

Surviving Genocide

NATIVE NATIONS AND
THE UNITED STATES FROM THE
AMERICAN REVOLUTION TO
BLEEDING KANSAS



Jeffrey Ostler

Yale UNIVERSITY PRESS

New Haven & London

At the same time U.S. officials were telling Indians that the only alternative to disappearance was removal, officials also had much to say about a very different plan for Indians: "civilizing" them and incorporating them into an expanding America. Like removal discourse, civilization discourse also drew on the mythology of the vanishing Indian, though it charted a different path to salvation. Instead of rescuing Indians by separating them from American society, Indians would be saved by absorbing them into American society. Historians of U.S. Indian policy have often argued that a policy of removal replaced a policy of civilization in the mid- to late 1820s, when policymakers decided that the policy of civilization had "failed."²⁸ Already we have seen a major problem with this interpretation. Long before the mid-1820s, government officials were constantly trying to persuade Indians to move west, and as we will see in the next chapter, they were taking concrete steps to dispossess Native nations west of the Mississippi to prepare the way for the removal of eastern Indians. Two very different policies were being articulated at the same time. How can this contradiction be resolved? Some clues emerge from a close reading of what historians have frequently cited as a classic expression of an early republic civilization policy: a speech by Thomas Jefferson to a delegation of Indians from New Stockbridge, New York, in 1808.

Led by Hendrick Aupaumut, the Mahican whom the U.S. had enlisted as an emissary to the United Indian Nations at The Glaize sixteen years before (see Chapter 3), the Stockbridge delegates traveled to Washington, D.C., to seek Jefferson's guarantee to a small tract of land on the White River in Indiana. Moving to Indiana, Aupaumut thought, would protect his small community from rapacious land companies and allow him to convert non-Christian Delawares and other Indians in the White River area. Jefferson supported the delegates' request, but not before lecturing them on the reasons for "the increase of our numbers and the decrease of yours." The main cause of Indians' supposed decline, Jefferson explained, was that they had "lived by

hunting the deer and buffalo." Now that these were gone, "you have been a part of every year without food," which had led to "diseases and death among your children." In addition, "wars . . . and the abuse of spirituous liquors, have assisted in lessening your numbers." Extinction could be avoided, however, if Indian men were to "learn to cultivate the earth." This would free women to "spin and weave and to clothe their families." Such changes would allow Indians to "raise many children" and so "double your numbers every twenty years," with the result that "your children will never be tempted to sell the spot on which they have been born, raised, have labored, and called their own." Once this had occurred, Jefferson continued, Aupaumut's descendants would appreciate the value of property and would then desire to "live under . . . our laws" and "unite yourselves with us." At that time, "you will mix with us by marriage, your blood will run in our veins, and will spread with us over this great island."²⁹

Taken at face value, Jefferson's speech suggests a sincere desire to save Indians from an otherwise inevitable extinction, a desire grounded in a view of Indians as capable of advancing to the level of whites. Despite historians' fondness for quoting this speech, however, they have failed to notice, let alone explore, the irony that this particular audience already met Jefferson's definition of civilization. Not only were the Stockbridge Indians Christians, many were literate, they knew how to "cultivate the earth," and they had adopted the gendered division of labor Jefferson prescribed. They did not need Jefferson's fatherly advice. In fact, Aupaumut was offering similar counsel (cast in fraternal, not paternal, terms) to non-Christian Indians in Indiana, saying that if they followed the Stockbridges' example, "the great and good spirit will bless you that . . . you shall increase, both in number and substance."³⁰ Despite Jefferson's profession of Indians' ultimate racial equality as measured by their ability to "advance" toward civilization, he was unable to recognize that the Indians standing before him actually conformed to his criteria for civilization, a failure that revealed a powerful, though unarticulated, operating assumption of an innate racial inferiority.³¹ Instead, Jefferson deferred the moment of possible Stockbridge "civilization" to a distant future. Only after the community had adopted a new gendered division of labor, only after at least one generation and probably more had increased in number and learned to value private property, could the alchemy of marriage provide a route to the final civilization of Stockbridge Indians. However, the policies that Jefferson was actually pursuing—dispossession and removal—would not allow the Stockbridges, or any other eastern nation, to remain in

place long enough to obtain the gift he offered. On the terms Jefferson offered it, civilization was structurally impossible.

But what about the fact that in the 1810s and 1820s Congress regularly appropriated funds to provide tribes with plows, livestock, spinning wheels, blacksmitheries, grist mills, and schools in the name of civilizing them? Or that Christian missionary societies, with government encouragement, provided additional financial and human resources to support the same agenda? Or that the federal government sponsored an institution of higher learning like the Choctaw Academy in Kentucky, where students from dozens of Indian nations, north and south, studied moral philosophy, trigonometry, grammar, geography, and history?³² This does not mean that programs to civilize Indians were undertaken for the cynical purpose of hiding an actual agenda of removal. It simply means that people are capable of sincerely advocating conflicting agendas without acknowledging or fully reckoning with their fundamentally contradictory nature. Policymakers were undoubtedly sincere when they talked of the possibility of civilizing Indians. At the same time, though, in the decades before the advent of a formal policy of removal in 1830, U.S. officials undertook a series of initiatives to convince eastern Indians to move west, these initiatives steadily gained strength, and they eventually overwhelmed any residual commitment to civilization. Jefferson's failure to acknowledge the "civilized" Stockbridge Indians standing right in front of him along with concrete actions he took to promote removal strongly suggest that "civilization" was the weaker of the two priorities all along.

JUSTIFYING REMOVAL

The policy the United States adopted in 1830 of uprooting tens of thousands of people from their homelands and relocating them hundreds of miles away did not just happen with the stroke of a pen. A policy of removal took time to mature and involved substantial effort even before its formal adoption. We have already seen U.S. officials working hard to convince Native people to go west in the decades before 1830. At the same time, officials also needed to construct arguments justifying removal. This work was particularly laborious for Americans because the act of taking Indian lands and forcing Indians to do something against their will so clearly ran counter to American ideals of freedom, honor, and Christian brotherhood.

One step in the justification of removal was to undermine the sovereignty of Native nations. Attacks on Native sovereignty were nothing new, but they

accelerated after the end of the War of 1812. Andrew Jackson led the way. After dictating the 1814 Treaty of Fort Jackson to the Creeks, Jackson turned his attention to other southern nations. Working within the treaty system, Jackson and other officials secured modest cessions from Chickasaws, Cherokees, and Choctaws in fall 1816. By this time, Jackson had wearied of tiresome negotiations to procure cessions, and so in March 1817 he urged President-elect James Monroe to consider a new approach. The federal government, Jackson advised, should abandon the "absurdity" of negotiating treaties with Indians as if they were "independent nation[s]" and instead recognize them as subject to U.S. sovereignty with only a "possessory right to the soil." In a precocious assertion of what would become known as the plenary power doctrine, Jackson argued that Congress should "regulate all the concerns of the Indians," including taking their lands as a way to accelerate their adoption of American civilization, something he characterized as being in their own interest. The argument here was not directly connected to removal, but to the extent that it sanctioned dispossession, it established a crucial precondition.³³

Most U.S. leaders, including President Monroe, were unwilling to abandon the treaty-making process. Respect for the laws of humanity, as Tocqueville put it in *Democracy in America*, required obtaining (or creating an illusion of) Indian consent to dispossession. Nonetheless, there was considerable agreement among American leaders about Jackson's underlying assertion that Indians did not own their lands. Indeed, Chief Justice John Marshall, often considered an antagonist to Jackson, gave legal authority to precisely this view in his 1823 decision in *Johnson v. M'Intosh*. In this decision, considered by one legal authority to be one of the "ten worst Indian law cases ever decided," Marshall drew on the "doctrine of discovery" to argue that European governments (including the United States) had "ultimate dominion" over the land and "an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest." Indians, characterized in racist language as "fierce savages whose occupation was war," were not the full owners of the land and instead had only a "right of occupancy." There was nothing fundamentally new in Marshall's decision, but by giving judicial authority to the long-standing view that Indians did not have full ownership of their land, *Johnson v. M'Intosh* contributed to a mounting assault on Native sovereignty.³⁴

Although the argument that Indians did not have full ownership rights to their lands did not necessarily mandate removal, it and other attacks on Native sovereignty coincided with official assertions that removal would soon be necessary. In addressing the "condition of the aborigines within our limits"

in his 1824 message to Congress, President Monroe observed that "unless the tribes be civilized they can never be incorporated into our system in any form whatever." Rather than pause to consider whether or not civilization projects had been or could be successful, however, Monroe, apparently assuming that they had not and could not, drew on the mythology of the vanishing Indian and pronounced that "with the extension of our settlements, their situation will become deplorable if their extinction is not menaced." It was therefore necessary to move them far from "our settlements." To complete the work of reconciling removal with the United States' commitment to humane ideals, Monroe then considered how removal should be accomplished. One possibility was to send Indians west by force, but Monroe rejected this as "revolting to humanity and utterly unjustifiable." Having repudiated inhumanity, Monroe then articulated the only presumably humanitarian course of action: the U.S. should provide "inducements" for Indians to move into the "vast territory" between the Mississippi and the Rocky Mountains/Mexico, where they would be provided with "schools for every branch of instruction in literature and the arts of civilized life."³⁵

Monroe's argument for removal established the basic template for future arguments: since Indians could not survive in the East, the only humane option was to move them. Both of these premises were deeply flawed. First, eastern Indians were not vanishing, they were not predestined to vanish in the future, and they could have survived (and even prospered) indefinitely in their homelands with sufficient support and protection from the federal government. Second, by Monroe's own logic, removal was not a humane option. Setting aside commonsense concerns about moving large numbers of people great distances to new places, Monroe's contention that settlement had an inherently deleterious impact on Indians meant that removed Indians would eventually be subject to the same forces that threatened their extinction in the East. Even as Monroe spoke, it was plain enough that the process of settlement was already well under way in areas that had earlier been designated for Indian removal. Missouri, once imagined as a permanent home for relocated Indian nations, had become a state three years before. Arkansas, organized as a territory in 1819, was moving along the same path.

As an indication of the Monroe administration's commitment to a comprehensive policy, in early 1825 Secretary of War John C. Calhoun outlined a plan for removal. Calhoun did not recommend moving every single Indian from the East. The "small remnants of tribes" along the eastern seaboard from Maine to South Carolina would not be forced west. Evidently, they

controlled such a small amount of land and were so far from the West that it would not be worth the trouble. Recognizing that by this time there was a shortage of lands west of the Mississippi for the relocation of eastern Indians, Calhoun further advised against moving the much larger Indian populations in the upper Great Lakes (northern Michigan and Wisconsin). In fact, Calhoun thought that there were sufficient lands in the upper Great Lakes region to accommodate Indian nations from the lower Great Lakes and New York. Rather than moving these nations west of the Mississippi, it would be better to relocate them to the upper Great Lakes, where the "climate and nature of the country are much more favorable to their habits." Moreover, Indians from the lower Great Lakes and New York could be "collected" with "greater facility" to the upper Great Lakes than to places like Iowa, Missouri, or Kansas. With these exceptions, however, the large majority of eastern Indians would be moved west of the Mississippi, where they would find a "permanent home for themselves and their posterity, without being disturbed by the encroachments of our citizens." Calhoun, like Monroe, was also well aware of the acceleration of U.S. expansion since 1815 and so had ample basis to realize that the promise of a permanent and undisturbed home was bound to be chimerical. Whether in self-deception or outright deceit, however, Calhoun's assurance of a benevolent removal was fast becoming official dogma.³⁶

CHEROKEE RESISTANCE TO REMOVAL AND THE U.S. RESPONSE

Although momentum for a comprehensive removal policy gained strength in the late 1820s, there was significant opposition. A major source of resistance came from the Cherokee Nation. To defend themselves and their lands, Cherokees, or more precisely a smaller subgroup consisting of fairly wealthy people with Cherokee and European ancestry, had undertaken a major project of strengthening the Cherokee Nation in the 1820s. Cherokee leaders centralized executive decisionmaking and judicial authority, established a legal regime oriented toward paternalism and individual property rights (including rights to own black slaves), and promoted Euroamerican education, Christianity, and literacy in English and Cherokee. (Cherokee became a written language based on the Cherokee linguist Sequoyah's invention of a Cherokee syllabary in the late 1810s; Fig. 25.) In 1825 the Cherokees established a new capital city at New Echota (in northwestern Georgia) complete with legislative hall, courthouse, and printing press, which published a national



Fig. 25. The Cherokee linguist Sequoyah was born around 1770 in Tennessee. He fought with the United States against the Red Stick Creeks in 1814. Not long after, he completed his work on a syllabary for the Cherokee language. While in Washington in 1828, he sat for a portrait by Charles Bird King, and a year later he moved to Oklahoma. He died sometime in the early 1840s while on a journey to Mexico to visit Cherokees there. Museum of the Cherokee Indian, Cherokee, North Carolina. Photo credit: Mireille Vautier/Art Resource, N.Y.

bilingual newspaper, the *Cherokee Phoenix*. Two years later, the Cherokees held a constitutional convention. The resulting document, modeled on the U.S. Constitution, was ratified, not coincidentally, on July 4. In becoming a "mirror of the republic," Cherokees remained culturally distinct, but they had made themselves legible to the United States as a civilized and sovereign

nation and thus demanding recognition. Cherokee nation building was also designed to strengthen internal unity, understood as a vital condition for national defense.³⁷

The Cherokees' adoption of a constitution in 1827 offered a serious test of the U.S. commitment to a policy of civilization. If that commitment was more than simply rhetorical, the United States would be obligated to accept the Cherokee Constitution and allow for the permanent presence of a civilized Cherokee Nation on Cherokee lands. When confronted with an actual rather than a theoretical case of Indians conforming to the criteria Americans had established for civilization, however, federal and state government officials did not celebrate this achievement. Instead, they denied the legitimacy of the Cherokee Constitution and insisted that Cherokees go west.

Historians have often focused on the state of Georgia's leading role in the assault on the Cherokee Nation that followed the Cherokee adoption of a constitution. Indeed, it would be difficult to overstate the aggressiveness with which Georgia moved to counter the Cherokee Nation's claims to sovereignty. In December 1827 the Georgia Senate "solemnly warn[ed]" the Cherokees that "the lands in question *belong* to Georgia—She *must* and she *will* have them." The Georgia legislature followed up on this declaration by passing legislation declaring all Cherokee laws null and void effective June 1, 1830. It is important to note, however, that even before the longtime enemy of Native sovereignty, Andrew Jackson, became President, Georgia's stance had the full support of the executive branch. In late 1827 Superintendent of Indian Affairs Thomas McKenney reported to Congress that Cherokees "ought not to be encouraged in forming a constitution and government *within* a state of the republic, to exist and operate independently of our laws." A year later, in his last annual address to Congress, President John Quincy Adams observed that the United States had "unexpectedly found [Indians] forming in the midst of ourselves communities claiming to be independent of ours, and rivals of sovereignty within the territories of the members of our Union" (i.e., Georgia). Although Adams had shown some ambivalence about removal, he now endorsed this project. In so doing, he gestured to the standard paternalistic argument that removal would "do justice to those unfortunate children of nature." For Adams, however, there was a more fundamental issue requiring removal: the necessity of securing for states "their rights of sovereignty and of soil."³⁸

Had Andrew Jackson not been elected President in 1828, the federal government likely would have adopted a formal policy of removal anyway. The executive branch was clearly moving in that direction, and although Congress

had yet to act, momentum was building for legislation. Nonetheless, Jackson's election brought to the presidency someone far more devoted to Indian removal than any previous president. Removal had been Jackson's "major policy aim" for a quarter century. Having Andrew Jackson in the White House meant that the United States would pursue removal more relentlessly—and with more destructive consequences—than it might have done otherwise. The new President did not bring novel arguments to bear on the issue. In his first message to Congress in December 1829 Jackson repeated familiar phrases about the humanitarian imperative to protect Indians from disappearing. When "surrounded by whites" Indians were "doom[ed] . . . to weakness and decay," he declared, and so "humanity and national honor demand that every effort should be made to avert so great a calamity." In addition, Jackson asserted the impossibility of recognizing "a foreign and independent government" within existing states' boundaries. Jackson's contribution was an unprecedented determination to make Indian removal a reality.³⁹

The new President's intentions were no secret to the Cherokees. Anticipating that Jackson would move aggressively against them by supporting Georgia's attack on their sovereignty and in this way pressure them to abandon their homeland, Cherokees began a campaign of their own. In February 1829, they submitted a memorial to Congress, protesting Georgia's assertion of legal jurisdiction and citing the United States' historic commitment, inscribed in numerous treaties, to recognize their national sovereignty and promote their civilization. Cherokees also enlisted the support of missionary allies. While in Washington to present the Cherokee memorial, Principal Chief John Ross paid a visit to Jeremiah Evarts, corresponding secretary of the American Board of Commissioners for Foreign Missions. Ross told Evarts that should Georgia try to execute its laws, Cherokees would resist, "preferring death to subjugation or exile."⁴⁰

Over the next several months, Evarts and other missionaries, inspired by Cherokee appeals as well as Christian duty, orchestrated a remarkable campaign to uphold Cherokee treaty rights and block removal legislation. The key text opposing removal was a series of essays Evarts wrote under the pen name "William Penn." These were initially published in the *National Intelligencer*, widely copied by other journals, and republished as pamphlets. The William Penn essays provided a comprehensive overview of Cherokee treaties with Great Britain, the colony of Georgia, and the United States to establish the merits of the Cherokee position that "the title to the soil and sovereignty over [Cherokee] territory have been repeatedly *guaranteed to the Cherokees*,

as a nation, by the United States, in treaties which are now binding on both parties." From this position, Georgia's use of the discovery doctrine to deny Cherokee land title was tantamount to the claim that "force becomes right." In addition to establishing the illegality and immorality of violating treaties, Evarts also considered the destructive consequences of moving "60,000 souls, men, women, and children, most of them in circumstances of deep poverty." Removal, he forecast, would "be attended with much suffering."⁴¹

Evarts's writings inspired dozens of local Christian organizations to send antiremoval petitions to Congress. Evarts also influenced Catharine Beecher, the daughter of Lyman Beecher, a prominent figure in a religious revival sweeping New England known as the Second Great Awakening. After hearing Evarts speak in Boston, Catharine Beecher published an anonymous circular calling on U.S. women to petition Congress to protect the Cherokees and other Indian nations, "as by solemn and oft-repeated treaties they are bound to do." To allow states to take "such measures as will speedily drive them from their country" was sure to lead to their "final extinction." Beecher's circular influenced many like-minded white women in the North. Seeing themselves as guardians of Christian and American morality, they launched the "first national petition drive by [U.S.] women," inundating Congress with dozens of petitions, each signed by hundreds of women (the largest was from Pittsburgh, with 670 signers). Although this expression of women's activism has usually been seen as arising solely from non-Native women, it was inspired by Cherokee activism. In 1818–1819, Margaret Ann Scott, a leading Cherokee opponent of removal, had corresponded with the non-Native poet Lydia Sigourney to "impress" on her "the urgency of the Cherokee case." Ten years later, Sigourney, a close associate of Beecher, called Beecher's attention to the moral outrage of Cherokee removal.⁴²

Even before the emergence of the antiremoval movement, the Jackson administration had begun cultivating allies of its own. Superintendent of Indian Affairs McKenney secured support from Dutch Reformed, Presbyterian, and Episcopal churches, while influential proremoval Baptist missionary Isaac McCoy spent several months speaking on behalf of removal in eastern cities. The Jacksonians also commissioned Lewis Cass to write an essay on removal, which appeared in the January 1830 issue of the widely read *North American Review*. Drawing on the authority of his experience with Indians as governor of Michigan Territory and federal treaty commissioner, Cass voiced the usual humanitarian position that "the only means of preserving the Indians from that utter extinction which threatens them, is to remove them" and pledged

that the United States would guarantee Indian lands in the West "as long as the grass grows or the water runs." Such sentiments were combined with a relentless attack on the continent's original inhabitants. Ignoring millennia of Indigenous success in North America, Cass described Indians as "rude and barbarous," incapable of true nationhood, and possessing no more than a temporary right of occupancy in their lands. Though predating the emergence of formal racial theories grounded in biology, often mistakenly seen as a necessary feature of racist ideologies, Cass's argument clearly characterized Indians as a racial group inherently inferior to Europeans.⁴³

In early 1830 Jackson's allies introduced removal legislation in the House and Senate. The opposition's primary leader was New Jersey senator Theodore Frelinghuysen, a devout temperance man who had long taken an interest in Indian missions. For three days Frelinghuysen spoke on the Senate floor in support of the Cherokee position and offered an amendment guaranteeing federal protection of Cherokees until such time as they chose voluntarily to move. Georgia senator John Forsyth took the lead in rebutting Frelinghuysen, arguing that the truly humane position was Georgia's: that "the Indians in the United States would be benefitted by their removal beyond the states, to a country appropriated for their exclusive residence, cannot be doubted by any dispassionate man who knows their condition." Other supporters of removal indicted opponents of the current removal bill for their hypocrisy, pointing out that there had been little objection when outgoing President Adams had endorsed removal only months before. Thus, they said with some degree of truth, the current opposition was patently partisan.⁴⁴

The Removal Bill passed the Senate by a vote of 28 to 19. It was even closer in the House, with 102 in favor and 97 against. Because representatives from the southern states voted heavily for the legislation, it would have failed except that the Constitution's clause counting enslaved people as three-fifths of a person for the purposes of representation increased the South's voting power. President Jackson signed the bill into law on May 28, 1830. The United States was now formally committed to a policy of relocating eastern Indians west of the Mississippi.⁴⁵ The intensity of the removal debate and the fact that opponents of removal came close to blocking removal legislation suggests that this was a rare moment when the United States came close to taking a significantly different path in its relations to Indian nations than the one it chose. Perhaps the defeat of removal legislation in 1830 would have allowed Cherokees and other Native nations to remain permanently in their eastern homelands. Yet, even if federal removal legislation had failed in 1830,

there are reasons to doubt that most eastern nations could have avoided being forced west. For one thing, the Jackson administration would have continued to press for removal legislation and done little to protect Cherokees from Georgia's 1829 legislation, scheduled to take effect on June 1, 1830. More important, although the removal debate in Congress highlighted significant divisions, there was considerable consensus about removal's ultimate necessity. Those who spoke against removal in 1830 did not oppose removal altogether. Rather, they objected to the process by which it was being accomplished. The central outrage Frelinghuysen identified in his Senate speech was not removal itself, but the "unwarrantable pretensions of Georgia, in her late violent legislation." Although he defended Cherokee sovereignty and appeared to support the possibility of Cherokees permanently retaining their lands, Frelinghuysen's amendment for federal protection of the Cherokees called for this only until such time as the Cherokees voluntarily signed a removal treaty. Even the most celebrated antagonist to removal, Jeremiah Evarts, admitted (in a conversation with Georgia congressman Wilson Lumpkin in early 1829) that eastern Indians would eventually have to relocate west. Differences of opinion were more about process and timing and less about the ultimate end.⁴⁶

NOTHING BUT RUIN

In any event, the Indian Removal Act did pass. Three days later, in an assertion of "perfect settler sovereignty," the state of Georgia claimed full jurisdiction over the Cherokee Nation, denying its very existence. By Georgia's reckoning, the Cherokee Nation did not own its lands, its constitution and laws were meaningless, and its claims to legal jurisdiction within its territory spurious.⁴⁷ Georgia could not pass legislation compelling the Cherokee Nation to relocate west of the Mississippi. But by the reckoning of Georgia officials, legislating the Cherokee Nation out of existence would allow Georgians to make life so miserable for the Cherokees that they would eventually agree to depart.

The immediate source of immiseration for the Cherokees took the form of an invasion of Georgia settlers. Even before 1830, hundreds of Georgians, spurred by the discovery of gold on Cherokee territory in 1829, had illegally squatted on Cherokee lands. On the heels of the Removal Act, Georgia began surveying Cherokee lands in preparation for a lottery that would allocate these lands to Georgia's eager white citizens. By summer 1830, as the Cherokees wrote in a statement of grievances addressed to the U.S. Congress,

Georgians had "flocked in thousands to our gold mines" and "by violence" had "forced the natives out of their houses, and taken possession." In one instance, a relatively prosperous Cherokee couple provided supper to two Georgians. Later that night, when their hosts were temporarily away, the Georgians returned the couple's hospitality by burning down their house. Under their most recent treaty with the Cherokee Nation, signed in 1819, the federal government was bound to protect the Cherokees from "white people who . . . may . . . intrude on the lands reserved for the Cherokees." The federal government made some pretense of fulfilling this obligation when the War Department dispatched troops to evict a few Georgia squatters, but the few who were evicted quickly returned. By the time they did, the troops had withdrawn, in the words of the Cherokees' statement of grievances, leaving "our country again exposed to the ravages of intruders." Without federal protection, Cherokees were at the mercy of Georgia and its citizens. The Cherokees cited several examples. In one, squatters attacked "peaceable" Cherokees. "One was cruelly murdered, another wounded, and a third . . . thrown into jail." In another example, a party of ten armed men "forced an Indian from his horse . . . and cruelly abused the persons of two aged Cherokees, one a female, causing a flow of blood, because they did not quietly suffer themselves to be robbed of their property." In addition to supporting white miners, the state of Georgia actively worked to stop Cherokees from mining their own gold. At one point, Governor George R. Gilmer secured an injunction from a court in Hall County, Georgia, to "stop [Cherokees] from digging and searching for gold within the limits of their own nation." The county sheriff dispatched thirty or forty state militiamen into Cherokee country, where they "proceeded to destroy tools and machinery for gleaning gold" and then arrested three Cherokee miners for ignoring the injunction.⁴⁸

Cherokees were also deeply alarmed by attacks Georgia made on their national sovereignty. Sometime in the summer of 1830, a Cherokee named George Tassel killed another Cherokee man. The murder took place within the Cherokee Nation and under existing treaties should have been left to the Cherokee judicial system to resolve. But Georgia officials saw the killing as an opportunity to apply Georgia's recently passed laws asserting criminal jurisdiction over the Cherokees and so they arrested Tassel, found him guilty of murder, and sentenced him to death. Tassel's attorney appealed to the U.S. Supreme Court, which issued an injunction against Tassel's execution pending a hearing. But before the Supreme Court could consider the case, the Georgia legislature asserted "the right to punish crimes" as essential to state

sovereignty and Governor Gilmer ordered Tassel to the gallows. For Cherokees, the actions of Georgia's legislature and the state's governor "breathe a spirit towards our nation of which we will not permit ourselves to speak."⁴⁹

Cherokees faced a desperate situation, but the majority were determined to fight Georgia's efforts to force their removal. Consistent with the resistance strategy they had adopted over the previous decade, the Cherokee leadership decided to maneuver within the institutions of American civilization. Advised by former U.S. Attorney General William Wirt, the Cherokee leadership decided that the Supreme Court might be persuaded to rule that Georgia's assertions of sovereignty over the Cherokee Nation violated treaties between the Cherokees and the federal government and were therefore unconstitutional. Should that occur, the Cherokee leadership believed they could block removal. Otherwise, "if we are compelled to leave our country, we see nothing but ruin before us."⁵⁰

CONCLUSION: DESTROY TO SAVE

As word reached them of the Indian Removal Act, other Indigenous nations shared Cherokee fears of ruin. In April 1831, Creek leaders pleaded with Andrew Jackson to listen to the voices of their nation's elders: "Our aged fathers and mothers beseech us to remain upon the land that gave us birth, where the bones of their kindred are buried." Removal, the elders said, was "the worst evil that can befall them." In Ohio, Shawnees had "dreaded" removal for years. Quaker missionaries had assured the Shawnees that "if they would improve their lands and be at peace, that they never should be asked for their land." But when "intimations" of the Indian Removal Act reached the Shawnees, "alas," they feared, "what a mistake!"⁵¹ And in New York the Tonawanda Senecas informed the President of their hope that the "white man will not wish us far away but will take us by the hand as friends and neighbors." Since the advent of the United States, these and other Native American communities had survived genocidal violence and the theft of much of their land. They had rebuilt war-torn communities and adjusted to new economic realities. They were not vanishing, nor was it predestined that they would. A truly humane America would have protected Native communities in place, but under the guise of saving them, the United States now threatened their destruction.