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INTRODUCTION

The Cherokees and U.S. Indian Policy

THE CHEROKEE PEOPLE

The Cherokees lived in the valleys of rivers that drained the southern Appalachians. The United States did not exist when the Cherokees first inhabited this land, but today we might describe their homeland as extending from North Carolina into South Carolina, Georgia, Tennessee, and eventually Alabama. There they built their towns, cleared their fields, planted their crops, and buried their dead. The Cherokees also laid claim to a larger domain extending into Kentucky and Virginia, where they hunted deer and gathered raw materials essential to their way of life. Modern archaeologists believe that the Cherokees had lived on this land for hundreds, perhaps even thousands, of years; the Cherokees believed that they had always been there.

According to the Cherokees, the little water beetle created this land out of an endless sea by diving to the bottom and bringing up mud. The great buzzard shaped the mountains and valleys when his wings touched the soft earth. The first man and woman, Kana'ti and Selu, lived on that land. Their son and the unnatural Wild Boy, who had sprung from blood that Selu washed off dead game, unwittingly forged the Cherokee way of life when they spied on Kana'ti and Selu. The boys discovered that Kana'ti obtained the family's meat from a cave he kept covered with a large rock. When they pushed away the rock and accidentally released the animals, they condemned all future generations of Cherokee men to have to hunt for game. Then they found that Selu produced corn and beans by rubbing her stomach and armpits. They decided that she was a witch and that they must kill her. Realizing what her son and Wild Boy intended to do, Selu instructed them to clear a circle and drag her body over the cleared ground seven times. Where her blood dropped, corn grew. The boys tired of their task, however, and they cleared seven little spots instead of a circle and dragged Selu's body over them only two times.

Therefore, corn grows in only a few places, and Indian women must hoe their corn twice.

For many generations after Kana'ti and Selu, Cherokee women farmed and men hunted. Although the Cherokees divided tasks rather rigidly on the basis of gender, men helped clear fields and plant the crops and women helped dress and tan deerskins. Nevertheless, the Cherokees associated farming with women and hunting with men, and young women and men confirmed their marriage by an exchange of corn and deer meat. The Cherokees depended on the deer, turkeys, bears, rabbits, and other game that men killed and on the corn, beans, squash, and other crops that women raised. Farming as well as hunting, therefore, was essential to the Cherokee way of life long before Europeans arrived. In fact, the ancestors of modern Cherokees were growing crops well before the beginning of the Christian era, and by 1000, when most English people lived on coarse bread and ale, the Cherokees ate a varied and balanced diet of meat, corn, and other vegetables.

A Cherokee homestead consisted of several buildings clustered around a small plaza. Large rectangular houses with wooden sides and roofs provided shelter in summer months while small, round houses with thick mud-plastered walls provided a snug refuge from winter winds. Corncribs and other storage buildings stood nearby. Several generations of a family lived together. Because the Cherokees were matrilineal—that is, they traced kinship solely through women—the usual residents of a household were a woman, her husband, her daughters and their husbands, her daughters' children, and any unmarried sons (married sons lived in their wives' households). Usually the women of the household cultivated a small garden near the homestead, but the majority of the family's produce came from the large fields where all the women worked together, moving from one family's section of the field to another's.

These homesteads might be strung out along a river in a narrow mountain valley or tightly clustered in more open terrain, but together they formed a permanent village. Although men might travel great distances on the winter hunt, the village did not relocate, and most women, children, and old men remained behind. The focal point of the village was the town house or council house, a large, circular structure with thick mud walls much like the winter houses. Town houses had to be large enough to seat the members of the village, sometimes several hundred people, because the entire town met there to conduct ceremonies and debate important issues. Cherokees arrived at decisions by consensus; that is, they discussed issues until everyone could agree or those who disagreed withdrew from the discussion or even from the meeting. Debate could last

for weeks or months, and any man or woman who wanted to speak had an opportunity. This does not mean that the Cherokees considered all opinions to be equal. Indeed, if the issue was war, a prominent warrior could be expected to command more respect than a man who had never been to war. Furthermore, a woman who had lost a husband or child in a previous engagement might hold greater sway than a woman who was unrelated to previous victims. Leadership in a Cherokee community, in fact, rested with a person who could inspire followers rather than someone born to office.

War was often a concern for the Cherokees. They shared hunting grounds with many other Native peoples, and encounters in the hunting grounds often resulted in casualties. The Cherokees believed that they had a sacred duty to avenge the deaths of fallen comrades, and so war parties formed quickly following a death. If only one or two Cherokees had died, the chief responsibility for vengeance lay with the relatives of the dead, but when the deaths involved the kin of most members of a town, revenge became a concern for the entire community. War parties prepared for an expedition by fasting and singing sacred songs in the town house. When they left the village, they took care to avoid detection because the object was to return with enemy scalps or captives, not more casualties whose deaths would have to be avenged. This is why the warriors tried to stage surprise attacks and often targeted the easiest victims, including women and children.

The nature of Native warfare often struck Europeans as particularly brutal, but the Cherokees' view of the world and their place in it left them with few alternatives. They envisioned the world as composed of opposites that balanced each other. Men, for example, balanced women, and hunting balanced farming. By the same token, the Cherokees lived in a state of equilibrium with the non-Cherokees in the world, but if an outsider took the life of a Cherokee, he destroyed that state of equilibrium. For the world to be set right, one of the guilty party's people had to die. Failure to seek vengeance meant that the world remained out of kilter and placed the entire Cherokee people at risk of disease, drought, or a host of other disasters that they believed resulted from imbalance. Once a war party had exacted vengeance and restored cosmic order, however, it went home. Cherokee warriors did not conquer territory or destroy entire villages; they merely sought vengeance and order. Unfortunately, once the world had been returned to equilibrium in Cherokee eyes, it usually was out of balance from the perspective of the enemy, who would then seek to avenge the deaths of their people.

While all Cherokees worried about imbalance and sought to make things

right, the individuals most concerned with exacting vengeance were the clan members of the deceased. Each Cherokee belonged to one of seven clans. Cherokees believed that the members of a particular clan descended from a distant ancestor and that, therefore, all clan members were relatives. Marriage did not alter clan affiliation since Cherokee clans were matrilineal so that children belonged to the clan of their mother, not their father. The obligations of clan members were so strong and so scrupulously fulfilled that the Cherokees had no need for a police force or court system: protection, restitution, and retribution came from the clan. Cherokees traveling beyond their own town could expect food and shelter from distant clan members even if they did not know the travelers. Clan members also protected a person from members of other clans and sought vengeance after death. A person's clan kin had a special obligation to avenge his or her death because the spirit of the dead could not rest until a relative quieted "crying blood" through vengeance. Because all Cherokees accepted the same view of a balanced cosmos, clans stood back from the guilty party and did not retaliate for his or her death. Failure to restore balance, after all, threatened them as well.

Because the Cherokees tried to keep their world in harmony, religious observances focused on the maintenance of a pure and balanced world. The Cherokees did not separate religious observance from the ordinary tasks of daily life. Bathing, farming, hunting, and eating all had religious dimensions. People bathed daily for spiritual purification as well as physical cleanliness. The women sang sacred songs as they hoed their corn, and the men observed important rituals, such as asking the deer's pardon and offering its liver to the fire, when they killed game lest the spirits of the dead animals cause disease. Because the Cherokees believed that you are what you eat, stickball (lacrosse) players did not eat rabbit meat because rabbits are easily confused, and pregnant women did not eat squirrel because the baby might go up instead of down during delivery, like a squirrel on a tree. Cherokees extinguished fire with soil instead of water because water represented the underworld and fire the upper world, two spiritual realms that balanced each other and that the earth mediated. Men secluded themselves when they were most male—before and after going to war—and women when they were most female—during menstruation and childbirth—for fear that they might overwhelm their opposite and upset the precarious balance.

The greatest challenge to the Cherokee world and belief system came with the arrival of Europeans. Well before the Cherokees saw their first white man, they probably felt the effects of the unseen enemy that accompanied him—disease. Long separated from Europe and Asia, the

Cherokees and other Native peoples had little immunity to deadly European diseases such as smallpox, typhus, and even measles. When pathogens—disease-causing germs or viruses—reached the Cherokee country, people had neither the physical ability to fight off the diseases nor the knowledge of how to treat them. Numbering more than thirty thousand before the introduction of European diseases, the Cherokee population plummeted to perhaps as few as sixteen thousand in 1700. In addition to the decline in total population, the Cherokees no doubt lost many valued elders and their wisdom. The high death toll also perhaps undermined their confidence in traditional beliefs and in their conception of a harmonious world.

EARLY CONTACT WITH BRITISH COLONISTS

The British were not the first non-Indians to enter Cherokee territory. The Cherokees may have had brief or limited contact with Hernando de Soto in 1540 and with other Spanish explorers in the years that followed. Furthermore, they probably encountered runaway African slaves from British colonies well before they met the colonists. About 1700, however, the Cherokees began sustained contact with the British, and soon they became major players in Britain's commercial and imperial schemes. Despite the terrible losses from epidemics, the Cherokees remained a powerful people in the Southeast and an important strategic ally.

British traders traveled into the Cherokee country for two major commodities—deerskins and war captives. A great demand existed in Europe for deerskins, which were used to make leather goods such as stylish men's breeches. War captives became slaves either in the southern colonies or in the West Indies, where they worked alongside Africans. In exchange for these commodities, traders provided a variety of British goods including guns and ammunition, metal knives, hoes, hatchets, fabrics, kettles, rum, and trinkets. These goods became so desirable and even necessary to the Cherokees that hunting and war escalated. By midcentury, the slave trade had declined, but the deerskin trade continued to flourish.

The demise of the Indian slave trade did not mean that warfare declined. Indeed, the British, as well as the Spanish and French, who also had colonies in North America, discovered how useful Native allies could be and began to employ warriors in their colonial rivalries. Sometimes these alliances contradicted traditional Native enmities. In the 1740s, for

example, the British engineered an alliance between the Cherokees and the Iroquois, who lived in upstate New York and western Pennsylvania, although the two peoples were traditional enemies. In the 1750s the British built two forts in the Cherokee country, Fort Prince George in what is today upcountry South Carolina and Fort Loudoun in eastern Tennessee, to protect Cherokee towns while warriors were away fighting the enemies of the British Crown.

The Cherokees entered the French and Indian War (1756–63) on the side of the British, but attacks on Cherokees by white frontiersmen and duplicity by colonial officials ultimately led many Cherokees to shift their allegiance to the French. In 1760 Cherokee warriors placed Fort Loudoun under siege and defeated a force of sixteen hundred British soldiers sent to relieve the garrison. Fort Loudoun surrendered. Contrary to the terms of the surrender, however, the garrison destroyed or hid guns and ammunition, and so instead of giving the men safe conduct as originally promised, the Cherokees attacked, killed twenty-nine of the soldiers, and took the others prisoner. The following year, a British force invaded, and soldiers destroyed fifteen Cherokee towns including cornfields, granaries, and orchards. In the invasion and the famine that followed, thousands of Cherokees died.

Between the French and Indian War and the American Revolution, British hunters and settlers pushed westward. Hunters like Daniel Boone competed with Indians for game in the hunting grounds, and settlers began to encroach on Cherokee territory, particularly in the Holston River valley of northeastern Tennessee. The Cherokees welcomed the British king's Proclamation of 1763, which prohibited settlement west of the Appalachians. This should have made the Holston valley off limits, but the proclamation was only a paper blockade and the settlers ignored it. Cherokees began to regard the colonists, not the Crown, as their enemy, and when the American Revolution erupted in 1776, most Cherokees sided with the British.

The Cherokees gave refuge to fleeing Loyalists, and warriors raided the frontiers of Georgia, South Carolina, North Carolina, and Virginia. In late summer 1776, these colonies mounted a four-prong invasion. The Cherokees, who had not recovered from their losses in the French and Indian War, offered little resistance. Men, women, and children fled to the forests as the invading armies destroyed houses, fields, and granaries. At one town alone in upcountry South Carolina, the soldiers destroyed six thousand bushels of corn. The destruction so late in the year left no stores for the winter and no time to replant. The soldiers killed most Cherokee captives on the spot, and many collected the seventy-five-pound bounty

the South Carolina legislature offered for the scalps of Cherokee warriors. This invasion ended Cherokee participation in the American Revolution, except for a small group that moved west to the region near present Chattanooga. Called the Chickamaugas because many lived on a stream of that name, they continued to fight intermittently until 1794.

At the end of the American Revolution, the Cherokees faced an uncertain future. The American colonists had destroyed more than fifty towns, laid waste fields, and killed livestock. The Cherokee population, which had recovered somewhat from the early epidemics, once again declined dramatically as many who managed to survive the invasions died of exposure and starvation. Furthermore, between the outbreak of hostilities in 1776 and the final defeat in 1794, the Cherokees surrendered more than twenty thousand square miles of their domain. Most village sites remained in Cherokee hands, but the cession of such a vast expanse of hunting grounds jeopardized a Cherokee economy dependent on the deerskin trade. What would the Cherokees do?

THE UNITED STATES "CIVILIZATION" PROGRAM

In 1783, British and American diplomats signed the Peace of Paris, ending the American Revolution. The treaty recognized the independence of the United States and conveyed to the new nation all of England's rights and claims to the land within its boundaries. The territory of the Cherokee Nation, along with the lands of many other tribes, fell within those borders. One of the first and most important challenges for the United States was to define its authority and determine a set of policies for dealing with the tribes. Since most of them had allied with the British during the Revolutionary War, the first step was to make peace.

Congress's approach to the problem rested on the same theories that had governed the diplomats in Paris. According to international law, England had owned the American colonies by right of discovery, a concept that gave Christian European governments the right to claim and occupy the lands of non-Christian and "uncivilized" peoples, and by right of conquest, by which England had acquired France's right of discovery claims at the conclusion of the French and Indian War. This meant that while the British government recognized and accepted the rights of colonists and Indians to own and use their lands, govern themselves, shape their societies, and develop local economies, the ultimate and overarching authority was always the sovereign authority of England. When England

lost the Revolutionary War, the United States won, by right of conquest, England's rights, which included sovereign authority over all the land and people within its domain.

Congress extended this logic to its relations with the Indians. Victory in the Revolutionary War gave the new nation the same rights of conquest relative to the tribes. If England had lost its lands in America, England's Indian allies, the enemies of the United States, had lost theirs as well. It made no difference if their lands and villages had not been invaded and destroyed by American armies or if Native American warriors had not been wiped out in battle; they had lost the war along with England and should be dealt with as defeated enemies.

During the 1780s, until powerful Indian resistance forced change, Congress aggressively pursued this "conquered nations" Indian policy north of the Ohio River. South of the river, the "conquered nations" policy belonged to the states. Southern colonial charters, except for South Carolina's, extended west to the Mississippi River and beyond. Those states argued that England's authority had passed to them, not Congress, by right of conquest, and they quickly began to act on their assertions. In 1783, the North Carolina legislature granted a large block of Cherokee lands in present Tennessee to any of its citizens who would move there, and Georgia forced the Cherokees to cede a large tract for its citizens. The actions of both states outraged the Cherokees, who argued that the British government had no legal authority to dispose of their country in the Peace of Paris, that North Carolina and Georgia could not presume to take Cherokee land and offer it to their citizens, and that any Americans occupying the land without the Cherokees' permission should leave. Many Cherokee leaders believed that the best way to deal with American pretensions was through peaceful negotiations, but the Chickamaugas fought until their final defeat in 1794 to protect their land from North Carolina and Georgia claims.

The northern Indians reacted similarly to American right of conquest claims, and Congress had its hands full with warfare in the Ohio country. Fearful that the aggressive expansionism of North Carolina and Georgia would widen the war in the South, Congress adopted a different policy there. Making no right of conquest claims against the Cherokees and the other southern nations, Congress instead sought to negotiate peace treaties that would end the fighting and restrain the states. To that end it appointed commissioners to meet with Indian delegations at Hopewell, South Carolina.

The Treaty of Hopewell, signed with the Cherokees on November 28, 1785, established relations between them and the United States. Primarily

a peace treaty between the two nations, it contained several provisions designed to ensure friendly relations in the future. Because the main concern of the Cherokees was the continued encroachment of Georgians and North Carolinians, the treaty also defined the Cherokees' boundaries and recognized their right to expel unwanted intruders. Both states protested the treaty, citing the Indian article of the Articles of Confederation, which denied Congress the power to conduct relations with tribes within the boundaries of the states, but Congress argued that the threat of war overrode state claims. Congressional authority was undeniably ambiguous, however, and the Treaty of Hopewell was, for the most part, a failure. Neither Georgia nor North Carolina respected it, they continued to expand into Cherokee country, and the Cherokees continued to resist.

By the end of the 1780s, two things had happened to change the relations between the United States and Native Americans that had important implications for the Cherokees. In the first instance, the United States abandoned its assertion that the tribes were conquered enemies that had forfeited their rights to their lands. This decision, caused largely by continued Native resistance to the encroachment of settlers into their territories, reflected the realization that Native military power could be neither ignored nor countered without an enormous investment in lives and money. A new, peaceful way had to be found to conduct relations with Native peoples. Such a resolution of the crisis in the North proved impossible because neither the United States nor the tribes were willing to compromise their goals, but in the South, where the policy had always been to end the fighting, the change meant increased government efforts to restrain the expansionist states of Georgia and North Carolina.

The second event of importance was the reorganization of the United States government under the Constitution. Without ambiguity, the Constitution placed sole authority over Indian affairs in the hands of Congress and the president. This, in conjunction with its design of a federal system that subordinated the states to the national government in important areas, gave the United States the means to devise and execute an Indian policy that could control the actions of the states and their citizens.

The task of making the new system workable fell to President George Washington's first secretary of war, Henry Knox. The only high official to remain in office through the transition from the Articles of Confederation to the Constitution, Knox brought to the new government several years' experience in Indian matters and clear ideas about how relations with the tribes should be conducted. He believed that the tribes were sovereign, independent nations and that the United States should recognize and

respect their rights to autonomous self-government within their borders. He was convinced that the encroachment of settlers and others onto their lands was the primary cause of warfare on the frontier and that the only way to bring lasting peace to Indian relations was to exert legislative controls over aggressive United States citizens. Furthermore, Knox thought that the federal government had a moral obligation to preserve and protect Native Americans from the extinction he believed was otherwise inevitable when "uncivilized" people came into contact with "civilized" ones. Knox also fully concurred with the general American view that as the population of the United States grew, Indians must surrender their lands to accommodate the increased numbers. These views added up to a policy aptly described by one historian as "expansion with honor," the central premise of which was that United States Indian policy should make expansion possible without detriment to the Indians.

Knox's Indian policy, which the president fully embraced, began to take shape in the first months of the Washington administration. The initial step was to win agreement to the concept that the tribes were sovereign nations and that the United States should deal with them through the negotiation of treaties ratified, as the Constitution directs, by a two-thirds vote of the Senate. In the first Indian Trade and Intercourse Act, passed in 1790, Congress approved this idea by requiring that all purchases of land from Indians must be arranged through treaties negotiated by tribal leaders and federal commissioners appointed by the president. Because the Constitution prohibited states from negotiating treaties, Knox accomplished his goal of excluding the states from conducting relations with the Indians. In this way, he hoped to end the fighting on the frontier that was caused by state expansionism.

With the means to bring peace to Indian relations at hand, Knox addressed the longer-term problem of ensuring the Indians' survival. Along with many people of their generation, Knox and Washington believed that the obviously "uncivilized" characteristics of Indian life existed because Native people knew no better. In other words, their "inferiority" was cultural, not racial. Indians, therefore, were fully capable of becoming "civilized" and assimilating into American society as functioning citizens. This would reverse their otherwise inevitable extinction and free the United States from the moral stigma of having been instrumental in their destruction.

To most Americans, "civilization" was not an abstract concept. Rather, "civilization" meant contemporary American culture. To be "civilized," Native Americans must dress, think, act, speak, work, and worship the way rural United States citizens, ideally, did. All they needed was a little time to learn how, and the proper role of government was to encourage their instruction.

This new Indian policy of Knox and Washington began almost immediately to influence United States relations with the Cherokees. The failure of the Treaty of Hopewell to end the encroachment of settlers and the resulting warfare between them and the Cherokees was, to Knox, "disgraceful." But the thousands of settlers who had entered the Cherokee Nation in violation of the treaty could hardly be removed. Instead, Knox and Washington believed that the United States should negotiate a new treaty with the Cherokees, buy the land the settlers illegally occupied, survey a new boundary, strictly prohibit any further encroachment, and take the first steps toward "civilizing" the Cherokees. The Treaty of Holston was concluded in July 1791 and contained the provisions Knox required, including the following: "That the Cherokee nation may be led to a greater degree of civilization, and to become herdsmen and cultivators, instead of remaining in a state of hunters, the United States will, from time to time, furnish gratuitously the said nation with useful implements of husbandry." Congress included a section in the 1793 Trade and Intercourse Act that extended to all the tribes this policy of donating agricultural implements and tools, draft animals, and other "civilized" goods to Indians and called for the appointment of people to explain and demonstrate their use. Thus the "civilization" program, a central feature of the expansion with honor policy devised by Knox and Washington, came into being at a time when the Cherokees desperately needed some alternative to their collapsed economy of deerskin trading.

CHEROKEE CULTURE CHANGE

The Cherokees embraced the government's program with enthusiasm, but they also decided to adapt "civilization" to Cherokee needs and goals. When Moravians requested permission to establish a mission in 1800, for example, the Cherokee headmen welcomed a school but expressed no interest in the gospel. When two years passed and a school had not been opened, they threatened to expel the missionaries. The Moravians shifted their emphasis to education to comply with Cherokee demands, and in 1804 they commenced classes at the mission. However important religion may have been to the missionaries, the Cherokees apparently had little interest in Christianity—the Moravians did not make their first convert until nine years after they began their work—but they recognized that the missionaries had other things to offer.

The Moravians, Protestant German immigrants who had established a town at Salem, North Carolina, had relatively little competition for Cherokee souls during nearly two decades of ministry. In 1817, however, missionaries arrived from the interdenominational (but mostly Presbyterian and Congregationalist) American Board of Commissioners for Foreign Missions, headquartered in Boston. Soon Baptist missionaries joined them, and the Methodists arrived in 1822. While these Protestant missionaries differed over various theological interpretations, they agreed that Christianity and "civilization" were inextricably linked: one could not be truly "civilized" without being Christian and vice versa. Consequently, they not only taught their students to read the Bible and pray but also taught them how to dress, eat, keep house, cook, and farm. The division of labor, of course, was European, not Cherokee: boys rather than girls farmed, and girls learned to be subservient.

Although the number of missionaries increased, they never had enough spaces in their classrooms for all Cherokee children. Not all parents, however, wanted their children to attend mission schools. The students who did enroll generally came from two types of families. Many were the children of British traders or Loyalists and Cherokee women. The matrilineal Cherokees regarded these people as wholly Cherokee, of course, because their mothers were Cherokee, but they were often bicultural—that is, they moved comfortably in both Cherokee and Anglo-American societies. In addition to these bicultural children of mixed ancestry, some traditional Cherokees sent their children to school because they foresaw the end of a Cherokee life style of hunting and subsistence farming. Headmen who had achieved prominence in eighteenth-century warfare and wealth in the deerskin trade sought new avenues for the aggression, competition, and achievement they had enjoyed in these outmoded ways. Therefore, they looked to the "civilization" program and mission schools to prepare them and their children for a new Cherokee world.

This new world required a redefinition of the most basic principles of Cherokee life. Men could no longer do the things that identified them as men—hunt and fight—but culturally, many could not bring themselves to do what women did—farm. Yet farming was exactly what the "civilization" program prescribed for men. At the same time, many Cherokee women were reluctant to give up farming, especially since agriculture now commanded so much attention. As a result, the Cherokees tried to accommodate to changed circumstances and the "civilization" program as best they could without sacrificing their most basic categories. Many women continued to hoe the corn while their husbands tended livestock, a corollary perhaps to hunting. Men harnessed their horses to plows at planting time, but they had always helped the women prepare the field. Women now spun

thread and wove cloth, but they had always been responsible for their family's clothing. For many, perhaps most, Cherokees, the pattern of life changed little.

For other Cherokees, however, "civilization" led to a far more significant transformation. With missionaries and United States agents as their guides and southern planters as their models, these Cherokees began to imitate an Anglo-American way of life. Like their white southern counterparts, Cherokee planters acquired African American slaves, raised cotton and other crops for sale in the regional markets, and accumulated capital. The wealthiest Cherokees invested in taverns along the roads that began to crisscross the country, opened stores, and operated ferries and toll roads. The women in these households did not normally toil in the fields. Instead, African American slaves or white sharecroppers performed the agricultural labor that traditionally had been theirs. These Cherokee planters became an economic elite, and they ultimately dominated political affairs.

Cherokee law had been informal and clan-based, but the advent of disparities in wealth and concern over the protection of property led to the creation of a written law code. The first recorded law, in 1808, established a national police force to prevent horse stealing and to protect the property of widows and orphans. In particular, the law enabled men to bequeath their wealth to their wives and children in defiance of the matrilineal tradition. Gradually other laws appeared on the books. Some dealt with criminal matters, but many involved the regulation of property: laws set interest rates, awarded contracts for ferries and toll roads, and established licensing procedures for hiring non-Cherokees.

Another body of laws also began to emerge that strengthened the authority of the national government. The Cherokees' second written law, in 1810, shifted the responsibility for avenging certain kinds of deaths from the clans to the national government. In 1817, the Cherokees enacted articles of government giving only the National Council the authority to cede lands. Subsequent legislation provided for apportionment of representation among districts, a standing committee with executive powers, and a supreme court. Finally, in 1827, the Cherokees wrote a constitution that provided for a bicameral legislature, a chief executive, and a judicial system.

The centralization of power came about in part because wealthy Cherokees wanted to protect their property but primarily because they wanted to preserve the Nation. The Cherokees held their land in common, so individuals could not sell property on which they lived. Cherokee leaders wanted to make sure that everyone—Cherokees and non-Cherokees—knew who had the authority to sell land. The Council restricted the sale of

improvements—houses and barns that individuals built on commonly held land—and revoked the citizenship of those who chose to move west. The Cherokee constitution was in one sense the culmination of the "civilization" program, but in another sense it marked the zenith of Cherokee nationalism. The preamble delineated the boundaries of the Nation, thereby linking the governing document to the Cherokee homeland: without the land, the Nation did not exist. In 1829 the Council committed to writing a law imposing the death penalty on anyone who sold that land without authority.

Another expression of Cherokee nationalism was the invention and adoption of a system for writing the Cherokee language. In the early 1820s, an untutored Cherokee named Sequoyah devised a syllabary for writing Cherokee. He developed a symbol for each sound (or syllable), and anyone who spoke Cherokee reportedly could memorize the eighty-six symbols (soon reduced to eighty-five) in a matter of days. Many Cherokees did learn to read and write, and even today, mastery of the Sequoyah syllabary is a source of great pride for individual Cherokees. In 1828, the Cherokee Nation began publication of the *Cherokee Phoenix*, with columns printed in English and in Cherokee. Because of this newspaper, we have a remarkable view of early Cherokee history. The *Phoenix* also represents the crowning glory of a Cherokee "civilization" shaped in part by the United States government's program and the efforts of Protestant missionaries but largely directed by the Cherokees themselves.

PRESSURE FOR REMOVAL

When Henry Knox and President Washington designed the expansion with honor policy that incorporated a commitment to "civilizing" the Indians, they had assumed that as Native people learned to be "civilized," they would enter American society as fully equal citizens. They had not anticipated that the view would quickly develop that Indian "deficiencies" were caused by racial, not cultural, characteristics. This new pattern of racist thought rejected the idea that Indians could ever be fully "civilized" and insisted that one cannot change through education characteristics determined by race. Therefore, the reasoning continued, there could be no place in American society for Native people and, furthermore, it made no sense to pursue an Indian policy that aimed to achieve an impossible goal. Such thinking came to influence United States relations with Native Americans in the 1820s and was used during congressional debate in 1830 to justify "removal" of the eastern Indians to land farther west to make room

for a burgeoning population of American citizens. For example, Senator John Forsyth of Georgia, arguing in support of the Indian Removal Act in 1830, characterized Indians as "a race not admitted to be equal to the rest of the community; not governed as completely dependent; treated somewhat like human beings, but not admitted to be freemen; not yet entitled, and probably never will be entitled, to equal civil and political rights." Attitudes like this obviously had profound implications for the Cherokees, widely credited with being the most "civilized" of any of the Indian tribes.

In part, the issue was land. After the War of 1812, an agricultural boom, the transportation revolution, and the development of a national market brought rapid changes to the country between the Appalachian Mountains and the Mississippi River. In the North, grain and livestock farmers spread through the Ohio River valley. Indiana and Illinois became states in 1816 and 1818, and their combined population increased from barely 37,000 in 1810 to almost a half-million in 1830. South of the Ohio, the expansion of cotton plantation agriculture led to the admission to the Union of Mississippi and Alabama in 1817 and 1819. Their total population jumped from 40,000 in 1810 to 445,000 in 1830. And the older states of Ohio, Tennessee, and Georgia, all with land within their borders that belonged to Indians, filled up. Their population rose from 745,000 in 1810 to over two million in 1830. Such enormous growth, occurring in just two decades, vastly increased the pressure on the tribes to sell more of their land. The demand for the land of the southern Indians was particularly intense. The Cherokees, Creeks, Choctaws, and Chickasaws held thousands of square miles, much of it astonishingly fertile, within the borders of Georgia, Alabama, Mississippi, and Tennessee. These cotton states shared the economic and social system of plantation agriculture and slavery. Southerners defined and justified their slave system by racism and were thus particularly responsive to a theory that held that Indians were racially inferior. These two phenomena—a sharply intensified demand for Indian land fed by burgeoning populations and the development of the idea that the Indians were racially rather than culturally inferior and therefore unchangeable—came together in the 1820s to create an atmosphere of extreme tension.

After the War of 1812, just as the pressure on the southern tribes to sell their land intensified, tribal leaders became increasingly reluctant to sell. Exercising their rights as sovereigns, national councils rebuffed federal commissioners sent to negotiate treaties of cession with the argument that they had already sold too much land and had no more to spare. Andrew Jackson, the commander of the army's southern district at that time and a frequent negotiator of Indian treaties, suggested that the

sensible way to get land from tribes that refused to sell was to take it. Negotiating treaties with Indians was "absurd," he argued. Their nations were not sovereign and the United States should not pretend they were. Congress should treat the Indians as subjects and "legislate their boundaries," by which he meant that Congress should exercise its right of eminent domain and seize the millions of acres they "wandered" over and hunted on. They should be allowed to keep only their villages and fields, which they obviously owned because they had invested their labor in them. Then Congress could populate the country with American citizens who would develop it and use it properly. If the tribes resisted the confiscation of their territories, Jackson pointed out, the "arm of government" was strong enough to force their compliance. Congress rejected Jackson's recommendations, but many agreed that some radical change in policy was in order.

Clearly, however, the issue was more complicated than the lust for land. No state could demand all the land owned by Indians and ignore the question of what was to happen to them after they had sold out. If the popular ideology denied the possibility of "civilization" and assimilation, the only logical alternative was expulsion. No one seriously suggested the third possibility, extermination. Expulsion, or removal, as it came to be called, was an idea that dated back to 1803 when President Thomas Jefferson had contemplated the acquisition of Louisiana. He toyed with the notion that eastern Indians might exchange their lands for comparable tracts west of the Mississippi and even suggested it to the Cherokees and Choctaws, but he never made removal a key feature of his Indian policy. Like Knox and Washington, he believed that Indians could be "civilized" and would ultimately blend into American society. Nevertheless, in 1810 about eight hundred Cherokees did migrate to the Arkansas River valley in present Arkansas. Jefferson's idea, premature when he first suggested it, gained new life in the supercharged atmosphere of the 1820s.

Thomas L. McKenney, the War Department clerk mainly responsible for administering Indian policy, was especially sensitive to the mounting tension. Mushrooming populations demanding land from Indians who refused to sell meant serious trouble. Indian policy, dedicated to the acquisition of Indian land for the benefit of American citizens, was encumbered by two late-eighteenth-century concepts—tribal sovereignty and "civilization"—that a growing number of Americans rejected as outmoded, impractical, impossible, undesirable, and "absurd." By the mid-1820s, McKenney, President James Monroe and his successor, John Quincy Adams, and many others turned to removal as the solution to what McKenney nervously referred to as a "crisis in Indian affairs."

For many years, until Congress acted with legislation in 1830, government officials attempted to convince tribal leaders to agree to removal. Treaties with the Cherokees in 1817 and 1819, the Choctaws in 1820, and the Creeks in 1826 all contained provisions to encourage groups to move west. The government set aside land in the region west of Arkansas, later called Indian Territory, where the Indians could rebuild their societies free from the demands of encroaching settlers and expansionist states. Some of the Indians accepted the offer and migrated, including a number of Cherokees. But most rejected the idea of abandoning their homelands for a strange and distant place and refused to move. By the end of the 1820s, state and federal officials realized that the voluntary migration of small groups of Native Americans would not achieve the government's goals.

Andrew Jackson won election to the presidency in 1828 with almost unanimous support from southern voters, who believed he would expel the Indians. He urged Congress to adopt the removal plan recommended by his predecessors and made support of the plan a measure of loyalty to the Democratic Party. During the winter of 1829–30, while public debate raged, Congress considered Jackson's removal bill.

The impetus for the legislation came directly out of the history of the tangled relations between the Cherokees and the state of Georgia. In 1802, Georgia ceded to the United States the land between its current western boundary and the Mississippi River, which was included in its colonial charter. In return, the United States pledged to purchase for Georgia all the Indian lands remaining within the state. The lands in question belonged to the Creeks and the Cherokees. By 1827, the Creeks were out of Georgia but the Cherokees remained. Indeed, the Cherokees drafted their constitution and by every statement and action indicated that they had no intention of leaving. Georgia politicians had long been impatient with what they charged was unreasonable delay by the United States in fulfilling its obligation under the 1802 agreement and intensified their demands for speedy action. Presidents Monroe and Adams countered repeatedly that they were moving as fast as they could: the law required that land could be purchased only by treaty, and federal policy respected the sovereign right of the Indian nations to refuse to sell. There was, therefore, nothing more they could do.

Jackson's election encouraged the Georgia legislature to take control of the situation. Shortly after his victory, Georgia reaffirmed and expanded its policy of extending state civil and criminal jurisdiction over the Cherokee Nation. Jackson refused to interfere, arguing that Georgia had a sovereign right to govern all the territory within its borders. This ex-

change took place in early 1829, formed the backdrop for the debate on removal, and focused the arguments directly on the Cherokees.

Jackson built his defense of removal on the twin themes of the sovereign rights of Georgia over the Cherokees and the moral imperative to protect Indians from the deleterious effects of exposure to American frontier settlers. Such contact, he explained, had always resulted in the degradation and ultimate demise of the Indians and only their isolation in a safe and distant haven could save them. If they remained in Georgia, they would have to be subject to the laws of the state because whatever power he had to protect Indians from outside interference applied only to the encroachment of individual citizens, not to the actions of a sovereign state. This line reflected an extremely narrow interpretation of the constitutional provisions of federal supremacy in Indian affairs and the treaty stipulations that obligated the United States to defend the territories of the Native nations from external force.

The president encountered substantial opposition to his position from United States citizens, particularly those who lived in the Northeast. The missionaries who worked among the Cherokees and the organizations that supported them offered evidence of Cherokee "civilization" and compelling arguments against removal. Most persuasive was Jeremiah Evarts, the corresponding secretary of the American Board of Commissioners for Foreign Missions, who published a series of essays in the Washington *National Intelligencer* in 1829 under the pseudonym William Penn. Other papers reprinted the Penn essays, ministers used them in their sermons, and outraged citizens, mainly in the Northeast, were moved to sign petitions urging their congressmen to oppose removal. The essays also influenced the debates in Congress, where politicians quoted their arguments or challenged their assertions.

But public skepticism about the efficacy of "civilizing" Indians and a fever for more land, plus party loyalty in Congress, won the day. The Indian Removal Act passed. Signed by the president on May 28, 1830, it created the machinery that expelled to a distant territory some one hundred thousand Indians, including sixteen thousand Cherokees.

CHEROKEE RESISTANCE AND CAPITULATION

The Cherokees mounted a strong defense of their rights. After agreeing to a land cessation in 1819, the National Council announced that the Cherokees would cede no more land. The Cherokees maintained that resolve in

the face of Georgia legislation that suspended their own political and judicial systems, curtailed their civil rights, and essentially banished missionaries and other supporters from their territory. Ultimately, the Cherokees turned to the United States Supreme Court to protect their rights. In 1832, when the Court ruled in favor of Cherokee sovereignty in *Worcester v. Georgia*, the state refused to respond to the Court's decision. Furthermore, Georgia went ahead with a land lottery, enacted into law in 1830, that provided for the distribution of Cherokee land to Georgia's citizens. Thousands of Georgians streamed into the Cherokee country and dramatically increased the turmoil and suffering in the Cherokee Nation. No one seemed to have the power and the will to help the Cherokees.

The Cherokees had been united in their opposition to removal, but now the situation appeared hopeless to some of them. A small group began to coalesce around the Cherokee statesman Major Ridge, a highly respected veteran of the Creek War of 1813–14 and a successful planter, and his New England–educated son and nephew, John Ridge and Elias Boudinot. These men concluded that the Cherokees had no alternative but to negotiate with the United States to exchange their land in the east for a new homeland west of the Mississippi. This defection horrified Principal Chief John Ross and the majority of Cherokees. The Cherokee government took steps to silence the group forming around Ridge, which came to be called the "Treaty Party," for fear that the United States would seize the opportunity to make a treaty with a disgruntled minority. The National Council moved to impeach the Ridges from their seats in the Council and forced Boudinot to resign as editor of the *Cherokee Phoenix*, a position he had held since it began publication. The Cherokee government was struggling to preserve a consensus by forcing the withdrawal of the minority opposition.

While the Treaty Party acted partly out of concern for the suffering of the Cherokee Nation, some members had less than pure motives for trying to subvert the Cherokee national government. Most members of the Treaty Party were fairly well-to-do Cherokees, but they did not fall into the elite class composed of Principal Chief Ross, his brother, and several other prominent leaders. Since the Cherokee government controlled much of the economic activity in the Nation, some suspected Ross and others of using political power to further their own economic interests. Furthermore, several Treaty Party members had been defeated in the 1830 elections, and John Ridge believed that only the subsequent ban on elections, caused by the extension of Georgia law over the Nation, prevented him from defeating Ross in a contest for principal chief. A willingness to negotiate also brought members of the Treaty Party some tangible

rewards—the Georgia governor exempted the property of the Ridges and Boudinot from the land lottery. A fair share of jealousy, thwarted ambition, and self-interest, therefore, motivated the Treaty Party.

While Ross's position may very well have enhanced his family's fortune, as principal chief he understood something about the nature of Cherokee politics that members of the Treaty Party failed to recognize. Despite major changes in the structure of Cherokee government since the days of town councils in which everyone participated, political ethics remained relatively unchanged. Cherokees still believed that leaders should represent a consensus. This is precisely what Ross did: the vast majority of Cherokees opposed removal and wanted to resist the United States and Georgia at any cost. If Ross had followed any other course, he would have lost his mandate to govern.

The federal and state governments welcomed the defection of the Treaty Party. John Ridge led a delegation to Washington to negotiate a removal treaty in 1835 but found himself confronting John Ross's delegation. Both delegations returned to the Cherokee Nation, and in October 1835 at its annual meeting at Red Clay, within the borders of Tennessee, the National Council rejected Ridge's treaty. Not to be denied, the United States treaty commissioner proposed a December treaty conference at the abandoned Cherokee capital of New Echota in Georgia. The Ross delegation returned to Washington, and only the Treaty Party appeared at the New Echota meeting, where a removal treaty was negotiated. The Treaty of New Echota provided for the cession of all the Nation's lands in the East, additions to Cherokee lands west of the Mississippi in what is today northeastern Oklahoma, payment of five million dollars to the Cherokees, arrangement of transportation to the West, and subsistence aid from the U.S. government for one year.

The majority of Cherokees, led by John Ross, protested the Treaty of New Echota and petitioned the United States Senate to reject the treaty. Despite the pleas, the Senate ratified it in the spring of 1836. The treaty gave the Cherokees two years to prepare for removal. Most people could not believe that the battle had been lost. They continued to plant their corn as Ross struggled to have the treaty abrogated. When United States soldiers arrived in the spring of 1838, few Cherokees had made preparations to go west. The troops began rounding up people and placing them in stockades. The summer heat, poor water supplies, disease, and inadequate provisions quickly took their toll on those awaiting deportation to the West. Seeing his people's suffering, Ross finally accepted the inevitability of removal and secured permission for the Cherokees to conduct their own emigration that fall. Except for scattered families and a

small group of Cherokees whose 1819 treaty rights permitted them to stay in North Carolina, the remaining Cherokees moved west in the winter of 1838–39 on what has come to be known as the "Trail of Tears."

Were the Cherokees "uncivilized savages" as so many people maintained? What reasons did people advance in favor of removal of the Indians? What arguments refuted their line of reasoning? How did the Cherokees themselves respond to removal? The documents in this volume will help you explore these and other issues. The selections also will introduce you to the kinds of sources historians use in writing about Cherokee removal and direct you toward additional primary sources and secondary literature. While you learn about the Cherokees and their removal, you also can learn how to go about researching their past.

Figure 1. The Cherokee Country about 1825 (*p. 22*)
This map of the Cherokee Nation just before the removal crisis shows the electoral districts (Amohee, Aquohee, and so on), public thoroughfares, and principal settlements. The boundaries of the states that claimed Cherokee territory—Georgia, Alabama, Tennessee, and North Carolina—are also outlined (— - - — - - —).

Figure 2. Trails of Tears (*p. 23*)
Removal policy extended not just to the Cherokees but to many eastern Indian nations. This map shows the locations of the five large southern nations before and after removal.

The Census of 1835

HEAD OF HOUSEHOLD	MALES UNDER 18	MALES OVER 18	FEMALES UNDER 18	FEMALES OVER 18	TOTAL CHEROKEE
1. William Reese		1			1
2. Roman Nose Johnso	2	2	2	1	7
3. Turnover	3	2		1	6
4. Lizy Ratley	2		5	1	8
5. Ooyeakee	2	4	3	3	12
6. Dry	1	2	2	3	8
7. Wallace Ratley	1	1	1	1	4
8. Deer Coming	2	2		1	5
9. Ootiah	3		2	2	7
10. Johnson		1		1	2
11. Whirlwind		4	3	1	8
12. The Hunter	1	3	4	3	11
13. Moses	2	1		2	5
14. The Dog		2		1	3
15. Peggy Waters	3	1		2	6
16. The Doctor	2	1	1	1	5
17. William Read				1	1
18. Pigeon	1	3	2	4	10
19. Big Jim		1		1	2
20. Path Killer	2		2		4
21. Polly Gritts	1		2	1	4
22. John Blythe	1	1	2		4
23. James Vann	2	1	1		4
24. Adam Seabolt		1	2	2	5
25. Betsey Goins				2	2
26. Wilson Nivens	3		3	1	7

Source: United States. National Archives. Census of 1835. Reference group 75.

The Census of 1835 (*continued*)

HEAD OF HOUSEHOLD	MALE SLAVES	FEMALE SLAVES	TOTAL SLAVES	WHITES CONNECTED BY MARRIAGE
1. William Reese				
2. Roman Nose Johnson				
3. Turnover				
4. Lizy Ratley				
5. Ooyeakee				
6. Dry				
7. Wallace Ratley				
8. Deer Coming				
9. Ootiah				
10. Johnson				
11. Whirlwind				
12. The Hunter				
13. Moses				
14. The Dog				
15. Peggy Waters				
16. The Doctor				
17. William Read	1	1	2	1
18. Pigeon				
19. Big Jim				
20. Path Killer				
21. Polly Gritts				
22. John Blythe		1	1	1
23. James Vann	5	9	14	1
24. Adam Seabolt	1		1	
25. Betsey Goins				
26. Wilson Nivens		1	1	

The Census of 1835 (*continued*)

HEAD OF HOUSEHOLD	FARMS	ACRES IN CULTIVATION	HOUSES	BUSHELS WHEAT RAISED	BUSHELS CORN RAISED
1. William Reese	1	30	3		200
2. Roman Nose Johnson	1	30	8		300
3. Turnover	1	5	1		
4. Lizy Ratley			1		
5. Ooyeakee	1	50	5		400
6. Dry	1	40	6		450
7. Wallace Ratley	1	15	2		200
8. Deer Coming	1	15	4		300
9. Ootiah	1	3	2		60
10. Johnson	1	4	1		
11. Whirlwind	1	20	2		200
12. The Hunter	1	6	1		50
13. Moses	1	10	4		30
14. The Dog	1	30	3		450
15. Peggy Waters	1	40	5		
16. The Doctor	1	6	1		30
17. William Read	1	20	4		
18. Pigeon	1	3	2		15
19. Big Jim	1	11	4		200
20. Path Killer	1	35	7		300
21. Polly Gritts	1	3	1		15
22. John Blythe	1	55	5		500
23. James Vann	1	100	20		2000
24. Adam Seabolt	1	35	8	20	350
25. Betsey Goins	1	22	5		100
26. Wilson Nivens	1	100	14		1000

The Census of 1835 (*continued*)

HEAD OF HOUSEHOLD	BUSHELS WHEAT SOLD	BUSHELS CORN SOLD	FOR HOW MUCH	BUSHELS CORN BOUGHT	FOR HOW MUCH	MILLS
1. William Reese						
2. Roman Nose Johnson		150	75.00	47	23.00	
3. Turnover				30	15.00	
4. Lizy Ratley				50	25.00	
5. Ooyeakee						
6. Dry				10	5.00	
7. Wallace Ratley						
8. Deer Coming						
9. Ootiah						
10. Johnson						
11. Whirlwind		100	50.00			
12. The Hunter		10	5.00			
13. Moses						
14. The Dog		150	37.50			
15. Peggy Waters						
16. The Doctor						
17. William Read				100	33.00	
18. Pigeon				8	4.00	
19. Big Jim						
20. Path Killer		100	50.00			
21. Polly Gritts						
22. John Blythe		150	75.00	20	6.00	
23. James Vann		20	9.00			
24. Adam Seabolt	15	200	85.00			
25. Betsey Goins				20	7.50	
26. Wilson Nivens		100	50.00			

The Census of 1835 (*continued*)

HEAD OF HOUSEHOLD	FERRY BOATS	FARMERS OVER 18 YEARS	MECHANICS OVER 18 YEARS	READERS IN ENGLISH	READERS IN CHEROKEE
1. William Reese	1			1	
2. Roman Nose Johnson		1			
3. Turnover		2	1		2
4. Lizy Ratley					
5. Ooyeakee		4	1		5
6. Dry		2	1		1
7. Wallace Ratley		1		1	1
8. Deer Coming		2	2		1
9. Ootiah					
10. Johnson		1	1		1
11. Whirlwind		4	1		
12. The Hunter		3			3
13. Moses		1			
14. The Dog		2	1		
15. Peggy Waters		1			1
16. The Doctor		1			
17. William Read		1		1	1
18. Pigeon		3	1		
19. Big Jim		1	1		
20. Path Killer		2	1		
21. Polly Gritts				1	
22. John Blythe		1	1	2	
23. James Vann		1		2	
24. Adam Seabolt		1		2	1
25. Betsey Goins				1	
26. Wilson Nivens		1	1	3	

The Census of 1835 (*continued*)

HEAD OF HOUSEHOLD	HALF-BREEDS	QUADROONS	FULL BLOODED	WEAVERS	SPINNERS
1. William Reese	1				
2. Roman Nose Johnson	6		1	1	4
3. Turnover	4		2		1
4. Lizy Ratley	8			1	3
5. Ooyeakee	6		6	3	4
6. Dry			8	4	4
7. Wallace Ratley	4			1	1
8. Deer Coming			5	1	1
9. Ootiah			7		2
10. Johnson			2		1
11. Whirlwind			8		1
12. The Hunter			10	1	3
13. Moses			5		1
14. The Dog			3	1	1
15. Peggy Waters			6	2	2
16. The Doctor			5	1	1
17. William Read		1		1	1
18. Pigeon			10		2
19. Big Jim	1		1	1	1
20. Path Killer			4		
21. Polly Gritts	3		1	1	2
22. John Blythe		4		1	1
23. James Vann		4		1	1
24. Adam Seabolt		4	1	2	3
25. Betsey Goins	1		1	1	2
26. Wilson Nivens		7		1	2

2

Georgia Policy

One of the most important keys to understanding the policy of Indian removal and its relation to the Cherokees lies in Georgia. No state agitated more consistently or aggressively for the expulsion of Native people from within its borders, no legislature sent more resolutions to Congress, no congressional delegation worked harder, and no press devoted more space to its support. The reasons for this are complicated, confused, and to a degree unclear.

The immediate history of Georgia's campaign for Indian removal begins in 1802 when the state and the federal government negotiated an arrangement by which Georgia surrendered its colonial charter claims to the region that now includes the states of Alabama and Mississippi. In compensation Georgia received $1.25 million in cash, congressional agreement to assume responsibility for the legal and financial tangles left by the Yazoo grants of the 1790s, and a pledge that the United States government would acquire all the lands held by Indians within the new boundaries of the state as rapidly as it could be done "peaceably" and on "reasonable terms." Embarrassed by the Yazoo frauds in which land companies had bribed the state legislature to award them vast tracts of land at a fraction of its value, the Georgia legislature immediately devised a lottery system for disposing of the land it expected to receive from the Cherokees and Creeks. Giving the land away by lottery removed it as a financial temptation to corrupt another legislature, thwarted speculation schemes, and created in the populace a universal enthusiasm for acquiring land from the Indians that no politician could ignore.

But because the United States recognized Indian tribes as sovereign nations and conducted relations with them by treaties, the government could not force tribal leaders to sell their land. And tribal leaders often refused to sell. Thus, as Georgia politicians became quick to point out, Indians remained within the borders claimed by Georgia, and the United States was failing to abide by the 1802 compact. Indeed, in each treaty, the United States guaranteed to the Creeks and Cherokees the lands they

refused to sell, causing some Georgians to charge that the government was worse than irresponsible, it was actually impeding the fulfillment of the compact. By the mid-1820s, the political leaders of Georgia had created an atmosphere so volatile and threatening that the Creeks, who owned several million acres of rich agricultural land in the Chattahoochee River valley, were forced to sell out and relocate. Some moved west, but most settled on the unsold portion of their nation that lay within the borders of Alabama.

Georgia politicians learned an important lesson from their role in the expulsion of the Creeks. Intense, single-minded pressure exerted on both the Indians and the federal government could force a treaty of cession and removal. Georgia's governor in the mid-1820s, George M. Troup, had orchestrated a campaign of bluster, threat, and audacity that had both acquired the rich Creek lands for the people of his state and enhanced his popularity with the voters.

The strides the Cherokees had made toward "civilization" convinced many Georgians that the Indians were strengthening their hold on their land. Well-educated Cherokees not only were more difficult to trick or intimidate, they shared many of the economic and social values of the Georgians. They understood the productive worth of their land, and the marketplace held many of the same financial attractions. Furthermore, it was hard for Georgians to point to Cherokee planters and businessmen and claim that God intended that "uncivilized" Indian hunters should give way to "civilized" white farmers.

The federal program to "civilize" the Cherokees made many Georgians nervous but the Cherokees' 1827 constitution outraged them. In its preamble, the constitution defined the borders of the Nation and in legal language proclaimed its sovereignty, that is, its exclusive right to govern people within those borders. In the body of the document, the framers drew up a government that was hardly distinguishable in form from that of Georgia. Ratified and in operation by mid-1828, the constitutional government was certainly not the work of people who were contemplating removal anytime soon.

The Cherokee Nation included the northwest corner of the territory claimed by Georgia and thereby blocked Georgia's access to the Tennessee River, which emptied into the Ohio and the Mississippi. Economic development theorists argued that Georgia's full potential could never be reached until it could tap that vast inland market. Wilson Lumpkin, a prominent Georgia politician, congressman, and governor between 1831 and 1835, participated in a survey of the region and became an enthusiast for the construction of railroads to link the agricultural heartland of the

state to the river network of the north and west. But nothing could be done as long as the Cherokees remained in place.

The economic and social order of Georgia, as well as of the other states of the South, rested on plantation agriculture and slavery and was rationalized by a racial conceptualization of society that defined whites as free and blacks as unfree. The debate over slavery expansion that led to the Missouri Compromise in 1821 had revealed deep divisions over slavery in the nation, and southerners were searching for ways to defend the institution and their way of life. Fearful that Congress might fall under the control of antislavery forces, they saw two immediate ways to block such a threat. One was to replace Indians with free white voters who would increase southern representation in the House of Representatives. Race-conscious southerners would not consider Indians, as people of color, eligible for citizenship and voting rights no matter how "civilized" they might be. The other solution was to embrace the principle of state sovereignty based on a strict interpretation of the Constitution. This step offered a host of possibilities; in the case of Indian removal the states could challenge federal claims to exclusive authority in Indian relations, extend state civil and criminal jurisdiction into Indian country, outlaw tribal governments, and confiscate tribal land. In these and other ways, a state could use its legal institutions to make life for Indians so miserable that they would gladly sell their lands and flee to the West. A state could justify such action by claiming its sovereignty over all the people and land within its boundaries even though those boundaries included Indian land.

All of these ideas and forces came together in Georgia by the late 1820s and were directed with full force against the Cherokees. Claiming sovereign jurisdiction over the Cherokee Nation, the Georgia legislature passed a series of laws beginning in 1828 that subjected the Cherokees to Georgia law. In 1829, soon after the inauguration of Andrew Jackson, the Cherokee National Council petitioned the president for protection from Georgia's legislation. Citing provisions in the treaties and the Trade and Intercourse Acts, the council called on Jackson to fulfill his obligation to protect them from encroachment and interference in their domestic affairs. Jackson responded by defending Georgia's claim to sovereignty and offered the Cherokees two choices: accept Georgia law or move west. The Supreme Court ruled against Georgia in *Worcester v. Georgia* in 1832, but Georgia refused to acknowledge the ruling and Jackson clearly had no intention of forcing the state to comply. Georgians accelerated their campaign and forced many Cherokees from their homes. The president's unwillingness to intercede left the Cherokees at Georgia's mercy.

While the Jackson administration was eager to remove all of the southern tribes, the articles and essays, memorials and petitions, debates and discussions focused on the Cherokees. They had become the object of everyone's attention, in part because Georgia made them so.

Georgia's Indian policy in the 1820s and 1830s has not been the subject of systematic inquiry in recent years, but material useful for further study does exist. Ulrich B. Phillips, "Georgia and States Rights: A Study of the Political History of Georgia from the Revolution to the Civil War, with Particular Regard to Federal Relations," *Annual Report of the American Historical Association for 1901* (Washington, D.C.: Government Printing Office, 1902, 2: 3–224; reprint edited by Louis Filler, Yellow Springs, Ohio: Antioch Press, 1968), is an important place to begin, although the interpretation is unabashedly pro-Georgia. Michael D. Green, *Politics of Indian Removal: Creek Government and Society in Crisis* (Lincoln: University of Nebraska Press, 1982), discusses the controversy between Georgia and the Creeks that set the stage for Cherokee removal. Mary Young, "The Exercise of Sovereignty in Cherokee Georgia," *Journal of the Early Republic* 10 (1990): 43–63, considers Georgia policy relative to the Cherokees.

THE GEORGIA LAWS

Resolutions of the Georgia General Assembly in 1826 and 1827 asserted that by virtue of its colonial charter, Georgia held complete sovereign dominion over all the land and people within its borders, including the Cherokees. This claim implied that under the Constitution, the federal government had no authority in dealing with the Cherokees except to regulate commerce. Therefore, if the United States failed to acquire the Cherokee Nation for Georgia under the Compact of 1802, the state was within its sovereign rights simply to take it.

These resolutions were not empty threats. Rather, they were designed to put both the United States and the Cherokee Nation on notice that Georgia would not relax its demand that the Cherokees be expelled. The legislature did not threaten to invade the Cherokee Nation with an armed force, but it clearly believed that it had the right to do so if it wished. For example, the assembly resolved in 1827 "that the Indians are tenants at [Georgia's] will, and [Georgia] may at any time she pleases, determine that tenancy by taking possession of the premises." But because the state was anxious not to "disturb the public tranquility, . . . she will not attempt to improve her rights by violence until all other means of redress fail." Rather, the assembly instructed the governor to send copies of its report

and resolutions to both the president and the Cherokees so that all would understand that "if the United States will not redeem her pledged honor; and if the Indians continue to turn a deaf ear to the voice of reason and friendship, we now solemnly warn them of the consequences. The lands in question *belong* to Georgia. She *must* and she *will* have them."

The next year, 1828, produced no treaty of cession and in December the General Assembly enacted legislation to attach the Cherokee Nation to five Georgia counties, thus putting the Cherokees and their lands under state jurisdiction. To go into effect June 1, 1830, this extension law also disallowed all laws enacted by the Cherokee National Council. Everyone understood the political and constitutional implications of Georgia'a action and eagerly awaited the president's reaction. President Jackson recognized Georgia's claim to sovereignty over the Cherokee Nation and upheld the extension law. But Georgia still had no treaty of cession. Frustrated by continued delay and encouraged by Jackson's supportive Indian policy, the assembly enacted a second, more comprehensive jurisdiction law. In part, this act responded to legislation passed by the Cherokee Council in 1829 that revoked the Cherokee citizenship of people who enrolled to emigrate west.

In December 1830, the General Assembly further tightened the grip on the Cherokee Nation by making it illegal for the Cherokee government to meet and act. To go into effect February 1, 1831, this law also prescribed that whites living in the Cherokee Nation take an oath of allegiance to Georgia and established the Georgia Guard, a special police force empowered to enforce Georgia law within the Cherokee Nation. The acts printed here, along with the 1826 and 1827 resolutions and the 1828 law, come from *Acts of the Georgia General Assembly*, published annually in Milledgeville, then the state capital.

As you read these laws, remember that their purpose was to force the Cherokees to the treaty table by using the political power of the state to make life for the Cherokees so miserable that they would be happy to flee. How did these laws affect the Cherokee Nation's government and courts? How did they challenge Cherokee sovereignty?

GEORGIA STATE ASSEMBLY

Laws Extending Jurisdiction over the Cherokees

December 19, 1829, and December 22, 1830

An act to add the Territory lying within the chartered limits of Georgia, and now in the occupancy of the Cherokee Indians, to the counties of Carroll, DeKalb, Gwinnett, Hall and Habersham, and to extend the laws of this State over the same, and to annul all laws and ordinances made by the Cherokee nation of Indians, and to provide for the compensation of officers serving legal process in said Territory, and to regulate the testimony of Indians, and to repeal the ninth section of the act of eighteen hundred and twenty-eight, upon this subject. . . .

Sec. 6. *And be it further enacted,* That all the laws both civil and criminal of this State be, and the same are hereby extended over said portions of territory respectively, and all persons whatever residing within the same, shall, after the first day of June nex, be subject and liable to the operation of said laws, in the same manner as other citizens of this State or the citizens of said counties respectively, and all writs and processes whatever issued by the courts or officers of said courts, shall extend over, and operate on the portions of territory hereby added to the same respectively.

Sec. 7. *And be it further enacted,* That after the first day of June next, all laws, ordinances, orders and regulations of any kind whatever, made, passed, or enacted by the Cherokee Indians, either in general council or in any other way whatever, or by any authority whatever of said tribe, be, and the same are hereby declared to be null and void and of no effect, as if the same had never existed; and in all cases of indictment or civil suits, it shall not be lawful for the defendant to justify under any of said laws, ordinances, orders or regulations; nor shall the courts of this State permit the same to be given in evidence on the trial of any suit whatever.

Sec. 8. *And be it further enacted,* That it shall not be lawful for any person or body of persons by arbitrary power or by virtue of any pretended rule, ordinance, law or custom of said Cherokee nation, to prevent, by threats, menaces or other means, to endeavor to prevent any Indian of said nation residing within the chartered limits of this State, from enrolling as an emigrant or actually emigrating, or removing from said nation; nor shall it be lawful for any person or body of persons by arbitrary power or

by virtue of any pretended rule, ordinance, law or custom of said nation, to punish in any manner, or to molest either the person or property, or to abridge the rights or privileges of any Indian for enrolling his or her name as an emigrant or for emigrating, or intending to emigrate from said nation.

Sec. 9. *And be it further enacted,* That any person or body of persons offending against the provisions of the foregoing section, shall be guilty of a high misdemeanor, subject to indictment, and on conviction, shall be punished by confinement in the common jail of any county of this State, or by confinement at hard labor in the Penitentiary for a term not exceeding four years, at the discretion of the court.

Sec. 10. *And be it further enacted,* That it shall not be lawful for any person or body of persons, by arbitrary power, or under colour of any pretended rule, ordinance, law or custom of said nation to prevent, or offer to prevent, or deter any Indian, head man, chief or warrior of said nation residing within the chartered limits of this State, from selling or ceding to the U.States, for the use of Georgia the whole or any part of said territory, or to prevent or offer to prevent any Indian, head man, chief or warrior of said nation, residing as aforesaid, from meeting in council or treaty, any commissioner or commissioners on the part of the United States, for any purpose whatever.

Sec. 11. *And be it further enacted,* That any person or body of persons offending against the provisions of the foregoing section, shall be guilty of a high misdemeanor, subject to indictment, and on conviction, shall be confined at hard labor in the Penitentiary for not less than four, nor longer than six years, at the discretion of the court.

Sec. 12. *And be it further enacted,* That it shall not be lawful for any person or body of persons by arbitrary force or under colour of any pretended rules, ordinances, law or custom of said nation, to take the life of any Indian residing as aforesaid for enlisting as an emigrant, attempting to emigrate, ceding or attempting to cede as aforesaid, the whole or any part of said territory, or meeting or attempting to meet in treaty or in council as aforesaid, any commissioner or commissioners as aforesaid; and any person or body of persons offending against the provisions of this section, shall be guilty of murder, subject to indictment, and on conviction shall suffer death by hanging.

Sec. 13. *And be it further enacted,* That should any of the foregoing offences be committed under colour of any pretended rules, ordinance, custom or law of said nation, all persons acting therein either as individuals or as pretended executive, ministerial or judicial officers, shall be deemed and considered as principals, and subject to the pains and penalties herein before prescribed.

Sec. 14. *And be it further enacted,* That for all demands which may come within the jurisdiction of a Magistrates court, suit may be brought for the same in the nearest district of the county to which the territory is hereby annexed, and all officers serving any legal process, or any person, living on any portion of the territory herein named, shall be entitled to receive the sum of five cents for every mile he may ride to serve the same, after crossing the present limits of said counties, in addition to the fees already allowed by law; & in case any of said officers should be resisted in the execution of any legal process issued by any court or Magistrate, Justice of the Inferior court or Judge of the Superior court of any of said counties, he is hereby authorised to call out a sufficient number of the militia of said counties to aid and protect him in the execution of his duty.

Sec. 15. *And be it further enacted,* That no Indian or descendant of any Indian residing within the Creek or Cherokee nations of Indians, shall be deemed a competent witness in any court of this State to which a white person may be a party, except such white person resides within the said nation.

An act to prevent the exercise of assumed and arbitrary power, by all persons under pretext of authority from the Cherokee Indians, and their laws, and to prevent white persons from residing within that part of the chartered limits of Georgia, occupied by the Cherokee Indians, and to provide a guard for the protection of the gold mines, and to enforce the laws of the State within the aforesaid territory.

Be it enacted by the Senate and House of Representatives of the State of Georgia, in General Assembly met, and it is hereby enacted by the authority of the same, That after the first day of February, eighteen hundred and thirty-one, it shall not be lawful for any person, or persons, under colour or pretence, of authority from said Cherokee tribe, or as head men, chiefs, or warriors of said tribe, to cause or procure by any means the assembling of any council, or other pretended Legislative body of the said Indians, or others living among them, for the purpose of legislating, (or for any other purpose whatever.) And persons offending against the provisions of this section, shall be guilty of a high misdemeanor, and subject to indictment therefor, and on conviction, shall be punished by confinement at hard labour in the Penitentiary for the space of four years.

Sec. 2. *And be it further enacted by the authority aforesaid,* That after the time aforesaid, it shall not be lawful for any person or persons under pretext of authority from the Cherokee tribe, or as representatives, chiefs, headmen, or warriors of said tribe, to meet, or assemble as a council, assembly, convention, or in any other capacity, for the purpose of

making laws, orders, or regulations for said tribe. And all persons offending against the provisions of this section, shall be guilty of a high misdemeanor and subject to an indictment, and on conviction thereof, shall undergo an imprisonment in the Penitentiary at hard labour for the space of four years.

Sec. 3. *And be it further enacted by the authority aforesaid,* That after the time aforesaid, it shall not be lawful for any person or persons, under colour, or by authority, of the Cherokee tribe, or any of its laws or regulations, to hold any court or tribunal whatever, for the purpose of hearing and determining causes, either civil or criminal; or to give any judgment in such causes, or to issue, or cause to issue any process against the person or property of any of said tribe. And all persons offending against the provisions of this section, shall be guilty of a high misdemeanor, and subject to indictment, and on conviction thereof shall be imprisoned in the Penitentiary at hard labor for the space of four years.

Sec. 4. *And be it further enacted by the authority aforesaid,* That after the time aforesaid, it shall not be lawful for any person or persons, as a ministerial officer, or in any other capacity, to execute any precept, command, or process, issued by any court or tribunal in the Cherokee tribe, on the persons or property of any of said tribe. And all persons offending against the provisions of this section, shall be guilty of a trespass and subject to indictment, and on conviction thereof, shall be punished by fine and imprisonment in the jail or in the Penitentiary not longer than four years, at the discretion of the court.

Sec. 5. *And be it further enacted by the authority aforesaid,* That after the time aforesaid, it shall not be lawful for any person, or persons, to confiscate, or attempt to confiscate, or otherwise to cause a forfeiture of the property or estate of any Indian of said tribe, in consequence of his enrolling himself and family for emigration, or offering to enrol for emigration, or any other act of said Indian in furtherance of his intention to emigrate. And persons offending against the provisions of this section, shall be guilty of high misdemeanor, and on conviction, shall undergo an imprisonment in the Penitentiary at hard labor for the space of four years.

Sec. 6. *And be it further enacted by the authority aforesaid,* That none of the provisions of this act, shall be so construed as to prevent said tribe, its headmen, chiefs, or other representatives from meeting any agent or commissioner, on the part of this State or the United States, for any purpose whatever.

Sec. 7. *And be it further enacted by the authority aforesaid,* That all white persons residing within the limits of the Cherokee nation, on the first day of March next, or at any time thereafter, without a license or permit,

from his Excellency the Governor, or from such agent as his Excellency the Governor, shall authorise to grant such permit or license, and who shall not have taken the oath hereinafter required, shall be guilty of an high misdemeanor, and upon conviction thereof, shall be punished by confinement in the Penitentiary at hard labour, for a term not less than four years: *Provided,* that the provisions of this section shall not be so construed, as to extend to any authorised agent or agents, of the government of the United States, or of this State, or to any person or persons, who may rent any of those improvements, which have been abandoned by Indians, who have emigrated West of the Mississippi: *Provided* nothing contained in this section, shall be so construed as to extend to white females, and all male children under twenty-one years of age.

Sec. 8. *And be it further enacted by the authority aforesaid,* That all white persons, citizens of the State of Georgia, who have procured a license in writing, from his Excellency the Governor, or from such agent as his Excellency the Governor, shall authorise to grant such permit or license, to reside within the limits of the Cherokee nation, and who have taken the following oath, viz:—"I, A. B. do solemnly swear (or affirm, as the case may be,) that I will support and defend the Constitution and laws of the State of Georgia, and uprightly demean myself as a citizen thereof, so help me God," shall be, and the same are hereby declared, exempt and free from the operation of the seventh section of this act.

Sec. 9. *And be it further enacted,* That his Excellency the Governor, be, and he is hereby authorised to grant licences to reside within the limits of the Cherokee nation, according to the provisions of the eighth section of this act.

Sec. 10. *And be it further enacted by the authority aforesaid,* That no person shall collect, or claim any toll from any person for passing any turnpike gate or toll bridge, by authority of any act or law of the Cherokee tribe, or any chief or headman or men, of the same.

Sec. 11. *And be it further enacted by the authority aforesaid,* That his Excellency the Governor, be, and he is hereby empowered, should he deem it necessary, either for the protection of the mines, or for the enforcement of the laws of force within the Cherokee nation, to raise and organise a guard, to be employed on foot, or mounted as occasion may require, which shall not consist of more than sixty persons, which guard shall be under the command of the commissioner or agent appointed by the Governor, to protect the mines, with power to dismiss from the service, any member of said guard, on paying the wages due for services rendered, for disorderly conduct, and make appointments to fill the vacancies occasioned by such dismissal.

Sec. 12. *And be it further enacted by the authority aforesaid,* That each person who may belong to said guard, shall receive for his compensation at the rate of fifteen dollars per month when on foot, and at the rate of twenty dollars per month when mounted, for every month that such person is engaged in actual service, and in the event that the commissioner or agent herein referred to, should die, resign or fail to perform the duties herein required of him, his Excellency the Governor, is hereby authorised and required to appoint in his stead, some other fit and proper person to the command of said guard, and the commissioner or agent, having the command of the guard aforesaid, for the better discipline thereof, shall appoint three sergeants who shall receive at the rate of twenty dollars per month, while serving on foot and twenty-five dollars per month, when mounted, as compensation whilst in actual service.

Sec. 13. *And be it further enacted by the authority aforesaid,* That the said guard, or any member of them, shall be, and they are hereby authorised and empowered to arrest any person legally charged with or detected in, a violation of the laws of this State, and to convey as soon as practicable, the person so arrested before a Justice of the Peace, Judge of the Superior or Justice of Inferior Court, of this State, to be dealt with according to law, and the pay and support of said guard to be provided out of the fund, already appropriated for the protection of the gold mines.

GEORGIA AND THE SUPREME COURT

The Cherokees resisted Georgia's encroachment on their territory and sovereignty by challenging the state in the United States Supreme Court. The first case to reach the Supreme Court was *Cherokee Nation v. Georgia* (1831). The Georgia Guard had arrested George Tassel, a Cherokee citizen, for murdering another Cherokee within the Cherokee Nation. A Georgia court tried and convicted Tassel of violating Georgia law, which the state had extended over Cherokee territory and citizens. The Cherokee Council contended that Georgia laws had no validity within the Cherokee Nation and sought an injunction against their enforcement. The Cherokees engaged as their lawyer William Wirt, who had served as attorney general in the presidential administrations of James Monroe and John Quincy Adams. Georgia did not wait for the case to run its course and executed Tassel. The Supreme Court ultimately declined to rule on the issue at stake—the enforcement of Georgia law within the Cherokee Nation—because the Cherokee Nation had no legal standing as a "foreign nation" before the Court. Chief Justice John Marshall referred to the

Cherokees as a "domestic dependent nation," but he left the door open for a subsequent suit brought by a United States citizen who did have legal standing. Most missionaries in the Cherokee Nation were just such persons. They had come from states other than Georgia to the Cherokee Nation, and if the Cherokee argument prevailed, Georgia had no authority over them. The missionaries generally refused to take the oath of allegiance Georgia required of whites living among the Cherokees on the grounds that they were subject solely to Cherokee law while within the Nation. In July 1831 the Georgia Guard arrested eleven missionaries including Samuel Austin Worcester and Elizur Butler of the American Board of Commissioners for Foreign Missions, and a Georgia court convicted them. Georgia finally released nine of the missionaries who either took the oath or agreed to leave the state. Worcester and Butler refused. Their cases reached the Supreme Court, which in March 1832 ruled specifically on *Worcester v. Georgia* and extended that decision to Butler as well. The Court, in a decision authored by Chief Justice Marshall, found in favor of Worcester and decreed that Georgia law was not valid within the Cherokee Nation, but Georgia refused to follow the Supreme Court's order to release the missionaries. In his annual message delivered in November 1832, Georgia Governor Wilson Lumpkin denounced the "fallibility, infirmities, and errors of this Supreme tribunal." In December, the missionaries decided to end legal proceedings to force Georgia's compliance, and in January 1833 they appealed to the governor for a pardon, which he granted.

Since World War II, the *Worcester* case has become one of the cornerstones of federal Indian law. Having languished for nearly a century and a half, Marshall's opinion on the nature of Cherokee sovereignty in 1832 has provided the tribes with the arguments necessary to reaffirm their sovereign status today. The key element in the *Worcester* decision is the doctrine of retained sovereignty—the idea that a nation retains all those attributes of sovereignty it does not voluntarily surrender. In other words, according to Marshall, a tribe came to the treaty table with full sovereignty, surrendered certain specified attributes of sovereignty in exchange for particular benefits, and held on to all the sovereign rights and powers it did not agree to give up.

The following selection is an excerpt from John Marshall's opinion in *Worcester v. Georgia,* printed in Richard Peters, ed., *Report of Cases Argued and Adjudged in the Supreme Court of the United States: January Term, 1832* (Philadelphia: Thomas, Cowperthwait & Co., 1845). The United States prints Supreme Court decisions in an ongoing government publication, *United States Reports*. Before 1875, Supreme Court decisions

are cited by the name of the reporter, and each reporter has his own series of volumes beginning with volume 1. The first Cherokee case, *Cherokee Nation v. Georgia,* is cited as 5 Peters 1–80 (the fifth volume of the series edited by Richard Peters, pages 1 through 80). *Worcester v. Georgia* is cited as 6 Peters 515–97. You can find a good introduction to laws and court decisions regarding Native Americans in Charles F. Wilkinson, *American Indians, Time, and the Law* (New Haven: Yale University Press, 1987). The best discussion of the Cherokee cases remains Joseph C. Burke, "The Cherokee Cases: A Study in Law, Politics, and Morality," *Stanford Law Review* 21 (February 1969): 500–31.

What was Worcester's original plea? On what evidence does he base that plea? What right, according to Marshall, did Native Americans have to their land? What rights did European discoverers have to Native land? What evidence does Marshall cite in support of Cherokee sovereignty? What evidence had Georgia presented to counteract claims of Cherokee sovereignty? Which argument does Marshall find most compelling?

UNITED STATES SUPREME COURT

Worcester v. Georgia

March 1832

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 indictment charges the plaintiff in error, and others, being white persons, with the offence of "residing within the limits of the Cherokee nation without a license," and "without having taken the oath to support and defend the constitution and laws of the state of Georgia."

The defendant in the state Court appeared in proper person, and filed the following plea:

"And the said Samuel A. Worcester, in his own proper person, comes and says, that this Court ought not to take further cognisance of the action and prosecution aforesaid, because, he says, that, on the 15th day of July, in the year 1831, he was, and still is, a resident in the Cherokee nation; and that the said supposed crime or crimes, and each of them, were committed, if committed at all, at the town of New Echota, in the said Cherokee nation, out of the jurisdiction of this Court, and not in the county Gwinnett, or elsewhere, within the jurisdiction of this Court: and this defendant saith, that he is a citizen of the state of Vermont, one of the United States of America, and that he entered the aforesaid Cherokee nation in the capacity of a duly authorized missionary of the American Board of Commissioners for Foreign Missions, under the authority of the President of the United States, and has not since been required by him to leave it: that he was, at the time of his arrest, engaged in preaching the gospel to the Cherokee Indians, and in translating the sacred Scriptures into their language, with the permission and approval of the said Cherokee nation, and in accordance with the humane policy of the government of the United States for the civilization and improvement of the Indians; and that his residence there, for this purpose, is the residence charged in the aforesaid indictment: and this defendant further saith, that this prosecution the state of Georgia ought not to have or maintain, because, he saith, that several treaties have, from time to time, been entered into between the United States and the Cherokee nation of Indians. . . . all which treaties have been duly ratified by the Senate of the United States of America; and, by which treaties, the United States of America acknowledge the said Cherokee nation to be a sovereign nation, authorized to govern themselves, and all persons who have settled within their territory, free from any right of legislative interference by the several states composing the United States of America, in reference to acts done within their own territory; and, by which treaties, the whole of the territory now occupied by the Cherokee nation, on the east of the Mississippi, has been solemnly guarantied to them; all of which treaties are existing treaties at this day, and in full force. . . ."

This plea was overruled by the Court. And the prisoner being arraigned, plead not guilty. The jury found a verdict against him, and the Court sentenced him to hard labour, in the penitentiary, for the term of four years. . . .

The indictment and plea in this case draw in question, we think, the validity of the treaties made by the United States with Cherokee Indians; if not so, their construction is certainly drawn in question; and the decision has been, if not against their validity, "against the right, privilege, or

exemption, specially set up and claimed under them." They also draw into question the validity of a statute of the state of Georgia, "on the ground of its being repugnant to the Constitution, treaties, and laws of the United States, and the decision is in favour of its validity." . . .

It has been said at the bar, that the acts of the legislature of Georgia seize on the whole Cherokee country, parcel it out among the neighbouring counties of the state, extend her code over the whole country, abolish its institutions and its laws, and annihilate its political existence.

If this be the general effect of the system, let us inquire into the effect of the particular statute and section on which the indictment is founded.

It enacts that "all white persons residing within the limits of the Cherokee nation on the 1st day of March next, or at any time thereafter, without a license or permit from his excellency the governor, or from such agent as his excellency the governor shall authorize to grant such permit or license, and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanor, and, upon conviction thereof, shall be punished by confinement to the penitentiary, at hard labour, for a term not less than four years."

The eleventh section authorizes the governor, should he deem it necessary for the protection of the mines, or the enforcement of the laws in force within the Cherokee nation, to raise and organize a guard," &c.

The thirteenth section enacts, "that the said guard or any member of them, shall be, and they are hereby authorized and empowered to arrest any person legally charged with or detected in a violation of the laws of this state, and to convey, as soon as practicable, the person so arrested, before a justice of the peace, judge of the Superior, or justice of inferior Court of this state, to be dealt with according to law."

The extra-territorial power of every legislature being limited in its action to its own citizens or subjects, the very passage of this act is an assertion of jurisdiction over the Cherokee nation, and of the rights and powers consequent on jurisdiction.

The first step, then, in the inquiry, which the Constitution and laws impose on this Court, is an examination of the rightfulness of this claim.

America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should

give the discoverer rights in the country discovered, which annulled the pre-existing right of its ancient possessors. . . .

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. . . .

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.

DISPOSSESSING THE CHEROKEES

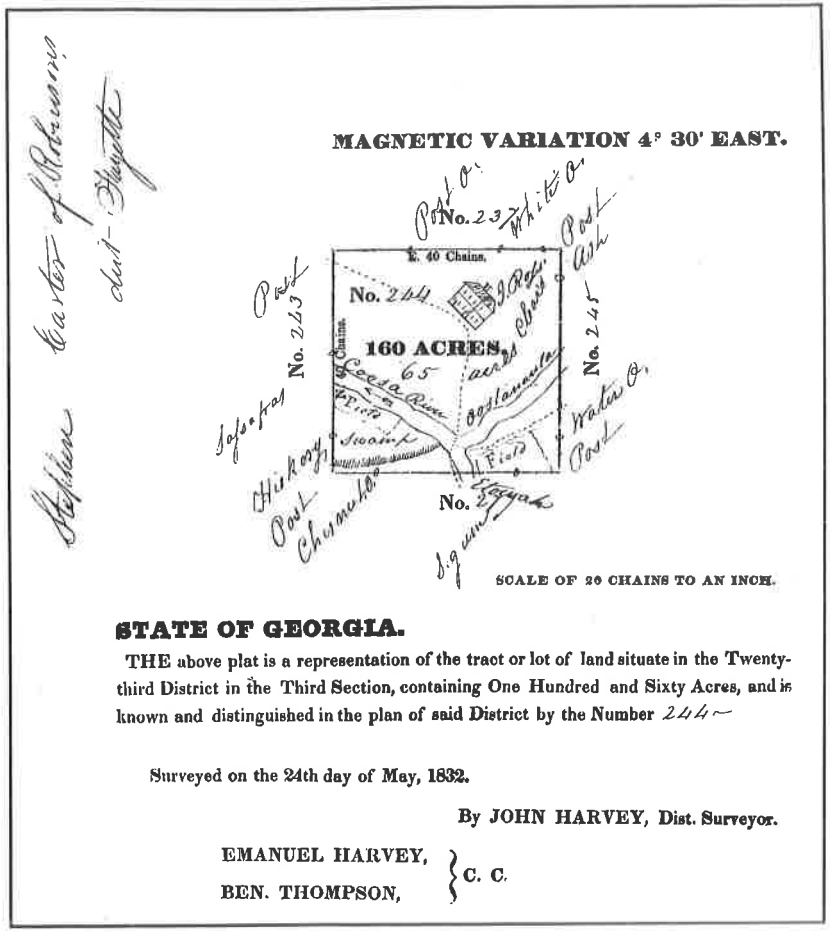
While the state laws extending jurisdiction into the Cherokee Nation had as their general purpose to harass the Indians to the treaty table and out of the state, the body of legislation enacted by the Georgia General Assembly between 1828 and 1835 covered a range of specifics that applied both to government and to property. As the Cherokees clung to their homes, farms, and businesses despite the pressures to leave, politicians devised new schemes to turn up the heat. Many Georgians were reluctant to infringe on the rights of the Cherokees to their improved property, however, and so most improvements remained relatively secure for a while.

Many of the leading men in the Cherokee government were wealthy businessmen and planters. If they could be dispossessed, Georgians came to think, they would surely agree to removal. The problem of how to do so was solved when a federal agent realized that many of the wealthiest, including Principal Chief John Ross, had accepted reserves (individual or personal reservations) under the terms of the treaties of 1817 and 1819. The treaty provisions in question assumed that those who took reserves intended to leave the Cherokee Nation and either become citizens in the states where their reserves were located or sell them and move west. While no one in the Cherokee Nation believed that accepting these re-

served tracts had denationalized Ross and the others, the politicians claimed that it had, which meant that they had no legal or moral right to the property they had subsequently acquired in the Nation. Acting on this argument, in December 1833 the Georgia General Assembly passed a law that authorized the confiscation of their improvements.

Figure 5. Survey of John Ross's Plantation

In 1832 Georgians surveyed the Cherokee Nation in preparation for the distribution of Cherokee land to Georgia citizens in a land lottery. This plat of John Ross's plantation shows the principal chief's house, the road that passed in front of it, and his ferry across the Coosa River. It also noted cleared acres and timber resources.



The legislators went after these people for two reasons. One was that the politicians could concoct an argument that permitted them to increase the pressure while blaming the victims for the action. The other was that the victims of this policy composed a substantial segment of the Cherokee economic and political elite. As the leadership class, they were the ones who led Cherokee resistance to removal. Furthermore, the pro-removal advocates in Georgia and Washington had claimed for years that this privileged elite blocked the desire of the mass of Cherokees, who really wanted to move west where they could continue their hunting life style, in order to protect their property. If they were stripped of their possessions, the leaders supposedly would have no reason to block the removal of their people.

The following selection, part of a memorial submitted by the Cherokee Nation to Congress on June 22, 1836, is one of dozens of statements and petitions drafted by Cherokee leaders in a frantic hope that somehow they could convince the government to rescind its policy to remove them. Signed by John Ross, John Martin, James Brown, Joseph Vann, John Benge, Lewis Ross, Elijah Hicks, and Richard Fields, delegates sent to Washington by the National Council, this petition describes something of the hardship and terror Cherokees experienced daily as the laws of Georgia did their work. Men of wealth, these Cherokees represented the most "civilized" element of their Nation. But being "civilized" did not protect them from a policy rationalized as a measure to save helpless and "degenerate" Indians from the evils of American culture. Instead their property targeted them for special attack. Mary Young's article "The Exercise of Sovereignty in Cherokee Georgia" (cited on p. 61) provides further information on this topic.

The "Memorial of Protest of the Cherokee Nation" was printed in the *United States Congressional Serial Set* as House Document 286, 24th Cong., 1st sess. The serial set is a varied collection of documents that Congress began to publish in 1817. Virtually anything that congressional committees or individual representatives and senators wished to include was printed, and historians have found it to be an enormously valuable source of primary records. It is one of the few places, for example, where documents produced by Native people, such as this memorial, can be found quite easily. This collection normally is housed in the government documents section of a library. Some libraries have the serial set in its original bound (book) form while others have it on microfiche. For an index to material in the serial set relevant to Indians, see Stephen L. Johnson, *Guide to American Indian Documents in the Congressional Serials Set, 1817–1899* (New York: Clearwater Publishing Company, 1977).

Memorial of Protest of the Cherokee Nation

June 22, 1836

It is the expressed wish of the Government of the United States to remove the Cherokees to a place west of the Mississippi. That wish is said to be founded in humanity to the Indians. To make their situation more comfortable, and to preserve them as a distinct people. Let facts show how this *benevolent* design has been prosecuted, and how faithful to the spirit and letter has the promise of the President of the United States to the Cherokees been fulfilled—that *"those who remain may be assured of our patronage, our aid, and good neighborhood."* The delegation are not deceived by empty professions, and fear their race is to be destroyed by the mercenary policy of the present day, and their lands wrested from them by physical force; as proof, they will refer to the preamble of an act of the General Assembly of Georgia, in reference to the Cherokees, passed the 2d of December, 1835, where it is said, "from a knowledge of the Indian character, and from the present feelings of these Indians, it is confidently believed, that the right of occupancy of the lands in their possession should be withdrawn, *that it would be a strong inducement to them to treat with the General Government, and consent to a removal to the west;* and whereas, the present Legislature openly avow that their primary object in the measures intended to be pursued, *are founded on real humanity to these Indians,* and with a view, in a distant region, to perpetuate them with their old identity of character, *under the paternal care of the Government of the United States;* at the same time frankly disavowing *any selfish or sinister motives towards them in their present legislation."* This is the profession. Let us turn to the practice of *humanity,* to the Cherokees, by the State of Georgia. In violation of the treaties between the United States and the Cherokee nation, that State passed a law requiring all white men, residing in that part of the Cherokee country, in her limits, to take an oath of allegiance to the State of Georgia. For a violation of this law, some of the ministers of Christ, missionaries among the Cherokees, were tried, convicted, and sentenced to hard labor in the penitentiary. Their case may be seen by reference to the records of the Supreme Court of the United States.

Valuable gold mines were discovered upon Cherokee lands, within the chartered limits of Georgia, and the Cherokees commenced working

them, and the Legislature of that State interfered by passing an act, making it penal for an Indian to dig for gold within Georgia, no doubt *"frankly disavowing any selfish or sinister motives towards them."* Under this law many Cherokees were arrested, tried, imprisoned, and otherwise abused. Some were even shot in attempting to avoid an arrest; yet the Cherokee people used no violence, but humbly petitioned the Government of the United States for a fulfilment of treaty engagements, to protect them, which was not done, and the answer given that the United States could not interfere. Georgia discovered she was not to be obstructed in carrying out her measures, *"founded on real humanity to these Indians,"* she passed an act directing the Indian country to be surveyed into districts. This excited some alarm, but the Cherokees were quieted with the assurance it would do no harm to survey the country. Another act was shortly after passed, to lay off the country into lots. As yet there was no authority to take possession, but it was not long before a law was made, authorizing a lottery for the lands laid off into lots. In this act the Indians were secured in possession of all the lots touched by their improvements, and the balance of the country allowed to be occupied by white men. This was a direct violation of the 5th article of the treaty of the 27th of February, 1819. The Cherokees made no resistance, still petitioned the United States for protection, and received the same answer that the President could not interpose. After the country was parcelled out by lottery, a horde of speculators made their appearance, and purchased of the "fortunate drawers," lots touched by Indian improvements, at reduced prices, declaring it was uncertain when the Cherokees would surrender their rights, and that the lots were encumbered by their claims. The consequence of this speculation was that, at the next session of the Legislature, an act was passed limiting the Indian right of occupancy to the lot upon which he resided, and his actual improvements adjoining. Many of the Cherokees filed bills, and obtained injunctions against dispossession, and would have found relief in the courts of the country, if the judiciary had not been prostrated at the feet of legislative power. For the opinion of a judge, on this subject, there was an attempt to impeach him, then to limit his circuit to one county, and when all this failed, equity jurisdiction was taken from the courts, in Cherokee cases, by acts passed in the years 1833 and 1834. The Cherokees were then left at the mercy of an interested agent. This agent, under the act of 1834, was the notorious William N. Bishop, the captain of the Georgia Guard, aid to the Governor, clerk of a court, postmaster, &c. and his mode of trying Indian rights is here submitted:

Murray county, Georgia, January 20, 1835

Mr. John Martin:

Sir: The legal representative of lots of land,

No. 95	25	district	2d	section
86	25	"	2	"
93	25	"	2	"
89	25	"	2	"
57	25	"	2	"

has called on me, as States agent, to give him possession of the above described lots of land, and informs me that you are the occupant upon them. Under the laws of the State of Georgia, passed in the years 1833 and 1834, it is made my duty to comply with his request, you will, therefore, prepare, yourself to give entire possession of said premises, on or before the 20th day of February next, fail not under the penalty of the law.

Wm. N. Bishop, *States Agent*

Mr. Martin, a Cherokee, was a man of wealth, had an extensive farm; large fields of wheat growing; and was turned out of house and home, and compelled, in the month of February, to seek a new residence within the limits of Tennessee. Thus Mr. Bishop settled his rights according to the notice he had given. The same summary process was used towards Mr. John Ross, the principal chief of the Cherokee nation. He was at Washington city, on the business of his nation. When he returned, he travelled till about 10 o'clock at night, to reach his family; rode up to the gate; saw a servant, believed to be his own; dismounted, ordered his horse taken; went in, and to his utter astonishment, found himself a stranger in his own house, his family having been, some days before, driven out to seek a new home. A thought then flitted across his mind, that he could not, under all the circumstances of his situation, reconcile it to himself to tarry all night under the roof of his own house as a stranger, the new host of that house being the tenant of that mercenary band of Georgia speculators, at whose instance his helpless family had been turned out and made homeless.

Upon reflecting, however, that "man is born unto trouble," Mr. Ross at once concluded to take up lodgings there for the night, and to console himself under the conviction of having met his afflictions and trials in a manner consistent with every principle of moral obligation towards himself and family, his country and his God. On the next morning he arose early, and went out into the yard, and saw some straggling herds of his cattle and sheep browsing about the place. His crop of corn undisposed of. In casting a look up into the wide spread branches of a majestic oak, standing within the enclosure of the garden, and which overshadows the spot where lies

the remains of his dear babe, and most beloved and affectionate father, he there saw, perched upon its boughs, that flock of beautiful peafowls, once the matron's care and delight, but now left to destruction and never more to be seen. He ordered his horse, paid his bill, and departed in search of his family, after travelling amid heavy rains, had the happiness of overtaking them on the road, bound for some place of refuge within the limits of Tennessee. Thus has his houses, farm, public ferries and other property, been seized and wrested from him. Mr. Richard Taylor was, also, at Washington, and in his absence, his family was threatened with expulsion, and compelled to give two hundred dollars for leave to remain at home for a few months only. This is the *"real humanity"* the Cherokees were shown by the real or pretended authorities of Georgia, "disavowing any selfish or sinister motives towards them."

Mr. Joseph Vann, also, a native Cherokee, was a man of great wealth, had about eight hundred acres of land in cultivation; had made extensive improvements, consisting, in part, of a brick house [see p. 49], costing about ten thousand dollars, mills, kitchens, negro houses, and other buildings. He had fine gardens, and extensive apple and peach orchards. His business was so extensive, he was compelled to employ an overseer and other agents. In the fall of 1833, he was called from home, but before leaving, made a conditional contract with a Mr. Howell, a white man, to oversee for him in the year 1834, to commence on the first of January of that year. He returned about the 28th or 29th of December 1833, and learning Georgia had prohibited any Cherokee from hiring a white man, told Mr. Howell he did not want his services. Yet Mr. Bishop, the State's agent, represented to the authorities of Georgia, that Mr. Vann had violated the laws of that State, by hiring a white man, had forfeited his right of occupancy, and that a grant ought to issue for his lands. There were conflicting claims under Georgia for his possessions. A Mr. Riley pretended a claim, and took possession of the upper part of the dwelling house, armed for battle. Mr. Bishop, the State's agent, and his party, came to take possession, and between them and Riley, a fight commenced and from twenty to fifty guns were fired in the house. While this was going on, Mr. Vann gathered his trembling wife and children into a room for safety. Riley could not be dislodged from his position up stairs, even after being wounded, and Bishop's party finally set fire to the house. Riley surrendered and the fire was extinguished.

Mr. Vann and his family were then driven out, unprepared, in the dead of winter, and snow upon the ground, through which they were compelled to wade, and to take shelter within the limits of Tennessee, in an open log cabin, upon a dirt floor, and Bishop put his brother Absalom in possession

of Mr. Vann's house. This Mr. Vann is the same, who, when a boy, volunteered as a private soldier in the Cherokee regiment, in the service of the United States, in the Creek war, periled his life in crossing the river at the battle of the Horse Shoe. What has been his reward?

Hundreds of other cases might be added. In fact, near all the Cherokees in Georgia, who had improvements of any value, except the favorites of the United States agents, under one pretext or other, have been driven from their homes. . . .

The Cherokee delegation have thus considered it their duty to exhibit before your honorable body a brief view of the Cherokee case, by a short statement of facts. A detailed narrative would form a history too voluminous to be presented, in a memorial and protest. They have, therefore, contented themselves with a brief recital, and will add, that in reviewing the past, they have done it alone for the purpose of showing what glaring oppressions and sufferings the peaceful and unoffending Cherokees have been doomed to witness and endure. Also, to tell your honorable body, in sincerity, that owing to the intelligence of the Cherokee people, they have a correct knowledge of their own rights, and they well know the illegality of those oppressive measures which have been adopted for their expulsion, by State authority. Their devoted attachment to their native country has not been, nor ever can be, eradicated from their breast. This, together with the implicit confidence, they have been taught to cherish, in the *justice, good faith, and magnanimity of the United States,* also, their firm reliance on the generosity and friendship of the American people, have formed the anchor of their hope and upon which alone they have been induced and influenced to shape their peaceful and manly course, under some of the most trying circumstances any people ever have been called to witness and endure.

WHITE INTRUDERS

The Cherokees complained bitterly about white people moving onto their land, mining their gold, stealing their livestock, and evicting them from their houses and farms. The United States government sent soldiers to eject intruders and offer protection to the Cherokees, but the small force had little effect, except perhaps in the gold country where the soldiers were concentrated. While many intruders had no claim to Cherokee land, the status of others was less clear-cut. Confronted with Cherokee refusal to negotiate removal, Georgia began awarding Cherokee land to its citizens in an attempt to force the Cherokees out. Thousands of white

settlers, who believed that they had legitimate title to land, moved into the Cherokee Nation.

Georgia had a well-established method for distributing public lands which, the state insisted, included Cherokee territory. Male residents of the state as well as widows and orphans registered for land lotteries, and certain categories of people, such as veterans, could register twice. Surveyors partitioned the land into plots of 202½ acres and prepared plats, or maps, for each of these plots. Lottery officials pulled a name out of one hopper and a plat out of another, thereby matching winner and prize. The winner paid only a small filing fee for his or her acreage. Unlike the later federal homestead law that required people to settle the land they claimed, Georgia's lotteries placed no restrictions on the winners. Consequently, many winners did not move to their new land but sold either their chances or the property to another party, often through one of the real estate agents who appeared on the scene. Wealthy planters tended to buy up the best land and leave that of marginal quality to poorer folk. The market was speculative and volatile, and some participants lost a great deal of money.

One of those who lost money in the market that followed the lottery for Creek lands was John Brandon, husband of Zillah Haynie Brandon, whose memoir is printed here. The Creeks ceded their last land in Georgia to the federal government in 1827. The Compact of 1802 required that this land be surrendered to the state, and so Creek lands became available for distribution to the citizens of Georgia through the lottery. The lottery was so successful and popular that Georgia did not wait for the Cherokees to vacate their land before granting it to state citizens. Indeed, Georgia officials hoped a survey and lottery might hasten the Cherokees' departure. In 1830, the Georgia legislature provided for a survey of Cherokees lands in preparation for a lottery. In 1832, the same year that the Cherokees won their case before the United States Supreme Court, the lottery wheels began to turn in the state capital. Georgia law gave some protection to land that Cherokees actually occupied, but the process for halting eviction by a lottery winner became so complicated and expensive that few Cherokees could take advantage of it. As a result, lottery winners or those who bought land from winners swarmed into the Cherokee Nation.

John Brandon's early loss had not dampened his enthusiam for the land lottery and the secondary market that followed. When he failed to draw a lot, he purchased another man's rights to Cherokee land. He had not met with much success in life, and land in the Cherokee Nation gave him yet another opportunity to start over. He did not hope alone. Many in Georgia sang the popular song:

All I want in this Creation
Is a pretty little wife and a big plantation
Way up north in the Cherokee Nation.

John and Zillah Brandon moved with their three small children to a Cherokee cabin in what Georgia had designated Cass (later renamed Bartow) County. When she was an elderly woman, Zillah Haynie Brandon remembered these trying times in a memoir spanning her life from 1823 to 1871 she wrote for her children. Her original handwritten memoir is housed in the Alabama Department of Archives and History in Montgomery. In transcribing the memoir, the editors regularized punctuation and capitalization to make the document more readable, but they retained the author's spelling.

Brandon's memoir gives us some insight into conditions in the Cherokee Nation in the period between the signing of the Treaty of New Echota (1835) and removal (1838). Many Cherokees lived in despair. Forced from their homes, uncertain of their future, they exhibited profound distrust far more than hostility. Many unfortunately turned to alcohol to ease their pain. The Cherokee Nation had strict laws against the sale of alcohol, but Georgia had suspended Cherokee law. The result was an invasion of whiskey traders who preyed on people's misery. Brandon graphically described the effects of the unregulated sale of liquor among a people who had given up hope.

Brandon's memoir also gives us a look at the mindset of the people who actually dispossessed the Cherokees. She was a religious woman, as indeed were many who forced Cherokee families from their homes. The wave of revival that swept the United States in the early nineteenth century heightened religious sensibilities, but religiosity took different forms. In many northern congregations, attention turned to social ills and the need for reform. This northern evangelicalism inspired the missionaries who came to the Cherokee Nation to establish churches and schools. In the South, evangelical religion tended to be focused inward on the individual or the family, not on the broader community. Brandon clearly was a devout woman, but her religious concerns did not extend beyond her own family except in the most general and impersonal way.

Brandon also had a very stereotypical view of Indians: all Indians, in her mind, were essentially the same. She refers twice, for example, to William McIntosh, who was executed in 1825 for illegally signing a Creek removal treaty, without realizing that McIntosh was a Creek, not a Cherokee. She also had difficulty separating the Cherokee farmers among whom she lived from the warriors about whom she had heard. She accepted the notion, common in the nineteenth century, that race determined character, and

she regarded the Indian character as decidedly inferior. At the same time, the death of her Cherokee neighbor clearly moved her, particularly since she believed that she could have prevented it. She gave refuge in her home to a Cherokee woman whose husband threatened her. And she kept the gifts presented to her two young sons by neighboring Cherokees long after the little boys had become men. One of the very important things that Brandon's memoir does is demonstrate that stereotypes of intruders are perhaps no more valid than stereotypes of Indians.

ZILLAH HAYNIE BRANDON

Memoir

1830–1838

After my marriage, your father thought proper to make an investment of all the money in his power in lands in Ga. He accordingly bought in Troop and Tolbert, from which he would, no doubt, have realized considerable profit if he had lived near them. But as it was, in view of so much land coming into market, after lying out of the use of his money for several years, he sold at a discount. He then engaged in the mercantile business in 1830, and at the close of two years, found his money all gone for goods and himself in possession of a pile of accounts and notes of no value, a low shaving[1] having been previously passed, denominated by some the poor man's law, which enabled many whose principle it was to keep from paying, to throw themselves upon its protection. So your father had to suspend business in the mercantile line.

Georgia, in the meantime, was pressing her claims for the lands ceded to her by the United States which was then in possession of the Cherokee Indians. But throwing herself upon her sovereignty, she gave it to her citizens by a state lottery. Many who had a right of claim acted like Esau with his birthright.[2] They were offering to sell their chance, and your Father, thinking he might thereby mend his broken fortune, gave what money he could raise, and all the property he could spare, and by that means became interested in thirteen chances, none of which drew a single

[1] The practice of purchasing a note or debt for less than the amount actually owed.
[2] In Genesis 25:29–34, Esau, son of Isaac, is tricked into selling his birthright to his twin brother, Jacob.

dollar's worth. As soon, however, as those lands came into market, he bought some in Cass County on the Etowah River, and selling his possessions in the latter part of the year 1832 where we were then living in Gwinnett County, had some thought of moving to them. But being elected high sheriff of the county, he moved to Lawrenceville in Feb. [18]33 in order to attend to his office, and send William and John to school. My troubles were not lessened by that move, and the only increase of pleasure was from an increase of church privileges which are always more abundant in towns than in the country. My health seemed entirely impared, yet I was compelled from unavoidable circumstances to perform from year to year, that amount of labor sufficient for three able hands, in order to maintain a character, as Christian and mother to which I felt I was justly entitled. These things I endured cheerfully, though with shattered nerves proped alone by Him who sustains the thrones of eternity, for from the heights of heaven, He stooped to listen to my complaints and number my tears. During the two years we spent there, I had the assistance of a servant woman whose conduct was such as to bring sorrow the most bitter and intense. But in the mighty roll of years those two at length passed, and in December 1835, we moved to our lands in Cass. . . .

The weather was excessively cold, but on the sixth day after our departure, we arrived at the place of our destination [and] found a family of *Indians occupying our house*, which, by the way, was a very poor one without floor or loft. The Indians set about moving out, tho, with looks as magisterial as if they had been kings seated upon thrones in royal robes with a retinue about them, leaning upon the sceptres. They would not deign to look at us, much less speak to us. That, though, was characteristic of that people: they are seldom known to speak to strangers, that is, among the white people. As soon, however, as they were out, we spread carpets over the dirt floor and unloaded the wagons and went in with thankful hearts, yet at the same time suffering from unavoidable circumstances, something of which you that were with me felt, but I in its intense rigor. . . .

It was on a solemn sabbath evening that we arrived at our new home. The white people were sparsely settled, but many came out to meet us and bid us welcome. The winds of a departing winter day was murmuring and whistling among the trees and through the large cracks of our house as the sun's last rays were gilding the evening sky, which served to render my feelings more solemn, while all without seemed withered, bleak, and drear. Oh! what a night was our first spent at our new home: crushed hopes, and anxious fears, with bodily pain from diseases, fatigue, and exposure to the cold damp earth and piercing winds. My own and my

babes sickness drove sleep from my anxious eyes. But presently, with joy we hailed the coming morn, and as the sun's first beams gilded the eastern sky, our people were off with their wagons for plank to make us floors, which were made before we slept again. Yet the sufferings of the first months of our sojourn at our new home is so fixed upon my memory that they will never be obliterated while reason retains her empire. And had not God in mercy interposed, there would have been little left upon life's track but that which was dark and cheerless as a desert waste. Yet the love and care of our God is as the sunlight which overspreads our faith; and although our earthly comforts were as gradual as the coming of spring, yet with chastened and matured affections, we were better able to appreciate and realize the blessings heaven had in reservation for us. Here we planted, we built, we sowed, and gathered into garners,[3] through the sweat of yours and your Father's brows, my dear children, and richly did the God and Father of our Lord Jesus Christ crown your efforts with temporal blessings giving us the good of the land. But still, you children were fettered for want of money to complete your education, but while your trameled genius struggled to overleap the footprints that had sparkled proudly along the path of intricate science, the sweet wreath, the conciousness of having done your duty awakened the light notes of gladness to a lively echo, which will vibrate along your path while the sunshine of the fame of others will grow dim. . . .

In sixty yards of our house there lived three families of Indians, who like their whole tribe, looked as if the very shafts of desolation was hanging around them, madnening that nation with more than death-like quiver, whose venom darts lay but half concealed in brave unconquered hearts. The tide of discord among their own nation wove a web which fettered those hands which were stained with the blood of one of their noblest chiefs, McIntosh, hung powerless while their tongues cursed the shrine upon which the white people knelt in prayer to God. And although there were many well informed and religious among that tribe, yet those nearest us were not of that class, especially the males. The women I believe were chaste and very civil, but their husbands would drink to drunkeness, and were very cruel when under the influence of the fire water. And though death had come among them and with an unpleasant brow, when on the very brink of the sable shore, warned them to drink no more, yet it seemed like a mirror held before them which lost its brilliancy in a few weeks, and then the poisoned cup was again placed to their lips. The death referred to was an old man, the English of whose name was Peacock,

[3] Granaries, storage places for grain.

being a nobleman among them. He was taken sick a month or two after we settled there. We had so far gained upon their good graces as to have a nod of their head when we spoke to them, or an occasional call when they wished to barter fish for salt or some other little matter relating to their necessities. A white woman in her degredation had some years before come in among them, and then had an Indian husband. She, after visiting the sick one day, called at my door and answered my enquiries in English. I came to the conclusion that the old man had pneumonia. I told her that I thought several things which I had in my power to supply them with would be of service to him. But she said I had better not offer to assist them, for if the means did not cure him, they would at once believe I had killed him. So as I was so much of a stranger, I did not offer them any assistance, but sincerely did I pity them when, from the want of knowledge, their sufferings were so much augmented. A few weeks past, and one night at mid hour, we were awakened by the lamentable wail of many voices. We guessed the cause, which was proven to us as soon as daylight came, for they came in for plank to make a coffin, each family having their burying ground. Preparation was going on in sight of our house for the interment. However deep their lamentation, whenever any white person would go in, they would suppress it. But the white woman, before alluded to, told me of the closing scene, when the soul and body was about to be rent assunder. Then the heathen, the Indian, was honest with himself when his destiny was about to be sealed for eternity. He past in review over the past: the frightful rocks, the treacherous seas, the dangers he had dared; the strife of death with which he had contended; the storms, the lightnings, he had braved; the iron hearted he had faced; the barbarious rites to which he had submitted; the oppressive yoke under which his tribe was then labouring, sinking beneath the flashing frown of laws long past, which they regarded as a blighting simoon[4] crushing all their hopes in its onward sweep. Oh! Such moments as these they snatched like a minute's gleam of sunshine, when scarcely a beam of life lit up his marble like brow, his fluttering heart and trembling voice burned, and spoke of Liberty even when death was summoning the aged, way worn chieftain before the Great Spirit. Yea, with falling voice he spoke of that liberty the Great Spirit had given them, though the star that had given them light was growing dim, their glory as a nation lost. Their cause he thought was betrayed by two of their Chieftains, McIntosh and Ridge, which had sunk them into wretchedness, with a doom still darker gathering over them. But oh! One rapturious thought kindling out of woe. He said he "had lived a long time, had done much but

[4] Desert wind.

had never done much harm." He said he "had sometimes drank too much but he had not been bad while drinking." I am thus particular in relating these things to show that truly that Spirit enlightenith every man that cometh into the world, had been doing its work even in the heart of the heathen. We stood with them as the grave closed over him without any ceremony or any burial service. Yet mentally we could say "Christ is the resurrection and the life, he that believeth in me shall never die." Glory, glory to God. How gladly we would have pointed these broken hearted people to the foot of the cross and the victory of Calvery for balm to heal their wounded spirits.

During the time they lived by us, we attended three of their burials. Their interments are pretty much like ours with the exception of the shallowness of their graves. They place in the coffin all that had been dearest to the departed, [and] all throw in a handful of dirt upon the lid. I had noticed the man about whom I have been telling you wearing a beautiful large merino shawl which I saw them pack in around his head and shoulders.

When they were sober, we were not afraid of them, but their drinking was so common a thing, a whiskey shop being kept by a white man in a quarter of a mile of us, that it was impossible to tell when we were safe. The contiguity of our habitations rendered our situation perilous. When they got drunk from home and their death like yells were heard by their families, they would look as if the cord of their souls were torn asunder. They would stand outside of their houses weeping and looking so doleful, that it would move any heart, not possessed of a demon, to pity. But presently the wives of those whose husbands were drunk would dress and take their babes and go and meet them with appearance of the soul of love and bravery, and from their husbands' savage eyes the truth was thus concealed and their secret well kept while they remained drunk. I have thought of all the women in the world, the wives of those drunken savages knew the least about a resting place.

I recollect once, while your father was on a journey, that a dozen or more Indian men came to the houses of those bordering on our yard, bringing whiskey with them, and it happened on a day when one of their wives were across the river, a quarter from her home. The first she knew of the troubles at home she heard the shrill panther-like screams which at once admonished her to get home in order, with pleasant alacrity, to attend to the nod of his lordship—her husband. But she was too late. He had taken the death drought till his anger was excited. Thinking it might endanger her life to go in, she and some lads came into our house. Her babe was snugly placed against her shoulders, cradled there by a large

piece of canvas. I noticed that she did not take it down, and her distressed looks plainly told us her situation. One or two of the boys stood at the back of the chair on which she was seated, their hands placed upon it as if they intended to shield her. One of them in the meantime, watching to see if he could get a glimpse of some of the women from whom he could learn something relative to the wife's safety, after remaining a few minits, he walked boldly to the house. In a few minits, with a hurried step, he returned, telling her to fly. Quick as possible, they were again to the river, leaving us almost parilized with fear for ourselves. A resolve was instantly taken that I would take you children and go to a neighbor's for that night. So locking our door, we were off instantaneously. Having gotten about eighty steps from the house, we looked back and saw the enraged husband turn off from our door with his gun in his hand. Seeing us look at him, he gave one of his war whoops such as only rolls from the caverns of devils. We had at that time the socity of three white families who lived in less than a half of a mile of us, one on the east of us and the other two west. The continued noise among the Indians on the evening refered to, excited the fears of our neighbors so much that when the men of one of those families came in, they asked the landlady what they should do in regard to us. She said, "By all means go and look after their safety," saying she expected they had killed me and all my children. The white man whose name was Spence, taking a Negro who was also able to measure arms with any of the Indians, came stealthily to our house. It was then getting dark, and they, acting the spy, had come to the back part of the house to see if they could hear us, but finding all was still and dark within, they redily came to the conclusion that the lady's conjectures had proven a reality. Spence, who had been living among the Indians for two or three years, having learned their language and understanding their true character, said to his companion, "Let us go round. And if they are killed," with an oath he swore, "the last one of them should die before day light." As soon as he got to the door, discovering the lock, he said, "We were safe." Like a bird we had escaped. But as anger was burning in his soul and not fearing danger and death, and the yell of havoc ringing in his ears with curses poured forth upon the whites, he burst in among them like a spirit of fire, and being armed for battle, fell on them with his stick, and after beating several of them, avenging himself for the alarm they had caused, left by telling them if their fury was not sufficiently cooled that he would return with hellish force and rend the last one of them. That led them as soon as they were sufficiently sober to scatter. Soon after that your Father hired them to move a quarter of a mile farther from us. That however endangered his life, for although they had received pay for their possessions, one of them,

in a drinking spree, came to our house to kill him, but was prevented by a young Indian man running ahead of him to give us warning, which we could not fully understand till the wife who came with her unmanageable husband bid us go away. But to our great comfort the liquor shop was demolished, and from that time, we had less to fear.

All the kindness we could show to any living people, we were assiduous to show to them. All that would relieve their sufferings or ameliorate their sorrows, that was in our power, we did for them, looking to God for his approval and reward. And at length, when the time came for their removal, their regard and kind feelings for us were made manifest, bursting the cold bars of silence that were raised like a wall of adamant around them, manifesting an unbounded preference for us by giving us those articles which were dearest to them, though of no real value to us. Two middle aged men, Duck and Etowah, gave William and John their bows and blow guns which, although nearly a score of years have passed, are still here, the former with their dressed squirrel skin strings wrapped loosely around, while the brawny hand, is far away, by which they have been so often tightened, born and nurtured in dangerous paths; whose skill and fierceness we would not dare to tempt, for whenever the fatal aim was taken and the pointed arrow flew, they were sure of their prey. Yet poor Cherokee, here lies your great bows unstrung. And although the sun has risen and set so often and torrents have flown, and streams of carnage have passed over portions of the land, and the word of the Lord demolished the thrones of the living, yet hope and courage still kindle along the track of those two boys by whom these momentoes are kept.

3

United States Policy

Andrew Jackson's election to the presidency in November 1828 has been widely regarded as a watershed in the history of United States Indian policy. Scholars have debated his motivations with arguments ranging from his history as an Indian fighter and "hater," to claims that his main concern was national security, to assertions that he was anxious to halt the decline and extinction of the Native peoples in the East. Despite their disagreements, none have suggested that his role was unimportant.

Jackson's contemporaries also believed that his election was a turning point. The first westerner to occupy the White House (Tennessee was then considered the West), his victory dramatized the rapidly growing political power of the region west of the Appalachians. If one believed that western needs and interests differed from those of the Atlantic states, Jackson's election seemed like the dawn of a new day. Jackson also represented the coalescence of a new political movement, the Democratic party, viewed by many as an important alternative to the political philosophy and American system of John Quincy Adams, Daniel Webster, and Henry Clay. Jackson, in other words, personified change. While many welcomed a new order, others feared and resented it.

Seen in this light, the debate over Indian removal during 1829–1830 represented a larger set of issues that went to the heart of American public life. What were the proper relationships between the federal government and the states? Could the concept of shared sovereignty that marked the constitutional system be satisfactorily defined? The emerging conflict over slavery made these questions increasingly crucial, just as it polarized the attempts to answer them.

But, of course, the debate over Indian removal was also much more than a part of the ongoing dispute over constitutional interpretation. For forty years the United States government had followed a set of policies, including the negotiation of treaties, that recognized the sovereignty of the nations of Native Americans and had committed itself to helping them preserve and protect that status. None of Jackson's predecessors, even in

their frustration over their failures to convince the tribes to do as they wished, seriously considered rejecting such recognition. But Jackson, on record for more than ten years as favoring such a step, did so in 1829 when he decided to honor Georgia's claims of jurisdiction over the Cherokees.

Probably Jackson saw Georgia's legislation, in effect nullification of congressional law, as an expedient means to achieve removal and not as an acceptable constitutional principle. His reaction to South Carolina's nullification in 1832 at least suggests that. But Georgia, Alabama, Mississippi, and Tennessee, all of which violated Native national sovereignty by extending their jurisdiction into Indian country, could do what Jackson could not. They could force the tribes to the treaty table where waiting federal officials would bargain to save them from state harassment by sending them off to the West. Critics called the scheme callous and inhumane, unconstitutional and illegal, but supporters saw it as efficient and effective as well as expedient.

Congressional implementation of Jackson's views came in the form of the Indian Removal Act, a bill that senators and representatives hotly debated. All claimed primary concern for the best interests of the Indians, but the constitutional and legal implications of removal remained central to the dispute. Indian policy became a partisan issue in the debate over removal and continued to be so during the next decade of party alignment known as the second party system.

The removal bill, enacted largely along party lines, thus aligned Congress with the president in support of Georgia's claims to sovereignty over the Cherokees. The Supreme Court's rejection of state jurisdiction in the 1832 *Worcester* decision, an important moral victory for the Cherokees, had little immediate effect. The Court neither designed nor implemented Indian policy; that was the responsibility of the president and Congress. And in 1832, in the midst of the larger debate over the nature of the federal system, there was no agreement that either must abide by the decisions of the Court. As a result, the president and Congress succeeded in achieving a dramatic restructuring of the relations among the Indians, the states in which they lived, and the federal government. Andrew Jackson was instrumental in making that happen.

Scholarly study of the removal policy began with the publication of Annie H. Abel's "The History of Events Resulting in Indian Consolidation West of the Mississippi," *Annual Report of the American Historical Association for 1906* (Washington, D.C.: Government Printing Office, 1908, 1:241–412; reprint, New York: AMS Press, 1972). An important recent interpretation is Anthony F. C. Wallace, *The Long, Bitter Trail: Andrew Jackson and the Indians* (New York: Hill & Wang, 1993). A

psychoanalytical analysis of Jackson can be found in Michael Paul Rogin, *Fathers and Children: Andrew Jackson and the Subjugation of the American Indian* (New York: Knopf, 1975).

IN DEFENSE OF THE CHEROKEES: THE "WILLIAM PENN" ESSAYS

Jeremiah Evarts, chief administrative officer of the large interdenominational missionary consortium the American Board of Commissioners for Foreign Missions, had definite ideas about the proper relation between the Indian tribes and the United States. Born in Vermont and trained as an attorney, he had become convinced early in his life that God had a special mission for the United States to lead the way in the conversion of the world to Christianity. American leadership required that the United States be a "beacon of goodness" that radiated the light of justice and morality in all of its affairs. Christian citizens were obligated, he believed, to critique their leaders if they strayed from the path and demand that they return. Otherwise, Evarts feared, God would punish the United States with disasters and destruction.

Since 1817, the American Board had maintained a significant presence in the Cherokee Nation. Several missionaries lived there, operated schools, conducted religious services, studied the language, worked on a translation of the Bible, and sent back to headquarters in Boston a steady stream of correspondence and reports on their progress. Evarts read all the reports, studied what additional sources he could find, and developed a deep and abiding respect for the Cherokees. Furthermore, with a lawyer's eye, he analyzed the history of Indian policy in all of its legislative and administrative aspects. To him, the Constitution clearly authorized Congress and the president to conduct relations with the Indians outside the involvement of the states. Treaties were the acts of sovereigns, and the policy of the United States had always been to respect the sovereign rights of the tribes. By definition, therefore, tribal sovereignty was superior to the claims of the states. In addition, neither Evarts nor his associates in New England were Democrats. Their view of the Union and the proper relation of the federal and state governments convinced them that the Constitution intended the national government to take an active, leading role in public affairs, to override and inhibit the narrow and selfish provincialism of the states, and to set the moral tone for the country.

Evarts was both outraged and terrified by the events of the winter of 1828–1829. Georgia's extension of jurisdiction over the Cherokees and

the Cherokee protest to the president had elicited the response of the Jackson administration. Though conveyed in a private letter dated April 18, 1829, from Secretary of War John Eaton to the Cherokee Council, the news that the government would not protect the Cherokees from the actions of Georgia law but rather would encourage the state's aggressive policy quickly made its way to Evarts's desk at the American Board offices. Shortly thereafter, Thomas L. McKenney, the War Department official chiefly responsible for the administration of Indian policy, wrote Evarts to explain and justify Jacksonian policy. Unable to win the support of the American Board, McKenney approached Episcopalian and Dutch Reformed church officials in New York; they agreed with Jackson's arguments and in July, with McKenney's active involvement, organized the Indian Board for the Emigration, Preservation, and Improvement of the Aborigines of America. This organization of lay and clerical religious leaders, McKenney hoped, would offer a persuasive alternative moral voice to Evarts and the American Board.

All of this jolted Evarts, who believed that the new policy was unconstitutional, illegal, immoral, and fraught with danger. Not only would the policy run roughshod over Indian human and legal rights, it would surely rain untold suffering and hardship onto a helpless and innocent people. Furthermore, God would punish the United States for such immorality, and Evarts shivered to think of the consequences.

Thus motivated, between August 5 and December 19, 1829, Evarts wrote and published in the Washington *National Intelligencer* twenty-four articles entitled "Essays on the Present Crisis in the Condition of the American Indians." Published under the pseudonym of William Penn, Evarts's essays constitute a propaganda masterpiece of historical, legal, and moral analysis and interpretation of America's relations with the Indians. The essays, reprinted in dozens of papers and published as a separate pamphlet, responded to Jackson's position and shaped the arguments on removal that resounded in Congress and the press during the early months of 1830.

The selection printed here is a summary of the "William Penn" essays written by Evarts late in 1829 as the body of a petition that opponents of removal could sign and send to their congressmen. Entitled "A Brief View," this represented one of many efforts by Evarts and those of like mind to bombard Congress with expressions of popular outrage. Note the logic of Evarts's presentation. How does he mix history, law, and morality to make his points? Do his views of the Cherokees betray a paternalistic attitude? What kinds of future relations between Indians and non-Indians does Evarts imagine?

This copy is taken from Francis Paul Prucha, ed., *Cherokee Removal: The "William Penn" Essays and Other Writing* (Knoxville: University of Tennessee Press, 1981), 201–11. Prucha's introduction is an excellent discussion of Evarts and the American Board's campaign against removal. For further information, see Prucha, "Thomas L. McKenney and the New York Indian Board," *Journal of American History* 48 (March 1962), 635–55, and John A. Andrew III, *From Revivals to Removal: Jeremiah Evarts, the Cherokee Nation, and the Search for the Soul of America* (Athens: University of Georgia Press, 1992).

WILLIAM PENN [JEREMIAH EVARTS]

"A Brief View of the Present Relations between the Government and People of the United States and the Indians within Our National Limits"

November 1829

In the various discussions, which have attracted public attention within a few months past, several important positions, on the subject of the rights and claims of the Indians, have been clearly and firmly established. At least, this is considered to be the case, by a large portion of the intelligent and reflecting men in the community. Among the positions thus established are the following: which, for the sake of precision and easy reference, are set down in regular numerical order.

1. The American Indians, now living upon lands derived from their ancestors, and never alienated nor surrendered, have a perfect right to the continued and undisturbed possession of these lands.
2. Those Indian tribes and nations, which have remained under their own form of government, upon their own soil, and have never submitted themselves to the government of the whites, have a perfect right to retain their original form of government, or to alter it, according to their own views of convenience and propriety.

3. These rights of soil and of sovereignty are inherent in the Indians, till voluntarily surrendered by them; and cannot be taken away by compacts between communities of whites, to which compacts the Indians were not a party.
4. From the settlement of the English colonies in North America to the present day, the right of Indians to lands in their actual and peaceable possession, and to such form of government as they choose, has been admitted by the whites; though such admission is in no sense necessary to the perfect validity of the Indian title.
5. For one hundred and fifty years, innumerable treaties were made between the English colonists and the Indians, upon the basis of the Indians being independent nations, and having a perfect right to their country and their form of government.
6. During the revolutionary war, the United States, in their confederate character, made similar treaties, accompanied by the most solemn guaranty of territorial rights.
7. At the close of the revolutionary war, and before the adoption of the federal constitution, the United States, in their confederate character, made similar treaties with the Cherokees, Chickasaws, and Choctaws.
8. The State of Georgia, after the close of the revolutionary war, and before the adoption of the federal constitution, made similar treaties, on the same basis, with the Cherokees and Creeks.
9. By the constitution of the United States, the exclusive power of making treaties with the Indians was conferred on the general government; and, in the execution of this power, the faith of the nation has been many times pledged to the Cherokees, Creeks, Chickasaws, Choctaws, and other Indian nations. In nearly all these treaties, the national and territorial rights of the Indians are guaranteed to them, either expressly, or by implication.
10. The State of Georgia has, by numerous public acts, implicitly acquiesced in this exercise of the treaty-making power of the United States.
11. The laws of the United States, as well as treaties with the Indians, prohibit all persons, whether acting as individuals, or as agents of any State, from encroaching upon territory secured to the Indians. By these laws severe penalties are inflicted upon offenders; and the execution of the laws on this subject, is specially confided to the President of the United States, who has the whole force of the country at his disposal for this purpose.

The positions here recited are deemed to be incontrovertible. It follows, therefore,

That the removal of any nation of Indians from their country by force would be an instance of gross and cruel oppression:

That all attempts to accomplish this removal of the Indians by bribery or fraud, by intimidation and threats, by withholding from them a knowledge of the strength of their cause, by practising upon their ignorance, and their fears, or by vexatious opportunities, interpreted by them to mean nearly the same thing as a command;—all such attempts are acts of oppression, and therefore entirely unjustifiable:

That the United States are firmly bound by treaty to protect the Indians from force and encroachments on the part of a State; and a refusal thus to protect them would be equally an act of bad faith as a refusal to protect them against individuals: and

That the Cherokees have therefore the guaranty of the United States, solemnly and repeatedly given, as a security against encroachments from Georgia and the neighboring States. By virtue of this guaranty the Cherokees may rightfully demand, that the United States shall keep all intruders at a distance, from whatever quarter, or in whatever character, they may come. Thus secured and defended in the possession of their country, the Cherokees have a perfect right to retain that possession as long as they please. Such a retention of their country is no just cause of complaint or offence to any State, or to any individual. It is merely an exercise of natural rights, which rights have been not only acknowledged but repeatedly and solemnly confirmed by the United States.

Although these principles are clear and incontrovertible, yet many persons feel an embarrassment from considering the Cherokees *as living in the State of Georgia.* All this embarrassment may be removed at once by bearing in mind, that the Cherokee country is not in Georgia, in any sense affecting sovereignty, right of soil, or jurisdiction; nor will it rightfully become a part of Georgia, till the Cherokees shall first have ceded it to the United States. Whenever that event shall take place, it will immediately fall into the States of Georgia, Tennessee and Alabama; not by virtue of any compact to which the Cherokees have been a party, but in consequence of compacts now existing between these States and the United States. This matter is placed in a perfectly clear light, by the titles of various laws of Georgia, which have been enacted to dispose of lands obtained from the Creeks. Even so late as the year 1825, the following title is found in the statute-book of Georgia: viz. *"An act to dispose of and distribute the lands lately acquired by the United States, for the use of Georgia, of the Creek nation of Indians, by a treaty made and concluded at the Indian Spring, on the 12th day of February, 1825."* This act was approved by Governor Troup on the 9th of June, the same year. The first section of the act begins thus: *"That the territory acquired of the Creek nation of Indians, by the United States, for the use of Georgia, as described in articles of a treaty entered into and concluded between commissioners on the part of the United States and the chiefs, head men and warriors of the Creek nation of Indians,"* &c.

These extracts give a fair account of the whole matter. If the *territory was acquired from the Creek nation,* it was manifestly the property of the Creek nation before it was thus acquired. If it was *acquired by the United States* and through the instrumentality of a treaty, it was because the treaty-making power is, by the federal constitution, vested exclusively in the United States, and because the Creeks, being a *nation,* could not dispose of their country in any other manner than *by treaty.* If it was acquired *for the use of Georgia,* it follows that Georgia had not the use of it previously. In fact, Georgia had never thought of legislating for the Indian country, till two or three years after the date of this law. According to the 11th article of the treaty of Holston, and to the law of the United States regulating intercourse with the Indian tribes, the Cherokee country is no more under the jurisdiction of Georgia, than it is under the jurisdiction of Missouri or Pennsylvania; nor can it be under the jurisdiction of any State, or of the United States, till it shall have been surrendered to the United States by treaty. Let this supposed embarrassment therefore, be finally dismissed.

Again, it is supposed, that the existence of a little separate community of Indians, living under their own laws, and surrounded by communities of whites, will be fraught with some great and undefined mischief. This supposed evil is set forth under learned and hard names. It is called *an anomaly,* an *imperium in imperio,* and by various other pedantic epithets. When the case is accurately examined, however, all the fog clears away, and nothing appears in the prospect but a little tract of country full of civilized Indians, engaged in their lawful pursuits, neither molesting their neighbours, nor interrupting the general peace and prosperity.

If the separate existence of the Indian tribes *were* an inconvenience to their neighbours, this would be but a slender reason for breaking down all the barriers of justice and good faith. Many a rich man has thought it very inconvenient, that he could not add the farm of a poor neighbour to his possessions. Many a powerful nation has felt it to be inconvenient to have a weak and dependent state in its neighbourhood, and has therefore

forcibly joined the territory of such state to its own extensive domains. But this is done at the expense of honour and character, and is visited by the historian with his severest reprobation.

In the case before us the inconvenience is altogether imaginary. If the United States were examined, with a view to find a place where Indians could have a residence assigned them, so that they might be as little as possible in the way of the whites, not a single tract, capable of sustaining inhabitants, could be found more secluded than the present country of the Cherokees. It is in the mountains, among the head waters of rivers diverging in all directions; and some parts of it are almost inaccessible. The Cherokees have ceded to the United States all their best land. Not a twentieth part of what remains is of a very good quality. More than half is utterly worthless. Perhaps three tenths may produce moderate crops. The people of the United States have a free passage through the country, secured by treaty. What do they want more? If the Cherokee country were added to Georgia, the accession would be but a fraction joined to the remotest corner of that great State; — a State now scarcely inferior in size to any State in the Union except Virginia; a State having but six or seven souls to a square mile, counting whites and blacks, and with a soil and climate capable of sustaining a hundred to the square mile with the greatest of ease. There is no mighty inconvenience, therefore, in the arrangement of Providence, by which the Cherokee claim a resting place on the land which God gave to their fathers.

And as to the learned chimera of *imperium in imperio,*[1] it is, and always has been, one of the most common things in the world. The whole of modern Germany is nothing else but one specimen after another of *imperium in imperio.* Italy has an abundance of specimens also. As to our own country, we have governments within governments of all sizes, and for all purposes, from a school district to our great federal union. And where can be the harm of letting a few of our red neighbours, on a small remnant of their own territory, exercise the rights which God has given them? They have not the power to injure us; and, if we treat them kindly and justly, they will not have the disposition. They have not intruded upon our territory, nor encroached upon our rights. They only ask the privilege of living unmolested in the places where they were born, and in possession of those rights, which we have acknowledged and guaranteed.

There is one remaining topic, on which the minds of many benevolent men are hesitating; and that is, *whether the welfare of the Indians would not be promoted by a removal.* Though they have a right to remain where they

[1] "Empire within an empire" (Latin).

are; though the whole power of the United States is pledged to defend them in their possessions; yet it is supposed by some, that they would act wisely, if they would yield to the pressure, quietly surrender their territory to the United States, and accept a new country beyond the Mississippi, with a new guaranty.

In support of this supposition, it is argued, that they can never remain quiet where they are; that they will always be infested by troublesome whites; and that the states, which lay claim to their territory, will persevere in measures to vex and annoy them.

Let us look a moment at this statement. Is it indeed true, that, in the very prime and vigour of our republican government, and with all our boasted reliance upon constitutions and laws, we cannot enforce as plain an act of Congress as is to be found in our national statute-book? Is it true, that while treaties are declared in the constitution to be the supreme law of the land, a whole volume of these supreme laws is to be at once avowedly and utterly disregarded? Is the Senate of the United States, that august body, as our newspapers have called it a thousand times, to march in solemn procession, and burn a volume of treaties? Are the archives of state to be searched, and a hundred and fifty rolls, containing treaties with the Indians, to be brought forth and consigned to the flames on Capitol Hill, in the presence of the representatives of the people, and all the dignitaries of our national government? When ambassadors from foreign nations inquire, *What is the cause of all this burning?* are we to say, "Forty years ago President Washington and the Senate made treaties with the Indians, which have been repeated and confirmed by successive administrations. The treaties are plain, and the terms reasonable. But the Indians are weak, and their white neighbors will be lawless. The way to please these white neighbours is, therefore, to burn the treaties, and then call the Indians our dear children, and deal with them precisely as if no treaties had ever been made." Is this answer to be given to the honest inquires of intelligent foreigners? Are we to declare to mankind, that in our country law is totally inadequate to answer the great end for which human laws are made, that is, the protection of the weak against the strong? And is this confession to be made without feeling and without shame? It cannot be. The people of the United States will never subject themselves to so foul a reproach. They will not knowingly affix to the character of a republican government so indelible a stigma. Let it not be said, then, that the laws of the country cannot be executed. Let it never be admitted, that the faith of the nation must be violated, lest the government should come into collision with white intruders upon Indian lands: — with intruders, whose character is admitted to be lawless; and who can be invested with power, in

no other way than by tamely yielding to their acts of encroachment and aggression.

The laws can be executed with perfect ease. The Indians can be defended. The faith of the nation can be preserved. Let the President of the United States, whenever the Indians shall be threatened, issue his proclamation, describing the danger and asserting the majesty of the laws. Let him refer to the treaties and the acts of Congress, which his oath of office obliges him to enforce; let him recite the principal provisions of these treaties and acts, and declare, in the face of the world, that he shall execute the laws, and that he shall confidently rely upon the aid and co-operation of all good citizens:—let him do this, and neither he, nor the country, will be disappointed. Law will triumph, and oppression will hide its head.

But it may be supposed, after all, that it would be for the benefit of the Cherokees and other tribes to remove beyond the Mississippi, and there enjoy the advantages, which are offered by the general government. These advantages are developed in a plan, which has been some years before the American people, and which is in substance, as follows:

Congress will set apart a tract of country of moderate dimensions, beyond Missouri, Arkansas, and Louisiana, (principally west of the territory of Arkansas,) and will guaranty it as the perpetual residence of Indians. Upon this tract of country shall be congregated numerous tribes, now residing in different states and territories. The land shall be divided among the tribes and individuals, as Congress shall direct. The emigrants, thus congregated, shall be governed by white rulers, till they are sufficiently amalgamated, instructed, and civilised, to be admitted to some share in the government themselves. The United States will pay the expense of a removal; will furnish implements of agriculture, the mechanical arts, schools, and other means of civilization. Intruders will be excluded; ardent spirits will never be permitted to pass the line of demarcation; good morals and regular habits will be promoted; and the Indians will rise rapidly in the scale of intelligence and virtue. This is the plan; and some good men have so much confidence in it, that they advise the Indians to embrace it, as their only refuge.

But before this advice is officiously pressed upon the Cherokees and other tribes, let the following things be considered.

1. The Cherokees and other tribes are now separate communities, or nations. They have rights as communities, and, under this associated character, they hold the United States by the strong obligations of treaties. They can, therefore, so long as their present relation continues, make a strong, united, and irresistible appeal to the justice and magnanimity of the United States. But the moment they consent to a removal, the existence of their separate communities will cease. Their act of consent to a removal may be called a treaty; but the moment the treaty is signed one of the parties become defunct. Let the terms be violated ever so grossly, and there is no nation of Indians to claim redress. Individuals may complain, but there is no community; for by consent to a removal, the Indians come as much under the government of the United States, as the District of Columbia is. Such a change in their condition is a great one; and let no man advise to it, unless he has duly considered its consequences. From being an independent people, rapidly improving in their character and habits, they will be put into leading strings, and will instantly feel that they are vessals. From walking abroad on their own possessions, as they are now wont to do, they will feel like paupers and mendicants, taken by the government, and stowed away in a crowded poor-house. At least these feelings seem very natural, if they are not certain.
2. There must be much suffering, in the removal of the 60,000 souls, which constitute the south-western tribes;—much exposure, sickness, hunger, nakedness, either on the journey, or soon after the arrival. The expense will be great; but this our national treasury can bear. The personal suffering comes wholly upon the Indians.
3. The removal must be conducted gradually. Of course all existing associations must be broken up; and the emigrants would be scattered along, at considerable intervals, and thus compelled to form new connexions. This alone would greatly impede their progress in civilization.
4. From the best accounts, which can be obtained of the country, which is selected for this permanent residence of Indians, it is deficient in wood and water, two articles of indispensable necessity to the emigrants. It is certain, that the Chickasaws, who visited this country last year at the expense of government, were unanimously dissatisfied with it as a place for their future residence. No man should advise the Indians to remove from their present habitations, unless he is in possession of undoubted evidence that the place, to which they are to be transported, is a desirable residence, or at least a comfortable one. No such evidence has yet been produced.
5. The crowding together of different tribes, speaking languages

entirely unintelligible to each other, and accustomed to different habits, would be productive of quarrels, and effectually impede the progress of improvement.

6. The proposed plan of government is entirely visionary, and has nothing, in the history of human affairs, to sustain it. The white rulers, who should have the charge of controlling and guiding such a heterogeneous mixture of different tribes, would need to be men of the most eminent qualifications;—men of great wisdom, firmness, patience, disinterestedness, and active persevering benevolence. With all these qualifications, their success would be doubtful; without them, defeat would be certain. But there is not the remotest probability, that a majority of agents and sub-agents would be of this character. Judging from all past experience, some of them would be profane, licentious, and overbearing; and a majority would be selfish, looking principally at the emoluments of office and caring little for the Indians.
7. No guaranty of a new country could be given to the Indians. The pretended guaranty would be either a treaty, one of the parties to which would cease to exist at the moment of signing, or an act of Congress, which might be repealed whenever Congress should please. Indeed, in these circumstances, it is an insult to common sense to talk of a guaranty. Even supposing half a dozen, or half a score, of Indian tribes, crowded together on the same territory, under white rules, *could* maintain their separate national existence, a thing manifestly impossible; but supposing this, how could these tribes insist on their right by treaty to lands upon which they had been placed by the United States, when they had previously left the original soil of their ancestors, because treaties were not strong enough to defend their possession. They can never have a title to a new country of equal validity with their title to the soil of their fathers. So they will regard the matter; and so all men will regard it.
8. It may be expected, therefore, that they will hardly get settled in their new location, before they will be urged to remove again. It will be impossible to escape the cupidity of the whites. If the Indians become outcasts and vagabonds, it will be said that they may as well be driven beyond the Rocky Mountains at once. If they, or a part of them, should live comfortably, it will prove that white men would live comfortably on the same soil. In a quarter of a century, the population of the United States will be 25,000,000. There will probably be 4,000,000 whites west of the Mississippi. Why should these whites be more tender of the rights of Indians than the whites of the present day?
9. The Cherokees, and the other south-western tribes, cannot be persuaded to remove voluntarily. If they go at all, they will go by constraint. They will consider the United States as guilty of the grossest violation of treaties. Of this state of their minds, the proof is already abundant; and, their mind being in this state, they cannot enter with vigour into any measures for their own good, but will abandon themselves to indolence, to despondency, and finally to despair.

These suggestions are made without the least intention to exaggerate. Let them be attentively examined.

May a gracious Providence avert from this country the awful calamity of exposing ourselves to the wrath of heaven, as a consequence of disregarding the cries of the poor and defenceless, and perverting to purposes of cruelty and oppression, that power which was given us to promote the happiness of our fellow-men.

LEWIS CASS JUSTIFIES REMOVAL

By the mid-1820s, Lewis Cass, governor of Michigan Territory between 1813 and 1831, had become widely regarded as one of the best informed, most experienced, and highly thoughtful experts in the country on United States Indian policy and the histories and cultures of the tribes. As superintendent of Indian affairs, an office all territorial governors held, he was certainly familiar with the details of United States relations with the Indians of the Great Lakes. He had toured the region, visited many tribes in their home countries, and arranged several treaties with them. He also was reputed to be a hardheaded, tough, but fair negotiator who supported the attempts of the government and the missionaries to "civilize" the Indians. The policy of changing the cultures of the Indians, turning them into plow farmers who produced surplus crops for sale in the marketplace, was the only way, Cass and many others believed, that the Indians could survive. If they remained "uncivilized," they would perish.

Cass made his reputation outside of government circles through a series of essays published in national magazines. The *North American Review*, one of the nation's leading literary journals, published several of his essays. Written as extended reviews of books and articles about Indians, Cass used these essays to put forth his opinions about Indian

policy and United States relations with the tribes. His most significant essay appeared in the January 1830 issue of the *North American Review* in the guise of a commentary on the publication of several letters, addresses, and resolutions in support of removal. Cass's essay, fifty-nine pages in length, was the first extended pro-removal document to appear in the popular press, written by an expert, since the election of Andrew Jackson, the publication of the "William Penn" essays, and the passage of Georgia's legislation to extend its civil and criminal jurisdiction into the Cherokee Nation.

What does Cass think of the "civilization" policy now? Notice Cass's claims to expertise, his tone, his range of arguments and his use of evidence. What do his readers who are not experts learn from him? How does he explain and justify Indian removal? What are his assumptions about the Constitution, state sovereignty, and the relations between state and federal governments? How does he deal with the reputation of the Cherokees as a "civilized" people? And how does all of this lead him to interpret the political and territorial rights of the Cherokees and all other tribes east of the Mississippi?

Francis Paul Prucha, *Lewis Cass and American Indian Policy* (Detroit: Wayne State University Press, 1967), contains further information on Cass. Anthony F. C. Wallace, *The Long, Bitter Trail: Andrew Jackson and the Indians* (New York: Hill & Wang, 1993), discusses Cass's role in the removal debate.

LEWIS CASS

"Removal of the Indians"

January 1830

Article III

Documents and Proceedings relating to the Formation and Progress of a Board in the City of New York, for the Emigration, Preservation, and Improvement of the Aborigines of America, July 22, 1829.

The destiny of the Indians, who inhabit the cultivated portions of the territory of the United States, or who occupy positions immediately upon their borders, has long been a subject of deep solicitude to the American government and people. Time, while it adds to the embarrassments and

distress of this part of our population, adds also to the interest which their condition excites, and to the difficulties attending a satisfactory solution of the question of their eventual disposal, which must soon pass *sub judice.* That the Indians have diminished, and are diminishing, is known to all who have directed their attention to the subject. . . .

It would be miserable affectation to regret the progress of civilization and improvement, the triumph of industry and art, by which these regions have been reclaimed, and over which freedom, religion, and science are extending their sway. But we may indulge the wish, that these blessings had been attained at a smaller sacrifice; that the aboriginal population had accommodated themselves to the inevitable change of their condition, produced by the access and progress of the new race of men, before whom the hunter and his game were destined to disappear. But such a wish is vain. A barbarous people, depending for subsistence upon the scanty and precarious supplies furnished by the chase, cannot live in contact with a civilized community. As the cultivated border approaches the haunts of the animals, which are valuable for food or furs, they recede and seek shelter in less accessible situations. . . .

. . . Distress could not teach them providence, nor want industry. As animal food decreased, their vegetable productions were not increased. Their habits were stationary and unbending; never changing with the change of circumstances. . . . There is a principle of repulsion in ceaseless activity, operating through all their institutions, which prevents them from appreciating or adopting any other modes of life, or any other habits of thought or action, but those which have descended to them from their ancestors. . . .

. . . From an early period, their rapid declension and ultimate extinction were foreseen and lamented, and various plans for their preservation and improvement were projected and pursued. Many of them were carefully taught at our seminaries of education, in the hope that principles of morality and habits of industry would be acquired, and that they might stimulate their countrymen by precept and example to a better course of life. Missionary stations were established among various tribes, where zealous and pious men devoted themselves with generous ardor to the task of instruction, as well in agriculture and the mechanic arts, as in the principles of morality and religion. . . . Unfortunately, they are monuments also of unsuccessful and unproductive efforts. What tribe has been civilized by all this expenditure of treasure, and labor, and care? . . .

The cause of this total failure cannot be attributed to the nature of the experiment, nor to the character, qualifications, or conduct, of those who have directed it. The process and the persons have varied, as experience

suggested alterations in the one, and a spirit of generous self-devotion supplied the changes in the other. But there seems to be some insurmountable obstacle in the habits or temperament of the Indians, which has heretofore prevented, and yet prevents, the success of these labors. . . .

We have made the inquiry respecting the permanent advantage, which any of the tribes have derived from the attempts to civilize them, with a full knowledge of the favorable reports that have been circulated concerning the Cherokees. Limited as our intercourse with those Indians has been, we must necessarily draw our conclusions respecting them from facts which have been stated to us, and from the general resemblance they bear to the other cognate branches of the great aboriginal stock. . . .

That individuals among the Cherokees have acquired property, and with it more enlarged views and juster notions of the value of our institutions, and the unprofitableness of their own, we have little doubt. And we have as little doubt, that this change of opinion and condition is confined, in a great measure, to some of the *half-breeds* and their immediate connexions. These are not sufficiently numerous to affect our general proposition. . . .

. . . But, we believe, the great body of the people are in a state of helpless and hopeless poverty. With the same improvidence and habitual indolence, which mark the northern Indians, they have less game for subsistence, and less peltry for sale. We doubt whether there is, upon the face of the globe, a more wretched race than the Cherokees, as well as the other southern tribes, present. . . .

We are as unwilling to underrate, as we should be to overrate, the progress made by these Indians in civilization and improvement. We are well aware, that the constitution of the Cherokees, their press, and newspaper, and alphabet, their schools and police, have sent through all our borders the glad tidings, that the long night of aboriginal ignorance was ended, and that the day of knowledge had dawned. Would that it were so. None would rejoice more sincerely than we should. But this great cause can derive no aid from exaggerated representation; from promises never to be kept, and from expectations never to be realized. The truth must finally come, and it will come with a powerful reaction. We hope that our opinion upon this subject may be erroneous. But we have melancholy forebodings. That a few principal men, who can secure favorable cotton lands, and cultivate them with slaves, will be comfortable and satisfied, we may well believe. And so long as the large annuities received from the United States, are applied to the support of a newspaper and to other objects, more important to the rich than the poor, erroneous impressions upon these subjects may prevail. But to form just conceptions of the spirit and objects of these efforts, we must look at their practical operation upon

the community. It is here, if the facts which have been stated to us are correct, and of which we have no doubt, that they will be found wanting.

The relative condition of the two races of men, who yet divide this portion of the continent between them, is a moral problem involved in much obscurity. The physical causes we have described, exasperated by the moral evils introduced by them, are sufficient to account for the diminution and deterioration of the Indians. But why were not these causes counteracted by the operation of other circumstances? As civilization shed her light upon them, why were they blind to its beams? Hungry or naked, why did they disregard, or regarding, why did they neglect, those arts by which food and clothing could be procured? Existing for two centuries in contact with a civilized people, they have resisted, and successfully too, every effort to meliorate their situation, or to introduce among them the most common arts of life. Their moral and their intellectual condition have been equally stationary. And in the whole circle of their existence, it would be difficult to point to a single advantage which they have derived from their acquaintance with the Europeans. All this is without a parallel in the history of the world. That it is not to be attributed to the indifference or neglect of the whites, we have already shown. There must then be an inherent difficulty, arising from the institutions, character, and condition of the Indians themselves.

. . . It is difficult to conceive that any branch of the human family can be less provident in arrangement, less frugal in enjoyment, less industrious in acquiring, more implacable in their resentments, more ungovernable in their passions, with fewer principles to guide them, with fewer obligations to restrain them, and with less knowledge to improve and instruct them. We speak of them as they are; as we have found them after a long and intimate acquaintance; fully appreciating our duties and their rights, all that they have suffered and lost, and all that we have enjoyed and acquired.

. . . The Indians are entitled to the enjoyment of all the rights which do not interfere with the obvious designs of Providence, and with the just claims of others. Like many other practical questions, it may be difficult to define the actual boundary of right between them and the civilized states, among whom or around whom they live. But there are two restraints upon ourselves, which we may safely adopt, — that no force should be used to divest them of any just interest they possess, and that they should be liberally remunerated for all they may cede. We cannot be wrong while we adhere to there rules. . . .

There can be no doubt, and such are the views of the elementary writers upon the subject, that the Creator intended the earth should be reclaimed from a state of nature and cultivated; that the human race should

spread over it, procuring from it the means of comfortable subsistence, and of increase and improvement. A tribe of wandering hunters, depending upon the chase for support, and deriving it from the forests, and rivers, and lakes, of an immense continent have a very imperfect possession of the country over which they roam. That they are entitled to such supplies as may be necessary for their subsistence, and as they can procure, no one can justly question. But this right cannot be exclusive, unless the forests which shelter them are doomed to perpetual unproductiveness. Our forefathers, when they landed upon the shores of this continent, found it in a state of nature, traversed, but not occupied, by wandering hordes of barbarians, seeking a precarious subsistence, principally from the animals around them. They appropriated, as they well might do, a portion of this fair land to their own use, still leaving to their predecessors in occupation all that was needed, and more than was used by them. . . .

Our compacts with the Indians assume the form of solemn treaties, passing through the ordinary process of ratification. These are obligatory upon them and us, for all the purposes fairly inferable from them, and we trust they will never be violated. But because we have resorted to this method of adjusting some of the questions arising out of our intercourse with them, a speculative politician has no right to deduce from thence their claim to the attributes of sovereignty, with all its powers and duties. . . .

Our peculiar form of government presents for consideration one question, which cannot exist in a monarchy or in a consolidated republic. Is the jurisdiction, which we may be called upon to exercise over the Indian tribes, to be assumed by the authorities of the confederation, or of the state, within which such tribes reside? It is a question growing out of our own municipal institutions, to be determined by ourselves, in which other nations have no right to interfere, and the decision of which can give no just cause of complaint to the Indians.

We have seen that the executive department of the Union has conceded the existence of this right in the state governments, and we think a few observations will be sufficient to show, that it is a concession demanded by the principles of our government, and by the usage which has prevailed among many of the members of the confederation. . . . To the constitution of the general government we must look for the resolution of this question. And the only provision we there find, relating to the Indians, is the third clause of the eighth section, which grants to Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." Certainly this is too narrow a foundation upon which to erect so broad a superstructure, as that which would include within it the whole of the concerns of the Indians. The regulation of

commerce can by no fair interpretation include, within the sphere of its operation, all the acts and duties of life, and thus confer the power of exclusive legislation. . . .

We are aware, that the treaty-making power may affect this branch of the inquiry. Treaties have been formed by the United States with most of the Indian tribes, and it is now too late to call in question their obligation, or the power of the government to conclude them; although it is difficult to point to any provision of the Constitution, which expressly or necessarily grants this power. . . . It is another of the anomalies, of which the general subject is so fruitful. If it were a question now to be agitated for the first time, the decision would probably be adverse to the exercise of the power. But we consider it as settled by this practical exposition, and that all the rights, secured to the Indians by these treaties, are beyond the reach of any difference of opinion, which may exist among ourselves, concerning the relative power of the various parties of our government. . . .

This question of jurisdiction over the Indian tribes is now, for the first time, seriously agitated. Heretofore, no one among them, or for them, has denied the obligation of any law passed to protect or restrain them. But new circumstances have intervened, and new pretensions are advanced. A government *de facto* has been organized within the limits of the state of Georgia, claiming legislative, executive, and judicial powers, and all the essential *attributes of sovereignty,* independent of that state.

The establishment of this government, thus claiming to be independent, and the probability, that a similar policy will be adopted by the other southern tribes, by which means they may become permanently established in their present possessions, necessarily presents to the states, within whose limits they reside, a serious question for consideration. It is evident, that if this pretension be not resisted now, resistance hereafter will be in vain. It is one of those questions, eminently practical, which a few years' acquiescence would settle. What might now be the assertion of a just and proper jurisdiction by the civilized communities, might then be an unjust claim to be enforced only by war and conquest. . . .

We have already expressed our convictions, founded on some knowledge of the Indian character, and of the efforts which have been formerly and recently made to change their condition and institutions, that so long as they retain positions surrounded by our citizens, these efforts will be unproductive, and that the Indians themselves will decline in numbers, morals, and happiness. If "these things are so," no just views of policy or humanity, require on their part the assertion of such a right, or the acknowledgment of it on ours. A false conception of their own interest, or a temporary excitement, which may have operated on some of their

influential men, and led to the present state of things, ought not to affect our views or decision. This demand is now made, for the first time, since the discovery of the continent. Writers upon natural law, courts of high character and jurisdiction, the practice of other nations, are all adverse to it. We can discern no advantages which either party can reasonably anticipate from such a measure.

There can be none to the Indians; for if they are anxious and prepared for a stable government, which shall protect all and encourage all, such governments they will find in the states where they reside. What has a Cherokee to fear from the operation of the laws of Georgia? If he has advanced in knowledge and improvement, as many sanguine persons believe and represent, he will find these laws more just, better administered, and far more equal in their operation, than the *regulations* which the chiefs have established and are enforcing. What Indian has ever been injured by the laws of any state? We ask the question without any fear of the answer. If these Indians are too ignorant and barbarous to submit to the state laws, or duly estimate their value, they are too ignorant and barbarous to establish and maintain a government which shall protect its own citizens, and preserve the necessary relations and intercourse with its neighbors. And if there are any serious practical objection to the operation of these laws, growing out of the state of society among the Indians, it would be easy for the state authorities to make such changes and interpose such securities as would protect them now, and lead them hereafter, if anything can lead them, to a full participation in political rights. . . .

But if it is difficult to perceive the advantages which the Indian tribes would derive from these independent governments, it is not difficult to foresee the mischiefs they would produce to the states and people, within whose limits they might be formed.

The progress of improvement would be checked. Extensive tracts of land would be held by the Indians in a state of nature. The continuity of settlements, and the communication between them, would be interrupted. Fugitives from labor and justice would seek shelter, and sometimes find it, in these little sovereignties. Questions of conflicting jurisdiction would frequently occur, not easy to be determined; for in vain might we search for principle, analogy, or precedent, by which to adjust them. There is already enough of the *imperium in imperio* in our government. Another wheel is not wanted, to render the machinery still more complicated. In the whole extent of Christendom, can a single instance be produced, where a state has voluntarily permitted, within its acknowledged boundaries, the establishment of a government, independent of, and unconnected with its own? . . .

Many excellent men believe, that the Indians have advanced, and are advancing in knowledge and improvement, and that they have both the right and ability to reorganize their political institutions, and assume a station which shall be coequal with the state governments. Erroneous as such an opinion is, both in principal and policy, still something is due to the feelings and motives of those who entertain it. In the practical assertion of jurisdiction, which circumstances now require some of the state governments to make, their authorities will no doubt accommodate their measures to the helpless, defenceless, and sometimes, we fear, hopeless condition of the Indians; taking care that such checks and limitations are imposed, as their ignorance and the superior intelligence of the whites may render necessary. . . .

The Cherokee government is acquiring the sanction of time, and their claim has assumed a definite shape. The laws of Georgia will operate upon them on the thirtieth of June next, and their chiefs have formally appealed to the general government for protection against this measure, urging their claim to be independent of that state, and affirming, that this act is to be viewed "in no other light, than a wanton usurpation of power, guarantied to no state, neither by the common law of the land, nor by the laws of nature."

It was necessary that this appeal should be answered. And it has been answered, as we have seen, in a spirit of just regard to the Indians and to the rights of a member of the confederacy. And what rational man could expect any other answer? Is the general government to interpose the arm of power between the state of Georgia or Alabama, and the assertion of rights essential to their "attributes of sovereignty?" A President of the United States would assume a fearful responsibility, who should thus employ the forces of the Union. It would be presumptuous to say, that such a case can never occur. But we may safely predict, that when it does come, it will shake the confederacy to its centre, and that a foreign war would be light in the balance, compared with such a fearful calamity. And who does not see, that in this contest for sovereignty, the uncivilized tribes must yield? Do not truth and humanity equally require the declaration of this fact? There is no mercy in suffering these Indians to believe, that their pretensions can be established and their independent government supported. In the actual state of the world, none but an enthusiast can expect or hope for the success of such a scheme. We have long passed the period of abstract rights. Political questions are complicated in their relations, involving considerations of expediency and authority, as well as of natural justice. If the laws of the various states, founded essentially upon the English common law, modified by our peculiar circumstances,

and administered in a spirit of fidelity and impartiality, which even in this land of violent political feuds, has left the judiciary without suspicion, excite the apprehensions of the Indians, and if they are anxious to escape from their operation and establish governments for themselves, ample provision has been made for their gratification. A region is open to them, where they and their descendants can be secured in the enjoyment of every privilege which they may be capable of estimating and enjoying. If they choose to remain where they now are, they will be protected in the possession of their land and other property, and be subject, as our citizens are, to the operation of just and wholesome laws.

CONGRESS ACTS

The Indian Removal Act, signed into law on May 28, 1830, by President Andrew Jackson, began its legislative history with Jackson's first State of the Union Address, delivered in December 1829. Each house of Congress referred the portion of the message dealing with Indian policy to its Committee on Indian Affairs. Both committees were chaired by Tennesseans—Hugh Lawson White in the Senate, John Bell in the House—and were dominated by southern Democrats. White's committee reported its bill to the Senate floor on February 22, 1830; Bell's committee followed suit two days later. The Senate's agenda permitted that body to complete debate on its version before the House could begin to work on its bill. Both were substantially the same, so Bell withdrew the version prepared by his committee and recommended that the House adopt the Senate bill. The House agreed, passed a slightly altered version of the Senate bill on May 26, and returned it to the Senate, which concurred two days later. The president signed it immediately.

Many representatives and senators recalled that the debates in both houses had been extremely bitter, highly partisan, emotionally supercharged, and exhausting. Senator Theodore Frelinghuysen of New Jersey, a friend of Jeremiah Evarts, a strong supporter of Christian benevolence, and a bitter anti-Jacksonian, led the attack in the upper house with a six-hour speech that extended over three days. The thrust of his argument was to uphold the sovereignty of the Cherokee Nation, condemn Georgia's extension of jurisdiction and Jackson's refusal to protect the Cherokees from Georgia law, charge that the entire scheme was a transparent attempt to force the Cherokees and other tribes out of their lands, and predict terrible suffering for the Indian victims of the policy. Peleg Sprague

(Maine) and Ascher Robbins (Rhode Island) joined with opposition speeches. John Forsyth (Georgia) and Robert Adams (Mississippi), along with chairman White, defended removal. Despairing of victory, opponents also tried unsuccessfully to amend White's bill with language that would force Jackson to protect the Cherokees from Georgia law until they were removed. The final vote, clearly along party lines, was 28 to 19.

The same pattern of attack and defense occurred in the House, which debated removal from May 13 to 26. Heavily influenced by the arguments and evidence presented in the "William Penn" essays, northern anti-Jackson representatives did battle against southern, largely Georgia, Democrats. But the party lines were not quite so strong in the House and some Democrats, particularly from Pennsylvania and the Ohio valley, along with Tennessean Davy Crockett, voted in opposition. The final tally, 102 to 97, reflects how controversial the removal policy actually was.

Note carefully what the act did and did not provide. What was the president authorized to do? How was removal to be arranged? How were the rights of the tribes protected? Opponents of the bill claimed that it would force the tribes to remove. Is there any evidence to support this fear?

This copy of the Indian Removal Act comes from *United States Statutes at Large*, 4:411–12. The congressional debates over the removal bill make fascinating reading. They can be found in Gales and Seaton's *Register of Debates*, vol. 6, pt. 2. A precursor of the *Congressional Record*, the *Register* contains the record of debates in both houses of Congress. Wilson Lumpkin, a representative from Georgia who sat on the House Committee on Indian Affairs, probably did more than any other single individual to achieve passage of the removal bill. Shortly after it was signed into law, Lumpkin left Congress to serve two terms as governor of Georgia, where he worked with equal vigor to remove the Cherokees. He believed so strongly that this was the crowning achievement of his life that he titled his two-volume autobiography *The Removal of the Cherokee Indians from Georgia* (New York: Dodd, Mead, 1907; reprint, New York: Augustus M. Kelley, 1971). The best analysis of the congressional debate on removal is in Ronald N. Satz, *American Indian Policy in the Jacksonian Era* (Lincoln: University of Nebraska Press, 1975), chaps. 1–2, and Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984), vol. 1, chap. 7. See Fred S. Rolater, "The American Indian and the Origin of the Second Party System," *Wisconsin Magazine of History* 76 (1993): 180–203, for a fascinating discussion of the relation between Indian policy and party politics in the 1830s and 1840s.

UNITED STATES CONGRESS

Indian Removal Act

May 28, 1830

Chapter CXLVIII

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 by the Senate and House of Representatives of the United States of America, in Congress assembled, 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.

ANDREW JACKSON APPLAUDS THE REMOVAL ACT

In his first annual message, delivered December 8, 1829, President Andrew Jackson outlined his Indian policy and called on Congress to enact legislation that would remove eastern Indians to the region west of the Mississippi. Jackson had a reputation, won during the Creek War of 1813–14, as an Indian fighter, but this was not a blood and glory pronouncement. He was critical, however, of the policies of his predecessors.

"Professing a desire to civilize and settle them, we have at the same time lost no opportunity to purchase their lands and thrust them further into the wilderness," he explained. Thus, the "civilization" policy, despite "lavish . . . expenditures," had largely been a failure, except in the South where the Cherokees "have lately attempted to erect an independent government." State legislation that subjected Indians to state laws induced the Cherokees to call on the United States for protection. Can the government, Jackson asked, "sustain these people in their pretensions?" The answer clearly was no. The Constitution expressly forbade the erection of one state within the borders of another without the consent of the latter. The Indians, therefore, had two choices: they could "emigrate beyond the Mississippi or submit to the laws of those States."

Jackson's address publicly clarified his recognition of the sovereign rights of the states over the Indian country within their borders. Previous administrations, even as they defended removal as the ideal policy solution to the growing "crisis in Indian affairs," had been unwilling to force the Indians to move. Indeed, the course of federal Indian policy since the 1790s had been the opposite as it sought to exclude and remove state involvement and interference and to emphasize the nation-to-nation relation between the United States and the tribes. Jackson's decision to actively support removal, therefore, was revolutionary, and political opponents seized on it as another demonstration of the president's regressive understanding of the nature of the federal union.

The selection printed here comes from Jackson's second State of the Union message, presented on December 6, 1830, after the passage of the Indian Removal Act. In it the president takes pride in the unfolding of his policy, extols its virtues, and predicts success. But the president still looks for vindication and is anxious for a speedy conclusion. Things will continue to go well, he assures his opponents, encouraging everyone to join in the humane task of convincing the tribes that so far have refused to retreat that for their own good they must do so now.

What are the benefits of removal that Jackson recounts? Are they important and valuable? Could they have been achieved in some other way? What is the tone of his expressions of sympathy for the Indians?

The preeminent scholar of the history of United States Indian policy, Francis Paul Prucha, has argued in *The Great Father* (Lincoln: University of Nebraska Press, 1984) that the chief characteristic of Jackson and everyone else involved in Indian policy was paternalism. The Indians did not know what was best for them, such people believed. Like children, they had to be guided. Someone had to show them, convince them, sometimes even force them to do and be what they should. Do you see examples of paternalism in Jackson's address?

Jackson's presidential address comes from the third volume of James D. Richardson, comp., *The Messages and Papers of the Presidents* (New York: Bureau of National Literature, 1897). Robert Remini's three-volume biography *Andrew Jackson* (New York: Harper and Row, 1977–1984) puts Indian policy in the context of Jackson's life and political program. See Remini's *The Legacy of Andrew Jackson: Essays on Democracy, Indian Removal, and Slavery* (Baton Rouge: Louisiana State University Press, 1988) for a restatement of Remini's views on Andrew Jackson's Indian policy.

ANDREW JACKSON

State of the Union Address

December 6, 1830

It gives me pleasure to announce to Congress that the benevolent policy of the Government, steadily pursued for nearly thirty years, in relation to the removal of the Indians beyond the white settlements is approaching to a happy consummation. . . .

Humanity has often wept over the fate of the aborigines of this country, and Philanthropy has been long busily employed in devising means to avert it, but its progress has never for a moment been arrested, and one by one have many powerful tribes disappeared from the earth. To follow to the tomb the last of his race and to tread on the graves of extinct nations excite melancholy reflections. But true philanthropy reconciles the mind to these vicissitudes as it does to the extinction of one generation to make room for another. In the monuments and fortresses of an unknown people, spread over the extensive regions of the West, we behold the memorials of a once powerful race, which was exterminated or has disappeared to make room for the existing savage tribes. Nor is there anything in this which, upon a comprehensive view of the general interests of the human race, is to be regretted. Philanthropy could not wish to see this continent restored to the condition in which it was found by our forefathers. What good man would prefer a country covered with forests and ranged by a few thousand

savages to our extensive Republic, studded with cities, towns, and prosperous farms, embellished with all the improvements which art can devise or industry execute, occupied by more than 12,000,000 happy people, and filled with all the blessings of liberty, civilization, and religion?

The present policy of the Government is but a continuation of the same progressive change by a milder process. The tribes which occupied the countries now constituting the Eastern States were annihilated or have melted away to make room for the whites. The waves of population and civilization are rolling to the westward, and we now propose to acquire the countries occupied by the red men of the South and West by a fair exchange, and, at the expense of the United States, to send them to a land where their existence may be prolonged and perhaps made perpetual. Doubtless it will be painful to leave the graves of their fathers; but what do they more than our ancestors did or than our children are now doing? To better their condition in an unknown land our forefathers left all that was dear in earthly objects. Our children by thousands yearly leave the land of their birth to seek new homes in distant regions. Does Humanity weep at these painful separations from everything, animate and inanimate, with which the young heart has become entwined? Far from it. It is rather a source of joy that our country affords scope where our young population may range unconstrained in body or in mind, developing the power and faculties of man in their highest perfection. These remove hundreds and almost thousands of miles at their own expense, purchase the lands they occupy, and support themselves at their new homes from the moment of their arrival. Can it be cruel in this Government when, by events which it can not control, the Indian is made discontented in his ancient home to purchase his lands, to give him a new and extensive territory, to pay the expense of his removal, and support him a year in his new abode? How many thousands of our own people would gladly embrace the opportunity of removing to the West on such conditions! If the offers made to the Indians were extended to them, they would be hailed with gratitude and joy.

And is it supposed that the wandering savage has a stronger attachment to his home than the settled, civilized Christian? Is it more afflicting to him to leave the graves of his fathers than it is to our brothers and children? Rightly considered, the policy of the General Government toward the red man is not only liberal, but generous. He is unwilling to submit to the laws of the States and mingle with their population. To save him from this alternative, or perhaps utter annihilation, the General Government kindly offers him a new home, and proposes to pay the whole expense of his removal and settlement.

4

The Cherokee Debate

Although the majority consistently opposed land cession and removal, the Cherokees were never unanimous in their opposition. In the early nineteenth century, a group of self-serving chiefs succumbed to the temptations of the federal government and sold land. Their leader, Doublehead, incurred the full wrath of the Cherokees, and other chiefs, including Major Ridge, killed him for his behavior. In 1808–1810, the Nation divided over the removal issue, and for a time, the antiremoval forces deposed the principal chief, who favored removal. Ultimately, the Cherokees did cede territory, most who wanted to move west did so, and those who remained strengthened their national government. Again in 1817–1819 the Cherokees debated land cession and removal. Under pressure from the federal government, the Cherokees surrendered more land, those who had promoted removal went west, and the remaining people established "articles of government" that clearly defined who had authority to cede land. These early removals had two important results. First of all, they siphoned off the individuals who supported land cession and western migration. The Cherokees who remained, therefore, became even more adamant in their refusal to negotiate removal, and little dissent from the official antiremoval position existed throughout the 1820s. Second, the people who first settled in western Arkansas and then moved in 1828 to northeastern Oklahoma established a distinct Cherokee society that numbered about four thousand by the 1830s. These Cherokees challenged the hegemony of the eastern Cherokees after the larger body of approximately sixteen thousand moved west in 1838–1839.

The best survey of early Cherokee efforts to preserve their homeland and adapt to changing circumstances is William G. McLoughlin, *Cherokee Renascence in New Republic* (Princeton: Princeton University Press, 1986). For the removal controversy of the 1830s, biographical studies of the major players present the opposing sides. See Thurman Wilkins, *Cherokee Tragedy: The Story of the Ridge Family and the Decimation of a People* (New York: Macmillan, 1970), and Gary E. Moulton, *John Ross,*