Lindsay Robertson, *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands,* New York: Oxford University Press, 2005. Pp. 239. $29.95 (ISBN 0-19-514869-X).

"Unintended consequences" is Lindsay Robertson's theme for this first complete account of Supreme Court case *Johnson v. M'Intosh* (1823). While researching the origins of the discovery doctrine, Robertson chanced upon land speculation records stored in a Pennsylvania furniture-maker's basement. With these newly rediscovered documents, Robertson builds a convincing case that, while trying to solve some local and immediate problems as he crafted *Johnson*'s majority opinion, Chief Justice John Marshall unwittingly stepped into a political mire that led to the displacement of thousands of indigenous peoples. In this land speculation case, Marshall used the "discovery doctrine" to privilege United States' territorial rights over indigenous people's claims to western lands. The doctrine states that when Europeans "discovered" America, the Indians lost title to their lands to the discovering sovereign, leaving them only the right to occupancy. The Indians, therefore, were only tenants on the land. Although Marshall tried to reverse the doctrine nine years later in *Worcester v. Georgia* (1832), he could not repair the damage.

Johnson was a collusive case, contrived to exploit legal loopholes in the judicial system so that land speculators could claim millions of acres in western lands. The United Illinois and Wabash Land Companies tried to take advantage of an early national court system still in its formative stages and, therefore, subject to considerable manipulation by attorneys who sought to turn the system to their clients' advantage. To ensure a favorable outcome, Robert Goodloe Harper, lead attorney for the Illinois and Wabash, hand-picked the plaintiff, the defendant, and the defendant's attorney. He chose original Wabash Company shareholder Thomas Johnson, Jr. as the plaintiff; Harper and his colleagues eventually settled on William M'Intosh, who possessed a competing claim to lands in Illinois. Harper then selected M'Intosh's attorney, William Winder, who was also placed on the Illinois and Wabash payroll.

Despite all of his orchestrations, Harper's strategy went awry. The attorneys for the defendant proved to be too thorough in their preparation. They built their case on the nature of Indian title, using the doctrine of discovery to argue that if the discoverer owned the lands, the Indians did not, therefore the transactions made between the Illinois and Wabash Companies and the Indians were invalid. Marshall agreed, and his use of the discovery doctrine in the majority opinion doomed the Native Americans of the Southeast to removal.

Robertson tries to dispel the myth that Marshall's goals were always wide-ranging and his purpose clear. The Chief Justice's use of the discovery doctrine was, Robertson claims, designed to resolve some local issues in which he held a personal stake. His goals with the *Johnson* decision were two-fold: to resolve disputes involving unfulfilled land-grant promises to Virginia's Revolutionary War veterans; and to try to make peace with Virginia over court decisions that moved lands out of Virginia's control when Kentucky became a state. Assertions of the discovery doctrine would allow Virginia's veterans to claim their lands in Kentucky

at the expense of Illinois and Wabash claims. Therefore, despite overwhelming historical evidence that the United States repeatedly fell on the side of the right of preemption rather than the sovereign's right to seizure of the land, Marshall insisted that Europeans held a power to grant the soil even while it was still under the occupancy of the Indians.

While Marshall intended his opinion to have limited application, others looked upon the decision as a way to annex Indian lands in the Southeast. His opinion achieved its short-term goals; the Virginia veterans were able to claim their land and Virginia's opposition to the federal courts diminished. But, Georgia and other states saw their opportunity. Legislators quickly began to pass laws that usurped tribal authority within their states' boundaries and confiscated lands that they coveted. Marshall engineered the slippery slope with his discovery doctrine, and there did not seem to be any turning back. Subsequent cases ignored his explanation in *Worcester* that discovery gave the discovering nation only the right of preemption; instead, they reinforced the version of the discovery doctrine that he outlined in *Johnson.*

Robertson's close analysis of *Johnson* identifies a turning point that held dire consequences for the indigenous peoples of the United States. With his decision, Marshall opened a door that facilitated the removal of thousands of Indians. It would have been instructive for Robinson to have placed the Southeastern Indians' reactions to these judicial machinations alongside the case. While he briefly addresses New Englanders' objections to removal, he only touches on Native Americans' reactions through the subsequent removal treaties. It is, however, probably fitting that the peoples whom Marshall's actions affected the most receive only a cameo appearance in this book; their voices' absence in this work mirrors their invisibility from the official record in the 1830s as well.

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Michael H. Hoeflich and Karen S. Beck, *Catalogues of Early American Law Libraries: The 1846 Auction Catalogue of Joseph Story's Library,* Austin, Texas: Jamail Center for Legal Research, 2004. Pp. vi + 74. $40.00 (ISBN 0-935630-58-9).

Michael H. Hoeflich, Louis V. de la Vergne, and Kjell Å. Modéer, *Catalogues of Early American Law Libraries: The 1877 Sale Catalogue of Gustavus Schmidt's Library,* Austin, Texas: Jamail Center for Legal Research, 2005. Pp. vi + 108. $40.00 (ISBN 0-935630-61-9).

Lecturing to law students in 1823, David Hoffman advised: "A complete law library, at present, consists of many thousand volumes, requiring nearly a fortune to procure them, in addition to the judgment and time necessary for selection." The most recent publications in the Legal History series of the Tarlton Law Library demonstrate the truth of Hoffman's statement. As facsimiles of auction catalogs, these books