**Civics 101**

**Episode: Declaration Revisited: Native Americans**

[00:00:00] Civics 101 is supported in part by the Corporation for Public Broadcasting.

**Nick Capodice:** [00:00:05] When we did our declaration episode last year Hannah, author and Harvard professor Danielle Allen told us the document was a masterclass in political philosophy unto itself, that you can hear pro slavery and antislavery voices in it. And then there was something that we didn't talk about in the episode. In a recent interview on Vox, she said, One of the big things we get wrong when we talk about the declaration is that we think it was written entirely by Thomas Jefferson.

**Danielle Allen:** [00:00:35] He put on his tombstone author, Declaration of Independence. That was a real self aggrandizing gesture. In fact, he was the scribe. The intellectual work of the declaration was driven significantly by John Adams and Benjamin Franklin. That's an important thing to say out loud, because Adams is somebody who never owned slaves and Franklin was somebody who was an enslaver earlier in his life. And who repudiated enslavement [00:01:00] and in fact became a proactive vocal advocate of abolition.

**Nick Capodice:** [00:01:05] And when we spoke with Danielle, she noted this, that there are pro slavery and antislavery voices in the declaration. But then she followed up that there is one community that shared no such duality.

**Danielle Allen:** [00:01:17] I mean, you can't say the same thing about the treatment of Native Americans. You can't see a moment of sort of positivity in the declaration on that front. And this is really, for me, the worst moment in the declaration, the one piece of the declaration that still I think really hurts.

**Nick Capodice:** [00:01:32] I'm Nick Capodice.

**Hannah McCarthy:** [00:01:32] I'm Hannah McCarthy.

**Nick Capodice:** [00:01:34] And this is Civics 101, the podcast refresher course on the basics of how our democracy works. Today is our second revisit to our founding document. We wanted to focus on that particular grievance and its social and political reverberations. I spoke with author, activist and independent candidate for president Mark Charles, and I'll let him introduce himself.

**Mark Charles:** [00:01:57] Yá’ át’ ééh. Mark Charles yinishyé. Tsin bikee dine’é nishłí. Dóó tó’aheedlíinii bá shíshchíín. Tsin bikee’ dine’é dashicheii. Dóó tódích’ íi’ nii dashinálí. [00:02:00]

**Mark Charles:** [00:01:57] In our Navajo culture, when we introduce ourselves, we always give our four clans. We're matrilineal as a people and our identities come from our mother's mother. So my mother's mother's American of Dutch heritage. And that's why I say Tsin bikee dine’é that loosely translated, hat means I'm from the wooden shoe people. My second clan, my father's mother is tó’aheedlíinii gleni, which is the waters that flow together. My third clan, my mother's father is also Tsin bikee dine’é, my fourth clan, my father's father is tódích’ íi’ nii, that's the bitter water clan. It's one of the original clans of our Navajo people.

**Hannah McCarthy:** [00:02:42] That's really interesting because, you know, whenever we introduce ourselves, like even at the beginning of each podcast, we say our first name and our last name and leave it at that. But that Navajo introduction roots oneself in the lands and the people that are a part of you. [00:03:00] It's an active form of self identifying.

**Mark Charles:** [00:03:03] I also just want to acknowledge that I am speaking to you today from Washington, D.C. and Washington, D.C. is the traditional end of the Piscataway, the Piscataway are the native nation. They lived here. They hunted here. They farmed here. They fished here. They raised their families here. They buried their dead here. Their society was here. And this was the nation that was removed from these lands. And when these lands were colonized. So they were here long before Columbus got lost at sea and then they were removed from these lands. So the District of Columbia, the state of Maryland, the state of Virginia could be established. I like to acknowledge the people whose land I'm on, no matter where I go around the country. So everywhere I speak, when I travel, I always acknowledge the host people of the land. And I want to acknowledge today the Piscataway and I want to thank them publicly for their stewardship of these lands. And I want to thank them for the honor of living of being on their lands today.

**Nick Capodice:** [00:03:57] I called Mark to talk about the declaration, but [00:04:00] he said first we had to go back to another set of documents from about 300 years earlier, which created a concept of international law called the Doctrine of Discovery.

**Hannah McCarthy:** [00:04:10] To be honest, I actually haven't heard of that. And I'm a little abashed because we did an entire series on the founding documents. What is the doctrine of discovery?

**Mark Charles:** [00:04:21] The Doctrine of Discovery is a series of papal bulls that are edicts of the Catholic Church written between fourteen fifty two and fourteen ninety three. They say things like invade, search out, capture, vanquish and subdue all Saracen's and pagans whatsoever, reduce their persons to perpetual slavery, convert them to his and to their use and profit.

**Nick Capodice:** [00:04:43] That quote is from the papal bull Dum Diversas in 1452. A papal bull, by the way, is a public decree or a charter that's issued by the pope. And Dum Diversas was issued in 1452 by Pope Nicholas the Fifth.

**Mark Charles:** [00:04:58] So the doctrine discovery, it's essentially [00:05:00] the church in Europe saying to the nations of Europe, wherever you go, whatever lands you find that are not ruled by white European Christian rulers, those people are subhuman and their land is yours for the taking. So this is literally the doctrine that let European nations go into Africa, colonize the continent, enslave the people because they didn't believe them to be human. It's the same doctrine that allowed Columbus, who was lost at sea, to land in this new world, which was already inhabited by millions, and claimed to have discovered it.

**Mark Charles:** [00:05:34] If you think about it, you cannot discover land already inhabited. That's called stealing. It's called conquering, it's called colonizing. The fact that our history books, our monuments are our proclamations refer to Columbus as the discoverer of America, this reveals the implicit racial bias of the nation, which is that Native people specifically and people of color in general are not fully human.

**Hannah McCarthy:** [00:05:59] And I would guess, right, [00:06:00] that the dehumanization of nonwhites results in a drastic expansion of the church's power across the whole world. So how is this idea of enslavement and the taking of land tied to the Declaration of Independence?

**Nick Capodice:** [00:06:18] Mark wanted to mention one more step before 1776. It's a proclamation of King George III, given to the 13 colonies in 1763.

**Mark Charles:** [00:06:28] In this proclamation, one of the things he did was he essentially drew a line down the Appalachian Mountains and he said to the colonies that were here that they no longer have the right of discovery of the empty Indian lands west of Appalachia. That right, he said, belonged to the crown, not to the colonists. Now, this is where there was a break between the northern colonies up where Canada is and the southern colonies, which were the thirteen of the US, where the northern colonies accepted the proclamation of 1763. It didn't change the history. The [00:07:00] lands were still "discovered." They were just discovered by the Crown, not the colonies.

**Nick Capodice:** [00:07:05] 1763 is also the year of the end of the French and Indian War, also known as the Seven Years War. And that's when what became Canada changed from French hands to British control. And this proclamation actually started to set up guidance on how to protect indigenous rights to the land. It's a huge factor in Canadian land rights, even to this day. But the southern colonies and when I say southern, I mean all of the 13 colonies that eventually became the United States, they rejected this. They wanted that land for themselves. They wanted that right of discovery. And so they made an official complaint.

**Mark Charles:** [00:07:42] So a few years later, they write a letter of protest. In their letter of protest, they have a list of grievances against the king. One of the grievances is that he's raising the level of conditions for new appropriations of land. The other grievance this is one of their last grievances is that he's endeavoured to bring on the inhabitants [00:08:00] of our frontiers, the merciless Indian savages, whose only known rule of warfare is a complete destruction of all ages, sexes and conditions. It's literally...this is the Declaration Independence.

**Hannah McCarthy:** [00:08:10] I have thought of the declaration as an announcement of separation, a justification for revolution, but I'd never considered it as a letter of protest.

**Nick Capodice:** [00:08:21] The grievances, frankly, get short shrift when we examine the document, but they are all tied to very specific frustrations with England, with the king, and those two paired together embed this racist doctrine of discovery into our very founding.

**Mark Charles:** [00:08:37] So 30 lines below the statement, all men are created equal, the Declaration of Independence refers to natives as savages, making it very clear that the founding fathers used this inclusive term all men, merely because they had a very narrow definition of who is actually human. So this makes the Declaration [00:09:00] of Independence a blatant systemically white supremacist document.

**Nick Capodice:** [00:09:09] And it's not just the ethical problem of considering a whole people as savages, the doctrine of discovery becomes embedded into American law. In 1823, the Supreme Court ruled in the case of Johnson vs. McIntosh.

**Mark Charles:** [00:09:24] And it's two men of European descent and they're litigating over a single piece of land. One of them got the land, acquired the land from a tribe. The other one acquired the same land from the government. They want to know who owned it. So the case goes all the way to the Supreme Court. So the Supreme Court, this is John Marshall's court. He was the chief justice at the time. They had to decide the principle that land titles were based on. They ruled that the principle was that Discovery gave title to the land and then they referenced the Doctrine of Discovery and John Marshall actually [00:10:00] wrote, he said, But the Indians who inhabited these lands were fierce savages whose subsistence came chiefly from the forests. To leave them in possession of their own country was to leave the country a wilderness. This is in the in the opinion he wrote in Johnson vs. Mcintosh. So literally the conclusion of this opinion is that title is based on Discovery, and Natives, even though we were here first, but because we're savages, we are merely occupants of the land, like a fish, occupies water, like a bird occupies air. Meanwhile, Europeans, who have the right of discovery to the land, the fee title to it, they're the true title holders. So that case back in 1823 creates the legal precedent for land titles based on this understanding that natives are savages.

**Hannah McCarthy:** [00:10:56] How long did that Supreme Court precedent remain that [00:11:00] land titles are based on "discovery?"

**Nick Capodice:** [00:11:03] That decision, Marshall's decision was cited in 1954, 1985 and most recently 2005.

**Hannah McCarthy:** [00:11:13] Are you kidding? What was the 2005 case?

**Nick Capodice:** [00:11:15] It was the city of Sherrill vs. the Oneida Indian Nation of New York. To take it back, at the time of our founding, the Oneida Indian Nation owned about six million acres of land, which the George Washington administration reduced to a few hundred thousand and set aside as a reservation. The Oneida sold much of that land to New York State over the next 200 years.

**Mark Charles:** [00:11:36] So in the nineteen nineties, the United Indian nation came back to the state of New York and they purchased some of their traditional lands on the open market. They paid full price for them. And they wanted to reestablish some of their traditional sovereignty over these lands. Now, the lands they bought were within the city limits of the city of Sherrill, and if they had sovereignty [00:12:00] over them, it meant they wouldn't pay taxes on them. The city of Sherrill wanted their tax revenues. So they sued the Oneida Indian Nation in federal district court. The case went to the Supreme Court in 2003 and in 2005 the opinion was written. In the first footnote of the case, the court references the doctrine of discovery by name. They then go on to establish that because these lands were settled by, were settled by white people, that there was no precedent for giving the land back. They then go on and they build the argument that these lands have since been converted from wilderness to become parts of city like Sherrill.

**Hannah McCarthy:** [00:12:44] They used that exact word wilderness.

**Nick Capodice:** [00:12:46] They did. They are reiterating the exact words of Justice Marshall.

**Mark Charles:** [00:12:50] So the court in 2005 is making the exact same argument. It's just not using the word savages, but it's making the same argument. And so then they conclude [00:13:00] that the Oneida Indian Nation cannot rekindle embers of sovereignty that have long ago grown cold. It's one of the most white supremacist Supreme Court opinions in my lifetime. And that opinion was written by Ruth Bader Ginsburg.

**Ruth Bader Ginsburg:** [00:13:15] But given the extraordinary passage of time, the Oneida's long delay in seeking equitable relief in court against New York or its local units and developments in the city of Sherrill spanning several generations. We reject the piecemeal shift in government.

**Mark Charles:** [00:13:34] And you ask yourself, how can this happen while our nation is literally having a debate about systemic institutionalized white supremacy and we're calling out these racist symbols and we're making some even big changes, and yet we still celebrate this document that literally calls native savages. [00:14:00]

**Nick Capodice:** [00:14:05] Mark told me the reason he wants to have a national conversation about this is that when we talk about institutional racism and white supremacy, we don't just deal with the low hanging fruit.

**Mark Charles:** [00:14:16] Yeah, the low hanging fruit is Andrew Jackson. Most Americans can agree he was a problem. We have to deal with him. The low hanging fruit is the Confederate flag. And generally, you know, most people can agree they didn't represent the best of America. The low hanging fruit is Christopher Columbus. Yes. He was pretty vile person who who way overstepped his bounds of what he should have done. That's the low hanging fruit. And yeah, we can all agree those are not good pieces of our history and our legacy to deal with. But because we're dealing with systemic racism and institutionalized white supremacy, we also have to realize that's going to affect the core of who we are.

**Mark Charles:** [00:14:55] So we have to also look at what's at the center. Abraham [00:15:00] Lincoln, who was a blatant white supremacist and literally committed genocide against native peoples in the states of Minnesota, Colorado and New Mexico, including my own people, the Navajo in the long walk.

**Nick Capodice:** [00:15:15] We have to look at the Declaration of Independence, it's the value statements for our nation. And what I'm saying is until we have a foundation that actually allows for the humanity of everybody, our laws are never going to reflect that. If you have a house that's built on a bad foundation, you're going to have cracks in your walls, you're going to have gaps in your windowsills, you're going to have a creaky, crooked floor. Now you can paint your walls all you want. You can caulk your windows as much as you want. You can you carpet your your floor every every summer. But until you fix the foundation, you're never going to fix the house. [00:16:00]

**Mark Charles:** [00:16:01] And so this is where a new law isn't going to solve these problems. We have to deal with the foundation. And so I propose that let's remove the racism, the sexism in the white supremacy from our foundations.

**Nick Capodice:** [00:16:25] That's two out of three declaration responses, the third will be in a couple of weeks. Today's episode is produced by me, Nick Capodice, with you Hannah McCarthy. Thank you.

**Hannah McCarthy:** [00:16:32] Our staff includes Jacqui Fulton and Felix Poon.

**Nick Capodice:** [00:16:35] Erica Janik is our executive producer. Music in this episode by Yung Karts sub Harmonic Bliss. Emily Sprague. And to hear him is to love him. Chris Zabriskie.

**Hannah McCarthy:** [00:16:46] Also, if there are any teachers out there who want to join our cabinet to get paid to work with us to create lesson plans and activities, to pair with our show, get all of the details at Civics 101 podcast.org backslash [00:17:00] Info.

**Nick Capodice:** [00:17:02] Finally, Hannah and I are going to host an On Air Ask Civics segment weekly on New Hampshire Public Radio. So if you have any questions you like answered in the lead up to this massive election, send them our way. Email us at Civics101@nhpr.org.

**Hannah McCarthy:** [00:17:15] Civics 101 is supported in part by the Corporation for Public Broadcasting and is a production of NPR, New Hampshire Public Radio.