Abuse of Power: Andrew Jackson and the Indian Removal Act of 1830

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While virtually all historical accounts of the Jackson era, both scholarly and popular, devote some space to the relocation of Indian inhabitants of the eastern United States to an Indian territory west of the Mississippi, very few acknowledge that the process as it was carried out by the Jackson administration violated guarantees contained in the congressional legislation which authorized removal. Indeed, historians frequently misunderstand and often misrepresent the provisions of this law. One recent writer, for example, claims erroneously "in 1830 the United States Congress passed . . . a statute authorizing use of military force to compel the relocation of all indigenous peoples east of the Mississippi River to points west."[1] A widely read survey of American history maintains that the law empowered "the President to send any eastern tribe beyond the Mississippi if he wished, using force if needed." Other textbooks contain the same claim.[2] While specialists familiar with the primary sources are certainly aware of the limits of the legislation passed in 1830, they have generally focused on the removal process itself and, for the most part, have devoted little if any attention to the discrepancy between the law's provisions and the administration's

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1. Ward Churchill, *A Little Matter of Genocide* (San Francisco, 1997), 144.

2. Quotation from Irvin Unger, *The United States: The Questions of Our Past* (Upper Saddle River, N.J., 1999), 235. For other examples of textbook accounts that imply, or state explicitly, that the act authorized forced removal, see George Brown Tindall and David E. Shi, *America: A Narrative History* (New York, 1992), 1: 411; Joseph R. Conlin, *The American Past* (Fort Worth, 1993), 242–43; John Mack Farragher, Mari Jo Buhle, Daniel Czitrom, and Susan H. Armitage, *Out of Many: A History of the American People* (Upper Saddle River, N.J., 1999), 178; Gary B. Nash, et al., *The American People: Creating a Nation and a Society* (New York, 2000), 310; Carol Berkin, Christopher L. Miller, Robert W. Cherny, and James L. Gormly, *Making America: A History of the United States* (Boston, Mass., 1995), 322–23.

actions.[3] Neither of the two major studies of Jacksonian Indian removal devote any space to that issue.[4] Others note in passing that the law did not authorize the measures Jackson used, but provide few details.[5] As a result, the impression that Jackson had received congressional authorization to remove Indians from their homelands at the point of a bayonet remains widespread.

The Indian Removal Act passed by Congress in 1830 neither authorized the unilateral abrogation of treaties guaranteeing Native American land rights within the states, nor the forced relocation of the eastern Indians. Yet both occurred, on a massive scale, during Andrew Jackson's administration and were the result, not

3. Jackson's misuse of the Indian Removal Act is recognized in Anthony F. C. Wallace, *The Long Bitter Trail: Andrew Jackson and the Indians* (New York, 1993). Wallace's very perceptive book, a popular supplemental text, is brief and lacks footnotes. But other accounts of the Indian Removal Act in the specialized literature are less satisfactory. Quite often, Jacksonian scholars have simply ignored the connection between legislation and removal. To cite two recent examples, Charles Sellers in *The Market Revolution* (New York, 1991) condemns Jacksonian Indian policy (308–12), but does not discuss the Indian Removal Act. Andrew Burstein, in *The Passions of Andrew Jackson* (New York, 2003), writes of the "devastating effect that Andrew Jackson's Indian policy had on his country" (236), but makes no mention of the law.

4. Michael Paul Rogin, *Fathers and Children: Andrew Jackson and the Subjugation of the American Indian* (New York, 1975), offers a detailed, highly critical account of Jackson's tactics in dealing with Indians, but ignores the opposition to Indian removal and does not deal specifically with the Indian Removal Act. Rogin consequently fails to place the removal program within its political context. Ronald N. Satz, *American Indian Policy in the Jacksonian Era* (Lincoln, Neb., 1975), provides a fairly good account of the coercive measures employed by the Jackson administration in carrying out its removal policy (97–115), but fails to note the discrepancy between those measures, Jackson's earlier promises, and the terms of the law. Satz states simply that "the Removal Act of 1983 provided the Jackson administration with congressional sanction and the necessary funds to begin relocating eastern tribes in the trans-Mississippi west" (64).

5. Francis Paul Prucha, in *Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1780–1834* (Cambridge, 1962), declared that the while law "made no mention of coercion to remove the Indians, and on the surface it seemed harmless and humane enough . . . those who knew the policy and practice of Jackson and the Georgians understood that force would be inevitable" (238–39). In a similar vein, Robert Remini in *Andrew Jackson and His Indian Wars* (New York, 2001) observes that under the Removal Act, "Indians had to sign treaties by which they formally gave their consent to migrate. And that could prove exceedingly difficult" (233). However, neither writer fully explored the conflict between the law and the actions of the administration. Prucha and Remini are both apologists for Jackson, stressing not only the political constraints he faced, but his presumed benevolent desire to protect and preserve Indians through removal. Both, in this writer's estimation, downplay and in some instances ignore the illegality of much of Jackson's Indian policy. There is also a tendency among some writers to interpret the law in the light of the outcome of the removal controversy. Thus Jill Norgren, in *The Cherokee Cases: The Confrontation of Law and Politics* (1996), recognizes that the law ostensibly continued the voluntary, treaty-based removal program in place prior to Jackson's election. Norgren claims, however, that "the tenor of the pro-removal debate and the very nature of the bill questioned tribal sovereignty and aboriginal land titles" (85–86). The result is a discounting of the very real opposition to coerced removal and an oversimplification of this tragic episode in American history.

of an explicit congressional mandate, but of an abuse of presidential power. In engineering removal, Jackson not only disregarded a key section of the Indian Removal Act, but also misused the powers granted to him under the Trade and Intercourse Act of 1802. Furthermore, he failed to honor promises made in his name in order to win congressional support of the removal, and he broke a number of federal treaty commitments to Indians, including some that he had personally negotiated. While Jackson was not the only president who abused powers granted to him by the legislative branch, disregard of the extralegal character of much of his Indian policy has contributed to the over-simplistic view of Indian removal found in much of the historical literature.

In a message to the Congress of the United States dated 8 December 1829 Jackson declared of removal: "This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers, and seek a home in a distant land." The president added that "our conduct toward these people" would reflect on "our national character."[6] This perspective on Indian affairs is particularly interesting in light of Jackson's treatment of Indians during his first year of office, which reflected his long-standing belief that Indian treaties were not really binding on the nation. The Jackson administration had refused to intervene to protect the Cherokee from the state of Georgia, which by legislative act had denied the Cherokees' right to tribal self-government and challenged their ultimate ownership of their land. Repudiating all past constitutional precedents, Andrew Jackson had declared that the federal government could not interfere with the states' management of Indian affairs within their own borders. In his 1829 message to Congress, Jackson noted that "years ago I stated to them my belief that if the states chose to extend their laws over them it would not be in the power of the federal government to prevent it."[7] Secretary of War Eaton, speaking for the President, several months earlier had informed Cherokee leaders that the guarantees in treaties with the United States that they claimed protected their rights against encroachment by Georgia in fact were nothing more than temporary grants of privilege awarded by a conquering power—the United States—to a vanquished people, the Cherokee. There were, Eaton declared, no guarantees in any treaty that could be considered permanent,

6. James D. Richardson, *A Compilation of the Messages and Papers of the Presidents*, 10 vols. (Washington, D.C., 1896–99), 2: 457–59.

7. First Annual Message, 18 December 1829, in Richardson, *Messages and Papers of the Presidents*, 2: 458.

nor could any clause be construed as "adverse to the sovereignty of Georgia."[8] Indeed, in the early stages of Congress's deliberations on Indian removal, the report of the House Committee on Indian Affairs, written by close associates of the president, dismissed Indian treaty-making as nothing more than an "empty gesture" to placate Indian "vanity." Such treaties were not really treaties, the committee declared, but were only a "stately form of intercourse" useful in gaining Indian acquiescence in peacemaking and land cession. Although that view was rejected in the bill finally presented to Congress, it was reflected still in the words of some pro-removal congressmen and thereby served to arouse suspicion of the administration's real intent with regard to Indian removal.[9]

Although privately in favor of coerced removal (and as a former treaty commissioner, skilled and experienced in the coercing of Indians), President Jackson recognized that he could not obtain from Congress the aggressive removal law that many writers imagine was actually passed. Hence, Jackson did not ask that Congress authorize forced deportation, but instead sought authorization and funding to continue his predecessors' policy of granting land west of the Mississippi to tribes willing to relinquish their eastern holdings. The Indian Removal Act of 1830 made provision for the president to negotiate for land exchanges and make payments for "improvements" (i.e., houses, barns, orchards, etc.) that Indians had made on their lands. The president was also authorized to pay transportation costs to the West. An appropriation of $500,000 was provided for those purposes.[10] Significantly, there was no provision in the bill authorizing the seizure of land that Indians declined to cede by treaty.

Members of Jackson's administration underscored the presumed voluntary nature of the president's removal program. Secretary of War John Henry Eaton assured skeptical congressmen that "nothing of a compulsory nature to effect the removal of this unfortunate race of people has ever been thought of by the President, despite assertions to the contrary."[11] Worried by the extensive anti-removal campaign recently mounted by the Boston-based American Board of Commissioners of Foreign Missions and by some of Jackson's political opponents, Eaton in confidential correspondence twice warned the Governor of Georgia

8. John Eaton to the Cherokee Delegation, 18 April 1829, OAILS.

9. House Committee on Indian Affairs, H.R. 227(1830), 11.

10. The text of the Indian Removal Act is reprinted in many places, including Wallace, *Long Bitter Trail*, 125–26.

11. Quoted in Rogin, *Fathers and Children*, 241.

that the state must be careful to avoid "the appearance of harshness towards the Indians." Should Georgia be suspected of "injustice," it might well prove impossible to secure broad based support for Jackson's removal program.[12] To reassure the general public, Michigan Governor and Jackson loyalist Lewis Cass, in an unsigned article in the influential *North American Review* in January 1830, declared that the administration not only understood that "no force should be used," but was determined that Indians "shall be liberally remunerated for all they may cede."[13]

Jackson's supporters in Congress also assured doubters that the administration did not intend to force a single Indian to move against his or her will. To cite three typical examples, Senator Robert Adams of Mississippi denied that the legislation Jackson requested would give the president any power "to drive those unfortunate people from their present abode." Indian relocation, the senator insisted, would remain "free and voluntary."[14] Congressman James Buchanan of Pennsylvania assured the House that there was no cause for concern, as Jackson had never considered "using the power of the government to drive that unfortunate race of men across the Mississippi."[15] Congressman Wilson Lumpkin of Georgia assured his colleagues that "no man entertains kinder feelings towards Indians than Andrew Jackson."[16] Jackson's supporters in Congress reminded skeptics of the president's assurances that Indians belonging to tribes that had signed removal treaties, but who did not themselves wish to accompany their kinsmen on the trek westward, would receive individual land grants after tribal claims had been extinguished and would then be welcome to remain behind as citizens of the states, where they would, in Jackson's words, be "protected in their persons and property."[17]

12. Eaton to John Forsyth, 15 September, 14 October 1829, Office of Indian Affairs, Letters Sent, Microfilm, National Archives, Washington, D.C. Hereafter cited as OIALS. Writing under the assumed name "William Penn," the Society's secretary, Jeremiah Evarts, published a series of essays in the *National Intelligencer* between 5 August and 19 December 1829 that mobilized evangelicals and others in opposition to Jackson's proposed Indian removal legislation. Widely circulated in a pamphlet edition during the 1830's, the Penn essays have been more recently reprinted in Francis Paul Prucha, ed., *Cherokee Removal: The William Penn Essays and Other Writings* (Knoxville, Tenn., 1981). On Evarts's career, see John A. Andrews, III, *From Revivals to Removal: Jeremiah Evarts. The Cherokee Nation, and the Search for the Soul of America* (Athens, Ga., 1992).

13. Lewis Cass, "Removal of the Indians," *North American Review* 30 (January 1830): 62–121.

14. *Register of Debates*, 21 Cong., I Sess., 20 April 1830, 357–69.

15. Quoted in Rogin, *Fathers and Children*, 214.

16. *Register of Debates*, 21 Cong., I Sess., 17 May 1830, 1021–24.

17. Richardson, *Messages and Papers of the Presidents*, 2: 457–59.

The Indian Removal Act passed by Congress included a clause guaranteeing that "nothing in this act contained shall be construed as authorizing or directing the violation of any existing treaty between the United States and any of the Indian tribes." Without that guarantee, and without Jackson's promise of legal protection for Indians who chose not to relocate, it is unlikely that the removal act would have passed the House of Representatives.

The Jacksonians' insistence on the voluntary nature of their removal program was a political ploy aimed at winning badly needed votes in the House of Representatives. In both houses of Congress, a substantial block of legislators stated bluntly that they did not believe that Andrew Jackson could be trusted to deal fairly with Indians, a suspicion confirmed when War Department correspondence discussing possible means of bribing and intimidating Indians reluctant to sign removal treaties fell into the hands of the opposition.[18] As a result, Jackson's congressional critics demanded yet more explicit procedural protection of existing Indian treaty rights. In the Senate, Theodore Frelinghuysen of New Jersey offered two amendments that, by affirming explicitly that treaty rights transcended state authority, would have guaranteed continuing federal protection of "tribes and nations" that rejected removal. One amendment stipulated that in the absence of a removal treaty, the "tribes or nations . . . shall be protected in their present possessions, and in the enjoyment of all their rights of territory and government, as heretofore exercised and enjoyed, from all interruptions and encroachments." The second declared that changes in Indian status could be made only through the traditional treaty-making process, thus denying that Indian nations were subordinate to the states.[19] In spite of significant support, however, determined opposition from southern senators meant that both amendments failed. A similar fate befell a variety of other proposed amendments, both in the Senate and the House, that would have provided more explicit federal protection of the property both of Indians who remained behind, and of those who relocated, and that would have mandated congressional inspection of the proposed Indian Territory.

The amendment that came closest to passing was introduced by Pennsylvania congressman Joseph Hemphill, a Jacksonian Democrat. Hemphill's amendment would have delayed action for a year, pending the report of "three disinterested commissioners" who would be charged with responsibility for ascertaining the

18. *Register of Debates*, 21 Cong., I Sess., 9 April 1830, 310.

19. Ibid., 309–20. Frelinghuysen's speech may also be found in (Jeremiah Evarts), *Speeches on the Passage of the Bill for the Removal of the Indians, Delivered in the Congress of the United States April and May 1830* (Boston, 1830), 1–30.

real wishes of each of the eastern tribes and for certifying the suitability of the western lands earmarked for their use.[20] That measure almost passed, with Speaker of the House Andrew Stevenson, a Jacksonian loyalist, breaking a ninety-eight to ninety-eight tie vote.

When efforts to amend the Indian Removal Act failed, Old Hickory's congressional critics then sought to vote down the act, arguing that the administration's refusal to agree to more specific protections of Indian rights exposed Jackson's true intentions. While in the Senate the removal bill passed easily, with twenty-eight votes in favor and nineteen opposed, it came close to failing in the House of Representatives and passed only when Jackson, scared by the near success of the Hemphill amendment, "pressured and bullied" the recalcitrant.[21] In the end, the House voted for the Indian Removal Act by the narrow margin of 102 to 97. An analysis of the roll call reveals that the vote was sectional:

a substantial majority of congressmen who represented districts north of the Mason-Dixon line opposed this legislation. Northeastern representatives were overwhelmingly opposed, with seventy-nine voting against the bill and only forty-two in favor. In the delegations from the northwest, opinion was divided. Twenty-seven western congressmen supported the bill; seventeen voted against it. There was little division in the South: sixty out of seventy-five southern representatives voted with the administration. Although the vote on the Removal Bill is usually represented as a partisan vote, a number of northern Jacksonians, despite pressure from the White House, broke with Old Hickory on this issue. Some others, fearful of both their antiremoval constituents and of the president, as Martin Van Buren recalled, "felt themselves constrained to shoot the pit," and absented themselves on the day of the vote.[22]

Opposition to the act was particularly strong in Quaker Pennsylvania. Of that state's twenty-five Democratic congressmen, seventeen voted against the removal bill. Other Jacksonian Democrats also broke party ranks, with six from New York, six from New England, four from Ohio, one from Indiana, and six from the South opposing removal. In the Senate, five pro-Jackson senators from New England, joined by a Senator from Pennsylvania, one from Ohio, and one from Missouri, had refused to support the president on this issue. By contrast, seven

20. *Register of Debates*, 21 Cong. I Sess., 18 May 1830, 1132–33.

21. Robert Remini, *The Legacy of Andrew Jackson: Essays on Democracy, Indian Removal and Slavery* (Baton Rouge, La., 1988), 66. The nickname "Old Hickory" was given to Jackson by militiamen during the Creek War. The men boasted that their general was tough as hickory wood.

22. Martin Van Buren, *Autobiography*, ed. John E. Fitzpatrick (Washington, D.C., 1920), 289.

anti-Jackson congressmen from the South and one from Indiana supported the Indian Removal Act.[23] While the measure's support was primarily southern, Jackson's efforts to impose party discipline had secured a narrow victory empowering him to grant land west of the Mississippi to eastern Indians willing to relocate.

Indian removal as carried out by Jackson and his successor Martin Van Buren was anything but a voluntary relocation program. Numerous contemporary witnesses provide damning testimony regarding fraud, coercion, corruption, and malfeasance both in the negotiation of removal treaties and in their execution. In their zeal to secure removal treaties, agents of the Jackson administration resorted to extensive bribery of compliant and corrupt tribal officials and frequently threatened independent Indian leaders opposed to relocation. In a series of blatant violations of the specific guarantees that Andrew Jackson and his supporters had offered to Congress in 1830, federal officials, by a variety of ruses, in effect denied antiremoval majorities within Indian tribes the right to vote on the ratification of removal treaties. Furthermore, the administration systematically removed Indian agents who either opposed the removal policy or were less than zealous in coercing compliance. Moreover, Indians endeavoring to make good on Jackson's promise that they could remain within the states as individuals were subjected to all manner of harassment from state officials, speculators, and Indian-hating mobs as the federal government looked the other way.[24]

Andrew Jackson's defenders over the years have suggested that Old Hickory ought not to be held responsible for the abuses associated with removal. Those abuses, in their view, were the work of lesser officials over whom he had little control. Jackson biographer Robert Remini, for example, has written that Old Hickory "struggled to prevent fraud and corruption" in the removal process, and sought through their relocation to protect "Indian life and culture."[25] Furthermore, according to Remini, "as far as Jackson was concerned, the Indians could

23. Fred S. Rolater, "The American Indian and the Origin of the Second American Party System," *Wisconsin Magazine of History* 76 (1993): 193.

24. The literature on the execution of Indian removal is extensive. A useful guide is Regan A. Lutz, *West of Eden: The Historiography of the Trail of Tears* (Ph.D. diss., University of Toledo, 1995).

25. Robert Remini, *Andrew Jackson and the Course of American Freedom 1822–1832* (New York, 1981), 264. For a more detailed statement of his views on this issue, see Remini's *Legacy of Andrew Jackson*, 45–82 and his more recent *Andrew Jackson and His Indian Wars*, 226–53. The most uncritical modern defense of Jackson is to be found in Francis Paul Prucha, "Andrew Jackson's Indian Policy: A Reassessment," *Journal of American History* 56 (1969): 527–39.

refuse to remove and stay where they were." He only asked that they acknowledge the authority of the state in which they resided. Remini recognizes that few of those who wished to remain were actually able to do so, but assures us that Andrew Jackson was not personally to blame. "Unfortunately the President's noble desire to give the Indians a free choice between staying and recovery, one devoid of coercion, was disregarded by land greedy state and federal officials, who practiced fraud and deception to enrich themselves and their friends at the expense of the native tribes."[26]

In these assertions, Remini and other Jackson apologists are mistaken. Close examination of administrative correspondence and personal memoranda suggests that Jackson's guarantees in 1829 and early 1830 that removal would be voluntary and that those Indians who did not wish to relocate would be protected in their personal and property rights were politically expedient but fundamentally dishonest. Some rough notes in his personal papers offer some insights into the president's private thoughts about Indians as citizens of the states. In a set of points he intended to raise with his envoy to Mexico, scribbled in the summer of 1829, Jackson lists among the advantages of the possible acquisition of Texas the prospect that the "additional territory" could be used for "concentrating the Indians," thereby "relieving the states of the inconveniences which the residue within their limits at present afford."[27] Jackson's own draft of his 1829 message to Congress contains no reference to voluntary removal. The eloquent acknowledgement that forced removal would be an act of cruelty that would reflect adversely on our national honor was added later, perhaps at the insistence of advisers hoping to reassure some northern congressmen.[28] Jackson himself was more concerned about other political considerations. In a draft of a position paper probably written in 1831, he argued that if the states indeed had no jurisdiction over Indian lands within their boundaries and thus lacked the right to take that land when needed by white settlers, then numerous land grants, and with them countless white land titles, in the frontier states of the upper South were "void." "Such a doctrine," he wrote, "would not be well received in the west."[29]

26. Remini, *Andrew Jackson and His Indian Wars*, 237.

27. "Notes on Poinsett's Instructions," 3 August 1829, Jackson Papers, Library of Congress Microfilm.

28. Draft of the First Annual Message, 8 December 1829, Jackson Papers, Library of Congress Microfilm.

29. Andrew Jackson to the secretary of war [1831?], Jackson Papers, Library of Congress Microfilm.

Jackson understood from the outset that the states would not in fact extend the full protection of the law to those Indians who remained behind. When the governor of Georgia informed Jackson that no Indian would be given a land allotment in his state, Jackson offered no objection. Instead, he warned Indians that the federal government could not protect them if they chose not to emigrate. When the Cherokee leadership indicated that they would accept a removal treaty that included the sort of allotment option earlier made available to the Choctaw, Creek, and Chickasaw, Jackson told them that they could have no land in Georgia. It is telling that in his 1830 annual message to Congress, Jackson in effect repudiated his 1829 observations about the cruelty of compelling "aborigines to abandon the graves of their fathers and seek a home in a distant land." "Doubtless," the president now declared, "it will be painful for them to leave the graves of their forefathers, but what do they do more than our ancestors did or our children are now doing?"[30]

Jackson regarded state harassment of Indians as a useful means of encouraging removal. Georgia officials claimed that Jackson himself in 1829 told a congressman disturbed by the delays in the Cherokee removal, "Build a fire under them. When it gets hot enough, they'll move."[31] While Jackson himself made no record of that conversation, Georgia's governor later sent a confidential letter to Jackson expressing satisfaction with "your general plans and policy in relieving the states from their remnant Indian population." The Governor was gratified that Jackson understood that "Indians cannot live in the midst of a White Population and be governed by the same laws." As for the Cherokee, who still refused to sign a removal treaty, "starvation and destruction await them if they remain much longer in their present abodes."[32] There is no doubt that Jackson

30. Prior to his election to the presidency, Jackson had entertained the possibility that some Indians might well choose to abandon their "ancient customs and habits" and accept "agricultural pursuits, civil life, and a government of laws." Those Indians, he advised John Coffee in 1817, should be allowed to remain on individual land allotments within the states. He anticipated that they would be protected by state laws, and become a part of "civilized society" Andrew Jackson to John Coffee, 13 July 1817, quoted in Remini, *Legacy of Andrew Jackson*, 56. As we have seen, his early comments on the removal bill held out the same prospect. Yet Jackson was soon declaring the necessity for total removal even of those who had adopted "agricultural pursuits, civil life, and a government of laws." He justified his repudiation of earlier position by claiming that whites and Indians could not coexist in the same territory. It may be that the intransigent position of Georgia, combined with pressure from other southern states, explains Jackson's apparent change of position. However, some of his earlier statements, cited elsewhere in this paper, suggest that he was never willing tolerate any substantial Indian presence east of the Mississippi.

31. Quoted in Samuel Carter I11, *Cherokee Sunset: A Nation Betrayed* (Garden City, N.J., 1976), 83.

32. Governor Wilson Lumpkin to Jackson, 9 February 1835, Bassett, *Correspondence*, V: 327.

shared those sentiments. Several months after the passage of the Removal Act, he assured a correspondent concerned about delays in the forthcoming Choctaw negotiations: "Indians could not possibly live under the laws of the states." He added: "If now they refuse to accept the liberal terms offered, they only must be responsible for whatever evils and difficulties may arise."[33] Shortly thereafter, Jackson, frustrated by the refusal of several southeastern Indian nations to heed his summons to meet with him at Franklin, Tennessee, to discuss removal, wrote his close associate William B. Lewis to predict that the activities of former Attorney General William Wirt and other antiremoval activists "will lead to the destruction of the poor ignorant Indians." "I have used all the persuasive means in my power," the president declared, "I have exonerated the national character from all imputations, and now leave the poor deluded Creeks and Cherokees to their fate, and their annihilation, which their wicked advisers has [sic] induced."[34]

Jackson repeatedly warned that those Indians who did not agree to removal would lose their right of self-government and be subject to the laws of the states in which they resided. In so doing, he far exceeded his legal mandate under the Indian Removal Act of 1830. That law, as we have seen, explicitly upheld existing treaty rights and obligations. Rather than enforcing the laws that forbade white settlement on treaty lands, Jackson informed Indian leaders that he lacked the power to protect them from even the most extreme and oppressive actions of the state governments and of lawless whites. One chief, self-described as "old and feeble," wrote to his "Great Father" Andrew Jackson to complain that treaty provisions were no longer honored and that whites invaded Indian country to "steal our property." Making matters worse, the federal soldiers in the area refused to help the Indians, but when Indians tried to resist the squatters, they were hunted down and shot "as if . . . they had been so many wild dogs." Only the Great Father, the chief pleaded, could protect his Indian children and restore peace.[35] We have no record of Jackson's reply. But a typical example of Jackson's response to Indian petitioners is found in his message to the Cherokee, dated 16 March 1835, wherein he declared, "you cannot remain where you now are. Circumstances that cannot be controlled, and which are beyond the reach of human laws, render it impossible that you can flourish in the midst of a civilized community. . . . Deceive yourselves no longer. . . . Shut your ears to

33. Andrew Jackson to John Pitchlynn, 5 August 1830, Bassett, *Correspondence*, IV: 169.

34. Jackson to Major William B. Lewis, 25 August 1830, Ibid., IV: 177.

35. Tiskinhah-haw to Andrew Jackson, 21 May 1831, OIALR.

bad counsels."[36] While it is true that Jackson on occasion sought to curb the excesses of some of the more corrupt Indian removal contractors, and ordered some reforms in the process, a close examination of the record suggests that he was primarily concerned with dealing with those who defrauded the government, or who cheated other whites, and was relatively indulgent with those who defrauded Indians.

While some writers have explained Jackson's refusal to protect the sovereignty of Indian nations against the claims of the states as an act consistent with his deep respect for states' rights, one must remember that Andrew Jackson not only refused to honor the obligations contained in treaties negotiated by his predecessors, but also ignored treaty promises made by his own administration.[37] His newly negotiated removal treaties generally guaranteed Indians federal protection from the depredations of white squatters prior to the completion of land surveys. While the federal government clearly possessed both the right and the obligation to enforce those guarantees, Secretary of War Cass, although required by the removal treaties to direct his agents to eject intruders on Indian land, made it clear that Andrew Jackson did not want federal officers to be particularly diligent in doing so. In a letter to United States Marshal Robert L. Crawford, he wrote: "it is the President's desire" that the order "be executed with as much regard for the feelings and situations of the persons (white squatter), whose cases are embraced by it, as possible." Force, the marshal was told, should be used "only when absolutely necessary," and then only after explaining the situation at length to those who were asked to move.[38] Soon thereafter, Jackson's administration abandoned even the pretext of removing illegal occupants of Indian land. Southern politicians had made it clear that their constituents would not tolerate any real enforcement of the protective clauses in the removal treaties. In Mississippi, Congressman Franklin Plummer declared that the settlers who had occupied Choctaw lands came from "numerous families of the first respectability" and had been encouraged by the federal agent to plant their crops on Indian land. He further warned that Mississippi would resent their eviction.[39] Similarly, in Alabama, federal efforts to deal with an unusually violent group of squatters provoked an armed confrontation, and a period of tension between the state and

36. Jackson Talk to the Cherokee, March 1831, Jackson Papers, Library of Congress.

37. Ronald Satz, Robert Remini, and Francis Paul Prucha, in the works cited earlier, all stress the constraints imposed by Jackson's states rights philosophy.

38. House Document No. 452, 21 Cong., 2 Session, II, 806.

39. Plummer to Cass, 28 May 1832, Senate Document 512, 23 Cong., 1 Sess., 3: 361–63.

the administration that ended with an agreement that the treaty provision calling for the removal of all intruders on Creek land would not be enforced.[40]

Plummer's claim of federal collusion was well founded. Jackson's agents from the outset understood that the president expected them to be considerate of white squatters, not of the Indians the squatters had so often dispossessed. Thus they not only did not challenge state officials who encouraged whites to occupy Indian lands prior to removal, but also on occasion actively encouraged the violation of removal treaty guarantees. The removal treaties envisioned an orderly process whereby whites purchasing Indian land would take possession only after the original owners had departed. But when Congressman Plummer in the spring of 1832 expressed concern that a provision in the recent Choctaw treaty which forbade white occupation of land in Choctaw territory occupied before September 1833 might be used to disallow the rights of some Mississippians who had already bought Indian titles, Secretary of War Cass replied: "The President is happy . . . that he is not called upon to execute [those] . . . provisions of the treaty."[41] As to the political reasons for Jackson's happiness, General Winfield Scott, in correspondence with Secretary of War Cass, noted that use of federal troops to eject white occupants of Indian land "would inflame the passions of Virginia, North Carolina, South Carolina, Georgia, and Mississippi, and thus give wider spread to the heresies of nullification and secession."[42]

Jackson was well aware of the misdeeds of his Indian agents. After leaving office, he told Francis P. Blair that dealing with the Indian office was "the most arduous part of my duty, and I watched over it with great vigilance, and could hardly keep it under proper restraint, and free from abuse and injury to the administration."[43] His claim that he had displayed "great vigilance" must be placed in proper context. Jackson was speaking of those who cheated the government or other whites, not those who abused Indians. One combs the record in vain for evidence that Jackson took any particular pains to protect Indians from speculators and swindlers. Consider, for example, Jackson's intervention in the Choctaw removal. In Mississippi, Indian agent William Ward refused to provide the land allotments within the state promised by treaty to those Choctaws

40. William Irvin to Lewis Cass, 30 July 1832 Senate Document No. 512, 23 Cong., 1 Sess., 3: 410; Young, *Redskins, Ruffleshirts, and Rednecks*, 76–82.

41. Cass to Plummer, 23 May 1832, *American State Papers: Public Lands*, 38 vols. (Washington, D.C., 1832–1861), VII: 611.

42. Quoted in Young, *Redskins, Ruffleshirts, and Rednecks*, 80.

43. Jackson to Francis P. Blair, 4 July 1838, Bassett, *Correspondence*, V: 553.

who chose not to relocate. Often drunk, Ward was seldom available at the registration office, frequently destroyed records, and—refusing to meet with concerned Choctaw leaders, or with those who had not been able to obtain their promised allotments—reported to his superiors in Washington, D.C. that only sixty-nine Choctaw had qualified for land in the state. He admitted that many others had tried to register, but reported that he had denied them a place on the register because he suspected that opponents of the removal program had influenced them. Despite Ward's acknowledgement that he had violated the treaty, the administration initially took no action. When Choctaws victimized by Ward appealed to Jackson, his first reaction was to brush aside their complaints. As president, he declared, he could do nothing. The Choctaw should look to Congress for relief. But when certain prominent Democrats who had hoped to profit from the purchase and re-sale of lands in Mississippi allocated to those Choctaw who stayed behind complained about Ward, Jackson suddenly discovered that he did have power to do something about it and promptly issued orders to investigate and resolve Choctaw claims.[44]

In the event, over one thousand Choctaw allotments were subsequently registered. But much of the best allotment land soon fell into the hands of speculators. Remarking upon this, Secretary of War Cass noted that, "our citizens were disposed to buy, and the Indians to sell," but when fraud occurred as it often did, Cass disavowed any responsibility for protecting the Choctaws from their own "improvident habits." If Indians made bad contracts that rendered them destitute, they had only themselves to blame.[45] The allotment fraud investigations in Mississippi, which extended over a decade, pitted white settlers against speculators. Jackson denounced speculators, but regarded Indian removal as the sole means of protecting Indians from the unprincipled and the corrupt. In those cases where claims commissioners found evidence that Choctaws had been illegally dispossessed, they did not restore them to their allotments, but rather ordered that they be issued paper script in the value of $1.25 per acre. Even this compensation was limited in practice, however, since half the script was never actually issued while much of the rest fell into the hands of speculators. As for Ward, he remained in office until the progress of Choctaw removal made his office

44. William Ward to Samuel Hamilton, 21 June 1831; Anthony Campbell to Lewis Cass, 5 August 1832; William Armstrong to George Gibson, 13 October 1832, Senate Document 512, 23 Cong., I Sess., I: 386; 2: 493; 3: 416–18; William Ward to Samuel Hamilton, 29 October 1831, OIALS; "Application for Indemnity, for Being Deprived of Reservations, of the Choctaw Indians," 1 February 1832, *American State Papers: Public Lands*, 8: 432.

45. Cass to R. J. Meigs, 11 October 1834; OIALS.

superfluous.[46] By contrast, Jackson did not hesitate to replace Indian agents whose commitment to removal was less than total; indeed, within two years of the passage of the Indian Removal Act, Jackson had fired over half of the Indian agents and subagents in the field.[47]

Jackson's flexible understanding of presidential power was also manifest in his selective enforcement of the Indian Trade and Intercourse Act of 1802. That law mandated federal action to remove whites that intruded on Indian land. Reluctant to use the law against traders, speculators, and squatters who cheated or abused Indians, Jackson was quite willing to invoke its provisions in order to silence his critics. Thus, even before the passage of the Indian Removal Act, the administration invoked the authority of the 1802 Act to detain and eject from Indian Territory missionaries and other white philanthropists who opposed the Indian removal program.[48]

Jackson was also willing to send federal troops into the states to deal with Indians who sought to obstruct removal. Worried about resistance in Tennessee, the president offered to dispatch federal troops to protect cooperative Indians from coercion by tribal governments. Likewise, disturbed by reports of violence against whites in the Cherokee Nation, the president directed his agents in Georgia to warn Cherokee principal chief John Ross and his council that the full power of the federal government would be used to punish Indian malefactors who harassed or harmed emigrants, pro-emigration chiefs, or government agents. Moreover, Ross himself would be held personally accountable "for every murder committed by his people."[49]

As we have noted, Jackson's presidential activism in dealing with crime in the Indian country did not extend to the protection of Indians from corrupt Indian agents or land speculators. His intervention in the controversies over Creek land allotments offers further evidence of his failure to enforce the law in an even-

46. On the activities of speculators, and of Agent Ward, see the depositions in *American State Papers: Public Lands*, 7: 641–53, 8: 337, 629–32, 691–93; and the correspondence in Senate Document 512, 23 Cong. Ist Sess. 1: 386; 2: 473; 3: 416–418. The history of the Choctaw allotments controversy is carefully analyzed in Mary E. Young, *Redskins, Ruffleshirts, and Rednecks*, 47–62. See also Arthur DeRosier, *The Removal of the Choctaw Indians* (Knoxville, Tenn., 1970): 136–37; Satz, *American Indian Policy in the Jacksonian Era*, 89; Rogin, *Fathers and Children*, 221.

47. Remini, *Andrew Jackson and His Indian Wars*, 229.

48. McKinney to Indian Agents, 17 February 1829; Eaton to Ward, 11 July 1829; Randolph to Ward, 20 October 1830, OIALS; Rogin, *Fathers and Children*, 222–23.

49. Andrew Jackson to B. F. Curry and H. Montgomery, 3 September 1834, Bassett, *Correspondence*, V: 288.

handed manner. The Creek Indians, who had earlier relinquished their Georgia lands but still lived in Alabama, refused to sign a treaty providing for their relocation west of the Mississippi. However, in March 1832 they agreed to give up most of their Alabama territory in exchange for the promise that they could remain on individual allotments within the state. The 1832 treaty contained guarantees both of the Creek right to land ownership and of their immunity from forced removal.[50] But as soon as they sought to claim the land titles promised to them, the Creeks were victimized by hordes of unprincipled whites who, when other means failed, often gained title for themselves by hiring people to impersonate the real owners and lay claim to their land. The Creek governing council begged the secretary of war to enforce the treaty and remove the intruders. "We are surrounded . . . our lives are in jeopardy, we are daily threatened."[51] The local federal marshal confirmed the Creeks' description of the crisis, reporting one instance in which white squatters "had not only taken the Indians' land from them and burnt and destroyed their houses and corn, but used violence to their persons."[52] The administration's response was to advise the Creeks to emigrate. Those who found themselves thrown off their lands by unscrupulous speculators or by squatters received little help from federal agents and investigators. Although willing to investigate and provide for federal adjudication of the conflicting claims of whites who defrauded one another in the purchase of Creek land allotments in Alabama, the Jackson administration showed little concern for Creeks victimized by those frauds. An agent in the field, Robert McHenry, noted that "the interest of the Indian is not much at hart [sic]" in antifraud proceedings in Alabama.[53] Another federal official, describing the condition of the Creeks in 1833, wrote: "How the Indians are going to subsist the present year I can't imagine. Some of them are sustaining themselves upon roots. They have, apparently, very little corn, and scarcely any flock. The game is gone, and what they are to do, God only knows."[54] Jackson was not unaware of their situation. The

50. 7 *Statutes at Large*, 366–68.

51. Neah Micco et al. to Lewis Cass, 26 September 1832, Senate Document 512, 23 Cong., I Sess., III: 464, 470.

52. Robert Crawford to Lewis Cass, 31 August 1832, Senate Document 512, 23 Cong., I Sess, III, 440, 231. For a very judicious survey of the evidence on allotment frauds, see Mary E. Young, "The Creek Frauds: A Study in Conscience and Corruption," *Mississippi Valley Historical Review* 42 (1955): 411–37, and *Redskins, Ruffleshirts and Rednecks*, 73–98.

53. Robert McHenry to Lewis Cass, 25 May 1835, Senate Document No. 425, 24 Cong., I Sess., 280–81.

54. Enoch Parson to Cass, 13 January 1833, Senate Document 512, 4: 29.

administration's own special investigator had advised that nowhere in the world could one find "a greater mass of corruption . . . than has been engendered by the Creek treaty." But when a few angry and starving Creeks raided some white farms in their former homeland in 1836, Jackson ordered the army to deport the entire nation by force.[55]

By contrast, Old Hickory showed great leniency in dealing with Indian Agent Benjamin Smith. A friend and supporter of the president, Smith had attained notoriety by stealing thousands of dollars of Chickasaw funds and by defrauding tribal members by paying their claims in depreciated "rag money." He lost his job, but was not prosecuted and thus kept his ill-gotten gains.[56] It is also worth noting that in Florida, a notoriously corrupt agent named John Phagan was finally cashiered, not for his abuse of the Seminoles or his role in provoking an Indian war, but for embezzling public funds.[57] A memorandum that Jackson prepared for the United States Senate but never sent suggests that the president was not terribly concerned about the means agents employed as long as they achieved the desired end without creating a public scandal. In that memo, Jackson responded to Ohio senator Ewing's complaint that one of his Indian agents had resorted to "deceptions, frauds, and treacheries" by declaring that whether those charges were true or not, they "would in no manner affect the validity of the Treaties" he had negotiated.[58] Andrew Jackson did nothing to honor his own guarantee that those Indians who wished to remain as citizens of the states could do so. Hence, Cherokee efforts to negotiate an accommodation that would grant them citizenship rights and allotments in Georgia in exchange for relinquishment of their claim of sovereignty and a substantial land cession received no encouragement from the White House.[59]

55. John B. Hogan to Lewis Cass, 30 March 1836, quoted in Rogin, *Fathers and Children*, 231. For the Creek removal, see Michael D. Green, *The Politics of Indian Removal: Creek Government and Society in Crisis* (Lincoln, Neb., 1983), and Foreman, *Indian Removal*, 107–92. For the background of the so-called "Second Creek War," see the documents in "Causes of the Hostilities of the Creek and Seminole Indians" *American State Papers: Military Affairs*, VI: 574–783.

56. Rogin, *Fathers and Children*, 223.

57. John Mahon, *History of the Second Seminole War 1835–1842* (Gainesville, Fla., 1985), 84–85.

58. Jackson to the United States Senate, 16 January 1832, Jackson Papers, Library of Congress Microfilm.

59. John Ross, "Letter in Answer to Inquiries from a Friend, July 2, 1836," *Niles Weekly Register*, 1 October 1836.

Soon after Jackson signed the Removal Bill, Henry Clay, declaring that it "threatens to bring a foul and lasting stain upon the good faith, humanity, and character of the nation," proposed that Jackson's opponents in the House of Representatives seek to block its enforcement by withholding appropriations, and that the Senate support those efforts by refusing to ratify removal treaties.[60] Although he had little admiration for Native Americans or their culture, Clay had long opposed what he had described in 1819 as Andrew Jackson's "cruel violence" towards Indians.[61] Whig opposition to removal was driven in part by public pressure from evangelicals and others moved by humane considerations. In the William Penn essays of 1829, Jeremiah Evarts had warned that if the Jacksonian removal proposal were adopted, there would be "much suffering . . . much exposure, sickness, hunger, nakedness, either on the journey, or after arrival. . . . The crowding together [in the Indian Territory] of different tribes, speaking languages entirely unintelligible to each other, and accustomed to different habits, will be productive of quarrels." Federal agents, Evarts predicted, would not effectively protect their charges during and after the removal process. "Judging from all past experience, some of them would be profane, licentious, and over bearing, and a majority would be selfish, looking principally at the emoluments of office and caring little for the Indians." Stripped of all claims of sovereignty, the Indians after removal would be entirely defenseless. With these words, Evarts anticipated the horrors of the Trail of Tears—a prophecy that Jackson's opponents would recall throughout the 1830s.[62]

If some Whigs were motivated by a concern for Indians, others were political opportunists seizing on Jackson's possible abuse of Indians as a means of embarrassing and discrediting the president.[63] Even more critical to Jackson's

60. Henry Clay to Daniel Webster, 7 June 1830 in *The Papers of Daniel Webster, Correspondence*, Charles M. Wilste, et al., eds., 7 vols. (Hanover, N.H., 1974–88), III: 80–82 and Webster to Edward Everett, 7 May 1836, ibid., IV: 110; Robert Remini, *Daniel Webster: The Man and His Times* (New York, 1997), 447; Robert Remini, *Henry Clay: Statesman for the Union* (New York, 1991), 386. Historians of the Whig party have generally ignored the Indian Removal issue. Most give it only a few sentences. The most thorough history, Michael Holt, *The Rise and Fall of the American Whig Party* (New York, 1999), although over a thousand pages in length, makes no mention of Whig opposition to removal.

61. Remini, *Andrew Jackson and His Indian Wars*, 163.

62. Prucha, *Cherokee Removal*, 201–11.

63. A conversation between John Quincy Adams and Henry Clay during the Adams presidency is particularly revealing. As Adams noted in his diary on 22 December, 185, "Mr. Clay said he thought it was impossible to civilize Indians. . . . He 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." Adams added that he feared Clay's assessment was well founded. John Quincy Adams, *Memoirs of John Quincy Adams*, ed. Charles Francis Adams, 12 vols. (Philadelphia, Pa., 1874–77), 7: 89–90.

opposition than either humanitarianism or opportunism, however, was the issue of states' rights. To conservatives committed to the premise that the federal government must play a major role in promoting economic growth through positive legislation on the tariff, internal improvements, and banking, Jackson's invocation of states' rights principles in dealing with Indian matters had distressing implications. Ever mindful that the Constitution declares treaties as well as acts of Congress the supreme law of the land, Whigs regarded Andrew Jackson's refusal to use federal power to secure their enforcement as nothing short of a dereliction of duty that opened the door to the dismantling of federal authority through state nullification.[64]

Many conservatives were equally disturbed by the confiscation of Cherokee property. Whigs were well aware of the fact that the Cherokee leaders who were dispossessed by the Georgians were not impoverished primitives living close to nature, but were actually often wealthy landowners, slaveholders, or merchants. The president's failure to enforce those provisions of the federal Trade and Intercourse Act mandating forced removal of those who illegally occupied Indian land, combined with his acquiescence in Georgia's confiscation of Cherokee-owned farms and plantations, raised grave questions about the sanctity of private property and the government's role in protecting property rights. Even in Georgia, Whigs challenged the premise that states had the right to seize Indian property by legislative mandate.[65]

Whigs also deplored Jackson's overly vigorous use of presidential prerogatives, as they held a view of the constitutional separation of powers that reflected longstanding conservative fears of the accession to executive power of a popular demagogue not deferential to the rights and interests of the propertied and the prominent. During the debate on the Indian Removal Act, Congressman Henry Stores of New York, after charging Jackson with acting as "a military chieftain" rather than as chief magistrate of a free Republic, intoned what would become the Whig mantra: "the concentration of power in the hands of the executive leads to despotism."[66]

Whig advocacy of ongoing federal protection of the Indian can also be seen as an outgrowth of their continuing if often unacknowledged belief in the politics of deference and in the chain of mutual obligations and benefits

64. Henry Clay to Samuel Southard, 14 February 1831, in *The Papers of Henry Clay*, ed. James F. Hopkins, 10 vols. (Lexington, Ky., 1959–1991), VIII: 323.

65. Paul Murray, *The Whig Party in Georgia* (Chapel Hill, N.C., 1948), 194–95.

66. *Register of Debates in Congress*, 21 Cong., 1 Sess., 15 May 1830, 1002.

which, in their view, bound the social classes together. In the hierarchical, organic society that many Whig leaders envisioned as their ideal, the strong had an obligation to protect, discipline, and improve the weak and vulnerable.[67] Laissez-faire individualism, of the sort upheld by Secretary Cass in his refusal to protect Indians from the consequences of their own bad judgment in land transactions, was a Jacksonian, not a Whig, dogma. Moreover, although it certainly does not fit all cases, historian Alexander Saxton is correct in contrasting the "hard racism" of Jacksonian Democracy, with its undercurrent of Indian hating, with Whig "soft racism," with its paternalistic determination to uplift "savages."[68]

When the first of Jackson's removal treaties came before the Senate, the opposition voted down the preamble, which stated, "the President cannot protect the Choctaw people in their property, rights, and possessions, in the State of Mississippi." But their bid to reject the treaty itself failed by three votes.[69] Later efforts to reform or terminate the removal process also ended in failure. Despite persistent public criticism of removal abuses, Jackson's opponents (known as Whigs after the merger of the National Republican Party with various other anti-Jackson elements) generally were unable to muster the votes required to deny the Jacksonians the two-thirds majority needed for treaty ratification. In 1832, Jackson assured his friend John Coffee that Clay and his associates had won little support for their efforts to block removal and had therefore "abandoned their opposition." Jackson believed that his administration's refusal to accept and enforce the Supreme Court decision in *Worcester v. Georgia*, which upheld Cherokee treaty rights and declared Georgia's legislative aggression against the Cherokee Republic unconstitutional, would settle the issue. His alleged quip, "John Marshall has made his decision, now let him enforce it" may be apocryphal, but Jackson did write to John Coffee that "the decision of the Supreme Court has

67. Whig ideas about the nature of society are best approached through examination of the files of *The American Whig Review*, published between 1845 and 1852. See in particular the two-part article "Human Rights According to Modern Philosophy" published in October and November of 1845. The secondary literature is not extensive. Daniel Walker Howe, *The Political Culture of the American Whigs* (Chicago, Ill., 1979); Thomas Brown, *Politics and Statesmanship: Essays on the American Whig Party* (New York, 1985); and John Ashworth, *Agrarians and Aristocrats: Party Political Ideology in the United States, 1837–1846* (Cambridge, 1987) contain valuable insights.

68. Alexander Saxton, *The Rise and Fall of the White Republic* (London, 1990), 53–76.

69. Senate Journal 22, Cong. I Sess., 21 February 1831, 236. The vote on the preamble was twenty-five in favor, nineteen opposed. The treaty itself was ratified by a vote of thirty-five to twelve.

fell still born . . . it cannot coerce Georgia to yield to its mandate."[70] He added that even if he were so inclined, he could not persuade "one regiment of militia" to fight to protect the Cherokees from Georgia. Should they resist removal, Jackson declared "the arm of the government is not sufficiently strong to preserve them from destruction."[71] When John Ridge, speaker of the Cherokee National Council, asked Jackson directly if the federal government would enforce the court's finding that Georgia had no right to impose its laws on the Cherokee, Jackson made it clear that would never happen.[72] There is, however, some evidence that Jackson was worried about further legal controversy, as he wrote to Governor Lumpkin to advise that Georgia "do no act that would give the Federal court a legal jurisdiction over a case that might arise with the Cherokee." He used his influence to persuade Lumpkin to release the missionaries.[73]

In the spring of 1833, Senator Frelinghuysen concluded that the Cherokee would be well-advised to seek the most favorable terms possible and move west as further resistance seemed futile. John Ridge agreed. The missionary Samuel Worcester, whose incarceration under a Georgia law forbidding whites to live in Indian territory without a state license was the basis of the Supreme Court decision against Georgia, concurred.[74] In 1835, presenting a petition to the Senate from the Cherokee "Removal Party" (a minority faction headed by Ridge), Massachusetts senator Edward Everett, hitherto one of the most eloquent opponents of removal, concluded that the Cherokee now had little hope of remaining in their homeland.[75] Paradoxically, Jackson's successful opposition to South Carolina's nullification of the tariff in 1832–33 weakened Whig resolve to defend Indians from removal abuses. Conservatives feared that, if South Carolina successfully evaded federal tariff legislation, the federal government's capacity to promote economic growth through legislation would be permanently impaired.

70. Horace Greeley claimed he learned of Jackson's remark from Massachusetts Congressman George N. Briggs. See *The American Conflict: A History of the Great Rebellion in the United States of America 1860–54*, 2 vols. (Hartford, 1865) I: 106. Robert Remini argues that Jackson probably did not say it. Since there was no federal habeas corpus statute applicable to state prisoners in 1832, there was no way to force Georgia to release the missionaries. *Legacy of Andrew Jackson*, 70.

71. Andrew Jackson to John Coffee, 7 April 1832, Bassett, *Correspondence*, IV: 429.

72. Remini, *Legacy of Andrew Jackson*, 73.

73. Jackson to Lumpkin, 22 June 1832, Bassett, *Correspondence*, IV: 451.

74. Frelinghuysen to David Greene, 23 April 1832, quoted in Edwin Miles, "After John Marshall's Decision," *Journal of Southern History* 39 (November 1973): 530.

75. *Register of Debates*, 25 Cong., 2 Sess., 10 January 1835, 1008.

Southerners, by contrast, feared that denial of a state's right to block tyrannical and unconstitutional assertions of national power could lead to federal interference with slavery. Jackson's support of Indian removal represented a concession to states' rights in dealing with Georgia's treatment of the Cherokee that helped defuse this issue. As one scholar notes, "in other southern states—Alabama, Georgia, Mississippi, and Tennessee—Jackson's support for Indian removal had lessened antipathy toward the tariff and diminished the power of the common cause involving states rights." Hence, conservative politicians were fearful "that agitation over the Cherokee would add to the danger of civil dissension in the United States. In some quarters, there was a political excitement bordering on panic."[76]

Even so, the removal issue would not die, and the passing of the nullification crisis relieved momentary Whig fears of continued identification with the anti-removal cause. Reports of the horrendous hardships endured by those Indians outraged many Americans. The petition campaign against removal continued throughout the 1830s. On one occasion, Congressman John Quincy Adams presented a petition from New York City that was forty-seven yards long. Jacksonian efforts to pass a resolution that all petitions on the Indian removal question be tabled automatically failed in the House by a vote of ninety-one to ninety-two.[77] Jackson was mistaken in his belief that his opponents would drop the Indian removal issue. Whig leaders soon discovered that many of their constituents did not agree that the matter was settled, and so the leaders responded accordingly. A sectional issue from the outset, party leaders sought to transform support or opposition to Indian removal into a litmus test of party loyalty. Historian Fred S. Rolater's analysis of roll call votes in Congress from 1830 to 1842 reveals that on no issue were Whigs more united. Overall, 84.74 percent Whig congressional votes on the issue were cast in opposition to removal measures. Democrats, by contrast, supported the administration in 80.74 percent of the votes they cast on congressional legislation implementing the policy.[78] Continued popular opposition in the North made it inexpedient for some Democratic congressmen to be identified with removal, although pressure from party leaders and the White House brought many into line. Southern Whigs faced comparable difficulties in opposing the policy.

76. Norgren, *Cherokee Cases*, 126.

77. Leonard L. Richards, *The Life and Times of Congressman John Quincy Adams* (New York, 1986), 149.

78. Rolater, "The American Indian and the Origin of the Second American Party System," 197.

Substantial Democratic legislative majorities throughout the decade assured that there would be no significant congressional interference with the removal program. Antiremoval forces were, of course, strongest in the House of Representatives, where the South controlled only a minority of the seats. But treaty ratification was the prerogative of the Senate, where southerners and their northern Democratic allies had little difficulty mustering the votes needed to implement the removal program. There was one close call. Jackson's opponents almost defeated the notorious Treaty of New Echota (removing the Cherokees) in 1835. The treaty, approved by a small faction of the Cherokee and opposed by an overwhelming majority, was ratified in the Senate by a one-vote margin. In the acrimonious week-long debate in the Senate, Daniel Webster, a powerful Whig leader who earlier in his career had expressed little interest in Indian policy, charged that the record revealed that Democrats had "no concern for Indian rights" whatsoever. When the treaty was ratified, by a one-vote margin, Webster wrote to Edward Everett to express disgust with the behavior of Senator Robert Goldsborough of Maryland, a Whig whom he had mistakenly considered as "a man of honor and religion." Had Goldsborough not voted with the Jacksonians, the treaty would have been defeated. Stung by the loss, Webster wondered what he could do "to clear myself from the shame and sin of the treaty."[79] His conversion to the cause of Indian rights gives telling evidence of the importance of opposition to Jacksonian Indian policy to the Whig program in the mid-1830s. The ongoing execution of the removal process removed the issue from politics, as by the early 1840s there were few Indians left in the states east of the Mississippi.[80] Clearly the process could not easily be reversed, as the former Indian territories east of the Mississippi were now occupied by white landowners. In 1841, former president John Quincy Adams, once a proponent of voluntary removal, described the Jacksonian program as "among the heinous sins of this nation, for which God will one day bring them to judgment." But as a practical political matter, Adams concluded that it was too late to redress the injustices of the past decade. He accordingly declined to chair the House Committee on Indian Affairs, confiding

79. *Register of Debates*, 24 Cong., I Sess., 1415–16, 1527–28; Webster to Edward Everett, 7 May 1836, in *The Papers of Daniel Webster, Correspondence*, IV: 110; Remini, *Daniel Webster*, 447.

80. An exception is New York, where opponents of removal were able to secure a compromise that protected some Iroquois holdings. See Stephen J. Valone, "William Seward, Whig Politics and the Compromised Indian Removal Program in New York State, 1838–1843," *New York History* 82 (spring 2001): 107–34.

to his diary that "the only result would be to keep a perpetual harrow upon my feelings, with a total impotence to render any useful service."[81]

Antiremoval protestors frequently charged that Andrew Jackson's refusal to execute the Indian treaties and laws of the United States "constituted a gross abuse of presidential power."[82] The charge was well-founded. Nothing in the Indian Removal Act of 1830 authorized his denial of Indian treaty rights in the removal process. While the law's affirmation that prior treaties remained in force was not as strong as Jackson's critics wished, it was nonetheless part of the law. By disregarding the obligations placed upon him by legislation providing for protection of Indian property, by denying the legitimacy of prior federal treaty commitments to Indian nations, by ignoring the promises written into his own removal treaties, and by tacitly encouraging the intimidation and dispossession of Indians, Jackson transformed the voluntary removal program authorized by Congress into a coerced removal sanctioned by the White House. The failure of subsequent Congresses dominated by Jacksonian loyalists to deal with those abuses does not alter the fact that the president was operating outside the law. It is doubtful that Jackson could have achieved his objectives in Indian removal had he either accepted the constraints contained in the enabling legislation, or honored the promises made to Congress to secure passage of that law. It is a mark of Jackson's political success that so many historians over the years have conveyed to their readers the impression that neither the constraints nor the promises existed.

81. Adams, *Memoirs*, 10: 491–92.

82. Philip R. Fendall to Henry Clay, 27 August 1832, in *The Papers of Henry Clay* James Hopkins et al. (Lexington, Ky., 1984) 8: 563.