

Newcomb: The right of Christian invasion

By Steven Newcomb

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At its 76th General Convention in Anaheim, Calif., July 8 – 17, the Episcopal Church adopted a resolution entitled, “Repudiating the Doctrine of Discovery.” I’d like to discuss the significance of the resolution in relation to the efforts by indigenous nations to protect their sacred places. The Black Hills, Mt. Graham, the Go-Road in Northern California, Yucca Mountain and San Francisco Peaks are the most well known, but there are certainly many others throughout the continent.

Since they first arrived, Christian Europeans worked hard to cut the ties of indigenous nations to their traditional lands. Attacking their languages and ceremonial traditions in the name of Christianity was a key means of attempting to sever the ongoing spiritual relationship that indigenous nations maintained for many thousands of years with their most sacred places and territories.

Non-Indian court rulings have also significantly affected Indian nations. And the most foundational court decisions are historically grounded in the ancient view that Christians had the right to locate, invade and capture lands anywhere in the world, provided the lands were inhabited by non-Christians.

This religiously premised claim of a Right of Christian Invasion leads to an important question: “Is the ancient claim that Christians have the right to locate, invade and assume territorial dominion over the lands of non-Christian nations a legitimate source of U.S. law in the 21st century?” The answer from the Episcopal Church resolution is, “No, it isn’t a legitimate source of U.S. law.”

One of the most explicit expressions of the Right of Christian Invasion is found in the 1826 case *Cornet v. Winton* (2 Yerg.) 129. In his ruling, Judge Haywood discussed papal and royal claims of supremacy during the days of Christendom that he said had become part of the foundation of U.S. law.

“To have a correct view of the rules adopted and applied to Indian affairs when grants were issued by the kings of England for lands in North America,” Haywood wrote, “we must look to the prevailing opinions in those days in matters of religion. The spiritual fathers of Christendom [the popes] dictated the creed of the people, and assumed enormous powers. ...”

The pope’s “grants of infidel countries were considered binding in heaven, and of

course upon the consciences of Christians,” wrote Haywood. What was the thinking behind such grants? Haywood pointed to *Calvin’s Case* (1608), in which Lord Edward Coke held that “all infidels are in law ‘perpetual enemies’; for between them, as with the devils [sic] whose subjects they be, and the Christian, there is perpetual hostility.”

At the time of *Calvin’s Case*, said Haywood, the “old law of nations” had not been “superseded by the modern [law of nations], so far as regarded their conduct toward infidel countries.” He continued: “The same view and practices had been exhibited by all the nations of antiquity; the Babylonians, the Persians, Greeks, and Romans, and by the Israelites under the Guidance of Moses and Joshua. According to what it [the law of nations] permitted, they extirpated [uprooted] the inhabitants of the countries they invaded, driving them from their habitations, or killing and enslaving them, as best suited their present circumstances.” (emphasis added).

Next, Haywood turned his attention to Spanish claims to lands in the Western Hemisphere. As he put it, “... the Spaniards came to [invaded] the frontiers of Mexico with a [papal] grant in their hands given by the supreme disposer of earthly possessions [the pope], by which the whole continent of America was made subject to their [Spanish] dominion.”

What was the ultimate outcome of the claimed Right of Christian Invasion? “Under these auspices,” declared Haywood, “[Christian] European dominion over the soil and over the bodies of men [was] interwoven into the codes of American jurisprudence.”

When the Reformation came along, Haywood stated, “the papal pretensions were curbed;” and “the monarchs of Europe took to themselves some parts of the power which could not be safely entrusted in the hands of pontifical ambition. The monarchs, said Haywood, also considered “infidels” to be “subjects of the devil.” For this reason, the infidels “might justly be deprived of their possessions and of all rights which they claimed as beings of the same race as” the monarchs. Haywood concluded that it was upon the foundations of papal and royal grants of infidel lands that the territorial claims of the people of Tennessee and of the United States “stand supported at this moment.”

He continued: “When. ... the countries which we now occupy were discovered and settled by the French, the English, and the Dutch, in the sixteenth century, and were granted by their sovereigns respectively, their grants were of perfect validity according to the law acknowledged among nations. The territorial dominion passed by the grant, and the infidel Indians residing upon it were tenants at sufferance.” (original emphasis). The infidels “had no right of property or possession, and were removable at the pleasure of those who were lords of the soil” by right of Christian invasion. Haywood went on to cite *Johnson v. M’Intosh* as supporting his version of history.

The presumption that the sacred places of indigenous nations and peoples are under the ultimate sovereign control of the United States originates in Christendom's disrespect for Native nations and spiritual traditions, and in the bigoted presumption that those are merely the traditions and places of "infidels" and "heathens." That thinking should have no place in U.S. law, and the Episcopal Church resolution successfully raises the visibility of the destructive legacy of the Right of Christian Discovery and Dominion.

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