



WORCESTER V. GEORGIA
SUPREME COURT OF THE UNITED STATES
31 US 515
March 3, 1832

OPINION: Mr Chief Justice MARSHALL...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, are all involved in the subject now to be considered...



[Is this] a case cognizable by this tribunal?

The indictment charges [Samuel A. Worcester] 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."

The defendant in the state court appeared in proper person, and filed the following plea:

[1. The state court does not have jurisdiction. I reside in the Cherokee nation. The alleged crime

is alleged to have taken place in said Cherokee nation at New Echota.

2. I am a citizen of Vermont and entered the Cherokee nation as a duly authorized missionary under the authority of the president of the United States and I was, at the time of arrest, engaged in preaching the gospel to the Cherokee Indians, and in translating the sacred scriptures into their language, with the permission and approval of the said Cherokee nation, and in accordance with the humane policy of the government of the United States for the civilization and improvement of the Indians.
3. My residence there for this purpose is charged in the aforesaid indictment.
4. This prosecution violates numerous treaties with the Cherokee Nation: Hopewell - 1785; Holston - 1791; Philadelphia - 1794; Tellico - 1798; Tellico - 1804; Tellico - 1805; Tellico - 1805; Washington city - 1805; Washington city - 1816; Chickasaw Council House - 1816; Cherokee Agency - 1817; Washington city - 1819: all which treaties have been duly ratified by the senate of the United States of America; and, by which treaties, the United States of America acknowledge the said Cherokee nation to be a sovereign nation, authorized 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, in reference to acts done within their own territory; and, by which treaties, the whole of the territory now occupied by the Cherokee nation, on the east of the Mississippi, has been solemnly guaranteed to them; all of which treaties are existing treaties at this day, and in full force. By these treaties, and particularly by the treaties of Hopewell and Holston, the aforesaid territory is acknowledged to lie without the jurisdiction of the several states composing the union of the United States; and, it is thereby specially stipulated, that the citizens of the United States shall not enter the aforesaid territory, even on a visit, without a passport from the governor of a state, or from some one duly authorised thereto, by the president of the United States: all of which will more fully and at large appear, by reference to the aforesaid treaties.
5. That the several acts charged in the indictment are repugnant to the aforesaid treaties; which, according to the constitution of the United States, compose a part of the supreme law of the land; and that these laws of Georgia are, therefore, unconstitutional, void, and of no effect.
6. The laws of Georgia are also unconstitutional and void, because they impair the obligation of the various contracts formed by and between the aforesaid Cherokee nation and the said United States of America.
7. That the laws of Georgia are unconstitutional and void, because they interfere with, and attempt to regulate and control the intercourse with the said Cherokee nation, which, by the said constitution, belongs exclusively to the congress of the United States; and because the said laws are repugnant to the statute of the United States...entitled 'an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers:' and that,

therefore, this court has no jurisdiction to cause this defendant to make further or other answer to the said bill of indictment, or further to try and punish this defendant for the said supposed offence of offences alleged in the bill of indictment, or any of them: and, therefore, this defendant prays judgment whether he shall be held bound to answer further to said indictment.]

[This plea was overruled...The prisoner pled not guilty, was found guilty and the court sentenced him to hard labor in the penitentiary for four years.]

The plea avers, that the residence, charged in the indictment, was under the authority of the president of the United States, and with the permission and approval of the Cherokee nation. 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. That the act under which the prosecution was instituted is repugnant to the said treaties, and is, therefore, unconstitutional and void. That the said act is, also, unconstitutional; because it interferes with, and attempts to regulate and control, the intercourse with the Cherokee nation, which belongs, exclusively, to congress; and, because, also, it is repugnant to the statute of the United States, entitled "an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers."...

It has been said...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...

[The statute on]...which the indictment is founded...[states 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 license or permit from his excellency the governor, or from such agent as his excellency the governor shall authorize to grant such permit or license, 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 eleventh section authorizes the governor, should he deem it necessary for the protection of the **mines...**to raise and organize a guard...

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

America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the

other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient possessors.

After lying concealed for a series of ages, the enterprise of Europe, guided by nautical science, conducted some of her adventurous sons into this western world. They found it in possession of a people who had made small progress in agriculture or manufactures, and whose general employment was war, hunting, and fishing.

Did these adventurers, by sailing along the coast, and occasionally landing on it, acquire for the several governments to whom they belonged, or by whom they were commissioned, a rightful property in the soil, from the Atlantic to the Pacific; or rightful dominion over the numerous people who occupied it? Or has nature, or the great Creator of all things, conferred these rights over hunters and fishermen, on agriculturists and manufacturers?

But power, war, conquest, give rights, which, after possession, are conceded by the world; and which can never be controverted by those on whom they descend. We proceed, then, to the actual state of things, having glanced at their origin; because holding it in our recollection might shed some light on existing pretensions.

The great maritime powers of Europe discovered and visited different parts of this continent at nearly the same time. The object was too immense for any one of them to grasp the whole; and the claimants were too powerful to submit to the exclusive or unreasonable pretensions of any single potentate. To avoid bloody conflicts, which might terminate disastrously to all, it was necessary for the nations of Europe to establish some principle which all would acknowledge, and which should decide their respective rights as between themselves. This principle, suggested by the actual state of things, was, "that discovery gave title to the government by whose subjects or by whose authority it was made, against all other European governments, which title might be consummated by possession."

This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and of making settlements on it. It was an exclusive principle which shut out the right of competition among those who had agreed to it; not one which could annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among the European discoverers; **but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man.** It gave the exclusive right to purchase, but did not found that right on a denial of the right of the possessor to sell...Great Britain...considered [the Indians] as nations capable of maintaining the relations of peace and war; of governing themselves, under her protection; and she made treaties with them, the obligation of which she acknowledged.

This was the settled state of things when the war of our revolution commenced. The influence of our enemy was established; her resources enabled her to keep up that influence; and the colonists had

much cause for the apprehension that the Indian nations would, as the allies of Great Britain, add their arms to hers. This, as was to be expected, became an object of great solicitude to congress. Far from advancing a claim to their lands, or asserting any right of dominion over them, congress resolved "that the securing and preserving the friendship of the Indian nations appears to be a subject of the utmost moment to these colonies."

...The first treaty was made with the Delawares, in September 1778. The language of equality in which it is drawn, evinces the temper with which the negotiation was undertaken, and the opinion which then prevailed in the United States.

"1. That all...hostilities...be mutually forgiven, and buried in the depth of oblivion, never more to be had in remembrance.

"2. That a perpetual peace and friendship shall...subsist...and if either of the parties are engaged in a just and necessary war, with any other nation..., that then each shall assist the other, in due proportion to their abilities, till their enemies are brought to reasonable terms of accommodation..."

3. The third article stipulates, among other things, a free passage for the American troops through the Delaware nation; and engages that they shall be furnished with provisions and other necessaries at their value.

"4. For the better security of the peace and friendship now entered into by the contracting parties against all infractions of the same by the citizens of either party, to the prejudice of the other, neither party shall proceed to the infliction of punishments on the citizens of the other, otherwise than by securing the offender or offenders, by imprisonment, or any other competent means, till a fair and impartial trial can be had by judges or juries of both parties, as near as can be to the laws, customs and usages of the contracting parties, and natural justice," &c.

5. The fifth article regulates the trade between the contracting parties, in a manner entirely equal.

6. The sixth article is entitled to peculiar attention, as it contains a disclaimer of designs which were, at that time, ascribed to the United States, by their enemies, and from the imputation of which congress was then peculiarly anxious to free the government. It is in these words: "Whereas the enemies of the United States have endeavored, by every artifice in their power, to possess the Indians in general with an opinion that it is the design of the states aforesaid to extirpate the Indians, and take possession of their country: to obviate such false suggestion the United States do engage to guaranty to the aforesaid nation of Delawares, and their heirs, all their territorial rights, in the fullest and most ample manner, as it hath been bounded by former treaties, as long as the said Delaware nation shall abide by, and hold fast the chain of friendship now entered into."

...During the war of the revolution, the Cherokees took part with the British. After its termination, the United States, though desirous of peace, did not feel its necessity so strongly as while the war continued. Their political situation being changed, they might very well think it advisable to assume

a higher tone, and to impress on the Cherokees the same respect for congress which was before felt for the king of Great Britain. This may account for the language of the treaty of Hopewell. There is the more reason for supposing that the Cherokee chiefs were not very critical judges of the language, from the fact that every one makes his mark; no chief was capable of signing his name. It is probable the treaty was interpreted to them...

When the United States gave peace, did they not also receive it? Were not both parties desirous of it? If we consult the history of the day, does it not inform us that the United States were at least as anxious to obtain it as the Cherokees? We may ask, further: did the Cherokees come to the seat of the American government to solicit peace; or, did the American commissioners go to them to obtain it?...

The first and second articles stipulate for the mutual restoration of prisoners, and are of course equal.

The third article acknowledges the Cherokees to be under the protection of the United States of America, and of no other power...

[In other words, the United States] receive the Cherokee nation into their favor and protection. The Cherokees acknowledge themselves to be under the protection of the United States, and of no other power. **Protection does not imply the destruction of the protected.** The manner in which this stipulation was understood by the American government, is explained by the language and acts of our first president.

The fourth article draws the boundary between the Indians and the citizens of the United States. But, in describing this boundary, the term "allotted" and the term "hunting ground" are used...Hunting was at that time the principal occupation of the Indians, and their land was more used for that purpose than for any other. It could not, however, be supposed, that any intention existed of restricting the full use of the lands they reserved...

The fifth article withdraws the protection of the United States from any citizen who has settled, or shall settle, on the lands allotted to the Indians, for their hunting grounds; and stipulates that, if he shall not remove within six months the Indians may punish him.

The sixth and seventh articles stipulate for the punishment of the citizens of either country, who may commit offences on or against the citizens of the other. The only inference to be drawn from them is, that **the United States considered the Cherokees as a nation.**

The ninth article is in these words: "for the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States...shall have the sole ...right of regulating the trade with the Indians, and managing all their affairs, as they think proper."

To construe the expression "managing all their affairs," into a surrender of self-government, would be, we think, a perversion of their necessary meaning, and a departure from the construction which

has been uniformly put on them. The great subject of the article is the Indian trade. The influence it gave, made it desirable that congress should possess it. The commissioners brought forward the claim, with the profession that their motive was "the benefit and comfort of the Indians, and the prevention of injuries or oppressions." This may be true, as respects the regulation of their trade, and as respects the regulation of all affairs connected with their trade, but cannot be true, as respects the management of all their affairs. The most important of these, are the cession of their lands, and security against intruders on them. Is it credible, that they should have considered themselves as surrendering to the United States the right to dictate their future cessions, and the terms on which they should be made? or to compel their submission to the violence of disorderly and licentious intruders? It is equally inconceivable that they could have supposed themselves, by a phrase thus slipped into an article, on another and most interesting subject, to have divested themselves of the right of self-government on subjects not connected with trade. Such a measure could not be "for their benefit and comfort," or for "the prevention of injuries and oppression." Such a construction would be inconsistent with the spirit of this and of all subsequent treaties; especially of those articles which recognize the right of the Cherokees to declare hostilities, and to make war. It would convert a treaty of peace covertly into an act, annihilating the political existence of one of the parties. Had such a result been intended, it would have been openly avowed...

[The treaty's]... essential articles treat the Cherokees as a nation capable of maintaining the relations of peace and war; and ascertain the boundaries between them and the United States.

The treaty of Hopewell seems not to have established a solid peace. To accommodate the differences still existing between the state of Georgia and the Cherokee nation, the treaty of Holston was negotiated in July 1791. The existing constitution of the United States had been then adopted, and the government, having more intrinsic capacity to enforce its just claims, was perhaps less mindful of his sounding expressions, denoting superiority. We hear no more of giving peace to the Cherokees. The mutual desire of establishing permanent peace and friendship, and of removing all causes of war, is honestly avowed, and, in pursuance of this desire, the first article declares, that there shall be perpetual peace and friendship between all the citizens of the United States of America and all the individuals composing the Cherokee nation.

The second article repeats the important acknowledgment, that the Cherokee nation is under the protection of the United States of America, and of no other sovereign whosoever.

The meaning of this has been already explained. The Indian nations were, from their situation, necessarily dependent on some foreign potentate for the supply of their essential wants, and for their protection from lawless and injurious intrusions into their country. That power was naturally termed their protector. They had been arranged under the protection of Great Britain: but the extinguishment of the British power in their neighborhood, and the establishment of that of the United States in its place, led naturally to the declaration, on the part of the Cherokees, that they were under the protection of the United States, and of no other power. They assumed the relation with the United States, which had before subsisted with Great Britain.

This relation was that of a nation claiming and receiving the protection of one more powerful: not that of individuals abandoning their national character, and submitting as subjects to the laws of a master.

The third article contains a perfectly equal stipulation for the surrender of prisoners.

The fourth article declares, that "the boundary between the United States and the Cherokee nation shall be as follows: beginning," &c. We hear no more of "allotments" or of "hunting grounds." A boundary is described, between nation and nation, by mutual consent. The national character of each; the ability of each to establish this boundary, is acknowledged by the other. To preclude for ever all disputes, it is agreed that it shall be plainly marked by commissioners, to be appointed by each party; and, in order to extinguish for ever all claim of the Cherokees to the ceded lands, an additional consideration is to be paid by the United States. For this additional consideration the Cherokees release all right to the ceded land, for ever.

By the fifth article, the Cherokees allow the United States a road through their country, and the navigation of the Tennessee river. The acceptance of these cessions is an acknowledgment of the right of the Cherokees to make or withhold them.

By the sixth article, it is agreed, on the part of the Cherokees, that the United States shall have the sole and exclusive right of regulating their trade. No claim is made to the management of all their affairs. This stipulation has already been explained. The observation may be repeated, that the stipulation is itself an admission of their right to make or refuse it.

By the seventh article the United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded.

The eighth article relinquishes to the Cherokees any citizens of the United States who may settle on their lands; and the ninth forbids any citizen of the United States to hunt on their lands, or to enter their country without a passport.

The remaining articles are equal, and contain stipulations which could be made only with a nation admitted to be capable of governing itself.

This treaty, thus explicitly recognizing the national character of the Cherokees, and their right of self government; thus guarantying their lands; assuming the duty of protection, and of course pledging the faith of the United States for that protection; has been frequently renewed, and is now in full force.

To the general pledge of protection have been added several specific pledges, deemed valuable by the Indians. Some of these restrain the citizens of the United States from encroachments on the Cherokee country, and provide for the punishment of intruders...

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.

In 1819, congress passed an act for promoting those humane designs of civilizing the neighboring Indians, which had long been cherished by the executive...This act avowedly contemplates the preservation of the Indian nations as an object sought by the United States, and proposes to effect this object by civilizing and converting them from hunters into agriculturists. Though the Cherokees had already made considerable progress in this improvement, it cannot be doubted that the general words of the act comprehend them. Their advance in the "habits and arts of civilization," rather encouraged perseverance in the laudable exertions still farther to meliorate their condition. This act furnishes strong additional evidence of a settled purpose to fix the Indians in their country by giving them security at home.

The treaties and laws of the United States 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.

Is this the rightful exercise of power, or is it usurpation?...

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 [Worcester] was prosecuted, is consequently void, and the judgment a nullity. Can this court revise, and reverse it?

[These laws 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...and 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 [Worcester], 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. Will these powerful considerations avail [Worcester]? We think they will. He was seized, and forcibly carried away, while under guardianship of treaties guarantying the country in which he resided, and taking it under the protection of the United States. He was seized while performing, under the sanction of the chief magistrate of the union, those duties which the humane

policy adopted by congress had recommended. He was apprehended, tried, and condemned, under color of a law which has been shown to be repugnant to the constitution, laws, and treaties of the United States. Had a judgment, liable to the same objections, been rendered for property, none would question the jurisdiction of this court. It cannot be less clear when the judgment affects personal liberty, and inflicts disgraceful punishment, if punishment could disgrace when inflicted on innocence. [He] is not less interested in the operation of this unconstitutional law than if it affected his property [and] is not less entitled to the protection of the constitution, laws, and treaties of his country...

It is the opinion of this court that the judgment of the superior court for the county of Gwinnett, in the state of Georgia, condemning Samuel A. Worcester to hard labor, in the penitentiary of the state of Georgia, for four years, was pronounced by that court under color of a law which is void, as being repugnant to the constitution, treaties, and laws of the United States, and ought, therefore, to be reversed and annulled.

DISSENT: Mr Justice BALDWIN...[His opinion remained the same as was expressed by him in the case of *Cherokee Nation v. Georgia*¹...]

CONCURRENCE: Mr Justice McLEAN...On the 30th of March 1802, congress passed an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

In this act it is provided, that any citizen or resident in the United States, who shall enter into the Indian lands to hunt, or for any other purpose, without a license, shall be subject to a fine and imprisonment. And if any person shall attempt to survey, or actually survey, the Indian lands, he shall be liable to forfeit a sum not exceeding one thousand dollars, and be imprisoned not exceeding twelve months. No person is permitted to reside as a trader within the Indian boundaries, without a license or permit. All persons are prohibited, under a heavy penalty, from purchasing the Indian lands; and all such purchases are declared to be void. And it is made lawful for the military force of the United States to arrest offenders against the provisions of the act.

By the seventeenth section, it is provided, that the act shall not be so construed as to "prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual states; or the unmolested use of a road, from Washington district to Mero district, or to prevent the citizens of Tennessee from keeping in repair said road." Nor was the act to be so construed as to prevent persons from travelling from Knoxville to Price's settlement, provided they shall travel in the tract or path which is usually travelled, and the Indians do not object; but if they object, then all travel on this road to be prohibited, after proclamation by the president, under the penalties provided in the act...

The acts of the state of Georgia, which the plaintiff in error complains of, as being repugnant to the constitution, treaties, and laws of the United States, are found in two statutes.

¹Case 1-24 on this website.

The first act was passed the 12th of December 1829; and is entitled "an act to add the territory lying within the chartered limits of Georgia, and now in the occupancy of the Cherokee Indians, to the counties of Carroll, Dekalb, Gwinnett and Habersham; and to extend the laws of the state over the same, and **to annul all laws made by the Cherokee nation of Indians**, and to provide for the compensation of officers serving legal process in said territory, and to regulate the testimony of Indians, and to repeal the ninth section of the act of 1828 on this subject."

This act annexes the territory of the Indians, within the limits of Georgia, to the counties named in the title; and extends the jurisdiction of the state over it. It annuls the laws, ordinances, orders and regulations, of any kind, made by the Cherokees, either in council or in any other way, and they are not permitted to be given in evidence in the courts of the state. By this law, no Indian, or the descendant of an Indian, residing within the Creek or Cherokee nation of Indians, shall be deemed a competent witness in any court of the state, to which a white person may be a party, except such white person reside within the nation. Offenses under the act are to be punished by confinement in the penitentiary, in some cases not less than four nor more than six years, and in others not exceeding four years.

The second act was passed on the 22d day of December 1830, and is entitled "an act to prevent the exercise of assumed and arbitrary power, by all persons, on pretext of authority from the Cherokee Indians and their laws; and to prevent white persons from residing within that part of the chartered limits of Georgia, occupied by the Cherokee Indians; and to provide a guard for the protection of the gold mines, and to enforce the laws of the state within the aforesaid territory."

By the first section of this act, it is made a penitentiary offence, after the 1st day of February 1831, for any person or persons, under color or pretense of authority from the said Cherokee tribe, or as headmen, chiefs or warriors of said tribe, to cause or procure, by any means, the assembling of any council or other pretended legislative body of the said Indians, for the purpose of legislating, &c.

They are prohibited from making laws, holding courts of justice, or executing process. And all white persons, after the 1st of March 1831, who shall reside within the limits of the Cherokee nation, without a license or permit from his excellency the governor, or from such agent as his excellency the governor shall authorize to grant such permit or license, or who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanour; and, upon conviction thereof, shall be punished by confinement to the penitentiary at hard labour, for a term not less than four years. From this punishment, agents of the United States are excepted, white females, and male children under twenty-one years of age.

Persons who have obtained license, are required to take the following oath: "I, A.B., do solemnly swear, that I will support and defend the constitution and laws of the state of Georgia, and uprightly demean myself as a citizen thereof. So help me God."

The governor is authorized to organize a guard, which shall not consist of more than sixty persons, to protect the mines in the Indian territory, and the guard is authorized to arrest all

offenders under the act.

It is apparent that these laws are repugnant to the treaties with the Cherokee Indians which have been referred to, and to the law of 1802. This repugnance is made so clear by an exhibition of the respective acts, that no force of demonstration can make it more palpable.

By the treaties and laws of the United States, rights are guaranteed to the Cherokees...By the laws of Georgia these rights are abolished; and not only abolished, but an ignominious punishment is inflicted on the Indians and others; for the exercise of them...[W]hich shall stand, the laws of the United States, or the laws of Georgia?...Are the treaties and law which have been cited, in force? and what, if any, obligations, do they impose on the federal government within the limits of Georgia?...

The abstract right of every section of the human race to a reasonable portion of the soil, by which to acquire the means of subsistence, cannot be controverted. And it is equally clear, that the range of nations or tribes, who exist in the hunter state, may be restricted within reasonable limits. They shall not be permitted to roam, in the pursuit of game, over an extensive and rich country, whilst in other parts, human beings are crowded so closely together, as to render the means of subsistence precarious. The law of nature, which is paramount to all other laws, gives the right to every nation, to the enjoyment of a reasonable extent of country, so as to derive the means of subsistence from the soil.

In this view perhaps, our ancestors, when they first migrated to this country, might have taken possession of a limited extent of the domain, had they been sufficiently powerful, without negotiation or purchase from the native Indians. But this course is believed to have been nowhere taken. A more conciliatory mode was preferred, and one which was better calculated to impress the Indians, who were then powerful, with a sense of the justice of their white neighbors. The occupancy of their lands was never assumed, except upon the basis of contract, and on the payment of a valuable consideration.

This policy has obtained from the earliest white settlements in this country, down to the present time. Some cessions of territory may have been made by the Indians, in compliance with the terms on which peace was offered by the whites; but the soil, thus taken, was taken by the laws of conquest, and always as an indemnity for the expenses of the war, commenced by the Indians.

At no time has the sovereignty of the country been recognized as existing in the Indians, but they have been always admitted to possess many of the attributes of sovereignty. All the rights which belong to self government have been recognized as vested in them. Their right of occupancy has never been questioned, but the fee in the soil has been considered in the government. This may be called the right to the ultimate domain, but the Indians have a present right of possession...

By the constitution, the regulation of commerce among the Indian tribes is given to congress. This power must be considered as exclusively vested in congress, as the power to regulate commerce

with foreign nations, to coin money, to establish post offices, and to declare war...

This investiture of power has been exercised in the regulation of commerce with the Indians, sometimes by treaty, and, at other times, by enactments of congress. In this respect they have been placed by the federal authority, with but few exceptions, on the same footing as foreign nations...

It must be admitted, that the Indians sustain a peculiar relation to the United States. They do not constitute, as was decided at the last term, a foreign state, so as to claim the right to sue in the supreme court of the United States: and yet, having the right of self government, they, in some sense, form a state. In the management of their internal concerns, they are dependent on no power. They punish offences under their own laws, and, in doing so, they are responsible to no earthly tribunal. They make war, and form treaties of peace. The exercise of these and other powers, gives to them a distinct character as a people, and constitutes them, in some respects, a state, although they may not be admitted to possess the right of soil...

The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word "allotted," in reference to the land guaranteed to the Indians in certain treaties, indicates a favour conferred, rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.

The question may be asked, is no distinction to be made between a civilized and savage people? Are our Indians to be placed upon a footing with the nations of Europe, with whom we have made treaties? The inquiry is not, what station shall now be given to the Indian tribes in our country? but, what relation have they sustained to us, since the commencement of our government?

We have made treaties with them; and are those treaties to be disregarded on our part, because they were entered into with an uncivilized people? Does this lessen the obligation of such treaties? By entering into them, have we not admitted the power of this people to bind themselves, and to impose obligations on us?

The president and senate, except under the treaty-making power, cannot enter into compacts with the Indians, or with foreign nations. This power has been uniformly exercised in forming treaties with the Indians. Nations differ from each other in condition, and that of the same nation may change by the revolutions of time, but the principles of justice are the same. They rest upon a base which will remain beyond the endurance of time...Have the numerous treaties which have been formed with them, and the ratifications by the president and senate, been nothing more than an idle pageantry?

By numerous treaties with the Indian tribes, we have acquired accessions of territory, of incalculable value to the union. Except by compact, we have not even claimed a right of way through the Indian lands. We have recognized in them the right to make war. No one has ever supposed that the Indians

could commit treason against the United States. We have punished them for their violation of treaties; but we have inflicted the punishment on them as a nation, and not on individual offenders among them as traitors...

But, can the treaties which have been referred to, and the law of 1802, be considered in force within the limits of the state of Georgia?...It is important, on this part of the case, to ascertain in what light Georgia has considered the Indian title to lands, generally, and particularly, within her own boundaries; and also, as to the right of the Indians to self-government.

In the first place, **she was a party to all the treaties entered into between the United States and the Indians, since the adoption of the constitution.** And prior to that period, she was represented in making them, and was bound by their provisions, although it is alleged that she remonstrated against the treaty of Hopewell. In the passage of the intercourse law of 1802, as one of the constituent parts of the union, she was also a party.

The stipulation made in her act of cession, that the United States should extinguish the Indian title to lands within the state, was a distinct recognition of the right in the federal government, to make the extinguishment; and also, that, until it should be made, the right of occupancy would remain in the Indians.

...In a memorial to the president of the United States, by the legislature of Georgia, in 1819, they say, "it has long been the desire of Georgia, that her settlements should be extended to her ultimate limits." "That the soil within her boundaries should be subjected to her control; and, that her police organization and government should be fixed and permanent." "That the state of Georgia claims a right to the jurisdiction and soil of the territory within her limits." "She admits, however, that the right is inchoate -- remaining to be perfected by the United States, in the extinction of the Indian title; the United States...as their agents."...

On the 25th of March 1825, the governor of Georgia issued the following proclamation:

"Whereas it is provided in said treaty, that the United States shall protect the Indians against the encroachments, hostilities, and impositions of the whites, so that they suffer no imposition, molestation, or injury in their persons, goods, effects, their dwellings, or the lands they occupy, until their removal shall have been accomplished, according to the terms of the treaty," which had been recently made with the Indians.

"I have therefore thought proper to issue this my proclamation, warning all persons, citizens of Georgia or others, against trespassing or intruding upon lands occupied by the Indians, within the limits of Georgia, either for the purpose of settlement or otherwise, as every such act will be in direct violation of the provisions of the treaty aforesaid, and will expose the aggressors to the most certain and summary punishment, by the authorities of the state, and the United States." "All good citizens, therefore, pursuing the dictates of good faith, will unite in enforcing the obligations of the treaty, as the supreme law," &c.

Many other references might be made to the public acts of the state of Georgia, to show that she admitted the obligation of Indian treaties, but the above are believed to be sufficient. These acts do honor to the character of that highly respectable state.

Under the act of cession, the United States were bound, in good faith, to extinguish the Indian title to lands within the limits of Georgia, so soon as it could be done peaceably and on reasonable terms. The state of Georgia has repeatedly remonstrated to the president on this subject, and called upon the government to take the necessary steps to fulfil its engagement...By the first president of the United States, and by every succeeding one, a strong solicitude has been expressed for the civilization of the Indians. Through the agency of the government, they have been partially induced, in some parts of the union, to change the hunter state for that of the agriculturist and herdsman.

In a letter addressed by Mr Jefferson to the Cherokees, dated the 9th of January 1809, he recommends them to adopt a regular government, that crimes might be punished and property protected. He points out the mode by which a council should be chosen, who should have power to enact laws; and he also recommended the appointment of judicial and executive agents, through whom the law might be enforced. The agent of the government, who resided among them, was recommended to be associated with their council, that he might give the necessary advice on all subjects relating to their government.

In the treaty of 1817, the Cherokees are encouraged to adopt a regular form of government.

Since that time, a law has been passed making an annual appropriation of the sum of ten thousand dollars, as a school fund, for the education of Indian youths, which has been distributed among the different tribes where schools had been established. Missionary labors among the Indians have also been sanctioned by the government, by granting permits, to those who were disposed to engage in such a work, to reside in the Indian country.

That the means adopted by the general government to reclaim the savage from his erratic life, and induce him to assume the forms of civilization, have had a tendency to increase the attachment of the cherokees to the country they now inhabit, is extremely probable; and that it increased the difficulty of purchasing their lands, as by act of cession the general government agreed to do, is equally probable.

Neither Georgia, nor the United States, when the cession was made, contemplated that force should be used in the extinguishment of the Indian title; nor that it should be procured on terms that are not reasonable. But, may it not be said, with equal truth, that it was not contemplated by either party that any obstructions to the fulfilment of the compact should be allowed, must less sanctioned, by the United States?

The humane policy of the government towards these children of the wilderness must afford pleasure to every benevolent feeling; and if the efforts made have not proved as successful as was anticipated, still much has been done. Whether the advantages of this policy should not have been held out by

the government to the Cherokees within the limits of Georgia, as an inducement for them to change their residence and fix it elsewhere, rather than by such means to increase their attachment to their present home, as has been insisted on, is a question which may be considered by another branch of the government. Such a course might, perhaps, have secured to the Cherokee Indians all the advantages they have realized from the paternal superintendence of the government; and have enabled it, on peaceable and reasonable terms, to comply with the act of cession.

...Much has been said against the existence of an independent power within a sovereign state; and the conclusion has been drawn, that the Indians, as a matter of right, cannot enforce their own laws within the territorial limits of a state. The refutation of this argument is found in our past history.

That fragments of tribes, having lost the power of self-government, and who lived within the ordinary jurisdiction of a state, have been taken under the protection of the laws, has already been admitted. But there has been no instance, where the state laws have been generally extended over a numerous tribe of Indians, living within the state, and exercising the right of self-government, until recently...

When Georgia sanctioned the constitution, and conferred on the national legislature the exclusive right to regulate commerce or intercourse with the Indians, did she reserve the right to regulate intercourse with the Indians within her limits? This will not be pretended...

Is it incompatible with state sovereignty to grant exclusive jurisdiction to the federal government over a number of acres of land, for military purposes? Our forts and arsenals, though situated in the different states, are not within their jurisdiction...

Why may not these powers be exercised by the respective states? The answer is, because they have parted with them, expressly for the general good. Why may not a state coin money, issue bills of credit, enter into a treaty of alliance or confederation, or regulate commerce with foreign nations? Because these powers have been expressly and exclusively given to the federal government.

Has not the power been as expressly conferred on the federal government, to regulate intercourse with the Indians; and is it not as exclusively given, as any of the powers above enumerated? There being no exception to the exercise of this power, it must operate on all communities of Indians, exercising the right of self-government; and consequently, include those who reside within the limits of a state, as well as others. Such has been the uniform construction of this power by the federal government, and of every state government, until the question was raised by the state of Georgia.

...But the inquiry may be made, is there no end to the exercise of this power over Indians within the limits of a state, by the general government? The answer is, that, in its nature, it must be limited by circumstances.

If a tribe of Indians shall become so degraded or reduced in numbers, as to lose the power of self-government, the protection of the local law, of necessity, must be extended over them. The point

at which this exercise of power by a state would be proper, need not now be considered: if indeed it be a judicial question. Such a question does not seem to arise in this case. So long as treaties and laws remain in full force, and apply to Indian nations, exercising the right of self-government, within the limits of a state, the judicial power can exercise no discretion in refusing to give effect to those laws, when questions arise under them, unless they shall be deemed unconstitutional.

The exercise of the power of self-government by the Indians, within a state, is undoubtedly contemplated to be temporary. This is shown by the settled policy of the government, in the extinguishment of their title, and especially by the compact with the state of Georgia. It is a question, not of abstract right, but of public policy. I do not mean to say, that the same moral rule which should regulate the affairs of private life, should not be regarded by communities or nations. But, a sound national policy does require that the Indian tribes within our states should exchange their territories, upon equitable principles, or, eventually, consent to become amalgamated in our political communities.

At best they can enjoy a very limited independence within the boundaries of a state, and such a residence must always subject them to encroachments from the settlements around them; and their existence within a state, as a separate and independent community, may seriously embarrass or obstruct the operation of the state laws. If, therefore, it would be inconsistent with the political welfare of the states, and the social advance of their citizens, that an independent and permanent power should exist within their limits, this power must give way to the greater power which surrounds it, or seek its exercise beyond the sphere of state authority.

This state of things can only be produced by a co-operation of the state and federal governments. The latter has the exclusive regulation of intercourse with the Indians; and, so long as this power shall be exercised, it cannot be obstructed by the state. It is a power given by the constitution, and sanctioned by the most solemn acts of both the federal and state governments: consequently, it cannot be abrogated at the will of a state. It is one of the powers parted with by the states, and vested in the federal government. But, if a contingency shall occur, which shall render the Indians who reside in a state, incapable of self-government, either by moral degradation or a reduction of their numbers, it would undoubtedly be in the power of a state government to extend to them the aegis of its laws. Under such circumstances, the agency of the general government, of necessity, must cease...

So long as those laws and treaties exist, having been formed within the sphere of the federal powers, they must be respected and enforced by the appropriate organs of the federal government.

The plaintiff who prosecutes this writ of error, entered the Cherokee country, as it appears, with the express permission of the president, and under the protection of the treaties of the United States, and the law of 1802. He entered, not to corrupt the morals of this people, nor to profit by their substance; but to teach them, by precept and example, the Christian religion. If he be unworthy of this sacred office; if he had any other object than the one professed; if he sought by his influence, to counteract the humane policy of the federal government towards the Indians, and to embarrass its efforts to comply with its solemn engagement with Georgia; though his sufferings be illegal, he is not a proper

object of public sympathy.

It has been shown, that the treaties and laws referred to come within the due exercise of the constitutional powers of the federal government; that they remain in full force, and consequently must be considered as the supreme laws of the land. These laws throw a shield over the Cherokee Indians. They guarantied to them their rights of occupancy, of self-government, and the full enjoyment of those blessings which might be attained in their humble condition. But, by the enactments of the state of Georgia, this shield is broken in pieces -- the infant institutions of the Cherokees are abolished, and their laws annulled. Infamous punishment is denounced against them, for the exercise of those rights which have been most solemnly guarantied to them by the national faith.

Of these enactments, however, the plaintiff in error has no right to complain, nor can he question their validity, except insofar as they affect his interests. In this view and in this view only, has it become necessary, in the present case, to consider the repugnancy of the laws of Georgia to those of the union.

Of the justice or policy of these laws, it is not my province to speak: such considerations belonging to the legislature by whom they were passed. They have, no doubt, been enacted under a conviction of right, by a sovereign and independent state, and their policy may have been recommended, by a sense of wrong under the compact. Thirty years have elapsed since the federal government engaged to extinguish the Indian title, within the limits of Georgia. That she has strong ground of complaint arising from this delay, must be admitted; but such considerations are not involved in the present case; they belong to another branch of the government. We can look only to the law, which defines our power, and marks out the path of our duty.

Under the administration of the laws of Georgia, a citizen of the United States has been deprived of his liberty; and, claiming protection under the treaties and laws of the United States, he makes the question, as he has a right to make it, whether the laws of Georgia, under which he is now suffering an ignominious punishment, are not repugnant to the constitution of the United States, and the treaties and laws made under it. This repugnancy has been shown; and it remains only to say, what has before been often said by this tribunal of the local laws of many of the states in this union, that, being repugnant to the constitution of the United States, and to the laws made under it, they can have no force to divest the plaintiff in error of his property or liberty.