

The Cherokee Nation
In the Nineteenth Century:
Racial Tensions and the Loss
of Tribal Sovereignty

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Summary

During the nineteenth century indigenous communities that had survived European colonization, but were isolated within white societies, struggled to maintain control of the lands they still occupied and to fend off encroachment by settlers. The Cherokee Tribe in the Southeastern United States is a case in point. Located within the boundaries of several States within the Federal Union, but with no political standing either within those States or the Union itself, it had to confront the problem of how to maintain its tribal identity and a measure of tribal autonomy. Its status was determined by treaties of the type usually negotiated between nation states, treaties which involved the loss of some tribal lands in return for annuities or cash, and assurances that the Tribe's occupancy would be permanently guaranteed by the United States.

In the early decades of the century, the mixed blood leaders of the Tribe who understood the white world due to their access to education and their links with white relatives, saw knowledge as the key to the future of the Tribe. They created a system of free tribal schools, introduced white systems of law and politics, and developed a thriving agricultural economy. White contemporaries referred to the Cherokees and four other Tribes in their vicinity as civilized because they had achieved a high degree of acculturation to white norms. Their leaders argued that they were meeting the expectations of the white community by creating a civil society and an agricultural economy comparable to that of their white neighbors. They also pointed to the guarantees of limited tribal autonomy given by the Federal Government in treaties, and asked that those guarantees be respected.

That did not protect them from expropriation when white settlement spilled into their lands. In the 1830s they were forcibly moved to an area west of the Mississippi and forced to rebuild their economy and political institutions, only to have their prosperity destroyed once again by their support of the Confederacy in the Civil War. They rebuilt for a second time, only to face another expropriation at the end of the century, this time by a Federal Government encouraged by influential reformers who saw the destruction of the tribal system as essential if Indians in general were to survive and be incorporated in the wider American community.

The Cherokee experience has long been characterized as the unjust destruction of the culture of a group that had already adapted to white mores. What has been less obvious was the degree to which the group kept control of its tribal identity, even when under duress. It did so by restricting intermarriage with African Americans, while taking a more flexible approach to intermarriage with whites. Many mixed bloods had been slave owners and shared the racial values of the Southern white communities around them. In the late nineteenth century, Cherokee discrimination against African Americans was part of their adaptation to the modern world, because it prevented them being consigned to the lowest rung of the social ladder.

Declaration

I certify that this thesis does not incorporate without acknowledgement any material previously submitted for a degree or diploma in any University; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Roderick C. Essery

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Introduction

This thesis examines how the leaders of one American Indian tribe, the Cherokee Nation, endeavored to retain the political power they claimed was their due by prior treaty arrangements with the United States Government, during the period between their enforced removal from Georgia in the 1830s to the establishment of the State of Oklahoma in 1907. It is concerned with two major issues, the first being the efforts made by the tribe's governing élite to demonstrate that the tribe was entitled to manage its own affairs within the American political system and to negotiate external matters with the United States Government. These efforts included both the presentation of arguments during the course of formal negotiations with the United States Government, and the actual operation of a civil society that conformed to contemporary white standards. The term used to describe the political state they claimed was sovereignty, the concept which underlay the authority of each of the States within the Federal Union, and of the Union itself. Given the realities of the power relationship between the Cherokees and the white world, what was being claimed by the Cherokees was in fact tribal sovereignty, a concept which involved both autonomy within the wider American political system, and a sense of being at the same time outside that system. Recognition of that duality was perhaps the basis for Chief Justice John Marshall's 1830 definition of the Cherokees as being a 'domestic, dependent nation' within the United States.

When academic historians began to study the history of the American Indians, their accounts were based on white perceptions and categories, and on the types of documentary evidence valued by white scholars. One of the distinctive features of the history of the Five Tribes is that the degree of their acculturation early in the nineteenth century meant that their leadership did generate some documentary records of the type familiar to modern researchers, and their well-educated mixed blood political élite argued the case for limited tribal autonomy in the terminology of the white world around them. Unfortunately, the records apply to the workings of the leadership, who were mainly the wealthier mixed blood élite of the Cherokee Nation, and tell us little of the day to day life of the main body of the

tribe.¹ At the same time, the tribe appears to have been building a racial framework that would endure beyond a future political defeat by the white authorities. It is the inter-relationships between the process of managing acculturation in a way that just might stave off that defeat, and the construction of the racial framework that are the focal points of this study. It will therefore examine the tension between the Cherokee élite's insistence on pressing the claim for tribal sovereignty as their best defense against growing government pressure to incorporate them into the mainstream of American life, and their community's internal debate over who was entitled to tribal membership. The Cherokee experience was in many ways the same as any other community, in that the leadership stressed the unity and cohesion of the group, while the group itself engaged in its own contests for power, status and social advantage. It is the impacts of these internal issues – sovereignty and race – on the wider and more familiar struggles of the leadership to defend the group against the overwhelming power of white institutions that will inform the following chapters.

The internal racial issue, which also affected the social cohesion and the sense of control over tribal affairs, was the question of how membership of the tribe was determined, one that became important when Cherokees began to inter-marry with the increasing number of white settlers moving into their area. The new generations of white-Cherokee mixed bloods were more likely to be attuned to the political ideas of the white Americans, and therefore more likely to adopt them than were many of the tribe's full blood members, who preferred to retain their traditional culture. The subject of race within the Cherokee Nation was further complicated when the Federal Government forced the tribe to grant tribal citizenship to its former slaves as part of the post-Civil War Reconstruction of the Federal Republic, a move that profoundly undermined the traditional system of determining who was entitled to membership of the tribe.

¹ In the case of the Cherokees, this was not helped by Colonel Stand Watie's malicious act of burning the Park Hill properties of his hated rival Chief John Ross, including most of the tribal archives, October 1863. Alvin M. Josephy, *The Civil War in the American West*, (New York, Vintage Civil War Library edn. 1993 [1991]), 375.

In previous decades, most scholars have focused on the issue of sovereignty and the difficulties the Cherokees had in maintaining their claim in the face of increasing pressure from the white authorities to accept full acculturation and incorporation within the American political system.² In the first decade of the twenty-first century, some historians have pointed to the importance of blood and race in the life of the Cherokee community in the nineteenth century, and have drawn attention to the involvement of African Americans in Cherokee society.

Given that a number of mixed blood Cherokees had been actively involved in the cotton economy of the South and the slave labor system on which it was based, the Southern view of race relations would have been well understood by important elements within Cherokee society. The interplay between the unifying notion of tribal sovereignty and the potentially divisive tensions between pure blood and mixed blood – Cherokee, White, and African American – is a central concern of this investigation.

The Cherokees' claim to sovereignty was complicated by the fact that no Indian tribe had been party to the processes of negotiation that created the Federal Union by having States cede some part of their sovereignty to a new central government. Any Indian claim to absolute sovereignty was therefore bound to affront both the Federal Government and those States with significant indigenous population within their borders. The issue was further complicated by the long history of treaty-making between both British and American governments and the Indian tribes. In the early years of English colonization, when tribes such as the Iroquois and the Huron outnumbered the settlers and were formidable military opponents, the British authorities found it expedient to make formal treaties with Indian groups so

² A fine example of this approach is William G. McLoughlin's *After the Trail of Tears: the Cherokees' Struggle for Sovereignty 1839-1880*, (Chapel Hill, University of North Carolina Press, 1993). As early as 1979, Theda Perdue began to explore the racial issues in her *Slavery and the Evolution of Cherokee Society, 1540-1866*, (Knoxville, University of Tennessee Press, 1979), and the increased focus on race is well represented by the work of Fay Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century*, (Philadelphia, University of Pennsylvania Press, 2008); Circe Sturm, *Blood Politics: Race, Culture and Identity in the Cherokee Nation of Oklahoma*, (Berkeley, University of California Press, 2002); Patrick N. Mingos, *Slavery in the Cherokee Nation: the Keetoowah Society and the Defining of a People 1855-1867*, (New York, Routledge, 2003).

that they could be used as allies against European rivals, such as the French. The use of treaties continued because it was a convenient method of controlling the Indians long after the whites had become dominant, and the new Republic saw no reason to change the procedure. By dealing with Indian entities in this way, the white authorities did concede an element of limited sovereignty, one that survived only until new concessions were needed and another round of treaty negotiations commenced.

Much of the Cherokees' physical environment was shared with the Choctaws, Chickasaws, Creeks and Seminoles, the group who earned respect by the whites in the late eighteenth century as having taken steps to acquire parts of European civilization. In some respects study of the Cherokee Nation during the nineteenth century provides a useful insight into the process of managing the tension in the Indian world between acculturation on the one hand and the retention of tribal identities on the other. Some policies of the Federal Congress and decisions of the U.S. Supreme Court, initially directly affecting the Cherokees, in several cases flowed on to become precedents applicable to most of the other Indian tribes.

The Cherokee Nation originated as part of the Iroquoian language group, and spread down to the Southern Appalachians prior to European colonization, perhaps driven away from the Iroquois because of their warlike nature, and to have taken their agricultural and political skills with them. The Cherokee language separated from its Iroquoian roots when the two Indian Nations became the dominant groups at each end of the Appalachians, with the tribes of the Iroquois League remaining in the North and the Cherokees settling in the South. Within the Cherokee language three dialects emerged, corresponding to the three main geographical areas in which they lived prior to the European invasions and upheaval. The Otali (or Overhill) dialect was the predominant form of the language, spoken in east Tennessee, North Carolina, Northeastern Alabama, and Northwestern Georgia, and is still spoken by over ten thousand Cherokees in their transplanted homeland in Northeastern Oklahoma. The Kituwah (or Middle) dialect is still spoken mainly by the descendants of the small group who avoided removal in the 1830s and remained hidden in the Qualla

Boundary hills of western North Carolina.³ This group is now federally registered as a separate tribe, the Eastern Band of Cherokees, with more than ten thousand members. The Kituwah dialect has taken over from the Elati (Lower) Cherokee, which has become extinct. The Kituwah (now more usually spelt Keetoowah) dialect and outlook would attain more significance in the nineteenth century, both before and during the American Civil War. The organization of Masonic Lodges, secret societies, and even the raising of separate Cherokee regiments to fight in the Civil War would be linked to the Keetoowah section of the tribe and their political opponents.

Early post-Columbian Cherokee history is sketchy, but it is known that even prior to the initial European contact by Hernando de Soto's exploration northwards from Florida into what became the Carolinas in 1540, the Cherokees lived in multi-roomed wattle-and-daub cabins with adjacent storage huts.⁴ Each home was surrounded by a cornfield, orchard and livestock farm, worked by the women. Corn was the main agricultural product, but was augmented by beans, squash, and tobacco.⁵ Hunting and fishing were important, and were carried out by the men. Unlike the migratory hunter-gatherers of the central Plains, the Cherokees appear to have mainly developed a sedentary life style based around the cultivation of food crops long before their first contact with Europeans, and may have found it easier than other groups to incorporate the more advanced agricultural practices into their culture.

Some traditions do seem to have been widely shared by most Indian tribes along the Eastern seaboard, and one which has been a major factor in Cherokee culture and history is the importance of the Clan system as the basis of their social and legal organization. The Eastern tribes traditionally organized themselves in kinship groups, and the Cherokees followed this principle, being divided into seven Clans,

³ They now principally reside in a reservation adjoining the Great Smoky Mountain National Park.

⁴ For a brief resumé of early white contact with Cherokees, see James Wilson, *The Earth Shall Weep*, (London, Picador, 1998), 138-148, and Marion Starkey, *The Cherokee Nation*, (North Dighton, JG Press, 1995), 4-13.

⁵ Angie Debo, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes*, (Princeton, Princeton University Press, 1940), 3.

seven being a mystical and powerful number.⁶ The tribe's social organization was traditionally matrilineal, the mother's Clan being the dominant family unit, and the women of each Clan elected their own leaders, convened as a Women's Council. Every village had one central large meeting hall, seven-sided so that all Clans could be equally represented.⁷ Principal Chiefs were chosen from the men, although the women retained a right of veto.⁸ Only those who belonged to Cherokee clans regardless of language, residence, or even race were Cherokee; those who had Cherokee mothers were *Ani-Yun'wiya*, the Cherokees' preferred name for themselves, meaning 'Real' or 'Special' People.⁹ The importance of the clan system would continue through the first half of the nineteenth century, and would retain its significance as the tribal authorities determined who could become a member of the Cherokee Nation.

All members of a clan were regarded as each other's brothers and sisters, so no Cherokee could marry within either his mother's or his father's clan, on pain of death for incest. The women held the responsibility for the family's domestic arrangements and tending crops and livestock. Husbands were chosen and accepted by the women, and not only would the new groom move into the bride's home, but he would also be adopted into her Clan. If the wife chose to end the marriage, she divorced her mate by the simple expedient of bundling up his personal chattels, and leaving them outside the house; he would then return to his original Clan. The gradual acculturation of the Cherokees inevitably meant that the matrilineal power of the Clan system would diminish during the nineteenth century, and the source of political power within the tribe would shift towards male elected officials and American-style legal institutions based on a written constitution; but traditional customs were neither excluded nor forgotten, as evidenced by the bloody series of revenge killings in the 1840s in the Indian Territory, due to the traditional

⁶ David Eugene Wilkins, *American Indian Politics and the American Political System*, 2nd ed., (Lanham MD, Rowman & Littlefield, 2007), 131.

⁷ Ray A. Billington, *Westward Expansion: a History of the American Frontier*, (New York, MacMillan, 1974) 27; William G. McLoughlin, *Cherokee Renascence in the New Republic*, (Princeton, Princeton University Press, 1986), 11.

⁸ Wilkins, *American Indian Politics*, 132.

⁹ Theda Perdue, 'Cherokee Women', quoted in Patrick Mingos, *Slavery in the Cherokee Nation*, 17.

requirement that any murder would be punished by the execution of either the killer or a close member of his Clan.

The matrilineal/matriarchal nature of Cherokee society had defined the accepted purity of blood, which was determined entirely by the mother's quantum. No matter how mixed the parentage of a male, if he married a full blood wife his offspring would be defined as full blood. This definition became all the more important in the political division of the tribe in the nineteenth century and would continue to have on-going repercussions, such as the responses of individual Cherokees to questions of ethnic grouping and individual tribal affiliation in the decennial United States censuses when these began to count Indians. As an illustration of the importance of the blood quantum divisions, long-serving Principal Chief John Ross, the leader of the mainly full-blood faction prior to and during the American Civil War, had a Cherokee mother and was classified as full blood despite his father and both his grandfathers being Scottish.¹⁰ The use of the blood quantum as the determinant of membership of the Cherokee community was the standard practice through the nineteenth century, and was little affected by modernization; it was often the basis for factional division within the community, and the distinction between the full blood or mixed blood affected the decisions individuals made to support either the North or the South during the Civil War. It continues to have an impact on Cherokee life to the present day, in that any individual applying for membership of the Cherokee Nation requires a Certificate of Degree of Indian Blood (CDIB)¹¹, issued by the Bureau of Indian Affairs (BIA), in addition to a separate Cherokee Nation membership card, to establish his or her bona fides as a member of the Nation.¹²

Because the Cherokees were originally located principally in Georgia and the Carolinas, they were close to the European settlements established along the Atlantic coast from the seventeenth century onwards, but were not impacted as directly as

¹⁰ Gary E. Moulton, *John Ross, Cherokee Chief*, (Athens GA, University of Georgia Press, 1978), 2-5.

¹¹ Application Form (with instructions) supplied by BIA.

¹² Tony Mack McClure, *Cherokee Proud: a Guide for Tracing and Honoring Your Cherokee Ancestors*, (Somerville Tenn., Chunanee Books, 2001), Appendix 1, 243.

were the Native American communities from Virginia northwards. During the colonial period they had an opportunity either to retain their autonomy or to negotiate arrangements on their terms. This relative immunity from white subjugation allowed them to observe white society and to adopt those elements of the white life-style they found attractive and useful, while reserving the choice to reject others. Like most Indian groups in that era, they readily accepted metal goods (both household and agricultural) and firearms, for which they exchanged furs, principally the beaver-pelts which were so desirable for the manufacture of hats in Europe, and also deer-skins.

Early in their experience of white contact, the Cherokees as a group had demonstrated their ability to adapt to the dominant culture in ways that left room to retain a sense of distinctive identity, but during the nineteenth century that ability was severely tested. This study will explore how this one indigenous community dealt with the tensions engendered by the conflicting demands of the acculturation necessary to survive within a modernizing world while at the same time preserving of an element of separate identity grounded in tradition and historical experience.

Nineteenth century Cherokee Nation history cannot be written without incorporating discussion of the racial and cultural divisions within the tribe, initially the differences that arose between the full blood members and the mixed bloods, and then the effect of the absorption of the African Americans when they became freedmen and subsequently Cherokee citizens. The first historian to address the subject of race within the tribe was Annie Heloise Abel, although she was primarily interested in the use of chattel slavery in both Georgia and Indian Territory, and in the effect slavery had on the tribe in the beginning of and during the Civil War.¹³ It had become a controversial subject again in 1866, when the Federal Government dictated that the African American freedmen must be accepted into the tribe as equal members, eligible for land allotments and voting rights within the tribe, which inevitably added further

¹³ Annie Heloise Abel, *The American Indian as Slaveholder and Secessionist*, (Lincoln, Arthur H. Clarke, 1915), *The American Indian as Participant in the American Civil War*, (Lincoln, Arthur H. Clarke, 1919), and *The American Indian and the End of the Confederacy, 1863-1866*, (Lincoln, Arthur H. Clarke, 1925).

elements of complexity into the tribe's racial hierarchy and social structure, particularly among the relatively small number of wealthy mixed bloods who had been cotton-growing slave-owners.¹⁴ Prior to their relocation into Indian Territory their most striking adaptation to the Southern white agricultural economy was the use of black slaves in their farms. Slavery had long been part of Indian culture, as individuals captured during inter-tribal warfare could be regarded as the spoils of war. The change to ownership of African American slaves led to the enrichment of some of the mixed-blood Cherokee élite, as they were used in producing cotton and tobacco, and that in turn accustomed their owners to current Southern White practices in relation to land ownership and the treatment of a captive labor force.

Nevertheless, in Indian Territory the apparent ownership of the land, defined by the improvements on it (homes, barns and fences), did not eliminate the tribal notion of the communal ownership of all the territory. Tribal law traditionally ensured that between all improved farms some vacant land must remain, for communal use as grazing pasture or forested land. Whitney's patenting of his cotton-gin in 1794 accelerated the growth of cotton cultivation in the South, and necessitated the use of greater numbers of African slaves.¹⁵ Some Cherokees, mainly mixed blood tribal members, took advantage of this expansion, and as they prospered, they created a new classification within tribal society, in this case one based on wealth.¹⁶ This further divided the traditional full bloods from the rapidly acculturating mixed blood Cherokees.¹⁷

As this process of adaptation was taking place, the Cherokee Nation came under almost continual pressure to concede territory to the increasing numbers of white settlers moving into the Southeast. When the Europeans first met them, the Cherokees were estimated to have been the largest tribe in the Southeast with a

¹⁴ Charles J. Kappler, (comp. and ed.), *Indian Affairs: Laws and Treaties*, Vol.2, (*Treaties 1778-1883*), Article 4, The Cherokee Treaty, Washington, 1866, (Washington, Government Printing Office, 1904.). Accessed via OSU Library Electronic Publishing Center (digital library.okstate.edu/kappler), 943.

¹⁵ Paul W. Gates, *The Farmer's Age: Agriculture 1815-1860*, (New York, Harper Torchbooks, 1960), 7-8; Peter Kolchin, *American Slavery 1619-1877*, (London, Penguin, 1993), 87, 95.

¹⁶ McLoughlin, *After the Trail of Tears*, 39, 71, 77.

¹⁷ Rose Stremmlau, *Sustaining the Cherokee Family: Kinship and the Allotment of an Indigenous Nation*, (Chapel Hill, University of North Carolina Press, 2011), 29

population numbered about twenty thousand.¹⁸ They held about forty thousand square miles of land in what are now Georgia, North and South Carolina, Tennessee, Kentucky, West Virginia and Alabama.¹⁹ It is probable that the Cherokees drove out the Muskogean-speaking Choctaws, Creeks, and Chickasaws from the vast area they occupied, and many wars between these traditionally militaristic tribes ensued over dominance of the hunting grounds, so they were no strangers to the business of the violent displacement of weaker tribal societies. The most frequent opponent of the Cherokees was the Chickasaw Tribe, although the two tribes did unite to advance shared mutual interests in 1715 and 1745. The former occasion was during the Yamasee War of 1715-1717, during which a large gathering of Indian tribes banded together against the British colony of South Carolina.²⁰ The colony was only saved from total annihilation by the Cherokees, who changed sides to fight alongside the British against the tribe's traditional enemies, the Creeks. In 1745 the Cherokees again allied with the Chickasaws during King George's War to drive the Shawnees out of the rich hunting territory in the Cumberland Valley of Tennessee. Involvement with the white colonists and traders through the sixteenth to eighteenth centuries usually involved the exchange of furs and deerskins for modern European goods such as farm implements and small arms, and military activity as opponents or allies of the British, French, or the Americans.

The spread of European colonization into the large Cherokee area inevitably influenced them into a new cultural environment. The growing influx of white settlers rapidly changed the balance of power within the Cherokee territory. Not only did the population numbers swing in favor of the whites, but their superior technology, both agricultural and military, made it impossible for the Cherokees to stem the tide of white settlement. By 1819 they had lost ninety per cent of their territory.²¹ They could not fail to notice, moreover, that technology was bringing about noticeable improvements in the newcomers' standard of living, and some Cherokees were ready to incorporate the more attractive elements of white

¹⁸ Wilson, *The Earth Shall Weep*, 138.

¹⁹ *Ibid*, 138.

²⁰ Grace Steele Woodward, *The Cherokees*, (Norman, University of Oklahoma Press, 1963), 58.

²¹ Grace Woodward, *The Cherokees*, 127, 133, 138.

culture into their own. As David Williams noted, the fact that some seventeen thousand Cherokees were now surrounded by almost a million whites in made it inevitable that the smaller group would need to adapt to the larger culture if they were to survive.²²

Despite these pressures, the Cherokee leadership continued to argue that they still had a distinct national identity, and should be entitled to manage their own affairs within the American political system, but their status within that system remained ambiguous. The United States Supreme Court in 1831 devised a formula which largely overcame this problem. Chief Justice John Marshall defined the Cherokees as a ‘domestic dependent nation’, a ruling which severely curtailed the Cherokee claim to complete sovereignty, but was still less than the complete denial of status which the white authorities would have wanted.²³ The United States’ Government continued to negotiate treaties with the Indian tribes, thereby nominally conceding a degree of sovereignty to them, until 1871, when Congress voided the treaty-making process. By that point the Federal Government was anxious to assert its national sovereignty over that of the Indian tribes as part of its overall policy of moving Indian communities out of the path of white settlement. Existing treaties were to be honored, but no new treaties were to be negotiated.

The capacity of the Cherokees and their near-neighbors the Choctaws, Chickasaws, Creeks and Seminoles to absorb the new culture, and their conscious adaptation to the changes being wrought in their world by the incoming European colonists, led to their designation by the colonists as ‘The Five Civilized Tribes’. Their adaptation also included partial acceptance of Christianity whilst still retaining elements of their own traditional religion, and converting much of their political structure to the American pattern, with written Constitutions, elected legislatures, and a court system.²⁴ These changes did not mean immunity

²² David Williams, *The Georgia Gold Rush: Twenty-Niners, Cherokees and Gold Fever*, (Columbia, University of South Carolina Press, 1993), 14.

²³ Wilcomb E. Washburn, *The American Indian and the United States: a Documentary History*, (New York, Random House, 1973), Vol.4, 2554, 2556.

²⁴ McLoughlin, *After the Trail of Tears*, 74, 76.

from internal division and physical conflict, any more that it did in the white communities they tried to emulate.

In the case of the Cherokee Nation, the full blood versus mixed blood issue would become a major factor in the political life division early in the nineteenth century, at first in Georgia and the other Southeastern States, and then more strongly in Indian Territory. The schism was political at first but it developed into a tragically bloody intra-tribal conflict, which went on to divide the tribe as members chose to join opposing armies during the Civil War. The subject of blood quantum has been examined in detail by Circe Sturm, an anthropologist who exemplifies the newer multi-disciplinary approach to historical enquiry, and who brought the controversial subject of citizenship based by race into the open.²⁵ Her interest is mainly how the Cherokees are affected in the current situation, but argues that the present attitudes originated in the separations within the tribe which first occurred in the nineteenth century. She noted that the degree of blood quantum paralleled the division of the tribe socially, politically, and financially.²⁶ Prior to the 1866 Cherokee Treaty, the Cherokee Council in 1824 forbade miscegenation by black slaves with either Indians or whites.²⁷ The dislike of blacks continued after the 1866 ruling, and was another unconscious aspect of the Nation's acculturation.

The event which has permanently divided the Cherokee Nation was the Treaty of New Echota, signed on December 29 1835. A group of mainly mixed blood Cherokees led by Major Ridge, his son John, and his nephews Buck Watie (who adopted the name of Elias Boudinot) and Stand Watie took note of the long history of white expropriation of Indian land, and saw the Georgia gold-rush lottery as a clear indication that the tribe faced forcible removal unless it negotiated and gave concessions. They illegally signed a treaty without the full backing of the main tribal Council, selling off Cherokee land and agreeing to be paid by the United States Government to remove to the vacant territory west of the Mississippi, into

²⁵ Circe Sturm, *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma*, (Berkeley, University of California Press, 2002).

²⁶ Sturm, *Blood Politics*, 15-16.

²⁷ *Ibid*, 55.

what is now the State of Oklahoma. They took note of their previous history of treaties which had all meant some loss of their land, and opted for what they saw as the best deal, given that the tribe was inevitably facing expulsion from its lands in Georgia and adjoining States, after the Indian Removal Act of 1830. Their decision was bitterly opposed, and the violent divisions within the tribe undermined the image of a united and cohesive community, able to manage its own affairs and entitled to a measure of autonomy within its own borders.

Despite the trauma of the removal to Indian Territory on the basis of the social split in the tribe caused by the New Echota Treaty and the bloody feuds that flowed from the recriminations that followed, the tribe rebuilt its agricultural economy in the 1840s and 1850s and restored some order to its political system. However, the long association of a substantial number of its mixed blood elite with the Southern plantation economy and the slave labor system that was at its base brought about further division when the Civil War broke out in the East. The Indian Territory tribes became involved; some Cherokees fought for the Union, others for the Confederacy, and some fought for both sides at different times. The results were devastating for the Cherokees, as they suffered heavy loss of life, much of their economy was ruined, and they were left vulnerable to retribution from the victorious North. The settlement forced on them in 1866 showed how little regard the Federal Government had for their claims of tribal sovereignty or for past guarantees that they would enjoy permanent ownership of their lands in Indian Territory. To make matters worse, the Federal Government insisted that the Cherokee Nation give tribal citizenship to its former slaves, a move which undermined the tribal sense of identity by destroying its ability to determine who was eligible for membership. Hostility towards black Americans had deep roots in Cherokee culture, and while intermarriage with whites had been approved, there were strong legal sanctions against marriage with blacks. Now the Cherokee Nation began to create the kind of segregated social system that the Southern States developed in the aftermath of Reconstruction.

During the second half of the nineteenth century the United States of America experienced a period of unparalleled change and expansion. By 1850 its territory extended to the Pacific Coast, more than trebling in acreage. The population grew

to almost seventy-six millions in 1900. The indigenes, on the other hand, had dwindled to a quarter million by the end of the century.²⁸ Such a dramatic change, inevitably marginalized the indigenes and left them with very little bargaining power, while the United States economy was being transformed. The native tribes of the continent could not fail to be affected by the tensions these huge changes wrought in their world. It is clear that in the decades following the Civil War, the Federal Government steadily dismantled the vestiges of tribal sovereignty throughout the Indian world, and that in the case of the Cherokees, the final destruction of their autonomy was completed as a necessary step towards the creation of the State of Oklahoma in 1907. It is also clear that during that period their leaders continued to plead the case for tribal sovereignty and that the Cherokee community continued to demonstrate that despite its internal racial divisions, it could create a civil society based on vigorous economic activity and a capacity to take advantage of new opportunities to participate in the expanding economy to their North.

At the point at which the final dismemberment of Cherokee tribal sovereignty began to gather momentum, the academic study of history emerged within the expanding U.S. university system as a discipline based on the study of documentary records and the application of a kind of intellectual rigor that had produced such striking progress in the natural sciences. Given contemporary assumptions about racial hierarchies and level of civilization, there was little likelihood that the indigenes would find a place in the new national narrative, other than as temporary obstacles to the expansion of Anglo-Saxon power.²⁹

There was one very significant exception to the general trend, one that occurred outside the framework of formal academic history and was developed in the deeply rooted tradition of reform that had its greatest success in the campaign

²⁸ Figures from the U.S. Bureau of Census reported the population of the U.S. in 1800 as 5,308,483, which does not include Indians, who were not included in the National Censuses until after the Civil War, but were variously estimated at approximately a million. The U.S. Bureau of the Census 1900 report (*Abstract of the Twelfth Census of the United States 1900*, Washington, 1902) showed the U.S. population as 75,994,575, including Indians. The indigenous population reached its lowest total of 237,196 in the 1890 census.

²⁹ Kent Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893-1914*, (Orem, Utah, Ancestry Incorporated, 1999).

against slavery. In the early 1880s, Helen Hunt Jackson's *A Century of Dishonor*,³⁰ a polemical attack on the Indian policies of successive Administrations since the founding of the new nation, was in part intended to arouse a sympathetic response to Indian problems among the general public, but even more as a direct appeal to Washington lawmakers by presenting an indictment of the dishonest methods white governments had used to dispossess and humiliate Indian tribes. Their duty was to redress the wrongs done to the Indians and to do so immediately. The book was to become central to the Indian reform movement based in the Eastern States, and Jackson was herself active in the discussions and conferences which paved the way for the Dawes Act and the comprehensive program of converting reservations into freehold allotments and forcing the Indians to put their tribal ways behind them and become conventional farmers.³¹ Although not part of the body of historical studies emerging from the new university based scholars, Jackson's book did indicate the approach that was to become basic to some of the most influential of the academic studies when these began to appear – the view of the Indian as victim of white rapacity and dishonesty.

The history of white/Indian relations at the national level was the starting point for Indian historiography, simply because the official records of the Presidency and the Congress provided the kind of archival sources that the new type of historians were trained to dissect. Since there was no corresponding body of Indian documentary sources known to the early historians, there was little chance of an Indian perspective emerging, other than in the comments of Indian leaders recorded by whites involved in the negotiation of treaties or similar discussions. Until the second half of the twentieth century, few American historians had developed an interest in the internal structure of Native American societies, and many saw the Indian world only through the perspective of the advancing white frontier. Indian tribes were of interest only in the sense that they acted as a foil for the advance of white civilization, a complication added to the challenges presented by climate, distance, and terrain.

³⁰ Helen Hunt Jackson, *A Century of Dishonor: the Early Crusade for Indian Reform*, (New York, Harper Torchbooks, 1965, [1881]).

³¹ Ray Allen Billington, *Westward Expansion: a History of the American Frontier*, (New York, MacMillan, 1974, 4th edn., [1949], 581.

While there was some sympathy for the collapse of tribal societies and the poverty that followed, scholars had accepted the nineteenth century white consensus that the Indian way of life was incompatible with modernity, and would inevitably succumb to white pressure. In the early twentieth century, anthropologists began to investigate the social organization of individual tribes and to modify the traditional white view of the Indians as backward and ignorant, but these studies appear to have had little influence on the work of the small number of academic historians working on Indian issues at that time. It was not until the development of a radically different outlook within sections of the white élite after World War II that historians began to inspect the record of white treatment of the Indian minority in the national archives. Studies of the history of individual tribes as they came into contact with white settlers and Federal authorities began to emerge, and the need for detailed accounts of the trends in Federal policy became clear. Francis Paul Prucha's two-volume history *The Great Father: the United States Government and the American Indian* (1984)³² provided a comprehensive study of national policies over the long term, and Wilcomb E. Washburn's four-volume *The American Indian and the United States* (1973)³³ gave scholars a representative collection of treaties, legal decisions, Congressional proceedings, with brief analytical comments. Such studies reinforced the increasingly detailed tribal histories that had been appearing since the 1960s, as what had been a long neglected field developed into a significant component of the broadening narrative of United States history.

The history of the Cherokees, however, does provide an exception to this general pattern, in that it did attract attention rather earlier than in the case of other tribes. The Removal of the Five Civilized Tribes had long been an irritant in the national conscience, simply because those tribes did not fit the usual model of a violent and savage impediment to the orderly occupation of virgin land by white settlers. The injustice of what had happened attracted the sympathy of some observers long before the rising tide of academic interest in Indian history emerged in the mid-years of the twentieth century. As far back as the 1840s, the question of Indian

³² Francis Paul Prucha, *The Great Father: the United States Government and the American Indians*, (Lincoln, University of Nebraska Press, 1984, and abridged edn. 1986).

³³ Washburn, *The American Indian and the United States*, Vols.1-4

removal had generated vigorous debate in Congress and in the Northern press, and prominent Abolitionists had opposed the policy, even though the fact that some Cherokees were slave-owners did present difficulties for Northern reformers. The knowledge that John Marshall's Supreme Court had given support to the Cherokees in their efforts to resist removal made the actions of the Federal Government at the time open to criticism. The serious examination of both the impact of removal and the later distribution of Cherokee land began as an exercise in local history, notably with the extensive scholarly work of Grant Foreman in the 1930s. Foreman had moved to Oklahoma as a field worker for the Dawes Commission to the Five Tribes in 1899 and remained there for the rest of his career. Over the next half century he produced nineteen books on Indian history, including such seminal works as *Indian Removal* (1932)³⁴, *Advancing the Frontier* (1933)³⁵, and *The Five Civilized Tribes* (1934).³⁶ He was also a prolific contributor to the *Chronicles of Oklahoma* and was noted for his work in expanding the Oklahoma Historical Society Archives.³⁷

The major development of the period between the two World Wars, however, was the appearance in 1940 of Angie Debo's *And Still the Waters Run: the Betrayal of the Five Tribes*,³⁸ which provided a detailed account of the mistreatment of the Cherokees by white settlers, who were vigorously supported by the State of Georgia. Debo's white family had moved from Kansas into Cherokee territory when she was nine, and she grew up in the period when the Federal Government had voided the Five Tribes' Constitutions and quashed their tribal sovereignty. She had been commissioned to write the book by the University of Oklahoma in 1936, during the era when BIA Indian Commissioner John Collier was achieving some successes in improving the social and economic environment

³⁴ Grant Foreman, *Indian Removal: the Emigration of the Five Civilized Tribes of Indians*, (Norman, University of Oklahoma Press, 1932, Paperback 1953).

³⁵ Grant Foreman, *Advancing the Frontier, 1830-1860*, (Norman, University of Oklahoma Press, 1933).

³⁶ Grant Foreman, *The Five Civilized Tribes*, (Norman, University of Oklahoma Press, 1934, Third printing 1970).

³⁷ See Stanley Clark, "Grant Foreman", *Chronicles of Oklahoma*, Vol.31, No.3, 1953, 226-242, for an account of his life and a full bibliography of his published works, including forty-six articles in the journal.

³⁸ Angie Debo, *And Still the Waters Run: the Betrayal of the Five Civilized Tribes*, (Princeton NJ, Princeton University Press, 1940, [revised 1972]).

of the American Indians.³⁹ Initially her work was so sympathetic to the Five Tribes that the University declined to publish it, fearing that Oklahomans would react against such a criticism of the actions of an earlier generation of white settlers, that some individuals might take legal action, and that sponsors of the university might withdraw financial support. She was championed by Joseph Brandt, who had been Director of the Oklahoma University Press but had moved to Princeton University Press in 1938, and he had the book published in 1940. It was updated and reprinted several times, and later commentators such as Oliver LaFarge and Vine Deloria Jnr. have acknowledged its power and its influence on them. It was a seminal work which generated an emotional response and ensured that the Five Tribes would occupy a major position in the list of victims of white oppression. Her work is all the more meritorious for having predated the civil rights movement which triggered much of the late twentieth century interest in the treatment of minorities.

Both Debo and Foreman were extremely effective in setting out the details of the mistreatment of the Five Tribes and their work reinforced the new emphasis on the Indian as victims of white rapacity and deceit, and one that was picked up by Gloria Jahoda⁴⁰ in her 1976 study of the removals and given national prominence in the early 1970s by the success of Dee Brown's *Bury My Heart at Wounded Knee* which dealt – as Helen Hunt Jackson had done in *A Century of Dishonor* some ninety years earlier - with the treatment of Indian tribes across the nation.⁴¹ Despite the very different political and social contexts in which they were written, the two books provided emotional accounts of the history of contact between white Americans and the indigenous population of the United States, and they stand as benchmarks in the white critique of Indian policy over those nine decades.

³⁹ Collier was BIA Commissioner of Indian Affairs 1933-1945, and is regarded as the driving force behind the Indian Reorganization Act (1934) and the Oklahoma Indian Welfare Act (1936), the latter being passed prior to the completion of Debo's manuscript. Debo acknowledged Collier's assistance in the preparation of the book, in page xi of the Preface.

⁴⁰ Gloria Jahoda, *The Trail of Tears: the Story of the American Indian Removals, 1833-1835*, (London, Allen & Unwin, 1976).

⁴¹ Dee Brown, *Bury My Heart at Wounded Knee: an Indian History of the American West*, (London, Vintage, 1970); Helen Hunt Jackson, *A Century of Dishonor*.

Once the traumas associated with the removal of the Five Tribes had been spelled out and acknowledged by the work of Foreman and Debo in the late 1930s, academic interest shifted towards the persistence with which the tribal leadership argued for an acknowledgement of their tribal sovereignty, and their efforts to have the Federal Government include a reference to that notion of sovereignty in any treaties negotiated between them. The Cherokees were not unique amongst Indian tribes in pressing for a measure of autonomy, but they were unusual in that their leaders emulated white politicians as they pursued their claims through the United States' judicial system and through long-term lobbying in Washington, either to win concessions or to ward off further incursions on what they considered tribal rights. They believed these rights were due to them, based on the prior occupation of their territories, and on prior treaty commitments by the United States Government, and they used the claim of sovereignty as one of the few levers they could use to obtain concessions from the American government. The Cherokees insisted that they were entitled to manage their own lives, and their leaders were well-educated and understood the legal and political values on which the whites based their own claims to sovereignty. Both their actions and their arguments were easily understood by later academic historians because they fitted into the conceptual framework that operated in the white world, and it is no surprise that the literature emerging in the late twentieth century was often organized around the question of tribal sovereignty in its Cherokee context.

The most significant student of the sovereignty issue was William C. McLoughlin, who examined the efforts of the tribal leaders to adjust to the culture and institutions of the white colonists in his *The Cherokee Renaissance in the New Republic* (1986), efforts which, when added to similar moves in the adjoining Southeastern tribes, gained them a reputation among their white neighbors as civilized with a major communities.⁴² He followed this up with a major study of Cherokee sovereignty in *After the Trail of Tears: the Cherokee Struggle for Sovereignty, 1839-1880* (1993). McLoughlin gives valuable insights into the internal workings and finances of the Cherokee Nation as it rebuilt in the period between its forced

⁴² William G. McLoughlin, *Cherokee Renaissance in the New Republic*, (Princeton NJ, Princeton University Press, 1986).

relocation and its tragic involvement in the Civil War. He also examined the political split which developed within the Cherokee Nation between the mainly Cherokee-speaking traditionalist full blood Keetoowahs and the more progressive mixed bloods. It became a fact, moreover, that as the century progressed the full bloods, who were a majority of the Cherokees but generally lacked political influence within the Nation, gradually incorporated white customs as part of their process of acculturation, although less willingly than their mixed blood compatriots.

A recent study of the period during which the Cherokees made their most striking claim to sovereignty, and one which led directly to their removal from Georgia, has argued that it coincided with a very significant shift in thinking within the wider settler community, one that stemmed from changes within the legal approach to settler sovereignty shared by judges throughout the Anglophone diaspora. The older assumption that plural sovereignties could be tolerated within a territory controlled but not fully occupied by whites now gave way to a much more vigorous assertion of sole white control over territory, a view that was supported by the Courts. The peak of Cherokee assertiveness in the 1820s collided head on with an equally assertive view of white settler sovereignty, and drew a violent and determined response – the expulsion of a tribe that had proclaimed its autonomy at a very dangerous time.⁴³

That high level of adaptability did not provide the Cherokees with protection when an expanding white community decided it was time to expropriate their lands; by demonstrating the rich agricultural potential of their territory, they may have sharpened their white neighbors' appetite to acquire well-developed Cherokee farmland. McLoughlin closes his account at 1880, before the allotment process which curtailed the tribe so radically, arguing that increasing pressure from white settlers and railroad operators had so weakened the Cherokee Nation politically that the tribe's collapse was inevitable. There were significant developments in the period between 1880 and the final collapse of Cherokee sovereignty with the

⁴³ Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia*, (Cambridge, Mass., Harvard University Press, 2010).

establishment of the State of Oklahoma in 1907 which fall outside the scope of McLoughlin's study: the Dawes Allotment in Severalty Act of 1887, which led to the huge loss of land organized by the Dawes Commission to the Five Tribes in 1893, the census of 1896, the Curtis Act of 1898, the ambitious but abortive plan to create a separate State for Indian tribes, and the failed attempt of the Cherokee Nation to make even the slightest headway in its efforts to retain a measure of tribal sovereignty.

These events toward the end of the nineteenth century brought to a close what Andrew Denson has described as the articulation over a sustained period of "a Native American political literature, a decades-long Cherokee commentary on the Indian Question". In his *Demanding the Cherokee Nation: Indian Autonomy and American Culture, 1830-1900* (2004), Denson focuses on the content of the arguments in support of Cherokee sovereignty put by the delegates regularly sent to Washington to watch over the tribe's interests and to ward off unfavorable legislation or administrative decisions.⁴⁴ The Memorials they presented to Congress and the articles they contributed to newspapers, Denson argues, amount to a consistent and highly intelligent engagement with the legal, political, and moral issues caught up in the relationship between the Indian tribes and the United States. Their efforts could not deflect the increasing determination of Washington to settle the Indian Question once and for all by destroying the notion of tribal autonomy and forcing the incorporation of the tribes into the white political and economic system. The fact that over many decades the Cherokee representatives were able to use their education and their knowledge of white legal and political values to develop a coherent and principled case for tribal sovereignty marks them out as an unusual group within the wider Native American community in that era.

For other Native American communities, the only forum available to them was the U.S. Supreme Court, and David E. Wilkins has examined the ebb and flow of the debate over tribal sovereignty in his *American Indian Sovereignty and the U.S.*

⁴⁴ Andrew Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture 1830-1900*, (Lincoln, University of Nebraska Press, 2004).

Supreme Court (1997).⁴⁵ Drawing on sources such as Felix S. Cohen's *Handbook of Federal Indian Law* (1942, republished 1958)⁴⁶ and Charles J. Kappler's monumental *Indian Laws and Treaties*, Volumes II-VII (1997),⁴⁷ Wilkins has traced the white legal system's response to Indian claims to a measure of autonomy within the American political system, noting the increasing emphasis on the plenary power of Congress as the critical factor in deciding the status of Indian communities.

There may, however, have been other ways in which the Cherokee Nation tried to maintain its tribal identity over those difficult decades, and in recent years a small group of scholars has begun to probe a number of issues quite distinct from the question of treaty rights and the matters of political principle set out in Denson's account of the memorials and petitions to Congress – issues to do with race. The importance of the interaction between the full blood and mixed blood members of the tribe was obvious to the first generation of historians working on the operations of the Cherokee Nation, and the role of the mixed bloods in providing leadership and knowledge of the ways of the dominant white communities around them is a basic theme in most accounts of the struggle to maintain tribal sovereignty.⁴⁸ The fact that many of the Cherokee leaders had been educated in white schools and had often spent long periods living among the whites gave them an advantage when anything to do with acculturation contact with the white economy or white political institutions was concerned. So white/Cherokee racial intermixture is a familiar and uncontroversial aspect of Cherokee history in the nineteenth century.

⁴⁵ David Eugene Wilkins, *American Indian Sovereignty and the Supreme Court: the Masking of Justice*, (Austin, University of Texas Press, 2005 [1997]).

⁴⁶ Felix S. Cohen, *Handbook of Federal Indian Law*, (Albuquerque, University of New Mexico Press, 1958, [1942]).

⁴⁷ Charles J. Kappler, comp. and ed., *Indian Affairs: Laws and Treaties*, Vol.2., (Washington, Government Printing Office, 1904 [1997]), OSU Library Electronic Publishing Center, digital.library.okstate.edu/kappler/, 942-950.

⁴⁸ e.g. Circe Sturm, *Blood Politics*, 169, 171, 175-8; Fay A. Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century*, (Philadelphia, University of Pennsylvania Press, 2008), 7, 35, 41-2; Celia E. Naylor, *African Cherokees in Indian Territory: from Chattel to Citizens*, (Chapel Hill, University of North Carolina Press, 2008); Patrick Mingos, *Slavery in the Cherokee Nation: the Keetoowah Society and the Defining of a People*, (New York, Routledge, 2003); Rose Stremmlau, *Sustaining the Cherokee Family: Kinship and the Allotment of an Indigenous Nation*, (Chapel Hill, University of North Carolina Press, 2011).

The recent interest in the impact of a third racial group on the workings of Cherokee society in the nineteenth century raises important methodological questions relating to the recovery of information about the perceptions of members of the marginalized groups. In the case of most Indian communities, the absence of documentary evidence generated from within this group has made it difficult for conventional historical investigation to move beyond the level of the formulation and implementation of white government policy, and assessment of the outcomes of those policies according to white standards and values. The Indian perspective at the level of the individual remains obscured, and it is only when an élite leadership group expresses in white terms the aspiration of the group that conventional historical scholarship can get some indications of the external workings of the community itself. When sections of that community are also owners of other human beings, the task of recovering the perspective of that even less visible group becomes even more complex, and may have to be inferred from records such as marriage registers, as Yarbrough demonstrated,⁴⁹ and from the small body of oral history gathered by the WPA project in the 1930s, or from the reconstruction of the lives of the few families who have left some record of their life experience.

It is the second concern of this thesis, the intermingling of the three races, that has attracted the attention of investigators in recent years. McLoughlin, for example, in his *After the Trail of Tears*, dealt extensively with the tension that developed within the Cherokee community in the decades before the Civil War, as those of the mixed blood élite who owned slaves increasingly identified with their Southern white counterparts and pressed for the Cherokee Nation to align itself with the Confederacy as the United States descended into Civil War. He traced the rise of the Keetoowah Society in the 1850s as an attempt by the traditional full bloods to regain political control from the mixed bloods and prevent the alignment with the Confederacy, and sees this split along blood lines as undermining the campaign for tribal sovereignty. He was very aware of the long term importance of the slaves in bridging the gap in skills between the white and Cherokee communities in the early stages of acculturation, but his main concern was with the political implications of

⁴⁹ Yarbrough, *Race and the Cherokee Nation*, 80.

the existence of black slavery in Indian Territory during the great sectional crisis that developed after 1820, the period when the ‘Old Settlers’ had divided the tribe by moving West.⁵⁰ Racial issues, in this context, involved divisions within the Indian community itself, divisions linked to the proportion of Cherokee blood in individuals, with slavery as the focal point of conflict and an external irritant. What this approach did not test was the matter of racial mixture between Cherokee and African Americans, and the extent to which it may have occurred.

In recent decades, scholars have pointed to the extent to which the question of who could legitimately be a member of the Cherokee Nation created internal tensions and complicated the wider debate about sovereignty.⁵¹ The incidence of the degree of Cherokee blood is a major consideration, as it also gave rise to an internal racial hierarchy in the tribe. Many Cherokees married into the white community, and their mixed blood offspring provided the tribe with a bridge across the two societies and generated a group of potential leaders who understood the ways of both cultures and could negotiate successfully with the dominant society. To any white observer in the 1820s in Georgia and again in the 1850s in Indian Territory, the Cherokee Nation looked much like a conventional white agricultural community, with its family-operated farms producing crops and livestock, and its social relations controlled by elected representative institutions, and by Courts assisted by the first Indian mounted police force. The Cherokees and the other four Civilized Tribes – the Muskogean Creeks, Choctaws, Chickasaws and Seminoles - were seen at that time as unusual within the Native American world, having by their own volition moved further than any others along the path of acculturation, without relinquishing their claim to sovereignty based on the retention of elements of their own culture predating the arrival of the whites. The early strict adherence to the matrilineal Clan system, with the restrictions on selection of marital partners and the Indian simplified method of divorce, and also the Blood Law which would cause so much violence during the third and fourth decades of the century, were examples of their selective adherence to Indian cultural traditions.

⁵⁰ McLoughlin, *After the Trail of Tears*, 39.

⁵¹ Debo, *And Still the Waters Run*, 10-12; Carter, *The Dawes Commission*, 106-8, 115, 117, 121.

Theda Perdue pioneered this rich vein of racialism within Cherokee history as early as 1979 in her *Slavery and the Evolution of Cherokee Society 1540-1866*, (1979)⁵² and *Nations Remembered* (1980),⁵³ in which she examined the impact of Cherokee involvement in the plantation labor system of the neighboring South, and the complications this presented when the Civil War broke out in 1861. At that point the significant element within the Cherokee élite who owned African American slaves and were embedded in the cotton economy had to decide whether they should support their counterparts in the South and declare for the Confederacy. Some did so, and others supported the Union; a few aligned with both at different times as their circumstances changed. In the Treaty of 1866 imposed on the Cherokee Nation after the Union victory, the Federal Government acted as if the Cherokee had all been allied with the South and forced them to make concessions in relation to their lands in the Indian Territory and in relation to the freedmen, who were now to be given tribal citizenship.⁵⁴ This meant that the tribe had to a considerable extent lost its ability to decide who could be admitted to membership of the tribe, a substantial reduction in their tribal sovereignty.

Studies such as Perdue's and David L. Littlefield Jnr's *The Cherokee Freedmen: from Removal to Emancipation* (1979)⁵⁵ have indicated that there was a strong tradition of hostility to blacks long before the Civil War, and that the tribe had shown a clear preference for accepting white males who married Cherokee females, although they were not allowed to take senior positions in tribal politics and they could never become a Chief. Under the Constitution of 1824, on the other hand, blacks who married Cherokee females were to be given a severe flogging.⁵⁶

⁵² Theda Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866*, (Knoxville, University of Tennessee Press, 1979).

⁵³ Theda Perdue, *Nations Remembered: an Oral History of the Five Civilized Tribes*, (Westport Conn., Greenwood Press, 1980).

⁵⁴ Kappler, *Indian Affairs: Laws and Treaties*, Vol.2, Cherokee Reconstruction Treaty, Washington, July 1866: Article 9 (freedom and citizenship of Cherokee Nation, 944); Article 4 (right to return and live in Cherokee territory, 943).

⁵⁵ David L. Littlefield, *The Cherokee Freedmen: from Removal to Emancipation*, (Westport Conn., Greenwood Press, 1979).

⁵⁶ Fay Yarbrough, *Race and the Cherokee Nation*, 45.

In recent years there have been impressive attempts to explore at the individual level the implications of a racial structure rarely mentioned in the earlier literature, where the fact that a substantial section of the Cherokee community owned black slaves and used them to grow cotton and tobacco as part of the Southern economy did not seem noteworthy. Fay Yarbrough's *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (2008), which developed out of her research into gender and sexuality within indigenous American communities, by contrast argues that

the Cherokee Nation aligned itself more closely with whites by adopting a racial ideology that distinguished black from non-black rather than white from non-white ,[and that] Cherokees conceived of Indians as distinct from whites, and especially, blacks. Cherokees sought equality with whites but also continued to emphasize a separate identity. To avoid being stripped of all land and political rights and enslaved, Cherokees continually widened the gap between themselves and blacks.⁵⁷

During the period from 1866 to the formal end of the Cherokee Nation in the 1898 Curtis Act, the tribal leadership and the tribal courts did their best to counter the 1866 Treaty provision by making it as difficult as possible for African Americans to meet the specific tests for admission to the tribe, and there is little indication that the Federal authorities objected to the way blacks were being treated. The original restrictions which forbade African Americans from gaining power in the Cherokee Nation, in Article III, Section 5, of the 1839 tribal Constitution:

No person who is of negro or mulatto parentage, either by the father's or mother's side, shall be able to hold any office of profit, honor, or trust in this government,⁵⁸

were not written into the 1892 Constitution, the last before Statehood.⁵⁹ Nevertheless there was considerable discussion in the new State's legislature, largely instigated by Roy E. Stafford, the editor of the *Tulsa Daily Oklahoman*, beginning in the Constitution Convention and continuing into the young Statehood, about the need to incorporate rigid Jim Crow laws as amendments to the State

⁵⁷ Fay Yarbrough, *Race and the Cherokee Nation*, 125.

⁵⁸ *Constitution and Laws of the Cherokee Nation*, published by an Act of the National Council, Tahlequah, Parsons KA, Foley Printing co, 1892, 14.

⁵⁹ *Constitution and laws of the Cherokee Nation*, 14.

Constitution.⁶⁰ A typical example of his campaign was the front-page sub-headline, under Stafford's own by-line: "Negro must be made to know his place – he should have equal privileges, but entirely separate."⁶¹ The 'grandfather' clause was invoked to restrict eligibility of black voters, until invalidated by the U.S. Supreme Court in 1915 in the *Guinn v. United States* case, but restrictions such as residency qualification continued to be used to disenfranchise blacks.⁶²

The realization that beneath the level of white/Indian interaction that earlier historians had criticized for its exploitation of Indian political and military weakness and its assumption of white racial superiority, there existed a duplicate layer of similar racial assumptions within the Cherokee community itself has triggered a number of investigations. A number of scholars (Claudio Saunt, Patrick Mingos, Celia Naylor, Christina Snyder, Lauren L. Basson, Tiya Miles, and Circe Sturm⁶³) have turned to the collection of more than 2,300 interviews with former black slaves set up as part of the Works Progress Administration (WPA) of the 1930s for insights into how the racial assumptions of the Cherokees affected the lives of their black slaves.⁶⁴ The elderly freedmen's memories may have softened over the decades since 1866, but in the main the impression was given that slavery in Indian Territory was less consistently cruel

⁶⁰ C. Vann Woodward, *The Strange Career of Jim Crow*, (New York, Oxford University Press, 1974 [1957], 97.

⁶¹ *Daily Oklahoman*, September 13 1907, Vol.19, No.131.

⁶² David R. Morgan, *Oklahoma Politics and Policies: Governing the Sooner State: Politics and Government of the American States*, (Lincoln, University of Nebraska Press, 1991), 66-7, 71.

⁶³ Claudio Saunt, *Black, White and Indian: Race and the Unmaking of an American Family*, (New York, Oxford University Press, 2005); Patrick Mingos, *Black Indian Slave Narratives*, (Winston-Salem, John F. Blair, 2003), and *Far More Terrible for Women: Personal Accounts of Women in Slavery*, (Winston-Salem, John F. Blair, 2006); Celia E. Naylor, *African Cherokees in Indian Territory: from Chattel to Citizens*, (Chapel Hill, University of North Carolina Press, 2008); Lauren L. Basson, *White Enough to be American? Race Mixing, Indigenous People, and the Boundaries of State and Nation*, (Chapel Hill, University of North Carolina Press, 2008), Tiya Miles, *Ties That Bind: the Story of an Afro-Cherokee Family in Slavery and Freedom*, (Berkeley, University of California Press, 2005); Circe Sturm, *Blood Politics*, 2002.

⁶⁴ Collection entitled *Born in Slavery: Slave Narratives from the Federal Writers' Project 1936-38*, Microfilmed in 1941 (with 500 photographs) in seventeen volumes held in the Manuscripts and Prints and Photographs Division of the Library of Congress. The number represents only a small minority of those still living and accessible to the interviewers, who were mostly urban-based, but "are the largest body of first person narratives ever collected in the U.S.A." according to Patrick Mingos, *Far More Terrible for Women*, xv.

than in its Southern counterpart, although with some notably vindictive exceptions: the largest slave-holder in the Cherokee Nation James Vann and his white overseers were among the cruelest.⁶⁵ Slave overseers were rare, and often the poorer Indian slave-owners with fewer slaves worked alongside their chattels in their fields. There were frequent references to being considered part of the slave-owner's family, and Yarbrough reports that many asserted that they were of Indian descent and proud of it, possibly because they saw both blacks and Indians as victims of white discrimination. However, Yarbrough's careful examination of Cherokee marriage records to measure the extent of racial mixture over time suggests that unions between whites and Cherokees were preferred to those between blacks and Cherokees. She surveyed 1,672 marriages of Cherokee brides, which included 239 Cherokee and 1,376 white men, and only 13 colored.⁶⁶

The frequency of intermarriages between all racial groups within the Cherokee Nation has since come to mean that blood-quantum acceptance into the tribe may vary from full blood to as little as 1/2048 actual Cherokee blood. The traditional matrilineal heritage may not now have the same legal power, but Sturm noted that the first thing Cherokees still ask on meeting someone is "Who's your Mother?", a question which also establishes which Clan, which still carries some importance, particularly for Keetoowah full bloods.⁶⁷ She noted that registered Cherokees have frequently regarded themselves since the Allotment and Statehood period as tri- nationals, citizens of the United States, the individual States, and the Cherokee Nation, but in many cases they esteem the third level, the membership/citizenship within the Cherokee Nation to hold the primary importance.

Yarbrough pointed out "the Cherokees' ability to regulate marriage, especially inter-racial marriage, serves as a demonstration of sovereignty."⁶⁸ Court records in the decades following the Civil War indicate that restrictions

⁶⁵ Miles, *Ties That Bind*, 41.

⁶⁶ Yarbrough, *Race and the Cherokee Nation*, 80.

⁶⁷ Sturm, *Blood Politics*, 28.

⁶⁸ Yarbrough, *Race and the Cherokee Nation*, 12.

such as the denial of citizenship to the descendants of Cherokee-black marriages, and the refusal to allow blacks to hold political office within the tribe, were written into the Cherokee Constitutions. It is possible that as the Northern opinion became less concerned about the fate of the former freedmen in the Southern states in the decades after the Reconstruction in 1876, and the Southern élite tightened their control over the freedmen in their midst, the Cherokee leadership took its cues from what was happening across their borders and made access to tribal citizenship more difficult for blacks.

It may be that historians who have stressed the harshness of the Federal Government's policy of refusing to accept its treaty obligations to preserve the status of the Cherokee Nation as a body secure in the possession of its lands and enjoying a degree of autonomy within its borders similar to that enjoyed by individual States within the Union, have not recognized the complexity of the Cherokee position. Their claim to tribal sovereignty carried within it a hidden agenda, one that was expressed not in the public elaboration of their claim, but emerges from the way in which they conducted the internal affairs of the tribe. The identity they wanted to preserve was Cherokee with a white orientation, and without a black component.

It was not an identity antagonistic to white culture, for their mixed blood white-Cherokee élite had always aspired to parity of esteem with the white world. As a group located outside the Union and not subject to the process of incorporation available to white communities in Federal Territories, they needed to obtain a political settlement which would enable them to survive as a cultural entity and retain control over their lands and their economy. They did not want to be reduced to the inferior status of the black community, and they had little interest in what happened to blacks. By 1907, the year the State of Oklahoma was created, the Cherokees' hope that they would be able to enter the white world on at least some of their own terms had disappeared.

Chapter One

Relocation Into Indian Territory

The forced transfer of the majority of the Cherokee tribe from Georgia to Indian Territory in 1836-9 with the loss of some 4,000 lives was a major tragedy and a demonstration of just how powerless the tribe was when confronted by the armed forces of both the Federal Government and the ruthless State of Georgia. However, the fact that in their new location they would be outside the territory of any existing State and would be dealing only with the Federal Government did give them the opportunity to retrieve at least some of the autonomy they had exercised in Georgia, despite the hostility of that State Government. Under the terms of the treaties of 1828 and 1835, they were to receive compensation for the land and improvements they had owned in Georgia and its contiguous States, grants to cover their relocation, and for specific purposes such as education and the care of orphans, and some limited Federal Government assistance in setting up their new domain. Although it would take time to reconstruct the economy and the institutions the Cherokees had built over several decades in Georgia, they had the benefit of experienced mixed blood leaders, and for the 10% of the tribe who owned slaves, the task of rebuilding their former plantation economy was less demanding.

The 1791 Treaty of Holston had given the Cherokees assurance that they would retain their territory in the Southeast, and the treaty also included an agreement that the U.S. Government would assist the advance of the Cherokees by supplying them with an annuity for tools and technical advice, although less than the Cherokees thought they deserved.⁶⁹ Jefferson had virtually overturned that Treaty in 1802 with the Georgia Compact, when in negotiations with the State of Georgia for the purchase of land in the Western half of the State to enable the creation of new Federal Territories, he agreed to pay \$1.25 million for

⁶⁹ F.P. Prucha, *American Indian Treaties: the History of a Political Anomaly*, (Berkeley, University of California Press, 1994), 86-8, 159.

the land and undertook to remove the Indians and extinguish their titles "...as soon as the same can be peaceably obtained, on reasonable terms."⁷⁰ The Federal authorities failed to follow up the terms of the Compact in relation to Indian removal, and Georgia had to wait until the 1830s for any major action on the matter. The Cherokees were on notice that they were likely to be relocated, and this would have come as no surprise; as far back as the 1780s, when the founders of the new republic were organizing its territorial framework,

boundaries for the States of Georgia, South Carolina and Virginia were drawn through Cherokee territory as if the tribe did not exist. Later boundaries for the new States of Kentucky, Tennessee and Alabama likewise included Cherokee lands, despite the fact that the Federal Government and the States had already recognized by various Treaties the sovereignty of the tribe.⁷¹

The traumas caused by the wholesale relocations of the Five Civilized Tribes from the Southeast in the late 1830s have been well documented. Less familiar are the experiences of groups of Cherokees who had moved out of Georgia well before the enforced main removal, and it were these experiences that were to determine the location of the Cherokees within Indian Territory when the main body arrived in 1838. As far back as 1794 the first group of Cherokees under their leader the Chickamauga Chief Bowles, known as The Bowl, fled to the valley of the St. Francis River in Southeastern Missouri, in fear of losing their homes, or even their lives, after being accused of organizing the Mussel Shoals Massacre, an altercation between Cherokees and a group of white boatmen entailing loss of lives on both sides. The first major group, of two thousand Cherokees, emigrated to join Bowl in New Madrid in Missouri in 1808, and remained there until a series of massive earthquakes began to occur in December 1811, powerful enough to cause even the Mississippi to realign and reverse its flow in some places.⁷² Thousands of aftershocks continued right through 1812,

⁷⁰ The 'Compact of 1802' in American State Papers, 7th Congress, 1st Session, April 26 1802, 125-6; Public Lands, Vol. II, "The Articles of Agreement and Cession", Article I, Sections 3 and 4, April 24 1802, 113-4.

⁷¹ Charles Russell Logan, *The Promised Land: the Cherokees, Arkansas and Removal 1794-1839*, (Little Rock, Arkansas Historic Preservation Program), 5.

⁷² S.E. Hough, "Cataloging the 1811-1812 New Madrid, central U.S., Earthquake Sequence", *Seismological Research Letters*, Vol.80, No.6, 2009, 1045-1053; U.S. Geological Survey Report, '1811-1812 Earthquakes in the New Madrid Seismic Zone' deduced that the three main quakes (within seven weeks) were between magnitude 7.2 to 8.1, much larger than the 1906 San Francisco event, but they caused only minimal loss of life as the area was still sparsely populated, even in St.

until the group became convinced that the Great Spirit was displeased with them, and they relocated again.⁷³

The party had split earlier in 1809, when Chiefs Tahloneeskee and Doublehead contravened Cherokee law by selling 10 million acres of their land to the U.S. -Government, and the pair escaped their promised execution by moving with about 300 supporters into the Arkansas/White Rivers area of Arkansas. The Bowl's group followed them there after the earthquakes, and remained there until most decided to move south into a Caddo-occupied section of Texas in 1819. Chief Bowl's group remained in Texas until 1828, when the U.S. Secretary of War James Barbour signed a treaty in Washington in which these Western Cherokees agreed to surrender to the encroachment by whites, and move into a section of Indian Territory known as the Outlet, which extended from the 95th to the 100th Meridian (the eastern beginning of the Panhandle), which at that time was regarded as the western boundary of the United States.⁷⁴ In retrospect, the terms of that treaty for the early Cherokee settlers seem very reasonable. Article II of the 1828 Treaty with the Western Cherokees stated

The United States agree to possess the Cherokees and to guarantee it to them forever, and that guarantee is solemnly pledged of seven million acres of land, [a full description of the geographical location followed, and concluded with:] In addition ... the United States further guarantee to the Cherokee Nation a perpetual outlet, West, and a free and unmolested use of all the Country lying West of the sovereignty of the United States, and their right of soil extend.⁷⁵

The traditional Cherokee view of the tragedy of the Cherokee Nation's main Removal of 1835-39 sees Andrew Jackson as the chief culprit, and while it is true that he supported the Removal Act of 1830, he was out of office by the time the forced transfer took place. Nor was he alone in advocating that white

Louis, the largest city in the Mississippi Valley. Also referred to in Robert J. Conley, *The Cherokee Nation: a History*, (Albuquerque, University of New Mexico Press, 2005), 78.

⁷³ Agent to the Cherokees R.J. Meigs' described the Indians' account of the 'Great Spirit's anger' in his memorandum of March 19 1812, National Archives Microfilm record 75, roll M-208, quoted in William McLoughlin, *The Cherokee Ghost Dance*, (Macon, Mercer University Press, 1984), Appendix F, 148..

⁷⁴ In April 1961 the U.S. Claims Commission, Docket No. 173-A, awarded the Cherokee Nation almost fifteen million dollars for the insufficient compensation they had received in the nineteenth century for two million acres in the Cherokee Outlet.

⁷⁵ Charles J. Kappler, *Indian Affairs, Laws, and Treaties*, Vol.2, *Government Treaties with Native Americans, 1788-1883*, (Washington, U.S. Government Printing Office, 1903-4), 188-9.

settlement take priority over Indian occupancy; since the early years of the new republic, the authorities in Washington and leaders of white opinion had argued that Indian title should not stand in the way of white settlement, and that the primitive life-style and religious beliefs of the Indians would in time give way to the norms of white civilization. Thomas Jefferson, for example, advocated a policy of helping the Indian to adapt to the white man's ways, including his agriculture and religion; but if the opportunities were not accepted he was determined that the Indians should be evicted. Jefferson's approach was particularly strengthened by his Agent to the Cherokees, Colonel Return J. Meigs.⁷⁶ Unless actual warfare had taken place, Indian lands were to be acquired by negotiation and some form of compensation, but the Indians could not expect to remain hunters and gatherers for all time. To many who were sympathetic to the problems of the Indians when they were in extended contact with whites, the ideal solution seemed to be the transfer of Indian communities into areas beyond the reach of white traders and whiskey vendors, so that they could be educated and converted to Christianity by white missionaries. In 1803, a vast area that appeared ideal for that purpose suddenly became available.

The area that would become known as Indian Territory and ultimately the State of Oklahoma was a small section of the Louisiana Purchase, which at one stroke had virtually doubled the area of the United States. It was a highly speculative venture, in that very few Americans knew anything about its resources or its peoples. Jefferson's decision to send Lewis and Clark to explore the vast area Northwest of St. Louis as far as the Pacific Coast in what proved to be a two-year reconnaissance was an attempt to evaluate the resources of the region and its inhabitants. Their reports of friendly Indians, and rivers teeming with beaver, sent trappers up the Mississippi in considerable numbers and led to an expanded fur trade based on St. Louis. They were less sanguine about the land to the South of their route, and other less successful explorations of the area to the West and Southwest of St. Louis reported that the Plains were too dry and

⁷⁶ William G. McLoughlin, *The Cherokee Ghost Dance*, (Macon, Mercer University Press, 1984), 73, 94, 98, 155-6, 178.

bereft of timber to be suitable for European-style agriculture. Zebulon Pike reported in 1806 that the central Plains would be virtually the limit of white population spread, suggesting that

Our citizens being so prone to rambling and extending themselves on the frontiers will through necessity, be constrained to limit their extent on the West to the borders of the Missouri and the Mississippi, while they leave the prairies incapable of cultivation to the wandering and uncivilized aborigines of the country.⁷⁷

Most telling of all was the report from Major Stephen Long of his second expedition to Colorado in 1820, when he labelled his map of the area as ‘the Great American Desert’, a description that caught the American imagination and remained in vogue for some time.⁷⁸ The expedition geographer Edwin James reported the region was

almost wholly unfit for cultivation, and of course uninhabitable by people depending on agriculture for their subsistence; the scarcity of wood and water will prove an insuperable obstacle in the way of settling...the country.⁷⁹

Even as late as 1845 Daniel Webster referred to it as the Great American Desert, insisting that the “country could have no possible use for the whole region westward to the Pacific.”⁸⁰ The area therefore seemed to be only of value to the hunting and gathering activities of the nomadic indigenes, yet white leaders had no difficulty in suggesting that at some point in the future, Indian communities in the Eastern half of the continent could be transferred there, even though some of them had adopted European agricultural methods and the lifestyle that went with them.

Despite the threat posed by the terms of the Georgia Compact, the Cherokees were not immediately affected by the threat of relocation posed by the availability of sites west of the Mississippi, but they did continue to lose some of their traditional lands in the Southeast. Jefferson’s successor James Madison agreed with the broad plan for Indian Removal, and took the opportunity to acquire major land-holdings from the Indians after the decisive victory by

⁷⁷ Chester Whitney Wright, *Economic History of the United States*, Vol. III, (New York, McGraw-Hill, 1949), 265.

⁷⁸ Billington, *Westward Expansion*, 396.

⁷⁹ D.W. Meinig, *The Shaping of America: a Geographical Perspective on 500 Years of History*, Vol.3, (New Haven, Yale University Press, 1993), 76.

⁸⁰ Wright, *Economic History of the United States*, 265.

General Andrew Jackson which ended the Red Stick War. He had defeated the Creeks in the Battle of Horseshoe Bend on the Tallapoosa River on March 27 1814, culminating in the largest slaughter of Indians by U.S. troops, when Jackson's force lost 47 men but killed 557 Creeks in the Peninsula, and an estimated 800 died in the river.⁸¹ Some of his military success in the Red Sticks War was owed to the Cherokees, whose inter-tribal rivalry had aligned them with Jackson's army against the Creeks, and he was only able to win the crucial battle because of the Cherokees' decisive contribution. He would be further indebted to them after the battle, when Cherokee Chief Junaluska personally saved Jackson's life, foiling an attempt by a Creek prisoner-of-war to murder him in his tent. To punish the Creeks for their revolt, and to recompense the American Government for the cost of the war, Jackson stripped them of 23 million acres of their land, including 14 million acres in Georgia, which virtually cleared that State of all Creeks.⁸² The Cherokees, much of whose area adjoined the Creek territory, as defined in the Treaty, could not have failed to take notice of this clearance, and their fears were increased as demand for Cherokee removal accelerated. The Cherokee leaders appealed to Congress to reject the relocation provisions of the Treaty, but without success. Madison introduced homestead legislation for cheap and even free land for whites in the areas to be vacated. Two thousand of the Creeks had fled to join their Muskogean kinsmen, the Seminoles in Florida. Also, despite Jackson's double debt to the Cherokees he contrived to take away more than a million acres from them as part of the same Treaty of Fort Jackson, August 9 1814.

However, not all the Federal officials treated the Indians harshly. Thomas L. McKenney, for example, as the Superintendent of Indian Trade under both Madison and Monroe from 1816 to 1822, advocated a policy of civilizing and converting the Indians, and worked hard to have it accepted by government.⁸³ The process of removal began in earnest when Monroe's Secretary of War John C. Calhoun, described by McLoughlin as "often considered the major architect of the new

⁸¹ Reginald Horsman, *The Causes of the War of 1812*, (Philadelphia, University of Pennsylvania Press, 1962), 224-5.

⁸² Treaty of Fort Jackson, August 9 1814, Article I, in Washburn, *The American Indian and the United States*, Vol.4, 2349.

⁸³ Francis P. Prucha, *The Great Father: the United States Government and the American Indians*, (Lincoln, University of Nebraska Press, 1984, and abridged edn.1986), 148.

federal Indian policy of removal”,⁸⁴ proposed that 14,000 Indians in the Old Northwest should be moved to either the headwaters of the Mississippi in Wisconsin or beyond, or even into the Plains area west of the Missouri River. Calhoun also advocated moving the 79,000 Southern Indians to the area between the 95th. Meridian and the Great American Desert further west.⁸⁵ He underestimated the degree of civilization the Southeastern Indians had already achieved, believing they would be induced to move with no more than \$30,000 worth of trinkets or annuities, and on January 27 1825 Congress endorsed this plan.⁸⁶ The Indians were unwilling to cooperate with this upheaval, and it would take several years and considerable increases in the level of financial compensation before the main Removals finally occurred during Van Buren’s administration. John Quincy Adams was the only President in the early nineteenth century who was both a confirmed opponent of slavery and was also sympathetic to the Indians.⁸⁷ He still approved of their relocation in the West, but wanted it done in accordance with the existing treaties where applicable, and by fairly purchasing the Indian lands rather than by compulsory acquisition.

Removal of the Cherokees became principally a campaign by the State of Georgia, which was not wholly supported by the U.S. Government, although Jackson, acting as agent for President Monroe, forced the Cherokee Treaty on the unwilling tribe in 1817. The Cherokee leaders appealed to Congress to reject the relocation provisions of the Treaty, but without success.

Brothers: we wish to remain on our land, and hold it fast. We appeal to our Father the President of the United States to do us justice. We are now distressed with the alternative proposal to remove from this country to the Arkansas, or stay and become citizens of the United States. We are not yet civilized enough to become citizens of the United States; nor do we wish to be compelled to move to a country so much against our inclination and will...return to the same savage state of life we were in before the United States...brought us out of a savage state into a state similar to theirs.⁸⁸

⁸⁴ McLoughlin, *The Cherokee Ghost Dance*, 274.

⁸⁵ Billington, *Westward Expansion*, 396.

⁸⁶ *Ibid*, 396.

⁸⁷ Adams represented the Africans who had taken over the Spanish slave ship *Amistad* in 1839, and won their release in the Supreme Court.

⁸⁸ Cherokee Indian Treaty, July 8 1817, printed in full in Washburn, *The American Indian and the United States*, Vol.2, 2353-2359.

Nevertheless, Federal power was being turned against the now beleaguered Cherokees remaining in the Southeast. Andrew Jackson's presidential election campaigns in 1824 and 1828 had stressed his successful history as an Indian-fighter, and made Indian Removal a major part of his policy.⁸⁹ Jackson's Secretary of War Lewis Cass shared his President's belief that the white man's progress should be unhindered and should override any rights of the Indians, no matter how 'civilized' they were. Jackson's first Annual Message on December 8 1829 outlined the case for Indian Removal:

This emigration should be voluntary for it would be cruel and unjust to compel the aborigines to abandon their graves of their fathers and seek a home in a distant land. But they should be distinctly informed that if they remain within the limits of the States they must be subject to their laws. In return for their obedience as individuals they will no doubt be protected in the enjoyment of those possessions which they have improved by their industry.⁹⁰

His first major action as President was to press for the Indian Removal Bill of 1830, which would eventually result in 45,000 Indians being relocated from the Southeast to the newly-designated Indian Territory west of the Mississippi. Jackson refused to acknowledge the Indian claim to tribal sovereignty, and although he did appreciate the inconsistency of signing Treaties with them, he continued to do so. During his eight years in office more than seventy treaties were signed and ratified. He purchased 100 million acres of long-held Indian land for \$68 million, plus 32 million acres in Indian Territory. His second Annual Message on December 6 1830 again stressed his belief that removal would be beneficial to the Indians:

It gives me pleasure to announce to Congress that the benevolent policy of the Government, steadily pursued for nearly thirty years, in relation to the removal of the Indians beyond the white settlements, is approaching a happy consummation.⁹¹

Such sentiments were often repeated throughout Jackson's Presidency, with several paragraphs being devoted to removal in seven of his eight Annual Addresses

⁸⁹ Robert V. Remini, *Andrew Jackson: the Course of American Freedom 1822-1832*, Vol.2, (New York, Harper & Row, 1981), 117, 200-1, 221-2.

⁹⁰ Andrew Jackson, First Annual Message, December 8 1829, in Julius W. Muller, ed., *Presidential Messages and State Papers*, (New York, The Review of Reviews Company, 1917), Vol.3, 918.

⁹¹ Muller, *Presidential Messages*, 961.

to Congress. It has been claimed that the Jackson/Cass approach to the Indian Question “was one of the earliest policies to give greater ideological and structural coherence to the emerging Democratic Party”.⁹²

The Southeastern Indians were for the most part unwilling to vacate their traditional homes, and initially the wheels of Indian Removal were slow in turning. The catalysts for the exodus of the Cherokees were the gold rush at Dahlonega in Georgia’s Lumpkin County in 1828-29, which led to the Cherokee lands being swamped by an invasion of four thousand white miners by June 1830,⁹³ and then President Jackson’s successful pressure on Congress to pass the Indian Removal Bill of 1830. In 1830-1 the Georgia Government held a Gold Lottery, which awarded Cherokee-owned land, even if improved and lived on, to miners in forty-acre lots.⁹⁴ At the height of the gold rush period there were estimated to be 15,000 miners in the Cherokee area; all were white, as Georgia State law made it illegal for Cherokees to prospect even on their own land.⁹⁵

The main proponent of the Indian Removal Bill within Congress was Wilson Lumpkin, a Georgia Democrat and member of the House Committee on Indian Affairs, who would later become the Governor of Georgia. He argued that removal into their own area would be the most beneficial course for the Indians. He quoted to the house a large extract from Jackson’s First Inaugural Address, in which the President had claimed to be concerned with the best interests of the Indian tribes, but also showed how strongly he felt on the subject of Indian Relocation across the Mississippi, and the importance which he attributed to passing the Removal Bill.

I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limits of any State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designated for its own use.

⁹² Remini, *Andrew Jackson*, 265, and Richard B. Latner, *The Presidency of Andrew Jackson: White House Politics, 1829-1837*, (Athens GA, University of Georgia Press, 1979), 97.

⁹³ David Williams, *The Georgia Gold Rush: Twenty-Niners, Cherokees, and Gold Fever*, (Columbia, University of South Carolina Press, 1993), 23, 25, 108.

⁹⁴ *Ibid*, 4, 47-8, 56-57.

⁹⁵ *Ibid*, 18, 97.

There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes.⁹⁶

These words should have had a significant bearing on the subsequent history of the Indian Territory, since they recommended that the Indians possess their new lands ‘until the rivers run’, and conceded a limited degree of sovereignty to each tribe within its own area. There was to be a sting in the tail, however, as Lumpkin’s quote from Jackson’s same speech included the stipulation that the move would be voluntary, but if not carried out the Indians must obey States Laws.

The Indian Removal Bill provoked an angry and intense debate in the House, with New York Anti-Jacksonian Henry Storrs speaking at great length in leading the group sympathetic to the Indians, aided by lobbying support from the Quakers and the mixed blood Cherokee missionary Jeremiah Evarts, who had been sent to Washington on behalf of the American Board of Commissioners of Foreign Missions, of which he was Treasurer.⁹⁷ Storrs referred to the long list of Treaties with the Cherokees, which the Congress should continue to honor. He pointed out that the Bill recommended that the Eastern Indians should voluntarily emigrate across the Mississippi with the aid of Federal Government compensation, but that the Cherokees had repeatedly stated that they wanted to remain in their present homelands in the Southeastern States. This, he also noted, was despite the state of lawlessness and disruption in the Cherokee lands due to the sudden influx of white gold miners.⁹⁸ The Bill did not require the forcible ejection of any tribe, but did infer that existing Treaties would no longer be honored, and payment of federal annuities would stop if a tribe refused to move. The tribes were to be compensated from funds that Jackson had asked Congress to provide. The controversy over the Bill lasted for four

⁹⁶ President Jackson’s First Annual Message to Congress, in James D. Richardson ed., *A Compilation of the Messages and Papers of the Presidents 1789-1897*, Vol.2, (New York, Bureau of National Literature Inc.,1897), 442-462.

⁹⁷ McLoughlin, *Cherokees and Missionaries 1789-1839*, (New Haven, Yale University Press, 1984), 116.

⁹⁸ Williams, *The Georgia Gold Rush*, 25-27.

months, until finally it was passed by the slim margin of 102 to 97 on May 19 1830.⁹⁹

Several small tribes, including the Potawatomies, Miamis and Kickapoos voluntarily moved west because of ill-treatment by whites. In theory the policy was directed at about seventy tribes of Eastern Indians, but in actual fact the House discussion mainly centered on the Five Civilized Tribes, and the Cherokees-versus-Georgia conflict was the case most frequently cited in the debates. As the Cherokees were the most successful of the tribes, they were singled out as they owned over six million acres of well-developed farmland and timber, mainly in Georgia.¹⁰⁰ McLoughlin noted that

The Cherokees tried to demonstrate to the average white citizen that...Jackson was in fact subverting the United States' Constitution by upholding States' rights over treaty rights, the supreme law of the land.¹⁰¹

Most of the clauses in the Act were directions to the President to take specific actions; Section 3, for example, dealt with the question of tenure:

It shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange [of territories] is made, that the United States will forever secure and guaranty to them, and their heirs and successors, the country so exchanged with them.¹⁰²

Section 7 further provided that

Nothing in this Act contained shall be construed as authorizing or directing the violation of any existing treaties between the United States and any of the Indian Tribes.¹⁰³

Before the large-scale removal of the Five Tribes could be carried out, the existing Indian tribes laying claim to the areas had to be coerced to move further west to make room for the incoming Southeastern tribes, a process which also created further conflicts with their more warlike neighbors on the Western Plains. Over the next fifteen years the eviction of both the Northern and Southern tribes

⁹⁹ Gales and Seaton's *Register of Debates in Congress*: 21st Congress, 1st session, Vol.6, May 14 1830, 988 and 993-4; May 15-19 1830, 994-1133.

¹⁰⁰ McLoughlin, *Cherokee Renascence in the New Republic*, 245.

¹⁰¹ *Ibid*, 429.

¹⁰² Washburn, *The American Indian and the United States*, Vol.2, 1123

¹⁰³ *Ibid*, Vol.2, 1123.

from their traditional homelands was carried through by whatever means produced results – persuasion, corruption, or direct physical force.

While it is undoubtedly true that much of the history of White/Indian relations ranges from the insensitive to the genocidal, it is a mistake to think of Indians as invariably victims. That is a sweeping generalization which arises from the assumption that all Native Americans shared the same experiences. There are great differences among the five hundred Indian Nations, which had evolved in widely divergent geographic, climatic, historical and also of cultural environments. Even the so-called Five Civilized Tribes of Oklahoma were not the one homogenous group that their collective title would seem to imply. They took pride in their tribal distinctiveness, even as they continued to strive for some semblance of sovereignty in their separate Nations.

No Indian Nation disproves the ‘Indians-as-Victims’ characterization more than the Cherokees. They appear to have maintained some control over the process of assimilation in the early nineteenth century, but not all the political choices made by their leaders succeeded in benefiting the Tribe as a whole. The Cherokees may have been well-equipped to make their own decisions and choices as they adjusted to the pressures placed on them by an expanding white society. It is possible that the tragic ‘Trail of Tears’ could have been avoided, or at least had its hardships and appalling death-toll of four thousand minimized. Had the whole Tribe accepted the Treaty as a *fait accompli*, however unpleasant, they could have made the arduous journey in far more advantageous conditions. The first Treaty-Party emigrants moved west with their house contents, plentiful livestock, their slaves, and millions of government dollars invested on their behalf in bonds.¹⁰⁴ However, the Treaty was opposed by the majority of the tribe, who agreed with Chief John Ross’s refusal to relocate. Ross presented a petition to Congress of 15,665 members of the tribe declaring the Treaty contrary to the Cherokee Constitution; the number appears to be improbable, as the Cherokee Nation at that time totaled about 16,000, which of course included non-voting

¹⁰⁴ Grace Steele Woodward, *The Cherokees*, 1.

women and children. Nevertheless, his supporters considerably outnumbered the twenty signatories of the Treaty, but the damage had been done.

It would not be until the opportunity created by the signing of the minority faction of the tribe in the Treaty of New Echota that the Federal Government felt compelled to take action against the Cherokee Nation. In 1835 President Jackson appointed the Reverend John Schermerhorn from New York and Governor William Carroll of Nashville, Tennessee, as Special Commissioners to negotiate with the Cherokees on behalf of the head of the BIA, Commissioner of Indian Affairs Judge Elbert Herring. The latter's Report, written only one month before the fateful New Echota Treaty, was in total agreement with Jackson's policy.

There has been no intermission of exertion to induce the removal of the Cherokees to the west of the Mississippi, in conformity with the policy adopted by the Government in favor of the Indians, and to which they form almost the sole exception.¹⁰⁵

In the same report he made it clear that resistance would not be tolerated once an agreement to relocate had been signed; for example:

Indications of a contumacious and hostile spirit on the part of the Seminoles excited apprehension that they meditated resistance to the fulfilment of their late Treaty, and their removal could not be effected without compulsion.¹⁰⁶

Schermerhorn and Carroll were instructed to expedite the removal of the Cherokees and Chickasaws beyond the Mississippi, as required by the Act of 1830. Schermerhorn called a meeting of the Cherokee National Council, but Chief John Ross quite correctly advised him that he had no right to convene such a meeting. Nevertheless, the Council was held, attended almost exclusively by the Ridge family group and their pro-Removal supporters, as Ross had instructed the majority of the Tribe that the meeting had no validity and they should all boycott it. As it turned out, Ross's strategy of withdrawing almost all the anti-Removal voting power proved to be a mistake with tragic consequences. Major Ridge's small and unrepresentative group went ahead and signed the Treaty of New Echota on December 29 1835. Those involved were mixed blood middle class Cherokees,

¹⁰⁵ Grace Woodward, *The Cherokees*, 29.

¹⁰⁶ *Ibid*, 29.

including Major Ridge's son John and his nephews, the white-educated mixed blood Elias Boudinot¹⁰⁷ and his brother Stand Watie, a lawyer who was Clerk of the Cherokee Court. Boudinot was editor of the tribe's Cherokee/English newspaper the *Cherokee Phoenix*,¹⁰⁸ and had campaigned in its columns against Jackson's Removal policy. Ridge's restricted and unrepresentative group had been bitterly opposed to any sale of Cherokee land, but saw that removal was an increasingly likely occurrence and they signed the Treaty in order to ensure the tribe relocated under the best terms and in the most comfortable conditions.

The underlying cause of their discontent which caused the change of policy by the Treaty Party was the frustration that had grown out of three centuries of mistreatment and the expropriation of Indian land by the whites. It had been a consistent pattern ever since the Tribe's first concession of land in the 1721 Cherokee Treaty with the Governor of the Carolinas. The signatories to the New Echota Treaty were alert and far-seeing enough to realize that the spread of white Americans into their Georgian territory, particularly with the overhanging threat of the Indian Removal Bill, would surely increase. There was also the problem of Jefferson's Georgia Compact of 1802, which still remained in force, and which included a provision that the Cherokees would be removed once terms had been agreed upon; it would make their westward Removal assured at some point in the future

It could be argued that the Treaty Party did in fact represent the Council, as Chief John Ross had instructed the main body of the tribe to boycott the meeting, and only the Ridge group attended. Article 2, Section 7 of the 1827 Cherokee

¹⁰⁷ Kenny A. Franks, *Stand Watie and the Agony of the Cherokee Nation*, (Memphis, Memphis State University Press, 1979), 4; also Edward Everett Dale and Gaston Little, *The Cherokee Cavaliers: Forty Years of Cherokee History as told in the Correspondence of the Ridge-Watie-Boudinot Family*, (Norman, University of Oklahoma Press, 1939, [3rd Printing 1969]), xvii. Buck Watie, and his cousin John Ridge, had been sponsored as pupils of the American Board of Missions School in Cornwall, Connecticut, by the founder of the American Bible Society, Elias Boudinot. Watie had adopted his benefactor's name, but to avoid confusion he frequently spelled his name as Boudinott; it appeared in that form on many mast-heads of *The Cherokee Phoenix*.

¹⁰⁸ All the mastheads of the early editions of the newspaper spelled *Phœnix* with the Greek ligature, and this thesis follows the original style; modern editions of the paper now use the American separated style.

Constitution did not specifically enumerate a quorum, merely providing that “a majority of each House shall constitute a quorum to do business”, and the Treaty Party formed the whole Council present on that occasion.¹⁰⁹ Chief Ross attempted to have the Treaty voided by presenting his petition to Congress, declaring the treaty to be contrary to the Cherokee Constitution.

The Treaty of New Echota in 1835 was the single most divisive action that split the Cherokee Nation asunder, and was to be the cause of much subsequent strife and grief, despite being conceived with such good intentions, admittedly only by a small minority of the tribe. The problems engendered by the Treaty split the Cherokee Nation politically, led to a spate of murders in Indian Territory justified as being legal executions with the backing of Clan law, and led to division of the Nation into supporters of both sides of the Civil War; it has had repercussions still not resolved in the twenty-first century. Ostensibly the Treaty was the most visible result of the struggle for power among the Cherokee Nation’s leaders, but in reality it was an effect caused by the inexorable advance of white settlers in the Southeast.

Despite some formidable opposition, notably from Henry Clay, Daniel Webster, and ex-President John Quincy Adams (who castigated the Treaty as “an eternal disgrace upon the country” in the House of Representatives), the Treaty was ratified in the Senate with a margin of only one vote.¹¹⁰ The margin was made all the more galling to the tribe as the Tennessee Senator Hugh Lawson White had voted to ratify it, after having assured the Tribe of his support, and even after having voted to return the spurious Treaty for reconsideration by the full Cherokee management (an amendment lost by only one vote¹¹¹) before it

¹⁰⁹ Article 3, Section 10, of the 1827 Constitution, hand-written copy of entire document in Tennessee State Library Archives, reproduced on-line http://www.tn.gov/tsla/foundling_docs/33638_Image Packet.pdf

¹¹⁰ Quoted in James Wilson, *The Earth Shall Weep: a History of Native America*, (London Picador, 1998), 169.

¹¹¹ This appears to have been an example of practical politics. In retrospect it seems ingenuous for Chief Ross to have believed Lawson White’s pre-vote assurance of support, as White’s earlier history had included participation in a military expedition against the Cherokees in 1793, and also he had been the drafting author of Jackson’s Indian Removal Bill in 1829-30. White stood

was put to final ratification.¹¹² President Jackson, intent on enforcing the Indian Removal Act of 1830, signed the Bill ratifying the Treaty on May 23 1836, despite knowing it should not have been presented to Congress, as being contrary to the Cherokee Nation's Constitution, and against the wishes of the majority of the Tribe.

The main body of the Tribe, led by nominal full-blood Chief Ross in Georgia, had rejected President Jackson's Indian Commissioner John F. Schermerhorn's final offer of five million dollars, unsuccessfully trying to negotiate for four times that sum, and refused to vacate the Cherokee Nation's long-established and prosperous homes in the Southeast.¹¹³ Ross had the weight of the Cherokee Nation's majority behind him, but Jackson was determined to carry out his policy of removing the Southeastern Indians across the Mississippi and chose to ignore Ross's plea to remain where they were living. Many members of both chambers of Congress were embarrassed by the fraudulent nature of the Treaty, even prompting Virginian Whig Congressman Henry A. Wise to castigate Schermerhorn in the House as a "raw-head and bloody-bones" who had duped the Cherokee Nation.¹¹⁴ This was the twenty-fourth Cherokee Treaty, including ten from 1721 to 1773 prior to the Federal Constitution, and was the culmination of a century of frustration at the history of consistent loss of territory in each Treaty.

The tensions aroused by the conflict of the two cultures, on the one hand the predominantly full-blood majority of the tribe and on the other the smaller mainly mixed-blood Treaty Party supporters, became particularly evident in the period between the removal and the Civil War. The Clans' traditional responsibility for the punishment of those who had infringed tribal law led to a return to the old Blood Rule and the outbreak of intra-tribal warfare in the 1840s

in the Senate as a Jacksonian, an Anti-Jacksonian (including becoming a Presidential candidate in 1836), and lastly as a Whig.

¹¹² Gales, *Register*, Congress 24th Session, Senate Record, May 18 1836, 545-6. Also referred to in a letter from a Ross supporter William C. Codey dated July 8 1836, quoted in Woodward, *The Cherokees*, 179.

¹¹³ *Ibid*, 179.

¹¹⁴ Gales, *Register*, House of Representatives, 24th Congress, 1st Session, June 30 1836, 4566.

and 1850s, at a time when the tribe was writing Constitutions based on Federal and State models, and creating a tribal police force, known as the Lighthorsemen. The tensions included in this contrast of traditional and progressive values could not have been more clearly exhibited.¹¹⁵

The Cherokees had been given two years to prepare for relocation, but the bulk of the tribe followed Ross's policy of taking no action while he was still trying to improve the terms of the Removal compensation.¹¹⁶ The delay led to the order from President Martin Van Buren in 1838 to Major-General Winfield Scott to arrest the Cherokees and forcibly remove them, resulting in the infamous series of 'Trails of Tears' for the Cherokees and the other four civilized tribes. Some 45,000 individuals were relocated from the Southeast to the newly-designated Indian Territory west of the Mississippi. Scott, a Freemason and sympathetic to John Ross and his fellow Masons leading the Cherokee Nation, instructed his Georgia militia troops to treat the Cherokees with civility, ordering

Every possible kindness...must therefore be shown by the troops, and, if in the ranks, a despicable individual should be found capable of inflicting a wanton injury on any Cherokee man, woman, or child, [the nearest good officer must impose] the severest penalty of the laws.¹¹⁷

but as it happened the soldiers totally ignored his humane instructions and rounded up the tribe from their homes violently and incarcerated them in prison camps set around twenty-three forts erected for the purpose.¹¹⁸ This gave the opportunity for an orgy of theft of livestock and property, including jewelry buried in Cherokee graves, by the nearby white Georgians.¹¹⁹ From the camps they were driven out of their Georgian homeland during the winter, and relocated in Northeast Indian Territory. The ill-equipped exodus to Indian Territory caused the deaths of an estimated four thousand Cherokees (a quarter of the eastern Tribe) including Chief John Ross's wife Quatie. The horrendous experiences of the survivors totally justified their implacable resentment towards those of their Tribe

¹¹⁵ John Phillip Reid, *A Law of Blood*, (DeKalb, Northern Illinois University Press, 2006), 73-75

¹¹⁶ McLoughlin, *After the Trail of Tears*, 34.

¹¹⁷ Grace Woodward, 204, also quoted in Minges, 61.

¹¹⁸ Patrick N. Minges, *Slavery in the Cherokee Nation: the Keetoowah Society and the Defining of a People 1855-1867*, (New York, Routledge, 2003), 61.

¹¹⁹ Gloria Jahoda, *The Trail of Tears: the Story of the American Indian Removals 1833-1835*, (London, Allen & Unwin, 1976), 231; Minges, *Slavery in the Cherokee Nation*, 49-50.

who had betrayed them, and who had preceded them in the move west with their possessions and in much more comfortable conditions.¹²⁰

Well before removal there were gradual changes of lifestyle as the tribe had begun to acquire some of the rudiments of white culture, which also brought about a reversal of the division of duties within the hitherto matriarchal society. Full blood women adopted the new skills of spinning and weaving, while the wealthier mixed bloods improved their wardrobes by sewing, crocheting and dressmaking as some of the Cherokee Nation became slave-owning cotton-planters.¹²¹ Women had traditionally been the managers of the family units, as they were permanently at home, while their menfolk were often away on hunting or engaged in warfare. The men of the tribe, no longer required to be mainly the hunter-gatherers, took more responsibility in running the family, and also took part in agricultural work, which was previously beneath their dignity.¹²² The tribe changed, not from its matrilineal bloodlines, but towards a patriarchal political organization of its management. Article III of the 1827 Cherokee Nation Constitution decreed that the right to vote was restricted to male citizens over the age of 18. Eligibility for seats on the Council was restricted to “all free males except negroes [sic] and descendants of white and Indian men who may have been set free”.¹²³ Tribal Officers had to be males over 35.¹²⁴ It would be the elected male Chiefs of the Nation, with a predominance of mixed bloods, who became the notable figures in Cherokee politics as the nineteenth century progressed. The new forms of employment, and emulation of the white man’s political organization, led to a diminution in the traditional division of duties given to each of the Clans.

It has been suggested that the frequent marriage of Cherokee women to white men may have led to the women becoming more submissive than had been the custom in Cherokee-Cherokee pairings, perhaps eroding the basis of

¹²⁰ McLoughlin, *After the Trail of Tears*, 34.

¹²¹ *Ibid*, 76-7

¹²² Mary Beth Pudur et al, *Appalachia in the Making: the Mountain South in the 19th Century*, (Chapel Hill, University of North Carolina Press, 1995), 26.

¹²³ 1827 Cherokee Constitution, Section 4 of Article III, 6.

¹²⁴ The Cherokee Constitution of 1828, published in the *Cherokee Phoenix*, March 6 1828, without specifically negating women, defined its Officers all in the masculine. It was signed by 21 male members of the Cherokee Nation.

the matriarchal society.¹²⁵ The matrilineal classification of children born to Cherokee mothers as tribal full bloods, however, remained in force. Whereas the matriarchal organization of the tribe had been inward-looking, with the family being the important unit, the change to a masculine political management meant that the Cherokee Nation's leaders strove to compete in a wider context. It was a feature of the male élite's assertion of tribal sovereignty that they tried to deal on equal terms with the Federal Government, based on their autonomous management of their sector of Indian Territory, though generally with only qualified success.

One unforeseen factor that sowed the seeds of internal tribal strife, although they would not fully germinate for three decades until the 1866 post-Civil War treaties, was the number of black slaves who accompanied the richer Cherokees. The latter were already predominantly the mixed bloods with most responsibility for managing the Cherokee Nation. Older accounts of the removal tragedy make little reference to the fact that black slaves shared the pain of relocation, and that they would have carried much of the burden of constructing the new economy, as far as their owners were concerned. In the four decades prior to removal, the Cherokees had moved away from their traditional view of slavery as a bi-product of inter-tribal warfare, involving those captives who were not adopted into the tribe or slaughtered for entertainment. The Cherokee travelling group also included some freedmen.

While there was little need for slave labor in the tribal economy in the late eighteenth century, the readiness of some Cherokees – mostly mixed bloods – to emulate the lifestyle of the Southern planters in the early decades of the nineteenth century meant that some slave-owning members of the tribe could become cotton and tobacco planters without suffering the indignity of manual labor.¹²⁶ No census of the tribe was taken at that time, but it was believed that blacks were owned by only about ten per cent of the Cherokee Nation. Statistics were not accurately taken in early years but a partial tribal census in 1851 numbered the tribe as

¹²⁵ Wilma Mankiller, *Mankiller: a Chief and her People*, (New York, St. Martin's Griffin, 1993), 20.

¹²⁶ Minges, *Slavery in the Cherokee Nation*, 195

between 17,000 and 18,000, with 1,844 black slaves and 64 free blacks.¹²⁷ The acquisition of slaves would continue to increase until the Civil War. Commissioner Butler's 1859 Report estimated 4,000 slaves, owned by less than 10% of the Cherokee population.¹²⁸ The Cherokee Council passed a Fugitive Slave Act, with severe punishments for anyone aiding escape of slaves, but was seldom needed.¹²⁹

Slaves were extensively used in the conversion of the unimproved land in Indian Territory, particularly in the labor-intensive production of cotton, which became so important a cash crop in the years to come. Article I, Section 2, of the Cherokee Constitution decreed

The Sovereignty and Jurisdiction of this [Cherokee] Government shall extend over the country within the boundaries described [in Section 1] and the lands therein, shall remain the common property of the Nation.¹³⁰

but improvements (houses, barns, crops, fences, etc.) became the property of those industrious enough to build on or make use of the surface.¹³¹ Often slaves were used to clear the forests and convert the area into farming land, thereby materially increasing the wealth of their slave-owners.¹³² This further divided the richer mixed bloods from the larger number of full bloods who were more likely to be subsistence farmers with only one or no slaves to help them improve their land.¹³³

During the early stages of Cherokee acculturation in Georgia, black slaves frequently brought with them knowledge of white agricultural methods and many indirectly trained the tribe to cultivate crops and manage livestock.¹³⁴ That went some way to explaining how some male members of the tribe gradually made the change from hunters and gatherers to farmers and planters, tasks

¹²⁷ McLoughlin, *After the Trail of Tears*, 81.

¹²⁸ Minges, *Slavery in the Cherokee Nation*, 65.

¹²⁹ *Ibid.*, 57.

¹³⁰ *Cherokee Phœnix*, February 21 1828, 1.

¹³¹ *Ibid.*

¹³² McLoughlin, *After the Trail of Tears*, 38, 71, 125.

¹³³ *Ibid.*, 125.

¹³⁴ McLoughlin, *After the Trail Of Tears*, 124-130.

previously the duties only of the women-folk.¹³⁵ McLoughlin notes contemporary white accounts of the reluctance of Cherokee males to engage in hard physical labor and their preference for having slaves undertake such work, and also suggests that Cherokee women may have learned the routines of house-keeping from female slaves, who taught their mistresses how to milk cows, make butter and cheese, candles, and soap, as well as to spin, weave, and sew the family's clothing. They also performed the daily labor of drawing water, gathering wood, washing clothes, and cooking. Even the Cherokee diet changed with their new way of life.¹³⁶

The tribal involvement in slavery, particularly by at least some of the Cherokee mixed bloods in the 1830s, was to some an encouraging sign of the Cherokees' progress towards civilization, favorably compared to the commercial and agricultural societies of the Northeast and Midwest. When Northern abolitionists were surprised to find advertisements for the return of runaway slaves in the *Cherokee Phoenix and Advocate* newspaper (for examples, in January and February 1832), editor Elias Boudinot defended the ownership of black slaves by Indians as indicating their progress up the scale that would eventually make them equivalent to their white neighbors.

As in the South, only a minority of the tribe owned black slaves; one estimate suggests that in 1809 the 16,395 Cherokees owned only 583 slaves, and that only 5% of the families owned one or more slaves.¹³⁷ By 1835, just prior to removal, that percentage had grown to 8%, and these slaves were held by as many as 300 out of 3,300 families, with the larger number due to natural increase rather than by purchase. George Butler, Agent for the Cherokees, reported that numbers (estimated only, there having been no full Cherokee Census since 1846) in the Cherokee Nation were: Tribal total 21,000; number of voters was 4,000; there were 1,000 whites, and 4,000 Negroes (sic). They had cultivated

¹³⁵ McLoughlin, *After the Trail Of Tears*, 76.

¹³⁶ Kolchin, *American Slavery*, 8; Natalie Joy, "Cherokee Slaveholders and Radical Abolitionists: an Unlikely Alliance in Antebellum America", *Common-Place: the Interactive Journal of Early American Life*, Vol.10, No.4, July 2010, 6, 8-14.

¹³⁷ McLoughlin, *After the Trail of Tears*, 125.

102,500 acres under cultivation, and livestock were: cattle 240,000; horses and 20,000; hogs 16,000; sheep 5,000.¹³⁸

It is difficult to estimate just how many slaves were involved in the earlier, more benign transfer involving members of the Treaty Party, or in the Trail of Tears, and how many died during the removal. It has been argued that those families with slaves were better able to settle into the new territory and to get their homes built and their farms and plantations organized.¹³⁹ In the following decades and prior to the Civil War, the number of slaves in the Cherokee section of Indian Territory increased dramatically, reaching an estimated 3,500-4,000 by 1860 – which meant that as many as 10% (400 out of 4,200) of Cherokee families were involved in some level of slave-owning, precisely at the point at which the sectional debate over slavery was reaching its peak.¹⁴⁰ The increasing presence of black slavery within the tribe presented important questions for the various groupings within Cherokee society both before and after removal.

The increasing presence of black slavery within the tribe presented important questions within Cherokee society both before and after removal. Although only a third of the mixed blood component owned slaves, they were reputed to be the most prosperous and white-orientated group, compared to the pure blood majority who were less interested in white culture and were rarely slave-owners. With a more traditional approach to wealth and to tribal culture, the pure bloods had little incentive to join the slave economy and could take their own approach to the place of the slave in the Cherokee community, and to the increasing dangers of the developing crisis over slavery in the white States to the East. Yet both mixed bloods and pure bloods appear to have been agreed on the internal issue of the status of the black slaves – and free blacks – in Cherokee society. They did not engage in the public discussion of the merits or otherwise of the institution, as did their white neighbors in the South, but by their actions they made their views clear. Blacks were to be refused membership of the

¹³⁸ A.B. Greenwood, Commissioner of Indian Affairs' 1859 Annual Report to Congress, 173.

¹³⁹ McLoughlin, *After the Trail of Tears*, 125.

¹⁴⁰ *Ibid*, 125.

Cherokee Nation, and were not to be allowed to marry Cherokee women as a way of gaining admission.

In effect, the great setback of the removal to Indian Territory provided a second opportunity for the tribal leadership to demonstrate that it could create a civil society little different to that operating in any western territory in which slavery could operate, or in the Southern States. In that sense, it could anchor its claim to limited sovereignty on a platform of demonstrated competence, rather than rely entirely on the promises made in treaties or in appeals to Euro-American political philosophy. There did, however, remain one distinguishing element: membership of the political community would be restricted to those whom the tribe considered eligible. It would remain tribal at its core, and in the long run that was to prove its fatal flaw, as far as the white community was concerned.

Chapter Two

Cherokee Sovereignty

Cherokee leaders used the term sovereignty frequently in their dialogue with the Federal Government during the course of the nineteenth century, and it often surfaced in Congressional debates on Indian affairs and also in the Supreme Court, especially during cases brought by the Cherokees to defend themselves against the actions of the State of Georgia in the 1820s and 1830s.¹⁴¹ The term reappeared in the Courts in later years when the findings in the Cherokee cases were cited in relation to litigation involving other tribes. It is not always clear, however, what those using the term understood it to mean.

The Europeans who took control over the New World and its peoples so that they could exploit its natural resources and establish colonies had no doubt that they were entitled to exercise sovereignty over these new territories so far from their own borders.¹⁴² In the European tradition, the conquest of territory meant a loss of sovereignty by the group defeated and the transfer of that sovereignty to the victor. In the New World, however, the Europeans were not dealing with familiar enemies, but peoples and cultures previously unknown to them, so the notion of discovery became a critical factor in their struggle for advantage over competing European Nations. Sovereignty over a new land was now seen as based on the claim of first discovery and certified by a formal ceremony in the new land, often marked by a raising of the claimant's flag and the reading of a proclamation setting out the claim – in effect, a registering of the claim as far as the rest of Europe was concerned.¹⁴³

In the case of England, France, Portugal and Spain, sovereignty in the overseas territories was now seen as vested in the Crown. The European justification

¹⁴¹ Grace Woodward, *The Cherokees*, 158-9, 173.

¹⁴² Washburn, *The American Indian and the United States*, 2538. In the case *Johnson and Graham's Lessee v. M'Intosh* Marshall ruled that "discovery gave the nation the sole right of acquiring soil from the natives." 2538.

¹⁴³ *Ibid.*

for conquest became deeply embedded in the convenient fiction that the act of discovery gave the incoming power complete legal ownership of all the territory claimed. If in later years armed conflicts between indigenes and settlers resulted in the defeat of the indigenes, more severe measures could be taken against them. The disposal of lands within the discovered and claimed territories was a prerogative of the Crown, and how that occurred depended on the social and political institutions operating in the dominant society at the time. Given the fact that sections of the white population in the English colonies had access to political influence in their areas, they could play a key role in divesting the Indians of their lands if they wanted those lands for cultivation or grazing.

The European claim to sovereignty based on the doctrine of discovery did not mean that the incoming European power would attempt to exercise jurisdiction over the entire territory concerned. Discovery gave title to the government by whose subjects, or by whose authority it was made, against all other European governments.¹⁴⁴ [This] necessarily gave to the nation making the discovery the sole rights of acquiring the soil from the natives. Often the effective range of the authority of the incoming power was limited to the coastal areas and the white settlers there, and colonial authorities saw no reason to exercise direct control over the indigenes in the hinterland. In the eighteenth century, what is now referred to as the concept of plural sovereignties was quite acceptable both to the English authorities and their successors in the United States. Indigenes, if not conquered, could be regarded as occupants of territory now owned by a European nation and allowed to manage their own affairs by whatever traditional methods they preferred. It was often difficult to manage the relationships between settlers and Indians, but the long history of the fur trade provides an example of the way in which the two groups could coöperate and both profit from the activity,

¹⁴⁴ Robert J. Miller et al, *Discovering Indigenous Lands: the Doctrine of Discovery in the English Colonies*, (Oxford, Oxford University Press, 2010); James E. Falkowski, *Indian Race Law; a Five-Hundred-Year History*, (New York, Praeger, 1992); Washburn, *The American Indian and the United States*, quotes Marshall's summary, with its historical background, in full, Vol.4, 2537-2553; D.E. Wilkins, *American Indian Sovereignty and the Supreme Court*, examines the case from a more modern viewpoint, yet confirms the "lasting implications for indigenous and non-indigenous populations", 31. Washburn should be read in conjunction with Felix Cohen *Handbook of Federal Indian Law*, (Albuquerque, University of New Mexico, 1958) Chapter 15 on 'Tribal Property', 287-294.

without the whites needing to take direct control over the Indians. That cooperation, however, would not continue if the white population required land occupied by Indians for conversion to agriculture, and the task of white governments then became one of moving the indigenes away from the lands the settlers wanted to develop.

Wherever possible, the white authorities preferred to negotiate arrangements that would allow the Indians to retain that part of their hunting grounds that were less attractive to settlers, and to assure the Indians that they would live within secure borders and retain the right to occupy their area free of disturbance. During the eighteenth century the Cherokees gave up parts of their territory in South Carolina in the Treaties of 1721, 1775, 1770 and 1777, in Virginia in 1768 and 1777 (with some of North Carolina) and in Georgia in 1777 and 1783.¹⁴⁵ Prucha gives a comprehensive guide to treaties with Indians,

between 1778, when the first [Senate ratified] treaty was signed with the Delawares, and 1868 when the final one was completed with the Nez Percé, there were 367 ratified Indian treaties and 6 more whose status is questionable. In addition a considerable number of treaties that were signed by Indian Chiefs and Federal Commissioners were never ratified by the Senate or the President.¹⁴⁶

The success of the American Revolution meant the transfer of sovereignty to the former colonies and to the Republic they created, and both the States and the new Federal Government had a strong sense of meaning of sovereignty because of their struggle against British authority, during which they radically altered the concept by grounding it in the general population rather than in a monarch.¹⁴⁷ The United States now inherited the problem of how to manage its indigenous population, which in the East had already been in contact with whites for almost

¹⁴⁵ Charles C. Royce, *The Cherokee Nation of Indians*, (Chicago, Aldine Publishing Co., 1975).

¹⁴⁶ Francis P. Prucha, *American Indian Treaties*, 1, with a full list in Appendix B, 448-500; Washburn, *The American Indian*, quotes extensively from 41 Indian treaties, including four with the Cherokees, Vol. IV, 2267-2534.

¹⁴⁷ The literature on the history of the notion of plural sovereignty is extensive. The studies most relevant to the Cherokee situation are Lisa Ford, *Settler Sovereignty*, and Tim Alan Garrison, *The Legal Ideology of Removal: the Southern Judiciary and the Sovereignty of Native American Nations*, (Athens GA., University of Georgia Press, 2009). For a discussion of the concept in relation to European colonial expansion, see Laura Benton, *A Search for Sovereignty: Law and Geography in the European Empires, 1400-1900*, (Cambridge, Cambridge University Press, 2002). Additional discussion can be found in Laura Benton and Richard Ross, eds, *Legal Pluralism and Empires, 1500-1850*, (New York, New York University Press, 2013).

two centuries. The framers of the U.S. Constitution made it clear that they did not regard Indians as part of the American polity. They were the only racial group specified in the Constitution, but only to make their exclusion clear. In Article I Section 2, as “Indians not taxed”, which at that time meant all Indians, they were excluded from the population eligible to vote, and this was also repeated in Section 2 of the Fourteenth Amendment, passed after the emancipation of the slaves, in 1868. In the United States Constitution’s Commerce Clause, Article I Section 8, they were classified as a separate group and as distinct from foreign nations and American States, hence the significance of Supreme Court Chief Justice Marshall’s later definition of them as “domestic dependent nations”.¹⁴⁸

The leaders of the new United States, when confronted by the demands of their citizens for access to Indian lands, found it convenient to continue the British practice of negotiating treaties with individual tribes. In the late eighteenth and early nineteenth centuries such treaties dealt with a narrow range of issues. They often agreed on an exchange of prisoners of war, set out the boundaries of the hunting grounds the tribe would occupy, established a framework for the handling of serious criminal offences involving American citizens and tribal members, and sought assurances from the Indians that they acknowledged that they were under the protection of the United States and would make no agreements with foreign powers or with individuals or States within the Union. In the 1785 Treaty of Hopewell, for example, the boundaries of the Cherokees’ hunting grounds were defined in detail, and whites were forbidden to settle within those boundaries.¹⁴⁹ If already there, they were to leave within six months of the signing of the Treaty or face whatever punishment the Tribe chose to inflict on them. The intention of the white negotiators seems to have been to separate the Indians from the white settlers and allow the former to pursue their hunting and gathering activities in the traditional way. The reference to agreements with foreign powers reflected the uncertain state of the international situation at the time, with a small nation still

¹⁴⁸ Washburn, “The Cherokee Nation v. The State of Georgia”, *The American Indian and the United States*, Vol.4, 2554, (2556 for more extensive definition); Wilkins, *American Indian Sovereignty*; James E. Falkowski, *Indian Law/Race Law: a Five-Hundred Year History*, New York, Praeger, 1992; Cohen, *Handbook of Federal Indian Law*.

¹⁴⁹ Washburn, *The American Indian and the United States*, Vol.4, 2272; Prucha, *American Indian Treaties*.

conscious of the risks of interference by European nations, and sensitive to the continued presence of the British on its northern boundary.

There remains some uncertainty over what the process of negotiating treaties meant to each side. It has been suggested that to white participants, a treaty with an Indian tribe may have been a convenient way of resolving an immediate problem and easily discarded when circumstances changed. Indians on the other hand, may have seen treaties in the context of their own traditions of settling differences between tribes, especially after war. The actual negotiations appear to have followed Indian custom, and involved symbolic rituals such as burying the hatchet and stylized statements about the restoration of good feelings between the two parties. The Indian view of the significance of a treaty seems more likely to have been one of a binding agreement between sovereign powers that would endure, and if so, would underpin the anger of tribes when during the nineteenth century, white authorities discarded treaties without embarrassment.¹⁵⁰ Since the white need to gain access to Indian land was the usual reason for abandoning or renegotiating treaties, the centrality of land to the Indian tribal system was a key element in the notion of tribal sovereignty. Prior to the arrival of the Europeans the indigenes of North America usually asserted right of possession, or at least dominance, over the areas in which they lived, which were sometimes of huge extent. Even the nomadic Plains tribes laid claim to sole usage of their extensive hunting areas, although they may have drifted following the buffalo herds in their seasonal migrations. Claims of dominance over their area frequently involved clashes between war parties from competing tribes, with winners and losers clearly defined and sovereignty over the terrain fiercely maintained. This traditional tribal environment meant little to the white invaders, who arrived with the firm conviction that the lands inhabited by non-Christian savages were merely waiting for European Christian proprietorship. The ingrained belief of most of the indigenous peoples of North America that they were given ownership, or more appropriately – stewardship of the land by the “Great Spirit” was jeopardized from the first moment the Europeans arrived in

¹⁵⁰ Garrison, *The Legal Ideology of Removals*, 49-50.

the New World as there was no easy way to bridge the cultural divide in relation to ownership of land.

There were no doubts however, as to which was the sovereign power in these negotiations, and in all of the treaties that followed, the Indians were the weaker party. Where the transfer of land was involved, it is not clear that the Indians always understood what was involved in the European notion of sale, especially the right to exclusive use of the area involved. White leaders, on the other hand, inherited the European notion that in the matter of land ownership, outright confiscation was not acceptable unless the owner had been defeated in battle, or was an unsuccessful rebel or a felon. They assumed that some form of compensation should be made and that acceptable unless the owner had been defeated in battle, or was an unsuccessful rebel or a felon, and that documents be exchanged. As time passed, compensation could involve direct payment for land or the provision of annuities to cover “education, blacksmiths, farmers, tobacco, transportation...a light horse police force, payment of tribal debts, and expenses of tribal officers.”¹⁵¹

For the Cherokees, who developed an early understanding of the value of these payments as a basis for funding tribal programs such as schools, orphanages, and public works, the monitoring of the transfer of funds from Washington became an important task for the tribal authorities over the course of the nineteenth century. As they strove to acquire the benefits accruing from their contact with white communities, tensions developed within the Cherokee Nation as some members became literate in English and began to understand the workings of the white legal and political systems. That understanding put them in a good position to defend the tribe’s interests by using the dominant white society’s values against it, and the concept of sovereignty could be used to test the treaty obligations of the Federal Government. If treaty statements included guarantees of Indian rights “as

¹⁵¹ Cohen, *Handbook of Federal Indian Law*, 45. Washburn refers to Cohen’s note that the Indian Claims Commission in the twentieth century was still compensating Indian tribes for large underpayments in the nineteenth century; Washburn, *The American Indian and the United States*, Vol. 3, 2262.

long as the rivers run”, how could whites justify refusal to honor those obligations? Well educated Cherokees such as Chief John Ross or Elias Boudinot could debate such questions at length and in the appropriate manner, and their speeches and newspaper articles drew attention to the issue of sovereignty.¹⁵²

On the other hand, the fact that the tribes needed to absorb some aspects of the dominant white society meant that Indian sovereignty could never be absolute, although Ross was one who consistently argued that it should be. In reality, what was being claimed was limited sovereignty, which would allow the retention of some elements of self-government and security of tenure, rather than complete autonomy. The need for United States Government protection, and often annuities or other forms of aid, necessarily weakened their claims; the term sovereignty therefore always implicitly needed a prefix such as quasi, limited, or simply, tribal. The desire of some Cherokees to ignore that qualification and to assert that their tribe was a sovereign Nation retaining powers from their pre-contact past, while at the same time benefitting from their absorption of white modernity, built a state of tension which underlay their history throughout the nineteenth century.

One key to that tension within the Cherokee Nation, which grew in importance as the century progressed, was the divergence within the tribe created by the emerging political dominance of the mixed bloods. It became apparent that the offspring of intermarriages between whites and Cherokees were more readily adaptable to white forms of education, and to incorporate European-style political structures into tribal institutions. The full blood Keetoowah members of the tribe, on the other hand, remained convinced that their traditional Indian way of life should be retained, although when the Baptist missionaries Evan Jones and his son John B. Jones encouraged the Keetoowahs to gather in a formal Society, they added Christianity to their traditions. John Jones had been raised in the Cherokee

Nation, was fluent in the Cherokee language and was adept at interpreting for his father.¹⁵³ McLoughlin argued that

The ultimate goal of the Keetoowah Society was to define a ‘true Cherokee patriot’ as a full blood, true to traditional values, national unity, and Cherokee self-determination through consensus.¹⁵⁴

They continued to believe in a sovereignty that had existed prior to the arrival of the whites, whereas the increasing mixed blood members of the Cherokee Nation used their greater facility for negotiating with the whites to argue for their rights under Treaty provisions.¹⁵⁵ The Cherokees of the Southeastern States (Georgia, Tennessee, North and South Carolina and Arkansas) made a valuable collective case-study of these intra-tribal tensions, if only because they were affected by them earlier than most tribes. The mixed blood Cherokees were astute in recognizing the advantages of gaining power, and thereby reinforcing belief in the Nation’s sovereignty, by acquiring the knowledge, agricultural skills, and the emerging technologies of the late eighteenth and early nineteenth centuries. Much of their early acceptance of European education was mediated by the Christian missionaries of various denominations, who often made converts, and this contributed to the mixed bloods’ desire for a lifestyle similar to the white Americans moving into the lands around and within their territory. At the same time, however, both the full and mixed bloods were loath to relinquish fully their time-honored customs and traditions. Not only were these ingrained and respected, but to dispense with them would weaken their claim to the retention of tribal sovereignty, a claim which would increase in importance as a defensive claim became overshadowed as the Indian and Oklahoma Territories were converted from a home designated for Indians into a white-dominated new

¹⁵³ E.C. Routh, “Early Missionaries to the Cherokees”, *Chronicles of Oklahoma*, Vol.15, No.4, December 1937, 462.

¹⁵⁴ McLoughlin, *After the Trail of Tears*, 156.

¹⁵⁵ The division within the tribe between the more conservative full bloods and the politically more active mixed bloods continued from time of removal until the modern day. The split which this divergence of philosophy engendered has resulted in the modern division of the Tribe into two main bodies in Oklahoma. The Cherokee Nation of Oklahoma and the United Keetoowah Band of Cherokee Indians are both federally registered tribes, sharing Tahlequah as their Capital. The only other federally registered tribe is the Eastern Band of Cherokee Indians on the Qualla Boundary of North Carolina, descendants of those who hid in inaccessible Appalachian mountain areas and avoided the ‘Trail of Tears’ removal. There are also several other small Cherokee tribal units, only registered as separate tribes within and by States. This thesis focuses primarily on the Cherokees in Indian Territory/Oklahoma.

American State, in which even the blacks outnumbered the Cherokees in the area which had been set aside for Indians ‘in perpetuity’.

In the early decades of the nineteenth century the Cherokees had good reason to shore up their defenses against further loss of land to white settlers. The fact that Jefferson had negotiated the 1802 Compact with Georgia to purchase the western sections of the State so that new Federal territories (Mississippi and Alabama) could be organized, and had promised Georgia that it would move the Indians out of the State as soon as he could negotiate acceptable terms, put the Cherokees on notice that they would eventually be removed entirely from the area defined so carefully in the older treaties.¹⁵⁶ Although the Federal Government was unable to finalize its part of the Compact, there were other indications that pressures were mounting; President Monroe had commented to Andrew Jackson in October 1817 that “the hunter or savage state requires a greater extent of territory to sustain it, than is compatible with the progress and just claims of civilized life, and must yield to it.”¹⁵⁷ Jackson appears to have agreed, and took the opportunity on 1817 to negotiate a new Treaty with a group of dissident chiefs which led to the departure of over a thousand Cherokees to Arkansas, over the objections of the Cherokee National Council.¹⁵⁸

As the Cherokees strove to acquire the benefits accruing from their contact with white communities, tensions developed within the tribe as some members became literate in English and began to understand the workings of the white legal and political systems. That understanding put them in a good position to defend the Tribe’s interests by using the dominant white society’s values against it, and the concept of sovereignty could be used to test the treaty obligations of the Federal Government. If treaty statements included guarantees of Indian rights “as long as the rivers run”, how could whites justify refusal to honor those obligations? The formula used would become familiar: either move, or stay and

¹⁵⁶ “Articles of Agreement and Cession”, April 24 1802, in American State Papers, Public Lands, Vol.1, (Washington, Government Printing Office, 1834), 125-6.

¹⁵⁷ Francis Prucha, *The Great White Father*, 65.

¹⁵⁸ Article 2 of the Treaty with the Cherokees, in Kappler, *Indian Affairs and Treaties*, Vol.2, 142.

become subject to the laws of the State in which you reside and lose your tribal identity.

Sensing the danger of a more vigorous campaign by Georgia to have the final element of the Compact completed, the National Council restructured the tribe's political and legal institutions, and then in the mid 1820's began drafting a new Constitution. This was to be the foundation of a Cherokee Republic based on a view of tribal sovereignty that Ross and his colleagues considered had existed before the United States had been created. The Cherokee Nation Constitution was printed in entirety in the *Cherokee Phoenix* of February 21 1828. Its supporters saw it as a defensive measure against the pressure of the States in whose territories the Cherokee held parts of their land, and designed to gain the support of the Federal Government, even though it was difficult to reconcile with the U.S. Constitution's prohibition of the creation of separate political units within the Federal Union. The Cherokee document had been modeled on the United States Constitution,¹⁵⁹ and was the first complete Constitution to be implemented by any Indian tribe, according to a comment by the *New York Daily Advertiser* quoted with approval in the *Cherokee Phoenix*, that the Cherokees "have...by popular delegates, formed a government under the first liberal Constitution ever adopted by a savage tribe".¹⁶⁰ The language in the Constitution reflected its authors' hopes that Americans would no longer think of the Cherokee Nation as savages, but as a civilized body capable of governing itself without supervision or control by the United States Government.

The Cherokee Nation's assertion of sovereignty was based on their view of their inherent independence by right of prior occupation of the land, and by the acceptance by the United States of its status as a separate Nation, something which had already been acknowledged in Treaties with the U.S. Government, of which there had been twelve prior to the 1827 Constitution. Norgren outlined the

¹⁵⁹ Grace Woodward, *The Cherokees*, 145.

¹⁶⁰ *Cherokee Phoenix* March 6, 1828, 3

Indians' belief that

Valid treaties with the United States guaranteed their sovereignty, which represented nothing if not the power to govern themselves. Georgia's proposed assertion of jurisdiction violated these treaties, - that according to Article VI of the U.S. Constitution, were the supreme law of the land, superior to State law.¹⁶¹

The Cherokee declaration of sovereignty was also clearly spelled out in 2 of the Cherokee Nation 1827 Constitution:

The sovereignty and jurisdiction of this Government shall extend over the country within the boundaries above described and the lands therein defined in detail in Section 1, including lands within several U.S. States is & shall remain the property of the [Cherokee] Nation, but the improvements made thereon and in possession of the citizens of the Nation are the exclusive and indefeasible property of the citizens respectively [who] shall possess no rights nor power to dispose of their improvements in any manner to the United States' individual States.¹⁶²

Elias Boudinot, the editor of the *Cherokee Phoenix*, the first Indian newspaper, in its third issue on March 6 1828, set out the Cherokee Nation's claim to sovereignty in terms which must have seemed provocative to white Americans in the region:

The fact that a newspaper is to be put in circulation among the Cherokees, in their own language, and designed for their benefit, and edited by one of their own Nation is in itself a *Prospectus* [italics in the original] – pointing out the condition to which the Cherokees may, ere long, attain as an enlightened people, a guarantee under providence as a *Tribe*, a *State*, prepared for the privileges of inter community, in all that constitutes political life and health, vigor and enjoyment, among the States, composing the Great American Republic.

Stand Watie, Clerk of the Cherokee Courts,¹⁶³ who was also Secretary to a group protesting against removal, argued that the Cherokee Nation

was a distinct political society, separated from others, capable of managing its own affairs and governing itself [and had been] uniformly treated as a State from the settlement of our country.¹⁶⁴

Georgia reacted immediately to news of the tribal Constitution and protested vigorously against what its leaders saw as a direct assault on the authority of their

¹⁶¹ Jill Norgren, *The Cherokee Cases: Two Landmark Federal Decisions in the Fight for Sovereignty*, (Norman, Oklahoma University Press, 2004), 48.

¹⁶² Cherokee Constitution, Article 1, Section 2, in *Cherokee Phoenix*, February 21 1828.

¹⁶³ Franks, *Stand Watie*, 7.

¹⁶⁴ *Ibid*, 9.

State. Two Cherokee decisions had angered the Georgia leadership. One had been the passage in 1819 of a tribal law forbidding Cherokees to make independent land cessions without endorsement by the full Cherokee National Council, a decision which had the effect of restricting piece-meal white incursions into Cherokee territory, and thereby strengthening the Tribe's hold on its land in Georgia and adjoining States. The more serious action was the clear assertion of sovereignty in the Tribe's 1827 Constitution. Article I Section 1 of the Ross-designed Constitution also particularly irked the leaders of several States, as it defined the geographical boundaries of the Cherokee territory to include sections of North and South Carolina, Tennessee, Alabama and Georgia.

The message to Georgia and the other States that included Cherokee lands could not have been more clear. The existence of an Indian tribe claiming to be a self-governing Republic within the borders of five U.S. States was bound to antagonize both the Federal and the State governments in the region. As the largest area of Cherokee territory and population was within Georgia, it was the State most affected, and its Government took umbrage at the Cherokee claim to sovereignty. The Georgia Government ignored the pre-existence of settled Cherokee landholdings and its view was that the Cherokees were merely tenants in State land, subject to State laws. Its legislature passed an Act in 1828 which declared the Cherokee Constitution null and void, and indicated that as from early 1830, the State would exercise its jurisdiction over the Cherokee area. In 1828 a rich gold-reef was discovered in Habersham County.¹⁶⁵ This increased the pressure on the Cherokees, as ten thousand white miners (two thousand more than the Cherokee population then living in Georgia) rushed into the Dahlonega area inside Cherokee territory. Drinking, gambling and fighting led to a marked increase in crime, but the neither knew nor cared for the laws.¹⁶⁶ The Georgia Legislature ruled that it would be illegal for any Indian to prospect for or dig for gold, even within their own property. Another State law negated the right of

¹⁶⁵ Now White County. David Williams, *The Georgia Gold Rush*, 24-5.

¹⁶⁶ *Ibid*, 25.

any “person of color”, which included the Cherokees, to be “a competent witness in court cases to which any white person was a party”.¹⁶⁷

Recent studies have suggested that the timing of the Cherokee initiative may have been unfortunate because it coincided with a shift in legal thought around the Anglophone world which changed the status of indigenes in relation to the white political systems operating within their area. Whereas the older concept of legal pluralism was content to allow indigenes to occupy land within the area controlled by a sovereign power without that power needing to extend its jurisdiction over them, legal opinion had begun to shift. It was now suggested that settler societies were entitled to extend their jurisdiction over the full extent of the territory over which they exercised sovereignty, and to bring the indigenes under the control of State law and State agencies. That approach, when taken up by State Courts, would back the actions taken by the State of Georgia in asserting its authority over the Cherokee tribe and its lands.¹⁶⁸ In the long run, it was the State Courts that provided rulings that badly damaged the Cherokee cause and encouraged Georgia and neighboring States to press the Federal Government to remove Indians from the Southeast, and with Jackson now in the White House, the white communities in Georgia had the additional backing they needed to persuade Congress to pass the Removal Act of 1830.

In an effort to retrieve the situation, the Cherokee leaders in 1831 took the unusual course of hiring their white attorney William Underwood to appeal to the United States Supreme Court for an injunction against Georgia’s decision to curtail the powers claimed in the Cherokee Constitution,¹⁶⁹ and also to stop the seizure of Cherokee homes and farms for transfer to incoming white settlers in the infamous Georgia Land Lottery of 1830-1.¹⁷⁰ The Cherokee Nation attempted to assert its sovereignty with the three claims it made against the State of Georgia through the U.S. Supreme Court, *Johnson and Graham’s Lessee v. M’Intosh* (1823)¹⁷¹, *The*

¹⁶⁷ Williams, *The Georgia Gold Rush*, 18.

¹⁶⁸ Garrison, *Legal Ideology of Removal*, passim; Lisa Ford, *Settler Sovereignty*, Ch.6.

¹⁶⁹ Jill Norgren, *The Cherokee Cases*, 135.

¹⁷⁰ Williams, *The Georgia Gold Rush*, 108.

¹⁷¹ Washburn, *The American Indian and the United States* Vol.4, 2537-2553.

Cherokee Nation v. The State of Georgia, (1831),¹⁷² and *Worcester v. The State of Georgia* (1832).¹⁷³ The first case was, in Chief Justice John Marshall's terms

brought by the Cherokee Nation, praying an injunction to restrain the State of Georgia from the execution of certain laws of that State, which, as is alleged, go directly to go directly to annihilate the Cherokees as a political society.¹⁷⁴

The case was sympathetically dealt with by Marshall's Court, but was rejected on the grounds of jurisdiction, but the Cherokees had taken action which set them on a confrontational course against the State of Georgia. In the first case *Johnson and Graham's Lessee v. M'Intosh* in 1823, the Court had accepted the European doctrine of discovery as the basis for the sovereignty of Britain over its North American colonies, which had then transferred to the United States.¹⁷⁵ Marshall's summary included a particularly detailed history of the piece by piece discovery of the area that would become the United States, but emphasized the "ultimate dominion" of the new occupying power, re-affirming that:

In the establishment of these relations, the rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil with a legal as well as a just claim to retain possession of it...but their rights to complete sovereignty as independent Nations, were necessarily diminished...*discovery gave exclusive right to those who made it.* [My italics]¹⁷⁶

and that

The conquered world shall not be wantonly oppressed. Most usually they are incorporated with the victorious nation, and become subjects or citizens of the government with which they are connected.¹⁷⁷

¹⁷² Washburn, *The American Indian and the United States* Vol.4, 2554-2602.

¹⁷³ Ibid, Vol 4, 2603-2648

¹⁷⁴ Marshall's opening statement in *Cherokee Nation v. Georgia*, Washburn, *The American Indian in the United States*, Vol. 4, 2554.

¹⁷⁵ Washburn, Vol. 4, 2537-2553; also quoted in Cohen, *Federal Indian Law*, 324, with a second corroborating reference in the 1825 case *Jackson v. Porter*.

¹⁷⁶ Washburn, Vol.4. 2537-2553, quotes Marshall's summary, with its historical background, in full; D.E. Wilkins, *American Indian Sovereignty and the Supreme Court*, examines the case from a more modern viewpoint, yet confirms the "lasting implications for indigenous and non-indigenous populations", 31. Washburn should be read in conjunction with Cohen, *Federal Indian Law*, Chapter 15 on 'Tribal Property', 287-294.

¹⁷⁷ Ibid.

Marshall referred to the British constitutional convention in which all vacant lands (in which natives are regarded merely as ‘occupants’) are vested in the Crown, and therefore became American Government property after the Revolution:

The United States have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country and assert in themselves the title by which it was acquired. They maintain...that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest, and gave also a right to such a degree of sovereignty as the circumstances of the people would allow them to exercise.¹⁷⁸

The Supreme Court found great difficulty in determining the *Cherokee v. Georgia* case, with Marshall eventually writing a majority opinion which contained a formula for describing the Cherokee Nation, which he then used in denying the Cherokee request on the grounds of jurisdiction, ruling that the Court could not “control the legislature of Georgia.”¹⁷⁹ This was despite the previous ruling in the *Johnson v. M’Intosh* case, which could have had major effects on all the Indian tribes under U.S. jurisdiction from that point on. The powerful precedent that had been set in *M’Intosh*, by the assertion that the doctrine of discovery gave dominant power over the continent’s indigenous inhabitants, became slightly modified in the two other cases in the Marshall Trilogy, the *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832), which appear to contradict each other on the strength of Cherokee sovereignty; but the trilogy has had a long term impact on Indian law, being often cited in later cases involving Indian rights.

Two of the Judges in the *Georgia* case wrote concurring opinions which qualified the Marshall viewpoint to some degree,¹⁸⁰ and two others strongly dissented.¹⁸¹ Marshall complimented the Cherokees on the moral justification for their plea, and on the quality of their argument, delivered in this case by Virginian lawyer William Wirt and his white legal team representing Chief Ross and his associates. Marshall delved at some length into their history, acknowledging that

¹⁷⁸ Cohen, *Federal Indian Law*, 292.

¹⁷⁹ Norgren, *The Cherokee Cases*, 169

¹⁸⁰ *Ibid*, re Justices Baldwin and Johnson, 105.

¹⁸¹ *Ibid*, re Justices Story and Thompson, 108.

the United States Government had agreed to treaties with them which implicitly recognized them as a sovereign Nation, although co-existing within the jurisdiction of the United States' Constitution, and looking to the U.S. Government for "protection; [to] rely upon its kindness and its power; appeal to it for relief to their wants". Marshall settled on the formula that the Cherokees, and therefore by implication all Indian tribes, were "domestic dependent nations...in a state of pupillage...Their relation to the United States resembles that of a ward to his guardian".¹⁸²

Justices Smith Thompson and Joseph Story were the dissenters, and the former's minority opinion, described by Washburn as "brilliant but futile" dealt with the case in terms of whether the Cherokees were justified in asserting their own sovereignty.¹⁸³ Because of the importance of the case, Thompson's dissenting opinion has often been examined. He argued that

Every nation that governs itself... without any dependence on a foreign power, is a sovereign state;... by these rules it is not perceived how it is possible to escape the conclusion, that [the Cherokees] form a sovereign state. They have always been dealt with as such by the government of the United States; both before and after the present [U.S.] Constitution.¹⁸⁴

Thompson also wrote, with the concurrence of his colleague Justice Story, that

The Cherokees compose a foreign State within the sense and meaning of the [U.S.] Constitution, and constitute a competent party to maintain a suit against the state of Georgia.¹⁸⁵

Both shades of opinion acknowledged the quasi-sovereignty accorded to the Cherokees by virtue of their being accorded the courtesy of national treaties, but seem to overlook the continuing need of the Cherokees for federal protection, and also their acceptance of Congressional control of foreign policy and trade.

The result of the *Cherokee Nation v The State of Georgia* affected not only their relations with the State, and by implication the degree of their sovereignty,

¹⁸² Washburn, *The American Indian and the United States* Vol.4, 2554, 2556; Wilkins, 21-23; Norgren, 99-102, 119

¹⁸³ Washburn, Vol.4, 2554, (*Georgia* case reviewed in Vol.4, 2554-2602, and *Worcester* in Vol. 4, 2603-2648).

¹⁸⁴ Washburn, *The American Indian and the United States*, Vol. 4, 2582-3.

¹⁸⁵ *Ibid*, Vol.4, 2602.

but also would become the precedent most often referred to in subsequent cases taken to the Court by Indian tribes. Marshall addressed the assertion of sovereignty by the Cherokees, and the question of how the Indian Nation could co-exist within the American Constitution, as well as the extent of the relations between the States of the Union.

The important precedent contained in *Cherokee Nation v. Georgia* was slightly confused by Marshall's Court only a year later, in *Worcester v. The State of Georgia*, a case initiated by lawyers on Worcester's behalf but in reality representing the Cherokee Nation. Again William Wirt led the attack, hired by the American Board of Foreign Missions in support of the Cherokees. Governor Gilmer, irritated by what he considered as political interference by the Board which was appointing ministers to the Indian tribes, had approved a State law requiring that the missionaries residing within the Cherokee Nation must obtain a State license to do so, and to swear allegiance to the State of Georgia.¹⁸⁶ The narrowly targeted law applied to thirteen missionaries of several denominations who had met in Reverend Samuel Worcester's house to draft a manifesto against Cherokee removal, which was published in the *Cherokee Phoenix*, and also other papers in the northern States. Eleven of the missionaries complied, but two, namely Elizur Butler and the Samuel Worcester beloved by the Cherokees, refused and were sentenced to four years with hard labor in the Georgia State Penitentiary at Milledgeville, which aroused the Cherokee Nation to lodge an appeal on their behalf. The Supreme Court ruled that Worcester's incarceration was "repugnant to the [U.S.] Constitution and ought to be reversed and annulled", although it would be several months before Georgia complied with the direction to release the missionaries, as in 1832 there was no federal *habeas corpus* statute applicable to State prisoners, and Federal Marshals were not called to enforce compliance.¹⁸⁷

Marshall in this case again delved into the history of treaties with the Cherokees, and considered the degree of sovereignty within their own territory. He

¹⁸⁶ Washburn, *The American Indian and the United States*, Vol.4, 2623.

¹⁸⁷ Justice Department Attorney Gibson Clark first successfully instituted *habeas corpus* proceedings as a test case involving Indians in the Federal District Court of Wyoming in November 1895, described in Wilkins, *American Indian Sovereignty and the Supreme Court*, 95.

recognized the importance of the decision, which would have definite bearing on the relative sovereignties of the three main bodies involved, and also to the rights of citizens.

The legislative power of a State, the controlling power of the Constitution and Laws of the United States, the rights, if they have any, the political existence of a once numerous and powerful People, the personal liberty of a citizen, are all involved.¹⁸⁸

His summation also included the statements that

Indian Nations were distinct, independent political communities retaining their original rights, as acknowledged in several treaties.¹⁸⁹

The Cherokee Nation, then, is a distinct community, occupying its own territory...in which the laws of Georgia can have no force. The whole intercourse between the United States and this Nation is... vested in the government of the United States.¹⁹⁰

Sovereignty is a critical political concept, which defined the extent of Indians' power to decide their own lives and destiny, and Marshall's words implied acceptance of a degree of sovereignty for the Cherokee Nation. It was not unlimited, however, as the Cherokees' claim was severely weakened by Marshall's definition of the plenary power of the U.S. Congress, which would have long-term implications for the way in which the Supreme Court ruled in cases involving Indians. The first case to mention Congressional plenary power was *Gibbons v. Ogden* in 1824,¹⁹¹ but it would be referred to in subsequent cases, including *Ex Parte Crow Dog* (1883),¹⁹² *U.S. v. Kagama* (1886),¹⁹³ *Talton v. Mayes* (1895)¹⁹⁴ and *Lone Wolf v. Hitchcock* (1903).¹⁹⁵ Marshall's ruling in the *Gibbons* case was succinct:

The sovereignty of Congress, though limited to specific objects, is plenary as to those objects; the power over commerce with foreign nations, and among the several States, is vested in Congress as absolutely as it would be in a

¹⁸⁸ Marshall's summary, printed verbatim in the *Cherokee Phœnix*, April 7, 1832, 1.

¹⁸⁹ Washburn, *The American Indian and the United States*, Vol.4, 2621.

¹⁹⁰ Jill Norgren, *The Cherokee Cases*, 184-5.

¹⁹¹ Wilkins, *American Indian Sovereignty*, 25.

¹⁹² *Ibid*, 11, 68, 212, 306: Wilkins argues that the Supreme Court could not override Cherokee sovereignty by invoking the plenary power of Congress.

¹⁹³ *Ibid*, 11, Chief Justice Taney in *U.S. v. Rogers* (1846) had emphasized the United States power over the Indians, and the *Kagama* case defined his ruling against Indian sovereignty, 69.

¹⁹⁴ *Ibid*, 11, 99.

¹⁹⁵ *Ibid*, 105.

single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.¹⁹⁶

The third case resulted in a win for the Cherokees, with the Court instructing Georgia to release the two missionaries, although it suited U.S. President Jackson to refuse to enforce the Court's ruling against the State, despite Georgia's action being described in the trial as "repugnant to the Constitution of the United States". The most critical decision which ensued from the three cases was the formula devised by Marshall to describe the status of Indian Nations in the second of the trilogy, *The Cherokee Nation v. the State of Georgia*. Despite declaring in his final summation

the Cherokees compose a foreign state within the sense and meaning of constitution, and constitute a competent party to maintain a suit against the State of Georgia he devised a formula during the course of the trial which set an important precedent, but has had significance not only for the Cherokees, but also for all other Indian tribes, describing them as "domestic, dependent nations".¹⁹⁷

The formula has even been referred to in trials in British colonies, such as Australia, Canada, and New Zealand.¹⁹⁸

By refusing to accept the rulings in the Supreme Court against Georgia, the State had chosen to ignore the Court's direction and to assert its own decisions, perhaps setting its own sovereignty above that of the United States. President Andrew Jackson should have stood behind the Supreme Court ruling, but it suited his policy on the Indians to allow Georgia to defy Marshall's pro-Indian decision. Jackson is reputed to have exclaimed "John Marshall has made his decision; now let him enforce it!", but the quote is presumed to be apocryphal, with its first usage in print in Horace Greeley's *The American Conflict* in 1864.¹⁹⁹ More pertinent is the letter Jackson wrote to his friend John Coffee, a former Brigadier-General of Tennessee militia, who Jackson had appointed along with his Secretary of War John Eaton to be negotiators with the Five Tribes for their planned Removal:

¹⁹⁶ Kermit Hall et al, *American Legal History: Cases and Materials*, (New York, Oxford University Press, 1997), 123.

¹⁹⁷ Washburn, *The American Indian and the United States*, Vol.4, 2556.

¹⁹⁸ Falkowski, *Indian Law*, 95, and footnotes 4, 5, 6, on 114.

¹⁹⁹ John Spencer Bassett, *Life of Andrew Jackson*, (Archon Books, 1911, reprinted 1967 from 1931 edition), 691.

The decision of the Supreme Court is still-born, and they find that they cannot coerce Georgia to yield to its mandate.²⁰⁰

The combination of the enmity caused in Georgia by these successful Supreme Court trials and the attraction of the Cherokees' prosperous farms made the drive to remove the Indians unstoppable, although the gold rush into the Cherokee territory near Dahlonega in North Georgia became the final catalyst for their removal. This was a period when pressure had been put on the Cherokee Nation by Presidents Monroe, Adams, and particularly Andrew Jackson, to move from their traditional homeland in the Southeast, and to relocate west of the Mississippi. The burgeoning white population needed land, and saw no reason why they should not take over farming land and cotton plantations tended by large numbers of black slaves.

The Court in *Gibbons v. Ogden* extended the Federal Government's power to regulate interstate commerce, and declared that Congress had power over the States for all commerce where Federal and State laws conflicted. The case did not involve Indians, but in asserting the principle of over-riding Congressional power, the Court set a precedent which has subsequently been decisive in the Federal Government's dealings with groups asserting some degree of sovereignty, no matter how limited. The assertion of plenary power was later used to override Indian treaty obligations, and it affects the outcome of the claims against the U.S. Government, still being fought out in the Supreme Court in the twenty-first century.

At one level, the Cherokee attempt to seek redress through the Supreme Court was a useful exercise, in that it did lead to a sympathetic discussion of the Indian sovereignty issue at the highest level of the judiciary, but it left the tribe in the middle ground. The traditional view of national sovereignty as vested in the United States was confirmed as expected, but the novel definition of the status of the tribe as a "domestic, dependent nation" under the management of the United States was not the decisive rejection that many white observers would have hoped for. However, the minor success at the Federal level meant little in practical terms. Georgia held to its position, supported by State Court decisions, Jackson supported the State,

²⁰⁰ Alfred A. Cave, "Abuse of Power: Andrew Jackson and the Indian Removal Act of 1830", *The Historian*, Vol. 65, No.6, December 2003, 1350.

and Congress was divided. The Removal Act of 1830 provided the legislative framework for what had long been the objective of the State of Georgia and many politicians and administrators in other areas – the relocation, either by negotiation or force, of the Indians of the Southeast. The Cherokee Nation, in its new location in Indian Territory, was outside the boundaries of any State and would be free of the problems of jurisdiction that created such difficulty in Georgia. In its cases in the Supreme Court, the fact that the U.S Government had signed treaties had attracted favorable attention, and the tribe would continue to make that point in the following decades in Indian Territory. Even the controversial Treaty of New Echota contained commitments by the Federal Government that the tribe expected the U.S. to respect, and even when the Congress decided in 1871 that it would not enter into any new treaties with Indian tribes, it did state that it would honor all existing treaties with the tribe.²⁰¹ In their new location, the Cherokees would continue to claim that they were entitled to sovereign status, and to prepare for the day when the cycle of white settlement would force a repetition of the Georgia experience. The tribe would rebuild its economy and its political institutions, and would try to demonstrate that its entitlement to autonomy was grounded in demonstrated competence as well as in theory.

²⁰¹ Statutes at Large, 41st Congress, Session III, Chapter 120, March 3 1871, 566.

Chapter Three

Cherokee Education - Assimilation, or an Aid to Sovereignty?

During the first half of the nineteenth century, the provision of a public system of elementary schools emerged as one of the responsibilities of government at the State level. Much of the whites' approach to education had been shaped by their own experiences in the New World. In the New England colonies the Puritan conviction that an individual must seek salvation through knowledge of the scriptures made it essential that local communities develop some form of schooling for their children, and over time these colonies developed systems of community-based elementary schools. The pattern varied from State to State, with Massachusetts a pioneer in the elaboration of a system of locally based schools by a State authority. In areas where there had been a long tradition of educating the young in the Christian faith, the organizational model was close to hand; in others, especially in the South, there were fewer precedents and less social pressure to ensure a basic education for the bulk of the white population. Schooling was still seen as appropriate for the children of the social and economic élite, who made their own arrangements. In frontier communities, basic schooling was more a question of improvisation.

Unlike the Indians living in the Northeast or in the Middle colonies, the Five Civilized Tribes enjoyed a relatively long period of autonomy, during which they could observe the ways of their European neighbors without being caught up in their power struggles and without being forced to accept their authority. The fact that they had previously developed settled communities based around village life with each house surrounded by the cultivation of corn and fruits may have made it easier for them to identify with the rather similar lifestyle brought to the Eastern seaboard by the European settlers, and over time they adjusted very effectively to those elements of European culture that they found the most attractive. During the later stages of that breathing space they were able to replicate many of the institutions that were basic to the way white societies organized their political and economic affairs, including their methods of educating their children.

Nevertheless, it must have been apparent to the leaders of the Cherokee Nation that the westward encroachment of the increasing white population into Cherokee territory would be likely to lead to a reduction of the tribe's sovereignty, a situation which could only be countered by using the white man's culture against him. The key to white power was literacy and numeracy, and the English-speaking mixed blood Cherokees "believed they set the standards and deserved the leadership of the Nation",²⁰² but recognized that the creation of a school system for the education of as many tribal members as possible would increase the chances of the tribe's survival in the face of white encroachment on their traditional lands. Rose Stremmlau noted that

Cherokees were wary of interference with their educational system because, unlike the reformers, they did not equate education with assimilation, and believed that education instead served the interests of Cherokee nationalism. ...Above all, in a society that had grown out of town councils and into a republic, literacy enabled the continuation of popular involvement in government affairs.²⁰³

The long period of interaction between the white and Indian communities had provided the tribe with a number of individuals who had had direct experience of white education because they were the offspring of interracial marriages and had often been involved in the agricultural and commercial activities of their white relatives. They were in good position to provide the tribe with leadership in dealing with the white community, and to help replicate in the tribal world the legal and political institutions that the whites took for granted. To these mixed blood leaders of the Cherokee Nation who had benefited from their exposure to education in white communities, the advantages they had gained in their understanding of the way those communities functioned were very evident, and they understood that the power of the white world was based on the ability to transmit knowledge and skills across the generations. If the Cherokees were to survive as a distinctive unit within a dominant white world, they would have to replicate the methods the whites used to such good effect, and educating the young was critical in achieving that objective. To provide that education, they set out to establish a tribal system of free public schools, and in doing so, demonstrated that they were as capable as

²⁰² McLoughlin, *After the Trail of Tears*, 76.

²⁰³ Rose Stremmlau, *Sustaining the Cherokee Family*, 99.

any white community of building schools, training and supervising teachers, and funding their system over many decades. The leaders, particularly the mixed bloods, made it clear that they saw education as a key to their notion of tribal sovereignty in terms of the survival skills it provided, but the fact that they could create and maintain such a system over the long term was in itself a powerful indication that they could act as a sovereign people. “Cherokee schools were in the front line in the Nation’s defense against encroachment.”²⁰⁴ They realized from the outset that the task was a formidable one: to create a school system would require the recruitment of teachers, the funds to employ them, and some method of supervising the operations from year to year.

Unlike the white communities around them, the Cherokees did not inherit a system of education devised by earlier generations in other parts of the United States. Since the early years of English colonization, various efforts had been made to extend European patterns of education to Indian communities, but apart from an occasional mention in the foundation documents of a number of colleges of an intention to provide education for Indians as well as whites, colonial Americans showed as little interest in the education of the indigenous population as they did in their conversion. During the seventeenth century, some of the earliest colleges in the Northeast, including some which later developed into major prestigious Universities, were set up to educate ministers of religion, and planned to include Indians as well as white students. To provide for the more advanced training needed for an effective ministry, small colleges such as Harvard and Yale were established; as the region developed a range of mercantile activities, the practical value of education as an aid to success in business activities became obvious, and education became well entrenched in the region. Some colleges did attempt to make higher education available to Indians, but very few took advantage of the opportunity. Harvard’s original Charter in 1650 stated that the school’s purpose was “...the education of English and Indian youth of the Country in knowledge and godliness”.²⁰⁵ Five years later the Indian College became the first brick

²⁰⁴ Chief Joel Mayes, Third Annual Message, quoted in Stremmlau, *Sustaining the Cherokee Family*, 100.

²⁰⁵ Jason Urbanus, “Harvard Reconnects with its Native American Past”, in *Archeology*, Vol.61, No.2, March/April 2008, online@:www.archeology.org/0803/abstracts/harvard.html

building among the wooden structures on the Harvard campus, and was intended to accommodate twenty Indians; it lasted until 1698, using funds that had been set aside by the English Society for the Propagation of the Gospel among the Natives. Between 1660 and 1663 the school printed fifteen hundred copies of the first Bible translated into the Algonquian language. Harvard's first Native American graduate was Caleb Cheeshahteumuck in 1665, who died of tuberculosis only one year after graduation. Despite the University's charter avowing to educate indigenous youths, he was the only Indian graduate for over three hundred years, and the Indian College building, used mainly by white students, was dismantled in 1698.

Another gesture towards the education of Indians was the opening in 1693 of the College of William and Mary; its Charter declared one of its objects to be "that the Christian faith may be propagated amongst the Western Indians".²⁰⁶ In 1723 a three-story house for Indian students was built on the campus, funded by the income from the Brafferton Estate in England, after which it was named, and it remained open until the income ceased following the American Revolution in 1776.¹ It had not succeeded because the diminishing number of Virginian Indians distrusted the school's motives, believing it was an insidious attempt to enslave them.²⁰⁷ As it turned out, the Indians had only felt confident in residing at the College for security in times of conflict, such as the Tuscarora War of 1711-1713, the Yamasee War of 1715, and the French War of 1750. Eight Cherokees attended between 1753 and 1756, but were unhappy there, and the Indian school closed in 1777.

During the eighteenth century a few individuals did attempt to make higher education available to the Indians, but very few took advantage of the opportunities. The Congregational Minister Reverend Eleazar Wheelock opened Moor's Indian Charity School in Lebanon, Connecticut in 1754. The

²⁰⁶ Alice C. Fletcher, *U.S. Bureau of Education Report: Indian Education and Civilization: a Report prepared in Answer to Senate Resolution of February 23 1885, 48th Congress, Senate 2nd Session*, (Washington, Government Printing Office, 1888), 34.

²⁰⁷ Reported in a letter from school Governor Spotswood to Lord Dartmouth, November 11 1711, quoted in Fletcher, 35.

Continental Congress had provided a grant of five hundred dollars,²⁰⁸ but the bulk of the money required had been raised in England by one of Wheelock's students, the first ordained Mohegan missionary Samsom Occom. King George III had chartered the college, and a British Board of Trustees was set up for the purpose, the creation of the school being in the hands of Eleazar Wheelock, after his proven success at Moor's school. He moved his premises to Dartmouth in 1769. Occom raised twelve thousand pounds, including two hundred from the King, and fifty guineas from the Board's Chairman Lord Dartmouth, after whom the college was named.²⁰⁹ The preface of the original Charter provided for

an Indian Assistance School...cloathed [sic], maintained and educated a number of children of the Indian Natives, with a view to carrying the Gospel in their own language...[and] the education and instruction of Youth of the Indian Tribes in this Land, in reading and writing, and all parts of learning. . . as well as in all liberal Arts and Sciences.²¹⁰

The year after Dartmouth opened, the Confederation Congress appropriated \$500 to fund the education of three Delaware Indians in the College of New Jersey, later named Princeton University. Only one, George Morgan White Eyes, completed his education from preparatory school to graduation in 1789. Three nephews of Cherokee Principal Chief John Ross were the next graduates: John McDonald Ross went on from Lawrenceville school to Princeton and graduated in 1841; William Potter Ross graduated in 1843 and would go on to become Principal Chief of his Nation (1866-67, and again in 1872-75),²¹¹ and Robert Daniel Ross also graduated in 1843. The latter went on to receive a Master's Degree in 1846, and an M.D. from Pennsylvania in 1847 and sat on the Cherokee Senate. Princeton's Class of 1863 also included Allan McFarlan, a Choctaw, whose studies were prematurely interrupted by the Civil War.

Apart from a few individuals with the option of travelling outside their region to obtain an education, these initiatives had little relevance to the situation of the

²⁰⁸ Fletcher, *U.S. Bureau of Education Report 1888*, 161.

²⁰⁹ Kathleen Garrett, "Dartmouth Alumni in the Indian Territory", *Chronicles of Oklahoma*, Vol.32, No.2, 1954, 123-141, also provides details of Indian students at Dartmouth College.

²¹⁰ From first main paragraph of King Georges' Charter; the original copy is in Rauner (Special Collections Library, Hanover, NH.).

²¹¹ John Bartlett Meserve, "Chief William Potter Ross", *Chronicles of Oklahoma*, Vol.15, No.1, March 1937, 23-29.

Cherokees in the early nineteenth century. They could expect little from the Federal Government, despite Congress having passed an Indian Civilization Act in 1819 which provided ten thousand dollars annually for schools under the control of the Commissioner of Indian Affairs, Thomas L. McKenny, to allow the War Department to employ teachers to teach Indians on the western fringes of the developed States the literacy, numeracy and agricultural skills considered central to their conversion to white civilization.²¹² Some federal aid appears to have taken the form of occasional subsidies to individuals or organizations attempting to educate some of the Indian population. Congress's intention was to solve the 'Indian Problem' by assimilating them into the dominant white culture. It would not be until after the Civil War, however, that the Federal Government did become very active in promoting education through the BIA as part of its campaign to subjugate the Plains Indians, still using the 1819 Civilization Fund – but the Five Civilized Tribes were not part of the Federal scheme.

The importance of education had been recognized by the Cherokees well before the move into Indian Territory, and was even written into the treaties with the United States. In the treaty drawn up by Secretary of War John C. Calhoun with Cherokee Agent Return Meigs and the Cherokee leaders at Washington of February 27 1819, Articles I and IV included a school fund to be invested in U.S. Stocks and held in trust with its interest directed “for education among the Cherokees east of the Mississippi River.”²¹³ The earliest attempts to set up schools in Cherokee areas were made by missionaries, who saw the advantages of education as a means of converting Indians to Christianity. If earlier generations of church leaders in other sections of the country had shown only a modest interest in converting the Indians, the religious revival of the early nineteenth century produced an intense interest in the evangelization of the heathen, and the fact that the Five Civilized Tribes appeared to have already taken up many of the social characteristics of the white community made them attractive targets for missionary activity.

²¹² Clifford E., Trafzer et al, *Boarding School Blues: Revisiting American Indian Educational Experiences*, (Lincoln, University of Nebraska Press, 2006) 10.

²¹³ Fletcher, *U.S. Bureau of Education Report*, 1888, 385.

A further indication of the importance given to Christian belief was the incorporation in the original Eastern Cherokee Constitution drawn up by Chief Ross in 1827, Article VI, Section 2, of a provision that any officeholder in the Cherokee Nation had to demonstrate support for Christian religion and education.²¹⁴ This provision was repeated verbatim in Article VI (Clause 2,) of the revised Cherokee Nation Constitution which was drawn up by Ross's nephew William Story Coody and signed by George Lowrey, President of the National Convention, combining the new Indian Territory residents with the Eastern Cherokees remaining in North Carolina in September 1839.²¹⁵ The missionaries generally found the Five Civilized Tribes of the Southeast and of Indian Territory willing to accept conversion to Christianity, and they organized many of the early schools in the Territory. The Moravians opened a school near Illinois River in 1830, and soon afterwards another at Beattie's Prairie, forty miles north of the new Cherokee capital, Tahlequah. Catholics, Methodists, and Baptists soon followed the Moravian example, but the missionaries did not have the resources to develop an entire system of schools on the scale later developed by the tribe itself.

The first school opened for the Cherokees, however, pre-dated the missionary movement into Indian education. The history of John Ross as Principal Chief for most of the period 1839 to 1866, with his sometimes controversial, occasionally divisive, but generally benign influence on the Cherokee Nation, is well recorded.²¹⁶ Not so well known, however, is the contribution made by his Scottish grandfather Daniel Ross (1760-1830), who is credited with opening the first school for Cherokees in 1799,²¹⁷ hiring George Barbee Davis from Kingston, Tennessee as its first teacher.²¹⁸ His purpose was not solely to benefit the Indians, as he had fathered nine children from his two

²¹⁴ 1827 Constitution printed in full in the first edition of the *Cherokee Phœnix*, Vol.1, No.1, February 21 1828, 1-2.

²¹⁵ The Cherokee Constitution of September 6 1839 was published in book form, *The Constitution and Laws of the Cherokee Nation, 1839-51*, (Tahlequah, Cherokee Nation Publication, 1852).

²¹⁶ Gary E. Moulton, *John Ross, Cherokee Chief*, (Athens GA, University of Georgia Press, 1978).

²¹⁷ Moulton, *John Ross*, 5-6; Abraham E. Knepler, "18th Century Cherokee Educational Efforts", *Chronicles of Oklahoma*, Vol.20, No.1, March 1942, 59.

²¹⁸ Devon Mihesuah, *Cultivating the Rosebuds: the Education of Women at the Cherokee Female Seminary, 1851-1909*, (Champaign, University of Illinois Press, 1993), 15.

marriages, and their education was his first concern. The reaction to his application to the Cherokee Council foreshadowed the later political division of the tribe which led to the controversial Treaty of New Echota in 1835. The traditional members of the Council opposed the acceptance of the white man's customs, but the more progressive faction ruled in favor of the cultural advance, setting a precedent which would be followed in later decades.

The earliest successful educational institution among the Cherokee 'Old Settlers' west of the Mississippi was the American Board of Commissioners for Foreign Mission's Dwight Mission school, founded by the Reverends Cephas Washburn and Albert Finney in 1820 near present-day Russellville, west-central Arkansas.²¹⁹ It was successful with the full bloods, many of whom had to be turned away for lack of room in the school. It was moved to Sallisaw, twenty-five miles west of Fort Smith in Indian Territory in 1829. Costs for the building and the teachers were subsidized by the proceeds of an associated farm. The Boston based American Board had also opened a school for the Eastern Cherokee Nation on the Chickamauga Creek at Brainerd, Tennessee, in March 1817.²²⁰ By 1823 it had 84 pupils, with the U.S. Government contributing \$1,200 to that year's expenses for the school of \$7,632. The school educated three hundred students, both male and female, until the forced removal of the Cherokees to the Indian Territory closed the school in 1838. The Cherokee Old Settlers had opened four schools of their own in 1832, but these were inadequately funded and understaffed, unable to cope with the three- to four thousand school age children spread over the Nation's 7,800 square miles.

Among the Old Settlers group was Sequoyah (English name George Guess, or Gist). He was mixed blood, believed to have had a white father whom he never knew, but his mother was a full blood Cherokee descended from several Chiefs of the Nation; in the matrilineal Ani-Yun'Wiya society he was therefore

²¹⁹ Mihesuah, *Cultivating the Rosebuds*, 16. The school was named for Rev. Timothy Dwight, President of Yale College, who had been a founder member of the American Board. Rev. Samuel Worcester taught in the school from 1835

²²⁰ Moulton, *John Ross*, 7. Reverend Cyrus Kingsbury was given go-ahead from Cherokee General Council to purchase twenty-five acres and build a Mission School. It was named Brainerd, the name honoring one of the Board's pioneer missionaries to the northern Indians.

regarded as a full blood Cherokee of noble lineage.²²¹ He was fascinated by the ability of the white men to record an idea with permanent records for all who understood the markings. He would have a marked influence on the acquisition of literacy by the Cherokee Nation, by his invention of a Cherokee-language form of writing script. One of the reasons that the white immigrants had labelled the Cherokees, Choctaws, Creeks, Chickasaws and Seminoles as the Five Civilized Tribes was their ability to understand, absorb, and incorporate European culture; the ability of the Cherokees to read and write in their own language confirmed their distinctiveness.²²² They not only learned the rudiments of Christianity, but also improved their existing agricultural methods, and acquired skills in new trades, notably spinning, weaving and silverworking. Sequoyah was a naturally talented artist, adept at both drawing and silversmithing and it is quite likely that he would have come across some examples of English silver Hallmarks, and these readable pictographs contributed to the formation of his idea for the creation of a form of Cherokee writing.²²³ In the process of attempting to make a record of all Cherokee words he had taken note of the groups of sounds within them, and devised symbols for eighty-six of them. The conventional alphabet meant nothing to the non-English-speaking illiterate, but the system of a pictographic syllabary became the key by which so many Cherokees learned quite quickly to read in their own language.

He completed his extraordinary task of creating a written form of the Cherokee tongue in 1821. He was undoubtedly a genius, totally illiterate, yet able to become the first, and possibly only, man in history to design a complete written language that has become accepted and used as standard by a whole people. He was an adept multi-linguist, fluent in many Native American tongues, yet strangely enough throughout his whole long life he never learned to speak, let alone read or write, in

²²¹ One advocate for this theory of Sequoyah's heritage is Samuel C. Williams, "The Father of Sequoyah: Nathaniel Gist", *Chronicles of Oklahoma*, Vol.15, No.1, March 1937, 9, 11.

²²² The Choctaws did learn to read their own language, but with a phonetic adaptation of the Roman alphabet devised by the Rev. Cyrus Byington. McLoughlin, *Cherokee Ghost Dance*, 343. The Smithsonian Institute published Byington's Choctaw Dictionary in 1915.

²²³ Grace Woodward refers to his use of Hall-marking pictographs in his silversmithing in *The Cherokees*, 132.

English. The Old Settlers paid Sequoyah four hundred dollars to teach the children to read in his Cherokee-script.²²⁴

The achievement of the Cherokees in becoming the first Indian tribe to create a method of writing their language was their major breakthrough, although this was some decades after the Cherokee Nation had been already been accorded the status of being among the Five Civilized Tribes. Even within the Five the Cherokees were unique from 1821 in the fact that many of their members were literate in their own language, and with some also literate in English.

The Cherokee Nation first took advantage of the syllabary to make written contact between the original homelands of the Southeast and the new colony in Arkansas.²²⁵ This advance was noticed by white Christian missionaries, especially by the Reverend Samuel A. Worcester of the American Board of Commissioners for Foreign Missions, who realized the potential benefits of Cherokee literacy for the two widely separated groups of the Tribe. Worcester had been sent to the Cherokee Nation in 1825, soon after the Cherokee leaders had seen the benefits of Sequoyah's syllabary, and encouraged the tribe to set aside \$1500, one fifth of the Nation's interest income from national annuity funds, to buy a press and type. Worcester took responsibility of getting the type cast in Boston, and arranged through the American Board (which was surprised at this development among the 'savages'), to purchase the press and have the font delivered to the Cherokee capital at New Echota, with a new printing- press and a white printer, David Greene, to instruct selected individuals of the Tribe in the skill of printing. One result was the founding of the first Indian newspaper, *The Cherokee Phœnix*, which printed its copy in both languages side by side on the same pages. It first appeared on February 21, 1828. The tribe allocated five hundred dollars for Greene's salary, but only \$250 for Worcester's chosen editor, the fully bi-lingual Elias Boudinot, an offer which almost made him refuse the post, but he was soon placated when the amount was increased to \$550.

²²⁴ McLoughlin, *After the Trail of Tears*, 88.

²²⁵ Grant Foreman, *Sequoyah*, 7.

The missionary had seen the opportunity to produce Christian tracts in the Cherokees' own language, and also employed the Princeton-educated mixed blood Rev. Stephen Foreman to translate books to be printed for the tribe²²⁶ although the very first book translated into Cherokee was a New Testament construed from Old Greek by a brilliant Brainerd-educated young mixed blood David Brown, more fluent in Greek than in Cherokee, who had become a preacher as well as Secretary to the Cherokee Nation's Council.²²⁷ The State Government of Georgia, led by Governors Forsyth in 1827-29, Gilmer in 1829-31 and Lumpkin in 1831-35, was finally alerted to the influence of the Cherokee Press by Worcester's move from his established Church at Brainerd to New Echota. In 1828 there was no church yet built in the Cherokee capital town, but it was a healthier area for the ailing Boudinot. There was some cause for the Cherokee pride in the syllabary being widely used in the tribe; this was reflected in a letter about the level of literacy in the *Cherokee Phoenix*: A contributor, 'G.C.', claimed that

Several persons immediately tried to learn. They succeeded in a few days, and from this it quickly spread all over the Nation, and the Cherokees (who as a people had always been illiterate) were in a few months, without school, or expense of time or money, able to read and write in their own language.²²⁸

This claim was backed up by Worcester, who reported to the newspaper the progress he had observed in the four years he had lived in the Cherokee Nation, stating that "The Cherokee language, as far as I can judge, is read and written by a large majority of those between childhood and middle age."²²⁹ The missionaries recognized that literacy in their own language would make it easier for the tribe to accept Christianity. Worcester reported in 1825 to the American Board of Foreign Missions that "In three days [young Cherokees] are able to commence letter-writing and...to teach others. He saw the possibility of using the tribe's literacy in spreading the words of the Gospels, and convinced the Board to fund a printing press and have Sequoyah's symbols cut into a printing font."²³⁰ It also led in many cases to bi-lingual literacy for the more educated Cherokees. As

²²⁶ Mihesuah, *Cultivating the Rosebuds*, 19; McLoughlin, *After the Trail of Tears*, 89.

²²⁷ Grant Foreman, *Sequoyah*, (Norman, University of Oklahoma Press, 1938, [1970]), 7, 11; Marion L. Starkey, *The Cherokee Nation*, 44, 60, 70, 89-90.

²²⁸ *Cherokee Phoenix*, Vol. 3, No.3, May 8 1830, 1.

²²⁹ *Ibid*, 1.

²³⁰ Grant Foreman, *Sequoyah*, (Norman, University of Oklahoma, 1970, [1938]), 13.

the editor of the *Cherokee Phœnix*, Boudinot, encouraged by Worcester, was initially strongly opposed to the westward removal of the Tribe, and used his editorials to campaign against the policy. In the first edition Boudinot set out his editorial policy, including the statement that

In regard to the controversy with Georgia, and the present policy of the General Government, in removing, and concentrating the Indians, out of the limits of any State, which, by the way, appears to be gaining in strength, we will invariably and faithfully state the feelings of the majority of our people.²³¹

Boudinot's view that the majority opinion would guide his editorial policy did change by 1832, when he declared the *Phœnix* to be a 'National' newspaper, and wrote his editorials for a wider readership than just the Cherokees.²³²

It was claimed that by 1830 most Cherokees could read and write in Cherokee, using the Sequoyah 'Talking Leaves' syllabary, but only a few, mostly mixed bloods, could understand English.²³³ Some of the claims of widespread literacy cannot be proven; for example, Moulton's biography of Chief John Ross claimed that the syllabary "could be mastered by an illiterate Cherokee in only a few days"²³⁴; Robert Martin stated that "half of the Cherokee adult males could read in 1828", and by 1852 Chief William Potter Ross was boasting that "the number of adults in the Cherokee Nation not able to read or write may be counted on your fingers,"²³⁵ a view supported by the *Cherokee Advocate*. Marion Starkey claimed that the brighter Cherokees with more retentive memory could "bridge the gap between illiteracy and letters in the span of a single day. To everyone concerned, such accomplishment was little short of miraculous."²³⁶ She may have been influenced by 'G.Cs' letter about Sequoyah in the tribe's newspaper *Cherokee Phoenix*. There

²³¹ *Cherokee Phœnix*, February 21 1828, 3.

²³² Facsimile reproductions of all original copies of the *Cherokee Phœnix*, 1828-1834, are online at: onlinebooks.library.upenn.edu/webbing/serial?id=cherokeephoenix More easily read are transcribed selected articles from Volumes I-III, 1824-1831, which are also printed online, supplied by Western Carolina University, on the same website. The most complete file of original editions of the *Phœnix* is held in the British Museum, London, noted by Grant Foreman, *Sequoyah*, 14.

²³³ Mihesuah, *Cultivating the Rosebuds*, 17.

²³⁴ Moulton, *John Ross*, 36.

²³⁵ Robert G. Martin Jnr., "The *Cherokee Phœnix*: Pioneer of Indian Journalism", *Chronicles of Oklahoma*, 1947 Vol.25 No.1, 117-8. Also quoted in Morris Wardell, *A Political History of the Cherokee Nation*, (Norman, University of Oklahoma Press, 1977 [1938]), 51.

²³⁶ Starkey, *The Cherokee Nation*, 85.

were soon books published in Cherokee, particularly Bibles and religious tracts, together with the bi-lingual newspapers from 1828 on, and these advantages may have helped the Cherokees adopt the political and legal systems of the white communities and spread ideas across both sections of the Cherokee Nation.

The prominent mixed bloods, being more ready to grasp its political benefits, saw education as a means to enhance their political power within the Tribe, and also looked down on the less acculturated full blood Cherokees who still preferred to retain their traditional tribal values and language. The newly acquired literacy proved not just to be a passing fad, but became an on-going feature of Cherokee life. Theda Perdue noted that

According to the Census of 1835 [Henderson Roll²³⁷], 18 per cent of the households in the Cherokee Nation contained people who read English, 43 per cent had Cherokee readers, and 39 per cent claimed no literate members in either language.²³⁸

After the Old Settlers were joined by the main body of the tribe as a result of the forced relocation in 1838, the reconstituted Cherokee Council led by John Ross made the decision to create a system of tribal schools that would cater for all its children and strengthen the claim for tribal autonomy.²³⁹ As McLoughlin noted

The Cherokees undertook a major effort to restore national pride in 1840 when they decided to establish their own free public school system. Hitherto dependent on white missionaries for their schools, they now decided to accept responsibility for their own education. At the same time, they determined to throw off any dependence on the Federal Government to sustain law and order in their Nation. If they were a sovereign people, they must take on the full measure of that status.²⁴⁰

²³⁷ The Henderson Roll, also known as the Trail of Tears Roll of the Cherokee Nation, listed over 16,000 Cherokees who were to be removed to Indian Territory, subsequent to the Treaty of New Echota. National Archives Microfilm T496, held in the Tennessee State Library and Archives, Nashville, Tennessee.

²³⁸ Theda Perdue, ed., *Cherokee Editor: the Writings of Elias Boudinot*, (Knoxville, University of Tennessee Press, 1983), f/n 63.

²³⁹ Margaret Connell Szasz, "Through a Wide-Angle Lens", in Clifford E. Trafzer et al, *Boarding School Blues: Revisiting American Indian Educational Experiences*, (Lincoln, University of Nebraska Press 2006), 187.

²⁴⁰ McLoughlin, *After the Trail of Tears*, 86.

Totally committed to the goals of independence and prosperity, John Ross believed that their security lay in their education. He asked no help from the United States or the missionaries.²⁴¹

To fund the new program, the Cherokee Nation would use the \$16,000 annual interest from the five million dollars agreed to as Removal compensation funds held in trust by the Federal Government under the terms of Articles X and XI of the Treaty of New Echota. The immediate intention was to create a system of common schools, but there was also provision for seminaries at some later point. The Treaty of New Echota provided that

The sum of \$150,000 in addition to the present school fund of the Nation [which then stood at \$50,000, as listed in Article XI of the Treaty] shall constitute a permanent school fund, the interest of which shall be applied annually by the council for the support of common schools and such a literary institution of a higher order as may be established in the Indian country.²⁴²

The Treaty also stipulated in Article X that

The sum of fifty thousand dollars to constitute an orphans fund, the annual income of which shall be expended towards the support and education of such orphan children as are destitute of the means of subsistence.

The latter fund was used by the Cherokee Nation in Indian Territory to set up an orphan asylum at Grand Saline, which cared for an average of 150 children, particularly after the depredations of the Civil War had left so many children parentless.²⁴³ Their education was under the control of a Cherokee, ‘Uncle Joe’ Thompson, “a Minister of the Methodist church, and one of the noble men of the Cherokee Nation.”²⁴⁴ A large farm was attached to the school, and pupils from age nine until sixteen were taught vocational as well as academic subjects.

In 1841, to cope with the expanded population after the main body of the tribe had joined the Old Settlers and Treaty group, the Council under Ross’s leadership passed the Public Education Act, increasing the electoral districts from four to eight

²⁴¹ McLoughlin, *After the Trail of Tears*, 87.

²⁴² Treaty of New Echota, December 29 1835, in Washburn, *The American Indian and the United States*, Vol.4, 2461-2476.

²⁴³ Fletcher, *U.S. Bureau of Education Report 1888*, 381.

²⁴⁴ Described as such by V.A. Travis in “Life in the Cherokee Nation a Decade after the Civil War”, *Chronicles of Oklahoma*, Vol.4, March 1926, 24.

with eleven schools.²⁴⁵ Extra funding for salaries set was aside from the national treasury.²⁴⁶ The Council established a National Board of Education, consisting of three members who had general control of the schools. The Principal Chief appointed the Board subject to the approval of the tribal Senate. Directly under the Board was a Superintendent of Education, who was elected by a joint ballot of the National Council and the Executive Committee.²⁴⁷ Wooden buildings were to be erected by the local inhabitants, and tuition was free. Subjects taught were reading, writing, arithmetic, English grammar, book-keeping, and history. The system was successful: in 1843 the original eleven schools increased to eighteen; three more opened in 1846, and by 1860 there were thirty, educating 1,500 students. The schools were restricted to Cherokees only, whereas the Church schools accepted non-Cherokee students.²⁴⁸ Funds were tight, and the initial teacher-salary of \$525 in 1841 decreased to \$333 in 1844, and as Cherokee students were trained to become teachers they accepted lower salaries than the whites would do.²⁴⁹ The period of amicable peace following the 1846 Treaty signed in 1846 by Ross and Watie, through to the Civil War, later known as the ‘Golden Age’ of the Cherokees, saw an expansion of the tribe’s education facilities. Denson has argued that

the Cherokee government used its Treaty funds to create a public education system equal to or better than those of neighboring States. More than one hundred primary schools were operating by the early 1850s, along with the Male and Female Seminaries – high schools founded with the intent of training better Cherokee teachers.²⁵⁰

He also added that “the Cherokee élite identified their people as the elder brothers of the Indians, steadily drawing their brothers towards civilization.”²⁵¹ The decisions made by the Cherokee National Council in 1838 and developed further in the early 1840s laid the groundwork for their Nation’s public school system, which, except for the disastrous period of disorganization during and immediately after the Civil War, flourished until the Federal Government took over the

²⁴⁵ Mihesuah, *Cultivating the Rosebuds*, 19.

²⁴⁶ McLoughlin, *After the Trail of Tears*, 88.

²⁴⁷ V.A.Travis, “Life in the Cherokee Nation a Decade After the Civil War”, *Chronicles of Oklahoma*, Vol.4, No.1, March 1926, 22.

²⁴⁸ McLoughlin, *After the Trail of Tears*, 89.

²⁴⁹ *Ibid*, 89.

²⁵⁰ Denson, *Demanding the Cherokee Nation*, 55.

schools as part of the 1898 Curtis Act which removed Cherokee autonomy and prepared the way for Oklahoma to become America's 46th State in 1907.²

The intention was good, but a problem arose as the new schools set up by Ross had mainly taught in English rather than in the Cherokee language which had been the norm in the Old Settlers' schools. They had taught reading and writing in Sequoyah's Cherokee script. Ross's schools at first employed mainly white teachers who could usually only speak in English, putting the full blood majority who could only speak and write in Cherokee at a disadvantage.³ Cherokee-language literacy therefore proved to be a mixed blessing, particularly useful in correspondence with the section of the tribe that had avoided the Trail of Tears and had remained in North Carolina, but it became a handicap within the Cherokee schools in Indian Territory, as it created a further division between the racial groups within the tribe. The full bloods who were not literate in English at first tended to sit at the back of the school rooms, not keeping up with the mixed bloods who were conversing in English with the teachers, and as schooling was not compulsory they increasingly dropped out. This had the unfortunate effect of increasing the social divide between the full bloods and the mixed bloods.

Another factor which affected this growing division was that the poorer members of the tribe – and this generally applied to the full bloods - relied on their sons to help on their farms, particularly at harvest time, and their daughters were often needed at home in case of sickness.²⁵¹ There was even criticism of the totally academic nature of the curriculum, which the poorer parents would have like to have been widened so that their children could grow into “farmers and stock raisers. Mihesuah quoted a parent's (undated) letter to the *Cherokee Advocate* newspaper

What sense or good is there in preparing our youth for their [whites'] business?...The education they received ought to conform to, and fit them for, what they expect to become.²⁵²

²⁵¹ McLoughlin, *After the Trail of Tears*, 91.

²⁵² Mihesuah, *Cultivating the Rosebuds*, 62.

Mihesuah saw some justification for the writer's question; "in 1880, out of a population of approximately 25,438: of the 859 parents of seminarians whose type of work could be ascertained, 85% of the Cherokees were farmers."²⁵³ As a result, the full bloods frequently fell behind in their education, thereby increasing the influence of the mixed bloods over the full blood Cherokees. At a time when two thirds of the Cherokees were full bloods, they became a minority of the students who actually attended schools. This growing divergence had the inevitable effect of creating a dominant political white-Cherokee cadre within the tribe, which would be reflected in the election of a disproportionate number of mixed-bloods as tribal leaders for most of the remainder of the nineteenth century. Over time, the growing number of prominent mixed bloods from white-Indian marriages meant that they "championed a progressive educational system as a key to the enhancement of the tribe."²⁵⁴ The Cherokee leadership also realized that the tension that was growing between the Nation's full bloods and mixed bloods, "while it reflected the divergence associated with levels of wealth, was basically a cultural difference."²⁵⁵

Not only did the Cherokees build an efficient and widespread school system which was intended to be free for all the tribe, but they also made the first serious attempts at post-elementary education in 1850 by establishing the Cherokee Male and Female Seminaries to train teachers to staff their elementary schools. The Seminaries were well-appointed brick structures in Classic Revival Style, fronted by Grecian columns, each costing \$40,000 to build, a huge sum for that period and indicating the importance the Cherokees attached to their school system.²⁵⁶ As in many areas of Cherokee life, the majority of students in the two Seminaries were mixed bloods, which meant that this group was in a better position to dominate internal tribal politics for most of the second half of the nineteenth century. It was unfortunate that the progressive forms of education which should have benefitted the full bloods who needed it most, actually served to leave them

²⁵³ Mihesuah, *Cultivating the Rosebuds*, 17.

²⁵⁴ *Ibid*, 62.

²⁵⁵ McLoughlin, *After the Trail of Tears*, 75.

²⁵⁶ *Ibid*, 92. Letter from Principal Chief Samuel Houston Mayes to the U.S. Congress, January 15 1896.

more disadvantaged in comparison with the white-Cherokee members of the Nation, because fewer full bloods completed their primary education and went on to the Seminaries.²⁵⁷

The Male Seminary was two miles southwest of the Cherokee Nation's capital city, Tahlequah, and its Female counterpart was located close to John Ross's estate, between Tahlequah and Park Hill. Each could accommodate up to 150 boarders.²⁵⁸ The curriculum was ambitious: it broadened in each of the four years, leading to arithmetic, algebra, geography, botany, history, rhetoric, Latin, Greek, philosophy, and the Bible in the final year. Courses available to senior students included geometry and trigonometry, French, German, chemistry, political economy, and intellectual philosophy. The instruction in Literature is reported to have included the works of Virgil, Ovid, Thucydides, Livy, Homer, Goethe and Molière, and the students acted in annual productions of Shakespeare's plays.²⁵⁹ Students were charged five dollars a month for tuition, books, and accommodation; a system of partial employment was arranged for pupils too poor to pay the fees,²⁶⁰ and no Cherokee boy or girl who desired a Seminary education would be denied entrance, although in practice almost all students came from the more progressive mixed blood families. African American members of the Tribe were hired to fill non-teaching positions, such as cooks, cleaners, and artisans.²⁶¹

Mihesuah also noted that in the next few years Principal Chiefs Dennis Bushyhead and Joel B. Mayes were concerned the Seminaries were not accomplishing all they should. While Bushyhead acknowledged the 'gratifying results' of the seminaries' curricula, in 1881 he advocated using more of the tax revenue for a mandatory 'system of manual labor' for the primary-grade students,

²⁵⁷ McLoughlin, *After the Trail of Tears*, 93.

²⁵⁸ Fletcher, *Indian Education and Civilization*, 382.

²⁵⁹ Mihesuah, 54 *Cultivating the Rosebuds*, 55.

²⁶⁰ Travis, "Life in the Cherokee Nation a Decade after the Civil War", 23.

²⁶¹ Mihesuah, *Cultivating the Rosebuds*, 54.

who were usually from poor farming families – a system which would be optional for upper grades.²⁶²

By this time the traditionally matrilineal tribe had evolved into a male-dominated society, and the emphasis on direction of education showed a gender imbalance. The Female seminary was successful in its primary aim of preparing teachers for the Cherokee schools, but also virtually became a finishing school which trained the daughters of the rich to become the wives of wealthy men. In contrast, the Male establishment guided its alumni towards Eastern colleges to train for the professions.²⁶³ During the nineteenth century at least two hundred male alumni became doctors, dentists, lawyers, bankers or politicians. When the State of Oklahoma took over or closed almost all of its institutions after 1907, the Cherokee Nation had produced more college graduates than its neighboring States of Arkansas and Texas combined. This output declined markedly after the State took over.²⁶⁴ In the thirty-nine years the Female Seminary operated, before it was sold to the State Government of Oklahoma to become the non-racial Northeastern State Normal School, ninety alumni had become teachers in the Cherokee Public schools.²⁶⁵ Forty-five returned to the Seminary as teachers, the majority with university degrees.²⁶⁶ Both the Seminaries were remodeled and enlarged in 1875, and are claimed to have been the finest buildings, with the most advanced courses of study, ever established by an Indian tribe.²⁶⁷ An unintended but noticeable pattern emerged from the Seminaries. The majority of attendees came from the tribe's mixed bloods, who were also more likely to afford the monthly fees, and it became apparent that the lighter the skin color of the Cherokees, the more likely they were to be accepted as acculturated, and to fit into white society more successfully, even when they were away from the Indian

²⁶² Mihesuah, *Cultivating the Rosebuds*, 63.

²⁶³ McLoughlin, *After the Trail of Tears*, 95.

²⁶⁴ Online @ <http://www.everyculture.com/multi/Bu-Dr/Cherokees.html>

²⁶⁵ Mihesuah, *Cultivating the Rosebuds*, Appendices B and C.

²⁶⁶ Ibid, Appendices D and E.

²⁶⁷ Quote from online: www.oklahomagenealogy.com

Territory.²⁶⁸ Samuel Worcester confirmed this, noting that

Those who have little Cherokee blood, in comparing themselves with white men, glory in being 'Cherokee', yet look with contempt upon those who speak Cherokee only or chiefly as 'Indians'.²⁶⁹

McLoughlin added that the mixed bloods became 'red nationalists', whose pride required both progress and sovereignty.²⁷⁰ This would also have a lasting effect on the Cherokee Nation's government, which largely consisted of the mixed blood élite of the Tribe. The students of the Cherokee Male and Female Seminaries became the élite of an average of four thousand of the Nation's children who were enrolled in a hundred primary schools for two terms of five months each year, returning to their families at sowing and harvesting periods. Buildings were erected by the local communities, but the running expenses and salaries of primary school teachers, which ranged from thirty to fifty dollars a month dependent upon enrolment numbers, were paid by the Cherokee Nation Government, financed from interest on investments made by the U. S. Congress on behalf of the Cherokee people, as compensation for the assets lost in the Removal of 1838. The Female Seminary was destroyed by fire in 1887, but was rebuilt and reopened by the Tahlequah Masonic lodge on April 25, 1888, at a large gathering organized by the Freemasons' fraternity and addressed by Chief Joel B. Mayes, Assistant Chief Samuel Smith, and Colonel William P. Ross. It was again partially damaged by fire in 1898, promptly rebuilt, and lasted until its closure in May 1909, at that time under the direction of the nationally respected educator Dr. C.A. Peterson.²⁷¹

The importance of education to the Cherokee Nation can be shown by the high percentage of the tribal income spent on it. The tribe struggled to keep its finances within feasible limits, particularly in drought years, but during the period 1865 to 1885 the tribe's annual national debt remained between \$175,000 and \$200,000, yet education remained a high priority within the expenditure.²⁷²

²⁶⁸ Mihesuah, *Cultivating the Rosebuds*, 105.

²⁶⁹ Quoted in McLoughlin, *After the Trail of Tears*, 76, fn 39.

²⁷⁰ *Ibid*, 76.

²⁷¹ On-line @: www.oklahomagenealogy.com/.../male_and_female_seminaries.htm

²⁷² McLoughlin, *After the Trail of Tears*, 239.

Principal Chief Dennis Bushyhead's sixth *Annual Message to the Senate and Council* of the Nation in 1884 reported that the tribe received federal Annuities of \$146,446.76 from sale of the Neutral Lands and the Cattlemen's Association income from rentals of the Cherokee Strip,²⁷³ plus internal taxes collected of \$14,209.18.²⁷⁴ Chief Bushyhead presided over a period of political peace within the tribe, and his careful fiscal management improved the Nation's cash reserves.²⁷⁵ Of those funds, \$74,923.86 was used for 'General Government Purposes', but nearly as much, \$67,563.90 (made up by \$46,110.33 for schools, \$18,206.21 for orphans, and \$3,247.36 for the asylum) was spent on education.²⁷⁶ The records of the Cherokee Nation *Senate Journal* provide an indication as to how important the Tribe regarded the education of their young.

Alice Fletcher's monumental Bureau of Education Report to the U.S. Senate in 1888, *Indian Education and Civilization*, gave the Cherokee population as about 22,000, with a total of 4,660 students having passed through the 100 elementary schools. The Male Seminary, with an average attendance of 140, cost \$16,696.25 to run for a year, and the Female Seminary cost \$15,839 for its average attendance of 150 pupils. Total cost of education for the Cherokee Nation was \$87,497.92.²⁷⁷ In addition to the Cherokee schools systems, there were also 425 students in the schools operated by missionaries. Notable among these was the Presbyterian Mission School, which had evolved out of the original Dwight Mission and was renamed the Tahlequah Institute, which educated both Cherokee and white pupils to a high standard, and continued until the change of regime at Statehood. It had an active printing press, producing a regular school magazine in both the Cherokee and English languages, and Cherokee Bibles for sale at twenty-five cents a copy.²⁷⁸

²⁷³ McLoughlin, *After the Trail of Tears*, 240.

²⁷⁴ Cherokee National Records, (Tahlequah, Oklahoma Historical Society, Microfilm CHN115).

²⁷⁵ John Bartlett Meserve, "Chief Dennis Wolfe Bushyhead", *Chronicles of Oklahoma*, Vol.17, No.3, September 1936, 354-356.

²⁷⁶ Cherokee National Records, (Microfilm CHN115); Stremlau, *Sustaining the Cherokee Family*, 98.

²⁷⁷ Fletcher, *Indian Education and Civilization*, 381-2.

²⁷⁸ Caroline Thomas Foreman, "The Cherokee Gospel Tidings of Dwight Mission", *Chronicles of Oklahoma*, Vol.12, No.4, Dec. 1934, 459.

One other group within the Cherokee Nation which required special educational treatment, more out of begrudging necessity than by the general approval of the tribe, was the African-Americans. The Cherokee Nation was divided on the subject of educating the blacks among them, most of whom were still enslaved at the outset of the Civil War. Their status was one of the issues behind the split in the Tribe during the War, with the mainly pro-abolitionist group eventually fighting for the Union. The 1866 Cherokee Treaty had stipulated that the freedmen of the Nation must be absorbed into the tribe as full citizens, a clause which angered the slave-owning Cherokees, who were slow to act on their incorporation, although the Cherokees were not as recalcitrant on this point as the Choctaws and Chickasaws, who shared the Cherokee opinion of their ex-slaves. The freedmen were given forty-acre lots in which to set up their homes, all grouped together in one area in the south of the Cherokee territory, and some elementary schools were set up for them, but no initial provision was made for secondary education.²⁷⁹ When a secondary school was established, this was due more to party politics than any concern for black students.

Some of the Cherokee elementary schools had admitted black pupils, but it was not until the 1866 Treaty forced the Cherokees to incorporate freedmen into their Tribe that they opened a separate Colored High boarding school for African-Americans six miles northwest of Tahlequah, which was to be run on similar lines to the two Cherokee Seminaries.²⁸⁰ Its establishment was in part due to the political astuteness of the Downing Party, which saw the opportunity of weakening the power of the National Party, John Ross's successors, by gaining the freedmen's support in the pre-election campaign of 1887.²⁸¹ The Downing Party made the promise of a High School for the black Cherokees the main issue of their campaign, with an eye to gaining the votes of the black voters and the Cherokees who sympathized with them, and Joel B.

²⁷⁹ Minnie Thomas Bailey, *Reconstruction in Indian Territory: a Story of Avarice, Discrimination, and Opportunism*, (Port Washington N.Y., Kennikat Press, 1972), 183, 185.

²⁸⁰ T.L. Ballenger, "The Colored High School of the Cherokee Nation", *Chronicles of Oklahoma*, Vol.30, No.4, 1952, 454-459.

²⁸¹ Ballenger, 454.

Mayes became Principal Chief on the strength of the extra votes gained.²⁸² The Cherokee National Council authorized ten thousand dollars for the building, to which Tahlequah citizens added another four hundred to ensure the school was built in their area rather than Bartlesville as initially planned.²⁸³ It opened on January 1, 1890, with both the staff and the students being charged five dollars a month for board. Costs of running the school, including the teachers' salaries of from thirty to sixty-five dollars a month, were paid from Cherokee Nation funds.

All needed funds were to be drawn from the public treasury by warrant of the Principal Chief base upon requisition of the Superintendent and accompanied by an itemized estimate showing the purpose of such expenditure.²⁸⁴

The co-educational Colored High School was at first governed by the Superintendent of Education, in addition to his duties of supervising the two Seminaries; soon control was given to a three-member Board of Education, which was responsible for curriculum, uniform, and financial management. A wide range of subjects ranged across the four-year curriculum, culminating with astronomy, algebra, philosophy, psychology, geography and literature in Senior Year.²⁸⁵ All students were also expected to learn some agricultural and vocational skills in order to participate in the upkeep of the school premises and grounds, which made the school partially self-supporting in food. The minimum average attendance to keep the school open was twenty-five pupils, but as this was not maintained consistently, the Samuel H. Mayes administration in 1895 opened up an elementary department, to receive one boy and one girl from each of the existing negro elementary schools, with preference being given to the poor or orphans, who would otherwise have difficulty in receiving a full education. Total attendance in the two sections reached forty-eight in 1898. The school operated until State authorities closed it in 1910.

The Choctaws also opened a school for Indians in 1825, which was for not only Choctaws, as nine tribes had students there. It was opened by Colonel

²⁸² Ballenger, "The Colored High School of the Cherokee Nation", 454.

²⁸³ Ibid, 455.

²⁸⁴ Ibid, 456.

²⁸⁵ Ibid, 459.

Richard Mentor on a property he owned, while he was U.S. Congressman; he went on to become Vice-President to Martin Van Buren.²⁸⁶ His head teacher was Baptist Minister Thomas Henderson, and pupils had to pay three hundred dollars per annum for board and tuition. The neighbors of the Cherokees in Indian Territory, the Choctaws, shared the Cherokee attitude to their freedmen, and were also slow in making arrangements for the education of African Americans. The Choctaws had aligned with Watie's Confederate Cherokee regiments in the Civil War, and had fought for the retention of slavery within their Nation; they also treated the freedmen as inferior members of their tribe, according them no legal status for two decades after the war, and providing no schools for them, unless they were funded by the Federal Government.²⁸⁷ It would not be until 1885 that they were given full Choctaw citizenship.²⁸⁸ Their Articles of Adoption stipulated that they should then receive equal educational opportunities with the Indian Choctaws who attended the neighborhood schools in every District. In 1886 the General Council opened thirty-four 'colored' neighborhood schools catering for 847 children.²⁸⁹ They went a step further than the terms of their Treaty obligations by opening a boarding school for colored students in 1892, known as Tushka Lusa ('Black Warriors'), and with a Choctaw Freedman Henry Nail as Principal. The Choctaws never paid school taxes, choosing to fund their educational systems from invested annuities and royalties from coal and asphalt mining, which had previously been paid out to tribal members.²⁹⁰ The apparent racism of the early post-war period in the Choctaw Nation also extended to the children of the non-citizen white population of the area, for whom almost no educational facilities were available, although a few white children attended Choctaw neighborhood schools on a fee paying basis.

The measure of the Cherokees' achievement in setting up their own education system can be shown by comparison with many of the other Indian tribes in the

²⁸⁶ Carolyn Thomas Foreman, "The Choctaw Academy", *Chronicles of Oklahoma*, Vol.6, No.4, December, 1928, (History and Roll-call, 453-480).

²⁸⁷ Angie Debo, "Education in the Choctaw Country After the Civil War", *Chronicles of Oklahoma*, Vol. 10, No.3, September 1932, 383-389.

²⁸⁸ Debo, "Education in the Choctaw Country, 388.

²⁸⁹ Ibid, 388.

²⁹⁰ Ibid, 388.

nineteenth century, whose schools were mainly set up by the Federal Government. The earliest BIA schools were day schools within reservations, but they failed to move the Indians towards assimilation in the closed indigenous environment, and the schools out on the Plains were notable more for truancy than for educational achievement; indigenous parents who were opposed to white education condoned, and may have actually encouraged, non-attendance by their children.²⁹¹ The policy changed to off-reservation boarding schools, but it is not surprising that the unsympathetic way the BIA established these schools proved very unpopular with the Indians concerned. This can be shown by comparing the Cherokee self-generated schools and seminaries with the American Government BIA boarding school system, and also, as a comparative test case, with the Diné/Navajos, who were until late in the twentieth century the most populous Indian Nation, totaling 298,215 in the Bureau of the Census Report of the year 2000, and only being overtaken in population numbers by the Cherokees in the 1990 U.S. Census.

The acceptance of Euro-American schooling differs widely between the Cherokees and the Navajos, but the comparison must take into account the very different geographic, climatic and historical factors in the two tribes' environments. The Cherokees, already living in good agricultural lands as settled farmers in the Southeast prior to the white invasions, began early to incorporate European customs, which included the overlapping subjects of religion and education. The tribe's intermingling with the white men also included frequent intermarriage between the racial groups and, as has been pointed out, the mixed blood members of the tribe were more amenable to adopt white men's customs and benefit from them. In contrast, the Navajos in the West, mainly in Arizona, lived in the harsher terrain of the Great American Desert, with the much more arid climate and soils less responsive than in the Southeastern States, or even later in the eastern half of Indian Territory to which the Cherokees had relocated. Their history did include some dealings with the Spaniards from Mexico, from whom they acquired horses and the sheep that became so important a part of the Navajo economy, but there is little

²⁹¹ David Wallace Adams, *Education for Extinction: American Indians and the Boarding School Experience*, (Lawrence, University Press of Kansas, 1995), 28, 30.

evidence of frequent intermarriages, so the Navajos did not become such a mixed blood tribe as the Cherokees or Choctaws.

The contrasting environments became evident in the forms of schooling of the Indian Territory Nations as compared with the Western tribe. Whereas the Cherokee students were interested in the academic subjects taught in the white schools, the Navajos were notably less keen to attend the schools in their reservations, and later the BIA boarding schools intentionally sited far from their homes.²⁹² When they did attend schooling their preference was for learning vocational skills, such as weaving and silversmithing, at which they became adept. The lack of keen interest in book learning showed up right from the earliest effort to install formal schooling on their reservation covering 26,000 square miles in Northeastern Arizona, Southeastern Utah, Southwestern Colorado and Northwestern New Mexico. Half-hearted attempts to educate the Navajo young in the appalling incarceration at Bosque Redondo in 1864 were doomed to failure,²⁹³ with the children often only attending the school in order to receive the ration coupons.²⁹⁴

The first proper school for Navajos was not opened until long after the tribe's return from Bosque Redondo to their reservation. In 1878, as part of President Ulysses S. Grant's Peace Policy, set up in frustration at the U.S. Army's death-toll in the fighting on the Western Plains and to prove his theory that "it is cheaper to ration Indians than to conquer them", the education of Indian tribes was entrusted to Protestant Christian missionaries. The Presbyterians were chosen to guide the Navajos, and Miss Charity Gaston was sent from the East by the Presbyterian Home Missions Board, with a salary of six hundred dollars. The primitive school could accommodate twenty-five pupils, "but there were never that many present, even during the most pleasant weather. Some mornings three or four would arrive, sometimes six or seven, but on many days the

²⁹² Adams, *Education for Extinction*, 212.

²⁹³ See William B. Kessell, *Encyclopedia of Native American Wars and Warfare*, (Facts on File, Inc., 2005), 224, for a detailed account of the Navajo 'Long Walk' and the June 1, 1867 Treaty which ended it.

²⁹⁴ Katherine M.B. Osburn, "The Navajo at Bosque Redondo: Coöperation, Resistance and Initiative, 1864-1868" in Frederick E. Hoxie, *American Nations: Encounters in Indian Country, 1850 to the Present*, (New York, Routledge, 2001), 4.

classroom would be empty.”²⁹⁵ In 1879 the BIA authorized a boarding school at the Navajo Agency, but offered no money to set it up, until they produced a paltry \$875 a year later; the Agent Captain Bennett and J.D. Perkins of the Presbyterian Home Missions Board organized the Navajos to build adequate premises. It opened in February 1884 with less than twenty pupils, had twenty-four in November, but few remained very long – just collecting a suit of clothes and then absconding. A police guard was posted at the entrance, but in 1889 the complement was still only thirty-three very frightened youngsters.²⁹⁶ The Navajos were much more interested in learning vocational skills within their tribal environment.

The more general and early acceptance of education by the Cherokee students also contrasted quite remarkably with the resistance of the children who after the Civil War were forcibly removed from the reservations of other tribes, particularly from the Western Plains and the Dakotas, and sent to boarding schools run by the BIA. These were mostly on the lines of the Carlisle Indian Industrial School set up in Pennsylvania in 1879 by ex-Army Captain Richard Henry Pratt, a crucial figure in the history of Indian education, a pioneer who became an educator under unusual circumstances.²⁹⁷ He had been a Lieutenant from 1867 to 1875 in the Tenth United States Cavalry, “keeping the peace” on the Plains with an all-black unit, augmented by a group of Cherokee scouts, the latter impressing Pratt with their standard of literacy. A group of seventy-two Indians from the Cheyenne, Kiowa, Comanche, Arapaho, and one from the Caddo Tribes, had been charged in Fort Sill in Indian Territory with a number of crimes committed during the Red River War of 1874, but they were precluded from receiving a trial in a Court of Law. The U.S. Attorney-General had ruled that a military trial would be illegal because, in Justice John Marshall’s frequently cited judgment, “a state of war could not technically exist between “a nation and its wards”.”²⁹⁸ It was also

²⁹⁵ John Upton Terrell, *The Navajos; the Past and Present of a Great People*, (New York, Harper & Row, 1942), 246-7.

²⁹⁶ *Ibid*, 248-9.

²⁹⁷ Richard Henry Pratt, *Battlefield and Classroom: Four Decades with the American Indian, 1867-1904*, (New Haven, Yale University Press, 1964).

²⁹⁸ *Ibid*, 105.

considered that frontier hostility from whites would render a fair civilian trial only a remote possibility.²⁹⁹

Pratt was directed to remove the Indian prisoners to Fort Marion in Florida, and to be their custodian. Several of the Indians soon died in the unaccustomed Florida humidity, and the remainder fell into a dangerous state of depression.³⁰⁰ Pratt devised a scheme to rehabilitate them, which involved cutting their hair, dressing them in military uniforms, and educating them on Christian lines to keep them interested in living, and eventually integrating them as workers within the St. Augustine town's white populace. The Indians were taught to make and sell artefacts, and learned to earn and handle their own money.

This experiment in assimilating 'wild and criminal' Indians attracted interested national attention, particularly amongst the Churches, and when the prisoners were deemed rehabilitated and released in 1878, seventeen opted to continue their education. Samuel Chapman Armstrong had been a Colonel of a regiment of black soldiers in the Civil War, and as most of them had been slaves and were therefore illiterate, he had taken steps to educate them. After the war he opened the Hampton Institute in Virginia with a mixed race group of students, and there he agreed to accept Pratt's pupils, along with forty-five other Indian applicants, and put Pratt in charge. All Indian pupils were photographed in before-and-after guises, as long-haired semi-naked savages on arrival, and as short-haired and smartly dressed in military style after their initial enrolment.³⁰¹ These photographs were used as propaganda to arouse more Indian interest, and four months after the first intake commenced they were joined by forty more, including girls. Pratt, now a Captain and used to being his own unsupervised boss in Florida, stressed that much of his success at St. Augustine had been due to the mutually beneficial integration of his Indians into the local white community, which was not allowed in Hampton. He successfully lobbied the Administration in Congress, and was authorized to recruit 125 students and the necessary teaching staff for a new

²⁹⁹ Pratt, *Battlefield and Classroom*, 105.

³⁰⁰ Ibid, 118.

³⁰¹ Pratt, *Battlefield and Classroom*, photographs between 337-339.

Indian school, and was offered a disused military barracks at Carlisle, Pennsylvania.³⁰² The school opened in November 1879, with mainly Sioux students from the Pine Ridge and Rosebud agencies in the Dakotas. Pratt's motivation was unusual for his era, as he liked Indians and believed he was acting entirely in their best interests. He did not consider the Indians to be racially inferior, just culturally untutored and unsophisticated.

In 1884, in Indian Territory there was only one off-reservation government boarding school (for Kiowas and Comanches) at Chilocco, where Ponca City now stands, just south of the Kansas border. This contravened Pratt's belief that Indian schools should be built in predominantly White areas so that Indian pupils would be more likely to become acculturated if they could observe and blend into the civilization around them.³⁰³

In 1887 Congress passed the Compulsory Indian Education Law, and Pratt's school became the prototype for the Bureau's reservation boarding school system; eight were initially built, and were like brutal disciplinary prisons.³⁰⁴ The system was soon enlarged by the BIA, after Secretary of the Interior Carl Schurz estimated that it was costing the United States nearly a million dollars for the Army to kill each Indian, whereas it would cost only twelve hundred dollars to give an Indian child eight years of schooling. Schurz's successor Henry Moore Teller subsequently calculated that over a ten year period the annual cost of both waging war on Indians and providing protection for frontier communities was in excess for a year.³⁰⁵

In both the Carlisle and the BIA systems, the long-distance removal of Indians from their tribes and the mixing of students from culturally-different groups were prerequisites, but where Pratt differed from the BIA was in his basic belief in 'outing', i.e., the visiting, mixing with, and working for white families even

³⁰² Adams, *Education for Extinction*, 48.

³⁰³ Ibid, 56.

³⁰⁴ Terrell, *Navajos*, 250.

³⁰⁵ Adams, *Education for Extinction*, 20.

earning some money and learning to handle it.³⁰⁶ It had been highly successful with the Fort Marion prisoners, and was very much an integral part of his educational system. His slogan was: “to civilize the Indian, get him into civilization; to keep him civilized, let him stay!”³⁰⁷ At both the Pratt and BIA schools the system was harsh, especially for newly-arrived students, who were forcibly bathed, had their long hair shorn (which within their tribal traditional culture would have been either an act of mourning or a humiliating sign that the short-haired one had been defeated, captured and enslaved in inter-tribal warfare³⁰⁸), dressed in alien military-style clothing, and strictly forbidden to speak their own native languages.

This last rule was enforced often by washing the mouth out with lye soap or by even more brutal corporal punishments, to which the children had never been subjected in their tribal upbringing. Understandably, loneliness and homesickness were prevalent, and also the boarding school environment was notable for the spread of diseases. All this was intended to be in the best of interests of the Indians, although the vocational skills taught (household service, cooking, ironing and baby-sitting for the girls, menial farm-work for the boys) actually continued their subjugation to the whites, into whose service they were being trained. The BIA in 1901 published a Course of Study for the Indian Schools in which it was made clear that commitment to book learning for girls was notably to be absent, even to the extent of the girls being admonished to: “Learn the dignity of serving, rather than being served!”³⁰⁹ Some girls spent their whole boarding school period in the institution’s laundry, and therefore returned to their reservations with only the one limited vocational skill. The Meriam Report entitled ‘The Problem of Indian *Administration*’ reported in 1928 that in the BIA schools

the question may very properly be raised as to whether much of the work of Indian children in boarding schools would not be prohibited in many States

³⁰⁶ Pratt, *Battlefield and Classroom*, quoted in Adams, *Education for Extinction*, 55.

³⁰⁷ Pratt, *Battlefield and Classroom*, 290, 310.

³⁰⁸ Carol Devens, “If we get the girls, we get the race”, in Hoxie et al, *American Nations: Encounters in American Country, 1850 to the Present*, 161.

³⁰⁹ Robert A. Trennert, “Educating Indian Girls at Nonreservation Boarding Schools, 1878-1920”, in Albert Hurtado & Peter Iveson (eds), *Major Problems in American Indian History*, (Lexington, Mass., D.C.Heath &Co., 1994), 387.

by child labor laws, notably the work in the machine laundries. At several schools the laundry equipment is antiquated and not properly safeguarded.³¹⁰

Pratt's intention was very different from the aims of the coercive BIA. He took part in several of the Friends of the Indians conferences at the Lake Mohonk resort, and his principles were encouraged by the white reformers, including Helen Hunt Jackson. The Mohonk philosophy was essentially philanthropic and included the belief that the 'Indian Question' could only be solved by the Native American ceasing to exist as an Indian, and therefore having to accept "civilization or extinction".³¹¹ This view was shared by Thomas J. Morgan, who had been a Union General in the Civil War, was ordained a Baptist Minister after it and had become a reforming educator. He was appointed BIA Commissioner of Indian Affairs from 1889 to 1893, and argued in 1892 that "It is cheaper to educate a man and to raise him to self-support, than to raise another generation of savages and fight them."³¹² Morgan expanded the BIA off-reservation boarding school system, standardized the curriculum, and aimed to raise the level of technical training for the boys, although in practice the continuance of training as cheap labor usually overrode his altruistic aim. Morgan also warmly recommended Pratt's 'outing' system in an October 1889 meeting of the Lake Mohonk Friends of the Indians, but it was not carried into Federal policy.³¹³

One difference between the government owned schools of this later period and the Cherokee schools in Indian Territory was in their contribution towards the Indians' defense against attempts to weaken their sovereignty. Those Cherokees who saw the benefit of white education used it as a means of increasing their

³¹⁰ Institute of Government Research, *The Problem of Indian Administration*, generally known as 'The Meriam Report', after Lewis Meriam, the Technical Director of the group of ten who prepared the extensive report; for full title see Bibliography, (Baltimore MD., Johns Hopkins Press), 13.

³¹¹ David Wallace Adams, "Schooling the Hopi: Federal Indian Policy Writ Small", in Leonard Dinnerstein, and Kenneth T. Jackson (Eds), *American Vistas: 1877 to the Present*, Vol.2, (New York, Oxford University Press, 1991),28.

³¹² Trafzer, *Boarding School Blues*, 211-2.

³¹³ Francis P. Prucha, ed., *Documents of United States Indian Policy*, (Lincoln, University Press of Nebraska, 3rd Edn. 2000), 178, included Morgan's *Supplementary Report on Indian Education*, Clause 12, given to the Mohonk Conference. The report referred to all U.S. mainland tribes, with the exceptions of the Five Civilized Tribes, who arranged their own educational systems, and the New York tribes, who were under N.Y. State control.

understanding of the white world around them, and could use that understanding to protect their tribal sovereignty by managing their own affairs without needing white assistance or supervision. The Cherokee Nation's schools system had flourished in the Indian Territory until the Curtis Act in 1898, which not only handed the responsibility for the school systems over to the State Government, but also negated the Cherokee Nation's Constitution and virtually voided all claims of tribal sovereignty.

In contrast, the BIA schools set out consciously to destroy the Indian identity of their conscripted students, attempting to acculturate them to white norms with the eventual aim of integrating them within the mainstream white society, although at the lowest social levels. Parallels exist with similar educational symbols of assimilation in the First Nations of Canada, in African colonies, in Catholic Ireland, in New Zealand, and in the well-meaning but unsympathetically handled removal of the mixed blood Stolen Generations of indigenous Australia.³¹⁴ As an example, Miller outlines to the "cultural genocide" [his words] in New Zealand by pointing out

Legislation stipulated that native schools could only receive funding if the curriculum was taught in the English language, (a policy which led to the near extinction of the Maori language and culture, and marginalized Maori by a deliberate policy of training for manual labor rather than the professions).³¹⁵

The Cherokees tried harder than the BIA schools to make literacy and numeracy available to all the Tribe's children, and also created a two-tiered school system with the Seminaries, in order to engender elitism and reinforce their belief in Cherokee sovereignty. The Seminaries, Male and Female, were meant to benefit the whole Cherokee Nation, but the pattern emerged that students were mainly drawn from the bi-lingual or solely English speaking mixed bloods, from more progressive and generally wealthier families than the Cherokee-speaking full bloods. They were consciously trained in a curriculum similar to white schools to be the leadership cadre of the Cherokee Nation; in particular, the Seminaries

³¹⁴ Robert J. Miller et al, *Discovering Indigenous Lands: the Doctrine of Discovery in the English Colonies*, (Oxford, Oxford University Press, 2010), 11 – Africa, 16 – Ireland, 188-9, 196 – Australia, 97 – Canada, and 218 – New Zealand.

³¹⁵ *Ibid*, 218, including footnotes 72, 73, 74, and 75.

concentrated on educating teachers for the tribal elementary school system, but they had a wider brief. Margaret Connell Szasz draws an analogy with the privileged boarding schools of England and Scotland, attended by the middle and upper classes “as training grounds for leadership positions”, as being closer to the objectives of the Cherokees’ Seminaries. She adds that the Choctaws, Creeks and Chickasaws also “used their educational institutions to enhance tribal sovereignty, self-determination, and Indian identity”.³¹⁶ This deeper use of education systems originated with the Trails of Tears period in the 1820s and 1830s, during which period the Southeastern Indians had allowed missionaries to set up their first schools. After their Removal the Five Tribes chose to build their own schools as a “first line of defense against further attacks on their land, their Nation, and their culture”.³¹⁷

³¹⁶ Quoted by Trafzer, *Boarding School Blues*, 187.

³¹⁷ *Ibid.*, 191.

Chapter Four

Internal and External Pressures 1835-1865

The challenges confronting the Cherokee Nation in its new location in northeastern Indian Territory were formidable. Its education system had to be rebuilt from scratch, its political and legal institutions reconstructed, and its agricultural economy re-established. At the same time, some kind of accommodation had to be reached with the minority of the tribe that had supported the Treaty of Echota and had already established itself in the new location. That issue brought to light the extent to which the Cherokee effort to conform to the social and political values of the white world around them had not come to terms with the traditional values of tribal culture, and the consequences for the tribe were drastic. The pain of the removal process would now be compounded by self-inflicted wounds, as factional conflict within the tribe led to violence and disorder that undermined the image of stability and rule of law that the tribal leaders were trying to project to the white communities around them.

Cherokee Nation law prohibited the sale of tribal lands, except by approval of the full Council, and the 1835 Treaty of New Echota contravened this law. The treaty was negotiated and signed by only a minority of the Nation's leaders; the principal signatories were Major Ridge, his son John, his nephew Elias Boudinot, and Boudinot's brother Stand Watie, who was Clerk of the Cherokee Supreme Court. The Treaty might have taken a different form but for the hostility of Chief John Ross, who instructed his adherents to boycott the meeting arranged with the Federal Representative, Reverend John Schermerhorn, thereby leaving the minority group to represent the whole Nation – and to become the scapegoats. The Ridge group's action was the result of long held frustration as they noted the loss of some of the Cherokee lands in every Treaty from 1721 to 1819, and also the similar experiences of other tribes along the Eastern seaboard of the American colonies. Jackson's 1830 Indian Removal Act also threatened their future in the Southeast.

The Ridge group knew they were jeopardizing their lives within the terms of the Nation's traditional Blood Law, still governed not by the written Constitution but operated on local management rules by existing tribal tradition.³¹⁸ Reid recognized the continuing importance of this:

For [the Cherokees] a killing was not the concern of the Nation, nor was it left to blind, personal vengeance. Rather, they channeled vengeance into a set of customary rules which imposed duties, defined rights, and while privately executed were publicly obeyed...When a Cherokee caused the death of a second Cherokee, the relatives of the dead man [his clan] had the duty and the right to kill the manslayer, or one of his relatives.³¹⁹

Ridge had himself been involved in the execution of Chief Doublehead for leasing his land to whites in 1807,³²⁰ had advised Jefferson in 1820 that the law remained in operation, and his son John had committed the law to writing in 1829.³²¹ Nevertheless, several senior members of the tribe, including Ridge, foresaw the potential result of the *Cherokee Nation v. Georgia* definition of the tribe as a 'domestic dependent nation', and Jackson's refusal to act on the Supreme Court's decision in *Worcester v. Georgia*.³²² The Treaty Group, as they became known, had been convinced that their Removal was about to become inevitable, and that by signing the Treaty, which included the promise of new lands and monetary compensation during and subsequent to the move, they were acting in the Cherokee Nation's best interest.³²³ President Andrew Jackson's 1830 Indian Removal Act was the culmination of a long series of treaties involving the loss of tribal lands, and confirmed the Treaty party's pessimistic view of U.S. Government policy.³²⁴

Where the Treaty Party had erred was in not having convinced the majority of the members of the Cherokee Nation of the inevitability of the move, and of the benefits of being able to control its timing and to maximize government

³¹⁸ Reid, *A Law of Blood*, 74.

³¹⁹ Ibid, 74.

³²⁰ Stan Hoig, *The Cherokees and Their Chiefs: In the Wake of an Empire*, (Fayetteville, University of Arkansas Press, 1998), 94, 96.

³²¹ Moulton, *John Ross*, 114; Reid, *A Law of Blood*, 74.

³²² McLoughlin, *After the Trail of Tears*, 1-2.

³²³ Prucha, *American Indian Treaties*, 179-180.

³²⁴ Ibid, Appendix B, 446-500, lists 367 ratified treaties with Indians, 446-500, (drawn from compilation by Kappler, *Indian Affairs: Laws and Treaties*, Vol.2)

compensation, prior to the actual negotiation of the actual Treaty. The bulk of the Tribe, a majority of whom were full bloods, accepted the advice of their elected Principal Chief Ross, who believed the power of their united opposition would prevail against the policies of Georgia and the Federal Government. Signing treaties with dissident minority groups was not unusual, and it suited Jackson and the Congress to ignore the protests of the majority of the tribe because it could begin the process of removal as set out in the Indian Removal Act of 1830.³²⁵ With the benefit of hindsight, it is apparent that the Treaty Party signatories had made the sensible choice by bowing to the inevitability of relocation and moving in their own time with government help and financial assistance. The main body of the Tribe, persuaded by Ross's stubborn insistence that removal should not happen, were forced by his delay into the tragedy of the Trail of Tears, with its daily death toll and subsequent difficulties in restarting their lives successfully in Indian Territory.

The troubles of the Cherokee Nation in Indian Territory had begun in earnest after the arrival of the main body of the tribe led by Chief John Ross after their forced removal in 1838. John Ridge knew he had acted against the tribal traditional law, even admitting to Schermerhorn that "I may yet some day die by the hand of some poor infatuated Indian",³²⁶ and Ross' supporters took steps to enforce that law against the Treaty signatories.³²⁷ On June 22 1839 large bands of Ross supporters assassinated Major Ridge, his son John Ridge, and his nephew Buck Watie (who had taken the name Elias Boudinot), while several other Treaty Party adherents were listed for execution.³²⁸ Boudinot's brother, Stand Watie, was included in the latter group, but escaped execution by killing his assailant, James Foreman, who had also been one of the executioners of Major Ridge.³²⁹ Under traditional law, each killing within the tribe had to be revenged upon a member of the killer's clan (not necessarily the actual killer; if he was unobtainable, a near

³²⁵ McLoughlin, *After the Trail of Tears*, 2; Prucha, *American Indian Treaties*, 180-1; Grace Woodward, *The Cherokees*, 192.

³²⁶ Moulton, *John Ross*, 114.

³²⁷ Thurman Wilkins, *Cherokee Tragedy: the Story of the Ridge Family and the Decimation of a People*, (MacMillan, New York, 1970), 321; Grace Woodward, *The Cherokees*, 225.

³²⁸ Thurman Wilkins, *Cherokee Tragedy*, 322-323.

³²⁹ Kenny Franks, *Stand Watie and the Agony of the Cherokee Nation*, (Memphis TN, Memphis State University Press, 1979), 80-81.

relative could be killed as a matter of honor), and a period of violent intra-tribal unrest ensued. As part of this code of honor Watie submitted himself to the Cherokee Court for killing Foreman, and was exonerated on the basis that he had acted in self-defense.³³⁰

As Major Ridge and Boudinot had each been cut down by as many as thirty attackers, the 1840s was a period of near anarchy as the large number of retribution killings continued.³³¹ The Treaty Party group accused Ross of organizing the executions, but he denied the accusations and they remained unproven.³³² The problems within the most civilized of the Five Tribes aroused concern in Congress. Even as late as August 1845 the U.S. Government's Cherokee agent, Colonel James McKissick, reported that in the previous nine months thirty-three murders had been committed among the Cherokees, almost all of them for political reasons involving the factions.³³³ Under these circumstances the claim that the tribe was able to manage its own affairs and as capable as any white community of maintaining law and order was difficult to sustain, and the adherence to traditional Blood Law played into the hands of white critics of the notion of tribal sovereignty.

The tribe had bitterly divided into two bitter and aggressive factions.³³⁴ On the one side were the Treaty party adherents, who had been accepted and supported by the original Cherokee Old Settlers in the West, and on the other was the much larger contingent who came unwillingly in 1838, bearing the scars of their appalling treatment during removal. The Old Settler group had operated a system of government based on their own workable Constitution (and traditional clan laws) and they resented Ross's attempt to dominate them, particularly as he used

³³⁰ Franks, *Stand Watie*, 83-88.

³³¹ Grace Woodward, *The Cherokees*, 227.

³³² McLoughlin, *After the Trail of Tears*, 55-6; Woodward, *The Cherokees*, 225-227; Moulton, *John Ross*, 110-114.

³³³ Grant Foreman, *The Five Civilized Tribes*, (Norman, University of Oklahoma Press, 1934), 346-7.

³³⁴ Memorial of John Ross and Others, "*Representatives of the Cherokee Nation of Indians, on the subject of the existing difficulties in that Nation, and their relations with the United States*", sent to 29th Congress, Senate 1st Session, (Committee of Indian Affairs, Washington, Government Printing Office, May 4 1846), 331.

his power as Principal Chief to impose the newcomers' more elaborate 1827 Constitution which had been adopted in Georgia. The Federal Congress was concerned at the violent anarchy amongst the Cherokees.³³⁵ The likelihood of outright war between the two groups had repercussions even beyond the borders of Indian Territory. Brigadier-General Matthew Arbuckle, military Commander of the main U.S Army headquarters at Fort Gibson, requisitioned muskets and ammunition to arm militia units in Arkansas and Missouri, as he reported to Congress that the anxiety of many of the white settlers on the Indian Territory frontier was making them so fearful of the situation that they were leaving their homes and emigrating elsewhere.³³⁶

Arbuckle forwarded to Washington a solution proposed by the combined opponents of John Ross, led by Elias Boudinot. This involved a formal split in the Cherokee Nation, combined with a division into two territories, each with its own Cherokee Government.³³⁷ President Polk concurred with the idea of a division to restore tribal peace, and the House Committee on Indian Affairs introduced a Bill into Congress on June 2 1846.³³⁸ The Old Settlers, the Treaty Party, and the Ross majority each sent delegations to Washington, with Ross's National Party delegation alone in bitterly opposing the break-up and weakening of the Cherokee Nation. Secretary of War Joel R. Poinsett, who had been appointed by the U.S. Government to Chair the delegates' discussions, also opposed the division. Effective lobbying by John Ross's delegates supported by the majority of the tribe carried the day; the separation of the tribe and the division of territory was quashed in Congress, with discussion turning onto financial matters, principally regarding the non-payment of funds promised in the 1835 Treaty.³³⁹

At this juncture the political impasse was resolved by the influence of Freemasonry, a subject which had become extremely important to the leaders of

³³⁵ Grace Woodward, *The Cherokees*, 225-227.

³³⁶ Foreman, *The Five Civilized Tribes*, 299, 302, 346-7; Grace Woodward, *The Cherokees*, 227.

³³⁷ Grace Woodward, *The Cherokees*, 301.

³³⁸ Foreman, *Five Civilized Tribes*, 349.

³³⁹ *Ibid*, 346-7.

the Five Civilized Tribes, the Iroquois League, and many other tribes.³⁴⁰ Not only had it been an accepted part of life for the English gentry settling in the colonies, but it had also become widespread within the Indian world by the late eighteenth century, and had some influence on events in Indian Territory during and after the Civil War. The main body was led by the Old Chief's nephew, William P. Ross, who was a Keetoowah ex-slave-owner, a Princeton educated lawyer, and had been a founding member of Masonic Lodge #21 in Tahlequah, the Cherokee Capital in the Territory. All the prominent members of the rival Cherokee delegations were also Freemasons, and both groups of representatives were brought together by Worshipful Master S. Yorke at a meeting of the Federal Lodge #1 in Washington D.C. Yorke's efforts, and the shared Masonic beliefs of the two opposing sides led to a compromise Treaty in 1846. The two adversaries John Ross and Stand Watie, the dominant personalities of both sides, linked more by their shared bond of freemasonry than by personal friendship, were seen to shake hands in approval of the Treaty, and to bring peace to their troubled Nation.³⁴¹ It was endorsed by Congress on August 6, 1846, although by a margin of only one vote in the Senate, and received Polk's signature on August 17.³⁴²

The Treaty proved to be effective, as the next fifteen years became the Golden Years of the Cherokee Nation, with education and agriculture both showing the benefits of a greatly reduced level of violence.³⁴³ The period between 1846 and the Civil War in 1861 was a period of stability and prosperity, aided by a series of good harvests.³⁴⁴ The agreement, however, had reduced rather than eliminated the underlying differences between the two factions; the Cherokees could not ignore the events around them, and it would be external developments that would eventually undermine the agreement. To both the South and West of the Indian

³⁴⁰ McLoughlin, *After the Trail of Tears*; Abel, *The American Indian as Participant in the Civil War*; Patrick Neal Mingos has examined Indian Freemasonry in some detail in his *Slavery in the Cherokee Nation: the Keetoowah Society and the Defining of a People*, (New York, Routledge, 2003), 3, 57-62, 72-3, 82, 102, 105, 110, 114, 164, 181.

³⁴¹ Mingos, *Slavery in the Cherokee Nation*, 57.

³⁴² Charles J. Kappler, *Indian Affairs: Laws and Treaties*, 1846 Treaty reproduced in its entirety, with all signatories, in Vol. 2, 'Treaties', (Government Printing Office, Washington, 1904), 561-565.

³⁴³ Grace Woodward, *The Cherokees*, 238; McLoughlin, *After the Trail of Tears*, 59-61.

³⁴⁴ Grace Woodward, *The Cherokees*, 250-252.

Territory was the new State of Texas (since December 29 1845); the Territory's Eastern border abutted Arkansas, and to the North laid Kansas. All three States were experiencing increases in their white population and were developing railway systems; they were also involved in the controversial issue of slavery. The latter would not be the direct cause of the Civil War, but would be a contentious issue within the wider debate about sovereignty and States' rights. It would also exacerbate the tensions within the Cherokee Tribe, many of whom – the richer members of both racial groups, but more particularly among the mixed bloods – were slaveholders.

As the morality and the political importance of slavery became a major issue in the national constitutional crisis in the 1850s, the slave-owning tribes in Indian Territory found themselves in a difficult position.³⁴⁵ At a simplistic level, the crisis was a white man's conflict which had little or no bearing on Indian Territory, as their new homeland was not even defined as a Federal Territory with some prospect of becoming a State within the Federal Union. Nor were they part of the Confederacy when it appeared, although the Cherokee slave-owners could identify with the Southern States. The Five Tribes could have chosen neutrality, but the circumstances made this either difficult or impossible. They had little enough cause to support Georgia and the Southeastern States who had so cruelly mistreated them, and they still held Treaties with the United States Government, guaranteeing their homeland for the foreseeable future. The geographical and political factors of their environment in 1861, however, made inaction a dangerous choice, and the Confederate authorities were quick to bring pressure to bear on the Five Tribes on their western border. Wardell noted the growing significance of the Indians' slavery as the national conflict loomed:

It was not until the decade of the fifties, especially when the Kansas question became of national significance, that the Cherokees seriously considered their slave interests endangered. When proposals to remove reservation Indians from Kansas to Indian Territory were made, and when the Neutral Lands controversy assumed alarming proportions, together with the dual problem of [the latter] being incorporated within the State of

³⁴⁵ William E. Gienapp, "The Crisis of American Democracy in the Political System and the Coming of the Civil War", in Gabor S. Boritt, ed., *Why the Civil War Came*, (New York, Oxford University Press, 1996), 82.

Kansas and the refusal of the U.S. to buy it, the Cherokees became alarmed.³⁴⁶

Indian Territory's position between the slave states of Texas and Arkansas and the volatile 'Bleeding Kansas', plus its proximity to the Mississippi and also its potential contributions to the Confederate Army's supplies made the area of some strategic importance. Governor Henry Rector of secessionist Arkansas urged that the Cherokees ally themselves with "the common brotherhood of the slave-holding States".³⁴⁷ The abolitionist Baptist minister Evan Jones was disturbed enough when Ross finally made his mind up to participate in the war on the side of the Confederate slave-holders, to write to the Federal Indian Commissioner W.P. Dole that "unless the Cherokees would join the Confederacy [the Texan Brigadier General Ben] McCulloch would march into the Territory".³⁴⁸ The writer was also resigned to the fact that there was no way

to avert the over-running of the country by the Secessionist troops, and having no military force of their own, nor any other means of defense, the only choice seemed to be to accept the best conditions they could obtain...[Drew's regiment] was raised for home protection...the great majority of the officers and men in this case being decidedly loyal Union men.³⁴⁹

The Cherokee Nation had had the opportunity to decide its own future in 1835-38, and again was in the position to consider the decisions that would affect the lives of all tribal members in 1861-65. In this case, the leaders of the Tribe made choices which would materially increase the devastation of the Cherokee homeland during the Civil War and the tribal death toll, choices that were exacerbated by their own internal political conflict stemming from the tribal division which led to the Treaty of New Echota in 1835, and which still rumbled below the surface despite the peace agreement between the Ross and Watie parties of 1846. The immediate problem was how to react to Confederate pressure once the Civil War became a reality, and that brought to the surface the factional

³⁴⁶ Morris L. Wardell, *A Political History of the Cherokee Nation 1838-1907*, (Norman, University of Oklahoma Press, 1938, reprinted 1977), 118.

³⁴⁷ Alvin M Josephy Jr., *The Civil War in the American West*, (New York, Random House, 1998), 325.

³⁴⁸ McLoughlin, *After the Trail of Tears*, 199; Abel, *The American Indian as Participant in the Civil War*, 15.

³⁴⁹ McLoughlin, *After the Trail of Tears*, 200.

tensions that had been papered over in 1846. On one side was Watie's mainly mixed blood, pro-slavery and more overtly progressive group, signed up by Albert Pike, and on the other was Chief John Ross, backed by the more conservative Keetoowah full bloods, many of whom had been influenced by the abolitionist views of the Baptist missionaries, Evan Jones and his son John.³⁵⁰ They had reorganized the ancient and secret Keetoowah Society in 1859. Nominally it was a mainly full blood, Cherokee-speaking, traditionalist group, but under the Jones' tutelage also became an abolitionist society linked into a Freemason's Lodge, to which many of the Cherokee leaders already belonged.³⁵¹ Among the notable Cherokee Freemasons were the opposing tribal leaders Stand Watie and John Ross's nephew William Potter Ross, both of whom were to become important in Cherokee history during and after the Civil War.³⁵²

The Keetoowahs were first known as Nighthawks because their earliest meetings were held in secret at night in secluded forest clearings, but they soon became known as Pin Indians, because of their coded greeting, the disclosure of crossed pins behind the lapel collar above the heart. Oddly enough, the abolitionist group saw no anomaly in the fact that many of their members were among the largest slave-owners in the tribe. When Chief Ross authorized the raising of the first official Cherokee Regiment, with the intention of defending Cherokee territory, his friend John Drew was appointed its first Colonel, and he recruited his soldiers from amongst the Keetoowah ranks, most of whom were members of his Masonic lodge.³⁵³

The situation in the Creek Nation was analogous to that of the Cherokees. On February 12 1825 Creek General William McIntosh, leader of a small minority faction, was one of the first of fifty-two Creek signatories to accept the Treaty of Indian Springs, probably believing he was acting for the best outcome for his

³⁵⁰ McLoughlin, *After the Trail of Tears*, 147.

³⁵¹ Mingos, *Slavery in the Cherokee Nation*, 110-111.

³⁵² *Ibid.*, 73, 100, 180.

³⁵³ W. Craig Gaines, *The Confederate Cherokees: John Drew's Regiment of Mounted Rifles*, (Baton Rouge, Louisiana State University, 1989), 13; Mingos, *Slavery in the Cherokee Nation*, 102-3.

Tribe.³⁵⁴ His apparent integrity was compromised by the gift of two parcels of land, added as a post-script to the Treaty by the Federal officials two days after the signing of the document by the Creeks.³⁵⁵ The treaty ceded all the Creek lands within the State of Georgia for an equivalent area between the Arkansas and Canadian Rivers, and granted annuities. The Creek majority's leaders advised the U.S. Commissioners Duncan Campbell and James Meriwether that "General McIntosh knows that no part of the land can be sold without a full Council, and without the consent of the [Creek] Nation," adding that if the signatories sold their own portions of land, these would revert to the Tribe's communal property.³⁵⁶

The Creek Council ordered McIntosh's execution for his disloyalty.³⁵⁷ This minority-approved Treaty split the Creeks for sixty years, and in Foreman's words, "greatly retarded its recovery and reconstruction after removal".³⁵⁸ Both President John Quincy Adams and the Senate recognized that the treaty was not in accord with Creek tribal law and had it investigated by Major General Edmund P. Gaines; it was then renegotiated and signed in Washington on January 24 1826.³⁵⁹ Removal was still mandatory, but to an enlarged territory and with a two year grace period to prepare for the shift. The senior opponent of this revised Treaty was Chief Opothleyohola, who thirty-five years later would again become the dominant figure in Creek politics during the Civil War.

The involvement of Cherokees in the Civil War would have been damaging enough in terms of the loss of life and the destruction of property, but the damage was compounded by the re-emergence of the deep seated hatreds within the tribe resulting from the New Echota Treaty. There was now open hostility between Watie's mainly mixed blood, pro-slavery, and more overtly 'progressive' group,

³⁵⁴ Washburn, *The American Indian and the United States*, Vol.4, 2389-2394; Arrell Morgan Gibson, *The American Indian: Prehistory to the Present*, (Lexington, Mass., D.C. Heath & co., 1980), 325,

³⁵⁵ Washburn, *The American Indian and the United States*, Vol.4, 2389-2393; Prucha, *American Indian Treaties*, 149.

³⁵⁶ Washburn, *The American Indian and the United States*, Vol.4, 2389.

³⁵⁷ Gibson, *The American Indian*, 325; Prucha, *American Indian Treaties*, 149.

³⁵⁸ Foreman, *The Five Civilized Tribes*, 424.

³⁵⁹ Washburn, *The American Indian and the United States*, Vol.4, 2410-2416; Kappler, *Indian Affairs: Laws and Treaties*, Vol.2, 264-268.

and Ross's group, which was supported mainly by the more conservative Keetoowah full bloods, many of whom were abolitionists.

As in much of Cherokee history and politics, however, these divisions were neither cut and dried nor consistent. It is anomalous, for example, that the pro-abolition faction was led by Principal Chief John Ross, only one-eighth Cherokee but nominally a full blood according to the Tribe's matrilineal system, who had fifty slaves tending his fields around his Park Hill property, Rose Cottage.³⁶⁰ Despite its name, Rose Cottage was a two-story reproduction of an Old South mansion large enough to entertain forty guests in well-furnished comfort. At one stage the joint leader of Ross's faction had been Second Principal Chief Joseph 'Rich Joe' Vann, who owned three hundred slaves,³⁶¹ but much of Vann's antipathy towards the pro-secessionist Watie group may have been based on his deep resentment against the Confederate State of Georgia. This stemmed from as far back as 1833 when Colonel William Bishop's Georgia Guard confiscated Vann's mansion, the first brick house built in the Cherokee Nation; it was used by Bishop as his headquarters of his regiment.³⁶² The mansion was also separately claimed as part of the iniquitous Georgia Land Lottery which had handed out improved Cherokee properties to Georgia's incoming white gold prospectors.³⁶³ Against the Ross/Vann group was the Ridge-Boudinot-Watie Treaty party, who believed that slavery was firmly in the Cherokee Nation's interest.³⁶⁴ They failed to convince Chief Ross's majority traditionalist faction that the time and circumstances were right, and that acceptance of the Confederate Government's conditions would be both safe and financially beneficial.³⁶⁵

Watie's associates, however, were mainly mixed blood Indians, more readily adaptable to the white man's culture and civilization and were adamantly pro-slavery. Watie's destruction of the Cherokee Nation's Council House, of most of

³⁶⁰ Moulton, *John Ross*, 155.

³⁶¹ *Ibid*, 155.

³⁶² Grace Woodward, *The Cherokees*, 176.

³⁶³ Williams, *The Georgia Gold Rush*, 4, 48 (with photograph of the lottery-draw); Moulton, *John Ross*, 56-7, 60, 62.

³⁶⁴ Moulton, *John Ross*, 7, 170,

³⁶⁵ Kolchin, *American Slavery*, 99, 183; Grace Woodward, *The Cherokees*, 257, 263; McLoughlin, *After the Trail of Tears*, 168.

the Cherokee capital of Tahlequah and Ross's home during the Civil War was inexcusable in purely military terms, having neither tactical nor strategic value, but his actions showed the depths of the intra-tribal hatred which contributed so significantly to the scorched earth devastation and the huge death toll within the divided Cherokee Tribe during the Civil War.³⁶⁶ In the spring of 1863 the Confederate Government decreed that any captured black troops would be either re-enslaved or executed, and their white officers would also be shot. During the raid Watie had no compunction about killing captives, both Pin Indians and freedmen. Watie particularly despised the latter, and during the Civil War would seldom leave captured African-American prisoners alive. In one instance, in a letter to his wife Sarah on November 12 1863 he casually mentioned killing four prisoners, two Pins and two blacks.³⁶⁷ The C.S.A. Indian regiments' policy was demonstrated by Watie's allies, the Choctaws and Chickasaws under Colonel Tandy Walker, when they defeated U.S. Colonel James Williams' 1st Kansas Colored regiment in the Battle of Poison Springs on April 18, 1864;³⁶⁸ the black unit suffered 117 killed, mostly shot or bayoneted after being captured, a massacre in a flagrant contravention of the generally accepted rules of warfare.³⁶⁹ This ingrained feeling of Indian superiority over the blacks, (whether slaves or freedmen was immaterial), would lead to difficulties in dealing with the Federal Government in the aftermath of the Confederate defeat, and subsequently in the absorption of the freedmen into the Cherokee Nation.

Watie's supporters were also involved in Freemasonry, their Lodge being a branch of the Knights of the Golden Circle³⁷⁰ (wryly referred to by the

³⁶⁶ Moulton, *John Ross*, 177.

³⁶⁷ Edward E. Dale, "Some letters of General Stand Watie": Letter reproduced in full in *Chronicles of Oklahoma*, Vol.1, No.1, January 1921, 41-42.

³⁶⁸ Abel, *The American Indian as Participant in the Civil War*, 326-7.

³⁶⁹ Josephy, *Civil War in the American West*, 212; Abel, *American Indian as Participant in the Civil War*, 327; Kennedy, *Civil War Battlefield Guide*, makes particular mention of the Battle of Fort Pillow in 1864, after which "several dozen black soldiers" were murdered after surrendering, 186.

³⁷⁰ Clarissa Confer, *The Cherokee Nation in the Civil War*, (Norman, University of Oklahoma Press, 2007), 32.

abolitionists as the “Knaves of the Godless Communion”³⁷¹) which grew out of the earlier pro-slavery Blue Lodges which were particularly active in nearby Arkansas.³⁷² Watie’s Lodge, Tahlequah #21, was chartered on August 28 1860, with a Constitution including a provision that “No person shall be a member... who is not a pro-slavery man”.³⁷³ As the likelihood of the War of Secession increased, Watie changed his Freemason faction’s name to the Southern Rights Party.³⁷⁴ The separation of the two Masonic Groups’ philosophies became crucially important when Ross finally abandoned his support of neutrality and called the Cherokees into arms on the side of the Confederacy.³⁷⁵ Two Cherokee regiments were raised by the two unlinked Lodges, the Union supporters coming mainly from the Keetoowah-allied Fort Gibson #35 and Flint Lodge #74, and the two Cherokee regiments would rapidly separate and join opposing Armies.³⁷⁶ Watie’s Freemason allies included Daniel McIntosh of the Creeks, John Jumper of the Seminoles, and Choctaws Peter Pitchlynn and Chilly McIntosh.³⁷⁷ Leading American Mason Albert Pike had been sent by the Southern leaders to raise the Indians on behalf of the slave-owning secessionists, and had been appointed Confederate Commissioner of Indian Affairs.³⁷⁸ He was commissioned Brigadier-General when the conflict began, leading the Indians under the Texan Douglas Cooper, who was also a Freemason.³⁷⁹ After the war, Watie’s Southern Rights group was harshly treated, and the lodge was closed.³⁸⁰ As an example, Joy Porter noted

Possibly because of the number of Northern sympathizers it had contained, Cherokee Lodge #21 was never to have its charter from the Grand Lodge [of Arkansas] reinstated, but in 1877 Cherokee Lodge #10 was granted a charter by the Grand Lodge of Indian Territory.³⁸¹

³⁷¹ Quoted from A.W. Bishop’s *Loyalty on the Frontier* in a footnote by A.H. Abel, *The American Indian as Slaveholder and Secessionist*, 143; also noted by McLoughlin, *After the Trail of Tears*, 159

³⁷² Confer, *The Cherokee Nation in the Civil War*, 33; Frank Cunningham: *General Stand Watie’s Confederate Indians*, (Norman, University of Oklahoma Press, 1998 [1959]), 28.

³⁷³ McLoughlin, *After the Trail of Tears*, 159; Minges *Slavery in the Cherokee Nation*, 73.

³⁷⁴ Confer, *The Cherokee Nation in the Civil War*, 46.

³⁷⁵ Minges, *Slavery in the Cherokee Nation*, 4, 109.

³⁷⁶ *Ibid*, 72-3.

³⁷⁷ *Ibid*, 114.

³⁷⁸ Joy Porter, *Native American Freemasonry: Associationalism and Performance in America*, (Lincoln, University of Nebraska Press, 2011), 216.

³⁷⁹ Abel, *The American Indian in the Civil War*, 319.

³⁸⁰ Minges, *Slavery in the Cherokee Nation*, 232, fn121.

³⁸¹ Porter, *Native American Freemasonry*, 225.

Before 1861 the U.S. Army units in the area had given Indian Territory some protection from the possible depredations of the warlike Plains tribes. As the Civil War became a certainty, there were large scale resignations from the Union Army by officers from Southern States, with most re-enlisting in the Confederate Army. Josephy reported that

Altogether, 313 officers, about one-third of the total in the entire U.S. Army, left western commands. Of that number, 184 were West Pointers, and 182 would eventually serve the Confederacy as General Officers.³⁸²

In addition to these depletions of the Army personnel in the West, the Lincoln Administration, perhaps failing to foresee the advantages of keeping Indian Territory in Union hands as a source of ponies, salt, and lead for military supplies, withdrew the Union Army garrisons from Fort Gibson on the Arkansas River, and from Forts Washita, Arbuckle and Cobb along the Washita and Red Rivers, to strengthen their forces in the Eastern theatre.³⁸³ The Union Army units led by Colonel William H. Emory relocated into Kansas, and the abandoned Territory forts were immediately refilled by Texan troops under Colonel William C. Young.³⁸⁴ Fort Smith on the Indian Territory-Arkansas border, manned by the U. S. Army's 1st Cavalry, was surrounded by secessionist volunteer units from Arkansas and Texas, and the Federals abandoned the strategic post on April 23, 1861, only nine days after the action at Fort Sumter. Even before the hostilities had commenced in the East, Jefferson Davis's Confederate Secretary of State (another Freemason³⁸⁵) Robert Toombs had proposed sending a representative to convince the Five Tribes to align with the South in the coming conflict.³⁸⁶ A Department of Indian Territory was created, and Toombs' choice of leader of the Indians with the rank of Brigadier-General was Albert Pike,³⁸⁷ multi-talented, multi-lingual, and America's leading 33rd Degree Freemason, which became an important factor in the cordiality of his relations with the Chiefs of each of the Five Tribes, all of whom were themselves Freemasons.³⁸⁸

³⁸² Josephy, *Civil War in the American West*, 34

³⁸³ Confer, *The Cherokee Nation in the Civil War*, 46.

³⁸⁴ *Ibid*, 46.

³⁸⁵ Minges, *Slavery in the Cherokee Nation*, 102.

³⁸⁶ Josephy, *Civil War in the American West*, 324.

³⁸⁷ Abel, *American Indian in the Civil War*, 20.

³⁸⁸ Minges, *Slavery in the Cherokee Nation*, 60, 88, 102-3, 105.

In May 1861 Pike took a wagon train filled with good foods and wines and assorted gifts for the Indians, and the assurance that the Confederacy would authorize up to \$100,000 for treaties of alliance with the Indian tribes.³⁸⁹ His first call, accompanied by Brigadier Ben McCulloch, was to Cherokee Chief Ross proposing the formation of a Cherokee Home Guard to ward off invasion by Union abolitionist forces from Kansas. Ross believed that existing Cherokee treaties with the United States should continue, and that Indians were not involved in the white man's struggle; he opted for neutrality.³⁹⁰ His stance was weakened by the fact that his old nemesis within the Cherokee Nation, the white-educated pro-slavery Stand Watie, had declared for the South and on his own initiative had been raising and training a regiment of mixed blood Cherokees, the 1st Cherokee Mounted Rifles, under the auspices of the Knights of the Golden Circle Freemasons lodge. Albert Pike took a group of officers and men of the newly created Muskogean regiments around the western part of Indian Territory, and achieved partial success with some of the Plains Indians, to which his feasts and distribution of gifts materially contributed.³⁹¹ They expressed no enthusiasm for joining the Confederate forces, but did agree not to oppose them and in addition Pike did persuade the Comanches to "suspend their depredations against the virtually undefended ranches and farms of Northern Texas", which had been a cause of hostilities across the border.³⁹² Nevertheless, Mingos argued Pike's Masonic connections were a critical factor in consolidating support among the Five Nations for the Confederate States of America.³⁹³

Thwarted by Ross, Pike crossed the Arkansas River to negotiate with the Creeks, only to find that tribe as bitterly divided as the Cherokees, and on similar lines. The aged and revered full blood patriarch of the Creek Tribe Opothleyohola (a Mason) favored neutrality, with continuance of the existing treaties and alignment with the Federal Government.³⁹⁴ He was opposed by the mixed blood

³⁸⁹ Josephy, *Civil War in the American West*, 324.

³⁹⁰ Abel, *The American Indian as Participant in the Civil War*, 15, 74.

³⁹¹ Josephy, *The Civil War in the American West*, 324.

³⁹² Quotation from Roy A. Clifford, "The Indian Regiments in the Battle of Pea Ridge", in *Chronicles of Oklahoma*, Vol.25, Winter 1947, 314; Gibson, *The American Indian*, 342, 345, 347.

³⁹³ Josephy, *The Civil War in the American West*, 324.

³⁹⁴ Mingos, *Slavery in the Cherokee Nation*, 106; Josephy, *Civil War in the American West*, 327.

Principal Chief Motey Kennard and the McIntosh brothers (sons of the executed William McIntosh), who agreed to join the Confederacy, and to raise a regiment to face any Northern invasion ‘within Indian Territory’, an important proviso that would limit their actions during the Civil War.³⁹⁵ Two days later Pike met with instant success with the Choctaws and Chickasaws. The popular pre-war Indian Agent Douglas H. Cooper, a friend of the Confederacy’s President Davis and another Freemason, had been given a Colonelcy, and he raised a regiment from the two Muskogean tribes, the Choctaws and the Chickasaws. They had an agreement, shared with the Creeks, that they had been formed only to fight for the defense of, and within, Indian Territory. This would be a factor which would become crucial when they were sorely needed just outside the Territory at the Battle of Pea Ridge in March 1862.³⁹⁶

John Ross in 1861 first chose to repeat his refusal to act at the time of the 1835 crisis by opting to keep his Nation neutral, abiding by the existing Treaties and not joining the war against the Federal Government. He also hoped this would ensure the security of the millions of dollars of Cherokee funds held in trust by the Federal Government.³⁹⁷ This was possibly a forlorn hope, given the fact that much of the Cherokee Trust had been invested by the U.S. Treasury in the Southern States and was therefore frozen. Ohland Morton described the position:

Practically all of the Indian money held in trust by the United States [still due from removal payments] for the individual tribes was invested in Southern stocks. Only a very small part was secured by Northern bonds. The argument of the Southerners was that all these securities would be forfeited by the war.³⁹⁸

Governor Henry M. Rector of Arkansas wrote to Ross three months before his State seceded from the Union, pointing out that the Cherokees “were allied to the common brotherhood of the slaveholding States, and offered to assume the monetary obligations of the Federal Government, if [the Cherokees] would join

³⁹⁵ Josephy, *The Civil War in the American West*, 327.

³⁹⁶ *Ibid*, 327-8.

³⁹⁷ McLoughlin, *After the Trail of Tears*, 167-8; Josephy, *Civil War in the American West*, 327.

³⁹⁸ Ohland Morton, “Confederate Government Relations with the Five Civilized Tribes”, *Chronicles of Oklahoma*, Vol.31,1954, 203 (Quoted from a letter sent to John Ross, in *Official Records*, Series I, Vol. 13, 497).

the South.” Ross declined, declaring his loyalty to the United States, with whom the Cherokees still held treaties.³⁹⁹

Pike’s success in promoting the Confederate cause led Ross to have doubts about his own neutral position.⁴⁰⁰ His political foe Watie, given a Colonelcy in the Confederate Provisional Army and gathering mixed blood Cherokees to his cause, had again emerged as a potential political leader of the Cherokee Nation, with growing support for him as Chief instead of the still-vacillating Ross.⁴⁰¹ The raising of Rebel regiments by Watie and by the Choctaws, Chickasaws and some Seminoles had left Ross’s group isolated in what had become a pro-Confederate Indian Territory. Pike also signed treaties with groups of Osages, Quapaws, Senecas, and Shawnees, who chose to be non-combatants but assured Pike they would not assist the Union.

Ross appealed to Lincoln for support for his stance of neutrality, but not only did he receive no encouragement, Lincoln exacerbated the danger for Indian Territory by removing the U.S. Army units which had been stationed in the Territory to guard against hostile Plains Indians tribes.⁴⁰² Ross was also becoming more nervous of the growing power of his old opponent Watie, now an acknowledged leader as a Colonel leading his own regiment. A possible factor which influenced Ross towards joining the C.S.A. was the early success of the Confederate Armies in the Civil War in the battles of Bull Run and Wilson’s Creek which, in Franks’ words: “did much to increase the Southern prestige among the Cherokees.”⁴⁰³ In the East on July 21 1861 the Union Army under Brigadier-General Irvin Mc Dowell was ignominiously routed by a smaller force under the C.S.A’s Brigadier-General P.G.T. Beauregard, Joseph Johnson, and Stonewall Jackson at the first Battle of Bull Run/Manassas.⁴⁰⁴ The Confederates

³⁹⁹ Morton, “Confederate Government Relations”, 203.

⁴⁰⁰ McLoughlin, *After the Trail of Tears*, 167, 169.

⁴⁰¹ Josephy, *The Civil War in the American West*, 327.

⁴⁰² McLoughlin, *After the Trail of Tears*, 177-178.

⁴⁰³ Franks, *Stand Watie*, 118; McLoughlin, *After the Trail of Tears*, 181; Moulton, *John Ross*, 172; Josephy, *Civil War in the American West*, 329.

⁴⁰⁴ Frances H. Kennedy, *The Civil War Battlefield Guide*, (New York, Houghton Mifflin, 2nd edn., 1998), 11-15.

chose not to advance on Washington, but the South's morale had received a major boost, and the Union's expectation of a short, sharp, victorious war was shattered.

Closer to Indian Territory, the Missouri State Governor Claibourn Fox Jackson led his State Guard, which was not yet part of the official Confederate Army, to victory against the Union's Colonel Franz Sigel in the Battle of Carthage, only hours after President Lincoln had formally declared war on the Confederate States of America.⁴⁰⁵ Missouri was a strategically important area, which if dominated by the Union Army would have given valuable transit access to the three major rivers (Mississippi, Missouri, and Ohio) and the most heavily used trails through to the Pacific. On August 10 Sigel was again involved in the Battle of Wilson's Creek, in which Confederate Brigadier General Ben McCulloch's mixed white and Indian force defeated the Union force under Brigadier General Nathaniel Lyon, who died in the battle, the first Union General to die in combat in the Civil War.⁴⁰⁶ C.S.A. morale was high, with many believing the war was winnable for the South. Ross finally decided to call a general meeting of the Cherokee Tribe at Tahlequah, which formally agreed to join Watie's regiment in the Confederate States Army, and to raise a Keetoowah ('Pins') full blood regiment through his Masonic Lodge, to be led as its Colonel by Ross's close friend John Drew. An underlying motive was to create a unit loyal to Ross and to protect him from Stand Watie's growing success and therefore prestige which could lead to a potential challenge for leadership of the Cherokee Nation.⁴⁰⁷

The Seminoles were the smallest of the Five Tribes, and under Chief Billy Bowlegs had previously recorded the most military success against the U.S. Government and Army in the Florida Everglades but Bowlegs showed no interest in joining the approaching Civil War. The Seminole Wars had been partly caused by the tribe's policy of harboring escaped slaves from Georgia, even to the extent of assimilating them into the tribe, and in 1861 they chose not to become involved

⁴⁰⁵ Kennedy, *The Civil War Battlefield Guide*, 20.

⁴⁰⁶ *Ibid*, 21-23.

⁴⁰⁷ McLoughlin, *After the Trail of Tears*, 182.

in the Secessionist war over the slavery issue.⁴⁰⁸ Only a minority faction of the Tribe under the influential John Jumper did sympathize with the South, and they joined the Creek regiment, Jumper being given the rank of Major, fighting with the two Creek McIntosh Colonels.⁴⁰⁹

These mixed tribal alignments foreshadowed from the outset the internal civil wars which would increase the tragedy which would naturally occur if the Civil War spilled over into the Territory. The internal civil war which would become so bitter amongst the Indians was not long in coming. In the Creek Nation the 80-year-old traditionalist Chief Opothleyohola gathered a majority of the tribe onto his large estate, and then chose to remove his five thousand supporters to avoid the war and become neutral refugees across the border in Kansas, leaving behind those Creeks who had already chosen the Confederacy.⁴¹⁰ His party was joined by Bowlegs and his Seminole supporters, including some freed slaves, all intending to stand by their existing United States treaties and not to take part in the war against the Federal Government. Their stance was considered not as neutrality but as active opposition to the newly aligned Confederate Indians, and their march northwards in December 1861 was a catalyst for opening the Civil War hostilities within the Indian Territory. Colonel Douglas Cooper's Texans and Indians attacked the Creek army at Round Mountain on November 19 1861 but were repulsed, partly by the Creeks starting a prairie fire in the tall grass, which endangered Cooper's supply wagon train.⁴¹¹ The battle was inconclusive, but as Opothleyohola's group was able to move on after dark, Cooper had in effect suffered a nominal tactical loss in his first engagement, but it was a first step towards his longer-term strategic superiority.

The chase continued, and included a major battle at Chusto-Talasa ('Caving Banks') on the Bird Creek on December 9 1861, won by the Confederates, with

⁴⁰⁸ Edwin C. McReynolds, *The Seminoles*, (Norman, University of Oklahoma Press, 1957), 292.

⁴⁰⁹ Ibid 299-300; Josephy, *Civil War in the American West*, 328; Abel, *The American Indian as Participant in the Civil War*, 152.

⁴¹⁰ Josephy, *Civil War in the American West*, 327, 330-1; McReynolds, *The Seminoles*, 292-294.

⁴¹¹ Kennedy, *Battlefield Guide*, 33.

412 Unionists killed and only 52 Confederates.⁴¹² On December 26 the Confederate Army crushed Opothleyohola in the third and largest battle at Chustenahlah ('Patriot Hills'), killing 211 of his warriors and capturing 160 women, 20 blacks, 30 supply wagons, 500 horses, and large numbers of other livestock.⁴¹³ Confederate casualties were only 40, but John Drew's regiment refused to take part in the fighting, using as a pretext that they "did not desire the shedding of blood among Indians".⁴¹⁴ Of Drew's 480 troops, 420 deserted, a few of them returning home but the majority crossed over to join the pro-Union refugees, intending to withdraw from the war and move with the remainder of Opothleyohola's group as it continued its slow progress towards Kansas.⁴¹⁵ Colonel Stand Watie arrived only at the end of the battle, but killed or captured about a hundred Union Indians as he harried them for twenty-five miles, incurring no losses from his own men.⁴¹⁶ The contrast between the attitudes of Watie's and Drew's followers towards the killing of other Indians could not have been more sharply demonstrated.

This was a defining moment in the Cherokees' Civil War history, as Watie's mixed blood regiment continued to fight on with ruthless distinction, in marked contrast to Drew's Pins regiment.⁴¹⁷ The two units reopened the hostility that had lain dormant in the Cherokee Tribe since 1846. The Pins' desertions had added another factor to the war, the Confederate fear that they would encourage more Indians to desert and weaken the Territory's meager defenses.⁴¹⁸ On December 19, three hundred of the Pin deserters were addressed by Chief Ross and Colonel

⁴¹² Kennedy, *Battlefield Guide*, 33-4.

⁴¹³ Abel, *The American Indian as Participant in the Civil War*, 79; Grace Woodward, *The Cherokees*, 272-3.

⁴¹⁴ Gaines, *The Confederate Cherokees*, 42, 45, 58; Josephy, *The Civil War in the American West*, 331.

⁴¹⁵ Gaines, *The Confederate Cherokees*, 46, 48; Josephy, *The Civil War in the American West*, 330-1; Grace Woodward, *The Cherokees*, 272.

⁴¹⁶ Cunningham, *General Stand Watie's Confederate Indians*, (Norman, University of Oklahoma Press, 1998), 52-3.

⁴¹⁷ Abel, *The American Indian as Participant in the Civil War*, 111,113.

⁴¹⁸ Ella Lonn, *Desertion in the Civil War*, (Lincoln, University of Nebraska Press, 1998 [1928]), 37.

Cooper, and many were persuaded to re-join Drew's regiment.⁴¹⁹ The officers had to resign their commissions, but no other punishments were imposed.⁴²⁰ This forgiveness, however, was not to be shared with Watie's troops, and the bitterness between the Pins and the Knights of the Golden Circle would both continue and increase. Not all the deserters from the Pins unit re-joined Drew, however, and the others augmented Opothleyohola's refugees. The large group of Union loyalists was unwelcomed and unwanted by the Kansans, and they were left to their own devices in refugee camps.⁴²¹ There they became destitute and starving, circumstances which led to many of them joining the Union Army as a means of physical survival.⁴²² It is one of the oddities of the complicated Civil War that this reversal of neutrality included Billy Bowlegs, who had previously been the fiercest undefeated fighter against the United States Army in the second and third Seminole Wars in Florida; he accepted a Captaincy in the Union Army.⁴²³ When the Union later invaded the Cherokee area, which was immediately south of the Kansas border, the Northern renegades dispensed with their "no Indian shall kill another Indian" principle, and the horror of the Cherokee intra-tribal bitter war began.

The two Cherokee regiments, nominally allies in the same C.S.A. Army, were from then on generally kept apart, the intense hatred between them becoming a violent intra-tribal civil war within the greater national conflict. Drew's Pins were posted to a camp near Tahlequah, while Watie's regiment continued to the Northern border of the Indian Territory. A great deal of the subsequent 'scorched earth' devastation of the Cherokee Nation's property (owned by both sides) was due more to the factional intra-tribal hatred rather than to conventional military action by the Confederate or Union forces.⁴²⁴

⁴¹⁹ Josephy, *The Civil War in the American West*, 337; Gaines, *The Confederate Cherokees*, 42, 45-6, 53; also J.B. Meserve, "Chief Opothleyohola", *Chronicles of Oklahoma*, Vol. 9, No.4, December 1931, 448.

⁴²⁰ Gaines, *The Confederate Cherokees*, 57.

⁴²¹ J.B. Meserve, "Chief Opothleyohola", *Chronicles of Oklahoma*, Vo.9, December 1931, 450-1.

⁴²² Gaines, *The Confederate Cherokees*, 117.

⁴²³ Minges, *Slavery in the Cherokee Nation*, 115.

⁴²⁴ Gaines, *The Confederate Cherokees*, 124-5.

Only once did the two Cherokee regiments fight on the same side in one battle, that of Pea Ridge, known to the Confederates as ‘Elkhorn Tavern’ in March 1862.⁴²⁵ In that strategically important battle, which ensured Missouri would remain in Union hands for the rest of the War, the difference in attitude and behavior was again apparent. Drew’s regiment, combined with a white Texan unit, did capture three of the Union cannons, although the Union gunners were able to escape with their horses and caissons.⁴²⁶ Drew’s men, war-painted and still wearing traditional Indian garb instead of C.S.A. uniforms, and led by inexperienced officers who had been rapidly promoted to replace the original deserters, performed a gleeful war dance around the captured Union guns. This broke up in disorderly panic as two more Union batteries came up and opened fire on the Indians, who were unused to open field warfare, and they retreated into the cover of the nearby woods. Watie’s regiment, mostly uniformed, considerably better trained and already battle hardened, brought the unmanned cannons into the woods, and also on the second day of the battle distinguished themselves by calming the eventual disorderly rout of Van Dorn’s Confederate Army, and settling the retreat into more military order and sanity. A subsequent sour note was the complaint from Union General Curtis that incidents of scalping and mutilation had occurred, a practice viewed with horror by the white regiments. Without examining the truth of this accusation Pike apologized for it, but as both Indian regiments blamed the other it was never established which of them was the guilty unit.⁴²⁷

Scalping of defeated enemies was not the only Civil War activity which aroused both fear and anger. The accepted practice of taking prisoners and, at least nominally, incarcerating them, possibly to be used in equal exchange with prisoners of the other side, was frequently broken, and after black regiments joined the war it was mainly the despised freedmen who were executed after being

⁴²⁵ Kennedy, *Battlefield Guide*, 34-37.

⁴²⁶ Gaines, *The Confederate Cherokees*, 82.

⁴²⁷ Confer, *Cherokee Nation in the Civil War*, 94-5; Josephy, *The Civil War in the American West*, 348; Gaines, *The Confederate Cherokees*, 83; Cunningham, *General Stand Watie’s Confederate Indians*, 76.

captured by the Confederates.⁴²⁸ Watie was not the only perpetrator of the action, as Kennedy reported

Another deterrent [to recruitment of black troops] to serving in the military was the Confederates' announcement, in the Spring of 1863, that captured black troops would be executed or enslaved, and their white officers executed. One of the more notable atrocities of the war was the massacre of large numbers of black soldiers after they had surrendered after the Battle of Fort Pillow.⁴²⁹

The lack of confidence in the Indian regiments which began in the Opothleyohola campaign was reconfirmed in the Pea Ridge battle, both by the incompetence of Drew's men and the horror at the scalping incidents. The battle was won and lost, however, by Major General Earl Van Dorn's ill-chosen attempt to march a large section of his army around and behind the Union troops, thereby separating his own tired forces into defeatable sections, and losing the advantage of his 16,500 men against Major General Samuel Curtis's smaller Union force of 10,500.⁴³⁰ All the treaties signed by Albert Pike had stipulated the Indian units should only fight to defend their homelands, and the Choctaws and Chickasaws would not cross into Arkansas to augment the Indian brigade. Colonel Peter Pitchlynn's Choctaws strengthening Watie's Cherokee force may have made an appreciable difference to the outcome. It is true, however, that part of their reluctance to cross out of Indian Territory was a dispute over being unpaid by Pike, who was himself incensed by the lack of coöperation from the C.S.A. Government, and also the lack of respect his fellow white Generals gave to the Indian force, particularly by their habit of purloining the military supplies and uniforms earmarked for the Indian regiments.⁴³¹ The pay claim was resolved as the battle was taking place, and the Muskogean did move towards Pea Ridge, but did not arrive until after the battle and its combatants were dispersed. They seldom left Indian Territory again.

⁴²⁸ James McPherson, *Battle Cry of Freedom: the Civil War Era*, (London, Penguin, 1988), 565-567; Minges, *Slavery in the Cherokee Nation*, 163; Cunningham, *General Stand Watie's Confederate Indians*, 94.

⁴²⁹ Kennedy, *Battlefield Guide*, 186.

⁴³⁰ *Ibid*, 36.

⁴³¹ Josephy, *The Civil War in the American West*, 337; Abel, *The American Indian as Participant in the Civil War*, 295-6..

Watie's Mounted Rifles did come out of the Pea Ridge debacle reconfirmed as respected battle hardened troops, and continued right through the War to be effective guerrillas in the Western theatre, never ceasing to harry the occupying Union forces, although with varying success. Watie was particularly implacable and severely extended the devastation of the territory. Almost all of the war in Indian Territory was fought in the north-eastern sector, the Cherokees' own designated area, which was most accessible to the Union invasions from Kansas, Missouri, and Arkansas. The one notable exception was the February 1864 march by Union Army Colonel William A. Phillips who took 1500 troops from his captured stronghold Fort Gibson southwards almost as far as the Red River in Choctaw/Chickasaw territory. He captured, looted, and burned the Choctaw main supply depot at Perryville, and in an attempt at breaking the Indians' spirit he burned the surrounding countryside.⁴³² He succeeded neither in convincing Pitchlynn's Choctaw/Chickasaw forces to change their allegiance to the Union, nor even in breaking the people's spirit, but he did leave the area devastated for the only time in the War. The Southern area had largely avoided being involved in the fighting, but was nevertheless impoverished by the large numbers of refugees who had been driven down from the Cherokee area.

Stand Watie even continued to fight on after the Federals took control of Indian Territory in the strategically decisive loss in the Battle of Honey Springs on July 17, 1863 and waged a running guerrilla war, returning frequently with marauding forays into what should have been the Cherokees' own area.⁴³³ He bypassed Phillips' Union force in Fort Gibson and almost totally destroyed the Cherokee capital of Tahlequah. He took particular pains to burn down the Council House, the actual seat of Cherokee government over which Chief John Ross had presided for so many years. Significantly, the one notable public building Watie's men left unscathed was the Cherokee Masonic Lodge; even its ceremonial jewels were left

⁴³² Abel, *The American Indian as Participant in the Civil War*, 295-297. This incident is not to be confused with the Battle of Perryville in Kentucky in 1862, one of the bloodiest in the Western Theatre, (Kennedy, *Battlefield Guide*, 127).

⁴³³ Josephy, *The Civil War in the American West*, 371-372; Kennedy, *Battlefield Guide*, 219-221. Honey Springs was unique in the composition of the personnel involved, in that Indians and Black troops outnumbered the Whites in the battle, (Kennedy, 221).

intact and in situ by both sides throughout the war.⁴³⁴ On October 28 1863 Watie also burned John Ross's Rose Cottage at Park Hill.⁴³⁵ This was an act of pure hatred, with no military value as his old nemesis Ross was already long departed, 'captured' and paroled by the Union and living in comfort in the Philadelphia home of his wealthy white wife's Quaker family. Ross had taken with him the bulk of the Cherokee Nation's treasury and most of the Archives, which had been stored by the Principal Chief since records had first been kept in 1808, including all the papers and correspondence with the U.S. Government and Presidents.⁴³⁶ The Park Hill estate had also been used for meetings of the Ross Party's supporters. No record exists of the Archives being brought back when Ross returned, and unfortunately for historians Watie's destruction of the estate's surrounding barns and storehouses also included the burning of the remaining less important documents of the Tribe's history, and these actions left gaps in the historical records of the Cherokee Nation.

Except for the major campaign of Union Colonel William A. Phillips' foray to the main Choctaw storage depot at Perryville, for most of the War the Union Army stayed within or around their garrison towns, while Watie's Confederates were the dominant force outside the urban areas. The main garrison in Indian Territory was at Fort Gibson, used to defend the thousands of pro-Union Indian refugees who had been forced to return from the camps in southern Kansas, and were destitute and starving. There were also four thousand Union troops held in Fort Smith in Arkansas, close to the Indian Territory border, as reported in a letter from Stand Watie to his wife Sarah on June 1, 1864.⁴³⁷ By 1865 the Union had stationed 20,000 troops on the frontier, a large number considering the needs of the War in the South, although this number included many units further west who seldom or never saw action. For example, they included the Iowa 7th Cavalry, who spent the years 1863-65 peacefully in Dakota, Colorado, Wyoming, Kansas and Nebraska. The Union Army may have been overly cautious in keeping so

⁴³⁴ T.L. Ballenger, *History of Cherokee Lodge #21*, (Chicago, Ill., Ballenger Papers, Newberry Library), 11.

⁴³⁵ Josephy, *The Civil War in the American West*, 375.

⁴³⁶ Grace Woodward, *The Cherokees*, 214, 280.

⁴³⁷ Letter quoted in full in Edward E. Dale, "Some Letters of General Stand Watie", *Chronicles of Oklahoma*, Vol.1, No.1, January 21 1921, 49-50.

many men west of the Mississippi, particularly as a Grand Council at Camp Napoleon of all the tribes in the 'leased district of Indian Territory', also including representatives from Kansas and the Plains tribes had been called in 1864, all agreeing "not to spill any more Indian blood".⁴³⁸ The notable exception to this generally honored policy was the continuing internal warfare within the Cherokee Nation.

The war in Indian Territory (and further West) was generally regarded in the Eastern sector as being only a side-show of lesser importance, but it was a compliment to Watie's strategic nuisance value that so many Union troops had to be stationed so far from the main theatres of combat. Frequently his targets were the supply routes, used to bring not only military materiel but also food and clothing for the refugees huddled around the Union Army depots. On May 10 1864 the commander of Indian Territory Major General Samuel B. Maxey recognized Watie's military value and his steadfast loyalty to the Confederacy by promoting him to become the only Indian Brigadier General on either side in the War, and putting him in charge of all the Territory's Indian forces.⁴³⁹ Maxey was quoted as saying that "Watie and his men have been from the very beginning as the needle to the North Star".⁴⁴⁰

His two greatest military successes soon followed his promotion. The first was the unusual capture by cavalry of the Union steamship *J.R. Williams* at Pleasant Bluffs in the Arkansas River on June 15 1864, an opportunity anticipated by Watie as the rising water of the river would allow restitution of the supply route to Fort Gibson.⁴⁴¹ Second Lieutenant Horace Cook, with his sergeant and twenty-four privates of the 12th Kansas Volunteer Infantry guarded the steamer, but had no chance against the ambush of Watie's three hundred Cherokees and Creeks of the Indian Brigade, particularly as Creek Lieutenant George Washington Grayson had hidden three cannons on the bank, one of which hit and exploded the

⁴³⁸ Bailey, *Reconstruction in Indian Territory*), 55-57.

⁴³⁹ Josephy, *The Civil War in the American West*, 377.

⁴⁴⁰ Franks, *Stand Watie*, 160-163.

⁴⁴¹ Cunningham, *General Stand Watie's Confederate Indians*, 143-144; Josephy, *The Civil War in the American West*, 377; Abel, *The American Indian in the Civil War*, 327.

steamship's boiler. The ship lost steering control, grounded upon a sandbank, and the terrified scalded Union soldiers abandoned ship and escaped to the far bank, returning on foot to Fort Smith. Fort Gibson was deprived of \$120,000 worth of supplies, including foodstuffs and clothing, although the Confederates could not gain full advantage as the rising river washed away many barrels of flour and stores away from the bank overnight before Watie could receive the wagons he had requested.⁴⁴² His Creeks and Seminoles looted what they could carry and scurried home, severely depleting his force for a time. He took advantage of this victorious moment to call all his Cherokee troops together at his main camp, Limestone Prairie, and there they fully justified Maxey's confidence in their loyalty by unanimously re-enlisting for the duration of the War.⁴⁴³

The other conspicuous victory was the Second Battle of Cabin Creek in September 1864, Watie's greatest success, although it occurred too late in the War to have the strategic impact of Pea Ridge (which made Missouri safe for the Union) or Honey Springs (which gave the Union virtual military control of so much of Indian Territory for the remainder of the War).⁴⁴⁴ On February 5 1864 Watie presented Major General Maxey with a plan for recapturing the Union-held area north of the Arkansas River, a plan which may have influenced Maxey's decision to promote Watie. The plan was put into operation in September, with Brigadier General Richard Gano's Fifth Texas Cavalry Brigade posted to join the Indian Brigade. The 800-Indian Brigade was made up of Lt. Col. C.N. Vann's 1st Cherokee Regiment, Major John Vann's 2nd Cherokee, Lt. Col. Samuel Chekote's 1st Creek Regiment, Col. T. Barnett's 2nd Creek, and Col. John Jumper's Seminole Battalion. Gano brought 1200 men from seven Texan units, plus Capt. Sylvanus Howell's Battery of six cannons. Their target was a Union supply train of 205 Government-owned wagons, 91 sutler's wagons, and four ambulances guarded by 260 Kansas soldiers and 310 Union Cherokees at Cabin

⁴⁴² Cunningham, *General Stand Watie's Confederate Indians*, 143-4, 156; Abel, *The American Indian as Participant in the Civil War*, 327.

⁴⁴³ Cunningham, *General Stand Watie's Confederate Indians*, 145.

⁴⁴⁴ Josephy, *The Civil War in the American West*, on Pea Ridge, 338-347, on Honey Springs, 371-2; Cunningham, *General Stand Watie's Confederate Indians*, 58-64.

Creek, near Fort Gibson.⁴⁴⁵ The battle was a stunning success for Watie and Gano, capturing 130 wagons and 740 mules, burning all the others and depriving the Union of \$1,500,000 worth of stock, some of which clothed Watie's Confederates in Union Blue uniforms, which they wore for the remainder of the War.⁴⁴⁶ The battle was a major morale booster for the whole Confederacy in a time when they were suffering major reverses of fortune elsewhere in the War.

Watie's units participated in innumerable guerrilla skirmishes and eighteen battles, including Cowskin Prairie (April 1862), Elkhorn Tavern/Pea Ridge (March 1862), Old Fort Wayne (October 1862), Webber's Falls (April 1863), Fort Gibson (May 1863), and the 1st Cabin Creek (July 1863). Lee's surrender of the Army of Northern Virginia to Grant at Appomattox on April 9 1865 is usually regarded as the close of the Civil War, but this did not apply across the Mississippi. Lieutenant General Kirby Smith, the commander of the Confederates' Trans-Mississippi Department, believing he still 60,000 men in his armies, had written to Grant in May 1865, "declining to surrender on the terms granted to General R.E. Lee" and had urged his troops to maintain the fight against the Union.⁴⁴⁷ His opponent Colonel Sprague assured Smith on May 13 that "anyone who quit the War and went home quietly or who escapes to Mexico without parole would not be penalized or obstructed".⁴⁴⁸ By May 27, Smith discovered that the large army he claimed to command "no longer existed".⁴⁴⁹

It would not be until June 1865 that the Choctaw Chief, Colonel Peter Pitchlynn, surrendered his Choctaw/Chickasaw Regiment. Even though the War had in reality been lost, Watie finished his war with a flurry of small guerrilla victories, still striking terror into the Northern Cherokee refugees clustered around Fort Gibson but mainly against Union supply lines north of Fort Smith. It is not known whether he continued to support Kirby Smith and to fight on as proof of his conviction that he had fought for the right side, or whether he was

⁴⁴⁵ Josephy, *The Civil War in the American West*, 377.

⁴⁴⁶ Grace Woodward, *The Cherokees*, 288-9.

⁴⁴⁷ Robert Lee Kerby, *Kirby Smith's Confederacy: the Trans-Mississippi South, 1863-1865*, (New York, Columbia University Press, 1972), 415.

⁴⁴⁸ *Ibid*, 418.

⁴⁴⁹ *Ibid*, 425.

demonstrating the Cherokee Nation's sovereignty over its own pre-war territory. Watie, defiant to the end, finally sent his warriors home with all their equipment and supplies and then surrendered himself on June 25 1865, eleven weeks after the Appomattox surrender.⁴⁵⁰ Watie therefore became the last Confederate General to surrender in the Civil War, thus bringing the war to its end.

Just as Watie had commenced his war service under the auspices of his Masonic Lodge, so did the Lodge figure in its close. In the presence of Master Mason Robert M. Jones, he surrendered to Lieutenant-Colonel Asa Matthews, who had been sent by Major-General Francis Herron of the Iowa Masonic Lodge #125, in the Doaksville Lodge #52 in the Choctaw Nation's territory.⁴⁵¹ This was less than a month after a Grand Council of Southern Indians had been called at the Armstrong Academy, in western Indian Territory, in an attempt to unite all the nearby Indian tribes (the Five Tribes as well as Plains Indians) into a cohesive group to remain strong after the impending collapse of the Confederacy. At that meeting were Watie and William Penn Adair of the Cherokees, Seminole leader John Jumper, the last full blood Creek Chief Samuel Checote, Creek leaders Chilly McIntosh, Daniel McIntosh, and George W. Stidham (who had earlier been an emissary to Washington, and who had formed the Eufaula Masonic Lodge in 1855, the first in what would become Oklahoma Territory), Robert M. Jones and Peter Pitchlynn of the Choctaws. All of them were Indian Freemasons.

The Five Tribes had a total population of only about 100,000 at the commencement of the Civil War, a tiny minority when compared to the United States as a whole, and this may be one of the reasons historians seldom found the Territory's war to be worthy of their interest. The total numbers involved may have been small on the national scale of the war, but Gaines believed no State or Territory "had a higher percentage of losses than the Indian [Territory] Nations".⁴⁵² The pall of death hung heavily over the Five Tribes, and particularly

⁴⁵⁰ Shelby Foote, *The Civil War*, Vol.3, "Red River to Appomattox", (New York, Random House, 1974), 1022; Josephy, *The Civil War in the American West*, 385; Confer, *The Cherokee Nation in the Civil War*, 158.

⁴⁵¹ Minges, *Slavery in the Cherokee Nation*, 165.

⁴⁵² Gaines, *The Confederate Cherokees*, 124.

for the Cherokee, who were the most heavily involved Tribe – on both sides, as most of the warfare had been carried out in the northeastern sector, the Cherokee tribe’s area. It was not only vulnerable to invasion from Kansas and Missouri and the fighting around the Arkansas border, but the intra-tribal enmity between the Ross and Watie factions had increased the bitterness, property devastation, and death toll of the divided Tribe.

The pride in Watie’s achievements and his four years of constant harassment of the Northern forces could not compensate for the devastation and poverty of the Indian Territory at the close of the Civil War. He had fought valiantly, earning respect from generals of both sides, but his ceaseless activity had come at a dire cost to his homeland. Conscription in the Cherokee Nation reached its peak in July 1864, with all able-bodied males between the ages of seventeen and fifty-five being drafted. The violence of the Cherokees’ dual civil wars, national and intra-tribal, had left them with the worst casualty toll of the Five Tribes, including civilians; about 4,000 were killed, and there were 1,200 orphans and maimed veterans.⁴⁵³ Even as early as 1863 one-third of the Indian Territory’s women were widows, and a quarter of the children were orphans. The Cherokee Agent George Butler had reported in 1859 that the Cherokee population was 21,000, of whom 4,000 were eligible to vote. About 1,000 whites and 4,000 blacks, mainly slaves but including some freedmen, also lived among them.⁴⁵⁴ A census of the Cherokee Nation in 1867 showed a population of only 13,566; when seriously injured veterans among them are also taken into account, this figure represents an appalling casualty rate.⁴⁵⁵

The tribe was also widely dispersed, the majority driven as homeless refugees southwards into the more peaceful Choctaw sector of the Territory, and even further south across the Red River into Texas.⁴⁵⁶ The Choctaws, who were themselves impoverished, were hard-pressed to feed the Cherokee refugees many of whom stayed until 1868 and 1869. Approximately 5,500 of the latter had been

⁴⁵³ McLoughlin, *After the Trail of Tears*, 220.

⁴⁵⁴ Grace Woodward, *The Cherokees*, 252.

⁴⁵⁵ Gaines, *The Confederate Cherokees*, 124.

⁴⁵⁶ Josephy, *The Civil War in the American West*, 375.

rendered homeless and destitute when the pro-Union Council of the Cherokee Nation, led by Chief John Ross, in 1863 confiscated the property of the pro-Confederates. Watie had lost his home near Honey Springs, his wife and daughters had been forced to flee into Texas, although Saladin, one of his sons, remained to fight as a fifteen-year-old Captain in Watie's regiment, and later became a tribal delegate in the post-war peace conferences. Some Cherokees had also drifted into Arkansas, and most of the pro-Union Cherokees, along with the surviving remainder of Opothleyohola's Creeks and Seminoles, spent much of the war in poverty and near starvation in Kansas, until driven out of that State and being forced to cluster around Fort Gibson, dependent upon help from the Union Army units based there. Not all were able to return to their earlier homes during the war or its aftermath, and their inability to return promptly would create difficulties after the 1866 reorganization of the Territory and later when the 1893 Dawes Allotment census would occur.

The tragedy of the Cherokees' involvement in the war was not confined to the human losses. The Ordnance department of the Confederacy at the outset had sent supply officers to survey not only the strategic position of the Indian Territory, but also its potential worth.⁴⁵⁷ They reported that the Territory should be a rich source of beef, saddle leather, horses and grain, while the mines in the northeastern sector could supply enough lead for all the Confederate Armies' needs, but after the war what had been a thriving agricultural community was left a barren wasteland. All the hard work from 1835 to 1861 had to be repeated, albeit without the previous supply of federal funds and without all the household goods and agricultural implements which had originally been brought in from Georgia and its neighboring States.

The degree of devastation in the War can be shown by comparison with pre-war statistics. Cherokee Agent Butler's 1859 report had stated the Cherokees had 102,500 acres in cultivation, and they owned 240,000 head of cattle, 20,000

⁴⁵⁷ *Official Records of the Civil War*, Vol. liii, supplements 767, 774, quoted in Abel, *The American Indian in the Civil War*, 20.

horses and mules, 16,000 pigs and 5,000 sheep.⁴⁵⁸ Farmers had averaged thirty-five bushels of corn to the acre, thirty of oats, and twelve of wheat.⁴⁵⁹ Watie's burning of the Park Hill estate owned by the absent Chief John Ross typified the destruction of most of this previously prosperous Cherokee area. Farms and orchards had been looted, stripped and destroyed, and hardly a house, barn, store, or farm remained in the landscape, with even the fences having been commandeered for firewood.⁴⁶⁰ Virtually all schools, churches, and public buildings had been burned down.⁴⁶¹

The B.I.A. Commissioner of Indian Affairs D.N. Cooley reported in 1865 that he was investigating the large-scale theft of Indians' cattle during the conflict. The War Department appointed Lieutenant George Williams to examine the accusations, and to report to Cooley. He declared the charges proven; approximately 300,000 head of cattle had been driven out of Indian Territory without the owners' consent or remuneration.⁴⁶² These large-scale thefts were mainly regarded as the spoils of war and therefore legitimate gains by the generals of the dominant Army. Two hundred thousand head of these cattle were driven westwards out of the war zone and reached Denver, Colorado, and the rest were sent to Kansas.⁴⁶³ Williams laid the blame not only on civilian cattle rustlers, but also included some Indian Agents, and against some officers of the Army units sent to the area to curtail the thieving.⁴⁶⁴ Cattle sold for an average of fifteen dollars a head, a total of four and a half million dollars stolen during the period. Looting by soldiers was of course standard practice throughout the war, both by Union regulars and Watie's Confederate guerrillas. It was seldom punished by military authorities, and the civilian courts no longer functioned in the battle zones.

⁴⁵⁸ Grace Woodward, *The Cherokees*, 252.

⁴⁵⁹ *Ibid*, 252.

⁴⁶⁰ Confer, *The Cherokee Nation in the Civil War*, 144-5.

⁴⁶¹ *Ibid*, 145.

⁴⁶² Washburn. *The American Indian and the United States*, Vol.1, 121-2.

⁴⁶³ Bailey, *Reconstruction in Indian Territory*, 40-41; 2.

⁴⁶⁴ Confer, *The Cherokee Nation in the Civil War*, 145-7.

Post-war agricultural production and the re-establishment of saltworks had to take place in a deserted and neglected landscape; agriculture had been neglected and severely declined during the war.⁴⁶⁵ The Indians required assistance from the Federal Government, as there was not enough seed to plant crops; there would be no wheat harvest in 1865.⁴⁶⁶ Some limited help was forthcoming during the last year of the war, from the pro-Union Cherokees who had returned from Kansas and were established around Fort Gibson, nominally protected by General Blunt's Union forces; but the problems increased as the Southern Cherokee refugees drifted back from Texas and the Choctaws' territory when the War ended. The Five Tribes faced all the heart-breaking problems common to war torn and devastated territories as peace returned in 1865. Families had been torn asunder and scattered in all directions, widows and orphans had to be cared for, and the prosperity of the pre-war Territory had to be rebuilt. Not least for the Cherokees, would be the problems of politically re-uniting the bitterly divided Indian Nation. They were also soon to find out that as they had been the losing side in the war, they would be treated unsympathetically and even harshly by the Federal Government in the post-war Treaties forced upon them.

It had been the truculent Stand Watie who had fought to uphold some semblance of Cherokee Nation sovereignty throughout the Civil War, rather than the official Principal Chief John Ross, the man who had previously led his tribe in courageous but stubborn defiance against the combined political forces of the United States and Georgia. The war had reinforced the separation of the blood divisions within the Cherokee Nation. Although neither side was clearly based on degrees of Cherokee blood, the majority of the full bloods had ended the war as Northern sympathizers, while the mixed bloods were mainly aligned to Watie's Southern Rights Party, and the division had been instrumental in increasing the horrendous death toll in the area.

The Federal Government had defeated the South's claim to sovereignty, and as some of the Cherokees had been heavily involved in supporting the Confederacy,

⁴⁶⁵ Confer, *The Cherokee Nation in the Civil War*, 113.

⁴⁶⁶ Bailey, *Reconstruction in Indian Territory*, 43-44.

the Cherokee tribe as a whole was to be punished as part of the post-war reorganization of Indian Territory. Cherokee sovereignty had been seriously eroded, and the tribal leaders would have to begin again to struggle to regain it. The post-war arrangements would also have a marked effect upon the racial mix of Cherokee citizenship, which also entailed a further erosion of their sense of autonomy within their homeland.

Chapter Five

Post-War Reorganization of Indian Territory 1866-1887

The defeat of the Confederacy exposed the Cherokee Nation to Northern retribution, and it was swift in coming. By September 1865 the Federal authorities had presented the Cherokees with the terms of the Peace Treaty that they were expected to accept, and after relatively unsuccessful attempts to win some concessions, their leaders signed the Treaty in mid July 1866. The Treaty amounted to a major assault on any notion of tribal sovereignty, in that the Cherokees had to concede land for the use of other tribes that the Federal Government wanted to relocate, and to set aside other land as right of way for two railroads. It was also required to admit free blacks and freedmen to tribal citizenship, something that the tribe bitterly opposed because they considered blacks to be inferior, and they regarded the right to determine who should be admitted to membership of the tribe as key element of tribal sovereignty. Their loss of control over territory and membership made it very clear that they were now in a very weak bargaining position, and that the Federal Government was ready to deal with the Five Tribes within the overall framework of a national Indian policy.⁴⁶⁷ For the Cherokee leadership, the problem was how to delay the complete destruction of tribal sovereignty, and at the same time manage what was an increasingly complex racial structure within the tribe.

During the Civil War the Indian Problem was a low priority for the Federal Government, but after the war it moved to solve that problem once and for all by Grant's Peace policy, which was aimed not at the Five Civilized Tribes but at their wilder western brethren, many of whom were to be herded into reservations.⁴⁶⁸ Their corrupt Federal Agents were to be replaced by missionaries, mainly

⁴⁶⁷ Eric Foner, *Reconstruction: America's Unfinished Revolution 1863-1877*, (New York, Harper & Row, 1988), 257, 462-3; Bailey, *Reconstruction in Indian Territory*, 80-1, 192, 194-5.

⁴⁶⁸ Henry E. Fritz, "The Making of Grant's Peace Policy", *Chronicles of Oklahoma*, Vol.37, No.4, 1959, 411-432.

Quakers,⁴⁶⁹ who would encourage the Indians to abandon their attachment to the notion of communal ownership of land and adopt the American practice of individual ownership of farmland. They would also teach them to read and write, wear Euro-American clothing, and embrace Christianity.⁴⁷⁰ In practice the Peace policy was a failure, but written into it was the rider that if the Indians did not cooperate, action would be taken to enforce it. The U.S. Army and local volunteer regiments created in the States and Territories carried out a widespread military campaign directed by Major General Philip Sheridan over the next two decades across the central and northern Plains⁴⁷¹. The enforcement of Federal policy was costly both in lives and money, and involved hundreds of engagements in a largely one sided campaign to subjugate the tribes.⁴⁷² The wholesale slaughter of the Indians' main source of food, the buffalo, also contributed to the decline of the economy of the Plains tribes. Dee Brown asserted that 3,700,000 buffalo were destroyed between 1872 and 1874; of those, only 150,000 were killed by Indians.⁴⁷³ Sheridan approved the practice, as it aided his policy of subjugating the Indians.⁴⁷⁴

One outcome of the displacement of the Plains Indians was that the Federal Government had to find new locations for survivors, and Indian Territory seemed to provide an attractive option. Soon the remnants of many tribes were moved into the Territory, from areas as far apart as New England and the central Plains, without any reference to their cultural differences, and this influx had the effect of both reducing the land available to Indians in the Territory, and making more land outside the Territory available to white settlers, who had the vote and were increasing in numbers. In 1865 a Federal Commission created mainly to organize the Indians in Kansas and Nebraska and led by the Heads of the Central Indian

⁴⁶⁹ Clyde A. Milner II, *With Good Intentions: Quaker Work Among the Pawnees, Ojibwas, and Omahas in the 1870s*, (Lincoln, University of Nebraska Press, 1982), 2, 5; Dan W. Perry, "The Indians' Friend, John H. Seeger", *Chronicles of Oklahoma*, Vol.11, No.1, March 1933, 709-10; Aubrey L. Steele, "The Beginnings of Quaker Administration of Indian Affairs in Oklahoma", *Chronicles of Oklahoma*, Vol.17, No.4, December 1939, 367.

⁴⁷⁰ Foner, *Reconstruction*, 462.

⁴⁷¹ Francis Paul Prucha ed., "Creation of an Indian Peace Commission, July 20 1867", *Documents of United States Indian Policy*, (Lincoln, University of Nebraska Press, 1975), 105-6.

⁴⁷² Billington, *Westward Expansion*, 571-577.

⁴⁷³ Brown, *Bury my Heart at Wounded Knee*, 265; Billington, *Westward Expansion*, 579.

⁴⁷⁴ Brown, *Bury my Heart at Wounded Knee*, 265; Foner, *Reconstruction*, 462-3.

Superintendency, Thomas Murphy and General William Harvey, met at Wichita in Kansas to arrange the relocation of the Western tribes. The Commission included the mixed blood Cherokee Jesse Chisholm, and Delaware Chief Black Beaver, both selected for their considerable multi-lingual interpretive skills. The Cheyennes and their Algonquian relatives the Arapahos (homeless since Chivington's Sand Creek massacre), the Comanches, Kiowas, and Kiowa-Apaches were all moved into reservations in or around the Indian Territory.⁴⁷⁵ These settlements became only temporary, however, as continued incursions into their territories by white settlers, and the poor delivery of government annuities to the tribes, led to them all escaping back to their original homelands. The issue of permanent relocation into Indian Territory would surface again in the post-war treaties imposed on the Five Tribes as the Federal Government turned its attention away from the subjugation of the Plains tribes and towards the settled tribes that had become embroiled in the Civil War itself, and in particular to the Five Tribes in Indian Territory.

Even before the end of the war, the Confederate Indians tried to plan their post-war destiny and perhaps ward off Federal action by holding a Council at Camp Napoleon at Cotton Wood Grove on the Washita River in May 1865, at which over twenty tribes from the Plains as well as the Territory and even Kansas took part (including Annahdahkos, Arapahos, Caddos, Cheyennes, Comanches, Cochateks, Kiowas, Lipans, Mootchas, Nacones, Senawuts, and Yameparckas).⁴⁷⁶ The conference resulted in the Camp Napoleon Compact, which agreed to peace and coöperation among the tribes, under the principle that "no Indian should spill another Indian's blood."⁴⁷⁷ In the same month, Lt. General Edmund Kirby Smith had urged his troops to maintain the fight against the Union, thus prolonging the War as far as the West was concerned. The Choctaw Chief, Colonel Peter Pitchlynn, did not surrender his Regiment until June 19 1865; Governor Winchester Colbert surrendered his Chickasaws on July 14, and the Civil War

⁴⁷⁵ Bailey, *Reconstruction in Indian Territory*, 81; Billington, *Westward Expansion*, 571.

⁴⁶⁷ Bailey, *Reconstruction in Indian Territory*, 55-6; Anna Lewis, "Camp Napoleon", *Chronicles of Oklahoma*, Vol.9, No.4, December 1931, 359-364..

⁴⁷⁷ Brad R. Clampit, "An Indian Shall Not Spill Another Indian's Blood: the Confederate Indian Conference at Camp Napoleon, 1865", *Chronicles of Oklahoma*, Vol. 83, No.1, Spring 2005, 34-5.

finally ended when Cherokee Brigadier-General Stand Watie sent his warriors home with all their horses, arms, equipment and supplies and then surrendered himself on June 23, eleven weeks after Appomattox.⁴⁷⁸ The Camp Napoleon Council, although including representatives from the Five Tribes, was held whilst the Confederate Indian troops were still harassing Union forces. Its resolutions were to have no effect on the Federal Government's approach to reorganizing Indian Territory

A major problem for the Cherokee Nation as it waited for the Federal Government to show its hand was the restoration of some semblance of stability and order among its own ranks, and especially among the leadership. The resolution at the Camp Napoleon conference forbidding the spilling of further Indian blood by Indians proscribed violence, but was not enough to cement friendship throughout the still divided Cherokee Nation. The traditional enmity between the two Chiefs, John Ross and Stand Watie, had become more complex because of the allegiance each had taken during the Civil War, and the division between full blood and mixed blood was still a major issue. The old intra-tribal antagonism engendered by the New Echota Treaty in 1835 between the two main groups of Cherokee leaders, Watie's Treaty Party and Ross's National Party, although diminishing, had re-emerged during the post-war election process, which was marred by violent brawling at the polls between the supporters of the rival factions.⁴⁷⁹ The political division of the 1830s and 1840s had culminated in bloody violence, including thirty murders in a ten month period in 1845-46, but was supposedly settled by the 1846 Cherokee Treaty in Washington, at which the two main protagonists, Ross and Watie, had shaken hands.⁴⁸⁰ The tenuous peace enjoyed during the period from 1846 to 1861, the Golden Age of the Cherokees, had been destroyed again by the divisions during the Civil War, and the two Parties had again become irreconcilable.⁴⁸¹

⁴⁷⁸ Josephy, *The Civil War in the American West*, 385; Franks, *Stand Watie*, 180; Cunningham, *General Stand Watie's Confederate Indians*, 198

⁴⁷⁹ Grace Woodward, *The Cherokees*, 309.

⁴⁸⁰ *Ibid*, 237; McLoughlin, *After the Trail of Tears*, 58.

⁴⁸¹ Grace Woodward, *The Cherokees*, 309.

This was another instance where the Cherokee élite could have acted in a manner more beneficial to their own people. In 1863 Principal Chief John Ross tried to extend his tenure as head of the Cherokee Nation with the support of his Party, in controversial circumstances, as Ross had been captured in July 1862 when the Union Army under Colonel William Weer reached Park Hill during its victorious southward drive out of Kansas.⁴⁸² The majority of Colonel John Drew's regiment had changed sides for the third time, joining the Union's Indian Home Guard, which was mainly composed of Opothleyohola's Creeks and Seminoles drawn from their impoverished refugee camps in Kansas.⁴⁸³ Ross himself had been considering changing his allegiance from the Confederacy to the Union, and willingly accepted the status of prisoner of war to Weer, who immediately paroled him. Ross then left the Indian Territory under protective Union custody to plead for clemency for the Cherokee Nation in Washington. He attempted to convince President Lincoln and Secretary of War Edwin M. Stanton that the Cherokees had only been prevented from remaining loyal to the Union by unavoidable circumstances, economic pressures, and geographic location. Lincoln could not accede to the old Chief's appeal, and Ross moved on to Philadelphia until the end of the war, taking with him all the Cherokee Nation records and the bulk of its funds.⁴⁸⁴ There he lived in the home of his young second wife Mary Brian Stapler's wealthy Quaker family.⁴⁸⁵

During Ross's absence Stand Watie, backed by his Knights of the Golden Circle, a regiment raised by and within Watie's Masonic Lodge in 1861, claimed to be the logical candidate to lead the tribe, and was elected by the Southern group as Chief of the Cherokee Nation in 1862, although not supported by the pro-Union Cherokees.⁴⁸⁶ To all intents and purposes, the Southern faction considered that he was the sole Chief of the Cherokees while Ross was still absent in Philadelphia.⁴⁸⁷ This claim was intolerable to the Keetoowah Pins-dominated northern Cherokees,

⁴⁸² Josephy, *The Civil War in the American West*, 356.

⁴⁸³ *Ibid.*, 356.

⁴⁸⁴ Grace Woodward, *The Cherokees*, 280.

⁴⁸⁵ Moulton, *John Ross*, 175; Grace Woodward, *The Cherokees*, 280.

⁴⁸⁶ Grace Woodward, *The Cherokees*, 281, 284.

⁴⁸⁷ Cunningham, *General Stand Watie's Confederate Indians*, 72.

who refused to accept Watie as their Chief.⁴⁸⁸ He added the extra executive duties to his military activities, becoming one of the most active guerrilla leaders against Northern forces throughout the war. The Pins' decision also became controversial because they had appointed Acting Chiefs to stand in for Chief Ross while he was still absent from the Territory, unable to take the Oath of Office or take part in an election. Ross had foreseen the difficulty this omission would create, and had taken an Oath before a Justice of the Peace in Washington, which he then filed with the Indian Office. This action became crucial when a Bill recommended by Harlan and designed to combine all the Indian tribes under one consolidated Territorial government, was being planned in March 1865. At that point Senator James Lane followed Cooley's lead in objecting to Ross's bona fides as a Cherokee representative. In order to keep the tribe functioning during his absence, the Northern Cherokees had appointed as Acting Chiefs Major Thomas Pegg in 1862-63, Captain Smith Christie in 1863, and then Colonel/Baptist Minister Lewis Downing; the latter would go on to become a major figure in Cherokee politics after the war. It may have been more sensible to have appointed Watie as Principal Chief at the end of the War.

The seventy-five-year-old Ross returned from Philadelphia in 1865, hoping to cling to his previous power, thereby keeping the tribe divided. He planned to attend the Fort Smith multi-tribal Peace Council but was already ailing, and deputized his nephew Second Chief Lewis Downing to attend with a group of pro-Union Cherokees, including Smith Christie, Lewis Downing, and thirteen other senior members of the Ross faction. Ross attempted to influence proceedings, but failed to persuade Chairman Cooley to give the Ross faction his full trust and support. Doubt was cast on Ross's claim to be the authentic tribal Chief, as he had been merely rubber-stamped rather than elected in August 1863 during his absence in the North, and as a result he had not taken the Oath of Office within Cherokee Territory.⁴⁸⁹ He had also pleaded that he had led a large part of the Cherokee Nation that had been loyal to the Union, which therefore should not be

⁴⁸⁸ McLoughlin, *After the Trail of Tears*, 225; Grace Woodward, *The Cherokees*, 284.

⁴⁸⁹ Morris L. Wardell, *Political History of the Cherokee Nation*, (Norman, University of Oklahoma Press, 1977 [1938]), 183.

punished. Cooley pointed out that Ross had in fact recruited the first official Cherokee regiment (Colonel John Drew's 1st Cherokee Mounted Rifles) and had started his war on the Confederates' side.⁴⁹⁰ Cooley's report was surprisingly sympathetic to the Confederate Cherokee delegates' cause, referring to the "able representation" by Boudinot, who had held the rank of Major in Watie's regiment, but had spent the whole war as a delegate to the Confederate Congress in Richmond, and was an adept and articulate politician.⁴⁹¹ Instead of giving credit to Ross for having belatedly supported the North, Cooley dismissed Ross's plea as "bad faith".⁴⁹²

The first official session of a Peace Council, chaired by Commissioner Cooley, was held from September 8 to 21 1865 at Fort Smith, just across the eastern border of Indian Territory in Arkansas.⁴⁹³ The main aim of the conference was to arrange the post war settlements for the Five Tribes, but delegates from the Caddos, Delawares, Osages, Pawnees, Senecas, Shawnees, Quapaws, Wyandottes, Wichitas, and Comanches also took part.⁴⁹⁴ In the Indian Territory the Cherokee regiments and civilians who had supported the Union, together with the majority of the Creeks and Seminoles, expected that they would receive more sympathetic treatment than the Confederate Indians, but were shocked to discover this was not to be the case.⁴⁹⁵ Ross had declared at the end of the war that "We, the loyal Cherokee delegation, acknowledge the execution of the Treaty of October 7 1861, but we solemnly declare that the execution of the treaty was procured by the coercion of the rebel army," which committed them to support the Confederacy, but his appeal was disregarded.⁴⁹⁶ The aim of the Federal Government was to reorganize the Territory for the benefit of the expanding white population, and it suited Congress to deal with both the Confederate and Union Indians as one unit.

⁴⁹⁰ Gaines, *The Confederate Cherokees*, 28.

⁴⁹¹ Confer, *The Cherokee Nation in the Civil War*, 58.

⁴⁹² Commissioner Cooley's 1865 Report, quoted in Washburn, *The American Indian and the U.S.*, Vol.1, 124 (re Ross), and 125 (re Boudinot).

⁴⁹³ Commissioner Cooley provided an informative account of the Peace Council in his 1865 Report (200-210 in his report) largely quoted in Washburn, *The American Indian and the U.S.*, Vol.1, 120-133.

⁴⁹⁴ Edwin C. Reynolds, *The Seminoles*, (Norman, University of Oklahoma Press, 1957),313,316-7.

⁴⁹⁵ Moulton, *John Ross*, 185-6; Grace Woodward, *The Cherokees*, 293.

⁴⁹⁶ Robert J. Conley, *The Cherokee Nation: a History*, (Albuquerque, University of New Mexico Press, 2005), 180; McLoughlin, *After the Trail of Tears*, 220.

The Cherokee Nation was therefore considered to be just one group, possibly because the government believed that the Northern section had only fought for the Union out of expediency, after having initially chosen to sign treaties with the Confederacy. Unlike the Cherokee regiment Ross had raised, and which was led by his colleague Colonel John Drew, Watie's Cherokees and Pitchlynn's Choctaws and Chickasaws had fought only for the Confederacy, and as defeated enemies of the Union all the tribes were to be harshly dealt with when the post war Treaties were drawn up.

The Cherokees were the most vociferous delegates at the Peace Council, with E.C. Boudinot of the Cherokees the most active speaker, protesting against detribalization and territorial status for Indian Territory, the large requisition of land for railroads, and arguing even more strongly against the compulsory incorporation of freedmen as full citizens of the Cherokee Nation.⁴⁹⁷ It would be this latter issue which aroused the most antagonism among the Cherokee delegates, and which caused the Cherokee to be the last of the Five Tribes to sign their reorganization treaty. Boudinot and Ross both led delegations to Washington from October 1865 to January 1866 to continue discussions with Congress.⁴⁹⁸ A post war tribal election was held, and Ross was re-confirmed as Principal Chief; he then worked assiduously to keep his Nation as independent as possible, but without success. He was particularly opposed to the Bill which Secretary of the Interior James Harlan was trying to push through Congress, intended to convert the Indian Territory from an unorganized territory without a Governor and central Administration, in which the Five Tribes had hitherto been entrusted with management and a degree of sovereignty in their own areas, into an official United States Territory with eventual Statehood in mind.⁴⁹⁹ Ross knew this would destroy the sovereign powers of the Cherokees and the four other Tribes.⁵⁰⁰ Harlan's strongest concern was for the interests of his home State, Iowa, whose citizens Morris Wardell described as "the most voracious land-hungry settlers to

⁴⁹⁷ McLoughlin, *After the Trail of Tears*, 221.

⁴⁹⁸ Moulton, *John Ross*, 188-9; McLoughlin, *After the Trail of Tears*, 220-1.

⁴⁹⁹ Grace Woodward, *The Cherokees*, 304.

⁵⁰⁰ *Ibid*, 295.

be found anywhere”.⁵⁰¹ At the same time, but becoming part of a strong and separate Indian State, although he realized that the two opposing Cherokee factions were irreconcilable, and asked the Federal Government to apportion funds so that the two groups could divide into separate living areas within Cherokee Territory.⁵⁰² This was unacceptable to Congress, which supported Ross in keeping the whole Cherokee area united and intact.⁵⁰³ Ross had been wearied and became ill by his travels, was still deeply mourning the loss of his wife in 1865, but lived long enough to see the Cherokee Treaty signed on July 19 1866.⁵⁰⁴

A major problem facing the scattered Cherokee Nation was the restoration of its internal political stability, which at the end of the Civil War was compromised by the renewed enmity between the twin Chiefs, Ross and Watie. They were still revered figures within the Cherokee élite during the Fort Smith Peace Council and the discussions over the treaty of 1866, but the humiliation Ross received from Boudinot’s refusal to accept him as Chief was the last straw for the weakened old man. Ross had been wearied and became ill by his travels, was deeply mourning the loss of his wife in 1865. He left the Council, and died only days after the signing of the Cherokee Treaty in July 1866. Just as Ross had wished to influence the course of discussion in the Fort Smith Peace Council by directing his faction’s delegates in committee meetings outside the main conference, Stand Watie had intended to direct the Southern Cherokees. After he returned from the Armstrong Academy meeting, Watie was tired and aged beyond his years, and only took an advisory role at the Fort Smith Council, but after the death of his long-time adversary Ross in 1866 he withdrew from politics in order to devote his attention to his long-suffering wife and their family. His retirement softened but did not completely end the vicious division between his and Ross’s faction which had affected the tribe so badly, and led to the emergence of a new and very different generation of Cherokee politicians.

⁵⁰¹ Wardell, *Political History of the Cherokee Nation*, 184.

⁵⁰² McLoughlin, *After the Trail of Tears*, 223; Grace Woodward, *The Cherokees*, 301.

⁵⁰³ McLoughlin, *After the Trail of Tears*, 226.

⁵⁰⁴ Moulton, *John Ross*, 194; Prucha, *American Indian Treaties*, 267-8.

Watie went into business in partnership with his nephew Elias Cornelius Boudinot, as an investor rather than as a manager, in a Tobacco Company until that enterprise was quashed by the U.S. Supreme Court's tax decision shortly before Watie's death in 1871.⁵⁰⁵ Tobacco at that time was used in barter-exchanges as a form of currency. The Supreme Court's decision was the first occasion that the U.S. Government had been given approval to levy a tax on Indians – even though they were still not U.S. citizens – which Boudinot maintained was a violation of the Treaty of New Echota. The decision was a further nail in the coffin of Cherokee sovereignty.

The Cherokees, being the most politically sophisticated and the most organized of the Five Nations, argued the longest against the Federal Government, and were the last of the Tribes to sign their separate Reconstruction Treaty, although it must be noted that the continuing tension between the Ross faction and the pro-Confederate Cherokees did prolong the negotiation process.⁵⁰⁶ The Federal delegates could not forget that Brigadier General Stand Watie's Confederate Brigade had been the most active and frequently most successful of the forces against the Union west of the Mississippi, even to the extent of prolonging the War for another three months after Appomattox. The punitive measures in the treaties were directed mainly against the Cherokees.

John Ross, an efficient and wily politician, had been the dominant personality in Cherokee politics for four decades, and his shoes were not easy to fill. The most important task for the Nation's leaders in the immediate post-war reorganization was to consolidate the tribe and reduce the continuing enmities which were still festering near the surface. The old Chiefs were replaced by the next generation. Watie's nephew E.C. Boudinot led one side, and Ross's stand-in whilst in Philadelphia Chief Lewis Downing expected to be re-elected, a decision which would have been beneficial in uniting the tribe under his tolerant

⁵⁰⁵ James W. Parins, *Elias Cornelius Boudinot: a Life on the Cherokee Border*, (Lincoln, University of Nebraska Press, 2006), 85-87.

⁵⁰⁶ Commissioner of Indian Affairs D.N. Cooley's 1865 Report, 304-5, quoted in Dan W. Peery, "Oklahoma, a Foreordained Commonwealth", *Chronicles of Oklahoma*, Vol. 14, No.1, March 1936, 38.

leadership.⁵⁰⁷ He was surprised when Ross's nephew, the Princeton-educated William Potter Ross, was endorsed by the Keetoowah Society, backed by the influential Cherokee Masonic Lodge #21, and was elected for one year. W.P. Ross was still despised by the Knights of the Golden Circle, in spite of his and their shared Freemasonry.⁵⁰⁸

Another period of bitter divisiveness ensued, but it was largely cured by the re-emergence of the influence of the two pre-war Baptist missionary politicians Evan Jones and his son John. They cleverly aligned the Southern Cherokees (including remaining members of the old Treaty party) with the mainly full blood Keetoowah leaders who in effect had run the pro-Union section of the Tribe on Ross's behalf in the absence of many of the mixed blood leaders, who were at that time in the Union's Kansas regiments.⁵⁰⁹ The Evans' choice for Principal Chief fell on the experienced and respected Lewis Downing, who held the post from 1867 until 1872. He was an ordained Baptist Minister, had early in the Civil War fought both for Drew's Confederate Regiment and then as a Colonel for the United States volunteers out of Kansas. He planned to bring amicability – or at least peace – to the two opposing factions of the Tribe, particularly negotiations by the Southerners during their dual lobbying visits to Washington. He honored an electoral promise by selecting equal numbers of each faction in his administration.⁵¹⁰ His placatory nature and negotiating skill were very largely successful in restoring a measure of peaceful stability which united the Cherokee Nation, a factor which contributed towards the Downing Party dominating the Cherokee elections for most of the period remaining until Congress dissolved the Cherokee Government just prior to Oklahoma's Statehood in 1907.

The change signaled by Downing's leadership style also became a factor encouraging the large scale return of the Confederate refugees from Choctaw and Texas lands, although they were often unable to return to their original home areas. Most were still wary of the Keetoowahs living in the north of their old

⁵⁰⁷ McLoughlin, *After the Trail of Tears*, 245-6

⁵⁰⁸ Ibid, 246; Minges, *Slavery in the Cherokee Nation*, 180-1.

⁵⁰⁹ Gaines, *Confederate Cherokees*, 121-3.

⁵¹⁰ McLoughlin, *After the Trail of Tears*, 246, 248.

territory and many returnees chose to settle in the Canadian district, between the Canadian and Arkansas Rivers.⁵¹¹ Watie and his family, for example, had initially moved into a well-watered spot at Honey Springs, but did not return there as his home and farm had been destroyed by the Union Army's Colonel William Phillips, so they relocated to Webbers Falls. He did finally achieve his dream of returning to Honey Springs in May 1871, where he died four months later.⁵¹² The re-election of the more intransigent W.P. Ross in 1872 when Downing died suddenly was a setback for tribal unity, as it risked a revival of the old factional rivalry. Charles Thompson, calling for support from the full blood majority and promising to look after their interests as leader of what had become known as the Downing Party, was elected in 1875 for four years.⁵¹³ The Party remained in power until Statehood in 1907, except for the period 1879 to 1888, when Dennis Wolfe Bushyhead was elected as the head of a new political group, the National Independent Party.⁵¹⁴

On the national arena, a much larger and more complex social and political drama was being played out. The defeat of the Confederacy in 1865 presented the victorious North with the arduous task of deciding how the federal system of government would be reconstructed and its institutions restored. Lincoln's Administration had been planning for the Reconstruction of the Union from 1863 onwards in line with his Proclamation of Amnesty and Reconstruction, which would offer full pardon and restoration of full rights to those who would resume their allegiance to the United States with an oath of loyalty, and acceptance of the abolition of slavery.⁵¹⁵ The original lenient plan for the Reconstruction of the defeated States was toughened by Congress after the immense human cost of the war and the social changes it created, and a much more punitive system was introduced.⁵¹⁶ With the Radical wing of the Republican Party taking much of the initiative from the weakened presidency under Andrew Johnson, the moderate approach preferred by Lincoln was discarded and the rebel States were required to

⁵¹¹ Grace Woodward, *The Cherokees*, 308-9.

⁵¹² Franks, *Stand Watie*, 206-7.

⁵¹³ McLoughlin, *After the Trail of Tears*, 316.

⁵¹⁴ *Ibid*, 312; Grace Woodward, *The Cherokees*, 321.

⁵¹⁵ Foner, *Reconstruction*, 35-37.

⁵¹⁶ *Ibid*, 40-43.

grant the franchise and basic civil rights to the former slaves.⁵¹⁷ If the States tried to prevaricate, they could be put under military occupation until they complied. In the early years of Reconstruction, efforts were made to give the freedman access to land and some opportunities for basic education. The introduction of Black Codes by some Southern States was resisted, and freedmen were to be allowed to move and seek employment on the same basis as whites.⁵¹⁸ The intransigence of the white élite in the South, and their willingness to resort to violence, made it difficult to achieve these objectives, even by military force.⁵¹⁹

Eventually, the critical issue became the right of the freedmen to vote in the hope that their voting strength would prevent the white majority from regaining control over the South.⁵²⁰ This struggle over the terms of political Reconstruction continued for a decade after the war, and ended only when the Northern political leaders grew tired of the controversy and turned their attention to the more attractive challenges of dealing with the expansion and rapid growth of an industrial economy. The Republicans eventually lost interest in the South and its racial problems, withdrew the occupying forces and left the region to manage its own affairs and to deal with its new status as a minor player in the life of the nation. As far as its economic base was concerned, the South was left to its own devices. Over time, the plantation owners rebuilt the economy by employing their former slaves as wage laborers or by converting them into sharecroppers.

Several generations of historians have examined the bitter and complex political and social history of the South during the Reconstruction decade, and the period is one of the most intensively studied because of its implications for the later history of race relations in the United States.⁵²¹ In the late nineteenth and early twentieth centuries, James Ford Rhodes set out the view which was to

⁵¹⁷ Foner, *Reconstruction*, 177-180.

⁵¹⁸ *Ibid*, 199-200.

⁵¹⁹ *Ibid*, 273-5.

⁵²⁰ *Ibid*, 62, 67, 221, 245, 447.

⁵²¹ e.g.: Foner, *Reconstruction*; Lacy K. Ford ed., *A Companion to the Civil War and Reconstruction*, (Chichester, Sussex, Wiley-Blackwell, 2011); Claudio Saunt, "Paradox of Freedom", *Journal of Southern History*, Vol.70, No.1, 2004, 63-94; Judith N. Shklar, *American Citizenship: the Quest for Inclusion*, (Cambridge Mass., Harvard University Press, 2010); C. Vann Woodward, *The Strange Career of Jim Crow*, (New York, Oxford University Press, 1957).

persist for much of the first half of the twentieth century – that the Reconstruction era was a tragedy for the Southern whites, who had been humiliated by the elevation of their former slaves to equal political status and were entitled to resist that unnatural situation.⁵²² The pro-Southern position was supported by a new generation of academic historians, many of them trained by William A. Dunning and specializing in the impact of the Reconstruction on Southern States.⁵²³ It was not until after the late 1930s and the 1940s that the generally accepted view was challenged. Some historians began to explore the economic pressures behind Northern policies during the Reconstruction era, while others who were sympathetic to the new attitudes towards racial discrimination that launched the Civil Rights movement in the 1950s and 1960s revisited the policies of Reconstruction in the South and in the decades after 1877.⁵²⁴ As early as 1910, W.E.B. Du Bois had argued that the involvement of blacks in Southern State politics had not brought corruption and incompetence in its train, and he returned to that theme more forcefully in his 1935 study, *Black Reconstruction...in America, 1860-1880*.⁵²⁵ The emphasis on black Civil Rights in the 1960s led to the revisiting of the early phases of Reconstruction, and the efforts of Congress to achieve the objectives of the early generation of reformers. By that point, the historical approach to Reconstruction had reversed its traditional acceptance of nineteenth century racial attitudes in the South.⁵²⁶

⁵²² James Ford Rhodes, *History of the United States from the Compromise of 1850*, Vol.6, (New York, Macmillan, 1920).

⁵²³ William A. Dunning, *Reconstruction: Political and Economic, 1865-1877*, (New York, Harper Brothers, 1907); Walter L. Fleming, *Civil War and Reconstruction in Alabama*, (New York, Macmillan, 1905); Bernard A. Weisberger, "The Dark and Bloody Ground of Reconstruction Historiography", *Journal of Southern History*, Vol.25, No.4, November 1959), 427-447.

⁵²⁴ Kenneth M. Stampp, *The Era of Reconstruction*, (New York, Vintage Books, 1967); John Hope Franklin, *Reconstruction after the Civil War*, (Chicago, University of Chicago Press, 1961); Michael Perman, *Emancipation and Reconstruction: 1862-1879*, (Arlington Heights, Harland Davidson, 1987); Eric Foner, *Reconstruction*; Foner, *Nothing but Freedom: Emancipation and its Legacy*, (Baton Rouge, LA, University of Louisiana Press, 1983); Hans L. Trefousse, *The Radical Republicans: Lincoln's Vanguard for Racial Justice*, (New York, Knopf, 1968).

⁵²⁵ William E. B. DuBois, "Reconstruction and its Benefits", *American Historical Review*, Vol. 15, 781-799; DuBois, *Black Reconstruction in America, 1860-1880*, (New York, Harcourt Brace and Company, 1962 [1935]).

⁵²⁶ James M. McPherson, *The Abolitionist Legacy: from Reconstruction to the NAACP*, (Princeton NJ, Princeton University Press, 1975); Lawrence Grossman, *The Democratic Party and the Negro: Northern and National Politics, 1868-1892*, (Urbana, University of Illinois Press, 1976); C. Vann Woodward, *Origins of the New South 1877-1913*, (Baton Rouge LA, University of Louisiana Press, 1951).

The Reconstruction literature, however, deals only with relations between the Federal Government and the Confederate States; it does not refer to the situation in Indian Territory, which was not a conventional Federal Territory and certainly not part of the Confederacy. However, a number of the Five Tribes were divided in their loyalties and some entered into a formal alliance with the Confederate States. Given their location, they had to be careful in their dealings with the South, and as a number of their members were involved in the slave economy, they were sympathetic to the Southern cause. The fact that some groups had made formal alliances with the Confederacy early in the war made it inevitable that the Northern authorities would take some action against them when the Confederacy capitulated. In most of the general accounts of Cherokee history, the term “Reconstruction” is used to describe the post-war situation in Indian Territory, but as the actions taken by Washington in the Territory were not part of the wider processes of the political Reconstruction of the Federal Union, the term is a misnomer when applied to Indian Territory: the term “Reorganization” would be more appropriate. There were some issues that were common to both processes, most notably the matter of the status of the former slaves, but the contexts were quite different.

The actions taken in relation to Indian Territory involved the swift and unimpeded introduction of Federal policy on Indian affairs by treaties whose terms were pre-determined by the Federal authorities and allowed little scope for negotiation.⁵²⁷ The treaties were presented to the tribes in late 1865 and were signed in 1866, at which point the Reconstruction of the Southern States was in its early stages, and there was none of the long drawn-out resistance that marked the Reconstruction decade in the South. The outcome was a massive challenge to the notion of tribal sovereignty, especially for the Cherokees.⁵²⁸ They lost control over much of their tribal lands, and were made more conscious of the importance of blood as a social and political factor in the life of their community. As the tribe with the largest number of slaves, they were strongly opposed to granting tribal

⁵²⁷ Bailey, *Reconstruction in Indian Territory*, 68-81.

⁵²⁸ McLoughlin, *After the Trail of Tears*, 376-7.

membership to the freedmen, who they regarded as racially inferior.⁵²⁹ This was to be a source of dissension within the Cherokee Nation for generations. No census was taken in 1865, so accurate figures cannot be quoted, but estimates of the tribe's total "ranged from 14,000 to 17,000".⁵³⁰ That figure included approximately 2,500 freedmen who returned to the Cherokee Nation when they could.⁵³¹ The Treaty stipulated that they should be not only freed from slavery, which had been abolished, but should also be accepted as Cherokee citizens; this was resented by both the full bloods and the mixed bloods.⁵³² Though the two groups tended to be culturally and socially divergent, they appeared to have agreed that the Cherokees were culturally superior to the freedmen they were now required to accept as tribal members.⁵³³ Many of the full bloods settled into Cherokee-speaking enclaves, and were the poorest section of the tribe.⁵³⁴ Racial tensions within the tribe became more complex than they had ever been before.

Several recent studies have focused on the extent of Cherokee sensitivity to the racial composition of their community, an issue which was not usually discussed in the context of the claim for tribal sovereignty based on conventional political arguments, but rather emerged through the operations of the tribal courts.⁵³⁵ In effect, the tribal leaders were anxious to protect their ability to control the admission of outsiders to the rank of tribal citizenship on racial grounds, so that black American blood was kept to a minimum, while white American blood was acceptable with some qualifications. This resulted in another strand in the campaign to preserve a measure of tribal autonomy at a time when the dominant Federal Government was dismantling the institutions which the Cherokees had carefully constructed in Indian Territory over two generations to replicate those of the white communities around them.

⁵²⁹ Yarbrough, *Race and the Cherokee Nation*, 7, 35, 41-2, 44; Sturm, *Blood Politics*, 169, 171, 174.

⁵³⁰ Figures quoted from McLoughlin, *After the Trail of Tears*, 224.

⁵³¹ Carter, *The Dawes Commission*, 106-7.

⁵³² McLoughlin, *After the Trail of Tears*, 226; Carter, *The Dawes Commission*, 106.

⁵³³ Carter, *The Dawes Commission*, 106.

⁵³⁴ McLoughlin, *After the Trail of Tears*, 70.

⁵³⁵ e.g. Yarbrough, *Race and the Cherokee Nation*, 124, Carter, *The Dawes Commission*, 108.

A considerable section of the tribes' populations were involved. Around the time of the tribe's main removal from the Southeast the slaves of African descent comprised about 9% of the Cherokee Nation, but by the beginning of the Civil War they had increased to a sizeable portion of the Indian Territory's population: 18% of the Cherokees, 18% of the Chickasaws, 14% of the Choctaws, 10% of the Creeks, and an indeterminate number of the Seminoles, many of the latter two groups already intermarried into the tribe.⁵³⁶ The Cherokees could not refuse to admit the freedmen, but they could, and did, place restrictions upon the mingling of black blood into the tribe by marriage laws, and clan acceptance, which differed from full blood Cherokee or Cherokee-white pairings. Even before their relocation from Georgia the Cherokees had been clearly influenced by white ideas about race, and how the whites treated blacks, both slaves and free, reducing them to a position of social inferiority.⁵³⁷ This influence strengthened as the Cherokees themselves extended their participation in the cotton-producing economy with the purchase of a growing number of African slaves. In the Indian Territory they grew to realize "a system of racialized social identities in which what entitled one to full political social and legal rights was not whiteness, *but a lack of blackness*" [my italics].⁵³⁸

The 1827 Cherokee Constitution, Article III, Section 7, had decreed that "all male persons who shall have attained the age of eighteen" including those of pure Cherokee blood and offspring of Indian-white marriages had the right to vote in tribal elections, but the vote was denied to any members whose mothers had any black blood, even those who were free.⁵³⁹ Also, the restriction on tribal officers being male did not over-ride the continuing traditional matrilineal power, as children of Cherokee women paired with either a white or a black man could become citizens, a dispensation denied to those with black mothers.⁵⁴⁰

⁵³⁶ Yarbrough, *Race and the Cherokee Nation*, 71, 115; Minges, *Slavery in the Cherokee Nation*, 111, 237 fn234.

⁵³⁷ Yarbrough, 9.

⁵³⁸ *Ibid*, 57.

⁵³⁹ Hand written copy of entire Constitution in Tennessee State Library Archives, claimed by the Archivists as having been written by Sam Houston (who had been adopted as a child into the Cherokee Nation in 1829. Grant Foreman "Some New Light on Houston's Life among the Cherokee Indians", *Chronicles of Oklahoma*, Vol.9, No.2, June 1931, 139, 148).

⁵⁴⁰ McLoughlin, *After the Trail of Tears*, 127-8.

A Cherokee National Council law passed in 1843 legalized marriages of Cherokee women with white men, provided the man had to apply to the National Council, provide at least seven witnesses to affirm he was of good character, applied for a license for a fee of five dollars, expensive for that era, and also “alienated himself from the protection of all other governments” by declaring an Oath of sole allegiance to the Cherokee Nation, on pain of being removed from the Territory as an intruder if he refused.⁵⁴¹ No clearer assertion of Cherokee sovereignty could be imagined.

The provision in the 1866 Cherokee Reconstruction Treaty incorporating the freedmen deprived the Nation’s wealthiest slave-owners of their source of cheap labor in their cotton fields, without any compensation for the large sums which had been paid for their slaves. It also had the effect of cancelling the ban on marriage between Cherokees and blacks, which under the 1828 Cherokee Constitution was an offence punishable by fifty lashes. As a result, the tribe could now be divided into three racial groups - full bloods, white-Cherokees, and blacks - and the three groups continued to keep mainly to themselves. Also, a potential fourth group which soon became a reality was the offspring of the marriages between existing Cherokees and the new black citizens. The 1866 Treaty imposed on the Cherokees stipulated that a defined area within their territory should be set aside for the freedmen to set up their own homes, but the critical issue was that the tribe had now lost control of its sovereign ability to define who was entitled to membership of the Cherokee Nation.

The Union Cherokees, mainly Keetoowah soldiers serving in the Union’s Indian Home Guard Regiment, had held a Council in February 1863 at Cowskin Prairie, which supported the abolition of slavery in the Cherokee Nation. This was in accordance with Lincoln’s January 1 1863 Emancipation Declaration, which only applied to the rebellious States and did not mention any areas of the West. The Cowskin decision was the first such action outside the Union’s Northern States, but the Cherokee intentions were not altogether altruistic, as they

⁵⁴¹ Yarbrough, *Race and the Cherokee Nation*, 53, 57.

denied the freed slaves citizenship within the Cherokee Nation, hoping that they would later be able to expel them as unwanted intruders.⁵⁴² Under Article 4 of the 1866 Cherokee Treaty the freedmen returning from Kansas were to be allotted 160-acre farm plots in an area set aside for them in the Canadian District, north of the Arkansas River, thereby forcing the Cherokees to do more for freedmen than whites were directed to do in the South.⁵⁴³ The Cherokees did manage to have a concession attached to the allotment proviso, which stipulated the freedmen had to take up residence within two years, or lose the allocation.⁵⁴⁴

The last limitation was often difficult to enforce. Many other displaced Indian Cherokees who had been refugees across the borders south, north, and east of their own territory also had difficulty in returning promptly to Indian Territory, thereby becoming ineligible under the terms stipulated in the Cherokee 1866 Reconstruction Treaty.⁵⁴⁵ These problems of non-return or non-acceptance would lead to discrepancies in the 1893 Dawes 'Index to Freedmen' Census roll, compounded by the Dawes Commission referring to "freedmen and tribal members" with their official blood quantum not being recorded. As in so many of the treaties with the Indian tribes, Article 4 (and also Articles 5 and 6, which further dealt with Cherokee freedmen, by allowing them to elect their local officers) looked comprehensive and logical enough when drafted, but allowed for loopholes of interpretation dependent upon the attitudes of the full blood and mixed race White-Cherokee members. Nominally the freedmen shared equal citizenship within the tribe as the other racial groups, but they were herded together in an area in the Oklahoma District, west of Indian Territory, in what became a permanent black enclave; several all-black towns were created, and they remain so to the modern era.⁵⁴⁶ Even with the addition of the freedmen, however, the total population of the tribe became too small a unit to compete with the

⁵⁴² Claudio Saunt, "The Paradox of Freedom: Tribal Sovereignty and Emancipation during the Reconstruction in Indian Territory", *Journal of Southern History*, Vol.80, No.2, March/April 2008, 74; Kent Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893-1914*, (Orem, Utah, Ancestry.com.Incorporated,1999), 107-8, 110.

⁵⁴³ Sturm, *Blood Politics*, 74.

⁵⁴⁴ Cherokee Reconstruction Treaty, Article 4, Kappler, *Indian Affairs: Laws and Treaties*, Vol.2, 943.

⁵⁴⁵ Ibid.

⁵⁴⁶ Naylor, *African Cherokees in Indian Territory*, 187-8.

burgeoning American population around them. In the second half of the nineteenth century, a key element shaping the experience of the Indian population was the massive growth of the non-Indian community with which it was embedded. From a base figure of 5.3 million in 1800 the population of the United States increased to 31 million in 1860 and to 76 million in 1900.⁵⁴⁷

The treaties imposed upon the Five Tribes in 1866 negated the earlier treaties written when the Territory was created, which had defined the major tracts of land to be used by the Five ‘in perpetuity’. Three major aims lay behind the conditions set by the Federal delegates in 1866: the need to gain space for the tribes being decanted into Indian Territory, the need to acquire more land both in the Territory and in the West for the expanding white population, and the need for large tracts of land for the two major railroads which the Indians had to accept through their territory, one north-south linking Kansas with Texas (the ‘Katy’), the other being part of the Atlantic-Pacific east-west link.⁵⁴⁸ The need to acquire Indian land had an immediate effect on the Five Tribes and also on the original groups, such as the Osages, who had been displaced by the Five Tribes as part of the forced relocation decades earlier. A second series of removals occurred after the Civil War with tribes from as far apart as the Hudson River in the northeast, and the Western deserts, being herded into the Indian Territory, into lands held by the Five Tribes since their removal treaties. Into one small corner of the Cherokee land, west of ninety-six degrees longitude, small groups of Senecas, Wyandottes (Delawares), Shawnees, Modocs, Peoras, Quapaws and Ottawas themselves culturally and historically differing from each other, were given tiny but adjacent areas.⁵⁴⁹ The Shawnees had been previously removed into Kansas from the Carolinas, where they had been living in a complicated relationship with the Cherokees, including several wars and some periods of peaceful but wary sharing of territory. The Delawares also ended up in the Cherokee corner of Indian Territory, the last of

⁵⁴⁷ U.S. Department of Commerce, Bureau of the Census, *Historical Statistics of the United States, 1789-1945: a Supplement to the Statistical Abstracts of the United States*, Decennial Summaries of the U.S. Aggregates, B1-12, (Washington DC, Government Printing Office, 1949), 25.

⁵⁴⁸ Billington, *Westward Expansion*, 626; Grace Woodward, *The Cherokees*, 306; Bailey, *Reconstruction in Indian Territory*, 160-1.

⁵⁴⁹ Wardell, *Political History of the Cherokee Nation*, 304.

several resettlements, their saga a microcosm of the whole overall picture of Indian removals. The Senecas, Delawares, and Ottawas had all fought on the Union side in the Civil War, but their loyalty did not save them from the treatment given to the war's Indian losers.⁵⁵⁰

Secretary of Interior Harlan was not the only Federal politician who would cause problems for the Cherokees. The two Kansas Senators James Lane and Samuel Pomeroy had been given the task of planning the Indian Territory Reconstruction, and their natural bias towards their own State adjoining the northern border of Indian Territory shaped their proposals.⁵⁵¹ For a start, the southeastern corner of Kansas had been part of the originally planned Cherokee 'Neutral Strip' section of Indian Territory until 1854, and was returned to the Cherokees when the new State borders were mapped. The Cherokee reservation on both sides of the border was good agricultural land with plentiful rainfall and it was coveted by white farmers. The first aim of Lane and Pomeroy was to remove the tribes that had been brought down into Kansas from the northeast of the Mississippi to south of the border when Kansas achieved Statehood in January 1861. Their plan also "authorized the U.S. President to suspend all existing treaties with the Five Tribes, and to appropriate certain portions of their domains" to accommodate the incoming tribes.⁵⁵²

Lane's and Pomeroy's political backgrounds contributed to their lack of sympathy with the Indians. Lane had earlier tried to negotiate with the full blood Cherokees in 1861, attempting to enlist their services alongside his Kansas abolitionist Jayhawkers. He was unsuccessful, partly because the U.S. Army had withdrawn from Indian Territory, thereby depriving the Territory Indians of protection from the less civilized tribes to their west, and jeopardizing any chance of the Indians staying loyal to the Union which had protected them.⁵⁵³ Lane's antagonism towards the Confederate Indians was based on his experiences before

⁵⁵⁰ Laurence M. Hauptman, *Between Two Fires: American Indians in the Civil War*, (New York, Simon & Schuster, 1995), 189.

⁵⁵¹ Bailey, *Reconstruction in Indian Territory*, 67-8,

⁵⁵² Arrell Morgan Gibson, *The American Indian*, 384.

⁵⁵³ Wardell, *Political History of the Cherokee Nation*, 183, 157.

and during the Civil War and led naturally to the harshness of his proposed Reconstruction settlement. Lane had fought for the Union, raising two regiments of militia for the Kansas Brigade, plus one of the first black regiments in the Union Army, and was made a Brigadier General.⁵⁵⁴ He had been an active jayhawker, leading raids into Missouri, killing, plundering, and collecting contrabands. On September 23 1861 he led his Kansas Brigade of three regiments in the destruction of the Missouri town of Osceola.⁵⁵⁵ He had aimed to march from Kansas all through Indian Territory liberating slaves. His abolitionist policies made him despised in the Confederacy and this hatred was reinforced when he imprisoned pro-Confederate women and children in Lawrence, Missouri, a brutal policy which led to Quantrill's murderous reprisal raid on August 21 1863 which sacked the city of Lawrence and left 150 of its men dead. Quantrill's chief target, Lane himself, managed to escape by hiding in a cornfield in his nightshirt.

His partner in planning the Indian Reconstruction was Pomeroy, who was equally unlikely to have any sympathy for the Cherokees. He had been the organizer of the New England Emigrant Aid Company which provided many of the white settlers in Kansas Territory. He had moved to Lawrence in 1854, then to Atchison in 1859, where he became Mayor, and as a devout abolitionist was heavily involved with Lane in the Free State movement before the Civil War. When Kansas became the 34th State of the Union on January 29 1861 Pomeroy was elected a Republican Senator, a position he held until accused of corruptly buying votes in the legislature, which led to his defeat in 1872. At the time of the Indian Territory post-war treaties he was also Company President of the Atchison, Topeka, and Santa Fe railroad, which was clamoring to extend into and through the Indian Territory. There was extensive lobbying in Congress by the railroad companies to install new routes across the Cherokee land, and one section of the Cherokee Treaty dealt directly with these plans.

⁵⁵⁴ Lane should not be confused with Confederate Brigadier General James Henry Lane, (no relation).

⁵⁵⁵ Josephy, *The Civil War in the American West*, 350.

A controversial issue was the 1854 handover of the ‘Cherokee Strip’, a narrow southern section of the new State of Kansas which had been part of the Cherokee territory, and had been returned to the Tribe when the new State borders were mapped.⁵⁵⁶ The Cherokee reservation on the border, some of which was within Kansas State, was good agricultural land with plentiful rainfall and it was coveted by white farmers. The railroad lobbyists were also clamoring to extend into and through the Indian Territory, which of course lay almost in the geographical center of what would eventually become the forty-eight contiguous States of mainland America. All these reasons combined to ensure Lane and Pomeroy, with the backing of the white-elected Congress, would not deal sympathetically or beneficially for the Five Tribes, with the Cherokees being the most disadvantageously affected as their area was directly contiguous with Kansas.

The Federal policy of legally acquiring land in Indian Territory for the increasing white population was already in place before the Civil War, and the Reconstruction Treaties provided opportunities to extend it. Land leases had been made available to incoming whites in quasi-legal fashion since John Tyler’s Presidency, when Missouri Democrat Thomas Hart Benton successfully put the 1841 Distributive Pre-emption Act through the Congress. Trespassing on unclaimed land became acceptable,⁵⁵⁷ and squatters who settled for fourteen months on one hundred and sixty acres of public land could purchase it for the minimum price of \$1.25 per acre, without having to bid against others when the survey was subsequently officially carried out.⁵⁵⁸ The Pre-emption Act not only regularized the hitherto illegal spread of the pioneers into public land, but had the effect of stimulating further westward movements by white settlers. The opportunity to develop more unsold land was increased by the 1854 Graduation Act, which allowed the minimum price for such tracts which had remained unsold to reduce gradually to as little as 12.5 cents an acre.⁵⁵⁹ Agitation for such cheap land, and the surge of populace westwards to take advantage of it, had led

⁵⁵⁶ William W. Savage, Jr., *The Cherokee Strip Livestock Association*, (Columbia, University of Missouri Press, 1973), 9-10.

⁵⁵⁷ Roy M. Robins, *Our Landed Heritage*, (Princeton NJ, Princeton University Press, 1942), 89.

⁵⁵⁸ Ray Allen Billington, *Westward Expansion*, 324.

⁵⁵⁹ Chester Whitney Wright, *Economic History of the United States*, 252, (New York, McGraw-Hill, 1949).

Congress to pass the Homestead Act of 1860, although it was vetoed by President Buchanan after united Southern opposition had threatened another reason for secession.⁵⁶⁰ Two years later, with the Southern States no longer represented in Congress, and Lincoln in the White House, Congress passed the Homestead Act, giving 160 acres of public land free to anyone over twenty-one who agreed to build ‘improvements’ on the land and cultivate it for at least five years.⁵⁶¹ It was not feasible to allocate lands in the middle of the Civil War, and the system would not become widespread in the Indian Territory until the Dawes Allotment Act of 1887, but the principle was set, and the Indians were aware of the threat to their traditional communal way of life.⁵⁶² It became yet another threat to the Cherokees’ claim to tribal sovereignty.

The other major change for the Cherokees was the re-apportionment of their less-used lands. They held title, gained by ‘squatters’ rights’ and their improvements when removed in the 1830s into the Indian Territory, and separated from the Choctaws, Seminoles, Creeks and Chickasaws by agreement, into areas which they had yet to develop. The Treaty referred to a small but fertile section in the extreme north-east corner of the Cherokee area, known as the “Neutral Lands”, abutting the Missouri and Kansas borders, into which the U.S. Government could settle any friendly tribes of American Indians, being compensated by the Government at not less than \$1-25 an acre. It became the home of the Quapaws, the Delaware/Wyandottes, the Shawnees, the Modocs, the Peorias, the Senecas and the Ottawas. This area, and the strip of land along the Cherokees’ northern border with Kansas was affected by the interests of James Lane and Samuel Pomeroy,

The Osage Nation was given a reservation in the northeastern section of the land set aside as Indian Territory, to make way for the displaced Cherokees from Georgia. In the Treaty of New Echota of May 23 1836, in which the

⁵⁶⁰ Ross M. Robertson, *History of the American Economy*, 107, (Harcourt Brace & Co., 1955, re-printed 1964).

⁵⁶¹ Billington, *Westward Expansion*, 325, 606.

⁵⁶² Carter, *The Dawes Commission*, 23; McLoughlin, *After the Trail of Tears*, 311-2.

Ridge/Boudinot faction agreed to move the Cherokee Tribe into the proposed Indian Territory, the northern border of the Cherokee land was set as the southern boundary of the Osage reservation. An anomaly had occurred due to a surveying error in relation to the boundary between Indian Territory and the new State of Kansas, created on January 28 1861. When Congress passed the Kansas-Nebraska Act on 30 May 1854, it set the southern border of the Kansas territory as the 37th parallel of latitude, which was believed to have been also the southern edge of the Osage area.

The Cherokees immediately complained, arguing that the 37th parallel was not the agreed boundary, and that the border of Kansas should be moved north to accommodate the actual extent of the Cherokee land. No action was taken at that time owing to the violent situation in ‘Bleeding Kansas’, and then the outbreak of the Civil War. Dissension arose when the border of the new State of Kansas was mapped, including a strip of land given to the Cherokees in the Treaty of New Echota in 1835. Agreement could not be reached on the Cherokee claim, and a commission was set up to survey the disputed land. The Commission reported on December 11 1871 that the border was indeed misaligned by 2.46 miles, north to south.⁵⁶³ This narrow band was not insignificant, however, as it ran from the Neosho River (which flowed from Kansas into the Lake of the Cherokees at Miami) westwards for 276 miles to the 100th meridian, which is the extension on the map of the Texas-Oklahoma border, the eastern edge of the Oklahoma ‘Panhandle’. The area amounted to 434,679 acres, much of which was well-watered good agricultural land. A third of this area, 156,848 acres, was sold in the first year, with the funds being placed in the U.S. Treasury, Article 23 of the treaty stipulating that the resulting interest to be paid 35 per cent to the Cherokee Nation’s education funds, 15 per cent to the tribal orphans’ fund, and 50 per cent to go towards the tribal budget. The remaining 277,831 acres were entrusted to Land Offices, but much of the unsold land and undeveloped land was subject to incursions by white men, although they were still forbidden by law to settle on Indian lands.

⁵⁶³ McLoughlin, *After the Trail of Tears*, 268.

The other key objective of the 1866 Treaty in relation to the allocation of tribal lands was to provide right of way for two major railroad corporations which had been lobbying vigorously for the concession. The Atlantic and Pacific Railroad's President John C. Frémont had offered President Andrew Johnson a million dollars to buy the required Indian land, but the continued Cherokee factional tension delayed the implementation of Article 11, and the tribe eventually received one dollar an acre. The treaty had stipulated a right of way two hundred feet wide, with greater areas around stations, bridges, and watering points. The first railroad line was laid down from the Missouri border to Vinita in the Cherokee area in 1871, and extended to Tulsa in 1882.

The other railroad, running north-south and crossing the Pacific-bound line at Vinita, was the Missouri, Kansas, and Texas line (known as the 'Katy'). It crossed the northern border of Indian Territory on June 6 1870, ran along the line of the Texas Road through the Cherokee, Creek, and Choctaw Nations to Colbert's Ferry on the Red River in the Chickasaw Nation, and crossed the Red River into Texas on December 24 1870.⁵⁶⁴ Earlier railroad development elsewhere had forewarned the Cherokees that the line-builders would bring in alcohol, crime, and prostitution, and would exceed their permitted boundaries. All this proved to be true, and as the white intruders increased along with the railroad construction, so too did the level of crime. The Cherokees were further angered by the large-scale denudation of the area's forests for sleepers and building materials, for which the tribe was seldom paid.⁵⁶⁵ The Tribe had unwillingly accepted the inevitable progress of the railroad through its lands, but was never adequately compensated. Not least of the irksome aspects of the railroads' construction was the consumption of alcohol in the camps, a major cause of the crime and violence which occurred there.⁵⁶⁶ Article 27 of the 1866 Treaty had specifically forbidden "the introduction of any spirituous, vinous, or malt liquors into the Cherokee

⁵⁶⁴ Michael Green, "Indian Territory 1866-1889", in Goins, *Historical Atlas of Oklahoma* 4th Edition, (Norman, University of Oklahoma Press, 2006), 98; A. Debo, *A History of the Indians of the United States*, (London, Pimlico, 1995 [first published Norman, University of Oklahoma Press, 1970]), 201.

⁵⁶⁵ Bailey, *Reconstruction in the Indian Territory*, 170; Debo, *And Still the Waters Run*, 78-9

⁵⁶⁶ Burton, *Indian Territory and the United States*, 110-1.

Nation.” The tribe, influenced by the Baptist Reverend Evan Jones, had long recognized the evil that drunkenness could create.

One of the ironies of the tension between the railroads and the Cherokees was that the part played by one of the most acculturated mixed blood Cherokees, Elias Cornelius Boudinot, who had become estranged from his tribe after not being supported when his tobacco company was denied its tax exemption and the company confiscated by the Federal Government. Working from an office he set up in Washington, he was paid by the Katy executives to reverse his previous antagonism to the railroads, and to advertise the attractions of several millions of acres in the Cherokee, Creek, and Seminole territories.⁵⁶⁷

The federal negotiators at the Fort Smith Peace Council in 1865 had the task of drawing up treaties with the other four Civilized tribes – the Creeks, Chickasaws, Choctaws and Seminoles – as well as the Cherokees. They were smaller tribes, and the way in which they were treated indicates how determined the federal authorities were to relocate the tribes from other parts of the United States into Indian Territory, with little respect for prior treaty obligations and little regard for the position individual tribes had taken in relation to the Confederacy. The smallest of the Five Tribes, the Seminoles, for example, were harshly treated despite the fact that they had tried to avoid involvement, and their lands were confiscated. They had begun by joining Opothleyohola’s band of Creeks fleeing into Kansas, and had been forced to defend themselves against Watie’s Confederate regiment in 1861.⁵⁶⁸ They had then returned into Indian Territory in 1863 in the Union Army, at no time ever having fought against the United States. Their delegates, Principal Chief John Chupco supported by Chiefs Chocote Harjo, Fos Harjo, and John F Brown, were the most amenable to the incorporation of their freedmen, having willingly assimilated many escaped slaves from Georgia prior to the Seminole Wars in Florida, and many of them had married into the

⁵⁶⁷ Savage, *The Cherokee Strip Livestock Association*, 67-8; Billington, *Westward Expansion*, 626; McLoughlin, *After the Trail of Tears*, 377; Parins, *Elias Cornelius Boudinot*, 187-8, 192-3.

⁵⁶⁸ McReynolds, *The Seminoles*, 292-3, 296-7, 299-302.

Seminole Tribe.⁵⁶⁹ On the subject of territory, however, they were naïve in that they had hoped to retain their post-Removal homeland in the West, and were also harshly treated financially in the post-war relocation. The Federal Government, which had already decided to halve the Creeks' area in the Indian Territory, removed the Seminoles (as being related to and sharing the same language of their fellow Muskogean Creeks) into a small section of land attached to the newly shrunken Creek territory. The Seminoles conceded over two million acres, but received back only 200,000 acres in between the Canadian and North Fork Rivers.⁵⁷⁰ They were paid only fifteen cents an acre (half the rate the Creeks had received) for their former lands in what was renamed as Oklahoma Territory.⁵⁷¹

The Seminoles' pre-war lands were then given to Cheyenne and Arapaho Tribes, as part of the Grant administration plan to concentrate many of the more 'savage' Western Indian tribes from elsewhere.⁵⁷² The Government charged the Seminoles fifty cents an acre for their new area, which admittedly was climatically more suited to agriculture than their previous home.⁵⁷³ The new land further east within the Indian Territory had an average rainfall of forty-eight inches, fifty per cent more favorable than in their previous territory.⁵⁷⁴ They had been fortunate in having good harvests of wheat in late 1865 and of corn in 1866 in their original location, enough to sustain them through their migration in October 1866. They were given one year of assistance by the Government in developing their new area, and were blessed by another good harvest in 1867, helped largely by the huge communal effort involved in its preparation and production. This would carry them through the 1868 harvest, which was severely depleted by drought. The Seminole Reconstruction Treaty made no mention of having to vacate land for planned railroads, and it would not be until 1895 that the first track was laid through their territory.⁵⁷⁵

⁵⁶⁹ McReynolds, *The Seminoles*, 23, 48, 164; Minges, *Slavery in the Cherokee Nation*, 237, fn 234.

⁵⁷⁰ *Ibid*, 317.

⁵⁷¹ *Ibid*, 316-7.

⁵⁷² Bailey, *Reconstruction in Indian Territory*, 194.

⁵⁷³ McReynolds, *The Seminoles*, 317; Burton, *Indian Territory and the United States*, 16; Bailey, *Reconstruction in Indian Territory*, 195; Charles Robert Goins & Goble, Danney, *Historical Atlas of Oklahoma*, (Norman, University of Oklahoma Press, 2006), 108.

⁵⁷⁴ Goins, *Historical Atlas of Oklahoma*, 108.

⁵⁷⁵ McReynolds, *The Seminoles*, 97, 317; Goins, 108.

The Seminoles' related Muskogean tribes, the Choctaws and Chickasaws, had been the first to enlist with the Confederacy at the outset of the war, and Choctaw Chief Colonel Peter Pitchlynn had been almost the last Rebel to surrender, but the two tribes were ready to cooperate by signing their post-war treaty in 1866.⁵⁷⁶ Their area had been partially impoverished by the wartime influx of Indian refugees, mostly Cherokee, from the northern areas of the Territory, but rapidly recovered when most of the refugees returned home. The depleted stocks of cattle, horses and pigs increased steadily through 1867, and by 1870 good crops of oats (first grown in 1869), wheat, and particularly cotton were harvested. Lumber was plentiful, and lead, coal and copper, followed soon by petroleum, contributed to their financial stability.⁵⁷⁷ One subject of controversy between the tribes in 1866 was Chickasaw Governor Cyrus Harris' view that the division of tribal lands into allotment by severalty would become `necessary.⁵⁷⁸ Under the agreements between the two tribes in both 1855 and 1866, the lands of both groups were held jointly, and neither Nation could dispose of any land, including for railroads, without the consent of the other tribe.⁵⁷⁹ The Choctaws, led by Pitchlynn managed to hold out against the idea of allotment until three years after the Dawes Commission Bill was enacted in Congress in 1893. In December 1896 the Choctaws reversed their opposition to the idea, and became the first of the Five Tribes to hand over their territory (except for public buildings and mines) for allotment, with mineral revenues to be used to support education.⁵⁸⁰

For the Five Tribes, the period following the Civil War was the second major reorganization they had experienced within four decades. The greed of the white Americans for land, which had forced the Tribes' removal from the southeastern States in the 1820s and 1830s, had made it necessary for them to rebuild their lives and their economy, and to revise their constitutional governments in an area first considered to be unsuitable for agriculture. Despite bitter internal conflicts,

⁵⁷⁶ Bailey, *Reconstruction in Indian Territory*, 71-75, 198; Burton, *Indian Territory and the United States*, 16, 21-23.

⁵⁷⁷ Bailey, *Reconstruction in Indian Territory*, 126-7.

⁵⁷⁸ Burton, *Indian Territory and the United States, 1866-1906: Courts, Government, and the Movement for Oklahoma Statehood*, (Norman, University of Oklahoma Press, 1995), 23.

⁵⁷⁹ Bailey, *Reconstruction in Indian Territory*, 127-8; Burton, *Indian Territory and the United States*, 107.

⁵⁸⁰ Bailey, *Reconstruction in Indian Territory*, 129

they had built a prosperous agricultural economy in Indian Territory in the decades before the Civil War, only to see their lands devastated and internal conflict rekindled during the war years. The decision of some of their leaders to support the Confederacy made them vulnerable when the Union forces succeeded in crushing the Confederate armies, and the victors seized the opportunity to solve at least part of the long-standing Indian problem by resettling as many of the problem tribes as possible in Indian Territory. The 1866 Treaty made it clear that the Federal Government would take control of whatever Cherokee land it needed, although it did provide some financial compensation, the land to be sold to the highest bidder, with the Cherokees receiving \$1.50 per acre for some areas and \$2.00 for others.⁵⁸¹ Individual Cherokee holdings were left undisturbed, but the unimproved areas could be assigned to incoming remnant tribes from the Plains or from the settled States. Tribal government was left intact, but that government had lost control of part of its territory and of its control over membership. It also had to accept the presence of United States Courts within Indian Territory.⁵⁸²

The Cherokee leaders, despite their factional division, did what they could to soften the terms presented to them at the Fort Smith Council in late 1865, and the final document signed in Washington in 1866 did contain some concessions. For the next two decades after the 1866 Treaty came into effect a less conflicted Tribal leadership presided over a repair of a damaged economy and tried to exact a price for some of the land they were required to make over to railroad corporations or to other tribal groups. Then in 1871 Congress added a rider to the Indian Department Appropriations Act stating that no further treaties would be made with Indian tribes, although existing treaties were to be honored. In future the United States would make agreements with Indian tribes, rather than treaties; the last of the old-style treaties was the Sioux Treaty signed on April 29 1868. Congress also stated that it would govern Indian tribes directly, a position accepted by the Supreme Court in the 1886 case *U.S. v Kagama*, in which an Indian faced prosecution for murdering another Indian within the Hoopa Valley Reservation. The Court ruled that the prosecution could go ahead because

⁵⁸¹ Bailey, *Reconstruction*, 161.

⁵⁸² McLoughlin, *After the Trail of Tears*, 227.

Congress had passed an Act negating the earlier decision in the 1883 case, *Ex Parte Crow Dog*, which found that the Federal Courts had no jurisdiction to crimes committed on reservations. The *Kagama* Judgment stated that

The power of the General Government over the remnant of a race, once powerful, now weak and diminished in numbers, is necessary for their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it has never existed anywhere else, because the theatre of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes.⁵⁸³

Aware of the pressure building up in the white settler population for access to what they saw as unimproved Indian lands, and noting the growth of Congressional assertiveness, the tribal leadership looked for other ways of protecting their control of tribal lands. In 1884 Principal Chief Dennis W. Bushyhead set out in his *Annual Message to the Cherokee Nation's Senate and Council* a second line of defense, given those past treaties were not likely to prove sufficient

This Nation holds a large landed estate by double grant of the General Government – grant by treaty and grant by patent in fee simple. The Government made this grant deliberately and willingly, and testified its intention at the time to make it perpetual, and had pledged its power to protect it to the [Cherokee] Nation as a corporation, and to the individuals who compose it...The experience of the whole Indian Race, unfortunately, proves that grants by treaty are hardly ever to be relied upon...but title by patent in fee is another thing, and this Nation has such a title, executed to it by President Martin Van Buren on December 31 1838.⁵⁸⁴

In the long term, Bushyhead's hopes that property law would provide more protection for tribal land than treaties had done in the past did not eventuate. When the final assault on tribal forms of land ownership took shape in the Dawes Act of 1887, the Five Tribes were initially exempted from its provisions, and were active in helping other tribes to resist the allotment of tribal lands by the Federal authorities. In 1888 the Five Tribes convened a conference at which twenty-two other tribes were represented, and which unanimously protested against the allotment legislation. The Federal authorities ignored their views, and in time the Cherokees were forced to give way to the destruction of their tribal autonomy,

⁵⁸³ Washburn, *The American Indian and the United States*, Vol.4, 2692.

⁵⁸⁴ Cherokee National Records, Oklahoma Historical Society Microfilm CHN 115.

which in the peaceful decade before the Civil War seemed to have had some chance of survival.

Chapter Six

Cherokee Economy

To have any hope of convincing white opinion makers that they could manage their own affairs as capably as the white communities in neighboring States, the Cherokee leadership needed to demonstrate that they could create and manage an economy strong enough to feed themselves with minimal Federal government assistance and to generate the funds they needed to support their local institutions, especially their system of public education. The latter was deemed so important to the tribe that large amounts of the available funds were directed towards it, even to the extent of incurring a considerable amount of debt.⁵⁸⁵ The Cherokee leaders had made a considerable effort to provide children with an education based on the curriculum and organization of the better white schools, which led to a growing élitism among a minority of the tribe.⁵⁸⁶ The leadership needed to generate funds from the tribe's own resources if they were to operate with the degree of autonomy they saw as essential, and they valued the status that went with material prosperity and a standard of living comparable with their white neighbors. They had been successful as farmers and small businessmen in Georgia prior to Removal. They were eager to do the same in Indian Territory, demonstrating once again that they should not be regarded as savages, but as a community which was as civilized as any other and already entitled by treaty to some degree of tribal autonomy within the larger United States. They aimed to be able to put their faith and trust in their own government, which could successfully organize the tribal economy.

The tribe was fortunate in that under the terms of the 1835 Treaty of New Echota, the Federal Government had undertaken to pay compensation and interest to the tribe for the land and improvements they had lost in Georgia, and over the course of the remainder of the nineteenth century, these payments did

⁵⁸⁵ McLoughlin, *After the Trail of Tears*, 86-7, 89-90, 94-5.

⁵⁸⁶ *Ibid.*, 94-5.

provide the tribe with a substantial, if irregular, source of income. The history of the tribe from the 1830s to the 1870s in Indian Territory did not allow as much smooth progress as the tribe would have wished, but it was a tribute to their resilience that they came through the difficult period of readjustment in their new land so successfully. They needed to regain their economic strength after two periods of tragic devastation, the Removals and the Civil War, both of which had also revived the old conflicts within the tribe. The process of adjustment meant hardship for both the major groups within the Cherokee Nation, especially in the early period as they transformed largely forested land, for the Osages they displaced had been more hunter-gatherers than cultivators, with horse-stealing as a side-line.

Cherokee leaders had shown initiative in creating political institutions based on American models, and in taking cases to the United States Supreme Court, but much of this progress was undermined as the differing factions reopened the hatred of the Blood Law period after the 1838 Removal forced Ross's majority group to rejoin their Treaty Party opponents in Indian Territory. The period later known as the 'Golden Age of the Cherokees' which followed the settlement of factional issues under the Washington Treaty of 1846, and which had lasted until the outbreak of the Civil War, generally improved the financial standing and life-style of much of the Nation. It was in the decade following that internal treaty that a number of large structures were built, including Chief John Ross's palatial replica of an Old South mansion, "Rose Cottage," at Park Hill, the Male and Female Seminaries, and the Cherokee capital at Tahlequah, which by 1849 contained the Cherokee legislative buildings, the Supreme Court, a Masonic Temple, the *Cherokee Advocate* newspaper office, five hotels, and the wide range of the business and professional premises required in a thriving community.⁵⁸⁷ In addition to the basic need to become self-sufficient in food, and to supplement the major allocation for education, funds were needed to enable the tribal leaders, particularly Chief John Ross and his main opponent Elias Cornelius Boudinot, to send delegations regularly to Washington to lobby Congress in the Cherokee Nation's interests. Andrew Denson based much of his research on the reports of

⁵⁸⁷ McLoughlin, *After the Trail of Tears*, 81.

the Cherokee delegations to Washington, and his work reveals the political acumen of the tribe, although he does mention that the delegates were usually the English-speaking mixed blood elite of the Nation, who were not always necessarily representative of the full blood majority of the tribe.⁵⁸⁸ At a time when white settlers, politicians, railroad corporations and reformers were busy developing projects that would reduce Cherokee autonomy, the tribe needed to have alert and determined observers in Washington – and that required money if it was to be effective; the Council thought the delegations important enough to continue using a considerable amount of their funds to sustain them.⁵⁸⁹ By the last quarter of the nineteenth century, when the pressure to destroy tribal identity was reaching its peak, the Cherokee Nation's economy was very similar in its structure to that of its white neighbors.

Despite the trauma involved in their forcible relocation, the Five Tribes, particularly the Cherokees and Choctaws, soon demonstrated that the land allocated to them was more fertile than had originally been anticipated. When the displaced Indians from the Southeast began farming in the Indian Territory, the area proved to be well suited to agriculture, with the combination of the Five Tribes' farming skill and experience making excellent use of the naturally fertile soil. The rivers, that were so necessary for watering livestock, had also created rich alluvial soil on which luxuriant grasslands and forests of fine timber thrived. Oak, ash, cottonwood, walnut, mulberry, hickory and pecan groves were abundant on the lowlands, while pine, blackjack and red cedar were plentiful on the hillsides. The main natural vegetation was Bluestem Grass, which grew abundantly in clusters from three to ten feet tall, and was the staple fodder of the

⁵⁸⁸ Denson, *Demanding the Cherokee Nation*, discusses the role of the mixed blood elite in the delegations to Washington (11-13), their development of the negotiating and lobbying skills that served the tribe well throughout the remainder of the nineteenth century (15), their opposition to the claims of the powerful railroads (184), their opposition to Allotment (205-8), and their claim to be the "Elder Brothers of the Race", able to represent not only the Cherokees, but all Indian tribes. The latter claim had been made in the *Cherokee Phoenix* as early as November 12 1831.

⁵⁸⁹ Denson, *Demanding the Cherokee Nation*, 205-6; McLoughlin, *After the Trail of Tears*, 244, 248, 262.

herds of buffalo.⁵⁹⁰ Cherokee women did cultivate on a small scale around their homes some corn, squash, and a few vegetables, and supplemented their diet by collecting wild nuts and the prolific natural blackberries, dewberries, gooseberries, strawberries, mulberries, grapes, cherries and wild plums.⁵⁹¹ The males had retained their traditional hunting skills, were assisted by male slaves, and as the bulk of their diet was meat, the men hunted twice a year; their most important quarry was the buffalo, but they also added deer, rabbits, wild turkeys, quail, wild pigeons, squirrels, mink, muskrats, some bears, and the abundant fish to their menu.⁵⁹²

Many of the more affluent Cherokees had acquired black slaves prior to their removal across the Mississippi and had been as successful in the production of cotton as their white neighbors in the Old South. Almost a quarter of the tribe in Indian Territory were slaves accompanying their mixed blood Cherokee masters, who used them firstly to clear larger areas of the tribe's common land than the poorer full bloods could manage, and then to add cotton-production to their cultivation of basic foodstuffs.⁵⁹³ The slaves were then used to develop more acres, which created a demand for yet more slaves to produce more cotton for export, generating funds that the Cherokee masters could invest in mills, ferries, and shops in the new townships.

It was not long before the tribe was beginning to replicate the economies of the Southeastern States it had left behind. Once again, the mixed bloods were the main beneficiaries of this economic growth. It was not long before the tribe was beginning to replicate the economies of the Southeastern States it had left behind.

⁵⁹⁰ Bluestem Grass had major root systems, as much as ten feet deep, which benefited the ground by binding the soil securely. The Cherokees kept much of the grassland for grazing, but a major change was to be made by the large influx of whites late in the century. Their preference for wheat, and the change to cotton plantations needed large areas denuded of the grass by overploughing, and therefore land erosion; Paul W. Gates, *The Farmer's Age: Agriculture 1815-1860*, Vol.3, (New York, Harper & Row, 1960), 138-9; Fred A. Shannon, *The Farmer's Last Frontier, Agriculture, 1860-1897*, Vol.5, (New York, Harper & Row, 1945), 125-130, 169.

⁵⁹¹ As described by John Harrison, an Indian Territory slave, in Patrick Mingos, *Black Indian Slave Narratives*, (Winston-Salem, NC, John F. Blair Publishers, 2006), 86.

⁵⁹² Mingos, *Black Indian Slave Narratives*, 86; McLoughlin, *After the Trail of Tears*, 38.

⁵⁹³ Mingos, *Slavery in the Cherokee Nation*, 195; McLoughlin, *After the Trail of Tears*, 67, 71, 122; Gates, *The Farmer's Age*, 135-142,.

Once again, the mixed bloods were the main beneficiaries of this economic growth. The English-speaking Chief John Ross had been quite correct in his belief that education in schools organized by the Cherokee Nation would reinforce the tribe's claim to limited sovereignty, but the fact that children were taught almost entirely in English created an ever-widening rift between the tribe's two linguistic groups.

The Cherokees used the lush grasslands, particularly on the tribally owned areas between their farms, for raising cattle and ponies. Those with larger farms quickly attained self-sufficiency in food, and then produced a marketable surplus.⁵⁹⁴ They sent their agents to the Northeast to sell their produce and to purchase improved farm implements and general merchandise which the wealthier members of the tribe sold to its members through their own trading posts. The tribe was fortunate in the area to which they were removed. They benefited from the fact that they had been allocated an area between the 95th and 97th Meridians, and between the 35th parallel of latitude and the Kansas border, 37 degrees North. Most of this area, from the Southwestern edge of the Ozark Plateau across to the 97th Meridian, is low-lying hill country under one thousand feet high, and is usually well watered. Rainfall recedes from forty-six inches per year on the Arkansas border in a consistently gradual pattern to less than half that figure in the western area, and diminishes to sixteen inches, mainly in the form of winter snow, in the panhandle Outlet.⁵⁹⁵ Territory lay entirely within the Mississippi drainage basin, with the Neosko (Grand), the Cimarron and the two Canadian Rivers all flowing into the Arkansas, and both the Arkansas and Red Rivers continuing to the Mississippi. The eastern half of the Territory was also well served by a multitude of lakes, which provided badly needed water storage in an area where the rainfall was inconsistent.⁵⁹⁶ Indian Agents' reports between the Cherokees' arrival and the Civil War listed 1838, 1848, 1854, 1856, 1860 and 1862 as being years of severe drought.⁵⁹⁷ The rainfall was brought by the warm

⁵⁹⁴ McLoughlin, *After the Trail of Tears*, 67.

⁵⁹⁵ Goins, *Historical Atlas of Oklahoma*, 18-19.

⁵⁹⁶ *Ibid*, 12-13.

⁵⁹⁷ Leslie Hewes, *Occupying the Cherokee Country of Oklahoma*, (Lincoln, University of Nebraska Press, 1978), 23.

moist air from the Gulf of Mexico, which also gave Oklahoma the claim to be part of the most tornado-prone region in the world, with an average of sixty per year.⁵⁹⁸ In this respect, the Cherokee and Choctaw areas in the northeast of the Territory were less prone to tornado damage than that of the unfortunate Osages, whose area lay in the main path of the Kansas and Oklahoma twisters.

Each of the Five Tribes held all agricultural land within their own tribal area in common, but citizens of the Tribe could settle on their chosen plot of land, and own the improvements (crops, fences, houses, barns etc.) they made on it. A Cherokee Nation law of 1839 forbade encroachment on prior claims,⁵⁹⁹ and ruled that settlement by improvements and any subsequent extensions must leave at least a quarter of a mile between any two improved areas, and in practice this separation was often exceeded.⁶⁰⁰ If farming activity ceased, the land reverted to tribal control, and all the land between the improved farms was communal property, usually used for shared grazing of cattle and hogs, and for hunting purposes.⁶⁰¹ Many white men saw the advantage to be gained by marrying Cherokee women as a means to acquire and improve tribal land; even those who did not farm used the freely available pasture between farms for raising cattle, although the right of some Cherokee women to retain their own property after marriage or divorce still remained from the tribe's matriarchal system.⁶⁰²

The Federal Government offered support to the new settlers of Indian Territory, helping initially by building homes, giving current scientific advice to the Indian farmers, and providing both draft and stock animals.⁶⁰³ They also promised farm implements, although supply of the latter was slow in forthcoming.⁶⁰⁴ This tangible aid was of more benefit to the individual farmers than the supply of annuities which had been written into some of the pre-removal treaties to be paid

⁵⁹⁸ Goins, *Historical Atlas*, 21-22.

⁵⁹⁹ *The Constitution and Laws of the Cherokee Nation: passed at Tahlequah, Cherokee Nation, 1839-51*, (Tahlequah, published by Cherokee Council, 1852), 5.

⁶⁰⁰ *Ibid*, 29.

⁶⁰¹ Norman Arthur Graebner, "Pioneer Indian Agriculture in Oklahoma", *Chronicles of Oklahoma*, 1945, Vol.23 No.3. 237.

⁶⁰² McLoughlin, *After the Trail of Tears*, 67.

⁶⁰³ Prucha, *The Great Father*, 271

⁶⁰⁴ Jahoda, *The Trail of Tears*, 270; Prucha, *The Great Father*, 144, 148, 271, 301, 325, 333, 492

into the Cherokee Nation's treasury. Federal politicians considered that payments to individuals in cash would have led to welfare dependence on the part of the less industrious who would have relied upon the hand-outs rather than having the personal ambition to work for their future independence. Most Cherokees, however, did work hard to support themselves, and were not the idle and improvident Indians many whites believed them to be.⁶⁰⁵ Their work ethic helped them to adapt their farming techniques to survive the drought years of the 1850s, and especially the most severe one of 1860. In the early years their reliance on shallow ploughing made them vulnerable in harsh seasons when rainfall failed,⁶⁰⁶ but when the wooden ploughs were later superseded by the more effective metal ones, deeper furrows and sowing improved the yield and enabled them to get through periods of drought with more satisfactory results per acre than before.⁶⁰⁷

When they had first moved into Indian Territory they took with them "peaches, wheat, Hickory King maize, field peas, butter beans, lima beans, large summer squash, turnips, yams, cabbages and potatoes".⁶⁰⁸ The primary crop was corn, as it had been in the Southeast before removal, and although it was the cereal most affected by drought, the early harvests were satisfactory. It became the first cash crop sown after arrival in the Territory. The tribe was soon not only self-sufficient in grain, but able in the better seasons to produce a surplus which they sold to the Federal Government, which in turn used it to feed the less agriculturally proficient tribes coming in from the Western Plains. The Five Tribes were more interested in growing corn, their traditional crop, as they preferred to make their bread from it rather than from the white man's wheat. Wheat flour had to be baked in a different manner, initially less to the Indians' taste, although they did develop a type of bread made with wheat-flour mixed with peach-flesh, which became a delicacy. In the 1900 Census, the last before Statehood, the eastern half of Indian Territory produced only 2.2 million bushels of wheat on

⁶⁰⁵ McLoughlin, *After the Trail of Tears*, 72.

⁶⁰⁶ Ibid, 71; Minges, *Slavery in the Cherokee Nation*, 14, 33.

⁶⁰⁷ Gates, *The Farmer's Age*, 181, 280-284.

⁶⁰⁸ Duane H. King, *The Cherokee Indian Nation: a Troubled History*, (Athens GA, University of Georgia Press, 1978), 202.

3,895 farms, but 39,208 farms produced 30.7 million bushels of corn. The latter remained the principal crop in both Indian and Oklahoma Territories, its production rising to about 73,000,000 bushels by Statehood, but the white dominated western section Oklahoma grew nine times as much wheat as did the Indian area.⁶⁰⁹ Within the Indian Territory, the Cherokees were the most productive in growing cereals, raising 9,080,390 bushels of corn on 411,067 acres, 1,486,820 bushels of wheat on 185,238 acres, 1,102,000 bushels of oats on 46,651 acres, and 3,270 bushels of barley on 155 acres.⁶¹⁰ The Chickasaws, Choctaws, Creeks also produced sizeable amounts, but the small Seminole tribe very little.⁶¹¹ Some of the corn was fed to livestock, particularly hogs, which followed cattle around and cleaned up the cattle-leavings, and the hogs were therefore a good source of profit due to their low maintenance costs. Cattle and horses also fed on the prolific grasses. The Cherokees in 1900 produced 224,902 tons of Bluestem and Wild Prairie hay on 202,006 acres, plus small amounts of millet, Hungarian grasses and clover.⁶¹²

Early attempts at wheat farming were frequently damaged not only by the inconsistent rainfall in Indian Territory, but also by insect infestations. The larvæ of the Hessian fly reached plague proportions, outstripping even grasshoppers (which usually swarmed in drought years) until it was discovered that the insect could not tolerate icy conditions, and the farms were converted to winter wheat to overcome this problem.⁶¹³ The initial choice of soft winter wheat was soon replaced by a harder variety, which in turn would be replaced after 1874 by the ‘Turkey Red’ strain introduced into the West from Southwestern Russia by German Mennonites in Kansas; this hardy crop became the preferred choice, thriving even in freezing winters.⁶¹⁴

⁶⁰⁹ Bureau of Census Report 1900, 12th Census, Vol.6, “Agriculture”, (Washington 1900) 79, 106.

⁶¹⁰ Ibid.

⁶¹¹ Ibid, 162.

⁶¹² Ibid, 238.

⁶¹³ This mosquito-like pest was widely believed to have arrived in Long Island, NY, in the bedding of Hessian mercenaries during the American Revolution, 1775-83. It infests several cereal crops, but is mainly partial to wheat, and can only be controlled by breeding new strains of the plant.

⁶¹⁴ Donald E. Green, *Rural Oklahoma*, (Oklahoma City, Oklahoma Historical Society, 1977), 64; Fred A. Shannon, *The Farmer’s Last Frontier: Agriculture 1860-1897*, (Vol. V, *The Economic History of the United States*), (New York, Harper Torchbooks, 1945), 42.

Orchard fruits were also valuable supplements to the diet in Indian Territory. The 1900 Census listed 222,565 bushels of apples, 329,736 bushels of peaches, 1,455 bushels of cherries, and a small production of apricots.⁶¹⁵ Those few Cherokees unlucky enough to have to settle on land including rocky outcrops or on hillsides created a strawberry industry in the niches of the uneven terrain.⁶¹⁶

Cotton became a major element in the Cherokee economy. All the Five Tribes had begun growing cotton in the Indian Territory soon after their arrival, and ‘King Cotton’ became a significant money spinner for the wealthier slave-owning Indians, most of whom were mixed bloods, until the disruption of the Civil War years. Even the smallest subsistence farmers with ten to twenty acres usually produced a small amount of cotton for their own use, making and dyeing the cloth which their wives used to make clothes for the family. The wealthier Indians, some of whom had brought hundreds of African-American slaves from their estates in Georgia, established profitable commercial plantations. Prior to the coming of the railroads after the 1866 Treaties, their bales of cotton were transported by bullock carts to the tributaries of the Arkansas River, and thence by flatboats down the Mississippi to New Orleans for export, mainly to the textile mills of northern England. The largest individual cotton-grower in Indian Territory was a Choctaw, Colonel Robert M. Jones, who in 1851 used 227 slaves on five thousand acres to produce seven hundred bales.⁶¹⁷ The richest Cherokee, Joseph Vann, with 300 slaves before the Civil War, planted most of his large estate with cotton.⁶¹⁸

The Civil War temporarily brought cotton production almost to a halt, due both to the devastation of the northern part of Indian Territory, and the abolition of slavery, which had been the basis of cotton’s profitability. The fall of Vicksburg in 1863 had also cut off the western part of the Confederacy from access via the

⁶¹⁵ Bureau of Census 12th Report, 1900, Vol. 6, “Agriculture”, 617.

⁶¹⁶ Grace Woodward, *The Cherokees*, 311.

⁶¹⁷ Norman Arthur Graebner, “Pioneer Indian Agriculture”, *Chronicles of Oklahoma*, Vol. 23, No.3, 1945, 242.

⁶¹⁸ Graebner, “Pioneer Indian Agriculture”, 241.

Mississippi to its principal market, the Lancashire cotton-mills.⁶¹⁹ The influx of large numbers of whites from Texas and Arkansas into the area in the 1870s, officially forbidden by tribal laws to lease land from the Indians, but nominally ‘employed’ to work for the Indian land-owners as tenant-farmers, led to a huge increase in cotton acreage. In 1879 35,000 acres under cotton produced 17,000 bales, and this increased to 155,729 bales from 442,065 acres only twenty years later.⁶²⁰ An unfortunate side-effect was the degradation of the soil, as the cotton growers ignored advice to diversify their crops and preferred the lure of quicker returns from cotton. This, combined with the process of replacing the natural soil-stabilization of the deep rooted Bluestem grass by deep ploughing, left the topsoil exposed to wind erosion. In 1898 the price of long-staple cotton rose from six to ten cents a pound, netting the farmer as much as fifty dollars per acre, as opposed to fourteen for wheat or eleven for corn.⁶²¹ Nevertheless, corn still remained the main subsistence crop in Indian Territory, both for family consumption and for livestock-feeding, while cotton became a major source of income, producing \$5,407,052, which was 32% of the total agricultural income of the Territory in 1900. By the time of Statehood in 1907, seventy-one of Oklahoma’s Counties produced cotton, on more than a fifth of the cultivated land.

The slave-owning members of the Five Tribes had also been tobacco growers in the Southeastern States, and some continued to do so when they moved into Indian Territory. It was a highly labor intensive crop, almost entirely produced by those mixed bloods holding large numbers of slaves. It also seriously depleted the soil by taking out the natural trace elements, phosphate and potash, in as little as three productive seasons, which made it necessary to clear fresh ground on which to restart the crop. Tobacco was also prone to Hawkmoth infestations, which could only be eradicated by slaves picking the hornworms off the tobacco by hand at least weekly.⁶²²

⁶¹⁹ Chester W. Wright, *Economic History of the United States*, 433.

⁶²⁰ Donald E. Green (Ed.), *Rural Oklahoma*, 38.

⁶²¹ *Ibid*, 39, 40.

⁶²² Paul W. Gates, *The Farmer’s Age: Agriculture 1815-1860*, (New York, Harper Torchbooks, 1960), 100.

For the small number of Cherokees who had sufficient slaves, tobacco was an added source of income.⁶²³ The leader in this field was the entrepreneurial Elias Cornelius Boudinot who, with his uncle Stand Watie took advantage of Clause X of the 1866 Cherokee Treaty which permitted the Cherokees to sell tobacco without having to pay tax in Indian Territory, and set up a Company in 1868.⁶²⁴ Not only was plug-tobacco a popular product, but in the cash-poor post-Confederacy States it was a common source of bartering tender.⁶²⁵ The venture was soon thriving, employing 120 and needing more investment in machinery to produce five thousand pounds of tobacco per diem.

The progress made in agriculture did not benefit the whole tribe uniformly, and it would again be the differences between the mixed blood and full blood groups which drove them further apart. The Cherokee Nation still held all its land communally, with only the improvements being the property of whoever could use it by his own toil or by financial investment. The greater opportunities for the white-Cherokees to gain not only the advantage of better schooling by their English-speaking teachers, but entry to the two Cherokee Seminaries frequently gave them access to tertiary Colleges in Arkansas, Missouri and the Northeast.⁶²⁶ The English-speaking and better educated Cherokees, many of them with professional degrees and able to take advantage of the greater incomes their professions created, could use their larger numbers of slaves, not only to clear and improve more parcels of land close to their original holdings, but also to grasp other opportunities for increasing their wealth.

On the other hand, while the poorer full blood farmer would be barely subsisting on a cornfield developed only by back-breaking work behind his inefficient wooden plough pulled by his single draught-horse, and raising a small number of cows and pigs, the more entrepreneurial mixed blood would be baling up his surplus tobacco for transport to river boats on the Mississippi.

⁶²³ The Bureau of the Census 12th report, 1900, Vol.6, "Agriculture," 617, only showed eight tobacco farms, producing \$16,081 value on 516 acres.

⁶²⁴ Washburn, *The American Indian and the United States*, Vol.4, 2649.

⁶²⁵ Parins, *Elias Cornelius Boudinot*, 86-7.

⁶²⁶ McLoughlin, *After the Trail of Tears*, 77.

This was much to the chagrin of the tobacco growers in the adjoining States of Arkansas and Missouri, who could not compete with the tax-exempt Cherokee prices,⁶²⁷ or with the freight costs to and from the outlets in St. Louis. In 1870, they successfully lobbied the Federal Government to close this legal loophole, and U.S. Attorney General Amos Akerman and Solicitor General Benjamin Bristow took the case to the U.S. Supreme Court. The case deeply divided the Court, with only three deciding to validate the tax, two were against it, and three (including the Chief Justice) abstained.⁶²⁸ As it developed, much more was at stake in the case than the mere imposition of a tax upon a small company, as the ruling had great importance in relation to the subject of Indian sovereignty. The critical clause in the summation was that “an Act of Congress has the power to supersede the provisions of a treaty.”⁶²⁹ The Court ruled that Congress had the right to over-rule Indian Treaties, quoting the Revenue Act of July 20, 1868, and the Tobacco Company collapsed, leaving considerable debts.⁶³⁰ This had a severe impact on the sovereignty of the Cherokee Nation, and on all the other Indian Territory tribes who were selling tobacco. It was agreed that no penalty other than the imposition of the tax should apply to Watie and Boudinot, who had legally complied with the terms of the 1866 treaty, but the decision had severely undermined the concept of tribal sovereignty. It was also the first occasion that Indians were taxed by the Federal Government, even though they were not yet American citizens.

By the time of the Civil War the class stratification of the tribe had rationalized into four levels. The mixed blood élite were clearly the dominant class. Ross had moved to Indian Territory in 1838 with twenty slaves, and by 1861 had over fifty.⁶³¹ His deputy Chief “Rich Joe” Vann had six hundred acres worked by four hundred of the 4,600 Cherokee slaves.⁶³² Only ten per cent of the Nation owned forty per cent of the tribe’s slaves. The value of adult male chattels varied from \$800 to \$1500, the greater price being paid for slaves who had some

⁶²⁷ Wilkins, *American Indian Sovereignty and the Supreme Court*, 55, 303.

⁶²⁸ *Ibid*, 60.

⁶²⁹ *Ibid*, 61.

⁶³⁰ *Ibid*, 55-63.

⁶³¹ Moulton, *John Ross*, 155.

⁶³² *Ibid*, 61.

extra skills, such as blacksmiths, coopers, or tool-makers.⁶³³ Tahlequah had a thriving slave market, and some of the mixed blood Cherokees, including Chief Ross's brother Lewis and his friends John Drew, Andrew Nave and John Martin were active slavetraders.⁶³⁴ Relocation into Indian Territory had given the slave owning Cherokees greater opportunities to clear, improve, and settle on larger numbers of acres than the poorer, non-slave-owning tribal members, so the imbalance increased over time.⁶³⁵

The majority of Cherokees for most of the nineteenth century were still the full bloods who owned either no slaves, or only a very small number, so they were subsistence farmers, whose wives and children were expected to toil with the husband in the fields, making it harder for their children to attend school. They would often have a cornfield and a few fruit trees, a small herd of cattle on the communal tribal pasture, some hogs, and sometimes a few sheep. In rare good years the full bloods may have produced a market surplus, but usually they operated at just the subsistence level. One problem was the difficulty of furrowing with an old-fashioned mule-drawn wooden plough at enough depth for the crops to thrive. It would not be until after the Civil War that the more efficient iron ploughs would become available in the Territory. The climate was occasionally prone to drought, and it was customary for those Cherokees who could afford to do so to donate some corn or vegetables to those who were distressed in the bad seasons such as in 1845 and 1853.⁶³⁶

Between the groups of slave-owning landed gentry and the poor subsistence farmers was a small but growing middle class, who were a group within the Cherokee-speaking full blood farmers. As they spread into the Territory they took up larger acreages, even though this meant that they would be further separated from the granaries and mills that were close at hand when they had farmed in their closer-knit Georgia settlements. Nevertheless they survived, and gradually improved their lifestyle. Typically they would farm about one hundred acres, often

⁶³³ McLoughlin, *After the Trail of Tears*, 129-131.

⁶³⁴ *Ibid*, 130.

⁶³⁵ *Ibid*, 39.

⁶³⁶ Graebner, "Pioneer Indian Agriculture in Oklahoma", 234.

assisted by a handful of slaves, and would run a variety of livestock. In most years they could store enough seed for the next season's crop and still have some surplus for sale. This lower middle class also included the bulk of the tribe's artisans, shopkeepers, and holders of lower level positions in the Cherokee Nations' increasing bureaucracy, with enough familiarity with English to work as Clerks to the Council and Courts. They would be the most likely to be called upon to build the Nation's schools, churches, and public offices.⁶³⁷ By employing this group, the tribal leaders demonstrated their ability to manage their own affairs in Indian Territory, and to lay down the foundations of a thriving agricultural economy.

Life in the Indian Territory was not as smooth and law-abiding as the Tribe would wish, and the Cherokee Nation was no different from was no different from any typical white society of the time. A fourth class, made up of unemployed drifters, drunkards, prostitutes, and petty criminals (particularly horse thieves) kept the tribe's police-force known as the Lighthorsemen busy. This lowest class was almost entirely full blood, who incurred the most punishments for crimes, including violence against other members of their own class. The "introduction and vending of ardent spirits in this [Cherokee] Nation" had been prohibited by tribal law,⁶³⁸ signed by Chief John Ross on October 25 1841, but the law was frequently ignored by white whiskey peddlers, whose products caused much of the drunkenness, prostitution, and lawlessness in the Nation, particularly as the white railroad builders drove through the Cherokee Territory.⁶³⁹ To regulate tribal life, the Cherokee Council drafted a wide range of laws relating to property, personal relationships, public behavior and safety, care of livestock, and even morality and religion. In McLoughlin's view, these "resemble[d] the laws of any western State or Territory as it moved from a frontier society to a more settled community."⁶⁴⁰

⁶³⁷ McLoughlin, *After the Trail of Tears*, 78.

⁶³⁸ James W. Duncan, "Interesting Ante-Bellum Laws of the Cherokees, now Oklahoma History", *Chronicles of Oklahoma*, Vol.6, No.2, June 1928, 179.

⁶³⁹ McLoughlin, *After the Trail of Tears*, 273.

⁶⁴⁰ McLoughlin, *After the Trail of Tears* 79.

The close of the Civil War opened up the organization of the cattle raising trade, both in Indian Territory and across the Red River in Texas. It led to marked improvement in the Cherokee economy, and became increasingly lucrative in the period between the Civil War and Statehood. The Civil War had virtually finished the cattle raising sector of the Cherokees' agriculture, but in the period following the Civil War the Cherokees recommenced producing cattle on their own farms, feeding them both hay and corn, and from 1867 they were exporting them north to Kansas to link with the growing railroad systems. Cherokee graziers benefited from the plentiful supply of tall Bluestem grass hay, as it enabled them to raise enough cattle to supply them with beef even in drought years. In addition, much of their income came from their low cost corn-fed hogs, which were almost double the number of the cattle. It was found that four cattle would waste enough corn or grass to feed one hog, and the pork produced was very profitable.⁶⁴¹

One early change in Indian Territory after the war was the partially benign invasion of Texan cattle drives into the wild grasses in the western half of the Indian Territory. This new development was to have a marked effect on the income of the Cherokee Nation. During the Civil War the Texan farmers had had no market for either of their two staple earners, cotton and cattle, and the open-range herds were left to multiply without control, mostly in the north of the State, unbranded, and available to any alert cattleman. The Texan and Indian Territory cattle industry soon revived after this wartime hiatus. Historians can only guess at the numbers, ranging from half a million,⁶⁴² five million,⁶⁴³ and as much as fifteen million.⁶⁴⁴ What they do agree on is the value of the steers, which could only sell in Texas – not so much for meat as for tallow and the hides – for less than five dollars a head, whereas the demand for meat for the expanding population in the Midwest could bring in forty dollars, and in the already populous Northeast of America an

⁶⁴¹ Fred A. Shannon, *The Farmer's Last Frontier: Agriculture 1860-1897*, Vol.5 of *The Economic History of the United States*, (New York, Harper Torchbooks, 1945),165.

⁶⁴² W. Eugene Hollon, *The Great American Desert: Then and Now*, (New York, Oxford University Press, 1966), 124.

⁶⁴³ Billington, *Westward Expansion*, 583.

⁶⁴⁴ Harry Sinclair Drago, *Great American Cattle Trails: the Story of the Cow Paths of the East and the Longhorn Highways of the Plains*, (New York, Bramhall House, 1965), 8.

animal could be sold for up to seventy dollars.⁶⁴⁵ The problem was how to reach those markets to take advantage of the high prices; Indian Territory was supposed to be off limits to white men, and the railroads had not yet reached so far south.

The herds had to be moved on foot, and the era of the Long Drive ensued. The first drives went from San Antonio across the Red River to Fort Smith, Arkansas and thence up the Sedalia Trail, through Missouri connecting with the Missouri Pacific Railroad in Sedalia for dispatch to Chicago. In 1866 some 260,000 head started this route, and those that arrived at the railhead were bought for thirty-five dollars.⁶⁴⁶ Heavy rains, losses to raiding Indians, and stampedes caused by Missouri farmers who dreaded the disease brought by the infestations of ticks to which the Texas Longhorns were accustomed and immune, but which were quickly lethal to their own British Hereford and Angus cattle, reduced the profitability of the Sedalia route.⁶⁴⁷ The Missouri Government soon completely banned the tick-infested Longhorns, and the Texans moved their routes further to the west, which took them across Indian Territory, through the Cherokee Outlet.

This was the area originally negotiated by the Cherokees in Article II of the Treaty of New Echota as “a perpetual outlet west”⁶⁴⁸ to the buffalo-hunting grounds of the central Plains, and was a sixty mile wide corridor containing 6,574,486 acres between the 96th and 100th meridians, the ‘No Man’s land’, which would eventually be called the Oklahoma Panhandle.⁶⁴⁹ The change in the lifestyle of the Cherokees after removal, when they depended much less on hunting and had become almost exclusively settled agriculturists, had meant that the Outlet was little-used lush grassland. After the Civil War the Cherokees began to appreciate the potential income from cattle raising. The Outlet was watered by four main streams, the Arkansas, the Salt Fork, the Cimarron and the North Canadian, usually refreshed by an ample rainfall ranging

⁶⁴⁵ Billington, *Westward Expansion*, 583.

⁶⁴⁶ Ernest Staples Osgood, *The Day of the Cattleman*, (Minneapolis, University of Minnesota Press, 1929), 30.

⁶⁴⁷ Drago, *Great American Cattle Trails*, 584

⁶⁴⁸ Washburn, *The American Indian and the United States*, Vol.4, 2465.

⁶⁴⁹ Goins, *Historical Atlas of Oklahoma*, 99.

from thirty-two inches in its east to twenty-two in its west.⁶⁵⁰ The area was remote from the main Cherokee settled lands, and the tribe were still only deriving very little income from it, as relatively few tribesmen took quite small herds into the western pastures.

The Texan cattle drives through Cherokee territory began on the old Chisholm Trail, following the route pioneered by the mixed blood Cherokee itinerant salesman Jesse Chisholm, which crossed into Indian Territory at Red River Station, went due north through the Kansas border at Caldwell, and continued through Wichita to the railhead at Abilene, which by 1867 had been reached by the Kansas–Pacific Railroad. It was the most used trail, but other routes soon followed: the two Shawnee Trails (from Colbert’s Ferry to Baxter Springs and to Wichita), and the Great Western Trail (from Vernon in Texas to Dodge City, Kansas). At that stage Abilene’s principal resident was an astute Cherokee Charles Thompson, who had purchased property there in 1861, and had been responsible for laying out the town grid.⁶⁵¹ He authorized the visionary entrepreneur Joe McCoy to purchase 250 acres adjoining the town as a stockyard on which he installed fencing, a built an office, live-stock scales, a large hotel and a bank.⁶⁵² McCoy bypassed the Texas-tick quarantine arrangements of the Kansas 1867 Protection from Disease Act by bribing the Abilene citizens, and the Texan cattle invasion began in earnest.⁶⁵³

The terms ‘Cherokee Strip’ and ‘Cherokee Outlet’ frequently overlapped in the documents of the time, and historians have been inconsistent in their descriptions of the areas, both of which now form part of the State of Oklahoma, but which had different histories. The ‘Strip’ was the two-mile deep Kansas border error, and the ‘Outlet’ was the six and a half million acres south of the Strip, some sixty miles deep from north to south, from the 96th Meridian to the 100th, the western edge of the Oklahoma Panhandle.⁶⁵⁴ The latter area became part of the Indian Territory, and eventually Oklahoma, by a unique combination of historical,

⁶⁵⁰ Savage, *The Cherokee Strip Livestock Association*, 17-18.

⁶⁵¹ Robert R. Dykstra, *The Cattle Towns*, (New York, Alfred A. Knopf, 1968), 12-13.

⁶⁵² Dykstra, *The Cattle Towns*, 21.

⁶⁵³ *Ibid*, 22.

⁶⁵⁴ Savage, *The Cherokee Strip Livestock Association*, 17.

political, and geographical factors. The area, 'No Man's Land', between the 100th and 103rd Meridians, was in the independent Republic of Texas when it became part of the United States of America in 1845, but Texas had to relinquish the area north of the Missouri Compromise extension of the Mason-Dixon Line, (Latitude thirty-six degrees, thirty minutes) in 1850 in order to be eligible to remain a slaveholding State. The Cherokees claimed the largely vacant 'Outlet' as their territory, and also the use of the 'No Man's Land', as an unobstructed route through to the Salt Plains (even as far as the Rockies) in the West for their hunting and foraging trips. The northward cattle trails crossed this large and mainly vacant territory.

As the railroad building proceeded southwest through Kansas, the towns of Ellsworth, Newton, Baxter Springs, and Dodge City in turn became cattle collection depots,⁶⁵⁵ and soon Caldwell in Indian Territory became a major center, which had been reached by the Atchison, Topeka and Santa Fe railroad.⁶⁵⁶ A short part of these trails traversed some Choctaw land, but the majority of the journey went through the Cherokee Outlet in the Panhandle of their territory. It had been part of the land set aside for the Cherokees in the Treaty of New Echota, some distance from most of their territory as a throughway to their traditional hunting grounds. As a result, it was little used by the Cherokee Nation, but was well grassed and ideal for the cattle drovers. The Cherokee Nation would have found it difficult to curb the Texan transgressions, but did in 1867 benefit by taxing the cattlemen. The first tax was ten cents per head of cattle, but initially the Cherokees were unable to enforce the levy from every Texan; the tax increased slightly in 1869, but would not become a major source of tribal income until the Texans negotiated the right to graze throughout the winter. The Texans originally negotiated just to drive their cattle through the outlet, but had soon begun wintering their stock in the Outlet without permission, and they benefited both by fattening their cattle much closer to their railhead arrival points, but also by a lessening of the Longhorn tick problem, as the insects could not live through the Outlet's winter snows.

⁶⁵⁵ Shannon, *The Farmer's Last Frontier*, 200

⁶⁵⁶ Dykstra, *The Cattle Towns*, 63-65 (map) and 181.

The Cherokees had levied the tax, but were unable to collect it efficiently - until the U.S. Senate Judiciary Committee confirmed their right of taxation in 1878. The Secretary of the Interior backed this up in 1879 by ruling that only cattlemen who had paid the Cherokees would be allowed to remain in the area.⁶⁵⁷ The Agent for the Ponca and Nez Percé tribes protested to the Commissioner of Indian Affairs that the Cherokees could not sell grazing licenses, but Charles Thompson, who had become Principal Chief of the Cherokees in 1875, had the right confirmed. Even so, some Texans were avoiding the payments, and the system was inefficiently managed.

The frustrated Cherokee Tribe, led from 1887 by Principal Chief Joel B. Mayes, realizing that their cattle lease income had stopped, and sensing that Congress would take the Outlet from them by decree, accepted an offer negotiated by Elias Cornelius Boudinot to receive from the U.S. Government \$8,595,736.12, approximately \$1-29 per acre for the nearly six million acres.⁶⁵⁸ The Cherokees were then unable to accept an offer by the D.R. Fant Cattle Company of Chicago of ten million dollars for the Outlet.⁶⁵⁹ Two days later the Williamson, Blair Company of Kansas City doubled that offer, and on December 9, the Lucas Cattle Company of Colorado Springs put in a bid for thirty million dollars.⁶⁶⁰ It is not clear whether Chief Joel Mayes did not take these offers seriously, or was locked in to the Federal Commission's offer.⁶⁶¹ The Government's low offer was also conditional on payment being made in full by March 4, 1893. Non-payment by that deadline should have meant the contract ended on March 3, 1893.⁶⁶² The Cherokees, well used to being short-changed by the American Government, and wary of losing all rights to the land and therefore loss of the entire payment, agreed to accept the reduced amount. The issue did not end there, however, and it would not be until 1961 that a Cherokee claim for a fairer settlement, which took several years of litigation, was finally rewarded with an additional \$14.7 million dollars. This was nearer the true 1888 value, but was well short of a true valuation figure for

⁶⁵⁷ Dykstra, *The Cattle Towns*, 343.

⁶⁵⁸ Savage, *The Cherokee Strip Livestock Association*, 123, including footnote 20.

⁶⁵⁹ *Ibid*, 121.

⁶⁶⁰ *Ibid*, 121.

⁶⁶¹ *Ibid*, based on Oklahoma Historical Society records, 121.

⁶⁶² Savage, *The Cherokee Strip Livestock Association*, 126, footnote 28.

1961, and could never really compensate the Cherokee Tribe for the enforced loss of the land which had originally been promised to them forever.

A major change in the arrangements was the agreement of the Texans to form a combine, the Cherokee Strip Live Stock Association, in March 1883, based in an office in Caldwell.⁶⁶³ The Cherokee Nation approved of the formal Association, making it more effective for the tribe's Chiefs and Treasurers to negotiate with it rather than with individual cattle owners. Thompson's successor as Chief in 1879, Dennis Wolfe Bushyhead, appointed Major D.W. Lipe as Cherokee Nation Treasurer, with a staff of two, and he negotiated with the Association a system of license fees, forty cents a head for adult cattle and twenty-five cents for heifers under two years old staying in the Outlet for the winter.⁶⁶⁴ Receipts were still erratic, but the tribe received amounts varying from \$1,100 in 1879, to more than \$41,000 in 1882, with which the Cherokee Council reaffirmed the tribe's priorities by directing the funds to be used for its educational activities.⁶⁶⁵

One source of discord between some of the members of the Cattlemen's Association was the erection of fences in the Outlet, the right to do so being part of the contract with the Cherokees. Herds on the open range needed gangs of cowboys to manage them, and it became much cheaper to divide the herds by fencing, the Association still being a group of individual owners needing to separate their unbranded cattle. After fences separated the herds, cowboys were then only hired for the annual roundups, branding and driving to the markets. Patents for wire fencing had been awarded to Lucien Smith in 1867 and Michael Kelly in 1868, but it was Joseph F. Glidden's improved barbed system in 1874 which really became successful, with 86,900 tons of the product being sold in the ensuing decade to cattlemen and farmers, not only in the Outlet but all across the Plains.⁶⁶⁶ The barbs made it slightly hazardous to cattle, but the wire became the usual method of dividing farms across the whole country, and in changing the

⁶⁶³ Savage, *The Cherokee Strip Livestock Association*, 7

⁶⁶⁴ *Ibid.*, 30.

⁶⁶⁵ *Ibid.*, 19-30.

⁶⁶⁶ *Ibid.*, 34-5.

nature of range farming Glidden became a millionaire. By 1883 there were 959 miles of barbed fencing (at a cost of \$200 a mile)⁶⁶⁷ around 174,000 acres in the Cherokee Outlet.⁶⁶⁸ A secondary benefit was the curbing of the frequent incursion of timber thieves from across the Kansas border, who were helping themselves to the valuable cedar timber on the Cherokee lands.⁶⁶⁹

The Cherokees approved of the wire-fencing, making it easier to control their collection of rent from cattlemen who had claimed settled areas within the wires for their stock.⁶⁷⁰ Dennis Wolfe Bushyhead (Principal Chief 1879-1887) appointed an intermarried white citizen of the tribe, John F. Lyons, as attorney to negotiate an annual rent from the Livestock Association for the entire outlet for \$100,000 a year for five years, payable in advance and only in silver coins.⁶⁷¹ This last stipulation was to avoid the losses involved in depreciating paper money. The Cherokee Nation itself did not coin money, but used a national script that answered the purpose. It was in much the same order as the U.S. currency, and was redeemed by the Cherokee National Treasurer in values ranging from twenty cents on the U.S. dollar to par, and it was one of Chief Bushyhead's outstanding accomplishments that he raised the script's value to par.⁶⁷² Craig Miner described Bushyhead as

being overly sympathetic to corporations, though he was granted grudging praise by all as one of the best financial minds in the Cherokee Nation. During his term of office, 1879-1887, he brought the Nation from a position of being in debt \$187,000 to relative prosperity.⁶⁷³

In 1888 his successor as Chief, Joel B. Mayes, signed a renewal of the Association's lease for \$200,000 a year.⁶⁷⁴ The Texas cattlemen's Outlet-range fencing ended when the Federal Government took over the area in 1890, forcing

⁶⁶⁷ H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907*, (Columbia, University of Missouri Press, 1976), 125; Edward Everett Dale, "The Cherokee Strip Livestock Association", *Chronicles of Oklahoma*, Vol.5, No.1, March 1927, 65.

⁶⁶⁸ Kent Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893-1914*, (Orem, Utah, Ancestry.com, 1999), 155.

⁶⁶⁹ Savage, *The Cherokee Strip Livestock Association*, 33.

⁶⁷⁰ *Ibid*, 35.

⁶⁷¹ Dale, "Cherokee Strip Livestock Association", 70.

⁶⁷² V.A. Travis, "Life in the Cherokee Nation a Decade After the Civil War", 21.

⁶⁷³ Miner, *The Corporation and the Indian*, 122.

⁶⁷⁴ Savage, *The Cherokee Strip Livestock Association*, 111.

the cattlemen to remove all wire fences and any 'improvements' (buildings) on the Outlet, and threatening them with eviction by the U.S. Army if they did not soon comply.

The era of the Long Drive was inevitably curtailed when the two railroads, provision for which had been included in the 1866 Cherokee Treaty and its supplementary adjustment in 1868, finally became the standard method of transporting the cattle. It was more efficient to use the railroad to ship Texan and Cherokee cattle north to the Kansas cattle towns, there to be processed and shipped to Chicago and the major population centers of the Northeast.⁶⁷⁵ Elias Cornelius Boudinot, ambitious to make his fortune not only with his Tobacco Company, but in various other directions as well, was involved in the sale of the Cherokee northwest lands as well as the development of the railroads.⁶⁷⁶ He had been one of the delegates who agreed to the Federal Government's set of instructions in the 1866 Treaty, and – like his father before him – foresaw the inevitability of the whites swamping much of the Cherokee territory. Although his actions were not widely popular within the tribe, the old Blood Law ruling against selling Cherokee land had lapsed, presumably as part of the tribe's continuing blending in with white society.

The 1866 Treaty had stipulated that two rail routes would cross Cherokee land, one north-south from Kansas into Texas (the Missouri, Kansas, and Texas 'Katy' line) and one from the northeast through Indian Territory. The first was negotiated with James F. Joy's American Emigrant Company in the 1868 Treaty, but with the proviso that the first line to cross into Cherokee territory without interfering with other tribes on the route would be granted the right to continue south, a ruling which handicapped the Joy company which had to go through Quapaw land. The Katy won the race, and the Cherokee Nation benefited financially from the arrangement. Not only could land-holders sell the timber for the railroad ties, but the Nation was able to sell timber ties from its communally-

⁶⁷⁵ Prucha, *The Great Father*, Vol.2, 742; Miner, *The Corporation and the Indian*, 119; McLoughlin, *After the Trail of Tears*, 297.

⁶⁷⁶ Grace Woodward, *The Cherokees*, 295.

owned unimproved areas for 25 to 45 cents each, depending on quality, but also applied a five cent tax on every tie used. This was no small matter, as 2,600 ties were needed for every mile of track. For example, this tax raised \$3,672-80 in the June quarter of 1882.⁶⁷⁷ The astute Boudinot predicted the crossing point of the two railroads and used the Cherokee law of improving unused tribal land by fencing off five square miles of well-watered grazing land, and laid out the beginning of Vinita town, planning to sell off building blocks when the rail reached the town, and built the only hotel.⁶⁷⁸ His prediction of where the town-site would be located was not entirely accurate, but the pattern for the area's development had been set. He also used some of his fenced area to graze 700 sheep on the land, a first for Cherokee territory.⁶⁷⁹ The railroad did bring in rough population elements, an increase in crime and an inflow of alcohol, but the Cherokee Nation's coffers benefited considerably.

Not all Cherokee wealth came from the surface soil. Until the oil industry became important near the close of the nineteenth century, the mining or production of salt became the major non-farm income earner. There are estimated to be twenty trillion tons of salt within the borders of Oklahoma, mainly in the Great Salt Plains of the arid west, but most of this is in a layer of Permian-age rock-salt, so solidly-pressed and hard that attempts to dig it out broke the mattocks of the early prospectors. In the eastern half of the State there were not only plentiful freshwater rivers, but also many active saline springs. It was from these that salt was commercially produced, by boiling the water in huge kettles and leaving the residue to dry out in open evaporative pans.

The first commercial salt manufacturing plant in Indian Territory had begun in 1815, well before the Removals, and by 1833 there were six privately owned salines, including the salt springs owned by Sequoyah since 1828 on Lee's Creek.⁶⁸⁰ In 1843 the Cherokee Nation acknowledged the economic importance of the salt

⁶⁷⁷ Parins, *Elias Cornelius Boudinot*, 122.

⁶⁷⁸ *Ibid*, 127.

⁶⁷⁹ *Ibid*, 124.

⁶⁸⁰ Grant Foreman gives a comprehensive account of 19th Century salt industry in: "Salt Works in Early Oklahoma", *Chronicles of Oklahoma*, Vol.10. No.4, December 1932, 475-500.

industry, and declared the salines in their area to be the property of the Nation, and to be leased out by the tribal government. The revered Sequoyah was allowed to keep operating his salt works, but a suspicion of political corruption attaches to the leasing of the nationalized salines to close associates of Chief John Ross, including his brother Lewis.⁶⁸¹ David Vann, son of the tribe's wealthiest member Joseph Vann, and John Drew (who had been chosen by Chief Ross as Colonel of the pro-Ross Cherokee Regiment in the Civil War) were also among the Cherokee elite who operated those lucrative salines prior to the Civil War. One reason for their success in obtaining leases was that salt production was labor-intensive and the slave-owners were in a better position than others to provide that labor. The salt they produced was sold by traders operating both in Indian Territory and Kansas; also Jesse Chisholm took wagons of salt from Blaine County westwards to trade with Plains Indians. One negative aspect of the presence of salt springs in the Territory was that the different tribes in the area could come into conflict over access to the wild animals which were attracted to the springs and were targeted by hunters.

The salt was used for cooking, preserving meats, drying animal-skins and furs, and in the Civil War years it became a strategic commodity because it was used in the production of gunpowder. Prior to the war, salt was imported from a saltworks north of the Ohio River, but when that source became unavailable in the war, Indian Territory's abundant salt became an important commodity for the Confederacy.⁶⁸² Cherokee salt works were fought over, captured by the Union, and eventually destroyed by the Union Army near the War's end. As an example, one major salt works was set up by an Old Settler, Samuel Mackey near the strategically important military road connecting the major army depots of Fort Smith in Arkansas and Fort Gibson in Cherokee territory. The works included one hundred large evaporation kettles in several large buildings, pumps and other machinery, a store-house, a general trading post, a large warehouse, and stabling for all the horses and mules needed to convey the salt, the wagons also being used

⁶⁸¹ Foreman, "Salt Works in Early Oklahoma", *Chronicles of Oklahoma*, 490.

⁶⁸² Arrell Gibson Morgan, *The History of Oklahoma*, (Norman, University of Oklahoma Press, 1984), 64.

for general transport for hire for other purposes. Just prior to the Civil War it was run by Alexander Wilson until his death in 1858, and then by his widow Rebecca. When she died in 1861 the Cherokee Nation seized the works, and in addition to the production of salt, Watie's regiment used the premises as a base to train and drill his troops. In 1863 the Confederates were driven out by the invading Union forces; two companies of Federal troops were stationed there to continue salt production for the Army and for the thousands of refugees who had returned from Kansas to cluster around Fort Gibson. In 1865 the Union forces abandoned the works, and to prevent them from falling into Confederate hands they completely destroyed the buildings, kettles, and machinery.⁶⁸³

One by-product of the operations of the salt industry was the discovery that saline water often contained small amounts of oil, which was being sold in the Eastern and Southern states as a medicine, before the real value of oil was realized.⁶⁸⁴ In 1897 the commercial value of oil triggered the drilling of the first successful oil well at Bartlesville in Washington County, and the oil industry became a major force in the area's economy. The growing industrialization of the United States, which was accompanied by accelerated expansion of the railroad systems, also meant that the search for underground minerals became a new industry in itself. Large coal deposits were discovered, particularly in the Choctaw zone⁶⁸⁵ – production quadrupled between 1885 and 1900 - but also some was mined in Cherokee territory late in the century. This attracted the Boomer settlers to the area, when the major threats to Cherokee sovereignty, the Allotment policy and the land rushes, swamped the Indian population in their own territory. An unfortunate effect of the successful agricultural activities in Indian Territory had been the visible proof of the value of the land, which inevitably made the growing white population look enviously on the large and fertile areas sustaining a relatively small Indian community.

⁶⁸³ Foreman, "Salt Works in Early Oklahoma", 490.

⁶⁸⁴ Kenny A. Franks & Paul F. Lambert, *Oklahoma: the Land and its People*, (Unicorn Publishing Company, 1994), 149.

⁶⁸⁵ Burton, *Indian Territory and the United States*, 246.

Towards the end of the century the Allotment process, which initially bypassed the Five Tribes, was the system by which the white reformers, self-interested politicians and developers used to destroy the tribal land system and undermine tribal sovereignty. The rationale for destroying tribal institutions, and especially communal ownership of land, was that it was an impediment to the process of modernization and assimilation by preventing the development of entrepreneurial skills and economic progress. Yet the Cherokees had demonstrated their ability to create an agricultural system little different to that of the white states around them, and to operate within a market economy. They had managed the income they received from Federal annuities and compensation payments, and they had shown they could engage in complicated negotiations with the cattlemen who needed access to tribal lands to get their herds to the railheads. Large sums of money were involved, and the record keeping involved over several decades would have been considerable. There were at times suggestions of corruption in the handling of tribal funds, but again that would have been the case in many of the white communities in the region at that time. That so little credit was given at the time of the white drive for detribalization in the last decades of the century for the considerable skills in economic management displayed by the Cherokee leadership is remarkable, and suggests the level of determination on the part of the white community to force its will on the Indian minority.

Chapter Seven

The Destruction of Cherokee Sovereignty 1887-1907

The Cherokees had argued through most of the nineteenth century that the United States Government should concede them at least some element of tribal sovereignty, but the period from 1887 to the creation of the State of Oklahoma in 1907 saw a relentless drive by both the Congress and the Administration to remove the last remnants of tribal autonomy. The Federal Government no longer needed to take into account the claims of the Indians, who had become a diminishing minority even in their own territory. After the challenge of the Confederate South had been defeated, the United States economy expanded enormously and its white population increased as immigrants poured into the new cities to provide an additional industrial workforce. There was little interest at the national level in the problems of marginalized groups such as the remnant Indian population, and the only concern for Government was a quick resolution of any impediment to the full development of a market economy.

For the Cherokees, the large scale expropriation of so much of their land under the 1866 Treaty, coupled with the apparent loss of their right to determine membership of the tribe, meant the removal of the bases on which their claim to limited tribal sovereignty had rested. During the 1880s and 1890s the whole question of the national policy on Indian affairs surfaced again, and this time the convergence of the views of reformers and vested interests ensured that the national government would dismantle once and for all the system of collective ownership of land that was the basis of tribal culture. The process of destruction took some time, because Washington chose first to deal with the less acculturated tribes, and exempted the Five Tribes from the first phase of the restructuring of tribal organization; the exemption also included a few selected other tribes, and it was no coincidence that the exempted group of tribes were also those who had

been most vociferous in their opposition to the process.⁶⁸⁶ Once that main phase had been completed, the Five Tribes were exposed to reform, and by 1907 they were submerged within the new State of Oklahoma. The reaction of the Cherokees to this powerful onslaught reveals the resilience of tribal values.

Early attempts at improving the lot of Indians after the Civil War had concentrated on the wilder Plains tribes, one notable example being the work of Henry Benjamin Whipple (1822-1901), the first Episcopalian Bishop of Minnesota, who had worked among the Sioux from the 1860s and who criticized their treatment.⁶⁸⁷ Whipple's campaign to appoint honest Agents and traders to work with the Indians received support from Brigadier General Alfred Sully, a veteran of the Dakota campaigns against the Sioux,⁶⁸⁸ who believed it was preferable to civilize the Indians rather than exterminate them, and that much of the Indian unrest was directly caused by the failure to pay promised annuities on time, thereby causing deprivation and in some cases starvation. Scully did not believe full assimilation would be possible, but he was more accommodating than his superior, General Philip Sheridan, whose policy leaned towards the extermination of all Indians not living within the confines of reservations, and who had influenced Congress to encourage the wholesale slaughter of the buffalo, the Indians' prime source of sustenance.

Most frontier pioneers regarded Indians as incorrigible savages who formed a continuing barrier to the white occupation of western America. They saw no value in the sympathetic and progressive ideals of President Grant's Peace policy. This included the creation by Congress of the Board of Indian Commissioners in 1866, giving responsibility for supervision of Indian reserves mainly to churchmen.⁶⁸⁹ The Board was a Protestant-dominated group, with no representation by any Catholics, and the distribution of reserves reflected that

⁶⁸⁶ Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier*, (Cambridge, Mass., Harvard University Press, 2005), 276.

⁶⁸⁷ Prucha, *The Great Father*, Vol.1: 469-473, 512.

⁶⁸⁸ *Ibid*, Vol.1: 446-7.

⁶⁸⁹ *Ibid*, Vol.1, 506.

imbalance.⁶⁹⁰ On the basis of missions they had already established, and the scale of Catholic expenditure, the Catholics expected thirty-eight missions, but were appointed to only seven - two boarding and five day-schools.⁶⁹¹ Methodists, who had done little missionary work by that time, were given fourteen.⁶⁹² The Catholics could not allow this imbalance to continue; in 1874 they opened a central agency in Washington to liaise with the Federal Government, and a Bureau of Catholic Indian Missions was established, which soon had eighteen boarding schools, heavily subsidized by the Government.⁶⁹³ Several other smaller religious groups were offered agencies. For example, Bishop Whipple and a group of his fellow Episcopalians found willing and responsive allies among the Quakers, who were adept at working with Washington politicians.⁶⁹⁴ One prominent Quaker leader was the abolitionist educator Benjamin Hallowell, who turned his energies towards the Indian problem once the slaves had been emancipated, and he successfully recommended several Quaker teachers as Superintendents of Indian reserves.⁶⁹⁵ General Sully became another ally, arguing that Grant's Peace policy based on the coöperation between government forces and missionaries, backed up by the efficient delivery of promised food and equipment, would be preferable and considerably less expensive than the extermination implied in Sheridan's violent Force policy.

A key element in the drive to dismantle tribal institutions throughout the United States was the pressure generated by groups of sympathetic white reformers. It was a period when reforming zeal on behalf of the Indians took hold amongst a small but influential group within the Eastern élite, in part influenced by Helen Hunt Jackson's *Century of Dishonor* (1881), which had condemned government cruelty towards the Indian over many decades and called for Indian citizenship.⁶⁹⁶ She sent copies to every member of Congress at her own expense,

⁶⁹⁰ Prucha, *The Great Father*, Vol.1, 507, particularly footnote 19.

⁶⁹¹ Francis Paul Prucha, *The Churches and the Indian Schools 1888-1912*, (Lincoln, University of Nebraska Press, 1979), 1-3.

⁶⁹² *Ibid*, 2.

⁶⁹³ *Ibid*, 2-4; Prucha, *The Great Father*, Vol.2, 707-8.

⁶⁹⁴ *Ibid*, Vol.1: 92, 499-500, 512-3, 523.

⁶⁹⁵ *Ibid*, Vol.1, 513.

⁶⁹⁶ Although professing to plead on behalf of all Indians, Jackson's work principally examined the Poncas, Cherokees, Delawares, Cheyennes, Nez Percés, Sioux, and Winnebagos.

without having much impact, but the book did arouse considerable public interest. The Indian reform movement in the late nineteenth century led to the formation of number of mainly northeastern organizations determined to reach a final settlement of the Indian problem. They included in 1879 the Women's National Indian Association, under the driving force of Amelia S. Quinton, who had moved on from being a temperance campaigner to become an advocate for Indian reform, with the financial backing of the Association's President Mary Bonney.⁶⁹⁷ The Association concentrated both on improving the living conditions of the Indians, and converting them to Christianity; it went on to open sixty branches in twenty-seven States.⁶⁹⁸ In 1879 Helen Hunt Jackson argued strongly on behalf of the mistreated Poncas and her book created much interest and action among reformers.

Organizations began to emerge to tackle specific issues. For example, William Welsh (1807-78) of Philadelphia, a member of the Board of Indian Commissioners who aimed to clean out the corruption that was rife in the BIA, was moved by an appeal by Ponca Chief Standing Bear, and in July 1879 formed the Boston Indian Citizenship Association.⁶⁹⁹ This group included Massachusetts Governor John D. Long, the Mayor of Boston Frederick O. Prince, Massachusetts Republican Senator Henry Dawes, and their principal spokesman was journalist Thomas Henry Tibbles, whose varied careers had included being a member of John Brown's abolitionist band in Kansas; his support for Welsh ensured his main target was the corruption which the BIA Secretary Carl Schurz could not control.⁷⁰⁰ In 1882 Herbert Welsh⁷⁰¹ and Henry Pancoast⁷⁰² in Philadelphia, and

⁶⁹⁷ Prucha, *The Great Father*, Vol.2, 612, 614, 654; Loring Benson Priest, *Uncle Sam's Stepchildren: the Reformation of United States Indian Policy, 1865-1887*, (New York, Octagon Books, 1972), 81-83,156, 240; Stremlau. *Sustaining the Cherokee Family*, 71, 84.

⁶⁹⁸ Prucha, *The Great Father*, Vol.2, 612-614; Priest, *Uncle Sam's Stepchildren*, 82; Margaret D. Jacobs, "Making savages of us all", in Frederick Hoxie et al, eds., *American Nations: Encounters in Indian Country, 1850 to the Present*, (New York, Routledge, 2001), 175-6,

⁶⁹⁹ This was one positive result emanating from Jackson's book, in which she told the pitiful story of the Poncas, who were removed by mistake into the Sioux reservation, then into Indian Territory, where many died in the unaccustomed climate, and then back by their own choice to their original homeland in Nebraska, despite attempts by the U.S. Army to stop them. Wilcomb Washburn, *The Assault on Indian Tribalism: the General Allotment Law (Dawes Act) of 1887*, (Philadelphia, J.B. Lippincott Company, 1975), 6.

⁷⁰⁰ Prucha, *The Great Father*, Vol.1, 568-9, Vol 2, 611-612; Priest, *Uncle Sam's Stepchildren*, 78-9, 83, 213.

Charles C. Painter⁷⁰³ in Boston, set up the Indian Rights Association, which began by advocating that the destruction of tribal culture was essential for complete assimilation of Indians into white society, and was therefore the Indians' only hope of survival.⁷⁰⁴ In time, however, their opinion gradually shifted towards stimulating Indian independence, and leaving the tribes to solve their own problems.⁷⁰⁵ Some of these reformers began by questioning the morality of their government's treatment of the indigenes since the founding of the nation, while others concentrated on finding the best methods of bringing the current generation as rapidly as possible into the mainstream of modern white American life.

The cause of Indian reform moved into another phase when a larger group of mainly Eastern intellectuals began to widen the discussion beyond the issue of the Plains tribes and formulate policies that would affect all Indians still living in tribal settings. In the aftermath of the Civil War, the U.S. Government had shown little respect for Cherokee treaty rights as it relocated remnant tribes on Cherokee land as part of its general reorganization of Indian tribes, but now many of the reformers argued that tribal communal ownership of land was at the heart of Indian backwardness and should be abolished and replaced by individual freehold allotments.⁷⁰⁶ The wealthy Quakers Albert Smiley (who had been a member of the Board of Indian Commissioners, but had found the Board's discussions rushed and unsatisfactory⁷⁰⁷) and his twin brother Alfred Smiley organized a series of annual discussions in their Lake Mohonk Hotel in New York State from 1883 to 1916 that provided a sounding board for prominent individuals with an interest in achieving the assimilation of the Indian population into the wider American community.⁷⁰⁸ Positive attention was paid to Christianization of the Indians,

⁷⁰¹ Prucha, *The Great Father*, Vol.2, 615, 619, 634-7, 725-6, 774; Priest, *Uncle Sam's Stepchildren*, 44-5, 69, 83-4.

⁷⁰² Prucha, *The Great Father*, 615, 677-8, 680, 682; Priest, *Uncle Sam's Stepchildren*, 84, 209.

⁷⁰³ Prucha, *The Great Father*, Vol.2, 616, 629, 641-2.

⁷⁰⁴ *Ibid*, Vol.2, 619; Banner, *How the Indians Lost Their Land*, 243, 278; Hoxie, *American Nations*, 175.

⁷⁰⁵ Prucha, *The Great Father*, Vol.2, 615-617, 753, 773; Banner, *How the Indians Lost Their Land*, 243-4, 278; Priest, *Uncle Sam's Stepchildren*, 88, 185, 202, 213.

⁷⁰⁶ Priest, *Uncle Sam's Stepchildren*, 184-5; Bailey, *Reconstruction in Indian Territory*, 128; Banner, *How the Indians Lost Their Land*, 257-261.

⁷⁰⁷ Prucha, *The Great Father*, Vol.2: 617.

⁷⁰⁸ Prucha, *The Great Father*, Vol.2, 617-620, 642; Priest, *Uncle Sam's Stepchildren*, 84-5.

almost entirely by Protestant groups, much to the chagrin of the Catholics, until they were welcomed to join the conferences in 1902.⁷⁰⁹ The Lake Mohonk conferences brought together individuals who had the capacity and the political influence to put reform policies into practice.⁷¹⁰ Attendees were predominantly white Northerners, including Rutherford B. Hayes and William Howard Taft, the young Theodore Roosevelt, James S. Sherman (who would become Taft's Vice-President), the naturalist/conservationist John Burroughs, industrial magnates John D. Rockefeller and Andrew Carnegie, reformer Amelia Quinton, educator Richard Pratt, anthropologist/ethnologist Alice Cunningham Fletcher, and various Indian Commissioners and BIA Board members. Senator Dawes first attended in 1885.

The alternative choices considered by the reformers were:

- To destroy the status quo, by voiding treaty guarantees, destroying tribal integrity, even if that involved removing or killing the Indians.
- To maintain the existing status quo, guaranteeing tribal integrity and land rights, and protection against white aggression.
- To destroy tribal autonomy by forcing Indians into mandatory allotment of lands, making them subject to white man's law and then granting citizenship, so that they became settled farmers and were assimilated into 'civilization'.
- Any of the above alternatives, but including benefits to white settlers, miners, and railroad companies.⁷¹¹

The editor of the *Illustrated Christian Weekly*, the Reverend Lyman Abbott, shared Fletcher's and Pratt's support for allotment but took a harder line, one that was approved by the 1885 Mohonk Conference, which decided that the best hope for the survival of the Indians would be the third alternative – forced assimilation into the greater white society. In order to achieve this, the Indians should be trained away from their tribal communal life and become individual farmers,

⁷⁰⁹ Prucha, *The Churches and the Indian Schools 1888-1912*, (Lincoln, University of Nebraska Press, 1979), 4, 18-19, 24, 55.

⁷¹⁰ C.Roland Marchand, *The American Peace Movement and Social Reform 1889-1918*, (Princeton NJ, Princeton University Press, 1972), 35

⁷¹¹ Washburn, *The Assault on Indian Tribalism*, 3-4.

particularly after the deliberate large-scale destruction of the buffalo had reduced the effectiveness of the Plains tribes as self-sufficient hunter-gatherers.⁷¹² The Conference settled on allotment of lands held in severalty as being the reform most beneficial to the Indians, giving them protection and leading to their assimilation and eventual integration into the greater American community. One of the few critics of this approach was the former Colorado Senator Henry Teller, who in 1881 condemned forced allotment as a land grab on behalf of white settlers, although he did support allotment where it occurred with the consent of the Indians concerned.⁷¹³ His prediction of the scale of the loss of Indian land under the allotment policy proved to be correct.⁷¹⁴ He accepted the standard critique of the tribal system, however, and as Secretary of the Interior from 1882 to 1885 put considerable effort into the destruction of tribal culture by expanding the number of Indian schools to promote assimilation, and trying to wipe out aspects of tribal culture that whites found unacceptable.

The conferences were to have a great influence on American Government policy, and helped shape the climate of opinion that moved the Dawes 'Allotment in Severalty Act' through Congress. The Act authorized the compulsory acquisition of tribal lands so that they could be converted into freehold allotments in the hands of individual members of the tribes concerned, instead of being communally shared as had been the usual tribal practice.⁷¹⁵ This would convert the Indians into individualistic small farmers and participants in the market economy and guarantee their survival as part of the larger white community. The reformers argued that the only logical solution to the Indian problem was for the Indians to accept that their traditional way of life no longer made any sense in the modern industrial world, and that they should rescue themselves by adopting white values and white ways of earning a living.⁷¹⁶ Half a century after the Civil

⁷¹² Prucha, *The Great Father*, Vol.2, 656.

⁷¹³ Ibid, Vol.2, 662, 665-6; Banner, *How the Indians Lost Their Land*, 266, 271,

⁷¹⁴ D.S. Otis, *The Dawes Act and the Allotment of Indian Lands*, (Norman, University of Oklahoma Press, 1973 [1934]), 6; Banner, *How the Indians Lost Their Land*, 266, 271.

⁷¹⁵ Full text of the Dawes Act, the General Allotment Act, is in Francis Paul Prucha, ed., *Documents of United States Indian Policy*, 171-174.

⁷¹⁶ Carter, *The Dawes Commission*, 1, 12-13, 176, 227; Prucha, *The Great Father*, 615-6, 621-626; Banner, *How the Indians Lost their Land*, 256, 259-261, 268-9; Denson, *Demanding the Cherokee Nation*, 202, 207-8.

War had destroyed slavery, the reformers saw vigorous action by the Federal Government as the key to changing the status of the surviving Indian tribes, arguing that the abolition of the traditional system of land ownership would remove the major barrier to their progress towards white civilization.

Whatever relevance this view might have had to the Plains Indians and related tribes, it made little sense in the case of the Five Civilized Tribes, many of whose members had been farming and tending livestock in the American fashion for at least a generation, and who had already become part of the market economy as small farmers and merchants. The application of the reform program to the Five Tribes would, however, have the effect of throwing large amounts of surplus land on to the open market after individual Indians had been assigned conventional farms as freehold, and that possibility attracted the interest of large numbers of settlers, many of whom had already tried to establish themselves as interlopers in Indian Territory. For once the interest of reformers and land-hungry settlers converged, and there was little the Cherokees could do to deflect the combined pressure exerted by the two groups.⁷¹⁷

In some cases, agreement on basic policy emerged despite the contrasts in the actual experiences of a number of the participants. Support for the allotment policy, for example, led the anthropologist Alice Cunningham Fletcher (who had lived among the Omaha in Nebraska) to accept appointment as Special Agent in charge of allotting the Nez Percé reservation, only to find the Indians were unaware of the Dawes Act, and questioned her authority to apportion their land.⁷¹⁸ On the other hand Abbott was also a strong advocate of the allotment system and the abolition of the reservations,⁷¹⁹ despite the fact that, according to Prucha, he “had never visited an Indian reservation and had never known more than ten Indians, but his convictions about what was best for the Indians were absolute.”⁷²⁰

⁷¹⁷ Grace Woodward, *The Cherokees*, 295, 306; McLoughlin, *After the Trail of Tears*, 112, 116, 232-4, 269, 340-1; Prucha, *The Great Father*, Vol.1:428, 560-1, Vol.2: 738, 742.

⁷¹⁸ Banner, *How the Indians Lost Their Land*, 278-9.

⁷¹⁹ *Ibid*, 255-6; Prucha, *The Great Father*, 657.

⁷²⁰ Prucha, *The Great Father*, Vol.2, 657.

He put his aim for the solution of the Indian Problem vigorously before the Mohonk meetings, but was initially strongly opposed by Senator Henry Dawes.⁷²¹

The concept of Indian assimilation became not only a way of improving the Indians' lives, but also an excuse for sharing their lands, ostensibly in the name of universal fairness and progress. In reality it led to a tragic disaster that would affect the Indian communities for generations. Acculturation would benefit some Indians, but those benefits came at great cost. A central objective of the reformers was the development and extension of Indian farming as a step towards assimilation, but during the allotment period farming actually declined, both absolutely and relative to that of the whites.⁷²² Prucha notes that in the 1930s,

BIA Commissioner John Collier, testifying before a Congressional committee on legislation to reverse the Allotment process, declared that between the Dawes Allotment Act of 1887 and the 1934 Indian Reorganization Act, the Indians' lands across the nation had been cut from 138 million acres to 48 million. Of the residual lands, nearly one half were desert or semi-desert, and about 100,000 Indians were totally landless because of the allotment.⁷²³

By the early 1880s a broad consensus had developed across the range of groups and individuals with a stake in solving the Indian problem once and for all, that tribal structures and anything that supported them had to be broken down. The process of separating most Native Americans from their traditional lands where these were seen as desirable by white settlers was almost complete, and indigenous communities existed as tiny minorities dominated by a rapidly expanding white population, surviving in any numbers only in areas considered of little economic value by white settlers. Generally seen as backward and bereft of technology, the Indians attracted little attention from the white community that had already brought the much larger African American population under tight control.⁷²⁴ Tribal land ownership was the primary target of settlers and railroad promoters in the West, but the difficulty was how to deal with the problem on a national basis.

⁷²¹ Prucha, *The Great Father*, Vol.2, 657

⁷²² Banner, *How the Indians Lost Their Land*, 257.

⁷²³ Prucha *The Great Father*, Vol.2, 896.

⁷²⁴ Foner, *Reconstruction*, 25-6, 215-6, 604.

In 1881 Secretary of the Interior Carl Schurz had a Bill put before the Senate by Richard Coke of Texas, the Chairman of the Committee on Indian Affairs.⁷²⁵ Schurz had designed the Bill as a solution to the problem of the violence between whites and Utes in Colorado in 1879; it planned to dispense with the Indian practice of holding tribal land in common and to grant individual Plains Indians 160-acre farms.⁷²⁶ Several Bills designed to apply versions of this policy to various reservations across the nation were introduced to Congress in the early 1880s, but although they won support in the Senate, they failed to pass in the House. The final version introduced by Senator Dawes and approved in February 1887 was the Allotment in Severalty Act, which authorized the President at his discretion to require tribes to accept a reorganization of tribal lands. The main difference between the Coke Bill and the Dawes Act was that the earlier document did not envisage American citizenship for the allottees.⁷²⁷ There was an important provision in Clause 5 of the Dawes Act that an allottee should retain his farm for twenty-five years, partly for his own protection from land-sharks, but also after that period of time it was considered he would have been assimilated enough to be considered civilized.⁷²⁸ He could not sell his block in that time, although the Act made no provision against it being leased, and this option was exploited on a large scale by unscrupulous whites. Section 5 of the Act stipulated that in relation to the twenty-five year limit, the President could “in any case in his discretion extend the period.”⁷²⁹ This was to allow the allottees more time to blend into the wider American society. At the end of that period the allottee would be deemed acculturated enough to be granted U.S. citizenship, as stipulated in Clause 6 of the Act, which stated that the settled Indian would become “ a citizen of the United States, and is entitled to the rights, privileges, and immunities of such citizens”.⁷³⁰

It would be the most important legislation for the indigenes since President Jackson’s 1830 Indian Removal Act, and would have by far the greatest effect on

⁷²⁵ Prucha, *The Great Father*, Vol.2, 661-662, 664-665

⁷²⁶ Ibid, Vol.1, 595; Banner, *How the Indians Lost their Land*, 268,

⁷²⁷ Prucha, *The Great Father*, 682-686..

⁷²⁸ Banner, *How the Indians Lost their Land*, 273

⁷²⁹ U.S. Congress *Statutes at Large*, Vol. XXIV, 388; Prucha, *Documents of United States Indian Policy*, 172-3.

⁷³⁰ Kappler, *Indian Affairs; Laws and Treaties*, Vol.1, Section 6 of ‘The Allotment in Severalty Act’, 34.

the Native Americans, but it put into practice principles that had been envisaged by a number of observers in the past. For example, Secretary of War Lewis Cass in 1831 had argued that an allotment system would be essential for “settling the future destiny of the Indians.”⁷³¹ It had been already been tried on a piecemeal basis in the West before the Dawes Act became law; the 1886 report of the BIA Commissioner of Indian Affairs John D. Atkins stated that 7,763 allotments had already been made on reservations across the nation.⁷³²

Dawes led the Congressional discussions on Allotment, and was given responsibility for implementing the process, but he can be suspected of having very mixed motives regarding the Indians. On the one hand, he genuinely cared for them, believing that converting them into modern entrepreneurial individual farmers rather than unsettled, communally oriented groups would be in their best interests in the rapidly expanding and technologically changing America. Dawes has been blamed for the huge loss of land by the Indians, but in actual fact he became merely a means to an end, the agent needed to put the wholesale policy into place on behalf of white America. It was inevitable that the great spread of white settlers across the continent would occur. Dawes showed much sympathy for the Indians as a whole, as demonstrated by his input to the Mohonk conferences that directly led to the Allotment legislation that bore his name.

Dawes had some experience as a reformer; prior to the Civil War he had campaigned against slavery, but after the war he had concentrated on domestic issues.⁷³³ Later in his career he developed an interest in Indian reform and used his long experience in Congress to build a reputation as a key player in forming Indian policy and in crafting legislative proposals.⁷³⁴ As Chairman of the Committee on Indian Affairs, Dawes led the Senate discussions on allotment, and was a strong supporter of radical Indian land reform. At the 1885 Lake Mohonk Conference Dawes noted that he had visited the Cherokee Nation in 1869, and had

⁷³¹ Otis, *The Dawes Act*, x.

⁷³² Frederick E. Hoxie, *A Final Promise: the Campaign to Assimilate the Indians, 1880-1920*, (Lincoln, University of Nebraska Press, 1984), 44.

⁷³³ Carter, *The Dawes Commission*, 3.

⁷³⁴ Hoxie, *A Final Promise*, Footnote 32.

met with the Cherokee leaders in the fine Italianate Capitol building in Tahlequah.⁷³⁵ It is likely that he would have been shown the two identical Male and Female Seminaries which were located near Tahlequah, built at a cost of \$80,000 in 1851, and they would have impressed him by the evidence of the Cherokees' acculturation.⁷³⁶ No clearer comparison could have been given to the Mohonk delegates of the Cherokee standards of acculturation in contrast with the semi-nomadic and reservation blanket/moccasin Indians that were their main concern. Nevertheless, Dawes remained convinced that collective ownership of land would prevent Indians from evolving further towards the individualism that was at the core of American civilization, noting that

The Head Chief told us there was not a family in the whole Nation that had not a home of its own. There was not a pauper in the Nation, and the Nation did not owe a dollar. It built its own Capitol, in which we held this examination, and it built its own schools and hospitals. Yet the defect of the system was apparent. They have got as far as they can go, because they own their land in common. It is Henry George's system, and under that there is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivates, they will not make much progress.⁷³⁷

Dawes' comments reflected the strong hostility at that time towards any suggestion of socialist values, and the conviction that individual enterprise was the key to social progress and the higher forms of civilization. Had he made an objective assessment of the realities of Cherokee society at that time, he could have reported that the community was already displaying the kind of differentiation that he and his Mohonk audience regarded as so important. Certainly the largest group, the lesser acculturated full bloods, were subsistence farmers and content with their lot. Among the mixed bloods, however, there were well educated professionals, some of them graduates of Ivy League colleges, merchants and others in a variety of occupations ranging from blacksmiths,

⁷³⁵ The Capitol building held the Cherokee Council meetings, and also included the Court. The building still stands (in 2015), structurally sound, and is in use as the Courthouse. It was declared a National Historic landmark in 1961.

⁷³⁶ McLoughlin, *After the Trail of Tears*, 92.

⁷³⁷ Quoted from the Board of Indian Commissioners' Annual Report, 1902, 3-7, in Debo, *And Still the Waters Run*, 21-2.

builders, carriers, hotel managers, shopkeepers, and ferry operators.⁷³⁸ There were upper income families such as the Vann's, the Ross's and the Adairs whose wealth went back to their days as slave-owners, who lived in well-appointed mansions complete with imported furniture and pianos to entertain their guests.

At the other end of the social scale were the small number of indolent and the poor, who in drought years depended on the charity of their kinfolk. In many respects Cherokee society would have appeared little different to many of the white communities on the frontier. There is no indication that Dawes made a close inspection of Cherokee life, and it would appear that he reacted to what he had been told by the leaders he met in Tahlequah, and that the issue of tribal land tenure dominated his thinking. To many of the Mohonk attendees, the more important examples of the failure of the existing system in regard to Indian assimilation were the federally supervised Indian Agencies, rather than the Five Tribes.⁷³⁹

Much of the discussion leading up to the Dawes Act was not only on the speed of implementing the allotment system, but on whether the right to vote should be given to the Indians who accepted allotments. Abbott took the most extreme position, arguing that the reservation system should be abolished completely, and that the Indians be given all the rights and opportunities, together with the responsibilities, of white American citizens, and then be left to their own devices to succeed or fail by a natural form of selection.⁷⁴⁰ Professor Painter, less extreme, noted that no educational qualifications were required of foreign immigrant voters, so Indians should be accorded the same rights to suffrage.⁷⁴¹ He did believe, however, that some educational standard should be required for all voters. Since voting rights were a State matter, that view prevailed for decades.

⁷³⁸ McLoughlin, *After the Trail of Tears*, 76-7, 81, 95; Denson, *Demanding the Cherokee Nation*, 19, 66-7, 197.

⁷³⁹ Priest, *Uncle Sam's Stepchildren*, 119; Prucha, *The Great Father*, Vol.1, 512, 514, 522, 551.

⁷⁴⁰ Prucha, *The Great Father*, 656-7; Prucha, *The Churches and the Indian Schools*, 7-8, 63-4, 161.

⁷⁴¹ Priest, *Uncle Sam's Stepchildren*, 183-4, 202.

When the Dawes Bill was discussed during the second day of the 1886 Mohonk Conference, Dawes explained that his ultimate objective was simply to achieve the absorption of the Indians into the American body politic as self-supporting citizens, but he did not address the practical steps needed if they were to make use of the land allotted to them and progress towards civilization. The only mention of agriculture in the discussion came when he was asked if Indians would be given seed and implements, to which Dawes responded that he did not know. There was no other mention of the promotion of agriculture anywhere in the forty-eight pages of the minutes of the Conference.⁷⁴² Nor was there discussion of the possible negative effects of allotment foreshadowed by the House Indian Affairs Committee as far back as 1880, when the earlier versions of the Coke Bill were being discussed. It had reported that the push for tribal land reform was only a pretext, in the guise of humanitarian reform, for the opening up of surplus lands for the white population.⁷⁴³ The years of discussion over the variants of the original Coke Bill may have canvassed the issues so extensively that there was little left to discuss; the final two readings of the Dawes Bill provoked very little debate, and it was passed without even a roll-call.⁷⁴⁴

According to Loring Benson Priest, the Five Tribes were exempted from the operation of the Allotment Act because of problems relating to prior agreements with railroads allowing them to take advantage of any extinguishment of native title.⁷⁴⁵ That meant that for the time being she believed the Five Tribes did not feel the immediate impact of the legislation. For other Indians the outcome of the Dawes Act and its predecessors was a dramatic reduction in the amount of tribally owned land and a massive transfer of that land to the white community, including about 17.5 million acres of land still nominally owned by Indians but which had been leased to whites.⁷⁴⁶ During the implementation of the legislation, one problem that quickly emerged was that of the quality of the land being assigned to

⁷⁴² U.S. Department of the Interior, *1886 Report of the Secretary*, Washington D.C., Government Printing Office, 996.

⁷⁴³ Otis, *The Dawes Act*, 19.

⁷⁴⁴ Otis, *The Dawes Act*, 32.

⁷⁴⁵ Loring Benson Priest, *Uncle Sam's Stepchildren*, 221-2

⁷⁴⁶ Carl Waldman, *Atlas of the North American Indian*, (New York, Checkmark Books, 2000 [1986]), 202.

the Indians. In setting the boundaries of individual allotments, the authorities relied only on maps and did not inspect the land itself, so that no account was taken of the quality of the land being subdivided: the presence of swamps or rocky outcrops could undermine the value of individual allotments. The old description of the Plains as the Great American Desert became all too true for many Indians. The Secretary of the Interior's 1887 report listed 113 reservations as having 100.2 million acres, but pointed out that only 8.5 million acres were tillable land, and of those only about 230,000 acres were actually under cultivation. Grain production amounted to only 2.1 million bushels, and there were 98,354 cattle grazing on Indian land. One improvement made by the surveyors was to assess the value per acre of the land, varying from \$1.25 to \$5 per acre, thereby allotting land more fairly than in the previous standard quarter-section plats. Under the revised Dawes Commission system the U.S. Geological survey team valued land by quality, and therefore the nominal 160-acre allotment could vary in actual area from 160 to 4,165 acres.⁷⁴⁷ The freedmen's' sections varied from 20 to 521 acres.⁷⁴⁸

For white settlers and the railroad companies that depended on the revenue that white farmers would bring to their operations, the large-scale transfer of Indian lands to settler control was a welcome development, and fitted neatly into the broad view of the national interest held by the reformers, the business community, and the general population. The results were immediate and striking in their scale; the first allotment after the Act was on the one million acre Sisseton and Wahpeton Sioux reservation in South Dakota, which yielded 600,000 acres of 'surplus' land within a year.⁷⁴⁹ As the process gathered speed, malpractice increased the amount of lands falling into white hands, often for trifling amounts, or even for whiskey. This unethical but technically legal system became widely known as 'grafting', and rapidly became a lucrative industry.⁷⁵⁰ While there was some criticism of the extent of the exploitation of some of the tribes by unscrupulous whites, it had very little impact on public opinion. Even the reform

⁷⁴⁷ Carter, *The Dawes Commission*, 126; Debo, *And Still the Waters Run*, 51.

⁷⁴⁸ Debo, 51.

⁷⁴⁹ Wilson, *The Earth Shall Weep*, 304.

⁷⁵⁰ Goins, *Historical Atlas of Oklahoma*, 142.

organizations found it difficult to maintain their levels of membership in the 1890s, as so many of their rank and file took it for granted that the passage of the allotment legislation meant the end of the Indian Problem and turned their attention elsewhere.⁷⁵¹

As the Indian Office worked its way through the list of reservation Indians and reorganized their systems of land tenure, the leaders of the Five Tribes did what they could to fend off the pressure brought to bear on them to resolve the allotment question by negotiation, and when that failed to secure the desired capitulation, Congress established a Special Commission to the Five Civilized Tribes as a rider to the Indian Office Appropriation Act of 1893, which was signed by President Harrison on his last day in office.⁷⁵² Three Commissioners appointed by the President were to negotiate with the Five Tribes for the extinguishment of their communal titles and to prepare them for incorporation within a new State. Grover Cleveland did not activate the Commission until November 1893, as he had to deal with the more urgent problem of the panic which led to prolonged economic depression and large unemployment of United States workers.⁷⁵³ Agriculture stagnated as a result, and the Cherokees used this as an argument against their being allotted small farmsteads that would probably be unprofitable, but their arguments fell on deaf ears.⁷⁵⁴ They were proved correct in their predictions, as under the Allotment process the amount of Indian farming declined rather than grew.⁷⁵⁵ The land holdings of the Five Tribes, twenty million acres of desirable agricultural territory, became too attractive to be withheld from white settlers.

Dawes was appointed Chairman, and the Commission to the Five Civilized Tribes was soon referred to as the Dawes Commission. Dawes was appointed not only because of his support for the Allotment Act, but also his experience as a former Chairman of the Federal Committee on Indian Affairs. His colleagues

⁷⁵¹ Priest, *Uncle Sam's Stepchildren*, 250.

⁷⁵² Carter, *The Dawes Commission*, 2.

⁷⁵³ Ross M. Robertson, *History of the American Economy*, (New York, Harcourt, Brace & World, Inc., 2nd edn. 1964), 411, 418-9.

⁷⁵⁴ Wright, *Economic History of the United States*, 609, 668, 705-6.

⁷⁵⁵ Prucha, *The Great Father*, Vol.2, 895.

were Major Meredith Kidd of Indiana and Captain Archibald McKennon of Arkansas.⁷⁵⁶ The Commission was to report to Secretary of the Interior Hoke Smith, and had been given clear instructions to abolish tribal autonomy, and to prepare the Territory for Statehood.⁷⁵⁷ Tams Bixby of Minnesota joined the Commission in 1897, and took over as its Chairman when Dawes died in 1903, remaining in the position until 1907 (the last two years as sole Commissioner). There was an apparent conflict of interest in Bixby's dealings; while he was Chairman of the Dawes Commission in charge of allotting land to Indians he was also President of the Canadian Valley Trust Company, a major purchaser of Indian land.⁷⁵⁸ The offices of the Dawes Commission and the Canadian Trust were in the same building; it has been suggested that Indians visiting the Commission were not always aware to which corporate body they were giving information.⁷⁵⁹

Although the aging Dawes did not take a major role in the work of the Commission, he remained a respected spokesman for this final effort to dismantle the last vestiges of tribal sovereignty in Indian Territory. He toured Indian Territory again in 1893, and although he found no-one was in abject poverty, he reported back to Congress that neither did he find that many people were actually rich, and used this observation to confirm his 1887 view of the tribe as constrained by its system of communal land tenure. He decided they were not to escape the enforced allotment system; the desire for their lands over-rode the principle of acculturation. The Cherokee leaders refused to concede on the matter of land title, and the Commissioners were so angry at the refusal they received on their first visit to Tahlequah that they advised the Congress to abolish tribal tenure despite Cherokee opposition and to ignore treaty obligations. Congress preferred a negotiated settlement, and the Commission continued to work on the other four tribes. The Cherokees and the Creeks refused to concede until after the Curtis Act of 1898 formally destroyed the tribal governments and left both tribes with no basis from which to negotiate. In 1901 each Creek was allocated 160 acres and in

⁷⁵⁶ Burton, *Indian Territory and the United States*, 195.

⁷⁵⁷ Carter, *The Dawes Commission*, 3.

⁷⁵⁸ *New York Times*, August 16 1903.

⁷⁵⁹ Banner, *How the Indians Lost Their Land*, 284.

1902 the Cherokee allotment was set at 110 acres per citizen. The tribal land system had vanished under the sustained pressure of the Administration, Congress, reformers, and vested interests.

To a number of the Cherokee leaders, especially the mixed bloods such as E.C. Boudinot,⁷⁶⁰ the destruction of the last vestiges of tribal sovereignty had been a foregone conclusion, and some privately argued that the members of the tribe would have to come to terms with the new state of affairs and find ways of surviving and perhaps flourishing at the individual level. In public they contested the campaign against tribal autonomy and identity in a number of ways, and the fact that the Administration and the Congress had to use every lever at their disposal to dislodge the Cherokees from their position indicates the degree of political skill and determination the tribal leaders had built up over the decades since the 1820s. Some of that determination was on open display as they used the white man's own methods of political action to deflect and delay the full exercise of white power against the tribe, but there were also forms of resistance that had their source in the hidden pressures and conflicts within the tribe itself, pressures that centered on the question of race. The notion of tribal sovereignty had become increasingly bound up with the question of racial identity as the Cherokees were forced to assimilate with white America.

At the political level, Cherokee resistance took many forms. One was the lobbying carried out by the delegates whom the Cherokee Nation Council authorized virtually every year to stay for extended periods in Washington; their brief was to warn the tribal leadership of dangers developing in Congress and among vested interests such as the railroads, and to try to influence opinion in Washington in favor of Cherokee interests.⁷⁶¹ The delegates were usually prominent members of the mixed blood elite who understood the workings of the Washington political system and tried to deflect policies that were likely to damage the Cherokees' position.⁷⁶² Some critics in the homeland questioned the

⁷⁶⁰ Parins, *Elias Cornelius Boudinot*, 1, 86, 162; Denson, *Demanding the Cherokee Nation*, 116-7.

⁷⁶¹ McLoughlin, *After the Trail of Tears*, 263.

⁷⁶² Carter, *The Dawes Commission*, 2.

heavy drain on the Nation's finances that maintaining the delegations involved, and it may be that some delegates enjoyed the pleasure that involvement in national politics brought with it.⁷⁶³ The fact that this articulate group could not make much of an impression on the growing body of opinion in favor of the destruction of tribal entity and culture indicates the strength of the campaign for assimilation and the rising tide of white nationalism. At best, their efforts may have slowed down the attack on tribal autonomy.

A second form of political resistance was at the administrative level. The Commission's task of sub-dividing Cherokee tribal land proved to be something of a nightmare, as it struggled to determine which individuals were entitled to receive allotments.⁷⁶⁴ Unlike the Plains tribes, the Cherokees had over seven decades of experience in limited self-government. They had operated a Court system and an extensive network of public schools, they had collected taxes and fees and managed their national accounts, and their leaders were well versed in white administrative processes. When the Dawes Commission realized that in order to determine which Cherokee individuals were entitled to receive an allotment, they would need to compile a list of tribal members, they left themselves open to procrastination and passive resistance.⁷⁶⁵ As a result, the administration of the allotment process was delayed and left open to challenge, especially since the tribal authorities in effect still controlled the definition of membership, despite the passage of the Curtis Act in 1898, and continued to do so beyond the dissolution of tribal government. The lists of tribal members were critical to decisions about the allocation of allotments and eligibility for per capita grants when tribal lands were sold to the Federal Government or to incoming tribes, so it was in the tribe's interest to keep the numbers under tight control. The Dawes Commission made several attempts to create accurate membership rolls, but the Cherokees were quick to point out the difficulties involved. For example, the full bloods, still the majority group within the Cherokee Nation, continued to argue that they held their lands in perpetuity under the terms of the 1835 Treaty of

⁷⁶³ McLoughlin, *After the Trail of Tears*, 263.

⁷⁶⁴ Carter, *The Dawes Commission*, Chapter 7, 105-124.

⁷⁶⁵ *Ibid*, 108.

New Echota, and refused to cooperate with the Commission.⁷⁶⁶ Since many of them lived in the more inaccessible areas of the Territory, it was difficult for the Commission staff to locate them and bring pressure to bear on them.⁷⁶⁷ Many of this group refused to have their names entered on the rolls, and some eventually went to prison for non-compliance.⁷⁶⁸

The 1893 Act provided that acceptance of an allotment would entitle an individual to eventual American citizenship. The Cherokees were aware that such citizenship would entail direct rule from federal and also State bodies, and would reduce the value of tribal citizenship.⁷⁶⁹ Indian Territory was still not part of a State, so citizenship would not necessarily entitle them to vote. They could still vote in tribal elections, but the tribe was rapidly being reduced to the status of a private association. For many of the Cherokees, citizenship was of little value; the Keetoowahs considered the tribe was entitled to its own degree of sovereignty, and that the Cherokee Nation should be able to choose its own membership and control tribal citizenship. A large number of these full bloods would not apply for the Certificate of Allotment.⁷⁷⁰ Their refusal to cooperate with the federal officials, and their refusal to include their names in the official rolls, despite being adamant that they were fully Cherokee, created difficulties for the Commission staff.

Of the Five Tribes, the Cherokees fought longest and hardest to retain their political independence, and created the most difficulties for the Dawes Commission by their rigid process for selection of tribal members eligible for allotments. They were therefore the last of the Five Tribes to be included in the system, but could not overcome the Federal Government's final direct assault on their sovereignty. There were also groups of Delaware and Shawnee Indians who had purchased new homelands within Cherokee territory and had been accepted as Cherokee tribal members, but not on the same basis as that of others who had

⁷⁶⁶ Carter, *The Dawes Commission*, 2, 115.

⁷⁶⁷ *Ibid*, 117

⁷⁶⁸ *Ibid*, 116.

⁷⁶⁹ *Ibid*, 108.

⁷⁷⁰ *Ibid*, 117, 121.

been admitted in the past.⁷⁷¹ To complicate matters, the Cherokee National Council established a Citizenship Court to receive applications for membership, and their deliberations were very time consuming, which created further problems and prevented a quick resolution of the Dawes Commission's work.⁷⁷² For example, the freedmen of the tribe were to be given smaller allotments than the Indian/Cherokees, and therefore needed a separate enrolment census. The Cherokees were loath to include freedmen in tribal payouts, and obstructed the compilation of the rolls.

The effectiveness of Cherokee resistance to allotment in Indian Territory meant that the Federal authorities had little to show for their efforts during the first five years after the establishment of the Dawes Commission. Given the importance that the reform of Indian land tenure had assumed within the broad plan to destroy the foundations of tribalism and pave the way for assimilation, that delay was unacceptable. A common view amongst those trying to enforce the allotment policy was that corrupt Indian leaders anxious to protect their own power base and their control over the poorer members of the tribe were behind the refusal of so many of the latter to apply for certificates and accept their share of tribal land. The deadlock was broken by two Federal attacks on the structure of tribal government, the Act establishing a United States Court in Indian Territory in 1889, and the Curtis Act of 1898.⁷⁷³ The latter Act was instigated by mixed blood Senator Charles Curtis from Kansas, who had been in Congress since 1892 and had worked in Committees on tribal finances and organization, sponsored the Federal legislation which dealt the strongest blow to Indian sovereignty. His 'Act for the Protection of the People of the Indian Territory' not only increased the Dawes Commission's authority to extend the Allotment Act to the Five Civilized Tribes, but also abolished their tribal Constitutions and Courts, clearing the way for Indian Territory to become part of the planned State of Oklahoma.⁷⁷⁴

⁷⁷¹ Carter, *The Dawes Commission*, 110.

⁷⁷² *Ibid*, 108.

⁷⁷³ Rennard Strickland, *Fire and Spirits: Cherokee Law from Clan to Court*, (Norman, University of Oklahoma Press, 1975), 175.

⁷⁷⁴ *Statutes at Large*, XXX, 495-503, entire text of Act in Washburn, *American Indian and the U.S.*, Vol. III, 2194- 2208.

The Curtis Act was a clear reversal of the principle first cited by President Andrew Jackson that Removal to Indian Territory “provided the opportunity for the tribes to create their own unique governments”.⁷⁷⁵ It also confirmed a ruling by the United States Supreme Court in the 1824 case *Gibbons v. Ogden*,⁷⁷⁶ and reiterated in *U.S. v. Kagama*⁷⁷⁷ in 1886, that the U.S. Congress exercised plenary power over all those living within United States territory. Those decisions were made even stronger by the decision in the 1903 case *Lone Wolf v. Hitchcock* in which the Kiowas, Comanches, and Apaches – who had already exchanged their 90 million Plains acres for a 2.9 million acre reservation in Indian Territory – had lost two million acres of their land (for 93 cents per acre) by fraud, and appealed to the U.S. Supreme Court citing their management of their land written into the Treaty of Medicine Lodge. Their white lawyer based the Kiowa case on the Fifth Amendment provision that just compensation be made for private land resumed for public use. The Court held that Congress had the power to abrogate the provisions of an Indian treaty currently in use.⁷⁷⁸ This negated the 1871 assurance by the United States Senate that abolition of the Treaty system with Indian tribes would not affect the validity of all existing Treaties. As historian Hugh Cunningham noted, the *Lone Wolf* case meant that

The Federal Government could ignore absolutely the provisions of Indian treaties whenever it was deemed necessary. There are now about 370 Indian treaties on the Statute books of this country, each made with the faith of an Indian tribe and the words of the United States behind it, yet each amounting to nothing at all.⁷⁷⁹

The Curtis Act was a definite negation of tribal sovereignty because it effectively disbanded each of the Five Tribes as separate Nations, and put them under the direct control of the Federal Government through the BIA. It also directly led to the process by which the Indian Territory, originally “never to be

⁷⁷⁵ Jackson’s first Annual Address to Congress, quoted in Joel Spring, *The Cultural Transformation of a Native American Family and its Tribe 1763-1995 / A Basket of Apples*, (Mahwah, NJ., Lawrence Erlbaum Associates, 1996), 101.

⁷⁷⁶ Wilkins, *American Indian Sovereignty and the Supreme Court*, 25-6.

⁷⁷⁷ *Ibid*, 45, 67-69, 85, 89, 114, 125-6.

⁷⁷⁸ Prucha, *American Indian Treaties*, 324; Washburn, *The American Indian and the United States*, Vol.4, 2705-2709; Wilkins, *American Indian Sovereignty*, 228.

⁷⁷⁹ Hugh T. Cunningham, “A History of the Cherokee Indians”, *Chronicles of Oklahoma*, Vol.8, No.4, December 1930, 429.

incorporated into a State of the Union” without full approval of the Indian tribes, would soon become part of the State of Oklahoma.⁷⁸⁰ The Act incorporated the gist of the Atoka Agreement of the previous year, which had divided up the Choctaw and Chickasaw lands, but had left the Choctaw coal mines and the Chickasaw asphalt deposits in communal tribal hands.⁷⁸¹ Tribes would now be controlled from Washington, any decisions made in tribal Councils would need Presidential approval, and Congress would legislate on Indian issues without reference to Indian views. Although allotment of Cherokee land did not begin until 1901, the Curtis Act at one stroke brought down the structures that had underpinned tribal culture for generations, and forced that absorption of the Indian into the American body politic that Dawes had expected would happen as a consequence of the reform of the Indian system of land tenure. There was no mistaking that the next move would be the merging of Indian Territory with the western half of what had become known as Oklahoma Territory, and the build up to an application for admission to the Federal Union as a white dominated State.⁷⁸²

This was part of yet another major threat to the notion of tribal sovereignty, the conversion of Territories into States, which accelerated as the nineteenth century drew to its close. Frederick Jackson Turner’s 1893 Frontier thesis argued that the American character was shaped by contact with the frontier, a view in part triggered by the U.S. Bureau of the Census’s report that the exploring/pioneering frontier no longer existed because no region had a population of less than two persons per square mile.⁷⁸³ All of the United States outside the Indian Territory was now populated, even though still thinly in many areas, from the Atlantic to the Pacific coast. Railroads had rendered the wagon trains obsolete, and the fortunes being made from the new mineral discoveries were changing the economies of the West. Nebraska had become a State in 1867, Colorado in 1876,

⁷⁸⁰ Article 5 of the Treaty of New Echota.

⁷⁸¹ Carter, *The Dawes Commission*, 137.

⁷⁸² Carter, *The Dawes Commission*, 207, 218-220; Grace Woodward, *The Cherokees*, 323-4.

⁷⁸³ Frederick Jackson Turner, “The Significance of the Frontier in American History”, *American Historical Association Annual Report for 1893*, (Washington DC, 1894), 199-227; Billington elaborated on the Jackson thesis in the opening Chapter of *Westward Expansion*, 1-11.

Montana, North Dakota, South Dakota, and Washington in 1889, and Idaho and Wyoming in 1890.

In a last desperate attempt to avert such a situation, a number of Indian leaders from across the Five Tribes tried to win support for a proposal to establish an Indian State, to be known as Sequoyah. Separate Indian Statehood was not a new idea; as far back as 1868 the Indian Commissioner N.G. Taylor had reported to Congress that

The Cherokees, Choctaws, Chickasaws, Creeks and Seminoles, residing within the Indian country west of Arkansas have given evidence of their capacity for self-government. Institutions are organized under which their civil and political rights have for many years been as well protected as in any part of our country. They have adopted measures for the formation of a territorial government, with a view to their ultimate admission as a member of our Federal Union.⁷⁸⁴

In 1903, James Alexander Norman, a one-sixteenth Cherokee hotel-owner in Muskogee in the Creek Nation, enlisted the support of Chief Green McCurtain of the Choctaw Nation, and the last tribally-elected Cherokee Chief, William C. Rogers, in developing the proposal. In 1905 they approved the concept of a separate Indian State, and called for a Constitutional Convention to be held in Muskogee.⁷⁸⁵ Twenty- six districts across the Indian Territory, including some from areas held by tribes other than the Five, were chosen to elect representatives, and three hundred and five delegates attended. The Creek Chief Pleasant Porter chaired the Convention, with Charles N. Haskell, who would later become the first Governor of the State of Oklahoma in 1907, as Vice Chairman. The Vice-Principal Chiefs of the Five Tribes were appointed to the organizing Committee, and the Sequoyah State Convention drew up a Constitution to be sent to Congress in support of its request for admission as a State. A plebiscite was held in Indian Territory, and although the turnout was disappointingly light, approximately 56,000 voted in favor of the proposed State Constitution and only about 9,000

⁷⁸⁴ *Indian Commissioner's Report to Congress*, (Washington, Government Printing Office, 1868), Preface iii.

⁷⁸⁵ William H. Murray, "The Constitutional Convention", *Chronicles of Oklahoma*, Vol.9, No.2, June, 1931, 126-130; Debo, *And Still the Waters Run*, 162-3; Burton, *Indian Territory and the United States*, 248-9; Prucha, *The Great Father*, 756; Stremlau, *Sustaining the Cherokee Family*, 178.

against.⁷⁸⁶ President Theodore Roosevelt opposed the proposal and it lapsed. Not all the Convention's work was wasted, however, as the bulk of the projected Constitution was later used as the model for the State of Oklahoma's Constitution.⁷⁸⁷

The Sequoyah proposal ran counter to the long standing policy among the Cherokee leadership of resisting white proposals for the conversion of Indian Territory into a conventional U.S. Territory, which they saw as the first step on the road to white- dominated Statehood. The situation had deteriorated with the passage of the Curtis Act, and those involved in the Sequoyah proposal no longer held any political position in Indian Territory; they could only speak as prominent individuals in the eyes of their own tribes. As a proposal, it ran against the weight of white opinion at the time, which agreed that Indian values and tribal habits were to be destroyed in the interests of white hegemony. It was supported by some local whites who were advocating Statehood for Oklahoma Territory alone. In Congress the dominant Republican Party was campaigning for the 'twin territories' to become one State, because the white population of Oklahoma Territory was largely Northern in origin and therefore more likely to vote Republican, whereas the Indian area still retained much of its Southern and mainly Democrat sympathies. The Republican Congress feared the likelihood of two new Democrat Senators and a Congressman if the State of Sequoyah became a fact.⁷⁸⁸ The local politicians in the proposed new State had their eyes on the opportunities provided for additional Congressional seats, Government positions, and judgeships in the new State, and some supported the Indian campaign, as they had supported the previous separate Statehood plans – John Morgan's Territory of Indianola, and John Moon's bizarre Territory of Jefferson, both short-lived. The latter did in fact exist unofficially for sixteen months in 1859-61, straddling five of the existing Plains Territories (Kansas, Nebraska, New Mexico, Utah and Washington) and its laws were incorporated into Colorado's when it inevitably

⁷⁸⁶ Carter, *The Dawes Commission*, 218.

⁷⁸⁷ Ibid, 218; Burton, *Indian Territory and the United States*, 249.

⁷⁸⁸ Stremmlau, *Sustaining the Cherokee Family*, 178

collapsed.⁷⁸⁹ The Territory of Indianola, however, was an earnest attempt by Arkansas Senator James H. Berry in March 1892⁷⁹⁰ and December 1894 to organize a Government for the Five Civilized Tribes.⁷⁹¹ He planned to give them their own home, although his proposal in part reflected the policies of the Dawes Commission, in that the Indians should be given tax-free homesteads and the right to suffrage, but all treaties should be abrogated. Republican Senator Orville Platt of Connecticut suggested a Commission such as governed the District of Columbia, but pointed out that the proposed territory for Indians had already been swamped by 300,000 whites and “they are not Indian republics, they were now ‘white oligarchies’.”⁷⁹² The proposal was referred to the Committee on Territories, and got no further.

An Executive Committee established by a Single Statehood Convention at Shawnee in 1903 led the opposition to the Indian State proposal. Delegates from the Cherokees, Creeks and Choctaws objected to the white domination of the Convention, but to no effect. The Committee lobbied for three years until Congressman Hamilton introduced his Enabling Bill in January 1906 to allow the two Territories to form a single State. It carried, and Theodore Roosevelt signed it on 16 June 1906, creating Oklahoma as the Union’s forty-sixth State on November 16, 1907. In the Census of July 1, 1907 the reasons for the fears of the indigenous Americans whose ‘permanent’ territory became part of the newest State, were clearly delineated. The white population of Oklahoma had grown to 1,226,930, and there were only 75,012 Indians. They were also outnumbered by 112,160 African Americans, and had even been swamped by both other races in the part of the new State that had previously been eastern Indian Territory.⁷⁹³

The scale of the increase in the white population both in Indian Territory and in the rest of Oklahoma in the decades after the Cherokee Treaty of 1866 suggests

⁷⁸⁹ Billington, *Westward Expansion*, 536-7

⁷⁹⁰ Carter, *The Dawes Commission*, 2.

⁷⁹¹ *Los Angeles Herald*, Vol.43, No.56, December 6 1894, 1, accessible in California Digital Newspaper Collection.

⁷⁹² Orville Platt, “Problems in Indian Territory”, *The North American Review*, Vol.160, No. 459, February 1895, 200.

⁷⁹³ Incorporation Records for the Oklahoma and Indian Territories at Statehood, July 1 1907 are digitized and kept on record by the Oklahoma Historical Society, Tahlequah, OK. .

that there was very little possibility that the Cherokees and their tribal neighbors could succeed in their efforts to preserve the limited degree of autonomy that they considered their due. As a minority with no entitlement to vote and occupying fertile land, they were at the mercy of an aggressive and politically powerful white settler majority, and their grip on their tribal lands had been reduced each decade as the number of whites built up. At first it had been white railroad gangs and the hangers-on they brought with them, but the Cherokee Treaty of 1866 had led to the release of two million acres of the Unassigned Lands (the Cherokee Outlet), which had become little-used after Congress had closed off the area to the Cherokee Strip Cattlemen's 'Association, thereby eliminating a valuable source of tribal income from the grazing leases. The sale of the land to the Federal Government, negotiated mainly by E. C. Boudinot, who had become a paid Washington lobbyist for the railroads,⁷⁹⁴ was originally planned to accommodate some of the incoming Western Plains tribes, but instead President Harrison opened up the territory for immediate colonization by whites.

When the first Federal Census to include the Indians was published in 1890, it listed 22,015 Cherokees, amounting to only 39.1% of the population in their own lands, and outnumbered by 29,166 whites and 5,127 African-Americans; but those figures were already outdated because of developments in the western part of Oklahoma, which saw the first of a series of land rushes on April 22, 1889.⁷⁹⁵ An estimated fifty thousand pioneers, mainly white, raced into the Territory to claim land.⁷⁹⁶ Tent cities sprang up in Oklahoma City, Kingfisher, El Reno, Norman, Stillwater, and Guthrie, and the inflow of immigrants made the western half of what had been the original Indian Territory, intended only for the tribes, the fastest-growing area in the nation. The City of Guthrie was founded in one day with an estimated 15,000 inhabitants, and Oklahoma City opened overnight with around 10,000. This also happened at the time when the total indigenous American population had fallen to its lowest recorded figure, less than a quarter million in the 1890 Federal census. A report to Congress on February 15, 1890

⁷⁹⁴ Parins, *Elias Cornelius Boudinot*, 109-110.

⁷⁹⁵ Prucha, *The Great Father*, 744

⁷⁹⁶ Goins, *Historical Atlas of Oklahoma*, 124, 144.

reported that the Territory of Oklahoma – half of the land which had been the land given to the Indians in the early part of the century – was populated by “about 12,000 Indians and at least 90,000 white people and others”.⁷⁹⁷ Guthrie, which had grown around a staging-post of the Atchison, Topeka, and Santa Fe railway, became the first capital of the new Oklahoma Territory under the Organic Act of June 1890, an honor which it held until a referendum in 1910, which made Oklahoma City the new State Capital.⁷⁹⁸

The newcomers staked out two million acres, though many of the choicest sites had already been claimed by the Sooners who had illegally infiltrated the area ahead of the official starting time for the race into the Territory. Several groups of colonizing whites organized by the enterprising Captain David Payne had already been discovered and driven back several times by the U.S. Army in response to the complaints of the Cherokees.⁷⁹⁹ As far back as 1879 and 1880 President Hayes had issued proclamations forbidding white settlement in Indian Territory, but the violations continued at an increasing rate. Other land rushes followed in 1891, 1893, 1901 and 1911. The largest was on September 16 1893,⁸⁰⁰ after the passage of an Act forced the Cherokees to sell the remaining 6,574,487 acres of the Cherokee Strip for \$8,595,736 (\$1.31 per acre). An estimated 100,000 people settled into the area on 40,000 quarter-sections of land overnight.⁸⁰¹ The appalling chaos which ensued, including violent fights for lots, led to better organization in the last two runs, those of 1901 and 1911, with sections being allocated by lotteries, after the U.S. Geological Survey teams had properly surveyed the available land between 1895 and 1897.

Despite the pressures created by the burgeoning white population around them, the Cherokees had been able to continue to operate their tribal institutions despite

⁷⁹⁷ Report No. 66 to the House of Representatives, 51st Congress, First session, *Organization of the Territory of Oklahoma*.

⁷⁹⁸ Guthrie’s official history reveals how quickly the new settlements grew. Four months after the Land-rush, Guthrie had 6 Banks, 16 blacksmiths, 17 carpenters, 15 hotels, 19 pharmacists, 39 doctors, 40 restaurants, and 81 lawyers. *guthrieok.com*

⁷⁹⁹ Carter, *The Dawes Commission*, 6-7, 155-6

⁸⁰⁰ Ibid, 111; Prucha, *The Great Father*, 747; Goins, *Historical Atlas of Oklahoma*, 124.

⁸⁰¹ Goins, *Atlas*, 124.

the constant criticism leveled at them by the Dawes Commission and the white politicians and business interests determined to get access to tribal lands. The Cherokee school system continued to operate, the Cherokee Council organized regular elections, and farming and commercial activities continued. Revenues from Federal annuities and tribal fees were collected and disbursed, and although the Dawes Commission regularly reported with some justification on what it saw as the chaos and a lack of personal security in the Cherokee lands, this appears to have been to a large extent due to the influx of white settlers – many of them illegal – into the Cherokee lands.

Their rising numbers however, did cause increasing problems. The Cherokee Nation had built a thriving school system for the tribe's children, and had included some separate schools for the children of freedmen who had tribal membership, but they offered none for whites. In 1879 there were 102 schools for Cherokee children, and they had set up ten schools for the tribe's blacks – although the latter had a minimum requirement of 25 students, which was not always filled. In 1889 the Cherokee Nation built the first freedmen's post-elementary school, the Colored High School in Tahlequah.⁸⁰² All of this was deemed important enough to consume a large proportion of the tribe's funds, but the leadership saw no need to pay for the education of the growing number of whites who were not part of the tribe. The white population suddenly ballooned late in the century after the Indian lands had been opened up; there were about 300,000 whites by 1895, and 700,000 by 1906, but there were still no schools for the white children.⁸⁰³ That deficiency would have amounted to a political handicap for a tribal leadership already under attack by white politicians, and until the area became the State of Oklahoma in 1907, there was no way of filling this void.

As the pressure from the Dawes Commission and local politicians built up in the last decade of the century, the Cherokee tribal government now had to manage an increasing number of whites who were not citizens of the Cherokee Nation and

⁸⁰² Celia Naylor, *African Cherokees in Indian Territory*, 163, fn. 292; Mihesuah, *Cultivating the Rosebuds*, 83, 91; T.L. Ballenger, "The Colored High School of the Cherokee Nation", *Chronicles of Oklahoma*, Vol.30, No.4, 1952, 454-462.

⁸⁰³ Celia Naylor, *African Cherokees in Indian Territory*, 7, 209

therefore not subject to its laws or able to access its schools. Tribal government became in effect the instrument of a minority group unable to control an emerging majority; it was not surprising that its legal system cracked under pressure, and that the Federal Government could justify the extension of the Federal Court system into Indian Territory to provide relief for the white population. In doing so, it further reduced the reality of tribal sovereignty. Nevertheless, the Cherokee leadership refused to compromise on the key issue of land tenure, forcing the Federal Government to collapse the entire system of tribal government formally by passing the Curtis Act of 1898.

This did not mean that the tribe had been completely defeated. They had clearly lost their case in relation to control of tribal land and what they saw as their entitlements under treaties with the U.S. Government. They had not, however, lost control of their ability to decide on whom they would admit to tribal membership, especially in relation to the acceptance of African Americans. The tribe had a long history of hostility towards African Americans, and had only admitted them as members when under strong Federal pressure during the negotiation of the 1866 Cherokee Treaty after the Civil War, at a time when the Congress regarded the rectification of the status of former slaves as a major concern. In the wake of that unwilling concession, tribal hostility towards the freedmen in the late 1860s was so evident that Major General John B. Sanborn of the Freedmen's Bureau recommended that the freedmen be concentrated in a single area, where they could be protected by the military.⁸⁰⁴ Chief Lewis Downing had also wanted to segregate the freedmen, but was prepared to give them the same civil rights as other tribal members.⁸⁰⁵

Freedmen were entitled to vote in tribal elections, but it would not be until 1875 that Joseph Brown of Tahlequah would be the first freedman to be elected to the Cherokee National Council.⁸⁰⁶ The Cherokee Nation's attitude to its freedmen was made clear by their refusal to include them in the distribution of funds from

⁸⁰⁴ McLoughlin, *After the Trail of Tears*, 251-2.

⁸⁰⁵ *Ibid*, 252-3.

⁸⁰⁶ Celia E. Naylor, *African Cherokees in Indian Territory*, 166, 37.

sources such as the rental income of \$100,000 per annum paid by the Cherokee Strip Cattlemen's Association for grazing rights on Cherokee land. In 1883 Congress paid \$300,000 for land west of the 96th Meridian, and \$900,000 for the Cherokee Panhandle Outlet. The tribal management made per capita payouts from these funds, but refused payments to the freedmen, and also to the Delawares and Shawnees; a series of claims through the federal Courts ensued.⁸⁰⁷ This aroused concern in Congress, which in 1890 passed *An Act to Refer to the U.S. Court of Claims Certain Claims of the Shawnee and Delaware Indians and the Freedmen of the Cherokee Nation*.⁸⁰⁸ A subsequent appeal to the Supreme Court in *Whitmire v. Cherokee Nation and the United States* in 1912 was successful, but by that point the Cherokees had spent the disputed funds and the U.S. Government, as co-defendant in the court appeals, had to pay the freedmen.⁸⁰⁹

The freedmen rolls created particular difficulties, which stemmed from the fact that the Cherokee Nation had never wanted to accept their ex-slaves, and had only begrudgingly done so because of the Federal Government's dictate to the tribe in the 1866 Treaty. Two major census rolls of freedmen were made: one drawn up by a team led by John W. Wallace, which also included the Delawares and Shawnees, was finished in 1892 and was designed to facilitate the payout to the three bodies. The Cherokee Council objected to this and authorized a second count, to be made by a committee of three representing the Secretary of the Interior, the Cherokee tribe, and the freedmen, who were to receive smaller allotments than the Indian Cherokees. As both the Indian and white Cherokees were unwilling to include the freedmen in tribal per capita grants, they created difficulties for the Commission so as to delay the compilation of the freedmen's roll. This roll was also objected to, with accusations of corruption clouding the issue.⁸¹⁰ There had been a full tribal roll made in 1896, but it was rejected as being inaccurate, and eventually the Commission turned back to the Cherokee full tribal roll of 1880, which was the only one that the Federal Government would accept as a true record. It listed 15,307 Cherokee citizens by blood, 1,967 freedmen, 627

⁸⁰⁷ Carter, *The Dawes Commission*, 108-110.

⁸⁰⁸ Statutes at Large, 51st Congress, Session 1, October 1st 1890, 636.

⁸⁰⁹ Carter, *The Dawes Commission*, 110.

⁸¹⁰ *Ibid*, 112.

Delawares, 503 Shawnees, and 1,062 ‘intruders’ (mainly whites) and listed 187 as claims pending.⁸¹¹

During the period between 1866 and the formal end of the Cherokee Nation under the Curtis Act of 1898, the tribal leadership and the tribal courts did their best to counter the provisions of the 1866 Treaty by making it as difficult as possible for African Americans to meet the specific tests for admission to the tribe, and apart from the intervention on behalf of the Shawnees, Delawares and freedmen in the claims for a share in the distribution of tribal funds from land sales, there is little indication that the Federal authorities objected to the way the freedmen were being treated. Intermarriage was a familiar pathway to tribal membership, and Yarbrough has argued that “the Cherokees’ ability to regulate marriage, especially inter-racial marriage, serves as a demonstration of sovereignty.”⁸¹² Court records in the decades following the Civil War, such as the Boles/Vann case in 1889, indicate that restrictions such as the denial of citizenship to the descendants of Cherokee/black marriages, and the refusal to allow African Americans to hold political office within the tribe, were written into redrafts of the Cherokee Constitution.⁸¹³ Yarbrough’s examination of 1,672 Cherokee marriage records suggests that white men were far more likely to be accepted as husbands of Cherokee women than African Americans – 1,376 as against 13. Such an imbalance in a society based on matrilineal lines ensured that mixed blood offspring would connect more readily with the dominant white culture.⁸¹⁴ It is possible that as Northern opinion became less concerned about the fate of the freedmen in the Southern States in the decades after the end of Reconstruction in 1876, and as the Southern white elite tightened its grip over the African Americans in the region, the Cherokee leadership took their cues from what was happening across their eastern border and sensed that they could make access to citizenship by their freedmen and their descendants as difficult as possible.

⁸¹¹ Carter, *The Dawes Commission*, 108.

⁸¹² Yarbrough, *Race and the Cherokee Nation*, 12.

⁸¹³ *Ibid.*, 95-99, 127-8.

⁸¹⁴ *Ibid.*, 70, 88.

The depth of Cherokee resistance to intermarriage with black members of the tribe has been examined by Tiya Miles, who widened the scope given to her by the WPA interviews with former slaves in the 1930s, in *Ties That Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (2005).⁸¹⁵ She quotes the resolution of the Conference held at the outbreak of the Civil War, at which many of the Cherokees decided to join the War on the side of the slave-holding South.

That we proclaim unwavering attachment to the Constitution and laws of the Cherokee Nation, and solemnly pledge ourselves to defend and support the same, and as far as in us lies to secure to the citizens of the Nation all the rights and privileges which they guarantee them.

That among the rights guaranteed by the Constitution and laws we distinctly recognize that of property in Negro slaves, and hereby publicly denounce as calumniators those who represent us to be abolitionists, and as a consequence hostile to the South, which is both the land of our birth and the land of our homes.⁸¹⁶

The central protagonist in Miles' study was Captain Shoebottoms, a property-owning full blood Cherokee who was revered as a heroic warrior who had contributed to the resounding success of the Cherokees over the Creeks in Andrew Jackson's Red Sticks War. His case is widely cited as revealing the deep rooted hostility of the Cherokees in the nineteenth century towards the African Americans in their community. In 1780 Shoebottoms captured a teenage white girl named Clarinda and after four years had taken her as his wife; she bore him three children. He had at least two African slaves, one of whom (Doll) was Clarinda's servant. When Clarinda expressed a desire to visit her original family in Kentucky, Shoebottoms ensured she would reflect well upon his civilized status by sending her dressed finely, with money in her pocket and with a slave and several fine horses. She chose not to return, and embarrassed her poorer farming relatives by having to apply for a pension from the Kentucky government. Cherokee laws of 1819 and 1825 forbade polygamy, but on Clarinda's non-return and shortly before tribal law forbade miscegenation, Shoebottoms took his slave Doll as his wife, generally recognized as the first black-Cherokee marriage.⁸¹⁷ This was at a time when it suited white men to marry Indian women, as they gained citizenship

⁸¹⁵ Miles, *Ties That Bind*, 14, 16.

⁸¹⁶ *Ibid*, 187.

⁸¹⁷ *Ibid*, 2.

and trading rights in the wife's tribe, although the matrilineal Clan system still gave women control of their property; but marriages between Cherokees and blacks were still anathema. He never released Doll from slavery, but in 1834, approaching the end of his life, he petitioned the Cherokee Council, confessing that "I debased myself and took one of my black women by the name of Doll, and by her have three children"; he now wanted to grant the children freedom, tribal citizenship, and the right to inherit from him. His reputation among the Cherokee Nation's elite as a military hero may have influenced the National Committee to grant his request, although with a very blunt proviso that he "cease begetting any more Children by his said *slave woman*" [italics in the original].⁸¹⁸ The General Council was determined that such a liaison could not happen again, ruling that intermarriages between negro slaves and Indians, or whites, shall not be lawful, and any person or persons, permitting and approbating his, her, or their negro slaves to intermarry with Indians or whites, he she or they, so offending, shall pay a fine of fifty dollars, one half for the benefit of the Cherokee Nation; and...any male Indian or white man marrying a negro woman slave, he or they shall be punished with fifty-nine stripes on the bare back, and any Indian or white woman, marrying a negro slave, shall be punished with twenty-five stripes on her bare back.⁸¹⁹

The situation was further complicated when Shoeboots and Doll had two more children, but unlike their siblings, they and Doll remained slaves for life.⁸²⁰ Efforts by Shoeboot's sister to have other family members admitted to the tribe met with resistance. The attitude of the Cherokees could not have been more forcefully stated, and the Cherokee belief in their superiority over blacks would not only take much of the tribe into the Confederacy, but would cause ongoing problems in the aftermath of the Civil War. During the last decades of the century the Cherokee authorities appear to have been consistent in their opposition to blacks being allowed to gain membership of the tribe by marriage. Racial

⁸¹⁸ Miles, *Ties That Bind*, 126.

⁸¹⁹ Ibid, 127, quoted from the November 1824 Council Resolution of the Cherokee Nation; Mcoughlin, *Cherokee Renascence in the New Republic*, (Princeton NJ, Princeton University Press, 1986), 326; Yarbrough, *Race and the Cherokee Nation*, 25.

⁸²⁰ Yarbrough, *Race and the Cherokee Nation*, 41-2.

sensitivities were to remain central to the Cherokee way of thinking of their identity as a tribe, even as their tribal structures collapsed around them at the end of the century.

Conclusion

Maintaining an element of control over admission to membership of the tribe was the one glimmer of success the Cherokee leadership managed to salvage from the long struggle to fend off the white assault on tribal sovereignty. They lost the argument about treaty rights and the importance of their system of communal land ownership, and to a large extent it was an argument with only one side seriously involved; the white authorities did not consider that they needed to counter the Cherokee assertions other than through Court decisions, and simply ignored the Cherokee position. There was little to be gained by repeating the approaches to the Federal courts as the tribe had done in the 1830s, when what appeared to be significant rulings in their favour proved to be of little value on the ground. State Courts were much more sympathetic to the white settlers, and Federal politicians with Southern or Western connections took their cue from the State rather than the Federal courts.

Even at the Federal level, the trend was towards asserting the powers of Congress over the indigenes rather than giving support to the Treaties which the Cherokees read as recognizing their right to control the land they cultivated, and to manage the greater part of their own affairs within defined territorial boundaries. Some aspects of Treaty obligations were honored, if sometimes in erratic ways; the Federal Government does appear to have made payments and annuities granted in the Treaty of Echota, and the Cherokees gained the resources that underpinned their school system from that source. The Federal Government also appears to have paid for the land it bought from the tribe in the last decades of the century. It would not, however, guarantee that any Treaty reference to Cherokee rights to tribal land involved permanent entitlement.

That caution in regard to land rights became much more dangerous in the last decades of the century when white reformers combined with self-interested white politicians and settlers in the region and agreed that tribal ownership of land was the key to solving the Indian Problem. White authority prevailed in the drive to eliminate tribal ownership of land in the hope of bringing down the entire tribal system and enforce assimilation; so strong was the white conviction that forcing

individual ownership of land was the key to civilizing the Indian that little or no attention was paid to the fact that for decades the Cherokees had operated as a civil society along white lines, that they had displayed financial and political skills, and had created an extensive agricultural economy little different to that of their white counterparts.

Perhaps most remarkable of all was their ability to build, fund and manage an extensive system of free public elementary schools and two fee-paying secondary schools without assistance from the Federal Government or from Church organizations. While the language of instruction was English, they also had access to their own language in a written form devised by one of their own people. A group able to demonstrate these modern skills might have expected more recognition from the dominant white society around them, and some sympathy for their claim to the kind of autonomy that white communities already enjoyed. What they got was forced assimilation and the loss of much of the land on which their tribal culture was based.

What the white authorities missed in their dismantling of Cherokee tribal institutions was the significance of the Cherokees' efforts to preserve their ability to control admission to membership, and in doing so they allowed the tribe to remain a relatively closed community and able to retain a hold on the sense of a distinctive tribal cultural identity that would persist across the generations. The fact that they used that measure of control to preference intermarriage with whites and preclude intermarriage with African Americans suggests a view of race relations that at the outset mirrored that of the Southern whites around them, and that in the later decades of the century would have meshed in with the racial assumptions of the white American community as a whole. No matter how determined the white community was to bring an end to tribal culture, a substantial portion of the Cherokee tribe was more inclined to accept part assimilation into the white world; but there appears to have been general agreement within the group that there should be as little connection as possible with an African American world that they saw as inferior and whose disadvantage they did not wish to share. To the extent that they were allowed to manage that aspect of their tribal life, a small degree of tribal sovereignty had survived.

From that point on, the idea of tribal sovereignty as a political issue had vanished under the weight of Federal authority. It would emerge again in the early twentieth century when a reform impulse very different from that of the late nineteenth century tried to recover for the tribes some element of the autonomy lost in the last years of the nineteenth century. Even in a community badly damaged by what had happened, an element of tribal identity still survived.

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