

The removal of the Cherokee people from Georgia and South Carolina was a direct result of land greed, the failure of the courts to protect Cherokee rights, and racism on the part of both the American people and their representatives in government. The Cherokee were a civilized people with a written constitution, schools, religion, and even a newspaper. With the help of missionaries they were becoming Christianized and only protested the government in the court room and not on the battle field. They were no longer a threat to the American people in the way of possible war; they were only a threat to western expansion. If not for the white mans insatiable land greed accompanied with racist views toward whom they considered an “inferior people,” the Cherokee people would have never been forced to remove.

The South was an ever changing landscape throughout the late 1700’s and early 1800’s. Technological advances in cotton agriculture in the South began to drive settlers west in search for land to grow the cash crop. As the number of settlers increased conflicts began to arise with the various Indian tribes that called the South home. The Cherokee, Creek, Choctaw, Chickasaw, and Seminole were the five most populous tribes of the South. They became known as “the five civilized tribes” due to their efforts to become westernized. They set up schools that taught western ideals, started farming on large scale plots rather than using the basic subsistence methods they were accustomed to, and even began to take part in the owning of slaves (Finkelstein, pg. 1-2). The Cherokee were the most westernized of the five tribes and as whites moved into their area they were the first to use non-violent protest to try to protect their rights and their lands. After the massacre of the Creek in 1814 and the First Seminole War in 1817 that ended in failure, the Cherokee saw violent response to the white invasion as a waste of time and

life. Instead they chose to defend themselves in the court room mounting several legal challenges from 1823 to 1836 (Judgment Day, pg. 1). However it was all for naught, and in 1837 they ran out of options and were forced to move off their land to Indian Territory west of the Mississippi.

In July of 1827 the Cherokee came together as a people to form a nation by signing a written constitution. The Cherokee constitution resembled the United States constitution in order to show respect for the United States form of government. There were three branches of government, the accused shared the same rights, and a person had to be a certain age to be part of the Cherokee council, all of which were shared with the U.S. constitution. This was the first of many attempts by the Cherokee to prove that they were Americanized and willing to adopt the ways of the whites. In order to try to stop the government from taking Indian land the constitution stated that only those who were part of the Cherokee High Council would be able to sign treaties with the United States (Constitution of Cherokee, pg.1). This was in response to the government tricking Indians who possessed little or no power within the tribe to sign treaties ceding large portions of Indian lands to the U.S. government. This had occurred throughout the North and the South with all tribes.

Unlike the U.S. Constitution, in the Cherokee document there was not a separation of church and state. In order to be a member of the council, one must believe in "a god." There was freedom of religion but it was understood that there was a God and you had to worship a God to have power, thus atheists could not be part of the council. This was designating clearly in the Cherokee constitution, stating, "Religion, Morality, and Knowledge being necessary to good government, to the preservation of liberty, and

the happiness of mankind, schools and the means of education shall forever be encouraged in this nation (Constitution of Cherokee, pg. 2).”

The Cherokee had a constitution and called themselves a “Nation” but this did not make them autonomous from the U.S. government. The first time the Supreme Court got involved in Indian affairs was in 1823 when it handed down a decision that stated that Indians could occupy United States land but could not own a title to that land. This decision happened four years prior to the Cherokee constitution meaning that by law the land was still part of the United States, and even though they were a nation the Cherokee were only occupying the land. This was handed down under the idea that Indians’ “Right of Occupancy” was negated by the United States’ “Right of Discovery (Judgment Day, pg. 2).” This opinion of the court would set a precedent that would affect all future legal battles that the Cherokee would mount.

Andrew Jackson took office in 1829 starting a new age in Indian relations. He was an ex-army commander that fought many Indian battles including ones against the Creek and the Cherokee. During the time period before taking office, presidents were struggling with the issue of trying to assimilate Indians or to remove them. Jackson was a firm believer in removal and proved his belief less than a year after taking office. In 1830 Jackson signed the Indian Removal Act stating that all eastern Indians shall be removed west of the Mississippi to Indian Territory. In the Indian Removal Act, Jackson stated that:

Shall it be made lawful for the President to cause such tribe or nation to be protected.....The President solemnly to assure the tribe or nation with to which the exchange is made, that the U.S. will forever secure and guarantee to them and their heirs or successors, the country so exchanged with them (Indian Removal Act).

With these promises Jackson convinced many tribes who were tired of struggling with the white invasion to leave their lands for the West. Little did they know that these were empty promises that would never be followed.

Jackson decided that Indians were not capable of assimilating into American culture and were inferior to whites. He saw them as his children and him the father who was removing them for their own protection. Due to this view he thought the act as a favor to the various Indian tribes. His paternal view of the tribes made him think that he knew what was best for them. Consequently, when the Cherokee refused to remove and began to battle for their rights within the governmental system he was outraged (Remini). This racist and uninformed view of Indian tribes did not exist just in the president's seat but throughout government. Even the courts, who had several chances to protect the Cherokee from unjust acts failed to represent them as equals.

Prior to deciding to take Georgia into the court room to settle what the Cherokee considered unjust laws Georgia had over the Cherokee people; delegates were sent to discuss their options with President Jackson. He proceeded to inform them that he would do nothing to help them in their fight against the state of Georgia. He claimed that there was nothing he could do. By sending delegates to the executive branch of the United States government for peaceful negotiations the Cherokee once again attempted to show that they were as civilized as any other nation in the world. However, again their efforts were futile and they were forced to take matters with Georgia to the Supreme Court (Remini).

In response to the Indian Removal Act as well as Georgia laws that the Cherokee saw as unjust, the Cherokee took the Georgia government to the Supreme Court in 1831.

They hired a man named William Wirt to take their case. They argued that in fact they were an independent nation and that the U.S. government had recognized them as such in multiple treaties throughout American history. Also they wanted to prove that because they were independent they were not bound by Georgia law which tried to claim and control authority over the nation. On March 18, 1831 John Marshall ruled partially in favor of the Cherokee. Instead of calling them an independent nation, which would have made them independent from the U.S. he ruled them a “Domestic Dependent Nation.(Cherokee Nation v Georgia)” This put them into their own category separate from that of a state or an independent nation. This meant that the Cherokees won in the sense that they did not have to follow Georgia law because they were separate from them, but that they did have to abide by national laws, such as Jackson’s Indian Removal Act.

During the process of the Cherokee lawsuit, Georgia passed a law stating that whites were not allowed to enter the Cherokee Nation after March 1, 1831 without a pass giving permission from the state (Judgment Day). This was both good and bad for the Cherokee. On the one hand it was illegal for whites to squat on their land which happened often but on the other it prevented missionaries from moving in with the tribe to help civilize and Americanize them. The state failed to protect the Cherokee from squatters and did not enforce the law on them; they only enforced it on the missionaries helping the Cherokee. The government wanted the land because gold was discovered there and had a better chance of getting them removed the less Americanized they were. Also, there was plenty of virgin timbre that could be cut down and sold or used for homesteads, which was seen as a very valuable commodity (Finklestein, pg. 36).

Georgia's efforts to keep the missionaries from Christianizing the Cherokee would not last. Of the eleven missionaries that were arrested, all of them accepted pardons except for two who challenged the Georgia law in the court case *Worcester v. Georgia*. The case was very similar to *The Cherokee v. Georgia* and was once again a battle to keep Georgia law out of the Cherokee Nation. The Supreme Court handed down the decision that:

The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves or in conformity with treaties and with the acts of Congress (*Worcester v Georgia*).

With this decision the two men were released and all Georgia laws dealing with the Cherokee were considered unconstitutional, null, and void. This was technically a victory for the Cherokee but it was really a defeat. Georgia no longer had any control over them, and the U.S. government under Jackson wanted to remove them. This meant that no matter how many whites squatted on their land they could appeal to no one for help. As a "Domestic Dependent Nation" they were unable to be independent and unable keep whites off of their land (*Cherokee Nation v Georgia*). When the *Worcester* case referred to them as a "distinct community" it proved too many Cherokee that no matter how Americanized they became, the U.S. government and the courts would never recognize them as a civilized nation and would have to remove (*Remini*).

These court decisions created a divide in the Cherokee government. Some believed that the courts had abandoned them and that there was no possibility of staying in the East. This group wanted to negotiate a removal treaty. This effort was led by the Treaty Party under the direction of Major Ridge and his son John Ridge. Major Ridge

was a full blood Cherokee and thus felt he was best to choose the future direction of the tribe. However the vast majority of the Cherokee people still wanted to stay and didn't want removal. This side was led by John Ross, the principle chief of the Cherokee Nation. Ross was only partially Cherokee but was educated and thought he could do what was right for the Cherokee people (Young, 517-519).

Jackson used this power struggle within the tribe to his advantage. Throughout 1833 and 1834 Jackson commissioned Rev. John G. Shermerhorn to meet with Ridge and negotiate removal with the Treaty Party. Ross found out about this and immediately went to Jackson to try to negotiate his own terms. During this time Shermerhorn's negotiations with the Treaty Party were temporarily suspended. Jackson did not like Ross, publicly referring to him as a half breed due to him only being 1/8 Cherokee (Judgment Day). He thought that Ross did not represent the opinion of the Cherokee people and that in his infinite wisdom knew that removal was best. After meeting with Jackson, Ross began to realize that a removal treaty was inevitable so he began negotiations. He wanted to keep some sacred lands in the East and wanted twenty million dollars in restitution for being forced to remove. At the time this was more money than the national debt. Jackson was insulted by this offer and said he would not give that much money to the Cherokee. He made a counter offer that Ross was insulted by and thus they were at a stalemate. They then agreed to get the opinion of the senate, which Ross thought might be different than Jackson's. However, the result was the same and negotiations were thus ended between Ross and Jackson (Finklestein pg. 40-41).

After Ross's failed attempt at negotiations, the Treaty Party and Shermerhorn resumed their negotiations and on March 14, 1835 the treaty of New Etocha was signed

with a restitution of 5 million dollars and secession of 8 million acres of land (Ross). Prior to this there was a vote held to determine the opinion of the Cherokee people on the matter. The treaty Party used propaganda to encourage their supporters to show up and cast their vote while discouraging those who wished to remain on their lands by saying showing up to the votes was a sign that you wanted removal. The final vote was 79 to 7 in favor of removal and only 15/16<sup>th</sup>'s of the population was represented due to the propaganda (Remini). John Ross was completely demoralized by the tragedy that had befallen them and stated in a letter of protest that:

By the stipulations of this instrument, we are despoiled of our private possessions, the indefeasible property of individuals. We are stripped of every attribute of freedom and eligibility for legal self defense. Our property may be plundered before our eyes; violence may be committed on our persons' even our lives may be taken away, and there is none to regard our complaints. We are denationalized' we are disfranchised. We are deprived of membership in the Human Family (Ross)!

However, his pleas to the President had no effect, and on May 23, 1836 the removal treaty was signed. The Cherokees were given two years to leave what was now government land. Throughout these short years Ross never gave up the fight, continuing to protest the calamity that Jackson and the Treaty Party had brought upon the Nation. This was probably a mistake because Ross was loved by his people and when he told them not to leave they listened. By 1838 the deadline was up and the military forced the removal of 2,000 Cherokees (Young 521-523). Many died in route and those that did make it awaited a hard life in a hazardous territory unfamiliar to them.

What happened to the Cherokee was truly a crime. They were civilized, they were Americanized, and they were peaceful to the United States. Several times they went out of their way to prove this to Jackson and the American people. They brought



problems to the court room instead of the battlefield, they wrote a constitution that modeled that of the United States., and they set many delegations to the government to negotiate non-removal solutions to the Indian problem. However, due to the richness of the Cherokee land and the continuing racism towards Indians, all of these civilized methods at peace were all for naught. They were forced from their homes and were in fact dehumanized.