

## The Purdue Historian

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Volume 8

Article 6

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2017

# The Indian Removal Act: Jackson, Sovereignty and Executive Will

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### Recommended Citation

Celano, Daniele. "The Indian Removal Act: Jackson, Sovereignty and Executive Will." *The Purdue Historian* 8, 1 (2017).  
<http://docs.lib.purdue.edu/puhistorian/vol8/iss1/6>

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## Cover Page Footnote

1. Perdue, Green. *The Cherokee Removal: A Brief History with Documents*. 59. 2. Perdue, Green. *The Cherokee Removal: A Brief History with Documents*. 59. 3. *Ibid.* 60. 4. John Yoo, "Andrew Jackson and Presidential Power," 113. 5. *Ibid.* 114. 6. *Ibid.* 114. 7. John Yoo, "Andrew Jackson and Presidential Power," 113. 8. Perdue, Green. *The Cherokee Removal: A Brief History with Documents*. 111. 9. Wilson, Woodrow. "Division and Reunion: 1829-1909." 10. Perdue, Green. *The Cherokee Removal: A Brief History with Documents*. 103. 11. Proceedings April 17, 1830". Register of Debates. Senate, 21st Congress, 1st Session 344. 12. Proceedings April 9, 1830". Register of Debates. Senate, 21st Congress, 1st Session 310. 13. Perdue, Green. *The Cherokee Removal: A Brief History with Documents*. 108. 14. Wilson, Woodrow. "Division and Reunion: 1829-1909." 15. Jeremiah Evarts. *Essays on the Present Crisis in the Condition of the American Indians*. 110. 16. Howe, Daniel Walker. *What Hath God Wrought: The Transformation of America, 1815-1848*. 352. 17. Howe, Daniel Walker. *What Hath God Wrought: The Transformation of America, 1815-1848*. 354. 18. Perdue, Green. *The Cherokee Removal: A Brief History with Documents*. 69. 19. John Yoo, "Andrew Jackson and Presidential Power," 111. 20. Wilson, Woodrow. "Division and Reunion: 1829-1909." 36. 21. John Yoo, "Andrew Jackson and Presidential Power," 111. 22. *Ibid.* 112. 23. Proceedings April 9, 1830". Register of Debates. Senate, 21st Congress, 1st Session 310. 24. John Yoo, "Andrew Jackson and Presidential Power," 25. Wilson, Woodrow. "Division and Reunion: 1829-1909." 42. 26. John Yoo, "Andrew Jackson and Presidential Power," 112. 27. Wilson, Woodrow. "Division and Reunion: 1829-1909." 43. 28. John Yoo, "Andrew Jackson and Presidential Power," 114. 29. Wilson, Woodrow. "Division and Reunion: 1829-1909." 37. 30. Proceedings April 26, 1830". Register of Debates. Senate, 21st Congress, 1st Session 383. 31. *Ibid.* 383. 32. Proceedings April 9, 1830". Register of Debates. Senate, 21st Congress, 1st Session 310.

## The Indian Removal Act: Sovereignty and Executive Will

Daniele Celano

## **INTRODUCTION**

From King Andrew I to Old Hickory, Andrew Jackson had no shortage of nicknames symbolic of the opposing opinions of the president responsible for the forced removal of all Native peoples from the American South. While on its face the Indian Removal Act of 1830 appears to be little more than a racist executive order purporting large-scale land theft, the Act was also a manifestation of executive power and competing constitutional interpretations of sovereignty. In using his presidential authority to demand Indian removal, Jackson not only restructured national Indian policy, but further challenged both the power balance between state and federal government. Congressional opinions on the Act's legality depended on opposing beliefs regarding proper constitutional reading of sovereignty. Jackson's fickle enforcement of Indian laws further accentuated the ultimate authority of executive will. The Indian Removal Act's narrow passage and enforcement in the face of judicial objection exemplified and aroused fundamental debates over sovereignty in American federalism and the actual ability of checks and balances between the branches of government.

## **ORIGINS OF THE ACT**

The origins of the Removal Act lie in Georgia's contentious relationship with the Cherokee nation that inhabited the Northwest area of the state. Since 1802, Georgia tried tirelessly to rid its territory of the Indian population that was viewed as an obstacle to the state's growth and economic prosperity. White settlers were eager to tap into the rich, fertile farmland within native borders. Cherokee territory further blocked access to river networks and thus the inland, cutting off an integral connection to the heartland's growing market economy.<sup>1</sup> In addition to the mounting economic demand for the land, Southern legislatures feared an anti-

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<sup>1</sup>Perdue, Green. *The Cherokee Removal: A Brief History with Documents*.59.

slavery dominated Congress and saw replacing the Cherokee with free white voters as a method to increase the state's delegates in the House of Representatives.<sup>2</sup> In a series of 1827 resolutions, Georgia proclaimed that Indians in its land were subject to the laws and jurisdiction of its legislature, challenging the federal government's exclusive right to deal with the natives, creating tension between the federal and state government over authority.<sup>3</sup>

The U.S. had long recognized Indian nationhood and conducted relations with them through federal treaties, affirming Indian land claims. President Jackson, however, disagreed with the legal theory assuring Cherokee sovereignty within American borders and broke precedent immediately upon inauguration. Following the Georgia laws, the Cherokee petitioned the president to uphold their former treaties, and Jackson replied that their government "Would not be countenanced by the executive of the United States"<sup>4</sup>. The Indian Removal Act was then drafted, in which Jackson ordered Southern Native Americans to either exchange their lands for those west of the Mississippi, or submit to state law.

Jackson's firm response to the Cherokee petition signaled a complete overhaul of Indian policy and that he would not hesitate to impose his Constitutional interpretation regarding Indian land claims regardless of existing treaties. The seventh president staunchly supported states' rights, believing it was the responsibility of the state to regulate their residing native nations as a legitimate exercise of states' Constitutional power to have jurisdiction over its population<sup>5</sup>. Jackson disagreed with the anomaly in American sovereignty that came from having independent nations in its territory.<sup>6</sup> The United States had ultimate sovereignty over the area within its

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<sup>2</sup> Perdue, Green. *The Cherokee Removal: A Brief History with Documents*. 59.

<sup>3</sup> Ibid. 60.

<sup>4</sup> John Yoo, "Andrew Jackson and Presidential Power," 113.

<sup>5</sup> Ibid. 114.

<sup>6</sup> Ibid. 114.

borders, yet tribal nations also had sovereignty over their land, which existed within claimed U.S. territory. Having independent governments and nations not bound to American legal jurisdiction weakened the country, as the nation could not assert undisputed land claim if competing governments existed within it.

Jackson maintained that domestic tribal sovereignty proved dangerous to the nation; he therefore reasoned that, by extension, the federal treaties enabling it were equally as injurious. He denounced the treaties as works of elitist politics harmful to average Americans, specifically Southern farmers, that must be removed.<sup>7</sup> He subscribed to Michigan Governor Lewis Cass's argument that although the U.S. must oblige all its legitimate treaties, the circumstances surrounding former Indian treaties had materially changed in that "A government de facto has been organized within the limits of the state".<sup>8</sup> Since Jackson felt the aspects surrounding the treaties had altered to the serious disadvantage of the American populace, it was within his authority to protect his citizens, and drafted the order to remove the supposed problem entirely.

### **DIVIDED SOVEREIGNTY**

The debate over the Act largely reflected the intensifying differences in Constitutional interpretation of dual sovereignty. Anti-Jacksonian political ideology surrounding federalism emphasized the supremacy of federal law and governance and thus rejected the Indian Removal Act's assertion of states autonomous right to regulate their Indian populations.<sup>9</sup> Claiming that a state's rights over its domestic affairs included Indians within its borders was erroneous, as the article specifically proscribing Congress's duty to facilitate Indian relations inherently made that

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<sup>7</sup> John Yoo, "Andrew Jackson and Presidential Power," 113.

<sup>8</sup> Perdue, Green. *The Cherokee Removal: A Brief History with Documents*. 111.

<sup>9</sup> Wilson, Woodrow. "Division and Reunion: 1829-1909."

duty exclusive to Congress and independent of state involvement.<sup>10</sup> States thus did not have any. Because the Constitution placed Indians under the purview of the federal government, states had no legitimate legal claims to sovereignty over them, and the executive did not have the power to turn Congressional jurisdiction over to the states. Under this legal interpretation, anti-Jacksonian Maine Senator Sprague argued, the Act was an unconstitutional transfer of federal powers and responsibility to the states, dictating how “The express words of the article require this right to be exercised by the United States ‘in Congress assembled.’ Can we... strike out these words and insert the Legislature of Georgia?”<sup>11</sup> Federal treaties had long been in place securing Indian nationhood and land claim; forcing Natives to submit to state law allowed states to effectively nullify treaties and violate the Supreme law of the land.<sup>12</sup> The Act was not only an unconstitutional delegation of federal power to the states, but it posed a threat to the very system of American dual federalism in challenging and weakening the binding supremacy of federal law.

Southern Jacksonians, in contrast, heralded the Act as embracing the foundational principle that the Union was a federation of sovereign states, where all rights should be conferred to the state through employing a strict interpretation of the Constitution. Supporters of the Act believed that according to the specific language of the Constitution, Congress was only given the right to facilitate Indian commerce and therefore could not claim exclusive authority over all Indian affairs, as the limited autonomy of the federal government extended only as far as what was expressly awarded in the words of the document.<sup>13</sup> All other Indian relations excluding

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<sup>10</sup> Perdue, Green. *The Cherokee Removal: A Brief History with Documents*. 103.

<sup>11</sup> Proceedings April 17, 1830”. *Register of Debates*. Senate, 21st Congress, 1st Session 344.

<sup>12</sup> Proceedings April 9, 1830”. *Register of Debates*. Senate, 21st Congress, 1st Session 310.

<sup>13</sup> Perdue, Green. *The Cherokee Removal: A Brief History with Documents*. 108.

commerce, then, belonged under the purview of the individual states in which the nations resided. Further, Jackson and his supporters saw the federal government hijacking rights not delineated in the Constitution and subsequently removing state jurisdiction over a group within their borders was an “Encroachment upon the legitimate sphere of state sovereignty”.<sup>14</sup> The War Department issued a statement warning that the “Arms of the country can never be employed to stay any State of this union from the exercise of those legitimate powers, which attach and belong their sovereign character”.<sup>15</sup> Jacksonians viewed the Act as remedying the federal government’s long infringement on the rights of states to have total control to regulate their domestic affairs, of which Indians were inherently included, as they directly affected the economic prosperity of the state. In succeeding in narrowly passing the Act, with the House voting only 102-97 in favor, Jacksonians effectively stamped into law and secured principles of ultimate state sovereignty as a matter of federal law.

### MARSHALL TRILOGY

The issue facing Jackson’s administration, however, was that the Supreme Court issued rulings that defied Jacksonian principles of national and state sovereignty that innately constituted the Act. The Court, under Chief Justice Marshall, decided on three cases from 1823 to 1832 affirming the political and legal rights of Indian nations.<sup>16</sup> *Johnson v. M’Intosh* hit the Court in 1823 in which Marshall ruled that Natives merely had a right of occupancy, rather than ownership, to the land. The second case, *Cherokee Nation v. Georgia* in 1831 held that while the Cherokee were not foreign nations and therefore had no standing in Court, native tribes were

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<sup>14</sup> Wilson, Woodrow. “Division and Reunion: 1829-1909.”

<sup>15</sup> Jeremiah Evarts. *Essays on the Present Crisis in the Condition of the American Indians*. 110.

<sup>16</sup> Howe, Daniel Walker. *What Hath God Wrought: The Transformation of America, 1815-1848*. 352.



“Domestic dependent nations”, meaning they were within the bounds of the U.S. and subject to the sovereignty of the U.S. government, yet were nonetheless sovereign in their own right.<sup>17</sup> The final case, *Worcester v. Georgia*, Marshall declared that state jurisdiction did not extend over native peoples and territory, and employed the Doctrine of Discovery that detailed how the conqueror of a land has rights to it and sovereignty over the aboriginals to assert his decision that the federal government and not the states had the sole authority to facilitate with Indian nations<sup>18</sup>. This trilogy established three main principles of federal Indian law, two of which become points of greatest contention in Congressional debates over the Constitutionality of the Act: first, tribal sovereignty over Indian lands is inherent and not granted by the states in which they are located and secondly, that Congress, not the executive branch, had ultimate authority over matters regarding Indian nations.<sup>19</sup>

### CHECKS AND BALANCES

The Indian Removal Act exposed a deficiency in the judicial authority to check the other branches, as the Supreme Court could dictate its opinion of the Constitutionality of legislation, yet its ruling had no binding influence over either Congress or the President. In light of the Marshall decisions, the Act violated the rulings on a fundamental level in its denial of Indian sovereignty and assertion of state’s authority over Indians, and thus should have been rendered unconstitutional and invalid<sup>20</sup>. However, Jackson not only held a vastly different Constitutional reading than Marshall, but he believed that one branch of government did not have to yield to

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<sup>17</sup> Howe, Daniel Walker. *What Hath God Wrought: The Transformation of America, 1815-1848*. 354.

<sup>18</sup> Perdue, Green. *The Cherokee Removal: A Brief History with Documents*. 69.

<sup>19</sup> John Yoo, “Andrew Jackson and Presidential Power,” 111.

<sup>20</sup> Wilson, Woodrow. “Division and Reunion: 1829-1909.” 36.

another branch's interpretation.<sup>21</sup> The continued enforcement of the Act, even after the Supreme Court's invalidation, proved how the executive had the dominating power to impose its Constitutional interpretation upon the country, regardless of judicial opposition, explaining Jackson's famous quote, "John Marshall has made his decision –now let him enforce it!"<sup>22</sup> While the power of judicial review is vested in the Court, Jackson's ability to simply ignore the invalidation of his Act without any inhibiting recourse from the Court exemplified how little power of enforcement the judiciary actually held in the face of an opposing executive.

The passage and enforcement of the Act was an unprecedented expansion of executive power and represented how the executive branch was the only government branch with the true power of binding authority. While in the past presidents consulted Congress with Indian treaties, the Act gave sweeping authority to the executive to decide a standardized course of action for regulating Indian relations. Rather than deferring treaties to Congressional debate, the Act imposed the President's agenda of removal in every case regardless of circumstance in the form of an executive order, placing part of Congress's power to regulate Indians in the hands of the executive.<sup>23</sup> This not only eroded Congressional authority within the government but it was in direct violation of Marshall's ruling. In continuing to implement the Indian Removal Act as though the Court never dictated its invalidation, Jackson denied the Supreme Court's Constitutional interpretation in favor of his own, claiming that "the decision of the Supreme Court has fell still born, and they find they cannot coerce...to yield to its mandate".<sup>24</sup> The

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<sup>21</sup> John Yoo, "Andrew Jackson and Presidential Power," 111.

<sup>22</sup> *Ibid.* 112

<sup>23</sup> Proceedings April 9, 1830". *Register of Debates*. Senate, 21st Congress, 1st Session 310.

<sup>24</sup> John Yoo, "Andrew Jackson and Presidential Power,"

judiciary had no tangible force to prevent the eventual, and deemed unconstitutional, removal of Indian tribes, and therefore had no binding way to check the power of the executive.

Further, the Act showcased how because only the Executive branch has military backing, it is the ability of the president alone to enforce laws and rulings, which can render the legislative and executive branches effectively useless in their ability to limit Presidential will. Jackson proved the limited scope of Congress's actual authority as well in his actions directly before the Act's passage. When the Cherokee petitioned the President to stop Georgian encroachment on their land, the President refused to follow the established treaties that had been secured through Congress that ensured the Cherokee protection against the state.<sup>25</sup> Congress had no power to deploy the armed forces to defend the Cherokee, and thus without Presidential support, federal law went entirely unenforced, nullifying all legal power of Congress. On the contrary, when remaining Indian nations did not heed the laws of removal, drafted by the executive office, by maintaining occupancy in their land and homes, the president sent the military to force accordance with the law, culminating in the tragic and deadly military expulsion of Native Americans by foot to the lands west of the Mississippi, along the "Trail of Tears".

### **EXECUTIVE WILL**

Jackson felt justified in his expansion of executive power in the belief that he, above all else, represented the true will of the people. While the judicial officials were appointed and Congressmen elected by state, the President was voted into office by the entire nation, and thus embodied the principles and political beliefs of the American populace at large.<sup>26</sup> Because of this, Jackson felt that it was entirely a part of his executive duty to ensure the welfare and

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<sup>25</sup> Wilson, Woodrow. "Division and Reunion: 1829-1909." 42.

<sup>26</sup> John Yoo, "Andrew Jackson and Presidential Power," 112.

furtherance of the wants of the people, even when those objectives countered existing legal doctrines and the dictation of the other branches.<sup>27</sup> The enacted treaties made between the Indian nations and Congress, the president felt, directly harmed Southerners who wanted Natives removed from their territory, and therefore the issue became one for the President to remedy as the people's defense against a legislature that did not adequately protect their needs.<sup>28</sup> It was well within his Presidential responsibility and exercise of power to overrule actions that went against the people's wants, even if those actions were coming in the form of legislation and court rulings from the federal government itself. Contrary to the assertions of his adversaries, Jackson claimed that he had the ultimate check on his executive power: re-election. If the people no longer agreed with his actions or legal interpretation, they had recourse in the voting booth where they could easily vote him out of office.<sup>29</sup> Under that thought process, Jackson took his landslide victory in 1832 as a symbol of popular approval for his methods.

There was great dissent, however, to Jackson's justification for expanding the reach of presidential will. In the Senate, opposers to the Indian Removal Act saw it as a manifestation of unchecked executive power. The Act itself took away constitutionally guaranteed rights from Congress in allowing states to usurp the power to regulate Indian relations and invalidate legitimate treaties.<sup>30</sup> Jackson's further refusal to adhere to neither the treaties in place nor judicial review of his actions contended that legal doctrine and federal contracts were only as secure as the will of the current President and his ability to capitalize on a current political climate.<sup>31</sup> By latching on to the Southern agenda promoting removal, Jackson garnered just enough support to

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<sup>27</sup> Wilson, Woodrow. "Division and Reunion: 1829-1909." 43.

<sup>28</sup> John Yoo, "Andrew Jackson and Presidential Power," 114.

<sup>29</sup> Wilson, Woodrow. "Division and Reunion: 1829-1909." 37.

<sup>30</sup> Proceedings April 26, 1830". *Register of Debates*. Senate, 21st Congress, 1st Session 383.

<sup>31</sup> *Ibid.* 383.

legalize his Act against steadfast opposition from the other powers within the federal government. In supporting Georgia's repudiation of federal Indian treaty and Marshall's ruling, Jackson sent the dangerous message that states did not have to follow unpopular federal law when their constitutional beliefs aligned with that of the executive branch.<sup>32</sup> This ideology not only put the sanctity of the legal system at risk of breaking down, but it decreased the legitimate authority of both the legislature and judiciary.

### CONCLUSION

The Indian Removal Act was responsible for the forced migration of thousands of Native Americans from their ancestral homes in the Southeast. Not only was it a gross disregard of humanitarian principles, the Act symbolized complex and opposing political ideologies concerning dual sovereignty and checks on federal power. Divided sovereignty inherent in the American federalist system was directly contested with the Act's passage, as both state and federal governments used the same Constitutional doctrines to prove their legitimate claim to sole authority to regulate Indian relations. Ultimately, the will of the executive branch under the guise of Andrew Jackson allowed state sovereignty to prevail, presenting a larger deficiency in the legislature and judiciary's ability to check executive will. Jackson's enforcement of the act even after judicial invalidation exposed a major limitation on the ability to check presidential power. The Indian Removal Act represented the authority struggle between the branches of government and inherent in American federalism that led to Jackson's expansion of executive authority while solidifying state sovereignty.

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<sup>32</sup> Proceedings April 9, 1830". *Register of Debates*. Senate, 21st Congress, 1st Session 310.

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