“Let Them Enforce It”: The Supreme Court and the Cherokee Cases

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Historians often relegate the Cherokee cases to a secondary role in American history for a number of reasons but mainly because the cases never truly figured largely in the controversies that created them. *Worcester v. Georgia* should have aggravated the states' rights debates of the 1830s and it should have settled the official stance the United States took in protecting Indian nations from individual state interests, but it did neither. History seems to have decided that the Cherokee cases failed to affect American policy and political practice because of the cases’ irrelevance at the time they were heard. However, the Cherokee cases did not fail merely because they were inconsequential. Instead, they failed because the events surrounding them made the cases inconsequential. Many problems within the United States government led to the Cherokee cases' failures. Among them are the U.S. Supreme Court's lack of real power and President Andrew Jackson's refusal to enforce even the simplest of laws--or in this case decisions--when they interfered with his interests. Although the decisions were at times sweeping but always extremely well-crafted, Jackson's abuse of the presidency led to the consequences described above and, ultimately, the forced removal of the Cherokee and many other Indian nations.[1]

Before comparing the Cherokee cases with other events of the Jackson administration, the history of the cases must be considered and understood. Georgia had wanted the lands of the Cherokee and the neighboring Creek nations since the end of the American Revolution, if not earlier. After the Revolution, the state claimed one hundred million acres of land, which included Cherokee and Creek lands and encompassed all of present-day Alabama and Mississippi.[2] Georgia even claimed land that belonged neither to Great Britain before the Treaty of Paris nor to the United States afterward but instead belonged to Spain.[3] The federal government did not respect Georgia’s claims, however, and moved to protect the Indians from Georgia's encroachments. The federal government and the Cherokee signed the Treaty of Hopewell on November 28, 1785, which guaranteed the Cherokee the protection of the United States.[4] The Creek nation also made a treaty with the United States, the Treaty of New York, in 1790 to protect them from Georgia's aggression. The United States went so far as to guarantee the Creeks any contested lands between the Indian nation and Georgia and even returned some lands that Georgia had claimed for itself.[5] This in effect allowed the federal government to limit Georgia's size by guaranteeing land to the Creeks that the state wanted.[6] Georgia continued to claim the lands, though, and the federal government had to agree to remove the Indians at some point in the future in order to end the conflict. This agreement, known as the Compact of 1802, also stipulated that Georgia would no longer claim lands to the west that the government had set aside as Indian lands.

Still, removal was not a viable option in 1802, quite simply because the federal government had nowhere to send the Indians. Only after the Louisiana Purchase did the United States gain a vast tract of land to the west, which in turn made removal seem possible. After all, many Americans thought the massive land purchase could easily support the Indians east of the Mississippi as well as those already in the Louisiana Purchase. Thus, public and legislative support for removal grew throughout the United States. Immigrants and older Americans saw Indian lands as somewhere they or their children could settle and make a living. Others saw Indian removal as part of national expansion, which also included the expulsion of the Spanish from Florida and the West. Still others saw removal as part of America's mission to bring Western civilization to all of North America.[7] Public policy followed public feeling, as it usually does over time, and in December of 1829 Andrew Jackson presented the Indian Removal Bill to Congress, which would increase federal efforts to move the Cherokee and other tribes across the Mississippi River. The Congressional members of the embryonic Whig party strongly opposed the Bill, and in a vote along party lines in the Senate, Jackson and his Democrats won by a twenty-eight to nineteen tally.[8] However, the Whigs ground the Bill to a halt in the House, forcing a tie vote. In response, Jackson told the Democrats he was hinging his administration's success on the Indian Removal Bill, and "he pressured and bullied, and the original legislation passes in the House by a vote of 102-97.”[9] Jackson then promptly signed it into law in late May 1830.

At the same time, Georgia had made a series of laws encroaching on Cherokee rights. In retaliation, Cherokee chief John Ross decided that the Cherokee had little choice but to sue in federal court to stop the state from enacting its laws.[10] The Cherokee seemingly had the law on their side; Article IX of the Articles of Confederation as well as numerous acts of the Continental Congress set out to give the United States sole power over Indian affairs by stipulating that treaties could only be made by federal diplomats. Additionally, Article I, Section 10 of the Constitution barred states from entering into treaties and Article I, Section 8 gave the federal government the sole power to negotiate with Indian nations.[11]

Also, the Treaty of Hopewell appeared to favor the Cherokee. Article III gave the federal government sole protection over the Cherokee, as was discussed above. Also, Article IX gave the United States over the Cherokee nation the "sole and exclusive right of regulating the trade...and managing all their affairs in such a manner as they think proper."[12] Georgia's interference in Cherokee affairs appeared plainly unconstitutional and in violation of the Treaty of Hopewell, and the Cherokee hoped that the Supreme Court would see the state's actions as such.

The Cherokee decided to pursue original jurisdiction from the Supreme Court under Article III, Section 2, which states:

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases...between a State or the citizens thereof, and foreign states, citizens, or subjects.[13]

They said that the Court could originally rule because the Constitution plainly declared that "judicial power of the United States shall be vested in one Supreme Court."[14] The Cherokee claimed that they were a foreign state, satisfying the conditions of Article III, Section 2, and so the Supreme Court should take the case.

> Additionally, they sued under the Supremacy Clause in Article VI, which states:
> This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.[15]

They also used Article I, Section 10, known as the Obstruction of Contracts Clause, to make their case; the Obstruction of Contracts Clause, as it appears in the Constitution, says that:

> No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.[16]

The Cherokee used these passages to claim that Georgia had made its own laws in contradiction with the Treaty of Hopewell, which was a treaty of the United States and therefore had precedence over Georgia's laws. They said Georgia was also obstructing a contract between the United States and the Cherokee, describing treaties as "contracts of the highest character and of the most solemn obligation."[17] Because Georgia was acting unconstitutionally, the Cherokee sought an injunction against the execution of Georgia's laws.

The Supreme Court decided to take the case in March of 1831, naming it *Cherokee Nation v. Georgia*. Georgia never replied to the Cherokee claims or the Court's announcements before the case, though; instead, the state asserted that the Supreme Court had no power to oversee a state's business. Even so, Georgia lobbied Congress during arguments of *Cherokee Nation v. Georgia* to limit the powers that the Supreme Court had under Section 25 of the Judiciary Act of 1789. In the Judiciary Act, Congress had allowed the Supreme Court to declare a state law unconstitutional and to grant such an injunction that the Cherokee sought.[18] Georgia's actions will figure largely later in the Cherokee cases, but in 1831 the Supreme Court, and the rest of the United States, were focused on *Cherokee Nation v. Georgia*.

The Court decided by a margin of four votes to two to deny the injunction. John Marshall spoke for the majority in denying that the Cherokee and other Indian nations were independent but were "more correctly...domestic dependent

nations."[19] He said that they were dependent based upon his discovery doctrine. This doctrine traces itself to Marshall's opinion in *Johnson v. M'Intosh*, where Marshall said that land titles were recognized only if they came from the European government, or its descendent in the United States' case, in charge of the land. He said that by discovery the Europeans claimed the right to purchase or conquer Indian lands, and in the process Indian nations, though they did not totally lose their sovereignty, had it diminished nonetheless.[20]

Of course, discovery in and of itself did not suffice to debunk the Cherokee nation's claims. Marshall also said that the European nations long considered the Indians as "being so completely under the sovereignty and dominion of the United States, that any attempt to...form a political connexion with them, would be considered by all as an invasion of our country, and an act of hostility."[21] The United States has merely followed that tradition, Marshall wrote, and so the United States did not consider the Cherokee as independent. He pointed to Article I, Section 8 of the Constitution as evidence. The Framers, Marshall said, separated "foreign nations" and "Indian tribes" because they did not consider the Indian nations as either foreign or independent.[22] Since the Cherokee were not a foreign state, he concluded, the Court had no original jurisdiction powers, and so it could not grant the injunction that the Cherokee desired.

Many have denounced Marshall's opinion as inconsistent, weak, or merely protective of the Court's power. His discovery doctrine has often received the most criticism, even in his day. In *Fletcher v. Peck*, the case in which the discovery doctrine first appeared, Justice William Johnson considered Marshall's idea preposterous, saying that no nation could occupy a land yet not have claim to it.[23] However, Marshall never set out to define a new legal doctrine in his opinions; instead he merely continued the laws of Europe because he had little choice otherwise. As one writer described it, "United States courts simply could not adjudicate the most basic questions about the way that non-Indians had colonized and converted aboriginal lands into...lands for their own use."[24]

Critics say that Marshall would have ruled differently in *Cherokee Nation v. Georgia* if he were younger.[25] They have accused him of being too old to be an effective Supreme Court Justice in 1830. They have also referred to Marshall as a mentally exhausted man.[26] But Marshall appears a perfectly capable Chief Justice. His rejection of original jurisdiction and of the Cherokee nation's petition seem well in keeping with his prior rulings. He rejected original jurisdiction on previous occasions, most notably in *Marbury v. Madison*. In that decision, he denied Marbury's claim because, according to him, the Framers did not set up the Supreme Court to make an original ruling and issue a writ of mandamus in the manner Marbury asked. In *Cherokee Nation*, Marshall again shied away from original jurisdiction, and he used the argument that the Cherokee were not a foreign nation in order to do so. If they did not qualify, he could reject the motion out of hand without having to rule on the injunction itself.

Additionally, Marshall made his decision for utilitarian purposes. If he decided that the Cherokee and other Indian nations were indeed independent, then he would have allowed European nations, especially England and Spain, to move into American lands and form alliances with the Indians. Considering that the United States had recently fought the War of 1812 partially because the British remained allied with Indian tribes on American soil, allowing Europe to get involved in Indian affairs--with American blessing even--would have made no sense at all. Therefore, Marshall had no practical reason to side with the Cherokee.

Also, the dissenting opinion withers under scrutiny, and so Marshall may have been justified in rejecting the Cherokee nation's motion. The dissent's author, Justice Thompson, commits a series of logical errors in his arguments for establishing the Cherokee as an independent nation. He says that if Georgia had bought land from the Cherokee and refused to pay for the land, then the Court would recognize the Cherokee as an independent nation.[27] However, Thompson severely misses the point: he tries to compare what would have been a commercial case that likely would have been brought first in a lower federal court with what, in *Cherokee*, was an appeal for an original ruling while considering the Cherokee a foreign nation. The Cherokee did not have to be a foreign nation to sue for payment, though; they only needed standing in court or, at the very least, a lawyer who could represent them. Thompson further claims that "if they, as a nation, are competent to make a treaty or contract, it would seem to me to be a strange inconsistency to deny to them the right and the power to enforce such a contract."[28] Of course, under the treaties the Cherokee signed, they seem to have signed away their independence.[29] Further, signing a treaty does not necessarily make a nation independent. Scotland provides the greatest example; they and England signed an agreement in 1707 that joined the two nations and made Scotland subservient to England. Here, Scotland indeed signed a treaty, but no one considers them an independent nation today just because they signed an agreement in the

past. When the dissent seems weak, it makes it even easier for Marshall to rule as he did, especially since he also had very pragmatic reasons to do so.

Even so, Marshall seemed open to decide the "question of right...in a proper case with proper parties."[30] Samuel Worcester provided just that opportunity; he and colleague John Thompson were arrested in mid-March 1831 for being on Cherokee lands without permission from Georgia. The judge they faced, wary to prevent a test case from advancing beyond his court, released the men by saying that they were federal agents, whom the law exempted. He based his decision on the fact that Worcester was the postmaster in the Cherokee town of New Echota and that both of them qualified as federal agents because the War Department gave money to missionaries to educate the Indians. However, Georgia's governor George Gilmer made sure that the Postal Service promptly fired Worcester and secured an opinion from the War Department that missionaries were not truly federal agents.[31] After all of this occurred, the Georgia authorities had no choice but to arrest Worcester once again. He came before the court again, this time with fellow missionary Elizur Butler, and both were convicted of violating Georgia's law against living in Cherokee lands without permission and sentenced to four years of hard labor.

Their case moved quickly through the system, and it came before the Supreme Court as *Worcester v. Georgia* in February of 1832.[32] As in *Cherokee Nation v. Georgia*, the plaintiffs sued Georgia in the Supreme Court under Article 25 of the Judiciary Act, which allowed the Supreme Court to overturn a state law or court decision if it "has been shown to be repugnant to the constitution, laws, and treaties of the United States."[33] Worcester and Butler's attorneys, William Wirt and John Sergeant,[34] claimed Georgia used an unconstitutional law to convict the two missionaries. Therefore, Wirt and Sergeant said, the Supreme Court should overturn Worcester and Butler's convictions and declare the Georgia law null and void, which the Supreme Court had power to do under the Judiciary Act.

Of course, the lawyers provided the Court specific reasons for believing Georgia's law was unconstitutional. They used, as they did in *Cherokee Nation*, the Supremacy Clause of Article VI in the U.S. Constitution to declare Georgia's law usurped the federal government's power by overriding provisions of the Treaty of Hopewell. Most notably, they pointed to Articles 3 and 9 of the Treaty, which placed the Cherokee under the sole protection of the United States and gave Congress the sole power to regulate Cherokee affairs--other than the Cherokee government, of course.[35] Also, as in *Cherokee Nation*, they argued that the treaties between the Cherokee and the United States were contracts. By passing a law concerning the Cherokee, Georgia broke the Treaty of Hopewell and thereby obstructed a contract, which is expressly forbidden in Article I, Section 10 of the U.S. Constitution.[36]

Georgia again refused to reply to the plaintiffs' claims, file a legal brief, or appear for oral arguments in the Court. They once again denied that the Supreme Court had power to oversee state business. For these reasons, *Worcester v. Georgia*, along with South Carolina's nullification of federal tariffs, fell into the ever-growing mess that was the states' rights debate of the early 1830s.[37]

Arguments lasted three days, and just over a week later, the Supreme Court handed down its decision.[38] In a unanimous decision, the Supreme Court sided with Worcester and Butler.[39] The decision was not fully unanimous though; Justice Baldwin believed that the case was not properly filed but ultimately sided with the rest of the justices, signing Justice McLean's concurring opinion.[40]

Marshall wrote for the majority, making a sweeping decision against Georgia. In it, he very simply declared that "the acts of Georgia are repugnant to the constitution, laws, and treaties of the United States,"[41] and therefore the law was null and void and the prisoners should go free as soon as possible. Marshall agreed with the reasoning that Wirt and Sergeant had put forth in their briefs and went further to explain the reasons the Court sided with their arguments. He pointed to the Compact of 1802, saying Georgia had recognized the United States held sole power over the Cherokee. They also recognized in the Compact that no state could interfere in Cherokee affairs or lands. He also defended the sovereignty of the Cherokee nation against the United States government, even though he maintained that the Cherokee were still a domestic dependent nation. He said that the United States merely secured the rights to regulate trade between the two nations and to remove the Cherokee from their lands whenever both sides agreed on terms for doing so.[42]

As strong (and largely praised) as this ruling was, it made little difference in the circumstances of the times. Andrew Jackson simply chose not to enforce the ruling when the Georgia courts refused to overturn Worcester and Butler's

convictions. Jackson's decision not to enforce *Worcester* illustrated the Supreme Court's weakness as an institution. The justices had no ability to force Georgia to overturn their decision without the United States government. They could have authorized a U.S. Marshal to go to Georgia to free the missionaries, but they adjourned before Georgia announced that they would ignore the ruling in *Worcester*.[43]

During the Supreme Court's recess, other events transpired that kept the Court from forcing its hand. On December 22, 1832, Georgia Governor Wilson Lumpkin pardoned the missionaries and repealed the law that the Supreme Court declared unconstitutional. This move freed the prisoners and took the unconstitutional law off the books as the Court wanted, but Georgia's leaders could claim that they did so voluntarily, thereby allowing them to still not recognize the Supreme Court's jurisdiction over individual states.[44]

The pardons also removed Georgia from the states' rights debates. Many states' rights supporters hoped that Georgia would join South Carolina against the federal government in saying that an individual state could nullify federal laws and rulings when they hurt that state's interests. Therefore, the news that Lumpkin had repealed the law and pardoned Worcester and Butler angered many of them.[45] This move allowed Andrew Jackson to move against a friendless (as far as states were concerned, at least) South Carolina. He threatened to send troops to enforce the tariff there, and so South Carolina gave in and respected the tariff. When Georgia removed itself from the states' rights issue, they relegated the case to a secondary role in the controversy, and history has remembered the Cherokee cases as such.

Jackson did not necessarily abstain from the *Worcester* controversies, though. He quite simply refused to do anything about the decision and Georgia's refusal to follow it. He has received criticism throughout history as well as in his own time. John Ross wrote an essay blasting Jackson for doing nothing in Georgia while pursuing the matters in South Carolina. Ross reasoned that Jackson could not continue to act in such a manner without being inconsistent. His logic was impeccable, but it did not change Jackson's behavior at all. Only Congress could force Jackson to act on the *Worcester* decision or could change his actions toward the Cherokee, but they did nothing at all.[46]
Congress did nothing because the Cherokee nation's supporters in Washington and around the country had simply given up after Jackson refused to take action. Wirt advised Ross against filing another suit because he believed the Cherokee would gain nothing from it.[47] Supreme Court Justice John McLean, who wrote the concurring opinion in *Worcester*, also told the Cherokee delegation to the Supreme Court in 1832 that they should expect nothing of a Court decision in their favor, and further, he encouraged them to sign a removal treaty. The Senate's most enthusiastic supporter of the Cherokee, Theodore Freylinghuysen of New Jersey, told the tribe's leaders that they had no options left and should sign a removal treaty if a gracious one was presented to them. Secretary of War Cass began negotiating with the Cherokee on a removal treaty soon after it became painfully clear that Jackson had no intentions of enforcing *Worcester*.[48] What occurred after the Cherokee agreed to remove still haunts the United States and shall always remain a stain upon her history.
The United States severely failed the Cherokee nation in the Cherokee cases and in the negotiations between the two nations afterwards. However, the Constitution did not fail the Cherokee; after all, the Supreme Court did everything the Constitution allowed to protect the Cherokee. If the Constitution did not fail to protect the Cherokee and the other Indian nations forcibly removed in the same time frame, then the agents of the Constitution would have to shoulder the blame.
This blame has never fallen far from Andrew Jackson. His inaction forced the Cherokee to submit to the federal government and indirectly caused the tragic Cherokee removal across the Mississippi River. No law required Jackson to enforce the Supreme Court's decision, but the Constitution quite clearly expects the President to enforce the Supreme Court's decisions. Then again, the Framers did not expect a President to abuse his power and, in bad faith, sidestep the Constitution in order to insert personal interests into public actions.[49] Otherwise, the Framers would have stipulated the President's powers and responsibilities more carefully. Nevertheless, the Framers did not force the President to reasonably prosecute the powers given to him. Perhaps they should have, since Andrew Jackson's failure to do so concerning the Cherokee cases, particularly *Worcester v. Georgia*, ultimately resulted in the deaths of thousands of Cherokees on the Trail of Tears. If Jackson had merely acted more reasonably, the Cherokee could have come to terms with the United States much more easily, and removal could have been done much more practically and safely. Perhaps history has largely forgotten the Cherokee cases, but history will long remember the events that the cases could have so easily prevented if Andrew Jackson had only done his job.

[1] The United States Army forcibly removed the 14,000 members of the Creek nation in 1836, less than a year after the Cherokee arrived in the Indian Territory. Tim Alan Garrison, "Beyond *Worcester*: The Alabama Supreme Court and the [sic] Sovereignty of the Creek Nation," *Journal of the Early Republic* 19, 3 (Fall 1999), 448.

[2] Jill Norgren, *The Cherokee Cases: The Confrontation of Law and Politics* (New York: McGraw-Hill, Inc., 1996), 31.

[3] Ibid.

[4] "ART. 3. The Said Indians...do acknowledge the Cherokees to be under the protection of the United States of America, and of no other sovereign whatsoever." United States of America, "Treaty of Hopewell with the Cherokees," 28 November 1785 [database online]; available from the Texas Tech University Department of English.

[5] "It is hereby agreed...that the United States will cause certain valuable Indian goods now in the state of Georgia, to be delivered to the said Creek nation." United States of America, "Treaty of New York City, New York with the Creeks," 7 August 1790 [database online]; available from the Avalon Project at the Yale Law School.

[6] Norgren, *The Cherokee Cases*, 32.

[7] Ibid., 72.

[8] Ibid., 84.

[9] Ibid., 85.

[10] Ibid., 110.

[11] Ibid., 30.

[12] United States, "Treaty of Hopewell."

[13] U.S. Constitution, art. 3, sec. 2.

[14] Ibid., art. 3, sec. 1.

[15] Ibid, art. 6.

[16] Ibid., art. 1, sec. 10.

[17] Supreme Court of the United States, *Cherokee Nation v. Georgia* 30 U.S. 1 (1831) [database online]; available from Lexis-Nexis.

[18] Norgren, *The Cherokee Cases*, 100.

[19] Supreme Court, *Cherokee Nation v. Georgia*.

[20] Philip P. Frickey, "Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law," *Harvard Law Review* 107, 2 (December 1993): 390.

[21] Supreme Court, *Cherokee Nation v. Georgia*.

[22] "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." - Ibid.

[23] Norgren, *The Cherokee Cases*, 91; and Supreme Court of the United States, *Fletcher v. Peck* 10 U.S. 87 (1810) [database online], available from Lexis-Nexis.

[24] Frickey, "Marshalling Past and Present," 388.

[25] Marshall was in his mid-seventies when the Cherokee cases came before the Supreme Court.

[26] Norgren, *The Cherokee Cases*, 104-5.

[27] Supreme Court, *Cherokee Nation v. Georgia*.

[28] Ibid.

[29] The Cherokee placed themselves under the sole protection of the United States in Articles 3 and 9 of the Treaty of Hopewell. That in and of itself seems to suggest that the Cherokee gave up their independence, or at least some of it, in the Treaty. United States of America, "Treaty of Hopewell."

[30] Supreme Court, *Cherokee Nation v. Georgia*.

[31] Edwin A. Miles, "After John Marshall's Decision: *Worcester v. Georgia* and the Nullification Crisis," *The Journal of Southern History* 39, 4 (November 1973): 522-3.

[32] Supreme Court of the United States, *Worcester v. Georgia* 31 U.S. 515 (1832) [database online]; available from Lexis-Nexis.

[33] Ibid.

[34] Wirt and Sergeant also represented the Cherokee nation in *Cherokee Nation v. Georgia*. Norgren, *The Cherokee Cases*, 98-99.

[35] "ART. 9. For the benefit and comfort of the Indians...the United States Congress assembled shall have the sole and exclusive right of...managing all their affairs in such manner as they think proper." (See note 4 for the text of Article 3.) United States, "Treaty of Hopewell."

[36] Supreme Court, *Worcester v. Georgia*.

[37] The controversy surrounding the case and the nullification debate seem inexorably tied because they occurred at the same time. They do indeed intertwine on numerous occasions. These occasions will be discussed later, as they apply more after the case was decided than before. Miles, “After John Marshall’s Decision,” 542.

[38] The opinions for *Worcester v. Georgia* were handed down March 3, 1832, only twelve days after oral arguments commenced on the case. Norgren, *The Cherokee Cases*, 117.

[39] Seven justices sat on the Supreme Court’s bench at the time both cases were argued and decided. However, one justice fell ill during both of the Court's terms in 1831 and 1832 and abstained from a number of cases. In *Cherokee Nation*, Justice Duvall missed the proceedings; in *Worcester*, Justice Johnson was the one who fell ill and missed the case. Many historians and legal scholars believe that, upon examining his opinion in *Cherokee Nation*, Johnson may have been the sole dissenter had he been present. Norgren, *The Cherokee Cases*, 107, 117; and Frickey, "Marshalling Past and Present," 399.

[40] Baldwin said that the writ of error petition that the Court sent to Georgia should have been returned by the state court itself rather than its clerk, who actually returned the petition. Marshall addresses these concerns expressly in his opinion, using *M'Culloch v. Maryland* and *Brown v. Maryland* as examples to show that the clerk could return petitions. - Supreme Court, *Worcester v. Georgia*.

[41] Ibid.

[42] Marshall expressly referred to parts of the Treaty of Hopewell that appeared to give the United States much more power than the Court recognized, but he reconciled the difference by arguing that the Cherokee should receive the benefit of the doubt. As he said it, "It is reasonable to suppose, that the Indians...certainly were not critical judges of our language," and that the Cherokee were unable to "distinguish the word ‘allotted’ from the words ‘marked out.’" The actual subject of the contract was the dividing line between the two nations." He also later says that the Cherokee negotiators likely did not know that "hunting grounds" in English means only land that the Cherokee needed for hunting, not their entire territory. Therefore, they were still entitled to all the lands guaranteed them in the several treaties they made with the United States. Ibid.

[43] Norgren, *The Cherokee Cases*, 123.

[44] Miles, "After John Marshall's Decision," 535.

[45] Ibid., 542.

[46] Norgren, *The Cherokee Cases*, 130.

[47] Ibid., 127.

[48] Miles, "After John Marshall's Decision," 529-0.

[49] It should be noted that Jackson's plantation, the Hermitage, actually sat on land that the Cherokee ceded to the United States in the Treaty of Hopewell. During Jackson’s administration, the Hermitage sat roughly one hundred miles from Cherokee lands, and the Cherokee still occupied roughly one-fifth of the land encompassing his home state of Tennessee. Additionally, it is very well known that Jackson made no qualms about his past as an Indian fighter and his hatred of Indians. This should lead most reasonable people to infer that Jackson simply wanted the Cherokee out of his home state and away from his plantation. Anon., "Cherokee Land Cessions," *State Maps on File: Southeast* (New York: Facts on File Publications, 1984), 9.17.