

**INDIAN REMOVAL ACT AND U.S.  
SUPREME COURT - DEGRADATION  
OF INDIAN TRIBAL SOVEREIGNTY**

## Historical Basis – Spanish Law

- *Inter Caetera*, May 3, 1493 – Papal Bull granting lands discovered by Christopher Columbus to Catholic Majesties of Ferdinand and Isabella of Spain
- “...that Catholic faith and Christian religion be exalted and everywhere increased and spread .. that barbarous nations be overthrown ... **provided however they at no time have been in the actual temporal possession of any Christian owner.**”

## Historical Basis – English Law

- 1496, Queen Elizabeth - commission to Cabot's “**to discover countries then unknown to Christian people, and to take possession of them in the name of the King of England.**”
- 1578, Queen Elizabeth - charter to Gilbert “to discover and take possession of such remote, heathen, and barbarous lands, **as were not actually possessed by any Christian prince or people.**”

## France

- France claimed all Canada and Louisiana based on its discovery when Indians occupied almost whole country.

## Holland

- Under orders of East India Company, Holland claimed country from Delaware River (Delaware, Maryland, New Jersey, Pennsylvania) to Hudson River in New York.

## European Wars to Sustain Claim to Disputed Claims of Discovery

- Great Britain and France engaged in war over conflicting claims of discovery.
- Great Britain won all lands east of Mississippi under Paris Treaty of 1763.

Title by Discovery Absolute

- No distinction was made between vacant lands and lands occupied by Indians.

## Land Syndicates

- Land syndicates made up of individual investors begin purchasing lands from Indian tribes prior to American Revolution even though prohibited by Crown and colonies.
- This led to conflicting titles.

# Why Speculate in Land?

Land was a constant.

It was not subject to

- changing fortunes of paper money inflation,
- royal mercantile policies,
- loss of political favor, or
- decline of one's skills through age or poor health.

What land promised was social status, security for one's family, and a legacy for one's children.

## Westward Movement of Colonists

- Speculation fueled by westward movement of colonists.
- Nine out of every ten colonists made their living farming.
- Kentucky -1780s, 20,000; by 1800, 220,000 people.
- Kentucky land all disputed. Courts clogged with lawsuits.

## “Land Exchange”

- Early 1800's, notion of "land exchange" developed to avoid Indian wars.
- American Indians would relinquish land in east in exchange for “equal” or “comparable” land west of Mississippi River.
- 1817- Cherokee agreed to cede certain land in east for land in present-day Arkansas.

1803 Letter from President Jefferson  
to William Henry Harrison

- To promote this disposition to exchange lands ...we shall push our trading uses, and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop them off by a cession of lands ...”

## 1803 Letter from President Jefferson to William Henry Harrison (con't)

- “Should any tribe be foolhardy enough to take up the hatchet at any time, the seizing the whole country of that tribe, and driving them across the Mississippi, as the only condition of peace, would be an example to others, and a furtherance of our final consolidation.”

## 1828 - Goal of American Indian Removal

- Presidential Campaign 1828 - Andrew Jackson - Democratic Party - made American Indian Removal goal - relocating eastern Indians west of Mississippi.

## President Jackson's First Annual Message to Congress, Dec. 8, 1829

- “Our conduct toward these people is deeply interesting to our national character... Our ancestors found them the uncontrolled possessors of these vast regions. **By persuasion and force they have been made to retire from river to river and from mountain to mountain, until some of the tribes have become extinct and others have left but remnants to preserve for awhile their once terrible names.** Surrounded by the whites with their arts of civilization, which by destroying the resources of the savage doom him to weakness and decay, the fate of the Mohegan, the Narragansett, and the Delaware is fast overtaking the Choctaw, the Cherokee, and the Creek. **That this fate surely awaits them if they remain within the limits of the states does not admit of a doubt. Humanity and national honor demand that every effort should be made to avert so great a calamity.”**

## **They May Begin to Dig Their Graves and Prepare to Die**

Alfred Balch appointed as Commissioner of Indian Treaties by President Jackson: "The removal of the Indians would be an act of seeming violence — But it will prove in the end an act of enlarged philanthropy. These untutored sons of the Forest, cannot exist in a state of Independence, in the vicinity of the white man. If they will persist in remaining where they are, they may begin to dig their graves and prepare to die."

## The Indian Removal Act

Indian Removal Act signed by President Andrew Jackson on May 28, 1830, authorizing president to grant unsettled lands west of Mississippi in exchange for Indian lands within existing state borders. Vote -- 102-97.

## Andrew Jackson, 1833

- “They have neither the intelligence, the industry, nor the moral habits, nor the desire of improvement which are essential to any favorable change in their condition. Established in the midst of another and a superior race and without appreciating the causes of their inferiority or seeking to control them, they must necessarily yield to the force of circumstances and ere long disappear.” Andrew Jackson, 1833

## "Five Civilized Tribes"

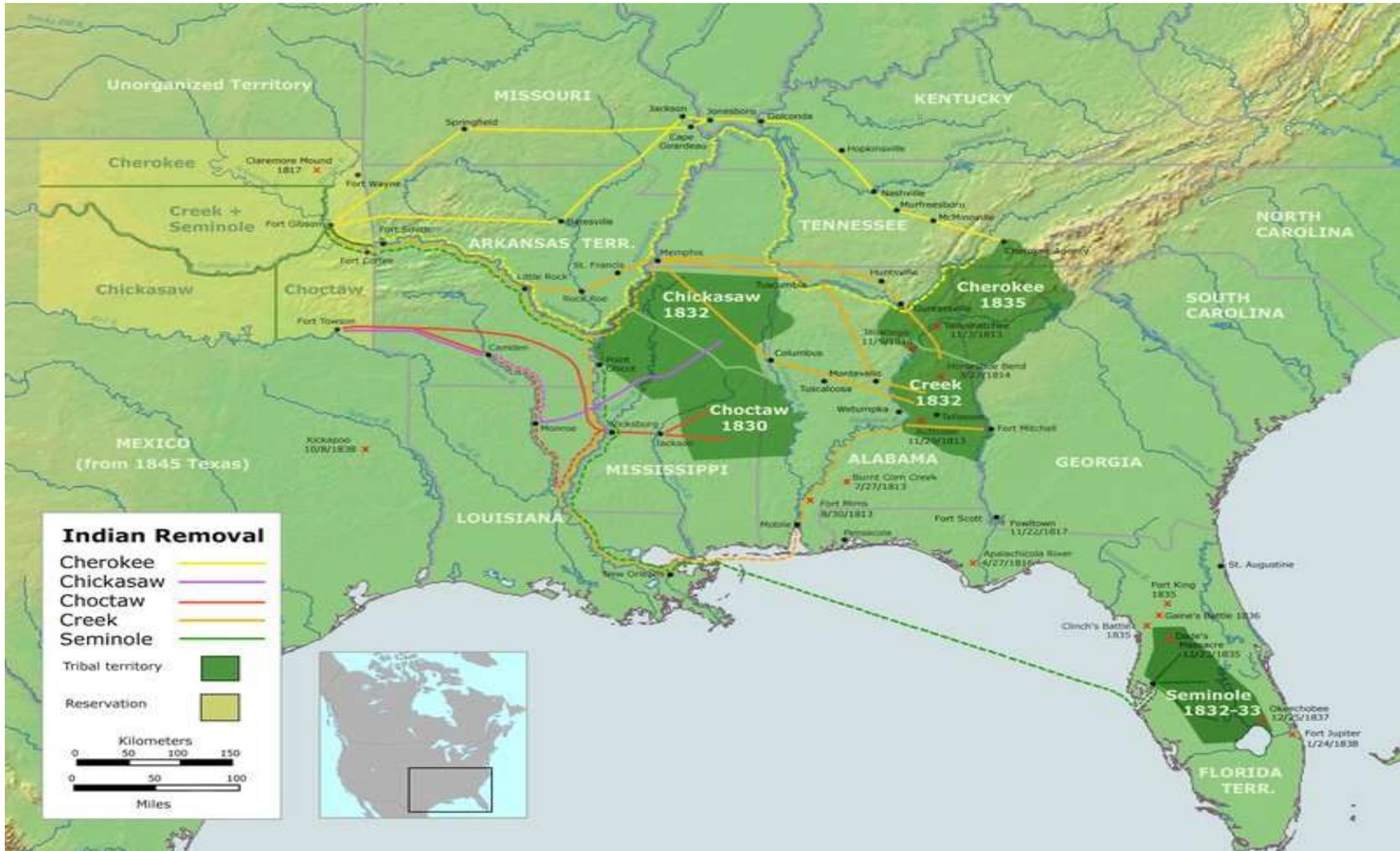
- In 1830, "Five Civilized Tribes" -- Chickasaw, Choctaw, Creek, Seminole and Cherokee Tribes were still living east of Mississippi River.
- Many tribesmen adopted various aspects of European - American culture, including Christianity.

## "Five Civilized Tribes "(con't)

- System of writing their own language, developed by Sequoyah, and published newspaper in Cherokee and English.
- Enacted Constitution based on US Constitution.
- Position precarious.

## Indian Policy 1829-1837

- Settlers and speculators wanted tribal land.
- Governments of several U. S. states desired that all tribal lands within their boundaries be placed under state jurisdiction.



## Indian Legal Conflict -Self-Dealing of Chief Justice Marshall, U.S. Supreme Court

**Throughout late 1820s, legal conflict over ownership of Indian lands led issue to U.S. Supreme Court.**

**All of main political leaders and financiers of time were engaged in land speculation: George Washington, Benjamin Franklin, James Madison, John Marshall, Henry Knox, Alexander Hamilton and Thomas Jefferson.**

## Thomas Marshall's Land Speculation – Kentucky Surveyor

- In 1780, Thomas Marshall (U.S. Supreme Court Chief Justice John Marshall's father) purchased land in Kentucky territory.
- Superintendent of Lord Fairfax's Estate
- Surveyor Kentucky
- Daniel Boone - Deputy Surveyor
- Great demand due to interest in acquiring land. Title could not be established without survey.

## Thomas Marshall's Land Speculation - Collector of Revenue for Kentucky

- Dangerous job due to tax on whiskey distillers who refused to pay -- People of Lexington hung Thomas Marshall in effigy. Profitable due to fees collected.
- **Before end of 1780's, Thomas Marshall claimed over 400,000 acres in Kentucky.**

# Chief Justice John Marshall's Personal Interest in *Johnson v. M'Intosh*

- John Marshall's land claims in Virginia - chain of title originating in English crown.
- In order to pay for purchases he practiced law. Later he was appointed Secretary of State and then Justice of U.S. Supreme Court.
- He would locate military warrants land, purchase treasury warrants, have his father survey, and claim them.
- When *Johnson v. M'Intosh*, 21 U.S. 543 (1823) came before Court, it afforded then Chief Justice Marshall opportunity to bolster legitimacy of his family's land claims **to over 600,000 acres in Virginia and Kentucky**. [https://www.umass.edu/legal/derrico/marshall\\_jow.html](https://www.umass.edu/legal/derrico/marshall_jow.html)

## Conflicting Land Titles in *Johnson v. M'Intosh*

- Thomas Johnson had acquired **title to land he purchased in Virginia from members of Illinois and Piankeshaw Indian tribes**. There was no dispute that Chiefs conveying land had authority or that Tribes were in possession of lands they sold.
- William M'Intosh had a **land warrant from U.S. government**, a conveyance of "public lands" to a citizen. These "public lands" were Indian lands that had been granted by Crown of England and devolved to states or United States.
- **Question was whose title would prevail.**
- **Could Indians convey title to land which could be recognized in courts of United States?**

Robertson, Lindsay, *Conquest by Law, How the Discovery of America Dispossessed Indigenous Peoples of Their Lands*, March 2006

- University of Oklahoma Law Professor Robertson, in researching *Johnson v. M'Intosh*, found fifty years of corporate records of the Illinois and Wabash Land Companies in 1991 still intact, preserved by a descendant (Jasper Brinton) of last corporate secretary of Illinois and Wabash Land Companies, John Hill Brinton.
- University of Oklahoma Law Digital Collection consists of 263 original manuscripts, five hand-drawn maps and seven published documents which relate to **United Illinois and Wabash Land Companies Collection** Companies' efforts to acquire title to Indian lands during period 1775 to 1823.

## Fraudulent Case

- These corporate records document how Illinois-Wabash Land Company retained attorney Robert Goodloe Harper to bring Johnson v. M'Intosh case on behalf of Illinois-Wabash Land Company who had acquired significant land base from Indian tribes. Harper based Illinois-Wabash Land Company case on frontier claim so that a decision at circuit court could be appealed directly to Supreme Court.
- Attorney Harper needed defendant who would lay claim to over 2,000 dollars' worth of property so that case could be heard in federal court. He chose William M'Intosh, a fur trader who lived in the region. He chose plaintiff, Johnson, He chose federal judge to hear case.
- Illinois-Wabash Company then funded entire court proceeding, including prosecution and defense.

## Fraudulent Case

- Harper selected great Daniel Webster—powerful orator – as his co-counsel to argue case before U.S. Supreme Court. Harper chose less-qualified attorneys to argue M’Intosh’s case, paid them, and told them what to argue. Harper lost possibly because of Chief Justice Marshall’s self-interest in case.
- Chief Justice Marshall’s decision considered history of colonization and character of indigenous peoples.

## Courts Should Decide Each Case on “Narrowest Grounds”

- Courts should decide each case on “narrowest grounds” – addressing no more than is necessary to resolve dispute before it. This was not done in this case.
- Chief Justice expanded question presented to extend holding to all land purchases by individuals from Indian tribes.

## Broad Ruling Due to Magnitude of Interest

- Chief Justice Marshall recognized this interest in following statement in Court's decision: "After bestowing on this subject a degree of attention which was more required by the magnitude of the interest in litigation..."

## Case Extended to Include all Land Purchases from Indian Tribes

- British Proclamation of 1763 prohibited private purchase of American Indian land. Land purchases were to be made by Crown officials "at some public Meeting or Assembly of the said Indians."
- Johnson's purchases from Indians were void ab initio.
- **This alone would have settled case.**

## Marshall Opinion Even Cited Virginia Statute Referencing Kentucky which Covered His Family's Land Claims

- Virginia, particularly, within whose chartered limits the land in controversy lay, passed an act, in the year 1779, declaring her "exclusive right of pre-emption from the Indians, of all the lands within the limits of her own chartered territory...." [and] proceeded ... to open her land office, for the sale of that country which now constitutes Kentucky, a country, every acre of which was then claimed and possessed by Indians..."
- This reference explicitly included claims in Virginia and Kentucky should there be any question.

## Property Rights Created by Law of Nation in which They Lie – Social Construct

- "... the right of society, to prescribe those rules by which property may be acquired and preserved is not, and cannot be drawn into question; ... the title to lands, especially, is and must be admitted to depend entirely on the law of the nation in which they lie...."
- Property rights are thus created by law; they are a social construct.

## Ample Compensation to Indian Inhabitants - Civilization and Christianity

- “On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire... the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendancy ... they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity...”

Avoiding War between European Countries Simple  
– Title Is Based on Discovery, Consummated by  
Possession

- To avoid conflicting settlements, and consequent war they adopted principle that **“discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession.”**

## Sovereignty of Tribes, as Independent Nations, Necessarily Diminished

- “... [T]he rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it ... but ... **their power to dispose of the soil at their own will was denied by the original fundamental principle, that discovery gave exclusive title to those who made it.**”

## Conquest Gives Title which Courts of Conqueror Cannot Deny

- Marshall explicitly refused to engage critical philosophical questions:
- “We will not enter into the controversy, whether agriculturists, merchants, and manufacturers, have a right, on abstract principles, to expel hunters from the territory they possess, or to contract their limits.  
**Conquest gives a title which the Courts of the conqueror cannot deny...**”

## Discoverer May Appropriate Lands Occupied by Indians

- **Marshall concluded that "... all the nations of Europe, who have acquired territory on this continent, have asserted in themselves, and have recognised in others, the exclusive right of the discoverer to appropriate the lands occupied by the Indians."**

## Colonial Patents Not Nullities

- “Thus has our whole country been granted by the crown while in the occupation of the Indians. ... The governments of New England, New York, New Jersey, Pennsylvania, Maryland, and a part of Carolina, were thus created... These various patents cannot be considered as nullities....”

## United States Acceded to Doctrine of Discovery of European Predecessors

- “The United States ... maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest; and gave also a right to such a degree of sovereignty as the circumstances of the people would allow them to exercise.”

## Title by Conquest Is Acquired and Maintained by Force

- “The title by conquest is acquired and maintained by force. The conqueror prescribes its limits... the conquered shall not be wantonly oppressed... **Most usually they are incorporated with the victorious nation and become subjects or citizens of the government with which they are connected.**”

## Indians Were Fierce Savages Whose Occupation Was War

- **“But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country was to leave the country a wilderness; to govern them as a distinct people was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.”**

## Inevitable Consequence Was European Enforcement of Their Claims by Sword

- “What was the inevitable consequence ...? The Europeans were under the necessity **either of abandoning the country, and relinquishing their pompous claims to it, or of enforcing those claims by the sword, and by the adoption of principles adapted to the condition of a people with whom it was impossible to mix.**”

**The court held that Indians have only a right of occupancy in land they claimed, not title that can be conveyed because they**

**(1) were not Christian;**

**(2) land belonged to United States as victor in Revolutionary War by which they derived title from Crown under European doctrine of discovery; and**

**(3) new Republic wielded sword of conquest.**

**Cherokees were not parties in the case. There were no Indians in courtroom.**

# U.S. Constitution

- U.S. Constitution did not shed much light on this question. Indians are only mentioned twice.
- Article I, Section 2, Clause 3 Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union ... **excluding Indians not taxed...**
- Article I, Section 8 of Constitution states that “The Congress shall have power to **regulate Commerce** with foreign Nations and among the several States, and with the Indian Tribes”, determining that Indian tribes were separate from the federal government, the states, and foreign nations.

## Censoring Chief Justice Marshall

- “Three months after the chief justice delivered the Johnson opinion, Thomas Jefferson complained to Justice William Johnson, “This practice of Judge Marshall, of travelling out of his case to prescribe what the law would be in a moot case not before the court, is very irregular and very censurable.”” *Conquest by Law*, p. 92.

**Second Case of Trilogy:**  
***Cherokee Nation v. Georgia***  
**30 U.S. 1 (1831)**

- **State of Georgia enacted laws that abolished Indian right to sovereignty, self government, and land. President Jackson and Congress refused direct request of Cherokee Nation for federal intervention to uphold tribal treaty rights against Georgia's legislative encroachments on Cherokee tribal sovereignty.**

## Federal Government Offered No Help to Cherokees Against State Encroachment

- As executive and Congressional branches of federal government took no action on behalf of Cherokees, Cherokees filed a claim in U.S. Supreme Court – third branch of our government system. Question was whether U.S. Supreme Court had jurisdiction over case.
- Under U.S. Constitution, U.S. Supreme Court has original jurisdiction over disputes between states, and disputes between United States and a foreign state.

**Supreme Court had to determine whether an Indian tribe is a state or foreign nation or some other entity.**

## Tribes Are Not Foreign Nations

- **Those which reside within acknowledged boundaries of United States can, with strict accuracy, not be denominated foreign nations.**

## Domestic Dependent 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... Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.”

## Completely under Sovereignty and Dominion of United States

- “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.”

## Distinguished from Foreign Nations and States in Constitution

- Constitution empowers Congress to "regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Thus they are distinguished from foreign nations and states.

Proper Subject for Judicial Inquiry and Decision  
– Political Question??

- “The case requires us to control the Legislature of Georgia, and to restrain the exertion of its physical force.... It savours too much of the exercise of political power to be within the proper province of the judicial department.”

## **Split Court**

Court's decision was a split of 2, 2, and 2. Two justices held that Indian tribes have no sovereignty at all; two justices held that Indian tribes were limited dependent sovereigns, and two justices held that Indian tribes were foreign nations with all attributes. Practical effect was that there was no government branch which would stop Georgia in its actions against Cherokees.

**Third Case in Marshall Trilogy**  
***Worcester v. Georgia*, 31 U.S. 515 (1832)**

- **Georgia enacted a series of laws beginning in 1827 which, in effect, would have abolished Cherokee government, distributed Cherokee land among five Georgia counties, prohibited Cherokee legislature and courts from meeting, and annulled all tribal laws, usages, and customs.**

## Georgia Needed to Get Rid of Indians Living in State

- An impoverished Georgia wanted to raise revenues by:
- Encouraging immigration by promising land grants;
- Holding state lotteries for land grants;
- Controlling gold mines in State;
- Encouraging cotton production; and
- Settling ongoing disputes over prior corrupt land grants by State.
- To do this they needed to get rid of Indians living in Georgia.

## Georgia Enacts State Law Purporting to Apply within Cherokee Nation

- Case brought by missionary, Samuel A. Worcester. Worcester condemned to hard labor for four years in penitentiary of Georgia under Georgia statute requiring all white persons residing within limits of Cherokee Nation to have a license or permit from Georgia Governor. Worcester refused to comply with statute.

Discovery Doctrine between European Discoverers Could Not Affect Rights of Those Already in Possession

- Discovery principle “regulated the right given by discovery among the European discoverers, but could not affect the rights of those already in possession, either as aboriginal occupants or as occupants by virtue of a discovery made before the memory of man.”

All Intercourse with Indians Shall Be Carried on  
Exclusively by Federal Government

- Treaties and laws of United States contemplate Indian territory as completely separated from that of States, and provide that all intercourse with them shall be carried on exclusively by federal government.

## Georgia, Herself, Had So Previously Agreed

- Georgia recognized
- universal conviction that Indian nations possessed a full right to lands they occupied until that right should be extinguished by United States, with their consent;
- within their boundary, they possessed rights with which no State could interfere;
- power of regulating intercourse with them was vested in United States.

## **Laws Of Georgia Have No Force within Cherokee Nation**

- **...Cherokee nation is a distinct community, occupying its own territory, with boundaries accurately described, in which laws of Georgia can have no force, and which citizens of Georgia have no right to enter, but with assent of Cherokees themselves, or in conformity with treaties, and with acts of Congress.**

## Worcester Overruled Part of Doctrine of Discovery Assigning Fee Title to Discovering Sovereign

- In *Worcester*, Justice Marshall in a lengthy opinion overruled his opinion in *Johnson v. M'Intosh* nine years previously that doctrine of discovery gave fee title to discovering sovereign.
- **It was too little, too late.**
- **His position was itself rejected in 1835 Supreme Court Term in *Mitchel v. United States*.**

## Doctrines of Federal Indian Law

Three cases: *M'Intosh*, *Cherokee Nation*, and *Worcester* represent Marshall trilogy and fundamentally shaped federal Indian policy and institutionalized major doctrines of federal Indian law.

## U.S. Supreme Court's Ruling Ignored by State of Georgia and President Jackson

- Georgia ignored U.S. Supreme Court's ruling in *Worcester*.
- President Jackson refused to enforce U.S. Supreme Court ruling. He purportedly remarked, "Well, John Marshall has made his decision, now let him enforce it."

1834- Congress Created Indian Territory  
in Present Day Oklahoma for Removal of Indians in  
Southeast



## Cherokee Nation Divided

- Despondent and divided, Cherokee Nation broke into two factions, for or against removal. Chief John Ross led larger group against removal. Major Ridge led smaller group supporting removal.

## Treaty of New Echota

- In 1835 Major Ridge signed a treaty with U.S. government agreeing to removal in exchange for 5 million dollars. Federal and state government were fully aware that Ridge did not represent majority of tribe.
- Three signers of Treaty of New Echota were murdered by their tribe.
- This gave Jackson legal document needed to remove Cherokees.

Letter from Chief John Ross of Cherokee, Georgia,  
1836, Opposing Treaty of New Echota

- By the stipulations of this instrument (Treaty of New Echota), we are despoiled of our private possessions, the indefeasible property of individuals... Our property may be plundered before our eyes; violence may be committed on our persons; even our lives may be taken away, and there is none to regard our complaints.

## Voluntary Removal

- 10,000 Cherokees in favor of Treaty agreed to accept federal government support and move west on their own in two years after signing of Treaty of New Echota in 1835.

## Forcible Removal

- 17,000 Cherokees refused to move. President Van Buren assigned General Winfield Scott to forcibly remove these Cherokees, employing U.S. Army and state militia totaling about 7,000 soldiers.

17,000 Cherokees were brutally rounded up and marched 2,200 miles to Indian territory in Oklahoma.

**As many as 4,000 died along “*Trail of Tears*”.**

Alexis de Tocqueville, French Diplomat, Political Scientist and  
Historian, Traveled across U.S. and Authored *Democracy in  
America*

- At the end of the year 1831, while I was on the left bank of the Mississippi, at a place named by Europeans Memphis, there arrived a numerous band of Choctaws (or Chactas, as they are called by the French in Louisiana). These savages had left their country and were endeavoring to gain the right bank of the Mississippi, where they hoped to find an asylum that had been promised them by the American government. It was then the middle of winter, and the cold was unusually severe; the snow had frozen hard upon the ground, and the river was drifting huge masses of ice. The Indians had their families with them, and they brought in their train the wounded and the sick, with children newly born and old men upon the verge of death.

## Alexis de Tocqueville (con't)

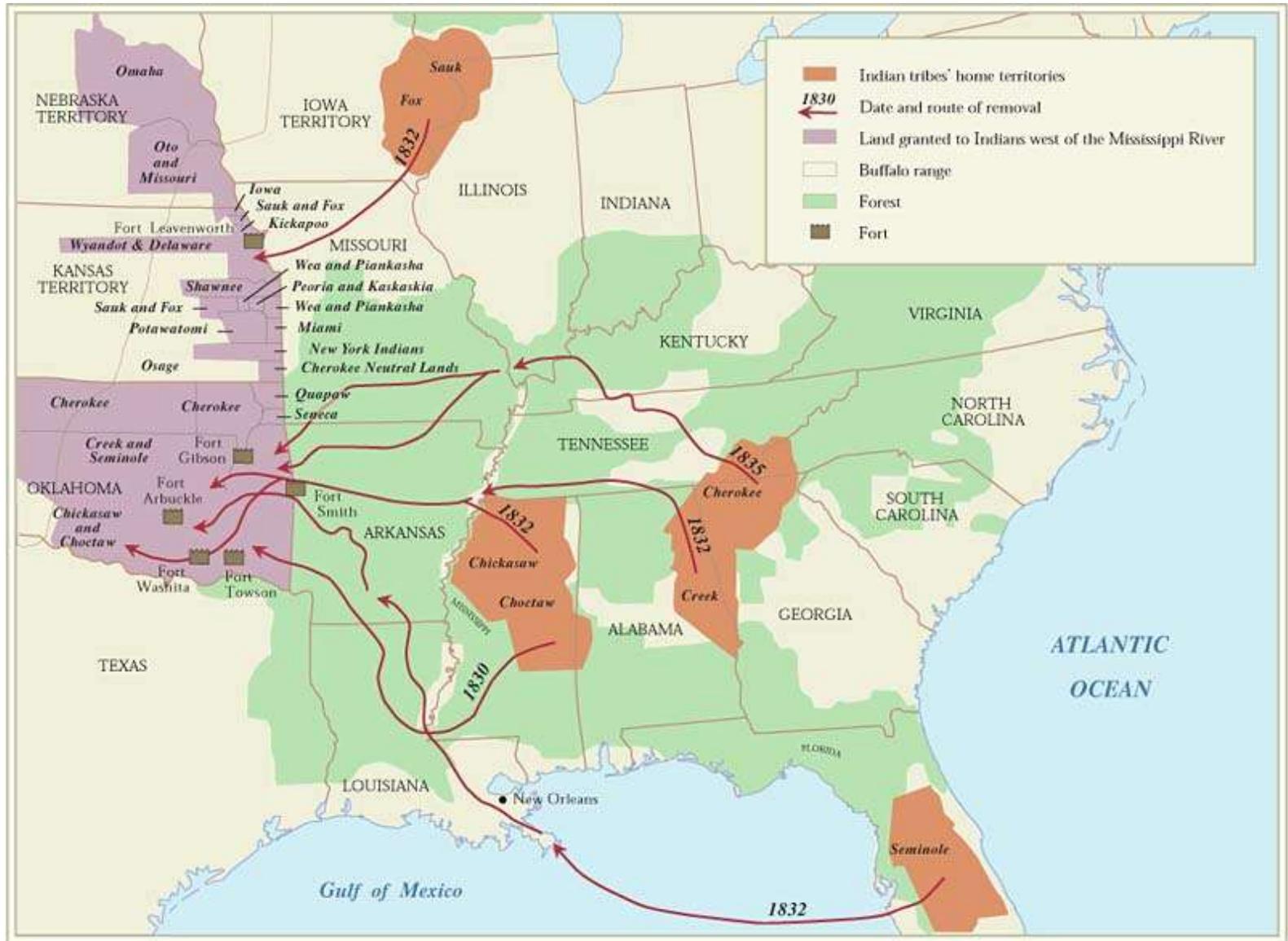
- They possessed neither tents nor wagons, but only their arms and some provisions. I saw them embark to pass the mighty river, and never will that solemn spectacle fade from my remembrance. No cry, no sob, was heard among the assembled crowd; all were silent. Their calamities were of ancient date, and they knew them to be irremediable. The Indians had all stepped into the boat that was to carry them across, but their dogs remained upon the bank.

## Alexis de Tocqueville (con't)

- As soon as these animals perceived that their masters were finally leaving the shore, they set up a dismal howl and, plunging all together into the icy waters of the Mississippi, swam after the boat.

## Removal Accomplished

- Choctaw were removed in 1831 (Treaty of Dancing Rabbit Creek)
- Seminole were removed in 1832 (Treaty of Payne's Landing)
- Creek were removed in 1834 (Treaty of Washington)
- Chickasaw were removed in 1837 (Treaty of Pontotoc)
- Cherokee were removed in 1838 (Treaty of New Echota)



## Relocation of Tribes Became Mandatory

- Over 60 removal treaties were signed which resulted in forced migration of approximately 60,000 American Indians.
- Although removal was supposed to be voluntary, relocation of tribes became mandatory whenever government decided.
- Millions of acres of lands were opened to settlers moving west.
- Many of eastern tribes were destroyed or decimated.

## Indians Cannot Rely on Conqueror's Legal System to Define Their Rights and Status as Sovereigns

- Push for Indian self-determination is recognition that Indians cannot rely on conqueror's political, legislative or legal system to define their rights and status as sovereigns. *Johnson v. M'Intosh* has never been overruled.

## “Semantic World Created by One Group to Rule Another” – Peter d’Errico

- Even though it is known that *Johnson v. M’Intosh* was based on deception and self-interest, violating the U.S. Constitution itself, it is still cited as controlling law.
- In 1886, in *United States v. Kagama*, U.s. Supreme Court declared, “...Indians are within the geographical limits of the United States. The soil and the people within these limits are under the political control of the Government of the United States, or of the States of the Union. There exist within the broad domain of sovereignty but these two.” The Court went on to state, “The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell.”

## Platonic Notions of Indian Sovereignty

- In 1973, in *McClanahan v. Arizona*, 411 U.S. 164, the Supreme Court invalidated a state income tax on individual Indians on an Indian reservation. The Court relied on the principle of "tribal sovereignty," yet suggested that such sovereignty might not be inherent, but rather derived from federal power. The Court referred to "platonic notions of Indian sovereignty" and referred to Indian sovereignty as "a backdrop" for analyzing treaties and federal statutes.

Thank You For Your Invitation!!

Do you have any questions?