Spanish colonial context. The book has a fine glossary and bibliography, but it sorely needs relevant regional maps as well as maps showing community racial segregation and who lived where in colonial settlements. Also missing is a comprehensive conclusion to put the essays into perspective. Nevertheless, this is a major contribution to the field of borderland studies that provides new insights into Spanish and Indian identities and patterns of accommodation. Previous scholarly notions of racial barriers disintegrating at the end of the colonial period must now be understood in the context of adaptability and multiethnic alliances.

*Andrew Gulliford*
Fort Lewis College

**Conquest by Law: How the Discovery of America Dispossessed Indigenous People of Their Land.** By Lindsay G. Robertson. New York: Oxford University Press, 2005. 272 pages. $29.95 cloth.

Lindsay Robertson has written a strange book. It purports to be a study of "discovery"—the doctrine by which Christian colonizers explained their domination of American Indians; but it reads more like an apology for John Marshall, the Supreme Court chief justice responsible for establishing the doctrine as the foundation of federal Indian law.

*Conquest by Law* provides much useful detail about the people and places involved in the trilogy of cases that announced the discovery doctrine: *Johnson v. McIntosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832). The book describes complex political and economic circumstances that put the Cherokee Nation in the middle of increasingly bellicose state-federal conflicts that led up to the American Civil War. The reader is shown a staggering array of insider deals, bribes, self-dealing, and other corrupt practices by politicians, lawyers, judges, and other major figures whose interests converged on dispossession of indigenous peoples. In the face of this history, it is unbelievable that these cases continue to be considered valid precedent for twenty-first-century decisions, not only in the United States, but also in Canada and Australia.

The book fails in two crucial respects: first, in attempting to exempt Chief Justice Marshall from the networks of personal interests that swirled around the cases, and second, in misconstruing the key holdings of the cases so as to make it appear that Marshall did not intend and was not aware of their long-term anti-Indian consequences. What might have been a great book is marred by these failures. Any reader concerned with a critique of the foundation of federal Indian law—the discovery doctrine—will have to go beyond this book.

Robertson asserts that "the chief justice came to realize [the discovery doctrine] was a tragic mistake" (xi) and subsequently "repudiated" it (xii). It is not unusual to find John Marshall lauded as an advocate of Indian sovereignty. This notion, however, is problematic. In light of the historical evidence and a close reading of the cases, Robertson should not have embraced it.

Robertson writes that Marshall was "guided by his own interests. . . . [He] saw *Johnson* as a vehicle for removing an obstacle standing between his former colleagues in Virginia's Revolutionary War militia and bounty lands promised them in western Kentucky" (xi). Robertson completely ignores Marshall's own personal and family interests in land speculation in Kentucky.

Jean Edward Smith, author of a major biography of Marshall points out that Marshall's father, Thomas, had been "appointed surveyor of the western lands (Kentucky) by the State of Virginia in 1781 and . . . was appointed by President Washington to be the Collector of Revenue for Kentucky. . . . In 1780 . . . Thomas . . . led a new wave of settlement in the Kentucky territory and established the foundation for the subsequent wealth of the Marshall family. . . . Before the end of the 1780's, [John] Marshall would claim over 200,000 acres in Kentucky. His father and his brothers would own about twice that amount." Marshall's career involved him from the start as "an intermediary [to his father] for investors wishing to convert their land office warrants into surveyed acreage" (*John Marshall: Definer of a Nation*, 1996, 31n, 74; 75n, 91). In addition, Marshall held land claims in Virginia under the Fairfax grant, originating in the English crown.

John Marshall's whole career and family fortune were thus implicated in the *Johnson* decision, which protected chains of title linking royal grants of Indian lands through state and federal governments to individuals. Marshall protected the interests of his militia colleagues, his family, and himself. This is a far messier picture than presented by Robertson, but it must be acknowledged to arrive at an accurate history of the case.

Robertson acknowledges that the *Johnson* decision "necessarily diminished" the Indian nations' "rights to complete sovereignty, as independent nations" (100); but, focusing on what he calls the different historical presentations in the two cases, he asserts that, in *Worcester*, Marshall "attempted to kill the heart of the [*Johnson*] opinion" (xiii). According to Robertson, the continuing legacy of the discovery doctrine is due to anti-Indian Andrew Jackson zealots who used the doctrine "because it facilitated Indian removal" (143). This reading of the cases flies in the face of the texts.

Robertson is wrong in stating that the *Worcester* opinion "dismantle[d] the discovery doctrine by overruling that part of the doctrine assigning fee title to the discovering sovereign" (133). In fact, *Worcester* specifically cites *Johnson* for the proposition "that discovery gave title to the government by whose subjects or by whose authority it was made" (31 U.S. 543). It is also not true that *Worcester* reformulated the discovery doctrine to hold that "the discovery right was not dependent on and did not result in the diminishment of tribal sovereignty" (134). A clear understanding of the discovery doctrine and its legacy requires a different understanding of the cases and interests than that presented by Robertson.

To begin with, the discovery doctrine, an outgrowth of struggles among the Christian European colonizers, was adapted after the formation of the United States to apply to struggles between federal and state powers and private land speculators. As Marshall put it in *Johnson*, "Th[e] principle was, that discovery gave title to the government by whose subjects, or by whose

authority, it was made, against all other European governments, which title might be consummated by possession." More significantly, he wrote that "the character and religion" of the indigenous peoples "afforded an apology" for considering them inferior and that "civilization and Christianity" were traded as "compensation" for colonial subjugation.

From the outset, then, discovery doctrine focused on the right of Christian monarchs to colonize Indian lands. By the time of the *Johnson* case, the issue was who would get to inherit the legacy of the British crown, which had "granted" Indian lands to its subjects throughout the colonial period.

In *Johnson*, Marshall defined the legacy of the crown's "discovery" in a way that privileged government over private land speculators: "[E]ither the United States, or the several States, had a clear title to all the lands . . . subject only to the Indian right of occupancy, and . . . the exclusive power to extinguish that right, was vested in that government which might constitutionally exercise it." McIntosh's title was held to be better than Johnson's, because it was derived from a government grant, while Johnson's was based on a private purchase from the Indians. Marshall stated that the "rights of the original inhabitants were [not] entirely disregarded; but were necessarily, to a considerable extent, impaired. . . . [T]heir rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied. . . ."

In the subsequent *Cherokee Nation* case, Marshall again ruled that the Indians are not independent nations. He invented a new category—"domestic, dependent nations"—created out of whole cloth, to define the diminished form of Indian sovereignty. He suggested that the relation between the Cherokee and the United States "resembles that of a ward to his guardian." Because the Cherokee are not an "independent nation," they may not sue the state of Georgia in the Supreme Court to stop the imposition of state law in Cherokee territory.

Robertson focuses on the later *Worcester* decision, writing that it "would become celebrated . . . for its holding the state's act imposing Georgia laws on the Cherokees invalid" (133). The celebration, however, is shortsighted because *Worcester* does not signal indigenous liberation from colonial subjugation. The question in the case was *not* whether the Indians were free from the discovery doctrine, but whether their subjugation was to the states or the federal government. The decision was that "the laws of Georgia can have no force . . . but with the assent of the Cherokees themselves, *or in conformity with treaties, and with the acts of congress*" (31 U.S. 561; italics added). The Cherokee are "dependent" on federal power and congressional acts are an *alternative* to Cherokee assent, a factor that was soon demonstrated in the removal process.

The *Worcester* opinion did not "repudiate" the discovery doctrine, but preserved it—the "necessary diminishment" of indigenous sovereignty—in a way that privileged federal power: The Cherokee continued in a diminished status, bound exclusively to the federal government. As Marshall put it, "[T]he Cherokees . . . assumed the relation with the United States, which had before subsisted with Great Britain" (31 U.S. 555).

There is no reason to excuse John Marshall from his clear personal and federalist interests in authoring the trilogy of cases that constitute the core of federal Indian law to this day. He may have regretted the use of coercion in the service of his doctrine, but there are no grounds to believe that he regretted or did not foresee the deep, long-term implications for diminished Indian sovereignty.

Marshall presented federal primacy as "protection" and this image would come to dominate federal Indian law and the story of Marshall as an "advocate of the Indians." What is striking, however, is that Marshall's adoption of Christian discovery as the foundation of land title in the United States has only rarely been seen for what it is: a subjugation of indigenous peoples to fifteenth-century theological and colonial legalisms, in derogation of their status as free and independent nations.

Marshall's rhetorical skill transmuted the theology of Christian discovery into constitutional theory. He was willing to jettison "natural right" and even "reason" to uphold "that system under which the country has been settled." Far from being an advocate for Indians, Marshall may be seen as advocating a concept of "tribal quasi-sovereignty" that formed the basis of US property law.

The merit of *Conquest by Law* is that it places law and legal doctrine at the center of the process by which indigenous peoples were displaced in the colonization of North America. Its failing is that it tries to rescue a hero from the author of these legal doctrines.

*Peter d'Errico*
University of Massachusetts, Amherst

**Entering America: Northeast Asia and Beringia before the Last Glacial Maximum.** Edited by D. B. Madsen. Salt Lake City: The University of Utah Press, 2004. 400 pages. $50.00 cloth.

The rather lengthy and complex tome under review, *Entering America: Northeast Asia and Beringia before the Last Glacial Maximum*, takes the reader through fourteen contributed chapters in which questions regarding the type and timing of the settlement, or colonization, of the subarctic and arctic realms of Siberia and the consequences of that effort for the subsequent movement of Native peoples into the Americas are explored. One should not be misled by the book title as the time periods covered in *Entering America* extend into the Late Glacial Maximum (LGM, 22,000–20,000 years ago) and post-LGM intervals of the Late Wisconsin glacial of North America (Sartan in Russia) making its contribution all the more valuable.

The book opens with a lengthy introduction in which the editor's major thesis, the possible entry of modern humans into Siberia and the New World prior to the LGM before the present (BP), is explored, thus setting the stage for the remainder of the volume. The introductory section, "Environmental Conditions in Northeast Asia and Northwestern North America," provides an overview of the paleoenvironmental settings that Upper Paleolithic