

# Robert J. Miller - Property & Sovereignty

Tue, Feb 20, 2024 9:54AM • 27:19

## SUMMARY KEYWORDS

discovery, indigenous peoples, doctrine, move, consent, religion, governed, sovereignty, countries, law, state, elements, word, indigenous, government, Chile, colonize, land, indigenous nations, constitution

## SPEAKERS

Tanner Randall, Robert J. Miller

### Tanner Randall 00:03

We acknowledge with respect the Onondaga Nation, Fire Keepers of the Haudenosaunee the Indigenous people on whose land Syracuse University now stand. May the information you glean from this podcast, motivate you to uphold indigenous values, protect Mother Earth and honor indigenous treaties. I voted now for five years, it's the closest thing to my consent to be governed, other than the citizenship that was handed to me when I was born. There's no other document certifying my relationship with this nation. In today's conversation, I talked to Dr. Robert J. Miller, about sovereignty property, and what it's like to consent to a nation sovereign right in rule. Welcome to the doctrine of Christian discovery. I'm Tanner Randall, your host from good faith media. We're producing this podcast at the religious origins of white supremacy conference in December of 2023, at Syracuse University in New York. This year is particularly special because it's the 100th anniversary of Johnson V. McIntosh, the supreme court proceeding that installed the framework of the doctrine of discovery within American government. We will be talking about the different ramifications of the doctrine of discovery and how it led to indigenous values and land being stolen as well as white supremacy and the general idea of revitalized indigenous culture. national entities govern borders, they subject the individual to certain rules and regulations, so we must live our life by but when did we consent to those rules? Even the ones made hundreds of years ago guide our life? To should we question what we follow? would like to thank our sponsors who made this podcast possible Many thanks to the Henry Luce Foundation, Syracuse University, indigenous values initiative, American Indian law Alliance, American Indian community house, good faith media, ton of theater and towards our common public life. We appreciate your support. I'm Tanner Randall with good faith media. Our guest on today's episode is Professor Robert J. Miller from Arizona State University. Professor Miller is an enrolled citizen of the Eastern Shawnee tribe, and his 10 legal dimensions is one of the most cited and published pieces on the Doctrine of Discovery. You can find more of his in depth work in Native America discovered and conquered Thomas Jefferson, Lewis and Clark and manifest destiny, a book by Robert J. Miller. I'm here with Professor Robert J. Miller from Arizona State, Bob, how are you?

### Robert J. Miller 03:10

Very good. Thanks for talking to me.

**Tanner Randall 03:12**

So to start out briefly, today's episode is going to go over property and sovereignty as we know it, there are specific cases in the United States, as well as I know that you have some experience or a lot of experience with the international realm. But for those of you who don't know, Bob, could you possibly explain sovereignty briefly,

**Robert J. Miller 03:31**

sovereignty is an old word, of course, comes from the idea of sovereigns, kings and queens who had the authority to cut your head off if they didn't like your looks, right. But sovereignty doesn't have that meaning today, if you look in legal dictionaries, or even in Webster's dictionary, the definition is roughly the ultimate independent power to govern your own people, your own country. And I suppose if we're talking personal sovereignty, then it's the power and right to govern yourself. So it's about sovereignty, the governance of a country, in essence.

**Tanner Randall 04:06**

Okay. Thank you for explaining that. And I guess I have a question because in my own academic pursuit, I always kind of got confused or finding myself questioning the difference between sovereignty and autonomy. Are they one in the same? Can you kind of go into that a little bit?

**Robert J. Miller 04:23**

Well, I mentioned the word personal sovereignty, but you and I have no independence from the United States really? Do we? The laws, the United States passes and an axe you and I had better comply with or we will end up in federal prison. But part of the American political theory is that the consent of the governed, we created the United States and we endowed it with certain powers to protect us. And so this is European philosophers that I'm no expert on but they had written about for decades John Locke and others I think Montesquieu, even the fact that the individuals give up certain powers to the city government, the state government and the federal government, to protect them to have an army to have law enforcement to provide schools and build highways, but we give up certain rights. So I don't think you can say that you and I have some sort of personal autonomy that exists separately from the United States or from the state we live in. There are certain arenas that are forced, the Ninth Amendment of the Constitution says, powers not granted to the United States are reserved to the people, and to the states respectfully, respectively, excuse me. So that's almost a direct quote. So our founding fathers knew that we were giving up certain rights to the federal government. And by living in a state, we gave up certain rights to the state government, but we did retain other human rights to control where we live, what kind of job we do what you know, who we marry, bla, bla bla,

**Tanner Randall 05:55**

you mentioned something that I think so important distinction for the sovereignty of the citizens within America and the reality that indigenous peoples face, you say that those groups are giving up certain rights in order to consent to the system, like the government like the social contract, but we see indigenous nations not necessarily giving up their rights, they're being taken from them in some respect. So I'm wondering if you can kind of go into since this is a podcast about the Doctrine of

Discovery, even the doctrine of Christian discovery, how is that kind of affecting indigenous nations today, in particularly their limitations of sovereignty?

**Robert J. Miller 06:36**

Well, you ask a very intriguing question. I asked my class this all the time, when did American Indian peoples consent to be governed by the United States and be part of the body polity? We were always excluded if you read the Constitution, Indian peoples were not to be counted as US citizens. That's in Article One, Section three, and it's in the 14th amendment. So even in the Civil War amendments in which the ex slaves of the South were granted full citizenship rights, American Indians were still excluded. It was not until 1924 that the United States made all Indians citizens. And I believe the Onondaga Nation here who wants to travel on their own passports. There are some American Indian peoples who say I am not an American citizen. I never agreed to that. So this is very intriguing question you're asking Tanner, is the consent of the governed somehow violated, but I'm going to teach constitutional law this January for the first time, and I'm going to ask my students, when did you consent to be governed by this US Constitution from 250 years ago? By being born? I guess we consent by not moving away. Right? Well, how else did we read? In 1787 and 1788, the States held conventions and the people voted. So they actively consented to that government. But when did you and I, and how, so what you ask about Indians and tribal nations. They were dominated they were conquered. I'm putting quotes around the word, even if it wasn't in an actual war. The doctrine of discovery that you mentioned, has that as one of the elements, when Europeans showed up and planted their flag and crossing the soil, they deemed that they had just won a war, and they acquired sovereignty, rights and property rights over land and assets. So this was very much a colonial rip off. Can't think of a better word. This Johnson the Macintosh itself says this is an extravagant and pretentious idea that Europeans enforced with the power of the sword. And Johnson, the Macintosh twice, John Marshall writes, We enforce this law by the power of the sword. So what is law? I teach first year classes and I ask students, what is law is some magical, mystical thing? Or is it the power of the sword? Why do you and I drive the speed limit? Because if we don't, you get a ticket. And if you speed too often, they take your driver's license away. So we obey the law because of coercion. And the Doctrine of Discovery is plainly coercion.

**Tanner Randall 09:20**

Wow, that's given me a lot to think about because now I'm trying to consider it did I ever consent to be governed and it What point I believe like registering to vote is probably the closest thing I have had to any kind of consent of, you know, Governor being governed. But it almost seems like inaction is what kind of sparks your consent to be governed, and you don't necessarily rebel when you're younger, to like move to a different area to be, you know, not necessarily five years old, saying I don't want to be governed by America. So I'm leaving for you.

**Robert J. Miller 09:51**

What do you tell your parents I'm leaving home. Exactly. So some people do move from state to state ain't right, they're not happy with perhaps a real liberal state. So maybe a conservative person moves away, or vice versa a liberal person in a very conservative state where now abortion is illegal, they move. So that's what we call a voting with your feet. But how many people leave the United States completely, because they don't like the form of government. I mean, some do, right? Vietnam war,

people went to Canada to avoid the draft. That has nothing to do with the consent of the governed, I don't think but it's sort of an example what you and I are just talking about.

**Tanner Randall** 10:34

That takes me to an interesting topic in that a lot of American citizens can move state to state if they don't feel that they resonate with a lot of the particular state laws. But something that is challenging for the populace to understand is the spiritual ties and cultural ties that Indigenous peoples have to their property and land. And so I think that it's worth talking about kind of the need to have a space for indigenous revitalization and need to have kind of border. So if you could kind of speak on why indigenous nations and I know it's hard to talk about all of the 500 Plus federally recognized and even more state recognized ones that do not have recognition because they don't have paperwork to show it, which is, in some cases, outrageous. But can you speak on to speak on? Why indigenous communities feel this passion to protect their sovereignty?

**Robert J. Miller** 11:36

Well, you asked first, I thought you were going to ask about land. So you have place based religions, place based cultures, place based economies. This is why the removal era was so destructive to Indian peoples. Why do we call it the Trail of Tears, because those tribes were moved from the south west for the American southeast, forced to an entirely different environment, different soil, different crops, my tribe was moved. In fact, we were the first tribe to be moved to what's now Oklahoma, we arrived in December of 1832, we were removed from South Central Ohio, forced by the United States and forced by the encroachments of the increasing American population around us theft, invasions of our lands, risks to our lives. And so a lot of my Shawnee ancestor said, It's better to move we got to get out of here, but what a what a disruption to your life, and you're leaving where your relatives are buried. So if you're a religion that believes in sacred sites, you now can't practice your religion. You're not like most Christian churches that can build a new building 10 blocks away and people just drive to a different place, right? The Mormon Tabernacle, or Jerusalem? Look how some religions have placed such significance. Can you imagine that the state of Utah would build a four way freeway through the Mormon Tabernacle, I kind of doubt they would condemn those lands for that. So in one sense, that's kind of a sacred site for Latter Day Saints. And so I guess I'm comparing that to indigenous peoples to be uprooted and moved is so destructive, so depressing. It's almost a miracle that these tribal nations survived and thrived. The tribes that moved to the Indian territory that's now Oklahoma, made amazing recoveries from the life that lives they had had the economies they had the religions they had had in the American southeast, and it just have that uprooted involuntarily and you're forced to move. It's a miracle, those tribes still exist today. And those cultures and religions still exist. And

**Tanner Randall** 13:51

it's interesting because we went to the George Emilio Sanchez performance last night, and he talked about the US forestry service, bringing this case to the Supreme Court and the Supreme Court basically saying, well, even though your site isn't there, you can still practice your religion, we're not restricting at all. And it's just such a misunderstanding of spirituality and religion.

**Robert J. Miller** 14:16

I've written an article on that case, when I was a law student, I published an article on the link decision, you're talking about the Northwest Indian protective Cemetery Association versus Lange, who was I believe, the Secretary of either interior or agriculture. And yes, it shows that one mindset one religion just cannot understand another religion and another Mindset, the fact that these tribal peoples in Northern California needed these sacred places, these quiet places for their medicine people to go and to meditate and to acquire power to serve their people. The Supreme Court just can't picture that because again, as I said, most religions could move a couple blocks could build new building and no one even think set, give that a second thought. But for these indigenous religions that are placed based, this is a rupture that hurts the earth hurts our world, etc. I'm not of these religions or that culture. So I'm explaining this as an outsider. But that's exactly what we're up against. And the link decision is a disaster written by Sandra Day O'Connor, and she perverted the definition of the First Amendment. Because the First Amendment says that government can pass no law that prohibits the free exercise of religion. She did not use the word prohibit in her laying opinion. She used the word coercion, she said the government is not forcing these your Karuk, Tolowa, and Yurok Indians to not practice their religion? Well, Justice O'Connor, that's not the word from the Constitution. Congress can do nothing that prohibits the free exercise of religion. That's the word in the First Amendment. And instead, she uses the word coercion, that's an entirely different word. And so, a little judicial trickery there to reach a decision that is the link decision just stops any claims today by indigenous peoples to right at sacred sites. If those sacred sites are not within your reservation boundaries, and you don't own them, you just don't have much of a chance to claim any right and protect that land. So, there's cases going on in Arizona right now. Oak Flat about mining, going to destroy an Apache, a San Carlos Apache site, and I just kind of despair litigation seems fruitless when you have that link decision. But

**Tanner Randall 16:47**

it's truly tragic. And one would hope that, you know, United States, it's built on checks and balances and says that, you know, misunderstandings of power or malpractice within the government can be righted, you'd hope that something would come about and change, you know, some of that lingo in instead of saying coerce, you know, change it to prohibit. But yeah, obviously, constitution,

**Robert J. Miller 17:10**

Justice O'Connor. She also made a statement, that's just, I mean, it's true. And it was like the end of the case, she said, these Indians are trying to impose a servitude, a religious servitude on what is, after all the United States land. So she looked at the ownership of the underlying title and that other peoples cannot have rights there. And a lot of native cultures have a different view of property rights, Hawaiians, the right to go on other people's lands to gather certain things Australia, the Aboriginal peoples rights to go on other people's lands to gather certain things or do certain things or conduct a ceremony. So indigenous religions, and indigenous property systems have a different view of the ownership of land, then does the Anglo American property system.

**Tanner Randall 18:07**

It before we sign off here, I want to make sure I get around to we spoke before about your experience, also talking on an international level. And you mentioned the 10 steps of breaking down the doctrine of discovery. And most recently, in Africa, I was wondering if you kind of introduce us to that topic and show that this, you know, issue of sovereignty, and this issue of people going and conquering

populations is not something that's just isolated United States, because often I think our history books focuses on such a America centric curriculum. Absolutely.

**Robert J. Miller 18:40**

In my 2006 book, it's entitled Native America discovered and conquered Thomas Jefferson, Lewis and Clark and manifest destiny, I break Johnson V Macintosh down into what we in the law would call its elements, its basic constituent elements. And I find 10 elements like you mentioned, I won't recount those right now. Buy my book, or check it out from the library for free. But I then got the idea. Maybe my only brilliant idea in my life, breaking the case down into its elements was intriguing, because now I could compare colonization across countries. And so in 2011, I published two articles on how Spain applied the Doctrine of Discovery in Chile, and how Portugal applied the Doctrine of Discovery in Brazil. And I use those 10 elements from Johnson V Macintosh, to compare the history and the law in Chile, Spain, Portugal and Brazil. And I conclude they pretty much used all 10 of those elements to conquer and colonize the indigenous peoples of what's now Chile and Brazil. I just published another article came out last year about Africa, and how in the Berlin Conference From 1884 to 1885 13, European countries gathered, debated and wrote an act that is called the Berlin act. And they said we are caught defying international law to colonize Africa. What international law were they colonizing? The doctrine of discovery, and it was already 460 years old. By the time they held this Berlin conference, and carved up Africa. So that's my most recent article, and a book I published in 2010. With indigenous scholars from Australia, New Zealand, and Canada, we use my 10 elements to analyze how England applied this international law in our four countries, the US, Canada, New Zealand, Australia. So those 10 elements are a wonderful way to analyze colonization, not just by the US, but by other countries. And I'm working right now I have a student working on the Sami peoples from Scandinavia. So we are looking at how Russia, Finland, Norway and Sweden. If they did, that's what we're looking for. And then how did they apply the doctrine of discovery and those 10 elements to colonize the Sami peoples?

**Tanner Randall 21:16**

I'm a little bit curious, you saying that you have these 10 points within Johnson V. McIntosh that you apply to other situations? What do you kind of investigate as far as when you look at a country? Say Chile? Like what documents are you looking at see to measure how much they may have been colonized?

**Robert J. Miller 21:41**

In regards Chile, I found out that the Spanish Empire is far more legalistic than is England Anglo American system. They pass laws about everything. There's the 1513 laws for the new nds that were amended, I believe in like 1532, there are a lot of my 10 elements of discovery, evident in the laws that the Kings of Spain impose that apply to the whole new world. So I say my articles only about Chile, but it's about how Spain colonized in the entire New World, I just chose to focus on Chile. So then, when I looked at Chile, I looked at Pedro Val de Viva he sent there in 1541, with orders to do certain things, those orders, some of them are some of my 10 elements. He goes there to conquer by war or peacefully to conquer if the people don't fight back, he established the cities, he established his church to Christianize, the people, that's one of the elements of the doctrine of discovery, obviously, and to civilize the savage peoples. I put, quote, marks for your audience over the word civilization, who was civilized, indigenous peoples were more civilized than these European barbarians that came in to kill



and rape and steal. But that's not the way World History teaches. It isn't. So then how I applied How did Portugal do the same thing in Brazil. So I look at the laws, I look at the historical facts, what the colonial governors in Brazil did. And then in Brazil, you can read their to modern day constitution. And there's some elements of the doctrine of discovery in the Brazilian Constitution today. So I looked at once Chile broke away from Spain and acquired independence, I looked at Chile and laws, their constitution, how they deal with indigenous peoples, and I'm looking for my 10 elements. So I often use a co author because I need someone who's an expert in the law of that country. So my co author on the Chile article was a professor from Qatar legal University, in Santiago. So we use the history and law of those countries looking for evidence of the doctrine of discovery. And that's how I did this in Africa and the Berlin act, I focused on only three countries, Kenya, Uganda, and Tanzania, because they were colonized by England and Germany under the Berlin act, I mentioned under 1885. So again, we looked at the history and the law, to see if England and Germany use the Doctrine of Discovery, these 10 elements, and our conclusion was absolutely yes. That's

**Tanner Randall 24:22**

quite remarkable. I want to end with this kind of idea. I think it's so important that your work is looking at these specific countries, somebody may say, Well, you can just look at the empires and see their, you know, strategy book to going and colonizing but by looking at these isolated countries and digging into their communities, like you said, working with professors in the area, it allows you to come at it from an indigenous perspective and be able to study these specific populations and not just give more time to the colonizer in the Without a better way of saying it. But I think your work is extremely important. And thank you for everything you've been doing across the world for in business populations. Let

**Robert J. Miller 25:09**

me close with this. It's international law. What is international law? Maybe your audience should think about that. International law are the rules that governments agreed to comply within their actions visa vie each other. So when it came time to claim Empire around the world, each country wanted its discoveries to be recognized by the rest of the world. They didn't want wars over Panama on wars over Colombia, they want it Hey, Isaiah, first look, there's my flag, there's my cross. I own that first. And so under international law, countries agreed that European countries, European Christian countries agreed on how to divide the world. That's a pretty efficient, cheap way to do it. So by looking at the doctrine of discovery, we are trying to say here's what happened indigenous peoples, here's why we're fighting back. And here's why you should stop ignoring your own history and your own law and you should face up to what you did you European countries, was powerful. Thank you.

**Tanner Randall 26:15**

Thanks for listening to this episode of the doctrine of Christian discovery recorded at the 2023 Religious Origins of White Supremacy Conference at Syracuse University in New York. This podcast is produced in collaboration between Good Faith Media, Syracuse University, and the Indigenous Values Initiative. I'm Tanner Randall for Good Faith Media. Our executive producers are Mitch Randall of Good Faith Media Philip P. Arnold and Sandy Bigtree of the Indigenous values initiative and Adam DJ Brett Syracuse University and the American Indian law Alliance. Our producer is Cliff Vaughn and our editor is David Pang. Our music comes from Pond5. Production assistance provided by the American Indian Law Alliance. To learn more go to [doctrineofdiscovery.org](https://doctrineofdiscovery.org).