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Review of *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* by Robert J. Miller, Jacinta Ruru, Larissa Behrendt, and Tracey Lindberg

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the UN Permanent Forum on Indigenous Peoples will devote its Eleventh Session to a study of the Doctrine of Discovery and its enduring impact.

*Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* is a collaborative effort by Native legal scholars from the United States (Miller), Canada (Lindberg), Australia (Behrendt), and New Zealand (Ruru). Their self-proclaimed objective is to “trace the legal and historical evidence that demonstrates the development and use of the Doctrine of Discovery against the Indigenous peoples in our four countries.” After providing insightful histories of the adoption and adaptation of the Discovery Doctrine, the authors conclude that all four countries share similar—but not identical—colonization stories, and that the Doctrine continues to play a significant role in restricting Native rights and remains “a dangerous myth that must be acknowledged if ex-English colonies wish to realize respectful reconciled relationships with their Indigenous peoples.”

Robert Miller describes the adoption of the Doctrine of Discovery in the United States and identifies ten of its elements: first discovery; actual occupancy/current possession; preemption/European title; Indian/Native title; Indigenous nations’ limited sovereign and commercial rights; contiguity; *terra nullius* (land belonging to no one); Christianity; civilization; and conquest. Tracey Lindberg points out that the Discovery Doctrine in Canada “may not be as evident on the face of the law as in other countries, but the assumption of authority under Discovery indisputably informs the development of policy and legislation.”

After describing Aboriginal society and practices, Larissa Behrendt explains why the British Crown claimed absolute ownership of Australia pursuant to the legal fiction of *terra nullius*. This official position persisted until 1992, when the Australian High Court acknowledged that Aborigines had—and continue to have—legal rights to their traditional lands (unless validly extinguished). In contrast, the British acknowledged Native

*Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies*. By Robert J. Miller, Jacinta Ruru, Larissa Behrendt, and Tracey Lindberg. New York: Oxford University Press, 2010. xx + 294 pp. Tables, notes, bibliography, index. \$132.00 cloth, \$40.00 paper.

The Doctrine of Discovery provides that colonizing European nations automatically acquired certain property, governmental, and commercial rights over Indigenous inhabitants. In recent years, Indigenous peoples, legal scholars, religious institutions, and nongovernmental organizations have pressed for official repudiation of the Doctrine. In 2007, the United Nations voted (over the initial opposition of Australia, Canada, New Zealand, and the United States) to adopt the *Declaration on the Rights of Indigenous Peoples*, which contains several provisions that acknowledge the rights of Indigenous peoples to their lands. In 2012,

rights in New Zealand and entered into the Treaty of Waitangi with the Māori. However, as argued by Jacinta Ruru, the controversial Treaty is “steeped in a Discovery mindset” and the Doctrine remains a “permeating influence” even as the New Zealand government progresses in settling with the Māori people.

In the concluding chapter, the authors use Miller’s ten constituent elements of the Discovery Doctrine to compare and contrast the rights of Indigenous inhabitants of Australia, Canada, New Zealand, and the United States. Overall, the book is a timely and informative critique of the Doctrine of Discovery, which remains the primary legal justification for the diminishment of Indigenous rights.

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