WORCESTER V. GEORGIA—AN EXPLANATION OF THE CASE

Background

For hundreds of years, the Cherokee Nation of Indians lived in Georgia. When the British controlled the territory, the Cherokees had treaties (agreements) with the English that recognized their sovereignty. This recognition of sovereignty meant that the tribe controlled their own lands and rights under the treaties. After the Revolutionary War, the U.S. federal government took over the duties of these treaties with the Cherokee, as well as with many other tribes. Later, when the U.S. Constitution was ratified, its wording gave specific power to the national government (rather than the state) to make treaties and regulate interactions with Native American tribes.

When Georgia became a state, its population grew. Settlers crowded in on Cherokee lands. When gold was discovered in northern Georgia in the 1830s, America experienced its first gold rush, and more people flooded the state. Pressure was put on the state government of Georgia as well as the federal government to remove the Cherokee from their lands and send the tribe to lands west of the Mississippi River—called Indian Territory—in order to free the land for white settlers.

The Cherokee fought against these proposals of removal. They built Anglo-style towns, adopted American ways, established newspapers, hired lawyers, and adopted a constitution. They also gained supporters from the white population who believed the Cherokee and other Indian tribes were being treated unfairly and should have the right to remain on their land and govern themselves.

One of these people was Samuel Worcester. An American missionary and a printer, he moved to the Cherokee territory of Georgia and took up the Cherokee cause. In addition to his missionary work, he advised the Cherokee about resisting Georgia's attempts to impose state laws on the tribe. He helped the Cherokees publish a newspaper to bring them together and advocate for their rights.

The Case

Georgia passed a law meant to stop Worcester and other missionaries from helping the Cherokee and to establish the state's authority over the Cherokee Nation. The law made it a crime for any non-Indian to be on Cherokee Indian lands without getting a permit from the governor of Georgia. Since Worcester had refused to get one of these permits from the state, he and 11 others were arrested by the state of Georgia for violating the law. After Worcester was found guilty at trial and sentenced to four years of hard labor in prison, he appealed his conviction to the U.S. Supreme Court in the case *Worcester v. Georgia*.

Georgia argued that, since Cherokee land existed within the boundaries of the State of Georgia, the state had the right to extend its state laws into Cherokee territory. Worcester and the Cherokee did not agree. The Cherokee believed that the State of Georgia had no authority over the Cherokee people or their territory.

The Ruling

In 1832, the Supreme Court ruled in favor of Worcester and the Cherokee. The Supreme Court used its power of judicial review to overturn the Georgia state law, which it deemed unconstitutional.

Chief Justice Marshall stated, "Indian nations had always been considered distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil." Marshall concluded:

> *The Cherokee Nation, then, is a distinct community occupying its own territory . . . in which the laws of Georgia can have no force, and which the citizens of Georgia have no rights to enter but with the [permission] of the Cherokee themselves. . . . [All interaction] between the United States and [the Cherokee], is, by our Constitution and laws, [to be regulated by] the Government of the United States.*

The opinion explained that, under Article VI of the U.S. Constitution, agreements the U.S. government entered into, such as treaties, are the supreme law of the land. Those previous treaties between the U.S. government and the Cherokee recognized their sovereignty and their right to self-government. Additionally, only the federal government had authority over Indian treaties and regulations. Therefore, the court argued that state governments such as Georgia did not have these powers, which made Georgia's law concerning who could be on Cherokee territory unconstitutional.

While Samuel Worcester eventually gained his freedom, the decision did little to help the Cherokee. In fact, President Andrew Jackson believed that the Cherokee should be removed from the state to free land for white settlement. Enforcing the ruling meant not only going against his own beliefs, but alienating a state that supported those beliefs. As a result, instead of acting on his power as president to enforce the Supreme Court's decision, Jackson ignored it. Without the president's enforcement of the ruling, the decision largely meant nothing. Congress had passed an Indian Removal Act two years earlier. This gave the president power to make agreements with Indian tribes to leave Georgia and other states. In 1836, one group of Cherokees signed a removal treaty, but the majority of the tribe called the treaty a fraud because it did not have support from the majority of the tribe or from their tribal leaders. Still, knowing this, the U.S. government used the treaty as justification for Cherokee removal. Over the next several years, some Cherokees left the state voluntarily, but many were forced to

move by the U.S. Army. An estimated 4,000 Cherokees died in what came to be known as the Trail of Tears.

Sources:

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