

Marshall On The Constitution & Country

PBS Summary -- Cherokee Indian cases (1830s)

In the cases *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832), the U.S. Supreme Court considered its powers to enforce the rights of Native American "nations" against the states. In *Cherokee Nation*, the Court ruled that it lacked jurisdiction (the power to hear a case) to review claims of an Indian nation within the United States. In *Worcester*, the Court ruled that only the United States, and not the individual states, had power to regulate or deal with the Indian nations.

In 1828, the state of Georgia passed a series of laws stripping local Cherokee Indians of their rights. The laws also authorized Cherokee removal from lands sought after by the state. In defense, the Cherokee cited treaties that they had negotiated, as an independent "nation," with the United States, guaranteeing the Cherokee nation both the land and independence. After failed negotiations with President Andrew Jackson and Congress, the Cherokee, under the leadership of John Ross, sought an injunction ("order to stop") at the Supreme Court against Georgia to prevent its carrying out these laws.

The Court, in *Cherokee Nation v. Georgia*, ruled that it lacked jurisdiction to hear the case and could not resolve it. The Court began by sympathizing with the Cherokees' plight, acknowledging that they had been persecuted and marginalized by America's European settlers, then asserted that Indian nations were both "foreign nations" and people within U.S. boundaries. In other words, the Cherokee, though sometimes viewed as an independent nation, were also dependent people on the nation that envelopes them. Thus, the Court asserted that "foreign nations," as used in the Constitution, could not include "Indian nations." Because the Constitution only authorizes the Supreme Court to hear cases brought by "foreign nations," not "Indian nations," the Court was not authorized to entertain this case and dismissed it. Meanwhile, in 1830, Georgia passed another law requiring its citizens to obtain a state license before dwelling inside the Cherokee Nation. A group of missionaries residing there, including Samuel Austin

Worcester, refused to obtain such a license. The missionaries were known supporters of Cherokee resistance to Georgia's removal efforts. Worcester and a fellow missionary were indicted by a Georgia court, brought to trial, and convicted. Worcester appealed to the U.S. Supreme Court, claiming that the Georgia court lacked authority to convict them.

On review of the case, the Supreme Court in *Worcester v. Georgia* ruled that because the Cherokee Nation was a separate political entity that could not be regulated by the state, Georgia's license law was unconstitutional and Worcester's conviction should be overturned. The Court first pointed to evidence proving that the Native American communities were conceived of as "separate nations" dating back to the time of early colonial America. The Court then argued that today's "treaties and laws of the United States [also] contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the union." Therefore, only the United States can negotiate the terms of Indian lands and the use thereof. States lack constitutional power to deal with such "nations" at all. Thus, Georgia could not pass the license law and convict Worcester for violation of that law.

The Supreme Court's ruling, however, was neither followed by Georgia nor enforced by the U.S. government. President Andrew Jackson, sensitive to Georgia's claims of independence at a time when the states wielded considerable power, had no interest in enforcing the Court's decree. The missionaries remained imprisoned until 1833, when a new Georgia governor negotiated for their release. The Georgia Cherokees themselves were forcibly relocated in 1838, pursuant to a U.S. treaty, to present-day Oklahoma ("the Trail of Tears"). Today, the substantive ruling in *Worcester* is no longer binding: the Supreme Court holds that, to a certain extent, a state may regulate the Indian territories within its boundaries.

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