1975

The Rhetoric of Cherokee Indian Removal From Georgia, 1828-1832.

William Murrell Strickland

Louisiana State University and Agricultural & Mechanical College

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FROM GEORGIA, 1828-1832.
The Louisiana State University and Agricultural
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THE RHETORIC OF CHEROKEE INDIAN REMOVAL,
FROM GEORGIA, 1828-1832

A Dissertation

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy

in
The Department of Speech

by
William M. Strickland
B.S., University of Arkansas, 1968
M.A., University of Arkansas, 1969
August, 1975

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ABSTRACT

The purpose of this investigation is to examine the rhetoric of the Cherokee Indian removal from Georgia. This movement is of special interest to the rhetorical critic because the major weapon the Indians could use to defend their home lands was rhetoric. Thus, the Indian removal debate can provide insight into the use of speaking when a minority clashes with an established power of the status quo.

The study first discusses the historical setting of the dispute between the Cherokees and Georgia. Special attention is paid to the legal claims of the Cherokees and their advancement toward civilization. With this understanding of the historical background, the study focuses on the speaking in the Federal Government and of the pro and anti removal groups.

The speaking in the Federal Government is examined by departments: executive, legislative, and judicial. The speaking of the executive branch, headed by Andrew Jackson, was used to advocate removal. The executive branch was ineffective in convincing the Indians to voluntarily remove because it was unable to control the occasion, setting, or audiences of speeches. Poor selection of speakers and appeals on the basis of fear to an educated Indian audience were further reasons for failure.
Jackson and the other executive spokesmen were effective when speaking to the majority of Americans, for they expressed the very basis of thought on the Indian issue: the savage vs. civilization.

The congressional debate on the Cherokee removal issue was not decided on the basis of logical arguments but on sectional and party affiliations. Georgia's strategy of speaking only when the Georgians felt forced to and ignoring many of their opponents' points proved to be effective.

The speaking in the Supreme Court in the cases of *The Cherokee Nation vs. Georgia* and *Worcester vs. Georgia* was relatively meaningless. William Wirt and John Sergeant, the Cherokee lawyers, spoke eloquently for their clients, while Georgia was not represented. Georgia's decision not to speak was in effect an argument that the Court had no power over Georgia's domestic affairs. This position was maintained by Georgia's decision not to obey the Court's decisions. The speaking in the Federal Government was of no help to the Cherokees.

Three major groups spoke in support of the Indians. They were the National Republicans, the liberal religious community of the North, and the Cherokees themselves. The speaking of the Cherokees to Cherokees was carefully planned and effectively carried out, but it was unable to keep the tribe united against removal because of
harassment from Georgia. None of the groups speaking against removal was effective in persuading the American public to oppose removal because all were unable to overcome the myth of the Indian as a savage and barrier to advancement.

Jackson's Democratic Republican Party and Georgia were the major advocates of removal. Their strategy of speaking only in response to anti-removal agitation and their ability to show the advantages of removal to America proved to be effective.

The Cherokees were unsuccessful in their fight to prevent removal. Their loss was due not so much to their failure in the use of rhetoric, but to the American public's failure to view progress and the rights of a minority as one and the same. This study by examining the removal debate tries to provide new insights into how rhetoric can be used to further true progress.
Chapter I

INTRODUCTION

Statement of Problem

By 1838 all the Cherokee Indians in Georgia had been forced to move west of the Mississippi. The trip was not an easy one and many of the Indians died. The journey is now appropriately known as the "Trail of Tears." Grant Foreman tells of the suffering: "Hundreds died in the stockades, and the concentration camps, chiefly by reason of the confinement and the rations furnished them . . . . Hundreds of others died soon after their arrival in the Indian Territory from sickness and exposure on the journey. A very small percentage of the old and infirm, and the very young survived the hardships of that ghastly undertaking . . . . over 4,000 Cherokee Indians [one fourth of the tribe] died as the result of the removal."^1

The history of America in many ways would have been easier if the new world had been unoccupied when the first Europeans arrived. Unfortunately, the new world was inhabited by Indians. The problem of how to deal with these Indians has been a continuing one for America. Removal of the Southern Indians was selected as the best

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means of dealing with them. It was first suggested by Thomas Jefferson in 1803 and was debated and evaluated until the last Indian was removed. This debate offers a rhetorical critic an excellent case for study. The importance of the removal question as a national issue as well as a significant rhetorical movement was pointed out by Dale Van Every in Disinherited: The Lost Birthright of the American Indian: "The Cherokee controversy had now drawn into its vortex every major manifestation of power in the country: the President, Congress, the Supreme Court, political parties, the religious community and the press. Clergymen, editors, educators, lecturers, writers, party managers and candidates for any office were as obliged to take some position as had already been senators, congressmen and federal administrators."2

Justification

This movement is of special interest to the rhetorical critic because the major weapon the Indians could use to defend their rights was rhetoric. It is also interesting to note how those opposed to the Indians justified exiling them. The Indian removal debate can provide valuable insight into the use of speaking when a minority clashes with an established power of the status quo.

Questions this dissertation will attempt to answer include:

1. How was speaking used by the various pro-removal forces to promote their interests?
2. Did the uses of speaking differ among the various pro-removal forces?
3. How was speaking used by the various anti-removal forces to promote their interests?
4. Did the uses of speaking differ among the various anti-removal forces?
5. What insight can the Cherokee case provide for any minority who tries to defend its rights with speaking?
6. What effects did the various strategies of removal have on U.S. history?

The answers to these questions may provide help in formulating future strategies for rhetorical battles between a minority and the status quo and aid our society in evaluating its goals.

Limits of the Study

This study deals with only a small portion of the total removal controversy, being limited to only one tribe, one state, and five years. The Cherokee Indians were selected because they were the most advanced of the Southern tribes and the most vocal in their opposition.
to removal.3 The other southern tribes "looked to the Cherokee case for an intimation of what would be done," so, in effect, the study of the Cherokee removal fight is a study of the whole movement.4 Georgia was selected for study because it was the state most determined to remove the Indians. The states of Alabama and Mississippi both had significant Indian territory, but they followed the lead of Georgia. The years 1828–1832 were chosen because these years contained the heart of the debate. Only when Jackson was elected in 1828 did removal have the active support of the President and become a prominent national issue. With the re-election of Jackson in 1832 the Cherokee cause was lost. While no formal removal agreement was reached until 1835 and some Cherokees remained in Georgia until 1838, the nature of the rhetoric changed when important support deserted the movement and a split developed in the attitude of the tribe.

3 Chapter two dealing with the historical setting goes into detail on Cherokee advancement.

The two most common approaches to a study of a rhetorical movement are the "traditional" and the "Burkean" approaches. The traditional method has the advantage of showing the complexity of a movement by examining different speeches by different speakers and comparing them in such areas as pathos, logos, and ethos. A Burkean method which views the movement as a drama is better suited to the study of the totality and flow of the movement. Both methods have been criticized for their limitations. Writing in the Quarterly Journal of Speech, Herbert W. Simons pointed out the problem of using a traditional approach: "Designed for microscopic analysis of particular speeches, the standard tools of rhetorical criticism are ill-suited for unravelling the complexity

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of discourse in social movements or capturing its grand flow.\textsuperscript{6} Dan F. Hahn and Ruth M. Gonchar disagree: "Intertwining traditional categories of analysis facilitates insights into the complexity of social movement rhetoric."\textsuperscript{7}

While both methods have points to recommend them, the nature of the rhetoric of Cherokee Indian removal makes the application of either approach difficult. Basic to both approaches is the assumption that the movement includes "among its salient characteristics a shared value system, a sense of community, norms for action, and an organizational structure. In addition, the movement ... is oriented toward definite goals ..."\textsuperscript{8} The groups in support of the Cherokees included the Indians themselves, the northern religious community, southern liberals, westerners, anti-Jackson politicians, and Indian missionaries. It would be difficult to argue that these groups had "a shared value system, a sense of community, norms for action, and an organizational structure", and they certainly were oriented toward different goals. On the side of Georgia, one can find the Georgians, Baptist religious leaders, northern politicians, and southern

\begin{itemize}
\item \textsuperscript{6} Simons, p. 2.
\item \textsuperscript{7} Hahn and Gonchar, p. 47.
\item \textsuperscript{8} Cathcart, p. 85.
\end{itemize}
states' righters. Again it would be difficult to identify many common characteristics. In addition, these two approaches are self restrictive, leaving little flexibility to deal with such analysis as the timing of speeches, what was not said (often more can be gained by examining what is not said than by what is said), why methods were used by some groups and not by others, the decision to speak or not, and the aims of the speakers.

The methodology selected for this study could best be described as the "case study approach." Various settings and groups of speakers will be examined in isolation. These settings and groups will be examined in relation to the most important aspects of their rhetoric. Areas to be examined will include: rhetorical aims, self definition of the groups, premises, arguments, evidence, symbols, non-articulated emotions, emotional appeals, logical appeals, ethical appeals, persuasive techniques, beliefs, audience adaptation, and any other areas which might facilitate an understanding of the rhetorical strategies. No attempt will be made to keep the areas of analysis consistent from group to group or setting to setting. The most appropriate areas for analysis will be used for each group. For example, the decision not to speak applies to the Georgia speakers and does not apply to the northern religious community. This type of case study approach
will allow specific analysis and yet will provide a fairly complete understanding of the whole movement from the picture of its parts.

Writing Indian History

The major problem in a study dealing with Indian history is separating fact from fiction in order to maintain an objective view of the events. Much of the writing on Indians viewed them as the noble savages and the white man as guilty of his destruction. Bernard W. Sheehan believes that this "story has been recounted often enough to be part of the American folklore." This study is not designed to assign guilt, although moral judgments are made. An attempt will be made to understand the rhetoric, not so much from a view of the twentieth century but from the view of the participants.


Sheehan, p. 267.
Authenticity of the Speech Texts

No evidence exists to establish the authenticity of the speech texts to be examined. The speeches were obtained from a great variety of sources including government documents, pamphlets, anthologies, and newspapers. No guarantee can be provided that these texts represent the actual words delivered. Nevertheless, it should be noted that this study is not directed toward an analysis of style. Instead, the study analyzes the rhetorical strategies of the speakers. Therefore, the potential lack of total authenticity of the texts should not affect this study.

Sources and Contributory Sources

The only comprehensive study of the rhetoric of Cherokee Indian removal is a Ph.D. dissertation entitled "The Removal of the Cherokee Indians From the State of Georgia, 1824-1835: An Analysis of Rhetorical Strategies," written by Philip McFarland at Stanford University in 1973. This interesting and informative dissertation deals with the rhetorical strategies of the participants in the removal crisis. The strategies examined include the use of acts, letters, newspapers, and speeches. Few speeches are mentioned, and only one speech (Frelinghuysen's speech before Congress) is discussed in any detail. Frelinghuysen's
speech is only summarized and not analyzed in relation to appeals. McFarland's dissertation in no way is duplicated by this study. While McFarland views speaking as only one of the strategies (a minor one), this study will consist only of an analysis of speeches and in areas not previously covered.

There are many primary sources of information for the study of the Cherokee Indian removal. The most important include: The American State Papers, John P. Kennedy's Memoirs of the Life of William Wirt, Wilson Lumpkin's The Removal of the Cherokee Indians from Georgia, Register of Debates in Congress, Richard Peters' Supreme Court Reports, James Richardson's A Compilation of the Messages and Papers of the President 1789-1897, and speeches of Georgia governors found in the Journal of the Senate of the State of Georgia.

Contemporary newspaper reports and articles are the major source used in this study. Every general newspaper of this period carried numerous items dealing with the Indian issue. Over fifty newspapers were examined in order to find pertinent information. The most valuable include: Southern Recorder (Milledgeville, Ga.), Macon Advertiser, Georgia Messenger (Milledgeville, Ga.), Cherokee Phoenix (New Echota), Boston Patriot, Eastern Argus (Portland, Maine), Hartford Times (Connecticut), and the New York Evening Post.
There are numerous secondary sources on the Cherokee Indian removal because of its importance to the forming of United States' values and institutions. This dissertation uses a number of these works. Two of particular value are Dale Van Every's *Disinherited: The Lost Birthright of the American Indian* and Father Francis Prucha's *American Indian Policy in the Formative Years*. Van Every gives a clear picture of removal as an unjust and unconscionable action, while Prucha tends to emphasize purer motives and more honorable dealings by the whites.

**Organization of the Study**

This dissertation is composed of six chapters. In chapter one an attempt has been made to introduce the study in terms of subject, limitations, methodology, writing Indian history, textual authenticity, sources, and objectives.

Chapter two presents the historical setting of the removal crisis. Cherokee-white relations are examined from first contact to the end of 1832. This analysis is essential for an understanding of the issues debated.

Chapter three deals with the rhetoric of the Federal Government. The chapter considers the speaking of each of the branches: executive, legislative, and judicial. These three sections focus on how speaking was used in their deliberations and actions.
Chapter four examines the speaking of the anti-removal forces. Included in this analysis are the speeches of the Indians, northern liberals, and anti-Jackson politicians.

Chapter five deals with the speaking of the pro-removal forces. Included in this analysis are the Georgians, the New York Board, pro-Jackson politicians, and the South Carolina nullifiers. Chapter six develops the final analysis and conclusions of the study.
Chapter II

THE HISTORICAL SETTING

Before the Revolution

When James Edward Oglethorpe came with his paupers from England in 1733, he was greeted with gifts from the Indians he met. When a Cherokee chief appeared, Oglethorpe said to him, "Fear nothing. Speak freely." "I always speak freely," answered the Indian. "Why should I fear?" ¹

There was little reason for the Cherokees to be fearful, for to them warfare was a great delight which they practiced with the utmost cruelty. It was their "beloved occupation." ² Dale Van Every believes that the Cherokees were "the most warlike" of all the American

¹ Helen Hunt Jackson, A Century of Dishonor (Boston: Roberts Brothers, 1891), p. 257.

² Oliver LaFarge, A Pictorial History of the American Indian (New York: Crown Publishers, Inc., 1956), p. 31. La Farge points out that killing women and children was highly esteemed by the Cherokees and that they only captured men in order to torture them. Helen Hunt Jackson in A Century of Dishonor describes a Cherokee torture: "The mode of inflicting the torture was by light-wood splits of about eighteen inches long, made sharp at one end and fractured at the other, so that the torch might not be extinguished by throwing it... It was deemed a mark of dexterity... when an Indian threw one of these torches as to make the sharp end stick into the body of the suffering youth without extinguishing the torch" (p. 31).
Indians. They had to be fierce fighters to control their hunting ground. It covered not only the Appalachian Highlands in the western extremities of both Carolinas and the northwest portion of Georgia, but also northern Alabama, the Cumberland Plateau in Tennessee west to Muscle Shoals and north to the Ohio, and even the interlocking borders of both Virginias and Kentucky.

The Cherokees proved to be valuable friends to Oglethorpe's colony. Wars with France and with Spain made the colonies' position hard. Again and again England would have lost her colony except for the unswerving fidelity of the Indian allies. In 1740, for example, the Cherokees furnished one thousand warriors to repulse the Spaniards at St. Augustine.

In 1752 the Georgia Colony was disbanded and formed into a royal government which did not maintain friendly relations with the Cherokees. They did, however, support the Indians' rights to their land. According to Helen


5 Starkey, p. 259.


7 Jackson, p. 620.
Hunt Jackson, Indian sovereignty was recognized by all European countries. However, this recognition was often one of convenience rather than conviction. Indian friendship was important for trade, as a source of allies to fight other European nations, and in order to prevent the high cost of a war with the Indians. In reality settlers paid little attention to the Indians' natural rights or, for that matter, to treaty rights. When convenient, treaties were often "broken before the ink was dry."\(^9\)

In 1763 a treaty was signed between the Cherokees and the British which would last until the outbreak of the dispute between England and her colonies. The treaty called for a large cession of Cherokee land for which all debts owed by the Cherokees were cancelled.\(^10\)

Before the Revolution, American agents urged Cherokee neutrality. The Indians agreed to this and sold a tract of land to an American land company in 1775. They were determined to remain peaceful and let the white men kill each other.\(^11\) However, there was Cherokee opposition to

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\(^8\) Ibid., pp. 17-18.

\(^9\) Van Every, pp. 81-83.

\(^10\) Jackson, pp. 26-61.

giving up any land whatsoever. Dragging Canoe objected to the sale of land to the Transylvania Company in a speech before the Cherokee Council:

Where are our grandfathers, the Delawares? The encroachment of the white men upon various nations of Indians who have left their homes and graves of their ancestors to satisfy the insatiable desire of white men for more land. Whole Indian nations have melted away like balls of snow in the sun, leaving scarcely a name except as imperfectly recorded by their destroyers. . . . Should we not therefore run all risks, and incur all consequences, rather than submit to further lacerations of our country? Such treaties may be all right for men who are too old to hunt or fight. As for me, I have my young warriors about me. We will have our lands--a waninski, I have spoken!12

The British, who at first urged neutrality, were by June 1775 trying to get the Cherokees on their side. They passed out guns, hatchets, and other presents to the Indians in case there was a war with the colonies.13 The Cherokees did join the British against the colonies, but

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12 Irwin M. Perthmann, Red Men of Fire (Springfield: Charles C. Thomas, 1964), pp. 29-30. This speech was delivered before one thousand Indian men, women and children. It did not persuade the Council who went ahead with the sale.

13 Perthmann, p. 33.
it was due to resentment over the encroachment of white settlers on Indian land, not loyalty to England.\textsuperscript{14} This allegiance proved to be a mistake. The Cherokees suffered heavy losses and had many of their towns burned. They were unable "to resist, partly because the great majority remained at peace, and perhaps chiefly because . . . . their supplies and ammunition were inadequate."\textsuperscript{15}

\textbf{1785-1800}

The war between the Cherokees and the new American government officially ended with the treaty at Hopewell in 1785. The treaty read in part:

\begin{quote}
The Commissioners Plenipotentiary of the United States, in Congress assembled, give peace to all the Cherokees . . . .
\end{quote}

\textbf{Article III}

The said Indians for themselves and their respective tribes and towns do acknowledge all the Cherokees to be under the protection of the United States of America, and of no other sovereign whatsoever,

\textbf{Article V}

If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands westward or


\textsuperscript{15} Cotterill, p. 43.
southward of the said boundary which are hereby allotted to the Indians for their hunting grounds, or having already settled will not remove from same within six months after the ratification of the treaty, such person shall forfeit the protection of the United States, and the Indians may punish him or not, as they please . . .

Article IX

For the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States in Congress assembled shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as they think proper. 16

Peace was not really established by this agreement. Georgia and North Carolina were unhappy with it, for they felt it gave too much land to the Indians. The Indians were displeased because of the encroachments of the whites. There were continual clashes between the Indians and white settlers. 17 In 1791 a second attempt was made to secure a permanent peace with the signing of the Treaty of Holston. It read in part:


Article VII

The United States solemnly guarantee to the Cherokee nation, all their lands not hereby ceded.

Article XIV

That the Cherokee nation may be led to a greater degree of civilization, and to become herds-men and cultivators, instead of remaining in a state of hunters, the United States will from time to time furnish gratuitously the said nation with useful implements of husbandry, and further to assist the said nation in so desirable a pursuit . . . .18

This treaty not only guaranteed the lands of the Cherokees, but was the first step taken to implement President Washington's Indian policy of civilizing them with "the idea of ultimate incorporation."19 The Washington administration clearly viewed the Indians as savages, but nonetheless its policy recognized their sovereign rights. Secretary Henry Knox expressed this when he wrote to Washington that "The independent nations and tribes of Indians ought to be considered as foreign nations, not as the subjects of any particular state."20 Secretary of


19 Mary B. Gude, "Georgia and the Cherokees" (M.S., University of Chicago, 1910), p. 2. Washington adopted the policy suggested by Secretary of War Henry Knox outlined in a letter dated July 7, 1789. This letter appears in the American State Papers, Indian Affairs, I, pp. 53-54.

20 American State Papers, Indian Affairs, I, pp. 53-54.
State Thomas Jefferson supported this position in a letter to Knox two years later, "The Indians have a right to the occupation of their lands, independent of the states within those chartered limits they happen to be: that until they cede them by treaty, no act of a state can give a right to such lands." 21

Even after the treaties of Hopewell and Holston and the support of the Washington Administration, the Indians were forced by advances of white settlers to cede more and more of their land. Agreements were made in 1798, 1804, 1805, 1806, 1816, 1817 and 1819, in which the Cherokees gave up some of their land. 22 Thomas Parker describes what was left of the once large land holdings of the Cherokees, "of their original country a tract in the northwest corner of Georgia about hundred miles square, or a little more than half the size of the original tract in that state, a tract not half as large in Alabama and smaller sections in Tennessee and North Carolina." He concludes, "Slice by slice, according to the increasing voracious appetite of the whites, the land

21 Letter from Jefferson to Knox, August 10, 1791 appearing in New York University Law Center, "The Removal of the Cherokee Indians from Georgia," (Unpublished Report) Section 2, Part 3, No date. This is a memographed report of the Law Center.

22 Parker, pp. 9-11.
went until the helpless Indian saw the mere remnant of what had been his."^23

The treaty which had the greatest impact on the Cherokees and eventually led to their removal was one in which they were not a party. It was an agreement between the state of Georgia and the United States. Georgia agreed to give up her claims to the territory which was to become Alabama and Mississippi in an exchange for a promise from the federal government to gain for her the Indian lands within her borders. Article I, Section 4, of the Georgia Cession of April 24, 1802 reads in part: "Fourthly, that the United States shall, at their own expense, extinguish, for the use of Georgia, as early as the same can be peaceably obtained, on reasonable terms, the Indian title to lands within the State of Georgia."^24 This agreement was described by one observer as opening "a Pandora's box" for the Cherokees.^25 The federal government now recognized two claims to the same land.

^23 Parker, p. 15.


President Jefferson was the first official to advocate a large scale removal of the Indians to land west of the Mississippi as a solution to the Indian problem. In July 1803 he wrote out a rough draft of a constitutional amendment which was designed to guarantee the validity of the Louisiana purchase; this amendment contained a provision which stated the rights of Indians but also expressed the desire for migration west. Jefferson's amendment read in part:

... The right of occupancy in the soil, and of self-government, are confirmed to the Indian inhabitants, as they now exist. Pre-emption only of the portions rightfully occupied by them, and a succession to the occupancy of such as they may abandon, with the full rights of possession as well as of property and sovereignty in whatever is not or shall cease to be so rightfully occupied by them shall belong to the U. S.

The legislature of the Union shall have authority to exchange the right of occupancy in portions where the U.S. have full rights for lands possessed by Indians within the U.S. on the East side of the Mississippi: to exchange land on the East side of the river for those of the white inhabitants on the West side thereof ... 26

The Federal Government for the next twenty-five years would in various ways maintain two different policies toward

the Cherokees. The federal government both encouraged the Indians to remove west and also be become civilized. These two policies were inconsistent, each running counter to the object of the other.

Most of the Cherokees were eager for aid in learning the white man's ways. Their old life style was becoming increasingly unsuited to new conditions. The white man had taken away most of their hunting ground and was now too powerful to fight. They had to either migrate west or to become "civilized." Some of the Indians chose to move. Voluntary migration west of the Mississippi took place as early as the treaty of Hopewell, but the "majority of the tribe chose to become civilized." 27

This situation was described by U. B. Phillips: "After 1795 no considerable portion of the Cherokee nation was at any time seriously inclined to war. Those of its members who preferred the life of hunters moved away to the far west, while the bulk of the tribe remaining settled down to the pursuit of agriculture." 28

27 Parker, p. 12.

The remaining Cherokees began a new way of tribal existence in the early 1800's. At the urging of Thomas Jefferson they adopted a set of written laws in 1808 and in 1810 outlawed the time honored custom of blood revenge. During this same period the Cherokees not only began a new form of government but also a new religion. There had been some Christian missionary work before 1800, but the new century brought renewed interest in work with the Indians. Edward Griffin in a sermon before the Presbyterian General Assembly declared this new interest: "We are living in prosperity on the very lands from which the wretched pagans have been ejected; from the recesses of whose wilderness a moving cry is heard. When it is well with you, think of poor Indians." The impetus for this new effort was partly due to the Indians themselves. In 1799 a group of Cherokees sent a request to the Moravian brothers, asking for a mission school for their children. This request resulted in the establishment of the first

29 Rennard Strickland, "From Clan to Court: Development of the Cherokee Law," Tennessee Historical Quarterly 31 (Winter, 1972): 320-321. This excellent article discounts the commonly held myth that the Cherokee legal system developed "overnight".

organized mission in the Cherokee nation; Spring Place Mission was established in 1801. In addition, missions were soon established by the American Board of Commissioners for Foreign Missions (a joint Presbyterian-Congregationalist enterprise), the Baptist Missionary Society, and the Methodists.

The goals of the missionaries for the Indians were to make them "English in their language, civilized in their habits, and Christian in their religion." In an effort to obtain these goals, a mission often not only contained ministers but teachers, physicians, farmers, blacksmiths, and other artisans. There was little objection to the missionary work, for the Cherokees lacked a strong religion and were very much interested in using the missionaries for educational and cultural gains.


34 Ibid., p. 63.

35 Henry Thompson Malone, *Cherokees of the Old South* (Athens: The University of Georgia Press, 1985), p. 31. In Emmet Starr's *History of the Cherokee Indians* (Oklahoma City, The Warden Co., 1921), pp. 21-22, it is pointed out that great similarity exists between the religious traditions of the Cherokees and biblical accounts. The Cherokees have beliefs and accounts similar to the triune God, creation in seven days, women created out of rib, and the flood. Thus "it was a comparatively easy task to convert them from a tribe of savages to a Christian nation within the comparatively short period of thirty years." Probably this was due to an unremembered contact with earlier Christian missionaries.
The Indian Council even sent a message to the Spring Place Mission demanding in effect more civilizing and less Christianizing. The Indians were not opposed to Christianity, but they really preferred their children taught "the three r's" rather than the Trinity.\textsuperscript{36}

By 1812 the Cherokee Council realized that all their hopes for continued progress and of maintaining their homelands depended upon American favor; thus they supported the U.S. in the War of 1812. Nearly a thousand Cherokees joined the forces of Andrew Jackson to fight the Creek Indians who were allied with Great Britain. In fighting the Creeks, the conduct of Jackson's white militia was marked by unreliability and misbehavior which forced retreat twice, while the weight of the campaign was carried by the Cherokees. His eventual victory at Horseshoe Bend, where more than a thousand Creeks died, was won, after his frontal assault by white troops had been repulsed by his Cherokee battalions who swam a river to take the Creeks from the rear. These first victories won by the Cherokees opened the way to Jackson's sensational victory in the Battle of New Orleans.\textsuperscript{37}

\textsuperscript{36} Malone, "Missionaries in Cherokee Country," p. 129.

\textsuperscript{37} N.Y. U. Law Center, Section 6 Part 2. Ironically the help from the Cherokees helped make Jackson a national hero and fourteen years later he was elected President; as President he was ultimately responsible for the removal of the Cherokees. One Cherokee later bitterly regretted a lost opportunity: "If I had known Jackson would drive us from our homes, I would have killed him that day at Horseshoe."
The Cherokees next dealt with General Jackson in 1817 when he represented the Federal Government in talks designed to extinguish the Indians' land claims east of the Mississippi; he failed. A treaty was finally worked out which exchanged some land east of the Mississippi for land west of it. In a treaty signed in 1819 more land was exchanged in an effort to clarify the treaty of 1817. The Federal Government had tried to make good its agreement with Georgia, but less than three thousand Indians moved and little of the Georgia land was surrendered. 38

After this failure, agitation for Indian removal increased in Georgia in volume and determination. The Cherokees also increased their determination to remain. In 1820 they formed the General Council (comparable in authority and responsibility to a state legislature) whose consent was required for land sales or cessions. A law was also passed which provided the death penalty for the unauthorized sale of land or the unauthorized negotiation of land cessions. 39 The Cherokees were indeed tired of giving up their land which at one time consisted of 40,000 square miles and now was just 200 miles east to west and 120 miles north to south (most of this land lying in Georgia). 40

38 Gude, pp. 3-4.
39 Van Every, pp. 72-73.
In 1821 an invention was completed by an Indian which would make the fighting position of the Cherokees much stronger. The invention was not a new gun but an alphabet. Sequoyah (George Gist) provided the Cherokees a written language. His alphabet was not based on the English language, for he did not know how to read or write. It was superior to English in that all Cherokee sounds were represented by eighty-four characters and the Cherokee who could learn the alphabet could thus read. Oliver LaFarge pointed out the rapid spread of new knowledge: "In a matter of months virtually every Cherokee who was not an infant or senile could read and write." Dale Van Every put it this way: "The effect of education which has come to most societies as a gradual permeation, a process measured by the passage of generations, had come to the Cherokee like the sudden all-pervading light of a rising sun."

For details on this great inventor and his alphabet, see George E. Foster, SE-QUO-YAH the American Cadmus and Modern Moses (Philadelphia: By author, 1885). An excellent explanation of the alphabet itself appears in the Cherokee Phoenix, February 21, 1828.

La Farge, p. 40.
Van Every, p. 44.
The Cherokees were also making educational advances in the English language. By 1826 there were eighteen mission schools in the Cherokee nation. Some Cherokees even left the nation in an effort to obtain a quality English education. The most important northern school for the Indians was the Cornwall School in Cornwall, Connecticut. It was established by the American Board of Commissioners for Foreign Missions "for the purpose of educating youths of Heathen nations, with a view to their being useful in their respective countries." It was successful in the case of the Cherokees, for many of the future leaders against removal attended Cornwall; they included John Ross (Principal Chief), George Lowery (Second Chief), David Brown (Secretary of the Cherokee Council), Elias Boudinot (Editor of the Cherokee Phoenix), John Ridge (member of the Cherokee Council and delegate to Washington), and William Shorty Coodey (member of the Cherokee Council and delegate to Washington).

44 Woodward, p. 140.


46 Boudinot's Cherokee name was "Galigino." He took the name of a Philadelphia man who took an interest in him. Smith says it was a Congressman (p. 140), Van Every a clergyman (p. 46), and Carolyn Foreman a "philanthropist, statesman, and author." (p. 244).
closed on a sour note to the Cherokees, for it was
closed as a direct result of the marriages of Boudinot
and Ridge to white girls.

On October 16, 1823, the Federal Government again
tried to fulfill its commitment to Georgia. The United
States Commissioners to the Cherokees sent a message to
the Council of the Cherokee Nation which read in part:

We propose to purchase of the Cherokee
nation the whole, or a part, of the territory
now occupied by them, and lying within the
chartered limits of the State of Georgia. We
do not confine ourselves to Georgia limits,
because we are Georgians, but because . . .
the United States bound herself, at her own
expense, to extinguish, for the use of Georgia
as early as the same could be peaceably obtained,
and on reasonable terms, the Indian title to
all lands within the State of Georgia.  

On October 20, 1823 the Cherokees answered: "We cannot
accede to your application for a cession. It is the fixed
and unalterable determination of this nation never to
cede one foot more land." They were determined to stay
because it was their home and all the bones of their
ancestors were there. An economic motivation was also a
strong reason for many of the leaders, for they owned
mansions and slaves which they hated to give up. Another
Indian objection to the move was that it would not be
permanent, for the west Cherokees (the Indians who had

47 American State Papers, Indian Affairs, II, p. 467.
48 Ibid., p. 469.
voluntarily moved) had already been moved from their so recently guaranteed "permanent home" in Arkansas to a new "permanent home" in Oklahoma.

Georgia's position was just as clear and just as firm. Governor Troup expressed it in a letter on April 6, 1825 to Senator Forsyth: "The Cherokees must be told in plain language that the lands they occupy belong to Georgia; that sooner or later the Georgians must have them; that every day—nay, every hour—of postponement of the rights of Georgia makes the more strongly for Georgia, and against both the United States and the Cherokees. Why conceal from this misguided race the destiny which is fixed and unchangeable?" Former Governor Troup believed that "men and the soil constituted the strength and wealth of nations, and the faster you plant the men, the faster you can draw on both." The Cherokees limited the amount of soil and men who could make Georgia great. The invention of the cotton gin coupled with the wearing out of the soil by improper agricultural methods placed an additional premium on the Indian lands.

49 N.Y.U. Law Center, Section 13.

Race hatred also played an important part in the desire to move the Indians out of Georgia. Governor George Gilmer summed up Georgia's view: "... the Aboriginal people are as ignorant, thoughtless, and improvident, as formerly; without any of the spirit and character which distinguished them when war was their employment, and their support derived from the forest . . . ." 51 But possibly the fiercest and most "enduring element in the intensity and unanimity of public opinion was state pride." 52 Georgia's internal politics were frequently marked by bitter factionalism, but on the Cherokee issue all parties and all candidates and all officials were united. Indian expulsion had become a standard to which all Georgians rallied.

In 1825 in a meeting at New Town, the Cherokee Legislative Council took a giant step toward civilization and education but more important toward defending themselves against Georgia. The council voted to start a newspaper to be printed part in Cherokee and part in English. This newspaper was intended to facilitate communication among the Cherokees and at the same time to express their views

51 N.Y.U. Law Center, Section 14, Part B.

52 Van Every, p. 96.
to the North on removal. The council, in an effort to raise funds for the two sets of type, appointed Elias Boudinot (later to become editor) as the Cherokees' representative to collect money from eastern lectures. According to Grace Steele Woodward: "Boudinot held Philadelphia and New York audiences spellbound as he recited the achievements of his people and expressed their great desire for education by means of a national newspaper." He collected nearly six hundred dollars and a pamphlet of his speech before the First Presbyterian Church in Philadelphia continued to raise funds after he had returned home. The first issue of the Cherokee Phoenix appeared February 21, 1828.

The Cherokees on July 26, 1827 took a step which many viewed as the ultimate proof of their progress and civilization; they adopted a written constitution. The document in many ways was copied after the U.S. Constitution. Its preamble gives evidence to this fact:

53 Woodward, pp. 143-44. The Cherokee Phoenix during the years of debate on removal exchanged newspapers with about one hundred newspapers and articles from the Phoenix appeared all over the country (p. 155).

54 Woodward, p. 144.

We, the Representatives of the People of the Cherokee Nation, in Convention assembled, in order to establish justice, ensure tranquility, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty do ordain and establish this Constitution for the Government of the Cherokee Nation.

The form of the government is identical to that of the U.S.:

Article II

Sec. 1. The Power of this Government shall be divided into three distinct departments: the Legislative, Executive and the Judicial

Article III

Sec. 1. The Legislative Power shall be vested in two distinct branches.

Article IV

Sec. 1. The Supreme Executive power of this nation shall be vested in a Principal Chief.

Art. 1. The Judicial Powers shall be vested in a Supreme Court, and such Circuit and Inferior courts as the General Council may, from time to time, ordain and establish.

While this constitution is poor evidence of advancement of the whole tribe, many contemporary accounts speak of the progress made by the Cherokees toward civilization. Thomas L. McKenney, Commissioner of Indian Affairs, in a letter to the War Department included this glowing


57 Ibid.
description: "... The natives carry on considerable trade with the adjoining states ... There are many public roads in the nation, and houses of entertainment kept by natives. Numerous and flourishing villages are seen in every section of the country. Cotton and woolen cloths are manufactured: blankets of various dimensions, manufactured by Cherokee hands, are very common. Almost every family in the nation grows cotton for its own consumption. Industry and commercial enterprise are extending themselves in every part."^58

The Charleston Gazetteer echoed McKenney's opinion: "Within the last twenty years the Cherokees have rapidly advanced towards civilization. They now live in comfortable houses, chiefly in villages and cultivate large farms. They raise large herds of cattle which they sell for beef to the inhabitants of the neighboring states. Many mechanical arts have been introduced among them. They have carpenters and blacksmiths, and many of the women spin and weave, and make butter and cheese ..."^59

Samuel A. Worcester (missionary to the Cherokees and one of their best friends in the fight against removal) wrote

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58 Jackson, p. 275.

to the editor of the Philadelphian: "From what I have learned of the state of the Cherokees by a residence of more than four years among them, I hesitate not to say, that the great mass of the Cherokee people were never before in so good circumstances, in regard to the comforts of life, as at the present time, and that their circumstances are improving every year." William Wirt held this same opinion: 'There is scarcely on record a more agreeable picture than that presented by the Cherokees, of savage life reformed and advanced within the confines of civilized man . . . . They established schools; adopted the social organization of the whites; assumed their costume, learnt their mechanical crafts; built villages, churches, court-houses . . . ."  

Georgia had a different view of the Cherokee advancement; the Indians were still savages in the opinions of Georgians. Athen's Athenian on August 11, 1829 says of the Cherokees, "... go among them—see the degradation that they are already sunk into . . . . It is a fact, that some of them died last year from absolute starvation; and many of them move about without sufficient clothing to

60 Cherokee Phoenix, May 1, 1830.
Representative Terrill, in a speech before the Georgia Legislature, said, "Their situation is precarious, and truly deplorable. They are the remnant of a once powerful race; what are they now? debased, degraded, and still a savage tribe. The lights of education, Christianity, and civilization, beam but faintly on their almost benighted minds." Governor Gilmer in a message to the legislature took this view of Cherokee progress: "The Aboriginal people are as ignorant, thoughtless and improvident as formerly, none of them in this state, with the exception of one family, have acquired property, or been made by others among them . . . ."

By 1827 Georgia was tired of these savages occupying their land and of continued federal failure to remove them. Georgia was the only state with a guarantee to move the Indians, yet many Indians had been moved from other states and few from Georgia. On December 19, 1827, a joint committee of the Georgia legislature resolved:

62 Athenian (Athens, Georgia) August 11, 1829.
63 The Federal Union (Milledgeville, Georgia) February 1, 1831.
That all the lands, appropriated and unappropriated, which lie within the conventional limits of Georgia, belong to her absolutely; that the title is in her; that the Indians are tenants at her will; that she may, at any time she pleases, determine that tenancy, by taking possession of the premises; and that Georgia has the right to extend her authority and laws over the whole territory, and to coerce obedience to them from all descriptions of people, be they white, red, or black, who reside within her limits. 65

Without at least passive support of the federal executive, this resolution was meaningless. While Madison, Monroe, and Adams supported removal, they believed in the rights of the Indians to their lands and in no way would they agree to coercive acts. James Monroe's message to Congress on March 30, 1824 is representative of these Presidents' attitudes: "... the Indian title was not affected in the slightest circumstance by the compact with Georgia, and ... there is no obligation on the United States to remove the Indians by force. The express stipulation of the compact that their title should be extinguished at the expense of the United States when it may be done peaceably and on reasonable conditions is a full proof that it was the clear and distinct understanding of both parties to it that the Indians had a right to the territory, in the disposal of which they were to


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be regarded as free agents. An attempt to remove them by force would, in my opinion, be unjust."

1828-1832

In November 1828 the situation changed; Andrew Jackson was elected President. He was an "Indian fighter and hater." His dedication to the policy of Indian removal led Martin Van Buren after removal was completed to write: "That great work was emphatically the fruit of his own exertions. It was his judgment, his experience, his indomitable vigor and unrelenting activity that secured success." The Indians found 1828 a bad year for another reason; gold was discovered scarcely fifty miles


67 This is a commonly held belief. See Woodward, "well-known Cherokee-hater" (154), Bass, "Indian fighter and was an Indian hater" (109), and B. J. Ramage, "Georgia and the Cherokees," The American Historical Magazine 7 (July, 1902), 204. F. P. Prucha in his excellent article "Andrew Jackson's Indian Policy: A Reassessment," Journal of American History 56 (1969) 530, refutes this belief.

68 Bassett, p. 691.
from their capital at New Echota. This discovery made their land even more valuable to Georgia and according to one historian, "determined the expulsion of the Cherokees from Georgia." 69

Georgia was pleased to have a western man with western views in the White House. They wasted no time in setting out to force the Cherokees to move. On December 20, 1828 they adopted a measure which would eventually give Georgia complete control over the land. B. J. Ramage explains the provisions: "All white persons residing therein were made immediately subject to the laws of Georgia . . . Indians residing in the territory after June 1, 1830, were to be liable to such regulations as the legislature might afterwards prescribe. After the above date, "all laws, usages and customs made, established and in force, in the said territory, by the said Cherokee Indians" were to be null and void. 70

The Cherokees could not remain in Georgia if they were subjected to her laws. Their tribunal existence would be destroyed and the individuals set adrift to deal with a people who hated them. They appealed to the federal government for protection. On February 27, 1829 John Ross

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Ramage, p. 203.
and the Cherokee delegation to Washington sent a memorial which read in part:

We cannot admit that Georgia has the right to extend her jurisdiction over our territory, nor are the Cherokee people prepared to submit to her persecuting edict. We would therefore respectfully and solemnly protest, in behalf of the Cherokee nation, before your honorable bodies, against the extension of the laws of Georgia over any part of our Territory, and appeal to the United States' Government for justice and protection. 71

The federal executive's position was made clear by President Jackson in his First Annual Message to Congress on December 8, 1829. He stated: "I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limits of any state or territory now formed, to be guaranteed to the Indian tribes . . . . This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land. But they should be distinctly informed that if they remain within the limits of the states they must be subject to their laws." 72 Obviously, the Cherokees could not expect Jackson to protect them from the laws of Georgia.

71 New American State Papers, Vol. 9, p. 141.

Eleven days later, the Georgia legislature passed virtually the same law it had passed the previous December. It read in part:

Sec. 6. And be it further enacted, that all the laws, both civil and criminal of this state, be, and the same are hereby extended over /Indian territory/ . . . after the first day of June next . . . .

Sec. 7. And be it further enacted, that after the first day of June next, all laws, ordinances, orders and regulations of any kind whatever, made, passed, or enacted by the Cherokee Indians . . . are hereby declared void.

Georgia included in this act three sections designed to limit the Cherokees' ability to fight removal:

Sec. 8. And be it further enacted, that it shall not be lawful . . . to endeavor to prevent any Indian residing within the chartered limits of this state, from enrolling as an emigrant or actually emigrating, or removing from said nation . . . .

Sec. 10. And be it further enacted, that it shall not be lawful . . . to prevent, or offer to prevent or deter any Indian . . . from selling or ceding /Land/ to the United States . . .

Sec. 12. And be it further enacted, that it shall not be lawful . . . to take the life of any Indian residing as aforesaid for enlisting as an emigrant, attempting to emigrate, ceding or attempting to cede /Land/. . . .

The last section made it almost impossible for an Indian to protect himself from unscrupulous whites. The Indians

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73 This provision was enacted because the Cherokee Council on October 24, 1829 revised an old law "making death the penalty of selling lands without the authority of the nation." New York Observer, December 2, 1829.
would be subject to Georgia's laws but could not use its courts:

Sec. 12. And be it further enacted, that no Indian or descendant of any Indian, residing within the Creek or Cherokee nations of Indians, shall be deemed a competent witness in any court of this state to which a white person may be a party, except such white person resides within said nation.  

The Cherokees still had hopes that they would be protected, if not by the President, by the Congress. From late February to late May 1830, Congress debated a bill designed to set aside land west of the Mississippi to be exchanged for Indian land east of the river. According to Thomas Hart Benton, this bill "was one of the closest, and most earnestly contested questions of the session . . . ." William Wirt said "it was debated, with singular ability, in Congress." The bill did not call for forced removal and on the surface would appear to warrant little debate. Why then was there such


76 Kennedy, p. 252.

prolonged and heated argument? J. P. Kinney provides the answer:

The exchange act did not provide for compulsory removal, and without familiarity with the conditions that had led to its enactment and an understanding of the forces that lay back of it, one might think the feelings displayed by its opponents to be quite unjustifiable. Yet the Indians and those who sympathized with their viewpoint knew that the passage of this apparently innocuous and permissive legislation formed an integral part of a plan to exert pressure for removal. 78

Cotterill summed it up this way: "The law made removal inevitable . . . ." 79

The Indians had many supporters in the North who were very vocal in their opposition to the bill; newspaper editors editorialized, ministers sermonized, and anti-Jackson politicians orated in support of the Indians. Town meetings were called to petition Congress to do their duty and protect the poor Indians from wicked Georgia; Wilson Lumpkin estimates that thousands of these petitions with more than a million signatures were

79 Cotterill, p. 239.
received by Congress. Georgia had the support of the
South, where opposition to removal was almost non-
existent, and of pro-Jackson Democrats in the North.

In the Senate the most important vote came on April
24, 1830 on an amendment which would have provided for
federal protection for the Indians until they decided to
move; it was defeated 27 to 20. The South voted 18 to
9 against and New England 11 to 1 for. Eight senators
north of the Potomac and Ohio voted against it; four were
from states with Indian occupation (Indiana and Illinois)
and two were from Jackson's Democratic stronghold, New
York.

80 Wilson Lumpkin, The Removal of the Cherokee Indians
from Georgia, Volume I (New York: Dodd, Mead and Company,
1907), p. 47. The most important and widely distributed
defense of the Cherokees was a series of articles which
appeared in the Washington National Intelligencer under the
signature of William Penn. The essays can be found in
Jeremiah Evarts, Essays On Present Crisis in the Con-
dition of the American Indians (Boston: Perkins and
Marvin, 1829), 112 pp. Joseph Burke describes these
articles as "the holy writ, the reference work, and the
legal brief of the many preachers, congressmen, and
lawyers interested in defending the Cherokees, attacking
Georgia, and condemning Jackson" (p. 505).

81 For an outstanding analysis of southern views,
see Mark R. Leutbecker, Some Public Views on Indian Removal
in the South (M.A. Thesis, Louisiana State University,

82 Van Every, p. 117.
The Indian supporters hoped to do better in the House where the population factor would give the northern states more votes. The final vote came on May 26, 1830; the Indian Removal Bill passed 102 for and 97 against. Again the votes were predominantly on the basis of section or party affiliation.\(^83\)

If Congress would not protect the Cherokees, they had one more federal branch to turn to for help—the Supreme Court. The Cherokee delegation in Washington was advised by several prominent National Republicans in Congress (including Daniel Webster, Ambrose Spenser, and Peter Frelinghuysen) to hire eminent counsel to represent them before the Court.\(^84\) Less than forty years previously when the Cherokees first heard of the Supreme Court, it was referred to as "nine wise beloved old men"; now they hired William Wirt to go to the Court for their protection.\(^85\)

The Cherokees did need protection, for on July 3, 1830 Georgia made good its threat and extended her laws over the Indian territory. The object of this extension

\(^83\) Ibid., p. 120


\(^85\) Starkey, p. 127.
was simply to make life so miserable for the Indians that they would move. Indian laws were null and void; Governor Gilmer asked Jackson to remove federal troops. He did, which left the only law Georgia's, and this, in effect, was no law. Dr. W. R. L. Smith called the Cherokee Nation "a land of anarchy," while Marion Starkey called it a "lawless nation." George Dewey Harmon describes the situation:

... it was impossible for the Indian to defend his rights in any court or to resist the seizure of his homestead, or even of his dwelling house, under penalty of imprisonment at the discretion of the Georgia courts. Still another law was passed which made 'invalid any contract made by an Indian unless established by the testimony of two white men'; this practically cancelled all debts due the Indians. It is easily seen that the purpose of these laws was to force the natives to move out of the state. White people entered the Cherokee country in great numbers, seized horses and cattle and drove them off in large numbers. Families were ejected from their homes in bleak weather to make room for whites. When the guilty were arrested and arraigned before the courts 'the cases were dismissed on the grounds that no Indian could testify' against a member of the Caucasian race.

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86 Smith, p. 143.
87 Starkey, p. 207.
Instead of helping create Indians skilled in agriculture and advanced in civilization, the Federal Government under Jackson joined Georgia in efforts to push the Indians west. Jackson sent General William Carroll as a secret agent to encourage the Indians to remove. He was authorized to spend up to two thousand dollars on presents for the Indians as "bribes" to aid in his task.\(^89\) Jackson also secretly hired some Cherokees to try and influence opinion for removal.\(^90\) Jackson was determined to build up a strong Cherokee party which would treat with the government for removal. In an effort to do this, he stopped the voluntary removal of Cherokees.\(^91\) But the most damaging blow to the Cherokees was in the area of finance. Georgia had already destroyed their power to tax and had taken their gold mines; now Jackson cut off educational funds to the American Board for work east of the Mississippi\(^92\) and changed the annuity payments from one large sum given to the tribal government

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\(^89\) Foreman, Removal, p. 283. He reported that "the Cherokees were too discerning to be deceived."

\(^90\) These Indians included the influential James Rogers from the western Cherokees. Grant Foreman, Removal, p. 230.

\(^91\) B. Phillips, Georgia, p. 84.

\(^92\) Clifton Phillips, Pagan, p. 74.
to payments to the individual tribe members (about forty-two cents). This money had been used to hire lawyers, pay the expenses of delegates to Washington, and send speakers to northern audiences; Jackson would no longer subsidize Indian resistance.

Non-enforcement of liquor laws also created chaos in Indian territory. Whiskey sales were illegal according to federal law. Georgia gave the sale of liquor her blessings and federal authorities ignored the large quantities of alcohol being sold to Indians. An Indian by the name of Corn Tassel, drunk on this illegal liquor, killed another Indian and was tried, convicted, and sentenced to be hung for the murder by Georgia. There was little question of his guilt, but the important question was Georgia's authority to enforce her laws in the Cherokee Nation. William Wirt saw the Tassel case as an opportunity to test the Cherokee's rights before the Supreme Court. John Marshall, on December 12, 1830, sent a writ of error ordering the state of Georgia to appear before the Court. Governor Gilmer in response to this communication sent a message to the Georgia

93 Harmon, p. 188.

94 Starkey, p. 150.

95 Hampshire Gazette (Northampton, Massachusetts) January 12, 1831.
legislature which said: "So far as concerns the exercise of the power which belongs to the Executive Department, orders received from the Supreme Court . . . will be disregarded . . . ." 96 To this message the legislature responded in a resolution, "that his Excellency the Governor be, and he and every other officer of this state, is hereby requested and enjoined to disregard any and every mandate . . . ." 97 Georgia defied the writ of error and hung Corn Tassel on the day before Christmas.

William Wirt recognized that Georgia would never let another case get to the Court, so the Cherokees would have to seek original jurisdiction as a foreign state. 98 Georgia refused to appear in the new case of the Cherokee Nation vs Georgia, but the trial went on anyway. Wirt and John Sergeant eloquently presented the case for the Indians' being considered a foreign nation, but the decision went against them. John Marshall, in the decision of the majority, said, " . . . it may well

97 Georgia Journal, 1830, p. 447.
98 Kennedy, p. 256. Gilmer had written his agents in Cherokee country to take precautions in order "to prevent any interference on the part of the Federal Courts" (N.Y.U., Section 31 Part 3).
be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations."99 However, portions of the decision were very encouraging to Wirt and Sergeant. Marshall had stated, "If courts were permitted to indulge their sympathies, a case better calculated to excite them can scarcely be imagined" and "the mere question of right might perhaps be decided by this court in a proper case with proper parties."100 With these encouraging statements, the Cherokees were determined to return with a better case.

The case which proved to be suitable came about as a result of a law passed by Georgia on December 22, 1830, requiring all white residents on Indian territory after February 1 to obtain a license and swear allegiance to Georgia. A group of missionaries not only failed to get a license, but drew up a public statement supporting the Indians.101 Without question, the missionaries for some


100 Ibid., p. 15 and p. 19.

101 "Resolution and Statements of the Missionaries," Filler and Guttmann, pp. 53-60. Some missionaries, particularly the Baptists, supported removal.
time had gone outside their legitimate field as teachers and spiritual guides, to give encouragement and advice to the Indians. They would now defy Georgia law. They were warned to leave but refused. They were arrested in March of 1831 by the Georgia Guard. At first, they were released because they were federal employees. Then Jackson removed Samuel A. Worcester as Postmaster of New Echota and sent a letter to Governor Gilmer declaring that the ministers were not federal employees. The missionaries were rearrested, convicted, and sentenced on September 15 to four years of hard labor. They were offered pardons if they agreed to leave Indian territory or obtain a license. All the missionaries agreed save Worcester and Elizur Butler.102 As citizens of the United States, they could take their case to the Supreme Court.

Wirt and Sergeant were hired as the lawyers for Worcester and Butler by the Board of Missions. They obtained a writ of error from the Supreme Court on October 27, 1831. This writ was received by the new Governor Wilson Lumpkin, and he responded to the Georgia legislature with the same old message: "I will disregard all unconstitutional requisitions, of whatever character

102
U. B. Phillips, Georgia, pp. 78-83.

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or origin they may be . . . ." The legislature responded, "that the state of Georgia will not compromit her dignity as a sovereign state, or so far yield her rights as a member of the Confederacy as to appear in answer to, or in any way become a party to any proceedings before the Supreme Court having for their object a revision or interference with the decisions of the state courts in criminal matters."

Again Wirt and Sergeant spoke eloquently while Georgia was not represented. This time, however, John Marshall ruled in favor of the missionaries and their Indian friends. Georgia had no right to extend her laws over the Cherokee Nation. Marshall declared, "The judgement . . . condemning Samuel A. Worcester to hard labour in the penitentiary of the state of Georgia, for four years, was pronounced by that court under colour of a law which is void, as being repugnant to the Constitution, treaties, and laws fo the United States, and ought, therefore, to be reversed and annulled."

103 Lumpkin, Volume I, p. 94.
104 N.Y.U., Section 45 Part 4.
Georgia, as expected, refused to obey the Supreme Court's decision and kept the missionaries in jail. Cries of "Force Georgia" were heard all over the North. Jackson was called on to support the Court. He supposedly replied, "John Marshall has made his decision: —now let him enforce it!" Jackson, in reality, could not have enforced the decision if he had wanted to. The Court could not have issued a writ of habeas corpus until its 1833 terms; and since "the Georgia court never put its refusal in writing, the Supreme Court could not have awarded execution" even in its next term.

The Cherokees had one more place to turn for help; the American people. If Jackson could be defeated in the election of 1832, their homeland might be saved. In the spring of 1832 they took their case to northern audiences and prayed for the victory of Henry Clay. Clay made the Indian question the central issue of the 1832 campaign. His running mate was John Sergeant (one of

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106 Jennings C. Wise, The Red Man In The New World Drama (Washington: W. F. Roberts Company, 1931), p. 369. Many historians report this unconfirmed remark, including Smith (145) and Kinney (71). That it is very likely that Jackson really said this was proven by Anton-Hermann Chroust, "Did President Jackson Actually Threaten the Supreme Court of the United States with Nonenforcement of its Injunction Against the State of Georgia?", The American Journal of Legal History 4 (1960), p. 77.


108 Grant Foreman, Removal, p. 246.

109 Van Every, p. 259.
the Cherokees' lawyers) and the "platform" of the National Republican Party included a large section on the injustices to the Indians. Jackson was re-elected. The Indians had lost. After 1832 the Cherokees had nowhere else to turn but westward.

110 Ibid., p. 152.
Chapter III

THE FEDERAL GOVERNMENT

The Executive

S. Lyman Tyler in *Indian Affairs*, a publication of the Institute of American Indian Studies, explained, "Indian policy has historically been influenced by each of the three branches of government: legislative, executive, and judicial."\(^1\) Each of these branches was extensively involved in the decision making process to remove the Cherokee Indians. Speech played a major role in the actions of each of these branches. Certainly, the executive branch frequently used the spoken word to further its aims in regard to the Indians. Lyman states, "For the first few decades of our national existence the presidents expressed themselves often and rather fully in regard to Indian affairs."\(^2\) Andrew Jackson used rhetoric to accomplish two major goals: to persuade the Cherokees to remove

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\(^2\) Lyman, p. 1.

* To assist in facility of reading, the footnotes of each section of this Chapter will begin with 1.
and to convince Congress and the American public of the justice and desirability of Indian removal.

If the first goal could be accomplished, the second would automatically follow. If the Indians wanted to move west, the American people and Congress would have little objection. Could Jackson persuade the Cherokees to move voluntarily considering their determination "never to cede one more foot"? What strategy would give Jackson the best chance of success? What arguments would be most effective in convincing the Indians?

Determining Time, Place and Occasion

The first problem Jackson faced was none of these. The problem was gaining an opportunity to speak directly to the Indians. The Cherokees seemed to have adopted a policy of avoiding speaking to government agents. The Indians sought federal contact only when they wanted to talk. This meant that no matter how good the arguments were for removal, no one could be persuaded.

In 1827 commissioners John Cocke, George Davidson, and Alexander Gray were sent to try to persuade the Indians to move. They first found out that the Indians could not meet until August because Chief Hicks had died, and they needed time because their "national affairs were..."
disorganized and confused." The commissioners on 23 August requested a meeting for 18 September at Rattlesnake Springs. To this the Cherokees' John Ross and Major Ridge answered: "We consider it our duty, in behalf of the nation, to inform you, that this sudden and unexpected general invitation, while you have thought proper to make, for a general council, by appointing a place and time, without consulting the convenience of the members of Committee and Council on the occasion, cannot be accepted...." The task of meeting with the Indians was proving frustrating to the commissioners; they wrote back, "Can you expect this subterfuge will avail...? Why have you interposed to prevent their Cherokee headmen from meeting us? Is it necessary to keep the nation in ignorance of their true interest?" In their answer to this letter, the Cherokees revealed the real reason for their refusal to meet with the commissioners: "We will

3 Report from John Cocke, George Davidson and Alexander Gray to Secretary of War James Barbour, in New American State Papers, Vol. 9, p. 15.

4 Letter from John Ross and Major Ridge to Commissioners in New American State Papers, vol. 9, p. 25.

5 Cocke, Gray, and Davidson to Ross and Ridge, in New American State Papers, Vol. 9, p. 35.
now repeat again to you, what has often been told to other Commissioners of the United States, that the Cherokee nation has no more land to dispose of, and that we cannot accede to your propositions: therefore, we do not deem it necessary to appoint agents for the purpose of negotia-
ing. . . ."\(^6\) These agents were never able to meet with the Cherokee leaders in a formal situation.

The Cherokees did invite the Commissioners to the Cherokee capital at New Echota, but the Commissioners wanted to meet at the Indian agency. Ross and Ridge commented on this insistence: "It is the only place where you can, in reason, have a right to be met in General Council of the nation.... We can see no reason for your persistance in renewing your invitation at the Rattlesnake Springs, or the Agency...."\(^7\) The reasons for the conflict over the site of the meetings were simple. The agents knew that they could get nowhere at New Echota, while the Cherokee leaders felt they would have less control

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\(^6\) Cherokee Council to Commissioners in *New American State Papers*, Vol. 9., p. 32.

\(^7\) Ross and Ridge to Commissioners in *New American State Papers*, Vol. 9., p. 32.
over their members at Rattlesnake Springs. The Cherokees had the advantage of not wanting to meet anyway and thus they never met at the agency.

Delegates from the Southern tribes were invited to meet with President Jackson and Secretary John Eaton at Franklin, Tennessee in August 1830, but again the Cherokees did not attend. The Chickasaws were the only tribe to attend, and they declared, "after sleeping upon the talk you sent us, and the talk delivered to us by our brothers, Major Eaton and General Coffee, we are now ready to enter into a treaty based upon the principles communicated...." It would be pure foolishness to suppose the Cherokees would have been persuaded by the talks to remove, but by their not attending, persuading them was out of the question.

Federal agents were very resourceful in countering the Cherokee action. They knew more could be gained by talking to the average Indian than to his leaders; the leaders had strong economic reasons for staying. Federal agents took advantage of any large Indian gathering to find audiences. For example, they would go to Greencorn Dances or stickball games in order to read their messages.

8 The Federal Union (Milledgeville, Ga.), September 26, 1830.
The fact that the Cherokee Nation was rural made the task of getting a large audience more formidable. When Jackson stopped paying the Indian annuity to the tribe and started giving the money to individuals, the agents took advantage of the change to persuade for removal. When an Indian would go to the agency to collect his fifty cents, he would be given the reasons why he should sign up for removal. The Cherokee chiefs, in an effort to prevent this practice, used threats of whipping to keep the Indians away. In a six month period, only seventy-one families enrolled for removal. 10

Time, place, and make-up of the audience certainly were important factors in this rhetorical battle. The executive branch failed to control them and thus were at a considerable disadvantage in talking to the Indians in the Cherokee Nation.

Executive Spokesmen

Often who speaks is more important than what is said. If the federal spokesmen had had high ethical appeal with the Indians, their chance of success would have been greater. Unfortunately, the government selected spokesmen with negative ethos instead of positive ethos. Grant Foreman writes of

10 Grant Foreman, Removal, p. 241.
the removal agents: "Currey's Superintendent for removal assistants were nearly all selected by Governor George Gilmer of Georgia, which greatly embarrassed the movement because the Indians regarded the people of Georgia as their enemies and where persuasion was needed their words were wasted." Secretary Lewis Cass chose Elisha Chester as a spokesman to the Cherokees. Chester was the double dealing lawyer of Worcester whom the Cherokees despised and hated; according to Elijah Hicks "only Lumpkin could be less popular with the Cherokees." Marion L. Starkey described the Cherokee reaction to the continual use of Chester: "The Cherokees expressed themselves on Cass's bad taste in transmitting such an offer through so equivocal an emissary as Chester. Cherokee contempt of the latter, who had used his connection with Worcester and the American Board merely to cloak his full-time employment by Jackson interests, knew no bounds. . . They commented on the irregularity of choosing just this agent and stated that propositions could be considered only when they came through authorized channels." The continued use of Chester is inexplicable; he obviously could not persuade the Cherokees to move.

11 Ibid.
12 Starkey, p. 196.
13 Ibid., pp. 189-190.
The Federal government did have one program designed to persuade the Indians by selection of speakers with high ethical appeal; they paid some Cherokees to work for removal. The success of this effort depended on keeping their connection with the government secret, for if their employment was discovered, they would lose all their ethos and maybe their lives. Thomas McKenney (Head of the Bureau of Indian Affairs) explained this practice in a letter to the Cherokee agent: "Capt. Rogers [a western Cherokee] is confidentially employed to go to the Cherokees, and explain to them the kind of soil, climate, and the prospects that await them in the west; and to use, in his discretion, the best methods to induce the Indians residing within the chartered limits of Georgia to emigrate. As much if not all his success will depend upon the keeping of the object of his visit a secret, you will by no means make it known."\(^{14}\) He was discovered and two Indians "committed violence on Rogers."\(^{15}\)

Major spokesmen for the Jackson administration were often chosen on the basis of their Indian views; they had to support removal. Jackson bypassed William Wirt

\(^{14}\) Thomas McKenney to Hugh Montgomery in *New American State Papers*, Vol. 9, 112.

\(^{15}\) *New American State Papers*, Vol. 9, p. 121.
as Attorney General because he distrusted him on removal. Jackson appointed John Berrien of Georgia to this position "primarily because his views on the Indian issue," and he appointed John Eaton of Tennessee to the post of Secretary of War "in part to help execute his planned Indian policy." The Bureau of Indian Affairs was headed by Thomas McKenney, a man whom the Indians respected and considered a friend. Jackson had to replace him with "someone of sounder feelings." Jackson had no one who could persuade the Indians to move.

Andrew Jackson

In order to understand the speaking of the administration to the Indians, one must first understand Jackson's attitudes toward them. He was not an Indian hater; he demanded justice for the Indians. Jackson expressed his feelings about a Cherokee who was robbed by a group of Tennessee volunteers: "that a set of men should without any authority rob a man who is claimed as a member of the Cherokee nation, who is now friendly and engaged with us

18 Pessen, Jacksonian America, p. 309.
19 Ibid., p. 319.
in a war against the hostile creeks, is such an outrage, to the rules of war, the laws of nations and of civil society, and well calculated to sower [sour] the minds of the whole nation against the United States and is such as ought to meet with the frowns of every good citizen, and the agents be promptly prosecuted and punished as robbers."20

Jackson took a Indian boy into his home to be raised with his son. He wrote his wife, "I have directed Major White to carry to you, the little Hyncoya. He is the only branch of his family left, and the others when offered to them to take care of would have nothing to do with him but wanted him to be killed.... Charity and Christianity says he ought to be taken care of and I send him to my little Andrew and I hope wil adopt him as one of our family."21

F. P. Prucha documents in The Journal of American History that those historians who have accepted the view of Jackson as an Indian hater "have certainly been too harsh, if not, indeed, quite wrong."22


21 Letter from Jackson to wife, December 19, 1813, in Bassett, Correspondence, I, pp. 400-401.

22 Prucha, "Reassessment," p. 539.
If Jackson did not hate the Indians and wanted justice for the Indians, why did he insist on removal? First, Jackson felt that the military safety of the country depended on their removal. He felt the Indians might again side with the British or another foreign country against the United States. Second, he wanted the U. S. to expand in power and territory. Third, he wanted to avoid a clash between the Federal government and Georgia. The final reason was that he honestly believed that the Indians could best advance socially if they could be protected from white settlers.23

Speeches To The Indians

Jackson and his spokesmen made no appeals to the Indians on the basis of the first three reasons, since they offered no benefits to the Indians but only to the U. S. Jackson tried to persuade the Indians that the move would be beneficial to them. However, he relied on negative rather than positive motivation, stressing what would happen to the Indians if they stayed.

Consider three typical speeches to the Indians:

Eaton to the Cherokee delegation in Washington, Jackson to

23 See Prucha's "Reassessment" for development of these reasons.
the Chickasaws and Colonel John Lowry to the Cherokee Council. In some ways the speeches are organized differently but the messages are the same in main points.

1. **Friendly feelings toward the Indians**

   Eaton: "Justice and friendly feelings cherished towards our red brothers of the forest, demand that in all our intercourse, frankness should be maintained."

   Jackson: "Your Great Father is rejoiced once again to meet, and shake you by the hand, and to assure you of his continued friendship and good will."

2. **The Federal Government can not protect you from the states**

   Eaton: "The U.S....forebore to offer a guarantee adverse to the sovereignty of Georgia. They could not do so; they had not the power."

   Jackson: "To these laws, where you are, you must submit; --there is no preventive--no other alternative. Your Great Father cannot, nor can Congress, prevent it."

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   B) Jackson through Eaton to Chickasaw Nation. Franklin, Tennessee, August 23, 1830, reported in Federal Union (Milledgeville, Georgia), September 26, 1830.

   C) Colonel John Lowry to Cherokee Council found in the William Hardin Collection, Folder 3, Georgia Department of Archives and History, No date. Probably delivered in October, 1830, (see Starkey, 148).
Lowry: "He [Jackson] cannot prevent the extension of the laws of the different state...."

3. There are only two alternatives: either go or stay and be subject to state laws

   Eaton: "There are two alternatives. Live under Georgia's laws or removal."

   Jackson and Lowry both make this same point.

4. If you stay you will be unhappy and will lose your national identity

   Eaton: "To continue where you are, within the territorial limits of an independent state, can promise you nothing but interruption and disquietude."

   Jackson: "Our white population has so extended around in every direction, that difficulties and troubles are to be expected....If you stay your national character will be lost and then like other tribes who have gone before you, you must disappear and be forgotten."

   Lowry: "Can you live and be happy under the laws of the different States. Will you not in that lose your National Character and belong to the different States....."

5. If you move, the Federal Government will aid you and you will progress.

   Eaton: "Government aid will come if you go."

   Jackson: "Peace invites you there--within your limits no State or Territorial authority will be permitted."
Intruders, traders, and above all, ardent spirits so destructive to health and morals, will be kept from among you......"

Lowry: "/For those who go/ a school will be also provided so education may be promoted."

6. Act quickly, for you may lose a good opportunity.

Jackson: "Reject the opportunity which is now offered to obtain comfortable homes, and the time may soon pass away, when such advantages as are now within your reach may not again be presented."

Lowry: "Now is the time to act and act promptly and decisively. If you delay until Georgia shall..... draw lots for their Territory, and parcial it out among her citizens, what will become of you."

These speakers in trying to establish a friendly relation with the Indians could have been following the advice of Aristotle: "The speaker should evince a certain character, and that the judges should conceive him to be disposed towards them in a certain way." They, however, failed to develop reasons why the Indians should believe in their friendship. Prior knowledge of Lowry and Eaton

certainly could not have established a bond of friendship. Lowry was eyed "suspiciously" from the time he arrived in Cherokee territory, while Eaton had shown his ignorance of the Cherokees "by asking them how they hoped to live when the game was gone from their hills." Jackson at one time was respected and admired by the Cherokees. According to Kenneth Colgrove: "There was scarcely an Indian community in the South but had endured his chastisement or listened to his talks. Those who had accepted his advice had seldom regretted it; those who had repulsed him had learned to rue their mistake. But withal Jackson had attained a reputation for justice. In some peculiar way he impressed the minds of his savage wards with respect, trust, and confidence. His election as President was actually hailed by the Cherokees with rejoicing." 27 Jackson had a prior reputation which could have been developed and used to gain ethical appeal with his audience; however, he failed to use it to any degree in his speaking.

The first, and in some ways the most important, point developed by the executive branch was that the Indians could get no protection from the laws of Georgia. They

26 Starkey, pp. 148-149.

failed to prove this point. They asserted it time and again but gave few supporting reasons. The Cherokees were being told by their northern friends that while Jackson would not help, there was still a chance Congress would repeal the Removal Act, the Supreme Court would intervene, or that Henry Clay would win the election of 1832. Jackson and his men did not counter this advice.

Jackson asked the Indians to go on the basis of an alternative syllogism.

Major Premise: You can either go, or stay and be subject to Georgia laws.

Minor Premise: You should not stay and be subject to Georgia laws.

Conclusion: You should go.

The minor premise was developed with substantial proof. The Indians were shown that they would be unhappy and lose their national identity if they stayed, while they were told they would receive government aid and would progress if they went. Failure to prove there was no other alternative made the minor premise worthless. The Indians saw another alternative: help from the Supreme Court or Clay.

With the hope of help from other sources, the last appeal to "act quickly" was ineffective. The Indians wanted to act slowly and give the court or the people in the election of 1832 a chance to help them.
Jackson and his spokesmen tried to arouse one main emotion in their speeches—fear. They stressed the evil that would come to the Indians if they stayed or failed to act quickly. Jackson in his meetings with the Cherokee delegates in Washington always emphasized the harm in their policy. Jackson felt fear was the best means to move an Indian to action. He wrote in 1812: "I believe self interest and self preservation the most predominant passion. Fear is better than love with an Indian."\(^28\) Later he wrote, "long experience satisfies me that they /Indians/ are only to be well governed by their fears."\(^29\) Jackson's view may have been the best way to appeal to the ordinary Indian, but he and his men dealt mainly with the leaders of the tribe. These men were highly educated and in some cases had very little Indian blood. John Ross, the Principal Chief of the Cherokees, was only one eighth Indian. With these men, more proof and reasoning with fewer threats may have proved more effective.

To say that Jackson failed in his use of rhetoric with the Indians would be misleading, for the Indians did remove. To say that he succeeded in his use of rhetoric would be equally misleading, for only after years of hard

\(^{28}\) Bassett, Correspondence, I, p. 228.

\(^{29}\) Ibid., p. 507.
struggle were the Cherokees forced to remove. It is safe to say the Executive Branch failed to use speaking at its optimum level because it was unable to determine occasion, setting, or audiences of speeches. Poor selection of speakers, failure to prove a major premise of reasoning, and appeals to fear to an educated Indian audience were further reasons for failure.

Jackson's Speeches To The Public

Jackson's second speaking goal was to persuade the American people and Congress of the justice and desirability of Indian removal; either of these groups could prevent or impede removal. An examination of Jackson's First Inaugural, First and Second Messages to Congress, and the preliminary drafts of some of his speeches should provide a clear picture of how Jackson tried to use rhetoric to obtain his goals.

First Inaugural

Jackson in a brief statement about Indian Policy in his First Inaugural Address established his aim towards the Indians as one of justice: "It will be my sincere and constant desire to observe toward the Indian tribes within our limits a just and liberal policy, and give that humane and considerable attention to their rights and their wants which is consistent with the habits of our
Government and the feelings of our people."30 Two definitional problems made this statement meaningless. What is justice? Justice in the 1830's was not an absolute. In a rhetorical clash both sides can claim that justice is on their side. Jackson's view of justice and Chief John Ross' were certainly different. Jackson's failure to define the term made his claim worthless to a discriminating listener. The second definitional problem relates to what "is consistent with the habits of our Government and the feelings of our people." Considering that the policy of the government had been inconsistent, on one hand trying to civilize the Indians and on the other trying to remove them to the wilderness, this statement was also fairly ambiguous and meaningless.

Why did Jackson fail to use this opportunity to set forth a clear Indian policy? Traditionally, Inaugural Addresses have not been the place to detail policies. But most importantly, nothing could be accomplished until Congress met in its next session. This innocuous message helped shield him from attack until he was ready to act.

30 Richardson, Messages, II, p. 438.
First Annual Message to Congress

Jackson acted firmly in his First Annual Message to Congress, read to them on December 8, 1829. Jackson opened his discussion of the Indian problem by reviewing Federal Indian policy. He explained how it had been inconsistent: "It has long been the policy of Government to introduce among them the arts of civilization, in the hope of gradually reclaiming them from a wandering life. This policy has, however, been coupled with another wholly incompatible with its success. Professing a desire to civilize and settle them, we have at the same time lost no opportunity to purchase their lands and thrust them farther into the wilderness." If one remembers his Inaugural Address, one must wonder how he was going to follow a policy "consistent with the habits of our Government."

Jackson next developed his response to the establishment of a Cherokee government within the state of Georgia. He quoted the ultimate source on American Government—the Constitution. He declared that the Cherokees could not be supported because "The Constitution declares that

31 All quotations from this speech are from Richardson, Messages, II, pp. 456-459.
'no new State shall be formed or erected within the jurisdiction of any other State' without the consent of its legislature." The center of opposition to nonprotection of the Cherokee government would come from the North. Jackson tried to counter this with a series of rhetorical questions: "Would the people of New York permit the Penobscot tribe to erect an independent government within their State? And unless they did, would it not be the duty of the General Government to support them in resisting such a measure? Would the people of New York permit each remnant of the Six Nations within her borders to declare itself an independent people under the protection of the United States? Could the Indians establish a separate republic on each of their reservations in Ohio? And if they were so disposed, would it be the duty of this Government to protect them in the attempt?" The analogy is clear and effective; Georgia should be given this same right; it is only just.

Given the premise that the Cherokees cannot establish an independent government, Jackson asserted that there were only two alternatives: "emigrate beyond the Mississippi or submit to the laws of those States." He next argued that it would be beneficial to the Indians to move because if they stayed they were doomed to "weakness and decay." He proved this point by the examples of the "fate of the
Mohegan, the Narragonsett, and the Delaware." To prevent this decay, he proposed to Congress "the propriety of setting apart an ample district west of the Mississippi" for the Indians. Jackson claimed this would be in the best interests of the Indians, for "there the benevolent may endeavor to teach them the arts of civilization, and, by promoting union and harmony among them, to raise up an interesting commonwealth, destined to perpetuate the race."

In his concluding remarks, he made a statement which showed his good will toward the Indians and provided one of the great issues of the removal debate. He stated, "This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land."

What was voluntary? It appeared to Jackson's supporters that the Indians could remain in Georgia. To his opponents, non-support of the Indians meant forced removal. The question then became not Jackson's words, but his actions. Did he attempt to force the Indians to move? If requiring them to live under Georgia's laws is forced removal, Jackson's policy was not voluntary. At best he was a willing accomplice in Georgia's drive to force the Indians to leave. A Georgian wrote to the Savannah Georgian: "Advice continue to be received from Washington of the unabated good feeling of the President towards us, and his approval
of the policy of this state. The withdrawal of the agent from the nation, the removal of the intriguing whites and the possession of the gold mines will go far in producing emigration, and a short time must see our country entirely rid of this useless race of beings."

Jackson's First Message was a good defense of his position. It was clearly organized and effectively worded. He used testimony and example to prove his points. But the genius of this speech was his assertion that removal must be voluntary. This assertion put two burdens on the opposition; they not only had to prove that forced removal was harmful, but also that Jackson's policy was "forced".

Before this speech, Jackson's opposition had declared him ignorant and that his message would reflect his intelligence. The fact that the speech was almost brilliant (especially the Indian portion) was an argument in and of itself for Jackson and his positions. If his message had been poorly constructed, his ability to persuade the public would have been greatly impaired, for he would have proved the opposition correct in their evaluation. This message, however, showed him to be a statesman worthy of a hearing.

A Jackson paper boasted:

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The Jamestown Journal (Jamestown, New York) November 17, 1830.
The first reading of it gave rise to a general burst of approbation. The opposition editors were struck with consternation. It was a document so entirely different from what they had repeatedly declared to their partisans it would be, that they hardly knew which way to turn themselves. They had confidently predicted that it would be non-committal and brief:—it was bold and full. They had chuckled over the errors in composition, which they felt quite certain it would contain;—it was written in a style of manly and simple eloquence never surpassed by any previous document of its kind in our political history. 33

The opposition found one main attack against this message; it was not written by Jackson. He was incapable of writing such a document. This charge was answered by Reverend John Leland in a speech commemorating the battle of New Orleans: "The communication of the President evinces such dept of thought, justice and humanity, that pedantry, with all its puffs cannot gainsay it;—But (say his enemies) Jackson is not the author of those Messages; Van Buren is Premier, he does all. Be it so; Jackson had wit enough to appoint him Secretary." LeLand also defended Jackson by saying that assistance on government communications was a common practice. He cited Washington and Hamilton as examples: "Mr. Hamilton has informed us, that then Washington had formed his documents, he would say, 'Pray, Mr. Hamilton, correct this document and fix it

33 Eastern Argus (Portland, Maine) December 29, 1829.
in proper order,' and what harm was there in this?

LeLand's final point was a complete denial: "All the messages and communications that have the signature of the President affixed to then, were substantially written by himself; and if better state papers are to be found, I know not where to look for them."34

Second Annual Message To Congress

Jackson's Second Annual Message to Congress35 on December 6, 1830 was an expanded repeat of the First. Again he stated the inability of the government to protect the Indians, the two alternatives, the harm in their staying and the advantage in going. One difference in this message was that Jackson stressed the advantages to the United States in the removal policy: better military security, growth, and the prevention of a clash between the Federal Government and the states involved. He stated:

It puts an end to all possible danger of collision between the authorities of the General and State Governments on account of the Indians. It will place a dense and civilized population in large tracts of country now occupied by a few savage hunters. By opening the whole territory between Tennessee on the north and Louisiana on the south to the settlement of the whites it will incalculably strengthen the southwestern frontier

34 Eastern Argus (Portland, Maine) March 11, 1831.

35 All quotations from this speech are from Richardson, Messages, II, pp. 519-523.
and render the adjacent States strong enough to repel future invasions without remote aid.... and enable those States to advance rapidly in population, wealth, and power.

Jackson included contrast in speaking on the justice and advantage in Indian removal and at the same time appealed to a population which was increasingly westward bound; the government would pay the Indians to move west, while whites would have to pay their own way for such a beneficial move. Jackson states:

Our children by thousands yearly leave the land of their birth to seek new homes in distant regions......It is ......a source of joy that our country affords scope where our young population may range unconstrained in body or in mind, developing the power and faculties of man in their highest perfection. These remove hundreds and thousands of miles at their own expense, purchase the lands they occupy, and support themselves at their new homes from the moment of their arrival. Can it be cruel in this Government when, by events which it can not control, the Indian is made discontented in his ancient home to purchase his lands, to give him a new and extensive territory, to pay the expense of his removal, and support him a year in his new abode? How many thousands of our own people would gladly embrace the opportunity of removing to the West on such conditions! If the offers made to the Indians were extended to them, they would be hailed with gratitude, and joy.

Jackson emphasized his friendship to the Indians and the justice of his policy. He declared that "Toward the aborigines of the country no one can indulge a more friendly feeling than myself, or would go further in
attempting to reclaim them from their wandering habits and make them a happy, prosperous people." He described his policy as "benevolent," "liberal," "generous," "just," and "fair."

A weak point in this Second Message was the major premise that Georgia was a sovereign state and the Federal government could not protect the Indians. The argument that state law could take precedence over Federal Treaties equalled nullification. The Boston Patriot accused Jackson of supporting this doctrine in relation to Georgia and the Indians. 36 Considering the lack of explanation by Jackson on inter-governmental relations, this was a powerful attack. If the northern citizens believed Georgia was nullifying Federal laws, they would not support removal and Jackson.

Special Message To Congress

Jackson explained his position in a Special Message to Congress on February 22, 1831. 37 This message differed from his Annual Messages in that it was much more technical and obscure in meaning. In defending his position, he

36 Boston Patriot (Boston, Mass.) January 8, 1831.

37 All quotations from this speech are from Richardson, Messages, II, pp. 536-541.
reviewed past laws and treaties. An act passed by Congress in 1802 to regulate trade and intercourse with the Indians was the basis for Jackson's defense. He stated, "By the nineteenth section of this act it is provided that nothing in it shall be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of citizens of the United States and being within the ordinary jurisdiction of any of the individual States.'" From this Jackson concluded that as soon as a state extended its jurisdiction over Indian land Congress could not interfere. The reasoning was that Georgia had the right to extend her jurisdiction over the Indians as soon as she extended her laws over the Indians.

In this address Jackson was not trying to persuade the public. He used technical language because of the small distribution of the message to the public and the need to find some legal justification for his policy. If the public did not understand his reasoning through the numerous treaties, proclamations, and resolutions, he did not care, for there was no reason for them to be concerned with the legal arguments. The Republican Banner saw the message for what it was and wrote, "It will be perceived to be technical in the extreme; or may be discovered to
present an instance of construction by which the law is made to conform to the case."

Jackson's Third and Fourth Messages were much shorter in their discussion of the Indians than the first two, but nothing new was offered. Jackson spoke of the progress being made toward the "wise and humane policy." There was little need for much development, for "the position of these Indians remains unchanged, as do the views communicated in my message to the Senate of February 22, 1831."

Preliminary Drafts

An understanding of Jackson's rhetoric can be gained not only from what he said but from what he did not say. Two preliminary drafts of the First Message give a unique opportunity to see the message in preparation. The care taken in preparation shows Jackson's awareness of the message as an argument in and of itself. Numerous changes were made between Amos Kendall's draft and the final version. The word choice was corrected and tempered so that Jackson could appear more reasonable and intelligent

38 The Republican Banner (Williams-Port, Maryland) March 26, 1831.

39 These messages can be found in Richardson, Messages, II, Third pp. 554-555 and Fourth p. 604.
in his attitudes. Changes included: "indifferent" for "hypocritical;" "teach them" for "teach them by degree;" "policy" for "course of policy;" "region" for "continent;" and "voluntary" for "not corrosive." Substantial changes were made from Major A. J. Danelson's draft. This draft would have made Jackson appear harsh and unsympathetic to the Indians. It declared treaties inconsistent with Georgia's rights "unconstitutional and void, the Indians savages totally dependent on game," and generally had a more aggressive and unfriendly attitude toward the Indians.

The Second Message also had two preliminary drafts by Amos Kendall and Major Danelson. These drafts included legal justification for extension of state law over the Indians. These justifications were left out of the final text. Considering that their deletion left Jackson open to the attack of being a nullifier, why were they omitted from the final text? Jackson probably eliminated them because they were weak and he was unwilling to put his major premise directly before the public. Jackson chose to use these arguments in the Special Message to Congress in February 1831. The decision to present them in a special message of a technical nature was wise, for it had limited distribution and thus reduced the extent of attack.
When Jackson could avoid the legal arguments involved in extension, he did. Even when the Supreme Court ruled Georgia's laws unconstitutional, Jackson made no public statement on his legal position. Avoidance of this issue was a major rhetorical device of Jackson.

Jackson's messages are full of inconsistencies, poor reasoning, hidden meaning, and, at time, lies. The messages must be viewed as justification for a predetermined policy and not necessarily the reasoning which led to the policy. Jackson wanted the Indians removed. His messages were designed to gain that goal. The fact that the Indians were removed does not prove the success of his rhetoric, for it was accomplished only after years of bitter fighting. To the extent that his messages often made the job of his opposition much more difficult, his speaking was successful. His speeches were such that it was difficult to explain to the general public their weaknesses. Jackson's aim may be better described as trying to prevent opposition to his policy rather than gaining converts to it.
Congress

With no help coming from the Executive, the Cherokees turned to Congress. Congress responded by debating a bill designed to remove the Indians by exchanging their land for land west of the Mississippi. This was one of the closest and hottest debates of the period. It involved not only the rights of the Indians and Georgia, but it was a sectional as well as a political issue. An examination of the proofs and strategies used in this debate should provide a clear picture of congressional speaking and decision making.

The major issue of the debate was whether or not the Cherokees were a sovereign nation with a right to the territory they occupied. Both sides tried to prove their point by historical example and authority. This was not unusual, for these were logical choices. It was unusual that they both chose the same authorities and examples.

Founding Fathers

The highest authority and most often quoted source was America's founding fathers and outstanding statesmen. Both sides apparently felt that if Washington, Jefferson, and Madison supported their positions, they had won the argument. This reasoning shows the respect Americans held for its founders, but as proof, some of the quotations seemed ill-fitted for new conditions.
Of this source group, George Washington was the highest of the high. Peleg Sprague, pro-Indian senator from Maine, introduced a quotation from a speech by Washington with this description: "That greatest and best of men, whose name we profess so much to venerate, and which should be, of all others, the highest authority to this Senate, and to the nation . . ."\(^1\) Quotations from Washington were a mainstay for those claiming Indian rights. He believed in Indian sovereignty and their legal right to land ownership. This source was denied to Georgia and her friends, and in the battle of authorities the loss was a heavy blow.

In his long career, Thomas Jefferson made many statements on Indian affairs and he was quoted often by both sides. Adams, Madison, and Monroe also were called on to support both positions. Wilson Lumpkin of Georgia pointed out a few of the great statesmen who supported removal: "Jefferson gave to it \(_{\text{Removal}}\) the first official impulse; Madison, Monroe, Adams, Jackson, Calhoun, Barbour, Porter, Eaton, and a majority of the Senators and Representatives of the people of this great confederation of

\(^1\) *Register of Debates In Congress, (1st Session 21st Congress, Volume VI)*, 1830, p. 350.
States, have, in their official capacities, repeatedly sustained the principles and policy of the bill on your table."² Sprague called the roll of those supporting Indian treaty rights:

"I have already referred to our repeated and reiterated engagements by the sages of the Revolution, in the Congress of 1785; by Washington and the constellation of brilliant names around him, in 1791, 1792, and 1794; by the elder Adams and his cabinet in 1798; by Mr. Jefferson, in four successive treaties, in 1804, 1805, 1806, and 1807; by Mr. Madison, in several formed in 1816; by Mr. Monroe, in 1817, General Jackson himself subscribing it with his own hand as commissioner; and by another in 1819, to which Mr. Calhoun affixed his name, as negotiator. All these treaties were ratified by the Senate, and sanctioned by every department of the Government."³

Documents

Next to these great statesmen in authority were the documents they created: the Articles of Confederation and the Constitution. If rights were guaranteed by the Articles of Confederation and then followed with similar guarantees by the Constitution, then the Indians should be protected. Those opposed to the removal bill quoted the Articles and the Constitution more often than those for the bill because these documents contained provisions which

³ Ibid.
implied support against a state extending laws over Indians. Isaac Bates of Massachusetts in a speech before the House on May 19, 1830 presented the standard arguments for those supporting Indians' rights against the states:

When the articles of confederation were adopted . . .'the sole and exclusive right and power of regulating the trade and managing all the affairs of the Indians not member of any of the States,' was given to the United States. From this article it is clear there were Indians with whom the United States had trade to regulate, and affairs to manage, who were not members of any State. If not the Cherokees, who were they?.....

The Constitution gave to Congress the power' to regulate commerce with the Indian tribes,' and as fully and unconditionally as with 'foreign nations,' or 'among the several States.'

This article in the Constitution establishes my position, that the Indians were not members of the States, nor subject to their jurisdiction; but were sovereign nations with whom the United States had a commerce to regulate. 4

The Articles of Confederation and the Constitution, being general guides and not spelling out specific policy, left room for a variety of interpretations. Georgia could not afford to have these documents against them, so they presented their views of how the documents supported not the Indians but the States. Georgia and her friends relied on the fact that no clear authority was given to the Federal government to control the Indians when a state

extended its jurisdiction over them. John Forsyth of Georgia stated, "there is nothing in the articles of confederation that touches the power of a State to legislate for the Indians with its limits." He showed the same type of omission to exist in the Constitution: "One thing is guarded by special provisions—the powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. Has the power over Indians within the States been delegated by the Constitution?" He answered this question by saying that the Federal government only had power over commerce and to the states were left all other powers.\(^5\)

**Treaties**

Third in the hierarchy of proof were the numerous treaties made between the Cherokees and the Federal government. Those opposed to the bill claimed that these treaties guaranteed the sovereignty and land of the Indians. They quoted mainly the treaties of Hopewell and Holston in making this point. William Ellsworth of Connecticut referred to the article of Hopewell: "The United States in

\(^5\) Ibid., p. 335.
Congress assembled shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as they think proper."  

Henry Storrs of New York quoted Holston's "Article 7. The United States solemnly guaranty to the Cherokee nation all their land not hereby ceded."  

Forsyth of Georgia also used Article 9 of the Treaty of Hopewell in an effort to show the Federal Government gained control over the Indians by treaty. He turned to the agreement of 1802 to show that the Federal Government gave control of the Indians to Georgia. He cited the compact showing that the United States ceded "to the State of Georgia, whatever claim, right, or title, they may have to the jurisdiction and soil of any Indian lands in Georgia."  

Forsyth later made the main argument against the U.S. treaty obligations: the Federal Government had no right to make treaties with the Indians and they all were therefore null and void. He states, "These instruments are not technically treaties,

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6 Ibid., p. 1029.
7 Ibid., p. 995.
8 Ibid., p. 326.
supreme law of the land, superior in obligation to State constitutions and State laws." 9

The arguments of those who supported the removal bill concerning treaties were contradictory. Georgia could not have gained jurisdiction by an illegal act. This type of argument was common in the debates. Georgia would present two arguments of which both could not be true, but if one was won, their case was supported. This strategy forced their opponents to try to answer both arguments while confusing the debate through the introduction of side issues.

Asher Robbins of Rhode Island effectively dealt with this strategy by recognizing the legality of treaties as a major issue and then answering the argument by ridicule. He first stated:

"The turning question, then, of this whole debate, I repeat, is, whether the Indian nations... are competent to make treaties?" He answered "All this is treated as if the whole world, from the beginning down to this time, had been benighted upon this subject; as if they had ignorantly supposed and believed that the Indian nations, thus situated, were competent to make treaties: that Great Britain had been in this deplorable state of ignorance, with all her statesmen; that our Governments, both State and National, had been in this deplorable ignorance,

9Debates, VI, p. 336. Forsyth points out that they are not treaties because "a contract made with a petty dependent tribe of half starved Indians could not be a treaty", and the treaty making provisions of the Constitution were not followed.
with all their statesmen; that the jurists, or writers upon public law, of all the world, had been in this deplorable state of ignorance."\textsuperscript{10}

Court Cases

Next to treaties in popularity were court cases, and \textbf{Johnson vs. McIntosh} was the most popular of these. Lumpkin quoted the court's decision: "The ceded territory was occupied by numerous and warlike tribes of Indians; but the exclusive right of the United States to extinguish their title, and to grant the soil, has never, we believe, been doubted."\textsuperscript{11} Sprague cited the case quoted by the opposition: "The original inhabitants are the rightful occupants of the soil, with a legal, as well as a just, claim to retain possession of it, and to use it according to their own discretion. . . . It has never been contended that the Indian title amounted to nothing. Their right of possession has never been questioned."\textsuperscript{12}

Other Sources

Other sources quoted by both sides include Vattel, Congress, and Indian missionaries, agents and commissioners. There was no major source area where one of the sides was unable to find some quotable material. It appears that

\textsuperscript{10} \textit{Debates, VI}, p. 374.
\textsuperscript{11} \textit{Ibid.}, p. 1032.
\textsuperscript{12} \textit{Ibid.}, p. 353.
these debaters thought it better to present weak testimony than no testimony from a source used by the opposition. Generally, little notice was taken by the debaters that they were quoting the same sources. Usually, they would use additional material from the source or ignore the opposition's quotations. Considering the frequency and quantity of duplicate sources, it is surprising that only one person chided his opponents for taking a document out of context. This attack was available to all, which perhaps accounts for its limited use. Forsyth of Georgia was the one debater to use it. When refuting Frelinghuysen's discussion of treaties, he said, "The treaties I have presented to the Senate were examined and quoted by him; it is strange by what fatality it was, that his eye did not for a moment rest upon either of the pregnant provisions to which I have endeavored to direct his attention."\textsuperscript{13}

Of all the source areas of testimony, only one was extensively attacked as unworthy of consideration. Strangely enough, the group consisted of men of God—the missionaries. The other groups were probably not questioned because of their impersonal nature (i.e. treaties, court

\textsuperscript{13} Ibid., p. 326.
cases) or their high ethical appeal (i.e. American heroes). The missionaries were indeed troublesome to the administra-
tion and Georgia because they were one of the most vocal
groups supporting the Indians and their testimony helped
place "right" on the side of the Indians. What was Georgia
to do? Probably more could be lost by an open attack than
no attack, yet to let their testimony go unopposed (ex-
cept a few quotes from the Baptist missionaries) also
seemed undesirable. The answer was to use quotations from
pro-removal missionaries to discredit those who were
opposed. Lumpkin quoted the Reverend Isaac McCoy to
show pro-removal missionaries as a biased group with self
interest in demonstrating Indian progress. He said,
"Societies and their missionaries should carefully guard
against what we may term high coloring. We are naturally
fond of telling the more favorable parts of the story, and
rather desire the unfavorable parts to sink into oblivion.
... . If a missionary is not able to state, in a toler-
able degree, what would be deemed by his patrons evidence
of success, and in a pretty short time, too, after he has
commenced his labors, his supporters are liable to grow
impatient, and to imagine the existence of some defect in
him or his management." Forsyth was not so concerned

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14 Ibid., p. 1018.
and openly attacked these men of God: "There are a great many white men, missionaries, and others connected with the missions, who have comfortable settlements on the land occupied by the Cherokees, and a direct interest in preventing any change in their conditions." The Indian supporters, appealing to the Christian community, could not let this attack on their missionary supporters go unanswered, but an open attack would also be disadvantageous to them. They resolved this with the indirect approach that Reverend McCoy was misinformed because of limited contact with the Southern Indians. Mr. Everett of Massachusetts said, "Mr. McCoy is a very worthy and benevolent person. Having been connected with a mission to some northwestern band of Indians, which has been nearly or quite broken up by the encroachments of whites, he appears to have considered removal as the greatest good for all Indians, under all circumstances." 

Historical Example

Next to testimony, historical example was the most often used proof to show Indian sovereignty. Both sides used the same examples to prove their point: Spain,

\[15\] Ibid., p. 329.
\[16\] Ibid., p. 1072.
Britain, and the American colonists. Supporters of the bill claimed historically Indian rights were not recognized because of the superior claims of conquest, discovery, and civilization. Mr. Adams of Georgia presented the argument in relation to England: "The vast country which now forms the United States. . . . was, at one time, subject to the jurisdiction and sovereign dominion of Great Britain. She claimed it by right of discovery and conquest, and, added to this, the superior claims of an agricultural over a savage and barbarous people."\(^\text{17}\) The opposition countered this with two lines of analysis; Britain, Spain, and the colonists recognized Indian rights and even if they did not, their actions were unjust and should not be followed. Jabez Hunington of Connecticut gave the first argument when he stated, "the Crown of England neither possessed nor claimed the right, as derived from discovery, conquest, or otherwise, to extend its laws over the Indian tribes. They were considered as distinct nations or communities, sovereign and independent. . . ."\(^\text{18}\) Generally, the arguments were handled separately with regard to each of the claimed rights: conquest, discovery, and civilization.

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\(^\text{17}\) Ibid., p. 361.

By dealing with conquest two lines of analysis were used; the Cherokees were never conquered and even if they were, the right of conquest was given up by treaty. Concerning discovery it was argued that authorities contradicted it and if it did confer a right it was only the exclusive right of purchase. The rights of civilized nations over savages was argued nonexistent because the Cherokees were civilized.

The second line of analysis was the injustice of claiming the rights of conquest, discovery, and civilization. Mr. Sprague pointed out the injustice by a series of analogies:

To give to conquest— to mere force— the name of right, is to sanction all the enormities of avarice and ambition. Alexander and Bonaparte are justified! Britain has done no wrong in sweeping India with the hand of rapine, and holding fifty millions of people in thraldom! All the cruelties of the Spaniards in South America . . . are sanctified by the name right! This right of conquest, gentlemen contend, is the legitimate offspring of the right of discovery. Sir, the pirates on the coast of Barbary and Barataria exercise both. They find a ship alone on the ocean; this is discovery. They capture her, and murder or enslave the crew; this is conquest."

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19 See Jabez Hunington's (Connecticut) speech in Debates, VI, appendix, p. 10.
20 Ibid., p. 11.
21 Debates, VI, p. 354.
The arguments concerning Indian sovereignty in relation to conquest, discovery, and civilization were extended by the opposition to include many subpoints. Georgia chose not to try and refute them and only repeated her historical examples. Apparently Georgia felt that power gave Spain, England, and the colonists all the rights they needed, and she would rely on that same source of rights—power.

Analogy

Another means of proof frequently used in the debate was the analogy. The friends of the Indians would point to past injustices and compare them to Cherokee removal, thus gaining sympathy for their cause. The removal was compared to the recent action in Poland, the expulsion of the French from Acadia, and the Pilgrims. Mr. Everett developed the Pilgrim analogy: "There was no force employed by the British Government toward the Puritans. They needed only to conform to the established church, and they would then be safe from the visitation of the star chamber. But it was well known that these victims of power could not and would not submit; and history has recorded that they were driven by force from their native land."22

22 Ibid., p. 1061.
responded to these analogies by pointing out that the Indians wanted to move. They cited the laws of the Cherokees making it a crime to sell land and enroll for removal. Wilde of Georgia stated, "It is vain for gentlemen to say that the Cherokees do not wish to go. There is one argument which is conclusive: when was it found necessary to punish, by cruel and sanguinary punishments, any people for leaving a country which they had no mind to leave?" This argument did not show that the Indians were not being forced to go; it only shows they were also being forced to stay. The analogies of the opposition were effective.

Desirability

A portion of the debate centered on its desirability not only to the Indians but also to the United States. Those opposed to the bill contended it would be harmful to the U.S. and the Indians, while those supporting contended it would not. The opposition contended the U.S. would be hurt militarily by removal. John Test of Indiana stated: "You are going to place [the Indian] on the borders of the Mexican dominion [where] he will be always ready to join your foes, whoever they may be."23

23 Debates, VI, p. 1095.

24 Ibid., p. 2012.
Georgia had to answer this argument, because failure to do so would have constituted a major loss. White of Tennessee showed the danger to the Southern frontier if the Indians remained: "I cannot believe that a majority of this House can leave the most exposed part of the United States subject to the constant annoyance and depredations of this half starved erratic race, and ready, at all times, to be operated upon by a foreign enemy to destroy our frontier settlements." 25

According to the opponents of removal another harm to the United States of the removal policy would be to retard her manifest destiny to occupy the continent. Sammuel Vinton stated why this policy could never be palatable, "to the People of the West--who look forward to the day when the great valley of the Mississippi shall become the heart of the nation, sending out its strong pulsations to the distant shores of the Atlantic and Pacific Oceans. This is the great and sure inheritance of posterity . . . ." 26 Georgia did not respond to this argument. The last argument dealing with harm to the United States was the great cost of removal.

25 Register of Debates In Congress (1st Session 20th Congress, Volume IV), 1826, p. 1587.

26 Ibid., p. 1573.
The arguments of harm to the Indians included: many would die on the trip, they would be killed in the West by savage tribes, they would starve on the poor land in the West, or they would be pushed into the Pacific by the advance of whites. Georgia responded to all of these arguments as a group, citing the experience of the Cherokees who had moved in the past. Mr. Wilde of Georgia stated: "About six thousand Cherokees did emigrate to Arkansas. They did not ride in coaches there, to be sure: neither did they starve; nor have the other Indians massacred them, nor did they attack the white settlements; nor was the treasury ruined by the expense of their removal." 27 The example of the Cherokee West group was countered by additional testimony and by examining the state of the Indians in the West.

Contradiction

The issue and arguments in this debate were numerous and complex. The individual speakers for each side would take different positions on the same argument. This practice made for many contradictions. Even with individual speeches contradictory arguments were used Frelinghuysen, speaking for those opposed to the bill, said, "we have acquired . . . more land. . . than we shall dispose of at

27 Debates, VI, p. 1098.
the present rate to actual settlers in two hundred years;" later in the same speech he said, "when a few more years shall fill the regions beyond Arkansas with many millions of interprising white men, will not an increased impulse be given, that shall sweep the red men away into the barren prairies, or the Pacific of the West?" 28

Speakers against removal were more often guilty of contradictions and this constituted one of their major weaknesses. Certainly, their case was weakened by Mr. Wilde's attack:

We have heard the most contradictory arguments on this subject, in the course, sometimes, of the same speech. At one moment we are shocked with the intelligence that we are going to send the poor Indians into a sterile and inhospitable wilderness, or rather desert, to perish; the next, we are about to concentrate formidable bands of furious and savage warriors, to desolate our frontiers, and become allies of Great Britain and Mexico. Now, we hear that the country is without wood or water, and utterly uninhabitable; and, anon, that this is a plan to check the progress of our western settlements, and to prevent the springing up of new States and flourishing cities west of the Mississippi. Sir, all these arguments cannot be sound, for they destroy each other. 29

28 Ibid., p. 311 and p. 319.

Those for the bill did not deal with all the subpoints, so they were less likely to contradict themselves. They were accused of contradictions once in comparison to six charges against the other side.

The Georgians had their greatest success in the debate by examining the practice of the states of the pro-Indian speakers. Georgia continually pointed out that these states had extended harsh laws over their Indian inhabitants. John Wayne of Georgia stated:

It would have been discreet, if the gentlemen from Massachusetts, Maine, Connecticut, and New York, who have zealously distinguished themselves by opposition to the measure now before us, to have examined more minutely than they appear to have done, into the nature and extent of the jurisdiction claimed by the states over Indians living in their limits. . . . Sir, I pass over the laws of Maine, New Hampshire, Rhode Island, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, and South Carolina, in all of which jurisdiction and sovereignty over the Indians in their respective limits are asserted. 30

This argument, which was carried by Georgia, hurt the opposition in two significant ways: it established precedence for Georgia's action and it reduced the northern speakers' ethical appeal as defenders of the Indians.

30 Ibid., p. 2027.
Ethical Appeal

Both sides tried to develop their ethical appeal and destroy the ethos of the other. A composite picture of the Georgians from the speeches of their opponents would be a group of mercenary horse leeches trying to steal the poor Indians' land and remove them where they can be exterminated out of sight, while a composite picture of those supporting the Indians would be a group of hypocritical northern intruders who are in league with the power hungry, money grubbing Nabob chiefs of the Cherokees. Each impugned the motives of the other. Each accused the other of making the issue a party issue. Each tried to destroy the ethos of the other. Georgians ended up the loser in the name calling, for it appeared that they were arguing from expediency. Their self-interest was so obvious that they were an easy target.

Both sides tried to build a positive image as the true friends of the Indians. Lumpkin stated, "In humanity, forbearance, and liberality towards the Indians, Georgia has no superior, if she does not stand pre-eminent."31 Those opposed to the bill continually called for justice for the Indians. There were people who only wanted what was best for the Indians on both sides of the debate, but

31 Ibid., p. 1025.
one would be hard pressed to view Georgia as the champion of Indian rights. Lumpkin also said of the Indians, "Pages may be filled with the sublimated cant of the day, and in wailing over the departure of the Cherokees from the bones of their forefathers. But if the heads of these pretended mourners were eaters, and their eyes were a fountain of tears, and they were to spend days and years in weeping over the departure of the Cherokees from Georgia, yet they will go."

Mr. Weems of Georgia gave a more accurate picture of Georgia's attitude in an earlier debate in 1828: "It was probable our aborigines were descendants from the patriarch Abraham, by his bond-woman she could tell by the color of skin and he had seen the mixed breed, and did not like it--he would rather have them a little farther off." Almost every Georgia speaker made some effort to show his friendship to the Indians but also everyone of them would make comments which negated it.

Most of those opposed to the bill also had self interests in opposing it. Removal was one of the major political issues which could hurt Jackson's chances of being reelected.

32 Ibid., p. 1023.
33 Debates, IV, p. 1565.
Some of their speeches appear to be more anti-Jackson than pro-Indian. The charge of political biases was frequently made by their opponents. Lumpkin states, "I have tried to prevent party considerations from operating on this question; but our opponents are an organized band; they go in a solid column." This charge was met with denials and counter charges of political interest. Few senators or representatives did not vote with their party. Both attacks had truth behind them. The believability of both sides was hurt by these charges, but those who opposed the administration were hurt the most.

Threats

Georgia had one more attack which was designed to force support of the bill. It was more of a threat than an argument; if government tried to intervene against Georgia's rights, there would be civil war. George McDuffie from Georgia's states rights neighbor, South Carolina, made the point when calling for the final vote: "What ever we may think here, the State of Georgia has assumed an attitude from which she will not shrink; and if we refuse to exercise the power which we may constitutionally assume on this question, the guilt of blood may

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Debates, VI, p. 1021.
rest upon us. I demand the previous question."\(^{35}\) This threat of civil war was made six times by the Georgians. It had great appeal to those who really cared little about the Indians.

The friends of the Indians had their own threats to make to those who voted for the bill; a vote for the bill would condemn them to the black pages in history and to hell. Storrs of New York stated, "The human heart will be consulted—the moral sense of all mankind will speak out fearlessly, and you will stand condemned by the law of God as well as the sentence of your fellow-men. You may not live to hear it, but there will be no refuge for you in the grave. You will yet live in history; and if your children do not disown their fathers, they must bear the humiliating reproaches of their names."\(^{36}\) This charge was made seven times in the debate. Anyone who believed strongly in God would have had to rethink the issue.

Georgia's Strategy

The opposition had numerous factors working against them; the emotional appeal of the Indians, their obvious self interest, and the great volume of evidence against

\(^{35}\) Ibid., p. 2031.

\(^{36}\) Ibid., p. 1015.
their case. Much of their success in the debate was due to careful planning and a strategy designed to minimize self interest. Lumpkin, in his autobiography, speaks of his preparation for the debate:

I availed myself of every opportunity to make myself perfectly familiar with everything which appertained to Indian history in this country. I was not content with tracing the policy which had been preserved by the Federal Government in relation to Indian affairs, from first to last, but I examined thoroughly the policy of all the colonial and state governments towards the Indians. I examined the transactions of the Federal and state governments, when they had either acted in concert, or had come into conflict, in relation to Indian matters. Further, I read and examined writers on the laws of nations, to find all that I could, bearing on the subject, and carefully examined the judicial decisions of our ablest judges, on all subjects where Indians were concerned. 37

The Georgia speakers were well prepared for the debates. However, they did not try to deal with all the arguments of the opposition. They dealt only with the arguments they could win or the arguments which they could not afford to leave unanswered. Wilde stated: "He did not intend to follow the honorable gentlemen from Massachusetts [Mr. Everett], through the course of his arguments, but hoped he might be indulged with one or two observations." 38

37 Lumpkin, p. 48.

38 Debates, VI, p. 2002.
Haynes asserted: "He would content himself with offering a few brief and desultory observations...."\textsuperscript{39} Lumpkin stated: "The opposition introduced such a mass of foreign matter into the discussion, that they will excuse me, in my present state of health, for declining to follow them in all their labored arguments and details upon this subject."\textsuperscript{40} In addition to a wise selection of arguments, the representatives of Georgia were skilled in selecting when to speak. During the preliminary discussions of Indian affairs before the main bill was introduced, they repeatedly did not speak or limited their speeches, saying this was not the time to discuss the issue. They did not want to exhaust their arguments or the patience of the Congress in listening to them. Lumpkin went even further than limiting his speaking on Indian affairs. He limited his speaking on other subjects. He later explained why: "My observation and experience had taught me, that no one member of Congress could assume to take special charge of more than one important measure at a time, without incurring the imputation of assuming too much. Therefore I often remained silent upon other subjects, even when I desired to take an active part, that I might be more favorably

\textsuperscript{39} \textit{Debates}, VII, p. 759.

\textsuperscript{40} \textit{Debates}, VI, p. 1585.
attended to, on this Indian subject."41 In an effort to reduce antagonism, some of Georgia's representatives did not even speak on the main question. The debates were left to the more able and informed speakers. Mr. Haynes explained why he did not speak on the removal bill: "Under the most urgent importunity of his friends, he had forborne, at a critical period of the debate, from pressing himself into it, believing that its further protraction would probably lead to the defeat of the bill."42

The goal of those supporting the bill was not to win all the issue or even the debate itself. All they had to do was to make a reasonable showing which would allow members to vote the South's interest or party interest. The Cherokee Phoenix explained: "Their air was confident; they gave up the floor to their opponents, scarcely to be present, or listening to them with the utmost indifference, and evincing by their whole deportment, what was known to be true, that they had brought about an arrangement among the members, by which they had secured to themselves a majority before the hearing of the case."43 When the final vote was taken, the bill passed largely along party and sectional lines; Georgia's strategy was successful.

41Lumpkin, p. 45.
42Debates, VII, p. 760.
43Cherokee Phoenix (New Echota) October 8, 1830.
The major problem facing Georgia's opposition was one of public apathy. Their case needed public support in order to force members to vote against party interest. They had to make a noise which the people would hear. The Cherokee Phoenix reported: "No course could be more fatal to the Indians, than silence on the part of their friends, either in Congress or out of it... The apathy manifested throughout the nation is... an indication of the most blindness or insensibility." Many memorials were sent to Congress but more were needed. The lack of public involvement was partly blamed on a lack of information. The same issue of the Phoenix reported: "On a subject like this, no people can be made to feel deeply without information...." Georgia was partly to blame for the lack of information. Their congressmen continually worked to defeat the printing of any pro-Indian memorials or information. As reluctant as they were to agitate the subject before the main debate, they did speak against printing material unfavorable to their interests. Georgia newspapers went as far as to print separate editions for outside distribution, omitting the texts of their laws and any

44 Ibid.
Those opposed to Georgia frequently tried to get information about the Indians to the public. They sought to have many of the memorials printed plus the laws of Georgia; usually they were unsuccessful in these efforts. They did give long, eloquent speeches in the support of the Indians. These speeches were not only reprinted in pamphlets and newspapers, but a book was published containing the entire debate. Unfortunately for the Indians, one of the best speakers in the Senate, whose speeches always received wide circulation, did not speak, although he supported their cause. The Cherokee Phoenix explained why he did not: "The inquiry has often been made, why Mr. Webster did not put forth his great powers while this question was pending in the Senate. It is proper therefore that it should be stated, that he was confined by ill health to his chamber during the earliest and most important part of the discussion; and that after he resumed his seat his strength was not adequate to any effort which he would have deemed worthy of the subjects." The speeches given in opposition

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45 Starkey, p.135.


47 Cherokee Phoenix (New Echota) December 25, 1830.
to the bill did receive enthusiastic reviews from the anti-Jackson press. The New York Observer described Storrs speech as "one of the ablest and most conclusive speeches which have ever been delivered in our House of Representatives. It will bear a very honorable comparison with the best discussion in the British House of Commons."\(^{48}\) The Spirit of the Pilgrims Review commented on two of the speeches: "In point of argument, we are inclined to give the preference to the speech of Mr. Sprague; it is exceedingly close and powerful in its reasoning, nor is it wanting in passages of eloquence. Mr. Everetts is equally distinguished in his part of the subject; he shows the enormous absurdity of the bill from beginning to end."\(^{49}\) Theodore Frelinghuysen's speech was probably the most famous of the debate. It won for him the title of "Christian statesman" and led to his nomination for vice-president by the Whigs in 1844.\(^{50}\) These speakers did make a loud noise, but they did little good in getting the public to force their representatives to vote against the bill. The agitation was too late in coming to have any major effect on the outcome of the bill.

One of the most effective arguments used by the friends of the Indians was the presence of the Indians at

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\(^{48}\) Ibid., January 8, 1831.

\(^{49}\) Ibid.

\(^{50}\) Van Every, p. 114.
the debates; they were sent to the galleries to weep.\textsuperscript{51} The \textit{Hampshire Gazette} reported: "From the galleries of the Hall the Cherokee delegation looked down upon the movements below with anxious hearts, as if their fate might depend upon the decision now about to be made."\textsuperscript{52} Storrs took no chance on their presence being missed. He stated: "I will not consent to take advantage of men in their situation. I am sick-heart-sick of seeing them at our door as I enter this hall, where they have been standing during the whole of this session, supplicating us to stay our hand. There is one plain path of honor, and it is the path of safety, because it is the path of duty."\textsuperscript{53}

Debate by Amendment

The last effort to prevent the passage of the bill was debate by amendment. Sprague and Frelinghuysen presented amendments to the bill not so much for adoption but for clarification of the issues. If their amendments were rejected, then it would be clear what those who voted for the bill supported; forced removal of the Indians violating

\begin{itemize}
\item \textsuperscript{51} Starkey, p. 125.
\item \textsuperscript{52} \textit{Hampshire Gazette} (Northampton, Mass.) February 23, 1831.
\item \textsuperscript{53} \textit{Debates}, VI, p. 1014.
\end{itemize}
treaty rights. Sprague proposed, "That until the said tribes or nations shall choose to remove... they shall be protected in their present possessions..."^54 Frelinghuysen proposed, "That nothing herein contained shall be so construed as to authorize the departure from, or non-observance of, any treaty, compact, agreement, or stipulation heretofore entered into, and now subsisting, between the United States and the Cherokee Indians."^55 These amendments were rejected and the bill passed both the House and Senate and was signed into law by President Jackson.

Conclusion

Congress continued to debate the Indian issue in one form or another until removal was completed. After the Supreme Court tried to prevent the hanging of Corn Tassel, Georgia attempted to limit the power of the Court but failed. When Georgia threatened to ignore the Court in the missionary case, the friends of the Indians tried to

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54 Ibid., p. 383.

55 Ibid.
increase the Court's ability to enforce their decisions. This later portion of the Indian discussion centered more on the nature of the Union than on the Indians. Georgia was accused of being nullifiers, while Georgia claimed their opponents were violating the states' rights. None of the legislation concerning the Supreme Court was passed. The Court's power was not to be established by the question of Indian rights which Jackson opposed. It would be established over the tariff issue and the threat of disunion by South Carolina. Congress was unable to aid the Cherokees because of the political and sectional nature of the question.
Supreme Court

The Cherokees next turned to the Supreme Court for help. They were advised by Daniel Webster, Theodore Frelinghuysen, and Ambrose Spenser to hire eminent counsel; they suggested William Wirt. Wirt had been Attorney General when Jackson took office and was not asked to continue in that position. He seemed happy to be out of the political world which he disliked and when approached by the Indians was reluctant to take on their case. Only his respect for the men who recommended him and his conviction that great injustices were being perpetrated on the Cherokees made him accept.¹ The Indians were wise in their selection. Wirt's speaking, which had both emotional and intellectual appeal, was well suited to this case which would be tried not only in the courts, but in the press and at the polls.²

Wirt's Preparation

In preparation for the case, Wirt had three important questions to answer: 1.) What were the Indians' legal rights? 2.) What type of case would get a hearing?

¹ Letter from Wirt to Judge Carr, June 21, 1830, in Kennedy, pp. 253-55.

3.) What were the attitudes of the justices toward the Indian question?

To determine the legal rights of the Indians, Wirt carefully investigated the question. Wirt wrote to Judge Carr: "I took up the question of the right of Georgia to extend her laws over these people, read all the speeches in Congress pro and con, on the subject, the opinion of the President communicated to the Cherokees through the Secretary of War, in favour of the right of the State, and gave the whole case a thorough examination." After this study, he prepared a lengthy opinion on the question. Wirt examined the Cherokee treaties, Indian court cases, the practice of European nations, United States Law, and the Constitution and came to the conclusion:

That, the law of Georgia which has been placed before me, is unconstitutional and void. 1. Because it is repugnant to the treaties between the United States and the Cherokee nation. 2. Because it is repugnant to a law of the United States passed in 1802, entitled 'an act to regulate trade and intercourse with the Indian tribes, and to preserve trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.' 3. Because it is repugnant to the constitution, inasmuch as it impairs the obligation of all the contracts arising under the treaties with the Cherokees: and affects, moreover, to

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3 Letter from Wirt to Carr, in Kennedy, p. 255.
regulate intercourse with an Indian tribe, a power which belongs, exclusively to Congress.\(^4\)

This extensive opinion was to form the basis for all future argumentation before the Supreme Court.

Convinced of the rights of the Cherokees, Wirt had to figure out how to get a case heard. If he could not get a case before the Court in order to present his views, all was for naught. He had four choices: 1.) A case by consent between Georgia and the Cherokees  2.) A suit by Chief John Ross against an officer of Georgia in a lower court.  3.) A Writ of Error against a Georgia Court.  4.) A direct appeal to the original jurisdiction of the Supreme Court.\(^5\)

Wirt wrote Governor George Gilmer of Georgia suggesting that they join with the Cherokees in taking a case to the Court. Gilmer in a long, bitter letter replied;

> Your suggestion that it would be convenient and satisfactory, if yourself, the Indians, and the Governor would make up a law case to be submitted to the Supreme Court for the determination of the question whether the Legislature of Georgia has competent authority to pass laws for the Government of the Indians residing within its limits, however courteous the manner, and conciliatory the phraseology cannot but be considered exceedingly

\(^4\)William Wirt, Opinion on the right of the State of Georgia to Extend Her Laws over the Cherokee Nation (Boston: F. Lucas, 1830), p. 29.

\(^5\) The last three are suggested by Burke, "Cherokee Cases," p. 510.
disrespectful to the Government of the State. No one knows better than yourself that the Governor would grossly violate his duty and exceed his authority by complying with such a suggestion, and that both the letter and spirit of the powers conferred by the Constitution upon the Supreme Court forbid its adjuring such a case.6

Wirt would have to find another method to get a chance to speak to the Court.

A suit by Chief Ross in one of the lower courts was probably rejected because of the time consuming nature of such an appeal. In addition, the case would have had to go before Justice William Johnson, whose opinion might have been unfavorable (as it was in the case Wirt finally got before the Court.)

The case of the Indian, Corn Tassel, offered Wirt an opportunity to appeal to the Court by Writ of Error. Corn Tassel had been convicted of murder and sentenced to hang under the laws extended by Georgia over the Indian territory. Wirt applied to the Court and got a writ requiring Georgia to appear before the Court, but Georgia ignored the order and hung Tassel. Georgia would never allow a case to go before the Court by Writ of Error.

6 The Georgia Messenger (Macon, Georgia) September 4, 1830.
More by a process of elimination than anything else, Wirt would seek original jurisdiction for the Cherokees as a foreign state. However, he did have great doubts as to whether the Court would accept original jurisdiction. He wanted and received legal opinions from a number of prominent lawyers, including Ambrose Spencer, Daniel Webster, Horace Binney, and James Kent, all agreeing that the Cherokees had a right to original jurisdiction.\(^7\)

In preparation for the case, Wirt sought the answer to one more question: what were the attitudes of the justices toward the Indian question? It is important to analyze the audience before giving a speech, but Wirt might have carried this too far from a legal standpoint; he asked Judge Carr to find out Chief Justice Marshall's opinion. Wirt wrote Carr:

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\text{...tell him /Marshall/ as I wish you to do, that there is no case yet depending, which involves a decision on them; but that, unless the opinions of the Supreme Court, as already pronounced, prevent it, there may be questions of a delicate and embarrassing nature to the Supreme Court, which may be prevented by a correct understanding of the full scope of the decisions heretofore pronounced. I would speak to him with the confidence of a friend, ... and leave it to him to say, whether he would or would not be willing to} \]

\(^7\) Burke, "Cherokee Cases," p. 511.
come out with the expression of his opinion, so as to prevent embarrassment and mischief. I cannot discover that there would be any impropriety either in his saying whether the principles I have mentioned are involved in the former decisions; or, what he may at present, think of these questions.  

Marshall did not give his legal opinion to Carr, but he did express his opinion on the question. Marshall wrote to Carr: "I have followed the debate in both houses of Congress with profound attention, and with deep interest, and have wished, most sincerely, that both the Executive and Legislative departments had thought differently on the subject. Humanity must bewail the course which is pursued, whatever may be the decision of policy." This was encouragement to Wirt, for "he knew that the legal decisions of the Chief Justice usually followed his sympathies."  

Cherokee Nation vs Georgia--John Sergeant's Speech

The trial began on March 5, 1831 with the Cherokees' other lawyer, John Sergeant, asking for an injunction against the State of Georgia. Sergeant was described by

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8Kennedy, p. 258.


the Kennebec Journal in these words: "As a private citizen he is without reproach—as a professional man, he ranks among the first at the bar—and as a statesman and a patriot, he has few superiors. Pennsylvania is and has reason to be proud of him. It is said Mr. Sergeant is the first man in Pennsylvania, who has been in the public service upwards of twenty-five years." The injunction was ignored by Georgia and on March 14 Sergeant opened the arguments with a three hour speech. Sergeant's legal oratory was not as ornate as Wirt's and his arguments were designed more to persuade the judges than the public. He used a technical vocabulary of legal terms to describe the situation. His major proof was court decisions; he quoted these rulings more than fifteen times in his speech. He also turned to legal authorities and writers on jurisprudence to sustain his conclusions.

Sergeant made the major issues of the case clear by partitioning them in his introduction. He stated that he would endeavour to establish three propositions:

1. That the parties before the court were such as, under the constitution, to give to this court original jurisdiction of the complaint made by the one against the other.

11 Kennebec Journal (Augusta, Maine) July 6, 1832.
2. That such a case or controversy, of a judicial nature, was presented by the bill, as to warrant and require the interposition of the authority of the court.

3. That the facts stated by the complainants, exhibited such a case in equity, as to entitle them to the specific remedy by injunction prayed for in the bill.  

Over four-fifths of Sergeant's speech dealt with the first point—original jurisdiction. He tried to prove that the Cherokees were a foreign nation and competent to bring a case before the court. His main argument was presented in syllogistic form:

Major Premise: The Cherokees are either a state or a foreign nation.

Minor Premise: They are not a state.

Conclusion: They are a foreign nation.

He stated: "The constitution knows of but two descriptions of states, domestic and foreign. Those which are not included in the former class must necessarily fall into the latter." Sergeant's main proof was the numerous treaties made between the United States and the Cherokees; minor proof included: conditions of the ancient state, relation


13 Ibid., p. 78.
to Great Britain, action under the confederation, opinions of George Washington, Indian Intercourse Act of 1802, judicial decisions (Johnson vs M'Intosh, Goodell vs. Jackson, and Holland vs Pack), and "the most approved writers on public law" (Grotiers, Burlamaqui, and Vattel).

The second point developed was "that a sufficient 'case' or 'controversy' was presented to call for the exercise of judicial power."\(^{14}\) Sergeant set forth what was required to make such a case, "there must be, 1. Parties capable of suing and being sued. 2. A subject matter proper for judicial decisions." The first point was little more than what he had elaborately explained when examining whether the Cherokees were a foreign nation, so he spent little time on that question. He showed that the subject matter was proper for judicial decision by examining the laws and treaties of the United States showing they gave protection to the Cherokees. He went on to point out how these treaties were being violated and that "Georgia proposes to annihilate" the Cherokees.

The final point of the speech dealt with the Court's ability to remedy the situation. He stated; "In this

\(^{14}\) Ibid., p. 97.
court there is a decision directly applicable. An injunction may be issued to restrain a person who is an officer of a state from performing an act enjoined by an unconstitutional law of the state."\textsuperscript{15}

Wirt's Speech

This legalistic speech clearly set forth the arguments in terms the Court could understand. Wirt's speech on 14 March covered the same ground, but mixed these arguments with appeals to humanity and justice. Wirt's speech was a direct contrast to Sergeant's unemotional approach. Wirt, in calling for a subpoena to restrain Georgia from extending her laws, advanced two main arguments: the Supreme Court possessed original jurisdiction and the Cherokee Nation was a foreign state. He proved these points in much the same manner as Sergeant had, quoting treaties, laws and the constitution.\textsuperscript{16} Wirt's speech, however, was aimed more at the sympathy than the intellect of the Court. He stated:

\begin{quote}
\textsuperscript{15} Ibid., p. 103.
\end{quote}

\begin{quote}
\textsuperscript{16} \textit{Boston Patriot} (Boston, Mass.) March 23, 1831.
\end{quote}

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I cannot believe that this honourable court, possessing the power of preservation, will stand by and see these people stripped of their property and extirpated from the earth, while they are holding up to us their treaties and claiming the fulfilment of our engagements. If truth and faith and honour and justice have fled from every other part of our country, we shall find them here. If not, our sun has gone down in treachery, blood and crime, in the face of the world; and, instead of being proud of our country, as heretofore, we may well call upon the rocks and mountains to hide our shame from earth and heaven. 17

This speech was praised by the partisan press, for it was directed not only to the Court but to the people in the crowded courtroom and to the entire nation. The emotional nature of the subject was highlighted by the Cherokee delegation. They attended the trail looking "intelligent and respectable."18 This deportment added weight to Wirt's argument that they were a foreign nation and not a band of savage Indians. The injustices against the Cherokees that Wirt talked about were made to seem true because of the crying of a member of the delegation, "he shed tears copiously during Mr. Wirt's address."19


18 Boston Patriot (Boston, Mass.) March 23, 1831.

19 Ibid.
The Cherokees attended and cried at almost every important speech supporting their position; this show of tears was convenient, for it reenforced the plight of the Cherokees.

Wirt's speech discusses one important subject not mentioned by Sergeant, the danger of non-enforcement of the Court's decision. Wirt wrote of this danger to his friend, Judge Carr: "With regard to the Supreme Court, the Attorney-General is reported to have said, that the State of Georgia would not respect their decision, if against them, but would go on to enforce their rights according to their own opinion of them; and after what has already passed, I should not be surprised if the President should co-operate with them and render the decision abortive, by forbidding the Marshal and people of the country from obeying it. On the other hand it is possible, (though not very probable,) that the President may bow to the decision of the Supreme Court, and cause it to be enforced; and that Georgia may sullenly acquiesce." 20

Wirt could have left this danger alone and waited to see if non-enforcement occurred, but he chose to attack it. He basically made three points, aimed at three different audiences.

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20 Kennedy, p. 255.
1. To the Court he stated: "Shall we be asked (the question has been asked elsewhere) how this court will enforce its injunction, in case it shall be awarded? I answer, it will be time enough to meet that question when it shall arise. At present, the question is whether the court, by its constitution, possesses the jurisdiction to which we appeal . . . ."21 This was a challenge for the Court to do their duty even if it meant a fight. By bringing this danger out in the open, he turns this disadvantage of a battle into the advantage of meeting a challenge to the integrity and power of the Court.

2. To the President he said: "If he refuses to perform his duty, the Constitution has provided a remedy."22 Wirt, in effect threatened Jackson with impeachment if he refused to enforce the Court's decision. This declaration before the act would perhaps add weight to any impeachment movement, while making the President think twice before acting.

3. To the people he said: "I believe if the injunction shall be awarded, there is a moral force in the public sentiment of the American community which will, alone, sustain it and constrain obedience. At all events, let us do our duty, and the people of the United States will

21 Peters, Case of the Cherokee Nation, p. 153.
22 Ibid., p. 155.
take care that others do theirs." Wirt effectively sets forth what the people must do in case of non-enforcement—force the President.

Sergeant and Wirt in a balanced presentation clearly stated the Indians' case. Georgia in defense was equally clear. They did not appear. The choice not to speak spoke loudly; the Supreme Court had no jurisdiction over Georgia's internal affairs and Georgia was not bound by any decision. These views were expressed time and time again by her governors and legislature. If Georgia had appeared, it would have contradicted this position, while the failure to speak supported it. Georgia received another advantage by refusing to speak; the significance of the case was reduced. A onesided debate is of less news value than a two-sided one. This was a continuation of the strategy, used in the congressional debates, to speak only when absolutely necessary. Georgia's aim was to reduce agitation, not to increase it. Georgia lost little by not appearing. The justices were bound to support their own interpretations of the constitution and they might vote in favor of Georgia even if she did not speak. Georgia used this speaking opportunity to a maximum by not speaking.

23 Ibid.
The Court's Decision

The decisions of the court members are important in studying the speaking of removal, for they are not only speeches themselves but are in some ways evaluations of the speeches of others. Of the seven judges, four voted against the Cherokees (John Marshall, William Johnson, John McLean, and Henry Baldwin), two voted for them (Smith Thompson and Joseph Story), and one was absent (Gabriel Duvall). On the surface it appears that the arguments of Sergeant and Wirt were ineffective, but a closer analysis gives an opposite opinion.

The case was lost on the issue Wirt and Sergeant feared most: did the Supreme Court have original jurisdiction. Wirt wrote to his wife shortly before the trail expressing his concern on this question: "I feel rather despondent about my poor Indians--not that I have the slightest doubt of the justice of these claims on the United States, but that I fear the Supreme Court may differ with me as to the extent of their jurisdiction over the subject...."

Most of the argumentation of Wirt and four-fifths of Sergeant's was directed at this point. They

had effectively analyzed the case, but there was one weakness in the syllogism which formed the basis for their reasoning. They viewed the Indians as either a state or a foreign nation. John Marshall in his opinion presented another alternative with which they had not dealt. Marshall believed the Indians to be a "domestic dependent nation." Thus, the major premise of their syllogism was false and they lost four to two. The actual decision might better be described as two-two-two, with Marshall and McLean voting that the Indians did not have original jurisdiction but they were states with rights, Baldwin and Johnson voting that the Cherokees not a state and having few rights, and Story and Thompson voting that the Cherokees had original jurisdiction as a foreign state and supporting their political rights.\(^{25}\) Thus, on the question of Cherokee political rights, the vote was four to two in favor of the Indians.

Three decisions were read in court on the day the decision was given. Marshall was first, supposedly speaking for the Court. His decision, while against the Indians, was far from discouraging. He spoke of the points won by Wirt and Sergeant: "\(\text{Their}^7\) argument as was intended to prove the character of the Cherokees as a state, 

\(^{25}\) Burke, "Cherokee Cases," p. 517.
as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful."\textsuperscript{26} Marshall even went as far as to encourage another case: "The mere question of right might perhaps be decided by this Court in a proper case with proper parties."\textsuperscript{27} Marshall in this speech gave the legal decision he felt compelled to give, but in his explanation he went far to give an opposite view. His opinion supported the Cherokees to such a degree that Justice Baldwin (who voted with the majority) called himself a dissenting judge.\textsuperscript{28}

Baldwin's and Johnson's opinions were clear presentations of Georgia's claim to sovereignty over the Indian lands. They did not view the Indians as having any claim to the title of foreign nation. Their arguments were powerful, well supported legal opinions. Anyone who heard these two opinions would have had little respect for Indian rights, even when considering Marshall's hedging. The total effect of the speaking of these judges went far in convincing the public that the Cherokees had few legal rights.

\textsuperscript{26} Peters, p. 15.  
\textsuperscript{27} Ibid., p. 19.  
\textsuperscript{28} Ibid., p. 32 and p. 40.
Thompson, however, wrote an opinion which was inserted into the proceedings as if it had been delivered. In addition, Thompson had the opportunity to examine the other decisions and then refute them. His opinion followed the exact organization of Sergeant's speech and included many of the same arguments used by Wirt and Sergeant. Richard Peters (court reporter) included this opinion in the official report of the Court. He also printed a separate volume on the case including the legal opinion of James Kent (pro-Cherokee), the treaties with the Cherokees, the Federal Intercourse Act of 1802, the Georgia Indian laws, and the opinions of the justices including Thompson's undelivered opinion. Through these publications and the press, the northern public received a different view than they would have had if they had been in court to hear the decisions.

Worcester Vs Georgia

The arrest and conviction of the Cherokee missionary, Samuel A. Worcester, gave Wirt and Sergeant the case they hoped would support the Indians' rights. There no longer was a question of jurisdiction because Worcester was a

29 Peters, Case of the Cherokee Nation, 230 pages.
citizen of the United States. The Supreme Court could rule on the merits of this case and not have to be concerned with technicalities.

The case of *Worcester v. Georgia*\(^30\) began on February 20, 1832 with Wirt and Sergeant speaking for the Cherokees and no one representing Georgia. Sergeant and Wirt's main point was: "That the statute of Georgia under which the plaintiffs in error were indicted and convicted, was unconstitutional and void."\(^31\) The Cherokee lawyers argued that the laws were unconstitutional because they violated the Constitution, laws, and treaties of the United States. Although only a summary of these speeches remains, the supporting arguments were probably about the same as in *The Cherokee Nation v. Georgia*. Wirt and Sergeant cited many of the court decisions, laws, and treaties used in the first trial. That Sergeant presented a reasoned approach and Wirt a more emotional one can be seen from a review of the case by the *New York Daily Advertiser*:

Sergeant's arguments was equally creditable to the soundness of his head and the goodness of his heart. The belief was, when he had resumed his seat, that he had left little or no ground for Mr. Wirt to occupy. Were I to judge from Mr. Wirt's speech today, I should say that the subject

\(^{30}\) 6 Peters, p. 515. The case of Elizur Butler, another missionary, was also being heard at the same time.

\(^{31}\) 6 Peters, p. 534.
is inexhaustible. He spoke until after three o'clock, and was obliged, from fatigue, to ask the Court to adjourn. So interesting was the subject, so ably did he present it to the Court, that in addition to the number of gentlemen and ladies, who attended from curiosity, so many of the members of the House reported to the Courtroom that an adjournment was moved......32

Wirt's conclusion was so emotional that Chief Justice Marshall shed tears, something he had not done since the Dartmouth College case.33

The Court ruled in favor of the missionaries, thus upholding the rights of the Cherokees. Marshall spoke for the five-one majority in what was applauded as of the most brilliant and eloquent decisions ever rendered. Justice Black called it "one of Marshall's most courageous and eloquent opinions."34 Albert J. Beveridge said it was one of the noblest Marshall ever wrote.35 It deserves this praise because of the elaborate and extensive explanations and proofs in addition to its eloquent passages. Marshall drew heavily on Wirt's first written argument, the speeches

32 New York Daily Advertiser (New York, New York) February 27, 1832.


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of Wirt and Sergeant, and the opinion of Justice Thompson in the Cherokee case. Marshall picked from these the best proofs and arguments and culled the rest. He gave a historical review of Indian-white relations from first discovery to the present, showing 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. The whole intercourse between the United States and this nation, is, by our Constitution and laws, vested in the government of the United States." 36

The major weakness of this decision was that it really had little to do with the missionaries. The Chief Justice seldom mentioned Worcester and spent most of his time developing arguments related to property. Apparently Marshall was giving the decision he wished he could have delivered in the Cherokee case.

36 6 Peters, pp. 560-561.
Justice McLean also delivered a decision supporting the missionaries. However, he felt the Indians' rights were temporary and thought the best policy might be one of removal. Justice Johnson was absent and would have, no doubt, dissented. Justice Baldwin did dissent, but on the technical grounds that "the record was not properly returned upon the writ of error..."37 He did not deliver an opinion because he did not want his opinion to "go to the public simultaneously with that of the Court. Lest it might be open to the imputations of having a tendency to impair the weight of the decision and mandate in Georgia."38 Baldwin's decision not to speak was, in effect, support of the Court and the Indians.

Conclusion

The ultimate victory in this case went to Georgia. The arguments which they supported by not speaking proved to be the strongest; they refused to go along with the decision to free the missionaries. The Macon Advertiser on March 13, 1832 fairly well sums up the legal battle:

37 6 Peters, p. 595.
38 The Georgia Messenger (Macon, Georgia) April 7, 1832.
"They [The missionaries] have been placed where they deserved to be, in the State Prison, and not all the eloquence of a Wirt, or a Sergeant, nor the decision or power of the Supreme Court can take them from it unless the State chooses to give them up, which, at this time is very improbable." 39

All three branches of the Federal government help formulate Indian policy and the Cherokees turned to all of them. They turned first to the Executive and were told to move west. They next turned to Congress and were told to move west. They next turned to the Supreme Court who told them that their rights would be protected. This may have been the cruelest of the answers, for the Court had not the power to grant this protection.

39 Macon Advertiser (Macon, Georgia) March 13, 1832.
Chapter IV

THE ADVOCATES FOR THE CHEROKEES

Three major groups spoke in behalf of the Cherokees' rights to remain and rule in Georgia. They were the National Republicans (later to become the Whigs), the liberal religious community of the North, and the Cherokees themselves. The Indians were perhaps the most eloquent of these groups. Edward Everett described the speaking of these Indians as doing "honor to the best days and most gifted minds of Greece or Rome."¹

Cherokee Speaking

It is difficult to imagine these Indians equalling the Greeks and Romans in rhetoric. Possibly, contemporary accounts were exaggerated; however, much evidence supports the conclusion that the Indians were effective speakers. The development of speaking in the Cherokee nation had some of the characteristics of the Greek experience. In order to understand the speaking of the Cherokees from 1828 to 1832, one must understand the historical role of speaking in the tribe.

¹Debates, Vol. VI, p. 1079.

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The Cherokees before the invention of their alphabet were dependent on the spoken word for communication. One important aspect of this oral tradition, like the Greeks', was story telling. Oliver Knight stated, "The Cherokees were great storytellers, and they had a vast story of engaging fireside tales to be drawn from their rich and varied mythology. Broken down into the sacred myths, animal stories, local legends, and historical tradition, the myths told the stories of the creation, of the origin of the Cherokees, of the many birds and beasts and fishes the Cherokees knew in their forests and streams, and of the ethereal little people who lived high on the mountain."  

The oral nature of communication was even more important in the workings of the Cherokee government. Important decisions were made in meetings open to all the men of the tribe and some women of high standing. According to Dr. W. R. L. Smith, the Cherokee government was "a pure democracy. The Cherokees never knew the dominion of a king, an oligarchy, or an aristocracy. . . . Discussion was free to each and all... Propositions were

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freely discussed and decisions reached by majority vote.\textsuperscript{3} In the \textit{American Anthropologist} Fred Gearing describes the Cherokee council as giving the "appearance of a New England town meeting."\textsuperscript{4}

The democratic nature of the Cherokee government placed a premium on public speaking. The chiefs and headmen had no power other than persuasion and example. Nearly every observer of Cherokee life during the 17th and 18th centuries mentioned that the chiefs had no coercive power and the importance of persuasion. Timberlake stated, "They are fond of speaking well, as that paves the way to power in their councils." Another observer reported that the chiefs could persuade only by "good-nature and clear reasoning."\textsuperscript{5} The person who "had the gift of forceful expression" had the most influence in the councils.\textsuperscript{6} Thus the art of rhetoric developed to a high level among the Indians. In the foreward of \textit{Indian Oratory}, William R. Carmack writes of the

\begin{itemize}
\item \textsuperscript{3} Smith, pp. 20-21.
\item \textsuperscript{5} Ibid., p. 38.
\item \textsuperscript{6} Van Every, p. 66.
\end{itemize}
effectiveness of these native speakers: "Their speeches, which would do credit to any Athenian orator, should dispel for all time the myth of the Indian as ignorant savage. That these eloquent, moving speeches were often made with telling use of wit and sarcasm destroys the stereotype of the stoic, silent, humorless red man."^7

The Indians, like the Greeks, place importance on how something was said. They viewed speech making as an art form to be appreciated not only for what was said, but also for its own beauty. Supporting this point Van Every wrote: "Indians had always been born talkers, loved talking for its own sake, and set the highest value on the clarity, force and eloquence with which any speaker could present his views. Innumerable Indian councils of the past had debated for weeks and months, with the manner in which arguments were delivered often considered more significant than the substance of the issue."^8

Another reason for the importance of speaking to the Cherokees was that it was often used as a means of punishment. Instead of physical punishment, they would


^8 Van Every, p. 75.
punish a wrongdoer with words of sarcasm. Smith explains: "Not many severe punishments were ever inflicted ... Public irony and sarcasm were found tremendous correctives of bad conduct. For instance, the coward was praised for his valor; the liar for his veracity; and the thief for his honesty." 9

Vanderwerth believes that because of the procedure of letting all speak there was "little opportunity to use superfluous words." 10 The custom that all could speak in the councils meant that the speeches had to be short. This pressure resulted in a style of speaking which was compact with every word having meaning and a definite reason for being included.

The Indians had no written language during this period and thus had to speak extemporaneously. This practice enabled many to speak eloquently with no formal training. Their speeches were often delivered on a moment's notice with effective adaptation to the preceding speaker or recent happenings. 11

9 Smith, p. 27.
10 Vanderwerth, p. 4.
11 Vanderwerth's anthology shows the brevity of their talks by including over thirty-five speeches and biographies of the speaker in less than 225 pages. Most of the speeches are less than four pages in length.
In addition to the oral tradition of the Cherokees, many of the leaders of the removal fight had attended the Foreign Mission School at Cornwall, Connecticut; they included Elias Boudinot, John Ridge, John Vann, David Brown, and Leonard Hicks. The curriculum included rhetoric and exercises in declamation. The Reverend Mr. Doggett described the study of two Cherokees: "John Ridge and Elias Boudinot have studied Geography extensively, Rhetoric, Surveying, Ecclesiastical and Common History, three books in the Aeneid, two Orations of Cicero, and are attending to Natural Philosophy."\textsuperscript{12} The Indians learned well their lessons in speaking and usually performed effectively in the public exhibitions held at Cornwall. One observer of these speech exercises stated that "the Indian pupils appeared so genteel and graceful on the stage that the white pupils appeared uncouth beside them . . . ."\textsuperscript{13}

Even the Indian students who were not fortunate enough to attend Cornwall received speech training in the mission schools in the Cherokee nation. Oratory was one of the subjects in which the Indian students excelled.

\textsuperscript{12} Carolyn Foreman, p. 254.
\textsuperscript{13} Ibid., p. 246.
The *Missionary Herald* gave this account of a declamation performance at a Cherokee mission school:

Several single speeches, and a very interesting dialogue, founded on the story of Joseph and his brethren, were spoken uncommonly well. This was indeed novel and unexpected; and though the children had never witnessed anything of the kind in their lives, yet I am confident I do not exaggerate, when I say that the performance was excellent. The speech of Brutus on the death of Caesar, and that of Mark Anthony on the same occasion, were spoken by two of the boys with great animation. I was much interested in another spoken by a full-blooded boy. It was taken from the *Columbian Orator*, attributed to an Indian, and begins with these words — 'Fathers when you crossed the great waters' — this piece, as you may suppose, appeared quite in keeping with the little Cherokee orator, who delivered it with great propriety.'

The oral tradition of the Cherokees plus their formal training in speaking was to aid the Indians in their fight against removal. By 1820 the population of the United States had grown to ten million, the white population surrounding the Cherokees totaled almost one million, while their own population was just thirteen thousand. There could be no military victory for the Indians. If they were to resist removal, they had to persuade the North to support their cause while maintaining a united front against removal in their own nation.

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14 Bass, pp. 48-49.

15 Van Every, p. 40.
Most of the speaking of the Cherokees in the Indian nation was directed toward maintaining a united front against removal. This was essential because a split would reduce the Cherokees' appeal in the North and would probably result in a removal treaty by the splinter group. Trying to prevent a split, the Cherokee leaders preached the doctrine of unity and dishonor of betrayal, until the mountains and caves reverberated with "United we stand, divided we fall!"

The most effective speaker to the common Indian was Major Ridge, better know as The Ridge. During the crisis he rode tirelessly about the nation, preaching against removal and strengthening the spirits of the people.¹⁶ None of his speeches has survived, so an evaluation must rely on contemporary accounts. The removal agent Benjamin Currey described him as "the great orator in the nation."¹⁷ Worcester called one of his council speeches "a great speech."¹⁸ He was an orator of the old Cherokee school of speaking, never having learned to read or write. According to Starkey, he had an instinctive gift of phrasing

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¹⁶ Wilkins, p. 199.

¹⁷ Foreman, Removal, p. 248.

¹⁸ Starkey, p. 185.
(Shakespearean in nature), a rich sense of the living past, and a disciplined emotional power.19 However, The Ridge's real persuasiveness came from his ethical appeal. He represented the Cherokee nation's proud past, containing the virtues of the old chiefs and warriors. Ridge had been speaking against removal since 1808. In that year he had risen in the council and denounced a removal plan with "passionate eloquence."20 His name had come out of that day, in Cherokee "One who walks on ridges" and hence sees farther than most.

Major Ridge was to the Cherokees what Churchill was to the English during the Battle of Britain. He inspired the people to stand united, but more than his speaking, his very presence gave witness to the enduring nature of the Cherokees. Marion L. Starkey explains: "To the Cherokees, when The Ridge spoke it was as if a man out of myth were speaking. He gave voice to the folk spirit of his people, and there lay his power."21 To disagree with The Ridge was to denounce being a Cherokee.

Next to Major Ridge, John Ross was the most important speaker in the Cherokee nation. He spoke mainly to the

19 Ibid.
20 Ibid.
21 Ibid., pp. 185-186.
council and many of his speeches have survived. His style was in direct contrast to Ridge's. Starkey states: "Ross was no orator. He did not speak in the grand manner of the old chiefs, who . . . could so address a multitude as to melt their hearts. The Ridge was of the old tradition, but not Ross. The latter's talks were concerned mainly with prosaic facts and figures." While Ross' dry messages to the council were far from moving, they were important in the defense of the nation. Ross spoke as the Cherokees thought white men spoke. His speeches were always clearly organized and contained much documentary proof. His speeches to the Indians were evidence that they had made great progress toward civilization. In short, the speaking of John Ross gave the Indians pride in their advancement and confidence in their right to stay because they were civilized.

Typical of Ross' speaking is this excerpt from his council speech of October 14, 1829:

This sacred privilege of assemblege in General council of the Nation of our citizens is one among the great blessings which we have derived from the Great Ruler of the Universe. It is a right which we as a distinct People have ever exercised and our preogative so to act has been recognized by

22

Ibid., pp. 161-162.
the United States, under whose fostering care we have moved the darkness of ignorance and superstition to our present degree of advancement in civilized improvements. It has therefore become our duty to guard and protect the rights and happiness of your constituents, by adopting such laws for their common welfare as will avert any abuse of the legitimate privileges guaranteed under the constitution. 23

Although Ross and Ridge were the most important speakers, they were not the only one trying to persuade their people to fight removal; other speakers included: Elias Boudinot, Richard Taylor, Speckled Snake, John Ridge (Major Ridge's son), Woman Killer, and Going Snake. Many speeches were given in the council or at small meetings throughout the nation.

No argumentation was needed to persuade the vast majority of Indians against removal. By 1828 most of those favorable to removal had already left. If given a free choice, those who remained would have elected to stay. The problem facing these speakers was not one of changing attitude, but of reinforcing already held beliefs. With the extension of Georgia law over the nation and the lawlessness of white intruders, much determination would be needed to resist the appeal of a new, peaceful home.

23 Georgia Messenger (Macon, Georgia), November 21, 1829.
Two major arguments were used to reinforce the Indians' beliefs: the move would not be permanent and the Cherokees should not give up the land of their ancestors. The last argument was either developed or alluded to in nearly all speeches (even in Ross' council speeches). Grant Foreman, one of the most knowledgeable historians of the Southern Indians, explained why this argument would have a great impact on a Cherokee audience:

They /Southern Indians/ loved their streams and valleys, their hills, and forests, their fields and herds, their homes and firesides, families and friends; they were rooted in the soil as the Choctaw chief Rushmatoha said, "where we have grown up as the herbs of the woods." More than white people they cherished a passionate attachment for the earth that held the bones of their ancestors and relatives. 24

One of the most effective appeals to love of the land of their ancestors was made by Woman Killer, who was reported to be over eighty years old. The fact that Woman Killer was so old gives this appeal extra weight, for not only did the Cherokees love their ancestors, but they had great respect for age. In arguing for the "Blood Law" (which called for death for any one selling land without council approval) Woman Killer stated:

24
Foreman, Removal, preface.
"My companions, men of renown, in council, who now sleep in the dust, spoke the same language and I now stand on the verge of the grave to bear witness to their love of country. My sun of existence is fast approaching to its sitting and my aged bones will soon be laid in the bosom of this earth we have received from our fathers who had it from the Great Being above. When I sleep in forgetfulness, I hope my bones will not be deserted by you." 25

The bill passed. Major Ridge in a speech at Turkeytown stated this same point: "As our ancestors revered the sepulchral monuments of the noble dead, we cherish the sacred spots of their repose. . . . under hillocks of clay that cover them from sight." 26

This appeal did not need complete articulation for effect. It could be used by simply stating key words such as: "ancestral home," "land of our fathers' bones," "beloved land," "ancient hunting ground," or any reference to their hills, rivers, mountains, fields, or homes. Speakers such as The Ridge or Woman Killer invoked the argument because their very presence called to mind the Cherokees of old. This argument was an effective mainstay of the anti-removal speaking of the Indians to Indians.

25 Statesman and Patriot (Milledgeville, Ga.) January 16, 1830.

26 Wilkins, p. 200. John Ridge recorded the sense of his father's speech and the feeling of his audience at Turkeytown.
The other argument used to enforce the Indians' objection to removal was that they would be forced to move again. This point was especially appropriate when one considers Van Every's analysis of the thinking of a group facing migration: "A people can be confronted by no more difficult, critical and fundamental decision than to contemplate abandonment of its native land. So total a change in their environment arouses forebodings of as sweeping a change in their character."27 These fears could be played on by showing this move would not be the last. If the Indians were opposed to moving, they certainly would be opposed to moving two or three times more. This appeal multiplied each objection a Cherokee had to moving. If he was fearful of the journey, he would think of the evils of more than one trip. If he hated leaving his house, he would think of abandoning more than one. If he resented having to build a new farm, he would think of having to clear and plow many new sites. The effectiveness of this appeal is that it re-enforces whatever the individual most fears. In a response to a message from Jackson, Speckled Snake told about all the times the Indians were forced to move. Using irony, he concluded with this point:

27
Van Every, p. 33.
He said much; but it all meant nothing, but "move a little farther; you are too near me." I have heard a great many talks from our great father, and they all begun and ended the same. Brothers! When he made us a talk on a former occasion, he said, "Get a little further; go beyond the Oconee and the Oakmulgee, there is pleasant country." He also said, "It shall be yours forever." How he says, "The land you live on is not yours; go beyond the Mississippi; there is game; there you may remain while the grass grows or the water runs." Brothers! Will not our great father come there also? He loves his red children, and his tongue is not forked.

The major talks of the Indian speakers was to promote a united stand against removal. They did this by direct appeals and by providing hope that resistance could be successful. Ross presented a typical direct appeal in an address to the council: "Much . . . depends on our unity of sentiment and firmness of action, in maintaining those sacred rights which we have ever enjoyed." The sentiment of a town meeting in Cooswatee gives a clear picture of their discussion: "We are still united and firm in our purpose to continue on the land of our fathers." This appeal to unity could only be disregarded.


29 *Georgia Messenger* (Macon, Ga.) November 21, 1829.

30 *Hampshire Gazette* (Northampton, Mass.) July 21, 1830.
if conditions became totally intolerable because harmony was basic to the Cherokee character. This point is expressed by Fred Gearing in the *American Anthropologist*: "The single focus which created pattern in Cherokee moral thought was the value of harmony among men . . . . The Cherokee ethos . . . was . . . a single, consistent pattern of thought which provided the measure of a good man. The good man dealt cautiously with his fellows, turned away to avoid threatened face-to-face conflict, and when overt conflict did occur, withdrew from the offenders. Their Cherokee ethos disallowed disharmony."

Given the Cherokee ethos, the appeal to unity was generally successful. The majority of the tribe remained united in their objection to removal.

The majority of the Cherokee speakers encouraged unity by providing hope of success if the nation remained firm. Typical of this effort was a speaking tour made by Ross and Ridge. Wilkins describes the tour:

Several local councils were called in April, May, and June /1831/, at places like Hickory Log, Pine Log, Taloney, and Setico—at towns in both Georgia and Tennessee—and Major Ridge and John Ross made the rounds explaining the work of the delegation in Washington, and assuring the common Indians that the decision of the Supreme Court was not adverse to the Cherokee Nation . . . They told

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31 Gearing, pp. 31-36.
the common Indians, . . . to remain constant till Jackson's term of office expired. Then Henry Clay would become President, and Georgia's Indian code would be declared unconstitutional. . . . Major Ridge continued to ride constantly during the summer and fall of 1831 to persuade his countrymen to remain in their ancient homelands. 32

In his council speeches, Ross frequently tried to give the Indians courage to continue to fight removal by expressing confidence in the "Great Being's" help. In an address of July 1830 Ross ends with this hopeful passage: "Let us not forget the circumstance related in Holy Writ, of the safe passage of the children of Israel through the chrystal walls of the Red Sea and the fate of their wicked pursuers; let our faith in the unsearchable mysteries of an Omnipotent and all-wise Being be unshaken, for in the appearance of impossibilities, there is still hope." 33 Ross, as most of the Cherokee leaders, was a Christian, but he never uses the term "God". Although he makes allusions to the Christian religion, his terms referring to God are always abstract, thus including those Cherokees who still believed in the traditional Cherokee deity.


33 John Ross, Message of the Principal Chief to the General Council of the Cherokee Nation, July, 1830. This document can be found at Gilcrease Museum, Tulsa, Oklahoma.
The anti-removal speaking of the Cherokees was effectively planned and executed. However, it failed. Boudinot, Major Ridge, John Ridge, and other Cherokees in the spring and summer of 1832 saw their cause as lost. They saw no help coming from the Executive, Congress, the Supreme Court, or the election of 1832. This group of leaders and a small minority of the Cherokees formed a "Treaty Party" and in 1835 signed the Treaty of New Echota under which all the Georgia Cherokees were removed. The split in the Cherokee nation was not caused nor could it have been prevented by rhetoric. The split was caused by the extension of Georgia's laws and the resulting suffering which ended Cherokee harmony.

The major weakness of the Cherokees' speaking was their failure to promote unity among the southern tribes. At the time the Cherokees faced removal, so did the Seminoles, Choctaws, Creeks, and Chickasaws. A united effort would have meant more money and greater appeal to the North. However, the Cherokees chose to make their stand alone.

If the major weapon of the Indians was rhetoric, Georgia tried to disarm them with her laws, making it illegal for Indians to speak in a white court, to hold council, and for one Indian to persuade another not to move. The last two laws were never enforced, but the threat made open appeals more difficult.
The law making the council illegal led to one of the most effective speeches of the removal fight. John Ross spoke at Chatooga, Alabama after the law had been passed. He was dry and more informative than persuasive, but the fact that he spoke to the council was a great moral victory for the Indians. He showed that the Indians were still a Nation and this gave hope that removal could be resisted.

By the beginning of 1832 the major hope of the Cherokees was that they could keep going until the North could defeat Jackson in the next election. John Ridge and Elias Boudinot toured northern towns speaking to church and lyceum groups in an effort to raise money to further resistance and increase opposition to Jackson. During this tour, they spoke at Philadelphia, Boston, New York, New Haven, and Hartford.

If audience reaction was the standard used to judge effectiveness, they definitely were effective. The Liberator reported:

"The meeting was opened with a spirited address from the Hon. Leverett Saltonstail, after whom followed John Ridge, the Cherokee Chief, who riveted the attention of the audience while he delineated the rise, progress and present condition of his nation. He speaks the English language with singular precision, using no superfluous words and rarely violating the rules of grammar. His speech found a mighty response in the hearts, hands, and feet of his listeners." 34

34 The Liberator (Boston, Mass.) March 7, 1832.
The New York Commercial Advocate stated: "His voice is full and melodious, his language chaste and correct, his elocution fluent, and without the least observable tincture of foreign accent or Indian. Even his metaphors were rarely drawn from the forest, and he had little or none of that vehement action that characterizes the orators of uncivilized tribes."35

The Boston Patriot wrote: "Mr. Ridge . . . rose to address the audience and was greeted with great applause. His person is good, his manner free and graceful, and his accent peculiar, such as marks the Indian from the white man. His language was strongly figurative, though not strictly grammatical, but the more impressive, perhaps, on that very account, from its conformity to the Indian mode of expression . . . /made/ his voice distinct, and his action and elocution such as would grace an orator of the schools."36

If results were the standard used to judge the speeches, the Indians would be considered successful, for they collected a large sum of money, including eight hundred dollars at one meeting in New York.37

35 Cherokee Phoenix (New Echota) March 3, 1832.
36 Boston Patriot, March 21, 1832.
37 Cherokee Phoenix (New Echota) February 18, 1832.
Also, they persuaded their hearers of the injustices of Jackson's actions. The Commercial Advocate reported:

"We only wish that every man, woman and child in the United States could hear his [Ridge's] unadorned tale of truth, from his own lips. The President would then execute the laws, and the prison wails of Georgia would tumble like those of the Bastille . . . ."38

The primary reason for the Indians' success was not their eloquence or their argument; it was the fact that they were Indians. From the reviews previously given and others, it is clear that the northern audiences did not expect an Indian to be able to give a public speech. Therefore, any reasonable effort would receive greater acceptance than a similar effort by a white man. The Indians' "not strictly grammatical" speeches and "simple and unostentatious manner" struck an appealing balance between civilization and the image of a wild Indian.

From four fairly complete texts of the Indians' speeches, it can be seen that being an Indian was not the only reason for their success. They were also successful because of their ability to identify with the cherished beliefs of the audiences and elicit an emotional response.

38
Ibid.
to the plight of the Indians and their missionaries. Ridge and Boudinot were able to identify with the cherished beliefs of the northern audiences and thus create strong rapport or a bond of sympathy with them. The Indian speakers showed their respect and agreement with the audiences' leaders, ancestors, religion, and life style. In explaining why the Cherokee Council sent them North to speak Ridge expressed his admiration for their leaders: "\textit{The Council} said to us Go to the cities of the North, and let them know of our distress. Go to the land of that great man who has buckled on the armour of truth and eloquence, and nobly defended the Cherokees on the floor of Congress; go to the land of Edward Everett—\textit{applause}— Go to the city of that man who struggled for our rights to the last, and died in the cause of the Cherokees; the city of Jeremiah Evarts—\textit{some applause}—.\textit{The Boston Patriot} gave this account of Ridge's showing his esteem for an audience's ancestors: "On this spot, where he had the honor of speaking, the first resistance was made against the designs of Great Britain to enslave this people, and he was happy to be here to speak in behalf of people . . . ." Ridge also

\begin{itemize}
\item[39] \textit{The Liberator} (Coston, Mass) March 17, 1832.
\item[40] \textit{Boston Patriot}, March 21, 1832.
\end{itemize}
showed his acceptance of the religion of his audience. The same newspaper reports his saying, "if they [Cherokees] should fall he hoped they would fall like men . . . with the resignation of the Christian, and prove acceptable to the Great Master of Breath in the great day of account, when even a certain great military Chieftain [Jackson] will be compelled to acknowledge the power of a God!" 41 In a speech to a New York audience, Ridge spoke of the similarities of whites and Indians. The Commercial Advocate reported him as saying: "Although their complexions were not the same, yet their feelings, and the kindlier sympathies of their natures were. Their social relations were the same; their soil was prized by them as much as the white man's; they had equal reverence for the graves of their fathers; their firesides and their altars were as sacred; they loved their wives and their children as much as the white man could love!" 42

The Indian speakers added to their appeal by the use of emotional proof. The New York Commercial Advocate said their speeches were "full of pathos and feeling" and gave this account: "the simple story of their wrongs, related in the unsophisticated language of nature, went

41 Ibid.

42 Cherokee Phoenix (New Echota) February 18, 1832.
to the heart with irresistible power. . . . There was not an unmoved heart, nor an eye in the room, that did not glitter with the tears of pity."^43^ Boudinot and Ridge told of the crying of the Cherokee women, the women and children who would die on the trip, the cruelties of Georgia toward the Indians, the broken promises, the pain in leaving the graves of their fathers, how their homes and farms were being taken from them, how courts were closed to them and their annuities stopped. One emotional argument which had great appeal to these audiences was the pain and sufferings of the missionaries sent by the North to aid the Cherokees. The Advocate reported:

His narrative of the brutalities of the Georgia Guard towards the Missionaries, though related in the most artless manner, was sufficient to fire the blood, and rouse the indignation of every American deserving the name of man. These unoffending and guiltless men—our own fellow citizens of this boasted republic—were ignominiously seized like felons—they were chained with horses' trace-chains around their necks, and fastened, one to the neck of another horse, and dragged, with bleeding feet, through rough and tangled forest, over brake and bush, and bog and fen, at the point of the bayonet and even in sickness and with wounded feet, refused the privilege of riding their own horses. ^44^

^43^ Ibid.

^44^ Ibid.
The speeches of these two Indians were full of military terms. They used such terms as: protecting shield, victory, battle, fought, fall, pillaged, might, crushed, soldiers, aggression, weapons, drove, and strike quickly; they even described their speeches as "to hold a battle." By using the military metaphor, the Indians were speaking in the language of the political rhetoric of the age of Jackson. Perry M. Goldman stated: "During the Jacksonian era, the Democratic and Whig politicians evolved a military rhetoric and style which has since become commonplace in our culture." The Indian speakers were thus not only in tune with their audiences' beliefs and emotions, but also with their language.

Ridge and Boudinot were successful in their speaking to northern audiences. However, their tour had very limited effects on the outcome of their struggle. Their direct appeal to their audiences could not be duplicated by the newspaper reports of their speeches. The major appeal of an Indian's speaking could not be felt by someone reading their speeches, nor could the emotional arguments carry as much weight. Therefore, the success of their tour was limited to the few thousand who heard the speeches.

The Northern Supporters

The Indians were not the only anti-removal speakers in the North. Large numbers of speeches were delivered by whites from pulpits and platforms in support of the Cherokees. The Northern liberal religious community ranging from sewing circles to abolitionist groups took an interest in the issue. In *The Presidential Campaign of 1832* Samuel Rhea Gammon says when speaking of the removal issue that: "The opposition seized upon this question as the first ground for attacking the administration."

The ultimate goals of the liberals and politicians were different. The liberals were primarily interested in preventing removal and spoke against Jackson in an effort to obtain that goal. The National Republicans were primarily concerned with defeating Jackson and spoke against removal in an effort to obtain that goal. The difference at times is hard to distinguish. Some speakers appear to fall into both groups: a liberal politician who honestly wants to obtain both goals. However, there is value in examining these groups separately.

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46  Coulter, p. 221.

The speeches of the liberals were characterized by a two value analysis of the issue with removal and its supporters described with devil or low value terms and the cause of anti-removal and its supporters being described with God terms or high value words. Removal was described as injustice, rank injustice, an atrocious crime, inhumanity, unjust humanity, perverted humanity, oppressive, injurious, offensive, selfish, forceful, heartless, cruel, a measure of tyranny, and unconstitutional. Protection of the Indians was referred to as honest, fair, lawful, humane, honorable, faithful, Christian, and as a measure of liberty. Those who supported removal were dishonest and heartless, while those opposed were lovers of God and liberty. This double value analysis has strong weight because it clearly places good on one side and evil on the other and makes one choice easy and the other difficult to justify.

In addition to the simple use of value terms, the liberal speakers usually appealed directly to fair play, justice, national honor, and God. Fair play dealt with the moral obligation to help the Indians because of their kindness to white settlers and their advancement toward civilization. Franklin Sturgis told "a large and respectable meeting of the inhabitants of South Lee and its vicinity, assembled for the purpose of taking into consideration the situation of the Cherokees" of the fair treatment the Indians gave the Pilgrims: "That little pilgrim
band, fleeing their country's wrongs, her despotism and degradation, found in the unsuspicious and confiding native, that hospitality and kindness denied them on their own soil."\textsuperscript{48} Heman Humphrey made the same point in a speech at Amherst: "When we were few and they were many; --we were weak and they were strong, --instead of driving us back into the sea, as they might have done at any time, they cherished our perilous infancy and tendered to us the sacred emblems of peace. They gave us land as much as we wanted, or sold it to us for nothing."\textsuperscript{49} This appeal to fair play because of the noble nature of the Indian is the beginning of the myth of the noble savage. Humphrey clearly states the point: "A nobler race of wild men never existed in any age or country."\textsuperscript{50} Unfortunately for the Cherokees, this concept was in its infancy and did not carry the weight of an accepted belief. However, the argument was appealing to a humanitarian audience such as those attending anti-removal meetings.

\textsuperscript{48} Cherokee Phoenix (New Echota) April 14, 1832.

\textsuperscript{49} Heman Humphrey, Indian Rights and Our Duties: An Address Delivered at Amherst, Hartford, etc. (Amherst: J. S. and Adams and Co., 1830), p. 6.

\textsuperscript{50} Ibid.
Fair play was also the basic emotion appealed to when the speakers talked of Cherokee advancement. The Southern Indians, having taken the white man's advice and adopted his ways, should not be rewarded by removal. He had earned the right to remain on his home land. "Tristram Burges, delivered at the public dinner given to him in the city of N. York" these thoughts on Cherokee advancement: "Under the advisement and instruction of Mr. Jefferson, they have succeeded in establishing a republican form of government. . . . . The school-house and the meeting-house have been built by them in the village as our pious ancestors reared the like buildings in ours. In the one their children are taught in our language and their language; in the other, their whole people meet together, on our Sabbath, in the name of the Savior of the World, to worship, the God of the whole earth."51 Mr. Ingersoll made the same point at a dinner to honor William Penn: "... these are no longer savages. They have . . . everything which can distinguish them as a civilized men. They have schools, and churches and printing presses: government and laws. They are herdsmen agriculturists, mechanics, . . . . Every succeeding President has proclaimed their improvement in the arts

51 The Republican Banner (Williams-Port, Maryland) April 13, 1831.
of civilized life . . . The question is whether these men . . . shall be . . . driven . . . among unknown regions . . . to suffer, and languish, and die. . . ."

The liberal speakers made an appeal closely related to fair play when stressing the justice of Indian protection. While fair play was a moral obligation, the argument for justice was a legal obligation. The Cherokees were granted rights under the laws and treaties of the United States and should not be forced to remove. Every pro-Indian speaker talked of the United States' legal duty to maintain the Cherokees in Georgia. In a speech at Faneuil Hall, Evarts made the point: "We are bound to afford this protection . . . by the most explicit stipulations made by our nation, in the exercise of its highest attributes of sovereignty; stipulations made solemnly, deliberately, and many times repeated." Humphrey said: "Solemn Treaties have been made with them, by all our Presidents, and sanctioned as the constitution directs, by the Senate, with all the formalities of its high prerogative. In every one of these treaties the faith of the nation is pledged." To a group of people who prided

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52 Southern Reporter (Milledgeville, Ga.) December 4, 1831.
53 Boston Patriot, October 23, 1830.
54 Humphrey, p. 23.
themselves on being law-abiding citizens and supporters of justice, the treaty argument was strong.

Americans during this period were increasingly concerned with national honor and showing the world the superiority of their noble experiment. Webster in his Plymouth Oration had stressed this point. Increasingly, the great American myths were beginning to play an important part in the thinking of Americans. It is little wonder that national honor was frequently used as a reason for supporting the Indians. Mathew C. Patterson, speaking at the Masonic Hall in New York City, told of a congressman of Irish ancestry who voted for the Indian bill: "On the struggles of the oppressed people of that glorious land for their freedom, all the lovers of liberty have looked with the deepest interest; and this country has been the place of refuge for the exiles of Erin. Flying from persecution at home, it was expected that they of all men would be the last to indicate oppression in the country of their adoption. But in this instance too we have experienced a most melancholy disappointment." Sturgis stated: "Let us then extend to them [The Cherokees] the hand of friendship, and remember that the glory of our Republic like those far back on the scroll of time, may,

55 Cherokee Phoenix (New Echota) November 20, 1830.
through ingratitude and injustice be consigned to the grave of a country."56 Heman Humphrey clearly stated the point:

A third motion for earnest remonstrance at the present crisis, is found in the grand experiment which we as a nation are now making, before the whole world, of the superior excellence and stability of republican institutions. How many thousand times has the parallel been proudly drawn by our statesmen and orators, between this country and every other nation under heaven. How triumphantly has it been proclaimed in the ears of all mankind, that here, at least, all the rights of the weak as well as the strong have found a sure protection. But let the stroke which is now impending, fall upon the heads of the poor defenceless Indians, and who will not be heartily and forever ashamed of all this boasting? 57

Pro-Indian speakers left little doubt on which side of the issue God stood. Either by inference or direct reference they made the Indian cause His cause. Most of the speakers viewed Him as a vengeful God who would punish those who did not support the Cherokees. In writing of this period Frederick Jackson Turner tells why this appeal would have great impact to the many New England audiences:

56 Ibid., April 14, 1832.

57 Humphrey, p. 23.
Puritanism still laid a deep impress upon the people. Calvinistic conceptions, a blend of individualism and social responsibility, were still at work. Men not only placed themselves under a rigorous self-examination to determine whether or not they were among the saved, but they also felt the community sense of responsibility for sin. It was a part of the Calvinistic doctrine and of the New England conscience, that man was his brother's keeper. Herein lies the explanation of much of New England's restraint, her intellectuality, and her reforming instinct. . . . In the period of this volume, businessmen as well as statesmen and ministers took frequent stock, in their diaries, of their moral condition and were mindful of death and the final reckoning. 58

Patterson spoke of the removal as a "measure of oppression and tyranny, which, if carried into effect, will bring down the judicial vengeance of Providence." 59 Humphrey quoted Ezekiel and Moses, warning of God's wrath on those who inflict pain on the poor and needy. Humphrey first quoted Ezekiel: "The people of the land have used oppression, and exercised robbery, and have vexed the poor and needy . . . . Therefore have I poured out mine indignation upon them; I have consumed them with the fire of my wrath. . . ." He next quoted Moses: "Thou shalt neither vex a stranger nor oppress him. . . if thou afflict them in any wise. . . my wrath shall wax hot, and I will kill you


59 Cherokee Phoenix (New Echota) November 20, 1830.
with the sword . . ." Humphrey's closing sentence is this warning: "The Lord is a holy God, and he is jealous!"\(^{60}\)

This appeal to the religious convictions of the northern audiences had to be one of the most effective of the removal fight.

Most of the arguments presented by the northern liberals were directed to the emotions and not to the intellect. Little documentation was used by these speakers and when it was, its purpose was to prove the advancement of the Cherokees, the treaty obligations of the United States, or the noble character of the Indians, all of which related to the emotional arguments previously mentioned. The humanitarian aspects were stressed with little being said about the self interests of the audience in protecting the Indians. One of the very few, if not the only, appeal to self interest was made by Humphrey:

A second motive, then, for stirring up all the moral power of this nation at this time, is found in the danger which threatens our own liberties. This suggestion, I am aware, will be ridiculed by many and regarded by most as the offspring of a terrified imagination. Let those who choose, cry, "Peace and safety" and fold their arms and wait for the march of events. But if the people set still, and look calmly on, while the Indians are abandoned to their fate, in violation of the most

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\(^{60}\) Humphrey, pp. 3 and 24.
solemn national compacts, what security have we that the same government . . . will not turn . . . its power and patronage against the constitution itself? How long will it be a blessing to be born and live in America, rather than in Turkey or under the Autocrat of all the Russians? 61

One of the major weaknesses of the anti-removal rhetoric was that it was directed to abstract values of humanity, justice, and fair play with little attention being directed to self interests. Humphrey, by qualifying his statement as being open to ridicule, shows the difficulty of relating Cherokee rights to the rights of the United States citizens. The essential nature of a rhetoric of self interest is pointed out by Van Every: "In the privacy of the voting booth the American voter thought first of his own interest. However vocal may have appeared his prior sympathy with an ethical cause at the moment of stamping his ballot his decision was governed by more immediate, material and egoistic considerations." 62

The primary result of the speaking of the northern liberal community was the sending of memorials and petitions to Congress. The citizens of the North sent thousands of petitions with more than a million signatures to Congress

61 Ibid., pp. 22-23.

62 Van Every, pp. 259-260.
in favor of the Indians. These memorials were usually the product of a town meeting called to protest the Indians' treatment. The memorials stressed the treaty obligations of the United States. A memorial from "The Inhabitants of Pittsburgh" stated: "the right of the Indians to the soil has been recognized by many solemn treaties. . ." A group of citizens from New York wrote "That these treaties were solemnly sanctioned. . . and that their stipulations have not been altered." A group of citizens of Boston on January 21, 1830 sent this message: "the right of their country has been implicitly acknowledged in treaties made . . . from the arrival of the first English colonists . . . to the present day . . ." An examination of the memorials sent from Maine shows the extent of interest in the Cherokee issue. Memorials were sent from these towns in Maine: Augusta, Bath, Bluehill, Brunswick, Buckspot, Castine, Chesterville, Eden, Edgecomb, . . .

63Lumpkin, p. 47.
66"Rights of the Indians": an undated memorial from the inhabitants of Boston found in the Duke University Treasure Room.
Gray, Hollowell, Hebron, Kennebec, Kennebunk, Kittery, Lincoln (county), Mount Desert, North Yarmouth, Otisfield, Phipsburg, Powell, Prospect, Sidney, Topsham, Vassalborough, Waldoborough, Waterford, Winthrop, and Wiscasset. Despite the memorials, Congress never supported the Indians. The Senate and House had debated the issue and the appeals on the basis of treaty rights did not sway votes. Van Every explains why the number of petitions did not influence the outcome of the Indian issue: "It had been made clear to their shrewd judgment that it was safe for a congressman or senator to vote for removal whenever this seemed a service to the larger aims of his party. His constituents might compose righteous memorials and hold mass meetings of vociferous protest but it was not an issue on which they were very likely ever to turn him out of office."68

Political Rhetoric

The importance of the removal controversy as a political issue can be seen in the fact that William Wirt was nominated as the presidential candidate for the Anti-Mason


68 Van Every, p. 262.
Party and John Sergeant the vice-presidential candidate for the National Republican Party. Van Every points out the significance of the issue: "In the 1832 presidential election Henry Clay's National Republicans and their allies had made the removal question the central issue upon which they attacked the record of the administration."\textsuperscript{69}

The political speeches had some common characteristics with the liberal speaking (fair play, justice, and double value analysis), but they were mainly anti-Jackson rather than pro-Indian. The speeches stressed the failure of the Jackson administration to deal fairly with the Indians. Jackson was painted as a villain and the people were asked to vote against him rather than to protect the Indians. Daniel Webster in a speech at Worcester attacked the president for not enforcing laws and the Supreme Court's decision while letting Georgia keep the missionaries "immured in a dungeon." He stated, "the executive has . . . refused to enforce the execution of laws actually passed. An eminent instance of this is found in the course adopted relative to the Indian intercourse law of 1802 . . . . The President pays no more regard to the missionary decision than to the act of Congress itself. The missionaries remain in prison, held there by a condemnation under

\textsuperscript{69} Ibid, p. 259.
a law of a State which the supreme judicial tribunal has pronounced to be null and void." The "Address of the National Republican Convention" made this attack on Jackson, "the President, instead of protecting the Indians against these acts of wholly unauthorized violence, has openly countenanced the pretensions of Georgia and instead of employing the armed force of the United States in their defense, actually withdrawn that force at the instance of the offending party from the scene of action and left the unoffending natives entirely at the mercy of their enemies." The Worcester Convention Address also attacked the President on the Indian issue: "He has done nothing to rescue these missionaries from the cruel imprisonment to which they have been condemned by laws pronounced unconstitutional by the Supreme Court and he permits the State of Georgia under the same laws to seize and parcel out by lottery the lands of an unprotected and dependent tribe guaranteed to them by treaty stipulation . . ."


71 Boston Patriot (Boston, Mass.) December 31, 1831.

72 Ibid, October 17, 1832.
Henry Clay, in a speech to the National Republican Young Men, alluded to Jackson's failure to enforce the laws:

"What we want is a practical, efficient and powerful Union—one that shall impartially enforce the laws towards all; whether individuals or communities who are justly subject to their authority—a Union which if it shall ever be deemed necessary to chide one member of the Confederacy for rash and intemperate expressions, threatening its disturbance, will snatch violated laws and treaties from beneath the feet of another member and deliver Free citizens of the United States from unjust and ignominious imprisonment."

The political rhetoric focusing on Jackson and often more on the plight of the missionaries than the Indians was of limited value in aiding the anti-removal cause. When Jackson was reelected, many of the political "friends" of the Indians soon forgot the removal fight. It would appear that many of the National Republicans spoke for the Indians not out of conviction but for their own gain.

Support for the Indians came from three additional sources: the Massachusetts legislature, the Indian missionaries, and a few southerners. One of the strongest supporters

73 Southern Recorder (Milledgeville, Ga.) May 24, 1832.
of the Cherokees, Edward Everett, was mainly responsible for action of the Massachusetts legislature in support of the Cherokees. He was head of a select committee of the senate which presented a lengthy report condemning Georgia for her actions against the Indians. The committee presented three resolutions which were adopted by the senate and then sent to the legislatures of all the other states. The preamble to the resolution reads:

"Whereas certain late proceedings of the government of Georgia are of a nature to create very serious apprehensions in the minds of the people of the Union respecting the integrity and permanence of our civil institutions . . . We resolve that:

1. . . . the Federal Constitution, the laws of the United States . . . , and all treaties . . . , are the Supreme law of the land and that the Judges in every State are bound thereby, 2.

. . . . no State can rightfully enjoin upon its executive affairs to disregard or resist by force any process or mandate which may be served upon it . . . , 3. it is the duty of the President of the United States, to take care that the constitution, the laws of the United States, and the treaties made under their authority, are faithfully executed . . ." 74

Only Connecticut supported the resolutions of Massachusetts. John L. Megquier, chairman of a committee of the Maine legislature assigned to investigate the resolutions, concluded: "The committee does not perceive. . .

74 Boston Patriot (Boston, Mass.) February 2, 1831.
any occasion for the legislature of Maine to . . . express a censorious opinion upon the conduct of any sister state."\(^{75}\)

Another reason for their rejection might have been the growth of the Jackson party in Maine. The *Eastern Argus* pointed out: "In 1828 the friends of Jackson in Maine . . . were in truth but as a speck . . . In September /1829/. . . the same party had grown and strengthened into an equal number with their opposers . . . ."\(^{76}\) Whether out of a desire to avoid sectional rifts or political considerations, the arguments of Everett and the Massachusetts legislature could not persuade Maine or the other states (besides Connecticut) to support their resolutions.

**Missionaries**

The Cherokee missionaries (except for the Baptists) were strong supporters of the Indians' removal fight. It could easily be argued (as Georgia did) that they overstepped the bounds of their missionary role. Their efforts mainly took the form of encouragement and advice to the Indians and letter writing to gain northern support. They seldom spoke in an effort to influence the issue. However,

\(^{75}\) *Eastern Argus* (Portland, Maine) April 15, 1831.

\(^{76}\) Ibid., May 4, 1830.
the different sects did meet once to discuss the issue, and this meeting resulted in a joint statement of their position. They spoke at length of the advances being made by the Cherokees toward civilization. Their statement was very persuasive because it gave the appearance of being realistic. The claims made by the missionaries were not exaggerated accounts of great accomplishments. They were, instead, reasonable assessments qualified with such comments as: "the progress of others has but commenced," "though many fail in this respect," "though in this respect there is still room for improvement," "a few are still living in a state of polygamy," "conjuring, however, is still, to a considerable extent, practiced by the old," and "in regard to intemperance there is much to deplore." 77 If the missionaries had chosen to overstate their case, they would have played into the hands of the Indians' opponents who claimed the missionaries exaggerated their accomplishments. As the statement reads, they not only presented a believable view of the Indians, but also they refuted the charges of their distractors.

77 Hampshire Gazette (Northampton, Mass.) February 9, 1831.
Georgia arrested many of the missionaries at this meeting for failing to get a permit to live in Indian territory. Samuel Worcester was so committed to dramatizing the plight of the Cherokees that he refused clemency and remained in jail. However, he virtually wasted a grand speaking opportunity which could have been used to gain support. Worcester had a chance to tell the court sentencing him "why it should not be pronounced." He answered in two short, nondescript sentences that "Georgia had no right of jurisdiction over the territory in which I reside. . . ."78 Worcester was well informed and skilled in rhetoric as his letters to newspapers verify, so why he chose not to deliver a message of real interest is a mystery.

The Southern Supporters

The extent of anti-removal thought in the South is very difficult to measure. Dissent against southern policy was discouraged and people with minority views often remained silent. This point was made in a speech by Charles Wilkes of Natchez at one of the few pro-Indian meetings in

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78 Southern Recorder (Milledgeville, Ga.) September 29, 1831.
the South; he stated that he "had learned . . . that few, although many felt an interest, few were willing to step forward as the public champions of the poor children of the forest."79

Dissent was discouraged mainly on the basis of sectional bias—love of the South and dislike for northern ideas. Speaking against removal was equated with speaking against the South. The Southern Recorder reported that opposition to removal was "inimical to the best interests. . . of the southern states, and entertaining northern instead of southern thoughts."80 Some sections of the South were less subject to this sectional appeal and sent memorials to Congress. Of the two such memorials found, one was from Wheeling, Virginia 81 (a town which remained loyal to the Union during the Civil War and was part of the new state of West Virginia) and Tennessee82 (a state with many loyalists during the Civil War).

79 The Natchez (Natchez, Miss.) April 3, 1830.
80 Southern Recorder (Milledgeville, Ga.) August 9, 1825.
In some ways more western than southern, Tennessee was probably the southern state with the most anti-removal feelings, although it was not a large amount. One of the Tennessee congressmen, the famous frontiersman Davy Crockett, voted against the removal bill, and some Tennessee ministers preached against removal. Woodward gives this account of one sermon: "At a Methodist camp meeting in the South, a minister depicted a scene in hell in which President Jackson, together with his cohorts, was called to account for the eviction of the Indians from their ancient homelands."\(^{83}\)

As might be expected, there was little support for the Indians in Georgia. Robert Campbell, a resident of Savannah, did send a memorial to the Georgia legislature in favor of the Indians: "The impolicy \(^{Sic}\) of the course recommended by the committee of 1827, is as obvious as its injustice and want of faith."\(^{84}\) This document is eighteen pages long and the senate "after hearing about two pages, suspended its further reading, upon the ground of disrespectful language; but referred it to the Joint Committee on

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84 Robert Campbell, "To the Honourable the President and Members of the Senate of the State of Georgia," November 24, 1828. This memorial can be found in the Gilcrease Museum, Tulsa, Oklahoma.
The state of the republic. This committee, however, upon the same plea, refused to hear any part of it read.\textsuperscript{85}

The greatest controversy in Georgia over the Indian issue dealt with the treatment of the missionaries. Even some of those who favored a firm policy toward the Indians were opposed to imprisonment of the missionaries. That the stand of the missionaries was swinging public sentiment to the side of the Cherokees was suggested by a debate held by a literary society in Lawrenceville, Georgia. The question was "Ought the Georgia Guard to be continued in the Cherokee Nation?" and the negative won, nine to three.\textsuperscript{86}

The most interesting speaking occasion in Georgia supporting the Indians occurred in Milledgeville and \textit{The Southern Recorder} reported: "A meeting was held in this town on Thursday evening last, for the ovowed object of raising money to aid the Cherokees in prosecuting their suits against the State of Georgia. We were not present, but are informed that a speech was made by Ridge, an Indian Chief, in which he indulged in the most violent coarse

\begin{footnotesize}
\begin{enumerate}
\item Ibid. in a brief explanation before the memorial.\textsuperscript{85}
\item Starkey, p. 143.\textsuperscript{86}
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and vulgar abuse of the President and the Government of Georgia." \(^{87}\) Of what the "coarse and vulgar abuse" consisted, there is no information provided. The Recorder's opinion of the meeting was clear: "We are happy to learn that there was one man, although an uniform opposer of the administration, and in favor of assisting the Cherokees whose honorable feelings would not permit him to sanction such proceedings. But this gentleman when expressing his disapprobation of the Indian's abuse of our government was hissed down!" \(^{88}\)

The lack of support for the Indians in Georgia and the South is not surprising considering the major rhetorical appeal for the Indians was as a defenseless child of the forest. The emotional response sought could not be obtained from most southerners who viewed the Indians as a violent and inferior people. The vast majority of the southerners wanted removal in order to strengthen their section and to provide new land for white settlement.

\(^{87}\) Southern Recorder (Milledgeville, Ga.) April 5, 1832.

\(^{88}\) Ibid.
Conclusion

The Cherokees were effective when speaking to other Cherokees if any standard besides results is used as the measure. However, they were unsuccessful in keeping the tribe united against removal because of the harassment of Georgia and because of her laws. They were also effective when speaking in the North, but their failure to reach more people directly hurt their cause. To have prevented removal the Indians needed to devote more time and effort to reach more of the Northern populace.

The other groups speaking for the Cherokees were unable to show the Indians to be an asset to America or removal as a harm to America. In short, they failed to provide the average citizen concrete reasons for him to support the Cherokees.
Chapter V

GEORGIA'S ADVOCATES

Jackson's Democratic Republican Party (not to be confused with the National Republicans— their opposition) and Georgia herself were the major advocates of Indian removal. Unlike the Cherokees, the Georgians seldom left the state to discuss the issue. Except for the congressional debates, they refused to speak out in the North. As in the Supreme Court proceedings, the decision not to speak was a rhetorical strategy designed to reduce agitation and improve the change of removal. However, when in Georgia, they were not reluctant to voice their opinions on what policy they should follow toward the Cherokee Indians.

Georgia

If only the congressional speeches of the Georgia delegates were examined, a false view of their character and motivations would be obtained. When debating the northern senators, the Georgians were sensitive of their state's honor and were basically of one mind in defending its position. They were unwilling to compromise on any of the issues and would counter or ignore all points. In the course of the debate little if any ground of common agreement could be found among the advocates.

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The speaking of the Georgians in the debate could best be described as a rhetoric of obstinancy.

This rhetoric has generally led to a misunderstanding of Georgia's position and motivation. This misunderstanding has also led to an almost universal condemnation of Georgia's role in the removal of the Cherokees. A better understanding of Georgia's position and motives can be gained by an analysis of their speeches to Georgia audiences.

To comprehend the stand Georgia took on removal, one has to first know how they viewed the Indians. Many Georgians had firsthand experience with the Indians who lived in their state and found most of them to be ignorant and totally uncivilized. In an address to the legislature Governor George Gilmer stated: "The aboriginal people are as ignorant, thoughtless and improvident as formerly without any of the spirit and character which distinguished them when war was their employment."¹ Judge Augustin S. Clayton in the decision of the trial of John Saunders (a Cherokee) gave this view of the Indians regarding their right to testify: "The same authorities that exclude slaves, infidels, convicts and idiots from giving testimony in courts of justice, on account of defect of moral principle can do the same thing towards any other class of

persons whom they . . . may deem to be labouring under the same disability." 2 Many Georgians not only viewed the Indians as idiots, but saw a danger from their close proximity. In a message to the legislature, Gilmer explained "During the last session of the Legislature, complaints were made of depredations having been committed in Lee county, by parties of Creek Indians, who crossed the boundary line in search of such means of subsistence as are to be found in our parts. Since that period, similar complaints have been made by other frontier countries and great apprehension has been more than once felt. . . ." 3

Given the view that the Indians were ignorant and dangerous, one could not expect a Georgian to oppose removal. It is easy to condemn them from a distance of a thousand miles or a hundred years where different Indian attitudes are not difficult to hold. The Athenian made this point:

"It is easy matter to pen high-toned speculations, fraught with the best feelings of kindness and humanity, towards these people, when they are viewed through the softening atmosphere of a thousand miles. But go among them—see the degradation that they are already sunk into—the adject proverty which they are in--and humanity calls loudly for a different order of things." 4

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2 Southern Recorder (Milledgeville, Ga.) April 10, 1830.
3 Georgia Messenger (Macon, Ga.) November 4, 1828.
4 Athenian (Athens, Ga.) August 11, 1829.
The view of the Indian as a savage was continually expressed in the congressional debates. The Georgia delegates also told of the kind feelings they had for the Indians, but these claims were hard to believe because of Georgia's great self interest in removal and their obvious prejudice against the Cherokees. When Georgians spoke to Georgians, their believability was greatly increased, for there was nothing to gain by expressing false feelings of kindness toward the Indians. The Georgia speakers in their own state showed a genuine concern for the Indians. The high value Georgia placed on honor demanded a just policy, as they saw it, to the Indians. In a charge to a grand jury, Judge Clayton stated: "To our citizens I would say, let us falsify the prophecies that have been made as to the treatment which the Indians are to receive at our hands, by exercising towards that unfortunate people, the utmost kindness, justice, and humanity. Their personal rights must be respected." A proposed legislative resolution contained this view of the Indian lands: "[Georgia] must admit that she cannot now proceed to the occupancy of said lands, without violating her own sense of right and also the Indian right of possession." During this period,

5 Cherokee Phoenix (New Echota) October 1, 1830.
both governors made suggestions to the legislature which were designed to provide justice to the Indians while they remained in Georgia. In an address, Gilmer proposed the repeal of the law making it illegal for Indians to testify in courts: "The present law exposes them to great oppression, whilst its repeal would most probably injure no one. Attempts have been made to strip them of their property by forged contracts, because of the impossibility of defending their rights by the testimony of those who alone can know them." Wilson Lumpkin proposed legislation which would protect the Indians as well as their property:

"By our existing laws their homes and improvements are secured to them, so long as they may choose to remain thereon; but these laws are by no means adapted to the security of their persons and property. Therefore special and appropriate legislation, is most earnestly recommended; whereby these objects will be secured to them, and their rights be as effectually shielded from violation, as those of the white man. It is due to the character of the State, that this dependent people should be protected by laws as liberal as may be consistent with their moral and intellectual condition."  

Considering Georgia's striving for justice and honor, her pushing for Indian removal, imprisoning the missionaries, and ignoring the Supreme Court appears inconsistent. They were not, for Georgia viewed these actions as not only justifiable but the only moral stand

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7 Ibid., p. 14.
8 Georgia Journal, 1832, November 6, 1832.
they could take. The removal of the Cherokees was for the benefit of the Cherokees. The Georgia speakers points to two reasons why the Indians should remove: first, they could only be degraded by contact with the surrounding whites and second, west of the Mississippi they could advance toward civilization. Representative Wood of McIntosh made the first point in a speech to the legislature: "They are innately indisposed to civilization, and the moment you place them within its pale, or bring them in contact with the civilized man, you destroy their original national character, and place them on the road to degradation and inevitable destruction."  

Mr. Terrill of Franklin County made the same point: "To save them from the vortex of destruction, humanity, religion, and every other consideration tells, yes warns us to pursue, with regard to these unfortunate people a mild, yet settled and energetic policy [of removal]." In an address to the legislature, Governor Gilmer argued that removal would enable the Cherokees to advance: "The government proposes to remove all the Indians within the limits of the State, to an extensive territory, which belongs to it, beyond the Mississippi, where they can be protected and aided in their advancement in civilization. The humane and intelligent are everywhere concurring

9 The Federal Union (Milledgeville, Ga.) January 12, 1832.
10 Ibid., February 1, 1831.

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with the views of the Government." Representative Wood made the same point in the House: "They will go to a rich and fertile region, the title to which will be guaranteed to them forever; there reposing on a soil, in perpetuity, the proposed mild and hopeful work of civilization may progress without let or hindrance." If the Indians did not see the advantages in going and the disadvantages in staying, the Georgia officials still wanted to deal fairly with them. Georgia would let those who wanted to stay remain. Gilmer stated to the legislature: "Permit me particularly to recommend, that you pass resolutions authorizing the President to grant reservations in fee of such quantities of land as may be amply sufficient for their support, to all the Cherokees who are actual cultivators of the soil to any extent, and who may desire to remain in the State and subject to its laws." While Georgia's attitude toward the Indians was unfavorable, the state's honor would not allow most Georgians to advocate a policy they viewed as cruel or unjust.

The treatment of Cherokee missionaries presented another difficult problem in justifying actions that others viewed as immoral. The choice to arrest, convict,

11 Southern Recorder (Milledgeville, Ga.) December 19, 1829.
12 The Federal Union (Milledgeville, Ga.) January 12, 1832.
and imprison Christian ministers is a hard decision for a Christian community to make. Georgia's view of the missionaries' actions left them no other alternative. In presenting the decision of the Gwinnett Superior Court in the case of The State vs. The Missionaries, Judge Clayton presented Georgia's views, but first he gave this explanation for his extensive analysis:

"As I sincerely believe this prosecution has been sought and endured, I will not say in an unchristian temper, but certainly in a great spirit of opposition to the laws, for political effect, I deem it my duty to make a few remarks on this occasion, not by way of vindication of the public authorities, for they need none, but to prevent a misdirection of public opinion, and with hope that it may undeceive many an ignorant and innocent individual who has been seduced into a similar transgression. . . ."14

Judge Clayton proceeded to justify the actions of Georgia. His first point was that the missionaries after first being arrested were released and thus had an opportunity to correct their illegal actions, but they continued to break the laws of Georgia.15 He then gave one of the main reasons why the missionaries had to be punished—contempt of Georgia's laws: "It is for the contempt and disobedience of one of her necessary laws to put down this influence, that the individuals at the bar have been tried and convicted."16 Clayton put the

14 Southern Recorder (Milledgeville, Ga.) September 29, 1831.
15 Ibid.
16 Ibid.
missionaries' action into perspective by comparing it to the relatively unpopular doctrine of nullification:

"Though this is a grave subject one is almost induced to smile, and in the language of some of the counsel for the accused, ask, if this be not the doctrine of Nullification—can it be possible that we have come to this, that every man has a right to throw himself upon his original sovereignty and obey just laws as he pleases." 17

The last reason given to explain why punishment of the missionaries was an honorable action was the one most frequently used and the one Judge Clayton spent the most time developing—the missionaries were not acting in a religious manner:

It /the missionaries' violating the law/ cannot be excused upon any principal of sound religion or a rational and discreet desire to serve the cause of piety, for surely that religion which requires us to 'render tribute to whom tribute is due; custom to whom custom; fear to whom fear; honor to whom honor,' never could demand such resistance to the laws of the land. . . . To prevent then the accomplishment of a work so desirable /removal/, is not only presumption, of the highest character against the sages who planned it, but is cruelty to the Indians, ingratitude to the country, and what is worse than all, seems when persisted in to involve a consequence with which no prudent man should dare to trifle. 18

17 Ibid. Georgia was accused by many (obviously including the defense counsel) of nullifying the Intercourse Act of 1802. Jude Clayton makes good use of this argument in pointing out the missionaries were doing the same thing. The comparison is a strange one for him to make, for he is one of the few outspoken advocates of nullification in Georgia.
This attack was not only directed against the missionaries, but against the whole northern religious establishment.

In another case Clayton stated:

"Another class of men, styling themselves heralds of the cross, with an officiousness ever characteristic of pretended piety, and who follow religion less for its hopes than its honors, have lent themselves as willing tools to the projects of political ambition in this crusade against Georgia... To the truly pious no part of it is applicable; and no man of this character need take any exception to the remarks. It is solely intended for a class who certainly do not reside in the South, but who call themselves the learned and efficient clergy, of whom I would say to the people of this nation—Beware!" 19

That the missionaries for their shameful action should stay in jail was to many Georgians an honorable reason to disregard the ruling of the Supreme Court. However, it was not the main reason. Most Georgians viewed the Union as a compact with the state's sovereignty intact. To acquiesce in the Court's decision would be to give up the rights of the states. Georgia was determined to take a course of honor and justice and stand up to what she called "usurpation," "interference," "encroachment," and "invasion." In an address to the legislature Lumpkin stated: "The Supreme Court of the United States, have not only assumed jurisdiction in the cases of Worcester and Butler, but have by their decision, attempted to overthrow that essential jurisdiction of the State, in

19 Cherokee Phoenix (New Echota) October 1, 1838. Emphasis added.
criminal cases, which has been vested by our constitution in the Superior Courts of our own State." In a resolution dealing with the Tassel case, the Senate and House of Georgia stated: "That they view with feelings of the deepest regret, the interference by the Chief Justice of the Supreme Court of the United States, in the administration of the criminal laws of this State, and that such an interference is a flagrant violation of her rights." John Peabody, Foreman of the Grand Inquest of Washington County, states: "The Supreme Court . . . in the late decision /Worcester/, sacrificed states rights on the altar of fanaticism and run diametrically opposite to the principles it has heretofore, and not long since, loudly maintained: That not only Georgia but every state in the Union is sovereign . . . ." The Augusta Constitutionalist stated the feelings of the people of Georgia: "Not a paper reaches us from any part of the state, a considerable portion of which is not devoted to the Supreme Court and its decision. The meeting at Forsyth . . . has expressed with truth the sentiments of indignation which pervades Georgia. No doubt meetings will be held in most of the counties, and the result of these deliberations will show how sincerely our people lament while they

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21 Georgia Journal, 1830, p. 447.

22 Southern Recorder (Milledgeville, Ga.) April 12, 1832.
admit the necessity which circumstances impose upon them, of refusing obedience to the extra judicial mandate of the Chief Justice . . . ." At the public meetings held in Monroe County the decision was condemned and the participants "Resolved, That we will hold our personal services and means at the disposal of our State Executive at all times when he may call upon us to save the state from such a judicial despotism." Georgia was so determined to keep the missionaries in prison that they were willing to face civil war to do it, for states' rights was a just and honorable cause.

In maintaining a strong stand for Indian removal, Georgia was not only defending her honor, but she was also defending the South against the North. The Macon Telegraph stated: "The greater part of this affected sympathy we must believe has been sheer hypocrisy, to hide other and darker motives. The politicians of the North hate to see the growth of the South and the consequent wane of their own preponderance in Congress. Remove the Indians, and the South acquires almost instantly . . . population and power." The resolutions of Massachusetts and Connecticut certainly added to the sectional mistrust.

23 *Jamestown Journal* (Jamestown, N. Y.) April 18, 1832.
24 *The Fredonia Censor* (Fredonia, N.Y.) April 11, 1832.
25 *Macon Telegraph* (Macon, Ga.) June 12, 1830.
developing over the Indian issue. Governor Gilmer brought the matter before the Georgia legislature: "Your attention is particularly called to those resolutions from Massachusetts and Connecticut, charging this State with design of dissolving the Union . . . . It is much to be regretted that the prejudices and unfriendly feelings which have already been excited among the people of different sections of our country, by jarring and local interests, should be embittered by unnecessary intermeddling of one state with the affairs of another."26 A select committee of the legislature reviewed the resolutions and in a lengthy report27 concluded Georgia was completely innocent of all charges. It would appear that the Georgians felt that one measure of an action is who opposes it. If one's adversaries are of low character, then the cause is just. Many Georgia speakers made much of the fact that they were being opposed by northern fanatics, power hungry politicians, and white Indian chiefs. Clayton, in the Missionary Case, told of the opposition: "We have had nothing to contend with but the miserable selfishness of political aspirants and the sinister influence they have put in operation, not so much

26 Georgia Journal, 1831, p. 16.

27 Southern Recorder (Milledgeville, Ga.) January 5, 1832.
to defeat the plan, as to promote the reachings of ambition."28 Gilmer told the legislature that the "controlling influence" of the tribe was "almost exclusively made up of the descendants of the whites."29 To a people who strove to be chivalrous, a charge made by Clayton may have had the greatest effect. Clayton stated: "In discussing these subjects, they [opponents of removal] have indulged in a language unbecoming any privilege of fair debate, and certainly unworthy of any deportment of men, who either claim or court the distinction of gentlemen."30

The most important argument justifying Georgia's actions was seldom extensively developed, for most Georgians were already convinced of its truth: the land belonged to Georgia.31 Speakers did not go into detail to prove this point; all they did was state the key words or give the labels of the various arguments. They would allude to: The rights of the civilized, the Compact of 1802, the right of discovery and conquest, and the passing of title from Britain to Georgia. A rhetoric of self interest was seldom used with Georgia audiences. However,

28 Southern Recorder (Milledgeville, Ga.) September 29, 1831.
29 Georgia Journal, 1831, p. 16.
30 Cherokee Phoenix (New Echota) October 1, 1830.
31 Georgia Journal, 1830, p. 16.
Gilmer did speak of the great economic benefit to be obtained from removal in his October 19, 1830 message to the legislature: "The great object to be effected by the state, in the appropriation of its /Indian/ lands, is the increase of its population, and the excitement of its people to industry, and the accumulation of wealth."\(^{32}\)

He also told of the advantages to be obtained from the gold on the Indian land: "The state would thereby be enabled to relieve the people from taxation, improve all the roads, render its rivers navigable, and extend the advantages of education to every class of society."\(^{33}\)

In addition to the economic reasons for obtaining possession of her Indian land, Georgia's actions were justified as removing an inferior people for their own good while defending the state's laws, rights, and honor against opponents of low character. The Georgia speakers often promoted a united effort in support of this cause. It would seem that such appeals would not be needed, considering the substantial reasons given for removing the Indians. However, the political feuding in Georgia was intense and no issue was above dispute. The Savannah Georgian wrote that "party feelings /\textit{are}7 as violent here as in any other state."\(^{34}\) Hezekiah Niles, the editor of

\(^{32}\) Van Every, p. 96.  
\(^{33}\) Ibid., p. 17.  
\(^{34}\) Jamestown Journal (Jamestown, N.Y.), April 18, 1932.
Nile's Register, wrote of Georgia politics: "We know not what they differ about, but they do violently differ." The New York Evening Post told of the origins of the two major parties: "The two political parties in Georgia grew out of the political jealousy and rivalry of Mr. Crawford and Gen. John Clark [sic]." Both the Clarke party and the anti-Clarke party wanted the people of Georgia united in support of removal. Gilmer, a member of the anti-Clarke party, in his Inaugural Address called for unity:

"Permit me to express the desire, that the violent state of party excitement arising from the quarrels or ambition of individuals which has so long distracted the councils of the state and embittered the feelings of its people may soon subside altogether and that our divisions may hereafter be confined to differences of opinion in relation to the principles and policy of the government. Surely the energies of our people ought not be wasted in contests about men in office, when our right of sovereignty over the persons and soil within the limits of the state is assailed from every part of the Union . . . ."

In his Inaugural Address, Wilson Lumpkin, a member of the Clarke party, also called for unity: "To this station, I bring no spirit of party animosity, or political strife. . . . I avail myself of this occasion, to reaffirm what I stated to the public in February last—that it is my

35 Filler Guttman, p. 79.
36 Evening Post (New York) October 20, 1831.
37 Macon Telegraph (Macon, Ga.) November 14, 1831.
most ardent desire to see the whole people of Georgia united, on the great subjects of political interest and principle which are inseparably connected with liberty. . . ."

He made another appeal to unity by quoting a Bible verse which was later used by another American. He asked: "Finally, fellow citizens, let us strive to be of one mind—let our measures be founded in wisdom, justice and moderation—constantly bearing in mind the sacred truth, that a nation or state 'divided against itself, cannot stand.'"

The appeals for unity were successful to the extent that the vast majority of Georgia's citizens supported removal. However, the issue was not removed from the political arena. In the gubernatorial race of 1831 between Gilmer and Lumpkin, the most important issue was Indian removal. The question was not who supported it, for both did, but which candidate was its strongest supporter. The Athenian attacked Lumpkin as being soft on Indian removal by comparing the speeches of the two candidates. The newspaper stated: "Mr. Gilmer demanded of the General Government \underline{Indian removal} as a right, Mr. Lumpkin only asked as a favor. . . . Mr. Lumpkin then says, 'that the

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38 Columbus Democrat (Columbus, Ga.) November 19, 1831.

39 Lumpkin, p. 125.
government of the United States has no right to interfere in the form of government adopted by the Cherokee Indians, so far as it relates to the government of their own people.' Here he claims for the Indians almost absolute sovereignty, and yet the advocate of these sentiments is now aspiring to the office of Georgia, and ruler of those same people.⁴⁰ Lumpkin won the election and according to Gilmer the reason was that people did not understand his position on Indian removal. At a dinner honoring him, Gilmer explained: "Thousands of our citizens have by the operations of one or two corrupt presses, been made to believe that I was opposed to the acquisition of our Indian lands... The authors of these charges knew them to be false, and the whole course of my public and private life, I trust, is testimony against them. But in popular governments like ours, there will always be found persons, who are ready to avail themselves of such base means of acquiring offices."⁴¹

The races for other state positions were often determined by the Cherokee issue. A mild form of Indian baiting was used to obtain votes. The Kennebec Journal (Maine) reported: "Each aspirant for the legislature,  

⁴⁰ The Athenian (Athens, Ga.) September 20, 1831. 
⁴¹ Macon Advertiser and Agricultural and Mercantile Intelligencer (Macon, Ga.) December 21, 1831. Hereafter referred to as the Macon Advertiser.
when he mounts the stump, seizes the cupidity of his audience and proposes a bargain—elect me and I will vote you a ticket for a lot in the Gold Region in the Indian country. The temptation takes, and they vote for such as can violate constitution and treaty to effect the end designed."\(^{42}\)

Even though there was almost universal agreement in Georgia that the Cherokees must move west, there was great debate as to the best policy to follow in obtaining removal. Some Georgians (mainly the Clarke party) favored an immediate survey and lottery to give away the Indian lands, while others (mainly the anti-Clarke party) favored waiting until the Federal Government could obtain the title to the land. The question was "should Georgia use her power and take the Cherokee land?" Those arguing for delay and moderation advanced three main reasons.

1. **Immediate action would increase northern agitation.** In an address to the legislature, Governor Gilmer stated: "On account of the sensitive feelings of the humane, excited as they have been, by the interested and improper statements of political partizans upon the subject of our policy towards the Cherokees, so liable to misconstruction, that it would be magnanimously forbearing,

\(^{42}\) *Kennebec Journal* (Augusta, Maine) May 25, 1832.
in the legislature, perhaps wise, to delay the adoption of that measure for the present."\(^{43}\) The State Legislature responded with a resolution which stated in part: "The state of Georgia, should not adopt any measure which might be deemed either by his \(^{\text{Jackson}}\) or her enemies, rash or precipitate, and which might in any degree verify the predictions, or gratify the malignity of the Indian fanatics of our sister states of the Union."\(^{44}\)

2. **Moderation will avoid a clash with the Federal Government.** Mr. Fleming, a member of the Georgia House of Representatives, in debating an Indian land bill, stated: "I see in it the Cherokee land distribution the rock upon which the Union will split. It cannot but be evident to every one, who has paid the least attention to the history of our country, that the great danger to the Union arises from the collisions that take place between the General and State Governments."\(^{45}\)

3. **Immediate action will hurt President Jackson's re-election chances.** At the dinner in his honor, Gilmer stated: "Upon no subject have stronger efforts been made to excite the prejudices of the people against Gen. Jackson, and to prevent his re-election, than his disposition

\(^{43}\text{Georgia Journal}, 1830, p. 13.\)

\(^{44}\text{Ibid., p. 282.}\)

\(^{45}\text{Macon Advertiser (Macon, Ga.) November 23, 1831.}\)
to do justice to Georgia. And shall we give effect to these unprincipled efforts, by adopting such measures as must either sacrifice our best friend, or force him, under the measure of public opinion, to resist their execution? Gratitude and policy both forbid." Some members of the legislature were opposed to "immediate occupancy of the Cherokee lands" because it would "jeopardize the re-election of Andrew Jackson." The first three reasons appear to be insufficient to convince Georgians not to take strong action against the Cherokees. Most Georgians were not afraid of northern agitation and were determined not to have their state policies controlled by "fanatics." Debating a "Bill to survey and dispose of the lands in the occupancy of the Cherokees," Representative Terrill stated: "Are we to be deterd by phantoms? by the chimeras of our own brain? by the children of imagination? If we have a state right that it becomes important to us to exercise, we should not throw obstacles of our own creation into the way of its exercise.—We should not stop to ask

46 Ibid., November 23, 1831.


48 Ibid.
whether this power, or that will be offended at our acting."\textsuperscript{49} The danger of collision with the Federal Government was weakened by the fact that Andrew Jackson was President. It a great dispute did arise, most Georgians were willing to fight to defend their state's rights. However, the danger was not viewed as likely. Mr. Terrill stated: "Gentlemen are now shockingly frightened at the most remote prospect of coming into collision, as they say, with the General Government. Sir, for myself, I conceive this collision never will bear."\textsuperscript{50} No brave Georgian should be "frightened" of the collision which would probably never come about.

The strongest argument against surveying and lottery was that it would hurt Jackson's re-election bid. Terrill answered this charge: "The strongest reason advanced, is that by precipitate action, that is by passing this bill, the election of Jackson will be endangered. How can this be? Has not every art been resorted to, every falsehood sent abroad upon the wings of the wind by Jackson's enemies, for the purpose of working injury to his cause?

\textsuperscript{49} \textit{The Federal Union (Milledgeville, Ga.)} February 1, 1831.

\textsuperscript{50} Ibid.
--No exertion, no time, no industry has been spared to effect this object--all has failed--Jackson yet stands and will long stand in defiance of the poisoned shafts of his untiring foes... I again ask how can the passage of the bill on your table affect the re-election of President Jackson? I answer in no wise."

Those seeking immediate action were willing to go to war in order to get the Cherokee land. They not only expressed this attitude but used military metaphor common to this Jackson era. Perry M. Goldman tells why these metaphors were effective: "The majority of the citizenry shared experiences which made military rhetoric particularly evocative... In any event, the partisan of the Jacksonian age was never far removed from the odor of gunpowder, and resort to the analogue of war had become rhetorical commonplace."52 Terrill's challenge to those opposed to immediate action is a classic example of this rhetoric: "The objections raised by the opposition to this bill are too specious. They do not come into the field upon the broad and open ground of right. . . . Let them meet us in fair and open combat; let them unveil

51 Ibid.
their batteries, unmask their guns, and spread before us the array of their forces." The military metaphor was largely denied to Terrill's opponents because they were "frightened of a collision," thus these metaphors would have seemed inappropriate for their speeches.

In an address to the Legislature, Lumpkin told the result of the debate over Georgia's action: "The survey of the country of Cherokee, in conformity with, and under the provisions of, the several acts of the legislature... the Lottery Commissioners were convened, and commenced the preparatory arrangements for the drawings, which was commenced on the twenty-second day of October last, and is now in progress..." It should be noted that occupation did not really begin until after Jackson was re-elected.

The Northern Supporters

While Georgia's supporters outside the state were not as vocal as those supporting the Indians, they did not remain silent. Numerous pro-Georgia speakers mounted the

53 The Federal Union (Milledgeville, Ga.) February 1, 1831.

54 Lumpkin, p. 106.
platform to support removal. Two meetings held in the city of Hartford, Connecticut make an interesting study in the divided opinion of the North and show the President's and Georgia's supporters far from silent. The first meeting was "the largest popular meeting ever held by the citizens of that place."55 The New York Evening Post reported of the debate: "The persons attending the meeting seem to have been by no means agreed on the subject: a good deal of debate took place, and different views of the question were supported by different speakers."56 After the debate pro-Indian resolutions were passed. The Hartford Times disagreed with the count on the resolution claiming they failed:

"The vote was put on the passage of the resolutions . . . and on a division there was clearly and decidedly a majority in the negative. Yet the chairman declared differently. On this point we are not, and cannot be mistaken—we were in the gallery and could see distinctly and to better advantage than those below..... There was we know a mock attempt to count, but the chairman will not pretend, that there was any correctness in it; from a defect of vision, it is well known, he can see scarcely six feet ......")57

55 Evening Post (New York) January 21, 1830.
56 Ibid., January 16, 1830.
57 Hartford Times (Hartford, Conn.) January 11, 1830.
The speakers against the resolution "carried conviction to many" by arguing that Connecticut had no right to memorialize considering her treatment of the Indians within her boundary and that they had no right to interfere with the laws of another state. The same arguments were used at a second meeting held "to remonstrate against the petition of the first." The New York Evening Post reported one of the major reasons given for the second resolutions: "The Georgians have, for years, been giving notice, that they will maintain their claims with their lives. We do not believe this an empty threat. The chivalrous citizens of that state would pour their blood like rain, before they would be compelled to surrender what they believe to be their rights. Nor would they struggle alone. The other southern states would not quietly see Georgia, like a limb from her country, cast bleeding and torn."  

There was much support for Georgia in Connecticut considering Connecticut was one of two states whose legislature passed resolutions condemning Georgia. The

58 Ibid.
59 Ibid. Evening Post (New York) January 21, 1830.
60 Ibid.
Hartford Times reports on those resolutions: "They were drafted by Mr. Boardman of New Haven, and were pushed through a legislature noted for its imbecility. Their proceedings are not recognized as the sentiments of the people of this state on scarcely a solitary subject... The great mass of the people of the state of Connecticut are friendly to Georgia...." 61

Freeport, Maine provided another excellent example of the divided opinion on the Indian question. A group of Freeport citizens met, adopted and sent resolutions to Congress opposing a pro-Indian meeting. The second meeting resolved: "We do not wish to be uncharitable, but we have good reasons for our belief that the feelings expressed by these petitioners for the poor Indians is all false philanthropy; and that these petitions are got up, not so much on account of the good wishes which the petitioners entertain towards the Indians, as to render President Jackson's administration unpopular. We know this to be the case in regard to the petition from this town." 62 At a pro-Indian meeting in New York, the difference

61 Hartford Times (Hartford, Conn.) November 28, 1831.


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of opinion led to riot conditions. The *Boston Patriot* reported: "A scene of the most disgraceful character ensued, caused by a gang of rioters and disorganizers who outrageously attempted to defeat the object of the meeting. At least four fifths of the original number in the room were decidedly in favor of order and were disposed to proceed regularly with the subject presented, but in vain. Incessant shouts and hissing prevented the other gentlemen from addressing the meeting...."63

Two items of special interest should be noted about the pro-removal meetings in the North. First, the speakers were usually more pro-Jackson than they were pro-removal. Their speeches were designed to defend the position Jackson was taking rather than Georgia's. They often quoted his messages to show how his policies were honorable and just. Second, these meetings and speeches were usually in response to the meetings and speeches of those opposed to removal. The northern supporters of removal thus adopted Georgia's strategy of speaking only when they felt they had to.

63 *Boston Patriot*, November 6, 1830.
Political Rhetoric

The Democrat Republican Party responded to the attacks on Jackson's Indian policy at their conventions and caucuses. They almost always included two main points:

1. The policy of removal has been approved by previous Presidents.

The Democratic Republican Convention of the members of the Main legislature resolved: "That we highly approve the policy which has been pursued by several successive administrations of the government, of removing the Indians."64 "The Address of the Great Republican Caucus" of Portland, Maine stated: "Removal was proposed by Mr. Jefferson as early as 1804, and ... has received the earnest recommendation of every successive President."65 A Republican Convention in Kentucky stated: "When removal was recommended by Mr. Adams and Mr. Clay, it was regarded by their followers, as highly beneficial and proper; but failing in their efforts to succeed, they now condemn General Jackson...."66

2. Removal is a just and humane policy toward the Indians.

The Kentucky Convention resolved: "Removal is the only means of preserving the Indians in a distinct and

64 Eastern Argus (Portland, Maine) March 1, 1831.
65 Ibid., August 10, 1830.
66 Ibid., January 28, 1831.
The Portland Caucus called removal "a most just and humane project." The Maine legislators resolved "\text{\underline{Removal}} is recommended equally by its wisdom and its humanity." These two arguments were useful in answering the charge that Jackson's Indian policy is unfair. The first point clearly made removal not Jackson's policy but the policy of others. Jackson was just completing the work of others. The second point answered all arguments dealing with removal. If the policy was just and humane, the broken treaties, Georgia's action, and the actions of the President in ignoring the Intercourse Act were of little concern. In short resolutions of Jackson's supporters attacked the great volume of anti-removal rhetoric.

Possibly the single most able political speech supporting Jackson and the one most widely distributed was delivered by Benjamin F. Butler at the Capitol in Albany, New York. The effectiveness of this speech lay in Butler's ability to identify with both sides of the issue while defending Jackson. In discussing Georgia's laws, he stated that they were harsh but the people of Georgia were honorable:

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67 Ibid.
68 Ibid., August 10, 1830.
69 Ibid., March 1, 1831.
My individual opinion has uniformly been, that the laws passed by Georgia were oppressive; but when I have reflected on the peculiar condition of that state, and on the confidence reposed by all her citizens, numbering among them as she does, many liberal, enlightened, and I may add, too, religious citizens, in the justice of her claims, I have never felt myself at liberty to say, that the most enlightened and religious community in the Union had been exposed to precisely the same vexations circumstance, they would not have taken precisely the same course. 70

Butler also skillfully handled the missionary question, not offending either side:

I have no hesitation in saying that, in my judgement, the missionaries, in interfering in the political questions between the Cherokees and Georgia, overstepped the limits of their duty. Let me not be misunderstood. I have not the slightest doubt of the purity of their motives; I sympathize with them in their sufferings; and I honor them for adhering, at the risk of imprisonment and bonds, to what they, sincerely—though as I think, most erroneously, believed to be their duty. But I am equally satisfied, that in reference to this point, they entirely misjudge—probably under the influence of bad advisers—and I cannot but think, that if they had confined their studies to their Bibles, instead of extending those to the treaties with the Indians, the Constitution of the U. States, and the statute laws of Congress and of Georgia, they would have found the very question whether it was proper for them, as ministers of the gospel, to become parties in this controversy, decided in the plainest manner, and by the highest authority, in the negative. 71

70
Richmond Enquirer (Richmond, Va.) November 2, 1832.

71
Ibid.
Butler then went on to quote the Biblical verse dealing with tribute to the Roman Emperor—"render unto Ceasar."

After presenting a reasonable and balanced view of the crisis, Butler reached his main point—the President should not be attacked for non-support of the Supreme Court. By the fall of 1832 non-support was the major charge against Jackson. Butler's answer is ingenious, for he did not take a stand on whether the Court should be supported. What he did was to point out that Jackson could not have legally supported the Court:

Before any return of the mandate could be received from Georgia, the Supreme Court of the U. States adjourned; and the cause cannot now be brought before it until January next. If the cause should then be again brought before the Court, and they should think proper to award process to the Marshal, commanding him to set the defendants at liberty, and the Marshal should be opposed ..., then, and not till then, would it be the duty of the President to enter upon and to decide.... The President had not refused to carry into effect the judgment of the Supreme Court; but that in the present state of the case, he has no right or authority to interfere. 72

This speech, just a month prior to the election, freed anyone with qualms about supporting Jackson from their doubts about his reasonableness and his loyalty to the General Government. It is an excellent example of campaign

72 Ibid.
rhetoric: not arguing the rightness or wrongness of an issue but removing the issue from the election.

The New York Board

The most important pro-removal organization, although short-lived, was the Board for the Emigration, Preservation, and Improvement of the Aborigines. It is impossible to fit this board neatly into any classification, for it was at the same time a religious group, a political supporter of Jackson, and a quasi-propaganda arm of the Federal Government. An understanding of the organization can be gained by Francis Prucha's explanation of its origin: "The charge of being unchristian was not one to be lightly shrugged off, and the administration undertook to counteract the opposition. Thomas L. McKenney, using his position as head of the Office of Indian Affairs, enlisted in support of Jackson's policy and program a group of New York clergymen, who organized on July 22, 1829, the Board. . . ."73 The purpose of the organization was to stand behind the government's removal policy, stirring

73
up public support for the removal bill.74 One of the major projects to achieve this goal was a public meeting at which McKenney spoke. In a fifty minute speech, he made three main points:  

1. The Indians want to remove: "In regard to the disposition of the great body of the Indians within our states, we speak advisedly when we say, they are anxious to remove."  

2. Removal will be voluntary: "In regard to the employment of force, to drive the Indians from the country they inhabit, so far from this being correct, they have been told by the Executive, in one of the documents read to you to-night, that if they choose to remain, they shall be protected in all their rights."  

3. Removal will be beneficial to the Indians: "Those who have regarded with deep interest the condition of the Indians, and who doubt the issue of any attempt to save them upon their present reservation, have looked with much anxiety to the country west of the states and territories beyond the Mississippi, for a land of refuge, where this unhappy race may find rest and safety."75 This speech


contained the major arguments which would reduce the agitation of the Indian supporters. McKenney's ethical appeal would be ample proof for many, for he was "a man well received in church circles because of his own religious temperament and his long and active support of missionary activities among the Indians." That the work of the Board was geared to influence opinion in favor of the Indian bill cannot be doubted, for McKenney wrote to Bishop Hobart that their work "ought to be ripe before the meeting of the next Congress."

After the meeting in New York, the next step was to gain a wider audience for the McKenney speech and the other documents of the Board. The War Department came to the aid of the organization by paying for the printing of three thousand copies of the Board's papers. Additional circulation of McKenney's speech and the other documents was gained when Lewis Cass summarized, quoted, and paraphrased them in the North American Review. This collection spread before a wide audience a favorable presentation of the administration's proposals.

76 Prucha, McKenney, p. 638.
77 Ibid., p. 641.
78 Ibid., pp. 645-646.
79 Ibid., p. 648.
Shortly after the passage of the removal bill, the Board stopped functioning. Its demise was due to many factors, but most prominent were the growing conviction that force would be used and McKenney’s removal from Jackson’s cabinet. While its existence was short, it provided valuable service in refuting the arguments of the pro-Indian religious leaders and reducing the attacks on the administration. However, the effectiveness of the Board was reduced by the charge that it was controlled by the government. The Hampshire Gazette wrote: "It would seem very extraordinary that this member of the national cabinet Secretary of War, Eaton, should be engaged in a correspondence with a parochial clergyman of this city, if it were not known that this reverend gentleman is an active agent of an association formed here, for the avowed purpose of assisting the national administration, and the State of Georgia, in carrying into effect the iniquitous scheme of removing that tribe from their lawful possessions...."\(^{80}\)

Sam Houston

Even though no Indians spoke in the North in favor of removal, Jackson and Georgia had the support of Sam

\(^{80}\) Hampshire Gazette (Northampton, Mass.) August 11, 1830.
Houston—the adopted son of Chief John Jolly of the Western Cherokees, Oo-tse-tee Ar-dee-tah-skee. Houston had resigned the governorship of Tennessee and moved to Indian territory to live with the Cherokees. The Western Cherokees sent Houston to Washington as one of their representatives. Before returning home, Houston made speeches at Washington, Baltimore, Philadelphia, New York and Boston in support of his old friend, Andrew Jackson. Houston dressed in his picturesque Cherokee dress, which no doubt added to his ethical appeal. Jennings C. Wise described the success of Houston's tour: "Everywhere he was met with a tumult of enthusiasm. Women by the hundreds came to his meetings out of curiosity to see the man who had renounced a governorship because of a broken heart and put on 'savage' trappings to fight single handed against the rapacious oppressors of a weak and helpless race. They proclaimed him a hero, a real knight-errant."


82 Peithman, p. 139.

83 Wise, pp. 358-359.
Houston's speeches dealt with a subject of which he had great personal knowledge—a comparison of the eastern Indians with the western. The New York Evening Post reported on a speech before the Indian Board:

According to his statements, as we are informed, the Indians west of the Mississippi are in a better condition, both in a moral and physical point of view, than those within the limits of the states. He considers the immediate neighborhood of white men as most pernicious to the Indian, imparting to him the vices of civilization, without communicating any of its virtues.... He was confident that the only possible method of preserving the Indian race and of elevating the Indian character, was to remove them from the vicinity of the whites, until their gradual civilization could be effected. 84

Houston used contrast as his major form of reasoning, showing the differences of the Creeks in Alabama and Georgia from those west of the Mississippi. Of course, his major proof was his character, good will, and knowledge of the Indian. Houston provided a much needed expertise in the support of removal.

The Nullifiers

Additional support for Georgia came from the nullifiers of South Carolina. Their support was backhanded and certainly unwanted. These South Carolina speakers spoke not so much in support of Georgia's position as for

84 Evening Post (New York) March 9, 1830.
nullification. They cited Georgia's action as a successful example of nullifying a federal law. Representative Barnwell, at a dinner given in his honor, concluded: "By a law of the United States, the non-intercourse law, the President was authorized to prevent, by armed forces, the intrusion of the whites upon the Indians. Yet, when Georgia became dissatisfied...she abrogated, she nullified the treaty; she reverted to her original sovereign right over her soil; and extended, in defiance of all treaties, of all laws, her own jurisdiction over all persons within her limits. And what was the result? Disunion? No!"\(^85\) Georgia could not have been pleased with the attempt to tie her actions with the doctrine of nullification. To tie removal to nullification would mean increased objection to it. Even those who did not care about the Indians might oppose it if they believed it was nullification. Therefore, most Georgians denounced the doctrine. Typical of this denunciation was an article in the Macon Telegraph: "Georgia claims no power to revoke laws regulating foreign or domestic commerce, assessing revenue, or involving the interests of any other state--she affects no authority to alter any act of Congress. All that she asks

\(^85\) The Banner (Williams-Port, Maryland) August 21, 1830.

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is the exercise of a power of which she was possessed when she entered the Union, and of which she has never divested—simply, civil and criminal jurisdiction within her chartered limits."86 The Georgia Legislature "By a vote of 87 to 26....declared that a state did not have the right to pass on the constitutionality of an act of Congress for itself. This was a complete rout for those who favored nullification."87 Fortunately for Georgia, Indian removal was never effectively tied to nullification despite the speaking of their friends and neighbors from South Carolina and the northern opponents. Georgia's efforts would be rewarded with the removal of their Indian population.

Conclusion

The speaking of the pro-removal groups provides a picture of an honorable effort to be just. Without this view, much of the meaning of the removal debate would be

86 Macon Telegraph (Macon, Ga.) April 21, 1832.
lost and the removal supporters written off as cruel. With this understanding, one can see how their rhetoric of self interest was twisted to fit their values. This was the reason they were successful: their speaking expressed values which conformed to Georgia's and America's self interest.
Chapter VI
CONCLUSION

The preceding analysis shows some of the strengths and weaknesses of the various groups speaking for and against removal. But it provides limited insight into why the Cherokees were unsuccessful in their fight against removal. An overview of the removal crisis reveals three main reasons for their failure: desertion, other issues, and popular beliefs.

By the end of 1832 the Cherokee cause was being hurt by significant desertions. Among the first to go were those whose rhetoric was more anti-Jackson than anti-removal—the politicians. After the November election the Indians were of no value to the newly forming Whig party and Whig's speaking of the breach of national faith and honor came to a halt. This action just pointed out what many had said; their speaking was a rhetoric of self interest. Joseph Burke sums it up when he writes: "The Cherokees must have wondered how a cause so connected with politics, law, and morality in 1832 could be of so little interest to politicians and lawyers in 1833. Perhaps the Cherokees merely concluded that politicians . . . spoke with forked tongues."¹

¹ Burke, "Cherokee Cases," p. 530.
Desertions were not limited to the Indians' political friends. The most active and vocal group in support of the Cherokees decided the cause was lost and advised them to remove. Marion Starkey writes of the American Board of Foreign Missions: "On Christmas Day of 1832 the American Board assembled in their rooms on Pemberton Square, Boston. They had a heavy decision to make. They read Worcester's letter from a Georgian prison asking for advice on a pardon and reviewed the whole history of the Cherokees versus the state of Georgia; then each gave his opinion. When these were tabulated they found that they were in agreement on two points: Worcester and Butler might now honorably seek pardon; the Cherokees must be advised that hope had ended; they must remove."\(^2\)

Worcester and Butler had been informed that any time they would stop legal action against Georgia they would be released. After hearing of the Christmas Day decision of the American Board, they applied for pardon. They wrote Governor Lumpkin on January 8, 1833: "We have this day forwarded instructions to our counsel to forbear the intended motion, and to prosecute the case no farther."\(^3\) On January 15 the prisoners headed home to their mission.

\(^2\) Starkey, p. 205.

\(^3\) Jack Kilpatrick and Anna Kilpatrick, eds., New Echota Letters (Dallas: Southern Methodist University, 1988), p. 117.
Individual desertions were also significant. Both Edward Everett and Senator Frelinghuysen came to the conclusion that the Cherokees had to move. Frelinghuysen wrote to a friend, "I think removal is best." The power base of northern money and agitation had crumpled. Even the once unified Cherokee resistance to removal ended by 1833. Such anti-removal leaders as Elias Boudinot, The Ridge, and John Ridge were openly advocating removal.

To say the Cherokees failed because of the desertions is to look to the effect and not the cause. The real reasons for failure are the reasons for the desertions. Jackson's re-election was a major factor in viewing the removal fight as lost. Many of the political friends of the Cherokees, seeing the Indian cause as one which did not have significant voter support, stopped their agitation. The re-election was even a factor in the decision of Worcester and Butler to seek release. They wrote The Missionary Herald explaining why they accepted a pardon: "There was no longer any hope, by our perseverance, of securing the rights of the Cherokees, or preserving the faith of our country. The Supreme Court had given a decision in our favor, which recognized the rights of the Cherokees; but it still rested with the Executive Government, whether those rights should be protected, and it

4 Cherokee Phoenix (New Echota) January 4, 1833.
had become certain that the Executive would not protect them."\(^5\)

Another reason for lessened interest in the Cherokee cause was the rise of a more important and crucial issue: nullification. In late 1832 the country's attention turned to the danger of disunion as a result of fighting over the tariff question. South Carolina claimed the right to nullify any Federal law with which they disagreed. While Georgia's actions were virtual nullification, the difference in the two cases was how Jackson treated them. Jackson supported Georgia and fought South Carolina. The result was that many of those who supported the Indians abandoned them to join Jackson in his efforts to save the Union. One might say the Cherokee cause was lost when Jackson delivered a toast at a birthday dinner in honor of Thomas Jefferson. Jackson electrified the country when he expressed sentiments sounding like a speech of Daniel Webster's: "Our Federal Union--it must be preserved."\(^6\)

On November 24, 1832, a convention in South Carolina passed its famous Nullification Ordinance. Jackson responded with his Nullification Proclamation expressing a strong nationalistic philosophy, supporting the right of

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Congress to establish protection, denying that the constitution is a compact of sovereign states, and announcing that a state has no right to secede. Many of those most opposed to his Cherokee policy rallied to his support. Daniel Webster, who just a few months before had condemned the President for his support of Georgia, now spoke in favor of Jackson at a meeting in Faneuil Hall, a favorite meeting place for pro-Indian groups. Webster said: "I regard the issuing of this Proclamation by the President as a highly important occurrence. The general principles of the Proclamation are such as I entirely approve. I esteem them to be the true principles of the Constitution."7 J. T. Austin, another political opponent of Jackson, declared at the same meeting: "Laying aside all private feelings, we are ready, in this trial, to rally around the Chief Magistrate of the Union; with one heart and voice, we stand ready to support him, as the Israelite upheld the arm of Moses."8 Worcester's decision to seek a pardon was based partially on the danger to the Union from South Carolina. Starkey writes of this decision: "Worcester had discovered that those who urged him to surrender were friends of the Union; nullifiers hoped he would persist, for the effect was to swing the state to

7 Boston Patriot December 19, 1832.

8 Ibid.
the support of South Carolina." 9 Jackson even received the support of Supreme Court Justice Joseph Story. Story had been the strongest supporter of the Cherokees, voting for them in The Cherokee Nation vs. Georgia. Story wrote Richard Peters: "The President's proclamation is excellent, and contains the true principles of the Constitution." 10 Story also wrote home that he and Chief Justice Marshall "were to be counted among the president's warmest supporters." 11 He even recounted how, at a state dinner, "President Jackson specially invited me to drink a glass of wine with him. . . . Who would have dreamed of such an occurrence?" 12

Certainly the Cherokees could not believe what was happening. In an editorial the Cherokee Phoenix asked: "What do the good people of the United States think of the distressed condition of the Cherokees? Is their attention so completely engrossed in their own private affairs that they cannot even find time to shed a tear at the recollection of such accumulated oppressions heaped upon their fellow creatures? Has the cause of the Indians been swallowed up in other questions, such as

9 Starkey, p. 205.
11 Ibid., p. 327.
12 Ibid.
the tariff . . . ."13 What the Cherokees did not understand was that it was not that their friends did not care about them; it was that they cared more about the Union than they did for the Indians. When Story, Marshall, Webster, and many others were presented with the choice of supporting Jackson and the Union or opposing Jackson and supporting the Indians, the choice was for the Union.

While the election of Jackson and the shift of interest to nullification help explain the desertions, they are only symptoms of the ultimate cause of Cherokee failure. The main reason was that those opposed to removal articulated the beliefs of the majority of Americans. While the year 1828 can be used to mark a genuine moral upsurge with the rise of temperance societies, opposition to Sunday mail, the lyceum, social reform, and colonization societies, most Americans were unaffected by these movements and organizations. The goal sought by most Americans was somewhat selfish. They were interested in their own progress and economic advancement. In Jacksonian America: Society, Personality, and Politics Edward Pessen writes: "Certainly most Americans seemed to throw themselves into the race for gain, undeterred by religious enthusiasms which cheerfully approved worldly success. Materialism and a love of money were perhaps

13 Cherokee Phoenix (New Echota) July 7, 1832.

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their most noticeable traits. . . The mass of Americans seemed far more interested in personal enrichment than in moral uplift."\textsuperscript{14} Dale Van Every agreed when he wrote: "The practical aspects of such issues as the national bank, the tariff, and internal improvements were more readily grasped by the average voter than the ethics of Indian removal or the sanctity of the judiciary. Concern for the rights of a remote racial minority did not impinge on his emotions as deeply as did concern for his own economic welfare."\textsuperscript{15} What the majority of Americans wanted was progress and expansion for themselves and their nation. In his 1836 book The Americans in Their Moral, Social and Political Relations, Francis J. Grund explains: "It appears, then, that the universal disposition of Americans to emigrate to the western wilderness, in order to enlarge their dominion over inanimate nature, is the actual result of an expansive power, which is inherent in them, and which, by continually agitating all classes of society, is constantly throwing a large portion of the whole population on the extreme confines of the state in order to gain space for its development."\textsuperscript{16} William Ellery Channing in 1830 explained the importance of

\begin{itemize}
  \item \textsuperscript{14} Pessen, Jacksonian America, p. 349.
  \item \textsuperscript{15} Van Every, p. 154.
  \item \textsuperscript{16} Quoted in Everett E. Edwards, The Early Writings of Frederick Jackson Turner (Madison: The University of Wisconsin Press, 1938), pp. 193-194.
\end{itemize}

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progress: "The only freedom worth possessing is that which gives enlargement to a people's energy, intellect, and virtues. . . . Progress, the growth of power, is the end and boon of liberty; and, without this, a people may have the name, but want the substance and spirit of freedom."¹⁷ Roy Harvey Pearce sums up the point: "Progress seemed to most nineteenth-century Americans a fact at once hard, pragmatic, and commonsensical. . . ."¹⁸

The American Indian was viewed as a savage. He was to the colonialists part of a hostile environment which had to be overcome if the white man was to civilize the new world. Treaties were the preferred method of obtaining Indian land. Gilmer explained the purpose of early treaties: "They have been the expedients by which ignorant, intractable and savage people, have been induced, without bloodshed, to yield up what civilized Governments had the right to possess . . . ."¹⁹ When treaties could not be arranged, the white man resorted to violence. Cotton Mather explained how some troublesome Indians were dealt with: "That in the depth of winter a descent was made

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¹⁸ Ibid., p. 156.

¹⁹ Georgia Journal, 1830, p.12.
upon them, (the Indians,) and the day was wonderfully carried against the tawny infidels. Their city was laid in ashes. Above twenty of their chief captains were killed; a proportionable desolation cut off the inferior salvages, (savages,) mortal sickness and horrid famine pursued the remainder of 'em so that we can hardly tell where any of 'em are left alive upon the face of the earth."20

For those of the removal period who had no direct contact with the Indian, the literature of the period helped form a picture of him as a savage. The narrative of Indian captivity was a staple source for thrilling and shocking accounts of the Indians. Pearce says the Indian of the captivity narrative was described as "the consummate villain, the beast who hatched fathers, smashed the skulls of infants, and carried off mothers to make them into squaws."21

The issue between Georgia and the Cherokees to most Americans was a choice between the savage and the civilized, between expansion and stagnation, and progress and decay. The American Indian was an obstacle to all that they wanted and would have to be overcome. Rather than being immoral to this expansionist society, the ultimate

20 Georgia Messenger (Macon, Ga.) February 12, 1831.
21 Pearce, Savages, p. 58.
authority for their beliefs was God. In *Manifest Destiny*
Albert K. Weinberg explains:

"The principles centered in a philosophy of the use of the soil. The white race seemed to Senator Benton to have a superior right to land because they used it according to the intentions of the CREATOR! The theory that a use of the soil was ordained by God or morality figured not only in the entire history of Indian relations but also in all issues in which Americans found themselves desiring soil occupied by an 'inferior' race."22

Pearce believes the understanding of the Indian as a savage and as an obstacle to civilization "was almost totally pervasive" during this period. To him it was the basis for all thought on Indian matters. He writes:

"Most often it functioned not so much as an argument but as an assumption; not so much as a step in a logical chain leading to action, as the very foundation of the logic itself."23

Gammon believes "Jackson's intuitive ability to sense the feelings of the masses toward his leading measures was the secret of his strength as party leader...."24 This evaluation is certainly true in relation to the removal issue. Jackson expressed the very basis of America's thoughts on the Indian--the savage vs. civilization. Jackson said in his Second Annual Message:


24 Gammon, p. 63.
Humanity has often wept over the fate of the aborigines of this country, and philanthropy has been long busily employed in devising means to avert it, but its progress has never for a moment been arrested, and one by one have many powerful tribes disappeared from the earth. To follow to the tomb the last of his race and to tread on the graves of extinct nations excite melancholy reflections. But true philanthropy reconciles the mind to these vicissitudes as it does to the extinction of one generation to make room for another. In the monuments and fortresses of an unknown people, spread over the extensive regions of the West, we behold the memorials of a once powerful race, which was exterminated or has disappeared to make room for the existing savage tribes. Nor is there anything in this which, upon a comprehensive view of the general interests of the human race, is to be regretted. Philanthropy could not wish to see this continent restored to the condition in which it was found by our forefathers. What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns, and prosperous farms, embellished with all the improvements which art can devise or industry execute, occupied by more than 12,000,000 happy people, and filled with all the blessings of liberty, civilization, and religion?

The present policy of the Government is but a continuation of the same progressive change by a milder process . . . ."25

There was pity for the plight of the Indian. Some Americans were truly saddened over the Indians' fate, but they had to be victims of the inevitability of civilized progress. The northern friends of the Cherokees were unable to change the beliefs of their fellow citizens partly because they were victims of the same beliefs.

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Richardson, pp. 520-21.
The rhetoric of the anti-removal speakers usually referred to the Indians in terms which just added to the general stereotype of the Indian. They called the Cherokees "children of the forests," "poor creatures," "quaint people," "aborigines," "tribesmen," and "red men." The term "Indian" hurt the Cherokee cause, for it did not allow them to be separated from the lesser developed tribes. Even the best friends of the Indians did not view them as their equals. The closing of the Cornwall Mission School as a result of Boudinot's and Ridge's marriages to white girls bears witness to this point.

Father Francis Prucha basically sums up why the Cherokees lost: "The right to dispossess the Indians to which Jackson appealed was almost a part of the American atmosphere, so universally had it been accepted and promoted—now openly and with apostolic vigor, now subconsciously under the guise of protecting and preserving the Indians. It was a question of civilization versus the savage state . . . ."\(^26\) It was a question the Cherokees could never win.

An interesting aspect of this debate was that the traditional sides of a debate were reversed. The side proposing a new policy is called the affirmative and has the burden of proving the policy needed, workable, and desirable because the present system is presumed to be

\(^26\) Prucha, *Indian Policy*, p. 239.
adequate until proven otherwise. Georgia, proposing the policy of removal, should have been on the affirmative with the burden of proof. However, the Cherokees were placed in a position of having to speak out and prove their right to remain. The reason the sides were reversed is that the Indians (and it can be argued all minorities) were not a real part of the present system and thus cannot be on the affirmative. The Indians were an obstacle to the United States and not part of it, and they were, therefore, presumed to be wrong until proven otherwise. This fact allowed Georgia to sit back while the Cherokees were forced to speak at every opportunity.

Two significant results occurred from the speaking on the removal issue. The first was that many seeds of sectional hate were spread. The inflammatory rhetoric left the South with the view that much of the North was opposed to anything which would benefit the South. The South greatly resented the attacks on its character and honor. Many Northerners viewed Southerners as cruel and inhumane as witnessed by their treatment of Indians and backed up by their institution of slavery. The rhetoric of removal contributed significantly to the widening gulf between the two sections.\(^\text{27}\)

The next result was a beneficial one. The rhetoric of removal brought America's haphazard Indian policy to

\(^{27}\text{Van Every, p. 264.}\)
the forefront and significant changes were made. Prucha explains: "The tremendous weight of the arguments put forth in the 1830's by the supporters of the Cherokees stirred the conscience of the nation. What new authority it gave to the traditional principles behind American Indian policy cannot have been insignificant." In 1834 two new laws were passed which formed the basis for a well-grounded Indian policy.

To label one side of the removal debate good and the other evil is to miss the point. Both sides had many people who were acting in what they viewed as the best interest of the Indians as well as the nation, while both sides had supporters who were using the question for their own personal gain. What America must learn from this lesson is to view progress and the rights of a minority, as one and the same, for if America ignores the rights of a minority, has progress really been made? Those supporting removal did not see their cause as one which violated democratic principles, while those opposed did not express their concern for justice and humanity in practical terms which would persuade the majority of the people. In short, the participants in the removal debate failed to see the danger of Cherokee Indian removal; if the rights of a minority cannot be protected, no one's rights are safe.

28 Prucha, Indian Policy, p. 239.
The "case study" method used in this study rather than limiting future studies on Cherokee removal should encourage them. Each of the settings and groups examined could be expanded into a meaningful research project. In addition, the rhetoric of the removal of the Seminoles, Choctaws, Creeks, and Chickasaws could be analyzed. There is still much to learn about rhetoric and its uses from the removal of the Southern Indians.
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July 10, 1975

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