

25 A Time to Weep



In 1832 Black Hawk and his son Whirling Thunder led a force of Sauk and Fox Indians in a fierce attempt to get back their homelands in Illinois.

It was called the "Trail of Tears." And it was a trail, a long trail west, that people were forced to walk. As they went they wept, because they didn't want to go. They didn't want to leave their homes, their farms, their hunting grounds, the land of their fathers and mothers.

The people who wept were Native Americans. They were being forced to go by white soldiers with guns, and by a president, Andrew Jackson, who was famous as an Indian fighter.

The Cherokees were stubborn. They refused to move west. They refused to give up their land. They appealed to the government. Two congressmen, Henry Clay and Daniel Webster, said the Indians were right: their land was their land and no one else's. In 1832 Clay ran for president against Andrew Jackson (who was seeking a second term). The Cherokees prayed that Clay would win—everyone seemed to think he would—but he didn't. Jackson was popular. He was a man of the people, a man of the frontier, in many ways a good president. Most U.S. citizens agreed that the Indians should move west. They approved of Jackson's Indian policy. But sometimes the majority is not right.

The case of the Cherokees was argued before the Supreme Court. Court cases are named for those who are on opposite sides in the conflict. This case was called *Worcester v. Georgia*. The *v* is for *versus*, which is Latin and means "against," or "opposed to." It was Georgia (then the largest of the 27 states) against Worcester.

Worcester (say: WUSS-ter) was a man named Samuel Worcester.

Prey to Plunderers

Evan Jones, a missionary, was a witness to the Cherokee exodus in 1838:

The Cherokees are nearly all prisoners. They have been dragged from their houses, and encamped at the forts and military posts, all over the nation. In Georgia, especially, multitudes were allowed no time to take anything with them, except the clothes they had on. Well-furnished houses were left a prey to plunderers, who, like hungry wolves, follow in the train of the captors. These wretches rifle the houses, and strip the helpless, unoffending owners of all they have on earth. Females, who have habituated to comforts and comparative affluence, are driven on foot before the bayonets of brutal men.



When the Supreme Court ruled that the Cherokees had the right to live in their own nation, President Andrew Jackson—shown here as a “Great White Father,” with Indians reduced to the status of dolls or puppets—said, “John Marshall has made his decision; now let him enforce it.”

He was a Congregational minister, a missionary, who had come to the Indian territory to teach school and to preach Christian doctrine.

Georgia passed a law saying all white men in the Indian portion of the state needed to be licensed. The law was really meant to get rid of the preachers who were taking the side of the Cherokees. No one would give Sam Worcester a license.

Worcester was arrested—twice. In order to stay out of jail, he moved to nearby North Carolina and continued his work from there. His wife and children stayed in Georgia. Then his baby died. When he came home to be with his wife Worcester was arrested again. He was tried, found guilty, and sentenced to four years in prison at hard labor. He appealed his case to the Supreme Court.

The old man who was chief justice of the Supreme Court could remember British times and the Indian treaties of the old days. He was a man with a mind as straight as an Indian’s arrow. Do you know his

name? (Hint: he was Thomas Jefferson’s cousin.) The great chief justice wrote a famous opinion in *Worcester v. Georgia*. (A justice’s written words are called an *opinion*.) That opinion is still read and cited as a statement of fairness on human rights.

It went beyond the case of Samuel Worcester. The court ruled on the issue of Indian ownership of their own land and their right to

govern themselves. Great Britain, said the chief justice,

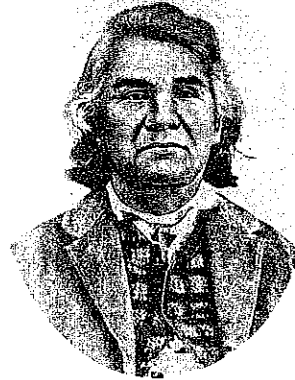
considered [the Indians] as nations capable of maintaining the relations of peace and war; of governing themselves...and she made treaties with them, the obligation of which she acknowledged.

Now here is the important part:

The Cherokee nation, then, is a distinct community, occupying its own territory...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.

The most famous of all chief justices (yes, it was John Marshall) had a whole lot more to say, but you get the idea. The Cherokees had won the right to their own land. (And to decide if Sam Worcester could teach and live on that land.) The Supreme Court said that *the Indians have a present right of possession*. In other words, it was unconstitutional to push the Indians from their land.

Only it didn't matter. The president—Andrew Jackson—refused to enforce the law. Our American system of checks and balances failed. I'm sorry to have to write this. It was a terrible moment in U.S. history. But the truth needs to be told.



The Cherokee leader Stand Watie resisted removal. The Union's abandonment of the Cherokees backfired later: many, such as Watie, who led a regiment, fought for the South in the Civil War.

Falling Trees—and Hills Bare of Bear

Frenchman François André Michaux (FRON-swah-ON-dray-me-SHO) spent years in America studying its trees and flowers. He is known as the "father of American forestry." Michaux was horrified by the waste of oak, hemlock, and cypress. Homes and factories and steamboats and railroads were burning forests as fuel. Timber was scarce in the East, and so were native grasses; they had been destroyed by overgrazing.

Farmers had to send to England for clover and timothy grass seed to sow for their cattle to eat. A few people, like Michaux, worried about nature and the environment, but most Americans thought the land was



endless, and its resources endless, too. They weren't, of course. Before the end of the 18th century, just about all the original forest east of the Appalachian Mountains had been cut and burned.

In 1800, Daniel Boone returned to Kentucky (he'd been away for 20 years) and was depressed by what he found. When he had lived

there, he said, *you could not have walked more than a mile in any direction without shooting a Buck or a Bear. Thousands of Buffalo roamed the Kentucky hills and land that looked as if it never would become poor. But when I [returned]...a few signs only of Bear were to be seen. As to Deer I saw none.*

The Supreme Court ruled that the Cherokees' land belonged to them. The Court also said that the Indians were not able to be entirely independent of the government. "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 on its kindness and its power; appeal to it for relief of their wants; and address the President as their great father."

People in Georgia wanted Indian land. (I don't want to pick just on Georgia. The same thing happened in many other states.) So the Indians of the eastern woodlands went west. Some fought before they went. The Sauk and Fox in Illinois fought especially hard, but their cause was hopeless.

The Choctaws were first; they moved in 1831. Three years later the Chickasaws trudged west. The Creeks signed a treaty that said "they shall be free to go or stay, as they please." It didn't matter. In 1836 they were sent west—some with chains around their necks.

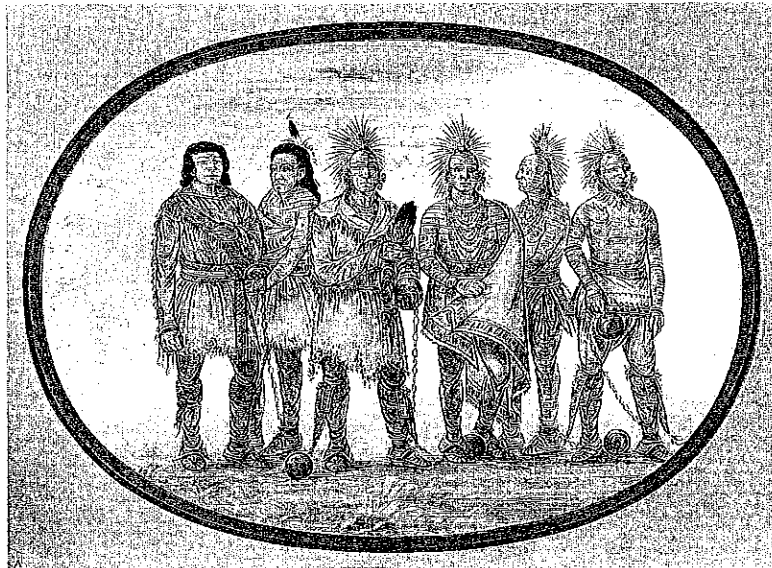
The Cherokees set out in 1838. They left their homes and walked west, against their wishes. They went from their lush, fertile mountain lands to a region beyond the Mississippi that few people wanted

Barron v. Baltimore

John Barron owned a wharf (a boat dock) in Baltimore harbor. It was a very profitable wharf, because it was on deep water and big clipper ships and cargo carriers could dock and unload there. Because of its fine harbor, Baltimore had grown large—bigger than the Maryland capital, Annapolis. That growth had led to a lot of construction. The city of Baltimore was careless with the dirt from all the building and roadmaking. Every time it rained, that dirt—often called "silt"—washed into the harbor. Most of it seemed to be settling right at Barron's Wharf.

Barron and 10 other wharf owners wrote to the city, saying: *For within one year last past, many parts of Our Wharves have been filled up with sand and dirt from four to six feet....If the City Commissioners continue digging ditches to alter the Water Course...our Wharves will be useless to us and intirely ruined.* But the city of Baltimore paid no attention, so the dock owners went to court asking that the city dredge up the sand.

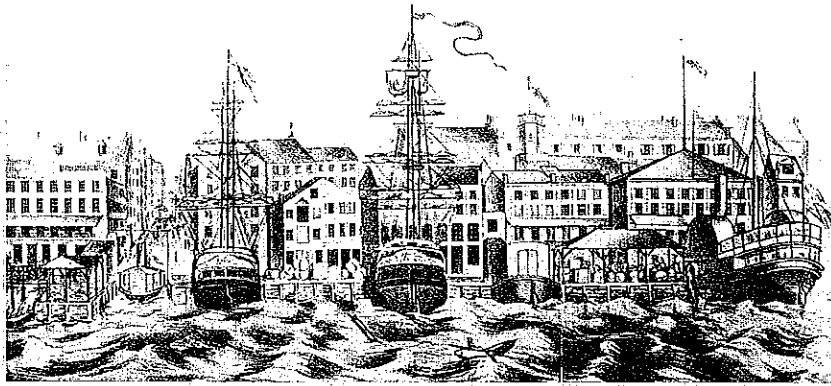
The Constitution's Fifth Amendment says *private property shall not be taken for public use without just compensation.* (Just means "fair." Compensation is "payment.") The dock owners'



Black Hawk and five other Sauk and Fox leaders wearing ball and chain after their rebellion and capture in 1832. Afterward, their tribes were forced to move west—again and again and again.

Protected States' Rights—Not Citizens'

property was being used as a public dump site. The Baltimore court said the dock owners should be compensated. But the city of Baltimore didn't want to pay. The city appealed the case, all the way to the Supreme Court. It was 1831, and this was Chief Justice John Marshall's last important constitutional case (and his first Bill of Rights case).



A busy wharf similar to John Barron's, crowded with ships loading and unloading.

He didn't seem to think it a difficult case at all.

Marshall had created judicial review when he wrote these words: *It is...the duty of the judicial department to say what the law is.* What does this have to do with John Barron and his wharf? Well, as you just read, the Constitution (which is the highest law of the land) has words about private property and just compensation. They come from the Fifth Amendment, which is part of the Bill of Rights—and that is part of the Constitution; so the dock owners thought they were protected.

But, as you know, our nation was an experiment. We were trying to work out that federal system which divides power between the states and the central government. Justice Marshall said that the

Constitution and its Bill of Rights had nothing to do with the states (except in those parts that specifically deal with the states). This is what Justice Marshall said. *The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states.* Does that mean a state could take away your right to free speech? Yes, it does.

Remember, the founders worried about big-government power. They didn't realize state and local governments could be equally dangerous. (It was the state governments that were insisting on slavery.) John Marshall said state constitutions and state bills

of rights were meant to protect citizens from state power. What if a state was unfair to a citizen? It was no business of the Supreme Court.

That idea did get changed. There was a war, a civil war, before it happened. Then three new amendments enlarged the Bill of Rights. One of them—it is the Fourteenth Amendment—says: *No State shall make or enforce any law which shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

That came too late for John Barron, but today, the guarantees of the first 10 amendments are yours in federal, state, and local courts.

(at the time). They walked—the children, their parents, and the old people—on hot days and cold. They walked in rain and windstorm. Often there was not enough food; often there was no shelter. Always there was sadness, for one of every four of them died during the cruel march.

The government said the new land would be theirs forever. But when the white people moved west they forgot their promises to the Indians. They took their land again, and again, and again.