

WORCHESTER v. GEORGIA
31 U.S. (6 Pet.) 515 (1832).

Mr Chief Justice MARSHALL delivered the opinion of the Court.

This cause, in every point of view in which it can be placed, is of the deepest interest.

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 labour for four years in the penitentiary of Georgia; under colour 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.

The indictment charges the plaintiff in error, 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 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.'

The indictment and plea in this case draw in question, we think, the validity of the treaties made by the United States with the Cherokee Indians; if not so, their construction is certainly drawn in question; and the decision has been, if not against their validity, 'against the right, privilege or exemption, specially set up and claimed under them.' They also draw into question the validity of a statute of the state of Georgia, 'on the ground of its being repugnant to the constitution, treaties and laws of the United States, and the decision is in favour of its validity.'

It has been said at the bar, that the acts of the legislature of Georgia seize on the whole Cherokee country, parcel it out among the neighbouring counties of the state, extend her code over the whole country, abolish its institutions and its laws, and annihilate its political existence.

If this be the general effect of the system, let us inquire into the effect of the particular statute and section on which the indictment is founded.

It enacts 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 authorise to grant such permit or license, and 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.'

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 charters contain passages showing one of their objects to be the civilization of the Indians, and their conversion to Christianity--objects to be accomplished by conciliatory conduct and good example; not by extermination.

Certain it is, that our history furnishes no example, from the first settlement of our country, of any attempt on the part of the crown to interfere with the internal affairs of the Indians, farther than to keep out the agents of foreign powers, who, as traders or otherwise, might seduce them into foreign alliances. The king purchased their when they were willing to sell, at a price they were willing to take; but never coerced a surrender of them. He also purchased their alliance and dependence by subsidies; but never intruded into the interior of their affairs, or interfered with their self government, so far as respected themselves only...

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.

The treaty is introduced with the declaration, that '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 of America, on the following conditions.'

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 treaty was made at Hopewell, not at New York. The word 'give,' then, has no

real importance attached to 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.

This stipulation is found in Indian treaties, generally. It was introduced into their treaties with Great Britain; and may probably be found in those with other European powers. Its origin may be traced to the nature of their connexion with those powers; and its true meaning is discerned in their relative situation...

The same stipulation entered into with the United States, is undoubtedly to be construed in the same manner. They 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 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, in congress assembled, shall have the sole and exclusive 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 a 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 recognise 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 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 high 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 acknowledgement, that the Cherokee nation is under the protection of the United States of America, and of no other sovereign whosoever...

From the commencement of our government, congress has passed acts to regulate trade and intercourse with the Indians; which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. 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 neighbouring Indians, which had long been cherished by the executive. It enacts, 'that, for the purpose of providing against the further decline and final extinction of the Indian tribes adjoining to the frontier settlements of the United States, and for introducing among them the habits and arts of civilization, the president of the United States shall be, and he is hereby authorized, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced *with their own consent*, to employ capable persons, of good moral character, to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing and arithmetic; and for performing such other duties as may be enjoined, according to such instructions and rules as the president may give and prescribe for the regulation of their conduct in the discharge of their duties.'

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...

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed: and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term 'nation,' so generally applied to them, means 'a people distinct from others.' The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense...

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...

Mr Justice McLean, (concurring):

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 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...

But, if it shall be the policy of the government to withdraw its protection from the Indians who reside within the limits of the respective states, and who not only claim the right of self

government, but have uniformly exercised it; the laws and treaties which impose duties and obligations on the general government should be abrogated by the powers competent to do so. 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.