

The President, the Chief Justice, and the Cherokee Nation

OVERVIEW

This lesson examines the power of judicial review, its application in the case of *Worcester v. Georgia*, and legal rights of the Cherokee Indians in the 1830s. First, the teacher reviews “Checks and Balances” on the Courts in the Classroom website. Then they read and discuss an article providing more information on judicial review and the Worcester case. Finally, in an activity, students write a letter to President Andrew Jackson.

OBJECTIVES

Students will be able to:

- Describe the concept of the power of judicial review.
- Explain the facts and decision in the case of Worcester case.
- Describe what happened as a result of the decision.
- Develop an argument supporting the power of judicial review.

PREPARATION

Web Access and Projector to present **Checks and Balances** from the Courts in the Classroom website.

Handout: The President, the Chief Justice, and the Cherokee Nation—1 per student

STANDARD ADDRESSED

California History-Social Studies Standard 8.8.1—Discuss the election of Andrew Jackson as president in 1828, the importance of Jacksonian democracy, and his actions as president (e.g. . . .policy of Indian removal, opposition to the Supreme Court)

VOCABULARY

Treaty Negotiate Advocate

PROCEDURES

A. Web-Based Animation

1. Explain to students that in commemoration of Constitution Day, they are going to learn about an important idea contained in the structure of government found in the U.S. Constitution. It is called “checks and balances.” As they view the animation, ask them to look for the following information to answer these questions:
 - What are checks and balances? Why are they important?
 - What are some examples of checks and balances?
 - What is judicial review? How does it check the power of the other branches?

B. Reading and Discussion—The President, the Chief Justice and the Cherokee Nation

Explain to students that now they are going to take a closer look at judicial review and the U.S. Supreme Court case of *Worcester v. Georgia*. Distribute and have students read the Handout. When students have completed the reading, hold a class discussion using the following questions.

1. What is judicial review? How does it help to protect the Constitution?
(With judicial review, hear cases that claim that the acts of the executive or legislative branch or state governments violate the Constitution. It assures that the other branches and state governments do not exceed their constitutional powers or violate other provisions of the Constitution.)
2. According to Chief Justice Marshall’s opinion in *Worcester v. Georgia*, why did the Georgia law violate the Constitution?
(According to the opinion, power to regulate Indian tribes and relations belonged to the federal government and not to state governments. The law passed by the Georgia legislator attempted to regulate who could be in Cherokee territory and Georgia did not have power under the Constitution to pass or enforce such a law.)
3. During the build up to the Nullification Crisis in 1830, President Jackson was quoted that if a single drop of blood were spilled in “opposition to the laws of the United States” he would hang the first man he could lay his hands on.” Why did Jackson not take a similar stance over the *Worcester* situation?
(Jackson believed that the Cherokee and other Native American tribes should be moved to west of the Mississippi River and had supported the Indian Removal Act. He also wanted to negotiate with the tribe to begin its removal.)

C. Individual Activity—A Letter to the President

Direct student attention to the Activity at the end of the Handout. Review the instructions and answer any questions they might have. (e.g. the salutation: Dear Mr. President, The Address: Washington City, etc.) Allow students sufficient time to complete the assignment. Completed letters can be shared in class or collected for grading.

In assessing student work, in addition to other grammatical and writing criteria, consider the following. To what degree does the work product

Demonstrate an understanding of judicial review and why it is important

Utilize relevant facts drawn from the lesson presentations.

Demonstrate reasoned opinions and conclusions based on relevant fact and logical arguments.

Handout

The President, the Chief Justice, and the Cherokee Nation

An important part of the checks and balances in our constitutional system of government is the power of judicial review.

Judicial review gives the U.S. Supreme Court and other courts the power to overturn laws and other government actions that conflict with the U.S. Constitution. For example, imagine that a state law-making body passed a law that outlawed newspapers in the state. Citizens of that state could bring a case to the courts claiming that the law violated the First Amendment of the U.S. Constitution, which guarantees freedom of the press. If the court agreed, it could overturn the law. In this way, judicial review gives courts the ability to check the action of the legislative and executive branch to make sure they do not exceed their powers or take actions that violate constitutional principles.

The power of judicial review was established in 1803 in the famous U.S. Supreme Court case of *Marbury v. Madison*. In an opinion written by Chief Justice John Marshall, the court overturned a portion of the Judiciary Act of 1789 by ruling it unconstitutional. But the power of judicial review is not absolute. The other branches of the federal government or state governments must accept the judgment of the courts and, if necessary, enforce the decision.

Twenty-nine years after the *Marbury* decision, in 1832, Chief Justice Marshall wrote another opinion overturning a law passed by the Georgia legislature.

Samuel Worcester and the Cherokees

For hundreds of years, the Cherokee Nation of Indians had lived in Georgia. When their territory was controlled by the British, the Cherokees had treaties (agreements) with the English that recognized their sovereignty. This meant the tribe was almost treated like a foreign nation within the colony of Georgia. They had control of their lands and rights under the treaties. Changes had to be negotiated and agreed upon.

After the Revolutionary War and American Independence, the federal government took over the duties of these treaties with the Cherokee and many other tribes as well. But as the fourth state admitted to the Union, the population continued to grow. Settlers crowded in on Cherokee lands. When gold was discovered in northern Georgia in the 1830s, America experienced its first gold rush, and more people flooded the state. Pressure was put on the government of Georgia and the federal government to remove the Cherokee from their lands and send the tribe to more western lands in the interior of the country.

The Cherokee fought against these proposals. They built Anglo style towns, adopted American ways, established newspapers, and hired lawyers. They adopted a constitution and established a capital at the town of New Echota. They also gained supporters from the white population who believed the Cherokee and other Indian tribes were being treated unfairly.

One of these was Samuel Worcester. A missionary and a printer, he moved to the Cherokee territory of Georgia and took up the Cherokee cause. He set up a printing house and helped the Cherokees publish a newspaper to bring them together and advocate for their rights. He also worked with others inside and outside the state fighting for Indian rights.

The legislature of Georgia passed a law to block these activities. The law made it a crime for any non-Indian to be on Cherokee Indian lands without getting a permit from the governor. Worcester and 11 others were arrested for violating the law. He was convicted at trial and sentenced to four years hard labor. He appealed his conviction to the U.S. Supreme Court.

The Case

The case came before the Supreme Court in 1832. After oral argument on the case, Chief Justice Marshall wrote the opinion for the majority.

The court reversed the conviction of Samuel Worcester and held that the statute was unconstitutional. The opinion explained that under Article VI of the U.S. Constitution, agreements entered into by the U.S. government, such as treaties, are the supreme law of the land. Previous treaties between the U.S. government and the Cherokee Indians recognized their sovereignty and their right to self-government. Under the Constitution, only the federal government had authority over Indian treaties and regulations.

State governments such as Georgia did not have these powers. Making a law concerning who could be on Cherokee territory violated the Constitution. The state could not make laws that applied to Cherokee territory or regulate who could be on Indian Territory. Under the Constitution, a state is limited in exercising legislative power only over its own citizens within its own borders.

Chief Justice Marshall stated:

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.

The authorities in Georgia were not happy with the decision. Only after a new governor was elected was Samuel Worcester released.

How Did Judicial Review Work?

In *Worcester*, the Court used its power of judicial review to overturn the unconstitutional state law. And Samuel Worcester did finally gain his freedom.

But the decision did little to help the Cherokee. President Andrew Jackson and the federal government did nothing to get Worcester released. In fact, Jackson believed that the Cherokee should be removed from the state. Congress had passed an Indian Removal Act two years earlier. It gave the president power to make agreements with Indian tribes to leave Georgia and other states. In 1836, one group of Cherokees signed a removal treaty, but the majority called it a fraud. Over the next several years, some Cherokees left the state voluntarily, but many were forced to move. An estimated 4,000 Cherokees died in what came to be known as the Trail of Tears.

Questions for Discussion

1. What is judicial review? How does it help to protect the Constitution?
2. According to Chief Justice Marshall's opinion in *Worcester v. Georgia*, why did the Georgia law violate the Constitution?
3. During the build up to the Nullification Crisis in 1830, President Jackson was quoted that if a single drop of blood were spilled in "opposition to the laws of the United States" he would hang the first man he could lay his hands on." Why did Jackson not take a similar stance over the *Worcester* situation?

ACTIVITY

A Letter to the President

On reading the opinion in *Worcester v. Georgia*, President Andrew Jackson has been reported as saying, "John Marshall has made his decision, now let him enforce it." However, there is a debate among historians whether Jackson ever made this famous quote.

Whether Jackson actually said it or not, there is evidence that he did not respect the decision. In a letter to John Coffee, he did write: "The decision of the of the supreme court has fell still born and they find they cannot coerce Georgia to yield to its mandate."

Imagine that you, like Samuel Worcester are a supporter of the Cherokees in the 1830s and opposed to Indian Removal. Write a one-page letter to President Jackson explaining to him the importance of judicial review and why it is important for the other branches of the federal government and state governments to follow decisions of the courts.

In preparing to write the letter, review the article. In writing the letters be sure to provide facts and reasons to support your argument, explain the court's reasoning in the *Worcester* case, and explain why the President should support judicial review and the court's decision.