



Indigenous Law & Policy Center

New Equitable Defenses in Federal Indian Law

Matthew L.M. Fletcher, J.D.

Assistant Professor, Michigan State University College of Law,
Director, Indigenous Law and Policy Center

Kathryn E. Fort, J.D.

Staff Attorney, Indigenous Law and Policy Center

Summary of Findings:

Indian land claims are one way for a tribe to maintain or increase its sovereignty over its land base. In some cases, they strike at the heart of the exercise of tribal sovereignty, as the success or failure of a claim can determine the very existence of the tribe's land base. These claims are usually based on historical transactions between the tribe and state or federal government. Recent cases have struck down some of these claims based on passage of time. Because the focus is the passage of time, indeed any claim based on a treaty, be it land or otherwise, could similarly be struck down because for the same reason.

A Supreme Court decision used equitable remedies to dismiss an "ancient" claim in New York. Unfortunately, instead of recognizing the inherent equity of the tribe's position, the Court chose to focus on the state's claim. Because the Court surprised most observers with this foray into equitable defenses, few practitioners have had the time to do historical research and determine a way to use it for tribal interests. These defenses are based in ancient English cases, but as late as 1910, federal courts of equity were to look to England for guidance when no federal rule applied. The research required to provide a full historical understanding and information for current practitioners is vast but necessary. Through this work tribes will have the language to counter state arguments of equity in any historical claim.

The Court has used laches, acquiescence and impossibility in stark contrast to their historical precedent. This research demonstrates laches should not be used against a sovereign, that acquiescence does not trump Congressional intent and that impossibility is a changing standard based entirely on the remedy sought. Since these defenses are so old there is a long line of precedent for tribes to use to strengthen their claims.

Practitioners must find the language to demonstrate to the courts that the balance of equity falls on the side of the tribes. This language must be framed in a way to counter the courts unwillingness to balance the actual equities of the case. Recent cases decided in federal district

court in New York and the Second Circuit have taken the Court's use of equitable defenses and expanding them into other Indian land claims cases.

A study of the origins of these defenses, their use in other cases, and their use in other Indian cases demonstrates how equity is on the side of the tribes. Laches, acquiescence and impossibility need to be countered explicitly. Thus far, courts have only used these defenses in land claims cases, but since the overarching court analysis is that too much time has passed since the claim began, other courts may start to use them in any treaty rights case. This work will provide practitioners of Indian law, specifically at the appellate level, as a way to counter the arguments now brought by states when looking to defeat an Indian land claim.

Practical Implications for Tribal Communities:

Tribes need this information for any claims based on treaties or other historical documents. Few practicing attorneys have the time or resources to do an in depth historical study of the equitable defenses, and are left trying to counter the state and Supreme Court opinions with limited resources. This work will provide a base for tribal attorneys and tribal representatives to use in their briefs.

Policy and Practical Relevance:



This research is relevant to any tribe bringing not only a land claim, but any claim based on treaty rights. If the courts can bar any claim based on passage of time through the equitable defense of laches, no treaty right is safe from judicial challenge. Tribes and practitioners need to quickly develop language to counter these defenses to preserve treaty rights and land claims.

The courts are using these defenses to uphold certain public policy interests, such as settled expectations, rather than focusing on the equities. The courts are actively ignoring the policy of tribal self-determination currently promulgated by Congress by finding against tribes, and the United States, in the recent New York land claims cases.

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**Creating Title Where None Existed:
Laches and Indian Land Claims**

NCAI Mid-Year Conference
June 12, 2007
Anchorage, AK



The Indigenous Law and Policy Center at MSU College of Law


- ❖ Created in 2004
- ❖ Certificate in Indigenous Law for MSU Law students
- ❖ Research and occasional papers for various tribes and tribal organizations
- ❖ Provide experiential learning class



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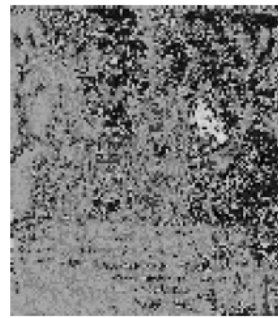
Laches

- ❖ City of Sherrill v. Oneida Indian Nation
- ❖ Equitable Defenses
- ❖ Court included Acquiescence and Impossibility
- ❖ Lower courts have focuses on laches



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What is Laches?




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Definition of Laches

- ❖ requires proof of:
 - ❖ Lack of diligence by the party against whom the defense is asserted
 - ❖ Prejudice to the party asserting the defense


U.S v. Costello, 365 U.S. 265 (1961)



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History of Laches

- ❖ Based in equity
- ❖ Sovereign immune from laches
 - ❖ King could do no wrong
 - ❖ King too busy to bring claims on time



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Sovereignty and Laches

- ❖ “Laches is not imputable to the government” U.S. v. Kirkpatrick, 22 U.S. 720 (1824)
- ❖ “Laches is not a defense against a sovereign” Costello v. U.S., 365 U.S. 265 (1961)



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Public Rights/Public Interest

- ❖ Shift from King's prerogative to public policy
- ❖ Modern public policy concerns
- ❖ Laches does not apply when enforcing a public right or protecting a public interest.
Utah Power & Light Co. v. U.S., 243 U.S. 389 (1917)



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Laches and Indian Law Cases

- ❖ Laches did not apply to cases brought by the U.S. on behalf of Indian tribes.
- ❖ Protecting a public interest



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28 U.S.C. § 2415

- ❖ Preserves land claims on Interior list
- ❖ Discretion of the Secretary of the Interior
- ❖ Claims on list since 1982
- ❖ Claims cannot be barred by a statute of limitations, but no mention of laches



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Contact Us

Indigenous Law and Policy Center at MSU College of Law
405 Law College Building
East Lansing, MI 48824
517/432-6992
fort@law.msu.edu

ILPC Staff:

Prof. Matthew L.M. Fletcher, Director
Prof. Wenona T. Singel, Associate Director
Kathryn E. Fort, Clinical Instructor and Staff Attorney



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