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## To the Indian Removal Act, 1814-1830

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To the Graduate Council:

I am submitting herewith a dissertation written by Kyle Massey Stephens entitled "To the Indian Removal Act, 1814-1830." I have examined the final electronic copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in American History.

Daniel Feller, Major Professor

We have read this dissertation and recommend its acceptance:

Stephen V. Ash, Lynn Sacco, Michael R. Fitzgerald

Accepted for the Council:

Carolyn R. Hodges

Vice Provost and Dean of the Graduate School

(Original signatures are on file with official student records.)

**“To the Indian Removal Act, 1814-1830”**

**A Dissertation Presented for the  
Doctor of Philosophy  
Degree  
The University of Tennessee, Knoxville**

**Kyle Massey Stephens  
August 2013**

## **Abstract**

This dissertation offers a history of Indian removal as a political issue from the War of 1812 to the signing of the Indian Removal Act in 1830. Its central argument is that federal removal policy emerged and evolved due to a precise and largely unforeseen sequence of events. Drawing on Indian treaties, journals of negotiations, minutes of cabinet meetings, Congressional debates, personal memoirs, and a variety of other sources, the dissertation charts and elucidates the evolution of United States Indian policy from a diplomatic to a domestic concern. One of the central themes of the dissertation is how most white statesmen gradually, once Anglo-American dominion was established east of the Mississippi River after the War of 1812, abandoned long-held notions of “assimilation” and instead viewed the American Indian communities as the quintessential “other.”

Chapter 1 examines American-Indian relations at the outbreak of the War of 1812. It argues that the federal government’s policy toward the Native Americans was both contradictory and incompatible with the nation’s desire for western expansion. Chapter 2 describes the establishment of American hegemony in eastern North America during and immediately after the War of 1812. Chapter 3 considers the efforts of the James Monroe administration to reform the contradictory modes of interacting with the Indians. It argues that these efforts were stymied by the determination of Georgia to remove all Indians from its territory, which led to clashes between the federal government and the state over Indian affairs. Chapters 4 and 5 discuss the fraudulent Treaty of Indian Springs, concluded with the Creeks in 1825, and its aftermath. They argue that the controversy over the treaty and its subsequent annulment created a political environment in which removal came to be viewed by the majority of politicians as the only solution to the tensions both in the American government and in the southern borderlands.

Chapter 6 argues that Andrew Jackson inherited an unofficial policy of Indian removal in 1829 and describes the efforts of his administration to codify removal as official policy. Chapter 7 delineates the debate over the removal bill in Congress and the subsequent vote.

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## **Introduction: To the Indian Removal Act**

In Volume I of Democracy in America Alexis de Tocqueville relates a haunting scene he witnessed firsthand. In December 1831, while visiting Memphis, Tennessee, the young Frenchman watched a large group of Choctaw Indians cross the Mississippi River for lands west, never to return. The weather was wretched, with hard snow on the ground and ice in the river. The age of the Choctaws ranged, according to Tocqueville, from newborn to elderly. Many were sick, and they had few provisions and no shelter. “No cry, no sob was heard amongst the assembled crowd; all were silent,” he writes. “Their calamities were of ancient date, and they knew them to be irremediable.” As the Indians gathered onto the ferry that was to carry them across the river, their dogs “set up a dismal howl” and leapt into the frigid water after the boat. “The ejection of the Indians,” Tocqueville continues, “very often takes place at the present day, in a regular, and as it were, a legal manner.”<sup>1</sup>

Tocqueville’s famous chapter on Indian removal reminds us that he was not an unabashed admirer of the United States. Though there was much about the young nation he did respect, Tocqueville was a commentator on American culture and institutions, not a champion of them. His language concerning the treatment of the Native Americans by the United States government, in fact, ranks among the most poignant, and acerbic, in the book. He believed the removal of the Indians from their ancestral lands to be a great evil. One source of Tocqueville’s outrage can be traced to the single word legal quoted above. This French nobleman was far from naïve; he well understood the way of empires in general and the history of North America in particular. The Spanish, for example, certainly acted brutally in their dealings with the inhabitants of the Americas, sacking the New World “with no more temper or compassion than a

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<sup>1</sup> Alexis de Tocqueville, Democracy in America, Vols. I & II. Trans. Henry Reeve (New York: Bantam, 2000), 394.

city taken by storm.” The distinction that caused Tocqueville discomfort was the fact that despite their “unparalleled atrocities” the Spanish did not succeed in either exterminating the Indians or entirely depriving them of their rights. The white citizens of the United States, however, “have accomplished this twofold purpose with singular felicity; tranquilly, legally, philanthropically, without shedding blood, and without violating a single great principle of morality in the eyes of the world.”<sup>2</sup>

Though Tocqueville was incorrect in his assertion that Indian removal was accomplished (or, if you will, committed) tranquilly or without violating moral principles, he was entirely correct in his recognition that the removal of Native Americans to lands west of the Mississippi River was a definitive event in United States history. The process was controversial at the time, and its legacy remains so today. President Thomas Jefferson advocated the acquisition of Indian lands as early as 1803. At the time, however, this was largely wishful thinking. By the time Jefferson’s successor James Madison began his second term, however, the situation had markedly changed in favor of the United States. By the time his successor, James Monroe, completed his second term, Anglo-American hegemony was all but assured in the southeastern borderlands. The legal and systematic removal of the Indians that so concerned Alexis de Tocqueville was the result of politicians responding to rapid demographic, military, and economic changes in the Old Southwest, which was being transformed into what we recognize as the Old South. These changes resulted in an unprecedented diplomatic leverage over the American Indians that culminated in a singular piece of United States legislation—the Indian Removal Act of 1830.

Yet the political history of Indian removal has been surprisingly understudied. Those works that have examined the phenomenon vary considerably in scope and analysis. Some

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<sup>2</sup> Ibid., 411-412.



scholars argue that the Native peoples of this country were doomed from the first European footprint on North American soil; in this vein, there is a direct lineage from Columbus in 1492 to Wounded Knee in 1890. Other historians write as if United States Indian removal policy began with the presidency of Andrew Jackson. The former postulate is not helpful for the understanding of federal Indian policy, and the latter only partially so.<sup>3</sup> Even the one indispensable analysis of United States Indian policy, Francis Paul Prucha's two-volume The Great Father: The United States Government and the American Indians (1984) devotes a mere eight pages to the formative years from the War of 1812 to the ascendancy of Andrew Jackson.<sup>4</sup>

A central premise of this study is that the politics of Indian removal cannot be understood merely by examining the attitudes and policies of Jackson. Indeed, I argue that the seventh president has for too long remained at the center of analyses of removal, thus obscuring our understanding of the event. Indeed, if many Americans remember anything about Jackson, it is (not unreasonably), his advocacy of and signature on the Removal Act. Similarly, if someone is asked about Indian removal, the one name sure to crop up is that of Jackson. Jackson was certainly a key player in the codification of removal as federal policy, but he was hardly the only one. This study will show that the 1810s and 1820s were defining decades in the evolution of American Indian policy. During the better part of these years—over a decade, from late 1816 to early 1829, when he was elected president—Jackson played very little role in discussions of federal Indian policy (though he desperately wished to be consulted) and no role at all in several of the key junctures that led to the Act.

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<sup>3</sup> As examples, see David E. Stannard, American Holocaust: The Conquest of the New World. (New York: Oxford University Press, 1992), and Anthony F. C. Wallace: The Long, Bitter Trail: Andrew Jackson and the Indians. (New York: Hill and Wang, 1993).

<sup>4</sup> Francis Paul Prucha, The Great Father: The United States Government and the American Indians. 2 vols. (Lincoln: University of Nebraska Press, 1984), 183-191.

This dissertation, after a brief introductory chapter on the foundations of United States Indian policy, argues that the Indian Removal Act of 1830 came about due to a specific and largely unforeseen series of events. It was not destined to occur. These events were, in chronological order, the establishment of Anglo-American hegemony east of the Mississippi River during and immediately after the War of 1812 (Chapter 2); a bitter controversy between the federal government and the state of Georgia over the rights to Indian lands that culminated in President James Monroe formally proposing removal to Congress in 1825 (Chapter 3); the fraudulent Treaty of Indian Springs of that same year and the political repercussions which followed (Chapter 4); and the increasingly widespread belief among white statesmen that the unresolved relationship between the United States and the Indian tribes had reached a state of crisis (Chapter 5). None of these events, of course, created the desire for Indian lands or the wish to see the original inhabitants removed. But they did foster the political conditions that allowed the crafting of federal legislation to address the situation (Chapter 6), followed by a national debate and an up-or-down vote in Congress (Chapter 7). Andrew Jackson is the central figure in Chapters 2 and 6.

From this altered perspective several key actors emerge as significant in the history of removal policy. The most prominent figures are presidents James Monroe and John Quincy Adams, and their respective secretaries of war, John C. Calhoun and James Barbour. The fact that Monroe chose to close out his presidency by formally abandoning the Jeffersonian rhetoric of assimilation and advocating removal is curious, and has never been satisfactorily explained by Monroe's biographers.<sup>5</sup> Secretary of War Calhoun, for his part, advocated as early as 1818 a

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<sup>5</sup> See, for example, Noble E. Cunningham, The Presidency of James Monroe (Lawrence, Kansas: University of Kansas Press, 1996), 174.

“proper combination of force and persuasion” to incorporate the Indian tribes under the laws of the United States and cease treating them as separate nations.<sup>6</sup>

The presidency of John Quincy Adams has also been overlooked in studies of U.S.-Native American relations. This omission is less puzzling, given the relative obscurity of the Adams presidency, sandwiched as it was between the great Virginia dynasty of Jefferson, Madison, and Monroe and the two terms of Andrew Jackson. Indeed, the administration of the younger Adams is not only consistently overlooked in United States history survey texts but minimized even by Adams’s biographers. A popular textbook affords the presidency of John Quincy Adams exactly four sentences.<sup>7</sup> Similarly, Paul C. Nagel’s brilliant but inaccurately titled John Quincy Adams: A Public Life, a Private Life provides a single chapter for these four years of its subject’s life and work. The author justifies the brevity by asserting that “His administration was a hapless failure and best forgotten, save for the personal anguish it cost him.”<sup>8</sup> In retrospect, of course, there is no doubt that Adams’s unsatisfying presidency was overshadowed by his stellar earlier career as a diplomat and his admirable third act as a congressman and antislavery agitator. Even the finest Adams scholar of the twentieth century, Samuel Flagg Bemis of Yale, whose two-volume opus chronicling the sixth president’s long career remains unsurpassed in scope and analysis, underestimates the amount of time and energy Adams devoted to the Indian question, as well as the significance of the professional relationship

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<sup>6</sup> John C. Calhoun, “Alteration of the System for Trading with the Indians,” December 5, 1818, ASP: Indian Affairs, 2: 183.

<sup>7</sup> James West Davidson, et. al., Nation of Nations: A Narrative History of the American Republic, Fourth edition. (New York: McGraw Hill, 2001), 338.

<sup>8</sup> Paul C. Nagel, John Quincy Adams: A Public Life, A Private Life. (New York: Knopf, 1997), 296. Nagel’s book is a fine study of the man, his personal relationships, and the evolution of his worldviews. It is a poor treatment of his professional career.

between Adams and his able secretary of war, James Barbour of Virginia.<sup>9</sup> When we examine the history of the Adams presidency in prospect rather than in retrospect, however, by reading the most valuable historical source of all—his diary, both in its published and unpublished forms—a different picture emerges.

But while Adams believed that Native Americans should make way for white Americans forthwith, he recognized, in principle, their right of refusal. The same cannot be said of Andrew Jackson. The general was swept into office with an overwhelming popular consensus among southern voters, and he addressed the Indian problem eagerly and aggressively. Certainly the inhabitants of Georgia, Alabama, and Mississippi believed Jackson would advance their interests. Jackson and Secretary of War Eaton continued diplomatic efforts to try to convince the Native Americans to relocate beyond the Mississippi River. An intriguing question, however, is the degree to which these efforts were pro forma. The Indian Removal Act of May 1830, after all, is a brief but fascinating document. On the one hand, it is a simple appropriation bill for half a million dollars, coated in benign language, and making no mention of the use of force. On the other hand, the act for the first time placed the federal government fully behind the removal policy. The bill, conspicuously, contained no stipulation which allowed the Indian tribes to refuse relocation, and nothing further was said of assimilation.<sup>10</sup>

The United States Congress, in particular, has too often been the silent branch in analyses of antebellum Indian removal, an omission I hope this work will partially rectify. The Indian Removal Act was signed by Jackson; but the Indian removal bill was fiercely debated and voted upon by individuals in the Senate and the House of Representatives, each with his own

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<sup>9</sup> The two volumes are Bemis, John Quincy Adams and the Foundations of American Foreign Policy (New York: Knopf, 1949) and John Quincy Adams and the Union (New York: Knopf, 1956). The latter volume chronicles Adams' career from his presidency forward.

<sup>10</sup> Francis Paul Prucha, ed. Documents of United States Indian Policy (Lincoln: University of Nebraska Press, 1975), 52-53.

personality, motive, and constituency. Theodore Frelinghuysen of New Jersey became known in the United States and Europe as the “Christian Statesman” for his impassioned campaign against the bill. Others who favored it, such as Senator Thomas Hart Benton of Missouri, viewed the matter as a combination of political battle and constitutional crisis. There were few public officials who lacked a strong opinion on the matter, and the congressional argument merits a detailed analysis. The narrow final vote in the House of Representatives (102 to 97) is testament to the hotly contested debate and the fact that Americans in the first third of the nineteenth century were far from unanimous in their opinions toward the Indians and westward expansion.

A goal of this project is to address Indian removal in the context and terms of the nineteenth century. Stating that Indian removal was a crime against humanity, while true, does not lead us to a greater understanding of the event. Neither does demonizing Andrew Jackson and the other statesmen of the period. They were, of course, racist; that these white statesmen believed Anglo-Saxon—and, more specifically, Anglo-American—culture to be the pinnacle of human achievement should come as no surprise. Despite the abhorrence we properly feel for the race-based sense of superiority of nineteenth-century white Americans and their consequent characterization of the Indian peoples as “savages,” “children,” and “minors,” as well as their greed for Indian lands and extinction of Indian title—and, eventually, Indian sovereignty—these sentiments must be evaluated and understood in the context of their time, not our own. Explaining away removal as genocidal intent does little justice to the complexities of the moment. And, as uncomfortable as it may be, we must ask the question: were American politicians sincere in their professions of concern for Native Americans? Not always, certainly. But to assume that people were hypocrites all of the time can only lead to an anachronistic misunderstanding of the era. We will rarely find perfect echoes of our own values in the people

of the past. The alternative to appropriation of the lands and removal of the tribes was, some contemporaries genuinely believed, slaughter. As John Bell of Tennessee claimed in 1830: “To pay an Indian tribe what their ancestral hunting-grounds are worth to them, after the game is fled or destroyed, as a mode of appropriating wild lands claimed by Indians, has been found more convenient, as well as more merciful, than to assert the possession of them by the sword.”<sup>11</sup> For many American political figures at the time, these were the only two possible outcomes. Leaving the Native Americans and their lands alone was, quite literally, inconceivable.

This being stated, other statesmen were aggressive and articulate in their defense of the Indians, and the last third of this study examines the nationwide debate over removal from 1828 to 1830. This debate meant different things to different people, and these varying interpretations of removal are crucial in explaining the event. Jeremiah Evarts, an author and social reformer, wrote a brilliant series of essays advocating the rights of the Cherokees to their land on historical grounds. There were few prominent thinkers and public officials who lacked strong opinions on the matter, and I have attempted a detailed analysis of the national argument.

History, simply put, is the study of how and why things happened. In these pages I trace how one thing happened—how the Indian Removal Act came to be—and why. To that end, I echo the Canadian historian Donald Creighton’s famous assertion that history is also “the encounter between character and circumstance.”<sup>12</sup> Never is this more apropos than in the history of American politics and public policy. Though certain American Indian leaders appear in this work, it is not a history of any Indian tribe, and I make no claim to being an expert on Native American history. My focus is on the lineage of removal policy from the perspective of Anglo-American policymakers and those who implemented Indian policy in the borderlands. My study

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<sup>11</sup> John Bell, “Removal of the Indians,” United States Serial Set, H. of R. No.227, 21<sup>st</sup> Cong. 1<sup>st</sup> Session, p. 6.

<sup>12</sup> Donald G. Creighton, Toward the Discovery of Canada: Selected Essays (Toronto: Macmillan Canada, 1972), 19.

concludes with the vote in Congress and the signing of the bill by President Jackson—when the Indian removal bill became the Indian Removal Act, and thus removal of all Native Americans beyond the Mississippi River became official United States policy. This was not the end of the matter, of course, for the individuals involved. Jeremiah Evarts led the crusade for repeal until his untimely death the following year. Others, including Frelinghuysen and Henry Clay of Kentucky (who would have opposed anything sponsored by Jackson) fought against the act's implementation. But because boundaries must be drawn somewhere, and because the implementation of government policy strikes this writer as a decidedly different endeavor from its formulation and codification, I leave the study of the physical removal of the Indians—an effort begun by Alexis de Tocqueville and still ongoing—to others.

## Chapter 1 America's Indian Policy in 1812

Already by 1783, the year the United States formally achieved independence from Great Britain, some Americans were thinking of their nation's future in terms of empire. This included the most prominent American of all, George Washington. In his last letter to the state governments before stepping down as commander-in-chief of the Continental Army, he referred to Americans as "the sole Lords and Proprietors of a vast Tract of Continent" and believed the success of the Revolutionary struggle was nothing less than the "foundation of our Empire[.]" But Americans, Washington cautioned, had a choice: to be "respectable and prosperous, or contemptible and miserable as a Nation."<sup>1</sup> The new country, Washington believed, would grow and prosper, or it would stagnate and fail. Even earlier, in 1780, Thomas Jefferson referred to America as an "Empire of liberty" whose mission was to set an example of freedom to other nations.<sup>2</sup> He too envisioned the nation's future in terms of continental dominion, and proved it in 1803 by purchasing Louisiana from France and adding 529,402,880 acres to the country's domain. Ordinary Americans were eager to fill up that space. Leading statesmen's dreams of national power, prosperity, and stability perfectly complemented the dreams of thousands, and then millions, of ordinary Americans who sought personal homesteads, independence, and profit in the West.

On the eve of the War of 1812, the population of the United States was in excess of seven and a half million people. About eighty percent of the population was white. Twenty percent, about 1.4 million people, was black. Eighty-seven percent of the black population lived and worked as slaves. All but about seven percent of Americans lived in rural areas. From 1790 to

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<sup>1</sup> Circular to the States, June 8, 1783, Writings of George Washington, ed. by John C. Fitzpatrick. 39 vols. (Washington, D.C.: Library of Congress, 1931-1939), 26: 484-86.

<sup>2</sup> Thomas Jefferson to George Rogers Clark, December 25, 1780, The Papers of Thomas Jefferson, ed. by Julian P. Boyd et. al. 39 vols. to date. (Princeton: Princeton University Press, 1951--), 4: 237-38



1810, the population of the country had nearly doubled, and was continuing to grow at the same incredible pace.<sup>3</sup> As a result, white Americans, many bringing their slaves with them, were spilling over the Allegheny, Blue Ridge, and Cumberland Mountains in record numbers in search of unoccupied land to transform and cultivate. By 1803 the new western states of Kentucky, Tennessee, and Ohio had been admitted to the Union. Louisiana became a state in 1812, and it seemed a foregone conclusion that the residents of the Mississippi Territory (comprising today's Mississippi and Alabama) between Louisiana and Georgia would apply for statehood before many more years passed.

These “new” lands, however, were anything but unoccupied. Though the numbers for the indigenous population are very uncertain for the early nineteenth century, in 1810 the total Native American population of what is now the contiguous United States was probably between 500,000 and 600,000 human beings.<sup>4</sup> The famous tribes of New England from the years of first contact in the early seventeenth century—the Wampanoag, the Massachusetts, and the Pequot—had long vanished from their ancestral homes, though a small number of their descendants still existed as part of other tribes in western New York and around the eastern Great Lakes. In today's Middle West, the Shawnee, Illinois, Sauk, Fox, Winnebago, and other tribes still lived, though they felt the pressure from the encroachment of white pioneers. In the more densely populated Southeast, about 100,000 Indians comprising five major tribes lived between the Ocmulgee River in central Georgia and the Mississippi River, and between the Tennessee River and the Gulf of Mexico—a space of roughly 400 miles by 300 miles. These were the Creeks, Choctaws, Chickasaws, Seminoles, and Cherokees. The first four groups spoke languages related

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<sup>3</sup> Bureau of the Census, Historical Statistics of the United States: Colonial Times to 1970 (Washington, D.C.: United States Department of Commerce, Bureau of the Census, 1975), 8.

<sup>4</sup> Michael R. Haines and Richard H. Steckel, A Population History of North America (New York: Cambridge University Press, 2000), 24.

to a common Muskogean tongue; the Cherokees' language indicated they were of Iroquois ancestry. Though these five groups differed in innumerable ways, their cultures and rituals were similar enough to be mutually intelligible. For instance, all lived in towns and engaged in hunting, fishing, and cultivation, raising primarily corn but also beans, peas, pumpkins, and tobacco. They fashioned pottery for cooking and storage, and engaged in an extensive inter-tribal trade.<sup>5</sup>

All the Indian tribes were also engaged in the transatlantic economy. European goods such as firearms, bullets, knives, kettles, and other implements were exchanged for slaves and the highly coveted skin of the white-tailed deer. The craze for leather goods among Europeans in the colonial period led to serious overhunting by the Indian tribes. By the coming of American independence, Native American hunters needed to range greater distances for skins and sustenance.<sup>6</sup>

In 1812, the relationship of the United States to the Indian tribes was an unsettled question and had been for a quarter-century. Unlike trade, taxes, and slavery, the topic of Indian affairs played almost no role at the Constitutional Convention of 1787. The states conceded control of Indian affairs to the proposed federal government without complaint. But in the document itself, the American Indians were mentioned only twice, in Article I, Sections 2 and 8. The former excluded "Indians not taxed" from the apportionment of the House of Representatives. The latter gave Congress the authority "To regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes." More than any other function of the fledgling federal government in the 1790s, therefore, the ambiguous term "Indian Affairs"

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<sup>5</sup> Thomas D. Clark and John D. W. Guice, Frontiers in Conflict: The Old Southwest, 1795-1830 (Albuquerque: University of New Mexico Press, 1989), 19-20.

<sup>6</sup> Clark and Guice, Frontiers in Conflict, 21-22; J. Leitch Wright, Jr. Creeks & Seminoles: The Destruction and Regeneration of the Muscogulge People (Lincoln: University of Nebraska Press, 1986), 41-71.

represented a responsibility without a clear mandate. This was not altogether avoidable. Most Native American tribes had sided with the British (the devil they knew) during the American Revolution, and there was considerable wariness and uncertainty among Americans and Native Americans alike as to how relations in the newly redefined eastern part of North America would play out.<sup>7</sup> One of the few significant duties granted to the weak general government under the old Confederation Congress of 1781 to 1789 was the responsibility of maintaining the “safety and tranquility of the frontiers of the United States.”<sup>8</sup> The new president under the Constitution, George Washington, aware of the fragility of the young nation, advocated “amicable” relations with the Native American tribes.<sup>9</sup> Those relations, however, were not always amicable. Nor did the United States expect them to be. The responsibility for Indian affairs rested with the War Department from its establishment on August 7, 1789, until the establishment of the Department of the Interior in 1849. In peacetime Indian affairs was the primary concern for the Secretary of War and his staff.

From the standpoint of the United States government, there were three modes of interaction with the American Indian tribes. The first was the method of dealing with the Indians via negotiations and treaties, a precedent set in the colonial era and reaffirmed by the Confederation Congress and then George Washington under the Constitution. In the span of ninety years, between 1778 and 1868, a total of 367 treaties were made between the United States government and various Indian tribes, not counting those that were never ratified by the Senate or whose status remained ambiguous. On paper at least, a treaty is an agreement between

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<sup>7</sup> The American Indians were promptly abandoned by their European allies after the British defeat at Yorktown in 1781. The Treaty of Paris (1783) made no mention of the Indian nations.

<sup>8</sup> Ordinance for the Regulation of Indian Affairs, August 7, 1786, ASP: Indian Affairs, 1:14.

<sup>9</sup> George Washington to the United States Senate, August 7, 1789, James D. Richardson, ed., A Compilation of the Messages and Papers of the Presidents, 1789-1902 (Washington, D.C.: Bureau of National Literature and Art, 1903), 1: 59-60.

two sovereign political entities. The sovereignty of the American Indians was affirmed by the United States in the language of the first Indian treaty of 1778, which declared a “perpetual peace and friendship” between the Delaware “nation” and the United States—whose revolutionary victory was then far from certain. From America’s infancy, however, its policy in this regard was inconsistent. After independence, the United States continued to officially acknowledge Indian autonomy while gradually asserting authority over the tribes. A January 1785 treaty with the Wyandots declared the tribe to be “under the protection of the United States and of no other sovereign whatsoever.” The treaties of Hopewell in 1785 and 1786 with the Cherokees, Choctaws, and Chickasaws included similar language.<sup>10</sup> After ratification of the Constitution, this trend became more pronounced. A 1790 treaty with the Creeks, headed by the famous Scots-Creek chief Alexander McGillivray, ended a frontier war between the United States and the Creeks by declaring perpetual peace and friendship, agreeing to a prisoner exchange, and establishing an American-Creek boundary roughly along the Oconee River in central Georgia. The document also acknowledged the protection of the United States over the Creeks, including the protection of Indian lands from white intruders. Even at this early stage, in the words of the leading historian of this phenomenon, “The treaties both reflected and contributed to the inequality and dependency with which the Indian negotiators faced the federal treaty commissioners.”<sup>11</sup> Though the American Indians were of course familiar with treaties, the treaty system itself was a tool of white Americans. The language in the early treaties reflected the ambiguous status of the tribes vis-à-vis the new United States government. The whites who negotiated these agreements had no doubt as to the subservience of the Indians to the new American government; in their minds, the tribes were not fully sovereign entities. And yet they

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<sup>10</sup> U.S. Statutes at Large, 7: 13; 16-25. Francis Paul Prucha, American Indian Treaties: The History of a Political Anomaly (Berkeley: University of California Press, 1994), 1-3.

<sup>11</sup> Prucha, American Indian Treaties, 5.

were independent of American laws. This confusion, even contradiction, was not resolved but only heightened as the nineteenth century progressed. But though the Indian treaty system did not officially come to a close until 1871, the practice of making treaties with the tribes became increasingly controversial among white Americans after the War of 1812, reaching a frenzy after the 1825 Treaty of Indian Springs (see Chapter 4).

The second mode of interacting with the Indian tribes was trade. In 1796, the Fourth Congress had established a system of government-run trading houses that remained a staple of U.S.-Indian relations for the next quarter-century. These trading posts, dubbed “factories” in the tradition of the British East Indian Company and the Hudson’s Bay Company, were scattered along the southern and western frontiers. Officially, they existed for “the purpose of carrying on a liberal trade” with the Indians—a deliberately vague mission statement.<sup>12</sup> The official in charge of the factory—the factor—was appointed by the president and strictly forbidden from personally engaging in the Indian trade. The United States government purchased goods and transported them to the factories. The factor’s job was to sell those goods to the Indians at a modest markup calculated for the government to break even after transportation costs. Supervising the factories was the Office of Indian Trade, headed by a Superintendent of Indian Trade, which was subordinate to the War Department but also reported to the Treasury. The Office of Indian Trade was commonly known simply as the “Indian Office,” as it served as the unofficial headquarters of all Indian affairs.

Unofficially, however, the factories were a security measure, placed at strategic intervals in the borderlands. Their number varied from year to year, as some were set up and others closed down. In 1810, for example, there were twelve factories in operation. In 1812, there were ten: one in Georgia, two in the Mississippi Territory, one each on the Missouri, upper Mississippi,

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<sup>12</sup> U.S. Statutes at Large, 1: 452.

and Red rivers, one at Fort Wayne in the Indiana Territory, one at Chicago on Lake Michigan, one in Sandusky, Ohio, and one on Lake Huron in the Michigan Territory. They were expensive to operate and impossible to completely control. Their rate of success varied widely; from 1807 to 1811 the factory at Fort Wayne reported a net gain of \$10,502.77, while the factory at Fort St. Stephens, on the Mobile River, lost \$10,352.54. The salaries and expenses of the seventeen factors, assistant factors, and clerks that staffed the factories at the beginning of 1812 totaled \$17,235 per annum. But the expense was deemed worthwhile. Everyone in the government understood that the factories were meant to assert financial, and hence diplomatic and military, control over the Indians. If the factories reduced the possibility of hostilities by even a modest amount, they were a good investment as long as the Indians were in a position to threaten white settlements.<sup>13</sup>

The factories alone, however, were not enough to ensure the United States a monopoly on the Indian trade. They were few in number and very far apart, and the Indians had no incentive to travel great distances to purchase goods at non-negotiable prices if the same items could be had by dealing with European traders or Americans operating illegally. To prevent, or at least curtail this, the federal government allowed individual citizens to trade with the Indians, provided they adhered to strictly enumerated conditions. No person was permitted to trade without posting a bond of one thousand dollars and receiving a license, good for two years, issued by the government. The importation of spirits into Indian country by the licensed traders was strictly forbidden, but liquor was among the most precious commodities of the frontier among whites and Indians alike, and the black market trade flourished. Moreover, in its frantic efforts to ensure the tribes were not trading with outside powers, the United States inadvertently set up a competition between the factors, who had quotas to meet, and the licensed traders, who were

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<sup>13</sup> ASP: Indian Affairs, 1: 769; 783-84.

mobile and could travel to the Indians. The tribes, for their part, were happy to use the resentment between the factors and the traders to their own advantage, thus undermining the justification for each.

The third official interaction with the Indian nations was a program of assimilation or “civilization” that was a key feature of America’s Indian policy, with varying degrees of support, from the 1790s until the 1820s. This program was an official endorsement of incorporating the Indians, at least those not openly hostile to the United States, into the body politic of white America. More a sponsor than an administrator in this matter, the general government encouraged missionaries and teachers (often these were the same individuals), both as private citizens and as members of religious groups called benevolent associations, to engage in a process of slowly incorporating the Native American communities into the American body politic. But to bring the Indians into the larger (white) American society, the reasoning went, they first had to be “civilized”—taught reading and writing, the science of agriculture, and the technique of spinning cotton or wool to make clothing. White Americans did not question the propriety of this plan, as it did not occur to them that the Indians would have little desire to fully adopt the ways of European-Americans.<sup>14</sup>

Though it left much of the groundwork of assimilation to the benevolent societies, the government was not idle. Congress, “in order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship,” authorized the president to furnish farm animals such as cattle and chickens, agricultural implements such as hoes and plows, and other

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<sup>14</sup> Good summaries of the assimilation program can be found in Thomas D. Clark and John D. W. Guice, Frontiers in Conflict: The Old Southwest, 1795-1830 (Albuquerque: University of New Mexico Press, 1989), 235-36, and Tim Alan Garrison, The Legal Ideology of Removal: The Southern Judiciary and the Sovereignty of Native American Nations (Athens: University of Georgia Press, 2002), 15-20. The best full-length study is Bernard Sheehan, Seeds of Extinction: Jeffersonian Philanthropy and the American Indian (Chapel Hill: University of North Carolina Press, 1973).

domestic goods, such as looms, to the Indians. These goods were furnished independently of the factories, though the origins of the assimilation policy lay in the same Trade and Intercourse Acts of the 1790s that had brought the factory system into being. The two programs, in fact, were interconnected. Just as the factor was the point of economic contact between the Indians and the United States, the American agent assigned to an Indian tribe was the point of diplomatic contact. He served as the official representative of the federal government and reported directly to the secretary of war. His job was to reside among and liaise with the tribal leadership, to forward communiqués from the War Department to the Indians, and to explain and publicly support America's Indian policy. It was also his responsibility to dispense the materiel deemed necessary to convert the Indians from a semi-nomadic hunting lifestyle to one of sedentary cultivation. In so doing, the agent was in theory supposed to serve as a role model representing the civilized society the Indians were persuaded to emulate.<sup>15</sup>

The central tenet of the assimilation program was a near-universal assumption among white statesmen and missionaries that the Indians' way of life was inherently inferior to their own. It was savage, and therefore required improving. The missionaries established schools which emphasized learning to read and write, and above all becoming Christian, but more important to politicians was the necessity of teaching the Indians to use land more efficiently. For the vast majority of white men, a private parcel of land was both the foundation for their financial stability and a centerpiece of their identity and self-worth. Those who did not own land aspired to do so—hence the land craze that began immediately after the Revolution and continued unabated for decades. Moreover, the land had to be improved. Settlers sought to transform their homesteads by cutting down trees and turning them into fences that would protect

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<sup>15</sup> U.S. Statutes at Large, 1: 331. The standard study of the factory system is Ora Brooks Peake, A History of the United States Indian Factory System, 1795-1822 (Denver: Sage Books, 1954), which is helpful, but could use a modern supplement.



neat rows of cultivated acreage. Hunting was a time-consuming and unreliable means of attaining sustenance. Land that was reserved for hunting was deemed wasted. As the desire for western lands grew, it was no great stretch for whites to conclude that Indian claims to “unused” lands were, or ought to be, invalid.

More than trade or even treaties, assimilation was inextricably linked to the craving for Indian lands. Thomas Jefferson, the great advocate of Indian assimilation, in effect admitted as much. When in 1803 Jefferson was confronted with the increasing resistance of the Indians to ceding further portions of their land, the president pointed to the factories and the agencies as vehicles that would provide the tribes with the manufactured goods necessary to abandon the hunt and survive on smaller parcels of land. “In leading them thus to agriculture,” Jefferson wrote, “in bringing together their and our sentiments, and in preparing them ultimately to participate in the benefits of our government, I trust and believe we are acting for their greatest good.”<sup>16</sup> Perhaps he did believe this—Jefferson’s paternalism knew few bounds—but Americans in the first decade of the nineteenth century looked with increasing repugnance on the Indians’ concept of common land for common use.

That there were lands to be had was without question. If Jefferson was the most prominent spokesman for assimilation, he was also the great advocate of the West. The acquisition of the Louisiana Territory in 1803 had added 827,000 square miles to United States territory, at least on the map, cemented control of the strategic port of New Orleans, and secured control of the Mississippi River itself. It was no coincidence that the year 1803 marked a crucial change in the way President Jefferson addressed the Indian tribes. No longer did he use the phrase “Friends and Brothers.” Now his letters began “My Children” and were signed by “Your

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<sup>16</sup> Richardson, *Messages and Papers of the Presidents*, 1: 354-5. See also Francis Paul Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834* (Cambridge: Harvard University Press, 1962), 214-6.

Great Father”—terms that implied both control over and responsibility for the Indian communities of North America.<sup>17</sup> As Jefferson envisioned it, there would be no “frontiers” in the sense of international or geopolitical boundaries; rather, the new American frontier would be a stage of development in American civilization as well as a physical place, a borderland.<sup>18</sup> Figuring out the exact relationship of the Indian tribes to the United States was one of the great political conundrums of early American history. Technically, they were free entities—Indian nations. Yet land acquisition was the basis of Jeffersonian policy. The Western explorations of Meriwether Lewis and William Clark up the Missouri River and Zebulon Pike to Colorado had not been sent forth solely to satisfy the third president’s personal curiosity about that vast realm. Both were also military expeditions whose mission was to reconnoiter and report back on potential Indian resistance to white encroachment. In 1803, even before the Louisiana Purchase, Jefferson had written to General William Henry Harrison, governor of the Indiana Territory, and communicated his plan for the Indians: “To promote this disposition to exchange lands which they have to spare and we want, for necessities which we have to spare and they want, we shall push our trading houses, and be glad to see the good and influential individuals among them in debt; because we observe that when these debts get beyond what individuals can pay, they become willing to lop them off by a cession of lands.”<sup>19</sup> Jefferson’s cold proposal foreshadowed, or perhaps set the blueprint for, the tone of United States dealings with Native Americans for the next thirty years. But at the time Jefferson wrote, as in the administration of Washington a dozen

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<sup>17</sup> A fine study of Jefferson’s views on the West and the Indians’ place in it is Anthony F. C. Wallace, Jefferson and the Indians: The Tragic Fate of the First Americans. (Cambridge: Harvard University Press, 1999), esp. 206-240.

<sup>18</sup> Peter S. Onuf, “Prologue: Jefferson, Louisiana, and American Nationhood,” in Empires of the Imagination: Transatlantic Histories of the Louisiana Purchase, Edited by Peter J. Kastor and François Weil. (Charlottesville: University of Virginia Press, 2009), 23-4. The overall theme of the essays in this book is that the Louisiana Purchase was, more than anything else, an “empire of the imagination”—that is, that Jefferson did not so much purchase the land as secure the opportunity to try and incorporate it into the United States without European interference.

<sup>19</sup> The Writings of Thomas Jefferson. Edited by Andrew A. Lipscomb and Albert Ellery Bergh. (Washington, D.C: The Thomas Jefferson Memorial Association, 1903), vol. X, 370.

years before, the United States did not possess the military and diplomatic leverage to do much more than financial harm to the Indians. But an enthusiasm for expansion was embedded in the American body politic from an early date. Some writers confidently predicted a future American empire. This was not to be an empire like that of the Dutch or the British, but a continental dominion on the order of China or Russia. The rapid population growth of the American republic, and the seemingly unlimited energy of its citizenry, dictated that the United States “may well be as durable as any empire the world had witnessed,” according to one author in the wake of the Louisiana Purchase. Admittedly, there was a danger. Unheeded expansion could well tear the young nation apart, and the Whiskey Rebellion of 1791 had already demonstrated the ominous independent streak of western settlers. But whether the outcome would be a strong America exercising continental dominion or several sectional confederacies, white expansion was deemed inevitable.<sup>20</sup>

What would occur when the expanding American population encountered the Native communities was very uncertain. Each situation, each encounter, was unique and unfolded differently. The entire apparatus of the government’s three-part Indian policy, however, was to ensure that when Americans and Indians encountered each other in the borderlands, the Indians would be in a state of friendly submission to the whims of the United States. This meant that when whites encroached onto Indian lands to hunt or settle, as no one doubted would occasionally happen, the Indians were expected to seek redress from the American federal government, either via their designated agent or, in the event an agent was not present, by contacting the War Department. They were not, American statesmen emphasized, to take matters into their own hands. Sometimes the government sought to interfere in inter-tribal disputes by

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<sup>20</sup> Q., “Thoughts on the Probable Duration of the American Republic,” The Literary Magazine, and American Register, Vol. 2, Issue 9 (Jun 1804), p. 215. Though now somewhat dated, an excellent treatment of early American imperialism is Richard Van Alstyne, The Rising American Empire (New York: Norton, 1974 [1960]), esp. 78-99.

presenting itself as the arbiter of all diplomatic matters, whether they concerned white Americans or not.<sup>21</sup>

In truth, however, despite these admonitions, and despite the treaties, the Indian trade, and the assimilation program, the United States before the War of 1812 could do little to impose its will over the Indian nations. Nor could it fully control its own citizens on the frontier. If a group of Indians attacked a white settlement, there was little the government could do in retaliation without risking a full-blown frontier war. Similarly, if a band of whites in Georgia or Alabama harassed a community of Creeks or Chickasaws, the Indians could respond in kind before anyone in Washington heard of, let alone could respond to, the original incident. In short, the government's Indian policy was a deterrent to violence between whites and Indians, but it was not a preventative. The United States could influence and occasionally pressure the tribes east of the Mississippi, but it could not control them.

This became dramatically clear during the War of 1812. When President James Madison asked Congress to declare war on Great Britain on June 18, 1812, he did so for four reasons. The first was outrage over the Royal Navy's practice of boarding United States naval and merchant vessels and arresting American sailors under the pretext that they were actually British subjects who had deserted. Some Royal Navy captains did not even go to this trouble, declaring that Great Britain had the legal right to "impress" Americans just as it did British subjects. These men were then drafted into service on British ships against their will. Thousands of Americans were abducted in this way after the American Revolution, though the practice reached a high during the Napoleonic Wars, when England needed replacements for sailors lost at sea. Madison's second reason for war was the Royal Navy's practice of harassing American coastal towns and seaports, and boarding and inspecting incoming and outgoing commercial traffic.

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<sup>21</sup> See, for example, the U.S.-Cherokee treaty of January 7, 1806, U.S. Statutes at Large, 7: 101-4.

More often than not, the British cruisers helped themselves to some or all of the American cargo. The third reason was the so-called Orders in Council, an act of the British Cabinet that outlawed neutral vessels from trading with England's enemies. It was, for all practical purposes, a blockade of the European continent.<sup>22</sup>

These justifications for war, however, were issues faced by the New England and Atlantic seaboard states—regions that did not want war with Britain. Though impressment was a concern, it was nothing new in the maritime history of the world. Though the hovering British cruisers and frigates were a nuisance, American sea captains from Penobscot Bay to the Chesapeake were skilled blockade runners. Much more damaging to their livelihood than boarding and theft would be the Royal Navy's seizure of entire vessels, which a declaration of war would allow.<sup>23</sup>

Only Madison's last reason for declaring war concerned the West, briefly referring to "the warfare just renewed by the savages on our extensive frontiers[.]" The president vaguely blamed the attacks of Indians against white settlers on machinations by British agents and traders in the hinterland. There were indeed incidents of violence on the frontier in 1811 and the first half of 1812. In March 1811 two Creeks reportedly murdered a white man named Loudon in his home in western Tennessee after two days as his houseguests. Three white families were killed in the Illinois Territory in July of that year. Newspapers blamed these murders on Tenskwatawa, a Shawnee religious figure with a reputation for prophecy who condemned all Indian contact with whites. In February 1812, an express messenger traveling down the Mississippi River cried that a group of Indians around St. Charles, a settlement not far from St. Louis, had waited until

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<sup>22</sup> James Madison to the Senate and House of Representatives, June 1, 1812, Richardson, *Messages*, 1: 499-501.

<sup>23</sup> In fact, the Federalist governors of Massachusetts, Connecticut, and Rhode Island refused to comply with an order from Secretary of War Henry Dearborn to call up the local militias, which would allow regular Army companies to relocate for defense of the western frontier. See Jon Latimer, *1812: War with America* (Cambridge: Harvard University Press, 2007), 57.

the head of a household, a Mr. O'Neil, had gone into town, then murdered his nine family members, mostly female. Army officers on the frontier warned of an impending "Anglo-Savage War" and had no doubt that "the hand of Britain is in this thing."<sup>24</sup>

Western politicians did nothing to assuage the anti-British and anti-Indian hysteria that enveloped the trans-Appalachian settlements by the spring of 1812. In fact, they did the opposite. Westerners were vocal and united in their clamor for a conflict with Britain. Speaker of the House Henry Clay, the leader of a loose cabal of jingoistic statesmen known as the War Hawks, claimed that the root motive behind British actions was not to vanquish an enemy—Bonapartist France—but to undermine a rival, the United States. To remedy this, Clay pressed for an American invasion of Canada. He thought that, once purged from the area around the Great Lakes, the British would no longer have access to the North American interior.<sup>25</sup> Andrew Jackson, a former congressman and senator from Tennessee, agreed about the British motives, but thought the true enemy—or at least most immediate concern—was not so much England but the tools of England, the Indian tribes. As Clay of Kentucky looked north, to Ohio and Upper Canada, for American security, Jackson of Tennessee looked south, to the Mississippi Territory. When a group of Creek Indians known as Redsticks murdered a family of seven near Nashville and abducted a woman named Martha Crawley, Jackson decided that the tribe, and any others who threatened frontier security, needed a "fatal blow."<sup>26</sup> Clay, Jackson, and many others in the American government who clamored for war wanted to see American hegemony definitively

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<sup>24</sup> The Supporter (Chillicothe, OH), April 20, 1811, Issue 133, col. B.; Raleigh Register, and North-Carolina Gazette (Raleigh, NC), August 2, 1811, Issue 619, col. C.; The Supporter, March 28, 1812, Issue 182, col. B.; National Intelligencer (Washington, D.C.), June 4, 1812, Issue 1818, col. C.

<sup>25</sup> Amendment to, and Speech on, the Bill to Raise an Additional Military Force, December 31, 1811, The Papers of Henry Clay. Ed. by James F. Hopkins et. al. (Lexington: University of Kentucky Press, 1959-1992), 1: 608.

<sup>26</sup> Andrew Jackson to Willie Blount, June 4, 1812, The Correspondence of Andrew Jackson, ed. by J. S. Bassett. 7 vols. (Washington, D.C.: Carnegie Institution of Washington, 1926-1935), 1: 225.

established in eastern North America. How that might come about, and what that might mean for the Indian peoples and federal Indian policy, remained to be seen.<sup>27</sup>

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<sup>27</sup> Several books emphasizing the lasting significance of the War of 1812 have been published in the last decade, including Walter R. Borneman, 1812: The War that Forged a Nation (New York: HarperCollins, 2004), A. J. Langguth, Union 1812: The Americans who Fought the Second War of Independence (New York: Simon and Schuster, 2006), and Stephen Budniansky, Perilous Fight: America's Intrepid War with Britain on the High Seas, 1812-1815 (New York: Knopf, 2010). The best treatment, however, is from the British perspective. See Jon Latimer, 1812: War with America (Cambridge: Harvard University Press, 2007).

## **Chapter 2** **In the Wake of Horseshoe Bend** **(1814-1817)**

The War of 1812 brought about three realities that influenced United States Indian policy. The first was the resurgence of American nationalism. The second was the political coming of age of American statesmen who would work to secure the legacy of independence: men like John Quincy Adams, Andrew Jackson, Henry Clay, and John C. Calhoun. The third was a sharp change in the relationship between the United States and the Indian tribes. All three contributed to a slow evolution of Indian policy that would culminate in removal.

The importance of nationalism and the Revolutionary legacy to removal was revealed gradually after the war, as statesmen began envisioning and articulating America's future in terms of empire. For many whites in this vein, the Indians became stubborn impediments to continental dominion. The change in relationship between the United States and the Indians, however, came about suddenly and in dramatic fashion. Within six months, and as the result of two frontier battles, the United States established military, diplomatic, and financial hegemony east of the Mississippi River. In October 1813, near the Thames River in Upper Canada, General William Henry Harrison, who had long served as governor of the Indiana Territory, defeated a British force under Henry Procter. Not only did Harrison's victory secure the region south of the Great Lakes for the United States, but it resulted in the death of Tecumseh, a charismatic Shawnee chieftain who had been attempting to create a vast pan-Indian confederacy which would thwart white expansion into today's Middle West and South. When Tecumseh fell, his dream died also.

Even more decisive than Harrison's victory over the British (and their few Indian allies), and more significant in the evolution of American Indian policy, was Andrew Jackson's victory



over an all-Indian force at Horseshoe Bend, in Alabama, in March 1814. For the Americans, the battle was a campaign for frontier security, one part of the larger war with Great Britain. For the Creek Indians, it was an intra-tribal civil war, with the whites viewed as interlopers by one side and auxiliaries by the other. Between these disparate perspectives lay the seeds of a demographic catastrophe for the Indians, and a seemingly boundless future for the Americans.

### **The Battle of Horseshoe Bend**

The acts of violence between Indians and whites on the frontier between 1810 and 1812 were but a prelude to more egregious deeds which followed. Though Andrew Jackson was angered by the murder of nine whites and the abduction of another near Nashville in 1812, he was incensed even further when, the following year, a band of seven hundred Creek warriors known to the whites as Redsticks or Red Clubs, inflamed with religious zeal, attacked and overran a garrison of white militiamen and civilians at Fort Mims, at the junction of the Tombigbee and Alabama rivers north of Mobile. No one knew precisely how many were killed, but the army attachment assigned the task of burying the dead counted 246 corpses (including women, children, and black slaves) in and around the smoldering site.<sup>1</sup> In January 1814 Jackson, a forty-seven year-old major general of Tennessee militia, raised a regiment of 800 green recruits at Fort Strother in today's north-central Alabama. Two months later he had at his disposal a force of three thousand. The majority of Jackson's force was comprised of white volunteers and regular Army soldiers, but was augmented by six hundred Indian allies (Cherokees and allied Creeks).<sup>2</sup>

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<sup>1</sup> Thomas D. Clark and John D. W. Guice, Frontiers in Conflict: The Old Southwest, 1795-1830. Histories of the American Frontier. (Albuquerque: University of New Mexico Press, 1989), 129-132.

<sup>2</sup> Clark and Guice, Frontiers in Conflict, 143-45. A fine full-length study of the Fort Mims incident is Gregory A. Waselkov, A Conquering Spirit: Fort Mims and the Redstick War of 1813-1814. (Tuscaloosa: University of Alabama Press, 2009).

The twenty-seventh of March, 1814, marked the beginning of the end for the Creek confederacy. Sometime before noon on that Sunday, Jackson's army attacked and decisively defeated a band of one thousand Redsticks. The battle occurred at a place on the Tallapoosa River known to the Redstick Creeks as Tahopeka and which the whites called Horseshoe Bend. The small peninsula of about one hundred acres was surrounded on three sides by water, and it was important to the Creeks both militarily and spiritually.<sup>3</sup>

From a defensive standpoint, the Redsticks had constructed a brilliant perimeter. The open, north, side was enclosed by a sturdy barricade. The breastwork lay in a concave L-shape; anyone who attempted to scale the wall would be exposed on one or both sides and could presumably be easily dispatched by a defender. Jackson was impressed with both the site and the fort. "It is difficult to conceive a situation more eligible for defense than the one they had chosen," he noted.<sup>4</sup> Despite his admiration for the enemy's engineers and tactics, however, Jackson proceeded to destroy the community within. Placing two cannon at a range of about two hundred yards from the breastwork, Jackson and his army slowly advanced. Musket and rifle fire was exchanged for about two hours—though mostly in one direction, since less than a quarter of the besieged Creeks possessed firearms. Meanwhile, Jackson had sent his friend Brigadier General John Coffee and most of the Indian allies to cross the Tallapoosa and secure the surrounding opposite bank, in order to prevent the enemy's escape. Upon learning that Coffee had done so, Jackson ordered the breastwork stormed. "The men by whom this was to be effected," as he described it, "had been waiting with impatience to receive the order, & hailed it with acclamation." After several hours of close combat, the very few Redstick Creeks who had

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<sup>3</sup> Joel W. Martin, *Sacred Revolt: The Muskogees' Struggle for a New World*. (Boston: Beacon, 1991), 6-12.

<sup>4</sup> Andrew Jackson to Thomas Pinckney, March 28, 1814. *The Papers of Andrew Jackson*, ed. Harold D. Moser et. al. (Knoxville: University of Tennessee Press, 1980--, 8 vols. to date), 3: 52-3. Hereafter *Jackson Papers*.

not been killed were routed and chased into the dusk. Jackson reported five hundred and fifty-seven enemy dead on the peninsula, at a cost of twenty-seven militia deaths and 106 wounded. The total number of Redstick losses was around eight hundred. As one leading historian of the event has phrased it, “Never again would so many die in a battle between Americans and Native Americans.”<sup>5</sup>

Jackson could not have been more pleased. In an address he gave to his troops on April 2, five days after the battle, he congratulated them on their victory which proclaimed to all the character and fortitude of Tennesseans. In just a few days’ time, the volunteers had forged a path to the Tallapoosa and destroyed an enemy whose reputation for brutality was not undeserved. “They knew not what brave men could effect,” Jackson declared, “when they came to chastise an insolent foe.” He went on: “The fiends of the Tallapoosa will, no longer murder our women and children, or disturb the quiet of our borders. Their midnight flambeaux will no longer illuminate the council-house, or shine upon the victims of their infernal orgies. They have disappeared from the face of the earth.”<sup>6</sup>

Jackson rarely shied from hyperbole, but this degree of elation was exceptional. He came by this release of emotion honestly. More than any other individual, Jackson had fought to prosecute the Creek War, despite tepid support from Secretary of War John Armstrong. By so doing, in his mind, he had stepped in to protect the entire white population of the Southeast, and succeeded. Indeed, the events at Horseshoe Bend, while a splendid achievement from the standpoint of whites in the region, had in Jackson’s eyes arrived almost criminally late. The occurrence at Fort Mims, as well as other acts of violence in recent years, terrified the white population of the Mississippi Territory. Jackson’s ebullient rhetoric in the wake of Horseshoe

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<sup>5</sup> Martin, *Sacred Revolt*, 162-63.

<sup>6</sup> Andrew Jackson to Tennessee Troops in the Mississippi Territory, April 2, 1814, *Jackson Papers*, 3: 57-8.

Bend reflected not only euphoria over his military victory but a sense of personal and professional relief. He had demanded both action and responsibility for that action, risking shame and an irrevocable loss of reputation if he failed. He had succeeded, but Jackson was not satisfied with defeating the enemy Creeks militarily. The ones who remained alive were subdued, but Jackson thought the insolence they had shown by attacking white settlers demanded nothing short of humiliation. It also demanded a permanent capitulation, which could be achieved only by forever eliminating the conditions which had allowed the Redsticks to coordinate and execute their hostilities. This capitulation could be delineated in the negotiations of surrender, but five days after the battle Jackson had still heard no word from the hostile Creeks. “Our enemy are not sufficiently humbled since they do not sue for peace,” he told his men. “Buried in ignorance & seduced by their prophets, they have the weakness to believe they shall still be able to maintain a stand against our arms. We must undeceive them.” His army spent the first half of April 1814 scouring the Coosa and Tallapoosa Rivers for remnants of Redstick resistance.<sup>7</sup>

The authority to negotiate terms of peace with the Creeks rested with Thomas Pinckney of South Carolina. A former governor of that state and a major general in the United States Army, Pinckney was superior to Jackson in rank. He was also a veteran diplomat, having negotiated the Treaty of San Lorenzo with Spain in 1795, which guaranteed American access to the Mississippi River. Pinckney’s instructions from the War Department required three things of the Creeks: to cede sufficient land to pay the United States for the cost of the war; to guarantee

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<sup>7</sup> Andrew Jackson to Tennessee Troops in the Mississippi Territory, April 2, 1814, Jackson Papers, 3: 57-8; Andrew Jackson to Willie Blount, April 18, 1814, Ibid., 3: 64. The hostile Creek forces at Horseshoe Bend did not represent the total number of Red Sticks who were opposed to the United States. Writing to Benjamin Hawkins in August 1813, Big Warrior of the Upper Creeks and Tustunnugee Hopoie of the Lower Creeks estimated the number of warring Indians at 2,500, with 29 of the 34 Upper Creek towns siding with the pro-war Red Sticks. See American State Papers: Indian Affairs. 2 vols. (Washington: Gales and Seaton, 1832) 1: 851. Hereafter ASP: Indian Affairs.

the right to build forts, roads, and trading houses in Creek territory; and to guarantee free navigation of all waterways in the Creek realm. They were also to surrender to the United States all instigators of the war, and to cease all contact with the Spanish in Florida. The Creeks, who for generations had been the key player in an international trading network that included Britain, France, and Spain, would now trade and communicate with the United States or with no one at all. Assuming the cession accurately reflected the cost of the war to the United States, the terms were considered by the Americans to be quite fair. In fact, Secretary of War John Armstrong quickly reconsidered his own instructions, thinking them too lenient. “Since the date of my last letter,” Armstrong wrote Pinckney, “it has occurred to me, that the proposed treaty with the Creeks should take a form altogether military, and be in the nature of a capitulation.”<sup>8</sup> This coincided with Jackson’s own thinking. A military surrender, as opposed to a diplomatic negotiation, would allow the senior military officer on the scene to dictate terms at his own discretion.

Meanwhile, during the spring and early summer of 1814, Andrew Jackson found himself in great favor both in the Mississippi Territory and in the nation’s capital. Secretary of War Armstrong promised Jackson a quick commission as major general in the regular Army and appointment as commander of the Seventh Military District, which included the Territory.<sup>9</sup> With this command came the authority and opportunity to replace Pinckney as American negotiator with the Redstick Creeks.

### **The Reckoning at Fort Jackson**

Armstrong’s instructions to Pinckney, which were now Jackson’s own orders, made little differentiation between the Redstick Creeks and those allied to the United States. This did not

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<sup>8</sup> John Armstrong to Thomas Pinckney, March 17 and 20, 1814, ASP: Indian Affairs, 1: 836-7.

<sup>9</sup> John Armstrong to Andrew Jackson, May 22, 1814, Jackson Papers, 3:76.

bode well for the Creek nation. The question of a proper settlement had been weighing on Jackson's mind since the conclusion of the Battle of Horseshoe Bend, and he had firm opinions as to the form it should take. Of primary importance was ensuring that whites on the frontier would hereafter be safe from Indian attack. Inseparable from this goal was the protection of the exposed underbelly of the United States. The Gulf Coast region was vulnerable to attack and intrigue from European powers via the great inlets and water arteries, which in turn threatened the heart of the South itself. Only when the region was full of teeming and prosperous white settlements, with men able and willing to defend it without force-marching great distances (as he and his volunteers had done), would it be safe for the United States and its citizens.

The true issue as Jackson saw it was not of an appropriate indemnification for the cost of the war, but of the proper form of punishment. Writing to a friend on May 18, 1814, Jackson conceded that the lands west of the Coosa River and north of the Alabama River would suffice, when sold to white settlers, to cover the cost of the war. This was a vast territory, roughly one third the present-day state of Alabama. But Jackson wanted to see the enemy crippled. The Creeks had risked American ire by attacking whites in the southeastern borderlands, and lost. They had therefore forfeited all right to their lands in the Mississippi Territory save those which the United States chose to reserve for them. Jackson did not, however, want to see them starve or perish. He figured the allied Creeks should be left to inhabit their towns and surrounding woodlands east of the Coosa. The hostile Creeks would be allowed sufficient land for cultivation, but not ample land to roam and hunt, and certainly not any land which would give them access to other tribes or foreign powers.<sup>10</sup> Jackson wanted no Indians living west of the Coosa River. Why not east? Because Jackson, like other whites in the region, did not envision the frontier as a

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<sup>10</sup> Andrew Jackson to John Williams, May 18, 1814, Jackson Papers, 3: 74.

north-south line that gradually slid westward. Rather, it was a rough circle that began near the Ocmulgee River in central Georgia, ran south and west along the thirty-first parallel (the border with Spanish Florida as established by Pinckney's treaty of 1795), north along the meandering Mississippi River, and back east along the Tennessee River. Jackson sought to tighten the circle by expelling the Indians from much of Alabama, thus opening a swath of land from Nashville to the Gulf of Mexico to American settlement. Once it was thickly inhabited by "a hardy race that would defend it," the Indians of the Ohio River valley would be cut off from those of the South, and Britain and Spain would be deterred from trying to exploit the southern frontier of the United States. The Battle of Horseshoe Bend, then, did not destroy the Creek nation as a powerful political and military entity. The peace treaty which followed did. General Jackson summoned all the chiefs of the Creek nation—allied and hostile alike—to a conference which was to convene at Fort Jackson, at the junction of the Alabama and Coosa rivers, on the first of August, 1814.

It is difficult to know with certainty what the Native Americans were expecting as they made their way to the designated site. Jackson's instructions to them (via Benjamin Hawkins, the United States agent to the Creeks) were vague, simply ordering their presence at the fort.<sup>11</sup> On August 5, the allied Creeks, the few hostile Creeks who showed up, and a small delegation of Cherokees who were present to safeguard Cherokee interests, along with their agent, Return J. Meigs, learned the lay of the land after Horseshoe Bend. Andrew Jackson commended his allies for their service. To his former enemies he expressed pleasure that he was once again, on behalf of the President of the United States, able to offer them the hand of friendship. But, he continued, the President "laments that such bad men, with vagabonds employed by his enemies to deceive you, have ever had influence over your counsels to reduce a nation like yours to such distress."

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<sup>11</sup> Andrew Jackson to Benjamin Hawkins, July 11, 1814, Jackson Papers, 3: 441.

Had they listened to their wise chiefs—those who submitted to the hegemony of the United States—“Your towns and villages would not have been burned, nor your women and children wandering in the woods, exposed to starvation and cold.”<sup>12</sup> The entire Creek nation was indeed in a bad way. Some 23,000 rations had been given to the exhausted and destitute tribe, but they were one-third rations, “not sufficient to keep soul and body together,” as Jackson himself complained to the contractor responsible for provisions.<sup>13</sup> He calculated that every adult needed, at minimum, three-quarters of a pound of meat and flour per day, and a half-pound for children. His rationale was at once both humanitarian and strategic, and he saw no conflict in that. The Indians could not be allowed to starve to death. Nor could the United States allow an opening for the Spanish or British to swoop in and present themselves as the saviors of the southern tribes, which in Jackson’s judgment would certainly occur if the tribes were not fed and clothed. The civil war had seen the destruction of much of the livestock and nearly all of the crops. Worse still, the charity would have to be continued for at least one year, for almost no corn had been planted this season.

Jackson understood the leverage he, as sole negotiator, held over the Creeks. He had wanted it, and he now used it. The war had cost the United States dearly, and the Indians must pay by a cession of lands. “But it will be taken from your whole nation,” he specified, “in such a manner as to destroy the communication with our enemies every where.” The United States would appropriate the lands of the friendly Creeks as well, to establish a buffer between the Indians and the foreign powers to the south. Jackson justified this by claiming he would give the allied Creeks lands taken from the Redsticks, “to which we are intitled by conquest in the place

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<sup>12</sup> Andrew Jackson to the Cherokee and Creek Indians, August 5, 1814, Jackson Papers 3: 103.

<sup>13</sup> Andrew Jackson to John Armstrong, May 8, 1814, Jackson Papers, 3: 70; Andrew Jackson to John Pryor Hickman, August 2, 1814, Ibid., 102.



of it.” The rest of the terms came from John Armstrong’s instructions: the United States would send trading goods into Indian country; the Indians were to have no contact with outside powers of any kind; and the United States Government was to have the prerogative to build roads, warehouses, and military posts where it pleased. Also, the Native Americans were to work to assimilate white ways. The men were to become farmers and raise cattle, corn, and cotton, and women were to learn the skill of weaving.

Jackson concluded by announcing “the Terms of Peace,” and they were severe. Beginning ominously with “Whereas an unprovoked, inhuman, and sanguinary war, waged by the hostile Creeks against the United States, hath been repelled, prosecuted, and determined, successfully, on the part of the said States,” the prelude to the articles was a damning condemnation of the treachery and foolishness of the majority of the Creek nation, two-thirds of which had taken up arms against the United States under the banner of false prophets and influenced by the machinations of foreign powers.<sup>14</sup>

The first article of the treaty was a detailed description of the lands to be ceded by the Creeks as indemnification for the cost of the war. Jackson specified to the smallest stream and landmark the new boundary between the United States and the Creek nation. The tally was some twenty-three million acres, three-fifths of the present state of Alabama and one-fifth of Georgia. The cession was, and remains, the largest single acquisition of Indian territory in United States history. The document guaranteed the integrity of the remaining Creek lands, provided that Creeks have no further communication of any sort with external powers. Of course, “integrity” was interpreted to mean the United States had unquestioned access to the remaining Creek territory for the purposes of building roads, warehouses, trading posts, and military fortifications;

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<sup>14</sup> Andrew Jackson to the Cherokee and Creek Indians, August 5, 1814, Jackson Papers, 3: 104.

the Creeks would not entirely be the masters of their own country. The Creeks were also required to return all property and persons captured in the war to the United States as well as to the Cherokees, Chickasaws, and Choctaws. These tribes, however, would also suffer from the Creek cession. It was so enormous that they, too, would be constricted and separated from common trading routes and hunting grounds.

The terms also placed a further, unenviable, burden on the Creeks. Article Six required the surrender of all the prophets and instigators of the war, be they Europeans or Indians, who had not yet capitulated, “if ever they shall be found” within their remaining territory. Should this stipulation be enforced, it would doubtless keep alive the tensions and suspicions in an already fractured community during the difficult years to come. Nor were they, according to Article Six, to again wage war on the United States or on the Cherokee, Chickasaw, or Choctaw nations. The treaty also reiterated the intention of the United States to feed and clothe the Creeks, they “being reduced to extreme want.”<sup>15</sup>

The Indians were appalled. Not only were the terms harsher than they could have anticipated, but many of the Creeks literally did not comprehend what Jackson was saying to them. It was not a problem of the language barrier. Rather, Andrew Jackson’s treaty illustrated, more than anything else could have, the stark differences between the American and the Native American views of the conflict. For Jackson the matter was simple: the hostile Creeks had committed unprovoked acts of atrocity against peaceful white settlers in the Mississippi Territory, as well as intervened in the War of 1812 by succumbing to the overtures of America’s European enemies. In so doing they had fallen under the spell of Tecumseh, who was an interloper in the region as well as a tool of the British, and under the sway of deluded messiahs

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<sup>15</sup> “Articles of Agreement and Capitulation,” signed August 9, 1814, in Public Statutes at Large of the United States of America, Vol. VII (Boston: Charles C. Little and James Brown, 1846), 120-122.

whose visions of invincibility and cosmic rebirth Jackson himself had torn asunder. Now they would reap their rewards, which Jackson considered just given the circumstances.

From the perspective of the chiefs, there were several insurmountable problems with this situation. The first was the fact that, for all his condemnation of the hostile Creeks, Jackson was not actually addressing the hostile Creeks. Almost none of the Redsticks had traveled to Fort Jackson. Many were dead, victims of either Horseshoe Bend or the various follow-up campaigns during that long summer. Some had fled south to Florida hoping to find support among the Seminoles or the Spanish. A few, no doubt, had simply disappeared into the forests, hoping to anonymously salvage what they could of their lives. Jackson's audience comprised his own allies and a few neutral Cherokees.

But the truly disconcerting reason for the Indians' distress was Jackson's interpretation of the past year. The assembled Creeks were astonished to hear the white man lecture them on the dangers of listening to false prophets and "bad men" who were intent on destroying the white inhabitants of the region. This was precisely what they, the allied Indians, had refused to do, which sparked the bloody intra-Creek conflict in the first place. Moreover, it was a civil war that was still ongoing as far as they were concerned, and the allied Creeks were bewildered and frustrated at Jackson's tone of finality.

These concerns were brought to bear by the spokesman for the friendly Upper Creeks, a man named Tustunnuggee Thlocco and known to the Americans as Big Warrior. On August 6, Big Warrior sent a response to Creek agent Benjamin Hawkins, whom he had known since the negotiations at Colerain in 1794. Jackson was absent that day. One wonders whether Big Warrior addressed the note to Hawkins because Jackson was not there to receive it, or whether the chief

took advantage of Jackson's absence to appeal directly to Hawkins, with his known sympathies for the Indians.

The primary disagreement between Jackson's interpretation of the situation and that of the friendly Creeks, Big Warrior informed the agent, was this: the allied Creeks had enlisted the assistance of the whites in their internal dispute, under the terms of the Treaty of New York, which stipulated that the United States would serve as protector of the Creek Nation. This it was doing, and the friendly Creeks were grateful and intended to express their thanks when the matter was settled. "The one that asks for help will give his thanks—and ask if it is satisfactory for payment," Big Warrior wrote Hawkins. "I look on the land as the property of the nation, and thought to pay the expense out of it. This land I asked you to fight for. Before we are done fighting you ask for a part which is like imposing upon us: it is too rash." When the civil war was concluded, Big Warrior assured Hawkins, the Creek government would convene and make appropriate reparations for the services of the Americans.<sup>16</sup>

Jackson responded the following day. Hinting his annoyance that Big Warrior had gone out of channels by addressing his note to Hawkins, the general icily dismissed the rather pitiful and anxious rendition of the Creek leader. The cause of the war had indeed been the killing of whites, replied Jackson, but it was assuredly not the sole cause. The well-known visit of Tecumseh to the southern tribes in 1811, and the Shawnee's success while there, were proof enough. Since Big Warrior wished to invoke the Treaty of New York, Jackson reminded him that under the terms of that agreement the Creek nation was obligated to keep the United States apprised of any possible plot against it. This the Creeks had not done. For this omission alone, Jackson reasoned, "The United States would have been justified by the Great Spirit, had they taken all the lands of the nation merely for keeping it a secret, that her enemies were in the

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<sup>16</sup> Big Warrior to Benjamin Hawkins, August 6, 1814, Jackson Papers, 3: 106-7.

Nation.” The truth of the matter, Jackson asserted, was that the majority of the Creek leaders believed the United States to be weak. Again, Tecumseh’s inordinate influence among the Creeks was ample evidence of this. “If my enemy goes into the house of my friend,” stated Jackson,” and tells my friend he means to kill me—my friend becomes my enemy, if he does not at least tell me I am to be killed.” The request for assistance from the friendly Creeks, on which Big Warrior based so much of his argument, had in fact come woefully late—after the massacre at Fort Mims and other smaller, but no less violent, incidents that were “mischief enough” to oblige the United States to take military action.

Jackson responded with especial harshness to Big Warrior’s charge that the war was incomplete: “I answer—we know the war is not over—and that is one reason why we will run a line between our friends and our enemies,” he wrote. “We wish to save our friends, protect them, support them—we will do all these things. We will destroy our enemies because we love our friends & ourselves.” At issue was not whether the allied Creeks would settle with the United States; at issue was the prevention of the spilling of more white blood in the Territory and the guarantee of American hegemony.<sup>17</sup>

In the end, the Creek chiefs—allies of the United States—were forced to sign the treaty on behalf of the entire Creek nation. When Jackson spoke of “terms of peace,” he meant precisely that: a failure to sign would result in an immediate resumption of hostilities—except that this time the allied Indians would also be viewed as the enemy. Of the thirty-five Creek chiefs who reluctantly signed the paper, only one—the celebrated warrior William Weatherford, who in later years was to become a friend and houseguest of Andrew Jackson—had fought on the side of the Redsticks.

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<sup>17</sup> Andrew Jackson to Big Warrior, August 7, 1814, Jackson Papers, 3: 109-10.

In retrospect, the allied Creeks may not have been as hard-pressed to sign the articles of capitulation as they believed at the time. Jackson, it now seems clear, could ill afford to resume the campaign against the Creeks at that moment, or at least not with anything approaching the full force under his command. Rumors were rampant—which Jackson believed and which proved to be true—that British warships carrying Royal Marines were lurking in the Gulf of Mexico with designs on Mobile, New Orleans, or both.<sup>18</sup> Like all great field commanders in history, Jackson was adept at keeping multiple problems in mind at one time. Even as he was engaged in concluding the Creek War, Jackson was simultaneously coordinating with American officials in the region, such as William C. C. Claiborne, governor of Louisiana, to raise men and munitions for use against America's European enemies on the nation's southern borders.<sup>19</sup> Time was not on his side and Jackson knew it. Ultimately, it mattered not. The allied Creeks signed, and the matter was settled for the time being.

But capitulation is not the same thing as consent, and by the time the Creek nation had somewhat healed the following year, there was keen pressure on the chiefs to renounce and resist the Treaty of Fort Jackson. It was a resistance to white authority in the Southeast that would endure for nearly two decades. However, it was merely that: resistance, not concerted opposition on a grand scale. Though the Creeks themselves survived, the Creek nation—the powerful confederacy once so feared by its enemies, white and red alike—had been dealt a terrible blow at and after Horseshoe Bend from which it would never recover.

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<sup>18</sup> Andrew Jackson to Rachel Jackson, July 31, 1814, Jackson Papers, 3: 101.

<sup>19</sup> Andrew Jackson to William C. C. Claiborne, July 21, 1814, and Claiborne to Jackson, August 12, 1814, Jackson Papers, 3: 91, 115-16.

## **New Discussions of Indian Policy**

But what, precisely, this new American hegemony over the eastern Indians meant remained to be seen, and was the source of much debate during President Madison's second term. Already by mid-1815 white emigrants were flooding into the new tract added to the Mississippi Territory by the Creek cession, and they did so fearlessly. Newspapers across the nation expressed relief that the prospect of Indian wars east of the Mississippi River had at last been settled to America's advantage. "The storm is blown over," exulted the editor of Washington, D.C.'s leading daily.<sup>20</sup> Some of these exultations were premature; the same papers continued to print accounts of violence between Indians and whites in the borderlands.<sup>21</sup> But both the white citizenry and the American government were certain that the United States now had the upper hand over the eastern tribes. The question was what to do about this fact.

One man had ideas. If his victory at Horseshoe Bend made Andrew Jackson a frontier hero, his success against the British at New Orleans in January 1815 made him a national legend. With this celebrity came additional military and diplomatic responsibilities, and Jackson thought his success guaranteed that he would play a disproportionately influential role in southern Indian affairs in the postwar world. He believed himself to be an unrivaled expert in negotiating with Indians, at least those in the region. But to his consternation, neither President Madison nor the new Secretary of War, William Crawford, solicited Jackson's opinion on Indian policy. In fact, as of early 1816, when he was appointed commander of the United States Army's Southern Division, Jackson's experience in dealing with Native American tribes in an official capacity was comprised entirely of his actions in the Creek War. As the victor of Horseshoe Bend, it was natural that he be named the negotiator for the peace talks with the Redstick Creeks. And, in his

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<sup>20</sup> The Supporter (Chillicothe, OH), July 18, 1815; Raleigh Register, and North-Carolina Gazette (Raleigh, NC), November 24, 1815; Daily National Intelligencer (Washington, D.C.), November 27, 1815.

<sup>21</sup> Daily National Intelligencer, March 18, 1816.

new role, he would, between 1816 and 1820, negotiate five treaties with southern tribes that resulted in small land cessions to the United States. Many other American officials, however, were engaged in similar activities. Jackson's role was important, but not special.

This did not mean the general stayed silent. The first major debate over the future of American Indian policy, in which Jackson was a key, though uninvited, participant, came about as a result of a treaty with the Cherokees of which Jackson and many other Southerners and Westerners strongly disapproved. On March 26, 1816, President Madison submitted a treaty negotiated by the chief clerk of the War Department, George Graham, to the Senate for approval. As Indian treaties went, it was a brief and unremarkable document. Its goal was to correct a discrepancy between the 1814 Treaty of Fort Jackson and an earlier agreement. In January 1806, Thomas Jefferson's Secretary of War, Henry Dearborn, had signed a treaty with the Cherokees in which the United States accepted the boundary between the Cherokees and the Chickasaws as being south of the Big Bend of the Tennessee River, on a line from a waterway called Bear Creek, near Muscle Shoals, in the west to a place known as Flat Rock on the Coosa River. Jefferson's administration had thus acknowledged the legitimacy of Cherokee claims in northeast Alabama. Graham's treaty simply amended the boundary ceded by the Creeks at Fort Jackson since the Creeks could not cede what the United States had already agreed was Cherokee country. For the Cherokees, it was a welcome instance in which the Americans affirmed the preexisting claims of the Native Americans, even if the United States made sure, as usual, to guarantee the unlimited right to travel by land and water through the Cherokee territory, as well as to establish such "ferries and public houses as may be necessary for the accommodation of the citizens of the United States."<sup>22</sup>

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<sup>22</sup> Treaty and Convention with the Cherokees, March 22, 1816, ASP: Indian Affairs, 2: 88-9.



For the Cherokees, however, the document alone was not enough. It must be enforced. For several years prior to the War of 1812, the same Cherokee lands were frequently occupied and held at gunpoint by white squatters. Most egregious of all, the Cherokees' tribesmen were often attacked with no provocation and killed by white settlers, and the Indians left with little recourse. "Yet we remained silent, with cool & unrevenged disposition, waiting for justice from the Government under which our protection depends," they said. "During the late war we availed ourselves of an opportunity to prove attachment to the Government of the United States; Yet some of our White Brethren on the frontier wish to remain insensible of it."<sup>23</sup> The Indians' message was clear: they had abstained from enacting retribution for these offenses because they considered themselves allies of the American government, which they in turn trusted would deal with the white intruders.

Complicating the matter, however, was the fact that Andrew Jackson, on his own authority, had set his friend and former comrade-in-arms, John Coffee, to survey and mark the boundary of the Fort Jackson cession. Coffee thought he was exploring lands recently ceded to the United States; the Cherokees considered him just another white trespasser. Not only did the Cherokee diplomats want the American government to put a stop to Coffee's actions and remove the white squatters from Indian lands. but they wished to make it plainly known that no chief or headman of the nation was interested in entertaining notions of a cession of Cherokee lands. Furthermore, they requested two companies of United States troops to be placed on their northern boundary (north of the Tennessee River) as a deterrent against white encroachment. This last provision was omitted from the treaty, but the Cherokees argued for, and got, the right to send a commissioner of their own, at the expense of the United States, to accompany any surveying party that was to build a road through their lands. In addition, the United States agreed

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<sup>23</sup> John Lorry, John Walker, and The Ridge to William H. Crawford, March 12, 1816, M-271, Reel 1.

to pay \$25,500 to individuals of the Cherokee nation who had sustained damages due to the march and foraging of militia and regular troops through their territory during the war.<sup>24</sup>

For Americans in the South and West, or hoping to move there, this agreement with the Cherokees was outrageous. As word of the treaty spread, by newspaper articles (forwarded verbatim by successive papers) as well as by word of mouth, Westerners were apoplectic at the thought that the war they had just fought and won, in their minds, to secure the peace of their region had been for naught. A group of prominent Tennesseans from Davidson County, which encompassed Nashville, sent a memorial to President Madison in protest: “The people of this State know that their political and individual prosperity is much retarded, and they also believe that their rights are obstructed by two causes, connected with the relations of the United States with the Indian tribes.” The first cause was the failure of the government to extinguish the claims of the Indians within the state of Tennessee. The second was the unjust “cession” of United States lands (rightfully received from the Creeks by treaty) to the Cherokees. Both concerns brought unresolved frustrations to the fore. The United States had, for the thirty years since the Revolution, acknowledged the possessory right of the Indians to the lands of western North Carolina and eastern and southern Tennessee. This acknowledgement, the memorialists claimed, came at the expense of not only those American citizens who had purchased their homesteads fair and square and made improvements upon them, but those Americans who eagerly awaited the extinguishment of Indians lands so they themselves could embark west. Yet the lands claimed by Indians were scarcely populated by Indians. The state was therefore deprived of the opportunity to achieve prosperity. These western states and territories were not only “fertile beyond description,” but fortuitously situated on wide navigable rivers, “which have become the highway to market the produce raised by several millions of people.” Hinting that the federal

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<sup>24</sup> Treaty and Convention with the Cherokees, March 22, 1816, ASP: Indian Affairs, 2: 88-9.

government cared more for the rights of Indians than American citizens, the protesters demanded that the Cherokee treaty be nullified. “Our citizens would then travel in security, without the risk of being murdered at every wigwam by some drunken savage, or of being ambushed and plundered until a safe passage is purchased by giving to the Indians money for permission to travel the public road.”<sup>25</sup>

These last stereotypes aside, this memorial cut to the heart of the central problem in American Indian policy. Sometimes the Indian tribes were treated, and addressed, as separate and independent nations. In other situations they were perceived as dependent groups that were subservient to the United States. The ambiguous relationship of the United States to the Indian tribes was perplexing and frustrating, and not just to whites wanting to move west. It complicated every aspect of the government’s policy towards the Indians. In fact, this nebulous state ensured that no single Indian policy could ever be codified, as each circumstance was different.

The memorial was sent to the nation’s capital with the knowledge and full support of Andrew Jackson, who was livid at the turn of events. He wanted a single Indian policy that left no question as to the status of the Indians: they were, and ought to be, entirely subordinate and subservient to the United States government. It was his responsibility to publicly support the actions of his government and the policies (fluid as they were) of the War Department. Instead, however, Jackson took the opportunity of the Cherokee treaty to engage in a remarkable duel of letters with Secretary of War Crawford over the present state and future of Indian affairs. It was a literary exchange that was of course reprinted, in the custom of the day, in the nation’s newspapers.

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<sup>25</sup> Jenkin Whitesides et. al. to James Madison, ASP: Indian Affairs, 2: 89-91.

But Jackson never penned a note to Crawford if he thought he could achieve the same end by also writing to Secretary of State James Monroe. Although Madison and Crawford had not sought Jackson's opinion on Indian policy, it was a foregone conclusion that Monroe would become the next president. Jackson had supported Monroe against Madison in the 1808 election, and thought Monroe would lend an ear to his, Jackson's, words of wisdom, both regarding the immediate treaty with the Cherokees and in the future. "The late hasty convention with the Cherokees is much regretted & deprecated in this quarter," Jackson informed the secretary of state. President Madison, Jackson asserted, had been deceived. The medium by which the Cherokees pressed their claims was a document given to them after the Treaty of Fort Jackson by Creek chief William McIntosh, a man largely of Scotch descent with a Cherokee wife. Not only, claimed Jackson, did McIntosh not speak for the entire Creek nation, but the piece of paper was a transparent fraud. The territory recently awarded by the United States to the Cherokees "contains between four and five millions of acres, to which it is believed the cherokees never had the least semblance of a claim." Those millions of acres were in Jackson's eyes invaluable to the future prospects of the United States. Anyone who would willingly surrender them to the Indians, or otherwise acknowledge that white Americans had no claims to settle upon them, was endangering the country. Should the treaty stand, an avenue for communication between the northern and southern tribes would remain in place, exposing white settlements to "savage murders & depredation." The citizens who had fought the recent conflict, claimed Jackson, were disgusted that American blood had been spilled to secure a region that was then handed to the Cherokees. It afforded him much pleasure, Jackson assured the secretary, to know that Monroe was not involved in the disgraceful affair, even if Crawford "has forever forfeited in this act the confidence of the people of this section of the country[.]"<sup>26</sup>

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<sup>26</sup> Andrew Jackson to James Monroe, May 12, 1816, Jackson Papers, 4: 28-30.

But it was Crawford who flatly rejected Jackson's assertions. The general's opinions of the Cherokee treaty and the boundary of the Creek cession, he wrote, "have not in any degree changed the opinion of the President upon that subject." Crawford also hinted that Jackson was overreacting with his warnings about the lower country. The road from the Tennessee River to Mobile and New Orleans would run through Indian country for only a short distance, certainly not enough to worry about, and the American settlements near the Gulf Coast were quite capable of defending themselves long enough for reinforcements from Tennessee to arrive. Moreover, Madison was no fool. "The President is as sensible as any other person of the advantages which the extension of the settlements of the Tennessee would have secured," Crawford wrote. Attempts were made to convince the Cherokees to relinquish the titles in question, to no avail. "The advantages however important, would have been too dearly bought by an act of injustice, which might have changed a friendly tribe into an inveterate foe." The bottom line was that there was little certainty in Indian boundaries. While it was a great nuisance that the Native tribes kept no written records, or even inhabited the lands they claimed in the same manner as white Americans, the United States had nevertheless set precedents of respecting Indian land claims. Given the uncertainty of the situation, "an enlightened and liberal nation should not set aside the claims of its ignorant and savage neighbors, where they have ever been recognised by any act of the Government." Jackson could argue that the lands in question belonged to the Creeks; but the decision was not Jackson's to make, and the United States favored the claims of the Cherokees. The U.S. government was the sole arbiter in the matter, for which the Cherokees could have no appeal. This being so, "delicacy, as well as a proper sense of justice" should induce the United States to give the benefit of the doubt to the party with the adverse claims. "I am very far from believing," wrote Crawford, "that we have yielded any thing to the Cherokees which they had

not a right to demand.” Nothing would be lost from an act of liberality towards the Indians within American borders; Jackson’s dire warnings of unrest and even massacre in the Territory were unfounded and unhelpful.

As far as Crawford was concerned, the immediate matter of the treaty was closed. Nothing else need be said. Jackson, a serving military officer, had been given his orders and was expected to obey them. “In an enlightened nation, submission to the laws is the fundamental principle upon which the social compact must rest,” the secretary of war reminded his general. “The treaty with the Cherokees has been approved by the Senate and House of Representatives, and is the supreme law of the land. Submitting to it is a duty which will not be neglected.”<sup>27</sup>

Still, Crawford allowed Jackson to proceed with previous plans to negotiate a definitive boundary between the Chickasaw lands of west-central Alabama and the Creek cession. The government also wanted Chickasaw lands along what is now the Black Warrior-Tombigbee Waterway. Money was no object, assuming the agreed-upon rate was not truly exorbitant, which could lead to a bad precedent. In the fall of 1816, Jackson and David Meriwether, a Revolutionary War veteran whom Jackson considered “a fine old fellow,” commenced a negotiation with the Chickasaws, Cherokees, and Choctaws at the Chickasaw council house on the Coosa River. The Chickasaws refused to cede any land. The Cherokees ceded their lands on the south side of the Tennessee River, pending ratification by their nation as a whole, while refusing to do the same for their lands north of the river. According to Jackson, this tentative agreement with the Cherokees “alarmed and seemed to irritate the Chickasaws,” who were also reeling from the death of one of their principal chiefs, a man called the Old Factor. Jackson and Meriwether, sensing their objective slipping from their grasp, “addressed ourselves feelingly to the predominant & governing passions of all Indian Tribes, ie. Their avarice or Fear.” As their

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<sup>27</sup> William H. Crawford to Andrew Jackson, June 19, 1816, [ASP: Indian Affairs 2](#): 112.

instructions “pointed to the former & forbid the latter,” the commissioners offered money and gifts, though their inclination, or at least Jackson’s inclination, was to threaten. Eventually, the Chickasaws gave in, and Jackson leapt at the chance to close the deal. The two resulting treaties—one with the Cherokees of September 14, 1816, and the other with the Chickasaws of September 20—largely cleared the Indians from much of today’s Alabama and opened a swath of land between the Tennessee River and the Gulf of Mexico to white control, which had been a goal of Jackson since Horseshoe Bend. The Cherokees were pushed north and east, into their ancestral homeland in eastern Tennessee, northwestern Georgia, and western North Carolina. The Chickasaws were squeezed west.<sup>28</sup> Jackson was pleased; his first postwar negotiations with the southern tribes had worked out in his, and the country’s, favor. But things had proceeded much more slowly than he had wished and required more energy than he believed should be necessary.

Meanwhile, the exchange between Jackson and Crawford came at a time when the war secretary was already thinking about how to remedy the uncertain state of Indian affairs. William Clark, the former explorer who now served as governor of the Missouri Territory, would eventually advise six presidents on Indian policy. He had already written Crawford pleading for “greater efficiency” in Indian relations. Specifically, he wanted to reform the government’s system of trade. It was wasteful to send to the tribes both U.S. agents, who fulfilled a political and diplomatic role on the frontier, and traders, who played an economic role, as discussed in Chapter 1. The great leverage held by the United States over the Indians was trade, said Clark; therefore let the Indian agents regulate trade with the tribes. A welcome side effect of the new arrangement would be that infighting over questions of jurisdiction and authority between agents

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<sup>28</sup> “Treaty with the Cherokees,” September 14, 1816, and “Treaty with the Chickasaws,” September 20, 1816, ASP: Indian Affairs, 2: 92-3.

and traders would disappear, and along with it the ability of the tribes to turn one American representative against the other.<sup>29</sup>

Crawford did not publicly champion Clark's proposal, but he recognized the concerns that underlay it. All the problems with United States Indian affairs revolved around, to some degree, uncertainties over jurisdiction. The de facto responsibility for Indian affairs was divided among the Departments of War, Treasury, and State—in Crawford's view, an untenable situation. He saw the peculiarity of the War Department's responsibility over matters concerning trade with the Indians. Officials spoke of a possible new and separate department for Indian trade, and Crawford endorsed the idea wholeheartedly. "The only rational principle," he wrote to the president pro tem of the Senate, "upon which it is considered necessary to place the Indian trade under the control of the War Department is the necessity of relying on it for the small military force which has hitherto been stationed at different trading posts which have been established." The annuities paid to the tribes came from the War Department and were distributed by the Indian agents on the frontier. In turn, Americans living on the western fringes who lost property were obliged to petition the War Department for redress, thus creating so much paperwork that the War Department clerks were often many months in arrears.<sup>30</sup>

In short, Indian affairs required major reform. Crawford's proposals for doing so, however, were founded on the assumption that it was the sincere policy and honest goal of the federal government to "draw its neighbors into the pale of civilization" by assimilating the Indians into white American society. But if the true object of the government was in fact to extinguish the Indians' title to their lands so that whites could settle upon them as soon as possible, all efforts at regulating Indian trade should immediately cease. He thought such a

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<sup>29</sup> William Clark to William H. Crawford, October 1, 1815, ASP: Indian Affairs, 2: 77-8.

<sup>30</sup> William H. Crawford to John Gaillard, March 13, 1816, ASP: Indian Affairs, 2: 26-8.



contradiction in the American-Indian relationship could never be maintained. Moreover, it was unjust: if the United States used its leverage as the Indians' sole trading broker to influence them to cede their lands, the result could be nothing other than the expulsion of all the Indians and the extermination of many of them. Crawford evidently surmised that this was indeed the object of some American statesmen. "The correctness of this policy cannot for a moment be admitted," he declared. "The utter extinction of the Indian race must be abhorrent to the feelings of an enlightened and benevolent nation." If it came down to the Indians' survival, it would be best to let them and whites intermarry. This would preserve the Indian race but "with the modifications" necessary to become productive and happy members of American society. The principles of humanity, Crawford believed, were not incompatible with the future interests of the United States. In fact, the opposite could well be the case, as it would be preferable to incorporate the Indians into "the great American family of freemen" than to continually accept immigrants who were often the dregs of European society.<sup>31</sup>

At least some lawmakers, however, were perfectly willing to accept the contradiction, if they even recognized it as such, of continuing to promote assimilation as one cornerstone of Indian policy while encouraging the Indians themselves to cede their lands to the United States. During the last weeks of the Madison administration the Senate Committee on Public Lands expressed concern over the proximity of Indian communities to newer white settlements. There were two specific problems: frontier security, due to the undefined boundaries between American and Indian spaces, and a perception (or pretense) that whites and Indians would degrade the morals of the other. "The removal of the Indian tribes from their lands surrounded by and contiguous to our settlements will give place to a compact population, and give strength to the means of national defense," the committee claimed. But rather than constantly pressure the

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<sup>31</sup> Ibid, 2: 26-28.

tribes to cede small portions of their territory, why not revive Thomas Jefferson's 1803 proposal for exchanging great swaths of land at once? An exchange of lands, the committee reasoned, "is no other than a transfer of the Indian right of possession from one portion of the public domain to another." So long as the Indians voluntarily agreed to the exchange, the honor of the United States would be maintained and the Indians would emigrate.<sup>32</sup>

Others, too, had ideas about the future of national Indian policy. Seven weeks later, on March 4, 1817—Inauguration Day—Andrew Jackson again attempted to influence Indian policy by penning a letter to the new president, James Monroe. It was a letter he had been waiting months, and perhaps years, to write. He did not mince words. "Your Predecessor accomplished much for his Country," Jackson wrote, but there was still much to be done. Jackson thought Monroe's first concern was the security of the country, followed by its general welfare. This would be accomplished by strengthening the existing fortifications in the lower country, and constructing new ones, from New Orleans to Mobile and, presumably, points farther east and into Florida. The next step was the permanent settlement of the lands acquired from the Creeks. Jackson recognized that some of the nation's statesmen were not in favor of putting the entire region up for auction at once, but they were wrong. "The lower country is of to great importance to the Union for its safety to be jeopardized, by such short sighted policy," he believed. Even if all the lands were sold en masse—and thus more cheaply, reducing the government's income—it would be far preferable to the later cost of retaking the region from ocean-borne European invaders. The region being inhabited by citizens of the United States, the next course of action was to construct a proposed foundry (for the manufacture of firearms) and armory (for their storage) on the Tennessee River below Muscle Shoals. The site, chosen by Jackson himself, was both secure and convenient; the arms could be transported either downriver to the coast or via the

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<sup>32</sup> Exchange of Lands with the Indians, January 9, 1817, ASP: Indian Affairs, 2: 123-4.

military road whose construction was about to commence. Moreover, the location was a prime source of water, timber, and, most importantly, high-quality coal and iron ore.

Connected with the security of the southwest, Jackson continued, was another subject he wished to bring to the president's attention. "It is that the Lands on the Ohio, within the State of Kentucky and on the East bank of the Mississippi be obtained from the Chickasaws and immediately settled." Despite what Madison and Crawford had believed, there was no danger in extending white settlements. In fact the opposite was true. American settlers would cut off communication between the northern and southern Indians, as well as cut off the Five Tribes, the Choctaws and Chickasaws in particular, from each other. They would also serve as bulwarks along the Ohio and Mississippi Rivers, and the entrance to the Missouri. The United States might as well acquire the land. The game was largely gone from the woods, as everyone well knew, so the traditional claim of "hunting rights" had no validity at the negotiating table. That brought Jackson around to the crux of his argument, and the reason for writing Monroe. How were the lands to be acquired? Not, if Jackson had his way, via treaty. Feeling frustrated from his difficult deliberations with the recalcitrant Chickasaws the previous September, as well as his exclusion from the policy deliberations of Madison and Crawford, Jackson declared, "I have long viewed treaties with the Indians an absurdity not to be reconciled to the principles of our Government." The Indians, said Jackson, were subjects of the United States, pure and simple, "inhabiting its territory and acknowledging its sovereignty." It was a fiction that the tribes were in fact separate and independent entities, and it was absurd to negotiate with them as such. Congress, Jackson thought, should have the true authority to legislate for Indian affairs, as it did for the territories. Although the Indians were not citizens of the United States, they were nevertheless its subjects, and entitled to "protection and fostering care." But the American government, in turn, was

entitled to “prescribe their bounds at pleasure.” The government had not done so to this point, Jackson asserted, because it was weak, unnecessarily so. All Native Americans within the “Territorial limits” of the United States—itsself a nebulous category—possessed possessory right (that is, for hunting) to the lands, not a right of domain. Hence, Jackson concluded, “Congress has full power, by law, to regulate all the concerns of the Indians...their existence and happiness now depend upon a change in their habits and customs which can only be effected by a change in policy in the Government.” Such a change would also greatly benefit countless American citizens, who were currently being deprived of their rightful acquisition of the public lands. “There can be no doubt,” Jackson concluded, “but that, in this way, more justice will be extended to the Nation, than by the farce which has been introduced of holding treaties with them, for it is true that avarice and fear are the predominant passions that govern an Indian.” The Indian chiefs were corrupt, and the American commissioners merely the bringers of bribes; the poor of the tribes benefited not at all from the arrangement. Therefore “Honor justice and humanity certainly require that a change of Policy should take place.”<sup>33</sup>

James Monroe did not respond directly to Jackson’s extraordinary letter, or to his other attempts to forge national policy towards the Native Americans. But thanks in no small part to Jackson himself, a change in policy was now a practicable reality. The United States experienced more defeats than victories during the War of 1812. The war and its aftermath, however, including Jackson’s strategic crippling of the Indians in the Southeast, had placed the nation in a position where it could, for the first time, articulate and enforce a cogent Indian policy. As yet, there were few specifics. But it was a given that United States Indian policy could no longer be separated from the near-universal desire to acquire Indian lands. Before the war, the United States had signed treaties of trade and friendship with the Indian nations, in addition to modest

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<sup>33</sup> All quotations from Andrew Jackson to James Monroe, March 4, 1817, Jackson Papers, 4: 93-98.

acquisitions of Indian lands. The language of trade and friendship would remain, but as hollow courtesies. The eight years of Monroe's administration would witness tremendous and unforeseen changes that would redraw the map of North America and begin to revolutionize American conceptions of space and time. These years would also see economic collapse and regrowth, as well as accelerated emigration to several points of the compass. But one group's emigration, more often than not in history, results in another group's displacement—or its resistance to displacement. The United States now held sway over the American Indians, but the key concern for the new administration was the proper manner in which to use that power for the benefit of the white populace while maintaining a just benevolence toward the tribes. As with every other aspect of American Indian policy, there were contradictions in this goal that would remain unreconciled as statesmen and officials gradually attempted to define the relationship between the federal government and the Indian peoples.

### Chapter 3 Mr. Monroe's Message (1817-1825)

Few Americans were thinking about a national Indian policy when war broke out in 1812. Only a few more were thinking about one five years later, when James Monroe succeeded to the presidency. This was true of the new president himself. An old diplomat, Monroe energetically engaged in foreign policy, but thought attempts to frame domestic policy could be left largely to Congress—and, after the war, Indian affairs were increasingly viewed by politicians as domestic, rather than external, concerns. For his part, Monroe was exceedingly reluctant to deviate from the modes of trading, treating, and assimilating begun by Washington. In his inaugural address Monroe addressed none of the concerns that Andrew Jackson, that very day, was furiously penning in Nashville regarding America's southern borders, its rapidly expanding white population, and the contradictory relationship of the United States and the Indian tribes. Of westward expansion the new president said almost nothing. Of Indian affairs, he offered scarcely more. Saying only, in the blandest possible terms, that "With the Indian tribes it is our duty to cultivate friendly relations and to act with kindness and liberality in all our transactions," Monroe followed up with a requisite line about the necessity for continued efforts at civilizing them, but that was all.<sup>1</sup>

After a long search, Monroe named his secretary of war: an energetic and nationalistic South Carolinian named John C. Calhoun who was currently serving his fourth term in the House of Representatives. At thirty-five, Calhoun was young for the responsibilities he was to assume.<sup>2</sup>

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<sup>1</sup> James D. Richardson, ed. *A Compilation of the Messages and Papers of the Presidents, 1789-1797*. 10 vols. (Washington: Government Printing Office, 1896-99). See Washington's Third Annual Address, October 25, 1791, *Messages*, 1: 105, and Monroe's Inaugural Address, March 4, 1817, *Ibid.*, 2: 9.

<sup>2</sup> Calhoun was not Monroe's first or even second choice for secretary of war. He was, at best, seventh. General Isaac Shelby, former governor of Kentucky, refused the position after being nominated, confirmed by the Senate, and commissioned. Both Madison and Monroe attempted in vain to convince Congressman William Lowndes of South

President Monroe, by comparison, was fifty-nine, and Secretary of State John Quincy Adams, the next oldest, was fifty. Treasury secretary William Crawford and Attorney General William Wirt were both forty-five, and Secretary of the Navy Benjamin Crowninshield was forty-four. But Calhoun had established a reputation for hard work while in the House and he was highly intelligent. John Quincy Adams, whose early impressions of people tended to be negative or carefully neutral, was impressed. “Calhoun thinks for himself, independently of all the rest, with sound judgment, quick discrimination, and keen observation,” Adams wrote. “He supports his opinions, too, with powerful eloquence.”<sup>3</sup> Calhoun’s first weeks in office tested his desire to, as he put it, “contribute as much as possible to the publick prosperity.”<sup>4</sup> He was determined to modernize his department, standardize the bureaucracy, and remove or retire the cronies who had held clerkships or offices for decades. In retrospect, Calhoun can fairly be judged the ablest secretary of war in United States history prior to 1862, when Edwin M. Stanton joined the administration of Abraham Lincoln. A fine political theorist, he understood the importance of military policy as well as the difficulties of implementing policy in the field. Moreover, Calhoun was a superb organizer—something the War Department had always needed but never really had. But in late 1817 he was completely untried when it came to executive experience and no one, including himself, could be sure if he was up to the task before him. A partial list of his major concerns during the seven years he spent in the War Department includes Andrew Jackson’s invasion of Florida, the controversial and grueling reduction of the army, several explorations of the western country, and incidents of violence among American Indian tribes and white settlers in the South and West.

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Carolina to accept the post. Henry Clay and Andrew Jackson similarly declined. Monroe had then considered John Drayton and General David R. Williams, both former governors of South Carolina, to no avail.

<sup>3</sup> Adams, *Memoirs*, 4: 36.

<sup>4</sup> Robert Lee Meriwether et. al., eds. *The Papers of John C. Calhoun*. Columbia: University of South Carolina Press for the South Carolina Historical Society, 1959-1980, 28 vols., 2: 7.

During the first half of Calhoun's tenure at the War Department, there were three major issues (apart from the Seminole War) relating to Indian affairs: the ongoing attempts to secure cessions of land from the Indian tribes east of the Mississippi River and Lake Michigan; the reformation of the system of Indian trade, which his predecessor, William Crawford, had begun to examine before moving to the Treasury; and a growing uncertainty over the feasibility of assimilating the Indians into white society. During Monroe's second term, the War Department was consumed by efforts to placate aggressive expansionists in the state of Georgia, who articulated a claim to Indian lands within the state's boundaries. The Monroe administration approached the four situations with great care, for all were delicate matters. At all four, however, it failed. Understanding these issues is key to comprehending why President Monroe went from privately encouraging an informal policy of removal to formally advocating legislation for the removal of all American Indians to the spaces west of the Mississippi River—the first sitting president to do so.

### **Treating with the Tribes**

Throughout Monroe's presidency, the administration aggressively sought treaties of cession with the tribes. In doing so, it adhered to the precedent set by George Washington and followed by every president after him. All treaties, especially the treaties of cession, were significant, but two in particular would become, unbeknownst to the negotiators at the time, important milestones in the evolution of federal Indian policy. All were hailed at the time by American statesmen as victories for the United States. Each acquired land from the Indians that was subsequently opened for white settlement, and each had the added advantage of making it clear to the Indians who was in charge east of the Mississippi River. As we will see in a later chapter, however, the



same treaties would within a few short years become lightning rods for attack by pro-removal advocates. The documents that were hailed in the mid- and late-1810s as diplomatic successes which served to advance America's interests were by the mid-1820s condemned as the shackles of an antiquated system that was far too generous to the Indians and did not reflect the reality of American hegemony over the tribes.

The two were the treaties of July 8, 1817, and February 27, 1819, made with the Cherokees. Both of these treaties also boasted high-ranking commissioners. Major General Andrew Jackson, Joseph McMinn, the governor of Tennessee, and Brigadier General David Meriwether of the Georgia militia negotiated on behalf of the United States in 1817; the 1819 talks were conducted in Washington by Secretary of War Calhoun himself. Since both treaties—specifically, their defects, according to removal advocates—later played such a prominent role in discussions of Indian removal, they are worth briefly examining here.

The treaty of 1817 was initiated by the state of North Carolina soon after Monroe took office, but before Calhoun joined the War Department. Both North Carolina and the War Department were well aware of the Cherokees' standing refusal to cede any more land, but not once in United States history did such a refusal prevent the government from trying. As acting Secretary of War George Graham wrote to Return J. Meigs, the seventy-six-year-old agent to the Cherokees, "as the land which the State of North Carolina is desirous of purchasing at present is very mountainous, and of indifferent quality, and adjacent to white settlements, and, therefore, probably of little service to the Cherokees, either for the purpose of settling or hunting upon, it is hoped that this proposition may be favorably received."<sup>5</sup> Here Graham was being disingenuous; the state of North Carolina was fully aware that the terrain on its western borders, though indeed hilly, was extraordinarily fertile.

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<sup>5</sup> George Graham to Return J. Meigs, December 9, 1816, ASP: Indian Affairs, 2: 140.

As usual, the goals of the negotiation evolved. In mid-January 1817, Graham instructed Andrew Jackson, the lead commissioner, to attempt a relinquishment of two reservations of land granted to the Cherokee nation by an earlier agreement made in 1806.<sup>6</sup> In May 1817 the instructions for Jackson, McMinn, and Meriwether evolved yet again. A few hundred Cherokees had voluntarily emigrated to the Arkansas River in the 1790s to avoid proximity to encroaching white settlers. Under the terms of the agreement of 1806 and another of 1809, more Cherokees had emigrated to the Arkansas River. By 1816 the number of “Western” Cherokees totaled some 3,600.<sup>7</sup> The War Department now wanted the Eastern Cherokees, by far the majority of the nation, to join them. The three commissioners were to negotiate for an exchange of lands between those in the East and a tract of land along the Arkansas River, adjacent to the Osage tribe. Even if Jackson, McMinn, and Meriwether were unsuccessful, the parley would allow the government, via the commissioners, to express to the Cherokees the “advantages which they may, respectively, derive from an exchange of territory, the ultimate accomplishment of which will be as beneficial to themselves as to the people of the United States.”<sup>8</sup>

On July 2, however, at Hiwassee, Tennessee, the Cherokees stated, not for the first time, their refusal to emigrate. Using the federal government’s language of paternalism, the Cherokee negotiators claimed that “We are not yet civilized enough to become citizens of the United States; nor do we wish to be compelled to move to a country so much against our inclination and will, where we would, in the course of a few years, return to the same savage state of life that we were in before the United States, our white brothers, extended their fostering care towards us, and brought us out of a savage state into a state similar to theirs.” Their removal to the west,

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<sup>6</sup> George Graham to Andrew Jackson, January 13, 1817, *Ibid.*, 140.

<sup>7</sup> This figure comes from a report by William Clark, governor of the Missouri Territory, in a report of November 4, 1816. Record Group 75, M-271-1; reprinted in *Jackson Papers*, 4: 110, fn 2.

<sup>8</sup> George Graham to Andrew Jackson, May 16, 1817, *Ibid.*, 142.

then, would only cause their social regression and undo the hard work of a generation of white Americans and Native Americans alike. Best to remain where they were and pursue cultivation and civilization so that “in the course of time, if we should be allowed to keep our country, our white brothers will not blush to own us as brothers.”<sup>9</sup>

It was a delaying tactic, pure and simple, but it was only partly successful. In part this was because the Cherokee nation itself was divided. Despite the language of the Cherokee negotiators, some of the nation thought voluntary emigration, accompanied by a healthy compensation from the United States, an acceptable alternative to certain continuing harassment. These Cherokees preferred to join their brethren in the West. Many of the tribe, however, were vehemently opposed to removal or a cession of lands. Jackson and the other commissioners were happy to seize upon this divided sentiment, and encouraged individual choice. In so doing, the government’s agents were intentionally, and successfully, turning a division within the Cherokee community into a schism. Some four thousand of the tribe agreed to relocate, on the condition that the United States acquire ample and fertile land for them on the Arkansas River.

Many of the Indians who had acquired and improved property in the East did not wish to relocate. These eastern Cherokees succeeded in delaying further discussion of removal, but felt compelled, given the dogged persistence of the commissioners, to cede a portion of their land after the commissioners sweetened the deal by offering a parcel of 640 acres to each head of household who wished to remain in the East. These reservations, which were within the ceded territory, would remain in “fee-simple,” meaning the estates could legally be passed from one family member to another. The new homesteads, then, would remain in the possession of individual Cherokee families if the fathers remained on the land until death. The United States

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<sup>9</sup> Cherokee delegation to Andrew Jackson, Joseph McMinn, and David Meriwether, July 2, 1817, ASP: Indian Affairs, 2: 143.

accordingly secured two cessions of Cherokee country in western North Carolina and eastern Tennessee, totaling about two million acres, for which the government agreed to provide an equivalent acreage in the West as well as compensate the emigrants who chose to relocate for improvements made to their lands in the East. The document also provided for a census to be taken, in 1818, of the entire Cherokee nation, including those who would soon be known as western Cherokees. The census was deemed necessary because the annuities for 1818 and beyond were to be divided proportionately among the eastern and western branches of the tribe.<sup>10</sup> The eastern Cherokees agreed to the treaty's terms after taking pains to differentiate themselves from others of their tribe who were now living on, or would move to, the Arkansas country. The decision of some Cherokees to cede tribal lands and move west, the eastern chiefs claimed, was unauthorized by the chiefs and headmen of the nation as a whole. In the future, the United States government would distinguish between the two branches of the Cherokee nation. This was important because it guaranteed that only the eastern chiefs could speak for the eastern Cherokees; the signature of a Cherokee on the Arkansas could not be used to cede lands in the East. Thus the treaty, signed on July 8, 1817, was a three-way agreement (comprising thirteen articles) between the United States, the Cherokees who resided east of the Mississippi, and the Cherokees who would soon live along the Arkansas. The most important stipulations of the treaty were Article Eight, which guaranteed title in fee simple to Cherokee heads of households who chose to remain in the East, and Article Twelve, which assured that Indian lands would be protected from white intruders. From the standpoint of the whites, the former article was an unfortunate concession, but a necessary one; without it, the chiefs would not have agreed to any cession, no matter how pushed. Even then, not all eastern chiefs agreed to the document. Acting Secretary of War George Graham was mildly concerned at the small number of actual Cherokee

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<sup>10</sup> Treaty with the Cherokees, July 8, 1817, Statutes at Large, 7: 156-160

signatories to the treaty, but he thought it would get through the Senate, and it did.<sup>11</sup> The treaty was a crucial shift toward a removal policy. The two million acres acquired from the Cherokees in 1817 amounted to a very small percentage of Indian claims in the Southeast. But the precedent established by the treaty, which associated cession with emigration, would be of key importance in the evolution of removal policy. Andrew Jackson recognized it as such. Writing to his friend John Coffee, Jackson confidently predicted that the principle “will give us the whole country [the entire Southeast] in less than two years.”<sup>12</sup>

The 1819 treaty secured an additional cession of about four million acres and reaffirmed the stipulations made in 1817, including a promise of a fee-simple reservation to each household that chose not to emigrate west. It was not an easy negotiation for either party. Secretary of War Calhoun, who did not enjoy threatening the Indians, felt obliged to adopt an ominous tone toward the Cherokee delegation in the capital. His message was simple and stark: if the Cherokees wished to maintain a strong claim on the land remaining to them in the future, they must not withhold a healthy cession now. “Should a larger quantity be retained [by the Cherokees],” Calhoun asserted, “it will not be possible, by any stipulation in the treaty, to prevent future cessions.” The Cherokees, he continued, knew it to be so, as did all Indian nations. If they wished to remain in the East, it must be as individuals on small, privately-held tracts, not as a collective.<sup>13</sup>

In both treaties, the Cherokees agreed to cede lands, but only as a means of staving off discussion of emigration. The topic of Indian relocation, however, was firmly on the agenda of

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<sup>11</sup> George Graham to Andrew Jackson, Joseph McMinn, and David Meriwether, August 1, 1817, ASP: Indian Affairs, 2: 143. The final treaty contained 31 signatures from the eastern branch of the tribe, 15 from the Arkansas Cherokees.

<sup>12</sup> Andrew Jackson to John Coffee, July 13, 1817, Jackson Papers, 4: 126.

<sup>13</sup> “Treaty with the Cherokees,” February 27, 1819, ASP: Indian Affairs, 2: 187-88; John C. Calhoun to the Cherokee Delegation, February 11, 1819, Ibid., 2: 190.

the administration. The unsettled relationship of the tribes to the American government, the masses of would-be settlers clamoring to move to the West, as well as whites simply moving into Indian country at will, were political and social concerns that needed to be addressed. No one thought that whites could be stopped from moving into Indian territory, and very few believed an encounter of white settlers and Indians in the borderlands would be resolved without violence. When Monroe became an advocate of removal is difficult to discern, but it was early in his term. Andrew Jackson's success with the treaty of 1817 may have been a factor. Writing to Jackson and Isaac Shelby in May 1818, Calhoun informed the generals that "The President is very anxious to remove the Indians on this side to the west of the Mississippi."<sup>14</sup> Christopher Vandeventer, the chief clerk of the War Department, expressed the same goal to Lewis Cass, at Detroit. "The great object is to remove, altogether, these tribes beyond the Mississippi. If that be accomplished, every difficulty is removed; there then ceases to be any question about the tenure by which the Indians shall hold lands."<sup>15</sup>

The government's preferred means of removing the tribes was via a simple (so it assumed) exchange: a generous slice of the vast trans-Mississippi West, presumably well-watered and teeming with game, in exchange for the Indians' increasingly cramped, barren, and hostile realms in the East. The United States would pay for the cost of emigration. In addition to this, the United States was prepared to send tens of thousands of dollars' worth of goods with the Indians, and the age-old method of offering, in Calhoun's phrase, "moneyed presents"—cash bribes—was never off the table.<sup>16</sup> Should it be deemed necessary, the United States could appeal to the financial self-interest of the tribal elites, who were often the light-skinned sons of white fathers and Indian mothers, though this was to be a last resort. Most government officials in

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<sup>14</sup> John C. Calhoun to Andrew Jackson and Isaac Shelby, May 2, 1818, *ASP: Indian Affairs*, 2: 173.

<sup>15</sup> Christopher Vandeventer to Lewis Cass, June 29, 1818, *Ibid.*, 2:175-6.

<sup>16</sup> John C. Calhoun to Isaac Shelby and Andrew Jackson, May 2, 1818, *ASP: Indian Affairs*, 2:173.

Washington, and the dozens of civil servants on the frontier, did not believe the situation would come to that. Despite the fact that all the southern tribes had, at one time or another, stated their refusal to either cede any more of their lands or move west, many American officials persisted in their self-serving belief that the majority of Native Americans were not only willing to relocate but were eager to do so—but were prevented from acting on their wishes by the tribal elders or elites. Chief among the Americans who thought in this vein were those most intimately acquainted with Indians, and presumably were better informed of the politics and disposition of the individual communities. Return J. Meigs, for example, expressed confidence that the Cherokees saw the writing on the wall, and would eventually be willing—the influence of the tribal elites notwithstanding—to move in order to retain their common identity.<sup>17</sup> The fact that some Indian families, perhaps too exhausted to argue further, did consent to move, only fueled this mindset. “I take the pleasure to inform you I have got several families of the Choctaws who are willing to move west of the Mississippi,” a Choctaw named James Pitchlynn wrote to Calhoun in the spring of 1819. “I believe, if there was a treaty held in the nation, there would be one-third or half of the nation would move in the fall.”<sup>18</sup> Other Choctaws, certainly representing the vast majority of the nation, protested in the strongest terms they could muster. “We wish to remain here, where we have grown up as the herbs of the woods; and do not wish to be transplanted into another soil. Those of our people who are over the Mississippi did not go there with the consent of the nation; they are considered as strangers.”<sup>19</sup>

Such protests fell on deaf ears, in any event. But even if the Indians wanted, or at least were willing, to move, a critical question remained: to where, exactly, would the eastern tribes be sent? No one knew. There were only two non-negotiable factors as far as the American

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<sup>17</sup> Return J. Meigs to William Crawford, November 8, 1816, *ASP:IA* 2: 116.

<sup>18</sup> James Pitchlynn to John C. Calhoun, March 18, 1819, *Ibid.*, 2: 229.

<sup>19</sup> Mushulatubbee and Pooshamataha to John C. Calhoun, August 12, 1819, *Ibid.*, 230.

government was concerned. The first was the great natural divide of the Mississippi River. Relocating the tribes to the west of the Mississippi was considered necessary to the Indians' happiness, so they would be free from white encroachment onto their newly acquired lands. Though American security in the East was no longer a concern, the United States would also benefit by using the subdued eastern tribes as a bulwark against the lesser-known, and presumably more aggressive, western tribes. The second inviolable factor was the voluntary consent of the Indians themselves. They could be persuaded, even cajoled, but not forced to relocate. American officials believed they were, in articulating and advocating this policy, embarking upon the humane course of action. In formulating their approach, they made certain assumptions about the future of the Indians as a whole, the politics and disposition of the individual tribes, and the geographic and demographic circumstances of the American West that were rarely, if ever, seriously questioned. Both the Monroe administration and Congress perpetuated the misconception that the West was, in fact, empty space. One 1818 report from the House Committee on Public Lands referred to the "extensive uninhabited territories" on the other side of the Mississippi.<sup>20</sup>

Few American officials enjoyed negotiating with the Indian tribes. The process, from initial proposal (often put forth by a state, as in the case of North Carolina in 1816) to a signed document could take anywhere from six months to a year. (The process for the 1817 treaty with the Cherokees, discussed above, took eight months.) Then the negotiators had to wait for ratification by the Senate. It was a grueling, expensive, and often inconclusive task. It was also, invariably, a thankless one. Andrew Jackson, who was successful at it—that is, he generally secured for the government what it wanted—hated the process. (Since he believed the treaties to

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<sup>20</sup> "Emigration of the Choctaws," December 1, 1818, ASP: Indian Affairs, 2: 180.



be absurdities, he especially resented the days actually spent in talks with the tribes.)<sup>21</sup> Lewis Cass, the governor of the Michigan Territory, and Solomon Sibley, the Territory's delegate to Congress, wrote Calhoun in 1822 expressing the near-impossible situation in which United States commissioners found themselves:

An Indian negotiator is placed by the execution of his duty in a peculiar situation. He is required by his instructions to procure a cession upon the best terms for the United States. On the other hand, neither the feelings of the age, the opinions of the Country, nor the principles of the government permit that he should extort from these wanderers of the forest the inheritance of their forefathers for the merest pittance which they may be induced to take. There are moral considerations connected with this subject, which no honourable man will disregard. He must & ought to consider himself rather as an impartial judge than an interested party. The execution of the duty is at best irksome & unpleasant. No man would voluntarily subject himself to it.<sup>22</sup>

There was also the matter of the white American public. Americans were voracious readers of newspapers, and no public official served long without earning the approval or condemnation of highly partisan editorials. One segment of American society, Cass and Sibley asserted, viewed the negotiations with the Indians as chicanery of the highest order. In this view, ancestral lands were wrenched from the tribes for almost nothing. The other class of white Americans viewed the process of negotiation as absurdly inefficient in both time and treasure. "Between these discordant opinions," wrote Cass and Sibley, "it is difficult to pursue any course which shall render general satisfaction." Whichever opinion one possessed on the matter, there was no doubt that this method of obtaining the title to Native lands was enormously expensive. "In all our treaties from that of Greenville to the present day," said the two men, "all considerations secured by the United States to the Indians for the cession of their lands has been

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<sup>21</sup> See, for example, Andrew Jackson to John Coffee, July 13, 1817, Jackson Papers, 4: 126.

<sup>22</sup> Lewis Cass and Solomon Sibley to John C. Calhoun, February 1, 1822, Calhoun Papers, 6: 667.

the immediate distribution of goods & the promise of future annuities, temporary or permanent. No treaty has ever been effected without this process.”<sup>23</sup>

It stood to reason that none ever would; that was one problem from the vantage of the United States. In 1820, when the nation was deep in an economic depression, the Senate requested the Treasury Department to account for every dollar spent in negotiating with every Indian tribe since the Declaration of Independence. This included funds for actually negotiating with the tribes, offering gifts of money or goods, the enormous cost of the annuities, the annual appropriations for the Indian trade, as well as the salaries and expenses for the “Superintendents, clerks, factors, commissioners, agents, interpreters, and all other persons employed under the authority of the United States in the negotiations and intercourse with the Indian tribes.” A clerk at the Treasury sifted through the voluminous records and by the end of the year came up with the sum of \$5,921,181.63.<sup>24</sup> It was a tremendous tally, and one that was growing by the year. A politically and financially unsustainable situation was in the making.

The Monroe administration would eventually conclude a total of forty-one treaties with twenty-nine different Indian tribes.<sup>25</sup> All but five of these occurred during Calhoun’s tenure as secretary of war, and all but eight involved a cession of Indian lands to the United States. Of the eight remaining treaties, six placed the signatory tribes under the protection, and de facto sovereignty, of the United States. Only two of the forty-one treaties concerned trade alone, and in neither of them do we find a mutually agreeable contract between two equal parties. In short, the United States held the upper hand over the tribes. But the aforementioned concerns—the enormous time and expense, plus the tedious and disagreeable nature of the negotiations—about

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<sup>23</sup> Ibid.

<sup>24</sup> “Expenditures for the Indian Department Since the Declaration of Independence,” December 7, 1820, Ibid., 209.

<sup>25</sup> United States Statutes at Large, Ed. by Richard Peters. Boston: Charles C. Little and James Brown, 1846. Vol. 7: v-vi.

the treaty paradigm remained. The fact that the Indians were not inclined either to cede their lands or to remove themselves from their homes in the East ensured that the aggravations of the treaty-making process would continue, at least until the complex and contradictory relationship of the tribes to the American government was definitively addressed.

### **Reforming the Indian Trade**

John Quincy Adams and John C. Calhoun, heads of the Departments of State and War, respectively, spent their time in the Monroe Administration (seven and a half years for Adams, seven and a third for Calhoun) in unceasing, and largely uncomplaining, labor. “At my office,” Adams wrote in November 1818, “it was like two-thirds of the time that I pass there—a hurly-burly day, a perpetual succession of objects rushing upon my attention, and leaving no time for reflection or steady application to any one.”<sup>26</sup> Calhoun could have used identical wording to describe his own hectic days. But the South Carolinian had one valuable asset that Adams did not. This was Thomas McKenney, whose title was “Superintendent of the United States Indian Trade with the Indian Tribes.”<sup>27</sup> McKenney was in fact much more than that. He handled all Indian affairs, except the treaties, for the War Department. This relieved Calhoun of a tremendous bureaucratic burden and enabled him to more effectively address the reform of the Indian trade and its peculiar blend of government factories and licensed private traders.

John C. Calhoun was alerted to the need for re-examining the Indian trade by one such private trader, though one more influential than most—John Jacob Astor, president of the American Fur Company and the first self-made millionaire in America’s history. His employees

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<sup>26</sup> *Ibid.*, 4: 171.

<sup>27</sup> Thomas L. McKenney, Memoirs, Official and Personal; with Sketches of Travels among the Northern and Southern Indians; Embracing a War Excursion, and Descriptions of Scenes Along the Western Borders. Second edition. (New York: Paine and Burgess, 1846), 3.

had mastered the trade routes from St. Louis to the Pacific Coast—hence the seaport settlement of “Astoria.” For several years, however, Astor’s private traders had been quarreling with various factors and Indian agents of the federal government. Since the private traders were dependent on the Indian agents for their licenses and passports into Indian country, they could be greatly inconvenienced at the whim of these peripheral employees of the War Department. Astor’s company was “suffering,” he said, to the point that “it would indeed be ruinous to continue the Trade under such circumstances.” He and the Office of Indian Trade needed to “ascertain definitively the ground on which private citizens engaged in this Trade are to be placed” in the eye of the government.<sup>28</sup> Astor was not a man who could be ignored. Calhoun and McKenney spent months examining the origins of the Indian trade, the system currently in place, and its prospects for reform. In December 1818, in a lengthy report to Congress, Calhoun concluded that the peculiar and contradictory nature of the Indian trade indeed merited reexamination.

The nations of Indians [Calhoun claimed] who inhabit this portion of our continent were, on its first discovery, in a state of the most perfect commercial independence. Their knowledge of the useful arts was, indeed, very limited, but it was commensurate with their wants and desires. . . . A great change has now taken place, such as appears to be inevitable by a fixed law of nature, in the intercourse between a civilized and a savage people.<sup>29</sup>

The inevitable change resulting from the contact of “civilized” whites and “savage” Indians was the degradation of the tribes. Helplessness, asserted Calhoun, had replaced independence. The wants of the Indians had multiplied over the course of previous generations. The ancestors of today’s Indians had been exposed to the more advanced tools of Europeans, to

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<sup>28</sup> John Jacob Astor to John C. Calhoun, March 14, 1818, *Calhoun Papers*, 2: 191.

<sup>29</sup> John C. Calhoun, “Alteration of the System for Trading with the Indians,” December 5, 1818, ASP: *Indian Affairs*, 2: 181.

the point that “their knowledge even of their former arts has been lost.” Axes and hoes, to say nothing of firearms, were things the Indians were now utterly dependent upon, yet were unable to manufacture for themselves. The Native tribes were thus entirely reliant on trade with whites. Without trade, he believed, they would vanish, either by starvation or by extermination by hostile, better-armed enemies. “The period seems, then, to have arrived to give to our control over the Indians,” Calhoun concluded, “through an exclusive supply of their wants, the greatest efficiency, and to promote their and our interest, by a judicious system of trade fairly and justly directed.”<sup>30</sup>

A system of trade, of course, was in place and had been since the Trade and Intercourse Act of 1796 established the factories. And, as untenable and inefficient as the factory system was, Calhoun had to concede that it did, from the perspective of the United States, have its merits. “If wars have not been entirely prevented by it,” he wrote, “they probably, without it, would have been more frequent; and if the Indians have made but little advances in civilization, they probably, without it, would have made less.”<sup>31</sup> Now, however, the circumstances under which the factories had been established were no longer applicable. There was very little chance of an American-Indian war east of the Mississippi, and the foreign traders about whom the Washington administration had fretted were long gone. Calhoun thought the factories now more trouble than they were worth, and favored letting the act authorizing them expire. So long as the factories guarded against excess loss, and removed their capital gradually, to allow other sources of cash—private sources, put up by individual, licensed traders or companies like Astor’s—to begin to circulate, the secretary foresaw no financial repercussions in the hinterland.

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<sup>30</sup> Ibid., 2: 181.

<sup>31</sup> Ibid., 2: 182.

But this was to be only the first step in reforming the Indian trade. A quick glance at a map of North America revealed the absurdity of trading with all Indian nations in the same manner. “The vast extent of the country inhabited by the Indians, and the numbers and variety of the tribes, render it impossible to apply, with propriety, one uniform system to the whole,” Calhoun declared. The Indians in the immediate vicinity of the United States—the five major southern tribes, the Osages and other small tribes on the west bank of the Mississippi, those in Illinois, Indiana, and Ohio, and those surrounding the eastern edge of Lake Michigan—should be dealt with under one system, those farther afield in another. For those tribes living deep in the North American West or on the Pacific coast, Calhoun revived the oft-mentioned idea of a government-sponsored company—not at all what Astor had been hoping for. For the tribes “in our immediate neighborhood,” however, the trade would fully revert to “individual enterprise” but be supervised by a Superintendent of Indian Affairs who would report directly to the secretary of war. This individual, at a salary of \$3,000 per year (similar to that of an associate justice of the Supreme Court), would be charged “with the correspondence, superintendance, and general management of Indian affairs; and to be authorized, with the approbation of the Secretary of War, to grant licenses to trade with the Indians.” The licenses under this revised system were to be granted to citizens of good moral character, and would continue to be valid until revoked. The annual fee for the license would be set by the president at somewhere between one hundred and five hundred dollars, thus ensuring a steady income for the new Office (or Department, or Bureau) of Indian Affairs. Persons caught trading without a license were to be charged a penalty of up to \$1,000 and would face up to six months in prison, in addition to a forfeiture of goods. The sale or trade of spirits was to be strictly prohibited.<sup>32</sup>

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<sup>32</sup> Ibid., 2: 182.

At no time since the Revolution were Anglo-American and Native American economic relations envisaged as a system of free trade; some form of regulation was always deemed proper, as seen in Chapter 1. “The trade with the Indians has never been opened, without restrictions, to our citizens,” Calhoun reminded Congress. The reason was simple: the Indians, operating from ignorance and weakness, needed to be protected. The government was obliged to supervise and manage the system of trade, and if supervision was necessary, it might as well be efficient. Calhoun viewed his proposal as a stricter form of governmental oversight than had ever been seen before. His thinking went thus: more expensive licenses meant that fewer individuals would be able to afford them. This meant, presumably, that those who obtained a license to trade in Indian country would have more than a few hundred dollars of capital invested in trading goods. Since the proposed punishment for violating the terms of the license was severe, including loss of goods (and, hence, livelihood), Calhoun was convinced that traders under his system would be careful to operate within the limits of the law. The secretary was explicit, however, that the government’s authority was to extend not just over the white traders but over the tribes as well. Calhoun articulated the propriety of the federal government’s direct interference into the economic lives of the eastern Indians, and with it an erosion of Native American sovereignty, for the Indians’ own good.<sup>33</sup>

By the late winter and spring of 1820, when Congress was considering the future of the factories, some in the government had come around to Calhoun’s opinion and felt the warehouses had done more harm than good.<sup>34</sup> The factories were expensive to operate, and cash was scarce, especially after 1819, when the nation was rocked by an economic depression. The factors and interpreters had to be paid a salary, and even the paltry sum of one to two thousand

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<sup>33</sup> Ibid., 2: 182-83.

<sup>34</sup> “Trade and Intercourse,” February 16, 1820, ASP: Indian Affairs, 2: 201

dollars per year quickly added up when the total number of trading houses (nine) was taken into account. Some of the factors themselves hated the Indian trade. George Sibley, the factor at Fort Osage in northwestern Missouri, compared the system to “a wretch under sentence of death” who gets a reprieve from year to year, growing weaker and weaker in the meantime.<sup>35</sup> Others thought the system was flawed, but could be fixed, and claimed that if the factories reduced the possibility of hostilities by even a modest percentage, they were a good investment. By keeping the government’s trading system open for now, the United States could more directly assert its will over the tribes.<sup>36</sup>

Despite Calhoun’s recommendation that the factories be closed, Superintendent of Indian Trade Thomas McKenney fought to keep them open. In the process he directly undermined the secretary of war, his superior. For example, in a letter to Senator David Holmes of Mississippi, a state with an extensive Indian population within its borders, McKenney underscored the importance of controlling the purse strings when it came to dealing with the tribes. There was no cheaper or more convenient means of asserting power over the Indians than trade, which meant the factories, in McKenney’s view. Trade, said the superintendent, “is a lever, against the power of which, whenever it shall be brought properly to bear upon them, they will not make even a show of resistance. Indians are like other people in this, as in other things—they will make large sacrifices rather than be shut out from commercial privileges.”<sup>37</sup> McKenney may well have believed the factories to be the most effective means of trading with, and hence maintaining an influence over, the Indian tribes. But the superintendent also feared he would be out of a job should the factory system be abolished. (He was evidently unaware of Calhoun’s plan’s to keep him on as Superintendent of Indian Affairs once that position was created.)

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<sup>35</sup> George Sibley to Thomas L. McKenney, April 16, 1819, *Ibid.*, 2: 362.

<sup>36</sup> “Trade and Intercourse,” April 5, 1820, *ASP: Indian Affairs*, 2: 205-6.

<sup>37</sup> “Trade and Intercourse,” December 6, 1820, *Ibid.*, 2: 222.



In the end, despite McKenney's tireless—one might say frantic—efforts, the factories were doomed. Calhoun's proposal to shut them down coincided with other reports that questioned the peculiar dual nature of the Indian trade. The chairman of the Senate Committee on Indian Affairs, Henry Johnson of Louisiana (at the behest of Thomas Hart Benton of Missouri), opened an investigation into the factory system by querying the factors, Indian agents, private traders, and even some foreigners operating beyond the boundary of the Louisiana Purchase. The committee's questions were detailed, and the answers revealing. What was the quality of goods found in the factories? (Quite bad, in some cases.) Had factory goods been sold to other persons besides Indians? (Yes. Some of the factories operated as if they were general stores. The factor at Prarie du Chien, in fact, sold the factory's goods to private traders, licensed and unlicensed, who then sold them at mark-up to the Indians.) What effect did the government's trade have in "conciliating the good-will of the Indians towards the United States, in reclaiming them from savage habits, and in converting them to Christianity?" (None whatsoever.) The reports offered persuasive testimony to the futility, and even harmful effects, of the factory system. According to one account, the government's factors were, to the Indians, indistinguishable from individual traders. Or, worse for the government, the factor was a stranger to the Indians, while the private trader was not. U.S. Indian agent Benjamin O'Fallon, who was stationed on the Missouri River, unreservedly endorsed closing the factories. "They will not suffer from want of supplies, or be subject to greater impositions than they are now," he claimed. "The factory system has no good effect in conciliating the good-will of the Indians towards us; on the contrary, it is calculated to give them unfavorable impressions, and alienate them from us, by exhibiting the Government of the United States in the light of a common trader." Ramsay Crooks of the American Fur Company claimed that the factories did nothing to help the United

States control the Indians, nothing to convert them to Christianity, and nothing to confer any advantage in trade or “for an hour preserve peace on the frontiers.” Closing the factories, he said, “will not create a murmur loud enough to disturb the primeval stillness of the forest.”<sup>38</sup> And so the testimony went, a damning indictment of the expensive and inefficient network. McKenney protested feebly, noting that Crooks was a lead agent of the American Fur Company and a British subject to boot, and reminded the committee that the testimonies had occasionally been contradictory.<sup>39</sup> He was not wrong, but the damage was done. Benton, in a scathing performance on the Senate floor, sealed the demise of the mainstay of the government’s Indian policy that had been in operation for a quarter-century.<sup>40</sup> Congress voted to end the factory system, and President Monroe signed the bill into law on May 6, 1822.<sup>41</sup> If the factories had served only to prevent, or minimize, the potential for conflict on the frontier, even that precaution was no longer deemed necessary. The Indians were no longer viewed as a threat to white settlements, but merely a temporary obstacle to American expansion.

### **Abandoning Assimilation**

As the discussion over the factory system made clear, the Indian trade was not fully distinguishable from the plan for civilizing the Indians. A subsidiary responsibility of the factors and Indian agents on the frontier was to introduce the Indians to American ways and set an example worthy of emulation. This vague program was generally considered one and the same with that of assimilating them into white society and placing them on an eventual path to American citizenship. The tribes, in this vein, would cease to exist. In his 1818 recommendation

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<sup>38</sup> “Operations of the Factory System,” January 19, 1822, ASP: Indian Affairs, 2: 326-31.

<sup>39</sup> Thomas McKenney to Henry Johnson, February 27, 1822, *Ibid.*, 356.

<sup>40</sup> Annals of Congress, Senate, 17<sup>th</sup> Congress, 1<sup>st</sup> Session, cols. 317-331.

<sup>41</sup> U.S. Statutes at Large, 3: 679

to Congress regarding the future of the factories and his proposal for a new mode of conducting the Indian trade, Calhoun could not resist commenting on the status of the Indians themselves:

In fact, the neighboring tribes are becoming daily less warlike, and more helpless and dependent on us, through their numerous wants. . . . They have, in a great measure, ceased to be an object of terror, and have become that of commiseration. The time seems to have arrived when our policy towards them should undergo an important change. They neither are, nor ought to be, considered as independent nations. Our views of their interest, and not their own, ought to govern them. By a proper combination of force and persuasion, of punishments and rewards, they ought to be brought within the pale of law and civilization. . . . It is only by causing our opinion of their interest to prevail, that they can be civilized and saved from extinction. . . . The Indians are not so situated as to leave it to time and experience to effect their civilization.<sup>42</sup>

Calhoun's report of 1818 made three assertions that would thereafter reverberate in white discussions of the American Indians: the Indian tribes were not independent nations; they were not capable, or at least not yet capable, of determining their own best interests; and, should they prove unwilling or unable to assimilate into the routines and customs of white American society, their extinction was inevitable. The significance of these claims for the evolution of United States Indian policy cannot be overstated. It was the most direct attempt at clarifying the American-Indian relationship since the adoption of the Constitution. Moreover, by choosing to use the word "extinction," Calhoun amended a timeline to the program of civilization: the Indians could not afford, as many white Americans once thought, to take several generations to assimilate. Time was rapidly running out, as the settlement of the continent east of the Mississippi River—and, increasingly, west of it—by white Americans was continuing unabated.<sup>43</sup>

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<sup>42</sup> "System for Trading with the Indians," December 8, 1818, *ASP: Indian Affairs*, 2: 183.

<sup>43</sup> The lands west immediately of the great river were rapidly opening up to whites as well—hence the vehement Missouri Debates in Congress in 1819 and 1820.

As mentioned, the federal government was more a sponsor than an administrator in the assimilation program. James Monroe believed the United States should contribute by allocating money and assisting private missionary societies known as benevolent associations with their educational endeavors. The first missionary schools in the Southeast were established in 1817, funded entirely by private donations. In 1819 Congress allocated an annual appropriation of \$10,000 as a small supplement to whatever funds the associations could privately raise. Calhoun made it clear that this meager sum should be used for those Indian communities in closest proximity to white settlements. The Indian boys were to be taught reading and writing, of course, but an emphasis was also placed on agriculture and the “mechanical arts,” such as blacksmithing. The girls were to be instructed in spinning, weaving, and sewing.<sup>44</sup> By 1820 there were two schools in the Cherokee nation, one run by the American Board of Commissioners for Foreign Missions (which also planned schools among the Choctaws and Chickasaws), the other by the United Brethren, better known as the Moravians. In the Northeast, similarly, under the tutelage of the Society of Friends, various tribes were seen as making “considerable improvements” in their lifestyles.<sup>45</sup>

Calhoun thought these efforts at education nowhere near sufficient to arrest the perceived decline of the Indians. The expense and energy would be for naught if the tribes remained in a de jure, but by no means de facto, state of independence. If an Indian was educated and even Christianized but maintained his ethnic identity and tribal allegiance, he was not, as Calhoun saw it, civilized, because the Indian had not become white. And Calhoun was increasingly convinced that Indian communities could not exist independently while surrounded by white society. “They are not, in fact, an independent people, (I speak of those surrounded by our population,) nor

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<sup>44</sup> ASP: Indian Affairs, 2: 201.

<sup>45</sup> “Progress Made in Civilizing the Indians,” January 17, 1820, ASP: Indian Affairs, 2: 200.

ought they to be so considered,” he stated firmly. “They should be taken under our guardianship; and our opinion, not theirs, ought to prevail, in measures intended for their civilization and happiness.”<sup>46</sup> Calhoun was convinced that the Indians were, and should be considered, as wards of the United States, and it was a conviction he eventually passed on to James Monroe.

In his discussions with the president, Calhoun conceded the uncertainty of the civilizing program. Only time would tell whether it would be successful, but how much time was anyone’s guess. At minimum it would take a generation, by which time the younger Indians, including the boys now in the mission schools, learning English and Christianity, would grow up. The Choctaws in particular showed great eagerness and aptitude for the schools. The Indians were bright and quite capable of learning; there was little question of that. The question was whether such an education would be enough to “lead them to that state of morality, civilization, and happiness, to which it is the desire of the Government to bring them.” The flip side of that question was whether there was something about the Indians’ situation that presented “insuperable obstacles to such a state.”

The progress of some of the tribes notwithstanding, Calhoun believed there were indeed inherent obstacles to the “civilization” of the Native peoples. First was the fact that the United States government, despite the formality of treaties and referring to the Indian tribes as “nations,” increasingly considered the Indians to exist in a state of nominal, not actual, independence. It was a peculiar circumstance in which “They lose the lofty spirit and heroic courage of the savage state, without acquiring the virtues which belong to the civilized.” Second, Calhoun thought a continuation of this nominal independence would doom them to “dwindle through a wretched existence, a nuisance to the surrounding country. . . . Tribe after tribe will sink, with the progress of our settlements and the pressure of our population, into wretchedness and oblivion.” This

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<sup>46</sup> Ibid., 201.

sentiment is key to understanding the motives of the white statesmen who determined federal Indian policy. It was literally unthinkable to these men that the United States, as manifested in the energy and fortitude of its pioneers, frontiersmen, and settlers, would not occupy the lands the Indians now held. The uncertainty lay in whether the Indians would still be there when the whites arrived en masse. Third was the belief that there was no “civilization” apart from white or Anglo-American civilization. Any tribes wishing to remain in the vicinity of whites would have to leave their traditional ways behind. (The Cherokees, with their sense of individual, landed property, seemed to partially understand this, Calhoun noted with approval.) Fourth and most important for the United States, anything short of “a complete extension of our laws and authority over” the Native Americans was unacceptable. All tribal authority must end, certainly east of the Mississippi. There were to be no more “chiefs” and “headmen,” only the usual Anglo-American hierarchy of mayors, sheriffs, representatives, senators, and governors.<sup>47</sup>

Given the stated refusal of every tribe to abandon, or at least fully abandon, its age-old communal identities and ways, it was increasingly clear to many government officials that the removal of the American Indians to the West was the most likely outcome for the eastern Indians. The rich lands of the Old Southwest—a region that was rapidly becoming what we recognize as the Old South—would be flooded by settlers and speculators whether the Indian tribes were still there or not. Leaving the Indians, or their lands, alone was literally inconceivable to most white Americans.

This mindset, of course, raised a troubling question. If the frenzy of whites for Indian lands did not abate (and no one had reason to suspect it would), and if the tribes did not move voluntarily, what was to be done? No one had an answer. Removal of the Indians by force, it was unanimously agreed within the administration, was unthinkable. Those who openly spoke of

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<sup>47</sup> John C. Calhoun to James Monroe, February 8, 1822, [ASP: Indian Affairs](#), 2: 275-6.

forced emigration were a very small minority, both in the nation's capital and in most of the country. But in the far southerly latitudes of the United States, white citizens and their political leaders were growing increasingly vocal about their demands for Indian lands. These voices were not afraid to offer blunt language, backed by the threat of blunt action. A peculiarly virulent conflict between the leading figures of Georgia on the one hand, and the Creek and Cherokee nations on the other, in turn sparked a bitter controversy between that state and the federal government. Indeed, several years before the protective tariff brought the specter of black emancipation to the minds of white southerners, the first true nullification crisis in United States history erupted. Its roots lay in the peculiar situation of the Native American communities in Georgia and an equally peculiar agreement made a generation earlier, at the dawn of the nineteenth century, between the United States and the state. It was this explosive three-way crisis that moved the debate over Indian policy from a small circle of presidential advisors and congressional committee members to the national stage. Significantly, it also made a reasoned discussion about reforming the interdependent and yet contradictory methods of interacting with the Indians, never a promising prospect, increasingly unlikely.

### **Georgia and the Compact of 1802**

If by 1830, when nullification was in the air, South Carolina stood out as the most eccentric of Southern states, then until that time the distinction belonged to Georgia. One historian, writing in the mid-twentieth century, described Georgia in the 1820s as a “remote and unreasonable satrapy of the cotton empire.”<sup>48</sup> But if the Georgians were inveterate in their political postures, it must be conceded that, of the thirteen original states, Georgia's early existence was far and away the most precarious, surrounded as it was on three sides: by the Creeks to the west, the Cherokees to

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<sup>48</sup> George Dangerfield, The Era of Good Feelings. (New York: Harcourt, Brace, and Co., 1952), 390.

the north, and, most ominously, by the Spanish to the south. This state of vulnerability lasted from the Revolution until 1814. Indeed, from 1780 to 1782 Georgia had effectively ceased to exist in any political sense after being overrun by a loose coalition of British troops, American loyalists, and Creek warriors. After the ratification of the Constitution, two treaties, at New York in 1790 and at Coleraine, a trading outpost on the Saint Marys River, in 1796, set the stage for the later hostilities between the Creeks and the Georgians. For while both treaties bought time for the United States as a whole—saving the Washington administration from conducting an Indian war in the southwest, since it was already doing precisely that in the Northwest Territory—the Georgians felt themselves slighted. Both the New York and the Coleraine agreements affirmed Creek possession of lands which Georgia considered to be rightfully within its boundaries, since Georgia’s colonial charter had extended its boundary all the way to the Mississippi River.<sup>49</sup> No doubt resentful of this, the state of Georgia ceded its western lands only in 1802, and only after the federal government made an unprecedented payment to the state of \$1,250,000. (The other states, especially New York, Virginia, and North Carolina, had ceded extensive western territory several years sooner and at no cost.) In an obscure provision of this Compact of 1802, the United States government agreed to extinguish Indian claims within the state as soon as they could be “peaceably obtained, on reasonable terms.”<sup>50</sup> This clause was then forgotten for nearly a generation.

Andrew Jackson’s victory at Horseshoe Bend mitigated the military threat of the Creek confederacy, as discussed in Chapter 2. This was, for nearly all white Americans, a relief. For Georgians, however, it was a reminder that the United States was party to an unfulfilled contract

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<sup>49</sup> David A. Nichols, “Land, Republicanism, and Indians: Power and Policy in Early National Georgia, 1780-1825,” *The Georgia Historical Quarterly*, Vol. 85, No. 2 (Summer 2001), pp. 199-226. For the treaties of New York and Coleraine from the Creek perspective, see <sup>49</sup> J. Leitch Wright, Jr. *Creeks and Seminoles: The Destruction and Regeneration of the Muscogulge People*. (Lincoln: University of Nebraska Press, 1986), 138-9.

<sup>50</sup> Georgia Cession, April 26, 1802, *American State Papers: Public Lands*, 1: 115.



with their state. But however pleased they were at the outcome of Horseshoe Bend, white Georgians were incensed at the Treaty of Fort Jackson which followed: the Indians, though beaten, were still there. The tremendous Fort Jackson cession had been a boon for whites who lived or intended to move west of the Chattahoochee—that is, for the settlers who would soon become Mississippians and Alabamians. Jackson’s treaty did almost nothing to assist Georgians in their goal of expelling the Indians from the state. In fact, the terms of the cession pushed the Creeks east, into Georgia.

The fact that, between the two tribes, the Creeks and the Cherokees possessed tens of millions of acres, including much of the best cotton land in Georgia, only fueled anti-Indian resentment and racism in the state.<sup>51</sup> From the standpoint of whites in Georgia the federal treaty of 1817 with the Cherokees, discussed above, was an insult and a travesty. The state elites had hoped that the majority of the Cherokees in Georgia, perhaps totaling ten or twelve thousand souls, would emigrate to the Arkansas River. The minority that remained, as mentioned, would be given a minimum of 640 acres, in fee simple, for each head of family. Ideally, this process would strip the Cherokees from most of the thirteen million acres of Appalachia they claimed as their territory. As it happened, only 311 families opted to receive their 640-acre homestead. Few, only four thousand, chose to emigrate west, however. Most simply remained where they were, on about ten million acres of lands in the Southeast, including seven million in Georgia.<sup>52</sup> The treaty had acquired a tract of land for the United States, but had not succeeded in convincing the Indians to emigrate. Each day brought them into closer contact with whites who resented their presence.

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<sup>51</sup> Mary Young, “Racism in Red and Black: Indians and Other Free People of Color in Georgia Law, Politics, and Removal Policy,” *The Georgia Historical Quarterly*, Vol. 73, No. 3, Special Issue Commemorating the Sesquicentennial of Cherokee Removal 1838-1839 (Fall 1989), pp. 492-518, esp. 492-3.

<sup>52</sup> Young, “Racism in Red and Black,” 495.

The first hint of the Georgians' impatience arrived at the State Department in late February 1819. Georgia's governor, William Rabun, forwarded to Secretary of State John Quincy Adams a resolution of the state's general assembly. The resolution called for the governor to appoint "three fit and proper persons" to go to the Creek nation and reacquire or seek compensation for the horses, cattle, slaves, and other goods belonging to white Georgians that were destroyed in backcountry fighting or taken by Indians prior to the treaties of New York (1790) and Coleraine (1796), which ended a decade of violence between whites and Creeks on the frontier.<sup>53</sup> It was a peculiar request. The amounts involved were trifling, and it was exceedingly unlikely that any captured slaves, to say nothing of horses or cattle, were still alive and in the Creeks' possession. Besides, constitutionally, governors did not appoint commissioners to the Indian nations. The president, acting on the advice of the secretary of war, did that, as everyone knew. The Georgia legislature was either attempting to interfere in a matter of Indian affairs by circumventing the federal government, or it drafted the resolution in an attempt to pressure the Monroe administration into acting on behalf of the state. Either way, it was an ugly harbinger of things to come.

The administration successfully ignored the 1819 letter from Governor Rabun and its enclosure. But the situation reared its head again a year later, when the new governor of Georgia, John Clark, wrote to Adams from the state capital of Milledgeville. The motive of Georgia now became clear. Clark was a brawny, uneducated Indian fighter, but he was aggressive and consistent in his push to remove the Indians from his state, and was thus popular among Georgia's western yeomen. "The subject of Indian spoliations and aggressions upon the citizens of this State is one which the President will readily believe must excite a most feeling interest in

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<sup>53</sup> William Rabun to John Quincy Adams, February 17, 1819, M-271, Reel 3 (Letters to the War Department, Indian Affairs).

their minds and revive their long delayed expectations that justice should now be rendered to them,” the governor wrote. Ostensibly at issue were the supposed material losses of Georgians due to the New York and Coleraine treaties, which did not compensate white Georgians for personal belongings lost due to the backcountry conflicts. But what was really at issue, everyone knew, was land. When he pressed Adams to press Monroe for a “a power to treat for territory with the Indians in the event of failure to obtain from them indemnity for our losses in any other shape,” Clark hinted his willingness to drop the claims, now decades old, in return for federal support in obtaining Indian cessions. To this end, he, Clark, had appointed three Georgians “of the most respectable rank and standing” as commissioners to promote these goals.<sup>54</sup> Georgians and their political leaders had clearly decided the time had come when there should be no impediment to white settlement in the state’s western and northern reaches, which were historically Creek and Cherokee country. The mention of the old treaties was merely a salvo to draw attention to the unfulfilled Compact of 1802.

John Clark’s use of the word “commissioner” was a stretch. A true Indian negotiating commission could be issued only by the president of the United States or, as often occurred in practice, the secretary of war with the president’s consent. The three Georgians—Major Generals John McIntosh and David Adams, and Brigadier General David Meriwether, all of the Georgia militia—were, legally, no more than unofficial negotiators. This explains Clark’s emphasis on acquiring presidential authority for the three men, which would allow them to secure a treaty of cession.

The cabinet recognized the need to act in order to defuse a potentially troubling situation, but Calhoun thought better of granting formal status to McIntosh, Adams, and Meriwether. Instead he selected two United States commissioners, Andrew Pickens and Thomas Flournoy, for

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<sup>54</sup> John Clark to John Quincy Adams, January 19, 1820, M-271, Reel 3.

the role. Pickens and Flournoy were afforded \$30,000 for everything, including their own expenses, gifts and provisions for the Indians during the talks, and the initial payment for the cession itself. If the commissioners could afford to pay for talks with both the Creeks and the Cherokees for that sum, so much the better, but treating with the Creeks was essential. As to the cession itself, Calhoun, after consulting with the Georgians, decided that acquiring the northern portion of the state had priority, which would allow for white settlement between the Creeks and the Cherokees. Should this proposal fail, the commissioners were to try to gain lands from the northern limit of Creek territory “to be extended as far south and west as can be obtained.” If the success of the negotiations depended on it, Pickens and Flournoy could offer a “liberal” price for the land, but not an exorbitant one. (The last treaty made with the Creeks, in 1818, purchased a different, smaller stretch of land in southern Georgia for an astonishing \$120,000. Both the War and Treasury Departments were determined not to make a precedent of such a high figure.) A fixed-term annuity, obviously, would be much preferred to a permanent one. Even better would be an agreement by the Creeks for an exchange of territory beyond the Mississippi, which would eliminate the need for an annuity altogether.<sup>55</sup>

Almost immediately, tensions arose between the two sets of commissioners. Thomas Flournoy found the three Georgia negotiators to be insufferable. Things got so bad that Flournoy wrote to Calhoun and asked him to set the matter straight. “These latter Commissioners,” he said of the Georgians, “claim the right of acting with the United States Commissioners, with full powers, on the subject matter of the treaty. However absurd this pretention may be, it is calculated to embarrass, if not defeat the objects in view. You are therefore earnestly requested to say to the Governor of Georgia, & to the Commissioners of the United States (Colo Pickens &

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<sup>55</sup> John C. Calhoun to Andrew Pickens and Thomas Flournoy, August 8, 1820, ASP: Indian Affairs, 2: 248-9; “Treaty with the Creeks,” January 22, 1818, *Ibid.*, 152.

myself) that we alone are authorised to conclude the treaty.”<sup>56</sup> (In fact, Pickens had already resigned on September 11, 1820, before even meeting up with Flournoy.)

Calhoun must have been surprised at the language coming from Flournoy, who was from Augusta, Georgia. He reminded the commissioner that this particular negotiation was being conducted precisely for the benefit of Georgia. It was important that the state’s leadership be satisfied with the results, therefore “for that purpose, as well as to insure success, the intercourse between the commissioners of the United States and hers should be of the freest character.”<sup>57</sup> In other words, the representatives of Governor Clark had to be listened to and their ideas respected. Meanwhile, Calhoun appointed Daniel M. Forney, a former congressman from North Carolina, to replace the departed Pickens.

Flournoy was outraged that a United States commissioner should be the puppet of informal state negotiators. He had a valid point. His name would be on the resulting document, not the names of McIntosh, Adams, and Meriwether. And while he would certainly make sacrifices to serve the United States and be responsible for his own conduct, “I am not willing to be responsible for the conduct of others, who are not placed under the same obligations with myself.”<sup>58</sup> He resigned.

The preliminaries to the treaty, including the initial correspondence from then-Governor Rabun, had already taken up the year. Calhoun hastily procured an appointment for David Meriwether as U.S. commissioner. But it would clearly be irregular for Meriwether to simultaneously serve the state of Georgia and the United States, and Calhoun hinted that the appointment was contingent upon Meriwether resigning his Georgia commission, which the

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<sup>56</sup> Thomas Flournoy to John C. Calhoun, October 3, 1820, Calhoun Papers, 5: 370.

<sup>57</sup> Calhoun to Flournoy, October 19, 1820, ASP: Indian Affairs, 2: 250.

<sup>58</sup> Flournoy to Calhoun, November 4, 1820, Calhoun Papers, 5: 420.

latter gladly did.<sup>59</sup> One set of United States commissioners, Pickens and Flournoy, had been replaced by Meriwether and Forney. Meriwether, of course, never stopped serving the interests of his state and his governor, John Clark. For his part, Fourney, who would one day move to Lowndes County in Alabama, was not inclined to act contrary to the wishes of the Georgians. In turn, John Clark appointed Daniel Newman to replace Meriwether as member of the Georgia delegation. In effect, the federal government was unrepresented in a federal treaty negotiation. Five expansionist southerners were cooperating to secure space for white settlers.

The Creeks thus faced an uphill battle when they met the two teams at a place known as the Indian Spring in north-central Georgia. After pro forma niceties, the Georgia commissioners asserted that, under the treaties of Augusta (1783), New York (1790), and Coleraine (1796), among others, the Creeks had agreed to repay the citizens of Georgia for material losses sustained during the many wars and frontier skirmishes. The time for repayment had come. “In order that the chain of friendship may remain bright between the white and red people, it is necessary that they should do justice to each other,” the Georgia delegation asserted. “This business has remained so long unsettled, that an adjustment of it is necessary for the preservation of friendship between the white and red people.”<sup>60</sup>

The Creeks were astounded. William McIntosh, the Scotch-Creek spokesman for the tribe, replied that he knew nothing about any agreement on the part of the Creeks regarding Georgia’s claims. True, the long-deceased Alexander McGillivray had gone to New York in 1790 and agreed to return any prisoners or slaves the nation still possessed, but had said nothing about reparations for prisoners or property (human or animal) that had perished. At Coleraine, it was also true, Benjamin Hawkins had acknowledged Georgian losses during the fighting, but had

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<sup>59</sup> John C. Calhoun to David Meriwether, November 22, 1820, ASP: Indian Affairs, 2: 251.

<sup>60</sup> Georgia commissioners to the Creek Indians, December 27 and 28, 1820, M-271, Reel 3. (Also in ASP: Indian Affairs, 2: 252.)

said nothing such as was now being put to the Creeks. As far as slaves and prisoners went, they had been delivered up. Any slaves who had either been taken by the British during the war or who had fled to the Seminole realm in Florida were not the responsibility of the Creek nation. The claims of the Georgians were “trifling,” not to mention the fact that the Creeks, too, had claims they could dredge up, should they choose.<sup>61</sup> The Georgians were unyielding: since the Creeks and Seminoles were considered by the whites to be the same people, the Creeks owed the whites for the slaves who had escaped to Florida.<sup>62</sup>

The chiefs asserted that the Creeks had no property belonging to the citizens of Georgia. The American commissioners were referring to frontier skirmishes that had occurred thirty years or more before. There were no cattle, slaves, or anything else from those days remaining in the Indians’ possession. The Creek nation was penniless. The only thing of value owned by the tribe was its land, and both the Indians and the Americans knew it.

It is difficult to know with certainty from the available sources why the Creeks gave in and ceded a tremendous portion of their land in Georgia—about 4.5 million acres. Very likely, however, it was due to the cumulative effect of three unusual factors. First, it was very evident that Georgia, not the federal government, was in charge. At every stage of the talks, the state’s representatives bombarded the Creek chiefs with a bewildering array of obscure treaties that, the Georgians insisted, had been concluded to end the frontier violence of the late eighteenth century but remained unfulfilled. These included the Treaty of Augusta (now 37 years old), the Treaty of Galphinton (35 years old), and the Treaty of Shoulderborne (34 years old), in addition to the better-known Treaties of New York and Coleraine. Along with these perceived (or pretended) grievances came the Georgians’ explicit threat about preserving the friendship between the

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<sup>61</sup> William McIntosh to the Georgia commissioners, December 28, 1820, ASP: Indian Affairs, 2: 252-3.

<sup>62</sup> Georgia Commissioners to the Creek Indians, December 29, 1820, M-271, Reel 3:815. (Also in ASP: Indian Affairs, 2: 253.

Indian and white peoples.<sup>63</sup> The United States had no intention of going to war with the Creeks for the sake of Georgia, but the Creeks had no way of knowing that, and now, six years after the last Creek-American conflict, the Treaty of Fort Jackson still cast a dark shadow over the tribe. Another gamble lost would decimate the Creek nation.

The second factor in the Creeks' acquiescence was the fact that some of the headmen of the tribe personally benefited from the resulting treaty. William McIntosh, the spokesman who had protested that the tribe no longer had any possessions of Georgians, was, simply put, bribed. He was awarded one thousand acres surrounding the location of the negotiations, the Indian Spring, and 640 acres on the west bank of the Ocmulgee River. Both tracts would help him expand his thriving businesses, which included a tavern, a ferry, a blacksmith's shop, and eventually a hotel. Five other chiefs were awarded parcels of one square mile each on the eastern bank of the Flint River.

The third factor was the staggering (from the perspective of the War Department) sum paid to the Creeks. The commissioners agreed to pay the Creeks \$200,000 over a fourteen-year period.<sup>64</sup> In addition, the treaty assured the tribe that the United States would assume up to a quarter-million dollars in Creek debt. In terms of money, this meant little to the Creeks, since they did not believe they owed either the federal or any state government anything and had no money to give, at any rate. But the psychological significance of this clause was very clear: if they agreed to the cession, Georgia would leave the tribe alone and turn to the United States government for redress of its decades-old claims. Twenty-six Creek leaders, enough to give validity to the treaty, signed.<sup>65</sup>

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<sup>63</sup> Georgia Commissioners to the Creek Indians, December 28& 29, 1820, ASP: Indian Affairs, 2: 252-53.

<sup>64</sup> Treaty with the Creeks, January 8, 1821, U.S. Statutes at Large, 6: 215-6.

<sup>65</sup> Articles of Agreement, January 8, 1821, *Ibid.*, 217.



The 1821 Treaty of Indian Springs was an impressive political and financial coup for the expansionists in Georgia. Without spending a dime of the state's money (even the expenses of the Georgia commissioners were paid by the War Department), Georgia had acquired nearly seven thousand square miles of territory, pushed the Creeks away from white settlements, and cornered the United States into reimbursing it for nearly-forgotten acts of vandalism and theft. In this last regard, Calhoun could verify little, as the records of the War Department were woefully incomplete prior to the year 1800, when fire swept through its offices.<sup>66</sup> John Quincy Adams thought the administration's willingness to honor the claims of Georgia was asinine. Never hesitant to speak his mind, Adams declared that "no Court of Justice in the World would be admitted to establish a claim to the value of half a dollar. The articles lost were negroes, horses, and cattle; many of them lost nearly half a century since. . . . I observed [to the Cabinet] that the compensation would amount in most of the cases to about six times the value of the loss." His prediction was correct. After many months of investigating Georgia's claims for losses incurred during the 1790s, the government awarded some \$215,000 to the state. The Georgians were getting a splendid deal, on very dubious grounds, and at the expense of the United States.<sup>67</sup> Georgia also secured a promise from the United States to implement the Compact of 1802 and remove the Indians from all the remaining lands within the state's boundaries.<sup>68</sup> As with the original compact, however, this 1821 affirmation of it was in similarly vague terms. No timeline was set. The potentially mutually exclusive nature of the object (removal of the Indians) and the method (peaceably and on reasonable terms) was certainly recognized by the administration, but never addressed.

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<sup>66</sup> John C. Calhoun to James Monroe, February 7, 1821, ASP: Indian Affairs, 2: 255.

<sup>67</sup> Adams, Memoirs, 6: 10. James P. Preston to John C. Calhoun, December 15, 1821, Calhoun Papers, 6: 570.

<sup>68</sup> Articles of Agreement, January 8, 1821, U.S. Statutes at Large, 6: 217.

An unfortunate feature of the controversy with Georgia was the state's willingness to preempt the authority of the federal government, and James Monroe's willingness to let it happen. The president showed a peculiar lack of fortitude in his dealings with Georgia's state government and its delegation in Congress. Adams, for one, thought the president was not quite his own man. "There is what in vulgar language is called an undertow always working upon and about the President—what used in England to be called a back-stairs influence—of which he never says anything to me, and which I discover only by its effects," the secretary confided to his diary.<sup>69</sup>

During the winter and spring of 1822, the federal government began to seriously consider the matter of extinguishing the Creek and Cherokee title to lands in Georgia, which would fulfill the Compact of 1802.<sup>70</sup> In the House of Representatives, George Gilmer of Georgia lobbied for the creation of a select committee to examine the best means of executing the terms of the compact. The House's standing Committee on Indian Affairs, jealous of its prerogatives, objected. Gilmer did, however, win an appointment as chair of a select committee to look into the three most significant Indian treaties made in recent years—the Treaty of Fort Jackson, made with the Creeks in August 1814, and the treaties with the Cherokees of July 1817 and February 1819, discussed above.<sup>71</sup>

Unsurprisingly, Gilmer immediately encountered a contradiction between the goals of the compact and the results of the three Indian treaties. In fact, they were mutually exclusive. No one mentioned Andrew Jackson by name, but the committee criticized the Fort Jackson cession on two counts. First, the treaty was forced on the Creeks as part of a wartime capitulation, which violated the compact's requirement that Indian lands in Georgia be extinguished on peaceful and

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<sup>69</sup> Adams, *Memoirs*, 4: 187.

<sup>70</sup> James Monroe to the Senate, February 25, 1822, *ASP:Indian Affairs*, 2: 325.

<sup>71</sup> *Annals of Congress*, 17<sup>th</sup> Cong., 1<sup>st</sup> Sess., 550-51, 555.

reasonable terms. Second, the cession had granted vast stretches of prime land in Alabama to the United States, thus pushing the Creeks back east, deeper into Georgia. Had the treaty instead procured a cession in Georgia, this situation might not have arisen in so volatile a manner. The Cherokee treaty of 1817 (also negotiated by Jackson, as it happened) was little better. In the treaty, the United States purchased an “inconsiderable” amount of land from the Cherokees within the limits of Georgia and a much larger tract within Tennessee, “apparently in opposition to the wishes of the Indians, the interests of Georgia, and good faith in themselves,” the select committee concluded. Worse was Article Eight of the treaty, the one that granted 640 acres of land in fee simple for the Indians who wished to remain. This was a direct violation, the committee determined, of the rights of Georgia, as it was incompatible with the Compact of 1802. Protective of congressional authority, moreover, the committee also expressed offense at the other stipulation of Article Eight, which authorized the Cherokees who accepted the parcels of land to become citizens of the United States. “The committee are not aware of the existence of a power conferring the rights of citizenship in any other branch of the Government than Congress.” The treaty of 1819, which confirmed and superseded that of 1817, presented identical problems. The solution? Gilmer and his select committee recommended that the United States “relinquish the policy which they seem to have adopted with regard to civilizing the Indians, and rendering them permanent upon their lands, and changing their title by occupancy into a fee-simple title, at least in respect to the Creek and Cherokee Indians.” If the choice was between civilizing the Indian tribes and honoring the wishes of the Georgians, the contract with Georgia must reign supreme, meaning the Indians must move.<sup>72</sup>

The possibility of abandoning efforts at assimilation sent advocates of the program into paroxysms of panic. Assimilation, they claimed, was the only means to save the Indians from

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<sup>72</sup> “Extinguishment of the Indian Title to Lands in Georgia,” January 7, 1822, ASP: Indian Affairs, 2: 259-60.

extinction.<sup>73</sup> In this case they need not have worried. Some statesmen, including those in Monroe's administration, by now dismissed or doubted assimilation as either impossible or unappealing. But the notion of civilizing the Indians, ambiguous in its goals and methods as it was, was ingrained in the American body politic. Politicians were used to speaking about the Indians in paternalistic phrases, and few were keen to cease doing so. The House's standing Committee on Indian Affairs unreservedly affirmed this in the spring of 1824:

The Indians are not now what they once were. They have partaken of our vices more than our virtues. Such is their condition, at present, that they must be civilized or exterminated; no other alternative exists. He must be worse than the savage who can view, with cold indifference, an exterminating policy. All desire their prosperity, and wish to see them brought within the pale of civilization.<sup>74</sup>

Extermination, it must be noted, was never an official or unofficial policy of the United States government. But equally true, as the Indian Affairs committee was surely aware, was the fact that many white Americans, especially those in the South and West who were in closer proximity to Indian tribes, did not wish to see them incorporated into white society. Assimilation and civilization, words once used interchangeably, were increasingly viewed by statesmen as two different goals. That the Indians lived a savage lifestyle in need of improvement was not in question. But many whites in government were increasingly skeptical that such an improvement could occur where the Indians now resided.

This sentiment became painfully clear in 1823 and 1824, when the controversy between Georgia and the Cherokees and Creeks spiked in intensity. Once again, in an attempt to placate Georgia's executive and the vocal Georgia delegation in Congress, the Monroe administration initiated treaty talks with the Cherokees. As before, it made a mistake in appointing Georgians as commissioners to negotiate with the Cherokees. They were Duncan G. Campbell and James

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<sup>73</sup> "Civilization of the Indians," January 22, 1822, *ASP: Indian Affairs*, 2: 274-5.

<sup>74</sup> "Civilization of the Indians," March 23, 1824, *Ibid.*, 2: 458.

Meriwether—son of the David Meriwether who collaborated with Georgia Governor John Clark during the 1820-1821 Indian Springs negotiations with the Creeks. As before, these representatives of the federal government served the United States only on paper. When they met the Cherokee General Council at New Echota (which the Americans customarily referred to as New Town) in northwestern Georgia, their sole purpose was to serve the interest of their state. Campbell and Meriwether were met with hospitality on October 6, 1823. Major Ridge, the Speaker of the Council, addressed the commissioners “in terms of congratulation and friendship.”<sup>75</sup> The two commissioners presented their presidential authority to “hold conferences with you of and concerning all matters interesting to the United States and the Cherokee nation.” As in the parley with the Creeks in 1820, the U.S. commissioners, both Georgians acting in the name of the president but on behalf of the governor of Georgia, were accompanied by two “commissioners” of Georgia, Johnson Wellborn and James Blair. Campbell and the younger Meriwether emphasized the importance the Cherokees should place on what Wellborn and Blair had to say. Then, “as soon as this part of our joint business is concluded,” the U.S. commissioners and the Cherokee Council could discuss any issues that lay between them.<sup>76</sup> Again, the federal agents were taking care to emphasize the importance of the wishes of Georgia.

John Ross, the president of the Cherokee National Committee, possessed a brilliant legal mind, but he did not need this to inform him that he was being cornered by four pro-expansion Georgians. This suspicion must only have grown stronger when Campbell claimed on October 16 that he and Meriwether did not want the Indians out of Georgia “because we are Georgians,” but because those were the instructions they had been given by the president. Speaking for the United States, Campbell presented the American position: prior to April 24, 1802, the state of

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<sup>75</sup> *ASP: Indian Affairs*, 2: 465.

<sup>76</sup> Duncan G. Campbell and James Meriwether to the Grand Council of the Cherokee Nation, October 10, 1823, *Ibid.*, 2: 466.

Georgia possessed sovereignty over an immense stretch of land, from the Atlantic Ocean to the Mississippi River. The federal government, realizing that this was too big an expanse for a single state, purchased it from Georgia for the purpose of creating a new territory. The condition, as John Ross, Major Ridge, and the other Cherokees assembled all knew, was the extinguishment of all Indian title to lands within the remaining borders of the state, as soon as it could be accomplished on peaceable and reasonable terms. According to most officials in the United States government, an exchange of lands would accomplish both stipulations. Their reason for desiring quick action was simple: the explosive growth of the white population in Georgia. In 1810, Campbell informed the Cherokees, the population of Georgia was 252,433 inhabitants. A decade later the figure was 344,773, an increase of over 92,000 and growing every day. Yet the Cherokee domains were only slightly smaller than those of Georgia, and filled with only 12,000 members of the tribe. “This difference,” the commissioners claimed, “is too great ever to have been intended by the Great Father of the Universe, who must have given the earth equally to be the inheritance of his white and red children.” The whites earnestly wanted the Indians to emigrate. But even if nothing else was agreed to, the United States demanded the opportunity to purchase a portion of Cherokee lands.<sup>77</sup> As before, with the 1817 treaty, the white negotiators hoped that a discussion of removal would be sufficiently disquieting to the Indians to pressure them into a cession of lands.

This time the tactic was unsuccessful, much to the chagrin of Campbell and Meriwether. The Cherokee response, drafted by John Ross, was politely worded but unambiguous. Emigration was out of the question. Those Cherokees who had decided to relocate, contrary to the wishes of the nation as a whole, were living miserable lives in Arkansas. “[M]any of them, no doubt,” said Ross, “would willingly return to the land of their nativity, if it were practicable

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<sup>77</sup> Campbell and Meriwether to Cherokee Council, October 16, 1823, *Ibid.*, 2: 467-8.

for them to do so[.]” The eastern Cherokees were fully aware that the United States wanted them to move, but if it had ever been their desire to move, they would have done so by now. Rather, they had chosen to stay on “the soil which gave them birth,” and they would continue to do so. Nor was ceding more land very appealing. Once the Cherokees had possessed a tremendous expanse of rich and fertile woodlands and fields, only to see piece after piece ceded away. They were not going to exchange their lands for those in the west, and it was unreasonable to assume that any limited cession would satisfy the whites to any degree. Therefore, the Cherokees asserted, “It is the fixed and unalterable determination of this nation never again to cede one foot of more land.”<sup>78</sup>

At this, Campbell was apoplectic. Claiming the right to “to reply as often as we may consider it necessary,” he dropped the paternalist rhetoric. The lands that once belonged to the Indians had been claimed by right of discovery by the first Europeans on North American shores. After the War for Independence—in which the majority of the Indian tribes had sided against the patriots—these lands became, by right of conquest, the domain of the United States. The Indians’ original title was gone forever. “We have reference to these matters of history and compact,” said the commissioners, “not to show your humiliation, but to show your dependence.” The tribes were not independent nations, despite the frequent use of the word by American officials. And if the Cherokees “cherish the idea of independence and self-government, the sooner they are corrected the better. The United States will not permit the existence of a separate, distinct, and independent Government within her limits. All the people on her soil must be hers, and her laws must, sooner or later, pervade the whole.”<sup>79</sup>

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<sup>78</sup> Cherokee Council to the U.S. commissioners, October 20, 1823, *Ibid.*, 2: 468-9.

<sup>79</sup> U.S. Commissioners to the Cherokee Council, October 24, 1823, *Ibid.*, 2: 469-70.

When it came to the use of history and diplomacy to support one's argument, Campbell was no match for John Ross. (At one point the Georgian asked, presumably rhetorically, regarding the expanding white population, "Would you, if you could, repossess yourselves of all the soil which you once held, and allow it to be peopled only by yourselves? . . . Would you lay waste a city, that a wigwam might rise upon its ruins?" None of the Cherokees, or any of the five southern tribes, lived in wigwams. Some, like Major Ridge, lived in fine plantation homes.)<sup>80</sup> Ross, for his part, demonstrated a keen and nuanced understanding of Cherokee-American diplomacy since the Revolution, and offered cogent counter-arguments to those of Campbell and Meriwether. If the two men had been negotiating on an equal footing, the result would have been no contest.<sup>81</sup>

But for Campbell, might made right. The commissioners turned explicit: How could the Cherokees call the president their "father" while ignoring his wishes? Had the president not been just in his dealings with the tribe? Had the American government not kept its promise to remove intruders, fellow whites, from the Cherokee settlements? "Ingratitude approaches to crime; a grateful return for a favor is the best evidence that the favor is felt. You cannot suppose that all these things, taken together, are to pass away and produce no effect," Campbell warned. "What the effect may be, we are not exactly prepared to say. Time will disclose it." In other words, the Indians' refusal would result in ominous consequences—an unspecified retribution to be delivered at an unspecified future date. The threat did not go unrecognized. The aggressive tone and intimidating language of Campbell and Meriwether convinced the Cherokee council of the

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<sup>80</sup> Ibid., 2: 470.

<sup>81</sup> Cherokee Council to the U.S. Commissioners, October 24, 1823, Ibid., 2: 470-71.



need to immediately adjourn the talks and travel to Washington, D.C., to speak directly to the president.<sup>82</sup>

A Cherokee delegation made its way to Washington, in winter, out of desperation. But they were not to find friends there. In the capital, in January 1824, the Cherokees—Ross, Ridge, George Lowrey, and Elijah Hicks—inquired of the administration if there was any way to find a legal means for releasing the United States from its obligation to Georgia.<sup>83</sup> Secretary of War Calhoun, representing the president, said there was not. The United States was bound to extinguish the Indian title to lands in Georgia; the executive and legislature of that state had been in an uproar over the matter for several years now. Surely, said Calhoun, the Cherokees recognized the impossibility of their situation. They could not long remain in Georgia as a separate community.

This the Cherokees had heard before. But now there was a sharp, painful corollary to it, one that vividly demonstrates the twin goals of the Georgians: the acquisition of Indian lands, and the expulsion of the Indians themselves from the state. Not only did the state object to the Cherokees existing as a distinct community within the state, it also objected to individual families taking possession of small parcels of existing Cherokee land by individual ownership. The land rightfully belonged to Georgia, so the whites claimed: if individual Cherokees wanted to have family plots in Georgia, those individuals would have to purchase those plots from the state.<sup>84</sup> Calhoun did not have to point out that Georgia would certainly choose to sell its available land at rock-bottom prices to poor whites rather than sell at a profit to a rich Cherokee. His message was clear: the Indians were not welcome within the state's borders.

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<sup>82</sup> Cherokee Council to the U.S. Commissioners, October 27, 1823, *Ibid.*, 472-73.

<sup>83</sup> Cherokee Delegation to James Monroe, January 19, 1824, *Ibid.*, 473.

<sup>84</sup> John C. Calhoun to the Cherokee Delegation, January 30, 1824, *Ibid.*, 473.

The Cherokee delegation, with John Ross again serving as spokesman, desperately seized upon the terms of the Compact of 1802. The president, Ross said, had been apprised of the decision of the tribe never to cede any more land. The terms of the compact were conditional—it depended upon the “free and voluntary consent of the Cherokee nation,” which the federal government did not have. The United States thus could not fulfill the terms of the compact. Some other means of satisfying the Georgians must be thought of and executed, perhaps by giving the state some of the available lands in northern Florida. The Cherokees were not insensible of the impossibility of their situation, Ross claimed. They were, however, sensible of the absurd notion that the state had had a right to claim their ancestral lands in the first place, under its colonial charter. The Americans apparently needed reminding that “the Cherokees are not foreigners, but original inhabitants of America; that they now inhabit the soil of their own territory,” which had long been defined and affirmed by treaties made with the United States government.<sup>85</sup>

It is hard to conceive the James Monroe and John C. Calhoun of 1819 or 1820 humoring this extreme position of Georgia. But the state was increasingly radicalized over the issue of Indian lands, and both the president and the secretary of war were feeling pressure from both the governor’s office in Milledgeville and the Georgia delegation in Washington. From the perspective of the administration, a crisis was brewing. Calhoun attempted to defuse the situation by assuring the new governor, George M. Troup (who was even more extreme in his anti-Indian views than his rival, John Clark) that “it will afford the President much pleasure to adopt any measure in his power which may tend to the fulfillment of the convention with the State of Georgia, with the least possible delay.”<sup>86</sup>

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<sup>85</sup> Cherokee Delegation to John C. Calhoun, February 11, 1824, *Ibid.*, 473-4.

<sup>86</sup> John C. Calhoun to George M. Troup, February 17, 1824, *Ibid.*, 475.

Troup's reply was blistering. He was outraged by the Cherokees' mission to the nation's capital, and the message they had put, with "a boldness bordering on effrontery," before the president and secretary of war. How dare the Indians, Troup thundered, put the word "No" before the president of the United States? They did not have the right to use the word. And yet the words "No!" and "Never!" were continually spoken to the people of Georgia, "who have endured so long and so patiently" and "have parted with their empire for a song." If the United States now postponed Georgia's "redemption" after twenty-two years, avowed Troup, it would be a terrible breach of faith. As for the Indians, "if they persevere in this rejection, the consequences are inevitable." There were two possible outcomes, in Troup's view: the federal government must assist the Georgians in their goals of expelling the Indians from the state, or the United States must undertake to resist the settlement of the country by Georgia's white settlers. This would mean a decision "to make war upon, and shed the blood of your brothers and friends." The Indians were in danger if they stayed, but even if they were not, Troup emphasized, the white citizens of Georgia would never accept them. They would forever remain in an ambiguous class between whites and enslaved blacks. He added, "I can only say, generally, that, among men best informed on Cherokee affairs, the minds of the majority of the [Cherokee] nation are well prepared to receive your proposition for removal."<sup>87</sup>

Troup's letter was a piece of astonishing effrontery. Neither Monroe nor Calhoun had proposed, or even discussed, removing the Indians from Georgia. What Calhoun had mentioned to Troup was Monroe's eagerness to "adopt any measure in his power" to expedite the fulfillment of the 1802 compact. Since the compact specifically called for the Indians to be removed from Georgia peaceably and on reasonable terms, the two were not the same thing as far as the administration was concerned. But by making the Indians' removal a centerpiece of

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<sup>87</sup> George M. Troup to John C. Calhoun, February 28, 1824, *Ibid.*, 475-6.

fulfilling the compact—and by doing so after offering a stark choice between the Indians’ annihilation or bloodshed between whites and whites—Troup successfully maneuvered to place the burden of decision and action squarely on the shoulders of the president.

Monroe attempted to placate the executive of Georgia and get Congress on his side at the same time. In a special message of March 30, 1824, the president assured Congress (and the public) that the administration was not at all hostile to the wishes of Georgia. Indeed, the United States took the obligation to fulfill the compact very seriously, as evidenced by the time and treasure expended in securing land cessions for the state. But Monroe also conceded that the wish of the Cherokees to remain sovereign within the limits of the state was, theoretically, a violation of the federalist system under the Constitution (Article IV, Section 3). Therefore the Indians, reasoned Monroe, should remove. The question was when and how. For now, however, the Indians legally held title to their lands within the state. They were free agents. The terms of the compact did not change that fundamental fact. In response to the ominous hints emanating from Georgia, Monroe was clear: “Any attempt to remove them by force would, in my opinion, be unjust.” While it would eventually fulfill the terms of the compact in full, the United States was under no obligation “to commit any breach of right or of humanity, in regard to the Indians, repugnant to the judgment and revolting to the feelings of the whole American people.”<sup>88</sup>

Georgia’s reaction to Monroe’s message of March 30 was unanimously negative. Governor Troup claimed that his state “has only asked of the United States to do for her what she has done for herself—acquire Indian lands whensoever and wheresoever she wanted them.” The fact that the president’s murmurs of removal were being couched in terms of Indian welfare, and not in terms of a contractual obligation to the citizens of Georgia, was insulting.<sup>89</sup> The Georgians

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<sup>88</sup> Richardson, *Messages and Papers of the Presidents*, 2: 234-7.

<sup>89</sup> Troup to Calhoun, April 24, 1824, *ASP: Indian Affairs*, 2: 736-7.

in Congress were no less belligerent. While the governor of Georgia was preoccupied with the relationship between the Indians and his state, that state's delegation in Washington (two senators and six representatives) brought to the fore the same question posed by Andrew Jackson a decade earlier—namely, the proper relationship between the tribes and the federal government. The Indian tribes were not separate and independent nations, and everyone knew it, the Georgia caucus informed James Monroe. The proof was self-evident: if the tribes were in fact independent nations, treaties with them would be conducted by the Department of State, not the War Department. Regardless of this political anomaly, the Indians had to leave Georgia, and the federal government had an obligation to make it happen, for “there is no alternative between their removal beyond the limits of Georgia and their extinction.” Whether the Indians consented to the move or not was, to these southern statesmen, irrelevant.

The Georgians were united in their goals, and without compunction in their means. The use of force was by no means off the table. Indeed, the rhetoric they offered seemed to suggest they were itching to send the Cherokees a lesson in state hegemony. If the Cherokees would not voluntarily remove, Georgia wanted the president to “order their removal to a designated territory, beyond the limits of Georgia,” at last fulfilling “a solemn promise postponed.”<sup>90</sup> These assertions left no doubt about the prospects for assimilation within this particular state. In Georgia, at least, red could never become white.

No one in the cabinet save the Georgian, William Crawford, could quite believe the invective directed at the president. “The answer of the Cherokees was communicated to the Georgia delegation here [in Congress],” wrote Secretary of State Adams, “and they have addressed to the President a letter of remarks upon the correspondence between the Secretary of War and the Cherokees, which the President said was an insult. It is in terms of the most

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<sup>90</sup> Georgia Delegation to James Monroe, March 10, 1824, *Ibid.*, 476-7.

acrimonious reproach against the Government of the United States, whom it charges almost in terms with fraud and hypocrisy, while it broadly insinuates that the obstinacy of the Cherokees is instigated by the Secretary of War himself.”<sup>91</sup>

Georgia’s invective had placed the president in an untenable situation. The open correspondence to and from Governor Troup and the Georgia delegation was being circulated in newspapers from Florida to Philadelphia.<sup>92</sup> As the Georgians in state and federal government placed the predicament squarely on the shoulders of the United States, the administration was under enormous pressure to alleviate the situation. Monroe had to act, but how? For days, the discussion continued. The charges of the Georgians, Calhoun pointed out, “were of a nature which did not admit of being answered. They were charges of bad faith, of fraud, and hypocrisy. The exertions of humanity and the measures for promoting the civilization of the Indians were stigmatized as perfidy towards Georgia.”<sup>93</sup> The president, angry and insulted, wanted to respond in the same “defiant” tone. Calhoun voted for silence. Samuel Southard, the Navy secretary, thought the Georgians in Congress would find little support regarding such a letter—that they were undermining their own cause. Monroe replied that he had never in his years of public service received one like it. Finally, it was proposed to forward the letters to Congress with an explanation of what the general government had done to fulfill the terms of the 1802 agreement.<sup>94</sup> Monroe wanted to include a paragraph responding to the Georgians’ mention of the use of force by stating that Congress alone had the authority to settle that question, but Adams, ever the cautious diplomat, thought this might be misconstrued into a recommendation of the use

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<sup>91</sup> Adams, Memoirs, 6: 255.

<sup>92</sup> Pensacola Gazette and West Florida Advertiser (Pensacola, FL), July 7, 1824, Issue 19, col A; Aurora General Advertiser (Philadelphia, PA), June 18, 1824, col. D.

<sup>93</sup> Adams, Memoirs, 6: 267.

<sup>94</sup> Adams, Memoirs, 6: 255.

of force. He suggested that “something should be said to show that Georgia had no right to claim it, and that the Indians had perfect right on their side in refusing to remove.”<sup>95</sup>

Calhoun and his department took on the task of investigating the ostensible reasons for Georgia’s high-handedness. In other words, how much land, precisely, had already been given to the state? Calhoun and McKenney did some calculations. At the time the compact was agreed to in 1802, the Creeks owned 18,831,890 acres within the limits of Georgia, the Cherokees 7,152,110 acres, for a total of just under 26 million. Before the War of 1812, the United States had acquired 2,713,890 acres from the Creeks; since the war, a little over 12 million were acquired, for a total of 14,748,690 acres. In the same time span, the United States had acquired just under one million acres from the Cherokees, for a total of 15,744,000 acres wrested from the two tribes and given to Georgia since 1802. The federal government had acquired these nearly 16 million acres of Indian lands for the staggering sum of \$7,735,243.52½. In other words, the United States, contrary to the histrionic claims of the Georgians, had not been idle but actively engaged in fulfilling the terms of the settlement.<sup>96</sup> Writing to Monroe, Calhoun pointed out that:

In performing the high duties of humanity to the wretched aborigines of our country, it has never been conceived that the stipulation of the convention with Georgia, to extinguish the Indian title within her limits, was contravened. The Government has been actuated solely by a desire to perform the obligation which considerations of humanity imposed on us, in relation to these unfortunate people. Their situation, at best, is wretched, and can only be rendered tolerable by the perpetual exercise of that humanity, kindness, and justice which has ever characterized the acts of the Government towards them.<sup>97</sup>

These efforts of Monroe and Calhoun—a combination of appeasement with Georgia and attempt to manipulate public opinion against it—were of little avail. The Augusta Chronicle flatly refused to consider the possibility of the Cherokees and Creeks remaining within the limits

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<sup>95</sup> Ibid., 6: 267.

<sup>96</sup> “Extinguishment of Indian Title to Lands in Georgia,” March 30, 1824, ASP: Indian Affairs, 2: 460-2.

<sup>97</sup> Ibid, 2: 462.

of the state, to say nothing of reviving the now-defunct policy of assimilation: “There appears such characteristic differences between them and the whites, that they seem to be a distinct people, and we are willing they should remain so.”<sup>98</sup> Of course, the Cherokees also wished to remain a distinct people; hence their refusal to cede one more foot of land. But they also had, over the course of three decades, acceded to the efforts of white Christians to Anglicize their society to a degree. Now, they were being told, those cultural concessions had been for naught. The Creek chiefs, for their part, took to the newspapers with an open letter declaring the same intention. “We do not want to sell our land; and, on a deep and solemn reflection, we have, with one voice, determined to follow the pattern of the Cherokees, and on no account whatever will we sell one foot of our land, neither by exchange or otherwise.” Both northern and southern editors had little faith in the fair play of whites in Georgia. A New England periodical asserted that “The Georgians will undoubtedly use all their efforts to effect the removal of the Indians, peaceably if they can, forcibly if they must. It is perfectly evident from the temper of their public prints, that if they cannot persuade the Indians to remove quietly, they will immediately find some occasion for a quarrel, and in that quarrel they will take care to make sure of their extermination.” The editor of the Montgomery, Alabama, Republican, agreed that the neighboring Georgians were certain to use any excuse to force the issue. As the whites crept in, crowding Creek settlements, the Indians’ suffering would increase, and “the commission by them of the most trifling depredation will be the signal for their removal, right or wrong!”<sup>99</sup>

Fortunately for Monroe, the Eighteenth Congress adjourned in May and did not reconvene until December. The pressure on the administration was also assuaged somewhat—or

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<sup>98</sup> Augusta Chronicle (GA), April 21, 1824.

<sup>99</sup> The Religious Intelligencer (New Haven, Conn.), January 1, 1825. The magazine contained excerpts from the Creek document. The former quote, about the Georgians, comes from Nathan Whiting, the editor of the magazine, who also reprinted the quote from the editor of the Montgomery Republican.



occluded somewhat—by the fact that three members of the administration spent the year 1824 in a grueling contest for the presidency. Secretary of State John Quincy Adams and Secretary of War John C. Calhoun remained, on the surface at least, cordial and cooperative, while Treasury Secretary William Crawford alienated everyone during this time, including President Monroe. Machinations and rumors of machinations were rampant.

### **Mr. Monroe's Message**

The president waited until very nearly the last minute to make a definitive and public stand on Indian affairs, and even then acted against all his political instincts. He had spent almost eight years publicly promoting the possibility of the Indians' eventual assimilation into white society while spending tremendous sums of money, amid the worst economic depression the nation had yet experienced, to secure their voluntary removal west. In his eighth and final annual message to Congress in December 1824, Monroe included just a single paragraph concerning the Indians—but it was a paragraph full of foreboding. The experience of the past generation, the president claimed, had shown that the tribes could never assimilate into white American society without being civilized—a process “indispensable to their safety.” Experience had also shown, he believed, that with the growth and expansion of America's white population the Indians' situation “will become deplorable, if their extinction is not menaced.” The Indians, from the perspective of the United States, had to become civilized—white—if they were to survive. But Monroe now believed that civilization could come about only by incremental degrees. The South was becoming more crowded every day. Between the existing states and territories and the Rocky Mountains, however, there were vast expanses which, once agreements were made with the tribes currently living in those western realms, the eastern tribes would find amenable. The

eastern tribes needed to be persuaded of the necessity of emigration, for forcible removal would be, as the president put it, “revolting to humanity and utterly unjustifiable.” Once the Indian tribes were relocated in the west, the territory there could be divided into districts, with civil governments established in each, and with “schools for every branch of instruction in literature and the arts of civilized life.” The process would be expensive, Monroe conceded, but the cost was unavoidable.<sup>100</sup>

Congress scarcely noticed Monroe’s brief call for encouraging the Indians to emigrate, sandwiched as it was between a lengthier update on the Latin American and Greek wars for independence and the president’s own farewell comments. The closest he came to referencing the controversy with Georgia was a mild remark about the importance of the federal and state governments keeping “within the limits prescribed to them.”<sup>101</sup> In mid-January, Thomas Hart Benton proposed the construction of a road from the western boundary of Missouri to Santa Fe, a distance of some 700 miles as the crow flies.<sup>102</sup> The imaginary line that Americans called the frontier was being pushed farther west at an incredible pace. Even as Monroe called for an Indian sanctuary in the West, proponents of western expansion were plotting the appropriation of that very territory.

His annual message ignored, James Monroe sent one last special, and desperate, message to Congress. If he consulted either Adams or Calhoun before his decision, neither man made a record of it. Five weeks before he left office, Monroe suddenly and formally declared that the removal of the Indians was of paramount importance to the United States, not coincidentally using the word “Union.” The United States must fulfill its obligation to Georgia, and had been endeavoring to do just that, while acting in accordance with a “liberal construction” of the

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<sup>100</sup> Richardson, Messages and Papers, 2: 262.

<sup>101</sup> Ibid., 263.

<sup>102</sup> Bills and Resolutions, Senate, 18<sup>th</sup> Cong., 2<sup>nd</sup> Session, January 11, 1825.

Compact of 1802 “in accordance with the just rights of those tribes.” But the president conceded that the program of assimilating the Indians where they now were, on their ancestral lands, was a failure. “Experience has clearly demonstrated that in their present state it is impossible to incorporate them in such masses, in any form whatsoever, into our system,” Monroe stated. “It has also demonstrated with equal certainty that without a timely anticipation of and provision against the dangers to which they are exposed, under causes which it will be difficult, if not impossible, to control, their degradation and extermination will be inevitable.”<sup>103</sup>

Monroe was sincere when he spoke of the precarious position of the southeastern tribes. Part of the reason for this precariousness was the limited ability of the federal government to protect them. George Troup had threatened frontier warfare if the United States did not remove the Creeks and Cherokees from the borders of his state, and no one doubted he meant it. If the Georgia militia decided to forcibly remove the Indians of its own accord, there was little the United States Army could do to prevent it in a way that would not cost many lives. Monroe was also sincere when he asserted that the removal of the tribes could be accomplished “on conditions which shall be satisfactory to themselves and honorable to the United States.” But his sincerity came at the cost of disregarding the statements of the Indians themselves, who had in no uncertain terms refused all offers of emigration and stated their unwillingness to entertain future cessions of their land. It was literally inconceivable to Monroe that the Indians would not come around to the point of view of the United States and agree that, unpalatable as emigration may be, removal was in their own best interests for both the near future and the long term. They simply needed to be convinced of the truth that by sacrificing now they would “protect their families and posterity from inevitable destruction.” The removal of the tribes would also mean the removal of the ever-present tensions that existed and sporadic conflicts that occurred between

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<sup>103</sup> Richardson, Messages and Papers, 280-3.

Indians and whites on the frontier. In closing both his message and his administration, James Monroe recommended that Congress adopt “certain fundamental principles in accord with those above suggested,” and to provide by law a number of commissioners to visit the tribes and explain “the objects of the Government.”<sup>104</sup> As early as 1818, as we have seen, Monroe wanted to see the Indians voluntarily emigrate to the trans-Mississippi West. By the close of his term, after witnessing the Indians’ repeated refusal to do so, he believed that only a concerted effort of persuasion would suffice.

In publicly making the case for the removal of all American Indians to the West, however, President Monroe did not merely concede the failure of assimilation. He also acknowledged the reality that the executive branch alone was not competent to clarify the ambiguous relationship of the Indians to the United States. His administration’s limited success in treating with the tribes and in reforming the Indian trade was greatly overshadowed by the state rights rhetoric emanating from Georgia and the sobering realization that, though the dominance of the United States over the Indians was increasing by the day, the state of the government’s Indian affairs was more confused and contradictory than ever.

The document went almost entirely unnoticed at the time, so riveted was the nation on the disputed presidential contest of 1824, still unsettled, and with the pending election by the House of Representatives. Historians, too, have overlooked Monroe’s last major act as president, and its subsequent significance in the evolution of Indian removal as a political issue. But in the weeks and months following the succession of John Quincy Adams to the White House, as Monroe himself began a lonely and impoverished retirement, the fifth president’s message became a potent source of legitimacy as Congress and the nation began debating removal in earnest. Monroe’s message was both a catalyst and a justification for the debates. The evolution of the

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<sup>104</sup> Ibid.

fifth president's attitudes toward the American Indians is thus crucial to understanding the strong opinions over Indian affairs in the second half of the 1820s and why federal removal policy coalesced at the time and in the manner that it did.

Monroe himself could now only watch the situation from a distance, receiving his information in the same manner as his fellow private citizens—from the papers, and the occasional letter or visit from an old colleague. It was no doubt small consolation that the events which followed did not occur on his watch, but a measure of consolation, nonetheless.

**Chapter 4**  
**Indian Springs**  
**(December 1824-March 1826)**

At the same time that James Monroe was preparing his final annual message and his special removal message for submission to Congress, an event was taking place in the southern periphery of the nation whose repercussions would exacerbate the tensions over the Indian question and stoke sectionalist sentiment. The aftermath of the Treaty of Indian Springs (1825) would bring forth a virulent state's rights rhetoric and invective against the national government that was unprecedented in the history of the republic, far surpassing the sentiments of the Federalists at the Hartford Convention in 1815.<sup>1</sup>

When Duncan Campbell signed off his letters to George Troup with "Your obedient servant," it was more than mere epistolary courtesy. Campbell, as we have seen, had treated with the Cherokees in the autumn of 1823 and the early winter of 1824, and had acquired a reputation as an aggressive negotiator. This enabled him, in the late autumn of 1824, to secure an appointment as United States commissioner to negotiate with the Creeks. The fact that he was a Georgian was a significant attribute for, as outgoing Secretary of War John C. Calhoun made clear, "It is the desire of the Government that the feelings and wishes of the State of Georgia should be particularly attended to in any treaty that may be made with the Creek nation."<sup>2</sup> But despite Georgians' outward display of solidarity the internal politics of the state were more divisive than any in the union, possibly excepting New York. Factions coalesced around two political rivals: John Clark, the tough, unlettered frontiersman who first brought the compact of 1802 to the attention of the Monroe administration in 1820, and who represented the western

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<sup>1</sup> Two treaties with the Creeks were negotiated and signed at a place called the Indian Spring in central Georgia—the treaty of 1821, discussed in Chapter 3, and the more famous agreement, signed in early 1825 and discussed here. To avoid confusion, I refer to the former as the Treaty of 1821 and the latter as the Treaty of Indian Springs.

<sup>2</sup> John C. Calhoun to Duncan G. Campbell and James Meriwether, July 16, 1824, *ASP: Indian Affairs*, 2: 565.

yeomen and settlers of the state; and George Michael Troup, a graduate of Princeton who commanded the loyalty of the tidewater elites. Both factions, however, were committed to removing the Creeks and Cherokees from Georgia. Troup won the governorship in 1823, in the state's first popular elections, so to him went the opportunity to defend Georgia's wounded honor at the hands of the United States, in the process stoking the indignation of the state's white populace.<sup>3</sup>

The Monroe administration believed it had no choice but try to assuage this indignation. In mid-July 1824 Calhoun appointed Campbell and his old colleague James Meriwether, both tireless servants of Troup, to resume efforts to extinguish the Creek title in Georgia. \$50,000 was allocated for the cost of the negotiations alone, and a sum of up to \$200,000 was authorized as the purchasing price.<sup>4</sup> Campbell and Meriwether immediately contracted for the necessary rations. This was to be a major gathering, with an estimated five thousand Creeks attending the talks, which were expected to last for several days.<sup>5</sup> The talks began in earnest on December 7, 1824. Campbell and Meriwether explained the compact between the United States and Georgia and reiterated the desire of the president to exchange his lands on the other side of the Mississippi for not merely the Creek lands in Georgia but the entire Creek realm. Doubtless recalling Troup's resentment of the Cherokees' daring to speak the word "No" to the American government—"a word easily pronounced, but in this case most unadvisedly," according to the governor—the two commissioners attempted to stave off a negative response: "We shall expect you to listen to us as long as we have any thing to say, and we will do the same by you. We want

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<sup>3</sup> See also Mary Young, "Racism in Red and Black: Indians and Other Free People of Color in Georgia Law, Politics, and Removal Policy," *The Georgia Historical Quarterly*, Vol. 73, No. 3, Special Issue Commemorating the Sesquicentennial of Cherokee Removal 1838-1839 (Fall 1989), pp. 492-518.

<sup>4</sup> John C. Calhoun to Duncan G. Campbell and James Meriwether, July 16, 1824, *ASP: Indian Affairs*, 2: 564-5.

<sup>5</sup> Duncan G. Campbell to John Crowell, September 5, 1824; Crowell to Campbell, September 20, 1824, *Ibid.*, 2: 566.

you to take time and consider and deliberate well before you decide either way. . . . We cannot consent, therefore, that our propositions should be put aside in a hasty manner.”<sup>6</sup>

At Indian Springs the different views on the relationship between the United States and the tribes approached mutual incomprehension. The Creeks replied that they were unaware of any agreement between “our father the President of the United States and our brothers of Georgia,” but they were certain that any such agreement could result only in their ruin.<sup>7</sup>

Campbell informed the Creeks that “although it may not be very pleasing, it is nevertheless true.” The fact of the matter, according to Campbell, was this: The Muscogee nation was itself not native to this land, but had taken it from others long ago. All the Creek lands, moreover, had belonged to Georgia, under its colonial charter, until 1802. Thus the Georgians were not seeking a change, but a partial restoration. Fifty years before, when the Americans went to war with England, the British “were all driven off, and you would have suffered the same fate but for the humanity and goodness of the new Government which was established after the war.” Since that time, the Indians had held no power in the United States. “It was not your fault that your forefathers fought against their country,” said Campbell, “yet you have to be the sufferers by their rashness.”<sup>8</sup>

The Creeks, as requested, listened to every word. This included the age-old entreaty to abandon their “barbarism” and a lengthy admonition to avoid the dangerous path taken by the Cherokees, who had vowed never to cede another foot of land and encouraged the Creeks to do the same. They listened to the concerns for their future safety and happiness, and the bluntly-worded desire for the land. Then, as they had done many times before, the Creeks politely

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<sup>6</sup> Address to the Creek nation, December 7, 1824, *Ibid.*, 2: 568; Troup quote, *Ibid.*, 2: 735.

<sup>7</sup> Reply to the U.S. Commissioners, December 8, 1824, *Ibid.*, 2: 569.

<sup>8</sup> Address to the Creeks, December 9, 1824, *Ibid.*, 2: 569-571.



refused to sell or move from their ancestral homeland.<sup>9</sup> Commissioner Campbell, apparently genuinely surprised at the negative response, was apoplectic when his political patron, Governor Troup, wrote to inquire about the progress of the talks. The state legislature was preparing to adjourn and wanted some welcome news before doing so. Troup was particularly interested in knowing more about the proceedings than the federal government. Perhaps fearing that the Creek agent, John Crowell, might interfere with the negotiations by questioning the legitimacy of the commissioners' words and actions, Troup wanted to know if Crowell was present at the site and, if so, how much information he may have passed on to the War Department.<sup>10</sup> It was an irregular request; Troup was requesting knowledge that properly belonged to the president and secretary of war.

Campbell, however, was happy to share the governor's confidence. He enclosed the journal of the proceedings thus far, as well as his judgment that the Creek nation was divided into two factions: the Upper Towns, under the authority of Big Warrior, and the Lower Towns, influenced by William McIntosh. Campbell was convinced that the Lower Towns, in Georgia, would consent to move. The Upper Towns, in Alabama, however, would not hear of it. Campbell was convinced that the agent, Crowell, and his assistant, William Walker, had encouraged the Creeks to refuse any entreaty from the United States or Georgia. "It appeared," Campbell reported, "that the most active, industrious, and insidious means had been resorted to, for months, for the purpose of inspiring confidence, determination, prejudice, and obstinacy, in one

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<sup>9</sup> Reply to the U.S. Commissioners, December 11, 1824, *Ibid.*, 2: 571.

<sup>10</sup> George M. Troup to Duncan G. Campbell and James Meriwether, December 9, 1824, *Ibid.*, 2: 572. James Meriwether played only a supporting role in the negotiations, simply lending his name, which commanded prestige in Georgia, to the process.

part of the nation, (upper towns), and of spreading fears and alarms in the other, by threats and menaces.”<sup>11</sup>

Campbell reported this to both Governor Troup and Secretary Calhoun. Writing to the latter, Campbell pleaded for the authority to treat with the McIntosh faction alone. “From the outset,” he claimed, “it was impossible not to perceive a very striking difference between the sentiments and deportment from the chiefs of the upper and lower towns.” Campbell oversimplified and overestimated the differences between the town groups. But he suspected, correctly as it turned out, that Cherokee chief John Ross had used his considerable diplomatic skills to make an arrangement with Big Warrior for the purpose of resisting encroachment by white Americans and weakening the influence of McIntosh, who had grown wealthy from his alliance with southern elites. Ross and the Upper Towns, however, could be dealt with later; Campbell thirsted for a victory, and was convinced he could successfully treat with the McIntosh faction before Monroe left office. He would simply deal with the Creeks willing to give in to white demands. This would fulfill the United States’ obligation to Georgia in its entirety, thus ridding the federal government of that time- and money-consuming burden. It would also mean, Campbell estimated, that ten thousand fewer Indians would reside east of the Mississippi. Campbell, “with positive certainty,” guaranteed positive results if the administration granted permission to treat with the part of the Creeks led by McIntosh.<sup>12</sup>

The man who was known as William McIntosh Jr. by white Americans, and as Tustunnuggee Hutkee by the Creek nation, is one of the fascinating characters of the age. Both a Creek and a southerner, he fought against the Redsticks in the War of 1812 and was rewarded for his services with the hollow title of brigadier general. He was also afforded land and—equally

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<sup>11</sup> *ASP: Indian Affairs*, 2: 573. Campbell had, in fact, assured Troup that he would do his best to ensure the compact of 1802 would be fulfilled before Troup left office. *ASP:IA* 2: 755.

<sup>12</sup> Duncan G. Campbell to John C. Calhoun, January 8, 1825, *Ibid.*, 2: 574-5.

valuable—the ear of the men in the American government. McIntosh used the Americans to become the most influential Creek in the eyes of the United States, though he was but the fifth-ranking chief among the Creeks. The government, in turn, employed McIntosh to secure its own agendas.<sup>13</sup>

While waiting for Calhoun’s response, Campbell instructed John Crowell, the Creek agent, to gather “all of chiefs of the nation who are in the habit of transacting public business and signing treaties.”<sup>14</sup> Campbell also secured the dismissal of the sub-agent, William Walker, who he correctly believed to have impeded the success of the talks by forewarning the Creeks of the commissioners’ mission (as though there could be any other). His attempt to also implicate Crowell was unsuccessful, as nothing could be proven.<sup>15</sup>

But Monroe balked at the notion of treating with a part of the Creek nation. McIntosh, for all his usefulness to the American government—he had signed no fewer than four previous treaties of cession, dating back to 1805—could not be construed as having the authority to cede any portion of Creek lands. Secretary of War Calhoun did, however, authorize Campbell to resume negotiations. This was to be a second attempt at treating under the same instructions as before; Campbell was explicitly forbidden to deal with only a segment of the Creek leadership. “You will,” Calhoun instructed, “distinctly perceive in the remarks which have been made, that whatever arrangement may be made with General McIntosh for a cession of territory must be made with the Creek nation, in the usual form, and upon the ordinary principles with which treaties are held with the Indian tribes.”<sup>16</sup>

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<sup>13</sup> A splendid treatment of McIntosh is found in Andrew K. Frank, Creeks and Southerners Biculturalism on the Early American Frontier (Lincoln: University of Nebraska Press, 2005), 96-113.

<sup>14</sup> Duncan G. Campbell to John Crowell, January 12, 1825, *Ibid.*, 2: 576.

<sup>15</sup> John C. Calhoun to William Walker, January 11, 1825; Calhoun to Crowell, January 18, 1825, ASP: Indian Affairs, 2: 577-579.

<sup>16</sup> John C. Calhoun to Duncan G. Campbell, January 18, 1825, *Ibid.*, 2: 578. William McIntosh affixed his signature to the Creek treaties of 1805, 1814 (the Treaty of Fort Jackson), 1818, and 1821.

The McIntosh party, for its part, declared itself fully authorized “to make such arrangements with our father the President” to arrange an exchange of lands. They did this with full knowledge that Big Warrior and the chiefs of the Upper Towns had ordered the execution of McIntosh or any other chief who did so.<sup>17</sup> McIntosh found himself in a precarious position. Pressured by white southerners whose approval he sought and whose lifestyle he emulated, he chose a side.

On Friday, February 11, 1825, the commissioners met the Creek council at noon. Campbell was aware that many of the Creek chiefs, having given their refusal, intended to depart for home. It was the moment he had anticipated:

Previous to retiring [Campbell and Meriwether reported, referring to themselves in the third person], the commissioners informed the council that they had been called together by the authority of the President, on business of importance; that the nation appeared to be fully represented; and that, if any of them thought proper to leave the place before the business was closed, they should conceive themselves fully authorized to carry on and conclude the negotiation with those who remained.<sup>18</sup>

If ever an Indian treaty was made with intentional and premeditated bad faith, it was the Treaty of Indian Springs. The chiefs of the Upper Towns, having said their piece and believing their business with the commissioners to be concluded, departed the council grounds. McIntosh and his small group of followers, having been left alone, signed a hastily scribbled document on February 12.<sup>19</sup> The agreement explicitly represented the Indian signatories as the entirety of the Creek nation save a single town, the Tukabatchee, on the Tallapoosa River. In the treaty, McIntosh and his followers agreed to cede all Creek lands in Georgia (which included land between the Coosa and Chattahoochee Rivers, in what is now eastern Alabama), totaling some

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<sup>17</sup> Ibid., 2: 578-580.

<sup>18</sup> Journal of Proceedings, January 11, 1825, ASP: Indian Affairs, 2: 582.

<sup>19</sup> U.S. Statutes at Large, 7: 237-8.

4.7 million acres, and to relocate west of the Mississippi. In return the United States agreed to provide an “acre for acre” equivalent between the Arkansas and Canadian Rivers, in today’s Kansas and Oklahoma. Campbell and Meriwether also promised the Creeks the enormous sum of \$400,000, in part to compensate the Indians for buildings and other improvements they would now be giving up. Half the amount was to be paid immediately upon ratification of the treaty. Another \$100,000 was to be paid when the Creeks actually commenced their relocation, with the remainder to be paid in two annual installments of \$25,000, followed by \$5,000 per year thereafter. If the emigrating party did not like the land between the Arkansas and Canadian Rivers, they could select any other territory west of the Mississippi that was not occupied by Cherokees and Choctaws who had previously emigrated. If they chose land that was currently occupied by any other tribe, the United States would extinguish those claims in favor of the emigrating Creeks. The American government would also provide a wheelwright and blacksmith. Since the Creeks could not immediately depart for the West, the agreement stipulated that the ceded lands in Georgia would remain in possession of the Indians until September 1, 1826.<sup>20</sup>

John Crowell, the Creek agent, was horrified at the transparent fraud. He wrote in protest to Calhoun, claiming that the treaty was in direct opposition to both the letter and spirit of the secretary’s instructions to the commissioners. The treaty, if ratified, would lead to catastrophe among the Creeks, for “with the exception of McIntosh, and perhaps two others, the signatures to this treaty are either chiefs of low grade, or not chiefs at all[.]” Calhoun, who by this time knew he would be the next vice president of the United States, did not reply.<sup>21</sup>

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<sup>20</sup> U.S Statutes at Large, 7: 237-38.

<sup>21</sup> John Crowell to John C. Calhoun, February 13, 1825, ASP: Indian Affairs, 2: 583-4.

## **Adams and Barbour**

On February 9, 1825, John Quincy Adams was elected president of the United States by the House of Representatives, though he had handily lost the popular vote to Andrew Jackson. Conservative by nature anyway—he never made a move without considering past precedents and what precedents his own actions might set—Adams was also always aware that he was a minority president who had arrived at the office via a curious and controversial route, and one who governed without a popular mandate.

Upon hearing of his election, Adams felt obligated to consult James Monroe. Monroe had asked his own predecessor, James Madison, for advice upon his own election to the presidency, and clearly desired Adams to accord him the same courtesy. “He [Monroe] said he would readily give me his opinions upon any subject I should desire; that upon his own election he had consulted his predecessor, Mr. Madison,” wrote Adams. “I understood him as wishing that I would pursue the same course.”<sup>22</sup> In fact, there was not much about which to consult Monroe. Adams offered the State Department to Henry Clay, which did not please the retiring president. Clay had been an inveterate opponent of the Monroe administration ever since the office of secretary of state had gone to Adams in 1817. Three cabinet officials were invited to stay put, including William Crawford, the ailing secretary of the Treasury. Crawford, his presidential hopes dashed, angrily declined, and the post went to a more deserving Richard Rush. Adams also asked Samuel Southard to stay on as secretary of the navy and William Wirt to remain as attorney general. Both men accepted.

Adams’s first choice for secretary of war was, naturally, Andrew Jackson. The two men had met at the White House on the night of the election and shaken hands. The general, recorded

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<sup>22</sup> Ibid., 2: 508.

Adams, “was altogether placid and courteous.”<sup>23</sup> But Jackson had no intention of serving in the Adams administration. The War Department was then offered to James Barbour, a senator from Virginia. Until very recently, Barbour would have been an unlikely choice. Adams thought little of Barbour when he first met him at a Washington dinner in 1819. “He is a man of affected pomposity of speech, handsome of person, full of prejudices and dogmatism, and of commonplace exaggeration of Republicanism,” Adams wrote then. “Through some remark of Colonel Tayloe’s I became entangled with him in a conversation, in which he maintained that an American Minister to European Courts ought to present himself in a plain frock-coat with metal buttons (he was thinking of the one he had on), and demand admission, and, if they would not let him in, go away, renounce all his attendance at Court, and transact all his business in writing.” Just as Adams was preparing to ridicule the arguments of the Virginian (who had never served in an overseas post), Barbour’s carriage was called.<sup>24</sup>

During the election of 1824, however, James Barbour proved a key ally. As early as January 1824, Adams heard word that, in the event of an election in the House, Barbour was considering throwing his influence behind the New Englander.<sup>25</sup> He and Adams met several times during the winter of 1824-25. Barbour made it plain that the Virginians in the House were disposed to first vote for Crawford, but he was confident that their second choice would be for Adams. They discussed “with perfect candor” the great issues of the tariff and internal improvements, and Barbour left Adams “with the impression that the interview had been entirely satisfactory to him.”<sup>26</sup> Upon hearing that Andrew Jackson would not consent to serve as secretary of war, Adams offered the job to Senator Barbour.

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<sup>23</sup> *Ibid.*, 2: 501.

<sup>24</sup> Adams, *Memoirs*, 4: 226.

<sup>25</sup> Adams, *Memoirs*, 6: 242.

<sup>26</sup> *Ibid.*, 6: 450.

Whether one chooses to interpret Barbour's appointment as a political reward for services rendered, or as simply a pragmatic decision on the part of President-elect Adams—it was important for a president and his secretary of war to be comfortably candid with one another, as they apparently were—the two men could not then know the degree to which they would closely work together, nor the extent to which the Indian question would define their service in the executive branch.

On March 3, 1825, the Senate, with scarcely any debate, voted for ratification of the Treaty of Indian Springs, 38 to 4. On the morning of Friday, March 4, having not slept for two consecutive nights, John Quincy Adams rose from his bed and offered a prayer, “first, for my country; secondly, for myself and for those connected with my good name and fortunes, that the last results of its events may be auspicious and blessed.” Three days later, without giving it much thought, Adams affixed his signature to the Treaty of Indian Springs, then promptly forgot about it.<sup>27</sup>

### **Immediate Aftermath**

Unfortunately for Adams and his cabinet, his administration was neither auspicious nor blessed. This was in part due to the irregular circumstances of his election and in part due to Adams's own lack of personal warmth; either way, few congressmen could muster much loyalty to him. There were other reasons, beyond his control or, seemingly, his ability to address. One such impediment was George Michael Troup.

Troup was not a patient man, and to his mind he had no reason to be. Elected in Georgia's first popular gubernatorial election in 1823, he carried a mandate which he fully intended to put into effect. In his inaugural address he had alluded to his intention of removing

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<sup>27</sup> Senate Executive Journal, March 3, 1825; Adams, Memoirs, 6: 518.



the Indians from Georgia for the benefit of white settlers. Land not properly used was land wasted, and “what is wanting in the works of Providence designed for the purpose of man, ‘tis for the industry of man to improve; and to improve what God had bountifully given, is gratitude to God.”<sup>28</sup> Once the new administration took over, Troup’s ally in Congress, John Forsyth, met with President Adams and reminded him of the Compact of 1802. The Creeks had agreed to remove from Georgia, via the Treaty of Indian Springs, said Forsyth, and now it was time for the Cherokees to make a similar cession. As things stood, a delegation of influential Cherokees was then in Washington, and “the present moment appears to be particularly favorable for a complete performance of the obligations” of the 1802 agreement. Secretary Barbour assured Forsyth that the Adams administration was fully committed to implementing the Treaty of Indian Springs, and that the president himself “entirely accords with the policy recommended by Mr. Monroe. . . on the subject of the general removal of the Indians to the West of the Mississippi.”<sup>29</sup>

Barbour spoke the truth. John Quincy Adams in 1825 had no love for the American Indian. Eleven years earlier, during the peace negotiations at Ghent, Adams had responded to a British request for a huge Indian sanctuary in the heartland of North America in scathing terms. “To condemn vast regions of territory to perpetual barrenness and solitude that a few hundred savages might find wild beasts to hunt upon it,” Adams declared at that time, was unthinkable and insulting.<sup>30</sup> Like every other statesmen he considered the American Indians inferior to whites and, as president, Adams wanted the Indians to emigrate. Like most of his fellow statesmen (if not some of his fellow countrymen), however, President Adams was not prepared to force them at gunpoint. Barbour so informed Forsyth.

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<sup>28</sup> Raleigh Register, and North-Carolina Gazette, November 28, 1823, Issue 4, col. E.

<sup>29</sup> John Forsyth to James Barbour, March 9, 1825, ASP: Indian Affairs, 2: 774, Barbour to Forsyth, March 23, 1825, M21 1:423.

<sup>30</sup> Adams, Memoirs, 3: 28.

From the standpoint of whites in Georgia, such a stance was tantamount to apostasy. As far as Governor Troup was concerned, Georgia had “sought repose from the painful altercation” with the federal government, only to be rebuffed. Barbour, he thought, was dissembling, or at least beating around the bush with the Indians—the Cherokees, in this case, though Troup’s words describe his views toward every eastern tribe. “The Cherokees must be told, in plain language, that the lands they occupy belong to Georgia; that, sooner or later, the Georgians must have them. . . . Why conceal from this misguided race the destiny which is fixed and unchangeable?” Furthermore, in a blatant abrogation of the assimilation ideal, Troup went so far as to declare that the United States had the duty to “arrest the progress of improvement in Cherokee country” as it was “the reason constantly assigned by the Cherokees” for their refusal to emigrate. There is more than a hint of insecurity in Troup’s words. He knew that, for Georgia, time was of the essence. The greater the improvements by the Cherokees, the greater their claim to remain where they were—a claim supported by numerous treaties. At the same time, Troup baldly asserted that Cherokee improvements did not actually increase the value of the land. Why, he asked, did Barbour not simply tell the Cherokee delegation, “Remove now, or stay the hand of improvement forever; now we will give you the full value of improvements. . . . If you accept, well and good; if you refuse, we are not bound to make you the same offer again.” Again, land without improvements—white improvements—was land wasted. It galled the eager and energetic would-be settlers that they had to sit and wait for the tribes to remove, and it angered their elected officials who risked publicly losing face in the matter.<sup>31</sup>

The Treaty of Indian Springs, meanwhile, stipulated that the Creeks had until September 1, 1826, to vacate the ceded lands, a date some eighteen months hence. But scarcely three weeks after the ratification of the treaty—just long enough for the news to reach the state capital of

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<sup>31</sup> George Troup to John Forsyth, April 6, 1825, ASP: Indian Affairs, 2: 776.

Milledgeville—Troup wrote McIntosh, his first cousin, and informed him that, while he had “no intention on my part to hurry your departure,” the governor would nevertheless dispatch surveyors to the ceded land in preparation for its public sale. McIntosh said that he had no objection, provided the general government and the Indian agent, Crowell, had no objections. Troup angrily retorted that Georgia had nothing to do with the national government or the Creek agent. “If we wanted the consent of the United States we could ask it.” On April 25, 1825, in a hasty note, McIntosh “absolutely, freely, and fully” gave his consent to the survey, and the government of Georgia saw no reason not to implement plans for an early survey of the ceded lands.<sup>32</sup>

It was the final communication between the two men. On Saturday, April 30, McIntosh’s plantation home was torched by some two to four hundred Creek warriors. As the man of two worlds—Creek chieftain, American general—fled, he was gunned down by rifle fire. According to one eyewitness, McIntosh’s corpse was riddled with more than fifty bullets. According to his widow, the surrounding Creeks shot “near one hundred balls into him.” A neighbor, Etome Tustunnuggee, a Creek chief of the Coweta clan who was also complicit in the Treaty of Indian Springs, suffered the same fate. Under Creek law, the two men had been legally executed for treason.<sup>33</sup>

The response of white southerners was very different. Governor Troup was doubly furious. Not only had he lost a useful means of accomplishing his Indian policy within the state, but he had publicly proclaimed McIntosh and his party to be under his, Troup’s, protection, an

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<sup>32</sup> George M. Troup to William McIntosh, March 29, 1825; McIntosh to Troup, April 12.; Troup to McIntosh, April 18.; McIntosh to Troup, April 25.; reprinted in the Daily National Intelligencer (Washington, D.C.), August 3, 1825, Issue 3911, col. D.

<sup>33</sup> Testimony of Francis Flournoy, May 15, 1825, ASP: Indian Affairs, 2: 771; Peggy & Susannah McIntosh to Duncan G. Campbell and James Meriwether, May 3, 1825, Ibid., 2: 768.

assertion that was very evidently meaningless.<sup>34</sup> Newspapers took up a refrain that white men were behind the murders. If a band of Creek warriors committing violence, even against fellow Creeks, was unwelcome news to whites, the thought that one's white neighbors might be responsible was truly sinister.<sup>35</sup>

Charges that John Crowell had been complicit with sub-agent William Walker in sabotaging the negotiations were unrelenting. Crowell could partially blame the dead McIntosh for this. Having read in the papers Crowell's warning to the War Department about the treaty, McIntosh had informed Troup a month before his death that "We are not any way in danger until he [Crowell] comes home [from Washington] and commences hostility, and urges it himself on us."<sup>36</sup> It is unclear why McIntosh said this. Crowell was undeniably a political enemy on two fronts: the agent was intruding on McIntosh's machinations with the Georgia government as well as diminishing whatever authority he still retained within the Creek nation. And McIntosh may have believed Crowell harbored ill intentions for him, though more likely the truth was the other way around. McIntosh was fully aware that he had committed a capital crime against his fellow Creeks and that, at best, his standing among them was forever diminished. If the stipulations of the treaty went into effect, however, McIntosh stood to augment his fortune as well as cement his political ties to southern elites. Crowell was one of the few who could upend his plan.

Furthermore, if Troup and Campbell had possessed hard evidence against the agent, we would know about it, for they would have ensured its publication in every newspaper in the Southeast, from whence it would have certainly spread to Washington and beyond. A likely explanation is this: Crowell, as ordered, assisted Campbell and Meriwether at Indian Springs to the extent

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<sup>34</sup> Troup to McIntosh, April 4, 1825, ASP:IA 2: 758. See also Troup to McIntosh, in Providence Patriot, Columbian Phoenix (Providence, RI) June 8, 1825, Issue 46, col. B.

<sup>35</sup> Augusta Chronicle, May 2, 1825, Issue 70, col. B.

<sup>36</sup> William McIntosh to George Troup, March 29, 1825, ASP: Indian Affairs, 2: 757.

required by his position, but no more. Campbell may have thought that Crowell, a fellow Georgian, was a traitor to his state and race. John Crowell, in turn, did not like seeing the Creeks defrauded. The Indian agent had been under no obligation to sign the treaty as anything but a witness; Campbell had informed him often enough that he, Crowell, possessed no powers to treat with the Indians. Crowell had no doubt that the agreement was in blatant violation of the commissioners' instructions, for they had been expressly forbidden to treat with the McIntosh faction alone. In his vain efforts to forewarn the War Department about the ramifications should the treaty be signed and ratified, Crowell did his duty as a public servant of the federal government. He had attempted to avoid just such loggerheads between the United States and Georgia, and the sort of retribution that felled McIntosh. In his warnings to Washington, Crowell was accurate to the point of clairvoyant.

For his part, either Troup was misinformed of the proceedings at Indian Springs, or he deliberately misrepresented the situation. Troup accused Crowell of undermining Commissioners Campbell and Meriwether and then “dismissing in the dead of night chiefs who had agreed to sign the treaty[.]”<sup>37</sup> Crowell did not, of course, “dismiss” the chiefs from the Upper Towns, as Troup claimed. They left for home of their own accord, having kept their pledge to listen to the commissioners and having said their piece in reply. Not only had those chiefs not agreed to a treaty, they had in the most explicit terms refused to even entertain such a treaty. Campbell and Meriwether were fully cognizant of Calhoun's instructions, and if the two men truly did not believe the proceedings to be fraudulent, they certainly knew them to be highly irregular. Governor Troup had been anticipating a change of administration. One wonders if, in their private conversations on the subject, the notion of using the confusion of the presidential

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<sup>37</sup> George M. Troup to John Forsyth, April 6, 1825, ASP: Indian Affairs, 2: 776-7.

transition to successfully submit a treaty of cession came up between Troup and Campbell. In any event, that is precisely what occurred.

Adams and Barbour learned of the executions of William McIntosh and Etome Tustunnuggee on May 15, 1825, a Sunday. Four Creeks, including Chilly McIntosh, the son of the late chief, showed up at the White House first thing that morning with a letter from Troup. The letter, written according to Adams “in a style similar to that which the same personage used with Mr. Monroe,” accused Crowell of instigating the “massacre,” and “vows revenge with a spirit as ferocious as ever inspired any Creek Indian.” Secretary Barbour, suddenly feeling the weight of his office, radiated apprehension as he referred to Troup as a “madman.”<sup>38</sup>

Barbour thought the matter was one in which the United States had precious little ground on which to rightfully intervene. This situation was yet another facet of the unresolved relationship between the United States and the Indian tribes. Did the federal government have the right to interfere in internal Creek affairs, even if violent? Barbour thought not. He suggested that the administration apprise the Upper Creeks of the horror with which the United States government received the news of the deaths, warn them against further violence, and advise them to return to their homes. The government should also agree to a Creek request to send a delegation to Washington in the winter. Adams approved, but believed “this massacre is only the signal for a ferocious Indian war, bursting upon us like a thunderbolt.” Both George Troup and Chilly McIntosh now charged John Crowell with not just sabotaging the treaty negotiations but with being, as President Adams put it, “an accessory to the slaughter of Mackintosh.” Adams thought both accusations very likely trumped up, since Crowell had little real authority in the borderlands and no influence in intra-tribal decision making. Nevertheless, Adams sent an Army major, Timothy P. Andrews, to the Creek agency to investigate both claims. Adams also sent

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<sup>38</sup> Adams, *Memoirs*, 7: 3.

General Edmund Gaines into Georgia as an emissary, with instructions to defuse tensions in the region by speaking directly to the government of the state and the Creek leadership.<sup>39</sup>

It was a bad moment for the new president. Jacob Brown, the commanding general of the Army and a man Adams trusted, warned that the Georgians might be spoiling for a fight. A war between Creeks and whites in Georgia might be “of profitable interest” to that state, as it could give Georgia free rein to do with the Indians as it wished. Adams had to approach the Creeks in a firm manner, but he could do no less with the truculent government of Georgia. To the former, Adams urged the necessity of carrying out the provisions of the Treaty of Indian Springs, which was now the law of the land. To Troup he warned against a premature surveying of the territory; until September 1, 1826, the Creeks were legally residing on their own land. Privately, the president placed the blame for the volatile situation on Campbell and Meriwether. The treaty, he believed, “ought never to have been made; but nothing could have arrested the progress of this iniquity after the selection of two Georgians as Commissioners for negotiating the treaty.”<sup>40</sup>

Adams had approved the treaty, and it now fell to him to decide on a course of action. The administration’s primary aim was to prevent further violence in the Southeast. Superintendent of Indian Affairs Thomas McKenney instructed Crowell to use every means at his disposal to “heal the unhappy divisions” of this “distracted people.”<sup>41</sup> Secretary of War Barbour considered suspending Crowell from his duties, but abstained from doing so until more information was at hand. He did, however, instruct Campbell and Meriwether to withhold the initial payment of \$200,000 to the Creeks until General Gaines could arrive and assess the state of things. In response to attacks on Crowell by Governor Troup, Barbour assured Milledgeville that all accusations against the agent would be investigated fully. Meanwhile, Troup must halt all

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<sup>39</sup> Adams, *Memoirs*, 7: 5-11; *U.S. Statutes at Large*, 7: 238.

<sup>40</sup> Adams, *Memoirs*, 7: 12.

<sup>41</sup> Thomas McKenney to John Crowell, May 15, 1825, M21 2: 10.

preparations to survey the ceded land. To Major Timothy Andrews was given the “very delicate and responsible trust” of collecting and evaluating specific charges against Crowell, under Gaines’s supervision. He was to travel first to the Georgia capital and gather whatever evidence Troup possessed, proceed to the Creek agency and present copies of the evidence to Crowell, then communicate his conclusions on the matter to Adams and Barbour.<sup>42</sup>

At the end of May Barbour received assurance from Crowell that the Creeks had no intention of committing violence in Georgia, unless spurred into action by Troup. Partially reassured, Barbour thought it best to postpone further discussion of the matter until the whole cabinet reconvened. Then they could address, as Adams put it, “other questions of the same kind, left unsettled by the late Administration.”<sup>43</sup> Thomas McKenney took the liberty of writing directly to the president on the matter. “My little knowledge of the Indian character,” he said—by which he proclaimed himself an expert—“warrants me in believing, that it needed no agent to excite the Creek Nation, under the recent circumstances, to the perpetration of bloody deeds.” The fact that the treaty had been conducted furtively, behind the backs of nearly all the legitimate leaders of the tribe, was quite enough.<sup>44</sup>

### **A “Suffocating” Summer**

On May 23, 1825, having called the Georgia legislature into special session, Troup gave an address in which he praised Campbell and Meriwether for their “untiring zeal and patient labor” in service to the state. These deeds were the more heroic for the unprecedented obstacles the men had had to surmount from an unexpected quarter—“from officers in the pay and confidence of

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<sup>42</sup> Barbour to Crowell, May 17, 1825 (not sent), M21 1: 13; Barbour to Campbell and Meriwether, May 18, 1825, M21 2: 17; Barbour to Troup, May 18, 1825, M21 2: 15; Barbour to Timothy Andrews, May 19, 1825, M21 2: 18-9.

<sup>43</sup> Adams, *Memoirs*, 7: 21.

<sup>44</sup> Thomas McKenney to John Quincy Adams, June 9, 1825, M21 2: 8.



the Federal Government[.]” He also commended Georgia’s congressional delegates for comporting themselves in a manner “as to command the confidence of ourselves and the respect of all who know them.” Regarding the acquisition and subsequent disposal of the lands in question, Troup grandly referred the legislators to their constituents, since it was a “fundamental principle” that “none but themselves or their immediate representatives can rightfully dispose of them.” He also stated his refusal to believe that the Upper Towns of the Creek nation had acted unilaterally in the death of McIntosh; they must have, he insisted, been influenced by “evil-minded white men.” And while he, Troup, had been fully prepared to deal out “the full measure of that vengeance” due those who committed such crimes on Georgia soil, he had abstained from doing so to wait for the “wise deliberation” of the legislature.<sup>45</sup>

Politically, Georgia was divided, but if Troup was trying to flatter the legislature into submitting to his will, he was successful. On June 9, 1825, in special session, the Georgia legislature passed an act approving the surveying and disposal of the “ceded” Creek lands. The Georgia Land Lottery Act of 1825 divided the cession into five sections that eventually became the counties of Lee, Muscogee, Troup, Coweta, and Carroll. Each section was to be divided into districts of nine miles square, which in turn were subdivided into tracts of 202 ½ acres. One hundred surveyors were to be appointed by the legislature, with the person receiving the highest number of votes receiving first choice of which district to survey. (The second-place finisher would pick second, and so on.) Once the future homesteads were clearly marked on the ground and on the map, the governor would authorize a lottery for each district. The list of those eligible was long, but included unmarried men age eighteen and older who had resided in Georgia for three years (one draw), widows (one draw), men eighteen and older with wives or children (two draws), and widows and orphans whose husbands or fathers had been killed while fighting the

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<sup>45</sup> George Troup to the General Assembly of the State of Georgia, May 23, 1825, ASP: Indian Affairs, 2: 751-2.

British or the Indians during the War of 1812 (two draws). The individual tracts of land were classified into one of six categories: first quality river land, second quality river land, first quality oak and hickory upland, second quality oak and hickory upland, first quality pine land, and pine land. The act also provided for a survey to definitively mark the boundary between Alabama and Georgia, which had never been clearly established after Alabama's admission to statehood in 1819.<sup>46</sup>

By the time Edmund Gaines arrived in Milledgeville, every detail of Georgia's planned takeover of the territory acquired at Indian Springs had been addressed by the state. Troup bluntly informed the general that the legislature had extended the laws of Georgia over the ceded country, and that it was his, Troup's, bound duty to execute them. If the state enjoyed the federal government's cooperation in the matter, so much the better. If not, replied Troup, "we will proceed to run the line [between Georgia and Alabama] without them [the United States], as we will also proceed in our time to make the survey of the lands within our limits, disregarding any obstacles which may oppose from any quarter."<sup>47</sup> Gaines tried to be conciliatory, stating that his goal was nothing more than to amicably settle the differences between Milledgeville, Washington, and the Creeks, while doing justice to all parties. He assured Troup that "the interests of the State was in all respects the same as the interests of the Union or General Government." Governor Troup refused to back away from his stance. "The Government of Georgia," he replied to Gaines, "will not retire from the position it occupies to gratify the agent or the hostile Indians; nor will it do so, I trust, because it knows that, in consequence of disobedience to an unlawful mandate, it may very soon be recorded that 'Georgia was.'" In other

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<sup>46</sup> Acts of the General Assembly of the State of Georgia, 2: 3-16. (June 9, 1825)

<sup>47</sup> George Troup to Edmund P. Gaines, June 13 and 14, 1825, ASP: Indian Affairs, 2: 795-6.

words, Troup justified his radical position by both asserting his unwillingness to give any satisfaction to John Crowell and by declaring his state to be in the midst of an existential crisis.<sup>48</sup>

The exhausting back and forth between Troup and Gaines continued daily, sometimes twice daily, and the letters were instantly picked up by newspaper editors who reprinted them verbatim. And no wonder: these expressions of disgust at the national government were remarkable. A mere decade after the war that had ignited American nationalism, a governor whose state had benefited enormously from federal hegemony in matters diplomatic and military in recent years—particularly in dealing with the British, Spanish, and Seminoles on its southern frontier— was openly and unmistakably picking a fight with the United States government over a few hundred square miles of territory that the state was, in terms of strict legal interpretation, already entitled to occupy a mere fourteen months hence. That this affray was articulated in the language of a contest for the state’s very survival was astonishing and disquieting.

The public certainly thought so. Most Americans were not on Georgia’s side, nor sympathetic to the histrionics of its leading spokesman. This included fellow southerners. Why, one observer from neighboring South Carolina wanted to know, were the Georgians so impatient? It was a large state with a thin population, about the size of Great Britain but with 280,000 inhabitants instead of 16 million. “And for what purpose are these harsh measures to be adopted?” this writer asked. “[T]o add to the Lands of a state where the population is not adequate to its cultivation, nor will be for centuries to come.”<sup>49</sup> To the west, Troup’s hoped-for allies, the Alabamians, were silent. From Nashville, Tennessee, Andrew Jackson responded to Troup’s language by scornfully commenting on the governor’s evident “derangement.” “No body did believe that the Indians had any intention of committing hostilities on the whites,” he

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<sup>48</sup> Gaines to Troup, June 14, 1825; Troup to Gaines, June 15, 1825, [ASP:IA2](#): 796-7.

<sup>49</sup> From the [Columbia Telescope](#) (Columbia, SC), reprinted in the [Daily National Journal](#) (Washington, D.C.), June 22, 1825, Issue 270, col. A.

wrote to a friend. “The whole excitement was produced by designing Whitemen to draw the public attention from the means used in obtaining this fictitious Treaty, signed by one or two chiefs & the rest self created, for the purpose of multiplying signers to the instrument.” Jackson, now the junior senator from Tennessee, made it clear that he had been ill at the time of the treaty’s ratification but would have voted against it.<sup>50</sup> A New England religious periodical commented on the “intemperate” and “strange” sentiments emanating from Georgia’s governor and legislature. An Augusta newspaper, one of the few in Georgia willing to stand up to Troup, flatly asserted that McIntosh had been executed legally by the Creeks and echoed Jackson’s belief that “no white men seem to have been the objects of their vengeance.”<sup>51</sup> Even former governor John Clark, who loathed the Indians and would not have wept in the event of their extinction, thought Georgia was powerless to move onto Creek lands until September 1, 1826, when the treaty was scheduled to take effect. At that time, said Clark, “our right to take possession of them is unquestionable.”<sup>52</sup>

The weather grew warm, and then hot, one of the worst summers on record. Barbour left the capital several times that season, retiring to his farm in Virginia, while Adams complained of the “Suffocating heat” that, on a visit to James Monroe with General Lafayette, kept everyone confined indoors.<sup>53</sup> On July 19, Adams, after consulting Secretary of War Barbour, Navy secretary Southard, and Attorney General Wirt, decided the federal government would not permit

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<sup>50</sup> Andrew Jackson to Edward George Washington Butler, July 25, 1825, *Jackson Papers*, 6: 94.

<sup>51</sup> *Augusta Chronicle*, May 2, 1825, Issue 70, col. F.

<sup>52</sup> Open Letter to the People of Georgia by John Clark, printed in *Augusta Chronicle*, September 7, 1825, Issue 101, col. B.

<sup>53</sup> Adams, *Memoirs*, 6: 37; John Quincy Adams diary 23, 1 January 1795 - 12 May 1801, 5 August 1809 - 30 April 1836, page 410 [electronic edition]. *The Diaries of John Quincy Adams: A Digital Collection*. Boston, Mass.: Massachusetts Historical Society, 2004. <http://www.masshist.org/jqadiaries>.

the survey to proceed. The next day Adams authorized General Gaines to use force if necessary.<sup>54</sup>

Adams took pains to word the order as carefully as possible, but there was little the president could do to assuage Troup's sense of wounded honor. The temperature in Georgia, too, remained high, as the tempers of the two leading state and federal officials there also climbed. Troup and Gaines continued their bitter and very public debate for weeks. At issue was the question of national prerogatives, under the Constitution, versus notions of state rights and sovereignty. Governor Troup attempted to interfere with General Gaines's investigation of John Crowell. Gaines replied that a state had no authority to investigate a federal agent. Furthermore, Gaines vowed to use all his power to prevent such a survey; if the Georgians were so very pleased with the recent treaty, they would abide by its stipulation that the Creeks could remain where they were until September 1 of the following year.<sup>55</sup> The Georgian responded with his customary hostility, whereupon Gaines, his patience exhausted, retorted: "I have seen, of late, with regret, that it is scarcely possible for an officer of the General Government to differ with you in opinion without incurring your uncourteous animadversion or your acrimonious censure."<sup>56</sup>

Major Andrews endured similar difficulties with Troup. The governor thirsted for Crowell's suspension, followed by his dismissal and public humiliation. But Troup did not provide Andrews with specific documentation. "The agent is charged with instigating the Indians to the commission of the crime of murder," asserted Troup, "and with predetermined resolution to prevent the Indians from making cession of the lands. . . these, in all reasons, are

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<sup>54</sup> Adams, *Memoirs*, 7: 33-4.

<sup>55</sup> Gaines to Troup, June 16, 1825, *Ibid.*, 2: 797.

<sup>56</sup> Gaines to Troup, July 26, 182, *Ibid.*, 2: 801.

specifications enough.”<sup>57</sup> The governor’s histrionics, in other words, were intended to disguise the fact that he had no evidence. Andrews, after a thorough investigation, cleared Crowell of any wrongdoing. The Creek agent, according to the major, was “not only an innocent but a much injured man.”<sup>58</sup>

Beyond the immediate crisis—the federal-state controversy, the charges against Crowell, and the prospects for an Indian war in the Southeast—the administration was starting to suspect that the treaty was fraudulent, that it was not merely an agreement disadvantageous to the Creeks but a blatant swindle. The Adams administration, which included General Gaines, was not the inveterate enemy of Georgia that Governor Troup believed and proclaimed it to be. In fact, Gaines’s tertiary concern in Georgia, after maintaining the peace and supervising the investigation of Crowell, was to try to convince the main body of the Creeks to accept the Treaty of Indian Springs. But the records of the four major Creek treaties of recent years, those of 1814, 1818, 1821, and 1825, diligently examined by Thomas McKenney, were revealing.<sup>59</sup> Of the thirty Creek chiefs who signed the treaty of surrender in 1814 (who as explained in Chapter 2 had been allied Creeks), eight signed the treaty of 1818. Of the 54 men who signed one or both of those documents, ten signed the Treaty of 1821. And of the 80 total signatories on all three documents, a mere nine signed this disputed treaty of 1825—only four of whom, as far as McKenney could discern, were chiefs of moderate or significant rank.<sup>60</sup>

His examination, revealing if not conclusive, was enough to support the claims of Crowell and cast doubt on those of Campbell, whom Adams was disinclined to believe anyway.

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<sup>57</sup> Troup to Timothy Andrews, June 20, 1825, *Ibid.*, 2: 804.

<sup>58</sup> T. P. Andrews to John Crowell, August 1, 1825, ASP: Indian Affairs, 2: 852. Reprinted in Daily National Intelligencer, August 22, 1825; Issue 3927, col. B.

<sup>59</sup> The first agreement, the Treaty of Fort Jackson (1814) is discussed in Chapter 2. The Treaty of 1818, made at the Creek agency on the Flint River by then-agent David Brydie Mitchell, and the Treaty of 1821 are discussed in Chapter 3.

<sup>60</sup> Thomas McKenney to John Quincy Adams, June 9, 1825, M21 2: 59-61.

Barbour informed General Gaines on July 21, 1825, that the vehement opposition of the Creeks to the treaty, as well as the small number of signatures on it, had convinced the administration that it had an obligation to fully examine the treaty's legitimacy.<sup>61</sup> Governor Troup protested, claiming that the approval of the entire Creek nation was by no means necessary to make a treaty.<sup>62</sup> The accosting letters from Georgia arrived with distressing regularity well into the autumn. To some of these Barbour responded on the president's behalf, but Adams, working despite the worst bout of depression of his life, "doubted whether it would be possible to answer and deny injurious imputations without entering upon useless and humiliating discussions, in which even victory would be disgraceful."<sup>63</sup> Still, the administration achieved a partial victory, albeit a thankless one: further violence was averted in the borderlands, at least for the time being. Assuring Troup that the general government was fully committed to and respectful of the state's prerogatives, Barbour cautioned that the United States also owed a duty to "the unfortunate aboriginal inhabitants of this country." If the Creeks had not been wronged by the recent treaty, he said, so much the better. But that remained to be seen.<sup>64</sup>

### **"The Age in Which It Is Our Happiness to Live"**

Barbour was in no good mood when the Creek delegation arrived in late autumn. Speaking to Opothle Yoholo, the leading spokesman for the Upper Creeks since Big Warrior's death on March 8 (the day, as it happened, after President Adams signed the treaty), Barbour did not mince words. In murdering McIntosh, the Creek nation had "caused very general and deep dissatisfaction; made yourselves many enemies, embarrassed your Great Father; and fill'd him

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<sup>61</sup> James Barbour to Edmund P. Gaines, July 21, 1825, *ASP: Indian Affairs*, 2: 810.

<sup>62</sup> George Troup to James Barbour, July 26, 1825, *ASP: Indian Affairs*, 2: 812.

<sup>63</sup> Adams, *Memoirs*, 7: 37, 47.

<sup>64</sup> Barbour to Troup, August 30, 1825, *ASP: Indian Affairs*, 2: 815. For a different take on the events of this chapter, see James W. Silver, "General Gaines Meets Governor Troup: A State-Federal Clash in 1825," *The Georgia Historical Quarterly*, Vol. 27, No. 3 (September, 1943), pp. 248-270.

with deep regret.” Opothle Yoholo, a fine public speaker and a cool diplomat, replied simply that the matter was “an affair of the Nation,” and had been addressed internally. The violence in Georgia, Barbour stressed, had greatly embarrassed the president—hence the “difficulties which now attend this interview, and which must attend every step of this business.” (Barbour meant “embarrassed” in the nineteenth-century meaning of the word, which had connotations of both “embarrassed” and “inconvenienced.”) But the Creeks, too, had been embarrassed in this business, they claimed—hence their presence in the capital. They looked for protection to the United States and, their spokesman underscored, “I expect the late treaty to be cancell’d.” What did the tribe, Barbour wanted to know, object to: the substance of the treaty, or the manner in which it was carried out? If the latter was the case, arrangements for a new treaty “substantially” like it could be made.<sup>65</sup>

One imagines the look on Opothle Yoholo’s face at this moment. The chief certainly had objections to both: not only were the terms outrageous, but the treaty, he said, “was not made by the Muscogee nation, and who else had a right to make it?” The Creek leader, however, had not traveled to Washington for the sole purpose of undoing this fraudulent treaty, nefarious as it was. He had come to ask the whites to forever cease maneuvering for Creek lands, so much of which had already been surrendered. “The land that stands fast under the white people’s feet,” the Creek diplomat intoned, “keeps slipping from under the feet of the red people.”<sup>66</sup>

Barbour was in a delicate diplomatic situation. The commissioners, the secretary emphasized, had been sent to make a fair and honorable treaty. But a treaty had been made, and the president could not “cancel” it without the sanction of the “Great Council”—Congress—that was soon to convene. Moreover, said Barbour:

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<sup>65</sup> Outline of an Interview between the Secretary of War and the Delegation of Creeks, November 30, 1825, M21 2: 269-70.

<sup>66</sup> *Ibid.*, M21 2: 270.



Your Great Father did hope that as there is so much difficulty in this affair, that some method would be agreed upon by you for a reconciliation of these difficulties; and that you would agree to carry the substance of this Treaty into effect, in a new one made by yourselves as the heads of the nation; and that you would be willing to occupy lands West of the Mississippi, away from the white man, to live in future, and under some friendly helps for your improvement in peace and prosperity.<sup>67</sup>

Barbour understood that the Treaty of Indian Springs could not be implemented under the same name. But if the Creeks could save face by agreeing to the same terms via a different agreement—negotiated by different commissioners, or even by Barbour himself—the expense would be well worth it to the United States. The administration hoped that, as painful as it might be for the Creeks to give up their territory (if not east of the Mississippi then at least within the limits of Georgia), some form of compensation could be agreed to. The administration learned that General Gaines had, without permission, proposed the Chattahoochee River as the boundary between Georgia and the Creeks. (Unlike today, the river in 1825 did not mark the boundary between Georgia and Alabama, which remained undefined.) The Creeks were willing to entertain the notion but the government of Georgia was not. The main object of the president, the secretary of war assured the Indian delegation, was “to put you at rest—to give you peace,” but no one was sure how that might be accomplished.<sup>68</sup> The Creek representatives wanted another interview with the president, but Adams put them off for the time being. “If I should answer them inflexibly, it would only increase their distress,” he believed. “If I indulged any sympathy for them, it would imply censure upon the treaty, which we must yet maintain, and would be offensive to Georgia.”<sup>69</sup> Barbour then seized upon Gaines’s unauthorized proposal as a way out of the

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<sup>67</sup> Ibid., M21 2: 271-3.

<sup>68</sup> James Barbour to Opothle Yoholo, Yoholo Mico, et. al., December 5, 1825, M21 2: 280-1.

<sup>69</sup> Adams, Memoirs, 7: 79.

stalemate, and even Congressman John Forsyth let it be known that anything was better than a recommendation that Congress annul the treaty.<sup>70</sup>

Both the Creek delegation and the Chilly McIntosh party were in the capital as winter crept in—the former lodged in Tennyson’s Hotel on Pennsylvania Avenue, the latter on Capitol Hill at the invitation of Georgia’s Congressional delegation.<sup>71</sup> Barbour met with McIntosh a week after his interview with Opothle Yoholo. Unlike the earlier interview, in which Barbour had simultaneously reprimanded and pleaded with the Creek leader, the secretary’s conversation with McIntosh was more akin to an interrogation.

Barbour: What portion of the Creek nation do you represent?

McIntosh: The friendly party.

Barbour: How many do you suppose make up the friendly party?

McIntosh: I suppose sixteen hundred.

Barbour: How do you ascertain the number?

McIntosh: By villages.

Barbour: What villages do you represent?

McIntosh: Broken Arrow, Coweta, Talladega, and Hilloby.

Barbour: Do you acknowledge the Little Prince, and Opothle Yoholo, as Chiefs of your Nation?

McIntosh: Little Prince is acknowledged as our head.

Barbour: How many in your nation, do you understand to belong to the other party?

McIntosh: I do not know.

Barbour: Have you authority to come here on the business of your nation from the Little Prince?

McIntosh: No—we represent our side.<sup>72</sup>

The War secretary thought these answers to be contradictory. If the Little Prince was acknowledged by the McIntosh faction as its head, how could they represent a “side” that did not, in turn, represent his authority? Barbour’s confusion continued. When asked if their faction of the Creeks was willing to leave the rest of the Creek nation and go west, Chilly McIntosh’s answer was yes. When asked if they were willing to emigrate to lands west of the Mississippi—a

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<sup>70</sup> *Ibid.*, 79.

<sup>71</sup> Thomas McKenney to Joshua Tennon, December 10, 1825, M21 2: 296; Adams, *Memoirs*, 7: 76.

<sup>72</sup> Interview between the Secretary of War and the McIntosh party, December 10, 1825, M21 2: 288-9.

rephrasing, for emphasis, of the first question—the answer was maybe. When asked if their faction was on friendly terms with the other Creek delegation in the city, the answer was an emphatic no. Thomas McKenney quietly informed the secretary that, of the four towns claimed to be represented by Chilly McIntosh and his fellows, two of them, Broken Arrow and Talladega, were actually Upper Creek towns. Little Prince himself resided at Broken Arrow.<sup>73</sup> The administration thus had strong reason to suspect that the true support of the McIntosh party was less than, and possibly half of, what it claimed. (The administration later realized that the McIntosh party had inflated its numbers by an approximate factor of four.) This revelation weakened whatever credence Adams and Barbour still afforded the Treaty of Indian Springs, but no Indian treaty had ever been abrogated in the manner the Creeks now proposed. Adams did not wish to incur further wrath from the direction of Milledgeville if he could help it.

As the end of the year approached, Thomas McKenney felt good about the status of the American Indian tribes and the prospects for their future “happiness and prosperity.” The age, he wrote, “in which it is our happiness to live, has, by its enlightening and humanizing influences, decided that mercy shall rule, and liberality and kindness minister to these unfortunate people, in whatever relation it may be determined they are to stand to us.”<sup>74</sup> Others were less sanguine about the perpetually unresolved relationship between the American government and the Indian tribes.<sup>75</sup> These included the president and his secretary of war, who bore the responsibility for solving the conundrum but as yet had no answers. In his first annual message of December 1825, Adams made little mention of Indian affairs, but he did not neglect the Treaty of Indian Springs. After briefly sketching the details of the treaty, the president distanced himself from it. The

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<sup>73</sup> *Ibid.*, 290-3.

<sup>74</sup> Thomas McKenney to James Barbour, December 13, 1825, M21 2: 306.

<sup>75</sup> McKenney’s job as Superintendant of Indian Affairs was, technically, extralegal, as Calhoun had never officially established the post nor sent McKenney’s name to the Senate for approval.

Senate, Adams said pointedly, had consented to the agreement on March 3, too late for Monroe to act on it. Therefore he, Adams, signed the document on March 7, “under the unsuspecting impression that it had been negotiated in good faith and in the confidence inspired by the recommendation of the Senate.” The president’s responsibility was to communicate the current state of affairs to Congress, which meant he was obligated to bring the Indian Springs controversy to that body’s attention. However, he tried to do so delicately. While he did not openly censure the treaty or its authors, the president left hint enough of what was to come. That the business with the Creeks and Georgia was not yet concluded Adams left no doubt: “The subsequent transactions in relation to this treaty will form the subject of a separate communication.”<sup>76</sup> This terse sentence was enough to cause murmurs of concern in Georgia’s congressional delegation and send that state’s executive into paroxysms of fury.

### **“A Combination of Circumstances”**

The cabinet meeting of the afternoon of December 22, 1825, was consumed by the matter of Georgia and the Creeks. Secretary of State Henry Clay, who had been absent from Washington during much of 1825 for reasons of health and the deaths of two daughters, was present. Someone read the final refusal of the Creek delegation to cede all the tribe’s lands within Georgia. Frustrated and exhausted by this point, after only nine months in office, James Barbour had come to believe that the process of treaty-making was absurd and inefficient, and that the Indians should be brought under the laws of the United States. When Adams asked if there

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<sup>76</sup> James D. Richardson, ed., A Compilation of the Messages and Papers of the Presidents, 1789-1897. (Washington: Government Printing Office, 1896), 2: 306.

would be some question as to the constitutionality of such a proposal, Barbour wearily replied that, regardless, such a system would soon be “unavoidably necessary.”<sup>77</sup>

Clay claimed that such a plan was not practicable. He asserted that “it was impossible to civilize Indians; that there never was a full-blooded Indian who took to civilization. It was not in their nature.” With his customary thoroughness, Adams recorded the moment:

He [Clay] believed they were destined to extinction, and, although he would never use or countenance inhumanity towards them, he did not think them, as a race, worth preserving. He considered them as essentially inferior to the Anglo-Saxon race, which were now taking their place on this continent. They were not an improvable breed, and their disappearance from the human family will be no great loss to the world. In point of fact they were rapidly disappearing, and he did not believe that in fifty years from this time there would be any of them left.

Secretary Barbour expressed shock at Clay’s sentiments, “for which,” Adams noted, “I fear there is too much foundation. But the question was what should now be done.”<sup>78</sup>

There were options, some more viable than others. Ignoring the situation for the time being was possible, but inadvisable. While Adams and Barbour took Opothle Yoholo at his word that the Creek nation harbored no violent intentions toward white settlers in the borderlands, they could not assure the chieftain that the reverse was the case. Nor was Adams, a nationalist to the core, disposed to cater to the whims of the Georgians, as Monroe and Calhoun had done—and which, by allowing partisans of Georgia to serve as federal commissioners, had brought about the current predicament. Fortunately, a middle path appeared from an unexpected source. John Forsyth had recently appeared willing to compromise, albeit strictly off the record. Forsyth now hinted to the administration that if the secretary of war was to write the Georgia delegation and communicate the refusal of the Creeks to cede all of their lands in Georgia, but also the tribe’s

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<sup>77</sup> Adams, *Memoirs*, 7: 89-90.

<sup>78</sup> *Ibid.*, 7: 90.

willingness to cede its land east of the Chattahoochee, the representatives and government of Georgia would accept the terms. Adams half-expected “an insulting and violent refusal,” but assented to the proposal. This would at least give his administration the moral and pragmatic high ground should the controversy continue.<sup>79</sup>

Barbour sent the letter, with some reservation. He was, after all, a southerner, and if Clay was correct in his assessment of the future of the Indian tribes, “what need was there for us to quarrel with our friends for their sakes, and why should we not yield to Georgia at once?” But Adams, although in agreement with Clay’s overall opinion, had no intention of contributing to the extinction of the Indians. He also no doubt felt that he had yielded quite enough. Despite Forsyth’s assurances, the response from the Georgia delegates was negative: they did not want a new negotiation with the Creeks, and neither did they accept the Chattahoochee as a boundary between the state and the tribe.<sup>80</sup>

All other options exhausted, James Barbour spent the month of January 1826 quietly negotiating a new treaty with Opothle Yoholo and the other members of the Creek delegation in Washington. (The McIntosh party hovered, making excuses to delay their departure, until McKenney reminded them they were there at the government’s expense and all but evicted them from the capital.<sup>81</sup>) The issue at hand, President Adams believed, was not whether the Treaty of Indian Springs should or should not be put into effect. Adams, like Barbour and many other civil officials, disliked the treaty-making process with the tribes, but felt bound to respect it so long as it remained the primary legal means of dealing with the Indians. A treaty, however, had to have two contracting parties. Adams would have liked to implement the treaty, but by no stretch could this particular agreement be viewed as having been acquiesced to by the Creek nation. To the

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<sup>79</sup> Ibid, 7: 90.

<sup>80</sup> Ibid., 7: 92, 102.

<sup>81</sup> Thomas McKenney to John P. Denney (Secretary to the McIntosh Party), January 19, 1826, M21 2: 375-6.

president, then, the issue, as well as the alternatives, were clear. The United States could either go to war with the Creeks, “to secure by force the advantages stipulated to them [the United States] in the treaty,” or try to negotiate a new agreement.<sup>82</sup>

On paper, the Treaty of Washington, signed on January 26, 1826, corrected a gross injustice. The document admitted that the Treaty of Indian Springs had been made with only a portion of the Creek nation, and that the signers had not been authorized to make a treaty, much less cede any Creek lands. Article I of the Treaty of Washington explicitly nullified the Treaty of Indian Springs.<sup>83</sup>

In reality, however, the substitute treaty was only marginally less draconian for the Creeks than the original. The head of the delegation, Opothle Yoholo, was rumored to have attempted suicide at one point in the negotiations.<sup>84</sup> The Creeks were obliged to cede all of the tribe’s holdings in Georgia save for a narrow strip comprising the western edges of today’s Carroll, Heard, and Troup Counties, totaling about one million acres. The tribe was to vacate the ceded territory by January 1, 1827, less than a year hence. In return the chiefs and headmen of the Creeks were to be paid the sum of \$217,600, divided among themselves, with a perpetual annuity of \$20,000 thereafter. The United States would pay for a deputation of the McIntosh faction of the tribe to reconnoiter the lands west of the Mississippi and find a spot for relocation. Because it was the majority of the Creek nation that ceded the tribe’s land to the United States, however, and not the McIntosh faction, the emigrating party was not guaranteed an acre-for-acre exchange but a tract of land “proportioned to their numbers” at the discretion of the federal government. They were to remove within two years. McIntosh’s followers were promised \$100,000 if three thousand or more of their group emigrated to the West, or a proportionately

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<sup>82</sup> John Quincy Adams to the Senate, January 31, 1826, ASP: Indian Affairs, 2: 611-2.

<sup>83</sup> U.S. Statutes at Large, 7: 286.

<sup>84</sup> Thomas McKenney to James Barbour, January 18, 1825, M21 2: 374.

reduced sum for any number less than three thousand. As usual, the treaty guaranteed to protect the remaining Creek lands from white intruders.<sup>85</sup>

It was certainly a victory for Georgia, which still acquired some three and a half million acres of Creek lands. The land that remained in the tribe's possession was no more than one-tenth of its previous possessions within the state.<sup>86</sup> With one exception, the members of the Adams administration breathed a sigh of relief. Only Henry Clay, who "thought the new treaty a much more disadvantageous one to the United States than the former," according to President Adams, seemed unsatisfied.<sup>87</sup>

When Adams explained to the Senate his decision for substituting the Treaty of Washington for the Treaty of Indian Springs, he largely ignored the fraudulent conditions in which the original treaty was negotiated, and downplayed the recriminations of the past year, as reviving them could serve no purpose. Furthermore, upon submitting the new treaty, the administration broke precedent by omitting the many documents from Troup, Crowell, Major Andrews, and General Gaines from the bundle of official papers sent to the Senate. This was at the suggestion of Secretary Barbour, to whom President Adams was happy to defer. It was a highly irregular course of action, but no previous administration had been obliged to deal with so irregular a situation.<sup>88</sup>

### **"A Most Solemn Question"**

James Barbour had, from the view of the U.S. government, salvaged the situation with the Creeks. Tensions still existed in the Southeast, but for the moment the probability of outright

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<sup>85</sup> U.S. Statutes at Large, 7: 286-88.

<sup>86</sup> James Barbour to John Quincy Adams, January 25, 1826, ASP: Indian Affairs, 2: 612-3.

<sup>87</sup> Adams, Memoirs, 7: 110.

<sup>88</sup> Adams, Memoirs, 7: 110.



further violence seemed to wane. Barbour enjoyed little alleviation of pressure, however. The immediate crisis settled, he now attempted (either on his own initiative or due to verbal instructions from Adams) an implementation of James Monroe's vague proposal for the removal of the Indians. It was no easy task. Immediately after the conclusion of the Treaty of Washington, Barbour drafted a prospectus, in the form of a letter to the House Committee on Indian Affairs, delineating the current state of American-Indian relations as he saw it.

“The relations between the United States and the Indians,” he wrote, “are so entirely peculiar, that it is extremely difficult to refer to any well settled principles by which to ascertain the extent of our authority over them.” That the Native inhabitants of North America had been grievously wronged for a dozen generations Barbour had no doubt. What right, after all, did the original European settlers of the continent have to dispossess the American Indians? It was an important question, but he thought perhaps also a moot one. For the early settlers, might made right, and “fraud and force [were] perfectly legitimate in the acquisition of territory.” The takeover of the eastern half of North America by whites was an established fact no longer worth opposing. “It has been done,” he wrote, “and time has confirmed the act.” In those earlier generations, Barbour knew, “the milder qualities of justice and clemency were disregarded.” Now, however, the United States enjoyed hegemony over many of the Indian tribes. With such power came a duty, and “It is now, therefore, that a most solemn question addresses itself to the American People, and whose answer is full of responsibility.”<sup>89</sup>

The question, Barbour wrote to the committee chairman, John Cocke of Tennessee, was this: how could white Americans continue to expand across the continent—which no one in government doubted their right to do—without committing further acts of injustice toward the

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<sup>89</sup> James Barbour to John Cocke, “Preservation and Civilization of the Indians,” February 3, 1826 [communicated February 21], *ASP: Indian Affairs*, 2: 647.

Indians? Unlike Henry Clay, Barbour was an advocate of the civilizing program; he thought the best thing for Indians was their incorporation into white society. But he was well aware that his view was increasingly unpopular, and he conceded that in practice attempts at assimilation had done more harm than good. “If the original plan, conceived in the spirit of benevolence,” he believed, “had not been fated to encounter that as yet unsatisfied desire to bereave them of their lands, it would, perhaps, have realized much of the hopes of its friends.” That whites hungered for Indian lands, however, was inarguable and, it seemed, irrevocable. Such greed had and would continue to cause even genuinely benevolent intentions toward the Indians to fail. Why should the Indians accept the exhortations of the United States and take up the plow on private homesteads when they would undoubtedly be pressured to move farther west within a year or two? What was needed, and what the country had always lacked in Indian policy, concluded the Virginian, was consistency. “Either let him retain and enjoy his home; or, if he is to be driven from it, abstain from cherishing illusions we mean to disappoint, and thereby make him to feel more sensibly the extent of his loss.” There was also the matter of posterity. Just as the past history of American-Indian relations was not a happy one, the future, too, appeared dark, unless things changed. To nineteenth-century Americans, the judgment of posterity mattered a great deal, and many statesmen feared that history would condemn them for failing to act if the Indians, in fact, died out. However, if the current system of Indian policy was, as Barbour phrased it, “so unhappily organized that it contains within itself the causes of its own abortion,” it must be noted that the sheer inability, or refusal, of whites to view the Indians as anything but inferior both perpetuated the problem and ensured that the justification for coveting Indian lands remained unchallenged.<sup>90</sup>

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<sup>90</sup> Ibid., 647.

Barbour's plan was straightforward, at least on paper. The Indians would remove to lands west of the Mississippi, or in the case of the far northern tribes, west of Lakes Huron and Michigan. They would remove as individuals, not tribes. The United States would establish a territorial government to supervise the new realm. Eventually, Barbour hoped, the tribal identities would dissolve, and the Indian territory would be precisely that—a vast pan-tribal region free from the interference of whites. Barbour emphasized that the Indians would not be removed without their own consent, hence the stipulation that the Indians remove as individuals. The thinking was that if the structures of tribal authority were disbanded, the majority of Indians, who whites persisted in believing wanted to move west, would feel free to do so. The third stipulation of the plan, the U.S.-administered territorial government, comprising a governor, three judges, and a secretary—all presidential appointees—was conceived for the “protection” and “civilization” of the individual Indians. From whom did the Indians need protecting? Themselves. Without some external (that is, competent) authority, the mass of Indians might “be exposed to endless mischiefs.”<sup>91</sup> The Indians who went west would be removed from their native lands, yet not be sovereign. At best, in the future, they would experience a state of semi-autonomy, with their own elected officials to handle Indian matters but still subordinate to the territorial government.

Adams remarked that “There are very many excellent observations in the paper, which is full of benevolence and humanity.” He was less sanguine about Barbour's plan itself, fearing that “there is no practicable plan by which they can be organized into one civilized, or half-civilized, Government.” In the cabinet meeting in which Barbour's proposal was discussed, Richard Rush,

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<sup>91</sup>James Barbour to John Cocke, “Preservation and Civilization of the Indians,” February 3, 1826 [communicated February 21], *ASP: Indian Affairs*, 2: 647.

Samuel Southard, and William Wirt all doubted the feasibility of the plan, but could propose none better. The president approved it “from the same motive.”<sup>92</sup>

Support for Barbour’s plan also came in from other quarters. William Clark, the Superintendent of Indian Affairs in St. Louis whose approbation Barbour surely desired, thought the secretary had cogently articulated the situation between the United States and the Indian tribes. “The events of the last two or three wars,” he wrote, “from General Wayne’s campaign in 1794, to the end of our operations against the southern tribes, in 1818, have entirely changed our position with regard to the Indians.” Clark followed up with a precise seven-step plan for relocating the Indians west—including checkpoints and warehouses along the way—and for supervising them once there.<sup>93</sup>

## **Conclusion**

The Treaty of Indian Springs was an act of diplomatic chicanery theretofore unseen in the (admittedly troubled) history of American-Indian relations. The resulting controversy, moreover, inaugurated an era of vehement state rights rhetoric that would persist in the American body politic until the outbreak of civil war two generations later. But the immediate import of the negotiations at Indian Springs was a public debacle of political brinksmanship that—in a grim foreshadowing of the Nullification Crisis a few years later—pitted a southern state against the federal government. The verbal conflict very nearly became a martial one; and it was a situation which the southern tribes, for all their ingenuity and perseverance, could do little to avert or avoid.

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<sup>92</sup> Adams, *Memoirs*, 7: 113. Henry Clay was absent yet again, this time with influenza.

<sup>93</sup> William Clark to James Barbour, March 1, 1826, *ASP: Indian Affairs*, 2: 653.

Beginning in 1826 and fueled by the removal message of James Monroe and the federal government's acrimonious conflict with Georgia, the topic of Indian emigration arose and recurred with exponential frequency and volume in Congress. The debate was taken up by newspaper editors, Christian missionaries, men and women of letters, and ordinary citizens. Most whites came to have a strong opinion on the prospect of removing the tribes to the American West. Some believed the project was essential for the country's near- and long-term prosperity. Others, in the minority, shuddered at the stain of ignominy that removal was sure to leave upon the nation's character.

**Chapter 5**  
**“The Question Was What Should Now Be Done”**  
**(March 1826-February 1829)**

James Monroe’s message of January 1825 did not introduce the question of removal to Congress or the American public. But his endorsement bestowed a legitimacy on the concept of removal that had not yet been seen in American policymaking. Monroe’s proposal, vague as it was, provided both a template and an excuse for bringing a potential program of removal to the center of political discourse. The events and controversy surrounding the Treaty of Indian Springs, moreover, ensured that this opportunity to debate Indian policy would be taken up. In Congress, it rapidly became impossible to discuss feeding the starving Seminoles in Florida, or expanding the Cumberland Road, or tracking down white fugitives from justice hiding in Indian country, without the conversation turning into a debate over Indian removal itself.<sup>1</sup> Indeed, after 1825 “removal” superseded “emigration” as the effective word when white statesmen discussed the relocation of the American Indians. This shift in wording reflected a hardening of attitudes towards the Indian tribes, their lands, and the future of the United States. If emigration was benignly palatable to whites who wistfully hoped the Indians would simply and without further ado get out of the way, taking their government-issued muskets, blankets, foodstuffs, and cash with them, removal carried connotations of political authority, racial superiority, and a rapidly diminishing patience with the status quo.

John Quincy Adams’s comment in December 1825 that “the question at hand was what should now be done” referred specifically to the immediate controversy with Georgia and the Creeks. But it could equally have spoken to the unresolved question of the proper relationship of the Indians to the United States. It was a relationship, many members of Congress contended, that could not long remain in its current ambiguous state, particularly in the aftermath of the

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<sup>1</sup> Register of Debates, Senate, 19<sup>th</sup> Congress, 1<sup>st</sup> Session, pp. 346-350; H. of R., 19<sup>th</sup> Congress, 1<sup>st</sup> Session, p. 2133

Treaty of Indian Springs and the execution—or murder, as southern statesmen contended—of William McIntosh. In the House of Representatives, four bills were presented during a five-week period in February and March 1826. One bill included a provision for civilizing and “preserving from extinction” the Indians living near white settlements—that is, living east of the Mississippi River. This “melioration of their physical and moral condition,” as the bill phrased it, “can only be obtained by removing the Indians from the operation of those causes which have occasioned their declension.” Another bill was intended to carry out the provisions of the Creek treaty of 1821, which promised white claimants in Georgia a recompense for lost, stolen, or damaged property in the frontier wars of the 1790s (discussed in Chapter 3). The third bill required “additional or special licenses” for private traders wishing to barter deep inside Indian country, well away from the Indian agencies. The fourth recommended a “General Superintendency of Indian Affairs” within the War Department. The superintendent would serve as a sort of undersecretary of Indian affairs, and in fact was the job Thomas McKenney already held, albeit without congressional sanction.<sup>2</sup>

These proposed bills were largely repetitions of earlier ones, and served little real purpose except to keep active a discussion of Indian affairs in Congress. But this many politicians wanted to do, for three things were increasingly clear to American policymakers. The concept of assimilation was, thanks to James Monroe, officially defunct. No longer would the government spend time and treasure in efforts to incorporate the Indians into white society. Far worse for those Indians who had for years been living in houses, cultivating cotton and corn, owning and trading black slaves, and participating in the international economy—in short, living exactly as white southerners lived—was the rhetoric coming from George Troup and the Georgians, who

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<sup>2</sup> U.S. Bills and Resolutions, 19<sup>th</sup> Congress, 1<sup>st</sup> Session, H.R. 113 (February 21, 1826), H.R. 163 (March 18, 1826), H.R. 189 (March 29, 1826), and H.R. 195 (March 31, 1826).

expressed the sentiment of many whites who wanted no proximity to Native peoples, regardless of culture or modes of living. For them, red could never become white. Lastly, James Barbour's February 1826 plan for the American Indians made it clear that, in the eyes of the government, the Indians must be removed—but not, as had often been promised in earlier years, for the benefit of being free from white corruption and living as they pleased, under their tribal identities. This was a fundamentally different paradigm: the tribes would remove, but their autonomy was presumed gone forever.

And yet the Indians remained in the East, and the tribes were, legally, still sovereign entities. To many members of Congress this was an increasingly vexing and untenable situation. This became apparent during the first session of the Nineteenth Congress. On Monday, March 20, 1826, Senator Thomas Buck Reed of Mississippi rose to mention that more than half his state was still occupied by the Choctaw and Chickasaw tribes. And, because the state of Mississippi had never extended its jurisdiction over the tribes, the Indian country within the boundaries of Mississippi had become a refuge for American citizens seeking to escape justice. Reed gave several examples, the most peculiar of which was a Tennessean who had fled from his crimes and set up a sort of feudal state of “fifty or a hundred persons, living on his lake, who know no other authority except his own.” While, Reed conceded, the Indians had laws and traditions of their own, they had no right to turn their territory into an asylum for white lawbreakers. Reed spoke “particularly to those gentlemen who were not acquainted with the subject, having no Indian territory within their limits, that the Indian territory in Mississippi affords a complete sanctuary for debtors and vagabonds and criminals from every part of the Union.” His message was clear: the problem of the close proximity of Indian tribes to white settlements was not one with which every member of Congress could empathize; but it was one to which every state, via



its emigrating malefactors, contributed. What, Reed asked, could the individual states do about this problem? Did the state have the right to forcibly remove white Americans from Indian country and put them on trial? Mississippi's legislature had recently said no, though Reed's personal opinion was yes. He therefore proposed a resolution asking for clarification as to what extent a state government, "by its own authority and power, without the aid of the General Government," had the right to enter into Indian country and extradite American citizens hiding from the law. On this question Reed said he would be particularly interested in the opinion of the senators from Georgia and Alabama.<sup>3</sup>

It was a clever strategy on Reed's part. By mentioning the Indian country as an extralegal refuge for white Americans, he was able to apparently digress into a discussion of the Indians' "actual posture in our social and political order", which meant a discussion of their removal. On one question, said Reed, his opinion was unambiguously settled: "that the prospect of civilizing these People by the actions of surrounding communities, is illusive. It is a dream which can never be realized." Furthermore, the Indians, so long as they were exempt from state and federal laws, would never consent to be removed. If a removal policy was not pursued, the senator emphasized, the Indians of Mississippi "will not last for twenty years longer." For Reed, both the situation and the solution were obvious: The Indians could not be civilized, they could not survive where they now were, and they would never consent to abandon their homelands "until our legislation can, in some form or other, be brought to act on these People."<sup>4</sup> With these words, Reed introduced the need for an Indian removal act.

Moreover, by inviting comments from the Georgia and Alabama delegations, Reed revealed the sectionalism that was increasingly present in congressional discussions of the

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<sup>3</sup> Register of Debates, Senate, 19<sup>th</sup> Cong., 1<sup>st</sup> Sess., 346-7. (March 20, 1826)

<sup>4</sup> *Ibid.*, 348-9.

Indians and the American government. In April 1826, for example, an argument sprang up in the House of Representatives between John Cocke of Tennessee and John C. Wright of Ohio. Cocke, the chairman of the House Committee on Indian Affairs, brought for consideration a bill for the relief of the Florida Indians, who were experiencing famine and were, as Cocke put it, consequently committing, “from the pressure of want, depredations on the white population in all directions around them.”<sup>5</sup> But the bill also contained an appropriation “to pay the expense of removing the Indians West of the Mississippi.” Wright objected, claiming that Cocke was attempting “to legislate indirectly on so important a question” as Indian removal. At this Cocke took offense and accused Ohio of hypocrisy, since its citizens had already benefited from the emigration of Indians from their state. Though the bill was amended to include only a provision for relieving the Florida Indians, and the proposed allotment was reduced from \$50,000 to \$20,000, the Ohio delegation succeeded in tabling the bill, an embarrassing defeat for the Tennessean.<sup>6</sup>

The tension in Congress over the Indian issue was not confined to northern versus southern members, however. Political allies from the same region also found themselves at loggerheads, to their surprise and dismay. For instance, Senators John Branch of North Carolina and John Berrien of Georgia held similar political philosophies and both had supported Andrew Jackson in the election of 1824. But when Berrien rose during that spring session to support a bill providing for the family and other supporters of the late William McIntosh, Branch immediately opposed it on two grounds. First, the resolution precluded an inquiry into the just claims of the McIntosh faction, which Branch seems to have found suspicious. Second, it contravened the just-ratified Treaty of Washington, which already allocated up to \$100,000 to the McIntosh party,

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<sup>5</sup> Register of Debates, H. of R., 19<sup>th</sup> Cong., 1<sup>st</sup> Sess., 2133-34.

<sup>6</sup> Ibid., 2135.

\$15,000 of it immediately.<sup>7</sup> Berrien expressed incredulity that anyone should think a justification necessary, as McIntosh “gave up his life a victim to our policy and wishes.”<sup>8</sup> Branch thought this remained to be seen. If the death of McIntosh resulted from his allegiance to the wishes of the United States, that was one thing. If, however, he had died “in yielding to his mercenary desires” and had “fallen by any influence exerted over him by the authorities of Georgia, direct or indirect,” in violation of the president’s wishes, then “let him look to the quarter for whom he had made the sacrifice.” These were harsh words from a nominal ally. The resolution was submitted to the Indian Affairs committee for further inquiry—a legislative stalemate.<sup>9</sup> In short, much energy and rhetoric was devoted to the topic of the Indians, but to no avail. The ambiguous status of the tribes remained, and nothing was getting accomplished to change that. As yet, by the spring of 1826, there had not been a single congressional debate specifically about Indian removal. But senators and representatives had energetically responded to bills and motions that could be construed as pertaining to removal, and few doubted that a major debate was in the making. Those who welcomed such a debate were probably in the minority. For years, Indian affairs had been largely in the hands of the executive. Members of Congress, however, were now taking an increasingly keen interest in Indian policy, and finding it to be a divisive, and potentially explosive, issue.

### **The Georgia Survey**

The divisiveness stemmed in part from the continuing determination of Georgia to be its own master in its dealings with the neighboring Indian tribes. In July 1826, when Congress was adjourned and John Quincy Adams had left for Massachusetts upon the death of his father,

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<sup>7</sup> Register of Debates, Senate, 19<sup>th</sup> Cong., 1<sup>st</sup> Sess., 620-1; U.S. Statutes at Large, 7: 288.

<sup>8</sup> Register of Debates, Senate, 19<sup>th</sup> Cong., 1<sup>st</sup> Sess., 622.

<sup>9</sup> *Ibid.*, 622.

Governor George Troup sent two of the state's civil engineers into Cherokee territory. Their mission was to chart the hilly northwestern realm of Georgia for the purposes of plotting a canal or railroad route that would connect the Tennessee River to the Georgia interior. The surveyors, Hamilton Fulton and Wilson Lumpkin, were prevented from doing so by Cherokee Chief Charles Hicks. Troup called out the state militia to ensure the survey would proceed.<sup>10</sup>

It was true that Charles Hicks—"who may justly be considered King of the Cherokee Nation, if governing by a nod may be considered kingly power," according to Lumpkin—had informed the two men that they were trespassing and must leave. But he had done so politely, having invited Fulton into his own living room to discuss the matter. Fulton himself, though annoyed and inconvenienced, took pains to point out to Troup that Hicks had intended no insult nor made any threat other than the confiscation of the white men's instruments.<sup>11</sup>

When Troup called up several companies of cavalry for the "protection of the Engineers," therefore, his action caused concern in both Georgia and Washington. Between February 1826, when the Treaty of Washington was signed, and July, things were largely quiet between the governments of Georgia and the United States. But the peace was misleading; the controversy with Georgia and the Indians, dating back to 1820, was entering an explosive new phase. Upon hearing of the governor's unprecedented action, the editors of the anti-Troup Augusta Chronicle confessed their frustrated hope that "this undignified and unmanly violence had subsided" and that the governor "had seen the error of his past conduct."<sup>12</sup> The National Intelligencer of Washington, well aware that Troup had intentionally exacerbated the controversy with the Creeks in 1825 (though the paper had remained quiet at the time), publicly pleaded for restraint

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<sup>10</sup> Adams, Memoirs, 7: 136.

<sup>11</sup> Wilson Lumpkin to George Troup, June 29, 1826, and Hamilton Fulton to George Troup, June 28, 1826, both reprinted in the Augusta Chronicle, July 12, 1826.

<sup>12</sup> Augusta Chronicle, July 12, 1826.

between Georgia and the Cherokees. This tribe, as the Intelligencer put it, had been more successful at “an amalgamation with the Whites, than any other portion of the aboriginal stock.” The Cherokees, in fact, were “almost as much Whites as Indians.”<sup>13</sup> Not everyone agreed, of course. The editors of Georgia’s Darien Gazette promptly condemned those of the Intelligencer for the “pride and insolence of overweening arrogance” that the Washington paper demonstrated by commenting on Georgia’s situation.<sup>14</sup> Another of Georgia’s newspapermen was livid at the “opposition” of the Cherokees. “Should they not be more circumspect than they have been of late,” he warned, “their impertinence will demand a corresponding and summary corrective.”<sup>15</sup> No violence, however, broke out; and when commissioners from Georgia and Alabama spent the summer and early autumn running a boundary line between their respective states through Indian territory, the tribes protested, but did not interfere. More than one newspaper was happy to interpret this lack of aggression as acquiescence.<sup>16</sup> Troup himself bristled at the suggestion that he had ever considered the use of force to run the survey—while at the same time affirming Georgia’s right to go even further. Writing to Secretary Barbour, Troup claimed that

The United States Government, no more than any foreign Government, is permitted to insult officers of Georgia, within the territory of Georgia, occupied in the discharge of their lawful duty. Georgia has the right, which she always had, in common with the colonies and colonizing countries, to prescribe limits within her charter to the territories of the aborigines. It is no derogation from this right that Georgia has never exercised it but on terms of treaty; if she has forborne, from motives of humanity, she may deserve praise, but ought not to suffer loss.

Moreover, asserted Troup, Georgia had, and had always possessed, the right to remove the Indians from its lands. Just because the right had not been exercised did not mean it would

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<sup>13</sup> Daily National Intelligencer, July 15, 1826.

<sup>14</sup> From the Darien Gazette (GA), reprinted in the Daily National Intelligencer, August 18, 1826.

<sup>15</sup> From the Georgia Messenger, reprinted in the United States’ Telegraph (Washington, D.C.), July 19, 1826.

<sup>16</sup> From the Milledgeville Journal, reprinted in the Daily National Journal (Washington, D.C.), October 19, 1826.

forever remain latent.<sup>17</sup> In his November 1826 message to the state's legislature and citizens, Troup declared that "Wrong has been done to Georgia, her views misrepresented, and her character traduced; but wrong will come to right; and what prejudice has misrepresented, history will correct."<sup>18</sup> Determined to fulfill his own prophesy, Governor Troup, unbeknownst to the Adams administration, prepared to survey the land reaffirmed as Creek territory by the Treaty of Washington. In early December, Adams, knowing that Congress was soon to reconvene but perhaps also suspecting that the controversy with Georgia would soon reach a crescendo, took a moment from refining his second annual message to record a stark comment in his diary: "The days of trial are coming again."<sup>19</sup>

They were not long in coming. During the last week of January 1827, the Adams administration learned from Creek agent John Crowell that a new team of surveyors from Georgia was engaged in running its lines on Creek lands, west of the territory ceded by the Treaty of Washington. Georgia, however, refused to recognize the Treaty of Washington and claimed its surveyors were on state territory. The chiefs and leaders of the Creek nation politely but firmly forbade the survey, and appealed to the federal government for assistance, whereupon the surveyors—intimating they were in grave danger—appealed to Governor Troup for protection.<sup>20</sup> Adams knew he had to respond on the side of the Creeks but was unsure how. The existing laws were of little help. The current Trade and Intercourse Act, which in theory (but not always in practice) regulated American interactions with the Indians, dated back to 1802. The act forbade American citizens to survey or settle on Indian lands (Section 5) and offered two

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<sup>17</sup> George Troup to James Barbour, August 26, 1826, ASP: Indian Affairs, 2: 743.

<sup>18</sup> George Troup, November 7, 1826, ASP: Indian Affairs, 2: 731.

<sup>19</sup> Adams, Memoirs, 7: 193.

<sup>20</sup> John Crowell to James Barbour, January 15, 1827; Little Prince et. al. to "The surveyors running the line west of the treaty," January 21, 1827; Wiley Williams to George Troup, January 22, 1827; James A. Rodgers to Troup, January 23, 1827, ASP: Indian Affairs, 2: 862-6.

possible remedies: Section 16, which authorized the military to arrest any person trespassing in Indian country and transport him to a civil authority in the three nearest states or districts for trial; and Section 17, which stated that any person charged with violating the act could be apprehended anywhere in the United States (or territories) by the military and put on trial as if the crime had been committed in the state or territory where the person was apprehended. It also authorized the executive to use the military to enforce the act.<sup>21</sup> Henry Clay urged the invoking of Section 17 and sending the army to protect the rights of the Creeks, not for any love of the Indians, but because the nationalist in him despised Troup's petty machinations. Adams declined, thinking Section 16 preferable. Neither was truly applicable, and in fact the cabinet seems to have been unsure of the distinctions between the two alternatives. The president was merely grasping for any legal statute or precedent to guide him. "The Act of 1802 was not made for the case," he realized, "and before coming to a conflict of arms I should choose to refer the whole subject to Congress."<sup>22</sup>

Meanwhile James Barbour wasted no time, sending out several sets of instructions in twenty-four hours. First he wrote to John Crowell, instructing him to commend the Creek chiefs for their proper—meaning nonviolent—protest and ask that they now leave the matter in the hands of the government. The president felt "the binding obligation of the treaty of Washington no less forcibly than they," Barbour assured the agent. It was Adams's intention "to execute faithfully every clause and condition thereof." Next he wrote to Troup. Despite Adams's wish to "avoid all irritating expressions," Barbour used uncommonly strong language, insisting that the treaty—the treaty he had authored, at considerable expense to his time, energy, and health—would be honored by the United States, which included the state of Georgia. "The treaty of

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<sup>21</sup> U.S. Statutes at Large, 2: 141-45.

<sup>22</sup> Adams, Memoirs, 7: 219.

Washington, like all other treaties which have received the constitutional sanction,” he avowed, “is among the supreme laws of the land. Charged by the constitution with the execution of the laws, the President will feel himself compelled to employ, if necessary, all the means under his control to maintain the faith of the nation, by carrying the treaty into effect.” “All the means” included ordering both the federal marshal in Savannah, John H. Morel, and the United States attorney in that city, Richard W. Habersham, to arrest the surveyors. Not trusting the speed or discretion of the mail, Barbour ordered an army officer to hand-deliver all four letters.<sup>23</sup> The following day, however, Barbour sent another note to Crowell, instructing the agent to determine what price the Creeks would accept for the strip of land in question. If the Indians could simply be bought off, so much the better.<sup>24</sup>

After reflection, President Adams sent on February 5, 1827, what he termed “the most momentous message I have ever sent to Congress.”<sup>25</sup> He did not exaggerate. The Creeks, he informed Congress, had invoked the protection of the federal government to defend their rights as guaranteed by a ratified treaty. Quite possibly, they had also arrested one or more of the surveyors. Even so, “Their forbearance and reliance on the good faith of the United States will, it is hoped, avert scenes of violence and blood, which there is otherwise too much cause to apprehend will result from these proceedings.” The message then delineated the stipulations of the Trade and Intercourse Act of March 30, 1802, and the punishments prescribed for white intruders in Indian country. Legally, Adams could have invoked both processes: attempted to arrest the surveyors while they were still on Indians lands, while simultaneously charging them with a federal crime, which would allow them to be pursued by the Army anywhere in the

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<sup>23</sup> James Barbour to John Crowell, January 29, 1827; Barbour to Troup, January 29, 1827; Barbour to John H. Morel, January 30, 1827; Barbour to R. W. Habersham, January 30, 1827; Barbour to Lieutenant J. R. Vinton, January 30, 1827, *ASP: Indian Affairs*, 2: 864-5.

<sup>24</sup> James Barbour to John Crowell, January 31, 1827, M21 3: 349.

<sup>25</sup> Adams, *Memoirs*, 7: 221.



nation. He balked at invoking Section 17 of the act because the surveyors, although engaged in illegal activity, believed themselves to be operating under legal orders from the chief executive of Georgia. They had also been informed that they would be protected by the state militia. Had he sent in the United States Army, Adams stated, “a conflict must have ensued, which would itself have inflicted a wound upon the Union, and have presented the aspect of one of these confederated States at war with the rest.”<sup>26</sup>

There had been previous conflicts between the federal government and individual states in American history, most notably the Virginia and Kentucky Resolutions of 1798, which declared the Alien and Sedition Acts (signed into law by President John Adams) unconstitutional. There had also been moments of violence or potential violence between the United States Army and American citizens, as during the so-called Whiskey Rebellion of 1791-1794, when a federalized combined militia force of 13,000 men under the direct command of President George Washington silenced a tax protest in Pennsylvania.

But Adams was correct in his assertion that there was no previous instance in which the disagreement between state and federal authority “has been urged into a conflict of actual force”—if not civil war, at least a potential prelude to it.

In the present instance [Adams concluded], it is my duty to say, that if the legislative and executive authorities of the State of Georgia shall persevere in acts of encroachment upon the territories secured by a solemn treaty to the Indians, and the laws of the Union remain unaltered, a superadded obligation, even higher than that of human authority, will compel the Executive of the United States to enforce the laws, and fulfill the duties of the nation by all the force committed for that purpose to his charge.<sup>27</sup>

Adams was preparing, or at least threatening, to send the United States Army into Georgia to guarantee the rights of the Creeks as specified by the Treaty of Washington. Adams’s February 5

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<sup>26</sup> Richardson, Messages, 2: 370-2.

<sup>27</sup> Richardson, Messages, 3: 372-3.

message prompted a very mundane question in Congress: to which of the three standing committees—Military, Judicial, or Indian Affairs—should the message be forwarded? In both the Senate and House of Representatives, the debate over this seemingly minor concern lasted for days. In a less heated context the situation might have been seen as farcical, and hastily defused by cool heads. But this question of legislative jurisdiction cropped up at a particular moment. The Georgia survey, and Adams’s response to it, occurred at the precise time when southern members were already increasingly vocal about the need for legislation to address the Indian question—meaning the Indians’ refusal to emigrate. In January, Joseph M. White, the House delegate from Florida Territory, had introduced a resolution to “inquire into the expediency of providing by law for the removal of the Florida Indians.”<sup>28</sup> Congressman William Haile of Mississippi claimed that any effort to “make further appropriations for the purpose of obtaining land from the Indians, by treaty, was perfectly useless.”<sup>29</sup> George Washington Owen of Alabama took up the thread, avowing that if the federal government did not “speedily remove the Indians,” it would be the duty of the states to extend their jurisdiction over them. The result of all the efforts to assimilate the tribes, said Owen, “had not been to civilize and improve them, but rather tended to make them more savage, and to entail their presence as a curse upon the newer States.”<sup>30</sup> Sectional allegiance was crystallizing around Indian removal, as it had over slavery during the rancorous Missouri debates in 1819. Southern members increasingly assumed that legislation would be a requisite for removal, that the treaty system was antiquated and useless, and that the federal government could not be entirely trusted to promote southern interests.

The very real possibility of an armed confrontation between federal and state forces over the Creeks’ occupancy of a small stretch of western Georgia exacerbated this process. The

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<sup>28</sup> Register of Debates, H. of R., 19<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 600.

<sup>29</sup> Register of Debates, H. of R., 19<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 684.

<sup>30</sup> Register of Debates, H. of R. 19<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 838.

controversy also revealed deeper fears about the permanency of the Union. But who was to blame for this dangerous situation? In the Senate, John Berrien of Georgia hinted that Adams was power-hungry. Surely, he said, “every lover of peace, every friend to the Union” could devise another means of resolving the situation “without arraying a sovereign State of the Union against the Confederacy, either in the forum or in the field.”<sup>31</sup> Richard Mentor Johnson of Kentucky, for his part, was aghast at both the president’s message and Berrien’s rhetoric. Under no circumstances did he wish to see the United States pitted against an individual state. In a statement of haunting clairvoyance, Johnson predicted that “It was from such a conflict of powers that the Union was, hereafter, if ever, to be dissolved.”<sup>32</sup> In the House of Representatives, John Forsyth of Georgia, William Haile of Mississippi, and James Hamilton Jr. of South Carolina placed the blame for what was happening—and whatever might result—squarely on the shoulder of President Adams. Daniel Webster and Edward Everett, both of Massachusetts, and Robert Perkins Letcher of Kentucky blamed Troup and the removal fanatics in Georgia.<sup>33</sup>

The exchange between Forsyth and Webster was particularly acrimonious. On the afternoon of February 9, 1827, after hours of argument between the two men, Forsyth professed to want to see the entire matter settled by the judiciary. “That might,” replied Webster, “have been a remarkably good argument to address to the State of Georgia before she took the remedy into her own hands.”

It is a new mode of settling a Constitutional question [Webster continued], to seize the lands in dispute, and send out the Hancock troop of horse to defend the possession of them. But, at this stage of the affair, that appeal to the Courts comes with rather an awkward grace. When a man advances a claim against the lands of his neighbor, he makes his appeal to the law; but, when he forcibly enters into possession of them, he makes his appeal

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<sup>31</sup> Register of Debates, Senate, 19<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 269-71.

<sup>32</sup> Ibid., 271-73.

<sup>33</sup> Register of Debates, H. of R., 19<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 935-38.

to something different than the law.<sup>34</sup>

Forsyth tried to refer the president's message to the entire House and was rejected, 92 votes to 81. He then proposed referring it to the Judiciary Committee and was similarly defeated, 95 to 81. Daniel Webster moved to refer the subject to a select committee and won by a show of hands. Seven members, with Edward Everett as chair, were accordingly chosen.<sup>35</sup>

The debates of February 5 and 9 illustrate the growing complexities of Indian affairs as they appeared to American statesmen. The issues raised by Forsyth, Webster, Everett, and others over the situation with Georgia and the Creeks included the distinction between legitimate authority and usurped power, state rights vs. federal responsibility, judicial review, martial law, separation of powers, and sectional allegiance—plus the specter of civil conflict and even disunion. The most revealing comment, however, was uttered when Congressman Forsyth, in his anger and frustration, turned on Robert Letcher of Kentucky. Letcher had expressed sympathy for the Georgians and their “peculiar situation,” but also felt a “strong sympathy for the Indians, and deeply regretted the controversy that had arisen between them and the state of Georgia.”<sup>36</sup> At this Forsyth stood and professed incredulity and disgust. “What, sir, a Representative from Kentucky neutral between Indians and White People—between his brothers and this miserable and dependent tribe of Indians, in whose name, for years, money has been filched from your Treasury?”<sup>37</sup> Kentucky had been the first state admitted after the original thirteen. It was the home of Henry Clay—“Harry of the West”—and Richard Mentor Johnson, popularly (though incorrectly) believed to be the slayer of Tecumseh. More important than Kentucky's respected status in the Union, however, was Forsyth's stark differentiation between white and red. Forsyth,

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<sup>34</sup> Ibid., 1035.

<sup>35</sup> Ibid., 1058.

<sup>36</sup> Ibid., 1044-5.

<sup>37</sup> Ibid., 1050.

soon to become governor of his state, had never before hinted that racial loyalties should automatically trump other considerations. But it was clear to many House members, at least, as this long discussion drew to a temporary close, that the racial amalgamation of Native Americans and Anglo-Americans in which Thomas Jefferson had believed (or at least publicly proclaimed) was an impossibility.

Everett and the select committee drafted two resolutions declaring the Indian Springs treaty to be null and void, and the Treaty of Washington to be valid and in effect—legally redundant, since the Treaty of Washington itself did exactly that. But Everett also proposed an appropriation to purchase the remaining Creek lands in Georgia. “I am willing,” Everett said, “to give five times, ten times, the value of the land, (which, in fact, is said to be of no great worth,) to come to a peaceful adjustment of so unpleasant a controversy.”<sup>38</sup>

The widespread anxiety in Congress about the possibility of martial conflict between Georgia and the United States proved to be well founded. Upon receiving James Barbour’s letter of January 29, which relayed the president’s determination “to employ, if necessary, all the means under his control to maintain the faith of the nation, by carrying the treaty into effect,” Governor Troup responded in the most extraordinary manner possible: he threatened civil war. Declaring himself obligated to give the administration’s order “the defiance which it merits,” Troup declared:

You will distinctly understand, therefore, that I feel it to be my duty to resist, to the utmost, any military attack which the Government of the United States shall think proper to make on the territory, the people, or the sovereignty of Georgia; and all the measures necessary to the performance of this duty, according to our limited means, are in progress. From the first decisive act of hostility, you will be considered and treated as a public enemy; and with the less repugnance, because you. . . yourselves are the invaders, and, what is more, the unblushing allies of the

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<sup>38</sup> Adams, *Memoirs*, 7: 226; *Register of Debates*, H. of R., 19<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 1036.

savages whose cause you have adopted.<sup>39</sup>

Troup ordered the major generals of the Sixth and Seventh Divisions of Georgia militia to mobilize and prepare “to repel any hostile invasion of the territory of this State.” They were also to work in cooperation with the attorney and solicitor general of the state to prevent any surveyor from being arrested or to secure the release of any who had been.<sup>40</sup> Assuming both sides to the quarrel kept their pledge—the Adams administration to protect the rights of the Creeks and the Georgia executive to prevent precisely that—the potential for armed collision between different branches of the federal system had grown from disturbingly possible to alarmingly likely. If that happened, the event would at best alter the history of the republic. At worst, it could end it.

Adams, who received no real support from Congress, backed down. A select Senate committee chaired by Thomas Hart Benton requested the president to use every exertion to convince the Creeks to accept payment for their lands. Benton included a dire warning. “The committee will not enlarge upon the frightful consequence of civil wars,” he wrote. “They are known to be calamitous to single Governments, and fatal to confederacies. . . . A contagious fury rages in such contests. No matter how small the beginning, or how insignificant the cause, the dissension spreads, until the whole confederacy is involved.”<sup>41</sup> The president agreed. In a departure from usual procedure, Superintendent Thomas McKenney was sent into Georgia to commence talks before Congress even had time to appropriate funds for the purchase. McKenney and John Crowell spent the summer in negotiations with the Creeks, which allowed time for tempers to cool in both Washington and Milledgeville. In the autumn McKenney and Crowell concluded an agreement in which the tribe was obliged to accept \$27,491 and cede all

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<sup>39</sup> George M. Troup to James Barbour, February 17, 1827, printed in Edward Jenkins Harden, The Life of George M. Troup (Savannah, GA: E.J. Purse, 1859), 485-86.

<sup>40</sup> Harden, Life of George M. Troup, 486-87.

<sup>41</sup> Relinquishment of the Claims of the Creeks to the Lands in Georgia, American State Papers: Indian Affairs, 2: 871.

claims to its remaining land inside Georgia's boundaries, a rectangle of land comprising the western edges of today's Carroll, Heard, and Troup Counties, totaling about one million acres. The Creeks had little choice but to take the money. The alternative was to risk seeing their home become a battleground.<sup>42</sup>

But as was often the case with Georgia, the resolution of one controversy coincided with the growth of another. During the same summer of 1827, the Cherokee nation held a constitutional convention at its capital of New Echota, in northwest Georgia. A centralized government, which included the informal Cherokee National Council (a gathering of leaders from different towns), was a recent innovation of the Cherokees. Before the turn of the nineteenth century, each Cherokee town was largely independent of the others and was under no accepted obligation to follow the decisions of the others. Now, however, a group of "progressives"—who favored the ways of white Americans—sought to institutionalize a central tribal government, believing it the only way to maintain the territorial integrity of the Cherokee nation. Confronting them were the so-called traditionalists, who bitterly opposed incorporating both white culture and American political systems into Cherokee society. The progressives were in the minority, but exploited a power vacuum left by the deaths of powerful traditionalists such as Principal Chief Path Killer and Charles Hicks in early 1827 to push a constitution through the National Council. On paper, at least, the new constitution—modeled very closely on the U.S. Constitution, with executive, legislative, and judicial branches of government—would at last resolve the unsettled relationship of the Cherokees to the whites. The Cherokees and the Americans were to be politically independent and diplomatically equal.<sup>43</sup>

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<sup>42</sup> U.S. Statutes at Large, 7: 307-8. (November 15, 1827; proclaimed (not ratified, as it was not officially a treaty) March 4, 1828.)

<sup>43</sup> Theda Perdue, "Traditionalism in the Cherokee Nation: Resistance to the Constitution of 1827," The Georgia Historical Quarterly, Vol. 66, No. 2 (Summer, 1982), 159-170.

No one in the United States government gave the Cherokee constitution much thought until the Twentieth Congress commenced in December 1827. When President Adams sent his third annual message to Congress, it made no mention of Georgia or of any southern Indian tribe.<sup>44</sup> He knew to do so would be pointless. “There is a decided majority of both Houses of Congress in opposition to the Administration—a state of things which has never before occurred under the Government of the United States,” Adams correctly noted.<sup>45</sup> In January 1828, even his closest allies began to desert him. Secretary of War James Barbour and Treasury secretary Richard Rush both began campaigning for the post of minister to the Court of St. James in London, “as a harbor from the storm” to come.<sup>46</sup> Barbour was particularly anxious to exit the administration and thus “save himself from the wreck.” Adams did not blame him. “I know not that I could do better than to gratify Governor Barbour, who has rendered faithful service to the country, and whose integrity and honor are unsullied. In my own political downfall I am bound to involve unnecessarily none of my friends.” Despite these admirable sentiments, Adams was left feeling lonely, embarrassed, and helpless. He knew, as did everyone, that Andrew Jackson would be his opponent in the fall election, and his ego desperately feared losing. But he also wished his ordeal over and done with; he dreaded the necessity of living through the remaining fourteen months of his term.

The last significant discussion of Indian affairs during the presidency of John Quincy Adams was spurred by the Cherokee Constitution, drafted and ratified in July 1827 but only now, in early 1828, with Congress in session, stirring up talk in the capital. Speaking to a Baptist missionary who had spent time among the Indians, Adams expressed his sorrow for the situation of “that unfortunate race of hunters, who are themselves hunted by us like a partridge upon the

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<sup>44</sup> Richardson, *Messages*, 2: 378-392.

<sup>45</sup> Adams, *Memoirs*, 7: 367.

<sup>46</sup> *Ibid.*, 7: 410, 474, 525.



mountains.” Adams admitted the gross inconsistency of United States Indian policy, such as it was. “We have talked of benevolence and humanity, and preached them into civilization, but none of this benevolence is felt where the rights of the Indian come into conflict with the interest of the white man.” As to the Cherokee Constitution, Adams believed “this imperio in imperium”—state within a state—to be impracticable and futile. He knew that most white statesmen would decry the Cherokees’ action as illegal, violating Article IV, Section 3 of the U.S. Constitution, which prohibited any new state from being formed within the jurisdiction of any other state. Adams thought the best thing to do with the American Indians would be to make them citizens, “as a part of our own people.” He also knew it was a forlorn hope: “Even this the people of the States within which they are situated will not permit.”<sup>47</sup> From now on, Adams was merely marking time. The national discussion over Indian policy—which now meant the debate between pro- and anti-removal advocates—moved to the United States Congress.

### **The First Removal Debate**

In February 1828, two historic events occurred. One was the inauguration of the Cherokee Phoenix, a bilingual newspaper published from the Cherokee capital of New Echota, in northwest Georgia. Its articles and editorials came to be reprinted in every significant newspaper in the United States. The name, referring to a rising, a rebirth, was chosen by its editor, a brilliant young man of twenty-four named Elias Boudinot. The first issue, dated February 21, printed the Cherokee Constitution on the front page.<sup>48</sup>

The other event began three days earlier, on February 18, when for the first time members of Congress engaged in an expansive, detailed, and impassioned argument over the removal of the American Indians. The debate occurred in the House of Representatives, which

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<sup>47</sup> Ibid., 7: 410-11.

<sup>48</sup> Cherokee Phoenix, February 21, 1828.

had witnessed smaller rhetorical skirmishes in December and January. Like those briefer quarrels, this one was triggered by a seemingly innocuous bill. Congressman George McDuffie of South Carolina, serving as the chairman of the House Committee on Ways and Means, proposed adding \$50,000 to the appropriation for the Indian Department for 1828 for extinguishing the Cherokee title to any lands in Georgia, and for “aiding the said Cherokees, and such other Indians” who were willing to move west of the Mississippi. Similar bills had been proposed on countless occasions. Now, however, William Haile of Mississippi was not satisfied with the phrase “such other Indians” and wanted the Chickasaws—the Indians living within his own state—explicitly named in the legislation. When Wilson Lumpkin objected to this amendment, Haile was offended, having expected the support of the Georgia delegation, of all people. William McLean of Ohio stood and asked that members keep the committee he chaired, Indian Affairs, out of the debate, as this bill stemmed from Ways and Means. A representative from Maine named Peleg Sprague, seeing the way the discussion was trending, begged the House not to enter upon a general discussion of Indian affairs. Very often, Sprague complained, “subjects of the greatest weight were forced upon the House in the most unexpected manner, by mere incidental motions.”<sup>49</sup>

So it was in this instance: an unremarkable and routine request opened the floodgates of a debate that lasted for several days. As if determined to prove Sprague’s point, Joseph White, the delegate from Florida Territory, rose and vowed to oppose any appropriation that included the removal of the Cherokees, Creeks, and Chickasaws but not the Indians in Florida. Admitting that “the claims of Georgia may be strong,” White insisted that the “certainty of future collision” between white citizens and Indians was as applicable to Florida as anywhere else. Wilson Lumpkin (who had been one of Georgia’s surveyors in the controversy of the previous year)

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<sup>49</sup> Register of Debates, H. of R., 20<sup>th</sup> Cong., 1<sup>st</sup> Sess., 1533-7.

countered by declaring this particular appropriation to be the victim of a misunderstanding, which “could arise only from a want of attention on the part of the House.” The bill at hand, as he interpreted it, was intended to finally fulfill the Compact of 1802 with Georgia. It necessarily involved the Cherokees, but was inapplicable to the Chickasaws, Seminoles, or any other group of Indians. And, said Lumpkin, while “neither force nor favor was to be made use of” in convincing the tribes to accept the money, it was a fact that the government could not proceed without the appropriation. He well knew the current unpopularity of Georgia in Congress, and the “impressions which many gentlemen had received” in relation to the state’s claims. But those claims, he asserted, were not unreasonable. In fact, “her forbearance on this subject” was without parallel. Georgia had been waiting twenty-five years for the compact to be fulfilled, Lumpkin reminded his colleagues, and in the meantime had witnessed “the extinction of the Indian title to entire States which had been settled into the Union.”<sup>50</sup>

Haile’s amendment to include the Chickasaws was defeated, but Lumpkin’s last comment had been a verbal swipe at Ohio and the other states formed from the old Northwest Territory, and everyone recognized it. Congressman John Woods, an attorney and former schoolmaster from Butler County, Ohio, whose anti-removal sentiments had been made clear during the previous congressional session, proposed paying the Cherokees their due but striking any language that referred to aiding Indian emigration. He also cautioned the members to tread lightly. “If a general course of policy was thus to be introduced and sanctioned by an item in the appropriation bill,” he warned, “that bill might be made an instrument of changing the whole course of the Government.” Like Sprague of Maine, Woods thought removal should be discussed on its own terms, not as an adjunct to an appropriation bill. McDuffie, the Ways and Means chair, disagreed, claiming that a removal policy was now fairly before Congress, “and if it was to

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<sup>50</sup> Register of Debates, H. of R., 20<sup>th</sup> Cong., 1<sup>st</sup> Sess., 1537-9.

be discussed at all, the time was ripe.” For himself, McDuffie did not question that it was the “settled policy of this Government” to aid and encourage the emigration of the Indians to the West. The current and previous administrations had openly supported the scheme, and even if Congress had not yet officially approved it, McDuffie thought most members in the chamber believed the Indians must either remove or “infallibly sink into a state of indescribable and irretrievable wretchedness.” The notion of civilizing them was “wholly delusive.” Therefore the government should, he argued, “make use of all proper and legitimate means” to see to their removal.<sup>51</sup> By now the hour was late, and the House was happy to adjourn. The members reconvened the next morning, now fully prepared to discuss the various plans for Indian removal and the implications of such a policy.

Given the rapidity of American expansion in the years since the War of 1812—with seven new states added in that time, including, most recently, Missouri, west of the Mississippi River—it is remarkable that a full and frank discussion of United States Indian policy took so long to reach the floors of Congress. But the events which assisted white emigration into the South and West—the bizarre process of treaty making, including the blatantly fraudulent documents authored at Fort Jackson and Indian Springs, the Seminole War, and the Compact of 1802 between the United States and Georgia, among others—also created uneasy situations that made such a discussion unpalatable to many statesmen. The United States, contemporaries well knew, was still in its adolescence. The increasingly sectionalist sentiments and state rights rhetoric made most politicians, the Georgians excluded, tread gingerly around a direct discussion of a general removal—as opposed to the piecemeal removal of individual tribes or portions of tribes to address a specific situation (as in the Treaty of Washington after the execution of William McIntosh) or constituency (such as William Haile and his fellow Mississippians). Some

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<sup>51</sup> Ibid., 1539-40.

members, such as Sprague, were still reluctant to embark upon a deliberation of the whole House, either due to unease with the topic of removal or from weariness of the related issues, most notably the controversy with Georgia but also including the role of Indian agents, the precedent of the treaties, and the expense of the annuities. But the recent controversy between the federal government and the state of Georgia, an uncomfortable situation heightened by the recent Cherokee constitution, clearly led many congressmen to the conclusion that, like it or not, they had arrived at a definitive moment in American history and that a national debate over the unresolved relationship of the Indians to the United States could no longer be delayed.

During the following days of debate, three general opinions on Indian removal were revealed in the House of Representatives. Because no vote was taken and no quorum recorded, and only a handful of members spoke at any length, it is impossible to tally the precise distribution of these opinions for the Twentieth Congress. Those who opposed removal, however, were clearly in a minority.

Those who favored a removal policy were divided into two camps: those who enthusiastically supported removal and those who did so with reluctance. Among those who expressed unalloyed support for removing the Indians were men like William McLean of Ohio, Wilson Lumpkin of Georgia, William Haile of Mississippi, and Joseph White of Florida Territory. These men claimed that removing the tribes was for all practical purposes the fixed policy of the United States government and insisted that the Indians were destined for extinction if the policy did not soon come to fruition. McLean asserted that the concept of settling the Indians in their own colony west of the states and territories had long been before the American people, and that its origins lay “in the best feelings of the human heart.” This was an extraordinarily complex and difficult matter, McLean said, and “I am aware that this is a subject

about which there exists a great difference of opinion.” These differences between statesmen no doubt derived from good intentions, but it was “a melancholy truth” that the Indians once numbered in the tens of thousands and now counted themselves in the hundreds. True, McLean conceded, some Indians were in fact very rich, “but we all know, that more than nine tenths of them are, even at this hour, in a most wretched and pitiable condition.” If his colleagues believed the policy he supported to be an incorrect one, they must acknowledge that “it is an error of the head, and not of the heart.”<sup>52</sup> Lumpkin, who was ill, nevertheless spent the better part of two hours on February 20, 1828, insisting that removal was the confirmed policy of the nation, endorsed by Monroe, Calhoun, Barbour, and other “experienced and distinguished statesmen and patriots” who had arrived at the same conclusion. The time for debating this fundamental point was over. Rather, said Lumpkin, “that the time has arrived, when this Government must change its policy in relation to the Indians, appears to me to plain, so clear, and so self-evident, that I cannot see any reason for delay or hesitation. . . . sir, the day has already arrived when this state of things cannot longer exist.”<sup>53</sup>

Other members of the House were not so sanguine about the benevolent intentions of their colleagues in government. Nor did they believe that removal could be the “fixed policy” of the government, as the United States had never articulated a cogent and comprehensive plan in regard to Indian affairs. However, they were equally certain that the status quo was untenable. Representing this opinion was Oliver Hampton Smith, New Jersey-born and now representing Indiana. The key question at hand, according to Smith, was “whether we will continue the same destructive policy which has heretofore been pursued by the United States, or whether a more liberal and humane policy shall be adopted in relation to this People.” Smith was revolted by the

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<sup>52</sup> Ibid., 1559-65.

<sup>53</sup> Ibid., 1584-86.

treatment of the Indians at the hands of the United States. From the moment of the first landings at Jamestown and Plymouth, the Indians' lands were considered open to appropriation. Smith saw two things wrong with this so-called right of conquest. First, it was inarguably destructive to the Native peoples, "and if we continue the present policy, the time cannot be very far distant, when the last sound of the Indian must die on the Pacific." Moreover, Smith maintained that the right of conquest was simply a false doctrine, "founded on a principle, maintained by arbitrary governments alone, that power gives right." If one glanced at his neighbor's field, Smith asked rhetorically, and saw that his fellow was not as skilled at cultivation, did one then possess the right to drive him from the premises and take the land for himself? The rhetoric of "proper usage" of the soil, Smith asserted, was a mere pretext for theft.

Smith had equal condemnation for the treaty system. Yes, it was technically successful, in that white agents and commissioners, more often than not, acquired the lands sought by the United States. But how was this accomplished? By bribes and, at best, implicit threats. The result could not be properly termed a contract. It was far better to simply take the land by force. That, at least, would allow the United States to claim historical precedent as justification. Smith acknowledged that Indians occasionally attacked white people. But what of the all-important context? Though no excuse for murder, it was equally true that the Indians in question "have been generally defending their homes—the country that contained the bones of their fathers, and in which they found, at all times, an old associate in every spring, in every running spring, and even in the silent tree that stood near the wigwam or travelling path."<sup>54</sup>

However, the truly damning component of Indian affairs, claimed Smith, was that of the annuities. It was due to the "most destructive policy" of the yearly payments that the Indian tribes were melting away "like snow under a meridian Sun." When relying on themselves to

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<sup>54</sup> Ibid., 1543-4.

procure a livelihood, the Indians were “reasonably industrious.” The annuities, on the other hand, were an excuse for “idleness and the most abandoned dissipation.”<sup>55</sup> Smith emphasized that these policies of whites—right of soil, fraudulent treaties, and the annuities—were the bane of Indian existence and the cause for their current plight. In fact, he rebuked the House members who spoke of the inherent inferiority of the Indian to the white man. The Native peoples must, he reasoned, be improvable, or why send missionaries and teachers to set up schools among them? If anything, the Cherokee Constitution was all the evidence one needed to be assured that the Indians were “entirely susceptible of acquiring a sufficient quantum of knowledge to govern their own concerns[.]” Nor was the charge of ingratitude, so often leveled, at all just in regards to the Indians.<sup>56</sup>

Despite these sentiments, however, Oliver Smith was a supporter of Indian removal. While no “compulsory means” should be utilized, he felt it absolutely necessary that the Indian tribes emigrate beyond the Mississippi. The key concern in the debate over Indian policy was whether the United States had the legal right and moral obligation to act on behalf of the Indians, and whether their situation was dire enough to “require the interposition of the strong arm of the United States” in order to provide relief and prevent their total demise. This answer was a reluctant but unequivocal yes. He did not come to this conclusion easily, Smith stated, and was not at all confident of its success. But he could envision no more powerful “antidote” to the current crisis.<sup>57</sup>

Only a few members expressed firm opposition to removal. This mindset was represented by Congressmen John Woods and his Ohio colleague Samuel Finley Vinton. Woods rose and proclaimed his gladness that the question was at last “before us in its proper form and nakedness,

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<sup>55</sup> Ibid., 1544-5.

<sup>56</sup> Ibid., 1546-7.

<sup>57</sup> Ibid., 1545-6.



stripped of the pretence of disinterested humanity, which has been thrown around it.” The unending appropriations for the emigration of the Indian tribes were not, he asserted, “for their civilization and preservation—but for our interest, and only our interest.” For himself, Woods wanted to hear nothing more about Georgia and the Creek Indians. The Creeks had ceded every last acre of their land in Georgia, and “It is now a matter of no more interest to Georgia than Ohio, whether the Indians shall be removed West of the Mississippi or driven into the Gulf of Mexico.” Furthermore, despite the repeated referrals to James Monroe’s removal message, the current aims differed in both spirit and letter from the project articulated by the former president. Monroe had proposed a territory to be designated and a government to be laid out before the Indians’ arrival in the trans-Mississippi West. Rather than promoting the happiness and preservation of the tribes, Woods argued, the current measures would expedite their annihilation. If the southern Indians could not make a living on the fertile lands now in their possession, they could not sustain themselves anywhere. Some men in the government were calling on others to approve a plan for removal “as a measure of humanity,” while a true analysis of whether such a plan would achieve its stated object was conspicuously absent. Should the members of Congress sanction removal, said Woods, “the blood of these People, reduced by us to the condition of wretchedness and horror, in which ‘the living child is buried with the dead mother,’ will be upon our heads.”<sup>58</sup>

Obscured by the vehement disagreements in this debate, however (and others that sporadically cropped up during the congressional session), was the reality that every member of Congress—at least every one who spoke—agreed on three critical points regarding the relationship of the Indians to the United States. First, the Indian tribes were not independent nations, and were thus subservient to the United States government. Second, and a corollary to

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<sup>58</sup> Ibid., 1551-9.

the first, was the belief that the treaty-making system with the Indians was a waste of time and money and should be discontinued.<sup>59</sup> Third and most significant was the universal agreement across the political spectrum that the Indians were in dire straits. Though differing greatly as to the cause of the urgency, it was clear to statesmen that the status quo was unacceptable. United States Indian policy had to change, they thought, or the result would be the demise of the tribes, violence in the borderlands, or both. Even the very few who, like Samuel Vinton, defended the Indians' right to their own soil, did not believe they should be left to govern themselves, or were in fact capable of doing so.

What, then, was to be done? Joseph White, the Florida delegate, pointed out that he had, two years past, proposed an inquiry into extending the "absolute" authority of the United States over the Indians. "They are, and ought to be," he said, "considered minors, and governed as such." The Indians of White's own home territory had in 1821 been declared by then-Governor Andrew Jackson as "subjects of legislation, not of treaty," and his opinion had been affirmed by the joint Committee on Indian Affairs. Surely, stressed White, the United States had the right and the duty to consider every Indian as such, and to execute the plan of "that practical statesman and benevolent man," James Monroe. Nearly lost in the debate was George McDuffie's original motion to augment the funds for the Indian Department; almost as an afterthought, it was sent to the floor and approved by the House.<sup>60</sup>

It was one thing to speak of executing James Monroe's, or any one else's, proposal for removing the Indians. But resolving the political impasse was another matter. For all the facile tributes to Monroe, everyone suspected it would take a very different type of individual to enact a new paradigm in American Indian policy. All knew, too, that the administration of John

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<sup>59</sup> Though the treaty-making paradigm remained in place for another forty-three years.

<sup>60</sup> Register of Debates, H. of R., 20<sup>th</sup> Cong., 1<sup>st</sup> Sess., 1589-92. (February 20, 1828)

Quincy Adams was for all intents and purposes at an end, though he had a year left to serve. His new secretary of war, Peter B. Porter, was merely filling a necessary but temporarily irrelevant cabinet post. Both the White House and Congress considered Indian affairs to be in a state of deferral until a new administration took over.

## **Conclusion**

In the presidential election of 1828, Andrew Jackson won 100 percent of the vote in Georgia for the simple reason that John Quincy Adams was not on the ballot there. The other two states most dedicated to a policy of Indian removal, Alabama and Mississippi, elected Jackson with 90 and 81 percent of the popular vote, respectively.<sup>61</sup> Between Jackson's election and his inauguration, moreover, all three states extended their legal jurisdiction over the Indian tribes within their borders. Georgia acted first, on December 20, 1828. Alabama and Mississippi followed suit on January 29 and February 4, 1829. The statutes of the three general assemblies were not identical, though each state specifically mentioned the Indian tribe within its borders. The act of Georgia was the simplest. It incorporated the remaining Cherokee territory within Georgia into five northern counties and extended the laws of the state over the same, and authorized the state government to protect the "frontier settlements of this State from the intrusion of the Indians of the Creek Nation." Alabama's statute incorporated the Creeks in the state into existing counties and explicitly made them subject to the sheriffs, census takers, and circuit courts as individuals, not as members of a tribe. The act of the Mississippi legislature was the most specific. It abolished all tribal forms of government within the state (though it recognized tribal marriages and contracts) and declared all laws, statutes, and ordinances of Mississippi "to have full force,

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<sup>61</sup> Lynn Hudson Parsons, *The Birth of Modern Politics: Andrew Jackson, John Quincy Adams, and the Election of 1828*. (New York: Oxford University Press, 2009). Parson's table on p. 182 shows Jackson winning the vote in Georgia, 19,363 to 0; in Alabama, 17,138 to 1,938; and in Mississippi, 6,772 to 1,581.

power and operation over all the persons and property of and within the territory now occupied by the Indians.” The Indians were to recognize no authority except Mississippi’s elected officials and law enforcement officers. Any Choctaw or Chickasaw who exercised the “office of chief, mingo, head-man, or any other post of power, established by the tribal statutes, ordinances, or customs, of the said Indians, and not particularly recognized by the laws of this state,” faced a fine of up to \$1,000 and a term of imprisonment of up to twelve months. Georgia later added statutes that more specifically delineated state power over the Cherokees and gave explicit protection to Indians who sold or ceded lands to the state and made it a high misdemeanor, with a punishment of four to six years at hard labor, to interfere with any Indian wishing to enroll as an emigrant or in the process of emigrating west. Alabama’s act was to take effect on March 1, 1829, Georgia’s on January 1, 1830.<sup>62</sup> (Mississippi’s act contained no execution date, but would be implemented on January 19, 1830.)<sup>63</sup>

The southern tribes were alarmed by these state actions that coincided with Andrew Jackson’s election. But there was nothing Secretary of War Porter could do. On February 11, the electoral ballots were counted and, to the surprise of no one, Andrew Jackson, whose campaign had not even paused after the election of 1824, was chosen by a margin of 178 electoral votes to Adams’s 83. Upon hearing of Jackson’s election, President Adams immediately decided that most executive decisions, but particularly those which affected policy, would wait for the new administration. That same day, February 11, President-elect Andrew Jackson entered the city of Washington.<sup>64</sup>

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<sup>62</sup> Acts of the General Assembly of the State of Georgia. Vol. IV, 1823-1833. (Milledgeville, GA: Clark and Ragland, 1824-34), 4: 197. (December 20, 1828); Acts of the General Assembly of the State of Alabama, (Tuscaloosa, AL: McGuire, Henry, and McGuire, 1829), 65-66 (January 29, 1829); Laws of the State of Mississippi, (Jackson: State of Mississippi, 1838, printed by John D. Toy of Baltimore), 196-97 (February 4, 1829).

<sup>63</sup> Laws of the State of Mississippi, 208. (January 19, 1830).

<sup>64</sup> Adams, Memoirs, 8: 89, 96-97.

**Chapter 6**  
**Jackson's Mandate**  
**(February 1829-April 1830)**

In his inaugural address on March 4, 1829, Jackson offered only two sentences about his intended Indian policy. “A humane and considerate attention to the rights and the wants of the Indian tribes within our limits, consistent with the habits of our government, and the feelings of our people, it will be my sincere and constant desire to observe,” said Jackson. “A just and liberal policy is due to their dependent situation, and to our national character.” The significance of these few words, however, lay in what Jackson did not say. Unlike James Monroe twelve years earlier—whose first inaugural also devoted a mere two sentences to Indian policy—Jackson made no mention of cultivating “friendly relations” with the tribes, or the United States acting with “kindness and liberality” in its dealings with the Indians, or—most significantly—the imperative to “persevere in our efforts to extend to them the advantages of civilization.”<sup>1</sup> Jackson’s tone, and position, regarding the Indian tribes was clear: the American Indians were wards of the American government, children who needed to be protected and guided. The United States was to be a conscientious and just parent under Jackson’s administration. Left unsaid, but no doubt inferred by those who heard and read Jackson’s address, was the hint that parents were often stern for their children’s own good.

Andrew Jackson inherited a removal policy from his predecessors. He was reminded of this during his first weeks in office. Just as Jackson had offered his counsel about Indian affairs to James Monroe on March 4, 1817, so too did state representative Daniel W. Wright of Mississippi take the liberty of asserting on March 4, 1829, that “the present policy of the Government, is, to remove, at as early a period as possible, those tribes west of the Mississippi River.” Given this policy, Wright continued, surely the new president accepted the propriety and

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<sup>1</sup> Richardson, *Messages*, 2: 9, 298.

legality of Mississippi extending its jurisdiction over the Choctaws and Chickasaws.<sup>2</sup> Wright was not alone in his curiosity about whether Jackson would support the actions of the three southern states. Jackson received a copy of the December 20 act of the Georgia legislature from Governor John Forsyth. This was accompanied by reports that the Creeks were regularly crossing into Georgia to hunt, and had, on February 18, murdered a man named Elijah Wells at his home in Marion County. Nearly simultaneously, Tuskeneah, son of the late Big Warrior of the Upper Creeks, protested the similar act of the Alabama legislature and called on Jackson to intervene on behalf of the tribe.<sup>3</sup> The situation provided no room for ambiguity. Jackson had to side with the states, or with the tribes. He chose the states.

But President Jackson needed no reminder about the nation's de facto Indian program. Unlike his predecessors, Jackson was fully prepared, indeed determined, to articulate, defend, and codify Indian removal as official policy. What this precisely meant may have been unclear even to Jackson at this early stage, but at a minimum would entail formal congressional sanction and unprecedented efforts at inducing the Indians to emigrate. The states of Georgia, Alabama, and Mississippi had obviously counted on this when extending their legal jurisdiction over the tribes. Had they not done so, however, Jackson would have found another opportunity to implement what a friend referred to as the president's "correct and humane intentions with regard to the Southern Indians."<sup>4</sup> His eagerness did not stem from any entrenched antipathy for the American Indians. Andrew Jackson was not an inveterate Indian-hater, though he was unsparing when conducting a military campaign against them (or any other enemy). He could be cordial or vengeful toward individual Indians depending on the circumstance. The famous Red

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<sup>2</sup> Daniel W. Wright to Andrew Jackson, March 4, 1829, Jackson Papers, 7: 80.

<sup>3</sup> John Forsyth to Andrew Jackson, March 11, 1829, Jackson Papers, 7: 91-92; Tuskeneah to Jackson, March 20, 1829, Ibid., 7: 106-7.

<sup>4</sup> William Carroll to Andrew Jackson, June 29, 1829, Jackson Papers, 7: 305.

Stick Creek William Weatherford (a former foe), was a friendly acquaintance and occasional houseguest of Jackson's until the chief's death in 1824. But Jackson did hold the tribes' societies and cultures in contempt, and believed the Indians were inherently inferior to the white race. His obsession with Indian removal was exactly fifteen years old: he had resented their presence in the Southeast, as well as his limited ability to do anything about it, since his victory at Horseshoe Bend in March 1814. The presidency, too, was limited (one had Congress to deal with), but Jackson believed he had a mandate and an obligation to act on the Indian question. He came into office determined to use all the resources of the executive branch to remove the tribes. This included installing his friend, biographer, and confidant John Eaton, who he knew shared his agenda and who he could trust to be heavy-handed with the Indians, as secretary of war.

As it happened, Jackson began to implement his removal policy just nineteen days into his presidency. On March 23, 1829, in a formal address to the Creeks, the president responded to the murder of Elijah Wells and the Creek protest over the January 29 act of the Alabama legislature extending the state's authority over the Indians. Jackson demanded the murderers of Wells and the restoration of any property stolen from whites. He blamed the incident on the proximity of Indians and white settlers, which in turn stemmed from the stubborn refusal of the tribes to abandon old ways:

Where you now are, you and my white children are too near to each other to live in harmony and peace. Your game is destroyed and many of your people will not work and till the Earth. Beyond the great river Mississippi, where part of your nation has gone, your father has provided a country large enough for all of you, and he advises you to remove to it. There your white brothers will not trouble you; they will have no claim to the land, and you can live upon it, you and your children, as long as the grass grows or the water runs, in peace and plenty. It will be yours forever.

None of this was new to the Creeks. It was same paean to a presumed halcyon life in the West that Thomas Jefferson had articulated twenty years earlier. What was new, however, was a

president of the United States expressing unambiguous support for state authority over the Indians as individuals. “My white children in Alabama have extended their law over your country,” continued Jackson. “If you remain in it, you must be subject to that law. If you remove across the Mississippi, you will be subject to your own laws, and the care of your father, the President.” The Creeks who chose to remain in the East would be provided a homestead in fee simple, but there was to be no tribal identity, much less tribal authority, east of the Mississippi River.<sup>5</sup>

Like Jefferson and unlike James Monroe and John Quincy Adams, Jackson cherished the presidential role of “Great White Father” to the Indians. He was pleased with, and proud of, his message to the Creeks, which became the centerpiece of his removal policy. He believed it communicated the clear position of the federal government, a fair offer to the Indians, and the sound advice of a benevolent guardian. A cogent policy, however, amounted to little without a detailed plan for executing it. The Jackson administration wanted, in no uncertain terms, the Indians to remove to the West. The question was how to convince them to do so. Jackson certainly hoped the assertion of power by the states would have the desired effect, but he could not wholly rely on it. As in the administrations of Monroe and Adams, the use of force was mentioned only indirectly, in terms of how to avoid it. In response to Jackson’s request for advice, Creek agent John Crowell—then in Washington, and who would carry and deliver Jackson’s message to the tribe—claimed that the government needed to mend relations with the Creeks before they would remove peacefully. Indians, said Crowell, were motivated either by love or fear. The latter had been so often used when treaty commissioners had neither “the means or the authority to coerce them” that the result was “a fixed hate on the part of the great body of the Creek Nation” for the United States. But this was not the only problem. The southern states’

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<sup>5</sup> Andrew Jackson to the Creeks, March 23, 1829, Jackson Papers, 7: 112-13.



assertion of legal hegemony over the tribes, and Jackson's support of those actions, directly contravened fifty years of treaty making. Not least of these treaties was the most recent agreement between the Creeks and the United States. The 1826 Treaty of Washington and its 1827 addendum had rid Georgia of all Creek settlements, and the McIntosh faction had emigrated to the western country. The eastern Creeks had been guaranteed the small space remaining to them in Alabama, but Crowell proposed a three-step strategy for bringing about their removal: make the government's benevolent reasons for desiring removal clearly known to the Indians; afford full discretionary power to the individual assigned to execute and facilitate the act of emigration itself, including accompanying the emigrants at every stage of the journey; and pay "full & fair value" for all improvements, including any stock or other possessions which, for whatever reason, could not be moved.<sup>6</sup>

Crowell's tactic for carrying out the first step—persuading the Indians—was to assemble a general council of the tribe and negotiate an arrangement with the "whole nation." Failing this, Crowell would "endeavour to weaken the opposition of the chiefs" by offering them fee-simple reservations and other inducements. As a last resort, Crowell would gather those towns or families willing to remove and personally lead the way west in the hope that others would see the unavoidable necessity of following suit. If the government fully backed him, Crowell assured Jackson, "I have but little doubt of being able to effect their removal in a few years."<sup>7</sup>

Jackson set aside Crowell's advice for consideration, but it was an open question whether the southern Indians had a few years available to come around to accepting removal. Secretary of War Eaton did not welcome the death of Elijah Wells, for example, but could not resist viewing

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<sup>6</sup> John Crowell to Andrew Jackson, March 25, 1829, Jackson Papers, 7: 122-23.

<sup>7</sup> Crowell to Jackson, March 25, 1829, Ibid., 7: 123.

it as welcome leverage to pressure the entirety of the Creek nation to remove.<sup>8</sup> Such sentiments do not hint of patience. Moreover, the administration was even more assertive, indeed aggressive, in responding to a Cherokee protest over Georgia's act of December 20, 1828. The tribe, Secretary Eaton declared to Principal Chief John Ross on April 18, 1829, had never been a sovereign political entity within the boundaries of Georgia. It could not have been, as the American Revolution had transferred all political authority from Great Britain to the state, then a sovereign government under the Confederation. "If, as is the case, you have been permitted to abide on your lands from that period to the present, enjoying the right of soil and the privilege to hunt," said Eaton, "it is not thence to be inferred, that this was any thing more than a permission growing out of compacts with your nation." In other words, there was no such thing as an inherent right of the Cherokees to the land. Georgia had, according to Eaton, tolerated the Cherokees' presence for decades, but such forbearance was now denied thanks to the tribe's assertion of political independence in its constitution of 1827. The Indians' only recourse, the secretary flatly declared, was to remove west, where "you will find no conflicting interests."<sup>9</sup>

Jackson and Eaton's approach to removal was a curious blend of the familiar and the original. Jackson's March 23 address to the Creeks, which was later forwarded verbatim to the Choctaws, employed the age-old method of persuasion, albeit in an uncommonly stern tone. The language of anger (at the murder of Elijah Wells), assurance (that the western lands were ample, fertile, and would be protected), and paternalism (the president claimed to offer nothing but wise counsel, and only for his "children's" best interests) was not dissimilar to statements made by

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<sup>8</sup> John Henry Eaton to John Crowell, March 27, 1829, M21, Reel 5. See also Jackson Papers, 7: 113 (fn).

<sup>9</sup> John Henry Eaton to the Cherokee Chiefs, April 18, 1829, Niles' Weekly Register, June 13, 1829. See also Jackson Papers, 7: 161 (fn).

John Quincy Adams and James Barbour, and before them James Monroe and John C. Calhoun.<sup>10</sup> Furthermore, Jackson and Eaton were receiving the same sort of assurances from subordinates that removal could be achieved without undue effort and expense. Even a veteran hand such as John Crowell persisted in believing that the majority of the Indians would consent to remove if only the government's reasons for desiring their removal could be clearly articulated to them. When Jackson commissioned William Carroll, a once and future governor of Tennessee, as special Indian agent to informally visit the Cherokees and Creeks in the summer of 1829 and impress upon them the urgent necessity of emigrating, Carroll confidently predicted he could do so "without much difficulty." Carroll thought the reality of state sovereignty over the tribes was there for all to see. It was all but certain that the two tribes would immediately discern the need for self-preservation, pack up, and move west. If the Indians did express reluctance, Carroll was confident that "success will be found in assailing the averice of the chiefs and principal men."<sup>11</sup>

Some of Jackson's position on removal, however, was new. First, though there is little evidence to suggest that Jackson and Eaton accepted these assurances of easy victory at face value, Jackson clearly believed his words carried greater weight with the tribes than those of his predecessors. When Jackson reminded the Indians that he always spoke straight, "and not with a forked tongue," he may have been hinting that the tribes could be forgiven for not accepting the assurances of Monroe and Adams. Jackson, on the other hand, had "always told you the truth."<sup>12</sup> He was buoyed in this belief that he held particular sway over the tribes by white and Indian correspondents alike.<sup>13</sup> Second, Jackson's unalloyed support of the acts of the Georgia, Alabama,

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<sup>10</sup> Alexander Talley to David W. Haley (endorsed by Jackson), September 18, 1829, *Jackson Papers*, 7: 757. See also John C. Calhoun to the Cherokee Delegation, February 11, 1819, *ASP: Indian Affairs*, 2: 190, and James Barbour's interview with Opothle Yoholo, November 30, 1825, M21 2: 269-70.

<sup>11</sup> William Carroll to Andrew Jackson, June 29, 1829, *Jackson Papers*, 7: 305.

<sup>12</sup> Andrew Jackson to the Creeks, March 23, 1829, *Jackson Papers*, 7: 112-13.

<sup>13</sup> Mushulatubbe to Andrew Jackson, May 16, 1829, *Jackson Papers*, 7: 223-24; David W. Haley to Jackson, October 8, 1829, *Ibid.*, 483-84.

and Mississippi legislatures was unprecedented, because those acts themselves were singular. Prior to this, no state had asserted its absolute hegemony over the Indian tribes within its borders. Jackson left no doubt that under his administration there would be no controversies between the United States and the southern states, which meant that any remonstrance to the federal government by the Indians would be in vain. Third was Jackson and Eaton's disregard for the entire history of the treaty system, as revealed in Eaton's April 18 reply to the Cherokees, particularly the assertion that the tribe had at no time since the Revolution exercised sovereignty or even owned the land it resided on. Fourth, Jackson and Eaton attempted to influence what we now call public relations. In July, Superintendent of Indian Affairs Thomas McKenney was dispatched to New York City to assist in organizing the "Indian Board for the Emancipation, Preservation, and Improvement of the Aborigines of America."<sup>14</sup> The co-organizers were Protestant clergymen based in New York. McKenney's mission was to impress upon these men that the government's intentions toward the Indians were not only benign, but essential to the survival of the Indians as a race. McKenney succeeded, securing the endorsement of the New York Indian Board, as it became known. It publicly declared that "the harmony of these United States, the preservation of the American Indians from total extinction, and consequently the cause of humanity, require some prompt and decisive measure calculated to carry into effect the only alternative left, namely, the final and speedy removal of the scattered remains of the Indian tribes from within the jurisdictional limits of the sovereign states."<sup>15</sup> The fact that McKenney expressed what he sincerely believed to be true only helped his—and by extension, the president's—credibility. An equally important factor in the Indian Board's support was the War

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<sup>14</sup> John Henry Eaton to Andrew Jackson, c. July 15, 1829, Jackson Papers, 7: 741.

<sup>15</sup> Documents and Proceedings Relating to the Formation and Progress of a Board in the City of New York, for the Emigration, Preservation, and Improvement, of the Aborigines of North America. (New York: Vanderpool and Cole, 1829), 21-22.

Department's willingness to subsidize the organization's expenses, which included covering the printing costs. Jackson and Eaton were using McKenney's well-known fondness for the Native Americans to neutralize a few of those most likely to protest a future removal bill.

No one doubted that Jackson had a removal bill in mind. The fifth and final aspect of Jackson's position on Indian affairs that differed from his predecessors, and the most important, was his settled opinion on the relationship between the Indians and the United States. To his mind, the tribes were undeniably subordinate to the American government, something he had been proclaiming for more than a dozen years. Jackson's views on removal reflected this opinion and everyone close to him knew it. Jackson informed his old friend John Coffee that "the Govt. is taking means to have the Indians peaceably removed beyond the Mississippi[.]" To James Gadsden, who had served under Jackson during the War of 1812 and during Jackson's Seminole campaign in 1818, the president offered assurance that he would "adhere to the just and humane policy towards the Indians which I have commenced." Gadsden, in reply, referred to the "final removal" of the tribes.<sup>16</sup> Secretary of War Eaton offered several assurances to Georgia governor John Forsyth that securing the Indians' removal was Jackson's primary goal. The president was merely waiting for the Twenty-First Congress to convene.<sup>17</sup>

### **The "William Penn" Essays**

Andrew Jackson and John Eaton succeeded in using Thomas McKenney to win over the clergymen of the New York Indian Board to their cause. But the victory was pyrrhic for two reasons. First, as a puppet organization of the War Department, the Indian Board never amounted

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<sup>16</sup> Andrew Jackson to John Coffee, October 4, 1829, *Jackson Papers*, 7: 478; Andrew Jackson to James Gadsden, October 12, 1829, *Ibid.*, 491; Gadsden to Jackson, November 14, 1829, *Ibid.*, 548.

<sup>17</sup> John Henry Eaton to John Forsyth, August 18, September 15, and October 14, 1829, *HRDoc* 89, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., Serial 197.

to much.<sup>18</sup> Second, McKenney also tried to persuade, either on his own initiative or under orders from Eaton, the American Board of Commissioners for Foreign Missions, far and away the most prestigious and influential evangelical organization in the country. It was a public relations error. Though Congregationalist in origin, the ABCFM had evolved into an ecumenical organization, and now coordinated missionary efforts as far away as the South Pacific and the Indian Ocean, and as close as among the Indians of the Southeast, as seen in Chapter 3. The corresponding secretary of the American Board was Jeremiah Evarts, a Yale-educated attorney. In a lengthy letter of May 1, 1829, McKenney professed to Evarts that they shared the same goal vis-à-vis the Indians. As he put it, both the New York Indian Board and the American Board of Commissioners wished “to see those people rescued, and elevated into a participation of the blessings of the civilized and Christian state.” They differed on how to accomplish this objective. The subject of Indian lands, said McKenney, was “full of interest and pregnant with difficulty.”<sup>19</sup> Echoing the administration’s official line, McKenney asserted that the Indians’ right to the land was one of possession, not ownership in perpetuity. All treaty guarantees covered this right, the right to live on and use the resources of the land, but the treaties did not and had never guaranteed Indian sovereignty. “It could not have been otherwise.” McKenney stressed, for any other interpretation would abrogate the sovereignty of the states. The Indians, quite simply, were mistaken in their understanding of the treaty system. And now the states had legally extended their jurisdiction over the Indians, who were in a “very delicate, nay hazardous, relation in which they stand to the States within whose bosom they are.”

I never doubted [McKenney continued], nor do I now doubt, that if they

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<sup>18</sup> Indeed, after the Indian Removal Act was passed, the Jackson administration entirely ignored the New York Indian Board, which belatedly recognized “that our influence in promoting the passage of the bill was the ultimate object of the executive, in procuring the organization of the board.” James Renwick Wilson to Andrew Jackson, September 14, 1831, *Jackson Papers*, 9: 575.

<sup>19</sup> Thomas L. McKenney to Jeremiah Evarts, May 1, 1829, *Documents and Proceedings*, 11-12.

were made to see the peril of this relation, they would seek to establish a better one upon a different basis than that which secures their lands to them as possessory tenants, only; and this would lead them west of our States and Territories, where every sort of guarantee, could, and I doubt not, would be given to them; and every protection and blessing within the power of the General Government to confer, extended to their race. Upon such a basis, only, can they expect to be preserved and improve themselves, or be improved by others.

The die, said McKenney, was cast, and the Cherokees had cast it with their constitution of 1827. Echoing Secretary of War Eaton's words to John Ross, McKenney repeated the administration's assertion that the Revolution had transferred all political authority to the states. The Cherokees had forced the hand of the state, and the federal government was powerless to intervene. If the Indians persisted in refusing to accept the government's terms of emigration, claimed McKenney, "then the reproach of being idle, and letting the Aborigines of North America perish, will be wiped off; and posterity will recur with gratification to the honest efforts of their forefathers to arrest so great a calamity."<sup>20</sup>

Many people mistook Jeremiah Evarts for a clergyman. He was not. He was a lawyer and constitutional scholar with a keen legal mind energized by a devout Christian faith. This was not McKenney's first letter to Evarts, nor even his first attempt to win Evarts and the ABCFM over to the policy of removal; he had tried to do so the year before, in 1828.<sup>21</sup> Evarts had long been concerned about the future of the American Indians and was a well-known opponent of removal. He was familiar with McKenney's paternalistic rhetoric, and probably recognized that the Indian superintendent's concern for the tribes was sincere. But Evarts found McKenney's new and energetic endorsement of Jackson and Eaton's interpretation of the treaties highly alarming. The attorney was galvanized into action against the Jackson administration. In a herculean effort,

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<sup>20</sup> Thomas L. McKenney to Jeremiah Evarts, May 1, 1829, Documents and Proceedings, 12-19.

<sup>21</sup> John A. Andrew III, From Revivals to Removal: Jeremiah Evarts, the Cherokee Nation, and the Search for the Soul of America. (Athens: University of Georgia Press, 1992), 182.

Jeremiah Evarts spent the summer and autumn of 1829 penning twenty-four essays “on the present crisis of the condition of the American Indians.” He published under the name William Penn, the founder of Pennsylvania remembered for his fairness to the American Indians.

The essays were published in Washington’s leading newspaper, the Daily National Intelligencer, between August 1 and December 19, 1829, at the rate of about two per week except for two gaps in October and early November when Evarts was writing new material. In his first essay, Evarts asserted that the subject of Indian removal was a matter of national import and merited a national discussion. He claimed that many members of Congress wanted such a debate, and that the United States was obligated to secure to the Indians “the integrity and inviolability of their territory.” Lastly, he declared that the president of the United States and the secretary of war were egregiously incorrect in their interpretation of the treaty system.<sup>22</sup> The essays were reprinted, as Evarts intended, in dozens of other publications, both religious and secular, including the Cherokee Phoenix.<sup>23</sup> Because the “William Penn” essays were widely read by the American public, because they constituted the only sustained advocacy of the Indians during the removal debate, and because pro-removal legislators later defended the removal bill by countering the legal interpretations contained within the essays, it is worth examining them in detail.

In the first essay Evarts professed his mission statement. “Every careful observer of public affairs must have seen,” he wrote, “that a crisis has been rapidly approaching, for several

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<sup>22</sup> Essays on the Present Crisis in the Condition of the American Indians; First Published in The National Intelligencer, Under the Signature of William Penn (Boston: Perkins & Marvin, 1829). Hereafter Evarts, Essays. To avoid confusion, I have cited the earliest edition of Evarts’ collected “William Penn” essays, published the same year, rather than referred to each edition of the National Intelligencer. For a modern edition, see Francis Paul Prucha, ed. Cherokee Removal: The “William Penn” Essays and Other Writings by Jeremiah Evarts (Knoxville: University of Tennessee Press, 1981), which contains an outstanding introduction by Prucha. The most recent treatment of Evarts and his mission and worldview is John A. Andrew III, From Revivals to Removal: Jeremiah Evarts, the Cherokee Nation, and the Search for the Soul of America (Athens: University of Georgia Press, 2007).

<sup>23</sup> The first “William Penn” essay appeared in the Cherokee Phoenix, and Indians’ Advocate on September 16, 1829. The paper eventually reprinted all 24 essays.



years past, in reference to the condition, relations, and prospects, of the Indian tribes, in the southwestern parts of the United States.” Those who wished to inquire into the subject, however, had little at their disposal, as correct and detailed information was unavailable. The unreliability of the newspapers, with their “vague and inconsistent opinions,” meant that even a conscientious inquirer into the true state of Indian affairs had little to enlighten him. In its essence, said Evarts, the situation was this: some Americans believed the Indians had a “perfect right” to the lands they occupied, except as “their original right has been modified by treaties fairly made, and fully understood at the time of signing.” Others claimed that the Indians had no original or inherent right to the lands, and were essentially tenants at will of the landowner, the states. This latter group saw no problem in extending the laws of the states over the Indians, and claimed that removing them, “even without their consent and against their will,” to the western country would result in their happiness. In contrast, those who supported Indian rights to the land believed that a forced emigration could result only in “the lowest degradation and to [the Indians’] final extinction.”<sup>24</sup>

Given this diversity of opinion, the author’s intent was to propose and address four critical questions “which have forced themselves upon us, as a nation”: What was to become of the Indians? Had they any rights? If so, what were those rights? How were those rights to be secured? Evarts believed the answers would define the character and honor of the federal government. Indeed, the republican experiment itself was at stake. Evarts, the Christian attorney, envisioned three unsmiling judges who would pronounce upon the outcome of the controversy. The first was the entire world, as “No subject, not even war, nor slavery, nor the nature of free institutions, will be more thoroughly canvassed” by foreign nations. The second judge was posterity. If the United States chose to act in a “manifestly, fair, and generous, and benevolent”

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<sup>24</sup> Evarts, *Essays*, 3-4 (No. 1).

manner to the Indians, that decision “will command the warm and decided approbation of intelligent men, not only in the present age, but in all succeeding times.” If, however, white Americans should, in a time of peace and prosperity, and “in the blazing light of the nineteenth century,” drive the Indians from their ancestral homes, “then the sentence of an indignant world will be uttered in thunders, which will roll and reverberate for ages after the present actors in human affairs shall have passed away.” Even more important than these very sobering considerations was the judgment of God. “The Great Arbiter of Nations never fails to take cognizance of national delinquencies,” wrote Evarts. The critical, conscious decision was at hand. Though the United States was by no means blameless in its treatment of the Native Americans, it “cannot as yet be charged with any systematic legislation on this subject.” Should a codified removal policy, which Evarts saw as a legalized program of oppression, come to pass, however, Americans would irrevocably expose themselves to the divine judgment.<sup>25</sup>

To answer the four questions at hand, Evarts focused primarily on the situation of the Cherokees, though he also touched on the Creeks and Chickasaws. It was a sensible tactic for several reasons. First, the Cherokees were almost universally recognized as the most “civilized” of the southern tribes. Second, the American Board of Commissioners for Foreign Missions had long been engaged in missionary and education efforts among that tribe. Accordingly, Evarts was acquainted with Principal Chief John Ross, Cherokee Phoenix editor Elias Boudinot, and other leading men among the Cherokees. Lastly, the individual episodes of the entire controversy of the last decade had stemmed, directly or indirectly, from the Georgians’ fixation on the Compact of 1802. The Creeks had left the state, but the Cherokees still clung to a small area of northwest Georgia, where the tribal capital of New Echota was located. Evarts was determined that they should remain there.

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<sup>25</sup> Ibid., 5-6 (No. 1).

And so, in biweekly serials, Evarts answered his own questions about the relationship of the Indians both to their land and to the United States government. That the Indians—specifically, the Cherokees—possessed inalienable rights Evarts had no doubt. Echoing Jefferson’s language in the Declaration of Independence, he stated that the Cherokees were human beings and, as such, “endowed by their Creator with the same natural rights as other men.” They were in “peaceable possession” of a territory that was bequeathed to them by uncounted generations, “with a title absolutely unencumbered in every respect.” No earthly power could compel them to abandon their lands. The most often-cited justification for removal involved the Indians’ stubborn devotion to the hunting lifestyle and the lack of game in the eastern woods. But even if the canard was true for other Indians, said Evarts, it had no relevance to the Cherokees’ situation. The earliest European observers of the tribe noted the stationary habitations of the Cherokees and their cultivation of corn and other vegetables. The tribe’s dependence on farming had only increased through the generations, “till they now derive their support from the soil, as truly and entirely as do the inhabitants of Pennsylvania or Virginia.” The original Cherokee realm, the possession and control of which no early European immigrant or explorer disputed, totaled some 35 million acres, Evarts calculated. Less than 8 million acres remained to the tribe, of which Georgia claimed 5 million and Alabama 1 million. The remainder, at the edges of Tennessee and North Carolina, “seem hardly worth inquiring about; for, if the other portions are given up, or taken by force, there will be no motive for retaining these.” The Cherokees held irrevocable title to their lands by right of occupancy, regardless of the claims of others. Indeed, said Evarts, a “claim,” even the claim of a European sovereign, was worth nothing. One need look no further than the history of England, whose monarchs had for

centuries styled themselves the rulers of England, Ireland, and France, but only subdued Ireland in the seventeenth century and France, never.<sup>26</sup>

Contrary to the assertions of “some shallow writers”—by which Evarts undoubtedly meant Secretary of War John Eaton and Superintendent of Indian Affairs Thomas McKenney—a title of occupancy did not mean the inhabitants of the land in question were mere tenants. The Indians did indeed have title of occupancy, but such was “the best title in the world, and the only original foundation of every other title.” In the past, the Cherokees had “immemorial occupancy”; as for the present and future, they had “a perfect right to occupy their country indefinitely.”<sup>27</sup> Furthermore, this right, the right of the Cherokees to their land and to self-government, was formally acknowledged by the United States in every treaty made with the tribe, sixteen in total, from the Treaty of Hopewell in 1785 to the Treaty of Washington in 1819. Evarts devoted Essay No. 5 to the question of what constituted a treaty—more specifically, to what was meant by the phrase “A treaty of peace and friendship,” included in the preamble to nearly every agreement. A treaty, Evarts claimed, was by definition a compact between two independent polities, with “each party acting through the medium of its government.” By this definition, not every agreement was a treaty. If Virginia ceded a parcel of waterfront acreage to the federal government for the construction of a navy yard, the accord was not a treaty, because the two agents were not independent. The same conclusion was applicable to Georgia if that state agreed, as it had, to cede enough of its territory to allow for two new states. Furthermore, the very language in the Cherokee treaties, including the first at Hopewell (in South Carolina), described the violence between the United States and the tribe not in terms of “riot,” “sedition,” or “rebellion,” but war. The resulting settlements, accordingly, were not expressed with the

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<sup>26</sup> Ibid., 7-10 (No. 2).

<sup>27</sup> Ibid., 10 (No. 2, fn).

words “pardon,” “amnesty,” “suppression,” “conviction,” or “punishment,” but peace. In both the title and the preamble to those treaties, wrote Evarts, there was “every indication of perfect equality” between the two parties. “In point of fact,” he claimed, accurately, “the whites were, at that moment [1785], much more desirous of peace than the Cherokees were.”<sup>28</sup>

Evarts delineated the stipulations and details of all sixteen Cherokee treaties and proved that they explicitly acknowledged the legitimacy and continuing authority of those that came before. For instance, the fifth Cherokee treaty, that of Tellico in 1798, both affirmed the four earlier treaties and specifically committed the United States to “continue the GUARANTY of the remainder of their country FOREVER, as made and contained in former treaties.”<sup>29</sup> Pointedly, Evarts used Andrew Jackson’s own history in treating with the tribes to refute the administration’s assertion that the treaties were not and had never been intended as perpetually binding pacts between politically independent entities. The fourteenth Cherokee treaty, that of September 14, 1816, for which Jackson, David Meriwether, and James Franklin served as commissioners, not only referred to the Cherokees as a “nation” but declared that the document would not be binding until ratified by the United States government and “approved by the Cherokee nation.” “It is humiliating to be obliged to prove,” Evarts commented, “that parties to a treaty are bound by it.”<sup>30</sup> The fifteenth Cherokee treaty of July 8, 1817 (discussed in Chapter 3), for which Jackson again served as lead commissioner, was “perfectly consistent with every other; and they all unite in leading to the same conclusion.”<sup>31</sup> The sixteenth and last treaty between the Cherokees and the United States, signed in Washington on February 24, 1819,

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<sup>28</sup> Ibid., 19-20 (No. 5).

<sup>29</sup> Treaty with the Cherokees, October 2, 1798, U.S. Statutes at Large, 7: 63. Quoted in Essay No. 8, Evarts, Essays, 31, emphasis Evarts.

<sup>30</sup> Treaty with the Cherokees, September 14, 1816, U.S. Statutes at Large, 7: 148. Quoted in Essay No. 11, Evarts, Essays, 41.

<sup>31</sup> Evarts, Essays, 45 (No. 12).

explicitly acknowledged that “the greater part of the Cherokee nation have expressed an earnest desire to remain on this side of the Mississippi” and implicitly (Evarts argued) promised that the United States would ask no further cessions from the tribe.<sup>32</sup> The United States had ignored or forgotten both the acknowledgement and the promise, which was why the Cherokees had assented to no treaty since that of 1819, claimed Evarts. The Cherokees’ refusal to make new treaties with the United States in no way, however, abrogated the treaties that already existed. They remained in full force. Indeed, Evarts noted in Essay No. 14, Georgia’s assertion that the Cherokees had no authority to negotiate treaties was only a few years old. “The scruples about the treaty-making power,” he wrote, “seem not to have existed, till after the Cherokees refused to treat any more.”<sup>33</sup>

Evarts devoted the second half of his essays to countering the claims, complaints, and actions of Georgia, which even removal advocates understood to have brought the current crisis into being. He did so by delving into the early history of the colony. The Compact of April 24, 1802, by which Georgia ceded its western territory as encompassed in its colonial charter, was itself invalid, according to Evarts, because the justification for the charter itself was absurd and unsound. King George II had granted the charter to James Oglethorpe in 1733, as was well known. But how could even a king grant “vast tracts of country, which neither he, nor any European, had ever seen”? Did a royal grant confer the right to dispossess the original inhabitants of a territory from their soil? The answer was unequivocally no. “But who will dare,” Evarts asked, “to advocate the monstrous doctrine, that the people of a whole continent may be destroyed, for the benefit of a people of another continent?”<sup>34</sup> Even Evarts conceded that the Compact of 1802 was an irrevocable fact. But this was not to say that Georgia’s complaint,

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<sup>32</sup> *Ibid.*, 47-48 (No. 13).

<sup>33</sup> *Ibid.*, 52 (No 14).

<sup>34</sup> *Ibid.*, 57 (No 16).

beginning in 1820 and ongoing, that the United States failed to fulfill the compact was valid. A large amount of money was paid to acquire the Indian land in Georgia, and over three-quarters of the land formerly in tribal hands was now controlled by the state and either settled by whites or currently up for auction. This was the total amount of Indian land that could be obtained under the “peaceable and reasonable” stipulations of the compact. Therefore Georgia’s persistent accusations of negligence against the United States were unfounded and irresponsible. All proof pointed to the determined and conscientious efforts of the federal government to fulfill the compact. The state often claimed to have expected the United States to extinguish all Indian title by now. “Very well,” replied Evarts. “What if she [Georgia] did? The history of every man, and of every community, is full of disappointed expectations.” The implication was clear: the Georgians needed to grow up.<sup>35</sup>

Evarts continued his retort to the assertions of Georgia. He occasionally employed acerbic language to give emphasis to his points, but always grounded his argument in the logic of established American jurisprudence. In this manner he ridiculed the 1825 Treaty of Indian Springs, especially the machinations of commissioners Duncan Campbell and James Meriwether (Essay No. 21), the act of Georgia extending its laws over the Indians, which Evarts claimed to be as “flagitiously immoral” as the slave trade (No. 22), and the outcry over the Cherokee constitution, especially the histrionic language over the supposed imperium in imperio, or state within a state (No. 23). “But in what do these frightful inconveniences exist?” asked Evarts. “A little pacific community of Indians, living among the mountains, attending to their own concerns, and treating all who pass through their borders with kindness and hospitality, is surely no very great cause for alarm.”<sup>36</sup>

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<sup>35</sup> Ibid., 74-76 (No. 20).

<sup>36</sup> Ibid., 86 (No 22), 91 (No 23).

In twenty-three essays, Evarts addressed the question of Indians rights in impressive detail. He devoted his twenty-fourth and final essay to the question of the Indians' future. It, however, was written and published after Andrew Jackson's first annual message of December 1829, which called for the removal of the Indians.

### **The Indian Removal Message**

It is difficult to determine from the available sources when, precisely, Andrew Jackson began crafting his first annual message to Congress. But he and his cabinet clearly anticipated the commencement of the Twenty-First Congress many months in advance of December 7, 1829, when the 48 senators, 213 representatives, and 3 nonvoting House delegates representing the territories of Michigan, Arkansas, and Florida were scheduled to take their seats.<sup>37</sup> Each portion of the annual message went through several revisions, with each department head drafting or editing that part which pertained to his responsibility. The part of the message which Jackson had been waiting to deliver since the day of his inauguration, however, concerned the American Indians. The president was eager to see how Congress responded to it. On November 30, Jackson wrote to his nephew by marriage, Robert J. Chester, that "Congress meets next Monday, and we will soon be able to judge what course it will adopt with regard to our Indian neighbors. . . as soon as I can see the whole ground I will write you again."<sup>38</sup>

In its finalized form, the portion of the annual message dedicated to Indian removal totaled six paragraphs (1,207 words) inserted about three-quarters of the way into a total message of about 11,000 words.<sup>39</sup> The relative brevity of the part on Indian affairs belied the fact that an inordinate amount of time had been dedicated to it, resulting in several different drafts. Both

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<sup>37</sup> Register of Debates, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., Appendix.

<sup>38</sup> Andrew Jackson to Robert Johnstone Chester, November 30, 1829, Jackson Papers, 7: 585.

<sup>39</sup> Richardson, Messages, 2: 442-462; the portion on removal is on 456-59.



Jackson's and Eaton's drafts, however, and the final version submitted to Congress on December 8, 1829, centered on the question of Indian sovereignty. The message began by noting that the policy of the federal government had for many years been to acculturate the Indians to white ways. It also admitted that the civilization program was "coupled with another wholly incompatible with its success"—namely, the unending efforts to purchase Indian lands and "thrust them farther into the wilderness." Thus the United States consistently undermined its professed goals for the tribes. This brief mention, however—four pro forma sentences—contained the entirety of Jackson's comments on the responsibility of the United States for the plight of the Indians. If the decade-long controversy over Indian affairs was now a crisis, the Indians themselves were to blame, Jackson stated. The true catalyst for the immediate dilemma was the fact that a "portion" of the southern tribes had "lately attempted to erect an independent government within the limits of Georgia and Alabama." As a result, Jackson continued, those states had been obliged to extend their laws over the Indians. To do otherwise would allow a violation of the United States Constitution, which prohibited any new state from being formed within the jurisdiction of any other state. If a state could not be thus formed, a "foreign and independent government" certainly could not. Indeed, Georgia and Alabama (and Mississippi, though the message made no mention of it) had only formally declared a right which every other state took for granted. Would the state of Maine, Jackson asked rhetorically, permit the Penobscot tribe to establish an independent government within its borders? Would New York suffer the Six Nations do to so? Of course not. Nor could the federal government permit such a thing without assisting "in destroying the States which it was established to protect." The only recourse of the United States was to uphold the actions of the southern states. No tribal authority could compete against state law. If the Indians wished to retain their tribal identity and modes of

authority, they could not do so within the United States, leaving them no alternative but emigration to the West.<sup>40</sup>

The phrasing of the message was carefully and cleverly chosen. It omitted several key facts and condensed the chronology of the events in question, thus concealing part of the story without being blatantly untruthful. Only the Cherokees, for instance, had formally installed an independent government in the Southeast, in mid-1827. Georgia did not extend its laws over the tribe for another eighteen months, until the last days of 1828, when Andrew Jackson's election was all but assured. Alabama and Mississippi had followed suit in early 1829. Jackson's message contained none of this. A reader could be forgiven for inferring that the southern states had hastily (and perhaps even reluctantly) acted as they did to counter the efforts of many Indians aggressively seeking to undermine the American federal system.

The annual message also reasserted the claim that, surrounded as they were by civilized whites, the southern Indians were descending toward "weakness and decay," and would doubtless soon suffer the fate of long-vanished tribes such as the Narragansett and the Delaware. "Humanity and national honor demand that every effort should be made to avert so great a calamity." Furthermore, to discuss past misdeeds, dating back to the seventeenth century, committed against the Indians by whites was pointless. "That step," said Jackson, "cannot be retraced." The thing to do now was save the Indians from extinction. To that end, the president suggested setting aside a large district west of the Mississippi River, outside the boundaries of any American state or territory, to be guaranteed to the Indian tribes as long as they remained in occupancy of it. Each tribe would, in this plan, control the parcel of the district designated for its use. The tribes would be permitted to govern themselves, with the United States interfering only to prevent hostilities between them. In that place, at last, would come the time and opportunity

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<sup>40</sup> Richardson, Messages, 2: 457-58.

for the Indians to learn “the arts of civilization.” Jackson emphasized that the emigration of the Indians “should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek home in a distant land.” But those who remained would have to subject themselves to the authority of the local, state, and federal laws that governed their homes in the East.<sup>41</sup>

Jackson devoted only about 10 percent of his annual message to Indian removal. Other portions related to foreign affairs, the appropriate terms of office for civil officials, the Treasury and revenue, the second Bank of the United States, and the military. Most newspapers and periodicals quoted the entire message verbatim but made no special mention of Jackson’s proposed Indian policy, though an unlikely publication, Boston’s North American Review, did applaud the president’s “propriety and wisdom” regarding the Cherokees.<sup>42</sup> The few editors who did not think the administration’s proposal for removing the Indians to be benevolent, however, were very alarmed indeed. Not least of these was Elias Boudinot, editor of the Cherokee Phoenix, who professed confusion (though he could not have been surprised) over Jackson’s portrayal of Cherokee sovereignty as a recent pretension rather than a historical reality.<sup>43</sup> The Genius of Universal Emancipation, an abolitionist newspaper in Baltimore, immediately recognized that “The most important and most exceptionable part of the message relates to the removal of the Indians.” The editor, a Quaker named Benjamin Lundy, went on to state that “Here the President betrays either great injustice or great ignorance. He arrives at his conclusions in a hurried, strange and illogical manner.”<sup>44</sup> It was, however, the foremost newspaper editor in the country, Hezekiah Niles, who offered the starkest comment on the removal message: “The

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<sup>41</sup> Richardson, Messages, 2: 458-59.

<sup>42</sup> North American Review, January 1830.

<sup>43</sup> Cherokee Phoenix, January 7, 1830.

<sup>44</sup> Genius of Universal Emancipation, December 11, 1829.

fate of the Indians within the present states and territories—is sealed.” The eastern tribes would remove, or become extinct.<sup>45</sup>

Jeremiah Evarts rejected the assumption that removal was necessary to prevent the Indians from degenerating and ultimately dying out. In his final “William Penn” essay, published in Washington’s National Intelligencer on December 19, 1829, Evarts claimed that Jackson’s removal policy would, rather than save the Indians, ensure their demise. There were many reasons for this, because there were, as Evarts saw it, many deficiencies in the president’s plan. First was the “suspicious circumstance” that, for all the rhetoric about relieving the Indians, the origins of and momentum for removal stemmed from the desire of whites for Indian lands. Evarts distrusted those who spoke of generosity and kindness “but say nothing of the present obligations of honor, truth, and justice.” Even more ominous for the Indians was the plan’s “visionary” nature, meaning a thing founded on assumption and theory rather than hard experience. Incorporating the mass of the Indian tribes, with their different histories, languages, and cultures, into one realm, and granting them an undefined measure of autonomy while maintaining the ultimate authority of the United States, was an untried and probably dangerous experiment. Moreover, the actual act of transporting sixty thousand people, “most of them in circumstances of deep poverty, must be attended with much suffering,” Evarts (accurately) predicted. Not only did the southern tribes not want to move, but the federal government could not possibly keep its promises to the emigrants. His reasoning was simple: if the government could not protect the tribes where they now resided, as it claimed, it surely could not do so when they were a thousand miles more distant. Equally important was the fact that, within twenty years, those western realms would certainly be teeming with white settlers. Missouri had been a state for almost ten years, and there was talk of annexing Texas to the United States. What would

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<sup>45</sup> Niles’ Weekly Register, December 19, 1829.

the government's guarantee of perpetual peace and freedom for the Indians mean then? If Andrew Jackson could with a straight face declare that George Washington had possessed no authority in 1790 to guarantee to the Indians their lands in perpetuity, there was nothing at all to prevent some future statesman in 1840 or 1850 from discarding the assurances of Jackson.

Nothing of this kind has ever yet been done [Evarts concluded], certainly not on a large scale, by Anglo-Americans. To us, as a nation, it will be a new thing under the sun. We have never yet acted upon the principle of seizing the lands of peaceable Indians, and compelling them to remove. We have never yet declared treaties with them to be mere waste paper.

The United States government had arrived, as Evarts put it, at the bank of the Rubicon. In an extraordinary effort, he had done all he could to prevent its crossing.<sup>46</sup>

### **The Indian Removal Bill**

In the weeks immediately after Andrew Jackson's annual message, Congress and the War Department were flooded by memorials and petitions protesting removal on behalf of the Indians: from the ladies of Steubenville, Ohio, from the Board of Managers of the New York Missionary Society, from the inhabitants of Hampshire County, Massachusetts. There were many others, from every corner of the Union, though the majority stemmed from the Northeast and today's Middle West.<sup>47</sup> Senator Nathan Sanford of New York presented a memorial from the Society of Friends in that state, who were praying "that the Indians may be protected from injury and oppression."<sup>48</sup>

Jackson himself received encouragement from his friends. James Gadsden, who lived in Florida, was "much pleased to learn that the Seminoles are to share the fate of the Creeks," and promised to publicly support and explain Jackson's views on removal. The portion of the annual

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<sup>46</sup> Evarts, Essays, 95-101 (No. 24).

<sup>47</sup> HRRep 209, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., February 15, 1830, Serial 200; HRRep 247, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., February 16, 1830, Serial 200; HRRep 253, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., March 17, 1830, Serial 200.

<sup>48</sup> Senate Journal, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., p. 84, January 14, 1830.

message advocating removal was referred to the House Committee on Indian Affairs, chaired by Jackson's fellow Tennessean, John Bell. Alfred Balch, a Nashville attorney, assured Jackson that Bell would do justice to the topic—meaning craft and present a removal bill, and defend it before Congress. “The removal of the Indians would be an act of seeming violence,” wrote Balch. “But it will prove in the end to be an act of enlarged philanthropy.”<sup>49</sup> The president also received a resigned note from the Creeks of the Lower Towns along the Chattahoochee River in eastern Alabama, lamenting the loss of their independence and their fate, which “is about to be sealed.”<sup>50</sup>

The Creeks were not wrong. True to Balch's assurance to Jackson, John Bell and the Indian Affairs committee moved quickly. On February 24, 1830, the committee submitted a removal bill—officially, H.R. 287. (The Senate version of the bill, submitted at the same time by Bell's counterpart on the Senate's Indian Affairs committee, Hugh Lawson White, was known as S. 102.)<sup>51</sup> The House version of the bill was preceded by a report of over 15,000 words that was part retort to Evarts and other removal opponents, part history of United States Indian policy, especially the peculiarities of the treaty system, and part assertion of the southern Indians' rapid decline and, should they remain, certain extinction. The resulting combination was the most vigorous and concentrated defense of Indian removal to be presented to the American public. Ten thousand copies were printed and mailed across the country.<sup>52</sup> “The most active and extraordinary means,” Bell's report stated, “have been employed to misrepresent the intentions of the Government, on the one hand, and the condition of the Indians on the other.” Opponents of removal had, simply put, grossly exaggerated the progress of Indian civilization, and the tribes themselves had come to believe the adulteration to be true. The effect of this was to encourage

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<sup>49</sup> James Gadsden to Andrew Jackson, January 8, 1830, Jackson Papers, 8: 22; Alfred Balch to Jackson, January 8, 1830, Ibid., 8: 20.

<sup>50</sup> Eneah Micco et. al. to Andrew Jackson, February 1, 1830, Jackson Papers, 8: 64.

<sup>51</sup> Bills and Resolutions, Senate, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., February 22, 1830

<sup>52</sup> HRRep 227, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., p. 1, Serial 200.

the tribes in their “most extravagant pretensions”—namely, that they were sovereign entities residing on land immune from the authority of the United States and the particular states in which they resided. But any legal interpretation intended to emphasize Indian rights must also, the committee claimed, prove a limitation on state authority. Concepts such as “natural law” were of little utility in satisfactorily defining the relationship of the Indians to the United States. These were abstractions only. The federal government had the duty to examine the “nature and condition of things, as they actually exist” in its formulation of policy. The only relevant and (perhaps in response to the legalistic language of Jeremiah Evarts) “admissible” grounds for determining the rights of the Indians versus the rights and powers of the states and the federal government, said the committee, were the “charters, laws, constitutions, and general policy, of the various governments” from the earliest days of colonization to the present. Discussions of “what should have been” were irrelevant. The fact was that the early settlers, under authority of the English crown, assumed and asserted the right to colonize and transform the soil for their own purposes. Though the origins and evolution of the various colonies greatly differed, all required new resources to survive and thrive, which necessarily entailed appropriating additional land from the Indians. The colonies and, later, the states never abandoned the “fundamental principle” that the Indians had no right to the soil or to sovereignty, their “ancient possession” of both notwithstanding.<sup>53</sup>

How, then, to explain the treaty system under the Constitution? The answer lay in the pragmatism of the American republic’s first statesmen. “To pay an Indian tribe what their ancient hunting grounds are worth to them,” as Bell put it, “as a mode of appropriating wild lands, claimed by Indians, has been found more convenient, and certainly it is more agreeable to the forms of justice, as well as more merciful, than to assert the possession of them by the

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<sup>53</sup> Ibid., 2-5.

sword.” In other words, the United States acted in a humane fashion toward the Indians to avoid bloodshed, though it was under no legal obligation to do so. The Indian treaties were “but a mode of government, and a substitute for ordinary legislation” intended to exercise control over the tribes. The treaties were not, the committee emphatically declared, explicit or implicit recognitions of tribal independence or autonomy. The authority of the states was paramount, at all times and in all circumstances. The most well-known example of this (which the Indian Affairs committee no doubt lifted from Jackson’s own annual message) was the Six Nations of New York. Despite the sobriquet, they were not “nations,” and despite the convenient usage of the treaty system, no one considered them as anything but subject to the laws of the state in which they lived.<sup>54</sup> According to this interpretation of history and legal precedent, the southern states, Georgia foremost among them, had merely bided their time in asserting a legal jurisdiction over the Indian tribes within their borders that had always existed and always been valid. Indeed, it was only the very recent “pretensions” of the Indians’ claims to self-government that had forced the southern states to formally declare this reality.

All this being stated, the committee report assured its readers that “neither Georgia nor any other State will attempt to appropriate the lands within the Indian reservations, without their consent.” The only real effect of the states’ authority over the Indians would be the mitigation of the power of the chiefs who had “managed to place themselves at the head” of the tribes. The vast majority of Indians would see little or no change in their daily lives. “Most of their ancient usages, their dances, their ball plays, and their right to take game wherever they can find it, will still be their privileges.” If anything, the dissolution of tribal authority would ensure that the vast majority of Indians then living in a state of landless poverty could at last hope for relief. Declarations of Indian prosperity, Bell and the committee claimed, were entirely misleading.

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<sup>54</sup> Ibid., 6-11.



This applied to the Cherokees, often hailed as civilized and prosperous. In truth, wealth and power rested in the hands of an educated oligarchy, and the best opportunity “to elevate the condition of the common Indian” awaited west of the Mississippi. The removal plan, concluded the report, “offers a prospect, which may never again occur, of atoning, at last, for any wrongs inevitably incident to the settlement of the country by the white race, in a manner worthy of the character of the Government.”<sup>55</sup>

This detailed apologia was hailed by removal advocates as a cogent and candid articulation of the government’s motivation and intentions. Removal opponents viewed it as a nefarious rewriting of history designed to achieve criminal ends. The removal bill appended to it was, by contrast, short and simple. Its official title was “A Bill To provide for the removal of the Indian Tribes within any of the States and Territories, and for their permanent settlement West of the river Mississippi.” The bill contained nine brief sections. It authorized the president of the United States to set aside a large territory in the West to serve as a permanent residence for the Indians, in exchange for the tribes’ eastern lands, and to assure the emigrating Indians the perpetual ownership of their new lands. The bill also authorized the president to make any arrangement—that is, a land cession—with any Indian tribe claiming any western land desired by an emigrating eastern tribe. Members of the former tribe, native to the West, could then “remove and avail themselves of the means provided by this act.” The president was further authorized to compensate the emigrants, after a due appraisal, for improvements made on eastern lands; to assist the emigrants in moving to and settling in their new home; and to protect and maintain “the same suprintendence and care over” the tribes in the West as when they were in

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<sup>55</sup> Ibid., 19-22, 25.

the East. Section nine of the bill, which authorized an appropriation to enact these stipulations, was intentionally left blank.<sup>56</sup>

On its surface, the bill was benign, even benevolent. It was coated in altruistic language, and dotted with words such as “absolute,” “assure,” “forever,” “permanent,” and “posterity.” Officially, H.R. 287 was little more than an open-ended appropriation that authorized an exchange of lands with the Indians, an idea that had existed in the American political consciousness for a quarter of a century. It made no mention of the use of force. Significantly, however, it contained no provision for the Indians’ refusal to relocate, or even any indication they might not wish to do so. Of the nine sections in the bill, eight granted powers to the president and one authorized an expenditure of the Treasury’s money. The only mention of any tribe’s “wishes” or “consent” occurred in Section Four, which referred to the Indians already living in, and native to, the trans-Mississippi West. The bill’s omission of Indian rights did not escape removal opponents in Congress, however, as will be seen in the next chapter.

The House of Representatives on March 18, 1830, requested a report from the War Department on the climate and soil of the proposed western Indian territory and the estimated expense involved in removal. The report, which Secretary of War Eaton submitted to the House on April 13, affirmed, based on an 1825 assessment by William Clark in St. Louis, that the climate of the territory west of the boundaries of Missouri and Arkansas and between the parallels of 41° and 44° North was pleasant, with winters mild enough for domestic animals to survive. The land itself was fertile. According to Clark, “On all creeks and rivers, there are bottoms of rich land easily prepared for cultivation.”<sup>57</sup> The heart of Eaton’s report, however, involved the amount of money necessary to get the Indians there. Because no project on such a

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<sup>56</sup> Bills and Resolutions, House of Representatives, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., February 24, 1830.

<sup>57</sup> Thomas McKenney to John H. Eaton, April 6, 1830, HRDoc 91, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., p. 7, Serial 198.

scale had before been attempted, the estimates were imprecise. According to Jackson's removal plan, a minimum of 55,000 Indians would have to be gathered, escorted a thousand miles, and fed for one year. All previous removals had been piecemeal, involving portions of tribes. Indian agent David Brearly had arranged for the emigration of 1,200 Creeks (the Chilly McIntosh faction, discussed in Chapter 4) in 1827 and 1828 at a cost of about \$43 per person. John Crowell did the same for another 1,300 Creeks in 1829 at a cost of \$21 per head. An official at the Treasury, however, Second Auditor W. B. Lewis, made some calculations and was convinced that every southeastern Indian could be removed for an average of just eight dollars per person (ten dollars for every Cherokee and Creek, six dollars for every Chickasaw and Choctaw, who had less distance to travel). The cost of emigration would thus total \$440,000. The crucial expense would be the sum required to feed the emigrants in their new homes for a year. According to Lewis's reckoning, which was included in the report to the House, the United States would need to provide 18,920,505 rations at a cost of 8 cents each, totaling \$1,513,640. Furthermore, Lewis determined that one out of every seven Indians was a warrior who would expect to receive departing presents such as rifles and kettles. At thirty dollars per warrior, totaling 7,857 men, this would mean an additional expense of \$235,710. The total cost of clearing the Southeast of its Native inhabitants was therefore, according to this estimate, \$2,189,350.<sup>58</sup>

Meanwhile, in the Senate, the debate over the removal bill was commencing. Unlike the House, which was evenly divided between supporters and opponents of Indian removal, there was a clear majority of pro-removal men in the Senate; it was likely that the bill would pass in that body. This did not mean, however, that the bill had to pass as it was written by Hugh White and the Committee on Indian Affairs, or that debate was irrelevant. At best, removal opponents

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<sup>58</sup> W.B. Lewis to John H. Eaton, April 12, 1830, *Ibid.*, pp. 2-6, Serial 198.

in the Senate could try to amend the bill to give some right of refusal to the Indians. If this failed, they could at least provide their counterparts in the House with sustainable arguments, which might assist the representatives in defeating, even if by a single vote, the removal bill. Either way, the fate of the American Indians was in the hands of Congress.

## **Chapter 7** **The Debate and the Vote in Congress** **(April-May 1830)**

The congressional debates over the Indian removal bill in the spring of 1830 were the most vitriolic since the Missouri Crisis ten years earlier. Indeed, a veteran observer of Congress, journalist Thomas Ritchie of Virginia, predicted “another Missouri Question” as a result of the sharply divided opinions on removal.<sup>1</sup> The debates lasted about two weeks in both the Senate and the House, but they were not simultaneous. They represented the political culmination of years of uncertainty, contradiction, and anxiety in the long relationship between Anglo-Americans and Native Americans. Just how many years was an open question. The answer could be as few as five years (since the Treaty of Indian Springs of 1825) or as many as seventy-six (since the Albany Congress of 1754 had first considered the need for a uniform approach for the colonies’ interactions with the Indian tribes).

Most politicians understood, however, that the reasons for the removal crisis stemmed from America’s experience in the War of 1812 and the demographic and political events which followed. The United States Army had during the war decisively established military hegemony east of the Mississippi River, which secured to Americans the possibility of westward emigration and all but guaranteed national expansion—including, to some degree, the expansion of slavery. The energetic nationalism of the immediate postwar years set the United States on its path to continental empire. The 1819 Florida (Transcontinental) Treaty and the 1823 Monroe Doctrine were the most significant manifestations of this national ambition.

But many whites viewed the Native Americans as an obstacle to the country’s stability. The Indian removal bill was the only major piece of legislation proposed by Andrew Jackson

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<sup>1</sup> Richmond Enquirer, February 26, 1830.

that became law at his behest, and it was one he put the full power of his office into supporting. The Senate and House committees on Indian Affairs, sponsors of the respective removal bills, were chaired by Tennesseans and filled with Jackson supporters. Many opponents of removal were, not coincidentally, political opponents of Andrew Jackson, who was an extraordinarily polarizing figure. The bill was also, as Jackson's secretary of state, Martin Van Buren, conceded, a measure which would benefit most southern whites but few northerners.<sup>2</sup> The partisan and sectional nature of the congressional debates, however, largely obscured the understanding that had heretofore been integral to discussions of federal removal policy. Removal as articulated by politicians in the 1820s was a dogged attempt to solve a seemingly unsolvable social and political problem. The Indians could not be destroyed; extermination of the tribes was never, officially or unofficially, an acceptable solution for American statesmen. Nor could they be assimilated into American society, most contemporaries now believed. The Indians' determination to maintain their identity and the inveterate racial prejudice of whites in the borderlands made it impossible. The choice before Congress, then, was between protecting the Indians on their lands in the East and removing them to the West.<sup>3</sup> But the extraordinary friction between the federal government and Georgia in the latter half of the 1820s meant that the state would be a focus of attack by removal opponents. The Georgia delegation in Congress knew it, and entered the debate prepared to counter these perceived assaults on Georgia's honor and reputation. In short, a nonpartisan, objective discussion of removal was no longer possible. With few exceptions, those who participated in the removal debate were either strongly for or strongly

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<sup>2</sup> Autobiography of Martin Van Buren, 2 vols., ed. John C. Fitzpatrick (Washington, D.C., 1920), 2: 289-295, for a decidedly biased view of the policy. For a brief but insightful analysis of the sectional nature of the removal bill, see Leonard L. Richards, The Slave Power: The Free North and Southern Domination. (Baton Rouge: Louisiana University Press, 2000), 125-27.

<sup>3</sup> See also Francis Paul Prucha, "Andrew Jackson's Indian Policy: A Reassessment," The Journal of American History, Vol. 56, No. 3 (Dec., 1969), pp. 527-539.

against the measure at hand. Both supporters and opponents of the removal bill found seemingly legitimate justifications for their positions by mining—and interpreting—the history of the United States and its predecessor, British America. The partisan and sectional nature of the debate, combined with professions of moral outrage from the bill’s northern opponents and angry indignation from the Georgia delegation, created the atmosphere of a political showdown. Andrew Jackson’s intent from the first day of his presidency had been to force the issue of removal on the nation once and for all, and he succeeded. But Congress, not the executive, represented the arena in which the fate of the Indians was to be sealed.

### **The Debate in the Senate**

The Senate debate lasted from April 6 to April 24, 1830. Of the 48 senators, only eight spoke for any length of time—four of whom voted for the removal bill, four against. Senator Theodore Frelinghuysen of New Jersey and his allies, Peleg Sprague of Maine and Asher Robbins of Rhode Island, intended to prove that the actions of the southern states were extralegal, as they violated the higher authority of the United States as expressed in its treaties with the Indians. Opposing them were John Forsyth of Georgia, Hugh Lawson White of Tennessee, John McKinley of Alabama, and Robert Adams of Mississippi.<sup>4</sup>

The debate began with a consideration of an amendment to the removal bill proposed by Frelinghuysen. The amendment was in the form of two additional sections. The first was a proviso that afforded the Indians the right of their current landed possessions until they chose to remove. The second stipulated that, before any tribe removed or exchanged lands, the rights of the tribe would be guaranteed by treaty, understood to be a legal and binding contract between

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<sup>4</sup> It is peculiar that the other senator from Georgia, George Michael Troup, who more than any other individual had precipitated the crisis between Georgia and the federal government from 1825 to 1827, said not one word during the removal debate, nor made any other action except to cast his vote.

the government and the Indians. The first section, which if approved would become Section Nine of the removal bill, was intended to disclose, as Frelinghuysen put it, “the real object sought by this bill, seemingly composed of harmless clauses.” Though the bill was officially an appropriation for Indian emigration and an authorization for an exchange of lands, Frelinghuysen drew attention to the unspoken but crucial context of the measure—namely, the president’s determination, without the consultation or consent of Congress, that the Indians who remained would be subject to the laws and jurisdiction of the states. The second proviso, Section Ten, sought to continue the precedent of dealing with the Indians by treaty. Thus amended, the bill would explicitly grant the Indians the right of refusal and, at least implicitly, acknowledge their status as politically sovereign entities.<sup>5</sup>

For removal opponents, the absence of these provisions was what made Jackson’s scheme, as manifested in the removal bill, both deceptive and criminal. For while the bill, on its surface, was benign, the insistence of the administration that it was powerless to interfere in the acts of the Georgia, Alabama, and Mississippi legislatures was the very thing that made this piece of legislation different from all previous appropriations concerning Indian affairs. The assertions of state hegemony over the tribes gave the Indians a choice: to remove or submit. For anti-removal politicians, it was no choice at all; it was, in fact, what made Jackson and Eaton’s policy a program of forced removal. For Frelinghuysen, the “principle [sic] question we have to decide” was whether Georgia had the right to enact such legislation in the first place. “If that question is settled,” said the senator, “all will be at an end.” Either Georgia and the other southern states had legally extended their jurisdiction over the Indians, in which case the tribes

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<sup>5</sup> Register of Debates, Senate, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., April 9, 1830, 309. Frelinghuysen’s famous speech against removal, six hours in length, was delivered over the course of three days, from April 7-9, 1830.



were doomed as political and social collectives unless they removed, or they had not. If it was the latter, Congress could negate the hidden teeth behind the bill by simply voting against it.<sup>6</sup>

In his unambiguous support of those state actions, Frelinghuysen declared, President Jackson had usurped the powers of the judiciary by acting as a one-man Supreme Court. He, assisted by Secretary of War John Eaton, had decided that the precedent, set by the Confederation Congress and continued by George Washington, of conducting treaties with the Indians would be nullified, or at least that the existing treaties were open to a great degree of interpretation. Frelinghuysen declared that the early Indian treaties—particularly the Cherokee treaties of Hopewell (1785) and Holston (1791) and the Creek Treaty of New York (1790)—affirmed boundaries between the tribes and the United States and guaranteed the integrity of Indian territory. At its discretion, however, the Jackson administration had “thought proper, without the slightest consultation with either House of Congress, without any opportunity for counsel or concert, discussion or deliberation, to despatch the whole subject in a tone and style of decisive construction of our obligations and of Indian rights,” said Frelinghuysen. “No one branch of the Government can rescind, modify, or explain away, our public treaties.” Andrew Jackson was, as Frelinghuysen described the situation, disregarding the fundamental American concept of separation of power.<sup>7</sup>

That Jackson and his alter ego, Eaton, were doing so in an attempt to terrorize the Indians Frelinghuysen had no doubt. He had at hand a report from Cherokee agent Hugh Montgomery to the War Department which predicted that “if the laws of the States are enforced, you will have no difficulty in obtaining an exchange of lands with them.” The policy of coercing the Indians to remove was, Frelinghuysen conceded, not original to the Jackson administration. “The truth is,”

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<sup>6</sup> Ibid., March 8, 1830, 245.

<sup>7</sup> Register of Debates, Senate, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., April 9, 1830, 309-10.

said the senator, “we have long been gradually, and almost unconsciously, declining to these devious ways, and we shall inflict lasting injury upon our good name, unless we speedily abandon them.”<sup>8</sup> In a six-hour speech that became justly famous in the United States and abroad, the senator from New Jersey asserted three fundamental and, as he saw it, undeniable precepts about the relationship of the Indians to the United States: the Indians held the original and absolute title to their lands; the Indian tribes were sovereign political entities with their own governments; and the paradigm of the Indian treaty system, in conjunction with the Trade and Intercourse Acts, was the only established and recognized mode of interacting with the American Indians.

Despite his later fame in American and Europe as the “Christian Statesman,” an appellation given him by abolitionist William Lloyd Garrison, Frelinghuysen mentioned religion only in four brief instances during his defense of the Indians. One of those times, however, and the most important, was when he declared that the Indians possessed an inviolable title to their lands. “And here,” he stated, “I insist that, by immemorial possession, as the original tenants of the soil, they hold a title beyond and superior to the British Crown and her colonies, and to all adverse pretensions of our confederation and subsequent Union.” God had placed the Indian tribes in North America. Although some white politicians had, “by a system of artificial reasoning,” justified the encroachment of white settlers upon Indian lands, there was no such thing as a “law of nations” that permitted such chicanery. In itself the desire for Indian land was not unreasonable. Frelinghuysen agreed with those who wanted to see an efficient use of the land, and cultivation was unmistakably a better use of arable land than hunting. “But such appropriations are to be obtained by fair contract, and for reasonable compensation.” The owner

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<sup>8</sup> Ibid., April 9, 1830, 310.

of a parcel of land could be induced, but not compelled, to sell.<sup>9</sup> This was true regardless of the race of the owner in question. “Do the obligations of justice change with the color of the skin?” Frelinghuysen asked rhetorically. Given the “unshakable basis” of Indian title, therefore, the “collateral issue” between the United States and Georgia was nothing more than an artificially manufactured bone of contention. The Cherokees, said Frelinghuysen, were not a part of the controversy between Georgia and the general government, as they “hold [their lands] by better title than either Georgia or the Union.” They were beyond and above questions of state sovereignty. Indeed, if the Cherokees and Georgians were to trade places, Frelinghuysen claimed, there would be no question of who was in the right. The Georgians would erupt in protest, and rightly so. The American Revolution had been ignited, with the widespread outcry over a few shillings’ tax on paper and tea, by far less an imposition.<sup>10</sup>

Tied to the question of Indian title was that of Indian sovereignty, which in turn was inseparable from the matter of the Indian treaties. The Treaty of Hopewell had in 1785 granted peace and protection to the Cherokee nation. It had also formally distinguished between American citizens and the Cherokee people. Even if one conceded that the two parties to the treaty were not equals, that in no way affected the sovereignty of either. When, Frelinghuysen asked, did the southern Indians relinquish the right to self-government? Never. “Sir, they have always exercised it, and were never disturbed in the enjoyment of it, until the late legislation of Georgia and the acts of Alabama and Mississippi.” The assertion that the Indians were tenants at will was, he believed, absurd. Weak as it was, the Confederation Congress had retained the power to conduct Indian affairs precisely because of the necessity for the states to speak with one voice when dealing with the Indian “nations.” This standard was reaffirmed by the new federal

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<sup>9</sup> Register of Debates, Senate, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., April 9, 1830, 311.

<sup>10</sup> Ibid., April 9, 1830, 312.

government under the Constitution. There was a reason that the framers had made treaties difficult to ratify: the need for a two-thirds, as opposed to simple, Senate majority reflected the fact that, once made, treaties had to be honored. The second treaty with the Cherokees, that of Holston in 1791—and the first ratified under the Constitution—intentionally contained the same language as that of Hopewell. Now, however, the administration and removal advocates in Congress were, according to Frelinghuysen, guilty of an almost inconceivable arrogance. In their assertion that the Indian treaties were not legally binding compacts but merely ambiguous and useful tools to control the Indians, pro-removal statesmen were accusing the senators who had ratified those early treaties of “gross ignorance of constitutional powers”—when many of those same men had served at the Constitutional Convention itself. A respect for and protection of Indian “lands and property” was included in the famous Northwest Ordinance of 1787, re-enacted by the First Congress. The Trade and Intercourse Acts, moreover, including the Act of 1802, still in force, were pieces of legislation “passed expressly to effectuate our treaty stipulations.” In short, Frelinghuysen concluded, there was no doubt of the obligation of the United States to protect the Indians, which meant respecting Indian title to land, recognizing the Indians’ political independence, and honoring the treaty stipulations. The central question of Indian affairs had ceased to be “What are our duties?” Removal advocates were instead concerned with the question of “How shall we most plausibly, and with the least possible violence, break faith?”<sup>11</sup> Frelinghuysen, more than any other opponent of removal, addressed the removal question in terms of moral and legal obligations.

Although the removal bill was presented by Hugh White of Tennessee, the chief spokesman for removal in the Senate was John Forsyth. A former governor of Georgia, he no doubt took Frelinghuysen’s criticisms of his state personally. Certainly he responded with the

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<sup>11</sup> Ibid., April 9, 1830, 313-16.

energy of a man addressing a stain upon his honor. “I have so much kindness for the Senator as to wish to satisfy him,” said Forsyth, “that there is no occasion for an assault upon us, notwithstanding he displayed so little sympathy for the whites. . . having exhausted all his sympathy upon the red men, none for the whites could be reasonably looked for from him.” Forsyth well knew that Frelinghuysen’s speech was not merely for the members and spectators in the Senate chamber. It was equally intended “to persuade his friends in the House of Representatives” to block passage of the removal bill. But if few could surpass Frelinghuysen in sheer oratorical ability, Forsyth was the more adept at marshaling the facts (sometimes creatively) necessary to sustain his case. Unsurprisingly, Forsyth grounded his argument in the Compact of 1802 and state rights. Legislation was “the highest act of sovereignty,” Forsyth said, quoting the English jurist Sir William Blackstone.<sup>12</sup> Treaties were subordinate. Even so, the Treaty of Hopewell itself had granted the United States the power of legislation over the Cherokees. Article Nine of the treaty, Forsyth pointed out, gave the United States “the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as they [the United States] think proper.”<sup>13</sup> Under Article Two of the Georgia compact, Forsyth claimed (accurately), the state had ceded its claims to territory between the Chattahoochee and Mississippi Rivers on condition that the United States grant all jurisdiction to lands not in the ceded territory or in any neighboring state to Georgia. As the state had been granted legal hegemony over all its lands, Forsyth reasoned, the Indian tribes could not be sovereign within its borders.

By this interpretation, Frelinghuysen’s references to the Indian treaties were irrelevant.

Frelinghuysen, Forsyth noted, had pointed to the treaty-making power of the United States under

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<sup>12</sup> Ibid., April 15, 1830, 325-26. Blackstone’s Commentaries on the Laws of England was first published in 1765 and was a success with readers on both sides of the Atlantic.

<sup>13</sup> Treaty with the Cherokees, November 28, 1785, U.S. Statutes at Large, 7: 20.

the Articles of Confederation, but not mentioned the key clause which read “provided, that the legislative right of any State within its own limits be not infringed or violated.” Of greater aid in Forsyth’s argument that the Compact of 1802 superseded the Indian treaties, however, was the Constitution itself, on which anti-removal legislators pinned their assertions of the supremacy of treaties over state legislation. The Constitution, Forsyth claimed, did not grant the United States the power to make a treaty with Indians within an existing state. Nor did the Constitution prohibit the states from making contracts with the Indians. Article VI was clear that federal treaties superseded any and all state laws, and Forsyth did not deny the right of the United States to forge agreements with Indians living beyond the states and territories. But he did assert “that these instruments are not technically treaties, supreme laws of the land, superior in obligation to State constitutions and State laws.” Article I, Section 8 authorized Congress to regulate commerce “with foreign Nations, and among the several States, and with the Indian tribes,” implying that the Indians did not constitute foreign, and hence sovereign, polities. Article I, Section 10, Forsyth said, “proves that the Indian contracts were not in the contemplation of the convention, when the treaty-making power was discussed,” as the clause prohibited the states from entering “into any Agreement or Compact with another State, or with a foreign Power,” but made no mention of the Indians. As far as George Washington’s precedent was concerned, Forsyth contended that the great general had only continued the colonial policy, dating back to the Albany Congress of 1754, of purchasing Indian lands because it was pragmatic to do so. Whites, said Forsyth, had traditionally purchased lands from the Indians “not because it is the only or the just mode of managing them [the Indians], but as the cheapest and most convenient.”<sup>14</sup>

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<sup>14</sup> Register of Debates, Senate, April 15, 1830, 336-37.

If Frelinghuysen's references to the treaties were irrelevant, his censure of President Jackson was unfounded, according to Forsyth. In Jackson's declaration that the tribes had to either remove or submit to state laws, the president was not violating any treaty stipulation but merely honoring the Constitution, which did not allow for an abridgment of state sovereignty. Moreover, said Forsyth, those state laws were not, as Frelinghuysen claimed, oppressive to the Cherokees. Georgia's act of 1828 and its addendum of 1829 put the Indians "in every respect, save one, on the footing of white persons." The one exception prohibited an Indian from testifying against a white man, and was adopted from a Virginia law, which in turn could be traced to early statutes of Massachusetts and Connecticut. Forsyth thus rejected the idea that an indigenous government was necessary to the improvement of the Indians, but even more vehemently denied the accusation that the laws of Georgia contributed to a de facto program of forced removal.<sup>15</sup>

John McKinley of Alabama supported Forsyth's assertion that the Indians possessed no inherent rights to the soil by invoking the well-known Supreme Court case of Johnson v. McIntosh (1823), in which Chief Justice John Marshall had affirmed that the United States held dominion over Indian lands by an established right of discovery and conquest, inherited from the country's European predecessors. The Indians had a right of occupancy, but not a right to title.<sup>16</sup> In response to Forsyth and McKinley, Peleg Sprague of Maine delivered an extraordinary legalistic defense of the Indians' right to self-government. Sprague ridiculed Georgia's assertions that the treaties were informal, and hence malleable, agreements. As late as 1825, as everyone in Congress knew, Georgia had contended that the Treaty of Indian Springs was valid and must be enforced. Sprague also rejected the claim that legal jurisdiction over Indian lands could pass

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<sup>15</sup> Ibid, 339.

<sup>16</sup> Ibid., 353. McKinley's speech was not recorded. We know of his argument from Sprague's response.

directly from Great Britain to Georgia regardless of the fact that the United States had repeatedly recognized the tribes' governments and political independence. The tribes had always enjoyed political independence, which meant that Georgia's complaint of the Cherokees' supposed imperium in imperio was groundless. Article IV, Section 3 of the Constitution decreed that no "new State" could be established within the jurisdiction of an existing state. The Cherokees, declared Sprague, had not established a new state but merely adopted a new form of government, as was their right. The New Englander quoted the same decision of the Marshall court, in which the chief justice had himself written that "it had never been contended that the Indian title amounted to nothing. Their right of possession has never been questioned." Even the December 20, 1828, act of the Georgia legislature, Sprague pointed out, by its express intention "to extend the laws of the State over" the Cherokees, admitted that the lands were never before subject to Georgia's jurisdiction.<sup>17</sup> Sprague's arguments were assailed by Robert Adams of Mississippi who was, in turn, refuted by Asher Robbins of Rhode Island, with each side talking past the other.

Of the forty-eight senators, twenty-five were political allies of the Jackson administration. Clearly, however, the supporters of the removal bill in the Senate expected at least a few of the Anti-Jacksonians to vote for the measure. Late in the debate, on April 22, 1830, Frelinghuysen accused Forsyth of gloating before the vote was even taken. "The honorable Senator," Frelinghuysen noted, "raises the notes of victory, while the conflict is still matter of expectation only."<sup>18</sup> If the success of the removal bill in the Senate was not quite a foregone conclusion, however, the pro-removal senators proved justified in their confidence. On April 24, Frelinghuysen reiterated his proposed amendments to the bill, which had not been acted upon.

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<sup>17</sup> Register of Debates, Senate, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., 343-53.

<sup>18</sup> Ibid., April 22, 1830, 380.



The first was a clause that explicitly afforded the Indians the right of their current landed possessions until they chose to remove. It was rejected 27 to 20. The second stipulated that, before any tribe removed or exchanged lands, the rights of the tribe would be guaranteed by treaty. It was rejected 28 to 19. The third proposal, to be attached after Section Eight of the removal bill, stated “That nothing herein contained shall be so construed as to authorize the departure from, or non-observance of, any treaty, compact, agreement, or stipulation, heretofore entered into, and now subsisting between the United States and the Cherokee Indians.” This addendum also went down, 27 to 20. A fourth motion by Sprague, which also attempted to guarantee Indians rights as expressed “according to the true intent and meaning of such treaties” was defeated by the same margin. Thus all four attempts to include the right of Indian refusal and preserve the letter of previous Indian treaties failed.

Only one thing remained to be done: to fill in the amount of the appropriation in Section Eight of the bill, which had been left blank. On Saturday, April 24, 1830, the initial appropriation of \$500,000 was inked in, and the Senate voted on the Indian removal bill. It passed by a vote of 28 to 19, with all twenty-four Jacksonian senators present voting yea, and with Nathan Sanford of New York, Josiah Johnston of Louisiana, and William Hendricks and James Noble of Indiana, nominal Anti-Jacksonians, supporting the bill.<sup>19</sup> Four states—New Hampshire, Pennsylvania, New Jersey, and Missouri—recorded split votes.

### **The Debate in the House**

To a much greater degree than their counterparts in the Senate, removal opponents in the House of Representatives seemed to understand that Indian removal was entrenched in American political discourse and that, unpalatable and offensive as the idea might have been, it was not

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<sup>19</sup> *Senate Journal*, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., 266-68. Senator Samuel Smith of Maryland, a Jackson supporter, was not present and did not vote.

going to disappear. There were exceptions to this, of course, and the defense of the Indians' sovereignty and right to self-government continued throughout the debate, which lasted from May 13 to May 26, 1830. But if anti-removal senators highlighted and questioned the legality and morality of removal itself, anti-removal congressmen instead adopted the more pragmatic stratagem of undermining the specific program of removal at hand. These men—Henry Storrs of New York, William Ellsworth and Jabez Huntington of Connecticut, George Evans of Maine, Isaac Bates and Edward Everett of Massachusetts, John Test of Indiana, and Joseph Hemphill of Pennsylvania—focused on and expounded upon the earlier assertions of Frelinghuysen, Sprague, and Robbins that the removal bill and the administration's removal scheme were deceptive. They argued that its true purpose—and Jackson's—was not to save the Indians or improve their condition but to sanction the bullying actions of the southern states, thus constituting a de facto program of forcible removal. They also assailed the provisions of the removal bill itself, arguing that it was vague in its goals and unrealistic in its expectations.

This attempt to discredit the bill began on May 15, after Bell introduced it on May 13 and spent five hours on May 14 explaining its purpose. Bell's speech was unfortunately not recorded, but we know from the language of Henry Storrs's response that the Tennessean decried "the condition to which these unfortunate people have become reduced, by a combination of circumstances which now press upon them in some quarters with intolerable severity," and expressed a wish that they were already removed from "the reach of the oppression" in the East.<sup>20</sup> The New Yorker replied that he could not lend his support to the bill because, although it contained nothing objectionable on its face, it was clearly intended to support the actions of Georgia, Alabama, and Mississippi. Georgia in particular was far from being misunderstood or misinterpreted, as that state's delegation had so often claimed, said Storrs. The Monroe and

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<sup>20</sup> Register of Debates, H. of R., 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., 993-94. (Storrs quoting or paraphrasing Bell.)

Adams administrations had extinguished the Indian title to twelve million acres of land in Georgia at a cost of seven and a quarter million dollars. Yet, once it was clear the Cherokees had determined never to remove or cede any more land, the Georgia legislature itself had in December 1827 found a way to dismiss the supposedly sacred compact. The agreement was not binding on the state, the legislature asserted to then-Governor John Forsyth, if the federal government violated it first by continuing to declare itself the “sole and exclusive judge of what may be considered ‘reasonable terms.’” In this event, the legislature continued, the state was free to use force to remove the Indians and secure access to its own land. Georgia was left untrammelled, at full liberty to prosecute her rights in that point of view, according to her own discretion, and as though no contract had ever been made.”<sup>21</sup> Georgia was not, Storrs insisted, engaged in an attempt to save the Indians from extinction. Rather, the state was bent on ensuring the cultural and political annihilation of the tribes.<sup>22</sup>

Even more than his counterparts in the Senate, Congressman Storrs condemned the actions of the Jackson administration. The president, he said, “acting on his own responsibility” had in an astonishing display of effrontery simply decided to remove United States’ protection from the eastern Indians. In effect, he had declared not only the treaties but the trade and intercourse laws to be null and void, and had done so by circumventing Congress. It was true, Storrs acknowledged, that the issue of removal was a difficult one to discuss, but it should not have been impossible. There was no reason that Congress could not have been “left free to devise some prudent and just course, by negotiation or legislation, which might have quieted all parties, and preserved the public faith unblemished.” Jackson, however, by his “hasty” action, had intentionally eliminated all other alternatives but to vote yea or nay on the removal bill. The

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<sup>21</sup> Acts of the Legislature of the State of Georgia, 1: 237-47.

<sup>22</sup> Register of Debates, H. of R., 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., 995-96.

president had single-handedly changed the government's Indian policy, and he, therefore, was to blame for any subsequent violence in the southern borderlands.<sup>23</sup>

Storrs was attempting to stoke the indignation of the House of Representatives. Jackson had taken it upon himself, "in the recess of Congress," to decide the fate of the American Indians. Such encroachments of a president upon the prerogatives of the other two branches of the government, if left unchecked, could only lead to despotism, he claimed. This was the crux of the matter before the House. "This is the doctrine which must be sustained," said Storrs, "and it is this stretch of executive power which must be vindicated by those who support the measures of the President."<sup>24</sup> William Ellsworth and Edward Everett spent several days supplementing Storrs's accusations regarding the true purpose of the bill. The "mercenary motives" of the southern states, said Ellsworth, meant that the wishes of the Indians would not be respected, no matter how benign the bill's language. While he would gladly assist in the "honorable removal" of the tribes—meaning their formal consent via treaty—he could not support any program that so brazenly dismissed the entire legal history of the country's interactions with the Native Americans while it, at the same time, professed to be in the best interest of the Indians themselves. "Sir," said Ellsworth, "I confess I do not like this parade of humanity."<sup>25</sup> Everett was equally explicit. The southern states wanted the Treasury to pay for removal and the United States to contribute at least "a portion of the machinery" to physically escort the tribes west. The removal bill, in effect, required opponents of removal to become accomplices to that very

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<sup>23</sup> *Ibid.*, 996-97.

<sup>24</sup> *Ibid.*, 999-1002.

<sup>25</sup> *Ibid.*, 1026, 1030. One wonders if Ellsworth in fact said the word "charade" but was not heard (and recorded) correctly.

project, as it “provides the means for co-operating with the States of Georgia, Alabama, and Mississippi, in removing the Indians within their limits.”<sup>26</sup>

The extension of state jurisdiction over the Indians, asserted removal opponents, was unconstitutional and illegal. But what made the entire proposal truly heinous was how the Jackson administration and the southern states were cooperating to implement a program of forcible removal. The Georgia legislature’s act of December 1828 was nothing less than a transparent attempt to drive the Indians across the Mississippi, according to George Evans, despite the pretense of benevolence and the protestations of the Georgia delegation to the contrary. One did not have to face a musket and bayonet to be forced to do something. Like Senators Frelinghuysen and Sprague, Congressman Evans asserted that Georgia’s actions and those of her sister states put the Indians in an impossible position, since the legislation did not provide any sort of protection to the lands and rights of the Indians. The result of it would “leave the Indians in circumstances where they can make but one choice,” which was no choice at all, but compulsion. It was apparent to all in the House, said Evans, that Georgia’s action made no sense except as a means of forcing the Indian to emigrate, whereupon whites would immediately occupy the tribe’s land.<sup>27</sup> Edward Everett agreed that the use of force was a real concern. Jackson himself, in his annual message, had conceded that the Indians had long been pressured to remove “by persuasion and force.” To what did the president refer? Certainly not to open warfare against the Indians, as such measures had never been undertaken by the United States to acquire Indian lands. “I take the message,” said Everett, “to intend legislative force, moral force, duress, the untiring power of civilized man pushing his uncivilized neighbor farther and farther into the woods.” To deny the concerted efforts of the states and the administration to force the Indians

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<sup>26</sup> Ibid., 1060.

<sup>27</sup> Register of Debates, H. of R., 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., 1039.

out of the East was insulting. It was akin to claiming that the Puritans did not feel forced to move to America because they had the option of conforming to the Church of England. This, Everett claimed, was in fact the “most appalling” force that could be applied. More than all other modes of force, “the cold averted eye of a Government” suppressed resistance and broke a person’s willpower. It was an act of fraudulence, therefore, to claim that Jackson’s removal plan was not compulsory. No claim that the majority of Indians wanted to emigrate could be verified while the threat of state hegemony was held over their heads.<sup>28</sup>

Regardless of these objections—that the bill stemmed from a cabal of pro-removal politicians with Jackson at their head, and contributed to a de facto program of forced removal—opponents believed the program as articulated by the legislation was woefully inadequate to its professed goal. Everett for one thought the cost of removing the Indians would be more than twenty-four million dollars. His estimate of just the cost of feeding the emigrants for one year was over four million dollars—twice the Treasury’s anticipated cost for the entire removal scheme. This enormous sum would have to be paid by the American taxpayers. Given the country’s distribution of population, Everett reckoned that the state of New York would contribute \$4,080,000 to the removal program while Georgia would contribute only \$476,000. Ohio would be obliged to pay \$2,000,000, but Mississippi only \$120,000. Apart from the prohibitive cost of the venture, he continued, the mode of distributing the funds was objectionable, as the money was to be distributed solely at the discretion of the War Department. The secretary of war, however, had presented no itemized financial plan for removing the Indians. “Here we have a vast operation,” Everett said,

extending to tribes and nations, tens of thousands of souls, purchasing and inhabiting whole regions, building fifteen thousand habitations in a distant wilderness, and putting seventy-five thousand individuals in

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<sup>28</sup> Ibid., 1061.

motion across the country, and not an officer or agent specified; not a salary named; not one item of expenditure limited; the whole put into the pocket of one head of department, to be scattered at his will!”<sup>29</sup>

There were other concerns. The bill promised to “solemnly guaranty” the western country to the Indians, but the president, secretary of war, and removal advocates in Congress had spent months undermining the guarantees of past treaties with the Indians. Furthermore, the Georgia delegation claimed that treaties with Indians were not really treaties—and yet Section Four of the removal bill allowed the president to make treaties with western tribes to acquire their lands and make room for emigrants from the East. These contradictions could not be sustained either on paper or in practice, removal opponents insisted. A Pennsylvania Jacksonian named Joseph Hemphill proposed a substitute to the bill. He was the only person in either house to propose a cogent alternative to H.R. 287. Hemphill’s plan would provide for three commissioners chosen from states not “immediately interested” in Indian removal who would travel to each eastern tribe and ascertain their willingness to emigrate. They would then continue west and reconnoiter the territory to which the Indians would be sent, gauging its “quality and extent.” Hemphill figured both tasks and the commissioners’ report could be accomplished by the next session of Congress, six months hence, and for the relatively paltry sum of thirty thousand dollars. It would be a mission to collect information about both the disposition of the Indians and the realities of the West. Congressman Hemphill made it clear that he was not trying to impugn the motives of the president. At the same time, he cautioned, the issue could not be addressed on the grounds of party loyalty, as “it deeply involves both the political and moral character of the country.” Events were happening too quickly, Hemphill felt, for the American people to properly reflect upon the Indian question. Congress had received many petitions against removal, but none supporting it. His proposal was intended to collect information and buy time to answer the questions raised by

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<sup>29</sup> Ibid., 1077-78.

the vagaries of John Bell's bill. For example, Section Five allowed the president to compensate the Indians for improvements made to their eastern lands. Did this mean that the states would acquire the title to Indian lands while the United States owned the improvements? Section Six provided for the protection of the Indians in their new location. Would the United States then be obligated to become involved in every inter-tribal skirmish or war? Every concern and question, Hemphill stressed, needed to be considered before proceeding. A year's delay was of little inconvenience in so serious a matter. "To adopt this course," Hemphill concluded, "will be pursuing the recommendation of the President in the most wise and dignified manner."<sup>30</sup>

Joseph Hemphill's proposal came very late in the House debate, on May 24. It was a last attempt to slow the pace of the proceedings. Even if he had presented his plan on the first day of debate, however, it is unlikely that supporters of the removal bill would have been persuaded to accept even the modest delay of a year or even six months. Nearly every House member who argued in favor of the bill was a member of the Georgia delegation—Wilson Lumpkin, Thomas Foster, Richard Henry Wilde, Henry Lamar, Wiley Thompson, and James Moore Wayne. There were only two exceptions. One was Dixon Hall Lewis of Alabama, a close ally. The other was George McDuffie of South Carolina, who spoke only to comment that Georgia "has assumed an attitude from which she will not shrink," and that if the House did not vote in the affirmative, "the guilt of blood may rest upon us."<sup>31</sup> It was true that the Georgians were united in their efforts and determined to prevail in their goal. This goal was no longer exclusively concerned with removing the Indians from their state, but achieving a major political victory. Georgia's congressional delegation had rebuffed assaults on the state's actions (and therefore honor) for a full five years. In addition to assurance that the Cherokees would at last be removed from their

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<sup>30</sup> Ibid., 1132-33.

<sup>31</sup> Ibid., 1131.



state, a legislative triumph would bestow, if not vindication, at least the satisfaction of seeing their opponents humbled.

To this end the Georgians declared that removal was in no way a recent concept or a “novel” (a favorite epithet of removal opponents) scheme. The idea of Indian emigration, said Wilson Lumpkin, was sanctioned by Thomas Jefferson, James Madison, James Monroe, and John Quincy Adams. Andrew Jackson merely represented continuity. The chief task of every secretary of war since John C. Calhoun had been to address the Indian question, which increasingly meant attempting to persuade the tribes to emigrate. Moreover, Lumpkin contended, the vast majority of Americans supported Indian removal and desired its “consummation,” including noted citizens with long experience in Indian affairs such as General William Clark and Reverent Isaac McCoy, a Baptist missionary.<sup>32</sup> He was supported in this argument by Foster and Wilde, who claimed that removal was not only an established concept but had long been the settled policy of the government, as testified by James Monroe’s message of 1825. It was true, Wilde said, that a few hundred people had petitioned against the bill, but they were nothing compared “with the millions who were silent and satisfied” with the government’s course of action. Not only was removal nothing new, he claimed, but a bill “absolutely like the present in principle” had passed the Senate in 1825 “without a division, and almost without debate.” He referred to a bill put forward by Thomas Hart Benton, which proposed extinguishing the title of the Osage and Kansas tribes from Missouri, and which was written in language very similar to that of the current bill.<sup>33</sup>

Just as the bill’s opponents had the history of the Indian treaties to support their claims that the Indians were politically sovereign, its advocates had the country’s more recent history to

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<sup>32</sup> Ibid., 1018.

<sup>33</sup> Bills and Resolutions, Senate, 18<sup>th</sup> Cong., 2<sup>nd</sup> Sess., February 1, 1825. (S. 45)

support their assertion that removal had for years been a part of American political discourse. And even its opponents, Henry Lamar pointed out, had conceded that the bill's provisions were benign. The bill would, far from conferring alarming powers on Andrew Jackson, instead allow the president to serve as the instrument of the legislative branch. "He will," said Lamar, "occupy the humble station of a subordinate agent, with no more control than is conferred on him in the execution of other public acts." Lamar knew, however, that many congressmen were opposed to the removal bill because of the actions of his state. But the rejection of the bill, he said, would not aid the Indians in any way. The state would not rescind its efforts to extend legal jurisdiction over the tribes. Efforts by the Indians to resist the hegemony of American laws would only contribute to their decline.

But Lamar, too, used American legal history to support his assertion that the tribes were not sovereign, and certainly not when they were within the boundaries of a state. The framers of the Constitution, said Lamar, had placed the burden of proof on the United States when a question of federal versus state jurisdiction arose. The states had delegated the power to make treaties with the Indians, as well as regulate commerce with them, to the general government. But that was all. "If then, the United States cannot, in the regulation of commerce among the several States, divest the States of their jurisdiction over other subjects," the Georgian asked, "how do the same words, in relation to Indian tribes, increase the powers of the Federal Government, or impair the rights of the States? They do not." Georgia, Alabama, and Mississippi knew their constitutional rights, and would not yield them. The Indian treaties, he continued, could not possibly supersede the Constitution; the result would be that the president and two-thirds of the Senate would "hold the fate of the republic at will." Furthermore, the Supreme Court case of Fletcher v. Peck (1810) ruled that a state (specifically, as it happened, the state of

Georgia) possessed the power to dispose of unappropriated lands within its limits as it saw fit, unless prohibited from doing so by its own constitution. This included, Lamar claimed, tribal lands, because they were within the state's boundaries. If Georgia had a proprietary right to such lands it was obvious that Georgia had legal jurisdiction over those lands, and the people living on them. But this did not mean that the actions of Georgia, or the legislation at hand, were ominous. "There is no real or imaginary evil in voting for an appropriation, however large; no force is to be employed, no coercion contemplated," Lamar concluded. "[The Indians] will be left to their own judgment, and the adoption of their own course, uncontrolled by the restraints or exactions of this Government."<sup>34</sup>

His colleague James Wayne spoke up late in the debate and conceded that the discussion "was embittered by party spirit," a rare admission from the Georgia delegation. He also acknowledged that the members of the opposition were guided by "humane and conscientious" motives—the only pro-removal legislator in either house of Congress to do so. However, Wayne said, "the cause we advocate needs not the prescription of its adversaries." Opposition, in fact, had morphed into misrepresentation. The removal opponents referred to the Indians as the original owners of the soil. But, claimed Wayne, they in fact had no ownership, rights of property, or even tenancy by occupancy. True, they were in possession of great tracts of land, but that did not give them the right to prevent others from appropriating and transforming them. The Indians were proprietors of the soil they occupied so long as they put it to use, but that did not mean they were sovereigns of it. Sovereignty over the soil was "the attribute of the States" and could not be applied to any Indian tribe, mired as they were in a state of savagery. The early European colonizer of the continent, however, had possessed a providential right "to make this continent the grave of himself and the home of his posterity." The Indians possessed a "share"

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<sup>34</sup> Register of Debates, H. of R., 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., 1112-19.

of the New World, but not political rights, jurisdiction, or ownership of the land. This subservient status was, Wayne asserted, only reinforced by later subsequent treaties, completely separate from the prerogatives of Georgia. Article Six of the Treaty of Hopewell, Wayne pointed out, deprived the Cherokees of the power to punish Indians (or white persons residing among the tribe) for acts of robbery, murder, or other capital crimes against American citizens; the offenders were to be turned over to the United States government. Nor could the Cherokees punish a white offender who committed a similar crime in Indian country. Article Nine of the same Treaty (as Senator Forsyth had pointed out) granted the United States the power to regulate all the Cherokees' affairs "in such manner as they think proper." If the Cherokees had a right to establish an independent government, argued Wayne, they could enter into agreement with foreign powers, a possibility that the entire history of American-Indian relations had sought to prevent. The tribes, therefore, were not "nations." They had no separate or national existence apart from the United States. The Indians were unquestionably subordinate, but they were not and had never been an "oppressed, aggrieved people," Wayne concluded on May 24. Where, he wanted to know, was the proof of such oppression? "In what history is it to be found? Or what tradition of their own tells it to the world?" Rather, he claimed, the century of settlement from the Pilgrims to James Oglethorpe was one that witnessed purchases of land from the Indians and negotiations for peace. True, there had existed two centuries of intermittent warfare between whites and Indians, but "I assert, without the fear of contradiction, that our military annals are free from any excesses" against the American Indians.<sup>35</sup> Anti-removal congressmen, Wayne intimated, were throwing out histrionic accusations.

James Wayne's speech was followed by Joseph Hemphill's suggestion of an alternative bill that proposed sending three commissioners to the western country. Congressman John Bell,

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<sup>35</sup> Ibid., 1123-26, 29-31.

on the defensive after the legislation he had authored had been under attack for a fortnight, rejected Hemphill's proposal on the grounds that no three men could fulfill the duties stipulated therein in twenty-four months, let alone six. The majority of members agreed. By this time the House of Representatives was exhausted. Rarely had the chamber adjourned before 9:00 or 10:00 p.m. during recent weeks, and most members were eager to adjourn Congress itself and return to their homes before the heat and dust of the Washington summer fully arrived. On May 25, 1830, a motion to suspend further discussion passed, 110 to 85. The vote came the following day, Wednesday, May 26. Two Pennsylvania representatives, James Ford and William Ramsey, were absent. The Pennsylvania delegation, which had many Quaker constituents, was divided on the removal issue, as testified by the Jacksonian Joseph Hemphill's opposition to it. Apparently believing the missing members were opponents of the bill, and knowing that every vote would matter, Edward Everett asked the House to wait for several hours while the sergeant-at-arms tracked down all missing members and they made their way to the chamber. Finally, the vote was taken. The removal bill passed by a razor-thin margin of 102 to 97. (Ford and Ramsey voted for the measure.)<sup>36</sup>

Unlike that of the Senate, the House vote exhibited a marked sectional allegiance. Twenty-seven Jacksonians voted against the bill—one from Illinois, two from Kentucky, one from New York, three from North Carolina, five from Ohio, and fifteen from Pennsylvania. Eight Jacksonians did not vote, including future president James Buchanan and Speaker of the House Andrew Stevenson, who preferred not to cast a vote unless there was a tie.<sup>37</sup> Only two Anti-Jacksonians, William Shephard of North Carolina and Jonathan Jennings of Indiana, voted

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<sup>36</sup> House Journal, 23: 729-30. For a comprehensive state-by-state tally of the vote on the removal bill, see the Appendix.

<sup>37</sup> This was apparently a personal preference of Stevenson's. Had there been a tie, however, he would have voted in favor of the bill, as he did during three previous test votes. Register of Debates, H. of R., 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., 1124.

for the bill. The slave states voted 61 to 15 for the bill, while the free states opposed it by a two-to-one margin (82 votes against, 41 in favor). The West was closely divided, the representatives of the trans-Appalachian states casting 23 votes in favor of the bill, 17 against.

A close victory was all President Jackson needed or wanted. Upon the passage of H.R. 287 on May 26, the House immediately sent it back to the Senate, which adopted its language as the final legislation. Senators Frelinghuysen and Sprague attempted a desperate last effort to add amendments to the measure, but they were rejected 18 to 24. Andrew Jackson signed it two days later, on May 28, 1830. The Indian removal bill was now the Indian Removal Act.<sup>38</sup>

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<sup>38</sup> Register of Debates, Senate, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., 456. U.S. Statutes at Large, 4: 411-12.

## Conclusion

The seemingly inexhaustible drive and enthusiasm of Americans for expansion in the late 1810s and 1820s, and their belief, not yet called Manifest Destiny, that it was a national birthright, came into conflict with United States Indian policy as it had been practiced since 1789. This policy was forthright about the desire of the national government and white Americans for Indian lands, but the inherent contradictions in United States Indian affairs, especially regarding the unresolved question of Indian sovereignty, made a political controversy over the Indians increasingly possible, then increasingly likely, as Americans moved west and new states were added to the Union. Few politicians, however, could have predicted the manner in which the controversy would unfold. When then-governor John Clark brought the Compact of 1802 to the attention of the Monroe administration in January 1820, few government officials were familiar with it. The concept of state rights during the subsequent decade owed its evolution as much to Indian affairs as to slavery. It is a peculiarity of American history that the postwar nationalism which contributed to the country's expansion and prosperity in turn begat new states and, with them, sectional identity and allegiance. The bitter and extraordinary controversy between the national government and Georgia created a political environment in which the removal of the Indians came to be seen as not just beneficial to the United States, but essential. Andrew Jackson had come to this conclusion early in his career, but it was not until 1829 that he was in a position to do more than advocate Indian removal.

It was Congress, however, that codified Indian removal as the official policy of the United States. It would be easy to interpret the congressional debate as one of good versus evil, or as one between humanitarians and Indian oppressors. It is difficult not to admire Theodore Frelinghuysen's attempt to frame removal as a moral issue that would mark, for good or ill, the

nation's character, or his sincere grief at the fate of the Indians. Too, it is tempting to dismiss John Forsyth's snide retorts to removal opponents, and his facile interpretation of America's history with the Indians, as the shameless tactics of a man for whom the matter was a political contest that had to be won at all costs. But the reality is that neither side of the removal question was willing or able to concede that Indian affairs constituted a complex problem with no universally acceptable solution. This had not been the case during the first congressional debate over removal in 1827, as shown in Chapter 5. Notwithstanding the heated rhetoric of those exchanges in the House of Representatives, the members had acknowledged a consensus on three points: the Indian tribes were not independent polities, and hence were subservient to the United States government; the treaty system as it had been heretofore practiced did not reflect this reality, meaning its further utility was questionable at best; and the situation of the Indians with respect to the neighboring white settlers was untenable.

During the 1830 debate, however, this consensus was nowhere to be seen. The pro-removal legislators refused to acknowledge several crucial realities. One was the fact that President Jackson had indeed unilaterally determined that the actions of Georgia, Alabama, and Mississippi were beyond the purview of the federal government, in a deliberate attempt to pressure the Indians into emigrating. His earlier career as a military man, especially his often-contentious relationship with his superiors in the War Department, testified to Jackson's unwillingness to concede personal or official authority to anyone. Clearly, he now professed impotence in the matter of state jurisdiction over the Indians because doing so advanced his goal of removing them from the East. Another was the history of the Indian treaties, especially Georgia's willingness to accept the treaties as valid, binding, and permanent agreements between two independent parties—until the tribes refused to remove or cede any more land. Perhaps the



most egregious omission by removal advocates, however, was the irrefutable evidence that the James Monroe and John Quincy Adams administrations had gone to unprecedented lengths to fulfill the Compact of 1802 and satisfy the claims of Georgia. They had extinguished 90 percent of Indian title within the state, at enormous cost, and been rewarded with accusations of bad faith and threats of armed conflict in the borderlands. The creativity with which supporters of the removal bill “explained away,” as Frelinghuysen correctly phrased it, these truths of the recent past infuriated those who articulated a defense of Indian rights.

As the same time, however, the question of what viable alternatives existed was not addressed by removal opponents in Congress. The failure to recognize the intractable nature of the Indian problem contributed to this inability to conjure acceptable substitutes for the removal bill. Indeed, the only proposed alternative to the measure at hand, offered by a single House member, still adhered to the belief that some form of removal would be necessary; Joseph Hemphill’s plan was a kinder and gentler means of achieving Indian emigration. One shudders to criticize those who spoke for the American Indians, but it must be noted that opponents of the removal bill offered an incomplete picture of the Indians’ situation in the Southeast. While many Indians, especially the Cherokees, were prospering or at least living sustainable lives, and thus not on an inevitable path to extinction, the southern tribes were not independent of the United States. Senator Asher Robbins of Rhode Island perhaps inadvertently conceded as much to removal advocates when he asserted that the Indians were politically sovereign and thus competent to be parties to treaties: “I agree that an Indian nation, to be competent to make a treaty, must be a sovereignty. . . but, for this purpose, it is not material whether the sovereignty be dependent or independent; sovereignty is all that is necessary to this competency.”<sup>39</sup> While the southern Indians could perhaps have (with difficulty) done without the annuities, agricultural

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<sup>39</sup> Register of Debates, Senate, 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., 375.

implements, or other economic and material supplements from the Treasury and the War Department, they could not maintain the integrity of their borders against Americans without the protection of the United States. That same spring of 1830, in fact, a delegation of Cherokees in Washington requested the removal of white intruders in tribal territory, a problem that had worsened since the discovery of gold in northwest Georgia in 1828.<sup>40</sup>

Contemporary Americans identified four alternatives with regard to dealing with the Indians: destroy them, assimilate them, protect them, or remove them. The first was unthinkable and the second deemed impossible, as noted above. Was protecting the Indians a viable option? Military men in the borderlands thought not. The United States Army in 1830 was small, with only seven infantry regiments responsible for manning forty-nine military posts and arsenals from Maine to Florida and from Louisiana to Michigan.<sup>41</sup> Offering meaningful protection to the eastern Indians was not possible, militarily or politically. The United States Army could not fend off the surrounding white southerners. And if President Jackson had radically changed his Indian policy—that is, suddenly declared the right of the Indians to remain where they were, free from local and state jurisdiction or interference—it is inconceivable that Georgia would not have immediately turned against his administration, as it had those of Monroe and Adams.

Like his predecessors, Andrew Jackson could see no alternative to removal. Unlike them, however, he was not content to leave removal as a preferable but unrealized solution. He was determined to make the concept of removal the law of the land, and the physical relocation of the Indians an active project. For Jackson the question of removal was a straightforward one. For many other Americans in and out of the government, however, the matter was not as simple. Politically speaking, Indian affairs was the most complicated issue of the day except slavery. It

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<sup>40</sup> George Lowrey et al. to Andrew Jackson, March 26, 1830, *Jackson Papers*, 8: 158-60.

<sup>41</sup> *Army Register for the Year 1830*, *American State Papers: Military Affairs*, (Washington: Gales and Seaton, 1860), 4: 251-64.

was also, thanks to partisanship and sectionalism, increasingly divisive. And yet every American statesman believed that something had to give, that the unstable political and demographic situation could not be sustained. Even those who bitterly opposed the Removal Act, such as Henry Storrs and Edward Everett, would by their own admission have been happy to see the Indians voluntarily emigrate to the West.<sup>42</sup> As Bernard DeVoto wrote of the American Civil War: “Whether or not the war was inevitable, the crisis was.”<sup>43</sup> The same is true respecting the crisis in American Indian policy in the 1820s and early 1830s. The Native American tribes of the early nineteenth century experienced a terrible and unavoidable predicament. Removal was not predestined to occur. But the expansion of the United States after the War of 1812 made a tremendous and irrevocable disruption of the Indians’ way of life a certainty. Indian removal was a tragedy in the true Sophoclean sense of the word.

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<sup>42</sup> Register of Debates, H. of R., 21<sup>st</sup> Cong., 1<sup>st</sup> Sess., 998, 1060.

<sup>43</sup> Bernard DeVoto, The Easy Chair. (Boston: Houghton Mifflin, 1955), 153.

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## Appendix

## Voting Record for the Indian Removal Bill (Twenty-First Congress)<sup>44</sup>

**The Senate** (S. 102; voted April 24, 1830)

### Alabama:

John McKinley (Jacksonian) Y  
William R. King (Jacksonian) Y

### Connecticut:

Samuel A. Foot (Anti-Jacksonian) N  
Calvin Wiley (Adams) N

### Delaware:

John M. Clayton (Anti-Jacksonian) N  
Arnold Naudain (Anti-Jacksonian) N

### Georgia:

George M. Troup (Jacksonian) Y  
John Forsyth (Jacksonian) Y

### Illinois:

Elias K. Kane (Jacksonian) Y  
John McLean (Jacksonian) Y

### Indiana:

William Hendricks (Adams) Y  
James Noble (Anti-Jacksonian) Y

### Kentucky:

John Rowan (Jacksonian) Y  
George M. Bibb (Jacksonian) Y

### Louisiana:

Josiah S. Johnston (Anti-Jacksonian) Y  
Edward Livingston (Jacksonian) Y

### Maine:

John Holmes (Adams Republican) N  
Peleg Sprague (Anti-Jacksonian) N

### Maryland:

Samuel Smith (Jacksonian) (no vote)  
Ezekiel F. Chambers (Adams) N

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<sup>44</sup> The party affiliations are in parentheses, followed by a Y or N, indicating a ye or nay vote. Because most members of the Twenty-First Congress were elected as Jacksonians or Anti-Jacksonians, I have retained those names, rather than substitute them with Democrat or Whig, which would soon become common.

Massachusetts:

Nathaniel Silsbee (Adams) N  
Daniel Webster (Anti-Jacksonian) N

Mississippi:

Powhatan Ellis (Jacksonian) Y  
Robert H. Adams (Jacksonian) Y

Missouri:

David Barton (Anti-Jacksonian) N  
Thomas H. Benton (Jacksonian) Y

New Hampshire:

Samuel Bell (Anti-Jacksonian) N  
Levi Woodbury (Jacksonian) Y

New Jersey:

Theodore Frelinghuysen (Anti-Jacksonian) N  
Mahon Dickerson (Jacksonian) Y

New York:

Nathan Sanford (Anti-Jacksonian) Y  
Charles E. Dudley (Jacksonian) Y

North Carolina:

James Iredell (Jacksonian) Y  
Bedford Brown (Jacksonian) Y

Ohio:

Benjamin Ruggles (Anti-Jacksonian) N  
Jacob Burnet (Adams) N

Pennsylvania:

William Marks (Adams) N  
Isaac D. Barnard (Jacksonian) Y

Rhode Island:

Nehemiah R. Knight (Anti-Jacksonian) N  
Asher Robbins (Anti-Jacksonian) N

South Carolina:

William Smith (Democratic Republican) Y  
Robert Y. Hayne (Jacksonian) Y

Tennessee:

Hugh L. White (Jacksonian) Y  
Felix Grundy (Jacksonian) Y

Vermont:

Dudley Chase (Anti-Jacksonian) N  
Horatio Seymour (Anti-Jacksonian) N

Virginia:

L. W. Tazewell (Jackson Republican) Y  
John Tyler (Jacksonian) Y

**The House of Representatives** (H.R. 287; voted May 26, 1830)

Alabama:

R. E. B. Baylor (Jacksonian) Y  
C. C. Clay (Jacksonian) Y  
Dixon H. Lewis (Jacksonian) Y

Connecticut:

Noyes Barber (Anti-Jacksonian) N  
William W. Ellsworth (Anti-Jacksonian) N  
J. W. Huntington (Anti-Jacksonian) N  
Ralph J. Ingersoll (Anti-Jacksonian) N  
William L. Storrs (Anti-Jacksonian) N  
Ebenezer Young (Anti-Jacksonian) N

Delaware:

Jensy Johns, Jr. (Anti-Jacksonian) N

Georgia:

Thomas F. Foster (Jacksonian) Y  
Charles E. Haynes (Jacksonian) Y  
Wilson Lumpkin (Jacksonian) Y  
Henry G. Lamar (Jacksonian) Y  
Wiley Thompson (Jacksonian) Y  
James M. Wayne (Jacksonian) Y  
Richard H. Wilde (Jacksonian) Y

Illinois:

Joseph Duncan (Jacksonian) N

Indiana:

Ratliff Boon (Jacksonian) Y  
Jonathan Jennings (Anti-Jacksonian) Y  
John Test (Anti-Jacksonian) N

Kentucky:

James Clark (Anti-Jacksonian) N  
Thomas Chilton (Jacksonian) N  
Nicholas D. Coleman (Jacksonian) Y  
Henry Daniel (Jacksonian) Y  
Nathan Gaither (Jacksonian) Y  
R. M. Johnson (Jacksonian) Y  
John Kincaid (Jacksonian) N  
Joseph Lecompte (Jacksonian) Y  
Robert P. Letcher (Anti-Jacksonian) N  
Chittenden Lyon (Jacksonian) Y  
Charles A. Wickliffe (Jacksonian) Y  
Joel Yancey (Jacksonian) Y

Louisiana:

Henry H. Gurley (Anti-Jacksonian) (no vote)  
W. H. Overton (Jacksonian) Y  
Edward D. White (unclear; later Whig) N

Maine:

John Anderson (Jacksonian) Y  
Samuel Butman (Anti-Jacksonian) N  
George Evans (Anti-Jacksonian) N  
Leonard Jarvis (Jacksonian) (no vote)  
Rufus McIntire (Jacksonian) Y  
Joseph F. Wingate (unclear) N

Maryland:

Elias Brown (Jacksonian) Y  
Clement Dorsey (Anti-Jacksonian) N  
Benjamin C. Howard (Jacksonian) Y  
George E. Mitchell (Jacksonian) Y  
Benedict L. Semmes (Anti-Jacksonian) N  
Michael D. Sprigg (Jacksonian) Y  
Richard Spencer (Jacksonian) Y  
George C. Washington (Anti-Jacksonian) N  
Ephraim K. Wilson (Jacksonian) (no vote)

Massachusetts:

John Bailey (Anti-Jacksonian) N  
Isaac C. Bates (Anti-Jacksonian) N  
B. W. Crowninshield (Anti-Jacksonian) N  
John Davis (Anti-Jacksonian) N  
Henry W. Dwight (Anti-Jacksonian) Y  
Edward Everett (Anti-Jacksonian) N  
Benjamin Gorham (Anti-Jacksonian) N

George Grennell Jr. (Anti-Jacksonian) N  
James L. Hodges (Anti-Jacksonian) N  
Joseph G. Kendall (Anti-Jacksonian) N  
John Reed (Anti-Jacksonian) N  
Joseph Richardson (Anti-Jacksonian) N  
John Varnum (Anti-Jacksonian) N

Mississippi:

Thomas Hinds (Jacksonian) Y

Missouri:

Spencer Pettis (Jacksonian) Y

New Hampshire:

John Brodhead (Jacksonian) Y  
Thomas Chandler (Jacksonian) Y  
Joseph Hammons (Jacksonian) Y  
Jonathan Harvey (Jacksonian) Y  
Henry Hubbard (Jacksonian) Y  
John W. Weeks (Jacksonian) Y

New Jersey:

Lewis Condict (Anti-Jacksonian) N  
Richard M. Cooper (Anti-Jacksonian) N  
Thomas H. Hughes (Anti-Jacksonian) N  
Isaac Pierson (Anti-Jacksonian) N  
James F. Randolph (Anti-Jacksonian) N  
Samuel Swan (Anti-Jacksonian) N

New York:

William G. Angel (Jacksonian) Y  
Benedict Arnold (Anti-Jacksonian) N  
Thomas Beekman (Anti-Jacksonian) N  
Abraham Bockee (Jacksonian) Y  
Peter I. Borst (Jacksonian) Y  
C. C. Cambreleng (Jacksonian) Y  
Timothy Childs (Anti-Masonic) N  
Henry B. Cowles (Anti-Jacksonian) N  
Hector Craig (Jacksonian) Y  
Jacob Crocheron (Jacksonian) Y  
Charles G. De Witt (Jacksonian) Y  
John D. Dickinson (Anti-Jacksonian) N  
Jonas Earll Jr. (Jacksonian) Y  
Isaac Finch (Anti-Jacksonian) N  
George Fisher (Anti-Jacksonian) (no vote)  
Jehiel H. Halsey (Jacksonian) (no vote)



Joseph Hawkins (Anti-Jacksonian) N  
Michael Hoffman (Jacksonian) Y  
Perkins King (Jacksonian) Y  
James W. Lent (Jacksonian) (no vote)  
John Magee (Jacksonian) Y  
Henry C. Martindale (Anti-Jacksonian) N  
Thomas Maxwell (Jacksonian) Y  
Robert Monell (Jacksonian) Y  
E. F. Norton (Jacksonian) N  
Gershom Powers (Jacksonian) Y  
Robert S. Rose (Anti-Masonic) N  
Ambrose Spencer (Anti-Jacksonian) N  
Henry R. Storrs (Anti-Jacksonian) N  
James Strong (Anti-Jacksonian) N  
John W. Taylor (Anti-Jacksonian) N  
Phineas L. Tracy (Anti-Masonic) N  
Gulian C. Verplanck (Jacksonian) Y  
Campbell P. White (Jacksonian) Y

North Carolina:

Willis Alston (Jacksonian) Y  
Daniel L. Barringer (Jacksonian) N  
Samuel P. Carson (Jacksonian) Y  
H. W. Conner (Jacksonian) Y  
Edmund Deberry (Anti-Jacksonian) N  
Edward Dudley (Jacksonian) N  
Thomas H. Hall (Jacksonian) Y  
Robert Potter (Jacksonian) Y  
Abraham Rencher (Jacksonian) Y  
William B. Shepard (Anti-Jacksonian) Y  
Augustine H. Shepperd (Jacksonian) N  
Jesse Speight (Jacksonian) Y  
Lewis Williams (Anti-Jacksonian) N

Ohio:

Mordecai Bartley (Anti-Jacksonian) N  
Joseph H. Crane (Anti-Jacksonian) N  
William Creighton (Anti-Jacksonian) N  
James Findlay (Jacksonian) Y  
William W. Irwin (Jacksonian) N  
William Kennon (Jacksonian) N  
William Russell (Jacksonian) N  
James Shields (Jacksonian) Y  
William Stanberry (Jacksonian) N  
John Thompson (Jacksonian) N  
Joseph Vance (Anti-Jacksonian) N

Samuel F. Vinton (Anti-Jacksonian) N  
Elisha Whittlesey (unclear; later Whig) N

Pennsylvania:

James Buchanan (Democratic Republican) (no vote)  
Richard Coulter (Jacksonian) (no vote)  
Thomas H. Crawford (Jacksonian) Y  
Harmar Denny (Anti-Masonic) N  
Joshua Evans (Jacksonian) N  
Chauncey Forward (Jacksonian) N  
James Ford (Jacksonian) Y  
Joseph Fry, Jr. (Jacksonian) Y  
Innis Green (Jacksonian) N  
John Gilmore (Jacksonian) Y  
Joseph Hemphill (Jacksonian) N  
Peter Ihrle, Jr. (Jacksonian) N  
Thomas Irwin (Jacksonian) N  
Adam King (Jacksonian) N  
George D. Leiper (Jacksonian) N  
Alem Marr (Jacksonian) (no vote)  
William McCreery (Jacksonian) N  
Daniel H. Miller (Jacksonian)  
H. A. Muhlenburg (Jacksonian) N  
William Ramsey (Jacksonian) Y  
John Scott (Jacksonian) Y  
Philander Stephens (Jacksonian) N  
John B. Sterigere (Jacksonian) Y  
Joel B. Sutherland (Jacksonian) N  
Samuel A. Smith (Jacksonian) N  
Thomas Sill II (Anti-Jacksonian) N

Rhode Island:

Tristram Burges (Anti-Jacksonian) N  
Dutee J. Pearce (Anti-Jacksonian) N

South Carolina:

Robert W. Barnwell (Jacksonian) Y  
James Blair (Jacksonian) Y  
John Campbell (Jacksonian) Y  
Warren R. Davis (Jacksonian) Y  
William Drayton (Jacksonian) Y  
William D. Martin (Jacksonian) Y  
George McDuffie (Jacksonian) Y  
William T. Nuckolls (Jacksonian) Y  
Starling Tucker (Jacksonian) Y

Tennessee:

John Bell (Jacksonian) Y  
John Blair (Jacksonian) Y  
David Crockett (Anti-Jacksonian) N  
Robert Desha (Jacksonian) Y  
Jacob Isacks (Jacksonian) Y  
Cave Johnson (Jacksonian) Y  
Pryor Lea (Jacksonian) Y  
James K. Polk (Jacksonian) Y  
James Standifer (Jacksonian) Y

Vermont:

William Cahoon (Anti-Masonic) N  
Horace Everett (Anti-Jacksonian) N  
Jonathan Hunt (Anti-Jacksonian) N  
Rollin C. Mallery (Anti-Jacksonian) N  
Benjamin Swift (Anti-Jacksonian) N

Virginia:

Mark Alexander (Jacksonian) Y  
Robert Allen (Jacksonian) Y  
William S. Archer (unclear; later Whig) Y  
William Armstrong (Anti-Jacksonian) N  
John S. Barbour (Jacksonian) Y  
Philip P. Barbour (Jacksonian) Y  
J. T. Bouldin (Jacksonian) Y  
Nathaniel H. Claiborne (Jacksonian) Y  
Richard Coke, Jr. (Jacksonian) Y  
Robert B. Craig (Jacksonian) Y  
Thomas Davenport (Jacksonian) Y  
Philip Doddridge (Anti-Jacksonian) N  
William F. Gordon (Jacksonian) Y  
George Loyall (Jacksonian) Y  
Lewis Maxwell (Anti-Jacksonian) N  
William McCoy (Jacksonian) Y  
Charles F. Mercer (Anti-Jacksonian) N  
John Roane (Jacksonian) Y  
Andrew Stevenson (Jacksonian) (abstain; Speaker of the House)  
John Taliaferro (Anti-Jacksonian) N  
James Trezvant (Jacksonian) Y

## **Vita**

Kyle Massey Stephens obtained a Bachelor's Degree from the University of Alabama in 2003, where he majored in History and Religious Studies and was inducted into Phi Beta Kappa and Phi Alpha Theta. He obtained a Master's Degree in History from the University of Massachusetts, Amherst, in 2008. In 2009 he entered the doctoral program in the Department of History at the University of Tennessee, Knoxville. He was twice recipient of the Milton M. Klein Graduate Fellowship, the Department of History's highest award in American History, as well as the Bruce Wheeler Graduate Research Award for Early American History. For the 2012-2013 academic year Kyle was in residence as a Graduate Fellow at the University of Tennessee Humanities Center, as a member of its inaugural class. He graduated with a doctorate in American History from the University of Tennessee in August 2013.