THE CHEROKEE NATION v. THE STATE OF GEORGIA.
30 U.S. 1 (1831)

Mr Chief Justice MARSHALL delivered the opinion of the Court.

This bill is brought by the Cherokee nation, praying an injunction to restrain the state of Georgia from the execution of certain laws of that state, which, as is alleged, go directly to annihilate the Cherokees as a political society, and to seize, for the use of Georgia, the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force.

If courts were permitted to indulge their sympathies, a case better calculated to excite them can scarcely be imagined. A people once numerous, powerful, and truly independent, found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts and our arms, have yielded their lands by successive treaties, each of which contains a solemn guarantee of the residue, until they retain no more of their formerly extensive territory than is deemed necessary to their comfortable subsistence. To preserve this remnant, the present application is made.

Before we can look into the merits of the case, a preliminary inquiry presents itself. Has this court jurisdiction of the cause?

The third article of the constitution describes the extent of the judicial power. The second section closes an enumeration of the cases to which it is extended, with 'controversies' 'between a state or the citizens thereof, and foreign states, citizens, or subjects.' A subsequent clause of the same section gives the supreme court original jurisdiction in all cases in which a state shall be a party. The party defendant may then unquestionably be sued in this court. May the plaintiff sue in it? Is the Cherokee nation a foreign state in the sense in which that term is used in the constitution?

The counsel for the plaintiffs have maintained the affirmative of this proposition with great earnestness and ability. So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee nation as a state, and the courts are bound by those acts.

A question of much more difficulty remains. Do the Cherokees constitute a foreign state in the sense of the constitution?

The counsel have shown conclusively that they are not a state of the union, and have insisted that individually they are aliens, not owing allegiance to the United States. An aggregate of aliens composing a state must, they say, be a foreign state. Each individual being foreign, the whole must be foreign.

This argument is imposing, but we must examine it more closely before we yield to it. The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. In the general, nations not owing a common allegiance are foreign to each other. The

term *foreign nation* is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist no where else.

The Indian territory is admitted to compose a part of the United States. In all our maps, geographical treatises, histories, and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens. They acknowledge themselves in their treaties to be under the protection of the United States; they admit that the United States shall have the sole and exclusive right of regulating the trade with them, and managing all their affairs as they think proper; and the Cherokees in particular were allowed by the treaty of Hopewell, which preceded the constitution, 'to send a deputy of their choice, whenever they think fit, to congress.' Treaties were made with some tribes by the state of New York, under a then unsettled construction of the confederation, by which they ceded all their lands to that state, taking back a limited grant to themselves, in which they admit their dependence.

Though the Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet 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. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connexion with them, would be considered by all as an invasion of our territory, and an act of hostility.

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.

In considering this subject, the habits and usages of the Indians, in their intercourse with their white neighbours, ought not to be entirely disregarded. 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. Be this as it may, the peculiar relations between the United States and the Indians occupying our territory are such, that we should feel much difficulty in considering them as designated by the term *foreign state*, were there no other part of the constitution which might shed light on the meaning of these words. But we think that in construing them, considerable aid is furnished by that clause in the eighth section of the third article; which empowers congress to 'regulate commerce with foreign nations, and among the several states, and with the Indian tribes.'

In this clause they are as clearly contradistinguished by a name appropriate to themselves,

from foreign nations, as from the several states composing the union. They are designated by a distinct appellation; and as this appellation can be applied to neither of the others, neither can the appellation distinguishing either of the others be in fair construction applied to them. The objects, to which the power of regulating commerce might be directed, are divided into three distinct classes--foreign nations, the several states, and Indian tribes. When forming this article, the convention considered them as entirely distinct. We cannot assume that the distinction was lost in framing a subsequent article, unless there be something in its language to authorize the assumption.

The counsel for the plaintiffs contend that the words 'Indian tribes' were introduced into the article, empowering congress to regulate commerce, for the purpose of removing those doubts in which the management of Indian affairs was involved by the language of the ninth article of the confederation. Intending to give the whole power of managing those affairs to the government about to be instituted, the convention conferred it explicitly; and omitted those qualifications which embarrassed the exercise of it as granted in the confederation. This may be admitted without weakening the construction which has been intimated. Had the Indian tribes been foreign nations, in the view of the convention; this exclusive power of regulating intercourse with them might have been, and most probably would have been, specifically given, in language indicating that idea, not in language contradistinguishing them from foreign nations. Congress might have been empowered 'to regulate commerce with foreign nations, including the Indian tribes, and among the several states.' This language would have suggested itself to statesmen who considered the Indian tribes as foreign nations, and were yet desirous of mentioning them particularly.

It has been also said, that the same words have not necessarily the same meaning attached to them when found in different parts of the same instrument: their meaning is controlled by the context. This is undoubtedly true. In common language the same word has various meanings, and the peculiar sense in which it is used in any sentence is to be determined by the context. This may not be equally true with respect to proper names. *Foreign nations* is a general term, the application of which to Indian tribes, when used in the American constitution, is at best extremely questionable. In one article in which a power is given to be exercised in regard to foreign nations generally, and to the Indian tribes particularly, they are mentioned as separate in terms clearly contra-distinguishing them from each other.

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. When, afterwards, the term 'foreign state' is introduced, we cannot impute to the convention the intention to desert its former meaning, and to comprehend Indian tribes within it, unless the context force that construction on us. We find nothing in the context, and nothing in the subject of the article, which leads to it.

The court has bestowed its best attention on this question, and, after mature deliberation, the majority is of opinion that an Indian tribe or nation within the United States is not a foreign state in the sense of the constitution, and cannot maintain an action in the courts of the United States.

A serious additional objection exists to the jurisdiction of the court. Is the matter of the bill the proper subject for judicial inquiry and decision? It seeks to restrain a state from the forcible exercise of legislative power over a neighbouring people, asserting their independence; their right to which the state denies. On several of the matters alleged in the bill, for example on the laws making it criminal to exercise the usual powers of self government in their own country by the Cherokee nation, this court cannot interpose; at least in the form in which those matters are presented.

That part of the bill which respects the land occupied by the Indians, and prays the aid of the

court to protect their possession, may be more doubtful. The mere question of right might perhaps be decided by this court in a proper case with proper parties. But the court is asked to do more than decide on the title. The bill requires us to control the legislature of Georgia, and to restrain the exertion of its physical force. The propriety of such an interposition by the court may be well questioned. It savours too much of the exercise of political power to be within the proper province of the judicial department. But the opinion on the point respecting parties makes it unnecessary to decide this question.

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.

The motion for an injunction is *denied.*

Mr. Justice JOHNSON.

I cannot but think that there are strong reasons for doubting the applicability of the epithet *state*, to a people so low in the grade of organized society as our Indian tribes most generally are. I would not here be understood as speaking of the Cherokees under their present form of government; which certainly must be classed among the most approved forms of civil government. Whether it can be yet said to have received the consistency which entitles that people to admission into the family of nations is, I conceive, yet to be determined by the executive of these states. Until then I must think that we cannot recognize it as an existing state, under any other character than that which it has maintained hitherto as one of the Indian tribes or nations.

In the very treaty of Hopewell, the language or evidence of which is appealed to as the leading proof of the existence of this supposed state, we find the commissioners of the United States expressing themselves in these terms. 'The commissioners plenipotentiary of the United States give peace to all the Cherokees, and receive them into the favour and protection of the United States *on the following conditions*.' This is certainly the language of sovereigns and conquerors, and not the address of equals to equals. And again, when designating the country they are to be confined to, comprising the very territory which is the subject of this bill, they say, 'Art. 4. *The boundary allotted to the Cherokees for their hunting grounds*' shall be as therein described. Certainly this is the language of concession on our part, not theirs; and when the full bearing and effect of those words, 'for their hunting grounds,' is considered, it is difficult to think that they were then regarded as a state, or even intended to be so regarded. It is clear that it was intended to give them no other rights over the territory than what were needed by a race of hunters; and it is not easy to see how their advancement beyond that state of society could ever have been promoted, or, perhaps, permitted, consistently with the unquestioned rights of the states, or United States, over the territory within their limits.

But it is said, that we have extended to them the means and inducement to become agricultural and civilized. It is true: and the immediate object of that policy was so obvious as probably to have intercepted the view of ulterior consequences. Independently of the general influence of humanity, these people were restless, warlike, and signally cruel in their irruptions during the revolution. The policy, therefore, of enticing them to the arts of peace, and to those improvements which war might lay desolate, was obvious; and it was wise to prepare them for what was probably then contemplated, to wit, to incorporate them in time into our respective governments: a policy which their inveterate habits and deep seated enmity has altogether baffled. But the project of ultimately organizing them into states, within the limits of those states which had not ceded or should not cede to the United States the jurisdiction over the Indian territory within their bounds,

could not possibly have entered into the contemplation of our government. Nothing but express authority from the states could have justified such a policy, pursued with such a view.

There is one consequence that would necessarily flow from the recognition of this people as a state, which of itself must operate greatly against its admission.

Where is the rule to stop? Must every petty kraal of Indians, designating themselves a tribe or nation, and having a few hundred acres of land to hunt on exclusively, be recognized as a state? We should indeed force into the family of nations, a very numerous and very heterogeneous progeny.

The right of sovereignty was expressly assumed by Great Britain over their country at the first taking possession of it; and has never since been recognized as in them, otherwise than as dependent upon the will of a superior.

The right of legislation is in terms conceded to congress by the treaty of Hopewell, whenever they choose to exercise it. And the right of soil is held by the feeble tenure of hunting grounds, and acknowledged on all hands subject to a restriction to sell to no one but the United States, and for no use but that of Georgia.

They have in Europe sovereign and semi-sovereign states and states of doubtful sovereignty. But this state, if it be a state, is still a grade below them all: for not to be able to alienate without permission of the remainder-man or lord, places them in a state of feudal dependence.

However, I will enlarge no more upon this point; because I believe, in one view and in one only, if at all, they are or may be deemed a state, though not a sovereign state, at least while they occupy a country within our limits. Their condition is something like that of the Israelites, when inhabiting the deserts. Though without land that they can call theirs in the sense of property, their right of personal self government has never been taken from them; and such a form of government may exist though the land occupied be in fact that of another. The right to expel them may exist in that other, but the alternative of departing and retaining the right of self government may exist in them. And such they certainly do possess; it has never been questioned, nor any attempt made at subjugating them as a people, or restraining their personal liberty except as to their land and trade.

But in no sense can they be deemed a foreign state, under the judiciary article.

The argument is that they were states; and if not states of the union, must be foreign states. But I think it very clear that the constitution neither speaks of them as states or foreign states, but as just what they were, Indian tribes; an anomaly unknown to the books that treat of states, and which the law of nations would regard as nothing more than wandering hordes, held together only by ties of blood and habit, and having neither laws or government, beyond what is required in a savage state. The distinction is clearly made in that section which vests in congress power to regulate commerce between the United States with foreign nations and the Indian tribes.

Mr Justice BALDWIN.

In my opinion there is no plaintiff in this suit; and this opinion precludes any examination into the merits of the bill, or the weight of any minor objections. My judgment stops me at the threshold, and forbids me to examine into the acts complained of.

My view of the plaintiffs being a sovereign independent nation or foreign state, within the meaning of the constitution, applies to all the tribes with whom the Unites States have held treaties: for if one is a foreign nation or state, all others in like condition must be so in their aggregate

capacity; and each of their subjects or citizens, aliens, capable of suing in the circuit courts. This case then is the case of the countless tribes, who occupy tracts of our vast domain; who, in their collective and individual characters, as states or aliens, will rush to the federal courts in endless controversies, growing out of the laws of the states or of congress.

This treaty (Hopewell) is in the beginning called 'Article:' the word 'treaty' is only to be found in the concluding line, where it is called '*this definitive treaty*.' But article or treaty, its nature does not depend upon the name given it. It is not negotiated between ministers on both sides representing their nations; the stipulations are wholly inconsistent with sovereignty; the Indians acknowledge their dependent character; hold the lands they occupy as an allotment of hunting grounds; give to congress the exclusive right of regulating their trade and managing all their affairs as they may think proper. So it was understood by congress...and so understood at the adoption of the constitution.

There can be no dependence so anti-national, or so utterly subversive of national existence as transferring to a foreign government the regulation of its trade, and the management of all their affairs at their pleasure. The nation or state, tribe or village, head men or warriors of the Cherokees, call them by what name we please, call the articles they have signed a definitive treaty or an indenture of servitude; they are not by its force or virtue a foreign state capable of calling into legitimate action the judicial power of this union, by the exercise of the original jurisdiction of this court against a sovereign state, a component part of this nation. Unless the constitution has imparted to the Cherokees a national character never recognized under the confederation; and which if they ever enjoyed was surrendered by the treaty of Hopewell; they cannot be deemed in this court plaintiffs in such a case as this.

In considering the bearing of the constitution on their rights, it must be borne in mind, that a majority of the states represented in the convention had ceded to the United States the soil and jurisdiction of their western lands, or claimed it to be remaining in themselves; that congress asserted as to the ceded, and the states as to the unceded territory, their right to the soil absolutely and the dominion in full sovereignty, within their respective limits, subject only to Indian occupancy, not as foreign states or nations, but as dependent on and appendant to the state governments: that before the convention acted, congress had erected a government in the north western territory containing numerous and powerful nations or tribes of Indians, whose jurisdiction was continued and whose sovereignty was overturned, if it ever existed, except by permission of the states or congress, by ordaining that the territorial laws should extend over the whole district; and directing divisions for the execution of civil and criminal process in every part; that the Cherokees were then dependants, having given up all their affairs to the regulation and management of congress, and that all the regulations of congress, over Indian affairs were then in force over an immense territory, under a solemn pledge to the inhabitants, that whenever their population and circumstances would admit they should form constitutions and become free, sovereign and independent states on equal footing with the old component members of the confederation; that by the existing regulations and treaties, the Indian tenure to their lands was their allotment as hunting grounds without the power of alienation, that the right of occupancy was not individual...

To correctly understand the constitution, then, we must read it with reference to this well known existing state of our relations with the Indians; the United States asserting the right of soil, sovereignty, and jurisdiction, in full dominion; the Indians occupant, of allotted hunting grounds.

Mr. Justice THOMPSON, dissenting.

That a state of this union may be sued by a foreign state, when a proper case exists and is presented, is too plainly and expressly declared in the constitution to admit of doubt; and the first

inquiry is, whether the Cherokee nation is a foreign state within the sense and meaning of the constitution.

The terms *state* and *nation* are used in the law of nations, as well as in common parlance, as importing the same thing; and imply a body of men, united together, to procure their mutual safety and advantage by means of their union. Such a society has its affairs and interests to manage; it deliberates, and takes resolutions in common, and thus becomes a moral person, having an understanding and a will peculiar to itself, and is susceptible of obligations and laws. Vattel, 1. Nations being composed of men naturally free and independent, and who, before the establishment of civil societies, live together in the state of nature, nations or sovereign states; are to be considered as so many free persons, living together in a state of nature. Vattel 2, § 4. Every nation that governs itself, under what form soever, without any dependence on a foreign power, is a sovereign state. Its rights are naturally the same as those of any other state. Such are moral persons who live together in a natural society, under the law of nations. It is sufficient if it be really sovereign and independent: that is, it must govern itself by its own authority and laws. We ought, therefore, to reckon in the number of sovereigns those states that have bound themselves to another more powerful, although by an unequal alliance. The conditions of these unequal alliances may be infinitely varied; but whatever they are, provided the inferior ally reserves to itself the sovereignty or the right to govern its own body, it ought to be considered an independent state. Consequently, a weak state, that, in order to provide for its safety, places itself under the protection of a more powerful one, without stripping itself of the right of government and sovereignty, does not cease on this account to be placed among the sovereigns who acknowledge no other power. Tributary and feudatory states do not thereby cease to be sovereign and independent states, so long as self government, and sovereign and independent authority is left in the administration of the state.

Testing the character and condition of the Cherokee Indians by these rules, it is not perceived how it is possible to escape the conclusion, that they form a sovereign state. They have always been dealt with as such by the government of the United States; both before and since the adoption of the present constitution. They have been admitted and treated as a people governed solely and exclusively by their own laws, usages, and customs within their own territory, claiming and exercising exclusive dominion over the same; yielding up by treaty, from time to time, portions of their land, but still claiming absolute sovereignty and self government over what remained unsold. And this has been the light in which they have, until recently, been considered from the earliest settlement of the country by the white people. And indeed, I do not understand it is denied by a majority of the court, that the Cherokee Indians form a sovereign state according to the doctrine of the law of nations; but that, although a sovereign state, they are not considered a foreign state within the meaning of the constitution.

That numerous tribes of Indians, and among others the Cherokee nation, occupied many parts of this country long before the discovery by Europeans, is abundantly established by history; and it is not denied but that the Cherokee nation occupied the territory now claimed by them long before that period.

They have never been, by conquest, reduced to the situation of subjects to any conqueror, and thereby lost their separate national existence, and the rights of self government, and become subject to the laws of the conqueror.

In this view of their situation, there is as full and complete recognition of their sovereignty, as if they were the absolute owners of the soil. The progress made in civilization by the Cherokee Indians cannot surely be considered as in any measure destroying their national or foreign character, so long as they are permitted to maintain a separate and distinct government; it is their political condition that constitutes their *foreign* character, and in that sense must the term *foreign*, be

understood as used in the constitution. It can have no relation to local, geographical, or territorial position. It cannot mean a country beyond sea. Mexico or Canada is certainly to be considered a foreign country, in reference to the United States. It is the political relation in which one government or country stands to another, which constitutes it foreign to the other. The Cherokee territory being within the chartered limits of Georgia, does not affect the question. When Georgia is spoken of as a state, reference is had to its political character, and not be boundary; and it is not perceived that any absurdity or inconsistency grows out of the circumstance, that the jurisdiction and territory of the state of Georgia surround or extend on every side of the Cherokee territory. It may be inconvenient to the state, and very desirable, that the Cherokees should be removed; but it does not at all affect the political relation between Georgia and those Indians. Suppose the Cherokee territory had been occupied by Spaniards or any other civilized people, instead of Indians, and they had from time to time ceded to the United States portions of their lands precisely in the same manner as the Indians have done, and in like manner retained and occupied the part now held by the Cherokees, and having a regular government established there: would it not only be considered a separate and distinct nation or state, but a foreign nation, with reference to the state of Georgia or the United States. If we look to lexicographers, as well as approved writers, for the use of the term *foreign*, it may be applied with the strictest propriety to the Cherokee nation.