

[“We the People”—The three most misunderstood words in US history](#)

Mark Charles, TEDxTysons, January 24, 2019

<https://youtu.be/HOktqY5wY4A>

TRANSCRIPT

Yá'át'ééh. Mark Charles yinish'yé. Ts'in bikee' dine'é nishłj. Doo Tō'aheedlííńíí bashishchíín. Ts'in bikee' dine'é dashicheii. Doo' Tōdích'íí'nii dashinalí.

In the Navajo culture when you introduce yourself, you always name your four clans. We are a matrilineal people and our identities come from our mother's mother. Now my mother's mother happens to be American of Dutch heritage and so I say “Ts'in bikee' dine'é nishłj” which translated means I'm from the Wooden Shoe People. In my second clan, my father's mother is “Doo Tō'aheedlííńíí” which is the Waters that Flow Together. My third clan, my mother's father, is also “Ts'in bikee' dine'é” and my fourth clan, my father's father's is, “Doo' Tōdích'íí'nii” and that's the Bitter Water clan. It's one of the original clans who were Navajo people.

Before I go any further, I want to first acknowledge that we are on the land of the Pamunkey the Haudenosaunee, and the Piscataway. These are the tribes that lived here. They raised their families here. They hunted here. They fished here. They farmed here. They buried their ancestors here. These were the people who had society and life here long before Columbus got lost at sea. These were the tribes that were **ethnically cleansed** and removed from these lands so that the state of Virginia, the District of Columbia and the state of Maryland could be founded. I like to acknowledge the people whose land I'm standing on wherever I go around the country, first just to honor them and to thank them for the years they've stewarded these lands, and second to remind myself, to remind us, to be more humble as we walk on these lands, acknowledging that there is a story that goes beyond the history that we've read and that we were taught in our schools.

In his final **State of the Union [speech]**, President Obama was talking about the need in our nation for a new politics, and he said “We the people.” Our **constitution** begins with these three simple words, words we've come to recognize mean all the people. Now when I heard that as a native man, I had to stop and ask when. I've read our **founding documents**. I've studied our history. I see the current political environment, and I had to question: When did we decide as a nation that “we the people” actually means “all the people”?

Let me demonstrate: “Invade, search out, capture, **vanquish** and **subdue** all **Saracens** and **pagans** whatsoever. Reduce their persons to **perpetual slavery**. Convert them to his and to their use and profit.” These are the words of Pope Nicholas V in a **Papal Bull** written in 1452. Now this Papal Bull, along with other Papal Bulls written between 1452 to and 1493, collectively are known as what we call the **Doctrine of Discovery**. The Doctrine of Discovery is essentially the church in Europe saying to the nations of Europe, “Wherever you go, whatever lands you find not ruled by white European Christian rulers, those people are subhuman and their lands are yours for the taking.” This is literally the doctrine that let European nations go into Africa, colonize the continent and **enslave** the people. They didn't believe them to be human.

This is the same doctrine that let Columbus, who was lost at sea, land in this New World—which was already inhabited by millions—and claim to have discovered it. If you think about it, you cannot discover lands already inhabited. If you don't believe me, leave your cell phones, your smartphones, your car keys, your laptops out. I'll come by and discover them for you. Clearly, this is not discovery. This is

stealing. This is conquering. This is colonizing. The fact that to this day we have a national holiday honoring Christopher Columbus as the discoverer of America reveals the implicit racial bias of the nation, which is that **indigenous** peoples, people of color, are not fully human.

So this makes the Doctrine of Discovery a systemically **white supremacist** doctrine that assumes the **dehumanization** of indigenous peoples. Now the challenge is what our founding fathers have done with this doctrine throughout our nation's history. So in 1763 King George drew a line down the Appalachian Mountains and he said to the colonies that were here that they no longer had the right of discovery of the empty Indian lands west of Appalachia. This upset the colonies. They wanted access to those lands, so a few years later they wrote a letter of protest. In their letter they accused the king of raising the conditions of new **appropriations** of land. They went on in their letter to state "He has excited **domestic insurrections** amongst us and has **endeavored** to bring on the inhabitants of our frontiers the **merciless** Indian **Savages**." They signed their letter on July 4th, 1776.

Literally thirty lines below the statement "All men are created equal," the Declaration of Independence refers to natives as merciless Indian savages, making it very clear that the only reason our founding fathers used this inclusive term "all men" was because they had a very narrow definition of who was actually human. This of course makes our Declaration of Independence a systemically white supremacist document that assumes the dehumanization of indigenous peoples. Now a few years later, our founding fathers wrote another document. They started this one with words "We the people of the United States." This, of course, is the **preamble** to the constitution. However, if you read just a few lines later down to article 1, section 2... Article 1, section 2 is the section of the constitution that defines who is and who is not covered by this constitution, who is not a part of this union. If you read article 1, section 2, the first thing you will note is it never mentions women. This is important because if you read the entire constitution from the preamble through to the 27th amendment, you will find that there are 51 gender specific male pronouns in regards to who can run for office, who can hold office, even who is protected by this document, 51 "he" "him" and "his" and not a single female pronoun.

So we first have to know article 1, section 2 never mentions women. Second, it specifically excludes natives, and third, it counts Africans as three-fifths of a person. So who's left? Well, white land-owning men is who could vote. Now we have to ponder this for a moment. The reason our constitution was written, the purpose of our constitution, is to protect the interests of white land-owning men. So today we act shocked that women earn 70 cents to the dollar. This shouldn't shock us. Our constitution is working. We act surprised that our prisons are filled with people of color. This shouldn't surprise us. Our constitution is working. We act outraged that in 2010, the Supreme Court sided with Citizens United and ruled that corporations now have the same rights to political free speech as individuals. This is what opens the door for Super PACs' unlimited contributions to candidates. This shouldn't surprise us. The constitution is doing exactly what it was designed to do. It is protecting the interests of white land-owning men. So this makes our constitution a systemically white supremacist and sexist document that assumes the white land-owning male has the authority to decide who is and who is not human.

Now about 50 years later we had a **Supreme Court** case. This is Johnson versus McIntosh. It's two men of European descent. They were **litigating** over a single piece of land. One of them got the land from a native tribe. The other one got the same piece of land from the government. They wanted to know who owned it and who had the right to sell the land. The case goes all the way to the Supreme Court. This is the Marshall Court, and they had to decide the principle upon which **land titles** were based, so they ruled that the principle was that Discovery gave title to the land. Then they went on to reference the Doctrine of Discovery and **rule** that natives who were here first, but are less than human, only have

what's called the right of occupancy to the land, like a fish would occupy water or a bird would occupy the air, and Europeans have the right of Discovery to the land, the **fee title** to the land, and therefore they are the true title-holders. This of course creates the legal precedent for **land titles**, this and a few other cases between the 1820s and 1830s.

This precedent and the Doctrine of Discovery are referenced by the Supreme Court in 1954, in 1985, and most recently in 2005. Now I want to talk about this 2005 case for a moment. So in 1998 the Oneida Indian Nation purchased some of their traditional lands on the open market. They paid full price for them in the state of New York, which is where they traditionally resided, and they wanted to exercise their traditional **sovereignty** over these lands which would mean they were not taxable. Now the city of Sherrill, which is where the land resided, wanted the tax revenue from these lands, so they sued the Oneida Indian nation in federal district court. The Oneida Indian nation won that case and the city of Sherrill **appealed** to the federal court of appeals. The decision was **upheld** and so they appealed to the Supreme Court. The case was heard in 2005, and in arguing this case the court actually reversed the rulings of the lower courts, and in the first footnote of the case, when they were setting **precedent**, they referenced the Doctrine of Discovery. They then went on to argue given, "the Oneidas' long delay in seeking judicial relief, we hold that a tribe cannot **unilaterally** revive its ancient sovereignty." They then went on to argue, "It is impossible to **rescind** the **cession** and restore the Indians to their former rights because the lands have been open to settlement," which is white settlement, "and large portions of them are now in the possession of innumerable innocent purchasers."

Now in the original 1823 Supreme Court cases, John Marshall was building his case and he actually referred to natives as savages, and he said, "But the tribes of Indians inhabiting this country were fierce savages whose occupation was war and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country was to leave the country a wilderness."

Now in 2005, the court made almost the same argument. It said, "Moreover, the properties here involved have greatly increased in value since the Oneidas sold them 200 years ago. Notably, it was not until lately that the Oneidas sought to regain ancient sovereignty over land converted from wilderness to become parts of cities like Sherrill."

This is the same argument John Marshall was making. It's just not using the word savages. So the Supreme Court then concluded, "We now reject the unification theory of the Oneida Indian nation and the United States and hold that the 'standards of federal Indian Law,'" which again, in footnote one, is based on the Doctrine of Discovery, "and 'the federal equity practice,' **preclude** the tribe from rekindling the embers of sovereignty that long ago grew cold." This is quite possibly the most white supremacist Supreme Court decision written in my lifetime, and it was written and delivered by Ruth Bader Ginsburg.

You see, white supremacy is a **bipartisan** value, and we don't know what to do with that. In 2016, Donald Trump won the US presidency by campaigning with a promise to make America great again. Not to be outdone, Hillary Clinton responded and told her supporters that America was great already. In October 2016, in the third presidential debate, she expanded and said America is great because America is good, and Donald Trump concurred. He said, "I agree with her. I agree with everything she just said." They both had a broad base of agreement. They both agreed on our past, our history, which included the enslavement of African people and the genocide of native peoples, and our foundations which are based on the Doctrine of Discovery, and the lie of white supremacy. They both agreed those things were great. They disagreed if we were great in 2016. Donald said no and Hillary said yes.

We were **duped**. Many of us thought that the 2016 election was about racism versus anti-racism, equality versus inequality. What we were actually deciding on as a nation was did we want Donald Trump to make America **explicitly** white supremacist, racist and sexist again, or did we want Hillary Clinton to work on our behalf to keep our white supremacy and racism **implicit**. And we didn't know what to do with that.

It's easier to **call out** that candidate, to demonize that Supreme Court nominee, to oppose that particular politician, than it is to deal with our foundations. Why? Because our foundations are what prop up our land titles. We would rather believe that the United States of America is racist and sexist and white supremacist **in spite of** our foundations, but the truth is we are white supremacist, racist and sexist as a nation **because of** our foundations, and we don't know what to do with that. African-Americans and women will never be included as equal until we deal with the racism and sexism **embedded** in our foundations.

Native Americans, my people, will never be included in "we the people" until as a nation we deal with the Doctrine of Discovery and our dehumanizing legal precedent for land titles. There's an **aboriginal** leader named George Erasmus who says, "Where common memory is lacking, where people do not share in the same past, there can be no real community." If you want to build community, he says, you have to start by creating a common memory. I think this quote is brilliant, and it gets to the heart of our nation's problem with race, which is we don't have a common memory. We have a white majority that remembers a history, a **mythological** history of discovery, expansion, **exceptionalism** and opportunities, and we have communities of color that have the lived experience of stolen lands, broken treaties, slavery, **Jim Crow laws**, boarding schools, ethnic cleansing, genocide, Indian Removal, **internment camps, segregation, mass incarceration** and families separated at our borders. We have no common memory, and I think we all can agree that community on a national level is absolutely **in the pits**.

I'm proposing that the United States of America needs a national dialogue on race, gender and class, a conversation on par with the Truth and Reconciliation commissions that took place in South Africa, in Rwanda, and in Canada. I would call ours truth and **conciliation** because *reconciliation* implies there was a previous harmony. I think we need it sooner rather than later. My goal is 2021.

Tonight we are talking about **legacy**. The Iroquois did not just look seven generations into the future. They looked seven generations into their past. They understood that they were a part of a vast trans-generational community. This is my challenge to you tonight. If we can learn from the wisdom of our indigenous hosts who have been stewarding these lands for hundreds, even thousands, of years, if we can acknowledge the vile racism, sexism, colonialism and white supremacy that our founding fathers embedded deep into our foundations, and if we can **pivot**, we might just be able to leave a different legacy for our children's grandchildren's grandchildren's grandchildren—a legacy that for the first time "we the people" might actually mean "all the people." Thank you very much.