Indian Removal and Land Allotment: The Civilized Tribes and Jacksonian Justice*

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BY the year 1830, the vanguard of the southern frontier had crossed the Mississippi and was pressing through Louisiana, Arkansas, and Missouri. But the line of settlement was by no means as solid as frontier lines were classically supposed to be. East of the Mississippi, white occupancy was limited by Indian tenure of northeastern Georgia, enclaves in western North Carolina and southern Tennessee, eastern Alabama, and the northern two thirds of Mississippi. In this twenty-five-million-acre domain lived nearly 60,000 Cherokees, Creeks, Choctaws, and Chickasaws.[1]

The Jackson administration sought to correct this anomaly by removing the tribes beyond the reach of white settlements, west of the Mississippi. As the President demanded of Congress in December, 1830: "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?"[2]

The President's justification of Indian removal was the one usually applied to the displacement of the Indians by newer Americans—the superiority of a farming to a hunting culture, and of Anglo-American "liberty, civilization, and religion" to the strange and barbarous way of the red man. The superior capacity of the farmer to exploit the gifts of nature and of nature's God was one of the principal warranties of the triumph of westward-moving "civilization."[3]

Such a rationalization had one serious weakness as an instrument of policy. The farmer's right of eminent domain over the lands of the savage

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[1] Ellen C. Semple, *American History and Its Geographic Conditions* (Boston, Mass., 1933), p. 160; Charles C. Royce, "Indian Land Cessions in the United States," Bureau of American Ethnology, *Eighteenth Annual Report, 1896–1897* (2 vols., Washington, D. C., 1899), II, Plates 1, 2, 15, 48, 54–56.

[2] James Richardson, *A Compilation of the Messages and Papers of the Presidents of the United States* (New York, 1897), III, 1084.

[3] Roy H. Pearce, *The Savages of America: A Study of the Indian and the Idea of Civilization* (Baltimore, Md., 1953), p. 70; *House Report* 227, 21 Cong., 1 sess., pp. 4–5.

could be asserted consistently only so long as the tribes involved were "savage." The southeastern tribes, however, were agriculturists as well as hunters. For two or three generations prior to 1830, farmers among them fenced their plantations and "mixed their labor with the soil," making it their private property according to accepted definitions of natural law. White traders who settled among the Indians in the mid-eighteenth century gave original impetus to this imitation of Anglo-American agricultural methods. Later, agents of the United States encouraged the traders and mechanics, their half-breed descendants, and their fullblood imitators who settled out from the tribal villages, fenced their farms, used the plow, and cultivated cotton and corn for the market. In the decade following the War of 1812, missionaries of various Protestant denominations worked among the Cherokees, Choctaws, and Chickasaws, training hundreds of Indian children in the agricultural, mechanical, and household arts and introducing both children and parents to the further blessings of literacy and Christianity.[4]

The "civilization" of a portion of these tribes embarrassed United States policy in more ways than one. Long-term contact between the southeastern tribes and white traders, missionaries, and government officials created and trained numerous half-breeds. The half-breed men acted as intermediaries between the less sophisticated Indians and the white Americans. Acquiring direct or indirect control of tribal politics, they often determined the outcome of treaty negotiations. Since they proved to be skillful bargainers, it became common practice to win their assistance by thinly veiled bribery. The rise of the half-breeds to power, the rewards they received, and their efforts on behalf of tribal reform gave rise to bitter opposition. By the mid-1820's, this opposition made it dangerous for them to sell tribal lands. Furthermore, many of the new leaders had valuable plantations, mills, and trading establishments on these lands. Particularly among the Cherokees and Choctaws,

[4] Moravian missionaries were in contact with the Cherokees as early as the 1750's. Henry T. Malone, *Cherokees of the Old South: A People in Transition* (Athens, Ga., 1956), p. 92. There is a voluminous literature on the "civilization" of the civilized tribes. Among secondary sources, the following contain especially useful information: Malone, *Cherokees;* Marion Starkey, *The Cherokee Nation* (New York, 1946); Angie Debo, *The Rise and Fall of the Choctaw Republic* (Norman, Okla., 1934) and *The Road to Disappearance* (Norman, Okla., 1941); Grant Foreman, *Indian Removal: The Emigration of the Five Civilized Tribes of Indians* (2d ed., Norman, Okla., 1953); Robert S. Cotterill, *The Southern Indians: The Story of the Civilized Tribes before Removal* (Norman, Okla., 1954); Merrit B. Pound, *Benjamin Hawkins, Indian Agent* (Athens, Ga., 1951). Among the richest source material for tracing the agricultural development of the tribes are the published writings of the Creek agent, Benjamin Hawkins: *Letters of Benjamin Hawkins, 1796–1806* in Georgia Historical Society *Collections, IX* (Savannah, 1916), and *Sketch of the Creek Country in the Years 1798 and 1799* in Georgia Historical Society *Publications,* III, (Americus, 1938). For the Choctaws and Cherokees, there is much information in the incoming correspondence of the American Board of Commissioners for Foreign Missions, Houghton Library, Harvard University. On the Chickasaws, see James Hull, "A Brief History of the Mississippi Territory," Mississippi Historical Society *Publications,* IX, (Jackson, 1906).

they took pride in their achievements and those of their people in assimilating the trappings of civilization. As "founding Fathers," they prized the political and territorial integrity of the newly organized Indian "nations." These interests and convictions gave birth to a fixed determination, embodied in tribal laws and intertribal agreements, that no more cessions of land should be made. The tribes must be permitted to develop their new way of life in what was left of their ancient domain.[5]

Today it is a commonplace of studies in culture contact that the assimilation of alien habits affects different individuals and social strata in different ways and that their levels of acculturation vary considerably. Among the American Indian tribes, it is most often the families with white or half-breed models who most readily adopt the Anglo-American way of life. It is not surprising that half-breeds and whites living among the Indians should use their position as go-betweens to improve their status and power among the natives. Their access to influence and their efforts toward reform combine with pressures from outside to disturb old life ways, old securities, and established prerogatives. Resistance to their leadership and to the cultural alternatives they espouse is a fertile source of intratribal factions.[6]

To Jacksonian officials, however, the tactics of the half-breeds and the struggles among tribal factions seemed to reflect a diabolical plot. Treaty negotiators saw the poverty and "depravity" of the common Indian, who suffered from the scarcity of game, the missionary attacks on his accustomed habits and ceremonies, and the ravages of "demon rum" and who failed to find solace in the values of Christian and commercial civilization. Not unreasonably, they concluded that it was to the interest of the tribesman to remove west of the Mississippi. There, sheltered from the intruder and the whisky merchant, he could lose his savagery while improving his nobility. Since this seemed so obviously to the Indian's interest, the negotiators conveniently concluded that it was also his desire. What, then, deterred emigration? Only the rapacity of the half-breeds, who were unwilling to give up their extensive properties and their exalted position.[7]

[5] Paul W. Gates, "Introduction," *The John Tipton Papers* (3 vols., Indianapolis, Ind., 1942), I, 3–53; A. L. Kroeber, *Cultural and Natural Areas of Native North America* (Berkeley, Calif., 1939), pp. 62–63; John Terrell to General John Coffee, Sept. 15, 1829, Coffee Papers, Alabama Dept. of Archives and History; Campbell and Merriwether to Creek Chiefs, Dec. 9, 1824, *American State Papers: Indian Affairs,* II, 570; Clark, Hinds, and Coffee to James Barbour, Nov. 19, 1826, *ibid.,* p. 709.

[6] See for example, Edward M. Bruner, "Primary Group Experience and the Processes of Acculturation," *American Anthropologist,* LVIII (Aug., 1956), 605–23; SSRC Summer Seminar on Acculturation, "Acculturation: An Exploratory Formulation," *American Anthropologist,* LVI (Dec., 1954), esp. pp. 980–86; Alexander Spoehr, "Changing Kinship Systems: A Study in the Acculturation of the Creeks, Cherokee, and Choctaw," Field Museum of Natural History, *Anthropological Series,* XXXIII, no. 4, esp. pp. 216–26.

[7] Wilson Lumpkin, *The Removal of the Cherokee Indians from Georgia* (2 vols., New York,

These observers recognized that the government's difficulties were in part of its own making. The United States had pursued an essentially contradictory policy toward the Indians, encouraging both segregation and assimilation. Since Jefferson's administration, the government had tried periodically to secure the emigration of the eastern tribes across the Mississippi. At the same time, it had paid agents and subsidized missionaries who encouraged the Indian to follow the white man's way. Thus it had helped create the class of tribesmen skilled in agriculture, pecuniary accumulation, and political leadership. Furthermore, by encouraging the southeastern Indians to become cultivators and Christians, the government had undermined its own moral claim to eminent domain over tribal lands. The people it now hoped to displace could by no stretch of dialectic be classed as mere wandering savages.[8]

By the time Jackson became President, then, the situation of the United States vis-à-vis the southeastern tribes was superficially that of irresistible force and immovable object. But the President, together with such close advisers as Secretary of War John H. Eaton and General John Coffee, viewed the problem in a more encouraging perspective. They believed that the government faced not the intent of whole tribes to remain near the bones of their ancestors but the selfish determination of a few quasi Indian leaders to retain their riches and their ill-used power. Besides, the moral right of the civilized tribes to their lands was a claim not on their whole domain but rather on the part cultivated by individuals. Both the Indian's natural right to his land and his political capacity for keeping it were products of his imitation of white "civilization." Both might be eliminated by a rigorous application of the principle that to treat an Indian fairly was to treat him like a white man. Treaty negotiations by the tried methods of purchase and selective bribery had failed. The use of naked force without the form of voluntary agreement was forbidden by custom, by conscience, and by fear that the administration's opponents would exploit religious sentiment which cherished the rights of the red man. But within the confines of legality and the formulas of voluntarism it was still possible to acquire the much coveted domain of the civilized tribes.

The technique used to effect this object was simple: the entire population

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1907), I, 61–77; Thomas L. McKenney to James Barbour, Dec. 27, 1826, *House Doc.* 28, 19 Cong., 2 sess., pp. 5–13; Andrew Jackson to Colonel Robert Butler, June 21, 1817, *Correspondence of Andrew Jackson,* ed. John Spencer Bassett (6 vols., Washington, D. C., 1926–28), II, 299.

[8] For brief analyses of government policy, see Annie H. Abel, "The History of Events Resulting in Indian Consolidation West of the Mississippi," *Annual Report of the American Historical Association for the Year 1907* (2 vols., Washington, D. C., 1908), I, 233–450; George D. Harmon, *Sixty Years of Indian Affairs, 1789–1850* (Chapel Hill, N. Car., 1941).

of the tribes was forced to deal with white men on terms familiar only to the most acculturated portion of them. If the Indian is civilized, he can behave like a white man. Then let him take for his own as much land as he can cultivate, become a citizen of the state where he lives, and accept the burdens which citizenship entails. If he is not capable of living like this, he should be liberated from the tyranny of his chiefs and allowed to follow his own best interest by emigrating beyond the farthest frontiers of white settlement. By the restriction of the civilized to the lands they cultivate and by the emigration of the savages millions of acres will be opened to white settlement.

The first step dictated by this line of reasoning was the extension of state laws over the Indian tribes. Beginning soon after Jackson's election, Georgia, Alabama, Mississippi, and Tennessee gradually brought the Indians inside their borders under their jurisdiction. Thus an Indian could be sued for trespass or debt, though only in Mississippi and Tennessee was his testimony invariably acceptable in a court of law. In Mississippi, the tribesmen were further harassed by subjection—or the threat of subjection—to such duties as mustering with the militia, working on roads, and paying taxes. State laws establishing county governments within the tribal domains and, in some cases, giving legal protection to purchasers of Indian improvements encouraged the intrusion of white settlers on Indian lands. The laws nullified the legal force of Indian customs, except those relating to marriage. They provided heavy penalties for anyone who might enact or enforce tribal law. Finally, they threatened punishment to any person who might attempt to deter another from signing a removal treaty or enrolling for emigration. The object of these laws was to destroy the tribal governments and to thrust upon individual Indians the uncongenial alternative of adjusting to the burdens of citizenship or removing beyond state jurisdiction.[9]

The alternative was not offered on the unenlightened supposition that the Indians generally were capable of managing their affairs unaided in a white man's world. Governor Gayle of Alabama, addressing the "former chiefs and headmen of the Creek Indians" in June of 1834 urged them to remove from the state on the grounds that

> you speak a different language from ours. You do not understand our laws and from your habits, cannot be brought to understand them. You are ignorant of the arts of civilized life. You have not like your white neighbors been raised in habits of industry and economy, the only means by which anyone can live, in settled

[9] Georgia, *Acts,* Dec. 12, 1828; Dec. 19, 1829; Alabama, *Acts,* Jan. 27, 1829; Dec. 31, 1831; Jan. 16, 1832; Dec. 18, 1832; Mississippi, *Acts,* Feb. 4, 1829; Jan. 19, 1830; Feb. 12, 1830; Dec. 9, 1831; Oct. 26, 1832; Tennessee, *Acts,* Nov. 8, 1833; George R. Gilmer to Augustus S. Clayton, June 7, 1830, Governor's Letterbook, 1829–31, p. 36, Georgia Dept. of Archives and History.

countries, in even tolerable comfort. You know nothing of the skill of the white man in trading and making bargains, and cannot be guarded against the artful contrivances which dishonest men will resort to, to obtain your property under forms of contracts. In all these respects you are unequal to the white men, and if your people remain where they are, you will soon behold them in a miserable, degraded, and destitute condition.[10]

The intentions of federal officials who favored the extension of state laws are revealed in a letter written to Jackson by General Coffee. Referring to the Cherokees, Coffee remarked:

Deprive the chiefs of the power they now possess, take from them their own code of laws, and reduce them to plain citizenship . . . and they will soon determine to move, and then there will be no difficulty in getting the poor Indians to give their consent. All this will be done by the State of Georgia if the U. States do not interfere with her law— . . . This will of course silence those in our country who constantly seek for causes to complain—It may indeed turn them loose upon Georgia, but that matters not, it is Georgia who clamors for the Indian lands, and she alone is entitled to the blame if any there be.[11]

Even before the laws were extended, the threat of state jurisdiction was used in confidential "talks" to the chiefs. After the states had acted, the secretary of war instructed each Indian agent to explain to his charges the meaning of state jurisdiction and to inform them that the President could not protect them against the enforcement of the laws.[12] Although the Supreme Court, in *Worcester* vs. *Georgia,* decided that the state had no right to extend its laws over the Cherokee nation, the Indian tribes being "domestic dependent nations" with limits defined by treaty, the President refused to enforce this decision.[13] There was only one means by which the government might have made "John Marshall's decision" effective—directing federal troops to exclude state officials and other intruders from the Indian domain. In January, 1832, the President informed an Alabama congressman that the United States government no longer assumed the right to remove citizens of Alabama from the Indian country. By this time, the soldiers who had protected the territory of the southeastern tribes against intruders had been withdrawn. In their unwearying efforts to pressure the Indians into ceding their lands, federal negotiators emphasized the terrors of state jurisdiction.[14]

[10] Governor John Gayle to former chiefs and headmen of the Creek Indians, June 16, 1834, Miscellaneous Letters to and from Governor Gayle, Alabama Dept. of Archives and History.

[11] Feb. 3, 1830, Jackson Papers, Library of Congress.

[12] John H. Eaton to John Crowell, Mar. 27, 1829, Office of Indian Affairs, Letters Sent, V, 372–73, Records of the Bureau of Indian Affairs, National Archives; Middleton Mackey to John H. Eaton, Nov. 27, 1829, Choctaw Emigration File 111, *ibid.;* Andrew Jackson to Major David Haley, Oct. 10, 1829, Jackson Papers.

[13] 6 *Peters,* 515–97.

[14] Wiley Thompson to Messrs. Drew and Reese, Jan. 18, 1832, Indian Letters, 1782–1839, pp. 173–74, Georgia Dept. of Archives and History; John H. Eaton to Jackson, Feb. 21, 1831,

Congress in May, 1830, complemented the efforts of the states by appropriating $500,000 and authorizing the President to negotiate removal treaties with all the tribes east of the Mississippi.[15] The vote on this bill was close in both houses. By skillful use of pamphlets, petitions, and lobbyists, missionary organizations had enlisted leading congressmen in their campaign against the administration's attempt to force the tribes to emigrate.[16] In the congressional debates, opponents of the bill agreed that savage tribes were duty-bound to relinquish their hunting grounds to the agriculturist, but they argued that the southeastern tribes were no longer savage. In any case, such relinquishment must be made in a freely contracted treaty. The extension of state laws over the Indian country was coercion; this made the negotiation of a free contract impossible. Both supporters and opponents of the bill agreed on one cardinal point—the Indian's moral right to keep his land depended on his actual cultivation of it.[17]

A logical corollary of vesting rights in land in proportion to cultivation was the reservation to individuals of as much land as they had improved at the time a treaty was signed. In 1816, Secretary of War William H. Crawford had proposed such reservations, or allotments, as a means of accommodating the removal policy to the program of assimiliation. According to Crawford's plan, individual Indians who had demonstrated their capacity for civilization by establishing farms and who were willing to become citizens should be given the option of keeping their cultivated lands, by fee simple title, rather than emigrating. This offer was expected to reconcile the property-loving half-breeds to the policy of emigration. It also recognized their superior claim, as cultivators, on the regard and generosity of the government. The proposal was based on the assumption that few of the Indians were sufficiently civilized to want to become full-time farmers or state citizens.[18]

The Crawford policy was applied in the Cherokee treaties of 1817 and

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Sen. Doc. 65, 21 Cong., 2 sess., p. 6; Cyrus Kingsbury to Jeremiah Evarts, Aug. 11, 1830, American Board of Commissioners for Foreign Missions Manuscripts; Tuskeneha to the President, May 21, 1831, Creek File 176, Records of the Bureau of Indian Affairs; Journal of the Commissioners for the Treaty of Dancing Rabbit Creek, *Sen. Doc.* 512, 23 Cong., 1 sess., p. 257.

[15] 4 *Statutes-at-Large,* 411–12.

[16] J. Orin Oliphant, ed., *Through the South and West with Jeremiah Evarts in 1826* (Lewisburg, Pa., 1956), pp. 47–61; Jeremiah Evarts to Rev. William Weisner, Nov. 27, 1829, American Board of Commissioners for Foreign Missions Manuscripts; *Sen. Docs.* 56, 59, 66, 73, 74, 76, 77, 92, 96, 21 Cong., 1 sess.

[17] Gales and Seaton, *Register of Debates in Congress, VI,* 311, 312, 320, 357, 361, 1022, 1024, 1039, 1061, 1110, 1135.

[18] *American State Papers: Indian Affairs,* II, 27. A general history of the allotment policy is Jay P. Kinney, *A Continent Lost—A Civilization Won: Indian Land Tenure in America* (Baltimore, Md., 1937).

1819 and the Choctaw treaty of 1820. These agreements offered fee simple allotments to heads of Indian families having improved lands within the areas ceded to the government. Only 311 Cherokees and eight Choctaws took advantage of the offer. This seemed to bear out the assumption that only a minority of the tribesmen would care to take allotments. Actually, these experiments were not reliable. In both cases, the tribes ceded only a fraction of their holdings. Comparatively few took allotments; but on the other hand, few emigrated. The majority simply remained within the diminished tribal territories east of the Mississippi.[19]

The offer of fee simple allotments was an important feature of the negotiations with the tribes in the 1820's. When the extension of state laws made removal of the tribes imperative, it was to be expected that allotments would comprise part of the consideration offered for the ceded lands. Both the ideology which rationalized the removal policy and the conclusions erroneously drawn from experience with the earlier allotment treaties led government negotiators to assume that a few hundred allotments at most would be required.

The Choctaws were the first to cede their eastern lands. The treaty of Dancing Rabbit Creek, signed in September, 1830, provided for several types of allotment. Special reservations were given to the chiefs and their numerous family connections; a possible 1,600 allotments of 80 to 480 acres, in proportion to the size of the beneficiary's farm, were offered others who intended to emigrate. These were intended for sale to private persons or to the government, so that the Indian might get the maximum price for his improvements. The fourteenth article of the treaty offered any head of an Indian family who did not plan to emigrate the right to take up a quantity of land proportional to the number of his dependents. At the end of five years' residence those who received these allotments were to have fee simple title to their lands and become citizens. It was expected that approximately two hundred persons would take land under this article.[20]

The Creeks refused to sign any agreements promising to emigrate, but their chiefs were persuaded that the only way to put an end to intrusions on their lands was to sign an allotment treaty.[21] In March, 1832, a Creek delegation in Washington signed a treaty calling for the allotment of 320

[19] 7 *Statutes-at-Large,* 156–60, 195–200, 210–14; Cherokee Reservation Book, Records of the Bureau of Indian Affairs; Special Reserve Book A, *ibid.;* James Barbour to the Speaker of the House, Jan. 23, 1828, *American State Papers: Public Lands,* V, 396–97.

[20] 7 *Statutes-at-Large,* 334–41; manuscript records of negotiations are in Choctaw File 112, Records of the Bureau of Indian Affairs.

[21] John Crowell to Lewis Cass, Jan. 25, 1832, Creek File 178, Records of the Bureau of Indian Affairs.

acres to each head of a family, the granting of certain supplementary lands to the chiefs and to orphans, and the cession of the remaining territory to the United States. If the Indian owners remained on their allotments for five years, they were to receive fee simple titles and become citizens.[22] Returning to Alabama, the chiefs informed their people that they had not actually sold the tribal lands but "had only made each individual their own guardian, that they might take care of their own possessions, and act as agents for themselves."[23]

Unlike the Creeks, the Chickasaws were willing to admit the inevitability of removal. But they needed land east of the Mississippi on which they might live until they acquired a home in the west. The Chickasaw treaty of May, 1832, therefore, provided generous allotments for heads of families, ranging from 640 to 3,200 acres, depending on the size of the family and the number of its slaves. These allotments were to be auctioned publicly when the tribe emigrated and the owners compensated for their improvements out of the proceeds.[24] Although the fullblood Chickasaws apparently approved of the plan for a collective sale of the allotments, the half-breeds, abetted by white traders and planters, persuaded the government to allow those who held allotments to sell them individually.[25] An amended treaty of 1834 complied with the half-breeds' proposals. It further stipulated that leading half-breeds and the old chiefs of the tribe comprise a committee to determine the competence of individual Chickasaws to manage their property. Since the committee itself disposed of the lands of the "incompetents," this gave both protection to the unsophisticated and additional advantage to the half-breeds.[26]

Widespread intrusion on Indian lands began with the extension of state laws over the tribal domains. In the treaties of cession, the government promised to remove intruders, but its policy in this respect was vacillating and ineffective. Indians whose allotments covered valuable plantations proved anxious to promote the sale of their property by allowing buyers to enter the ceded territory as soon as possible. Once this group of whites was admitted, it became difficult to discriminate against others. Thus a large number of intruders settled among the Indians with the passive connivance of

[22] 7 *Statutes-at-Large*, 366–68.

[23] John Scott to Lewis Cass, Nov. 12, 1835, Creek File 193, Records of the Bureau of Indian Affairs.

[24] 7 *Statutes-at-Large*, 381–89.

[25] John Terrell to Henry Cook, Oct. 29, 1832 (copy), John D. Terrell Papers, Alabama Dept. of Archives and History; Benjamin Reynolds to John Coffee, Dec. 12, 1832, Chickasaw File 83, Records of the Bureau of Indian Affairs; Terrell to John Tyler, Feb. 26, 1841 (draft), Terrell Papers; G. W. Long to John Coffee, Dec. 15, 1832, Coffee Papers; Rev. T. C. Stuart to Daniel Green, Oct. 14, 1833, American Board of Commissioners for Foreign Missions Manuscripts.

[26] 7 *Statutes-at-Large*, 450–57.

the War Department and the tribal leaders. The task of removing them was so formidable that after making a few gestures the government generally evaded its obligation. The misery of the common Indians, surrounded by intruders and confused by the disruption of tribal authority, was so acute that any method for securing their removal seemed worth trying. Furthermore, their emigration would serve the interest of white settlers, land speculators, and their representatives in Washington. The government therefore chose to facilitate the sale of allotments even before the Indians received fee simple title to them.[27]

The right to sell his allotment was useful to the sophisticated tribesman with a large plantation. Such men were accustomed to selling their crops and hiring labor. Through their experience in treaty negotiations, they had learned to bargain over the price of lands. Many of them received handsome payment for their allotments. Some kept part of their holdings and remained in Alabama and Mississippi as planters—like others planters, practicing as land speculators on the side.[28] Nearly all the Indians had some experience in trade, but to most of them the conception of land as a salable commodity was foreign. They had little notion of the exact meaning of an "acre" or the probable value of their allotments.[29] The government confused them still further by parceling out the lands according to Anglo-American, rather than aboriginal notions of family structure and land ownership. Officials insisted, for example, that the "father" rather than the "mother" must be defined as head of the family and righteously refused to take cognizance of the fact that many of the "fathers" had "a plurality of wives."[30]

[27] William Ward to Secretary of War, Oct. 22, 1831, Choctaw Reserve File 133; Mushulatubbee to Lewis Cass, Feb. 9, 1832, Choctaw File 113; W. S. Colquhoun to General George S. Gibson, Apr. 20, 1832, Choctaw Emigration File 121; A. Campbell to Secretary of War, Aug. 5, 1832, Choctaw File 113; John Kurtz to Benjamin Reynolds, Aug. 9, 1833, Office of Indian Affairs, Letters Sent, XI, 74; S. C. Barton to Elbert Herring, Nov. 11, 1833, Choctaw File 113; William M. Gwin to Lewis Cass, Apr. 8, 1834, Choctaw File 84, Records of the Bureau of Indian Affairs; Mary E. Young, "The Creek Frauds: A Study in Conscience and Corruption," *Mississippi Valley Historical Review,* XLVII (Dec., 1955), 415–19.

[28] Benjamin Reynolds to Lewis Cass, Dec. 9, 1832, Apr. 29, 1835, Chickasaw File 83, 85, Records of the Bureau of Indian Affairs; David Haley to Jackson, Apr. 15, 1831, *Sen. Doc.* 512, 23 Cong., 1 sess., p. 426; Elbert Herring to George W. Elliott, Jan. 23, 1833, Office of Indian Affairs, Letters Sent, IX, 516, Records of the Bureau of Indian Affairs; J. J. Abert to J. R. Poinsett, July 19, 1839, Creek File 220, *ibid.* See Special Reserve Books and Special Reserve Files A and C, and William Carroll's List of Certified Contracts for the Sale of Chickasaw Reservations, Special File, Chickasaw, Records of the Bureau of Indian Affairs, and compare Chickasaw Location Book, Records of the Bureau of Land Management, National Archives.

[29] George S. Snyderman, "Concepts of Land Ownership among the Iroquois and their Neighbors," in *Symposium on Local Variations in Iroquois Culture,* ed. William N. Fenton, Bureau of American Ethnology *Bulletin 149* (Washington, D. C., 1951), pp. 16–26; Petition of Choctaw Chiefs and Headmen, Mar. 2, 1832, Choctaw Reserve File 133; James Colbert to Lewis Cass, June 5, 1835, Chickasaw File 84; Benjamin Reynolds to Elbert Herring, Mar. 11, 1835, Chickasaw File 85, Records of the Bureau of Indian Affairs.

[30] Memorial of Chickasaw Chiefs to the President, Nov. 25, 1835, Chickasaw File 84; Thomas J. Abbott and E. Parsons, Sept. 7, 1832, *Sen. Doc.* 512, 23 Cong., 1 sess., pp. 443–44;

Under these conditions, it is not surprising that the common Indian's legal freedom of contract in selling his allotment did not necessarily lead him to make the best bargain possible in terms of his pecuniary interests. Nor did the proceeds of the sales transform each seller into an emigrant of large independent means. A right of property and freedom to contract for its sale did not automatically invest the Indian owner with the habits, values, and skills of a sober land speculator. His acquisition of property and freedom actually increased his dependence on those who traditionally mediated for him in contractual relations with white Americans.

Prominent among these mediators were white men with Indian wives who made their living as planters and traders in the Indian nations, men from nearby settlements who traded with the leading Indians or performed legal services for them, and interpreters. In the past, such individuals had been appropriately compensated for using their influence in favor of land cessions. It is likely that their speculative foresight was in part responsible for the allotment features in the treaties of the 1830's. When the process of allotting lands to individuals began, these speculative gentlemen made loans of whisky, muslin, horses, slaves, and other useful commodities to the new property-owner. They received in return the Indian's written promise to sell his allotment to them as soon as its boundaries were defined. Generally they were on hand to help him locate it on "desirable" lands. They, in turn, sold their "interest" in the lands to men of capital. Government agents encouraged the enterprising investor, since it was in the Indian's interest and the government's policy that the lands be sold and the tribes emigrate.[31] Unfortunately, the community of interest among the government, the speculator, and the Indian proved largely fictitious. The speculator's interest in Indian lands led to frauds which impoverished the Indians, soiled the reputation of the government, and retarded the emigration of the tribes.

An important factor in this series of complications was the government's

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Elbert Herring to E. Parsons, B. S. Parsons, and John Crowell, Oct. 10, 1832, *ibid.*, p. 524; Leonard Tarrant to E. Herring, May 15, 1833, Creek File 202, Records of the Bureau of Indian Affairs; Alexander Spoehr, "Kinship Systems," pp. 201–31; John R. Swanton, *Indians of the Southeastern United States,* Bureau of American Ethnology *Bulletin 137* (Washington, D. C., 1946).

[31] John Coffee to Andrew Jackson, July 10, 1830, Creek File 192, Records of the Bureau of Indian Affairs; John Crowell to John H. Eaton, Aug. 8, 1830, Creek File 175, *ibid.;* John H. Brodnax to Lewis Cass, Mar. 12, 1832, *Sen. Doc.* 512, 23 Cong., 1 sess., III, 258–59; John Terrell to General John Coffee, Sept. 15, 1829, Coffee Papers; J. J. Abert to [Lewis Cass], June 13, 1833, Creek File 202, Records of the Bureau of Indian Affairs; contract between Daniel Wright and Mingo Mushulatubbee, Oct. 7, 1830, *American State Papers: Public Lands,* VII, 19; W. S. Colquhoun to Lewis Cass, Sept. 20, 1833, *ibid.*, p. 13; Chapman Levy to Joel R. Poinsett, June 19, 1837, Choctaw Reserve File 139, Records of the Bureau of Indian Affairs; James Colbert to Lewis Cass, June 5, 1835, Chickasaw File 84, *ibid;* Chancery Court, Northern District of Mississippi, Final Record A, 111, M, 235–37, Courthouse, Holly Springs, Mississippi.

fallacious assumption that most of the "real Indians" were anxious to emigrate. Under the Choctaw treaty, for example, registration for fee simple allotments was optional, the government expecting no more than two hundred registrants. When several hundred full-bloods applied for lands, the Choctaw agent assumed that they were being led astray by "designing men" and told them they must emigrate. Attorneys took up the Choctaw claims, located thousands of allotments in hopes that Congress would confirm them, and supported their clients in Mississippi for twelve to fifteen years while the government debated and acted on the validity of the claims. There was good reason for this delay. Settlers and rival speculators, opposing confirmation of the claims, advanced numerous depositions asserting that the attorneys, in their enterprising search for clients, had materially increased the number of claimants.[32] Among the Creeks, the Upper Towns, traditionally the conservative faction of the tribe, refused to sell their allotments. Since the Lower Towns proved more compliant, speculators hired willing Indians from the Lower Towns to impersonate the unwilling owners. They then bought the land from the impersonators. The government judiciously conducted several investigations of these frauds, but in the end the speculators outmaneuvered the investigators. Meanwhile, the speculators kept the Indians from emigrating until their contracts were approved. Only the outbreak of fighting between starving Creeks and their settler neighbors enabled the government, under pretext of a pacification, to remove the tribe.[33]

Besides embarrassing the government, the speculators contributed to the demoralization of the Indians. Universal complaint held that after paying the tribesman for his land they often borrowed back the money without serious intent of repaying it, or recovered it in return for overpriced goods, of which a popular article was whisky. Apprised of this situation, Secretary of War Lewis Cass replied that once the Indian had been paid for his land, the War Department had no authority to circumscribe his freedom to do what he wished with the proceeds.[34]

Nevertheless, within their conception of the proper role of government, officials who dealt with the tribes tried to be helpful. Although the Indian must be left free to contract for the sale of his lands, the United States sent agents to determine the validity of the contracts. These agents sometimes

[32] Mary E. Young, "Indian Land Allotments in Alabama and Mississippi, 1830–1860" (manuscript doctoral dissertation, Cornell University, 1955), pp. 70–82; Franklin L. Riley, "The Choctaw Land Claims," Mississippi Historical Society *Publications,* VIII (1904), 370–82; Harmon, *Indian Affairs,* pp. 226–59.

[33] Young, "Creek Frauds," pp. 411–37.

[34] Lewis Cass to Return J. Meigs, Oct. 31, 1834, *Sen. Doc.* 428, 24 Cong., 1 sess., p. 23.

refused to approve a contract that did not specify a fair price for the land in question. They also refused official sanction when it could not be shown that the Indian owner had at some time been in possession of the sum stipulated.[35] This protective action on the part of the government, together with its several investigations into frauds in the sale of Indian lands, apparently did secure the payment of more money than the tribesmen might otherwise have had. But the effort was seriously hampered by the near impossibility of obtaining disinterested testimony.

In dealing with the Chickasaws, the government managed to avoid most of the vexing problems which had arisen in executing the allotment program among their southeastern neighbors. This was due in part to the improvement of administrative procedures, in part to the methods adopted by speculators in Chickasaw allotments, and probably most of all to the inflated value of cotton lands during the period in which the Chickasaw territory was sold. Both the government and the Chickasaws recognized that the lands granted individuals under the treaty were generally to be sold, not settled. They therefore concentrated on provisions for supervising sales and safeguarding the proceeds.[36] Speculators in Chickasaw lands, having abundant resources, paid an average price of $1.70 per acre. The Chickasaws thereby received a better return than the government did at its own auctions. The buyers' generosity may be attributed to their belief that the Chickasaw lands represented the last first-rate cotton country within what were then the boundaries of the public domain. In their pursuit of a secure title, untainted by fraud, the capitalists operating in the Chickasaw cession established a speculators' claim association which settled disputes among rival purchasers. Thus they avoided the plots, counterplots, and mutual recriminations which had hampered both speculators and government in their dealings with the Creeks and Choctaws.[37]

A superficially ironic consequence of the allotment policy as a method of acquiring land for white settlers was the fact that it facilitated the engrossment of land by speculators. With their superior command of capital and the

[35] Lewis Cass, "Regulations," for certifying Creek contracts, Nov. 28, 1833, *Sen. Doc.* 276, 24 Cong., 1 sess., pp. 88–89; *id.*, "Regulations," Feb. 8, 1836, Chickasaw Letterbook A, 76–78, Records of the Bureau of Indian Affairs; Secretary of War to the President, June 27, 1836, Choctaw Reserve File 136, *ibid.* For adjudications based on the above regulations, see Special Reserve Files A and C and Choctaw, Creek, and Chickasaw Reserve Files, Records of the Bureau of Indian Affairs, *passim.*

[36] "Memorial of the Creek Nation . . . ," Jan. 29, 1883, *House Misc. Doc.* 18, 47 Cong., 2 sess.

[37] Average price paid for Chickasaw lands computed from William Carroll's List of Certified Contracts, Special Reserve File, Chickasaw, Records of the Bureau of Indian Affairs; Young, "Indian Allotments," 154–67.

influence it would buy, speculators acquired 80 to 90 per cent of the lands allotted to the southeastern tribesmen.[38]

For most of the Indian beneficiaries of the policy, its most important consequence was to leave them landless. After selling their allotment, or a claim to it, they might take to the swamp, live for a while on the bounty of a still hopeful speculator, or scavenge on their settler neighbors. But ultimately most of them faced the alternative of emigration or destitution, and chose to emigrate. The machinations of the speculators and the hopes they nurtured that the Indians might somehow be able to keep a part of their allotted lands made the timing of removals less predictable than it might otherwise have been. This unpredictability compounded the evils inherent in a mass migration managed by a government committed to economy and unversed in the arts of economic planning. The result was the "Trail of Tears."[39]

The spectacular frauds committed among the Choctaws and Creeks, the administrative complications they created and the impression they gave that certain self-styled champions of the people were consorting with the avaricious speculator gave the allotment policy a bad reputation. The administration rejected it in dealing with the Cherokees,[40] and the policy was not revived on any considerable scale until 1854, when it was applied, with similar consequences, to the Indians of Kansas.[41] In the 1880's, when allotment in severalty became a basic feature of American Indian policy, the "civilized tribes," then in Oklahoma, strenuously resisted its application to them. They cited their memories of the 1830's as an important reason for their intransigence.[42]

The allotment treaties of the 1830's represent an attempt to apply Anglo-American notions of justice, which enshrined private property in land and freedom of contract as virtually absolute values, to Indian tribes whose tastes

[38] See calculations in Young, "Indian Allotments," 141–42, 163–64. No system of estimating percentages of land purchased for speculation from figures of sales is foolproof. The assumption used in this estimate was that all those who bought 2,000 acres or more might be defined as speculators. Compare James W. Silver, "Land Speculation Profits in the Chickasaw Cession," *Journal of Southern History,* X (Feb., 1944), 84–92.

[39] For the story of emigration, see Foreman, *Indian Removal;* Debo, *Road to Disappearance,* pp. 103–107 and *Choctaw Republic,* pp. 55–57. Relations between speculation and emigration can be traced in the Creek, Choctaw, and Chickasaw Emigration and Reserve Files, Records of the Bureau of Indian Affairs.

[40] Hon. R. Chapman to Lewis Cass, Jan. 25, 1835, Cherokee File 7, Records of the Bureau of Indian Affairs; Lewis Cass to Commissioners Carroll and Schermerhorn, Apr. 2, 1835, Office of Indian Affairs, Letters Sent, XV, 261, *ibid.;* "Journal of the Proceedings at the Council held at New Echota . . . ," Cherokee File 7, *ibid.;* Joint Memorial of the Legislature of the State of Alabama . . . , Jan. 9, 1836, *ibid.;* William Gilmer to Andrew Jackson, Feb. 9, 1835, Jackson Papers; 7 *Statutes-at-Large,* 483–84, 488–89.

[41] Paul W. Gates, *Fifty Million Acres: Conflicts over Kansas Land Policy, 1854–1890* (Ithaca, N. Y., 1954), pp. 11–48.

[42] Memorial of the Creek Nation on the Subject of Lands in Severalty Among the Several Indian Tribes," Jan. 29, 1883, *House Misc. Doc.* 18, 47 Cong., 2 sess.

and traditions were otherwise. Their history illustrates the limitations of intercultural application of the Golden Rule. In a more practical sense, the treaties typified an effort to force on the Indians the alternative of complete assimiliation or complete segregation by placing individuals of varying levels of sophistication in situations where they must use the skills of businessmen or lose their means of livelihood. This policy secured tribal lands while preserving the forms of respect for property rights and freedom of contract, but it proved costly to both the government and the Indians.

How lightly that cost was reckoned, and how enduring the motives and rationalizations that gave rise to it, may be gathered from the subsequent experience of the southeastern tribes in Oklahoma. There, early in the twentieth century, the allotment policy was again enforced, with safeguards hardly more helpful to the unsophisticated than those of the 1830's. Once more, tribal land changed owners for the greater glory of liberty, civilization, and profit.[43]

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[43] Compare Angie Debo, *The Five Civilized Tribes of Oklahoma: Report on Social and Economic Conditions* (Philadelphia, Pa., 1951) and Kinney, *Indian Land Tenure*, pp. 243–44.