



# Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands

By Lindsay G. Robertson

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John Marshall's landmark 1823 decision in *Johnson v. M'Intosh* gave the European sovereigns who "discovered" North America rights to the land, converting Native Americans in one stroke into mere tenants. In 1991, while investigating the historical origins of this highly controversial decision, Lindsay Robertson made a startling find in the basement of a Pennsylvania furniture-maker--the complete corporate records of the Illinois and Wabash Land Companies, the plaintiffs in the case. Drawing on these records, *Conquest by Law* provides, for the first time, a complete and troubling account of collusion, detailing how a spurious claim gave rise to a doctrine--intended to be of limited application--which led to the massive displacement of Native Americans and the creation of a law that governs indigenous people to this day.

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### Editorial Review

From [Booklist](#)

Law professor Robertson presents a meticulously researched analysis of the political rivalries and personal greed surrounding a landmark Supreme Court decision that set the stage for "the judicial conquest of Native America." In 1823, two large land speculation companies brought their case to the Court in the hope of having their claims to land in Illinois and Indiana validated. Chief Justice John Marshall, guided by his concern with maintaining the power of the Court relative to the Congress and the states, and his personal desire to secure land grants for Revolutionary War soldiers, produced his landmark "discovery doctrine" that gave "exclusive title" to those who "discovered" the land. Indians were thereby reduced to mere occupants "incapable of transferring absolute title to others." To Marshall's chagrin, this doctrine led to the practice of "Indian removal," whereby entire tribes were forced to move west as their lands were opened to speculators. Robertson's study is based on rediscovered historical records that clearly reveal how greed for land and power instigated the Trail of Tears and similar tragedies. *Deborah Donovan*  
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### Review

"No attorney or judge ought to cite *Johnson* without first reading [this] book."--Walter Echo-Hawk, Native American Rights Fund

"This is the perfect book to assign to students at the start of a property class, even at the start of their law school careers. Robertson takes us behind the litigation of the landmark case of *Johnson v. M'Intosh*, laying bare the process: the maneuvering to present a test case, the economic incentives behind the suit, and even the forgotten sources of Marshall's opinion. Robertson's rich case study brilliantly illustrates how social, economic, and legal concerns all came together in this critical decision."--Alfred L. Brophy, Professor of Law, University of Alabama and author of *Reparations: Pro & Con*

"This work provides insight into the legal machinations of the government and land speculators bent on pursuing Manifest Destiny." --*CHOICE*

"Robertson's painstaking research jumps off the pages of this excellent book that preserves the truth of the "discovery doctrine."--*The Oklahoman*

"A meticulously researched analysis of the political rivalries and personal greed surrounding a landmark Supreme Court decision that set the stage for the judicial conquest of Native America.... Robertson's study is based on rediscovered historical records that clearly reveal how greed for land and power instigated the Trail of Tears and similar tragedies."--*Booklist*

"At last a comprehensive examination of the circumstances surrounding *Johnson v. M'Intosh*, a Supreme Court decision used and abused by generations of lawyers and judges. Robertson brings the case into the historical world from which it has been missing for 180 years."--Vine Deloria, Jr., Professor Emeritus of History, University of Colorado, Boulder

"*Conquest by Law* is an important contribution to the study of the extension of European ideas and governance to other parts of the world, and the work sheds considerable light on indigenous land policies in the United States."--*Law and Politics Book Review*

"Lindsay Robertson's *Conquest by Law* opens exciting new vistas on American politics and law in the republic's formative years. Robertson brilliantly reconstructs the history of *Johnson v. M'Intosh*, the foundational case in federal Indian law in which Chief Justice John Marshall set forth the "discovery" doctrine, showing how this failed feigned case led to tragic, unintended consequences for Indian peoples in the U.S. and beyond. Deeply researched and lucidly argued, *Conquest by Law* is a remarkable contribution both to the literature of American history and to our national self-understanding."--Peter Onuf, author of *Jefferson's Empire*

"Lindsay Robertson's outstanding book pulls off the frail cover of the articulated court reasoning in *Johnson v. McIntosh* to expose the often ugly reality that the case was orchestrated to satisfy the greed of speculators. More disturbing, the decision was expanded for the purpose of rewarding Marshall's friends. It points to one of those historic moments wherein had integrity persevered, many tribes, including the Cherokee Nation, may not have faced the infamous Trail of Tears; and federal and tribal relations would have been founded on solid law, rather than fleeting political desires. Professor Robertson has done a great service to the country, to the law, to the Indian nations by exposing the truth through painstaking research." --Chad Smith, Principal Chief, Cherokee Nation

"This is an exceptional work that breaks new ground and contributes to our understanding not only of a specific case, but of the role of the Supreme Court in the American Republic. An important contribution to both the study of law and the history of the West."--Rennard Strickland, Philip H. Knight Professor of Law, University of Oregon

"Drawing upon previously unknown historical records, Professor Robertson has written a major book destined to force a significant reconsideration of the legal principles and the landmark judgment relied upon in the USA, as well as in many other countries, to legitimate colonial assertions of ownership overriding indigenous ones."--Bradford W. Morse, Professor of Law, University of Ottawa

From the Publisher

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