

**The Cherokee Nation and Andrew Jackson**

**1829–1832**

By

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## Preface

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## Introduction

This paper will discuss The United States Government's dealings with, and the call for removal of the Cherokee Nation to west of the Mississippi from 1829–1832. That time period was the height of the Jackson era and the beginning of problems for the Cherokee Nation. The one cause of problems for the Cherokee Nation was Paternalism. The need of white Americans to "civilize" the Cherokee Nation, and to bring them to God. Another was the problem of Cherokee self-government. Lastly, there was the white Americans need for land.

The above were general areas of contention between the Cherokee Nation and The United States Government. Specifically, this paper examines the basis of Paternalism, Jackson's view of the Indians as children of The United States Government, and the Indian Removal Bill. In addition, the problem that Georgia had with Cherokee self-government.

Indian policy based on Paternalism may have started as simply guardianship of the Cherokee Nation and its lands in an effort to bring them around to a Christian way of life, but in the end Paternalism was the platform that the Jackson administration used to take their land and ignore their rights.

## The Basis of Paternalism

Before discussing Jackson's view it is necessary to examine some of the history that formed the basis of Paternalism toward the Indians. In 1791 The Federal Government negotiated the treaty of Holston with the Cherokee. It was a treaty of peace and friendship. It also set limits and cession, specifying boundaries for the Cherokee Nation. The Holston treaty bound the federal government to the duty of protection and guardianship over these primitive people (Gates, 1988, p. 3). Primitive, was the way most whites saw the Indians. As for the way whites saw themselves, American society from the 1770's to the 1900's was experiencing the Enlightenment. The country believed in the power of human reason to understand the principles of nature law and set up society according to them. On the other hand, as enlightened as the country was it was also very religious. A commitment biblical truths was seen as necessary for the nation (Prucha, 1985, pp. 5–6).

Indian policy was formed, according to Prucha, upon three basic principles. First, all man-kind was one, that all human beings were created innately equal by God and were descendants from one set of parents, Adam and Eve. Most whites, however, did not hold this view. Second, the Indians were, because of their existing cultural circumstances, inferior (1985, p 8). It is necessary to point out that whites of the late 1800's and early 1900's were by no means multi-cultural. Whites looked at the Indians from what they saw as a superior way of life. White saw Indian cultures with primitive technologies, engaged in some limited agriculture, but still dependent largely on hunting and gathering for food and the making of clothes, and in need of guidance. White Americans were engaged clearing the land and farming it. Although, most whites did not see Satan behind every tree as the early Puritans did they did view Indian religious

beliefs as pagan. Whites also saw Indians as increasingly dependent upon trade for goods such as "guns, kettles, knives, and other metal implements"(Prucha, 1985, p. 8).

All the above leads to Prucha's third basic principle: "The Indians' culture could and should be transformed to equal or *approximate* to their whites neighbors" (1985, p. 10). Christians saw a need to reform the Indians and bring to God using positive and sometimes forcible means. This view was also held by United States Government without, however, publicly calling for a change in the Indians' religious reviews. According to Gates, "the government announced a strong desire to see the Cherokee advance in the ways of civilization: to become herdsmen and cultivators, instead of remaining in state of hunters" (1988, p.4).

Paternalism at this point can be seen as over protective parents looking after the needs of their under developed children. Again, whites were by no means multi-cultural, but many whites were interested in helping the Indians an example of this benevolent Paternalism was the Brainerd mission school:

Staffed by educated New Englanders sent out by the American Board of Commissioners for Foreign Missions in Boston, Brainerd opened its doors to male and female Cherokee in 1817... The flourishing school offered a curriculum that embraced Presbyterian doctrine and elementary education for all, mechanical skills for males and household skills for females (Gates, 1988, pp. 7-8).

This mission school and others like it were attempts by whites to live up to what they saw as their parental responsibility, for as Thomas Jefferson stated in 1785: "I believe the Indian then to be in body and mind equal to the white-man." If Indians such as the Cherokee were educated, Jefferson thought, "we shall probably find that they are formed in mind as well as body, on the same module with the `Homo sapiens Europaeus'" (Prucha, 1985, p. 6).

### **President Jackson's View**

It is clear that United States Government Indian Policy was one of Paternalism, and it was based largely on the premise that Indians were under developed, but could and should be assimilated, that is, given the values and the belief system of the white culture, thus live in the most civilized and technological advanced society possible. This society had, of course, a market economy, and it was thought the Indians once assimilated would do the capitalist thing. To put it another way, sell what they had to better their place in society which was one of the many ideas the whites had tried to teach the Indians. Well, that did not happen according to Rogin, "the market alone could not control them, for they could ignore, as self-improving whites could not, its imperatives. They would not, to improve their position, sell their land and move west" (1975 p. 207). It was at that point Paternalism turned dark.

President Jackson supported the prospect of Indian removal which helped him gain an election victory among the southern states in 1828. As stated above the Indians would not, to improve their position, sell their land and move west. The problem was whites wanted land, so Jackson using the cloak of Paternalism to promised, "to rescue

his 'red children' from the advancing tide of white settlement in the east, protect them in the west, and help them advance to civilization" (Rogin, 1975, p. 207). One reason Jackson was willing to move the Cherokee and other tribes west of the Mississippi was he thought that land would be useless for agriculture (Olson and Wilson, 1984, p. 208). The point was to give the Cherokee and the other Indians land that whites did not want, thus getting the Indians out of the way. According to instructions from John H. Eaton Secretary of State to Generals William Carroll and John Coffee 30 May 1829:

The President is of the opinion that the only mode left for the Indians [Cherokee] to escape the effects of such enactments, and consequences more destructive and which are consequent on their contiguity the whites, is, for them to emigrate (Remini, 1972, p. 63).

In 1828 Georgia extended State law over the Cherokee in its state. Jackson saw this a problem as stated above and saw the only way to solve it was to move the Cherokee.

Again, the dark side of Paternalism was at work. The white need to clear and cultivate land for settlement was all. "The President allowed that this progress destroyed the resources of the savage and doomed him to weakness and decay"(Gates, 1988, p.40). There was no thought of the rights of the Cherokee on the part Jackson. He let settlers move in on lands that were clearly Indian. "Thus, Jackson could voice humanitarian concern as a compelling basis for Indian removal; a concern actuated by feelings of justice and regard for our national honor"(Prucha, 1969, p 534). Jackson saw what best for the Cherokee and the other tribes, and, to him, it was not working with them to see that their rights were protected. While it was true that removal was seen by Jackson and others as a way to protect Indians from white settlers and white settlers from Indians there were other ways to do the same. For example, Congress could have passed a bill that protected the Indian lands within the boundaries of states from being settled by whites. That idea was well within the basis of Paternalism, but never even tried, most likely, because it would have sparked a debate over States rights vs. Federal power.

### **Indian Removal Bill**

Instead, in 1830 Congress began debate on the constitutional and moral implications of Jackson's recommendations (Satz, 1975, pp. 20–21). The fight in Congress fell along party lines. However, there were some anti-Jackson leaders like Theodore Frelinghuysen who felt the Indians had every right to their lands given to them by treaties, and it was legally wrong for the administration to disregard or modify (Gates, 1988, p 42). The Senator took to task Georgia officials for the extension of state law over the Cherokee Nation which declared their government, their laws, and customs void (Gates, 1988, p 42). It was clear, at least to Frelinghuysen and some others, that the United States Government had a duty to protect the Cherokee and their political and civil rights.

Still other anti-Jackson senators supported Frelinghuysen's argument and added their own. Many feared that any appropriations attached to the bill might be used to enact forced removal or provide the means to bribe chiefs into making agreements that

married their people to the administration's policy. If the good faith of the Jackson administration was questioned in the area of removal, it was because some congressmen and senators felt that promises of a peaceful home in the West were not followed up by any plains for subsistence or security (Evarts, 1830, p. 96).

Senator Ascher Robbins, according to Gates, questioned the very constitutionality of the bill:

After all, there had been a long history of treaties negotiated between United States Government and Indians. ...Since the Indian nations were held competent to make treaties, the proposed legislation was not only in appropriate, but unconstitutional (1988, p 44).

The reason Senator Robbins thought the bill unconstitutional was it seemed to be a new treaty, and that job was in the area of the executive according to Article II Section two The President, " Shall have the power, by and with the Advice and Consent of the Senate, to make Treaties...." Thus, the whole bill should not have come to either house of congress without first having been negotiated with the Indian Nations such as the Cherokee.

Supporters of the Removal Bill were not without breath. In the forefront was John Forsyth former governor of Georgia who late 1828 urged the state legislature to pass an act that extended the laws of Georgia over the Cherokee. In sum, the supporters position was the bill did not give the President the right to remove the Cherokee people by force However, those who opposed the bill shot back there was nothing in the bill that spelled out the President could not use force if the Cherokee and the other tribes did not emigrate (Gates, 1988, p 45). Those in opposition to the bill had the good Paternalistic concern that rights of the Cherokee and the other tribes were protected. And if the Jackson administration intended free and voluntary removal there should be no objection to amendments which would support it (Evarts, 1830, pp 91–92).

Jackson and his supporters wanted latitude under the bill which would allow them to use fair and what some would call unfair means, thus they rejected any amendments that limited the actions the United States Government could take to remove the Indians. The Removal Bill Passed the Senate 28–19 (Satz, 1975, p 25). The House passed the bill 94–94 the tie was broken by the Speaker of the House. On 28 May 1830 Jackson signed the Bill into law.

### **Cherokee Self-government**

Georgia in 1828 passed a bill that extended the laws of the State over the Cherokee, for in 1827 the Cherokee did two important things. They set up a government and declared themselves an independent nation. The bill voided all Cherokee laws and customs, also it declared ownership of all Cherokee lands. The Cherokee appealed to The Supreme Court. In the case Cherokee Nation v. Georgia 1831 John Marshall defined the legal relations between the Indians and the United States Government. Marshall was faced with the question; "Do the Cherokee constitute a foreign state in the sense of the Constitution?" Marshall found the Indians to be in, "A state of pupillage; their relation to United States resembles that of a ward to his guardian. That legal

relationship was nothing more than a restatement of Paternalism, but not the same Paternalism that pushed the Removal Bill through Congress. As stated above, the bill called for voluntary removal of the Indians, but did not spell out that force could not be used. It was Paternalism more like the treaty of Holston, and Thomas Jefferson. Marshall also found that, "The Indians...have an unquestionable and heretofore unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government" (Cherokee Nation v. Georgia 1831).

The above would seem to have narrowed latitude under the bill which would allow the use fair and what some would call unfair means that Jackson and his supporters wanted. Marshall was saying the United States Government could not just take the land, which the Cherokee occupy unless it was ceded. And yet that was just what United States Government did, and Jackson let it happen. He did not, as the Constitution instructs in Article II Section three, "take Care that the Laws be faithfully executed."

### **Conclusion**

Indian policy based on Paternalism may have started as simply guardianship of the Cherokee Nation and its lands in an effort to bring them around to a Christian way of life, but in the end Paternalism was the platform that the Jackson administration used to take their land and ignore their rights.



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