Jordan Brady Loewen-Colon (00:00:07):

Hello and welcome to the Mapping, the Doctrine of Discovery podcast. The producers of this podcast would like to acknowledge with respect the Onondaga Nation, Firekeepers of the Haudenosaunee, the Indigenous Peoples on whose Ancestral Lands Syracuse University now stands.

Paula Johnson (00:00:25):

All right, well it seems to be that we're here and I don't want you all to lapse back into your being sleepy again. So we got to wake up and get started this morning. Welcome back, everybody, to this fantastic conference. Again, I'm Paula Johnson, for those of you how might not have been here yesterday, and I teach here at Syracuse University and teach at the College of Law, and I've been so honored to be a part of this incredible conference.

(00:01:02):

As someone who teaches in the law, I know that the subjects that we've been talking about this weekend are not as integrated and infused within law school courses as they ought to be. And so I'm pleased that we're able to add information and add a sense of the imperative that all of these discussions be part of what we learned in law school. And for those of us who tried to do that, this is very inspirational and supportive of these efforts. [inaudible 00:01:37], and I hope that we all find ways in whatever work we're doing to make sure that these issues, these topics are discussed, and that all the voices that we have been hearing here this weekend are concluded in whatever areas we teach work, or where our activism lies.

(00:01:55):

So let me introduce our panelists this morning. This is a discussion on the aptly named Federal Anti-Indian Law. And in the order in which they will speak, we have Peter D'Errico, who is online with us. Professor d'Errico retired from the university at UMass in August 2002. He is a central figure in the development of the Legal Studies Department at UMass. His research and teaching having been focused on the legal issues of Native Americans and indigenous peoples. He also has been active in litigation of indigenous peoples issues. He is the author of Federal anti-Indian Laws and he continues to engage in law-related writing and consulting primarily on issues of concern to indigenous peoples. And he is especially involved with Mashpee, Wampanoag, and Western Shoshone issues as well as the work of the United Nations permanent Forum on indigenous issues. So welcome, Professor d'Errico, glad to have you with us.

(00:03:17):

We also have with us Steven Newcomb, President Newcomb of the Shawnee-Lenape Tribe Nation has co-founded the Indigenous Law Institute in 1992 with Birgil Kill Straight, who was a traditional headman and ceremonial leader of the Oglala Lakota Nation. Professor Newcomb is recognized as one of the world's foremost authorities on the Doctrine of discovery and has made evidence by his law review articles and his book Pagans in the Promised Land, Decoding the Doctrine of Christian Discovery. He is also producer of the documentary movie, the Doctrine of the Discovery, Unmasking the Domination Code, which was directed by Sheldon Wolfchild. It is based on pagans in the Promised land. So welcome to you, President Newcomb.

(00:04:13):

And again, we have our hometown expert, Joseph Heath. Joe Heath has a long background, an extensive experience in civil rights litigation as one of the four lawyers representing a class action against New York State in the 1971 Attica Prison assault brutality, which resulted in a $12 million settlement in 2000.

He is the Onondaga Nation General Counsel. Counsel, sorry. In his 45 years of practice, Joe Heath has also worked in criminal defense, constitutional law and protection of free speech and assembly, protection of abused and neglected children, and fighting domestic and police violence. And he also is an active member of Veterans for Peace.

(00:05:08):

So each of our speakers will talk to us for roughly 10 minutes and we hope to have time for you afterwards to engage with your questions and comments with our panelists. So with no further ado, then we would invite Professor Enrico to begin. Professor d'Errico.

JoeDe Goudy (00:05:28):

d'Errico.

Paula Johnson (00:05:28):

d'Errico, I'm sorry.

Peter D'Errico (00:05:30):

Thank you for that introduction and good morning everyone. It would be wonderful to be sitting in that chair there next to Steve and Joe, but I'm joining you this way, and I'm happy to be able to do that. I've had a connection over the years to the folks at Syracuse doing this important work, and so glad to be here.

(00:05:51):

In the few minutes that I have right now this morning, I want to make two major points. First, just picking up on the comment in the introduction about this work being too little involved in law schools, and I think that's a major problem. It seems to me that, just as a quick comparison, imagine that we're back in the 1950s, some of us are old enough for that, I'm imagining, and remembering actually. Imagine that the doctrine of separate but equal is still US law and imagine that there are classes being taught about it, and that it's basically being presented as a pretty good thing. It has some problems, but of course everything has problems and we have to work with what is given to us because this is the way law works.

(00:06:42):

And this is a parallel to what's going on right now with the entire doctrine based on the martial trilogy, which I'm sure all of you are familiar with, beginning with Johnson v. M'Intosh and including Cherokee Nation v. Georgia, and Worcester v. Georgia. All of that is being taught as if this is just an immutable framework, we have to reason within this framework because it is given to us as the law, and then we go on and do that reasoning within that framework. That's what I see happening not just in law schools, I see it in articles, I see it in briefs that are filed in cases in which this is simply presented as it's the way it is and we now are going to try to work our way around in this maze and figure out some way to make this bad doctrine be a good thing.

(00:07:33):

And we see it in even the highest levels of the courts and we see it applauded in the media. When the Brackeen v. Haaland case was decided within the first three or four pages of the decision, the court said the basis of our decision, this is the plenary power of Congress. It is bizarre to me. If the problem of child welfare were addressed without plenary power, it would have a very easy niche in the entire global framework of the Hague Convention on Inter-Country Adoption, and there would be no problem of

indigenous children being stolen because all of these inter-country adoptions happened according to the Hague Convention and all the things people were worried about with why ICWA was so important are all covered in that framework without anybody claiming plenary power. And this is just somehow passes by without commentary, and I think that's really a serious problem.

(00:08:29):

We have JoeDe Goudy and the Yakama Nation to thank for having been a major exception to this. I should say there have been a handful of exceptions over the last decades, but the major exception of the Yakama Nation amicus brief in the Washington State Case, v. Cougar Den was a frontal attack on this doctrine of domination called Christian Discovery. And only after presenting that did they go into the discussion of the treaty and it was very clear that the court was put on notice. The brief was cited at least three times, which is unusual for any amicus brief. The court was on notice that if they wanted to go down that Christian Discovery Road, they were going to be hit from all sides by a very powerful antagonist in the form of the Yakama nation amicus. And so they ducked it. They cited the brief for its section, which is about the treaty, and on that basis they upheld Yakama rights.

(00:09:30):

So it can be done, the challenge can be made and it certainly ought to be being made in law schools. So that's point number one. The second point I want to make is that a parallel with this failure to make the challenge is the invisibility of what it is that should be challenged. The most recent example is the one happened right in New York state last month when the Montauket so-called reinstatement bill was vetoed by the governor. Now the news coverage from the New York Times all the way to Newsday and Long Island TV stations and the rest of it, the coverage all focused on, "Oh, how horribly racist this is," because the governor relied on a 1910 decision and a 1914 affirming of that decision in which the two judges involved made racist characterizations of the Montauket people.

(00:10:24):

That racist characterization is actually in both of those opinions, so it's not as if there isn't racism involved, but the major basis of the opinions was the doctrine of Christian discovery. It was about land, it was not about racial miscegenation, which was tossed around in one or two sentences. It was the major bulk of the 1910 decision, which started out by saying the issue here is the status of Montauket land. And how did the court answer that question? The court said the fee of the land is in England. Now if you know anything about Christian discovery law, you know that's basic Christian discovery doctrine, that the colonial powers acquired ownership of the continent and the US has adopted that doctrine. That's the M'Intosh case, the Johnson v. Macintosh. Not a single paper that I saw, not a single news report went anywhere near that. They were all over themselves with talking about racism.

(00:11:27):

Racism has become a kind of fixation that it is the reason for every wrong in the US, it's the reason for every injustice, and the real basis of domination just passes by without anybody even apparently seeing it. So I think that these two intertwined problems of failure to raise the challenge where it must be raised in law schools and in courts by litigants and the failure of journalists and commentators to see what it is that needs to be challenged. Even the legislators that were behind the so-called Reinstatement Bill didn't really understand it. They referred, the bill itself referred to the doctrine of Christian Discovery, and the point that it made was that the Montaukets existed before that doctrine was imposed. Well, that's absolutely important. From time immemorial, the Montaukets and all other native peoples have been on this continent without anybody claiming plenary power over them or ownership of their lands. But having said that, what did the bill text do? It said that under the Doctrine of Christian

Discovery, New York State doesn't have power to decide anything about Montauket land, it has to be Congress that decides that.

(00:12:42):

So this goes back to the first thing I said, is instead of challenging that doctrine, the bill authors said, "Well, if we use that doctrine we can find the little silver lining here is that we have a stick that we can whip New York with. It ought to be the US government that decides whether the Montauket exists." I'm wondering, when would a single commentator, other than the two people in the room with you, on the panel, and me, probably two or three others, if we could take time to name them, would say, "Wait a minute, that doesn't really make sense. You're saying that the domination is okay as long as the Congress does it. It's not okay if New York State does it."

(00:13:23):

So the bill authors were aware of Christian discovery and didn't know how to deal with it. That's really unfortunate. And I think that if we're going to accomplish anything here, and I mean here in our work but also here even in a conference like this, there must be a way to move beyond the fixation with the racism as the single explanation for everything that's wrong and everything that has gone wrong, and the single thing that has to be fixed. That's ultimately, if we have those two points that we can make here today, then we will have accomplished something. Let's wake up in the law schools and in the brief writing to challenge what has to be challenged and let's wake up in journalism and commentators and legislators to realize this is the same point. Here's what the target is, let's aim at the target.

(00:14:19):

And just to close out my few minutes here, I'm not just talking about making a historical theoretical critique. In the case of the Montauket, it is historical and it's one that has current meaning. But the Doctrine of Christian Discovery is not just something that happened 200 and some, 400 and some years ago, because the doctrine still goes on. The doctrine is what is being used by the US government to take over the Apache land at Oak Flat. It's being used by the US government to take over Western Shoshone and Paiute land at Thacker Pass. It's been used by the United States to disrupt Navajo nation land resources and water resources. It's been used over and over again in current time, still being used. So we're talking about an active battle, and that at least is enough to say enough. Where are we going to stand and say, "Let's be clear about what's going on here." More than racism is going on. There may be racism, there is racism, but that's not really what the law is based on.

(00:15:29):

You can have a judge like Ruth Bader Ginsburg, whom I don't think anybody ever said Ruth Bader Ginsburg had a racist bone in her body, but she had no hesitation in 2005 in the case involving the Oneida of saying, right at the top of her opinion, footnote number one, Doctrine of Discovery is what we are relying on here. The Oneida have no ownership of land because the monarchical powers own it, the colonial powers passed it to the States, and the US adopted it. End of footnote number one. That's 2005. That's a non-racist Supreme Court judge. Should be enough to say, "I think we got a problem here. Let's look at it." Now, I don't know if I've used up 10 minutes or not, but I've probably said enough for a while.

Paula Johnson (00:16:18):

Thank you very much. [inaudible 00:16:19]. Thank you very much, Professor d'Errico. We will come back to you, hopefully, and have more exchange with you with points that you've raised. I'm going to ask Mr. Newcomb to speak. We have a mic there. [Inaudible 00:16:55]

Steven T. Newcomb (00:16:54):

[Inaudible 00:16:55] Steve Newcomb, Nuala Lindum, and [inaudible 00:16:57]. So good to be with you all here. Want to acknowledge the Haudenosaunee and the Onondaga nation on whose territory we are having this convening. And I want to begin by, in the few minutes that we have here, to set the context. And that context is the original free and independent existence of our nations and peoples, extending back to the beginning of time through our oral histories and oral traditions, contrasted with the system of domination brought by ship across the ocean and imposed on everyone and everything. And once we have that contrast, then we have a view from the shore looking out at those colonizing invading ships coming toward our ancestors and we have the view from the ship looking at our ancestors all those centuries ago and we're able to have that as a great starting point for this conversation.

(00:17:59):

Years ago, when I was working out the ideas for my book, Pagans in the Promised Land, I created some language that I think is helpful in this moment, in this gathering, and this is talking about the sacred birthright of our original nations and peoples. Distinct and diverse indigenous peoples are nations born of the earth, the sacred life giver, placed by the creator in sacred relationship with our respective homelands and territories throughout time. Our ancestors lived free and independent of Western colonialism and subjugation for an untold succession of ages until the empires of Christendom invaded our region of earth, which is commonly known in the foreigner's tongue as the Western Hemisphere. Our ancestors bequeathed to us the gift of a sacred birthright, which is our very being as naturally existing nations and peoples. This sacred birthright is comprised of our languages, cultures, lands, deserts, mountains, forests, and our relatives such as the buffalo, caribou, salmon, cedar, sage, sweet grass and corn pollen, as well as our spiritual and ceremonial traditions, our songs and sacred ceremonial places, our oral histories and the burial places of our ancestors.

(00:19:25):

Our sacred birthright includes our minds, our philosophies, our sciences, and our economic systems and agricultural practices. It includes our petroglyphs and artifacts, and our sacred birthright also includes the rivers, streams, natural springs, lakes, underground aquifers, seas, bays, inlets, oceans, and all bodies of water, the precious and sacred liquid that flows through the veins of mother earth and sustains all life without which the life cannot continue.

(00:20:01):

And since I have limited time, I won't read the rest of that, but I will say that it's this type of understanding that goes into that original free and independent existence of our nations and peoples. Our sacred birthright, which we shall never freely forfeit, includes the right to heal from the trauma of colonization and to one day be free and independent of all forms and manner of colonial domination. We have a solemn responsibility to use every fiber and breath of our being to uphold and protect the sacred birthright of our own children and young people for the benefit of our future generations and for the benefit of life. Every spark that spirals into the air from a ceremonial fire represents the spiritual energy of the universe that burns in each and every one of us. We have the ability to combine together the fire of our respective spiritual energy as human beings to become a tremendous force of healing, cultural resurgence and revitalization.

(00:21:13):

Pardon me. The reason why I'm opening like this, which I've never done before, is that I really want you to have a deeper insight and understanding to try to get us out of this colonial mindset, this way in which our minds have been conditioned into this colonizer's language along the lines of the domination system. The things that Peter d'Errico has just presented to you are so critically important, but we have to look at the nature of language and the way in which language maintains reality. It creates and

maintains a particular form of reality. And as soon as we say a particular word, then that becomes the focal point of our awareness and our consciousness in a conversation. But we could just as quickly switch to something else and then suddenly that becomes the focus. And so the framing of how we're discussing all of these issues is so crucial, and Marshall was very well aware of this when he wrote the Johnson versus M'Intosh ruling, or any of those rulings.

(00:22:18):

All of those men were extremely skilled in the use of language, they understood metaphor. They were some of the most highly intelligent people in history. We're not even supposed to be here today, let alone get this deep into the colonial language and so forth, but yet here we are. And so I want to say that it's so extraordinary to me, and saying these following remarks, I'm not going to be criticized in the person I'm going to mention right now, but I'm going to make an observation. Robert Jones has come out with a new book called The Roots of White Supremacy. It's been picked up by the New York Times, I think maybe the Wall Street Journal, certainly Time Magazine, The Guardian. All these mainstream publications are putting out all this publicity about white supremacy as if they're not part of that same system of domination that is perpetuating all these harms for our nations and peoples.

(00:23:18):

And so the reason I'm bringing this up is how is it that they're able to put all that out, but yet at the same time, the Christian heathen distinction and the domination system is not the central focus. So in this article about the Algonquin people that Peter mentioned, what's the name of the people, Peter?

Peter D'Errico (00:23:40):

Montauket.

Steven T. Newcomb (00:23:41):

Montauket people. That part of it, even though it's right there, but yet it's not there because it's not being explicitly named. And there's a wonderful book by Richard Brown, A Poetic For Sociology. It's fantastic. I've been reading it for more than 20 years, probably 30 years, and I read it over and over again. And he makes this statement. He says, "The thing itself, whatever thing it is, becomes emergent in the process of being named." So when we name it, it's there, as I said before, but then when you don't name it is out of focus.

(00:24:19):

So you can have Doctrine of Discovery over and over and over again, but the domination is there behind, in the background, but not in the foreground. It only becomes explicit in the foreground when we name it. And then suddenly it is emergent, it emerges into our awareness and becomes a focal point. Now, some years ago, Peter d'Errico and I were talking about the Tee-Hit-Ton ruling from 1955, and Peter very kindly sent me the file for the case, the decision. But attached to the decision were the filings from the US government and the Tee-Hit-Ton people in Alaska. I had never seen the filings and I was so excited. I said, "Oh my gosh, look at this."

(00:25:07):

So I opened the US legal brief and I could have written it because it had Christian, heathen, all the religious focus, because that was the time of the Eisenhower administration. And it had a papal bull from 1344. 1344 in 1954. And then it had the papal bulls from 1493, it had the Christian heathen differentiation and the Cabot Charter, and all the various charters. Those US attorneys focused in on exactly that language of the Christian/non-Christian framing of the so-called doctrine of discovery, which

I prefer to call the Doctrine of Domination. That was the quote, unquote smoking gun, to show that this is very much a biblical Old Testament narrative. It's the use of Christianity against our nations and peoples as a system of domination. But until we call it that, until we make those points explicit, it will not be evident.

(00:26:15):

So I also want to mention that with regard to the way in which scholars tend to discuss these things, there's an interesting phenomenon that happens. So in the Johnson v. M'Intosh ruling of 1823, Chief Justice Marshall, well, he uses the English charters to quote Christian people, and he uses that over and over again. He says, "Not withstanding the occupancy of the natives who were heathens." So there's your Christian heathen distinction, as I already mentioned.

(00:26:55):

Scholars tend to say, "Well, the Doctrine of Discovery is the idea that the first Europeans to locate non-European lands have the right of possession. So now try to go back to the papal bulls and find the word Europe or European in there, you can't find it because that's a different worldview. It's a time of a religious empire, a religious worldview. They weren't using a geographical place called Europe and the people living there called Europeans to identify folks from Christendom. They were calling them Christians, which is the correct name from their viewpoint. And so that's crucial because once these scholars write things like that, now you're one removed from the religious basis of the whole thing. And then you go even further, and then you use the color ... not you, but anybody who writes like this uses the color spectrum, and then we're under white, black, yellow, red, whatever kind of color is being used to identify people. So the metaphorical framework of the color spectrum is being used as the overlay and the focal point, so now you're an additional remove.

(00:28:06):

So where are our nations and peoples explicitly named in the color spectrum racial framework. There's a place for that certainly to oppose racism and those forms of domination as well. But that's not this work. And so I think that's crucial.

(00:28:22):

The last thing I want to say, and then I'll hand it over to Joe, is that last night we watched the presentation, amazing presentation, the play there, and there was a point at which the Oliphant decision from the 1980s was mentioned and there was a very simple way that that could have been summed up. And there's a sentence in the Johnson ruling where Chief Justice Marshall says, "Their rights to complete sovereignty as independent nations were necessarily diminished by the original fundamental principle that discovery gave title to those who made it." Chief Justice Rehnquist and the Oliphant decision took that sentence and modified it, and he says, "Their rights to complete sovereignty as independent nations are," and he put the word are in brackets," necessarily diminished." Close quote.

(00:29:23):

So not only did he modify the timeframe to make it present-day and ongoing, but he removed the explicit mention of the Christian, excuse me, the Christian discovery aspect of it. And I think these are the deceptions that they're using.

(00:29:39):

What's cool and fantastic is the fact that the Yakama Nation legal brief, Amicus brief from the Cougar Den case, put the Supreme Court on notice. We know, and now they know that we know, and now they're playing the game. So in the McGirt ruling, Peter d'Errico found that the Gorsuch reference to US sovereignty and the property law treatise of Emory Washburn from 1864, when all Gorsuch did was

write the title and give you the citation. But when you go to the actual reference in the book, what does it say? The Christian nations of Europe. So you're right back there and he knew that, Gorsuch knew that. Why didn't you just cite it and quote it and make it explicit? But that's the kind of game they're playing. So thank you very much, One Nation.

Joseph Heath (00:30:47):

Morning everyone. I am humbled to appear on the same panel with these two geniuses, because everything I say is going to come from them. If you do not have these two books and haven't studied them, then you're not going to pass this course. Steve's book, Pagans in the Promised Land, if you read it, reread it, and understand the importance of the concept of domination because that's one of the things that Steve has helped us understand. And this book by Peter, which is in the background of his library, when you see him, Federal Anti-Indian Law, priceless and brilliant. So between the two of them, as I said, I'm humbled to be here.

(00:31:48):

This is a painting by Oren Lyons, Faithkeeper Oren Lyons, that depicts the creation of the Confederacy here on the shores of Onondaga Lake. And Oren is certainly a graduate of this institution, and we have buildings named after him. It reminds me that 59 years ago I took classes in this building. I didn't always make the eight o'clock, so I'm really appreciative that you all are here, but 59 years ago. Back then, this institution had a racist team mascot called the Saltine Warrior that was played, I remember going to football games and watching a drunken track boy in red paint come out and run around the field. So we've progressed a little bit in those 60 years. But let me get to trying to talk about what we're supposed to do. And we've heard a little bit, I'm going to focus primarily on this artificial construct of plenary power because it's so central to everything that we just heard, and I hope we see that by the time I get done.

(00:33:22):

And let's see the next slide. So an introduction to Peter's book, it talks about plenary power and he says, challenging Christian discovery in the United States claim to own native land and to have plenary power over native people produces a metaphysical crisis for America. I also took philosophy in this building, I have some memory of what metaphysical means. As one scholar said, if the federal government exercises unrestrained power over Indian nations, then we have a different government than we think, different kind of government than we think we have. And as Steve said, and as Peter said, often judges won't admit that they're basing their decisions on plenary power. They often dodge around it because they don't want us to understand, next slide please, how extravagant this is. Those are Marshall's words.

(00:34:33):

So what does plenary mean? This is not a word that we use in our daily discussions, and it's a very clever word because it doesn't really tell us how all encompassing it is. But what it means, it's absolute. Now, if all of these discussions always said absolute power, we would understand it better. They dodge around and use plenary power. Next slide please.

(00:35:05):

And most of you are familiar with the McGurk decision, I think it's three years ago now, and most legal scholars just couldn't get out of their own way to grow about what a wonderful decision this was. And I certainly would prefer the decision that we received to the one that John Roberts would've written if you read his minority dissent, because the concept was, was the reservation created by Congress in Oklahoma, still in existence? And Roberts would've said no because settlers grabbed all the land, that's what Roberts would've written. So it's a good thing that Vorsage who seems to be the one justice

because he comes out of the Ninth Circuit who understands Indian law to a certain degree, that he wrote this opinion.

(00:36:07):

And what he wrote was that once Congress establishes a reservation, it remains intact and that most of Oklahoma is still Indian reservation, but he never mentions the central foundation for that, which is plenary power. He doesn't use the word. I've done word searches in his decision more than once. You will not find the term plenary power. Instead, he says, "Congress long ago ruled that Congress wields significant constitutional authority." There is no constitutional authority, and you'll see that by the time we finish. When it came to tribal relations, possessing even the authority to breach its own promises and treaties. Really slick way of not admitting what he's trying to say.

(00:37:09):

So what we have to do is we have to look back. He cites Longmove. Longmove was a 1905 decision. Next slide please.

Paula Johnson (00:37:19):

Next slide.

JoeDe Goudy (00:37:23):

Yeah, it's frozen.

Joseph Heath (00:37:28):

So Longmove is 1903. Whenever you see an indigenous law decision from 100 years ago, you should put it in your woodstove because the amount of racism and Christian dominance in every one of these decisions is, it's just shameful when we look at it these days. And this is how Gorsuch brings plenary power into his decision without saying so because when we look back at the opinion that he cites so favorably, it says that we have to understand that the Indians held their ancestral homeland, it was only occupancy, they never possessed it. And that it should be presumed that the United States would govern such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race.

(00:38:42):

And this is where he says plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning. And the power has always deemed to be a political one, not subject to control in the judicial department of government. If any of you remember the quotes that I referred to yesterday, from Johnson v. M'Intosh, about how Marshall was trying to explain this extravagant claim that he was making, it's the same thing. We have said this from the beginning, therefore it's our power. That's the basis of plenary power in Lowenwolf.

(00:39:21):

And just briefly to refer back to, Peter mentioned the recent unfortunate veto by Governor Hoco of the recognition of the Montauks. In that veto message, he refers back to, as Peter mentioned, some 1910 decisions that called the Montauks shiftless, who served whites and mixed with other races. And then an appellate court looked at that decision and said that the Montauks were impaired by miscegenation, particularly with the Negro race. So this is the kind of 100 year old Christian dominant racism that our courts and our governor keep referring to.

(00:40:25):

Next slide, please. And in Lowenwolf, the court went on to say that the power exists to abrogate. Now this is another word we don't use in our normal language. It means just break, tear up. So the power exists to tear up the provisions of an Indian treaty when therefore treaties were entered into. It was never doubted that the power to tear up existed in Congress, and that a contingency of such power might be availed from the contingency availed from consideration of government. In other words, the United States said, "We had our fingers crossed behind our back when we signed every one of those treaties, when we stole all of your land. We never intended to keep one of those commitments," and that's why we can now understand why there's such a trail of broken treaties.

(00:41:27):

Next slide, please. Here's another infamous decision. And because it's where the court first articulates plenary power, we are not able to see in the constitution any delegation of power to enact a criminal law for Indians, but this power arises not so much from the Constitution. So here's an admission, there is no constitutional basis for plenary power. And at the ownership of the country, that's the basis of our power. We own the lands, the Indians never do. And the right of exclusive sovereignty, which must exist in the national government. In other words, the national government has sovereignty, but Indian nations don't. Next slide, please.

(00:42:17):

The lack of constitutional basis is so clear that Clarence Thomas writes about it. Now, I can't believe that I'm quoting David Lee. I won't finish that thing. But we don't need to go through all of these, and at least three different times, Thomas has clearly said, "There is no constitutional basis for plenary power and therefore all of our indigenous law is concocted," which is exactly what we need to understand and why we're all here, because the claims of Christian dominance and the right to own the land by merely planting your flag, you are with us today. That's why when we are down in Onondaga talking about how we're going to get a thousand acres back three years after we started that and we're still into it, and Onondaga reflects they know how to take our land, they don't know how to give it back.

(00:43:38):

And that's what we're talking about here. The importance of land, I don't need you to tell most of you this, the importance of land to indigenous nations and cultures, and we have to keep working to get land back, as we all know. And the way to do that is to keep exposing and talking about the Doctrine of Christian Discovery and Domination, and how it is used every day that a court gets near an indigenous decision. It's the basis of all of this law because the property is so important to the dominant culture.

(00:44:19):

So I appreciate your listening today. You have two very, very important, I would be remiss if I did not mention this last time, that even though we have been insulted in the US courts, one more, a couple more. One more. There we are. So because the Onondaga nation has been shabbily, painfully treated in the federal courts and the land rights action was thrown out before we even had a chance to argue it because of the Doctrine of Christian Discovery and Domination, which was in the first footnote in [inaudible 00:45:04], which was used to dismiss the Haudenosaunee and the Onondaga land rights actions, as we explained yesterday.

(00:45:10):

Onondaga went into an international forum, the organizations of American states, Inter-American Commission on Human Rights. And our petition after nine years now has finally reached a stage where the commission will rule on its merits. And we anticipate a ruling that the United States is guilty of three human rights violations for allowing the land to be stolen, for allowing the land to be trashed

environmentally, and for having a court system that has this racist Christian dominant nonsense, and has no remedy for treaty violation. And that's how Onondaga is continuing that fight, and we will keep people advised as we keep making progress in it.

(00:46:00):

So I'll get out of the way because we really ought to benefit from Peter and Steve's wisdom as we move forward. So thank you for listening.

Peter D'Errico (00:46:11):

Thank you very much, Joe.

Paula Johnson (00:46:18):

Thank all of you for your presentations. We do have a few moments left to have discussion and questions. So if there are, please feel free to raise your hands for any questions that you have. Yes.

Mama Bear (00:46:32):

I really appreciate all that you have shared and it's pretty mind-altering. But we're in a pickle, and I'm just wondering, in order to provoke the thinking, to catapult ourselves out of this reality that we're living, if I can present a perspective, because inside what you're talking about, the Christian, the Christianity, the Christian domination, is also the domination over women. And so we hear a lot from the men, but rarely from the women. And so there's this subliminal feeling that, because I'm a Haudenosaunee and I'm a clan grandmother, and because we're a matrilineal society that follows the mother, it's almost like this battle between the mother and the father because Christianity also wiped out the woman and subjugated her under the possession of a man.

(00:47:40):

So when I think about this and I think about who we are as Haudenosaunee and as being a matrilineal leader, I challenge all of you, if we're really that unhappy with the process of the legal fight, rescind your US citizenship. Get the hell out of this country. And we need a mass exodus out of this present reality that we live in that doesn't recognize or give equal rights to women, to children, to people of all various beliefs and ethnic communities. Make a mass exodus. Take everybody with us. Rescind your US citizenship. Rescind your Canadian citizenship. Because inside the great law of peace, it says, any man of any nation and any woman who traces its roots to the source is allowed to take shelter beneath there and ask for citizenship under our Indian nation as it should have been in the beginning.

(00:48:46):

And to me, that would expel this dominant Christian power because it's ran so much havoc in a lot of societies and continues to do so. So this is where the mother meets the father, and the mother takes the children with her. And it's because Christian domination is so riddled with patriarchy, and I'm sorry to say that, but it is, and it's not to take away from the man, but it's to remind them of who the mother is.

(00:49:17):

And so for me, I propose this as a social, a moral stand to all humanity is leave the US country. Leave the dominant European Christian power and take shelter underneath the mother because there's a lot of Indian nations here that follow the mother, not the father. And so I challenge you all to consider that and think about that, because if we continue to always be in this, there's always that underlying idea that it's not only Christian domination, it's male domination. And so when we return the sacred to the mother, which we call rematriation, not repatriation, is that we awaken to the true heart of who we are

in our humanity. And so I just want to put that on the floor and to propel our thinking beyond what it is, because the underlying title in Haudenosaunee country is the land belongs to the women, to the mothers, and the peacemaker left that clearly when we created the Union of Peace. And so we seem to continue to forget that.

(00:50:36):

But anyways, I challenge all of you to think about that. There is a process in the US system to rescind your US citizenship and then come under an Indian nation and come under the veil of peace and acceptance for everybody in the world. So I just want to add that. Steve, I said that to you before. I really want you to think about that, Joe. Because when we get to land rights and the reason why there's so many missing and murdered indigenous women is because they know that the women are the land and the land is a woman. So I just want to add that into your thinking and may the mother force be with you.

Paula Johnson (00:51:19):

Thank you. Thank you so much. Would you like to say your name so that people will ...

Mama Bear (00:51:27):

Mama Bear.

Paula Johnson (00:51:28):

Mama Bear. Okay. Thank you very much. Any of you have a comment to that or ...

Peter D'Errico (00:51:33):

I would like to first say thank you for the comments. Two quick things. One is you're advocating a kind of renunciation of US citizenship and it's in stark contrast. One of the things that I have pointed out again and again is the foolishness, to put it mildly, it's almost like a suicide act to constantly celebrate how many native candidates are running for office. And the Democrats and the Republicans, and even the independents are so-called courting the native vote. And so not only is there not a renunciation, but there's actually an embracing going on here. It's all part of the assimilation move. It's exactly what the boarding schools were aimed to do, to make all these Indian children forget who they were and say, "Oh, you're just Americans now." So now 100 years after the boarding school, there's again a kind of a popular media celebration of, "Look how assimilated it's been."

(00:52:42):

And now it is schizophrenic. Clarence Thomas is right, it's schizophrenic because some of these same people are talking about, "Oh, Indian nations are so important, government to government relationship." At the same time, they're taking steps to abolish that independence.

(00:52:58):

Which brings me just a real quick second thought is that you talk about the structure of traditional governments. It's not accidental that when the government refers to government to government relationships, it's not talking about traditional native governments, it's talking about the imposed governments that were organized under the Indian Reorganization Act. You think about that for a minute, Indian Reorganization Act. How does the US try to reorganize native people's forms of government? But that's what happened, that's what celebrated. And again, just like celebrating all the native candidates, we celebrate this thing called government to government, and it's all quite deceptive. It needs to be called out.

(00:53:39):

One last little thought to help you remember, I think what Steve and Joe did were so important, the defining of the words that we use. We don't use plenary in everyday life, but when you say plenary means absolute, we don't use domination in everyday language. When you say that, it helps to clarify what's really going on and using proper terminology, proper in the sense of actually defining the words that we're using is part of helping us to wake up. Thank you for your comment.

Paula Johnson (00:54:09):

Thank you. Thank you so much. I was just thinking on this issue of the law being schizophrenic, that it was recently announced that the lacrosse team from the Haudenosaunee would be competing under their own flag in the upcoming Olympics. And so it seems to me that adds an air of schizophrenia to one relationship and the recognition of, but at the same time having these sorts of decisions that continue to come out in the ways that we've been talking about. And that's something maybe to take note of.

Peter D'Errico (00:54:52):

Yeah.

Steven T. Newcomb (00:54:52):

Just to keep in mind that, yes, Clarence Thomas did say that. With regard to using the metaphor, I think we really need to be mindful of, these are metaphors, comparisons, analogies, of schizophrenia. At the same time, he's using that to attack the notion of sovereignty in Native Nations. So if you read the rest of that sentence, then you'll see that he's actually questioning the whole attribution of sovereignty to Native Nations, which that's a much longer conversation because sovereignty itself, Jonathan Havercroft defines that as an unjust form of political domination that limits human freedom. So that's a whole other conversation just in that one word alone.

Paula Johnson (00:55:41):

Any other question of comments? Have someone in the front, [inaudible 00:55:45]

Speaker 6 (00:55:45):

I'm just wondering. So do you have a sense if Assemblyman Thiel and Senator Colombo are going to make a sixth run at getting that bill across the governor's desk? And do you have a sense if they, did they have any understanding of the depth of what they're talking about here? Are they able to be advocates on doctrine and have this conversation at that level?

Peter D'Errico (00:56:14):

No. No. If you're asking me, no, I think that they're talking very superficially. When you think about the so-called recognition, it's ... just again, reverse some of these words and pick up what was just said about us citizenship. Do the Montauket recognize the US as the owner of their lands? That's an equally important, more important question than whether New York State, quote, recognizes the Montauket as being, quote, in existence.

(00:56:47):

That's a very important conversation to have about what recognition means. So anybody that's caught up with talking about recognition should put that in quotes. Recognition, who's recognizing whom? And

does it mean that what the US Federal Anti-Indian law says is that if the US doesn't recognize you, you don't exist? Well, I mean that's very interesting, isn't it? So that means if I don't recognize the US, it doesn't exist? Oh no, because I don't have plenary power.

(00:57:15):

So no, I don't think that there... It's possible, given the kind of conversation we're having today, if this conversation is expanded, then it's possible with some of the legislators, I wrote to some of them, by the way, commenting about this, that if they really want to grapple with this, they've got to do a little more thinking than they've been doing. Although I didn't put it baldly as that.

Steven T. Newcomb (00:57:38):

I want to just quickly mention that OriginalFreeNations.com is our website, and RedThought.org, which former chairman of the Ackman Nation, JoeDe Goudy put together, and Peter d'Errico and I, can you go back to that? Yeah, OriginalFreeNations.com, and we have a tremendous amount of content on our website, as Original Nations Advocates in the Indigenous Law Institute, but also RedThought.org. I think we have what, Joday, 70 hours or something of con- ... I mean, certainly we've got a lot on there. And it's Peter and Joday and I having these types of interactions over a very long period of time. And I thank Joday for having put that together.

(00:58:29):

I just wanted make sure I mentioned it.

JoeDe Goudy (00:58:31):

Steve, also your newsletter. About your newsletter.

Steven T. Newcomb (00:58:34):

Oh, Peter d'Errico and I both have a substack, so you can look at that as well.

Paula Johnson (00:58:43):

Thank you. We are just a minute before we have to conclude. There are others sessions that are beginning in just a few moments. Well, we have one hand over here and I think that really needs to be our last comment before we end. Go ahead please.

Speaker 7 (00:59:00):

I just want to say thank you. I'm the mother of a Montauket child, Montauk, and I'm an attorney and I want to say thank you for setting the target in this battle. I will forever be grateful to the Creator for being in this space and being in this room, and hearing the message and the gift that you have given us. Thank you.

Peter D'Errico (00:59:19):

Thank you.

Paula Johnson (00:59:19):

Thank you. [Inaudible 00:59:20].

Steven T. Newcomb (00:59:19):

JoeDe?

JoeDe Goudy (00:59:24):

I would be remiss if I didn't say this, as much as I 100% disagree with everything Steve Newcomb said, and Peter d'Errico, I also 100% agree with everything they said. You can figure it out. Joe, you and I are good, Joe. The other two, I told him I was going to heckle them in their presentation and I did it.

Paula Johnson (00:59:50):

So I will say, let us please thank our panelists again.

Jordan Brady Loewen-Colon (00:59:56):

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