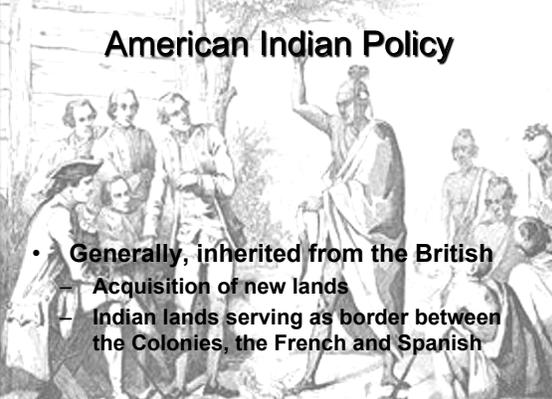


### American Indian Policy



- **Generally, inherited from the British**
  - Acquisition of new lands
  - Indian lands serving as border between the Colonies, the French and Spanish

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### Northwest Ordinance

- In 1787, the Continental Congress passed the Northwest Ordinance, which contained a section titled the Utmost Good Faith Law, which asserted:
- *"The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in the property rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them."*



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### General Overview of Constitutional Inclusion

The Constitution gave final authority for Indian Affairs to Congress, although all three branches of the Federal Government have played significant roles in this sphere. Both specific and implied powers have been used to anchor federal authority for Indian Affairs in the Constitution. Specific power can be found in the Commerce Clause (Article I, Section 8); implied power has been found in treaty-making powers (Article II, Section 2); in the war powers (Article I, Section 8 and Article II, Section 2); in the ownership clause relating to territories (Article IV, Section 3) and, most widely, in the general welfare clause (Article II, Section 8).



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### Cherokee Nation v. Georgia (1831)

- Gold discovered on Cherokee land
- Cherokee sued GA for disallowing their tribal courts and dividing up their lands--they had violated Cherokee sovereignty
- Motion for an injunction to prevent the execution of certain acts of the Legislature of the State of Georgia in the territory of the Cherokee Nation, on behalf of the Cherokee Nation



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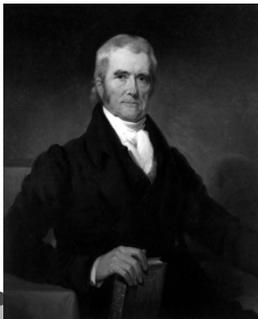
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### Marshall Trilogy, Part Deux



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**Article 3, Section 2, Clause 1**

*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 affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State; --between Citizens of different States, --between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.*

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**Marshall's decision**

- Tribes are ***“domestic dependent”*** nations
- “Their relations to the United States resemble that of a ward to his guardian.”
- Indian tribes were ***“a distinct political society, separate from others, capable of managing [their] own affairs and governing [themselves].”***




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**Worcester v. Georgia (1832)**

*“For residing, on the 15th July, 1831, in that part of the Cherokee Nation attached by the laws of the State of Georgia to that County, without a license or permit from the Governor of the State, or from anyone authorized to grant it, and without having taken the oath to support and defend the Constitution and laws of the State of Georgia, and uprightly to demean himself as a citizen thereof, contrary to the laws of the said State.”*

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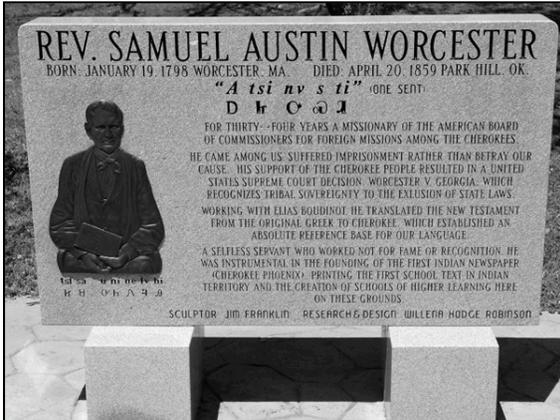
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### Marshall's Decision

- Cherokee laws are the supreme law of the land (in ***Cherokee Nation***.)
  - *Indian nations had always been considered distinct, independent political communities retaining their original natural rights as the undisputed possessors of the soil*
- The Court held that tribal sovereign powers were not relinquished when Indian tribes exchanged land for peace or protection.

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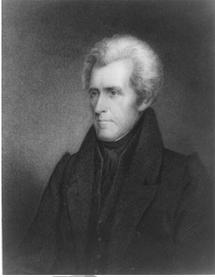
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### President Andrew Jackson

- President Jackson, however, refused to enforce the decision and continued to pressure the Cherokees to leave the Southeast.
- ***"Marshall has ruled, now let him enforce it!"***




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## “Plenary Power”

- “complete, entire, perfect, possessing full power or authority”
- Federal government’s absolute legislative authority over tribes
- Conferred by Cherokee v. Georgia



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- In the United States, interpretation of tribal sovereignty is in some ways a paradox. Through legal and political determinations, tribes are considered sovereign, yet Congress has the Constitutional authority to legislate laws over Indian tribes.
- How is it that tribes can simultaneously exist as sovereigns and be subject to Congressional action? The answer resides both in:
  - the commerce clause of the Constitution which confers Congress with the power to regulate commerce between “foreign nations, among the several states, and *with the Indian tribes* [italics added]” (U.S. Constitution, Art. 1, sec. 8, clause 3);
  - and in the power granted to Congress to negotiate treaties.
- From these two sources, Chief Justice John Marshall established Constitutional precedence for Congressional authority in Indian Country which is called **plenary power**.



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## Tell It to the Cherokees

And other tribes thus removed



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## Indian Removal



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## Indian Removal Act of May 28, 1830

The Indian Removal Act, passed with strong support from President Andrew Jackson, authorizes the federal government to negotiate treaties with eastern tribes exchanging their lands for land in the West. All costs of migration and financial aid to assist resettlement are provided by the government. Jackson forces through a treaty for removal of the Choctaw from Mississippi within the year.

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## Cherokee Removal

- 1835, the Cherokee finally sign a treaty of removal, giving up their lands in Georgia for territory in present-day Oklahoma.



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### ***“Trail of Tears”***

- In the winter of 1838 and 1839, 14,000 Cherokees were marched 1,200 miles through Tennessee, Kentucky, Illinois, Missouri and Arkansas into Indian Territory.
- An estimated 4,000 of them died from hunger, exposure, and disease.



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### **Indian Territory**



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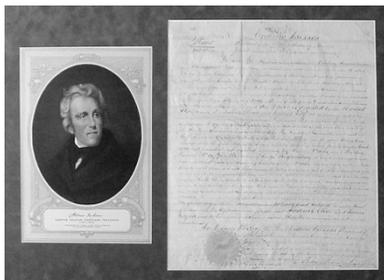
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### **The Power to Negotiate Treaties**



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