

■ *Worcester v. Georgia*

Date: March 23, 1832

Author/s: John Marshall, et al.

Genre: Court opinion

Summary Overview

In the 1832 case of *Worcester v. Georgia*, the United States Supreme Court examined the issue of the legal sovereignty of American Indians and others within the borders of land designated by the federal government to be “Indian Country.” Coming on the heels of two other cases decided by the Marshall Court, *Johnson v. McIntosh* (1823) and *Cherokee Nation v. Georgia* (1831), *Worcester v. Georgia* is the final portion of the “Marshall trilogy” of Indian rights cases that defined the relationship between the United States and the American Indian nations that exist within its borders. In *Worcester v. Georgia*, the Supreme Court ruled that individual states had no authority over either Indian or non-Indian people and their actions that take place within the borders of Indian lands, as designated by the federal government. State laws do not have any force on Indian Country, as the federal government alone, rather than any state or local governments, has the authority to override any laws passed by American Indian tribal governments. This case reinforced the subservient position of American Indian nations to the federal government, while at the same time reestablishing the sovereignty of American Indian nations as relative to the laws of the individual states in which their lands existed.

Defining Moment

During the late eighteenth and early nineteenth centuries, the federal government and the Cherokee Nation concluded a number of treaties guaranteeing Cherokee lands in Georgia and trade agreements. Importantly, the United States Supreme Court in the 1823 *Johnson v. McIntosh* decision, declared that American Indians were the rightful occupants of their ancestral lands, and clearly placed the federal government, rather than the state governments, in the position of authority over those lands, as a result of the Doctrine of Discovery. The Cherokees responded by doing everything within their power to establish themselves as a modern society, devising a

written form for their language, producing a newspaper, planning to build a railroad. Most importantly, in 1827, the Cherokees established themselves as an independent and constitutionally-based republic. The State of Georgia responded by passing laws in the late 1820s and early 1830s that declared all Cherokee laws invalid, and asserted the state’s authority over the Cherokee lands within its borders. These laws sought to take away all rights that the Cherokee people had in terms of self-determination and sovereignty, and also set the stage for the Cherokees to be removed from their ancestral lands if so ordered by the State of Georgia.

However, Cherokee independence ran counter to President Andrew Jackson’s views on the rights of American Indian people and desire to see the expansion of cotton cultivation in the South. The federal government refused to support the Cherokee claim of sovereignty against the State of Georgia, so the Cherokees pursued their claims to the U.S. Supreme Court in two related cases, *Cherokee Nation v. Georgia* and *Worcester v. Georgia*. In his 1831 opinion in *Cherokee Nation v. Georgia*, Chief Justice John Marshall created an entirely new conception. The Cherokees (and, by extension, all American Indian nations) were not to be given the same status as independent foreign nations, nor were the American Indians to be given the same rights of citizenship as other people in the United States. Rather, the American Indian nations were designated as “domestic dependent nations,” meaning that they had a limited sovereignty in that they were seen as separate from the states that surrounded them, but that they would be completely subservient to the United States as a whole.

At the same time as the *Cherokee Nation v. Georgia* case was working its way through the legal system, the State of Georgia passed a law that required its citizens to obtain a license granting permission to live inside the borders of the Cherokee Nation. A group of Christian missionaries led by Samuel Austin Worcester, who were

well-known supporters of Cherokee sovereignty over their land, refused to apply for the license, and as a result were indicted by Georgia's state courts and convicted of refusing to obey the law. Worcester and his co-defendant then appealed their case to the U.S. Supreme Court, arguing that only the Cherokee Nation and the federal government had the authority to govern their actions while on Indian land.

Author Biography

John Marshall was Chief Justice of the United States Supreme Court from 1801 until 1835, authoring many opinions issued by the Court that have had some of

the longest-lasting ramifications. Marshall's influence in shaping the policies his decisions defined that created the relationship between the United States and the American Indian nations that live within its borders is undeniable. Under Marshall, the Court offered a single opinion on cases, rather than each justice offering separate opinions, which often led to ambiguity and confusion as to the legal status of a question. In *Worcester v. Georgia*, associate justices William Johnson, Gabriel Duvall, Joseph Story, and Smith Thompson agreed with Marshall's opinion, while John McLean concurred and Henry Baldwin dissented.

HISTORICAL DOCUMENT

This cause, in every point of view in which it can be placed, is of the deepest interest.

The defendant is a State, a member of the Union, which has exercised the powers of government over a people who deny its jurisdiction, and are under the protection of the United States.

The plaintiff is a citizen of the State of Vermont, condemned to hard labor for four years in the penitentiary of Georgia under color of an act which he alleges to be repugnant to the Constitution, laws, and treaties of the United States.

The legislative power of a State, the controlling power of the Constitution and laws of the United States, the rights, if they have any, the political existence of a once numerous and powerful people, the personal liberty of a citizen, all are involved in the subject now to be considered. . . .

We must inquire and decide whether the act of the Legislature of Georgia under which the plaintiff in error has been persecuted and condemned, be consisted with, or repugnant to the Constitution, laws and treaties of the United States.

It has been said at the bar that the acts of the Legislature of Georgia seize on the whole Cherokee country, parcel it out among the neighboring counties of the State, extend her code over the whole country, abolish its institutions and its laws, and annihilate its political existence.

If this be the general effect of the system, let us inquire into the effect of the particular statute and section on which the indictment is founded.

It enacts that "all white persons, residing within the limits of the Cherokee Nation on the 1st day of March next, or at any time thereafter, without a licence or permit from his excellency the governor . . . and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanor, and upon conviction thereof, shall be punished by confinement to the penitentiary at hard labor for a term not less than four years." . . .

The extraterritorial power of every Legislature being limited in its action to its own citizens or subjects, the very passage of this act is an assertion of jurisdiction over the Cherokee Nation, and of the rights and powers consequent on jurisdiction.

The first step, then, in the inquiry which the Constitution and the laws impose on this court, is an examination of the rightfulness of this claim. . . .

From the commencement of our government Congress has passed acts to regulate trade and intercourse with the Indians; which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which

their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States. . . .

The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the government of the United States.

The act of the State of Georgia under which the plaintiff in error was prosecuted is consequently void, and the judgment a nullity. . . . The Acts of Georgia are repugnant to the Constitution, laws, and treaties of the United States.

They interfere forcibly with the relations established between the United States and the Cherokee

Nation, the regulation of which according to the settled principles of our Constitution, are committed exclusively to the government of the Union.

They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guarantee to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognize the pre-existing power of the nation to govern itself.

They are in equal hostility with the acts of Congress for regulating this intercourse, and giving effect to the treaties.

The forcible seizure and abduction of the plaintiff, who was residing in the nation with its permission, and by authority of the President of the United States, is also a violation of the acts which authorize the chief magistrate to exercise this authority. . . .

Judgment reversed.

Document Analysis

In his opinion in the case of *Cherokee Nation v. Georgia*, Chief Justice John Marshall was able to avoid the issue of whether or not the laws of the State of Georgia applied within the borders of Cherokee territory by ruling that the Cherokees did not have the legal standing to bring the case as they were not an independent nation. However, actions taken by the State of Georgia, in creating laws that had legal ramifications on who went into Cherokee lands and what they did there, resulted in another case relating to the limits of Cherokee sovereignty to the Supreme Court only a year later. In this case, the State of Georgia had specifically sought to limit who could enter Cherokee lands, as some Christian missionaries and educators were well-known advocates of Cherokee sovereignty. The Georgia laws, however, ran up against the existing Cherokee system for regulating commerce and the activities of both Indians and non-Indians on their lands. The Cherokees supported the appeal of missionary Samuel Austin Worcester's conviction of the Georgia laws, which they saw as ignoring their sovereignty and seeing to impose state regulations on Indian lands.

Worcester was one of three missionaries from the American Board of Commissioners for Foreign Missions

who had articulated their support for the Cherokees keeping their lands, and had actively helped preserve Cherokee culture. Their statements of support for the Cherokees, however, gained the attention of the state government, who dispatched a contingent of Georgia state militia to enter Cherokee lands and arrest the missionaries. Worcester was also a federal postmaster, and was released once he claimed protection as a federal employee. However, President Jackson responded to this by terminating his employment, after which the militia again arrested him, this time with nine other missionaries on the charge of living in the Cherokee Nation without the proper license. The missionaries were beaten and forced to march thirty-five miles per day to the jail where they were to be held. While most of the ministers agreed to abide by the Georgia law, Worcester and Elizur Butler refused, after which they were tried and convicted on September 15, 1831. They were both sentenced to four years of hard labor. The Cherokee Nation then hired William Wirt, who had been Attorney General of the United States under Presidents James Monroe and John Quincy Adams, to appeal their convictions.

Upon appeal to the U.S. Supreme Court, the Court, as it had in *Cherokee Nation v. Georgia*, denied the Cher-

okee Nation standing in the case, as they were not a sovereign nation. However, the Court ruled that the State of Georgia's law requiring a license to enter the Cherokee Nation was unconstitutional, and thus Worcester's and Butler's convictions should be overturned. Again, the Court reinforced the idea of domestic dependent nations, arguing that Indian lands had been viewed as separate since colonial times, and that the treaties between the tribes and the federal government (which had been given the exclusive right to negotiate such treaties in the U.S. Constitution) were not subject to the laws of any individual states. Like *Cherokee Nation v. Georgia*, *Worcester v. Georgia* upheld a limited view of sovereignty, holding that state laws have no force on Indian lands, because they are subject only to federal laws.

Essential Themes

When the U.S. Supreme Court recognized a limited right to self-government and independence from state laws on behalf of the Cherokees, their leader John Ross considered it a victory in the continuing Cherokee efforts to retain their lands and sovereignty. However, in response to the *Worcester* decision President Andrew Jackson is said to have declared "John Marshall has made his decision; now let him enforce it," seeming to be willing to ignore the separation of powers outlined in the U.S. Constitution. Though the saying itself is thought to have been apocryphal, the sentiment behind it is exactly what happened after the Court's decision in *Worcester v. Georgia*. Jackson refused to enforce the decision, along with the earlier decisions that had declared that the Cherokees had a sovereign right to their ancestral lands. He went forward with efforts to remove the Cherokees to Indian Territory in modern-day Oklahoma and Kansas. Worcester and Butler remained in prison until 1833, when newly elected Georgia governor Wilson Lumpkin sought their release.

Only six years after the *Worcester v. Georgia* decision, the Cherokees were forcibly removed from their ancestral homelands, on what became known as the "Trail of Tears." The Cherokees had to abandon all of their prop-

erty, including their crops and livestock by which they survived, and leave only with what they could carry. Approximately a quarter of the total number of Cherokees that were force marched over 1,000 miles to Oklahoma perished on the journey. A small group of Cherokees escaped into the North Carolina mountains, and their descendants, known as the Eastern Cherokees, live there today. It was the government's intention that the lands west of the Mississippi River to which the Cherokees were moved would be guaranteed to them forever. But even as the tribes were being removed, white men were already across the Mississippi, and history was about to be repeated. The reports of rich western country full of beaver were publicized by the Lewis and Clark expedition on their return. This only accelerated the movement of fur traders into the West, and the government did nothing to stop them. Even the precedent set by *Worcester v. Georgia* has never proven absolute, as Indian legal sovereignty over their lands has been challenged repeatedly and tribes have sometimes been held to be subject to some state laws.

—Steven L. Danver, PhD

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