

Prosecution Witness: Reverend Samuel Worcester

(excerpt from piece cited below)

Samuel Worcester, a native of Vermont, was a minister affiliated with the American Board of Commissioners for Foreign Missions (ABCFM). In 1825 the board sent Worcester to join their Cherokee mission in Brainerd, Tennessee. Two years later the board ordered Worcester to the Cherokee national capital of New Echota, in Georgia. Upon his arrival Worcester began working with [Elias Boudinot](#), the editor of the [Cherokee Phoenix](#), to translate the Bible and other materials into the Cherokee language. Over time Worcester became a close friend of the Cherokee leaders and often advised them about their political and legal rights under the Constitution and federal-Cherokee treaties. Another ABCFM missionary, Elizur Butler, who was also a physician, left New England in the early 1820s, eventually being assigned to the Hawaii mission near Rome in 1826.

The Georgia government recognized that Worcester was influential in the Cherokee resistance movement and enacted a law that prohibited "white persons" from residing within the Cherokee Nation without permission from the state. Georgia gave the missionaries until March 1, 1831, to obtain a license of residency or leave the Cherokee Nation. Several missionaries, including Worcester and Butler, decided to challenge the law and refused to leave the state. On March 12, 1831, Georgia authorities arrested Worcester, Butler, and several other missionaries and teachers for violating the new law. A Georgia judge released Worcester when his lawyers argued that he served as federal postmaster at New Echota and was therefore in the Cherokee Nation under authority of the federal government. Governor George Gilmer persuaded the United States to relieve Worcester of his postmaster duties and then ordered the missionaries to leave the state.

Three of the missionaries gave up the fight and abandoned their missions. Worcester, Butler, and several of their colleagues remained, and on July 7 the Georgia Guard again arrested Worcester and Butler, and nine other missionaries. After posting bond Worcester returned to New Echota to take care of his wife and daughter, who was seriously ill. Understanding that the Georgia governor would continue to harass him, he left them and relocated to the Brainerd mission. At that point, he received word that his daughter had died. When he returned to New Echota to console his wife, the Georgia Guard arrested him for the third time. Worcester explained why he had returned, and the commander of the guard temporarily released him. In September the missionaries were tried, convicted, and sentenced to four years in prison at hard labor.

The missionaries, represented by lawyers hired by the Cherokee Nation, appealed to the U.S. Supreme Court. In *Worcester v. Georgia*, the court struck down Georgia's extension laws.

Garrison, Tim Alan. "Worcester v. Georgia (1832)." *The New Georgia Encyclopedia: Government and Politics*. 2004-2005. 6 May 2005. <http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2720>.

See also: biography on Worcester on the Cherokee.org site:
<http://www.cherokee.org/culture/HistoryPage.asp?ID=60>.

Prosecution Witness: John Marshall (1755–1835)

Biography

American jurist, 4th Chief Justice of the United States (1801–35), b. Virginia.

In his long service on the bench, Marshall raised the Supreme Court from an anomalous position in the federal scheme to power and majesty, and he molded the Constitution by the breadth and wisdom of his interpretation; he eminently deserves the appellation the Great Chief Justice. He dominated the court equally by his personality and his ability, and his achievements were made in spite of strong disagreements with Jefferson and later Presidents.

A loyal Federalist, Marshall saw in the Constitution the instrument of national unity and federal power and the guarantee of the security of private property. He made incontrovertible the previously uncertain right of the Supreme Court to review federal and state laws and to pronounce final judgment on their constitutionality. He viewed the Constitution on the one hand as a precise document setting forth specific powers and on the other hand as a living instrument that should be broadly interpreted so as to give the federal government the means to act effectively within its limited sphere (see McCulloch v. Maryland).

His opinion in the Dartmouth College Case was the most famous of those that dealt with the constitutional requirement of the inviolability of contract, another favorite theme with Marshall. His interpretation of the interstate commerce clause of the Constitution, most notably in Gibbons v. Ogden, made it a powerful extension of federal power at the expense of the states. In general Marshall opposed states' rights doctrines, and there were many criticisms advanced against him and against the increasing prestige of the Supreme Court.

The sometimes undignified quarrel with Jefferson (which had one of its earliest expressions in Marbury v. Madison) reached a high point in the trial (1807) of Aaron Burr for treason. Marshall presided as circuit judge and interpreted the clause in the Constitution requiring proof of an “overt act” for conviction of treason so that Burr escaped conviction because he had engaged only in a conspiracy. Marshall's difficulties with President Jackson reached their peak when Marshall declared against Georgia in the matter of expelling the Cherokee, a decision that the state flouted.

“John Marshall.” ["http://www.factmonster.com/ce6/html."](http://www.factmonster.com/ce6/html) *The Columbia Electronic Encyclopedia*. © 1994, 2000-2005, on Fact Monster. © 2000–2005 Pearson Education, publishing as Fact Monster. 06 May. 2005.
<http://www.factmonster.com/ce6/people/A0859499>.

Chief Justice John Marshall: Excerpts from the Majority Opinion in *Worcester v. Georgia*

1832

MARSHALL, C. J. 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 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, all are involved in the subject now to be considered. . . .

We must inquire and decide whether the act of the Legislature of Georgia under which the plaintiff in error has been persecuted and condemned, be consisted with, or repugnant to the Constitution, laws and treaties of the United States.

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 neighboring 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 licence or permit from his excellency the governor . . . 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 extraterritorial power of every Legislature being limited in its action to its own citizens or subjects, the very passage of this act is an assertion of jurisdiction over the Cherokee Nation, and of the rights and powers consequent on jurisdiction.

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

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. . . .

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 the plaintiff in error was prosecuted is consequently void, and the judgment a nullity. . . . The Acts 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, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guarantee to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognize the pre-existing power of the nation to govern itself.

They 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 the plaintiff, 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. . . .

Judgement reversed.

Marshall, John. "Worcester v. Georgia." *Archives of the West*. © 2001 The West Film Project and [WETA](http://www.pbs.org/weta/thewest/resources/archives/two/worcestr.htm). 6 May 2005.
<http://www.pbs.org/weta/thewest/resources/archives/two/worcestr.htm>.