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THE TRAIL OF TEARS – THE CHEROKEE NATION

Bakalářská práce

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Prohlašuji, že jsem závěrečnou práci vypracovala samostatně a použila jen uvedených pramenů a literatury.

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vlastnoruční podpis

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ABSTRACT

The thesis focuses on the forceful exodus of Native Americans westward. Firstly, it describes the rich Cherokee culture. Secondly, it illustrates the development of the relationship between the United States and Cherokee Nation. Finally, it studies treaties, court cases and laws that led to the Trail of Tears and proves its unconstitutional basis.

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INTRODUCTION

Dahlonega, Chattanooga, Tennessee, Chickamauga, Hiawasse, Chattahoochee...

These non English-looking names can be found on the map of the United States of America. These names are not English, but Cherokee. The Cherokee lived on this land for years before the European colonists came. Their way of life was different and something was bound to happen.

The relationship between the Native Americans and European settlers was not a friendly one. Every side believed that they had the right for the land. By the law of nature, the most strongest and numerous win, however, let's see how the European settlers gained their rights for the Cherokee lands in a "civilized" way.

My thesis's first goal is to give the reader an idea of the Cherokee culture. It is important as from the point of view of an eighteenth century Euro-American settler, Indians appeared to be "savages". In comparison with the European culture, the Cherokee's culture was matriarchal and thus the Cherokee women had more rights. Secondly, I also want to provide a better understanding of the relationship between the two sides through time.

The main goal of the bachelor thesis is to prove the illegal ways that the American settlers used to remove the Cherokee Indians from their ancestral lands west of the Mississippi river. The removal is known as the Trail of Tears. This will be done by studying laws, court cases and treaties signed between the two sides through time based on historical background.

All events are ordered chronologically as they are connected with each other. The thesis is divided into six chapters with appendices at the end that provides pictures of a Trail of Tears map and important personae of the time.

The thesis can be used as a study material at schools. It reveals a part of American history that not many people/students are aware of. It provides information to History or English classes. It can also serve as a primary source for students of Law because it deals with relevant treaties and court cases.

1. Historical origins of the Cherokees

The Cherokees are one of the native Indian tribes that occupied the American continent for many centuries. They created their own culture and adjusted their lifestyle to nature. Men and women had different roles in society and together, they enjoyed various social occasions.

1.1. Place

People are speculating where the Cherokee origins lay. Usually, they are associated with the mountains of the Southern Appalachian, however, this was not their original homeland. The Cherokees belong to the Iroquoian language family, so it is believed that they lived in the North, around the Great Lakes where the Iroquoian Indians come from (River, 2013). There are two different views on when the Cherokees came to the Appalachian.

The first opinion is that it was as late as in the 13th century. The Appalachians were occupied by several different tribes of Muscogee (Muskogean) peoples constantly fighting over the place and eventually, the Cherokees conquered the mountains and pushed them back (Brown, 1938).

The second one claims that it happened far earlier, that is about 6000 years ago. This fact is supported by a glottochronology research that studied the linguistic changes in the Cherokee language (River, 2013). In the Encyclopedia of North Carolina (Anderson, Wetmore, 2006) is claimed an even earlier date - approximately around 8000 BC.

Before the first touch with the white people, the Cherokee inhabited forty million square miles of land in parts of eight present-day states (King, 2007).

1.2. Name

The Cherokee people refer to themselves as Tsalagi, Aniyunwiya which translation is “real people” or Ani-Kitu-hwagi “people of Kituhwa”. The precise origin of the word Cherokee is not known, however, it is probably from names that other indigenous tribes called them. For instance, the Choctaw used the term Chiluk-ki “cave people”. Other tribes called the Cherokee similarly as one of the aforementioned terms (Partridge, 2014).

1.3. Division of the tribe

The exact number of the Cherokees prior to European contact is unknown but is estimated to be from 15 000 to 20 000 people (Bryan, 2012-2014).

The Cherokees were divided into three sub-groups based on location and mainly on three language dialects. In the east part of their territory lived the Lower Cherokee, in the west they were called the Over-the-Hill or Upper Cherokee and in between these two were located the Middle Cherokee (River, 2013; Partridge, 2014).

1.4. Culture

In 1783, at the end of the American War of Independence, George Washington wrote a letter to James Duane where he compared the Indians with wolves – “*both being beasts of prey tho’ they differ in shape*” (Washington, 1783). So how did the Indians live that they deserved these words?

The Cherokee were mountainous people. They lived scattered on a vast land in villages. In every village seven clans were represented: Bird, Wolf, Deer, Paint and the remaining three cannot be translated for sure. Every clan had its function in the village. For example the Wolf clan was the most numerous and prominent clan (Partridge, 2014). Also one could not marry within one’s clan, as the members were family. (Ehle, 1988) In each Cherokee village was a war chief, always a man. There was also a peace chief – a woman. She was respected by all and led the women’s activities (Bealer, 1972).

1.4.1. Women

The Cherokee society was, unlike European, matriarchal. A mother was a head of a family and she owned the house and the children. She could decide whom she would marry. If she bore too many children or if a child was deformed, she had the right to kill them. If a man did so, he would be accused of murder. It was easy to obtain a divorce too. Woman just packed her husband’s bags and put them in front of her door. Then, both of them were free to marry someone else (Ehle, 1988). This indicates that a Cherokee woman had more privileges and rights than a European woman.

Women were working as hard as men. They were mainly in charge of preparing food. They skinned and cleaned game animals that men hunted and used every part of them.

Clothes were made from animal furs. They also made everyday tools such as baskets from oak, cane or honeysuckle vine and pots from clay. Planting corn, beans and squash was women's work too as well as gathering berries, persimmons, crab apples or chestnuts and acorns in season (Bealer, 1972).

1.4.2. Men

The men were the hunters. They hunted buffalos, bears, deer, elks, even rabbits, squirrels, raccoons and so on with bows and arrows and stone-tipped spears. Their job was felling trees and making the famous dugout canoes. Men were building houses for women and those skilled made stone arrowheads and knives for the village (Bealer, 1972).

But primarily the men were warriors. Warfare was their favourite activity mainly during winter. Indigenous people were fighting among themselves continuously. The Cherokees fought with their neighbourhood tribes, the Iroquois, Chickasaw, Shawnee and Creek people (Bealer, 1972).

Every boy underwent a special training for hunting, learning how to use weapons and tracking preys. A Cherokee boy was not taught by his father but by a whole village, mainly by his mother's brothers. All boys received the same instructions. At puberty, more advanced training began. Men were trained to become warriors. A warrior that is a "*brutal instrument of vengeance, the deliverer of death to others*" (Ehle, 1988, p.22). The warrior must not show any hesitation in killing or capturing his enemy. The trophy of war was an enemy's scalp. The more scalps one obtained, the bigger warrior he was (Ehle, 1988). Because of unhesitant and brutal killing, the Indians were feared by the new settlers.

1.4.3. Social occasions

Except hunting and warfare, the third most important thing to a Cherokee man was a Cherokee ball game. It was a rough game that requires one's strength, agility and speed. Each participant carried two sticks and tried to catch a ball between them. The game looked like a true battlefield. This game became popular among the French and eventually evolved into a game called La Crosse (Mooney, 1890, p.105). The ball game was played between towns or sometimes between different tribes and was accompanied by many rituals and shaman ceremonies (Ehle, 1988).

The Cherokees celebrated six main festivals or ceremonies focused on nature, purifying or friendship (Cherokee Nation, 2014a). Before any hunt or warfare, ritual dances were performed. The rituals functioned as entertainment for children too, for example the Booger Dance when men changed clothes and put on wooden masks and danced around fires as clowns until children recognised their identity (Bealer, 1972). Cherokee priests or shamans had an important role in their lives. They were also serving as doctors along with women (Ehle, 1988).

Another important social gathering was during winter times when the snow was falling. People gathered in their snug houses around a fire and listened to the story-tellers. They were telling old legends, adventures of women and men (Bealer, 1972). This was very important as everything was passed on orally because no written language was developed at that time (Ehle, 1988).

The Cherokees lifestyle was different from the one known and acknowledged in Europe. However, the Cherokee's culture was rich, made the society work together and the Cherokees were proud of their heritage. Then the white men arrived.

2. First contact with the Europeans

The Cherokees knew people with white skins only from their legends. However, from the 16th century, first Europeans were arriving. Spanish, French and English slowly brought many changes for the Cherokee.

2.1. Legends

The Cherokee legends tell of the moon-eyed people with white skins whose eye sight was poor during the day. They had blue eyes and light hair. The Cherokees drove them west and they were not heard of again (Bealer, 1972). Bealer (1972) presumes that they could be the descendants of a Welshman called Madoc that arrived in A.D. 1170. According to Delaware Indians, these light-skinned people were called Allegewi and after their defeat they went to live among the Cherokees where they were remembered as moon eyed people (Tibbs, 2008).

2.2. Spanish

The first ones to make contact with the Cherokee tribe were Spanish explorers that came from Florida in 1540 under the leadership of Hernando de Soto. They came in hope of finding gold in the mountains (Bealer, 1972). The expedition recorded that they found “Chalaque” settlements along the Tennessee River (River, 2013). The Cherokees were surprised by their strange tools and weapons made of iron. They also admired Europeans soft cloths and jewellery (Bealer, 1972). So the first small trade started but because the Cherokees lived in remote mountainous areas, the contact was not frequent. However, this contact brought new diseases to Cherokees and it is estimated that 75% of them died (River, 2013).

2.3. English and French

A more frequent contact with the Europeans started after the English established their colony of Virginia in 1609 and Carolina colonies in 1663. A steady flow of deerskins and slaves started in 1684 when a treaty was signed between traders of Carolina and two Cherokee towns (River, 2013).

In the 17th century the French made their first contact with the Cherokees, too. They came from Canada and wanted animal furs and skins. In exchange they brought steel and iron tools such as axes, needles or knives, also luxury goods that were wanted by Cherokee

women – mirrors, copper pots, glass beads and the most importantly guns and gunpowder (Bealer, 1972).

However, iron or copper goods were not the only merchandise the colonists brought with them. Traders sold or gave whiskey to Native Americans who were not used to alcohol. Alcohol was much more intoxicating than any drug that the Natives knew. Alcoholism became a problem among native people (Wallace, 1993).

During the late 17th century and the first half of the 18th century, there were constant clashes between English and French over the fur trade with the indigenous people and the Cherokees functioned as a buffer and continued to switch alliances between the two nations (Wallace, 1993).

2.4. Changes in society

Due to the contact with European settlers, life began to change for the Cherokees. They began to be dependent on colonial goods, especially on firearms because other tribes started to use them too. Guns also became useful during hunts. Hunters were more successful and could kill more game which meant more goods for trade (River, 2013).

Moreover, the political power within the Cherokees shifted from the priest class to the warrior class. Hunters became known as “hunters for profit” (River, 2013).

During the 17th century, the Cherokee started to be connected with the European settlers by trade. Trade made Cherokee’s life easier in some aspects and they slowly began to be dependent on it.

3. The 18th century

The eighteenth century brought many changes to the Cherokees. They faced adversity, diseases and warfare through out the century. Two major events inevitably influenced their lives, they were the French and Indian War and the American Revolutionary War. Overall, the century was disastrous for all the Native people on the American continent.

3.1. Diseases

During the 18th century, the contact with Europeans extensively increased. And so did their exposure to new diseases to which they had no immunity. Thus a series of epidemics in 1729, 1738 and 1753 reduced their number by half (River, 2013).

Europeans were well aware of this fact and historians speculate if the Europeans used smallpox germ warfare or not. What supports this claim is a letter written by General Jeffery Amherst to Colonel Henry Bouquet July 7, 1763: *“Could it not be contrived to send the Small Pox among those disaffected tribes of Indians?”* Bouquet replied: *“P.S. I will try to inoculate [them] with some blankets that may fall in their hands, and take care not to get the disease myself”* (Cherokee Heritage, 2015). There has been some debate whether this plan was actually enacted. However, there is evidence that some infected blankets were given to Delaware Indians on May 24, 1763 (Harpster, 1938).

3.2. Capital city

At this time, the Cherokees were decentralised, each town was autonomous with its leadership build on clan and blood laws and it was not effective for trading and negotiations. Thus in the 1750s the Cherokee chiefs and leaders appointed Chota (also spelled Echota), a town in what is now north-central Tennessee, as its primary town and Old Hop as their principal chief. After that the Cherokees started to meet regularly, and a more centralized structure was established (Cherokee Nation, 2014b).

3.3. Warfare

As there were not any clear borders between the Cherokee lands and European settlers, constant clashes happened. European settlers being more and more hungry for land, the Cherokees gravely paid the price. The first treaty between the British and the Cherokees was signed in 1721, the first ceded land to the Province of South Carolina (River, 2013). However,

this treaty was broken later anyway and some of the Cherokees started to side with the French. There were two facts that kept their alliance with the British. The British goods were of higher quality and their naval power could cut off French colonies in Canada (River, 2013). Therefore, two trade treaties were signed between the Cherokees and British in 1730. At the sunset of the French and Indian War, the Cherokees ceded more land to South Carolina (Wikipedia, 2015).

3.3.1. The French and Indian War (1756-1763)

The Cherokees signed the treaty with North Carolina in 1756 that made them allies with the British during the French and Indian War. However, the British started to invade the Cherokee territories within two years and around 5000 Cherokees had to run into the mountains as refugees. This conflict is known as the Anglo-Cherokee War. The Cherokees were forced to end this conflict by signing a peace treaty in 1761. This treaty excluded the Cherokees from the ongoing war (Cherokee nation, 2014b).

After the Anglo-Cherokee conflict, a delegation of Cherokees had an audience with King George III. This was seen as a sign of imperial favouritism at the colonists' expense, along with the Proclamation Line of 1763 that prohibited settlement west of the Appalachian Mountains. The Cherokees fearing reprisal for the Anglo-Cherokee Conflict, ceded their land east of the line in a series of treaties from 1763 to 1765 (Wallace, 1993).

3.3.2. The Revolutionary War (1775-1783)

During the American Revolution, the Cherokees were once again sought as an ally by the British. The decision of joining them cost the Cherokee heavily. After several victories, the colonists persuaded the Cherokees to sue for peace. The Cherokee gave up lots of their lands in the Carolinas in the treaties of 1777 and 1781 (River, 2013). For the first time, these treaties forced the Cherokees to cede land where were their oldest towns, not just unsettled hunting grounds (Anderson, Wetmore, 2006).

At the end of the War, there was no mention of the Indian issue in the peace treaty in 1783, so every tribe signed its own peace treaty with the new Confederation Congress of the United States of America (Wallace, 1993).

The Cherokees signed the Treaty of Hopewell in 1785, South Carolina (Hicks, 2011).

Some of the young Cherokee warriors (with chief Dragging Canoe) went to the mountains and became known as the Chickamauga Cherokee and continued to fight Americans until 1794 (Anderson, Wetmore, 2006, Hicks, 2011).

3.3.3. Treaty of Hopewell

The treaty of Hopewell was signed between the United States of America and the Cherokee peoples in 1785 at Hopewell. The treaty consisted of thirteen articles and was signed by 37 Cherokee delegates and 3 American Commissioners (Kappler, 1904).

There were many important articles for the Indians. In the third article, the Cherokees accepted protection of the USA. The fourth article provided detailed description of Indian's hunting ground boundaries and was followed by the fifth article that added that no one other than Indian could settle on this ground and the Indians had the privilege to punish them as they please. The people already settled in these grounds had to leave within six months. The seventh article claimed that any citizen of the United States would be punished if committing a crime against Indians. The treaty also gave Indians the right to send their representative to US Congress (Kappler, 1904).

The treaty of Hopewell should have re-established the relationship between the two sides. However, later on, none of these points were fulfilled.

During the 18th century, the Cherokees ceded many acres of their land to the new settlers. The Cherokee fought with them in wars and realised that they would not be able to win alone without any alliance. After gaining independence from the Great Britain, the newly created state signed a peace treaty with the Cherokee.

4. Indian policy at the end of the 18th century and at the beginning of the 19th century

During the presidency of George Washington, Henry Knox was the secretary of war. Henry Knox wrote a letter to Washington in which he proposed the idea of a new Indian policy (King, 2007). After the Revolutionary War, the US government held the theory of conquest. After realising that this policy would lead to another expensive and long war with the Indians, they stated in the Northwest Ordinance of 1787 that Indian “*land and property shall never be taken from them without their consent*” (Wallace, 1993, p.32). This part of the Ordinance showed that the Indians had the rights to their lands and thus the land could be bought from them.

George Washington, Thomas Jefferson and Henry Knox started to view the Indians as foreign nations. They wanted to civilise and then assimilate the Indians into the Euro-American culture. Washington sent Christian missionaries into Indian lands, hoping they would introduce the idea of civilisation to the indigenous people (River, 2013).

However, the Government did not contemplate that the Indians would not want to give up their land or become American citizens. Unfortunately, after losing the last battles in 1794, the Cherokee welcomed Washington’s concept of civilisation (King, 2007).

4.1. Treaty of Holston

The new Indian policy was anchored in the Treaty of Holston in 1791. It is important to highlight that the treaty was signed after the ratification of the US Constitution.

The treaty was similar in contents to the treaty of Hopewell. There were sixteen articles and one change added one day later by Henry Knox (Kappler, 1904b).

Important was the article 9 where was stated that “*any citizen or inhabitant [of the United States shall not] go into the Cherokee country, without a passport first obtained from the Governor of some one of the United States...*” (Kappler, 1904b, p.30). Whereas in the fourteenth article was explicitly written that the United States would help the Cherokees to become more civilised and sent people into their country to assist them with cultivation (Kappler, 1904b).

4.2. The Cherokee's cultural changes

By agreeing with the assimilation into the American culture, the Cherokees style of life started to change. As soon as the beginning of the 19th century, there were some wealthy Cherokees that lived in the brick houses and owned farms. One example can be James Vann, rich mixed-blood Cherokee that gave the Moravian Church part of his lands to settle and build houses for themselves and a school for the Cherokee children (Bealer, 1972).

4.2.1. Cherokee Constitution and political life

To prevent ceding more land to the European Americans, the Cherokees established a new form of tribal government. The new system was codified in 1827 in their constitution and is based on the American model of government – two-house legislature (Bealer, 1972). In the Constitution the Cherokees named themselves as the Cherokee Nation. They divided the power into three departments: the Legislative, Executive and Judicial. This called for a new elected Principal Chief – John Ross, the police force – Lighthorse Guard, courts and schools (Hicks, 2011).

The Cherokees were among one of the first nations on the world that wrote their own constitution (River, 2013).

James Vann, Major Ridge, Charles Hicks and later John Ross were main leaders of the Cherokee political life and the chief Doublehead led the opposition. These two sides disagreed about the extent of adaption to white culture and disposing of Cherokee lands (Ehle, 1988).

Together with the new political structure, the Cherokees appointed a new capital city at New Town, a small village within the Georgia territory and named it New Echota (Hicks, 2011).

4.2.2. Cherokee's written language

The Cherokee language did not have a written form until 1821. The Cherokee alphabet was invented by one tribal member named Sequoya. Sequoya was injured in one unsuccessful hunt but he was an intelligent man that recognized the importance of written language. He did not understand English but started to study its letters from children's books. After a long

twelve years, he succeeded and brought the new Cherokee alphabet to his people. Soon after, many Cherokee people became literate (Newton, 1988).

The Sequoia's alphabet enabled the publication of the Cherokee Phoenix in 1828, a weekly newspaper written both in English and Cherokee (River, 2013). The Phoenix played an important role during the Georgia's anti-Indian laws as the Cherokees thought that public opinion could help them to maintain their sovereignty (Hick, 2011). Furthermore, some parts of the Bible were printed in Cherokee language in 1824 and this made some Cherokees convert to Christianity (Hicks, 2011).

During a short period of time, the Cherokees proved themselves to be a competent and "civilized" tribe and became known as one of the Five Civilized Tribes (River, 2013).

4.3. Reasons behind the Indian Removal

After the Revolutionary War, the Cherokees ceded most of their land to the American government. At that time, most of their territory was within Georgia. During the 18th century, the Georgia territory extended westward to the Mississippi River. Thus the strongest case for the removal of the Indians developed in this state (King, 2007).

The Mississippi River marked a boundary between the French colony Louisiana and United States (King, 2007).

4.3.1. The Compact of 1802

In 1795, Georgia passed the Yazoo Land Act which allowed selling land for a very low price. Due to the corruption, Georgia made an agreement with the US government called the Compact of 1802. In exchange for the west parts of Georgia (Mississippi and Alabama territories), the government promised three commitments. One of them stated 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...all...lands within the State of Georgia*" (King, 2007, p.28). One year later, America bought Louisiana from Napoleon and Jefferson offered the Cherokees to move to any unsettled land west of the Mississippi. Though, only a small number of Cherokees accepted his proposal (King, 2007).

By 1822, Georgia tried to press the federal government to cease the Cherokees title to lands within its boundaries. At that time, the president of the United States was James

Monroe. He had a difficult position in deciding how to handle this situation. With John Ross's successful diplomacy and an opinion of John Quincy Adams who was Monroe's Secretary of State, he stated in an 1824 speech to Congress that "*there is no obligation on the United States to remove the Indians by force*" (Hicks, 2011, p.138).

Thomas Jefferson is usually remembered as the author of the Declaration of Independence and one of the Founding Fathers, however, he also signed a compact with Georgia in which he promised Indian's ancestor lands that the US government did not own at that time and set in motion the inevitable relocation of Indians.

4.3.2. Need for Land

In 1823, Georgia delegates came to the capital city New Echota and were stunned by its modern look, better than most of their cities. They came to bargain for more land for Georgians as they had doubled in numbers in 20 years. Georgians also found the advancing Cherokees as a threat to their sovereignty (Hicks, 2011).

In 1825, Georgia discussed the best ways to improve the state's economy. It was needed to create routes which would help with easier transportation of goods between the state's capital Milledgeville and Tennessee's Chattanooga. Wilson Lumpkin, who was a member of the House of Representatives at that time, saw the future in the railroad that would pass through the Cherokee territory (King, 2007).

4.3.3. Discovery of Gold

In 1828, unfortunately for the Cherokees, gold was discovered at Dahlonega in their territory. This discovery caused many gold-seekers to come to the Indian territory and claim the land. Due to the presidential election of Andrew Jackson, Georgia was stimulated to pass many anti-Indian laws (King, 2007).

4.3.4. Andrew Jackson president

Andrew Jackson was a man that earned his fame by military career. He took part in the War of 1812 side by side with the Cherokee, Choctaw and Creek allies. The Cherokees bound by the treaty of Holston helped the United States win the War (Hicks, 2011).

Jackson was appointed a general and by president Monroe's command invaded Florida which he managed to overtake. By Jackson's victory, Spain surrendered its claim over Florida

and Oregon which increased Jackson's popularity among the white American citizens (Silverman, 1989).

In the election of 1824, Jackson was sought as the only strong candidate; however, he did not get more than 50% of votes which were needed to become the president. Therefore, the House of Representatives were to vote again. The opponent was James Quincy Adams. Surprisingly, the president became J.Q. Adams. Adams became president with help from Henry Clay, a skilful orator and influential person, which made him Adam's Secretary of State. This charade became known as a "corrupt bargain" (Silverman, 1989).

After losing the elections, Jackson went back to Tennessee to prepare his next presidential campaign. During the Adams's presidency, Jackson was undermining his position and gaining new supporters. The next presidential campaign was very personal and filled with hatred. Jackson's wife was accused of bigamy and adultery and unexpectedly died before Jackson's inauguration. Jackson blamed her death on Adams campaign for causing her stress (Hicks, 2011).

J. Q. Adams supported the Native Americans and honoured the treaties signed with them. On the other hand, Jackson supported the idea of removing the Indians westwards (Hicks, 2011).

In the election of 1828, Jackson won by electoral votes and put people that supported him into high positions (Silverman, 1898).

Cherokees were able to socially adapt to the Euro-American culture just in two decades. This showed their determination to stay in their ancestral lands. They signed a treaty that should have guaranteed these lands to them. However, because of various reasons, treaties as well as promises were broken.

5. Treaties, Laws and Cases before the Trail of Tears

Combining all the reasons for removal, the plan for relocating the Indians could slowly be set in motion. Firstly, the State of Georgia anxious for the Cherokee land, started to pass state laws over them.

5.1. Georgia's anti-Indian acts

In December 1828, Georgia passed a bill that claimed all Cherokee lands within its boundaries and the obligation to move by June 1, 1830. This law also made all white settlers living among the Cherokee to pledge alliance to the State of Georgia or move, otherwise they will be sued and imprisoned (Hicks, 2011).

Georgia passed many bills that would help to chase the Cherokees out of their state. Cherokees were prohibited from mining gold even if they owned the land. They could not assemble in groups, testify in court against any white person and all Cherokee laws were nullified (King, 2007).

To enforce the Georgia laws, they sent militia troops to Cherokee territory (Bealer, 1972).

5.2. Indian Removal Act

In December 1829, the Twenty-first Congress seated the first session. It is a custom that the president gives a speech that recommends next steps in legislature. It is not surprising that Jackson's speech focused on the Indian matter, especially concerning the Cherokee-Georgia case (Wallace, 1993).

5.2.1. Jackson's Annual Message to Congress

In Jackson's speech, he cited the Constitution where is written that "*no new State shall be formed or erected within the jurisdiction of any other State*" (Wallace, 1993, p.122) and he advised the Cherokee "*to emigrate beyond the Mississippi, or submit to the laws of those States*" (Wallace, 1993, p.123). He proposed that "*an ample district West of the Mississippi,.... to be guaranteed to the Indian tribes, as long as they shall occupy it*" (Wallace, 1993, p.123). At the end he mentioned that "*this emigration should be voluntary*" (Wallace, 1993, p.124).

Jackson aimed to persuade the Congress not only of the legality of the removal but also of moral necessity to do so as he believed it is the only way how to save the Indians from extinction (Wallace, 1993).

Jackson's speech was build upon an idea that the Cherokees were an independent state that was created within another state's boundary and thus it went against the Constitution. However, later, the Cherokees obtained a special identity and were called "domestic dependant nation".

5.2.2. Indian Removal Act of 1830

Soon after the Jackson's Annual Message to Congress, on February 24, 1830, the Committee on Indian Affairs promoted a removal Bill (Wallace, 1993). It was a new Georgian senator Wilson Lumpkin who drew up the Bill. Lumpkin knew and respected many prominent Cherokees, and in his opinion; Jackson was not the one who was trying to take land from the Indians but Jefferson who had started the removal policy by the Compact of 1802 (Ehle, 1988).

The bill brought a heated debate into the Congress. There were many supporters and objectors to the Removal. One of the objectors was William Penn who wrote many essays on the topic in the National Intelligencer and Cherokee Phoenix (Rozema, 2003). After many weeks, the heated debate ended on April 23, 1830 when the Senate voted 28 to 19 to pass the Removal Act and on May, 24, the House of Representatives voted 102 to 97 to pass the bill (Wallace, 1993).

The Indian Removal Act consisted of eight sections. It gave the president the power to relocate all the Indians west to the Mississippi River in exchange for their ancestral lands. It stated that all exchanged lands would be given to them for forever, provided they would not want to leave the given lands by themselves. The Act also stated that Indians would be given aid and protection during relocating and the first year after. It also appropriated 500,000 dollars to be paid for the exchanged lands. The Indian Removal Act was signed by President Andrew Jackson on May 28, 1830 (Indian Removal Act, 1830).

The Removal Act ended the dispute between the State of Georgia and the US government over Indian land. Even though the Act was based on voluntarily ceded land, in reality the government pressed all Native American people to sign treaties with them at any cost (Hicks, 2011).

5.3. Nullification Crisis

In the late 1820s, another disagreement between a state and federal government occurred. This case posed a question whether federal or state law is higher.

Nullification crisis or controversy was a dispute between South Carolina and the federal government. The government increased taxes over manufactured goods such as wool and textiles in 1828. These high tariff rates burdened Southern states' economy, so South Carolina decided to nullify the act claiming that they have the right based on the Constitution (Silverman, 1898).

However, President Jackson sent federal troops into the South Carolina to enforce the federal law (Silverman, 1898).

This case proved that President Jackson recognized the federal laws higher than state laws.

5.4. Cherokee Nation v. the State of Georgia

When the State of Georgia started to pass anti-Indian Acts and after the ratification of the Indian Removal Act, the Cherokee sent many delegates to meet influential people, including the president, and sent many letters fighting with the injustice. They knew that this is their only chance to fight as they could never beat the white settlers in a war. When none of these actions worked, they decided to turn for help to the United States Supreme Court (Ehle, 1988).

5.4.1. John Marshall and the Supreme Court

John Marshall became the Chief Justice in 1801. During his service, the Supreme Court strengthened its position. The case *Fletcher v. Peck* (1810) marked the first unconstitutional state law – it was the case about land corruption in Georgia. In the case *McCulloch v. Maryland* (1819), Marshall proved federal supremacy over states. Marshall won many cases while in office and managed to balance the three branches of government (Silverman, 1898).

5.4.2. The Cherokee nation v. Georgia Case

On July 18, 1831, the Cherokee sued the State of Georgia for her anti-Indian laws. The Cherokee hired two attorneys William Wirt and John Sergeant. No one from Georgia appeared to defend their state as they were sure that the law was on their side. Wirt argued that the Cherokees had their authority over their land supported by many treaties signed with the federal government. He acted as if the case was easy and there was nothing to worry about. However, he made a mistake (Hicks, 2011).

When announcing the Court's verdict, John Marshall sympathised with the Cherokee, however, he could not proclaim them as sovereign (foreign) nation but called them "domestic dependent nation". And therefore the Supreme Court did not have the jurisdiction to hear the case (Hicks, 2011).

Let's see what is written in the Constitution. The third article of the Constitution describes the judicial power, and in section two is written: "*The judicial Power shall extend to all Cases, ..., between a State, or the Citizens thereof, and foreign States, Citizens or Subjects*" (US Constitution, 1787). Now, the question is whether the Cherokee were these foreign States as written in the Constitution (River, 2013).

From the beginning, the federal government made treaties with the Cherokee so that they recognized them as an independent nation, tribe. However, in the treaties mentioned above (Treaty of Hopewell and Treaty of Holston), Cherokees admitted that they were under the protection of the USA and the United States could regulate their trade (River, 2013). Even though in the Treaty of Hopewell was written that Cherokees could send a representative into US Congress any time, there was no mention of it in the Constitution.

In article one, section eight of the Constitution is written that the Congress has power "*to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes*" (US Constitution, 1787). Here, Indian tribes are written separately from the foreign Nations (River, 2013).

These were the reasons why John Marshall described the relations between the Cherokee and United States as of "a ward and guardian" and "dependent domestic nations" (River, 2013).

Unfortunately, the Cherokee lost their case. Nonetheless, it was not because the state laws were higher than federal laws but because of the wrongly posed action.

5.5. Land lottery

In 1831, Georgia's surveyors came into the Cherokee territory and started to divide it into parts of land that would be distributed to Georgia citizens next year. In 1832, the winners came and expelled the Cherokees from their houses (Rozema, 2003). This law violated all the treaties that promised the Cherokee their sovereign right to their homelands.

5.6. Worcester v. Georgia

After Georgia passed the bill forcing all white citizens living within the Cherokee territory to register and swear an oath of alliance to Georgia, many white settlers did not do so. Some of them were the missionaries Isaac Proctor, Daniel Butrick, who escaped to the North Carolina, John Thompson and Samuel Worcester. They were imprisoned for two months before convincing the judge to release them. However, Georgia's governor Gilmer was irritated and complained to Jackson, who fired the judge and the men were once again arrested (Hicks, 2011).

Their case was brought to the Supreme Court. Once again, the attorneys were William Wirt and John Sergeant. This time, they based their belief on the statement that Georgia violated the treaties between the Cherokee and federal government and thus the law was null and void. It was also written in the treaties that the Cherokee could deal only with the federal government and so the state of Georgia had no jurisdiction over them (King, 2007).

Georgia was asked to present arguments before the Court. At that time, Wilson Lumpkin became Governor of Georgia. He declined to come and argued that the Supreme Court had no jurisdiction over the case (King, 2007). This time, he underestimated John Marshall's Supreme Court.

On March 3, 1832, Chief Justice Marshall delivered a verdict. He declared the state's laws unconstitutional and ordered to release the prisoners (King, 2007). He did not have to go as far as stating that Georgia cannot extend her laws over the Cherokee but he decided to remind the Congress of the power of the judicial branch (Hicks, 2011).

Though the Cherokees celebrated their victory, newspapers reported that President Jackson pronounced his infamous sentence: “*John Marshall made the ruling, now let him enforce it*” (Hicks, 2011, p. 214). Even though this statement did not have to be accurate, it was not disprovable that the government and the State of Georgia planned to continue on the Removal Plan.

In my opinion, President Jackson’s decision to ignore the Supreme Court’s verdict damaged the sole core of the Constitution and American belief of freedom for which they fought with Great Britain. It also poses a question whether Andrew Jackson could be accused of treason when he refused to take into consideration the Supreme Court’s decision and thus violated the Constitution.

The Cherokee fought with all injustice not by force, but by legal cases. This proved their degree of assimilation to the American culture. Even though they won decisive court cases, they still could do nothing about their relocation.

6. The Trail Of Tears

The Trail of Tears is the name of the actual removal of Native Indians from their ancestral homelands west of the Mississippi river. In the Cherokee language, the event is known as “Nunahi-Duna-Dlo-Hilul” – The Trail Where They Cried (River, 2013).

6.1. Treaty of New Echota

The only thing that remained was to make the Removal Act of 1830 legal. That meant that the Indians had to sell their lands voluntarily. However, there was little chance that the Cherokee government would agree with the terms.

6.1.1. Division of the Cherokee Nation

Because the situation started to become more and more hopeless, the Cherokees divided into two fractions – the Treaty Party and National Party. The Treaty Party started to feel that their only chance to survive is to move west. Prominent members of this party were people such as Major Ridge, his son John Ridge, William Hicks or Elias Boudinot. They were a minority but all of them were important fighters for the Cherokees. On the other hand, the National Party was led by the Chief John Ross and opposed to the removal (Rozema, 2003).

John Ross was desperately trying to save his Nation. He met President Jackson several times but always without any success. President Jackson said that the Cherokees had no other way but to move from their lands or be annihilated in a war with Georgian militia. And the Union would not risk their fragile existence over an Indian tribe (Hicks, 2011). As he was unsuccessful in his attempts, it convinced the Treaty Party that the situation was helpless and made them act on their own.

6.1.2. Signing of the Treaty

As the Nation was divided into two groups with opposing thoughts, the US government decided to deal only with the party that agreed with that removal. Five years after the Removal Act, in 1835, the Treaty Party members signed the Treaty of New Echota at Elias Boudinot’s house (Bealer, 1972, Hicks, 2011).

Rozema (2003) and Hicks (2011) wrote that the Treaty of New Echota was signed by twenty Cherokee men from the Treaty Party, whereas River (2013) claims that no Cherokee representative signed the Treaty.

On May 23, 1836, the US Senate ratified the Treaty of New Echota by a single vote (River, 2013). John Ross was furious when he realized what had happened. He argued that the treaty was not valid because by the Cherokee law, a majority of tribe's people had to sign such an important treaty for it to be valid (Bealer, 1972). Before ratification of the Treaty, almost 16,000 Cherokees signed a petition against it (Hicks, 2011). However, this was of no use and after the two years ultimatum, the federal militia came to enforce the Removal (King, 2007).

6.1.3. Contents of the Treaty

The Treaty of New Echota consisted of twenty articles. In the first article, the Cherokees were promised to get 5 million dollars for all of their lands east of the Mississippi river. The second article described the lands west of the Mississippi river given to the Cherokee, about 7 million acres. In the third article, the United States reserved right to build forts or military roads within the new Cherokee territory. The sixth article guaranteed the protection from the United States against any intruders including any states of the Union. The tenth article promised more money for the Cherokee, this money had to be withdrawn in two years from the signing of the Treaty. In the twelfth article, those Cherokees not wanting to relocate could remain in the states of North Carolina, Tennessee and Alabama under the condition of becoming their citizens and obeying their laws. The State of Georgia was not mentioned. In the sixteenth article was written that the Cherokee had to move within two years. If they did not leave voluntarily, they would be moved under supervision (Cherokee Nation, 2015).

Overall, the Treaty was disadvantageous for the Cherokee people. They were promised much less money than their actual property was worth (Ehle, 1988). Before the first contact with the white colonists, the Cherokee inhabited 40 million square miles of land, and before the Treaty of New Echota about 35 thousand square miles of land (Carnes, 1995), but now they have just about 11 thousand square miles of land in the present-day Oklahoma.

6.2. Preparation for Removal

By the spring of 1838, only about 2,000 Cherokees had voluntarily left to the new Indian Territory. These were mostly the treaty Party supporters (Rozema, 2003). Before the deadline for the removal, Colonel William Lindsay had build up thirty militia forts in North Carolina, Georgia, Alabama and Tennessee to house the Cherokee (River, 2013, King, 2007). Commander assigned to the task of removing the Cherokee people was General Winfield Scott. He collected an army of seven thousand men, consisted of federal and state troops. The state troops consisted mainly of volunteers; they lacked proper training and discipline. These unites became known as the Army of the Cherokee Nation (King, 2007).

In 1837, the 8th President of the USA became Jackson's Vice President Martin Van Buren (King, 2007). In May 1838, Buren ordered General Scott to assemble the Cherokee into stockades. Scott made an order to peacefully collect all Cherokee men, women and children. However, this command was largely ignored. The soldiers plundered, burned and looted Cherokee's houses. They made everyone leave immediately from their houses, leaving everything behind. They were moved into concentration camps and thrown into wooden huts with terrible living conditions (Bealer, 1972, Carnes, 1995). The Cherokee were given poor food rations and sickness was spreading among them. Many of them died even before being relocated (Carnes, 1995). One soldier that later fought in the Civil War, wrote: "*I fought through the Civil War and have seen men shot to pieces and slaughtered by the thousands. But the Cherokee Removal was the cruelest work I ever knew.*" (Bealer, 1972, p.70). Within a week, almost all of the Cherokee were imprisoned (King, 2007).

The main emigration depots were the Cherokee Agency, Ross's Landing and Gunter's Landing. There were about thirty stockades scattered across the region and more than sixteen thousand Cherokees rounded up. Some Cherokees lived in the camps for five months, after becoming weak because of the poor conditions and diseases; they had to set off to the Indian Territory (Hicks, 2011).

6.3. The Removal

The total number of detachments that made the journey to the Indian Territory is seventeen. Out of them, only four were accompanied by US troops. The remaining thirteen were conducted by John Ross (King, 2007). The average length of routes was about 1,200 miles (River, 2013).

6.3.1. The Water Route

The first three detachments left in June 1838 accompanied by US militia. They were mainly Cherokees from Georgia that opposed the Removal the most. They left from Ross's Landing and were assigned to travel by wagons and boats. The first detachment managed to reach the final point in seventeen days and without any deaths (King, 2007). However, the following two detachments led by Captain Drane and Lieutenant Whiteley took much longer and many people died on the journey. Drane's group travelled for 82 days and 146 Cherokees died, Whiteley's group travelled for 54 days with 70 casualties (King, 2007). The deaths were caused by poor conditions, malnutrition and exceptionally hot weather that made the river too dry for boats and the Cherokees had to travel the rest of the route on foot. Some of them did not even have shoes (Hicks, 2011).

When the Cherokees awaiting the Removal heard about the numerous deaths, they wrote a petition demanding to postpone the next detachments after the summer season and to conduct their relocating themselves (King, 2007). General Scott approved of the conditions but the Cherokee had to stay in the camps before going west (River, 2013).

6.3.2. The Northern Route

The next detachments were postponed until autumn. John Ross organised twelve groups of approximately one thousand people. These groups travelled by land and set off between August and October 1838 and arrived between January and April 1839. The thirteenth group composed of sick and infirm waited for the renewal of river streams and left on December 5, 1838 by boats together with John Ross and his wife (King, 2007).

6.3.3. The Benge Route

The Benge detachment started at Fort Payne in Alabama on September 28, 1838 and reached the Indian Territory on January 17, 1839. It was the fourth detachment under John Ross's command. There were 33 deaths and 3 births en route. This route is important because it was distorted on maps before the National Park Service studied it (King, 2007).

6.3.4. The Bell Route

The Treaty Party members took the Bell Route or also southern route on October 11, 1838. They were conducted by mixed-blood Cherokee John Bell and Lieutenant Edward

Deas. This was the only group that travelled on land and was not under supervision of John Ross. The route was the most forward but least recommended because of low quality roads. The Treaty Party members chose this route probably because they wanted to avoid meeting the other Party. They travelled for 89 days and 21 out of 660 people died en route (King, 2007).

Not all of the Cherokees were removed to the new territory, the Oconaluftee Cherokees had different treaties with the US government and together with fugitives from the journey remained in the North Carolina (Ehle, 1988).

6.3.5. The Aftermath

Overall, there were seventeen detachments and more than 16,000 Cherokees relocated. The first group departed on June 6, 1838 and the last party arrived on March 24, 1839. The number of people that died en route is about 4460 Cherokees according to Dr. Elizur Butler that had accompanied the Cherokee west (Rozema, 2003). James Mooney claimed a similar number that is about 4,000 Cherokee (Ehle, 1988). Another estimate by Russel Thornton is around 8000 Cherokees, including the ones that died on journey, in camps and shortly after arrival (Rozema, 2003). The official number is however much lower, 424 deaths en route (Ehle, 1988). The cost of the removal of John Ross's twelve detachments was approximately 1,250,000 dollars (King, 2007).

Together with the Cherokees, four more tribes were removed from their homelands. These were the Creek, Seminole, Chickasaw and Choctaw tribes. They managed to significantly assimilate into Euro-American culture and became known as the Five Civilized Tribes. Their relocation was no less terrifying than the Cherokees (Wallace, 1993).

John Ross was fighting the Removal until the last minute. He was comforting his people that they will not have to leave their homes and gave them hope. His people respected him much and believed in him. In my view, this also added to the disastrous outcome of the Trail of Tears. People were not prepared for what was to come. They left everything behind and were cramped into concentrating camps with no chance to see their property ever again.

6.4. Arrival to the new territory

The Indians were promised seven million acres of land west of the Mississippi river that is land in present-day Oklahoma State. After all detachments arrived, they faced many problems (Rozema, 2003).

The Nation was divided into three branches. They were the Treaty and National Party and now also Cherokees that had left their ancestral lands years earlier. These ‘old settlers’ created their own government and laws and thought that the arriving ones would obey them. However, this was not planned by the forcefully removed Cherokees. Sequoia, who moved west earlier, used his reputation and the three sides eventually reconciled. However, many National Party Cherokees could not forget what the prominent Treaty Party members did and thus Major Ridge, John Ridge and Elias Boudinot were killed, other members managed to escape (Hicks, 2011).

As soon as September 1839, the Cherokees ratified a new Constitution. The Constitution made the Treaty of New Echota illegal. With the new Constitution, John Ross was once again elected as the Principal Chief of the Cherokee Nation and remained in the office until his death in 1866. Seeing that the situation in his Nation calmed down, Ross set off to Washington at the end of the year 1839. He went to obtain the promised money in the Treaty of New Echota (Hicks, 2011). When he got back, he started to renew his Nation. Soon after the Removal, the Cherokee made a splendid new capital city Tahlequah. The Nation was filled with schools, courts, public houses, farmlands and industry. The Cherokee also re-established their printing press (Rozema, 2003).

6.5. National Historic Trail

The United States of America established a National Historic Trail as late as in 1987. The Trail commemorates and copies exactly the Trail of Tears of 1838-1839. In 2013, the trail was 5,045 miles long. The visitors can go through the trail on foot, over water or by vehicle, horse or bicycle. There are many stops and places to visit during the journey in every one of the nine states through which the Trail passes (National Park Service, 2015).

The Trail of Tears is one of the most sorrowful and shameful parts of American history. Many Native Americans died on the route or as a consequence of the journey. The

Cherokees were relocated based on a fraudulent treaty in years 1838-1839. They travelled thousands of miles through nine present-day states to reach the Indian Territory. In my view, I compare the journey with the Death Marches that happened during the World War II. Nonetheless, the Cherokees were still able to re-establish their Nation.

CONCLUSION

The Cherokees are an indigenous tribe that inhabited the American continent for centuries. They created their own culture based on the place where they lived – the Appalachian Mountains. They lived their lives in harmony with nature and formed a society where every woman, man and child had their rights, work and lived according to the tribal laws.

However, this way of life started to change with arrival of the European settlers. These settlers needed more land as more of them were coming. Because of their different culture, the settlers feared and detested the aboriginal people. They often called them savages and looked at them as inferior. Likewise, the Indians felt similarly about “white men”.

Throughout the seventeenth and eighteenth century, the Cherokee changed their alliance many times. Soon, they did not know whom they should join. After the Revolutionary War, everything was decided. The Cherokee signed a peace treaty with the newly created United States. At the end of the eighteenth century, George Washington proposed a new Indian policy that was to assimilate the Indians into American society. This policy was stated in another treaty – Treaty of Holston and the Cherokees managed to assimilate so much that many European settlers envied them.

However, there were many reasons why the Cherokee and other tribes could not stay in their ancestral lands. I would summarize them into two words – greed and power. These reasons led to the forced removal of over 16,000 Cherokees into unknown land west of the Mississippi river later known as the Trail of Tears.

In my opinion, even though the Cherokee tried to fight their fate through legal ways, the European settlers did not respect their own laws and Constitution and so betrayed themselves.

While studying the topic, I realised that some historians had different opinions and sometimes some sources stated different facts. It was important to draw information from more sources and compare them together. Especially this topic that was not paid attention to until 1987 when the National Historic Trail was established by the US government.

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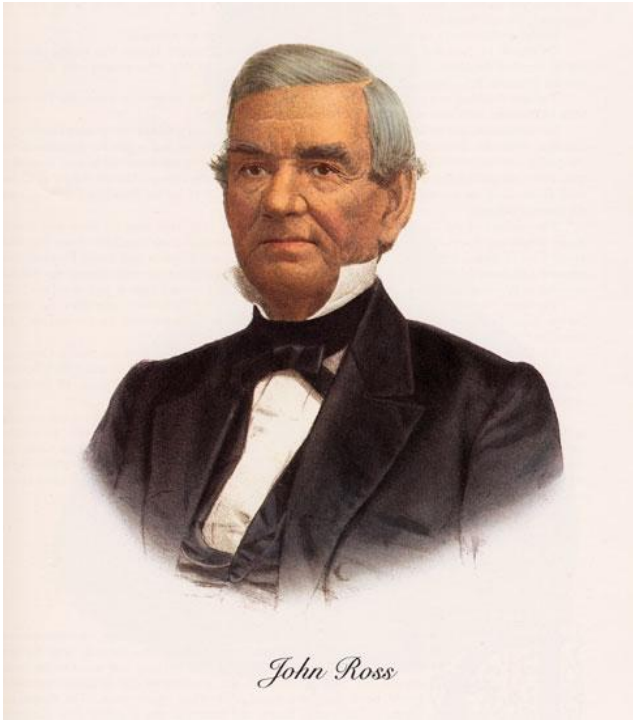
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APPENDICES

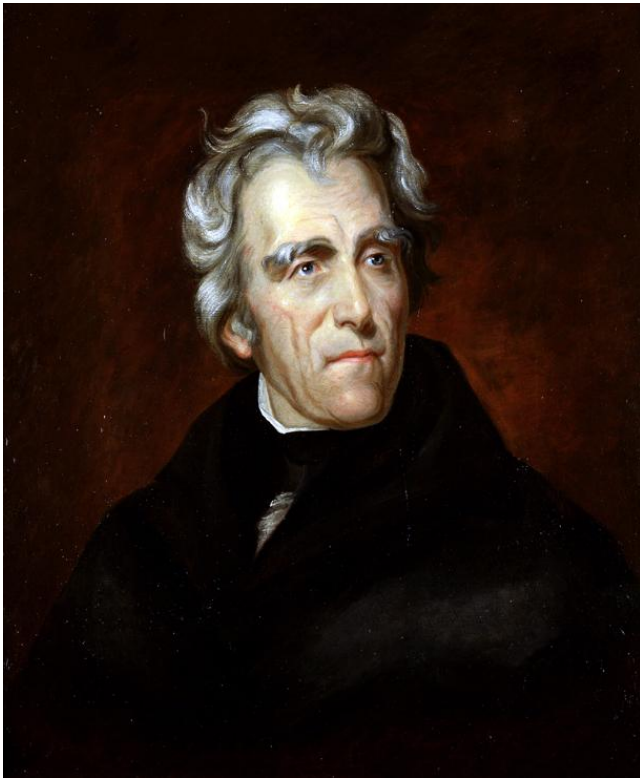
Appendix 1: John Ross



Appendix 2: Sequoya



Appendix 3: Andrew Jackson



Appendix 4: Map of the Trail of Tears



RESUMÉ

Bakalářská práce je zaměřena na část Americké historie ve spojitosti s původními obyvateli, konkrétně kmene Čerokiů. V první části popisuje Čerokíjskou kulturu a jejich vztah k Evropským kolonistům. Druhá část analyzuje smlouvy, soudní spory a zákony, které byly vydány a podepsány s Čerokíjským kmenem. Dokazuje protizákonné a protiústavní jednání Amerického prezidenta a lidu, které vedlo k nucenému odchodu původního obyvatelstva na západ za řeku Mississippi. Tento přesun se stal známým pod názvem Cesta slz.

ANNOTATION

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Rok obhajoby:	2015

Název práce:	Cesta slz – Čerokíové
Název v angličtině:	The Trail of Tears – the Cherokee Nation
Anotace práce:	Bakalářská práce popisuje kulturu kmene Čerokíů. Dále se zabývá vztahy mezi Americkými kolonisty a původními obyvateli v 17. a 18. století. Analyzuje podepsané smlouvy, zákony a soudní spory a dokazuje protiprávní jednání, které vedlo k nucenému odsunu Indiánů na západ v letech 1838-1839.
Klíčová slova:	Cesta slz, Čerokíové, Indiáni, Andrew Jackson, smlouva Hopewell, smlouva Holston, smlouva Nová Echota, zákon o odsunu Indiánů 1830, Čerokíové v. Georgia, Worcester v. Georgia
Anotace v angličtině:	The bachelor thesis describes the culture of the Cherokee Nation. It deals with the relationship between the American colonists and indigenous people in the 17 th and 18 th centuries. It also analyses treaties, laws and court cases and proves the unconstitutional actions that led to the Indian removal west in 1838-1839.
Klíčová slova v angličtině:	The Trail of Tears, the Cherokee Nation, Indians, Andrew Jackson, Treaty of Hopewell, Treaty of Holston, Treaty of New Echota, Indian Removal Act of 1830, Cherokee Nation v. Georgia, Worcester v. Georgia
Přílohy vázané v práci:	Appendix 1: John Ross Appendix 2: Sequoia Appendix 3: Andrew Jackson Appendix 4: Map of the Trail of Tears
Rozsah práce:	42 s.
Jazyk práce:	Angličtina