

The great Cherokee Nation that had fought the young Andrew Jackson back in 1788 now faced an even more powerful and determined man who was intent on taking their land. But where in the past they had resorted to guns, tomahawks, and scalping knives, now they chose to challenge him in a court of law. They were not called a "civilized nation" for nothing. Many of their leaders were well educated; many more could read and write; they had their own written language, thanks to Sequoyah, a constitution, schools, and their own newspaper. And they had adopted many skills of the white man to improve their living conditions. Why should they be expelled from their lands when they no longer threatened white settlements and could compete with them on many levels? They intended to fight their ouster, and they figured they had many ways to do it. As a last resort they planned to bring suit before the Supreme Court.

Prior to that action, they sent a delegation to Washington to plead their cause. They petitioned Congress to protect them against the unjust laws of Georgia that had decreed that they were subject to its sovereignty and under its complete jurisdiction. They even approached the President, but he curtly informed them that there was nothing he could do in their quarrel with the state, a statement that shocked and amazed them.

So the Cherokees hired William Wirt to take their case to the Supreme Court. In the celebrated *Cherokee Nation v. Georgia* he instituted suit for an injunction that would permit the Cherokees to remain in Georgia without interference by the state. He argued that they constituted an independent nation and had been so regarded by the United States in its many treaties with them.

Speaking for the majority of the court, Chief Justice John Marshall handed down his decision on March 18, 1831. Not surprisingly, as a great American nationalist, he rejected Wirt's argument that the Cherokees were a sovereign

ANDREW JACKSON



"Old Hickory" had been an Indian fighter, and he continued the struggle as president. His new weapon was the Indian Removal Act, which would force Eastern tribes to relocate west of the Mississippi.

By Robert V. Remini

Andrew Jackson, President of the United States (1830) by Albert Newsam depicts a man of iron will who refused to compromise.

nation, but he also rejected Jackson's claim that they were subject to state law. The Indians were "domestic dependent nations," he ruled, subject to the United States as a ward to a guardian. Indian territory was part of the United States but not subject to action by individual states.

When the Cherokees read Marshall's decision they honestly believed that the Nation had won the case, that Georgia lacked authority to control their lives and property, and that the courts would protect them. The Supreme Court, the Principal Chief told his people, decided "in our favor." So they stayed right where they were, and missionaries encouraged them to stand fast.

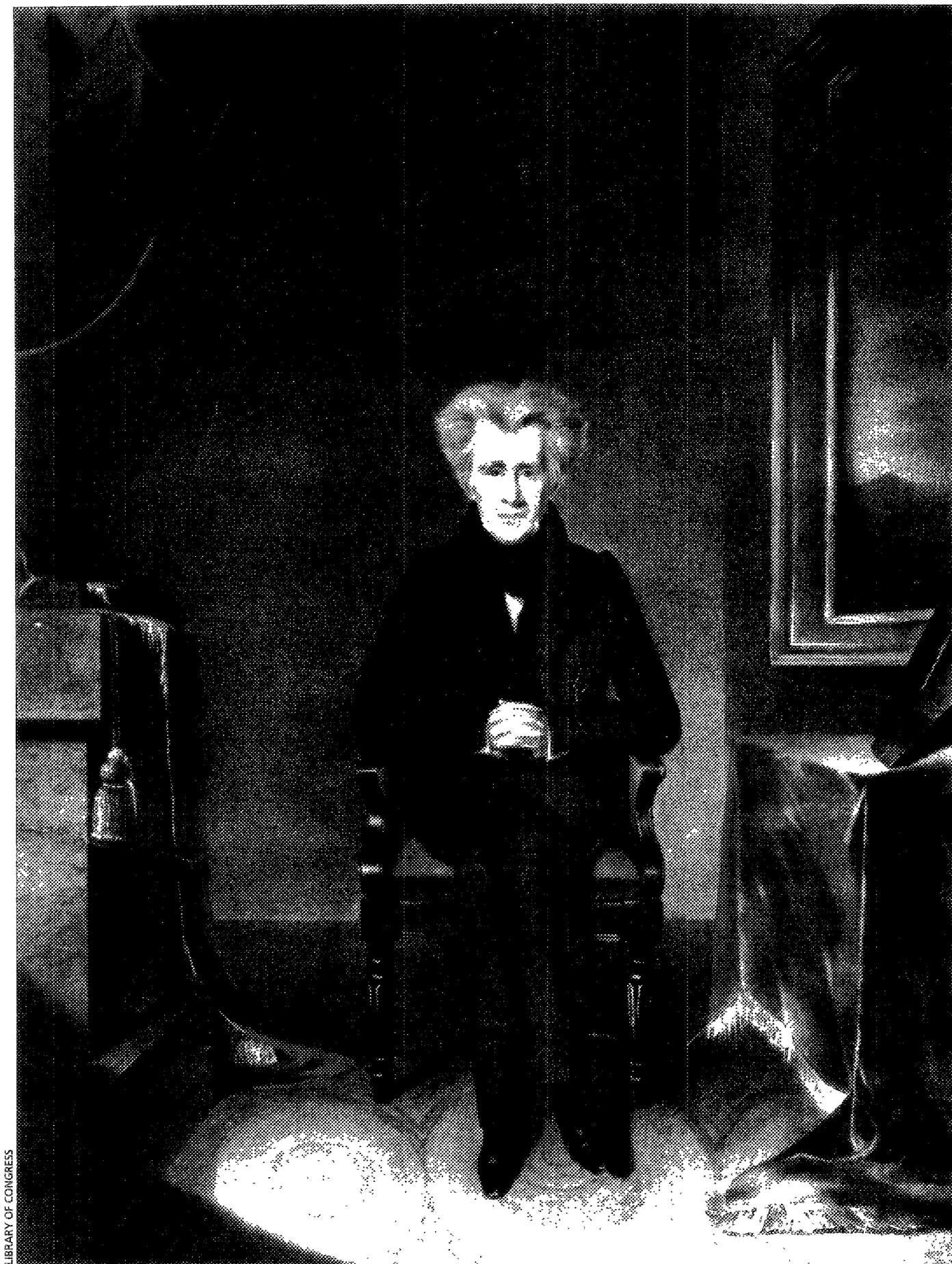
But they figured without Andrew Jackson—the man the Cherokees called Sharp Knife—and the authorities of Georgia. In late December 1830, the state passed another law prohibiting white men from entering Indian country after March 1, 1831, without a license from the state. This move was obviously intended to keep interfering clergymen from inciting the Indians to disobey Georgia law. Eleven such missionaries were arrested for violating the recent statute, nine of whom accepted pardons from the governor in

return for a promise that they would cease violating Georgia law. But Samuel A. Worcester and Dr. Elizur Butler refused the pardon, and Judge Augustin S.J. Clayton sentenced them to the state penitentiary, "there to endure hard labor for the term of four years." They appealed the verdict and their case came before the Supreme Court.

On March 3, 1832, Marshall again ruled in *Worcester v. Georgia*, declaring all the laws of Georgia dealing with the Cherokees unconstitutional, null, void, and of no effect. In addition he issued a formal mandate two days later ordering the state's superior court to reverse its decision and free the two men.

Jackson was presently involved in a confrontation with South Carolina over the pas-

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sage of the Tariffs of 1828 and 1832. The state had nullified the acts and threatened to secede from the Union if force were used to make her comply with them. The last thing Jackson needed was a confrontation with another state, so he quietly nudged Georgia into obeying the court order and freeing Butler and Worcester. A number of well-placed officials in both the state and national governments lent a hand and the governor, Wilson Lumpkin, released the two men on January 14, 1833.

With the annoying problem of the two missionaries out of the way, both Georgia and Jackson continued to lean on the Cherokees to get them to remove. "Some of the most vicious and base characters that the adjoining states can produce" squatted on their land and stole "horses and other property" and formed a link with as many "bad citizens" of the Cherokee Nation "as they can associate into their club." Missionaries decried what was happening to the Cherokees. If only "whites would not molest them," wrote Dr. Elizur Butler in *The Missionary Herald*. They have made remarkable progress in the last dozen years and if left alone they can and will complete the process toward a "civilized life."

But allowing eastern Indians full control of their eastern lands was virtually impossible in the 1830s. There was not army enough or will enough by the American people to bring it about. As Jackson constantly warned, squatters would continue to invade and occupy the land they wanted; then, if they were attacked, they would turn to the state government for protection that usually ended in violence. All this under the guise of bringing "civilization" to the wilderness.

Even so, the Cherokees had a strong leader who had not yet given up the fight. They were led by the wily, tough, and determined John Ross, a blue-eyed, brown-haired mixed-blood who was only one-eighth Cherokee. Nonetheless he was the Principal Chief, and a most powerful force within the Nation. He was rich, lived in a fine house attended by black slaves, and had influence over the annuities the United States paid to the tribal government for former land cessions. His appearance and lifestyle were distinctly white; in all other respects he was Indian.

From the beginning of Jackson's administration Ross urged his people to stand their ground and remain united. "Friends," he told his people, "I have great hopes in your firmness and that you will hold fast to the place where you were raised. Friends if you all unite together and be of one mind there is no danger." And the Cherokees cheered his determination. They approved wholeheartedly of his leadership and they took comfort in what he said. So, with the Nation solidly behind him, Ross resolutely resisted any thought of leading his people from their ancient land into a god-forsaken wilderness.

Still the Cherokees held out, even though even they had begun to feel the unrelenting pressure. A so-called Treaty Party emerged within the Nation, made up of chiefs and headmen who understood Jackson's inflexible will and had decided to

John Ross, Principal Chief of the Cherokee Nation, learned that President Jackson was an unyielding adversary.

bow to his wishes and try to get the best treaty possible. They were led by very capable, hard-headed, and pragmatic men, including the Speaker of the Cherokee Na-

tional Council, Major Ridge; his son, the educated and politically ambitious John Ridge; and the editor of the Cherokee *Phoenix*, Elias Boudinot.

John Ridge took a leading role in the emergence of the Treaty Party, for when the *Worcester* decision was first handed down he instantly recognized that Chief Justice Marshall had rendered an opinion that abandoned the Cherokees to their inevitable fate. So he went to Jackson and asked him point-blank whether the power of the United States would be exerted to force Georgia into respecting Indian rights and property. The President assured him that the government would do nothing. He then advised Ridge "most earnestly" to go home and urge his people to remove. Dejected, the chief left the President "with the melancholy conviction that he had been told the truth. From that moment he was convinced that the only alternative to save his people from moral and physical death, was to make the best terms they could with the government and remove out of the limits of the states. This conviction he did not fail to make known to his friends, and hence rose the 'Treaty Party.'"

The members of this Treaty Party certainly risked their lives in pressing for removal, and indeed all of them were subsequently marked for assassination. Not too many years later, Elias Boudinot and John Ridge were slain with knives and tomahawks in the midst of their families, while Major Ridge was ambushed and shot to death.

John Ross, on the other hand, would not yield. As head of the National Party that opposed removal he was shrewd enough to recognize immediately that the President would attempt to play one party off against the other. "The object of the President is unfolded & made too plain to be misunderstood," he told the Nation. "It is to create divisions among ourselves, break down our government, our press & our treasury, that our cries may not be heard abroad; that we may be deprived of the means of sending delegations to Washington City to make known our grievances before Congress . . . and break down the government which you [Cherokees] have, by your own free will & choice, established for the security of your freedom & common welfare."

Under the circumstance, Ross decided to go to Washington and request a meeting with the President in order to try again to arrange some accommodation that would prevent the mass relocation of his people to what was now the new Indian Territory, which Congress had created in 1834 and which eventually became the state of Oklahoma. He was tormented by the knowledge that his people would be condemned to a "prairie badly watered and only skirted on the margin of water courses

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John Ridge, a leader of the Treaty Party, was assassinated by opponents in 1839.

and poor ridges with copes of wood." Worse, districts would be laid out for some "fifteen or twenty different tribes, and all speaking different languages, and cherishing a variety of habits and customs, a portion civilized, another half civilized and others uncivilized, and these congregated tribes of Indians to be regulated under the General Government, by no doubt white rulers." The very thought of it sent shivers through Ross's entire body.

Since he had fought with Jackson at the Battle of Horseshoe Bend during the Creek War he reckoned that his service during that battle would provide him with a degree of leverage in speaking with the President. And, as Principal Chief, he could speak with the duly constituted authority of the Cherokee Nation as established under the Cherokee Constitution of 1827.

He had another reason for requesting the interview. He had heard a rumor that Jackson had commissioned the Reverend John F. Schermerhorn, an ambitious cleric who had assisted in the removal of the Seminoles from Florida, to negotiate with Ridge and his associates and see if a deal could be worked out that would result in a treaty. Definitely alarmed, Ross asked to speak with the President at which time he said he would submit his own proposal for a treaty.

Jackson never liked Ross. He called him "a great villain." Unlike Ridge and Boudinot, said Jackson, the Principal Chief headed a mixed-blood elite, and was intent on centralizing

power in his own hands and diverting the annuities to those who would advance his authority and their economic self-interests. Real Indians were full-blooded Indians, not half-breeds, he declared. They were hunters, they were true warriors who, like Ridge and Boudinot, understood the President's concern for his red children and wished to prevent the calamity of certain annihilation that would ensue if they did not heed his pleas to move west. As for Ross's authority under the Cherokee Constitution, Jackson denied that it existed. He said that this so-called Constitution provided for an election in 1832 and it had not been held. Instead the Principal Chief had simply filled the National Council with his henchmen—another indication, claimed Jackson, of an elitist clique who ruled the Nation and disregarded the interests of the majority of the people.

Despite his feelings about the chief, Jackson decided to grant Ross's request for a meeting. Above all else he wanted Cherokee removal and if that meant seeing this "great villain" and hearing about his proposal for relocating the tribe then he would do it. As a consummate politician, Jackson understood the value of playing one party off against another, so when he granted the interview he directed that Schermerhorn suspend his negotiations with the Treaty Party and wait for the outcome of his interview with the Principal Chief.

Actually Jackson and Ross were much alike. They were both wily, tough, determined, obsessed with protecting the interests of their respective peoples, and markedly dignified and polite when they came together in the White House on Wednesday, February 5, 1834. It was exactly noon when the Principal Chief arrived, and the Great Father greeted him with the respect due Ross's position. The chief returned the compliment. For a few minutes their conversation touched on pleasantries, then they got down to the question at hand and began playing a political game that involved the lives of thousands, both Native Americans and white settlers.

Unfortunately, despite his many talents and keen intelligence, Ross was no match for the President. He simply lacked the resources of his adversary.

The Principal Chief opened with an impassioned plea. "Your Cherokee children are in deep distress," he said, "... because they are left at the mercy of the white robber and assassin" and receive no redress from the Georgia courts. That state, he declared, has not only "surveyed and lotteried off" Cherokee land to her citizens but legislated as though Cherokees were intruders in their own country.

Jackson just listened. Then the Principal Chief acted imprudently and made impossible demands on the President. To start, he insisted that in any treaty the Nation must retain some of their land along the borders of Tennessee, Alabama, and Georgia, land that had already been occupied by white settlers. He even included a small tract in North Carolina. He then required assurances that the United States government would protect the Cherokees with federal troops in the new and old settlements for a period of five years.

Jackson could scarcely believe what was being demanded of him. Under other circumstances he would have acted up a storm in an attempt to frighten and cower the chief. But, on this occasion he decided against it. Instead, in a calm and quiet but determined voice, he told Ross that nothing short of an

entire removal of the Cherokee Nation from all their land east of the Mississippi would be acceptable.

Having run into a stone wall, Ross headed in another direction. In view of the gold that had recently been discovered in Georgia and North Carolina, he wanted \$20 million for all their eastern land plus reimbursement for losses sustained by the Nation for violations of former treaties by the United States. He also asked for indemnities for claims under the 1817 and 1819 Cherokee treaties. The total amount almost equaled the national debt.

On hearing this, Jackson also changed direction. His voice hardened, his intense blue eyes flared, and the muscles in his face tightened and registered his growing displeasure. Obviously the Principal Chief had not caught the President's meaning when he rejected the first demand. Jackson snapped at Ross, rejected the proposal as "preposterous" and warned him that the Great Father was not to be trifled with. If these demands were the best the chief could offer then there was no point in continuing the discussion.

That brought Ross up short. Completely surprised by Jackson's reaction he protested his sincerity, and to prove it he offered to accept any award the Senate of the United States might recommend. Apparently the chief was attempting to set up a bidding contest between the upper house and the chief executive. Surprisingly, Jackson accepted the offer and assured Ross that he would "go as far" as the Senate in any award that might be proposed. And on that conciliatory note the interview ended.

In less than a week Ross received his answer about what the Senate would offer. John P. King of Georgia chaired the Committee on Indian Affairs that considered the question. That was bad enough. Then the committee came up with an offer of \$5 million. The figure shocked the Principal Chief. Jackson probably knew beforehand what would happen and therefore agreed to Ross's suggestion. Now the Indian was faced with rejecting the money outright or accepting this paltry sum and thereby losing credibility with his people. Naturally he chose the former course. He claimed he had been misunderstood, that he could not possibly agree to such an amount, and that his reputation among the Cherokees would be shattered if he consented to it. He left Washington an angry and bitter man.

Having disposed of Ross, Jackson turned back to Schermerhorn and instructed him to renew the negotiations with the Treaty Party. With little difficulty the cleric managed to arrange a draft removal treaty signed on March 14, 1835, by Schermerhorn, John Ridge, Elias Boudinot, and a small delegation of Cherokees. After due notice the treaty was submitted to the Cherokee National Council at New Echota, Georgia, for approval and sent to the President for submission to the Senate. The draft stipulated that the Cherokees surrender to the United States all its land east of the Mississippi River for a sum of \$5 million, an amount that one modern historian has called "unprecedented generosity." This cession comprised nearly 8 million acres of land in western North Carolina, northern Georgia, northeastern Alabama, and eastern Tennessee. A schedule of removal provided that the Cherokees would be resettled in the west and receive regular



payments for subsistence, claims, and spoiliations, and would be issued blankets, kettles, and rifles.

At approximately the same time this draft treaty was drawn up and considered at New Echota, a large delegation of Cherokee chiefs—in the desperate hope that their assembled presence would make a difference and prevent the treaty from going forward to the Senate—went to Washington and asked to speak to their Great Father. In contrast to his grudging granting of Ross's request, Jackson was anxious to meet the delegation and give the chiefs one of his celebrated "talks."

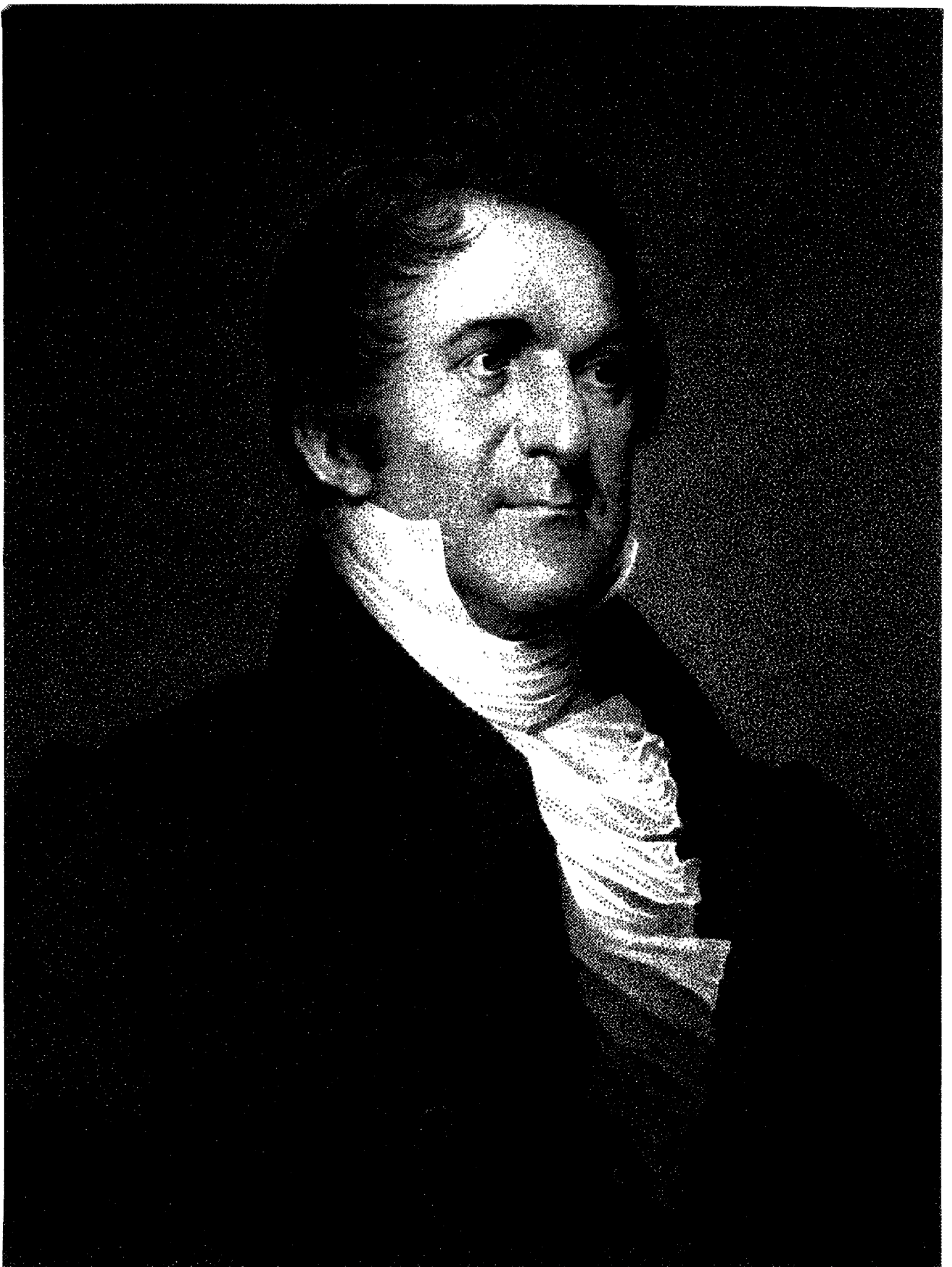
The Indians arrived at the White House at the designated hour, and Jackson treated them with marked respect, as though they really were dignitaries of a foreign nation. Yet he did not remotely say or do anything that would indicate an acceptance of their independence or sovereignty. Once the Indians had assembled they faced the President as he began his talk.

"Brothers, I have long viewed your condition with great interest. For many years I have been acquainted with your people, and under all variety of circumstances, in peace and war. Your fathers are well known to me . . . Listen to me, therefore, as your fathers have listened . . ."

Jackson paused. He turned from side to side to look at and

Major Ridge, John Ridge's father, was also a member of the Treaty Party.

He was killed in an ambush on the same day his son died.



take in all the Cherokees standing around him. After a few moments he began again.

"You are now placed in the midst of a white population . . . You are now subject to the same laws which govern the citizens of Georgia and Alabama. You are liable to prosecutions for offenses, and to civil actions for a breach of any of your contracts. Most of your people are uneducated, and are liable to be brought into collision at all times with your white neighbors. Your young men are acquiring habits of intoxication. With strong passions . . . they are frequently driven to excesses which must eventually terminate in their ruin. The game has disappeared among you, and you must depend upon agriculture and the mechanic arts for support. And yet, a large portion of your people have acquired little or no property in the soil itself . . . How, under these circumstances, can you live in the country you now occupy? Your condition must become worse and worse, and you will ultimately disappear, as so many tribes have done before you."

These were his usual arguments, but he judged them essential for success.

You have not listened to me, he scolded. You went to the courts for relief. You turned away from your Great Father. And what happened? After years of litigation you received little satisfaction from the Supreme Court and succeeded in earning the enmity of many whites. "I have no motive, Brothers, to deceive you," he said. "I am sincerely desirous to promote your welfare. Listen to me, therefore, while I tell you that you cannot remain where you are now . . . It [is] impossible that you can flourish in the midst of a civilized community. You have but one remedy within your reach. And that is to remove to the West and join your countrymen, who are already established there." The choice is yours. "May the great spirit teach you how to choose."

Jackson then concluded by reminding them of the fate of the Creeks, that once great and proud Nation. How broken and reduced in circumstances their lives had now become because they resisted. It was a not-so-subtle threat that also struck home. "Think then of these things," he concluded. "Shut your ears to bad counsels. Look at your condition as it now is, and then consider what it will be if you follow the advice I give you."

That ended the talk, and the Indians filed from the room more disappointed and depressed than ever. Jackson would not budge, and they knew their kinsmen were dead set against removal. It was a stalemate that could end only in tragedy.

Meanwhile Schermerhorn called "a council of all the people" to meet him at New Echota in Georgia during the third week of December 1835 to approve the draft treaty, making sure that a large contingent of Treaty Party members attended. Like Jackson,

William Wirt argued the Cherokees' case before the Supreme Court, which ruled that the Nation was not subject to Georgia state law but was accountable to the United States government.

he had the temerity to warn other Cherokees that if they stayed away their absence would be considered a vote of consent for the draft.

Despite the threat and the warning, practically the entire Nation stayed away. As a consequence the treaty was

approved on December 28 by the unbelievably low number of 79 to 7. The numbers represented only the merest fraction of the Nation. A vast majority—perhaps fifteen-sixteenths of the entire population—presumably opposed it and showed their opposition by staying away. The entire process was fraudulent, but that hardly mattered. Jackson had the treaty he wanted, and he did not hesitate to so inform the Senate.

The Treaty of New Echota closely, but not completely, resembled the draft treaty in that the Cherokees surrendered all their eastern land and received \$4.5 million in return. They would be paid for improvements, removed at government expense, and maintained for two years. Removal was to take place within two years from the date of the treaty's approval by the Senate and President.

A short while later some 12,000 Cherokees signed a resolution denouncing the Treaty of New Echota and forwarded it to the Senate. Even the North Carolina Cherokees, in a separate action, added 3,250 signatures to a petition urging the Senate to reject it. But Jackson was assured by the Treaty Party that "a majority of the people" approved the document "and all are willing peaceable to yield to the treaty and abide by it." Such information convinced the President that the Principal Chief and his "half breed" cohorts had coerced the Cherokees into staying away from New Echota under threat of physical violence.

At New Echota the Treaty Party selected a Committee of Thirteen to carry the treaty to Washington and they were empowered to act on any alteration required by the President or the U.S. Senate. This Committee invited Ross to join the group and either support the treaty or insist on such alterations as to make it acceptable. "But to their appeal [Ross] returned no answer," which further convinced the President that the treaty represented the genuine interests and the will of the majority of Cherokees.

Although Henry Clay, Daniel Webster, Edward Everett, and other senators spoke fervently against the treaty in the Senate, a two-thirds majority of 31 members voted for it and 15 against. It carried by a single vote on May 18. Jackson added his signature on May 23, 1836, and proclaimed the Treaty of New Echota in force.

And they had two years—that is until May 23, 1838—to cross over the Mississippi and take up their new residence in the Indian Territory. But every day of that two-year period John Ross fought the inevitable. He demanded to see the President and insisted that Jackson recognize the authority of the duly elected National Council, but Sharp Knife would have none of him and turned him away. Back home the Principal Chief

They had two years—that is, until May 23, 1838—to cross over the Mississippi and take up their new residence in Indian Territory.

advised his people to ignore the treaty and stay put. "We will not recognize the forgery palmed off upon the world as a treaty by a knot of unauthorized individuals," he cried, "nor stir one step with reference to that false paper."

Not everyone listened to him. They knew Andrew Jackson better. Some 2,000 Cherokees resigned themselves to the inevitable, packed their belongings, and headed west. The rest, the vast majority of the tribe, could not bear to leave their homeland and chose to hope that their Principal Chief would somehow work the miracle that would preserve their country to them.

But their fate could not have been worse. When the two-year grace period expired and Jackson had left office, his hand-

picked successor, President Martin Van Buren, ordered the removal to begin. Militiamen charged into the Cherokee country and drove the Cherokees from their cabins and houses. With rifles and bayonets they rounded up the Indians and placed them in prison stockades that had been erected "for gathering in and holding the Indians preparatory to removal."

These poor, frightened and benighted innocents,

while having supper in their homes, "were startled by the sudden gleam of bayonets in the doorway and rose up to be driven with blows and oaths along the weary miles of trail which led to the stockade. Men were seized in the fields, women were taken from their wheels and children from their play." As they turned for one last glimpse of their homes they frequently saw them in flames, set ablaze by the lawless rabble who followed the soldiers, scavenging what they could. These outlaws stole the cattle and other livestock and even desecrated graves in their search for silver pendants and other valuables. They looted and burned. Said one Georgia volunteer who later served in the Confederate army: "I fought through the Civil War and have seen men shot to pieces and slaughtered by thousands, but the Cherokee removal was the cruelest I ever saw."

In a single week some 17,000 Cherokees were rounded up and herded into what was surely a concentration camp. Many sickened and died while they awaited transport to the west. In June the first contingent of about a thousand Indians boarded a steamboat and sailed down the Tennessee River on the first lap of their westward journey. Then they were boxed like animals into railroad cars drawn by two locomotives. Again there were many deaths on account of the oppressive heat and cramped conditions in the cars. For the last leg of the journey the Cherokees walked. Small wonder they came to call this 800-mile nightmare "The Trail of Tears." Of the approximately 18,000 Cherokees who were removed, at least 4,000 died in the stockades along the way, and some say the figure actually reached 8,000. By the middle of June 1838 the

general in charge of the Georgia militia proudly reported that not a single Cherokee remained in the state except as prisoners in the stockade.

At every step of their long journey to the Indian Territory the Cherokees were robbed and cheated by contractors, lawyers, agents, speculators, and anyone wielding local police power. Food supplied by the government disappeared or arrived in short supply. The commanding officer, General Winfield Scott, and a few other generals "were concerned about their reputation for humaneness," says one modern historian, "and probably even for the Cherokee. There just wasn't much they could do about it." As a result many died needlessly. "Oh! The misery and wretchedness that presents itself to our view in going among these people," wrote one man. "Sir, I have witnessed entire families prostrated with sickness—not one able to give help to the other, and these poor people were made the instruments of enriching a few unprincipled and wicked contractors."

And this, too, is part of Andrew Jackson's legacy. Although it has been pointed out many times that he was no longer President of the United States when the Trail of Tears occurred and had never intended such a monstrous result of his policy, that hardly excuses him. It was his insistence on the speedy removal of the Cherokees, even after he had left office, that brought about this horror. From his home outside Nashville he regularly badgered Van Buren about enforcing the treaty. He had become obsessed about removal. He warned that Ross would exert every effort and means available to him to get the treaty rescinded or delayed and that, he said, must be blocked. But the new President assured him that nothing would interfere with the exodus of the Cherokees and that no extension of the two-year grace period would be tolerated under any circumstance.

Principal Chief John Ross also shares a portion of blame for this unspeakable tragedy. He continued his defiance even after the deadline for removal had passed. He encouraged his people to keep up their resistance, despite every sign that no appreciable help would be forthcoming from the American people or anyone else; and he watched as they suffered the awful consequences of his intransigence.

Despite the obscene treatment accorded the Cherokees by the government, the tribe not only survived but endured. As Jackson predicted, they escaped the fate of many extinct eastern tribes. Cherokees today have their tribal identity, a living language, and at least three governmental bodies to provide for their needs. Would that the Yemassee, Mohegans, Pequots, Delawares, Narragansetts, and other such tribes could say the same. ☪

Robert V. Remini is the author of a three-volume biography of Andrew Jackson as well as biographies of Daniel Webster and Henry Clay and many other books about Jacksonian America.



For more about our seventh president, read "Andrew Jackson and the Tavern-Keeper's Daughter" by J. Kingston Pierce. You can find it on TheHistoryNet, www.thehistorynet.com, starting July 2.