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Democracy, Sovereignty, and the Struggle over Cherokee Removal

The Cherokee Council house at New Echota, Georgia, was burning. On December 24, 1835, as Major Benjamin Currey spoke to a committee from the tribe about a potential treaty with the United States, an ember from the hearth fire had floated to the ceiling and set the roof ablaze. Vigilant Cherokee jumped into action, attacking the flames with blankets and buckets of water. The fire was soon extinguished, and Currey resumed his speech. Although the meeting continued without further interruption, at least one Cherokee in attendance who opposed the treaty later acknowledged that he saw the fire as a sign of disapproval from the heavens.¹

The number of Cherokee assembled at New Echota – possibly as many as several hundred – was but a small fraction of the full tribe. Although the federal government and the State of Georgia had for years been pushing the Cherokee to turn all of their territory over to white settlers and move west, most Cherokee wanted to keep their ancestral homeland. In October 1835 the Cherokee General Council had named a committee of leaders to work out a mutually agreeable solution with the federal government in Washington. However, U.S. Indian Commissioner John Schermerhorn had called a meeting at New Echota with a separate committee of Cherokee who he believed would be more willing to “remove” the entire tribe to the West. This was the committee listening to Major Currey speak on December 24. Five days later, on December 29, its members agreed to the Treaty of New Echota, ceding all of the Cherokee’s eastern territory in exchange for \$4.5 million, land in the West, and other sundry benefits.

U.S. President Andrew Jackson, who had battled Native American tribes during much of his former military career, was eager to oust the Cherokee from the eastern states. However, several members of the Senate criticized the Treaty of New Echota as a “phantom treaty,” claiming that it was signed by an illegitimate council without the consent of the Cherokee people.² Approving the treaty, they insisted, would be a grave wrong against the Cherokee Nation and its official government, which the United States had long recognized.

On May 18, 1836, the U.S. Senate finally put the Treaty of New Echota to a vote. If ratified, the treaty would bind all Cherokee to the decisions of the committee at New Echota, and the Cherokee Nation would have to leave its native land.

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The Meeting of Different Worlds

When European explorers arrived in North America, they claimed control of territory inhabited by millions of indigenous people (the exact number is unknown) whom Europeans called "Indians."¹ These Native Americans called themselves by many names. They were divided into hundreds of tribes that spoke different languages and lived diverse ways of life and that had long and complex histories of alliances and rivalries with each other. Among them were the Cherokee.³

The earliest recorded contact between Europeans and Cherokee occurred in 1540, when the Spanish conquistador Hernando de Soto reached the Cherokee village of Guasili in what is now North Carolina. At the time, the Cherokee clans were centered in roughly 40,000 square miles of the southern Appalachian Mountains, where their ancestors had migrated, most likely from the Great Lakes region many centuries before. Although the Cherokee had only limited dealings with Europeans before 1700, these interactions had nonetheless significantly affected them. Cherokee obtained their first guns, horses, and alcohol from Europeans, and possibly even the practice of referring to themselves as "Cherokee," a term that may originally have been what a neighboring tribe called them. Also, like other native populations, they contracted a host of diseases to which they had never before been exposed. The most devastating was smallpox. A series of epidemics beginning at least as early as 1697 had sharply reduced the Cherokee population, roughly estimated at 22,000 in 1650, to about 10,000 – 12,000 by 1720. A subsequent smallpox outbreak in the late 1730s again proved devastating, and the Cherokee population recovered only slowly thereafter. Still, the Cherokee may have been able, for a time, to expand their territory, as nearby tribes were also weakened by European conquest and disease. Cherokee lands eventually recognized by Britain and the United States covered some 125,000 square miles across what is today Kentucky, West Virginia, Virginia, North and South Carolina, Tennessee, Georgia, and Alabama.⁴

Relations with the British

British migrants began arriving in North America in large numbers in the seventeenth century. They came expecting to take possession of land on which indigenous peoples lived, but at the same time they asserted that they would not behave like their hated international rivals, the Spanish, who had already conquered the Indians of Central and South America. Stories of the conquistadors' atrocities and cruelties were widely publicized in Britain. The British declared that they would do better, taking territory only by treaty, achieved through fair negotiation, while converting willing American Indians to Christianity and "civilizing" them. The Massachusetts Bay Colony, founded in 1630, placed on its first official seal the image of a Native American quoting, from the New Testament, the plea of the Macedonians to St. Paul: "Come over and help us" (Acts 16:9). The struggle over territory, however, was not mainly resolved through goodwill or negotiation, in Massachusetts or elsewhere. In 1675–1676, relations between settlers and Native Americans in southern New England degenerated into a brutal and exceedingly bloody conflict, known as King Philip's War, which killed thousands, destroyed whole communities, and, in the end, sharply diminished Native American presence in the region.⁵

Further south – and far beyond the reach of King Philip's War – British merchants began visiting Cherokee villages in the late seventeenth century, marking the beginning of the Cherokee's closest relationship with a colonial power. The British and the Cherokee were signing military and commercial treaties with each other by 1684 and together fought against the Tuscarora, another southeastern Native

¹ In this case study, indigenous American peoples will be referred to sometimes as "American Indians" or "Indians," the terms used in the era under discussion and used by many indigenous peoples today, and sometimes as "Native Americans," the more common modern term.

American tribe, in the early 1710s.⁶ They solidified their partnership in 1730, when seven Cherokee visited London to negotiate a treaty called the Articles of Friendship and Commerce.⁷ The Articles, drawn up by the British, declared that "the great nation of Cherokees [are] now the children of the Great King of Great Britain [George II]," and that "as the King has given his land on both sides of the great mountains to his own children the English, so he now gives to the Cherokee Indians the privilege of living where they please." The Cherokee would promise to trade and ally only with England in exchange for weapons and supplies. The Cherokee delegates assented to these terms on September 9, 1730, in a response notable for its extreme deference to the British monarchy: "We came hither naked and poor, as the worm out of the earth, but you have everything; and we that have nothing must love you, and can never break the chain of friendship that is between us."⁸

Although the two nations entered the French and Indian War of 1754–1763 as allies, the Anglo-Cherokee "chain of friendship" fell apart over the course of the war. Trouble began in 1756, when a group of Virginia settlers killed twenty-four Cherokee warriors and delivered their scalps to the colonial governor, seeking a bounty for "enemy" scalps. The Cherokee retaliated with their own atrocities, and the violence escalated into a conflict called the "Cherokee War" by the British. Despite a significant victory in which the Cherokee seized a British fort on the Tennessee River, a British assault on their homeland later in 1760 severely weakened the tribe. The two sides signed peace treaties the next year.⁹

Victory in the French and Indian War left Britain as the dominant power in North America, and its people were eager to settle the frontier—regardless of whether or not Britain had already legally recognized the land as Indian territory. Many Native American tribes had long struggled with colonists' settlement on their lands. Unlike the Cherokee, most tribes had fought against the British in the war to avenge such intrusions. Hoping to calm these tensions, King George III issued the Proclamation of 1763, which forbade all English settlement west of the Appalachian Mountains. Colonists widely ignored the Proclamation, however, and continued to settle lands belonging to the Cherokee and other tribes. At the same time, the official Cherokee territory shrunk as a series of treaties ceded more and more of their land to the colonies. The Cherokee had signed their first treaty transferring land to the British in 1721. By the end of 1777 they had ceded more than 68,000 square miles in nine treaties (see **Exhibit 1**).¹⁰

The conflict between the settlers and the Cherokee escalated when the colonists declared their independence from Britain in 1776. Most Cherokee (and other Native Americans) sided with the Crown in the war, preferring a government that respected treaties over its rebellious subjects, who often did not. To weaken the Cherokee threat, American troops attacked and destroyed Cherokee villages. The invasion was brutal, and some American soldiers scalped and tortured their enemies—horrors that Cherokee themselves had sometimes been known to practice in battle. The attack crippled the tribe, which ceded over 8,000 square miles to the Americans in peace deals the next spring.¹¹ Irrespective of these deals, many Cherokee continued fighting for years afterward, and one group called the Chickamaugans kept up attacks on U.S. communities until well after the Revolution had ended. Another smallpox epidemic in 1783 is estimated to have killed 2,500 more Cherokee and further weakened the reeling tribe.¹²

Cherokee Policy of the Early United States

The United States finally signed a comprehensive peace treaty with the Cherokee on November 28, 1785. The Treaty of Hopewell declared "all the Cherokees to be under the protection of the United States of America, and of no other sovereign whatsoever." It delineated the borders of the Cherokee

Nation and prohibited American settlement within those borders. The treaty also stated that Congress would "have the sole and exclusive right of regulating trade with the Indians, and managing their affairs in such manner as they think proper," and it allowed the Cherokee to send a deputy to Congress whenever they wished to communicate with the U.S. government. Finally, the treaty declared, "The hatchet shall be forever buried, and the peace given by the United States, and friendship re-established between the said states on the one part, and all the Cherokees on the other, shall be universal."¹³

As with the Proclamation of 1763, the Treaty of Hopewell proved ineffective in curbing white settlement on Cherokee lands. Thousands continued migrating into the territory, joining those who had traveled there before Hopewell. Under the existing national charter of the United States, the Articles of Confederation, the federal government lacked the authority to stop these incursions. The situation changed only after the ratification of the U.S. Constitution in 1788.

In addition to broadly expanding federal authority, the Constitution contained a number of provisions pertaining to Native Americans in U.S. territory. It declared that "Indians not taxed" were not to be counted toward apportionment of the House of Representative or direct federal taxes, indicating that they were not to be regarded as citizens (Art. I, §2). It further declared that Congress had the authority "to regulate commerce with foreign Nations, and among the several States, and with the Indian tribes" (Art. I, §8); that all existing treaties (the large majority of which were with Native American tribes) were to be held as valid by the new federal government; and that all treaties made under the authority of the federal government were to be the "supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" (Art. VI).¹⁴ As a result of these provisions, relations with the Native Americans were now seen as exclusively a federal matter; the Cherokee, like other tribes, would negotiate treaties only with the federal government, never with states. The Constitution specified, moreover, that the power to "make Treaties" rested with the Executive, meaning Native Americans from this point forward would have to deal with the president or his representatives, and that all treaties had to be ratified by a two-thirds vote of the U.S. Senate (Art. II, §2).

In 1789, shortly after ratification of the Constitution and the inauguration of the first president, George Washington, the Cherokee sent a delegation to the national capital to complain about the ongoing treaty violations. They caught the sympathetic ear of Secretary of War Henry Knox, who had responsibility for Indian relations. On July 7 he wrote to President Washington, insisting that the settlers showed "direct and manifest contempt of the authority of the United States," which if unmet would lead "Indian tribes [to] have no faith in such imbecile promises."¹⁵ In response, the federal government reiterated the illegality of settlement on Cherokee lands in a proclamation, but settlers ignored this as well. These continuing intrusions led to the Treaty of Holston (July 1791), in which the Cherokee handed over large tracts of land in the Carolinas in exchange for an annual \$1,000 payment and a new prohibition on trespassing. An amendment in February 1792 raised the annual payment to \$1,500.¹⁶

The Treaty of Holston also promised that the United States would "furnish gratuitously the said [Cherokee] nation with useful implements of husbandry," in order "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." This strategy of "civilization," conceived by Secretary Knox, formed the core of the federal government's early Indian policy.¹⁷ The agreement authorized up to four federal officials, who would become known as "Indian agents," to live among the Cherokee and oversee this effort. The first such agent, Benjamin Hawkins, established his headquarters in Tellico, Tennessee, along with a trading post (called a "factory") where the Cherokee could obtain U.S. goods. Knox hoped these

arrangements would familiarize the tribes with a more commercial lifestyle and, ideally, ease their assimilation into the United States.¹⁸

Meanwhile the federal government negotiated an end to its conflict with the Chickamaugans, the Cherokee holdouts who had never abandoned warring against the States. In the early 1790s they were still attacking settlers near the frontier. In September 1794 the United States invaded Chickamaugan territory in northwest Georgia and destroyed their towns, finally breaking the resistance. "I want peace," Chickamaugan leader Bloody Fellow pleaded that October, "that we may . . . sleep in our houses, and rise in peace on both sides."¹⁹ Chickamaugan leaders signed a peace treaty the next month at Tellico. Hoping for continued tranquility, the governor of the Southwest Territory, William Blount, proudly declared, "Peace with the Indians exists now not only in name or upon paper in form of treaty but in fact, and he who shall violate it shall deserve the severest punishment of the laws and execrations of his fellow citizens."²⁰

Tellico was also the site of yet another treaty that transferred land from the Cherokee. After Tennessee became a state in 1796, many of its citizens settled in the eastern Powell Valley, which belonged to the Cherokee. The settlers were frequent targets of Cherokee attacks and of federal officers attempting to enforce the Treaty of Holston. Many Tennesseans were upset that the government was exercising, in their eyes, "partial conduct in favour of a Savage tribe," and state leaders reported that some settlers were fleeing to Spanish-held territory to escape both the violence and the law. At the urging of Tennessee's congressmen, including a young senator named Andrew Jackson, the administration of President John Adams negotiated with the Cherokee and signed the First Treaty of Tellico on October 2, 1798.²¹ The treaty ceded the lands in question to the United States, in exchange for \$5,000 and an increase of \$1,000 to the preexisting annual payment, to be paid in merchandise.²²

Adams's successor, Thomas Jefferson, was eager to continue the country's expansion as well as the "civilization" of the American Indians. The two processes were linked in his mind: he believed that as the Native Americans ceded their hunting grounds to the States, they would have to abandon their culture for the whites' way of life.²³ Jefferson made his first major deal concerning Native American lands with the State of Georgia rather than with a particular tribe. In 1802 many Georgians were outraged after the state legislature sold approximately 80,000 square miles of western land to wealthy speculators in a deal that enriched a number of political elites and their allies. In an attempt to wash away the scandal, the state transferred all of the contested land to the federal government (the land would later become Alabama and Mississippi). In exchange, the federal government paid for all of the speculators' holdings and promised eventually to clear for settlement all of the land in Georgia that belonged to the Cherokee and Creek tribes. The contested land was transferred to the federal government and the speculators were paid, but President Jefferson did not immediately act on his promise to acquire Cherokee and Creek territory. The Pact of 1802 remained on the books, however, and Georgia's leaders would cite it years later in their efforts to oust the Cherokee.²⁴

Disagreement within the Cherokee Tribe

In the meantime, President Jefferson continued to deal with the issue of Native American lands through traditional treaty acquisitions. Between 1804 and 1806, a federal Indian agent named Return Jonathan Meigs secured four agreements with the Cherokee, netting land in Georgia, Tennessee, Kentucky, and Alabama.²⁵ These agreements, however, served to exacerbate internecine conflicts within the tribe. Although by this point there existed a national tribal council with supposed authority over all of the Cherokee, the tribe was unofficially divided into two subgroups: the southern "Lower Towns" and the northern "Upper Towns." Meigs had negotiated his treaties primarily with Lower Towns leaders and had often enticed them with what he called "silent considerations" of money and

goods. After Lower Towns chiefs ceded much of the Cherokee land, Upper Towns leaders demanded that future treaties be worked out with the consent of the entire Cherokee Nation. The conflict came to a head in August 1807, after word leaked that Meigs had bribed Doublehead, a Chickamauga leader who had once participated in the fighting against the United States.²⁶ To punish Doublehead, another leading Cherokee known as "The Ridge" (an English translation of one of his Cherokee names, "The Man Who Walks On Mountain's Top") gathered a group to confront Doublehead at his favorite tavern. The Ridge's men brutally killed Doublehead, ostensibly in accordance with tribal law.²⁷

After the Doublehead killing, several Lower Towns leaders orchestrated the very first Cherokee "removal" operation. Beginning to doubt the viability of federal "civilization" policy, Meigs had come to believe that westward relocation—or "removal"—was the only means by which the Cherokee could "preserve their national existence."²⁸ Lower Towns chiefs nearly negotiated a formal removal treaty with the federal administration in Washington, but Upper Towns chiefs in the National Council sent a delegation to block it. Still, in 1808 President Jefferson offered an exchange of western lands for eastern ones to any Cherokee willing to leave their homelands. The Cherokee Council rejected this offer, but 1,023 Lower Towns Cherokee—led by Doublehead's brother-in-law—voluntarily migrated west to Arkansas. Two years later, in 1810, the Council revoked the migrants' citizenship in the Cherokee Nation, accusing them of "treason against the motherland."²⁹

Cherokee Culture and Government

The defeat of the Cherokee during the American Revolution seems to have convinced most members of the tribe that conflict with America would lead only to the loss of more lives and land. In 1811, therefore, they gave a cool reception to the charismatic Shawnee warrior Tecumseh, who was traveling south from his native Ohio territory in search of allies. Tecumseh believed that if all western tribes formed a united military front against the United States, they could prevent it from taking any more of their land and could preserve their traditional ways of life. He had been able to bring together warriors from most of the tribes of the Great Lakes region under his leadership and found friends among a faction of Creeks, the Cherokee's neighbors, who became known as "Red Sticks" after they adopted Tecumseh's symbol (a bundle of red sticks) as their own. Cherokee leaders, however, thought Tecumseh's plan would lead their nation to disaster. In the summer of 1813, The Ridge confronted a large meeting of Cherokee who wanted to join with Tecumseh, telling them bluntly that to do so "would lead us to war with the United States, and we should suffer." Some listeners were so angered by The Ridge's words that they attacked him, but he was mostly able to fend off the assault until friends came to his aid and helped him escape. Tecumseh was killed later that year, fighting alongside the British against the United States in the War of 1812, and support for his ideas among the Cherokee seems to have died with him.³⁰

Instead of pursuing warfare, the Cherokee opted to try to save their nation by transforming their system of governance and way of life, a process already long under way. At the time of European contact, Cherokee had been organized into scores of autonomous towns, each with its own chief, but governed in most matters by local councils in which all adults, male and female, participated. Particularly after the disasters suffered during the Revolution, however, the Cherokee began to centralize their administration. They gradually invested authority in a national council of chiefs and warriors (all men), headed by a principal chief. By the 1790s the council had established the first national police force, later known as the Light Horse Guard, tasked initially with suppressing horse stealing and eventually with enforcing the council's decisions. By 1808 the most important council decisions began to be written down as a national legal code, in the formal English of legislation

("Whereas . . . , Be it resolved by the Council . . ."). By 1821 the Cherokee had established their own system of district courts and marshals.³¹

Meanwhile, in October 1820 the Council restructured itself into a bicameral General Council, with the National Committee as the upper house and the National Council as the lower house. Eight districts would each send four delegates to the National Council for two-year terms, and the National Council would select the thirteen members of the National Committee. A principal chief and second chief would hold executive power. In 1822 the General Council established a National Superior Court of four judges to oversee the judicial system. In the early years of this new government, Pathkiller served as principal chief, John Ross as committee president, and The Ridge as speaker of the National Council.³²

The changes in Cherokee governance accompanied deeper changes in Cherokee society, ones that started before Knox established a federal "factory" in Cherokee territory and that persisted after it closed in 1811.³³ Before European contact, the Cherokee had lived by hunting deer and bear (seen as the work of men) and growing fields of maize and other crops (seen as the work of women). In the eighteenth century the Cherokee economy came to be based largely on trading deerskins (used in luxury European clothing) and other goods with the British in return for consumer goods. In 1745 a Cherokee chief complained, "My people cannot live independent of the English. . . . The clothes we wear we cannot make ourselves. They are made for us. We use their ammunition with which to kill deer. We cannot make our guns. Every necessary of life we must have from the white people."³⁴ By 1800, overhunting and habitat loss had depleted the deerskin trade, producing an economic crisis. In response the Cherokee increasingly turned to making a living as their white neighbors did, through trade, herding, and commercial agriculture. In wealthier and more acculturated households, Cherokee women began to live as housewives, although in poorer and more traditional households, planting and tending crops remained women's work. Meanwhile, Cherokee-white intermarriages became increasingly common. The children of such unions, even if fully acculturated to white ways, were regarded as "half-breeds" by most whites and subjected to various legal disabilities. The Cherokee, by contrast, accepted them as full tribal members—especially, in their matrilineal society, if their mother was Cherokee. Cherokee therefore respected both The Ridge and John Ross as tribal leaders, not caring that the former was "full-blooded" and eloquent in Cherokee, while the latter was mostly of white ancestry and felt more comfortable speaking English than Cherokee, or that both men lived in the style of prosperous white southern planters (both owned slaves).³⁵

Another major shift in Cherokee life was the spread of literacy. In 1799 the Cherokee allowed Moravian missionaries to establish a school among them; later they would allow in other missionaries, most notably from the influential American Board of Commissioners of Foreign Missions (ABCFM), an organization dominated by Congregationalists and Presbyterians. Most Cherokee leaders sent their children to be educated in mission schools, although few showed any interest in converting from traditional Cherokee beliefs to Christianity. Among those who did express interest were The Ridge's son John Ridge and his cousin Gallegina ("Buck") Watie, who furthered their education at an academy in Connecticut, popularly known as the "Heathen School." The school had been established by the ABCFM to train "natives" from around the world to spread the Gospel in their homelands. Watie identified with the cause so strongly that he adopted the name of a prominent ABCFM patron, the New Jersey philanthropist (and former president of the Continental Congress) Elias Boudinot.³⁶

The spread of literacy made its greatest advance, however, owing to the efforts of a silversmith named (by his white father) George Guess, but more widely known by his Cherokee name, Sequoyah. Himself illiterate, he is generally believed to have started by 1809, if not earlier, to devise a system of written symbols to represent the sounds of the Cherokee language. Working entirely alone, by 1821 he had developed an 86-character syllabary (later reduced to 85). Many Cherokee speakers found they

could learn it in just a few days. The system spread rapidly, possibly in part as an act of resistance against a separate plan by missionaries to make Cherokee a written language. By the 1830s, observers reported that half or more of all Cherokee households had a member who could read and write using Sequoyah's syllabary, while one in six households contained a member literate in English.³⁷ In 1828 Boudinot established the first Native American-run newspaper with the authorization of the Cherokee Council and the backing of the ABCFM. The paper was called the *Cherokee Phoenix* (its motto, "I will arise"), and Boudinot had special fonts designed for Sequoyah's symbols so he could print columns in both English and Cherokee. The *Phoenix* found readers across the United States and served as a platform for publicizing the tribe's cause and achievements.³⁸

The Cherokee found many sympathizers among American whites, especially northern and evangelical Protestant supporters of the ABCFM, who saw the Cherokee as the successful fulfillment of all the old missionary promises, and validation of the early goal to "civilize the Indian." Yet in at least one critical respect, "civilization" for the Cherokee meant something very different from what it meant for its original white advocates. Whereas the latter had envisioned that "civilized" Indians would eventually assimilate fully into white society, the Cherokee did not seek to assimilate because even the most acculturated of them had come to believe that whites would never accept them as equals. Such had been the bitter lesson learned by John Ridge and Elias Boudinot at the "Heathen School" in Connecticut. Each, during his time there, had won the heart of a young woman from a prominent local family (in Ridge's case the daughter of the school steward, and in Boudinot's the daughter of a leading school patron), and married her. Yet the marriages, both in 1824, provoked consternation in the women's families and a huge public outcry. Many white Americans professed shock and disgust that respectable white ladies had been allowed to wed "savages." The controversy grew so fierce that the ABCFM eventually decided to close the school. This painful episode provoked a backlash against missionary activity in Cherokee lands and helped convince Ridge and Boudinot that the Cherokee could retain their dignity only under the aegis of their own sovereign government.³⁹

General Jackson

The U.S. wars against both British and Native American foes in the 1810s would have lasting consequences for the Cherokee. A pivotal figure in the events of this era, both on the battlefield and in the political arena, was Andrew Jackson. Born on the Carolina frontier in 1767, Jackson as a child had witnessed Native American attacks on his community, including one that reportedly killed a member of his family.⁴⁰ In 1788 he moved to Nashville, Tennessee, where settlers are said to have lived in fear of Cherokee raids. Jackson distinguished himself as a dogged enemy of the local tribes and, in the words of one nineteenth-century historian, "had great ambition for encounters with the savages."⁴¹ He served in a militia that fought the Chickamaugans in the early 1790s, and later joined the U.S. House of Representatives in 1796 as Tennessee's first delegate. Jackson was elected to the U.S. Senate in 1797, but disliked the job and resigned the next year. He returned to the Tennessee militia, where he reached the rank of major general in 1802.⁴²

The perennial clashes between Tennessee settlers and Native Americans continued, and attacks by the Creek tribe in particular roused Jackson's anger. When the Red Stick faction attacked Fort Mims in Alabama in August 1813, killing hundreds, Jackson led his militia into Alabama to avenge their deaths.⁴³ At the urging of The Ridge, who feared war with the United States, the Cherokee allied with Jackson in this "Creek War." The Red Stick leader William Weatherford had promised to punish members of other tribes who did not fight for his cause, but Jackson assured his allies, "[I]f one hair of your head is hurt or of your family or of any who are friendly to the whites, I will sacrifice a hundred lives to pay for it."⁴⁴ Jackson and his Native American allies smashed the Red Sticks by the spring of

1814. In this campaign, The Ridge served as major of the 800-member Cherokee regiment (whose ranks included John Ross), and he got to know Jackson. After the war he was always called "Major Ridge." Meanwhile, in August 1814 the Creeks agreed to the Treaty of Fort Jackson, in which they ceded approximately 36,000 square miles of land in Alabama and Georgia.⁴⁵

The treaty still required ratification by the U.S. Senate before it could become official, but international political developments complicated matters. While Andrew Jackson had been fighting the Creeks, the United States was simultaneously engaged in the War of 1812 against Britain. In fact, Britain had been arming Native American tribes, including in Florida, to the great consternation of U.S. settlers. Immediately after the Creek War, Jackson was promoted to major general of the U.S. Army and placed in charge of the southern military district. He led a campaign into Florida, and in January 1815 he defended New Orleans from British invasion in a victory that earned him national admiration. Unbeknownst to Jackson, however, the United States and Britain had already signed the Treaty of Ghent on December 24, 1814, formally ending the war. The treaty included an article requiring the United States to end its wars against Native Americans and to return to the tribes all land it had acquired since 1811. This clause threatened the Creek concessions in the Treaty of Fort Jackson.⁴⁶

Despite this tension between the two treaties, Jackson's status as a national hero persuaded the Senate to ratify the Fort Jackson agreement on February 16, 1815, and to do so unanimously. President James Madison's acting secretary of war, Alexander J. Dallas, encouraged Jackson to "cooperate with all means in your power to conciliate the Indians, upon the principles of our agreement with Great Britain," but Jackson largely ignored the Treaty of Ghent in construing his settlement with the Creeks. With the war over, Jackson returned to Tennessee to oversee the surveying of boundaries agreed upon in the Treaty of Fort Jackson.⁴⁷

Jackson and the Cherokee

The Treaty of Fort Jackson ended up posing a significant problem for the Cherokee, even though they had assisted Jackson in the Creek War. In particular, they believed that some of the land the Creeks had ceded actually belonged to them. Creek chiefs insisted that the disputed lands had been "only loaned to the Cherokees, and that the said lands were always considered the property of the Creek Nation."⁴⁸ Major Ridge led a Cherokee delegation to Washington to settle the issue. On March 22, 1816, the Madison administration awarded them a new treaty that granted them the contested lands, plus \$25,500 for damages done by Jackson's militia in the Creek War, in exchange for some Cherokee lands in South Carolina.⁴⁹

Jackson found the treaty revision troubling, asserting that it could inflame tensions on the frontier and, in turn, bring about "the destruction of the whole cherokee nation, and of course . . . a civil war [sic]." In other words, he believed that southern whites would defy the government if he attempted to enforce the treaty provisions.⁵⁰ Jackson also made it clear, in letters to his superiors in Washington, that he thought treaty negotiations were an "absurd" and atavistic relic of an earlier era, when American Indian tribes were powerful and independent nations. Because this was no longer true, he suggested, the treaties were no longer relevant and Congress should simply enact laws to remove Indians from their land. Besides, he asserted, only "designing half-breeds and renegade white men" who lived among the Indians protested removal. In his view, "real" Indians did not oppose removal, because, as "natives of the forest," they wished to escape from what they viewed as the corrupting influence of whites.⁵¹

Despite such attitudes, Jackson was duty-bound, as a U.S. Army general, to enforce the new treaty — or at least to work out a new one more to his liking. In September 1816 Jackson and his treaty

commissioners met leaders of the Cherokee and Chickasaw (another tribe that contested the Fort Jackson boundaries) at the Chickasaw Council House in Mississippi to press for a new agreement. In a speech on September 12, Jackson's commissioners pushed the cause of "civilization," saying that the Cherokee and Chickasaw "must cultivate the Earth like your white Brethren & your women like their white sisters must learn to spin & weave." The commissioners insisted that the lands the United States desired were "of no value to you . . . [and] will only be a fruitful source of Bloodshed & strife."⁵² Finally—after some "presents" had been offered—the Cherokee and Chickasaw chiefs agreed to land cession treaties on September 14 and 20, respectively. A meeting with the Cherokee National Council at Turkey Town, Alabama, beginning on September 28 finalized the treaty with the Cherokee, over the opposition of several leaders and only after further bribes had been granted. A year later, leading Cherokee chiefs alleged that the treaty had been ratified only by representatives of a few towns and not the entire nation, but the federal government never investigated the matter.⁵³

As the negotiations progressed, some Cherokee leaders hinted that they might be willing to abandon their lands entirely and "remove" themselves west. The Monroe administration, seeking to acquire Cherokee lands along the Tennessee River, was willing to offer U.S. property along the Arkansas River in exchange. In June 1817 President Monroe sent Jackson to the government's Cherokee Agency in Tennessee to negotiate with both the eastern Cherokee and the Arkansas Cherokee, those who had taken up President Jefferson's offer to move west years before.⁵⁴ In his presentation to the Cherokee Council and its new National Committee of thirteen leading men, Jackson argued that the Cherokee who had discussed removal with Jefferson in 1808 had accepted an exchange of lands between the West and the East on behalf of the whole tribe. The Arkansas Cherokee had acted on this first and moved before any land was officially transferred, and now the time had come to finalize the exchange. "Go where game is plentiful & corn is plenty," he encouraged the easterners, and enticed them with promises of supplies and a trading factory. Anyone who did not go, Jackson promised, would become a U.S. citizen and be assimilated into the "civilized life."⁵⁵

This offer divided the leaders of the two Cherokee populations. Although barred from the meeting with Jackson, the Arkansans agreed with his telling of events, and were willing to trade the ancestral territory for official ownership of their land in the West. The easterners saw things quite differently. They claimed that the tribe had made no such agreement with Jefferson, and that those who had gone west had had no official sanction from the Cherokee Nation. Even Cherokee delegates who had been at the meeting with Jefferson could not agree on exactly what had happened there. The easterners presented two of those delegates to support their story, but the principal chief of the tribe, named Tochelar, had also been present and agreed with Jackson's account. Incensed at the thought of removal, the easterners ousted Tochelar from their council and on July 4 declared, "We wish to remain on our land, and hold it fast."⁵⁶

The statement enraged Jackson, who told the chiefs that they were reneging on a promise to the United States. "Look around you and recollect what happened to . . . the Creeks," he warned.⁵⁷ On July 6 his commissioners delivered the chiefs a draft treaty, which included a "private article" offering eastern and Arkansan chiefs thousands of dollars each for their approval. On July 8, a number of chiefs—though not the Council, or even a majority of the chiefs present—consented, signing over a thousand square miles in Georgia, Alabama, and Tennessee for equivalent territory in the West. The Senate approved the treaty on December 11, 1817, and the first party to migrate west under the treaty, numbering about 700, departed in February 1818. (Among them was Sequoyah. His syllabary first grew popular when migrants and their families realized they could use it to write letters to one another.)⁵⁸

Most of the eastern Cherokee opposed removal and disagreed with those who had moved west. In late 1818 the new Cherokee National Committee president John Ross led a delegation to Washington

with the aim of revising the 1817 treaty. Although the Cherokee ceded an even greater amount of land—nearly 6,000 square miles—to the United States in the resulting Treaty of 1819, their negotiators agreed to this with the understanding that their boundaries would never be further diminished. They believed that on the basis of this new treaty, the more than 12,000 square miles of their homeland they still held, which Principal Chief Pathkiller called the “last little,” would always remain in Cherokee hands. Confident that they had finalized their borders, the Council rescinded citizenship in the Cherokee Nation to any member who moved to a reservation outside the traditional homeland.⁵⁹

Georgia Demands Cherokee Lands

In the 1820s about two-thirds of all Cherokee lived in Georgia, and the General Council met at New Town, Georgia. The existence of a separate government within Georgia’s borders, as well as a large Cherokee population, disturbed state leaders, representing (in their eyes) an unnecessary constraint on white settlement and a clear violation of Georgia’s sovereignty. After the Treaty of 1819, state lawmakers had complained that the state received no lands in the deal, despite the Pact of 1802, which seemed to promise that all the Cherokee lands in Georgia would someday be cleared.⁶⁰ Now that the Cherokee were re-forming, centralizing, and strengthening their government, the state stepped up its effort to collect on Jefferson’s promise.

President Monroe responded to Georgia’s complaints in March 1823, announcing that the Cherokee “in their present temper . . . can only be removed by force . . . and there is no obligation on the United States to remove the Indians by force.”⁶¹ With the president showing no interest in a conflict, Congress appropriated money for peaceful removal, and Secretary of War John Calhoun sent commissioners to the October 1823 General Council meeting to urge emigration. In a Supreme Court decision that year, *Johnson v. M’Intosh*, Chief Justice John Marshall ruled that the states owned their Native American territories by a “right of discovery” transferred from the British Crown. The Native Americans themselves only had a “right of occupancy,” not complete ownership of their lands.⁶² Calhoun’s commissioners invoked this argument at the General Council meeting. Offering another exchange of western for eastern lands, they claimed that previous treaties had acknowledged only the Cherokee’s right to live on the land, not ownership of it. When the Council turned down their offer, the commissioners attempted to bribe its leaders with \$12,000. The commissioners secured the representation of a Creek named William McIntosh to make the offer, but Pathkiller, Ross, and Major Ridge roundly rejected McIntosh’s overtures and sent him fleeing from New Town.⁶³

With officials from Georgia and the federal government continuing to harangue the Cherokee Council over emigration, Ross, Major Ridge, and others journeyed to Washington in January 1824 to discuss the issue with Secretary Calhoun and President Monroe. They told the president that they would not cede any more territory and urged him to disavow the Pact of 1802: “An exchange of territory twice as large . . . or all the money now in the coffers of your treasury, would be no inducement for the Nation to exchange or sell their country.” In his annual message of March 1824, Monroe reiterated that the United States had no responsibility or obligation to remove the Cherokee by force.⁶⁴

Monroe’s inaction aggravated Georgia’s leaders, and John Forsyth, the state’s only U.S. House representative, put forward a resolution calling for the United States to force the Cherokee out of Georgia. John Ross traveled to Washington to confront Forsyth personally and on April 15, 1824, brought a petition against the resolution to Congress. In his testimony, Committee president Ross insisted that the Cherokee were more “civilized” than other tribes, and would remain peaceful, seeking only to “enjoy the blessings of civilization and Christianity, on the soil of their rightful inheritance.”

Ross's plea proved successful, with enough northern congressmen voting against Forsyth's resolution to block its passage.⁶⁵

The Question of Sovereignty

Over the next few years, the government of Georgia eased its pursuit of the Cherokee lands, and the Cherokee continued to develop their governance institutions. The General Council announced in 1825 the creation of a capital called New Echota, near New Town, to house the government. Under the guidance of Committee president Ross, the Cherokee elected delegates to a constitutional convention, which on July 4, 1827, published a national constitution. It was modeled on the U.S. Constitution, as was evident from its preamble: "We, the Representatives of the People of the Cherokee Nation . . . in order to establish justice, ensure tranquility, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty . . . do ordain and establish this Constitution." The Cherokee constitution affirmed the Nation's existing borders, indicating that no more land would be ceded, and defined its governmental structures, declaring that "the sovereignty & jurisdiction of this Government shall extend over the country within the boundaries . . . described." The next February, the government began publishing the *Cherokee Phoenix*.⁶⁶

Just months before the birth of the *Phoenix*, however, the Georgia legislature approved a resolution (on December 26, 1827) challenging Cherokee sovereignty:

That the policy which has been pursued by the United States toward the Cherokee Indians has not been in good faith toward Georgia. . . . That all the lands, appropriated and unappropriated, which lie within the conventional limits of Georgia belong to her absolutely . . . and that Georgia has the right to extend her authority and her laws over . . . all descriptions of people, be they white, red, or black, who may reside within her limits.⁶⁷

Although passage of the resolution had no immediate consequences, many Cherokee were understandably alarmed. Elias Boudinot later wrote in protest, "How is it possible that [the Cherokee] will establish for themselves good laws, when an attempt is made to crush their first feeble effort toward it?"⁶⁸

Georgia took no further legal action until December 20, 1828, when John Forsyth, now governor, approved a law asserting that all Cherokee laws were null and that beginning in June 1830 the Cherokee lands would be subject to state law and annexed to nearby counties. The law, while not unexpected, further offended the Cherokee and threatened their sovereignty. In January 1829 John Ross, now principal chief, carried a petition to Washington signed by 3,095 Cherokee protesting Georgia's new law. Ross found the capital crowded with people eager to meet the same man he had come to see, president-elect Andrew Jackson. Chief Ross never met with Jackson, and by the time he departed Washington in April his only response from the administration was a letter from the new secretary of war, John Eaton, urging removal.⁶⁹

The threat to the Cherokee grew more serious in mid-1829 after a gold vein was discovered running through their territory. "Within a few days it seemed as if the world must have heard of it, for men came from every state," recalled one fortune seeker. At its height the gold rush would draw more than 10,000 people to the area. The mania tempted some Cherokee to sell their land, which in turn led the General Council to declare unanimously in October that any who did so were outlaws and that it was permissible for any Cherokee to kill them if spotted within the Nation. The Georgia legislature countered with laws of its own, forbidding the Cherokee from digging for gold on their own land and banning the Council from preventing land sales.⁷⁰

Driven by the lure of gold, the new arrivals harassed the Cherokee living in the territory. There were frequent raids against Cherokee communities, and many settlers took up residence in abandoned Cherokee homesteads. Despite complaints from the Cherokee, the Jackson administration did nothing to combat these illegal incursions. The Cherokee began fighting back in February 1830, when Major Ridge led a Council-approved force to oust settlers from Cherokee homes near the Alabama border and to burn down buildings so they could not return. Violence between whites and Cherokee soon escalated, and the national press spoke of "WAR IN GEORGIA." The Cherokee's retaliation and subsequent fights with settlers fed many whites' perceptions that the Cherokee were belligerent savages. Elias Boudinot wrote in the *Cherokee Phoenix* that this was "a circumstance which we have for a long time dreaded. . . . It has been the desire of our enemies that the Cherokees may be urged to some desperate act. . . . We would say, *forbear, forbear* — revenge not, but leave vengeance 'to whom vengeance belongeth.'" ⁷¹

The Indian Removal Act

In his first message to Congress, in December 1829, President Jackson acknowledged Georgia's ongoing conflict with the Cherokee and urged congressional action. In particular, he asked Congress to allot

an ample district west of the Mississippi, and without the limits of any State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it. . . . This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land. But they should be distinctly informed that if they remain within the limits of the States they must be subject to their laws. ⁷²

With anti-Cherokee sentiment rising, particularly in Georgia, the Senate Indian Affairs Committee reported a bill in line with Jackson's recommendation on February 22, 1830. The bill would authorize the president to offer western lands in exchange for Native American holdings in the states and territories. The president would be empowered to provide aid to any Native Americans who emigrated, and would be bound to protect the émigrés in their new lands. ⁷³

When Senate debate over the removal bill began in April, opinions divided largely along regional lines, with support coming from the South and opposition from the North. Although the bill would apply to five different tribes, discussion focused on the Cherokee. The tribe's most vigorous defender in the Senate was Theodore Frelinghuysen of New Jersey, who had once served as president of the ABCFM. In a six-hour speech stretched over three days, Frelinghuysen insisted on equal justice for the Cherokee irrespective of race, the sovereignty of the Cherokee nation, and the Cherokee's inherent right to their lands. The bill would only authorize the president to negotiate an exchange of lands, but Frelinghuysen and other opponents believed that Jackson would negotiate aggressively and with threats of force, effectively seizing Cherokee lands. ⁷⁴ "God, in his providence, planted these tribes on this western continent, for aught that we know, before Great Britain herself had a political existence," he argued. "Where is the decree or ordinance, that has stripped of their rights these early and first lords of the soil? . . . no argument can shake the political maxim — that where the Indian always *has been*, he enjoys an absolute right still *to be*, in the free exercise of his own modes of thought, government and conduct." Comparing the United States to a "horseleech" that sought more land than it needed, he declared that Georgia's 1828 law was illegitimate and that removal was profoundly unjust. ⁷⁵

John Forsyth, who was now a U.S. senator from Georgia, responded in a speech that likewise spanned three days. He suggested that Frelinghuysen was a hypocrite because the northern states had

seized Native American lands long ago and were now criticizing southern states for doing the same. "The Indians in New York, New England, Virginia, &c. &c. are to be left to the tender mercies of those states, while the arm of the General Government is to be extended to protect the Choctaws, Chickasaws, Creeks, and especially the Cherokees, from the anticipated oppressions of Mississippi, Alabama, and Georgia." Forsyth reviewed the history of Native American treaties with the United States, the British colonies, and the individual states, and concluded that Georgia had been well within its rights in passing the 1828 law. He concluded by accusing Senator Frelinghuysen of "prejudiced examination, and unjust condemnation of our cause," and of wanting the federal government to violate "the personal rights of its people" and "to make war upon a State."⁷⁶

The Senate approved the federal removal bill on April 26, and the House began its debate on May 13. The House discussion was similarly heated, with speeches invoking themes of Cherokee sovereignty, the validity of prior treaties, and states' rights. In a long speech on the first day, New York's Henry Storrs lamented that the removal bill showed little respect for Cherokee sovereignty, which previous treaties had assumed to exist. "If the question [of Cherokee sovereignty] before us is not settled at this day, there is nothing settled in the Government. Every thing is to be kept floating. We shall never know what our institutions are, nor will others know when or whether to trust us at all." Supporters, by contrast, argued that the bill would benefit Native Americans. "It is a measure of life and death," argued Georgia's Wilson Lumpkin. If the Native Americans did not move west, he warned, "they will every day be brought into closer contact and conflict with the white population, and this circumstance will diminish the spirit of benevolence and philanthropy towards them which now exists."⁷⁷

In a 103-97 vote, the House passed the removal bill on May 26, 1830, and President Jackson signed it into law two days later.⁷⁸ Following passage, Georgia and the federal government pressured the Cherokee to abandon their lands. Georgia's 1828 law had declared that the state would extend its authority over the Cherokee in June 1830, and Governor George Gilmer sent the Georgia Guard into the Cherokee Nation beginning that month. Mindful that many Americans were sympathetic to the Cherokee, the Guard did not begin full-scale enforcement of state law but apparently did harass Cherokee with arrests over trivial, invented, or provoked offenses. At the same time, President Jackson pressed for the Cherokee to give up their land by treaty. Of the five tribes with lands eligible for exchange under the new federal law, the Cherokee were the only tribe that refused to meet with Jackson. In retaliation, the president changed the way the federal government paid its annuity to the Cherokee. Traditionally the government had paid the annuity to Cherokee leaders, but Jackson now required that individual Cherokee collect their share from the Indian agent. Because most Cherokee would likely not travel a long distance to obtain the small sum due to them, this had the effect of reducing federal payments to the tribe.⁷⁹

The Cherokee Go to Court

Cherokee Nation v. Georgia

With state and federal governments turning up the heat, the Cherokee General Council sought to fight back in court. Chief Ross hired the former U.S. Attorney General William Wirt to guide the Cherokee's legal efforts, which initially relied on the case of a Cherokee named Corn Tassel to get to the U.S. Supreme Court. Tassel had been accused of murdering another Cherokee, and the tribe had arrested him and planned a trial. However, state officials in Georgia intervened, seizing Tassel, trying him in state court, and sentencing him to hang. Wirt argued that the state had violated tribal sovereignty. The Georgia Superior Court ruled for the state, and on December 12, 1830, Wirt appealed

to the U.S. Supreme Court to halt the execution. Chief Justice John Marshall proved responsive and ordered the governor of Georgia to appear before the court. Instead, the governor summoned a special session of the Georgia legislature, which instructed the sheriff detaining Tassel to move forward with the execution. Tassel was hanged on December 24. Three days later, Wirt and his co-counsel, John Sergeant, a congressman from Pennsylvania, filed a new case before the Supreme Court, claiming that the Cherokee qualified as a foreign nation. Georgia sent no counsel to rebut them, because it refused to acknowledge that the Supreme Court had jurisdiction over what it called an internal state matter.⁸⁰

Chief Justice Marshall handed down a decision in *Cherokee Nation v. Georgia* on March 5, 1831. Although sympathetic to the Cherokee, Marshall's opinion held that the U.S. Supreme Court was not the proper venue for the case. The U.S. Constitution stated that federal judicial power pertained to cases "between a State, or the Citizens thereof, and foreign States, Citizens, or Subjects."⁸¹ Marshall maintained that the Cherokee Nation was not a foreign state, but rather a "domestic dependent nation" within the United States:

In general, nations not owing a common allegiance are foreign to each other. . . . But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else. The Indian territory is admitted to compose a part of the United States. In all our maps, geographical treatises, histories, and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens. . . .

Though the Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.⁸²

Because Georgia's seizure of Tassel had not violated the rights of a foreign nation, Marshall ruled, the Supreme Court had no authority to reverse the state court's decision.

Settler incursions and abuses in Cherokee territory increased after the decision. Civilians and guardsmen alike engaged in violence against the Cherokee, and Governor Gilmer and President Jackson did little to stop them. In a meeting with Cherokee leaders after the decision, Jackson swore that he was "the friend of the Cherokees" but asserted, "You can live on your lands in Georgia if you choose, but I cannot interfere with the laws of that state to protect you."⁸³

Worcester v. Georgia

The Cherokee had another chance to challenge Georgia before the U.S. Supreme Court the following year. In December 1830 the Georgia legislature had passed a bill directing settlers on Cherokee land to obtain a permit that required an oath of loyalty to the state. Supporters of the law intended to target evangelical Protestant missionaries, sent by the American Board of Missions, who had settled among the Cherokee and, according to Senator Lumpkin, spread defiant "religious fanaticism" throughout the tribe.⁸⁴ The Georgia Guard selectively enforced the law and in March 1831 arrested several missionaries

who had not taken the oath. The state judge who heard the case, Augustin Clayton, ruled that the missionaries' work with the Indians made them in effect federal agents and so exempt from arrest. Apparently Judge Clayton did not want to give these missionaries standing to challenge the constitutionality of the Georgia law. However, the Jackson administration soon denied that they were federal agents, and the Guard arrested them again, along with more missionaries. After a retrial in September, most of the accused took the oath and subsequently fled Georgia. Two of the original defendants, Elizur Butler and Samuel Worcester (a founder, with Boudinot, of the *Cherokee Phoenix*), refused and were sentenced to jail. Wirt brought their case to the U.S. Supreme Court, arguing that Georgia had violated U.S.-Cherokee treaties with the 1830 law. In this case, unlike *Cherokee Nation v. Georgia*, the Court's jurisdiction was unquestioned because the plaintiff was a U.S. citizen alleging wrongdoing by a U.S. state.⁸⁵

Once again, Wirt and Sergeant argued the Cherokee case; once again, Georgia refused to send anyone in response. The Marshall Court ruled on March 3, 1832, in *Worcester v. Georgia*, that Georgia's law was unconstitutional. The law, Marshall wrote, violated the Cherokee's right to self-government, which treaties with the U.S. and Britain had always recognized. The Cherokee Nation existed within Georgia's borders, but was not subject to Georgia law:

The very fact of repeated treaties with them recognizes [Cherokee self-government]; 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. . . . 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.⁸⁶

In *Cherokee Nation v. Georgia*, the Court had ruled that the Cherokee did not constitute a foreign nation. Now it made clear the Cherokee were a sovereign nation, though dependent on and not foreign to the United States, and that the states were bound to observe U.S. treaties delineating tribal borders.

The decision was initially greeted with jubilation among the Cherokee. John Ross reported "great rejoicings throughout the nation," and Elias Boudinot believed that the "question is forever settled as to who is right and who is wrong."⁸⁷ It soon became clear, however, that the ruling was not a panacea for the Cherokee. Wilson Lumpkin, now governor, refused to release Worcester and Butler from prison, and President Jackson made it known that he had no intention of enforcing the decision. The ruling, he said, was "stillborn," and his allies in Washington continued to pressure the Cherokee to accept a removal treaty.⁸⁸

At first, some Cherokee held out hope that President Jackson would be defeated for reelection in 1832. Among Jackson's opponents were prominent supporters of the Cherokee, including both of the attorneys who represented them at the Supreme Court: Sergeant was running on the National Republican ticket as the vice presidential running mate of Jackson's political archenemy, Henry Clay, and Wirt was running as the presidential nominee of a large third party, the Anti-Masons. In the fall elections, however, Jackson won over 54 percent of the popular vote, as opposed to 37 percent for the Clay-Sergeant ticket and 8 percent for Wirt. In Georgia, Jackson was so popular that his opponents did not even mount campaigns, and he won 100 percent of the vote.⁸⁹

Contemplating Removal

As a growing number of Cherokee came to see the *Worcester* decision as an empty victory, they began to conceive of removal as a necessary evil. In a meeting with Jackson soon after the decision, Committee President John Ridge, son of Major Ridge, became "convinced that the only alternative to save his people from moral and physical death was to make the best terms they could with the government, and remove out of the limits of the States," according to a close Jackson ally.⁹⁰ Elias Boudinot and Major Ridge began seriously considering removal at about the same time, and some Cherokee started migrating west in the spring of 1832 in anticipation of full removal. In May, Boudinot printed a story in the *Phoenix* reporting that Committee President Ridge had attempted to negotiate a land sale with Jackson. Although Ridge himself denied this, the article angered Principal Chief Ross, who feared it would be read as suggesting his government was considering removal. Ridge and Boudinot broached the topic in July, when the General Council gathered at Red Clay, Tennessee, a new center of Cherokee government beyond the reach of the Georgia Guard. Perhaps because most Cherokee leaders continued to oppose removal, Ridge and Boudinot were careful not to endorse it explicitly, but they did encourage the Council to consider negotiations.⁹¹

Chief Ross emerged as the foremost opponent of removal at the July 1832 meeting. In his opening address, he hinted that he would reject any negotiations without full tribal consent, declaring that a "man who will forsake his country in time of adversity and will cooperate with those who oppress his own kindred is no more than a traitor and should be viewed and shunned as such."⁹² Leadership changes made at the meeting further strengthened Ross's hand. Boudinot resigned as editor of the *Phoenix*, complaining that Ross was attempting to block all dissent within its pages. Ross's brother-in-law, Elijah Hicks, became the new editor of the *Phoenix*, and proved receptive to Ross's guidance. When, for example, President Jackson's Indian Affairs commissioner, Elisha Chester, came to the Red Clay meeting to offer a removal treaty, Hicks honored Ross's request not to print any of Chester's testimony in the *Phoenix*. At the same meeting, the General Council agreed to postpone the elections constitutionally mandated for that year, thereby ensuring that Ross would retain power. Although the Council ostensibly did this to avoid the prospect of changing leaders in the midst of a crisis, some dissenters believed the measure was instead intended simply to shield Ross from challengers.⁹³

At its October 1832 meeting, the General Council decided Ross should go to Washington to confront the Jackson administration. Ross met with Jackson twice in February 1833, and the exchanges were heated. Jackson made two offers for the Cherokee lands: \$2.5 million for assisted removal, or \$3 million if the Cherokee left without any government help. Ross refused, replying, "If you have so much money at your disposal, buy off the Georgia settlers and end this dispute." Finally, Jackson offered a grim prediction of the Cherokee's fate if they did not leave their ancestral land. Georgia would not back down, he promised, and eventually there would be war. The U.S. government would not help the Cherokee, for fear of sectional discord, and the tribe's people would either be killed or brought under Georgia law.⁹⁴

A Growing Divide

When Ross returned to the Cherokee Nation that spring, divisions over removal ran deep. Cherokee leaders had split into a pro-removal "Treaty Party" and an anti-removal "National Party," and isolated acts of violence had broken out between the two factions. At a meeting in May 1833, Committee President Ridge expressed his disapproval of Ross's decision to dismiss Jackson's offer, and others in the Treaty Party composed a letter to the General Council warning that continued resistance to removal would "not result in the restoration of those rights" the tribe had lost. Ross persuaded the authors of this letter, including Major Ridge and Boudinot, to postpone publication until the October Council

meeting, hoping that the situation would improve in the meantime. It did not. That summer, white settlers who had been granted title to Cherokee land by the state began seizing land and homes, and more and more Cherokee opted to head west.⁹⁵

The extent to which removal divided the Cherokee—and even individual families—became apparent in the months that followed. In October 1833 the General Council again sent Ross to meet with President Jackson. In January, Ross's younger brother Andrew and his relative Thomas Jefferson Pack secretly traveled to Washington as well. Pack and the younger Ross were emissaries of William Hicks, a former principal chief whom John Ross had ousted in the election of 1828. Hicks had formed a shadow government of pro-removal Cherokee and hoped that Pack and Andrew Ross could negotiate a treaty with Jackson. Jackson, however, knew that they lacked authority and that neither the Cherokee governing bodies nor the U.S. Senate would approve any treaty they signed. He thus dismissed Pack and Ross, requesting that they return with leaders of greater stature within the Cherokee Nation.⁹⁶

Andrew Ross returned to Washington in May, this time with Major Ridge and Elias Boudinot at his side. Although both soon lost confidence in his negotiating skills and abandoned him, the discussions continued (despite Jackson's earlier position) and Andrew Ross's delegation hammered out a removal treaty with the administration in June. The treaty would award the Cherokee an annual payment of \$25,000 for twenty-four years. Funds were also allocated to Andrew Ross himself. However, John Ross denounced the treaty, insisting that Andrew's men had "no authority whatever from the nation to do what they have done," and the U.S. Senate rejected it.⁹⁷

Chief Ross's own mission to Washington, meanwhile, once again yielded no progress. In discussions with Secretary of War Lewis Cass, Ross offered a partial cession in exchange for protection of the Cherokee lands that would remain, and, failing that, requested that the Cherokee be allowed to apply for citizenship if they relinquished all of their lands. Cass refused both offers, claiming that only full removal would be satisfactory. Even when Ross presented President Jackson with an anti-removal petition signed by 13,000 Cherokee (out of 16,000 tribal members still living on their traditional lands; see Exhibit 2), the president dismissed it as a fake.⁹⁸

By 1834 the rupture within the tribe was becoming ever more dangerous. Andrew Ross faced death threats, and the Ridges confronted calls for their assassination at an August meeting at Red Clay. That same month a Treaty Party leader named John Walker Jr. was shot and killed, raising tensions and provoking Georgia settlers to form a "Citizens Committee" to defend against the "constant danger of assassination and other lawless violence."⁹⁹ The conflict finally split the Cherokee government in two when John Ridge, his father, Boudinot, and other Treaty Party leaders walked out of the October 1834 Council meeting to form a separate council. From John Ridge's home at Running Waters, this alternative council sent a message to the U.S. Congress announcing that they had "turned their eyes to the country west of the Mississippi" and were prepared to leave for good.¹⁰⁰

Both councils sent delegations to Washington that winter. Aware that the Treaty Party was negotiating as well, Chief Ross made his first offer to Jackson for removal: \$20 million for all of the lands, plus extra money for past treaty violations. When Jackson dismissed this price as "preposterous," Ross suggested he would take any price the Senate proposed. Jackson approved, and a week later the Senate Committee on Indian Affairs offered \$5 million. Having expected a much larger sum, Ross rejected the deal and left Washington.¹⁰¹ Arriving at his home in Georgia late one evening, he found strangers living there: the state of Georgia had confiscated all of his property and awarded it to a white family in a lottery. Ross had little choice but to rent a room, and he left the next morning to find his family and set up a new home in Tennessee. In the meantime, Committee President Ridge had

been negotiating with Reverend John F. Schermerhorn, Jackson's new treaty commissioner. Schermerhorn proposed paying \$4.5 million, plus extensive western lands, for the Cherokee homeland. Ridge believed this to be "very liberal in its terms," and a provisional treaty along these lines was signed on March 14, 1835.¹⁰²

Many – and likely most – Cherokee still opposed removal, and in May the General Council voiced its disapproval of the Treaty Party's negotiations and invested "John Ross with full power to adjust the Nation's difficulties in whatever way he might think most beneficial."¹⁰³ Ross encouraged his supporters to attend a July meeting at Running Waters that the Treaty Party was holding with Schermerhorn, with the aim of scuttling the negotiations. Approximately 2,600 Cherokee answered Ross's call, and those assembled rejected a key provision concerning annuity payments in a 2,225 to 114 vote. Foiled by the National Party, Schermerhorn waited until the October Council meeting to make his next move.¹⁰⁴

The Treaty of New Echota

Chief Ross did not permit Schermerhorn to address the Council at Red Clay in October 1835 until the very end of the meeting. At that point, Schermerhorn spelled out the specific terms of the treaty he offered: \$3.4 million plus more than 21,000 square miles of land in the West (mostly land already guaranteed to the western Cherokee). The Council rejected this offer, even after Schermerhorn raised his price to \$5 million. Finally, Ross claimed that Schermerhorn's offer was illegitimate anyway, since he had no formal commission document from Secretary of War Cass. With this in mind, the Council voted to send a committee to negotiate a new treaty with the U.S. government. The committee would include John Ross, Elijah Hicks, John Ridge, and Elias Boudinot, among others.¹⁰⁵

Commissioner Schermerhorn, meanwhile, called for negotiations at New Echota, the abandoned Cherokee capital in Georgia. As two historians have explained, "Schermerhorn wanted a treaty, and he knew that the Cherokees most likely to show up [there] would be those nearby who were hurting the most," owing in part to Georgian policies.¹⁰⁶ While Ross led the Council-approved committee in Washington, Ridge and Boudinot, who had resigned their positions on the committee, met with Schermerhorn and his team (which included Major Benjamin Currey) at New Echota on December 21, declaring their delegation to be the true negotiating body for the tribe. Estimates vary widely, but perhaps up to several hundred Cherokee, women and children included, attended the meeting, many enticed by a promise of free blankets. Major Ridge and Andrew Ross were also present. In the agreement worked out there, the United States promised \$4.5 million, plus western lands, removal assistance, support for Cherokee education, and the possibility of a Cherokee delegate to the U.S. House of Representatives, if Congress approved. The Cherokee would have to leave their lands within two years.¹⁰⁷

On December 24 Major Ridge, speaking in Cherokee, offered the following comments on the treaty:

I am one of the native sons of these wild woods. I have hunted the deer and turkey here, more than fifty years. I have fought your battles, have defended your truth and honesty, and fair trading. I have always been the friend of honest white men. . . . I know the Indians have an older title than theirs. We obtained the land from the living God above. They got their title from the British. Yet they are strong and we are weak. We are few, and they are many. We cannot remain here in safety and comfort. . . . There is but one path to safety, one road to future existence as a Nation. That path is open before you. Make a treaty of cession. Give up these lands and go over beyond the great Father of Waters [Mississippi River].¹⁰⁸

Major Ridge's plea moved many of the older chiefs to tears, and they vowed to support the treaty. The Ridge-Boudinot committee approved the deal on December 28, 1835, and the next day, at Boudinot's house, committee members signed the Treaty of New Echota. They were well aware of how unpopular the treaty would be with the tribe, and of the Cherokee law declaring cession of territory a capital crime.¹⁰⁹ Major Ridge, who had helped kill Doublehead for ceding territory contrary to tribal law, announced after making his mark on the document, "I have signed my death warrant."¹¹⁰ Boudinot also thought he was risking his life by signing, but asked, "What is a man worth who is not willing to die for his people?"¹¹¹

When Chief Ross, then in Washington, learned what had happened, he immediately sought to persuade the Jackson administration that the negotiations at New Echota were illegitimate. Presenting Secretary of War Cass with a petition signed by almost 14,000 Cherokee against the treaty (hastily assembled by Assistant Chief George Lowrey), Ross hoped that federal lawmakers would reject the treaty, as they had in the case of his brother's treaty the year before. Unmoved by Ross's pleas, Jackson backed the New Echota treaty and pressed for its ratification in the U.S. Senate, where it had substantial support. Elbert Herring, Commissioner of Indian Affairs, wrote to Ross: "You are laboring under extreme misapprehension in believing that you have been recognized . . . as the duly constituted representatives of the Cherokee Nation."¹¹²

The Senate Votes

The U.S. Senate began debating the Treaty of New Echota on March 7, 1836, and the next day Chief Ross delivered a long memorial against its ratification. "This instrument purports to be a contract with the Cherokee people," he declared, "when in fact it has been agreed upon, in direct violation of their will, wishes, and interests, by a few unauthorized individuals of the Nation. . . ." After reviewing the sequence of events that had led to the document, he argued that it was "a fraudulent treaty, false upon its face," and begged senators not to "drive us from the land of our nativity and from the tombs of our Fathers and of our Mothers."¹¹³

Discussion within the Senate chamber remained confidential, but Ross clearly had supporters at the Capitol. Lawmakers who had opposed the 1830 removal law, condemned the treaty as unjust. Senator Daniel Webster of Massachusetts called it "a great wrong."¹¹⁴ Henry Clay, senator from Kentucky, announced, "I tremble that God is just and that His justice cannot sleep forever," quoting (in part) what Thomas Jefferson had once said regarding slavery. There were even opponents among those directly involved in the removal process. Major William M. Davis, who operated inside the borders of the Cherokee Nation enrolling Cherokee for removal, had written to Secretary Cass that the "treaty is no treaty at all . . . it would be instantly rejected by 9 / 10 of [the Cherokees] and I believe 19 / 20 of them."¹¹⁵

The final Senate vote on the treaty came on May 18, 1836. At the last moment, Senator Clay attempted to introduce an amendment that would have nullified the whole treaty, but this was rejected. Southern and western senators largely supported the treaty, despite the considerable passion of its opponents. One southern senator, Thomas Hart Benton of Missouri, later explained that he hoped it would transform "Indian soil to slave soil."¹¹⁶ Nonetheless, Chief Ross believed the treaty would fail, based on his discussions with numerous senators.¹¹⁷ With the vote commencing in the Senate chamber, the result would be known soon enough.

Exhibit 1 Cherokee Land Cessions to Great Britain and the U.S.

Year	Description	Area (square miles)
1721	To South Carolina	2,623
1755	To South Carolina	8,635
1768	Lands in southwestern Virginia	850
1770	Lands in Virginia, Tennessee, and Kentucky	9,200
1772	To Virginia	10,917
1773	Lands in Georgia	1,050
1775	Lands in Kentucky, Virginia, and Tennessee	27,070
1777	To South Carolina	2,051
1777	Lands in North Carolina and Tennessee	6,174
1783	To Georgia	1,650
1785	Lands in western North Carolina (Treaty of Hopewell)	6,381
1791	Lands in North Carolina and Tennessee (Treaty of Holston)	4,157
1798	Lands in North Carolina and Tennessee (First Treaty of Tellico)	1,539
1804	Lands in Georgia	135
1805	Lands in Kentucky and Tennessee	8,119
1806	Lands in Tennessee and Alabama	6,871
1816	Lands in South Carolina	148
1816	Lands in Alabama and Mississippi	3,433
1817	Lands in Georgia, Tennessee, and Alabama	> 1,018
1819	Lands in Alabama, Tennessee, North Carolina, and Georgia	5,941
1835	<i>Under consideration in May 1836 (Treaty of New Echota)</i>	12,316

Source: Adapted from Russell Thornton, *The Cherokees: A Population History* (Lincoln, NE: University of Nebraska Press, 1990), pp. 41 and 55.

Exhibit 2 Statistics from the Federal Cherokee Census of 1835 (which excluded western Cherokee)

	North Carolina	Georgia	Alabama	Tennessee	Total
Cherokee	3,644	8,946	1,424	2,528	16,542
% Readers of Cherokee	14.7	14.9	19.4	18.1	15.7
% Readers of English	1.5	4.0	15.0	14.8	6.0
No. of Households					2,637
Black Slaves	37	776	299	480	1,592
Whites, Intermarried	22	68	32	79	201
Farms	714	1,735	259	412	3,120
Cultivated Acres	6,906	19,216	7,252	10,692	38,134

Source: Adapted from Thornton, *The Cherokees*, pp. 51-52 (esp. table 4); William G. McLoughlin and Walter H. Conser, Jr., "The Cherokees in Transition: A Statistical Analysis of the Federal Cherokee Census of 1835," *Journal of American History*, 64:4 (Dec 1977), esp. p. 688 (table 7).

Note: The census was originally performed by the U.S. War Department and did not include western Cherokee. Thornton estimates there were likely an additional 5,000 Cherokee in the West at this time (Thornton, *The Cherokees*, pp. 50-51).

Endnotes

¹ Brian Hicks, *Toward the Setting Sun: John Ross, the Cherokees, and the Trail of Tears* (New York: Atlantic Monthly Press, 2011), 279; Samuel Carter III, *Cherokee Sunset: A Nation Betrayed* (Garden City, NY: Doubleday, 1976), 189; A. J. Langguth, *Driven West: Andrew Jackson and the Trail of Tears to the Civil War* (New York: Simon and Schuster, 2010), 232; Gary E. Moulton, *John Ross: Cherokee Chief* (Athens: University of Georgia Press, 1978), 72.

² Quotation from Tennessee's Hugh Lawson White in Carter, *Cherokee Sunset*, 197.

³ For estimates of North American population at the time of the early European explorers, see Charles C. Mann, *1491: New Revelations of the Americas before Columbus* (New York: Knopf, 2005), 132–133.

⁴ Carter, *Cherokee Sunset*, 8; Grace Steele Woodward, *The Cherokees* (Norman: University of Oklahoma Press, 1963), 18–19, 21–22; Alvin M. Josephy Jr., *500 Nations: An Illustrated History of North American Indians* (New York: Knopf, 1994), 232; Russell Thornton, *The Cherokees: A Population History* (Lincoln: University of Nebraska Press, 1990), 11–12, 15–18, 21–23, 28–30, 42.

⁵ Jill Lepore, *The Name of War: King Philip's War and the Origin of American Identity* (New York: Knopf, 1998), xiv–xvi, xi–xiii, 183–184; Colin G. Calloway, "Introduction: Surviving the Dark Ages," in *After King Philip's War: Presence and Persistence in Indian New England*, ed. Colin G. Calloway (Hanover: University Press of New England, 1997), 1–4; Eric B. Schultz and Michael J. Tougias, *King Philip's War: The History and Legacy of America's Forgotten Conflict* (Woodstock, VT: Countryman Press, 1999), 1–5.

⁶ Theda Perdue and Michael D. Green, *The Cherokee Nation and the Trail of Tears* (New York: Penguin, 2007), 15–16; Robert V. Remini, *Andrew Jackson and His Indian Wars* (New York: Penguin Group, 2001), 10.

⁷ Carter, *Cherokee Sunset*, 7.

⁸ The treaty and response are available via the British History Online website at <http://www.british-history.ac.uk/cal-state-papers/colonial/america-west-indies/vol37/pp291-298>. Robert J. Conley, *The Cherokee Nation: A History* (Albuquerque: University of New Mexico Press, 2005), 34–35, argues that the Cherokee delegates probably did not compose this response themselves.

⁹ Conley, *Cherokee Nation*, 45–53. For detailed accounts of Anglo-Cherokee relations during the French and Indian War, see John Oliphant, *Peace and War on the Anglo-Cherokee Frontier 1756–63* (Baton Rouge: Louisiana State University Press, 2001); Tyler Boulware, *Deconstructing the Cherokee Nation: Town, Region, and Nation among Eighteenth-Century Cherokees* (Gainesville: University Press of Florida, 2011), chaps. 5–6; and Woodward, *Cherokees*, 69–79.

¹⁰ Perdue and Green, *Cherokee Nation*, 17–18; Thornton, *The Cherokees*, 40–41.

¹¹ Carter, *Cherokee Sunset*, 10; Woodward, *Cherokees*, 41, 96–98; Thornton, *The Cherokees*, 41. For a detailed account of the Cherokee during the Revolution, see Boulware, *Deconstructing the Cherokee Nation*, chap. 8.

¹² Perdue and Green, *Cherokee Nation*, 19; Woodward, *Cherokees*, 97–101; Carter, *Cherokee Sunset*, 10.

¹³ The treaty is reprinted in Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, vol. 2 (Washington: GPO, 1904), 8–11, available at <http://digital.library.okstate.edu/kappler/vol2/treaties/che0008.htm>.

¹⁴ Charles F. Wilkinson, "Indian Tribes and the American Constitution," in *Indians in American History*, ed. Frederick E. Hoxie (Wheeling, IL: Harlan Davidson, 1988), 119.

¹⁵ Carter, *Cherokee Sunset*, 12–13, quotation at 13. Knox's letter is available via the National Archives at <http://founders.archives.gov/documents/Washington/05-03-02-0067>. The Cherokee complaint, dated May 19, is at <http://founders.archives.gov/documents/Washington/05-02-02-0237>.

¹⁶ Carter, *Cherokee Sunset*, 12–13. The treaty and amendment are reprinted in Kappler, *Indian Affairs*, 2:29–33, available at <http://digital.library.okstate.edu/kappler/vol2/treaties/che0029.htm>.

¹⁷ Perdue and Green, *Cherokee Nation*, 23–29.

¹⁸ Carter, *Cherokee Sunset*, 13, 21; Perdue and Green, *Cherokee Nation*, 30.

¹⁹ Quoted in Woodward, *Cherokees*, 116. See also John R. Finger, *Tennessee Frontiers: Three Regions in Transition* (Bloomington: University of Indiana Press, 2001), 146–147.

²⁰ Carter, *Cherokee Sunset*, 13–14; Woodward, *Cherokees*, 115–117, quotation at 116. See Remini, *Andrew Jackson*, 32–35, for a more detailed account of the Chickamauga conflict.

²¹ Remini, *Andrew Jackson*, 43–44, quotation from a letter to Jackson from Tennessee governor John Sevier on 44.

²² The treaty is reprinted in Kappler, *Indian Affairs*, 2:51–55, available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/che0051.htm>.

²³ Perdue and Green, *Cherokee Nation*, 31.

²⁴ Carter, *Cherokee Sunset*, 27–28; Langguth, *Driven West*, 28–29; George R. Lamplugh, “Yazoo Land Fraud,” available at <http://www.georgiaencyclopedia.org/articles/history-archaeology/yazoo-land-fraud>.

²⁵ Perdue and Green, *Cherokee Nation*, 31; Carter, *Cherokee Sunset*, 29; Woodward, *Cherokees*, 128–129.

²⁶ Perdue and Green, *Cherokee Nation*, 37.

²⁷ For a detailed account of this confrontation, see Hicks, *Toward the Setting Sun*, 18–25.

²⁸ Perdue and Green, *Cherokee Nation*, 37–38, quotation at 38.

²⁹ *Ibid.*, 38–39; Carter, *Cherokee Sunset*, 29; Hicks, *Toward the Setting Sun*, 33–36; Remini, *Andrew Jackson*, 115. Quotation in Perdue and Green, *Cherokee Nation*, 39.

³⁰ Hicks, *Toward the Setting Sun*, 53–60; Josephy, *500 Nations*, 308–317.

³¹ Perdue and Green, *Cherokee Nation*, 10, 16, 36; John Demos, “The Tried and the True: Native American Women Confronting Colonization,” in *No Small Change: A History of Women in the United States*, ed. Nancy Cott (New York: Oxford University Press, 2000), 36; Hicks, *Toward the Setting Sun*, 32; *Laws of the Cherokee Nation* (Tahlequah, Cherokee Nation, 1852).

³² Carter, *Cherokee Sunset*, 54–55.

³³ Perdue and Green, *Cherokee Nation*, 29–30.

³⁴ Quoted in John Demos, *The Heathen School: A Story of Hope and Betrayal in the Age of the Early Republic* (New York: Knopf, 2014), 213–214. See also Demos, “Tried and the True,” 36–38.

³⁵ Perdue and Green, *Cherokee Nation*, 35–36; Josephy, *500 Nations*, 322; Hicks, *Toward the Setting Sun*, 116, 28–31; Demos, *The Heathen School*, 200–203.

³⁶ Perdue and Green, *Cherokee Nation*, 32–34; Demos, *The Heathen School*, 146–148.

³⁷ Jill Lepore, *A is for American: Letters and Other Characters in the Newly United States* (New York: Knopf, 2002), 65–67, 74–75; Barry O’Connell, “Literacy and Colonization: The Case of the Cherokees,” in *An Extensive Republic: Print, Culture, and Society in the New Nation; A History of the Book in America*, vol. 2, ed. Robert A. Gross and Mary Kelley (Chapel Hill: University of North Carolina Press, 2010), 510–515.

³⁸ Lepore, *A is for American*, 81–84; Perdue and Green, *Cherokee Nation*, 75–76.

³⁹ Demos, *The Heathen School*, 149–154, 175–195, 219–221.

⁴⁰ Remini, *Andrew Jackson*, 14. This anecdote originates from Jackson’s childhood neighbor, Susan Alexander. Alexander reported that the family member killed was Jackson’s oldest brother, but this could not have been accurate. Both of Jackson’s older brothers died during the Revolutionary War.

⁴¹ Albion W. Putnam, *History of Middle Tennessee* (Nashville, 1859), 317–318, quoted in Remini, *Andrew Jackson*, 27.

⁴² Remini, *Andrew Jackson*, 34–47.

⁴³ *Ibid.*, 55–61; Carter, *Cherokee Sunset*, 2.

⁴⁴ Remini, *Andrew Jackson*, 62; Carter, *Cherokee Sunset*, 33–34. Quotation in Remini from a letter to Cherokee Principal Chief Pathkiller (23 Oct. 1813).

⁴⁵ Remini, *Andrew Jackson*, 62–92; Hicks, *Toward the Setting Sun*, 61–63, 71–72; Langguth, *Driven West*, 35. Fort Jackson was an old French fort, rebuilt in 1814 and named after Jackson himself (Remini, *Andrew Jackson*, 81). The treaty is reprinted in Kappler, *Indian Affairs*, 2:107–110, available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/cre0107.htm>.

⁴⁶ Remini, *Andrew Jackson*, 86, 94–95.

⁴⁷ Ibid., 95–98, quotation from a letter of 15 June 1815.

⁴⁸ Statement from Creek leaders of 22 Jan. 1816, quoted in *ibid.*, 102.

⁴⁹ Hicks, *Toward the Setting Sun*, 84–87; Carter, *Cherokee Sunset*, 35–36. The treaty is reprinted in Kappler, *Indian Affairs*, 2:125–126, available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/che0125.htm>.

⁵⁰ Quoted in Remini, *Andrew Jackson*, 105.

⁵¹ Perdue and Green, *Cherokee Nation*, 50; Remini, *Andrew Jackson*, 105.

⁵² Quoted in Remini, *Andrew Jackson*, 110–111.

⁵³ Ibid., 111–114. The treaties are reprinted in Kappler, *Indian Affairs*, 2:133–137, available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/che0133.htm> and [/che0135.htm](http://digital.library.okstate.edu/kappler/Vol2/treaties/che0135.htm). A third tribe, the Choctaws, also settled Treaty of Fort Jackson objections in a separate meeting.

⁵⁴ Remini, *Andrew Jackson*, 114–115, 120–121; Hicks, *Toward the Setting Sun*, 95.

⁵⁵ Quoted in Remini, *Andrew Jackson*, 122–123.

⁵⁶ Ibid., 124–125, quotation at 125.

⁵⁷ Ibid., 126.

⁵⁸ Ibid., 127–129; Hicks, *Toward the Setting Sun*, 98; Thornton, *The Cherokees*, 55; Carter, *Cherokee Sunset*, 38. The treaty is reprinted in Kappler, *Indian Affairs*, 2:140–144, available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/che0140.htm>; Lepore, *A Is for American*, 86, 89.

⁵⁹ Carter, *Cherokee Sunset*, 40; Hicks, *Toward the Setting Sun*, 101–105; Thornton, *The Cherokees*, 55. The treaty is reprinted in Kappler, *Indian Affairs*, 2:177–181, available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/che0177.htm>; Langguth, *Driven West*, 36. Hicks estimates the Cherokee had “about eight million acres” left, or 12,500 square miles (*Toward the Setting Sun*, 105), whereas Carter offers a higher estimate of “approximately ten million acres,” or 15,625 square miles (*Cherokee Sunset*, 40).

⁶⁰ Carter, *Cherokee Sunset*, 40, 55; Perdue and Green, *Cherokee Nation*, 55.

⁶¹ Quoted in Perdue and Green, *Cherokee Nation*, 56.

⁶² Langguth, *Driven West*, 39. The case is available online at <http://supreme.justia.com/cases/federal/us/21/543/case.html>.

⁶³ Carter, *Cherokee Sunset*, 56–57; Hicks, *Toward the Setting Sun*, 122–128.

⁶⁴ Carter, *Cherokee Sunset*, 57–58, quotation at 58; Hicks, *Toward the Setting Sun*, 132–138.

⁶⁵ Hicks, *Toward the Setting Sun*, 138–140, quotation at 140.

⁶⁶ Carter, *Cherokee Sunset*, 64, 68–70, 70–71, 74–75. The constitution appears in *Laws of the Cherokee Nation*, 118–130.

⁶⁷ Quoted in Carter, *Cherokee Sunset*, 71, 73.

⁶⁸ *Cherokee Phoenix* (6 Mar. 1828), quoted in *ibid.*, 76.

⁶⁹ Carter, *Cherokee Sunset*, 83, 83–84; Hicks, *Toward the Setting Sun*, 166–167.

⁷⁰ Carter, *Cherokee Sunset*, 88, 89–90.

⁷¹ Hicks, *Toward the Setting Sun*, 178–180; Carter, *Cherokee Sunset*, 91–96. Quotation from the *Phoenix* (10 Feb. 1830).

⁷² The speech is available via the American Presidency Project of the University of California, Santa Barbara, at <http://www.presidency.ucsb.edu/ws/index.php?pid=29471>.

⁷³ The bill reported by the Senate Indian Affairs Committee on 22 Feb. 1830 (S. 102, 21st Cong. 1st Sess.) is available online at <https://memory.loc.gov/cgi-bin/ampage?collId=llsb&fileName=011/llsb011.db&recNum=223>. See also Senate Committee on Indian Affairs, Report of 22 Feb. 1830, available at <https://memory.loc.gov/cgi-bin/ampage?collId=llrd&fileName=009/llrd009.db&recNum=551>.

⁷⁴ Ronald M. Satz, *American Indian Policy in the Jacksonian Era* (Norman: University of Oklahoma Press, 2002), 21–23; Carter, *Cherokee Sunset*, 96; Hicks, *Toward the Setting Sun*, 181–182; Langguth, *Driven West*, 148.

⁷⁵ *Register of Debates in Congress*, vol. 6, 311, online at <http://memory.loc.gov/ammem/amlaw/lwrd.html>.

⁷⁶ *Ibid.*, 325, 339.

⁷⁷ *Ibid.*, 1010, 1016.

⁷⁸ *Ibid.*, 1135. The final text of the law is available via Civics Online at http://www.civics-online.org/library/formatted/texts/indian_act.html.

⁷⁹ Carter, *Cherokee Sunset*, 102, 101; Hicks, *Toward the Setting Sun*, 186, 187.

⁸⁰ Hicks, *Toward the Setting Sun*, 187–192; Perdue and Green, *Cherokee Nation*, 81, 79.

⁸¹ Art. III, §2.

⁸² 30 US 1 (1831), pp. 11–12. Opinion available online via FindLaw at laws.findlaw.com/us/30/1.html.

⁸³ Quoted in Carter, *Cherokee Sunset*, 117.

⁸⁴ *Ibid.*, 106.

⁸⁵ Perdue and Green, *Cherokee Nation*, 84–85; Hicks, *Toward the Setting Sun*, 198–199; Tim Alan Garrison, *The Legal Ideology of Removal: The Southern Judiciary and the Sovereignty of Native American Nations* (Athens: University of Georgia Press, 2002), 171–172. One of the missionaries was released because, as a U.S. postmaster, he was a federal employee; the Jackson administration fired him, allowing him to be rearrested.

⁸⁶ 31 U.S. 515 (1832), p. 560. Opinion available online via FindLaw at laws.findlaw.com/us/31/515.html.

⁸⁷ Quotes in Hicks, *Toward the Setting Sun*, 214–215; Carter, *Cherokee Sunset*, 131.

⁸⁸ Carter, *Cherokee Sunset*, 132; Hicks, *Toward the Setting Sun*, 214. Rumors abounded that Jackson said, “John Marshall has made his decision, now let him enforce it.” However, this quotation appears to have been invented by the editor Horace Greeley, reporting on the president’s inaction after the decision. Langguth writes, “Jackson may not have put it so tersely, but Greeley’s version reflected his sentiments” (Langguth, *Driven West*, 190). See also Hicks, *Toward the Setting Sun*, 214.

⁸⁹ Perdue and Green, *Cherokee Nation*, 86; Presidential general election, all states, 1832 summary (2003), available at *CQ Voting and Elections Collection*, <http://library.cqpress.com/elections/AVg1832-1us1>.

⁹⁰ Amos Kendall quoted in Carter, *Cherokee Sunset*, 135.

⁹¹ Hicks, *Toward the Setting Sun*, 218–223.

⁹² Carter, *Cherokee Sunset*, 136–137, quotation at 137.

⁹³ Hicks, *Toward the Setting Sun*, 222–224; Carter, *Cherokee Sunset*, 137–141.

⁹⁴ Hicks, *Toward the Setting Sun*, 227–231, quotation at 230.

⁹⁵ *Ibid.*, 231–237, quotation at 234; Carter, *Cherokee Sunset*, 149–150.

⁹⁶ Hicks, *Toward the Setting Sun*, 240–241; Carter, *Cherokee Sunset*, 151–152.

⁹⁷ Hicks, *Toward the Setting Sun*, 242–244; Carter, *Cherokee Sunset*, 152–153; Langguth, *Driven West*, 214–215, quotation at 215.

⁹⁸ Carter, *Cherokee Sunset*, 153; Hicks, *Toward the Setting Sun*, 244.

⁹⁹ Hicks, *Toward the Setting Sun*, 246–248. Quotation in Carter, *Cherokee Sunset*, 164.

¹⁰⁰ Carter, *Cherokee Sunset*, 164–165; Hicks, *Toward the Setting Sun*, 250.

¹⁰¹ Remini, *Andrew Jackson*, 263–265. Remini provides the most detailed account of this negotiation, but says that it occurred in February 1834. However, Carter (169), Hicks (252), Langguth (219), and Woodward (179) are clear that it took place in 1835. Remini’s footnotes and chronology suggest that he may have made a typographical error.

¹⁰² Perdue and Green, *Cherokee Nation*, 105; Carter, *Cherokee Sunset*, 168–170, quotation at 169. See also Hicks, *Toward the Setting Sun*, 252–253, 255.

¹⁰³ Hicks, *Toward the Setting Sun*, 256; Carter, *Cherokee Sunset*, 173; Woodward, *Cherokees*, 182.

¹⁰⁴ Hicks, *Toward the Setting Sun*, 257–261; Woodward, *Cherokees*, 182–183.

¹⁰⁵ Langguth, *Driven West*, 229; Carter, *Cherokee Sunset*, 184–185; Woodward, *Cherokees*, 186–187. On Nov. 7, 1835, after the Council meeting had ended, the Georgia Guard arrested Ross and accused him of interfering with a census of the Cherokee. He was released on Nov. 16, thanks to the assistance of President Ridge. See Hicks, *Toward the Setting Sun*, 269–276, for a detailed account.

¹⁰⁶ Perdue and Green, *Cherokee Nation*, 110.

¹⁰⁷ Carter, *Cherokee Sunset*, 189; Hicks, *Toward the Setting Sun*, 277–279; Langguth, *Driven West*, 232–234; Woodward, *Cherokees*, 190.

¹⁰⁸ Quoted in Hicks, *Toward the Setting Sun*, 280 and Carter, *Cherokee Sunset*, 189.

¹⁰⁹ The following resolution was approved by the Cherokee Council in October 1829: "Whereas, a law has been in existence for many years, but not committed to writing, that if any citizen or citizens of this Nation shall treat and dispose of any lands belonging to this Nation without special permission from the national authorities, he or they, shall suffer death, therefore, Resolved by the Committee and Council in General Council . . . That any person or persons who shall, contrary to the will and consent of the Legislative Council of this Nation, in General Council convened, enter into a treaty with any Commissioner or Commissioners of the U. States or any officers instructed for the purpose, and agree to sell or dispose of any part or portion of the National lands defined in the Constitution of this Nation, he or they so offending upon conviction before any of the Circuit Judges or the Supreme Court, shall suffer death . . . [and] any person or persons who shall violate the provisions of this act and shall refuse by resistance to appear at the place designated for trial, or abscond, are hereby declared to be outlaws, and any person or persons citizens of this Nation may kill him or them so offending in any manner most convenient." *Laws of the Cherokee Nation*, 136–137.

¹¹⁰ Langguth, *Driven West*, 234–235; Carter, *Cherokee Sunset*, 190; Hicks, *Toward the Setting Sun*, 282. The treaty is reprinted in Kappler, *Indian Affairs*, 2:439–449, available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/che0439.htm>.

¹¹¹ Quoted in Demos, *The Heathen School*, 247.

¹¹² Hicks, *Toward the Setting Sun*, 284–286, quotation at 286.

¹¹³ Reprinted in Gary Moulton, ed., *The Papers of John Ross* (Norman: University of Oklahoma Press, 1985), 1:394–413, available via *Early Encounters in North America*, Alexander Street Press at solomon.eena.alexanderstreet.com.

¹¹⁴ Quotation in Carter, *Cherokee Sunset*, 196.

¹¹⁵ Quoted in Robert A. Rutland, "Political Background of the Cherokee Treaty of New Echota," *Chronicles of Oklahoma* 27, no. 4 (Dec. 1949): 405. Originally in C. C. Royce, *The Cherokee Nation of Indians* (1883).

¹¹⁶ Quoted in Rutland, "Political Background," 406. Originally in Benton's book *Thirty Years' View, 1820–1850*, published in 1854–1856.

¹¹⁷ Carter, *Cherokee Sunset*, 197.