

ALABAMA VERSUS THE FEDERAL GOVERNMENT:  
AN EXAMINATION OF THE CREEK  
LANDS CONTROVERSY OF  
1832-1834

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## Chapter One Introduction

After listening to over fifteen toasts extolling the virtues of states' rights at the Jefferson Birthday Dinner of April 30, 1830, President Andrew Jackson rose, glared at Vice President John C. Calhoun, and delivered his own toast: "Our Union: It must be preserved."<sup>1</sup> Thus, with one concise yet powerful sentence, Jackson made public his opposition to the nullification doctrine of South Carolina and his intentions to enforce the laws of the United States, including the protective Tariff of 1828. When the Tariff of 1832, which cut duties on many items, maintained high rates on cotton, woolens, and iron, a special session of the South Carolina legislature called for the election of a state convention.<sup>2</sup> Convened at Columbia in November 1832, the convention declared the tariffs of 1828 and 1832 unconstitutional and forbade their collection in the state after February 1, 1833. Calhoun promptly resigned from the vice presidency to defend nullification in the Senate.<sup>3</sup>

In his annual message of December 4, 1832, Jackson confirmed his intentions to enforce the tariff, but, he also urged Congress to lower the rates.<sup>4</sup> Six days later, he issued his Nullification Proclamation, an even more forceful statement of his stance. The president termed the doctrine of nullification an "impractical absurdity."<sup>5</sup> Jackson went on to state that the power of one state to

annul a law of the United States was "incompatible with the existence of the Union," contradictory to the Constitution, "unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed."<sup>6</sup> He also expressed his belief that the true objective of the nullifiers was disunion and that "disunion by armed force is treason."<sup>7</sup> To enforce the tariff, Jackson sent General Winfield Scott to Charleston Harbor with reinforcements for Fort Moultrie and Castle Pinckney. The nullifiers called out the South Carolina militia while unionists in the state organized a volunteer force.<sup>8</sup>

With a crisis at hand, Jackson asked Congress to reaffirm his power to use the army to compel South Carolina's compliance with federal law. He simultaneously gave his support to a bill in Congress that would have lowered duties substantially within two years. In hopes of a compromise, the South Carolinians postponed enforcement of their ordinances. On March 2, 1833, Jackson signed the Force Bill and a compromise tariff which gradually reduced tariff rates until 1842. The South Carolina convention reconvened to rescind its nullification of the tariffs and nullify the Force Bill.<sup>9</sup>

South Carolina, to the consternation of the nullifiers, had stood alone in defiance of the federal government. While many southern legislatures expressed sympathy with South Carolina's opposition to the tariff,

they could not subscribe to the radical doctrine of nullification.<sup>10</sup> Georgia lawmakers called for a southern convention to decide how best to obtain relief from the tariff system and characterized nullification as a "mischievous policy" that was "rash and revolutionary."<sup>11</sup> The Virginia legislature debated the issue for nearly a month before issuing a resolution in which it disagreed with the actions of both South Carolina and Jackson. The most vehement denunciation of nullification came from the state of Mississippi. The legislature matter-of-factly stated, "We are opposed to Nullification" and "regard it as heresy, fatal to the existence of the Union."<sup>12</sup> After echoing the sentiments of Jackson's Nullification Proclamation concerning the constitutionality of South Carolina's actions, the Mississippi legislators resolved, "That we will, with heart and hand, sustain the President of the United States, in the full exercise of his legitimate powers, to restore peace and harmony to our distracted country, and to maintain, unsullied and unimpaired, the honor, the independence and integrity of the Union."<sup>13</sup>

Alabama, much like the other southern states, denounced nullification without denying the legitimacy of South Carolina's complaint. One historian of Alabama's early days points out that because the state was in an early stage of development there was much "divergence of opinion" concerning states' rights and that the votes

concerning the issue "showed no definite alignments and seem to have been dictated by personal convictions or temporary considerations."<sup>14</sup> In January 1833, however, a majority of the Alabama state legislature agreed that nullification was "unsound in theory and dangerous in practice;" it was an "essentially revolutionary," unconstitutional doctrine "leading in its consequences to anarchy and civil discord, and finally to the dissolution of the Union."<sup>15</sup> Even though the legislature expressed confidence in Jackson's leadership and declared that "the wisdom of our system has secured the rights of the states against every emergency," it failed to endorse the president's proclamation and, instead, called for a compromise to the crisis through a reduction of the tariff and the suspension of South Carolina's ordinance.<sup>16</sup>

There was also support for South Carolina within Alabama's legislature. In December 1830, these legislators, led by the vice president's nephew, James M. Calhoun, defeated the reelection bid of John McKinley, a staunch Jacksonian, to the United States Senate in favor of Gabriel Moore, a Calhoun supporter.<sup>17</sup> Two years before, McKinley, though he had voted against it, had been optimistic about the possible effects of the tariff upon his state. He hoped that the higher rates would force Alabamians to turn a portion of their labor to manufacturing, making the state less dependent on others and more insulated against fluctuations in the cotton

market.<sup>18</sup>

Alabama's governor, John Gayle, was a strong supporter of Jackson; he opposed protective tariffs, the re-charter of the Bank of the United States, and internal improvements by the national government. He had won election to office, in 1831, by being the most outspoken of three anti-nullification gubernatorial candidates.<sup>19</sup> During a message to the legislature in November 1832, Gayle referred to nullification as a "deplorable experiment" and predicted that as "sure as it shall succeed, its triumphs will be stained with fraternal blood, and the proudest of its trophies will be the destruction of constitutional liberty."<sup>20</sup> "If it shall be recognized," Gayle added, "that a state can remain a member of the Union and at the same time place her citizens beyond the reach of its laws, ours will not be the shadow of a government, and for all practical purposes it will be dissolved."<sup>21</sup>

Eight months before Governor Gayle made these comments, the federal government and the Creek Indians living in Alabama signed a treaty that would turn his words against him and ultimately drive Gayle from the Jacksonian Party. In 1830, the Choctaw, Chickasaw, Cherokee, and Creek tribes owned approximately one-fourth of the territory within Alabama.<sup>22</sup> The Creeks agreed to a treaty, in March 1832, that granted ninety "principal chiefs" a reservation of one section each and every male head of a family a half section, with the hope on the part



of the government that the individuals would sell their reservations and move west.<sup>23</sup> The land not chosen by the Creeks was ceded to the federal government, which pledged to keep intruders out of the territory until the completing necessary surveys and selections. In spite of this latter provision, settlers and speculators rushed into the Creek Cession in hopes of obtaining the choicest lands. In August 1833, responding to the situation in Alabama, Jackson ordered that all intruders be removed.<sup>24</sup> Gayle came to the defense of the Alabamians and a struggle over jurisdiction ensued. By arguing that the Constitution did not confer on the federal government power to make treaties to the detriment of a state's jurisdiction within its own boundaries, Gayle in effect attempted to place citizens of Alabama beyond the reach of federal law. Only a few months earlier, he had contended that such a position would result in the dissolution of the Union.<sup>25</sup>

Despite the fact that a state, which had previously sided with Jackson against nullification, came to question the value of the Union and threatened violence against federal forces, historians have failed to examine this controversy thoroughly.<sup>26</sup> The only scholars to have addressed this subject have been those concerned primarily with the history of either the state of Alabama or the Creeks. Though these events have been covered sufficiently, historians have not attempted to explain why the controversy occurred.

The most important of the works with a more political perspective are Theodore Henley Jack's Sectionalism and Party Politics in Alabama, 1819-1842 and "Francis Scott Key's Mission to Alabama in 1833," by Frank L. Owsley, Jr.<sup>27</sup> Jack presents the events well and views the controversy over the Creek lands as the key to the development of a states' rights faction in Alabama. Without substantially adding to the narrative, Owsley echoes Jack's sentiments and concludes that the controversy was a "misunderstanding on all parts"; however, he offers no explanation as to how this misunderstanding came about.<sup>28</sup> Owsley seems to envision an even stronger connection between the events of the 1830s and secession than Jack: "a growing element favoring states' rights and ultimately disunion . . . given respectability by the conflict over Indian lands, eventually became powerful enough to lead Alabama to that conclusive disaster 'secession.'"<sup>29</sup> Neither of these works attempts to explain how the controversy led to secession other than the fact that it produced the first enunciations of radical states' rights rhetoric in Alabama.

The works with the Creeks as the main focus, are Mary Elizabeth Young's Redskins, Ruffleshirts, and Rednecks: Indian Allotments in Alabama and Mississippi, 1830-1860 and Michael D. Green's "Federal-State Conflict in the Administration of Indian Policy: Georgia, Alabama, and the Creeks, 1824-1834."<sup>30</sup> Both of these offer insight

into Creek culture and the effects of the controversy upon the tribe. Young focuses on the allotment policy and the frauds that speculators perpetrated against the Native Americans of the Old Southwest. Taking a different tact, but also focusing on the mistreatment of the Creeks, Green presents the most thorough narrative and explains the importance of the Indian Agents to the tribes.

What remains unexplained is why the controversy between the federal government and the state of Alabama took place. Using the actual events as a frame, successive chapters in the present study will focus on the federal government, the state, and the governor. The first chapter will argue that Jackson's Indian removal rhetoric and other actions by the federal government encouraged the settlers of Alabama to intrude on the ceded territory. Jackson used threats to convince the Creeks to agree to a treaty. However, the settlers, as well as many historians, did not understand that Jackson used the threats as weapons to gain his objective but once the treaty went into effect, he would seek to carry out its provisions faithfully. The government's record of granting squatters preemption rights and Secretary of War Lewis Cass's indecisiveness in expelling the intruders compounded the situation. The second chapter argues that the democratic nature of Alabama's political system forced the state's politicians to defend the squatters. The third chapter examines the role of southern honor in the conflict and posits that John

Gayle's sensitivity to insult prolonged the difficulties as he sought satisfaction. Rather than being the starting point for a direct line from the initial states' rights arguments in Alabama to William Lowndes Yancey's dramatic departure from the 1860 Democratic Convention and the Civil War, the controversy over the Creek Cession is more important for what it reveals about the nature of states' rights in its infancy. By not supporting South Carolina and then taking up similar arguments when the Jackson administration ordered the expulsion of intruders from the Creek Cession, Alabamians showed that they did not care for the rhetoric of radical states' rights until the federal government threatened their interests.

In The Union at Risk: Jacksonian Democracy, States' Rights, and the Nullification Crisis, Richard E. Ellis identifies two distinct types of states' rights proponents: those who believed that Union was perpetual and advocates of a constitutional right of secession.<sup>31</sup> During the Nullification Crisis, Alabama was, along with Andrew Jackson, a member of the former group. The people and politicians of the state apparently did not consider the provisions of the Tariff of 1832 onerous enough to warrant a conflict with the federal government. However, when the federal government sought to protect the treaty rights of the Creeks to the detriment of Alabama settlers, Alabamians felt justified in their opposition. Even though they did not expressly contemplate secession, they did question the

value of the Union and threaten to resist the federal government with force.<sup>32</sup> At least in Alabama, self-interest seemed to be a key factor in the adoption of the more radical version of states' rights.

## End Notes

<sup>1</sup>Quoted in Robert V. Remini, Andrew Jackson and the Course of American Freedom, 1822-1832 (New York: Harper and Row, 1981), 235. See also Thomas Hart Benton, Thirty Years' View; or, A History of the Working of the American Government for Thirty Years, from 1820 to 1850 (New York: D. Appleton, 1854), 148-49; Remini, Jackson and Freedom, 233-36; Richard R. Stenberg, "The Jefferson Birthday Dinner, 1830," Journal of Southern History 4 (August 1938): 334-45.

<sup>2</sup>The nullifiers believed that a reduction on these products was necessary for significant economic relief because they were the products exchanged for southern staples; William W. Freehling, Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836 (New York: Oxford University Press, 1965), 247.

<sup>3</sup>For South Carolina's Ordinance of Nullification, see Herman V. Ames, State Documents on Federal Relations (Philadelphia: n.p. 1906), 169-73. Basic works on the nullification crisis are Freehling, Prelude to Civil War; Major L. Wilson, "'Liberty and Union': An Analysis of Three Concepts Involved in the Nullification Controversy," Journal of Southern History 33 (August 1967): 331-55; Richard B. Latner, "The Nullification Crisis and Republican Subversion," Journal of Southern History 43 (February 1977): 19-38; Merrill D. Peterson, Olive Branch and Sword--The Compromise of 1833 (Baton Rouge: Louisiana State University Press, 1982); Richard E. Ellis, The Union At Risk: Jacksonian Democracy, States' Rights, and the Nullification Crisis (New York: Oxford University Press, 1987); David F. Ericson, "The Nullification Crisis, American Republicanism, and the Force Bill Debate," Journal of Southern History 61 (May 1995): 249-70.

<sup>4</sup>Andrew Jackson, "Fourth Annual Message," December 4, 1832, in J.D. Richardson, ed., Compilation of the Messages and Papers of the Presidents, 1789-1897, 53d Cong., 2d sess., 1907, House Miscellaneous Document no. 210, 10 vols. (Washington, D.C.: Government Printing Office, 1907), 2: 591-606.

<sup>5</sup>"Nullification Proclamation," December 10, 1832, in *ibid.*, 642.

<sup>6</sup>*Ibid.*, 643.

<sup>7</sup>*Ibid.*, 654.

- <sup>8</sup>Ellis, Union At Risk, 78-82.
- <sup>9</sup>See Freehling, Prelude to Civil War, 284-97
- <sup>10</sup>"Georgia on a Southern Convention and Nullification," "Resolves of Alabama," "Resolves of Mississippi," and "Resolves of Virginia," in Ames, State Documents, 178-88. Also see Freehling, Prelude to Civil War, 265.
- <sup>11</sup>"Georgia on a Southern Convention and Nullification," December 14, 1832, in Ames, State Documents, 180.
- <sup>12</sup>"Resolves of Mississippi," in *ibid.*, 184.
- <sup>13</sup>*Ibid.*, 185.
- <sup>14</sup>Thomas Perkins Abernathy, The Formative Period in Alabama, 1815-1828 (Tuscaloosa: University of Alabama Press, 1965), 145.
- <sup>15</sup>"Resolves of Alabama," in Ames, State Documents, 182.
- <sup>16</sup>Alabama Southern Advocate, January 14, 1833; quote in J. Mills Thornton, III, Politics and Power in a Slave Society: Alabama, 1800-1860 (Baton Rouge: Louisiana State University Press, 1978), 27.
- <sup>17</sup>H. McVay to John Coffee, December 4, 1830, John McKinley to Coffee, January 2, 29, February 21, 1831, John Coffee Papers, Alabama Department of Archives and History, Montgomery, Alabama. See also Theodore Henley Jack, Sectionalism and Party Politics in Alabama, 1819-1842 (Menasha, WI: Collegiate Press, 1919), 29-30.
- <sup>18</sup>John Mckinley to John Murphy, May 25, 1828, "John Murphy," Governors Correspondence, Alabama Department of Archives and History, Montgomery, Alabama.
- <sup>19</sup>Alabama State Intelligencer (Tuscaloosa), November 19, 1833; Jack, Sectionalism, 27; Willis Brewer, Alabama: Her History, Resources, War Record, and Public Men, From 1540 to 1872 (Montgomery: Barrett and Brown, 1872), 500-501.
- <sup>20</sup>"Governor's Message," November 5, 1832, Alabama Senate Journal, called session, 1832, 6.
- <sup>21</sup>*Ibid.*

<sup>22</sup>Jack, Sectionalism, 28.

<sup>23</sup>"Treaty with the Creeks, 1832," March 24, 1832, Charles J. Kappler, ed., Indian Affairs Laws and Treaties, 5 vols. (Washington, D.C.: Government Printing Office, 1904), 2: 341-42.

<sup>24</sup>See Lewis Cass to Jeremiah Austill, August 10, 26, 1833, in U.S. Congress, Indian Removals, 5 vols., Document 512 of U.S. Senate, 23d Congress, 1st session (Washington, D.C.: Duff Green, 1834-35; reprint, New York: A.M.S. Press, 1974), 3: 744, 757.

<sup>25</sup>Gayle to Cass, October 2, 1833, *ibid.*, 4: 584-92.

<sup>26</sup>See unsigned letter, October 16, 1833, reprinted in Daily National Intelligencer (Washington, D.C.), October 29, 1833; "Proclamation of Governor John Gayle," September 16, 1833, "John Gayle," Governors Correspondence, Alabama Department of Archives and History, Montgomery, Alabama.

<sup>27</sup>Jack, Sectionalism; and Frank L. Owsley, Jr., "Francis Scott Key's Mission to Alabama in 1833," Alabama Review 23 (July 1970): 181-92. Jack's chapter on the controversy can also be found in "Alabama and the Federal Government: The Creek Indian Controversy," Mississippi Valley Historical Review 3 (December 1916): 302-17. An even older work that presents an interpretation similar to Jack's is Joseph Hodgeson, The Cradle of the Confederacy; or, the Times of Troup, Quitman, and Yancey (Mobile: Register Publishing Office, 1876), 179-203. Others who center on Key's involvement are Thomas C. McCorvey, "The Mission of Francis Scott Key to Alabama in 1833," Transactions of the Alabama Historical Society 4 (1904): 141-65; Edward S. Delaplaine, Francis Scott Key: Life and Times (New York: Biography Press, 1937).

<sup>28</sup>Owsley, "Key's Mission," 192.

<sup>29</sup>*Ibid.*

<sup>30</sup>Mary Elizabeth Young, Redskins, Ruffleshirts, and Rednecks: Indian Allotments in Alabama and Mississippi, 1830-1860 (Norman: University of Oklahoma Press, 1961); Michael D. Green, "Federal-State Conflict in the Administration of Indian Policy: Georgia, Alabama, and the Creeks, 1824-1834" (Ph.D. dissertation, University of Iowa, 1973), 224-93. See also Michael D. Green, The Politics of Indian Removal: Creek Government in Crisis (Lincoln: University of Nebraska Press, 1982), 141-86; Marvin E. Ellis, III, "The Indian Fires Go Out: Removing the Creeks from Georgia and Alabama, 1825-1837" (M.A. thesis, Auburn



University, 1882), 62-91.

<sup>31</sup>Ellis, Union at Risk, ix. According to Ellis, the two states' rights groups shared a belief in strict construction of the Constitution and limited government on the federal level, which differentiated them from the nationalists, a third group discussed by Ellis, who usually favored a loose construction and a more active federal government and also believed that the Union was perpetual.

<sup>32</sup>See unsigned letter, October 16, 1833, reprinted in Daily National Intelligencer (Washington, D.C.), October 29, 1833; "Proclamation of Governor John Gayle," September 16, 1833, Governors Correspondence.

Chapter Two  
Threats, Promises, and Duty: The Federal  
Government's Encouragement of Intrusions  
on the Creek Cession in Alabama

"All intruders upon the country hereby ceded shall be removed therefrom in the same manner as intruders may be removed by law from other public land until the country is surveyed, and the selections made"; thus began what would become the fifth and most controversial article of the Creek Treaty of 1832.<sup>1</sup> The subject of the treaty was the five million acres of Creek land within the boundaries of Alabama. State officials and potential settlers, many of whom had occupied Creek lands prior to the signing of the treaty, had long coveted this land. Officials sought the prosperity that a burgeoning white population would bring to the state, while the settlers viewed with envy the rich soil of the Creek Territory.<sup>2</sup>

The land hunger of the Alabamians clashed with President Andrew Jackson's desire to fulfill the federal government's treaty obligations to the Creeks. When Jackson ordered the expulsion of white settlers from the Creek Cession, Alabama's Governor John Gayle came to the defense of the intruders. This conflict led Alabamians to ponder the worth of a union that impinged upon the state's control of lands within its boundaries and, by state law, under its jurisdiction. To the detriment of the Creeks, the federal government eventually backed away from its removal order and the controversy never escalated beyond a

war of words.<sup>3</sup>

The question remains as to why this controversy occurred. Much of the blame for the controversy rests with the federal government. Jackson's rhetoric encouraged the settlers of Alabama to intrude on Creek lands, creating a situation that Secretary of War Lewis Cass and previous administrations compounded with their ambiguous records of dealing with squatters on public lands.

Andrew Jackson took the oath of office to become the seventh President of the United States on March 4, 1829. He won election without voicing his stand on many issues.<sup>4</sup> However, he did possess some very strong convictions. One of them was that the Indians as tribes should not exist within the territory of the states.<sup>5</sup>

In his first annual message, Jackson set forth three elements of his Indian policy. He began by stating that he believed that the practice of attempting to civilize the Indians, and at the same time negotiating treaties for the purchase of their lands, was "wholly incompatible" with success.<sup>6</sup> As to the independence of the tribes, Jackson pointed out the constitutional argument against taking a state's territory without its consent. The final consideration was the deteriorating condition of the Indians. With these things in mind, Jackson concluded that the only way for the Indians to maintain any semblance of their culture was to move outside the boundaries of all existing states and territories. He asked Congress to set

aside an "ample district west of the Mississippi . . . to be guaranteed to the Indian tribes as long as they shall occupy it," where they would be able to choose their own government and continue to learn the "arts of civilization."<sup>7</sup>

Jackson's predecessors in office had all supported the acculturation of Native Americans, but had continually yielded to pressures to gain more land without providing a place for the Indians to be secure. Jackson's message was critical not of acquiring land but of the failure to provide a permanent home for the dispossessed. The Indians were, in Thomas Jefferson's words, being driven "with the beasts of the forests into the Stony mountains."<sup>8</sup> Under these circumstances, Native Americans had no time to assimilate into white culture. Removal was how Jackson proposed to give them time. Once removed, they could learn what was required for them to function in a civilized society and be prepared for it when the "mercenary influence of White men" once again reached them.<sup>9</sup> Removal, therefore, was not a substitute for civilization but a prerequisite.

In pursuit of his policy, Jackson asked Congress for and received an Indian removal bill, which authorized him to negotiate with the Indians for their removal and allocated \$500,000 for that purpose. Some humanitarians from the northeastern states and Jackson's political enemies opposed the bill. Speaker of the House Andrew

Stevenson, of Virginia, had to break three tie votes to save the bill from defeat. After hard-fought and narrow victories in both the House and the Senate, Jackson signed the bill into law on May 28, 1830.<sup>10</sup>

To obtain treaties, prior to as well as after attaining the presidency, Jackson was not averse to the issuance of veiled or, even, overt threats to convince the Indians to agree. But he also urged that "candor" was the best method of dealing with the Indians.<sup>11</sup> As he advised Colonel John D. Terril, in 1826, "promise nothing to them, but what you will religiously perform."<sup>12</sup> The primary threat used to convince the tribes of the southeastern states to agree to removal was the extension of state jurisdiction over Indian lands. After having urged the Indians to agree to removal or submit to state law in his first annual message, Jackson added in his second that, if the state laws were unjust, the federal government had no right to interfere on behalf of the tribes: "As individuals we may entertain and express our opinions of their acts, but as a Government we have as little right to control them [state governments] as we have to prescribe laws for other nations."<sup>13</sup>

Finding themselves compelled "to seek an asylum from the craving desires of the white man, beyond the great river," the Creeks informed Secretary of War Lewis Cass that they were prepared to negotiate.<sup>14</sup> The resulting treaty made use of a practice known as land allotment.

This policy allowed individual Indians to receive parcels of land which, in theory, they could either sell and move west with money in their pockets or farm and become citizens of the state.<sup>15</sup> After a survey of the ceded territory in Alabama, ninety "principal Chiefs" were to select one section--640 acres--each, while each head of a Creek family received a half section.<sup>16</sup> The treaty stipulated that twenty sections be set aside and sold for the benefit of the "orphan children of the Creeks."<sup>17</sup> After five years, all the Creeks who wished to remain would receive land patents for their acreage. The federal government promised to remove all intruders. However, the settlers who had not harassed the Creeks and had already planted crops could wait until after the harvest. The Creeks were also to receive various types of payments with a total value of over \$350,000. The twelfth article of the treaty made clear the government's desire that "the Creeks should remove to the country west of the Mississippi."<sup>18</sup>

When discussing Jackson's Indian policy historians usually divide into two camps: those who believe that his pursuit of Indian removal derived from a hatred of Native Americans and those who argue that he acted out of a genuine concern for their well-being. For the most part, both groups have overlooked the controversy that ensued when, despite the government's promise to remove intruders, settlers already in the territory remained and others rushed in to stake their claims. By doing so, these

historians have disregarded evidence that does not fit neatly into either argument.

Jackson's Indian policy is the one aspect of his presidency that has received the most vehement denunciations from scholars. Edward Pessen characterizes Jackson as an arrogant, disingenuous, high-handed, egotistic, intolerant, emotional, petty, and vindictive man who took a perverse joy in hating and exhibited a cruel disregard for Indian rights.<sup>19</sup> He also describes Jackson's Indian policy as "a blending of hypocrisy, cant, and rapaciousness, seemingly shot through with contradictions."<sup>20</sup> Another historian, Ronald T. Takaki, argues that, "in his writings, messages to Congress, and personal letters, Jackson presented a philosophical justification for the extermination of native Americans."<sup>21</sup> In 1975, political scientist Michael Paul Rogin presented a psychobiography of Jackson which attempted to explain his hatred of Indians. Rogin uses Freudian theories to argue that the subjugation of the Indians allowed Jackson to overcome a "flawed maturity" resulting from fears of feminine domination.<sup>22</sup>

In opposition to this "devil theory" of Jacksonian policy, Francis Paul Prucha attributes Jackson's motives to a complex mix of nationalist and states' rights principles, national security concerns, and a genuine belief that removal was in the best interest of the Indians.<sup>23</sup> Prucha's argument convinced at least one Jackson scholar:

Robert V. Remini. In one of his earlier works, Remini points out that Jackson had a "remarkable talent for slaughtering Indians" and that he had as much affection for them as he did for Henry Clay.<sup>24</sup> However, by 1988, Remini's view had become quite similar to Prucha's.<sup>25</sup>

The arguments of both sides of this historical argument are flawed. By relying too heavily upon the writings of Jackson's political opponents, the proponents of the devil theory completely disregard a correlation between Jackson's words and actions that reveals the simplicity of their views.<sup>26</sup> These historians repeatedly assume that because Jackson fought Indians he necessarily hated them and would stoop to any depths to get them off the lands he and other Americans coveted. The pro-Jackson arguments are more complex but are still not completely satisfying. In arguing that the motivation for Jackson's removal policy derived from his view of the nature of the Union and national security concerns, Prucha and Remini offer compelling arguments and much substantive evidence. For their contention that Jackson acted upon a genuine concern for the well-being of the Indians, they do not.<sup>27</sup> To demonstrate this concern, they refer to isolated quotes and incidents without explaining the inconsistency in Jackson's fighting Indians with such zeal and being concerned for their well-being. This is not sufficient. Perhaps Prucha and Remini have presented their arguments in this way because it cannot be shown that Jackson expressed



an unqualified concern for the Indians. For just as Andrew Jackson was no devil, he most certainly was no angel. A number of events during the Creek War provide evidence that, rather than hating or being concerned for the Indians, Jackson's primary consideration was his duty as a general and, later, as president. His order to enforce the article against intrusion on Creek lands derived from a sense of duty which had consistently guided him in his dealings with all people regardless of their race.

The Creek War of 1813-1814 resulted from the pressures that American expansion exerted on the tribe.<sup>28</sup> After its triumph over the Federalists in the Election of 1800, Jeffersonian Democracy was the leading political creed of the United States. One of its many tenets was the inherent good of the yeoman farmer. Jeffersonians believed that for the republic to endure it would be necessary to slow the development of manufacturing industries to prevent the urban decay that they observed in Europe.<sup>29</sup> In addition, the government felt compelled to promote expansion for two very practical reasons. The first was that the sale of the public domain provided an important source of income for a government that had a heritage of avoiding taxes. The second reason, due, in part, to the presence of the British in Canada and the Spanish in Florida, was that large unsettled areas left openings for foreign invasions which a dense population would preclude. After the American Revolution, this consideration forced

the government to placate the tribes and elicit pledges of neutrality while convincing them to make land cessions. It would have been nearly impossible for the United States, with its distrust of standing armies to have repelled a full-scale invasion and fought a general Indian war.<sup>30</sup> For these reasons, the United States government needed the land that the Indians had.

The official goal of Indian policy from the Washington to the Monroe administrations was civilization. Ideally, as Indians became farmers they would settle down on a set amount of land and the excess would become available for white settlement. With the Louisiana Purchase, another option became available: Indian removal to the west of the Mississippi River.<sup>31</sup>

A faction of the Creeks resented the pressure to change their lifestyle and give up their land. These Creeks advocated a return to traditional ways and the rejection of innovations sponsored by American agents and missionaries. The remainder of the tribe desired good relations with the United States. When the National Council consented to the building of a road through the heart of Creek Territory, this factionalism deteriorated into a civil war that tore apart Creek society.<sup>32</sup> From the spring of 1812 to the spring of 1813, the militant faction, calling themselves Red Sticks, killed several white settlers. After the attacks, settlers, as well as some of the pro-American Creeks, gathered for protection at Samuel Mims's stockade

about twenty miles north of Mobile.<sup>33</sup> The slaughter of 517 men, women, and children by nearly to one thousand Red Sticks led by William Weatherford, Josiah Francis, and Peter McQueen brought Andrew Jackson into the Creek War.<sup>34</sup>

In bed, prostrate from wounds received in a brawl with Thomas Hart Benton and Jesse Benton, Jackson received word of the massacre at Fort Mims.<sup>35</sup> With authorization from Governor Willie Blount, Jackson issued orders calling out his division of the Tennessee Volunteers. The army moved out on October 10, 1813, with Jackson in command still pale and gaunt, with his arm in a sling.<sup>36</sup>

After the Tennessee Volunteers' first action in the Battle of Tallushatchee on November 3, 1813, the soldiers found the body of a dead Creek mother still clutching her ten-month-old child. Because the child had no relatives, the female captives said that he should be killed as well. Jackson would not hear of it. He had the orphan, named Lyncoya, sent to Huntsville, where he received care until the end of the campaign. Jackson later wrote his wife that "fortune has thrown him in my hands. . . . I therefore want him well taken care of, he may have been given to me for some valuable purpose--in fact when I reflect that he as to his relations is so much like myself I feel an unusual sympathy for him."<sup>37</sup> Jackson raised Lyncoya as one of his own sons and would have sent him to the military academy had the boy not died of tuberculosis.<sup>38</sup>

In November, suffering from the strain of battle, fear

of attack, and no food, the men of the Tennessee Volunteers decided it was time to go home. Jackson prevented three mass desertions by using his loyal troops against the deserters.<sup>39</sup> On December 10, 1813, the one-year enlistments of the volunteers expired and the entire brigade planned to leave during the night. Hearing of the scheme, Jackson sent out two orders. The first ordered the mutinous brigade to parade on the west side of the fort. The other called for the loyal militia to face them with their two cannons ready. Jackson rode before his brigade and argued that the year of enlistment meant actual service not, as the volunteers maintained, one year since enlistment. He pleaded with them not to desert and offered a bargain: if they remained, they could leave as soon as the reinforcements, who were expected at any moment, arrived. Receiving no reply and sitting calmly upon his horse within the line of fire, Jackson ordered the cannoneers to light their matches. The volunteers assented to Old Hickory's bargain.<sup>40</sup>

In February, reinforcements began arriving. By March, Jackson's force had grown to nearly five thousand. He was now prepared to put an end to the Creek War. After devastating defeats at the Battle of Horseshoe Bend and the Holy Ground, hostile Creek leaders began coming in to surrender.<sup>41</sup> The most notable of the capitulating Red Sticks was William Weatherford, one of the leaders of the attack on Fort Mims, who later visited Jackson several

times at the Hermitage.<sup>42</sup> With Weatherford's surrender, the Creek War was over. After a brief respite at the Hermitage, Jackson set out on the road to New Orleans and the presidency.

Prior to the development of the controversy between Alabama and the federal government, Jackson faced a similar situation involving Georgia and the Cherokees which produced the famous Supreme Court case of Worcester V. Georgia. In this controversy, Jackson did not seek to protect the Cherokees from the state government because he had no duty to do so. The Cherokees had refused to sign a treaty. Likewise, Chief Justice John Marshall's decision calling for the release of two missionaries who had violated Georgia law by entering the Cherokee Nation required the summoning of state officials before the Court for contempt or the issuance of a writ of habeas corpus before Jackson had any responsibility in the matter. Another consideration that differentiated this controversy from the later one in Alabama was its timing. The Georgia case was still unsettled when South Carolina threatened to secede during the nullification crisis. In order to keep the South Carolinians isolated, Jackson had to placate the Georgians.<sup>43</sup>

Regardless of the number of Creeks he killed in battle and the harsh rhetoric of Indian removal, Jackson neither loved nor hated Indians. As a general, it was his duty to care for his men and defeat the Creeks; as president, it

was his duty to open Indian lands to American expansion. To fulfill his responsibilities, Jackson used whatever means were necessary. He used the threat of state jurisdiction to convince the Creeks to agree to removal just as he had used the threat of cannon-fire to keep his troops in the field. Considering Jackson's adoption of an orphaned Creek and his friendship with Weatherford, there was no reason for Alabamians to believe that Jackson would view the duties imposed upon him by a treaty with the Creeks any differently than his duty to see to the well-being of his troops or to defeat the Red Sticks. However, Alabamians of the 1830s took Jackson's threat to the Creeks that he was powerless to protect them from unjust state laws as a promise. Alabamians could not believe that the old Indian-fighting frontiersman in the White House would force those who had settled in the ceded territory to move, regardless of his treaty obligations to the Creeks.<sup>44</sup>

In addition to receiving encouragement from Jackson's professions, in his second annual message, that the federal government could not and would not interfere with state law, Alabamians also found encouragement to intrude in the government's history of granting preemption rights to squatters.<sup>45</sup> Since before the Revolutionary War, Americans had advanced westward in their search for cheap land. Attempts to prevent this practice usually proved futile. In 1807, Congress passed "An act to prevent

settlements being made on lands ceded to the United States, until authorized by law" which called for the eviction of squatters by force with possible penalties of a \$100 fine and up to six months imprisonment.<sup>46</sup> Many in Congress thought of the squatters as "true pioneers, that open the country to the skills and capital of more thorough improvement and extended commerce," and, therefore, sought to sanction their action through the passage of retrospective preemption acts, such as the one of 1830.<sup>47</sup> The Alabamians who hoped to profit from preemption rights overlooked the fact that the Creek Treaty of 1832 contained a stipulation for the removal of intruders and that the Creek chiefs and heads of households had their choice of lands which they could keep or sell to whomever they chose.<sup>48</sup>

The actions of Secretary Cass, in regard to the expulsion of the squatters as called for in the fifth article of the Creek Treaty of 1832, served to perpetuate tensions in Alabama. Cass was a supporter of Indian removal and, while Governor of Michigan Territory, had gained a reputation for dealing firmly but fairly with the Native Americans of the Old Northwest. This was Cass's most important qualification as Jackson sought a replacement for his close friend John Eaton. Cass, unlike the chief executive, sought to avoid personal confrontations over political questions and exhibited such deference to the wishes of the president in his first

months in the War Department that he appeared to be indecisive.<sup>49</sup> Jackson complained of Cass coming "to me constantly with great bundles of papers, to decide questions for him which he ought to decide for himself."<sup>50</sup> Jackson also described Cass as "an amiable talented man, a fine writer, but unfortunately it is hard for him to say no."<sup>51</sup> After his aggressive handling of the Black Hawk War, Cass became more independent in the performance of his duties.<sup>52</sup>

Despite complaints from Creeks and government officials concerning the trespasses and depredations of white intruders, Cass was irresolute in the application of the removal clause of the treaty.<sup>53</sup> At first, it seemed that the government intended to enforce the stipulation. Shortly after the signing of the treaty, the secretary instructed United States Marshal for the Southern District of Alabama Robert L. Crawford "to repair to the district, and give notice to all persons, except those allowed by the treaty to remain until their crops are gathered, to remove within as short a time as practicable."<sup>54</sup> A few months later, Cass rescinded this order.<sup>55</sup> Due to "frequent complaints" against intruders, Secretary Cass renewed his instructions to enforce the article in October 1832.<sup>56</sup> While Cass vacillated, he also more directly encouraged settlers to remain in the Creek Cession by assuring anxious settlers and state officials, who inquired as to the administration's position, that "it is certainly the wish



of the Government to avoid all unnecessary severity towards our citizens who are located upon any part of the ceded territory."<sup>57</sup>

Much of the blame for the situation rested with the federal government. Jackson's threats to leave the Indians to the mercy of the states unless they agreed to emigrate sounded like promises to the intruders who overlooked or were unaware of Old Hickory's devotion to duty. The government's history of leniency in its enforcement of anti-squatter laws and the esteem with which many viewed the pioneers held out to them the hope of being granted preemption rights in the Creek Cession. In addition, Cass's inconsistency in enforcing Article V and his statements to settlers and Alabama leaders further encouraged the intruders to be intransigent. The settlers interpreted the words and actions of the government as invitations to encroach on the Creek lands and they refused to leave unless prompted by the United States Marshal.

End Notes

<sup>1</sup>"Treaty with the Creeks, 1832," March 24, 1832, Charles J. Kappler, ed., Indian Affairs Laws and Treaties, 5 vols. (Washington, D.C.: Government Printing Office, 1904), 2: 341-42.

<sup>2</sup>One writer described the area as a place where "cotton flourishes and health abounds"; D.R. Williams to Bolling Hall, January 26, 1824, Hall Family Papers, Alabama Department of Archives and History, Montgomery, Alabama. See also: Thomas Perkins Abernathy, The Formative Period in Alabama, 1815-1828 (Tuscaloosa: University of Alabama Press, 1965), 34-90; William Warren Rogers, et al., Alabama: The History of a Deep South State (Tuscaloosa: University of Alabama Press, 1994), 54-66.

<sup>3</sup>For a basic narrative of these events, see Theodore Henley Jack, Sectionalism and Party Politics in Alabama, 1819-1842 (Menasha, WI: Collegiate Press, 1919), 37-54.

<sup>4</sup>See Robert V. Remini, The Election of Andrew Jackson (Philadelphia: J.B. Lippincott, 1963); Richard P. McCormick, The Second American Party System: Party Formation in the Jacksonian Era (Chapel Hill: University of North Carolina Press, 1966); Edward Pessen, Jacksonian America: Society, Personality, and Politics (Homewood, IL: The Dorsey Press, 1978); Thomas P. Abernathy, "Andrew Jackson and the Rise of Southwestern Democracy," American Historical Review 33 (October 1927): 64-77.

<sup>5</sup>For example, see "Journal of the Convention" (with the Choctaws), 1820, Andrew Jackson Papers, Library of Congress, Washington, D.C.

<sup>6</sup>Jackson, "First Annual Message to Congress," December 8, 1829, J.D. Richardson, ed., Compilation of the Messages and Papers of the Presidents, 1789-1897, 53d Cong., 2d sess., 1907, House Miscellaneous Document no. 210, 10 vols. (Washington, D.C.: Government Printing Office, 1907), 2: 457.

<sup>7</sup>Ibid., 458.

<sup>8</sup>Quoted in Robert V. Remini, Andrew Jackson and the Course of American Empire, 1767-1821 (New York: Harper and Row, 1977), 332.

<sup>9</sup>Jackson to James Gadsden, October 12, 1829, Jackson Papers.

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10 United States Congress, Register of Debates in Congress, 14 vols. (Washington, D.C.: Gales and Seaton, 1824-1837), 7: 993-1136. For more information see Ronald N. Satz, American Indian Policy in the Jacksonian Era (Lincoln: University of Nebraska Press, 1975), 9-63; Francis Paul Prucha, The Great Father: The United States Government and the American Indian, 2 vols. (Lincoln: University Of Nebraska Press, 1984), 1: 200-8.

11 Jackson to John D. Terrill, July 29, 1826, John Spencer Bassett, ed., The Correspondence of Andrew Jackson, 6 vols. (Washington, D.C.: 1926-1933), 3: 308.

12 Ibid.

13 Jackson, "First Annual Message to Congress," December 8, 1829; and "Second Annual Message to Congress," December 6, 1830, Richardson, Messages and Papers, 2: 1022, 1083. For a similar statement made directly to the Creeks, see Jackson to the Creek Nation of Indians, March 29, 1829, Jackson Papers.

14 "Memorial of the Head Men and Warriors, Of the Creek Nation of Indians," January 24, 1832, U.S. Congress, Indian Removals, 5 vols., Document 512 of U.S. Senate, 23d Cong., 1st sess., (Washington, D.C.: Duff Green, 1834-35; reprint, New York: A.M.S. Press, 1974), 3: 267-69.

15 The best study of land allotment treaties with the southeastern tribes is Mary E. Young, Redskins, Ruffleshirts, and Rednecks: Indian Allotments in Alabama and Mississippi, 1830-1860 (Norman: University of Oklahoma Press, 1961).

16 "Treaty with the Creeks, 1832," March 24, 1832, Kappler, Indian Affairs, 2: 341.

17 Ibid.

18 Ibid., 342-43.

19 Pessen, Jacksonian America, 322.

20 Ibid., 298.

21 Ronald T. Takaki, Iron Cages: Race and Culture in Nineteenth-Century America (New York: Alfred A. Knopf, 1979), 103.

22 Michael Paul Rogin, Fathers and Children: Andrew Jackson and the Subjugation of the American Indian (New York: Alfred A. Knopf, 1975), 13; another psychohistory is James C. Curtis, Andrew Jackson and the Search for

Vindication (Boston: Little, Brown, and Company, 1976). For other works that characterize Jackson as an Indian-hater, see Grant Foreman, Indian Removal: The Emigration of the Five Civilized Tribes of Indians, new ed. (Norman: University of Oklahoma Press, 1953); Glyndon G. Van Duesen, The Jacksonian Era, 1828-1848 (New York: Harper and Row, 1959); Ray Allen Billington, Westward Expansion: A History of the American Frontier (New York: Macmillan, 1967).

<sup>23</sup>Ronald N. Satz, "Rhetoric Versus Reality: The Indian Policy of Andrew Jackson," in William L. Anderson, ed., Cherokee Removal: Before and After (Athens: University of Georgia Press, 1991): 31; and Francis Paul Prucha, "Andrew Jackson's Indian Policy: A Reassessment," Journal of American History 56 (December 1969): 527-39

<sup>24</sup>Remini, Election, 13, 75.

<sup>25</sup>Remini, "Indian Removal," chapter in The Legacy of Andrew Jackson: Essays on Democracy, Indian Removal, and Slavery (Baton Rouge: Louisiana State University Press, 1988). The evolution of Remini's views, from a proponent of the devil theory to his pro-Jackson stance, can be traced through: Remini, The Revolutionary Age of Andrew Jackson (New York: Harper and Row, 1976); Remini, Jackson and Empire; Remini, Andrew Jackson and the Course of American Freedom, 1822-1832 (New York: Harper and Row, 1981); Remini, Andrew Jackson and the Course of American Democracy, 1833-1845 (New York: Harper and Row, 1984). Another work that is favorable to Jackson is Richard H. Faust, "Another Look at General Jackson and the Indians of the Mississippi Territory," Alabama Review 28 (July 1975): 202-17.

<sup>26</sup>While Rogin's analysis is far from simple, he places too great an emphasis on Jackson's use of the terms "great father" and "red children" to indicate that Jackson sought to acquire parental authority through violence. All of the presidents and many governors used these terms in dealings with the Indians throughout most of the eighteenth and nineteenth centuries; Rogin, Fathers and Children, 129-30, 285. For general criticism of the devil theory see Prucha, "Reassessment," 527-28; Prucha, "Books on American-Indian Policy: A Half-Decade of Important Work," Journal of American History 63 (December 1976): 658-69; Faust, "Another Look," 217; Herman J. Viola, "From Civilization to Removal: Early American Indian Policy," in Jane F. Smith and Robert M. Kvasnicka, eds., Indian-White Relations: A Persistent Paradox (Washington, D.C.: Howard University Press, 1976), 45-6; Satz, "Rhetoric Versus Reality," 30-2.

27Satz, "Rhetoric Versus Reality," 32-4. For more even-handed analyses of Jackson's Indian policy see Frederick M. Binder, The Color Problem in Early National America as Viewed by John Adams, Jefferson, and Jackson (The Hague: Mouton, 1968), 136-56; Satz, American Indian Policy.

28Gregory Evans Dowd, A Spirited Resistance: The North American Indian Struggle for Unity, 1745-1815 (Baltimore: Johns Hopkins University Press, 1992), 148-66; Theron A. Nunez, Jr., "Creek Nativism and the Creek War of 1813-1814," Ethnohistory 5 (Winter 1958): 1-47.

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31See Francis Paul Prucha, American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834 (Cambridge: Harvard University Press, 1962); Bernard W. Sheehan, Seeds of Extinction: Jeffersonian Philanthropy and the American Indian (Chapel Hill: University of North Carolina Press, 1973).

32Henry Deleon Southerland, Jr. and Jerry Elijah Brown, The Federal Road through Georgia, the Creek Nation, and Alabama, 1806-1836 (Tuscaloosa: University of Alabama Press, 1989), 8-39.

33James F. Doster, ed., "Letters Relating to the Tragedy of Fort Mims: August-September, 1813," Alabama Review 14 (October 1961): 269-85; Laurence H. Marks, "Fort Mims: A Challenge," Alabama Review 18 (October 1965): 275-80; Frank L. Owsley, Jr., "The Fort Mims Massacre," Alabama Review 24 (July 1971): 192-204.

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Creek Indian Leaders (Tuscaloosa: University of Alabama Press, 1988); Joel W. Martin, Sacred Revolt: The Muskogeese's Struggle for a New World (Boston: Beacon Press, 1991).

<sup>35</sup>For details of the feud that left Jackson with two gunshot wounds in his left arm and shoulder of sufficient severity that his doctor recommended amputation, see James Parton, The Life of Andrew Jackson: In Three Volumes, 3 vols. (New York: Mason Brothers, 1861), 1: 386-98; Marquis James, The Life of Andrew Jackson: Complete in One Volume (New York: Bobbs-Merrill Company, 1938), 150-54; Remini, Jackson and Empire, 183-90.

<sup>36</sup>John Reid and John Henry Eaton, The Life of Andrew Jackson, Major General (Philadelphia: M. Carey and Son, 1817; Tuscaloosa: University of Alabama Press, 1974), 33-34.

<sup>37</sup>Jackson to Rachel, December 29, 1813, Andrew Jackson, The Papers of Andrew Jackson, 5 vols., Harold D. Moser and Sharon MacPherson, eds. (Knoxville: University of Tennessee Press, 1980-), 2: 516. Jackson's father had died in 1767. When he lost his mother and two brothers during the Revolutionary War, he was orphaned at the age of fifteen.

<sup>38</sup>Jackson to Rachel, December 7, 1823, March 27, 1824, Jackson Papers; Jackson to Rachel December 28, 1823, Bassett, Correspondence, 3: 241.

<sup>39</sup>See Jackson to Blount, November 29, 1813, "Address of Officers," November 1813, Jackson Papers; Jackson to Rachel, December 9, 1813, Jackson Papers, 2: 478; Reid and Eaton, Major General, 60-71; Remini, Jackson and Empire, 197-99.

<sup>40</sup>See Jackson to John Coffee, December 9, 1813, Jackson to Rachel, December 14, 1813, Jackson Papers; Jackson to Rachel, December 29, 1813, Jackson Papers, 2: 515; Reid and Eaton, Major General, 84-85; Remini, Jackson and Empire, 199-202.

<sup>41</sup>Holland, "Victory at the Horseshoe," 257-67.

<sup>42</sup>Griffeth, Alabama, 116-17; Parton, Life of Jackson, 1: 528; Griffeth, Jr., McIntosh and Weatherford, 153-55.

<sup>43</sup>For discussions of Jackson's handling of the controversy between Georgia and the Cherokees, see Robert V. Remini, The Life of Andrew Jackson (New York: Penguin Books, 1990), 216-18; Richard P. Longaker, "Andrew Jackson

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and the Judiciary," Political Science Quarterly 71 (September 1956): 343-53. In contrast, the removal of the Chickasaw and Choctaw tribes from Mississippi took place with no comparable political difficulties, see Young, Redskins, 16-74; Bradley G. Bond, Political Culture in the Nineteenth-Century South: Mississippi, 1830-1900 (Baton Rouge: Louisiana State University Press, 1995), 44.

<sup>44</sup>See Samuel W. Mardis to Lewis Cass, May 17, 1832, Lewis Watkins to Cass, October 18, 1832, H.H. Wyche to Cass, October 1, 1833, Indian Removals, 3: 357-58, 501, 4: 581; John Gayle to J. Austill, November 25, 1832, Gayle to Robert L. Crawford, August 20, 1832, Gayle to Judge Thomas H. Martin, September 24, 1833, John Murphy to Gayle, December 18, 1833, "John Gayle Governors Correspondence, Alabama Department of Archives and History, Montgomery, Alabama.

<sup>45</sup>Jackson, "Second Annual Message to Congress," December 6, 1830, Richardson, Messages and Papers, 2: 1083. For evidence that Alabamians expected Congress to grant them preemption rights, see Lewis Watkins to Cass, October 18, 1832, J.B. Eason to Cass, October 1, 1833, H.H. Wyche to Cass, October 1, 1833, Indian Removals, 3: 501, 516-17, 4: 581.

<sup>46</sup>U.S. Congress, United States Statutes at Large, 6th-12th Congress, 1799-1813, 2 vols. (Boston: Little, Brown and Co., 1856), 2: 445-46.

<sup>47</sup>Quoted in George M. Stevenson, The Political History of the Public Lands, From 1840-1862: From Preemption to Homestead (Boston: Richard G. Badger, 1917; New York: Russell and Russell, 1967), 21; "An act to grant preemption rights to settlers on the public lands," May 29, 1830, New American State Papers, "Public Lands," 8 vols. (Wilmington, DE: Scholarly Resources, Inc., 1973), 3: 243. See also Daniel Feller, The Public Lands in Jacksonian Politics (Madison: University of Wisconsin Press, 1984); Malcolm J. Rohrbough, The Land Office Business: The Settlement and Administration of American Public Lands, 1789-1837 (New York: Oxford University Press, 1968); Everett Dick, The Dixie Frontier: A Social History of the Southern Frontier from the First Transmontane Beginnings to the Civil War (New York: Alfred A. Knopf, 1948), 63-77; Benjamin Horace Hibbard, A History of the Public Land Policies (Madison: University of Wisconsin Press, 1965), 144-70; Paul W. Gates, History of Public Land Law Development (Washington, D.C.: Government Printing Office, 1968), 219-38.

<sup>48</sup>"Treaty with the Creeks, 1832," March 24, 1832, Indian Affairs, 2: 341-43; Gates, Land Law Development,

169-70.

<sup>49</sup>This characterization of Cass is taken from Willard Carl Klunder, Lewis Cass and the Politics of Moderation (Kent, OH: Kent State University Press, 1991), 1-95. For more details on Cass's career in the War Department, see W.L.G. Smith, The Life and Times of Lewis Cass (New York: Derby and Jackson, 1856), 239-322; Andrew C. McLaughlin, Lewis Cass (Boston: Houghton Mifflin Company, 1891; Cambridge: Harvard University Press, 1919), 133-66; Frank B. Woodward, Lewis Cass: The Last Jeffersonian (New Brunswick: Rutgers University Press, 1950), 172-94. The only two that mention the difficulties with Alabama are Klunder, Politics of Moderation, 72-73; and Smith, Lewis Cass, 281-82. For Cass's views on Indian removal, see Lewis Cass, "Considerations on the Present State of the Indians, and Their Removal to the West of the Mississippi," North American Review 66 (January 1830); repr., Jerome O. Steffen, ed., Mid-American Frontier (New York: Arno Press, 1975).

<sup>50</sup>Quoted in Klunder, Politics of Moderation, 68.

<sup>51</sup>Jackson to Martin Van Buren, December 17, 1831, Martin Van Buren Papers, Library of Congress, Washington, D.C.

<sup>52</sup>Klunder, Politics of Moderation, 68-70.

<sup>53</sup>For examples see John Crowell to Cass, August 3, 1832, Robert L. Crawford to Acting Secretary of War John Robb, September 15, 1832, Head-chiefs of the Creek Nation to Cass, September 27, November 15, December 20, 1832, Enoch Parsons to Cass, October 12, 1832, Jeremiah Austill to Cass, July 8, 12, 26, August 5, 1833, Tant Williamson to Cass, September 21, 1833, Indian Removals, 3: 413, 453-54, 464, 527-28, 565-66, 483-84, 4: 461, 469, 486-88, 497-98, 571.

<sup>54</sup>Cass to Crawford, April 5, 1832, *ibid.*, 2: 806. See also Crawford to Cass, April 27, 1832, Cass to Crawford, May 9, 1832, *ibid.*, 2: 810, 822.

<sup>55</sup>Crawford to Cass, September 15, 1832, *ibid.*, 3: 453-54.

<sup>56</sup>Cass to Crawford, October 26, 1832, *ibid.*, 2: 944.

<sup>57</sup>Cass to William R. King, C.C. Clay, and Samuel W. Mardis, December 8, 1832, *ibid.*, 2: 961. For similar statements see Cass to Mardis, May 17, 1832, Cass to J.B.



Eason, June 5, 1832, Cass to Gabriel Moore, December 8, 1832, Herring to Judge S. Williams, December 14, 1832, Cass to F.W. Pugh, October 12, 1833, Cass to J.J. Abert and James Bright, October 14, 1833, Cass to Thomas S. Woodward, October 15, 1833, *ibid.*, 2: 833, 843, 961-62, 965, 3: 786, 788, 790.

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Chapter Three  
The Pursuit of Property: The Role of  
Alabama Settlers in the Creek  
Lands Controversy

On July 29, 1833, a detachment of United States soldiers from Fort Mitchell in Creek Territory surrounded Hardeman Owen, postmaster of the newly-created Russell County, Alabama, as his home lay smoldering in the distance. Two days before, Deputy United States Marshal Jeremiah Austill had confronted Owen concerning charges attested to by both Creeks and white settlers that he had forcibly taken over Creek fields, killed Creek livestock, and cruelly beaten Creeks who attempted to resist his aggressions.<sup>1</sup> Austill ordered Owen to leave the territory.<sup>2</sup> Later, a group of Creeks informed the deputy that Owen had drawn his knife and threatened to kill them. Upon his return, Austill arrested Owen, but released him in exchange for a promise that he would leave peaceably. Contrary to his word, Owen sent his family away, mined his home with gunpowder, and issued new threats. When the deputy again returned, Owen politely invited him to come inside and discuss the situation. However, the trap was foiled when a young Creek, who had observed the postmaster's actions, emerged from a nearby wooded area and warned Austill of the powder. Owen ran out the rear, fired at the soldiers, and escaped into his fields moments before the house exploded. Austill left a detachment behind to search for this "most daring" and "dangerous" man and

ordered the Creeks to take him, if possible, or shoot him down if he came back among them. When the soldiers finally located and surrounded Owen, he drew a gun and was shot dead while attempting to fire at the sergeant in command.<sup>3</sup>

Article V of the Creek Treaty of 1832 stipulated that all intruders upon the ceded territory be removed, excluding only settlers who had "made their own improvements and not expelled the Creeks from theirs."<sup>4</sup> The government, however, had been lax and inconsistent in performing its duty until Secretary of War Lewis Cass reiterated his orders in May 1833.<sup>5</sup> Pursuant to these instructions, Austill removed a number of intruders during the months of June and July. None, until Owen, had resisted violently.<sup>6</sup> Responding to the news of the Owen incident, Cass instructed the deputy to facilitate any investigation by the civil authorities but to persist in the execution of his duty. The secretary, however, broadened this responsibility when he informed Austill, in August, that "I am directed by the President to request you to institute prosecutions . . . against all persons . . . intruding upon the lands ceded to the United States under the above-mentioned treaty."<sup>7</sup>

Austill's explanation that the soldiers had shot Owen in self-defense did not satisfy the authorities of Russell County. On October 13, a grand jury issued murder indictments for the men of the detachment who had surrounded Owen. The indictment also called for the arrest

of Austill and a United States Army lieutenant, who, "not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil . . . did feloniously, willfully, and maliciously incite, move, procure, aid, counsel, hire, and command the said murder."<sup>8</sup>

Major James S. McIntosh of Fort Mitchell refused to surrender any of the soldiers and denied the authority of the Russell County Court over himself or his troops.<sup>9</sup>

Upon receipt of Sheriff Edward Crowell's report that he could not arrest any of the indicted individuals for fear of death, the court sent a request to Alabama Governor John Gayle for a military force of sufficient strength to make the arrests. One Alabamian predicted that the "Governor will undoubtedly do it, as he, as well as the whole country here, are in a state of excitement against the General Government, and are determined to support the civil authorities even to the last ditch--Union or no Union."<sup>10</sup>

Thus, with the death of Hardeman Owen, the controversy over the ceded Creek Territory in Alabama reached its most critical point. Even though the Creek Treaty of 1832 set in motion a process that would have provided the settlers of Alabama access to Creek lands after a short delay for surveys, many rushed into the cession ahead of time. When it became apparent that the federal government intended to uphold its treaty obligations, with force if necessary, the intruders looked to the state for protection. The liberal nature of Alabama's political system, which held officials

more directly accountable to the electorate than the older and more conservative states, required Alabama politicians to defend the interests of the settlers against the federal government no matter the cost to the Creeks.

It seems odd that a minor disagreement over the removal of intruders from Creek lands could escalate to a level deserving the designation of a political controversy. Andrew Jackson was a frontier hero. He had fought the Creeks in present-day Alabama during the War of 1812. Most of his contemporaries and many historians have characterized him as an Indian-hater, who, upon assuming the presidency in 1829, had made Indian removal west of the Mississippi River one of his top priorities.<sup>11</sup> Governor John Gayle was a Jackson supporter and had been an outspoken opponent of nullification. He had also fought Indians and sought their removal from his state.<sup>12</sup> It seems that Jackson and Gayle could have worked together to insure that the treaty obligations were fulfilled and the lands legally opened to settlement in a timely manner. The key to understanding why the disagreement escalated to the point that Alabamians questioned the value of the Union is to be found in the settlers' values and beliefs about land and Indians and Alabama's political system which required state officials to be responsive to the needs of their constituents.

Who were these intruders? Why did they feel so justified in their right to occupy Indian lands that they

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were willing to take up arms against a United States Marshal?<sup>13</sup> According to an official of Talladega County, about thirty thousand whites had entered the ceded territory and were subject to removal.<sup>14</sup> They comprised a rather diverse group; one Creek agent described them as "the most wretched collection of mankind this side of Botany Bay" and speculated that "there's not a crime that some of them have not been guilty of."<sup>15</sup> The Globe of Washington, D.C. reported that four hundred of them were whiskey peddlers, while Alabama Senator Dixon H. Lewis praised them as "pioneers."<sup>16</sup> Many of the intruders were land speculators. Some, like Owen and the four hundred whiskey peddlers, were scoundrels and many were undoubtedly homesteaders in search of fertile soil where they could raise their families and perhaps build plantations.<sup>17</sup> Regardless of their backgrounds or occupations, the intruders along with many of the people throughout Alabama and the Old Southwest shared a set of values and beliefs that, not only allowed them to rationalize their actions, but also compelled them to undertake those actions.

Jacksonian America was a nation of people determined to better themselves. One contemporary contended that there "are no bounds among us to the restless desire to be better off. . . . No man in America is contented to be poor, or expects to continue so."<sup>18</sup> They saw land as the means of attaining their goals. The invention of the cotton gin in 1793 and the exhaustion of eastern soils had

spurred the movement of settlers west. The Louisiana Purchase of 1803 had eliminated French control of the west bank of the Mississippi River, the major economic stumbling block to the settlement of the Old Southwest. Cotton accounted for 22 percent of all United States exports from 1803 to 1807. This figure reached 65 percent by the mid-1830s.<sup>19</sup> Seeking to take part in the booming cotton market, most migrants sought lightly settled, fertile lands, located near a river to provide easier access to markets.<sup>20</sup> The southern portion of the Creek Cession fit these requirements perfectly. The land was sparsely settled, contained a sizeable portion of the rich cotton-producing land of the Alabama Black Belt, so named because of its black soil and the number of plantations in the area, and lay adjacent to the Chatahoochee River.<sup>21</sup>

Early settlers of both the North and the South had no qualms with taking land occupied by a people who, in their opinion, made no or improper use of it. The settlers' reasoning hearkened back to the earliest European colonists. To justify their taking of Indian lands, the Puritans had asserted the right to "vacuum domicilium," the right to claim untilled land, which was derived from the Biblical injunction, from Genesis 9: 7, to "be fruitful, and multiply; bring forth abundantly in the earth, and multiply therein."<sup>22</sup> For those more interested in reason than religion, utilitarian philosophers, like the Swiss jurist Vattel, claimed that natural law did not

justify the nomadic lifestyle because it required the use of too much land and did not develop civilization.<sup>23</sup> Therefore, these settlers viewed those who lived in the wild and preferred hunting game to tending the soil and keeping flocks as an obstacle, like the wilderness, to be subdued in the advance of civilization. One essayist sardonically wondered, "Who will hesitate in deciding the question which shall retire before the other?"<sup>24</sup> Because fertile land was the settler's key to prosperity, it was the most important and sought after commodity in early nineteenth-century North America. As the historian Francis Paul Prucha points out, it was "there to be exploited."<sup>25</sup> The settlers, perfectly willing to use the land "properly," maintained that they possessed a superior right to it because the Indians did not exploit it. These beliefs were also expounded in the halls of Congress. During the debates over the Indian Removal Bill, opponents and supporters alike agreed that the Indian's right to his land depended on the cultivation of it.<sup>26</sup>

When the settlers of the southern frontier looked upon the rich lands of the Creek Territory, especially in the mid-1820s, they did not see naked savages roaming through the woods. The Creeks, one of the Five Civilized Tribes, farmed, lived in villages, and had a national government. The Creeks fenced in their farm land, used plows, and raised corn, beans, melons, gourds, and squash for sustenance. Their villages were connected to towns which



served as autonomous ceremonial and governmental centers. Benjamin Hawkins, who served as the Creek agent from 1796 to 1816, used his influence to have the nation divided into districts for representation on the National Council and to obtain a written code of laws, taking them a step closer to the European notion of civilization.<sup>27</sup>

Despite the Creeks' advanced governmental system and agricultural economy, whites on the frontier refused to believe that the tribe had the ability or moral right to remain on its lands in the midst of American settlements. The extension of state jurisdiction over the Creeks, in 1829, served to weaken the power of the National Council and threatened to subject individual Creeks to the duties of state citizenship.<sup>28</sup> Governor Gayle exemplified this refusal to admit that the Creeks had attained a significant level of civilization, in June 1834, when he encouraged the "former chiefs and headmen of the Creek Indians" to submit to removal because

you speak a different language from ours. You do not understand our laws and from your habits, cannot be brought to understand them. You are ignorant of the arts of civilized life. You have not like your white neighbors been raised in habits of industry and economy, the only means by which anyone can live, in settled countries, in even tolerable comfort. You know nothing of the skill of the white man in trading and making bargains, and cannot be guarded against the artful contrivances which dishonest men will resort to, to obtain your property under forms of contracts. In all these respects you are unequal to the white men, and if your people remain where they are, you will soon behold them in a miserable, degraded, and destitute condition.<sup>29</sup>

This refusal to acknowledge the advances of the Creeks, combined with outright bigotry, is also evident in an article critical of Austill's handling of the Owen case that appeared in the Enquirer of Columbus, Georgia. The paper's editor posed the question, "can any warrant be found to justify even a Deputy Marshal of the U.S. in arresting a free citizen for an alleged assault upon an Indian?" The same article accused some Creeks of "arrogant and insulting" behavior and observed that free "citizens will never submit to the insolence of a handful of Savages, even though backed by a deputy marshal and a file of regulars."<sup>30</sup>

In addition to the land hunger of the settlers, there is another possible reason for their refusal to consider living side by side with the Creeks: hatred. Despite the friendly relations that existed between some whites and Indians, the Creek War had taken place a mere twenty years before the height of the controversy in 1833. Many Alabamians carried with them memories or scars from attacks on settlements like Fort Mims. Until the Civil War, many families had stories of "a father shot in the field, of a mother tomahawked at the spring, of a cabin set on fire, or of the dreaded warwhoop."<sup>31</sup> Once again, John Gayle provided an example of an early Alabamian with this type of experience. The future governor arrived in the part of the Mississippi Territory that became Alabama in August 1813, only a few weeks prior to the Creek attack on Fort Mims.

He never served with Andrew Jackson during the conflict, but he was almost continuously engaged with detachments sent to quell small war parties who attacked settlers at various points along the frontier. For his service, the Creeks awarded him with the need for a glass eye. In addition, Indians in Florida had killed and scalped his niece and her husband.<sup>32</sup>

In reality, the treatment that the people in Alabama accorded the Creeks varied. One group of settlers maintained, in a letter to the secretary of war, that they obtained possession of their farms in the ceded territory by the "free and voluntary consent of all the Indians who were interested."<sup>33</sup> The settlers cleared their fields, built their improvements, and paid as much as one dollar an acre in rent. Other letters made similar claims, but also admitted that there were some unscrupulous whites who had forced Creeks from their rightful lands. These writers called for impartial observers to remove only those whites who had unfairly dispossessed the Creeks.<sup>34</sup> Whites who maintained good relations with particular Creeks often refused to accept them as Creeks. One chief who was popular among the settlers of Talladega County was Fores-Hatchie-Fixico. When he died in 1832, the settlers provided him with a "civil burial," wrapped in a long white shroud, made by the ladies of the town, and encased in a black coffin, made by the men. Shortly after the funeral, a group of Creeks exhumed the body of their chief,

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destroyed the coffin, removed the shroud, and gave him a traditional Creek burial, sitting upright in the corner of his cabin. One of the Creeks, to the horror of the town's women, wore the shroud until it was in "rags and tatters."<sup>35</sup>

All relations between the two groups were not so benign. Austill argued that even those whites who treated the Creeks civilly disturbed them by bringing in large herds of cattle, horses, and hogs, which led Creek livestock astray and greatly reduced their stock.<sup>36</sup> One settler reported a much more disturbing episode. A group of Creeks, who had been living in the Cherokee Nation, entered the ceded territory to make selections for their reservations. A party of white men intercepted them, tied up and beat some, and drove them all back to the Cherokee lands. These whites then proclaimed that they would whip or kill any white man who attempted to help the Creeks obtain their reservations.<sup>37</sup> An English traveler, George W. Featherstonhaugh, witnessed another episode of cruelty as he journeyed through Creek Territory. At a cabin, where tobacco and whiskey were sold, the "villainous-looking" white proprietor and three "brutal-looking" companions were making sport of a drunken Creek, who "was staggering about stark naked and vociferating in an unintelligible manner."<sup>38</sup> The four whites were attempting to convince the intoxicated Creek to jump into a nearby stream in exchange for another drink. Fortunately, although he had

stripped, he retained enough good sense not to dive into the cold January waters. Featherstonhaugh concludes: "We left the place thoroughly disgusted."<sup>39</sup>

Many of the farmers strove to acquire the Creek lands through honest means, while other settlers endeavored to use force; the group who proved to be the most consistently prone to the use of trickery in their lust for quick profits was the speculators. The second article of the Creek Treaty of 1832, which allowed "ninety principal Chiefs . . . to select one section each, and every other head of a Creek family to select one half section each," opened the way for the speculators, as it placed the ownership of land in the hands of individuals who were not used to such responsibility.<sup>40</sup> The most notorious of this class were the twenty men of Columbus, Georgia, who, in April 1832, put up \$500 each to fund the Columbus Land Company. The agreement called for the purchase of as much Creek land as possible. After six years, each member was to receive a refund of his original investment and a share of the land. One tactic of the company's agents was to sell goods, tobacco, and whiskey to the Creeks on credit, secured by their land allotments. A second method involved the use of slaves as interpreters. An advantage of this tactic was that the slaves could not testify against their owners. Additionally, the Creeks tended to be more trusting of them than white agents.<sup>41</sup> Government Agent Return J. Meigs reported that the speculators ordered their slaves to "hunt

the reserves down like malefactors or wild beasts and to follow them incessantly wheresoever they might retreat to avoid importunity and persecution, and never cease hampering them, till from mere disgust" they sell their allotments at very low prices.<sup>42</sup> As other speculators witnessed the success of the Columbus Land Company, they formed their own independent companies and imitated the practices of their predecessor.<sup>43</sup>

Speculators were also adept at defending their interests from government attempts to protect the Creeks. In June 1833, federal agents, Enoch Parsons and J.J. Abert, held a council with the Creeks for the purpose of purchasing their allotments.<sup>44</sup> The agents described the frauds to which many had fallen prey and the threats and violence that others suffered. The basis of the proposed treaty was that the government would recognize the right of individuals to separate allotments which they would cede to the United States. The government would then put the lands on the market and pay each individual the amount obtained for his reservation. In return, the Creeks were to agree to emigrate by a certain date. In the meantime, the government would also provide agents to defend individual Creeks from suits brought against them, pertaining to sales and contracts into which they had been duped. The council rejected the proposal. The agents believed that speculators had dictated the Creek response and, if left to themselves, they would have accepted the government's

offer. However, the Creeks were not allowed a moments rest, but the most untiring, and . . . the most unjustifiable means were resorted to, in order to induce them to decline the treaty."<sup>45</sup>

The state government of Alabama, like the settlers, believed that the incorporation of Indian lands into the state was essential to its future prosperity. In February 1828, a committee of the Alabama House of Representatives declared that the inhabitation of a segment of land within state boundaries by a people who claimed to be an independent nation was "calculated to prevent the free and exclusive operation" of Alabama law, "to increase the dangers of domestic insurrection, retard the progress of internal improvements, and to exclude from citizenship" emigrants who "would otherwise seek among us their permanent homes and contribute essentially to the wealth and prosperity of the State."<sup>46</sup>

The basis of Alabama's political system, the Constitution of 1819, was written during an era in which the older southern states were undergoing constitutional struggles between groups who advocated greater democracy and conservatives who favored the status quo.<sup>47</sup> Though the specific issues differed from one state to another, large factions contended for reforms to make governments more responsive to the will of the people and against those who sought to protect the privileged position of some particular group or section. Those in favor of the

extension of majority rule usually called for such innovations as the elimination of property qualifications for suffrage and officeholding, popular election of governors and judges, more equitable representation in legislatures, and provisions for reapportionment to reflect population shifts.<sup>48</sup> Alabama avoided the need for these struggles by producing a much more egalitarian constitution than the older states of the South. The Alabama Constitution of 1819 granted elections by secret ballot, adult white male suffrage, and the popular election of state representatives, senators, and governors. It set no qualifications for officeholding other than age, race, sex, and residence. Representation in both houses of the legislature was based solely on the white population, with mandatory reapportionment every six years. Other features included the prohibition of imprisonment for debt, a guarantee of jury trials for slaves accused of crimes, and no permitted emancipation. These egalitarian provisions allowed the document to last virtually unchanged until the Civil War.<sup>49</sup>

This constitution, however, was not the product of selfless, democratically-enlightened individuals. The men chosen to the state convention possessed "the time, the ambition, the ability, and the means to engage in politics" and realized that, "in the natural course of events," those those elected to fill the offices of the state would be men of property such as themselves.<sup>50</sup> These men, though, had



to gain and keep the support of their constituents, to whom the most important principle was the protection of their liberty and property.<sup>51</sup> Failure, on the part of a life-long politician, like Governor Gayle, to defend Alabama settlers against federal interference on behalf of Indians would have been tantamount to political suicide.

One Alabama newspaper editor wondered, will the governor "permit the rights of the State to be trampled on; her citizens despoiled of their dearest rights, of liberty, protection, and property--and driven as outcasts from their homes?"<sup>52</sup> With letters to Secretary Cass and proclamations to the citizens of Alabama, Gayle answered this question in the negative. In his first communication to Cass after the death of Owen, Governor Gayle requested that, in the future, "the Government refer the complaints of the Indians to a tribunal less objectionable than that of the marshal with an armed soldiery."<sup>53</sup> The governor also stated that any individual with a complaint concerning an intruder or trespasser should apply to the justice of the peace for speedy redress.<sup>54</sup>

After the federal government issued orders that all intruders be removed, Gayle prepared a much more vigorous response. On September 16, 1833, he issued a proclamation calling for a militia force to be organized in the counties of the ceded territory.<sup>55</sup> He followed this with a letter to Cass.<sup>56</sup> The removal order, Gayle declared, was "one of uncalled for and unnecessary severity."<sup>57</sup> He

identified the hardships the settlers would be forced to endure if the orders were carried out and blamed the situation on the previous actions of the federal government. In the most controversial section, the governor argued that the treaty was unconstitutional because it violated the United States Constitution's due process clause. The Creeks, as property owners, had the right to do as they liked with their lands and, if they chose to rent or sell to whites under a legal contract, then the whites had legal possession of which the federal government could not constitutionally deprive them. Furthermore, the removal of all whites from the ceded territory would necessarily include county officials. "If the orders be carried into effect," Gayle asked, "will not an instance have occurred in our country, and the first instance, too, of the government of a State being put down and destroyed in nine of its counties by military force?"<sup>58</sup> He followed this letter with another proclamation, in which he declared that state authorities would prosecute any violators of state law, including federal officials engaged in the removal of settlers.<sup>59</sup>

The governor's arguments and threats had the desired effect. Marshal Crawford deemed it unsafe, due to the excitement of the settlers, to travel from his office in Mobile to Fort Mitchell "without a sufficient force, as well to enforce obedience to the laws as protection to myself."<sup>60</sup> In early October, he reported that he was no

longer hearing complaints of Creeks being abused. In the same communication, he expressed a preference for finding some method of attaining the government's objectives that would not involve the military or himself.<sup>61</sup> In mid-October, Major James S. McIntosh, the commanding officer at Fort Mitchell, informed the marshal that he had sent for additional ammunition in case of difficulties in his efforts to remove intruders.<sup>62</sup> About two weeks later, after traveling to the ceded territory, Crawford, perhaps in an effort to delay a confrontation, reported the number of intruders who had taken forcible possession of Creek lands to be twenty and added that "there is no doubt but in some cases the Indians have been shamefully abused, but I do not believe their injuries have been near so great as have been represented."<sup>63</sup>

Convinced of Alabama's determination to persist in its defiant attitude and eager to avoid the clash that would likely accompany further removal attempts, Jackson and Cass decided that the time had come to extricate themselves from this predicament. To this end, Cass appointed J.J. Abert and James Bright to complete the location of the Creek allotments as quickly and with as little inconvenience to the settlers as possible. The next step was to inform Marshal Crawford and Major McIntosh that they and their subordinates were to submit to any legal proceedings brought against them by local officials and that the District Attorney of the United States for the southern

district of Alabama, John Elliott, would defend them.<sup>64</sup> On October 22, 1833, Cass wrote Gayle a long letter in which he refuted each of the governor's arguments against the legality of the federal government's actions before informing him that no further removals would be initiated until January 15. Cass believed that by this date the location of allotments would be completed and all unclaimed lands would be free of the onerous treaty stipulations.<sup>65</sup> The secretary concluded with the assurance that "it was with great reluctance the President felt himself called upon" to order the expulsion of the settlers, but "circumstances were such as to leave him no discretion."<sup>66</sup> Jackson, through Cass, requested Francis Scott Key, United States District Attorney for the District of Columbia, to travel to Alabama to obviate any remaining difficulties by meeting with Governor Gayle and assisting District Attorney Elliott in the performance of his duties.<sup>67</sup>

Thus, the Creeks received their allotments, Alabama settlers gained access to the cession lands, the administration saved face, and Gayle won the approbation of his constituents. However, all was not well. With the federal government no longer involved, the Creeks, who had not emigrated and attempted to live on their reservations, were left at the mercy of unscrupulous traders and speculators. Driven to desperation, cheated out of their lands, penniless, and hungry, a few of the remaining Creeks clashed with settlers in May 1836. After a brief Second

Creek War, nearly twenty-five hundred of them, with the men in irons, were forcibly removed west.<sup>68</sup>

The Alabamians' stubborn ethnocentric view of the Creeks as uncivilized savages, undeserving of any moral or legal right to own land, combined with a political system devoted to the notion of majority rule, placed the state in conflict with the treaty obligations of the Jackson administration. After performing its duty to the barest minimum, the government withdrew. The settlers, speculators, and politicians of Alabama, then, were left to prove that the Creeks were indeed too uncivilized to "live with the whites, who talk, but do not act like brethren."<sup>69</sup>

## End Notes

<sup>1</sup>This account is taken from Jeremiah Austill to Lewis Cass, July 31, 1833, U.S. Congress, Indian Removals, 5 vols., Document 512 of U.S. Senate, 23d Cong., 1st sess. (Washington, D.C.: Duff Green, 1834-35; New York: A.M.S. Press, 1974), 4: 493. Additional charges levied against Owen included breaking the arm of a young Creek girl after dispossessing her of one hundred acres of valuable land and robbing graves of silver ornaments and beads, see Niles' Weekly Register, October 26, 1833.

<sup>2</sup>Albert Pickett, a contemporary of Austill's, described him as "a very troublesome adversary in a desperate encounter, although one of the most peaceable and amiable men in the country, in the ordinary pursuits of life;" Albert James Pickett, History of Alabama, and Incidentally of Georgia and Mississippi, from the Earliest Period (Sheffield, AL: Robert C. Randolph, 1851; Birmingham: Birmingham Book and Magazine Company, 1962), 567.

<sup>3</sup>Austill to Cass, July 31, 1833, Indian Removals, 4: 493.

<sup>4</sup>"Treaty with the Creeks, 1832," March 24, 1832, Charles J. Kappler, comp. and ed., Indian Affairs: Laws and Treaties, 4 vols. (Washington, D.C.: Government Printing Office, 1904), 2: 341-42. The treaty also allowed settlers who had planted crops to remain until harvest. By 1833, however, harvest time was well past for anything planted in the spring of 1832.

<sup>5</sup>Cass to Robert L. Crawford, May 10, 1833, Indian Removals, 3: 696.

<sup>6</sup>For details of additional encounters, see Austill to Cass, July 8, 12, 26, 1833, Indian Removals, 4: 461, 469, 486-88.

<sup>7</sup>Cass to Austill, August 10, 26, 1833, *ibid.*, 3: 744, 757. Authority for the executive to undertake this action came from an act of March 3, 1807 entitled "An Act to prevent settlements being made on lands ceded to the United States, until authorized by law," United States Statutes at Large, 6th-12th Cong., 1799-1813, 2 vols. (Boston: Little, Brown, and Company, 1856), 2: 445-46.

<sup>8</sup>Circuit Court, October Term, 1833, William D. Pickett, Solicitor Eighth Circuit, Russell County, reprinted in Indian Removals, 4: 616-17.

<sup>9</sup>Deposition of Sheriff Edward Crowell, Circuit Court, October Term, October 17, 1833, reprinted Indian Removals, 4: 620-21.

<sup>10</sup>Unsigned letter from Mobile, October 16, 1833, reprinted in Daily National Intelligencer (Washington, D.C.), October 29, 1833.

<sup>11</sup>See Ronald N. Satz, "Rhetoric Versus Reality: The Indian Policy of Andrew Jackson," in William L. Anderson, ed., Cherokee Removal: Before and After (Athens: University of Georgia Press, 1991), 29-54.

<sup>12</sup>For biographical information on Gayle, see Hugh A. Bayne, "When Francis Scott Key was an Ambassador," undated manuscript in John Gayle Papers, Alabama Department of Archives and History, Montgomery, Alabama; John Craig Stewart, "John Gayle," in The Governors of Alabama (Gretna, LA: Pelican Publishing Company, 1975), 66-70.

<sup>13</sup>Crawford to Cass, September 23, 1833, Indian Removals, 4: 573.

<sup>14</sup>H.H. Wyche to Cass, September 28, 1833, *ibid.*, 580-81.

<sup>15</sup>Unnamed agent quoted in Bobby L. Lindsay, "The Reason for the Tears": A History of Chambers County, Alabama, 1832-1900 (West Point, GA: Hester Printing Company, 1971), 33.

<sup>16</sup>The Globe (Washington, D.C.), October 21, 1833, January 8, 1834.

<sup>17</sup>For examples of arguments that many of the intruders were honest settlers, see H.H. Wyche, on behalf of the citizens of Talledega County, to Cass, September 28, 1833, Thomas S. Woodward to Cass, September 24, 1833, November 1, 1833, Indian Removals, 4: 580-81, 572, 632-34. On the speculators in Alabama see Mary Elizabeth Young, Redskins, Ruffleshirts, and Rednecks: Indian Allotments in Alabama and Mississippi, 1830-1860 (Norman: University of Oklahoma Press, 1961), 73-113; Marvin L. Ellis, III, "The Indian Fires Go Out: Removing the Creeks from Georgia and Alabama, 1825-1837" (M.A. thesis, Auburn University, 1982), 85-91.

<sup>18</sup>"Influence of the Trading Spirit upon the Social and Moral Life of America," American Review: A Whig Journal of Politics, Literature, Art and Science 1 (January 1845), 95, quoted in Herbert Ershkowitz and William G. Shade, "Consensus or Conflict?: Political Behavior in the State Legislatures during the Jacksonian Era," Journal of

American History 58 (December 1971), 593. See also Michael Chevalier, Society, Manners, and Politics in the United States: Letters on North America, John William Ward, ed. (Garden City, NY: Anchor Books, 1961), 299; Alexis De Tocqueville, Democracy in America, 2 vols., Phillips Bradley, ed. (New York: Vintage Books, 1954), 2: 166.

<sup>19</sup>U.S. Bureau of the Census, Historical Statistics of the United States: Colonial Times to 1870, Bicentennial Edition, 2 parts (Washington, D.C.: Government Printing Office, 1975), 2: U191 and 276.

<sup>20</sup>Joan E. Cashin, A Family Venture: Men and Women on the Southern Frontier (New York: Oxford University Press, 1991), 59; C. Vann Woodward, American Counterpoint: Slavery and Racism in the North-South Dialogue (Boston: Little, Brown, and Company, 1971), 17-18. See also Ulrich B. Phillips, Life and Labor in the Old South (Boston: Little, Brown, and Company, 1929).

<sup>21</sup>See Louis Vandiver Loveman, comp., Historical Atlas of Alabama (Gadsden, AL: n.p., 1976), 21-22.

<sup>22</sup>Charles M. Segal and David C. Stineback, Puritans, Indians, and Manifest Destiny (New York: G.P. Putnam's Sons, 1977), 75-76.

<sup>23</sup>Albert K. Weinberg, Manifest Destiny: A Study of Nationalist Expansionism in American History (Baltimore: Johns Hopkins University Press, 1935), 76-79

<sup>24</sup>Jared Sparks, quoted in Brian W. Dippie, The Vanishing American: White Attitudes and U.S. Indian Policy (Lawrence: University of Kansas Press, 1982), 29. For more on white attitudes toward Indians, see Robert Berkhofer, The White Man's Indian: Images of the American Indian from Columbus to the Present (New York: Alfred A. Knopf, 1978); Reginald Horsman, Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism (Cambridge: Harvard University Press, 1981); Roy H. Pearce, The Savages of America: A Study of the Indian and the Idea of Civilization (Baltimore: Johns Hopkins University Press, 1953).

<sup>25</sup>Francis Paul Prucha, The Great Father: The United States Government and the American Indians, 2 vols. (Lincoln: University of Nebraska Press, 1984), 1: 195. Albert K. Weinberg argues that despite the justifications expounded by the proponents of Manifest Destiny, "it is because of the possessive instinct and not the plough that the soil is destined for the race using the cannon rather than the bow and arrow"; Weinberg, Manifest Destiny, 99.



<sup>26</sup>United States Congress, Register of Debates in Congress, 14 vols. (Washington, D.C.: Gales and Seaton, 1824-37), 8: 311, 312, 320, 357, 361, 1022, 1024, 1039, 1061, 1110, 1135

<sup>27</sup>For more information on Creek society before removal see Michael D. Green, The Politics of Indian Removal: Creek Government and Society in Crisis (Lincoln: University of Nebraska Press, 1982); Thomas S. Woodward, Woodward's Reminiscences of the Creek, or Muscogee Indians (Montgomery: Barrett and Wimbish, 1859; Mobile: Southern University Press, 1965); Angie Debo, The Road to Disappearance (Norman: University of Oklahoma Press, 1941); Charles Hudson, The Southeastern Indians (Knoxville: University of Tennessee Press, 1976); Merrit B. Pound, Benjamin Hawkins, Indian Agent (Athens: University of Georgia Press, 1951); James Leitch Wright, Jr., The Only Land They Knew: The Tragic Story of the American Indians in the Old South (New York: Free Press, 1981); James Leitch Wright, Jr., Creeks and Seminoles: The Destruction and Regeneration of the Muscogulge People (Lincoln: University of Nebraska Press, 1986); R.S. Cotterill, The Southern Indians: The Story of the Civilized Tribes Before Removal (Norman: University of Oklahoma Press, 1954).

<sup>28</sup>"An Act to extend the jurisdiction of the state of Alabama, over the Creek nation," January 29, 1829, John G. Aiken, comp., A Digest of the Laws of the State of Alabama, second ed. (Tuscaloosa, AL: D. Woodruff, 1836), 22.

<sup>29</sup>Gayle to former chiefs and headmen of the Creek Indians, June 16, 1834, Governors Correspondence, "Gayle," Alabama Department of Archives and History, Montgomery, Alabama.

<sup>30</sup>Columbus (Georgia) Enquirer, September 14, 1833, in George Petrie Papers, Auburn University, Auburn, Alabama.

<sup>31</sup>Lucille Griffith, Alabama: A Documentary History to 1900 (Tuscaloosa: University of Alabama Press, 1968), 101. For general works on the Creek War of 1813-15, see H.S. Halbert and T.H. Ball, The Creek War of 1813 and 1815 (Chicago: Donahue and Henneberry, 1895; Tuscaloosa: University of Alabama Press, 1995); Benjamin W. Griffith, Jr., McIntosh and Weatherford, Creek Indian Leaders (Tuscaloosa: University of Alabama Press, 1988); Joel W. Martin, Sacred Revolt: The Muskogees' Struggle for a New World (Boston: Beacon Press, 1991); Gregory Evans Dowd, A Spirited Resistance: The North American Indian Struggle for Unity, 1745-1815 (Baltimore: Johns Hopkins University Press, 1992), 148-190. For works specifically on Fort Mims, see James F. Doster, ed., "Letters Relating to the Tragedy of Fort Mims: August-September, 1813," Alabama

Review 14 (October 1961): 269-85; Laurence H. Marks, "Fort Mims: A Challenge," Alabama Review 18 (October 1965): 275-80; Frank L. Owsley, Jr., "The Fort Mims Massacre," Alabama Review 24 (July 1971): 192-204.

<sup>32</sup>Hugh A. Bayne, untitled and undated biographical sketch of Gayle, John Gayle Papers.

<sup>33</sup>Edward Curry, A. Abercrombie, James Wadsworth, and J.G. Worsham to Cass, September 8, 1833, Indian Removals, 4: 547-48. For similar letters see William H. Moore to Cass, March 27, 1833, F.W. Pugh to Cass, September 25, 1833, Edward L. Woodward to Cass, October 18, 1833, *ibid*, 148-49, 574, 614.

<sup>34</sup>H.H. Wyche, on behalf of the citizens of Talledega County, to Cass, September 28, 1833, Thomas S. Woodward to Cass, September 24, 1833, November 1, 1833, *ibid*, 580-81, 572, 632-34.

<sup>35</sup>From a story told by Mrs. L.M. Taylor and corroborated by Mittie McElderry in E. Grace Jemison, Historic Tales of Talladega (Montgomery: Paragon Press, 1959), 72-73.

<sup>36</sup>Austill to Cass, July 3, 1833, Indian Removals, 4: 456.

<sup>37</sup>William H. Moore to Cass, March 27, 1833, *ibid.*, 148-49.

<sup>38</sup>Quoted in Walter Brownlow Posey, Alabama in the 1830's As Recorded by British Travelers (Birmingham: Birmingham-Southern College Bulletin, 1938), 28.

<sup>39</sup>*Ibid.*

<sup>40</sup>"Treaty with the Creeks, 1832," March 24, 1832, Indian Affairs, 2: 341. Creek society was matrilineal, but the government defined the head of a family as the husband; Green, Politics of Indian Removal, 5.

<sup>41</sup>Young, Redskins, 74-76; Ellis, "Indian Fires Go Out," 86-88.

<sup>42</sup>Meigs to Cass, September 26, 1834, "Report on Sales of Indian Reservations, quoted in Young, Redskins, 75-76.

<sup>43</sup>Ellis, "Indian Fires Go Out," 89.

<sup>44</sup>Enoch Parsons and J.J. Abert to Cass, July 3, 1833, Indian Removals, 4: 448-53.

<sup>45</sup>Ibid, 450. For the Creek response, see Creek Chiefs to Abert and Parsons, June 30, 1833, ibid, 453.

<sup>46</sup>Alabama Legislature, House of Representatives, "Report of the Committee on the State of the Republic," in Huntsville Democrat, February 6, 1829. A meeting of the citizens of Montgomery County had expressed similar sentiments about six months earlier, Alabama Journal (Montgomery), August 15, 1828.

<sup>47</sup>Fletcher M. Green, Constitutional Development in the South Atlantic States, 1776-1860 (Chapel Hill: University of North Carolina Press, 1930), 171-200; Fletcher M. Green, "Democracy in the Old South," Journal of Southern History 12 (February 1946): 3-23.

<sup>48</sup>Ibid; Charles S. Sydnor, The Development of Sectionalism, 1848-1861 (Baton Rouge: Louisiana State University Press, 1953), 104-33; Richard E. Ellis, The Union at Risk: Jacksonian Democracy, States' Rights, and the Nullification Crisis (New York: Oxford University Press, 1987), 187-94.

<sup>49</sup>Alabama Constitution of 1819. See also Malcolm Cook McMillan, Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism (Chapel Hill: University of North Carolina Press, 1955), 30-43; Thomas Perkins Abernathy The Formative Period in Alabama, 1815-1828 (Tuscaloosa: University of Alabama Press, 1965), 55-60; Richard P. McCormick, The Second American Party System: Party Formation in the Jacksonian Era (Chapel Hill: University of North Carolina Press, 1966), 289-90; and J. Mills Thornton, III, Politics and Power in a Slave Society: Alabama, 1800-1860 (Baton Rouge: Louisiana State University Press, 1978), 11-14.

<sup>50</sup>Abernathy, Formative Period, 174.

<sup>51</sup>Some books that have been written with this general theme in mind are William J. Cooper, Jr., The South and the Politics of Slavery, 1828-1856 (Baton Rouge: Louisiana State University Press, 1978); William J. Cooper, Jr., Liberty and Slavery: Southern Politics to 1860 (New York: Alfred A. Knopf, 1983); Thornton, Politics and Power; James Oakes, Slavery and Freedom: An Interpretation of the Old South (New York: Vintage Books, 1991).

<sup>52</sup>Alabama State Intelligencer (Tuscaloosa), October 12, 1833.

<sup>53</sup>Gayle to Cass, August 20, 1833, Indian Removals, 4: 529-30.

- <sup>54</sup>Ibid., 530.
- <sup>55</sup>"Proclamation of Governor John Gayle," September 16, 1833, Governors Correspondence.
- <sup>56</sup>Gayle to Cass, October 2, 1833, Indian Removals, 4: 584-92.
- <sup>57</sup>Ibid, 584.
- <sup>58</sup>Ibid, 591.
- <sup>59</sup>"Proclamation of Governor John Gayle," October 7, 1833, Governors Correspondence.
- <sup>60</sup>Crawford to Cass, September 23, 1833, Indian Removals, 4: 573.
- <sup>61</sup>Crawford to Cass, October 3, 1833, *ibid*, 592-93.
- <sup>62</sup>McIntosh to Crawford, October 15, 1833, *ibid*, 622-23.
- <sup>63</sup>Crawford to Cass, October 23, 1833, *ibid*, 615.
- <sup>64</sup>Cass to Bright and Abert, October 14, 1833, Cass to Gayle, October 15, 1833, Cass to District Attorney of the U.S. for the Southern District of Alabama, October 17, 1833, Cass to Crawford, October 19, 1833, Cass to McIntosh, October 29, 1833, Cass to Austill, October 29, 1833, *ibid*, 3; 786-89, 791, 792, 793, 807, 808.
- <sup>65</sup>Cass to Gayle, October 22, 1833, *ibid*, 794-805.
- <sup>66</sup>Ibid, 804.
- <sup>67</sup>Cass to Key, October 31, 1833, *ibid*, 810-12. On Key's activities in Alabama, see Thomas C. McCorvey, "The Mission of Francis Scott Key to Alabama in 1833," Transactions of the Alabama Historical Society 4 (1904): 141-65; Frank L. Owsley, Jr., "Francis Scott Key's Mission to Alabama in 1833," Alabama Review 23 (July 1970): 181-92; Edward S. Delaplaine, Francis Scott Key: Life and Times (New York: Biography Press, 1937), 345-64.
- <sup>68</sup>Peter A. Brannon, "Removal of Indians from Alabama," Alabama Historical Quarterly 12 (1950): 98-99; and Debo, Road to Disappearance, 99-101.
- <sup>69</sup>Sarah Haynesworth Gayle, December 10, 1833, "The Journal of Sarah Haynesworth Gayle," Gorgas Family Papers, W.S. Hoole Special Collections Library, University of Alabama, Tuscaloosa, Alabama.

Chapter Four  
Honor and Politics: John Gayle's Search  
for "Personal Satisfaction"

On April 8, 1826, Senator Thomas Hart Benton of Missouri watched from a small hilltop as Henry Clay, secretary of state under John Quincy Adams, and John Randolph, a United States senator from Virginia, accompanied only by their seconds and personal surgeons, prepared to step off ten paces and fire pistols at each other. During a congressional debate in March over the Adams administration's proposal to send delegates to a conference in Panama, Randolph had referred to the mission as "a Kentucky cuckoo's egg, laid in a Spanish-American nest" and to Adams and Clay as "the coalition of Blifil and Black George . . . the combination, unheard of till then of the puritan with the blackleg."<sup>1</sup> Still smarting from the charge that he had obtained his cabinet seat through a "corrupt bargain," Clay took umbrage at being referred to as Black George, a swindler and professional gambler from the novel Tom Jones. He immediately challenged Randolph: "Your unprovoked attack of my character, in the Senate of the U. States, on yesterday, allows me no other alternative than that of demanding personal satisfaction."<sup>2</sup> Upon reaching ten paces the men turned and fired. Both missing, they agreed to shoot again. When Clay's bullet buried itself in the ground behind its target, Randolph fired into the air. The combatants approached each other and shook

hands; Clay's honor had been defended and Randolph's was intact.<sup>3</sup>

As southern gentlemen, these two highly-respected individuals were literally willing to put their lives on the line in defense of their honor. Clay felt the need to defend his honor from a personal affront, while Randolph could not allow a properly presented challenge to go unaccepted. In southern society, a man's honor was his most prized and important possession. Scholars have established the importance of honor in southern social relations as well as in legal matters; however, they have neglected to examine its role in the political arena. Honor did indeed play an important part in the politics of the South. In the Creek land controversy, it manifested itself most prominently in the actions of Governor John Gayle. Due to his sense of honor and feelings of insult, Gayle's attempts to obtain "personal satisfaction" prolonged the difficulties between the state of Alabama and the Jackson administration.

First, honor must be defined. According to Julian Pitt-Rivers, in the International Encyclopedia of the Social Sciences, there are several facets that make up the notion of honor: "It is a sentiment, a manifestation of this sentiment in conduct, and the evaluation of this conduct by others, that is to say reputation."<sup>4</sup> Thus, it is a guide for one's conduct in society that is, at the same time, reflective of the values of the group with whom

the individual identifies himself. Honor and dishonor "provide the currency in which people compete for reputation and the means whereby their appraisal of themselves can be validated and integrated into the social system." This "appraisal of themselves" is embodied in the self-image that they project into society. For the group to accord the individual an honorable reputation, he must protect his image at any cost.<sup>5</sup>

To protect his self-image, the man of honor must challenge any affront presented by a social equal; dishonor cannot come from below. Failure to do so would be deemed cowardice which is antithetical to honor. As Pitt-Rivers points out, "Willingness to stand up to opposition is essential to the acquisition, as to the defense, of honor."<sup>6</sup> The code of honor, which regulated matters of honor and the competition for it, never took root in New England, where, as Pitt-Rivers argues, the "relation of the Puritan ethic to capitalism" restricted competition to "the field of wealth."<sup>7</sup> Most New Englanders saw the code as barbarous. Massachusetts passed an early anti-dueling law and John Adams attempted to forbid dueling in the army.<sup>8</sup> The entire concept bewildered one New England native, Benjamin Franklin: "A man says something which another tells him is a lie." But regardless of the outcome of the ensuing fight, "the dispute remains unsettled."<sup>9</sup>

Southerners, for a variety of reasons, held a very different opinion of the code and dueling.<sup>10</sup> The

historian Rollin G. Osterweis views the cult of honor as "a single phase" of southern romanticism from which emerged a group consciousness that was a prerequisite for southern nationalism.<sup>11</sup> A key component of romanticism, according to T. Harry Williams in Romance and Realism in Southern Politics, was a refusal to accept reality: "The southerner is marvelously adept at creating mind-pictures of his world or of the larger world around him--images that he wants to believe, that are real to him, and that he will insist others accept."<sup>12</sup> In this romantic environment of the South, men of ambition could create their own status by projecting an image of themselves and, by defending that image, force others to accept it. Thus, to outsiders southerners appeared to be extremely emotional and passionate. As Frederick Olmstead observed, "Every wish of the Southerner is, for the moment at least more imperative than that of the Northerner, every belief more undoubted, every hate more vengeful, every love more fiery."<sup>13</sup>

A necessary component of the use of force to gain and defend one's status was an acceptance of violence. The South's agricultural economy precluded the establishment of large urban centers and perpetuated a sense of isolation.<sup>14</sup> Miles of his own holdings separated the large plantation owner and his family from others, except his slaves. The smaller farmer, who often lived just off the plantation, was usually just as isolated. In this type of environment, skill with weapons was necessary for defense as well as to



supplement the diet with wild game. The famous example of Davy Crockett excluded, southerners usually exhibited a proficiency with firearms by the age of eleven.<sup>15</sup> Also of profound importance to the acceptance of violence in the South was the existence of slavery, a system to which the use of physical force was endemic.<sup>16</sup> As W.J. Cash points out in his classic work, The Mind of the South,

However careful they might be to walk softly, such men as these of the South were bound to come into conflict. And being what they were--simple, direct, and immensely personal--their world being what it was--conflict with them could only mean fisticuffs, the gouging ring, and knife and gun play.<sup>17</sup>

And come into conflict they did, as the historian Dickson D. Bruce, Jr. has found that the South, excluding Texas which had an abnormally high murder rate, had a murder rate in 1850 of 2.28 per 100,000 people, compared to a rate of only 0.31 in the North.<sup>18</sup> Also illustrative of the southern penchant for violence were political campaigns, known as barbecues, where such blood sports as cock fighting and gander pulling were popular entertainments.<sup>19</sup>

Historian Edward L. Ayers points out that "Southern violence had become legendary even before the nineteenth century began."<sup>20</sup> The most direct cause of much of this violence was honor. Southerners considered honor to be a precious commodity to be defended at any cost. The only acceptable method of settling a point of honor was through violence; only cowards tolerated insult. As Mrs. Jackson advised little Andrew, "Never bring a suit in law for

assault and battery or for defamation," because the "law affords no remedy that can satisfy the feelings of a true man."<sup>21</sup> The most refined method of defending one's honor was the duel which had become synonymous with the South by the 1830s. Even though this sense of honor permeated southern society from the richest to the poorest, only the gentry participated in formalized duels.<sup>22</sup> Despite a number of anti-dueling laws, the legal system sanctioned the practice, as juries ruled almost any case brought before them concerning a defense of honor, whether in the form of a duel or not, to be self-defense.<sup>23</sup>

Just as honor depended on an individual's self-image and the acceptance of that image by his peers, the individual as well as the group could judge whether or not one's honor had been injured.<sup>24</sup> Because a person's reputation depended on the opinion of his peers, many challenges were issued to avoid the appearance of cowardice. As historian Bertram Wyatt-Brown points out, "The inexperienced youth was very likely to take his own measure from public opinion of himself, an inclination that forced a good number to fight--and die--when peers demanded it."<sup>25</sup> At other times, the insult was personal.<sup>26</sup>

Considering the importance of honor and its pervasiveness in southern society, it is surprising that historians have failed to explore its influence on political decisions. In an era when an individual's honor was his most important possession, any man who entered the

political arena was in danger of suffering a blow to his self-image, his reputation, and, thereby, his honor. Every question of honor, however, did not result in a duel. The consequence could be harsh words, the withdrawal of political support, or the loss of an election. A prime example of the relationship between honor and politics can be found in the actions of Governor John Gayle during the closing stages of the controversy between Alabama and the federal government over the Creek land cession.

For honor to have played an important part in Gayle's actions, he had to be a man who realized the importance of his self-image and reputation both to himself and in southern society. Governor Gayle most certainly was such a man. He evinced all the qualities of a gentleman. He was known for his kindness, honesty, and generosity. One early historian of Alabama, who knew the governor personally, described him in this way: "As a magistrate he was firm and incorruptible; as a citizen patriotic and enterprising; as a companion intelligent and sociable."<sup>27</sup>

Gayle's private correspondence contains evidence that he was willing to defend his honor if the need arose. In 1831, he assured his wife that "My course to my enemies is polite and respectful, but firm and wide awake."<sup>28</sup> During a dispute with a Dr. Fearne, the doctor insinuated that Gayle was reluctant to settle his "private disputes in the usual way."<sup>29</sup> Gayle promptly responded with a note disabusing Fearne of his misconception. Shortly

thereafter, the doctor publicly made amends with Gayle. In another incident, Gayle's son Matthew was walking along a road in Tuscaloosa when a man rode by him at a gallop and for no apparent reason struck him on the side of the face with a stick. The outraged father determined to shoot the assailant, but he could not locate the "savage rascal."<sup>30</sup>

Gayle, who after arriving in Alabama from South Carolina had served as solicitor of the first judicial district, a representative in the Alabama territorial council and the state legislature, and a judge on the Alabama Supreme Court before winning the governor's race in November 1831, realized the importance of honor to a political career. In November 1830, he wrote his wife that John G. Aiken "would have maintained a respectable poll" for secretary of state "if he had not permitted himself, the other day, to be publicly denounced, as a scoundrel and coward" by Bolling Hall of the state legislature. Aiken, however, "did not even resent it, and several of his friends abandoned him at once."<sup>31</sup>

In 1833, as the controversy over the Creek lands in Alabama was nearing an end, President Andrew Jackson appointed United States District Attorney for the District of Columbia Francis Scott Key as an emissary to Alabama.<sup>32</sup> Cass had already appointed agents to complete the location of the Creek allotments, ordered federal officials to submit to any state proceedings brought against them, and informed Governor Gayle that no additional settlers would

be removed from the cession until January 15, 1834.<sup>33</sup> The administration hoped that by this date the Creeks would be in possession of their allotments and there would be no further reason to enforce Article V of the treaty. It also wanted the United States District Attorney for the Southern District of Alabama, John Elliott, to get the trials of any government officials moved to federal court where they would be assured of a favorable ruling.<sup>34</sup> Thus, Key's mission was to handle any unforeseen obstacles that could jeopardize the settlement, aid Elliott if the need arose, conciliate Gayle, and save face for the administration by avoiding the appearance of a total abandonment of the Creeks.<sup>35</sup>

Key's task, for the most part, was not very difficult. No additional settlers had to be removed and the soldiers indicted in the death of Hardeman Owens jumped bail, leaving no cause for a trial. Governor Gayle accepted Jackson's regulations for certifying sales of Creek reservations to whites. Stipulations included a minimum price of \$1.25 per acre, payment in full before the issuance of a land patent, and an explanation of the contract to the Creek by an approving agent before the sale was finalized. Gayle also agreed to ask the Alabama state legislature for a law protecting the Creeks in the possession of their reservations.<sup>36</sup> In January 1834, Gayle signed a bill which provided for a fine of between \$250 and \$1000 or three months in jail for anyone convicted

of forcibly or fraudulently taking possession of Creek allotments.<sup>37</sup>

Conciliating Gayle, however, proved to be more problematic. Even though he admitted that the "principal object of this unpleasant controversy with the General Government" had been "obtained," he was not satisfied.<sup>38</sup> He felt that the mouthpiece of the Jackson administration, the Globe of Washington, D.C., had assailed his character by calling him a nullifier.<sup>39</sup> As Gayle explained to former Governor John Murphy,

My feelings have had no effect to change the favorable light in which I have always regarded the prominent measures of Genl. Jackson's administration, or his qualifications and fitness for the office he fills; but I never can yield him the zealous and active support which I have heretofore extended, under the charges of corrupt speculation, and forming a combination with the nullifiers, which were dealt out against me sometime since by the Globe, as it is understood, with the approbation if not at the instance of the President. I cannot consent to kiss the rod that scourges me.<sup>40</sup>

Perhaps just as upsetting to Gayle was the fact that many of the Globe's charges had been propounded in some Alabama papers as well. One article in the Huntsville Democrat referred to Gayle as the "wildest and worst of nullifiers."<sup>41</sup> Gayle, a Democrat, had won election to the governorship as an outspoken opponent of nullification and, regardless of the construction placed on his argument that the taking of land within the jurisdiction of the state through a treaty was unconstitutional, he still considered himself an opponent of nullification.<sup>42</sup> As a

southern man of honor, his self-image had to be defended and the Globe had insulted that image. In an attempt to soothe Gayle's feelings, Senator William R. King of Alabama, a fellow Democrat, assured him that the Globe's editor, Francis P. Blair, did not express Jackson's sentiments or those of "any responsible person connected with the administration." King urged Gayle not to hold the administration responsible for "Blair's indiscretions."<sup>43</sup> The governor, though, had already expressed to Key his desire that the offending comments be recanted; they were but not for several months.<sup>44</sup>

Governor Gayle also sought satisfaction by attempting to deliver an insult of his own. The Alabama House referred that portion of his annual message dealing with the controversy to a special committee, headed by Jesse Beene, a political ally of Gayle.<sup>45</sup> After a lengthy discussion, the committee submitted five resolutions that upheld the actions of the governor and blamed the difficulties on the federal government. The resolutions proclaimed that the order to remove the settlers was "unnecessary for the protection of the Indians . . . destructive of the prosperity of the citizens," and "subversive of the jurisdiction of the State."<sup>46</sup> They added that the federal government had no authority to interfere in the internal affairs of the state and that "all treaties, which encroach upon the reserved rights of the States, are usurpations of power, subversive of the

government and destructive of civil liberty."<sup>47</sup> It was believed that the resolutions would win easy passage due to the strange alliance of Gayle, whose popularity had allowed him to win reelection to office without opposition in 1833, and the more hard-line states' rights advocates who, a year earlier, had supported South Carolina's nullification doctrine and opposed Gayle.<sup>48</sup>

Arthur F. Hopkins, a Whig who opposed the resolutions because he was more opposed to the tenets of the nullifiers than he was to Jackson, addressed the House with "enrapturing eloquence" for over two hours.<sup>49</sup> He argued that adoption of the resolutions would reopen a controversy that the governor, himself, had declared settled. Hopkins pointed out that, with the agreement between the Jackson administration and Gayle, the federal government had promised to exercise the minimum amount of power necessary to fulfill its obligations to the Creeks and it would be "faithless" if it "employed less."<sup>50</sup> Furthermore, the doctrine contained in the resolutions, he said, "outstrip nullification" in South Carolina.<sup>51</sup>

Instead of insulting the Jackson administration, Gayle's allies in the House had to maneuver to prevent an embarrassing defeat for the governor. When test votes revealed that the resolutions would not pass, Gayle's supporters declared the "matter over" and requested that the resolutions be allowed to "lie on the table."<sup>52</sup> Hopkins' supporters defeated a motion to postpone



consideration by a vote of 34 to 33. Then, by a margin of nine votes, they refused to table the resolutions. Finally, the members of the House agreed to refer the resolutions to a select committee with the understanding that it would take no further action.<sup>53</sup>

On November 18, 1834, in his annual message to the legislature, Governor Gayle announced that the controversy, "produced by the unwise, but temporary policy of the general government," was over and that, with "nothing to excite to unpleasant controversy, or to engender political strife, the present period is deemed peculiarly propitious for wise and wholesome legislation."<sup>54</sup> Had he not been sensitive to the barbs of political opponents, this statement could have been made earlier. However, as a southern man of honor, he had to seek redress for the affront to his self-image and reputation, with the result of prolonging the tensions between the state and the federal government. After having supported Jackson on the issues of nullification, the Bank of the United States, and internal improvements, Gayle's rupture with the Jacksonians never healed.<sup>55</sup> In 1836, he served as a presidential elector for Hugh L. White rather than Jackson's hand-picked successor, Martin Van Buren. In the subsequent presidential contest, he joined the Whigs as an elector and remained a member of that party for the rest of his career.<sup>56</sup> It is evident from the actions of Governor Gayle that the notion of honor, which permeated southern

social relations, played an important role in the political arena as well. It apparently led Gayle to abandon his party because of a few ill-chosen words in the Democratic party press.

## End Notes

<sup>1</sup>Quoted in Kenneth S. Greenberg, Honor and Slavery: Lies, Duels, Noses, Masks, Dressing as a Woman, Gifts, Strangers, Death, Humanitarianism, Slave Rebellions, the Pro-slavery Argument, Baseball, Hunting, and Gambling in the Old South (Princeton: University of Princeton Press, 1996), 56.

<sup>2</sup>James F. Hopkins and Mary W.M. Hargreaves, eds., The Papers of Henry Clay, 10 vols. (Lexington: University of Kentucky Press, 1959-1991), 5: 208.

<sup>3</sup>For accounts of the affair, see Thomas Hart Benton, Thirty Years' View; or, A History of the Working of the American Government for Thirty Years, from 1820 to 1850 (New York: D. Appleton, 1854), 70-77; Robert Dawidoff, The Education of John Randolph (New York: W.W. Norton, 1979), 255-59; Robert V. Remini, Henry Clay: Statesman for the Union (New York: W.W. Norton, 1991), 292-95; Greenberg, Honor and Slavery, 53-62; Hamilton Cochran, Noted American Duels and Hostile Encounters (Philadelphia: Chilton Books, 1963), 136-39; Harnett C. Kane, Gentlemen, Swords, and Pistols (New York: William Morrow and Company, 1951), 60-67; Don C. Seitz, Famous American Duels: With Some Account of the Causes that Led Up to Them and the Men Engaged (New York: Thomas C. Crowell Company, 1929), 227-50.

<sup>4</sup>Julian Pitt-Rivers, "Honor," International Encyclopedia of the Social Sciences, David L. Sills, ed., 18 vols. (New York: Macmillan Company, 1968), 6: 503.

<sup>5</sup>*Ibid.*, 504.

<sup>6</sup>*Ibid.*, 505.

<sup>7</sup>*Ibid.*, 507.

<sup>8</sup>William Oliver Stevens, Pistols at Ten Paces: The Story of the Code of Honor in America (Boston: Houghton Mifflin Company, 1940), 30-31.

<sup>9</sup>Quoted in *ibid.*, 6.

<sup>10</sup>For works on southern honor and dueling, see Clement Eaton, The Mind of the Old South, rev. ed. (Baton Rouge: Louisiana State University Press, 1967), 245-66; Clement Eaton, "The Role of Honor in Southern Society," Southern Humanities Review 10 (Bicentennial Issue, 1976): 47-58; Dickson D. Bruce, Jr., Vengeance and Culture in the

Antebellum South (Austin: University of Texas Press, 1979); Jack K. Williams, Dueling in the Old South: Vignettes in Social History (College Station: Texas A & M University Press, 1980); Bertram Wyatt-Brown, Southern Honor: Ethics and Behavior in the Old South (New York: Oxford University Press, 1982); Wyatt-Brown, Honor and Violence in the Old South (New York: Oxford University Press, 1986); Greenberg, Honor and Slavery; Richard E. Nisbett and Dov Cohen, Culture of Honor: The Psychology of Violence in the South (New York: Westview Press, 1996). One work portrays southern honor as a literary illusion: William R. Taylor, Cavalier and Yankee: The Old South and American National Character (Cambridge: Harvard University Press, 1961).

<sup>11</sup>Rollin G. Osterweis, Romanticism and Nationalism in the Old South (Baton Rouge: Louisiana State University Press, 1949), vii. See also Michael O'Brien, "The Lineaments of Southern Romanticism," in Rethinking the South: Essays in Intellectual History (Baltimore: Johns Hopkins University Press, 1988), 38-56.

<sup>12</sup>T. Harry Williams, Romanticism and Realism in Southern Politics (Athens: University of Georgia Press, 1961), 4.

<sup>13</sup>Quoted in Osterweis, Romanticism, 200.

<sup>14</sup>A few authors argue that urban centers of the Old South had an important influence on southern culture: Edd Winfield Parks, "Towns and Cities," Culture in the South, W.T. Couch, ed. (Chapel Hill: University of North Carolina Press, 1934), 501-518; William B. Hesseltine, "Regions, Class, and Sections in American History," Journal of Land and Public Utility Economics 25 (February 1944): 35-44; William B. Hesseltine, Confederate Leaders in the New South (Baton Rouge: Louisiana State University Press, 1950); Lawrence H. Larsen, The Rise of the Urban South (Lexington: The University Press of Kentucky, 1985). Most historians of southern culture, however, either discount the influence of cities or ignore them altogether. Some representative works are W.J. Cash, The Mind of the South (New York: Alfred A. Knopf, Inc., 1941; reprint, New York: Vintage Books, 1991); C. Vann Woodward, The Burden of Southern History (Baton Rouge: Louisiana State University Press, 1960); William H. Nicholls, Southern Tradition and Regional Progress (Chapel Hill: University of North Carolina Press, 1960); T. Harry Williams, Romance and Realism in Southern Politics (Baton Rouge: Louisiana State University Press, 1966); Carl N. Degler, Place over Time: The Continuity of Southern Distinctiveness (Baton Rouge: Louisiana State University Press, 1977).

<sup>15</sup>John Hope Franklin, The Militant South, 1800-1861 (Cambridge: Harvard University Press, 1956), 21.

<sup>16</sup>Bruce, Violence and Culture, 115; James Oakes, Slavery and Freedom: An Interpretation of the Old South (New York: Vintage Books, 1990), 14-24.

<sup>17</sup>Cash, Mind of the South, 43.

<sup>18</sup>Bruce, Violence and Culture, 242.

<sup>19</sup>Daniel Dupre, "Barbecues and Pledges: Electioneering and the Rise of Democratic Politics in Antebellum Alabama," Journal of Southern History 60 (August 1994): 479-512.

<sup>20</sup>Ayers, Vengeance and Justice, 9.

<sup>21</sup>Quoted in Robert V. Remini, Andrew Jackson and the Course of American Empire, 1767-1821 (New York: Harper and Row, 1977). A slightly different version can be found in Andrew Jackson to Martin Van Buren, December 4, 1838, John Spencer Bassett, ed., The Correspondence of Andrew Jackson, 6 vols. (Washington, D.C.: 1926-1933), 5: 573.

<sup>22</sup>Franklin, Militant South, 37. See also Williams, Dueling in the Old South, 26-39; Frank L. Owsley, Plain Folk in the Old South (Baton Rouge: Louisiana State University Press, 1949). Two works argue that the Celtic background of most white southerners led them, regardless of class, to be highly sensitive to insult. See Forrest McDonald and Grady McWhiney, "The Antebellum Southern Herdsman: A Reinterpretation," Journal of Southern History 41 (May 1975): 147-66; Grady McWhiney, Cracker Culture: Celtic Ways in the Old South (Tuscaloosa: University of Alabama Press, 1988).

<sup>23</sup>Ayers, Vengeance and Justice, 13.

<sup>24</sup>Wyatt-Brown, Southern Honor, 14-15, 354-61.

<sup>25</sup>Ibid., 357-58.

<sup>26</sup>For an example see Remini, Jackson and Empire, 136-37. Honor has also been linked to Robert E. Lee's decision to resign from the United States Army, Wyatt-Brown, Southern Honor, 109. Others have suggested that it played a part in southern strategists repeatedly choosing to attack rather than take up more prudent defensive positions, Grady McWhiney and Perry D. Jamieson, Attack and Die: Civil War Military Tactics and the Southern Heritage (Tuscaloosa: University of Alabama Press, 1982).

<sup>27</sup>Willis Brewer, Alabama: Her History, Resources, War Record, and Public Men, From 1540 to 1872 (Montgomery: Barrett and Brown, 1872; Tuscaloosa: Willo Publishing Company, 1964), 268. Another contemporary of Gayle points out his generosity in Thomas S. Woodward, Woodward's Reminiscences of the Creek, or Muscogee Indians (Montgomery: Barrett and Wimbish, 1859; Mobile: Southern University Press, 1965), 458-59.

<sup>28</sup>John Gayle to Sarah H. Gayle, December 12, 1831, Correspondence of S.H. Gayle, Gorgas Family Papers, W.S. Hoole Special Collections Library, University of Alabama, Tuscaloosa, Alabama.

<sup>29</sup>Gayle to S.H. Gayle, January 23, 1830, *ibid.*

<sup>30</sup>Gayle to S.H. Gayle, June 4, 1832, *ibid.*

<sup>31</sup>Gayle to S.H. Gayle, November 26, 1830, *ibid.* The information on Gayle's earlier career is from John Craig Stewart, The Governors of Alabama (Gretna, LA: Pelican Publishing Co., 1975), 66-70.

<sup>32</sup>Lewis Cass to Francis Scott Key, October 31, 1833, U.S. Congress, Indian Removals, 5 vols. Document 512 of U.S. Senate, 23d Cong., 1st sess. (Washington, D.C.: Duff Green, 1834-35; New York: A.M.S. Press, 1974), 3: 810-12. On Key's activities in Alabama see: Thomas C. McCorvey, "The Mission of Francis Scott Key to Alabama in 1833," Transactions of the Alabama Historical Society 4 (1904): 141-65; Frank L. Owsley, Jr., "Francis Scott Key's Mission to Alabama in 1833," Alabama Review 23 (July 1970): 181-92; Edward S. Delaplaine, Francis Scott Key: Life and Times (New York: Biography Press, 1937), 345-64.

<sup>33</sup>Cass to James Bright and J.J. Abert, October 14, 1833, Cass to Gayle, October 15, 1833, Cass to United States Marshal Robert L. Crawford, October 19, 1833, Cass to Major James McIntosh, October 29, 1833, Cass to Deputy United States Marshal Jeremiah Austill, October 29, 1833, Indian Removals, 3: 786-89, 791, 793, 807, 808.

<sup>34</sup>Cass to District Attorney of the U.S. for the Southern District of Alabama, October 17, 1833, *ibid.*, 3: 792.

<sup>35</sup>See Owsley, "Key's Mission," 188-90.

<sup>36</sup>These matters can be found in Key to Cass, November 6, 11, 30, December 18, 1833, Abert to Cass, November 11, 1833, Gayle to Key, December 16, 1833; Key to Gayle, December 16, 1833, Key to Crawford, December 18, 1833, Key to Abert, December 18, 1833, Crawford to Cass,

December 20, 1833, *ibid.*, 4: 655-56, 664-66, 741-42, 761-62, 666-67, 762, 763-64, 764-66, 766-67, 767-68; Cass (approved by Jackson), "Regulations for certifying contracts under the Creek treaty of March 24, 1832," November 28, 1833; Cass (approved by Jackson), "Supplementary regulations," December 18, 1833, *ibid.*, 3: 832-33, 834.

<sup>37</sup>"Message of Governor Gayle," December 20, 1833, printed in Columbus (Georgia) Enquirer, January 25, 1834; "An Act for the punishment of certain offenses committed upon the territory ceded by the Creek tribe of Indians to the United States of America," January 18, 1834, copy in George Petrie Papers, Auburn University, Auburn, Alabama.

<sup>38</sup>"Message of Governor Gayle," December 20, 1833, printed in Columbus (Georgia) Enquirer, January 25, 1834.

<sup>39</sup>See the Globe (Washington, D.C.), October 22, 23, November 1, 1833.

<sup>40</sup>Gayle to John Murphy, February 28, 1834, "John Gayle," Governors Correspondence, Alabama Department of Archives and History, Montgomery, Alabama.

<sup>41</sup>Huntsville Democrat, January 23, 1834. For other examples of the offending remarks, see Huntsville Democrat, November 14, December 12, 1833, January 30, 1834. In addition the Globe, October 28, November 4, 1833, reprint anti-Gayle articles from the Montgomery Advertiser and the Mobile Register.

<sup>42</sup>For Gayle's argument, see Gayle to Cass, October 2, 1833, Indian Removals, 4: 584-92.

<sup>43</sup>William R. King to Gayle, March 18, 1834, William R. King Papers, Alabama Department of Archives and History, Montgomery, Alabama. Blair's relationship with the administration is discussed in Richard E. Ellis, The Union at Risk: Jacksonian Democracy, States' Rights, and the Nullification Crisis (New York: Oxford University Press, 1987), 55; and Culver H. Smith, The Press, Politics, and Patronage: The American Government's Use of Newspapers, 1789-1875 (Athens: University of Georgia Press, 1977), 114-35.

<sup>44</sup>Gayle to Key, February 24, 1834; Key to Gayle, June 11, 1834, John Gayle Papers, Alabama Department of Archives and History, Montgomery, Alabama.

<sup>45</sup>Huntsville Southern Advocate, December 31, 1833, January 28, 1834. See also Theodore Henley Jack, Sectionalism and Party Politics in Alabama, 1819-1842

(Menasha, WI: George Banta Publishing Company, 1919), 49-50.

<sup>46</sup>Resolutions reprinted in Arthur F. Hopkins, Speech of Arthur F. Hopkins of Madison County, Alabama, Against the Report of the Special Committee on the Creek Controversy and in Reply to Mr. Beene (Tuscaloosa: Office of The Flag of the Union, 1834), 3.

<sup>47</sup>Ibid.

<sup>48</sup>Jack, Sectionalism, 49.

<sup>49</sup>Huntsville Southern Advocate, December 31, 1833  
April 22, 1834.

<sup>50</sup>Hopkins, Speech, 4.

<sup>51</sup>Ibid., 21.

<sup>52</sup>Huntsville Southern Advocate, January 18, 1833.

<sup>53</sup>For additional details of these debates and votes, see Huntsville Democrat, January 16, 23, February 6, 13, 27, March 6, 1834; Huntsville Southern Advocate, December 31, 1833, January 28, 1834; Jack, Sectionalism, 49-51.

<sup>54</sup>Huntsville Southern Advocate, November 24, 1834.

<sup>55</sup>Brewer, Alabama, 500-501.

<sup>56</sup>Stewart, Governors of Alabama, 70.



## Chapter Five Conclusion

All participants must share the blame for the controversy between Alabama and the federal government. Jackson's myopic rhetoric concerning the federal government's inability to protect the Indians from unjust state laws, which he used to win the Creek tribe's acquiescence to a treaty, and his image as an Indian fighter/hater combined with his and previous administrations' ambiguous application of anti-squatter provisions to encourage the settlers of the Old Southwest to intrude upon the ceded territory. Their feelings toward Native Americans and their land-hunger predisposed the settlers to ignore the legalities of the Treaty of 1832, while the nature of Alabama's political culture required the politicians to defend their constituents against the federal government. Once the issues that had caused the conflict were resolved, Governor John Gayle prolonged the difficulties by supporting legislative resolutions that vindicated his actions and exclusively blamed the federal government in an effort to satisfy his insulted sense of honor.

A question, however, remains as to the long-term impact of this incident. Previous scholars have concluded that it gave birth to the radical states' rights movement in Alabama and was the state's first step toward the Civil War.<sup>1</sup> If this were indeed the case, then the events of

1832-1834 take on great importance for the history of the South, as the departure of William Lowndes Yancey and the Alabama delegation from the Charleston Convention of 1860 precluded the Democratic Party's nomination of a compromise candidate to challenge Abraham Lincoln in all sections of the nation.<sup>2</sup> Other historians who have traced Alabama's acceptance of secession have not cited this controversy as a factor.<sup>3</sup> More general studies of the coming of the Civil War have also ignored the events in Alabama during the 1830s.<sup>4</sup> Nor did Alabamians who argued for secession in 1860 and 1861 refer to the Creek land controversy as a grievance against the federal government. Usually, their speeches and editorials cited events like the Missouri Compromise, "Bleeding Kansas," northern noncompliance with the fugitive slave law, and the passage of personal liberty laws.<sup>5</sup> In fact, they attempted to enlist the name of Andrew Jackson in their cause. One advocate of states' rights declared in 1851 that "Gen. Jackson knew that this Government was formed on the great principle of equality, that it was a partnership of sovereign states, each equal to the other, and all entitled alike to a full share of its benefits, as all had alike to bear its burdens." Old Hickory never would have accepted the idea "that under the Constitution Congress had the power to declare that a free citizen of Massachusetts was a better man and entitled to more privileges than a free citizen of Alabama."<sup>6</sup>

It is also interesting to note that the nine counties

created from the Creek Cession evidenced no pattern in the choice of cooperationist or immediate secessionist delegates to the state convention of 1861. Four counties, Talladega, Randolph, Coosa, and Tallapoosa, elected cooperationist delegates, while five, Chambers, Macon, Russell, Barbour, and Calhoun, supported the immediatists. None of the local histories of these counties mention the Creek land controversy as a grievance used to stir resentment toward the federal government.<sup>7</sup> The historians who see a causal relationship between the Creek land controversy and secession seem to draw their conclusions from the false notion that because one happened before the other, the former caused the latter.

A better interpretation can be found in J. Mills Thornton, III's Politics and Power in a Slave Society: Alabama, 1800-1860. This author devotes only four pages to the controversy and views it as one of many events that shaped Alabama's political parties during the state's early years.<sup>8</sup> After the difficulties between Alabama and the Jackson administration were over, John Gayle and some of his allies in the legislature joined the Whig Party, while the small faction of radical states' rightists, led by Dixon Hall Lewis, sided with the Whigs on most issues to form an "opposition coalition" that held nearly half the seats in the Alabama legislature in 1836.<sup>9</sup> Lewis and the more consistent advocates of states' rights, much like those of South Carolina, returned to the Democratic Party

when the Panic of 1837 convinced the Whigs to call for the chartering of a third national bank. Alabama's parties continued to evolve throughout the 1840s and 1850s until virtually the entire state supported secession in 1861.<sup>10</sup> According to Thornton, this outcome resulted from a threat to liberty. In a slave society, freedom was very important and the free soil desire to contain slavery where it was represented a dire threat to the Alabamian sense of freedom and equality which gave force to the arguments of Yancey and the fire-eaters.<sup>11</sup>

Concomitant with concerns over their freedom and equality was the Alabamian concern for honor. Those who argued for secession in 1860 and 1861 appealed to the southern sense of honor on several levels. In early December 1860, the Alabama Beacon argued that the election of Lincoln was no cause for revolt. Rather, it was the "animus" behind his election that presented the "indignity" against which "men should . . . revolt."<sup>12</sup> Thomas H. Herndon, at the Eutaw County Convention, cited honor as a reason for state action.<sup>13</sup> Whether a man or a state, it was up to the insulted party to defend its own honor and not wait on the actions of others. Upon resigning his seat in the United States Senate, Clement Comer Clay, Jr. appealed to the sensibilities of all classes of white southerners for a united stand against the North: "Let those proud and noble spirits, who suffer more from an insult than from an injury, remember that the party, about

to take the reins of government, denounce us as barbarians and criminals, devoid of the virtues and even the decencies of civilized nations."<sup>14</sup> This secessionist rhetoric adds credence to the contention that the role of honor in southern politics needs more thorough examination.

Perhaps most importantly, the controversy over the Creek Cession provides insight into how radical states' rights ideas won acceptance in Alabama. A few months before the controversy erupted, Alabamians had rejected the doctrine of the South Carolina nullifiers, leaving that state isolated in its opposition to the federal tariffs. However, when the property of Alabamians, even though it was obtained in contravention of a ratified treaty, became the object of the federal government, the citizens and officials of Alabama assumed a defiant attitude similar to that of South Carolina. The citizens of Alabama wanted the land for farming or for speculation and had no respect for the rights of the Creeks. The state officials needed the political support of their constituents and desired the prosperity for their state that usually attends an expanding populace. These circumstances show that self-interest was a key motivation in Alabama's adoption of a radical states' rights doctrine.

## End Notes

<sup>1</sup>Theodore Henley Jack, Sectionalism and Party Politics in Alabama, 1819-1842 (Menasha, WI: Collegiate Press, 1919), 53-54; Frank L. Owsley, Jr., "Francis Scott Key's Mission to Alabama in 1833," Alabama Review 23 (July 1970): 192; Joseph Hodgeson, The Cradle of the Confederacy; or, the Times of Troup, Quitman, and Yancey (Mobile, 1876), 203.

<sup>2</sup>See Austin L. Venable, "The Conflict Between the Douglas and Yancey Forces in the Charleston Convention," Journal of Southern History 8 (May 1942): 226-41.

<sup>3</sup>See William L. Barney, The Secessionist Impulse: Alabama and Mississippi in 1860 (Princeton: Princeton University Press, 1974); Clarence Phillips Denman, The Secessionist Movement in Alabama (Montgomery: Alabama State Department of Archives and History, 1933); William Brantley, "Alabama Secedes," Alabama Review 7 (1954): 168-85.

<sup>4</sup>For some representative works, see Ulrich B. Phillips, The Course of the South to Secession (New York: D. Appleton-Century Company, 1939); Kenneth L. Stamp, And the War Came (Baton Rouge: Louisiana State University Press, 1950); William L. Barney, The Road to Secession: A New Perspective on the Old South (New York: Praeger, 1972); David M. Potter, The South and the Sectional Conflict (Baton Rouge: Louisiana State University Press, 1968); Major L. Wilson, Space, Time, and Freedom: The Quest for Nationality and the Irrepressible Conflict, 1815-1861 (Westport, CT: Greenwood Press, 1974); William W. Freehling, The Road to Disunion: Secessionists at Bay, 1776-1854 (New York: Oxford University Press, 1990); Eric H. Walther, The Fire-eaters (Baton Rouge: Louisiana State University Press, 1992).

<sup>5</sup>See issues for December 1860 through January 1861 of the following Alabama newspapers: Autauga Citizen; Southern Messenger (Butler Co.), Jacksonville Republican, Clark County Democrat, Alabama Whig (Greene Co.), Alabama Beacon (Greensboro), Alabama Journal (Montgomery), Montgomery Daily Advertiser. One particularly thorough editorial, entitled "The Wrongs of the South," skipped from the Missouri Compromise to issues concerning the annexation of Texas and the Mexican War, Autauga Citizen, January 3, 1861. Also see William R. Smith, The History and Debates of the Convention of the People of Alabama (Montgomery: White, Pfister, and Co., 1861).

<sup>6</sup>Montgomery (AL) Advertiser, June 25, 1851, quoted

in J. Mills Thornton, III, Politics and Power in a Slave Society: Alabama, 1800-1860 (Baton Rouge: Louisiana State University Press, 1978), 219.

<sup>7</sup>"Vote of the Delegates in the Alabama Secession Convention," in Louis Vandiver Loveman, comp., Historical Atlas of Alabama, 1815-1900 (Gadsden, AL: n.p., 1976), 87. For the local histories, see Randolph Blackford, Fascinating Talladega County (Talladega, AL: Brannon Printing Co., n.d.); William Wallace Screws, "Randolph County," in Montgomery (AL) Advertiser, 1 March 1898; reprinted in Marilyn Davis Barefield, Historical Records of Randolph County Alabama: 1832-1900 (Easley, SC: Southern Historical Press, 1985); George E. Brewer, "History of Coosa County Alabama," Alabama Historical Quarterly 4 (Spring 1942): 7-162; Mrs. Frank Ross Stewart, Alabama's Calhoun County (Centre, AL: Stewart University Press, 1976); Anne Kendrick Walker, Russell County in Retrospect: An Epic of the Far Southeast (Richmond, VA: Dietz Press Inc., 1950); William Pressley Ingram, A History of Tallapoosa County (Birmingham: n.p., 1951); Bobby L. Lindsey, "The Reason for the Tears": A History of Chambers County Alabama, 1832-1900 (West Point, GA: Hester Printing Co., 1971).

<sup>8</sup>Thornton, Politics and Power, 28-31.

<sup>9</sup>Ibid., 34-36.

<sup>10</sup>Thornton finds only one delegate to the State Convention of 1861 who held "moderately unionist" views, C. Christopher Sheets of Winston County; *ibid.*, 429-30. Another author argues that there were many "intense Union men" in Randolph County, which supplied the federal army with at least one full company of troops, with many Union sympathizers remaining at home; Screws, "Randolph County," 97. See also Richard Nelson Current, Lincoln's Loyalists: Union Soldiers from the Confederacy (New York: Oxford University Press, 1992), 103-7.

<sup>11</sup>See especially Thornton, Politics and Power, 445-47. For books that examine the relationship between freedom and slavery, see William J. Cooper, Jr., Liberty and Slavery: Southern Politics to 1860 (New York: Alfred A. Knopf, 1983); James Oakes, Slavery and Freedom: An Interpretation of the Old South (New York: Vintage Books, 1991).

<sup>12</sup>Alabama Beacon (Greensboro), December 7, 1860.

<sup>13</sup>"Remarks of Thomas H. Herndon on the Subject of Co-operation," December 6, 1860, reprinted in *ibid.*, 21 December 1860.

<sup>14</sup>Clement Comer Clay to the United States Senate,  
n.d., reprinted in Jacksonville Republican, December 20,  
1860.



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