



# The Doctrine of Christian Discovery

## Part Two: The Supreme Court

The Supreme Court has repeatedly used the Doctrine of Christian discovery to claim the right to take Indian peoples' sovereignty and rights to land.

Acknowledging these negative rulings does not mean that Native People accept them; it does mean that we must understand the status of United States Indian law and the arguments and assumptions of the Supreme Court and other federal courts' rulings before we can move forward to successfully overcome White Christian Exceptionalism and defend Indigenous sovereignty and land rights.



Supreme Court in 1810: *Fletcher v. Peck*

“What is the Indian title? It is a **mere occupancy** for the purpose of hunting. It is not like our tenures; they have no idea of a title to the soil itself. It is overrun by them, rather than inhabited. **It is not a true and legal possession. . . . It is a right not to be transferred, but extinguished.**”

The Court went on to justify this claim by observing: The Europeans found the territory in possession of a rude and **uncivilized** people, consisting of separate and **independent nations**.

The Court said that Native People had no idea of property in the soil but a right of occupation. A right not individual but national. This is the right gained by conquest. The Europeans always claimed and exercised the right of conquest over the soil.



*Johnson v. M'Intosh*

There is no dispute that this is the leading case, when the Supreme Court articulated that the Doctrine of Christian Discovery would be the foundation of United States Indian law.

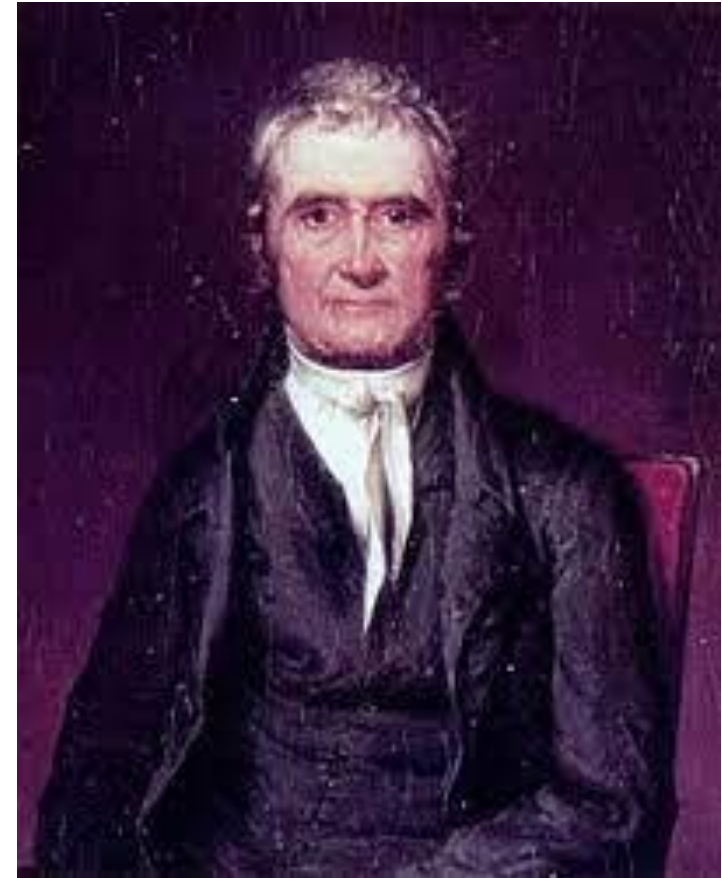
The case that came before Chief Justice John Marshall was all about land: 43,000 square miles of lush, rolling farmland commanding the junctures of four major rivers in Indiana and Illinois.

At the heart of the decision was a “discovery doctrine” that gave rights of ownership to the European sovereigns who “discovered” the land and converted the indigenous owners into tenants. Though its meaning and intention have been fiercely disputed, **more than 175 years later this doctrine remains the law of the land** and indigenous peoples all over the world have been dispossessed of their property as a result.

This case was the beginning of the federal courts' efforts to limit the sovereignty of Indian nations and to progressively take Indian peoples' rights of ownership to their ancestral homelands.

*“Thus has our whole country been granted by the crown while in the occupation of the Indians. These grants purport to convey the soil as well as the right of dominion to the grantees. . . .”* “Thus, all the nations of Europe, who have acquired territory on this continent, have asserted in themselves, and have recognized in others, the exclusive right of the discoverer to appropriate the lands occupied by the Indians.”

“The ceded territory was occupied by numerous and warlike tribes of Indians; but the exclusive right of the United States to extinguish their title, and to grant the soil, has never, we believe, been doubted.”



# Discovery Gave Exclusive Land Title to Those Who Made Discovery

“The United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country. They hold, and assert in themselves, the title by which it was acquired. They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest; and gave also a right to such a degree of sovereignty, as the circumstances of the people would allow them to exercise”

“All our institutions recognize the absolute title of the crown, subject only to the Indian right of occupancy, and recognize the absolute title of the crown to extinguish that right. This is incompatible with an absolute and complete title in the Indians.”



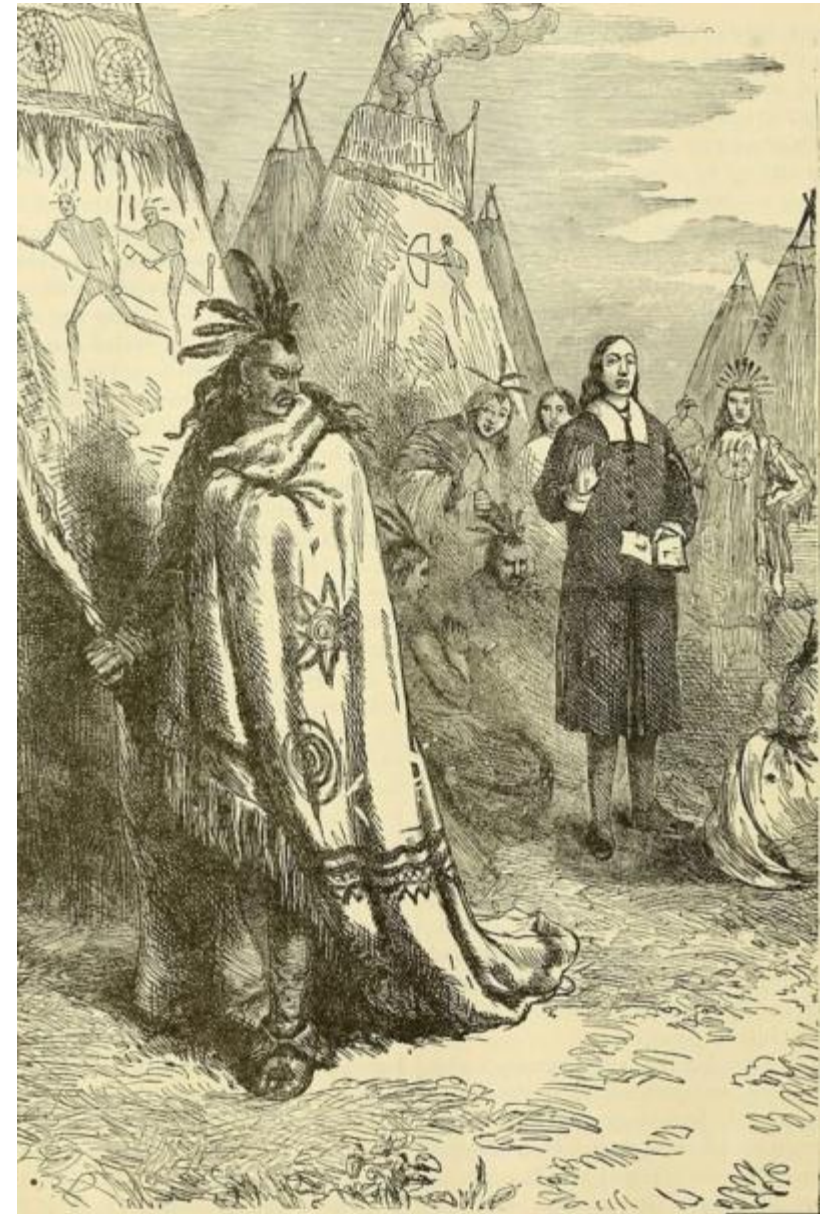


Marshall did not hide his racist opinion of Native Americans: “[b]ut the tribes of Indians inhabiting this country were fierce **savages**, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness.”

Marshall removed all doubt that the doctrine of Christian discovery was based upon the presumed superiority of the Christianity and his definition of civilization when he wrote:

*“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.**”<sup>79</sup>*

*Johnson* ruled that Native sovereignty and land rights were severely diminished upon discovery by Christian people. The right of Indian peoples to their lands was reduced to no more than that of a lessee.



*Martin v. Lessee of Waddell* - 1842

In 1842, in *Martin v. Lessee of Waddell*, the Supreme Court ruled that:

“The English possessions in America were not claimed by right of conquest, but by right of discovery. According to the principles of international law, as then understood by the civilized powers of Europe, the Indian tribes in the new world were regarded as mere temporary occupants of the soil; and the absolute rights of property and dominion were held to belong to the European nation by which any particular portion of the country was first discovered. Whatever forbearance may have been sometimes practiced towards the unfortunate aborigines, either from humanity or policy, yet the territory they occupied was disposed of by the governments of Europe, at their pleasure, as if it had been found without inhabitants.”



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## *Northwestern Band of Shoshone Indians v. United States – 1945*

The Court ruled that:

Even where a reservation is created for the maintenance of Indians, their right amounts to nothing more than a treaty right of occupancy. Prior to the creation of any such area, formally acknowledged by the United States as subject to such right of Indian occupancy, a certain nation, tribe or band of Indians may have claimed the right because of immemorial occupancy to roam certain territory to the exclusion of any other Indians. . . . [W]e shall refer to the aboriginal usage without definite recognition of the right by the United States as Indian title.

### **INDIAN LAND FOR SALE**

**GET A HOME**

OF  
YOUR OWN



**EASY PAYMENTS**



**PERFECT TITLE**



**POSSESSION**

**WITHIN**

**THIRTY DAYS**

**FINE LANDS IN THE WEST**

## *Tee Hit Ton Indians v. United States -1955*

In 1955, the Supreme Court held that Alaskan Natives had no right to compensation for timber resources removed from their lands against their will. It refused to follow one of the most basic of Constitutional principles—the Fifth Amendment’s prohibition of taking property without just compensation.

“The nature of aboriginal Indian interest in land and the various rights as between the Indians and the United States dependent on such interest are far from novel as concerns our Indian inhabitants. It is well settled that in all the States of the Union the tribes who inhabited the lands of the States held claim to such lands after the coming of the white man, under what is sometimes termed original Indian title or permission from the whites to occupy. That description means mere possession not specifically recognized as ownership by Congress. . . . This is not a property right but amounts to a right of occupancy which the sovereign grants, . . . but which right of occupancy may be terminated and such lands fully disposed of by the sovereign itself without any legally enforceable obligation to compensate the Indians.

Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food, and trinkets, it was not a sale but the conquerors’ will that deprived them of their land”.

## *U.S. v. Kagama - 1978*

In *U.S. v. Kagama*, criminal jurisdiction was extended over Indians even though the Court openly admitted that the Constitution did not give such power to Congress. Citing to the doctrine of Christian discovery as its reason, the Court wrote:

These Indian tribes are the wards of the nation. They are communities dependent on the United States,-dependent largely for their daily food; dependent for their political rights. . . . The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell.

Essentially, Justice William Rehnquist ruled that Indian nations were so culturally inferior that they should not be permitted to exercise criminal jurisdiction over crimes committed against their own citizens.

This case is still recognized as one of the leading precedents for United States Indian law, despite its 19th century racist language and assumptions of racial superiority.

## The *Sherrill* “Doctrine,”

The *Sherril* “doctrine” now denies judicial redress for any treaty violation.

On March 11, 2005, the Onondagas filed what they called their land rights action because they did not attempt to evict all of the settlers from their original territory, but only sought two declaratory judgments: (a) that New York had knowingly violated federal law, the Constitution, and treaties when it illegally took vast portions of Onondaga territory in the 1790s and early 1800s, and (b) that therefore, pursuant to the clear terms of the Trade and Intercourse Act, these takings are void.



Justice Ruth Bader Ginsburg  
delivered the opinion of the Court

In addition to naming New York State and lesser political subdivisions as defendants, the Nation also sued five corporate defendants because they were the worst polluters of the aboriginal Onondaga lands and waters, particularly Onondaga Lake.

One of these corporate defendants was Honeywell International. From 1888 to 1987, Honeywell and its predecessors, Allied Chemical and Solvay Process, heavily polluted Onondaga Lake, the sacred lake on the shores of which the Confederacy was formed.

Onondaga Lake once was so abundant with cold-water fish the visitors to Onondaga territory in the 1700s wrote about it, but these corporations had turned it into the most polluted lake in the country, by using the lake and its shore areas as dumping grounds for their toxic chemical wastes.

Just three weeks after the Onondaga filing, on March 29, 2005, the Supreme Court issued its remarkable decision in



The Oneida Nation, after earlier District Court rulings that it could not reclaim illegally taken lands in the court system, had begun to purchase property from willing sellers, within the boundaries of their reservation that had been recognized in the 1794 Treaty of Canandaigua. Since the lands had been under the sovereign jurisdiction of the Oneida Nation before New York knowingly violated the Trade and Intercourse Act, the Constitution, and three treaties when it took the land, the Oneidas took the position that any properties which they obtained on the open market, should be sovereign and under their jurisdiction once again.

Therefore, the Oneidas refused to pay the local property taxes, and the City of Sherrill eventually brought the dispute into court to collect the accumulated taxes. There was no dispute that the property was within the Canandaigua recognized Oneida reservation, which had not been disestablished or diminished.

## *City of Sherrill v. Oneida Indian Nation.*

The Supreme Court held that the City was authorized to tax the property, and in the process of reaching this conclusion, the Court created a new “equitable” defense, which it labeled as “laches” (an unreasonable delay in asking for redress). The Court, in creating this new defense, ignored many of the fundamental principles of equity—such as that a defendant must have clean hands, that the courts are required to balance the equities, or that any injury should have a remedy.

As disturbing as this ruling is, perhaps of even more concern is the reliance it placed on the Doctrine of Discovery, as shown in the Court’s opinion. Under the “doctrine of discovery,” “fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign—first the discovering European nation and later the original States and the United States.”

The Court acknowledged that New York “after the adoption of the Constitution . . . acquired vast tracts of land from Indian tribes . . . without National Government participation.” Such New York takings of Haudenosaunee lands were illegal and in violation of the Constitution and the Trade and Intercourse Act, but this was conveniently ignored by the Court.

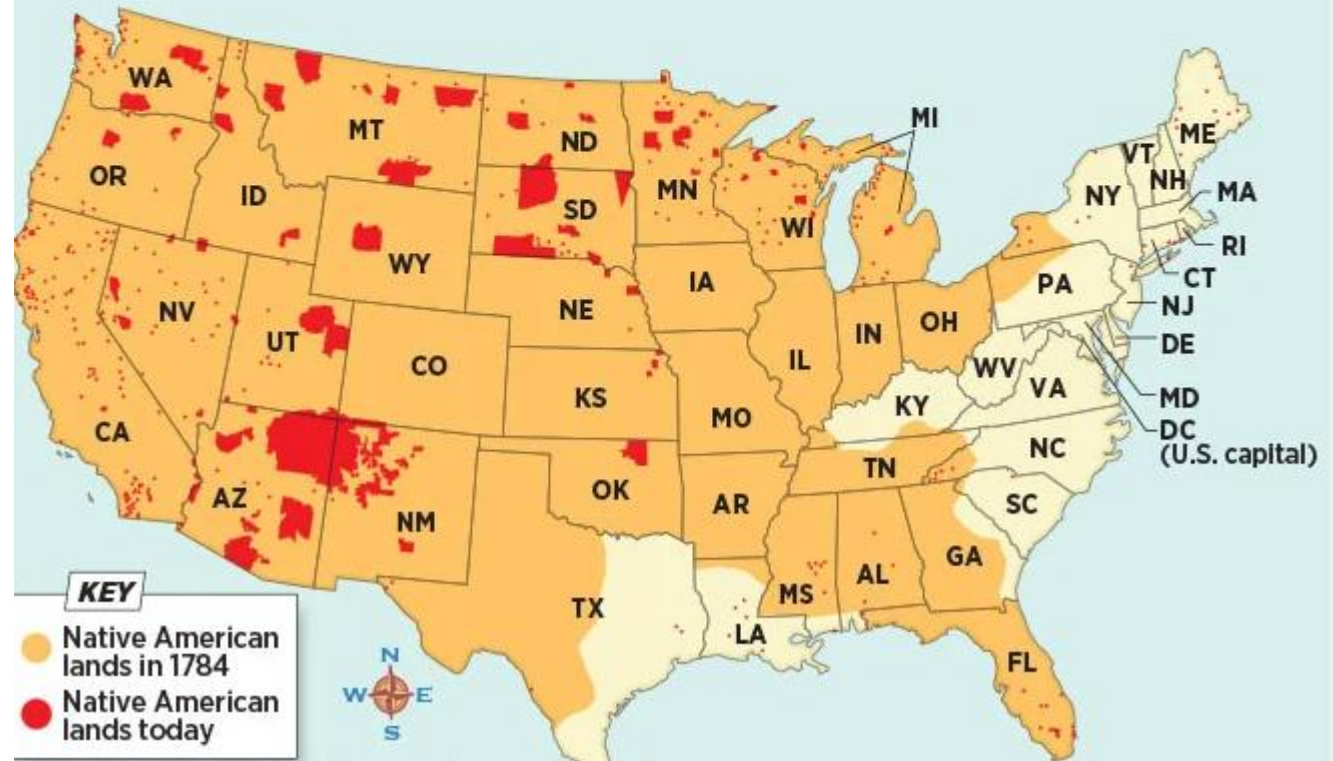
This new “equitable doctrine” does not require the defendants to comply with the traditional principles of equity, and this new defense only applies to Indian nations’ land rights cases. Once again, separate and more unequal.

Here we have yet another example of the courts' fast footwork when it comes to finding any way plausible to dismiss Indian nations' land rights action.

In *Cayuga*, the Circuit ruled that these "equitable doctrines . . . can . . . be applied to Indian land claims, even when a claim is legally viable and **within the statute of limitations.**" Different inequitable rules apply to Indian nations' land rights cases than to any other litigant.

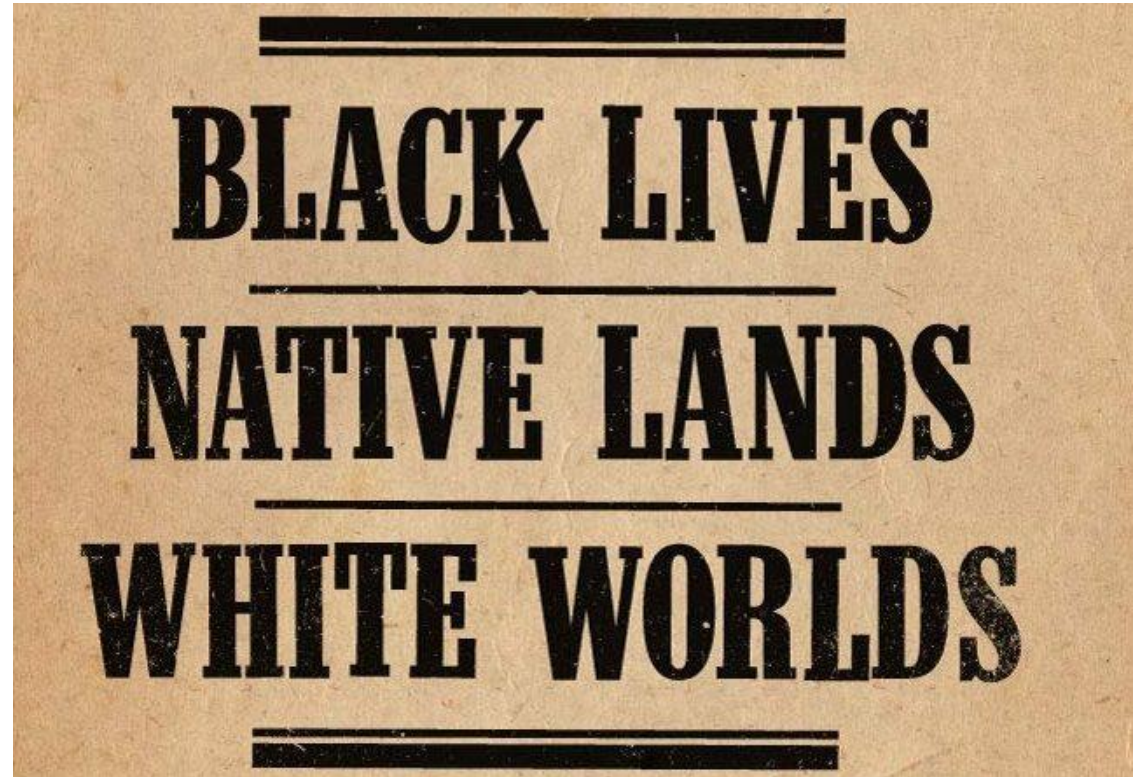
# America: Then and Now

Native American groups once lived throughout what is now the United States. As colonists arrived on the East Coast, they began forcing these groups off their lands. This map shows the amount of land Native people lived on in 1784, soon after the U.S. officially became a country. It also shows the amount of land they have now.



Native People of Turtle Island (North America) believe that the Doctrine of Christian Discovery must be exposed, renounced, and annulled.

They suggest that non-natives join them in a political and cultural campaign to increase the understanding of the Doctrine of Christian Discovery and expose the White Exceptionalism frame of mind. It is hoped that grass roots level organizing and working together will bring about meaningful change.



Non-native settlers can work with the Native People to building pressure on the United State government and institutions to admit that the Doctrine of Christian Discovery has no place in a true democracy.



The major resource for this presentation:

Joseph J. Heath, *The Doctrine Of Christian Discovery: Its Fundamental Importance In United States Indian Law And The Need For its Repudiation And Removal*, 10 GOVERNMENT LAW REVIEWLR (2017).