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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.

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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

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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

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, naïvely 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," could claim to have made any progress toward what the committee regarded as "civilization." These favored few opposed emigration. But the remainder, allegedly living in indolence, poverty, and vice, were generally in favor of removal as the only way to escape destitution and eventual annihilation. Obviously, in the committee's view, it was not merely justifiable but morally imperative to save the Southern tribes from extinction by helping them to emigrate to the West.

Both Houses of Congress were deluged by hundreds of petitions and memorials, solicited by religious groups and benevolent societies opposed to Indian removal. Town meetings were held, particularly in the Northern states, demanding justice for the Native Americans. Joseph Hemphill, congressman from Pennsylvania, published a review of Cass's article "Indian Reform," excoriating him for recommending an oppressive policy toward the Indians; and he included in his condemnation the Reverend Isaac McCoy, who had written a book, *The Practicability of Indian Reform,* urging removal as the only means of civilizing the natives. The American Board of Commissioners exerted wide influence on Protestant denominations in the cause of Indian rights. Not to be outdone, friends of Jackson organized their own pro-removal missionary society, its masthead adorned with the names of prominent officials and clergymen who favored the bill. Its efforts were eclipsed by the older American Board, however, whose leader, Jeremiah Evarts, under the *nom de plume* William Penn, had already published his *Essays on the Present Crisis in the Condition of the American Indians.*

In the spring of 1830, active debate began in the chambers of Congress. The at-

tack 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.

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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 cessions, 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 expense 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.

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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.