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“‘MAINTAINING INTACT OUR HOMOGENOUSNESS’: RACE, CITIZENSHIP, &
RECONSTRUCTING CHEROKEE.”

A Dissertation
presented in partial fulfillment of requirements
for the degree of Doctorate of Philosophy
in the Department of History
The University of Mississippi

by

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August 2012

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ABSTRACT

The history of the Cherokee Nation from 1866 to 1907 provides a new framework for the story of Reconstruction that expands the periodization and geographical scope of the effects of the postwar period on both mainstream America and those regulated to its margins. Although the historical narrative marks the end of Reconstruction with the political compromise of 1877, the process continued in the Cherokee Nation until Oklahoma statehood was achieved in 1907. The Cherokee Nation serves as a window of analysis that demonstrates how the process of Reconstruction was a national phenomenon. The experience of the Cherokee people and their leaders during Reconstruction bridges the gap between the historiography of the postwar period and the postwar conquest of the west, and also contributes to recent works detailing the centrality of race and slavery to the lives of nineteenth-century southeastern Indians. This dissertation project strives to contribute to the story of the struggle of the Cherokee to negotiate their place within the postwar United States through an examination of the problems of freedom unleashed in the Cherokee Nation with emancipation.

Investigations of the relevant secondary literature combined with an analysis of personal correspondence, governmental reports and letters from the holdings of the Bureau of Indian Affairs, Cherokee laws, Cherokee leaders' correspondence, and Cherokee Nation protests and memorials against federal government intervention in their affairs discussed in this project reveals that the Cherokee adapted the prevailing racial classifications of nineteenth-century America in an effort to use these categories of difference to assert their uniqueness and

independence as a sovereign and legitimate nation. Chapter one examines the Treaty of 1866 with an analysis of the document and its many stipulations. The second chapter looks at the struggle of Cherokee leaders to defeat numerous bills introduced in Congress to extend federal control over Indian Territory. Chapter three explores the important and contentious issue of Cherokee citizenship and its connection to native sovereignty. The final chapter reveals that federal protection of Cherokee freedmen continued beyond the official end of Reconstruction.

DEDICATION

This dissertation project is dedicated to my family who wholeheartedly supported my academic endeavors. In particular, I want to thank my parents for their encouragement throughout my graduate training, as well as my husband for his constant belief in my ability to succeed.

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INTRODUCTION:

The history of the Cherokee Nation from 1866 to 1907 provides a new framework for the story of Reconstruction. An examination of the process of Reconstruction in the Cherokee Nation expands the periodization and geographical scope of the effects of the postwar period on both mainstream America and those regulated to its margins. Although the historical narrative marks the official end of Reconstruction with the political compromise of 1877, the process continued in the Cherokee Nation until Oklahoma statehood was achieved in 1907. The Cherokee Nation serves as a window of analysis that demonstrates how the process of Reconstruction was a national phenomenon that involved more than the reunification of north and south and blacks and whites. When viewed through the history of the Cherokee Nation, Reconstruction is a process of reuniting the union and incorporating the west and its inhabitants into the American nation. Cherokee leaders struggled to preserve the sovereignty of their “dependent, domestic nation” in the face of a stronger federal government committed to rebuilding and uniting the country on its own terms. In fact, a close examination of the congressional actions debated for Indian Territory in 1865 reveals that the new power of a reunited United States government was felt first in native nations.

Native Americans are often marginalized in the historical narrative, especially in discussions of the Civil War and Reconstruction. Scholars have worked to show the crucial importance natives played in contesting the expansion of colonial America, and later in resisting

American removal efforts. Most textbooks reflect the influence of this scholarly attempt to broaden our understanding of the interactions of diverse racial groups in colonial America. But, Native Americans fall out of the national story after the removal period of the 1830s, and they often do not reappear until after the Civil War when the United States began to subdue Plains tribes and consolidate the west. In examining the history of the Cherokee Nation after the war, it becomes clear that the experience of the Cherokee people and their leaders during Reconstruction bridges the gap between the historiography of the postwar period and the postwar conquest of the west, and also contributes to recent works detailing the centrality of race and slavery to the lives of nineteenth-century southeastern Indians. When the history of the Cherokee is understood within the context of the Civil War and the subsequent national reconstruction it demonstrates the importance of race to late-nineteenth century America's national development.

The intersection of racism and Indian nationalism is often unexplored in both Reconstruction history and Native American history. This dissertation project strives to contribute to the story of the struggle of the Cherokee and their freedpeople to negotiate their place within the postwar United States through an investigation of the problems of freedom unleashed in the Cherokee Nation with emancipation. It asserts that when the intersection of racism and Indian nationalism in the postwar Cherokee Nation are considered it is possible to see how the chaotic and disruptive process of Reconstruction reached across all regions of the country and greatly affected all groups striving to rebuild their communities and societies after the trauma of war. The conventional framework of the historical narrative of this period should be expanded to include the story of groups like the Cherokee because it provides a more complicated and nuanced picture of the Reconstruction process.

Most recent studies of the postwar period have focused on the effects of emancipation on American society, but the problems of freedom in the Cherokee Nation have not been thoroughly examined. The destruction of slavery and the Fourteenth Amendment meant Americans had to confront the challenge of incorporating four million formerly enslaved people as citizens of the body politic. The Cherokee Nation also faced this challenge after the war, but issues arising from emancipation in Indian Territory quickly became entwined with the postwar sovereignty struggle between Cherokee leaders and federal officials. The war made the union of the states permanent and federal authority sovereign, and the formerly rebellious states were compelled to seek readmission to the union through new state constitutions that acknowledged the authority of the federal government. Once the states had complied, they were readmitted and reassumed the internal sovereignty enjoyed by other states of the union. The Cherokee Nation also had to reestablish its relationship with the federal government after the war, but this required that the two nations forge a new treaty to solidify their ties.

The sovereignty of the Cherokee Nation had been recognized and upheld by the U. S. Supreme Court in the era of removal, and the Treaty of 1866 that marks the beginning of Reconstruction for the Cherokees underscores that the federal government still considered the native nation a sovereign entity. While the postwar treaty acknowledged native sovereignty, it also established many opportunities for the federal government to push at the boundaries of the Cherokee Nation's sovereignty, especially in cases of disputed citizenship. Ironically, it is the destruction of slavery achieved through the fire and blood of war that resulted in the loss of Cherokee sovereignty. The Treaty of 1866 stipulated that the Cherokees must adopt their former slaves as citizens to enjoy all the rights of native-born Cherokees. This proved a difficult task for

the Cherokee Nation, and throughout the postwar period issues of disputed citizenship invited federal interference, especially in cases that involved freedpeople.

Radical Republicans in Congress extended support and protection for the enforcement of African American's civil and political rights during Reconstruction of the south with the Freedmen's Bureau and the Civil Rights Acts of 1866 and 1875. However, by the late 1870s, as economic issues became the concern of the day federal support for southern freedmen waned. Yet, federal support for and interest in the rights of Cherokee freedmen continued well into the late nineteenth century. Officials of the Bureau of Indian Affairs and the Interior Department investigated cases of disputed citizenship and infringed on the right of Cherokee authorities to control access to Cherokee citizenship. The desire for land and control over the inhabitants of Indian Territory prompted federal officials to challenge Cherokee sovereignty. Unlike the freedmen in the rebellious states, the federal government continued to support and protect the rights of these adopted Cherokee citizens because it offered the United States an opportunity to consolidate control over Indian Territory. Although the Treaty of 1866 had reestablished the Cherokee Nation's sovereignty, the expansion of the federal government after the war ultimately eroded that sovereignty, resulting in their incorporation into the American body politic as U. S. citizens.

Reconstruction has been a prolific topic of study in American history. The traditional interpretation of the corruptions and failures of Reconstruction was thoroughly revised by scholars in the 1960s that radically reinterpreted national Reconstruction politics and placed the activities and aspirations of African Americans at the center of the drama in the south.¹ The work

¹ The first interpretations of Reconstruction comes from the work of William A. Dunning, *Reconstruction, Political and Economic 1865-1877* (New York: Harper & Brothers Pub., 1907). Dunning detailed the failures and corruption of the Reconstruction governments and praised the

of historian Eric Foner synthesized thirty years of scholarship on Reconstruction, and provided a new interpretation of the postwar period that focused on the active role of African Americans in shaping the postwar labor system and the previously unexplored topic of Reconstruction in the north. Scholars now view the period, as a process of turbulent and significant changes in American life following the end of the Civil War. Southern society was remade and a new class and labor system developed in the postwar period. Historians agree that the era is marked by a change in the American mindset concerning the definition of American citizenship during an intense period of nation building. Despite an unclear definition of freedom in the aftermath of the Civil War, African Americans were active participants in the process of determining what emancipation meant for them and society at large. A larger and more powerful federal government emerged from the Civil War that was committed to equal rights for all Americans, as seen in the Fourteenth and Fifteenth Amendments as well as the Civil Rights Act.²

Redemption phase in which white southerners regained political power and control in the south. For an overview of the historiography of Reconstruction that details the transformation of the interpretation of the Dunning school by revisionist scholars see: W. E. B. DuBois, "Reconstruction and its Benefits," *American Historical Review* 15, no. 4 (July 1910): 781-799; A. A. Taylor, "Historians of the Reconstruction," *Journal of Negro History* 23, no. 1 (Jan. 1938): 16-34; Howard K. Beale, "On Rewriting Reconstruction History," *American Historical Review* 45, no. 4 (July 1940): 807-827; John Hope Franklin, "Wither Reconstruction Historiography?" *Journal of Negro Education* 17, no. 4 (Fall 1948): 446-461; Bernard Weisberger, "The Dark and Bloody Ground of Reconstruction Historiography," *Journal of Southern History* 25, no. 4, (Nov. 1959): 427-447; Richard O. Curry, "The Civil War and Reconstruction, 1861-1877: A Critical Overview of Recent Trends and Interpretations," *Civil War History* 20, no. 3 (Sept. 1974): 215-238; Armstead L. Robinson, "Beyond the Realm of Social Consensus: New Meanings of Reconstruction for American History," *Journal of American History* 68, no. 2 (Sept. 1981): 276-297.

² Eric Foner, *Reconstruction: America's Unfinished Revolution 1863-1877* (New York: HarperCollins Publishers Inc, 1988) is considered to represent the mature and settled consensus of the Revisionists of the Reconstruction period. For a discussion of Foner's impact see, Michael Perman, "Eric Foner's Reconstruction: A Finished Revolution," *Reviews in American History* 17, no. 1 (March 1989): 73-78. For an earlier challenge to the Dunning school's interpretation, and one that greatly influenced Foner, see W. E. B. DuBois, *Black Reconstruction in America 1860-1880* (New York: The Free Press, 1935).

A problem with the current consensus on Reconstruction is the absence of discussion of how native peoples and the west were effected by or influenced the drama of the era. The acquisition of the west in the 1840s under the banner of Manifest Destiny influenced America's racial history more than historians have acknowledged in their investigations of American race relations. Westward expansion triggered a racial crisis and fear of racial conflict and mixing.³ It is crucial to examine the ways in which American fascination with the west factored into the process of reuniting the war-torn nation during Reconstruction. The federal government successfully fulfilled the terms of the ideology of Manifest Destiny in the postwar period with the complete consolidation of its control over the entire continental United States. During Reconstruction, the federal government was concerned with uniting not only the south, but also the west, and the inhabitants of those regions with the north. The process of Reconstruction required the final conquest of the west and its native inhabitants and their incorporation into American society. Reconstruction was a time of great uncertainty about racial definitions and as a result Americans increasingly turned to science to make sense of the postwar world. The enlarged federal government worked to figure out how to incorporate the varied groups, both economically and culturally, into the American mainstream because a national economy and a national culture provided a common ground for all sections of the country. The federal policies employed for inclusion of African Americans and Native Americans after the war were often very similar. "Economic integration for freedmen was to come through forty acres and a mule, or at least some measure of agrarian self-sufficiency; for Indians, the answer was to be allotment in severalty. For cultural integration, ex-slaves would be educated under the Freedmen's Bureau;

³ Elliott West, "Reconstructing Race," *Western Historical Quarterly* 34, no. 1 (Spring 2003): 7-27.

for Indians, it would be agency and boarding schools.”⁴ The history of the Cherokee Nation during Reconstruction is an excellent example of the federal government’s postwar desire to unite north, south, and west, as well as white, black, and red. The process of the Cherokee Nation’s Reconstruction shows that the final conquest of the west was a top priority of the federal government as it rebuilt the American nation in the aftermath of the Civil War.

A recent work by historian, Heather Cox Richardson, argues that the west is a crucial component to the story of Reconstruction. For mainstream Americans in the postwar period she contends, the west became a symbol that embodied the developing middle-class ethic of individualism of the Gilded Age. The west was viewed as a place free from corruption and government intervention where individuals could succeed through hard work. For Richardson, the period of Reconstruction was marked by the rise of a middle class whose members defined themselves as “true” Americans. They ascribed to the belief that America’s economy was harmonious and that all Americans could rise up together socially through hard work. Since they were the American majority, the middle class believed the federal government should serve its interests. This middle class, she argues, opposed any “special interest”—workers, African Americans—that believed class conflict existed in America and appealed to the federal government to level the economic playing field. To the American mainstream, these special interests were trying to take over the federal government at the expense of the majority of Americans.⁵

The new middle class ethic of individualism ran counter to the Cherokee ethic of communalism, which is most clearly seen in the practice of communal land ownership that

⁴ West, “Reconstructing Race,” 23, 27.

⁵ Heather Cox Richardson, *West from Appomattox: The Reconstruction of America after the Civil War* (New Haven: Yale University Press, 2007).

Cherokee leaders fought to maintain in the face of new policies of allotment in the 1890s. The 1889 Dawes Act intended to make Native Americans, like the Cherokee, into proper middle-class individuals and families whether they liked it or not. Allotment in severalty in Indian Territory signaled the final conquest of the west and the end of sovereignty and self-rule for dependent, domestic nations like the Cherokee Nation. For these reasons, inclusion of the west is essential to the story of Reconstruction, and an examination of the history of the Cherokee Nation after the war demonstrates the continental scope of the federal government's plans for uniting the nation. The west is both a place and an idea; a place to be conquered, which also serves as an image of the frontier rich with possibilities that is so important to American identity.⁶ The federal government was greatly involved in the development of the west during the postwar period. It assisted industries, business, and railroad companies in their quest to extract the seemingly limitless resources that the west had to offer. The U.S. military waged war on the Plains Indians, forcing them on to reservations and exterminating those who would not submit. The frontier was officially "closed" in the 1890s and America's Manifest Destiny was complete.⁷ All of these things had an impact on the Cherokee Nation and their struggle to retain their sovereignty from the larger, federal government in postwar America; and it provides a new picture of the reconstruction process through the experiences of the Cherokee Nation.

⁶ Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: W.W. Norton & Company, 1987); Richard Slotkin, *Regeneration through Violence: The Mythology of the American Frontier, 1600-1860* (Middletown, Conn.: Wesleyan University Press, 1973); *The Fatal Environment: The Myth of the Frontier in the Age of Industrialization, 1800-1890* (New York: Atheneum, 1985); Frederick Jackson Turner, "The Significance of the Frontier in American History" (1893), in *History, Frontier, and Section: Three Essays by Frederick Jackson Turner* with an introduction by Martin Ridge (Albuquerque: University of New Mexico Press, 1993).

⁷ Richard White, *"It's Your Misfortune and None of My Own: A New History of the American West* (Norman: University of Oklahoma Press, 1991).

This dissertation also seeks to contribute to the growing literature on race and lives of southeastern Indian groups, like the Cherokees. The study of race relations is a prolific topic in southern history, but it is most often narrowly conceived as the interaction between Anglo Americans and African Americans. Southeastern Indians are also a part of the south's complex racial past. The interaction between red, black, and white shaped the society and culture of each group. Contact with Europeans introduced Native Americans to the ideas of race and racial difference, which affected how they viewed themselves as well as others. By the mid-nineteenth century, the Cherokee had fully developed their own racial ideology, which classified them as a distinct people separate from the white Anglo Americans and the black African Americans who also inhabited the southeastern United States.

Many recent works have addressed the issue of race and native peoples in an effort to determine when native peoples, particularly in the southeastern United States, began to racialize others. The prevailing consensus is that contact between native groups and European explorers and settlers introduced Native Americans to ideas and concepts about race and racial difference, which affected how they identified themselves and others. Southeastern Indian groups, like the Cherokee, had first hand knowledge and experience with the racial order of the colonial and antebellum South. The Cherokee quickly learned that whites believed blacks were inferior beings who were only suitable for slave labor. In an effort to maintain their elevated social position, whites worked to create and encourage antagonism and conflict between African Americans and Native Americans through fear, suspicion, and hatred. The Cherokee soon learned that the subjugation of blacks was in their own self-interest because it gained them a higher social status than that of African Americans in antebellum southern society. Slavery in the Cherokee Nation ran the gamut from master and slave relations that resembled kinship connections to treatment

that more closely resembled that of chattel slavery employed on large plantations of the Old South's Cotton Kingdom.⁸

In order to see fully how the Cherokee used race to defend their precarious position within the United States after the Civil War, one must first understand how racial classifications became a part of the Cherokee worldview. Effective illustration of this requires a brief discussion of the role of slavery in Cherokee society and its connection to the development of a racialized identity, especially among the Cherokee elite. Prior to European contact, Cherokees obtained slaves through tribal warfare with other southeastern Indian groups. Cherokee women often tortured these captives in order to restore balance to Cherokee society by replenishing the blood of those who had been lost to war or the captives were ransomed back to their group. The Cherokee either adopted those captives not ransomed or tortured as full members of one of the seven Cherokee clans or they regulated the captive to a subservient position outside of the kinship system on which their society was based.⁹ As historian Theda Perdue argues, this traditional model of slavery among the aboriginal Cherokee resulted from the unimportance of bondsmen to their subsistence economy as well as the Cherokees' lack of regard for material

⁸ The first study of slavery in the Cherokee Nation comes from Theda Perdue, *Slavery and the Evolution of Cherokee Society 1540-1866* (Knoxville: The University of Tennessee Press, 1979). Another early contribution was R. Halliburton, Jr., *Red over Black: Black Slavery Among the Cherokee Indians* (Westport: Greenwood Press, 1977). The first work to examine the freedmen's perspective comes from Daniel Littlefield, *Cherokee Freedmen: From Emancipation to American Citizenship* (Westport: Greenwood Press, 1977). More recent works have contributed to our understanding of slavery in the Cherokee Nation by placing the enslaved at the center of the story. See Celia Naylor, *African Cherokees in Indian Territory: From Chattel to Citizens* (Chapel Hill: The University of North Carolina Press, 2008); Tiya Miles, *Ties that Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (Albuquerque: University of New Mexico Press, 2005) and *The House on Diamond Hill: A Cherokee Plantation Story* (Chapel Hill: The University of North Carolina Press, 2010).

⁹ Perdue, *Slavery and the Evolution of Cherokee Society*, 4, 8. For an updated look at captivity see, Christina Snyder, *Slavery in Indian Country: The Changing Face of Captivity in Early America* (Cambridge: Harvard University Press, 2010).

wealth and profit. The European need for labor created a market for Cherokee war captives who became the object of warfare rather than one of its by products.¹⁰ The introduction of the Indian slave trade in early America resulted in the beginnings of internal inequality in Cherokee society as warriors increased their power and prestige within the group through their participation in the trade of war captives for European goods.

As Anglo Americans increasingly turned to enslaved Africans to fill their labor needs, many Cherokee wished to maintain their newly acquired status through their continued participation in the developing slave economy of the southeast. In order to sustain their trade connections with the American colonists, the Cherokee often served as runaway slave catchers and even began kidnapping African slaves that they then resold into bondage. Perdue marks this initial contact with enslaved Africans as the moment when some Cherokees realized that the white colonists regarded black slaves as inferior beings. The work of historian R. Halliburton, Jr. supports Perdue's eighteenth-century demarcation as the earliest signs of racialized thinking among the Cherokee. He contends that the Cherokee were always an ethnocentric people who believed that they were superior to others regardless of their tribe, race, or origin.¹¹

Many Cherokees became convinced that the subjugation of blacks could serve their own self-interest to remain a distinct group apart from the newly formed United States.¹² The Cherokee and other indigenous groups developed a polygenetic theory of multiple creations in order to explain the racial difference between white, red, and black. By the late eighteenth century, some Cherokees had begun to internalize ideas of race as fundamental to their own

¹⁰ Perdue, *Slavery and the Evolution of Cherokee Society*, 19, 23, and 33.

¹¹ Halliburton, *Red over Black*.

¹² Perdue, *Slavery and the Evolution of Cherokee Society*, 36, 48. Perdue argues that prevailing eighteenth-century arguments for the resemblance of Anglo-Americans and "noble" Indians espoused by leaders like Thomas Jefferson, coupled with the insistence of the profound difference between Indians and enslaved blacks led the Cherokee to this idea.

identity. They began to refer to themselves as red in response to Europeans calling themselves white and also adopted color categories as a strategy to inform Europeans about their social obligations to the tribe. Some even inverted the racial hierarchy, placing Cherokees at the top, in an effort to legitimate their own political and economic claims in the rapidly changing environment of the eighteenth century.¹³ By denoting themselves as red, the Cherokee wished to emphasize their distinctiveness as a people as well as highlight their social and cultural differences, which they viewed as an advantage, from the other racial groups of the south. Thus, Cherokees began to repudiate the adoption of Africans and their intermarriage with Cherokee men and women, especially as they turned to new forms of agriculture in the nineteenth century in order to survive the transformation of indigenous life.¹⁴

The United States' government developed a "civilization plan" at the end of the eighteenth century that encouraged groups like the Cherokee to abandon their agricultural techniques of subsistence farming for white methods of producing for both need and profit, including becoming slave owners. By the 1820s, Cherokee's had begun forsaking village life in order to establish individual farming units and plantations throughout their territory in the southeast.¹⁵ The creation of a more uniform and centralized political and judicial system accompanied the Cherokees acquiescence to the United States' "civilization plan" and resulted in the creation of the Cherokee Nation in the early nineteenth century. The Cherokee Nation replicated the racial ideologies and practices of the United States' federal and state governments, which served to ease the growing concerns of the Cherokee elite over the regulation of individual

¹³ Circe Strum, *Blood Politics: Racial Classifications and Cherokee National Identity* (Berkeley: University of California Press, 2002), 43-50.

¹⁴ Katja May, *African Americans and Native Americans in the Creek and Cherokee Nations, 1830s to 1920s: Collision and Collusion* (New York: Garland Pub., 1996), 10.

¹⁵ Halliburton, *Red Over Black*, 35, 141.

actions, the protection of realty and improvements, and the desire to safeguard their investments in human property.¹⁶

Article III, section 5 of the Cherokee constitution denied all rights and privileges of the Cherokee Nation from descendants of the African race. Blacks were also barred from holding national office and anti-miscegenation laws were introduced to increase the social distance between Cherokees and their African-American slaves.¹⁷ Laws controlling the activities of slaves preceded the adoption of the Cherokee constitution in 1828, and they were comparable to the slave codes of the southern slaveholding states.¹⁸ The creation of the Cherokee Nation and the codification of a racial ideology in the new laws and constitution of the Nation endeavored to ensure that Cherokee claims to nationhood would be considered legitimate by white America.

The construction of the Cherokee Nation and its governmental apparatus fundamentally altered how slaves were treated and viewed. Adoption and intermarriage of black slaves and Cherokee masters became increasingly harder to achieve. The Cherokee Nation guaranteed masters' rights to own slaves and use their labor as they saw fit. Historians contend that unlike their southern counterparts, Cherokee slaveholders did not morally justify slavery because they recognized it solely as the means for providing the labor force necessary to produce an agricultural surplus. Some Cherokee even began practicing plantation agriculture and modeling themselves after the white planters of the surrounding southern states. Theda Perdue argues that

¹⁶ Strum, *Blood Politics*, 51, as well as Perdue, *Slavery and the Evolution of Cherokee Society*, 56.

¹⁷ William Boudinot, comp., *Constitution and Laws of the Cherokee Nation Published by the Authority of the National Council* (St. Louis: R. & T.A. Ennis, 1875), 14. See also Strum, *Blood Politics*, 54.

¹⁸ Theda Perdue, "Cherokee Planters: The Development of Plantation Slavery Before Removal," in *The Cherokee Indian Nation: A Troubled History*, ed. by Duane King (Knoxville: The University of Tennessee Press, 1979), 116; Halliburton, *Red Over Black*, 142.

the development of plantation slavery among the Cherokee created two distinct classes within Cherokee society in both an economic sense and in terms of opposing values and worldviews.¹⁹

The strict division of the Cherokee Nation into competing groups of rich, progressive slaveholders and poor, traditional non-slaveholders advocated by Perdue is misleading. In reality, many Cherokees fit easily into each group. Both mixed-blood (meaning offspring of Cherokee and white parents) and full-blood Cherokees owned slaves and of those who did some advocated a complete emersion into white culture and some resisted and maintained the cultural trappings of their Cherokee ancestors.²⁰ Division within the Cherokee Nation ultimately centered on how much one wished to acculturate and assimilate into white American society. The Cherokee elite enriched themselves monetarily, politically, and socially with slave labor, though they disagreed over the appropriate level of assimilation to Anglo-American ways. Despite the disagreement over acculturation, the slaveholding elite did agree on the inferior status of their bondsmen. Although they could find common ground on the racial classification of their slaves as subordinate others, Cherokee leaders were bitterly divided throughout the early and mid-nineteenth century over how best to maintain their autonomy in the changing environment.

The leadership split over the proper way to preserve Cherokee sovereignty in the face of pressure from the state of Georgia for their removal in the 1830s, which was fully supported by Andrew Jackson's administration. A group of highly acculturated Cherokees led by Major Ridge, his son John Ridge, Elias Boudinot, and his brother Stand Watie, signed the Treaty of New

¹⁹ Perdue, *Slavery and the Evolution of Cherokee Society*, 95.

²⁰ Halliburton, *Red Over Black*, x. Perdue often divides progressive Cherokee from conservative Cherokee by degree of their inter-mixture with whites. She holds that mixed-blood Cherokees were the wealthy, well-educated, progressive elements in Cherokee society that pushed for complete assimilation with white America and rejection of their cultural past. See Perdue, *Slavery and the Evolution of Cherokee Society*.

Echota in 1835 that ceded all of the Cherokee homelands east of the Mississippi River to the United States government in exchange for five million dollars and seven million acres in the newly created Indian Territory.²¹ The signing of this treaty constituted an act of treason because members of the Cherokee Nation were forbidden to sell any portion of the land that comprised the Nation without the consent of the entire group.²² Unlike those Cherokee who identified themselves through their connection to their eastern homeland, the leaders of the Treaty Party had developed a new conception of land in both its meaning and use. Land no longer formed the basis of identity for many Cherokee people; instead ideas of racial and cultural distinctiveness replaced the notion of enduring ties to the Cherokee homeland as the defining feature of the group's identity.²³

The signers of the Treaty of New Echota believed that relocation to the Indian Territory west of the Mississippi River was the best way to ensure that the Cherokee people would remain an independent, sovereign nation unmolested by white settlers and state and federal governments. Many Cherokees disagreed with them, including Principal Chief John Ross who was also a well educated, mixed-blood slaveholder. Ultimately unable to resist the crush of white encroachment, the Cherokee were forced to relocate in the tragic event known as the Trail of Tears. Some Cherokees, including the signers of the Treaty of New Echota, relocated west prior to forced removal, where they could reestablish their farms and continue the plantation slavery they had adopted in the east. The majority of the Cherokee experienced the forced march from Georgia to Indian Territory on the Trail of Tears. Some of these Cherokees owned slaves, and

²¹ Cherokee Nation, *Treaties Between the United States of America and the Cherokee Nation, From 1785* (Tahlequah: National Print Office, 1870), 83-88.

²² Boudinot, *Constitution and Laws of the Cherokee Nation*, 158.

²³ Strum, *Blood Politics*, 63.

those slaves also made the forced march to the west with their masters.²⁴ Removal exacerbated divisions within Cherokee society especially economic ones. Slaveholders had a clear advantage over non-slaveholders in re-establishing themselves in the west because they could use their slaves to clear more acreage and make more improvements than those without slaves. This ensured the position of the Cherokee elite at the top of the social hierarchy as slavery solidified itself as an integral part of the economic, social, and political system of the Cherokee Nation in the west.²⁵

The increased importance of slavery to the Cherokee Nation and its leaders was best demonstrated by the addition of more oppressive black codes into the law books, which resulted from the rise in frequency of slave resistance after removal. The National Council of the Cherokee Nation prohibited slaves from owning property of any kind in 1840. In 1841, the Council also authorized the establishment of slave patrols, prohibited slaves from carrying weapons, and restricted the educational instruction that they could receive. Free blacks were placed in the same legal category as slaves. After a major uprising in 1842 by the slaves of Joseph Vann, Lewis Ross, and other slaveholding Cherokees in the Canadian District of Indian Territory, the Cherokee National Council expelled free blacks from the Nation's borders in order to prevent future insurrections and runaways. During the late 1840s, abolitionist missionaries also experienced increasing harassment and opposition to their presence in the Cherokee Nation as the security of slave property became a matter of prime importance.²⁶ The adoption of these harsher slave codes reveals that belief in the inferiority of blacks had crystallized in the minds of

²⁴ Halliburton, *Red Over Black*, 61.

²⁵ Perdue, *Slavery and the Evolution of Cherokee Society*, 70-72. See also Halliburton, *Red Over Black*, 117.

²⁶ Halliburton, *Red Over Black*, 68-69, 72, 80-82, 85, 87, 95, 107. See also Perdue, *Slavery and the Evolution of Cherokee Society*, 76-88.

the leaders of the Cherokee Nation. The new restrictive codes were designed to keep blacks in a position subordinate to the citizens of the Cherokee Nation.

By the mid-nineteenth century, slave-owning Cherokee, like their white southern counterparts, fully equated their bondsmen with property. Many Cherokee, like Sarah Bird Northrup Ridge, widow of Treaty Party leader John Ridge, requested compensation from the United States government for slaves that had either runaway or had been kidnapped during removal.²⁷ John Rollins Ridge, the son of John Ridge, requested that his grandmother give him the slaves she planned to will him before she died because he “[needed] money or what could be converted into money right away” since he planned to “sell the negroes or...hire them out as it suited [him].”²⁸ The Cherokees slave-owning experience greatly affected their post-war relations with their former slaves. It is clear that by the middle of the nineteenth century, a racial ideology had solidified in the minds of many Cherokee leaders and was reflected in the stricter slave codes the Nation adopted once they arrived in Indian Territory. The increasingly harsh treatment of their slaves after removal later greatly contributed to Cherokee perceptions of what rights their freedmen could have in the post-war Cherokee Nation. Cherokee perception of the inferiority of enslaved blacks resulted in the acceptance of a racially ordered society, which ultimately led the Cherokee Nation to implement its own discriminatory laws, policies, and practices against their former slaves after the Civil War.

By the late nineteenth century, Cherokee politicians provided two reasons in their many explanations of why former bondsmen were unsuitable for Cherokee citizenship: the absence of

²⁷ Stand Watie to T. Hartley Crawford, April 15, 1840, in *Cherokee Cavaliers: Forty Years of Cherokee History as Told in the Correspondence of the Ridge-Watie-Boudinot Family*, eds. Edward Everett Dale and Gaston Litton (Norman: University of Oklahoma Press, 1939), 19-20. See also letter of Sarah Bird Northrup Ridge to Stand Watie, October 22, 1844, *Cherokee Cavaliers*, 20-21.

²⁸ John Rollins Ridge to Stand Watie, July 2, 1849, *Cherokee Cavaliers*, 66.

kinship connections and scientific racism. In the postwar years, the absence of kinship connections was often cited as the reason to withhold citizenship from former slaves.²⁹

“Moreover, the growing reliance on written legal codes forced Indians to spell out with unprecedented specificity the rights and privileges of their newly adopted citizens.”³⁰

Throughout the process of Reconstruction, various Principal Chiefs, including Charles Thompson and Dennis Bushyhead, called for the National Council to produce some legislation clarifying the states of adopted citizens, like the freedmen, in the postwar Cherokee Nation because they understood such a bill could fend off federal intrusion into Cherokee internal affairs.

While there is much debate about how common racial thinking was among native groups, it is clear that late nineteenth-century Cherokee leaders were aware of the prevailing racial hierarchy of mainstream America and were concerned about the place of the Cherokee people in the racially ordered postwar world. The adoption of white America’s racial hierarchy was a survival strategy that some native peoples pursued while others rejected. Some scholars have found that native people did challenge the exclusion of blacks to citizenship. Alternatives to racial discrimination existed despite the fact that early nineteenth-century Cherokee lawmakers used racial definitions and regulations to solidify the identity of legitimate members to the Cherokee republic in order to demonstrate their unique standing as a civilized tribe to white America. With a thorough analysis of the Cherokee warrior Shoe Boots petition for Cherokee

²⁹ Perdue, *Slavery and the Evolution of Cherokee Society*, 36, 48, and William S. Willis, Jr., “Divide and Rule: Red, White, and Black in the Southeast,” in *Red, White, and Black: Symposium on Indians in the Old South*, ed. Charles Hudson (Athens: University of Georgia Press, 1971) 101-107, Claudio Saunt, “The Paradox of Freedom: Tribal Sovereignty and Emancipation During the Reconstruction of Indian Territory,” *Journal of Southern History* 70, no. 1 (2004),” 68, 75.

³⁰ Saunt, “The Paradox of Freedom,” 73.

citizenship for his mixed-race children, historian Tiya Miles illuminates a surprising test of the early nineteenth-century Cherokee Nation's institutional power and the redefinition of Cherokee identity. The case of Shoe Boots and his mixed-race offspring reveal the fluidity of race in the early Cherokee Nation.³¹

Miles work shows that while race is important to the question of Cherokee citizenship, membership in the Nation did not rest on race alone. It also included one's kinship connections, which were highly valued in Cherokee society. In some cases, especially in the eighteenth and early nineteenth centuries, clan identity and connections trumped race in southeastern native communities like the Cherokees and made insiders out of outsiders. But, the astounding growth of slavery in the nineteenth century resulted in the declining significance of clans in the organization of southeastern Indians' daily lives. Still, scholars are aware of the close relationship between cultural continuity and change. As Miles points out, "Categories of identity and experience—kinship, tribe, clan, gender, and culture—are all marked by equal parts of continuity and change. All are the products of the complex social interactions between Europeans, African Americans, and Native Americans." The presence of racial slavery, as practiced in the antebellum south, forced native groups to redefine their identity, community, and values in order to maintain native self-rule and resist white encroachment.³²

Reconstruction was another point in Cherokee history in which identity, community, and values were redefined. What is most noteworthy about the debate over Cherokee citizenship is the fact that whites, blacks, and other native groups, like the Eastern Cherokee and the Delaware, were all having problems securing their rights in the postwar Cherokee Nation. Members of all

³¹ Miles, *Ties That Bind*, 100-128.

³² Claudio Saunt, Tiya Miles, Celia E. Naylor, and Circe Strum, "Rethinking Race and Culture in the Early South," *Ethnohistory*, 53, no. 2 (Spring 2006): 403.

of these groups appealed to the U.S. government for assistance in obtaining Cherokee citizenship; and the Cherokee Nation offered a variety of explanations for why citizenship was withheld from these various groups. Whites were labeled criminals, low-class squatters, and intruders. African Americans were deemed an inferior race that already had citizenship in the United States. The Eastern Cherokee had forfeited their citizenship in the Cherokee Nation when they remained in the east during removal; they were now considered U.S. citizens who would have to purchase their citizenship rights in the Nation in the west. Members of Plains Tribes were considered uncivilized savages that would be detrimental to Cherokee society.

The Cherokee Nation faced a much larger and powerful foe in the postwar years and as a result had to become more creative and innovative in their efforts at resisting federal power. Employing racial concepts was a crucial component of this. In the postwar years, as Americans grappled with the definition of U.S. citizenship the leaders of the Cherokee Nation were trying to define the parameters of Cherokee citizenship while at the same time trying to maintain their separate nation status and autonomy in their relationship with a larger and stronger federal government that was quickly consolidating control over the entire continental nation through the military conquest of the west, and the Plains tribes in particular. Cherokee leaders turned to racial language in their appeals against federal intrusion on native sovereignty to remind white lawmakers that Cherokees racial status was above that of former slaves and savages. Thus, Cherokee national sovereignty was something to be protected by the federal government because it would ensure the survival of the Cherokee race.

Cherokee leaders actively participated in the Reconstruction of their nation and the renewal of its relationship to the newly enlarged U.S. government. In a recent work, Andrew Denson looked at Cherokee memorials to Congress as part of their long struggle to preserve their

independent tribal government and the barriers between themselves and non-Indian America.

The memorials reveal Native American's contribution to nineteenth-century debates over Indian policy as well as the paradox and contradiction between the sovereignty of Indian nations and the political weakness of Indian people. Denson argues that in defending their autonomy as an entitlement, Cherokee politicians tried to persuade non-Indians that maintaining Indian sovereignty was in every American's best interest. Although he notes the rise of racial language in the Cherokee memorials against the reorganization of Indian Territory into a federal territory in the 1870s, Denson dismisses race as a major issue in the fight for Cherokee sovereignty. He argues that the Cherokee delegates did not want racial separation but rather self-government.³³

But, this assessment of Denson's is incomplete; there is a reason behind the increase in racial language in Cherokee protests and memorials in the postwar period. His explanation implies that the Cherokee were above using racial language or that they somehow did not truly understand the racial language that they were using. They were using this racial language for a specific purpose; it allowed them to communicate and negotiate with white Americans on the same level. They were speaking the language of scientific racism in an effort to be taken seriously by white American lawmakers who were making decisions that affected the everyday lives of Cherokee people. Racial language gave Cherokee leaders another tool to use in their struggle to maintain the sovereignty of the Cherokee Nation; and some leaders also believed in the racial definitions that they utilized in their efforts to retain Cherokee self-rule.

Fay Yarbrough's recent work, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century*, takes seriously the Cherokee Nation's interest in and use of race and racial categories in the late nineteenth century in order to show the complex connections between race

³³ Andrew Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture 1830-1900* (Lincoln: University of Nebraska Press, 2004), 110.

and citizenship in the Cherokee Nation. She examines intermarriage and its regulation by the Cherokee Nation in order to reveal a community at work creating a racial ideology. Unlike Denson, she argues the Cherokee political leaders developed this racial ideology to protect their political sovereignty. By aligning itself with white America and utilizing its racial hierarchy, the Cherokee Nation was stressing its legitimacy as a nation separate from the American mainstream.³⁴

While striving to remain outside of American society, the Cherokee Nation and its leaders appealed to the ethics and beliefs of the American majority to be successful in maintaining its national sovereignty. The leaders of the Cherokee Nation employed the same language and thinking that were being used against them as a major component of their resistance efforts. That is why race is an important part of the story of the Cherokee Nation's Reconstruction; and why historians must take the use of race and racial language among indigenous nations, leaders, and citizens seriously. The use of race among indigenous nations and their citizens must be contextualized in order to see the connections between racism and Indian nationalism in the late nineteenth century.

In nineteenth-century America, racial classifications signified one's place in society. A white male often received more political and civil rights in the racially divided nation than his red and black male counterparts did. Racial minorities, such as enslaved Africans and Native American groups, struggled against these classifications that placed them in a subordinate position to those of the master race. Adaptation of Anglo American notions of race allowed Cherokee leaders to assert their group's unique position as a sovereign entity within the American nation. As the nineteenth century unfolded, Cherokee leaders insisted that the federal

³⁴ Fay Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2008).

government recognize the Cherokee Nation as a distinct racial group united by interests, habits, and cultural characteristics that they did not share with either the white or black race. The leaders of the Cherokee Nation intended for this assertion of racial and cultural difference to buttress their insistence that maintaining their nation's autonomy would ensure the Cherokees' physical, cultural, and social survival in the United States. The earliest signs of racial classifications within the Cherokee Nation were seen with the introduction of slaveholding and plantation agriculture among the Cherokee elite in the late eighteenth and early nineteenth centuries.

For Native American groups, like the Cherokee, the adoption of racial slavery greatly transformed their society and produced inequalities and other divisions that remain to this day. The emancipation of the former slaves of Cherokee masters and the subsequent oppression these freedmen faced best demonstrates how the Nation's leaders attempted to utilize race to defend the Cherokees' independent position in post-Civil War America. Investigations of the relevant secondary literature combined with an analysis of personal correspondence, governmental reports and letters from the holdings of the Bureau of Indian Affairs, Cherokee laws, Cherokee leaders' correspondence, and Cherokee Nation protests and memorials against federal government intervention in their affairs discussed in this project reveals that the Cherokee adapted the prevailing racial classifications of nineteenth-century America in an effort to use these categories of difference to assert their uniqueness and independence as a sovereign and legitimate nation within a nation. The beginning of the Reconstruction process for the Cherokee Nation was marked by the signing of the Treaty of 1866 between the Nation's delegates and the United States. This treaty required that the Cherokee grant their former slaves citizenship rights

in the Nation and recognized the abolishment of slavery within the Nation's borders. The treaty also stipulated that a portion of the Nation be set-aside especially for freedmen residence.

Chapter one, "The Reconstruction Treaty of 1866: Importance, Impact, & Legacy," examines the Treaty of 1866 and includes a discussion of the negotiations behind the creation of the agreement as well as an analysis of the document and its many stipulations. To understand the process of negotiations surrounding the treaty, the different factions operating in the Cherokee Nation's leadership must be explained. The trauma of removal fractured the Cherokee leadership and opposing sides pursued different futures for the Cherokee people after removal and during the Civil War. When war broke out between the free and slave states, the Cherokee Nation was also pulled into the white man's conflict. Much like the border states of Arkansas and Missouri, the Cherokee Nation divided its loyalties. These wartime divisions had originated during the removal era and the federal government manipulated the internal division against Cherokee leaders in postwar negotiations to reestablish relations between the United States and the Cherokee Nation.

This chapter offers an in-depth analysis of the articles of the Treaty of 1866, which is lacking from the historical narrative of the Cherokee Nation during Reconstruction. The individual articles make clear that the Cherokee leadership believed their former slaves would establish separate and autonomous communities within the Nation. Although Article 9 required the Nation to grant all adopted citizens the same rights as native Cherokees, many freedmen entitled to Cherokee citizenship struggled to exercise the citizenship rights they claimed through the treaty. The treaty is crucial to understanding the process of Reconstruction that the Cherokee faced after the war. The Treaty of 1866 set the terms of the postwar relationship between the Cherokee Nation and the federal government, which had emerged from the war with increased

power to extend its reach over native nations. Despite granting large land concessions and accepting the imposed citizenship of their former slaves, the Cherokee Nation continued to enjoy and assert its sovereign status in future negotiations with the federal government. Cherokee consent was required by treaty for any further alteration to the agreements concerning a territorial government in Indian Territory and land ownership, which Cherokee leaders viewed as threats to the Nation's right to self-rule. Much like the rebellious states, the Cherokee Nation worked to rebuild its society and economy after the war.

In the 1870s, the Cherokee leadership continued to assert the Nation's sovereignty and fought to maintain their autonomous status in Indian Territory. Chapter 2, "The Cherokee Nation in the 1870s: Fight to Retain Indian Territory," looks at the struggle of Cherokee leaders to defeat numerous bills introduced in Congress to extend federal control over Indian Territory with the establishment of a territorial bills under congressional control. Facing a larger and more powerful federal government, the Cherokee Nation relied on new strategies of persuasion and racial language greatly increased in their protests and memorials against territorialization to Congress. Historians have failed to provide an explanation for the increase in the emphasis on race and racial difference by Cherokee leaders in the 1870s. If these protests and memorials are placed within the context of Reconstruction and the federal government's military conquest of the west, it is not surprising that racial language greatly increases in this decade. The struggle to maintain national sovereignty required Cherokee leaders to employ new survival strategies in their efforts, which included emphasizing their racial difference from African Americans as well as the Plains tribes the government was attempting to subdue militarily. In postwar America, race determined much about one's prospects and place in American society. Racial language would have been a persuasive tool for Cherokee leaders attempting to generate Congressional support

for the continuation of treaty making, the protection of native sovereignty and the special status of Indian Territory.

The Cherokee Nation in the Reconstruction era continued to pass discriminatory legislation that regulated its former bondsmen to the lowest rungs of Cherokee society. An example of Cherokee discrimination against former slaves is the absence of the freedmen from the political culture of the post-war Nation. Although the Treaty of 1866 allowed freedmen to vote, serve on juries, and participate in politics, African Americans did not ascend to high political office in the Cherokee Nation. At the same time, the Nation began to assert itself as a racial group distinct from both African Americans and Anglo Americans. The Cherokee Nation emphasized that its citizens were a race apart from the black and white races of America in the hopes that the United States government would continue to regard them as a separate and sovereign nation of people within the larger American nation. The Cherokee Nation worked to maintain the subordinate position of their former slaves in order to remind white America that red and black were not synonymous. At the same time, the Cherokee also labored to remind white Americans that Indians deserved to be treated as an independent nation because it was “against the interest, honor, [and] welfare of either race to harmonize with the other.”³⁵ By the late nineteenth century, the Cherokee Nation was utilizing the racial classifications it was introduced to upon contact to argue for its right to self-government and autonomy in the postwar United States.

At the heart of the struggle between the Cherokee Nation and the federal government was a desire for control. The Cherokee wished to maintain control over their internal affairs and they

³⁵ Cherokee Nation, *Memorial of the delegates of the Cherokee, Creek, and Choctaw nations of Indians, remonstrating against the passage of bill to organize the Territory of Oklahoma, consolidate tribes under a territorial government and carry out the provisions of the treaties of 1866 with certain Indian tribes* (Washington: Government Printing Office, 1870), 4.

wished to remain a native nation outside the jurisdiction of the United States. Congress, encouraged by the railroad lobby and land speculators, pushed to extended governmental control over Indian Territory and incorporate those residing there as citizens of a new state. The federal government found an opportunity to infringe upon the boundaries of Cherokee sovereignty in cases of disputed citizenship in the native nation, and one of the main issues of contention between the two nations in the postwar period was control over Cherokee citizenship. Chapter 3, “Emancipation, Citizenship, and Reconstructing Cherokee,” explores the important and contentious issue of Cherokee citizenship, which became intertwined with the Nation’s sovereignty battles during Reconstruction. Throughout the postwar period, the Cherokee Nation asserted its sovereign right to determine who was and who was not a Cherokee citizen. Emancipation required the Cherokee to determine what freedom meant in the postwar Nation; and what role their former slave property would play in Cherokee society. The Treaty of 1866 also required the Nation to adopt other tribes, such as the Delaware and the Shawnee. The incorporation of new peoples into the postwar Cherokee Nation was not easy nor was it complete; and many Cherokee freedmen with disputed claims to citizenship felt their rights were denied them because of their race.

The Cherokee Nation was still debating what the emancipation of its former slaves actually meant in terms of citizenship rights ten years after signing the Treaty of 1866, which was intended to provide the answer to the question of freedom. In this respect, the Cherokees are not much different from Americans who were also grappling with incorporating freedpeople into the body politic. The former slaves of Cherokee masters who did not return to the Cherokee Nation by the six-month deadline were considered non-citizens. However, it was not uncommon for many freedmen to miss this deadline, and some freedmen who returned too late claimed

leading Cherokee men had told them that they deserved and could enjoy native citizenship. This group pursued its quest for citizenship rights in the Cherokee Nation through the assistance of the U.S. government and Bureau of Indian Affairs officials after officials of the Cherokee Nation had declared its members intruders. In their desperate attempt to maintain the autonomy of the Cherokee Nation, Cherokee politicians refused to accept certain citizens, like the former slaves who returned to the Nation after the deadline, and repeatedly insisted on their sovereign right to decide their own citizenship cases even though they lacked consensus on the meaning of freedom.

The Cherokee freedmen faced a protracted struggle in obtaining and exercising their rights as Cherokee citizens. Chapter 4, “Cherokee Freedmen Challenges to Racial Exclusion,” contributes to the current scholarship concerning the relationship of Africans and Cherokees; and reveals that federal protection of freedmen in Indian Territory continued well beyond the official end of Reconstruction. The inability of the Cherokee to fully incorporate their former bondsmen into the body politic is revealed in the letters of complaint sent to the Bureau of Indian Affairs from freedmen seeking protection of their homes and farms. These letters also reveal the motives behind the discrimination the freedmen faced in the postwar Nation. As Reconstruction proceeded in Indian Territory, freedmen and their representatives issued complaints of racial exclusion from schools, funds, and improvements on the Cherokee domain. The freedmen petitioned the federal government for help in securing access to schools and other benefits of Cherokee citizenship, like per capita payments issued to Cherokee citizens for help during times of bad harvest or from profits generated through the lease or sale of tribal lands. Unlike the freedmen of the rebellious states who witnessed a retreat of federal support for the protection and

enforcement of their rights as citizens in the late 1870s, the Cherokee freedmen enjoyed federal support in the enforcement of their rights well past the official end of Reconstruction.

Through the end of the nineteenth century, the United States continued to infringe on the sovereign right of the Cherokee Nation to control its internal affairs, especially in cases of disputed citizenship that typically involved freedmen's claims of racial exclusion. The process of Reconstruction involved more than just renewing the bonds of union between the north and the south; the west and the Indian peoples living there had to be conquered and incorporated into American society. While the military fought to subdue the Sioux and the Comanche, Congress continually pressed and eroded the sovereignty of Indian Territory. The Cherokee Nation resisted calls to establish a territorial government under Congressional control to rule Indian Territory; and it refused to consent to transformation of their land tenure with proposals of allotment emerged in the 1890s.

In May of 1885, the Senate committee on Indian Affairs, chaired by Henry Dawes, visited Indian Territory to survey the freedmen's treatment in the nations of the Five Civilized Tribes. Two years later, the U.S. Congress passed the General Allotment Act or the Dawes Act and began the process of dividing Indian Territory into individual lots. In January of 1893, the Dawes Commission began focusing the policy of allotment on the Five Civilized Tribes. Congress authorized the survey of the lands of the Five Tribes in 1895; and by June of 1896, it had empowered the Dawes Commission to hear and determine applications of all persons, including freedmen, applying for citizenship in Indian nations and to enroll the citizens for allotment. The rolls generated by the United States officials who oversaw the division of Indian Territory in the late 1890s serve as the basis for citizenship in the Cherokee Nation today. If individuals can trace their ancestry to an Indian person listed on the Dawes Rolls, then they are

eligible for citizenship in the Cherokee Nation. Despite the passionate protests of past leaders against the U.S. government's involvement in Cherokee citizenship cases, the roll created by the federal government now determines one's membership in the Cherokee Nation.

The official end of Reconstruction in the historical narrative is typically marked by the election of Rutherford B. Hayes and the withdrawal of the last U.S. troops still stationed in the South in 1877. But, Reconstruction for the Cherokee Nation was not over until the official closing of Indian Territory and the establishment of Oklahoma statehood in 1907, which was celebrated with a mock marriage ceremony between a white man and an Indian "princess." The end of Reconstruction for the Cherokee Nation is a romance of reunion with a marriage ceremony that has no place for former slaves. The uniting of a white man and his Indian "princess" signifies a new chapter in the history of native peoples. All sections of the country had been united and the various groups that inhabited the north, south, and west were now all Americans. Native peoples had to find a way to maintain their identity as a member of a native group while white America pushed and pulled them into the mainstream of American society whether they liked it or not.

CHAPTER ONE:
“THE RECONSTRUCTION TREATY OF 1866: IMPORTANCE, IMPACT, & LEGACY”

I.

In the aftermath of the Civil War, the inhabitants of the United States struggled to recreate and reunite their nation during the tumultuous period of Reconstruction. All groups in America, even those outside the mainstream of society, witnessed major changes in the life of the country as well as in their individual lives. With the end of war came the questions of peace and the problems of emancipation and Americans embarked on a mission to reconstruct their nation. Simultaneously, the Cherokee Nation and its citizenry underwent their own process of nation building characterized by the desire to reaffirm their diplomatic relationship with the United States, which would guarantee their sovereignty and the hopeful return of prosperity.

Reminiscent of many border states during the conflict, the Cherokee Nation exhibited a divided loyalty between the Union and Confederacy. This split, however, had deep roots in the removal crisis of the 1830s that had jeopardized the unity of the Cherokee Nation and its leadership when rival factions emerged with very different ideas on how best to deal with the threat of removal. Facing intense pressure from Andrew Jackson’s pro-removal administration, a group of Cherokee men lead by Major Ridge, his son, John, and his two nephews, Elias Boudinot and Stand Watie, negotiated the sale of the Cherokee homelands in Georgia and Tennessee. The majority of the Cherokee people denounced the removal treaty and its signers, and they desperately hoped Principal Chief John Ross would renegotiate the treaty allowing the Cherokee

people to remain in the place of their ancestors. Ultimately unsuccessful, Ross and the Cherokee people were forced west along the so-called Trail of Tears in the winter of 1838. Once in Indian Territory, they struggled to reform their nation under one government that would speak for all groups in Cherokee society. Leaders of the Treaty Party, the pro-Removal leaders who had migrated west, wished to divide the Cherokee Nation into separate factions, but Ross worked tirelessly to ensure the Cherokee Nation existed as one national body politic in the west. Violence erupted after National Party men (as Ross's supporters denoted themselves) carried out an 1829 law, which required death for any Cherokee selling Cherokee Nation lands without consent of the national council. The continued bloodshed between the rival factions prompted the federal government to mediate a treaty of peace between the two groups in 1848. The peaceful coexistence of the National Party and the Treaty Party allowed Cherokee society to flourish in the 1850s, but this truce once again dissolved in the face of mounting pressure from southern states for the Cherokee Nation to sign an alliance with the Confederacy. In one of his final acts as Principal Chief before his death in August 1866, Ross again strove to reunite the Cherokee Nation despite the demands of Confederate-allied Cherokees to split the nation in two in negotiations with the federal government after the war. The Reconstruction Treaty of 1866 was the last time Ross negotiated the future relationship of the US and the Cherokee Nation, and it marked the beginning of the Cherokee Nation's own reconstruction process.

In an effort to show how remarkable and important the Treaty of 1866 was to the post-war Cherokee Nation, we must first examine the intense factionalism among the Cherokee leadership that drove the negotiations with federal officials at the Fort Smith Peace Council and the final negotiations in Washington, D.C. An analysis of the various stipulations of the Treaty of 1866 is crucial to understanding the process of reconstruction in the Cherokee Nation and to

explain why emancipation resulted in major disputes that reverberated through Cherokee country. Although the Treaty of 1866 is a constant point of reference for historical scholarship on the Cherokee Nation after the Civil War, no in-depth analysis of the treaty exists to explain its connection or importance to the history of the Cherokee Nation in the Reconstruction era. While most scholars point to Article 9 of the treaty as the origins of both the past and present struggle of Cherokee freedmen for citizenship rights in the Cherokee Nation, there are several other articles often overlooked in discussions of the treaty which more clearly demonstrate that emancipation had unleashed a problem for the Cherokee Nation with no simple solution.¹ Scholars agree the Treaty of 1866 was the most aggressive attack on Cherokee sovereignty due to its demands of land concessions and the establishment of a territorial government; but many historians do not place this treaty in its proper context.² The federal government had emerged from the Civil War as a much larger and more formidable power that desired more control over

¹ See Daniel Littlefield, *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport, CT: Greenwood Press, 1978). Littlefield's work is the first scholarship to focus on the Cherokee Freedmen from their emancipation to their admission to citizenship in the US. He emphasizes the freedmen's struggle to establish citizenship in the Cherokee Nation in order to demonstrate how that struggle helped the federal government destroy Cherokee autonomy. More recently, Celia Naylor's *African Cherokees in Indian Territory: From Chattel to Citizens* (Chapel Hill: The University of North Carolina Press, 2008), discusses the day-to-day life of the enslaved in the Cherokee Nation and notes the cultural (and sometimes kinship) bonds they shared with their native masters. See also Fay Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2008) for a discussion of how the Cherokee Nation policed interracial marriages. She finds a community at work creating a racial ideology. All of these works point to the Treaty of 1866 as an important document in understanding what is happening in the Cherokee Nation in the postwar, but none of them provide a thorough discussion or analysis of the treaty itself.

² For various discussions on the harshness of the demands of the Treaty of 1866 see William McLoughlin, *After the Trail of Tears: The Cherokees' Struggle for Sovereignty 1839-1880* (Chapel Hill: The University of North Carolina Press, 1993); M. Thomas Bailey, *Reconstruction in Indian Territory: A Story of Avarice, Discrimination, and Opportunism* (Port Washington, NY: Kennikat Press, 1972); Claudio Saunt, "The Paradox of Freedom: Tribal Sovereignty and Emancipation During the Reconstruction of Indian Territory," *Journal of Southern History* 2004 70 (1): 63-94.

the native nations inhabiting its boundaries.³ A thorough investigation of the Treaty of 1866 highlights the intersection of race and nationalism in the postwar Cherokee Nation by showing how unclear Cherokee leaders were on the meaning of freedom and how many of them desired racial separation from their former bondsmen.

II.

In July 1866, Principal Chief John Ross had once again maintained the unity of the Cherokee Nation. Old tensions and new wartime affronts on the battlefield had threatened to divide the Cherokee Nation at the end of the Civil War as Confederate-allied Cherokees demanded their own sovereign nation be carved out of the Cherokee domain. For Ross, holding the Nation together was a crowning achievement, and it would become an enduring legacy after his death in August 1866. In negotiations with the federal government after the war, officials of the Bureau of Indian Affairs used intertribal tensions to push for major concessions from the Cherokee Nation. They sought the full incorporation of former slaves as equal members of the Nation. They also demanded the surrender of tribal lands and acceptance of the establishment of a territorial government in Indian Territory. Intertribal divisions had been greatly exacerbated by the Civil War, but they originated with the Cherokee Nation's removal crisis of the 1830s.

The issue of removal had split the leaders of the Cherokee Nation into two groups with very different plans for how to best meet the national crisis. Major Ridge, John Ridge, Elias Boudinot,

³ For a thorough discussion of the more powerful government that emerged from the Civil War see Eric Foner, *Reconstruction: America's Unfinished Revolution 1863-1877* (New York City: HarperCollins Publisher Inc.: 1988). For the most recent scholarship examining the uniting of the northern, southern, and western regions of the United States after the Civil War see Heather Cox Richardson, *West from Appomattox: The Reconstruction of America after the Civil War* (New Haven: Yale University Press, 2007).

and Stand Watie emerged as the leaders for those Cherokees who believed removal west of the Mississippi River was the best way to preserve the integrity of the Cherokee Nation. These men and their followers became known as the Treaty Party after the removal period.⁴ Born during the early years of America's revolution, Major Ridge came of age fighting American forces and raiding frontier settlements on the southern frontier in the early 1790s. He became active in tribal councils after peace was reached between the Cherokee people and the newly created United States and demonstrated his acceptance of the American plan for civilization as he acquired the trappings and improvements of a small southern planter. His status in the Cherokee Nation steadily increased with his selection as a delegate to Washington, D.C., during the Jefferson administration. Additionally, his military pursuits with the Americans during the Creek War earned him the rank of major, which he adopted as his first name. Major Ridge believed the key to Cherokee survival lay in educating the younger generations in an effort to prepare them for future struggles against American encroachment. To this end, he sent his two eldest children, Nancy and John, to the Moravian school, Spring Place, located in the Cherokee Nation, for instruction in reading, writing, and arithmetic. Ridge's brother, David Watie, also enrolled his son Buck (later called Elias Boudinot after assuming the name of his benefactors) in the mission

⁴ In order to understand the way factionalism in Cherokee leadership affected treaty negotiations in 1866 one must discuss the roots of disagreement that come from the removal era of the 1830s. Since this time period of Cherokee history is not the primary focus of my dissertation project, I have utilized various secondary materials that do address removal to set up the historical context in an attempt to demonstrate why these factions developed. See William McLoughlin, *Cherokee Renascence in the New Republic* (Princeton: Princeton University Press, 1986), chaps. 20, 21; William McLoughlin, *After the Trail of Tears: The Cherokees Struggle for Sovereignty 1839-1880* (Chapel Hill: The University of North Carolina Press, 1993), chap. 1; Theda Perdue and Michael D. Green, *The Cherokee Removal: A Brief History with Documents* (Boston: Bedford/St. Martin's: 2005), 21-24; Thurman Wilkins, *Cherokee Tragedy: The Story of the Ridge Family and of the Decimation of a People* (London: The Macmillan Company, 1970), 247-253. Wilkins provides one of the only studies that focused almost completely on the leading men of the Treaty Party and attempted to understand their motivations for accepting removal as an option for the Cherokee Nation and its people.

school where the child excelled at learning. In 1815, Ridge withdrew his children from the school because of John's ill health. Joined by Buck and his brother Stand, the children were briefly instructed in the Ridge home by an itinerant schoolmaster who proved to be an incompetent drunk. Buck and his brother Stand returned to the Spring Place Mission School, while John and Nancy Ridge were sent to Reverend Cyrus Kingsbury's Brainerd Mission School since it was closer to the Ridge home.⁵

In 1817, the arrival of young divine Elias Cornelius, with connections to the American Board of Commissioners for Foreign Missions, produced major changes in the lives of the young Cherokee men. Cornelius offered to take several select students to the newly opened Foreign Mission School in Cornwall, Connecticut, for the purpose of furthering their education and training them as missionaries, schoolmasters, interpreters, and doctors who would later minister to and serve their native groups once they returned home. Both John Ridge and Buck Watie (now known as Elias Boudinot) traveled to Connecticut to continue their education with advanced studies in geography, rhetoric, and history.⁶ The two Cherokees also met and married two young

⁵ Wilkins, *Cherokee Tragedy*, 3-4, 14-28, 30, 33, 44, 67, 99-101, 103-104. See also, William McLoughlin, *Cherokee Renaissance in the New Republic*, chaps 5 & 7. McLoughlin discusses Major Ridge's role in the revolt of the young chiefs and the creation of the Cherokees national government in early nineteenth century. For an explanation of the plan for civilization, see Robbie Ethridge, *Creek Country: The Creek Indians and Their World* (Chapel Hill: The University of North Carolina Press, 2003), 13-16. Ethridge explains that the plan for civilization was devised by George Washington, Henry Knox, Thomas Jefferson, and other leading statesmen and was intended to assimilate Indians into American society. Assimilation would be achieved by transforming native peoples into yeoman farmers, and sometimes planters, by providing them with both instruction and necessary tools. The main purpose of this plan was to divest Indians of their land to make way for American expansion. For a look at the plan for civilization in Cherokee country, see Theda Perdue, *Cherokee Women: Gender and Culture Change, 1700-1835* (Lincoln: University of Nebraska Press, 1998), chap. 5. For more on the education of John Ridge and Elias Boudinot see, James W. Parins, *Elias Cornelius Boudinot: A Life on the Cherokee Border* (Lincoln: University of Nebraska Press, 2006), chap. 1.

⁶ Wilkins, *Cherokee Tragedy*, 109, 111, 114, 125.

women from local families, which produced much scorn from the local white community.⁷ Upon their return to the Cherokee Nation, the young men quickly emerged as leading figures in the Cherokee community. John Ridge served the Cherokee government in various ways, most importantly as a Cherokee delegate to Washington, D.C., during the late 1820s and early 1830s when the demand for Indian removal accelerated. Elias Boudinot assumed editorial control of the newly created *Cherokee Phoenix* newspaper, which disseminated information to the Cherokee people in both English and Cherokee including the printing of the Cherokee Nation's newly written constitution in the paper's inaugural issue.⁸

With constitutional government came written laws regulating Cherokee society. Most of these laws codified older Cherokee rules, but some were new, in particular, the laws pertaining to intermarriage between Cherokee men and women and racial others, which included whites and blacks. Although John Ridge and Elias Boudinot experienced extreme prejudice in New England due to their marriages to white women, the Cherokee National Council legislated that full citizenship rights in the Cherokee Nation were available for the children of Cherokee men and

⁷ Wilkins, *Cherokee Tragedy*, 145-152. Wilkins provides a detailed description of the uproar associated with both John Ridge and Elias Boudinot's interracial marriages. New England newspapers declared the marriage of John Ridge and Sarah Northrup an outrage and the coupling was also denounced in the pulpit. After the wedding ceremony, Ridge and Northrup were nearly mobbed and made a quick exit from Cornwall, Connecticut, where they faced excited crowds who condemned the pair. The marriage of Elias Boudinot to Harriet Gold added more fuel to the controversy surrounding interracial marriage and the missionary school. Gold's family greatly objected to the match and the board of the school attempted to stop the second interracial marriage but Gold remained determined to marry and serve as a missionary to the Cherokee people. The town of Cornwall erupted in protest to the marriage and Harriett's own brother set her effigy ablaze in the town square and she was made to feel completely isolated from her religious congregation. The Foreign Mission School was closed the following autumn. If the Cherokee men wondered about their status in American society, the outpouring of hostility against the marriage of an Indian man and white woman provided a resounding answer.

⁸ *Ibid.*, 187-194, 196, and 211-217.

white women.⁹ Simultaneously, the National Council also enacted laws forbidding the intermarriage of Cherokee men or women with any persons of African descent whether free or enslaved. Recent scholarship by historian Fay Yarbrough convincingly demonstrates that the Cherokee Nation in the early nineteenth century was a community at work creating a racial ideology with her investigation of the regulation of intermarriage in the Nation. She argues the racial ideology functioned as a survival strategy that Cherokee leaders employed to protect national sovereignty throughout the nineteenth century.¹⁰ The Cherokee Nation's marriage laws, Yarbrough argues, were used to protect Cherokee women from unscrupulous white men while also placing marriages between Cherokees and whites on equal footing with marriages between white men and white women. The 1824 anti-amalgamation law that prohibited Cherokees from marrying slaves or anyone of African descent is an example of Cherokee lawmakers conflating race with social status. Cherokee leaders demonstrated they were moving toward an understanding of race as signifying one's condition.¹¹ The codification of racial difference in Cherokee law would have major implications for the incorporation of Cherokee freedpeople after the Civil War. Racial distinctions were not only important in regulating intermarriage in the postwar Cherokee Nation; they also served as the basis for regulating Cherokee citizenship during the Nation's reconstruction.

The newly formed constitutional government also needed elected leaders in order to function. The first elections held under the Cherokee Constitution at the fall council of 1827 saw thirty-eight-year-old John Ross selected as Principal Chief by a great majority of Cherokee voters and

⁹ For a discussion of this process see chapter six of Perdue's *Cherokee Women*.

¹⁰ Yarbrough, *Race and the Cherokee Nation*, 5.

¹¹ *Ibid.*, 28-29, 32-33.

Major Ridge chosen as one of three counselors to the newly elected Chief Ross.¹² Ross was an active and well-known figure in Cherokee society and politics before his election as the nation's leader. His grandfather, Scotsman John McDonald, had been a Tory agent with the Chickamauga during the American Revolution and his father, Daniel Ross, married mixed-Cherokee Mary McDonald and raised their children like aristocrats. Ross learned valuable lessons from his white father and grandfather about how to cope with white officials that he utilized in the removal battle with the Jackson administration. His dedication to the Cherokee people and his marriage to a Cherokee woman named Quatie cemented his popularity in Cherokee society.¹³ The newly elected principal chief's familiarity with white customs and the English language, in addition to his willingness to adapting Cherokee culture, along with his dedication to resisting removal made Ross a popular choice in a new era of Cherokee diplomacy.¹⁴ Still, Ross heavily relied on the advice and counsel of Major Ridge as he assumed leadership of the Cherokee Nation in 1827, and both men agreed that removal must be resisted at all costs.

The first order of business for the new chief and his advisors was the development of a strategy to fight the growing pressure from both the Georgia legislature and President Jackson's administration to relocate the Cherokee people to new lands west of the Mississippi River. In an effort to stop the federal government and its agents from stirring up favorable feelings among the Cherokee about emigrating west, the National Council enacted legislation to protect the national domain on October 24, 1829. This new law prescribed death for anyone who sold Cherokee lands without the authority of the Cherokee Nation.¹⁵ However, the demand of white settlers for

¹² Wilkins, *Cherokee Tragedy*, 198.

¹³ McLoughlin, *After the Trail of Tears*, 3.

¹⁴ Theda Perdue, *"Mixed-Blood" Indians: Racial Construction in the Early South* (Athens: The University of Georgia Press, 2003), 43.

¹⁵ Perdue, *Cherokee Women*, 155.

Indian lands and the desire of Andrew Jackson, as laid out in his first annual message to Congress, to remove all the southeastern Indians west of the Mississippi further aggravated the situation in Georgia.¹⁶ Both Major Ridge and John Ross understood the futility of armed resistance; instead, Cherokee leaders sought legal justice from the courts of the United States in their efforts to stop the encroachment of Americans clamoring for the land held by the Cherokee. In U. S. Courts, the Cherokee Nation argued against removal with assertions of their sovereign right to adopt a constitution based on the laws of the United States, and their right to govern their own land and peoples with their own laws and elected officials.¹⁷ Simultaneously, the Georgia legislature insisted on its right to abolish the Cherokee Nation and impose its laws on the Cherokee people. The question of the state's right to extend its jurisdiction over the Cherokee country came before the United States Supreme Court in two landmark cases: *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832). In the first case, Chief Justice John Marshall acknowledged Cherokee sovereignty and described the Cherokee Nation as “a domestic, dependent nation,” and in the second case, he stressed the unconstitutionality of Georgia's laws targeting the Cherokee Nation's sovereignty over its lands and asserted the supremacy of federal authority over states' rights in regard to Indian treaties.¹⁸ Despite these rulings, Jackson declared his support of the state of Georgia. In now famous words, Jackson proclaimed ““John Marshall has made his decision; let him enforce it now if he can.””¹⁹

In the face of this ominous pronouncement, Cherokee delegate John Ridge secured an audience with Jackson. He inquired if the power of the United States would be used to enforce the Supreme Court's decision to which Jackson assured him that it would not. Jackson pressed

¹⁶ Wilkins, *Cherokee Tragedy*, 202.

¹⁷ McLoughlin, *After the Trail of Tears*, 1.

¹⁸ *Ibid.*, 1-2.

¹⁹ Wilkins, *Cherokee Tragedy*, 229.

Ridge to return to the Cherokee Nation and begin preparing his people for their forced removal. According to Amos Kendall, one of Jackson's trusted advisors and later a counselor for the western Cherokee, "Ridge left the President with the melancholy feeling that he had [heard] the truth. From that moment he was convinced that the only alternative to save his people from moral and physical death was to make the best terms they could with the government, and remove out of the limits of the States." His father, Major Ridge, and his cousin, Elias Boudinot, agreed that removal was the best hope for the preservation of the Cherokee Nation and its people. With Jackson's support, Georgia continued with its plans to survey Cherokee lands and apportion them into 160-acre plots to be distributed to prospective settlers by lottery once the survey was completed. Throughout the summer and autumn of 1832, the Ridges and Boudinot struggled to gain supporters for emigration to the west; but the majority of the Cherokee people rejected the removal plan and held on to the hope that Principal Chief John Ross could reach a deal with the federal government that would allow them to remain on their lands. Rivalry for control of the treaty-making process erupted between John Ridge and John Ross as each man sought to do what he thought best for the Cherokee people; and Jackson's endorsement of Ridge and his supporters only intensified growing bitterness between the two men and sparked violent confrontations between their partisans.²⁰

A committee of twenty men, including Major Ridge and Elias Boudinot, entered into treaty negotiations with federal agents in the Cherokee capital of New Echota. Lacking authorization from the National Council, they agreed to sell the land of the Cherokee Nation in the east in exchange for \$5,000,000 and land west of the Mississippi River.²¹ John Ross urged the Cherokee people to resist Jackson's efforts to enforce the fraudulent Treaty of New Echota as he worked to

²⁰ Wilkins, *Cherokee Tragedy*, 229, 237, 239-244, 268.

²¹ *Ibid.*, 278.

renegotiate the terms of the removal treaty with the federal government.²² After Congress ratified the Treaty of New Echota in May 1836, at the behest of President Jackson, many Treaty Party members (as supporters of the Treaty of New Echota were called) prepared to remove west, and taking advantage of treaty provisions allowing them to emigrate at their leisure. The Treaty Party supporters were comfortably fixed to move west in their carriages and wagons and were accompanied by their slave property, which proved invaluable in helping them re-establish themselves in Indian Territory.²³ The majority of the Cherokee people, however, resisted removal, until, in 1838, the federal government rounded them up, sometimes at bayonet point, crowded them into stockades, and forced them to march west in the middle of winter. The forced march claimed the lives of thousands of Cherokee people, including Quatie, John Ross's beloved wife.²⁴ Once the Cherokees arrived in Indian Territory, Ross and others worked to reestablish the Cherokee Nation in the west under the constitution and leadership that had existed in the east. National Party members, as this group became known, faced opposition from the Old Settlers, a splinter group that had removed to Indian Territory in the early 1820s, and from members of Ridge's Treaty Party. Although Ross would be able to essentially bring the different factions together into one nation after removal, unity in the west would not come easily.

The divisions between the National Party and the Treaty Party had become personal and often times erupted into violent, bloody, and sometimes deadly disputes. An intense period of violence was kicked off by the assassinations of the Treaty Party leaders, John Ridge, Major Ridge, and Elias Boudinot. In the summer of 1839, supporters of John Ross enforced the terms

²² McLoughlin, *After the Trail of Tears*, 2-3.

²³ Wilkins, *Cherokee Tragedy*, 280, 288. Not only was this relocation much easier than the forced removal the remaining Cherokees faced in 1838, not one of the Treaty Party emigrants died en route to Indian Territory.

²⁴ *Ibid.*, 306-315. Quatie Ross died in route to Indian Territory and was buried in Little Rock, Arkansas.

of the national law requiring the death of any person who sold Cherokee Nation lands without the consent of the Cherokee government. They specifically targeted the leading men who had signed the Treaty of New Echota against the wishes of the majority of the Cherokee people. John Ridge was pulled from his bed and executed by a group of Cherokee men in front of his wife and children. Elias Boudinot was found overseeing the construction of his new home in the western community of Park Hill and was attacked from behind by Cherokee men wielding knives and tomahawks; he died in the arms of his second wife, Delight. Major Ridge was struck down by an ambush on the road as he traveled to Van Buren, Arkansas, to attend to one of his slaves who had fallen ill. Only Stand Watie escaped execution after receiving word of his brother Boudinot's death from a Choctaw man who had been clearing a burial ground within view of the tragedy and was sent to warn him of the danger.²⁵

Afterwards, supporters and kin of the slain leaders sought retribution, and retaliatory killings began. Ross struggled to unify the various groups of Cherokees by calling a people's council in Tahlequah in July 1839. The agenda for the meeting was clear: to stop any further retaliation for the execution of the Ridges and Boudinot, repudiate the Treaty of New Echota, and reunite all factions of the Cherokee Nation, including the Old Settlers and the Treaty Party, into one body politic.²⁶ A new Cherokee Constitution, which now provided for the direct election of the Principal Chief and a Second Principal Chief, was read and adopted by the convention and Ross was again chosen Principal Chief while Joseph Vann, an influential and wealthy Old Settler, was selected Second Principal Chief. The newly elected council of the reunited Cherokee Nation took power as the official government on September 19, 1839.²⁷ Despite Ross's desire for peace,

²⁵ Wilkins, *Cherokee Tragedy*, 322-324.

²⁶ McLoughlin, *After the Trail of Tears*, 19-20.

²⁷ *Ibid.*, 21-22.

violence continued and many outsiders viewed the conflict as a Cherokee civil war. The Bureau of Indian Affairs argued for separation of the groups if compromise could not be reached. For seven years, civil unrest continued in the Cherokee Nation and threatened to permanently divide the Cherokee Nation until the United States negotiated a truce between the rival factions with the Treaty of 1846.²⁸ Working with commissioners from the Polk administration, the factions crafted a new treaty in 1846 that required the National Party's acceptance of the Treaty of New Echota. Also, the Old Settlers, Treaty Party members, and those Cherokee who had evaded removal by hiding in the mountains and relocating to North Carolina would all share in the per capita money distributed as a result of the sale of Cherokee lands in the east. In exchange, Ross retained his position as Principal Chief of a unified Cherokee Nation.²⁹ Cherokee people in the west settled Indian Territory and worked to establish themselves in their new home.

The Treaty of 1846 inaugurated fifteen years of peace and prosperity, which allowed the Cherokee to begin the arduous process of rebuilding their nation. This peace was shattered when tensions flared and the Cherokee people divided over their role in the American Civil War. Questions concerning the role of the Cherokee Nation in what many perceived as the white man's war over slavery split the Cherokee people into the old factions that had originated with the removal crisis. Although slaveholders were in both groups, the Treaty Party members emerged as staunch supporters of the Confederate States of America (CSA) and quickly moved to enlist while Ross and many of his supporters believed neutrality better served Cherokee interests. The newly formed CSA sent emissary Albert Pike, a wealthy Arkansas poet and lawyer, to negotiate treaties with the Chickasaw, Choctaw, Creek, Seminole, and Cherokee residing in Indian Territory. He met with representatives from these native nations who were

²⁸ McLoughlin, *After the Trail of Tears*, 57.

²⁹ *Ibid.*, 51, 57-58.

known collectively as the Five Civilized Tribes, and offered enticing terms for an alliance that included promises of money, political participation, and a recognition of native sovereignty. Sovereignty meant the right to determine citizenship, restrict residency within native nations, reject allotment and statehood, and control over trade in Indian Territory. The Chickasaw, Choctaw, Creek, and Seminole representatives accepted Pike's terms of alliance but the Cherokees refused a Confederate treaty.³⁰

Pressure from officials and citizens in the southern-allied states and the withdrawal of a federal military presence from Indian Territory meant that Principal Chief Ross had to answer repeated calls to choose a side in the conflict. Texans traveled to councils in Indian Territory to plead the case for native nations to join in secession. Since many of its western counties were reluctant to declare secession without the native nations of Indian Territory, Arkansas sent emissaries to the chiefs of the Five Tribes in order to determine their respective stances.³¹ Initially pursuing neutrality, Ross eventually agreed to sign a treaty with the Confederacy in October 1861. Historians agree that Ross entered into an alliance with the south because the federal government had removed all troops from the west to prepare for battle in the east and had stopped payment of tribal annuities, leaving groups like the Cherokees extremely vulnerable and therefore willing to accept the generous terms of friendship from the Confederacy.³² But, Ross also entered into the Confederate alliance because he wanted to maintain his leadership and keep the Cherokee Nation unified. Prior to the official alliance with the Confederate government,

³⁰ Clarissa Confer, *The Cherokee Nation in the Civil War* (Norman: University of Oklahoma Press: 2007), 46-47. Confer's recent work offers a concise summary of earlier scholarship on the Cherokee Nation during the Civil War with the addition of first hand accounts of wartime experiences from various elite Cherokee men and women.

³¹ *Ibid.*, 45.

³² See Confer, *The Cherokee Nation in the Civil War*, 46-47 and McLoughlin, *After the Trail of Tears*, 159, 167.

Stand Watie had offered his services to the Confederate military and had begun enlisting other southern-leaning Cherokees into an armed company. Watie's company represented an internal threat to Ross's leadership and Cherokee national unity that could be best countered by accepting a Confederate treaty.³³

The work of historian Clarissa Confer provides a clear picture of the rising tensions between Ross's National Party and Watie's Treaty Party as each man and his supporters begin readying themselves for war. Treaty Party members saw an opportunity to seize political power from Ross through their service to the Confederacy. After receiving a commission of colonel from Confederate general Ben McCulloch on July 12, 1861, Watie quickly mustered three hundred men into Confederate service under his command.³⁴ A few months later, Ross signed the Confederate treaty on October 7, 1861. He also raised a regiment of Cherokee troops for the Confederacy and appointed his nephew, John Drew, as their commander. William P. Ross, another nephew of the Principal Chief, and Ross's brother-in-law also joined Drew's regiment as lieutenant colonel and adjunct respectively. Confer contends, "Drew commanded mostly full-blood men who had enlisted to defend their nation and were loyal to John Ross rather than to Jefferson Davis."³⁵

Personal grudges and tensions stemming from the era of removal exploded into violence once again. For those in the Cherokee Nation, the Civil War meant depredations and atrocities as the Pins (as Unionist Cherokees came to be called) and Watie's men waged war on each other. The Pins were Cherokee men who supported the Union and John Ross during the war, and they received their name from the pins they wore on their caps and hats throughout the conflict.

³³ Confer, *The Cherokee Nation in the Civil War*, 50.

³⁴ *Ibid.*, 54-55.

³⁵ *Ibid.*, 56-57, 62.

Factionalism that had developed during the removal crisis took on a new element as each side pursued separate national interests. Watie and his followers were staunchly pro-Confederate. They owned slaves, held Southern sympathies and connections, and saw an opportunity to gain political power their minority faction lacked. At the same time, Principal Chief Ross also did all he could to maintain control of the Cherokee government and keep the Nation together as the majority of the people wished. By 1862, Ross had become disillusioned with the Confederate government that failed to offer adequate protection for the Cherokee Nation or supplies for destitute Cherokee troops and civilians. Unlike the troops under Watie's command, John Drew's First Cherokee Mounted Rifles were lukewarm Confederates more interested in protecting their government and homes in the Cherokee Nation than ousting natives still loyal to the US from Indian Territory. Drew and his regiment also had very different ideas than Confederate commanders about what constituted a security threat worth armed conflict. The first major military engagements in Indian Territory proved disastrous for the Confederacy when Cherokee troops deserted the First Cherokee Mounted Rifles after Confederate commander Douglass Cooper insisted they attack a group of loyal Creek refugees led by Opothleyahola, an Upper Creek leader who refused to recognize the Creek treaty with the Confederacy. Many of Drew's men joined forces with Opothleyahola's group and fought with them as Cooper, joined by the Second Cherokee Mounted Rifles under Watie's command, fought and chased the group to the Kansas border.³⁶

The Union Army planned to invade Indian Territory in the summer of 1862 hoping to take advantage of Ross's displeasure with the CSA and the defection of Drew's men. Union troops commanded by Colonel William Weer approached Rose Cottage, Ross's Park Hill Home in the

³⁶ Confer, *The Cherokee Nation in the Civil War*, 59, 62, 73, 78.

Cherokee Nation, having met little resistance on their march south from Baxter Springs, Kansas. At first Ross refused to see Weer since he was technically allied with the Confederacy, yet a letter sent from the Superintendent of Indian Affairs William Coffin assured Ross of the U. S. government's desire to fulfill its treaty obligations with the native nation. To circumvent the Cherokee alliance with the Confederacy, Weer ordered Captain Harris Green to arrest Ross and his family at Rose Cottage. They were immediately paroled, and Union troops escorted the Ross family to Union territory.³⁷ Ross, his wife, and sister-in-law then left Kansas for Wilmington, Delaware. Mary Brian Stapler, Ross's second wife, an affluent Quaker woman he had married in 1844, and her east-coast connections allowed the Ross family to live comfortably at her house in Philadelphia while he represented the loyal Cherokees in Washington, D.C.³⁸

With the exit of Ross from Indian Territory, southern Cherokee leaders moved quickly to elect new principal chiefs and officials in an effort to gain political control over the Cherokee Nation. Stand Watie was elected principal chief and the new council affirmed the Cherokee Constitution of 1839 and all laws made since its ratification and also reaffirmed the Cherokee Nation's treaty with the Confederacy. All deserters from Drew's regiment were declared outlaws and the council passed a conscription bill compelling Cherokee men and boys between the ages of sixteen and thirty-five into Confederate service.³⁹ Watie assumed command of all Southern Cherokees fighting for the Confederacy and mercilessly raided the homes of known Pins. Watie rose to the rank of Lieutenant General in the Confederate forces during the war. Elias Boudinot's son, Elias Cornelius, served as the secretary of the Arkansas secession convention before

³⁷ Confer, *The Cherokee Nation in the Civil War*, 78-79.

³⁸ Ibid., 81. See also McLoughlin, *After the Trail of Tears*, 216.

³⁹ McLoughlin, *After the Trail of Tears*, 207.

enlisting in his uncle's regiment and concluded his wartime service as Indian Territory representative to the Confederate Congress.⁴⁰

In the winter of 1863, Colonel William Phillips, the Union commander of the Indian Home Guard encouraged the loyal Cherokee men stationed with him at Cowskin Prairie on the Cherokee-Missouri border who wished to hold a council in the Nation to affirm they, and not Watie and his followers, were the true government of the Cherokee people. After crossing into Cherokee country, the council re-elected John Ross as Principal Chief and voted to remove Confederate Cherokees from any national offices, thus revoking Watie's claim as principal chief. They renounced the Cherokee treaty with the Confederacy and asserted their continued loyalty to the United States. The Loyal council passed an emancipation act on February 20, 1863, that would free the enslaved people of the Cherokee Nation on June 25, 1863. However this act freed few enslaved people, because most slaves had been removed from the Cherokee Nation and were now refugees along the Red River with their Cherokee masters. The council also agreed the freed slaves lacked rights of citizenship in the Cherokee Nation and would be treated as members of another nation or community who would be allowed to stay in the Nation only as contract laborers. Four delegates were selected to join John Ross in Washington, D.C., to assist him in convincing the Lincoln administration to renew their former bonds of friendship.⁴¹ Once again, the Cherokee Nation divided along factional lines, which the Confederate Cherokee hoped might become permanent this time.

At the close of the war, U. S. officials entered into negotiations with leaders from both factions at a peace council in Fort Smith, Arkansas, which initiated the reconstruction process of

⁴⁰ Confer, *The Cherokee Nation in the Civil War*, 85.

⁴¹ McLoughlin, *After the Trail of Tears*, 208-209, 216, and Confer, *The Cherokee Nation in the Civil War*, 85.

the Cherokee Nation. The northern and southern factions of the Cherokee Nation, as well as those of the other Five Nations, met with commissioners from the Bureau of Indian Affairs to negotiate an end to all hostilities and to make a new treaty with the United States. Negotiations at Fort Smith began a new phase in the relationship between the United States and the Cherokee Nation. The U. S. had emerged from the successful defense of the Union a much larger foe that desired complete control over Indian Territory through an imposition of U. S. statehood on its native inhabitants. The treaty that resulted from continued negotiations in Washington with both Cherokee factions required greater concessions of Cherokee sovereignty and land holdings than Cherokee leaders on either side wished. Congress had been exploring its options in Indian Territory in an effort to decide what was to be done with the area when hostilities ceased, and America's focus shifted west for new sources of opportunities.

In the final stages of the Civil War, Congress debated Senate Bill no. 459, or the Harlan Bill, which had important implications for the reconstruction treaty between the Cherokee Nation and the United States. Senator James Harlan of Iowa, who also served as chairman of the Committee on Public Lands, introduced a bill to institute a civil government that would assume control over the various native governments operating in Indian Territory, arguing that it protected natives from white intrusions and offered a uniform way to govern the territory. Senate Bill no. 459 provided "for the consolidation of the Indian tribes, and to establish civil government in the Indian Territory."⁴² The proposed territorial government would be a confederation of the native nations under direct federal supervision by American officials appointed by the Secretary of the Interior.⁴³ Harlan met resistance to his proposals from Senator Lafayette S. Foster of Connecticut, who proclaimed the bill a major change in U. S. Indian policy. Foster claimed, "It

⁴² *Congressional Globe*, 38th Congress, 2d sess., 1865: 1303.

⁴³ McLoughlin, *After the Trail of Tears*, 217, 219.

changes, I believe, very materially and radically our whole Indian policy. It violates our treaties. It will be very injurious at least to some of the Indian tribes; and worse than all, it will be a stain upon national honor, a breach of national faith.”⁴⁴ Foster argued that the Harlan Bill acted on the presumption that the United States Congress had political control over native tribes, something it had never presumed before. Instead, Foster asserted the sovereignty of native groups in Indian Territory, which included the right to govern their people as they saw fit. Foster believed the United States had always viewed Indian tribes as sovereign over their own internal affairs, but the new policy proposed by Harlan’s bill no longer recognized the various Indian groups as sovereign nations. Instead, tribal governments were something the Congress could politically control.⁴⁵

Foster also reminded the Senate that the Treaty of 1835 required the consent of the Cherokee to a territorial government and he saw no reason to pass legislation before consent was given. In addition, he argued Cherokee consent while war continued was a farce. He highlighted the service of the loyal Cherokees who sent two regiments to the Union Army at a greater proportion in terms of able-bodied men than any other state in the Union. The Senator also believed the Cherokee-Confederate alliance had been forced on the Cherokee leadership because they were threatened by the lack of U. S. support. Although a motion was made to lay aside the Harlan bill until native nations could consent to it, Senator Harlan voiced his objection to postponing the vote because no one on the Senate Indian Committee had any concerns or objections to the bill. He asserted that the bill was intended to protect not oppress natives. In fact, the Senate had

⁴⁴ *Congressional Globe*, 38th Congress, 2d sess., 1865: 1304.

⁴⁵ Annie Heloise Abel, *The American Indian and the End of the Confederacy, 1863-1866* (Lincoln: University of Nebraska Press, 1925), 243.

recently passed a resolution that instructed the committee on Indian Affairs to investigate the possibility of establishing a territorial government in Indian Territory.⁴⁶

Harlan even offered Indian Territory as a possible answer to the question of what the federal government could do with the recently emancipated slaves of the South. The Senator proposed encouraging former slaves to settle in Indian Territory; and Senator James Lane of Kansas argued that the amalgamation of the black and red race would elevate them both. Lane insisted, “that while the amalgamation with the white man deteriorates both races, the amalgamation of the Indian and the black man advances both races.”⁴⁷ The assertion that race mixing is good or desirable ran counter to nineteenth-century racial mores and actually reveals Lane’s own feelings of racial superiority and a desire to separate racial others from the U. S. mainstream. In Lane’s opinion, “nothing can be better calculated to clear the political arena of the question of what shall be done with the black man than to pass this territorial bill, open up this country for him, and he will flock in there and become a useful member of society.”⁴⁸ This was a radical suggestion because it was based on the presumption that native groups would be willing to open their lands to former slaves from all over the south. None of the representatives of the various tribes present at the Fort Smith peace council expressed any desire to incorporate their former bondsmen and women as new citizens in their Indian nations. The Cherokees had passed laws against intermarriage and discouraged Cherokee people from marrying anyone of African descent. At the peace council, the southern Cherokees voiced their opposition to and disapproval of the

⁴⁶ *Congressional Globe*, 38th Congress, 2d sess., 1865: 1304-1305.

⁴⁷ *Congressional Globe*, 38th Congress, 2d sess., 1865: 1021-1024, 1058. Lane’s unusual advice here might also be attributed to his poor mental health. He was appointed brigadier general of volunteers by President Lincoln and saw battle during the war. Apparently deranged and accused of financial irregularities, Lane shot himself on July 1, 1866. He lingered for ten days before succumbing to his wounds on July 11 near Fort Leavenworth, Kansas. He was buried in the City Cemetery in Lawrence, Kansas.

⁴⁸ *Ibid.*

proposal of adopting their former slaves as Cherokee citizens with the same rights as native Cherokees. This was not a group ready and willing to receive former slaves into its fold, not even their own.

Senator Foster pressed the need for Cherokee consent before the U. S. could extend its jurisdiction over the native nation. Remembering the days of Indian removal from his youth, Foster cautioned the Senate not to act rashly and pass legislation before consent was granted.

“Let us pause before we drive these Cherokees from their last earthly resting place—for they have now reached it—to gratify the insatiable desire for land, which, like an evil spirit, seems to possess the minds of our people. You may pass this bill—you may exterminate these Indians and obtain the lands which you solemnly covenanted should be theirs forever—but a day of reckoning will come. It came in fire and blood upon those who drove them from Georgia. Beware lest it come upon us.”⁴⁹

Senator Jacob M. Howard of Michigan voiced his support for Foster’s position on the Harlan Bill. He too believed the bill was a reversal of U. S. Indian policy, and he argued the U. S. Constitution acknowledged the sovereignty of native nations with the provision that only Congress had the power to regulate commerce with Indian tribes as it did for foreign nations and between the states.⁵⁰ James A. McDougall, a Democrat from California, objected to the bill before the vote “as an outrage on one of the best bodies of Indian tribes there is or has been in our country.”⁵¹ Despite the objections, the bill passed the Senate with a final vote of seventeen for and nine against.

One remarkable aspect of the Senate debate is how it foreshadowed much of the future debate that Congress would have over the Reconstruction Acts of 1867. The 38th Congress passed the Harlan Bill while it also debated and passed legislation that produced the Freedmen’s Bureau and the establishment of the Freedmen’s Bank. Although Congressional Reconstruction

⁴⁹ *The Congressional Globe*, 38th Congress, 2d sess., 1865: 1306.

⁵⁰ *Ibid.*, 1310.

⁵¹ *Ibid.*, 1306.

did not officially begin until 1867 with the passage of the Reconstruction Acts, the newly expanded power of the federal government, and of Congress in particular, was felt first in Cherokee country. One of Congress's main requirements of native nations who wished to reestablish their treaty relationship with the United States was the full incorporation of former slaves into the body politic, which meant full and equal citizenship rights. This had not yet been considered as a requirement for the reunion of the rebellious states. Congress tested the waters of black equality and suffrage in Indian Territory with the Indian reconstruction treaties before it extended manhood suffrage to the other U. S. territories in January 1867.⁵²

The Reconstruction Act of 1867 followed on the heels of Congressional action in the territories and was a radical experiment in interracial democracy. Republicans believed that blacks must join the southern body politic and Congressional Reconstruction demanded southern states write new state constitutions that provided for manhood suffrage and that were also approved by a majority of registered voters in the state as a requirement for readmission. The Reconstruction Act of 1867 divided the eleven rebellious states into five military districts and commanders were instructed to employ the army to protect life and property as the process of reconstruction commenced.⁵³ The federal government had emerged from the Civil War as a much bigger foe that was exerting its power over the rebellious states, including Indian Territory. The first use of this new Congressional power is clearly seen in the goals of Senate Bill 459, which served as the model for future treaties signed by native nations in Indian Territory once the war had ended. Native groups entered a new phase in their relationship with the federal government as U. S. officials pushed for more land concessions and challenged the

⁵² Foner, *Reconstruction*, 272.

⁵³ *Ibid.*, 276.

constitutionally recognized sovereignty of tribal governments, especially when they intruded in cases of disputed Cherokee citizenship in the postwar era.

Appointed Secretary of the Interior by Andrew Johnson, former Senator James Harlan instructed the U. S. commissioners sent to reestablish treaty relationships with native groups in Indian Territory to push hard for native leaders to agree to the establishment of a territorial government under federal supervision. Commissioner of Indian Affairs, Dennis Cooley, opened a peace council at Fort Smith, Arkansas, with a lengthy speech condemning the various native groups in attendance for their alliance with the Confederacy and berating them for their treachery against their friends in the United States government.⁵⁴ This council was the first attempt to reestablish the former treaty relationship between the federal government and the native nations of Indian Territory. The irony of this speech is that Cooley actually delivered it to native men who served the Union army for the majority of the war; the southern factions of the various tribes were reluctant to convene at Fort Smith until after they had met with each other, which delayed their arrival to the negotiations with the federal commissioners. Once the southern factions arrived at Fort Smith, U. S. officials became intent on establishing a treaty with both the rebel and loyal factions of each native group. The treaties required the abolishment of slavery, the full incorporation of former slaves as native citizens, land for the relocation of various Kansas tribes, right-of-ways for railroads, and the merging of all tribal governments into one territorial government with federal oversight.⁵⁵

For the Cherokees, the Fort Smith council was an opportunity for Ross and Watie to discuss and debate the future of the Cherokee Nation. Elias Cornelius Boudinot, the murdered Boudinot's eldest son, was the speaker for the southern Cherokee. He purposed splitting the

⁵⁴ Abel, *The American Indian and the End of the Confederacy*, 183.

⁵⁵ McLoughlin, *After the Trail of Tears*, 219.

Cherokee Nation into two separate entities because the animosity between the Unionist and Confederate Cherokees was too intense for a united Cherokee Nation to overcome. Most historians believe Boudinot was intent on destroying the Cherokee Nation and was motivated by his desire to avenge the murders of his kin and gain political power for himself.⁵⁶ Boudinot was ambitious for personal gain, but so were most nineteenth-century men. Although his motives may be questionable, Boudinot still spoke for those Cherokees who did not want to rejoin the Ross faction and accept their old foe's authority as principal chief, fearing that they would never regain their confiscated property or rebuild their economic standing. Yet, John Ross desperately desired that the Cherokee Nation remain united, and he feared that the federal negotiators at Fort Smith favored the southern Cherokees and would cave to their demands for a separate nation. Cooley was ultimately unable to reunite the two groups and only secured articles of peace and an agreement to resume negotiations in Washington, D.C., over the various stipulations required for the reestablishment of treaty relations.⁵⁷

The divisions in Cherokee leadership allowed Commissioner Cooley to play the factions against one other in order to gain greater concessions of land and sovereign rights. On March 30, 1866, Cooley and Superintendent Elijah Sells met with representatives from the northern and southern Cherokee factions in an attempt to resolve the issue of division of the Cherokee Nation. The Ross Party representative, General Ewing, insisted that the Loyal and Confederate Cherokees would be able to live together in peace in a united Cherokee Nation because the leaders of the old feuds were old and dying and the new generation would forget the bitterness of their fathers' and grandfathers' generation. Serving as the southern Cherokee representative,

⁵⁶ See McLoughlin, *After the Trail of Tears*, 221-228 and Abel, *The American Indian and the End of the Confederacy*, 202.

⁵⁷ McLoughlin, *After the Trail of Tears*, 220-221.

David W. Voorhees argued that Ewing's assessment was too optimistic. Instead, Voorhees argued that the domestic struggles of the Cherokee Nation would not end quickly while also voicing disapproval of the Loyal Cherokee's offer to set aside a special section of the nation for the exclusive use of Confederate Cherokees. The southern Cherokees, Voorhees insisted, wanted an actual and final separation that would free them from Loyal Party rule. Ewing skillfully countered Voorhees with tales of good will between Ross and Watie after the Treaty of 1846, and he further argued that problems between the two men and their followers only emerged with the outbreak of war in 1861. He also chastised Cooley and Sells with his insistence that it was not right for the United States to divide the Cherokee Nation at the bequest of the Confederate Cherokees. Ewing reminded the federal officials that a majority of the Cherokee people had remained loyal to the United States and many had also served bravely in the war. "They broke away from the Rebels at Pea Ridge, which was the first opportunity, and fought as bravely as Kansas or Missouri men thereafter on our side. You cannot separate the Nation without wiping out the history of that Western Campaign."⁵⁸

Frustrated by commissioner Cooley's apparent sympathy for the Confederate Cherokees and their demands for division of the Cherokee Nation, Ross and his delegation appealed directly to the President and Congress for a treaty. Cooley used the opportunity to conclude a treaty with the southern Cherokee delegates on June 13, 1866. They agreed to concessions for railroad right-of-ways, to sell large pieces of tracts known as, the Cherokee Strip, the Cherokee Neutral Lands, and the Cherokee Outlet. The treaty also required that former slaves receive civil and political rights in the Cherokee Nation, although many southern Cherokee delegates had devised a plan to

⁵⁸ *Ratified treaty no. 358, documents relating to the negotiation of the treaty of July 19, 1866, with the Cherokee Indians* (July 19, 1866), 16. University of Wisconsin Digital Collection, <http://digital.library.wisc.edu/1711.dl/History.IT1866no358>. Last accessed March 7, 2012.

remove blacks from the nation by granting them their own land in the Cherokee Outlet. Finally, they conceded to the establishment of a territorial government supervised by American officials appointed by the Interior Department. Cooley also agreed to Confederate Cherokee demands to set aside an autonomous country within the Cherokee Nation that had a separate government of their own elected officials and funded by their proportion of all tribal funds. Southern delegates immediately informed Stand Watie and his followers to move into the Canadian District, which lay southwest of the Arkansas River and extended northward to the Creek border. Meanwhile, Cooley had sent the treaty to President Johnson.⁵⁹

For reasons that are not clear, Johnson never sent the treaty with the southern Cherokee to Congress, but the possibility that he would do so was enough to push the Loyal Cherokees to try to reestablish a treaty relationship with the federal government on their own terms. Determined to stop the division of the Cherokee Nation, Ross met with Cooley and yielded to many U. S. stipulations. Although Ross was in ill health and had been confined to his bed since April, Cherokee delegates kept him well informed throughout the negotiations, and he personally approved every clause of the final treaty. Cooley agreed not to divide the nation and conceded that the southern Cherokee would only receive semiautonomous control over the Canadian District; the Confederate Cherokees could elect their own officials, but they must obey laws passed by the majority of the National Council and they would have no control over Cherokee Nation lands or funds. In exchange for this, Ross reluctantly conceded to U. S. demands to give citizenship to former Cherokee slaves, to repeal the confiscation laws his Loyal Council passed during the war, to provide compensation to former rebel Cherokees whose improvements were seized, and land concessions for resettlement of Kansas tribes as well as railroad right-of-ways.

⁵⁹ McLoughlin, *After the Trail of Tears*, 224-225.

Ross also agreed to sell the Neutral Lands but he refused to sell any portion of the Cherokee Outlet. He regained control of the annuities of Cherokee Nation funds that had been frozen by the federal government during the war in addition to immediate payment of \$150,000 in back annuities put towards the payment of the Cherokee national debt. The U. S. also agreed to pay any bounties, pensions, or pay arrears due to Loyal Cherokees who served in the Indian Home Guards or their widows. Ross also consented to the establishment of a district court within the Cherokee Nation, but he carefully crafted the clause concerning the territorial government to require the consent of all the Indian tribes in the territory before it could be officially established. Complete amnesty was granted to all Cherokees on both sides of the conflict for crimes committed during the war in an effort to ease southern Cherokee fears. Ross, his Loyal delegates, and U. S. officials signed this reconstruction treaty on July 19, 1866; and the Senate ratified it on July 27, 1866. Four days later, John Ross died.⁶⁰

With the signing of the Treaty of 1866, the Cherokee Nation entered the process of reconstruction that was just getting underway in southern states. The treaty provides a window into the desires and demands of both the Cherokee Nation and the United States for the future of the Cherokee people in Indian Territory. Cherokee leaders wished to return to the pre-war status quo: annual annuities from the federal government, protection against intruders, and other items specified in previous treaty stipulations, specifically self rule over internal affairs and retention of the Cherokee domain in common. The United States and the Bureau of Indian Affairs, however, pursued goals of consolidating the various groups in Indian Territory under one civil government, strengthening congressional control over the territory, and extending the jurisdiction of federal courts into the area. The new Indian policy practiced by the United States in the post-

⁶⁰ McLoughlin, *After the Trail of Tears*, 226-227.

war era was intended to prepare Indian Territory for eventual statehood; and to extend the reach of federal power and control over “domestic, dependent nations” once and for all.

The most influential scholarship that investigates the Cherokee Nation during the postwar period reduces Cherokee factionalism to a contest between “traditional full bloods” versus “acculturated mixed bloods.” The division between the two groups is portrayed as one of class, as well, with wealthy, educated, and acculturated Cherokees with familial and economic ties to white Americans on the one hand versus the poor, English illiterate, dirt farmers who clung to the rituals, rules, and beliefs of the Cherokee past on the other.⁶¹ The term “mixed blood” or “full blood” is most often used to describe the differences between the two competing factions in the Cherokee Nation, but these are tricky terms to clearly define.⁶² While they denoted a person’s mixed racial parentage, they also distinguished between those Cherokees who spoke and reasoned in the Cherokee language from those who utilized English as their primary language. These terms have both racial and cultural meanings but historians are not always careful about highlighting what these terms meant to the Cherokee people who used them to identify themselves and others in their cultural group. This simplification of the complexities of Cherokee society obscures the similarities these two groups shared and results in a history that labels one

⁶¹ See McLoughlin’s *After the Trail of Tears*, especially chapters one through eight, 4-6, 13, 17, 20, 23-33, 44-48, 54-57, 61-63, 125-26, 173-75, 185-87, 219-21, 223-35, 245-51, 261-63, 279-81, 307-14, 316, 327-28, 361-66. McLoughlin’s work, while admitting the complexity of the motivations and actions of the various members of each faction, reduces the conflict to fight between “traditional Cherokee dirt farmers” and “mixed blood Cherokee slaveholders” with some degree of white intermarriage in their families. When the personal histories of various supporters of each group are investigated this simple dichotomy proves false. Both factions included wealthy slaveholders and poor, subsistence farmers.

⁶² The terms “mixed blood” and “full blood” derive from nineteenth-century ideas on race and biological descent wherein one’s blood could actually be “mixed” or “pure.” We now know that biological descent is governed by genetics, but even today the terms persist, with the same “traditional” and “progressive” connotations. Cherokee people used these labels to denote one’s racial group, but the labels also applied in terms of how much a person had assimilated with American society and white culture.

group as villains and the other as heroes. Both factions included wealthy, educated, slaveholders as well as poor, English illiterate, subsistence farmers, and both sides included people with mixed racial parentage and those whose parents were both “full blood” Cherokees. The divisions in the Cherokee Nation are understood best when viewed as two groups with competing visions of the future of the Cherokee Nation.⁶³ Both factions desired Cherokee national sovereignty, which meant Cherokee control over all internal affairs, and the continued separation of the Cherokee people from mainstream America; they just had different ideas and beliefs about how to achieve these goals.

Although they are described as “mixed-bloods” both the Ridges, Boudinot, and Watie were fluent in Cherokee and only some of them were products of mixed race unions. Historians have portrayed this group on a broad spectrum, from traitors of the Cherokee Nation to misunderstood progressive thinkers. But, the Treaty Party is viewed better as a group within Cherokee Society whose membership felt they had the best idea or path the Cherokee Nation should take in the face of constant pressure from Americans for their removal. They were proponents of education within the Cherokee Nation because they believed this would help the Cherokees resist America more effectively. Their personal economic interests cannot be overlooked in their desire to support removal to the west; but they did not see themselves as traitors to the Cherokee Nation.

The majority of the Cherokee people did not favor removal and resisted it until they were forced west on the Trail of Tears. Scholars present John Ross as the defender of “full bloods” and often compare him to Abraham Lincoln because of his desire to keep the Cherokee Nation

⁶³ The idea to view these factions in a new light comes from James Taylor Carson’s, *Searching for the Bright Path: The Mississippi Choctaws from Prehistory to Removal* (Lincoln: University of Nebraska Press, 1999). Carson examines the adaptation and evolution of the Choctaws as they dealt with the trauma of contact. Instead of labeling one approach as progressive and the other as traditional, Carson pushed scholars to consider that these approaches to contact and white encroachment were just different paths for the Choctaws to follow into the future.

intact. In this telling, Ross was a “mixed blood” and rarely spoke Cherokee; yet he was the people’s hero, who resisted removal until the bitter end. For historian William McLoughlin, Ross’s popularity came from his ability to maintain the loyalty of the “full-blood” majority while simultaneously encouraging the “mixed blood” minority and intermarried whites to develop the nation’s resources to the fullest extent. McLoughlin also stresses that Ross appealed to Cherokee consensus and regularly called the entire nation together to make decisions.⁶⁴ Like the Treaty Party, the group represented by John Ross also had a vision for the Cherokee Nation, but it desired to maintain the Nation’s eastern homelands at all cost. Unlike the Treaty Party, the majority of Cherokees did not believe that removal was the only or best option for the Cherokee Nation in the face of American encroachment.

Despite the bitter divisions that persisted among the Cherokee people, the majority of scholars ignore the fact that the leaders of both factions agreed on Cherokee sovereignty and both factions wanted to remain a nation within a nation with the power of self-rule. The Cherokees continually worked together to that end in the postwar period despite previous disputes over removal and the Cherokee Nation’s divisions during the Civil War. Emancipation posed one of the biggest problems in the postwar period as leaders of the Cherokee Nation struggled to understand what freedom meant for themselves as well as their former slave property. Each side was unsure of the role their former slaves would play in the reconstructed Cherokee Nation. Giving voice to this uncertainty, Elias C. Boudinot wrote his *Uncle Stand* to inform him that the Loyal Cherokees had succeeded in their negotiations and the treaty with the southern Cherokee would not be ratified. “We’ve been beaten;” Boudinot wrote, “that is to say

⁶⁴ McLoughlin, *After the Trail of Tears*, 227-228.

we have not been successful in securing an absolute separation.”⁶⁵ He believed the southern Cherokees should accept the treaty Ross had made because “it does not commit [the southern Cherokees] to anything.”⁶⁶ Boudinot succinctly explained the stipulations of Ross’s treaty, which granted amnesty, voided the confiscation laws passed during the war, and with the U. S. District Courts, freed the southern Cherokee from Ross’s jurisdiction in civil and criminal cases. He closes the letter with another benefit to accept this treaty; Ross and the Loyal Cherokee would “shoulder all the responsibility of the negro matter.”⁶⁷ The problem of freedom would become a constant source of tension in the postwar relationship between the United States and the Cherokee Nation as well as a major source of internal turmoil in Cherokee society because no one was exactly sure what emancipation meant for the Cherokee Nation and her people.

III.

The Fort Smith council served as the starting point for federal negotiators and Cherokee leaders to begin sketching the outlines for the future of the Cherokee Nation in postwar Indian Territory. Despite the desire of many former Confederate Cherokees, the Cherokee Nation was not divided into two separate entities, and the reunited nation had to hammer out the details of its future relationship with the United States government. What became increasingly clear in the ensuing treaty negotiations was that the federal government was eager to place the Cherokee people on the road to eventual U. S. statehood and that Cherokee delegates from both factions

⁶⁵ Edward Everett Dale and Gaston Litton, eds., *Cherokee Cavaliers: Forty Years of Cherokee History as Told in the Correspondence of the Ridge-Watie-Boudinot Family* (Norman: University of Oklahoma Press, 1995), 247.

⁶⁶ Ibid.

⁶⁷ Ibid.

were just as determined to resist their nation's incorporation into the United States. Despite other divisions, Cherokee leaders were unified in their belief that the federal government owed the Cherokee Nation its former sovereign status as repayment for their devotion and misery during the conflict.⁶⁸ The Treaty of 1866, accepted and ratified with amendments in July 27, 1866, left the question of sovereignty ambiguous and became the touchstone for all future disputes between the Cherokee Nation and the federal government during the era of Reconstruction.

The treaty began with a declaration that the Cherokee treaty with the Confederate States of America was void and a statement of amnesty "for all crimes and misdemeanors committed [sic] by one Cherokee on the person or property of another Cherokee, or of a citizen of the United States" during the rebellion.⁶⁹ Laws confiscating Confederate Cherokee property passed during the war by the Loyal Council were repealed and former Cherokee Confederates had their property restored and were compensated from the Cherokee Treasury for any lost improvements. Despite Union Cherokee service, the federal government viewed the entire Cherokee Nation as part of the rebellion and ignored the fact that many Cherokees were supporters of and fighters for the Union. Still, the treaty did provide amnesty for any acts taken to suppress the rebellion in Indian Territory. Thus, neither side faced persecution for the robbery, violence, and intimidation they had inflicted on one another during the war. These stipulations in the treaty highlight the fact that the desire to establish peace and reconciliation in the Cherokee Nation was at the top of the list for both federal and Cherokee officials.

In an effort to maintain peace between the factions, Article 4 of the treaty established the Canadian District as a haven for Cherokee Confederates and their former slaves, as well as all

⁶⁸ Andrew Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture, 1830-1900* (Lincoln: University of Nebraska Press, 2004), 87-88.

⁶⁹ Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties* (Washington, D.C.: G.P.O., 1975-1979), 943.

free blacks who resided in the Cherokee Nation prior to the outbreak of war. Article 4, then, effectively limited the areas in which former Cherokee bondsmen and freedmen “who resided in the Cherokee Nation prior to June 1, 1861,” could reside. Article 5 provided those choosing to reside in the specified districts in Article 4 with the right to elect all local officers and judges and the “rights and privileges of other Cherokees who may elect to settle in district.”⁷⁰ Article 5 also prohibited any rules and regulations that discriminated against residents of the district. These articles provided protection for both former Confederate Cherokee and Cherokee bondsmen, groups that could possibly face discrimination from Cherokee officials. It is clear from this stipulation that Confederate Cherokees were worried about a harsh backlash from Unionist Cherokees who staunchly supported Principal Chief John Ross and who believed that the minority faction that sided with the Confederacy were motivated by their own self interest rather than Cherokee national interests.

Article 5 also protected Cherokee freedmen and other black inhabitants from discrimination arising from their former condition of servitude or their race: “And should any such law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly or injuriously in said district, he [the President] is hereby authorized and empowered to correct such evil, and to adopt the means necessary to secure the impartial administration of justice,” a power that also included the fair and equal distribution of Cherokee national funds.⁷¹ Much as Radical Reconstruction had done in the South, the federal government committed itself to protecting Cherokee freedmen. The expanded role of the president was a new element of postwar treaty stipulations, but the increased power of the federal government was felt also in Article 7, which extended the jurisdiction of U. S. courts into Indian Territory. It

⁷⁰ Kappler, ed., *Indian Affairs*, 943.

⁷¹ *Ibid.* 944.

called for the creation of a U. S. district court in Indian Territory and specifically placed the Canadian district under its jurisdiction. Until the court was created, however, the U. S. District Court in Fort Smith, Arkansas, would “have exclusive jurisdiction of all causes, civil and criminal, wherein an inhabitant of the [Canadian] district hereinbefore described shall be a party, and where an inhabitant outside of said district, in the Cherokee nation shall be the other party.”⁷² The factionalism of the Cherokee leadership at the end of the war opened an opportunity for the federal government to invade areas of Cherokee sovereignty previously outside of its jurisdiction, which worked to push the U. S. agenda of federal territorialization over Indian Country.

Articles 11 and 12 demonstrated the desire of United States officials to put the Cherokee Nation and the rest of Indian Territory on the fast track to eventual statehood and full incorporation into the United States. Article 11 required the Cherokees to assent to the introduction of railroads into their lands, one line running east to west and one line north to south. The requirement of native consent to the railroad was reminiscent of Senator Foster’s argument against the Harlan Bill in 1865. Foster had stressed the need for native consent before Congress imposed its will through legislation consolidating the native governments in Indian Territory. Much like American policy, capitalistic endeavors such as railroad construction also needed citizens’ consent before beginning operations. Although native sovereignty was being challenged by a more powerful U. S. government, sovereignty for native nations still remained an acknowledge fact that America had to recognize. In Article 12, Cherokee leaders agreed to the creation of a joint council of the Five Tribes. Of particular note is the general council created under this article was given the “power to legislate upon matters pertaining to the intercourse and

⁷² Kappler, ed., *Indian Affairs*, 944.

relations between the Indian tribes and nations and colonies of freedmen resident in said territory.”⁷³ The United States government intended for this general council to serve as the early form of a territorial government with consolidated power over all the tribes in Indian Territory. But, native peoples had their own ideas about the purpose of the general council. The council quickly became a tool of pan-Indian unity that would later help the various groups collectively resist the pressure of allotment in the late nineteenth century.

Historian Andrew Denson has investigated the success of this general council with a thorough discussion of the Okmulgee Council, which met in December 1870, as tribal leaders from various native nations debated the idea of chartering a new government for Indian Territory and wrote a new constitution for Indian Territory. Denson finds that native leaders did not want a territorial government that followed the stipulations of American territorial law. Instead, they created a constitution for an independent confederacy of the tribes residing in Indian Territory. According to Denson, “While the federal government tried to make the council a mechanism by which the territory’s special status would be dismantled, council members attempted to perfect that status through the new body.”⁷⁴ According to Denson, the Okmulgee Council harkened back to prewar intertribal councils conducted in an effort to establish common procedures on matters such as criminal justice, tribal citizenship, and relations with the United States. The constitution the Okmulgee Council created proposed an alternative to a U.S. territorial government that recognized the independence of the various tribes under its jurisdiction while also establishing a tribal federation for Indian Territory largely independent of Washington, D.C. The Okmulgee constitution was forwarded to the United States Congress who returned a reformulated constitution more in line with U. S. territorial goals that ultimately rejected the plan outlined in

⁷³ Kappler, ed., *Indian Affairs*, 945-946.

⁷⁴ Denson, *Demanding the Cherokee Nation*, 121-122.

the constitution the Okmulgee Council drafted. Denson contends that despite the failure of the Okmulgee Council's proposed constitution, tribal leaders continued to meet once a year for the next five years. During this time, the council became a new instrument for expressing tribal opposition to territorialization, the allotment of Indian land, and other policy initiatives that threatened Indian independence and nationhood.⁷⁵

In addition to the creation of a territorial government, the Treaty of 1866 required the Cherokee people to cede large portions of their national lands to the federal government including the Cherokee Neutral Lands in southeastern Kansas, as well as the Cherokee Strip. Cherokee negotiators also agreed to the settlement of other Indian groups in the Cherokee Outlet in exchange for payment to the Cherokee Nation's government. Article 15 described the process of incorporation for other Indian groups. Once they had given up their tribal organization and contributed to the Cherokee Nation's national fund they were incorporated on equal terms in every respect with native Cherokee citizens. Other native groups had the option to maintain their tribal organization if they desired as long as it did not conflict with the laws and constitution of the Cherokee Nation. The Cherokee leadership, however, agreed that only "civilized Indians, friendly with the Cherokees and adjacent tribes" could settle in the Cherokee country.⁷⁶ This excluded many Plains tribes, whom the Cherokee government did not consider civilized enough for citizenship in the Cherokee body politic.

What is most striking about Article 15 is the fact that native groups could pay either to become Cherokee citizens or to maintain their own separate tribal organization as long as it did not conflict with the laws and constitution of the Cherokee Nation. Although this was a radical departure from the process of adoption or incorporation of other native peoples practiced by the

⁷⁵ Denson, *Demanding the Cherokee Nation*, 123, 127-129, 132.

⁷⁶ Kappler, ed., *Indian Affairs*, 947.

Cherokee Nation in the east, it reveals the determination of the Cherokee people to resist strenuously the demands of a more powerful United States government that was striving to consolidate its control over western tribes. It was also a shrewd way to increase the funds of the Cherokee Nation while maintaining control over the process of incorporating new citizens into the Cherokee body politic.

The ceding of land by treaty was nothing new to the Cherokee-U.S. relationship; however it was the first time the Cherokee Nation was forced to give up land it had received in Indian Territory after its forced removal. This loss was representative of what the United States had in store for the Cherokee people during the era of allotment at the end of the nineteenth century. Payments dealt out on a per capita basis for the sale of these lands during allotment would become a point of dispute between the Cherokee Nation and former Cherokee slaves who would be denied their share of the per capita payments. Article 20 revealed the true intention of federal negotiators who wished to prepare Indian Territory for the future allotment of land to individual owners. “Whenever the Cherokee national council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them, at the expense of the United States.”⁷⁷ The United States had shown its hand with this article, placing allotment on the table. The Cherokee Nation would never request allotment and it is unlikely federal negotiators ever thought that the Cherokee people would do so; however, this article opened the door to allotment in severalty, in which tribal lands were divided into individual lots. The Dawes Commission carried out this process for Indian Territory in the 1890s.

⁷⁷ *Treaties Between The United States of America and the Cherokee Nation, From 1785* (Tahlequah, Cherokee Nation: National Printing Office, 1870), 131.

At the time of the signing of the Treaty of 1866, Article 9 was the most controversial of the various requirements for the Cherokees. It granted all “freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendents, shall have all the rights of native Cherokees.”⁷⁸ The article also stated that slavery was no longer permitted in the Cherokee Nation unless as punishment for a crime. But, this article did not define explicitly what rights native Cherokees enjoyed that former slaves could now exercise. Since native Cherokees had the right to use the communal land held by the Cherokee Nation, receive per capita funds often awarded by the national Treasury, and participate in local and national Cherokee government, the article implied that former Cherokee slaves and free blacks living in the Cherokee Nation before the war would also enjoy these rights. But, as the process of reconstruction continued in the late nineteenth century, many Cherokee freedpeople found they could not exercise the rights of native Cherokees. They increasingly turned to the federal government for help in securing and exercising their citizenship rights. Most scholarship points to Article 9 as the source of conflict between the U. S. government and the Cherokee Nation in the postwar period, and some argue that problems over freedmen citizenship created inroads in Cherokee sovereignty that federal officials quickly exploited in their quest to end tribal sovereignty and bring Indian Territory into statehood.⁷⁹

⁷⁸ Kappler, ed., *Indian Affairs*, 944.

⁷⁹ See Daniel Littlefield, Jr., *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport, CT: Greenwood Press, 1978). Littlefield argues that the struggle for citizenship begun by many former slaves helped lay the groundwork for inroads upon Cherokee sovereignty and autonomy over internal affairs and ultimately directly contributed to the dissolution of the Cherokee Nation and the opening of Indian Territory to white settlement. He

Cherokee freedmen, unsure of their citizenship status under Article 9, often appealed to the Department of Interior fully to enforce the requirements of the article. In one example, twenty-eight men from various districts of the Cherokee Nation petitioned the Secretary of the Interior for assistance after Cherokee officials rejected their claims to citizenship. According to the petition, many of the men had “married enslaved women who under the Cherokee Treaty of 1866, Sec. 9 have all the rights and privileges of native Cherokees.”⁸⁰ Although they had followed the proper procedure for intermarriage with a Cherokee women and had been allowed to vote and sit on juries, the men had been declared intruders by the Cherokee Citizenship Council created in the 1870s to hear and decide cases of questionable citizenship. They believed the citizenship council had ruled against them because of their race and did not recognize them as equal to white U. S. citizens who had intermarried with Cherokee women. The petitioners requested the intervention of federal officials to enforce the requirements of Article 9. As this example shows, it was clear Cherokee leaders were unsure exactly what Article 9 meant for former slaves and their spouses.

The Reconstruction Treaty of 1866, and especially Article 9, set the tone for the future relationships between the federal government and the Cherokee Nation. It also served as a source of contention between Cherokee officials and Cherokee freedmen who were often denied all the rights of native Cherokees despite the guarantees in Article 9. The Treaty of 1866, in fact,

places the freedmen at the center of the story of the destruction of the Cherokee Nation in the late nineteenth century.

⁸⁰ William Hudson and others to Secretary of the Interior, March 31, 1880, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 3, folder 1880 C602, National Archives Building, Washington, D. C. This is one of many petitions from freedmen requesting federal help in securing their citizenship rights in the postwar Cherokee Nation. Freedmen challenges to racial exclusion is explored in greater detail in chapter four of this project.

continues to be a source of conflict today between the Cherokee Nation and descendants of Cherokee freedmen denied citizenship in the nation they claimed as their own.

Because of the dispute still raging between the Cherokee Nation and Cherokee freedmen and their descendants, scholarly discussions of the Treaty of 1866 typically focus solely on Article 9. While Article 9 did explicitly grant former slaves rights equal to those of native Cherokees, it did not clearly delineate if this would include civil, political, or economic rights exercised by native Cherokee citizens. This allowed Cherokee leaders considerable room to maneuver in cases of contested citizenship during the Cherokee Nation's reconstruction. In order to fully understand the nineteenth-century Cherokee Nation's interpretation of Article 9, a closer look at Articles 4, 5, and 7, as well as Article 12, Section 3 is required. Former slaves of Cherokee masters were confined to the Canadian District of the Cherokee Nation in Article 4; and this district was also home to southern Cherokees who would now employ their former bondspeople as free laborers, echoing patterns in the south during Reconstruction. Articles 5 and 7 provided guarantees for local political participation in and federal control of law and order for those who lived in the district, all of which were designed to protect them against discrimination at the national level. It is interesting that Loyal Cherokees who agreed to these stipulations with the federal government believed Cherokee freedmen required the same separation and protection from the Cherokee majority as their former Confederate Cherokee enemies. This implies that the Cherokee people had little desire to fully incorporate former slaves living in their nation.

A revealing nineteenth-century Cherokee attitude is found in Article 12, Section 3, which detailed the rules and regulations for a general council consisting of representatives from all nations in Indian Territory. The US Congress offered to fund a consolidated government run by native leaders who would "have power to legislate upon matters pertaining to the intercourse and

relations between the Indian tribes and nations and colonies of freedmen resident in said territory” as well as jurisdiction over “the arrest and extradition of criminals and offenders escaping from one tribe to another, or into any community of freedmen.”⁸¹ The agreement demonstrates with the phrase “colonies of freedmen” that both white and Cherokee negotiators believed that freedmen would build separate communities segregated from the Cherokee who were allowed to participate in Cherokee national affairs. The regulation of freedmen to settlement in the Canadian District with their former masters was just the beginning of the restrictions and prohibitions that the Cherokee freedmen would face following the end of the Civil War.

The decision to regulate where former Cherokee slaves could live in the Cherokee Nation is a strong indication that Cherokee leaders were uncomfortable with the idea of allowing the formerly enslaved people to live and roam in the Cherokee Nation freely. Although they conceded that the prevailing idea that emancipation meant slaves had now become citizens, it was unclear exactly what freedmen citizenship meant in terms of the political, economic, and civil rights freedmen would enjoy in the postwar Cherokee Nation. Of course, the American nation was facing similar problems as federal officials attempted to reunite North and South. The increasingly harsh treatment of Cherokee slaves after removal later contributed greatly to Cherokee perceptions of what rights their freedmen could have in the post-war Cherokee Nation. However, the most pressing thing facing the Cherokee Nation after the Civil War was not the

⁸¹ *Treaties Between The United States of America and the Cherokee Nation, From 1785, 125.*

status of their former slaves but, rather, the necessity of feeding the Nation's citizens and beginning the long process of economic recovery.⁸²

IV.

During Reconstruction, the U.S. government imposed emancipation on groups in Indian Territory with a series of treaties in 1865 and 1866 that required the freeing of former slaves and their incorporation, on equal footing, into indigenous nations. Claudio Saunt convincingly argues that this imposition of civil and political rights for former slaves of the Five Civilized Tribes was part of a larger project to assert the supremacy of the national state and to enlarge federal citizenship at the expense of relationships between slaves and masters, citizens and states, and Indians and indigenous governments. In the case of the Cherokees and their former bondsmen, the federal government went one step further than just defining American citizenship to imposing equal citizenship for ex-slaves. In an effort to retain Cherokee national sovereignty, leaders of the Cherokee Nation actively resisted the incorporation of those former slaves they felt did not meet the requirements for citizenship as outlined in the Treaty of 1866. For the Cherokees, the U. S. government's enforcement of emancipation and equal citizenship was viewed as a violation of treaty rights and an attack on their right to self-government. As seen in the various letters, memorials, and other protests against the incorporation of former slaves explored in this project, it is clear Cherokee leaders believed many freedmen had not fulfilled the terms of membership required by Article 9, and Cherokee leaders repeatedly stressed their sovereign right as members of the Cherokee Nation to determine who was or was not a fellow

⁸² Sue Hammond, "Socioeconomic Reconstruction in the Cherokee Nation, 1865-1870," *Chronicles of Oklahoma* 56, no. 2 (1978): 161.

citizen. As Saunt observes, “The dilemmas of freedom—the struggle of indigenous peoples and their ex-slaves to negotiate the meaning of freedom and its relationship to tribal sovereignty—are largely unexamined.” In addition, the connection between racism and Indian nationalism is unexplored in both Native American history and Reconstruction history.⁸³ This study of the process of reconstruction in the Cherokee Nation attempts to highlight the intersection of race and nationalism in the postwar Cherokee Nation.

An examination of the process of reconstructing the Cherokee Nation confirms the historical consensus that the federal government emerged from the Civil War a much larger and powerful government. U. S. officials defined American citizenship for the first time and also began inserting the federal government into the process of defining the citizenry of native nations in Indian Territory⁸⁴ Cherokee leaders developed new ways to maintain their nation’s sovereign status and often employed appeals to white Americans’ sense of racial order in their disputes with federal lawmakers over the enforcement of Article 9. Emancipation and equal citizenship was a key stipulation in the 1866 Reconstruction treaty, but a six-month time limit became a major source of contention between the Cherokee freedmen and their former Cherokee masters. Many freedmen, often unaware of the time limit for acquiring citizenship, did not make it back to the Cherokee Nation in time to claim their rights; and they generally complained that they were discriminated against due to their African ancestry and not their inability to fulfill the requirements of Article 9.⁸⁵

⁸³ Saunt, “The Paradox of Freedom,”: 63, 66-67, 71-73, 91, and 94.

⁸⁴ See Foner’s *Reconstruction*, which thoroughly chronicles the rise of the increasingly powerful federal government after the Civil War. He also talks in depth about US officials grappled with defining American citizenship for the first time.

⁸⁵ In the multiple freedmen letters and petitions viewed in chapter three and four of this project reveal that most freedmen who sought help from the federal government in the postwar period believed they were discriminated against because of their race. They also repeatedly stressed

The Cherokee Nation demonstrated its citizens' awareness of and desire to maintain separateness from their former bondsmen with revised law codes that sought to limit the rights of African Cherokees in the postwar Nation. In 1868, the Cherokee Nation issued its revised laws. All of the slave codes were removed, but some discriminatory statutes remained on the books. The restriction of the intermarriage of a free male or female with "any person of color" was prohibited and those violating the statute were punished with up to fifty lashes.⁸⁶ Newly established regulations for hiring help within the Cherokee Nation explicitly stated that work permits would be issued to "white wage workers" who could not be employed without it.⁸⁷ African American laborers were not mentioned in this law, which implies they were deemed unacceptable as permit laborers in the postwar Nation. Cherokee officials amended national laws and the constitution again and reissued the new rules in 1892. The Nation now acknowledged that all freed people and slaves living in Indian Territory before the Civil War, as well as those who had returned within six months of the Reconstruction Treaty of 1866, were recognized as Cherokee citizens, but discriminatory practices that reflected the Cherokees' perception of the inferiority of blacks remained.⁸⁸ One of the clearest examples of this was the establishment of a "colored high school" in the Cherokee Nation. The salaries and the funding for the education of the freedmen's children was significantly less than the funding for the Cherokee seminaries and elementary schools that educated Cherokee children.⁸⁹

they were unaware of the six month limit required by Article 9 and returned to the Cherokee Nation as soon as they could. Many freedmen also claim to have received encouragement from Cherokee leaders who assured them of their citizenship rights.

⁸⁶ William Boudinot, *Laws of the Cherokee Nation Passed During the Years 1839-1867* (St. Louis: Missouri Democrat Print, 1868), 22.

⁸⁷ *Ibid.*, 148-149.

⁸⁸ William Boudinot, *Constitution and Laws of the Cherokee Nation Published by the Authority of the National Council* (St. Louis: R. & T.A. Ennis, 1875), 33-34.

⁸⁹ *Ibid.*, 269-270, 271.

Near the end of the Reconstruction process, Cherokee Nation acknowledged that the Cherokee freedmen had gained the same individual rights, privileges, and benefits that the Nation's white adopted citizens enjoyed through Article 9. But, many Cherokee leaders argued this did not entitle the freedmen either to any rights of the Cherokee Domain, the land held in common by the Cherokee Nation, or to any proceeds from its sale. This allowed the Cherokee Nation to exclude the freedmen from any per capita distribution of money gained by the Nation through the sale of the Cherokee Domain. They claimed the freedmen only had use of the common land of the Domain, but could not profit from the sale of the land by the Cherokee government.⁹⁰ The Cherokee Nation continually resisted demands from groups of freedmen who had failed to return in the six-month limit to claim citizenship rights during Reconstruction; and these "Too-late Negroes" turned to the federal government through the local Indian Agent for help in securing equal access to benefits of the body politic. For the first time, the Cherokee leaders had to define citizenship in legal and constitutional ways as they struggled to return to the pre-war status quo treaty relationship with the United States. Emancipation imposed by the federal government meant the Cherokee Nation now faced the problem of defining what freedom meant in their postwar society. The Treaty of 1866 marked the start of the reconstruction process for the Cherokee Nation and its people; and it continues to impact contemporary Cherokee society today; particularly after a 2007 Cherokee-voter referendum ousted the descendants of Cherokee Freedmen from membership in the native nation because the freedmen descendants lacked a Cherokee blood connection. Much like their predecessors of the nineteenth century, modern members of the Cherokee body politic are still debating the markers of Cherokee

⁹⁰ Boudinot, *Constitution and Laws of the Cherokee Nation*," 371-373.

identity. It is clear the past of racial slavery and the turmoil of Civil War and Reconstruction still echoes through Cherokee country.

CHAPTER TWO:
“THE CHEROKEE NATION IN THE 1870S: FIGHT TO RETAIN INDIAN TERRITORY”

I.

On January 30, 1871, the Cherokee delegation, headed by William Penn Adair, introduced a memorial to the United States Congress that voiced concerns the leaders of the Cherokee Nation had with another incarnation of the Harlan bill of 1865, which sought to establish a territorial government in Indian Territory. This bill and its legislative goals had originated in late 1865 Congressional debates over the postwar status of Indian country. Territorial bills were a constant threat to Cherokee sovereignty throughout the 1870s. The Cherokee delegation, which included Adair, C. Vann, Samuel Smith, and George Scrapper, argued that the Harlan bill placed the appointment of officers in the hands of the President of the United States, which meant it established a territorial government under the authority of Congress instead of the native nations that resided in Indian Territory. Cherokee leaders insisted that their dependence on the U.S. for annuities and aid in times of difficulty did not destroy the sovereignty of the Cherokee Nation; and neither the President nor Congress had the authority to dictate what type of government native nations should adopt in the postwar era. The delegation resented the subjection of the Cherokee Nation to white rule because they believed it was detrimental to Indian nations. Native society, they asserted, would decline and disappear because of the encroachment of whites into their lands. They believed the Cherokee Nation had the

inherent and inalienable right to self-government, which was recognized and guaranteed in the numerous treaties with the United States.¹

The Cherokee Nation faced many challenges in the 1870s. It was a decade filled with important political changes, violence, drought, and uncertainty regarding the future of the Nation's treaty relationship with the United States. After the death of Principal Chief John Ross in July 1866, the Cherokee National Council selected his nephew William P. Ross to finish his uncle's term. William Ross unsuccessfully ran for Principal Chief in 1867 defeated by Lewis Downing who had formed a new political coalition with southern Cherokee leaders William Penn Adair and J.A. Scales in an effort to oust Ross from power. Yet, when Downing died from complications of pneumonia, the Cherokee National Council again selected William Ross to finish the remaining three years of Downing's term. Political violence reminiscent of the era of post removal erupted in the Cherokee Nation as old rivalries died hard. New leadership emerged in 1875 with the election of Charles Thompson who claimed to speak for the Cherokee people and considered by many Cherokees as the most distinguished "full blood" in politics at the time.²

Cherokee leaders and delegates struggled to maintain the precarious position of their nation within a nation throughout this uncertain decade. The United States' government emerged from the Civil War as a larger and more powerful force, which meant Cherokee leaders had to develop new strategies in their negotiations with U. S. officials in their efforts to defeat the many territorial bills before Congress that threatened their sovereignty. Race and racial concepts played an important role in the Cherokee Nation's fight to retain their self-governing status, and Cherokee delegates increasingly stressed racial difference in memorials to Congress in an effort

¹ Cherokee Nation, *Protest of the Cherokee Nation against a Territorial Government* (Washington, D.C.: Cunningham & McIntosh, Printers, 1871).

² William McLoughlin, *After the Trail of Tears*.

to claim their place as a sovereign nation in white America's postwar society. Why did racial language increase in Cherokee memorials to Congress in the 1870s? What role was race playing in the Cherokee Nation's struggle to maintain its sovereignty? Is there evidence that a racial ideology was at work within the Cherokee Nation in the postwar era? Situating the Cherokee Nation in the context of the Reconstruction period helps answer these questions and provides an alternative story that adds to our understanding of one of the most turbulent eras in American history.

Eric Foner's seminal work, *Reconstruction: America's Unfinished Revolution 1863-1877*, argues that Reconstruction is understood best as a process of social, economic, and political changes that occurred as American society adjusted to the end of slavery. Emancipation was one of the most revolutionary aspects of Reconstruction, which placed the black experience at the center of most recent investigations of the period.³ The aftermath of emancipation required Americans to define citizenship for the first time. Foner contends, the formerly enslaved people "seized the opportunity created by the end of slavery to establish as much independence as possible in their working lives, consolidate their families and communities, and stake a claim to equal citizenship."⁴ He demonstrates how African Americans actively participated in the process of Reconstruction and struggled to claim a place America's post-war society. Foner's focus on

³ Some of the most recent contributions to the study of emancipation and its aftermath include, Dylan Penningroth, *Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: The University of North Carolina Press, 2003); Laura Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Chicago: University of Illinois Press, 1997); Kathleen Clark, *Defining Moments: African American Commemoration & Political Culture in the South, 1863-1913* (Chapel Hill: The University of North Carolina Press, 2005); Nancy Bercaw, *Gendered Freedoms: Race, Rights, and the Politics of Household in the Delta, 1861-1875* (Gainesville: University Press of Florida, 2003). These works attempt to uncover the varied experiences of African American men and women during Reconstruction as they attempted to build their lives and communities in the post-war south.

⁴ Foner, *Reconstruction*, xxiii.

emancipation and its aftermath enriches our understanding of the period. However, Native Americans lack a place in this interpretation.

One of Foner's greatest contributions is the assertion that Reconstruction involved more than a rebuilding of the south; and many of the processes and issues central to southern Reconstruction were also present, though in different forms, in the north. Building on this idea, more recent scholarship expands the geographic scope of Reconstruction to include the west in the remaking of America in the post-war years. In *West from Appomattox: The Reconstruction of America after the Civil War*, Heather Cox Richardson insists the era cannot be understood without acknowledging the central importance of the American west, which expands both the geographical boundaries and the chronology of Reconstruction. According to Richardson, "Postwar 'reconstruction' was the literal reconstruction of the North, South, and West into a nation in the aftermath of the Civil War. That rebuilding stretched from the end of the Civil War until the start of the twentieth century."⁵ An investigation of the process of Reconstruction in the Cherokee Nation bolsters Richardson's assertion that it was clearly a national project involving all regions of the country and continued well beyond the Compromise of 1877. Placing an indigenous nation at the center of the story of Reconstruction provides an alternative narrative of the period that highlights issues of nation building and citizenship occurring in both the Cherokee Nation and the United States during the tumultuous epoch. Race played an important role in both the Cherokee Nation's struggle to reestablish its treaty relationship with the U. S. and in defining the requirements of citizenship in post-war Cherokee society.⁶

⁵ Richardson, *West from Appomattox*, 4.

⁶ Elliot West, "Reconstructing Race," *Western Historical Quarterly* 34, no. 1 (Spring 2003): 7-27, pushes historians to reexamine race in the postwar period by focusing on what is happening in the west among various ethnic groups competing to tame the region and exploit its natural resources.

Andrew Denson is the first scholar to discuss the Cherokee Nation's position on Reconstruction in his work *Demanding the Cherokee Nation: Indian Autonomy and American Culture 1830-1900*. He explains how Cherokee delegates lobbied Congress and the president with a public-relations campaign that stressed the need to maintain the existing state of Indian affairs. Cherokee leaders, Denson argues, produced formal arguments insisting that their people were citizens of a separate nation, which was a status that Americans were bound to respect. But, he contends "the ways in which they defined and defended the nation—the ideas and language that they employed—should not be taken to reflect all Cherokee' understandings of themselves and the United States."⁷ Instead, Denson believes these writings meant to persuade non-Indians with appeals to European American ideas of politics and Indian affairs. He acknowledges "delegates during this period added strong appeals to racial difference to their arguments for the maintenance of a distinct Indian Territory."⁸ But, Denson believes that what Cherokee leaders wanted was not racial separation but self-government. However, this argument does not fully explain why racial language increased in Cherokee memorials to Congress in the 1870s and it does not explain what role race played in negotiations between the Cherokee Nation and the U. S. government.

If viewed from the context of Reconstruction, it is not surprising that racial language increased in the 1870s memorials of the Cherokee Nation. This was a period in U. S. history when Americans were defining citizenship at the national level for the first time while working to solve the problems unleashed by emancipation. Race determined a person's place and status in America's post-war society and was an integral part of the process of Reconstruction.⁹ The

⁷ Denson, *Demanding the Cherokee Nation*, 12.

⁸ *Ibid.*, 107.

⁹ Foner, *Reconstruction*, xxiv.

government of the United States emerged from the Civil War with greatly expanded authority and new strategies for its Indian policy, which included ending the practice of treaty making with native nations. In 1871, the United States Congress voted to discontinue treaties with native peoples, thus marking a fundamental shift in U.S. Indian policy.¹⁰ The end of their old treaties meant native leaders had to develop new ways to appeal to white American lawmakers in their efforts to encourage the maintenance of the prewar status quo in U.S.-Indian relations. Cherokee leaders were well aware of the prevailing racial hierarchy of white America and they used it to their advantage in negotiations with U. S. officials in an effort to maintain their place and status as a self-governing nation in post-war America. Their appeals to racial difference are understood best when viewed as a crucial part of the newest survival strategy employed by Cherokee delegates during their negotiations with the U.S. over the numerous territorial bills and issues arising from the push to consolidate federal control that threatened Indian Territory throughout the decade.¹¹

¹⁰ Bailey, *Reconstruction in Indian Territory*, 4-5. Bailey argues that after 1871, the U.S. no longer dealt with native nations as sovereign nations, and instead viewed them as territories subject to Congressional control on the road to eventual statehood. See also, Denson, *Demanding the Cherokee Nation*, 1-2. Denson asserts that some members of Congress wished to end treaty making because they believed the Fourteenth Amendment had made natives U.S. citizens subject to state and federal law. Richard White's, "*It's Your Misfortune and None of My Own*": *A New History of the American West* (Norman: University of Oklahoma Press, 1991), 108-109, argues that treaty making ended in 1871 because the House of Representatives was tired of being denied a voice in agreements with Indians. The terms of treaties often affected their constituents' access to land and according to the Constitution, only the Senate and President had a role in treaty making. White contends the Senate conceded to ending treaty making as long as existing treaties, which governed potentially lucrative transfers of land to individuals and corporations, remained in force. Still Congress continued to negotiate agreements with native peoples to obtain land concessions.

¹¹ See Claudio Saunt, *Black, White, and Indian: Race and the Unmaking of an American Family* (Oxford: Oxford University Press, 2005), for an example of the centrality of race in the lives of nineteenth-century Southeastern Indians and how groups like the Creek employed race in their survival strategies.

II.

In an 1870 memorial, the Cherokee delegation submitted its disapproval of Senate bill 679, which purposed the creation of the territory of Oklahoma and the consolidation of all Indian tribes under one territorial government subject to the control of Congress. The delegates began with the observation that “persistent efforts were being made to intensify public feeling against us as a race.”¹² The delegates argued that Native Americans were specially marked as victims of “manifest destiny” and the sponsor of the bill, Representative Fitch of Nevada, favored a policy of extermination and the seizing of Indian lands.¹³ According to the Cherokee delegates, Senate bill 679 involved three legal questions: did Congress have the constitutional authority to establish a territorial government in Indian Territory? Were Indians made U.S. citizens via the Fourteenth Amendment? And did the bill contain provisions that violated treaty stipulations?¹⁴

Asserting their understanding of the history of U.S.-Indian relations, the delegates emphatically declared that they had never signed any treaty that surrendered their national independence. They had never expressed any desire to become U.S. citizens, or consented to the dissolution of their local governments. They rejected the connection between Native Americans and the Fourteenth Amendment; they argued the postwar amendment did not apply to Indians because it grew out of the aftermath of the Civil War and the need to define the status of the former slaves.¹⁵ Instead, the delegates insisted Indian nations “have been taught by the

¹² Cherokee Nation, *Memorial of the Delegates of the Cherokee, Creek, and Choctaw Nations of Indians, Remonstrating against the passage of bill to organize the Territory of Oklahoma, consolidate tribes under a territorial government and carry out the provisions of the treaties of 1866 with certain Indian tribes* (Washington, D.C.: Government Printing Office, 1870), 1.

¹³ *Ibid.*, 1-2.

¹⁴ *Ibid.*, 2-3.

¹⁵ *Ibid.*, 2,3, and 11.

experience of the past and the observation of the present that [their] only safety [was] in remaining by ourselves, and maintaining intact our homogeneousness.”¹⁶ They argued it was against the interest, honor, and welfare of either race to harmonize with the other. In this case, delegates used appeals to racial difference to strengthen their assertion that the best way for the Cherokee Nation to survive in the postwar world was to maintain its independence as a self-governing nation free from the influence of the U.S. government and the white and black races.

Cherokee delegates in June 1870 also emphasized the importance of the Nation’s treaty relationship with the United States and insisted that the Cherokee Nation had no desire to end treaty making with the federal government. The *Cherokee Advocate*, the official newspaper of the Cherokee Nation, printed a memorial signed by Cherokee Principal Chief William P. Ross along with other chiefs of the Five Tribes that was presented to Congress on June 18, 1870. The memorial opened with an earnest declaration that all the native nations in Indian Territory desired continued peaceful relationships with the United States. The chiefs believed the best way to maintain this important relationship was through the observance and execution of all previously agreed upon treaty stipulations, and they renewed their nations’ commitment to all past and any future treaties with the federal government. They also reminded the President, Congress, and people of the United States of the terrible cost of removal for their people in their effort to bolster their argument for continuing the practice of treaty making. “The people of this Territory were uprooted from their ancient homes and places where they now are through the policy and by the power of the Government for the benefit and convenience of the whites with assurances and guaranties of ownership in the soil and protection from interference with their

¹⁶ Cherokee Nation, *Memorial of the Delegates*, 3.

privileges of self Government.”¹⁷ The memorial also informed Americans and federal officials that if “the increase of the white population and the march of events have removed us from the wilderness in which we were then plunged unwillingly, and placed us in the way of our neighbors, the fault is not ours, nor do they invalidate any existing obligations.”¹⁸ The purpose of this memorial for Cherokee leaders was to explain to U.S. officials that the native nations of Indian Territory did not wish to see any change in the policy of treaty making, which Congress was considering doing away with all together. Native leaders actively protested this new phase of U.S. Indian policy as they attempted to maintain their sovereign status.

In their effort to underscore the vital importance of the treaty relationship between the native nations of Indian Territory and the United States, the authors of the memorial stressed native success at adapting to American notions of progress and civilization. Although many supporters of consolidating Indian Territory under federal control alleged that native groups opposed improvement, the delegates refuted these charges and insisted that the humble homes, farms, livestock, schools, churches, and organized governments of the native nations in Indian Territory proved their desire for progress in the new postwar age. They only asked “ not to be overwhelmed by the influences brought to bear upon us through the ambition of aspiring men, the cupidity of soulless corporations and combinations of whatever name, or the mistaken philanthropy [sic] of the uniformed.”¹⁹ They reminded their audience that the native nations of Indian Territory had formed their own governments that were modeled on the U. S. form but adapted to their specific culture and society and had prospered when left alone.

¹⁷ Memorial Signed By Wm. P. Ross And Other Chiefs, June 18, 1870, W. P. Ross Collection, box #1, folder #3, Western History Collection, University of Oklahoma, Norman, Okla. (hereafter cited as Memorial Signed By Ross).

¹⁸ Ibid.

¹⁹ Ibid.

One of the major points under dispute in the press for a territorial government was the desire of the American government to alter native land ownership practices by forcing every head of household to assume ownership of individual plots instead of adhering to the native practice of holding land in common for all to use. The hope was the excess lands not taken by native households could then be sold to white settlers and land speculators. “The tenure by which we hold our lands is such as we prefer, and such as we believe to be for the best for the majority of our people; observation and reflection leads us to believe that no change can be made in this respect [sic] that will not be fraught with mischief and ruin.”²⁰ The memorial closed with an appeal to U.S. officials to honor and uphold the treaty stipulations between the United States and their respective native nations in order to protect native sovereignty. “Grant [this protection] and we shall fear no evil, we shall apprehend for our race, neither extinction nor degradation, but progress and civilization will follow, and a brighter page on Indian affairs will be found in the history of the United States than has yet been recorded.”²¹ It is important to note that this memorial was adopted and signed by the International Council in Okmulgee, Muscogee Nation. Initially this council of the Five Tribes was created by the reconstruction treaties of 1866, and through this council Congress intended to prepare Indian Territory for eventual statehood. Although Congress tried to use this Council to dismantle the special status of native groups, council members used it to establish common procedures on matters like criminal justice, tribal citizenship, and relations with the United States.²² What is most striking about this memorial is that native leaders used the term “race” to denote that natives were different from other racial groups.

²⁰ Memorial Signed By Ross.

²¹ Ibid.

²² Denson, *Demanding the Cherokee Nation*, 122-123.

While historian Andrew Denson concedes that racial language like this increased in the 1870s, he does not place it in the context of Reconstruction. Denson states that there are several ways to read the racial argument. He explains that McLoughlin “suggests that its appearance reflected the rising ‘ethnic nationalism’ of the ‘full-blood’ faction that controlled the Cherokee government at various points during this period.” He believes that McLoughlin may be right “since the presence of former slaves and white newcomers was becoming an increasingly bitter issue in the tribe’s internal politics.” But he also points out that the majority of these statements were not made by full bloods of “either biologically or in terms of cultural traditionalism” measure. He asserts that anthropologist Circe Strum offers another explanation with her argument “that when Cherokees in the early nineteenth century adopted the European American concept of nation-state, they adopted as well the assumption that nationhood was tied to race.” Denson argues, “[f]rom the standpoint of the tribe’s federal relations, the racial argument offered a similar mix of benefits and problems. In describing a natural gulf between the races, delegates reduced Cherokee-American relations to the simplest possible terms. They ignored the tribe’s tangled multiethnic past and present and made the issues of the 1870s elements of an age-old clash of radically different people.” He insists that what leaders like Adair wanted was not racial separation but self-government.²³ This, however, does not explain why racial language increased during the 1870s and appeared again and again in Cherokee protests against the establishment of a territorial government.

It seems more plausible that the use of race and racial language was meant to speak to white American leaders who thought in those terms. The appeals to racial difference employed by native leaders functioned as a survival strategy that Cherokee leaders hoped would inspire

²³ Ibid., 108-110.

white Americans to continue to support native sovereignty. If native sovereignty was respected and upheld, these native leaders insisted, the Indian race would be safe from extinction and degradation. So in some ways, Denson is right that Cherokee memorials reflect a native voice appealing to a white audience in their effort to maintain their separation from the American mainstream. But, some Cherokees also desired racial separation, especially from their former slaves. This is best seen in the various unsuccessful attempts throughout the 1870s of Cherokee chiefs asking for legislation to clarify the status of former slaves who failed to return to the Nation in time to claim their Cherokee citizenship. The National Council, elected by Cherokee voters, never approved any bills introduced by the executive branch that would have extended citizenship to many freedmen with questionable status. This implies that the Cherokee Council members believed their constituency were also not interested in expanding the body politic for former slaves who failed to fulfill the requirements of Article 9 of the Treaty of 1866. The increase in racial language by native leaders is best understood as another tool the Cherokee leadership employed during the era of Reconstruction in their efforts to convince American lawmakers respect native sovereignty; and yet evidence suggests that some Cherokees also ascribed to the prevailing racial ideology of the late-nineteenth century United States and wished to maintain a social distance from their former slaves.

As the decade continued, it became increasingly more crucial that native leaders employed whatever tactics necessary to encourage U.S. officials to protect their right to self-rule. Warfare erupted on the Great Plains after the Sand Creek Massacre of 1864. Tales of atrocities on both sides and the expense of the unending conflicts turned Congressional support towards a policy of peace. Many Plains groups were relocated to reservations in Indian Territory on lands the Five Tribes had been forced to relinquish as terms in their reconstruction treaties. Many

eastern Protestant church members began to call for a reform of U. S. Indian policy in response to the brutal battles in the 1850s and 1860s. Bishop Henry Whipple of the Episcopal Church led the charge for reform. He argued that the U. S. should conquer native peoples through benevolent aid and Christian instruction. He believed war could be avoided through decent administration of a decent Indian policy instead of the corrupt practices and inefficient methods currently in place. Reformers believed Indians must give up all cultural identifiers of Indianness if they were to advance up the ladder of civilization. In the first and most well known of the Peace Policy phase, President Ulysses S. Grant actually diminished the government's power by turning control of the management of most Indian reservations and agencies to the churches. Grant invited the churches to nominate people to staff the reservations and Congress created the Board of Indian Commissioners, which oversaw the administration of Indian affairs in an effort to prevent corruption. Yet, Indian wars persisted throughout the 1870s often pushing actual management of Indian affairs into the hands of the War Department and the Army.²⁴

Fighting between the Sioux and the U. S. military peaked in the late 1870s. By 1874, the survival strategy that Sioux leader, Red Cloud pursued had collapsed. He could no longer placate the Americans while also expanding in the west at the expense of other Indian peoples. George Armstrong Custer's company had penetrated the heart of Sioux country, the Black Hills, and announced the discovery of gold. The Lakota Sioux refused to lease or sell the Black Hills and the U. S. army sent in troops to protect the miners pouring into the region. Custer pursued the Sioux to the Little Big Horn where he and his command was defeated by Sioux warriors led by Sitting Bull and Crazy Horse. By 1876, the Sioux could still win battles but not wars. The U. S. army pursued the group all the way to Canada until the Sioux agreed to terms in the winter of

²⁴ White, *"It's Your Misfortune and None of My Own,"* 95-99, 102-104.

1877. The Comanche also resisted the United States after the Civil War. In the 1870s, the Red River War involved several native groups, including the Comanche, Cheyenne, and Kiowa. As had been the case with their war with the Sioux, the Americans won through persistence and their ability to keep native peoples from acquiring enough foodstuffs to support their people. The Apache were the last group subdued in the United States' postwar conquest of the west. American victory over the Apache was secured by the U. S. army's ability to deny the Indians food and shelter.²⁵

In the midst of the United States' war on the Plains tribes, Cherokee leaders struggled to remind white American lawmakers in ways they would understand that the civilization plan had worked for some native groups and they desired no change in the U.S.-Cherokee relationship. An excellent example of this comes from a speech Principal Chief William R. Ross delivered before Congress in March 1872. William P. Boudinot, the editor of the *Cherokee Advocate* in which the speech was reprinted, praised Ross's speech for its "appeal to the highest tribunal for the existence of a nation – for the preservation of a race."²⁶ Boudinot insisted the speech was "Without passion, without mudlin [sic] sentiment, yet rising on the height of the subject in strong and weighty words worthy of the purest model of English eloquence, it is the more intense for its self-restraint. It is a perfect refutation of the statement made by General Custer in a recent article in an Eastern Magazine, that the Indian loses the gift of eloquence as he becomes civilized."²⁷ This speech was given as the wars with the Plains tribes began in earnest once the U. S. army was able to shift its focus from subduing the south to conquering the west. Boudinot believed the

²⁵ White, "It's Your Misfortune and None of My Own," 104-107.

²⁶ Editorial On Speech Of W. P. Ross, March 2, 1872, W. P. Ross Collection, box #1, folder #5, Western History Collection, University of Oklahoma, Norman, Okla. (hereafter cited as Editorial On Mar. 2, Speech of W. P. Ross.)

²⁷ Editorial On Mar. 2, Speech of W. P. Ross.

speech was “the production of a scholar as well acquainted with the English language and its models as the highest Parliamentary orator.”²⁸ He lauded the civilized and educated tone of Ross’s speech and argued that it demonstrated perfectly that native peoples could be civilized and not lose their nobility. This editorial clearly shows that Cherokee leaders stressed alternatives to the indictments of native society leveled by “experts” like Custer who was considered a reliable authority on native peoples due to his experiences in the west. The editor emphasized the differences between “civilized” natives, like the Cherokee, and those he deemed “uncivilized” and thus subject to extermination if they refused to submit to federal military authority in the west. In their continued struggle for sovereignty, Cherokee leaders continually stressed the progress of the Cherokee people in Indian Territory in an effort to persuade U.S. officials to maintain the prewar treaty relationship with the native nation. During this new phase of Indian warfare, leaders in Indian Territory understood that the powerful arm of the military could be turned on themselves if native sovereignty was not protected and honored by Congress.

The Cherokee Nation’s sovereignty was not only under attack in the halls of Congress, but also in jurisdictional disputes in Cherokee country between U.S. Marshals and Cherokee authorities that sometimes erupted into violent confrontations. The most notable was a gun battle in a Cherokee courtroom known as the Going Snake Tragedy. On May 4, 1872 the *Cherokee Advocate* printed an editorial by William P. Boudinot that addressed the recent violence between Cherokee authorities and the U. S. Deputy Marshals in a jurisdictional dispute over a Cherokee citizen who was accused of crimes by both governments. U. S. marshals entered Cherokee Nation on April 25, 1872 to arrest Ezekiel Proctor, who was standing trial in the Cherokee court for the murder of Polly Chesterton, a Cherokee woman married to a white man by the name of

²⁸ Editorial On Mar. 2, Speech of W. P. Ross.

William Chesterton. Polly had stepped between the two men while they were arguing and Proctor admitted firing the shot that killed her. The American relatives of Polly feared Proctor would go free because the crime of manslaughter did not exist in Cherokee law. William Chesterton, acting as a U. S. citizen, swore out a warrant in the Arkansas federal court for Proctor's arrest on the charge of attempted murder. A gun battle ensued between the U. S. marshals and the Cherokee authorities in Going Snake District courthouse in which Proctor was killed and six other Cherokees were wounded, including the judge. Cherokee authorities killed eight U.S. deputies and wounded three more.²⁹ Although this event is discussed in detail in McLoughlin's work, he does not provide the Cherokee view on the event or offer a Cherokee explanation for how the case should have been handled.

According to Boudinot's editorial, "The recent collision between the United States authorities and the Cherokee Indians while it was not entirely unexpected, [had] produced considerable excitement, and some anxiety. Trouble had been brewing between the Deputy Marshals and the Indians for several years past."³⁰ Boudinot acknowledged there were no innocent parties in this case: "To admit that there are bad men in the Cherokee Nation, is but to concede a fact equally true of every State in the Union, and it by no means follows that this Government is, therefore, warranted in utterly condemning the acknowledged authorities of that Government."³¹ The recent conflict was caused, as the editor understood it, by an attempt to arrest a Cherokee citizen for an offense against the laws of the United States, while the Cherokee Court was in session and the same man was being tried for the same offense. He argued that the

²⁹ McLoughlin, *After the Trail of Tears*, 299-301.

³⁰ Editorial on W.P. Ross, May 4, 1872, W.P. Ross Collection, box #1, folder #6, Western History Collection, University of Oklahoma, Norman, Okla. (hereafter cited as Editorial on May 4, Speech W.P. Ross)

³¹ Editorial on May 4, Speech W. P. Ross.

U.S. Marshals lacked the authority to determine who had jurisdiction over the case. Boudinot ended the editorial with a Cherokee solution to questions of criminal jurisdiction. “The proper course, it seems to us, would be, in all cases of such doubtful questions, to apply regularly to the authorities of the Nation for the accused to be delivered up after their trials by the courts of such Nation.”³² In a very immediate way, U.S. authorities were pushing at the boundaries of Cherokee sovereignty, this time with traumatic results. Cherokee leaders acted swiftly to curb the outbreak of violence in Cherokee country in the 1870s because they knew the perceived lawlessness of the Nation was a liability in their constant sovereignty struggle with the United States.

Violence in the Cherokee Nation required lawmakers to pass acts intended to curb the outbreak of gunplay. In January 1874, the *Cherokee Advocate* reprinted two recent acts passed by the Cherokee National Council and approved by Principal Chief W. P. Ross. One of these acts directly addressed the recent violent confrontations in Cherokee country. That act amended an Act of November 15, 1866, prohibited the carrying of concealed weapons. The carrying of concealed weapons was prohibited in all cases other than hunting or chasing a fugitive, or in the discharge of office. The act also instructed local sheriffs to begin disarming anyone violating this new act and to turn over any confiscated weapons to the National Treasurer along with the name of any offenders to the District Court for judgment. This act implies that there had been an increase the amount of concealed weaponry in Cherokee Country; and confirmed the chronicle of violence in the 1870s Cherokee Nation seen in McLoughlin’s work.³³ But, it also shows W. P.

³² Editorial on May 4, Speech W. P. Ross.

³³ McLoughlin, *After the Trail of Tears*, chap. 11.

Ross and the National Council's attempted to deal with the issue of violence in the Cherokee Nation in their own way.³⁴

Cherokee leaders understood that internal violence opened the door for territorial proponents in Congress. The process of reuniting the United States in the aftermath of civil war was well underway by 1870s and as America strove to unite all its sections it became clear that Indian Territory was not safe from the designs of the newly empowered federal government. The Cherokee leadership was well aware of the desire of the majority of the Cherokee people to retain their right to self-rule as well as the practice of communal landholding. Cherokee delegates and leaders often downplayed the violent events in Indian Territory in their efforts to sustain the all-important treaty relationship that protected native sovereignty in the 1870s. Like the memorial against the first of many territorial bills introduced in 1870, Principal Chief William P. Ross's speech against the 1874 Parker bill intended to organize a new territory called Oklahoma reveals that the Cherokee leadership was keenly aware of the prevailing racial ideology of the age.

Ross's two-hour speech before the House Committee on Territories, reprinted in the *Cherokee Advocate*, accentuated the progress of Cherokee Nation in rebuilding after the trauma of war while downplaying the eruptions of violence and lawlessness that had recently occurred. The speech specifically addressed Cherokee concerns with the Parker bill, which claimed to "carry out certain Indian Treaties of 1866, and to organize the Territory of Oklahoma."³⁵ Ross

³⁴ An Act Approved by W. P. Ross, January 17, 1874, W. P. Ross Collection, box #1, folder #11, Western History Collection, University of Oklahoma, Norman, Okla.

³⁵ Speech of W. P. Ross, February 21, 1874, W. P. Ross Collection, box #1, folder #14, Western History Collection, University of Oklahoma, Norman, Okla. The bill to organize the U. S. territory of Oklahoma was introduced by Representative Isaac Charles Parker, a Republican from Missouri. Parker served as a representative in both the 42nd and 43rd Congresses from 1871 to 1874. He was later appointed judge of the United States District Court for Western Arkansas on

began by reminding American lawmakers that the Cherokee people had been displaced in the 1830s because they were deemed racially and culturally inferiors by white Americans hungry for the fertile lands of the southeast. He argued that Congress approved the Indian Act of 1830 that was intended by American lawmakers to “relieve the States of the presence of a population not homogenous [sic] in color, culture, habits and inclinations, with their own more powerful and progressive people.”³⁶ He read the entire act aloud to his audience because he believed it “lies at the foundation of this whole question.”³⁷ He ended his recitation of the Indian Act by reminding Congress that the Cherokee removal treaty required federal protection for the Cherokee people from any disruptions or interruptions in their new place of residence. All the treaties, Ross insisted, that the Cherokee Nation and U. S. had entered into promised a permanent home for the Cherokee Nation that the U. S. government was bound by treaty stipulations to protect. He reminded Congress that the Treaty of New Echota required the consent of the Cherokee Nation before it could be included within a territory or state of the United States. The Cherokee people had not consented to this territorial government and did not wish to become citizens of the United States.

Ross also rejected the Parker bill’s presumption that the Reconstruction Treaty of 1866 authorized a territorial bill for Indian country. He explained the treaty agreed to the creation of a General Council made up of Indian members from the various tribes in Indian Territory, which offered a way for native groups to handle issues relating to intertribal conflicts as well as issues

March 19, 1875 and he served until his death in Fort Smith, Ark., on November 17, 1896. (Hereafter cited as Speech of W. P. Ross, February 21, 1874.)

³⁶ Speech of W. P. Ross, February 21, 1874.

³⁷ Ibid.

between the United States and the respective tribes.³⁸ Ross provided an eloquent defense of natives' natural right to self-government that appealed to both the American past and present.

“Indians divide into many nations and tribes with different languages, laws, customs, and interests, men whose rights are as sacred in the eye of law and honesty, as the rights of any other men whatever may be their complexion, men as devoted to their homes as any one on the face of the earth; men who are now at peace among themselves, who live on their own resources, who are giving you no trouble or cause for anxiety, who protest any interference with their rights, and only desire to be allowed to enjoy their homes in peace and quiet; men who either themselves or their forefathers were forced from their homes elsewhere, under the pledge of this Government that they should not be again troubled in [the] future.”³⁹

He reminded his American audience that native men enjoyed the same rights promised to white and black men in the postwar U.S.; and this assertion subtly called on Congress to uphold the promise that all men were created equal. All Cherokee men desired, according to Ross, was to be left alone to care for their homes, families, and subsistence in the way they deemed most appropriate to their society, culture, and situation. Ross underscored the peace that reigned in Cherokee country and insisted that Congress should have no anxiety about the native people in Indian Territory because they were not in open rebellion or resistance to the federal government like the Plains tribes who waged war against their forced assimilation. He argued that no person of any of the tribes had asked for this territorial legislation and he did not understand why these bills appeared every year “threatening the stability, jeopardizing the rights, distorting [sic] the

³⁸ Ross's understanding of the purpose of the General Council of Indian Territory fits nicely with Andrew Denson's argument that while the federal government tried to make the council a mechanism by which Indian Territory's special status would be dismantled under the direction of native members it instead served a radically different and unintended purpose. The General Council became a new instrument for expressing native opposition to territorialization, the allotment of Indian land, and other policy initiatives that threatened Indian nationhood. See Denson, *Demanding the Cherokee Nation*, chap. 4.

³⁹ Speech of W. P. Ross, February 21, 1874.

quiet, retarding the progress and endangering the peace of the country.”⁴⁰ The greed of the border press and the telegraph, according to Ross, were responsible for spreading distortions of every unfavorable or unlawful act in Indian Territory. Westerner speculators were the ones who demanded a thorough revolution in the relationship between native nations and the U. S.; and Ross explained these speculators wanted to appropriate native lands, seize political power and control the distribution of funds resulting in the ultimate subjugation of the native people of Indian Territory.

In an effort to emphasize the progress of natives in Indian Territory, Chief Ross then read extensive passages from the 1872 report on Indian Territory from the Board of Indian Commissioners that praised the Indian country’s inhabitants. The agency reported that the territory was producing and as populated as many other western states although it also noted that many of the native nations were still rebuilding their devastated towns, homes, and farms and some inhabitants were as greatly affected by the war as the south. The report also noted the existence of schools and churches as major institutions still a vital part of the territory; and asserted that life and property were safer in Indian Territory, which had fewer violations of law than in any other territory. Still, Ross acknowledged that violence and crime existed in Indian Territory. “And yet those who most loudly wail over such things in the Indian country, are most familiar with them at home.”⁴¹

Chief Ross briefly related recent charges of lawlessness from many of the states bordering the Cherokee Nation in his effort to demonstrate that conflict existed in large measure in other states, one of which had sided with the Confederacy during the war. Kansas had reported shootings along railroad lines and border towns. According to Ross, authorities in

⁴⁰ Speech of W. P. Ross, February 21, 1874.

⁴¹ Ibid.

Arkansas had offered rewards for information leading to the apprehension of fourteen murderers in the issue of a single paper, while neglecting to mention the “proceedings of mobs, white and colored, and individual acts of violence, which occur in the swamp and mountains.”⁴² The “knights of the hood” in Missouri, he explained, stopped trains in broad daylight to plunder or murder the passengers and also shot down law officers in order to free convicted compatriots sentenced to prison or death. Ross offered another compelling example of lawlessness in the United States by reminding his Congressional audience of Abraham Lincoln’s assassination. “In full view of this Congress,” he explained, “not only are murders frequently committed, but the utterance of the noble motto emblazoned on the shield of one of the proudest states in the Union, [the] “sic semper tyranis” [sic] of Virginia has been sealed to the lips of exulting patriotism by its association, recorded in the page of time.”⁴³

According to Ross, the reports of lawlessness in Indian Territory had been greatly exaggerated. From his own personal experience, he knew that there was no obstruction to travel, whether by foot, horse, wagon, or train and no fear of train robbery in the territory. The claims that Indian Territory was an obstacle to progress and a haven for criminals was, Ross believed, completely unfounded. Instead he argued, “the people who belong to it are engaged in the quiet pursuits of moral life, that they [were] at peace among themselves and with the whites who surround them.”⁴⁴ But, it was also reported that the freedmen of Indian Territory existed in a

⁴² Speech of W. P. Ross, February 21, 1874.

⁴³ Ibid. Ross is referencing Lincoln’s assassination here in his effort to demonstrate that charges of lawlessness abound all over the United States and are not unique to Indian Territory or justify the passage of territorial bills, like the Parker bill. After shooting Lincoln at Ford’s Theater on April 14, 1865, John Wilkes Booth is reported to have jumped from the second story box to the stage below brandishing his dagger and shouting Virginia’s state motto “Sic semper tyrannis” (Thus always to tyrants) before running from the stage and fleeing from capture. David Herbert Donald, *Lincoln* (New York: Simon & Schusser, 1995), 597.

⁴⁴ Ibid.

state of homelessness, despised and neglected by their former native masters. Ross argued this was “a new cord to the Territorial Harp of a thousand strings, touched by a new and unskilled hand, its notes nevertheless are so sweet and gentle as to be suggestive – sweetest are the notes of the swan.”⁴⁵ He further dismissed the charge of freedmen’s poor condition by reminding Congress the Cherokee Nation had abolished slavery in February 1863 and had agreed to grant citizenship to all freedmen who were former slaves of Cherokee masters and all free blacks living in the Nation at the beginning of the war or who had returned within the six-month limit set by the Treaty of 1866. He insisted these provisions demonstrated that freedmen had been placed “upon an equal footing with native citizens, and this signifies equal rights under their laws in political franchises in lands and moneys [sic].”⁴⁶ However, Ross failed to mention that disputed cases of freedmen citizenship plagued the Cherokee Nation at the time and that he, himself, had unsuccessfully appealed to the National Council to approve legislation granting citizenship to many freedmen who had failed to return in time. Later in 1875, Ross decreed that the per capita payments of bread money the federal government had distributed to help the Cherokee people survive a harvest devastated by drought and locusts was for Cherokees by blood only. While the reports presented by Congressional supporters for the Parker bill probably embellished the deplorable condition of freedmen in Indian Territory, there are numerous examples from Cherokee freedmen that reveal their almost constant struggle to fully exercise their Cherokee citizenship rights after emancipation.

Ross dismissed the allegations of freedmen’s trouble in an attempt to deflect any possible intrusion this might bring from a Congress committed to equal citizenship for blacks in postwar America. Instead Principal Chief Ross wanted to remind Congress that natives of Indian

⁴⁵ Speech of W. P. Ross, February 21, 1874.

⁴⁶ Ibid.

Territory had progressed and would continue to do so if left “in [the] quiet protection and fostering care” of the federal government. He ended his oration by stating his objection to any legislation unauthorized by treaty and not called for by the people affected by it because territorial bills, like the Parker bill, would result in the utter disruption of the Indian people. Ross closed with a plea that Congress uphold its protection of the Indian Territory’s special status as a territory for native people. “Extend it, and thus, instead of their extermination, in the course of a few years, they may imperceptibly be mingled in blood, sentiment, intelligence, and high aspirations with your own descendants.”⁴⁷

Although Chief Ross had spoken to the House Committee on behalf of the Cherokee delegation, a correspondent for the *Cherokee Advocate* also provided opinions on the Parker bill from some of the other Cherokee delegates. The reporter interviewed William P. Boudinot in an effort to obtain his opinion on the mood of the Cherokee people and their feelings about the Parker bill. According to Boudinot, the Cherokee people felt “that their salvation as a Nation and as a Race [depended] upon the faithful observance of what was intended to protect and preserve both – namely mutual obligations of white and red as formed in the stipulations of treaty.”⁴⁸ For Boudinot, the treaty relationship had to be honored because it was the treaties that defined the obligations of both races.⁴⁹ The bill and the Treaty of 1866, Boudinot contended, should be

⁴⁷ Speech of W. P. Ross, February 21, 1874.

⁴⁸ The Parker Bill Introduced, March 7, 1874, W. P. Ross Collection, box #1, folder #16, Western History Collection, University of Oklahoma, Norman, Okla.

⁴⁹ Boudinot’s description of the mutual obligations, which treaties articulated, fits nicely with the work of Nancy Shoemaker. He believes each race has a mutual obligation to the other that must be upheld, especially if native sovereignty was to continue to exist. Shoemaker explores how southeastern groups introduced the term “red people” or “red men” into the language of Euro-Indian contact. She finds that eighteenth-century Cherokees adopted color categories as a strategy to inform the English about their social obligations. The terms red and white were metaphors for moieties or complementary division within Southeastern Indian societies for war and peace. Shoemaker argues that as the science of race emerged in Europe, Indians were

compared in order to determine whether the bill violated any of the stipulations both parties had agreed to in 1866. For example, the bill purposed the establishment of the General Council of Indian Territory, which Boudinot pointed out already existed. “The Grand Council [was] already created and has been in full operation for several years, without any aid or action from Congress to set and keep it going except the mere appropriation of money to pay the members, which is a distinct obligation imposed upon the Government by treaty also.”⁵⁰ Here again, he reminded the Cherokee people of another example of the federal government failing to fulfill its side of the treaty relationship.⁵¹

The *Cherokee Advocate*'s correspondent also included Col. William P. Adair's thoughts on the Parker bill. According to Adair, “The United States Government [had] entered into certain agreements with the Indians of the Territory which the bill now considered proposes to violate.”⁵² He remarked that one positive provision of the 1866 treaty called for the creation of a U. S. court in Indian Territory, which the government had failed to accomplish. He laid the blame for this failure on the Cherokee Nation and indicated that charges of lawlessness were used to push a federal territory on the Cherokee people. Adair was not sure if the establishment of U. S courts in Indian Territory would end the alleged chaos, criminality, and violence used as an excuse to try to overthrow local Indian governments. He insisted, “neither this Bill nor any

similarly reading meaning into observable bodily differences as a way to find order in a complicated world. See Nancy Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth-Century North America* (Oxford: Oxford University Press, 2004).

⁵⁰ The Parker Bill Introduced, March 7, 1874. Emphasis in the original.

⁵¹ See Denson, *Demanding the Cherokee Nation*, chap. 4. Denson explains that once the federal government realized the General Council could not be used to dismantle tribal governments as hoped Congress stopped funding the Council. Despite this, members from the various tribes in Indian Territory continued to send members to the Council, which functioned as an intertribal effort to establish common procedures each tribe should pursue on issues like criminal justice, tribal citizenship, and negotiations with the United States.

⁵² The Parker Bill Introduced, March 7, 1874.

Territorial Bill can be passed without making the Indians citizens of the United States and depriving them of all claim to special protection of the Government.”⁵³ According to Adair if Indians were exposed “to the inevitable repugnance and hostility of the white race, excited by differences in language, color, manners and everything else that goes to make natural enemies or friends out of neighbors the red man will be doomed to destruction, by an act of pretended grace and honor.”⁵⁴ Adair shows that he was well aware of how racial others were viewed in the postwar United States with his belief that the introduction of white settlement to Indian Territory meant the end of native rule. Adair’s biggest concern was that the Cherokee people would become U. S. citizens if the Parker Bill passed and Indian Territory would be opened to white settlement. “The Indian question will be, as usual, settled by the destruction of Indian nationality and the extinction of the Indians – if this Territorial Bill becomes a law.”⁵⁵

A few months after Ross’s speech against the Parker Bill, on May 30, 1874, Cherokee delegate William P. Boudinot penned a letter to John L. Adair, the editor of the *Cherokee Advocate*, which relayed President Ulysses S. Grant’s opinion on how the Cherokee people should face the possible establishment of a U.S. territorial government within their midst. Boudinot opened by chastising the Cherokee people for focusing their concerns on local issues, like the location of the new Cherokee Orphan Asylum instead of on issues of more national importance. Boudinot wanted to bring the advice of President Grant on the issue of territorialization to the Cherokee people and explained that Grant’s views on the Indian problem were formed during his time of service as a lieutenant and he believed conflict between natives and Americans resulted from the United States unfair dealings with native peoples. Boudinot

⁵³ The Parker Bill Introduced, March 7, 1874.

⁵⁴ Ibid.

⁵⁵ Ibid.

reported President Grant wanted to “see the wild Indians gradually tamed and civilized, and ultimately to see your Territory become a State.”⁵⁶ However, Grant believed the Indian inhabitants had to consent to this new arrangement. Boudinot believed President Grant’s idea for Indian Territory was something the Cherokee people should consider. “It is evident that the President, when he speaks of a Territorial Government for our country, does not mean a Territorial Government of the United States in its usual sense.”⁵⁷ Instead, Boudinot explained, Grant meant to create “an Indian Government, extending over the whole Territory, by and through which, the Red men will be enabled to hold all the lands of the Territory for themselves and other red men, to the exclusion of white men as they shall prefer.”⁵⁸ According to Boudinot, Grant promised this was the best way to keep the railroad companies from obtaining large tracts of land in Indian Territory, which he claimed they would have already done if he had not personally stopped them. Even with presidential support the sovereignty of the Cherokee Nation faced repeated efforts from the U. S. Congress to put Indian Territory on the road to statehood.

Despite the best efforts of Cherokee leaders to downplay violence in the Cherokee Nation, reports of lawlessness continued and were often used as proof by those seeking a territorial government that one was desperately needed to restore order in Indian Territory and the Cherokee Nation more specifically. After 1875, disagreements over citizenship became entangled with the issue of lawlessness and the establishment of a federal territory. As discussed in Chapter Three, the aftermath of emancipation created significant chaos in Indian Territory. The Cherokee National Council ruled in 1869 that the Cherokee Supreme Court would hear all

⁵⁶ Letter of W. P. Boudinot To Editor Cherokee Advocate, May 30, 1874, W. P. Boudinot Collection, box #B-56, folder #4, Western History Collection, University of Oklahoma, Norman, Okla.

⁵⁷ Ibid.

⁵⁸ Ibid.

cases of disputed Cherokee citizenship. After the Court reviewed 177 applicants, 130 families were rejected while 47 were admitted to citizenship. Those who failed to prove their Cherokee connection were deemed intruders and placed on a list, which was forwarded to the Bureau of Indian Affairs authorized by treaty stipulations to remove the intruders.⁵⁹ The failure of the United States to remove intruders from the Cherokee domain was another example of the inability (or the intentional disregard) of American authorities to fulfill treaty requirements. Principal Chief Charles Thompson believed the United States used the intruder issue and the violence that often accompanied the expulsion of intruders from the Cherokee Nation as justification for the continued push in the U.S. Congress for territorial bills in the late 1870s. Winning election in 1875 by forging a new party viewed as a “revolt of the full bloods,” Thompson was recognized as the most distinguished “full blood” in Cherokee politics at the time, which some argue represented a new phase in Cherokee politics in which the people had a greater influence.⁶⁰ One thing quickly became clear once Thompson assumed office. The Cherokee executive would continue to dispute allegations of lawlessness and oppose federal intrusion on Cherokee national sovereignty.

On April 22, 1876, the *Cherokee Advocate* published a letter from Principal Chief Thompson to Indian Agent, Major Upham of the U. S. Army stationed at Fort Gibson, Indian Territory. The agent had requested the assistance of local Cherokee authorities in arresting two Cherokee men accused of murdering an adopted Cherokee citizen, Thomas Carlyle. The two accused murderers, Hanks and Ice, were to be tried in the U. S. District Court at Fort Smith,

⁵⁹ Chapter Three, provides a more in depth look at the issue of Cherokee citizenship in the wake of emancipation. For a discussion of the creation of the intruder list see also McLoughlin, *After the Trail of Tears*, chap. 10.

⁶⁰ McLoughlin argues the election of 1875 is a turning point in Cherokee history because this new party challenged elite leaders like William Ross and Lewis Downing. McLoughlin, *After the Trail of Tears*, chap. 12.

Arkansas, once they had been handed over to the U. S. Deputy Marshals. Thompson, however, informed the agent that Cherokee authorities could not help in this case because the men in question were under Cherokee authority and jurisdiction whether adopted or native. He reminded the agent that the right of jurisdiction over criminal offences had been granted to the Cherokee Nation in the removal treaty of 1835 and the reconstruction treaty of 1866. The fact that Carlyle was an adopted Cherokee citizen did not give the United States the authority to try his killers. “In law, the Chief sees no distinction between native and adopted citizens classes both being protected and held responsible alike, all are Indians.”⁶¹ Thompson forwarded a copy of the proceedings of the case pending in the Cherokee courts against Hanks and Ice for the murder of Thomas Carlyle; trying the same men in a U. S. court for the same offence amounted to double jeopardy, which the Chief reminded the agent violated the U. S. Constitution. Whether the quarrel was adopted citizens, intruders, or Cherokee freedmen, federal authorities latched on to these issues in their repeated efforts to dismantle Cherokee sovereignty.

Thompson even directly appealed to the president to resolve the problem of intruders, which he believed caused the majority of the problems that were reported in Indian Territory. His letter to Grant was also published in the *Cherokee Advocate*. He wrote President Grant and asked the federal government to remove the intruders from the Cherokee Nation as required by treaty stipulations. “These intruders are a source of great annoyance, since they are beyond our jurisdiction and many of them are bad men, and are continually perpetrating crime and wrongs upon our people, for which we can not punish them.”⁶² The intruder problem, Thompson argued,

⁶¹ Letter of Charles Thompson, April 2, 1876, Oochalata (Charles Thompson) Collection, box #O-20, folder #7, Western History Collection, University of Oklahoma, Norman, Okla.

⁶² Letter dated October 5, 1876 to U. S. Grant from Principal Chief Charles Thompson, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Received Relating to

had become a tool used by federal officials to push a territorial bill on Indian Territory.

“Furthermore the evil conduct of these intruders, furnish a pretext to our enemies, to continuously harass [sic] Congress with the false idea, that a U.S. Territorial Government is necessary to cure the evil.”⁶³ These reported charges of violence in Indian Territory created another threat Cherokee leaders had to combat. Lawlessness had become so rampant that some Congressmen believed the only way to restore order was a transfer of the Bureau of Indian Affairs to the War Department then currently engaged in subduing the violence on the Plains.

In 1876, Cherokee delegates stressed racial difference in their protest against the transfer of the Bureau of Indian Affairs to the War Department echoing many of the same themes highlighted in their objections to the territorial bills of the 1870s. The delegates argued that the Cherokee recognized “themselves as a different race, like the Germans, Irish, Jews, Africans, Italians, [and] Chinese, from the predominate one of this country.”⁶⁴ They asserted all citizens of the U.S. of all races and colors were not placed under military control in times of peace; if the U.S. government did not allow the military to control whites in a time of peace, then why allow the military to control Indians who are “civilized, Christianized, and educated.”⁶⁵ These delegates insisted that the Cherokee were a separate race with interests and goals specific to their

Cherokee Citizenship, 1875-89, box 1, folder P1-163 E-577, National Archives Building, Washington, D. C.

⁶³ Ibid. Emphasis in the original.

⁶⁴ Cherokee Nation, *Protest by the Lawful Delegates of the Civilized Nation of Indians of the Indian Territory herein named, on their behalf and on behalf of the Indian race, against the passage of a law by Congress transferring them and their property to military control, March 27, 1876* (Washington, D.C.: Gibson Brothers, 1876), 1.

⁶⁵ Ibid., 8. It is important to note that the assertion by the Cherokee delegates that the federal government did not control whites in a time of peace is not all together accurate. In fact, the Reconstruction Act of 1867 divided the eleven Confederate states, except for Tennessee, into five military districts under commanders empowered to employ the army to protect life and property while also laying out new requirements for readmission into the Union. See Foner, *Reconstruction*, 276-277.

group. The delegates emphasized the education and Christianization of the Cherokee people, which revealed the belief that the Cherokee viewed themselves as a racial group that was most comparable to the white race. The use of racial language allowed Cherokee delegates to insist, in a way that white lawmakers understood, that the best plan for the survival of the Cherokee Nation was to remain a sovereign nation entitled to its own self-government. This was becoming increasingly more important throughout the 1870s as the strengthened power of the federal government worked to consolidate its control over all lands within its continental boundaries, including Indian Territory.

As the decade came to a close, Cherokee leaders believed they had been successful in defeating the numerous territorial bills before Congress throughout the decade. Still, the pressure to put Indian Territory on the road to U. S. statehood persisted, which the Cherokee Nation continued to resist any way possible. Chief Thompson's November 7, 1876 annual message on the state of the Nation before the Cherokee National Council acknowledged little change in the Nation's relationship with the United States. He praised the effectiveness of the Cherokee delegation's protests against the numerous territorial bills introduced in Congress. "But by the watchfulness and strenuous efforts of our efficient Delegation they have all been defeated, with the exception of the one introduced by the Hon. William P. Caldwell of Tennessee, which bill has been reported to Congress and made the special order of the day, and will be called up for action on the 13th day of December next."⁶⁶ According to Thompson, it was now "[their] duty to oppose with all our might and means the passage of that bill, as it is ruinous in its details to our

⁶⁶ Annual Message of Hon. Charles Thompson, Principal Chief of the Cherokee Nation Delivered to the National Council, at Tahlequah, November 7, 1876, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Received Relating to Cherokee Citizenship, 1875-89, box 1, folder 1877 T 112, National Archives Building, Washington, D. C. (Hereafter cited as Annual Message of Hon. Charles Thompson, Principal Chief of the Cherokee Nation Delivered to the National Council, at Tahlequah, November 7, 1876.)

nationality.”⁶⁷ He pinpointed the intruder problem as another major obstacle the Nation must address in order to sustain its place as a sovereign nation. This issue, if not resolved, threatened more interference and intrusion on native self-rule as many intruders began to ask for federal help in securing their Cherokee citizenship.

Thompson divided the intruders into three separate groups. He explained one group of intruders was made up of white families falsely claiming to have a Cherokee Nation work permit. Members of the second group claimed citizenship through a blood connection they had thus far been unable to prove. Finally, he called attention to the freedmen excluded from citizenship by provisions of the Treaty of 1866. “It has been the policy of former administrations to recommend the adoption of all such persons, but from some cause or other there has been no action taken in the matter.”⁶⁸ In fact, Thompson had supported the efforts of Chiefs Ross and Downing to incorporate those freedmen who had failed to return to the Cherokee Nation by the required time limit. However, neither of these efforts by Chiefs Ross or Downing ever passed the National Council to become law. Thompson strongly recommended the members of the Council “take some prompt and definite action at an early date; so as to receive those that have been barred by the terms of the treaty or reject them, and all other intruders beyond the limits of the Cherokee Nation at once.”⁶⁹ The Chief hoped the Nation could resolve its intruder problem on its own terms and thus demonstrate its ability to manage its own affairs.

Thompson, like other Cherokee leaders and the people they represented, believed native governments were most successful when they were left to determine their future for themselves. In his continual effort to resolve the intruder problem, Chief Thompson wrote Commissioner of

⁶⁷ Annual Message of Hon. Charles Thompson, Principal Chief of the Cherokee Nation Delivered to the National Council, at Tahlequah, November 7, 1876.

⁶⁸ Ibid.

⁶⁹ Ibid.

Indian Affairs, J. Q. Smith on February 28, 1877. He used the letter as another opportunity to articulate Cherokee arguments against newly proposed territorial bills before Congress.

Thompson argued that a territorial government would not work for an area full of different native nations that pursued their own paths of governing. He highlighted the large number of Cherokee people who had still not yet become bilingual and adopted English as a second language. “More than three fifths of the Cherokee’s speak, think, and reason, in the Cherokee language only, and can only comprehend what the power of that language in expressing ideas, will enable them to do.”⁷⁰ This meant, Thompson explained that the “majority of our people, speaking only Cherokee, very naturally, select from among themselves men to represent them in the Councils of the Nation; and as often as they can, consistently with the common interest, select the Officers of the Nation from among the Cherokee speaking portion of the people.”⁷¹ Thompson, himself a Cherokee speaker, believed he spoke for the Cherokee majority who desired nothing more than to maintain their separation from the United States. Cherokee leaders employed any possible tactic in their fight against federal encroachment in the 1870s, including appeals to the prevailing racial mores of the late nineteenth century.

III.

⁷⁰ Letter from the Office of the Executive Department of the Cherokee Nation, Tahlequah, sent to the Honorable J. Q. Smith Commissioner of Indian Affairs Department of the Interior, February 28, 1877, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Received Relating to Cherokee Citizenship, 1875-89, box 1, folder 1877 – T 112, National Archives Building, Washington, D. C.

⁷¹ Ibid.

Additional evidence demonstrates that ideas of race were not only a tool used in negotiations with the United States in the 1870s, but also played a major role in the internal workings of the Cherokee Nation. Cherokee leaders, like their white American counterparts, also were grappling with the aftermath of emancipation and were unsure of the place of freedpeople in postwar Cherokee society. The treatment of the Cherokee freedmen implies most Cherokees viewed them as second-class citizens with limited rights to citizenship and resources in the Cherokee Nation. Emancipation produced controversy within the Cherokee Nation similar to problems that arose in the southern states during Reconstruction as many Cherokee freedmen struggled to exercise their rights as citizens of the indigenous nation. Although some historians have argued economic issues were the driving force behind the dispute between the Cherokee Nation and the Cherokee freedmen seeking citizenship rights, it is clear that race was a major part of this argument as well.⁷² Freed people residing in the Cherokee Nation insisted they were denied citizenship rights and access to economic resources because of their race. Emancipation had created chaos for Cherokee leaders unsure of the place of newly freed slaves in the body politic. Efforts to define Cherokee citizenship became increasingly more difficult as the 1870s progressed because issues of freedmen citizenship were often entangled in Cherokee-U. S. disputes over intruders deemed by Cherokee authorities to be residing illegally in the Nation.

Fay Yarbrough's 2008 work, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century*, investigates the Cherokee Nation's regulation of interracial sex in order to demonstrate the complex connections between race and citizenship. She argues that the Cherokees' racialized vision of their society left no space for blacks and prompted Cherokee leaders to protect Cherokee racial identity by constraining sexual behavior. For Yarbrough,

⁷² Denson, *Demanding the Cherokee Nation*, 85. See also Strum, *Blood Politics*, 77.

marriage laws serve as a window on racial attitudes that indicate how Cherokees were defining themselves and others. She contends that Cherokee leaders enacted a conception of identity built on blood, race, and legal citizenship best seen in legislation regarding interracial marriage. An examination of interracial marriage from the perspective of the Cherokee, according to Yarbrough, reveals a community at work creating a racial ideology. She argues that the Cherokee Nation focused on marriage laws to configure conceptions of race and gender in response to American attempts to infringe on indigenous sovereignty. Although Yarbrough focuses on the regulation of interracial marriage in the Cherokee Nation, she notes that other records, such as statutes, treaty agreements, and census reports, provide further proof of a Cherokee racial ideology. Bureau of Indian Affairs records relating to the freedmen's citizenship disputes with the Cherokee Nation offer additional evidence that demonstrates the existence of a Cherokee racial ideology, which guided the Cherokee Nation's response to the issues unleashed by emancipation and their fight with federal authorities for self-rule in the late nineteenth century. It became clear that U. S. officials intended to use multiple approaches in their efforts to erode Cherokee sovereignty and found ways to increase governmental control over the affairs of Indian Territory and the Cherokee Nation in particular.

Indian Agent G.W. Ingalls also reported to his superiors at the Bureau of Indian Affairs alleged cases of voter fraud of Cherokee freedmen denied citizenship yet allowed to participate in Cherokee elections and collect per capita payments that Cherokee leaders had reserved for Cherokees by blood. Ingalls claimed to have over forty sworn affidavits from Cherokee freedmen whose citizenship had been denied by Cherokee officials that who had received full shares of the most recent per capita payments the federal government had released to aid the Cherokee people because their harvest had been devastated by grasshoppers and drought.

According to the testimony Ingalls had collected, these freedmen had received these payments in exchange for their votes for William Ross's reelection as Principal Chief. He informed the commissioner about a recent petition circulating around various districts in the Cherokee Nation asking the Interior Department to withhold payments to Cherokee freedmen until the new administration took over because of a gross misapplication of funds by the current officeholders. "I am satisfied that partiality has been shown in the distribution of the \$200,000, and [these allegations] ...calls for some action by the Department for the reason those parties have presented their claims to the present Cherokee Authorities and they say they have no power" to delay the division of funds.⁷³

In a follow up letter marked private, Agent Ingalls asked for clarification and instructions from the commissioner on how he should proceed in his investigations of disputed Cherokee citizenship cases, while also providing more information on the Cherokee citizenship cases and recent per capita payments that were distributed by blood only. Ingalls reported he had invited Chief Ross to witness the depositions he has been collecting from claimants, but Ross had declined and wished only to be informed of the findings after Ingalls completed his investigation. Now the agent was unsure of how to should proceed. "I wish the Department would instruct me definitely as to further investigation of cases of Citizenship or intruders an if desirable to make other examination of new cases of persons claiming a share in the per capita – breadstuff payments."⁷⁴ He was anxious for instruction because Chief Ross had informed him that all the

⁷³ Letter sent to Hon J. Q. Smith Commissioner of Indian Affairs Washington, D. C. on August 7, 1875 from G. W. Ingalls Union Indian Agent in Muskogee, August 7, 1875, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Received Relating to Cherokee Citizenship, 1875-89, box 1, folder, 1877-1348/I1032, National Archives Building, Washington, D.C.

⁷⁴ Letter sent August 23, 1875 to Hon J. Q. Smith Commissioner of Indian Affairs Washington D. C. from G. W. Ingalls Union Indian Agent, August 23, 1875, Record Group 75, Records of

funds were paid out and there would be no more for any new claimants. Ingalls felt “compelled to say that great injustice had been done to a very large number of worthy Cherokee Citizens, who are living in the Cherokee Nation, others living in the Creek, Choctaw and Chickasaw Nations and to still others temporarily residing in Arkansas – who have been denied a share in this payment.”⁷⁵ It was interesting the agent believed that people living outside of the Cherokee Nation were legitimate citizens since most Cherokee leaders argued residency in the Nation was a major indicator of one’s citizenship.⁷⁶

Ingalls believed favoritism had been shown in many cases, which he argued was demonstrated in the affidavits of S.S. Stephens and Mr. Wheeler whom the agent identified as leaders of the Cherokee community. “It is claimed by a large number of respectable Cherokee Citizens that many persons’ whose right to Citizenship had never been granted but refused by the Council received share of the funds, for their influences and votes at the recent election.”⁷⁷ The agent also relayed that he had created much ire with Cherokee authorities unhappy with his citizenship investigations and had been “charged with having Sought to influence the colored vote by writing to Colored persons [and] advising them how to vote.”⁷⁸ He vehemently denied any involvement in influencing the Cherokee freedmen vote. “There is not a word of truth, in the

the Bureau of Indian Affairs Land Division, Letters Received Relating to Cherokee Citizenship, 1875-89, box 1, folder 1877-I348/I1119, National Archives Building, Washington, D. C. (Hereafter cited as Letter Sent August 23, 1875 to Hon J. Q. Smith commissioner of Indian Affairs Washington D. C. from G. W. Ingalls Union Indian Agent, August 23, 1875.)

⁷⁵ Ibid.

⁷⁶ The difficulty of defining Cherokee citizenship and identifying its markers is discussed in more detail in Chapter Two. One aspect of citizenship most Cherokee leaders seem to agree on is the need to reside in the actual boundaries of the Cherokee Nation. Evidence suggests that some Cherokee legislators believed removing oneself beyond the limits of the Nation and taking up residence in a state meant the person had renounced their Cherokee citizenship and had become U. S. citizens.

⁷⁷ Ibid.

⁷⁸ Ibid. Emphasis in the original.

charge, as I wrote but one letter to Colored claimant and invited attendance here for them to prove up their claims for Citizenship but in that letter did not suggest as to who they should vote for, or at all.”⁷⁹ Ingalls was appalled by the accusation that he had overstepped his bounds and attempted to influence the Cherokee national election during a critical race but failed to see that the Cherokee authorities also viewed his investigations as a federal intrusion into the Nation’s internal affairs. Ingalls’s reports encouraged Secretary of the Interior, Zachariah Chandler, to dispatch E. C. Watkins to the Cherokee Nation to investigate the citizenship matter and gather evidence Chandler could use to persuade Congress to enact legislation resolving the disputed Cherokee citizenship cases.⁸⁰

The 1876 report submitted by U.S. Indian Inspector E.C. Watkins to the Bureau of Indian Affairs illuminates the centrality of race in the freedmen controversy of the 1870s. Watkins provided his analysis of the various groups seeking citizenship in the Cherokee Nation. He insisted the applications for citizenship were divided into three categories: white men claiming citizenship either through marriage to a Cherokee woman or adoption, non-residents of the Cherokee Nation who claimed citizenship by blood, and freedmen claiming citizenship through the treaty of 1866. Watkins believed “the Indians scrutinize [sic] closely the claims of this class of [white] applicants” and “the instances are rare—where injustice has been done.”⁸¹ He found the second group of applicants claimed citizenship through their blood connection to Cherokees residing in North Carolina and Georgia. According to Watkins, it was very difficult to detect any

⁷⁹ Letter Sent August 23, 1875 to Hon J. Q. Smith commissioner of Indian Affairs Washington D. C. from G. W. Ingalls Union Indian Agent, August 23, 1875. Emphasis in the original.

⁸⁰ McLoughlin, *After the Trail of Tears*, 355.

⁸¹ E.C. Watkins, “Report on applications for Cherokee Citizenship and the general condition of Indian Territory,” *Letters Relating to Cherokee Citizenship*, Record Group 75, Records of the Bureau of Indian Affairs, Land Division, Box 1 P1-163 E-577 HM 1996 Folder 1877-I 348/W 244, 5, National Archives Building, Washington, D. C. (Hereafter cited as Watkins.)

trace of Indian blood in the appearance of these applicants. He explained, “The question then arises, to what extent Indian blood may be divided with white, and still the party remain Indian.”⁸² He found no case in which a North Carolina Cherokee who proved their kinship connection to the Cherokee Nation was denied citizenship, although Watkins asserted, “some rule, as to the proof, necessary to establish blood relation sufficient to entitle to citizenship, should be adopted.”⁸³ Therefore, those of white ancestry who successfully established their connections to the Cherokee Nation through intermarriage, adoption, or blood were granted access to Cherokee citizenship and did not need U.S. intervention to secure their rights.

For Watkins, it was the group of Cherokee freedmen that warranted the attention of the federal government. He argued “some legislation is necessary to secure to this class, such privileges, as they are entitled to” because “in most cases, applications have been made to both the courts and council [of the Cherokee Nation], but no action had been taken by the courts and none by the Council ... beyond passing a bill, declaring a large number of persons intruders.”⁸⁴ He pointed out that some of those included as intruders were freedmen who served in the Union Army during the Civil War and were unable to return to Indian Territory after the war within the six months required by the Treaty of 1866. Watkins did not believe the political views of the freedmen affected their citizenship status. Instead, he insisted “the recent per capita payments was the cause of excluding a large number of these applicants” and that “naturally, the Indians desired to exclude as many, not clearly belonging to their race as possible.”⁸⁵ Thus, the group deemed racially different was the only group of applicants specifically excluded from these resources.

⁸² Watkins, 6.

⁸³ Ibid., 7.

⁸⁴ Ibid., 9-10. Emphasis in the original.

⁸⁵ Ibid., 12, 13.

Letters from Cherokee freedmen and their spokesmen also reveal how black residents of the Cherokee Nation were affected by perceptions of race, and they highlight the racial hierarchy at work in the process of rebuilding the Cherokee Nation in the 1870s. In March 1878, Riley McNair, a Methodist-Episcopal pastor who had lived in the Cherokee Nation for over thirty years, wrote to President Rutherford B. Hayes on behalf of some Cherokee freedmen. McNair and his petitioners sought protection of their citizenship rights in the Cherokee Nation because they believed “no Person [of] African Descent can receive Justice at the hands of the Cherokee authorities” because “a number of Persons of African Decent [sic] have been murdered by Cherokee Indians and not in one single case has an Indian been punished for any crime committed against Persons of African Decent [sic] by any Court of the Cherokee Nation.”⁸⁶ McNair’s letter reported that racial discrimination and violence against freedpeople still existed in the Cherokee Nation after the official end of Reconstruction. He argued that Cherokee freedmen required the assistance of the U.S. government in securing their citizenship rights because they faced oppression from the Cherokee Nation and its leaders because of their race. McNair explained, “the Council of the Cherokee Nation has by Law created a Board of Three Commissioners called Commissioners of Citizenship and selected three Cherokee Indians as said Commissioners who are and have been for the [last] Eleven Years bitter Enemies and persecutors on account of our race cast coler [sic] and pervious condition [of servitude].”⁸⁷

Chief Charles Thompson urged the Cherokee National Council to create a tribunal to adjudicate disputed citizenship cases. The Cherokee citizenship court attempted to establish

⁸⁶ Riley McNair, “Letter to President Hayes March 1878,” *Letters Received Relating to Cherokee Citizenship, 1875-89*, Record Group 75, Records of Bureau of Indian Affairs, Land Division, Box 2 P1-163 E-577 1878-1879, Folder 1878 P131, 1, National Archives Building, Washington, D. C.

⁸⁷ *Ibid.*, 3.

ultimate control over Cherokee citizenship and refused to comply with Bureau of Indian Affairs (BIA) recommendations for deciding the cases. In the case of former slaves, the citizenship court used only the wording of the Treaty of 1866 to determine if an applicant was eligible for Cherokee citizenship. The National Council also refused to allow the BIA to review the decisions of the court. John Chambers, O. P. Brewer, and George Downing were appointed to the court and began hearing cases in 1878. All those claiming grounds for citizenship were to appear before the court or they would be declared intruders subject to expulsion from the Nation. The BIA refused to consider the findings of the court legitimate and removed no reported intruders.⁸⁸

An 1878 petition from a group of Cherokee freedmen residing in the Cooweescoowe District echoed McNair's claims of racial discrimination. Freedmen who were held as slaves in the Cherokee Nation before 1861 and returned to their former homes in 1866 composed this petition to the Commissioner of Indian Affairs, which stated they had settled in the Cherokee Nation with the support of Principal Chief Louis Downing and "are making [their] living by hardwork as we have been right by our former masters who now aim to take away from us all we have."⁸⁹ The freedmen feared the loss of their homes and improvements if they were unable to hire an attorney to represent them in their case before the Cherokee citizenship court. They appealed to the Bureau of Indian Affairs for help because they were unsure who had the final say in citizenship cases: the Cherokee Nation or the U.S. government. The confusion over jurisdiction is best understood when it is placed in the context of Reconstruction and the

⁸⁸ McLoughlin, *After the Trail of Tears*, 358-359. The Cherokee citizenship court was also known as the Chambers Commission.

⁸⁹ Group of Cherokee Freedmen, "Letter to Commissioner of Indian Affairs August 28, 1878," *Letters Received Relating to Cherokee Citizenship, 1875-89*, Record Group 75, Records of Bureau of Indian Affairs, Land Division, Box 2 P1-163 E-577 1878-1878, Folder 1878 S 1018, 3, National Archives Building, Washington, D. C. Downing served as Principal Chief from 1867 until his death in 1872.

aftermath of emancipation. White Americans and Cherokee leaders were both unsure what incorporating former slaves into their respective societies meant. The federal government with its expanded postwar power had attempted to protect freedmen rights in both the former Confederate states and Indian Territory. But, with the native nations in Indian Territory, the United States hoped to finally consolidate its control over the domestic, dependent nations and unite all regions of the country. The Cherokee Nation used whatever tools and strategies it could to maintain its sovereign status in the postwar period, especially over its own citizenry.

Chief Charles Thompson wrote to the Bureau of Indian Affairs on several occasions in his many attempts to have intruders removed from the Cherokee domain by the U.S. as required by the Treaty of 1866. His correspondence from August 1877, demonstrated that intermarried blacks faced the most difficulty obtaining and exercising citizenship rights they claimed through their marriage to women who had previously been enslaved by Cherokee masters and granted citizenship by fulfilling treaty requirements. On August 21, the Cherokee Nation's Executive Department forwarded to the Bureau of Indian Affairs a list of claimants for Cherokee citizenship that the Cherokee courts had deemed intruders with no citizenship rights in the Cherokee Nation. The list recorded intruders by their names, color, and residence in the Cherokee country. One reported intruder named Reubin Still claimed citizenship through marriage to his Cherokee wife. However, the executive department had rejected his claim. "Reubin Still has married a colored woman that claims Cherokee rights under Treaty, but there is no law of the Cherokees recognizing such a marriage as legal. The Supreme Court ruling that such a marriage is illegal. Reubin Still is an intruder, and a bad man at that."⁹⁰ A few days later

⁹⁰ List of Intruders forward to BIA from Cherokee Executive Department, August 21, 1877, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Received

Principal Chief Thompson wrote to Indian Agent G. W. Marston stationed at the U. S. Union Indian Agency in Muscogee, Indian Territory.

Thompson hoped his letter could clarify the Cherokee Nation's position on intermarriage. The Chief recognized no special form of adoption for non-citizens; and explained that Cherokee law regulated only intermarriage with white men and Cherokee women. He argued the Cherokee "made this law, [and] we have the best right to construe it, as being the best acquainted with its object, and intention."⁹¹ For Thompson, citizenship was clearly an issue of Cherokee sovereignty the United States had no jurisdiction over. Thompson continued his discussion of intermarriage by addressing the lack of a Cherokee law recognizing the marriage of non-citizen blacks with Cherokee freedwomen granted citizenship under the Treaty of 1866 as a legitimate claim for citizenship. In fact, the Chief explained, "Our Supreme Court has decided such marriages unlawful. Such non citizen negroes are intruders."⁹² He closed his letter by reminding the agent that the black claimants had an opportunity to prove their connection to the Cherokee body politic and if they were now listed as intruders it was clearly because they had failed to prove their claim. It was now the responsibility of the United States to remove these undesirable citizens from the Cherokee Nation.

Still, it is important to note that it was not only former slaves who faced problems securing and exercising their Cherokee citizenship rights. Some intermarried whites also turned to the U. S. government for help when they found themselves ousted from the Cherokee country as intruders or non-citizens. On February 7, 1878, J.L. McCorkle wrote Secretary of Interior,

Relating to Cherokee Citizenship, 1875-89, box 1, folder 1877 U 208, National Archives Building, Washington, D. C.

⁹¹ Letter of Charles Thompson to Indian Agent, August 30, 1877, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Received Relating to Cherokee Citizenship, 1875-89, box 1, folder 1877 U 208, National Archives Building, Washington, D.C.

⁹² Ibid.

Carl Schurz asking for federal help. McCorkle was a white man whose Cherokee wife had recently died and he now found his Cherokee citizenship in question. He explained that his wife Eliza was a native-born Cherokee who had never lived anywhere else except the Cherokee Nation. According to McCorkle, Rev. Allen Rattey, whom he also identified as a Cherokee, had married the couple on August 24, 1862. After Eliza's death on April 21, 1877, McCorkle had become a widower with two young children, aged seven and eleven. He explained to Secretary Schurz that he had improved a homestead in the Canadian District worth \$1,400.00, voted in county elections, and even served as the Clerk of the District for six years. Placed on the intruders list, he claimed the Cherokee authorities no longer recognized the legality of his marriage and accused him of having failed to follow the procedure for intermarriage, which included a required loyalty oath to the Cherokee Nation. He explained that an Indian Agent had reviewed his case in July 1877 and determined he needed only take the loyalty oath to comply. McCorkle believed the Cherokee authorities were unhappy with white men marrying Cherokee women during the war because they did not follow the proper rules for intermarriage because of the chaos of war. He reported that the Cherokee authorities had this group of men remarry their wives after the war in order to comply with the intermarriage laws of the Nation. He pleaded for federal protection from Cherokee authorities wishing to seize his farm and homestead and force his separation from his children. "Will the great government of the US protect me and my children from being trampled under by a few Indian demagogues [sic] who cannot bear to see a white man in the Cherokee Nation (although he may have an Indian family) – enjoy the fruits of his own labor."⁹³

⁹³ Letter to Carl Schurz (Sec. of Int.) from J. L. McCorkle, February 7, 1878, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Received Relating to Cherokee Citizenship, 1875-89, box 2, folder 1879 M 314, National Archives Building, Washington, D.C.

The jurisdictional chaos meant U. S. officials encouraged those with disputed citizenship status to defy Cherokee authorities while BIA agents investigated their claims. On July 16, 1878 Acting Commissioner of Indian Affairs W. M. Leeds responded to an inquiry from a group of Cherokee freedmen seeking clarification of their citizenship status in the Cherokee Nation. They wanted to know which government had supreme authority to decide their cases. They asked Commissioner Leeds to provide information concerning the “rights of the colored people in the Cherokee Nation and the authority of the Courts of said Nation to pass upon questions pertaining to their citizenship.”⁹⁴ In his response, the acting commissioner completely disregarded Cherokee authority over freedmen citizenship disputes and informed the freedmen the BIA had “never recognized the authority of any Cherokee Court to decide who are or who are not citizens of said Nation, and until you have received notice that this has been done there will be no necessity for you to attend the sessions of said, Courts.”⁹⁵ Although Leeds told the freedmen to disregard Cherokee authority and law by not attending their citizenship cases in Cherokee court, he did emphasize that the United States recognized only those freedmen granted citizenship through the Treaty of 1866 were accepted as Cherokee citizens. After quoting Article 9 of the 1866 Treaty, the commissioner recommended that any freedmen who did not meet the criteria outlined in the article must “remove at once from within the limits of the Cherokee Nation” or

The fact that he lives in the Canadian District most likely indicates southern sympathies if not actual Confederate service during the war. Confederate Cherokees were granted this District for their exclusive use in the Treaty of 1866.

⁹⁴ To Daniel [Sandrum] & W. M. David et al from Dept of Interior W. M. Leeds Acting Commissioner, July 16, 1878, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 2, folder 1879 W 442, National Archives Building, Washington, D. C. Emphasis in the original. (Hereafter cited as To Daniel [Sandrum].)

⁹⁵ Ibid. Emphasis in the original.

face forced expulsion from the area once the federal government figured out how to actually enforce their expulsion as intruders.⁹⁶

IV.

The freedmen's struggle to establish their rights to Cherokee citizenship, according to historian Daniel Littlefield, helped lay the groundwork for inroads upon Cherokee autonomy and contributed ultimately to the dissolution of the Cherokee Nation and the opening of Indian Territory to non-Indian settlement. Why did Cherokee leaders who were desperate to retain their nation's sovereignty allow this to happen? In fact, they had tried to stop federal intrusion on numerous occasions. Several bills were introduced to the National Council in the 1870s with the express purpose of resolving the freedmen's citizenship dispute by adopting those who had returned to the Cherokee Nation after the six-month time limit required by the treaty of 1866. Principal Chief Charles Thompson's 1876 annual message stressed the importance of a quick solution to the freedmen controversy. However, no bill or measure was ever approved to end the dispute, which continues today.

The role of race was evident in the inability of the Cherokee Nation to resolve its dispute with the Cherokee freedmen; Cherokee leaders were unable to accept their former bondsmen as equal citizens because doing so ran counter to the racial ideology of many Cherokee leaders during the Reconstruction period. This racial ideology also infused the protests of native

⁹⁶ To Daniel [Sandrum]. See also McLoughlin, *After the Trail of Tears*, 359. McLoughlin explains Leeds instructed the local Indian Agent not to expel any of those judged intruders by the courts. Yet, Leeds did nothing to prevent Cherokee authorities from ejecting them from their homes and selling their improvements. The former slaves, he argues, had become pawns in a much bigger game.

delegates as they struggled to maintain the Cherokee Nation's status as an independent, self-governing nation within the larger United States because appeals to racial difference functioned as a reminder to U.S. officials that the best strategy for the survival of the Cherokee in the late nineteenth century was to retain their place as a self-governing, sovereign nation that defined citizenship and inclusion in the Cherokee Nation on its own terms. Cherokee leaders would not allow the U.S. government to dictate the reconstruction of their nation and repeatedly insisted that the place of the Cherokee Nation in postwar America was as a self-governing nation whose sovereignty depended on the maintenance of its treaty relationship with the United States.

In the late 1870s, a new party emerged in the 1879 Principal Chief election that offered its plan for the future of the Cherokee people. This plan focused on the growth of the Nation's economy. Dennis Bushyhead and his friend, Rabbit Bunch, led the National Independent Party. The new party emphasized its differences with the National Party lead by William Ross and hoped to draw disaffected members from Oochalata's party to its cause.⁹⁷ In July 1879, the Muskogee *Indian Journal* printed a transcript of Dennis Bushyhead's campaign speech, which outlined his party's political platform. He opened with a reminder to his audience that the Cherokee tribal organization had been maintained and the Cherokee Nation still retained its liberty and right to self-government. Bushyhead claimed he answered the call from the Cherokee people to run for office. "The Cherokee people in regular Convention assembled, according to the laws and usages of our country have placed Rabbit Bunch and myself in nomination for the office of Principal and Assistant Chief."⁹⁸ He recounted his service to the

⁹⁷ McLoughlin, *After the Trail of Tears*, 365. McLoughlin claims no political platforms were published during the campaign and there was no violence by either party.

⁹⁸ "Speech of D. W. Bushyhead," *Indian Journal*, July 31, 1879, D. W. Bushyhead Collection, box #B-54, folder #159, Western History Collection, University of Oklahoma, Norman, Okla. (Hereafter cited as "Speech of D. W. Bushyhead," July 31, 1879.)

Cherokee people as Treasurer of the Nation detailing his economic experience and understanding of the Cherokee Nation's funds. He believed his honest and trustworthy personality meant his administration would not be corrupted and would balance the budget. He explained to the crowd the Cherokee Nation's debt was paid through the sale of Cherokee lands. This was a practice Bushyhead wanted to see ended. "No more land to pay future indebtedness."⁹⁹

"The National party of the Cherokee Nation" according to Bushyhead, "[was] committed and pledged to economy and reform in our financial matters."¹⁰⁰ He was a fiscal conservative who lived within his means and wanted the Nation to do the same. He took aim at the costly expense of sending a Cherokee delegation to Washington every year in addition to the attorney fees the Nation paid due to several cases pending in U. S. courts. He gave a breakdown of how much the delegation spent each year and also pointed out he had recommended to the National Council that the delegation be reduced to two delegates. Instead of a large Cherokee delegation, Bushyhead wanted to rely on the President, the honor of Congress, "upon the newspapers of the United States, and their readiness to expose all schemes of corruption, trickery or fraud sought to be perpetrated by their political opponents; and lastly but not least, upon the unswerving honesty of the mass of the people of the United States, and their consequent disinclination to permit a wrong to the Indian people when once they are informed of their rights under the treaties and the laws."¹⁰¹ He acknowledged the necessity of a Cherokee delegation but believed it should be smaller and less expensive. In fact, Bushyhead even proposed to send a united delegation of the Five Tribes to keep costs down. He believed the funds saved would be better spent on education because he argued schooling was essential to Cherokee national survival. He wanted to promote

⁹⁹ "Speech of D. W. Bushyhead," July 31, 1879.

¹⁰⁰ Ibid.

¹⁰¹ Ibid. Bushyhead is either really optimistic about the concern of the American public or he's sarcastic.

the establishment of an agricultural college to teach Cherokees more productive farming methods like those being practiced in Europe and other U. S. states.

Bushyhead also addressed the issues of adopted citizens in his speech, but made “no broad and glittering promises to win [their] votes.” He explained that all freedmen adopted by the terms of the Treaty of 1866 “full citizens of the Cherokee Nation with rights as complete as any we possess, and no promise of mine can make them more so.” Bushyhead told those claiming citizenship to appear before the National Council for judgment on their case. If they successfully proved their Cherokee citizenship through the Treaty of 1866, Bushyhead stated “the Cherokee people, and the National Party are equally bound to protect you in all the rights guaranteed by that treaty. No party can do more than this no matter what pledges should be made. The time is past when one man or set of men can rule this Nation, unquestioned by the increasing intelligence of the people.”¹⁰² He insisted that the Cherokee Nation must be like Switzerland, surrounded on all sides by other nations. “Our men are as brave as the Swiss. Let them be educated as well, as wise and honest in council, and we shall succeed. Our women are as intelligent, fair and virtuous as they. Let them teach patriotism and love of country to their children that they too may preserve our vested rights.” He reminded his audience that he was personally deeply connected to the Cherokee land and people. “Here my kinsfolks and friends were born. In their veins runs the blood of the Cherokee, unmixed with any other race. Here they lived and here many of them have died, and their bones lie buried in every district in this Nation, and here may they rest forever undisturbed, endearing my country to me by all the ties of race, of

¹⁰² “Speech of D. W. Bushyhead,” July 31, 1879

blood, and of home.”¹⁰³ Bushyhead easily won election as Principal Chief and served two four year terms marked by continued struggle with the United States.¹⁰⁴

Despite the new phase of Cherokee politics, lingering troubles continued to allow the federal government to press at the boundaries of Cherokee sovereignty. The intruder problem still plagued the Cherokee leadership as it entered the 1880s. On February 12, 1880, Principal Chief Dennis Bushyhead wrote President Rutherford B. Hayes about the persistent intruder problem in Cherokee country. The Cherokee authorities had sent the names of recent intruders to the Indian Agent and were waiting for the federal government to expel the reported intruders from the Cherokee Nation. These names had been collected through the provisions of an act approved by the Cherokee legislature in December 1878, which intended to clarify any errors on the intruder list. Chief Bushyhead asked Hayes for the “prompt exercise of your high authority, as will afford the Cherokees the protection in their rights of soil, contemplated and guaranteed to them by treaty with your Government.”¹⁰⁵ Like his predecessors, Bushyhead continued to remind U. S. officials of their responsibilities to uphold the treaty stipulations agreed to by both nations.

As the 1870s drew to a close, the Cherokee people faced a new threat as the United States began to debate the possibility of allotment in Indian Territory. This new threat was one the Cherokee leadership took very seriously and immediately began to protest against. In January 1881, the *Cherokee Advocate* reprinted the protest of representatives from Indian Territory to the members of the U. S. Congress against proposals of allotment. They began by reminding congressional leaders that current proposals for allotment could not be applied to native nations

¹⁰³ “Speech of D. W Bushyhead,” July 31, 1879. He highlights his “full blood” status in this speech.

¹⁰⁴ McLoughlin, *After the Trail of Tears*, 365.

¹⁰⁵ Letter of Principal Chief D. W. Bushyhead to President Rutherford B. Hayes, February 12, 1880, D. W. Bushyhead Collection, box #B-53, folder #14, Western History Collection, University of Oklahoma, Norman, Okla.

in Indian Territory until consent had been given as provided by treaty requirements. “We therefore appeal to you not to violate your pledges to us in treaties.”¹⁰⁶ The delegates especially objected to House bill 6022 intended to impose allotment on specific tribal groups in Indian Territory, which the native representatives believed jeopardized the order of groups, like the Cherokee. “Our own laws regulate a system of land tenure suited to our condition, and much safer than that which is proposed to be established for it.”¹⁰⁷ They explained that improvements could be frequently sold, but the land itself was not a chattel. The occupancy and possession of land was essential to holding it, and its abandonment for two years meant the land reverted to the public domain. This, they explained ensured that every native citizen could have a home.

Allotment, the delegates reasoned, would result in Cherokee lands being purchased by a few persons with means. The Cherokee, they asserted, had not consented to this and did not wish for allotment to be imposed on their country. The Cherokee people, along with the other Five Tribes, would be ruined they argued because “at least two thirds of the Indian Territory are only suitable for grazing purposes. By sectionizing [sic] or reducing them to 160 acres, you would pauperize and ruin a people who are adding to your productive industries.”¹⁰⁸ Individual allotment would punish the Five Tribes for their progressive ways and ability to adapt. They explained that allotment had been tried before with the Shawnee, Pottawatomies, and Kicapos who had all once live in Kansas. According to the delegates, five years after allotment non-

¹⁰⁶ “Protest Of The Representatives Of The Indian Territory,” *Cherokee Advocate*, January 19, 1881, D. W. Bushyhead Collection, box #B-53, folder #41, Western History Collection, University of Oklahoma, Norma, Okla.

¹⁰⁷ Ibid.

¹⁰⁸ “Protest Of The Representatives Of The Indian Territory,” *Cherokee Advocate*, January 19, 1881, D. W. Bushyhead Collection, box #B-53, folder #41, Western History Collection, University of Oklahoma, Norma, Okla. The protest is signed by representatives from the Cherokee Nation, Creek Nation, and Choctaw Nation.

natives owned the entire native lands and the Shawnee, Pottawatomies, and Kikapoo were sent to reservations in Indian Territory. They believed the allotment bills were encouraged by men who were not well educated on the subject and would result in ruin for the native nations of Indian Territory. Native leaders had to face a new phase of the territorial campaign. Instead of advocating for a U. S. territorial government, those wishing to dismantle the protected status of Indian Territory placed their hopes on schemes of allotment, which would end the practice of communal landholding and force native peoples to become property owners.

CHAPTER THREE:
“EMANCIPATION, CITIZENSHIP, AND RECONSTRUCTING CHEROKEE”

I.

Indian Agent George W. Ingalls was a busy man. In 1875, he forwarded Commissioner of Indian Affairs Edward P. Smith several affidavits the agent had personally collected in his Muskogee office from freedmen claiming citizenship rights denied to them by the Cherokee Nation. Ingalls hoped the testimonies would “serve to illustrate a large number of other freedmen who have been unjustly [sic] treated by the Cherokee Authorities.”¹ His investigation of the cases led the agent to conclude that many of the claimants were entitled to Cherokee citizenship, as well as a share of recently dispersed federal funds intended to help sustain the grasshopper-plagued inhabitants of Indian Territory through a bleak harvest. Cherokee authorities had ruled that the bread money would only be distributed to Cherokees by blood, leaving many adopted citizens in a precarious situation. This ruling created two categories of citizens: those with a blood or kinship connection to a Cherokee and those who had been incorporated into the national body politic through treaty agreements or adoption, which included whites, Delaware, Shawnees, Creeks, and former slaves of Cherokee masters.² The

¹ G. W. Ingalls, Letter to Hon E. P. Smith Commission of Indian Affairs Washington D.C. from Union Indian Agent G.W. Ingalls, dated August 1875 in the National Archives collection *Letters Relating to Cherokee Citizenship*, Records of the Bureau of Indian Affairs, Record Group 75, Land Division, Box 1 P1-163 E-577 HM 1996 Folder 1877—I 348/I1131, 2, National Archives Building, Washington, D. C.

² McLoughlin, *After the Trail of Tears*, 293.

solution to the disputed citizenship claims, in Ingalls opinion, was immediate Congressional action, because he saw no relief for the hundreds of claimants without legislation placing control of Cherokee citizenship firmly in the hands of United States officials.

Ingalls informed Commissioner Smith “that in determining the citizenship of Claimants marked evidence of partiality is shown and it appears that there is frequent destruction of papers of claimants by the members of the Cherokee Council or its Officers and unnecessary delay in examining [sic] the cases of claimants.”³ The Cherokee National Council’s answer to these citizenship claims was a legislative act that listed several of Ingalls’ claimants as intruders on the Cherokee domain. The agent viewed the Council’s response as both erroneous and cruel. He highlighted the case of Henry West as “one of the most unjust [sic] proceedings that has come under [his] observation” of the citizenship debate in the Cherokee Nation.⁴ West’s affidavit was unique for a couple of reasons; not only did he give a personal account of his right to claim Cherokee citizenship, but both his former master, Walker Mayfield, and a fellow freedman, Aaron Johnson, lent their support to West’s claim. The seventy-five year-old West had been the property of Mayfield for thirty years until, as he explained, the Civil War set him free. During the war, Mayfield had fled to Russ County, Texas, with his slaves, including West and his large family. As the former slave explained, “I did not want to go but he made me.”⁵

West returned to Indian Territory as quickly as he could after the end of hostilities and arrived in the Cherokee Nation in April 1867. He sought advice on how to establish himself

³ Ingalls, Letter to Hon E. P. Smith, August 1875, 5.

⁴ Ibid., 3.

⁵ Henry West, Affidavit of Henry West for claim for Cherokee citizenship given on 25th of August 1875 to Union Indian Agent G.W. Ingalls, *Letters Relating to Cherokee Citizenship*, Records of the Bureau of Indian Affairs, Record Group 75, Land Division, Box 1 P1-163 E-577 HM 1996 Folder 1877—I 348/I1131, 1, National Archives Building, Washington, D. C.

from Huston Benge, who West identified as “a Cherokee big man” who attended the Cherokee Council annually. Benge assured West of his Cherokee citizenship and encouraged him to begin working on a place of his own, even offering a letter confirming his rights that he could present to the local Indian Agent who also encouraged West to start homesteading and report any harassment immediately. After years of hard work, West found his improvements had been sold at auction at the Sequoyah Court House for \$6.00 when the purchaser arrived at West’s farm claiming not only his domicile but also the harvested crops. Unable to achieve resolution with Cherokee authorities, West “respectfully [asked] the United States government” to do what it could to protect his citizenship rights in the indigenous nation and placed his faith in the ability of the federal government to grant him justice for his case.⁶ Radical Republicans in the U.S. Congress were more than happy to lend support to former slaves claiming citizenship in the Cherokee Nation.⁷ U.S. officials used cases like West’s to assert the power of the federal government over the sovereign, indigenous nation in the latter years of Reconstruction. While some have argued that the citizenship struggle of Cherokee freedmen hastened the end of Cherokee national sovereignty, it is not the sole issue the federal government used to press its postwar power upon the indigenous nation.⁸ Many groups fought to establish their citizenship rights in the postwar Cherokee Nation and they often called on the federal government for

⁶ West, Affidavit of Henry West, 1-3.

⁷ McLoughlin, *After the Trail of Tears*, 281, 290.

⁸ See Littlefield, *The Cherokee Freedmen*. Littlefield places the freedmen at the center of the story of the demise and destruction of the Cherokee Nation. He emphasizes the freedmen’s struggle to establish their citizenship rights in an effort to demonstrate how the struggle lay the groundwork for inroads upon Cherokee autonomy over their internal affairs, which ultimately contributed to the dissolution of the Cherokee Nation and the opening of Indian Territory to white settlement. Although Littlefield is the first to put the Cherokee freedmen at the center of the story, he does not account for the various other citizenship disputes with adopted and intermarried whites, Shawnees, Delaware, and Eastern Cherokee that also served as inroads for federal power over indigenous nations in the late nineteenth century.

assistance in securing those rights. What is unique about the case of Henry West is the support he had from local Cherokees living in Cherokee country, which he used to bolster support from federal authorities.

In a note to Agent Ingalls, West's former owner Walker Mayfield confirmed the freedman's whereabouts during and after the war. He pointed to the support West received from both Cherokee and U.S. authorities to begin improving a place for himself and his family in the Cherokee Nation; and Mayfield also believed his former slave was entitled to citizenship rights because West had been unaware of the six-month time limit to return to the Cherokee Nation.⁹ Aaron Johnson, who was also a Cherokee freedman, swore to the authenticity of West's claim to Cherokee citizenship and recounted their shared wartime experience on the Red River in Texas. Johnson vouched for West, whom he had known all his life as a close neighbor and presumably as a friend who accompanied West to Muskogee since both men were deposed by Ingalls on the same day.¹⁰ At the local level, with people who knew him well, there was little doubt about Henry West's right to Cherokee citizenship despite his failure to meet the six-month deadline; yet he found himself involved in a complicated jurisdictional dispute between two nations competing for ultimate control of Cherokee citizenship.

The United States government emerged from the Civil War invested in seeing southern states returned to the Union with the millions of newly franchised citizens created by

⁹ Walker Mayfield, Letter sent to Honorable Judge Ingalls U.S. Agent from Walker Mayfield from the Sequoyah District of the Cherokee Nation on Aug. 14, 1875, Letters Relating to Cherokee Citizenship, Records of the Bureau of Indian Affairs, Record Group 75, Land Division, Box 1 P1-163 E-577 HM 1996 Folder 1877—I 348/I1131, National Archives Building, Washington, D. C.

¹⁰ Aaron Johnson, Affidavit in cases of Samuel Starr and Henry West given by Aaron Johnson on the 25th of August 1875 to the Union Indian agent G.W. Ingalls, Letters Relating to Cherokee Citizenship, Records of the Bureau of Indian Affairs, Record Group 75, Land Division, Box 1 P1-163 E-577 HM 1996 Folder 1877—I 348/I1131, National Archives Building, Washington, D. C.

emancipation. The Freedman's Bureau served to assist freedmen and women as they transitioned to a life of freedom. The height of Congressional support for freedmen rights, or the Radical Republican era of Reconstruction began to crumble in the mid 1870s, as many former champions of emancipation and freedmen rights began to retreat and shifted their focus to the economy. In the Cherokee Nation, however, the same period was marked by increased federal interference in Cherokee internal affairs over citizenship disputes, especially those involving former slaves.¹¹ Although federal officials had begun to accept that sovereignty had been restored to the rebellious states and withdrew their support for continued policies of reconstruction, they continued to press the boundaries of native sovereignty by involving itself in issues of disputed citizenship.

Defining citizenship was one of the problems of freedom that the United States and the Cherokee Nation both faced in the postwar years. For the first time, the U.S. legally defined citizenship with the Fourteenth Amendment, which promised equality before the law for former slaves and broadened the meaning of freedom for all Americans.¹² Leaders in both the United States and the Cherokee Nation were unsure just what freedom meant for the freedmen in their respective societies. Before the war, freedom for most white men in the U.S. involved membership in a body politic. Citizenship meant one belonged to a community, but it could also be used as a category of exclusion of those who lacked or were unable to exercise their citizenship rights. The struggles of former slaves to find a sense of belonging as citizens of formally defined nations and as members of a larger community altered the meaning of freedom

¹¹ Foner, *Reconstruction*, 449-59, 524-34, and McLoughlin, *After the Trail of Tears*, 289-314.

¹² McLoughlin, *After the Trail of Tears*, 257-258.

in both the postwar United States and the Cherokee Nation.¹³ Emancipation meant that the incorporation of slaves into the Cherokee Nation had expanded beyond practices of adoption and regulated intermarriage. Cherokee officials' newly increased reliance on written legal codes required that they clearly spell out the rights and privileges of these new citizens.¹⁴

Cherokee leaders were particularly interested in issues of citizenship in the postwar period because numbers determined the amount of federal funds the Nation and its people would receive. Throughout the period, the Cherokee Nation took several censuses in order to provide the Interior Department with an accurate count of the numbers of Cherokee people who were entitled to funds and assistance in times of hardship, which the federal government had promised in various treaties between the two nations. In his first annual address to the National Council in 1879, Principal Chief Dennis W. Bushyhead recommended "the passage of a law requiring a complete registration of births, deaths, and marriages, with such description of age, sex, color, and condition, as will enable us at all times hereafter to recognize as members of our Body all persons who may live among us and are such in fact, and to reject and expel pretenders."¹⁵ The census functioned as the Cherokee Nation's most accurate record of its citizens, and allowed Cherokee leaders to clearly delineate who were entitled to the benefits and rewards of Cherokee citizenship and who were intruders that the federal government was required by treaty to remove beyond the limits of the Cherokee Nation's boundaries. It is noteworthy that the Cherokee census

¹³ Frederick Cooper, Thomas C. Holt, and Rebecca J. Scott, *Beyond Slavery: Explorations of Race, Labor, and Citizenship in Postemancipation Societies* (Chapel Hill: University of North Carolina Press, 2000), 5, 13-14.

¹⁴ Saunt, "The Paradox of Freedom," 73.

¹⁵ Dennis W. Bushyhead, "First Annual Message of D.W. Bushyhead," *The Cherokee Advocate*, November 26, 1879, vol. 4 no. 35, located in D.W. Bushyhead Collection box #B-54, folder #160 in the holdings of the Western History Collection at the University of Oklahoma, Norman, Okla.

contained a category entitled “color” that implies there was some connection between one’s outward appearance and their citizenship status in the Nation.

Cherokee leaders repeatedly offered their own definitions of and requirements for Cherokee citizenship in their correspondence with the Interior Department and Bureau of Indian Affairs officials in an effort to clearly delineate the markers of Cherokee citizenship, over which they asserted the Cherokee Nation was sole judge. Reprinted in various newspapers throughout Indian Territory, many of these letters described the long and complex relationship between both nations while also continually reminding United States officials of the Cherokee Nation’s sovereign powers over its citizenry. An excellent example comes from an 1877 letter written by Principal Chief Charles Thompson to Commissioner of Indian Affairs J.Q. Smith. Chief Thompson fervently reminded Smith of the Cherokee “claim to have always been a separate and distinct people, and as Indians, this has been settled by your own Supreme Court, in the case of Worcester vs. The State of Georgia, where it is held that “The Indian Nations had always been considered as distinct, independent, political communities retaining their original natural rights.”¹⁶

One of the most closely guarded of these natural rights, for Thompson, was the power to determine questions of citizenship. He argued that his previous correspondence with the commissioner had proven “that the Cherokees have not only the natural right, but also the treaty right to judge and determine who are their own citizens or lawfully members of their own nation,

¹⁶ Charles Thompson, “Reply of Chief Thompson To J.Q. Smith, Commissioner of Indian Affairs, in regard to Intruders,” *The Cherokee Advocate*, September 19, 1877, vol. 2 no. 26, located in Oochalata Collection box #O-20, folder #23 in the holdings of the Western History Collection at the University of Oklahoma, Norman, Okla. Emphasis in the original. (Hereafter cited as Thompson, “Reply.”).

and as such, entitled to the rights and privileges of Cherokee citizenship.”¹⁷ Thompson insisted that it was easy for Cherokee officials to determine the status of questionable citizenship because the “comparitvely [sic] smallness of their number, [and] their intimate connection one with the other, the nature of their customs and usages, as well as their laws” clearly showed who was included as a member of Cherokee society.¹⁸ The Cherokee Nation, he explained, had “the [indissoluble] right to decide in their own way, who are not citizens and therefore not entitled to the rights and priviledges [sic] of Cherokees.”¹⁹ Thus freedmen, like Henry West, who failed to return before the required six-month deadline found they were labeled intruders subject to expulsion from the Cherokee Nation.

Chief Thompson closed his letter to Commissioner Smith by quoting the Cherokee Constitution adopted in 1827 and later amended in 1839, which he believed offered a simple definition of Cherokee citizenship. “It says, ‘The decendants [sic] of Cherokee men by all free women, except [of the] African race, whose parents may have been living together as man and wife, and according to the customs and laws of this nation, shall be entitled to all the rights and privileges of this nation, as well as the posterity of Cherokee women by all free men.’”²⁰ He explained that this provision meant, “persons of the African race were not considered as Cherokees, and were not citizens in any sense of the word.”²¹ Thompson also cited a Cherokee law prohibiting intermarriage with Africans as another reason why former slaves could not be Cherokee citizens since this avenue of inclusion in the body politic had been closed to them, although he acknowledged there were a few exceptions. The matrilineal group still honored “the

¹⁷ Thompson, “Reply.”

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid. Emphasis in the original.

²¹ Ibid.

traditional privilege of the ‘mother’” and granted right of residence in the Cherokee Nation to children born to Cherokee women and black fathers who were not enslaved; yet the Nation did not extend civil or political rights with the right of residence.²² The Principal Chief concluded, it was not right to extend citizenship to former slaves, now labeled intruders, without Cherokee consent or “to include them amongst that class you speak of when you say that there can be no doubt that all persons of Cherokee blood of whatever degree are entitled to the full benefits of citizenship in the nation.”²³ Instead Thompson insisted, “they never were Cherokees, and that no rights accrued to them until the making of the Treaty of 1866, which conferred rights on that class, conditionally, which we are willing to strictly apply, and as we believe, we have enforced.”²⁴ This was a stance many former slaves of Cherokee masters were unwilling to accept in the postwar period and often brought them into conflict with Cherokee authorities.

Chief Thompson also stressed the importance of residence in the Cherokee Nation as a qualification for Cherokee citizenship. In a follow up letter to Commissioner Smith that focused on the current intruder problem, Thompson emphasized that “residence [was] held to be the essential qualification for citizenship.” He argued intruders were defined as “Every person unlawfully residing or sojourning in the Cherokee Nation, agreeably to the 27th article of the treaty of July 19th, 1866, with the United States, and in violation of the laws of this Nation, shall be, and hereby is deemed an intruder.” For Thompson, a true Cherokee citizen was someone who had a permanent residence within the known boundaries of the Cherokee Nation. In fact, the one thing that most clearly resulted in the loss of Cherokee citizenship was the acceptance of U.S. citizenship when one moved beyond the boundaries of the Cherokee domain. He insisted:

²² Thompson, “Reply.” Emphasis in the original.

²³ Ibid.

²⁴ Ibid.

“But, in the case of these members of the Cherokee Nation, who had of their own free will, abandoned the Nation – male or female, and had become citizens of the United States or other government in any of the modes already noted; these were not counted on as members of the Cherokee Nation, “of any degree” by...the Nation its authorities, and were not included as forming any portion of “all the Cherokees,” and consequently they had no intent or part whatever, in any treaty stipulation or provision that was made by the legitimate members of the Nation for themselves and posterity only.”²⁵

In other words, any person or former citizen who found himself outside the known limits of the Cherokee Nation had renounced his native status and should he try to return was now an intruder attempting to invade Cherokee country. Thompson also took issue with the persistence of intruders and vehemently denied Cherokee acceptance of this group as citizens of the Nation. “Nor have we in any shape, consented by treaty or otherwise, so far as I can ascertain, that these non-citizens, or their posterity, may at their mere will, contrary to express law, force themselves upon us, under the pretext of being of our blood, and a part of the Cherokee Nation, when we know the last claim to be false in both theory and fact.”²⁶ He acknowledged that there was a difference in treaty interpretation, and that U.S. officials’ “construe and read these treaties (1835 & 1846 in relation to the rights of individual Cherokees who were not members of the Cherokee Nation) in this particular far different from us.”²⁷ According to Thompson, it was understood “that all claimants for Cherokee rights—not negroes—are of the class of non-citizens, by their own or their ancestors voluntary act.”²⁸ For Cherokee authorities, many intruders had brought their status upon themselves because they had removed beyond the Cherokee domain and as such

²⁵ *The Cherokee Advocate* Wednesday, September 26, 1877 Volume 2, No. 29 W.P. Boudinot, editor in the Oochalata collection box 0-20, folder 23 of the Western Historical Collection at the University of Oklahoma, Norman, Okla.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

were not citizens in the Cherokee Nation and should be removed by the federal government as promised in the Treaty of 1866.

Thompson ended his letter to the Commissioner with his own definition of nation and people, which had been formed by the history of the treaty relationship between the two countries. “As before stated, all treaties entered into between the United States and the “Cherokee tribe of Indians,” were made in point of fact with the “Cherokee Nation”.”²⁹ He argued “it [was] understood that a “nation” is the unity of a people, and is properly defined “as the body of inhabitants of a country united under the same government; a people, as distinguished from those of different descent, language or institutions; race, or stock of people.”³⁰ He defined people as “the body of persons who compose a community, tribe, nation or race; an aggregate of individuals forming together a whole.”³¹ For Chief Thompson the two terms were used in tandem so that Cherokee authorities “speaking of a state...use people for the mass of the community, as distinguished from their rulers; and nation, for the entire political body, including the rulers.”³² Thompson wanted to make the fact of Cherokee sovereignty very clear to Interior Department officials. The Cherokee Nation spoke for both the Cherokee people and their leaders, especially in cases of disputed citizenship.

Cherokee citizenship was an appealing choice for the various groups seeking inclusion in the Cherokee Nation because it offered several benefits, including the right to use the public lands, access to education, and assistance from the federal government in times of hardship. Cherokee leaders were aware of the appeal of Cherokee citizenship, which offered more than just

²⁹ *The Cherokee Advocate* Wednesday, September 26, 1877 Volume 2, No. 29 W.P. Boudinot, editor in the Oochalata collection box 0-20, folder 23 of the Western Historical Collection at the University of Oklahoma, Norman, Okla. Emphasis in the original.

³⁰ *Ibid.* Emphasis in the original.

³¹ *Ibid.*

³² *Ibid.*

civil rights. In an address before the National Council in November of 1883, Thompson's successor, Chief Dennis Bushyhead explained that unlike in other nations, Cherokee people had "the right to a home already provided for each and every citizen – right to the soil of the country – the right to erect residences and make farms on land bought and paid for by the Nation in behalf of its citizens."³³ In addition to land and access to schools, Cherokee citizens enjoyed "the right to materials and benefits which elsewhere must be purchased by the citizen himself, but which in our case have been bought for us and been paid for in advance,"³⁴ with the groups' forced removal from Georgia in the 1830s.

II.

Although the benefits were obvious, the definition of Cherokee citizenship was in flux throughout the reconstruction period, yet there were a few things which Cherokee leaders agreed were crucial elements or identifiers of Cherokee citizenship. First and foremost, a blood or kinship connection to a Cherokee woman or man was a clear indication of one's connection to the body politic. Before the ratification of the Cherokee Constitution in 1825 to include the offspring of Cherokee men and white women as citizens, inclusion into the group came only through a Cherokee mother. After ratification, any person born to a Cherokee parent residing in the Cherokee Nation was automatically included in the national community.³⁵ However, one drop of African blood appeared to erase or taint Cherokee blood in the eyes of Cherokee officials

³³Dennis W. Bushyhead, "Message of D.W. Bushyhead November 7, 1883," *Indian Chieftain*, November 16, 1883, vol. 2, located in D.W. Bushyhead collection box #B-54 folder #166 located in the holdings of the Western History Collection at the University of Oklahoma, Norman, Okla.

³⁴ Ibid.

³⁵ Perdue, *Cherokee Women*, 147.

charged with determining citizenship disputes, thus making it much more likely the person would be unacceptable as a citizen. As the Cherokee Nation established its republic in the Indian country of northern Georgia, it legally prohibited interracial marriage between Cherokees and African slaves and barred the offspring of such unions from any connection to the body politic. These same laws were reinstated in the Cherokee Nation after removal to the west.³⁶ Historian Fay Yarbrough's recent work explores the marriage laws of the Cherokee Nation before and after the Civil War and convincingly illustrates that the ability of Cherokee lawmakers to regulate interracial marriage served as a demonstration of the Cherokee Nation's sovereignty while provisions of the intermarriage laws reinforced the Nation's political authority over its citizenry in the eyes of federal officials.³⁷ Control over citizenship in the postwar Cherokee Nation was another avenue by which Cherokee leaders exercised and demonstrated their sovereign right to determine membership in the Cherokee community while also bolstering their political legitimacy with U.S. authorities intent on further eroding Cherokee sovereignty.

Control of citizenship in the postwar period became a major issue in the late nineteenth-century struggle for Cherokee self-rule in the face of an increasingly more powerful federal government, which was also in the process of uniting all sections of the nation and incorporating previous rebellious outsiders into the body politic. Cherokee leaders, like Principal Chief Charles Thompson, could not accept this new U.S. interference in what they saw as the Cherokees' natural rights to determine inclusion in their national body. The actions of Agent Ingalls shines a spotlight on this sovereignty struggle and reveals the constant intrusion of the expanding postwar

³⁶ For a complete discussion of the current literature on centrality of race and citizenship in the nineteenth-century Cherokee Nation see Miles, *Ties That Bind*, 4, 19-23, 30, 34, 105-08, 111; Strum, *Blood Politics*, 28-29, 48, 51, 63, 71; Saunt, *Black, White, and Indian* for more on the centrality of race in the lives of nineteenth-century Southeastern Indians.

³⁷ Yarbrough, *Race and the Cherokee Nation*, 12.

U.S. bureaucracy in the internal affairs of the Cherokee people. Unbeknownst to Cherokee authorities, Commissioner Edward Smith had extended the reach of federal government and had instructed Agent Ingalls to collect information about intruders and noncitizens in the Cherokee Nation who had appealed for citizenship through Cherokee channels, thus making actions of the Cherokee Nation subject to review and approval by the commissioner of Indian Affairs.³⁸ Ingalls invited claimants to share their stories, advertising in a local paper that he would hear complaints of “all Indians claiming citizenship...who have been deprived of their rights by action of the councils of the nations [of the Five Tribes].”³⁹ Cherokee officials immediately responded to Ingalls because his actions represented a very real and frightening threat to national sovereignty.

The Cherokee delegation formally addressed its grievances with Ingalls in an 1875 letter to Secretary of the Interior, Columbus Delano. D.H. Ross and William Penn Adair declared Ingalls’s actions “unwarranted in law, subversive of the most sacred right of self-government, and calculated, if persisted in, to engender endless strife in the Cherokee Country.”⁴⁰ The delegates believed the agent acted on his own authority, wasting time and expense investigating cases involving people whom the Cherokee authorities had already determined were intruders on the Cherokee domain “after several years of patient and exhaustive examination.”⁴¹ The Cherokee Citizenship Commission, created during Chief Thompson’s administration, was

³⁸ McLoughlin, *After the Trail of Tears*, 292.

³⁹ George Ingalls, Newspaper Advertisement attached to letter of W. A. Phillips, National Archives collection Letters Relating to Cherokee Citizenship, Records of the Bureau of Indian Affairs, Record Group 75, Land Division, Box 1 P1-163 E-577 HM 1996 Folder 1877 – I348/P454, National Archives Building, Washington, D. C. The ad had been cut out of the paper and mailed in with W.A. Phillips letter to Secretary of the Interior Columbus Delano.

⁴⁰ D.H. Ross and W.P. Adair, Letter to Columbus Delano, Secretary of the Interior September 24, 1875, National Archives collection Letters Relating to Cherokee Citizenship, Records of the Bureau of Indian Affairs, Record Group 75, Land Division, Box 1 P1-163 E-577 HM 1996 Folder 1877 – I348/ R 422, National Archives Building, Washington, D. C. (Hereafter cited as Ross and Adair, Letter to Columbus Delano, September 24, 1875.)

⁴¹ Ibid.

charged with investigating the claimants' genealogical ties to Cherokee kin or their status as adoptive citizens following treaty stipulations. The Commission, according to the Cherokee delegation, had already ruled that many of Ingalls's claimants were intruders unable to prove their Cherokee citizenship. The delegates highlighted the importance of Cherokee blood in the review process. The National Council "has been in the habit of admitting, as an Act of grace, not of personal right on the part of the applicant, persons of undoubted Cherokee, blood, to citizenship," which they argued was very simple to ascertain "in a Nation so small and so well organized, it is not difficult to trace the ancestry of every real Cherokee born within the last half century."⁴² For Cherokee officials, there was little debate about including individuals with Cherokee kinship connections or blood ties. The problem of emancipation, however, meant the boundaries of belonging would have to be strictly guarded to ensure the Cherokee people maintained their separateness from mainstream American society. Although those with a Cherokee blood connection were often deemed full Cherokee citizens, the possibility of inclusion was contingent on what other "blood" was present in a person's ancestry.

While the presence of African "blood" typically meant one was unacceptable for Cherokee citizenship, those of Cherokee-white descent were often gladly incorporated as full citizens. An 1876 article in the *Cherokee Advocate*, the Cherokee Nation's official newspaper, praised the influence of the white race, in particular white men, on the leadership of the Cherokee Nation. Entitled "Old Times," the article asked the present generation to remember the influence and importance of the white ancestors "who came among our people, intermarried and raised families previous to the war of the Revolution and after."⁴³ The article explained that after

⁴² Ross and Adair, Letter to Columbus Delano, September 24, 1875.

⁴³ *The Wagoner Record*, Thursday, July 26, 1900 Vol. 8, No. 43, the W.P. Ross collection, Western History Collection at the University of Oklahoma, Norman, Okla. box 2, folder 26. The

the American Revolution many “Scotch, German, Irish, and other white men” moved into the Cherokee country because they were loyalists looking for protection in the backcountry from American troops and militia. “The majority of these men had considerable book knowledge, had been well brought up, and had no vicious habits, were enterprising and became quite wealthy. They were the fathers of our prominent men of 1828 and 1829.”⁴⁴ The author credited these white men with introducing both the plow and loom to the Cherokee people. “We must give these old time white men credit for laying the foundations of future Cherokee prosperity in education, morals, and religion, for when the ministers of the gospel came they found the field ready for harvest. They taught the people house building, how to enlarge their farms, open roads, establish ferries, open houses of entertainment on the roads, sell produce and make money.”⁴⁵ The author cautions his readers, “It is a mistake to suppose that they were ruffians, or a low class of white men.”⁴⁶

Instead, the author heralded intermarried whites as educated, gentlemen and ancestors of important Cherokee men, such as John McDonald, grandfather of John Ross, Mr. William Adair, and even Ezekial Harlin, a merchant and grand uncle of former Secretary of the Interior and U.S. Senator James Harlin of Iowa.⁴⁷ The author continued his praise of white influence with another example from respected families of the Cherokee leadership. The father of Chief Charles H. Hicks (served in 1826-1827) and William Hicks was an intermarried white. As a result, the

Wagoner Record of Wagoner, Indian Territory reprinted this article that had originally appeared in an 1876 edition of the *Cherokee Advocate*, which functioned as the official newspaper of the Cherokee Nation and printed articles and news in both English and Cherokee. (Hereafter cited as *Wagoner Record*.)

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ironically, this is the same James Harlin who introduced the Harlin Bill to consolidate Indian Territory into a U.S. state that Cherokee memorialists fought against. Versions of Harlin’s bill would plague the Cherokee Nation throughout the period until statehood was achieved in 1907.

author believed that the two men benefited from extensive schooling among whites, which enabled Charles Hicks to serve as Secretary and Interpreter for the Cherokee Nation at its founding. Hicks was also praised in the article as the first Cherokee member of any Christian church he having joined the Moravian Church at Spring Place in the eastern homelands. Even Sequoyah, who was credited as having invented the Cherokee syllabary, listed an example of an important Cherokee with a white father known as George Guess or Guist. A Scotsman by the name of McLemore drew praise for advising Cherokee chiefs in their dealings with whites and as being one of the signers of the Treaty of Holston in 1791. “Under the teachings and examples of these worthy men and of those who followed them, the Cherokees began to learn the arts of civilized life, and to take an interest in education and schools about the close of the last century.”⁴⁸ One thing missing from the list of benefits these white fathers educated Cherokee offspring about was mastery over black slaves. Only one white father in the article was identified as “Lowery, the father of Chief George Lowery” who lived near the Tennessee River and was a merchant who also owned a large number of slaves. This silence ignored the negative aspects of white culture that these white fathers would have also passed along to their Cherokee sons. Instead, whites were lauded for exposing or providing Cherokee children to education and progress. Not surprisingly, no equivalent article praising the influence of the African race on the character and advancement of Cherokee people appears in the historical record.

Cherokee people and leaders seemed perplexed on the best way to incorporate former slaves into the body politic as required by the Treaty of 1866. The citizenship rights of many Cherokee freedmen were still an issue of debate in the National Council as late as 1882. Principal Chief Dennis W. Busyhead devoted considerable time to the topic in his fourth annual

⁴⁸ *Wagoner Record*.

address to the National Council. He brought the Council's attention to the 9th Article of the Treaty of 1866, "which grants to colored persons therein describes, 'all the rights of native Cherokees.'"⁴⁹ A problem about citizenship status had arisen for some African Americans who married Cherokee freedmen who were citizens in the Cherokee Nation and now complained they have been denied Cherokee citizenship by a verdict handed down by the Cherokee Citizenship Commission. Bushyhead saw an urgent need for the Council to address the status of this group. "If, by the Treaty, colored citizens of this Nation are placed upon precisely the same footing, in respect of the rights of citizenship, as native citizens," he argued it was difficult "to see how one class can be allowed privileges by law, which the other class is by the same law not allowed, without making a practical discrimination between colors and races in violation of the 14th and 15th Amendments of the Constitution of the United States."⁵⁰ He also drew the Council's attention to the status of those Cherokee freedmen unable to return to Indian Territory within the six-month time limit stipulated by the Treaty of 1866. He recalled the legislative action recommended by the Cherokee Citizenship Commission, which offered to incorporate this group of freedmen seeking "a medium ground between the extremes of public sentiment in reference to these people."⁵¹ He stated the U.S. government had also expressed the opinion that these residents should remain undisturbed in the Cherokee Nation. Due to the unclear status, Bushyhead believed the time had finally come for the Council to define the status of the "too

⁴⁹ *Fourth Annual Message of D.W. Bushyhead* reprinted in *The Cherokee Advocate* Vol. 7, No. 27 Friday, November 10, 1882, box#B-54 folder # 165 in D.W. Bushyhead Collection of the Western History Collection of the University of Oklahoma, Norman, Okla. (Hereafter cited as *Fourth Annual Message of D. W. Bushyhead*.)

⁵⁰ *Ibid.* The Treaty of 1866 included a section stating Cherokee national law could not violate U.S. Constitutional law thus making the decision of the Cherokee Citizenship Commission unconstitutional.

⁵¹ *Ibid.*

late Negroes.”⁵² However, the Cherokee National Council disagreed and refused to enact any legislation clarifying their status and incorporating them as full Cherokee citizens and closing often any potential sources of federal interference on the issue.

III.

The reconstruction of the Cherokee Nation also meant the incorporation of other native groups relocated to Indian Territory into the Cherokee body politic. The Delaware and Shawnee were adopted through the Treaty of 1866 and actually purchased their citizenship in the Cherokee Nation with large sums of money that was added to the Cherokee treasury. Despite this, some Delaware and Shawnee people, like the Cherokee freedmen, faced resistance to their full incorporation into the body politic. An excellent example of the problem of including new native groups and peoples in the postwar Cherokee Nation is the North Carolina Cherokee, also known as the Eastern Band. The North Carolina Cherokee were another group that sought citizenship in the Cherokee Nation after the Civil War, and turned to the U.S. government for help whenever its members encountered problems exercising their rights in the indigenous nation.

The Eastern Band was described by Principal Chief Bushyhead as descendants of those Cherokee who refused to remove to Indian Territory in the 1830s, and instead fled into the mountainous regions of North Carolina and Tennessee. After the end of the Civil War, some members of this Eastern Band sought to remove to the west after the Cherokee National Council issued them an invitation that asked them to emigrate and become identified with the Cherokee

⁵² *Fourth Annual Message of D. W. Bushyhead.*

Nation. The Principal Chief at the time of the invitation, Lewis Downing, had approved Senate Bill No. 6 that pertained to the North Carolina Cherokees' status in the Cherokee Nation. Members of the North Carolina Cherokee who wished to claim citizenship, had to "enroll themselves before the Chief Justice of the Supreme Court within two months after their arrival in the Cherokee Nation, and make satisfactory showing to him of there being Cherokee's."⁵³ Some Eastern Band Cherokee failed to complete the registration process and faced uncertain citizenship status.

In his December 3, 1881 message to the National Council, Principal Chief Dennis W. Bushyhead recommended taking action to clarify the status of the North Carolina Cherokee and encourage those who had not already done so to immigrate to the Cherokee Nation. He believed "the policy of extending a friendly invitation and of inducing a general emigration of the "Band" to this country was adopted to stop the immense expense of time and again having to contend against the claim of the North Carolina Cherokees at Washington through our Delegation. The expense attending their emigration, of which you have an illustration in the present accounts, is but slight and easily borne in comparison."⁵⁴ As a former treasure of the Nation, Bushyhead saw this legislative action as a pragmatic economic decision the Cherokee National Council should act upon quickly.

The chief justice of the Cherokee Supreme Court was required to report "the number, names, ages, and sex, of all [North Carolina Cherokees] admitted by him to be entitled to Cherokee Citizenship; and also the number, names, ages, and sex, of all the persons denied the

⁵³ *Senate Bill No. 6 An Act Relating To The North Carolina Cherokees*, box #O-20, folder #11 in the Ochalata Collection, Western History Collection at the University of Oklahoma, Norman, Okla.

⁵⁴ *Message of D.W. Bushyhead to Senate/Council December 3rd, 1881*, box #B-53 folder #51 in the D.W. Bushyhead Collection, Western History Collection at the University of Oklahoma, Norman, Okla.

rights of Cherokee Citizenship, to the annual Session of the National Council in each year.”⁵⁵

This census allowed the Cherokee leadership to maintain an accurate count of those members of the Eastern Band who were entitled to the all the rights of native Cherokees, as well as those who were not. Some of the North Carolina Cherokee who had been approved for citizenship believed they were now also entitled to a share of all monies paid out to the Cherokee Nation by the United States since 1835. Cherokee Nation officials strongly disagreed. This resulted in a lengthy and expensive legal battle between the two groups and further interference in Cherokee internal affairs by the U.S. government. Supporting the North Carolina Cherokee gave the United States another place where it could erode Cherokee sovereignty.

In a letter to the Cherokee National Council, Chief Bushyhead asked the honorable body to give its full attention to the Eastern Band’s lawsuit against the Cherokee Nation. “For eighteen years persons claiming Cherokee blood in North Carolina, Georgia Tennessee and other States, have been beseiging [sic] Congress and the Departments at Washington, claiming a distributive share, of all Cherokee funds and the proceeds of lands, and also claiming a share in all the interest, annuities, or proceeds of Cherokee monies, which have been paid or appropriated for the Cherokee Nation since the treaty of 1835.”⁵⁶ The Cherokee Nation hired attorneys, Col. William A. Phillips and Gen. S.S. Burdett, from the Washington, D.C. firm of Curtis & Burdett to represent the Nation in the U.S. courts. They reported to Chief Bushyhead that the U.S. Court of Claims decided the Eastern Band of Cherokee was not entitled to a distributive share of monies paid out to the Cherokee Nation since the Treaty of 1835. Bushyhead stressed the importance of

⁵⁵ *Senate Bill No. 6 An Act Relating To The North Carolina Cherokees*, box #O-20, folder #11 in the Ochalata (Charles Thompson) Collection, Western History Collection at the University of Oklahoma, Norman, Okla.

⁵⁶ Dennis W. Bushyhead, “To the Senate and Council in National Council Convened,” December 1, 1885, box #B-55, folder #119 in the D.W. Bushyhead Collection, Western History Collection at the University of Oklahoma, Norman, Okla.

this ruling in his letter to the National Council and what it meant for the pending case before the U.S. Supreme Court. In its ruling, the U.S. Court of Claims defined the Cherokee Nation as a sovereign entity due to “its Territorial possessions and boundaries its constitution (very much like the Constitution of the United States) its laws, its Executive, legislative and judicial departments with none of which can any State or the United States interfere.”⁵⁷ This was a crucial point that the Principal Chief wanted made extremely clear to the Cherokee leadership; because it was their only defense against the continued encroachment of the expanding bureaucracy of the postwar U.S. government.

“The Indian Office has on many occasions sought to violate the treaties of the Cherokee Nation,” Bushyhead wrote, and Bureau of Indian Affairs officials had assumed “unauthorized power over its property [in order to] reduce the Cherokee Nation to the condition of a mere Indian tribe subject to its direction.”⁵⁸ Bushyhead argued the Bureau treated Cherokee lands “as if they were a mere reservation, instead of lands held by a body politic by a simple title.”⁵⁹ Despite their best efforts, Bushyhead claimed the BIA had failed thus far in its efforts to destroy Cherokee sovereignty; and he believed if the U.S. Court of Claims decisions were sustained by the U.S. Supreme Court it would “[place] the Cherokee Nation independent of all such attempts” of the BIA usurp Cherokee authority.⁶⁰ In an effort to resolve the matter, Bushyhead recommended that “the Act inviting the North Carolina Cherokees to move to this Nation be

⁵⁷ Dennis W. Bushyhead, “To the Senate and Council in National Council Convened,” December 1, 1885, box #B-55, folder #119, D.W. Bushyhead Collection, Western History Collection at the University of Oklahoma, Norman, Okla. Emphasis in the original.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

either repealed, or so amended that this Nation shall not be bound to admit persons whose title to Cherokee descent is not made clear to you.”⁶¹

IV.

The majority of the debates between the Cherokee Nation and the U.S. government in the post-war period dealt with discussions of citizenship, intruders, and sovereignty. The post-war federal government was defining American citizenship for the first time and had now extended its reach and inserted itself in defining citizenship and inclusion in native groups like the Cherokee. Chief Bushyhead explained, “The Nation very naturally resisted such interference in its affairs, and...the Nation protested that the Federal Government was pledged by treaty to abstain from interference and to guard it from any coming from other sources.”⁶² Instead he explained, “the department at Washington claimed the authority to put all those persons in possession of the country as citizens, who had acquired the [rights] of citizenship through treaty provisions.”⁶³ According to Bushyhead, the Nation believed placing “individuals in possession of the country as owners in common under the treaty was to hold that the treaty had been made with individual members and not with the Nation as a whole, and that such construction was repugnant to the plain wording of treaty and patent in fee to the land.”⁶⁴ Bushyhead’s assessment and sentiments concerning the extension of Cherokee citizenship in the case of the Eastern Band

⁶¹ Dennis W. Bushyhead, “Message of D. W. Bushyhead,” April 26, 1886, box #B-55, folder #143, D. W. Bushyhead Collection, Western History Collection at the University of Oklahoma, Norman, Okla..

⁶² *Message of D. W. Bushyhead November 7, 1883* reprinted in the *Indian Chieftain* Friday, November 16, 1883 Vo. 2, box # B-54 folder # 166, D. W. Bushyhead collection, Western History Collection at the University of Oklahoma, Norman, Okla.

⁶³ Ibid.

⁶⁴ Ibid.

echoed that of his predecessor, Charles Thompson who also fought to have intruders claiming citizenship expelled from the Cherokee domain.

Chief Thompson acknowledged that many freedmen, like Henry West, faced hardships because they were unable to return within the six-month time limit, but he argued this did not mean the Cherokee Nation had any obligation to include them in its citizenry. The Cherokee were not “bound to extend the preacious [sic] gift of citizenship, to those that law has made strangers to us, on their mere demand;” instead the Cherokee Nation was only “bound by the express language of the treaty, which limits the rights of citizenship to freedmen who were residents of the Nation at the making of the treaty, or who might return within six months.”⁶⁵

Leaders of the Cherokee government attempted to force the Bureau of Indian Affairs to honor its agreement to remove those deemed intruders by Cherokee officials while they also protested the involvement of the United States in the Cherokee Nation’s internal affairs. The stakes were particularly high in the 1870s because the federal government was consolidating control over tribes on the western plains in often violent and deadly confrontations, and Bureau agents in Indian Territory helped pave the way for eventual statehood with covert attacks on tribal sovereignty throughout the postwar era. The Cherokee Nation was thoroughly embedded in the process of Reconstruction and the social, economic, and political changes that accompanied it; and focusing on how an indigenous nation dealt with these changes provides an alternative narrative of the period that highlights issues of nation building and definitions of citizenship occurring in both the Cherokee Nation and the United States during the tumultuous era. It also

⁶⁵ Charles Thompson, “Letter from the Office of the Executive Department of the Cherokee Nation, signed by Principal Chief Charles Thompson, sent to the Acting United States Indian Agent Major J.J. Upshaw at the Union Agency, Muskogee, I.T.,” Box 1 P1-163 E-577 HM 1996 Folder 1877 – 1348/ U 37 Letters Relating to Cherokee Citizenship, Records of the Bureau of Indian Affairs, Record Group 75, Land Division, National Archives Building, Washington, D. C. Emphasis in the original.

reveals the need to enlarge the scope of Reconstruction scholarship to include the west and groups outside the American mainstream.

The Cherokee story of Reconstruction deserves a place in the larger historiography of the period because it clearly shows that the process of reuniting the entire American nation, north, south, and west, fundamentally affected all groups in America, even those on the margins of mainstream society. Groups like the Cherokee had to solve the problem of freedom that emancipation unleashed while also fending off the interference of the U.S. government in internal Cherokee affairs. The legacy of emancipation is still felt today in the Cherokee Nation as officials argue with the federal government over the legitimacy of a 2007 referendum passed by Cherokee voters to expel descendants of Cherokee freedmen from citizenship in the Cherokee Nation. In August 2011, the Cherokee Supreme Court upheld the sovereign right of the Cherokee people to amend their Constitution and revoked freedmen citizenship rights in the Nation. Freedmen descendants again called on the assistance of the United States whose various federal agencies threatened to withhold federal funds and refused to recognize the results of the special election for principal chief.⁶⁶ Thus, the problem of freedom that began in the days of Reconstruction is still very much present in the current citizenship debates of the Cherokee people.

⁶⁶ Will Chavez, "Developing: Freedmen citizenship restored and voting extended to Oct. 8," *Cherokee Phoenix.org*, September 20, 2011, <http://www.cherokeephoenix.org/Article/Index/5513>. Accessed April 19, 2012.

CHAPTER FOUR:
“CHEROKEE FREEDMEN CHALLENGES TO RACIAL EXCLUSION”

I.

For the Cherokee Nation, the era of Reconstruction was marked by a struggle to rebuild the war-torn nation physically while also fighting to hold on to the national sovereignty of the indigenous group. Problems of disputed citizenship for freedmen provided the federal government with an opportunity to intrude on Cherokee sovereignty after the war. The Congressional Republicans pledged to protect freedmen rights in the rebellious states in the immediate years following the war. This commitment to the southern freedmen waned in the final years of Reconstruction as the economic interests of the reunited nation took precedence over the continued struggle to equally incorporate into the former slave population. However, in Indian Territory, the commitment of Congress to the protection of freedmen citizenship never wavered. Instead, federal officials continually took interest in the rights of freedmen in native nations well past the “official” end of Reconstruction in 1877. The legacy of slavery made it difficult for former native masters to include their newly freed slave property in the body politic; and the complaints of Cherokee freedmen to federal officials became entangled with a larger struggle for sovereignty as the United States sought to consolidate its power over the reunited nation.

The concept of slavery was not introduced to native groups through European contact. It had already existed as a way to incorporate war captives into native society. War captives among

southeastern Indian groups were either tortured, adopted by a clan, or they maintained a position outside the natives' kinship system. Thus, native peoples like the Cherokees, were not unfamiliar with a particular type of enslavement. It was trade that connected native peoples with the European economic system that gradually undermined and transformed the indigenous institution of slavery.¹

There has been much recent scholarship that attempts to explain and describe the transformation that southeastern tribes experienced. Historian Allan Galloway argues that the practice of captivity was changed because Native Americans readily adapted to the introduction of new technology, peoples, and ideas. He contends that Indian, European, and African life became intertwined by a combination of forces that were unavoidable for those residing in the southeast. The drive to control Indian labor was connected to the growth of plantations, and the trade in Indians slaves was at the center of the English empire's development in the American South. While raiding and capturing enemies was not new to natives, Galloway contends that warfare and captivity were enlarged by European labor demands and natives' willingness to meet those demands. Native peoples desired European trade goods, and alliances with European powers provided native groups a means to inflict devastating defeats on enemies and produced havoc in the southeast because virtually all of the native groups were armed and were involved in slaving against each other. As a defensive strategy to this slaving chaos, he explains, the natives began to form confederacies that offered protection from slaving.²

¹ One of the earliest works to investigate slavery among a southeastern group is Perdue's *Slavery and the Evolution of Cherokee Society*. The recent contribution of Snyder, *Slavery in Indian Country* provides a more nuanced picture of captivity among southeastern Indians while also chronicling the transformation of the practice after extensive contact with Anglo-Americans and the trade market.

² Allan Galloway, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717* (New Haven: Yale University Press, 2002). The work of anthropologist Robbie

Many ethnohistorians have shown that participation in the Indian slave trade produced visible changes within the societies of various Indian groups. Young men who had achieved their status within the native group through their military or hunting exploits were now achieving status through the accumulation of trade goods. Women who were intimately involved in both the torture and adoption of war captives lost this important social role as captives became commodities to sell instead of being incorporated into the native group. As Anglo-Americans turned to the enslavement of Africans as a solution to their constant labor shortage, the trade in Indian captives markedly declined. Native men who participated in the Indian slave trade also participated in the skin trade as another way to accumulate desired trade goods. Unfortunately, the destruction of the white-tailed deer population due to indiscriminate hunting fueled by the trade also closed this outlet of native economic production. The end of both the Indian slave trade and the deerskin trade meant southeastern Indians had to find new ways to support themselves.³

The transformation of southeastern Indians' lives fundamentally altered power and property relations in native society as new leaders emerged with skills to face American encroachment. Prior to the American Revolution, Creek leaders did not strive to accumulate

Ethridge introduces the Shatter Zone theory, which describes how slaving shattered the Mississippian chiefdoms and resulted in the creation and consolidation of native confederacies like that of the Creek. See *Mapping the Mississippian Shatter Zone: The Colonial Indian Slave Trade and Regional Instability in the American South*, edited by Robbie Ethridge and Sheri M. Shuck-Hall (Lincoln: University of Nebraska Press, 2009) and Ethridge, *From Chicaza to Chickasaw: The European Invasion and the Transformation of the Mississippian World, 1540-1715* (Chapel Hill: University of North Carolina Press, 2010).

³ For some of the most current scholarship on the effect of contact on the lives of southeastern Indian peoples, see *The Transformation of the Southeastern Indians, 1540-1760*, edited by Robbie Ethridge and Charles Hudson (Jackson: University Press of Mississippi, 2002), which provides essays from historians, anthropologists, and archaeologists that discuss how southeastern Indian culture and society evolved. For a discussion of the effect of the deerskin trade on the Creek, see Kathryn E. Braund, *Deerskins & Duffels: The Creek Indian Trade with Anglo-America, 1685-1815* (Lincoln: University of Nebraska Press, 1993).

significant amounts of material possessions or to protect and defend their possessions from their neighbors. However, the kind and quantity of these new possessions reshaped the lives of many Creeks. The changes in power and property that accompanied the acquisition of things like livestock and slaves posed difficult questions about Creek identity, aggravated tensions between men and women, and produced controversy over the responsibility of individuals toward the Creek nation. Some scholars see a strong correlation between the responses of the Creeks to the new economic order and their family background. The scholarship of Claudio Saunt argues that Creek mestizos had a profound and disruptive impact on Creek society. He explains that the rise of Creek mestizos, who were in touch with the commercial practices of European colonists due to their mixed-race parentage and upbringing corresponded with the encroachment of American colonists and cattle on Creek land. Thus, Creek involvement in European trade changed both Creek life and ideologies.⁴

Other historians have examined the transformation of Cherokee life after the American Revolution and also find fundamental changes in native life and ideologies. Due to white encroachment on Cherokee lands, young native men lost their ability to gain respect and manhood through warfare. The United States government implemented a plan to “civilize” native peoples and make them acceptable for assimilation with whites through farming and ranching. The Cherokee men unable to achieve status as hunter-warriors were told to farm; yet with the development of chattel slavery in the antebellum south they now had to worry about distinguishing themselves from black field hands. Some historians have argued that in order to

⁴ See Claudio Saunt, *A New Order of Things: Property, Power, and the Transformation of the Creek Indians, 1733-1816* (Cambridge: Cambridge University Press, 1999). Saunt demonstrates how extensive trade effected Creek society. He chronicles how Creeks who had one white parent, usually their father who was typically a European engaged in the Indian trade, gained wealth through the accumulation of livestock, farms, and sometimes slaves while also gaining power in Creek society because they had skills needed to fend off white encroachment.

sustain their new role Cherokee men had to reduce blacks to a servile laboring caste and transform Cherokee women into genteel mistresses. The successful Cherokee model of farming, thus took on the form of the southern cotton plantation. The transition of southeastern Indian groups to ranching and farming coincided with the development of the cotton gin in 1793 and the spread of the Cotton Kingdom throughout the south, and this was accompanied by an increase in the number of African slaves in both the cotton states and in the Cherokee country. Some natives who had grown wealthy through their participation in the Indian slave and deerskin trade began to acquire African slaves and participate in plantation agriculture. These were often men who were the product of unions between successful European traders and Indian women. Slavery among the Cherokee helped shape the economic class structure and conflicting value systems that produced persistent factionalism in the Cherokee Nation.⁵

Recently, scholars have debated the impact of slavery on southeastern Indians, and the Cherokee in particular and the institution's connection to natives' use of color as a basis of categorization. It is believed that soon after their first contact with Africans, the Cherokees realized that Europeans regarded blacks as social inferiors and that they were in danger of receiving the same treatment. Thus the Cherokees found the subjugation of blacks to be in their own self-interest. A great deal of hostility seems to have existed in the eighteenth century between natives and Africans and some argue white colonists willfully created antagonism between Indians and blacks in order to preserve themselves and their white privileges. In other

⁵ See McLoughlin, "Cherokee Anomie, 1794-1810: New Roles for Red Men, Red Women, and Black Slaves," in *American Encounters: Natives and Newcomers from European Contact to Indian Removal, 1500-1850*, edited by Peter C. Mancall and James H. Merrell (New York: Routledge, 2007) along with Perdue's *Slavery and the Evolution of Cherokee Society*. For the effect on gender roles among the Cherokee, see Perdue's *Cherokee Women*.

words, whites tried to keep Indians and blacks apart and pitted the two color groups against each other in order to maintain white supremacy and suppress any potential challenge to white rule.⁶

Recent investigations of the legacy of slavery in native society have examined the role of race in the lives of southeastern Indians. Ethnohistorian Nancy Shoemaker offers a new take on the adoption of color categories among native groups in the eighteenth century. Race, Shoemaker explains, is defined as the belief that people can be categorized by observable physical differences like skin color. She looks at when, how, and why southeastern Indians introduced the term “red people or men” into the language of Indian-European contact, and argues eighteenth-century southeastern Indians drew upon their own color symbolism to develop categories that could account for biological, cultural, and political differences. As Shoemaker explains, as the science of race emerged in Europe, Indians were similarly reading meaning into observable bodily differences as a way to find order in an increasingly complicated world.⁷

The adoption of racial slavery had a profound effect on the societies of the southeastern Indians. Native groups began to codify racial difference in the laws of their emerging nations in an effort to legitimize their sovereignty in the racially stratified American nation. More recent scholarship has probed the persistence of cultural practices of inclusion that made perceptions of race more fluid at the local level. One of the most persuasive arguments concerning the centrality of race in the lives of nineteenth-century southeastern Indians emerges from the work of historian Claudio Saunt. He presents the family history of two Creek people: Katy Grayson and

⁶ See Perdue’s *Slavery and the Evolution of Cherokee Society*, and William Willis, “Divide and Rule: Red, White, and Black in the Southeast,” in *Red, White, and Black* edited by Charles Hudson (Athens: The University of Georgia Press, 1977) and Halliburton, *Red Over Black*.

⁷ See Nancy Shoemaker, “How Indians Got to be Red,” in *The American Historical Review*: 102, No. 3, (June, 1997): p. 625-644. Shoemaker argues that categories of red and white were metaphors for moieties or complementary divisions within southeastern Indian societies that corresponded to war and peace. Cherokees adopted color-based categories in their diplomacy as a strategy to inform the English about their social obligations to the Cherokee people.

her brother William. Both Katy and William took African partners, though Katy abandoned her black husband and children while William emancipated his wife and children. Using the story of the Graysons, Saunt convincingly argues that race was a central element in the lives of southeastern Indians as a marker of difference between natives and white newcomers and as a divisive and destructive force within Indian communities themselves. Abiding by America's racial hierarchy was a survival strategy that some southeastern Indians employed, and the politics of the post-Civil War years demanded that Indians assert their racial distinctiveness or else risk being incorporated into the American republic. Those natives, like William Grayson, who rejected the racial hierarchy of the nineteenth century and adopted their African kin were often pushed to the margins of native society and could even lose their native citizenship.⁸

The work of historian Tiya Miles finds that challenges to black exclusion did exist in native societies. She uses the story of Cherokee warrior Shoe Boots and the Afro-Cherokee children he fathered with his slave woman Doll to show that British and American colonization of the southeast led to the introduction of African slavery and racial prejudice among the Cherokee. But, Miles argues that in the social context of local native communities, people of African descent were not always defined as black and enslaved but sometimes seen as relatives. She contends that the Cherokee Nation legalized slavery to achieve economic growth and independence and practiced black exclusion to demonstrate a social distance from the subjugated African race. However, she finds there were challenges to institutional power of slavery and that Shoe Boots's petition for citizenship of his children was a radical challenge to the emerging system of black exclusion and legalized slavery.⁹

⁸ Saunt, *Black, White, and Indian*.

⁹ Miles, *Ties That Bind*.

Although these works indicate the existence of some flexibility on racial exclusion in certain cases, the evidence from freedmen residing in native nations indicates that native groups did not always want to incorporate their former slaves into their societies after the Civil War. In the post-war Cherokee Nation, leaders elected by their constituents attempted to control access to native citizenship and labeled undesirable and disputed citizens as intruders on the Cherokee domain. Many of those labeled intruders were freedmen who claimed citizenship through Article 9 of the Treaty of 1866. The obstacles the freedmen faced in the postwar Nation demonstrate that the one-drop rule of racial exclusion used throughout the Old South had penetrated native societies and was used by the national leadership to exclude anyone with African ancestry from citizenship in native nations and from access to the economic resources that native citizenship guaranteed. The recent study of anthropologist Circe Strum stresses the idea that black slavery created lasting boundaries of cultural and class difference that cut between Cherokee tribal citizens. She argues that the late eighteenth-century Cherokees began to define themselves as a wholly different people in opposition to whites and were beginning to define themselves in terms of culture and race. She finds that the Cherokee Nation's resistance to incorporating their former slaves into the Nation in the nineteenth century was largely motivated by economic factors. Her work also shows the enduring legacy of racial slavery in citizenship fights that continue today in the Cherokee Nation.¹⁰

Although there is a lack of consensus on when exactly native peoples adopted racial classification, it is clear from the current literature that by the nineteenth century natives believed black slaves were an inferior race and viewed them more as property than as people. The exposure of southeastern Indian peoples to the color caste of the Old South is linked to their

¹⁰ Strum, *Blood Politics*.

development of racial classification. What is most striking about the adoption of color categories among native groups is the creative use of the prevailing racial hierarchy of the American nation in postwar negotiations over native sovereignty. The Cherokee Nation, for example, continually asserted its sovereign right to determine cases of disputed citizenship, which it believed the federal government was treaty bound to protect. The evidence presented in this chapter builds upon the contribution of current scholarship with discussion of freedmen's challenges to racial exclusion in the Cherokee Nation during Reconstruction.

Freedmen claiming citizenship in the Cherokee Nation wrote numerous appeals to federal officials in the late nineteenth century in which they complained of the racial discrimination they faced from their former masters. The freedmen wrote of their homes and farms being confiscated and sold at public auction, often without their knowledge. They complained of the lack of schools in the Cherokee Nation for their children and pleaded desperately with Bureau of Indian Affairs officials for clarification of their questionable citizenship status. The letters also hinted at possible racial motivations for the continual citizenship dispute as freedmen asked for protection from former masters who were buying up the valuable improvements of freedmen who were declared intruders. These freedmen's challenges to racial exclusion continued into the 1880s, which is past the official end of Reconstruction. The problems of the Cherokee freedmen became embedded in a sovereignty struggle between the Cherokee Nation and the United States. Although the union had been restored and state sovereignty again accepted with the compromise of 1877, the federal government repeatedly attacked the sovereignty of the Cherokee Nation most often in cases of disputed citizenship involving former slaves. The process of reconstruction was not finished until the federal government exercised control over the native nations in Indian Territory that were still recognized as sovereign entities. The federal

government attempted to fully implement the plans first outlined in the civilization plan through the process of forced allotment, in which individual plots of land would be given to the head of each native household so that any remaining tribal lands could then be sold to white settlers. As the nineteenth century drew to a close, the Cherokee Nation continued to assert its sovereignty in any way possible, from fighting the federal government for control of citizenship to forcing unacceptable citizens from the Cherokee country.

II.

In recent years scholars have begun to fill in the silences of slavery in Indian Territory. Focusing on the day-to-day experiences of the slaves of Cherokee masters has revealed a facet of the slave experience rarely studied or understood. Recent works have challenged the previous assertion that slavery in Indian Country was somehow better or at least less harsh than the slavery practiced on the plantations of the antebellum south. There were cruel and kind Cherokee masters, and slaves in the Cherokee Nation created their own slave community to help them cope with the traumas of slavery. Historical investigations of Cherokee freedmen reveal the cultural, social, and sometimes kinship connections that existed between slaves and Cherokee masters; and most freedmen seeking citizenship rights in the Cherokee Nation attest to their connection to the Cherokee country. The Cherokee leadership's regulation of intermarriage demonstrates the complex connection between race and citizenship; it policed marriages between Indians and whites by requiring submission of character references, a special license, and the renouncing of any allegiance or loyalty to the United States. In stark contrast, intermarriage with blacks was prohibited and the children of these unions were barred from citizenship. A focus on the

regulation of intermarriage in the Cherokee Nation, indicates that a racial ideology had developed that had political ramifications as Cherokee lawmakers developed this as a new strategy to employ in their fight to maintain national sovereignty.¹¹

Much of the evidence explored in this chapter supports the belief that a racial ideology had developed in the Cherokee Nation by the late nineteenth century. Letters from freedmen to the Bureau of Indian Affairs, the response of Cherokee lawmakers to freedmen complaints, and the arguments the Cherokee Nation used to maintain their political sovereignty reveal the racial ideology at work in the postwar period. Although Indian Territory lacked a Freedmen's Bureau, federal officials and the Bureau of Indian Affairs functioned as a de facto Freedmen's Bureau with their investigations into Cherokee freedmen complaints in the late nineteenth century.

While the federal government's commitment to the protection of freedmen's rights in the south began to wane in the late 1870s, U. S. officials were very interested and actively involved in the protection of freedmen's right to citizenship in Indian Territory and the Cherokee Nation in particular after the official end of Reconstruction. In fact, the Dawes Committee was sent to Indian Territory in the 1890s to investigate the conditions of the freedmen residing there, which served as an excellent reason to impose individual allotment on native nations still resisting the effort in Congress. For the process of reconstruction to be complete, the federal government wanted control over the sovereign nations of Indian country.

¹¹ For a current look at slavery in the Cherokee Nation see Miles, *Ties That Bind* and *The House on Diamond Hill*. For an excellent look at the slavery and the lives of the enslaved in the Cherokee Nation, see Naylor, *African Cherokees in Indian Territory*. The most current literature on the role of race in the Cherokee Nation focuses on the regulation of intermarriage in an effort to demonstrate that a racial ideology had developed in the nineteenth-century Cherokee Nation. This ideology left no place for blacks in the Cherokee Nation and was used to protect their political sovereignty. Much of the evidence in this chapter support this argument but instead of focusing on marriage laws, the racial ideology is apparent in freedmen treatment and the many Cherokee protests against the infringement of the federal government on native sovereignty. See Yarbrough, *Race and the Cherokee Nation*.

In 1875, the Bureau of Indian Affairs began to investigate complaints it had received from freedmen in the Cherokee Nation who found their citizenship questioned and faced eviction from their homes. Indian Agent George Ingalls began collecting affidavits from claimants denied citizenship in the Cherokee Nation as a main part of the Bureau's investigation. On August 25, 1875, Samuel Starr recounted the obstacles he faced in fulfilling the stipulations of the Treaty of 1866. The twenty-six-year-old identified himself as the former property of Cherokee Lilie Starr. Samuel claimed Lilie's brother George Johnson forced him to accompany Johnson to the Red River area of the Choctaw Nation during the war. Starr returned to the Cherokee Nation in February 1866 and claimed he had voted in all the elections of the Sequoyah District since the end of the war. He was known as an ardent supporter of the Downing party, which came to power after the war through a coalition of Confederate Cherokees and "full bloods" desiring a break with the Ross party.¹²

Starr insisted his "rights as a Cherokee in every particular [way] have never been disputed until lately. When the per capita payment was made last spring." He had applied for his family's share from Cherokee Treasurer Dennis W. Bushyhead, but had been denied his payment. Starr "respectfully [requested] the U. S. government...protect me in my rights."¹³ In 1875, the Cherokee National Council ruled that bread money distributed to help Cherokees through a bad harvest would be distributed only to Cherokees by blood. This recognized two categories of citizens in the Cherokee Nation: those with a blood connection to the body politic

¹² Affidavit dealing with the citizenship of Samuel Starr, a former slave of Lilie Starr a Cherokee, August 25, 1875, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 1, folder 1877 – I348/I1131, National Archives Building, Washington, D. C., hereafter cited as Affidavit dealing with the citizenship of Samuel Starr. For an explanation of the Downing Party's rise to power, see McLoughlin, *After the Trail of Tears*, chap. 9.

¹³ Affidavit dealing with the citizenship of Samuel Starr, August 25, 1875.

and those without any kinship ties to the native nation.¹⁴ Like fellow freedmen Henry West, Starr's Cherokee citizenship claim also received support from other freedmen of the Nation. Aaron Johnson testified before Agent Ingalls and endorsed Starr's citizenship claim and substantiated the accuracy of his affidavit. Johnson explained he had always worked and lived close to Starr and claimed the two men were together during the war on the Red River in the Choctaw Nation. Johnson confirmed that Starr returned to the Cherokee country and even noted Starr returned before he did in April 1866.¹⁵

On the same day Starr appeared, Agent Ingalls also deposed Allen Wilson who had been denied a per capita payment or "bread money" and had been declared an intruder on the Cherokee domain. The fifty-four-year-old Wilson had been a slave to Cherokee masters since he was twelve and had come "from the old Cherokee Nation to [the] Cherokee Nation, IT." He reported he had been sold several times while living in Indian Territory and at the time of the Civil War he had been taken by his Cherokee master Anderson Wilson to the Red River, Choctaw Nation. When the war ended, Wilson's family had been too ill to travel back to the Cherokee Nation. Once they had recovered their health, Wilson returned to the Cherokee country in December 1867 and went to work establishing his homestead in the Tahlequah District. As he explained, "I have been called a citizen [and] thought myself so but was refused my familys [sic] share in the Bread money payment last spring." He stated that he had gone to see Principal Chief William P. Ross about his payment and was informed that he was an intruder and had no right to

¹⁴ McLoughlin, *After the Trail of Tears*, 293.

¹⁵ Affidavit in cases of Samuel Starr and Henry West given by Aaron Johnson, August 25, 1875, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 1, folder 1877 – I348/I1131, National Archives Building, Washington, D. C.

a share in the per capita monies. Wilson sought justice through federal authorities who he believed offered protection and enforcement of his Cherokee citizenship.¹⁶

Like Samuel Starr, Allen Wilson found his Cherokee citizenship questioned in the 1870s; which was a difficult decade for Indian Territory. There had been droughts, plagues of grasshoppers, and economic turmoil throughout the period, and the Nation had fought continual battles with the federal government over territorial bills, citizenship, and sovereignty. The decision of the National Council to distribute funds to Cherokees by blood implies that those with a kinship connection had rights adopted citizens did not enjoy. Those lacking a blood connection to a Cherokee ancestor were deemed unworthy of full access to the benefits of Cherokee citizenship. Most scholars contend this decision was intended to guard limited economic resources by keeping them exclusively for those with a kin connection to the Cherokee body politic.¹⁷ However, this did not always hold true as the letters of complaint from North Carolina Cherokees indicate.

Some who claimed to have proven their blood connection to the Cherokee Nation still found themselves barred from exercising their full rights and turned to the federal government for help. Agent Ingalls forwarded a December 1874 petition from several North Carolina Cherokees to the Commissioner of Indian Affairs along with the freedmen's affidavits collected

¹⁶ Affidavit of Allen Wilson claiming Cherokee citizenship and a share in Cherokee per capita payment, August 25, 1875, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 1, folder 1877 – I348/I1131, National Archives Building, Washington, D. C.

¹⁷ Most histories of the Cherokee Nation during Reconstruction argue the actions of the National Council and Principal Chiefs to limit the number of freedmen eligible for citizenship were motivated by economic concerns and the desire to limit who had access to the limited resources of the Nation. While economic factors should not be downplayed, we should also consider that some people were easier to deny because they were not racially acceptable citizens to the Cherokee leadership. For the best discussion of economic motivations behind the freedmen controversy see, Littlefield, *The Cherokee Freedmen* and for a more updated look see also Strum, *Blood Politics*.

during his investigation. The petitioners asserted that they were Cherokees who had recently emigrated to the Nation in the west from their North Carolina homes. As required by the laws of the Cherokee Nation, the petitioners had submitted evidence “of our rights to citizenship in this nation by blood” to the Cherokee Chief Justice. Nevertheless, many of them had been denied even a hearing before the National Council to clarify their status. The petitioners were listed on the intruder roll and were now subject to expulsion from the Nation.¹⁸

The North Carolina Cherokees were extremely frustrated with the Cherokee Nation’s authorities and believed their citizenship was denied because of their mixed parentage. “There are others of us who have proof sufficient to satisfy any reasonable court, but there seems to be a determination on the part of some of the authorities not to admit any more of the eastern Cherokees the full bloods only accepted.” It appeared that these North Carolina Cherokee had been unsuccessful in proving their blood connections to the Cherokee Nation. They claimed the Cherokee authorities ignored any documentary evidence they had supplied. “The rule here is to [counsel] the applicant to find some Cherokee here who will swear to the Cherokee blood of [the] applicant.”¹⁹ Thus, applicants needed a recognized Cherokee citizen of the Nation in Indian Territory to vouch for their kinship connection to the Cherokee people. One wonders how this might be done. Perhaps someone’s appearance or his distant connection to those Cherokees who were pushed west during the era of removal. This implied the Cherokee Nation would accept those known and connected to Cherokee people living in Indian Territory, but how likely was it for Cherokees living in North Carolina in the 1870s to have maintained their connections with

¹⁸ Petition to Agent Ingalls Concerning North Carolina Cherokees in Indian Territory whose rights were refused, December 14, 1874, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 1, folder 1877 – I348/I1131, National Archives Building, Washington, D. C.

¹⁹ Ibid.

relatives who had been removed in the 1830s? The petitioners also highlighted their belief that those seeking citizenship deemed “full bloods” were automatically acceptable as citizens in the Cherokee Nation. The importance of blood created classes within Cherokee society, and the freedmen were treated like second-class citizens throughout the reconstruction process of the Cherokee Nation.

Many of the freedmen who requested help from the federal government lacked the literacy skills to appeal personally to Bureau of Indian Affairs officials and reached out to others to help them articulate their concerns to federal authorities. Attorney Daniel C. Finn of Coffeyville, Kansas, prepared many petitions for freedmen claimants and directly communicated their desires to the BIA Superintendent William Nicholson in March 1876. Finn told Nicholson he had personally prepared all the claims for freedmen with what he saw as legitimate claims for Cherokee citizenship. According to Finn, the petitioners had proven their claim through the Treaty of 1866 but were denied rights in the native nation. “The Authorities of the Cherokee Nation have done all they could do to prevent these people from appealing to the Government of the United States, and even make threats of blood.” Finn explained he felt the claimants “have been shamefully treated by a certain class residing in [the] Cherokee Nation and I made their papers more out of sympathy than proffit [sic].”²⁰

Superintendent Nicholson forwarded Finn’s letter and some of the citizenship applications prepared by Finn to Commissioner of Indian Affairs J. Q. Smith. Nicholson explained the applications came from blacks claiming Cherokee citizenship, and indicated that many of the applicants were concerned about the lack of schools for their children in the

²⁰ Daniel C. Finn to Hon. William Nicholson, Superintendent, March 16, 1876, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 1, folder I 348/ N 181, National Archives Building, Washington, D. C.

Cherokee country. “I also transmit, from the same source, a list of children of African decent in the Cherokee Nation, whose parents are citizens of the Cherokee Nation, who, it is alleged, have been deprived of schools by the Cherokee Nation, or any benefit whatever of the School monys [sic] of said Nation.” Nicholson believed this complaint should be investigated and if found true the federal government had to enforce their rights by treaty.²¹ Other freedmen letters to the Bureau attest that a lack of access for freedmen children to public education in the Cherokee Nation was a problem the Cherokee freedmen petitioners brought repeatedly before the federal government. Denied the right to education before the war, access to schools for themselves and their children was a part of the central meaning of freedom for the black community during Reconstruction.²² The Cherokee freedmen were eager for help in securing access to the education freedom promised them.

A letter from freedmen Daniel Landru also mentioned a lack of access to education in the Cherokee Nation for the children of former slaves. Landru explained to the Commissioner of Indian Affairs J. Q. Smith that he was a “colored man” born, raised, and lived in the Cherokee Nation. He had recently been summoned to appear before the Cherokee Citizenship Court, which presided over cases of doubtful citizenship. Although Landru believed he had followed the laws of the Nation, he was afraid his citizenship was in trouble. He pleaded for federal protection since there was no protection available against the “laws of the Cherokee.” He reported to Commissioner Smith that the Cherokee freedmen knew Col. William P. Adair, a Cherokee delegate to Washington, D. C. throughout the 1870s, had informed Bureau officials “all things

²¹ Letter sent by Wm. Nicholson from Office of Indian Affairs, Central Superintendency, May 9, 1876, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 1, folder 1877- I 348/ N 386, National Archives Building, Washington, D. C.

²² Foner, *Reconstruction: America's Unfinished Revolution 1863-1877*, 96.

are peaceful [and] quiet here.” The freedmen, according to Landru, were also aware that a commission was investigating the Cherokee school fund and freedmen’s access to education in the Nation. Landru supplied the Commissioner with his assessment of the state of freedmen education in the Cherokee Nation. He stated, “Colored people have no schools and haven’t had any schools since the war.”²³

Some Cherokee freedmen were still concerned about access to schools as late as May 1880. Cherokee freedmen Samuel Barnes wrote Secretary of Interior Carl Schurz to see if his “colored children” could be barred from the Cherokee Nation’s schools. Barnes lived in the Sequoyah District of the Cherokee Nation and claimed citizenship rights through his marriage to his wife whose father was “half Cherokee.” Barnes had proved his citizenship before the Cherokee Citizenship Court, yet now found he appeared on the doubtful list. His children, according to Barnes, were not allowed to attend the free Cherokee school in their district. He hoped the BIA could help him secure his children’s access to the Cherokee schools.²⁴

Freedman G. W. Lynch also sought federal help in securing access to schools for his children. Lynch asked Commissioner Ezra A. Hayt to clarify the position of the Interior Department in regard to the status of the Cherokee freedmen. Lynch told Hayt the freedmen of the Cherokee Nation wanted schools for their children; and he had been struggling to gain access to schools for fourteen years. Lynch argued that the Cherokee freedmen were law-abiding people who wanted to be citizens, but they lacked a vote and voice in the Cherokee council that meant

²³ Letter to Sec. of Interior – Commissioner of Indian Affairs from Daniel Landru in Vinitia, CN, July 2, 1878, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 2, folder 1878 L475, National Archives Building, Washington, D. C.

²⁴ Letter of Samuel Barnes to Sec. of Interior C. Schurz, May 22, 1880, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 3, folder 1880 B404, National Archives Building, Washington, D. C.

they had no influence over the legislation declaring them intruders or denying them per capita payments.²⁵ Having received response from the Interior Department, Lynch again wrote the federal government. This time he directly appealed to President Rutherford B. Hayes. Lynch informed President Hayes the Cherokee freedmen had sent a delegation to report their sufferings directly to Congress. He asked Hayes if there was anything the federal government could do to help the freedmen obtain schools for their children. Lynch explained that the freedmen needed a school closer to where they lived and he believed the Interior Department was empowered to help them. “It seems that the great Government of the United States it being the Supreme power of both the United States & Indian Territory will see that this great matter be [finally] considered & all rongs [sic] made right is my prayer.”²⁶

The lack of access to education for some Cherokee freedmen is a marked departure from the proliferation of schools in the south during Reconstruction. African Americans in the southern states initiated and actively worked to ensure that freedom meant the right to an education.²⁷ Some early investigations of slavery in the Cherokee Nation have argued that life for slaves was better or more desirable in Indian Territory than the southern states, and Cherokee masters were not as restrictive as southern masters and allowed their slaves opportunity for instruction.²⁸ However, evidence like these freedmen letters suggest that for some freedmen Indian Territory was not much different from the slave south. This evidence supports the recent findings of Celia Naylor, who explores the day-to-day life of African Cherokees from slavery to

²⁵ Letter to Sec. of Interior E A Hayt from G W Lynch, January 22, 1880, box 3, folder 1880 L120, National Archives Building, Washington, D. C.

²⁶ Letter to President Hayes from G W Lynch, February 29, 1880, box 3, folder 1880 L464, National Archives Building, Washington, D. C.

²⁷ For a discussion of the active role of African Americans in the creation of schools in the postwar South, see Foner, *Reconstruction*, 96-102, 354, 359, 541, 589, 592.

²⁸ Perdue, *Slavery and the Evolution of Cherokee Society*, 144.

freedom. Southern freedmen created mutual aid societies, utilized northern support, and federal assistance in their pursuit of education during Reconstruction. Yet, Naylor finds that Cherokee freedpeople relied on the resources and support of the Cherokee Nation for the creation of their schools. She highlights WPA narratives of Cherokee freedpeople who recalled their exclusion from education during slavery and their limited access during Reconstruction. “Unlike the steady growth of freedmen’s schools in other southern states during this period, the Cherokee Nation provided only limited opportunities for freedpeople to educate their children.” Naylor argues, the fact that Cherokees restricted the number of freedmen’s schools, by their refusal to recognize some freedpeople as citizens of the Nation, speaks directly to Cherokee leaders’ unwillingness to accept freedpeople as citizens with legitimate rights to the services provided to other Cherokees. She insists that freedpeople in the southern states actually had greater access to educational opportunities, in the decades following the Civil War, compared to Cherokee freedpeople. She contends that the Cherokee freedmen “were unable to utilize the services of the bureau fully to assist them in their educational pursuits.”²⁹

Most histories that discuss the freedmen’s struggle for citizenship argue the Cherokee leadership wished to limit the access of freedmen to the economic benefits of Cherokee citizenship.³⁰ However, the evidence contained in the Bureau records suggests most freedmen seeking assistance from the federal government in securing their Cherokee citizenship rights believed they were discriminated against because of the color of their skin. The emphasis on the economic motives of Cherokee leaders obscures other possible reasons for exclusion, including racial and cultural motives. Economic motivations definitely explain some of the discrimination

²⁹ Naylor, *African Cherokees in Indian Territory*, 162, 163, 165-66, 174.

³⁰ Strum, *Blood Politics*, 77.

Cherokee freedmen faced, but it is important to remember that freedmen's lack of access to economic resources was predicated on the idea they were somehow unacceptable citizens or had no right to these economic benefits because they lacked a Cherokee blood connection and were marked as an inferior race by the Cherokee Nation.

An excellent example of this comes from a July 18, 1878 letter from freedman Louis Carter to J. Q. Smith Commissioner of Indian Affairs. Carter wrote he believed he was denied Cherokee citizenship because of his race. According to Carter, the Cherokee Nation had decided the Treaty of 1866 did not give a "colored woman" of the Cherokee Nation the same rights as any other native born citizen. He identifies his wife as a "Native born Colored Woman" who was owned by Judge H. D. Reese who currently served as the Clerk of the Cherokee Supreme Court. Carter explained that his wife claimed Cherokee citizenship through the Treaty of 1866 and had never forfeited her rights in any way. Carter had married her and followed the requirements for intermarriage in the Cherokee Nation, and acquired the proper license and took an oath of loyalty to the Cherokee Nation. Claiming the rights of any "freeman," Carter asked Commissioner Smith to consider his case and let him know if he was to be driven from his home in the Cherokee Nation now that he was a doubtful citizen.³¹

The majority of the freedmen claimants examined in this chapter were property owners and they, like Louis Carter, faced the prospect their improvements would be sold at public auction. Like the freedmen of the southern states, Cherokee freedmen strove to build their own places after the war. Most of the freedmen who married Cherokee freedwomen after the war found that their rights to Cherokee citizenship were tenuous. The Cherokee Supreme Court ruled

³¹ Letter to Commissioner of Indian Affairs from Louis Carter, July 18, 1878, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 2, folder 1878 C455, National Archives Building, Washington, D. C.

marriage to a woman claiming rights through Article 9 of the Treaty of 1866 did not grant her spouse any rights to Cherokee citizenship. Although divisions did emerge over the status and rights of Cherokee freedpeople in the period after emancipation, they did not escalate to the same degree of violence targeted at southern freedpeople.³² But, it is clear they did face constant harassment and the possibility of losing their homes and farms. Cherokee freedpeople, as Celia Naylor explains, “experienced a dual sense of belonging; they were previously enslaved by, and belonged to, Cherokees, but they were also persons who believed that they were part of, and belonged to, Cherokee communities in Indian Territory.”³³

Like Louis Carter, William Hudson was a former slave who relocated to Indian Territory after the Civil War. He had married a Cherokee freedwoman in 1867 and believed he had fulfilled the requirements for intermarriage in the native nation. According to Hudson, he was recognized as a Cherokee citizen until 1870 when he was placed on the doubtful citizen list “with all other colored people that had married in this country from the U. S.” Hudson had appealed his case before the Cherokee Supreme Court and presented his marriage license to the court, yet no decision had been handed down. In addition, the court lost his paperwork and Hudson had to apply for duplicate copies from the Nation’s Clerk. Finally, the Cherokee Supreme Court ruled Hudson’s marriage license was invalid because it was not obtained from legal authorities. He insisted that Dobson Reese, the Clerk of the Cherokee Supreme Court and the private secretary of the Principal Chief, had granted him his license. According to Hudson, Reese had also granted a license to a white man at the same time, and he faced no obstacles in exercising his Cherokee citizenship rights. Hudson stated his “wife [was] a native born woman of the Cherokee Nation,” which meant she had been born into slavery in the Cherokee Nation and had been granted her

³² Naylor, *African Cherokees in Indian Territory*, 175.

³³ *Ibid.*, 177.

citizenship rights because she had returned to the Nation within the six-month limit. His wife was a citizen of the Nation, but Hudson's race made him a doubtful citizen in the eyes of the Court. Hudson desperately wished for the federal government to assist him because he had improvements he had labored to secure after the war and might lose without U. S. protection.³⁴

In the case of William Hudson, the fact that he feared the Cherokee Nation would take away his improvements adds another indicator of the economic motivations behind freedmen discrimination. Practices of racial exclusion, like distributing bread money to only Cherokees by blood, was not just about restricting access to per capita payments, but it was also about reclaiming desirable improvements from freedmen for the benefit of Cherokee citizens who could purchase the farm and home of these intruders at public auction. Despite their marriages to Cherokee freedwomen, the freedmen who wrote the federal government for help lacked a kin connection to the Cherokee Nation, and their race marked them as unacceptable citizens who had no right to benefit from the use of the public domain. Once again former masters had the opportunity to benefit from the hard work of another.

In 1878, a group of freedmen from Big Creek, Cooweescoowe District sought advice from Commissioner William Leeds. They explained they had been held as slaves in the Cherokee Nation prior to the war and returned to the Nation after the war in 1866; and they claimed to have proven their citizenship to the satisfaction of the Interior Department but now had to face the Cherokee Citizenship Court. Following the recommendation of Principal Chief Louis Downing, many of the freedmen had settled in the Cherokee Nation and now they feared that without an attorney to represent them before the Cherokee court they would lose their homes

³⁴ Letter to Commissioner of Indian Affairs from William Hudson, 1878, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 2, folder 1878 H 1187, National Archives Building, Washington, D. C.

and improvements. The freedmen insisted they were “making our living by hardwork...right by our former masters who now aim to take away from us all we have.” They were unsure who had final say over their citizenship status.³⁵ These freedmen had become entangled in the ongoing sovereignty struggle between the Cherokee Nation and the United States, but their immediate concern was to protect their hard earned improvements.

A letter from Cherokee freedmen Maryland Beck provides another example of how the desirability of freedmen’s improvements motivated Cherokee authorities to question the legitimacy of the freedmen’s citizenship claims. Beck wrote the Secretary of the Interior after he was ejected from his farm by Cherokee authorities. He explained he had been born and raised in the Cherokee Nation and had only left the boundaries of Cherokee country for two to three months at a time when he had served as a teamster “during the rebellion.” Not only had Beck been removed from his farm, but another man, presumably a Cherokee citizen had taken over his farm and would reap the harvest of the crop Beck had sown. Beck appealed to the federal government to reinstate him at his farm and for the Indian Agent to investigate his case.³⁶ Federal officials used appeals like Beck’s as entry points from which to attack Cherokee sovereignty throughout the postwar era.

Ironically, Cherokees sometimes assisted freedmen in their challenges to racial exclusion and appealed to the federal government for intervention in particular cases. One important example is freedmen Allen Wilson, introduced above. Wilson had been denied his per capita

³⁵ Letter/petition sent to Commissioner of Indian Affairs from group of Cherokee freedmen in Big Creek, Cooweescoowe district, July 28, 1878, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 2, folder 1878 S1018, National Archives Building, Washington, D. C.

³⁶ Letter of Maryland Beck to the Sec. of Interior, June 9, 1879, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 2, folder 1879 B 684, National Archives Building, Washington, D. C.

bread money in 1875 and by January 1879 was fighting to keep his improvements after his Cherokee citizenship was deemed doubtful by Cherokee authorities. Wilson hired William P. Boudinot as an attorney to represent him before the Cherokee Citizenship Court. Boudinot, a member of a well-known Cherokee family and previously editor of the *Cherokee Advocate*, was an interesting choice. Wilson most likely hoped his attorney's connections would benefit his case, although he may have also been following the crowd. Boudinot was also serving as attorney "for a considerable number of claimants of the same race." Boudinot forwarded Wilson's case to the Secretary of Interior and pressed for some solution for all involved in the disputed citizenship case. Boudinot's letter explained that these claimants had lived in the Cherokee Nation for many years as "good citizens with their families" and been guaranteed protection from both the Cherokee Nation and the United States in the Treaty of 1866. He also revealed a possible reason freedmen property and citizenship was threatened. He explained that the freedmen had made excellent improvements in desirable locations, and Wilson in particular had been industrious and had prospered. Boudinot argued that the order to sell Wilson's improvements was not justified and that his client believed the United States had the right to review Wilson's status as an intruder. The Cherokee attorney requested that the federal government infringe on Cherokee sovereignty with an investigation into Wilson's case.³⁷

Allen Wilson presented himself to BIA clerk J. G. Love who wrote his superior Commissioner Ezra A. Hayt with a report on his findings in the Wilson case. According to an advertisement running in the local paper, Wilson's land was to be auctioned by Tahlequah

³⁷ W. P. Boudinot submits the case of Allen Wilson & others to Sec. of the Interior, January 30, 1879, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 2, folder 1879 W1490, National Archives Building, Washington, D. C. This was not the last time the Boudinot would ask the federal government to infringe on Cherokee sovereignty. He forwarded other appeals from his freedmen clients for investigations into their disputed citizenship cases.

District Sheriff Henry Barnes in fifteen days. Love confirmed the details of Wilson's biographical background and reported that Wilson had been enslaved in the Cherokee Nation prior to removal, had removed with his master to Indian Territory, and had been taken to the Red River area of the Choctaw Nation during the war. The freedman had been delayed in returning to the Cherokee Nation and was also unaware of time limit provision of the Treaty of 1866. Love stated that Wilson had received permission from leading Cherokee men, including William P. Ross, to improve a place for himself on the Cherokee domain. Wilson's emphasized his ties to the Cherokee Nation and told Love he knew "no other home and no other people than the Cherokees and their country. That his connections are all there."³⁸

Wilson's farm was very prosperous and would have drawn much interest at the public auction. According to Love's report, Wilson had a sixty-acre farm near Fort Gibson with an orchard and nursery with over "350 bearing Appletrees of choice varieties [sic] and over 1000 Peach trees" along with twelve acres of wheat. Wilson claimed his improvements and fields were worth \$2000, "and asks you as Agent and Commissioner, if there is any way under law or treaty, to protect him, or allow him to sell his improvements and move out of the country." Apparently Wilson had received offers to purchase his farm, but he refused the offer. "It seems propositions have been made him to purchase his improvements and then for him to work for others. But this does not seem to him freedom."³⁹ Wilson did not wish to trade his farm to become a laborer for another, possibly even a former master. He had his own ideas about what freedom meant and laboring for another was not appealing to the former slave. His industry had brought unwelcome attention from Cherokee authorities, which motivated them to find ways to challenge Wilson's

³⁸ To: E A Hayt Com. Of Indian Affairs from: J G Love, Clerk, January 28, 1879, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 2, folder 1879 V21, National Archives Building, Washington, D. C.

³⁹ Ibid.

right to his improvements. Although Allen Wilson's main concern was protection of his citizenship rights and improvements, he also complained of problems he encountered with his Cherokee attorney.

When Allen Wilson gave his personal affidavit to Clerk Love, he claimed that Boudinot had failed to provide guidance about how he should challenge his doubtful citizenship status. Evidently, Boudinot was not especially concerned with settling the freedmen's citizenship disputes. So, Wilson had tried to clarify his status on his own. He told Love he had asked the Assistant Principal Chief about his rights, and many of the "Principal men of the country" had assured him of his right to a home and citizenship in the Cherokee Nation. Wilson had taken these leading men at their word and believed he was entitled to citizenship rights in the native nation. He also reminded Love that both the Indian Agent at Fort Gibson, Reverend J. B. Jones had also believed that he was entitled to Cherokee citizenship.⁴⁰ The inclusion of John Jones would have been an important endorsement. Jones had been a missionary to the Cherokee for many years. He was an adopted, intermarried Cherokee citizen too. His support for Wilson's citizenship rights showed possible challenges to the racial exclusion many freedmen faced existed at the local and personal level.

In January 1879, William P. Boudinot submitted the case of a sixty-year-old Cherokee freedman who had been taken to the Red River in the Choctaw Nation during the war. Although his master had promised to return the freedman to the Cherokee Nation, he had died and left a penniless widow unable to transport her former slave property home. The freedman and his family, free to labor for themselves, rented a farm for two seasons and were finally able to return

⁴⁰ Allen Wilson Affidavit, January 27, 1879, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 2, folder 1879 V21, National Archives Building, Washington, D. C.

to the Cherokee Nation in the fall of 1867. The freedmen's comfortable home was now listed for sale in the *Cherokee Advocate* as a result of his denial of citizenship from the Cherokee Citizenship Court. Boudinot's client believed the federal government through the Interior Department had the right to review the decisions of the Cherokee Court before intruders were expelled from the Cherokee country. Boudinot, on behalf of his client, claimed the protection of the Interior Department from the unlawful sale of the freedman's home.⁴¹ The federal government continued to actively support and protect freedmen rights in the Cherokee Nation well past the end of Reconstruction. Southern states had been reincorporated into the union by 1877, but federal interest in freedmen rights in indigenous nations of Indian Territory allowed the reconstruction process to continue as the United States sought to conquer these sovereign powers once and for all.

III.

As the contentious 1870s drew to a close, it became increasingly clear that the United States, and Bureau of Indian Affairs in particular, had no real interest in removing intruders from the Cherokee Nation despite the repeated pleas issued by Cherokee leaders that the federal government honor its treaty promises to eject them from Cherokee lands. There was also a shift in U. S. Indian policy in the 1880s, as federal officials and reformers turned to the idea of individual allotment of land to the heads of native households. This, it was believed, would more successfully integrate native peoples into American society than the current reservation

⁴¹ Letter to Sec. of Interior from W. P. Boudinot, January 29, 1879, Record Group 75, Records of the Bureau of Indian Affairs Land Division, Letters Relating to Cherokee Citizenship, 1875-89, box 2, folder 1879 B 134, National Archives Building, Washington, D. C.

approach. The underlying motive of this new federal policy was the desire to open surplus tribal lands in Indian Territory to white settlement.⁴² For the Cherokee Nation, the fight against territorial bills became a fight to stop the division of their land in severalty. In 1887, Congress passed the Dawes Severalty Act, which insisted the answer to the Indian question was to denationalize the tribes in Indian Territory, and to survey and allot their land in severalty, and establish a white-dominated government in Oklahoma.⁴³

In the 1880s, the Cherokee Nation had sold large tracts of excess lands in the western part of Indian Territory to the federal government as required by the Treaty of 1866 for the relocation of Kansas, Nebraska, and other western tribes. The Nation had also begun taxing ranchers who grazed their large cattle herds on Nation lands as a new source of revenue for the treasury.⁴⁴ When these large land deals had been achieved, the Cherokee Nation passed an act to distribute per capita payments only to Cherokees by blood as it had done with bread payments in the 1870s. Many adopted citizens again turned to the federal government to help them gain access to these funds. The Cherokee leadership greatly objected to this request for federal intrusion. Although a bill was introduced in the National Council for the adoption of freedmen with disputed citizenship, it never passed and the U. S. Congress passed an act to investigate and dispose of these citizenship claims. The Senate Committee on Indian Affairs, chaired by Henry Dawes the author of the Dawes Act, embarked on a tour of Indian Territory to investigate the status of the freedmen among the various tribes.⁴⁵ Still, the Cherokee Nation remained firm in its sovereign right to determine citizenship and control its internal affairs. At the same time, the

⁴² Murray R. Wickett, *Contested Territory: Whites, Native Americans, and African Americans in Oklahoma 1865-1907* (Baton Rouge: Louisiana State University Press, 2000), 46, 49, 50, 54-55.

⁴³ McLoughlin, *After the Trail of Tears*, 365-367.

⁴⁴ *Ibid.*, 360, 375.

⁴⁵ Littlefield, *The Cherokee Freedmen*, 114, 115, 123.

federal government continued to infringe on native sovereignty as it sought the final incorporation of Indian Territory into the United States through the allotment of lands to the heads of native households.

Principal Chief Dennis Busyhead delivered a memorial to the U. S. Congress that stated his objections to federal interference in what he characterized as the Cherokees internal matters. The Chief began by reminding Congress that the Cherokee Nation owned the land within its boundaries. Only the Nation's leadership could sell any portion of the Cherokee domain as treaty stipulations demanded. Busyhead argued the funds raised from the sale of excess lands was entirely under the control of the Cherokee Nation, and the Council had the right to direct the way these funds were distributed to the Cherokee people. Bushyhead believed those groups seeking federal help in securing their portion of these funds had no legitimate claim to the per capita payments "and seek to hide the defects of their claim under an arbitrary exercise of authority, and by misrepresentation [are] inviting the United States to violate her treaties with the Nation." The sovereign right to control the distribution of funds from the sale of excess tribal lands was unquestioned in Chief Bushyhead's mind. "The Cherokee Nation, as organized under law and treaty, on its present lands in the west, is a political community with well determined powers. The jurisdiction of all matters touching the persons and property of her own people remain with her."⁴⁶

The Chief explained the reasoning for denying payments to the Delaware, Shawnee, and freedmen adopted citizens of the Nation. "The subject of complaint is that a per capita payment was made of the money to Cherokees by blood, and that certain citizens by adoption were not

⁴⁶ Memorial of D. W. Bushyhead, March 20, 1884, D. W. Bushyhead Collection, box B-54, folder 106, Western History Collection, University of Oklahoma, Norman, Okla. Hereafter cited, Memorial of D. W. Bushyhead, March 20, 1884.

permitted to participate.” According to Busyhead, the Delaware had purchased their citizenship in the Cherokee Nation and were excluded because the land had been sold prior to the agreement the two groups had reached for the Delaware adoption into the Cherokee body politic. As for the Shawnee, they still had not paid all the money agreed upon in their deal with the Cherokee Nation for their adoption as citizens. “So far as the colored citizens were concerned, they had neither legal nor equitable claim to the common or public property of the Cherokee Nation.” In other words, adopted freedmen citizens enjoyed access to Cherokee lands because the Nation agreed to allow them use of the land, but they did not have the right to profit from the sale of the Nation’s excess lands. The Chief explained that the Council had passed legislation that “manumitted them.” Under the treaty stipulations of 1866, “it was agreed that colored people who were native to the Nation, or who were in it at the breaking out of the late war, and who should return to it within six months of the date of the treaty, should be adopted as citizens.” Busyhead boasted that Cherokee freedmen “have an equal public voice in all matters.” He insisted, “Colored men have now all the individual rights known to constitution and law.”⁴⁷

According to Bushyhead, this meant freedmen had access to homes on the public lands, the right to vote and hold office, as well as “the benefit of the government sustained by public funds and exempt from taxation.” “They have thus, in addition to their freedom and all the benefits of free education and government, obtained valuable homes from the common property of the Cherokee Nation, without paying a cent for them.” He pointedly asked his Congressional audience, “Which state in the Union has been so generous to its manumitted slaves?” According to the Chief, the federal government had no right to interfere in the distribution of these funds because it was an internal matter. Still, he acknowledged that future funds from the sale of excess

⁴⁷ Memorial of D. W. Bushyhead, March 20, 1880.

land might be distributed without distinction. However, he reminded Congress that power “rests with the law-making power of the [Cherokee] country, and all these people are voters.”⁴⁸ The idealized portrait of life for Cherokee freedmen did not match with the many letters of complaint the freedmen sent Bureau of Indian Affairs officials. With southern states successfully politically reincorporated into the union, the federal government’s commitment to the protection of southern freedmen significantly waned. However, freedmen in Indian Territory never lost government interest or support for the enforcement of their native citizenship rights. Although Chief Bushyhead emphasized the acceptance of the freedmen, his exchange with the National Council revealed that the Cherokee freedmen were not readily accepted with all the rights of native Cherokees.

Ironically, a year before his memorial before Congress Chief Bushyhead returned a bill authorizing per capita payments to the National Council with a letter stating his objection to the Council’s directions that the payments go only to citizens denoted as Cherokees by blood. He explained to the Cherokee Senate and Council, that he objected to this restriction because he felt it violated the Cherokee constitution and treaty agreements. He insisted he understood the arguments the legislators had made for the distribution of the funds to Cherokees by blood only. He agreed “that the lands of the Cherokee Nation west, including those now considered, were conveyed to the Cherokee Nation, at that time composed wholly of Cherokees by blood.” Bushyhead also agreed that “the colored citizens and adopted whites have paid nothing for their interest in these lands.” Still he reminded the senators, “it is just as true and indisputable that the Cherokees by blood, who were once the sole owners of the eastern country and this, were competent and qualified to share their common interest with whoever they might choose.” The

⁴⁸ Memorial of D. W. Bushyhead, March 20, 1880.

exclusion of the adopted citizens, to Bushyhead, seemed to violate Cherokee law and practice and would harm those it excluded.⁴⁹

According to the Chief, the question now was “whether the native Cherokees have done this as respects the colored and other classes of citizens of this nation.” He reminded the Cherokee Senate that it had to carry out its promises in good faith because “so much of our future as a nation depends on the good faith of the United States Government it is of the utmost importance that the nation sustains its own good character for square dealing.” Bushyhead recounted treaty stipulations from 1839 and 1866, as well as amendments to the Cherokee constitution granting adopted citizens the rights of native Cherokees. “While the lands remain common property all citizens have an equal right to the proceeds of their joint property, whether divided per capita or invested.” For these reasons, Bushyhead felt he must return the bill for the Council to reconsider its directions pertaining to the distribution of funds.⁵⁰ Bushyhead clearly understood that discrimination against adopted citizens of the Nation would invite the continued interference of the federal government into the internal affairs of the native group. The fact that this bill passed despite the Chief’s objections demonstrates that Council members were firmly committed to limiting who would receive these payments. Adopted citizens were viewed as a class separate from those with a blood connection to the body politic and in some way unworthy of the full benefit of their citizenship rights.

The status of adopted citizens in the Cherokee Nation was still uncertain in 1885 when the National Council decided that surplus monies earned from the taxing of cattle grazing on

⁴⁹ From an unidentified government document bound in Indian Documents, (O. H. S.), May 18, 1883, D. W. Bushyhead Collection, box B-54, folder 82, Western History Collection, University of Oklahoma, Norman, Okla. Emphasis in the original.

⁵⁰ Ibid.

Cherokee lands west of the 96° meridian would also be denied to adopted citizens. The Council passed a bill that authorized the per capita payments to be distributed only to Cherokees by blood. Principal Chief Dennis W. Bushyhead returned the bill to the National Council without his signature and offered a revealing explanation for his displeasure with the bill. “The Bill provides for the per Capita distribution of certain surplus funds in the National Treasury among some Cherokee Citizens, while excluding other citizens.” Bushyhead’s major point of contention with the bill was that it violated the Cherokee constitution. The Chief reminded the Council of its role in defining the status of those groups adopted into the body politic through the Treaty of 1866. “As the treaty vested certain Indians and colored persons with ‘all the rights of Native Cherokees’ without defining what those rights were, a definition of those rights became immediately necessary.”⁵¹

The constitution gave the Council the power to construe and execute treaty stipulations. In the case of adopted citizens, who had been incorporated through Article 9 and 15 of the Treaty of 1866 in particular, Bushyhead believed that the Council understood the term “all the rights of Native Cherokees” to mean that all adopted citizens, whether freedmen or Indians, were “equal to native born resident Cherokees as regards the rights of citizenship in this Nation.” Thus, Bushyhead argued no rights that belonged to Cherokee citizens could be denied “to these colored and adopted Indian citizens without a violation on treaty.” The Chief chastised the Council for its discriminatory bill and reminded the members they represented all of the Cherokee people. The Chief believed the bill denied rights to the adopted classes of the citizenry, violated the constitution, and threatened to annul the Treaty of 1866. Bushyhead feared the bill “puts this

⁵¹ To the Honorable The Senate In Regular Session, December 3, 1885, D. W. Busyhead Collection, box B-55, folder 122, Western History Collection, University of Oklahoma, Norman, Okla. Hereafter cited as, To the Honorable The Senate In Regular Session, December 3, 1885.

Nation in the attitude of being false to its obligations as those obligations have been construed in conformity with the Constitution.”⁵² The Chief’s insistence that the National Council deal fairly with the adopted citizens in order to maintain the honor and integrity of the Cherokee Nation shows how important these internal issues were to the Nation’s diplomatic relationship with the United States. It was especially crucial that the Cherokee Nation uphold its promises to its citizens because the leadership was also demanding that the federal government honor and respect and maintain Cherokee sovereignty and autonomy despite the push for allotment that accelerated after the passage of the Dawes act.

While disputed cases of citizenship continued to be a source of tension between the Cherokee Nation and the federal government, Congressional pressure to extend federal and state control over Indian Territory through individual allotment loomed as a new threat to native sovereignty. In March 1886, Principal Chief Busyhead wrote to his second in command, Assistant Principal Chief Rabbit Bunch, from Washington, D. C. where the Chief had been overseeing the Nation’s business with the federal government. He had found that many territorial bills had been introduced to Congress and would “affect the rights and interests of the different Nations of the Indian Territory.” Bushyhead believed the railroad and land speculation lobbies were behind the majority of the bills under consideration. He forwarded a copy of the bill proposed by Senator Henry Dawes, to Rabbit Bunch, which advocated that the allotment of individual plots of land to each head of household be applied to the tribes residing in Indian Territory. Bushyhead was pleased to inform Rabbit Bunch that Congressional supporters of Cherokee sovereignty had so far been able to exempt the Cherokee, Creek, Seminole, Choctaw,

⁵² To the Honorable The Senate In Regular Session, December 3, 1885.

Chickasaw, and Osage Nations from the provisions of the Dawes bill. Still, those groups residing in Indian Territory not exempted faced the prospect of forced allotment.⁵³

Bushyhead also reported that there were several “dangerous bills of a judicial character” introduced into Congress that proposed the extension of the civil and criminal jurisdiction of the U. S. District Courts over Indian Territory. Again, the Five Tribes were exempted from the provisions of these judicial bills. Bushyhead explained that some congressmen argued the extension of federal and state authority in Indian Territory was necessary to recoup lost revenue deriving from ranching, cattle grazing, and debt collection in Indian Territory. He explained that senators from Arkansas, Kansas, and Texas had introduced these bills; and many of the men who proposed this legislation had connections to railroads and the courts whose power they wished to enlarge.⁵⁴ For example, Democratic Senator John Henry Rogers from Arkansas advocated the creation of a U. S. District Court with jurisdiction over the entire Indian Territory. Rogers had practiced law in Fort Smith before his election to Congress, and was later appointed District judge in the Fort Smith court by President Grover Cleveland in 1896.⁵⁵

Despite his concern over the allotment and judicial bills, Bushyhead reported that there were some federal attempts to protect the sovereignty of the native nations of Indian Territory. He explained that the Senate had passed a bill that increased the punishment for intruders by adding the threat of imprisonment to the fine. Other bills sought to curb the poaching of native timber and restrict liquor distribution on Indian reservations in Indian Territory. He also reported that the memorials “of colored and other citizens of [the] Cherokee Nation, complaining that

⁵³ Letter of D. W. Bushyhead, March 15, 1886, D. W. Bushyhead Collection, box B-55, folder 133, Western History Collection, University of Oklahoma, Norman, Okla. Hereafter cited as, Letter of D. W. Bushyhead, March 15, 1886.

⁵⁴ Ibid.

⁵⁵ Congressional Biographical Database, <http://bioguide.congress.gov/biosearch/biosearch.asp> (accessed June 22, 2012).

they did not get their share of the last per capita payment” had resulted in a bill framed by the Commissioner of Indian Affairs to rectify the situation. According to Bushyhead, the Commissioner’s bill recommended that Congress pass an act taking a “sufficient amount from the Cherokee invested funds,” and pay it out to those denied these payments. The money had come from the Cherokee Nation’s sale of excess lands to the federal government to be used for the relocation of the Pawnee, Nez Perce, Ponca, Otoes, and Missouri tribes in Indian Territory. The Chief believed the bill could be successfully resisted because it violated a recent U. S. Supreme Court ruling that declared the Cherokees had a vested interest in their funds with which neither Congress nor the Executive Department could interfere. In other words, this bill would easily be defeated because it violated the Cherokee Nation’s sovereign control over its money and citizenry. Bushyhead acknowledged, “Much confusion seems to exist in the minds of many as to what are really the rights of Cherokee citizens.” Yet, the Chief explained the recent decision of the U. S. Supreme Court in the North Carolina Cherokee case upheld the sovereignty of the Cherokee Nation to determine the Nation’s disputed citizenship cases without federal input.⁵⁶

Still, pressure to open Indian Territory to white settlement persisted. According to Bushyhead, Senators Richard Wellington Townshend of Illinois and James Baird Weaver of Iowa had introduced the most recent bills to Congress; the Chief accused Weaver of championing the “lawless invaders of the Indian Territory styled boomer.” “While many men in Congress favor these unjust and aggressive measures, from all the evidence,” Bushyhead believed “that the railroad interests which center in and seem to have great power with the public men of Illinois, are largely at the bottom of this movement, and merely put the lawless squaters [sic] forward to cover up their own real objects.” The Chief warned that full assimilation into

⁵⁶ Letter of D. W. Bushyhead, March 15, 1886. Emphasis in the original.

American society was the ultimate goal of these new bills. “While there are many able gentlemen who are inclined to do fairly by the Cherokee Nation, there is a very strong sentiment in favor of forcing Indians generally to become citizens of the United States and to merge them with the white population, and sell all of the reserves, save 160 acres, to the head of each Indian family.” Bushyhead did not think Congress could succeed in breaking up the Cherokee Nation that year and he believed the recent decisions of the U. S. Supreme Court bolstered Cherokee sovereignty. Yet, he insisted that the Nation’s “chief security consists in asserting our property rights before the tribunals of law. Until the whole land system is revolutionized they cannot dispossess us.”⁵⁷

In a follow-up letter to the Cherokee Senate and Council, Chief Bushyhead warned that the recent act directing the distribution of per capita payments only to Cherokees by blood would invite federal intrusion on Cherokee sovereignty. The proceeds from the sale of Cherokee lands in the western part of the domain was to be distributed among the Cherokee people, but the National Council had decided to limit recipients of these payments to Cherokees by blood. Bushyhead reminded the legislators that the National Council had reviewed the constitution and treaty provisions. “The facts thus show that as regards the Colored, Delaware, Shawnee, and adopted white citizens of our Nation, these classes were made such citizens by constructions placed upon provisions of treaty by the National Council, in the exercise of their Constitutional powers.” The Chief felt it was necessary to recommend a course of action to the Council in regards to the distribution of the per capita payments. Bushyhead believed that his executive obligation to uphold the constitution required him to recommend that “the enactment of ‘directions’ for the distribution [sic] of Per Capita in this instance, that shall not exclude any

⁵⁷ Letter of D. W. Bushyhead, March 15, 1886.

citizen of this Nation from an equal participation in such Per Capita money – the same being proceeds of the use of lands to which all citizens of the Nation have an equal right.”⁵⁸

The Chief reminded the Council of the importance of its action in this matter with a brief discussion of the treaty obligations the United States had pledged to uphold. Bushyhead feared that if Cherokee leaders did not act to include all adopted citizens in these payments, “the U. S. Govt. will claim the right to interfere to see that injustice is not done by this Govt. to parties to whom the U. S. is pledged by treaty stipulations to protect their rights, as citizens of this Nation in pursuance to our own Construction of Treaty.”⁵⁹ The Council disagreed with Bushyhead’s position and passed an act for the creation of a roll of “citizens of the Cherokee Nation by blood,” who would receive payments from the funds appropriated by Congress. The Cherokee freedmen sought equal rights in the Nation and they wished to participate in the full benefits of Cherokee citizenship, which meant access to land and a percentage of the annuities the federal government paid the Cherokee Nation. Tension between the freedmen and the Nation were exacerbated by the intrusion of the United States on internal Cherokee affairs during the era of Reconstruction.⁶⁰

The work of historian Celia Naylor demonstrates how the Cherokee freedmen affected the political process by learning to navigate the institutional systems of both the Cherokee Nation and the United States in pursuit of their rights as Cherokee citizens. She argues that this sparked ongoing resistance from the Cherokee political leadership, and resulted in numerous appeals by

⁵⁸ Message of D. W. Bushyhead, April 14, 1886, D. W. Bushyhead Collection, box B-55, folder 137, Western History Collection, University of Oklahoma, Norman, Okla. Emphasis in the original.

⁵⁹ Ibid.

⁶⁰ Naylor, *African Cherokees in Indian Territory*, 167, 165-166.

the freedpeople to the Cherokee Nation and the United States.⁶¹ The federal government used freedmen complaints to infringe on Cherokee sovereignty and advance its new policy of allotment. While the political Reconstruction of north and south had been achieved by 1877, the cultural, social, and economic reconstruction of the postwar United States required the incorporation of the west and Indian peoples and would not end until statehood had been achieved.

In the 1890s the pressure of Congress to implement allotment increased, and Cherokee leaders attempted to resolve the ongoing problem of some freedmen's disputed citizenship in the native nation. In an effort to produce an accurate record of the Cherokee freedmen and their descendants eligible for Cherokee citizenship, the federal and Cherokee officials worked to document those freedmen who would receive any per capita payments they had been denied in the preceding decades. The rolls of Cherokee freedmen created in the 1880s and 1890s functioned as the Nation's official record of those freedmen they deemed legitimate citizens. The first of these censuses was compiled by BIA official John W. Wallace and became known as the Wallace Roll. Another attempt to create a record of the Cherokee freedmen with legitimate citizenship claims was carried out by the Kern-Clifton Commission. However, allegations of corruption by the officials authorized to create each of the rolls brought more controversy to the Cherokee Nation. Some freedmen turned to the U. S. courts and sued after being listed as ineligible and alleged that some listed on the official rolls were fraudulent; and the legal battle that ensued required that Cherokee leaders address the status of the group. The Cherokee Nation

⁶¹ Naylor, *African Cherokees in Indian Territory*, 166.

was forced to compromise with freedmen denied per capita payments after the decision of the U. S. Court of Claims affirmed the adopted citizens' right to the funds.⁶²

In July 1889, John W. Wallace was appointed as an enrollment commissioner and began creating a list of Cherokee freedpeople and adopted Shawnee and Delaware citizens. The roll was not completed until 1893. Large crowds inundated an overwhelmed Wallace and his work was also hampered by rumors of his intemperance and that Wallace had been promised a certain amount of money for every freedman he admitted to the roll. Wallace also faced crowds of people who were opposed to the enrollment of the freedmen. Historian Daniel Littlefield reveals that some of Wallace's behavior was questionable. First, Wallace made only verbal contract with the clerks who assisted him and he fell behind in paying them their salaries. Secondly, Wallace through the help of freedman Luster Foreman, attempted to take J. Milton Turner's place as attorney for the freedmen in later suits. In this, he was not successful. After Wallace completed the roll of Cherokee freedmen, Agent Leo Bennett of the Interior Department was assigned the task of making the per capita payments to the freedmen enrolled in the Cherokee Nation. Yet, Bennett discovered that the names of many freedmen who were recognized as citizens by the Cherokees did not appear on the Wallace roll. Although the Cherokee Nation did not recognize the authority of the Wallace roll, it began to use it to declare any freedmen whose names did not appear on it as intruders.⁶³

The Cherokee National Council approved an act on September 25, 1895, which authorized the creation of a commission to investigate the authenticity of the Wallace Roll. The freedmen listed on the Wallace Roll claimed Cherokee citizenship through Article 9 of the

⁶² Littlefield, *The Cherokee Freedmen*, chaps. 7, 8.

⁶³ Naylor, *African Cherokees in Indian Territory*, 169, 170, and Littlefield, *The Cherokee Freedmen*, 149, 155, 156-58, 161.

Treaty of 1866. The Council appointed R. F. Wyly, C. S. Shelton, and Isaac Rogers to the commission. The commissioners took testimony and heard other evidence necessary to uncover the inaccuracies of the Wallace Roll. The report they produced explained that the commissioners began their investigations in Nowata or the Gooseneck area of the Cherokee Nation, which was twenty miles south of the Kansas line. This area had generated a larger portion of complaints against the Wallace Roll. The commissioners encountered obstacles to their investigation almost immediately. "The colored people were suspicious of the object of our visit to them. Many thought it a 'trick' to defer, or perhaps, defeat them in obtaining the money awarded them by the Court of Claims at Washington city." The commissioners found it impossible to convince the freedmen in Gooseneck of their purpose and moved on to Vinita in the hopes of continuing their investigation. Instead, they "found the same state of misapprehension [existed] as to the purpose of our visit and its object." The commissioner's report insisted that given more time to conduct inquiries they would have been able to obtain more affidavits. "These people, like other people with only limited education and information, are naturally suspicious when their interest is at stake and are credulous in believing reports prejudicial to what they conceive to be their rights."⁶⁴

The legitimacy of the Wallace roll was endorsed in an important legal battle between the freedmen and the Nation that played out in American courts. The Cherokee freedmen turned to the U.S. Court of Claims to help recover their right to per capita payments that were distributed to Cherokees by blood for the sale of excess tribal lands in the western part of the Nation. The court affirmed the Wallace roll as a correct record of Cherokee freedmen; and argued that 3,524 freedmen were entitled to per capita payments. The court decreed that the Secretary of the

⁶⁴ Letter to National Council, November 21, 1895, Mayes, S. H. Collection, box M50, folder 27, Western History Collection, University of Oklahoma, Norman, Okla.

Interior appoint a commission to correct the roll to include those freedmen recognized as citizens of the Cherokee Nation, but left off the Wallace roll in error. The court also ruled that the freedmen and their descendants were entitled to participate in the common property of the Cherokee Nation. Due to its dislike of the Wallace roll, the Cherokee Nation appealed the court's decision, and ultimately compromised with the freedmen and their representation. Instead of the Wallace roll, the Cherokee census of 1880 would be considered the final roll of Cherokee freedmen citizens, and the Nation agreed to pay the freedmen \$256.34 per person to compensate them for the per capita payments they had not received.⁶⁵

Despite the continued support of the federal government for the protection and enforcement of freedmen rights, there was still evidence of racial exclusion as well as freedmen challenges to the exclusion in the late 1890s. The Cherokee Nation had restricted the Cherokee freedpeople from payments from the Cherokee Strip Livestock Association funds. These funds were from profits raised for grazing rights in the Cherokee Strip. Ranchers moving their large cattle herds from Texas to the cow towns of Kansas and Missouri often grazed cattle along sparsely populated western tribal lands for a fee. The Cherokee Council agreed that Cherokee freedmen had all the rights of native Cherokees. Yet, the Council felt those rights did not include the right to land or profits from the sale, or in this case lease, of Cherokee lands. As Celia Naylor explains, the ongoing complaints by Cherokee freedpeople and the Nation's incessant refusal to consider freedpeople citizens as recipients of per capita payments, resulted in the U.S. government decision to oversee the enrollment of, and payment to, Cherokee freedpeople, as well as adopted Shawnee and Delaware citizens of the Cherokee Nation.⁶⁶

⁶⁵ Littlefield, *The Cherokee Freedmen*, 166-73.

⁶⁶ Naylor, *African Cherokees in Indian Territory*, 169.

The inaccuracies of the Wallace Roll continued to be a problem for the freedmen still trying to gain access to per capita payments. In an effort to control their future in the Nation, a group of Cherokee freedmen had their legal counsel file a motion in the U. S. courts for a new hearing on their case. Principal Chief Colonel Johnson Harris believed the freedmen objected to the Cherokee Nation's official count of eligible freedmen. Col. Johnson Harris had served the Cherokee Nation as a senator from 1881 to 1887, as executive secretary since 1887, and as a delegate to Washington, D. C. on several occasions. He had been born in Cobb County, Georgia, on April 19, 1856 to a white father and a "half-blood" mother. Harris had come to the Indian Territory in 1868 and made his home near present-day Warner, Oklahoma. He taught in the tribal schools and also found success as a rancher before he entered politics and was elected Principal Chief in 1891.⁶⁷

According to Harris, the Cherokee Nation recognized that 2,052 freedmen were entitled to per capita payments that had originally been distributed only to Cherokees by blood. The freedmen's motion before the U. S. court, the Chief claimed, intended to raise the number of eligible Cherokee freedmen to over some 4,000 people allegedly denied the right to participate in the payments. Chief Harris greatly objected to the freedmen's motion and insisted that the claims of each freedmen had to be thoroughly investigated before payments should be distributed to those not on the official Cherokee Nation roll.⁶⁸ The Cherokee leader knew that control over Cherokee citizenship and the benefits that came with it was crucial; and the Nation fought to maintain its right to oversee its internal affairs in the effort to resist any further federal encroachment on its autonomy. It was important that Cherokee leaders assert Cherokee

⁶⁷ Stanley W. Hoig, *The Cherokees and Their Chiefs: In the Wake of Empire* (Fayetteville: The University of Arkansas Press, 1998), 253.

⁶⁸ Letter of C. J. Harris to Messers, Maxwell & Chase, April 16, 1895, Harris, C. J. Collection, box H-56, folder 38, Western History Collection, University of Oklahoma, Norman, Okla.

sovereignty in any way possible in the 1890s because the new policy of allotment threatened to destroy their national existence.

Chief Harris's successor Samuel Houston Mayes was elected in August 1895. Principal Chief Mayes was a rancher who had also served the Nation as a Sheriff of the Cooweeseeowee District for two years until his election to the Cherokee Senate. It was Mayes's administration that presided over the imposition of allotment that the federal government worked to achieve in the late 1890s.⁶⁹ In his first annual message to the Cherokee National Council on November 13, 1895, Mayes opened with a report on the international council. This council consisted of representatives from all of the Five Tribes. The council worked to create unity and cooperation among the Five Tribes in regard to their relationship with the United States. The Council continued to function as a way to collectively resist the encroachment of federal power over indigenous nations in Indian Territory. The prospect of allotment now faced all the tribes of Indian Territory, including the Cherokee Nation.⁷⁰

The first order of business for the Nation, Mayes believed, was the creation of a commission to meet with the Dawes Commission, which intended to present the federal government's allotment proposal to native leaders of the Five Tribes. Mayes also wanted for the Cherokee commission to determine the position of the Cherokee people on the issue of allotment so the leadership would know the way to proceed. After a thorough discussion of the educational funds and teacher standards for Cherokee schools, Mayes detailed the standing of the Nation's finances and revenue sources. Interestingly one of the first sources he mentioned came from the sale of intruder properties, such as those discussed in many of the freedmen complaints

⁶⁹ Hoig, *The Cherokees and Their Chiefs*, 255.

⁷⁰ First Annual Message of S. H. Mayes, November 13, 1895, Mayes, S. H. Collection, box M50, folder 26, Western History Collection, University of Oklahoma, Norman, Okla. Hereafter cited as, First Annual Message of S. H. Mayes, November 13, 1895.

investigated in this chapter. “The revenue derived from the sale of the “intruder” improvements is already provided to be paid in six equal installments. The revenue from this source will be small and uncertain.”⁷¹ Although the proceeds from the sale of intruder property was a small source of revenue, the idea that these profits could be used to pay national debts indicates a possible motive for seizing freedmen’s property was to fill the Cherokee Nation’s treasury.

The Chief then discussed the continued dispute between the Nation and the federal government over disputed citizenship cases in the native nation. The Cherokee Nation had been battling the federal government over control of Cherokee citizenship since the end of the war; and it continued to manage citizenship on its own terms as a demonstration of its sovereign power in the late 1890s. Mayes offered the Council his opinion on Cherokee citizenship, which was a troubling subject for many adopted citizens. The Chief explained that the U. S. Supreme Court had recently ruled in the Delaware case “the adopted classes...were entitled to the same civil, political, and property rights as Cherokee citizens by blood.” Mayes felt the federal rulings in the Shawnee and freedmen cases that supported the decision of the Court in the Delaware case meant the National Council had to act to extend citizenship to adopted citizens on its own terms. “Whatever might have been the difference of opinion among our people as to their [adopted citizens] rights pervious to the decisions in the Deleware [sic] and Shawnee cases, the doubt is removed, and I cannot see any reason why a division should now be entertained.” Mayes hoped Council members would work to “inspire the loyal devotion of all classes to the perpetuation of present institutions so adapted to the customs of our people.” To inspire national loyalty, the Chief argued that the Nation “must discontinue our discriminating legislation and unite all classes in one patriotic body.” He believed the adopted citizens “should not be forced to resort to

⁷¹ First Annual Message of S. H. Mayes, November 13, 1895.

the United States courts to determine their status and incur the expense incident thereto when a satisfactory settlement could be made at home.” He advised the Council to pass “an act according them the equal rights” as defined by the Cherokee constitution in a timely manner.⁷²

A month later in December 1895, Chief Mayes forwarded his recommendation that the National Council consider “a proposition for a compromise of the controversy now being urged before the Court of Claims, in Washington City, between the Cherokee Nation and its Freedmen citizens.” He explained that the offered compromise “comes from Robert H. Kern counsel of the Freedmen, and Moses Whitmire, Trustee.”⁷³ The compromise offered the Nation a chance to end the freedmen controversy on terms that respected Cherokee sovereignty. It also offered the Cherokee Nation another opportunity to control the official roll of freedmen eligible for native citizenship because the Cherokee census of 1880 would become the new litmus test for eligibility. To carry out the compromise, Chief Mayes had to call the National Council to an extra session. He submitted two agreements for its consideration; one between the Nation’s attorney Elias C. Boudinot and the other between Chief Mayes and freedmen counsel Robert Kern.

The initial purpose of the compromise was the settling of the Moses Whitmire suit then pending in the U. S. Court of Claims. In the final deal, Kern agreed to have the provision binding the Cherokee Nation to the Wallace Roll struck from the court’s decision and replaced with a provision allowing the Cherokee Nation to create its own record of freedmen entitled to per capita payments. The compromise required the Cherokee Nation to appropriate “such sums of money as may be needed in excess of the amount decreed to be due the Freedmen in the above

⁷² First Annual Message of S. H. Mayes, November 13, 1895.

⁷³ Letter to National Council, December 3, 1895, Mayes, S. H. Collection, box M50, folder 29, Western History Collection, University of Oklahoma, Norman, Okla.

case as may be necessary to equalize the said Freedmen in the amounts the Cherokees have paid themselves in the three payments complained of in the suit.” The Wallace Roll would no longer serve as the basis for settling citizenship cases with the Nation. Mayes informed the National Council that the 1880 census created by the Cherokee Nation, which included freedmen citizens would serve as the new touchstone for investigators hearing cases of disputed citizenship in the creation of the new roll.⁷⁴

Another record of Cherokee freedmen was compiled in 1896 by the Kern-Clifton Commission that included 2,569 authenticated freedmen citizens and 1,902 unauthenticated names. The number of freedmen eligible for citizenship grew after commissioner D.M. Browning made further corrections to the new roll benefiting the Cherokee freedpeople. Like the creation of the Wallace roll, conflict and controversy plagued the creation of the Kern-Clifton roll. “There were charges of bribery, fraud, and overall corruption directed toward almost every individual involved in its creation and the subsequent dissemination of payments to the Cherokee freedpeople.” Historian Celia Naylor argues that the corruption negatively affected not only the Cherokees’ views of Cherokee freedpeople but also Cherokees’ attitudes about their own nation’s officials. “Though they were legally free citizens, elements of their enslaved status of the past haunted their daily lives in the Cherokee Nation and permeated the thoughts and actions of other Cherokee citizens in Indian Territory.”⁷⁵ Almost immediately, the freedmen’s compromise ignited charges of corruption aimed at Principal Chief Sam Mayes and other leading men of the Nation. Mayes was accused of colluding with Robert Kern to personally profit from the settlement from the Whitmire suit, but Mayes emphatically denied any wrongdoing or

⁷⁴ Message of S. H. Mayes, March 16, 1896, Mayes, S. H. Collection, box M50, folder 39, Western History Collection, University of Oklahoma, Norman, Okla.

⁷⁵ Naylor, *African Cherokees in Indian Territory*, 173-74.

involvement with Kern. Mayes demanded a federal investigation into the allegations against Kern from the Interior Department, but was denied one. He expressed his outrage against the charges against him to the public with personal letters and interviews to the Indian Territory press.⁷⁶

Rumor and allegation of political corruption pushed Mayes to deny publicly any wrongdoing in the freedmen compromise in July 1897. It was alleged that Chief Mayes agreed to the creation of a fraudulent roll in exchange for a twelve thousand dollar bribe. Mayes explained that he agreed to the creation of a new roll that would be based on the Cherokee census of 1880. He also insisted that the Cherokee leadership and people agreed “that a non-partisan commission of three should sit and pass upon the testimony and decide whether or not other Cherokee freedmen not on the roll of 1880 were entitled to citizenship in the Cherokee Nation.” He understood that charges had been leveled at various Cherokee officials, including, the accusation that some had profited from the fee paid by the treasurer to the attorney for the freedmen. The Chief stated “that any person who says, charges or insinuates, directly or indirectly, that I was ever offered, tendered, or given a single cent for any action or influence of mine with reference to this freedmen compromise, is a base liar and the truth is not in him.” Mayes believed the freedmen’s compromise would only benefit the Cherokee people. He thought it was “folly for the Cherokee Nation to further fight” the freedmen’s suit, especially after the U. S. Supreme Court had ruled in the Shawnee and Delaware cases that the Shawnee, Delaware, and freedmen were entitled to the same rights as Cherokees by blood.⁷⁷

⁷⁶ Letter of John C. West to Editor of Ind. Chief., May 16, 1898, Mayes, S. H. Collection, box M51, folder 18, Western History Collection, University of Oklahoma, Norman, Okla.

⁷⁷ Letter of S. H. Mayes To Editor of The Indian Chieftain, July 8, 1897, Mayes, S. H. Collection, box M50, folder 49, Western History Collection, University of Oklahoma, Norman, Okla.

The Vinita *Indian Chieftain* actually published Chief Mayes's 1896 letter to President Grover Cleveland. Mayes's letter sought to inform Cleveland of the complaints of corruption against Robert H. Kern. Kern had charged with determining the claims of "freedmen to the rights of native Cherokees under the 9th article of the Cherokee treaty of 1866." Mayes forwarded the President several affidavits that testified to Kern's corruption and practices of intimidation. The federal commissioner was accused of assisting the freedmen's attorney, J. Milton Turner in preparing their cases before the commission to ensure their acceptance; and it was alleged Kern threatened freedmen's witnesses with prosecution and imprisonment if they did not answer as he wished. Mayes believed the affidavits were sufficient proof that an investigation into Kern's actions as a freedmen commissioner was warranted. "As consequences of these unauthorized practices, hundreds of freedmen will be imposed upon the nation, having all the rights of native Cherokees." Mayes hoped the President would "graciously entertain this complaint and protect us from such enormous imposition."⁷⁸ The request for an investigation makes it difficult to believe Mayes was colluding with Kern, yet claims that Mayes financially benefited from the freedmen's compromise persisted for many years.

Allegations that Chief Mayes financially prospered from the freedmen compromise followed him into the next century. Rumors circulated that he was to be nominated for reelection as Principal Chief, and his role in the compromise was again questioned. In 1903, Mayes gave an interview to the *Sallisaw Star* in which he once again emphatically denied any wrongdoing in the scandal that had become known in Indian Territory as the "Nigger Steal." Mayes insisted that the freedmen did not receive their payments "due to the action of their own agents, and such persons as they associated with them." Yet, Robert Kern had accused Mayes of accepting twelve

⁷⁸ Letter of S. H. Mayes To Grover Cleveland, July 16, 1896, Mayes, S. H. Collection, box M51, folder 19, Western History Collection, University of Oklahoma, Norman, Okla.

thousand dollars of the money appropriated for the freedmen payments. Mayes denied receiving the money and reminded the reporter of his own assistance in the federal investigation of the matter. But, Mayes never explained who did benefit from the missing \$400,000 appropriated by the Council for the freedmen payments.⁷⁹ Some Cherokees were more willing to divulge their roles in the freedmen's compromise.

In 1903, the *Sallisaw Star* published copies of some letters from Indian Inspector W. J. McConnell along with Frank Boudinot's 1896 affidavit, which concerned his role in the freedmen compromise. Inspector McConnell believed the allegations of bribery. He had forwarded all the findings of the Cherokee commission authorized to investigate the distribution of the \$400,000 appropriation to the Interior Department. The inspector reported that the Cherokee commission was unable to complete its investigation because of the obstacles they encountered from the Cherokee executive in completing their duties. "Although the committee appointed by the Cherokee council had authority to summon witnesses and compel the attendance of the same, the character of the evidence they obtained is not such as to be of much value, and the refusal of Chief Mayes to authorize the investigation to be continued is not satisfactorily explained." According to McConnell, Cherokee Nation officials and the freedmen's agents were involved in the corruption:

"In brief, the entire transaction of the enrollment of the Cherokee freedmen and free colored persons, together with the appropriation of the money by the Cherokee council for the purpose of equalizing the payments was a disgraceful affair. Men high in the councils of the Cherokee nation, as well as others trusted by the Cherokee freedmen and free colored persons, have grossly and outrageously betrayed the confidence of their too confiding people."⁸⁰

⁷⁹ Interview With S. H. Mayes, February 7, 1903, Mayes, S. H. Collection, box M51, folder 28, Western History Collection, University of Oklahoma, Norman, Okla.

⁸⁰ Letter of W. J. McConnell, May 29, 1903, Mayes, S. H. Collection, box M51, folder 34, Western History Collection, University of Oklahoma, Norman, Okla. Hereafter cited as Letter of W. J. McConnell, May 29, 1903.

McConnell also forwarded the affidavit of Cherokee Nation attorney Frank Boudinot as evidence supporting the charges of corruption leveled at Principal Chief Mayes, Robert Kern, and others. Boudinot explained that his brother Elias C. Boudinot (the nephew of the elder Elias C. Boudinot) was elected by the Council and appointed by Chief Mayes as the attorney for the Cherokee Nation in 1895. Elias C. Boudinot served as the Cherokee Nation's legal counsel and represented the Nation's "interest before the United States Court of Claims and the United States Supreme court at Washington, D. C." At that time, Frank and Elias were law partners in a small office in Tahlequah; and Frank remembered his brother telling him of a possible compromise in the works with the freedmen. The two brothers agreed to equally divide any profits arising from the handling of the case. After meeting with other involved parties in Kansas City, Missouri, Elias told Frank "the nature of the business and the official positions of the parties made it necessary to keep all transactions secret in relation to the business." Frank stated that Elias named the others parties "to this secret contract" included Robert Kern, Sam H. Mayes, Jake Guthrie, J. E. Campbell, W. W. Hastings, and C. J. Harris.⁸¹ These were some of the leading men in Cherokee country. For example, Jake Guthrie was a well-known lobbyist from Indian Territory. James S. Stapler was a prominent Cherokee businessman from Tahlequah.⁸²

According to Frank, all the money would pass through Kern's hands first before it would be distributed to those involved in the compromise. Unable to gain federal authorization for the freedmen compromise offered by the Cherokee Council in February 1896, Elias Boudinot returned home to Indian Territory where he died. Frank Boudinot offered his services to the

⁸¹ Letter of W. J. McConnell, May 29, 1903.

⁸² Editorial on South McAlester Capital, December 16, 1897, Boudinot, Frank J. Collection, box B-39, folder 3, Western History Collection, University of Oklahoma, Norman, Okla.

National Council after his brother's death and, along with Kern, helped craft a new compromise bill that was ultimately approved by both governments. Kern informed Frank there would be a smaller payment than previously believed because "they had been compelled to intrust [sic] other parties in addition to the original six besides Kern."⁸³ A week later, the *Sallisaw Star* published the July 19, 1897 affidavit of Mrs. Elias C. Boudinot, which confirmed much of Frank's testimony and added some context to the scandal.

Mrs. Boudinot explained that Robert Kern had approached her husband, Elias while he served as the Nation's attorney in Washington, D. C. to propose a deal to reduce the number of freedmen listed on the Wallace Roll. "This Mr. Boudinot considered was a fortunate offer for the Cherokee Nation, as the Wallace roll was known to have more than 1,000 fraudulent names thereron [sic]." The compromise Kern offered gave the Cherokee Nation the right to make a new roll of Cherokee freedmen, which would be based on the roll of freedmen the Nation had compiled in 1880. The new roll would be used in the distribution of the per capita payments instead of the federally authorized Wallace Roll. Mrs. Boudinot testified it was "understood this would hasten the decision of the [Whitmire] case, that R. H. Kern was to share the fees, supposing to amount to [\$126,000] with my husband, E. C. Boudinot, S. H. Mayes, W. W. Hastings, C. J. Harris, Jake Guthrie, and J. E. Campbell." She confirmed Frank's testimony that the first deal did not go through while the Boudinots were in Washington, but did eventually come to pass although for less profit than originally believed.⁸⁴

Whether money exchanged hands or not, the corruption surrounding the freedmen's compromise and the creation of the Kern-Clifton roll in 1893 reveals how the Nation viewed its

⁸³ Letter of W. J. McConnell, May 29, 1903.

⁸⁴ Letter From Interior Department, June 5, 1903, Mayes, S. H. Collection, box M51, folder 35, Western History Collection, University of Oklahoma, Norman, Okla.

adopted freedmen citizens. Freedmen in the Cherokee Nation were second-class citizens who were not welcome to the full benefits of Cherokee citizenship. The Council continued to deny them access to per capita payments throughout the postwar era, and when they could do so, it questioned their citizenship claims and threatened to expel them from the Cherokee country. It is clear the Cherokee Nation in the postwar era was not inclined to include racial others into its body politic. The struggle for Cherokee freedmen's citizenship is a crucial part of the story of the reconstruction process the indigenous nations underwent after the war because it allowed a federal government pledged to protect freedmen rights with a way to strengthen its control over Indian Territory.

Unwilling to incorporate their former slaves as full members of Cherokee society, national Cherokee leaders denied legitimate adopted citizens the right to many of the benefits of full native citizenship. While it is unclear exactly when Cherokee people began to codify others with racial categories, by the late nineteenth century race was central to the lives of Cherokee citizens. The Cherokee Nation's racial nation building in the postwar period actively sought to limit the access of blacks to Cherokee citizenship. When freedmen lost their homes, or could no longer vote, or found their names on the list of intruders, they increasingly turned to the federal government for help in securing their citizenship rights. Freedom, to the Cherokee freedmen, did not mean limited access to Nation lands, schools, and funds. Unlike their counterparts in the reunited rebellious states, the Cherokee freedmen enjoyed the support and active protection of the federal government well beyond the formal end of Reconstruction. The dispute provided the federal government with an opportunity to infringe on Cherokee sovereignty. The war had greatly increased the power of the U. S. government and the process of Reconstruction was not truly complete until federal power reigned supreme over Indian Territory. By the 1890s, the

freedmen controversy in Cherokee country, gave the federal government the chance to impose its policy of allotment with the purpose of extending U. S. power through citizenship. As natives enrolled with the federal government for their allotment, they also became U. S. citizens. Yet, they never stopped being Cherokee.⁸⁵

⁸⁵ For a current discussion of the effect of allotment on Cherokee society, see Rose Stremlau, *Sustaining the Cherokee Family: Kinship and the Allotment of an Indigenous Nation* (Chapel Hill: The University of North Carolina Press, 2011). Stremlau finds that Cherokee families' organization, cultural values, and social and economic practices allowed them to adapt to private land ownership by incorporating elements of the new system with older, communal land owning practices. She argues that the persistence of extended family bonds allowed indigenous communities to retain a collective focus and resist aspects of federal assimilation policy during a period of great social upheaval.

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