Supplementary Material

Chapter 8: The New Deal/Great Society Era—Equality/Native Americans

Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955)

The Tee-Hit-Ton Indians are small clan of the Tlingit Tribe who reside in Alaska. In 1947, Congress authorized the sale of timber in the Tongass National Forest "notwithstanding any claim of possessory rights." The Tee-Hit-Ton Indians claimed that they owned the trees in question under various treaties signed with the United States. When the secretary of agriculture attempted to sell the timber to a private party, the Tee-Hit-Ton Indians filed a lawsuit claiming that the federal government was violating the takings clause of the Fifth Amendment by taking their property without compensation. The Court of Claims dismissed their lawsuit. The Tee-Hit-Ton appealed to the Supreme Court of the United States.

The Supreme Court by a 6–3 vote ruled that the Tee-Hit-Ton had no right to compensation. Justice Reed's majority opinion ruled that Native Americans had no right to property in lands held before the United States acquired sovereignty over their territories unless those property rights were explicitly recognized by Congress. Is this a principle that would apply to white settlers in Alaska or just to Native Americans? If the latter, what reason does Justice Reed give for treating Native Americans differently than other persons? Is precedent sufficient? Given the willingness of the New Deal Court to overturn precedents sustaining Jim Crow segregation, why were the justices unwilling to overturn precedents denying constitutional rights to Native Americans?

JUSTICE REED delivered the opinion of the Court.

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II. *Indian Title.*—(a) The nature of aboriginal Indian interest in land and the various rights as between the Indians and the United States dependent on such interest are far from novel as concerns our Indian inhabitants. It is well settled that in all the States of the Union the tribes who inhabited the lands of the States held claim to such lands after the coming of the white man, under what is sometimes termed original Indian title or permission from the whites to occupy. That description means mere possession not specifically recognized as ownership by Congress. After conquest they were permitted to occupy portions of territory over which they had previously exercised "sovereignty," as we use that term. This is not a property right but amounts to a right of occupancy which the sovereign grants and protects against intrusion by third parties but which right of occupancy may be terminated and such lands fully disposed of by the sovereign itself without any legally enforceable obligation to compensate the Indians.

This position of the Indian has long been rationalized by the legal theory that discovery and conquest gave the conquerors sovereignty over and ownership of the lands thus obtained. . . . The great case of *Johnson v. McIntosh* (1823) . . . denied the power of an Indian tribe to pass their right of occupancy to another. It confirmed the practice of two hundred years of American history "that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest."

. . . In *Beecher v. Wetherby* (1877), . . . a tract of land which Indians were then expressly permitted by the United States to occupy was granted to Wisconsin. In a controversy over timber, this Court held the Wisconsin title good.

> ". . . It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race. Be that as it may, the propriety or justice of their action towards the Indians with respect to their lands is a question of governmental policy, and

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is not a matter open to discussion in a controversy between third parties, neither of whom derives title from the Indians. The right of the United States to dispose of the fee of lands occupied by them has always been recognized by this court from the foundation of the government."

. . .

No case in this Court has ever held that taking of Indian title or use by Congress required compensation. The American people have compassion for the descendants of those Indians who were deprived of their homes and hunting grounds by the drive of civilization. They seek to have the Indians share the benefits of our society as citizens of this Nation. Generous provision has been willingly made to allow tribes to recover for wrongs, as a matter of grace, not because of legal liability. . . .

This is true, not because an Indian or an Indian tribe has no standing to sue or because the United States has not consented to be sued for the taking of original Indian title, but because Indian occupation of land without government recognition of ownership creates no rights against taking or extinction by the United States protected by the *Fifth Amendment* or any other principle of law.

. . .

In the light of the history of Indian relations in this Nation, no other course would meet the problem of the growth of the United States except to make congressional contributions for Indian lands rather than to subject the Government to an obligation to pay the value when taken with interest to the date of payment. Our conclusion does not uphold harshness as against tenderness toward the Indians, but it leaves with Congress, where it belongs, the policy of Indian gratuities for the termination of Indian occupancy of Government-owned land rather than making compensation for its value a rigid constitutional principle.

JUSTICE DOUGLAS, with whom THE CHIEF JUSTICE and JUSTICE FRANKFURTER concur, dissenting.

[Justice Douglas claimed that the tribe had a statutory right to compensation.]

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