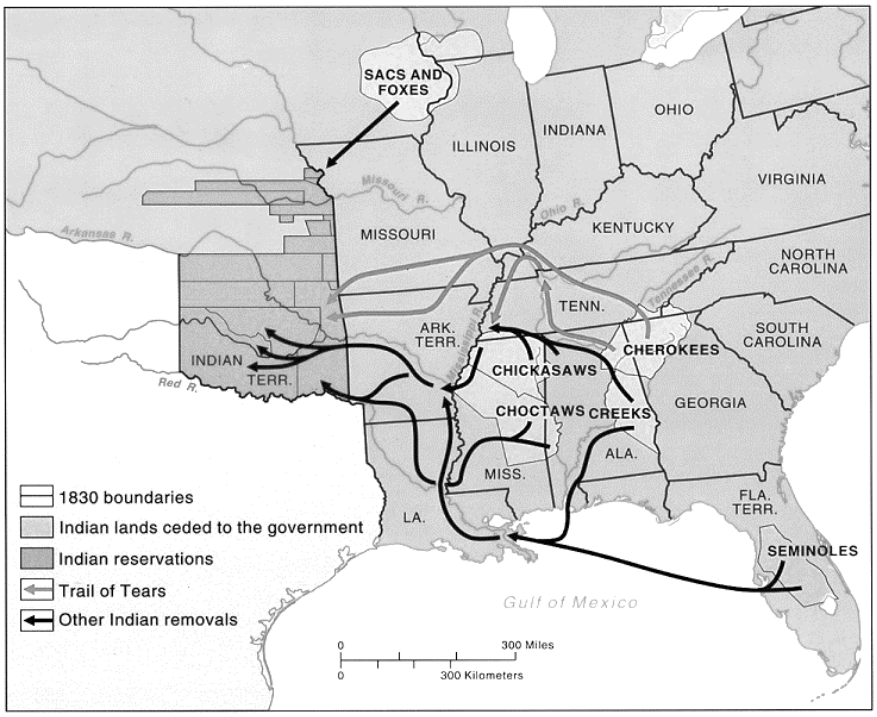
Cherokee Nation v. State of Georgia (1831) and *Worcester v. Georgia* (1832)
Background & Excerpts of the Supreme Court Decisions



The Cherokee people had lived in what is now the southeastern United States for hundreds of years. Even after the white guys showed up and started spawning like mad, the Cherokee managed to maintain reasonable boundaries and to adapt time and time again to those around them.

But white settlers wanted – no, *needed* – that land. The U.S. was expanding far more quickly than anyone could have anticipated, and fertile farmland was central not only to its economy but to its dominant political paradigm. Democracy required qualified voters, and land ownership was the most obvious means by which to establish one's credibility. If our national sense of identity was built on progress and destiny and lofty ideals, our individual self-worth was all about working your own land.

Unfortunately, there were these Indians in the way…

The so-called "Five Civilized Tribes" were designated as such because they, more than most other locals, had best adapted to the "white way of life." They farmed, built permanent housing, learned English, and more or less embraced the Christian faith. It's just… well…

They were still Indians. And also, *not* white guys.

'Indian Removal' of the Five Civilized Tribes actually began way back in 1817, when the U.S. Government attempted to persuade the Cherokee to leave. They promised them the same amount of land they currently occupied, minus white people, if they'd move west of the Mississippi River. A few thousand took them up on it, and these "Western Cherokee" settled in "Indian Territory" (then straggling parts of both Oklahoma and Arkansas) well before their "Eastern Cherokee" brethren showed up almost two decades later.

They formed a constitutional form of government in their new homeland and elected both a chief and a legislature. The remainder of the tribe still in Georgia passed a rather severe law two short years later prohibiting any additional land cessions – under penalty of death. This is going to become an issue in the 1830s when that law is violated by some within the tribe. It doesn't end well for them.

By the 1820s, Georgia was amping up its agitation for the removal of the Cherokee. They believed the federal government had already promised them they'd take care of this "problem," and demanded action. Then, in November 1828, Andrew Jackson - who had long favored removal - was elected US president.

This emboldened Georgia and other southeastern states, and they began almost immediately passing laws making it more and more difficult for the Cherokee to legally defend themselves or protect their property. In January 1829, John Ross – Principle Chief of the Cherokee Nation – headed to Washington to address these and other issues, but despite sympathy from some Congressional leaders, it was clear the President would not be supporting their cause.

Jackson's Indian Removal Act was passed in 1830, authorizing the President to set aside lands west of the Mississippi River to exchange for the lands of the tribes in the southeast. Ross, believing the U.S. to be a nation of laws rather than merely of men, challenged this legislation in U.S. courts. By June 1830, it reached the Supreme Court.

A delegation led by John Ross and William Wirt, former U.S. Attorney General, argued on behalf of the Cherokee. They had treaties with the U.S. guaranteeing their rights and Georgia's recent legislation was threatening both those rights and their existence as a sovereign people. Georgia argued that the Cherokee couldn't sue to begin with as they weren't actually a foreign nation – they had no constitution or meaningful central government.

The Court heard *Cherokee Nation v. State of Georgia* (1831), but didn't rule on the merits of the case itself. Instead, they concluded that the framers of the Constitution did not consider the Indian Tribes to be foreign entities but "domestic dependent nation{s}." The Cherokee thus lacked the standing to sue. Chief Justice John Marshall wrote that "the relationship of the tribes to the United States resembles that of a "ward to its guardian."

A year later, a missionary named Samuel Worcester claimed that his family's forced removal from Cherokee lands by the state of Georgia was a violation of his constitutional rights. Recently passed state law prohibited non-Indians from living in Indian territories; non-Native Americans had to get special permission from the state government to live on these lands.

Worcester, his wife, and five fellow missionaries, refused to move from land labeled "Indian territory." They applied for the government license that would allow them to stay, but were refused. Worcester and the others were arrested and Worcester was jailed. He appealed the charges and his case ended up in the Supreme Court.

In *Worcester v. Georgia* (1832), the Court ruled in favor of Worcester. Georgia did *not* have the power to enforce a law within Cherokee lands, as they were not within the jurisdiction of the state. The Georgia law under which Worcester was prosecuted interfered with the *federal* government's authority and was thus unconstitutional.

Worcester v. Georgia (1832) legally established that the Cherokee Nation was sovereign. It could be reasonably argued, therefore, that the Indian Removal Act was invalid, illegal, unconstitutional, and against treaties previously made by the United States.

But that only matters if the men with the guns and the horses see it the way as well, and they didn't. After additional pressures were applied, a percentage of the Cherokee signed the Treaty of New Echota (1835) and removed west "voluntarily." A few years later, President Andrew Jackson directed the U.S. Army to remove the rest by force.

Their relocation and their route became known as the "The Trail of Tears." Of the 15,000 who left, approximately 4,000 died on the journey to "Indian Territory" in the present-day state of Oklahoma.

Cherokee Nation v. State of Georgia (1831) - Excerpts

Mr. Chief Justice Marshall delivered the opinion of the Court:

This bill is brought by the Cherokee Nation, praying an injunction to restrain the state of Georgia from the execution of certain laws of that state, which as is alleged, go directly to annihilate the Cherokees as a political society, and to seize, for the use of Georgia, the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force.

If courts were permitted to indulge their sympathies, a case better calculated to excite them can scarcely be imagined. A people once numerous, powerful, and truly independent, found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts, and our arms, have yielded their lands by successive treaties, each of which contains a solemn guarantee of the residue, until they retain no more of their formerly extensive territory than is deemed necessary…

Do the Cherokees constitute a foreign state in the sense of the Constitution? …

The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. In the general, nations not owing a common allegiance are foreign to each other. The term foreign nation is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else.

The Indian Territory is admitted to compose part of the United States. In all our maps, geographical treatises, histories, and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens…

[It] may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations… Their relation to the United States resembles that of a ward to his guardian…

The Court has bestowed its best attention on this question and, after mature deliberation, the majority is of opinion that an Indian tribe or nation within the United States is not a foreign state in the sense of the Constitution, and cannot maintain an action in the courts of the United States…

If it be true that the Cherokee Nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future.

The motion for an injunction is denied.

Worcester v. State of Georgia (1832) – Excerpts

Mr. Chief Justice Marshall delivered the opinion of the Court.

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 labour for four years in the penitentiary of Georgia…

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, are all involved in the subject now to be considered…

The indictment charges the plaintiff… and others, being white persons, with the offence of 'residing within the limits of the Cherokee nation without a license,' and 'without having taken the oath to support and defend the constitution and laws of the state of Georgia'… [T]he prisoner… plead not guilty. The jury found a verdict against him, and the court sentenced him to hard labour, in the penitentiary, for the term of four years…

[The defendant argues that] the treaties, subsisting between the United States, and the Cherokees, acknowledge their right as a sovereign nation to govern themselves and all persons who have settled within their territory, free from any right of legislative interference by the several states composing the United States of America…

The indictment and plea in this case draw in question, we think, the validity of the treaties made by the United States with the Cherokee Indians… They also draw into question the validity of a statute of the state of Georgia…

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed…

The very term 'nation,' so generally applied to them, means 'a people distinct from others.' The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We… have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense…

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.