

Cherokee Nation v. Georgia (1831)

After the state of Georgia passed legislation opening Cherokee lands in Georgia to white settlement so long as settlers received a permit from the state of Georgia, the Cherokee sued the state of Georgia asserting that the legislation violated a treaty the Cherokee had made with the federal government. The Court, rather than ruling on the issue, ruled on whether the Cherokee could sue in federal court. The opinion follows.

The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. Though the Indians are acknowledged to have a . . . right to the lands they occupy until that right shall be extinguished by a voluntary cession to our government, 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. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile, they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.

They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their **great father**.

These considerations go far to support the opinion that the framers of our Constitution had not the Indian tribes in view when they opened the courts of the Union to controversies between a state or the citizens thereof and foreign states.

At the time the Constitution was framed, the idea of appealing to an American court of justice for an assertion of right or a redress of wrong had perhaps never entered the mind of an Indian or of his tribe. Their appeal was to the tomahawk, or to the government. This was well understood by the statesmen who framed the Constitution of the United States, and might furnish some reason for omitting to enumerate them among the parties who might sue in the courts of the Union.

We perceive plainly that the Constitution in this article does not comprehend Indian tribes in the general term **foreign nations**; not, we presume, because a tribe may not be a nation but because it is not foreign to 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.

Questions:

According to the Marshall Court

1. Under what circumstances do Indians have the right to occupy a particular territory?
2. What was the status of Indians under the United States Constitution?
3. Who, under the Constitution, is able to sue in a federal court? Were the Cherokee able to bring this lawsuit? Explain.

Worcester v. Georgia (1832)

The Following year, a missionary who was prosecuted for violating the Georgia law by settling on Cherokee lands without a permit from the state sued the state of Georgia, making the same argument that had been made by the Cherokee in the earlier case. Read the opinion and answer the questions that follow.

From the beginning of our government, Congress has made laws and treaties to regulate trade and intercourse with the Indians. This power is clearly delegated to the Congress in the Federal Constitution. All these acts clearly 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 guaranteed by the United States. The laws of Georgia cannot apply to the Cherokee nation. Only Congress has the authority to enter into treaties with the Cherokee nation or in any other way conduct relations with Indian tribes. Georgia's actions come into conflict with treaties negotiated by the Congress with the Cherokee nation; Georgia's actions are therefore unconstitutional.

Question: According to the Supreme Court, could the state of Georgia force the Cherokee off of their lands? What was the Constitutional basis for the decision? Explain.