

"BROTHERS, LISTEN . . . YOU MUST SUBMIT"

It is an awesome contradiction that at the moment the United States was entering a new age of economic and social betterment for its citizens—the industrial revolution underway, democracy expanding, social and political reforms in progress—the Indians were driven from their homes and forced to seek refuge in remote areas west of the Mississippi River. [Andrew] Jackson, the supreme exponent of liberty in terms of preventing government intervention and intrusion, took it upon himself to expel the Indians from their ancient haunts and decree that they must reside outside the company of civilized white men. It was a depressing and terrible commentary on American life and institutions in the 1830s.

The policy of white Americans toward Indians was a shambles, right from the beginning. Sometimes the policy was benign—such as sharing educational advantages—but more often than not it was malevolent. Colonists drove the Indians from their midst, stole their lands and, when necessary, murdered them. To the colonists, Indians were inferior and their culture a throwback to a darker age.

When independence was declared and a new government established committed to liberty and justice for all, the situation of the Indians within the continental limits of the United States contradicted the ennobling ideas of both the Declaration and the Constitution. Nevertheless, the Founding Fathers convinced themselves that men of reason, intelligence and good will could resolve the Indian problem. In their view the Indians were "noble savages," arrested in cultural development, but they would one day take their rightful place beside white society. Once they were "civilized" they would be absorbed.

President George Washington formulated a policy to encourage the "civilizing" process, and Jefferson continued it. They presumed that once the Indians adopted the practice of private property, built homes, farmed, educated their children, and embraced Christianity these Native Americans would win acceptance from white Americans. Both Presidents wished the

From Robert V. Remini, *Andrew Jackson and the Course of American Freedom, 1822-1832*, vol. 2 (Harper & Row, 1981). Copyright © 1981 by Robert V. Remini. Reprinted by permission of HarperCollins Publishers, Inc. Notes omitted.

Indians to become cultural white men. If they did not, said Jefferson, then they must be driven to the Rocky Mountains.

The policy of removal was first suggested by Jefferson as the alternative to the "civilizing" process, and as far as many Americans were concerned removal made more sense than any other proposal. Henry Clay, for example, insisted that it was impossible to civilize these "savages." They were, he argued, inferior to white men and "their disappearance from the human family would be no great loss to the world."

Despite Clay's racist notions—shared by many Americans—the government's efforts to convert the Indians into cultural white men made considerable progress in the 1820s. The Cherokees, in particular, showed notable technological and material advances as a result of increased contact with traders, government agents, and missionaries, along with the growth of a considerable population of mixed-bloods.

As the Indians continued to resist the efforts to get rid of them—the thought of abandoning the land on which their ancestors lived and died was especially painful for them—the states insisted on exercising jurisdiction over Indian lands within their boundaries. It soon became apparent that unless the federal government instituted a policy of removal it would have to do something about protecting the Indians against the incursions of the states. But the federal government was feckless. It did neither. Men like President John Quincy Adams felt that removal was probably the only policy to follow but he could not bring himself to implement it. Nor could he face down a state like Georgia. So he did nothing. Many men of good will simply

turned their faces away. They, too, did nothing.

Not Jackson. He had no hesitation about taking action. And he believed that removal was indeed the only policy available if the Indians were to be protected from certain annihilation. His ideas about the Indians developed from his life on the frontier, his expansionist dreams, his commitment to states' rights, and his intense nationalism. He saw the nation as an indivisible unit whose strength and future were dependent on its ability to repel outside foes. He wanted all Americans from every state and territory to participate in his dream of empire, but they must acknowledge allegiance to a permanent and indissoluble bond under a federal system. Although devoted to states' rights and limited government in Washington, Jackson rejected any notion that jeopardized the safety of the United States. That included nullification and secession. That also included the Indians....

The Indian Removal Act of 1830 authorized Jackson to carry out the policy outlined in his first message to Congress. He could exchange unorganized public land in the trans-Mississippi west for Indian land in the east. Those Indians who moved would be given perpetual title to their new land as well as compensation for improvements on their old. The cost of their removal would be absorbed by the federal government. They would also be given assistance for their "support and subsistence" for the first year after removal. An appropriation of \$500,000 was authorized to carry out these provisions.

This monumental piece of legislation spelled the doom of the American Indian. It was harsh, arrogant, racist—and inevitable. It was too late to

acknowledge any rights for the Indians. As [Senator Theodore] Frelinghuysen [of New Jersey] remarked, all the white men had ever said to the Indian from the moment they first came into contact was "give!" Once stripped of his possessions the Indian was virtually abandoned.

Of the many significant predictions and warnings voiced during the debates in Congress that eventually came true, two deserve particular attention. One of them made a mockery of Jackson's concern for freedom. The President insisted that the Indians would not be forced to remove. If they wished to reside within the state they might do so but only on condition that they understood they would be subject to state law. He would never force them to remove, never compel them to surrender their lands. That high and noble sentiment as interpreted by land-greedy state officials meant absolutely nothing. Fraud and deception also accompanied the exchange of land. Jackson himself tried desperately to discourage corruption among the government agents chosen to arrange the removal, but the events as they actually transpired ran totally opposite to what he expected and promised.

The other prediction that mocked Jackson's commitment to economy was the cost of the operation. In the completed legislation the Congress had appropriated \$500,000 but the actual cost of removal is incalculable. For one thing the process extended over many years and involved many tribes. Naturally some Indians resisted Jackson's will and the government was required to apply force. The resulting bloodshed and killing and the cost of these Indian wars cannot be quantified. For a political party that prized economy above almost everything else the policy of Indian removal was a ra-

dial departure from principle. Still many Democrats argued that the actual cost was a small price to pay for the enormous expanse of land that was added to the American empire. In Jackson's eight years in office seventy-odd treaties were signed and ratified, which added 100 million acres of Indian land to the public domain at a cost of roughly \$68 million and 32 million acres of land west of the Mississippi River. The expense was enormous, but so was the land-grab.

Andrew Jackson has been saddled with a considerable portion of the blame for this monstrous deed. He makes an easy mark. But the criticism is unfair if it distorts the role he actually played. His objective was not the destruction of Indian life and culture. Quite the contrary. He believed that removal was the Indian's only salvation against certain extinction. Nor did he despoil Indians. He struggled to prevent fraud and corruption, and he promised there would be no coercion in winning Indian approval of his plan for removal. Yet he himself practiced a subtle kind of coercion. He told the tribes he would abandon them to the mercy of the states if they did not agree to migrate west.

The Indian problem posed a terrible dilemma and Jackson had little to gain by attempting to resolve it. He could have imitated his predecessors and done nothing. But that was not Andrew Jackson. He felt he had a duty. And when removal was accomplished he felt he had done the American people a great service. He felt he had followed the "dictates of humanity" and saved the Indians from certain death.

Not that the President was motivated by concern for the Indians—their language or customs, their culture, or anything else. Andrew Jackson was mobi-

lized principally by two considerations: first, his concern for the military safety of the United States, which dictated that Indians must not occupy areas that might jeopardize the defense of this nation; and second, his commitment to the principle that all persons residing within states are subject to the jurisdiction and laws of those states. Under no circumstances did Indian tribes constitute sovereign entities when they occupied territory within existing state boundaries. The quickest way to undermine the security of the Union, he argued, was to jeopardize the sovereignty of the states by recognizing Indian tribes as a third sovereignty.

But there was a clear inconsistency—if not a contradiction—in this argument. If the tribes were not sovereign why bother to sign treaties (requiring Senate approval) for their land? Actually Jackson appreciated the inconsistency, and it bothered him. He never really approved of bargaining or negotiating with tribes. He felt that Congress should simply determine what needed to be done and then instruct the Indians to conform to it. Congress can "occupy and possess" any part of Indian territory, he once said, "whenever the safety, interest or defence of the country" dictated. But as President, Jackson could not simply set aside the practice and tradition of generations because of a presumed contradiction. So he negotiated and signed treaties with dozens of tribes, at the same time denying that they enjoyed sovereign rights.

The reaction of the American people to Jackson's removal policy was predictable. Some were outraged, particularly the Quakers and other religious groups. Many seemed uncomfortable about it but agreed that it had to be done. Probably a larger number of Americans favored removal and applauded the Pres-

ident's action in settling the Indian problem once and for all. In short, there was no public outcry against it. In fact it was hardly noticed. The horror of removal with its "Trail of Tears" came much later and after Jackson had left office.

Apart from everything else, the Indian Removal Act served an important political purpose. For one thing it forced Jackson to exercise leadership as the head of the Democratic party within Congress. It prepared him for even bigger battles later on. For another it gave "greater ideological and structural coherence" to the party. It separated loyal and obedient friends of the administration from all others. It became a "distinguishing feature" of Jacksonian Democrats. . . .

According to the Treaty of Dancing Rabbit Creek, the Choctaws agreed to evacuate all their land in Mississippi and emigrate to an area west of the Arkansas Territory to what is now Oklahoma. In addition the Indians would receive money, household and farm equipment, subsistence for one year, and reimbursement for improvements on their vacated property. In effect the Choctaws ceded to the United States 10.5 million acres of land east of the Mississippi River. They promised to emigrate in stages: the first group in the fall of 1831, the second in 1832, and the last in 1833.

Jackson immediately submitted the treaty to Congress when it reconvened in December, 1830, and [Secretary of War John] Eaton, in his annual report, assured the members that agreement was reached through persuasion only. No secret agreements, no bribes, no promises. Everything had been open and aboveboard! The Senate swallowed the lie whole and ratified the treaty on February 25, 1831, by a vote of 35 to 12.

Said one Choctaw chief: "Our doom is sealed." Since the Treaty of Dancing Rabbit Creek was the first to win Senate approval the President was very anxious to make it a model of removal. He wanted everything to go smoothly so that the American people would understand that removal was humane and beneficial to both the Indians and the American nation at large. Furthermore, he hoped its success would encourage other tribes to capitulate to his policy and thereby send a veritable human tide streaming across the Mississippi into the plains beyond.

The actual removal of the Choctaw Nation violated every principle for which Jackson stood. From start to finish the operation was a fraud. Corruption, theft, mismanagement, inefficiency—all contributed to the destruction of a once-great people. The Choctaws asked to be guided to their new country by General George Gibson, a man they trusted and with whom they had scouted their new home. Even this was denied them. The bureaucracy dictated another choice. So they left the "land of their fathers" filled with fear and anxiety. To make matters worse the winter of 1831-1832 was "living hell." The elements conspired to add to their misery. The suffering was stupefying. Those who watched the horror never forgot it. Many wept. The Indians themselves showed not a single sign of their agony.

Jackson tried to prevent this calamity but he was too far away to exercise any real control, and the temptations and opportunities for graft and corruption were too great for some agents to resist. When he learned of the Choctaw experience and the suffering involved, Jackson was deeply offended. He did what he could to prevent its recurrence.

fault with it for want of liberality or justice to the Indians." By this time Jackson had grown callous. His promise to economize got the better of him. "The stipulation that they remove at their own expense and on their own means, is an excellent feature in it. The whole treaty is just. We want them in a state of safety removed from the states and free from collision with the whites; and if the land does this it is well disposed of and freed from being a corrupting source to our Legislature."

Coffee's success with the Chickasaws followed those with the Creeks and Seminoles. On March 24, 1832, the destruction of the Creek Nation begun with the Treaty of Fort Jackson in 1814 was completed when the chiefs signed an agreement to remove rather than fight it out in the courts. The Seminoles accepted a provisional treaty on May 9, 1832, pending approval of the site for relocation. Thus, by the close of Jackson's first administration the Choctaws, Creeks, Chickasaws, and Seminoles had capitulated. Of the so-called Five Civilized Tribes only the Choctaws held out.

Not for long. They found small consolation from the courts. The Choctaws' lawyer, William Wirt, sued in the Supreme Court for an injunction that would permit the Indians to remain in Georgia unmolesated by state law. He argued that the Choctaws had a right to self-government as a foreign nation and that this right had long been recognized by the United States in its treaties with the Indians. He hoped to make it appear that Jackson himself was the nullifier of federal law. In effect he challenged the entire removal policy by asking for a restraining order against Georgia.

Chief Justice John Marshall in the case *Cherokee Nation v. Georgia* handed down his opinion on March 18, 1831. He rejected Wirt's contention that the Choctaws were a sovereign nation. He also rejected Jackson's insistence that they were subject to state law. The Indians, he said, were "domestic dependent nations," subject to the United States as a ward to a guardian. They were not subject to individual states, he declared. Indian territory was in fact part of the United States.

The Indians chose to regard the opinion as essentially favorable in that it commanded the United States to protect their rights and property. So they refused to submit—either to Georgia or to Jackson. Meanwhile, Georgia passed legislation in late December, 1830, prohibiting white men from entering Indian country after March 1, 1831, without a license from the state. This was clearly aimed at troublesome missionaries who encouraged Indians in their "disobedience." Samuel A. Worcester and Dr. Elizur Butler, two missionaries, defied the law; they were arrested and sentenced to four years imprisonment in a state penitentiary. They sued, and in the case *Worcester v. Georgia* the Supreme Court decided on March 3, 1832, that the Georgia law was unconstitutional. Speaking for the majority in a feeble voice, John Marshall croaked out the court's decision. All the laws of Georgia dealing with the Choctaws were unconstitutional, he declared. He issued a formal mandate two days later ordering the Georgia Superior Court to reverse its decision.

Georgia, of course, had refused to acknowledge the court's right to direct its actions and had boycotted the judicial proceedings. The state had no intention of obeying the court's order. Since

the court adjourned almost immediately after rendering its decision nothing further could be done. According to the Judiciary Act of 1789 the Supreme Court could issue its order of compliance only when a case had already been remanded without response. Since the court would not reconvene until January, 1833, no further action by the government could take place. Thus, until the court either summoned state officials before it for contempt or issued a writ of habeas corpus for the release of the two missionaries there was nothing further to be done. The President was under no obligation to act. In fact there is some question as to whether the court itself could act since the existing habeas corpus law did not apply in this case because the missionaries were not being detained by federal authorities. And since the Superior Court of Georgia did not acknowledge in writing its refusal to obey, Marshall's decision could not be enforced. Jackson understood this. He knew there was nothing for him to do. "The decision of the supreme court has fell still born," he wrote John Coffee, "and they find that it cannot coerce Georgia to yield to its mandate."

It was later reported by Horace Greeley that Jackson's response to the Marshall decision was total defiance. "Well: John Marshall has made his decision: *now let him enforce it!*" Greeley cited George N. Briggs, a Representative from Massachusetts, as his source for the statement. The quotation certainly sounds like Jackson and many historians have chosen to believe that he said it. The fact is that Jackson did not say it because there was no reason to do so. There was nothing for him to enforce. Why, then, would he refuse an action that no one asked him to take? As he said, the decision was

stillborn. The court rendered an opinion which abandoned the Indians to their inevitable fate. "It cannot coerce Georgia to yield to its mandate," said Jackson, "and I believe [Major John] Ridge has expressed despair, and that it is better for them [the Cherokees] to treat and move."

Even if Jackson did not use the exact words Greeley put into his mouth, even if no direct action was required at the moment, some historians have argued that the quotation represents in fact Jackson's true attitude. There is evidence that Jackson "sportively said in private conversation" that if summoned "to support the decree of the Court he will call on those who have brought about the decision to enforce it." Actually nobody expected Jackson to enforce the decision, including the two missionaries, and therefore a lot of people simply assumed that the President would defy the court if pressured. In the rush to show Jackson as bombastic and bluster, however, an important point is missed. What should be remembered is that Jackson reacted with extreme caution to this crisis because a precipitous act could have triggered a confrontation with Georgia. Prudence, not defiance, characterized his reaction to both the challenge of Georgia and later the threat of nullification by South Carolina. As one historian has said, Jackson deserves praise for his caution in dealing with potentially explosive issues and should not be condemned for his so-called inaction.

Still the President had encouraged Georgia in its intransigence. He shares responsibility in producing this near-confrontation. He was so desperate to achieve Indian removal that he almost produced a crisis between federal and state authorities. Nor can it be denied, as one North Carolina Congressman

observed, that "Gen Jackson could by a nod of the head or a crook of the finger induce Georgia to submit to the law. It is by the promise or belief of his countenance and support that Georgia is stimulated to her disorderly and rebellious conduct."

Jackson chose not to nod his head or crook his finger for several reasons, the most important of which was his determination to remove the Cherokees. But he had other concerns. As the time neared for the Supreme Court to reconvene and deliberate on Georgia's defiance, a controversy with South Carolina over nullification developed. Jackson had to be extremely careful that no action of his induced Georgia to join South Carolina in the dispute. Nullification might lead to secession and civil war. He therefore maneuvered to isolate South Carolina and force Georgia to back away from its position of confrontation. He needed to judge Georgia into obeying the court or der and free the two missionaries. Consequently he moved swiftly to win removal of the Indians. His secretary of war worked quietly to convince the legal counsel for the missionaries and the friends of the Cherokees in Congress, such as Theodore Frelinghuysen, that the President would not budge from his position nor interfere in the operation of Georgia laws and that the best solution for everyone was for the Indians to remove. Meanwhile the Creeks capitulated, and a treaty of removal was ratified by the Senate in April, 1832.

Although Senator Frelinghuysen "prayed to God" that Georgia would peacefully acquiesce in the decision of the Supreme Court he soon concluded that the Cherokees must yield. Even Justice John McLean, who wrote a concurring opinion in the Worcester case, counseled

the Cherokee delegation in Washington to sign a removal treaty. Van Buren's Albany Regency actively intervened because of their concern over a possible southern backlash against their leader. Van Buren himself encouraged his friend Senator John Forsyth to intercede with the newly elected governor of Georgia, Wilson Lumpkin, keeping Jackson carefully informed of his actions. More significant, however, were the letters written by the secretary of war to Lumpkin. These letters pleaded for a pardon for the two missionaries and stated that the President himself gave his unconditional endorsement of the request. Finally Forsyth conferred with William Wirt who in turn conferred with a representative of the two missionaries, and they all agreed to make no further motion before the Supreme Court. That done, Governor Lumpkin ordered the "keeper" of the penitentiary on January 14, 1833 to release Worcester and Butler under an arrangement devised by Forsyth. Thus, while the President held steadily to his course and directed the activities of the men in contact with Lumpkin, both the problem of Georgia's defiance and the fate of the two missionaries were quietly resolved without injurious consequences to the rest of the nation. It was one of Jackson's finest actions as a statesman.

Ultimately, the Cherokees also yielded to the President. On December 29, 1835, at New Echola a treaty was signed arranging an exchange of land. A protracted legal argument had gained the Indians a little time but nothing else. Removal now applied to all eastern Indians, not simply the southern tribes. After the Black Hawk War of 1832 Jackson responded to the demands of Americans in the northwest to send all Indians beyond the Mississippi. A hungry band of

Sac and Fox Indians under the leadership of Black Hawk had recrossed the Mississippi in the spring of 1832 to find food. People on the frontier panicked and Governor John Reynolds of Illinois called out the militia and appealed to Jackson for assistance. Federal troops were immediately dispatched under Generals Winfield Scott and Henry Atkinson. A short and bloody war resulted, largely instigated by drunken militia troops, and when it ended the northwestern tribes were so demoralized that they offered little resistance to Jackson's steady pressure for their removal west of the Mississippi. The result of the Black Hawk War, said the President in his fourth message to Congress, had been very "creditable to the troops" engaged in the action. "Severe as is the lesson to the Indians," he lectured, "it was rendered necessary by their unprovoked aggressions, and it is to be hoped that its impression will be permanent and salutary."

It was useless for the Indians to resist Jackson's demands. Nearly 46,000 of them went west. Thousands died in transit. Even those under no treaty obligation to emigrate were eventually forced to remove. And the removal experiences were all pretty much like that of the Choctaws—all horrible, all rife with corruption and fraud, all disgraceful to the American nation.

The policy of removal formed an important part of Jackson's overall program of limiting federal authority and supporting states' rights. Despite the accusation of increased executive authority, Jackson successfully buttressed state sovereignty and jurisdiction over all inhabitants within state boundaries. This is a government of the people, Jackson argued, and the President is the agent of the people. The President and the Congress

exercise their jurisdiction over "the people of the union. [W]ho are the people of the union?" he asked. Then, answering his own question, he said: "all those subject to the jurisdiction of the sovereign states, none else." Indians are also subject to the states, he went on. They are subject "to the sovereign power of the state within whose sovereign limits they reside." An "absolute independence of the Indian tribes from state authority can never bear an intelligent investigation, and a quasi independence of state authority when located within its Territorial limits is absurd."

In addition to establishing the removal policy Jackson also restructured the bureaucracy handling Indian problems. Since 1824 a Bureau of Indian Affairs headed by Thomas L. McKenney had supervised the government's relations with the Indians. By the time Jackson assumed the presidency the Bureau had become an "enormous quagmire" from an administrative point of view. McKenney was retained in office to take advantage of his reputation to win passage of the Removal bill. Once Removal passed, McKenney was dismissed. (For one thing he had supported Adams in 1828). Then the Bureau was reorganized. On June 30, 1834, Congress passed the necessary legislation establishing the Office of Indian Affairs under an Indian commissioner, and this administrative machinery remained in place well into the twentieth century. The Indian service was restructured into a more cohesive operation than had previously been the case. It regularized procedures that had been practiced as a matter of custom rather than law.

Ultimately Jackson's policy of removal and reorganization of the Indian service won acceptance by most Americans. The

President was seen as a forceful executive who addressed one of the nation's most bedeviling problems and solved it. Even Americans who fretted over the fate of the Indians eventually went along with the only possible solution to the Indian problem.

Anthony F. C. Wallace

NO

THE LONG, BITTER TRAIL: ANDREW JACKSON AND THE INDIANS

Georgia in the late 1820s was a prosperous and rapidly developing commonwealth. The state government encouraged the growth of an extensive system of private banks that lent money to aspiring farmers and entrepreneurs. Family farms were the norm; there were few cotton plantations larger than 500 acres. Railroads and shallow-draft steamboats were opening up the agricultural interior and connecting the cotton country with seaports at Savannah and Brunswick, through which passed the trade not only with Great Britain but also with the industrial Northern states. Georgia was less inclined than her neighbor South Carolina to espouse the doctrine of nullification, so hateful to President Jackson, propounded by that state's legislature and advocated by her native son Vice President John C. Calhoun. Increasingly, too, the Georgia electorate was turning away from the faction headed by Jackson's old political rival, William H. Crawford, and was favoring the party more friendly to the President. Jackson had motives for rewarding Georgia that went beyond his commitment to Indian removal.

Thus Georgians felt that they had the right to claim the President's sympathetic attention in time of need. And now was that time. The Cherokee constitution in effect nullified Georgia law and made the Indian nation a "state within a state." Left to themselves, the Cherokees would become a prosperous, independent commonwealth, and they would never sell their land (indeed, by Cherokee law, the further sale of land to the United States was a crime). On December 20, 1828, immediately after the election of Andrew Jackson as President of the United States, the Georgia legislature passed a law extending the state's jurisdiction—i.e., its laws, its police powers, and its courts—over the Cherokees living within the state. Enforcement was to be deferred until June 1, 1830, to give the President and Congress time to act in support of Georgia.

Georgia's action forced the President's hand. He must see to it that a removal policy long covertly pursued by the White House would now be enacted into

law by the Congress. The new President quickly took steps to implement a removal program that would, among other things, resolve the Georgia crisis. As his Secretary of War he appointed his old friend and political supporter from Tennessee, Senator John Eaton. No doubt with the advice of Superintendent McKenney, who had convinced himself of the need for removal, Eaton included in his first (1829) Report to the President a recommendation for wholesale removal of the Eastern Indians to a self-governing "Indian territory" in the West, where the U.S. Army would protect them from intruding whites and keep the peace among the tribes.

The Twenty-first Congress convened for its first session in December 1829, and as was (and still is) the custom, the President delivered to it a message reporting on the State of the Union and making recommendations for new legislation. Not unexpectedly, he paid considerable attention to the Indian question. . . . About half the discussion of Indian affairs was devoted to the constitutional issue raised by the Cherokee claim to independence and political sovereignty within the state of Georgia. Jackson stated that in his view the Native Americans residing within the boundaries of old or new states were subject to the laws of those states. He recognized the efforts of some tribes to become "civilized" but saw the only hope for their survival to be removal to a Western territory. The rhetoric was candid but compassionate in tone, no doubt intended to disarm criticism, suggesting that removal was not merely legally justified but morally necessary, and that he was responding not to the greed of land speculators and would-be settlers but to a moral imperative to save the Indians from extinction. Emigration, of course, should

be strictly voluntary with individuals. Those who chose to leave would be provided with an "ample district West of the Mississippi," to be guaranteed to them as long as they occupied it. Each tribe would have its own territory and its own government and would be free to receive "benevolent" instructors in the "arts of civilization." In the future, there might arise "an interesting commonwealth, destined to perpetuate the race, and to attest the humanity and justice of this Government." For those who chose to remain, he gave assurance that they would "without doubt" be allowed to keep possession of their houses and gardens. But he warned them that they must obey the laws of the states in which they lived, and must be prepared to give up all claims to "tracts of country on which they have neither dwelt nor made improvements, merely because they have seen them from the mountain, or passed them in the chace." Eventually, those who stayed behind could expect to "become merged in the mass of our population."

On February 24, 1830, a removal bill was reported out from the House Committee on Indian Affairs (John Bell of Tennessee, chairman). The same bill was also introduced into the Senate by its Indian Committee (also chaired by a Jackson man from Tennessee). The text of the bill . . . was briefer than the President's message recommending it. In eight sections, it authorized the President to set aside an Indian territory on public lands west of the Mississippi; to exchange districts there for land now occupied by Indians in the East; to grant the tribes absolute ownership of their new homes "forever"; to treat with tribes for the rearrangement of boundaries in order to effect the removal; to ensure that property left behind by emigrating

From Anthony F. C. Wallace, *The Long, Bitter Trail: Andrew Jackson and the Indians* (Hill and Wang, 1993). Copyright © 1993 by Anthony F. C. Wallace. Reprinted by permission of Hill and Wang, a division of Farrar, Straus & Giroux, Inc.

Indians be properly appraised and fair compensation be paid; to give the emigrants "aid and assistance" on their journey and for the first year after their arrival in their new country; to protect the emigrants from hostile Indians in the West and from any other intruders; to continue the "superintendence" now exercised over the Indians by the Trade and Intercourse Laws. And to carry out these responsibilities, the Congress appropriated the sum (soon to prove woefully inadequate) of \$500,000.

The debate on the bill was long and bitter for the subject of Indian removal touched upon a number of very emotional issues: the constitutional question of states' rights versus federal prerogatives, Christian charity, national honor, racial and cultural prejudices, manifest destiny, and of course just plain greed. The opening salvo was the Report of the Indian Committee of the House. The report defended the constitutional right of the states to exercise sovereignty over residents, including Indians, within their borders. It discussed the nature of Indian title, naively asserting that in pre-Columbian times "the whole country was a common hunting ground"; they claimed as private or tribal property only their "moveable wigwams" and in some parts of the continent "their small corn patches." The committee declared that the Indians were incapable of "civilization," despite their recent "extravagant pretensions," so loudly touted by misguided zealots opposed to emigration. Among the Cherokees, the report asserted, only a small oligarchy of twenty-five or thirty families controlled the government and only these, and about two hundred mixed-blood families who made up what the report referred to as a "middle class,"

lack on the bill was launched in the Senate by Theodore Frelinghuysen of New Jersey, a distinguished lawyer whose deep religious convictions had already earned him the respect of colleagues in both parties. Frelinghuysen, a Whig, was an example of the "Christian party in politics," for at one time or another he was president of the American Board of Commissioners for Foreign Missions (sixteen years), president of the American Bible Society (sixteen years), president of the American Tract Society (six years), vice president of the American Sunday School Union (fifty years), and for many years an officer of the American Temperance Union and the American Colonization Society. His stand on the Indian question was to earn him a national reputation as "the Christian statesman" and in 1844 a place on the Whig ticket as (unsuccessful) candidate for Vice President of the United States, along with Henry Clay for President. Senator Frelinghuysen's speech, which took three days to deliver, pointed out that the Indian policy of the United States, from the time of Washington on, had been based on the principle that the United States was obligated to protect peaceful natives living in unceded territory from intrusion by whites under any pretext, by force if necessary. Treaties with the Native Americans, according to the Constitution, were, like other treaties, the law of the land. The Jackson Administration, by refusing to enforce existing treaties, was violating the Constitution.

Why was more Indian land needed now, when annual sales of public lands amounted to no more than 1 million acres? The Indian occupants of the continent had already peacefully sold more than 214 million acres, and much of that remained vacant. To be sure, hunters

would eventually sell to agriculturists, but willingly and in response to reasonable argument, not by coercion, as this bill, in the hands of this administration, promised. Furthermore, many of the Native Americans, in response to the official reform policy of the United States government, were adopting white customs and could be expected to amalgamate with the whites, if left alone where they were. Frelinghuysen concluded with an essentially moral appeal:

Sir, if we abandon these aboriginal proprietors of our soil, these early allies and adopted children of our forefathers, how shall we justify it to our country? . . . How shall we justify this trespass to ourselves? . . . Let us beware how, by oppressive encroachments upon the sacred privileges of our Indian neighbors, we minister to the agonies of future remorse.

The pro-removal reply to Frelinghuysen was delivered by Senator John Forsyth of Georgia. Like his opponent, Forsyth was a lawyer and a former attorney general of his state. He had served as a representative in Congress, as minister to Spain (he secured the King's ratification of the 1819 treaty ceding Florida to the United States), and, most recently, he had served as governor of Georgia (1827-29). He was a loyal Jackson follower, would later support Jackson and oppose Calhoun over nullification, and in 1834 he was rewarded by appointment as Secretary of State. He was a skilled orator and had the reputation of being the best debater of his time.

Forsyth dismissed Frelinghuysen's words as a mere self-interested plea by the "Christian party in politics" to create unwarranted sympathy for the Indians, among whom their missionaries lived

so prosperously. He pointed to the deplorable conditions under which the Native Americans now lived and to the long history of the removal policy. Forsyth, as a true friend of the Indians, had long had doubts that removal would promote their civilization, but he would vote for this bill because it would relieve the states "from a population useless and bothersome" and would place these wild hunters in a country better supplied with game. But most of Forsyth's time was spent on legal arguments about states' rights (particularly Georgia's) to exercise sovereignty over Indians, about old treaties and proclamations, and about natural law. He concluded that Georgia had a right to expect the United States to remove the Indians (without coercion, of course) to a happier hunting ground west of the Mississippi.

The debate raged for weeks in both the Senate and the House. Amendments were proposed in the Senate that would have weakened the bill by protecting the Indians' interests; three times these amendments were defeated by a single vote. In general, delegates from the Northern and Eastern states, many of them National Republicans, anti-Masons, and moral reformers, stood against the bill, and Southern and Western delegates—many, like Jackson, with little interest in evangelical Christianity—favored it. Eventually, on April 23, 1830, the Senate voted 28 to 19 to pass the measure. On May 24, the House passed the bill by a narrower margin, 102 to 97.

President Jackson signed the Removal Act on the same day. It was, some maintained, the "leading measure" of his administration; indeed, "the greatest question that ever came before Congress, short of the question of peace and war." Jackson himself said that Indian removal

was the "most arduous part of my duty" as President.

A fairly clear federal policy with regard to the transfer to white owners of title to newly purchased Indian lands, based on a generation of experience, was already in place when the Removal Act was passed and signed. In some sessions, individual Indians were allowed to retain small tracts, called "allotments" (in distinction to tribally owned "reservations"); generally small parcels of land around their residences. These allotments could be sold by their Indian owners to settlers or land companies by government-approved contract. The remainder of the ceded territory became part of the public lands of the United States (except for Georgia, where, by special agreement, lands purchased by the United States were turned over to the state). The usual practice of the federal government was to dispose of the public lands as quickly as possible. The lands were first surveyed and then sold, a large proportion initially at public auction at a minimum price of \$1.25 an acre, and the remainder at subsequent privately arranged sales.

Meanwhile, "actual settlers" would be entering these public lands, staking out claims, building cabins, making improvements. Along with the squatters, "land lookers" sent by land companies were prowling about, identifying the best locations for speculative investment. The government did not try to stop the squatters, who often were tacitly accorded a "preemption right" to 80 or 160 acres around their improvements at the minimum price of \$1.25 an acre. "Speculator" land companies, while they were condemned in political rhetoric as unfair monopolistic competitors of the "actual

settler," at least sometimes supported the settlers' interests. Government did not really want to discourage the speculators any more than the settlers. After all, many politicians and officials (as we have seen, including Jackson and his friends) were speculators in Indian lands themselves, and anyway, there were rarely enough settlers on hand to buy up all the land offered for sale. Besides, some tracts like town sites required expensive development before resale to "actual settlers."

The government did not expect to realize much if any profit from the sale of the public lands. Some of the less desirable tracts, slow to move, eventually went for as little as 12 1/2 cents an acre after languishing for up to five years. Some of the more attractive sites, on the other hand, might bring prices at auction well above the \$1.25-an-acre minimum. But even though the Indians would be given only a few cents an acre for their land, the government was likely to agree to pay for the expenses of their relocation out of the proceeds from the sale of their former domain. And there were costs associated with preparing the public lands for sale: surveys, the opening of roads, and the operations of the Land Office itself, both in Washington and in the field. Public policy was to get the public lands into private hands, for economic development, as quickly as possible.

Thus the Jackson administration was ready to do its "land-office business" as soon as the Indians could be persuaded to sell and agree to remove. In fact, efforts to that end were already under way.

THE TRAIL OF TEARS

Responsibility for arranging the actual removal of the Indians was now in

the hands of the administration. Jackson had in place a removal team: his protégé John Eaton, the Secretary of War; Thomas McKenney, Superintendent of the Indian Office; a declared supporter of removal; General Coffee, his old comrade-in-arms, always ready to serve as the situation demanded—as Indian fighter, treaty negotiator, or surveyor of purchased lands. He also had available the staff of Indian agents who served under McKenney. But McKenney, despite his support for the principle of voluntary removal, soon balked at the harassment tactics of the administration. He was removed from office in August 1830. In 1831, after another official had served for a year, the position was filled by a loyal Jacksonite, Elbert Herring, who supported the removal policy until he left in 1836. Along with McKenney, about half the experienced Indian agents in the field were replaced by Jackson men. They could be counted on to execute administration policy more readily than those whose long acquaintance with Native Americans had made them too sympathetic. In 1831, Eaton, mired in an embarrassing domestic scandal, was replaced as Secretary of War by Lewis Cass, who... was not only a loyal Democrat but also a leading advocate of removal. Not incidentally, his political leadership in the Michigan Territory, which was about to become a state, would come in handy at election time in 1832.

It was the team of Jackson, Cass, and Herring that supervised the removal of most of the Southern Indians from 1830 through 1836. By the end of 1836, the Choctaws and Creeks had emigrated, and by the close of 1837 the Chickasaws had followed. Cherokee resistance was not broken, however, until 1839, and the

Seminoles were not removed until 1842, after a long and bloody war.

* * *

In principle, emigration was to be voluntary; the Removal Act did not require Native Americans to emigrate, and those who wished to remain could do so. But the actual policy of the administration was to encourage removal by all possible means, fair or foul.

Jackson as usual spoke publicly in a tone of friendship and concern for Indian welfare. In a letter of instruction to an agent who was to visit the Choctaws in October 1829 (even before the Removal Act was passed) he outlined the message from "their father," the President, urging them to emigrate. The threats were veiled. "They and my white children are too near each other to live in harmony and peace." The state of Mississippi had the right to extend a burdensome jurisdiction over them, and "the general government will be obliged to sustain the States in the exercise of their right." He, as President, could be their friend only if they removed beyond the Mississippi, where they should have a "land of their own, which they shall possess as long as Grass grows or water runs . . . and I never speak with forked tongue."

A harsh policy was nevertheless quickly put in place. To weaken the power of the chiefs, many of whom opposed removal, the traditional practice of paying annuities in a lump sum, to be used by the chiefs on behalf of the tribe for capital improvements and education, was terminated and annuities were doled out piecemeal to individual Indians. The amounts were pitifully small—each Cherokee was to receive forty-four cents per year, for example, and even that

was to be withheld until he reached the West. Some annuities were not paid at all, being diverted by local agents to pay spurious damage claims allowed by state courts against Indians.

The principal acts of harassment, however, were carried out by the governments and citizens of the Southern states. The extension of state sovereignty over the tribes within their borders led quickly to the passage of destructive legislation. The tribal governments, so carefully organized in imitation of white institutions, were simply abolished; it became illegal for tribes to establish their own laws and to convict and punish lawbreakers. The chiefs were to have no power. Tribal assemblies were banned. Indians were subject to state taxes, militia duty, and suits for debt. Indians were denied the right to vote, to bring suit, even to testify in court (as heathens all—despite the evidence of conversion for many—they could not swear a Christian oath). Intruders were encouraged to settle on Indian territory; lands were sold even before they had been ceded. In Georgia, after gold was discovered on Cherokee property, the Indians were prohibited from digging or mining gold on their own land, while hundreds of white prospectors were allowed to trespass and steal the gold with impunity.

And all the while, the federal government stood idly by, refusing to intervene in the application of state laws. The result was chaos. Thousands of intruders swarmed over the Indian country in a frenzied quest for land and gold, destroying Indian farms and crops. The missionaries tried to persuade their Indian friends to stand firm against removal. But Georgia passed a law requiring missionaries to take an oath of loyalty to the state or leave the Indian country,

and when a number refused, they were seized, imprisoned, tried, convicted, and sentenced to long prison terms. All but two were pardoned after they signed a pledge to obey the laws of Georgia.

The recalcitrant ones, the famous Samuel Worcester, former head of the American Board's school at Brainerd, publisher of *The Cherokee Phoenix*, and an ardent anti-removal advocate, and an assistant missionary, Elizur Butler, chose to appeal their convictions. While they languished in prison, the case wound its way up to the Supreme Court, where the issue was interpreted in the context of Georgia's claim of state sovereignty. The Supreme Court found against Georgia's right to supersede federal authority over Indian tribes and thus set aside Georgia's assertion of state sovereignty over the Cherokees and their missionaries. Jackson was not impressed, however, and is reputed to have said, "Justice Marshall has made his decision, now let him enforce it." Whether he actually used these words has been questioned; but they represent his sentiments, for the administration did nothing to aid the missionaries or effectively to deter intruders. Worcester was

not released from prison until the following year (1833).

The other major legal challenge to the state's sovereignty was an earlier suit pressed by the Cherokee nation that directly challenged the constitutionality of Georgia's attempt to execute state law within the Indian country. Former Attorney General William Wirt (who also represented Samuel Worcester) applied to the Supreme Court for an injunction. But this case was dismissed on the technical ground that an Indian nation was not a foreign state but a "domestic dependent nation," a "ward" of its "guardian," the United States, and therefore could not bring suit before the Supreme Court.

It is abundantly clear that Jackson and his administration were determined to permit the extension of state sovereignty because it would result in the harassment of Indians, powerless to resist, by speculators and intruders hungry for Indian land. Jackson, of course, was not always so indulgent of states' rights, as is shown by his famous threat later on to use military force against South Carolina if that state acted on John Calhoun's doctrine of nullification.