

Johnson v. McIntosh

Matthew L.M. Fletcher




Wherefore, as best we can, **we ask and require** you that you consider what we have said to you, and that you take the time that shall be necessary to understand and deliberate upon it, and **that you acknowledge the Church as the Ruler and Superior of the whole world,** and the high priest called Pope, and in his name the King and Queen Doña Juana our lords, in his place, as superiors and lords and kings of these islands and this Tierra-firme by virtue of the said donation, and that you consent and give place that these religious fathers should declare and preach to you the aforesaid.

But, if you do not do this, and maliciously make delay in it, I certify to you that, with the help of God, **we shall powerfully enter into your country, and shall make war against you** in all ways and manners that we can, and shall subject you to the yoke and obedience of the Church and of their Highnesses; we shall take you and your wives and your children, and shall make slaves of them, and as such shall sell and dispose of them as their Highnesses may command; and we shall take away your goods, and shall do you all the mischief and damage that we can, as to vassals who do not obey, and refuse to receive their lord, and resist and contradict him; and **we protest that the deaths and losses which shall accrue from this are your fault**, and not that of their Highnesses, or ours, nor of these cavaliers who come with us.

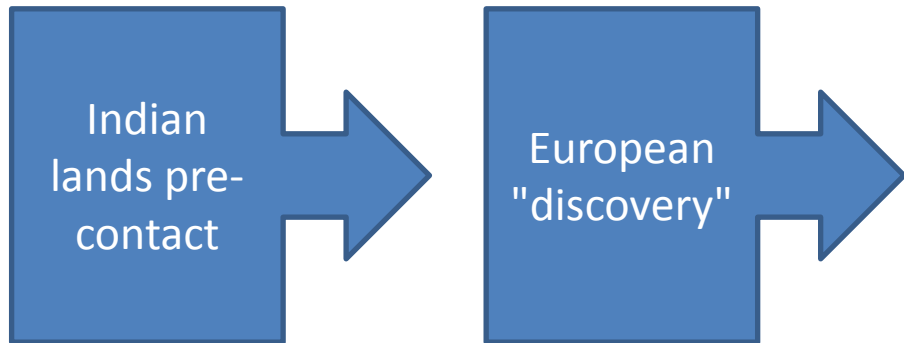
Indian Property Interests

Indian Property Interests



Indian lands
pre-contact

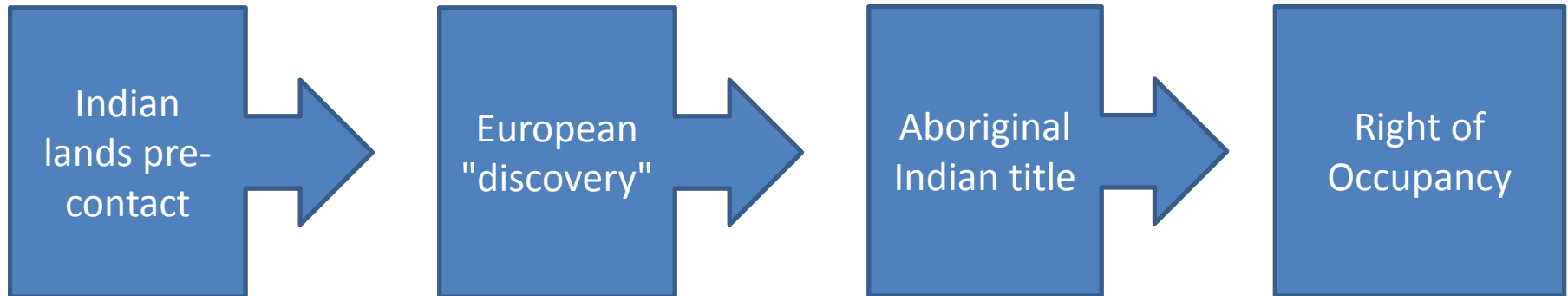
Indian Property Interests

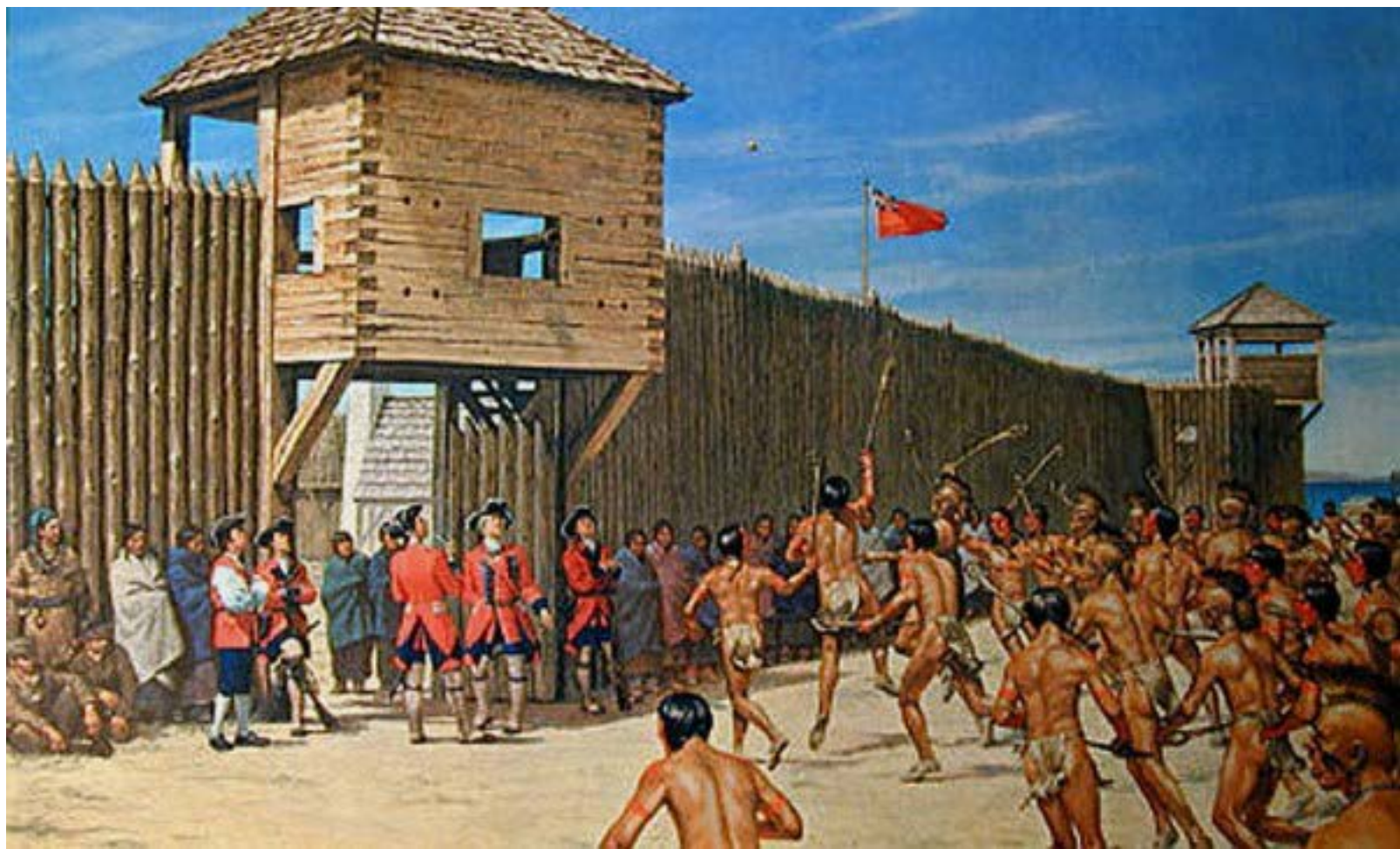


Indian Property Interests



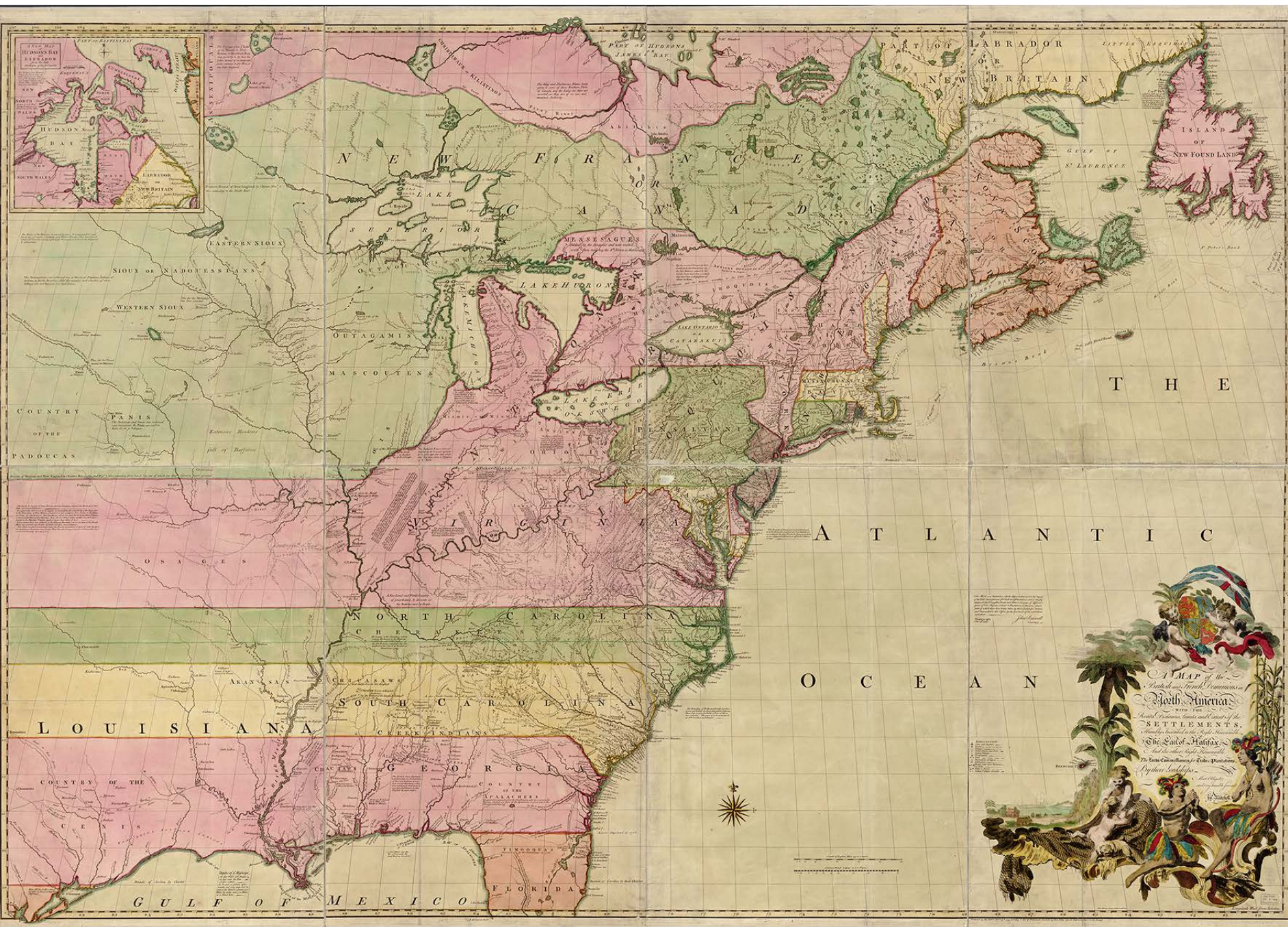
Indian Property Interests

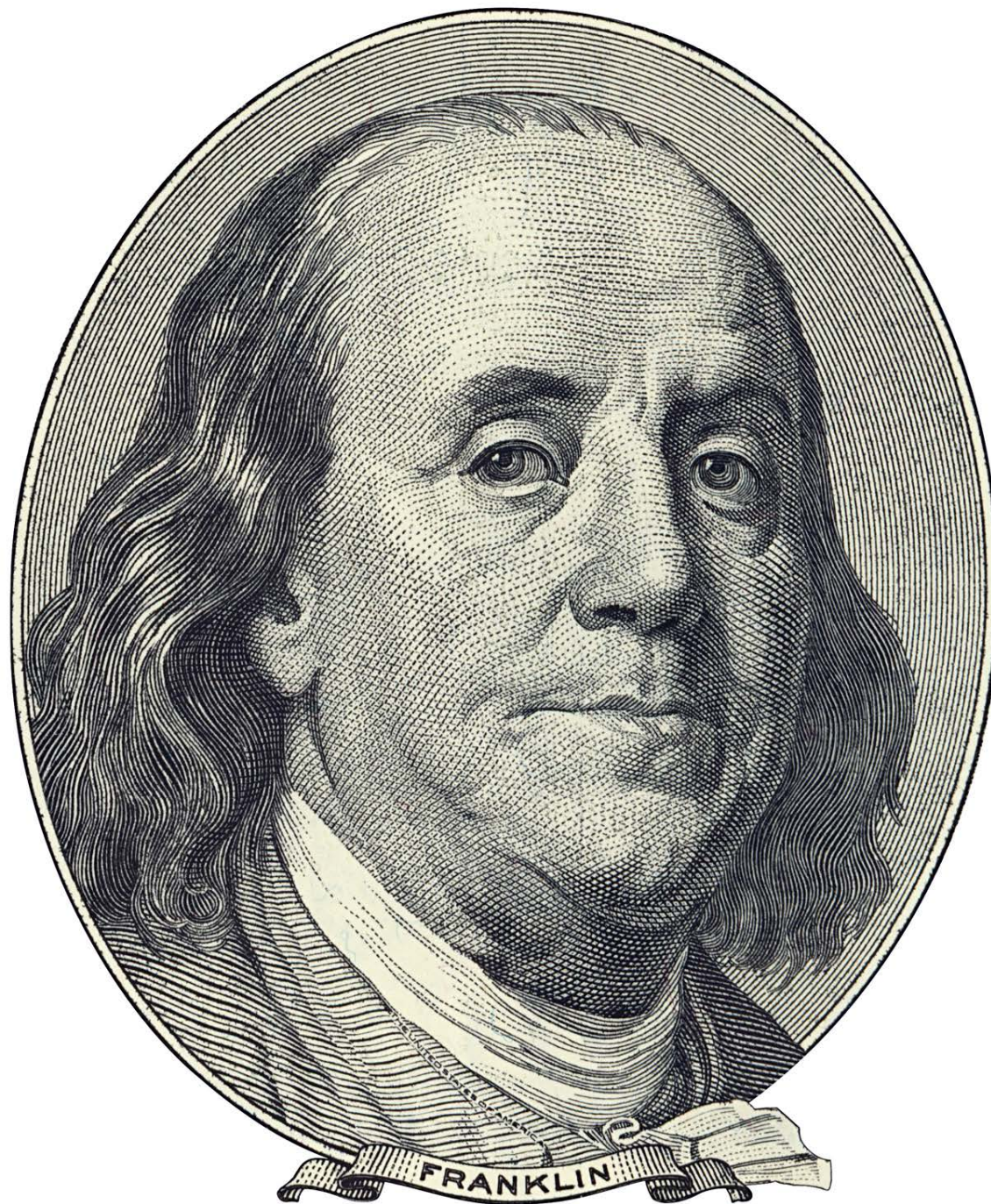


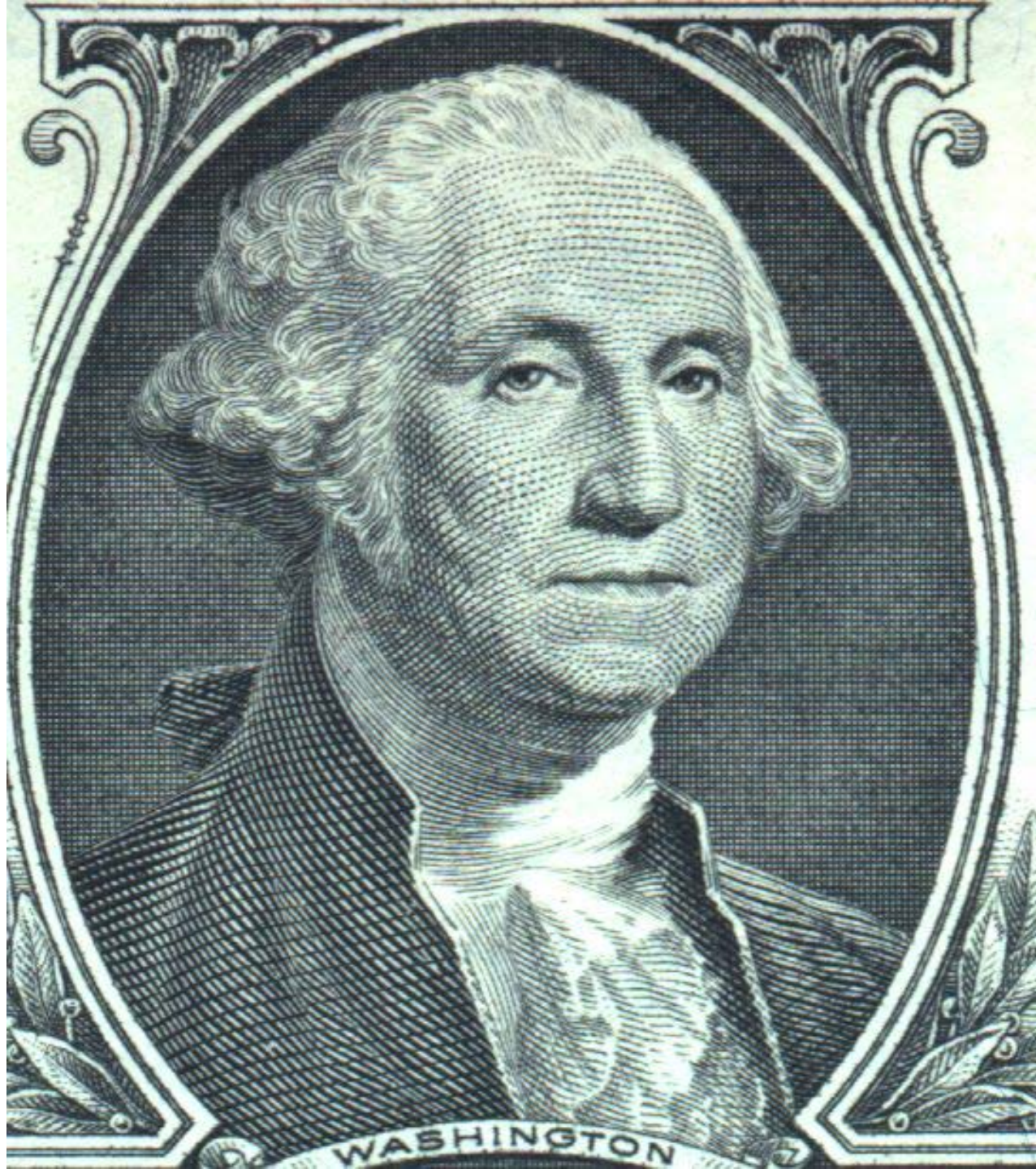




Land speculation in colonial America

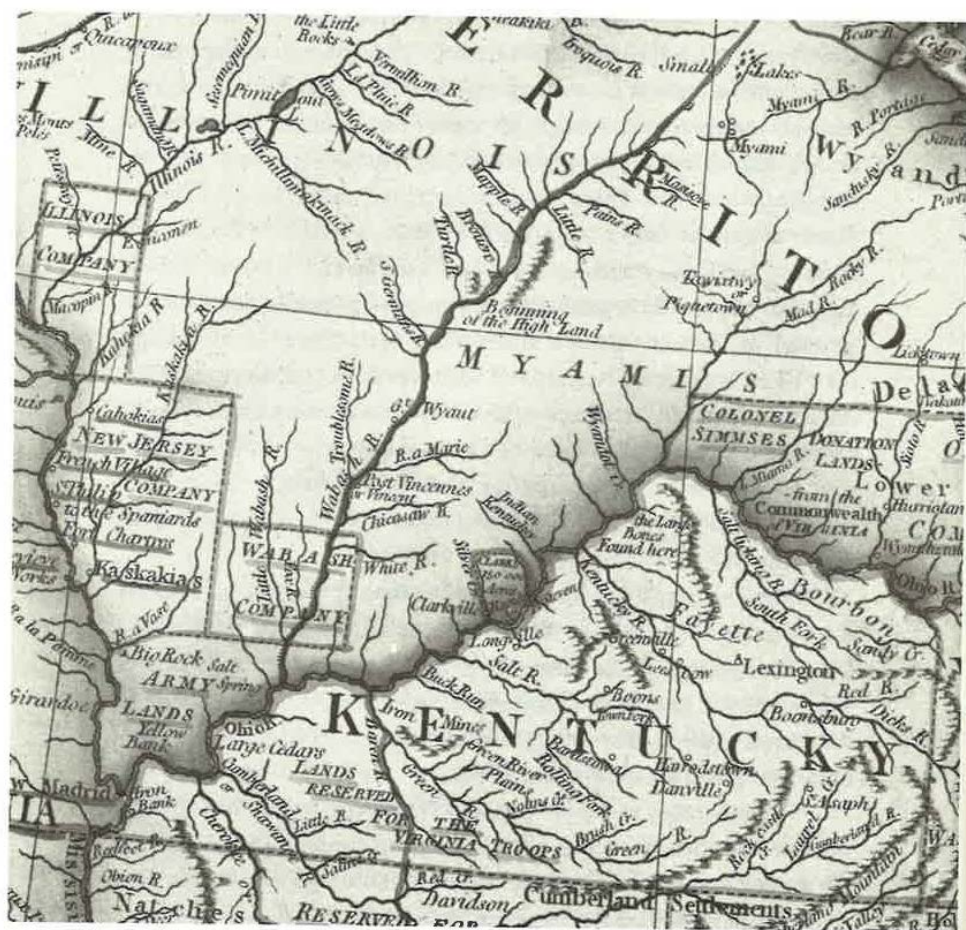


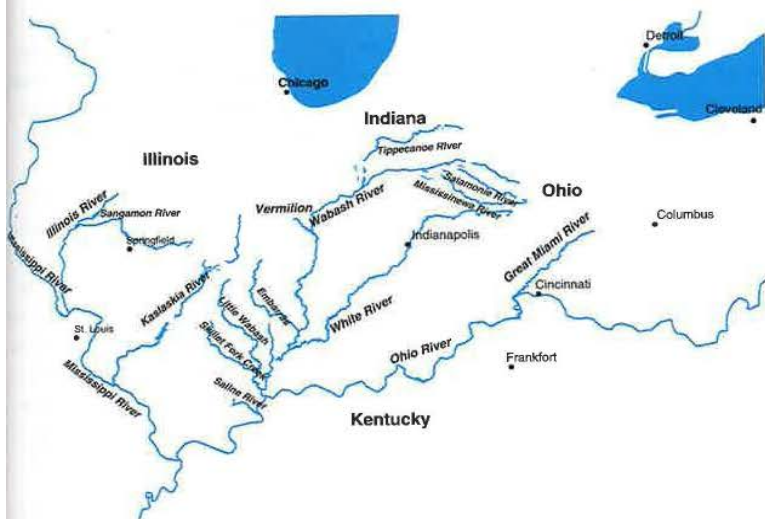




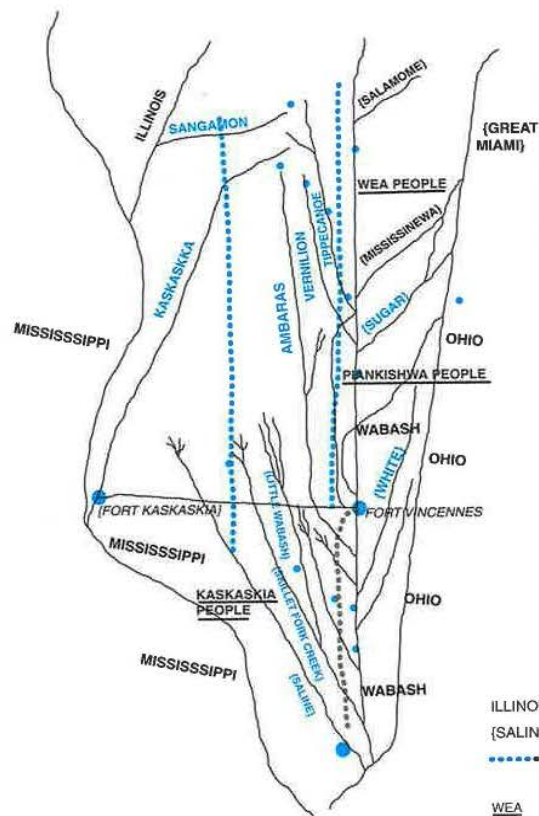


William Johnson
(Courtesy of the South Caroliniana Library,
University of South Carolina)





Modern map showing locations on buckskin map.



◀ TOP LEFT

Buckskin map drawn by Englishmen relying on Native American informants.

◀ TOP RIGHT

Diagram of places on the buckskin map.

Mr. McIntosh

Mr. McIntosh

Fur trader

Mr. McIntosh

Fur trader

Lawyer



507

JAMES ~~McKENZIE~~, President of the United States of America,

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That William McIntosh of
Vincennes,

having deposited in the General Land Office, a Certificate of the Register of the Land Office at Kaskaskia whereby it appears that full Payment has

[illegible]

relative to the disposal of the Public Lands in the **ILLINOIS TERRITORY**.

There is granted, by the United States, in pursuance of the Acts of Congress in that case provided, unto the said *William Mcintosh*

the _____ Section of Land above described: To have and to hold
the said _____ Section of Land, with the Appurtenances, unto the said

William Mc. Intosh his Heirs and Assigns forever.

In Testimony whereof, I have caused these Letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my Hand at the City of Washington, the *twentieth*
day of *July* in the year of our Lord one thousand
eight hundred and *eighteen* and of the Independence
of the United States of America the *forty third*.

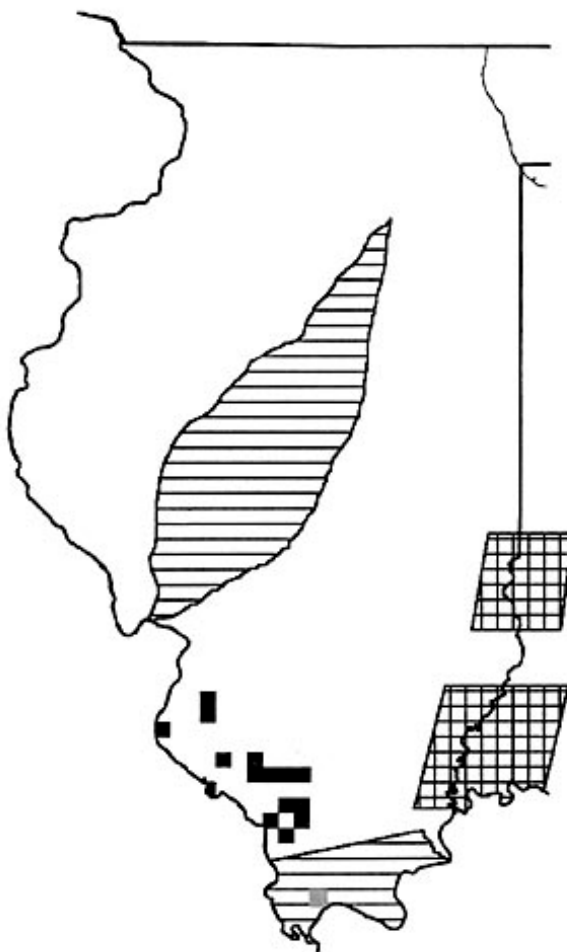
BY THE PRESIDENT.

BY THE PRESIDENT, *Signed James Monroe.*
Joshua Mifflin Commissioner of the General Land Office.

Commissioner of the General Land Office

2

Map of Land Claims in *Johnson v. M'Intosh*



Legend



Tracts Purchased by Illinois Company (1773)



Tracts Purchased by Wabash Company (1775)



Townships Containing McIntosh Purchases of 1815 (at issue in case)

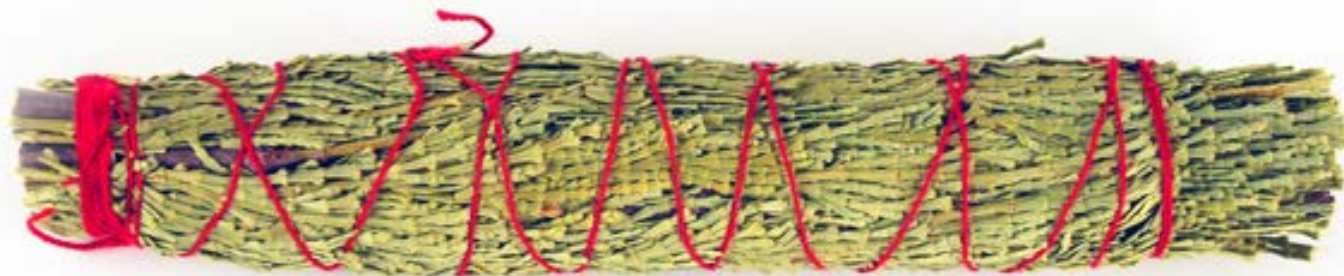


Township Containing McIntosh Purchase of 1819 (not at issue in case)

Feigned case

Bad legal history

Right of Occupancy



Right of Occupancy

Right of Occupancy

Rights retained

Right of Occupancy

Rights retained

- Farming

Right of Occupancy

Rights retained

- Farming
- Hunting and fishing

Right of Occupancy

Rights retained

- Farming
- Hunting and fishing
- Gathering

Right of Occupancy

Rights retained

- Farming
- Hunting and fishing
- Gathering
- Exclusion

Right of Occupancy

Rights retained

- Farming
- Hunting and fishing
- Gathering
- Exclusion
- Waste!

Right of Occupancy

Rights retained

- Farming
- Hunting and fishing
- Gathering
- Exclusion
- Waste
- Alienation to other Indians

Right of Occupancy

Rights retained

- Farming
- Hunting and fishing
- Gathering
- Exclusion
- Waste
- Alienation to other Indians

Rights divested

Right of Occupancy

Rights retained

- Farming
- Hunting and fishing
- Gathering
- Exclusion
- Waste
- Alienation to other Indians

Rights divested

- Alienation to non-Indians

Federal Preemption Right

Extinguishment of Indian Title

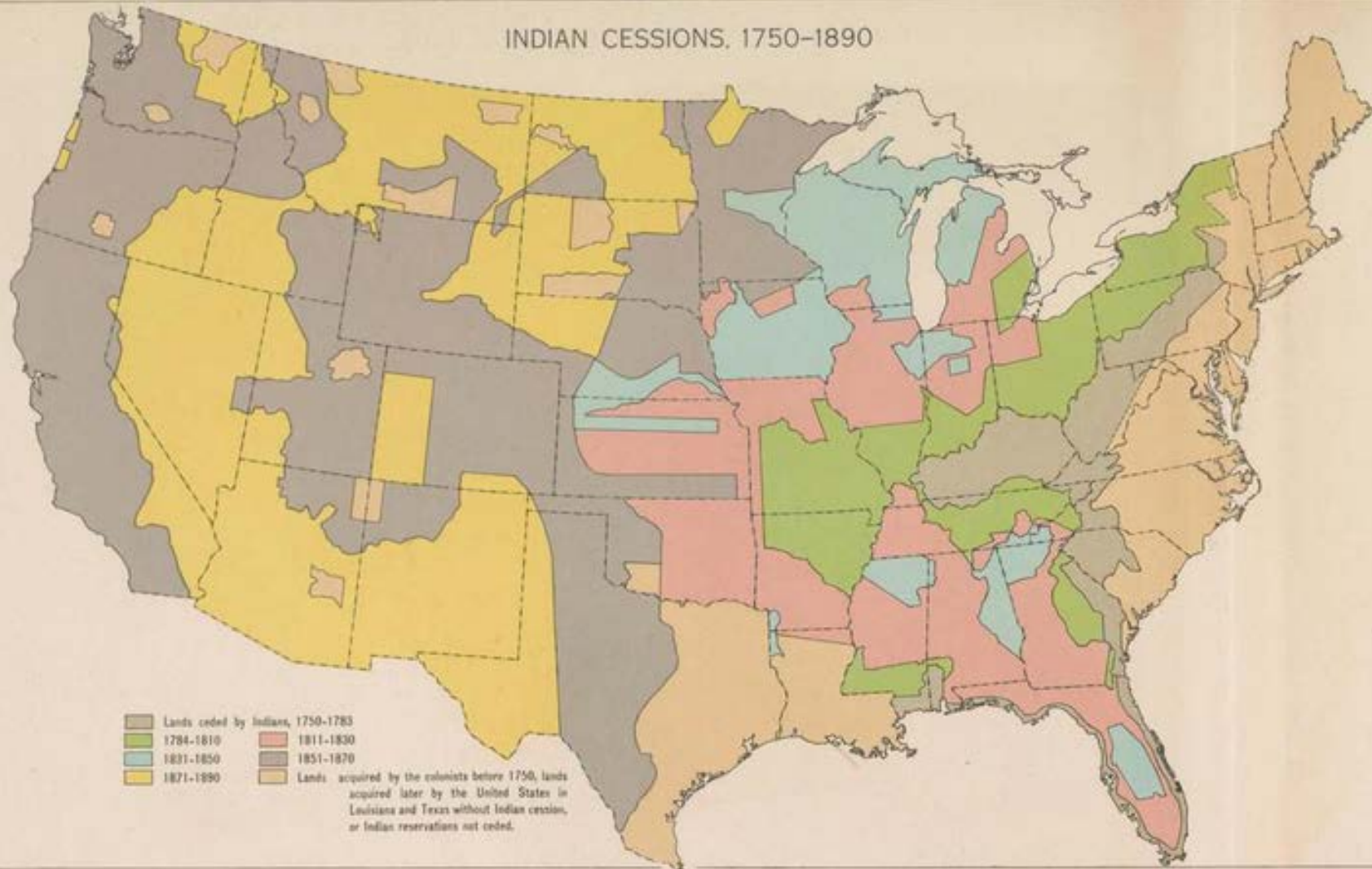


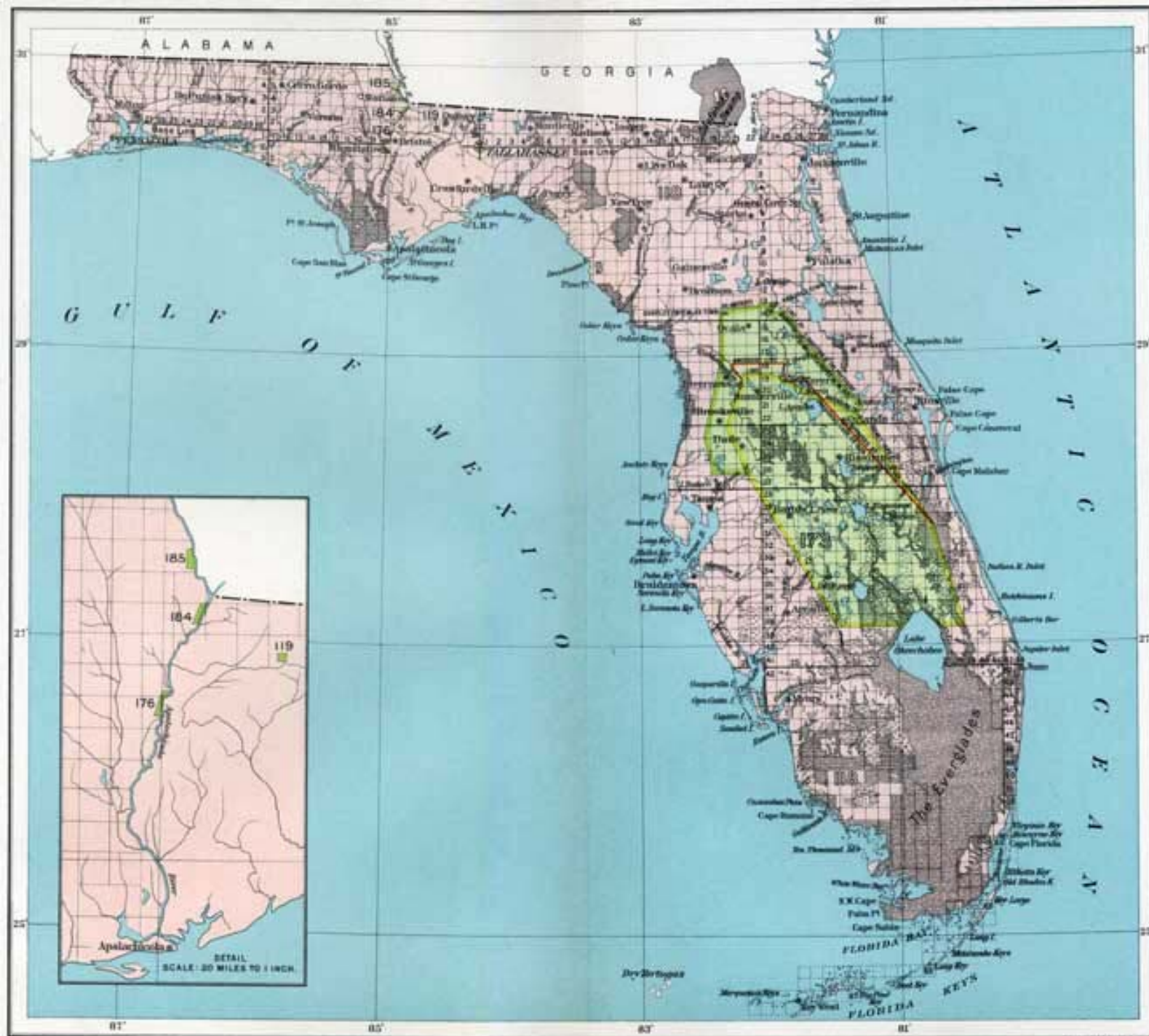


How often conquest?

INDIAN CESSIONS, 1750-1890

A







INDIAN LAND FOR SALE

GET A HOME

OF
YOUR OWN



EASY PAYMENTS



PERFECT TITLE



POSSESSION

WITHIN

THIRTY DAYS

FINE LANDS IN THE WEST

IRRIGATED
IRRIGABLE

GRAZING

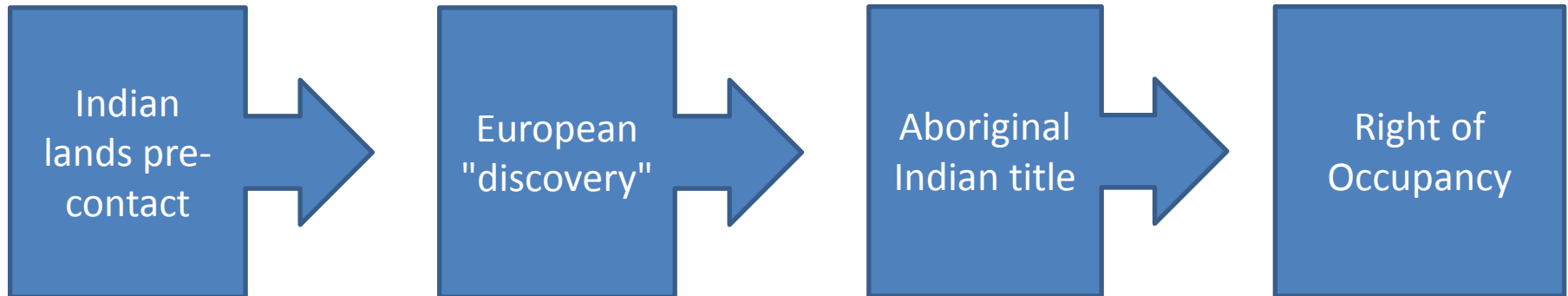
AGRICULTURAL
DRY FARMING

IN 1910 THE DEPARTMENT OF THE INTERIOR SOLD UNDER SEALED BIDS ALLOTTED INDIAN LAND AS FOLLOWS:

Location	Acres	Average Price per Acre	Location	Acres	Average Price per Acre
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Legacy of Aboriginal Indian Title

Indian Property Interests



Aboriginal
Indian Title

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graph TD; A[Aboriginal Indian Title] --> B[Extinguishment]
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Aboriginal
Indian Title

Extinguishment

Aboriginal
Indian Title

Extinguishment

- Treaties
- Acts of Congress
- Executive orders
- Conquest? (Ha!)

Aboriginal
Indian Title

```
graph TD; A[Aboriginal Indian Title] -- Extinguishment --> B["• Treaties  
• Acts of Congress  
• Executive orders"]; B -- "Vested property rights" --> C[ ];
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Extinguishment

- Treaties
- Acts of Congress
- Executive orders

Vested property
rights

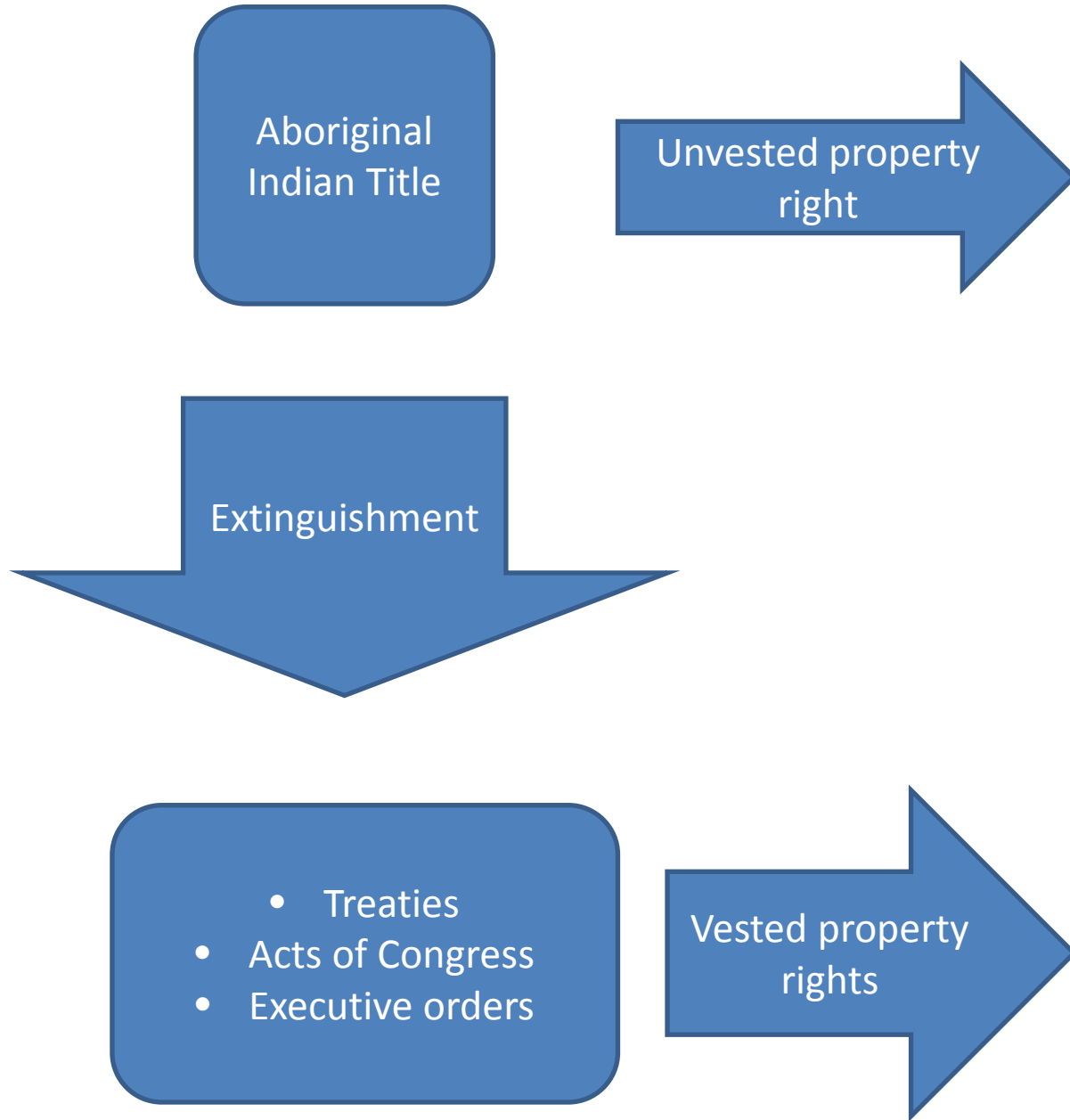
Aboriginal
Indian Title

Unvested property
right

Extinguishment

- Treaties
- Acts of Congress
- Executive orders

Vested property
rights



Aboriginal
Indian Title

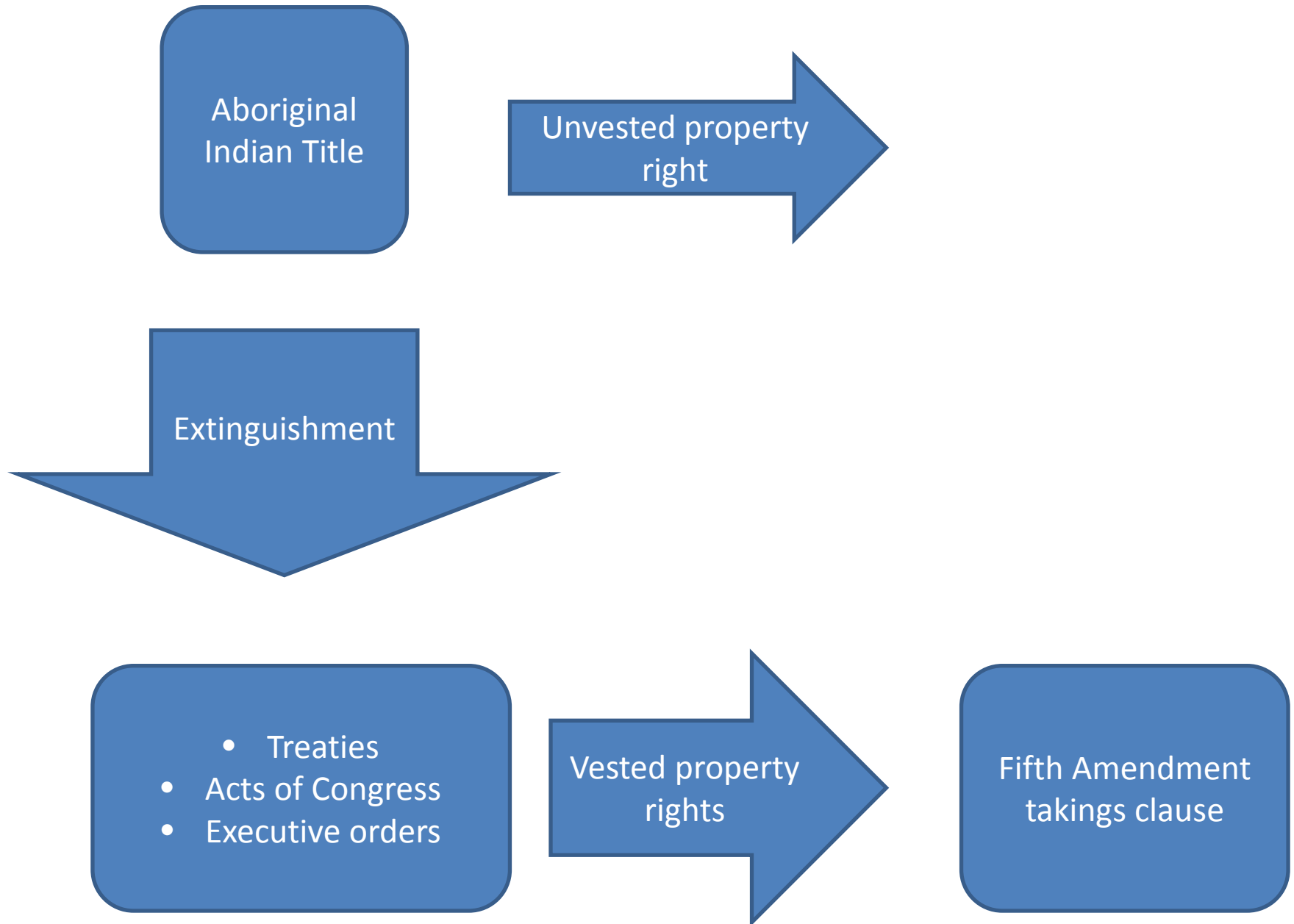
Unvested property
right

Extinguishment

- Treaties
- Acts of Congress
- Executive orders

Vested property
rights

Fifth Amendment
takings clause



Aboriginal
Indian Title

Unvested property
right

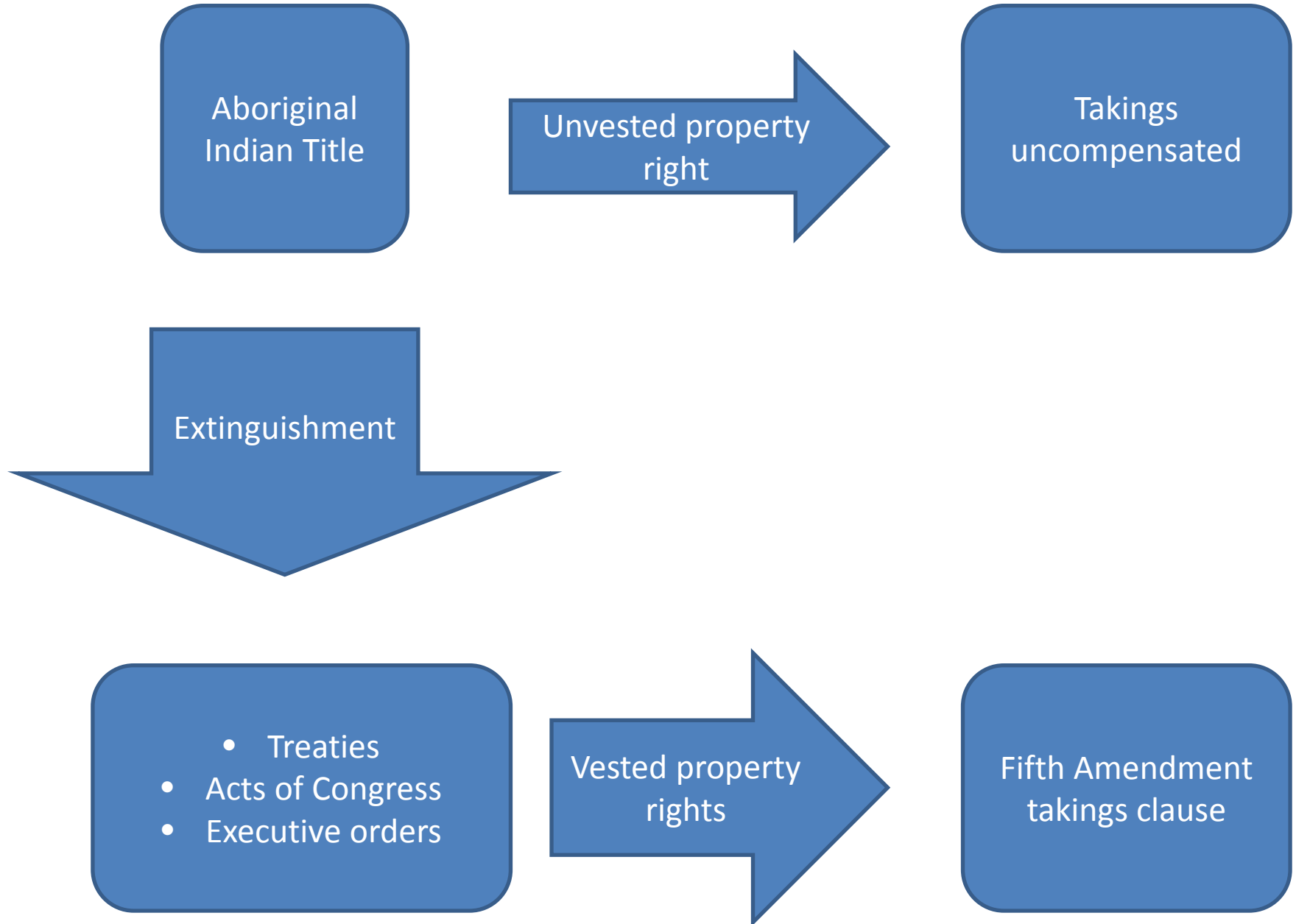
Takings
uncompensated

Extinguishment

- Treaties
- Acts of Congress
- Executive orders

Vested property
rights

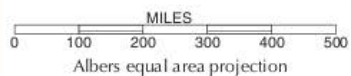
Fifth Amendment
takings clause



FEDERAL LANDS AND INDIAN RESERVATIONS

-  Bureau of Indian Affairs
-  Bureau of Land Management / Wilderness
-  Department of Defense (includes Army Corps of Engineers lakes)
-  Fish and Wildlife Service / Wilderness
-  Forest Service / Wilderness
-  National Park Service / Wilderness

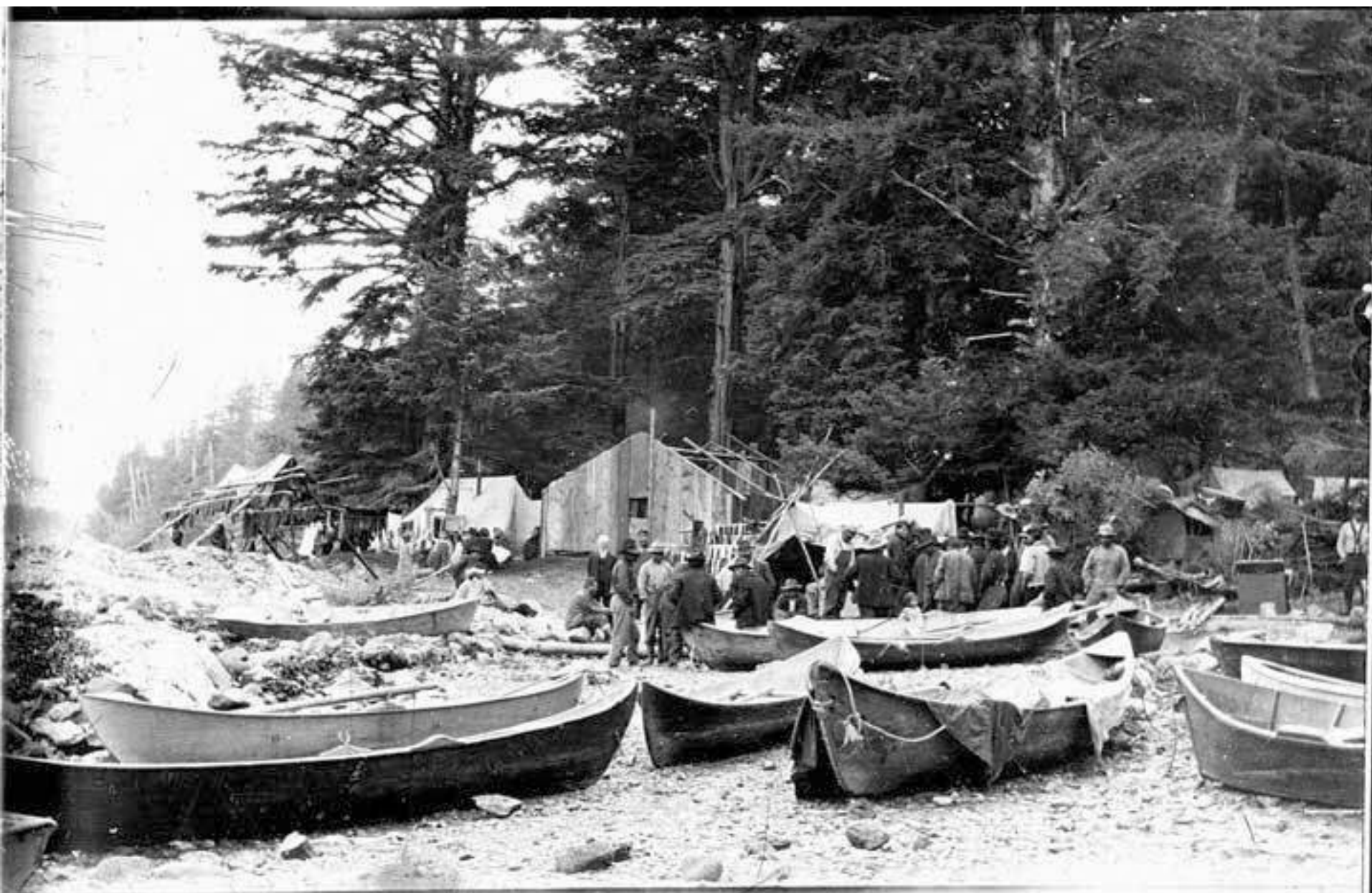
Some small sites are not shown, especially in urban areas.



Abbreviations

- | | |
|-------|----------------------------|
| NCA | National Conservation Area |
| NF | National Forest |
| NHP | National Historic Park |
| NM | National Monument |
| NP | National Park |
| NPres | National Preserve |
| NRA | National Recreation Area |
| NWR | National Wildlife Refuge |





Alaska State Library - Historical Collections

