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ANDREW JACKSON AND THE WORCESTER V. GEORGIA DECISION: STATE RIGHTS AND NATIONAL POLITICS

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ABSTRACT

The Supreme Court case of Worcester v. Georgia (1832) originated when Samuel Worcester, a missionary to the Cherokees, was arrested by Georgia officials for not obtaining a state required license to reside on Indian lands. Chief Justice John Marshall decided, as Worcester's lawyers had argued, that the state of Georgia had no jurisdiction in the Cherokee territory and ordered Worcester released from prison. The state refused to comply with Marshall's orders, and President Andrew Jackson acquiesced in this refusal. The case became involved with two other important events of 1832—the presidential election of that year, and the Nullification efforts of South Carolina.

This thesis focuses on Jackson's position concerning the Worcester episode. Special emphasis is placed on the political aspects of the court decision. Worcester remained in jail as long as Georgia was needed to help Jackson win the election. But after the election, and after South Carolina's nullification attempt, pressure was put on the state to release the missionary.

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PREFACE

In March of 1832 the Supreme Court of the United States ordered the release of an American missionary arrested in Cherokee territory by Georgia officials. The case, Worcester v. Georgia, claimed that proper jurisdiction over the Indian lands did not reside with the state. Georgia, however, denied that the Supreme Court had any authority in this matter and refused to honor the decision. President Andrew Jackson remained silent but his position had been made known through his constant but questionable denials that the Executive could interfere with the domestic affairs of a state. Some demanded that the President intervene to force the release of Samuel Worcester and his companion, Elizur Butler, and to prevent the state's harassment of the Cherokees. To some this protest seemed ironic. For many years the federal government had pursued the policy of Indian removal. Portions of tribes from the southeastern as well as the northwestern United States had emigrated beyond the Mississippi River. Now some partisans began to question the sincerity of the Cherokee sympathizers. Justice Joseph Story, who had concurred in favor of the defendants, was satisfied that now the Court was relieved of the Indian

problem.[1] The chief counsel for the Cherokees, William Wirt, thought the Indians had a right to their land but warned them that it was in their best interest to emigrate.[2] Wirt's friend and biographer commented years later,

> This removal and settlement of the Indians upon a territory adopted to their wants and free from the possibility of future annoyance, from the claims of jurisdiction by the states, will always be regarded as a measure which reflects the highest honor upon the wisdom and humanity of the nation.[3]

Thus the Worcester decision played an important role in the unsteady relationship between the Indians and the Americans during the mid-nineteenth century. This aspect of the Supreme Court case had been duly noted by scholars. One of the most thorough treatments, for example, may be found in Disinherited: The Lost Birthright of the American Indian by Dale Van Every.[4] In addition to the obvious Indian aspect of the case, the Worcester decision also had ramifications for two other important incidents of the year 1832—the Nullification controversy in South Carolina and the presidential election of that year. This study focuses its

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[1]William W. Story, The Life and Letters of Joseph Story, 2 vols. (Boston: Little, Brown & Co., 1851), 2: 87.

[2]John P. Kennedy, Memoirs of the Life of William Wirt, 2 vols. (Philadelphia: Blanchard & Lea, 1852), 2: 261.

[3]Ibid., 2: 244.

[4]Dale Van Every, Disinherited: The Lost Birthright of the American Indian (New York: William Morrow & Co., 1966).

attention upon the relationship among these two events and the Worcester decision.

Most historians of the Jacksonian period agree that Georgia's defiance of the Supreme Court was, in fact, nullification. None is more vocal in denouncing what he considered to be the gross hypocrisy of Jackson's different reactions to both Georgia and South Carolina than Charles M. Wiltse. This biographer of John C. Calhoun asserted that few legal differences existed between the state rights position taken by Georgia in the spring of 1832 and that taken by South Carolina during the latter part of that same year.[5] American legal historians have followed in differing degrees the allegation of Charles Warren that, "This absolute disregard of the process of the court . . . was, in fact, practical nullification."[6] This consensus by scholars has not settled the issue of nullification. William W. Freehling, in one of the most recent accounts of the nullification period, has denied any connection between the interposition activities of the two states.[7] What most of these scholars

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[5]Charles M. Wiltse, John C. Calhoun, Nullifier, 1829-1839 (Indianapolis: Bobbs-Merrill Co., 1949), pp. 145-146.

[6]Charles Warren, The Supreme Court in United States History, 3 vols. (Boston: Little, Brown & Co., 1924), 2: 194.

[7]William W. Freehling, Prelude to Civil War; The Nullification Controversy in South Carolina, 1816-1836 (New York: Harper and Row, 1966), p. 233.

suggest is an inconsistency in the stands taken by President Jackson—first, he quietly allowed nullification in the spring of 1832 but then was very adamant in the latter part of that year. This thesis will examine Jackson's earlier interpretations of constitutional powers as well as the consistency of his position on the Worcester matter. Also the problem of whether or not Georgia participated in nullification will be treated.

The Worcester decision bothered Jacksonian political strategists. It is doubtful whether the Indian problem was the main issue in the election as some have suggested, but a voter who felt strongly about the matter did have a choice between Jackson who favored Indian removal, and Clay or Wirt who voiced support for the Cherokees' position. In the partisan atmosphere created by the election, Jackson began to suspect that all who sympathized with the Cherokees were his enemies. This thesis seeks to examine the words and activities of Jackson's foes to determine if they sought any political or personal advantage from the decision.

The legal and political aspects of the decision had an impact upon Georgia's complex political situation. Georgia could successfully pronounce its state rights doctrine as long as the state held political value. But when the presidential election of 1832 was over, then the state's expressed views became a liability.

I would like to express my gratitude to the many persons with whom I have come in contact in the composition of this thesis. Special thanks must go to Dr. Paul H. Bergeron for his constant attention and aid. The Jacksonian struggles still exist among historians, charges and countercharges still pass as old accusations are proved and disproved. Dr. Bergeron was on continual alert to prevent this author from accepting statements of questionable truth. I am also indebted to Dr. John R. Finger and Dr. W. Bruce Wheeler whose probing, efficient criticism added to the improvement of this work. The staffs of the research libraries visited by the author were of utmost assistance; these included the Russell Library, Georgia College, Milledgeville, Georgia; the Georgia Department of Archives and History, Atlanta, Georgia; and the libraries of the University of Tennessee.

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CHAPTER I

THE BACKGROUND OF THE WORCESTER CASE

In 1832 in the crowded courtroom of the United States Supreme Court were many dignitaries awaiting the decision in the Worcester v. Georgia case. The case had originated when Samuel Worcester, a missionary to the Cherokees, had refused to acquire a Georgia license to remain on Indian lands. After being arrested, he was given a trial and sentenced to prison. His case was appealed to the Supreme Court. Worcester was not in the courtroom that day and neither was counsel for the state of Georgia. Instead the convicted clergyman sat in a county jail in Georgia while his attorney, William Wirt, defended him before the Washington tribunal. In Worcester's defense Wirt declared that Georgia did not have any authority over the Indian lands which were protected by numerous treaties. For its part, the state of Georgia, in refusing to appear, asserted its sole right to rule over the land within its boundaries and denied that the Supreme Court had any jurisdiction in the matter. But despite the legal arguments, the main reason for the intense interest in the case was the acquiescent silence of Andrew Jackson, In this election year his enemies were searching for issues, any weapon with which to defeat the very popular Old Hickory. Those of his foes not in the courtroom were waiting in

Washington, in Kentucky, in South Carolina, and in the rest of the nation to see if they could use this case as part of the larger issue of Indian removal. As the decision was pulled into the national political arena, the welfare of the Cherokees seemed to be forgotten by their supporters; but it was they who made the case.

Georgia and the Cherokees had fought each other for many years; but only in the last decade had the two parties gone to court. The Cherokees had gained protection of their rights from the several treaties made since their contacts with the whites. A 1777 treaty had dealt with the Cherokees as an independent, sovereign nation. In the 1785 Treaty of Hopewell, Georgia granted to the national government, then the Confederation Congress, the right to handle its Indian affairs. During the ratification of the Constitution the state agreed to give to the new federal government the sole power to handle Indian relations. A state convention elected by the people and ratified the Constitution, thus accepting it as the supreme law of the land.[1] In an 1802 agreement with the United States government Georgia consented to cede its western lands to the United States government in return for the promise to relieve the state of its Indian

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[1]John P. Kennedy, Memoirs of the Life of William Wirt, 2 vols. (Philadelphia: Blanchard & Lea, 1852), 2: 243.

populations "as early as the same can be peaceably obtained on reasonable terms."[2]

The United States was painfully slow in fulfilling its part of the bargain. It was successful in removing the Creek Indians from Georgia by military victories and by questionable treaties. Even this was not easily done. The state was constantly badgering the federal government to fulfill the removal promise. When the state became impatient it was rebuked, sometimes verbally and sometimes with force. The fiery Governor George Troup clashed with both Presidents James Monroe and John Quincy Adams. Monroe's answer was that the United States could not remove the Indians against their will; it must be done peacefully. A crisis came in 1825 when Adams sent federal troops to protect the Creeks from conflict with encroaching Georgia officials. The state retaliated by mobilizing its militia to prepare for war. To avoid trouble, Adams quickly called the Creek chiefs to Washington, where through generous bribes they were persuaded to consent to a treaty of removal. With the Creeks gone, only the Cherokees remained.

Then Andrew Jackson came to the presidency. Many people expected great things from the man whose deeds as an Indian fighter contributed to his fame. Jackson was not one to disappoint them. In his first annual address the President

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[2]John Spencer Bassett, The Life of Andrew Jackson, 2 vols. (New York: Doubleday, Page & Co., 1911), 2: 685.

stated that the federal government had no authority to protect the Indians from the state in which they resided.[3] In 1830 the Jacksonians introduced a bill in Congress which granted money to pay for the Indians' property and also guaranteed their security in the new lands in the west. Enemies and supporters of the bill divided along political lines. Defenders of the Cherokees were anti-Jackson, while his supporters favored removal.[4] The President's friends were successful in getting the removal bill passed but the problem remained.

In July of 1827, the Cherokees established their own government with a written constitution modeled after the United States Constitution. To the irate Georgians it was obvious that their "savage" intruders meant to stay. Many could understand the difficulties of two sovereign states within one another but Georgia's methods of dealing with the situation isolated much support for its cause.[5] In December of 1829 the legislature extended its rule over Cherokee territory. This event coincided with the discovery of gold

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[3]Jackson's First Annual Message, 8 December 1829, James D. Richardson, ed., A Compilation of the Messages and the Papers of the Presidents, 11 vols. (Washington: Bureau Of National Literature and Art, 1903), 2:458.

[4]Francis Paul Prucha, American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts (Cambridge: Harvard University Press, 1962), p. 242.

[5]Bassett, Life of Jackson, 2: 685.

on Cherokee land. White miners rushed into the area, an action which violated the laws of all three governments—Georgia, Cherokee, and Federal. State and federal troops clashed as each tried to preserve order. Upon Georgia's request Jackson recalled the federal troops. By this act the President clearly supported the state sovereignty position of Georgia.[6]

The certain conflict came when George Tassel, a Cherokee, was arrested by Georgia officials for killing another Cherokee on Indian land. Found guilty of murder by a state court, Tassel was sentenced to be hanged. The Cherokees now found a chance to test the validity of Georgia's laws over them. A case was taken to the United States Supreme Court on the grounds that Georgia had no legal jurisdiction over the Cherokee nation. The Indians hired two prominent attorneys, William Wirt and John Sergeant. This was a mistake—both men were enemies of Jackson. Wirt had been Attorney General under Adams and was currently the presidential candidate for the Antimasonic party. Sergeant's other client was the Bank of the United States and his other position was that of candidate for Vice President on the National Republican ticket with Henry Clay.

Governor George Gilmer of Georgia received a summons from the United States Supreme Court to defend the state's

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[6]Ibid., 2: 688.

position. In his refusal Gilmer explained that a state could not submit a question between itself and the United States government because the Supreme Court was part of the federal establishment and thus would be the judge in its own case.[7] The Georgia legislature expressed its dissatisfaction with the Supreme Court's involvement in a resolution granting the governor the power to ignore the high court's commands. Also the state judiciary joined the action when Judge A. S. Clayton, who had original jurisdiction in the Tassel case, defied any other court to overrule him. So Georgia's answer was to deny the Supreme Court any role in the case. That was the formal reply. Its informal reply was to order the execution of Tassel despite an injunction by the United States Supreme Court.

The Cherokees received another setback in their lawsuit before the Supreme Court. In the Cherokee Nation v. Georgia decision (1831), Chief Justice John Marshall stated that the Indian tribe was not a foreign nation as their lawyers had argued, and, therefore, the case was not justiciable before the Supreme Court. The tribe was defined as a "domestic dependent nation," a ward of the federal government. Thus the Supreme Court did not have any original jurisdiction in the matter, but Marshall did not stipulate who did. The

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[7]Charles Grove Haines, The Role of the Supreme Court in American Government and Politics, 1789-1835 (Berkeley: University of California Press, 1944), pp. 596-598.

Cherokees found a qualified victory in the results. They were referred to as an organized body instead of as individuals, as Georgia had treated them. Marshall wrote,

> The numerous treaties made with them by the United States recognise [sic] them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any agression [sic] committed on the citizens of the United States, by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognise [sic] the Cherokee Nation as a state, and the courts are bound by those acts.[8]

Georgia interpreted the decision as upholding its authority.[9] The Cherokees returned home but it was not long before they returned to court.

In 1830 the Georgia legislature had passed a law which required all whites to take an oath of allegiance to the state and to acquire a license before entering Indian territory. This law was designed to prohibit white gold miners from Indian land, but by application it also involved the missionaries.[10] Eleven missionaries arrested for not fulfilling these requirements were released when they claimed

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[8] Cherokee Nation v. Georgia, 5 Peters 17 (1831); Felix S. Cohen, Handbook of Federal Indian Law (Washington: Government Printing Office, 1942), p. 55.

[9] Ulrich B. Phillips, Georgia and State Rights (Washington: Government Printing Office, 1902: reprint ed., n.p.: Antioch College Press, 1968), p. 77.

[10] Ibid., p. 78.

to be federal agents. Jackson satisfied the suspicious Gilmer's inquisitiveness by denying that they were employees of the federal government. When Gilmer asked the missionaries to leave, all but Worcester and Elizur Butler agreed. Both of these men were arrested and convicted by a Georgia court to a four year prison term.

Samuel Worcester appealed his conviction to the United States Supreme Court on writ of error. In February of 1832 his attorneys argued his case before the Marshall court. Their main defense was that since their client was a resident of the Cherokee nation, a sovereign political body, and since the crime of which Worcester was accused of committing occurred at New Echota, his case was not justiciable before the Georgia state court.[11] It was further reasoned that the Supreme Court had jurisdiction in this matter, and that the actions of the state of Georgia were unconstitutional. The state of Georgia had refused to send anyone to defend its position. Chief Justice John Marshall delivered the opinion of the Court on March 3, 1832. He agreed that his court had jurisdiction in this matter, citing among other decisions the case of Fletcher v. Peck (1810) in which Marshall had established the power of the court to declare void the actions of state legislatures, in that case being Georgia again. The Chief Justice held that the treaties

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[11] Worcester v. Georgia, 6 Peters 528 (1832).

acknowledged the Cherokee nation as a distinct sovereign body with the sole right to govern over persons within its legal boundaries. Since the Revolution the Continental Congresses, the Articles of Confederation, and the Constitution had assumed the management of Indian affairs to be the exclusive province of the national governments:

> From the commencement of our government, Congress had passed acts to regulate trade and intercourse with the Indians; which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indians as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States.[12]

Marshall concluded,

> The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with acts of Congress. The whole intercourse between the United States and this nation, is, by our Constitution and laws rested in the government of the United States . . . .
>
> They [state laws] interfere forcibly with the relations established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our [C]onstitution, are committed exclusively to the government of the Union. They are in direct hostility with treaties, repeated in a succession

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[12] Ibid., p. 556.

> of years, which mark out the boundary that separates the Cherokee country from Georgia: guaranty [sic] to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognise [sic] the pre-existing power of the nation to govern itself. They are in hostility with the acts of [C]ongress for regulating the intercourse, and giving effect to the treaties.[13]

Justice John McLean, a Jackson appointee, wrote a concurring opinion which basically repeated Marshall's primary assumptions but stressed the dominance of the Supreme Court over the states. Justice Henry Baldwin, another Jackson appointee, dissented but his full opinion was not printed. It was recorded that Baldwin still agreed with the court's decision in Cherokee Nation v. Georgia.[14] The Georgia court was ordered to release Worcester.

The state of Georgia, in refusing to honor the summons to appear, denied that the Supreme Court had any jurisdiction in this intrastate matter. The new governor, Wilson Lumpkin, had repeated the traditional arguments but this time had threatened the use of force.[15] Georgia, in its usual style, chose to ignore the decision despite the direct command of the Supreme Court. Similarly Jackson also elected to

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[13] Ibid., pp. 560-562.

[14] Ibid., p. 595.

[15] Charles Warren, The Supreme Court in United States History, 3 vols. (Boston: Little, Brown & Co., 1924), 2: 213-214.

disregard the opinion and its enforcement. After hearing of the Chief Justice's comments the President was alleged to have said, "Well, John Marshall has made his decision, now let him enforce it." Whether or not the statement was made, Jackson stood idly by while Georgia officials continued to defy the United States Supreme Court.[16]

Georgia was successful in defying the Constitution, the Court, and the treaties ratified by the Senate because it had a higher authority on its side—Andrew Jackson. Jackson was considered to be many things throughout his long and variegated career but seldom was he thought of as a legal expert. Even though he was a lawyer, he had a tremendous disregard for accepted ways. He was a successful duellist, once ruthlessly killing a man over some small insignificant matter. During his famous invasion of Florida in 1818 General Jackson violated international law by executing two British officers and several Indian chiefs, and taking over the Spanish government. For these actions his enemies called him a "military chieftain" denoting his appeal to the public over constitutional law.[17] Jacksonian law was what Andrew Jackson said it was, not what any judge decided. Thus if

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[16]Bassett, Life of Jackson, 2: 691.

[17]John William Ward, Andrew Jackson; Symbol for an Age (New York: Oxford University Press, 1955), p. 188.

Jackson had needed a justification for his inaction in the Worcester case, he had an abundance of defenses from which to choose. He could have thought of the valuable land the Cherokees owned; or his alleged hatred of the Indians would have certainly upset few libertarians of his day. His allowing the Indians to suffer did alarm a small group of citizens, however, especially those who wanted to see Jackson ousted in 1832. A concern for his political enemies filled the pages of the writings of Jackson and his cohorts. The President chose a legal argument to combat the court decision; but he chose a state rights position similar in some respects to that of the nullifiers. By defending the right of a state to ignore the decrees of a branch of the federal government, he was placing strict limits on the powers of the national government. When one considers Jackson's past experiences it is difficult to believe that Jackson would allow anything to chain his will. But for this occasion his advocacy of state rights would be strategically valuable.

CHAPTER II

JACKSON AND THE INDIAN QUESTION

One day during the first few months of Jackson's administration, an angry Thomas McKenney, then Director of the Bureau of Indian Affairs, met with President Jackson to discuss the Georgia situation. The Director, protesting against the state's actions, requested that the President intervene in order to protect the Indians' rights guaranteed by treaties. Jackson listened calmly, then replied to his agitator, "Sir, the sovereignty of the state must be preserved."[1] However, only a few months later Jackson would inform Vice President John C. Calhoun, the foremost authority on state rights, that "Our Federal Union, it must be preserved." If Jackson remained ambiguous in these earlier years, he became totally unpredictable in the year 1832 as his legal stance on state rights completely reversed itself. In the earlier part of that year Jackson supported what many believed to be nullification by the state of Georgia. During this episode the President did nothing to reprimand Georgia; yet later he was willing to use the might of the nation to crush the rebellious South Carolina nullifiers. The President used legal reasons to define his position in

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[1]Thomas L. McKenney, Memoirs Official and Personal (New York: Paine & Burgess, 1846), p. 259.

both matters—with Georgia to deny the authority of the federal government, with South Carolina to assert the power of the national government to intervene. To some the legal stance Jackson took in the Worcester case appeared unnatural when compared just to his great "Proclamation to the People of South Carolina" as of December, 1832. Of course, the real cause for Old Hickory's change of policy, from allowing to opposing nullification, had little to do with the constitutional nature of the problem. The President was far more concerned with the maneuvers of his political adversaries than with interpretations of his constitutional duties. But the main questions are did Jackson allow nullification, and was this inconsistent with his established policy?

If Jackson's treatment of the Indians caused no surprise in the early 1830's, then neither should have his views on the limits of the national government. As one examined his performances until after the Worcester episode Jackson was consistent in his views on the restricted power of the national government. In his interpretation of the Constitution Jackson was a strict constructionist. As Senator in 1824 he called for the proper balance between state and federal governments to assure the happiness and

freedom of the nation.[2] As President he delivered the most famous manifesto of his viewpoint in the Maysville Road Veto message (1830):

> The constitutional powers of the Federal Government to construct or promote works of internal improvement presents itself in two points of view—the first as bearing upon the sovereignty of the states within whose limits their execution is contemplated, if jurisdiction of the territory which they may occupy be claimed as necessary to their preservation and use; the second as asserting the simple right to appropriate money from the National Treasury in aid of such works when undertaken by state authority.[3]

Jackson concluded in both instances that the national government did not have the authority to interfere within state boundaries.

Jackson defined his views on the constitutional nature of the Indian question in his first annual message. The role of the national government, according to the President, was limited to teaching the Indians the "arts of civilization." Alluding to the Cherokees in Georgia, Jackson warned

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[2]Jackson to James Lanier, 15 May 1824, John Spencer Bassett, ed., Correspondence of Andrew Jackson, 7 vols. (Washington: Carnegie Institute, 1926-1935), 3: 253.

[3]Richardson, Compilation of Messages, 2: 484. Historians still disagree as to whether the Maysville Road veto was an actual constitutional position of Jackson's or merely a political attack on his adversary, Henry Clay. The partisan nature of the veto is suggested most strongly by Glyndon G. Van Deusen in The Jacksonian Era (New York: Harper & Row, 1959), p. 52 and in a milder tone by Carlton Jackson in his Presidential Vetoes (Athens: University of Georgia Press, 1967), p. 16. However at no time in his writings did Jackson state that his veto was influenced by his feelings toward Clay. The charge of partisanship is not a specific fact but is merely speculation on the part of some historians.

that he would not allow the Indians to establish separate constitutional governments. The Constitution, he said, forbids the creation of new states within old states.[4] Thus the problem centered upon two conflicting phrases within the Constitution itself; one gave to the national government the sole right to handle Indian affairs, the other stated that no new state could be created within an old state as the Cherokees had done in Georgia. The question was which phrase, both equal in importance, would be obeyed. To Jackson there was no dilemma: he would not allow the new Cherokee government to exist.

In his annual message he described the role of the federal government in Indian affairs as one of preserving the national honor. His concern was that if the tribes did not migrate beyond the Mississippi River they would be obliterated. He was not taking their land but was saving their civilization.[5]

In February of 1831 the Senate passed a resolution requesting Jackson to explain his failure to enforce the treaties with the Cherokees and questioned the removal of the troops. In his answer Jackson admitted that originally the Executive did have the power to stop white intruders on

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[4]Jackson's First Annual Message, 8 December 1829, Richardson, Messages of the Presidents, 2: 458.

[5]Ibid., 2: 458.

Indian lands; but, since Georgia had extended its jurisdiction over the Cherokee lands, the matter was no longer the concern of the national government.[6] Without constitutional permission he could not prevent a state from exercising its full authority. Therefore, the national government could not support the Indian tribe.

> To maintain a contrary doctrine and to require the Executive to enforce it by the employment of military force would be to place in his hands a power to make war upon the rights of the states and the liberties of a country—a power which should be placed in the hands of no individual.[7]

Georgia had extended its jurisdiction over its own territory but had been met by the Cherokees who claimed to be independent. The state was determined to rule over what rightfully belonged to it. Its actions, according to the President, did not violate the major treaty of 1802 which placed the Indians "within the ordinary jurisdiction of the individual states."[8] Jackson once again asserted that the national government was limited in its powers to deal with intrastate matters. The President used this argument consistently in negotiations with the other southeastern tribes. To the Indians in Mississippi and Alabama as well

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[6]Jackson's Message to the Senate, 22 February 1831, Ibid., 2: 538.

[7]Ibid., 2: 539.

[8]Ibid., 2: 540-541.

as Georgia, he urged migration, because he could not protect them from the states' authority.[9]

As the Worcester case came to the Supreme Court and before Jackson put on his veil of silence, he reasserted his traditional arguments of his inability to act in the matter due to constitutional limitations. Though not in the courtroom, the defense used a clause in the Articles of Confederation which originally had given to the states the sole right to handle Indian affairs. Also an earlier Supreme Court decision was cited. In the case of Johnson v. McIntosh (1823) the Court decided that the British had originally owned the land but had given it to the states at the end of the Revolution. The Indians

> were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it.[10]

Jackson's record as a strict constructionist was thus consistent until late 1832. His interpretation made the

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[9]Jackson's Message to the Choctaws, 23 August 1830, Senate Documents, 23 Congress, 1 Session, No. 512: Correspondence on the Subject of the Emigration of the Indians, 5 vols. (Washington: Duff Green Publisher, 1834), 2: 342; Eaton to the Chickasaws, 26 August 1830, Ibid., 2: 244.

[10]Johnson v. McIntosh, 8 Wheaton 572-574 (1823).

federal government limited to acting only within the clearly defined powers of the Constitution. The President's attitude had been to protect the rights of the states against encroachment by federal authority.[11] Thus his involvement with the Worcester case was not different. After the decision he wrote,

> The decision of the Supreme Court has fell still born, and they find it cannot coerce Georgians to yield. . . . If a colision [sic] was to take place between them [the Indians] and the Georgians, the arm of the government is not sufficiently strong to preserve them from destruction.[12]

Jackson never declared publicly that he would not enforce the Worcester decision. His only statement, that of telling John Marshall to enforce his own decision, was made (if it ever was) in private to only one person and was not revealed until decades later.[13] However, Jackson's active support of the position was clearly demonstrated by recall of the federal forces. By his removal of the federal troops he thus admitted the lack of authority by the national government to

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[11]Albert Somit, "Andrew Jackson as Political Theorist," Tennessee Historical Quarterly, 8 (June, 1949), 111.

[12]Jackson to John Coffee, 7 April 1832, Bassett, Correspondence, 4: 430.

[13]The quotation first appeared in The American Conflict, first published in 1865. The author, Horace Greeley, cited George N. Briggs, a future Whig representative from Massachusetts as the receiver of Jackson's message. Greeley, The American Conflict: A History of the Great Rebellion in the United States of America, 2 vols. (Hartford, Connecticut: O. D. Case & Company, 1865-1867), 1: 106.

protect the Indians and the clear superiority of the rights of Georgia. President John Quincy Adams had sent the troops during his administration to protect the rights of the Cherokees guaranteed by treaties. As tensions between the Indians and the white miners increased during the Georgia gold rush President Jackson had at first reinforced the troops to prevent any acts of violence between the two parties. However, as the state extended its jurisdiction over the Indian territory federal troops clashed with Georgia officials. Governor George Gilmer requested that Jackson remove his forces. By ordering the federal troops to leave, Jackson admitted that the Indian treaties which guaranteed protection were defunct while Georgia's assertions of sole sovereignty were upheld.[14] At first both the Cherokees and the state of Georgia wanted the troops removed. The Cherokees protested that the federal officials had kept the Indians from the gold mines on Indian land;[15] but as Georgia became more oppressive, the Indians asked Jackson to return the federal forces. The President then replied that he had no authority to act in the situation.[16] Jackson was convinced

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[14]Bassett, Life of Jackson, 2: 688.

[15]John Ridge's Message to Congress, 22 December 1830, Senate Documents: Indian Removal, 2: 202.

[16]Warren, Supreme Court in United States History, 2: 191.

that since Georgia had formally extended its jurisdiction over the Indian territory there was no need for federal involvement.[17]

For this particular occasion Jackson and the supporters of Georgia found the limits to federal authority in that clause from the Articles of Confederation which prohibited the national government from interfering with the Indian affairs inside the boundaries of a state.[18] The Jacksonians were fond of quoting old statutes, such as British colonial claims, but they conveniently overlooked one important fact: since 1789 the government of the United States had been under the Constitution which had given the power to regulate Indian affairs to the national government. But Jackson felt he could not interfere with the actions of the Georgia government because he could not specifically find the authority granted to the President by the Constitution. There were violations, however, upon which he as President could have acted. First, white settlers had stolen Indian property. Second, the Georgians were generously selling whiskey to the Cherokees, an obvious violation of federal law and a rule which Jackson himself had strictly enforced in his earlier Indian adventures. Third, anarchy ruled in the Cherokee areas

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[17]Gilmer to Jackson, 17 June 1830, Senate Documents: Indian Removal, 2: 230-231.

[18]Wilson S. Hoffman, "Andrew Jackson, State Rightist: The Case of the Georgia Indians," Tennessee Historical Quarterly, 11 (December 1952): 340.

as the Georgia government was unable to control the plundering white settlers.[19] Finally, the Georgia militia had invaded the sovereign state of Tennessee to capture a missionary on his way to the Cherokees. The prisoner was confined but later released.[20] Thus if Jackson had had any inclination to act he certainly had ample justification.

In the public expoundings of the Jackson administration there were consistent constitutional arguments on the inability of the federal government to act. But in reality the situation was quite different. Jackson and his colleagues were approving and, at times, were directing the actions of the Georgia government. And while Georgia politicians through their public messages and the partisan newspapers were openly defiant in the face of outside opposition, in private they were seeking to avoid actions which were against the wishes of the Jacksonians. Of course, each side publicly and privately agreed that there were proper jurisdictions for each government—Georgia was to rule within the state while the federal government with the President as executive had the responsibility of removing the Indians.[21] But still, by way of private correspondence there existed close cooperation

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[19]Grant Foreman, Indian Removal (Norman: University of Oklahoma Press, 1923), p. 228.

[20]E. Merton Coulter, Georgia: A Short History (Chapel Hill: University of North Carolina Press, 1933), p. 236.

[21]Bassett, Life of Jackson, 2: 684.

between Washington and Milledgeville, the capital of Georgia. Jackson personally directed the situation through Congressman Daniel Newnan of Georgia. The President repeatedly stressed to Newnan the dominant theme of the necessity of avoiding conflict until after the election of 1832.[22]

Since the beginning of the Jackson administration Governor Gilmer had declared his aim was that of pleasing the President:

> The people of Georgia, and those who administer its government, are fully apprized [sic] of the delicate and difficult duty which the President has to perform in the management of Indian affairs. They know that, in discharging his high duty, in endeavoring to advance the real interest of the Indians, and in securing the rights of the states, he will be opposed by the prejudices if ignorance, the sickly sensibility of affected philanthropists, and the still more violent rage of party opposition. The legislature of the state and its executive have, therefore, endeavored to pursue such a policy in relation to everything connected with that subject as to aid the President in sustaining his measure.[23]

After carefully asserting that Georgia had the undeniable right to its Indian lands, Gilmer then confessed his willingness to wait until Congress or the President acted to remove its Indians.[24] Upon the President's assurance the governor urged his legislature not to press immediately for

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[22]Hoffman, "Jackson: State Rightist," p. 339.

[23]Gilmer to Jackson, 17 June 1830, Senate Documents: Indian Removal, 2: 215.

[24]Ibid., 2: 216.

removal but to wait until Jackson had time to act.[25] In the letter in which Gilmer asked Jackson to remove the troops the governor asserted the right of the state to full jurisdiction and control of the Cherokee land. But his certainty was abated by his desire not to displease the President.[26]

Gilmer sought Jackson only at the most critical times. Most of the correspondence from the state was directed to John H. Eaton, Secretary of War, and Eaton's successor, P. G. Randolph. Eaton, a long-time friend of Jackson's from Tennessee, favored Indian removal as the only policy. He was also a disciple of the state rights faith as he assured the Georgians that the federal government would not act on the Indian question; yet the Secretary spent much of his time directing the Cherokee episode. Eaton told Gilmer to remove white settlers from Indian lands. Federal agents under Eaton's direction were commanded to keep intruders out of Cherokee territory.[27] These actions by the War Department were certainly contrary to the public statements made by the Jackson administration on the limits of national authority. At times Eaton allowed the game to reach extremes of inhumane cruelty. Even though treaties had promised that provisions

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[25] Ibid., 2: 216.

[26] Gilmer to Jackson, 17 June 1830, Ibid., 2: 231.

[27] Eaton to Gilmer, 1 June 1830, Ibid., 2: 2: McKenney to Hugh Thompson, 9 June 1830, Ibid., 2: 14.

would be sent by the national government, Eaton would not send supplies needed by the Cherokees. He repeated his dubious assertion that the federal government lacked even this power. The state rights doctrine had become an excuse as well as a policy.

With such support as this Gilmer did not seem to mind taking orders from Washington, especially when it would be all to his advantage. Sometimes Georgia did receive criticism from some members of the Jackson administration. Benjamin F. Currey, the United States Superintendent of the Cherokee Indian Removal, was concerned that the Georgia laws were too lenient, that they encouraged the Cherokees to stay (one law especially repugnant to Currey allowed the Indians to dig their own gold!).[28] But even with this the satisfied Gilmer could assure Eaton that,

> the people of the state, and its constituted authorities, have entire confidence that the President, in contracting with the Cherokees for their removal from Georgia, will use no means adverse to the interest of the States or which may not be necessary for the accomplishment of that object.[29]

The most important incident prior to the Worcester decision was the question of whether or not Worcester and his fellow missionaries were members of the national government.

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[28]Currey to Elbert Herring, 7 November 1831, Ibid., 2: 648.

[29]Gilmer to Eaton, January 1831, Ibid., 2: 396.

Secretary Eaton denied that the men were federal agents and recommended that the men of God be arrested for opposing the government's policy of Indian removal.[30] The matter of the missionaries is of vital importance to understanding the actual role of the federal government. The state officials had asked the national government if certain persons were agents of the federal government. The Jackson administration could have ended the tragedy here but instead chose to allow Georgia to continue its work. Samuel Worcester was postmaster at the established town of New Echota. He handled federal property in the form of United States mail and received a salary from the government for this service. As a teacher and missionary he also received funds from Congressional appropriations under the civilization bill of 1819. Thus when Worcester was first arrested, he was set free by Judge A. S. Clayton because the missionary claimed to be a federal agent. Gilmer sent one of his typical humble letters to Washington to ask if this was true. Clearly Worcester was a federal agent but the Jackson administration denied this while conveniently removing Worcester as postmaster. The missionary was then rearrested. In his letter of denial Eaton repeated the declaration of limited federal involvement but requested that Gilmer avoid any trouble.[31] Eaton then

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[30]Eaton to Gilmer, 4 May 1831, Ibid., 2: 281-282.

[31]Ibid., 2: 282.

sent messages to his Indian agents ordering them to remove the intruders.[32] Worcester was taken before Judge Clayton's court again and, along with Elizur Butler, found guilty of residing on Indian territory without a license. Worcester appealed this decision to the Supreme Court and thus brought the case of Worcester v. Georgia to Washington and to national attention. From that point on the situation became uncontrollable as the case was tossed around in the milieu of Jacksonian politics.

But as Jackson placed strict limits on the authority of the federal government in Maysville, Kentucky and in north Georgia, he reacted in a different manner as South Carolina announced it could have unchallenged rule within its own borders. In his "Proclamation to the People of South Carolina" Jackson accused the South Carolinians of following a course of conduct which was in direct violation to their duty as citizens of the United States, contrary to the laws of their country, and having for their object the destruction of the Union.[33] But was not South Carolina merely asserting a claim similar to that of Georgia? Was Jackson ambivalent in his relations with Georgia and with South Carolina? The answer to these questions must come in the response to

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[32]Eaton to Hugh Montgomery, 17 June 1831, Ibid., 2: 304.

[33]Richardson, Compilation of Messages, 2: 640.

another—had Georgia practiced nullification in the early part of 1832?

In strictly defined legal terms Georgia had participated in nullification. Its actions and official declarations were similar in their assertions and details to those later made by the South Carolinians. The state of Georgia victimized Indians who were protected by treaties which were made by a President, ratified by the Senate, and, in the Worcester decision, upheld as valid by the Supreme Court. Thus as South Carolina had defied the entire federal government so theoretically did Georgia.

The 1830 bill passed by the Georgia legislature which extended the state's jurisdiction over Cherokee lands clearly and distinctly prohibited anyone from going to the Supreme Court.[34] The South Carolina Ordinance of Nullification passed two years later also denied the right of the federal government to act within its borders. The South Carolina proclamation concentrated on the acts of Congress, but also stated in one paragraph that any decision of the Supreme Court would be ignored.[35] Neither state made a direct mention of the President but both alluded to him. South

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[34]Milledgeville (Ga.) Federal Union, 6 November 1830.

[35]William W. Freehling, ed., The Nullification Era: A Documentary Record (New York: Harper & Row, 1967), pp. 150-151.

Carolina would not allow enforcement of the tariff by "constituted authorities"; Georgia denied "any officer" the right to interfere within the state's limits. The state of Georgia through legislative resolutions, state court opinions, and public statements defied the national government and declared federal decrees to be inoperative within the state. Georgia, as well as South Carolina, declared its sovereignty greater than that of the federal government. Georgia did not, as South Carolina, compose an ordinance and mobilize the militia. But still, in legal terms, there was the state sovereignty position victorious over the authority of the national government.[36]

Thus in March of 1832 Georgia proclaimed its rights as a state and was upheld by Jackson who declared the limits of the national government. Unfortunately there were persons in South Carolina who thought that the Worcester case was just a legal matter. Encouraged by the success of Georgia's defiance, the South Carolinians decided to try it themselves. One South Carolina editor eagerly directed attention to the fact that Jackson had allowed Georgia to nullify the Supreme Court decision. He asked his fellow South Carolinians, "Is the Tariff act more of a supreme law than a Supreme Court

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[36]Charles M. Wiltse, John C. Calhoun: Nullifier 1829-1839 (Indianapolis: Bobbs-Merrill Co., 1949), p. 146.

decision?" Some unionists in Calhoun's native state began to wonder if Jackson would abandon them.[37] To their own misfortune what was not realized was that the Worcester affair was more complicated than just legal expositions. In his different reactions to both Georgia's and South Carolina's brands of nullification Jackson seemed to be ambiguous, irrational, and hypocritical. When Georgia nullified Jackson said its actions were constitutional; when South Carolina decided to try it Jackson warned of civil war and destruction. Why was there such a change in Old Hickory in 1832? Certainly he could not allow the destruction of the Union but why did he make such vehement, forceful, and disastrous predictions? The answer to both questions lay in the fact that there were important differences but these were not legal distinctions.

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[37]William W. Freehling, Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836 (New York: Harper & Row, 1966), p. 234.

CHAPTER III

THE WORCESTER EPISODE AND NATIONAL POLITICS

In March of 1832 Jackson was still a very popular and a very powerful President. Although he should not have been too worried about his reelection that year, he was convinced that it would be a difficult campaign. Peculiar events in the last few months had led him to this opinion. In December of 1831 Henry Clay, Jackson's longtime adversary, had been chosen as the presidential candidate of the National Republican party. Clay's main line of attack centered on the Bank issue which was symbolized by the party's choice of John Sergeant for Vice President. Sergeant was attorney for the Bank of the United States as well as counsel for Worcester and the Cherokees. Nicholas Biddle, president of the Bank of the United States, was being encouraged by Clay and Daniel Webster to apply for recharter in this election year. Biddle would satisfy their wishes by a bill sent to the Senate on March 13, 1832 asking for renewal of the Bank's charter.[1] If Jackson vetoed the new charter, he would lose much support in the north. Wary over his oldest enemy, Clay, the President also had to watch the moves of one of his

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[1]Glyndon G. Van Deusen, The Jacksonian Era, 1828-1848 (New York: Harper & Row, 1959), p. 65.

newest foes—John C. Calhoun. Confident that confirmation by the Senate would eventually come Jackson had sent Martin Van Buren, one of his closest cohorts, to England as United States minister in June of 1831. The Senate in January of 1832 voted on Van Buren's appointment. The vote was a tie which meant that John C. Calhoun, still Vice President under Jackson and the President of the Senate, would have to make the decision. Van Buren was rejected and returned home to a very irate Jackson. This incident was viewed as a sign that Calhoun and Clay had joined forces against Old Hickory.[2] Also adding to Jackson's worries were the South Carolina nullifiers, always connected with Calhoun, who were encouraged by the success of Georgia in the Worcester episode to move closer toward the accomplishment of their goal.

Clay, the nationalist, and Calhoun, the nullifier, it was believed, had joined forces against Jackson's Indian removal policy. In April of 1832 the administration presented to the Senate a treaty with the Creeks for their removal. It was ratified but not without resistance. Jackson was particularly irritated to discover that this opposition was led by Clay and Calhoun. In the same letter in which the President affirmed his refusal to enforce the Worcester decision, he wrote that the conspiracy of Clay and Calhoun

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[2] Ibid., p. 58.

"would if they could, overturn heaven and earth to prostrate me, but Providence athwarts all their wicked designs and will turn it to the benefit of our happy country."[3] It was this duo, Clay and Calhoun, whom Jackson believed had recently destroyed the character of the Secretary of War's wife, Peggy Eaton, the scandal which in the spring of 1831 prompted the President to dissolve his first Cabinet. While Jackson's two foremost enemies may not have been involved in such episodes as the Eaton affair, they were to some extent entangled in the question of Indian removal. These two men were not as active, however, in the political manipulations of the Worcester decision itself as were William Wirt and John Marshall.

Jackson's adversaries were quite successful in maneuvering him into a complicated predicament in the Worcester episode. If the President did not enforce the decision he would lose votes, if not entire states, in the northeast. If he did enforce the decision he would undoubtedly lose the three southern states—Alabama, Mississippi, and Georgia. Each of these states had similar problems with indigenous Indian populations intent on remaining in spite of the government's attempts to remove them. His enemies lost no time in taking advantage of the

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[3]Jackson to John Coffee, 7 April 1832, Bassett, Correspondence, 4: 429.

situation. A few days after Marshall's opinion, the Richmond Enquirer reported that the President's opponents were spreading rumors in the northern states that he would not intervene while they were informing the southern states that he would intervene on the Indians' behalf. The primary motive of these political enemies, according to the Richmond paper, was to lead the state of Georgia into conflict with the President, thus creating a crisis similar to the Missouri question of 1820. If this villainous goal could be accomplished, then the President's adversaries could profit much politically from the machinations.[4]

Jackson's enemies moved quickly throughout the nation to make the best of the critical situation but they moved too hurriedly within Washington itself. In Congress the debates and votes on bills clearly divided among those who supported the President and those who did not. A few days after the Worcester decision was delivered, Congressman (and former President) John Quincy Adams introduced to the House of Representatives a memorial which desired congressional action against the state of Georgia. Adams, assuredly anti-Jackson, tried to steer his resolution based on the memorial away from the committee on Indian affairs whose chairman,

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[4]Richmond Enquirer article cited in the Milledgeville Georgia Journal, 15 March 1832.

John Bell of Tennessee, was an ally (but later an opponent) of Jackson. The debate on the resolution magnified the political divisions. The President's adversaries mentioned John Marshall's recent decision in the Worcester case and Georgia's alleged defiance of it. Georgia Congressman A. S. Clayton (former judge in the Worcester case) arose to make a very significant point. The date of this debate was March 5, 1832—just two days after Marshall had delivered his opinion! Since the Georgians had certainly not yet received word of the decision, then how could they possibly be charged with its disobedience? The anti-Jacksonians obviously missed the Georgian's point because they still argued for action against the state.[5] The House took a vote on whether or not to table Adams' resolution, a motion advocated by the Georgia delegation. Initially the move was defeated but the vote was changed when one member discovered he had mistakenly voted to table the memorial.[6] The Jacksonians had stopped the embarrassing resolution but just by one vote. Yet the 1830 Indian removal bill had been passed with much greater ease. If the present vote was any indication of party strength, then the Jacksonians seemed to be losing ground, but not entirely. Another episode in the

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[5] Register of Debates (1832), pp. 2010-2036.

[6] Charles Francis Adams, ed., Memoirs of John Quincy Adams, 12 vols. (Philadelphia: J. B. Lippincott Co., 1876), 8: 486.

spring of 1832, however, gave the administration reassurance of sufficient support. Sam Houston, well-known as a friend of Jackson's, was brought to trial before Congress for physically assaulting a member of Congress. Houston had come to Washington to get a contract for supplies to the Indians, an activity questioned by some Congressmen. This episode, like the Indian bills, became a test of strength between the Jacksonians and the anti-Jacksonians. Old Hickory's supporters were better able to use this event to their benefit by getting Houston released from the charges against him.[7] After Van Buren's rejection by the Senate and the narrow victory over Adams' resolution, Houston's acquittal must have given the Jacksonians some sense of relief.

Jackson's adversaries took full and immediate advantage of the nation's newspapers to profit from the President's predicament in the Worcester matter. It was assumed that once Jackson's actions were known the nation would rise against the President and his party.[8] The opposition press presented the theme that the Union was in danger—the Court must be upheld or civil war would come.[9] The pro-Jackson

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[7]Paul H. Bergeron, "A Test for Jacksonians: Sam Houston on Trial," East Tennessee Historical Society's Publications 38 (1966): 28-29.

[8]Warren, Supreme Court in United States History, 2: 225.

[9]Marquis James, Andrew Jackson: Portrait of a President (New York: Grosset & Dunlap Co., 1937), p. 281.

newspapers, initially silent, defended the President by accusing his enemies of partisanship. Thus most newspapers slanted the story according to whether or not its editors were for or against Jackson.

The two Jacksonian newspapers in Washington both supported their President. The United States Telegraph had been Jackson's first newspaper but had fallen into disfavor when its editor, Duff Green, had sided with Calhoun. Green, the ardent state rightist, was elated at the success of the Georgians. Francis Blair's Washington Globe, Jackson's latest newspaper, supported the President and accused its rival, the Telegraph, of having "at last boldly raised the flag of nullification."[10] One of the anti-Jacksonian newspapers, Niles' Register, repeated the opposition thesis, predicting that the end of the American nation would come if the federal government did not intervene in Georgia. Its editor was convinced that, "If there is not power in the Constitution to preserve itself, it's not worth keeping."[11] But the other antiadministration newspaper in Washington, the National Daily Intelligencer, did not present the typical crisis view of the others. Possibly still not certain what

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[10]Warren, Supreme Court in United States History, 2: 221.

[11]Ibid., 2: 227.

the popular reaction might be, its editor merely requested the state of Georgia to show moderation in its action.[12]

The anti-Jacksonian newspapers outside of Washington were more vocal in their expoundings of disaster. The Richmond Whig warned of an undesirable return to the Articles of Confederation type government,

> We are brought at once to the point—is it better to have recourse to the bayonet to attempt to keep the Union together, or to permit a peaceable withdrawal of its members, or lastly, to hobble on like the Old Confederation, each state obeying such laws as she liked and disobeying others.[13]

One of the most bitter condemnations of Jackson came from Theodore Dwight's New York Daily Advertiser. Its editor, a former member of the Hartford convention, foretold that if Jackson was not immediately impeached the Union would be dissolved. A call was issued for the masses to arise in support of the judiciary.[14] The New York Journal of Commerce predicted that if Georgia was encouraged in its acts of nullification then certainly "others," probably meaning South Carolina, would follow its position.[15]

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[12] Ibid.

[13] Article quoted in Warren, Supreme Court in United States History, 2: 218.

[14] Ibid., 2: 215.

[15] Article quoted in Macon Georgia Messenger, 31 March 1832.

The proadministration newspapers admonished Jackson to be on guard against movements by his enemies.[16] The Albany Argus, the newspaper of Martin Van Buren, in a bland editorial requested that Jackson do what was best.[17] This caution probably reflected Van Buren's uncertainty over the voter reaction to the Worcester decision. The other editors, however, did not portray such moderation. Isaac Hill, editor of the New Hampshire Patriot, was possibly the most vocal supporter of the Jacksonians. He warned that a conspiracy formed between Clay, Daniel Webster, and other anti-Jacksonian politicians had met with Justices Marshall, Joseph Story, and Smith Thompson to persuade the judges to decide against Jackson. This would then greatly help the National Republicans to defeat the President in the forthcoming election.[18] The Baltimore Republican could not understand the sudden sympathy for the Indians. Why had not these philanthropists protested the removals from the other states which were, in the Baltimore paper's words, "an hundred fold more harsh." The Indians were merely being used for partisan purposes.[19] The most accurate analysis was made by the

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[16]Warren, Supreme Court in United States History, 2: 270.

[17]Ibid., 2: 342.

[18]Ibid.

[19]Article quoted in the Macon Georgia Messenger, 31 March 1832.

editor of the New York Evening Post. This newspaper decried the political use of the judiciary system which had been intended to administer fair and impartial justice, in an attempt to create the downfall of a political opponent. Such actions by these partisans threatened to upset the checks and balance system of government.[20]

But while charges and countercharges passed between the partisan press and among politicians the most serious maneuvers were taking place within the Supreme Court itself. With unusual speed the Worcester case reached the dockets of the Washington court. It bypassed other cases that had been waiting for months to be decided. This quickness, breaking with judicial tradition, could have been interpreted as a move by Jackson's enemies to get a decision before the election of that year.[21] Stranger than this haste was the fact that another case dealing with similar state rights principles had been argued a few years before the Cherokee cases. That case, New Jersey v. New York (1829), had involved a dispute between these two states over maritime rights. The state of New York at first refused to appear in Washington, protesting that the federal government lacked the authority to deal with state matters. Finally Attorney General Bronson

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[20]Article quoted in the Macon Georgia Messenger, 17 March 1832.

[21]Warren, Supreme Court in United States History, 2: 229.

of New York did come before the court but only to shock the old judges by informing them that their jurisdiction was limited in this matter. Three years later many of New York's newspapers would be aroused over the Worcester decision, but in 1829 state rights principles ruled in New York.[22] This case, so similar to the later Worcester case, was not heavily publicized; there were no memorials to Congress and no politicians screaming disaster. This case remained within the legal realm and was not made a partisan maneuver; but if there had been any political advantage to it, or if Jackson had been involved, then there would have been an earlier prelude to the Worcester episode.

At the end of his long life Jackson had only two regrets—first, that he had not shot Henry Clay; second, that he had not hanged John C. Calhoun. The rivalry between Jackson and this duo which was of long duration by the time of the Worcester episode started during the Florida campaign of 1818. At that time Clay publicly denounced Old Hickory in the halls of Congress; but eleven years passed before Jackson knew of Calhoun's secret denunciations as Secretary of War. Other episodes, both minor and major, kept the hatred alive and led the suspicious Jackson to expect the worst from the nationalist and the nullifier.

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[22] Ibid., 2: 231.

As the selected candidate for the National Republican party, Clay was the opponent foremost in the mind of Andrew Jackson. To express their feelings about one another the two men exchanged nicknames, a popular practice in Jacksonian politics. Clay called Old Hickory a "military chieftain" while Jackson referred to the Kentuckian as the "Judas of the West"; of course, neither nickname was intended to be complementary. Clay gave Jackson his title during the 1819 speech before the House of Representatives in which the Kentuckian condemned the General for his lawless activities in Florida. While displaying some sympathy for the plight of the Indians, this speech was in the main a vicious attack on the character of Andrew Jackson.[23] The "military chieftain" was described as a man who took matters into his own hands, then appealed to popular passions for justification for his disregard of the law. Clay unfavorably compared his subject to Julius Caesar and Napoleon—men who had subverted republics to their own dictatorships.[24] Clay became the "Judas of the West" because of his alleged role in the "corrupt bargain" of 1824. Jacksonian politicians accused the Kentuckian of having joined forces with John Quincy Adams to insure the defeat of Andrew Jackson, the people's choice,

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[23]Clay's Speech on the Seminole War, January 1819, Calvin Colton, ed., The Works of Henry Clay, 10 vols. (New York: G. P. Putnam's Sons, 1904), 6: 179-190.

[24]Ward, Jackson: Symbol for an Age, pp. 186-188.

in the presidential race. But, in spite of the insults and manipulations, the most serious charge was the vicious rumors that Clay was accused of spreading about Mrs. Jackson. It is extremely doubtful that the Kentuckian himself was involved in such devious tricks but no one could convince Jackson, who blamed these lies for the death of his dear Rachel and swore vengeance on her murderers.

Clay at first seemed not to have realized the political value to be gained from the Worcester decision. Two weeks after it, as newspapers and politicians were predicting disaster, Clay wrote,

> I am sorry that I can give you no satisfactory information as (to the course of Georgia in respect) to the recent decision of the Supreme Court. It is rumored that the President has repeatedly said he will not enforce it, and that he even went so far as to express his hope, to a Georgia member of Congress that Georgia would support her rights.[25]

The Jacksonians, however, were receiving reports from Cherokee agents that someone had promised that if the Indians could persist until Clay was elected, then their land would be safe.[26] As one analyzes his correspondence it is apparent that Clay was not involved in the manipulation of the

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[25]Clay to Francis Brooke, 17 March 1832; Colton, Works of Clay, 4: 329.

[26]Alex Y. McGill to George Gilmer, 8 June 1831, Senate Documents: Indian Removal, 2: 490-493.

Cherokee question either before, during, or shortly after the Worcester decision. But as the popular outcry arose over Jackson's Indian removal policy and his alleged support of nullification as demonstrated by the Worcester case, Clay saw a chance to attack the President at a very vulnerable spot.[27] The administration's Indian policy was denounced as a disgrace to national honor and as an unnecessary expense to the government. But Clay himself decided to abandon the issue before he could attain any significant advantage from it. Whether or not this move was made because the Indian question failed to get enough votes is not known. Clay's decision was probably made because of his desire to concentrate on the Bank issue.

Clay's position on the Indian question should not have shocked or surprised the Jacksonians. His record was consistent in expressing his feelings for the oppressed tribes. For the many years of his public career he had advocated better treatment for the American Indians, whether the Jacksonians were involved or not.[28] But in 1832 Clay focused on the Bank issue as the major plank in his platform. For a prominent politician such as Clay to have championed the rights of this people during a time when Indians were so

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[27]Clement Eaton, Henry Clay and the Art of American Politics (Boston: Little, Brown & Co., 1957), p. 113.

[28]Glyndon G. Van Deusen, The Life of Henry Clay (Boston: Little,Brown & Co., 1937), p. 263.

disregarded would have been extraordinary. He himself decided to emphasize the Bank issue rather than many different causes. This was perhaps a mistake because, according to one scholar, Jackson was more assailable on the Worcester decision, which involved both nullification and the Indians, than on the Bank question.[29] But then again one may doubt whether or not Clay could have ever beaten Jackon in 1832.

The role John C. Calhoun played in the events surrounding the Worcester case has remained a mystery. One can only speculate about his opinion of the Supreme Court decision from the history of his relationship with Jackson. Old Hickory and Calhoun had at first been the best of friends—both men's future seemed promising and intertwined. Ten years before the year of nullification Jackson had confessed to his future Vice President that "there is no one's welfare and prosperity I have more at heart than yours."[30] As Jackson's first administration progressed, however, the close relationship became strained. A letter from William Crawford informed Jackson that Calhoun, as Secretary of War in 1818, had strongly opposed the General's actions in the Florida campaign. Old Hickory felt betrayed; Calhoun now joined the ranks of his enemies. Enmity increased as Jackson's close advisers began to warn of a

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[29]Hoffman, "Jackson: State Rightist," p. 344.

[30]Jackson to Calhoun, 20 May 1822, Bassett, Correspondence, 3: 164.

conspiracy between Calhoun, who was allegedly vying for the Presidency, and Clay, who would accept the Vice Presidency.[31] Jackson and Calhoun directly confronted one another in April of 1830 during the famous Jefferson Day toast. While staring at his Vice President, Jackson proclaimed, "Our Federal Union, it must be preserved." Calhoun's reply echoed some of Jackson's own strict constructionist views: "The Union—next to our liberty the most dear; may we all remember that it can only be preserved by respecting the rights of states and by distributing equally the benefits and burdens of the Union." In July of 1831 Calhoun in his Fort Hill address publicly advocated nullification.

As the Indian removal bills became more and more difficult to get passed the Jacksonians blamed all opposition on the connivings of "Calhoun and Co."[32] On the Worcester case itself Calhoun was strangely silent. His supporters, especially after South Carolina tried its own nullification, pointed out the similarities of the two incidents;[33] but neither in public statements or in his private correspondence does Calhoun mention the Georgia situation. His reticence was understandable, for both Jackson and Calhoun were vying

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[31]John Overton to Jackson, 16 June 1830, Ibid., 4: 153.

[32]Jackson to Coffee, 24 May 1831, Ibid., 4: 269.

[33]Gerald M. Capers, John C. Calhoun-Opportunist (Gainesville: University of Florida Press, 1960), p. 126.

for the same political territory—Georgia, Alabama, and Mississippi. These three states had been and, for the most part still were staunch supporters of Jackson because of his generous Indian removal policy.[34] Yet it was also this trio—but especially Georgia—which believed in the state rights doctrine similar to the principles of South Carolina. If and when the Calhounites decided to try nullification, they would need outside help; and this would have to come from these three states. Thus if Calhoun could somehow thwart the administration's Indian policy and turn these states against Jackson, then they would join the South Carolinians when the time came for their attempt.

Also, for Calhoun to have praised Georgia's success at nullification would have meant he was approving the actions of Andrew Jackson, the man who had done the most to suppress the promising future of Calhoun.

The Jacksonians were mainly concerned with the activities of Clay and Calhoun, though in reality these men were not the principal political manipulators of the Worcester episode. Clay was satisfied with his Bank issue, while Calhoun chose to remain silent. But there was a more serious threat to Jackson and to the prestige of the judiciary from certain men

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[34]Thomas P. Govan, "John Berrien and the Administration of Andrew Jackson," Journal of Southern History 5 (November 1939): 447.

who realized the vulnerability of the President on the Indian question as represented by the Supreme Court decision. The goals of the actual manipulators varied from those of William Wirt, a presidential candidate himself trying to oust Jackson, to those of Chief Justice John Marshall, whose differences with the President were more ideological; but he also had a personal desire to see Old Hickory removed from office. Whether or not the traditional aloofness and impartiality of the judiciary was abrogated by personal desires seemed not to matter to any of the manipulators.

The Cherokees had made a great political mistake in choosing their legal counsels. One lawyer, John Sergeant, crossed Jackson in three directions. First, Sergeant was attorney for the Bank of the United States; second, he served as legal counsel to the Cherokees; and, third, in 1831 Sergeant had been selected as a candidate for Vice President on the same National Republican ticket with Henry Clay. The other counsel was the man who had the most to gain politically from the strategic management of the Worcester episode. William Wirt had been Attorney General under President John Quincy Adams and had campaigned vigorously against Jackson in 1828. In early 1832 he had been chosen as the presidential candidate for the new Antimasonic party. The Cherokee cases were Wirt's main chances to gain national attention. Actually he was in favor of Indian removal and did not believe anything could be done to help the Cherokees. But

he realized that a decision against Georgia would cause some embarrassing problems for the Jacksonians.[35] Thus Wirt was acting in a partisan manner when he served as counsel to the Cherokees.

Wirt made the most of the situation that he could. Now, in March of 1832, he proclaimed that the Armageddon of the American nation had come. Unto this court rested the decisions that would determine the fate of the great American republic. The death or triumph of the Constitution would depend on the noble judges. Wirt's arguments carried the foregone conclusion that the Supreme Court would decide in his favor. In the rest of his speech he concentrated his attack on President Jackson. Wirt inferred that the President would not enforce a decision which was unfavorable to the state of Georgia.[36] If the President did not act then Wirt assured his audience, the Constitution provided a "remedy." This "remedy" meant impeachment.[37] But, Wirt believed, the people of America would not tolerate such negligence by the President; they would rise up to throw him out of office. Jackson was determined to destroy the great

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[35]Kennedy, Memoirs of Wirt, 2: 244.

[36]Anton-Herman Chroust, "Did President Andrew Jackson Actually Threaten the Supreme Court of the United States with Nonenforcement of Its Injunction Against the State of Georgia?" American Journal of Legal History 4 (January 1960): 76-77.

[37]Ibid., p. 77.

republic but he, William Wirt, would do all within his power to stop him. The lawyer pleaded to his "friends in Congress" to join him in restoring the American government.[38] Wirt placed Jackson in a precarious predicament—as an enemy of the republic or something worse than a "military chieftain." He gave a brilliant speech but it is regrettable that he did not spend more time on his defense of Worcester and the Indians. The Cherokees, desperate to protect their homelands, had hired two ambitious lawyers whom the Indians believed were constitutional experts but were instead political liabilities. Wirt was far more interested in making a personal attack on Jackson than in representing his clients in his cause. Wirt claimed the President was not doing his duty while the lawyer himself, by neglecting his clients, was making a mockery of the judicial process.

It is still debatable whether or not Jackson told John Marshall to enforce his own decision; but, because of the hostility that each man held for one another, such a statement would not have been unusual. Marshall has been held in high regard by constitutional scholars—to dispute his great wisdom seemed almost disrespectful and thus Jackson has been pictured in an unfavorable light. Marshall, however, was at times a very clever political strategist and

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[38]Warren, Supreme Court in United States History, 2: 225.

was able to use his position on the court to assault a statesman whom the Chief Justice deemed unworthy to hold office. The Marshall and Jackson disagreement was based more on political ideologies than a power struggle as between Clay and Jackson. Marshall believed the Constitution provided for a republican government. The Chief Justice defined a republic as a representative system with separate branches to check and balance one another. The best man would be chosen to rule over the nation. Essential to this preferred type of government, according to Marshall, was a constitution, the supreme law of the land that ruled over the passions of the masses.[39] Jackson looked on the American nation as a democracy, which meant to him rule by the majority. He was the voice of the people—their approval was all the justification he needed for his actions.[40] Marshall was a nationalist in favor of a liberal interpretation of the constitution; Jackson was a strict constructionist who was unwilling to allow the federal government to intervene as it pleased. In 1828 Marshall, aged and ailing, planned to retire when Adams, he was certain, would be reelected. The Chief Justice was stunned

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[39]Robert Kenneth Faulkner, The Jurisprudence of John Marshall (Princeton: Princeton University Press, 1968), pp. 114-124.

[40]Francis N. Ahl, Andrew Jackson and the Constitution (Boston: Christopher Publishing House, 1939), p. 117.

that old Hickory could attain the presidency. Jackson as President scared Marshall—the Chief Justice did not approve of Jackson's disregard of constitutional traditions and his hostility to the Bank.[41] Especially upsetting to the judge was the fact that Jackson for one did not believe in the doctrine of judicial review. The strict constructionist held from the first that the judiciary had no authority over the executive and legislative branches. The Constitution had not clearly given the Court the power of judicial review.[42] Jackson acted on this belief in his attitude toward the Worcester decision.

The year 1832 particularly depressed the Chief Justice. The reelection of Jackson, that demagogue in the White House, seemed almost assured. Nullification from Georgia and South Carolina threatened to destroy the republic, a destruction Marshall thought was approved by the President.[43] The Supreme Court became involved when the Worcester case was brought to Washington. The Indians, like the slaves, were in an abnormal situation, outside the realm of American society yet ruled by it. Marshall had tried to define the status of the Indian in 1823 in the case of Johnson v. McIntosh. In that decision, dealing with an Indian tribe in

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[41]Albert J. Beveridge, The Life of John Marshall, 4 vols. (New York: Houghton Mifflin Co., 1919), 4: 528.

[42]Ibid., 4: 530-531.

[43]Ibid., 4: 535.

Illinois, the Court had decided that the Indian did not have complete title to his land. The Europeans had originally owned the land but had surrendered it to the states at the end of the Revolution. This transition was accomplished by the law of force: "Conquest gives a title which the Courts of the conqueror cannot deny, whatever the private and speculative opinion of individuals may be, respecting the original justice of the claim which has been successfully asserted." Marshall concluded that the Indians could be displaced because they represented a threat to the safety of the American settlers. In the case of the Cherokee Nation v. Georgia, in 1831, Marshall decided that the Cherokees were not a foreign nation as their lawyers had argued and, therefore, had no standing in the Court. The Chief Justice did add, however, that the Indians did have a right to their land.[44] In the Worcester decision Marshall held that the national government had the sole right to handle Indian relations; Georgia had no authority over the Cherokee areas.[45]

Shortly after the opinion was delivered in the Cherokee Nations case, the Jacksonians' suspicions were aroused by information of an alleged letter from Marshall to the Cherokees in which the Chief Justice regretted his decision

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[44]Faulkner, Jurisprudence of John Marshall, pp. 53-54.

[45]Ibid., p. 57.

but told them how to make another try.[46] The Worcester opinion particularly irritated Jackson; now he knew that the Supreme Court had joined his political enemies.[47] After the decision Marshall pessimistically wrote of the end of the republic; Jackson was blamed for causing the constitutional crisis which had destroyed this great nation. America had survived thus far by "miracles" but these special happenings came no longer.[48] There was no crisis, however, because at no point in the Worcester opinion was the President specifically and directly ordered to act. There were strong insinuations but insinuations can be ignored. Again Marshall had made a good, but not perfect decision. Enough political damage was done, all without hurting the prestige of his court. When the Chief Justice died in 1835, Jackson, as President, did not take part in the funeral obsequies—he had not agreed with Marshall in life and neither would he in death.

In addition to Marshall, the other Justices were also partisan in their attitudes toward the President. Probably the most vocal critic of the Jacksonian administration was Justice Joseph Story. As aristocratic as Marshall he had

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[46]Thomas M. Berrien to Gilmer, 1 June 1831, Senate Documents: Indian Removal, 2: 486.

[47]Hoffman, "Jackson: State Rightist," p. 348.

[48]Marshall to Story, 22 September 1832, Warren, Supreme Court in United States History, 2: 229.

described the first inauguration as the "reign of King 'Mob.'"[49] Story feared that the President was determined to destroy the Court. A few days after Worcester decision Story knew that Jackson would ignore its enforcement. He too joined the chorus of crisis: "If we have a Government, let its commands be obeyed; if we have not, it is as well to know it at once and to look to the consequences."[50] Justice John McLean was an oddity. Although he was a Jackson appointee, he was proud of the fact that he had never voted for Old Hickory. McLean had been Postmaster General under President John Quincy Adams but kept quiet in 1828 and tricked the Jacksonians into believing he was joining them. To reward McLean's supposed loyalty Jackson had appointed him to the Supreme Court. McLean turned against his benefactor, mainly because the Justice had presidential aspirations of his own. When he rode the Seventh Circuit, which included the western states such as Tennessee, McLean tried to build support for his candidacy. Despite his flirtations with many diverse political groups he was not successful.[51] Justice Smith Thompson, a native of New York,

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[49]Joseph Story to Mrs. Story, 22 September 1832, William W. Story, The Life and Letters of Joseph Story, 2 vols. (New York: Little, Brown & Co., 1851), 1: 653.

[50]Story to Mrs. Ticknor, 8 March 1832, Ibid., 2: 83.

[51]Paul A. Freund, gen. ed., History of the United States Supreme Court, 11 vols. (New York: Macmillan Co., 1974), vol. 5: The Taney Period, 1836-64, by Carl Swisher, pp. 46-47.

was an old political foe of Van Buren, and, like Story, was apprehensive about the Jackson administration.[52] Alone to face these anti-Jacksonians stood Henry Baldwin, a loyal Jackson appointee. His vigorous support for Jackson in the Pennsylvania race had won him the position on the Supreme Court. In the 1831 case of Cherokee Nation v. Georgia, Baldwin was upset at Marshall's assertion that the Cherokees had a right to their land. He wrote a concurring opinion which agreed that the Indians had no standing in the Court but denied they were entitled to the land. Richard Peters, the court reporter, did not print Baldwin's opinion. The omitted Justice was furious; the Jacksonians saw this as a partisan attack against them.[53] In the Worcester case Baldwin dissented. Peters recorded that Baldwin disagreed but failed to print the entire dissent.[54]

Wirt, Sergeant, Marshall, and, to some extent, Clay were the principal manipulators in the Worcester episode. They maneuvered as best they could to get the most from the decision. There were others who, though with not as great goals as the quartet, did receive much enjoyment from the President's predicament and were to be carefully watched by Jacksonian strategists. John Quincy Adams, now a Congressman,

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[52] Ibid., p. 45.

[53] Ibid., pp. 49-50.

[54] Worcester v. Georgia, p. 595.

presented memorials calling for government action to protect the Indians. He was, of course, a primary adversary of Jackson by his participation in the "corrupt bargain" of 1824. As the previous President he had supported the policy of Indian removal but like the other presidents before Jackson had willed the issue to his successor. Adams had been responsible for the removal of the Creeks from Georgia, an act made easier by bribes. Daniel Webster—nationalist, presidential prospect, and political foe of Jackson—served as an adviser to the Cherokees. He publicly criticized the President for his handling of the Georgia situation.

The manipulators were unsuccessful. At the completion of the election of 1832 Jackson had taken all the southern states with the exception of South Carolina. Martin Van Buren, the Jacksonians' own manipulator, was greatly relieved to be through with the confusing predicament. It had been difficult to try to keep the southerners in line with their state rights doctrine, and at the same time not alienate voters in the north, because of the Worcester decision. As expected in 1832 the state of Georgia returned its support to its candidate of 1828, Andrew Jackson. The turnout had been small, probably because the National Republican party had not even bothered to run the Clay ticket in the state.[55]

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[55]Richard P. McCormick, The Second American Party System: Party Formation in the Jacksonian Era (Chapel Hill: University of North Carolina Press, 1966), p. 240.

Both factions in Georgia politics had supported Jackson. No one needed to remind the Georgians that their success with the Worcester case had was dependent on the whim of Old Hickory rather than any sense of righteous justification.[56]

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[56]Phillips, Georgia and State Rights, p. 120.

CHAPTER IV

THE WORCESTER DECISION AND GEORGIA STATE POLITICS

During the same Jefferson Day dinner in April of 1830 in which Jackson made his famous preservation of the Union toast, the guests led by Senator Robert Hayne of South Carolina (who on the Senate floor had just recently debated Daniel Webster on state rights), had also celebrated the arrival of the new Senator from Georgia, George M. Troup. The former governor was praised as a staunch disciple of the state rights faith and was lauded for his successful defiance of President John Quincy Adams over the Indian treaties of 1827. Jackson made no remarks on Georgia that evening, probably concentrating too much on Calhoun; but then again the President possibly would have avoided any negative comment on Georgia. From 1830 to 1832 the state had been in a very attractive position in national politics. Courted by Jacksonians and Calhounites who found the state's alliance very desirable, the Georgians were capable of getting their way—at least for a while.

In 1832, in addition to the strenuous task of guarding the movements of adversaries both real and imaginary, the

Jacksonians also had to devote much attention to the popular reaction by the state of Georgia. Private correspondence from Washington urged moderation by state officials so that Jackson would not be forced to act. Congressman James M. Wayne of Georgia approached Attorney General Roger Taney to inquire about the intentions of the Jackson administration with regard to the court decision. Taney assured the Congressman that Georgia's position was held by the President to be constitutional; the Attorney General disclaimed any authority on the part of the Supreme Court. Taney declared that he was prepared to defend the President and the state if called upon to enforce the decision. Upon such promises Wayne wrote to Governor Lumpkin with news of his meeting with Taney. The Georgia governor was urged merely to keep calm and the matter would disappear.[1] Thus dealings with the state would be gentle and polite, at least until the next election.

Jackson needed the state's support; and, although he had it, he was never certain that the Georgians would not follow the Calhounites in their nullification endeavors. The Georgians' stance on the state rights doctrine as

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[1]Swisher, The Taney Period, pp. 53-54. Ironically within five years both Wayne and Taney would be Justices on the Supreme Court they were now prepared to defy. In fact Taney would succeed Marshall as Chief Justice in 1836.

evidenced by their defiance of the Supreme Court was quite similar to that of South Carolina. When and if, South Carolina decided to move toward nullification it would be more successful if other states joined its efforts, and because of its doctrinal beliefs Georgia was the most likely prospect of support for Calhoun. On the other hand, in his previous bids for power Jackson had found in Georgia much loyal support and wished to retain this. In 1825 the Georgia legislature had instructed its delegation in Congress to vote for Old Hickory if its favorite son, William H. Crawford, did not win on the first ballot. In the 1828 election Georgia had presented Old Hickory with its unanimous support. As nullification and the election of 1832 moved nearer, Jackson more than ever needed to hold the Georgians in line. With Clay gaining in the north by using the Bank issue, Jackson would need the south's support. Also if the Jacksonians could isolate South Carolina from an alliance with its neighboring state, then they could put down the rebellion more easily.[2]

The state's voters may have been loyal but Jackson had a history of trouble with two of its most prominent leaders—William H. Crawford and John M. Berrien. Years earlier

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[2]Jackson received 19,363 votes; Adams received none. Govan, "Berrien," p. 447.

Jackson and Crawford had been the bitterest of enemies. Rather than vote for the Georgian Old Hickory swore he "would support the Devil first."[3] But by 1830 the head resident of Hell was not as bad as John C. Calhoun. It had been Crawford who had broken the Jackson-Calhoun alliance with a letter charging the South Carolinian with opposing the General's questionable activities during the Florida campaign. Calhoun was also accused of frustrating an early and quick removal of the Indians from Georgia in an effort to destroy Crawford's political career. The Georgian warned Van Buren to stop Calhoun or he would thwart Jackson's attempt at removal.[4] Both Crawford and Berrien had advocated nullification as a practical doctrine; but in 1832, realizing the dangers, the two men did their utmost to prevent the Georgia convention from joining their South Carolina brethren.[5]

John M. Berrien had been placed in an awkward and embarrassing position by Andrew Jackson. He had served as Jackson's first Attorney General until his dismissal as an alleged Calhounite during the Eaton scandal in the spring

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[3]Jackson to James Gadsden, 6 December 1821, Bassett Correspondence, 3: 141.

[4]Crawford to Van Buren, 17 July 1829, William Henry Williams, ed., "Ten Letters from William Harris Crawford to Martin Van Buren," Georgia Historical Quarterly 49 (March 1965): 73.

[5]Phillips, Georgia and State Rights, p. 132.

of 1831. Berrien had been originally selected for the Cabinet because of his work as a lawyer for Georgia in forcing Presidents Monroe and Adams to act in removing the state's Indians. As Jackson's closest adviser on the Indian problem he also served as a special intermediary between Washington and Georgia. But beyond the Indian matters Berrien had little influence over other administrative policies.[6] His enemies charged the Attorney General with being a Calhounite, a ridiculous accusation since he despised the Vice President and received harsh criticism from the Calhounites in Georgia for his opposition. Berrien had originally supported Crawford in 1824; afterwards he and Van Buren (a good friend of Berrien) joined the Jacksonians. The Attorney General remained neutral in the Calhoun-Van Buren maneuvers, but his enemies assured Jackson that Berrien was loyal to Calhoun which was all that was needed for his discharge.[7] Even though he had been embarrassed by Jackson, Berrien expressed no open bitterness toward the President. This was politically sound when one considers Jackson's enormous popularity, yet Berrien always remained in a very uneasy position. The Georgian privately desired

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[6]Govan, "Berrien," pp. 448-449.

[7]Ibid., pp. 451-454.

to see Jackson defeated but would never publicly confess his feelings.[8]

Even if his relationship with two of Georgia's top leaders was unsound, Jackson need not have worried. Both men were neutralized by the overwhelming support of the masses for Old Hickory. Berrien and Crawford were expendable; the Jacksonians had more interest in the state itself.

The Georgia political situation was extremely complicated in the years of 1831 and 1832. Two factions, the Clark (sometimes spelled Clarke) and the Troup, fought one another constantly over issues and personalities. No ideologies seemed to mark the differences between these two factions. Moreover, nothing connected these two groups with any of the national political parties; both factions supported Jackson and both despised Henry Clay.[9] It is generally held that the Troupites represented the more aristocratic elements of the state. George M. Troup, a graduate of the College of New Jersey (Princeton), led this faction in its appeal to the planters of the wealthy areas of the state. John Clark, a poorly-educated Indian fighter, was portrayed as a man of the people. As governor Clark

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[8] Ibid., p. 465.

[9] McCormick, Second Party System, p. 236.

did accomplish much in the way of democratizing the state's political process.[10]

A minute difference in the position on state rights existed between the Troupites and the Clarkites. The Clark faction, of which Wilson Lumpkin, the governor in 1832, was a member, contained the most extreme state rightists; in this group belonged the Georgia nullifiers. The Troup faction, including Berrien and Crawford, opposed Calhoun and nullification. Georgia's chaotic political predicament became more confused by virtue of the fact that the state's politicians accused one another of being Calhounites, a damaging charge given Calhoun's lack of popularity in Georgia. In 1828 both the Troup and Clark factions had endorsed Jackson for President but neither supported the South Carolinian for Vice President. This hostility to Calhoun stemmed from his rivalry with Crawford.[11] Calhoun, however, was able to draw a sizable minority of the votes; he received two of the state's nine electoral votes for Vice President. Clearly the Georgians could not see the obvious similarities between their stand on state rights and South Carolina's position. On one side of the November 13, 1830 issue of the Milledgeville Federal Union, the editorial

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[10] Ibid., p. 238; George Dangerfield, The Era of Good Feeling (New York: Harcourt, Brace, & Co., 1952), pp. 390-391.

[11] McCormick, Second Party System, p. 240.

defined and defended the state rights position taken by the Georgians. But on the other side the editors mercilessly attacked Calhoun as a traitor and destroyer of the Union.

In this chaotic environment there were only two things for certain. One was that for a Georgia politician ever to hope of success he must praise the magnificent virtues of Andrew Jackson. In the 1831 gubernatorial contest all three candidates (the Troup faction had divided) had publicly endorsed the policies of Old Hickory. Jackson's most vocal supporter in this race was Wilson Lumpkin, a member of the Clark faction and a close friend of John C. Calhoun.[12] In 1828 and 1832 both factions had endorsed Andrew Jackson for the presidency. The strength of Jackson's name could also be seen in the role of the deposed John Berrien, who personally hated the President but feared that any criticism of Old Hickory would be disastrous to his own career.

The second issue upon which the two main factions in Georgia politics agreed was the question of Indian removal. After the Worcester decision both Senator George Troup of his own faction and Governor Lumpkin of the Clark faction advocated defiance of the Supreme Court. As both groups vied for Jackson's favor so also did they fight greedily to gain credit for the expulsion of the Indians from Georgia.

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[12]Govan, "Berrien," p. 461.

Such a favor to their faction's name would help them in future elections, especially if they controlled the distribution of Indian lands.[13]

As news of the Worcester decision reached Georgia both of these factors, Jackson's popularity and the desire for Indian removal, became important in the state's reaction. Georgia newspapers warned that the enemies of the President were trying to use this measure to defeat him.[14] Senator Troup urged the Georgians to show moderation, thus not giving the President's enemies a chance to take advantage of the situation.[15] Governor Lumpkin assured Jackson that no move would be taken by the state which would embarrass the administration.[16] Newspapers and politicians of both factions urged the people to rally behind the state. Georgia was being used by Jackson's adversaries in order to destroy the Democratic government.[17]

The Jacksonian strategy of steering Georgia away from the Calhounites and keeping the state within the President's

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[13]Louis Turner Griffith and John Erwin Talmadge, Georgia Journalism, 1763-1950 (Athens: University of Georgia Press, 1951), p. 32.

[14]Macon Georgia Messenger, 17 March 1832.

[15]Milledgeville Georgia Journal, 15 March 1832.

[16]Wilson Lumpkin, The Removal of the Cherokee Indians, 2 vols. (New York: Dodd, Mead, & Co., 1907), 2: 77.

[17]Milledgeville Federal Union, 8 March 1832; Macon Georgia Messenger, 17 March 1832.

stronghold worked. In the 1832 election Georgia repeated its previous unanimous support of Jackson. The National Republican party did not even bother to run the Clay ticket within the state. Shortly after the election the state called its own nullification convention. The Georgians were careful not to displease the President in these proceedings. John Forsyth, an unconditional Jackson supporter, staged a walkout in an attempt to disrupt the meeting. Crawford, Berrien, and Judge Clayton took over the convention to guide it away from following South Carolina. Eventually the gathering adopted a resolution censuring the infamous tariff of 1828 but then adjourned thereby leaving South Carolina without support.[18] Jackson did, however, lose some popularity because of his forceful threat to quash nullification. Georgia's old political divisions submerged as the state's politics regrouped into the Union party and the State Rights party. The Union party was composed of the Old Clark and Troup factions. Ancient enemies such as Troup, Gilmer, Lumpkin, William Crawford, and Berrien met in 1833 to adopt a program which supported the Jackson administration's efforts again the nullifiers. At this meeting Lumpkin was nominated for governor. The State Rights party, though not openly at the time, greatly resented Jackson's treatment of the South Carolinians. Active in this group was

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[18]Coulter, Georgia: Short History, pp. 245-246.

Georgia's small body of nullifiers such as Judge A. S. Clayton. The nullification taint hindered the party's immediate success. In 1833 Joel Crawford, an unenthusiastic draftee, was nominated for governor; he was soundly defeated. But as Jackson began to lose popularity in Georgia, especially with the rise of Van Buren, the fortunes of the State Rights party improved. In the 1836 election Gilmer, Berrien, and Troup deserted Jackson's designated heir, Van Buren, to support the candidacy of Henry Clay.[19]

In the fall of 1832 came the turning point in the Worcester case as Georgia's value to the Jacksonians decreased. The election had gone very well for the Jacksonians—now they no longer had any urgent reason to keep Georgia pacified. The Jacksonians began to put pressure on the state to release the missionaries and end the matter.[20] The Worcester episode had become a source of political embarrassment to the Jackson administration as it realized that it had sanctioned nullification. The governor, Wilson Lumpkin, began to show more real defiance of Washington. After the election the state officials no longer had to be as concerned about what the Jacksonians wanted but made it clear that Georgia's position would not be compromised.[21]

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[19]Phillips, Georgia and State Rights, pp. 126-138.

[20]Hoffman, "Jackson: State Rightist," p. 344.

[21]Phillips, Georgia and State Rights, p. 120.

Under the twenty-fifth section of the Judiciary Act of 1789 the Court itself could not order the President to release the missionaries unless the previous decision had been ignored. Therefore in the next session of the Court, which would start in January of 1833, Worcester's attorneys planned to apply again, knowing this time Jackson would be called on directly to enforce the decision.[22] Some, especially his enemies, felt Jackson could create a real constitutional crisis by refusing to carry out the decision. To avoid the consequences, appeals were made to the American Board of Foreign Missions, which had originally sent Worcester and Butler to Georgia, to order the missionaries to accept a pardon and avoid a civil war. The Board refused to make such a demand but instead told its clergymen that the final decision would remain with them. Worcester and Butler declined to accept a pardon. Their counsel, William Wirt, had hoped that the administration's Indian policy would have caused the masses to oust Jackson, but the question had been only a minor issue. His overwhelming reelection convinced the partisan Wirt that Jackson could be president for life. The election also convinced the Cherokees that they must leave.[23]

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[22]Edwin A. Miles, "After John Marshall's Decision: Worcester v. Georgia and the Nullification Crisis," Journal of Southern History 39 (November 1973): 527.

[23]Ibid., p. 533.

In late November of 1832, after South Carolina had declared for nullification, more pressure was put on Georgia to end the Worcester episode. Because of the lack of substantial support from the state, due to the hostility to Calhoun, the Georgia convention adjourned without adopting articles of nullification. The Jacksonians were now relieved of the possibility of South Carolina receiving any outside aid.[24] And now the Jacksonians no longer had to treat Georgia in a most valued manner. The President's aides began to take a more rigid approach to the state rights doctrine. It was strongly suggested to the Georgians that the Supreme Court decision would be enforced.[25] Van Buren, concerned about his own political future, was determined to avoid a showdown with the state rightists but not to the point of compromising the President. He sent an agent to Governor Lumpkin to urge the release of the missionaries. Secretary of War Lewis Cass also asked the state for a pardon for the duo.[26]

Governor Lumpkin was placed in a dilemma; he could not win in a showdown with Jackson but he also had to think about his own political future. If he pardoned the missionaries,

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[24]Phillips, Georgia and State Rights, p. 130.

[25]Miles, "After John Marshall's Decision," p. 533.

[26]Ibid., p. 536.

there would be a reaction in the state against him by those claiming he had surrendered; but yet not to release his prisoners would be to defy Jackson. Not until Worcester had sent a second, more tactful letter did Governor Lumpkin, his pride undaunted, decide to release the missionaries.[27]

The conclusion of the Worcester case was decided by Worcester himself. The missionary was convinced that if he persisted then the state of Georgia would join South Carolina in a bloody civil war.[28] Worcester sent a letter to Lumpkin asking for a pardon; this was at first denied by the governor who was offended by the tone of the request. Eventually after more diversions of this nature Worcester and Butler were set free. The missionaries, in keeping with their agreement with the state, asked their lawyers not to make another plea to the Supreme Court.

Georgia's fortunes had changed dramatically. The state rights doctrine of which the state had been so proud now became a political liability that might have brought disaster. After he had been reelected, Jackson did not need to pacify the Georgians. After the Georgia convention had renounced Calhoun's nullification the President no longer had to worry about an alliance between the two states. Since

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[27]Ibid., p. 541.

[28]Ibid., p. 538.

Clay, Wirt, and the others could obtain no advantage from the case, the Jacksonians could now see in the Worcester episode what it actually had been—nullification and this Jackson felt he could not allow. As they had done in the events preceding the Worcester decision the Jacksonians directed the conclusion. There was always the insinuation if not demand that the President would not and could not allow defiance by any state. The Georgians were again presented with the old choice between Calhoun and Jackson but the situation was now different. Georgia could have chosen between joining Calhoun and the South Carolina nullifiers who were threatened with invasion, or releasing the missionaries as Jackson wanted. Fortunately this choice was never to be made, the governor was saved from making a major decision by the capitulation of the missionaries.

Samuel Worcester and Elizur Butler were released in January of 1833. They had been chained and dragged to jail as common criminals but now left their confines as pardoned political prisoners. But these two clergymen had gone to jail for a just cause and reluctantly agreed to accept a pardon for a greater cause. At first they had wanted to defend the rights of the Cherokee Indians but they left prison, they believed, in order to preserve the American nation.

CHAPTER V

CONCLUSION

After the Worcester decision had been delivered by the Court and during the excitement and confusion over what exactly happened, the editors of the New York Evening Post presented the most reliable analysis of the resulting situation:

> In regard to all these matters we have only to say at this time, that it is exceedingly unwise for any set of men to create an excitement that is calculated to bring discredit upon any branch of the government of the country, and especially may this remark be made with reference to the highest judicial tribunal in the land. The usefulness of this branch of government rests entirely upon the confidence of the people, and to inspire that confidence, as well as to retain it, there should be no sacrifice of the integrity of its members, or an absence of ability to discharge all the functions imposed by laws.
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> The Court should not be permitted to breathe in the heated atmosphere of party politics, and yet the course taken by the professed friends of the tribunal of the dernier resort in all constitutional questions, is too much calculated to excite distrust and jealousy.[1]

The Supreme Court, as this editorial asserted, was intended to administer fair and impartial justice, and to avoid contamination by party politics, but in the Worcester decision it had not. In 1832 the anti-Jacksonians sought to use the Supreme Court to curtail Jackson's overwhelming

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[1]Quoted in Macon Georgia Messenger, 17 March 1832.

strength by creating a crisis and turning it to the disadvantage of the incumbent president. These manipulators found their chance in the Worcester case. Therefore, what had originated as an honest, desperate attempt by a tribe of Indians to protect their homes became a part of a planned political strategy by Jackson's adversaries. When the Worcester case reached its final stage, it was not just a dispute over the rights of states or the legal status of the Indians, but was instead a partisan manipulation of the court system designed for political purposes. The decision itself, therefore, was not just a legal opinion but a partisan assault on Jackson. Thus from a political standpoint Jackson was justified in not enforcing the Worcester decision in 1832.

Presidents since Jefferson had advocated and practiced the policy of Indian removal, thus Jackson's goal of Indian migration was but a continuation of this trend. Historians still debate the motivations of those presidents involved—on the surface the forced migration of the tribes does not appear to be the most humane policy. But recent studies have portrayed a more philanthropic attitude on the part of the national administrations. In his work on the Jeffersonian presidents, Bernard Sheehan has described a concern for the preservation of Indian societies dominant in the thoughts

of the Virginia dynasty.[2] Concerning Andrew Jackson, Francis Prucha has asserted that removal was the only practical method to solve the disputes between the Indians and whites, and between federal and state governments.[3] But Jackson differed from the others in the means used to accomplish the desired end. With the previous presidents removal was more peaceful; there was corruption and questionable means, to be sure, but no president, especially John Quincy Adams, had tolerated any threats of disobedience from the states. Adams had even sent troops to Georgia to enforce the provisions of Indian treaties. The Jacksonians admittedly had to deal with the most difficult problems of removal; but nevertheless the administration allowed much suffering and harassment of the Cherokees that was unnecessary. For example, Jackson could have stopped the entire Worcester episode. Worcester as postmaster was clearly a federal agent and would not have been tampered with if the Jackson administration had admitted this fact. The Jacksonians, however, denied Worcester's attachment and went to a great deal of bother to avoid any federal involvement with the missionary by dismissing him as postmaster general of New Echota. Worcester was arrested, dragged in chains to the

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[2]Bernard Sheehan, Seeds of Extinction: Jeffersonian Philanthropy and the American Indian (Chapel Hill: University of North Carolina Press, 1973), p. 11.

[3]F. P. Prucha, "Andrew Jackson's Indian Policy: A Reassessment," The Journal of American History 56 (December 1969): 536.

Georgia court, and started the proceedings that ultimately ended in Washington..

The greatest tragedy of this whole episode was the plight of the Cherokee Indians. In an effort to protect their lands and rights guaranteed by treaties, they had begun the events which led to the Washington court. Upon first news of Marshall's opinion they had celebrated what was to them a long-awaited victory. Their joy was only temporary, as they soon discovered that their situation had not changed. After the Cherokees' partisan supporters realized what little could be personally gained from use of the incident, they deserted the defense of the Indians and began to urge them to leave in peace. The Indians had mistakenly cast their fate with the anti-Jacksonians, the "out" group whose only desire was to get in power. The Indians were ruthlessly betrayed, both by a government which refused to honor its promises and by manipulators who had taken advantage of their situation.

On the Indian removal policy and particularly the Worcester decision, Martin Van Buren in his autobiography wrote about Jackson,

> that great work was emphatically the fruit of his own exertion. It was his judgment, his experience, his indomitable vigor and unrelenting activity that secured success. There was no measure in the whole course of his administration of which he was more exclusively the author than this.[4]

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[4]Quoted in Bassett, Life of Jackson, p. 691.

The Red Fox may have known best but the praise or blame does not lie entirely with Jackson himself. Historians have questioned whether or not he was the symbol of democracy or of his times in other matters; but in the Indian policy Old Hickory reflected the attitudes of most Americans and fulfilled the wishes of his followers.[5] To this nation it was an issue between civilization and barbarism; it was acceptable to break treaties because they were made with savages.[6] Jackson embodied this feeling in his administration.

A few months after the Worcester decision Jackson again used his strict constructionist viewpoint in the Bank war. In this matter the Supreme Court had upheld the Bank's constitutionality in the case of McCulloch v. Maryland (1819). In 1832 both houses of Congress had approved a bill to recharter the Bank. Jackson was not very impressed with

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[5]Ward, Jackson: Symbol for an Age, p. 40. This point of whether or not Jackson's Indian removal policy received the endorsement of most Americans is still debated. Historian Francis Prucha has denied that Jackson used his power as President to fulfill the whites' greed for the Indian land, but has claimed a more practical desire on the part of Old Hickory to remove the Indians to where their civilization would be protected from white encroachments. Dale Van Every, however, has emphasized the political nature of the Indian removal, even to the point of calling it the main issue of the election of 1832. It is doubtful, however, that the Cherokee problem held such national importance. Prucha "Jackson's Indian Policy," p. 534; Dale Van Every, Disinherited: The Lost Birthright of the American Indian (New York: William Morrow & Co., 1966), pp. 150-155.

[6]Prucha, American Indian Policy, pp. 233-239.

the opinions of the other two branches of government. In his veto Jackson expressed his belief that it was as much the duty of the Executive to decide the constitutionality issues as it was the Supreme Court. Jackson, as a strict constructionist, held that the Court did not have the power of judicial review. This attitude was not contrary to the times. Jefferson had claimed the lack of review power at the time of the famous case of Marbury v. Madison (1803). In that case President Jefferson had declared that he would not enforce a decision which was unfavorable to him.[7] To both Jeffersonian and Jacksonian democrats it was absurd that a court should be so powerful. To Jackson, America was a pure democracy and he was the voice of the people. If the masses approved of his actions then this was all the justification that was needed.[8] Most of the nation did endorse the attitude which he displayed toward the Worcester opinion and praised his reaction to nullification.

The case of Worcester v. Georgia is not considered to be one of the important cases in American constitutional law; it certainly has no ranking with the Marbury case. In the studies of the development of the Supreme Court the Worcester case is regarded as a setback in the growth of the

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[7]Richard Ellis, The Jeffersonian Crisis: Courts and Politics in the Young Republic (New York: Oxford University Press, 1971), p. 66.

[8]Ahl, Jackson and The Constitution, p. 117.

Court's power. Biographers of Marshall do not avoid the subject, even though this was certainly not one of the Chief Justice's great moments. The case reflected the basic doctrines that Marshall had expounded throughout his long reign on the Court. He had always declared the Constitution supreme over the actions of the states (Fletcher v. Peck (1810); McCulloch v. Maryland (1819)). Sanctity of contract was considered as basic to any government. But the Worcester case differed from the mainstream of judicial thought because it dealt with the status of the Indian. Marshall's great decrees had protected the rights of whites, not Indians or slaves. The Indian question had always perturbed Marshall. In the case of Johnson v. McIntosh (1823) Marshall had decided that an Indian tribe in Illinois did not have complete right to its property. In the Worcester opinion the Chief Justice did not rule if the Cherokees were savages or not. In neither of the Cherokee cases did Marshall answer the Jacksonians strongest argument that the federal government could not allow a new state within an old state, a prohibition clearly asserted in the Constitution.

The Worcester case did not have the immediate impact expected by the anti-Jacksonians. Despite their efforts, Jackson's enemies had failed to create a crisis because they could not arouse a strong public reaction against the President. The case did have some effect on several movements of the time. The South Carolina nullifiers

thought they had seen approval of a legal doctrine they themselves espoused. The President's reaction to the Worcester decision encouraged some South Carolinians to make the final attempt at their goal. Also the Jackson administration's handling of the case had important consequences for the remnants of Indian tribes in the southern states who persisted in their opposition to removal. These groups, still remaining after their tribes had agreed to leave, looked upon the Cherokees as leaders and were interested in their fate. When the Cherokees migrated the others believed it was hopeless to resist.[9]

Georgia's problems had been made a national issue. Its Indian question was debated in the north as well as the south. The great men of the day—Jackson, Clay, Marshall, Van Buren—had all participated in the events surrounding the case. Georgia eventually succeeded with its policy of Indian removal but could not forget the controversy which had erupted in the Worcester episode. It had been mostly northerners who had so severely criticized the state, and northerners, such as Worcester, who had interfered with the situation. Georgia began to feel those sectionalist beliefs of resentment to northern meddling before many other southern states realized the danger.[10] Jackson had saved

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[9]Bassett, Life of Jackson, p. 692.

[10]Coulter, Georgia, p. 236.

the state from the northern peril in 1832 but who would be there in the future?

If the Worcester case did not present an example for the political manipulation of the Court, neither did it establish a precedent for a future president to ignore the decrees of the Supreme Court. The only other serious conflict came in 1935 when President Franklin D. Roosevelt announced he would defy the Court if it ruled that Government bonds could be redeemed for gold. Roosevelt had stopped this practice in an effort to fight the ongoing Depression. The President felt he must do what was necessary "to protect the economic and political security of this nation." Confrontation was avoided when the Court ruled in his favor. During the Korean War President Harry Truman's administration took over operation of a steel mill when its workers went on strike. The Supreme Court declared this takeover unconstitutional. Truman obeyed because, "I have no ambition to be a dictator."[11] In the summer of 1974 it seemed as if confrontation would come again as a president disagreed with a lower federal court's order for him to release documents which were claimed to be protected by executive privilege. The case having been appealed to the Supreme Court, Chief Justice Warren Burger decided for an unanimous

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[11]"The United States v. Richard Nixon, et. al.", Time 22 July 1974, p. 10.

court that the president must surrender such documents. On the power of the judiciary Burger wrote,

> Nothwithstanding the deferences each branch must accord the others, the "judicial power of the United States" vested in the federal courts by Article III (paragraph) I of the Constitution can no more be shared with the Executive Branch than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a presidential veto. Any other conclusion would be contrary to the basic concept of separation of powers and the checks and balances that flow from the scheme of a tripartite government.[12]

The final question remains that if Worcester had not accepted the pardon and if in the January, 1833 term the Court had directly asked the President to enforce the Worcester decision would Jackson then have refused to comply with this demand? Jackson probably would have acted for the missionaries' release, maybe not in a direct compliance but in a way to assure Georgia that it would not be so successful in its disobedience. In January of 1833 the political warfare surrounding the election of 1832 would be over and Jackson would be concentrating on quashing South Carolina's nullification. His administration had realized that Georgia's actions constituted nullification which could not be allowed. Of course this would just apply to Georgia's position concerning the missionaries' pardon—the Indians

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[12] United States v. Nixon, 94 S. Ct 3090

and their welfare would not be protected by any national administration. The enforcement of the Worcester opinion then would have concentrated on the missionaries. No one seemed to have noticed Marshall's contention that the Indians had a right to their land and that the treaties were superior to actions by the states. That the Cherokees would definitely have to go is the only fact among this speculation about what Jackson might have done. Worcester himself by accepting a tainted pardon prevented a showdown between Georgia and the federal government. The Cherokees left but not by choice. Their removal was stalled for six more years before they migrated beyond the Mississippi River.

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