

the founders of the Constitution; terms, too, of limited, well-defined, and established signification? On the contrary, I see great danger in using the *general* term now introduced; it may cover the latent designs of ambition and change the nature of the general government. It is entirely unimportant, as is before said, by what means this end is effected.

I come in the third place to show that the words “necessary and proper,” in the Constitution, add nothing to the powers before given to the general government. They were only added (says *The Federalist*) for greater caution, and are tautologous and redundant, though harmless. It is also said, in the report aforesaid, that these words do not amount to a grant of *new* power, but for the removal of all uncertainty the declaration was made that the means were included in the grant. I might multiply authorities on this point to infinity; but if these do not suffice, neither would one were he to arise from the dead. If this power existed in the government before these words were used, its repetition or reduplication, in the Constitution, does not increase it. The “expression of that which before existed in the grant, has no operation.” So these words, “necessary and proper,” have no power or other effect than if they had been annexed to and repeated in every specific grant; and in that case they would have been equally unnecessary and harmless. As a friend, however, to the just powers of the general government, I do not object to them, considered as merely declaratory words, and inserted for greater caution. I only deny to them an extension to which they are not entitled, and which may be fatal to the reserved rights by the states and of the people.

#### FOR FURTHER READING

- Margaret E. Horsnell, *Spencer Roane: Judicial Advocate of Jeffersonian Principles*. New York: Garland, 1986.
- Herbert A. Johnson, *The Chief Justiceship of John Marshall*. Columbia: University of South Carolina Press, 1997.
- Frances N. Stites, *John Marshall, Defender of the Constitution*. Boston: Little, Brown, 1981.

#### Viewpoint 21A

#### *Indians Should Be Removed to the West (1830)*

Andrew Jackson (1767–1845)

INTRODUCTION *Between 1815 and 1860 most of the American Indians residing in the territory between the Appalachian Mountains and the Mississippi River were forced to cede their lands and move from their homes. The United States government actively pursued this end by purchasing or seizing Indian territories and using threatened or actual military force to relocate Native Americans. Some Indian tribes responded with battle; others tried different methods of resistance. Among the latter group were the Cherokee Indians in Georgia,*

*Alabama, and Tennessee. After signing treaties with the federal government, they sought to accommodate themselves to change by adopting numerous traits of white American culture, including writing, a governing constitution, and agricultural plantations (complete with black slaves).*

*In 1827 the Cherokee proclaimed themselves an independent nation, much to the dissatisfaction of local whites who coveted their land. The state of Georgia promptly passed laws nullifying the Cherokee declaration and extending state authority over Cherokee lands, actions that violated existing treaties between the Cherokee and the federal government. Both sides looked to Washington for support in resolving the dispute.*

*The white settlers were to find an ally in Andrew Jackson, elected president in 1828. Jackson had gained much of his fame as an Indian fighter. He sought for and gained Congressional passage in 1830 of the Indian Removal Act, which authorized funds for the removal of all Indian tribes still east of the Mississippi, including the Cherokee. The following viewpoint is excerpted from Jackson’s 1830 message to Congress, in which he praises Congress for passing the law and defends his policy of Indian removal.*

*What benefits of Indian removal does Jackson describe? What comparison does Jackson make between Indians and immigrants? Why does he say that it is the duty of the federal government to expedite Indian removal?*

It gives me pleasure to announce to Congress that the benevolent policy of the Government, steadily pursued for nearly thirty years, in relation to the removal of the Indians beyond the white settlements is approaching to a happy consummation. Two important tribes [the Choc-taws and the Chickasaws] have accepted the provision made for their removal at the last session of Congress, and it is believed that their example will induce the remaining tribes also to seek the same obvious advantages.

The consequences of a speedy removal will be important to the United States, to individual States, and to the Indians themselves. 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. It will place a dense and civilized population in large tracts of country now occupied by a few savage hunters. By opening the whole territory between Tennessee on the north and Louisiana on the south to the settlement of the whites it will incalculably strengthen the southwestern frontier and render the adjacent States strong enough to repel future invasions without remote aid. It will relieve the

From *A Compilation of the Messages and Papers of the Presidents*, vol. 3, edited by James D. Richardson (New York: Bureau of National Literature), 1897.

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. It will separate the Indians from immediate contact with settlements of whites; free them from the power of the States; enable them to pursue happiness in their own way and under their own rude institutions; will retard the progress of decay, which is lessening their numbers, and perhaps cause them gradually, under the protection of the Government and through the influence of good counsels, to cast off their savage habits and become an interesting, civilized, and Christian community. These consequences, some of them so certain and the rest so probable, make the complete execution of the plan sanctioned by Congress at their last session [the 1830 Indian Removal Act] an object of much solicitude. . . .

#### TRUE PHILANTHROPY

Humanity has often wept over the fate of the aborigines of this country, and Philanthropy has been long busily employed in devising means to avert it, but its progress has never for a moment been arrested, and one by one have many powerful tribes disappeared from the earth. To follow to the tomb the last of his race and to tread on the graves of extinct nations excite melancholy reflections. But true philanthropy reconciles the mind to these vicissitudes as it does to the extinction of one generation to make room for another. In the monuments and fortresses of an unknown people, spread over the extensive regions of the West, we behold the memorials of a once powerful race, which was exterminated or has disappeared to make room for the existing savage tribes. Nor is there anything in this which, upon a comprehensive view of the general interests of the human race, is to be regretted. Philanthropy could not wish to see this continent restored to the condition in which it was found by our forefathers. What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns, and prosperous farms, embellished with all the improvements which art can devise or industry execute, occupied by more than 12,000,000 happy people, and filled with all the blessings of liberty, civilization, and religion?

The present policy of the Government is but a continuation of the same progressive change by a milder process. The tribes which occupied the countries now constituting the Eastern States were annihilated or have melted away to make room for the whites. The waves of population and civilization are rolling to the westward, and we now propose to acquire the countries occupied by the red men of the South and West by a fair exchange, and, at the expense of the United States, to send them to a land where their existence may be prolonged and perhaps made perpetual. Doubtless it will be painful to leave

the graves of their fathers; but what do they more than our ancestors did or than our children are now doing? To better their condition in an unknown land our forefathers left all that was dear in earthly objects. Our children by thousands yearly leave the land of their birth to seek new homes in distant regions. Does Humanity weep at these painful separations from everything, animate and inanimate, with which the young heart has become entwined? Far from it. It is rather a source of joy that our country affords scope where our young population may range unconstrained in body or in mind, developing the power and faculties of man in their highest perfection. These remove hundreds and almost thousands of miles at their own expense, purchase the lands they occupy, and support themselves at their new homes from the moment of their arrival. Can it be cruel in this Government when, by events which it can not control, the Indian is made discontented in his ancient home to purchase his lands, to give him a new and extensive territory, to pay the expense of his removal, and support him a year in his new abode? How many thousands of our own people would gladly embrace the opportunity of removing to the West on such conditions! If the offers made to the Indians were extended to them, they would be hailed with gratitude and joy.

And is it supposed that the wandering savage has a stronger attachment to his home than the settled, civilized Christian? Is it more afflicting to him to leave the graves of his fathers than it is to our brothers and children? Rightly considered, the policy of the General Government toward the red man is not only liberal, but generous. He is unwilling to submit to the laws of the States and mingle with their population. To save him from this alternative, or perhaps utter annihilation, the General Government kindly offers him a new home, and proposes to pay the whole expense of his removal and settlement.

#### THE DUTIES OF THIS GOVERNMENT

In the consummation of a policy originating at an early period, and steadily pursued by every Administration within the present century—so just to the States and so generous to the Indians—the Executive feels it has a right to expect the cooperation of Congress and of all good and disinterested men. The States, moreover, have a right to demand it. It was substantially a part of the compact which made them members of our Confederacy. With Georgia there is an express contract; with the new States an implied one of equal obligation. Why, in authorizing Ohio, Indiana, Illinois, Missouri, Mississippi, and Alabama to form constitutions and become separate States, did Congress include within their limits extensive tracts of Indian lands, and, in some instances, powerful Indian tribes? Was it not understood by both parties

that the power of the States was to be coextensive with their limits, and that with all convenient dispatch the General Government should extinguish the Indian title and remove every obstruction to the complete jurisdiction of the State governments over the soil? Probably not one of those States would have accepted a separate existence—certainly it would never have been granted by Congress—had it been understood that they were to be confined forever to those small portions of their nominal territory the Indian title to which had at the time been extinguished.

It is, therefore, a duty which this Government owes to the new States to extinguish as soon as possible the Indian title to all lands which Congress themselves have included within their limits. When this is done the duties of the General Government in relation to the States and the Indians within their limits are at an end. The Indians may leave the State or not, as they choose. The purchase of their lands does not alter in the least their personal relations with the State government. 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 their sovereign power within their own limits in as full a manner before as after the purchase of the Indian lands; nor can this Government add to or diminish it.

May we not hope, therefore, that all good citizens, and none more zealously than those who think the Indians oppressed by subjection to the laws of the States, will unite in attempting to open the eyes of those children of the forest to their true condition, and by a speedy removal to relieve them from all the evils, real or imaginary, present or prospective, with which they may be supposed to be threatened.

Viewpoint 21B  
*Indians Should Be Allowed to Remain  
in Their Homeland (1830)*

The Cherokee Nation

INTRODUCTION *The Cherokee Indians in the early 1800s had successfully adopted and combined traits of Indian and white culture to create a prosperous agricultural society with plantations, gristmills, a newspaper, and a governing constitution. In 1828, however, the state government of Georgia passed laws ordering the seizure of Indian lands and declaring all Cherokee laws void. Faced with the growing threat of forced removal from their homes, the Cherokees sent a delegation to Washington in 1830 to plead their case before Congress and President Andrew Jackson. Finding both the president and Congress unreceptive, they published an appeal to the American people, excerpted below, pleading for the right to stay in their homeland.*

*Despite some success, including an 1832 Supreme Court ruling (Worcester v. Georgia) in their favor,*

*the Cherokee Nation was ultimately unable to prevent relocation. In 1838 U.S. troops forced the remaining Cherokee in Georgia to leave for lands in Oklahoma. Many perished while on the "trail of tears."*

*On what legal basis do the Cherokee lose their arguments? What reasons do they give for not wishing to move? How, in their view, has the state of Georgia treated them unfairly?*

Permit us to state what we conceive to be our relations with the United States. After the peace of 1783, the Cherokees were an independent people; absolutely so, as much as any people on earth. They had been allies to Great Britain, and as a faithful ally took a part in the colonial war on her side. They had placed themselves under her protection, and had they, without cause, declared hostility against their protector, and had the colonies been subdued, what might not have been their fate? But her power on this continent was broken. She acknowledged the independence of the United States, and made peace. The Cherokees therefore stood alone; and, in these circumstances, continued the war. They were then under no obligations to the United States any more than to Great Britain, France or Spain. The United States never subjugated the Cherokees; on the contrary, our fathers remained in possession of their country, and with arms in their hands.

#### PEACE TREATIES

The people of the United States sought a peace; and, in 1785, the treaty of Hopewell was formed, by which the Cherokees came under the protection of the United States, and submitted to such limitations of sovereignty as are mentioned in that instrument. None of these limitations, however, affected, in the slightest degree, their rights of self-government and inviolate territory. The citizens of the United States had no right of passage through the Cherokee country till the year 1791, and then only in one direction, and by an express treaty stipulation. When the federal constitution was adopted, the treaty of Hopewell was confirmed, with all other treaties, as the supreme law of the land. In 1791, the treaty of Holston was made, by which the sovereignty of the Cherokees was qualified as follows: The Cherokees acknowledged themselves to be under the protection of the United States, and of no other sovereign.—They engaged that they would not hold any treaty with a foreign power, with any separate state of the union, or with individuals. They agreed that the United States should have the exclusive right of regulating their trade; that the citizens of the United States should have a right of way in one direction through the Cherokee country; and that if an Indian should do

From the "Memorial of the Cherokee Nation" (July 17, 1830), as reprinted in *Nile's Weekly Register*, August 21, 1830.