

**Cherokee Removal:
Unprecedented Twists and Turns in Indigenous Dispossession**

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May 1, 2023

Introduction

In his second annual message to Congress in 1830, President Andrew Jackson laid out his plans for the relocation of Indians residing in the American Southeast, declaring that “the consequences of a speedy removal will be important to the United States, to the individual States, and to the Indians themselves.”¹ Just eight years later, the nation would go on to witness one of the most dramatic Native American dispossessions of the nineteenth century. In May 1838, General Winfield Scott led a force of 7,000 soldiers to evict the Cherokee Nation from their ancestral homeland of *Tsalaguwetiyi* located in the southeastern portion of the United States.² Prodded along by federal bayonets, the Cherokees dangerously trekked 1,200 miles by foot to lands west of the Mississippi River.³ Exposed to the harsh elements, lacking sufficient food supplies, and mistreated by soldiers, thousands of Cherokees died during the journey, with estimates ranging between 4,000 to 8,000.⁴ The event was so devastating and traumatic that the Cherokees would remember it as *Nunna daul Tsuny* (the trail where they cried), now known as the Trail of Tears. This plight of the Cherokees was one among the numerous suffered by the Native Americans during this period but serves as a demonstrative example for discussion, not only for its infamy but because of the departures from historical precedent that the Jackson administration undertook to displace the Cherokee Nation within a short period.

It is tempting to label the Trail of Tears as an inevitable tragedy in which the Cherokees, threatened by a standing army half the size of its entire population, had no choice but to comply. In line with the prevailing belief of Manifest Destiny, or the notion that white America’s westward territorial expansion was preordained by God, it may seem that the Cherokees were a destined victim of the natural expansion and progress of the United States. Yet, hardly anything about the Trail of Tears was natural or simple, especially in light of the different intertwining

forces at work, both planned and unplanned, that ultimately led to the tribe's rushed, forced removal and the resulting catastrophic losses. It is a complex story resulting from competing human interests, filled with politicking, maneuvering, and chance.

Prior to Jackson's push for the large-scale removal of the Native Americans living east of the Mississippi, the United States government historically had obtained Cherokee territory through the consensual sale or voluntary cession of land by the tribe.⁵ Historians have suggested that had the United States maintained its strategy of territorial acquisition via customary negotiations and treaties, it would have taken at least another generation to secure all the land surrendered by the Cherokees through the Trail of Tears.⁶ This then raises the question: how was Andrew Jackson able to greatly expedite Cherokee removal during his presidency?

This paper will demonstrate how for the United States to have pursued, justified, and ultimately consummated the wholesale removal of an entire nation of people, it took a concerted combination of three major departures from historical precedent. First, it required a radical shift away from the United States government's long-standing policy of Indian assimilation that had begun under the George Washington administration's "Indian Civilization" campaign. Second, it took a complete disregard for judicial review by the executive branch in violation of the separation of powers principle. President Jackson refused to enforce the Supreme Court ruling of *Worcester v. Georgia*, a case that upheld the sovereignty of the Cherokee Nation, including the sanctity of their prior treaties, and declared Georgia's legislative aggression against the Cherokees unconstitutional. Third, it involved wholly undemocratic, closed-door negotiations between the United States government and a minority Cherokee faction that abrogated decades of prior diplomacy. It culminated with the illegitimate Treaty of New Echota, the document that ultimately provided the formal legal justification for the Cherokee's forced removal. On each of

these occasions, Jackson overstepped the bounds of his powers as the Chief Executive and the Cherokees faced incredible twists and turns of events that went against them at every opportunity. The uncompromising clash between Cherokee Principal Chief John Ross and President Andrew Jackson coupled with the complex administrative bureaucracy of removal proved to be a deadly recipe for disaster.

The “Indian Civilization” Campaign

Before the Jackson administration, the original United States Indian policy attempted to integrate, rather than shun, native tribes from white settler society. Previous administrations saw assimilation as a viable alternative to removal, and the Cherokee Nation’s acceptance and success with acculturation show why they would have ceded territory much more gradually if it were not for Jackson pursuing a forced military-backed removal.

Starting with the very first administration of President Washington, the United States Indian policy was defined by the Indian Civilization campaign, which encouraged cultural and economic assimilation through the promotion of Christianity, trade, commercial agriculture, cottage industries, European-style education, and private ownership of land among the Native American tribes.⁷ Its stated purpose was to engender the harmonious coexistence of white settlers and Native American tribes through cultural resemblance and trade relationships. However, the underlying goal of the plan also provided a possible answer to the question of how the United States government would open up tribal territories to Euro-American settlement. The Washington administration hoped that if the Indians could settle down into a farming lifestyle, then they would no longer need vast hunting territories and would voluntarily cede these lands to the United States.⁸ Thus, the Indian Civilization campaign offered a nonviolent and consensual approach to territorial acquisition.

Colonel Benjamin Hawkins, the Principal Temporary Agent for Indian Affairs South of the Ohio, spearheaded the program in the American Southeast. Hawkins first arrived in Creek country in December 1796, and he worked closely with the Cherokee, Chickasaw, and Creek tribes until his death in 1816.⁹ Unlike the previous federal Indian agents, Hawkins lived among the Native American communities, learning their languages and teaching agricultural techniques through hands-on demonstration rather than mere verbal instruction. For example, after living in the Creek towns of *Tuckabatchee* and *Coweta* during the early years of his service as an Indian agent, Hawkins went on to establish a farm along the Flint River near present-day Roberta, Georgia. There, he showed the Indians how to use the plow and how to grow cash crops such as cotton.¹⁰

Hawkins's efforts would ultimately pay off, as he successfully got the southeastern tribes interested in and equipped for agriculture. The Cherokee, Chickasaw, and Creek tribes had traditionally relied upon a nomadic, hunter-gatherer lifestyle for hundreds of years, and thus getting them to settle into an agricultural way of life was no easy task. Traditional gender roles in southeastern tribes made the transition difficult. Men held great pride in their hunting ability because agriculture was associated with domesticity and restriction. It was also believed women would become independent of men, no longer having to rely on the products of the hunt.¹¹ However, Hawkins was able to succeed despite this cultural opposition, even earning the respect of the tribe as shown through his nickname *Iste-chate-lige-osestate-chemiste-chaguro* (The Beloved Man of the Four Nations).¹² Overall, they were able to plant over 5,000 peach trees and begin the cultivation of cotton, flax, wheat, barley, rye, oats, apples, raspberries, grapes, roots, herbs, and various vegetables.¹³

Another key principle behind the Indian Civilization campaign was “expansion with honor.”¹⁴ The United States respected that the native tribes were the owners of the land on which they lived and solely possessed the right to retain, sell, or cede their property. In particular, Thomas Jefferson, who championed the Indian Civilization program while serving as Washington’s Secretary of State and later during his own presidency, emphasized the voluntary negotiation and exchange of Indian territory. For example, when asked by the president in 1793 what he understood to be the United States’ claims to Indian territory, Jefferson responded:

I considered our right of preemption of the Indian lands, not as amounting to any dominion, or jurisdiction, or paramountship whatever... but of preventing other nations from taking possession, and so defeating our expectancy; that the Indians had the full, undivided and independent sovereignty as long as they choose to keep it, and that this might be forever.¹⁵

Likewise, in an 1802 correspondence to Iroquois leader Handsome Lake, Jefferson emphasized, “We, indeed, are always ready to buy land; but we will never ask but when you wish to sell...”¹⁶

The United States remained committed to respecting Indian property rights and slowly buying Native American territory. The early treaties between the United States and the Cherokee Nation from the Washington and Jefferson administrations reflected this policy. For instance, in the 1791 Treaty of the Holston, the United States government mapped out the formal boundaries of Cherokee territory, vowing to “solemnly guarantee to the Cherokee Nation, all their lands not hereby ceded.”¹⁷ The United States also promised to provide “useful implements of husbandry” to help the Cherokees become “herdsmen and cultivators, instead of remaining in a state of hunters.”¹⁸ Subsequent treaties for Cherokee land sales continued to offer equipment to the tribe to accelerate their transition to an agricultural way of life. For example, in the 1805 Treaty of Tellico, the Cherokees were offered “useful articles of, and machines for, agriculture and manufacture” in exchange for land, and in the 1806 Treaty of Washington, a grist mill and cotton

processing machine were offered for their territory.¹⁹ The sales of territory in the Treaty of Tellico and Treaty of Washington demonstrated the viability of the soft-handed Indian Civilization campaign. Just as the Washington administration had originally hoped, the Cherokees were willing to sell some of their lands as they relied less on hunting and more on farming.

Economic, Cultural, and Political Advancement

With the support from the United States through the Indian Civilization campaign, the Cherokee Nation did not stop just with the adoption of agriculture; as one of the Five Civilized Tribes, the Cherokees boasted socioeconomic prosperity, political stability, and diplomacy with the United States. Their emulation of settler societies legitimized the Cherokee Nation in the eyes of white America, and counterbalanced the prejudiced attitudes that saw removal as necessary for the “savage” Indians who could never be “civilized.” Under the pressure of white settlers calling for the denationalization and removal of the Cherokees, the tribe banded together, transforming itself into a European-inspired, yet distinctly Cherokee society that demanded the sovereignty afforded to any other foreign nation.²⁰

Any doubts regarding the Cherokee Nation’s ability to conform to the societal standards of white America were disproven, even when viewed through a Eurocentric lens, as Cherokee society had achieved a high level of sophistication before it was all forcibly taken away from them during their removal. Economically, the Cherokees reached levels of production and wealth that rivaled, if not surpassed, those of their white counterparts. For instance, in a comparison of corn and livestock production by 1835 Cherokee farms and 1840 national averages, it was found that Cherokee agricultural output exceeded that of their white neighbors. On a per capita basis, the 1835 Cherokee farms produced 1.5 times more corn, 1.7 times more hogs, and 1.7 times

more cattle than the national farm averages in 1840.²¹ The same Cherokee farms also had greater agricultural output in 1835 than when they later became white-owned in 1840 after the Trail of Tears.²² In addition, according to registered claims of Cherokee material loss during the Trail of Tears, twenty men of the Cherokee Nation each had assets valued at over ten thousand dollars. Such assets included ferries, taverns, mills, stores, and plantations that stretched hundreds of acres. By the removal deadline in 1838, even the average member of the Cherokee middle class was forced to leave behind “a few round log cabins, with stick and clay chimneys, a hot house, and a dozen acres of land with a few fruit trees.”²³

Socially, the Cherokees also adopted and replicated various Euro-American social institutions and cultural practices. In 1799, a group of Cherokees wrote to the Moravian brothers of the Society of United Brethren to establish the first mission school in Cherokee territory. This led to the founding of the Spring Place Mission in present-day Murray County, Georgia in 1801. The school stood for 30 years until the state of Georgia ordered its closure in 1832, during which time hundreds of Cherokee children received education in Christianity, English, reading, writing, and arithmetic.²⁴ In addition to English, the Cherokee Nation also developed its own alphabet during this period. In 1821, Sequoyah unveiled his invention of a written system for the Cherokee syllabary, establishing the foundation of literature for his tribe.²⁵ In February 1838, the Cherokees also founded the *Cherokee Phoenix*, a bilingual weekly newspaper with Elias Boudinot as its editor. Finally, the Cherokees even mimicked the regrettable racial hierarchy of their white neighbors, owning black slaves for plantation labor and barring them from voting or running for office.

Politically, the Cherokees also established a system of governance inspired by the United States Constitution. In 1808, Jefferson had advised the Indians that “once you have property you

will want laws & Magistrates to protect your property and persons... you will find that our laws are good for this purpose.”²⁶ Following this principle, on July 26, 1827, the Cherokees drafted their constitution, a document that outlined a tripartite division of government, including a bicameral legislature and a bill of rights.²⁷ Such modeling after the United States was, in part, to promote the Cherokee government to northern sympathizers.²⁸ In terms of political alliances, the Cherokees also demonstrated loyalty to the United States. Cherokee leaders John Ross and Major Ridge assembled their warriors and helped General Andrew Jackson defeat the Creek faction that was a British ally throughout the War of 1812. Most notably, during the 1814 Battle of Horseshoe Bend, the Cherokees fought alongside Jackson and assisted in forcing the final Creek surrender.

In the pre-Jackson era, the Cherokee Nation’s ability to acculturate ultimately served as their greatest defense against removal. Given how well the Cherokees had responded to the United States government’s assimilation efforts, there existed little reason to abandon the Indian Civilization campaign. Ultimately, the program would continue past the Jefferson administration and into the presidencies of James Monroe and John Quincy Adams. Although Monroe was the first chief executive to present a removal plan to Congress, these two presidents would maintain Jefferson’s policy of “expansion with honor” and refused to use force. For instance, in 1822, the Cherokees decided not to relinquish any more territories to the United States by passing a resolution that prohibited treaties ceding land, “being resolved not to dispose of even one foot of ground.”²⁹ In response, Georgian settlers demanded the use of violent measures to strip away Cherokee territory, but neither the Monroe nor Adams administrations forced the issue.³⁰

Unexpected Repercussions from Acculturation

Despite the Cherokees' efforts and successes in acculturation, by the mid-1820s, unexpected consequences from their adoption of Western culture also began to surface. While these accomplishments responded well to earlier criticisms casting the Cherokees as uncivilized, they also contributed to rifts within the tribe and strained relations with neighboring white settlers. In some ways, the Cherokees had taken acculturation beyond the American appetite, triggering pushback from their white neighbors who began to see that the tribe had anchored itself too firmly upon its homeland.

The Cherokee society's steady transition from communalism consisting of sharing and rationing prizes of the hunt to individualized farming, fixed property rights, and a market economy resulted in socioeconomic divisions and inequality within the tribe. The small but rising upper middle class also hit a ceiling that limited further upward mobility and began to resent the Cherokee aristocracy. Indeed, other than the founding leaders of the later-formed Cherokee minority faction that ultimately signed away all of the tribe's territory in the 1835 Treaty of New Echota, its members were situated between the very wealthy and the proletariat.³¹ It was this ambitious "middle" class that later saw a removal treaty as an opportunity to usurp power away from the existing elites, wishing to negotiate for the entire tribe in exchange for political and economic gains for themselves. And in the short term, the likelihood of favorable treatment by the United States may have motivated them even more. They benefited immediately after the treaty signing as Georgia exempted their property from the lottery by which lands were parceled out to the encroaching settlers and provided physical protection until their move west.³²

Furthermore, the direct financial success of the Cherokees in farming and livestock production also served both as a threat and a source of jealousy for the non-landowning,

neighboring white settlers. Cherokee success meant that they may never be removed in the future to make room for the land-hungry settlers. With each passing year, their continuing improvements served as growing threats to white settler expansion because the cost of buying them out became increasingly expensive. Moreover, these achievements outpacing many white counterparts and the resulting prosperity of people then viewed as racially inferior could not have sat well with proponents of manifest destiny.

Jealousy even grew to outrage when the Cherokees went beyond their social boundaries and began to intermingle with white Americans. Although the United States government had encouraged the Cherokees to acculturate for integration into American settler society, their white neighbors preferred segregation when that intermingling threatened resulting kinship by marriage. As John Ridge and his cousin Elias Boudinot proposed to white women for marriage, they set off quite a firestorm of negative reactions even within what was supposed to be a progressive northern community.³³ From the privileged upbringings of wealthy families, these cousins were part of the Cherokee intelligentsia. Both men would later rise to prominence as Ridge led the Treaty Party against Principal Chief John Ross to sign the Treaty of New Echota and Boudinot became a leading thinker and headed the *Cherokee Phoenix* as its inaugural editor. They both attended the Foreign Mission School in Cornwall, Connecticut, which was established to acculturate the Indians with Christianity and Western culture.

These two young men met their fiancées at the Mission School but soon faced a violent maelstrom of political and racial attacks fueled by anti-interracial sentiments.³⁴ In 1824, Ridge married Sarah Bird Northrup who was the daughter of the Mission School's steward. In response, *The American Eagle*, a neighboring town's newspaper, carried an editorial labeling the

bride derogatorily as a squaw deserving a public whipping and calling for the groom to be hanged.³⁵

Just a year later when Boudinot proposed to Harriett Gold, her male relatives led the most vocal objections against the marriage. Her brother Stephen burned effigies of the couple in their town square for all their friends and neighbors to see and wrote letters to family members decrying Harriet's state of mind.³⁶ Daniel Brinsmade who was the husband of one of Harriett's sisters also wrote a scathing letter to the Golds describing how the entire clan would bear shame resulting from her "animal feelings."³⁷ Brinsmade characterized Boudinot in the stereotypical image of an uncivilized savage even though he was an agent at the Mission School and was familiar with Boudinot as a star pupil. The Mission School closed shortly thereafter in 1826 because of these marriage scandals.³⁸ Even as Northerners in Connecticut, the residents were unforgiving of these marriages. How these events unfolded was far removed from what Jefferson predicted in 1808 that the Cherokees would eventually as Americans "mix with us by marriage."³⁹ Ironically, acculturation had become a no-win situation for the Cherokees: the tribe risked alienation motivated by xenophobia if they did not abandon their "savage" lifestyles and conform to white society, but they also risked backlash fueled by jealousy if they became "civilized" enough to incorporate into the American mainstream. Amidst these challenges, the Indian Civilization campaign nevertheless demonstrated that the Cherokees could adjust well to American life and remained the official United States policy until Jackson's election.

The Rise of the Jackson: Successful Military Campaigns

Jackson's election as president in 1828 would mark a change in America's stance regarding Indian removal. After decades of the Indian Civilization campaign, Jackson would ride the waves of southeastern settlers' hunger for westward territory into the presidency and turn the

new tides of United States Indian policy against the Cherokees. To accelerate Indian removal, Jackson had to put an end to the Indian Civilization campaign. After all, the program required Native American tribes to make the first move—that is, offer up their lands for sale—before the United States could acquire new territory.

Historians often refer to the years leading up to and during Jackson’s presidency as the “Age of the Common Man,” a period during which the nation underwent greater democratization through the extension of voting rights to non-landowning white males and subsequent achievement of universal white manhood suffrage.⁴⁰ Jackson came to personify this movement, as his humble background, lack of a formal education, and self-made military career resonated with the average American farmer, or “common man.”⁴¹ However, while Jackson’s common roots certainly set him apart from other presidential candidates who often hailed from the wealthy elite, it would be his uncommon tenacity, stubbornness, and iconoclastic behavior that would win over the hearts of the American public.

Jackson made a name for himself by climbing the ranks of the United States military, gaining a notorious reputation as an “Indian fighter” and a ruthless champion of Manifest Destiny. In his interactions with Native American tribes during his military career, Jackson would demonstrate an aggressive commitment to the protection and expansion of the western frontier. Jackson was named general of the Tennessee militia in 1802, but his first major altercation with Native Americans would come more than a decade later during the Creek Civil War.

Tensions simmered among the Creeks when Shawnee leader Tecumseh visited them in 1811 and attempted to gather support for a resistance movement against America’s expansionist policy. This led to an internal struggle between a faction of Creeks known as the Red Sticks who

strongly opposed America's cultural and territorial encroachment upon their ancestral lands, and the White Sticks, the remainder of the tribe who wished to cooperate with the Indian Civilization program and the assimilation efforts of the United States.⁴² Civil War erupted within the Creek Nation when the Red Sticks asserted control of the tribe and began to attack white settlements and other Creeks who opposed their rule.

Jackson became involved in the fighting following the 1813 Fort Mims Massacre, in which the Red Sticks killed a total of 247 people at the American fort. The Mississippi militia had established the fort along the Alabama River to protect nearby white settlers and White Sticks from the violence of the Creek Civil War, but the garrison was overpowered by the Red Stick insurgents. The death toll included all 120 Mississippi soldiers stationed at the fort, mixed-blooded Creeks, women, and children.⁴³ Citizens in the Mississippi Territory demanded retaliation, and Jackson rallied his troops behind the battle cry "Remember Fort Mims," bringing the United States into the Creek Civil War.⁴⁴

In retaliation, Jackson marched into Mississippi with 2,500 Tennessee militia and ordered General John Coffee to attack the Creek village of Tallushatchee with about 900 mounted infantrymen.⁴⁵ It resulted in a resounding American victory with the death of 186 Red Sticks, including women and children, while Coffee's men suffered only minor casualties.⁴⁶ Against this backdrop of violence though, Jackson showed his compassion by adopting a Red Stick infant boy, later named Lyncoya, whose parents were killed, perhaps out of guilt for the massacre or because of sympathy from his own experience as a teenage orphan. Jackson and his wife raised him at their residence, The Hermitage, until he died of tuberculosis at only 16 years old.⁴⁷ Little Lyncoya grew up as a boy aspiring to enroll at West Point one day as a cadet but as a teen lost

interest in that endeavor and instead became a saddlemaker apprentice. He was laid to rest at The Hermitage upon his succumbing to tuberculosis.⁴⁸

During his involvement in the Creek Civil War, Jackson adopted a strategy of total war, even attacking civilian populations and turning to loyal Native American allies to secure victory. This war brought together the three central characters later intertwined in the Cherokee removal, with Jackson fighting alongside John Ross and Major Ridge, both of whom led allied Cherokee troops to aid the United States. Jackson began his campaign in northern Alabama with an army of over 1,000 militiamen and a sizable contingent of local Cherokee and Choctaw warriors seeking to prove their loyalty to the United States. From there, he would go on to lead attacks against any Native American communities in his path, killing non-combatant populations of not just the enemy Red Stick Creeks, but also those of the White Stick Creek allies.⁴⁹ In fact, even the allied Cherokees reported that their villages along Jackson's warpath had experienced more theft, abuse, and damage at the hands of the United States Army than the Red Sticks. While it is historically unclear why Jackson refused to differentiate friend from foe, his indiscriminate attacks against any and all Native Americans certainly reinforced his reputation as an "Indian fighter." He became to be known as a man who would force his way with the native tribes through violence.⁵⁰

By the spring of 1814, the Red Stick insurgents had dwindled down to their last 1,000 men and had retreated to a small U-shaped peninsula along the Tallapoosa River known as Horseshoe Bend. Heavily outnumbered by Jackson's force—which had grown to over 2,000 federal troops, militiamen, and allied Indians—the Red Sticks suffered a crushing defeat in their last stand. Now remembered as the 1814 Battle of Horseshoe Bend, the final battle of the Creek Civil War resulted in the death of over 600 Red Sticks and their ultimate surrender.

For Jackson, mere surrender was not enough, as he wanted to completely eradicate the Native Americans from the western frontier. Even after the Red Sticks had surrendered, Jackson commanded his army to pursue and kill the retreating survivors, and as he would recount in a correspondence to Tennessee Governor Willie Blount, the “slaughter continued until it was suspended by the darkness of the night.” In the same letter, Jackson also detailed how the next morning, the bloodbath resumed, as his troops had found and killed sixteen Red Sticks hiding in the Tallapoosa River banks.⁵¹ Resorting to such incessant violence, Jackson forced two dozen Creek chiefs to sign the Treaty of Fort Jackson, which stripped the Creek Nation of over 23 million acres of land in present-day Georgia and Alabama as compensation for damages incurred by the United States during the Creek Civil War. Ironically, the majority of the ceded territory belonged to the White Sticks. However, as Jackson had demonstrated in his conduct during battle, he cared little for Indian alliances as long as it advanced America’s interests in his view. Jackson legitimized and justified this dispossession of the Creeks solely on the grounds of retribution. The Red Sticks were at fault for instigating the civil war, and the White Sticks were at fault for failing to suppress it.

Jackson’s Election to the Presidency

Having become a national hero based on his military success and capturing territory in the name of Manifest Destiny, the latest of which consisted of annexing Florida from Spain, Jackson ran for president in 1824. He won the plurality of the popular and electoral votes, but because no candidate among the primary four—John Quincy Adams (Secretary of State from Massachusetts), Henry Clay (Speaker of the House from Kentucky), William H. Crawford (Secretary of Treasury from Georgia), Andrew Jackson (Senator from Tennessee)—had won a majority of the electoral vote, the United States House of Representatives held a contingent

election pursuant to the 12th Amendment. Speaker of the House Henry Clay was against having Jackson, a “military chieftain” in his eyes, as president.⁵² As a result, Clay lobbied House members to vote for John Quincy Adams. Ultimately, Adams emerged as the winner of this Congressional contest and would go on to appoint Clay as his Secretary of State. The seeming conspiracy between Adams and Clay in the Election of 1824 was dubbed a “corrupt bargain” by Jackson and his supporters. In fact, Jackson publicly levied accusations against Clay, decrying that the Speaker had promised him support for president in Congress in exchange for the post of Secretary of State after the inauguration. According to Jackson, when he refused to make such a deal, Clay had gone to Adams with the same “corrupt bargain.”⁵³ Jackson went so far as to label Clay as “the Judas of the West.”⁵⁴

In 1828, Jackson ran again for president, this time winning by a comfortable margin to unseat the incumbent Adams, partly thanks to the increasing universal white manhood suffrage, which had begun to take shape in the early 1820s but was firmly seated by this election.⁵⁵ Knowing that he owed a large part of his victory to the non-landowning whites, Jackson felt obligated to remove the Indians and wished to repay his southern constituents with land so that they could become property holders themselves. Therefore, Jackson would pursue widescale removal throughout his presidency, beginning with the Indian Removal Act of 1830.⁵⁶ This Act would give the president the authority to make treaties to exchange lands west of the Mississippi for existing Indian territory on a voluntary basis, including an appropriation of \$500,000 specifically set aside to compensate for improvements existing on ceded land and to pay for transportation costs for the migration. Coincidentally, in the same year Jackson became president, the Cherokee Nation elected Ross as their Principal Chief, the chief executive of the Cherokee Nation. Now, the stage was set for a clash between two equally headstrong men—a

president who had repeatedly overstepped authority to capture territory in war and a tribal chief who did not wish to yield an inch when it came to removal.

Hostile State Laws and The Indian Removal Act of 1830

Upon taking office, Jackson began to push for what would become a formal removal bill. The push to acquire Indian land within the borders of Georgia had started decades earlier with the Compact of 1802, formerly the Articles of Cession and Agreement. This agreement was between the state of Georgia and the United States whereby Georgia gave up western portions of its lands beyond the Chattahoochee River, which would later form the states of Mississippi and Alabama. In exchange, the federal government would pay Georgia \$1,250,000 and promised to extinguish existing Indian land titles within the state's borders by negotiating removal treaties with the native tribes.⁵⁷ In efforts to fulfill this agreement, from 1802 to 1824, the United States negotiated seven treaties with the Native Americans residing in Georgia to cede nearly 16 million acres of land at a cost approaching eight million dollars.⁵⁸ The western lands from the Louisiana Purchase of 1803 made these exchanges possible, but for Georgia, these voluntary cessions were too little, too slow.⁵⁹ Throughout the Monroe years, in reply to Georgia's complaints, the president made clear that the federal government would continue to use only peaceful methods to remove the Native Americans from their land, citing that he lacked the authority to use force.⁶⁰

Georgia thus took matters into its own hands to evict the Indians from their homelands. Its legislature relentlessly began to pass state laws to nullify existing Cherokee land rights and facilitate white settler encroachments. In 1829, Georgia passed a law asserting dominion over Cherokee lands within its state borders, declaring all Cherokee laws null and void, and banning all Indians from testifying against any white man in court.⁶¹ By 1830, Georgia passed additional

laws prohibiting Cherokee Council meetings and requiring all whites to secure an official permit before living on Cherokee territory.⁶² The Jackson administration complemented Georgia's acts by increasingly failing to uphold the prior treaties signed with the Native Americans and turning a blind eye to the encroachment of white settlers upon the remaining Indian lands. The situation grew worse when prospectors discovered gold on Cherokee lands in 1829. Thousands of neighboring whites trespassed onto Cherokee lands to mine for gold, without regard for prior treaties and the existing federal non-intercourse laws delineating property boundaries.⁶³ Jackson supported the miners by withdrawing all the federal troops from the gold fields while Georgia even passed a law that forbade the Indians from digging gold on their *own* lands.⁶⁴

Amidst this crushing wave of aggressive state encroachments, Jackson urged Congress for a formal removal legislation. In his first annual message to Congress on December 8, 1829, Jackson advocated for "setting apart an ample district west of the Mississippi, and without the limit of any State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designated for its use."⁶⁵ For the Indians of Georgia and Alabama, the president warned that "their attempt to establish an independent government would not be countenanced by the executive of the United States, and advised them to emigrate beyond the Mississippi or submit to the laws of these states." He further added, "This emigration should be voluntary, for it would be as cruel and unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land."⁶⁶ The promise of voluntary emigration, however, would later ring hollow because the United States would eventually use military force to drive out the Cherokees.

Just several months following Jackson's proposal, Tennessee Senator Hugh White serving on the Committee of Indian Affairs introduced a bill in Congress on February 22, 1830

that would become the Indian Removal Act of 1830.⁶⁷ This law marked the first legislative departure away from the official policy of the United States of respecting the legal and political rights of Native Americans. It aimed “for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal West of the river Mississippi.” White had succeeded Jackson as a senator from Tennessee after the latter had resigned following his defeat in the 1824 presidential election. After Jackson’s victory in 1828, White became a very close confidant, counseling the president on many of the most important initiatives of the time.⁶⁸ This relationship led White to spearhead the Indian Removal Act while chairing the Senate Committee on Indian Affairs. White framed the removal as beneficial to the Indians as they needed to be separated from the harmful influence of the white man.⁶⁹ This was the familiar rhetoric embraced by many removal advocates: separation from the whites was desirable because the Indians had a greater proclivity for the vices rather than the virtues of civilization.⁷⁰

Simultaneously with this bill, White issued a report enumerating a long list of reasons why the Cherokees should be removed to the West. It provided: Most of the Cherokees are poor. The Cherokee aristocracy does not want to remove and therefore lie to their tribe about how the western lands are inhospitable. It is unconstitutional for the president to interfere with state laws governing tribes residing within its borders. The president is limited to making treaties only with Indians who reside outside the borders of the current states.⁷¹ Interestingly, the report focused almost exclusively on the Cherokees in Georgia even though the bill was to pertain to all Native Americans.

On April 24, The Senate voted 28 to 19 in favor of the bill, and on May 26, the House passed the Indian Removal Act by a vote of 102 to 97. Before passing the bill, however, opponents in Congress led by Senator Theodore Frelinghuysen from New Jersey voiced their

dissent and attempted to add several amendments, one of which required that, “before any exchange or exchange of land be made aforesaid, that the rights of any such tribes or nations in the premises, shall be stipulated for, secured, and guaranteed, by treaty or treaties.”⁷² This proposal and several others were rejected except for the modification to Section 7 that required prior treaties to continue to be honored. Just two days afterward on May 28, Jackson signed the act into law.

Cherokees Take Action in the Courts

In response to the state laws that were intended to make their lives unbearable, the Cherokees turned to the judiciary for a reprieve. In 1830, they hired former Attorney General William Wirt of Philadelphia, a constitutional law expert, and the local Georgia law firm of William H. Underwood and Thomas W. Harris to mount their legal challenges.⁷³ The legal framework pitted Georgia’s rights over Indians living within its borders against the tribe’s sovereignty guaranteed by the prior treaties signed with the federal government.

The underlying issue of state versus federal control over the tribes appeared before the Supreme Court during the latter part of John Marshall’s term as Chief Justice. Two Cherokee appeals rounded out the Marshall Trilogy, which consisted of three Supreme Court cases of foundational influence on Indian affairs within the United States. These decisions established the basic framework for the precedent to follow relating to federal Indian law.⁷⁴ With the Chief Justice delivering the majority opinion of the Court on each occasion, the Marshall Trilogy established exclusive *federal* authority over Indian territorial rights, limited recognition of tribes as domestic dependent nations rather than true foreign states, and prohibited the application of state laws in Indian territories. The Cherokees wished to settle once and for all that, only the federal government, to the exclusion of the states, could dictate the terms relating to the tribes.

The *Johnson v. M'Intosh* case first established this principle and the Cherokees sought to confirm it through their own Supreme Court challenges.

Johnson v. M'Intosh involved a dispute between two land purchasers, one who had bought from the Piankeshaw tribe and another for the same parcel from Congress.⁷⁵ Marshall ruled that the federal government had exclusive jurisdiction over land deals with the Indians and that the tribes could not sell property to individuals. Moreover, Indians only had a right of occupancy and not the title to the land. Having purchased the land from Congress, M'Intosh had a superior claim to Johnson's, which derived title from the Indians who were never deemed to have had ownership in the first place. This case most significantly established how Indians could not own land and that their territorial rights were within the exclusive purview of the federal government, which meant that neither the states nor individual Americans could make land deals with the native peoples. The reasoning was based on the Discovery Doctrine, according to which a European nation has complete control henceforth over the land that it finds, irrespective of the then-present non-Christian occupants.⁷⁶

Even though the Supreme Court had made clear in *Johnson* that the affairs of Indian land rights belonged exclusively to the federal government, states such as Georgia nevertheless implemented and enforced laws to dictate tribal life. One such occasion occurred in 1830, when the State of Georgia convicted George "Corn" Tassel for murdering another tribesman named Sanders "Talking Rock" Ford within the Cherokee territory. Tassel should have been tried in a Cherokee tribunal because the act occurred within the Cherokee Nation but the Georgian authorities arrested and convicted him in a state superior court. Facing the death penalty for one of their tribesmen resulting from the application of state law, the Cherokees had Wirt petition the Supreme Court to enjoin a Georgian court from carrying out that execution. Upon appeal,

Marshall granted a writ of error and ordered the State of Georgia to appear before the Supreme Court. Georgia, however, defied this order and hung Tassel immediately.⁷⁷

Tassel's wrongful execution forced Wirt to modify his pleadings and file suit just three days later as *Cherokee Nation v. Georgia* to strike down the state's extension laws.⁷⁸ What began as an appeal to overturn a death penalty in a case entitled *Georgia v. Corn Tassels* evolved into a broader request to prohibit Georgia state laws from applying to the Cherokees within their tribal lands. To the dismay of the Cherokees, however, the Supreme Court declined to decide the case on its merits citing a lack of jurisdiction. Marshall cited that the Court's jurisdiction over controversies between a state and a foreign nation did not extend to a dispute involving Georgia and the Cherokee Nation because tribes were not foreign states as defined by Article 3 of the Constitution.⁷⁹ Rather, Marshall clarified that tribes were "domestic dependent nations" whose relationship with the United States resembles that of a "ward to his guardian."⁸⁰ The Chief Justice believed that the United States had the responsibility to act on behalf of the Indians' best interests rather than conferring full independent foreign status to the tribes. Marshall chose the middle-ground approach between the two alternatives on the ends of the spectrum embraced by the other associate justices—Henry Baldwin and William Johnson on the one hand and Smith Thompson and Joseph Story on the other.⁸¹ Baldwin and Johnson declared the Cherokees as subjects of the states in which they resided, while Thompson and Story saw the Cherokee Nation as an independent foreign state protected from state trespass.⁸²

Just a few months after the disappointing holding in *Cherokee Nation*, another opportunity arose for the tribe to challenge a Georgia law usurping their sovereignty. In 1830, Georgia had enacted legislation entitled "an act to prevent the exercise of assumed and arbitrary power by all persons, under pretext of authority from the Cherokee Indians," which required all

whites residing within Cherokee territory to obtain a license from the governor and also take an oath of allegiance to the state.⁸³ Anyone not in compliance would “be punished by confinement to the penitentiary at hard labour for a term not less than four years.”⁸⁴ Among the Christian missionaries living within the Cherokee Nation, Samuel Worcester refused to take a license out of loyalty to the natives and to help the tribe challenge the constitutionality of the law that placed Georgia’s rights over the Cherokees’. Being without state permits, Worcester and another Congregationalist missionary Elizur Butler in July 1831 were arrested, chained, and forced to march eighty miles over several days from New Echota to the courthouse in Lawrenceville.⁸⁵ During this walk, Worcester and Butler were not even allowed to observe the Sabbath and were subjected to verbal abuse from the guards.⁸⁶ The Georgia court promptly tried and sentenced this pair to four years of hard labor and held them in Milledgeville penitentiary.⁸⁷ The Cherokees turned to Wirts once more to handle the appeal.

The appellants argued that the Georgia laws violated the Constitution, the Indian Trade and Intercourse Act of 1802, and the prior treaties that the Cherokees had reached with the United States, which guaranteed Indian sovereignty. In *Worcester*, Marshall established that Georgia’s laws could have no force in Cherokee territory.⁸⁸ The ruling prohibited the extraterritorial application of Georgia’s laws within Cherokee territory.⁸⁹ This meant that Georgia lacked the legal authority to regulate the dealings between its citizens and members of the Cherokee Nation. Marshall clarified that even as a domestic dependent nation as espoused earlier in *Cherokee Nation*, tribes had exclusive, sovereign authority within their territorial boundaries to govern and implement rules therein. Moreover, the Cherokee Nation’s acts of making treaties and associating with a stronger nation for its protection likewise did not

dispossess itself of the right to self-government, and the Constitution granted Congress the exclusive authority to regulate Indian affairs.⁹⁰

Georgia Defies and Jackson Ignores the Supreme Court

Despite the *Worcester* ruling, however, Georgia ignored the Supreme Court and refused to release the missionaries from prison. Georgia proved it would not back down from continuing to apply pressure on the Cherokees, and Jackson's refusal particularly as the highest executive of the land to enforce *Worcester* signaled the end of the Cherokee's resistance. Besides his agenda for expansion at all costs, another reason why Jackson refused to enforce *Worcester* was that he was already fighting with South Carolina, which proclaimed its Nullification Ordinance in November 1832, repudiating the federal tariffs and declaring them null and void. For a while since their first implementation in 1828 as the Tariff of Abominations and again in 1832, southern states were resentful of the federal protectionist tariffs, which they took as benefiting emerging northern economic interests at their expense. South Carolina took special exception to these tariffs and declared them unconstitutional and unenforceable within its borders.⁹¹ Many viewed this act of defiance by South Carolina as a greater threat to the Union than Georgia's rejection of *Worcester*. Jackson quickly issued a response titled the Nullification Proclamation on December 10 rejecting South Carolina's attempt to quash this federal mandate.⁹² Essentially, this was Jackson's compromise with the states for the unfolding crises—a concession for Georgia in support of Indian removal but suppression of South Carolina by quashing its tariff revolt.⁹³

At this point with the threat of a potential civil war, even the American Board of Commissioners for Foreign Missions, which had commissioned Worcester and Butler to the Cherokee Nation, wished for its missionaries to drop their fight against Georgia in exchange for

a gubernatorial pardon.⁹⁴ So after a series of letters from Worcester to Wilson Lumpkin in January 1833 requesting a pardon at “the magnanimity of the State,” the Georgia governor executed a proclamation releasing the two missionaries.⁹⁵ It thus took an additional ten months from his Supreme Court victory on March 3, 1832 for Worcester to finally earn his freedom.

The final leg of Jackson’s pursuit of Cherokee removal consisted of a treaty with the tribe for their immigration to present-day Oklahoman territory. Even though the Indian Removal Act had been on the books for several years, it was not until 1835 that the Jackson administration achieved a removal treaty, which was necessary because the Act prohibited violation of any *existing* treaties with the Indian tribes. Hence, the Jackson administration needed a *new* treaty to supersede the prior ones guaranteeing the Cherokees their currently occupied territories within Georgia.

The Treaty of New Echota: Signed by a Few but Binding on All

Jackson used a two-prong approach to overcome the limitations of the Indian Removal Act. Specifically, Section 7 of the Act mandated that “nothing in this act contained shall be construed as authorizing or directing the violation of any existing treaty between the United States and any of the Indian tribes.”⁹⁶ To abrogate the prior treaty rights conferred upon the Cherokees, Jackson first supported those state laws aimed at harassing the Indians to foster an unbearable environment, and second, sought a new treaty with a minority faction of the tribe receptive to removal.

From the outset of his presidency, Jackson had always maintained that the Indians who did not remove would lose their sovereignty and be subject to the laws of the states in which they lived. He specifically stated so in his first annual address to Congress and followed through by allowing states to pass and enforce oppressive laws, as described above, interfering with Indian

life within their borders. Rather than enforcing prior treaties or federal non-intercourse laws, which would have prohibited white encroachment on tribal lands, Jackson stood behind the pretext that he lacked the power to interfere with state government actions. Systematically, nothing stood in the way of Georgian settlers who now had the backing of state laws. Jackson embraced the harsh state laws implemented against the Natives as an effective tool for removal. He is even attributed to having encouraged Georgia's politicians, "Build a fire under them. When it gets hot enough, they'll move."⁹⁷

By 1832, Jackson made it clear that he would ignore the Supreme Court and refuse to enforce the *Worcester* decision, which would have preserved Cherokee sovereignty against Georgia's laws to the contrary. When John Ridge went to the White House to voice concern about this refusal, Jackson told him to go home and advise his tribe "that their only hope of relief was in abandoning their country and removing to the West."⁹⁸ Jackson made it clear that he also would not force his hand on Georgia to comply with *Worcester*.⁹⁹ Quite simply, Jackson broke the Cherokees' will and fighting spirit while Georgia's laws exacted enough pressure to crack their once-united will to stand and resist. Their collective confidence in preserving their lands began to erode and seeds of doubt crept into the minds of some. Now, several prominent tribal figures like Major Ridge, John Ridge, Elias Boudinot, and Stand Watie emerged to lean toward removal, ultimately forming the backbone of the Treaty Party. Notably, these four were all family—Major and his son John, with Elias and his younger brother Stand being John's first cousins. They had concluded that voluntary removal was the best course for their survival. Jackson's refusal to enforce *Worcester* had served as a litmus test for these individuals.

The Cherokees split into two factions, with John Ridge's Treaty Party facing off against the National or Anti-Treaty Party led by John Ross. Confronted with an adversary in the United

States having insurmountable military power, the Treaty Party focused on securing the best terms possible (*i.e.*, favorable financial compensation and guaranteed security) in exchange for voluntary removal west of the Mississippi. Ross's party, on the other hand, resisted removal because they believed their lives ran with their ancestral homeland as its original inhabitants. They also were rightfully concerned that capitulating now would provide no guarantees against a similar removal in the future from their new territories for the same reasons. Such a never-ending cycle of removal would amount to eventual annihilation. Therefore, both groups had the same goal of preserving their culture, people, and lands, but embraced diametrical views about how to achieve those objectives. This divide pitted Cherokee against Cherokee, and a series of debates raged on, with each faction accusing the other of treason.¹⁰⁰ The resulting infighting led to tribal fragmentation, making them weaker when confronting the United States.

Jackson knew that the Treaty Party was a minority faction and that their wishes did not reflect those of the Cherokee majority. Yet, he chose to deal with any group that would agree to removal and took advantage of this schism.¹⁰¹ Having concluded that they had no choice at this juncture but voluntary removal, the Treaty Party met with Supreme Court Justice John McLean who was sympathetic to the Native Americans. McLean counseled them to pursue a treaty with the best possible terms, offering to serve as a commissioner during negotiations.¹⁰² Sensing an opportunity, Secretary of War Lewis Cass offered the Treaty Party that in exchange for all Cherokee territory, the United States would provide compensation, fertile land in the west, transportation for relocation, and other benefits. When the Treaty Party offered these terms to the Cherokee Council, it rejected the proposal.¹⁰³ With the tribe internally deadlocked, Jackson now picked Reverend John Schermerhorn as treaty commissioner to ram through a cession and removal deal with this minority faction. Schermerhorn met with the Treaty Party multiple times

in New Echota during the final months of 1835 in the absence of the National Party. On December 22, while Schermerhorn busily read the terms of the treaty, a contingent, likely from the Ross faction, set fire to the house where the meeting was taking place. Deterred by neither the fire nor the unresolved debate among the tribe, a committee of twenty members of the Treaty Party reconvened just a week later on December 29 to carry out “the fatal act.”¹⁰⁴ In this way, these twenty representing less than 400 tribal members signed away all of their homelands east of the Mississippi in exchange for \$5 million plus new territory in Oklahoma and Arkansas, sealing the fate of all 16,000 citizens. Their assumption that others in the majority would comply with the treaty terms by reaching the same conclusion of “no other alternative to removal” would eventually prove to be a fatal miscalculation for both themselves and the thousands who died on the Trail of Tears.

When the Treaty Party returned following their backdoor deal with the United States, the rest of the Cherokee Nation became outraged. The Treaty Party failed to convince the majority and it became clear that the treaty was wholly undemocratic. The Cherokee Council voted to reject this treaty as fraudulent in February 1836, and under the auspices of John Ross, thousands of Cherokee citizens petitioned Congress to void the agreement.¹⁰⁵ However, on May 18, 1836, Congress ratified the treaty by a passing margin of one vote more than the two-thirds majority required—31 to 15—and Jackson signed it into law on May 23.

Although well-intentioned, the Treaty Party may have been a bit hurried in signing at New Echota. The Jackson Administration received the Ross delegation multiple times in Washington even after the treaty signing for continued negotiations concerning both the removal deadline and additional appropriations for the move. Had the tribe confronted Washington with a united front, they most likely would have secured better terms for their removal. But the disunity

among the tribe took away even the little negotiating power that they otherwise may have had. Once removal got underway later in 1838, even Ross negotiated for the tribe to receive additional money and to self-service the move. Therefore, either Ross should have realized this predicament sooner and joined the Treaty Party to secure better terms earlier, or the Ridges should have held out alongside the majority. For Jackson, no matter how illegitimate the Treaty of New Echota may have been reached, it now provided the legal basis to remove the Cherokees to their new territory west of the Mississippi. Most critical was its Article 16, which required the Cherokees to remove—by May 1838—within two years from the treaty’s ratification.¹⁰⁶

Difficulties Preparing for Removal

The period from 1836 to 1838 following the Treaty’s ratification was fraught with poor judgment, miscalculations, and mistakes by both the United States and the Cherokees that made safe migration impossible. The logistical mishaps during the preparation stages before the forced removal by the Army only exacerbated the tragedy for the Cherokees. During these two years before the deadline, a combination of four secretaries of war, three military commanders, and four treaty claims commissioners revolved through their posts, leading to a lack of continuity and stability at positions that required swift, accurate decision-making for Cherokee safety and welfare.¹⁰⁷ The mishandling of the entire removal process from start to finish resulted in the chaos, sickness, and suffering of the migrants, which culminated in the Trail of Tears.

A month after the Treaty’s ratification, Secretary of War Lewis Cass commissioned General John Wool to take command of the United States troops in the Cherokee Nation on June 20, 1836 to administer the Cherokee removal. As of this time, the Cherokees remained spread across Georgia, North Carolina, Tennessee, and Alabama.¹⁰⁸ When Wool arrived at Fort Cass in Tennessee, he found administrative matters, ranging from the rations for the Cherokees to

supplies for the troops in complete disarray. The federal government had provisioned food, clothing, and blankets for the Cherokees to use beginning with the roundup in the stockades before departure and consumption during the migration. Numbering in the several thousand, the management and distribution of those commodities were no easy task. This situation was not surprising given that both the Indian Removal Act and the Treaty of New Echota failed to specify how the removal of the natives would take place; instead, most legislators involved up to that point were more focused on how to divide up the lands that the Indians would leave behind.¹⁰⁹ Therefore, it left the Army on the ground to figure out spontaneously how to get things done.

Wool's job became bureaucratic from almost the start because his decision-making authority fell under the approval of two civilians—former governors Wilson Lumpkin of Georgia and William Carroll of Tennessee who served as the treaty claims commissioners. The War Department held Wool responsible for failing to prevent an earlier Cherokee Council session at Red Clay in September 1836 during which the tribe formally repudiated the Treaty of New Echota, and consequently implemented this command hierarchy even for military operations to censure the general.¹¹⁰ Wool expressed his dismay openly, “For a military commander to be held responsible for the peace of a country, at the same time to be placed under the control of civil officers, has no parallel in the whole military annals of our country.”¹¹¹

The two treaty commissioners faced their own challenges of reviewing and approving all Cherokee claims, but the lingering administrative difficulties led to a continued bottleneck throughout the two years leading up to the removal deadline. Both the Indian Removal Act of 1830 and the Treaty of New Echota contained provisions to compensate the Native Americans for the improvements made to their lands before their move. Section 4 of the Act called for

improvements to be “ascertained by appraisement” and Article 9 of the Treaty provisioned for the “fair value of all such improvements” to determine the appropriate payment to the Indians. But the constant, extended absences, often months at a time, of the commissioners—most of it being Carroll due to his illness but even of Lumpkin at times—suspended the claims processing for long stretches at a time. From the outset, Lumpkin wrote to inform Jackson how Carroll’s absence was hampering his efforts to quickly settle Cherokee claims and allow families to emigrate. The regulations required approval from both commissioners before settling any claims. Lumpkin explained, “No claim whatever under the Treaty can be adjudicated by a single Commissioner. And not a single Indian or family will emigrate until their claims are adjusted and settled.”¹¹² As a result, even though thousands of appraisals were completed in 1836, the commissioners’ absences forced many Cherokees to camp out at New Echota for weeks awaiting payment before their move.¹¹³

Most crucially, the hospitable, mild weather months of 1836 and 1837 for the trek were lost because of these logistical failures. In fact, Superintendent of Cherokee Removal Benjamin Currey had requisitioned a budget of \$10,000 in 1836 for moving up to 5,000 Cherokees (at \$20 per person) and noted that “fifteen hundred or two thousand Indians” already would have left by that fall.¹¹⁴ Wool more ambitiously had assured Acting Secretary of War Benjamin Butler that he could move half of the tribe during the same period.¹¹⁵ Despite these plans, however, the only group that was prepared to and did leave by January 1837 numbered only about 600 and consisted of the Treaty Party members.¹¹⁶

Further complicating the administrative blunders was the constant in-fighting between the military commander and the two commissioners. Wool never got along with Lumpkin because for the general, it was demeaning to be under the supervision of civilians in what he considered a

military operation. Then, after Carroll resigned and Judge John Kennedy, also from Tennessee, assumed the same position as a successor, he too experienced friction with Wool.¹¹⁷ Thus, nothing could get done efficiently with the top administrators bickering. Lumpkin and Kennedy expressed their displeasure of Wool to the Commissioner of Indian Affairs, C. A. Harris, “In attempting, however, in the most humble and modest manner, to avail ourselves of the services of the military, in the execution of civil duties, we have found ourselves repulsed and insulted at every attempt which we have made to obtain the cooperation of General Wool in the execution of our views.”¹¹⁸ The War Department eventually replaced Wool with Colonel William Lindsay in July 1837, but by then, a year’s worth of Cherokee claims were backlogged and pending processing.

To make things worse for an already exhausting situation, another crisis at this time—The Panic of 1837—further hampered claims administration. A year earlier, Jackson had issued an executive order referred to as the Specie Circular to control excessive land speculations and monetary inflation by requiring payment for public land sales of over 320 acres to be made exclusively in specie (*i.e.*, gold or silver coins) instead of paper money.¹¹⁹ This sparked a financial crisis and a recession during which many banks failed. As a result, the Cherokees awaiting claims payment and the contractors involved in removal preparations supplying food and transportation only wanted specie for payment, but the commission just did not have enough gold and silver to fulfill these requests.¹²⁰ These financial challenges continued to delay the removal efforts.

Besides the administrative bureaucracy, the continued Ross-led resistance left the tribe completely unprepared until the very last days leading up to the forced march to Oklahoma. Most had placed too much faith in Ross to avoid removal altogether and held out without a backup

plan. For example, the majority of the Cherokees living in North Carolina were so opposed to the treaty that they refused aid from the Army. So strong was their resolve that many “however poor or destitute” would not take “either rations or clothing from the United States lest they might compromise themselves in regard to the treaty.”¹²¹ Accepting aid from the United States government meant acceptance of the treaty to them. Most of the Cherokees believed that they would be able to stay by repudiating the Treaty through sheer will, which gave them no time to even fully gather their personal belongings once forced by bayonets at the deadline. Ross led this resistance and was largely responsible for this unpreparedness. By having waited too long, the tribe absolutely had no time to spare and had to leave irrespective of what lay ahead without any opportunity to bide time for hospitable conditions for their long journey.

General Winfield Scott and the Trail of Tears

With the removal deadline quickly approaching, President Martin Van Buren scrambled to find a solution concerning the Cherokees who until this point were still not preparing to move in any meaningful numbers. By the beginning of 1838, only 2,103 Cherokees had moved west, which still left approximately 14,500 remaining to be settled and removed.¹²² With only a few weeks remaining, the War Department gave General Winfield Scott *carte blanche* to take command of the Cherokee removal on April 6.¹²³ Time was of the essence as the roundup in Georgia was scheduled to begin on May 23 with Tennessee, North Carolina, and Alabama to follow ten days afterward. Scott arrived at the Cherokee Agency on May 8 and just two days later gave a firm ultimatum before sixty chiefs that the emigration had to take place by the 23rd of the month without exception and that he was there to enforce the treaty.¹²⁴ Despite his apparent steely resolve, Scott tempered his firmness with “Orders No. 25,” which he issued on May 17, requiring his soldiers to extend the Cherokees “every possible kindness, compatible

with the necessity of removal” and that any violation resulting in injury to any man, woman, or child would be dealt by “the severest penalty of the laws.”¹²⁵ These orders of course could not prevent all tragedies—in one instance, a deaf Cherokee who turned in a direction opposite to what was ordered was shot and a protective husband who struck a soldier for prodding his wife with a bayonet received a lashing. But for the most part, unrestrained and unprovoked violence did not happen.¹²⁶

In tandem with the Ross-led resistance, the Van Buren administration’s hesitation about the mandatory removal deadline proved to be the final nail in the coffin against the Cherokees’ safe passage westward. Quite simply, Cherokee enrollment for removal did not speed up enough to avert the upcoming disaster because of the perceived success Ross was having with Van Buren’s cabinet for either postponing the migration or averting the move altogether. Throughout the critical last 12-month period beginning from the spring of 1837 to May 1838, when the Cherokees should have been most swiftly putting things in final order and preparing for the long haul, Secretary of War Joel Roberts Poinsett entertained Ross’s repeated visits to Washington to discuss postponing the final removal deadline. These meetings continued to give the Cherokees false hope. For example, letters arriving at the Cherokee Nation from Ross’s delegation in Washington indicating a new treaty was about to be signed significantly slowed and interfered with Scott’s enrollment efforts.¹²⁷ Based on the continuing discussions with Ross, Van Buren even sanctioned Poinsett to submit a proposal to the Senate to extend the deadline by another two years, subject to approval from the governors of the states in which the Cherokee population stood—Georgia, Tennessee, Alabama, and North Carolina.¹²⁸ Unsurprisingly, this proposal did not even make it past the first governor to be solicited, George Gilmer of Georgia, who not only opposed it but went so far as to threaten an armed clash between the Georgia militia and the

federal troops if removal did not occur on time as scheduled. Gilmer exclaimed, “If such is the intention of the President, a direct collision between the authorities of the State and the General Government must ensue. My duty will require that I shall prevent any interference whatever by the troops with the rights of the State and its citizens.”¹²⁹

Final Phase Before Departure

By the second week of May 1838, the Army began corralling the Cherokees at the departure depots. The soldiers caught the Cherokees completely off guard because they were so unprepared for such imminent removal. They did not have time to pack anything; most had to abandon their homes with only the clothes on their backs, with some leaving even without shoes. An army private later recalled, “I saw the helpless Cherokees arrested and dragged from their homes, and driven at the bayonet point into the stockades.”¹³⁰ Fast and furious, the roundup had only taken 25 days and the first forced dispatchment took place on June 6.¹³¹ The stockades along the Tennessee River were prepared to hold the remaining migrants until their departure.

Meanwhile, once removal was underway rendering any further delay impossible, Ross did a complete about-face and focused his energies on migration. Ross saw his people stuck in the internment camps and wanted to move them immediately. In cramped quarters, dysentery, diarrhea, fever, and whooping cough ran rampant. Many Cherokees refused medical aid because they thought the doctors were the ones spreading disease, which only made the suffering worse. Ross led another delegation to Washington and convinced Congress in June for an additional \$1,047,067 in appropriations, plus another \$140,000 for clothing, blankets, and medicine for the move. Ross also obtained authorization from Poinsett for the Cherokees to handle their own relocation and sought Scott’s approval for the same in July seeking full control of the migration. Ross negotiated a budget of \$65.88 per Cherokee to spend on food, supplies, wagons, and

medical aid during the journey.¹³² Even though Scott thought this sum exceeding \$850,000 for the remaining 13,000 to be excessive, he reluctantly agreed, hoping that it would further aid in their safety and comfort. Ross had now come full circle to assume the role of Superintendent of Removal and Subsistence.

With everything finally appearing ready to go, the onset of more unexpected delays plagued further progress. That summer experienced a severe drought, which forced Scott to postpone further migration until September 1, but even this date had to be delayed once more because the drought continued for several more weeks.¹³³ For months now, the Cherokees had been stuck in the stockades since their initial roundup in May with nowhere to escape from the cramped and unsanitary misery. Going back home was no longer an option as the new settlers now occupied them. By the first week of October, there was enough rain for the parties to finally depart, but by this time, chilly weather was fast approaching.

The remaining Cherokees numbering approximately 13,000 left during this period in thirteen separate groups of about 1,000 persons each under Ross's administration.¹³⁴ The last of the detachments, which included Ross and his family, did not leave until December facing winter storms and freezing temperatures. Tragically, many thousands including even Ross's wife, Quatie, succumbed to pneumonia and died during this journey at Little Rock, Arkansas.¹³⁵ About 2,000 perished during the harsh winter journey, which typically took three to four months, and another equal number died from illness during the long weeks or even months awaiting departure in the stockades, bringing the tragic toll to at least 4,000.¹³⁶ The Trail of Tears was an ordeal that lasted nearly ten months, with the roundup that began in May 1838 and the last of the detachments not arriving in their new lands until March 1839. What occurred during this period was even worse than what soldiers saw during wartime. According to the later account of one

Georgia volunteer, “I fought through the civil war and have seen men shot to pieces and slaughtered by thousands, but the Cherokee removal was the cruelest work I ever knew.”¹³⁷

Settlement in the New Territory

The tragedy did not end with the Trail of Tears. The Cherokees faced further turmoil in Oklahoma and Arkansas as political and civil strife continued. After the Ross-led migrants arrived in the new territory by the spring of 1839, they faced the Western Cherokees, or the Old Settlers, who had emigrated from the East before 1835. The Ross contingent, or the Eastern Cherokees, enjoying a majority, planned to continue with their old government while the Treaty Party aligned with the Old Settlers to form a political block opposite the new immigrants. The division, however, was more than just based on differences in ideology or plans for the future. After having endured such an arduous and perilous journey, the Eastern Cherokees sought accountability for their suffering; the Treaty Party was a prime target to bear this responsibility. The unofficial Cherokee council met, tried, and convicted the two Ridges, Boudinot, and Watie in absentia. By the Cherokee law prohibiting the sale of unsanctioned land, the council sentenced all four Treaty Party leaders to death by execution.¹³⁸ Ironically, it was the younger Ridge who had personally penned this law to paper a decade earlier in 1829 as a clerk of the National Council.¹³⁹ Bands of the Eastern Cherokees set out upon daybreak of June 22 to carry out the executions and only Watie escaped the massacre thanks to a warning received in sufficient time.

These murders fueled the continuing enmity and future killings between the Ridge and Ross factions for years to come.¹⁴⁰ The feud escalated to such heights that President James Polk threatened to split up the Cherokees into groups with separate territories and governments. At this point in 1846, the Old Settlers, the Treaty Party, and the Eastern Cherokees finally signed a truce in Washington to keep the Nation together.¹⁴¹ Most significantly, this Treaty of 1846 forced

Ross to accept the earlier New Echota Treaty and the \$5 million payment for their ancestral lands to be distributed per capita to all Cherokee citizens, including the Old Settlers. The monetary distributions provided closure to the removal era and a much-needed financial boost for the Cherokees, and the Nation enjoyed peace until the onset of the Civil War when the Treaty Party supporters sided with the Confederacy while the Ross contingent ultimately joined the Union.

Conclusion

The shocking and horrifying nature of Cherokee removal has made the Trail of Tears one of the most infamous dispossessions of indigenous peoples in American history. When the United States military ultimately threatened armed force to remove the Cherokees in 1838, it only seemed to justify and prove the inevitability rhetoric that convinced the Treaty Party to surrender their ancestral homelands two years prior through the Treaty of New Echota. Yet a part of what makes the Trail of Tears so shocking and horrifying is that it was, in fact, not unavoidable. By unraveling the blanket narrative of inevitability that shrouds Cherokee removal, we can see that it took the occurrence of many extreme conditions for the Cherokees to be removed, culminating in the Trail of Tears. Moreover, the ultimate failure of the Cherokees to avoid removal illustrates how civil struggles may only be as successful as the time and place permit. The degree and strength of America's bias behind Indian removal, especially in Georgia and the neighboring states, was simply too much for the Cherokees to overcome at that point in history.

In the years leading up to and during Jackson's presidency, the Cherokee Nation had proved time and time again that even in the face of racial prejudice, unconstitutional actions, and undemocratic diplomacy, they could put up a multi-layered defense against forced lump-sum removal. When the Cherokee Nation was confronted with the white settlers' prejudiced

beliefs that they could not stably coexist, the tribe banded together to assimilate and transform into a productive, agricultural society with democratic governance. When the Cherokees were faced with Georgian state laws that allowed settlers to encroach upon their land, they also fought back through the legal system, winning a favorable Supreme Court decision in *Worcester* confirming Indian sovereignty. Even when Jackson did not follow Marshall's Supreme Court rulings and negotiated an illegitimate removal treaty with a minority faction of Cherokees that was passed in the Senate by a margin of a single vote, the tribe managed to hold their ground, staying put on their homelands and outlasting Jackson's entire eight-year presidency. It would then take the Van Buren administration's last resort of brute force, after nearly a decade-long battle of court cases, politicking, and diplomacy, to finally remove the Cherokees.

A quote by Canadian philosopher Marshall McLuhan, while originally about media and communication, can be applied to the complex narrative of Cherokee removal: "There is absolutely no inevitability as long as there is a willingness to contemplate what is happening." Hardly anything about the Trail of Tears was straightforward or predestined, and the numerous historical junctions at which removal could have been more gradual, less deadly, or completely avoided are what make Cherokee removal so tragic, especially in light of their valiant defense.

Notes

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