

Island of the Blue Dolphins
The Doctrine of Discovery

Grade Level

High School: Ninth Grade through Twelfth Grade

Subject

Literacy and Language Arts, Social Studies

Common Core Standards

9–10.SL.1, 9–10.SL.1.B, 11–12.SL.1, 11–12.SL.1.B, 11–12.RH.1, 11–12.RH.2, 11–12.RH.7, 11–12.RH.8, 11–12.RH.9

Background Information

The Doctrine of Discovery is a legal premise that governed European conquest of the New World and continues to have implications for property rights today. The goal of this lesson is to familiarize students with the Doctrine of Discovery and offer practice in the close reading of historical sources. This lesson requires students to use background texts and primary source documents to learn how the Doctrine of Discovery influenced and influences the ongoing process of colonization.

Materials

- Copy of activity sheet for each student (provided)
- Pens/markers

Procedure

1. Prepare materials and familiarize yourself with the texts.
2. Introduce the Doctrine of Discovery.
3. Give each student an activity sheet and review directions.
4. Either have students work in pairs to complete the activity or work through the documents and questions together as a class.
5. Have the class come together for a discussion about the Doctrine of Discovery, its role in US history, and (possibly) its connections to *Island of the Blue Dolphins*.

Enrichment Activities

Further reading:

Walter Echo-Hawk, *In the Courts of the Conqueror: The 10 Worst Law Cases Ever Decided* (Golden, CO: Fulcrum Publishing, 2010).

Sara L. Schwebel, ed., *Island of the Blue Dolphins: The Complete Reader's Edition* (Oakland: University of California Press, 2016).

Blake A. Watson, *Buying America From the Indians: "Johnson v. McIntosh" and the History of Native Land Rights* (Norman: University of Oklahoma Press, 2012).

David Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2002).

Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourse of Conquest* (New York: Oxford University Press, 1992).

Name _____

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The Doctrine of Discovery

Document 1: *Inter Caetera* (1493). Translated from the Latin and edited for brevity.¹

Background

“Discovery” as a legal premise is rooted in ancient Roman law. At the end of the fifteenth century, Pope Alexander VI issued a Papal Bull (*Inter Caetera*) in which he granted to Ferdinand and Isabella, the monarchs of what was shortly to become a unified Spain, exclusive rights to claim territory in the Americas. (A Papal Bull is a written grant issued by the pope of the Roman Catholic Church). Portugal had also been engaged in ventures of discovery, so the *Inter Caetera* created conflict: what about Portuguese claims in the Americas? To resolve the conflict, the Pope issued the Treaty of Tordesillas the following year. This 1494 treaty divided the western hemisphere in half between Spain and Portugal. Together, the *Inter Caetera* and Treaty of Tordesillas nullified the territorial claims of indigenous people—although without their knowledge!²

Inter Caetera Bull of May 4, 1493

Alexander, bishop, servant of the servants of God, to the illustrious sovereigns, our very dear son in Christ, Ferdinand, king, and our very dear daughter in Christ, Isabella, queen of Castile, Leon, Aragon, Sicily, and Granada, health and apostolic benediction.

Among other works well pleasing to the Divine Majesty and cherished of our heart, this assuredly ranks highest, that in our times especially the Catholic faith and the Christian religion be exalted and everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself. . . We have indeed learned that you, who for a long time had intended to seek out and discover certain lands and islands remote and unknown and not hitherto discovered by others, to the end that you might bring to the worship of our Redeemer and the profession of the Catholic faith their residents and inhabitants . . . chose our beloved son, Christopher Columbus, whom you furnished with ships and men equipped for like designs, not without the greatest hardships, dangers, and expenses, to make diligent quest for these remote and unknown countries through the sea, where hitherto no one had sailed; and they at length, with divine aid and with the utmost diligence sailing in the ocean sea . . . discovered certain very remote islands and even mainlands, that hitherto had not been discovered by others; and therein dwell very many peoples living in

¹ Latin translation from Frances Gardiner Davenport, ed., *European Treaties Bearing on the History of the United States and its Dependencies to 1648* (Washington, DC: Carnegie Institution, 1917).

² The Pope did understand native peoples to possess the land they inhabited; however, citing Christian Scripture, he interpreted Discovery as a positive good: through conversion, former infidels—and their land—would be brought into Christendom. In asserting that it was legitimate to conquer lands peopled by infidels, Pope Alexander relied on an argument first laid out during the Crusades by Pope Innocent IV (Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990), 79–80).

peace, and, as reported, going unclothed, and not eating flesh . . .

Also, on one of the chief of these aforesaid islands the above-mentioned Christopher has already caused to be put together and built a fortress fairly equipped, wherein he has stationed as garrison certain Christians, companions of his, who are to make search for other remote and unknown islands and countries. In the islands and countries already discovered are found gold, spices, and very many other precious things of divers kinds and qualities. . . . we exhort you very earnestly in the Lord and by your reception of holy baptism, whereby you are bound to our apostolic commands, and by the bowels of the mercy of our Lord Jesus Christ, enjoin strictly, that inasmuch as with eager zeal for the true faith you design to equip and despatch this expedition, you purpose also, as is your duty, to lead the peoples dwelling in those islands and countries to embrace the Christian profession; . . . by the authority of Almighty God conferred upon us in blessed Peter and of the vicarship of Jesus Christ . . . give, grant, and assign to you and your heirs and successors, kings of Castile and Leon . . . But inasmuch as it would be difficult to have these present letters sent to all places where desirable, we wish, and with similar accord and knowledge do decree that to copies of them, signed by the hand of a notary public . . . and sealed with the seal of any ecclesiastical officer or ecclesiastical court . . . Let no one, therefore, infringe, or with rash boldness contravene this our exhortation . . . Should anyone presume to do so, be it known to him that he will incur the wrath of Almighty God and of the blessed apostles Peter and Paul. Given at Rome, at St. Peter's, on the third day of May in the year one thousand four hundred and ninety-three of the incarnation of our Lord, in the first year of our pontificate.

Gratis by order of our most holy lord, the pope.

B. Capotius. L. Podocatharus.
D. Serrano. Ferrariis.

Questions for Document 1

1. Carefully read the first paragraph of the Papal Bull, which was written by Alexander VI. According to the document:
 - a. Who are Ferdinand and Isabella?
 - b. What lands do they govern?
 - c. What is their relationship to the Pope?
 - d. What is their relationship to God?
2. Look at the body paragraphs. According to the document, who is Christopher Columbus? What does Christopher Columbus do?
3. Read the first body paragraph carefully, paying particular attention to the word "discover." According to Alexander VI, what is *the point* of discovery? Are there secondary benefits?
4. Alexander VI describes the people Columbus "discovered" at the end of the first body paragraph. According to the document, what are these New World people like? [If you know the Judeo-Christian Bible, can you see the parallel the Pope

makes between the native peoples of the Americas and two important figures in Genesis?]

5. In light of the Pope's description of the native people Columbus "discovers," why do you think Columbus built a fortress and stationed a garrison (an army)?
 6. From where does the Pope derive his authority to write this grant? Over what territory does he govern?
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Document 2: U.S. Supreme Court, *Johnson v. McIntosh*, 21 U.S. 543 (1823), excerpt from John Marshall, Chief Justice, opinion for the majority.

Background

By the sixteenth and seventeenth centuries, numerous European nations had joined Spain and Portugal in expeditions of discovery. By this point, the Protestant Reformation had occurred, and not all European nations were Catholic. Nonetheless, they continued to draw on the Pope's premise that their Christianity granted them an authority over non-Christian peoples, and by extension, it gave them the right to any territory held by non-Christians. This "Doctrine of Discovery" provided an ideological framework that informed discovery, conquest, and colonization.

In this section, we examine a United States Supreme Court Case, *Johnson v. McIntosh* (1823) to track the Doctrine of Discovery's use into the nineteenth century and U.S. law. *Johnson v. McIntosh* involved land in Illinois that was claimed by two different American citizens, Thomas Johnson and William McIntosh. Johnson believed that he had inherited claim to this land from ancestors who negotiated for it with the Illiniwek and Piankeshaw. McIntosh, however, claimed to have obtained what is called a "land patent" to this same land from the U.S. government. In reality, this was not the case (McIntosh's property lines did not overlap with Johnson's); however, that fact was ignored in deliberations, since all involved in the case sought a ruling on *the question* the dispute raised.

The lower court had dismissed Johnson's claim on the grounds that the Illiniwek and Piankeshaw could not sell the land. They were only "occupiers," not owners, of that land. The Supreme Court upheld the decision. John Marshall wrote the opinion for the unanimous majority. He argued that Indian nations could not grant land titles to individuals because the land did not belong to them—they were merely "occupiers." Under the Doctrine of Discovery, the right to sell, purchase, or negotiate land "occupied" by indigenous peoples is that of the "discoverer," which after the American Revolution was the federal government of the United States.

This case remains a cornerstone of federal Indian law and property law in the United States.

Johnson v. McIntosh 21 U.S. 543 (1823)

On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all, and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendancy. The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new by bestowing on them civilization and Christianity in exchange for unlimited independence. But as they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements and consequent war with each other, to establish a principle which all should acknowledge as the law by which the right of acquisition, which they all asserted should be regulated as between themselves. This principle was that discovery gave title to the government by whose subjects or by whose authority it was made against all other European governments, which title might be consummated by possession.

The exclusion of all other Europeans necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives and establishing settlements upon it. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves, and to the assertion of which by others all assented. Those relations which were to exist between the discoverer and the natives were to be regulated by themselves. The rights thus acquired being exclusive, no other power could interpose between them.

In the establishment of these relations, the rights of the original inhabitants were in no instance entirely disregarded, but were necessarily to a considerable extent impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their 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.

While the different nations of Europe respected the right of the natives as occupants, they asserted the ultimate dominion to be in themselves, and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil while yet in possession of the natives. These grants have been understood by all to convey a title to the grantees, subject only to the Indian right of occupancy.

The history of America from its discovery to the present day proves, we think, the universal recognition of these principles.

Questions for Document 2

1. What is John Marshall's attitude toward the Doctrine of Discovery, which was articulated more than 300 years earlier? Provide textual evidence that illustrates how a) he is critical of the Doctrine *or* b) he supports its principles.
 2. According to John Marshall, what qualities do the "potentates of the old world" have relative to native peoples?
 3. Turning to paragraph two, John Marshall uses two important nouns beginning with the letter "s." What are they? How do these words differ from the key "s" word Alexander VI used in the first body paragraph of the excerpted *Inter Caetera* above? What has shifted?
 4. According to the logic of John Marshall's opinion, can indigenous peoples who have converted to Christianity be more than "occupiers?" (See especially paragraph four.) What is the difference between "occupying" land and holding title to land? Draw on your own knowledge to come up with a present-day analogy.
 5. This Supreme Court decision has never been overturned. Does this surprise you? Why or why not? What are the implications should the Supreme Court overturn *Johnson v. McIntosh*?
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Document 3: George Nidever, *Life and Adventures of George Nidever, a Pioneer of Cal. since 1834*. Handwritten manuscript produced from dictation in 1878 and later published in book form.

Background

The land comprising present-day California, including the Channel Islands, was annexed to the United States by the Mexican-American War. It had been claimed for Spain by Sebastián Vizcaíno when he sailed past it in 1602. Under the Doctrine of Discovery, Spain laid claim to all of modern-day California, and this claim was inherited by Mexico when it won its independence from Spain. Finally, the title to the claim was transferred to the United States in 1848, with the Treaty of Guadalupe Hidalgo.

By 1848, the so-called Age of Discovery had long since passed: the United States was well into its industrial revolution! But in some ways, pioneers reenacted the "discovery" of America in California, *their* new world. Pioneers eagerly told stories about the exotic flora, fauna, and people they encountered on the land.

The Lone Woman of San Nicolas Island (fictionalized in Scott O'Dell's popular novel, *Island of the Blue Dolphins*) was one of those "exotic" people. Located more than sixty miles off the mainland, San Nicolas Island is the most remote of California's Channel Islands, and its people were not removed to missions on the mainland during the Spanish era of California history. However, European maritime trade in the region nonetheless greatly affected the island's population. In 1814, a violent encounter between the islanders and Alaska Native sea otter hunters brought by the mercantile Russian American Company occurred; this led to significant population loss. In 1835, with the island population further reduced, likely by exposure to disease, the entire

community of Nicoleño people was transported to Mexican California, where they intermingled with other native peoples. However, one woman and her son were, for unknown reasons, left behind on San Nicolas Island. The boy died in an accident, but the woman lived there alone for 18 years. We do not know what the woman called herself. In some early newspaper accounts, journalists referred to her as the “Lone” or “Lost” Woman of San Nicolas Island.

In 1853, the Lone Woman was brought to Santa Barbara, California, after the American otter hunter George Nidever, along with his crew, “discovered” her still living on the island. George Nidever installed the Lone Woman in his home, where she lived for the remaining seven weeks of her life. He recounted his story of “discovering” the Lone Woman numerous times, most expansively in his memoir, *Life and Adventures of George Nidever, a Pioneer of Cal. since 1834*.

The Life and Adventures of George Nidever

In April of 1852 . . . We went direct to the San Nicolas [Island] and . . . we discovered the footprints of a human being, probably of a woman as they were quite small. . . . At a distance of a few hundred yds. back from the beach and about 2 miles apart, we found 3 small circular enclosures, made of sage brush. . . . We examined them carefully, but found nothing that would indicate their having been occupied for a long time . . . Outside of the huts, however, we found signs of the place having been visited not many months before. . . . We had come on shore early in the morning and having found these signs of the existence of some person on the Island, we intended searching further, but a N. Wester sprang up about 10 A.M. so that we were obliged to hasten back to the vessel. . . .

The following winter I fitted out for another trip . . . Upon my return from my first trip I told several persons that we had seen footprints, &c., on the Island, and Father Gonzalez of the Mission, having heard of it, requested me to make all possible search for her. . . .

At the head of the Island I sat down to rest and Charley . . . told me that he had seen fresh foot prints. . . . On our way up [from the beach] we had also seen 7 or 8 wild dogs . . . They ran away as soon as they saw us I was afraid these dogs had eaten the woman as we had found nothing of her. . . . uncovering [a basket] we found it to contain several skins of the shag [bird feathers] . . . These I proposed carefully replacing, but upon a second thought scattered them about and threw the basket on the ground . . . if they were replaced in the basket by our next visit, we might be sure the woman was alive. We returned on board [the ship] in the afternoon and the next day continued our search without finding anything more. . . .

Ten days after our return [from gold prospecting in May of 1853] I again fitted out for a thorough hunt among the Islands [we] found the basket and its contents carefully replaced in the crotch of the bush in which we had first discovered it. . . . Looking about in all directions from this point, [Charley Brown aka Carl Dittman] discovered at a distance, along the ridge, a small black object about the size of a crow which appeared

to be in motion. Advancing cautiously towards it, he soon discovered it to be the Indian woman, her head and shoulders, only, visible above one of the small inclosures resembling those we had before discovered. He approached as near as he dared . . .

Upon his first approach there were some dogs near, which began to growl. These the old woman sent away with a yell but without looking in the direction of Charley. The men having come up, they quietly surrounded her to prevent any attempt at escape.

This being done, Charley stepped around in front of her when, instead of showing any alarm, she smiled and bowed, chattering away to them in a language wholly unintelligible to all of them, even to the Indians. They seated themselves around her, after having made signs to me to come up. . . . so I went up and found them seated around the old woman. . . .

The old woman was of medium height, but rather thick. She must have been about 50 yrs. old, but she was still strong and active. Her face was pleasing, as she was continually smiling. . . . Her clothing consisted of but a single garment of the skins of the shag, made in the form of a gown. It fitted close at the neck, had no sleeves, was girded at the waist with a sinew cord, and reached nearly to the feet. . . . This place was undoubtedly where she usually lived, but in the rainy season she lived in a cave nearby. Having been requested by the Fathers at the Mission of Santa Barbara, to bring her off in case we found her, I asked the Indians if they thought she could be taken by force if necessary. They thought she could. Charley Brown was of the opinion that no force would be necessary in taking her.

I thereupon made signs to her to go with us . . . she at once began putting her things into her baskets. . . . We remained here hunting about a month, when we brought her on shore with us. . . . The news was not long in spreading, of the arrival of the old woman, and we had barely reached my house with her when half of the town came down to see her. For months after, she and her things, as her dress, baskets, needle, &c., were visited by every body in the town and for miles around outside of it.

. . . The vessels that touched here usually brought passengers who, hearing of her, came to my house. The Capt. of the "Fremont;" one of these vessels, offered to take her to San Francisco and exhibit her, giving me one half of what he could make. Capt. Trussel of this place offered me \$1000 for her for the same purpose. We had all become somewhat attached to her, however, and consequently refused to listen to these proposals.

The same day we arrived here, the Fathers from the Mission came down to see her. . . . Her dresses, bone needles and other curiosities were taken possession of by Father Gonzalez, with my consent, and sent to Rome. About 5 weeks after she was brought over, she was taken sick from eating too much fruit and 7 weeks from the day of her arrival died. The Fathers of the Mission baptised her sub conditione and named her Juana Maria.

Questions for Document 3

1. Where does the word “discovery” appear in Nidever’s account? Why might he have used this particular word to describe his search for the Lone Woman?
 2. Before they find her, how have Nidever and Charley Brown imagined the Lone Woman? What do they anticipate she will be like? Are their assumptions confirmed?
 3. According to Nidever’s account, who encourages him to find the elusive Lone Woman? What is that man’s motivation for the search?
 4. Different people respond in different ways to the Lone Woman. Characterize the different responses, including those made by both Americans and Spaniards.
 5. How long does the Lone Woman live on the mainland? What might this tell us about the larger implications of “discovery” for native peoples?
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Conclusion

The Lone Woman’s life intersects with California during three different periods of conquest and colonization: Spanish, Mexican, and American. We can see the legacy of each period reflected in George Nidever’s account. George Nidever moved to California from the eastern half of the United States during the Mexican period. He married a woman of Spanish descent who was born in New Spain, as were her parents and grandparents (her paternal grandfather and father were *presidio* soldiers). Together, the Nidevers raised a bilingual, Catholic family and became “American pioneers.”