Documents of United States Indian Policy

Third Edition

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An Act to establish an Executive Department, to be denominated the Department of War.

SECTION 1. *Be it enacted* . . . , That there shall be an executive department to be denominated the Department of War, and that there shall be a principal officer therein, to be called the Secretary for the Department of War, who shall perform and execute such duties as shall from time to time be enjoined on, or entrusted to him by the President of the United States, agreeably to the Constitution, relative to military commissions, or to the land or naval forces, ships, or warlike stores of the United States, or to such other matters respecting military or naval affairs, as the President of the United States shall assign to the said department, or relative to the granting of lands to persons entitled thereto, for military services rendered to the United States, or relative to Indian affairs; and furthermore, that the said principal officer shall conduct the business of the said department in such manner, as the President of the United States shall from time to time order or instruct. . . .

[*U.S. Statutes at Large*, 1:49–50.]

13. Trade and Intercourse Act

July 22, 1790

Unrest on the frontiers threatened the peace of the young nation, and President Washington and Secretary of War Knox called on Congress to provide legislation to prevent further outrages. Congress replied in July 1790 with the first of a series of laws "to regulate trade and intercourse with the Indian tribes." These laws, which were originally designed to implement the treaties and enforce them against obstreperous whites, gradually came to embody the basic features of federal Indian policy.

An Act to regulate trade and intercourse with the Indian tribes.

SECTION 1. *Be it enacted* . . . , That no person shall be permitted to carry on any trade or intercourse with the Indian tribes, without a license for that purpose under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall appoint for that purpose; which superintendent, or other person so appointed, shall, on application, issue such license to any proper person, who shall enter into bond with one or more sureties, approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, payable to the President of the United States for the time being, for the use of the United States, conditioned for the true and faithful observance of such rules, regulations and restrictions, as now are, or hereafter shall be made for the government of trade and intercourse with the Indian tribes. The said superintendents, and persons by them licensed as aforesaid, shall be governed in all things touching the said trade and intercourse, by such rules and regulations as the President shall prescribe. And no other person shall be permitted to carry on any trade or intercourse with the Indians without such license as aforesaid. No license shall be granted for a longer term than two years. *Provided nevertheless*, That the President may make such order respecting the tribes surrounded in their settlements by the citizens of the United States, as to secure an intercourse without license, if he may deem it proper.

SEC. 2. *And be it further enacted*, That the superintendent, or person issuing such license, shall have full power and authority to recall all such licenses as he may have issued, if the person so licensed shall transgress any of the regulations or restrictions provided for the government of trade and intercourse with the Indian tribes, and shall put in suit such bonds as he may have taken, immediately on the breach of any condition in said bond: *Provided always*, That if it shall appear on trial, that the person from whom such license shall have been recalled, has not offended against any of the provisions of this act, or the regulations prescribed for the trade and intercourse with the Indian tribes, he shall be entitled to receive a new license.

SEC. 3. *And be it further enacted*, That every person who shall attempt to trade with the Indian tribes, or be found in the Indian country with such merchandise in his possession as are usually vended to the Indians, without a license first had and obtained, as in this act prescribed, and being thereof convicted in any court proper to try the same, shall forfeit all the merchandise so offered for sale to the Indian tribes, or so found in the Indian country, which forfeiture shall be one half to the benefit of the person prosecuting, and the other half to the benefit of the United States.

SEC. 4. *And be it enacted and declared*, That no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.

SEC. 5. *And be it further enacted*, That if any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit any crime upon, or trespass against, the person or property of any peaceable and friendly Indian or Indians, which, if committed within the jurisdiction of any state, or within the jurisdiction of either of the said districts, against a citizen or white inhabitant thereof, would be punishable by the laws of such state or district, such offender or offenders shall be subject to the same punishment, and shall be proceeded against in the same manner as if the offence had been committed within the jurisdiction of the state or district to which he or they may belong, against a citizen or white inhabitant thereof.

SEC. 6. *And be it further enacted*, That for any of the crimes or offences aforesaid, the like proceedings shall be had for apprehending, imprisoning or bailing the offender, as the case may be, and for recognizing the witnesses for their appearance to testify in the case, and where the offender shall be committed, or the witnesses shall be in a district other than that in which the offence is to be tried, for the removal of the offender and the witnesses or either of them, as the case may be, to the district in which the trial is to be had, as by the act to establish the judicial courts of the United States, are directed for any crimes or offences against the United States.

SEC. 7. *And be it further enacted*, That this act shall be in force for the term of two years, and from thence to the end of the next session of Congress, and no longer.

[*U.S. Statutes at Large*, 1:137–38.]

14. President Washington's Third Annual Message

October 25, 1791

President Washington carried his concern for a just Indian policy to Congress in his annual messages. In 1791 he outlined the essential elements of a policy to "advance the happiness of the Indians and to attach them firmly to the United States."

. . . . It is sincerely to be desired that all need of coercion in future may cease and that an intimate intercourse may succeed, calculated to advance the happiness of the Indians and to attach them firmly to the United States.

In order to this it seems necessary—

That they should experience the benefits of an impartial dispensation of justice.

That the mode of alienating their lands, the main source of discontent and war, should be so defined and regulated as to obviate imposition and as far as may be practicable controversy concerning the reality and extent of the alienations which are made.

That commerce with them should be promoted under regulations tending to secure an equitable deportment toward them, and that such rational experiments should be made for imparting to them the blessings of civilization as may from time to time suit their condition.

That the Executive of the United States should be enabled to employ the means to which the Indians have been long accustomed for uniting their immediate interests with the preservation of peace.

And that efficacious provision should be

and justly due and belonging to the United States; and the said agents, selected for the purpose aforesaid, shall be furnished with copies of the latest quarterly returns of the said superintendent, factors, and sub-factors, as rendered by them to the Treasury Department, and copies of any other papers in the said department which will show what is, or ought to be due and coming to the United States, from the said office of Indian trade in Georgetown, and from each of the trading-houses established among Indians. . . .

Sec. 2. *And be it further enacted*, That the goods, wares, and merchandise, which shall be delivered over to the agents of the United States, under the provisions of this act, shall be placed at the disposition of the President of the United States, subject, under his orders, towards satisfying or extinguishing the treaty obligations on the part of the United States, to keep up trading-houses with the Indians; also, towards the payment of annuities due, or to become due, to Indian tribes; also, in making the customary presents to tribes or individuals in amity with the United States; and the surplus, if any, may be sold to the best advantage, under the orders of the President, and the proceeds paid over to the treasury of the United States.

Sec. 3. *And be it further enacted*, That the furs, peltries, effects and property, received under the first section of this act, shall be sold in the manner the President may direct; the debts due and owing shall be collected under his orders; and all the money received from these sources, and all that shall be received from the superintendent of Indian trade, and from the factors and sub-factors, shall be paid over, as fast as received, into the treasury of the United States: *Provided*, That such sums may be retained and applied, under the orders of the President of the United States, as may be necessary to defray the expenses of carrying this act into effect.

Sec. 4. *And be it further enacted*, That, as soon as may be after the commencement of the next session of Congress, the President of the United States shall communicate to Congress the manner in which he shall have caused this act to be executed, showing the amount of moneys, furs, peltries, and other effects, and the amount and description of goods, wares, and merchandise, and the actual cash value thereof, received from the superintendent of Indian trade, and each of the factors and sub-factors, under the provisions of this act.

[*U.S. Statutes at Large*, 3:679–80.]

31. Act for Regulating the Indian Trade

May 6, 1822

With the abolition of the government trading houses, the United States fell back on a system of Indian trade carried on only by private individuals and companies. A new law revised the licensing regulations, strengthened the provisions for restricting the liquor trade, set regulations for the distribution of annuities, and created a special superintendent of Indian affairs to reside at Saint Louis.

An Act to amend an act, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved thirtieth March, one thousand eight hundred and two.

Be it enacted . . . , That the seventh section of the act, entitled "An act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers," shall be, and the same is hereby, repealed; and from and after the passing of this act, it shall be lawful for the superintendents of Indian affairs in the territories and Indian agents, under the direction of the President of the United States, to grant licenses to trade with Indian tribes; which licenses shall be granted to citizens of the United States, and to none others, taking from them bonds with securities in the penal sum not exceeding five thousand dollars, proportioned to the capital employed, and conditioned for the due observance of the laws regulating trade and intercourse with the Indian tribes; and said licenses may be granted for a term not exceeding seven years for the trade with the remote tribes of Indians beyond the Mississippi, and two years for the trade with all the other tribes. And the superintendents and agents shall return to the Secretary of War, within each year, an abstract of all licenses granted, showing by and to whom, when, and where, granted, with the amount of the bonds and capital employed, to be laid before Congress, at the next session thereof.

Sec. 2. *And be it further enacted*, That it shall and may be lawful for the President of the United States, in execution of the power vested in him by the twenty-first section of the act of the thirtieth of March, one thousand eight hundred and two, aforesaid, to which this is an amendment, to direct Indian agents, governors of territories acting as superintendents of Indian affairs, and military officers, to cause the stores and packages of goods of all traders to be searched, upon suspicion or information that ardent spirits are carried into the Indian countries by said traders in violation of the said twenty-first section of the act to which this is an amendment; and if any ardent spirits shall be so found, all the goods of the said traders shall be forfeited, one half to the use of the informer, the other half to the use of the government, his license cancelled, and bond put in suit.

Sec. 3. *And be it further enacted*, That all purchases for and on account of Indians, for annuities, presents, and otherwise, shall be made by the Indian agents and governors of territories acting as superintendents, within their respective districts; and all persons whatsoever, charged or trusted with the disbursement or application of money, goods, or effects, of any kind, for the benefit of Indians, shall settle their accounts annually, at the War Department, on the first day of September; and copies of the same shall be laid before Congress at the commencement of the ensuing session, by the proper accounting officers, together with a list of the names of all persons to whom money, goods, or effects, had been delivered within the said year, for the benefit of the Indians, specifying the amount and object for which it was intended, and showing who are delinquent, if any, in forwarding their accounts according to the provisions of this act.

Sec. 4. *And be it further enacted*, That, in all trials about the right of property, in which Indians shall be party on one side and white persons on the other, the burthen of proof shall rest upon the white person, in every case in which the Indian shall make out a presumption of title in himself from the fact of previous possession and ownership.

Sec. 5. *And be it further enacted*, That it shall and may be lawful for the President of the United States, from time to time, to require additional security, and in larger amounts, from all persons charged or trusted, under the laws of the United States, with the disbursement or application of money, goods, or effects, of any kind, for the benefit of the Indians.

Sec. 6. *And be it further enacted*, That the President of the United States, by and with the advice and consent of the Senate, may appoint a superintendent of Indian Affairs, to reside at St. Louis, whose powers shall extend to all Indians frequenting that place, whose salary shall be fifteen hundred dollars per annum; and one agent for tribes within the limits of East and West Florida, with a salary of fifteen hundred dollars.

[*U.S. Statutes at Large*, 3:682–83.]

32. Johnson and Graham's Lessee v. William McIntosh

1823

The plaintiffs in this case claimed title to land in Illinois on the basis of purchase from the Indians; the defendant, on the basis of a grant from the United States. The Supreme Court decided in favor of the defendant and in so doing discussed the nature of the Indian land title under the United States.

. . . The United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country. They hold, and assert in themselves, the title by which it was acquired. They 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.

The power now possessed by the government of the United States to grant lands, resided, while we were colonies, in the crown, or its grantees. The validity of the titles given by either has never been questioned in our Courts. It has been exercised uniformly over territory in possession of the Indians. The existence of this power must negative the existence of any right which may conflict with, and control it. An absolute title to lands cannot exist, at the same time, in different persons, or in different governments. An absolute, must be an exclusive title, or at least a title which excludes all others not compatible with it. All our institutions recognise the absolute title of the crown, subject only to the Indian right of occupancy, and recognise the absolute title of the crown to extinguish that right. This is incompatible with an absolute and complete title in the Indians.

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, whatever the private and speculative opinions of individuals may be, respecting the original justice of the claim which has been successfully asserted. The British government, which was then our government, and whose rights have passed to the United States, asserted a title to all the lands occupied by Indians, within the chartered limits of the British colonies. It asserted also a limited sovereignty over them, and the exclusive right of extinguishing the title which occupancy gave to them. These claims have been maintained and established as far west as the river Mississippi, by the sword. The title to a vast portion of the lands we now hold, originates in them. It is not for the Courts of this country to question the validity of this title, or to sustain one which is incompatible with it.

Although we do not mean to engage in the defence of those principles which Europeans have applied to Indian title, they may, we think, find some excuse, if not justification, in the character and habits of the people whose rights have been wrested from them.

The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest. Most usually, they are incorporated with the victorious nation, and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other; the distinction between them is gradually lost, and they make one people. Where this incorporation is practicable, humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connexions, and united by force to strangers.

When the conquest is complete, and the conquered inhabitants can be blended with the conquerors, or safely governed as a distinct people, public opinion, which not even the conqueror can disregard, imposes these restraints upon him; and he cannot neglect them without injury to his fame, and hazard to his power.

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.

What was the inevitable consequence of this state of things? 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, and who could not be governed as a distinct society, or of remaining in their neighbourhood, and exposing themselves and their families to the perpetual hazard of being massacred.

Frequent and bloody wars, in which the whites were not always the aggressors, unavoidably ensued. European policy, numbers, and skill, prevailed. As the white population advanced, that of the Indians necessarily receded. The country in the immediate neighbourhood of agriculturists became unfit for them. The game fled into thicker and more unbroken forests, and the Indians followed. The soil, to which the crown originally claimed title, being no longer occupied by its ancient inhabitants, was parcelled out according to the will of the sovereign power, and taken possession of by persons who claimed immediately from the crown, or mediately, through its grantees or deputies.

That law which regulates, and ought to regulate in general, the relations between the conqueror and conquered, was incapable of application to a people under such circumstances. The resort to some new and different rule, better adapted to the actual state of things, was unavoidable. Every rule which can be suggested will be found to be attended with great difficulty.

However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear; if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community orginates in it, it becomes the law of the land, and cannot be questioned. So, too, with respect to the concomitant principle, that the Indian inhabitants are to be considered merely as occupants, to be protected, indeed, while in peace, in the possession of their lands, but to be deemed incapable of transferring the absolute title to others. However this restriction may be opposed to natural right, and to the usages of civilized nations, yet, if it be indispensable to that system under which the country has been settled, and be adapted to the actual condition of the two people, it may, perhaps, be supported by reason, and certainly cannot be rejected by Courts of justice. . . .

It has never been contended, that the Indian title amounted to nothing. Their right of possession has never been questioned. The claim of government extends to the complete ultimate title, charged with this right of possession, and to the exclusive power of acquiring that right. . . .

After bestowing on this subject a degree of attention which was more required by the magnitude of the interest in litigation, and the able and elaborate arguments of the bar, than by its intrinsic difficulty, the Court is decidedly of opinion, that the plaintiffs do not exhibit a title which can be sustained in the Courts of the United States; and that there is no error in the judgment which was rendered against them in the District Court of Illinois.

[8 *Wheaton*, 543, 587–92, 603–5.]

33. Creation of a Bureau of Indian Affairs in the War Department

March 11, 1824

Secretary of War John C. Calhoun, without special congressional authorization, set up a "Bureau of Indian Affairs" within his department and assigned the duties of the office to Thomas L. McKenney. McKenney held the office until dismissed by President Jackson in 1830. Congress confirmed the position, then designated "Commissioner of Indian Affairs," in 1832.

Department of War
March 11th, 1824

SIR: To you are assigned the duties [of] the Bureau of Indian Affairs in this Department, for the faithful performance of which you will be responsible. Mr. Hamilton and Mr. Miller are assigned to you, the former as chief, and the latter as assistant clerk.

You will take charge of the appropriations for annuities, and of the current expenses, and all warrants on the same will be issued on your requisitions on the Secretary of War, taking special care that no requisition be issued, but in cases where the money previously remitted has been satisfactorily accounted for, and on estimates in detail, approved by you, for the sum required. You will receive and examine the accounts and vouchers for the expenditure thereof, and will pass them over to the proper

admitted, possessed the power to do, apart from any authority or opposing interference by the general government.

But suppose, and it is suggested, merely for the purpose of awakening your better judgment, that Georgia cannot, and ought not, to claim the exercise of such power. What alternative is then presented? In reply allow me to call your attention for a moment to the grave character of the course, which under a mistaken view of your own rights, you desire this Government to adopt. It is no less than an invitation, that she shall step forward to arrest the constitutional act of an independent State, exercised within her own limits. Should this be done, and Georgia persist in the maintenance of her rights, and her authority, the consequences might be, that the act would prove injurious to us, and in all probability ruinous to you. The sword might be looked to as the arbiter in such an interference. But this can never be done. The President cannot, and will not, beguile you with such an expectation. The arms of this country can never be employed, to stay any state of this Union from the exercise of those legitimate powers which attach, and belong to their sovereign character. An interference to the extent of affording you protection, and the occupancy of your soil is what is demanded of the justice of this Country and will not be withheld, yet in doing this, the right of permitting to you the enjoyment of a separate government, within the limits of a State, and denying the exercise of Sovereignty to that State, within her own limits, cannot be admitted. It is not within the range of powers granted by the states to the general government, and therefore not within its competency to be exercised.

In this view of the circumstances connected with your application, it becomes proper to remark that no remedy can be perceived, except that which frequently, heretofore has been submitted for your consideration, a removal beyond the Mississippi, where, alone, can be assured to you protection and peace. It must be obvious to you, and the President has instructed me again to bring it to your candid and serious consideration, that to continue where you are, within the territorial limits of an independent state, can promise you nothing but interruption and disquietude. Beyond the Mississippi your prospects will be different. There you will find no conflicting interests. The United States power and sovereignty, uncontrolled by the high authority of state jurisdiction, and resting on its own energies, will be able to say to you, in the language of your own nation, the soil shall be yours while the trees grow, or the streams run. But situated where you now are, he cannot hold to you such language, or consent to beguile you, by inspiring in your bosoms hopes and expectations, which cannot be realized. Justice and friendly feelings cherished towards our red brothers of the forest, demand that in all our intercourse, frankness should be maintained.

The President desires me to say, that the feelings entertained by him towards your people, are of the most friendly kind; and that in the intercourse heretofore, in past times, so frequently had with the Chiefs of your nation, he failed not to warn them of the consequences which would result to them from residing within the limits of Sovereign States. He holds to them, now, no other language, than that which he has heretofore employed; and in doing so, feels convinced that he is pointing out that course which humanity and a just regard for the interest of the Indian will be found to sanction. In the view entertained by him of this important matter, there is but a single alternative, to yield to the operation of those laws, which Georgia claims, and has a right to extend throughout her own limits, or to remove, and by associating with your brothers beyond the Mississippi to become again united as one Nation, carrying along with you that protection, which, there situated, it will be in the power of the government to extend. The Indians being thus brought together at a distance from their brothers, will be relieved from very many of those interruptions, which, situated as they are at present, are without a remedy. The Government of the United States will then be able to exercise over them a paternal, and superintending care to happier advantage, to stay encroachments, and preserve them in peace and amity with each other; while with the aid of schools a hope may be indulged, that ere long industry and refinement, will take the place of those wandering habits now so peculiar to the Indian character, the tendency of which is to impede them in their march to civilization.

Respecting the intrusions on your lands, submitted also for consideration, it is sufficient to remark, that of these the Department had already been advised, and instructions have been forwarded to the agent of the Cherokees directing him to cause their removal; and it is earnestly hoped, that on this matter, all cause for future complaint will cease, and the order prove effectual.

[Office of Indian Affairs, Letter Book no. 5, pp. 408–12, Record Group 75, National Archives.]

40. President Jackson on Indian Removal

December 8, 1829

The executive branch of the federal government was firmly committed to the removal of the eastern tribes to the region west of the Mississippi by President Andrew Jackson. In his First Annual Message to Congress in December 1829 he set forth his views.

. . . . The condition and ulterior destiny of the Indian tribes within the limits of some of our States have become objects of much interest and importance. It has long been the policy of Government to introduce among them the arts of civilization, in the hope of gradually reclaiming them from a wandering life. This policy has, however, been coupled with another wholly incompatible with its success. Professing a desire to civilize and settle them, we have at the same time lost no opportunity to purchase their lands and thrust them farther into the wilderness. By this means they have not only been kept in a wandering state, but been led to look upon us as unjust and indifferent to their fate. Thus, though lavish in its expenditures upon the subject, Government has constantly defeated its own policy, and the Indians in general, receding farther and farther to the west, have retained their savage habits. A portion, however, of the Southern tribes, having mingled much with the whites and made some progress in the arts of civilized life, have lately attempted to erect an independent government within the limits of Georgia and Alabama. These States, claiming to be the only sovereigns within their territories, extended their laws over the Indians, which induced the latter to call upon the United States for protection.

Under these circumstances the question presented was whether the General Government had a right to sustain those people in their pretensions. The Constitution declares that "no new State shall be formed or erected within the jurisdiction of any other State" without the consent of its legislature. If the General government is not permitted to tolerate the erection of a confederate State within the territory of one of the members of this Union against her consent, much less could it allow a foreign and independent government to establish itself there. Georgia became a member of the Confederacy which eventuated in our Federal Union as a sovereign State, always asserting her claim to certain limits, which, have been originally defined in her colonial charter and subsequently recognized in the treaty of peace, she has ever since continued to enjoy, except as they have been circumscribed by her own voluntary transfer of a portion of her territory to the United States in the articles of cession of 1802. Alabama was admitted into the Union on the same footing with the original States, with boundaries which were prescribed by Congress. There is no constitutional, conventional, or legal provision which allows them less power over the Indians within their borders than is possessed by Maine or New York. Would the people of Maine permit the Penobscot tribe to erect an independent government within their State? And unless they did would it not be the duty of the General Government to support them in resisting such a measure? Would the people of New York permit each remnant of the Six Nations within her borders to declare itself an independent people under the protection of the United States? Could the Indians establish a separate republic on each of their reservations in Ohio? And if they were so disposed would it be the duty of this Government to protect them in the attempt? If the principle involved in the obvious answer to these questions be abandoned, it will follow that the objects of this Government

are reversed, and that it has become a part of its duty to aid in destroying the States which it was established to protect.

Actuated by this view of the subject, I informed the Indians inhabiting parts of Georgia and Alabama that their attempt to establish an independent government would not be countenanced by the Executive of the United States, and advised them to emigrate beyond the Mississippi or submit to the laws of those States.

Our conduct toward these people is deeply interesting to our national character. Their present condition, contrasted with what they once were, makes a most powerful appeal to our sympathies. 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 a while 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. It is too late to inquire whether it was just in the United States to include them and their territory within the bounds of new States, whose limits they could control. That step can not be retraced. A State can not be dismembered by Congress or restricted in the exercise of her constitutional power. But the people of those States and of every State, actuated by feelings of justice and a regard for our national honor, submit to you the interesting question whether something can not be done, consistently with the rights of the States, to preserve this much-injured race.

As a means of effecting this end I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limit of any State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designated for its use. There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes. There the benevolent may endeavor to teach them the arts of civilization, and, by promoting union and harmony among them, to raise up an interesting commonwealth, destined to perpetuate the race and to attest the humanity and justice of this Government.

This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land. But they should be distinctly informed that if they remain within the limits of the States they must be subject to their laws. In return for their obedience as individuals they will without doubt be protected in the enjoyment of those possessions which they have improved by their industry. But it seems to me visionary to suppose that in this state of things claims can be allowed on tracts of country on which they have neither dwelt nor made improvements, merely because they have seen them from the mountain or passed them in the chase. Submitting to the laws of the States, and receiving, like other citizens, protection in their persons and property, they will ere long become merged in the mass of our population. . . .

[James D. Richardson, comp., *Messages and Papers of the Presidents*, 2:456–59.]

41. Senator Frelinghuysen on Indian Removal
April 9, 1830

One of the strongest supporters of the Indian opposition to removal was Senator Theodore Frelinghuysen of New Jersey. He presented his arguments in a long speech in the Senate on April 9, 1830, during the debate on the removal bill.

. . . . God, in his providence, planted these tribes on this Western continent, so far as we know, before Great Britain herself had a political existence. I believe, sir, it is not now seriously denied that the Indians are men, endowed with kindred faculties and powers with ourselves; that they have a place in human sympathy, and are justly entitled to a share in the common bounties of a benignant Providence. And, with this conceded, I ask in what code of the law of nations, or by what process of abstract deduction, their rights have been extinguished?

Where is the decree or ordinance that has stripped these early and first lords of the soil? Sir, no record of such measure can be found. And I might triumphantly rest the hopes of these feeble fragments of once great nations upon this impregnable foundation. However mere human policy, or the law of power, or the tyrant's pleas of expediency, may have found it convenient at any or in all times to recede from the unchangeable principles of eternal justice, no argument can shake the political maxim, that, where the Indian always has been, he enjoys an absolute right still to be, in the free exercise of his own modes of thought, government and conduct.

In the light of natural law, can a reason for a distinction exist in the mode of enjoying that which is my own? If I use it for hunting, may another take it because he needs it for agriculture? I am aware that some writers have, by a system of artificial reasoning, endeavored to justify, or rather excuse the encroachments made upon Indian territory; and they denominate these abstractions the law of nations, and, in this ready way, the question is despatched. Sir, as we trace the sources of this law, we find its authority to depend either upon the conventions or common consent of nations. And when, permit me to inquire, were the Indian tribes ever consulted on the establishment of such a law? Whoever represented them or their interests in any congress of nations, to confer upon the public rules of intercourse, and the proper foundations of dominion and property? The plain matter of fact is, that all these partial doctrines have resulted from the selfish plans and pursuits of more enlightened nations; and it is not matter for any great wonder, that they should so largely partake of a mercenary and exclusive spirit toward the claims of the Indians.

It is, however, admitted, sir, that, when the increase of population and the wants of mankind demand the cultivation of the earth, a duty is thereby devolved upon the proprietors of large and uncultivated regions, of devoting them to such useful purposes. But such appropriations are to be obtained by fair contract, and for reasonable compensation. It is, in such a case, the duty of the proprietor to sell: we may properly address his reason to induce him; but we cannot rightfully compel the cession of his lands, or take them by violence, if his consent be withheld. It is with great satisfaction that I am enabled, upon the best authority, to affirm, that this duty has been largely and generously met and fulfilled on the part of the aboriginal proprietors of this continent. Several years ago, official reports to Congress stated the amount of Indian grants to the United States to exceed 214 millions of acres. Yes, sir, we have acquired, and now own more land as the fruits of their bounty than we shall dispose of at the present rate to actual settlers in two hundred years. For, very recently, it has been ascertained, on this floor, that our public sales average not more than about one million of acres annually. It greatly aggravates the wrong that is now meditated against these tribes, to survey the rich and ample districts of their territories, that either force or persuasion have incorporated into our public domains. As the tide of our population has rolled on, we have added purchase to purchase. The confiding Indian listened to our professions of friendship: we called him brother, and he believed us. Millions after millions he has yielded to our importunity, until we have acquired more than can be cultivated in centuries—and yet we crave more. We have crowded the tribes upon a few miserable acres on our southern frontier: it is all that is left to them of their once boundless forests: and still, like the horse-leech, our insatiated cupidity cries, give! give!

Before I proceed to deduce collateral confirmations of this original title, from all our political intercourse and conventions with the Indian tribes, I beg leave to pause a moment, and view the case as it lies beyond the treaties made with them; and aside also from all conflicting claims between the

use; we have placed among them instructors in the arts of first necessity; and they are covered with the aegis of the law against aggressors from among ourselves." These, sir, are sentiments worthy of an illustrious statesman. None can fail to perceive the spirit of justice and humanity which Mr. Jefferson cherished towards our Indian allies. He was, through his whole life, the firm unshrinking advocate of their rights, a patron of all their plans for moral improvement and elevation. . . .

I trust, sir, that this brief exposition of our policy, in relation to Indian affairs, establishes, beyond all controversy, the obligation of the United States to protect these tribes in the exercise and enjoyment of their civil and political rights. Sir, the question has ceased to be—What are our duties? An inquiry much more embarrassing is forced upon us: How shall we most plausibly, and with the least possible violence, break our faith? Sir, we repel the inquiry—we reject such an issue—and point the guardians of public honor to the broad, plain . . . [path] of faithful performance, and to which they are equally urged by duty and by interest. . . .

[*Register of Debates in Congress*, 6:311–16.]

42. Indian Removal Act

May 28, 1830

After bitter debate in Congress and in the public press, Congress passed an act authorizing the president to exchange lands in the West for those held by Indian tribes in any state or territory and appropriated $500,000 for the purpose. This act enabled President Jackson to proceed with the removal policy and to negotiate removal treaties with the southern tribes.

An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi.

Be it enacted . . . , That it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States, west of the river Mississippi, not included in any state or organized territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there; and to cause each of said districts to be so described by natural or artificial marks, as to be easily distinguished from every other.

Sec. 2. *And be it further enacted*, That it shall and may be lawful for the President to exchange any or all of such districts, so to be laid off and described, with any tribe or nation of Indians now residing within the limits of any of the states or territories, and with which the United States have existing treaties, for the whole or any part or portion of the territory claimed and occupied by such tribe or nation, within the bounds of any one or more of the states or territories, where the land claimed and occupied by the Indians, is owned by the United States, or the United States are bound to the state within which it lies to extinguish the Indian claim thereto.

Sec. 3. *And be it further enacted*, That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States, if the Indians become extinct, or abandon the same.

Sec. 4. *And be it further enacted*, That if, upon any of the lands now occupied by the Indians, and to be exchanged for, there should be such improvements as add value to the land claimed by any individual or individuals of such tribes or nations, it shall and may be lawful for the President to cause such value to be ascertained by appraisement or otherwise, and to cause such ascertained value to be paid to the person or persons rightfully claiming such improvements. And upon the payment of such valuation, the improvements so valued and paid for, shall pass to the United States, and possession shall not afterwards be permitted to any of the same tribe.

Sec. 5. *And be it further enacted*, That upon the making of any such exchange as is contemplated by this act, it shall and may be lawful for the President to cause such aid and assistance to be furnished to the emigrants as may be necessary and proper to enable them to remove to, and settle in, the country for which they may have exchanged; and also, to give them such aid and assistance as may be necessary for their support and subsistence for the first year after their removal.

Sec. 6. *And be it further enacted*, That it shall and may be lawful for the President to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever.

Sec. 7. *And be it further enacted*, That it shall and may be lawful for the President to have the same superintendence and care over any tribe or nation in the country to which they may remove, as contemplated by this act, that he is now authorized to have over them at their present places of residence: *Provided*, That nothing in this act contained shall be construed as authorizing or directing the violation of any existing treaty between the United States and any of the Indian tribes.

Sec. 8. *And be it further enacted*, That for the purpose of giving effect to the provisions of this act, the sum of five hundred thousand dollars is hereby appropriated, to be paid out of any money in the treasury, not otherwise appropriated.

[*U.S. Statutes at Large*, 4:411–12.]

43. Treaty with the Choctaw Indians

September 27, 1830

The first of the removal treaties signed with the southern Indians after passage of the Removal Act of 1830 was that with the Choctaws at Dancing Rabbit Creek. It provided for an exchange of lands, guaranteed protection for the Indians, and specified annuities and other payments or services.

A treaty of perpetual friendship, cession and limits, entered into by John H. Eaton and John Coffee, for and in behalf of the Government of the United States, and the Mingoes, Chiefs, Captains and Warriors of the Choctaw Nation, begun and held at Dancing Rabbit Creek, on the fifteenth of September, in the year eighteen hundred and thirty.

Article I. Perpetual peace and friendship is pledged and agreed upon by and between the United States and the Mingoes, Chiefs, and Warriors of the Choctaw Nation of Red People; and that this may be considered the Treaty existing between the parties all other Treaties heretofore existing and inconsistent with the provisions of this are hereby declared null and void.

Article II. the United States under a grant specially to be made by the President of the U.S. shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork; if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the Treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present Treaty shall be ratified.

Article III. In consideration of the provisions contained in the several articles of this Treaty, the Choctaw nation of Indians consent and hereby cede to the United States, the entire country they own and possess, east of the Mississippi River; and they agree to move beyond the Mississippi River, early as practicable, and will so arrange their removal, that as many as possible of their people not

a broad sword as an outfit, and for four years commencing with the first of their removal, shall each receive fifty dollars a year, for the trouble of keeping their people at order in settling; and whenever they shall be in military service by authority of the U.S. shall receive the pay of a captain.

ARTICLE XVI. In wagons; and with steam boats as may be found necessary—the U.S. agree to remove the Indians to their new homes at their expense and under the care of discreet and careful persons, who will be kind and brotherly to them. They agree to furnish them with ample corn and beef, or pork for themselves and families for twelve months after reaching their new homes.

It is agreed further that the U.S. will take all their cattle, at the valuation of some discreet person to be appointed by the President, and the same shall be paid for in money after their arrival at their new homes; or *other* cattle such as may be desired shall be furnished them, notice being given through their Agent of their wishes upon this subject before their removal that time to supply the demand may be afforded.

ARTICLE XVII. The several annuities and sums secured under former Treaties to the Choctaw nation and people shall continue as though this Treaty had never been made.

And it is further agreed that the U.S. in addition will pay the sum of twenty thousand dollars for twenty years, commencing after their removal to the west, of which, in the first year after their removal, ten thousand dollars shall be divided and arranged to such as may not receive reservations under this Treaty.

ARTICLE XVIII. The U.S. shall cause the lands hereby ceded to be surveyed; and surveyors may enter the Choctaw Country for that purpose, conducting themselves properly and disturbing or interrupting none of the Choctaw people. But no person is to be permitted to settle within the nation, or the lands to be sold before the Choctaws shall remove. And for the payment of the several amounts secured in this Treaty, the lands hereby ceded are to remain a fund pledged to that purpose, until the debt shall be provided for and arranged. And further it is agreed, that in the construction of this Treaty wherever well founded doubt shall arise, it shall be construed most favorably towards the Choctaws.

ARTICLE XIX. The following reservations of land are hereby admitted. To Colonel David Fulsom four sections of which two shall include his present improvement, and two may be located elsewhere, on unoccupied, unimproved land.

To I. Garland, Colonel Robert Cole, Tuppanahomer, John Pytchlynn, Charles Juzan, Johokebetubbe, Eaychahobia, Ofehoma, two sections, each to include their improvements, and to be bounded by sectional lines, and the same may be disposed of and sold with the consent of the President. And that others not provided for, may be provided for, there shall be reserved as follows:

First. One section to each head of a family not exceeding Forty in number, who during the present year, may have had in actual cultivation, with a dwelling house thereon fifty acres or more. Secondly, three quarter sections after the manner aforesaid to each head of a family not exceeding four hundred and sixty, as shall have cultivated thirty acres and less than fifty, to be bounded by quarter section lines of survey, and to be contiguous and adjoining.

Third; One half section as aforesaid to those who shall have cultivated from twenty to thirty acres the number not to exceed four hundred. Fourth; a quarter section as aforesaid to such as shall have cultivated from twelve to twenty acres, the number not to exceed three hundred and fifty, and one half that quantity to such as shall have cultivated from two to twelve acres, the number also not to exceed three hundred and fifty persons. Each of said class of cases shall be subject to the limitations contained in the first class, and shall be so located as to include that part of the improvement which contains the dwelling house. If a greater number shall be found to be entitled to reservations under the several classes of this article, than is stipulated for under the limitation prescribed, then and in that case the Chiefs separately or together shall determine the persons who shall be excluded in the respective districts.

Fifth; Any Captain the number not exceeding ninety person, who under the provisions of this article shall receive less than a section, he shall be entitled, to an additional quantity of half a section adjoining to his other reservation. The several reservations secured under this article, may be sold with the consent of the President of the U.S. but should any prefer it, or omit to take a reservation for the quantity he may be entitled to, the U.S. will on his removing pay fifty cents an acre, after reaching their new homes, provided that before the first of January next they shall adduce to the Agent, or some other authorized person to be appointed, proof of his claim and the quantity of it. Sixth; likewise children of the Choctaw Nation residing in the Nation, who have neither father nor mother a list of which, with satisfactory proof of Parentage and orphanage being filed with Agent in six months to be forwarded to the War Department, shall be entitled to a quarter section of Land, to be located under the direction of the President, and with his consent the same may be sold and the proceeds applied to some beneficial purpose for the benefit of said orphans.

ARTICLE XX. The U.S. agree and stipulate as follows, that for the benefit and advantage of the Choctaw people, and to improve their condition, there shall be educated under the direction of the President and at the expense of the U.S. forty Choctaw youths for twenty years. This number shall be kept at school, and as they finish their education others, to supply their places shall be received for the period stated. The U.S. agree also to erect a Council House for the Nation at some convenient central point, after their people shall be settled; and a House for each Chief, also a Church for each of the three Districts, to be used also as school houses, until the Nation may conclude to build others; and for these purposes ten thousand dollars shall be appropriated; also fifty thousand dollars (viz.) twenty-five hundred dollars annually shall be given for the support of three teachers of schools for twenty years. Likewise there shall be furnished to the Nation, three Blacksmiths one for each district for sixteen years, and a qualified Mill Wright for five years; Also there shall be furnished the following articles, twenty-one hundred blankets, to each warrior who emigrates a rifle, moulds, wipers and ammunition. One thousand axes, ploughs, hoes, wheels and cards each; and four hundred looms. There shall also be furnished, one ton of iron and two hundred weight of steel annually to each District for sixteen years.

ARTICLE XXI. A few Choctaw Warriors yet survive who marched and fought in the army with General Wayne, the whole number stated not to exceed twenty.

These it is agreed shall hereafter, while they live, receive twenty-five dollars a year; a list of them to be early as practicable, and within six months, made out, and presented to the Agent, to be forwarded to the War Department.

ARTICLE XXII. The Chiefs of the Choctaws have suggested that their people are in a state of rapid advancement in education and refinement, and have expressed a solicitude that they might have the privilege of a Delegate on the floor of the House of Representatives extended to them. The Commissioners do not feel that they can under a treaty stipulation accede to the request, but at their desire, present it in the Treaty, that Congress may consider of, and decide the application. . . .

[Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, 2:310–15.]

44. Cherokee Nation v. Georgia

1831

When Georgia extended her laws over the Cherokee lands, the Indians brought suit against the state. The Supreme Court refused to accept jurisdiction because it declared that the Cherokee Nation was not a "foreign nation" in the sense intended by the Constitution. John Marshall, who delivered the opinion, described the Indian tribes as "domestic dependent nations."

. . . . Mr. Chief Justice MARSHALL delivered the opinion of the Court.

This bill is brought by the Cherokee nation, praying an injunction to restrain the state of Georgia from the execution of certain laws of that state, which, as is alleged, go directly to annihilate the Cherokees as a political society, and to seize, for the use of

Georgia, the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force.

If Courts were permitted to indulge their sympathies, a case better calculated to excite them can scarcely be imagined. A people once numerous, powerful, and truly independent, found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts and our arms, have yielded their lands by successive treaties, each of which contains a solemn guarantee of the residue, until they retain no more of their formerly extensive territory than is deemed necessary to their comfortable subsistence. To preserve this remnant, the present application is made.

Before we can look into the merits of the case, a preliminary inquiry presents itself. Has this Court jurisdiction of the cause?

The third article of the constitution describes the extent of the judicial power. The second section closes an enumeration of the cases to which it is extended, with "controversies" "between a state or the citizens thereof, and foreign states, citizens, or subjects." A subsequent clause of the same section gives the Supreme Court original jurisdiction in all cases in which a state shall be a party. The party defendant may then unquestionably be sued in this Court. May the plaintiff sue in it? Is the Cherokee nation a foreign state in the sense in which that term is used in the constitution?

The counsel for the plaintiffs have maintained the affirmative of this proposition with great earnestness and ability. So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognise them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognise the Cherokee nation as a state, and the Courts are bound by those acts.

A question of much more difficulty remains. Do the Cherokees constitute a foreign state in the sense of the constitution?

The counsel have shown conclusively that they are not a state of the union, and have insisted that individually they are aliens, not owing allegiance to the United States. An aggregate of aliens composing a state must, they say, be a foreign state. Each individual being foreign, the whole must be foreign.

This argument is imposing, but we must examine it more closely before we yield to it. The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. In the general, nations not owing a common allegiance are foreign to each other. The term foreign nation is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist no where else.

The Indian territory is admitted to compose a part of the United States. In all our maps, geographical treaties, histories, and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens. They acknowledge themselves in their treaties to be under the protection of the United States; they admit that the United States shall have the sole and exclusive right of regulating the trade with them, and managing all their affairs as they think proper; and the Cherokees in particular were allowed by the treaty of Hopewell, which preceded the constitution, "to send a deputy of their choice, whenever they think fit, to Congress." Treaties were made with some tribes by the state of New York, under a then unsettled construction of the confederation, by which they ceded all their lands to that state, taking back a limited grant to themselves, in which they admit their dependence.

Though the Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign 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, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward of his guardian.

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.

These considerations go far to support the opinion, that the framers of our constitution had not the Indian tribes in view, when they opened the Courts of the union to controversies between a state or the citizens thereof, and foreign states.

In considering this subject, the habits and usages of the Indians, in their intercourse with their white neighbours, ought not to be entirely disregarded. At the time the constitution was framed, the idea of appealing to an American Court of justice for an assertion of right or a redress of wrong, had perhaps never entered the mind of an Indian or of his tribe. Their appeal was to the tomahawk, or to the government. This was well understood by the statesmen who framed the constitution of the United States, and might furnish some reason for omitting to enumerate them among the parties who might sue in the Courts of the union. Be this as it may, the peculiar relations between the United States and the Indians occupying our territory are such, that we should feel much difficulty in considering them as designated by the term foreign state, were there no other part of the constitution which might shed light on the meaning of these words. But we think that in construing them, considerable aid is furnished by that clause in the eighth section of the third article, which empowers Congress to "regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

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. They are designated by a distinct appellation; and as this appellation can be applied to neither of the others, neither can the appellation distinguishing either of the others be in fair construction applied to them. The objects, to which the power of regulating commerce might be directed, are divided into three distinct classes—foreign nations, the several states, and Indian tribes. When forming this article, the convention considered them as entirely distinct. We cannot assume that the distinction was lost in framing a subsequent article, unless there be something in its language to authorize the assumption. . . .

Had the Indian tribes been foreign nations, in the view of the convention, this exclusive power of regulating intercourse with them might have been, and most probably would have been, specifically given in language indicating that idea, not in language contradistinguishing them from foreign nations. Congress might have been empowered "to regulate commerce with foreign nations, including the Indian tribes, and among the several States." . . .

The Court has bestowed its best attention on this question, and, after mature deliberation, the majority is of opinion that an Indian tribe or nation within the United States is not a foreign state in the sense of the constitution, and cannot maintain an action in the Courts of the United States. . . .

If it be true that the Cherokee nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future.

The motion for an injunction is denied. . . .

[5 *Peters*, 15–20.]

45. Worcester v. Georgia

1832

Samuel A. Worcester, a missionary among the Cherokees, was imprisoned because he refused to obey a Georgia law forbidding whites to reside in the Cherokee country without taking an oath of allegiance to the state and obtaining a permit. The Supreme Court decided in favor of Worcester, maintaining that the Cherokees were a nation free from the jurisdiction of the state.

. . . . Mr. Chief Justice MARSHALL delivered the opinion of the Court.

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 labour for four years in the penitentiary of Georgia; under colour 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, are all involved in the subject now to be considered. . . .

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed; and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term "nation," so generally applied to them, means "a people distinct from others." The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.

Georgia, herself, has furnished conclusive evidence that her former opinions on this subject concurred with those entertained by her sister states, and by the government of the United States. Various acts of her legislature have been cited in the argument, including the contract of cession made in the year 1802, all tending to prove her acquiescence in the universal conviction that the Indian nations possessed a full right to the lands they occupied, until that right should be extinguished by the United States, with their consent: that their territory was separated from that of any state within whose chartered limits they might reside, by a boundary line, established by treaties: that, within their boundary, they possessed rights with which no state could interfere; and that the whole power of regulating the intercourse with them was vested in the United States. A review of these acts, on the part of Georgia, would occupy too much time, and is the less necessary, because they have been accurately detailed in the argument at the bar. Her new series of laws, manifesting her abandonment of these opinions, appears to have commenced in December, 1828.

In opposition to this original right, possessed by the undisputed occupants of every country; to this recognition of that right, which is evidenced by our history, in every change through which we have passed; is placed the charters granted by the monarch of a distant and distinct region, parcelling out a territory in possession of others whom he could not remove and did not attempt to remove, and the cession made of his claims by the treaty of peace.

The actual state of things at the time, and all history since, explain these charters; and the King of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly asserted titles can derive no aid from the articles so often repeated in Indian treaties; extending to them, first, the protection of Great Britain, and afterwards that of the United States. These articles are associated with others, recognising their title to self-government. The very fact of repeated treaties with them recognises it; and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self-government, by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state. Examples of this kind are not wanting in Europe. "Tributary and feudatory states," says Vattel, "do not thereby cease to be sovereign and independent states, so long as self-government and sovereign and independent authority are left in the administration of the state." At the present day, more than one state may be considered as holding its right of self-government under the guarantee and protection of one or more allies.

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. Can this Court revise and reverse it?

If the objection to the system of legislation, lately adopted by the legislature of Georgia, in relation to the Cherokee nation, was confined to its extra-territorial operation, the objection, though complete, so far as respected mere right, would give this Court no power over the subject. But it goes much further. If the review which has been taken be correct, and we think it is, 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; guaranty 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 recognise 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 in error, 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.

Will these powerful considerations avail the plaintiff in error? We think they will. He was seized, and forcibly carried away, while under guardianship of treaties guarantying the country in which he resided, and taking it under the protection of the United States. He was seized while performing, under the sanction of the chief magistrate of the Union, those duties which the humane policy adopted by Congress had recommended. He was apprehended, tried, and condemned, under colour of a law which has been shown to be repugnant to the Constitution, laws, and treaties of the United States. Had a judgment, liable to the same objections, been rendered for property, none would question the jurisdiction of this Court. It cannot be less clear when the judgment affects personal liberty, and inflicts disgraceful punishment, if punishment could disgrace when inflicted on innocence. The plaintiff in error is not less interested in the operation of this unconstitutional law than if it affected his property. He is not less entitled to the protection of the Constitution, laws, and treaties of his country. . . .

It is the opinion of this Court that the judgment of the Superior Court for the county of Gwinnett, in the state of Georgia, condemning Samuel A. Worcester to hard labour in the penitentiary of the state of Georgia, for four years, was pronounced by that Court under colour of a law which is void, as being repugnant to the Constitution, treaties, and laws of the United States, and ought, therefore, to be reversed and annulled. . . .

[6 *Peters*, 534–36, 558–63.]

46. Authorization of a Commissioner of Indian Affairs

July 9, 1832

In 1832 Congress at last provided for an official specifically charged with the direction and management of Indian affairs. The commissioner succeeded the head of the Indian Office that had been established by the secretary of war in 1824. The same act absolutely prohibited the introduction of ardent spirits into the Indian country.

An Act to provide for the appointment of a commissioner of Indian Affairs, and for other purposes.

Be it enacted . . . , That the President shall appoint, by and with the advice and consent of the Senate, a commissioner of Indian affairs, who shall, under the direction of the Secretary of War, and agreeably to such regulations as the President may, from time to time, prescribe, have the direction and management of all Indian affairs, and of all matters arising out of Indian relations, and shall receive a salary of three thousand dollars per annum.

Sec. 2. *And be it further enacted*, That the Secretary of War shall arrange or appoint to the said office the number of clerks necessary therefor, so as not to increase the number now employed; and such sum as is necessary to pay the salary of said commissioner for the year one thousand eight hundred and thirty-two, shall be, and the same hereby is, appropriated out of any money in the treasury.

Sec. 3. *And be it further enacted*, That all accounts and vouchers for claims and disbursements connected with Indian affairs, shall be transmitted to the said commissioner for administrative examination, and by him passed to the proper accounting officer of the Treasury Department for settlement; and all letters and packages to and from the said commissioner, touching the business of his office, shall be free of postage.

Sec. 4. *And be it further enacted*, That no ardent spirits shall be hereafter introduced, under any pretence, into the Indian country.

Sec. 5. *And be it further enacted*, That the Secretary of War shall, under the direction of the President, cause to be discontinued the services of such agents, sub-agents, interpreters, and mechanics, as may, from time to time, become unnecessary, in consequence of the emigration of the Indians, or other causes.

[*U.S. Statutes at Large*, 4:564.]

47. Indian Commissioner Herring on the Indian Race

Extract from the *Annual Report of the Commissioner of Indian Affairs.*

November 22, 1832

The first man to hold the office of commissioner of Indian affairs authorized by Congress in 1832 was Elbert Herring. In his first report to the secretary of war he urged that the Indians be brought within the social system of the whites, especially in regard to private ownership of property.

. . . Some of the Indian tribes have proceeded to hostile acts, in the course of the year past, against each other, and conflicts have ensued, in which blood has been spilt in defiance of the obligation imposed by the guarantee of the United States, for the preservation of peace and tranquillity among them. The instigators of such unwarrantable proceedings, as well as the chief actors in every instance of ascertained outrage, are justly considered responsible to the Government for the transgression, and are invariably required to be given up to its authority to answer for the offences.

It is difficult to restrain such aggressions, growing out of ancient feuds, prompted by an unchecked spirit of rapine, and a thirst for warlike distinction, and, particularly, when probable impunity furnishes an additional incentive. To prevent outrage is, however, far better than to punish the offenders; nor should the expense attendant on the remedy to be found in the employment of a sufficient body of mounted rangers preclude its exercise. A display of military force, and the certainty of speedy punishment, can alone prevent a ready resort to rapine and bloodshed on the part of those who recognize no restraint on plunder, no bounds to the gratification of revenge.

On the whole, it may be matter of serious doubt whether, even with the fostering care and assured protection of the United States, the preservation and perpetuity of the Indian race are at all attainable, under the form of government and rude civil regulations subsisting among them. These were perhaps well enough suited to their condition, when hunting was their only employment, and war gave birth to their strongest excitements. The unrestrained authority of their chiefs, and the irresponsible exercise of power, are of the simplest elements of despotic rule; while the absence of the *meum* and *tuum* in the general community of possessions, which is the grand conservative principle of the social state, is a perpetual operating cause of the *vis inertiae* of savage life. The stimulus of physical exertion and intellectual exercise, contained in this powerful principle, of which the Indian is almost entirely void, may not unjustly be considered the parent of all improvements, not merely in the arts, but in the profitable direction of labor among civilized nations. Among them it is the source of plenty; with the Indians, the absence of it is the cause of want, and consequently of decrease of numbers. Nor can proper notions of the social system be successfully inculcated, nor its benefits be rightly appreciated, so as to overcome the habits and prejudices incident to savage birth, and consequent associations of maturer years, except by the institution of separate and secure rights in the relations of property and person. It is therefore suggested, whether the formation of a code of laws on this basis, to be submitted for their adoption, together with certain modifications of the existing political system among them, may not be of very salutary effect, especially as co-operating with the influences derivable from the education of their youth, and the introduction of the doctrines of the christian religion; all centering in one grand object—the substitution of the social for the savage state. . . .

[*House Executive Document* no. 2, 22d Cong., 2d sess., serial 233, p. 163.]

48. Trade and Intercourse Act

June 30, 1834

The final codification of the trade and intercourse acts was passed by Congress in 1834. It offered no sharp break with the past but embodied, sometimes in modified form, the principles that had developed through the preceding decades. The House Committee on Indian Affairs, which drew up the bill, relied heavily on a report submitted in 1829 by Lewis Cass and William Clark.

An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

Be it enacted . . . , That all that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas, and also, that part of the United States east of the Mississippi river, and not within any state to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country.

Sec. 2. *And be it further enacted*, That no

for the execution of the duties. And where any of the tribes are, in the opinion of the Secretary of War, competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe.

SEC. 10. [Compensation, travel allowances, etc.]

SEC. 11. *And be it further enacted*, That the payment of all annuities or other sums stipulated by treaty to be made to any Indian tribe, shall be made to the chiefs of such tribe, or to such person as said tribe shall appoint; or if any tribe shall appropriate their annuities to the purpose of education, or to any other specific use, then to such person or persons as such tribe shall designated.

SEC. 12. *And be it further enacted*, That it shall be lawful for the President of the United States, at the request of any Indian tribe to which any annuity shall be payable in money, to cause the same to be paid in goods, purchased as provided in the next section of this act.

SEC. 13. *And be it further enacted*, That all merchandise required by any Indian treaty for the Indians, payable after making of such treaty, shall be purchased under the direction of the Secretary of War, upon proposals to be received, to be based on notices previously to be given; and all merchandise required at the making of any Indian treaty shall be purchased under the order of the commissioners, by such person as they shall appoint, or by such person as shall be designated by the President for that purpose. And all other purchases on account of the Indians, and all payments to them of money or goods, shall be made by such person as the President shall designate for that purpose. And the superintendent, agent, or sub-agent, together with such military officer as the President may direct, shall be present, and certify to the delivery of all goods and money required to be paid or delivered to the Indians. And the duties required by any section of this act, of military officers, shall be performed without any other compensation than their actual travelling expenses. . . .

SEC. 14. *And be it further enacted*, That no person employed in the Indian department shall have any interest or concern in any trade with the Indians, except for, and on account of, the United States; and any person offending herein, shall forfeit the sum of five thousand dollars, and upon satisfactory information of such offence being laid before the President of the United States, it shall become his duty to remove such person from the office or situation he may hold.

SEC. 15. *And be it further enacted*, That the President shall be, and he is hereby, authorized to cause any of the friendly Indians west of the Mississippi river, and north of the boundary of the Western territory, and the region upon Lake Superior and the head of the Mississippi, to be furnished with useful domestic animals and implements of husbandry, and with goods, as he shall think proper: *Provided*, That the whole amount of such presents shall not exceed the sum of five thousand dollars.

SEC. 16. *And be it further enacted*, That the President be, and he is hereby, authorized to cause such rations as he shall judge proper, and as can be spared from the army provisions without injury to the service, to be issued, under such regulations as he shall think fit to establish, to Indians who may visit the military posts or agencies of the United States on the frontiers, or in their respective nations, and a special account of these issues shall be kept and rendered.

SEC. 17. *And be it further enacted*, That the President of the United States shall be, and he is hereby, authorized to prescribe such rules and regulations as he may think fit, for carrying into effect the various provisions of this act, and of any other act relating to Indian affairs, and for the settlement of the accounts of the Indian department. . . .

[*U.S. Statutes at Large*, 4:735–38.]

50. President Jackson on Indian Removal

December 7, 1835

President Andrew Jackson held firm in favor of Indian removal. In his annual message to Congress in December 1835 he renewed his arguments for the removal policy.

. . . . The plan of removing the aboriginal people who yet remain within the settled portions of the United States to the country west of the Mississippi River approaches its consummation. It was adopted on the most mature consideration of the condition of this race, and ought to be persisted in till the object is accomplished, and prosecuted with as much vigor as a just regard to their circumstances will permit, and as fast as their consent can be obtained. All preceding experiments for the improvement of the Indians have failed. It seems now to be an established fact that they can not live in contact with a civilized community and prosper. Ages of fruitless endeavors have at length brought us to a knowledge of this principle of intercommunication with them. The past we can not recall, but the future we can provide for. Independently of the treaty stipulations into which we have entered with the various tribes for the usufructuary rights they have ceded to us, no one can doubt the moral duty of the Government of the United States to protect and if possible to preserve and perpetuate the scattered remnants of this race which are left within our borders. In the discharge of this duty an extensive region in the West has been assigned for their permanent residence. It has been divided into districts and allotted among them. Many have already removed and others are preparing to go, and with the exception of two small bands living in Ohio and Indiana, not exceeding 1,500 persons, and of the Cherokees, all the tribes on the east side of the Mississippi, and extending from Lake Michigan to Florida, have entered into engagements which will lead to their transplantation.

The plan for their removal and reestablishment is founded upon the knowledge we have gained of their character and habits, and has been dictated by a spirit of enlarged liberality. A territory exceeding in extent that relinquished has been granted to each tribe. Of its climate, fertility, and capacity to support an Indian population the representations are highly favorable. To these districts the Indians are removed at the expense of the United States, and with certain supplies of clothing, arms, ammunition, and other indispensable articles; they are also furnished gratuitously with provisions for the period of a year after their arrival at their new homes. In that time, from the nature of the country and of the products raised by them, they can subsist themselves by agricultural labor, if they choose to resort to that mode of life; if they do not they are upon the skirts of the great prairies, where countless herds of buffalo roam, and a short time suffices to adapt their own habits to the changes which a change of the animals destined for their food may require. Ample arrangements have also been made for the support of schools; in some instances council houses and churches are to be erected, dwellings constructed for the chiefs, and mills for common use. Funds have been set apart for the maintenance of the poor; the most necessary mechanical arts have been introduced, and blacksmiths, gunsmiths, wheelwrights, millwrights, etc., are supported among them. Steel and iron, and sometimes salt, are purchased for them, and plows and other farming utensils, domestic animals, looms, spinning wheels, cards, etc., are presented to them. And besides these beneficial arrangements, annuities are in all cases paid, amounting in some instances to more than $30 for each individual of the tribe, and in all cases sufficiently great, if justly divided and prudently expended, to enable them, in addition to their own exertions, to live comfortably. And as a stimulus for exertion, it is now provided by law that "in all cases of the appointment of interpreters or other persons employed for the benefit of the Indians a preference shall be given to persons of Indian descent, if such can be found who are properly qualified for the discharge of the duties."

Such are the arrangements for the physical comfort and for the moral improvement of the Indians. The necessary measures for their political advancement and for their separation from our citizens have not been neglected. The pledge of the United States has been given by Congress that the country destined for the residence of this people shall be forever "secured and guaranteed to them." A country west of Missouri and Arkansas has been assigned to them, into which the white settlements are not to be pushed. No political communities can be formed in that extensive region, except those which are established by the Indians themselves or by the United States for them and with their concurrence. A barrier has thus been raised for

their protection against the encroachment of our citizens, and guarding the Indians as far as possible from those evils which have brought them to their present condition. Summary authority has been given by law to destroy all ardent spirits found in their country, without waiting the doubtful result and slow process of a legal seizure. I consider the absolute and unconditional interdiction of this article among these people as the first and great step in their melioration. Halfway measures will answer no purpose. These can not successfully contend against the cupidity of the seller and the overpowering appetite of the buyer. And the destructive effects of the traffic are marked in every page of the history of our Indian intercourse.

Some general legislation seems necessary for the regulation of the relations which will exist in this new state of things between the Government and people of the United States and these transplanted Indian tribes, and for the establishment among the latter, and with their own consent, of some principles of intercommunication which their juxtaposition will call for; that moral may be substituted for physical force, the authority of a few and simple laws for the tomahawk, and that an end may be put to those bloody wars whose prosecution seems to have made part of their social system.

After the further details of this arrangement are completed, with a very general supervision over them, they ought to be left to the progress of events. These, I indulge the hope, will secure their prosperity and improvement, and a large portion of the moral debt we owe them will then be paid. . . .

[James D. Richardson, comp., *Messages and Papers of the Presidents*, 3:171–73.]

51. Indian Commissioner Crawford on Indian Policy

Extract from the *Annual Report of the Commissioner of Indian Affairs*

November 25, 1838

Commissioner of Indian Affairs T. Hartley Crawford had strong views on Indian policy, which he expressed in his annual reports. In 1838 he wrote, among other things, about manual labor schools, allotment of Indian lands to individual Indians, and confederation of the Indians in the West.

. . . . The principal lever by which the Indians are to be lifted out of the mire of folly and vice in which they are sunk is education. The learning of the already civilized and cultivated man is not what they want now. It could not be advantageously ingrafted on so rude a stock. In the present state of their social existence, all they could be taught, or would learn, is to read and write, with a very limited knowledge of figures. There are exceptions, but in the general the remark is true, and perhaps more is not desirable or would be useful. As they advance, a more liberal culture of their minds may be effected, if happily they should yield to the influences that, if not roughly thrust back, will certainly follow in the wake of properly directed efforts to improve their understanding. To attempt too much at once is to insure failure. You must lay the foundations broadly and deeply, but gradually, if you would succeed. To teach a savage man to read, while he continues a savage in all else, is to throw seed on a rock. In this particular there has been a general error. If you would win an Indian from the waywardness and idleness and vice of his life, you must improve his morals, as well as his mind, and that not merely by precept, but by teaching him how to farm, how to work in the mechanic arts, and how to labor profitably; so that, by enabling him to find his comfort in changed pursuits, he will fall into those habits which are in keeping with the useful application of such education as may be given him. Thus too, only, it is conceived, are men to be christianized; the beginning is some education, social and moral lives, the end may be the brightest hope: but this allusion ought not, perhaps, to have been made; upon it I certainly will not enlarge; it is in better hands. Manual-labor schools are what the Indian condition calls for. The Missionary Society of the Methodist Episcopal Church has laid before the department a plan, based upon the idea suggested, for establishing a large central school for the education of the Western Indians. Into their scheme enter a farm, and shops for teaching the different mechanic arts. Experience, they say, has shown them, after much opportunity for judging correctly, that separate schools for the respective tribes, though productive of much good, are not so useful as one common school for the benefit of all would be. They assert truly that a knowledge of the English language is necessary, and they think that it can be best acquired in an establishment of the latter description. I would not hazard a different opinion; and yet it may not be improper to state that the funds which have been set apart for education purposes belong to the several tribes, without whose consent the Government could not devote them to a general school; and this the society admits. There is no disposition to discourage the efforts of those who choose to labor in this work of benevolence. On the contrary, there is, as there should be, an eagerness to meet any advance which promises greater facilities for improving the mind and morals of the Indian. Upon success in this department hangs every hope. All that can be done to encourage and cheer on those who have devised this scheme of goodness and charity, I think, should be done. But, whatever reform may be deemed advisable in the direction and economy of the separate schools, it appears to me that if the proposed central school shall be established, they should be kept up too. They may, perhaps, be more numerous than is necessary or advantageous; they may be too expensively conducted, or more scholars ought to be taught for the money expended, or they may be badly located; but each, or all, of these objections may be obviated, and the schools improved. For such minor institutions, would not the central school be able to furnish teachers? Could not the Government, in consideration of any pecuniary aid it might render, exact, as a condition, that a certain number of young Indians of capacity should yearly leave the central school qualified to be instructors, who shall make compensation for their own education by teaching as long as might be thought a suitable return? After such a plan had been in operation three or four years there would be an annual supply. . . .

There is one measure that, in my judgment, is of great importance; it has heretofore attracted the attention of Congress, and I hope will meet with favor. As any plan for the government of the western tribes of Indians contemplates an interior police of their own, in each community, and that their own laws shall prevail, as between themselves, for which some of their treaties provide, this, as it seems to me, indispensable step to their advancement in civilization cannot be taken without their own consent. Unless some system is marked out by which there shall be a separate allotment of land to each individual whom the scheme shall entitle to it, you will look in vain for any general casting off of savagism. Common property and civilization cannot co-exist. The few instances to be found in the United States and other countries of small abstracted communities, who draw their subsistence and whatever comforts they have from a common store, do not militate against this position. Under a show of equality, the mass work for two or three rulers or directors, who enjoy what they will, and distribute what they please. The members never rise beyond a certain point, (to which they had reached, generally, before they joined the society,) and never will while they remain where they are. But if they should, these associations are so small and confined as to place their possessions in the class of individual estates. At the foundation of the whole social system lies individuality of property. It is, perhaps, nine times in ten the stimulus that manhood first feels. It has produced the energy, industry, and enterprise that distinguish the civilized world, and contributes more largely to the good morals of men than those are willing to acknowledge who have not looked somewhat closely at their fellow-beings. With it comes all the delights that the word home expresses; the comforts that follow fixed settlements are in its train, and to them belongs not only an anxiety to do right that those gratifications may not be forfeited, but industry that they may be increased. Social intercourse and a just appreciation of its pleasures result, when you have civilized, and, for the most part, moral men. This process, it strikes me, the Indians must go through, before their habits can be materially changed, and they may, after what many of them have seen and know,

government which have produced an unsatisfactory and dangerous condition of things, menacing the peace of the Indians and irritating their white neighbors, should be replaced by a regularly organized Territorial form of government, the territory thus constituted to be admitted at some future time as a State into the Union on an equal footing with other States, thereby securing all the protection, sympathy, and guarantees of this great and beneficent nation. The sooner this sentiment becomes universal the better for all concerned. . . .

[*House Executive Document* no. 1, 49th Cong., 2d sess., serial 2467, pp. 81–82, 86–88.]

104. General Allotment Act (Dawes Act)

February 8, 1887

The demand of reformers that Indian reservations be allotted in severalty to individual Indians and that tribal relations be broken up was fulfilled by the Dawes Act of 1887. The law authorized the president of the United States to proceed with allotment and declared Indians who received allotments to be citizens of the United States.

An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

Be it enacted . . . , That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *And provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: *And provided further*, That when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

SEC. 2. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

SEC. 3. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

SEC. 4. That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land-office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land-office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

SEC. 5. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided; and the laws of the State of Kansas regulating the descent and partition of real estate shall, so far as practicable, apply to all lands in the Indian Territory which may be allotted in severalty under the provisions of this act: *And provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: *Provided however*, That all lands adapted to agriculture, with

or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at three per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And hereafter in the employment of Indian police, or any other employes in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

Sec. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

Sec. 7. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

Sec. 8. That the provision of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order.

Sec. 9. That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be repaid proportionately out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

Sec. 10. That nothing in this act contained shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

Sec. 11. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in Southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

[*U.S. Statues at Large*, 24:388–91.]

105. Use of English in Indian Schools

Extract from the *Annual Report of the Commissioner of Indian Affairs*

September 21, 1887

One of the chief tools in bringing white civilization to the Indians was the English language. Commissioner J. D. C. Atkins, in his annual report of 1887, argued for the exclusive use of English at all Indian schools and reprinted some of his directives.

. . . . Longer and closer consideration of the subject has only deepened my conviction that it is a matter not only of importance, but of necessity that the Indians acquire the English language as rapidly as possible. The Government has entered upon the great work of educating and citizenizing the Indians and establishing them upon homesteads. The adults are expected to assume the role of citizens, and of course the rising generation will be expected and required more nearly to fill the measure of citizenship, and the main purpose of educating them is to enable them to read, write, and speak the English language and to transact business with English-speaking people. When they take upon themselves the responsibilities and privileges of citizenship their vernacular will be of no advantage. Only through the medium of the English tongue can they acquire a knowledge of the Constitution of the country and their rights and duties thereunder.

Every nation is jealous of its own language, and no nation ought to be more so than ours, which approaches nearer than any other nationality to the perfect protection of its people. True Americans all feel that the Constitution, laws, and institutions of the United States, in their adaptation to the wants and requirements of man, are superior to those of any other country; and they should understand that by the spread of the English language will these laws and institutions be more firmly established and widely disseminated. Nothing so surely and perfectly stamps upon an individual a national characteristic as language. So manifest and important is this that nations the world over, in both ancient and modern times, have ever imposed the strictest requirements upon their public schools as to the teaching of the national tongue. Only English has been allowed to be taught in the public schools in the territory acquired by this country from Spain, Mexico, and Russia, although the native populations spoke another tongue. All are familiar with the recent prohibitory order of the German Empire forbidding the teaching of the French language in either public or private schools in Alsace and Lorraine. Although the population is almost universally opposed to German rule, they are firmly held to German political allegiance by the military hand of the Iron Chancellor. If the Indians were in Germany or France or any other civilized country, they should be instructed in the language there used. As they are in an English-speaking country, they must be taught the language which they must use in transacting business with the people of this country. No unity or community of feeling can be established among different peoples unless they are brought to speak the same language,

119. Extension of Civil Service Rules

Extract from the *Annual Report of the Commissioner of Indian Affairs*

September 15, 1896

In 1896 most employees of the Indian service were placed under civil service rules, leaving only the agents and a few others outside the system. Commissioner Daniel M. Browning reported on the status of the service in his annual report for 1896.

. . . . The classified service has been extended over almost every branch of the Indian work.

By direction of the President, in accordance with the third clause of section 6 of the civil-service act of January 16, 1883, the Department, March 30, 1896, amended the classification of the employees of the Department of the Interior so as to include therein "all clerks, assistant clerks, issue clerks, property clerks, and other clerical positions and storekeepers at Indian agencies and Indian schools."

Another Department order of same date amended the classification of the Indian service so as to include therein "all physicians, school superintendents, assistant superintendents, supervisors of schools, day school inspectors, school-teachers, assistant teachers, industrial teachers, teachers of industries, disciplinarians, kindergarten teachers, matrons, assistant matrons, farmers, seamstresses and nurses * * * without regard to salary or compensation, all subject to competitive examination for original appointment." Physicians, superintendents, teachers, and matrons were already in the classified service; but all persons employed in any of the other positions named were on March 30 also brought within its limits.

May 6, 1896, the President still further enlarged the scope of the classified service by including therein "all officers and employees, of whatever designation, except persons merely employed as laborers or workmen and persons who have been nominated for confirmation by the Senate, however or for whatever purpose employed, whether compensated by fixed salary or otherwise, who are serving in or are on detail from * * * the Indian service."

Recognizing the disadvantage under which the Indian labors in competing with his more favored white brother, permission was given for the appointment of Indians, without examination or certification by the Civil Service Commission, to all positions except those of superintendent, teacher, teacher of industries, kindergartner, and physician; and for those positions Indians could be selected upon noncompetitive examination, which should consist of such tests of fitness as should be approved by the Department and not disapproved by the Commission.

An abstract of all persons in the field in the Indian service June 30, 1896, except school employees, arranged with reference to their relations to the civil-service classification, gives the following items:

White persons in the classified service:

Agency employees classified by compensation—		
Salary less than $720 per annum	80	
Salary $720 or less than $840	164	
Salary $840 or less than $900	29	
Salary $900 or less than $1,000	112	
Salary $1,000 or less than $1,200	58	
Salary $1,200 or less than $1,400	74	
Salary $1,400 or less than $1,600	2	
Salary $1,600 or less than $1,800	1	
Salary $1,800 or less than $2,000	2	
Salary $2,000 or less than $2,500	3	
Salary $2,500 and over	2	
		527
Special agents, commissioners, surveying engineers, and physicians to L'Anse Indians		14
Presidential appointments		11
Total white persons in the classified service		552

White persons in the unclassified service:

Confirmed by the Senate: 38 agents, 5 inspectors, 5 commissioners to Five Civilized Tribes	48	
Military officers acting as agents	17	
Physicians paid for occasional services	3	
Transportation agents	3	
Employed at agencies at compensation below classification	12	
Total white persons in the unclassified service	83	
Total white persons	635	
Indians in excepted places	1,356	
Indians in positions having salaries below classification	78	
Total Indian employees	1,434	

The total of salaries paid to white persons employed at agencies was $546,670; to officials, such as inspectors, special agents, commissioners, etc., not located at agencies, $104,815. Salaries paid to Indians aggregated $258,140, nearly half the amount paid to white employees at agencies.

Whenever it has been found practicable to employ Indians it has been the policy of this office to give them the preference, and in the large majority of cases they have been found faithful and earnest, entering heartily into the work of advancing their own people. There are Indian employees at every agency except two; one of these is a very small agency and the other has only two employees. One agency has 107 Indians employed, one has 76, another 72, two have 51, twenty-two have over 20, and nineteen have from 10 to 20 Indians on their employee rolls. Of course a large number are policemen and judges of the courts of Indian offenses, but the number holding other positions is not small, and steadily increases.

As stated, none of the above figures refer to employees in schools. Under the orders referred to the entire school service was classified, thus bringing under the operation of civil-service rules 2,070 superintendents, teachers, etc., employed in the various schools, whose aggregate salaries amounted last year to nearly one million dollars. This included 705 Indians, about 34 per cent of the total number of school employees. The statement in detail is as follows:

Whites in the classified service:

Salary less than $720	979	
Salary $720 or less than $840	206	
Salary $840 or less than $900	39	
Salary $900 or less than $1,000	44	
Salary $1,000 or less than $1,200	42	
Salary $1,200 or less than $1,400	26	
Salary $1,400 or less than $1,600	27	
Salary $1,800 or less than $2,000	1	
		1,364

Whites in the unclassified service:

Confirmed by Senate	1
Total white persons	1,365
Indians in excepted places	705

The salaries paid white school employees amounted to $849,645. Those paid Indians amounted to $148,766. The classes graduating from the various nonreservation schools are fast furnishing material with which to fill school positions of importance and responsibility which require special training as well as aptitude. The first normal class, which was graduated last June, will be referred to hereafter.

The recognition of the merit system in the Indian service is a long step forward, and will undoubtedly elevate its standard, improve its morale, and promote its efficiency. The removal of all partisan influence from appointments will give added dignity to the positions and increase the zeal of those engaged in the work. . . .

[*House Document* no. 5, 54th Cong., 2d sess., serial 3489, pp. 3–5.]

120. Curtis Act

June 28, 1898

With the Curtis Act, Congress accomplished by legislation what the Dawes Commission has been unable to do by negotiation—effectively destroy the tribal governments in the Indian Territory. This long and detailed act provided for establishment and regulation of townsites, for management of leases of mineral rights, and for other technical matters. Printed here are several key sections, which authorized the Dawes Commission to draw up rolls and allot the lands to Indians on the rolls, prohibited aggrandizement of lands, and abolished the tribal courts.

An Act for the protection of the people of the Indian Territory, and for other purposes.

. . . . SEC. 11. That when the roll of citizenship of any one of said nations or tribes is fully completed as provided by law, and the survey of the lands of said nation or tribe is also completed, the commission heretofore appointed under Acts of Congress, and known as the "Dawes Commission," shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment among the citizens thereof, as shown by said roll, giving to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location, and value of same; but all oil, coal, asphalt, and mineral deposits in the lands of any tribe are reserved to such tribe, and no allotment of such lands shall carry the title to such oil, coal, asphalt, or mineral deposits; and all town sites shall also be reserved to the several tribes, and shall be set apart by the commission heretofore mentioned as incapable of allotment. There shall also be reserved from allotment a sufficient amount of lands now occupied by churches, schools, parsonages, charitable institutions, and other public buildings for their present actual and necessary use, and no more, not to exceed five acres for each school and one acre for each church and each parsonage, and for such new schools as may be needed; also sufficient land for burial grounds where necessary. When such allotment of the lands of any tribe has been by them completed, said commission shall make full report thereof to the Secretary of the Interior for his approval: *Provided*, That nothing herein contained shall in any way affect any vested legal rights which may have been heretofore granted by Act of Congress, nor be so construed as to confer any additional rights upon any parties claiming under any such Act of Congress: *Provided further*, That whenever it shall appear that any member of a tribe is in possession of lands, his allotment may be made out of the lands in his possession, including his home if the holder so desires. . . .

SEC. 17. That it shall be unlawful for any citizen of any one of said tribes to inclose or in any manner, by himself or through another, directly or indirectly, to hold possession of any greater amount of lands or other property belonging to any such nation or tribe than that which would be his approximate share of the lands belonging to such nation or tribe and that of his wife and his minor children as per allotment herein provided; and any person found in such possession of lands or other property in excess of his share and that of his family, as aforesaid, or having the same in any manner inclosed, at the expiration of nine months after the passage of this Act, shall be deemed guilty of a misdemeanor. . . .

SEC. 19. That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation. . . .

SEC. 26. That on and after the passage of this Act the laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory. . . .

SEC. 28. That on the first day of July, eighteen hundred and ninety-eight, all tribal courts of Indian Territory shall be abolished, and no officer of said courts shall thereafter have any authority whatever to do or perform any act theretofore authorized by any law in connection with said courts, or to receive any pay for same; and all civil and criminal causes then pending in any such court shall be transferred to the United States court in said Territory by filing with the clerk of the court the original papers in the suit: *Provided*, That this section shall not be in force as to the Chickasaw, Choctaw, and Creek tribes or nations until the first day of October, eighteen hundred and ninety-eight. . . .

[*U.S. Statutes at Large*, 30:497–98, 502, 504–05.]

121. Stephens v. Cherokee Nation

May 15, 1899

Suits brought against the determination of property rights by the Dawes Commission tested the constitutionality of the Curtis Act. The Supreme Court upheld the act in all its provisions.

. . . . We repeat that in view of the paramount authority of Congress over the Indian tribes, and of the duties imposed on the Government by their condition of dependency, we cannot say that Congress could not empower the Dawes Commission to determine, in the manner provided, who were entitled to citizenship in each of the tribes and make out correct rolls of such citizens, an essential preliminary to effective action in promotion of the best interests of the tribes. It may be remarked that the legislation seems to recognize, especially the act of June 28, 1898, a distinction between admission to citizenship merely and the distribution of property to be subsequently made, as if there might be circumstances under which the right to a share in the latter would not necessarily follow from the concession of the former. But in any aspect, we are of opinion that the constitutionality of these acts in respect of the determination of citizenship cannot be successfully assailed on the ground of the impairment or destruction of vested rights. The lands and moneys of these tribes are public lands and public moneys, and are not held in individual ownership, and the assertion by any particular applicant that his right therein is so vested as to preclude inquiry into his status involves a contradiction in terms.

The judgments in these cases were rendered before the passage of the act of June 28, 1898, commonly known as the Curtis Act, and necessarily the effect of that act was not considered. As, however, the provision for an appeal to this court was made after the passage of the act, some observations upon it are required, and, indeed, the inference is not unreasonable that a principal object intended to be secured by an appeal was the testing of the constitutionality of this act, and that may have had controlling weight in inducing the granting of the right to such appeal.

The act is comprehensive and sweeping in its character, and notwithstanding the abstract of it in the statement prefixed to this opinion, we again call attention to its provisions. The act gave jurisdiction to the United States courts in the Indian Territory in their respective districts to try cases against those who claimed to hold lands and tenements as members of a tribe and whose membership was denied by the tribe, and authorized their removal from the same if the claim was disallowed; and provided for the allotment of lands by the Dawes Commission among the citizens of any one of the tribes as shown by the roll of citizenship when fully completed as provided by law, and according to a survey also fully completed; and "that if the person to whom an allotment shall have been made shall be declared, upon appeal as herein provided for, by any of the courts of the United States in or for the aforesaid Territory, to have been illegally accorded rights of citizenship, and for that or any other reason declared to be not entitled to any allotment, he shall be ousted and ejected from said lands." . . .

For reasons already given we regard this act in general as not obnoxious to constitutional objection, but in so holding we do not intend to intimate any opinion as to the effect that changes made thereby, or by the agreements referred to, may have, if any, on the status of the several applicants, who are parties to these appeals.

The elaborate opinions of the United States court in the Indian Territory . . . consider the subject in all its aspects, and set forth the various treaties, tribal constitutions and laws, and the action of many tribal courts, commissions and councils which assumed to deal with it, but we have not been called on to go into these matters, as our conclusion is that we are confined to the question of constitutionality merely.

As we hold the entire legislation constitutional, the result is that all the

Judgments must be affirmed.

[174 *U.S. Reports*, 445, 488–89, 491–92.]