
DOCUMENT 7.4**JUSTICE JOHN MARSHALL, *Worcester v. Georgia***
1832

In the case *Worcester v. Georgia*, the US Supreme Court had to determine whether the federal government could use its commerce powers to remove Native Americans from the southeastern United States. Chief Justice John Marshall (1755–1835) wrote the majority opinion.

In the regulation of commerce with the Indians, congress have exercised a more limited power than has been exercised in reference to foreign countries. The law acts upon our own citizens, and not upon the Indians, the same as the laws referred to act upon our own citizens in their foreign commercial intercourse.

It will scarcely be doubted by any one, that, so far as the Indians, as distinct communities, have formed a connection with the federal government, by treaties; that such connection is political, and is equally binding on both parties. This cannot be questioned, except upon the ground that, in making these treaties, the federal government has transcended the treaty-making power. Such an objection, it is true, has been stated; but it is one of modern invention, which arises out of local circumstances; and is not only opposed to the uniform practice of the government, but also to the letter and spirit of the constitution.

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.

B. R. Curtis, *Reports of Decisions in the Supreme Court of the United States* (Boston: Little, Brown, 1881), 270–271.

PRACTICING Historical Thinking

Identify: How does Marshall justify legal protection for the Cherokee?

Analyze: Does the Court's decision favor the expansion or reduction of Native American freedom within the United States? Explain.

Evaluate: What are some similarities and some differences between the arguments in this document and those of James Madison's letter to Mathew Carey (Doc. 7.3)?