2

"Discovering" and "Founding" America

The Americas' Indigenous inhabitants "discovered" America, and the Americas' Indigenous Peoples developed the Americas' original governments. North Americans existed with no knowledge of Europe, and Europe had no knowledge of the Americas for most of history. When Europeans arrived in the Americas during the Age of Discovery, they rewrote history. Though they were not in North America first, European nations claimed they "discovered" it. And through the magic of discovery, the sovereignty of the original American governments began to wane.

2.1 VOYAGING TO AMERICA AND THE LAW OF DISCOVERY

While hundreds of civilizations existed in North America for thousands of years, Christopher Columbus is widely credited with "discovering" America in 1492. Not only does attributing "discovery" of America to Columbus disregard Indigenous existence but Columbus was not even the first old world denizen to contact the Americas. Some believe the Irish monk St. Brendan sailed from Ireland to Labrador around the year 500 CE. While this cannot be disproved, there is little evidence verifying St. Brendan's American expedition.[1] The Polynesians also may have arrived in the Americas before Columbus. DNA evidence indicates

[1] Josh Clark, *Was an Irish Monk the First European to Reach America?*, How Stuff Works, https://history.howstuffworks.com/history-vs-myth/irish-monk-america.htm [https://perma.cc/K3CY-64FR].

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contact between Polynesians and coastal Columbians and Ecuadorians circa 1200 CE.[2] The sweet potato was also prominent among Polynesians when Britons first contacted them in 1769, and the sweet potato is indigenous to the Americas.[3]

The Vikings, however, verifiably ventured into North America before Columbus. Viking settlements in Newfoundland have been discovered dating back to the year 1000 CE. Indigenous People already inhabited the island, and there is evidence of trade between the two groups. Despite commercial relations that appear to have been consensual, the Vikings clearly did not think much of Newfoundland's Indigenous People, referring to them as *skraelings*, meaning "wretched people."[4] Vikings abandoned their settlement soon after creating it. Researchers are not sure why, but according to Viking lore, hostilities with the Natives forced the Vikings to withdraw.[5]

Although Columbus was not the first person from foreign shores to see the Americas, he is the most consequential. Columbus was born during the Age of Discovery, a time when European nations began looking beyond the Mediterranean. Portugal led the race to claim new lands. In 1436, the pope granted Portugal the exclusive right to colonize the Canary Islands because the Indigenous Canary Islanders were deemed simple heathens. Portugal's claim was extended to all of Africa in 1455 for the same reason. By papal decree, Portugal was authorized:

> [T]o invade, search out, capture, vanquish, and subdue all Saracens [Muslims] and pagans whatsoever, and other enemies of Christ wheresoever placed, and the kingdoms, dukedoms, principalities, dominions, possessions, and all movable and immovable goods whatsoever held and possessed by them and to reduce their persons to perpetual slavery, and to apply and appropriate to himself and his successors the kingdoms, dukedoms, counties, principalities, dominions, possessions, and goods, and to convert them to his … use and profit … [and to] possess,

[2] Brian Handwerk, *Native Americans and Polynesians Met Around 1200 A.D.*, SMITHSONIAN MAG. (July 8, 2020), www.smithsonianmag.com/science-nature/native-americans-polynesians-meet-180975269/ [https://perma.cc/UT36-DHMC].

[3] *Id.*

[4] Eugene Linden, *The Vikings: A Memorable Visit to America*, SMITHSONIAN MAG. (Dec. 2004), www.smithsonianmag.com/history/the-vikings-a-memorable-visit-to-america-98090935/ [https://perma.cc/6CAZ-7T2Y].

[5] Cody Cottier, *Vikings Once Called North America Home*, DISCOVER (Mar. 11, 2021), www.discovermagazine.com/planet-earth/vikings-once-called-north-america-home [https://perma.cc/2H4A-EERC]; Michaeleen Coucleff, *How the Sweet Potato Crossed the Pacific Way Before the Europeans Did*, NPR (Jan. 23, 2013), www.npr.org/sections/thesalt/2013/01/22/169980441/how-the-sweet-potato-crossed-the-pacific-before-columbus [https://perma.cc/G6XM-6CHS].

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these islands, lands, harbors, and seas, and they do of right belong and pertain to the said King Alfonso and his successors …[6]

Portugal grew wealthy because of this papal edict, which was premised upon the Doctrine of Discovery.

The Doctrine of Discovery emerged during the Crusades in the late eleventh century.[7] The general idea was simple. Catholic Europe believed the pope was God's chosen representative on Earth. Accordingly, the pope was responsible for humanity's spiritual welfare. In the words of Pope Innocent IV, "The pope can order infidels to admit preachers of the Gospel in the lands that they administer, for every rational creature is made for the worship of God… If infidels prohibit preachers from preaching, they sin and so they ought to be punished."[8] This sentiment justified the Crusades as well as the Age of Discovery. Furthermore, this ideology validated the pope's endowing Africa to the Portuguese.

Portugal's neighbor, Spain, wanted its own source of colonial wealth. Since Africa was already Portugal's property, Spain had to look elsewhere for colonies. Enter Christopher Columbus, a Genoese sailor who promised a western, seaward route to Asia. Columbus' western route avoided contact with Africa; hence, there would be no interference with Portugal's claim over the continent. Additionally, a successful voyage to Asia would give Spain rights over the non-Christian continent. The Ottoman Empire closed the Silk Road a few decades earlier, so no Asian goods were entering European markets.[9] Thus, a claim to Asia meant a fortune for Spain, so Spain agreed to fund Columbus' Asian expedition.

Columbus departed from Spain in August of 1492. He spent a few months in the Canary Islands finalizing preparations for his journey then set sail for Asia. Remarkably, Columbus landed in the "Indies" in October of 1492 almost exactly as planned.[10] Columbus named the island San

[6] Robert J. Miller, *The Doctrine of Discovery: The International Law of Colonialism*, Indigenous Peoples' J. L., Culture & Resistance 35, 36 (2019).

[7] Michael C. Blumm, *Retracing the Discovery Doctrine: Aboriginal Title, Tribal Sovereignty, and Their Significance to Treaty-Making and Modern Natural Resources Policy in Indian Country*, 28 Vt. L. Rev. 713, 719 (2004).

[8] David H. Getches et al., Cases and Materials on Federal Indian Law 49 (7th ed. 2016).

[9] *Silk Road*, Hist. (updated Sept. 20, 2021), www.history.com/topics/ancient-middle-east/silk-road [https://perma.cc/2YJJ-467V].

[10] Edmund S. Morgan, *Columbus' Confusion About the New World*, Smithsonian Mag. (Oct. 2009), www.smithsonianmag.com/travel/columbus-confusion-about-the-new-world-140132422/ [https://perma.cc/9GGA-U6DU].

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Salvador, in the present-day Bahamas.[11] Although Columbus thought he was in Asia, this was reasonable based upon the information available to Europeans at the time. Columbus wrote of San Salvador's natural beauty, but the island's Indigenous People were what captivated Columbus.

2.2 SPAIN AND INDIGENOUS PEOPLE

Columbus called the Indigenous Americans he encountered "*Indios*," or in English "Indians," because Columbus believed he was in the Indies,[12] and the Indigenous People can be broadly placed in two groups: the Arawak and Caribs. Of the Arawak, Columbus said, "They are the best people in the world." The Arawak greeted Columbus with gifts, and Columbus believed they lived a very simple, idyllic life. Columbus wrote about how easily the Arawak could be conquered, enslaved, and forced to adopt Spanish ways. Contrarily, Columbus demonized the Caribs as ferocious cannibals. Columbus likely vilified the Caribs because they sternly resisted Spanish conquest. There is little evidence of the Caribs being cannibals either.[13] Though Columbus was not fond of the Carib, he described them as more industrious than the Arawak.[14]

Although Columbus' descriptions of the Americas' Indigenous People were largely erroneous, he was right about one thing – they were not Christian. Accordingly, Columbus had lawful authority pursuant to the papal bull to do with the island's Indigenous People as he pleased. He originally hoped to enslave the Caribs, but Carib military might made subjecting them impractical. Thus, Columbus turned his attention to the Arawak.

Columbus forced the Arawak to mine for gold and produce cotton. Conditions were appalling. The Arawak were routinely tortured, and many chose to end their own lives rather than live as Spanish slaves.

[11] *Christopher Columbus and the Tainos*, Core Knowledge, www.coreknowledge.org/wp-content/uploads/2017/02/CKHG-G5-U3-about-columbus-and-the-tainos.pdf [https://perma.cc/JG8Q-CLVN].

[12] Peter Inker, *Why We Use the Term American Indian*, Colonial Williamsburg (Nov. 23, 2021), www.colonialwilliamsburg.org/learn/living-history/why-we-use-the-term-american-indian/ [https://perma.cc/92RA-8HCN].

[13] Stephenie Livingston, *History Re-written: Christopher Columbus and the Cannibals*, Fla. Museum (Mar. 9, 2015), www.floridamuseum.ufl.edu/science/history-re-written-christopher-columbus-and-the-cannibals/ [https://perma.cc/RGL2-S6GB]; Stephen Johnson, *Controversy: Was the Caribbean Really Invaded by Cannibals?*, BigThink (July 6, 2023), https://bigthink.com/the-present/columbus-cannibalism/ [https://perma.cc/3TAT-PTNB].

[14] Morgan, *supra* note 10.

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European diseases also wreaked death on the island's Indigenous People. From an estimated population of 100,000 when Columbus arrived in the Indies, the Indigenous population plummeted to approximately 200 by 1542. Short on local labor, Spain began importing African slaves to fill the Indigenous labor void.[15]

Spain soon reached beyond the Indies and launched conquistadors into the American mainland. Juan Ponce de León invaded Florida in 1513.[16] Conquistadors toppled the Aztec and Inca empires by 1533.[17] Spain made contact with the Pueblo Indians of present-day New Mexico by 1539.[18] Hernando de Soto crossed the Mississippi in 1541.[19] These conquistadors described rich and large Indigenous nations,[20] but were able to thunder through the Americas thanks to their superior military technology: steel weaponry, gunpowder, and horses. Moreover, European diseases obliterated Indigenous populations.[21]

The papal-sanctioned Doctrine of Discovery validated Spain's conquest of the Americas; however, Spain sought to further legitimize its colonial efforts. Even Columbus acknowledged the Indigenous islands were inhabited by rational beings. Hence, murdering people and stealing their possessions contradicted cardinal biblical teachings. Spain solved this problem with the *Requerimiento*. The *Requerimiento* was an offer to Indigenous Americans to accept the one true God, the pope, and the Spanish throne as the rightful sovereigns of America or:

> [W]ith the help of God, we shall powerfully enter into your country, and shall make war against you in all ways and manners that we can, and shall subject you to the yoke and obedience of the Church and of their Highnesses; we shall

[15] *Id.*

[16] *Juan Ponce de León*, Hist. (updated July 28, 2022), www.history.com/topics/exploration/juan-ponce-de-leon [https://perma.cc/2PT9-QLKF].

[17] James Fredrick, *500 Years Later, The Spanish Conquest of Mexico Is Still Being Debated*, NPR (Nov. 10, 2019), www.npr.org/2019/11/10/777220132/500-years-later-the-spanish-conquest-of-mexico-is-still-being-debated [https://perma.cc/5TSU-V3K4]; *Francisco Pizarro*, Hist. (updated Oct. 24, 2019), www.history.com/topics/exploration/francisco-pizarro [https://perma.cc/6B97-ZLKN].

[18] Gerald Torres, *Who Is an Indian? The Story of* United States v. Sandoval, *in* Indian Law Stories 109, 110 (Carole Goldberg et al. eds., 2011).

[19] *Hernando de Soto*, Hist. (updated Sept. 6, 2022), www.history.com/topics/exploration/hernando-de-soto [https://perma.cc/CZK4-8QVF].

[20] The Forgotten Centuries: Indians and Europeans in the American South from 1521–1704, at 257 (Carmen Chaves Tesser & Charles M. Hudson eds., 1994).

[21] Keith Richotte, Jr., Federal Indian Law and Policy: An Introduction 21 (2020).

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take you and your wives and your children, and shall make slaves of them, and as such shall sell and dispose of them as their Highnesses may command; and we shall take away your goods, and shall do you all the mischief and damage that we can, as to vassals who do not obey, and refuse to receive their lord, and resist and contradict him; and we protest that the deaths and losses which shall accrue from this are your fault, and not that of their Highnesses, or ours, nor of these cavaliers who come with us.[22]

This, of course, was a mere formality because Indigenous People did not speak Spanish. Conquistadors often read the *Requerimiento* far from the Indigenous People's earshot, so no Indigenous People ever heard it. The *Requerimiento* was purely a legal formality.

Colonization was further legitimized through the encomienda system. Through the encomienda, the Spanish Crown granted conquistadors and other Spaniards control over Indigenous People in order to save their souls.[23] In practice, *encomenderos* – those granted control over Indigenous People in a given area – did little in the name of promoting spiritual welfare. Rather, *encomenderos* forced Indigenous People to labor and subjected them to egregious abuses. Thus, the encomienda was essentially slavery.[24] Life under the encomienda was so grim that Indigenous women killed their own children rather than let them experience Spanish cruelty.[25]

The brutality of Spain's Indian policy did not go unnoticed. Francisco de Vitoria was the foremost critic of Spain's Indian policy. Vitoria was a Dominican theologian and a legal scholar; indeed, Vitoria is widely recognized as the father of international law and federal Indian law. As a natural law scholar, Vitoria believed Indians possessed natural rights.[26] This perspective inspired his lecture, *De Indies*, which states, "From the standpoint of the divine law a heretic does not lose the ownership of his property."[27] While Vitoria thought the Indians "were unintelligent and stupid," he believed this was a consequence of their environment rather than a genetic defect. Accordingly, Spain had no right to conquer the Americas for these reasons. Nevertheless, Vitoria did believe Spain could lawfully wage war if Indians did not engage in commerce with Spain or

[22] *Id.* at 20.
[23] *Id.* at 18–21.
[24] *Encomienda*, Britannica (updated Sept. 5, 2022), www.britannica.com/topic/encomienda [https://perma.cc/2XU7-7395].
[25] Robert M. Utley & Wilcomb E. Washburn, Indian Wars 11 (2002).
[26] *Francisco de Vitoria*, Encyclopedia.com, www.encyclopedia.com/people/history/historians-miscellaneous-biographies/francisco-de-vitoria [https://perma.cc/YQ8P-HMHN].
[27] Richotte, *supra* note 21, at 22.

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prohibited Spain from spreading the gospel. These exceptions essentially rendered the Indians' natural rights moot; however, bare recognition of Indians' basic humanity was progress.[28]

Vitoria's views were shared by many, and Bartolomé de Las Casas was Vitoria's best-known contemporary.[29] Las Casas believed Indians possessed natural rights, including ownership of the land. Although Las Casas thought Spain should strive to make Christians of the Indians, he believed conversion should not be forced through violent means. In 1515, Las Casas journeyed from South America to Spain to petition for better treatment of the Indians.[30] The Spanish monarch Charles I was moved by Las Casas' plea and charged him with reforming the encomienda system in 1519.[31]

Las Casas returned to the Americas, but the Spanish beneficiaries of the encomienda thwarted his efforts.[32] Indians opposed Las Casas, too, as they had no desire to live under Spanish dominion,[33] for Indians had their own governments, customs, and traditions. Unsuccessful at implementing reform, he returned to Spain and published several works critiquing the encomienda, which resulted in Charles I freeing Indian slaves in 1542.[34] Nonetheless, the Spanish continued their colonization of the Americas and began settling in what would become the United States.

Spain largely abandoned the idea of colonizing the region north of the Rio Grande after Francisco Vázquez de Coronado's quest for gold came up empty in 1542. However, hope for riches remained, and the Church was eager to convert the region's Indigenous inhabitants to Christianity. Efforts to colonize the Rio Grande were revived in the late 1500s,[35] and conquistador Don Juan Oñate led a contingent of more than 500 soldiers into present-day New Mexico in 1598. Oñate greeted the Puebloans with the standard Spanish pronouncement of submit or suffer. Acoma Pueblo did not accept Christianity, so Oñate slaughtered

[28] *Id.* at 21–26.
[29] *Bartolomé de Las Casas*, COLUM. C., www.college.columbia.edu/core/content/bartolom%C3%A9-de-las-casas [https://perma.cc/273H-NFEC].
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Bartolomé de Las Casas*, BRITANNICA (updated July 19, 2022), www.britannica.com/biography/Bartolome-de-Las-Casas [https://perma.cc/Q3HT-D52A].
[34] COLUM. C., *supra* note 29.
[35] A FORGOTTEN KINGDOM: THE SPANISH FRONTIER IN COLORADO AND NEW MEXICO, 1540–1821, at chap. 1 (ebook), www.nps.gov/parkhistory/online_books/blm/ut/29/chap1.htm [https://perma.cc/66QS-UA7D].

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its inhabitants. Survivors were enslaved, and Oñate severed a foot from every Acoma Pueblo male over twenty-five years of age. Pueblos converted to Catholicism, at least outwardly, and were forced to labor under the newly imposed encomienda system. Spanish oppression caused the Pueblos to successfully revolt in 1680, freeing themselves from Spanish overlordship. During the eighty years of Spanish rule, the Pueblo population plummeted from 80,000 to 17,000.[36]

2.3 BRITAIN'S AMERICAN COLONIES

Other European powers did not just watch as Spain grew rich from its American colonies. England would become Spain's greatest rival. England acquired discovery rights in the Americas in 1497, when the Italian-born English navigator John Cabot made landfall around present-day Newfoundland.[37] However, the turmoil surrounding the Protestant Reformation slowed England's imperial ambitions.[38] As a result, England did not authorize American colonization until 1584, when Queen Elizabeth I granted Sir Walter Raleigh permission to "discover search find out and view such remote heathen and barbarous lands Countries and territories not actually possessed of any Christian Prince and inhabited by Christian people." With this decree, Raleigh sailed to Roanoke, off the coast of present-day North Carolina, in 1585. Little is known about what happened at Roanoke, though it appears the English settlers' relations with the local tribes deteriorated. By 1590, the colony had vanished.[39]

England established its first permanent American colony in 1607 at Jamestown, located in present-day Virginia,[40] but Jamestown was far from the first government in the area. Forty tribes called the area home, and thirty of these tribes were united under a confederacy led by Chief Powhatan.[41]

[36] Torres, *supra* note 18, at 109, 113–14.

[37] *John Cabot*, HIST. (updated July 26, 2022), www.history.com/topics/exploration/john-cabot [https://perma.cc/SXC8-HHXG].

[38] *The Reformation*, HIST. (updated Jan. 11, 2023), www.history.com/topics/reformation/reformation [https://perma.cc/7WEP-W5CS]; *Britain in the New World*, U.S. HIST., www.ushistory.org/us/2.asp [https://perma.cc/53EN-BGE8].

[39] *Roanoke Colony Deserted*, HIST. (updated Aug. 17, 2021), www.history.com/this-day-in-history/roanoke-colony-deserted [https://perma.cc/BKM7-SQPR].

[40] *The First Residents of Jamestown*, U.S. NAT'L PARK SERV. (updated Feb. 26, 2015), www.nps.gov/jame/learn/historyculture/the-first-residents-of-jamestown.htm [https://perma.cc/EJ53-FMP4].

[41] *English Colonization Begins*, DIGITAL HIST. (2021), www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=2&psid=3574 [https://perma.cc/83CX-4C3R].

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Powhatan was leery of the English and other white men due to the region's previous encounters with the Spanish.[42] Although Powhatan's confederacy could have easily exterminated the paltry group of English settlers – John Smith wrote as much in his journal[43] – Powhatan chose to provide the English with food and gifts.[44] By engaging in diplomatic relations, Powhatan hoped to acquire European weapons and tools for his own advantage.[45] This did not work out for Powhatan.

The English became dependent on Powhatan for food. When he refused to continue his welfare, the English turned violent. Powhatan tried to maintain amicable relations with the English until his death in 1618.[46] More English moved into Jamestown, and Indians were rapidly crumbling from old world diseases.[47] The English became more determined to clear Indians from the land. English-tribal relations were hostile until a treaty ended the violence in 1646.[48]

England was motivated by the prospect of precious metals and a desire to propagate Christianity among the Indians; however, England's primary goal was establishing permanent settlements in America.[49] The colonies would be a source of raw materials, such as wood and fur. Moreover, England began enclosing common lands in the late 1500s. This deprived villagers of grazing and gathering rights.[50] Consequently, many English poor were forced to America.[51] American colonies also provided prime launching points for attacks on Spain's American commerce.[52] England would go on to establish thirteen American colonies. But establishing

[42] *Virginia's Early Relations with Native Americans*, Libr. of Cong., www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/colonial-settlement-1600-1763/virginia-relations-with-native-americans/ [https://perma.cc/NSX4-9C9F].

[43] Utley & Washburn, *supra* note 25, at 15.

[44] Libr. of Cong., *supra* note 42.

[45] Utley & Washburn, *supra* note 25, at 15.

[46] *Id.* at 16.

[47] Edward Ragan, *A Study of Virginia Indians and Jamestown: The First Century*, U.S. Nat'l Park Serv., www.nps.gov/parkhistory/online_books/jame1/moretti-langholtz/chap6.htm [https://perma.cc/3QEL-8NX9].

[48] Utley & Washburn, *supra* note 25, at 16–20.

[49] Robert Anderson et al., American Indian Law: Cases and Commentary 22 (4th ed. 2020).

[50] *English Colonization Begins*, *supra* note 41; History of Western Civilization II, at ch. 25.1.3, Lumen Learning (ebook), https://courses.lumenlearning.com/suny-hccc-worldhistory2/chapter/the-enclosure-act/ [https://perma.cc/WF4B-AEXS].

[51] History of Western Civilization II, *supra* note 50, at ch. 25.1.3; *English Colonization Begins*, *supra* note 41.

[52] *English Colonization Begins*, *supra* note 41.

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colonies presented England with the same dilemma as Spain – people were already living on the land in well-established societies; obtaining the land by murder and theft would be sinful; what was an aspiring colonial power to do?

While Protestant England was not bound by papal fiats, England adopted the same colonial principles as Spain and Portugal. In *Calvin's Case*, decided in 1608 by Sir Edward Coke, one of the most influential legal minds in the history of the English law, the Court of the King's Bench declared:

> All infidels are in law perpetui (d) inimici, perpetual enemies (for the law presumes not that they will be converted, that being remota potentia, a remote possibility) for between them, as with the devils, whose subjects they be, and the Christian, there is perpetual hostility, and can be no (a) peace.[53]

Others, like English preacher Robert Gray, used a similar rationale for taking Indian land. Gray believed Indians sacrificed their own children in order to worship the devil; therefore, Gray concluded, "[T]he chil|dren of *Ioseph* haue an expresse commaundement here in this place, to destroy those Idolaters, and possesse their land."[54] Gray even held Christopher Columbus as a model for how to treat Indians.[55] Similarly, Governor John Winthrop of the Massachusetts Bay Colony believed the English had the right to eject Indians from the land because Indians were nonagricultural.[56]

These assertions were false. Reports had reached Europe by the early 1600s that Indians were farmers;[57] after all, Indian agriculture kept the Jamestown colony alive. Likewise, Jamestown's Captain John Smith wrote how meticulously Indians respected individual rights in land. Others made similar observations.[58] Roger Williams, the founder of Rhode Island, was a staunch advocate of Indian rights. Williams spent substantial time with Indians and published the first dictionary of Indigenous languages.[59] Based upon his experience, Williams wrote,

[53] Calvin's Case 7 Coke Report 1a, 77 ER 377, www.uniset.ca/naty/maternity/77ER377.htm [https://perma.cc/LU55-G3NN].

[54] Robert Gray, A Good Speed to Virginia, at Esay [*sic*] 42.4 (1609) (ebook), https://quod.lib.umich.edu/e/eebo/A02059.0001.001?rgn=main;view=fulltext [https://perma.cc/JTE5-7YF9].

[55] *Id.*

[56] Anderson et al., *supra* note 49, at 23.

[57] *Id.* at 24.

[58] *Id.*

[59] *Roger Williams*, Hist. (updated Feb. 4, 2020), www.history.com/topics/reformation/roger-williams [https://perma.cc/G2H9-8HYB].

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"The *Natives* are very exact and pun|ctuall in the bounds of their Lands, belonging to this or that Prince or People, (even to a River, Brooke) &c. And I have knowne them make bargaine and sale amongst them|selves for a small piece, or quantity of Ground."[60]

Although colonists had to pretend Indians did not recognize property rights, there was some support for their theological superiority over the Indians – disease interpreted as divine will. Indians were dying of smallpox, bubonic plague, measles, and other old world diseases at incredible rates. These diseases began to spread in the New England area about a century before Jamestown's founding as European fishing vessels made contact with the area, often to perform slave raids.[61] Furthermore, tribal trade networks accelerated the spread of disease by rapidly transporting items carrying European pathogens.[62] While the exact figure may never be known, approximately 90 percent of the Americas' Indigenous Peoples were killed by European diseases between 1492 and 1650.[63] The pious English interpreted the heathen Indians' extraordinary death rate as a sign from God that it was the colonists' destiny to be in America.[64]

The English reveled in the suffering Indians endured from disease, but words cannot capture the trauma experienced by Indians. Nine out of ten people each Indian knew were suddenly dead. Dead from an invisible enemy that had only appeared in conjunction with the arrival of Europeans. This magnitude of death caused extreme disruption to Indigenous governments.[65] In addition to perishing from disease, individuals afflicted with ailments or injured in war could not participate in

[60] Roger Williams, A Key into the Language of America, at chap. XVI, 93 (1892) (ebook), https://quod.lib.umich.edu/e/eebo/A66450.0001.001/1:19?rgn=div1;view=fulltext;q1=Narragansett+Indians [https://perma.cc/QP9L-CQ43].

[61] Lindsay McVay, *Everyone's History Matters: The Wampanoag Indian Thanksgiving Story Deserves to Be Known*, Smithsonian Mag. (Nov. 22, 2017), www.smithsonianmag.com/blogs/national-museum-american-indian/2017/11/23/everyones-history-matters-and-wampanoag-indian-thanksgiving-story-deserves-be-known/ [https://perma.cc/5DGP-UDPC]; *Exactly How New England's Indian Population Was Decimated*, New England Hist. Soc'y (updated 2022), www.newenglandhistoricalsociety.com/exactly-new-englands-indian-population-decimated/ [https://perma.cc/C96A-HKX4].

[62] Anderson et al., *supra* note 49, at 27.

[63] *The Impact of European Diseases on Native Americans*, Encyclopedia.com, www.encyclopedia.com/science/encyclopedias-almanacs-transcripts-and-maps/impact-european-diseases-native-americans [https://perma.cc/HR3Q-WD6U].

[64] Utley & Washburn, *supra* note 25, at 33.

[65] Anderson et al., *supra* note 49, at 27.

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planting, harvesting, and hunting.[66] Consequently, food security became an issue, which hindered recovery for the sick and wounded. Survivors fled from Indian cities, and the refugees amalgamated into new nations.[67] Drastic depopulation spurred the formation of decentralized Indigenous governments.[68] Looser social organization meant collective labor was more difficult to muster; thus, Indians did not build many major mounds or fortifications after the early 1600s.[69] European maladies devastated Indian nations. Without the epidemics, Europeans may not have colonized the Americas.[70]

2.4 THE PEQUOT WAR

Given the distress European arrival caused Indians and the English colonists' view of epidemics among the Indians as divine will, conflict was inevitable. New England's first major European-Indian clash was the Pequot War. The Dutch established the New Amsterdam colony at the site of present-day Manhattan in 1624.[71] Eager to control trade with the Dutch, the Pequot subjugated other tribes in the region.[72] As the English began moving into the area, tensions ran high between tribes, the Dutch, and the English. Conflict erupted in 1634, when citizens of a tribe under Pequot dominion killed Englishman John Stone, who by all accounts was an unsavory character.[73] The Pequot and English settlers entered a treaty in hopes of calming the situation but failed to accomplish this goal.[74]

The Pequot War officially began in 1636. Jack Oldham, who had been expelled from Plymouth, sailed to Block Island to trade with Manisses Indians.[75] The Manisses killed Oldham. The exact circumstances of Oldham's death are unclear, but it is plausible that Oldham provoked

[66] Tesser & Hudson eds., *supra* note 20, at 264.
[67] *Id.* at 267.
[68] *Id.* at 270.
[69] *Id.* at 271.
[70] McVay, *supra* note 61.
[71] *The Story of New Amsterdam*, New Amsterdam Hist. Ctr. (2011), www.newamsterdamhistorycenter.org/bios/origins.html [https://perma.cc/L38L-5YAF].
[72] *Pequot War Timeline*, Battlefields of the Pequot War, http://pequotwar.org/about/timeline/ [https://perma.cc/2VYU-HQLK].
[73] Utley & Washburn, *supra* note 25, at 38.
[74] *Id.* at 38.
[75] *The History of the Pequot War*, Battlefields of the Pequot War, http://pequotwar.org/about/ [https://perma.cc/9GPG-HSDB].

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the Manisses.[76] Nonetheless, the English settlers refused to let the murder stand.[77] Massachusetts Governor Henry Vane dispatched John Endicott to sack Block Island. Endicott led a raiding party of ninety colonists and killed every Indian male on Block Island. Endicott sold the women and children into slavery.[78]

Deeming war imminent, the Pequot approached an English fort and challenged its defenders to come out and fight. The English accepted the challenge but quickly retreated into the fort upon encountering the ferocious Pequot advance.[79] After the engagement, the Pequot approached the Narragansett, their rival, about entering an alliance against the English. The Pequot warned the Narragansett that the English would become adversaries of the Narragansett one day. Nevertheless, the Narragansett entered a treaty with the English. The English colonists also allied with the Mohegan.

A series of skirmishes ensued, but the war's apex occurred at the Battle of Mistick Fort on May 26, 1637. The English stormed the Pequot stronghold at night in hopes of preserving the Pequot valuables for plunder. However, the Pequot repulsed the English onslaught, so the English decided to torch the wooden fortress. Fire quickly engulfed the wigwams. More than 400 Pequot men, women, and children fled only to be slaughtered by the English and their Indian allies in less than an hour.[80] The Pequot Nation was nearly eradicated,[81] and at the war's conclusion, the English became the dominant power in the Northeast.[82] The path was cleared for further English expansion.[83]

2.5 KING PHILIP'S WAR

The most consequential event for European-Indian relations occurred nearly forty years after the Pequot War. To this day, King Philip's War

[76] *Mad Jack Oldham Starts the Pequot War*, NEW ENGLAND HIST. SOC'Y (updated 2022), www.newenglandhistoricalsociety.com/mad-jack-oldham-starts-pequot-war/ [https://perma.cc/V7PM-3UAK].

[77] *Id.*

[78] UTLEY & WASHBURN, *supra* note 25, at 39.

[79] *Id.*

[80] *Id.* at 38–43; *The History of the Pequot War*, *supra* note 75; *The Pequot War*, MASHANTUCKET (WESTERN) PEQUOT TRIBAL NATION, www.mptn-nsn.gov/pequotwar.aspx [https://perma.cc/C33C-9MT8].

[81] *The Significance of the Pequot War of 1637*, HIST. IN CHARTS (Oct. 15, 2021), https://historyincharts.com/what-is-pequot-war-1637/ [https://perma.cc/G34X-WJXQ].

[82] *Id.*

[83] *Pequot War Significance*, HIST. ON THE NET, www.historyonthenet.com/pequot-war-significance [https://perma.cc/6CHA-L8Q8].

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has the highest death toll by percentage of the population of any United States' conflict. Ironically, the Wampanoag and Pilgrims – the pairing that created Thanksgiving[84] – were the key players in the war.

Massasoit, the Sachem of the Wampanoag, managed to maintain relatively stable relations with the English. Upon his death in 1661, his eldest son, Wamsutta, known by the English as Alexander, assumed leadership of the Wampanoag. Wamsutta was arrested by the English soon after his ascension for allegedly planning to attack the English.[85] Immediately after his interrogation, Wamsutta died of unknown causes.[86] The Wampanoag suspected the colonists had poisoned Wamsutta.[87] The colonists believed the Wampanoag, under the leadership of Wamsutta's younger brother Metacom, or Philip to the English, would respond with war.[88]

Although Wamsutta's mysterious death exacerbated the situation, Metacom likely would have revolted anyway.[89] He was offended by the English settler's paternalism – they frequently summoned him, demanded he obtain the colony's consent prior to selling *his nation's land*, and routinely transgressed Wampanoag jurisdiction.[90] The final straw occurred when the English implicated Metacom in the murder of a Praying Indian, a term used to describe Indians who had essentially assimilated into the colonies. Three of Metacom's citizens were executed by the English for the offense, though there was no real proof of their guilt.[91] Metacom desired revenge.[92]

In June of 1675, Metacom led the Wampanoag and their tribal allies against the English. Metacom's forces scored several victories in

[84] Olivia B. Waxman, *400 Years After the "First Thanksgiving," the Tribe That Fed the Pilgrims Continues to Fight for Its Land amid Another Epidemic*, TIME (Nov. 23, 2020), https://time.com/5911943/thanksgiving-wampanoag/ [https://perma.cc/A4H7-6VTF].

[85] *King Philip's War*, HIST. (updated Dec. 4, 2020), www.history.com/topics/native-american-history/king-philips-war [https://perma.cc/5RGT-AQNT].

[86] Joshua J. Mark, *King Philip (Metacom)*, WORLD HIST. ENCYC. (Mar. 21, 2021), www.worldhistory.org/King_Philip_(Metacom)/ [https://perma.cc/8DL5-TVQG]; Michael Tougias, *King Philip's War*, BILL OF RTS. INST., https://billofrightsinstitute.org/essays/king-philips-war [https://perma.cc/XPY6-2K9V].

[87] Katharine Kirakosian & Tomaquag Museum, *Metacomet*, RHODE TOUR, https://rhodetour.org/items/show/295 [https://perma.cc/2SHY-S7S6]; Mark, *supra* note 86.

[88] Rebecca Beatrice Brooks, *History of King Philip's War*, HIST. OF MASS. BLOG (May 31, 2017), https://historyofmassachusetts.org/what-was-king-philips-war/ [https://perma.cc/HP55-JX6M]; Tougias, *supra* note 86.

[89] Tougias, *supra* note 86.

[90] *King Philip's War*, HISTORYBITS, www.historybits.com/american-history/king-philips-war/ [https://perma.cc/F55F-DFBQ].

[91] *King Philip's War*, HIST., *supra* note 85.

[92] *Id.*

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the opening months of the war.[93] War quickly spread through New England.[94] The English colonies were at risk of defeat until the Mohawk refused Metacom's request for an alliance and instead inflicted severe casualties on Metacom's army.[95] With Metacom's military weakened, the English colonies started to prevail.[96] The English colonies also began incorporating Indian warriors into their militias. The war was all but over when Metacom was killed in battle on August 20, 1676.[97]

King Philip's War was a decisive point in American history. Never again would tribes come so close to evicting the colonists from America. Furthermore, the colonists' tactics and treatment of Indians during the war set the precedent for how Indians would be dealt with in later conflicts with the United States. For example, Metacom's corpse was hanged, quartered, and his head posted on a pole at the entrance to Plymouth as a signal to the tribes: submit or die.[98] Some Indians who survived the war were enslaved or forced into indentured servitude. Other Indian survivors of the conflict often sought relations with France in hopes of avenging their defeat. Additionally, the near defeat caused England to restrict the colonies' autonomy, planting seeds that would later blossom into a colonial revolt.[99]

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European arrival shook the foundations of Indigenous North American societies. Over the ages, tribes developed sophisticated governments capable of constructing grand monuments, like Monks Mound at Cahokia, and feeding thousands of people. Following European arrival, these Indigenous governments were cast into turmoil as countless tribal citizens died from European plagues. Indigenous susceptibility to disease was exacerbated by European doctrines legitimizing Indigenous subjugation. Indigenous survivors were forced to begin life anew. They moved to new locations, forged new governments, and used European technologies to transform their cultures.

[93] Tougias, *supra* note 86.
[94] *King Philip's War*, Hist., *supra* note 85.
[95] Mark, *supra* note 86; *King Philip's War*, Hist., *supra* note 85.
[96] *King Philip's War*, Hist., *supra* note 85.
[97] Mark, *supra* note 86; *King Philip's War*, Hist., *supra* note 85.
[98] Mark, *supra* note 86.
[99] Utley & Washburn, *supra* note 25, at 47–48, 53; Tougias, *supra* note 86; *King Philip's War*, Hist., *supra* note 85.

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