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THE DEBATE OVER INDIAN REMOVAL IN THE 1830's

A Thesis Presented

by

GEORGE W. GOSS

Submitted to the Office of Graduate Studies,
University of Massachusetts Boston,
in partial fulfillment of the requirements for the degree of

MASTER OF HISTORY

June 2011

History Department/Program

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ABSTRACT

THE DEBATE OVER INDIAN REMOVAL IN THE 1830's

June 2011

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The US in the 1830s debated the relationship between the US and Indian communities of North America. The principles calling for equal rights and political democracy of the people in America were in contradiction with the principles calling for the US to follow colonial principles of the European empires that had begun to invade North America in the late 1400s. The colonies that had revolted against British rule in the late 1700s had continued the expansion of settlements and political incorporation that had been practiced since the founding of colonies at Jamestown and Plymouth. The proposal of Indian Removal debated in the US Congress was a straightforward expression of that expansionism, which dispensed with the past policies of the US that had combined expansion with treaty negotiations that had the form of a meeting and agreements of equals, and proclamations of Indian rights and sovereignty. There was a national

campaign developed in support of the Indian resistance, particularly from the Cherokee, that involved polemics and petitions, public meetings and Congressional debates. The opposition to Removal was advancing principles that in effect called for the US to develop practical policy that was in line with its past proclamations that upheld its treaty commitments to the Indian communities. The proponents of Removal, supporting a campaign of the state of Georgia to dispossess and expel Indian communities within its drawn borders, advanced principles that favored the prerogatives of US states. The US treaty commitments to the Indians were argued to be invalid; because the Indians were an inferior race the agreements with them could be annulled by a superior race. The arguments for Georgia's superior rights and US expansion, based on principles of white supremacy and colonial rights of discovery and conquest, won the day.

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This is dedicated to my wife, Doris Goss, who has been very patient and helpful during the weeks, months, and years this work has progressed, to my daughter, Amy Smalarz, whose experience and guidance has been much appreciated, and to the staff at the Morrill Memorial Library in Norwood and the libraries of the Minuteman Library Network.

....thank you.....

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CHAPTER 1

THE DEBATE OVER INDIAN REMOVAL IN THE 1830's

The US Congress, in 1830, voted on the issue of what rights Indians had to land and independence in North America, continuing a discussion older than the American colonies. In America, a land of immigrants, the question of whose rights were primary, and on what basis, was centuries old. According to their traditions the Indian communities of the Cherokee people had lived in their homeland in southeastern North America for centuries.¹ Little interested in Indian traditions, officials of the State of Georgia were waging a campaign to expel the Cherokee from within the borders the state had negotiated with the federal government in 1802. With the election of Andrew Jackson in 1828, Georgia had gained an ally in the White House who also had a program of Indian displacement and the issue was brought before the US Congress at the beginning of his administration.

In debating Indian Removal, Congress was discussing the dispossession and expulsion of independent Indian communities in the eastern half of North America. The debate was not a new one, but was set in terms of the principles and experience of a country with a

¹ Gary E. Moulton, ed., *The Papers of Chief John Ross*, (Norman: University of Oklahoma Press, 1984)

revolutionary heritage that those involved worked to use in support of their side in this clash of immigrants, originally from lands far to the west across the Pacific ocean, with those of the later immigrants, from lands, across the Atlantic ocean, to the east.

The assessment and rationalization of that clash and contention, in terms of US development, is the subject of this thesis, examining that debate over Indian Removal to understand the principles that were being advanced, and those that were being put into practice. To many people in the young republic the principles of democracy and human rights rested uneasily on an economic and social base that incorporated slave labor and expropriated land. There were tensions in Jefferson's vision of a 'yeoman republic' resting on the backs of slaves and immigrant farmers tilling ground taken from under the feet of the Indians, tensions not unlike those raised by the sheep walks in England running through the ruins of tenants cottages and their associated commons.

To others in the US the experience and ideals of earlier republics and European civilization generally vindicated the economic and political expansion of the US society that had won independence from Britain. For them the demands of civilization called for steadfast resolve in the face of forces that would divide and weaken the country. They saw no problem in using the value of slave labor to develop the country and the continual addition of cheap land as a magnet for immigrants, a reward for military service, and a means of financial growth, as the US was developing an extensive market economy. A strong and growing US was a goal shared by many defending Indian Removal as a necessity. With the question of slavery not far in the background, the 1830s debate in

Congress over Indian Removal and the national campaign around it highlighted the contention and disagreement over the direction and value of US development.

The proponents of expulsion of eastern North American Indian communities included recently elected President Andrew Jackson, Wilson Lumpkin, a representative of Georgia, and Lewis Cass, a governor of US Northwest Territories and member of Jackson's cabinet. Following Jackson's election in 1828 and with his support, Congress began dealing with proposals for the removal of Indian communities within the bounds of the eastern US, and their exile to areas west of the Mississippi and bordering territories.

The introduction of the Indian Removal bill in the US Congress in 1830 was met with a national campaign of printed material and public meetings aimed at the debate in the House and Senate. Prior to, during, and following the Congressional debate, there were articles and letters for and against the initiative that were published and widely circulated throughout the country. The opponents of Indian Removal included Chief John Ross of the Cherokee, whose homeland was surrounded by the states of Georgia, Alabama, Tennessee, and North Carolina, Jeremiah Evarts, of the American Board of Commissioners for Foreign Missions, and Peleg Sprague, Senator from Maine. They argued that the rights of Indian nations and the honor of the US were more important than US expansion and the demands of various states.

How to regard the American collision between the growing white communities of the United States and the Indian communities of North America, that had survived the Euro-

American invasion up to that point, became a national political question. The arguments followed and built upon two opposing narratives. Both proponents and opponents of Removal described a country facing pressing, grave problems, but they advanced two almost entirely different, but related problem descriptions, causes and solutions. This thesis presents the narratives of the proponents and opponents and discusses effects of the resolution of the contradiction.

A Brief Historical Review

In 1830, centuries after the Natchez had sought refuge among the Cherokee from the marauding Spanish led by Desoto,² the United States Congress, after considerable debate, approved a bill for the emigration of the greater part of the population of the Indian communities living east of the Mississippi River. By the end of the 1830s, most of these societies had been moved to lands west of the Mississippi River, through a combination of bribery, intimidation, political maneuver, and military force.³

From the beginning of European colonization, through the first U.S. war with Great Britain (1775 - 1781) and the second (1812 - 1815), the policy of the European-American colonists/settlers toward American Indian communities had consisted of a mixture of cooperation and trade, skirmishes and raids, and open warfare followed by numerous

² Moulton, *John Ross*, 118

³ Robert V. Remini, *The Legacy of Andrew Jackson Essays on Democracy, Indian Removal, and Slavery* (Baton Rouge: Louisiana State University Press, 1988) 79 - 81.

agreements, as the colonists pressed westward from the coast, over the mountains, and along the rivers.

Following the Louisiana Purchase in 1803, the US began to elaborate a policy of displacing eastern Indian communities to territories to the west, away from the US as it developed. Following the defeat of the British and Indian military forces during the War of 1812, the United States was the dominant military presence south of Canada and westward to Mexico and California. After the defeat of the forces of the Creek Red Sticks, south of the Tennessee, and those gathered by Tecumseh, north of the Ohio, the Indian communities east of the Mississippi (except for the Seminoles in Florida) were no longer the armed force to be reckoned with that they had been in the past.⁴

The campaign and election of Andrew Jackson in 1828, the aggressive campaign of Georgia against the Cherokee, and the passage of the Indian Removal Act in 1830 were elements of stepped up pressure against the Indian communities in the eastern US. Dominated socially, economically, and militarily by the rapidly growing nation state of the US, Indian communities were viewed by many as simply an obstacle to American expansion and were treated as threatening, subjugated populations. As dependents and subjects living under the overview of the United States, most of the Indian societies east of the Mississippi were dispossessed and exiled westward during the 1830s.⁵

⁴ Walter A. McDougall, *Freedom Just Around the Corner: A new American History 1584 - 1828*, (New York: Harper Collins, 2005) 419-421.

⁵ Remini, *Legacy of Andrew Jackson*, 82.

There was broad unease in some sections of U.S. society about that removal policy and a large-scale campaign of petitions and public meetings was organized in opposition to the Indians' expulsion, at the time of the Congressional debate on the Removal act.⁶ A large section of the Cherokee were opposed to Removal, and worked for years against it. Initially unified, by the mid 1830s there were Cherokee divisions the US worked to develop and exploit. Some sought to resist and maintain a national position and some thought it best to accede to the loss and dislocation and try to get the best deal possible.⁷

There was also division within the European-American people in the US. There was debate in newspapers, pamphlets, public meetings, Congress, and the courts. Those opposed to Removal did not have the votes in Congress to stop or alter the removal process and did not sway the sections of American society that felt the expansion of land and markets was essential to U.S. development and their well-being. The unfolding of the practical campaign of the State of Georgia, abetted by the federal government, overrode the resistance. State and federal officials worked to penalize, hinder, and harass the Cherokee and force their emigration, establishing 'facts on the ground' regardless of treaty agreements. The Cherokee government was suppressed by Georgia and by U.S. denial of protection and revenue. The Cherokee economy was subverted, their press

⁶ Francis Paul Prucha, ed., *Cherokee Removal The "William Penn" Essays and Other Writings by Jeremiah Evarts*, (Knoxville: The University of Tennessee Press, 1981) 6.

⁷ A brief account of this history is included in the Introduction of *Cherokee Cavaliers Forty Years of Cherokee History as Told in the Correspondence of the Ridge-Watie-Boudinot Family*, Edward Everett Dale & Gaston Litton, eds., (Norman: University of Oklahoma Press, 1995 paperback printing of 1939 edition).

confiscated, the people assaulted, harassed, imprisoned, and their property taken.⁸

Though the Cherokee legal case was supported by some courts in Georgia and by Supreme Court rulings, the Cherokee and their supporters lost the political battle. The rulings of the US Supreme Court and local courts that were favorable, but lacked enforcement, could add to the weight of public opinion but not alter the effective policy.

The executive and legislature of the U.S. and of Georgia were the makers and effectors of policy and they were determined to proceed with removal.⁹

In 1838, military units of the US oversaw the final expropriation of the Cherokee, interned them in military stockades, and conducted them on a forced march across the central US. That ‘trail of tears’ caused thousands of casualties through the terrible ordeal, including Ross’s first wife, with the Cherokee being relocated on land that later became part of the territory of Oklahoma.¹⁰ Though the Indians and their supporters lost the political battle in the 1830s, the Cherokee community survived and the social and political trends that advocated equality and human rights did not disappear, but shifted to battle the related issue of slavery.

⁸ Alexis de Tocqueville, *Democracy in America*, Vol. I and II, first published in 1835, trans. Henry Reeve (New York: Bantam mass-market edition published April 2002, Random House, Inc., 2002), 406, John Ross, *Papers*, 83.

⁹ John A Andrew III, *From Revivals to Removal Jeremiah Evarts, The Cherokee Nation, and the Search for the Soul of America* (Athens: University of Georgia Press, 2007), 258 and 267. Also Louis Filler and Allen Guttman, eds. *The Removal of the Cherokee Nation: Manifest Destiny or National Dishonor?* (Huntington: Robert E. Krieger Publishing Company, 1977), p. 82, and Wilson Lumpkin: “Message to Georgia Legislature,” From *Nile’s Register*, XLIII (November 24, 1832), 206.

¹⁰ Anthony F.C. Wallace, *The Long Bitter Trail Andrew Jackson and the Indians* (New York: Hill and Wang, 1993), 94.

The issues of rights and equality raised in the Indian Removal debate continued to be discussed. In the US many of those involved in the campaign for Indian rights and equality took up those issues in regard to the freeing of the enslaved people in the south, with the arguments against Indian Removal active in the abolitionist movement. The clash of principles continued to be fought over and formed a part of the national political balance of the US between the promise and the reality of American democracy.¹¹

A Far Reaching Debate

As noted, the issues raised in the debate over Indian Removal occupied the minds of many Americans. The dispossession and exile of the Cherokee was an ordeal and a wrenching spectacle for many, and the collision over U.S. policy regarding the Indian communities east of the Mississippi was felt across the country. Roughly four decades after the consolidation of the United States government this clash of ideology and politics in American society drew in a large number of people, with many following the struggle over Indian removal.

The number of articles, essays, and pamphlets that were printed and reprinted is estimated by F.P. Prucha to have reached over half a million readers.¹² That this debate spoke to a large audience is indicated by one of Jackson's close associates, Martin Van Buren, who wrote regarding the struggle: "(this issue) will in all probability endure...as

¹¹ Alisse Portnoy, *Their Right to Speak Women's Activism in the Indian and Slave Debates* (Cambridge: Harvard University Press, 2005), 167.

¹² Francis Prucha, *William Penn*, 6.

long as the government itself, and will in time, (continue to) occupy the minds and feelings of our people.”¹³ In raising the question of the rights and responsibilities of the peoples of North America, the debate over Indian Removal brought into focus a number of conflicting views on how the U.S. was to grow. Which principles were to primarily guide the development of this republic has always been in contention. In the speeches and in the press, both sides argued from ideas and traditions from America’s European heritage, as well as those developed in or adapted to American culture, to support their positions.¹⁴

The aim of this work is to examine the arguments and describe the principles they relied on and practiced as one description and assessment of Jacksonian Democracy. I have focused on published works assuming that public statements would have been worded to accurately represent their views. The public statements also reflect what they thought would be in agreement with the views of their audience. The principles appealed to would be those the speakers understood to be those widely held and thus reflect the spokesmen’s assessment of their society as well as the direction they thought the US should follow.

¹³ Both Gerard N. Magliocca, in “The Cherokee removal and the Fourteenth Amendment,” *Duke Law Journal* 53.3 (Dec 2003): 875(91). Page 1,2 of 72 in Academic OneFile Print, and Mary Hershberger, in “Mobilizing Women, Anticipating Abolition: The Struggle against Indian Removal in the 1830’s,” *The Journal of American History*, Vol. 86, No. 1. (Jun., 1999) 15-40.

¹⁴ Alisse Portnoy, *Their Right to Speak*, 7.

Arguing for Removal

Providing the narrative promoting Indian Removal, Andrew Jackson, President-elect in 1828, Wilson Lumpkin of Georgia, and Lewis Cass, Governor of Michigan territory and member of Jackson's cabinet, described a crisis facing the US and the states because of the obstacle to development presented by the existence of Indian communities in eastern North America. To them the federal government, through its past policies, had encouraged and assisted the Indian resistance and it should remedy that by facilitating the forced emigration of the Indians, assisting state efforts against the Indians. The proponents gave arguments as to why expansion was necessary, most desirable, and why opposition was dangerous to the US and to the Indians.

For these three proponents the interests of the Indian communities themselves should be seen in terms of their situation after they moved westward. They argued that for the Indians to remain where they were was not a viable option. In their arguments there was recognition of numerous treaties, and explanations as to why they should be disregarded. Treaty law was criticized as causing misunderstanding in relations with the Indians. In place of honoring treaty commitments Cass advocated reinterpretation of the language to reflect the relative strengths of the US and the Indian communities. Cass and Lumpkin held that the US had seriously erred in its dealings with the Indians, negotiating treaties as though they were equals. The way to solve the misunderstanding was to abrogate treaty law and allow the states to dominate Indian relations, as provided for in some earlier US legislation, while the US assisted the states and assumed direction of Indian Affairs outside the states. To them, the Indians needed to give way for the progress of

civilization. The previous treaties needed to be reinterpreted to reflect the needs of white America.

Jackson, Lumpkin, and Cass argued that America faced a problem of Indian occupation of land that was holding back expansion and development of the country and raising conflict and tension between the states and the federal government. In their view, federal policies of treaty agreements and support of Indian rights had caused confusion and emboldened the Indians while restricting state sovereignty and US progress. The solution to the problem was for the US to adopt Indian Removal, scrapping the treaties and assisting the states in restricting and displacing Indians communities. The outcome would create a more secure, expanding, and developing country for US society. They argued that the Indians would be compensated by their relocation farther away from white settlements and states' restrictions and that it was impossible for them to remain in the southeast. The Indian's emigration west of the Mississippi would allow the US to provide the assistance and protection being denied in the southeast.

Opposing Indian Removal

Chief John Ross from Cherokee Country, Jeremiah Evarts, a leader of the opposition campaign from Vermont, and Peleg Sprague, a stalwart opponent in the Senate from Maine, argued that the country faced a problem of the destructive assault on Indian land and social life caused by the continued encroachments of white settlers and federal and state policies that Indian Removal threatened to exacerbate. The honor and character of the US was at stake. They saw the tearing up of international agreements and

overpowering weaker communities for the benefit of the US as a path leading the entire country to destruction.

The opposition included a large portion of the Indian communities affected, particularly the Cherokee, and a number of overlapping social groupings: Christian missionary organizations and related congregations; reform minded, pro-human rights segments of society, including women's organizations; and some in opposing political parties.¹⁵ The solution they sought was for the US to uphold its treaty commitments by protecting the Indian nations against settlers and the states and meeting its financial obligations to the Indians. The outcome would be a United States that included Indian societies in which both the white and Indian communities would prosper. If Indian Removal was approved and applied it would cause destruction of Indian nations and bring dishonor on the US.

Ross, Evarts, and Sprague stressed the importance for the US of honoring the many commitments it made in the past; to disavow them would be to act as a tyrant, dishonoring the country and making a mockery of the ideals of the revolution. While Jackson's policy of Indian Removal was essentially a clarification of the expansionist policy the British colonies and the US had practiced, Ross, Evarts and Sprague worked to build a case for negating that policy by following the words, rather than the deeds, of the past governments. The thrust of their arguments was to call for a reversal of US Indian policy, to begin to respect the Indians as a people with humanity, rights and a history. To

¹⁵ Portnoy, *Their Right to Speak*, 3-5.

them, respect of the Indian agreements was more important than the territorial growth of the US. The declared rights of the states and the expansion of white settlements should take second place to honoring the ideals and the word and reputation of revolutionary America.

The two opposing views of how America should develop were argued in the debate over Removal, and though the expulsion of the Indian communities was approved, the debate over issues facing America's future carried forward. In the 1820s, as Georgia's campaign against the Indians gathered steam, the issue grew in importance to the US and became more and more an issue of life and death for the Cherokee people. Spokesmen for the US executive branch and the state of Georgia argued for the need for white occupation of the southeast, and the Cherokee argued that they were an integral part of the country and there was no good reason why they should be denied the right to live in their homeland.

CHAPTER 2

FOR GEORGIA A CAMPAIGN OF EXPANSION

To a number of officials of Georgia in the 1820s the continued existence of a semi-independent Cherokee nation, within state boundaries set out by an agreement with the US, was both an affront and an intolerable burden. One outspoken advocate for white rule in Georgia was Wilson Lumpkin, born in Pittsylvania County, Virginia in 1783. He moved with his parents to Georgia the next year, after which his father held several county offices and served in the Georgia legislature. Wilson himself was elected to the legislature in 1804 and to the US Congress in 1814. In 1818 he was appointed as one of the US Commissioners dealing with the Creek Indians, and in 1825 was appointed to the state Board of Public Works. Following his work as commissioner he stated that he saw the Indian population as an “incumbrance” that had no place within his state:

...Georgia could never be extensively developed...until this (northwestern) portion of the state was settled by an industrious, enlightened, free-hold population – entitled to, and meriting, all the privileges of citizenship.¹⁶

¹⁶ DeRenne, Wymberley Jones, ed. *The Removal of the Cherokee Indians from Georgia by Wilson Lumpkin : 1827-1841*, 2 vols. (New York: Dodd, Mead & Company, 1907. Reprint, USA: Kessinger Publishing’s Rare Reprints) 9-10, 13, 20, 31, 37, 42.

Wilson Lumpkin was an unabashed, unapologetic advocate for the interests of the white community of Georgia during his career as Representative, Senator, and Governor of the State of Georgia. In his writings and speeches, collected by Wymberley Jones DeRenne in two volumes entitled *The Removal of the Cherokee Indians from Georgia*, Lumpkin chronicled his campaign for Georgia's expansion. In 1825, as a member of Georgia's Board of Public Works, he said as he prepared to run for Congress that expulsion of Indians was his mission:

I was rather impressed with the belief that it was my particular mission, instrumentally, to do something to relieve Georgia from the incumbrance of her Indian population...¹⁷

Lumpkin was an unbending advocate of US expansion and domination throughout the 1820s and 1830s. As the process of Removal was nearing the expulsion of the Cherokee, during the Van Buren administration, Lumpkin as a US Senator opposed moves to make agreements with John Ross of the Cherokee as to the costs of Removal and allowing more time for emigration.

I acted the part of immutability *itself* in unyielding opposition to the slightest compromise with John Ross, as regards the slightest modification of the (New Echota) treaty.¹⁸

¹⁷ DeRenne, *Lumpkin*, 40.

¹⁸ *Lumpkin*, 308.

In 1830, President Andrew Jackson argued that Indian Removal was necessary for the country's development and security. Andrew Jackson's pressing for Indian Removal as a key part of his program is often cast as a result of Jackson as Indian hater, as noted by Louis Masur.¹⁹ However, there are a number of historians that argue differently. Biographies of Jackson by Robert Remini,²⁰ H.W. Brands,²¹ and Sean Wilentz²² portray Jackson as an ardent nationalist and his campaign for Indian Removal as a result of that drive. Jackson did operate from the racist views held by many in the US but, as well, his sense of things was that the welfare of the people of the US was dependent on the security and strength of the young republic and that involved removing any potential threats from within or nearby US borders.

Jackson as national candidate and as President presented a clear expansionist stand and gave that position prominence as he supported the initiatives of states such as Georgia. He worked and spoke in favor of Removal and in defense of its legality and constitutional necessity. Sean Wilentz characterizes Jackson as a man of his times – a 'western'

¹⁹ Louis P. Masur, *1831 Year of the Eclipse* (New York: Hill and Wang, 2001) 116.

²⁰ Robert Remini, *The Life of Andrew Jackson* (New York: Penguin Books, 1990).

²¹ H.W. Brands, *Andrew Jackson His Life and Times* (New York: Anchor Books, 2006).

²² Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York: W.W. Norton & Company, 2005).

plantation owner with slaves, growing cotton and raising horses, concerned with land and markets. As president of the US, Jackson's views had considerable influence.²³

Lumpkin's Argument for Removal

To Wilson Lumpkin, the situation in the 1820s was a crisis caused by the impediments to Georgia's growth. He had earlier worked on a plan for development, including a railroad through Cherokee territory, which also included the exodus of the Cherokee. For Lumpkin the needs of economic and social progress clearly could not be met while Indian communities existed close by. Under Governor Troup, in 1825, Lumpkin visited with a number of leaders of the Cherokee and advocated the need to emigrate, in discussions held:

...with a view of inducing and preparing their minds, as far as practicable, for an entire removal from...Georgia, to the west of the Mississippi.²⁴

Lumpkin worked continually to expel the Cherokee community from Georgia's borders throughout the 1820s and 30s. Going to Congress in 1827, Lumpkin was placed on the House committee on Indian Affairs where he introduced a resolution for the removal of Indians, within U.S. states or territories, to areas west of the Mississippi.

²³ Wilentz, *American Democracy*, 179.

²⁴ DeRenne, *Lumpkin*, 38.

For Lumpkin, there was no legitimate basis for supporting the rights of the Cherokee communities in the southeast. To him, the existence of the Cherokee Nation within the state boundaries of Georgia was intolerable; a problem whose solution was long overdue. Lumpkin referred to the Cherokee nation as a burden on the state, holding back its development and forcing it into an inferior status within the United States:

... the resources of Georgia could never be extensively developed by a well devised system of internal improvements, and commercial and social intercourse with other portion of the Union.²⁵

To Lumpkin, writing in 1827, Georgia was being held back by a “community (that was) incompatible” with US development and the state was being forced into an inferior political status, and the prospects seemed to be worsening rather than improving. The resolution to the question of satisfying the Compact of 1802, the vexing situation of Georgia being denied access and control to land drawn within her borders, was further complicated by some of the Cherokee:

...mostly mixed breeds and white bloods ... advanced in the arts of civilization ... (that) had their own written and printed constitution, and code of laws, ... (and) declared themselves to be a free and independent state and people ...²⁶

²⁵ *Lumpkin*, 41.

²⁶ *Lumpkin*, 42

Lumpkin saw the Cherokee nation as a threat to the state of Georgia; as a political obstacle and economic impediment standing in the way of the state taking her rightful place in US society. The developments of Cherokee agriculture, printing, and government reorganization compounded that threat. Georgia in 1828 responded to the Cherokee initiatives with a series of laws designed to disintegrate Cherokee society and distribute the land “freed up” in the process.²⁷

The civilization being developed by the Cherokee was not at all welcomed by Lumpkin. He did not want their community within Georgia’s drawn borders, whether they were ‘wandering barbarian savage heathens’ or were developing ‘civilization’ through Euro-American agriculture, schools, churches, and a newspaper. That Cherokee society had adopted European forms was not viewed as a positive development by Lumpkin.

Lumpkin argued that the small minority of mixed breeds was forming a “free and independent state” that was encroaching on Georgia’s sovereignty. That Georgia’s drawn borders might be altered to incorporate enough land from Florida to complete the 1802 agreement with the US was not considered. A Cherokee sovereign territory created for Lumpkin a situation of great tension as the state sought to gain control over it; he saw no rightful place for a Cherokee community in the US southeast.

Lumpkin was seeking support for Georgia by describing the state, rather than the Indians, as the injured party. Lumpkin sought to highlight a division between an overbearing

²⁷ *Lumpkin*, 43.

central government, ruling against the will of the citizens, and sovereign states defending their rights and ruling by the will of the citizens. Any decision of the central government that upheld Cherokee rights was tyrannical to Lumpkin, in whose view the Cherokee had no legitimate standing. To him there were not three sides to the issue to be considered; there were only the opposing sides of the federal government and the state government.

In December 1829, Lumpkin elaborated how the 1802 compact between the U.S. and Georgia had not been fulfilled. He said that the U.S. “has never denied the debt” but argued that it was unable to meet its obligations because it had not been possible to extinguish the Indian title ‘upon reasonable and peaceable terms.’ However, he continued, “the very impediments” lying in the way of extinguishment have been produced by U.S. policy.²⁸ To Lumpkin, the U.S. made a deal, was defaulting on it, and its claim of inability to comply was due to its own actions that stood in the way of completing the terms of the agreement.

The previous Adams administration’s resistance to Georgia’s demand for Indian land, and Adams’ consideration of the use of US troops to protect the Indian claim, was a major bone of contention for Lumpkin.²⁹ It was seen as an example of a harsh attitude toward the South. Lumpkin maintained that it was Georgia, not the Cherokee, which was the injured party, defending the rights of her citizens, who were being deprived of their

²⁸ *Lumpkin*, 43.

²⁹ Ronald Satz, *American Indian Policy in the Jacksonian Era* (Norman: University of Oklahoma Press, 1975), 4.

rights to the property of their state. To him, the Cherokee and their supporters were trying to hold the state under the oppressive rule of the federal government as it enforced misguided policies favoring Indians over whites. Lumpkin presented his case as one of the state of Georgia standing her ground, defending her republican values:

...contending for the sovereign constitutional rights of the states, against Federal usurpation...(with) integrity altogether Roman.³⁰

For Lumpkin, writing in 1828, following Cherokee government reorganization and Georgia's legislative response, there was no doubting the right of Georgia to claim and extend jurisdiction because of Cherokee treaty rights. To question Georgia's power in that expansion was to stand against Georgia and side with the "Federalists of the old school" such as John Q. Adams – whom Lumpkin did not see as a man of the people but rather:

a man 'not to be palsied, by the will of his constituents,' a consolidationalist at heart - holding in contempt the rights and sovereignty of the states ... ready to carry out the doctrine of force - brute force - on the sovereign States..³¹

³⁰ *Lumpkin*, 42.

³¹ *Lumpkin*, 41.

Lumpkin presented Georgia as the standard bearer of the democratic impulse of the American Revolution that was threatened by the overbearing rule of the federal government. Lumpkin said that the federal government might assist the Indians, as well as serve the interests of the states, but only when its actions supported the policies and conduct of a state. For Lumpkin, and also Andrew Jackson, the unquestioned superiority of the rights of a state over those of the central government and the Indian communities in this matter was a basic principle to be followed. For Lumpkin the issue was clearly that of righting the wrongs done to Georgia by federal Indian policy.

Jackson's Argument for Removal

To Andrew Jackson as well, there was no question as to whose rights were paramount. In his view the states already had the power to extend jurisdiction over Indian lands. Further, he stated that the Indians did not have the same status as US citizens.

The Indians are the subjects of the United States, inhabiting its territory and acknowledging its sovereignty...the inhabitants of Territories are Citizens of the United States...the Indians are Subjects...³²

Jackson continued, describing the division of rights that followed from that determination of the Indians as non-citizen subjects:

³² James D. Richardson, *A Compilation of Messages and Papers of the Presidents*, Vols. II & III. Published by authority of Congress, 1900, 457.

...whenever the safety, interest, or defense of the country shall render it necessary for...The United States to occupy and possess any part of the Territory...they have the right to take and dispose of it.³³

To Jackson, a strong advocate of US security and expansion, the contention over control of Cherokee country was one of the issues that potentially threatened the strength of the country. To him, the state of Georgia claiming the Cherokee land that lay within the northwest borders of that state was well within its right, as he argued in his first Annual Message, December 8, 1829.³⁴ For Jackson, a plantation owner and veteran of military campaigns against the British and the Creek Red Sticks, the establishment of “ an independent government within the limits of Georgia and Alabama” was a threatening development.³⁵

Seeing Cherokee independence and equality as a direct challenge to the campaign of Georgia to take over all the lands occupied by Indian communities, Jackson framed the problem as one of sovereignty, between the States extending their control within their claimed boundaries as against the Indians claim of sovereignty over the same area, with the United States asked to protect one side or the other. As Jackson weighed the question of the condition and destiny of the Indians and the condition and destiny of the federal

³³ Richardson, *Compilation*, 457.

³⁴ *Compilation*, 456-457.

³⁵ *Ibid.*

and state governments of the United States, he posed it as a question of sovereignty of the states, a question of:

whether the General Government had a right to sustain those (Indian) people in their pretensions (of sovereignty) or an obligation to uphold the Constitution which declares ‘no new state shall be formed or erected within the jurisdiction of any other State’.³⁶

With the question framed in this way the answer for Jackson was obvious. It would be unconstitutional for the United States to “sustain peoples’ pretensions” of being sovereign nations, which Jackson said, in agreement with Georgia’s advocates, was allowing the establishment of a “foreign and independent government”, setting up a state within a state.³⁷

Further commenting on US policies, Jackson argued that the US policies of civilizing the Indians, in settled communities, conflicted with policies of land acquisition and removal, which kept Indians in a “wandering and savage state.”³⁸ To Jackson, advocating civilization for the Indians while taking their land was self-defeating. It was a confused policy that had, by and large, produced almost no civilized Indians ready to be absorbed into the US. In this criticism Jackson was exposing the contradictory nature of US Indian policy, which claimed respect for Indian sovereignty while steadily working to

³⁶ *Compilation*, 457.

³⁷ *Ibid.*

³⁸ *Ibid.*

undermine it. Jackson contrasted this with his straightforward policy of focusing on continued expansion. He argued that even the goal of civilization and incorporation was wrong, because where the civilization policy had worked, it had produced some Indian communities that were setting up an independent government. Thus to an extent the policy had been effective, and that in itself was also a problem.

Either way, effective and civilizing or ineffective and uncivilizing, to Jackson the past US policy was ill conceived and executed. To him, the reaction of the US to both aspects of the problem he saw should be the same: continued expulsion of the Indian communities and further expansion of the white settlements without the contradictory rhetoric of respect for Indian sovereignty.

Further Arguments for Removal

Jackson's reasoning supported Georgia's campaign in every way. Presenting arguments for the dispossession and expulsion of the Cherokee, Lumpkin continually said that he was convinced that he was in the right in advancing Georgia's interests. He also maintained that he was not being mean spirited in exiling the Indians, but instead was working for the interests of all concerned in his endeavors, as he had: "...the conviction that I was laboring in the cause of humanity, and to promote the best interest of the

Indian, as well as the white race.”³⁹ He wrote that he proposed the removal of the Cherokee in order to accomplish two goals:

First ... relieving my own state from the encumbrance of her Indian population, and ... other states in like condition.

The second goal was presented as a companion to the first:

Secondly, I was anxious to better the condition of the Indians, by placing them beyond the jurisdiction and control of the state government...⁴⁰

Lumpkin’s stand was that while he was forcefully pursuing a campaign of expelling the Indians, he was not trying to oppress the Indians but was just being fair-minded in his pursuit of justice for his state. In 1827, on the House Indian Affairs committee, he advocated for deportation of the Cherokee not only for the primary benefit of the state of Georgia, but also maintaining that exile would help the Indians. For Lumpkin:

... it was my particular mission, instrumentally, to do something to relieve Georgia from the encumbrance of her Indian population, and at the same time benefit the Indians.⁴¹

The statements by Lumpkin only make sense from the racist view that it was absolutely impossible for white and Indian communities to exist near each other and that the Indians

³⁹ *Lumpkin*, 49.

⁴⁰ *Lumpkin*, 44.

⁴¹ *Ibid.* 39-40.

had no say in the matter or rights to be considered. Any recognition of the possibility of Indian and white coexistence or of Indian voice or rights would undermine the entire campaign for Removal. The views of Lumpkin and Jackson regarding the rights of the federal and state governments in relation to the rights of the Indians reflected that of many in the US. They thought that although the Indians had occupied the land in the past, the future did not belong to them. As described by Reginald Horsman, the policies enacted by the US following independence from Britain had been to continually press for US expansion. Even though the opposition to Removal could quote Washington and Jefferson in support of Indian independence and sovereignty, those pressing for Removal could point to a history that overrode those words.⁴²

For example, the Northwest Ordinance described a process of developing three new states in that area of the continent. But there was no mention of that development being contingent on the agreement from the Indian people already occupying the area.⁴³ There was also no mention of Indian communities being somehow incorporated into the new states, or composing one of the states formed. As Horsman describes, there was rather the assumption that the Indian communities would yield territory and evacuate or disappear as the white settlements expanded.⁴⁴

⁴² Reginald Horsman, *Expansion and American Indian Policy, 1783-1812* (Norman, University of Oklahoma Press, 1967) x.

⁴³ William Macdonald, ed. *Documentary Source Book of American History 1606-1913* (New York, The Macmillan Company, 1925) 212, 215-216.

⁴⁴ Horsman, *Expansion*, 56.

The views of Jackson and Lumpkin were very much in keeping with the past practice of the white colonizers as they intruded themselves across the continent. They argued that it was a question of the right of the states and the welfare of their citizens to maintain US expansion. Jackson's adjustment of US policy of respect/expansion was to focus on the expansion.

CHAPTER 3

A DEFENCE OF THE CHEROKEE

For the Cherokee the 1820s were a continuation of centuries of pressure from settler and plantation colonization, and the stepped up pressure from Georgia officials. To Chief John Ross, those burdens threatened the Cherokee nation with dissolution. Ross's collected letters and statements are views of a people devastated by the European discovery of America. Ross described some changes these western Atlantic people saw in the American world, in an 1824 letter to John C. Calhoun, Secretary of War under President Monroe:

By tracing the situation of our Ancestors for two Hundred year back, we see nothing desirable, but much to deplore – the happiness which the Indians once enjoyed...was now poisoned by the bad fruits of the Civilized Tree which was planted around them...tumultuous war arose, and the mountains and plains were covered with carnage...⁴⁵

Chief John Ross

John Ross (Kooneskoowe), of Cherokee and Scottish ancestry, grew up in two worlds. His maternal great grandmother was Ghigoosie, a Cherokee of the Bird Clan. Though 1/8 Cherokee, he is described in his biography as favoring their ways as he spent his early

⁴⁵ Moulton, *John Ross*, 65.

years around the Cherokee who traded at his father's store at the base of Lookout Mountain in Cherokee Country. Biographer Gary Mouton describes Ross as speaking the language haltingly and unable to read it, but understanding the Cherokee's "firm attachment to their ancient lands and (had) a desire to keep united a people formed in untraceable antiquity."⁴⁶

Ross was tutored at home, schooled in a mission supported by the American Board of Commissioners for Foreign Missions, and attended an academy at South West Point, now Kingston, Tennessee. Though familiar with white society, he was seen as someone who was committed to defending the needs of the Cherokee and in 1815, at age 25, was chosen to be part of a delegation to Washington, DC. Following the creation of a Cherokee bicameral government, in 1817, Ross assumed the presidency of the National Committee in 1818. Ross served in the government and on delegations and was elected Principal Chief in 1828.⁴⁷

Ross and the Argument Against Removal

Ross did not see that the European discovery of America had brought any great blessings to the one to two million people living east of the Mississippi in the late 1400s.⁴⁸ Though there is no indication that prior to the Europeans' arrival life in America was idyllic, there

⁴⁶ Moulton, *John Ross*, 2, 6.

⁴⁷ *John Ross*, 27.

⁴⁸ Daniel Richter, *Facing East from Indian Country* (Cambridge: Harvard University Press, 2001), 7.

is little argument that the advent of Europeans caused great disruptions. The invasion of America from the east brought disease epidemics, economic dislocation, and increased warfare. Ross gave a description of the situation facing the Indian communities that was obscured when they were being dismissed as incorrigible barbarian savage heathens:

Let us now for a moment, seriously reflect on the true causes, which have universally produced the extinction of Indian tribes...their land having been swept from under their feet by the ingenuity of the whitemen, and being left destitute of a home, ignorant of the arts and sciences and possessing no experience in the employment of a laborious & industrious life...⁴⁹

In opposition to Removal, Ross presented an alternative view of America; instead of it being a wasteland needing to be tamed and made to produce for civilization, it was a populated country that should be respected. For the Cherokee, Removal was not the fulfillment of an inter-government agreement or the providential march of progress. Removal was instead the latest blow threatening their destruction.

While the proponents of Removal described a crisis caused by the resistance to, and contention over, US expansion, Ross described a crisis of displacement. After hundreds of years of occupation and recurrent losses of great amounts of territory, ceded as a price for the promise of retaining a small amount, they were now to lose everything. In an

⁴⁹ *John Ross, 65.*

earlier letter, replying to one of many requests for the Cherokee to leave their land, Ross pointed out that:

...our nation has made cession after cession of lands...what has been the tone of their (White Brethren's) voices? More land, more land, the whole limits of our chartered limits.⁵⁰

In addition to the repeated calls from government officials and agents to give up their land, there were pressures from repeated and sustained incursions of white settlers. Although there were clear treaty agreements with the US guaranteeing Cherokee rights, providing for their security, and stating procedures for identifying and removing intruders, enforcement was either intermittent or non-existent. The lax protection was seen as a silent approval of the continued land grab. Ross wrote to John C. Calhoun in 1822:

Brother, we have repeatedly complained to your Government of the injuries done to our nation by our white Brethren of the frontier states, in direct violation of the good faith solemnly pledged by your Government...There appears to be a great relaxation in enforcing those obligations.

Ross related that it was more than just the taking of their land. Those expanding the frontier were acting like barbarians, destroying and pillaging, while the federal

⁵⁰ *John Ross*, 44-45.

government, that had pledged to protect the Indian in exchange for severe limits on their military forces and their foreign relations, was turning a blind eye and a deaf ear to the Cherokee travail. The invasion brings to mind some earlier advances westward, such as those of Attila the Hun into Europe. Ross elaborated on the depredations of the invaders on their country's frontier:

Intruders of considerable numbers have been tolerated to remain on our lands to secure their crops from year to year...They do not only injure us by living on our lands, but by stealing or arbitrarily driving off Stocks of property belonging to our citizens...⁵¹

Ross was pointing out that it was not only an issue of the US tolerating land being taken for use by white settlers but also an issue of tolerating the destruction and theft of Cherokee property. Though the Cherokee representatives repeatedly complained, they received no satisfaction and the intrusions and depredations continued. Ross said that the requests of the Cherokee were not those of special favors; they were asking for the US to uphold its part in the many bargains it had struck.⁵²

To Ross the Cherokee nation was not something in the way of civilization's progress. They were a society whose heritage was a country they had lived in for hundreds of years. Ross wrote in a letter to Secretary of War John C. Calhoun that he very much disagreed with Calhoun's statement in his January 30, 1824 letter to Ross, which

⁵¹ *John Ross*, 44-45.

⁵² *John Ross*, 44-45.

suggested that it was the Cherokee who had no right to live as a nation where they had been for centuries. Ross quoted Calhoun as advising the Cherokee:

...that it will be impossible for us to remain for any length of time in our present situation, as a distinct society or nation, within the limits of Georgia, or of any other state and that such a community is incompatible with (the new) system and must yield to it.⁵³

Ross disagreed strongly with Calhoun's remarks and disputed the authority of the US government to decide who was entitled to live in a given area and who was not. That federal and state officials had drawn boundary lines and made agreements among themselves did not mean to Ross that the negotiations and agreements the Cherokee made in the past should be disregarded. He directly countered Calhoun's remarks that the Cherokee should now yield because their nation was now "incompatible" with the state of Georgia. Ross elaborated the Cherokee's stand of their rights by heritage and agreement of boundaries as follows:

Sir, to these remarks we beg leave to observe, and to remind you, that the Cherokee are not foreigners, but original inhabitants of America, and that they now inhabit and stand on the soil of their own Territory, and that the limits of their Territory are defined by Treaties, which they have made with the Government of the United States, and that the States by which they are now surrounded have been created out of the lands which was once theirs, and *that they cannot recognize the Sovereignty of any State, within the limits of their Territory.*⁵⁴ (italics added)

⁵³ Ibid., 65.

⁵⁴ Ross, 66.

To Ross US officials, who were relatively recent immigrants to North America, had no right to decide who was compatible and who was not. In the face of statements of the US that, in effect, the Cherokee had worn out their welcome and needed to move on, Ross reminded Calhoun that it was the Euro-Americans who were newcomers, to be welcomed or not. Ross emphasized that agreements, such as the 1802 Compact, made without consulting the Cherokee, should not be binding on them.

However, in practical terms, it was not so much a question of rights as it was a question of power. It became a question of whose territory was inside of whose; somewhat similar to a game of *Go* or *Wei Chi*,⁵⁵ in which who is surrounding whom depends on which player has the initiative at a given time. Wilson Lumpkin was speaking from the side having the initiative and John Ross was speaking from the side that had the game board originally but lacked the force to hold its position. Though the Cherokee had lived in their country before Georgia or the US had come into existence, their right to remain there was being taken out of their hands by these new political organizations.

The Compact of 1802 between the US and Georgia was a constant source of agitation for the Cherokee to accept their dispossession and exile and the Cherokee constantly opposed

⁵⁵ *Go* or *Wei Chi* is a board game, sometimes called Japanese or Chinese chess, in which two opponents alternately place 'stone' markers on the intersections of perpendicular lines, inclosing 'territory' while threatening the opponents' markers and territory.

the agitation. John Ross protested the stand of Georgia in regard to the 1802 compact and urged the US to remember the conditional nature of that agreement, conditional on the “free and voluntary consent of the Cherokee Nation.” Ross maintained that the Cherokee had every right to remain in the land they had not ceded and that intention had been repeatedly been made clear. He said they had never promised to cede land in the future and the US had guaranteed their title.⁵⁶

Ross continually emphasized that the United States had no basis for speaking for the Cherokee or making commitments for their territory. Ross said again that there was no basis for Georgia to rail against the Cherokee for refusing to yield their title: “all to the United States, so that her (Georgia’s) own aggrandizement may be raised upon their (Cherokee) ruins.”⁵⁷ Ross repeated that the:

Cherokee Nation have never promised to surrender at any future period ... their title to lands but to the contrary, the United States have by Treaties, solemnly guaranteed, to secure to the Cherokee forever, their title to lands, which have been reserved to them.⁵⁸

Similar to the practice the US followed in dividing and consolidating the country included in the Northwest Territories, without regard to the Indian people having a history there, the Indian communities in the southeast were not asked to the table.

⁵⁶ *John Ross*, 64.

⁵⁷ *John Ross*, 64.

⁵⁸ *John Ross*, 64.

Treaties and proclamations notwithstanding, the Indians were expected to recede as white settlements advanced. In his Annual address to representatives of the Cherokee nation in 1828, Ross enumerated the Cherokee position, in which he listed and replied to the claims that Georgia made against the land and sovereignty of the Cherokee:

The pretended claim of Georgia to a portion of our lands, is alleged on the following principles. First, by discovery. Secondly, by conquest. Thirdly, by compact.⁵⁹

As to the claims based on the rights of discovery he said that the Europeans found a continent that was already inhabited and were permitted to stay and form colonies. Ross continued to relate that as the colonies multiplied they began to assert a claim against the land of those who had allowed them to stay:

...without the consent or knowledge of the native lords, a potentate of England, *whose eyes never saw, whose purse never purchased, and whose sword never conquered* the soil we inhabit, presumed to issue a parchment, called a "Charter," to the colony of Georgia, in which its boundary was set forth, including a great extent of country inhabited by the Cherokee and other Indian Nations. (italics added)⁶⁰

In a vein similar that echoed in later debates and Supreme Court decisions, Ross ridiculed the claims of the same foreign potentate the American colonies had revolted against. To Ross, the claims of discovering, and thus owning and controlling, an already populated

⁵⁹ Ibid., 142.

⁶⁰ *John Ross*, 142.

land across an ocean was the height of arrogance, and the acceptance of such claims, taking the ground from under the feet of those living there, could only be accepted on a very self-serving basis. To any sensible person, he said:

The claim advanced under the plea of discovery is preposterous. Our ancestors from time immemorial possessed this country, not by a “Charter” from the hands of a mortal king, who had no right to grant it, but by the Will of the King of Kings, who created all things and liveth for ever & ever.⁶¹

Ross then took up the issue of the second principle, the claim of Georgia to Cherokee land through the transference of the US right by conquest over Great Britain and, by extension, over the Cherokee:

Secondly, After a lapse of many years when the population of their colonies had become strong, they revolted against their sovereign, and by success of Arms, established Independent Government, under the name of “the United States.” It is further alleged that the Cherokee Nation prosecuted a war at the same time against the Colonies.⁶²

Ross did not dispute that there had been a war between the British colonies and the British homeland, or that there had been Cherokee forces engaged in the conflict as well. He did however argue the question of combatant status of those involved in the conflict.

⁶¹ Ibid.

⁶² *Ross*, 142-143.

He said that defeat of the British did not equate to conquest of the Cherokee, as they were never subjects of the British, and therefore there were no US rights to conquered territory to be transferred to Georgia:

The claim advanced ... on the ground of conquest is no less futile than the first, even admitting that the Cherokees waged a war with the Colonies ... The Cherokees took part in the war, only as the allies of Great Britain, and not as her subjects ... over whose land she exercised no jurisdiction; therefore, nothing could be claimed from them, in regard to their lands by the conqueror over the rights of Great Britain.⁶³

For Ross, there was no merit to the idea that the American colonists had won overlordship of the Cherokee from the British, because the British never had it in the first place; and, having disputed the claim of English jurisdiction and dominion over Cherokee land through discovery, the claim through conquest also had no basis. However, even if that possibility was allowed, Ross said that the claim was negated by the agreements terminating the conflicts acknowledging the territory and independence of the Cherokee:

...the United States negotiated with the Cherokees on the terms of peace as an Independent Nation, ... in no one stipulation can be found a single idea that our title to the soil has been forfeited, or claimed as the terms of peace; but, to the contrary, we discover that the United States solemnly pledged their faith that our title should be guaranteed to our Nation forever.⁶⁴

⁶³ Ibid.

⁶⁴ *Ross, 142-143.*

Thus for Ross, as the terms of peace were agreements concluded between two independent countries, the outcome of the wars of the late 1700s did not support a claim of Cherokee subservience. Instead, the post-war agreements supported the rights of Cherokee national independence. He said that in the terms of agreements between nations of the Cherokee and the United States, rather than a claim of territory won by force of arms, there was a guarantee given to respect the title of the Cherokee.

Ross then took up the third basis of the claims of Georgia of the right to own and control the Cherokee lands, that of the 1802 agreement between the U.S. and Georgia. That claim as well depended upon the assertions of British rights, as the territory ceded by Georgia had been included in British colonial claims. The 1802 agreement clarified the status, within the United States, of the territory that was to become the states of Alabama and Mississippi. By that agreement, Georgia gave up any claim based on English charters on that territory and the U.S. promised to try to make agreements with the Indian peoples within Georgia's legislated boundaries that would open up the lands to white occupation and control.

As Ross noted, the peoples of the discovered lands covered in the agreement were not consulted and were not party to the agreements. For Ross it was as though two parties negotiated over the price and disposition of a cotton plantation that neither of them owned in the first place and then complained when the original owner had the gall to object to being evicted and his property divided by the two other parties.

The third pretension is extremely lame. The United States enters into a compact with Georgia that they will purchase certain lands, which belong to us, for Georgia, as soon as they can do it on *peaceable* and *reasonable terms*. The promise was made on the part of the United States ... and the Cherokees not being a part in the compact, their title cannot be affected in the slightest degree.⁶⁵

To Ross, Cherokee country was still theirs to hold or to sell, and the Cherokee government made several statements saying it planned no further cessions of land; that it needed the land that remained after several cessions of land in the past. To Ross, what the federal government and the government of Georgia had discussed and agreed to in 1802 had no bearing on the agreements the US had made with the Cherokee. Their stand of not surrendering further land did speak to the agreement, however, as did their reminding the US of its treaty commitments to protect the Cherokee title.

The arguments of Ross, later repeated by Senator Peleg Sprague and Supreme Court Justice John Marshall, against Discovery, Conquest, and Compact were not directly refuted in the debates. Did colonial and imperial rights of discovery and conquest have application in the democratic republic of the US? Implicitly, the numerous assertions that Britain's claim, and spoils of war, and federal and state agreements should be accepted gave a positive answer to the question. Ross's arguments were essentially treated as irrelevant. The idea that there was any pertinent issue to be settled between imperial and

⁶⁵ *Ross*, 143.

colonial incorporation as opposed to mutual treaty agreements was dealt with by denouncing treaty agreements made with Indians as unwise and mistaken.

Ross also made practical suggestions as to how the US might honor its agreement with Georgia without the Cherokee being forced to pay the price for an agreement they had no say in. In a letter to John C. Calhoun, February 11, 1824 Ross suggested that the U.S. “adopt some other means, to satisfy Georgia...” pointing to:

an extensive Territory in the Floridas...(which could be used to)...extend the limits of Georgia in that section of Country, if her present bounds to considered to (sic) small...”⁶⁶

To Ross, that proposal would have satisfied the issue of land area that Georgia claimed was her due and would not have involved disturbing the territory of any other state. As far as the exchange of claims and promises, the proposal would seem to have satisfied Georgia’s demand of land within her borders being clear of Cherokee occupation. The US did not develop that discussion, with the proposal given short shrift by the US as not worthy of a reply. On its face the proposal would seem to have solved the dilemma of how to reconcile the claims of Georgia and the Cherokee; Georgia getting land promised and the Cherokee holding its land previously guaranteed by the US.

⁶⁶ Ross, 64.

That the proposal was ignored can be interpreted in a number of ways: that the Cherokee were not considered to be serious negotiating partners having a say in the matter and their rights were not an important consideration, that the amount of land claimed was not as important as its location, or that the presence of any organized Indian community within the area enclosed by the expanding US was intolerable to both the federal and state governments. There were indications that the main issue was the existence of a land area with a semi-independent Indian community within or proximate to the US. In the words of Calhoun, for the Cherokee it was impossible to remain in the southeast because their community was incompatible to the state of Georgia. During the debate in Congress, Lumpkin, Jackson, and Andrew Cass, of Jackson's cabinet, all expressed antipathy for the idea of an Indian nation in the southeast, citing numerous issues of national, economic, and local security.

Facing East, True Democracy, and Power

Ross was setting out an American view facing east that was completely opposite of an American view facing west. Instead of the Indians living within the boundaries of Georgia at the sufferance of whites, in Ross's view the whites were the immigrants. He thought that it was strange for the immigrants to decide who was suited to live in an area; to Ross it was the country of the Cherokee, to be run by them. As in *Wei Chi*, the issue of whose view would prevail would depend on who had the initiative and the power to hold it. Rather than a question of principles of right and wrong, the issue was decided more on a political plane of might makes right, a matter of domination and subordination.

In terms of principles, Ross presented the Cherokee as carrying on the American democratic impulse. In his 1828 Annual Message, Ross presents a discussion of the new character of the Cherokee government, “under a constitutional form, and on the principles of republicanism,” which included “free suffrage of the people...guaranteed by the Constitution.” Ross called for “The organization of the new Government, the revision and amendments of the old laws...” and the setting up of a Judiciary system, voting roles, and legislation regarding the public press.⁶⁷ To Ross the developments of Cherokee society should be welcomed and supported by the US. He relates his view that despite the “glaring expressions of hostility” from the state of Georgia, the “relation to the United States, as recognized by existing Treaties, is not in the least degree affected.”⁶⁸

Georgia was impressed, but not in a positive way. Instead the Cherokee developments were seen as a grave threat and provocation. In response to the reorganization of the Cherokee government the government of the state of Georgia adopted laws, described by Gerard Magliocca as “Cherokee Codes” that essentially defined the Cherokee as ‘people of color,’ that severely limited their rights, movements, and residence.⁶⁹ In addition, the state declared it to be illegal for the Cherokee government to operate and its people to oppose the takeover. Ross reported that the Georgia legislature, in December 1828:

⁶⁷ Ross, 140-141.

⁶⁸ Ibid., 142.

⁶⁹ Gerard N. Magliocca, “The Cherokee Removal and the Fourteenth Amendment.” *Duke Law Journal* 53.3 (Dec 2003): p 875(91) found on Academic OneFile Print.find.galegroup.com/itx/printdoc.

...during its late session, passed an act to add a large portion of our Territory to that State, and to extend her jurisdiction over the same, and declaring “all laws and usages, made and enforced in said Territory by the Indians, to be null and void after the first of June, 1830. No Indian, or descendent of an Indian, to be a competent witness, or a party to any suit to which a white man is a party.”⁷⁰

To Ross, the Georgia legislation made it very clear that the state had no intention of respecting the sovereignty of the Cherokee nation, but rather was on a course of destroying its existence in the southeast, while the US acted as though its obligations were to Georgia instead of the Cherokee. The state, by declaring it was taking over the land in dispute, dissolving the Cherokee government, and giving the Cherokee the status of non-persons, was moving to have complete control of Cherokee country. Georgia was putting into practice Calhoun’s description of the Cherokee as being incompatible with the new regime in the southeast.

To Ross, discussing the December 1828 act passed by Georgia, the federal and state governments were ignoring their own political and Christian heritage to carry out the suppression of the Cherokee. He said:

...it was not conceived, much less believed, that a *State*, proud of *Liberty*, and tenacious of the *rights of man*, would condescend to have...the imposing attitude of a usurper of the most sacred rights and privileges of a weak, defenseless, and innocent nation of people...to whom the faith of

⁷⁰ *Ross*, 154-155.

the United States is solemnly pledged to protect and defend them against the encroachments of their citizens (original italics)⁷¹

The Cherokee, having agreed to a limited sovereignty under the protection of the US, were told that the protection promised was incompatible with the obligations to Georgia. The pledges of the US regarding people's rights, mutual respect, and of protection of liberties notwithstanding, the tide of white settlements was not to be stayed. The faithlessness of the US was laid bare.

When gold was discovered on Cherokee land, Georgia officials and the Jackson administration used the situation to further pressure the Cherokee. The discovery followed the 1827 Cherokee government reorganization and, with Jackson's election, the state lost no time in taking the situation in hand. Additional laws and edicts of Georgia went into effect in June 1830 that forbid Indians to mine gold while encouraging white settlers and gold seekers to stream into Cherokee country.⁷² The surge of whites and the resulting social disorganization was used as a basis for a call for law and order, initially provided by federal troops, which were soon withdrawn and replaced by Georgia militia. The turmoil provided a reason for a military presence and Georgia's insistence on her own military presence gave Jackson a reason for withdrawing federal forces, so as to not

⁷¹ *Ross*, 154-15.

⁷² The laws of 1828 and 1820 can be read in the Appendix of this work.

infringe on the state's authority to govern its territory. The effect was to place Cherokee country under Georgia martial law.

In a letter written in January 1831, to one of the congressmen opposing Jackson's program, David Crockett, Ross describes the federal assistance to Georgia's actions through coordination of military deployments. Even though the US military was given the task, by treaty arrangements, of providing defense of the Cherokee nation and its people, it was employed to do the opposite:

...the withdrawal of federal troops has been ordered for the purpose of making room for the militia Troops of Georgia, who are ordered into service...for the purpose of dispossessing the Cherokee of their gold mines within their own Territory...⁷³

The state militia's entry into the Cherokee land that contained gold deposits served to encourage further intrusions of whites into the gold fields and to evict the Cherokee that were developing the deposits. With the federal government defaulting on security arrangements, the Cherokee were left to face Georgia's expulsion campaign on their own.

As the 1820s drew to a close, the pressure on the Cherokee to abandon their land and sovereignty continued to grow. The options left to the Cherokee were to either accept life in the southeast as individuals (without rights) or accept the dispossession of what they had built there and their exile to land toward the center of the continent. In the course of

⁷³ *Ross*, 211.

the 1820s multiple government spokesmen made it clear that the Indian communities were not considered nations on an equal footing with the US. As Ross described in his Annual Message of October 1829 the result of Removal:

...if, contrary to all expectation, the United States shall withdraw their solemn pledges of protection, utterly disregard their plighted faith, deprive us of the right of self-government, and wrest from us our land – then, in the deep anguish of our misfortunes, we may justly say, there is no place of security for us, no confidence left in the United States (that it) will be more just and faithful towards us in the barren prairies of the West, than when we occupied the soil inherited from the Great Author of our existence.⁷⁴

To Ross it was terrible for the US to abandon its treaty agreements. As he understood international law and basic principles of right and wrong, the US should protect Cherokee society instead of encouraging and assisting the state of Georgia in the destruction of the Cherokee. It was the Cherokee who had a long history on the land in question and Georgia and the US were recent immigrants and thus it was Georgia that was inside of Cherokee country instead of the reverse. In Ross's view the Cherokee were not incompatible with the southeastern part of North America they had lived on before Georgia had come into existence.

The bases of claims put forward by Georgia, of discovery should not apply, and that of conquest did not apply. It was wrong to say that the king of another country could by fiat decide the ownership and occupation of a land of which he knew almost nothing, much

⁷⁴ Ross, 172

less governed. To Ross the charters of the government of England lacked any validity when compared with the Cherokee's long history of developing and defending their country. The principles of the rights of man and defense of democratic rights should not be subservient to the principles of colonial, imperial discovery and conquest.

CHAPTER 4

ARGUMENTS FOR REMOVAL

As the fourth decade of the 19th century opened, the contention between the Cherokee and the federal government and states of the southeastern US became a national debate with the Indian Removal Bill coming before the US House and Senate. Congress took up squarely the issues of Indian rights, states' rights, and US responsibilities and commitments. Wilson Lumpkin was determined to free his state of its Indian communities once and for all, and strongly argued his position in the House of Representatives. President Jackson fully supported the initiative as a major part of his Administration's program that would strengthen the federation and make it more secure. Lewis Cass, territorial governor of Michigan and, starting in 1831, Jackson's Secretary of War, argued for Removal as a principled position instead of being cast as simply the strong bullying the weak.

As the US Congress took up the debate over Indian Removal the arguments of those favoring continued US expansion focused on issues of the rights and needs of states such as Georgia and the necessity and benefits of Removal to the US in contrast to the dangers of the status quo. The proponents argued that it was crucial to support the rights of the states to deal with the Indian communities as they saw fit. They held that the rights of citizens and states of the US should overrule the rights held by Indian communities; that

US states' rights and colonial custom nullified contracted obligations and pledges to Indian nations. Further they argued that Removal would benefit the US, and as well, the Indians, while its defeat would be disastrous to both.

The arguments of Jackson, Lumpkin, and Cass accepted as given the racist view that Indians were an inferior people. They said that the rights of civilized, Christian, settled, agricultural and industrious states of the United States should overrule and nullify the rights of savage, barbarian, heathen, wandering Indian communities; that US state's rights and colonial edict and custom overrode contracted treaty obligations to Indian nations. Any evidence of Indian society and economy that contradicted their views was either ignored or dismissed as inconsequential.

For Lumpkin, Jackson, and Cass, Removal would continue US expansion as an advance of civilization, improve national security, and strengthen the union by correcting federal policies that were harming the states and their citizens. They said that Removal would solve the problem of gaining land, occupied by stubborn Indians, that was needed for US expansion. Further, the proponents said that Indian policies of the federal government had interfered with initiatives of states such as Georgia against Indians and that interference was harmful to the Indians as well as oppressive to the states. Indian treaty rights should be abrogated and Federal and state laws that restricted and abolished Indian rights should be advanced and proximate Indian communities should be moved some distance away from US states.

The Rights of Georgia

In an 1830 speech to the Senate, Wilson Lumpkin continued to raise as a central point the need for changes in the U.S. government's policy towards the relations between the Indians and Georgia to relieve the state's suffering. For him, up to that time, the U.S. government has been in an almost unlimited control of the Indian communities while treating them as wards and dependents; unlimited control both in terms of the dependent status of the Indian communities and US control independent of the wishes of the states. That state of affairs needed to change so that the states would not be impeded in exercising control over Indian land.⁷⁵

To Lumpkin the situation growing out of the "imbecile course on the part of this government" was perilous because of the effects of "long delayed rights of Georgia" (regarding the 1802 compact), but he expressed confidence that Congress would "do justice to Georgia, as well as to the Cherokee Indians" and that "the cause of *right* and of *justice* will be no longer urged in vain." (original italics)⁷⁶ Lumpkin framed his discussion in terms of reconciling competing interests within white America. There was no consideration of the Indians having any part to play in the decision. To him the Indian communities bordering on areas of white expansion were obstacles to be overcome.

The U.S. handling of treaty relations had brought about a situation in which the Cherokee, in Lumpkin's view, completely misread their situation. He complained that

⁷⁵ *Lumpkin*, 70.

⁷⁶ *Lumpkin*, 53-54.

the Cherokee had repeatedly declared they will “*never, no, never*, relinquish their present possession.” The Cherokee had emphasized their stand by setting up a sovereign and independent state, in “disregard ... of the rights of Georgia” and enacted laws that are in “direct violation of the laws of the United States.” For him the Cherokee could not be allowed to assert their stand on their national rights because it opposed his state’s expansion and consolidation as well as the interests of the U.S.⁷⁷

For Andrew Jackson, as well, the past course of action of the US had created tension and conflict. The policies pursued by the federal government resulted in a loss of confidence in it and in confusing claims of jurisdiction made by the State of Georgia, the Cherokee Indians, and the U.S. Government. Jackson argued that this issue that had plagued previous US presidents could and should be resolved by the expulsion of the Indian communities from the southeast of North America and their relocation to the west of US states.⁷⁸

To Lumpkin, it was not just a question of civilized versus uncivilized or Christian versus heathen, though those were a part of his arguments. He objected to the fact that the Cherokee were there at all, developing a government modeled on that of the US. For him it was a limiting presence, subverting the rights and status of Georgia; a great injury to an oppressed state having a ‘noble Roman spirit that had endured much.’⁷⁹ On the issue of

⁷⁷ *Lumpkin*, 54.

⁷⁸ Richardson, *Compilation*, 457.

⁷⁹ *Lumpkin*, 81.

who was entitled to the land, he argued that "...elementary writers upon natural law" said that Indians had no rights. Their views were expressed in the laws of :

... the Colonial, State, and General government of this country ... in all the acts, first by the Colonies, and afterwards by the State government, the fundamental principles, that the Indians had no right either to the soil or sovereignty of the countries they occupied has never been abandoned,...⁸⁰

In Lumpkin's view the practice of European immigrants to America illustrated fundamental principles denying Indian rights and President Andrew Jackson argued for Removal as the constitutional rights of the states. Jackson's framing the question as conflicting control of state powers, between Georgia and the Cherokee, led to the answer of supporting the state's sovereignty. Jackson maintained that US legislation sanctioned a state's rule within her boundaries. He said in his Second Annual Message:

No act of the General Government has ever been deemed necessary to give the States jurisdiction over the persons of the Indians. That they possess by virtue of the sovereign power with their own limits...⁸¹

Jackson argued that US practice was to leave decisions to the states regarding Indian relations within their drawn borders; the federal government could advise, but the state would decide. To illustrate how treaty law had not always been the only consideration in

⁸⁰ *Lumpkin*, 83.

⁸¹ *Compilation*, 522.

Indian relations, he gave an example from the 1782 Journals of Congress regarding a question of land rights in South Carolina:

Resolved, That it be recommended to the legislature of South Carolina to take such measures for the satisfaction and security of said tribes as the said legislature in their wisdom may think fit.⁸²

Following this line of reasoning, there was no question of whether or not Indian claims should stand in the way of Georgia's expansion. To Jackson, Georgia, in reacting to the elaboration of the Cherokee government by extending counter jurisdiction over the area concerned, was asserting that state's rights.⁸³ Speaking to questions of justice and sovereignty, Jackson said that Georgia's action:

seems to have been anticipated by the Proclamation of 1783...and the act of 1802..." because the Indians are "not only 'surrounded by settlements...', but are now also 'within the ordinary jurisdiction of the individual States'..."⁸⁴

Further, in terms of states' rights and equality, Jackson framed the question as one of the rights of Georgia as compared to those of other states. Georgia should not be restrained from carrying out policies other states had employed. He said:

⁸² *Compilation*, 537.

⁸³ *Ibid.*, 540.

⁸⁴ *Ibid.*, 541.

There is no constitutional, conventional or legal provision which allows them (Georgia and Alabama) less power over the Indians within their borders than is possessed by Maine or New York.⁸⁵

To Jackson, because the states had the right then and now to extend jurisdiction over Indian nations and the federal government had no power to interfere, those communities had “no alternative (left) to them but that of their removal to the West or a quiet submission to the State laws.”⁸⁶

Lumpkin insisted that the contention of the Cherokee and the US opposition, that the Indian Removal act was overriding recognition of Indian rights observed for over a century, was misleading. He did allow that there were some contradictory passages in legislation and precedent that could be brought up in debate and that to a certain extent, there were some that one could read as support for Indian rights. He noted as to the:

...view of maintaining the doctrine of Indian sovereignty,... I admit many of the acts of the General and State Governments may be selected, apart from their general policy, which would seem to afford support to this position.

After admitting that there was some legal support for the Cherokee’s rights however, he argued that when viewed as a whole, the colonial experience clearly validated the claims

⁸⁵ *Ibid.*, 457.

⁸⁶ *Compilation*, 541.

of Georgia. The state was pursuing a policy that had been in effect since the expansion of colonies in Virginia and Massachusetts. He said that perception of support of Indian rights had to be tempered by an examination of the entire history of relations between the Indian communities and the Anglo-American colonial activity in America:

... when we take the whole policy and history of these Governments as exhibiting an entire system, it must be admitted they have never hesitated to extend their sovereignty over the Indians in their respective spheres, when it was deemed expedient to bring them under their laws and jurisdiction; unless, we find this hesitancy in the absence of physical power.⁸⁷

Here he is pointing out that, regardless of proclamations and agreements, the center of gravity of US Indian policy had been dispossession and exile, removal. To him, the professions of respect for Indian rights to cede or not cede land were “hesitancy in the absence of physical power.” That was not the situation in the America in the 1830s; and he thought it was the time for the US to exercise the power it had.

For Lumpkin agreements made with representatives of the Indians had to be interpreted in ways that allowed for the differences in the societies and the changes in relative strength. For him the purchase and sale of land of Indians did not necessarily signify transfer of ownership, as it would if viewed as regular transactions between equal parties.

⁸⁷ *Lumpkin*, 83.

Rather, the transactions were conditional agreements between unequal parties; they had to be seen in terms of potential conflict or means of avoidance of open warfare:

The practice of buying Indian lands is nothing more than the substitute of humanity and benevolence, and has been resorted to in preference to the sword, as the best means for agricultural and civilized communities entering into the enjoyment of their natural and just right to the benefits of the earth...⁸⁸

The reference to the sword was a nod to the use of force as an alternative to the ‘humanity and benevolence’ of intimidation and bribery that was often used. One way or another, he maintained the ‘civilized communities’ should enjoy their ‘natural and just right.’

Lewis Cass and the Rights of Civilization

Lewis Cass became an important figure in the debate with the printing of his article in the *North America Review* in 1830. He was elected to the Ohio Legislature in 1806, at age 24, served in the War of 1812, was appointed Governor of Michigan in 1813, not long after the battle of the Thames, which “secured the Northwest to the Americans.”⁸⁹ Cass presented an elaborated view of the importance and justification of white colonization and domination of a large part of North America.

⁸⁸ Ibid.

⁸⁹ Andrew C. McLaughlin, *American Statesman Lewis Cass* (Boston: Houghton, Mifflin and Company, 1891. Reprint, Kessinger Publishing’s Rare Reprints), 86.

Lewis Cass advocated Indian dispossession and exile from the more general angle of the rights of civilization. Cass spent a considerable amount of his article in the *North American Review* arguing for the forward march of civilization, following a Divine imperative to bring the earth under the plow, and the call to go forth and multiply. From that perspective, instead of using treaty negotiations and land cessions, the correct policy for the US was to dictate land use to the uncivilized. Cass asserted the importance of recognizing the incongruity of “the peculiar relations subsisting between us and the Indians” and that called for following “practical principles” to “control and regulate the construction of our compacts with them”.⁹⁰ To Lewis Cass, the US would have been much better off to follow the dominating practices he said had been used by other colonial powers instead of “relaxing the principles of intercourse which many other nations had adopted with the Indians.”

For Cass, with its “mistaken benevolence” the US had “introduced a system difficult to reconcile with our preconceived notions” of “the natural rights of the parties.”⁹¹ Cass elaborated how the U.S. government had pursued an “inefficient course ... in matters in which one of the states has a deep interest, as well as the Indians.” To Cass, the agreements made with the Indians in the past were not the same as those between equals, as would be the case of treaties between Britain and France. The Indians were not

⁹⁰ Lewis Cass, “Consideration of the Present State of the Indians and Their Removal to the West of the Mississippi,” Boston, Gray and Bowen, 135 Washington St., from the *North American Review*, No. LXVI for January 1830, Arno Press, A New York Times Company, New York, 1975, 4.

⁹¹ Lewis Cass, 27.

capable of making valid treaties and therefore the agreements that were called treaties had to be viewed in a different, non-constitutional light. Cass said that “the common justice of mankind” did not strictly apply because the “peculiar circumstances” of North America gave the colonial powers entitlement.

As an example of the racist view of the Indians, Cass described them as almost hopeless and that their only chance of survival was to be moved away from US society. They were portrayed as a dismal population that required ‘tending’ as would a herd of cattle or other animals:

It is difficult to conceive that any branch of the human family can be less provident in arrangement, less frugal in enjoyment, less industrious in acquiring, more implacable in their resentments, more ungovernable in their passions, with fewer principles to guide them, with fewer obligations to restrain them and with less knowledge to improve and instruct them.⁹²

To Cass the Indians were an “anomaly” and thus had imperfect rights. The treaties had to be viewed in terms of ‘practical principles’ instead of ‘abstract principles’ of ‘natural right.’⁹³ Because of the situation of inferiority of the conquered Indians and the superiority of the white conquerors, it was necessary for the whites:

To prescribe, from time to time, the principles which should regulate the intercourse between the two parties...The nature of the title, by which the

⁹² Cass, 13.

⁹³ Cass, 23.

Indians held their lands is not easily reconciled to the principles applying to civilized nations.⁹⁴

Cass argued that because Euro-American society was superior to North American Indian society, civilized, Christian, settled agriculturists had a God-given right to redistribute land occupied by barbarian, heathen, wandering hunters. The established customs and practice of colonizing countries from Europe supported Removal and past federal laws and practice supported states such as Georgia in exercising control over Indian communities and disposing of the land they occupied.

Cass said that clear Indian title to their land did not really exist, and to support that quoted from arguments made before the US Supreme Court.⁹⁵ According to Cass, the interactions between the societies had to be judged according to 'higher principles' and demands upon 'civilization:

...the Creator intended the earth should be reclaimed from a state of nature and cultivated; that the human race should spread over it...A tribe of wandering hunters,...have a very imperfect possession of the country over which they roam...⁹⁶

⁹⁴ Cass, 20-21.

⁹⁵ Cass, 20.

⁹⁶ Ibid., 15.

Cass argued that the language in treaties has to be seen in light of “fair and liberal interpretations” made by the dominant party following “practical principles, arising out of peculiar circumstances.” To him, in judging intentions it was necessary to understand that it was imperative for the civilized partner in negotiation with a savage partner to keep in mind the relative levels of the two societies, otherwise their contracts would be viewed in conventional legal terms. He explained:

No terms in these compact could have been intended to convey the sovereignty or the territory, or absolute dominion of the soil; for such improvident concessions would be equally inconsistent with all the legislation over them recorded in our statute-books, and with all the transactions with them recorded in our history, and with their own incapacity to protect their property...⁹⁷

For Cass there was no basis for Indians to think that any agreements between whites and Indians actually meant what they said as they were written.

He supported Georgia’s claims by quoting from Chancellor Kent, of New York, in *Commentaries on American Law*, which gave the view that “the first discoverer of unknown regions should be entitled to their permanent possession.” To Cass there was no question that the white settlers of the US should count as “first discoverers” and had

⁹⁷ Ibid., 23.

every right and duty to continue the colonial expansion begun roughly two centuries ago.⁹⁸

In this view the treaty rights claimed by the Cherokee could not be valid as against the rights of the states. Cass also supported the assertion of Georgia's right to claim Cherokee land through an entitlement of Christians to take land of non-Christians. He thought it was clear that being a heathen people meant a loss of rights in the face of European claims.⁹⁹ For Cass there wasn't the slightest doubt that talk of Indian equality was foolhardy and completely wrong. He developed the question of relative rights by relating the history of relations he saw between the Europeans and the Indians.

For Cass, the French and Spanish had the correct approach; as he read history, they were not concerned with general principles of conduct but simply applied imperial principles of authority through which they:

...judged for themselves as well as for the Indians, when land was wanted by one party and could be spared by the other... We find no evidence of any treaties of cession formed between themselves and the Indians.¹⁰⁰

⁹⁸ Cass, 17, Kent, *Commentaries*, Vol. III, 312.

⁹⁹ Cass, 17, Kent, *Commentaries*, Vol. III, 310.

¹⁰⁰ Cass, 20.

Cass accepted the word of the British king as to who owns North America and the example of the French and Spanish kings as to Indian relations. Further, according to Cass, following the defeat of Britain their rights of civilized Christian discovery were transferred to Georgia. Also he maintained that as Georgia was a partner to South Carolina in the defeat of the Cherokee, during and after the war with Britain, there was a basis for contending its right on that conquest as well.¹⁰¹ For Cass whatever was said in treaties as to sovereignty and rights to land did not mean Indian rights were existent. Rather it was the case that whatever the language used, the intent was to convey dominance to the European Americans.

Benefits and Necessity of Removal

The three proponents all agreed that the situation the US faced was unstable; change was needed to avoid turmoil in the country. At the same time, Jackson saw an opportunity to use the situation to advance important projects for the country. Jackson wanted to see the US become a growing country that was strong enough to deter European countries that had fought over North America for the previous 200 years. The US would gain in population, agriculture, and commerce. With Indian deportation, Georgia would be unburdened and the federal government would not be caught in the middle of competing claims of protection of the Indians and fulfilling agreements made with Georgia. He noted that it would not only make the US more secure from European intrusion, but that

¹⁰¹ Cass, 27.

it would also make the country stronger economically by allowing the expansion of ‘frontier’ white settlements and their incorporation into the national economy. He elaborated the benefits to US security of the expulsion of the resident Indian communities:

It will relieve the whole State of Mississippi and the western part of Alabama of Indian occupancy, and enable those States to advance rapidly in population, wealth, and power.¹⁰²

For Andrew Jackson, the deportation of the Indian communities was necessary for decreasing the contention between federal and state governments, as well as to economically develop those areas into the growing market economy. In his second Annual Message, December 6, 1830, discussing the agreement deporting the Choctaw and the Chickasaw, he said;

The pecuniary advantages which it promises to the Government are the least of its recommendations. It puts an end to all possible danger of collision between the authorities of the General and State Governments on account of the Indians.¹⁰³

To Jackson the acceptance of the expulsion of the Cherokee would have the Georgia and federal government on better terms and, and the expelled Indians would be better off

¹⁰² *Compilation*, 520.

¹⁰³ *Ibid.*

forced away from white settlements, able to live independently and be supported by the federal government. To Jackson neither independence nor federal support was possible for the Cherokee in their homeland.

The Dangers of Obstructing Removal

The alternative possibility to Removal, of semi-independent Indian communities remaining in place, raised issues of obstructed social and economic development of the US and the danger of a weakened ability to fend off incursions of the nations of Europe, who had treated North America as an extension of their continent. A facet of that issue was that of Indian alliances having the possibility of using the competition between Europeans and Euro-Americans to advance Indian interests. In Michigan Cass had been territorial governor of a section of the country having a history of being a “middle ground” where European colonists and Indian alliances had contended and accommodated prior to France’s defeat in the 1760s.¹⁰⁴

Cass was not all interested in that history being repeated. Either the principles of empire are followed and Indians are treated as subjects, or:

¹⁰⁴ Richard White, *The Middle Ground Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (Cambridge: Cambridge University Press, 1991) ix-xv.

Every Indian treaty is a virtual acknowledgement of their independence, and its conclusion with them a practical recognition of their right to all the attributes of sovereignty.¹⁰⁵

Here Cass essentially admits that the opposition had considerable evidence of recognition of Indian rights and if they were accepted as equals then their rights did exist and should be respected. The possibility of sovereign Indian communities was seen and feared.

The alternative to Removal, for Cass, was to support Cherokee independence that would produce numerous “mischiefs,” for example:

The progress of improvement would be checked... Extensive tracts of land... held ... in a state of nature. The continuity of settlements... would be interrupted. Fugitives from labor and justice would seek shelter.¹⁰⁶

Failure would mean having a weaker country that was less developed economically and less secure internationally, with increased contention between state and federal governments. To the proponents, the result of defeat of Removal would be settlements isolated by ‘wastelands,’ with ‘unruly’ areas bordering civilized ones, and the need to wage war to restore civilization’s primacy.¹⁰⁷

¹⁰⁵ Cass, 27-28.

¹⁰⁶ Cass, 42.

¹⁰⁷ Cass, 4.

Jackson said that those opposing the two choices offered the Indians, “removal to the West or a quiet submission to the State laws,” were making things worse for everyone. He thought that the campaign of opposition was “calculated to disturb the harmony to the two Governments and to endanger the safety of the many blessings which they enable us to enjoy.”¹⁰⁸ They were essentially portrayed as opposing measures for US security, thus almost traitors.

Lumpkin described the opposition in terms calculated to show them as misguided (fanatics) and incapable and irresponsible (women and children):

...during the recess of Congress, the Northern fanatics, male and female, had gone to work and gotten up thousands of petitions, signed by more than a million, of men, women and children, protesting against the removal of the poor dear Indians...¹⁰⁹

Clearly for Lumpkin, they were not responsible Americans who were siding with the Indians. He saw the work of the opponents as aimed directly against Georgia, its economy, and the well being of its citizens. To Cass, civilization required greater control of the population, citizen and non-citizen. He thought that if the federal government were

¹⁰⁸ *Compilation*, 523.

¹⁰⁹ *Lumpkin*, 47.

to side with the Indians it would cause a struggle that “will shake the confederacy to its centre.”¹¹⁰

For the proponents, it was clear that support of Indian Removal was a critical necessity for the US and for the Indians. It would repair the damage done by past federal policies, open the way for continued US development, and enhance the security of the country. They supported Georgia’s right to control Cherokee country through reference to colonial practice, federal and state statutes, and judicial arguments. By right of Christian discovery and conquest white settlements should continue to expand, following the lead of other colonial powers in dictating the terms of Indian relations instead of a negotiation of equals. The alternative to Removal would be contention between states and federal government, social discord and unrest, a weakened economy, a US vulnerable to international pressures and interference, and Indian communities subject to continued decline, distress, and disintegration.

¹¹⁰ Ibid., 52.

CHAPTER 5

OPPOSITION TO REMOVAL

John Ross of Cherokee country, Jeremiah Evarts of the American Board of Commissioners for Foreign Missions (ABCFM), and Senator Peleg Sprague of Maine argued that removal was not a necessity for the US and would be destructive to the Indian communities. What was necessary was for the US to provide the respect and protection pledged and agreed upon numerous times, against settler intrusions and encroachments of the states. They argued that by law and the moral commitments the Indians had every right to remain on their land and maintain their way of life. The practices of colonial empires of England, France, and Spain were not those of a revolutionary nation and should not be the basis of judgment in the democratic republic of the US.

John Ross, Jeremiah Evarts, and Peleg Sprague maintained that the Cherokee had treaty rights that were superior to those of Georgia and gave evidence of legal and judicial precedent that supported Indian rights. They argued that Cherokee human rights should be respected instead of being disregarded. The opponents said that a democratic republic should not apply the pirates' code of the rights of discovery and conquest.

To Jeremiah Evarts and Peleg Sprague, the honor of the US was being severely tried. Both Evarts and Sprague argued that in light of the principles advocated by the colonies in revolt against Britain, the treaties concluded between the US and the Indians should have the status of honored international agreements and the Indians should be accorded the same human rights as those on the banners of the struggle for independence against Great Britain. The opponents argued that the denial of Indian rights and equality sprang from the racist views that saw the Indians as a lower form of human who was not competent to make agreements with whites and who only had such rights of life and liberty as white society would allow.

In direct opposition to those campaigning for Indian exile as being beneficial to the Indians, as well as to the US, they argued that the ratification of Indian Removal would be destructive to developing, independent Indian communities. They said that the federal government's ignoring of promised protection dishonored the country. The passage of Indian Removal would amplify negative federal policies, destroying Indian nations and bring shame and disgrace on the US.

The Main Opponents to Removal

John Ross was not physically present in the Congressional debate but arguments that he had advanced were used extensively. A number of the arguments that Senator Peleg Sprague gave in the Senate, such as the denial of rights of discovery and conquest, were those given by Ross prior to the 1830s debate. Though Ross was 1/8 Cherokee by blood, the Cherokee community had shown by their votes and by their support for his initiatives

that they considered Ross their leader and representative. He was elected Principal Chief in 1828 and supported in his attempts to have the annuity payments restored to the nation, and in his later opposition to the New Echota Treaty.¹¹¹ Following the passage of the Indian Removal Act in May 1830, Ross called a special meeting of the Cherokee General Council in July to report on the lack of success with their petitions to the US Congress and suggested the Cherokee turn to the judicial branch, which the General Council approved. Throughout the 1830s, up to and through the forced march from Georgia and resettlement in the West, Ross fought to defend the rights, unity, and health of the Cherokee.

Jeremiah Evarts, born in Vermont in 1781, helped form the American Board of Commissioners for Foreign Missions (ABCFM) in 1810 to reform American society and sponsor foreign missions. During the War of 1812 Evarts advocated unity of the country through greater influence of “religious principles on everyday behavior.” John Andrew III describes Evarts as promoting the “principles of the Revolution” through individual and civic reform: “The *character* of the people was the essential bulwark for a free society and just civil institutions.”(original italics)¹¹² As treasurer and later corresponding secretary for the ABCFM Evarts oversaw the organization as it became

¹¹¹ Moulton, *Cherokee Chief*, 27, 59, 74.

¹¹² John A. Andrews III, *From Revivals to Removal Jeremiah Evarts, the Cherokee Nation, and the Search for the Soul of America*(Athens: University of Georgia Press, 1992), 69.

increasingly focused on work with American Indians and at odds with state and federal policies seeking to bring more and more land in North America under white settlement.

With his view that US actions against the Indians were a great moral wrong, Evarts worked to "arouse the national conscience and to direct its indignation" toward influencing the federal government as US policy was focusing on the expulsion of Indian communities from the eastern US. Historian Francis Paul Prucha says that through providing material for public meetings and publishing the series of "William Penn" Essays, "Evarts orchestrated much of the public agitation against Indian Removal..."¹¹³ Through the debates and court proceedings, up until his death on May 10, 1831, Evarts was a spokesman and organizer for the support of the Indian's cause and with his death the "full-blown crusade" wound down pretty quickly with a number of prominent supporters taking up other questions of reform.¹¹⁴

The third opponent of Removal quoted in this thesis, Peleg Sprague, relied heavily on the work of Evarts¹¹⁵ and that of John Ross. His Senate speech does, however, clearly express a straightforward jurist's approach supporting the Cherokee. His arguments elaborate the standing of the Cherokee as being considered an equal party in state and international affairs and he rebutted the legislative and judicial justifications given by Removal advocates. He thus brings into sharp relief the tension between questions of law

¹¹³ Prucha, *William Penn*, 10-11.

¹¹⁴ *Ibid.* 37-38.

¹¹⁵ John Andrews III, 221.

and republican principles and the principles of colonial practice. The Indians were not considered as equals, but rather as belonging to a lower order of humans who were non-citizens and subjects to whom different legal standards could be applied.

US Failure to Meet Obligations to the Indians

In his July 1830 Message to the General Council, Ross continued to condemn the lack of federal protection while the state of Georgia was preparing to take jurisdiction of the greater part of Cherokee territory. Rather than standing by the Cherokee, the federal government was standing aside, assisting Georgia by its inaction. He said:

the Chief Magistrate [Andrew Jackson] of the United States, having declared that he possesses no power to oppose, or interfere with Georgia in this matter, our relations with the United States are placed in a strange dilemma.¹¹⁶

The dilemma for the Cherokee nation was having accepted limitations on its sovereignty in exchange for government pledges that were not being honored. In the past, the Cherokee had battled militarily for its national security in alliance with other nations and had concluded peace treaties that defined rights and obligations. Having carried out their pledges of non-aggression and accepting diplomatic isolation, they were then faced with the denial of pledged support as they faced national destruction. With the US much

¹¹⁶ *Ross*, 191.

stronger militarily in the 1820s, and Cherokee chances of international alliance much dimmer, the US commitments to Cherokee security were of central importance.

To John Ross and Jeremiah Evarts, the renouncing of pledges, under the excuse that the US was unable to honor them, was a sin and a disgrace. They condemned the entire process of the state and federal government working to compel the Cherokee to abandon their country and accept relocation to another part of the continent. It was clear to Peleg Sprague that the oppressive actions of the state of Georgia were making the life of the Cherokee in the southeastern US insufferable. Denying them rights to their land and declaring them outside the law, Georgia passed laws making all Cherokee opposition illegal, while the federal government gave the state a free hand.¹¹⁷

Evarts said that there were clear agreements made between the US and the Cherokee that the Cherokee had honored and the US had not. He called the government to task for breaking the contract it had made and then excusing its double-dealing by saying it was powerless to assist and it was bound to bow to the pressures of the state government.¹¹⁸

Evarts denounced this response as a craven denial of responsibility. He saw this denial of federal protection as the worst kind of betrayal; the abandonment of the very principles that he thought America stood for. To Evarts the US stood before the world as a double-dealer that renounced obligations it found inconvenient or troublesome. Evarts thought

¹¹⁷ Peleg Sprague, "Indian Removal Debate 1830; Peleg Sprague, Part 1," *Indian Removal Debate*, 21 Congress 1 Session, Volume 6, Part 1, Columns 343-57, (Senate, April 16, 1830, yvwiiusdinvoohii.net/history/ps-debat.txt), 4-5.

¹¹⁸ Prucha, *William Penn*, 77.

that the principles, promoted to arouse the American colonists to fight against British rule, should be applied after independence had been won. He said that the issue involved core values of the country:

The character of our government, and of our country, may be deeply involved...if, in the plentitude of our power, and in the pride of our superiority, we shall be guilty of manifest injustice to our weak and defenseless neighbors.¹¹⁹

Jeremiah Evarts was describing the pressure being applied to the Cherokee as the principle of 'might makes right' being used to justify injustice and oppression. He saw the dispossession of the Cherokee as a terrible policy for a young country that proclaimed principles of democracy and liberty.¹²⁰ He criticized the US for a grave hypocrisy, giving lip service to respecting peoples' rights while proceeding to trample on the rights of the Indians.

...while we boasted of our attachment to liberty, and set ourselves up as patrons of the rights of men, we treated the weak and dependent ... not as men, but as animals.¹²¹

¹¹⁹ Ibid., 49.

¹²⁰ Prucha, *William Penn*, 205.

¹²¹ Ibid., 282.

Evarts also spoke of moral principles that reinforced the democratic principles in politics. Evarts saw the need for application of Christian precepts of justice, equality, and social responsibility that he saw as necessary for the health and reputation of the United States:

There is a higher consideration still. The Great Arbiter of nations never fails to take cognizance of national delinquencies ... he has declared his abhorrence of oppression in every shape; and especially of injustice perpetrated against the weak by the strong, *when strength is in fact made the only rule of action.* (original italics)¹²²

Instead of a divine providence calling for white colonial expansion, Evarts evoked a god calling for justice and respect of all things.

Racism Harmful to the Indians

In his essays, Evarts raised the problem of the racist treatment of the Indians. The 1830s saw the increase of racial views in the US that people of African descent and Indians did not qualify as people and therefore agreements with them could be made and broken with impunity.¹²³ Evarts said that racial ideas of the time clearly had a role to play in the contention over Indian rights. In his defense of Cherokee rights, Evarts repeatedly attacked the argument that racial divisions of humanity allow for unequal treatment in relations between peoples. He said that there was a mountain of evidence that the Cherokee had every right to live on their land, to sell or not sell it, and to govern their

¹²² Ibid., 51.

¹²³ *William Penn*, 294.

own affairs; that should be respected in any court of law. He said, however, because they are Indians:

They can bring files of parchments, with the seals of all our great statesmen affixed to them. All this avails nothing, however, for it has been discovered, within three years past, that they are not endowed with the rights of men; or in other words, they have lost their human character, and become mere animals.”¹²⁴

Here lies part of the real division of principles between the proponents and opponents: do the Cherokee have the same natural rights as all humankind or do they constitute another category of beings that are outside the consideration of regular principles of conduct?

Evarts maintained that the Cherokee were entitled to the same standing as anyone else.

He argued that there should be a single standard for all people.¹²⁵ Comparing removal to slavery, Evarts was among those of his day who thought slavery was as wrong as the uprooting of the Cherokee. Though standing on principles written earlier in the Declaration of Independence, the opposition was, in fact, calling for a change in the orientation and practice of the US, a drastic change in US policy. They were opposing the conquest and dispossession of the North American Indians that had over two centuries of precedent and were regarded by many as the way things should be in the US.

¹²⁴ Ibid.

¹²⁵ *William Penn*, 53.

Indian Rights Defended

Ross, Evarts, and Sprague argued there was a wealth of treaties that guaranteed land rights and national recognition to the Cherokee. There were numerous statements of US presidents and other officials that reinforced what was pledged in the treaties. Ross, Evarts, and Sprague disputed the relevance of past British rights, as well as the claim of their transference to Georgia. They argued that the Cherokee had title to their land; they were not tenants at will (of the landholder).

They said, as well, that the US had preeminence in Cherokee affairs over the states and was obligated to exercise it. The US had repeatedly recognized the Cherokee nation, its land and sovereignty. Evarts further pointed out that their right to the area had been repeatedly “*guaranteed to the Cherokees, as a nation* (original italics)”¹²⁶ by the US government in negotiations with representatives of the Cherokee and ratified in binding treaty agreements. He said that thus it was the word of the US federal government that was now being contradicted by allowing Georgia to extend the state’s jurisdiction over Cherokee land.

Evarts argued that the United States did not object to considering the Cherokee as a nation during the past 40 years. It seemed a little late to be raising objections now.¹²⁷

Evarts said that while the Cherokee had sold much land to whites, they had never bought

¹²⁶ Ibid., 562.

¹²⁷ *William Penn*, 73-74.

any, leaving no confusion of title, and owned the land they now occupied. He elaborated his assertion of their right, bringing up a comparison with other nationalities:

...by the right of original possessors; a right which is allowed in all countries to be of incontestable validity...we might as well ask the Chinese, what right *they* have to the territory which they occupy?(original italics)¹²⁸

Jeremiah Evarts supported the basic Cherokee position that they had lived on the land for centuries and it was theirs to continue to live on, royal charters and claims of conquest notwithstanding. The area not ceded by treaty agreements was Indian land and they had not relinquished it.¹²⁹

In the Senate debate, proponents cited earlier arguments made before the US Supreme Court as proof of the Indian's lack of rights. Peleg Sprague argued against such views as those of McKinley, of Alabama, who said his contention "that the natives had no title to the soil" was supported by arguments in the Supreme Court case of Johnson and McIntosh. Against his views, Sprague quoted from rulings from the same case to show support for a long-standing recognition of Cherokee rights:

The Cherokee have a perfect right to retain that possession (of their country) as long as they please. Such a retention of their country is no just cause of complaint or offence to any State, or to any individual. It is

¹²⁸ Ibid., 54.

¹²⁹ Ibid., 562.

merely an exercise of natural rights, which rights have been not only acknowledged but repeatedly and solemnly confirmed by the United States.¹³⁰

In the debate there was no shortage of contradictory court opinions. Sprague did make it clear as well that there was no shortage of positive evidence of the Cherokee's status. He repeatedly referred to opinions of state and federal courts in support of the Cherokee having long standing recognized rights. Further supporting that view, Sprague quoted from a letter of Thomas Jefferson to the Secretary of War in 1791 as an endorsement of Cherokee rights and a denial of the rights of the state of Georgia:

...the Indians have a right to the occupation of their lands, independent of the States within whose chartered lines they happen to be; that until the cede them by treaty...no act of a State can give a right to such lands...any settlements are made on lands not ceded by them...the Government will think itself bound...to remove them by public force.¹³¹

To Sprague there was neither constitutional nor statutory basis for Congress to approve the forcible expulsion of Indians such as the Cherokee from their homeland. He summarized the legal rights of the Indians as follows:

Whether we regard original principles of international law, as applicable to the right of discovery or the express powers conferred by the articles of

¹³⁰ Sprague, 24.

¹³¹ Sprague, 23.

confederation; or the confirmation of pre-existing treaties, by the adoption of the constitution; or the authority vested by that instrument in the General Government, and the renunciation of powers by the respective States; the invariable practice and usage of the Union, and the acts, acquiescence, and assent of Georgia herself; it is manifest that we are bound to perform our engagements to the Indians, and are under no incompatible and paramount obligations to that State.¹³²

Georgia's Rights Denied

Ross, Sprague, and Evarts denied that the state of Georgia had any valid claim against the authority of the Cherokee or against the responsibilities of the US outlined in treaty agreements. To them the arguments raised by the proponents in support of Georgia were attempts to apply principles of royal dictate, that the founding fathers had fought against, and obscure the basis question of whether or not the US was going to uphold its agreements or go back on its word. Evarts agreed with Ross in disputing the view that American colonists had somehow acquired title to the American continent by showing up and contended that proclamations of the kings of Great Britain were “mere *claims* (amounting) to nothing.” He pointed out that if claims by themselves could serve to establish sovereignty, the map of the world would be changed with each new proclamation.¹³³

In his speech to the Senate in 1830 in opposition to the Indian Removal bill, Sprague replied to a number of objections raised to honoring the US and Cherokee treaty

¹³² Sprague, 24.

¹³³ *William Penn*, 57.

agreements that revolved around issues of the rights and status of the states in relation to the federal government. The proponents, among them House Indian Affairs committee chairman White, were raising issues that they said would prohibit the federal government from intervening on behalf of the Indians.¹³⁴

One example was that of the objection to the Cherokee exercise of sovereignty because that would allow a state to be formed within an existing state. For Sprague, the argument against creating a state within a state had no application to the question at hand. He said that no new state was being created, as Ross had pointed out earlier. Sprague pointed out that the Cherokee nation was “a political community more ancient than Georgia herself” and thus was not being ‘created’ by the US.¹³⁵

The above arguments are examples of the complexity of some of the arguments, but at the same time illustrate that only by ignoring or dismissing the Cherokee’s history and treaty status could Georgia’s rights be sustained. For Sprague there was no question that there existed treaty agreements between white communities and Indian communities in North America and these agreements had a history, going back to the formation of the early European colonies in North America. He further insisted that the right of the

¹³⁴ Sprague, 3-13.

¹³⁵ Sprague, 12.

federal government to conclude these treaties had been given by the constitution and could not be argued away by claims of harm being done to individual states.¹³⁶

He likened the rights of Discovery and Conquest to the principles of “Alexander and Bonaparte...(of) avarice and ambition...” To Sprague, advocating that Congress should be guided by principles of Discovery and Conquest would be to approve of “Britain...sweeping India...the (conduct of) Spaniards in South America...” He asserted that it was the application of a pirate’s code:

They find a ship alone on the ocean; this is discovery. They capture her, and murder or enslave the crew; this is conquest...and their validity will not, I presume, be questioned either by the courts of Baratavia or other bands of similar conquerors.¹³⁷

For Sprague, the argument that the US could follow the code of Barbary pirates was far out of the bounds of the laws and legacy of the republic. To adopt a colonialist view of displacing the people that had a living history in the country was a terrible stain on the honor of the US and an abandonment of its revolutionary heritage. Here again, the arguments of the opponents had a double edge. In its history, US piracy played a role in the wars against the British as well as there being a history of English piracy playing a role in the struggle against the Empire of Spain. If piracy could be justified in wartime, how far could its code be followed to promote national security and progress? US

¹³⁶ Sprague, 13-14.

¹³⁷ Ibid., 25.

experience held examples of that principle being employed for the benefit of the country as it fought for independence from British colonial authority. Linking a policy to piracy would not have a completely negative connotation to the US public nor would it place the policy out of bounds of American tradition.

Dangers of Removal and Benefits of its Rejection

As previously stated, to Ross, Sprague, and Evarts the federal government pressing forward with Removal threatened the destruction of the Cherokee. The US agent Rev. John F. Schermerhorn aptly described the campaign he was pursuing, directed toward forcing the Cherokee from the Southeast in a threat issued in a meeting with them, saying that if they remained

their difficulties would increase – *that the screw would be turned upon them* till they would be ground into powder.(original italics)¹³⁸

Those objecting to Removal said that countries around the world would see Indian nations destroyed and the US dishonored and disgraced, admitting to the world that its democratic republican principles would not stand in the way of using its strength and another people's weakness to its own advantage. Congressional acceptance of Indian Removal would continue the oppressive campaign against the Cherokee, who were being

¹³⁸ Ross, 400.

harassed and hounded into agreeing to their dispossession, exile, and loss of national status and rights.

In contrast, the defeat of Removal would support Indian independence and development as part of America and would save the honor of the country. To the opponents, the defeat of the bill would have the Indian communities living in security and wellbeing and the US holding its head up as a beacon of liberty. For Sprague, the defeat of the Indian Removal bill was necessary for the continued existence of the Cherokee nation and for the health and standing of the US.¹³⁹

Sprague bitterly castigated the notion that the exile would allow the Indians to develop the interesting society mentioned by Jackson as they were given the many promised benefits once exiled. In an 1830 letter to Jeremiah Evarts, Ross described the bleak prospects faced by the Cherokee as they were being forced to leave their country and move to another part of the continent, dependent on the very government that had reneged on its previous pledges of respect and protection. He wrote:

...there is no free people upon earth who can possibly feel a deeper anxiety for their destiny than the Cherokee – duplicity, misrepresentation and oppression in the most odious form surrounds them, whilst their true sentiments, condition and future prospects are attempted to be stifled under the smoke of falsehoods which has been raised by the designing agents of an intriguing and selfish policy.¹⁴⁰

¹³⁹ *William Penn*, 55-56

¹⁴⁰ *Ross*, p. 187.

To the opponents, that description pretty well sums up their assessment of the US policy that was touted by proponents as offering great benefits to the Indian communities.

Sprague disputed the argument that somehow the choice of Removal or destruction was not a terrible one, but rather a positive one of either emigration to a great land of promise or enjoying the fruits of liberty in the land of Georgia.

In his speech to the Senate Sprague quoted from the December 1827 resolution of Georgia in which the state described its rights to determine the disposition of the remaining land of Cherokee country. To Sprague, quoting from the laws of Georgia, there was no doubt as to how officials of Georgia would treat the Cherokee on the land:

...respecting the territory of the Cherokees: “The lands in question belong to Georgia – she must and she will have them...all the lands... belong to her absolutely ...the Indians are tenants at her will;... and Georgia has the right to extend her authority and laws over the whole territory.”¹⁴¹

Sprague thought the resolution clearly stated Georgia’s intention to dominate Cherokee country “absolutely” and with that control the state intended to expel the Cherokee “tenants at her will” living there “at any time.” He quoted further from the resolution, pointing out that the state had plans to use armed force, even though described as a last resort: “... she will not attempt to enforce her rights by violence, *until all other means of*

¹⁴¹ Peleg Sprague, “Speech before the Senate, Saturday, April 17, 1830, *Indian Removal Debate, 21 Congress 1 Session, Volume 6, Part 1* (file prepared by The People’s Paths BBS© 1996-(517) 792-4906, (www.yviiusdinvnohii.net), 12.

redress fail.”(italics added) To the opponents of Removal the actions of Georgia were seen as the actions of a state bent on destroying the Cherokee nation.¹⁴²

For Sprague, the suggestion of Cherokee remaining within Georgia after their nation had been removed was an absurd idea, for not only would they be landless; they would be the non-persons proscribed by the Georgia laws of 1827 and 1828.¹⁴³ Nor were the prospects of life west of the Mississippi very appealing. Evarts maintained that nothing in the past conduct of the US would give confidence in any of the promised benefits to their forced emigration.¹⁴⁴ Evarts argued that emigration would take a terrible toll on the Indian communities, with the migration itself causing physical and mental suffering. Upon arrival, they will either be merged together and lose their separate national identities or, if they are allotted enough land to remain separate and viable, there will be encroachment by whites moving west.

The opposition to Removal described the hardships and oppression involved in Removal. In their view, what was necessary for America was to defeat the Indian Removal bill, honor Indian rights to land and independence included in past treaty agreements and presidential proclamations, and for the federal government to provide the protection, security, and monetary payments provided for in the treaties. To deny US obligations to the Indians would great dishonor on the country. They argued that America should not

¹⁴² Sprague, 2.

¹⁴³ Reprinted in the appendix of this thesis.

¹⁴⁴ *William Penn*, 209 – 211.

be ruled by colonial principles of discovery and conquest and Georgia's claims based on those principles did not stand up against the claims of the Cherokee based on mutual agreements with the US.

The opponents decried the operation of a racism that relegated the Indians to a lower human status with rights contingent on the practical judgment of others of higher status. Those opposing Removal referred to principles of common humanity and Christian compassion and responsibility. They were arguing that for the US to live up to revolutionary and Christian principles it needed to follow a policy of relating to Indian communities as it would to European communities. It may be argued that the opponents had stronger arguments in the debate, but the practical principles of the proponents carried the day. After passing the Senate, the Indian Removal Bill passed the House on May 26th by a margin of 102 to 97.¹⁴⁵ The Senate agreed to House amendments and the bill was signed into law on May 28th, 1830.¹⁴⁶

¹⁴⁵ John Andrews III, *From Revivals to Removal*, 228.

¹⁴⁶ Filler and Guttman, *The Removal of the Cherokee Nation*, 42.

CHAPTER 6

THE SUPREME COURT

In Congress Lumpkin, Jackson, and Cass carried the day with the Indian Removal bill approved and signed by President Jackson. The expansion of US settlements continued and their incorporation into the economic and political structure proceeded. Many people in the US supported the arguments that upheld the rights of Georgia and other states to take control of land and distribute it without regard to questions of obligations agreed to in the numerous Indian treaties.

The arguments of the opponents as to the proclaimed, negotiated, and inherent rights of the Indians had a large audience and, with the help of anti-Jackson political opposition, came close to winning the vote in the House, but fell short. The practical arguments of principles of colonial expansion prevailed despite the opponents' call to uphold and defend the principles of democracy and human rights that were a part of the struggle for independence from Britain.

Supreme Court Arguments and Effects

Following the approval of Congress of the Indian's expulsion the opponents of Removal brought the issue before the US Supreme Court, which resulted in *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832). These decisions validated the Cherokee positions while not standing in the way of Georgia's campaign to expel the Cherokee and take their country.¹⁴⁷ In his majority opinion in *The Cherokee Nation vs. The State of Georgia*, Marshall expressed sympathy for "A people once numerous, powerful, and truly independent" who asked the court to restrain Georgia from actions that would "annihilate the Cherokee as a political society" and seize lands guaranteed by treaties with the United States.¹⁴⁸

The expressed sympathy of the court, however, did not translate into practical support. Marshall said that the court could not interfere because it had no jurisdiction as the Cherokee did not "constitute a foreign state in the sense of the constitution," and thus did not have the standing to bring their case before the court. Instead, Marshall described the Indians as "domestic dependent nations" because their land was within the 'jurisdictional limits of the United States,' under the protection of the US that exclusively regulates trade with them. "Their relation to the United States resembles that of a ward to his guardian." Marshall said that the Indians were considered by foreign nations as being

¹⁴⁷ Louis Filler and Allen Guttman, eds., *The Removal of the Cherokee Nation: Manifest Destiny or National Dishonor*, (Huntington, Robert E. Krieger Publishing Company: 1977)

¹⁴⁸ Filler and Guttman, 61

“under the sovereignty and dominion of the United States” and foreign nations acquiring Indian land or forming a political connection with them would have been “considered by all as an invasion of our territory, and an act of hostility.”¹⁴⁹

Further, in terms of outlining the Indians’ lack of independence, Marshall argued that another article in the constitution, giving congress the power to “regulate commerce with foreign nations, and among the several states, and with Indian tribes,” also supported his view. He said that distinguishing foreign nations from Indian tribes indicated that they were not considered the same. Lastly, Marshall said that if the Indians were to be considered a foreign nation, there would be a jurisdictional problem because the suit asked the court to control and restrain the state of Georgia and that would have been “an exercise of political power” outside the “proper province of the judicial department.”¹⁵⁰

Thus Marshall put the Cherokee community into a category distinct from other nations and from the states of the US, in what today might constitute a semi-autonomous republic within one of the members of the United Nations. As a ‘domestic dependent nation’ the Cherokee were seen as a ward of the US, with a lesser status than those of the states and their citizens. In the logic of the decision, the Supreme Court could rule on a dispute between Georgia and Alabama but not a dispute between Georgia and the Cherokee.

¹⁴⁹ Ibid., 63.

¹⁵⁰ Filler and Guttman, 64-65.

The court was not unified on the decision to ignore the Cherokee's claim. In his dissent to the court's 1831 decision, Smith Thompson argued against several points made by Marshall. For example on the question of whether or not the court could make a judgment regarding a conflict between an Indian nation and a state of the US, Thompson argued that it should, that the property of the Cherokee, secured by laws and treaties of the US, were threatened by the laws of Georgia.¹⁵¹ Thompson disputed the point made by Marshall that if the court were to exert control over the state of Georgia it would be an exercise of political power that would not "be within the proper province of the judicial department."¹⁵² Thompson did not voice a judgment on how the court's restraint of Georgia would have played out in the politics of the time, and as a minority opinion the arguments were polemics rather than doctrine and they did not stand in the way of Georgia crushing the Cherokee.

The opinions of Marshall and Thompson illustrate the contradictory nature of US policy toward the Indian communities. On the one hand the Indian's existence and history was recognized and, on the other hand, the colonial policies of Europe and the US were unchallenged. Indian rights and title were subject to the interests, laws, and customs of the colonizing power. Indian rights and title were subservient rather than equal when the issue of US destiny was involved.

¹⁵¹ *Ibid.*, 67.

¹⁵² Filler and Guttman, 65.

The unequal status of the Indians was illustrated as well by the resolution of the second case involving the Cherokee coming before the Court, that of *Worcester vs. the State of Georgia*. In that case, the Court ruled that it did have jurisdiction, as it was an issue between a US citizen and a US state, in practice showing how a US citizen had greater rights than a “domestic dependent nation.” John Marshall said that Georgia was in error to charge a US citizen:

...with the offense of “residing within the limits of the Cherokee nation without a license...without having taken the oath to support and defend the constitution and laws of the state of Georgia.”¹⁵³

Marshall argued that treaties and laws of the US insured that the “Indian nations possessed a full right to the lands they occupied” and “they possessed rights with which no state could interfere: and the whole power of regulating the intercourse with them, was vested in the United States.”¹⁵⁴ The court found it was able to declare that the federal government had the power to oversee the rights of the Cherokee. Thus, in practice the Cherokee had sovereignty over their territory when the rights of a US citizen was in question, but lacked that sovereignty in questions involving only Indian rights.¹⁵⁵

¹⁵³ *Ibid.*, 70.

¹⁵⁴ Filler and Guttman, 76.

¹⁵⁵ The lack of recognized rights existed until “the passage of the Civil Rights Act of 1968, which guaranteed that the Bill of Rights and other constitutional protections would be extended to Indian tribes.” From the obituary of Helen Scheirbeck, by Matt Schudel of the *Washington Post*, printed in *The Boston Globe*, A New York Times Company Newspaper, Boston, Tuesday, December 28, 2010, B16.

Marshall gave the opinion of the court that the judgment of the Georgia court condemning Samuel A. Worcester to hard labor was pronounced under a law that was voided, reversed, and annulled. Marshall said that the Cherokee could have a national existence while under the protection of another state; its alliance with the US did not negate that.¹⁵⁶

The Supreme Court's arguments supported the principle of Indian rights while at the same time not practically challenging the actions of Georgia and President Jackson. While declaring for the Cherokee and against Georgia in its decision, the court did not take action to enforce its decree. The court's decision reinforced the ideology of equal rights for the Cherokee. Practically however, the court bowed to the authority of the President, the Congress, and the state apparatus of Georgia to dispossess and expel the Cherokee community.

Marshall declared the law imprisoning Worcester void and its judgment a nullity and then recessed the Court, resulting in the court's inability to respond to whatever state or federal actions were taken. As described by Jackson's biographer, Robert V Remini, after Marshall issued a formal mandate ordering the Georgia superior court to reverse its decision, the Supreme Court adjourned.¹⁵⁷ Remini points out that further action by the federal government required either issuing a summons to state officials for contempt or a

¹⁵⁶ Filler and Guttman, 77.

¹⁵⁷ Robert V. Remini, *The Legacy of Andrew Jackson Essays on Democracy, Indian Removal, and Slavery* (Baton Rouge: Louisiana State University Press, 1988), 69.

writ of habeas corpus. Thus while speaking for Cherokee nationhood, rights, and independence, the actions of the Supreme Court was limited to declaring the conviction of S.A. Worcester and the enabling law null and void. The court avoided what Marshall had earlier characterized as “an exercise of political power” outside its jurisdiction.

With the court’s adjournment, until January, 1833 the case was judicially inactive. The case concluded the next year with Wirt, the Cherokee’s council, agreeing to make no further motions before the Supreme Court and Georgia’s governor, Lumpkin, granting Worcester’s and Butler’s (the other missionary) petition for the freedom. The court had ruled in favor of the missionaries’ release, and that occurred. The court’s opinion in support of Cherokee sovereignty and rights lacked practical expression, leaving the decisive power in the hands of the federal and state executives. Jackson and Lumpkin were not moved from their entrenched positions. The cases had spoken for Cherokee sovereignty and equal rights while not producing any action that would support those. As characterized by Gerard Magliocca, “The Cherokee were now prey caught in the open.”

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Robert Remini says that the Cherokee were of two minds regarding the Court’s decisions. John Ridge, after speaking with Jackson, was convinced that Removal would proceed and the Cherokee needed to try to get the best terms they could. John Ross maintained that a

¹⁵⁸ Gerard N. Magliocca, “The Cherokee removal and the Fourteenth Amendment,” *Duke Law Journal* 53.3 (Dec 2003): p875 (91). Academic OneFile Print, 13.

unified opposition to Georgia's campaign and federal Removal would be in their best interest. Remini argues that while the Cherokee factions were assessing the situation, the remaining US allies of the Cherokee were abandoning their opposition.¹⁵⁹ Following the formation of a Cherokee faction that signed a treaty agreeing to Removal, the treaty was narrowly approved in the US Senate and Removal proceeded.

Though the opposition was initially encouraged by the Court's opinion, its narrow scope and the fact that its implementation would require Jackson's initiative to oppose his own program made it obvious that the battle was lost. One of the principle opposition speakers in the 1830 Senate debate, Theodore Frelinghuysen, "concluded that the Cherokee must yield." One of the concurring Justices in the *Worcester* decision, John McLean, "counseled the Cherokee delegation in Washington to sign a removal treaty."¹⁶⁰ While the opinions of the court advocated Indian rights and equality, as established in treaties, the political facts were that the only path for the survival of the Cherokee community was to retreat, to the hills of North Carolina and to lands in the west. The logic of US expansion and white European-American dominance prevailed and, as Magliocca describes, "The Tribe was then marched out of Georgia (in) one of the worst human rights abuses in American history."¹⁶¹

¹⁵⁹ Remini, *Legacy*, 71.

¹⁶⁰ *Ibid.*, 72.

¹⁶¹ Magliocca, 13,

The Promise of America

The setting to this clash of peoples, land and status is important to understand. On one level the clash is one of a white settler community expanding westward displacing the proud Indian communities who valued their freedom as much as the whites. The British colonists had advanced from the Atlantic coast inland year by year, month by month, incursion by incursion. This inexorable expansion, regardless of proclamations and treaties, was uppermost in the minds of the spokesmen from Georgia. In the British colonies one way to independence and social standing was through land ownership. There was a bias toward having land as economic security and social and political status. Land ownership in a country strong enough to fend off other powers was a prescription for a better life. That overrode the concern for freedom and desire for equality for everyone. A dominating hierarchy governing a country that grew through the kidnapping and enslavement of blacks and the expulsion of Indians were accepted as the price to pay by many Euro-Americans.

The promise of the liberty of being your own master was based on the Jeffersonian ideal of a republic of independent small owners that was only possible if there were areas of land to be occupied at little or no cost. The Jeffersonian ideal of a yeoman republic, even if other practical questions of its economic and political viability in the age of Napoleon and Metternich were set aside, was impossible without the incorporation of the land of North America being made available to a growing agricultural population.

Jacksonian Democracy and Colonial Hierarchy

The Jackson Democrats presented themselves as the party that embodied the democratic impulse of servants gaining equality with masters, commoners with the gentry, of not having to bow your head nor bend your knee to anyone. As the democratic impulse was turned into a force for white privilege over Indians, Mexicans, slaves, and freedmen, one hierarchy was displaced by another one. Considerable weight was put on the abundance of cheap land available.

Jacksonian politics did involve a broadening of the electorate, bringing large numbers of laboring people into representative politics that had been excluded before. Democratic politics entailed defense of the yeoman vs. defense of the northeastern aristocracy of bankers, merchants, and factory owners. The appeal to the common man required the existence of the opportunity to become a yeoman owning a small farm, and secure in his livelihood and political status.

This period in history did see a change in political standing of white men without property. In a number of states, property qualifications for voting either lessened or disappeared, which added a large number of white male settlers to the voting rolls.¹⁶² For the non-white and/or non-male population Jacksonian Democracy was not much of a social or political improvement, and was, in some ways, a deterioration of their situation.

For the Indians, as Gerard Magliocca relates, this was a period in which the official (but

¹⁶² Alexander Keyssar, *The Right to Vote the Contested History of Democracy in the United States*, Basic Books, New York, 2000, p. 34(?).

not always followed) government policy of civilizing the Indians while respecting their sovereignty came to an end. In its place was a governmental policy of subordination and displacement. As Magliocca relates, the application of the Cherokee Codes of Georgia meant that the Indians were now considered people of color who could not vote, serve in the militia, testify or bring suit in court, nor “assist a meeting of the Cherokee government.”¹⁶³

Jackson’s Indian Removal program was a continuation of US core policy. His assertive program brought an open clash over US Indian policy. He brought to a halt the oscillating Indian policy of public declarations of Indian rights and programs of acculturation paired with the expansion of white settlements. The policy of Jackson was a straightforward pursuit of using the land of North America as a US national resource: to reward US military veterans without having to drain the treasury; as a financial reserve or collateral for the growth of the US economy; as a promise to US white males that the social status, financial security, and political leverage of land owning was available to all who would work and sacrifice for it.

However, the issue was not Jackson’s policies alone. Jackson was not the first to follow a policy of using force in order to expand the United States, and to emphasize colonial

¹⁶³ Gerard N. Magliocca, “The Cherokee removal and the Fourteenth Amendment, *Duke Law Journal*, 53.3 (Dec 2003), p. 4. Of Gale Academic OneFile Print.

property rights. As described by Reginald Horsman,¹⁶⁴ the initial policy of the (confederated) U.S. following the signing of peace with Britain was to force the Indians in the areas north and west of the Ohio River to accept US dictate. In this area, ceded by Britain in the peace agreement, the US claimed to have the right to dispose of the land as it chose because it had defeated Britain.

Jackson pressed for settlement expansion, moving the Indian communities to make room for the white people of the US to take ownership of the country. Land ownership and political rights were not for everyone.

As noted, blacks and Indians, male or female, as well as white women were not included in the broadening ranks of the people having increased political expression and the opportunity to be landowners and their own master. In some ways Jacksonian Democracy shifted boundaries, rather than erasing them, between an aristocracy or elite and the common people. US society maintained a hierarchal order, with the level having political rights to elect and be elected broadened and the line separating those without rights more clearly defined.

In his book *Liberty and Power*, Harry Watson makes the point that Jacksonian politics were based on the inequality of races and the sexes. As regarded the white population, the Democratic Party called for majority rule and successfully pushed for the removal of

¹⁶⁴ Reginald Horsman, *Expansion and American Indian Policy 1783-1812* (Norman: University of Oklahoma Press, 1992).

property qualifications and inclusion of immigrants into the ranks of the voting public. At the same time as barriers for white men were being taken down, barriers for others, such as free blacks and women were being raised.¹⁶⁵

An Alternative View of US Development

The view of those who advocated honoring the rights of Indian communities would have, if successful, resulted in a drastic turn in the orientation and development of the US. The opponents of Removal, though able to raise a few examples of Indian communities retaining some semblance of independence, as in New York, were essentially calling for a change in US policy toward the Indians. They were calling for the US to respect Indian rights written in treaties and speeches instead of denying them.

As Cass noted, either the Indians were an independent people outside US control or they were a subjugated population whose affairs were regulated by the US; there was no status in between the two. The arguments of the opponents of Removal, discussing constitutional law and respect for international agreements, did not contradict Cass's proposition, but they did not elaborate how America might develop with independent or semi-autonomous countries between the Atlantic and the Pacific, south of Canada and north of the Rio Grande and the Colorado.

¹⁶⁵ Harry L. Watson, *Liberty and Power The Politics of Jacksonian America* (New York: Hill and Wang, 1990) 51-53.

The examples of Iroquois communities in New York or Wampanoag communities in Massachusetts having some autonomy were not comparable in size or complexity to a semi-autonomous Cherokee nation. Having its own agriculture, manufacturing, and mining, a Cherokee society with its own government, press, and educational system was something Ross could dream of; for Lumpkin, Jackson, and Cass it would be a terrible nightmare. The proponents did not want to find out the results of such an experiment. Lumpkin and Cass mentioned the problems of having an area nearby where slaves and other fugitives from the US might find easy escape, but that might only touch the surface of the problems caused by a region in the area not consolidated and unified within the plantation run South.

Central Threads of the Argument

Issues of equality and justice, national economic development, and security from military attack were central to the arguments of both proponents and opponents of Removal. Both said they were concerned with political justice in a good society and they were opposed to oppression and for justice. The obvious question was that of who was being oppressed, and liberty for whom? The opponents argued that Georgia was oppressing the Cherokee and the proponents argued that the federal government was oppressing Georgia. Justice, for Georgia, was for the 1802 agreement to be fully implemented and the Cherokee expelled. Justice, for the Cherokee, was for the treaties with the US to be honored, her borders and people protected, and agreed upon payments to be issued.

The oppression of the Cherokee people was done in the name of political principles rather than their negation. The proponents did not say to the US public “we don’t care what the rules are; we only care about winning this struggle.” Instead of saying that they stood for the US disavowing and breaking agreements they found disagreeable, the proponents said they were honorable men who were resisting the oppression of the federal government and the Cherokee; Lumpkin said the spokesmen for Georgia were fighting for their rights. They said they were asking for equality of the southern states with those to the north and east in what had been allowed in dealings with Indians. They argued that the opposition to Removal was only prolonging the Indian’s misery and that expulsion would be of benefit to the Indians as well as to the United States. They spoke in the name of progress and national security in a sort of eminent domain on a colossal scale ensuring economic growth, social and political advance, and military security.

The arguments of the proponents of Removal were clearly self-serving and offered as a justification for the pillage, dispossession, and expulsion of Indian communities.

However, their arguments resonated with a large number of people in the country. An essential argument of the proponents was that the treaties were not valid agreements because they were not agreements between civilized nations, but between whites and Indians. By characterizing the resisting Indian communities as savage, heathen, wandering peoples the proponents were laying the basis for dissolving their claims to land and sovereignty. Characterized as a lower race, the Indians were stripped of their standing as recognized in treaties and instead treated as wards and subjects.

The proponents of Removal argued that in order for the US to be an independent republic in the world of the 19th century it needed to be strong economically and internationally, which required secure borders and a growing population. The proponents were arguing for the continuation of the US policy of expansion that had been followed since the end of open war with Britain in 1783. The opponents of Removal were arguing for a change of policy. The change is hinted at by Evarts when he talks about the slave trade being legal in the past and now being illegal.

At the same time the stand of the opponents did not fully meet the political offensive of the proponents. They were silent on the charge that the southern states were being held to a different standard than other states that had dealt harshly with Indian communities within their borders. In charging the opposition with unfairly judging southern states by denial of the past history of US/Indian relations, Georgia was on solid ground. I found no apologies in the debates in Congress for the practices, including military campaigns, which resulted in the settlements in the Northwest Territories and their incorporation into the states of Ohio, Indiana, and Illinois, for example.

The opponents were arguing for basic principles of honest dealings in calling for the recognition and application of treaty agreements, but those were not the principles employed in the past, and to ignore that fact was a curious loss of memory. Thus the opposition did have the moral high ground of proclamations and documents but also had the baggage of living in a part of the country that had engaged in imperial and colonial expansion and the destruction of many Indian communities.

The proponents worked to write off the opposition and its appeal to the principles of equality and mutual respect by arguing that those opposing the dispossession and deportation of the Indian people were ignoring the constitutional rights of citizens of the states and the needs of the people.

The proponents preferred to have the focus of the debate on questions of colonial practice and legislation and US practice and legislation that agreed with that. The proponents cast the opposition to Removal in somewhat the same light as the opposition to Slavery was cast, as a threat to the established order and the progress of US society.

Ross, Evarts, and Sprague were calling for a turn away from the colonial policies of expansion and control practiced by European countries and continued by the US from the time of its independence. The turn would involve respecting the sovereignty of Indian communities and treating agreements with them in practice as they were written. The turn would involve abandoning, or at least greatly modifying, the incorporation of cheap land as a resource driving the US economy.

The proponents were able to block that turn and successfully press for the continuation of the principles and policies of colonial expansion that had prevailed up to that time. The racist views of the time and the expectation of many whites that land they could own and develop was an opportunity they were guaranteed were powerful impediments to the reconsideration that recognition of Indians rights would entail.

APPENDIX A.

TIME LINE OF EVENTS

The following time line from 1500s to mid 1800s is included as a background reference of events.

1540s. Desoto campaigned through southeastern North America and the Natchez sought refuge among Indian communities to the east.

1670. British colonists, and slaves, from Barbados founded Charleston.

1715-1716. There was war between the Yamasee and Creek forces and the Carolina colony and the Cherokee over Indian slave trade and loss of land.

1733. Oglethorpe founded Savannah, beginning the Georgia colony.

1752. Georgia became a British royal colony.

1763. The Treaty of Paris concluded a century and a half of French and English struggle over influence and hegemony in eastern North America with the French military evicted from the mainland.

1776-1781. There was war with rebel American colonists and French allies against British forces that included American Loyalists and Indian allies.

1787. The US is consolidated through a constitutional federation of states.

1802. A compact between the US and Georgia arranged settlement of Georgia's boundaries in exchange of promises of the land within those boundaries to Georgia.

1803. The Louisiana Purchase ends French and Spanish claim to land west of the Mississippi and north of the Red River and opened prospects of organizing Indian migrations to that land.

1811. In the Battle of Tippecanoe, US defeated forces of Tecumseh that were opposing US expansion in the old Northwest.

1814. In the Battle of Horseshoe Bend, the Red Stick Creeks were defeated.

1812-1815. The War of 1812 involving US, British, and Indian forces ended with US victories and effective British recognition of US domination of North America west of the Atlantic coast and south of the Great Lakes.

1821. Sequoyah completed a Cherokee syllabary, enabling the Cherokee to read and write in their own language.

1825. In the Treaty of Indian Springs Creeks lost all land in the southeast and were deported.

1827. A Cherokee national council adopted a new Constitution of Cherokee nation.

1828. Georgia enacted legislation that declared control over Cherokee country, making the Cherokee government illegal while denying Cherokee people access to Georgia court system.

1828. Andrew Jackson was elected President of the US.

1829 Gold fields were opened in Cherokee country.

1830. Indian Removal act was debated and passed by Congress and signed by Jackson.

1831. The Supreme Court decision in Cherokee vs. Georgia declared it could not intervene on behalf of Cherokee.

1832. The Supreme Court decision in Worcester vs. Georgia declared that Georgia could not make laws that defined who could live in Cherokee country.

1835. The New Echota treaty was advanced by US officials and Cherokee faction and later approved by the US Senate.

1838-1839. The Cherokee were rounded up by the US military and forced on a trek to land west of Arkansas and Missouri territory.

APPENDIX B.

GEORGIA STATE ASSEMBLY LAWS EXTENDING JURISDICTION OVER THE
CHEROKEES

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

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

Sec. 7, And be it further enacted, That after the first day of June next, all laws, ordinances, orders and regulations of any kind whatever, made, passed, or enacted by the

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

Sec. 8, And be it further enacted, That it shall not be lawful for any person or body of persons by arbitrary power or by virtue of any pretended rule, ordinance, law or custom of said Cherokee nation, to prevent by threats, menaces or other means, to endeavor to prevent any Indian of said nation residing within the chartered limits of this State, from enrolling as an emigrant or actually emigrating, or removing from said nation; nor shall it be lawful for any person or body of persons by arbitrary power or by virtue of any pretended rule, ordinance, law or custom of said nation, to punish in any manner, or to molest either the person or property, or to abridge the rights or privileges of any Indian for enrolling his or her name as an emigrant or for emigrating, or intending to emigrate from said nation.

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

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

Sec. 11. *And be it further enacted,* That it shall not be lawful for any person offending against the provisions of the foregoing section, shall be guilty of a high misdemeanor, subject to indictment, and on conviction, shall be confined at hard labor in the Penitentiary for not less than four, not longer than six years, at the discretion of the court.

Sec. 12. *And be it further enacted,* That should any of the foregoing offences be committed under colour of any pretended rules, ordinance, custom or law of said nation, all persons acting therein either as individuals or as pretended executive, ministerial or judicial officers, shall be deemed and considered as principals, and subject to the pains and penalties herein before prescribed.

Sec. 14. *And be it further enacted,* That for all demands which may come within the jurisdiction of a Magistrates court, suit may be brought for the same in the nearest district of the county to which the territory is hereby annexed, and all officers serving any legal

process, or any person, living on any portion of the territory herein named, shall be entitled to receive the sum of five cents for every mile he may ride to serve the same, after crossing the present limits of said counties, in addition to the fees already allowed by law; & in case any of said officers should be resisted in the execution of any legal process issued by any court or Magistrate, Justice of the Inferior court or Judge of the Superior court of any of said counties, he is hereby authorized to call out a sufficient number of the militia of said counties to aid and protect him in the execution of his duty.

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

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

Be it enacted by the Senate and House of Representatives of the State of Georgia, in General Assembly met, and it is hereby enacted by the authority of the same, That after the first day of February, eighteen hundred and thirty-one, it shall not be lawful for any person, or persons, under colour or pretence, of authority from said Cherokee tribe, or as

head men, chiefs, or warriors of said tribe, to cause or procure by any means the assembling of any council, or other pretended Legislative body of the said Indians, or others living among them, for the purpose of legislating, (or for any purpose whatever.) And persons offending against the provisions of this section, shall be guilty of a high misdemeanor, and subject to indictment therefore, and on conviction, shall be punished by confinement at hard labour in the Penitentiary for the space of four years.

Sec. 2. And be it further enacted by the authority aforesaid, That after the time aforesaid, is shall not be lawful for any person or persons under pretext of authority from the Cherokee tribe, or as representatives, chiefs, headmen, or warriors of said tribe, to meet, or assemble as a council, assembly, convention, or in any other capacity, for the purpose of making laws, orders, or regulations for said tribe. And all persons offending against the provisions of this section, shall be guilty of a high misdemeanor and subject to an indictment, and on conviction thereof, shall undergo an imprisonment in the Penitentiary at hard labour for the space of four years.

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

conviction thereof shall be imprisoned in the Penitentiary at hard labour for the space of four years.

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

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

Sec. 6. And be it further enacted by the authority aforesaid, That none of the provisions of this act, shall be so construed as to prevent said tribe, it headmen, chiefs, or other

representatives for meeting any agent or commissioner, on the part of this State or the United States, for any purpose whatever.

Sec. 7. And be it further enacted by the authority aforesaid, That all white persons residing within the limits of the Cherokee nation, on the first day of March next, or any time thereafter, without a license or permit, from his Excellency the Governor, or from such agent as his Excellency the Governor, shall authorize to grant such permit or license, and who shall not have taken the oath hereinafter required, shall be guilty of an high misdemeanor, and upon conviction thereof, shall be punished by confinement in the Penitentiary at hard labour, for a term of not less than four years: *Provided,* that the provisions of this section shall not be so construed, so as to extend to any authorised agent or agents, of the government of the United States, or of this State, or to any person or persons, who may rent any of those improvements, which have been abandoned by Indians, who have emigrated West of the Mississippi: *Provided* nothing contained in this section, shall be so construed as to extend to white females, and all male children under twenty-one years of age.

Sec. 8. And be it further enacted by the authority aforesaid, That all white persons, citizens of the State of Georgia, who have procured a license in writing, from his Excellency the Governor, or from such agent as his Excellency the Governor, shall authorise to grant such permit or license, to reside within the limits of the Cherokee nation, and who have taken the following oath, viz: - "I, A. B. do solemnly swear (or affirm, as the case may be,) that I will support and defend the Constitution and laws of

the State of Georgia, and uprightly demean myself as a citizen thereof, so help me God,” shall be, and the same are hereby declared, exempt and free from the operation of the seventh section of this act.

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

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

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

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

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

APPENDIX C.

THE TEXT OF THE REMOVAL ACT¹⁶⁶

An act to Provide for an Exchange of Lands with the Indians Residing in any of the States or Territories, and for their Removal West of the River Mississippi.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States, west of the river Mississippi, not included in any state or organized territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there; and to cause each of said districts to be so described by natural or artificial marks, as to be easily distinguished from every other.

¹⁶⁶ Reprinted in Anthony F.C. Wallace, *The Long, Bitter Trail Andrew Jackson and the Indians* (New York, Hill and Wang, 1993), 125-128.

SECTION II

And be it further enacted, That it shall and may be lawful for the President to exchange any or all of such districts, so to be laid off and described, with any tribe or nation of Indians now residing within the limits of any of the states or territories, and with which the United States have existing treaties, for the whole or any part or portion, within the bounds of any one or more of the states or territories, where the land claimed and occupied by the Indians, is owned by the United States, or the United States are bound to the state within which it lies to extinguish the Indian claim thereto.

SECTION III

And be it further enacted, That in the making of any such exchange or exchanges it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: Provided always, That such lands shall revert to the United States, if the Indians become extinct, or abandon the same.

SECTION IV

And be it further enacted, That if, upon any of the lands now occupied by the Indians, and to be exchanged for, there should be such improvements as add value to the land claimed by any individual or individuals of such tribes or nations, it shall and may be lawful for the President to cause such value to be ascertained by appraisement or otherwise, and to cause such ascertained value to be paid to the person or persons rightfully claiming such improvements. And upon the payment of such valuation, the improvements so valued and paid for, shall pass to the United States, and possession shall not afterwards be permitted to any of the same tribe.

SECTION V

And be it further enacted, That upon the making of any such exchange as is contemplated by this act, it shall and may be lawful for the President to cause such aid and assistance to be furnished to the emigrants as may be necessary and proper to enable them to remove to, and settle in, the country for which they have exchanged; and also, to give them such aid and assistance as may be necessary for their support and subsistence for the first year after their removal.

SECTION VI

And be it further enacted, That it shall and may be lawful for the President to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever.

SECTION VII

And be it further enacted, That it shall and may be lawful for the President to have the same superintendence and care over any tribe or nation in the country to which they may remove, as contemplated by this act, that he is now authorized to have over them as their present places of residence; Provided, That nothing in this act contained shall be construed as authorizing or directing the violation of any existing treaty between the United States and any of the Indian tribes.

SECTION VII

And be it further enacted, that for the purpose of giving effect to the provisions of this act, the sum of five hundred thousand dollars is hereby appropriated, to be paid out of any money in the treasury, not otherwise appropriated. Approved, May 28, 1830.

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