



THE INDIAN LAW HALL OF SHAME

SOME OF THE MOST RACIST INDIAN LAW CASES OF ALL TIME

Johnson v. McIntosh 21 U.S. 543 (1823)

- ▶ In Johnson v. McIntosh, the Supreme Court under Chief Justice John Marshall upholds the McIntosh family's ownership of land purchased from the federal government. It reasons that since the federal government now controls the land, **the Indians have only a “right of occupancy” and hold no title to the land.**

Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831)

- ▶ The case was significant because the Supreme Court ruled that they did not have jurisdiction over the case because the Cherokee Nation was not a state. As a result of not hearing the case, the Cherokee Nation was not protected against Georgia. As such, the state of Georgia enacted laws that forced the Cherokees to give up their land.

U.S. ex Rel. Standing Bear v. Crook (The Trial of Standing Bear)

- ▶ Standing Bear (c. 1829-1908) was the leader of the Ponca Tribe of Nebraska who successfully argued in U.S. District Court in Omaha in 1879 that Native Americans are "persons within the meaning of the law" and have the right to a fair and just trial.
- ▶ Standing Bear testified: "This hand is not the color of yours, but if I pierce it, I shall feel pain. If you pierce your hand, you also feel pain. The blood that will flow from mine will be of the same color as yours. I am a man. The same God made us both."

Ex parte Crow Dog, 109 U.S. 556 (1883)

- ▶ Crow Dog killed Spotted Tail for signing a Treaty that Crow Dog thought Spotted Tail was not authorized to sign. The Tribal Council punished Crow Dog under Sioux traditional law by making restitution to the family of Spotted Tail. Then the United States also brought federal charges against Crow Dog because the sentence given by the Tribal Council was not sufficient.
- ▶ This case was the beginning of the plenary power legal doctrine that has been used in Indian case law to limit tribal sovereignty .

Montana v. United States, 450 U.S. 544 (1981)

- ▶ Although the Tribe may prohibit or regulate hunting or fishing by nonmembers on land belonging to the Tribe or held by the United States in trust for the Tribe, it has no power to regulate non-Indian fishing and hunting on reservation land owned in fee by nonmembers of the Tribe.
- ▶ The 1851 treaty nowhere suggested that Congress intended to grant such power to the Tribe. And while the 1868 treaty obligated the United States to prohibit most non-Indians from residing on or passing through reservation lands used and occupied by the Tribe, thereby arguably conferring upon the Tribe authority to control fishing and hunting on those lands, that authority can only extend to land on which the Tribe exercises "absolute and undisturbed use and occupation," and cannot apply to subsequently alienated lands held in fee by non-Indians.

United States v. Sioux Nation of Indians, 448 U.S. 371 (1980)

- ▶ In 1980, the Supreme Court of the United States issued a ruling (formally described as United States v. Sioux Nation of Indians, 448 U.S. 371 (1980)) in which a lump of money was issued to the "Sioux Nation of Indians" as **Fifth Amendment compensation in exchange for the theft of the Black Hills.**
- ▶ The problem was that the Indian Claims Commission was specifically set up so that Tribes bringing their cases to that court HAD TO ACCEPT MONEY FOR THEIR CLAIMS. Even if they won their case, they could not get back the stolen land.

Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988)

- ▶ The U. S. Supreme Court ruled that the disturbance of the practice of religion need not be weighed against the economic benefit in determining how public lands are to be used.
- ▶ Justice Sandra Day O'Connor opined that the Tribes can take pictures of the mountains and use the pictures for their religious worship. They do not need the actual mountains.

Brendale v. Confederated Yakima Indian Nation, 492 U.S. 408 (1989)

- ▶ The Tribe does not have authority to zone fee lands owned by nonmembers within the reservation.
- ▶ Any regulatory power the Tribe might have under its treaty with the United States cannot apply to lands held in fee by non-Indians.

South Dakota v. Bourland, 508 U.S. 679 (1993)

- ▶ Congress, in the Flood Control and Cheyenne River Acts, abrogated the Tribe's rights under the Fort Laramie Treaty to regulate non-Indian hunting and fishing on lands taken by the United States for construction of the Oahe Dam and Reservoir.
- ▶ Congress has the power to abrogate Indians' treaty rights, provided that its intent is clearly expressed. The Tribe's original treaty right to exclude non-Indians from reservation lands (implicit in its right of "absolute and undisturbed use and occupation"), and its incidental right to regulate non-Indian use of these lands were eliminated when Congress ...took the lands and opened them for the use of the general public.

Strate v. A-1 Contractors, 520 U.S. 438

(1997)

- ▶ When an accident occurs on a public highway maintained by the State pursuant to a federally granted right-of-way over Indian reservation land, a civil action against allegedly negligent nonmembers falls within state or federal regulatory and adjudicatory governance;
- ▶ absent a statute or treaty authorizing the tribe to govern the conduct of nonmembers driving on the State's highway, tribal courts may not exercise jurisdiction in such cases.
- ▶ So public highways built on rights of way across Indian lands are now the equivalent of nonIndian owned fee land for purposes of Court jurisdiction.

THESE CASES ARE THE PAST OF INDIAN LAW

- ▶ THE FUTURE OF INDIAN LAW IS IN THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE
- ▶ On 13 September 2007, the Declaration on the Rights of Indigenous Peoples was adopted by a majority of 144 states in favour, **4 votes against (Australia, Canada, New Zealand and the United States)** and 11 abstentions.
- ▶ The United States was the last country to support the UNDRIP. In **December 2010** President Obama announced that the United States would lend its support to UNDRIP.
- ▶ SO THE UNDRIP NOW HAS UNANIMOUS SUPPORT AS **ASPIRATIONAL** LAW.