

Summary of Publicists' Opinions.

Comparing these three schools of thought, we see that, extending over some three and a half centuries, there had been a persistent preponderance of juristic opinion in favour of the proposition that lands in the possession of any backward peoples who are politically organized ought not to be regarded as if they belonged to no one. But that, and especially in comparatively modern times, a different doctrine has been contended for and has numbered among its exponents some well-known authorities; a doctrine which denies that International Law recognizes any rights in primitive peoples to the territory they inhabit, and, in its most advanced form, demands that such peoples shall have progressed so far in civilization as to have become recognized as members of the Family of Nations before they can be allowed such rights.

Lands inhabited by any Political Society are not
'Unoccupied.'

What are
uncivilized
races?
Sir John
Macdonell
in the
*Journal of
the Socy. of
Comparative
Legislation*,
XII. 290.
Ratzel;
*Hist. of
Mankind*,
I. §13.
See also
*Ann. X. of
the Inst. de
Droit Int.*,
178.

Now the progress of ethnography has shown that the distinction between civilized and uncivilized is not one that can be drawn with accuracy in practice. The proper distinction is not between civilization and no civilization, but between one kind of civilization and another, or one stage of development and another. Many of the so-called 'savage' races—or, as Ratzel calls them, 'natural' races—possess organized institutions of government, and it cannot be truly said that the territory inhabited by such races is not under any sovereignty. Such sovereignty as is exercised there may be of a crude and rudimentary kind, but, so long as there is some kind of authoritative control of a political nature which has not been assumed for some merely temporary purpose, such as a war, so long as the people are under some permanent form of government, the territory should not, it would seem, be said to be unoccupied.

Even some of the authors who deny rights of sovereignty to backward races allow them rights of property which they can transfer so as to give a title which, as Westlake puts it, 'may be of legal validity even under the white government to be ultimately established.' Property and its transfer are matters which, Westlake considers, the natives can understand, 'but certainly not the complicated arrangements of a modern State.'