

200 Years of Johnson v. M’Intosh: Law, Religion, and Native American Lands

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200 Years of *Johnson v. M’Intosh*:
Law, Religion, and Native American Lands

A Canopy Forum Thematic Series
March – April 2023

Produced through a partnership between *Canopy Forum*, the Indigenous Values Initiative (IVI), and Syracuse University, this series of essays brings together religion scholars, legal scholars, and Indigenous activists to explore the problematic legacy of *Johnson v. M’Intosh* (1823) and the 15th century Doctrine of (Christian) Discovery – a legal and religious rationale by which European powers claimed the right to discover and claim lands inhabited by non-Christian peoples. Focusing primarily on the 19th through the 21st centuries, these essays illustrate how *Johnson* and the Doctrine of Christian Discovery have global import to Turtle Island (especially the United States and Canada) and Aotearoa (New Zealand).

Grounding this conversation in the Two Row Wampum method, the editors of this series have worked to include both Indigenous and non-Indigenous voices so we can journey side by side without violating the waters down the river of life. We recognize the urgency and need for more inclusion of indigenous voices to reaffirm our proper relationship with the natural world in the staid disciplines of religion, law, history, anthropology, and cultural studies. We hope this series inspires generative conversations around *Johnson* and the Doctrine of Christian Discovery.

“Introduction to the 200 Years of *Johnson v. M’Intosh*: Law, Religion, and Native American Lands Series”

Philip P. Arnold, Sandra L. Bigtree, and Adam DJ Brett
March 10th, 2023

*“As historians of religions, we are interested in myths, history, and creation narratives. The U.S. Supreme Court’s landmark ruling in *Johnson v. M’Intosh* (1823) includes all these elements. The *Johnson* decision illustrates one of the powerful ways in which Christianity has played a hegemonic role within American law and culture at the expense of Mother Earth and all living beings...”*

“*Johnson v. M’Intosh* and the Missing Cover of the Jigsaw Puzzle”

Steven Newcomb
April 13th, 2023



*“February 28, 2023 marked 200 years since Chief Justice John Marshall delivered a unanimous decision for the U.S. Supreme Court in the case *Johnson & Graham’s Lessee v. M’Intosh*. This decision enshrined into the system of ideas and arguments called “U.S. law,” the assertion that the Christian nations of Europe, and their political successors, had a right of discovery and domination (“ultimate dominion”) against the original nations and peoples of this continent. At one point, the Court used the phrase “natives who were heathens,” language which is traced to the Bible and to Vatican documents from the fifteenth century....”*

“*Johnson v. M’Intosh*, *Wi Parata v. Bishop of Wellington*, and the Legacy of the Doctrine of Discovery in Aotearoa-New Zealand”

Tina Ngata
April 11th, 2023



“Here in Aotearoa-New Zealand the doctrine of discovery is, for many, a very new concept. If people knew of it at all, they assumed it to be relevant to the history of the Americas, but not to Aotearoa-New Zealand. This is in part due to our preoccupation with the colonial fiction of a “kind settlement.” A concerted grassroots campaign organized during the 2019 national commemorations of James Cook’s invasion in 1769 resulted in heightened awareness of his imperial intent. Consequently, there has been a somewhat belated awakening for Aotearoa-New Zealand...”

“The Legacy of the Right to Control Land and Dependency”

Kerri J. Malloy
April 1st, 2023



“Legacy embeds the actions and inactions of those before us into the current legal, political, and social processes. Reverberating through history are the echoes of words that canonized inequity in the systemic structures of federalism in the United States. In 1823, the U.S. Supreme Court decision in Johnson & Graham’s Lessee v. M’Intosh infused the Doctrine of Discovery as the law of the land and as the cornerstone for federal Indian law for the next two centuries. Along with the two other chapters of the Marshall Trilogy, Cherokee Nation v. Georgia (1831)...”

“The International Law of Colonialism: Johnson v. M’Intosh and the Doctrine of Discovery Applied Worldwide”

Robert J. Miller
March 30th, 2023



“The United States Supreme Court’s first Indian law case, Johnson v. M’Intosh, was decided in 1823. In that case, the Court summarized and then applied four hundred years of international law and colonization to the Indigenous nations and peoples within the United States. Johnson is still the law in the United States today and has also influenced the jurisprudence and histories of other settler colonial countries around the world. Johnson has been cited scores of times by courts in New Zealand, Australia, and Canada, as well as by the British Privy Council...”

“Johnson v. M’Intosh, Plenary Power, and Our Colonial Constitution”

Alexandra Fay
March 29th, 2023

“In Johnson v. M’Intosh, Chief Justice John Marshall articulated the doctrine of discovery as a justification for the legal subordination of Native people and their rights. In European international law, the doctrine of discovery gave European empires the legal right to settle whichever parts of the New World they “discovered.” Inherent to this idea was the presumption that Native lands were available for settlement and civilization by the Christian nations of Europe. By importing this doctrine into American law, the Supreme Court justified American claims over Native lands....”



“However, Extravagant The Pretensions of Johnson V. M’Intosh“

Betty Lyons and Adam DJ Brett
March 23rd, 2023

“The original free nations of Turtle Island have lived in a relationship with Mother Earth and all living beings since the beginning of time. There have been times of great harmony and balance and times — like now — of war and imbalance. Thousands of years ago, before the Haudenosaunee Confederacy was formed, the nation fought against the nation, and there was an imbalance. During this time, the Creator sent a prophet, the Peacemaker. The Peacemaker arrived on the shores of Onondaga Lake in a stone canoe...”



“Did Pope Alexander VI Authorize England’s Colonization of North America?”

Matthew P. Cavedon
March 21st, 2023

“Shortly before Thanksgiving 2016, Episcopalian priest John Floberg held up a copy of Pope Alexander VI’s 1493 papal bull Inter caetera before a crowd of hundreds of protesters and clerics at North Dakota’s Oceti Sakowin Camp. He asked a committee of Indigenous elders to authorize its burning. They did, the paper went up in flames, and the crowd erupted in applause. Why torch the text? Those present believed, as do many activists today, that Inter caetera was the basis for the English colonization of North America...”



“Haaland v. Brackeen and the Logic of Discovery”

Dana Lloyd
March 18th, 2023

“In 1823, the U.S. Supreme Court handed down a decision in Johnson v M’Intosh, the first of the Marshall trilogy, infamous for its attack on Indigenous sovereignty. Two hundred years later, it seems as if things are different — indeed, it seems as if things are better — for Indigenous peoples in the United States. We have a Laguna Pueblo woman Secretary of the Interior, an investigation into the horrors of Native American boarding schools has resulted in a report for the first time in U.S. history, and the government has even acknowledged the genocide of Indigenous peoples...”



“The Contemporary Presence of Discovery’s Assertion in Canada”

Mark Tremblay
March 14th, 2023

“Many groups and organizations have taken actions to repudiate the Doctrine of Discovery. In an opinion piece published in Canada’s Globe and Mail in Aug 2022, Douglas Sanderson asserts that the Doctrine of Discovery had little influence on the relationship between Indigenous peoples and the French and English who treated Indigenous nations as equals. The Doctrine of Discovery seeks to explain how European nations dispossessed Indigenous peoples of their land and rights...”



“Order, Economy, and Legality: Johnson v. M’Intosh after Two Hundred Years”

Andrew Little
March 11th, 2023

“From the beginning, the appropriation and distribution of Indigenous land had to be orderly. Settler-colonists needed a system to avoid haphazard, disorganized tribal land transactions and achieve their goal of the private commodification of the expanding American frontier. The settlers were well-versed in creating systems, in contrast to how they regarded the supposedly “inferior” native peoples. Condescending views of Indigenous lifeways predominated...”



“Federal Anti-Indian Law: The Legal Entrapment of Indigenous Peoples”

Peter d’Errico
March 7th, 2023

“This book tells the story of Christian discovery, the legal doctrine underpinning U.S. dispossession and domination of Indigenous peoples. The doctrine, which essentially states that the United States owns all Native lands, haunts American law to this day. It forms the bedrock of what is known as “federal Indian law”; in fact, federal Indian law is a matrix for domination, which is why I call it “federal anti-Indian law.” Federal anti-Indian law carries a significance far beyond the relations between the United States and Native peoples...”



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