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Cherokee Freedmen: The Struggle for Citizenship

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Cherokee Freedmen: The Struggle for Citizenship

Cherokee Freedmen: The Struggle for Citizenship

A thesis submitted in partial fulfillment
of the requirements for the degree of
Master of Arts in History

by

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Abstract

In 2011, the Cherokee Nation Supreme Court voted to exclude freedmen (descendants of former slaves) from voting, overturning a constitutional amendment that gave freedmen tribal rights. Cherokee freedmen argue that the Cherokee Nation is ignoring the Treaty of 1866 which granted all freedmen “rights as Cherokee citizens”, and they call upon federal support to redeem their rights as equals. The Cherokee Nation, however, claims they are exercising tribal sovereignty and have a right to determine who is a member of their tribe. Using a comparative historical approach, the goal of this paper is to explore the institution of slavery among the Cherokees in order to make sense of the current debate concerning descendants of slaves. Placing the freedmen citizenship debate in a historical context will offer a deeper perspective on the arguments of both sides and a better understanding of African American’s place in the Cherokee Nation before and after the Civil War, and in the 21st century.

Acknowledgements

Trust in the Lord with all thine heart; and lean not unto thine own understanding. In all thy ways acknowledge Him, and He shall direct thy paths. Proverbs 3:5-6

Dedication

This paper is dedicated to my great great great Cherokee grandmother, Charlotta Greene Henry, who motivates me in the search for truth and sharing the truth with others.

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I. Introduction

On August 22, 2011, the Cherokee Nation Supreme Court voted to exclude Cherokee freedmen (descendants of former slaves) from voting in a special election, overturning the January 14, 2011, constitutional amendment that gave Cherokee freedmen treaty rights and recognition as Cherokee Nation members. This led to several legal proceedings in the United States and Cherokee Nation courts in which freedmen have fought to void the constitutional amendment that stripped them of citizenship and denied them the right to vote. This heated debate is still being discussed at the federal, state, and tribal levels, so that even in the midst of a sesquicentennial celebration of the Civil War, disagreements over the rights of former slaves and their descendants, and the authority between the federal and tribal governments, continue.

Using a comparative historical approach, the goal of this thesis is to explore the institution of slavery among the Cherokees, from first contact with Europeans through the Civil War, in order to make sense of the current debate concerning descendants of slaves. Placing the freedmen citizenship debate in a historical context will offer a deeper perspective on the arguments of both sides and a better understanding of African American's place in the Cherokee Nation before and after the Civil War, and in the 21st century.

The Cherokee Nation has been popularized in culture and academic writings. According to those works, the Cherokee are known for their history of intermarriage to whites, prejudices against African Americans, and assimilation to the point of cultural

annihilation.¹ Certain issues in their history have received great attention, including the Indian Removal (Trail of Tears), Civil War military campaigns (Stand Watie and John Ross faction), and assimilation to white culture. But as Cherokee historian Rennard Strickland points out, there are many gaps that remain in Cherokee studies, including topics such as traditionalism, Cherokee language, resistance to assimilation, and intertribal (interethnic) relations with people other than whites.²

Strickland concludes that the sheer volume of scholarship on the Cherokee Nation surpasses that of any other tribe. With an estimated 300,000 citizens, making the Cherokee one of the largest modern tribes in the United States, it is surprising that no more accounts have been written from a personal perspective within the tribe. Of the literature examined for this thesis only three histories were written by either a Cherokee or an African-Cherokee. A lack of writing on the Cherokee Nation is not the problem, but representation is. Even attempts at more direct tribal accounts fail to deliver adequate representation for the Native American or African American perspective.

One such attempt is an unpublished and underutilized source located at the Oklahoma Historical Society called the Indian Pioneer Papers (1860-1937).³ The collection of 112 volumes with over 25,000 interview questionnaires has evident value but also unfortunate shortcomings. The majority of people interviewed on tribal perspectives were white men and women. African Americans were underrepresented and seemed to have

¹ Katja May, *Collision and Collusion: Native Americans and African Americans in the Cherokee and Creek Nations, 1830s to 1920s*, (New York: Garland Publishing Inc., 1996), 28.

² Morris Wardell, *A Political History of the Cherokee Nation, 1838-1907* (Norman: University of Oklahoma Press, 1977), ixx.

³ Works Progress Administration, *Indian Pioneer History, 1860-1935*. (Oklahoma Historical Society).

been swayed in their response to pre-arranged questions by white interviewers. Most of the Native Americans interviewed spoke English and were male.⁴

Another government attempt to secure a voice for the underrepresented Indian and African populations occurred through the Works Progress Administration. Between 1936 and 1938, 2,194 interviews with former slaves were conducted and compiled in the 'slave narrative' volumes. The use of slave narratives from these sources is controversial because the interviewers were usually white and there are questions about the reliability and integrity of the editors, interviewers, and even the interviewed. Consequently, many of those interviewed concealed their true feelings toward whites out of fear or mistrust.⁵ Overall, Native Americans and African Americans have been treated by scholars with emphasis on their relationship to whites and not on their mutual relations.

It should be noted that no sufficient attempt has been made to treat the subject of the evolution of slavery among the Cherokee in detail. Some literature covers the history of slavery within the Cherokee Nation and the evolution of tribal policy toward black members. In *The Cherokee Freedmen: From Emancipation to American Citizenship* (1978), Daniel F. Littlefield, Jr., provides a useful examination of the tribal citizenship debate. Basing his research on primary documents such as the Dawes and Wallace rolls, the latter compiled shortly before the Dawes census of 1889, he analyzes the correspondence of tribal and government officials and the actions taken by each government toward black members. Mainly working with legal and government records, he makes the Cherokee-

⁴ May, *Collision and Collusion*, 38.

⁵ WPA interviews of former slaves conducted by the Hampton Institute, Fisk University, Southern University, and Tuskegee University were conducted by black interviewers.

African story seem one-dimensional and lacking the perspective that illuminates how Cherokee and African Americans felt personally.⁶

African Cherokees in Indian Territory: From Chattel to Citizens (2009) by Celia E. Naylor examines the controversial Cherokee citizenship rolls known as the Wallace Roll, Kern-Clifton Roll, and Dawes Roll. She does an excellent job of covering the Cherokee and freedmen reaction to the interviews conducted by Special Agent John Wallace during the Federal government's attempt to produce a census of Cherokee and Cherokee freedmen after the Civil War. Naylor points out that Wallace's work of investigation and his completion of the Cherokee Freedmen Rolls was controversial from the beginning.⁷ With the modern freedmen debate centered on the census rolls after the Civil War, it is imperative to have a clear historical understanding of these foundational documents.

Naylor and Littlefield agree on the many issues concerning the government citizenship rolls for the Cherokee Nation, including the freedmen's legal status as members of the tribe. However, neither book does much to clarify how the U.S. government and Cherokee Nation handled the issue of African Americans in Indian Territory after the Civil War.

Another book that describes the traditional role of slavery among the Cherokee is Michael Roethler's *Negro Slavery Among the Cherokee Indians* (1964). Roethler's book contributes to historical understanding of the treatment of slaves before the Civil War and how the Cherokee view of the role of slavery may have influenced their view of freedmen

⁶ Daniel F. Littlefield Jr., *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport, CN: Greenwood Press, 1978).

⁷ Celia E. Naylor, *African Cherokees in Indian Territory*, (Chapel Hill: University of North Carolina Press, 2008), 170-173.

after emancipation. Roethler describes Cherokee slavery as being different from the institution as practiced by most whites in that slaves were valued for more than manual labor. If slaves were traditionally treated and viewed differently by Cherokee families, then it makes sense that slaves would be treated differently among the Cherokee during and after the Civil War.⁸

In 1979, Cherokee historian Theda Perdue outlined the history of slavery in *Evolution of Cherokee Society: 1540-1866*. Perdue portrays slavery among the Cherokee Nation as merely a link in the broader chain of the expansion of America. Her coverage of events is comprehensive, starting with the observations of Hernando de Soto (1540) and moving through the abolition of slavery after the Civil War, but Perdue's book lacks an overall weaving of the story of politics, slavery, and the social order of the Cherokee Nation. While providing facts about the evolution of slavery within the Nation, she fails to give readers a deeper understanding of the ties between the politics in the Cherokee Nation (constitutions, slave codes, slave policies) and relations between natives and Africans.⁹

Where Perdue's book may fail to offer adequate details of the history of slavery, Henry Thomas Malone provides a wealth of information in his book *Cherokees of the Old South: A People in Transition* (1956). He explores both the traditional use of slavery among the Cherokees and the impact of Europeans on the shifting nature of slavery. Malone's book includes a valuable table with the census of the Cherokee in 1835, just prior to their removal to Oklahoma. Unfortunately, he did not include a table to illustrate the number of

⁸ Michael Roethler, "Negro Slavery Among the Cherokee Indians 1540-1866" (PhD diss., Fordham University, 1964), 34.

⁹ Theda Perdue, *Slavery and the Evolution of Cherokee Society: 1540-1866*, (Knoxville, Tennessee: The University of Tennessee Press, 1979).

Cherokee, slaves, or intermarried whites who arrived in Oklahoma after the Trail of Tears.¹⁰ Knowing the number of slaves taken along the trail would indicate their value, since the Cherokee were limited in the number of 'goods' they could take with them on the journey. It raises an important question of whether slaves were considered "property" by the Cherokee, as they were in white society. The Cherokee were also known to have participated in the slave trade by capturing and selling slaves, both Indian and black, which again indicates the value they attached to slaves and might explain their determination to take slaves with them to Oklahoma.

Other scholars offer similar accounts of relations between Cherokees and Africans. Patrick Mingos covers the social and cultural impacts of the relations between Cherokees and Africans in his book *Slavery in the Cherokee Nation: The Keetowah Society and the Defining of a People 1855-1867* (2003).¹¹ Tiya Miles tells the story of the Shoebottom family, an African-Cherokee family living during enslavement and freedom, in *Ties that Bind* (2005). Her description of the experiences of slaves among the Cherokee and their various roles as cultural mediators, interpreters, and even pastors suggests how real families of African-Cherokee descent could be influenced by contemporary tribal affairs concerning citizenship and basic rights.¹² In Fay Yarbrough's book, entitled *Race and the Cherokee*

¹⁰ Henry Thompson Malone, *Cherokees of the Old South: A People in Transition*, (Athens, Georgia: University of Georgia Press, 1956), 118.

¹¹ Patrick N. Mingos, *Slavery in the Cherokee Nation: The Keetowah Society and the Defining of a People 1855-1867*, (London: Routledge, 2003).

¹² Tiya Miles, *Ties that Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom*, (Berkeley: University of California Press, 2005).

Nation (2008), a number of contemporary freedmen stories explore African-Cherokee attitudes toward their treatment and demands for tribal rights.¹³

A closer look at several primary sources provides a clearer understanding of the legal actions taken by the United States and Cherokee Nation toward black Indians. These include the Cherokee constitutions from 1827 to 1975, the Reconstruction Act of 1866, Wallace Roll of 1890, Kern-Clifton Roll of 1890, Dawes Roll of 1899, Census Bill of 1896, and the Cherokee freedmen Supreme Court decision of 2006, which mandated future decisions concerning citizenship and voting within the Cherokee Nation. These sources provide statistics on Cherokee and slave populations prior to removal, while in Oklahoma, and after the Civil War. Researching legal actions and populations helps to understand the political, economic, and social value of black slaves among the Cherokees. Understanding the black's place in the Cherokee Nation before and after the Civil War also helps to make sense of the current debate over citizenship.

Several Congressional documents contain oral testimony by Cherokees on the subject of post-Civil War Indian-black relations.¹⁴ The U.S. Department of Interior, gaining responsibility for Indian Affairs after 1824, required annual reports from Indian field agents. Publishing agreements—a politically correct word officially exchanged for “treaty” in 1872, when Congress stopped the treaty-making process—the Congressional acts

¹³ Fay Yarbough. *Race and the Cherokee Nation*, (Philadelphia: University of Pennsylvania Press, 2008).

¹⁴ Senate Report No. 1278, *Conditions in Indian Territory, Five Civilized Tribes and Freedmen*, 49th Cong., 1st sess., 1885/1886, S. Rep. 2363; House Document No. 5, *Reports of the Department of the Interior, Five Civilized Tribes, etc*, 56th Cong., 2nd sess., 1900, S. Rep. 4102; Senate Report No. 257, “*Hearings on enrollment please by part-Indian blacks as Indians, not freedmen [Choctaw Tribe]*”, 59th Cong., 2nd sess., 1907, S. Rep. 5072; Senate Report No. 390, *Resolution relating to number of Indian and freedmen enrollment cases pending*, 59th Cong., 2nd sess., S. Rep. 5073.

affecting the Five Civilized Tribes are found in the *Laws, Decisions, and Regulations Affecting the Work of the Commissioner of the Five Civilized Tribes, 1893-1906*.¹⁵ The Cherokee Nation published their treaties, laws, and constitutions throughout the latter half of the nineteenth century.¹⁶

Another crucial yet underutilized source of information is the *Cherokee Phoenix*, the first newspaper of the Cherokee Nation published in English and Cherokee beginning in 1828. Revealing articles regarding Cherokee freedmen, slaves among the Cherokee, and reconstruction in Indian Territory may be found in its pages that help to clarify the broader issue of citizenship among the Cherokee, the livelihoods of ex-slaves after emancipation, and the impact of the Wallace, Kern-Clifton, and Dawes Rolls. It is especially useful to compare articles from the period 1865-1888 regarding Cherokee freedmen to current articles on the issue of freedmen citizenship in the Cherokee Nation.

From the review of literature it is evident that there exists a number of scholarly works that describe slavery in general among the Cherokee Nation, but this scholarship is not as good at showing the changes in that institution post-removal and during reconstruction. The recent freedmen enrollment issues are evidence of a transition in political and social thinking among the Cherokee people. In 1866 freedmen enjoyed all the rights as native Cherokees. Today, they are fighting to maintain those rights and

¹⁵ Department of Interior, *Laws, Decisions, and Regulations Affecting the Work of the Commissioner to the Five Civilized Tribes, 1893-1906*. Washington D.C.: Government Printing Office, 1906. Contains the Curtis Act and various agreements with the Cherokee regarding allotment and dissolution of tribal government.

¹⁶ *Constitution and the Laws of the Cherokee Nation, 1892*. St. Louis, MO: R.T.A. Ennis, 1875; "Treaty with the Cherokee, 1866" in *Cherokee Nation Code, Annotated*, Oxford, NH: Equity Publishing, 1986, 296-308; *Laws and Joint Resolutions of the Cherokee Nation, Enacted During the Regular and Special Sessions of the years 1881-2-3*. Tahlequah, Cherokee Nation: Boudinot, 1884 (reprinted by Wilmington, DEL.: Scholarly Resources, 1975).

citizenship in the tribe. What influenced the shift over the past one-hundred and fifty years? What factors contribute to citizenship requirements now that were not in place after the Civil War? Does the Cherokee Nation have the right to disenroll members that were previously citizens? Is it the United States responsible to support the rights of Freedmen among a sovereign Indian nation? These are some questions answered throughout this thesis.

Also missing from the current literature and even from the current debate over citizenship is the human side of the story. Just as former slaves chose to stay within the Cherokee Nation after emancipation—for most the only community they had ever known—freedmen today feel a strong connection with their tribal roots and wish to be recognized as members. Historical inquiries have thus far provided much factual information about the evolution of slavery among the Cherokees, but these works have failed to explain the depth of the social division between groups of people that have been historically and traditionally at odds for hundreds of years.

Consulting primary source material on the history of the Cherokee Nation shows the Cherokee Nation's dealings with blacks within the tribe. A number of primary sources exist including the census rolls, Cherokee Nation Papers, constitutions, and court proceedings and are significant to research on the current debate over citizenship of black Cherokees because both sides of the argument stems from these leading documents. Digging into these foundational documents provides insights into the history, culture, traditions, and laws of the Cherokee Nation related to this issue.

The following chapters cover the history of the freedmen debate placed in a historical context. Chapter One reviews the history of slavery among Cherokee and

Cherokee relations with Africans leading up to the removal in the 1830s. Chapter Two discusses the conditions of slaves along the forced march and living in Indian Territory, and the impact of the Civil War on Cherokee-African relations. Chapter Three follows the evolving relationship between the Cherokees and former slaves into the twentieth century. Chapter Four draws from the history of Cherokee-African relations to understand the modern freedmen debate.

II. Chapter 1: History of Slavery among the Cherokee

The Cherokees were the largest of the southeastern tribes residing in the mountainous areas of northern Georgia, Alabama, Tennessee, South Carolina, and North Carolina. Among the Cherokee, slavery had existed for a sufficient length of time before the coming of the whites to modify materially the habits and institutions of the people.

The Cherokee Nation had a long tradition of slave holding. Prior to European contact, slaves were captured almost entirely by warfare. As Iroquoian tribe descendants, the Cherokee held that the death of a fellow tribesman could not go unavenged.¹⁷ Frequent raids after wars resulted in the capture of slaves that could be used to barter or trade with other Indian groups. Indian slavery in the late seventeenth century was not a moral issue among the natives because ownership of individuals was a matter of social status. Among Native American societies, slavery was seen as a legitimate fate for particular people or groups, and not as an economic means to secure wealth from unfree labor.¹⁸

By the eighteenth century, exotic articles of copper, shells, and beads appeared among American Indian groups east of the Appalachians.¹⁹ In a French account with the Iroquois in 1681, Father Louis Hennepin's *Narrative* describes an attempt by the Jesuits to free Ottawa Indian slaves held by the Iroquois with gifts of wampum belts and by telling them that the captives were children of the governor of France. Father Hennepin said that

¹⁷ Perdue, *Slavery and the Evolution of Cherokee Society: 1540-1866*, 33.

¹⁸ Alan Gallay, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717*, (New Haven: Yale University Press, 1989), 8.

¹⁹ *Ibid.*, 15.

by capturing and retaining French “children” the Iroquois were making war on France.²⁰ The Indian captives were returned to the Ottawa tribe.

Indian slaves among the Cherokee were often traded between Indian groups in a barter system. This intertribal traffic was evidently far-reaching. With the growing population of Europeans by the 1600s, bartering and trading Indian captives transitioned to suit changing needs of the Cherokee in relation to their new white neighbors. Slaves were often given to whites to win their favor or friendship.²¹ The use of slaves to purchase peace or placate another Indian tribe is noted by Henri de Tonti in the case of the Illinois and Iroquois in the late sixteen hundreds. The Illinois were too weak to deal with the Iroquois with their young men gone away to war. So, the Illinois made arrangements for peace with the Iroquois by offering gifts of beaver skins and slaves.²² The fact that the Cherokee participated in the slave trade by capturing and selling slaves, both Indian and black, indicates the actual economic value in their property that might explain their willingness to bring slaves with them to Indian Territory during relocation in the 1830s.

The desire to gain a reputation as a skillful hunter and brave warrior was sought among natives.²³ Cherokee men were so eager to acquire the title of warrior that they underwent any hardship to obtain slaves as proof of their qualifications.²⁴ The Cherokee

²⁰ John Gilmary Shea, *Discovery and Exploration of the Mississippi Valley: With the Original Narratives of Marquette, Allouez, Membre, Hennepin, and Anastase Douay*, (New York: Redfield, 1852), 144.

²¹ J. W. Powell, *Eighth Annual Report of the Bureau of Ethnology to the Secretary of the Smithsonian Institution, 1886-1887*, (Washington: Government Printing Office, 1891), 40-41.

²² Gallay, *The Indian Slave Trade*, 281.

²³ Lauber, *Indian Slavery in Colonial Times Within the Present Limits of the United States*, 27.

²⁴ Alan Greer, *Jesuit Relations: Natives and Missionaries in Seventeenth-Century North America*, (Boston, MA: Bedford/St. Martin's, 2000), 171.

were successful huntsman and stealthy captors acquiring Indian slaves for a variety of services.

Frequent tribal raids and trade produced Indian slaves who served the Cherokee community primarily as domestic help or personal servants. Women and children were highly valued as trade commodities. Father Fremin, an early Jesuit of 1628, wrote of a young Iroquois woman who possessed more than twenty personal slaves to gather wood, draw water, cook, and perform any other services she desired.²⁵ Captain John Smith, while living among the Powhatan tribe, a part of the Algonquin family, commented that tribes made war “not for lands and goods, but for women and children, whom they put not to death, but kept as captives, in which captivity they were made to do service.”²⁶ Labor for an Indian captive meant caring for the crops. The Cherokee practiced agriculture to a great extent by raising corn, beans, squashes, and melons, which meant slaves worked the fields as productive members of the tribe.²⁷

Cherokee slaves performed essential functions in their society, however, Cherokee bondage failed to conform to European ideals of slavery in that slaves were treated more humanely than they were among whites.²⁸ Henry Thompson Malone, author of the book *Cherokees of the Old South: A People in Transition* covers the history of slavery among aboriginal Cherokee. Malone points out the treatment of slaves among Cherokee as “less harsh” and more humane than white treatment. Aboriginal Cherokee captured members of

²⁵ Greer, *Jesuit Relations*, 93-95.

²⁶ Samuel Purchas, *Purchas His Pilgrimage or Relations of the World and the Religions Observed in All Ages*, (London: William Stansby, 1613), 636.

²⁷ Lucien Carr, *The Mounds of the Mississippi Valley, Historical Considered*, (Frankfort, KY: Yoeman Press, 1883), 8.

²⁸ Perdue, *Slavery and the Evolution of Cherokee Society: 1540-1866*, 18.

another tribe as retribution. Indian captives were also used as effective means of settling old quarrels between tribes.²⁹ Consequently, they simply viewed slaves as human beings who lacked clan membership. Rather than banish or kill them, the Cherokee recognized their value as people outside their kinship system and found uses for them, mainly as manual laborers but also as interpreters and even lay ministers.³⁰

Among the early Indians, the question of social equality or race did not determine the relation of the slave to the master. Indian slaves were considered eligible for adoption into the tribes if they could serve the community as agricultural or domestic laborers or replenish the numbers reduced by war, famine, or disease.³¹ They received equal treatment, were allowed to enjoy community rights and responsibilities, and intermarried with the Cherokee.³² Slaves often worked side by side with their Cherokee overseers, and intermarriage was not uncommon. If, for example, a slave woman married an Indian man she became a citizen of the nation, and their children were Cherokee citizens.³³

Selecting Indian captives to live or die was determined either by a council or by the women of the tribe (Cherokee descendants are maternally linked). Women often preferred to adopt male captives into their families to replace lost husbands and sons rather than to avenge the loss of their loved one by killing a good working hand.³⁴ In some cases, a captive could become a member of a tribe by being adopted by a Cherokee woman as her

²⁹ Gallay, *The Indian Slave Trade*, 15.

³⁰ Perdue, *Slavery and the Evolution of Cherokee Society*, 7.

³¹ Lauber, *Indian Slavery in Colonial Times*, 599.

³² *Ibid.*, 26.

³³ Malone, *Cherokees of the Old South*, 142-143.

³⁴ Lauber, *Indian Slavery in Colonial Times*, 599.

child.³⁵ The adopted slave became in every respect the peer of fellow tribesmen. Adopted captives who showed little ability or signs of being productive were made to perform menial labor for influential and prominent families, although they were still considered 'free'.³⁶

By 1827, with the writing of the Cherokee Nation's first constitution, the identity and rights of black Cherokees shifted. Children of slave parents were free and considered the equal of their parent masters because they "contributed nothing to their creation."³⁷ They could live in separate huts as a sign of their freedom and were formally adopted into the Nation as full tribal members.

As in all systems of slavery, the treatment of slaves among the Cherokee ultimately depended upon individual owners, whose disposition and mood might vary from kindness to extreme apathy or even cruelty. Slaves selected to work as laborers were, in some cases, prevented at an extreme cost from escaping. It was not an uncommon custom among the Cherokee to mutilate the feet of their slaves either by cutting away a part of the foot or by cutting the nerves above the ankle to prevent the slave from running away.³⁸ Nonetheless, despite the testimonies of cruel treatment, in general, slaves were not neglected or abused. The choice to retain captives as slaves was a sign of consideration as torture of prisoners of war was not uncommon among the Cherokee.³⁹

³⁵ Galloway, *The Indian Slave Trade*, 508.

³⁶ J. W. Powell, *Fifteenth Annual Report of the Bureau of Ethnology to the Secretary of the Smithsonian Institution, 1893-1894*, (Washington: Government Printing Office, 1897), 36.

³⁷ Arnold Johnson Lien, "Privileges and Immunities of Citizens of the United States," in *Studies in History, Economics, and Public Law Vol. 54*. Staff (New York: Columbia University, 1913), 93.

³⁸ Lauber, *Indian Slavery in Colonial Times*, 292.

³⁹ *Ibid.*

The Jesuit missionaries recorded many instances of kindness shown toward slaves by the Iroquois.⁴⁰ Among the Iroquois certain slaves were allowed to marry into the tribe and even become heads of families after the death of their owners. American naturalist William Bartram reported during his observations of the Cherokee Nation in 1776 that some slaves were even dressed better than their owners and were allowed to marry among themselves; but they remained slaves for life.⁴¹ It appears that slaves could enjoy some quality of life in bondage, although in most cases, they had no voice in the community affairs.⁴²

However, increased contact with white civilization changed Indian slavery in two ways. First, Cherokees came to rely more on European manufactured goods, they needed more captives to barter. Thus, warfare increased for the sole purpose of acquiring more slaves. Second, as African slaves become more available by European trade the Cherokee moved away from traditional forms of enslavement based on tribal tradition to the economic trade of slaves through the Trans-Atlantic slave trade.⁴³

By 1830, some Cherokees were wealthy enough to own more than fifty slaves and to cultivate hundreds of acres of cotton; these Cherokee slaveholders lived as lavishly on the income from their plantations as did white slaveholders.⁴⁴ In 1835, the Cherokee

⁴⁰ Shea, *Discovery and Exploration of the Mississippi Valley*, 34.

⁴¹ William Bartram, *Travels of William Bartram*, (New York, NY: Library of America, 1996), 271.

⁴² Greer, *Jesuit Relations*, 293.

⁴³ Lauber, *Indian Slavery in Colonial Times*, 294.

⁴⁴ William G. McLoughlin, *The Cherokees and Christianity, 1794-1870: Essays on Acculturation and Cultural Persistence*, (Athens: GA: The University of Georgia Press, 1994), 44.

numbered approximately 23,000.⁴⁵ Slaves, both Indian and black, were an important source of labor for food production among the Cherokee during these periods.⁴⁶

Along with changing forms of enslavement, conditions for slaves among the Cherokee also shifted with European contact. Concerning their political rights, the 1827 constitution stated, "All free male citizens (excepting negroes and descendants of white & Indian men by Negro women who may have been set free) who shall have attained to the age of 18 years shall be equally entitled to vote at all public elections".⁴⁷ Regarding blacks in office the constitution stated, "No person shall be eligible to a seat in the general Council but a free Cherokee male citizen, who shall have attained to the age of twenty-five years the descendants of Cherokee men by all free women (except the African race) whose parents may be or may have been living together as man and wife according to the Customs & 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, no person who is of a negro or mulatto parentage either by the father or mother side, shall be eligible to hold any office of profit or honor or trust under this Government."⁴⁸ Many scholars, including Theda Perdue and Henry Thompson Malone, agree that growing prejudice toward black Cherokees, as reflected in the first constitution, arose from growing assimilation and white contact.

The evolution of Indian and African slavery among the Cherokee, before the removal, puts the treatment of blacks within the Cherokee tribe in perspective. European

⁴⁵ Census Roll of Cherokee Indians East of the Mississippi. (National Archives, 1835), T496.

⁴⁶ Malone, *Cherokees of the Old South*, 26.

⁴⁷ *Cherokee Constitution*, 1827, sec. 4, 6. Records of the Cherokee Nation (Indian Archives Division, Oklahoma Historical Society)

⁴⁸ *Cherokee Constitution*, 1827, sec. 2, 4. Records of the Cherokee Nation (Indian Archives Division, Oklahoma Historical Society)

contact had influenced the shift from traditional values of slavery (retribution from war and peace tokens) to western ideas of slavery (farm labor and domestic servants). It remained to be seen if those attitudes would persist after removal, and how they would be affected by the American Civil War.

III. Chapter 2: Indian Territory and the Civil War

President Jefferson first mentioned relocating the eastern tribes to lands west of the Mississippi with the acquisition of the Louisiana Purchase in 1803. Several presidents continued the position until removal was successfully completed nearly forty years later. In 1824, President Monroe announced to Congress that he thought all Indians should be relocated west of the Mississippi River. Monroe had been pressured by the state of Georgia to make his statement because gold had been discovered on Cherokee land in Northwest Georgia and the state wanted to claim it. The Cherokee fiercely resisted and sought to maintain their land. The Cherokee took their claims to the courts where they fought to pursue Americans of their civilized political, social, and economic systems.

During this same period in 1825 U.S. Senator Albert Gallatin asked Cherokee leader John Ridge to provide a short account of the Cherokee Nation at its present state particularly concerning civilization. Gallatin was collecting data from various native tribes to construct a book entitled *Synopsis of the Indian Tribes of North America*, published in 1836. Gallatin supported assimilation of Native Americans into American society, encouraging federal efforts leading to greater exposure of white civilization and culture. The Census of the Nation of 1825 recorded 13,583 native citizens, 147 white married with Indians, 73 white women, and 1,277 African slaves.⁴⁹ In his response to the Senator, John Ridge explained the history of contact with whites and defended the civilization of the Cherokee Nation.

⁴⁹ John Ridge to Honorable Albert Gallatin, letter, February 27, 1826, "Letter to Honorable Albert Gallatin from Cherokee John Ridge on February 27, 1826, Teaching Us History. www.teachushistory.org/indian-removal/resources/success-civilizing-project-among-choerokee (accessed February 23, 2013).

Regarding the black population and intermarriage John Ridge explained that “there are a few instances of African mixture with Cherokee blood and wherever it is seen is considered in the light of misfortune and disgrace but that of the white may be as 1 to 4 occasioned by intermarriage which has been increasingly in proportion to the march of civilization.”⁵⁰ He described the African slaves as “mostly held by half breeds and full blooded Indians of distinguished talents. The valuable portion of property is retained in this case with southern white farmers of equal ability in point of property.” Ridge pointed out the Cherokee law pertaining to the regulation of intermarriage with the whites, “which makes it necessary for a white man to obtain a license and be married by a Gospel minister, or some authorized person.” As John Ridge wrote his response to be included in Senator Gallatin’s book, he thought thoroughly about his words and the light shed on his people. He carefully constructed a civilized view of the Cherokee, and made relations with blacks to be considered “in the light of misfortune and disgrace”. In a way, this was an effort made by political leaders of the Cherokee Nation to separate themselves, and to distinguish their identities not just from other less civilizing tribes but from other colored people. John Ridge continues in his letter portraying the Cherokee people.

In defense of the culture and traditions of the Cherokee, John Ridge expressed his concern toward the U.S. government and its dealings with the tribe:

In regard to the love of revenge the Indians have been represented in the grossest colours. I never could have the audacity to ascribe inconsistency to any portion of God’s creation. The various Nations of the Earth were created for noble purposes, endowed with sensibility to feel their own wrongs and sympathize for another’s woe. Education alone makes distinction in the refinement of the heart. Savages of the human race are not like the beasts of the Forests, which even trained to live contented in the yard, retain in full vigor an Instinct of indiscriminate cruelty.

⁵⁰ Ibid

Indians tho, naturally highminded, are not addicted to as much revenge as they have been represented and I can say this, much it is paid for them to endure an intended Insult but they are ready to forgive if they discover marks of repentance in the countenance of an enemy.

In eloquent verse John Ridge concluded his letter to Senator Gallatin by summarizing the Cherokee Nation's predicted future if pressures for civilization and assimilation continue.

I might indulge in sad review of the past, and point to Nation once powerful...the sun of glory is set, and we are left the Shadow of what once was a reality! Powerful in war and sage in peace, our Chiefs now sleep with their heroic deeds in the bosom of the Earth! It was not their destiny to become great. Had they concentrated their Council fires, their empire might have stood like a Pyramid, for ages yet unborn to admire. It was for Strangers to effect this, and necessity now compels the last remnant to look for it for protection.

It is true we [Cherokee] enjoy self Government, but we live in fear, and uncertainty foretells our Fall. Strangers urge our removal to make room for their settlements, they point to the West and they say we can live happy. Our National existence is suspended on the faith and honor of the United States alone. We are in the paw of the Lion—convenience may induce him to crush with a faint Struggle we may cease to be! But all Nations have experienced changes. Mutability is stamped on every thing that walks the earth. Even now we are forced by natural causes to a Channel that will mingle the blood of our race with the whites.

Ridge expressed a sense of inevitability; a pain, yet somewhat forced acceptance of assimilation with white society or the loss of their way of life. He left one final powerful remark that “in the lapse of half a Century if Cherokee blood is not destroyed it will run its courses in the veins of fair complexions who will read that their Ancestors under the Stars of adversity, and curses of their enemies became a civilized Nation.”

In the next few of years the Cherokee Nation faced challenges between balancing their traditional way of life and surviving in white society. In 1827 the Cherokee Nation adopted their first constitution, established a written syllabary, published the *Cherokee Phoenix* newspaper, and in 1828 elected Principle Chief John Ross. Despite facts provided by John Ridge to the government and evident strides in developing their political,

economic, and social system, the Georgia legislature annulled the Cherokee constitution and ordered seizure of their land. The Cherokee Nation resisted and took their claim of inherent sovereignty to federal court. In the case of *Worcester v. Georgia* (1832) Supreme Court Chief Justice John Marshall famously ruled that the Cherokee Nation was entitled to federal protection over those of the state laws of Georgia. The court ruled the Cherokee Nation was a “distinct community in which the laws of Georgia can have no force”.⁵¹ Justice Marshall set the precedence for future cases dealing with Indians because he established that the national government had inherited its responsibility from Britain to work with and protect Indian nations.

In clear rejection of the court’s ruling, President Andrew Jackson—following on the heels of Monroe—strongly encouraged removal of eastern tribes and supported Georgia’s claim for Cherokee land. The Indian Removal Act of 1830 had given the president authority to relocate Indians by signing treaties with eastern tribes. With this power, Jackson’s plan quickly took form as tribes were stripped of their homelands. In a letter dating March 16, 1834, Jackson prompted the Cherokee Nation to sign the removal treaty. He began with endearment, “My Friends: I have long viewed your condition with great interest. For many years I have been acquainted with your people, and under all variety of circumstances, in peace and war.” He continues by appealing to the history of personal relations: “Your fathers were well known to me, and the regard which I cherished for them has caused me to feel great solicitude for your situation.”

⁵¹ Robert V. Hine and John Mack Faragher, *The American West, A New Interpretive History* (New Haven: Yale University Press, 2000), 176, 235-236.

Compelling the Cherokee with emotion, Jackson's letter played to the current removal situation: "You are now placed in the midst of a white population. Your peculiar customs...have been abrogated by the great political community among which you live, and you are now subject to the same laws which govern the other citizens of Georgia and Alabama." He reminds them of their slack in civilization: "most of your people are uneducated...your young men are acquiring habits of intoxication", and need for assimilation in order to survive. "Your condition must become worse and worse, and you will ultimately disappear, as so many tribes have done before you."

Jackson appealed to Cherokee consciousness and common sense that the Indian nation was not improving but would continue to deteriorate without removal. "Listen to me, therefore, while I tell you that you cannot remain where you now are. Circumstances that cannot be controlled, and which are beyond the reach of human laws, render it impossible that you can flourish in the midst of a civilized community. You have but one remedy within your reach. And that is to remove to the west...and the sooner you do this, the sooner you can commence your career of improvement and prosperity."

Arrangements for removal had been made with Cherokee delegates in the previous years. "The United States has assigned to you a fertile and extensive country, with a very fine climate adapted to your habits, and will all the other natural advantages which you ought to desire or expect." The government promised the provision of five million dollars, and over thirteen million acres of land in Indian Territory. "The choice now is before you. May the Great Spirit teach you how to choose. The fate of your women and children, the fate of your people to the remotest generation, depend upon the issue. Deceive yourselves

no longer. Do not cherish the belief that you can ever resume your former political situation, while you continue in your present residence.”⁵²

Only a year after President Jackson’s call for removal, the Cherokee Nation was set on the path to relocate to Indian Territory. On December 29, 1835, the Treaty of New Echota was signed by a small fraction of Cherokee citizens. Disagreement over the decision to remove and sign the treaty divided the Cherokee into two hostile factions. Those who signed the treaty belonged to the Treaty, or Ridge, Party and supported relocation westward. Those who opposed relocation became known as the Ross Party, named for their leader, Chief John Ross. The Ross Party considered the New Echota treaty an act of betrayal by both the government and Treat Party.

Despite nearly 90% of the tribe opposing removal, Congress, under President Andrew Jackson, accepted the Treaty Party’s agreement and began forced relocation to Indian Territory in 1835. The removal to Indian Territory between 1835 and 1839 intensified hostilities between the two Cherokee factions. In July 1838, General Matthew Arbuckle noted the need to resolve hostilities between the two factions if peace were to be maintained west of the Mississippi. He declared that, “The two governments cannot exist in the Cherokee Nation without producing a civil war.”⁵³

When the Cherokee relocated, they were accompanied by African slaves and freedmen who chose to cast their lots with the Indians in their new homeland. Freedmen were former slaves who had been granted freedom with emancipation in 1863 or gained

⁵² President Andrew Jackson to Cherokee, letter, March 16, 1835, Teaching Us History www.teachushistory.org/indian-removal/resources/success-civilizing-project-among-choerokee (accessed February 23, 2013).

⁵³ Brad Agnew. *Fort Gibson Terminal on the Trail of Tears*. (Norman: University of Oklahoma Press, 1980), 56.

freedom through other means such as intermarriage. Just prior to removal there were 16,542 Cherokee, 1,592 slaves and 201 intermarried whites. The large number of slaves indicates their value, since the Cherokee were limited in the number of “goods” they could take with them on the journey. This raises the important question of whether or not slaves were considered “property” in the same way they were in white society.

Slaves were not immune to the bitter hostilities between the two removal factions during removal. Eliza Whitmire was born a slave to a wealthy Cherokee named George Sanders in Georgia. Eliza was five when President Andrew Jackson ordered General Winfield Scott and two thousand troops to remove the Cherokees by force to Indian Territory. “The women and children were driven from their homes, sometimes with blows,” Eliza recalled, “and close on the heels of retreating Indians came greedy whites to pillage the Indians’ homes, drive off their cattle, horses, and pigs, and they even rifled the graves for any jewelry or other ornaments that might have been buried with the dead.”⁵⁴ The aged, sick, and young children rode in wagons while the others went on foot. “The trip was made in the dead of winter,” said Eliza, “and many died from exposure from sleet and snow, and all who lived to make this trip will long remember it as a bitter memory.” Arriving in Indian Territory Eliza lived with her parents and their master Mr. Sanders near Tahlequah.

Removal from their ancestral homelands had provoked bitter controversy and even inner-tribal civil war. Historian Theda Perdue points out in *Nations Remembered* that even after peace had officially been restored, between the Ross and Ridge factions with the

⁵⁴ Eliza Whitmore, WPA Slave Narrative Project, *Oklahoma Narratives*, Vol. 97, February 1938.

Treaty of Washington in 1846, these deep-seated antagonisms among the Cherokee surfaced in times of stress and lingered long after the Civil War.⁵⁵ Even before removal, the U.S. Congress held that the peace and security of the western frontier could be maintained only by justice and good faith of the government toward the large and wealthy tribes recently removed there.⁵⁶ Meaning the government recognized and even promised an active role in peaceful relocation and resettlement in Indian Territory.

The Cherokee tried to replicate their government in the East upon arrival in Indian Territory. Log cabins were erected for the officer of the Cherokee government. Elaborate Inter-Tribal Councils were held at the capitol square. General Ethan Allen Hitchcock was sent from Washington to the new Cherokee capitol in Tahlequah to work with the council on a new treaty that would wrong the losses during the removal from Georgia. Chief John Ross addressed the council in English and Chief Justice Bushyhead interpreted in Cherokee.⁵⁷ They had been promised \$800,000 after their arrival in the West to enable them to establish themselves in their new home.⁵⁸ But the Jackson administration decided to withhold payment of those funds until the emigrant Cherokee agreed to abandon the government recently set up by them and acknowledge the rule of the Treaty Party as the

⁵⁵ Theda Purdue. *Nations Remembered: An Oral History of the Five Civilized Tribes, 1865-1907*, (Westport, CN: Greenwood Press, 1980).

⁵⁶ U.S. House Document No. 129. *Congressional Globe*, December 7, 1833. 26th Cong., 1st sess., <http://memory.loc.gov/cgi-bin/ampage?collId=llcg&fileName=001/llcg001.db&recNum=14> (accessed January 12, 2013).

⁵⁷ Eliza Whitmore, WPA Slave Narrative Project, *Oklahoma Narratives*, Vol. 97, February 1938.

⁵⁸ Immediately following the Civil War the Cherokee Council filed with the court of claims for this very money that was promised but not received.

only valid government in the Cherokee Nation.⁵⁹ This heightened tension between the Ridge and Ross factions and outbreak of fighting occurred throughout Indian Territory even before the Civil War.

Indian slaves were not untouched by the Cherokee blood feud that followed them from Georgia to Indian Territory. “You know, the Cherokee were peacable Indians, until you got them mad,” insisted one of the black slaves who accompanied them, “Then they was the fiercest fighters of any tribe.”⁶⁰ After removal to Oklahoma, Cherokee families continued to work agricultural land plots with slave labor. Cherokee slaves were caught in the middle of the fighting in Indian Territory as many oral histories tell of their experiences.

Chaney Richardson, a slave born at the old Caney settlement southeast of Tahlequah, grew up with three to four large slave families owned by Cherokee Charley Rogers. Although a young girl when the Cherokee removed to Indian Territory, Chaney recalled her awareness of “the big feud.” “My master and all the rest of the folks was Cherokees,” she said. “They’d been killing each other off in the feud ever since long before I was borned. Just because Old Master have a big farm...them other Cherokees keep on pestering his stuff all the time. Us children was always a-feared to go any place less’n some of the grown folks was along. We didn’t know what we was a-feared of, but we heard the

⁵⁹ Grant Foreman. *The Five Civilized Tribes: A Brief History and A Century of Progress*, (Norman, OK: University of Oklahoma Press, 1934), 312.

⁶⁰ Cora Gillam, WPA Slave Narrative Project, *Arkansas Narratives*, Vol. 2, Part 3. Little Rock, AR.

master and mistress keep talking 'bout 'another Party killing' and we stuck close to the place.”⁶¹

Chaney lived a decent life in Cherokee country, helping her father and mother with basic chores. She remembered when, as a girl around the age of ten, “the feud got so bad the Indians was always talking about getting their horses and cattle killed, and their slaves harmed.” One day Chaney’s mother Ruth walked down the road and did not come back. “Lots of the young Indian bucks on both sides of the feud would ride around the woods at night, and Old Master got powerful uneasy about my mammy and had all the neighbors and slaves out looking for her, but nobody find her.” A few days later, two Indian men took Chaney’s master to where they saw Ruth hidden in the bushes where she’d been hit with a club and shot with a bullet. They dug a hole and buried her right there. “Old Master nearly go crazy he was so mad,” said Chaney. The young Cherokee men ride the woods every night for about a month, but they never catch on to who done it.” Out of anger, indifference, or self-pity, her Master sold Chaney’s siblings and sent her to work for another Cherokee family. Chaney did not see her siblings again until after the Civil War.⁶²

Former slave, Della Bibbes recalled conditions in Cherokee country at the peak of the “War of Freedom.” “Slavery times was hard on some and not so bad on the other,” she decided. “We had a good house to sleep in, plenty of covers, plenty to eat, and that is more than I can say now. Of course, we had to work hard, both black and white. The Indians were not whipped. They did what he [master] wanted and worked steady, and he ‘pended on

⁶¹ Chaney Richardson. W.P.A. Slave Narrative Project, *Oklahoma Narratives*, Vol. 13, October 1937.

⁶² Ibid

them a lot.”⁶³ Looking back at her life as a slave among the Cherokee, Della concluded: “While these old slave days were trying, and we went through many hardships, our Indian masters were very kind to us, and gave us plenty of good clothes to wear, and we always had plenty to eat. I can’t say that I have been any happier and contented, [contented] since I was free, than I was in those good old days when our living was guaranteed, even though we had to work hard to get it.”⁶⁴ And finally, “It is true that there were a few hard masters, and I have heard of a few who whipped their slaves unmercifully, but they were few.”⁶⁵

Stories like Chaney Richardson and Della Bibles reflect the harsh reality of intertribal feuds leading up to the Civil War in Indian Territory. There is considerable debate as to whether slavery in Indian Territory was different from slavery as practiced in the South. Some owners treated their slaves well and others treated them harshly. Some Cherokee slaves were required to have a pass to go any place and patrollers watched them wherever they went. “Dey didn’t let us have much enjoyment,” recalled one man. “We never had no games of our own.”⁶⁶ Some slaves were treated just like the slaves in the Old South, even to being sold on the auction block. Morris Sheppard recalled when his family was sold. “I never forget when they sold off some more Negroes at de same time, too, and put dem all in a pen for de trader to come and look at,” Morris insisted. “He never come until the next day, so dey had to sleep in dat pen in a pile like hogs. It wasn’t my master done dat. He done already sold ‘em to a man, and it was dat man was waiting for de trader.

⁶³ Della Bibles. WPA Slave Narrative Project, *Texas Narratives*, Vol. 17, October 1937.

⁶⁴ Ibid

⁶⁵ Eliza Whitmore, WPA Slave Narrative Project, *Oklahoma Narrative*, Vol. 97, February 1938.

⁶⁶ Morris Sheppard. WPA Slave Narrative Project, *Oklahoma Narrative*, Vol. 13, Summer 1937.

It made my master made, but dey didn't belong to him no more, and he couldn't say nothing." The man put dem on a block and sold 'em to a man dat had come in on a steamboat, and he took dem off on it."⁶⁷ "If you treated the Indian in this country good he would always be your firned, and would help you anytime he was able to."⁶⁸

According to historian Patrick Mingos, the treatment of slaves among the Indians was substantively different. This can be seen, he says, in the ex-slave accounts that tell how Indian masters treated them. There was some degree of freedom enjoyed by the Cherokee slaves. "I would feed the chickens, take care of the children, and sometimes I would get money for it, and buy candy. Once I bought a doll," one woman recalled.⁶⁹ The slaves tended the crops of corn and cotton even when "there was nobody around the place but Indians and Negros. I was a full-grown girl before I ever saw a white man," she said.⁷⁰ "Old Master Harnage bought and sold slaves most all the time, and some of the new Negroes always acted up and needed a licking. The worst ones got beat up good, too! They didn't have no jail to put slaves in, because when the masters got done licking them, they didn't need no jail."⁷¹ However, it is important to note the rosy responses of slave narrative accounts, both in the South and in Indian Territory. While recognizing the value of first-person accounts from slaves, scholars also recognize that nostalgia colored their perceptions of the past, and encourage caution due to the authenticity and reliability surrounding the interviews.

⁶⁷ Ibid

⁶⁸ Charley Moore Brown. WPA Slave Narrative Project, *Oklahoma Narratives*, Vol. 13, July 1937.

⁶⁹ Patsy Perryman. WPA Slave Narrative Project, *Oklahoma Narratives*, January 1938.

⁷⁰ Ibid

⁷¹ Ibid

By 1840, only two years after settling in their new homeland, the Cherokees had 4,600 slaves in Indian Territory, nearly tripling the number of slaves owned by Cherokees. To acquire more slaves the Indians purchased them from auctions at Fort Smith, Little Rock, Tahlequah, and other larger cities. This number also accounts for the slaves brought by the Arkansas Cherokee who migrated to Indian Territory in 1828, although the exact number of slaves is unclear.

Even in their new homeland, the slaves fought for freedom, sometimes with violence and disobedience. In 1842 the Cherokee slave revolt was one of the most expansive rebellions among slavery in the Indian nations. Slave Codes among the Cherokee restricted most from traveling without a passport, and most slaves were bought and sold like cattle. In November 1842 some twenty-five Cherokee slaves fled their ranches along with free black Seminoles headed toward Mexico where slavery was outlawed. The runaways had locked their masters and overseers in their houses while they slept, burglarized the local store stealing horses, mules, guns, food, and supplies. The fugitives were eventually caught, pushing the Cherokee leaders to seek greater enforcement of slave codes and great restrictions on free blacks in Indian Territory.⁷²

On December 2, 1842 the Cherokee Nation passed an “Act in Regard to Free Negroes” that ordered the “sheriffs of the several districts to notify free negroes to leave the limits of the nation by the 1st of Jan. 1843. Be it further enacted, that should any free negro or negroes be found guilty of aiding, abetting, or decoying any slave or slaves to leave his or their owner or employer, such free negro or negroes shall receive for each and every

⁷² Art. T. Burton “Cherokee Slave Revolt of 1842,” last modified 1996, www.lwfaah.net/burton/slave_rv.htm (accessed March 10, 2013).

offense one hundred lashes on the bare back, and be immediate removed from this nation.” The act specifically targeted the free black Seminoles living in the Cherokee Nation who the Cherokee thought had motivated their slaves to revolt.

Other major restrictions placed upon free blacks in Indian Territory helped to enforce discrimination and order. An act of November 7, 1840 declared that “it shall not be lawful for any free negro or mulatto, not of Cherokee blood, to hold or own any improvement within the limits of this nation; neither shall it be lawful for slaves to own any property.” Another Act of October 22, 1841 prohibited the education of blacks in Indian Territory. “Be it enacted by the National Council, that from and after the passage of this Act, it shall not be lawful for any person or persons whatever to teach any free negro or negroes not of Cherokee blood or any slave belonging to any citizens or citizens of the nation, to read or write. The penalty annexed to a violation of this enactment is a fine of \$100 to \$500.”

The first constitution of the Cherokee Nation in 1827 had made relations with blacks and their place in society very clear. “No person shall be eligible to a seat in General Council but a *free* Cherokee male citizens, who shall have attained to the age of twenty-five years. The descendants of Cherokee men by all *free* women, except the African race, 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. *No person who is of negro or mulatto parentage, either by the father or mother side, shall be eligible to hold any office of profit, honor, or trust in this Government.*” (Art. III., sect. 4).

The same provision against Cherokees with African blood is retained in the Constitution of September 1839 (Art. III., sect 5). In this Constitution a law entitled “An act

to prevent *amalgamation* with colored persons” (meaning descendants of Africans,) just as if Cherokees were whites, and *not* colored. Penalty, corporal punishment, not to exceed fifty stripes, and such intermarriages declared not to be lawful.”

In 1853 abolitionist and missionary William Goodell compiled a detailed book entitled *The American Slave Code* in which he included slave codes and policies in Indian Territory. Analyzing slave codes from the Cherokee constitution, Goodell’s book provides a sobering insight into the realities of slavery in Indian Territory prior to the Civil War. In Appendix B describing “Slavery Among the Cherokees and Choctaws” Goodell explains that slave codes among the Cherokee are not much different from the “American Slave States in their vicinity, and evidently borrowed from them”.

It is clear from the policies of the Cherokee Nation in regard to slaves and free blacks that the institution of slavery was legally sanctioned into tribal culture and in many ways replicated that of the United States. These policies help provide some understanding of tribal policies of the Cherokee Nation in the 21st century. In many ways, ‘blood politics’ exhibited 160 years ago are still practiced today. The concept and practice of discrimination towards descendants of those enslaved (blacks) is evident today, as freedmen argue.

In 1862, Northern soldiers came down from Kansas along the Grand River to free any slaves they could find. They had received orders to shoot over the heads of the Indians if they tried to run, but let them go, unharmed. The soldiers helped themselves to what remained on the farmsteads and made the slaves haul their loot off in wagons.⁷³ “When dat Civil War came along I was a pretty big boy and I remember it good as anybody,” Morris

⁷³ Moses Lonian, WPA Slave Narrative Project, *Oklahoma Narratives*, Vol. 54, July 1937.

Sheppard said. "Uncle Joe [slave boss] tell us all to lay low, and work hard, and nobody bother us, and he would look after us."⁷⁴

Cherokee slaves were quite aware of the Civil War and its effects on their lives. Many slaves saw their Indian masters and their sons go to fight for the Confederacy wearing "brown butternut suits."⁷⁵ A year into the war, many Cherokee men returned to Indian Territory saying they would not be "going back to the War with that General [Douglas] Cooper" and would fight for the Federal side.⁷⁶ Slaves were also sent to fight as "most all the Negro men was off somewhere in the War."⁷⁷ "There was Mr. Jim Collins, and Mr. Bell, and Mr. Dave Franklin, and Mr. Jim Sutton, and Mr. Blackburn, that lived around close to us, and dey all had slaves," said Sheppard. "Dey was all wid the South, but dey was a lot of dem Pin Indians all up on de Illinois River, and dey was wid de North, and dey taken it out on de slave owners a lot before de War, and during it, too."⁷⁸

The Pin Indians were a Cherokee organization that branched off from the Keetoowah Society, a secret society within the Cherokee Nation dedicated to preservation of the old ways. The Keetowah Society was committed to the "white path of righteousness," but the Pins followed the 'Red Path, the path of war and blood revenge." The Pins claimed the U.S. flag as their symbol and wore crossed straight pins on the left lapel of their jackets—hence the name "Pin" Indians. Some Pins were violent in their pursuit of blood

⁷⁴ Morris Sheppard. WPA Slave Narrative Project, *Oklahoma Narrative*, Vol. 13, Summer 1937.

⁷⁵ Chaney Richardson. WPA Slave Narrative Project, *Oklahoma Narratives*, Vol. 13, October 1937.

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Morris Sheppard. WPA Slave Narrative Project, *Oklahoma Narrative*, Vol. 13, Summer 1937.

vengeance and showed it in their treatment of Cherokee slave owners and slaves. “Dey would come in de night, and hamstring de horses, and maybe set fire to de barn, and two of ‘em killed my pappy one night just before de War broke out,” Morris Sheppard recounted. “I don’t know what dey done it for, only to be mean, and I guess they was drunk.”⁷⁹ But that was not all. “Pretty soon all de young Cherokee menfolks all gone off to de War,” he continued, “and de Pins was riding ‘round all de time, and it ain’t safe to be in dat part around Webber’s Falls, so Old Master take us all to Fort Smith, where they had a lot of Confederate Soldiers.”⁸⁰

Morris Sheppard, a slave, was taken with the other slaves to Choctaw country along the Red River where they stayed for a while, but that place was no longer peaceful. “Mammy said the patterollers and ‘Pin’ Indians caused a lot of troubles after the War started,” Sheppard reported. “The master went to the war and left my mistress to look after the place. The Pins came to the farm one day, and broke down the doors, cut feather beds open, stole the horses, killed the sheep, and done lots of mean things.” So they moved again. “Then Mistress took her slaves and went somewhere in Texas until after the War, Sheppard explained. “We found the old house burned to the ground when we got back, and the whole place a ruin. There was no stock, no way for any of us to live. The Mistress told us that we were free anyway, to go wherever we wanted to.”⁸¹

Cherokee slave Phyllis Petite was sent to Texas with the other slaves during the Civil War to escape the rampaging and violence in Indian Territory. “We went in a covered

⁷⁹ Morris Sheppard. WPA Slave Narrative Project, *Oklahoma Narrative*, Vol. 13, Summer 1937.

⁸⁰ Ibid

⁸¹ Patsy Perryman. WPA Slave Narrative Project, *Oklahoma Narratives*, January 1938.

wagon with oxen, and camped all along the way. Mammy say we was down in Texas to get away from the War, but I didn't see any war and any soldiers. But one day Old Master stay after he eat breakfast, and when us Negroes come in to eat he say: 'After today I ain't your master any more. You all is free as I am.' We just stand, and look, and don't know what to say about it." ⁸²

After the Civil War ended in 1865, the United States government had the task of reconstructing the nation, including reuniting the tribes that lived in Indian Territory. The first postwar conference held with the Cherokee was in September 1865 at Fort Smith, Arkansas. Federal officials informed the tribes that by allying with the Confederacy they had broken treaties and "forfeited all rights under them, and must be considered as at the mercy of the government."⁸³

The finalized Treaty of 1866 between the Cherokee Nation and United States stipulated, "All freemen who have been liberated by voluntary act of their former owners or by law, as well as all free colored person who were in the country as the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have **all the rights** of native Cherokees." The terms of the treaty demanded the abolition of slavery, the extension of citizenship to freedmen, right of way to railroads, and the cession of land. The Cherokees agreed to sell the Cherokee Strip and neutral lands in Kansas to allow other tribes to settle there. They established a National

⁸² Phyllis Petite. WPA Slave Narrative Project, *Oklahoma Narratives*, Summer 1937.

⁸³ U.S. Office of Indian Affairs, *Annual Report of Commissioner of Indian Affairs for 1865*. (U.S.: Government Printing Office), 34.

Council with a Senate and House with representatives selected from two electoral districts. The principal chief headed an executive branch which governed everyone.⁸⁴

A revised Cherokee constitution was completed in 1867. Article IV stated that “all citizens of the Cherokee Nation must be original enrollees or descendants of original enrollees listed on the authenticated Cherokee Census Rolls.”⁸⁵ The constitution also said that “negroes and descendants of white and Indian men by negro women who may have been set free” were denied the right to vote.⁸⁶ This was the first politically evident attempt to disfranchise black Cherokees.

In 1869, the Cherokee National Council passed an act authorizing the Cherokee Supreme Court to judge citizenship claims. Those who failed to meet the requirements for citizenship would be categorized as unlawful intruders and lose any land they occupied. As more and more outsiders crossed Cherokee borders, the distinction between former slaves, Afro-Cherokees, and newcomers began to blur.⁸⁷ Black freedmen who had been former slaves but did not return to the Nation within six months were especially vulnerable to rejection.

After emancipation, former Cherokee slaves continued their lives but under their own direction, and the slave narrative interviews make it seem that freedmen continued doing much the same labor they did under Cherokee masters. Former slaves, especially women, worked spinning and weaving at their old master’s farm house just as they had

⁸⁴ Perdue, *Nations Remembered*, 56.

⁸⁵ *Cherokee Constitution, 1867*, Records of the Cherokee Nation (Indian Archives Division, Oklahoma Historical Society)

⁸⁶ *Cherokee Constitution, 1867*, Records of the Cherokee Nation (Indian Archives Division, Oklahoma Historical Society)

⁸⁷ Tiya Miles, *Ties that Bind*, 193.

done as slaves for generations. “The Negro men did the shearing, and the women washed the wool, carded it into small bats, and sorted it for quality, then spun it into threads or yarn,” one woman recalled.⁸⁸ “I can see that the colored race have had many ups and downs since being put on their own footing, and I believe that a great many of them would have fared better had they had their masters to feed them. Most of us slaves fared well, and many of them did not know what to do when set free, and they had a hard time getting a start in life. Some of the slaves went back and worked for their old masters for several years, rather than to try and make a living, after being set free.”⁸⁹

Even if their Cherokee masters had been cruel, many Indian slaves did not want to leave after freedom because they were afraid the Northern soldiers could not protect them. Moses Lonian admitted that slaves were “afraid their masters would follow them, and whip them unmercifully.” Every wagon team and ox was pulling wagon loads of fine furniture and possessions of his Cherokee master. Soldiers told the slaves they had to leave and that they “had earned everything their masters had many times over, now is the time to get out.” The refugees headed to Kansas, and once across the state line, they were abandoned by their Northern guides to fend for themselves. “We nearly starved to death,” recalled one refugee.⁹⁰

The slaves who belonged to the Cherokees fared much better than the slaves who belonged to the white race, for the reason that the Indian slaves who had left the Nation could come right back to the Territory, and settle on Indian land, when allotment came; they were given equal rights with land drawings. One former slave, Chaney McNair,

⁸⁸ Eliza Whitmore, WPA Slave Narrative, *Oklahoma Narratives*, Vol. 97, February 1938.

⁸⁹ Ibid

⁹⁰ Moses Lonian, WPA Slave Narrative Project, *Oklahoma Narratives*, Vol. 54, July 1937.

recalled moving back to the Cherokee Nation to claim her allotment according to the Treaty of 1866. "After the War was over, we colored folks all had to go back to prove up; tell where you come from, who you belong to, you know, so we get our share of land. The government made a treaty with the Cherokees. If all the slaves come back, they give 'em Cherokee citizenship, but we had to be back by '66."⁹¹

In 1866, there was no requirement to prove "Indian blood" but there was a requirement for freedmen to be living in Indian Territory in order to be registered on the U.S. census following the war. Moses Lonian and his family were purchased by Cherokee Louis Ross for \$1,500 at Bentonville, Arkansas, just before the Civil War. They were bought from a white man named Lonian and sold to Ross who already owned 150 slaves in Cherokee country near present day Salina, Oklahoma. After freedom, Moses's father chose to keep the last name of their first white owner Lonian. "This cost his children their rights in the Territory, as we were classed as doubtful when we came back, because we bore the name of a white master."⁹²

Much of the slave testimonies come from the Federal Writer's Project of the Works Progress Administration, which interviewed nearly 2,200 former slaves in the 1930s. These slave narratives provide evidence of social and cultural bonds between African Americans and Native Americans that run deep in their shared collective history. Yet, one of the most perplexing and interesting issues they raise is the relationship between African Americans and their Native American masters, and the very nature of slavery in Indian Territory. For the most part, Sheppard positively remembered his master. "After de War

⁹¹ Chaney McNair. WPA Slave Narrative Project, *Oklahoma Narratives*, Vol. 13, June 1939.

⁹² Moses Lonian, WPA Slave Narrative Project, *Oklahoma Narratives*, Vol. 54, July 1937.

was over, Old Master tell me I am free, but he will look out after me 'cause I am just a little Negro, and I ain't got no sense," he continued, "I know he is right, too." "Well, I go ahead and make me a crop of corn, all by myself and I don't know what to do wid it. I was afraid I would get cheated out of it, 'cause I can't figure and read so I tell Old Master about it, and he bout it off'n me." Sheppard said. It was against the law for slaves to read or write in the Cherokee Nation. He remembered the day of his freedom, "I always think of my older master as de one dat freed me, and anyways, Abraham Lincoln and none of his North people didn't look after me, and buy my crop after I was free, like Old Master did." He said, "Dat was de time dat was de hardest, and everything was dark and confusion."⁹³ Another former slave, Patsy Perryman, remembered her freedom, "I am glad slavery is over and I do not want to see any more wars. Lincoln freed us, but I never liked him because the way his soldiers done in the South."⁹⁴

According to Patrick Mingos, while there is great value in the compelling witness accounts of the slave narratives, the questions framed by the W.P.A. worked to confirm their opinions about slavery from a white perspective. Furthermore, the freedmen responded purposefully with opinions that pleased the interviewers, a perspective that provides insight but is also colored by the polite sensibilities of the time.⁹⁵ It is interesting that of the 2,193 interviews of former slaves nearly 12% contained some reference to the freedmen being related to or descended from a Native American.⁹⁶ That is also about the

⁹³ Morris Sheppard. WPA Slave Narrative Project, *Oklahoma Narratives*, Vol. 13, Summer 1937.

⁹⁴ Patsy Perryman. WPA Slave Narrative Project, *Oklahoma Narratives*, January 1938.

⁹⁵ Patrick Mingos, *Black Indian Slave Narratives*, (Winston-Salem, NC: John F. Blair, 2004), xxi.

⁹⁶ Laura Lovett, "African and Cherokee by Choice," *American Indian Quarterly*, 22

same percentage of the African American population among the Five Civilized Tribes in Indian Territory.⁹⁷

Despite discrepancies between the interviewer and interviewee, the W.P.A. interviews show evidence of a bond between slave and Cherokee masters that continued even after the Civil War. Morris Sheppard returned “to see dem lots of times” when his Old Master and Old Mistress moved to the Oklahoma and Arkansas border along the Illinois River. “Dey was always glad to see me. I would stay around about a week and help ‘em, and dey would try to git me to take something, but I never would.”⁹⁸

An official report by the Commissioner for Indian Affairs in 1866 tells of over-all positive relations between the Indians and their former slaves after the Civil War. “Most of these freedmen have ox teams, and among them blacksmiths, carpenters, wheelwrights, etc.,” it maintained. “I have the honor to report that the existing relations between the Freedmen of the Indian Territory and their former masters are generally satisfactory. The rights of the Freedmen are acknowledged by all; fair compensation for labor is paid; a fair proportion of crops to be raised on the old plantations is allowed; labor for the Freedmen to perform is abundant, and nearly all are self-supporting.”⁹⁹ Morris Sheppard would have disagreed. “Right after de War, de Cherokees that had been wid the South kind of pestered the Freedmen some,” he said, “dey told me some of dem was bad on Negroes.”¹⁰⁰ Not long

(Winter/Spring 1988): 205.

⁹⁷ Minges, *Black Indian Slave Narratives*, xxii.

⁹⁸ Morris Sheppard. WPA Slave Narrative Project, *Oklahoma Narratives*, Vol. 13, Summer 1937.

⁹⁹ *Report of the Commissioner for Indian Affairs* (Washington, D.C.: Government Printing Office, 1866): 383-384.

¹⁰⁰ Morris Sheppard. WPA Slave Narrative Project, *Oklahoma Narratives*, Vol. 13, Summer 1937.

after the Civil War, the Cherokee Nation struggled to redefine citizenship and tribal identity. The U.S. government began to take a more active role in establishing what it meant to be Indian, who could be an Indian, and what you got as an Indian.

IV. Chapter 3: Census Rolls and Citizenship

After the Civil War, reconstruction began in Indian Territory. Despite the Union and Confederate treaties that had promised to protect Indian Territory from invasion, the land was ravaged. The Five Civilized Tribes were required to sign new treaties with the federal government in 1866 that stipulated the treatment and procedure in dealing with freedmen of the Indian nations. In the decades after the war, the Cherokee Nation fought to maintain its political independence in the face of increasing political pressures. The postwar Treaty of 1866 with the U.S. government had already infringed on the rights of Cherokees to maintain their land and determine their citizenry as a sovereign nation. The intensity of the circumstance after the war strained the already tense relations between Cherokees and the people of African descent who had lived among them for generations. Devastation from the war produced poverty among the Indians that bred crime as the tribes struggled to survive, recover from their losses, and exact vengeance on those believed responsible for their suffering.¹⁰¹ This was taken out on the freedmen.

The debate over formalized citizenship for freedmen began after the Civil War and the beginning of Reconstruction. The federal treaty mandated the distribution of land and money among Native American groups of present day Oklahoma, including the Cherokee, Choctaw, Chickasaw, Seminole, Creek, Osage, Delaware, and Shawnee, in compensation for losses during the Civil War. The law required the Cherokee Nation to include freedman as Cherokee citizens.

The Five Civilized Tribes immediately made changes in policy regarding freedmen as tribal members following the reconstruction treaty. In regard to tolerance of recently

¹⁰¹ Perdue, *Nations Remembered*, 36.

freed former slaves, there was a diversity of opinion among the Five tribes. The Seminoles welcomed the freedmen as citizens with full tribal rights. The Chickasaw never admitted former slaves to tribal citizenship, and the Choctaws only allowed the freedmen allotments smaller than those awarded full tribal citizens. The Cherokees formally enrolled freedmen as tribal members, and they allowed allotments of tribal land as stipulated by the federal government in the treaty. However, the Cherokees impeded the political and social equality of their African American citizens. This placed them in the middle political spectrum with regard to citizenship.

The Cherokee Constitution of 1867, Article IV, stated that “all citizens of the Cherokee Nation must be original enrollees or descendants of original enrollees listed on the authenticated Cherokee Census Rolls.”¹⁰² The constitution also said that, “negroes and descendants of white and Indian men by negro women who may have been set free” were denied the right to vote. These restrictions went against the first constitution of 1827, which provided a number of rights to black Cherokees, including the right to vote. Many scholars, including Perdue and Malone, argue that the growing prejudice toward blacks in Cherokee slave codes, including their rights as citizens, arose from white contact.

Tribes fought over the issue of citizenship so fiercely because status as a citizen was vital for the sharing of land and the distribution of annuities appropriated by Congress. As a result, there were several attempts by individual tribal councils and state/federal authorities to collect a census of freedmen throughout Indian Territory.

¹⁰² *Cherokee Constitution, 1867*, Records of the Cherokee Nation (Indian Archives Division: Oklahoma Historical Society).

Recognizing what was at stake, the federal government commissioned Special Agent John W. Wallace to undertake a series of investigations for the “Authenticated, Admitted, Rejected Freedmen, and Free Negroes” among the Cherokee. Wallace was not initially welcomed by the Cherokee Nation. When he arrived in Tahlequah, Oklahoma, in August 1889, it became clear that the Cherokees would not cooperate with him in making a census roll because they did not recognize the federal government’s right to do so.¹⁰³ The Cherokees believed their autonomy was being trampled on by the government. It was also clear that the Cherokee did “not believe the Negro entitled to a cent of our money, or to a foot of land.”¹⁰⁴

In Vinita, Oklahoma, Wallace began working alone to authenticate the freedmen rolls the Cherokee Nation had conducted in 1880. By October 1889, nearly 3,800 total applications of freedmen were received. Wallace corrected the rolls by eliminating deaths, adding births, and updating current places of residence. By requirement from the federal government, each applicant’s statement had to be accompanied by the affidavits of witnesses who were citizens of the Cherokee Nation by blood.

Wallace must have been eager to validate the rolls as he was courageous enough to begin work despite strong opposition from the Cherokee Nation. He appears to have worked with thoroughness and objectivity. Wallace did try to accommodate the crowds that formed at the registration events by providing water, and fire wood, and having law enforcement officials to maintain order. He publicized the enrollment locations for those living in the country to provide an opportunity for any freedmen to apply for the rolls.

¹⁰³ Littlefield, *The Cherokee Freedmen*, 148.

¹⁰⁴ *Indian Chieftain*, (Vinita, Indian Territory [Ok]), March 20, 1890.

Littlefield points out in his book, *Cherokee Freedmen*, that Wallace's efforts to let every freedmen have a chance to apply for citizenship increased the number of claimants. Wallace's additions of freedmen further irritated the Cherokee, who did not believe that freedmen should be entitled to the same rights as Cherokee citizens by blood. At the time the rolls were completed, 67% of the population in Indian Territory was white, 24% Native American, and 9% African American.

Pressure from outside forces, threats, and the stress of prolonged work influenced Wallace in Oklahoma. By January 1890, Wallace relocated his office to Fort Smith, Arkansas, to secure the records in a government storage facility. By this time he had received over 6,000 applications with an estimated 2-3,000 more to go. The large number of freedmen who arrived each day told of more people in their neighborhoods who would be coming from Texas, Arkansas, and New Mexico. Wallace hoped to have the rolls completed by April to begin the distribution of funds. In March 1890 he took final testimonies and began completing the rolls.¹⁰⁵

However, there were also some anomalies in the rolls. For instance, when looking at the Wallace Rolls, there are both Shawnee and Delaware names mixed with the Cherokee names, even though the Cherokee are uniquely different from the Shawnee and Delaware tribes. This meant that the three tribes would share the same annuities granted by Congress despite their differences. It is also interesting that the Cherokee freedmen were approved by federal agents rather than Cherokee Council members themselves for admittance into the Nation.

¹⁰⁵ Littlefield, *The Cherokee Freedmen*, 183.

There were also several names that appeared to have been spelled in different ways. For example, John Wright, John Right, and John Wrighte. Mistakes in spelling of names and places on the rolls could be attributed to miscommunication and a lack of education. Wallace himself was not familiar with surnames or place names in Indian Territory. According to Littlefield, many of the freedmen did not know how old they were, and many could not count or read.¹⁰⁶ Wallace hired a freedman named Luster Foreman as his interpreter because many of the freedmen and Cherokee witnesses did not speak English.¹⁰⁷ It is possible that misspellings and inaccuracies on the roll were caused by the long line of communication from the freedmen to the interpreter to Wallace and finally to the scribe. It is also possible that names and places were misspelled because the freedmen themselves did not know how to spell them. Nonetheless, multiple names with very similar spellings were counted on the rolls and could have multiplied the actual number of freedmen when counted by the agents.

There were also a number of duplicate names, although those were possibly an oversight by Wallace and other federal agents due to the high volume of applications and investigations.¹⁰⁸ Freedmen came in large numbers to apply for status on the rolls. To be as efficient as possible, Wallace took the sworn statements by Cherokee witnesses as corroborative evidence for each case, then filed the claims until he had time to finalize the admitted or doubtful claimants. Each applicant was interviewed by Wallace, who asked if they had been slaves at the outbreak of the war, who their masters had been, where they

¹⁰⁶Ibid., 148.

¹⁰⁷ Ibid, 149.

¹⁰⁸ Ibid, 148.

were at the end of the war, and what they did after the war. Wallace received between 50 and 125 testimonies each day from Cherokee citizens validating the claims of freedmen.¹⁰⁹

Pressure between the Cherokee Nation and U.S. government also could have added to Wallace's haste and mistakes. Such Cherokee leaders as Elias C. Boudinot, praised Wallace for his "industry, skill, and faithfulness."¹¹⁰ Despite the approval, Secretary of the Interior John W. Noble began to distrust Wallace and ordered Commissioner Thomas J. Morgan to review Wallace's accounting methods. The waters were muddied further when freedmen attorney J. Milton Turner, from Missouri, gave Noble a letter from Cherokee leader Ridge Paschal asserting that Wallace was "extremely rebel democratic." Paschal alleged that Wallace had planned to take money from the freedmen by convincing them to take \$7-\$7.50 per capita immediately while the remaining money would go to Wallace and his friends. Noble complained to Morgan in Oklahoma, "there are a good many such statements about Wallace's habits. Be careful."¹¹¹

In March, 1890, a committee of Cherokee freedmen presented a resolution to Cherokee Chief Mayes, President Benjamin Harrison, Secretary Noble, and both houses of Congress that praised Wallace for his work. Nonetheless the following month, Cherokee concern about Wallace's integrity in the field became apparent when Congress created a joint U.S. and Cherokee court of eight members to redo Wallace's work.¹¹² The federal government was torn between providing justice to the freedmen, pacifying the Cherokee, and yet supporting a commissioned employee in the field.

¹⁰⁹ Ibid, 150.

¹¹⁰ Naylor, *African Cherokees in Indian Territory*, 138.

¹¹¹ Ibid., 139

¹¹² Ibid, 153.

The Cherokee, after reviewing the final rolls, submitted a revised copy with changes in spelling and names of locations that Wallace and his staff missed. Only five years after its completion, the Wallace Rolls were set aside as “fraudulent” by a decree of May 8, 1895, in the United States Court of Indian Affairs. The Cherokee Nation’s distrust of the federal agents who conducted the rolls also led to a new roll, this time with greater Cherokee National Council influence and authority.

The second census of Cherokee freedmen was the Kern-Clifton Roll of 1897. This survey included more extensive interviews with Cherokee families and a closer investigation of properties. The rolls were also more influenced by Cherokee leaders who organized and appointed Cherokee citizens to conduct the interviews/investigations. The census was taken by the Cherokee Freedmen Commission composed of William Clifton, Robert H. Kern, and William Thompson. The census listed the number, name, sex, age, and district of authenticated freedmen and their descendants. (There is also a supplemental list of names that appear on a rejected lists submitted by the Cherokee Freedmen Commission. This is at the NARA’s Old Military and Civilian Records)

The Kern-Clifton Roll added names to the comprehensive Cherokee Freedmen roll. Each name was grouped by family member, husband, wife, daughter, son, grandmother, and so on, although there appears to be no record of family genealogy taken into account with either the Wallace or Kern-Clifton rolls. In other words, with the information recorded on the rolls, the agents could have admitted anyone as a Cherokee freedmen because there was little way to trace or measure Cherokee “by blood”.

The roll was signed on January 16, 1897 as a supplementary list of Cherokee freedmen, in addition to the Wallace Roll, that was approved by the Secretary of Interior.

The roll was issued in pursuance of an Order of the Court of Claims case No.17209 of Moses Whitmire, Trustee for the freedmen of the Cherokee Nation, vs. the Cherokee Nation and United States.

Both the Kern-Clifton Roll and Wallace Roll provided \$75,000 to be distributed among Cherokee freedmen. It is peculiar that the same amount would be allotted because the purpose of sending Kern and Clifton to conduct a roll among the Cherokee was because the government believed the first census of freedmen presented by the Cherokee Nation was inaccurate. If the government suspected there would be more freedmen on the second roll, then more money should have been appropriated. Littlefield highlights this through Cherokee Elias C. Boudinot, who pointed out to Secretary of the Interior Nobel that the government would have difficulty with the promised provisions for freedmen. The government had appropriated the \$75,000 based on an estimate by the Cherokees of the number of freedmen. Boudinot warned that by his estimates the freed blacks would reach seven thousand and Congress would have to appropriate more money. Interestingly, the government maintained the \$75,000 fund for yet another census, but this time the number of freedmen listed reduced.

The third census of Cherokee freedmen was the Dawes Roll of 1899. It was created to further validate the earlier rolls by researching the family genealogies of those people who had traveled the Trail of Tears. The Kern-Clifton and Dawes rolls were meant to authenticate the Wallace roll, but they only caused greater confusion. Upon the reorganization of the Cherokee Nation of Oklahoma in the 1970s, the Dawes Roll became the authoritative means of certifying membership. However, it had omitted the names of

many former slaves who had been admitted as citizens on the Wallace and Kern-Clifton Rolls. This is the main cause of the modern controversy over citizenship.

It is interesting that many surnames were repeated on the Wallace, Kern-Clifton, and Dawes rolls. The Alberty, Beck, Bear, Bird, and Britton families were on all three rolls. It would seem a waste of time to gather the information and interviews with the same families three times but with different federal agents had conducted each survey over a ten year span. It also appears that within that ten year time frame anyone could claim to be a former slave of the Cherokee Nation or a descendent of a Cherokee family. The system for verifying qualifications as a Cherokee freedman were ambiguous.

Another foundational document concerning Cherokee freedmen and citizenship is the Census Bill. The bill was passed in 1880 with the census completed on August 8, 1896, by the Cherokee Nation Council and states, "Whereas, the United States Government, as guardian and protector of the Cherokee nation, as one of the parties to the treaties of 1835 and 1848 between the said Government and the Cherokee Nation, did, in the execution of the stipulations of the said treaties, cause to be made and preserved for its guidance, a list, or roll, of the names of all the members of said nation who were entitled to share in the monies provided in said treaties to be divided Per Capita among all Cherokees."¹¹³

The bill's most important provision outlines the Cherokee Nations responsibility during the third federally commissioned census, the Dawes Roll. The conditions in this bill help to explain the Cherokee's view of the federal government in its role of Cherokee affairs. It appears from the document that the Cherokees did not trust the federal agents to

¹¹³ *Census Bill, 1880, Cherokee Nation Papers (Indian Archives Division: Oklahoma Historical Society), f.131.*

conduct the census property, since it allowed the Cherokee National council to appoint several hundred of its own census takers to work independently of the federal agents sent by the Department of Interior. The bill also reflects the influences of the Cherokee Nation with the federal government because each time the Cherokee National Council criticized the census rolls, the government provided more agents, investigations of agents, and even the authorization of more rolls to appease the Cherokee.

The Census Bill outlines the qualifications for tribal citizenship as “those born Cherokee citizens, or those born of parents living as man and wife under the laws of the Cherokee Nation, and one of whom, at least, is a Cherokee by Blood, and all persons re-admitted to Cherokee Citizenship.” Cherokee by blood “shall be enrolled upon a separate roll—white adopted citizens on a separate roll—Freedmen made citizens by treaty and the Cherokee Constitution upon a separate roll.” The bill also enacted that any person whose name did not appear on the 1880 Dawes Roll but had since been regarded as a citizen, with “proper explanations attached” will be considered a Cherokee citizen.

A revised Cherokee constitution was not passed until 1975, a little over one-hundred years after the freedmen citizenship debate had begun, but it remains the most contemporary political document to guide the Cherokee Supreme Court. Upon the reorganization of the Cherokee Nation of Oklahoma in the 1970s, the Dawes Roll became the only means of certifying membership, and on that issue, Article III states:

All members of the Cherokee Nation must be citizens as proven by references to the Dawes Commission Rolls, including the Delaware Cherokees of Article II of the Delaware Agreement dated the 8th day of may, 1867, and the Shawnee Cherokees as of Article III of the Shawnee Agreement dated the 9th day of June, 1869, and/or their descendants.¹¹⁴

¹¹⁴ *Cherokee Constitution*, 197,5 Records of the Cherokee Nation (Indian Archives Division,

There is no 'by blood' requirement in Article III, only proof of citizenship by reference to the Dawes Rolls. While the overwhelming majority of people on the Dawes rolls were Cherokee by blood, the rolls also included other people who the Cherokee Nation recognized as citizens at the time the Dawes Rolls were compiled. The constitution could be amended to require that all tribal members possess Cherokee blood, but the Supreme Court and Cherokee Council lack the power to redefine tribal membership without such a constitutional amendment. In addition, constitutional amendments are required to have the Secretary of the Interior's approval.

Article VII of the 1975 constitution created the Cherokee Nation Judicial Appeals Court to "hear and resolve any disagreements" arising under the "constitution or any enactments of the Council." The Cherokee freedmen case directly challenges this provision by being taken to the U.S. Supreme Court instead of being filed against the Cherokee Nation. In fact, when other Cherokee freedmen have asked the U.S. federal courts to enforce their rights under the 1975 Cherokee Constitution, the federal courts have dismissed those lawsuits.¹¹⁵

The Cherokee Indians as a Nation were almost forced into extinction by the United States Federal Government and for the first time since the adoption of the 1827 constitution, they seized an opportunity in the twentieth century to exert their sovereign status and maintain their autonomy by defining their citizenship in the 1975 constitution. Today, the freedmen citizenship issue stems from the 1975 constitution and its recent amendments.

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¹¹⁵ See *Nero vs. Cherokee Nation of Oklahoma*, 892 F.2d 1457 (10th Cir. 1989).

V. Chapter 4: Contemporary Debate over Citizenship

Issues arising with Cherokee membership as tribal citizens have their origin over disagreements in the federal census rolls. Descendants of freedmen who did not sign the registered census now have to prove their tribal lineage, a very difficult task for many.

Today, many argue for biological membership only. Some say membership should be based on the census rolls, and others say to be Cherokee means to prove that people are members of long-standing tribal clans and extended families. For instance, the amount of tribal blood one can claim has become a highly disputed issue, with the proper percentage ranging from 1/16 to 3/4. Tribal membership was not always about biological relation to the Cherokee. Early accounts inform us that individuals could be adopted as tribal members within a Cherokee family. When blacks were considered tribal members through Cherokee tradition, such modern concerns as big money, political power, and land were not important issues. Now there is great gain in determining who is a rightful citizen or not based on casinos, oil fields, and land holdings.

The freedmen debate for both freedmen and the Cherokee Nation descends from a long and continuous history over policy. The first Cherokee constitution in 1827 did not permit “negroes” from taking a part in their government. Free blacks were allowed to live within the Cherokee Nation and enjoy some aspects of shared life, but they were not given full tribal citizenship or rights. The second constitution in 1839 was ratified after a new government had been established in Indian Territory. The new constitution stated, “No person who is negro and mulatto parentage, either by the father or mother’s side, shall be eligible to hold any office of profit, honor or trust under this government.” In 1863, the

Cherokee National Council rescinded the Confederate treaty and passed an act emancipating slaves in the Cherokee Nation.

After the Civil War, the Treaty of 1866 with the U.S. abolished slavery and provided freedmen with “all the rights of native Cherokees.” The Treaty of 1866 caused necessary changes to the Cherokee constitution regarding citizenship. Amendments to the constitution stated, “All native born Cherokees, all Indians, and whites legally members of the Nation by adoption, and all freedmen as well as free colored persons and their descendants, shall be taken and deemed to be citizens of the Cherokee Nation.” For the next century, Cherokee freedmen were accepted as tribal citizens according to the 1867 constitution.

In 1975, citizens voted to amend the constitution to require that membership be regulated and proved by reference to the Dawes Roll. Freedmen without Indian ancestry were not registered with the Dawes Roll. Furthermore, in 1983, the Cherokee Nation required its citizens to provide a Certificate Degree of Indian Blood (CDIB) registered with the Bureau of Indian Affairs. Again, without being listed on the Dawes Roll to prove Indian blood, the Cherokee freedmen were denied a CDIB and were consequently unable to vote in the elections. Fay Yarbrough, in *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century*, described this act as the first attempt by the Cherokee Nation to disenfranchise the freedmen, leading to the conflicts that we see today.

Two decades later, the 1999 constitution made efforts to clarify terminology regarding citizenship. Article III made it clear that citizens must be original enrollees or descendants of original enrollees on the Dawes Roll. Between 1999 and 2003, groups of Cherokee freedmen filed hundreds of appeals to challenge the constitution. One such

challenge rejected by freedmen was voted by Cherokee citizens in May 2003 to remove the requirement of federal approval of any amendments to the tribe's constitution. This meant that the new amendment to disfranchise Cherokee freedmen did not need federal approval to be upheld by the Cherokee Nation in law and practice. The freedmen claimed that their rights under the U.S. Constitution, the Treaty of 1866, and the Indian Civil Rights Act of 1968 were violated when they were excluded from voting in the Cherokee tribal elections in 2003. The freedmen case was granted when the judge ruled that "the sovereign interests of a tribe clearly are affected when the validity of a tribe's elections are questioned."

Nonetheless, in July 2003, the Cherokee National Council began using the 1999 constitution as the organic governing document for the tribe. The Bureau of Indian Affairs informed Principle Chief Chad Smith that they refused to approve the new constitution because it removed the voting rights of freedmen. Furthermore, the BIA instructed the Cherokee Nation to permit freedmen to run for elected office before it would approve the new constitution. Despite correspondence from federal offices concerning their disapproval of the 1999 constitution, the Cherokee National Council continued to disenroll freedmen. It was at this time that the freedmen debate seemed to appear more in public, as politicians and federal agencies sought to balance the power of tribal self-government and racial equality for freedmen.

In 2007, an amendment was passed to the constitution that required individuals to be of "Cherokee by Blood" in order to be citizens. This meant that thousands of Cherokee freedmen of African descent with no Indian ancestry were no longer eligible for citizenship. Hundreds of cases of Cherokee freedmen were filed within months of the 2007 constitutional amendment. They argued that their rights as citizens of the Cherokee Nation

could not be denied because of the Treaty of 1866, which stated that freedmen would be given “all the rights of native Cherokees.”

In 2008, the U.S. Court dismissed the Cherokee freedmen case against the Cherokee Nation because of their sovereign immunity, stating that the Cherokee Nation was “free to litigate these question in the federal action of its choosing, or not at all.” The debate did not end there. Following its dismissal from federal court, the Cherokee Nation voluntarily commenced a new suit in Oklahoma with the goal of obtaining resolution of a legal issue that controlled the citizenship dispute between the Nation and all freedmen. At the heart of the issue was the Treaty of 1866. The question disputed was whether the Cherokee Nation was required to provide citizenship rights and benefits to the freedmen under the Treaty of 1866. To date, this case has yet to come to a resolution in the Oklahoma district courts.

On August 22, 2011, the tribal Supreme Court, under Principal Chief Chad Smith, removed freedmen citizenship rights to vote. This action excluded some 2,800 freedmen from voting, cutting off health care, food stipends, and other tribal aid to them in the process. In response to the Cherokee Supreme Court decision, freedmen and their attorneys filed the Vann case against Department of Interior Secretary Ken Salazar with a motion to block disenrollment on September 2, 2011. A few days later, assistant secretary of Indian Affairs with the Department of Interior, Larry Echo Hawk, filed briefs in the Vann case and sent a letter to the acting chief of the Cherokee Nation, Joe Crittenden, to say the DOI would not recognize an election for tribal chief unless the citizenship of black members was restored. The U.S. Department of Housing and Urban Development (HUD) also froze more than thirty million dollars in funding for Indian housing due to freedmen

disenrollment. Faced with discontinued federal aid, a Cherokee tribal commission offered a freedmen provisional ballot, a step denounced by black members.

On September 20, 2011, attorneys representing the Cherokee freedmen presented oral cases for freedmen rights to the Cherokee Supreme Court. The next day, U.S. District Judge Henry Kennedy signed an order that determined Cherokee freedmen would retain their rights as citizens, which allowed them to vote in the tribal election in November 2011.¹¹⁶

The debate today sits at a cornerstone issue, being one of the Cherokee Nation's right to exercise tribal sovereignty versus racial justice for the freedmen. Since the Civil War, the governing document of the Cherokee Nation has been changed to clarify membership requirements and citizenship rights. The past three constitutions clearly require Indian blood for membership, thus freedmen without Cherokee ancestry are no longer tribal members. As with any debate, there are two sides to the story. The freedmen claim racial justice and equal rights under the law, as did previous members of the Cherokee Nation. The Cherokee Nation claims the right to self-government, to determine who is a member and how to enforce its laws.

From the freedmen perspective, three main issues arise concerning their citizenship within the Cherokee Nation. Their main arguments are that the Nation is in violation of the Treaty of 1866, neglects social ties between Cherokee and African-Cherokee, and permits racial discrimination.

¹¹⁶Molly O'Toole. "Cherokee Tribe reaches agreement to reinstate 2,800 Freedmen." *Reuters*. <http://www.reuters.com/article/2011/09/21/us-cherokee-freedmen-idUSTRE78K08D20110921> (accessed May 14, 2013).

First, freedmen rights as tribal citizens stem from the Treaty of 1866, and recent constitutional amendments violate that agreement with the United States. In a letter from freedmen attorney Jon Velie to the attorney for the Bureau of Indian Affairs, he points out that his clients acknowledge the Cherokee Nation's right to self-government as upheld by *Wheeler v. U.S.* in 1987. The case concluded "that the Federal Government encourages tribes to exercise that right [self-government]. Consequently, while the Department may be required by statute or tribal law to act in intratribal matters, it should act so as to avoid any unnecessary inference with a tribe's right to self-government." Velie explained that while they agreed the Federal government should not unnecessarily interfere with the tribe's right to self-government, to uphold the Treaty of 1866 granting Cherokee freedmen citizenship was not unnecessary interference.

Freedmen attorneys also looked to the Principal Chiefs Act of 1970, which states that certain procedures must be approved by the department regarding elections. The Cherokee Nation never submitted the procedures for disenfranchising the freedmen right to vote for departmental approval. Additionally, Velie pointed out that elections were fatally flawed because some citizens of the Nation were not permitted to vote, therefore, no part of the election could be accepted. He stated, "This is not merely an inter-tribal dispute but a direct violation of treaty rights that protect the citizenship of the Cherokee of African descent." Velie continued, "The BIA has a fiduciary duty to protect the Cherokee citizens against the tribal government's treaty violation in the same way it would have the duty to

protect the citizens against any other type of illegal act the Cherokee government performed against its citizens.”¹¹⁷

The second issue concerning citizenship is that freedmen feel historically, politically, and biologically tied to the Nation. For many freedmen, their history and legacy is connected to the Cherokee story. Freedmen are fighting not only for their rights as Cherokee citizens, but for a legacy deeply rooted in generations of shared history, culture, and experiences between the Cherokee and African people. Many freedmen cases confess they are hurt at being “robbed” of their heritage and stripped of their rights as Cherokee citizens. They claim that the bond between Cherokee of Indian blood and Cherokee of African blood cannot be ignored. Vann Woodward, a leader in the freemen debate, wrote in an article entitled “History from Slave Sources” that “the number of ex-slaves who claim Indian blood is remarkable...there is probably also a psychological as well as biological dimension to the claim of Indian blood or identity.” He continued, “At any rate, Indian blood is frequently invoked to account for cherished traits of rebelliousness, ferocity, and fortitude.” Woodward points to an Indian slave by the name of Louisa Davis, age 102, who said, ‘De Indian blood in me have held me up for over a hundred years,’ he points out that white blood was never mentioned in such connections.¹¹⁸¹¹⁹ Freedmen argue that just as former slaves chose to stay with the Cherokee Nation during removal and living in Indian Territory, descendants of freedmen today feel a strong connection to their tribal roots and wish to be recognized as members, like their ancestors. Apparently, this argument

¹¹⁷ Velie & Velie Attorneys at Law to Attorney for the Bureau of Indian Affairs, letter, July 21, 2003.

¹¹⁸ Vann Woodward, “History from Slave Sources,” *American Historical Review* 79 (1974): 470-481.

¹¹⁹ May, *Collision and Collusion*, 27.

influences people to empathize with the freedmen situation, as evidenced by the high volume and long-running news articles, web pages, personal blogs, and other media highlighting the Cherokee freedmen debate.

Third, freedmen argue that denying them rights as citizens is based on racial discrimination. In their article entitled “Red vs Black: Conflict and Accommodation in the Post Civil War Indian Territory, 1865-1907,” Donald A. Grinde and Quintard Taylor concluded that racism toward African Americans among the Cherokee was not an outcome of “white supremacy”, but of the attitudes and actions of both Indians and blacks. Their theory was that Native American and African American perceptions of whites were themselves prejudiced.¹²⁰ In other words, at the same time both Cherokee and blacks were fighting for their ethnic and cultural identity in the face of a dominant white society, they, in turn, began to develop deeper resenting sentiments toward each other.

According to Eric R. Wolf, racial designations among tribes were the outcome of the subjugation of populations in the course of European expansion. “Racial terms have since mirrored the political process by which populations were turned into providers of coerced surplus labor”, he explained. “These racial terms are exclusionary and delegate people to lower ranks of society.”¹²¹ Freedmen make it clear that the history of suffering among African Americans as slaves should not be forgotten, nor that anyone should forget the subjugation, and forced migration the Cherokee Nation suffered during the same period.

¹²⁰ Donald A. Grinde and Quintard Taylor. “Red vs. Black: Conflict and Accommodation in the Post-Civil War Indian Territory, 1865-1907”. *American Indian Quarterly*, 8 (Summer 1984): 211-229.

¹²¹ Eric R. Wolfe. *Europe and the People Without History*. (Berkeley: University of California, 1982), 381. For more information on race relations see Katja May’s book *Collision and Collusion* pp2; Terry P Wilson, “Blood Quantum: Native American Mixed Bloods” in Marcia P.P. Root, ed., *Racially Mixed People in America* (Newbury Park, CA: Sage, 1992), Ch. 9.

But the suffering of both the freedmen and Cherokee does not illuminate the legal issues before the court today: the Cherokee Nation's right to exercise tribal sovereignty for freedmen. In an opening statement, freedmen lawyer Jon Velie stated, "I think if some modern country decided it was going to start expelling citizens based on tracing the purity of their ancestry, people would be crying racism around the around. But here we are told it's none of our business? Sovereign countries have the power to make the law within their own land, but that does not mean the world should not condemn them when that law is unjust." Supporters of Cherokee freedmen are not interested in ignoring past wrongs, but only in seeing that the courts should not maintain moral double standards. They say two wrongs do not make a right.

From the Cherokee Nation perspective, two main issues arise concerning citizenship of freedmen. First, while acknowledging the Treaty of 1866 with the U.S., the Nation claims tribal sovereignty and the right to self-government as fundamental rights as indigenous people. Second, it insists on the need for a clearer cultural identity distinguished as a nation of Indians with Indian members.

Considering the first issue, the Cherokee Nation claims to exist as a 'distinct people' with the right to self-government, including the political right to determine who is a member. Pointing to the matter of sovereignty, it maintains that the U.S. cannot enter into a treaty with an individual, a ward, a territorial possession, or protectorate. It can only enter into a treaty with a sovereign state. Clearly, the U.S. regarded the Cherokee Nation as a sovereign nation when it entered into its several treaties with that tribe.

Katja May, author of *African Americans and Native Americans in the Creek and Cherokee Nations*, points out that removal of the Five Civilized Tribes was traumatic on

many levels and understood by the Cherokee as a direct attack on their sovereignty. May argues that as a means of reaffirming their power as a functioning nation, the Cherokee wrote a constitution that did not recognize its free black members as citizens. She said, “By effectively ousting large numbers of African Americans, Cherokee could feel they were still a sovereign nation.”¹²²

The U.S. Court of Appeals for the Tenth Circuit in *Nero*: “Indian Tribes have a right to self-government, and the Federal government encourages tribes to exercise that right. Consequently, while the Department may be required by statute or tribal law to act in intertribal matters, it should and so as to avoid any unnecessary interference with a tribe’s right to self-government.” *Swimmer*: “The right to conduct an election without federal interferences is essential to the exercise of the right to self-government.”

As a federally recognized tribe and independent entity, the Cherokee were granted sovereign immunity which gives them the ability to determine who is a citizen and who is not. According to the court case, *Marilyn Vann (Freedmen) vs. Cherokee Nation* of July 19, 2012, the Cherokee Nation decided, through constitutional referenda and popular elections, to bring the Nation back to what it had been before the first European settlers arrived in this country: an Indian tribe comprised of Indians. But there is much confusion about what constitutes a citizen, even among the Cherokees. The matter of tribal citizenship is complicated by issues of sovereignty and ties of kinship defined by ‘blood politics’.

In addressing the second issue concerning citizenship, the Cherokee Nation has sought to restore its cultural identity as an Indian tribe, by reversing more than a hundred

¹²²May, *Collision and Collusion*, 255.

years of forced assimilation. To restore its cultural identity, the Nation has carefully considered what it means to be an Indian and a Cherokee. Ethnicity means different things to different people. To Native American tribes, birth, clan, village, and town largely prescribe one's place in the social and political order. The equating of ethnicity with nationhood was a construct used by the Cherokee to lay claim to land. The acquisition of their land by the U.S. government forced Indians to give greater weight to a "tribal" identity than a traditional identity. Those who could not show specific identity in a tribal group were denied land and status as Indians. Eventually "tribe" and "nation" conflated. Ethnicity has never been a monolithic, static source of identity grounded only in biology and culture. In many ways, it is a matter of political identity.

Now, only descendants of individuals listed as "Cherokees by Blood" on the Dawes Roll are eligible for citizenship. These goals have been clearly outlined by the previous elected leaders and voting by the Cherokee citizens. The controversy over ethnicity fuels the nation to better identify its membership on its own terms. According to Yarbrough, the freedmen issues over the last thirty years are only a continuation of the Cherokee Nation's struggle to reaffirm its sovereignty and to define clear boundaries to Cherokee identity. She stresses that the Cherokee's efforts to maintain their political sovereignty is crucial to their identity. The Cherokee Nation claims the democratic right to restore an Indian tribe to Indians is about sovereignty, not skin color.

In enacting the citizenship requirements, the Nation is simply exercising its right, as a sovereign entity to define eligibility for citizenship—without regard to skin but with regard to Indian ancestry. If a foreign sovereign nation was to make citizenship determinations we would not question them. The result should be no different because the

sovereign nation in this case is the Cherokee people. One blogger in support of removing freedmen from enrollment wrote in his blog, “Everyone wants to tell us what is ‘right’ without considering that Cherokee have the right to decide what is right for Cherokees.” He continued, “The vast majority of indigenous peoples define themselves by shared ancestry,” after all, “300 million other Americans also do not qualify for citizenship in our tribe.”

This thesis seeks to review the historical backdrop of the Cherokee freedmen debate by carefully examining the policies, laws, and treaties regarding freedmen that evolved over the last two-hundred and fifty years. The fight for tribal sovereignty and a balance between U.S. oversight and tribal self-government has a long history evident in various documents. Using the census rolls and Cherokee constitutions are significant to research on the current debate because both sides of the argument stem from these leading documents. Resolution of the debate will set precedence for other tribal courts dealing with cases of citizenship for freedmen. As the pending court cases at the Supreme Court on the place and citizenship rights of descendants of Cherokee freedmen demonstrate, the history of Indian, African, and European relations continues to shape our lives, both separately and together. In the end, there must be a common ground where the Cherokee can maintain their sovereignty and still acknowledge the influential contribution of African Americans to their history, society, and culture.

VI. Conclusion

This thesis sought to review the historical backdrop of the Cherokee freedmen debate, carefully examining the policies, laws, and treaties regarding freedmen that evolved over the last two-hundred and fifty years. The fight for tribal sovereignty and finding a balance between U.S. oversight and tribal self-government has a long history evident in various documents. It appears that while the Cherokee Nation today is over 300,000 strong, disenfranchising 2,800 freedmen points to reasons of genetics rather than culture. Increasingly since the Civil War, legislation reflects that to be Cherokee means to have Indian blood as recorded on the Dawes Roll. In the face of political and social pressures, maintaining Indian identity as a 'distinct and sovereign people' is a major goal of the Cherokee Nation.

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