

STYLE SHEET FOR JCRT

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- A narrative biography of each author, of no more than 125 words.
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2. Abstract Information

- Abstract must be at the beginning of the article in the same type and formatting as the essay.

3. Article Information

- Articles must be single-spaced in Book Antiqua 11-point type in block paragraph No tabs or indentation. One-inch margins.
- Citation is by the most recent version of the *Chicago Manual of Style*, author-date style, with full footnotes. No MLA, APA, Turabian, etc. accepted.
- Footnotes, not endnotes
- No bibliography
- No page numbers.
- See the most recent issue of JCRT (jcrt.org) for a formatting example: jcrt.org/archives/
- Subheadings must be all italics, no bolding.
- No headers, footers, or page numbers on the first page of the
- We prefer receiving OpenOffice (.odt), Microsoft Word (.doc or .docx), plain text (.txt), or rich text (.rtf) file formats. Please ensure your file is not above 10MB in size.

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Submit with your reformatted article a bio of no more than 250 words indicating your current title and affiliation along with most recent and important books published, if anyone. Do not list published articles. Indicate your research interests as well. If you are a graduate student, indicate the degree program which you are in. Do not give personal information.

Formatting

Font: Book Antigua

Identifiers (top center): 9 pt.

Body text: 11 pt.

Footnotes: 8.5 pt.

Margins

Left: 1 in

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Margins are the *same* for all headings, body text, and footnotes.

All subheadings, including Roman numerals, must be centered. Body text aligned left, not justified. Subheadings must NEVER be bolded, only italicized in 11 pt.

Header: Last name of author, full title of article. The full title, not the author name, must be italicized. Ex: Porter: *Dis/Ordered Liberty: Islamic and Catholic Feminist Perspectives on Natural Law*. Header aligned right. Font size 8.5.

Footer: The footer must be aligned left, apposite to the page number. For example: *Journal for Cultural and Religious Theory*

Spacing and paragraph formatting: Single spacing except between paragraphs. *No line tabs.*

Example

PETER D'ERRICO

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FEDERAL ANTI-INDIAN LAW: WHY A CHALLENGE TO "CHRISTIAN DISCOVERY" CREATES A
METAPHYSICAL CRISIS FOR THE US

Abstract

The legal doctrine of "Christian Discovery" remains the foundation of United States federal anti-Indian law, yet it is rarely challenged directly in litigation. This essay argues that confronting the doctrine poses not merely a legal challenge but a metaphysical crisis for the United States itself. Through close analysis of the nineteenth-century "Marshall Trilogy" — *Johnson v. McIntosh*, *Cherokee Nation v. Georgia*, and *Worcester v. Georgia* — the essay demonstrates that federal Indian law is grounded in an explicit claim of Christian European land appropriation and a corresponding denial of Indigenous sovereignty.

The essay critiques common misreadings of these cases that treat dicta about Native "occupancy," "guardianship," or "trust" as affirmations of Indigenous rights. Instead, it shows how such language functions rhetorically to obscure the doctrine's central purpose: legitimizing U.S. ownership of Indigenous lands and plenary power over Indigenous peoples. Situating Christian Discovery within a broader jurisprudential framework, the essay argues that land appropriation is the primeval legal act from which U.S. property law, sovereignty, and territorial authority derive.

By comparing *Brown v. Board of Education* with *Tee-Hit-Ton v. United States*, the essay highlights how the Court embraced racial equality while reaffirming colonial domination. It concludes by urging litigators to directly challenge Christian Discovery, arguing that avoidance perpetuates a system of domination sustained by legal formalism and reformist rhetoric.

Keywords: Indigenous peoples, Indigenous Sovereignty, colonization, colonial domination, racial equality, anti-indian law, legal formalism, Christian Discovery, U.S property law, territorial authority, and Indigenous rights.

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Discussions about the infamous legal doctrine of "Christian Discovery" almost always provoke the question, "What can we do?" The question may be a hopeful request for tactics and strategy for change. Or it may be a world-weary expression of cynicism about the very possibility of change.

The situation reminds me of the environment in which Thurgood Marshall initiated his challenge to "separate but equal" racial segregation doctrine that eventually led to its overruling in 1954 in *Brown v. Board of Education*.¹ One of Marshall's tasks was to coordinate tactics among sometimes over-eager allies; not every case was equally suitable for a challenge. Success came from coordinated, close planning. Marshall also had to respond to skeptics who said he was on a fool's errand, that segregation was "just the way it is, and we can work with it"; they told Marshall not to rock the boat. But he did. He gathered critiques of legalized race domination, litigated, and overcame it.

Today, "Christian Discovery" doctrine is criticized in many law reviews and books, but in almost no litigation. One of my aims in this essay is to sharpen the criticism by focusing on the doctrinal foundations, especially to correct misreadings that interfere with tactics and strategy for overruling the doctrine. Another aim is to encourage more critique in litigation.

Lawyers are rightly cautious about challenging entrenched doctrine, because they can be sanctioned under civil procedure rules for making "frivolous" arguments.

Black's Law Dictionary defines a "frivolous" lawsuit as one that is "groundless . . . with little prospect of success; often brought to embarrass or annoy the defendant."² Surely a challenge to Christian Discovery doctrine will "embarrass or annoy" the United States, but annoyance is not the purpose of the lawsuit that we can imagine. The purpose is to free Indigenous Peoples from the dominating grip of fifteenth-century imperial colonial religious concepts entrenched in federal anti-Indian law.

In fact, there is actually room for challenge, because the Rules of Civil Procedure also say that arguments for "reversals of existing law or for creation of new law" are not "frivolous" if the litigant "has researched the issues and found some support for its theories even in minority opinions, in law review articles, or through consultation with other attorneys." Arguments specifically identified as calling for a change in the law are "viewed with greater tolerance."³

Given the leeway in the Rules and increasingly widespread critical commentary to support an argument for legal change, there is no excuse for the avoidance of challenge in court cases — no room for "it's just the way it is, so work with it."

¹ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

² *Black's Law Dictionary*, 7th ed. 1999.

³ *Fed. R. Civ. P.* 11, Advisory Committee Notes, 1993 Amendment.