

Book Review: *Buying America From the Indians: Johnson v. McIntosh and the History of Native Land Rights.*

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In his well-supported book, *Buying America From the Indians*, Blake A. Watson argues that the ruling in *Johnson v. McIntosh* has been used to shape legislation and action regarding Native American land rights. This 1832 Supreme Court case was between two purchasers of the same land sold and ceded by the Piankeshaw tribe. The Piankeshaw originally sold portions of their land to members of the Illinois and Wabash Land Company in 1773 and 1775, and then ceded the same land to the Indiana Territory in 1805. A land speculator, William McIntosh, then bought portions of the ceded land and argued that the original 1775 purchase “was invalid because Indians lacked the capacity to sell land to private individuals.”¹ The Supreme Court ruled that Native Americans lost “their power to dispose of the soil at their own will” by the doctrine of discovery.²

This Supreme Court case stripped Native Americans of the title to their land and set a precedent for future land acquisition and Native federal law cases. Watson focuses on Chief Justice John Marshall’s use of the doctrine of discovery as justification for his ruling. The application of the doctrine of discovery is noticeable in future Supreme Court cases Marshall ruled on, such as *Tee-Hit-Ton Indians v. United States* and *City of Sherrill v. Oneida Indian Nation*. Watson also discusses previous decrees, treaties, and rulings that the plaintiffs and defendants used to either confirm or deny Native land rights.

In his work, Watson’s central argument is that Marshall used the doctrine of discovery to establish the United States’ authority over Native land. The doctrine of discovery declares that European countries, and then the United States, inherited the rights and title to land in North America upon their discovery of the continent. Marshall states that because Europeans hold title to the land, the “discovery necessarily diminished the power of Indian nations.”³ Watson addresses

different views of Native land rights at the center of the debate at the time of the *Johnson v. McIntosh* ruling and events leading up to it. The four different views are: (1) Indians had ownership of their land and can sell it to whomever they want, (2) Indians own and occupy the land but are limited to whom they can sell the land to, (3) Indians only possess the land and have no ownership, and (4) Indians have no rights to the land and are trespassers. Marshall rules along the third point stating that Illinois and Piankeshaw did not own but only occupied their land and could not privately sell their land to the Illinois and Wabash Land Company.

Marshall's ruling in *Johnson v. McIntosh* establishes that Native Americans are "mere occupants" of the land that their families have lived on for generation after generation.⁴ Watson highlights the impact this ruling had on Native-Federal relations, noting its use by President Andrew Jackson to pass the Indian Removal Act and support the Georgian politicians' claim "that Johnson established that Indians hold no title to the soil."⁵ In *Worcester v. Georgia*, although Marshall rejected the idea that the discovery doctrine gave the title to the land, he still upheld that the Natives could only sell to the United States, which continued to dismiss Native land rights. During the 20th century, *Tee-Hit-Ton v. United States* ruling established that Native's title to their land could be "terminated by the United States without any legally enforceable...compensation."⁶ The doctrine of discovery also appears in present time, with the 2005 Supreme Court case of *City of Sherrill v. Oneida Indian Nation*. This ruling state that Native Americans do not precisely have title to their land because of the doctrine of discovery. The Natives lost the rights to their land "when the colonist arrived...first the discovering European nation and later the original States and the United States."⁷

Watson uses an ample amount of evidence to contextualize *Johnson v. McIntosh*. The lawyers of both plaintiff (Johnson) and the defendant (McIntosh) utilized recent proclamations, treaties, and rulings to argue their cases. For example, The British Proclamation of 1763 that states that British colonists could not privately buy land from Native Americans “without [the government’s] special leave and license.”⁸ The defendant stated that “the Crown held the underlying *title* to the land,” and Native Americans had no right to sell it to the Illinois and Wabash Land Company.⁹ Also, the proclamation prohibits British subjects from purchasing land from Native Americans. Robert Harper, a lawyer for the original purchasers of the land, tried to convince the Supreme Court that Native Americans are not British subjects. He added, “they could not be divested of their rights of property...by a mere act of the executive government, such as this proclamation.”¹⁰ Harper relies on a previous ruling from 1774, *Campbell v. Hall*, to argue that the king could not prevent colonists from privately purchasing their land by proclamation. However, the Supreme Court justices in *Johnson v. McIntosh* concluded that even without a proclamation, Native Americans still did not have any title to land that would allow them to sell it privately.

Watson also discusses how the Treaty of Greenville established the preemptive rights of the U.S., which affected the outcome of *Johnson v. McIntosh*. The treaty states that tribes occupy the land but are “dictated...when the tribes shall be disposed to sell their land,” and it must be to the United States.¹¹ The Treaty of Greenville solidifies that the United States does not own Native land, but they have the preemptive right to purchase it “from them whenever they should be willing to sell.”¹² Watson explains that Washington wanted to strengthen the arguments of preemption to invalidate the original Wabash Purchase.

The 1810 Supreme Court case *Fletcher v. Peck* was also used as a precedent for the justices in *Johnson v. McIntosh*. This case was “the first time [the Supreme Court] invalidated a state law contrary to the Constitution.”¹³ It prohibited the state of Georgia from diminishing the rights of purchasers of Native land. Marshall and justice William Johnson had contradicting views on the ruling. Johnson “argued for absolute tribal rights” but recognized preemptive rights of their land.¹⁴ Native Americans can sell their land whenever they want but not privately. However, Marshall then gave the title of the land to Georgia, and “went far beyond the preemption concept and declared that Georgia” held title to the land.¹⁵ This notion was used by McIntosh’s lawyers to argue that Native Americans did not have the right to sell the land they occupied.

Watson’s analysis is compelling when discussing the impact of Federal Indian law. He lays out the historical context and uses events to explain how Marshall and the Supreme Court justified their ruling. The historical context, such as different treaties, committees, doctrines, rulings, and decrees, are laid out for the reader in-depth before discussing the arguments and decisions in *Johnson v. McIntosh*. At the same time, Watson’s analysis would be more digestible if streamlined. Watson uses many examples of literature and legislation on the topic of Native land rights but does not use all of them towards his core argument. For example, Watson spends an extensive amount of time and often refers to the Camden-Yorke Opinion. However, in the *Johnson v. McIntosh* ruling, it was rarely brought to the forefront. It is critical to have a broad understanding of historical context, but Watson went a bit over the necessary amount of information needed to understand the Camden-Yorke Opinion concerning the Supreme Court ruling.

The criticism aside, Watson thoroughly established the impact of the *Johnson v. McIntosh* case on Federal Indian policy. Watson makes it apparent that the influence of *Johnson*

v. *McIntosh* and the doctrine of discovery is still noticeable in the judicial system and impacts the lives of Native Americans today. *Buying America From the Indians* connects the past and the present of Federal Indian law in the United States.

Notes

¹ Watson, Blake A. *Buying America from the Indians: Johnson v. McIntosh and the History of Native Land Rights*. Norman: University of Oklahoma Press, 2012.

² *Ibid*, 6.

³ *Ibid*, 11.

⁴ *Ibid*, 293.

⁵ *Ibid*, 318.

⁶ *Ibid*, 318.

⁷ *Ibid*, 319.

⁸ *Ibid*, 50.

⁹ *Ibid*, 51.

¹⁰ *Ibid*, 287.

¹¹ *Ibid*, 173.

¹² *Ibid*, 171.

¹³ *Ibid*, 234.

¹⁴ *Ibid*, 242.

¹⁵ *Ibid*, 242.