APPENDIX

TRADITIONAL COUNCIL OF INDIAN ELDERS AND YOUTH
COMMUNIQUE NO. 15
DISCOVERY—HEATHENS—SLAVERY—RELIGIOUS FREEDOMS
1492-1992

Sapa Dawn Center
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It is common knowledge that from time immemorial we the Indigenous Nations and Peoples of North America have lived in accordance with our original instructions given to us by the Creator. These instructions are rooted in the languages, cultures, communities, nations and lands of all our peoples. The common process of governance throughout North America with Indigenous Nations and Peoples is the oral tradition that embodies the democratic process of people's participation and control of representatives and Chiefs in council.

The separation of Church and State in the Constitution of the United States does not comprehend the spiritual reality of Indigenous Nations and Peoples. English terms, definitions and interpretations of Indigenous languages in North America have proven inadequate to deal with the spirit and values inherent in our languages and ways of life (religions). Invariably, attempts to interpret and codify the ways of life of Indigenous Peoples have resulted in the abridgement of our rights. The First Amendment of the Constitution clearly states that religious freedom of U.S. Constitutional Law and provides that:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press or the right of the people peaceably to assemble and petition the government for a redress of grievances.

Why then was it necessary to pass an Act specifically for American Indians' religious freedom? The answer is clear. The "Christian Nations Theory" is in practice what denies our sovereignty, territorial integrity and religious freedoms. The history of the Americas since the landfall of Columbus carrying the banner of the Roman Catholic Church and the monarchy of Spain have resulted in the devastation and deaths of whole nations of Indigenous Peoples. Clearly the mandate of Christian churches to proselytize and convert our peoples to Christianity, and convert our property and lands to Christian church and state, has resulted in the destruction of many nations, cultures and peoples—and continues to do so.

The historical basis of the Federal Indian Law systems in North America is the dominance of the Christian nations over non-Christians, including Indigenous Peoples. This theory of Christian dominance was rooted in the

directive issued by Pope Nicholas V in 1452 in which he gave permission to King Alfonso of Portugal to

> Capture, vanquish and subdue the Saracens, pagans, and other enemies [and] to put them into perpetual slavery. (citation omitted).

This policy was continued and expanded upon by Pope Alexander VI in 1493 in the Inter Caetera Bull which provided that

> The Catholic faith and Christian religion be everywhere increased [and that] barbarous nations be subjugated and be brought to the faith itself. (citation omitted).

Few legal scholars have chosen this area of research. Some contemporaries of Chief Justice John Marshall were Story; Wheaton; and Woolsey. They were in agreement with the Christian Nations Theory. A recent publication has clarified this theory from the days of Christendom to the present:

> According to Christian international law lands which had no Christian owner were considered to be vacant lands, even though inhabited by non-Christians. The first Christian to "discover" lands inhabited by heathens and infidels (beasts of prey) had the absolute title to and ultimate dominion over those lands. Spain, Portugal, France, England, Holland and Russia all embraced and acted on this doctrine.
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> In 1823 the same doctrine of "discovery" was formally written into the laws of the United States by the U.S. Supreme Court. In the case of *Johnson v. McIntosh* Chief Justice John Marshall said that "Discovery gave title to the government, by whose subject, or by whose authority, it was made against all other European governments."
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> Marshall cited the various charters of England to document her acceptance of the discovery doctrine. "So early as 1496," wrote the Chief Justice, "Her monarch granted a commission to the Cabots to discover countries then unknown to *Christian people* and to take possession of them in the name of the King of England." The Christian European nations making such discoveries only had a legal obligation to recognize the "prior title of any Christian people who may have made a previous discovery." In short, Christians had dominion and title, heathens had subservience and occupancy.
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> Few people realize that the United States Supreme Court's Christian/heathen distinction is still the Supreme Law of the Land. Based on that doctrine, Indian peoples are denied their rights simply because they were not Christians at the time of European arrival. On that basis the United States continues to deny that Indian peoples have a true vested right of property in their own ancestral homelands, and that they have "rights to complete sovereignty." (citation omitted).

Following the Johnson v. McIntosh decision of 1823, there was the now famous or infamous statement of Manifest Destiny of 1843, that declared that white man to be ordained by God to rule the world.

How consistent this attitude of "Manifest Destiny" remains in American thinking and law is embodied in the Supreme Court decision of 1955 called *Tee-Hit-Ton v. United States* (citation omitted) in which the Court held that:

> There is no particular form of Congressional recognition of Indian right of permanent occupancy of land, such as will entitle Indians compensation for its subsequent taking . . .

And that

> Permission granted to Indians to occupy portions of territory over which they had previously exercised sovereignty is not a property right, but a right of occupancy, which the sovereignty grants and protects against intrusion by third parties, but which may be terminated without any legal enforceable obligation to compensate Indians.

And further,

> Indian occupation of land without government recognition of ownership creates no rights against taking or extinction by the United States, and taking by the United States of unrecognized Indian title is not compensable under the Fifth Amendment.

All this rests upon the Law of Christians Nations or the doctrine of discovery, which in turn rests upon the Papal Bulls of 1452 and 1493. If this is not enough evidence to convince you that this arrogance of Manifest Destiny continues today, there is now the infamous decision on 1991: *Gitksan v. Canada*, where the Supreme Court of British Columbia ruled that the Gitksan Indians had no standing because of the Law of Nations, better known as the Doctrine of Discovery. In this doctrine, religious triumphalism and the seizure of lands are intrinsically connected. Five hundred years of domination, exploitation, and self-serving law historically based upon these ideas are alive and well today.

For the above reasons we conclude that the Theory of Christian Nations continues up to this moment. This explains why the American Religious Freedom Act was necessary to begin with, and also why paradoxically it has failed to protect our rights since it was passed. When invoked, it has failed in each case to secure for Indian Peoples specific religious freedoms or access to sacred sites. We understand that the amendments to the American Indian Religious Freedom Act are being proposed in an attempt to rectify the inadequacies of the Act. Our conclusions are that the Christian Nations Theory and practice which is embodied in the Johnson v. McIntosh decision on 1823 is archaic, abhorrent, and has no place in contemporary law. It abridges our religious freedoms and practices and is contrary to the language of the U.S. Constitution on the separation of Church and State. It provides the basis of

Federal land-takings, the assumption of U.S. jurisdiction in Indian Country and the violation of our treaties.

We call on Pope John Paul II to issue a special message for this year of the 500th anniversary of the voyages of Columbus repudiating the Papal Bulls of 1453 and 1493. Also, the Johnson v. McIntosh decision, which still stands, must be overturned, thereby abolishing the Christian Nations Theory from contemporary U.S. law. We will then be recognized as equal, eliminating altogether the need for the American Indian Religious Freedom Act. Our religious practices, ways of life, sacred sites—including geographical and geophysical sites—will then be protected by the principles of the First and the Fifth Amendments of the United States Constitution.