivers.

7. Terra nullius. This phrase literally means a land or earth that is null or void or empty. This element stated that if lands were not possessed or occupied by any person or nation, or even if they were occupied by non-Europeans but were not being used in a fashion that European legal and property systems approved, then the lands were considered to be “empty” and available for Discovery claims. Europeans and Americans were very liberal in applying this element. Euro-Americans often considered lands that were actually owned, occupied, and actively being utilized by indigenous people to be vacant and available for Discovery claims because they were not being “properly used” according to Euro-American law and culture.

8. Christianity. Religion was a significant aspect of the Doctrine of Discovery and of Manifest Destiny. Under Discovery, non-Christian people were not deemed to have the same rights to land, sovereignty, and self-determination as Christians.

9. Civilization. The Euro-American definition of civilization was an important part of Discovery and of ideas of superiority. Euro-Americans thought that God had directed them to bring civilized ways and education and religion to indigenous peoples and to exercise paternalism and guardianship powers over them.

10. Conquest. This element has two meanings as described in the U.S. Supreme Court case of *Johnson v. M’Intosh*.⁸ The Court defined it first as a means to acquire Indian title by military victories in just and necessary wars. But conquest was also used as a “term of art” under Discovery to describe the property rights Europeans gained automatically over Indian Nations just by showing up and making a “first discovery.”

In *Johnson*, the Court considered first discovery to be in essence like a military conquest because the Euro-American country immediately claimed political, property, and commercial rights over the native people. The Supreme Court modified the definition of conquest between European countries because of the different cultures, religions, and “savagery” of Native Americans. The Court claimed it had to develop a modified theory of the European principle because the Indian Nations could not be left in complete ownership of their lands in America.

⁸ 21 U.S. (8 Wheat.) 543 (1823).

The Doctrine of Discovery is not just an esoteric relic of history. It continues to impact indigenous people in the U.S. and around the world today. For example, the Doctrine continues to play a very significant role in American Indian law and policies because it still restricts Indian people and Indian Nations in their property, governmental, and self-determination rights. The cultural, racial, and religious justifications that led to the development of Discovery raise serious doubts about the validity of continuing to apply the Doctrine in modern day Indian affairs.

Manifest Destiny and Discovery

The phrase “Manifest Destiny” was apparently not used to define American expansion until 1845. But the idea that it was the destiny of the United States to control North America was “manifest” and obvious long before 1845. Instead of being a new idea, Manifest Destiny grew out of the principles and legal elements of the Doctrine of Discovery, Thomas Jefferson’s ambitions, and the work of the Lewis and Clark expedition. It was also clear, and in fact was specifically intended for the Indian Nations and native peoples who stood in the way of this American juggernaut, that Manifest Destiny would be a disaster for their legal, cultural, economic, and political rights. This was certain because the Louisiana Purchase, the Lewis and Clark expedition, the Doctrine of Discovery, and Manifest Destiny virtually ensured that a wave of American expansion would sweep over the indigenous peoples and tribes.

When Lewis and Clark returned to St. Louis in 1806, however, America’s destiny to reach the Pacific Ocean was not clearly visible. Many different people had the ambition and the desire to accomplish that goal but the actual means to do it were only partially visible. The twenty-eight month voyage of Lewis and Clark and the nearly superhuman effort it took to travel from St. Louis to Oregon graphically demonstrated one undeniable fact; the United States was going to have a difficult time settling and governing the Pacific Northwest anytime soon.⁹

Yet to Meriwether Lewis, who had just made that arduous voyage, the idea of the U.S. owning the Northwest was not farfetched. In fact, Lewis wrote President Jefferson on September 23, 1806, immediately after returning from his expedition, that the United States should develop the continental fur trade from a post on the Columbia River. Lewis was not deterred by the vast distance and the route he had just traversed. He wrote Jefferson that the United States “shall shortly derive the benefits of a most lucrative trade from this source, and that in the course of ten or twelve years a tour across the Continent by the rout mentioned will be undertaken by individuals with as little concern as a voyage across the Atlantic is at present.”¹⁰

⁹ JULIUS W. PRATT, *EXPANSIONISTS OF 1812* 12-14, 261 (1957); WEEKS, *BUILDING THE CONTINENTAL EMPIRE*, at 28-29; 3 *OVERLAND TO THE PACIFIC: WHERE ROLLS THE OREGON: PROPHET AND PESSIMIST LOOK NORTHWEST* xiii & 5 (1933).

¹⁰ DONALD JACKSON, *THOMAS JEFFERSON & THE STONY MOUNTAINS: EXPLORING THE WEST FROM MONTICELLO* 200 (1981); 1 *LETTERS OF THE LEWIS AND CLARK EXPEDITION WITH RELATED DOCUMENTS 1783-1854* 320 (Donald Jackson ed., 2nd ed., 1978).

It is clear that Jefferson directed the Lewis and Clark expedition to the mouth of the Columbia River in Oregon precisely to strengthen the U.S. claim to the Oregon territory and to further his dream of settling the Pacific Northwest. For example, Senator Thomas Hart Benton, the main spokesman for over thirty years for the United States to settle Oregon, stated that he got his ideas from Jefferson himself.¹¹

In this short paper I can only highlight a fraction of the legal and historical evidence that I allege proves that Manifest Destiny arose from the identical elements of the Doctrine of Discovery. One thing we will notice, which goes a long way in proving that Manifest Destiny grew out of Discovery, is that one cannot even understand the myriad statements and arguments made by Presidents, Secretaries of State, Congressmen, newspapers and citizens about Manifest Destiny and American expansion if we do not understand Discovery and its elements. The advocates of Manifest Destiny used the Doctrine of Discovery to prove their arguments that it was America's destiny to reach the Pacific. The Doctrine of Discovery, in essence, became Manifest Destiny.

When the New York journalist John L. O'Sullivan first used the phrase Manifest Destiny in July 1845, he was arguing that America should annex Texas. In his second use of the term, on December 27, 1845, O'Sullivan wrote a very influential editorial in the *New York Morning News* about the Oregon country entitled "The True Title."¹² This editorial and its use of "Manifest Destiny" created a new slogan that justified the idea of an American expansion over the continent. While the phrase was new, the idea that the U.S. would expand over the continent and acquire the Pacific Northwest had been alive and well since at least Thomas Jefferson's time.

Interestingly, O'Sullivan expressly utilized the Doctrine of Discovery in arguing that the United States already held legal title to Oregon. He then relied on Manifest Destiny and Divine Providence as a secondary argument to prove the U.S. title.

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 to stand upon, . . . [U]nanswerable 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,

¹¹ 3 OVERLAND TO THE PACIFIC, at 42, 101; I THOMAS HART BENTON, THIRTY YEARS' VIEW; OR, A HISTORY OF THE WORKING OF THE AMERICAN GOVERNMENT FOR THIRTY YEARS, FROM 1820-1850 14, 52, 54 (reprint, Greenwood Press, 1968); *Register of Debates in Congress*, 18th Congress, 2nd Session, 700, 705, 711-13; 1 *Cong. Debates* 705-06 (1825); WILLIAM NISBET CHAMBERS, OLD BULLION BENTON: SENATOR FROM THE NEW WEST 82-84 (1956).

¹² *Annexation*, 17 UNITED STATES MAGAZINE AND DEMOCRATIC REVIEW 5 (July 1845) (quoted in Julius W. Pratt, *The Origin of 'Manifest Destiny,'* 32 THE AMERICAN HISTORICAL REVIEW 795, 798 (July 1927)).

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.¹³ [italics added]

“Black-letter international law,” “civilization,” the “right of discovery, exploration, settlement, continuity” — can there be any question that O’Sullivan was fully conversant with the elements of the international law Doctrine of Discovery? And, can there be any dispute that he used the Doctrine and its elements of first discovery, occupation, and contiguity to justify America’s legal title to Oregon?

1803-1818

Thomas Jefferson’s desire for a continental empire was the overriding theme, the driving force that moved America towards the Pacific in this time period. He was the inspiration for the 1803 Louisiana Purchase, the architect of the 1803-06 Lewis and Clark expedition aimed at the Columbia River in Oregon, and the promoter of American economic activity in Louisiana and Oregon. One of Jefferson’s primary objectives in launching the Lewis and Clark expedition to the Pacific Northwest was unquestionably to expand the United States.¹⁴

As early as 1804, the House of Representatives Committee of Commerce and Manufactures reported that it “believed . . . [the Louisiana Territory] to include all the country . . . between the territories claimed by Great Britain on the one side [Canada], and by Spain on the other [California], quite to the South Sea [the Pacific].” This was the same claim that Jefferson hinted at in his research paper on the boundaries of Louisiana.¹⁵

It is no surprise, then, that the United States began working during the Jefferson administration to bring the Oregon country under American control. The evidence also shows that Jefferson, Madison and Monroe were “fervent expansionists” who were “willing to go to almost any length to secure additional territory” and that their goal was the “[a]nnexation of all the lands of North America.”¹⁶ In keeping with these aggressive

¹³ NEW YORK MORNING NEWS, Dec. 27, 1845 (quoted in Julius W. Pratt, *The Origin of ‘Manifest Destiny,’* at 795, 796).

¹⁴ JACKSON, at 200, 280; Thomas Jefferson, *The Limits and Bounds of Louisiana*, in DOCUMENTS RELATING TO THE PURCHASE & EXPLORATION OF LOUISIANA 24-37 (1904); WILLIAM EARL WEEKS, JOHN QUINCY ADAMS AND AMERICAN GLOBAL EMPIRE 26 (1992).

¹⁵ JACKSON, at 200, 280; Jefferson, at 24-37 (1904); WEEKS, JOHN QUINCY ADAMS, at 26.

¹⁶ FRANK LAWRENCE OWSLEY, JR. & GENE A. SMITH, FILIBUSTERS AND EXPANSIONISTS: JEFFERSONIAN

expansionist ideals, President Jefferson and his Secretary of State James Madison used Discovery elements to expand American territory to the Pacific.

For example, in 1807, Secretary of State Madison highlighted the United States right to the Oregon country when he wrote to James Monroe regarding negotiations with England and advised him not to discuss “our claims . . . to the Pacific Ocean.” Madison also referred in 1806 and 1807 to a Discovery element, the United States exclusive right to commercial and political interactions with the Indian Nations and Indians in American territory: “The privileges of British trade and intercourse with the Indians . . . are not to be extended to Indians dwelling within the limits of the United States”¹⁷

In June 1816, President Madison continued “[t]o assert American sovereignty along the [Pacific] coast.” As part of his plan, Madison ordered the Navy to explore the Pacific and to land at Astoria. Events prevented this mission from proceeding, but a Pacific voyage remained a high priority of the great expansionists President James Monroe and his Secretary of State John Quincy Adams.

In 1817, Secretary Adams and President Monroe took steps to reacquire Astoria from the English, who had taken the post in the War of 1812. After much delay and wrangling, Monroe and Adams dispatched American representatives to retake possession of Astoria. This was a bold move because it risked a political confrontation and because the U.S. was in no position to physically possess or govern the Oregon region. The task, however, was considered crucial by Adams and Monroe because they deemed it important to undertake formal, procedural steps to reoccupy Astoria and to reassert and protect America’s Discovery claim to the Northwest. The mission was designed, as they wrote, “to assert the [American] claim of territorial possession at the mouth of [the] Columbia river.” Adams wrote that the mission was “to resume possession of that post [Astoria], and in some appropriate manner to reassert the title of the United States.”¹⁸ The President and the Secretary of State were discussing nothing less than using the elements and rituals of Discovery to reassert the United States first discovery claim to Oregon!

Monroe and Adams then dispatched the diplomat John Prevost and naval Captain William Biddle in September 1817 to take possession of Astoria for the United States. It should be no surprise that the actions they undertook to protect America’s Discovery and Manifest Destiny interests on the Pacific coast were accomplished by Discovery rituals. In fact, Monroe and Adams ordered Captain Biddle and Prevost to sail to the Columbia

MANIFEST DESTINY, 1800-1821 1-2, 183 (1997); VI THE WRITINGS OF THOMAS JEFFERSON 55-56 (H.A. Washington ed., 1861).

¹⁷ *Congressional Globe*, 25th Congress, 2nd Session, at 566 (May 1838); II AMERICAN STATE PAPERS: DOCUMENTS, LEGISLATIVE AND EXECUTIVE, OF THE CONGRESS OF THE UNITED STATES: FOREIGN RELATIONS 662-65; *id.* Vol. III at 85-86, 126, 185-86.

¹⁸ VI THE WRITINGS OF JOHN QUINCY ADAMS 1816-1819 204-05, 366, 372-73 (reprint, Greenwood Press, 1968).

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.*”¹⁹ [italics added] This directive was nothing less than the government ordering them to perform Discovery rituals to reassert America’s claim to the Northwest.

Thereafter, on the north side of the mouth of the Columbia River, and in the presence of Chinook Indians, Biddle raised the U.S. flag, turned some soil with a shovel, just like the delivery of seisin ritual from feudal times, and nailed up 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 these Discovery rituals on the south side of the Columbia and nailed up a wooden sign. Biddle thus asserted America’s Discovery claim in the exact same manner as European explorers had done for centuries.²⁰

John Prevost arrived at Astoria in October 1818 on a British ship of war and a joint Discovery ritual was staged. The English flag was lowered and the U.S. flag raised in its place. The English troops fired a salute to the U.S. flag and papers of transfer were signed by the English Captain, the North West Company agent, and Prevost. The American claim of Discovery to the Pacific Northwest was again legally in place.²¹

During this time, congressional representatives reported these events in letters to their constituents. These letters demonstrate the widespread understanding of the elements of Discovery in Congress and among the voters, the use of Discovery to allege American ownership of the Pacific Northwest, and the understanding of an American destiny to absorb the Oregon country into the Union.²²

1818-1827

The U.S. continued to argue with England, Spain and Russia that it owned the Oregon country due to Robert Gray’s first discovery of the mouth of the Columbia River and the naming of that river in 1792; Lewis and Clark’s exploration of parts of that river from east to west, their building of Fort Clatsop at its mouth, and their occupation of the

¹⁹ FREDERICK MERK, *THE OREGON QUESTION: ESSAYS IN ANGLO-AMERICAN DIPLOMACY AND POLITICS* 17-18, 22-23 (1967); *see also* BERNARD DEVOTO, *THE COURSE OF EMPIRE* 512 (1952); WEEKS, *BUILDING THE CONTINENTAL EMPIRE*, at 50; JAMES P. RONDA, *ASTORIA & EMPIRE* 308-15 (1990).

²⁰ MERK, *THE OREGON QUESTION*, at 22-23; III *OREGON HISTORICAL QUARTERLY*, 310-11 (Sept. 1902); XIX *OREGON HISTORICAL QUARTERLY*, 180-87 (Sept. 1918); XX *OREGON HISTORICAL QUARTERLY*, 322-25 (Dec. 1919); MICHAEL GOLAY, *THE TIDE OF EMPIRE: AMERICA’S MARCH TO THE PACIFIC* 15 (2003); SEED, at 9 & n.19, 69-73, 101-02.

²¹ RONDA, at 314-15; MERK, *THE OREGON QUESTION*, at 23-24; *House Document No. 112*, 17th Congress, 1st Session, pp. 13-19; *Annals of Congress*, 17th Congress, 2nd Session, p. 246; GOLAY, at 65.

²² I *CIRCULAR LETTERS OF CONGRESSMEN TO THEIR CONSTITUENTS 1789-1829* xv-xxviii, 376, 381, 386, 401-03, 405-07, 415, 423, 439, 484-85, 496, 501, 571 (Noble E. Cunningham, Jr. ed., 1978); *id.* Vol. II, at 997; *id.* Vol. III, at 1515, 1551.

region in 1805-06; and, John Jacob Astor's construction in 1811 of the trading post Astoria, the first permanent settlement at the mouth of the Columbia River.²³

John Quincy Adams foresaw that Discovery and Manifest Destiny would work together to bring the Pacific Northwest into the American Union. He worked diligently towards that goal and extinguished the competing Discovery claims to Oregon of Spain and Russia through treaties he concluded with those countries in 1821 and 1824. He thought that the 1821 Spanish treaty guaranteed American Manifest Destiny because after the treaty he wrote that "the remainder of the continent should ultimately be ours."²⁴ These negotiations between the U.S. and Spain and Russia also show how commonly understood the elements of Discovery were, how often the principle was used to claim territory, and that it was an accepted part of international law and diplomacy.

Congress was also heavily involved in this period in applying Discovery to Oregon. In December 1820, for example, a House committee began studying the possibility of the U.S. occupying the Columbia River and establishing settlements. The committee produced a report in January 1821 and a proposed bill to authorize the United States to occupy the Columbia River and to "extinguish the Indian title."²⁵ This report is filled with extraordinary discussions of the elements of Discovery and used them as justifications for the U.S. to extend its jurisdiction and control to the Pacific Northwest.

1828-1855

During this period the United States continued to use Discovery and Manifest Destiny to acquire Oregon. For example, Senator Lewis Linn relied heavily on Discovery arguments to support America's rights to Oregon. In 1838, he told the Senate that the U.S. needed to occupy Oregon because "discovery accompanied with subsequent and efficient acts of sovereignty or settlement are necessary to give title." As usual, Linn relied on Robert Gray's discovery of the Columbia, Lewis and Clark's expedition as "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 thus believed that the United States

²³ III AMERICAN STATE PAPERS, at 185, 731; *id.* Vol. IV, at 377, 381, 452-57, 468-72; MERK, THE OREGON QUESTION, at 4, 14-23, 42, 47, 51, 110, 156, 165-66, 399; VI WRITINGS OF JOHN QUINCY ADAMS, at 400; Joseph Schafer, *The British Attitude Toward the Oregon Question, 1815-1846*, 16 THE AMERICAN HISTORICAL REVIEW 285-86 (No. 2 Jan. 1911).

²⁴ I A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 626 (James D. Richardson ed., 1913); *see also* V AMERICAN STATE PAPERS, at 436-37, 446-47, 449, 791; ALBERT K. WEINBERG, MANIFEST DESTINY: A STUDY OF NATIONALIST EXPANSIONISM IN AMERICAN HISTORY 136 (1958); DALE L. WALKER, PACIFIC DESTINY: THE THREE-CENTURY JOURNEY TO THE OREGON COUNTRY 385 (2000); THE DIARY OF JOHN QUINCY ADAMS 1794-1845 211 (Allan Nevins ed., 1951); WEEKS, JOHN QUINCY ADAMS, pp. 73, 79-81 119-20; JACKSON, at 53; VII WRITINGS OF JOHN QUINCY ADAMS, at 212-15.

²⁵ *Annals of Congress*, 16th Congress, 2d Session, at 679; *Annals of Congress*, 17th Congress, 2nd Session, pp. 682-83; *House Report No. 213*, 19th Congress, 1st Session, at 5-6, 8-12 (1826); 3 OVERLAND TO THE PACIFIC, 12, 42, 45; II AMERICAN STATE PAPERS, at 629-34; Charles H. Ambler, *The Oregon Country, 1810-1830: A Chapter in Territorial Expansion*, 30 THE MISSISSIPPI VALLEY HISTORICAL REVIEW 8 (June 1943).

“right, if placed alone on the strong and certain ground of *prior discovery*, would be as immutable as the everlasting hills.”²⁶

Also in 1838, according to Congressman Caleb Cushing, the “[p]riority of discovery, therefore, is clearly with the United States . . . the United States claim the Oregon Territory by right of discovery.” Moreover, Cushing argued that contiguity extended the northwest boundary of the Louisiana Territory and gave the U.S. rights in the Northwest and “a claim of title superior to that of any other nation.” Through the Louisiana Purchase, “the United States added to *her own rights of discovery* the preexisting rights of France.” He also clearly saw the Discovery significance of the Lewis and Clark expedition and the Discovery rituals they performed. He described their actions in 1805 when 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.” He also argued that Astor and Astoria “extended the bounds of empire.” In addition, Cushing relied on the 1821 treaty with Spain and its Discovery claim from California to the 60th parallel based on its “right of early discovery and repeated explorations and acts of occupation.” All of these facts added up to one point: “Here, then, 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.”²⁷

The United States became absolutely gripped with aggressive expansionist ideas by 1844. The widespread expression of Manifest Destiny ideals resulted from years of governmental and private discussions about American Discovery rights in the Northwest. It also resulted in the U.S. finally settling the Oregon question, annexing Texas, and declaring war on Mexico in 1846.

The issue of annexing Texas had been a boiling point in American politics for more than two decades, and desires to occupy and own Oregon had been fermenting for even longer. The Democratic Party brought these issues to a head by including in its platform for the 1844 presidential election a Discovery demand to annex Texas and occupy Oregon. The Democratic platform stated 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.”²⁸

The Democratic candidate, James K. Polk, campaigned vigorously on this theme

²⁶ *Senate Document*, No. 25-470, 5-6 (1838); *Congressional Globe*, 27th Congress, 3rd Session, pp. 79, 153 (January, 9, 1843); Mirth Tufts Kaplan, *Courts, Counselors and Cases: The Judiciary of Oregon's Provisional Government*, 123 LXII OREGON HISTORICAL QUARTERLY 124 (No. 2 June 1961).

²⁷ *Congressional Globe*, 25th Congress, 2nd Session, 566-70 (May 1838); John Belohlavek, *Race, Progress, and Destiny: Caleb Cushing and the Quest for American Empire*, in *MANIFEST DESTINY AND EMPIRE AMERICAN ANTEBELLUM EXPANSIONISM* 32 (Sam W. Haynes & Christopher Morris eds., 1997).

²⁸ WEEKS, *BUILDING THE CONTINENTAL EMPIRE*, at 105; VI OREGON HISTORICAL QUARTERLY, at 271.

and on Manifest Destiny. His election slogan was the aggressive statement about the Oregon country -- "54-40 or fight." Thus, Polk was claiming the Pacific Northwest and much of what is present day British Columbia as American territory. The 1844 election was considered to be about expansion and when Polk won he declared his election to be a mandate for expansion. It is no surprise, then, that Texas was annexed (even before Polk was inaugurated), Oregon acquired, and a war of territorial conquest was commenced with Mexico within less than two years.

In his inaugural address on March 4, 1845, Polk addressed the Oregon question, Discovery, and Manifest Destiny. In discussing "our territory which lies beyond the Rocky Mountains," he stated that the United States "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 noted that Americans were "already engaged in establishing the blessings of self-government in valleys of which the rivers flow to the Pacific." The opening of the Northwest and the "extinguish[ing]" of the "title of numerous Indian tribes to vast tracts of country" for American settlement was a good thing, according to Polk, because Manifest Destiny and expansion strengthened the Union by not confining its population to small areas but by allowing it to "be safely extended to the utmost bounds of our territorial limits [so as to] become stronger."²⁹

In October 1845, President Polk and Senator Benton engaged in an amazing discussion about the U.S. claim to Oregon. It is totally understandable that they discussed international law, first discovery, contiguity, discovery rituals, and occupation as they set out the U.S. claim because they were clearly analyzing the application of Discovery and Manifest Destiny to the Oregon country.³⁰

On December 2, 1845, Polk delivered his First Annual Message to Congress in which he discussed the Oregon question at great length. He stated that "our title to the whole Oregon Territory . . . [is] maintained by irrefragable [irrefutable] facts and arguments" and he asked Congress to decide how to maintain "our just title to that Territory." Polk suggested that Congress immediately provide for federal protection, laws, and civil and criminal jurisdiction to be extended to Oregon and to control the Indian commercial and political relations. He also requested the building of forts along the Oregon Trail, the creation of an overland mail service to Oregon and the grant of land to the "patriotic pioneers who . . . lead the way through savage tribes inhabiting the vast wilderness."³¹

Polk was confident that the evidence of Discovery proved that "the title of the

²⁹ 4 COMPILATION, at 380-81; SAM W. HAYNES, JAMES K. POLK AND THE EXPANSIONIST IMPULSE 70 (1997).

³⁰ FREDERICK MERK, THE MONROE DOCTRINE AND AMERICAN EXPANSIONISM 1843-1849 65-66 (1968); CHAMBERS, at 296.

³¹ 4 COMPILATION, at 392-97; RAY ALLEN BILLINGTON, THE FAR WESTERN FRONTIER, 1830-1860 156-57 (1956).

United States is the best now in existence.” He also claimed that under international law England did not have a valid claim to the Pacific Northwest because “the British pretensions of title could not be maintained to any portion of the Oregon Territory upon any principle of public law recognized by nations.”³²

Not surprisingly, other American politicians agreed with these arguments. In January 1846, Senator Stephen Douglass stated 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 Discovery and Manifest Destiny goals of converting and civilizing the Indians of Oregon, and he utilized the *terra nullius* element when he claimed that the U.S. had rights to “the vacant and unoccupied part of North America.” Secretary of State James Buchanan also 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.”³³

The U.S. finally culminated its push to expand to the Pacific in 1846 when it signed a treaty with England drawing the border between Canada and the United States at the 49th parallel, where it remains today. In the 1850s, the U.S. then used its Doctrine of Discovery preemption right to buy the “Indian title” by concluding treaties with tribal governments and buying most of the land in what is now Oregon and Washington.³⁴

Oregon joins the Union

In August 1848, Congress enacted the Territorial Act to create the Oregon Territory.³⁵ Congress took control of land ownership in the Territory and nullified all laws of the provisional government that might have granted land or affected land titles; although Congress did affirm the titles of the missionary stations located among the Indian Tribes.³⁶

While claiming that the area was “part of the Territory of the United States,” Congress also provided that “nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as

³² 4 COMPILATION, at 394-99.

³³ *Congressional Globe*, 29th Congress, 1st Session, at 259 (January 27, 1846); *Congressional Globe*, 33rd Congress, 1st Session, 337 (March 3, 1854); JOHANNEN, at 16; MAJOR L. WILSON, SPACE, TIME AND FREEDOM: THE QUEST FOR NATIONALITY AND THE IRREPRESSIBLE CONFLICT 1815-1861 111-13 (1974); HAYNES, at 98-99.

³⁴ Robert J. Miller, *Exercising Cultural Self-Determination: The Makah Indian Tribe Goes Whaling*, 25 AMER. INDIAN L. REV. 165, 189-99 (2001); Robert J. Miller, *Speaking with Forked Tongues: Indian Treaties, Salmon, and the Endangered Species Act*, 70 OREGON L. REV. 543, 552-56 (1991).

³⁵ An Act to establish the Territorial Government of Oregon, 9 Stat. 323 (1848).

³⁶ *Id.* at 323 & 329.

such rights shall remain unextinguished by treaty”³⁷ Congress obviously had the Discovery elements of preemption and Indian title in mind. The Territorial Act also applied Discovery to Oregon by mandating that the Northwest Ordinance of 1787 was applicable in the Oregon Territory.³⁸ The Northwest Ordinance had expressly utilized the Discovery elements of preemption and Indian title in the Old Northwest; the lands north and west of the Ohio River.³⁹ Thus, Congress mandated that the Doctrine of Discovery be used in the Oregon Territory.

In 1849, Joseph Lane was appointed the first Territorial Governor; a federal attorney and marshal were appointed; and units of the U.S. Army arrived.

In September 1850, Congress enacted the Oregon Land Donation Act⁴⁰ and began giving land grants to settlers as it had been requested to do for years. In the Donation Act, Congress gave away Indian lands even though the Indian titles had not yet been extinguished by treaty and purchase by the government under its preemption power. The assumption that Indian lands could be granted away by the federal government before purchase from the tribes reflected Discovery elements and the long held understanding that the U.S. could grant its “title” to non-Indian lands even while Indians still occupied and used the land.⁴¹

The Oregon settlers had long lobbied for just such a law. They felt entitled to the land because of their role in ensuring the Oregon country for the United States and in helping to civilize the area.⁴² In addition to rewarding the settlers who helped secure the territory, Congress used the Donation Act to encourage further immigration to Oregon so that the land could be put to productive use.⁴³

The Donation Act granted varying amounts of land depending on when the settlers arrived in Oregon, their ages, and whether they were married.⁴⁴ A male had to be white and of no more than one half American Indian blood, and they had to be a U.S. citizen or in the process of obtaining citizenship.⁴⁵ In addition, all individuals had to

³⁷ *Id.* at 323.

³⁸ *Id.* at § 14.

³⁹ Miller, 42 IDAHO L. REV. at 46.

⁴⁰ The Donation Land Claim Act of 1850, ch. 76, 9 Stat. 496 (1850) [hereinafter Donation Act].

⁴¹ *Clark v. Smith*, 38 U.S. (13 Pet.) 195, 201 (1839); *Meigs v. M’Clung’s Lessee*, 13 U.S. (9 Cranch.) 11, 16 (1815); *Fletcher v. Peck*, 10 U.S. (6 Cranch.) 87, 139, 142 (1810).

⁴² James M. Bergquist, *The Donation Act and the National Land Policy*, 58 OREGON HISTORICAL QUARTERLY 17, 18-19 (1957).

⁴³ COMMITTEE ON TERRITORIES, H.R. No. 271, 31st Cong., 1st Sess., at 5 (1850).

⁴⁴ The Donation Act, §§ 4, 5.

⁴⁵ *Id.* at §§ 4, 5.

reside on and cultivate their claimed land for four consecutive years. Married women were granted, in their own right, half of the land given to a married couple.⁴⁶ The only requirement for a woman to be granted land under the Donation Act was that she was married, and thus she did not have to comply with the other standards required of men.⁴⁷

On February 14, 1859, Congress made Oregon the thirty-third state of the Union.

Conclusion

Manifest Destiny developed from the elements and the themes of the international law Doctrine of Discovery. For forty years or more, American politicians, citizens, and newspapers used the elements of Discovery to justify Manifest Destiny and American continental expansion to the Oregon country. Apparently, Euro-Americans possessed the only valid religions, civilizations, governments, laws, and cultures, and Providence intended these people and their institutions to dominate the North American continent. The human, governmental, and property rights of Native Americans were almost totally disregarded as Discovery and then Manifest Destiny directed the United States' expansion. Under Manifest Destiny it was "clear" that God wanted Indians to get out of the way of American progress. The economic and political interests of Americans and of the United States were destined to dominate the continent and to acquire almost all of its assets.

Four statements aptly sum up what Discovery and Manifest Destiny meant for non-Americans. When Senator Benton was asked whether American expansion would cause the extinction of Indian tribes if they "resisted civilization" he stated: "I cannot murmur at what seems to be the effect of divine law The moral and intellectual superiority of the White race will do the rest" As Manifest Destiny clashed against Indian interests in Wyoming in 1870, a newspaper noted: "The rich and beautiful valleys of Wyoming are destined for the occupancy and sustenance of the Anglo-Saxon race. . . . The Indians must stand aside or be overwhelmed. . . . The destiny of the aborigines is written in characters not to be mistaken . . . the doom of extinction is upon the red men of America." Secretary of State Henry Clay added in 1825 that it was "impossible to civilize Indians They were destined to extinction" And, another author stated in 1847 that the destiny of Mexicans would be the same: they must assimilate into the "superior vigor of the Anglo-Saxon race, or they must utterly perish."⁴⁸

⁴⁶ *Id.* at §§ 4 and 5.

⁴⁷ *Vandolf v. Otis*, 1 Or. 153 (Or. Terr. 1854) (a wife who was American Indian was entitled to her half of the land granted to her and her husband under the Donation Act).

⁴⁸ REPRINT OF DOCUMENTS, at 46, 70; HORSMAN, at 1, 3, 5, 110, 195, 300-03; STEPHANSON, at 54-57; Thomas R. Hietla, 'This Splendid Juggernaut: Westward a Nation and Its People,' in MANIFEST DESTINY AND EMPIRE, at 53; HARRY L. WATSON, LIBERTY AND POWER: THE POLITICS OF JACKSONIAN AMERICA 53, 105 (1990); 1 *Cong. Debates* 689 (1825).