E004- Seeing Through To The Emperor's Extravagant Pretension

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SPEAKERS
Steven T. Newcomb, Peter d'Errico

Peter d'Errico 00:03
So Steve, good to see you again. Yeah, good seeing you. Yeah. We have another case that cited Johnson V Macintosh, but this time to criticize it, although what we're going to do is we go through this, I think we'll show how shallow the criticism is. And if I can just say ahead of time, I think that we're creeping up on some alternate version of the emperor's new clothes. And the old original 1837 story is about two tailors who, you know, rook the Emperor, basically, and give him nakedness. But I'm thinking that what happens when people become restless, they don't like the Emperor's clothes, they wish the emperor would wear some new clothes. And I think there's a theme somewhere in that we're going to get to. You want to say something about that. Before I was going to share a screen about the case that we're going to talk about, you want to say

Steven T. Newcomb 00:57
something Well, I think that the what we're going to examine is a confession, perhaps, is the right word, but certainly a an elucidation, or an effort to illuminate the domination system with embedded within the what's called federal Indian law, The ideas and arguments that have been accumulated over generations to to deal with Native issues, the issues of Native nations and peoples. And it's interesting now you have kind of, I don't know existential is the right word for it, the whole what is the nature of the existence that we ought to be living instead of what what we are living and experiencing. So there's an ideal that this judge. We're going to be examining his his words in particular, but there's an ideal that he has in his mind that he's using to compare the actual system that they're using to what he has in his mind as as far as what it ought to be if it were living up to its to the principles that he holds dear. Let's put it that way, and so that'll be revealed in how we examine his wording and the extent to which he's actually condemning it, but then still condoning the use of it. So it's kind of a weird thing, is disavowing it, but yet still utilizing it.

02:28
Yeah, similar to that Ninth Circuit Judge that we saw a couple of sessions ago, the who agreed that the Indians shouldn't get anything, but we shouldn't be calling him Indian. So let's Yeah.

Steven T. Newcomb 02:44
Well, I mean, it is, yeah, we're using the system of domination, but, my goodness, let's not call them a inappropriate name.

02:51
Yeah. Let's don't call it domination. Let me just Yeah. That's a good point. Let me share the screen here so can Okay, whoops, there we go. So this is the case, October 9. You can see it's very, very recent Supreme Court state of Washington, the flying T ranch versus the stellar Amish Tribe of Indians and the Sonoma County also involved in it, okay? And so basically, what it was about is a flying T Ranch was suing the silver Amish saying, we own the land that you claim to own. We've got it by adverse possession. And it's a whole long, complicated thing about the what the case is about is whether or not particular type of property law can apply to the still Amish. If it did, then flying T ranch would win. But they're saying no, that doesn't apply because it requires the well, what runs up against is the so called sovereign immunity, the still Amish, and then that sovereign immunity is is in the way of flying T ranch. So they just, you know, basically, they knocked down that flying T ranches lawsuit. But the The interesting question is they trying to decide, how, when do you know that the sovereign immunity has been waived? And as we're going to get into in some detail, they follow the basic line of federal anti Indian law, which is that the Indians can waive their sovereign immunity, but so can Congress, because Congress has this total power, and you can say, well, he hereby declare that still Amish can be sued. We're going to waive the immunity, so let's just die. So here, this is the opening of the case. Indian tribes may be sued only under two circumstances, one, when the tribe waives its immunity, or two, when Congress unequivocally abrogates tribal sovereignty. Now we've seen this over and over again, the idea that Congress has some total power, that it can abrogate tribal sovereign immunity. We also know that Congress, we've seen that even in the so called Pro Indian case of McGirt view Oklahoma, that it rested on the Congress hadn't yet extinguished the Crete nation, but it could extinguish it at any time. So this is basic. This is the root of the domination that is inherent in federal anti Indian law, is that Congress claims a right of domination over the original people's hearing. So right? The very first sentence of the opinion, it lays out that law. We're going to look at whether the still damage can be sued. And we want to say at the outset, we're either going to have to find that they waive their immunity, or Congress abrogated it. Now at the very conclusion, we're skipping all that text in between that I was trying to describe. The conclusion is that tribes are immune from suit and may be sued only where a tribe waives its humanity, or when Congress has unequivocally abrogated it, an act of Congress is necessary to create it. So here, this is in a nutshell. This is the statement of the domination, right? Would you agree with that? Yeah, so well, with

Steven T. Newcomb 06:18
the caveat that there's no appearance of domination whatsoever in this language. It's just invisible behind, behind all this verbiage. But go ahead,

Peter d'Errico 06:29
yeah, no, I'm glad you said it, because when you say unequivocally abrogated, it's like, well, that sort of sounds like gobbledygook, doesn't it? To a lot of people, abrogate. What does that mean? And then unequivocally abrogate, so and hidden behind that tiny phrase is the actual domination, the fact

Steven T. Newcomb 06:48
of the domination, or the the claim of a right of domination, of a right

Peter d'Errico 06:51
of domination. So we get to a judge, mungia, who's he files a concurring opinion. It means he agrees with the decision, but he wants to add some few thoughts. So here first things, I concur with the majority opinion, and yet I dissent. What is he descending from, from the racism embedded in the federal case law that applies to this dispute. So this is already right in his first two sentences. There's a little bit of a dilemma here, because he agrees with this power of domination, which has not been called power of domination. It's been called unequivocally abrogate. He agrees with that, but he doesn't like

the racism body in the cases that uphold that. So he's not saying he disagrees with congressional power. He doesn't disagree with domination inherent in it, but he doesn't like the language it is couched in. So that's why I said it's like the emperor's new clothes. He's not really complaining about the Emperor, but he's complaining about the Emperor's clothes. And I'm Hope I'm not being too harsh, but I'm sort of jumping to the punch line here. And so he starts out, federal Indian law is a product of racist beliefs endemic in our society, in our legal system. He starts out, it's certainly necessary to follow case law. In other words, the case law that has a domination. We have to follow that domination case law, but at the same time, it's important to call out that the foundation is based on racism and white supremacy. Now you might wonder, well, so if you're saying we're going to obey the M the Emperor, but you know we're going to reserve the right to criticize his wardrobe, then, is it really worth your time to do that? Shouldn't you be digging into whether or not you want the Emperor around?

Steven T. Newcomb 08:32
Oh God, keep going.

Peter d'Errico 08:34
So his point is that he doesn't want people to have any doubt that the court disavows and condemns the racist sentiments, beliefs and statements. But note, he's not saying that disavow can and condemn the decisions, just the language of the decisions. That's what we're going to dig into. Go ahead.

Steven T. Newcomb 08:52
Well, I was going to say that if after the certain disavows, but still uses those sentiments, beliefs and statements. In other words, the reasoning process that was applied to various cases across the generations has been representative of this complaint that he has against that system using these specific terms. But yet the reasoning process is what they're still using to reach their decision. Yes, they're disavowing it, but still maintaining it and sustaining it for yet another generation, or however many generations it might exist right

Peter d'Errico 09:36
now, notice there's a footnote here with his first sentence, okay. And now notice in the footnote, he says he's quarreling with the majority, talking about whether it makes any difference what the still around us are going to do with the property. That's the arcane property rule I was talking about. But he says that's irrelevant as domestic sovereign nations, it does not apply regardless of. What the property is now, where is the phrase domestic sovereign nations? Come in. We're going to find that so he has. He's relying on that concept of domestic sovereign nations.

Steven T. Newcomb 10:11
Let's stay up there for just a moment, if we could, okay, this text right there. Okay, I just wanted to make sure that I'm adding and probably already made the point, but that every time you see words such as racism and white supremacy, once again, it's that claim of a right of domination in the background here, but he's using those names to identify that. I just want to make that key,

Peter d'Errico 10:37
yeah, yep, yep. So this is what's useful here. As you said, it's very unusual to have a judge. I've been to this kind of stuff and expose it, to expose this the language. So he's talking about federal case law rising from those racist underpinnings, and particularly Cherokee Nation G Georgia, and we've talked about that the second case in the Marshall Trilogy, after Johnson B McIntosh said the US held title to the whole country. The Cherokee Nation sued Georgia under the treaty it had with the US, and the Supreme Court Justice Marshall said, we're not even going to hear your case, because you don't have the right to come here, because you're not a nation, even though you have a treaty, you're not a nation.

And what are you? He's, this is the famous line, it's and this is what he's Judge mungley is quoting. He says that the tribe is like a ward to his guardian. Alright, now we're going to look at Cherokee Nation in a moment. But ward to The Guardian is the basis of the so called trust relationship, and that is without reference necessary to this phrase, ward to guardian. Trust is a form Ward versus Guardian is a form of trust so called, and the the federal power is often exercised in the name of its trust relationship. And many, many native peoples bring cases saying, you owe us a trust duty. So he's criticizing the frayed Ward guardian, because it sounds he says that presents the tribal members as children. But once that phrase has been erased, when if you read trust relationship, it doesn't sound like that anymore. So the language, if you get rid of Ward, Guardian and just keep the rest of Cherokee Nation, this is what you get. Here's Cherokee Nation, first of all, right, top space. This is not the first page of the opinion, but selected page 30 in the opinion, Indian Territory is admitted by whom we don't know, certainly not admitted by the Indians admitted to compose a part of the United States. That's the key piece that Johnson said, is that all the land is actually part of the United States. Further down that page, it says, Well, who are these people? It says they may be perhaps denominated domestic dependent nations. Now, doesn't that sound an awful lot like domestic sovereigns? This is the phrase that Judge mungia used in footnote one. Is boosting them up. These are domestic sovereigns. They can do what they want with their land. But where did he get that concept? He got it from Cherokee Nation, the very case he's criticizing. So he says they this is Marshall. We assert a title independent of their will. That's Johnson V McIntosh. Yeah, lame. We own their land, right? As meanwhile, they're in a state of pupilage. They're really exempt. Their relation resembles that of a ward to his guardian, that the objectionable phrase occurs after the point at which the real domination has been applied, which is we assert a title independent of their will. Now you and I criticize Cherokee Nation because of that sentence. They occupy a territory to which we assert a title independent of their will. We say that's the claim of a right of domination, based on the notion that Indian Territory is part of the US. What judge mu is worried about is the last sentence award to his guardian.

Steven T. Newcomb 13:52
Yeah. Well, there's so much to this. For example, the word title there, we trace that into the back, into the Johnson ruling, which is where, that's where that comes from, then we will realize that that is a synonym for ultimate dominion. So the they asserted the ultimate dominion to be in themselves. That's the basis of quote, unquote title. And those kinds of connections have to be kept track of in reading these types of decisions. And so it is interesting what you're saying, the more key point is this business of asserting a title to their land independent of their will, meaning against their will. But he's going to say, Oh, just independent, and that avoids the word, the usual phrasing against their will and so, but he's focusing in merely on this ward Guardian analogy that Marshall has used and that the court has has used in this particular decision.

Peter d'Errico 14:58
Mm. And so if you got rid of that, let's say we go with Judge munya mungya and we erase the last sentence. Let's say we redacted it with your problem, with the problem be solved? No, the problem wouldn't be solved. The problem hasn't

Steven T. Newcomb 15:13
even been touched. He's avoiding the most foundational, foundational premise of the system he's criticizing.

Peter d'Errico 15:23
Yes, exactly. And notice this, where was it? Here it is. They, they're considered, as well as by yourself, being completely under the sovereignty. Yeah, that's, that's the essence of the claim of a right of domination. Anyway. So that's Cherokee Nation, which has been criticized for a little phrase here that

sounds Oh, it's troubling. It's a troubling place. Let's get rid of that phrase. Let's admit that it was there. Oh, nasty, nasty Marshall. He put that nasty phrase in there. Well, what else did Marshall say? Oh, I don't know. I don't remember that part.

Steven T. Newcomb 15:57
Well, can we just hold tight for just a second, the the go scroll up just a bit, or the other direction. Sorry, down. Oh yeah, down. I'm dyslexic. Okay, so, but the the under the sovereignty, so if we remember that sovereignty is defined by Jonathan havercroft as a unjust form of political domination limits human freedom, that would be very relevant to the interpretation of This phrase. So under the domination is, my point is that that's the

Peter d'Errico 16:44
Yes, yes, right? And if somebody wants to deal with the with the domination, this is what they're going to look at. And the dressing that's put on ward to The Guardian unit say, oh, yeah, that was that shirt he was wearing. It's got a bunch of holes in it now.

Steven T. Newcomb 16:57
Well. And also look at how the great father. The G is capitalized. The word father is capitalized, F and father, the Jew and G and great. Okay, so that's an honorific device showing the elevation above the lowercase in that interesting upper case, lowercase framing of this, this way of writing about these issues.

Peter d'Errico 17:25
Yeah, now, you know, Steve, if we really wanted to point to the silly side of this, we could say we think that that's really unright, that it's not right that he capitalizes president and great brother, that that was a really, that was a nasty thing that Marshall did. So it put them back in lowercase. Problem has been solved. No, I don't even think the problem's been looked at, right. There you go. Okay, now we're back to the descent. So he's talking about this superior to inferior. So we're talking here's he's describing forms of domination, although I'm not sure that teacher to student. Most people, I don't think, would think Jesus the teachers dominate in class. But of course, that's what teachers do. I've been one for long enough. So now he talks about the lone wolf case, okay? And lone wolf quoted another case, USB Kagama here. And this is where he doesn't like this language. The Indians are the wards of the nation, alright, so he's criticizing lone wolf for the same thing. But what else did lone wolf say? Let's look at Lone Wolf V Hitchcock, here, here's here's the this is the land. This is what else I don't need to show you that he gave you the full quote of the business word lone wolf, repeating the word to the Guardian. But this is in woebois, the right which the Indian have was only that of occupancy. The fee was in the United States. That's the same thing you were just talking about. That's comes from Johnson V McIntosh. Fee is another word for title. And so this is what it says, the occupancy could only be interfered with. And it's always struck me as interesting. Only be interfered now, only the dominator can dominate. You. Just keep that in mind, okay, only interfered with or determined by the United States. Plenary authority over the Tribal Relations has been exercised by Congress from the beginning. Now, if you're going to criticize lone wolf, that's what you should be criticizing it for, right?

Steven T. Newcomb 19:19
Well, one of, one of the things. And so notice, this is a subtle point, but notice how he's referring to the right of occupancy. And then he says, Where is that? Okay, the fee. So most people would not know. No. Most attorneys wouldn't know what the word fee means, and that's simply another synonym for domination, in a sense, but it was in the United States subject to that right well, which right occupancy? So in a sense, it's, it's, it really is a deception. Because Marshall's making it seem as if for the I think that's correct to say it was Marshall. Lone Wolf is, oh, I apologize. So lone wolf, this is from Lone Wolf,

so, but the court, in other words, is using the same kind of language that Marshall initially used in the Johnson ruling, and matching that here, and making it seem as if fee or, excuse me, seem, making it seem as if occupancy has some kind of power against a fee title, and it has zero power against a fee title. So that's, that's where the deception comes in, exactly. And if you said, if you reversed it, it would, it would look more accurate in certain terms of saying that the the this, the occupancy, is subject to the fee, meaning, subject to the domination of United States.

Peter d'Errico 20:56
Yes, yeah, yeah. So it's this is the thread that runs through all of these cases that that institute federal anti Indian law, and which are the real core of what that's about, regardless of whatever dress what seemed appropriate at that time in 1903 or 1823 or in 2025 and I think you use the word recently that there's a kind of existential crisis going on in the judiciary at this point, it seems to me, and I think we've, we can talk about that more later, but we've seen it in recent opinions like this one, where the judges are getting uncomfortable. Oh geez. I don't know. This is pretty nasty sounding stuff here. It's like a naked statue. We should put a fig leaf over it, or something like that. They're not talking about getting rid of the decision. They're talking about. How do we avoid saying how corrupt the whole thing is, how filled with domination that it is.

Steven T. Newcomb 21:55
Now you go to the earlier part of that. Just Okay, right there. So, well, come down. Come down a bit the other way. There you go, right there. So notice that this now, it is true that in decisions of this court, the Indian right of occupancy of tribal lands, whether declared in a treaty or create otherwise created, has been stated as being as being sacred, or is sometimes expressed as sacred as the fee of the United States. But notice that he's that they're using Johnson versus Mackintosh and Cherokee Nation to support that particular statement, right? And so that would help people listening to this broadcast to understand that this is supportive of what we've been stating, yup. And

Peter d'Errico 22:46
notice here after he says, it's as sacred as the fee, and so sacred using religious imagery here in the fee, like the ownership, right? Okay, is a sacred thing he's saying, right? And of course, occupancy doesn't have that, but it's just as sacred, he says. But he goes here, but, and none of these was a controversy. None of these cases, was there a controversy between the Indians and the government respecting the power of Congress to administer the property. All right. He's talking about here. Congress possessed a paramount authority. This is what's by and notice here, by reason of its guardianship, there's, there's your ward guardian, right? Yeah, it can even be applied contrary to the strict letter of the treaty, right? So the

Steven T. Newcomb 23:36
other thing I want to jump in just for interject for one moment, when we, when we approach this type of language about guardianship and guardian, Ward and so forth, as if it's a fact, and lose sight of the the the fact that it's an analogy and a metaphor that's being used to think through This. I think we're we're not enabling people to realize the extent to which all of this careful crafting of language is really what the whole point of the exercise is. How do they maintain this system that they've created and and pay attention to these types of analogies, but we lose sight of the fact that it's an analogy or a metaphor. When we state it as a fact, it's a fact that there that it's a guardian, and that this Guardian has a ward called ie Indians,

Peter d'Errico 24:30
right? Yeah, exactly. Metaphor, through and through. Yes. So now we're back to the judge's opinion, and this is he doesn't dig into Mackintosh, except to say that he says the same things that we have

talked about. Document of discovery. He even brings in, which is really unusual, the fact that Johnson relied on Christian Christian discovery here, and he slips out of the game when he says European countries he talked. Christian peoples, and this is where. So he acknowledges that this is the root of the whole thing. Okay, now what does he do next? He says, Oh, I like this, because the viewing of the ship, this is he's, he's somehow is plagiarizing a notion of the view from the shore and the view from the ship is the view from the ship was enough to give them title. That's what, basically what Doctrine of Discovery said. And then he just repeats the whole thing, the US controlled the land, etc. He's not actually criticizing that, because he's already agreed with the majority that the US can decide to still agamish. Don't have sovereign immunity. So he's saying, look how horrible this is. And at the same time, he says, but that's the basis of our case, and I agree with it.

Steven T. Newcomb 25:45
Well, okay, so let's go back to that for just right there. No, the the other direction, right? What you were just focused on? Okay, right there. Viewing the land from the ship was enough to give them title. That's actually inaccurate. If you want to get technical with the international law doctrine, it effective possession basically is what there has to be more than simply viewing the land and there has to be certain actions taken that demonstrate an effective occupation, or meaning the foreign occupation, them coming in and seizing control. That's why they put a Ford up, or they put certain garrison of soldiers, or what have you, to show that they now have control, and they have to symbolize that through arms, through implements or symbols of domination. And so there's more to this than what he's stating. Here is my point.

Peter d'Errico 26:50
Yes, I'm glad you said that. And I'm thinking of your ceremonies of possessions that you see all these pictures, come put the cross down, kneel down, put the sword down. You know, that sort of stuff that, yes, physical, they had to be physical action on the land. So you're right. He's this is oversimplifying what

Steven T. Newcomb 27:08
and And while we're on that, the federal government as conquerors, okay, that's stating that as a fact. It doesn't say as purported conquerors. There's no hedging. There's no calling this into question. As you already stated, it appears to be taking it at face value. But where is the critique of these notions,

Peter d'Errico 27:30
and where is the example of the Congress? This is where Johnson V McIntosh John Marshall said, This is what he said was the extravagant pretension of his decision was that he was converting discovery into conquest. There had been no conquest, certainly not of the entire continent. And since there was no conquest, he had to have some basis, and that basis would discover and yet he says that's an extravagant pretension

Steven T. Newcomb 27:56
well, and he's pretending to convert discovery into conquest. That's why he's combining those words together in that manner. He's actually confessing, admitting that he's pretending to do that. Fact, the whole government is right, lie.

Peter d'Errico 28:12
Yeah. So, so not only does this is it a superficial view of what the doctrine meant and what it required in terms of physical but it also borrows without any He doesn't say, wait a minute, how did they where's this conquering business? Let's go back and look at Johnson V Macintosh, where Marshall doesn't say they were conquered. So why are we saying they're conquered again? We're seeing, rather than

critique the core assertion of the claim of domination, he's just dealing with the trimmings of it. And so then he goes on, he says that it's time to call this out. Okay, he's going to call it out. So how does he start? He's talking about how the courts have taken steps to address some of the errors of the past. Now, the errors of the past are using the bad language. Let's be clear about that. We're going to see that it's not the errors of the past in making these decisions, see areas of the past and how they talked about these decisions. So he says this is where this is really disingenuous. He says the US Supreme Court now recognizes sovereign authority of tribes, etc. And he cites the upper Skagit Indian tribe versus London. Now we're going to jump back and forth a little bit, because if you look at the actual case, upper Skagit, this is written by Gorsuch. By the way, the court didn't adopt it. It says, For its part, the tribe relied upon decisions recognizing this. He didn't. He doesn't agree with that or disagree with that. Mark Gorsuch, so it's not really correct to say the Supreme Court recognized that. It said that in this case, it was argued that, but the court didn't decide that. Yeah. So then he also quotes Michigan b V Bay mills. This is now supposedly recognizing an error of the past. Let's zoom down to Michigan against Bay Mills, right here. As domestic dependent nations. Doesn't that sound a lot like domestic sovereigns Indian tribes exercise sovereignty subject to the will of the federal government. This is the phrasing you were saying should have been done in Lone Wolf. Is that the subjection has to be made clear. Subjection means notices among much else that Congress can abrogate immunity as it wishes, wishes, and the Bay Mills Court, the Supreme Court, said, if Congress had done this, Bay Mills wouldn't have any valid grounds to object. That's similar to what Gorsuch said in McGirt, yeah. So rather

Steven T. Newcomb 30:36
than says, But, but Congress has not done so, yes, including thought there, right?

Peter d'Errico 30:41
Yeah, yeah. And so if we back up here, why are we looking at Michigan? Because he claims that this is steps to address the error of the past. Where was the error of the past addressed Michigan's Bay mills. The Supreme Court said that Bay Mills, Indian community, had sovereign immunity. Oh, great, sovereign immunity. But why did they have sovereign because Congress hadn't taken away yet. You did that. Where's the error of the past been corrected? Yeah, so then

Steven T. Newcomb 31:09
where's where on the part of this judge, Yeah, where is the deeper examination of the founding principles of this system that he's calling into question. Apparently, zero. Yeah.

Peter d'Errico 31:25
So here another case. He cites, Holland V bracket. You remember, that's the child welfare case, and that was totally celebrated by so called progressives who said, Oh, isn't that wonderful? The Indians win. Well, what is, what does that case say? This is notice that we begin with. This is the beginning of their analysis, all right and right at the top. In a long line of cases, we've characterized Congress' power as plenary and exclusive. And then they go through quotes, plenary power, plenary and exclusive power. Plenary authority, Lone Wolf, by the way, Paramount power, plenary power of legislation leave little doubt that Congress field is muscular. Now, isn't that interesting saying muscular? You think, does that sound a little bit like physical domination? Doesn't it?

Steven T. Newcomb 32:13
Well, and where's the understanding or acknowledgement that every time the phrase plenary power is being used. It's a replacement for domination, just another way of stating a principle of domination.

Peter d'Errico 32:26

Yes, it's not here. Yeah, exactly. And the last line there I wanted to quote from the case Congress has plenary authority limit, modify or eliminate the powers of local self government. All right, so where is the Is this any evidence that there's been an error of the past? I mean, you're right. If you took plenary, said, we have, we have characterized Congress' power as domination. Congress possesses domination. Congress exercises domination. Thoroughly established a Congress that DOM. That's the meaning of of of the bay Mills case, I mean, of the Brackeen case, so cases that he cites as being, wow, this is really moving forward. Here are showing some progress. All of them, this is like not even a hole in the bucket. There's no bottom in the bucket of that argument. And notice then our court correctly holds that the still Amish has sovereign immunity, only Congress and the tribes themselves return. Wait a minute only. There's that only Congress again, only. Well, who else would do it? Shouldn't it be that the tribes retain power, only Congress and the tribes. How does Congress get in here at all? The only way Congress gets in here is going back through all these cases that while we just saw Hallen and Michigan and so on, all citing back to Johnson, Cherokee Nation wish to be Georgia, the whole structure is right there in that phrase. And it's not being criticized. It's saying our court correctly holds this do so now we went through those three cases, maybe, oh, here we go. This is a he gets down where it's near his end. Here we're bound by the precedent. He's not even criticizing the precedent. The precedent is the claim of the right of domination in every single one of those cases, the precedent is there. That's what the President is. He's not being critical of it, but he doesn't like the underlying racism and precedents are woven into the opinions. This is why I say it's like the emperor's new clothes.

Steven T. Newcomb 34:35
Well, let me jump in here and make a statement that I think is super pertinent, and that has to do with the limitations of a race oriented framework to critique all this. Because if the most you're going to say, oh, it's racist, it's prejudice and this sort of thing, how does that in itself? Just. It alone, get to the deeper kind of examination that we're wanting to engage in here. And why isn't this judge really going to that deeper level, that foundational level of an examination of the system that he's apparently condemning and critiquing? Yeah, he's satisfied to just call it racist, or it's based on white supremacy. In what way he he's kind of alluding to the Yusef Guardian Ward as being the real key example that he can point to, but it's also the least damaging to the system that they've created.

Peter d'Errico 35:36
Yeah, and when you the work, the incredible work that you've done with unearthing the Vatican archives and the rest of it is that's the the thread of, if there's a, if there's a ideology, let's call it he calls it ideology that, if that's woven into the very fabric of the opinions, it's Christian discovery, it's the Christian peoples, it's it's tied together With the so called power of Christendom, which was the power of the Pope. That's the piece that is like a clear thread throughout it. It's not like the pope saying, We want you to go get those dark people. No, we want you to go get those non Christians. Yeah, pagan that's why you're going to attack them, is because they're not of the proper religion. And so I think that if we're going to start doing serious we at least have to pay attention to to the rhetoric on that side. In fact, in in Johnson V Macintosh Christian is mentioned more than the so called Word savage so

Steven T. Newcomb 36:37
well. And as I recall, you sent me the result of your search. As far as how many times did the court refer to dominion? Yes, Johnson ruling, it was 13 times, as I recall. And the pairing of Christian people with dominion, ie domination, is really where the critical focal point ought to be. And yet that's you have the one part of it, which is the use of Christian people, and then using fee and title, but staying away from the ultimate dominion, which is the theme of domination. So he has all of the potential and capability of pointing that out, but declines to do so she didn't notice it. Who knows what the reason would be?

Peter d'Errico 37:25
Well, Steve, I think it's deeper than that, which is that the there's a belief in the Domination system. I mean, how can you be a judge and not believe in a domination system? You have the power to tell somebody you're going to jail right now. We can justify that with all kinds of reasons and rules and talk about, you know, how we get to enforcing proper behavior. But as soon as we're talking about that, then we're talking about force again. So there's a belief in a system which is hierarchical domination. The fact that in 500 years ago, all of those dominators wore Christian crowns is irrelevant to the fact of the domination. So you knock the crown off. You get rid of the Pope. You have King Henry. He's got the crown on. Get rid of King Henry. You get to the United States. What does John Marshall do? John Marshall says, Oh, that crown fits pretty well. Well, I'm going to justify it with some words here, but basically I'm also going to say that it's just a grand, extravagant pretension, but we're going to wear the crown. So the crown the system of the US. I tried to show this in my most recent post. This view, it's basically a feudalistic structure that has been carried on all the way through centuries, and imposed without all the rhetoric. And so today, what we're seeing here is the guy wants to erase more of the rhetoric. Let's get more rid of more of the rhetoric. Well, what about this claim of of the right of domination? Oh, I'm not going to talk about that well.

Steven T. Newcomb 38:55
And if people want to understand the term feudalism, correct me, if I'm wrong here, but they can think of it as a lordship system, because the feudal system is based on lordship. And there's a specific way in which that's written in Latin, and one of the papal bulls, D, O, M, I, N, i, i, s, I believe it is. And however you pronounce that. Yeah, dominius. So the but the thing that I want to really lock in here on is the original free existence, and the ending of that free existence is nowhere to be found in any of this verbiage. That's the crucial point that here are peoples nations living for countless generations completely free and independent of any of this foreign domination from Western Europe or Christendom, and then their free way of life is ended through the imposition of that foreign system. And there's no discussion of that whatsoever. It's all that's even further back in the in the background of the wording here,

Peter d'Errico 40:07
yep, and which is why I'm just trying to find that screen again. Why here he's actually upholding that the still agamish are the original peoples in that land. How is it that they themselves don't retain all the only ones that have power to determine when they're when they may be sued? He doesn't. He doesn't raise that question. It never occurs to him say, Wait a minute. How did Congress creep into this sentence here? Yeah, this ends. I'm saying it's correct, but it doesn't really do. What I think, supposedly I'm after is some kind of what. What is he after? Actually, that's why I go back to the notion of he just doesn't like the Emperor's clothes. He's not complaining about the Emperor. I think there's one more thing. I think I can, can I quit sharing this screen?

Steven T. Newcomb 40:56
Yeah, yeah. Well, well, before you do one last thing, if you go way back to the opening of his words. Mangia, yeah, I just wanted you the to focus in on the word necessary. Remember, while it is certainly necessary to follow federal case law, okay, pardon me that matches Marshall's use of the word, necessarily their rights to complete sovereignty as independent nations were necessarily diminished. Well, how were they diminished? By their imagining it being diminished. So their their rights, so mentally they're diminishing it by saying it's not the full extent of what it was, but why is it necessary? It's necessary to the integrity of the system of ideas and arguments they're crafting and putting together.

Peter d'Errico 41:51

Yes, and he is actually doing the same thing. He's finding language which is appropriate, 200 years after Marshall was writing, and he's saying Marshall's language inappropriate. We should use some new language here. Actually, I don't know what language he would use. He's the only language he adopts. Come straight out of that thing, domestic, sovereign nation. Well, domestic is contradictory to sovereign. So he's he's right in the thick of the actual case law here. But what he doesn't like is the sentiments, beliefs and statements. It's like, Well, how else could that be stated? Is what he's asking, Can we state the claim of congressional power in a way that's not offensive to my sense of propriety here? Think this is all about and why? Really, can I stop now? Yes, please go ahead. Go to something you and I have said we got to talk about, which is that the using race critiques of federal anti Indian law plays right into the hand of all the way back to Colonel Henry Pratt. The Oxford English Dictionary says that Colonel Henry Pratt, the guy who created the Carlisle, so called boarding school, that was the first written use of the phrase racism in 1902 when he was talking to the Friends of the Indians conference at Lake Mohammed. And his argument was that if we don't put these kids into the boarding schools, they'll stay Indians. And that's bad. That's racism. It's going to segregate them from the whites when they should be assimilated to the whites. So if you try to criticize federal anti Indian on the basis of racism, you're actually playing in to the entire fabric of the boarding school assimilation policy, and saying, Yeah, as soon as you open that door, you have opened. Well, it's not Pandora's box. I don't know what it is. It's kind of like you've gone all the way back and short circuited what you thought you were going to accomplish. You're criticizing federal entity and law is racist. And then you find out, well, wait a minute, the guy was saying that it was racist if we segregated him and allowed him to have their own property, and their own property is getting in the way. That's his he actually his comment before he talks about racism, he says the Indians property is the basic problem. As soon as we can solve that, the problem is solved.

Steven T. Newcomb 44:06
I Yeah, and I think that in addition to those points when, well, I I'll give you an example, I picked up a book that was about the the issue of racism and race and so forth. And I'm looking for a deeper analysis within the book for certain things, and I'm not finding it, because where I would find that deeper analysis, I only find the word racism repeated over and over and over again, as if that's adequate, as if calling it white supremacy and racism is sufficient, and that's all that needs to be said. Well, what more? What further explanation is there? What deeper explanation is there within the context of federal anti Indian law? It's these deeper examinations of the new. Response and subtleties of language and connections between synonyms and metaphors and analogies. There's so much that needs to be discussed that doesn't get discussed because that ends up being an end point rather than a starting point for examination.

Peter d'Errico 45:17
Yep, and I think, with all due respect, I don't think you claimed enough significance for what you just said, which is that the work that you and I are doing in a handful of others is to look at the chain of the decisions themselves of the presidents. We look at the language they're couched in. Obviously, you can't get to the decision without looking at the language. But what persists through this whole history is the so called precedent, the so called claim of the right of domination. That's what we're looking at. And if all you're doing is criticizing the rhetoric that the claim is made in, that's what you this is what is hopeless. That's what you're saying. It's just that's again, it's like the clothing The Emperor is wearing. The Emperor says, I'm here to dominate, and why you're going to dominate, because I'm white. Oh, that's a wrong thing to say. Oh, I'm going to dominate. Let me think, counselor, give me another good word here. Oh, he came up with a good word for the public interest. I'm dominating, for the public interest. Oh, great. Let's lock everybody up in the name of public health and public interest. Okay, problem is solved. The Emperor found some new language

Steven T. Newcomb 46:23
well, and I think that the the way in which the domination is there, but never explicitly acknowledged by the use of that word. Occasionally, you'll see dominant very, very seldom, but occasionally, and nobody looks at dominant and thinks domination. They just don't. It's not part of English to do that, okay, but what we've been doing is excavating, so to speak those deeper we've been digging down into those deeper levels of language going all the way back in time to foundational documents and looking at the well, for example, let's just take the word dominion. If you take the letter N off of the end of the word dominion, you get dominio, which is a verb to dominate, and the in the payable you say, que, sub, actuale, dominio, temp, dominio. Temporale. That's that word dominio stick an N on there. Now you have a noun dominion, and it what it does is it deflects attention away from the domination aspect of that and makes it much more difficult to comprehend. Yep. So it's those types of subtleties, sort of like use a completely different example, whether the word people has an S and whether the S is before, excuse me, whether the apostrophe for a possessive, right, the apostrophe goes before the S or after the s on peoples. That's crucial, because the first one before the s is individuals, and after the s is in entire people and another entire people and another one, so multiple peoples, right? Yeah, and those are the kinds of subtleties that we're paying attention to.

Peter d'Errico 48:18
Yes, exactly. Now we're coming up on the hour. I wanted just to share the Pratt thing so people can see that what we were just talking about. This is the 20th Annual Meeting of Lake Mohawk conference, friends of the Indian. Notice, 1902. And here's Colonel RH Pratt. I want to endorse what the bishop said, we'll skip that. And then here, in dealing with the Indian, the eternal thing with us is his property. Property, this stumbling block. I want to get it out of the way. So now make the Indian a man again. You think, Wait a minute. You mean not actually full man? You made that point. When do you get to be a man after you get civilized ability to take care of himself. Well, weren't they living here for 1000s of years? So then here's the famous line segregating any race or class of people, apart from race, kills the progress of the segregate people. I notice it doesn't think there's going to be any progress of the dominators. It's been going to be hampered, but just the dominated association of classes is necessary in order to destroy racism and classicism. That's it. OED says that's the first use in writing of the word racism. And what is it all about? It's because here's the head of the boarding school process, the boarding school system, waving his flag and saying, We've got to get these people assimilated. We got to get disconnect them from their property. And if we don't do that, we're committing racism, right? So the on the Indian was justified as an attack on racism. So I'm just saying Be very careful when you start attacking the federal anti Indian law as racist. Is because you. Started in the name of, let's attack racism. I'm not

Steven T. Newcomb 50:04
all Well, yeah, I would go back to the use of the word Bishop this. You don't have to show it, but because it's it's also showing the role of religion and churches in the overall process. But when you of assimilation. But when you look at that notion of property, if we were examining that still on the screen, we would see that he's he's basically saying the danger that exists for the United States is that a full right of property would be recognized as a as existing in the native nations. And one of the main things, the main, I think the main impetus for the so called boarding schools was to make sure that none of those children grew up with a sense of national identity as a In other words, a national political consciousness on the free existence, a free existence on the part of any native nation. So you make sure that the people are raised without that, so that they have no real political consciousness and a set of political skills that would enable them to advocate on the basis of their nation and their people, distinct and separate from the United States that has to be eliminated completely. And you see that idea of inculcating meaning pounding down into young children, the idea of patriotic values, patriotism for the United States. So it's a brainwashing process that's being engaged in with regard to those children, yeah,

Peter d'Errico 51:48
like a branding process, branding their minds. And this is the same guy I keep in mind, Henry Pratt. The phrase he uses that in another one of his comments to the Friends of the Indians is that kill the Indian, save the man. That's his motto. And he says that he he kind of agrees with General Sherman. He says, I kind of agree with him. He says, The only good Indian is a dead Indian. He says, but unlike Sherman, I don't believe we actually have to kill them physically.

Steven T. Newcomb 52:17
Yeah, and that's that, that's that genocidal process, the intention to destroy, in whole or in part, an entire people. But you don't have to have blood on the ground. You don't have to have bodies on the ground. You can engage in this long term process of assimilating them, quote, unquote, forcing them under the domination of another society and making them into an integral part of that society. So they're identifying with that other society, rather than their own. And that's the overall process. Going back to that word property again, that he's using, if we remember that that word means domination, as as William Blackstone called a despotic dominion. The danger is that native nations would claim that despotic dominion for themselves, not that they believe in that, but to use that as an artful tool that would provide a shield is, so to speak, to protect them as an as a nation or people with a distinctive identity that's not overwhelmed and overrun by some other nation, or people that wants to be invading and destructive to their existence.

Peter d'Errico 53:31
Steve, I think we're getting to the top of the hour, and I think what you just opened up is a whole new conversation about the extent of which it's possible in English in 2025 to make a statement that doesn't use the whole framework of property dominion, etc, to defend something called sovereignty, quote, unquote, another problematic word, saying, Well, I'm here from the so called tribal council, and we're defending our property rights and our sovereignty and so on. That begins to be, I think what you're saying, that's something we need to look at in another podcast. Yeah, that sound good.

Steven T. Newcomb 54:07
Does? It sounds great? Thank you so much. You too.

Peter d'Errico 54:10
Steve, great. Thank you.