

State Authority over Indian Reservations – National and Washington State

Washington State Gambling Commission Meeting

May 8, 2025

Olympia, WA

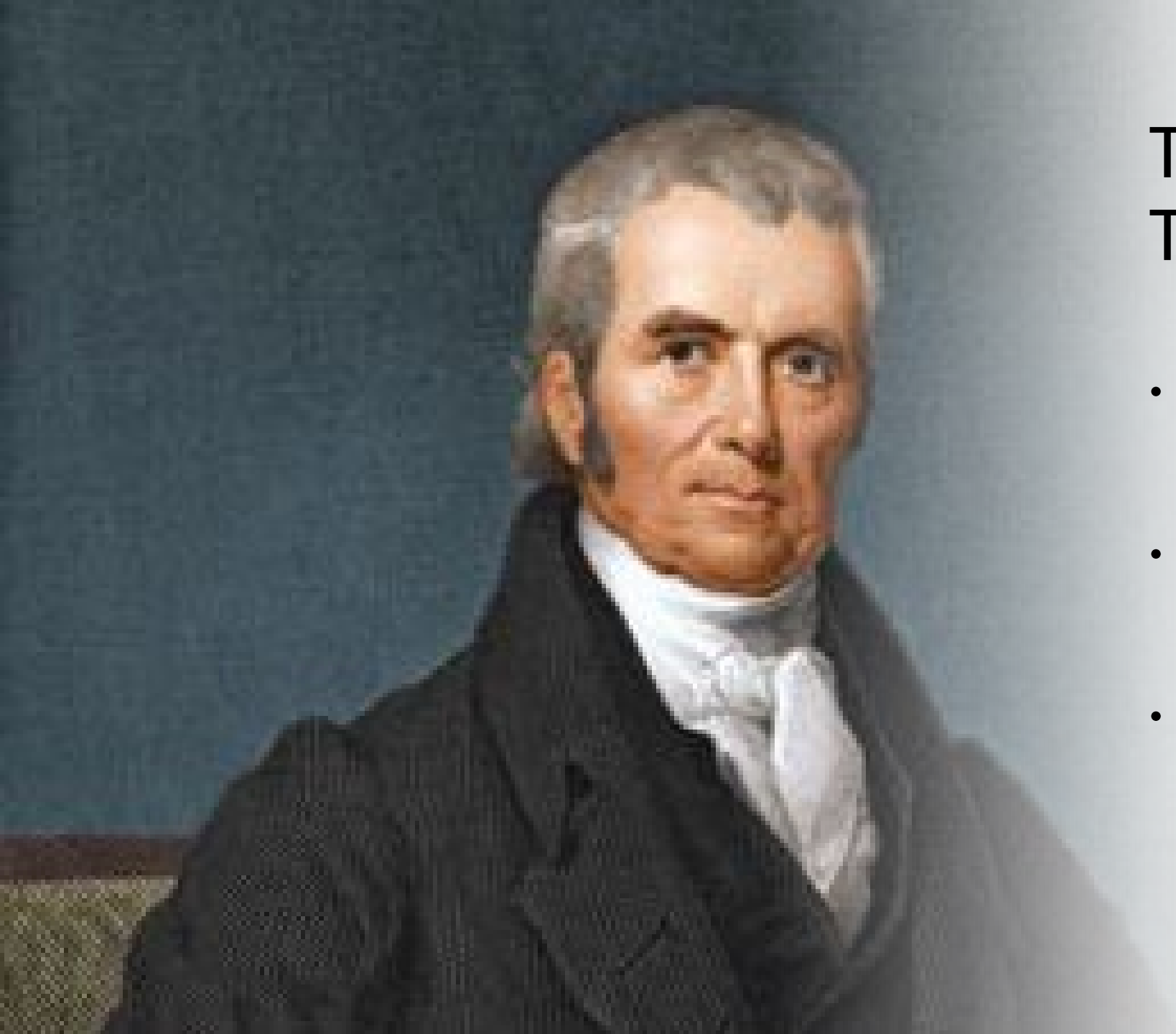
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The Indian Commerce Clause

- The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.
- U.S. Constitution, Clause 3.



The Marshall Trilogy

- Johnson v. McIntosh, 21 U.S. 543 (1823)
- Cherokee Nation v. Georgia, 30 U.S. 1 (1831)
- Worcester v. Georgia, 31 U.S. 515 (1832)

*Johnson v.
McIntosh*

The Discovery
Doctrine

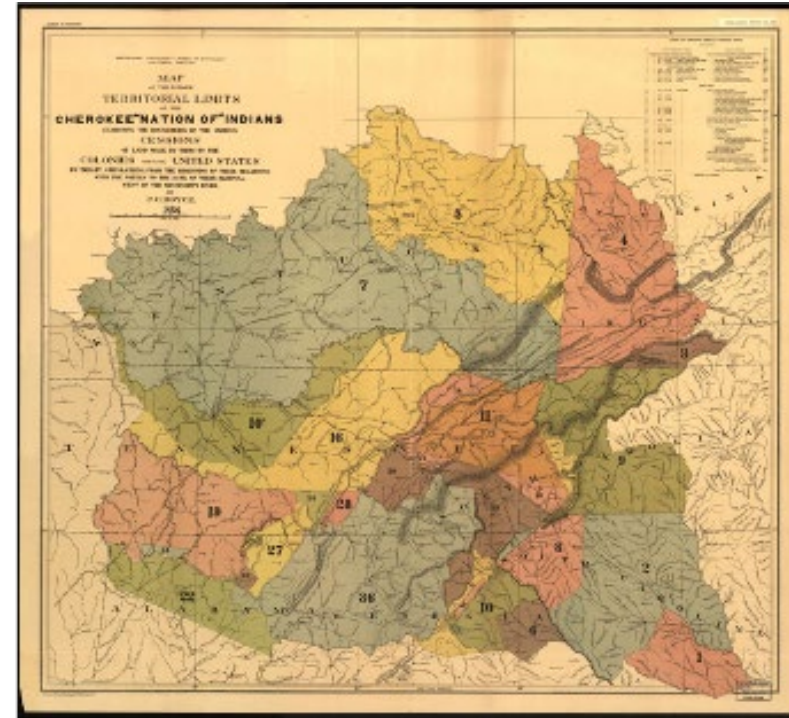
“When the conquest is complete and the conquered inhabitants can be blended with the conquerors or safely governed as a distinct people, public opinion, which not even the conqueror can disregard, imposes these restraints upon him, and he cannot neglect them without injury to his fame and hazard to his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

Johnson v. McIntosh Rules

- Tribes are sovereigns that can enter into treaties
- Only Congress (or who Congress delegates to) may engage in commerce with the Tribes
- Tribes cannot alienate their “aboriginal title” to anyone but the United States
- The United States, in exchange for Discovery Doctrine title, has a trust responsibility to the Tribes who they took title from

Cherokee Nation v. Georgia

What kind of
sovereign?



New Sovereigns – “Domestic Dependent Nations”

“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 to his guardian.”

Cherokee Nation v. Georgia Rules

- Tribes are sovereigns but not “foreign nations”
- Tribes are “domestic dependent sovereigns”
- Because they are not foreign nations, the U.S Supreme Court didn’t have jurisdiction over the case



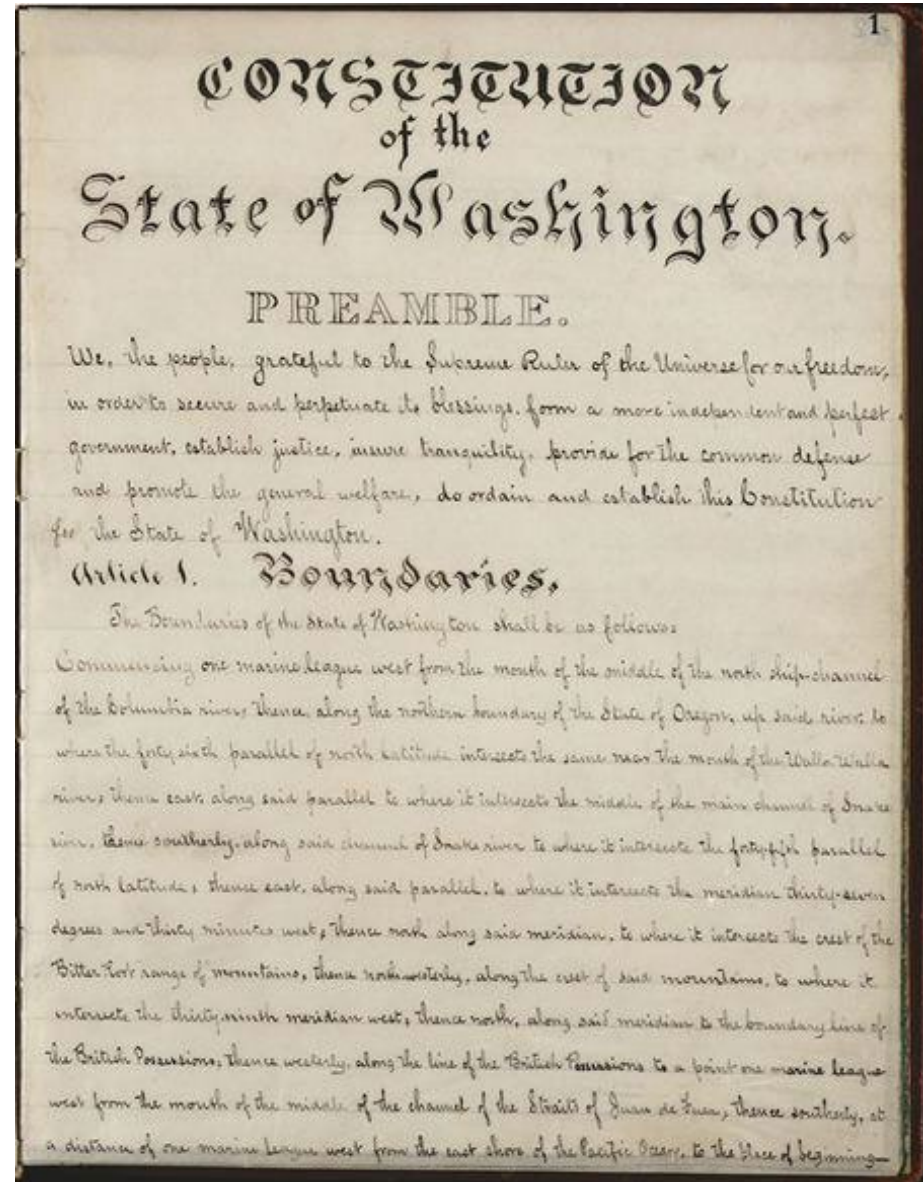
Worcester v. Georgia

- A missionary refused to leave the reservation in violation of Georgia statutes
- Sought Habeas Corpus relief from the U.S. Supreme Court, giving it jurisdiction to hear the case
- Chief Justice Marshall ruled that states have no authority over Indian reservations or tribes
- Jurisdiction is reserved to the federal government

Worcester v. Georgia Rules

- The Indian Commerce Clause reserves authority over tribes entirely to the Congress
- States have no jurisdiction over Indian Reservations or Indians on Reservations unless Congress allows

Washington State Constitution, Art. XXVI



Article XXVI

The following ordinance shall be irrevocable without the consent of the United States and the people of this state... That the people inhabiting this state do agree and declare that they forever disclaim all right and title ...[to lands] owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States...

Thank you!