



# Jurisdiction in Indian Country

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# Indians and the English

- Doctrine of Discovery
- Sovereign immunity

# Tribal Immunity Today

- Damage award limited to the limits on the insurance policy
- In tribal court only
- Notify tribal government of intent to sue (within 180 days)
- Short statute of limitations
- Strict construction

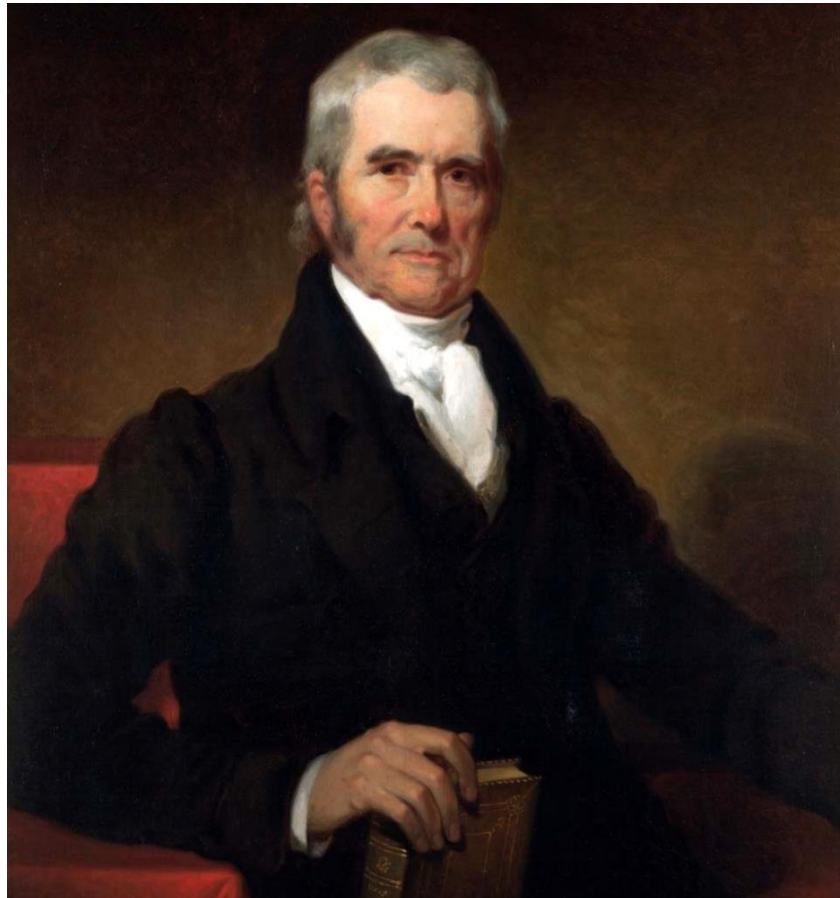
# Indians and the Constitution



## 3 References, 1 Hon. Mention

- Apportionment, U.S. House – Art. 1, sec. 2
- Indian Com. Cl. – Art. 1 sec. 8
- Supremacy Cl. – Art. 6 (hon. mention)
- Apportionment, U.S. House. Amend. XIV, sec. 2

# Indians and the Supreme Court



# Marshall Trilogy

- *Johnson v. M'Intosh*, 21 US 543 (1823)
- *Cherokee Nation v. Georgia*, 30 US 1 (1831)
- *Worcester v. Georgia*, 31 US 515, 8 L.Ed. 483 (1832)

# Canons of Construction

- Ambiguous expressions must be interpreted in favor of the Indians
- Indian treaties must be interpreted as the Indians themselves would have understood them at treaty time
- Indian treaties must be liberally construed in favor of the Indians



# *Williams v. Lee*

358 US 217 (1959)

- The right of Reservation Indians to make their own laws and be ruled by them

# *Montana v. U.S.*

450 US 544 (1981)

- The inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.  
Except:
- Consensual relationships, or
- Political integrity, economic security, or health or welfare

# *Nevada v. Hicks*

533 U.S. 353 (2001)

- Tribal court lacks jurisdiction over tort claims against state officials who executed search warrant against tribal member on trust land;
- Tribal court not a court of gen. jurisdiction & not have jurisdiction over Sec. 1983 claims;
- Exhaustion in tribal court not required where it would serve no purpose other than delay

## *Nevada v. Hicks* (cont.)

“State sovereignty does not end at a Reservation’s border. Though tribes are often referred to as “sovereign” entities, it was long ago that the court departed from Chief Justice Marshall’s view that the laws of a state can have no force within Reservation boundaries ... Ordinarily, it is now clear, an Indian Reservation is considered part of the territory of the State.”

# Plains Commerce v. Long

544 U.S. 316 (2008)

- Burden of proof on the Tribe to prove *Montana* exception
- Exceptions to be construed narrowly, so as not to swallow the rule
- 2<sup>nd</sup> exception: imperil the subsistence of the tribe.

# Indians and Treaties



Courtesy Special Collections Division, University of Washington, Libraries

The right of taking fish at all usual and accustomed grounds and stations

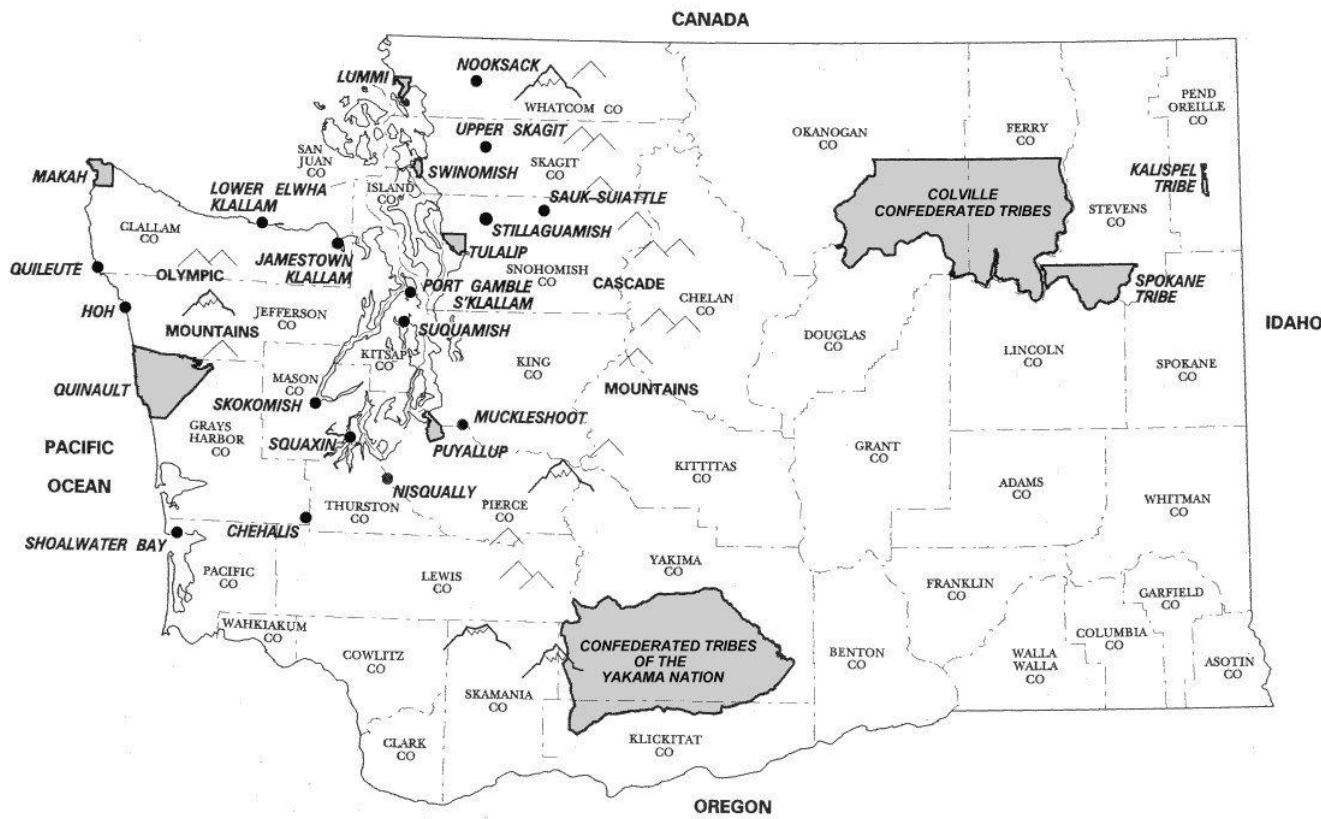


Nor to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.





# Indian Country in Wash.



# Indians and Congress

- Federally recognized Indian tribe
- Congress has plenary power over Indian affairs
- Fed. Laws of general applicability apply to the Reservation

# General Allotment Act

24 Stat. 388 (1887)

- Allotted Reservation lands to tribal members
- Held in trust by United States for 25 years, then fee simple title delivered to tribal member
- Tribal member became citizen, subject to state law, including real estate taxes

# P.L. 280

67 Stat. 588 (1953)

- 5 states (not including Wash.) shall assert criminal and civil jurisdiction over the Reservation
- Other states are optional

# P.L. 280 in Wash.

RCW 37.12. *et. seq.*

- 1957 (consensual): criminal and civil jurisdiction if requested by the tribal council
- 1963 (non-consensual): criminal and civil jurisdiction over the Reservation except Indians on trust lands within the Reservation
- Except 8 specified areas

# Rules of Thumb (Jurisdiction)

- P.L. 280 v. non-P.L. 280
- Member v. non-member
- Trust land v. non-trust land
- State interests v. Tribal interests

# Rules of Thumb (Sovereign Immunity)

Tribes have sovereign immunity unless:

- Explicit Congressional abrogation, or
- Explicit tribal waiver by someone authorized to make waiver

# Rules of Thumb Sov. Immunity (cont.)

Who is the defendant

- Injunctive relief against tribal government for illegal act of particular official
- Monetary relief against tribal official acting in official capacity but outside the scope of his authority



# Rule of Thumb (which court)

- Federal court if you can get it
- Tribal court if:
  - between members
  - non-member consents
  - non-member's conduct imperils the existence of the tribe
- State court for everything else