

SLAVERY, RACE, AND NATION IN INDIAN TERRITORY, 1830-1866

BY

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DISSERTATION

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ABSTRACT:

This dissertation focuses upon the rapid changes that the southeastern American Indian groups sometimes referred to as “The Five Civilized Tribes” experienced in the nineteenth century, especially the middle third of that century; in other words, the time period between Indian Removal and the end of the U. S. Civil War. Cherokees, Choctaws, Creeks, Chickasaws and Seminoles moved in the nineteenth century from the kinship-based tribal political structures they had utilized for centuries to modern polities who employed the language of nation and citizenship. At the same time, each also adopted the plantation slavery system, and instituted unprecedented racialized social hierarchies. These three significant shifts —national identity, chattel slavery, and the adoption of a legally defined racial hierarchy—combined to make the Five Tribes’ experience a project of modernity, and part of a larger historical process that involved, not just the United States, but the world.

After the Revolutionary War, the Five Tribes faced a single American government rather than the multiple colonial powers they had previously encountered. This meant they could no longer situate themselves among rival European groups, thereby maintaining political traction; neither were they able to successfully oppose the United States militarily. In order to maintain their territory and their autonomy, leaders of the Five Tribes initiated a new approach. They arranged marriages between their daughters and white traders, creating political alliances in the process, and invited missionaries into their lands to educate their children. That long-range plan resulted in a cohort of individuals, many of them biracial, who considered themselves Indian and were often well-educated and adapted to the courtroom rather than the battlefield. This new

cohort of leaders was well-informed on national and world events, and embarked on an intentional endeavor to establish themselves as modern nation-states, their identities defined by national citizenship and refined by race.

The process intensified after Removal. Strict racial hierarchies, with blacks on the bottom, were strictly imposed. Traditionalist elements among the tribes were encouraged by their governments to adopt new racial attitudes. The relative success of each indigenous nation in their efforts to bring their citizens aboard with their modernizing plans was revealed in the Civil War, in which all five governments allied with the Confederacy but many private, usually traditionalist, citizens sided with the Union. Underneath those political events lay the story of political modernization at the intersection of Indian identity, racial politics, modernity, and nationalism, a story whose individual components have been thoroughly examined but which has not been drawn together on the same canvas in an academic study.

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CHAPTER 1

INTRODUCTION

“We have a government of our own choice, well adapted to our condition.” – John Ross, annual message to the Cherokee People, October 3, 1859.¹

“The people are here: say, whether you are arrayed in classes one against the other—the full-blood against the white and mixed blood citizens—say whether you are faithful to the constitution and laws of your country? Whether you abide by all the rights they guarantee, particularly including that of slavery? And whether you have any wish or purpose to abolish or interfere with it in the Cherokee Nation.” – John Ross, address to the Cherokees, August 21, 1861.²

In the first several decades of the nineteenth century, indigenous peoples in the southeastern United States underwent some very significant changes. The largest cluster of native groups in the Southeast came to be collectively known as The Five Civilized Tribes: Cherokees, Choctaws, Creeks, Seminoles and Chickasaws. Each moved from the kinship-based tribal political structures they had utilized for centuries to modern polities who employed the language of nation and citizenship. At the same time, each also adopted the plantation slavery system, and instituted unprecedented racialized social hierarchies. These three significant shifts—national identity, chattel slavery, and the adoption of a legally defined racial hierarchy—combined to make the Five Tribes’ experience a project of modernity, and part of a larger historical process that involved, not just the United States, but the world. Beneath the underlying political events of the early nineteenth century (treaty-making, warfare, and removal) lay the story of political modernization at the intersection of Indian identity, racial politics, and nationalism. All the factors mentioned above have been explored in connection to Indian

¹ Gary E. Moulton, *The Papers of John Ross* (Norman: University of Oklahoma Press, 1985), Vol.2, 421.

² Ibid., 481.

Territory by numerous scholars, but no one to date has examined them all together as part of a process.

The term “Five Civilized Tribes” first appeared in print in 1877, in the annual report of the Commissioner of Indian Affairs. Indian agent S. W. Marston informed Commissioner John Q. Smith about the status of “the five civilized tribes in Union agency.” Each of them, Marston wrote, “has a constitutional government, with legislative, judicial, and executive departments, and conducted on the same plan as our State governments, the entire expenses of which are paid out of their own funds.”³ Fifty years earlier, when debates about Indian Removal were at their height, white supporters of the Southeastern tribes often pointed to the evidence of their “civilization”: the adoption of Anglo-American agricultural and commercial approaches, and the introduction of written laws among the Cherokees and Choctaws in particular. Those facts did not sway the majority of the American public at the time, in large part because gaining the Indians’ land and attendant resources was too tempting a prospect, but also because the tribes were still in the process of attaining the polity that would justify the term “civilization” in a nineteenth century context. That polity was firmly established in all five nations in Indian Territory by the post-Civil War era, and outsiders would use the term “Five Civilized Tribes” to describe them from that point forward.⁴

The Five Tribes’ transition to modern political entities defined by written laws rather than traditional kinship relationships, and by a legally-established racialized hierarchy, was certainly no accident. It was a project which progressed through most of the nineteenth century, reaching its culmination after the Civil War. Outside observers at the time, and historians for a century

³ Annual Report of the Commissioner of Indian Affairs, for the year 1877. See also Frederick Webb Hodge, *Handbook of American Indians North of Mexico*, vol. 1 (Washington, D. C.: Government Printing Office, 1907), 463.

⁴ The term “civilized tribes” is problematic on many levels, not the least of which is its condescension toward indigenous and colonized peoples in general. In this work I will use “Five Civilized Tribes” only in a historical context, and for the most part, in the narrative, use the phrase The Five Tribes instead.

afterward, credited the transition to efforts by the U. S. government to “civilize” Indians, and those Indians’ efforts to conform to the U.S. model. That perspective is not only simplistic, it is deeply flawed and acknowledges no real agency on the part of the Five Tribes. The leadership of those tribes, with an initial view toward preserving their peoples in the face of U.S. expansion, embarked on a project to establish a revised identity sculpted by the tools of race and nation. They did not seek to abandon the concept of tribe, but rather to augment it by making their people citizens of modern states.

They were adapting, not adopting, the Anglo-European model, and making it uniquely their own, and they were not alone in doing so. Around the world, other peoples in far different circumstances were also manifesting new ways of approaching their identities. Revolutions were creating new states, and new nationalities, in places like Greece, Haiti, and various Central and South American countries. Even the United States was struggling to determine whether it was a collection of states or a national entity, as evidenced by the Nullification Crisis and South Carolina’s threat of secession during the Jackson administration; debates about race and slavery exacerbated the situation until the U.S., too, settled its identity question in a civil war which was in many ways an unsuccessful revolution.

The leaders of the Five Tribes were not unaware of these events. A significant number of influential political and economic Indian leaders in the South were literate and well informed on national and international discourse by the 1830s. Cherokees and Choctaws produced a considerable amount of literature, often in the form of petitions, appeals, and press releases, which argued for Indian autonomy and nationhood using rhetoric which resonated with an American audience and engaged the global discussion about nation. “In demanding the nation” via such literature, historian Andrew Denson has observed, Cherokees argued that “the Indian

nation was compatible with an expanding modern United States... Some, in fact, suggested that the nation was the *key* to modernity for native people... because it would give them the power to choose the terms of their participation.”⁵ When Choctaw attorney Sampson Folsom wrote to his uncle, Choctaw politician Peter Pitchlynn, in 1858 that he feared their people had lost their sense of nationality, and needed to be reminded of the importance of the nation—concepts both men had spoken of for years—he was well aware of the complex implications that “nation” and “nationality” had developed over the preceding decades.⁶

How could nation be a relatively new concept, one might ask, if there had long been a Cherokee or a Choctaw people? The answer is tied to the concept of statehood. A state is a political framework, or, as defined by the *Stanford Encyclopedia of Philosophy*, “a political entity with a high degree of sovereignty.” A people, one could argue on the other hand, is a group with a common history. A nation exists when the latter legally solidifies their shared identity via the use of the former.⁷ The above quoted Encyclopedia uses this interesting scenario to describe the difference between nation (in this case, synonymous with “people”)⁸ and state:

As an example, the Native American Iroquois constitute a nation but not a state, since they do not possess the requisite political authority over their internal or external affairs. If the members of the Iroquois nation were to strive to form a sovereign state in the effort to preserve their identity as a people, they would be exhibiting a state-focused nationalism.⁹

⁵ Andrew Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture, 1830-1900* (Lincoln: University of Nebraska Press, 2004), 6.

⁶ The Western Heritage Collection; Peter Pitchlynn Collection, Box 3, Folder 2, letter dated December 9, 1858.

⁷ Ernest Renan. “What is a Nation?” in Eley, Geoff and Suny, Ronald Grigor, ed. 1996. *Becoming National: a Reader*. New York and Oxford: Oxford University Press, 1996: p.41-42(41-55). Anthony D. Smith suggests that a good deal of modern conflict is due to an incompatibility in this formula, to wit: where states have been established (or imposed) when there is no “people” with a common heritage. Such a state can never truly be a nation, and is likely to be fraught with discord. Anthony Smith, opening statement, the second annual Nations and Nationalism Public Lecture, London School of Economics, 21 March 1996.

⁸ The term “nation” was being used to refer to Indian groups well before the modern concepts of nationalism and the nation-state were solidified, and was simply a synonym for “tribe”. Since “nation” in current terminology is usually taken to mean the modern nation-state, this can become confusing. When the term is used in this work outside of quoted sources, it shall have the more recent meaning.

⁹ “Nationalism.” *Stanford Encyclopedia of Philosophy*. <<http://plato.stanford.edu/entries/nationalism/>>. May 10, 2009.

The modern nation, then, is a sovereign political entity which legally defines the identity of its members, encouraging their support by appealing to their shared experience (real or imagined) and thus creating a sense of nationalism centered on that state.¹⁰

The Five Tribes of Oklahoma, unlike the Five Nations of the Iroquois League¹¹, did form sovereign states. The fact that they did so “in the effort to preserve their identity as a people” helps explain why race was such an important factor in the formation of their nation-states. In order to legally solidify their shared identity, they had to define that identity. It had previously been defined solely by kinship; now it would be defined by race.

The significance of race in the Five Tribes’ nation-building projects is not an anomaly; race and nation are often intertwined, like the double helix that makes up a strand of DNA. And like DNA, they can leave their imprimatur on everything that springs from them, coding behavior for generations to come. Scholar David Theo Goldberg argues that “race is integral to the emergence, development, and transformations ... of the modern nation-state,” and that it “marks and orders the modern nation-state, and so state projects, more or less from its point of conceptual and institutional emergence.” Race is the basis for the “shared experience” that validates the creation of a nation-state; someone must be excluded in order for members to be defined and to possess a unique national affiliation.¹² Race, then, can be defined as several groups of people in a social hierarchy whose members are perceived to have shared cultural and/or phenotypical characteristics, of which one group has perceived superiority over, and privileges at the expense of, the others.

¹⁰ See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, (London: Verso, 1983.)

¹¹ Or Six Nations, when one includes the Tuscarora, who joined the League in 1720.

¹² David Theo Goldberg, *The Racial State* (Malden, MA: Blackwell Publishers, 2002), 4-5.

Both race and nation were contrary to the Five Tribes' customary belief system, and the transition to modern nations did not happen overnight. Each of the Five Tribes had a traditionalist element that resisted their leadership's new views on race and national identity. Gradually, through the passing and enforcement of written laws, particularly regarding race and slavery, modernist Indian leaders won over a majority of their traditionalist citizens and succeeded in establishing modern states that they could call "government[s] of our own choice." The Five Tribes' modernizing endeavor was not just driven by political and economic concerns; it was a reaction to changing circumstances, and an effort to adapt in order to survive.

The political environment of Southern Indians (including, but not limited to, the Five Tribes) shifted significantly after the American Revolution. First the British, then the Spanish, withdrew from the area, leaving only the newly-formed United States. The deerskin trade was declining, there were fewer potential trading and political partners, and Indians were left to deal with a single military power, not the multiple colonial powers among whom they had learned to navigate. They had lost all the factors that had traditionally given them leverage. This necessitated a new approach.

A century of trade with Europeans, and the resultant political and military involvement, had already led to profound changes in indigenous leadership. Europeans' strict hierarchical political approaches had led them early on to prefer dealing with particular tribal "leaders" whom they viewed as authoritarian and representative of their people, even though this was rarely the case. Southeastern Indians tended to choose their leaders for their spiritual power (and ability to effectively navigate the precariously-balanced world outside their circle) and for the wealth they distributed to others. Those who negotiated with European leaders gained many material possessions as a result, and used these to cement their power back home by dispensing them to

followers as evidence of their hospitality. Successfully mediating between two worlds, they had grown accustomed to gaining prestige in both, a situation their predecessors in the seventeenth century would not have envisioned.

With that type of leverage gone after the Revolution, how were the elite classes within the Five Tribes to hold on to their power? Their solution was to invite American and European traders into their communities and marry their daughters to them, thus bringing the white men into the local kinship circle and affirming ties with them. The elites could only maintain their position by controlling trade. If non-elites had access to trade without needing chiefs as intermediaries, the basis of those chiefs' power –walking in two worlds and bringing goods back to distribute to the people –would be gone. By intermarriage, though, trade could be regulated. A husband's responsibilities in a matrilineal society are first and foremost to his wife and her relatives. "Only elite Choctaws had marriageable access to traders," historian Gregg O'Brien writes, "and only elite Choctaw women married these traders in the late eighteenth century."¹³

The offspring of those biracial marriages, the first of whom reached adulthood in the early years of the nineteenth century, were in a unique position. With mothers from a matrilineal culture and fathers from a patrilineal one, they inherited, figuratively and literally, from both worlds. They would be able to mediate between those worlds even more adroitly than their Indian grandfathers and great-grandfathers had. Many of these individuals would rise to prominence in the circle of tribal elites. Nineteenth century Euro-American observers ascribed the disproportionately high number of Southern Indian leaders with white fathers or grandfathers as proof of the superiority of their "white blood"; later historians credited those biracial leaders' successes as evidence of their fathers' influence and training. As Theda Perdue has pointed out, those opinions ignore the fact that marriages between white men and Indian women were usually

¹³ Gregg O'Brien, *Choctaws in a Revolutionary Age, 1750-1830* (Lincoln: University of Nebraska Press, 2002), 90.

not random, but rather carefully arranged alliances supported by tribal leaders and often involving the daughters and granddaughters of economic and political elites. The children resulting from such alliances would have been well situated within the tribe no matter who their fathers had been, and it is not surprising that a large number of them eventually obtained influential positions.¹⁴

As the new century progressed, in each member of the Five Tribes, two groups contended for prominence in society: a traditional element that clung to customary ways and another group that moved toward adopting Euro-American approaches to politics and economy. Historians have customarily framed this as a conflict between old-fashioned “full bloods” and progressive “mixed bloods.”¹⁵ On the one hand, it is difficult to imagine that biracial elites were not influenced somewhat by their white fathers’ ideas on market economy and political and social structure. Indeed, many biracial individuals were in the forefront of cultural change. On the other hand, sweeping generalizations do not fit perfectly. Many “full blood” leaders were *also* in the forefront of change, and there were “mixed-bloods” who resisted that change. Further, “full blood” leaders who advocated conservatism had significant numbers of biracial followers, and “mixed bloods” who worked for change had “full blood” followers.

The effect of whites on The Five Tribes and their state-building efforts—both as parents to biracial Indians and as broader cultural influences due to their proximity as neighbors, missionaries, and Indian agents—has long been debated by historians. The question has undergirded the historiography of the tribes, in one fashion or another, for over a century.

Late nineteenth and early twentieth century authors presented the Indian nations as romanticized “noble red men” fated to succumb to the more civilized whites. “Truly, what a sad

¹⁴ Theda Perdue, “Race and Culture: Writing the Ethnohistory of the Early South, *Ethnohistory* Vol. 51 No. 4 (Fall 2004), 703.

¹⁵ *Ibid.*, 701-702.

and melancholy record is their history, undervalued by the civilized world,” amateur historian Horatio Cushman wrote in an 1899 book about Choctaws, Chickasaws, and Natchez Indians.¹⁶ Early ethnohistorians James Mooney and John Swanton wrote detailed studies of the Cherokees and Choctaws, respectively, and for the most part focused on their subjects’ past and present rather than speculating on their future—although Swanton influenced researchers for years to come when he declared, erroneously, that the Choctaws were too acculturated to white ways to make useful subjects, while also stating that they practiced no religion whatsoever.¹⁷ The other significant historians of the era who wrote about the Five Tribes followed the same pattern: Grant Foreman, Annie Heloise Abel, and Angie Debo all argued that Southeastern Indians were imitating their white neighbors for both good and ill, adopting from them all the graces of civilization while also imitating the practice of chattel slavery. Despite their often noble efforts, the narrative went, their demise as a distinct people was assured. As late as 1971, in the foreword to a new printing of her 1934 book *The Rise and Fall of the Choctaw Republic*, Debo wrote that “the merging of tribal history into the composite life of the state of Oklahoma may be said to have ended the history of this gifted people.”¹⁸ Her 1941 history of the Creeks was titled *The Road to Disappearance*, in keeping with the predominant Vanishing American theme. Although such works often portrayed Indians as well intentioned, their nationalistic ambitions were presented as solely attempts to imitate the civilization of whites, which were doomed to failure. The limited success that the Five Tribes did have in attaining (though not independently

¹⁶ Horatio B. Cushman, *History of the Choctaw, Chickasaw, and Natchez Indians* (Norman: University of Oklahoma Press, 1999 [1899]), 3.

¹⁷ John R. Swanton, *Source Material for the Social and Ceremonial Life of the Choctaw Indians*, foreword by Kenneth H. Carleton (Tuscaloosa: University of Alabama Press, 2001 [1931]), vii. See also James Mooney, *Myths of the Cherokee and Sacred Formulas of the Cherokees* (Fairview, NC: Bright View Books, 1992 [1900]).

¹⁸ Angie Debo, *The Rise and Fall of the Choctaw Republic* (Norman: University of Oklahoma Press, 1972 [1934]), x. See also Angie Debo, *The Road to Disappearance* (Norman: University of Oklahoma Press, 1941); Annie Heloise Abel, *The American Indian as Slaveholder and Secessionist* (Norman: University of Oklahoma Press, 1992 [1915]); Grant Foreman, *The Five Civilized Tribes* (Norman: University of Oklahoma Press, 1934).

maintaining) civilization, according to nineteenth and early twentieth century historical narrative, could be attributed to the influence of “mixed blood” leaders. Almost invariably, economic and political “advances,” as well as slavery, are credited to the influence of the “mixed blood” elites.

Blacks, meanwhile, barely appear in those early histories. Even volumes purporting to be about Indians and slavery, such as Annie Heloise Abel’s works, discuss the institution at length without considering the individuals it most directly affected. One significant exception was the poet and historian Kenneth Wiggins Porter, who wrote several books and articles about African Americans in Indian Territory between 1932 and his death in 1981. William Loren Katz also wrote several works on similar topics, beginning in the 1960s. While focusing attention on a theme generally ignored at the time by both academia and the general public, Porter and Katz often romanticized their subjects, especially the relationship between Seminoles and blacks.¹⁹

Several historians brought a more objective approach to race in Indian Territory in the 1970s.²⁰ Daniel F. Littlefield, Jr., William McLoughlin, and R. Halliburton Jr. led the way, abandoning the triumphalist and racial determinist narratives of their predecessors, and Theda Perdue’s *Slavery and the Evolution of Cherokee Society* laid the groundwork for a generation of scholars to follow. The field has flourished since the late 1990s, with dozens of important works appearing in the new century. There is still no consensus, however, on how to interpret the significance of the generations of biracial Indians who appeared on the political scene of the Five Tribes in the early nineteenth century, nor how to gauge their impact on those tribes’ nationalistic efforts or their investment in the institution of slavery.

¹⁹ See Kenneth Wiggins Porter, *The Negro on the American Frontier* (New York: Arno Press, 1971); William Loren Katz, *The Black West: a documentary and pictorial history of the African American role in the westward expansion of the United States* (New York: Random House, 1971.)

²⁰ One notable exception was Arrell Gibson, *The Chickasaws* (Norman: University of Oklahoma Press, 1971). Gibson’s work reinforced notions of racial determination which had persisted through decades of historiography, and which many of his contemporaries were abandoning or at least attempting to minimize. In Gibson’s narrative, “full blood” leaders were “unwitting tools” of more capable “mixed bloods.” Gibson, *The Chickasaws*, 142-143; Perdue, *Mixed Blood Indians*, 99-101.

Most scholars agree that the antiquated terms “full bloods” and “mixed bloods” are problematic (to say nothing of the nineteenth century pejorative “half-breeds.”) Some historians, most notably Claudio Saunt, have chosen to employ the terms *mètis* or *mestizo* to identify biracial elites among the Five Tribes. Saunt has emphasized that his own use of the Spanish word *mestizo* (*mètis* is the French version of the same word, meaning a racially mixed person) is meant as a cultural connotation, not a genetic one. He argues that the generations of biracial Indians (specifically, the offspring of European and Indian parents), many of whom were from prominent families, that came of age in the early nineteenth century were “a profound and disruptive influence” on indigenous communities. Saunt has written that this disruptive influence was due, not to their geneology or any physical traits, but to their unique culture; their white fathers familiarized them with “the market economy, coercive power, and race slavery.” He also notes that there were many exceptions; biracial children who never knew their white fathers, and others who “rejected the influence” of their white fathers. Further, not all “disruptive” Indians had European ancestry. Despite those exceptions, Saunt asserted that “a strong correlation exists between the response of Creeks to the new order and their family background.”²¹

Theda Perdue has argued that any use of the “mixed blood” concept, even though one qualifies it as meaning culture rather than geneology or uses different words to present the idea, is dangerous for historians. Categories based on race, or mixtures thereof, intrinsically promote the idea of a “hierarchy that privileges whiteness,” leaving “the indelible impression that whiteness is more potent” than Native culture. She argues that saying biracial Indians’ prominence was due to their white fathers’ influence is implicitly stating that their Indian heritage was easily overwhelmed by whiteness in most cases. Perdue implied that such

²¹ Claudio Saunt, *A New Order of Things: Property, Power, and the Transformation of the Creek Indians, 1733-1816* (Cambridge: The Cambridge University Press, 1999), 2-3.

approaches were also historically incorrect, since ancestry “did not play a major role in the internal affairs” of the Five Tribes until after the removal period. Historians of the South, Perdue concludes, should “put ancestry in its proper perspective” and avoid “the simplistic category of race.”²²

Saunt and several other scholars responded to Perdue’s comments in a co-written *Ethnohistory* article (the authors were Saunt, Barbara Krauthamer, Tiya Miles, Celia E. Naylor, and Circe Sturm). They pointed out that ancestry (and therefore race) played a very large role in the Five Tribes’ internal affairs well before Removal; by the early nineteenth century, racial concepts were becoming firmly established in their communities. While it may not have mattered if a Cherokee or Creek individual had a black parent in previous centuries, it was a significant concern in the 1820s. The authors took issue with the implication that race was not an important factor in the pre-Removal history of the Five Tribes: “We suggest, by contrast, that race and racial hierarchy are essential to formations of power and resistance in the postcontact Americas.”²³

The argument presented by Saunt et al. regarding racial hierarchy and the treatment, and perceptions of, blacks in the Five Tribes was well made and accurate. Their article did not, however, address Perdue’s concerns regarding “how history has ‘whitewashed’ native societies by attributing cultural change to ‘mixed bloods,’ that is, to Indian people of European ancestry.” In her own reply, in the same journal, Perdue stated that “enemies of southern Indians used race to try to discredit their leadership. Subsequent scholars too have often adopted that language as a

²² Perdue, “Race and Culture”, 719-720. See also Theda Perdue, *“Mixed Blood” Indians: Racial Construction in the Early South* (Athens: University of Georgia Press, 2003), 97-103.

²³ Saunt, et al., “Rethinking Race and Culture in the Early South,” *Ethnohistory* Vol. 53 No. 2 (Spring, 2006): 399-405.

category of analysis and left the impression that the basis for the economic, intellectual, and political achievements of native leaders was their European ancestry.”

Both sides make compelling arguments and raise good points. As is often the case, the truth lies somewhere in the middle, in a third alternative. Perdue is correct to question the (hardly new) claim that cultural changes in the Five Tribes were the result of the influence of biracial Indians’ white fathers. That thesis not only casts doubt on Indians’ cultural integrity, it is not fully correct. Not all of those trying to institute change were “mixed bloods”, and not all resisting those efforts were “full bloods.” That fact renders attempts to categorize the opposing factions which arose, to some extent, among all Five Tribes on a racial basis untenable. Historian James Carson has advocated the terms “primordialists” and “cosmopolitans” as frames of reference instead of cultural or biological indicators. This work shall be content with the less imposing terminology of “traditionalists” and “modernists,” for those are the most accurate descriptors of their perspectives and goals.²⁴

Even the term “biracial,” used throughout this work, is problematic; does it mean Indians with one white parent, or with one black one? One could make the argument that, during the time period in question, having a white father meant that a Cherokee or Choctaw was still an Indian, and happened to be a biracial one, while having one black parent or grandparent made one black, at least according to the racial hierarchies which were developing (and, increasingly, according to the law.) Still, calling a Euro-Indian “biracial” and an Afro-Indian “black” is distasteful at best, and seems to reify racial hierarchies. I shall use it for lack of a better term at present to identify Euro-Indians (which is too awkward a term), but shall attempt not to ascribe political or economic Indian activities to “biracials” as a group.

²⁴James Carson, *Searching for the Bright Path: the Mississippi Choctaw from Prehistory to Removal* (Lincoln: University of Nebraska Press, 1999), 86-89.

That being said, Saunt and his co-authors were correct about the profound effects of racial ideology, and its applications (especially legal ones) within the Five Tribes, both in the Southeast and in Indian Territory. Any history of these tribes in the nineteenth century, individually or collectively, must address both race and nation. Scholars must recognize that the experience of the Five Tribes goes beyond the simplified categories of continuation (or persistence) and change (especially change imposed by outside forces.) It is, rather, a story of adaptation.

The leaders of the Five Tribes, most of whom were more literate and sophisticated than Americans at the time believed, embarked on an endeavor in the early decades of the nineteenth century to transform their people into citizens of a modern nation. The sense of nationalism they encouraged was further defined by a new racialized hierarchy—which they co-opted and adapted rather than copied. Indian political and economic leaders used the institution of slavery to augment their sense of national identity. Many of these modernist leaders were the children of white fathers, although not all were, but they were still Indian; so were the traditionalists who resisted them. The first group was promoting, not white privilege, but Indian modernity, and that is what the latter group opposed. This work examines the modernists' attempts to build their own racial hierarchies, and their own nation-states.

CHAPTER 2

FROM TRADITIONAL KINSHIP SLAVERY TO PLANTATION SLAVERY ON THE EVE OF INDIAN REMOVAL, AND THE POWER OF RACE

In 1858, a retired brigadier general named Thomas Woodward wrote a letter to a friend from his Louisiana home and mentioned his slave, Polly, who had been deceased at that time for twelve years. At the time of her death she had claimed to be 115; Woodward doubted she was that old, but believed she was close. There was little doubt she was at least a centenarian. In the letter Woodward described Polly Perryman, also known as Chechaw Micco Polly, as “the most remarkable negro I have known in my time.” Her remarkable qualities were both personal –Woodward described her in a distinctly backhanded fashion as having been “as intelligent as negroes get to be” –and historical. Polly Perryman saw a lot in her time.

She had been born in slavery, owned by an English family in the Bahamas. During or shortly after the Seven Years’ War, her owners took her to Mobile. She was “about grown” at the time, possibly in her mid-teens; according to Woodward the trip occurred “a short time after the French evacuated Fort Du Quesne, or Pittsburg,” which was in 1758. The “short time” described by Woodward may have been up to five years; the treaty ending the Seven Years’ War in 1763 ceded Mobile, and what was then West Florida, to Britain. In Mobile she was sold to a businessman named James Clark, who took her back to Pensacola with him. Clark, in turn, eventually sold her to an “Indian countryman” –most likely a white deerskin trader –named Theophilus Perryman.

Perryman sold her to another “Indian countryman,” a Scottish trader named Lachlan McGillivray who lived at Little Tallahassee. Like Perryman, McGillivray had a

Creek wife and mixed blood children. One of these children, Alexander McGillivray, eventually assumed ownership of Polly. He also became one of the most influential Creek leaders of the eighteenth century. After Alexander McGillivray's death in 1793 Polly passed into the hands of William Panton, and then into the ownership of Jim Perryman – the mixed blood son of the Theophilus Perryman who had owned her years before. The younger Perryman sold her to another Creek, named Chehaw Micco. She ultimately came into the possession of Woodward, a white Southerner originally from Georgia who had received recognition and support from Andrew Jackson, under whom he served in the War of 1812. Woodward also led troops in the Second Seminole War and the 1836-1837 Alabama Creek uprising (also called the Second Creek War). Woodward wrote that, after the Creeks were removed to Indian Territory at the end of the latter conflict, Polly and another elderly slave woman were “left with me.” It is not clear whether her former master, Chehaw Micco, simply abandoned her because her advanced age made the trip untenable, or whether he sold her to Woodward. The general had, after all, accumulated dozens of other slaves during his service in Alabama. Regardless, Woodward was her final master. He took her along when he moved to Arkansas in 1840, and she died there six years later.

Little is known about Polly Perryman's life, other than the long litany of her owners and Woodward's observation that she was remarkable and intelligent. She did have at least one son: a man Woodward described as “the celebrated Siro.” Siro was killed fighting whites in 1837, in a battle that ended the conflict. It is noteworthy that the son of a black female slave took up arms with the Creeks to resist Indian Removal, and

ironic that after his death and the failure of his cause his mother should become the property of one of the victorious generals.¹

Polly had, in her long life, seen the full gamut of slave existence. She was owned by Englishmen, Americans, Indians, and mixed bloods. She spent her childhood in the Caribbean, most likely on a sugar plantation. She lived her young womanhood on the Southern frontier, being passed back and forth by deerskin traders. She spent decades as a slave among the Creek Indians, and finished her life with a white master on a plantation in Arkansas. Polly had started life as a chattel slave on a Caribbean plantation. The slavery she had then experienced among the Indians as a young woman was vastly different from the plantation system she eventually came, once again, to know. There had been other changes among the Indians as well: cultural, agricultural, and more. All of it was tied to the gradual transition from traditional native forms of bondage to the chattel slavery that was becoming more and more common, even among Indians, in Polly's declining years. The long century of Polly's life in slavery, ending shortly after Removal, was a long century of change for slavery in the Five Tribes of the Southeast.

In order for chattel slavery to take hold, several profound changes had to take place among Southeastern Indians. They would have to move from a subsistence paradigm to a capitalist one; they would have to change their concepts of gender and leadership roles; they would have to develop concepts of race; and they would have to learn how to commodify human beings.

¹The story of Polly is taken from Thomas Woodward, *Woodward's Reminiscences of the Creek, or Muscogee Indians* (Mobile, AL: Southern University Press, 1965 [1859]), 93. It is discussed in some detail in Kathryn E. Holland Braund, "The Creek Indians, Blacks, and Slavery," *The Journal of Southern History*, vol. 57, No. 4 (Nov. 1991): 601-636.

Captives and Kinship Slavery

As a young woman, Polly was owned by “Indian countrymen” –white men who lived among Indians, adopting many of their cultural practices and marrying into the tribes’ kinship circle. Southeastern Indians’ lives had been defined for centuries by an almost universal matrilineal kinship system. That system was, according to Theda Perdue, “a feature of their social organization which baffled whites until modern anthropologists made sense of it.”² She was describing Cherokees, but the kinship systems of all the Five Tribes were very similar in operation. The kinship system was very important in all dealings with outsiders. “For Southern Indians,” Perdue also wrote, “human beings fell into two camps –relatives, who belonged within the community, and enemies, who did not... enemies had no rights, not even the right to live.” This resulted in the need for adoption ceremonies to be held for outsiders with whom the tribes wished to treat or trade.³

The Five Tribes’ subsistence economies were based on a gendered division of labor, another aspect of the matrilineal kinship system. Their world was divided into separate, complementary spheres. Men were responsible for hunting and warfare, women were responsible for agriculture and the home. In a broader sense, then, men were responsible for life outside the village, and women were responsible for life inside the village. This usually meant also (though not in all cases) that men took life while women sustained it. Because the male sphere included everything outside the village, it was men who engaged in diplomacy and politics, but neither sphere was considered inferior to the

²Theda Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: University of Tennessee Press, 1979), 9.

³Theda Perdue, *“Mixed Blood” Indians: Racial Construction on the Early South* (Athens: University of Georgia Press, 2003), 9.

other. Women not only did most of the field work, women *owned* the fields and homes. Digging in the earth and producing life from it was symbolic of female sexuality –the sun was male, the earth female, and the sun’s rays caused earth to sprout forth life. Because the practical effect of this arrangement was that males had the power to make decisions for the community, James Carson writes that Choctaw men had “authority” while women had “influence.”⁴

The Five Tribes, and other Southeastern tribes as well, practiced a form of bondage that Europeans interpreted as slavery. It was not, however, the same sort of institution that Europeans practiced –that is to say, chattel slavery, the kind Polly had experienced in her formative years in the Bahamas. The form that existed traditionally among Indians was kinship slavery, a type that also existed in some parts of Africa.⁵ As the name implies, this form of servitude was tied closely to the matrilineal kinship system.

Kinship slaves were virtually always captives taken in raids. As in most of North America, Southeastern tribes were often in conflict –a traditional activity, necessary to sustain cultural perceptions of manhood, rather than large-scale European-style warfare. There were usually not massive slaughters (although there were occasional exceptions.) Instead, there was an ebb and flow of skirmishes, perpetuated not only by the warrior-culture paradigm but also by the practically universal concern with balance in the universe. A tribal loss inflicted by outsiders must be paid for. Revenge, and raiding, was therefore not just an emotional impetus or a rite of manhood; it was a spiritual

⁴Carson, 17.

⁵See Claudio Saunt, *Black, White, and Indian: Race and the Unmasking of an American Family* (New York: Oxford University Press, 2005), 16.

responsibility. If balance were not kept, the universe would not work properly and there could be dire consequences for one's people.

In the nineteenth century, anthropologist James Mooney collected and wrote down many Cherokee myths, publishing them in 1900. One of these concerned bears. According to the legend, bears had once been people, but had abandoned their traditional lifestyle to live in the woods, having concluded that eating nuts and berries was far easier than the rigors of farming. Over time, they grew more and more bestial, until eventually they became ursine and humans began to hunt and kill them. The great White Bear Chief called a council of all the bears, in hopes of formulating a war plan to avenge their lost brothers and prevent the trend from continuing. The bears could reach no consensus, and took no action to avenge their fallen comrades; as a result, their world became unbalanced and humans were allowed to kill them without suffering any ill consequence. "Had the result of the council been otherwise," Mooney reported, "we should now be at war with the bears, but as it is, the hunter does not even ask the Bears' pardon when he kills one."⁶ Cherokees who heard this story quickly realized that, in order to maintain balance and avoid the fate of the Bears, it was incumbent upon them to always quickly avenge their dead.⁷ One early European observer commented about Southeastern Indians: "It is considered by them as a point of honour to avenge the injuries done to friends, particularly the death of a relation. Scalp for scalp, blood for blood, and death for death, can only satisfy the surviving friends of the injured party."⁸

⁶James Mooney, *Myths of the Cherokee and Sacred Formulas of the Cherokees* (19th and 17th Annual Reports), Bureau of American Ethnology, 1900; Reproduced, Bright Mountain Books (Fairview, N. C., 1992), 234, 248.

⁷Theda Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: University of Tennessee Press, 1979), 6.

⁸Alexander Hewatt, *An Historical Account of the Rise and Progress of the Colonies of South Carolina and Georgia, 1779*, 2 vols. (London, 1779); reprinted by Kessinger Publications (Whitefish, MT, 2004), I:32.

Since revenge was the motivating factor (as, indeed, revenge had been the other party's motivation in attacking to begin with), warriors were more concerned with killing enemies than with taking captives. Blood called for blood, and the stronger force would usually not withdraw until they had taken the number of lives called for by balance and revenge. This often meant slaughtering the wounded on the field. The victors would then take the scalp or some other trophy as proof of their having courageously faced and defeated the enemy. Hence not only was balance restored, but anger was assuaged and satisfied, usually removing the impetus for prolonged warfare.

Men decided which enemies would live or die on the battlefield, but once they returned to the village it was often the women who decided the captives' ultimate fate. Perhaps the captive would be adopted into the tribe to replace someone who had died or to provide a needed skill to the village. Sometimes, though, the women were not so inclusive or forgiving, and in those cases a captive would be put to death. This was more likely to occur to a male captive than to women or children. The preferred means of killing captives in Choctaw villages was to torture them, then tie them to a stake and burn them alive. An early eighteenth century French army officer noted that "when they are able to bring home prisoners, they have them burned at their villages, and it is a great joy to them when that happens."⁹ A Jesuit missionary from the same time period noted that French troops, having captured three blacks who had fought against them in the Natchez rebellion, turned them over to the French-allied Choctaws –knowing what would happen

⁹John R. Swanton, *Source Material for the Social and Ceremonial Life of the Choctaw Indians* (Washington: Government Printing Office, 1931), p. 163. From *Relations de la Louisiane*, the Ayers collection, Newberry Library.

next. “They have been burned alive with a degree of cruelty which has inspired all the Negroes with a new horror of the Savages.”¹⁰

Cherokee captives destined for torture were similarly delivered over to the women of the village, who stripped them and put wet clay on their heads to protect their scalps from the ordeal to come. The female captors would then beat their prisoner with sticks and tether them to a pole, leaving a few feet of slack to allow some movement of the captive. The women rushed forward, burning the victim with flaming torches, taking their time so that the torment would last as long as possible. The captive played his or her part in the ritual by trying to avoid any displays of pain, maintaining bravado in the face of the enemy while under the greatest duress, and bravely singing their death songs.¹¹

In the eyes of the torturers –and, if the victim was also a Southeastern Indian, from his or her perspective as well –the individual captives bore the ultimate responsibility for what happened to them. They *must* have somehow become spiritually

¹⁰Reuben Gold Thwaites, ed., *The Jesuit Relations and Allied Documents* (New York: Harcourt, Brace and Co., 1927), LXVIII, 197-199.

¹¹James Adair, *Adair's History of the American Indians*, edited by Samuel Cole Williams (Johnson City, TN, 1930), pp. 418-419, quoted in Perdue, 4-5. James Adair, a trader who lived among the Five Tribes for many years, particularly the Chickasaws, described Indian attitudes toward prisoners:

“When I have reasoned with some of the old headmen, against their barbarous custom of killing defenceless innocent persons, who neither could nor would oppose them in battle, but begged that they might only live to be their slaves, they told me that formerly they never waged war, but in revenge of blood; and that in such cases, they always devoted the guilty to be burnt alive when they were purifying themselves at home, to obtain victory over their enemies. But otherwise they treated the vanquished with the greatest clemency, and adopted them in the room of their relations, who had either died a natural death, or had before been sufficiently revenged, though killed by the enemy.” Adair, 154.

Another example of “great duress”: In 1752 a group of Chickasaws captured two Choctaws and burned them to death “after tortureing them in a most barbarous Manner, takeing of their Scalps and cutting out their Bowels before they were dead, and all those that had lately lost any of their Friends painted themselves with their Heart’s Blood.” Eighteenth century trader Nathaniel Folsom witnessed the torture and burning of Creek prisoners by their Choctaw captors. When another trader offered to buy one of the Creeks’ freedom, the torturers declined; Creeks burn Choctaws, they informed the man, so Choctaws burn Creeks. The torches were applied by bereaved Choctaw women. (quoted in O’Brien, 44.)

unclean or offended their supernatural guardians, or they would never have been captured to begin with.¹² Whether by adoption or by execution, the captors had restored balance.

There were other possible fates for captives. They might be returned for a ransom. The fourth possibility was that they would become slaves. As such, they continued to live in the village of their captors, but existed outside the kinship system. They could be killed at any time on a whim, since they technically had no right to exist anyway. Philadelphia naturalist William Bartram observed such enslaved captives among the Lower Creeks, and noted that the slaves “served and waited upon him [their master] with signs of the most abject fear.” He further noted that the enslaved Indians were “the tamest, the most abject creatures that we can possibly imagine: mild, peaceable, and tractable, they seem to have no will or power to act but as directed by their masters; whilst the free Indians, on the contrary, are bold, active, and clamorous. They differ as widely from each other as the bull from the ox.”¹³

Choctaws viewed anyone or anything that was outside the boundaries of their proper spiritual location, and therefore out of balance, as unnatural. Cherokees had a similar perspective, and viewed their enslaved captives as something outside the natural order and difficult to classify, as they “had the physical appearance of human beings but could not live as such because they lacked membership in a clan.”¹⁴

The Cherokee word for this class of people, *atsi nahsa’i*, carried the connotation of a nonhuman, owned thing, and could equally be applied to any nonhuman possession, including pins and awls. Claudio Saunt describes the life of a Creek kinship slave thusly: “They cooked, cleaned, collected firewood, farmed, provided sexual services, and were a

¹²Perdue, “*Mixed Blood*” *Indians*, 9.

¹³William Bartram, *Travels of William Bartram*, edited by Mark Van Doren (New York, 1955), p.164.

¹⁴Carson, 23-25; Perdue, *Slavery and the Evolution of Cherokee Society*, 16-17.

lot like any other family member.” Their status was neither hereditary nor necessarily permanent –there was always the prospect of eventual adoption. Bartram noted of the Creeks that “The slaves, both male and female, are permitted to marry amongst them: their children are free, and considered in every respect equal to themselves.”¹⁵

Since the Five Tribes and other Southern Indians had a subsistence economy, kinship slaves did not live in a plantation-style system centered on high production; they worked alongside their masters (although the masters had more choice in the matter), and in some cases were given tools and land to farm, with the understanding they would give a portion of their produce to their “owners.” Those owners cared little about material wealth; early observers remarked that Cherokees, for example, were happy with very little, wishing nothing more than “a bare support of life.” Anything they produced that was surplus was either redistributed in the form of personal gifts or community contributions, or was destroyed at the annual Green Corn Festival as a symbol of endings and renewals. The latter practice, according to early historian James Adair, “helped greatly to promote a spirit of hospitality among the Indians,” no doubt because it prevented any extreme attachment to personal belongings. In fact, early colonists often found themselves being criticized by their Indian neighbors for allowing their own relatives to suffer want while they prospered. There was no need to grow surplus crops, which contributed to attitudes toward work that industrious white settlers could not

¹⁵Perdue, *Slavery and the Evolution of Cherokee Society*, 4-6; Saunt, 16. Bartram, 164. Bartram continues, “but the parents continue in a state of slavery as long as they live.” The condition was not so permanent as Bartram assumed; Kathryn E. Holland Braund has argued that Upper Creek chieftain Emistesequo, referred to by a British official as being “unfortunately...of a slave race,” was the son (or grandson) of a woman who had been captured, enslaved, and then adopted by the Creeks. While this may have led to some embarrassment and sensitivity on the chieftain’s part about his pedigree, it certainly does not seem to have curtailed his standing in the community. Braund, “The Creek Indians, Blacks, and Slavery,” 601-604. Bartram also noted that slaves who married Indians “enjoyed equal privileges with them; but they are slaves till they marry, when they become Indians or free citizens.” Bartram, 38.

understand; Southeastern Indians, simply put, worked only as much as necessary, and therefore so did their servants.¹⁶ As historian Michelle Daniel put it, “Before the expansion of trade in the Carolinas, the Cherokees had little in terms of personal property, and, in material terms, the life of the wealthiest Cherokee was almost indistinguishable from the life of the poorest.”¹⁷

The acquisition of surplus goods or material wealth, during the timeframe in question, did not translate into power or prestige for tribal leaders. Honor was gained by personal actions, either spiritual or physical. To prove one’s courage in warfare, wisdom in decisions, proficiency as a hunter, or spiritual enlightenment: these were the avenues to esteem and, ultimately, to leadership. Even if one were to gain a leadership role, it still did not necessarily mean a gain of *power*, for leaders governed by persuasion rather than by coercion. Leadership was based on the honors and glories a warrior had collected, as well as his skill at oratory and reputation for wisdom.¹⁸ Eighteenth century historian Alexander Hewatt observed the following about Southeastern Indians and their traditions regarding councils and warfare:

In this commonwealth every man's voice is heard, and at their public deliberations the best speakers generally prevail. When they consult together about important affairs, such as war or peace, they are serious and grave... When war is the result of their councils, and the great leader takes the field, any one may refuse to follow him, or

¹⁶Adair, 50, 462-463. See also Alexander Hewatt, *An Historical Account of the Rise and Progress of the Colonies of South Carolina and Georgia, 1779*, 2 vols. (London, 1779); reprinted by Kessinger Publications (Whitefish, MT, 2004), I:33-35: “As for riches they have none; nor covet any; and while they have plenty of provisions, they allow none to suffer through want: if they are successful at hunting, all their unfortunate or distressed friends share with them the common blessings of life.”

¹⁷Michelle Daniel, “From Blood Feud to Jury System: The Metamorphosis of Cherokee Law from 1750 to 1840,” *American Indian Quarterly* (Spring 1987), p. 102

¹⁸James Adair observed the following: “As only merit in war-exploits, and flowing language and oratory, gives any of them the least preference above the rest, they can form no other idea of kings and subjects than that of tyrants domineering over base slaves: of course, their various dialects have no names for such.” Adair, 229.

may desert him, without incurring any punishment, but by such ignominious conduct he loses his reputation, and forfeits the hopes of distinction and preferment.¹⁹

It is clear, therefore, that captives taken in battle and used as slaves did not bring the same benefits to Southeastern Indians that are generally brought by slaves in a plantation system such as the Bahamian birthplace of Polly. These slaves were not part of a commercial enterprise designed to bring profits to their owners by the production of surplus goods. Nor were their owners able to accumulate political power by dint of the number of slaves they possessed. Agriculture and hunting, the Five Tribes' primary means of support, were part of a gendered labor system; although kinship slaves could help either men or women in their traditional labors, they could not *replace* them, for then the system would be out of balance and the resultant disharmony would be socially disruptive. Why, then, would such captives –when not immediately adopted –be allowed to continue living in the first place? Was the marginal help they could offer in daily tasks worth the trouble, and potential risk, of accepting people into the community who had no role in the kinship system that made the whole social mechanism turn?

Perdue argued that the *atsi nahsa'i* did indeed serve a valuable role in Cherokee society: that of deviant, an outsider who provides contrast in order to illustrate the norm. This was especially important for Cherokees, she wrote, for their group identity needed reinforcing due to “intense individualism and the absence of a centralized government,” both of which were also cultural factors in the other four future “Civilized Nations.” Most things in a Southeastern Indian's life revolved around kinship; having an “other” present who exists outside that kinship circle helps demonstrate the values of being part of the

¹⁹Hewatt, I:33-35.

group.²⁰ Further, since in most cases the tribal group practicing kinship slavery had only been existent in their current form for a few generations and was struggling to find ways to overcome component-members' differences, a deviant class provided needed self-definition.

For example, when Hernando de Soto's expedition passed through what would later be known as the Mississippi Valley in the 1540s, he met no Choctaws. In fact, there is no record of Europeans meeting Choctaws until 1660, when they "emerged apparently from nowhere... to be portrayed as an enormous force and serious threat to any European aspirations."²¹ De Soto's expedition met a few decentralized native groups, as well as a more populous network of villages—organized, multilevel hierarchies that appeared quite powerful to the Europeans. When more explorers entered the area twenty years later, they found chaos; disease had followed in de Soto's wake, causing a virtual holocaust among the Indians he had met. The death toll had been enormous. Whole cultures collapsed, with sometimes only a fraction of their members surviving. The leadership elite were gone; much of the peoples' previous cultural framework was abandoned or forgotten. Throughout the Southeast, survivors coalesced and formed new amalgamated social groups, negotiating new ways of carrying out the rituals of life—sometimes one constituent subgroup's rituals would be adopted by the other subgroups, and sometimes whole new ways of doing things were found. This scenario, argued by Patricia Galloway in the book *Choctaw Genesis: 1500-1700*, possibly describes the origins of, not only the Choctaws, but the Chickasaws, Cherokees, Creeks, and others (the Seminoles, who

²⁰Perdue, *Slavery and the Evolution of Cherokee Society*, 16-17.

²¹Patricia Galloway, *Choctaw Genesis: 1500-1700* (Lincoln: University of Nebraska Press, 1995), 264.

would eventually be the fifth of the “Civilized Tribes”, would break away from the Creeks in the late eighteenth century.)²²

By the seventeenth century the people we know as Choctaws had definitely come together. They shared with both their Mississippian antecedents and the aforementioned other Southeastern composite tribes several basic social elements: chiefly political structure, matrilineal kinship, and a gendered division of labor. They also possessed a cosmology revolving around the sacred circle (represented by a cross within a circle) and the necessity of maintaining spiritual balance and respect for sacred boundaries, the latter being shared by most Southeastern tribes.²³

When one considers the possibility that many Southeastern tribes that Europeans encountered in the late sixteenth and early seventeenth centuries may have been composites of earlier groups (some related, but some not), it is no surprise that they would find the need for an outsider group to more closely define their own cultures by contrast. Kinship slaves were ideal for this purpose.

²²Patricia Galloway, *Choctaw Genesis: 1500-1700* (Lincoln: University of Nebraska Press, 1995), 340-360. Galloway adroitly sums up her theory thusly:

“In the early historic period the Choctaw were a multiethnic confederacy still forming out of the wreckage of prehistoric chiefdoms. A relatively small core of villages (which would become the ‘Western’ Choctaw, closely related culturally to the Chickasaw) had lived in central Mississippi for thousands of years and had probably constituted in late prehistory a simple chiefdom with a single small ceremonial center. During the late sixteenth and into the seventeenth century Europeans agency altered the region demographically and technologically, causing a significant refugee population to join them: the ‘Eastern’ Choctaw from the middle Tombigbee region (closely related to the Alabama and probably once part of the elaborate Moundville multileveled chiefdom on the Black Warrior River). Western and Eastern Choctaws formed an alliance, or confederacy, retaining separate group leadership, on two neighboring watersheds in present-day east-central Mississippi. The Natchez-related Sixtowns from the southwestern Pearl River region, the Chickasawhays from the Mobile delta, and the Conchas from the Tombigbee-Alabama forks later joined the confederacy. Thus Choctaw identity, if that is the word for it at the early stages, was a composite from the beginning. It was also shaped by Spanish, French, and English pressures, influences, and definitions, which joined with those of neighboring similarly emergent native groups to create the semipermeable membrane that would define the boundaries of Choctaw identity.” Galloway, “‘So many Republics’: British Negotiations with the Choctaw Confederacy, 1765.” *Ethnohistory*, Vol. 41, No. 4 (Autumn, 1994), 514.

²³Carson, 11-12, 19-21.

How, though, were the Five Tribes able to make the transition from kinship slavery to commercialized plantation chattel slavery? The latter, as we have seen, could serve no useful purpose in the Five Tribes as they existed in the sixteenth and seventeenth centuries. Before plantation slavery could take hold, several changes would have to occur in Southeastern Indians' cultures. Indians would have to develop the practice of identifying items –and eventually people –as commodities to trade in order to acquire surplus goods. They would have to abandon, or at least temper, their concepts of gendered divisions of labor. Leadership paradigms would have to change; material goods, or access to them, would have to replace spirituality, battle honors, and wisdom as the source of prestige. All these things would come to pass over the course of the eighteenth and early nineteenth centuries, and that transition would at least partially be initiated by the Indian Slave Trade.

Indians and Blacks on the Colonial Frontier

Southeastern Indians' first experience with chattel slavery, ironically, was as its victims rather than its perpetrators. Colonial powers provided a ready market for war captives, who were then used to work plantations in North America and the Caribbean; Indians were simultaneously introduced to the market economy and taught to commodify human beings. The Indian slave market saw its genesis in the early alliances forged between Europeans and some indigenous tribes. Indians would sometimes offer captives to their new allies as a gesture of friendship, a practice they had previously followed with their hereditary tribal enemies when forging alliances. The living captive-slaves were handed over as a ransom for those the offering tribe may have previously killed, thus restoring balance and creating a new bond.

Over the years, with colonists and natives trading more and more captives, Europeans began to sell them to one another as laborers. Entrepreneurial traders were quick to participate in the practice. In New France (that extended southward from Canada to present-day West Tennessee, Louisiana, and Mississippi, home of the Choctaws and Chickasaws), the enslavement of Indians had previously been illegal, a fact which, by the early eighteenth century, made the owners of Indian slaves nervous about the security of their investments. In 1709, New France legalized the enslavement of Indians (long after the English colonies had done likewise, well after the practice had become *de facto* in New France, and twenty years after the enslavement of Africans had been officially legalized there.)²⁴

The colony's intendant, Jacques Raudot, wrote that Indians provided valuable workers for the colony. They were, in fact, "as necessary to the inhabitants of this country for farming and other tasks as are the Negroes to the Islands. And, as these kinds of engagements are very important to this colony, it is necessary to guarantee ownership to those who have bought or will buy them." It was therefore ordered that all those blacks and Indians who had been bought, or would be bought in the future, "shall belong in full proprietorship to those who have purchased them as their slaves." By 1725, according to Brett Rushforth, half of New France's homeowners also possessed an Indian slave.²⁵

During the same time period when Europeans were receiving kinship slaves from Indians, and transforming them into commodities forced to labor for perpetuity, they were trading with the tribes and introducing them to professionally manufactured goods.

²⁴Brett Rushforth, " 'A Little Flesh We Offer You': The Origins of Indian Slavery in New France," *The William and Mary Quarterly*, Vol. 60, Issue 4 (October 2003), 778. See also H. Clare Pentland, *Labour and Capitol in Canada, 1650-1860* (Toronto: James Lorimer & Company, Publishers, 1981), 2.

²⁵ Quoted in Rushforth, 777.

Indians were able to acquire the goods they prized –primarily weapons, jewelry, and cloth –by providing colonial traders with deer skins. It was not long before Europeans began to offer trades for the captives they needed for labor. Southeastern Indians had always had weapons, jewelry, and clothing material, but they had to go through the laborious process of crafting them (or trading with other natives who had.) The materials offered by colonial traders were often superior, and even when that was not the case, they were convenient and saved time. The manufactured items gradually supplanted traditionally crafted ones in the indigenous culture. The time the Indians saved, meanwhile, was consumed by obtaining the trade goods necessary to acquire the “time-saving” luxuries. Hence the introduction of commercialism, and eventually a greater distinction between communal and private property, led to significant changes in Indian lifestyles. This is not to say, in a dangerously simplistic manner, that interactions between the Five Tribes and colonial powers led directly and inexorably to what Richard White has described as “crude materialism,” and to an inescapable dependency on whites and their goods. The situation was far more complicated than that, and the Indians involved did not always respond uniformly to new circumstances. Many individuals displayed a prodigious aptitude for adaptability. Nonetheless, the market economy was definitely a large factor in changing indigenous attitudes toward property, and toward the concept of slavery. Southeastern Indians had also always hunted game, as they had always taken captives; but never before had they done so on the massive scale that was introduced after the arrival of Europeans.²⁶

²⁶See Richard White, *The Roots of Dependency: Subsistence, Environment, and Social Change among the Choctaws, Pawnees, and Navajos* (University of Nebraska Press, Lincoln: 1983), xv, and Stephen P. van Hoak, “Untangling the Roots of Dependency: Choctaw Economics, 1700-1860,” *American Indian Quarterly*, Vol. 23, No. 3 (Summer-Autumn 1999), 113-128.

Captives did not, as a general rule, volunteer themselves for servitude: they were products of battle. An increased market demand for human product led, naturally, to an increase in warfare among the tribes as newly-minted indigenous entrepreneurs sought more captives to trade. Whereas combat had previously been a traditional activity centered primarily on balancing universal scales by means of revenge, it now became a commercial activity. War captives had once been a by-product; they were now the object of the exercise. The Chickasaws in particular became well-known as providers of war captives for sale, with Choctaws frequently serving as their quarry beginning in the late seventeenth century. Chickasaws were being armed at the time by the English, who provided them with guns and urged them to produce more slaves for the market, whereas Choctaws were initially left to defend themselves with bows and arrows.²⁷ British official Thomas Nairne noted in 1708 that Chickasaw slave raids not only brought warriors honor, but “procures them a whole Estate at once, one slave brings a Gun, ammunition, horse, hatchet, and a suit of Cloathes, which would not be procured without much tedious toil at hunting.”²⁸

If the previous traditional paradigm of combat had served to maintain a universal social balance, this new incarnation of war did the opposite. Tribal life was considerably disrupted by the constant warfare.²⁹ Nairne noted that Creek slaving raiders were “obliged to goe down as farr on the point of Florida as the firm land will permit. They

²⁷ Carson, p.26.

²⁸Thomas Nairne, *Nairne's Muskhogean Journals: The 1708 Expedition to the Mississippi River*, edited with an introduction by Alexander Moore (Jackson, Miss., and London, 1988), 75.

²⁹“This trade infected the South: it set in motion a gruesome series of wars that engulfed the region. For close to five decades, virtually every group of people in the South lay threatened by destruction in these wars. Huge areas became depopulated, thousands of Indians died, and thousands more were forcibly relocated to new areas in the South or exported from the region.” Alan Galloway, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717* (New Haven: Yale University Press, 2003), 6.

have drove the [native] Floridians to the Islands of the Cape, have brought in and sold many Hundreds of them, and Dayly now Continue that Trade so that in some few years they'le Reduce these Barbarians to a farr less number.” Nairne proved prescient. Kathryn E. Holland Braund writes that “By the end of the eighteenth century the Creeks had finished what European diseases had begun: the depopulation of the aboriginal tribes of the Florida peninsula.” The Creeks then claimed the now-empty lands as their own.³⁰

It is telling that the same ill effects were felt by African tribal groups when the European slave trade was established there.³¹ Historians such as Walter Rodney and Paul Lovejoy have argued that Africans’ efforts to meet the European demand for slaves resulted in massive social disruptions; Africans wanted guns, and captured more slaves to get them, then had the guns to equip ever larger forces to capture even more slaves. Others, including John Thornton and David Eltis, have argued that there was already a commercial slave-trading market in Africa and that Europeans were tapping into the existing structure. They may have benefited greatly from the trade, but they did not coerce African slavers into it, directly or indirectly. Philip Curtin has asserted that wars connected to the eighteenth century Senegambian slave trade, despite the fact they resulted in human chattel to be exchanged on the market, were still primarily political rather than economic in their cause. The situations in North America and Africa were similar, but each was defined by local circumstances; in both cases, however, indigenous people took captives from other tribal groups or nations in order to participate in what was ultimately a European commercial enterprise. The Europeans, Africans, and American Indians who participated in the slave trade were all ultimately responsible for

³⁰ Braund, 606.

³¹ Celia Naylor, *African Cherokees in Indian Territory: From Chattel to Citizens* (Chapel Hill: University of North Carolina Press, 2008), 10.

their individual decisions and actions, but this does not change the fact that the European economic system initiated the process, a process that ultimately tainted or victimized everyone involved.³²

At first both Indians and Africans were enslaved in this system. In fact, more Indians were exported from Charles Town than Africans were imported between 1670 and 1715. Nor were all the indigenous slaves shipped away to distant colonies; many were kept in the South to labor on plantations or in homes. By 1708, there were almost half as many Indian slaves in the Carolinas as African ones.³³ A 1712 pamphlet produced in London, that encouraged its readers to emigrate to South Carolina, suggested buying “a good Negro man and a good Indian woman.” If it were within one’s means, in fact, the author suggested purchasing a mix of blacks and Indians to work the fields and an additional three Indian women to serve in the household.³⁴

By the early-to-mid-1700s, though, the English use of Indians as chattel slaves died out in favor of Africans. There were several reasons. Indians were more likely to run away, since they were closer to home, and their efforts to escape were more likely to be successful. Africans did not have large numbers of free, armed tribesmen living nearby who might be offended by their relatives’ treatment in servitude; many Indians did. Many

³² David Eltis, *Economic Growth and the Ending of the Transatlantic Slave Trade* (New York: Cambridge University Press, 1987); Jack Goody, *Technology, Tradition, and the State in Africa* (New York: Cambridge University Press, 1980); J. E. Inikori, *Forced Migration: the impact of the export slave trade on African societies* (Fayetteville, AR: G. F. Hutchinson Press, 1982); Paul E. Lovejoy, *Transformations in Slavery: A History of Slavery in Africa* (New York: Cambridge University Press, 1983); Walter Rodney, “African Slavery and Other Forms of Social Oppression on the Upper Guinea Coast in the Context of the Slave Trade,” *The Journal of African History*, Vol. 7, No. 3 (1966): 431-443; Walter Rodney, *How Europe Underdeveloped Africa* (Washington, D.C.: Howard University Press, 1982); John Thornton, *Africa and Africans in the Making of the Atlantic World, 1400-1680* (New York: Cambridge University Press, 1998 [1992]).

³³ Galloway, 7-8. See also Patrick Mingos, “Beyond the Underdog: Race, Religion and the Trail of Tears,” *American Indian Quarterly* Vol. 25, No. 3 (Summer, 2001), 455.

³⁴ John Norris, *Profitable Advice for Rich and Poor* (London, 1712), quoted in Jack P. Greene, *Selling a New World: The Colonial South Carolina Promotional Pamphlets* (Columbia: University of South Carolina Press, 1989), 128-132.

planters considered Africans to be better workers, as Indians seemed more likely to despair of their situation and die. The challenges of keeping Indians in bondage led King Louis IV of France to urge colonists to sell their Indian servants “to the American islands in order to obtain negroes in exchange.”³⁵

The trans-Atlantic slave trade had completely supplanted the Indian slave trade by the 1720s. In time, plantation work forces became exclusively African. Still, Indians had learned to think of other people as potential commodities for trade on the open market. Some began to hunt down and return runaway African slaves for money, sometimes even enticing them off the farms where they worked (the Cherokees became well-known for this). English authorities encouraged “slave-catching” among the Cherokees; the 1730 Treaty of Dover promised substantial remuneration in trade goods to Cherokees who apprehended “any Negro slave [that] runs away from his English master into the woods.” Choctaws and Chickasaws received the same encouragement from French officials, and from the English when they gained control of West Florida in 1765. The newly appointed English governor was clear: “We farther expect you will agree to bring in any Negroes who may desert their Masters Service, for which a proper reward will be allowed to the Person who Shall execute this Service.”³⁶ South Carolina governor James Glen used Indian assistance in 1744 “in order to apprehend some Negroes, who had sheltered themselves in the Woods, and being armed, had committed disorders.”³⁷ By 1763, Creek

³⁵ Louis IV to Sieur de Mury, Governor of Louisiana, June 30, 1707, in *Mississippi Provincial Archives: French Dominion*, vol. 3, (Jackson: Press of the Mississippi Department of Archives and History, 1927-1932; reprint, New York: AMS Press, 1973), 53.

³⁶ Eron Dunbar Rowland, comp., *Life, Letters, and Papers of William Dunbar*, 26-27, quoted in Daniel H. Usner, *Indians, Settlers, and Slaves in a Frontier Economy: The Lower Mississippi Valley Before 1783* (Chapel Hill: University of North Carolina Press, 1992), 139.

³⁷ *Council Journal* [MS.] XI: 383, South Carolina Historical Commission, Columbia, SC; quoted in Richard Price, *Maroon Societies: Rebel Slave Communities in the Americas*, 3rd ed. (Baltimore: The John Hopkins University Press, 1996), p.153.

were being offered three blankets and a gun for each captured runaway. Kathryn Braund has pointed out that “this was roughly the equivalent of forty pounds of dressed deerskin. An average Creek hunter probably produced about one hundred pounds of dressed deerskin per year for trade.” The reward was later raised to the equivalent of fifty pounds of deerskin, which made one captured slave worth six months’ wages from hunting animals.³⁸

At the same time, tribes who had become slave-hunters still sometimes suffered from slave raids on their own people. In 1705, Cherokees claimed that the South Carolina governor had commissioned slave hunters to “set upon, assault, kill, destroy, and make captive” members of their tribe, and that the governor’s agents then saw to it that the captives were “sold into slavery for his and their profit.”³⁹

Ironically, other tribes –especially the Seminoles –became known for accepting and adopting runaways, often refusing to return them to their former masters. Blacks often became a vital and trusted part of the Seminole community, serving as interpreters and in some cases as diplomats.⁴⁰ Creeks, also, often resisted returning black runaways to their former masters; at times this was due to a desire to keep the slaves and their labor for themselves, or because the individual runaways intermarried with Creeks, and sometimes it was no doubt just because they resented being ordered to do so. This occasionally led to a degree of cooperation between Indians and blacks that made white neighbors distinctly uncomfortable.

³⁸ Braund, 611.

³⁹ Quoted in Minges, “Beyond the Underdog”, 454.

⁴⁰ See Daniel F. Littlefield, Jr., *Africans and Seminoles: From Removal to Emancipation* (Westport, Connecticut: Greenwood Press, 1977), 4-9.

Colonial governments, living in fear of a union between the two groups, worked to drive wedges between them. In the process of doing so, and in creating a network of economic and social links hinged on slavery, the European-introduced trade brought a new concept into the mix: race. In the seventeenth century, Alan Galloway tells us, “Indians, Africans, and Europeans had many identities, but membership in a ‘race’ was not one of them.”⁴¹ Theda Perdue has pointed out that, at the time of first contact with Europeans, “the concept of race did not exist among Indians.” James Adair, a trader who spent decades living among the Five Tribes in the eighteenth century, noted that “their own traditions” pertaining to their land of origin spoke of “no variegation of colour in human beings; and they are entirely ignorant which was the first or primitive colour.”⁴² In essence, if a late-seventeenth-century Creek man had two sisters, and one married an escaped slave and the other an English trader, the Creek would not see a red man, a black man, and a white man. From his perspective, they would be three Creeks. By the early nineteenth century that perspective had changed, and the Five Tribes had a new attitude toward race.

Southeastern Indians were thus encountering Africans in two conflicting manners at the same time. Indians who were victims of the slave trade wound up working alongside black slaves, in the fields and in colonial homes, sharing the experience of bondage together. They often lived in the same quarters, and influenced one another culturally –sharing oral traditions, medical knowledge, foods, and more. The lines are blurred between Indian and African components of traditional Southern practices from folk medicine and magic to telling trickster tales. African and Indian slaves also

⁴¹ Alan Galloway, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717* (New Haven: Yale University Press, 2003), 9, 347-349.

⁴² Perdue, *Slavery and the Evolution of Cherokee Society*, 36; Adair, 2.

occasionally shared in freedom as well as bondage, as demonstrated in the 1748 Louisiana report of “a negro and an Indians [sic] in the woods marooning.”⁴³ Lines become blurred, as well, in family histories; working and living together in such close proximity, it should be no surprise that Indian and African slaves sometimes became lovers, even spouses, as well as co-laborers, and that this phenomenon resulted in new generations of servants who could lay claim to both red and black origins.

Simultaneously, those Indians who were invested in the slave trade rather than victimized by it (and, as in Africa, the two groups often overlapped considerably) were learning to regard people in general, and eventually blacks in particular, as potential sale items. They were also beginning to view blacks through a racial lens, as beings who were inherently different (and inferior) by virtue of phenotype rather than clan affiliation or lack thereof. The latter transition was fostered by European colonists based on their own apprehensions, but it was also a logical result of Indians’ long exposure to, and involvement in, the white racial hierarchy that colonists had constructed.

Colonial authorities worked actively to create suspicion, distrust, and fear between Indians and blacks. They employed Indians as slave-catchers and spread tales of Indian cruelty to runaways. The earlier account of French soldiers turning rebellious slaves over to Choctaws to be burned is just one of many examples.⁴⁴ The prospects of slave uprisings and Indian attacks were equally frightening to white Southerners in the seventeenth and eighteenth centuries; certainly the possibility of the two groups joining forces against their oppressors was a natural source of great concern. One British official

⁴³ “Records of the Superior Council of Louisiana, April-May, 1748,” *The Louisiana Historical Quarterly* vol.19 (July, 1936): 769.

⁴⁴ William Willis, “Divide and Rule: Red, White and Black in the Southeast” (*Journal of Negro History* vol. 44 no. 3, July 1963), 168.

noted that “nothing can be more alarming to the Carolinians then the idea of an attack from Indians and Negroes... any intercourse between Indians and Negroes in my opinion ought to be prevented as much as possible.” Another suggested that an effort should be made “to make Indians & Negro’s a cheque upon each other least by the Vastly Superior Numbers, we should be crushed by one or the other.” Historian Patrick Mingos has noted that “the policy of fostering hatred between the races became an enduring element in the relationships among the varied peoples of the South.” Black slaves were eventually used to put down Indian uprisings, and Indians were used to catch runaways and discourage slave insurrections.⁴⁵

Both transitions, commodification and racialization, are demonstrated in the conflict between the French and Natchez Indians in Louisiana in 1729-1730. The Natchez attacked several French settlements near New Orleans, killing over two hundred French citizens and capturing fifty French women and around three hundred black slaves. Unlike white males the Indians encountered, black males were not killed; they “did no harm to the negroes, having them feast on the cattle of the French, intending to go and sell them later to the English of Carolina.”⁴⁶ The French sent their Choctaw allies to retrieve the captives and punish the Natchez; it was during this period that the Choctaws burned alive three blacks who had aided the Natchez in their rebellion. The recovered black slaves, however, were not burned alive. Neither were they returned immediately to the French. Choctaw leaders would only return the slaves if they were compensated with trade goods “at the English prices.” Even then, they did not return all the captives; more than one

⁴⁵Mingos, 456; Robert Merriwether, *The Expansion of South Carolina* (Kingsport, TN: Southern Publishers, 1940), p.6; John Stuart, quoted in Willis, 161.

⁴⁶Diron d’Artaguet to Maurepas, March 20, 1730, in *Mississippi Provincial Archives: French Dominion*, vol. 1, (Jackson: Press of the Mississippi Department of Archives and History. 1927-1932; reprint, New York: AMS Press, 1973), 76.

Choctaw leader kept some blacks “for the purpose of serving his warriors,” and brought the slaves back to their villages to provide labor for menial tasks. Significantly, it was the leaders who decided the slaves’ fate, not the women of the village. This illustrates either a potential shift in gender roles, or a growing tendency to view black captives as objects rather than humans, or both.⁴⁷

Cultural Changes in the Five Tribes

Diplomatic and economic encounters with Europeans brought about more consequences for the Five Tribes than just new views about property, sentient or otherwise. Southeastern Indians experienced a shift in their views of leadership during the eighteenth century. European diplomats and traders had often singled out individual indigenous leaders to represent whole tribes, whether those leaders actually did so or not, due to the European tendency to think of hierarchies as the natural order of politics. Colonial authorities often gave these designated “chiefs” many gifts in order to cement relations, usually with little or no understanding of local political or cultural norms. The first Frenchmen to encounter the Choctaws, for example, gave their leaders gifts and represented themselves as coming from a great king who was to be like a father to the Indians. Of course, the patrilineal French thought this symbolic relationship would make the Choctaws feel compelled to comply with their authority, like obedient children. They were offended when the Indians did no such thing, but continued taking the gifts; the Frenchmen considered them extremely ungrateful. What the Europeans did not realize was that, to a matrilineal Indian, one’s father is not a stern disciplinarian, although one’s

⁴⁷ *MPD:FD*, vol. I, 178-180; vol. IV, 54, 60, 65-69.

uncle might be. A father, to them, was a permissive relative who just liked giving them presents.⁴⁸

It did not take Southeastern Indians and Europeans long to develop a mutual understanding about the significance of diplomatic exchanges. The native leaders whom colonial governments elected to deal with directly gained a considerable amount of status when they distributed their gifts among their fellows. Members of the Five Tribes had always had a concept of personal property, but as previously noted they had not by practice been particularly attached to such items, and gained more prestige by what they redistributed than by what they accumulated. By the late eighteenth century certain individuals had become elites, both materially and socially, by their ability to garner goods from the Europeans. Having things, and the ability to acquire things, supplanted traditional methods of gaining leadership such as spiritual advancement or oratory skill. One's possessions could now give one power.⁴⁹

Gender dynamics within the tribes were affected by this shift in leadership qualities. It was the leaders of the Choctaw raids on the Natchez who decided the fates of the black slaves brought back to their villages, not the women. During the eighteenth century, the balance in tribal activities began to tilt toward the male sphere of the "outside" – hunting, war, and diplomacy – rather than interior "female" concerns such as agriculture. By the early nineteenth century this tilting had been augmented by U.S. efforts, via Indian agents and missionaries, to "civilize" the Indians, that included urging them to adopt a more "acceptable" patriarchal approach to their home life. When the Southeastern tribes started adopting written laws, many of them served to limit the

⁴⁸Carson, 28-29.

⁴⁹ See O'Brien's *Choctaws in a Revolutionary Age* for an excellent in-depth discussion of this phenomenon.

traditional powers of women within the tribe. At the same time, women managed to hold on to many of their customary roles, and general attitudes toward matrilineal kinship structure persisted. As late as the 1790s, male black slaves were usually not asked to do “women’s work,” but rather “cleared fields, tended cattle, hunted, and erected houses and other buildings.” Benjamin Hawkins noted in 1796 that Robert Grierson, a Scotsman living in Creek territory and married to a Creek woman, hired Indian women to pick his cotton even though he had forty black slaves.⁵⁰

The old paradigms of reciprocity and subsistence economics gradually gave way to accumulation and commercialism. Choctaws, for example, began to herd livestock for sale, supplying white Southerners with horses, cattle and pigs. This created some tensions around gender roles, but ways were found to resolve them. Women were able to navigate this new form of agriculture, for example, by regarding livestock as walking crops. Men still hesitated to engage in farm work for fear their masculinity would be compromised; one woman, at the suggestion her son become a farmer, replied “Would you have me make a woman out of my son? He is to be a man and a warrior & he is not going to work like a woman!” It was the women, in fact, who first began to plant and market cotton. The adoption of African chattel slavery as a labor force on cotton plantations had a gender element as well as an economic one; Choctaw men had no intention of helping their wives in this arduous work (due to cultural concerns and not, as Euro-Americans usually assumed, laziness), but sending slaves to do the labor was an acceptable alternative.⁵¹

⁵⁰ Quoted in Braund, 622.

⁵¹ Carson, 85. Some “half breed” men did not seem to mind crossing the gender labor barriers, and there is some evidence that the community was not as strict in its expectations of them. Still, slaves allowed such

The traditional gender paradigm had therefore transformed enough by the early nineteenth century that approaches to labor had become conducive to chattel slavery.⁵² By 1830, according to one pleased Indian agent in Chickasaw territory, it had been nearly a decade since the tribe had “requir[ed] the woman to perform all the labor in the field.”⁵³ Kinship captive-slaves had contributed to gender-specific labor tasks in the traditional framework; in the new approach, chattel slaves would work the fields in much the same way they did throughout the rest of the South. Accumulating such slaves could now be a badge of status, and an indication of economic power, especially if one acquired enough slaves to produce a marketable crop surplus.

Leaders of each of the Five Tribes eventually realized that they would not be able to hold onto their autonomy by physically resisting the United States. Some came to this conclusion earlier than others. For the Cherokees, the realization took place in the final decade of the eighteenth century, after a period of protracted warfare with the U.S. George Washington and his Secretary of War Henry Knox had articulated a policy of “civilization” for “friendly” indigenous tribes in 1789, that included sending Christian missionaries among them, equipped not only with Bibles but with “all the implements of husbandry and the necessary stock for a farm.” This policy was evident in the wording of the Treaty of Holston, signed by the United States and Cherokee leaders on July 2, 1791: “That the Cherokee nation may be led to a greater degree of civilization, and become herdsmen and cultivators, instead of remaining in a state of hunters, the United States

white/Choctaw biracial men to avoid the possibility of social difficulty due to agricultural labor. Such difficulties would be problematic for elites courting the support of traditionalists. Carson, 68, 80.

⁵² For a discussion of gender roles in this transitional period, see Theda Perdue, *Cherokee Women: Gender and Culture Change, 1700-1835* (University of Nebraska Press, Lincoln: 1998.)

⁵³ John Allen to Secretary of War, John Eaton, February 7, 1830, Letters Received by the Office of Indian Affairs, National Archives, Washington, DC, microfilm publication M234, roll 136; cited in Krauthamer, 36.

will, from time to time, furnish gratuitously the said nation with implements of husbandry.”⁵⁴

Missionaries built churches and schools in the Five Tribes’ territories. Many individual Indians spent more time on growing farms and less time tracking animals in the woods, although the hunting custom remained strong. “Civilization” required native men’s emphasis to shift away from traditional male pursuits such as hunting, for they did not conform to Euro-Americans’ gender perceptions. In the European tradition hunting was a pastime. After all, in England only the very wealthy had legal access to hunting grounds, so hunters were either gentlemen of leisure or poachers; layabouts in either case, albeit from opposite ends of the social scale. “Decent” men worked the fields and transformed the landscape with their hands. Commoners’ rights to communal, or common, land had been curtailed by the practice of enclosure, a sign of the move from feudalism and toward private ownership of land with non-reciprocal rights. Agriculture in the modern European world meant fencing off lands, limiting waste, and maximizing production.

In this framework traditional Indian gender balance was anything but decent. From the “civilized” standpoint, Indian men were idlers, entertaining themselves in the woods while the women were forced to do the actual work (agriculture) and live a life of male-imposed drudgery. Traditional male work roles were therefore, in Euro-American eyes, both lazy and cruel, and needed to change. Thomas Jefferson remarked that farmers easily become Christians, whereas hunters are by nature “unfavorable to the regular exercise of some duties essential to the Christian character.” He believed that teaching

⁵⁴ “Trade and Intercourse Act, March 30, 1802,” in Francis Paul Prucha, *Documents of United States Indian Policy*, 2nd ed. (Lincoln: University of Nebraska Press, 1990), 19; U.S. Congress, Report to the Senate on the Cherokees, Six Nations, and Creeks, 2nd Cong., 1st sess., October 26, 1791, no.19.

Cherokees to be farmers would “attach them to property, lead them, by necessity, and without delay, to the establishment of laws and government, and thus make a great and important advance towards assimilating their condition to ours.”⁵⁵

Recognizing the need for new survival strategies, many members of the Five Tribes welcomed these changes, some more reluctantly than others. In 1796, Benjamin Hawkins became the principal agent to the Creeks. Hawkins noted that many Creeks, even though they owned black slaves, did not use them “effectively.” He received reports that one elderly chief, Efau Harjo, “had no corn and his negroes were under no government, that he had five able to work and the whole of them last year put only forty baskets of corn in his crib.” On the other hand, Hawkins observed that many Creeks in the town of Oketeyoconne were prospering in their agricultural efforts, in large part because of their efficient use of slave labor. “Several of the Indians have negroes taken during the revolution war,” he noted, “and where they live, there is more industry and better farms.”⁵⁶ Some Indians, meanwhile, did not welcome the new approaches at all: the Choctaw mother who feared her son would be turned into a woman if he did farm work represents this group well. For either group, acquiring black slaves to do the field work became an increasingly desirable alternative.

White traders had begun intermarrying with Indian women much more frequently in the late eighteenth century. By the 1820s their children and grandchildren were reaching adulthood, and many seemed to reflect the economic values of their white relatives. As Patrick Minges put it, “individuals who held positions of power and land began to grow wealthy and to buy black slaves to extend their fields and tend to their

⁵⁵ Thomas Jefferson, Report to the Senate on the Cherokees, Senate, 10th Cong., 1st session, March 10, 1808, no. 120 in *American State Papers*, I: 752.

⁵⁶ Quoted in Braund, 628-629.

livestock,” becoming a “landed elite.”⁵⁷ Less wealthy individuals also began to benefit from chattel slavery. John Allen, the same Indian agent who reported that Chickasaw women were no longer doing all the agricultural work in 1830, also reported that the Chickasaws had made enough money by then from their livestock and farms that they could afford the “luxuries of life, slaves, sugar, and coffee, as well as dry goods of various descriptions.”⁵⁸

As early as the late eighteenth century, observers such as Benjamin Hawkins noted that most slave-owners among the Five Tribes were either white traders or “mixed-blood” leaders, a perception that continued even after Indian Removal. One missionary observed as late as 1861 that “the mass of the people have no interest in slavery. The owners of slaves among these tribes are mostly whites or mixed bloods.”⁵⁹

A more specific, and more accurate, picture of slave ownership can be found in the 1830 federal Choctaw census. This census showed that –of 17,963 inhabitants of Choctaw land in Mississippi -512 were slaves. There were sixty-six slave owners, of whom only twelve were white. Among “mixed bloods”, Chief Greenwood LeFlore owned 32 slaves, Chief David Folsom owned ten, and Joseph and James Perry owned 51. Nor were the slaveholders all biracial –prominent “full blood” chief Mushulatubbee owned ten slaves. Nine women were slaveholders, with Delia Brashears possessing sixteen. Sally Tom, a free black woman who “presided over a small community of free blacks, whites, and African Choctaws” in the East, herself owned a slave. The elites

⁵⁷ Minges, 457.

⁵⁸ John Allen to Secretary of War, John Eaton, February 7, 1830, Letters Received by the Office of Indian Affairs, National Archives, Washington, DC, microfilm publication M234, roll 136; cited in Krauthamer, 36.

⁵⁹ Benjamin Hawkins, “A Sketch of the Creek Country,” *Collections of the Georgia Historical Society*, Vol.3 (part I, 1848); Charles K. Whipple, *Relation of the American Board of Commissioners for Foreign Missions to Slavery* (New York: Negro Universities Press, 1861, facsimile production), 89.

possessed most of the African-American slaves in the Choctaw tribe; the next social level below them, the “captains”, made up the biggest number of small slaveholders.⁶⁰ The situation was similar among the Cherokees: as Perdue writes, “only 17 percent of the people living in the Cherokee Nation in 1835 had any white ancestors, but 78 percent of the members of the families owning slaves had some proportion of white blood.”⁶¹

Slave ownership, then, was not confined to an elite class or to those with some European ancestry (after all, the converse perspective of Perdue’s statement is that 22 percent of Cherokee slave owners had no white ancestors). The use of chattel slavery, and the accompanying social changes in racial attitudes, could perhaps be attributed more accurately to those Indians, full-bloods or mixed-bloods, who supported a progressive agenda of utilizing new approaches to navigate the modern world of the 1830s. Other Indians, in all five of the “Civilized Tribes,” also adopted the use of black slaves, but –in keeping with their traditionalist tendencies and in resistance to the changes being embraced by many around them –treated those servants more like traditional captive slaves.

The elderly Creek chief Efau Haujo is a prime example: his five slaves worked under a patronage system, giving their master a portion of what they produced, rather than laboring exclusively for his profit, and his property was unproductive (his slaves were not being used to their maximum potential to produce profit.) The old man’s subsistence had to be supplemented by his son-in-law, an entrepreneurial mixed-blood whose own nine slaves were kept busy looking after their master’s interests. The son-in-law complained to Benjamin Hawkins that he had to support, not only the old man, but

⁶⁰Carson, 80; *1830 Choctaw Roll: “Armstrong” Roll*. There were thirty captains in David Folsom’s district: *The Religious Intelligencer*, Oct. 31, 1829, p. 358.

⁶¹ Perdue, *Slavery and the Evolution of Cherokee Society*, p.60

“all the idlers of his house,” clearly referring to the five slaves who coexisted with their master in a manner more akin to traditional kinship bondage than to actual chattel slavery.

While it may seem that the divide on just how race and slavery were supposed to be imagined can be split along racial lines, as in the very case noted above, such a simplification is misleading. The largest factor was the dynamic between modernists and traditionalists, and their opposing priorities in the face of a modern world. That opposition would be played out in different ways among the Five Tribes, but the end result for each was a government following the progressive plan originally laid out by Washington and Jefferson: not in meek acquiescence, but as a tool of survival and an adaptation tinged with elements of their own cultures. These modernist governments would have to deal with traditionalist tendencies among their own citizens, especially where race and slavery were concerned.

Before the Five Tribes could become modern nations, as their leaders envisioned, they would need the definition of racial hierarchy as characterized by the “peculiar institution” of plantation slavery. This meant that their Indian citizens would all have to abandon the habitual practices of regarding blacks as individual humans who could potentially be equals, relatives, or even marriage partners. It meant that slaves had to be regarded and treated as chattel rather than as lesser fellow-laborers (which is not to minimize the cruelty and deprivations of kinship slavery, that was still a form of slavery, after all, and often physically dangerous for its victims). The methods leaders of the Five Tribes used to bring recalcitrant members of their nations onboard their racialized framework will be discussed in greater detail later.

Commodifying Human Beings

Cherokee concepts of property, and of their leaders' relationship to it, were changing by the 1820s. Some Cherokees, like some members of neighboring tribes, developed acquisitive attitudes toward wealth, and particularly toward the commodification of blacks. Others held to more traditional views. This dichotomy is illustrated in the pages of Elias Boudinot's newspaper, the *Cherokee Phoenix and Indian Advocate*. Published from 1828 until 1834, the paper contained several notices of slaves for sale, as well as rewards for runaways.⁶² The following ad placed by Moses Downing of the Cherokee Nation on November 5, 1831 tells a story containing several elements of a people in flux:

\$20 Reward will be paid by the subscriber to any person who will secure a mulatto woman named **Eliza** who, on the second day of the month absconded with a whiteman by the name of **Michael Doudy**, a shoemaker by profession. Doudy is a slim man of about 25 or 30 years of age. Eliza is about 30 years old or upwards –she is a likely woman, large and fleshy, and weighs about 170 lbs –speaks the English and Cherokee well. She can easily be recognized by noticing her two front teeth, which are set uncommonly wide apart. It is supposed their intention is to make for Tennessee. They took with them a horse belonging to John Downing, and a quantity of clothing belonging to other persons.⁶³

Moses Downing wanted his property back, and so did the owners of the stolen horse and even the various articles of clothing. It is not clear whether the shoemaker Michael Doudy abducted Eliza for re-sale, which would have made him a simple thief, or if the “absconding” involved an interracial romance. The wording of the article seems to indicate that the slave woman, who was fluent in “the English and Cherokee,” ran away

⁶² A more detailed discussion of this dichotomy, demonstrated in the *Cherokee Phoenix*, can be found in Tiya Miles, *Ties That Bind: The Story of an Afro-Cherokee family in Slavery and Freedom* (Berkeley: University of California Press, 2005), on pp. 72-75.

⁶³ *Cherokee Phoenix*, Nov. 5 1831.

with the white man, rather than charging that Doudy absconded with her in the sense one absconds with a stolen item. In this single advertisement, then, we see evidence of several Cherokees exhibiting proprietary attitudes about “items” such as clothing, horses, and a black woman; that there were slaves who were equally at home in a traditional Cherokee setting or in the state of Tennessee; and that there were publicly known instances of what the following generation would term “miscegenation.”

In 1832 a similar ad appeared. This time the escaped slave was named Lucy, who was described as tall, slim, and “built and tolerable likely” despite two missing front teeth. Like Eliza, Lucy spoke both English and Cherokee, “having been raised in the Cherokee Nation.” Her owner, Thomas Hollingsworth, offered a twenty dollar reward if she were found within the Nation, and ten dollars if found in the neighboring Georgia counties.⁶⁴

If there was some question as to whether Michael Doudy and Eliza’s run to Tennessee was romantic in nature, or whether Doudy was simply stealing a slave, there is little question about the motives of another such “thief.” Thomas Ripley, an inhabitant of Athens, Tennessee, submitted an ad to the *Cherokee Phoenix* encouraging the capture of Jesse Anderson, who “stole from the subscriber... a negro fellow, named Jack.” Ripley offered a reward “to any person who will apprehend the said Jesse Anderson in any part of the United States and secure him so that I can get him.” There is nothing to indicate that Ripley, Anderson, or the slave Jack lived in or were from the Cherokee Nation. Nonetheless, Ripley viewed it advantageous to place such a reward in a Cherokee newspaper.⁶⁵

⁶⁴ *Cherokee Phoenix*, January 28, 1832.

⁶⁵ *Cherokee Phoenix*, October 7, 1831

In addition to rewards for runaways, the *Cherokee Phoenix* featured advertisements of slaves for sale. Tiya Miles has perceptively pointed out that the majority of these ads were placed, not by private Cherokee citizens, but by representatives of the Cherokee government.⁶⁶ One official in particular, Joseph Lynch –a marshal of the Cherokee Court –placed five such ads in a two year period. These slave sales were part of Lynch’s duty as an officer of the court, as it was up to him to collect debts. Two of the ads are especially worth close attention:

Marshal’s Sale. Will be sold to the highest bidder, on the 17th July next, at New Echota, one Negro man named Peter, levied on the property of Edward Hicks to satisfy a bond given by said E. Hicks to the National Treasurer.

Notice. Will be sold to the highest bidder on the first day of December next, at the late residence of James Pettit... Corn... Fodder... Gabriel. All levied on as the property of James Pettit, to satisfy a judgment obtained against said Pettit in favor of Elizabeth Pettit.⁶⁷

The latter notice is about a slave, Gabriel, being sold to satisfy a civil decision against his owner in favor of another litigant. The former notice, though, concerns the auction of Peter –in the Cherokee capitol –because his owner owed money to the Cherokee government. Taken together, the two ads verify Miles’ assertions “first that Cherokee citizens were treating slaves as property in contracts made with individuals and the Cherokee government and second that the Cherokee government was actively involved in marketing slave property to benefit its treasury and to resolve legal disputes.”⁶⁸

Slaves’ status as property is demonstrated by Gabriel being listed along with corn and fodder as items to be auctioned. Another such auction listed “Two negro boys,

⁶⁶ Miles, 74.

⁶⁷ *Cherokee Phoenix*, June 24, 1829, November 4, 1829.

⁶⁸ Miles, 74.

sixteen or seventeen years old, One secondhand carriage, Two horses, One silver Watch, and One Pistol.”⁶⁹ The leadership of the Cherokee Nation considered two black teenagers as property, with no distinction made between them and a secondhand carriage or a watch. Of course, the same attitudes prevailed in the Southern states (and most of the United States, in fact) and had done so for a long time. However, this was a relatively new concept among Cherokees.

It was not only new, it was far from universal. The fact that these ads, and the attitudes they represent, appeared in the *Cherokee Phoenix* is ironic when one considers the attitudes of that paper’s editor. Elias Boudinot often reprinted in his paper abolitionist articles from a variety of sources. These included a 1788 poem by William Cowper called “Pity for Poor Africans,” whose opening stanza proclaimed:

I own I am shock'd at the purchase of slaves,
And fear those who buy them and sell them are knaves;
What I hear of their hardships, their tortures, and groans
Is almost enough to draw pity from stones.⁷⁰

Another poem, “Letter from an Infant Slave to the Child of its Mistress, Both Born on the Same Day,” had originally been published in abolitionist William Lloyd Garrison’s journal *The Liberator*. The eponymous slave child of this poem asked his white counterpart “Why am I thought so little worth, You prized so highly from your birth? Tell, if you know.” Boudinot claimed in one of his own editorials that Georgia would “have to overcome one great obstacle before she becomes a great state –slavery.”⁷¹

One could make the argument that Boudinot’s attitudes about slavery were influenced by the Northern whites he had met at the mission school in Connecticut, a

⁶⁹ *Cherokee Phoenix*, September 24, 1831.

⁷⁰ *Cherokee Phoenix*, May 21, 1828.

⁷¹ *Cherokee Phoenix*, May 7 and May 14, 1831 (poem), July 1, 1829.

school that officially disapproved of the South's peculiar institution. After all, Boudinot had admired one such Northerner so much he adopted his name. The fact is, though, that it was not just the handful of Cherokees who had journeyed to the Northeast who opposed slavery. The Cherokee American Colonization Society was formed in North Carolina in 1828, and three years earlier Cherokee preacher David Brown said "There are some Africans among us... they are generally well treated and they much prefer living in the nation as a residence in the United States... The presumption is that the Cherokees will, at no distant date, cooperate with the humane efforts of those who are liberating and sending this prescribed race to the land of their fathers." Brown was no single voice in the wilderness; he spoke for many of his fellow Cherokees.⁷² Brown, Boudinot and others demonstrate that, despite the official stance of Cherokee leaders, some Cherokees had not bought into the merchandising of human beings. On the other hand, the continuing entrenchments of both slavery in particular and commodification in general in Cherokee society showed that change regarding race, if not universally endorsed, was still taking place.

Race and Power

Race is an old word, and has meant many things. Prior to the twentieth century it was common for writers to speak of the English race as opposed to the German race, perhaps contrasted again with the French race, despite the common European ancestries of those groups. For our purposes, let us consider "race" as defined in the introduction: groups of people in a social hierarchy whose members are perceived to have shared

⁷² David Brown, *American State Papers*, Vol. II, 651. See also Patrick N. Mingus, *Slavery in the Cherokee Nation: The Keetowah Society and the Defining of a People 1855-1867* (New York: Routledge, 2003), 45-47.

cultural and/or phenotypical characteristics, of which one group has perceived superiority over, and privileges at the expense of, the others.

This understanding of race did not exist among Europeans before Columbus made his famous voyage. When Europeans—and especially the English, whose cultural imprint would be strongest on the colonies that would eventually become the United States—encountered new types of people, it led to the creation of a New World that was quite independent of physical geography. Interaction with American Indians, islanders of various sorts, and even the Africans of whom they had all been long aware but had had few real dealings with, led colonial Europeans to define themselves in contrast to them. This was a gradual process, and was accelerated by the economically driven adoption of slavery (both of Indians and Africans) to harvest the resources of the “newly discovered” lands. In the early 1600s Europeans were occasionally calling themselves white; by the middle of the century it was relatively common; by the end of the century it was universal, unquestioned, and enshrined in law.

In the early years of the eighteenth century, the use of Indians as slaves declined – due to several factors, the most significant being the Yamasee War of 1715-1716, in which frictions from the Indian slave trade set South Carolina ablaze. This led to chattel slavery becoming the exclusive experience of Africans, who had already begun to outnumber whites in some parts of the South. It also led to the commodification of human beings by Southeastern Indians, to their investment in a racialized system, and eventually to their involvement in plantation slavery as masters rather than slaves. So far as the Europeans were concerned, the more African slaves they held the “whiter” they were obliged to become—that is, the more necessary it was to establish their mastery.

Whiteness, after a long period of coalescence, was cemented by the early eighteenth century.

What is “whiteness”? After all, white people are not literally white, just as black people are not literally black and Indians are not literally red. Relative paleness of skin is a factor, but is neither the sole nor even the pre-eminent one. Winthrop Jordan argued in *Black over White* (an argument also propounded by James Baldwin and W. E. B. Du Bois) that “whites” define themselves in contrast to people of color, primarily blacks.⁷³ Baldwin presented this as a tragedy of sorts, for it means that whites have no identity of their own; indeed, the very phrase “people of color,” as it applies to all nonwhite racial groups, implies that whites are the only ones lacking something.

Whiteness, then, for the purpose of our discussion, is this: the dominant end of a racialized, racist power structure. This dominant end, which in U.S. history has been “white,” creates, and sets in motion the necessary actions to maintain, the structure. The purpose of the structure is for the top to have something to rest upon; in other words, the whole thing is there so that the dominant group will be able to define itself as the dominant group.

Many scholars would not agree with this assessment. Some historians have tried to return agency to the oppressed by stressing their own roles in creating a racial identity for themselves. Hence we have Nancy Shoemaker writing about the ways that Indians came to think of themselves as “red,” and Michael Gomez and Sterling Stuckey stressing the African commonalities of slaves—the ways they formed their own unique culture,

⁷³ Winthrop Jordan, *White Over Black: American Attitudes Toward the Negro* (Chapel Hill: University of North Carolina Press, 1968), viii-ix. See also James Baldwin, *The Price of the Ticket* (New York: St. Martin’s Press, 1985); W. E. B. Du Bois, “The Souls of White Folk”, in *Black on White: Black writers on what it means to be white*, edited by David Roediger (New York: Random House, 1998).

drawing on African antecedents, rather than simply defining themselves against whites.⁷⁴

There is valor and truth in these arguments—however, they do not successfully remove whiteness as the prime motivator in racialization. If there had been no Europeans to contend with, would Indians have universally considered themselves red? Would they not, rather, have continued to be members of their own unique ethnicities rather than part of a racial whole? If there had been no European slavers, would disparate yet similar African groups have come together to forge a new African American identity?

The development and subsequent growth of chattel slavery was inarguably economic in its genesis. So, then, is race merely class in disguise? Even though the initiation of the paradigm was economic, there is more to it than that. Edmund Morgan, who tended in his work to look at class, still mused that it would have been very unlikely indeed for English masters to cut off the toes of an English servant who insisted on attempting escape. Shoemaker quotes Benjamin Franklin as wondering whether, if a man with red hair and freckles killed one's child, one would feel as justified in killing every red-haired freckled person you ever met, as some colonists did in hating all Indians regardless of tribe.⁷⁵

Winthrop Jordan hinted that the formation of race was actually a triangulation, with whites setting up blacks and Indians as different definition points for themselves. He goes into some detail about how this applies to blacks, but only implies what it means for Indians, and certainly does not regard the dynamics of all three at once. Jordan claimed

⁷⁴ Nancy Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth Century North America* (New York: Oxford University Press, 2006); Sterling Stuckey, *Slave Culture: Nationalist theory and the foundations of Black America* (New York: Oxford University Press, 1987); Michael A. Gomez, *Exchanging Our Country Marks: The transformation of African identities in the colonial and antebellum South* (Chapel Hill: University of North Carolina Press, 1998). For more on the developing of white and red identities, see Saunt, *A New Order of Things*, 113.

⁷⁵ Edmund S. Morgan, *American Slavery, American Freedom* (New York: W. W. Norton and Company, 2003 [1975]), 314; Shoemaker, 125-126.

that blacks symbolized (to whites) the darker side of human nature. This is in line with traditional European symbolism, white being pure and black being evil. All of white males' baser instincts were therefore transferred to blacks, perceived as promiscuous, insatiable beings. By mastering and controlling blacks, they were in fact mastering and controlling their own animal instincts. White interaction with black was always about control, or the lack thereof. If black men touched white women, then white men's control over both was threatened. George Rawick argued that this simultaneous fascination and repulsion of the "wildness" that Africans embodied for Europeans arose in large part because the development of capitalism led Europeans to valorize work over all other activities, which "required the repression of man's nonrational desires and his subordination to work and more work, accumulation and more accumulation." The oppression of Africans and other "uncivilized" groups was actually the suppression of Europeans' own natural desires, now considered wrong, irrational, and evil.⁷⁶

Jordan hints at the Indian's role in white self-definition as well. It was in many ways the opposite of the black's. Europeans recognized that Indians were not homogenous, but were rather members of individual nations, something that they were never willing to admit about Africans. Jordan ascribes this to the fact that Indians were seen from a distance, whereas Africans were in close proximity to the Europeans—it could be dangerous, or at least hazardous to the power relationship, to give them too much dignity.

⁷⁶ George Rawick, *From Sundown to Sunup: The Making of a Black Community* (Westport, CT: Greenwood Press, 1973).

Whites viewed Indians as wild and free, ungovernable and individualistic. They represented a good sort of wildness (and the same arguments made for their nobility were just as effective as arguments to justify taking their land.)

“Confronting the Indian in America was a testing experience, common to all the colonies. Conquering the Indian symbolized and personified the conquest of the American difficulties, the surmounting of the wilderness. To push back the Indian was to prove the worth of one’s own mission, to make straight in the desert a highway for civilization. With the Negro it was utterly different.”⁷⁷

David Goldberg, in his books *Racist Culture* and *The Racial State*, has argued that race, nationalism, and modernity are inextricably intertwined.⁷⁸ The modern state requires an Other for its own self-definition, and this Other must be excluded either by segregation or assimilation. Thus race is paramount in constructing a state, and the state perpetuates race in its enforcement of exclusion and rationalization of its actions. This theoretical model explains much about the parallel natures of race and nation, and why they often appear so closely linked.

The Five Tribes were in a transitional period in the early nineteenth century. A kinship-based tribal system could no longer sustain them in the modern world. They were each well along in the process of establishing modern nations when Removal occurred; forcible relocation sped the process along rather than hindering it. At the same time, the Tribes’ leaderships were establishing a racialized hierarchy, providing their citizens a domestic other to help expedite their transition to modernity. Of course, each tribe approached this project a little differently, and achieved differing degrees of success.

The racial realities of Seminole culture in particular are aptly demonstrated in an oft-repeated story told by one of their leaders, Neamathla, during negotiations with the

⁷⁷ Jordan, 91.

⁷⁸ Goldberg, 4-5.

governor of Florida, William Duval, in 1823. Neamathla delivered a speech that expressed Seminole affection for both their autonomy and their traditional lifestyle. His speech included a story about the creation of the three races, Indian, white, and black, and the distinctive abilities of each –pointing out that the Indians did not *want* to live like whites, for it was not their nature. Neamathla’s story –and variations on it –appeared in print often during the nineteenth century (especially in the years 1840-1865.) Washington Irving produced the most popular version, first appearing in 1840 and based on an interview with Duval.⁷⁹

I know you white men say we all come from the same father and mother, but you are mistaken. We have a tradition handed down from our forefathers, and we believe it, that the Great Spirit, when he undertook to make men, made the black man; it was his first attempt, and pretty well for a beginning; but he soon saw he had bungled; so he determined to try his hand again. He did so, and made the red man. He liked him much better than the black man, but still he was not exactly what he wanted. So he tried once more, and made the white man; and then he was satisfied. You see, therefore, that you were made last, and that is the reason I call you my youngest brother.

When the Great Spirit had made the three men, he called them together and showed them three boxes. The first was filled with books, and maps, and papers; the second with bows and arrows, knives and tomahawks; the third with spades, axes, hoes, and hammers. 'These, my sons,' said he, 'are the means by which you are to live: choose among them according to your fancy.'

The white man, being the favorite, had the first choice. He passed by the box of working-tools without notice; but when he came to the weapons for war and hunting, he stopped and looked hard at them. The red man trembled, for he had set his heart upon that box. The white man, however, after looking upon it for a moment, passed on, and chose the box of books and papers. The red man's turn came next; and you may be sure he seized with joy upon the bows and arrows and tomahawks. As to the black man, he had no choice left but to put up with the box of tools.

⁷⁹Alan Dundes, "Washington Irving's Version of the Seminole Origin of Races" (*Ethnohistory* vol. 9, No. 3, Summer 1962): 257.

From this it is clear that the Great Spirit intended the white man should learn to read and write; to understand all about the moon and stars; and to make everything, even rum and whisky. That the red man should be a first-rate hunter, and a mighty warrior, but he was not to learn anything from books, as the Great Spirit had not given him any: nor was he to make rum and whisky, lest he should kill himself with drinking. As to the black man, as he had nothing but working-tools, it was clear he was to work for the white and red man, which he has continued to do.

There are other versions of the story, but the basic elements remain the same.

Unlike pre-nineteenth century creation stories that describe the genesis of *humans*, this tale specifies three distinct races. Of the three, there is no room left for doubt about the fate of the black man; he is destined for servitude. The Seminole storyteller, as clearly as the lawmakers of the other four tribes, was in effect heading off the results that would be predicted a year later (1824) by Georgia's governor George M. Troupe, who claimed that no matter how "civilized" the Indians became the best they could hope for was to reach a midway point on the racial scale, between white and black. Since they had no hope of reaching "whiteness," they would inevitably slide down the scale and join blacks in an equally "colored" state.⁸⁰

Neamathla and other Five Tribes leaders did not accept that their nations were to be debased; instead they chose to pass this debasement down the line to those on the bottom of the American social ladder, blacks. This is more than a cultural statement, or revision of past understandings about the definitions of humanity. Neamathla is telling his story, not to satisfy any religious or social need, but in the context of a political negotiation that will affect the future of his nation.⁸¹ Neamathla's creation story, as well

⁸⁰ McLoughlin, "Red Indians, Black Slavery and White Racism: America's Slaveholding Indians." *American Quarterly*, Vol. 26, No. 4 (Oct., 1974): 377.

⁸¹ McLoughlin's 1974 article "Red Indians, Black Slavery and White Racism: America's Slaveholding Indians" appeared in *American Quarterly* (vol. 26, no. 4, Oct. 1974). His argument was that whites had intentionally attempted to divide blacks and Indians –fearful of the consequences if they united –in ways

as an increasingly racialized set of laws that were legislated in the Five Nations in the second third of the nineteenth century, demonstrates that Southeastern Indians were establishing a racial hierarchy of their own. They were not simply buying into the pre-existing white structure, they were adjusting it to fit their own needs, and placing their own “redness” in the primary position.

Using the theory set forth by Jordan, which proposes that in the colonial period settlers created and reinforced a white identity by using Africans and Indians as defining others, one can visualize the racial hierarchy thus created by triangulating black, white and red. The theoretical structure in question has three parts: a **defining point** which is immutable, permanently debased, and “black”; a **refining** point, which has some mobility—debased at times, but also idealized, which is “red.” Indians could be romanticized once their land, and in essence their identities, had been acquired. They were the savage-yet-noble enemy which provided contrast—a reminder to colonists that they were civilized, not barbaric—yet their implied intrinsic nobility (after the fact) honed white identity. By locating the defining and refining points, one can triangulate

that led to racism among Indians. He concluded by saying that “a large chapter has yet to be written about America as a multiracial nation –red, white and black –and how the white man, unable to accept his own myth of equality, forced inequality on the others.”⁸¹ McLoughlin referred briefly in the text to a mid-nineteenth century Shawnee story about racial genesis; in a footnote to that story, and at length in the article’s appendix, he discussed Neamathla’s story. In McLoughlin’s context, both the Shawnee and the Seminole stories indicated that Indians had re-ordered their cosmogony in order to accommodate the new realities of racial hierarchy which whites had brought to them. This was due to a profound need on the Indians’ part to understand why the Great Spirit had upset their universe, and implied a new spiritual outlook which incorporated that racial hierarchy.

McLoughlin expounded on this theme two years later, in the pages of *The Journal of American Folklore*, when he specifically compared the Neamathla story with several African stories of racial genesis, all of which attempted to explain the white-black racial binary. The African stories, he argued, served the same cultural purpose as those Indian tales which demonstrated God creating all the races at once, with specific destinies in mind for each, and seeking “their own explanations for these differences in the mysterious designs of their Great Spirit.” However, as McLoughlin points out, none of these stories –African or Native American –give a satisfactory explanation as to why the Creator allowed whites to “attain those technological skills which he used to dominate other people.” William McLoughlin “A Note on African Sources of American Indian Racial Myths” See Appendix. (*The Journal of American Folklore*, vol. 89, no. 353, July-Sept. 1976): 331-335.

and find the third, and dominant, **power point**, which is in essence the identity being constructed by definition to the others. Indians, being part of the mutable refining group, can move up if they adhere to the “civilized” rules of the privileged group. As Troupe (and a host of other whites before and during the removal period) pointed out, however, they can never quite reach the top. Blacks, on the other hand, as primary definers of whiteness, remain in a fixed social position.

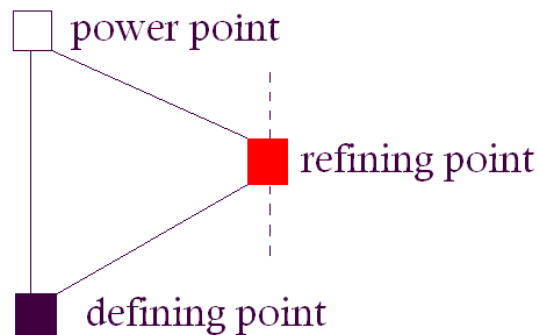


Fig. 2.1. The White Racial Power Structure

The Seminole racial creation stories demonstrate what the Five Tribes were trying to accomplish in the early nineteenth century. They were not only acknowledging a triangulated racialized power structure; as evidenced by growing black codes, and efforts to adopt some “white” practices while also maintaining their Indianness, they were actually co-opting that power structure and giving it a turn. They were putting red on top, making it the new power point. Black was still the defining point. White had become the refining point; it was desirable in some ways, as long as it did not threaten to subsume redness. In the white power structure, could an Indian become white? Choctaw leader Greenwood Leflore did, remaining in Mississippi as a U.S. citizen, even serving in public office. In the red power structure, could a white man become red? No matter how much “white blood” Peter Pitchlynn or John Ross might have, they still thought of themselves,

and were universally regarded, as Indians. But in either structure, could a black person be anything but black? No. In both racial hierarchies, one drop of “black blood” was considered debasing.

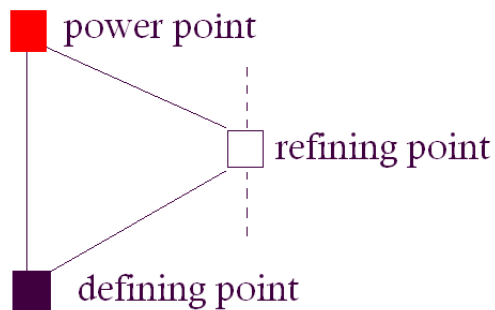


Fig. 2.2 The Red Racial Power Structure

This confluence of race and nation, and effort to come to a new group understanding of both, is not only reiterated, it is increasingly solidified into the political and social texture of the Five Tribes, decade by decade. It was not forced upon them by white Anglo-Americans, nor was it merely an effort to imitate them. The new racial power structure that the Five Tribes began constructing in the Southeast and perfected in Indian Territory was an integral part of the modern nation they were also in the process of building. This dual construction project may have been necessitated by changing circumstances in the early nineteenth century, but its inception was a conscious choice by Indian leaders, designed to maintain their sovereignty in the modern world. The Five Tribes were not trapped in the theoretical binary of “persistence or change”; persisting unchanged is impossible for any culture, and change is only a process. Like the refining point to which the white power structure attempts to confine Indians, these cultures were malleable. It is incorrect to say that their nineteenth century racial views were a

continuation of their traditional approaches, just as it is wrong to claim that those views were nothing more than a reflection of white society, and that the Five Tribes were being changed from without. The answer lies in neither claim, and to some extent it lies in both, for the Five Tribes were neither persisting nor changing—they were adapting, just as their ancestors had adapted to changing circumstances by cohering into new tribal groups. Their adaptations included elements of both their own traditions, the new trend of nationalism that had become prevalent in their world, and a racial hierarchy system which they did not copy but made their own, adapted to their needs and circumstances.

The success of their racial and national project would require the people of the Five Tribes to make fundamental changes in their views on race, nation, and identity in general. Their leaders would encourage the process by reframing their people as citizens and using laws to regulate their behavior.

CHAPTER 3

REFRAMING IDENTITY: THE SHIFT FROM CLAN MEMBERSHIP TO NATIONAL CITIZENSHIP

In 1829, Andrew Jackson's Secretary of War, John Eaton, publicly wondered "how the [Choctaw] Indians expect to remain where they are, surrounded by white people," and how the federal government could hope to protect them if they chose to do so. Choctaw leader David Folsom gave his answer in a letter to Indian agent William Ward on November 7 of that year: "How can there be any question or any doubt on the subject? It is our own country. It was the land of our forefathers ... here alone can we reside... here is our home, our dwelling places, our fields, and our schools, and all our friends; and under us are the dust and the bones of our forefathers. This land is dearer to us than any other. Why talk to us about removing? ...Our hearts cleave to... our beloved country."⁸² Later, when removal could no longer be avoided, Choctaw chief George Harkins echoed Folsom's sentiments about his native lands: "Here is the land of our progenitors, and here are their bones. They left them as a sacred deposit. We venerate the trust; it is dear to us, yet we cannot stay."⁸³

The Choctaws, like the other Five Tribes, had for countless generations defined themselves by two criteria: their kinship relations and the land they inhabited. As Harkins' words indicate, the two were conflated where Choctaw identity was concerned. The land not only supported them and identified them territorially, it contained the bones of their ancestors. Maintaining a presence on Choctaw land meant maintaining continuity with past relatives, and thus with the kinship circle itself. Separation from the land would

⁸²*The Missionary Herald, Containing the Proceedings of the American Board of Commissioners for Foreign Missions*. Mar 1830. Vol. 26, Iss. 3; p. 82-3.

⁸³*The Religious Intelligencer*. New Haven: Jan 7, 1832. Vol. 16, Iss. 32; p. 506.

equal separation from all that made one Choctaw (or Cherokee, or Chickasaw, as the case might be.)

Throughout the early nineteenth century, the Five Tribes had been moving toward a new means of measuring identity: legal citizenship. This transition, that their white neighbors described as “civilization,” was a means of navigating the increasingly modern world that surrounded them and an acknowledgment that traditional paradigms, unmodified, had become insufficient to preserve the tribes’ identities in the face of American encroachment. Government-enforced written laws, and eventually national constitutions, were replacing traditional frameworks that had been constructed around kinship. Removal did not merely accelerate this process, it added a new dimension: identity, already in the process of becoming defined by legal status, could no longer be tied to ancestral lands. What would a Choctaw Nation, or a Cherokee Nation, look like if divorced from its traditional location? What would it look like if tied to no soil at all, but rather to a political idea? Could it even be decisively tied once more to a geographic region, when (in Folsom’s words) “the red people are of the opinion, that, in a few years the Americans will also wish to possess the land west of the Mississippi”?⁸⁴

Kinship and Revenge

Before the nineteenth century, Cherokee, Creek, Choctaw, Chickasaw, and Seminole identity was defined solely by kinship relationships. The operative word was membership, not citizenship. Even so, inclusion could be mutable; kinship was ultimately symbolic rather than physical. An individual born outside the community could, through adoption (whether via marriage, capture, entry into trade relations, or some other means),

⁸⁴*The Missionary Herald, Containing the Proceedings of the American Board of Commissioners for Foreign Missions*. Mar 1830. Vol. 26, Iss. 3; p. 82-3.

gain membership and be accepted as wholly Cherokee, Choctaw, and so on. Conversely, individuals born into the kinship system could potentially find themselves outside it. This occurred if they did not conform to social mores. Since there were no written laws, those mores were defined, and enforced, by community will. The desire to remain within the protective embrace of kinship community, and avoid the negative consequences of losing that embrace, was usually sufficient incentive to behave in an acceptable manner.

The tribes' social mores, although not written down, could thus still be described as law in a sense. They were laws of the group as a whole (often viewed as divine in origin) rather than laws of a government, as they would have been had they been legislated, recorded, and disseminated by a representative authority structure. Members did not receive these traditional laws by osmosis; they were reminded of them often. For example, during the Cherokees' annual first-fruit celebration, a tribal figure known as the "beloved man" would recite the law to the community.⁸⁵ In 1828, early Tennessee historian John Haywood described this ritual:

The great beloved man or high priest addresses the warriors and women giving all the particular and positive injunctions, and negative precepts they retain of the ancient law. He uses very sharp language to the women. He then addresses the whole multitude. He enumerates the crimes they have committed, great and small, and bids them look at the holy fire, which has forgiven them. He presses on his audience by the great motives of temporal good, and the fear of temporal evil, the necessity of a careful observance of the ancient laws.⁸⁶

The greatest crime against these laws was killing another tribal member. No concessions were made for intent or circumstance. Thus, accidental killing, or killing in self-defense,

⁸⁵ "Beloved Man" is a more literal translation of the Cherokee *uku*, often translated "chief." Stan Hoig, *The Cherokees and Their Chiefs: In the Wake of Empire* (Fayetteville: University of Arkansas Press, 1999), 36, 37, 80.

⁸⁶ John Haywood, *The Natural and Aboriginal History of Tennessee* (Nashville: George Wilson, 1823) 243.

was socially equal in gravity to premeditated murder. A life had been taken, and balance had to be restored. A life must be paid in return. Relatives of the deceased were empowered to exact this price. It was the same principle that was displayed in martial raids on tribal enemies. Liability was the determining factor, not culpability, and guilt in the traditional Western sense was hardly a factor at all. For example, if a horse kicked a passer-by and killed them, the victim's family was entitled to seek revenge on the horse's rider (or its owner, if they were not one and the same.) The avengers had the option of killing one of the culprit's relatives in his place. This might be done if the original target was not readily available, but no reason need be given. The offender's clan owed a life to the victim's clan; while the avengers usually preferred the original offender's life, any member of his family would suffice.⁸⁷

The vagaries of blood revenge law are demonstrated by the experience of James Vann. Vann, son of a Scots trader and a Cherokee mother, was eventually a tribal leader, but during his youth in the late eighteenth century his career was almost cut short by revenge killing. Sour Mush, an older member of Vann's clan, the Blind Savannahs, had been severely beaten by a drunken member of the Paint clan. Several Blind Savannahs, led by Charles Hughes, found the attacker and beat him in return. Unlike Sour Mush, the Paint died of his injuries, making the Blind Savannahs liable for his life. Hughes was the most responsible, and thus the most endangered, but he quickly offered an alternative to the Paints. He recommended that they exact their vengeance on James Vann instead; everyone would be satisfied (except Vann, of course), and it would even be for the good

⁸⁷Daniel, 100; Rennard Strickland, *Fire and the Spirits: Cherokee Law from Clan to Court* (Norman: University of Oklahoma Press, 1975), 75-76.

of the community, as Vann was “an ungovernable and unpromising boy, who had done nothing for his people and who could be killed without regret.”

Hearing of his precarious position, Vann wisely stayed out of the public eye as much as possible thereafter. When he did go out, he did so in the presence and under the protection of his maternal uncle. On one such occasion the pair was accosted by a group of Paints. Knowing that his own death was probably imminent, Vann drew his pistol and shot his uncle in the head. He quickly pointed out to the Paints that, since his uncle was obviously also a Blind Savannah, balance was now restored and vengeance had been satisfied. The Paints agreed, accepting the uncle’s life as recompense and troubling Vann no further. There is no indication that the Blind Savannah clan troubled him for his actions, either, most likely because his uncle’s life had paid a legitimate revenge debt. We have no record about Vann’s subsequent ability to procure traveling companions.⁸⁸

A Choctaw who murdered his fellow was also subject to death, in order to restore balance, but the revenge often included specific rituals in its execution. The murderer could (and usually did) present him or herself to the victims’ relatives and the execution was carried out in a prescribed manner.⁸⁹ The murderer’s closest friends would accompany him, holding his arms. The victim’s avenger would then dispatch the killer with a single shot or blow, and his friends would gently lower him onto the deerskin that would serve as his shroud. If an important ball game was scheduled soon, the killer could request a stay of execution until it was over. In the meantime, he would be treated with great honor by members of the community. The killer’s death, then, took place with dignity and relative comfort compared to the execution of captives who were not part of

⁸⁸Daniels, 101.

⁸⁹*The Religious Miscellany*, July 18, 1823, p. 405.

the tribe. If a killer did not present himself for execution, the avenger could hunt him down and kill him at will. If he could not be found, a family member could be killed in his place.⁹⁰ That was rare, though, as the culprit usually played out his role in the ritualistic restoration of balance.⁹¹ One young Choctaw murderer, in the absence of any of his victim's kinsmen, rigged a rifle to shoot himself; he hesitated at the last moment, and only when his embarrassed brother tried to take his place did he pull the trigger.⁹² Choctaw laws eventually banned blood avenging and made the government responsible for administering justice.⁹³ In 1858 the death penalty, to be carried out by shooting, was prescribed for murder. Still, traditional elements of execution remained for decades after Removal, demonstrating how deeply held the concepts of balance remained among Choctaws. Convicted murderers were still expected to show up of their own volition when it was time for them to die.⁹⁴ In 1883 a white reporter asked a Choctaw bystander if the condemned man might perhaps break his parole; "If he is alive he will be here within ten minutes," the Choctaw said, "just as sure as the sun shines." He was.⁹⁵ The rituals

⁹⁰In the eighteenth century, an elderly Collapissa man offered himself as a sacrifice in place of his son, who had killed a Choctaw, because the son had a large family who relied on him for their sustenance. The Choctaws allowed the substitution. "I have lived like a man," the father said, "and as a man I will die. Therefore, I go to take my son's place." *Zion's Herald*, Jun 1, 1836, p. 86.

⁹¹Missionary Cyrus Byington, soon after arriving in Choctaw lands, met a man who was patiently awaiting the avenger to come and kill him. He seemed "suspended between time and eternity." *Christian Register*, Aug. 23, 1834, p. 1.

⁹²*Western Recorder*, March 15, 1825, p. 44.

⁹³Oliver Knight, "Fifty Years of Choctaw Law," *Chronicles of Oklahoma* 31 (Spring 1953), 82.

⁹⁴Choctaw freedman Jack Campbell, recalling legal practices of the late nineteenth century, verified that tradition still held sway in many respects:

I have witnessed some executions, in this nation, of Indians who committed serious crimes, serious enough to be shot. After the trial and conviction, they were turned loose to go home and take care of their personal business and were given the correct date for them to return to the Court House Yard for their execution and at no time did I ever remember one of the Choctaws failing to report at the proper time. The Choctaws told me that in those days there was no other tribe or place where he could live and if he committed a crime that serious that he might as well go take his punishment because if he tried to leave and go to some other tribe they would kill him there just the same. In other words, they would not accept him in the new tribe as a member and he did not care to live any longer. —*Indian-Pioneer Papers*, Jack Campbell.

⁹⁵*Frank Leslie's Popular Monthly*, p. 660.

involved lingered, as well. There were several post-Civil War accounts of the sheriff and his deputies playing the role of the condemned man's friends, holding his hands through the execution and then lowering him onto a blanket for burial.⁹⁶ As late as 1899 a Choctaw serving in the U. S. Army in Cuba, upon hearing that his sentence had been passed, immediately went home. Choctaw police were on hand during the execution to prevent the U.S. government from interfering. Two years prior another sensational case had occurred, when a promising young baseball player, who made "hundreds of dollars" a season and was courted by the best ball clubs in the country, willingly submitted himself for execution after killing a romantic rival.⁹⁷

Nancy Cox remembered legal proceedings in the Choctaw Nation:

When a man had been caught in a felony, he was called to the Indian court in the community and asked if he were guilty. If he said he was guilty, he was told to appear at a certain time for his sentence. When the day came, a grave was dug and when the man appeared, he was shot down and buried.⁹⁸

William Leslie Smedlie, a white man who lived in the Choctaw Nation, made a similar report:

They were tried before a Tribal Court held on "Buck Creek Prairie" in the summer of that year, and were convicted and sentenced to be shot sometime later. They were given their freedom until the date set for their execution without bond of any sort other than their honor... On the date set for the execution each one of the convicted men appeared, ready to atone with his life to the offended law. No mercy was asked; no mercy was given.⁹⁹

For untold generations, the revenge killing system was conducive to harmony within the Five Tribes. One early European traveler among the Cherokees observed that there was

⁹⁶Ibid., *The National Police Gazette*, Jan. 12, 1884, p. 7.

⁹⁷*Christian Advocate*, Sept. 28, 1899, p. 1544.

⁹⁸*Indian-Pioneer Papers*, Nancy Cox.

⁹⁹*Indian-Pioneer Papers*, William Leslie Smedley.

“rarely any quarreling among them,” due to their fear of “barbarous revenges.”¹⁰⁰ That fear was also tied into the establishment of peaceful relationships within the community where offenses less serious than murder were concerned. Milder forms of punishment were initially implemented against those individuals who did not conform to expected behavior; this often came in the form of shame and ridicule, as noticed by eighteenth century observer James Adair:

They commend the criminal before a large audience, for practicing the virtue, opposite to the crime, that he is known to be guilty of. If it is for theft, they praise his honest principles; and they commend a warrior for having behaved valiantly against the enemy, when he acted cowardly; they introduce the minutest circumstances of the affair, with severe sarcasms which wound deeply. I have known them to strike their delinquents with those sweetened darts, so good naturedly and skillfully, that they would sooner die by torture, than renew their shame by repeating the actions.¹⁰¹

Sometimes sarcasm was not enough to alter a malcontent’s behavior. If an individual repeatedly violated clan law, he ran the risk of being declared an outlaw and existing outside the kinship circle. This would remove all his rights within the tribe, including the protection of his clan. Anyone subsequently killing him would not be liable to his clan for the act. He would remain unavenged. This unavenged state would prevent his soul from entering the afterlife; more to the point, it meant there was nothing to prevent his murder at the hands of anyone bearing him a grudge should they cross his path. In effect, as historian Michelle Daniel put it, being declared an outlaw meant it was “open season” on him. His clan was protecting itself in making such a declaration; once a member was

¹⁰⁰Letter from William Fyffe to John Fyffe, February 1761; William Fyffe Letters, 1752-1773, Manuscript Division, Thomas Gilcrease Institute of American History and Art, Tulsa, Oklahoma.

¹⁰¹Adair, 461.

made an outlaw, the rest of the clan could no longer be held responsible for any of his misdeeds.¹⁰²

While revenge killing was a major component of Southeastern Native American culture since before European contact, during the nineteenth century –despite the vestiges remaining in Choctaw punishments, described above –it was replaced. The Five Tribes moved instead toward a set of written laws, made and enforced by government agencies. Violators, who could now rightly be called criminals, were being held personally responsible for their actions, rather than the liability being conferred on their whole clan. On the one hand, this meant that clan members no longer had to worry about being punished for something they individually did not do, nor did they have to expend effort to find and punish those who had wronged their clan. Rather, “the Nation would punish the perpetrator on behalf of all Cherokees.”¹⁰³ On the other hand, this shift in responsibility also represented a shift in power, and in identity. Cherokees were no longer primarily members of interconnected clans; they were citizens of a Nation, a Nation whose government was now responsible for actions that had once been clan business alone.

By 1829, *Cherokee Phoenix* editor Elias Boudinot was able to describe the blood revenge system, although accurately, in the past tense:

Murder was punished upon the principle of retaliation. It belonged to the clan of the murdered to avenge his death. If the murderer fled, his brother or nearest relative was liable to suffer in his stead ... To kill, under any circumstance whatever, was considered murder, and punished accordingly.¹⁰⁴

¹⁰² Daniel, 101-102.

¹⁰³ Daniel, 109.

¹⁰⁴ “Indian Clans”, *Cherokee Phoenix*, February 8, 1829.

Boudinot concludes: “Our readers will say, ‘those were savage laws indeed.’ They were and the Cherokees were then to be pitied, for the above were not mere inoperative laws, but were vigorously executed. But we can say now with pleasure, that they are all repealed, and are remembered only as *vestiges of ignorance and barbarism* (italics mine).”¹⁰⁵

Within a generation, traditional laws were repealed and had become “vestiges of ignorance and barbarism.” How and why did this change come about?

The Advent of Written Laws

Engaging in the deerskin trade in the eighteenth century, and, for many tribes, the slave trade before that, had already caused major cultural changes among the Five Tribes. There had been a shift from a subsistence economy to an acquisitive one, that naturally led to some acquiring more than others, and in a transition “from tribal achievement to individual achievement.” To quote Daniel, “when the Cherokees began to adopt the economic systems of the white man, it was easier to adopt his laws as well.”¹⁰⁶

There were other factors in this transition. The United States government had, since the Washington administration, been encouraging Indians to become “civilized”; this process involved, not just the adoption of agricultural techniques, but of a system of government and laws similar to those of the United States (and, by extension, a degree of literacy.) Thomas Jefferson expressed his desire for such a transition in an address to Cherokee leaders in 1809, telling them: “I sincerely wish you may succeed in your

¹⁰⁵ *Ibid.*

¹⁰⁶ Daniel 102.

laudable efforts to save the remains of your nation, by adopting industrious occupations and a government of regular laws.”¹⁰⁷

Many Indian leaders saw value in the approach Jefferson encouraged, believing that traditional methods were insufficient in the new reality of the nineteenth century. The best way to maintain their own autonomy, and keep their ancestral lands in the face of growing American sentiment for their removal, was to adjust their survival strategies for a legal, rather than a martial, playing field. This was partially in response to U.S. pressures, but was also a conscious decision and an expression of their own agency.

One of the first instances of a Southeastern tribe acquiescing to changes in application of its laws at the behest of the U.S. was the restriction placed on revenge killings in the Hopewell Treaties. These treaties were signed at the plantation of Andrew Pickens, in South Carolina, with Indian agent Benjamin Hawkins present at the signing of each. Cherokee representatives signed on November 28, 1785, with the Choctaws and Cherokees signing on separate occasions the next January. The U.S. placed the following stipulation in the treaties, in article 8 of the Cherokee document and article 7 of those signed by the other two tribes:

It is understood that the punishment of the innocent under the idea of retaliation, is unjust, and shall not be practiced on either side, except where there is a manifest violation of this treaty; and then it shall be preceded first by a demand of justice, and if refused, then by a declaration of hostilities.¹⁰⁸

¹⁰⁷ Speech of Thomas Jefferson to the Cherokee Deputies, January 9, 1809, cited in Daniel, 106. This speech was given just a few years after Jefferson had promised the state of Georgia, in the Compact of 1802, that the U.S. would purchase all Indian land holdings within Georgia’s borders “as early as the same can be peaceably obtained upon reasonable terms.” Jefferson’s paradoxical, inconsistent statements are a good demonstration of the mixed messages the U.S. government sent to the Cherokees and other Southern tribes in the decades leading up to Removal.

¹⁰⁸ Treaty of Hopewell with the Cherokees, November 28, 1785. United States-Cherokee Nation, art. VIII; Treaty of Hopewell with the Choctaws, January 3, 1786. United States-Choctaw Nation, art. VII; Treaty of Hopewell with the Chickasaws, January 10, 1786. United States-Chickasaw Nation, art. VII. Reprinted in

On the surface, this may seem like a fairly innocuous demand: “Stop killing innocent people.” In reality, however, it called for a massive restructuring of Indian legal philosophy. After all, how does one define “innocent”? In the past, it had always been the clan that was held responsible for disruptions in tribal harmony; it might be the actual culprit who suffered, but it might not. That distinction was beside the point. Now, though, just as economic activity had shifted from a community to an individual focus, so had the law. Intent would have to be considered, as well; should the execution of someone defending his or her life, owning an animal that accidentally killed someone, or wielding a faulty axe that flew off the handle, be considered “punishment of the innocent”?

There is some evidence that adoption of European economic models, coupled with a weakening of traditional spiritual beliefs and practices, had already begun to make inroads into the revenge system by the late eighteenth century. This is evidenced by the fact that sometimes the life of the culprit might be saved when the victim’s family agreed to accept some monetary or other physical ransom to assuage their grief, or on rare occasions to forgive the debt completely. It is hard to determine for certain whether such instances occurred before European contact, but when one considers the spiritual aspect of the entire retaliation concept –to restore cosmic balance, or, as in the case of the Cherokees, to pave the way for the deceased victim into the afterlife –it seems unlikely that bereaved families would be

willing to throw revenge to the winds in return for temporal gain. In the late eighteenth century, European observers commented on just such a phenomenon.

In the 1770s Indian agent Benjamin Hawkins asked elderly Creek chief Efau Harjo his opinion of punishing accidental killers (this is the same Harjo whom Hawkins described as having no control over his slaves.) Harjo replied: “The custom of ours is a bad one, blood for blood; but I do not believe it came from E-say-ge-tuh E-mis-see [the Creator] but proceeded from ourselves. Of a case of this sort, I will give you my opinion, by my conduct.” The old man then gave the example of two boys who had been playing with slings, and one accidentally killed his playmate. Preparations were being made to execute the young manslayer and bury both playmates in the same grave; Harjo interceded, meeting with the uncles of the boys. He then “raised their spirits with a little rum, and told them, the boy was a fine boy, and would be useful to us in our town, when he became a man; that he had no ill will against the dead one; the act was purely accidental; that it had been the will of E-sau-ge-tuh E-mis-se to end his days and I thought the living one should remain, as taking away his life would not give it to the other.” The uncles, after some deliberation, agreed and the boy went free.¹⁰⁹ This seems to be part of a general trend of the time, as Hawkins was present at a Cherokee council in 1797 that established a significant change in Cherokee laws dealing with murder:

The Cherokee are giving proofs of their approximation to the customs of well regulated societies; they did, in full council, in my presence, pronounce, after solemn deliberation, as law, that any person who should kill another accidentally should not suffer for it,

¹⁰⁹Benjamin Hawkins, “A Sketch of the Creek Country, in the Years 1778 and 1779,” 3 *Collections Georgia Historical Society* 19, 81 (1848.)

but be acquitted; that to constitute a crime, there should be malice and an intention to kill.¹¹⁰

James Adair described another eighteenth-century alternative to revenge killing. He commented that the Cherokees “will avenge blood for blood, unless in some very particular case when the eldest [member of the victim’s family] can redeem.” He does not specify what form that redemption would take, other than calling it the “price of blood,” but the implication is some form of material exchange. That sort of redemption was evidently both rare and, judging from Adair’s next words, not always satisfying to the aggrieved family:

However, if he should accept of the price of blood to wipe away its stains, and dry up the tears of the rest of the kindred of the deceased, it is generally productive of future ills; either when they are drinking spirituous liquors, or dancing their enthusiastic war dances, a tomohawk [sic] is likely to be sunk into the head of some of his [the killer’s] relations.”¹¹¹

In earlier generations, no amount of compensation or compassion for the perpetrator would have alleviated the need for *another life* to be offered in return for the deceased, whether it was a life snuffed out or another person, usually a captive, offered to replace the dead individual. To accept anything less would be to risk catastrophe, for one’s family and perhaps the whole clan, either by losing the protection of the spirit world due to willingly refusing to correct a cosmic imbalance or inviting the angry attention of the unavenged victim’s ghost. By the time the U.S. government was demanding a stop to the practice, the priorities of some Southeastern Indians had evidently already begun to change.

¹¹⁰Benjamin Hawkins, *Letters of Benjamin Hawkins*, Collections of the Georgia Historical Society, Vol. IX (Savannah: 1916), 136.

¹¹¹Adair, 158.

Those attitudes did not change completely, however. Everyone did not submit to the leadership's vision and abandon their traditions. This is evidenced, in part, by the fact that the rituals surrounding execution, and many individuals' attitudes about their own responsibility to maintain balance for their community even if it meant submitting to their own death, continued for another century among many Choctaws. Vestiges remained in Cherokee culture, as well. Ironically, Elias Boudinot –whose editorial had described blood revenge as a mere memory – became a victim, along with his relatives Major and John Ridge, of that very system after they signed the Treaty of New Echota in 1835, thus (in the eyes of their tribal opponents, at least) violating the Cherokee law against ceding land to the federal government for personal profit. In effect, they were declared outlaws with no clan protection, and anyone who wished was free to exact the fatal penalty. The years between Removal and the end of the Civil War in the Cherokees' new Indian Territory home were violent ones, more closely resembling the old days of blood revenge than the less “savage” modern times Boudinot had envisioned.

Law Enforcement and Private Property

If responsibility for punishing criminals had shifted from the clan to the nation, what agency and what procedure would be used to perform the task? The earliest answer to that question came in the same 1797 Cherokee council meeting described above, and was also recorded by Hawkins:

They at the same time gave up, of their own motion, the names of the great rogues in the nation, as well as those in their neighborhood, and appointed some warriors expressly to assist the chiefs in preventing horse stealing, and in carrying their stipulations with us into effect.¹¹²

¹¹² *Letters of Benjamin Hawkins*, 136.

Some warriors were “appointed... expressly” to help carry out the decisions of the 1797 council. It should be noted that the council’s decision was not officially written down, although Benjamin Hawkins made a private record of them. A decade later, on September 11, 1808, the Cherokee Nation did in fact produce its first written laws, in many ways “a formalization and expansion of the decision made in 1797.”¹¹³ This document provided for a law enforcement system more official, and more clearly defined, than “some warriors.” A body of light-horsemen was called for, to be paid from the national annuity, its purpose to “suppress horse stealing and robbery of other property.” Thieves, upon conviction of “one or two witnesses,” were to receive a hundred lashes upon the bare back, with “the punishment to be in proportion for stealing property of less value.” Should the accused resist the light-horsemen by arms, with the latter being forced to kill them, no revenge could be sought upon the national agents by “the clan the person so killed belonged to.”¹¹⁴

¹¹³ Daniel, 108.

¹¹⁴ *Laws of the Cherokee Nation* (1852), 3-4. The complete text is as follows:

“Resolved by the Chiefs and Warriors in a National Council assembled, That it shall be, and is hereby authorized, for the regulating parties to be organized to consist of six men in each company; one Captain, one Lieutenant and four privates, to continue in service for the term of one year, whose duties it shall be to suppress horse stealing and robbery of other property within their respective bounds, who shall be paid out of the National annuity, at the rates of fifty dollars to each Captain, forty to the Lieutenant, and thirty dollars to each of the privates; and to give their protection to children as heirs to their fathers’ property; and to the widow’s share who he may have had children by or cohabited with, at the time of his decease, and in case a father shall leave or will any property to a child at the time of his decease, which he may have had by another woman, then, his present wife shall be entitled to receive any such property as may be left by him or them, when substantiated by two or one disinterested witnesses.

Be it resolved by the Council aforesaid, When any person or persons which may or shall be charged with stealing a horse, and upon conviction by one or two witnesses, he, she, or they shall be punished with one hundred stripes on the bare back, and the punishment to be in proportion for stealing property of less value; and should the accused person or persons raise up with arms in his or their hands, as guns, axes, spears and knives, in opposition to the regulating company, or should they kill him, or them, the blood of him or them shall not be required of any of the persons belonging to the regulators from the clan the person so killed belong to.

This was followed in 1810 by a second law, which officially abolished revenge killing. The document made several clarifications about the definition of murder. For example, the council clarified that “if, in future, any life shall be lost without malice intended, the innocent aggressor shall not be accounted guilty.” Also, perhaps for the first time, it was specified that killing one’s brother (or, by extension, any close relative) was in fact murder and could be punished as such. There is some question as to whether traditional blood feud law applied when one killed a member of his own clan, a situation that James Vann may have used to his advantage when he killed his uncle.¹¹⁵ Finally, the law specified that if a man kills someone while they are in the act of stealing his horse, the spilled blood will “remain on his own conscience,” but he is not liable for punishment.¹¹⁶

Accepted. –BLACK FOX, Principal Chief
 PATH KILLER, Sec’d
 TOOCHALAR

CHAS. HICKS, Sec’y to Council\
 Brooms Town, 11th Sept. 1808”

¹¹⁵Daniel, *supra* note 137, at 123.

¹¹⁶*Laws of the Cherokee Nation* (1852), 4. The complete document reads as follows:

Be it known, That this day, the various clans or tribes which compose the Cherokee Nation, have unanimously passed an act of oblivion for all lives for which they may have been indebted, one to the other, and have mutually agreed that after this evening the aforesaid act shall become binding upon every clan or tribe; and the aforesaid clans or tribes, have also agreed that if, in future, any life should be lost without malice intended, the innocent aggressor shall not be accounted guilty.

Be it known, also, That it should happen that a brother, forgetting his natural affection, should raise his hand in anger and kill his brother, he shall be accounted guilty of murder and suffer accordingly, and if a man has a horse stolen, and overtakes the thief, and should his anger be so great as to cause him to kill him, let his blood remain on his own conscience, but no satisfaction, shall be demanded for his life from his relatives or the clan he may belong to.

By order of the seven clans.

TURTLE AT HOME, Speaker of Council
 Approved. –BLACK FOX, Principal Chief,
 PATH KILLER, Sec’d
 TOOCHALAR.

CHAS. HICKS, Sec’y to the Council.
 Oostanallah, April 10, 1810.”

Major Ridge was appointed the head of the light-horsemen.¹¹⁷ Still in his thirties, Ridge had developed a formidable reputation in warfare against the U.S. and as a member of the council. Just before the first written law, in 1807, he had shown himself a capable candidate for leadership in the future light-horse corps when he led a group of Cherokees, at the council's behest, to execute a chief named Doublehead who had been bribed to sell land to the United States, making him guilty of treason and liable to the death penalty. (James Vann was supposed to be a member of this execution/assassination party, but was too drunk to attend.)¹¹⁸

Under Ridge's direction, the light-horsemen made an immediate impact. On one occasion Ridge encountered two "notorious lawbreakers" in the act of preparing an ambush for a white peace officer trailing them for horse theft, and immediately shot one dead, after which the peace officer disarmed the other.¹¹⁹ On another occasion a murderer had fled, and the victim's families decided to obey tradition rather than the new law by killing the accused man's brother in his place. Upon receiving word of the plan from the brother's friends, Ridge informed the bereaved family that he would personally kill anyone who carried out such a plot. The plan was promptly abandoned.¹²⁰

Murderers were still executed. The difference now was that, unless the criminals offered armed resistance and were killed, they were tried first (Ridge's

¹¹⁷George Lowery, a future assistant chief, was one of the most prominent captains and was later considered the corp's leader. The light-horsemen themselves were described by one English traveler as "armed and wild looking horsemen," and their leader a "tall and reckless looking man, with red leggings, and a shabby green blanket coat." Thwaites, ed., 13 *Early Western Travels, 1798-1846*, 191.

¹¹⁸Daniel asserts that it was fear of reprisal from Doublehead's clan which led Ridge to push for the second law and its prohibition of revenge against regulators. Daniel, 108.

¹¹⁹Thurman Wilkins, *Cherokee Tragedy: The Story of the Ridge Family and of the Decimation of a People* (New York: Macmillan Co., 1970), *supra* note 96 at 38.

¹²⁰Strickland, 61.

threat against the bereaved family notwithstanding.) There was a procedure. Both trial and procedure might have been informal at first –light-horsemen often served as judge, jury, and executioner in the early days –but they were carried out nonetheless.

The judicial process was refined in subsequent years. In 1817 the council established a Standing Committee to administer national affairs; the Committee had thirteen members who served two-year terms. They served in “an executive, a legislative, and a judicial capacity,” dividing the nation into districts and assigning each district a judge, a sheriff, and a marshal. In 1820 a separate judiciary was formed, to hold “councils to administer justice in all cases and complaints that may be brought forward for trial.” Each district still had a body of light-horsemen in addition to the sheriff and the marshal, who acted as an officer of the court and carried out its decisions. In addition to the eight district judges there were four circuit judges, as well as a Superior Court, thus a system of appeals was in place.¹²¹

Light-horse companies were established in Choctaw territory soon after the establishment of the first mission school in 1818. In 1820, in the Treaty of Doak’s Stand, the United States pledged to provide funds to equip the corps:

To enable the Mingoes, Chiefs, and Head Men, of the Choctaw nation, to raise and organize a corps of Light-Horse, consisting of ten in each District, so that good order may be maintained, and that all men, both white and red, may be compelled to pay their just debts, it is stipulated and agreed, that the sum of two hundred dollars by the United States, for each district, annually, and placed in the hands of the agent, to pay the expenses incurred in raising and

¹²¹Bob L. Blackburn , “From Blood Revenge to the Lighthorsemen: Evolution of Law Enforcement Institutions among the Five Civilized Tribes to 1861.” *American Indian Law Review*, Vol. 8, No. 1 (1980): 55; Daniel 110-111.

establishing said corps, which is to act as executive officers,
maintaining good order...¹²²

In 1824, future Principal Chief Peter Pitchlynn was placed in charge of the Choctaw Light-Horse, and achieved notable success in his efforts to quell the illegal whiskey trade. Unlike the Cherokees, Choctaws during this time period displayed a remarkable compliance with the light-horsemen, almost never resisting even when arrested for murder.¹²³

The Chickasaws developed a written legal code, and instituted a light-horse corps, in 1829. The laws, and their enforcement, were very similar to the Cherokee and Choctaw models. An observer in 1830 noted of the Chickasaws that “Their laws are few, easily understood, and are highly calculated to promote peace.” Once in Indian Territory, the Creeks also established a code of written laws and a light-horse corps (in 1840); however, they had neither a judiciary nor “a republican form of government” until after the Civil War.¹²⁴ The Seminoles saw even less political change in the antebellum period, not having written laws or professional law enforcers until after the war. In fact, on one historian put it, “Not until 1859 was a general council organized, and even then it accomplished little.”¹²⁵

It should be noted that the light-horsemen were charged with more than just apprehending murderers. As the various laws cited above indicate, their primary purpose seems to have been the protection of property. Cherokee companies were charged with suppressing horse theft; Choctaw companies, with ensuring that

¹²² Kappler, 135-136.

¹²³ Carolyn Thomas Foreman, “The Lighthorse in the Indian Territory,” *Chronicles of Oklahoma* 34 (No. 1, Spring, 1956), 25.

¹²⁴ *Ibid.*, 29, 32; Blackburn, 60-61.

¹²⁵ Blackburn 62.

citizens paid their “just debts.” It is also noteworthy that, under the 1810 Cherokee law, killing a horse thief soon after the fact was not punishable as murder.

In addition to outside pressure to conform to Euro-American standards and an internal desire to maintain political cohesion, then, protection of property was another powerful motivation to develop written, nationally enforced laws.¹²⁶ As Bob Blackburn wrote: “With their accumulation of property came the desire for protection of their property...To rich mixed-blood Cherokees, written laws and professional law enforcement officers offered the only protections.”¹²⁷

Early visitors in the Cherokee nation had noted that the inhabitants seemed to care little for material wealth, content with only the bare minimum to survive; in fact, as noted, their material surplus was either redistributed or destroyed annually. By the nineteenth century, most Cherokees’ attitudes had changed. Thomas Nuttall observed in 1819 that they had learned “habits of industry... superior intelligence, conveniences and luxuries of civilization,” but further noted that the Cherokees “Have also acquired that selfish attachment to property, that love of riches, which, though not really intrinsic, have still the power to purchase sinister interest, and separate the condition of men, and hence arises that accumulation of laws and punishments.”¹²⁸ Another traveler later “addressed the same subject, noting how maldistribution of wealth threatened the security of the rich. In his opinion, new officers of law enforcement were for the sole purpose of protecting property.”¹²⁹

¹²⁶ After removal to Indian Territory, those laws would include fencing as evidence of land improvement in order to establish ownership.

¹²⁷ Blackburn, 50-51.

¹²⁸ Thomas Nuttall, *A Journal of Travels into the Arkansas Territory During the Year 1819*, in Thwaites, ed., *Early Western Travels, 1798-1846*, Vol. 13, p. 184.

¹²⁹ Edwin James, *Account of an Expedition from Pittsburgh to the Rocky Mountains in the Years 1819, 1820*, in Thwaites, ed., *Early Western Travels, 1798-1846*, Vol. 17, pp. 22-23.

The 1831 advertisement placed by Moss Downing in the *Cherokee Phoenix and Indian Advocate* was concerned with regaining stolen property. This applied to more than just Downing's runaway slave, for she and her accomplice "took with them a horse belonging to John Downing, and a quantity of clothing belonging to other persons."¹³⁰ Most such ads in that newspaper, by their very nature, displayed a preoccupation with property. It is worth noting that the Seminoles, who had the least interaction with commercialism of the Five Tribes, and whose move toward production-oriented slavery was slower than the other tribes, saw no need for light-horsemen or written laws at all.

Although the light-horsemen dealt with serious crimes such as murder and rape, the majority of their activities were centered on property, such as recovering stolen goods and punishing thieves. Since there was no prison system among the Five Tribes, the penalty for theft took the form of corporal punishment. Growing from the simple chastisements outlined in the 1808 law, physical penalties were eventually categorized by degree. Cherokee light-horsemen in Indian Territory administered fifty lashes for cattle theft, one hundred for the first offense of horse theft, two hundred for the second offense, and death for the third. Some light-horsemen went to extremes to prevent property loss; one Englishman described a corps member who, capturing a relative repeatedly guilty of stealing, cut out his eyes, telling him that "as long as you can see you will steal, I will therefore prevent your thefts by the destruction of your sight."¹³¹

¹³⁰ *Cherokee Phoenix*, Nov. 5 1831.

¹³¹ Letter from John Payne to John Waterston, Dec. 2, 1840, in Grant Foreman, *Advancing the Frontier, 1830-1860* (Norman: University of Oklahoma Press, 1933), 326.

Although the above case was unusually extreme, even the milder applications of physical punishment by tribal fiat were a relatively new phenomenon. By the accounts of most early European observers, the Five Tribes rarely used physical coercion or corporal punishment to enforce traditional laws or deter undesirable social behavior; as Adair noted, shame and ridicule were the primary corrective measures in such cases. Even when corporal punishment was implemented, neither the decision nor the execution was a tribal matter. It was handled by the perpetrator's clan, and usually his or her immediate family. Steven M. Karr described the Choctaws' views of punishment:

In Choctaw society conformity to communal standards, not revenge, was the motivation for these [traditional] types of punitive measures. The punished clan or family member was immediately accepted back into the domestic fold. With the arrival of the Europeans came a drastic contrast to this method of coercion. To the Choctaws it appeared that the Europeans used corporal punishment merely as a means of spiteful retaliation that did even more to injure a person's dignity than it did to inflict pain.¹³²

Karr points out that the Five Tribes were introduced to flogging both via observation and participation in the slave trade and by individually suffering it at the hands of colonial, and later U.S., courts. Although initially resistant to the practice, by the nineteenth century it was accepted by Indian leaders as a necessary component of maintaining civic order. As early as 1822, one Choctaw district mandated a punishment of 39 lashes for various crimes, including infanticide and

¹³²Steven M. Karr, "Now We Have Forgotten the Old Indian Law: Choctaw Culture and the Evolution of Corporal Punishment." *American Indian Law Review*, Vol. 23, No. 2 (1998/1999): 411.

stealing livestock. The practice became so firmly established that it endured long after Removal, and even long after flogging was abolished in the United States.¹³³

In fact, corporal punishment remained common until the end of the nineteenth century, when the Curtis Act of 1898 dismantled Native American governments in Indian Territory. John Duncan, also known as Red Cloud, was the last High Sheriff to serve the Cherokee Nation before the Curtis Act.¹³⁴ In 1938 he told a WPA interviewer about the execution of his duties:

The... Whipping Tree used while he was sheriff of the Cherokee was on the creek bank and had washed away several years ago. He said when anyone was

¹³³ Ibid., 413-414. Since warriors had traditionally displayed their courage under the tortures of their enemies when captured, and had also traditionally reacted poorly to punitive confinement, Southeastern Indians may have accepted and incorporated whipping as an acceptable alternative to creating a penal system. This would suggest a strain of traditional elements present within the new legal approaches and attitudes, indicating that The Five Tribes were not adopting Euro-American conventions, but rather adapting them. The relationship between traditional and "modern" is evidenced in this account of a whipping in the Choctaw Nation:

Before the hour appointed the neighborhood assembled around the church which stood about forty rods distant from the missionhouse, where they indulged in social conversation and smoking; never, however, mentioning, or even hinting the subject which had brought them together. The culprit was as gay and cheerful as any of them, walking with an air of perfect indifference, chatting and smoking with various groups sitting around on blankets spread upon the ground. Precisely at the moment designated, the lighthorse would appear. The crowd then went into the church, closed the door and commenced singing a religious hymn, taught them by the missionaries, which they continued until the tragedy outside was over. At the same time the culprit shouted "Sa mintih!" (I have come!) then ejaculated "Sa kullo!" (I am strong!). He then elevated his arms and turned his back to the executioner and said: "Fummih" (whip). When he had received fifteen or twenty blows, he calmly turned the other side to the Fum-mi (one who whips); and then again, his back, uttering not a word nor manifesting the least sign of pain. As soon as the whipping was over, the church door was opened and the whole assembly came out and shook hands with the "Fum-ah" (whipped), thus reinstating him to his former position in society, and the subject was then and there dropped, never to be mentioned again, and it never was. H.B. Cushman, *History of the Choctaw, Chickasaw, and Natchez Indians* (Norman: University of Oklahoma Press 1999 [1899]), supra note 7, at 159; John R. Swanton, *Source Material for the Social and Ceremonial Life of the Choctaw Indians* (Smithsonian Institution, Bureau of American Ethnology Bulletin No. 103, 1931), supra note 3, at 112-13

¹³⁴ Red Cloud's wife Susie Duncan told of the Curtis Act's immediate effects on the Cherokee legal system:

My husband, as high sheriff of the Cherokee Nation, was custodian of all the prisoners from all nine districts of the Nation, but about 1898 or 1899 a law was passed to do away with the tribal government and all the law enforcement was turned over to the United States Government. A vote was taken in the Cherokee national council and senate as to whether the Cherokee prisoners being held in the national jail should be turned loose, or turned over to the United States for keeping in the United States Jail. The vote to turn them loose carried, and my husband, by order of the National council, released all the prisoners being held by him. —*Indian Pioneer Papers*, Mrs. John Duncan.

convicted of a crime, for example, if anyone stole a hog worth five dollars they would tie him to the tree by his hands and feet, while the sheriff cut five hickory whips. He would then give him one lick with each whip across the bare back. If the hog happened to be worth fifty dollars he would receive fifty licks.¹³⁵

Choctaw punishments administered in Indian Territory were less severe, but not substantially so. Choctaw freedman Jack Campbell recalled the penalties for theft in his youth:

When an Indian was arrested for stealing some other Indian's cow, horse, or anything else that another owned he was tried in one of these Indian courts. For the first offense, he was immediately marched out to the Court House yard and held to a certain tree and whipped with a hickory switch. Twenty-five lashes for the first offense; seventy-five for the second; and one hundred for the third. Those lashes were seriously laid on by the Indian Sheriff.¹³⁶

While economic incentives, and the need to protect resultant accumulated property, may have been a large motivating force in the development of laws and law enforcement for the Five Tribes (as, indeed, they have been for everyone else who has moved beyond a subsistence economy and into an acquisitive one), they were neither the sole such source, nor do they tell the whole story. The Five Tribes developed complex political systems, creating a theoretical identity tied to those systems and into the national and racial components tied to them. They continued creating and sharpening that identity throughout the nineteenth century and beyond. After establishing written laws and agencies to enforce them, the next step in this refining process was the creation of constitutional governments.

¹³⁵ *Indian-Pioneer Papers*, John Red Cloud Duncan.

¹³⁶ *Indian-Pioneer Papers*, Jack Campbell.

The Five Tribes and Constitutional Government

The United States Constitution served as a model for the constitutions developed by the Five Tribes during the nineteenth century. Transition to constitutional republicanism was a natural step in the process begun by recording laws and focusing on citizenship instead of kinship. The Five Nations' drafting of constitutions, in the words of Arrell M. Gibson, "represents an evolutionary process, abetted by the threat to their ethnic integrity by the predacious American nation."¹³⁷ That process developed differently, and at a different pace, for each of the five nations, at least in part as a product of Removal.

	First Written Laws	Pre-Removal Constitution	Indian Territory Constitution
CHEROKEE	1808	1827	1839
CHOCTAW	1820	1826	1834
CHICKASAW	1844	-	1856
CREEK	1840	-	1859
SEMINOLE	1845	-	1856

Fig. 3.1. Legal Development of the Five Tribes

Mississippi Choctaws adopted a constitution and a set of written laws in 1826. A tribal police force, the light-horsemen, had already been put in place to enforce the new laws –laws that generally tended to take punishment away from individuals, families, and communities and put it in the hands of a central government. Alcohol was prohibited. The chieftaincy of each of the three Choctaw divisions became a four-year elected office. The constitution was revised in Indian Territory in 1834. Each of the three new divisions –Mushulatubbee,

¹³⁷ Gibson, 23.

Apukshunnubbee, and Pushmataha –were separate, yet contributed representatives to a legislature that would eventually be bicameral. Any law could be vetoed by two of the three chiefs. In 1837 the Chickasaw Nation was incorporated into the Choctaw nation as a fourth division, and constitutional changes were made to reflect this. The two nations separated again in 1855. In 1857 another new constitution was drafted in Skullyville, replacing the three district chiefs with a single chief, or governor. Conservative Choctaws drafted an alternate constitution, and civil war became a possibility. The two groups compromised, though, and adopted a constitution in Doaksville in 1860 that would stay in place until Indian Territory became the state of Oklahoma. The Doaksville Treaty still had a primary executive, called Principal Chief or Governor, with three subordinate district chiefs under him. All these officers could serve no more than two consecutive two-year terms. Government was divided into three branches, just as it was in the United States.¹³⁸

After regaining their autonomy in 1855, the Chickasaws reorganized their own government. Within a year they had a constitution as well. “With extraordinary lawmen, a structured judicial system, and corps of marshals, sheriffs, and constables, the Chickasaws enjoyed relative peace and order until the turmoil of the Civil War.”¹³⁹

In the fall of 1826, the Cherokee National Council resolved to call a constitutional convention. The document drafted for that convention was modeled on the United States Constitution, but revised in order to reflect Cherokee concerns.

¹³⁸Knight, 76-78; Debo, 70-72.

¹³⁹Blackburn 61.

For example, franchise was granted to all adult males “excepting Negroes and descendants of white and Indian men by negro women who may have been set free,” reflecting a growing Cherokee trend toward the exclusion of blacks, and following the “one-drop rule” utilized by nearby southern states. The National Council wished to make it perfectly clear that their people comprised a nation that was just as civilized, and just as capable of republican government, as their white neighbors. The constitution they produced has been described by William McLoughlin as “the capstone of Cherokee nationalism.”¹⁴⁰

The fact that Cherokee leadership (which contained a disproportionately high number of biracial individuals, usually the sons or grandsons of Cherokee women and white traders) favored such a constitution, with its attendant cultural and social changes, did not mean that all Cherokee citizens, many of whom still held to traditionalist views, would do so. A large number of Cherokees were already upset by a series of laws passed since 1819, some of which outlawed traditional practices (revenge killings and polygamy, for example.) These laws had been enforced only sporadically, but there could have been fears that their repetition in a national constitution might result in a stricter application of them. After the constitution was announced a group of rebels, spearheaded by a widely-respected leader named White Path, decided to oppose both the constitution and the other cultural changes of the preceding two decades. White Path’s rebellion became, not just a political,

¹⁴⁰ McLoughlin, *Cherokee Renaissance in the New Republic* (Princeton: Princeton University Press, 1992), 396.

but a religious movement, as its adherents stressed a return to the old dances and rituals and a rejection of Christianity.¹⁴¹

Panicked Moravian missionaries feared the worst:

...The whole nation here is in the greatest turmoil. The greater part wants to have the new laws abrogated and are for having the missions dissolved. Hardly one in fifteen votes for the laws... Dances at night are arranged and, during the day, they hold Council. No one trusts anyone anymore; now and again there are threats of murder.

Even more disturbing were rumors that the rebels had appointed a new chief for themselves, Big Tiger, a “conjurer” who still dressed in the warrior’s garb of a bygone era.¹⁴² A U.S. diplomat reported that “some of the old Indians are very much dissatisfied and intend to raise opposition to their new mode of Government by Constitution.” He noted that Cherokee leaders seemed out of touch with some of their people: “the mixed bloods are now, and have been for some time, at the head of affairs and passed laws so contrary to ancient customs that the native Indian is ready to revolt.”¹⁴³

White Path and his followers eventually acquiesced to the reality of the new constitution, in large part because they recognized the need to present a united front in the face of calls for the tribe’s removal. That united front would not last, nor would all future political and cultural upheavals be as bloodless as White Path’s rebellion, that was only a harbinger of future discords between proponents of, and resisters to, change.¹⁴⁴

The framing of constitutions helped all Five Tribes further refine a sense of modern nationality. In 1858, a year after the Choctaws’ constitution had been refined,

¹⁴¹ *Ibid.*, 388-390.

¹⁴² McLoughlin, *Cherokee Renaissance*, 392.

¹⁴³ *Ibid.*, 395.

¹⁴⁴ McLoughlin, “Ghost Dance Movements: Some Thoughts on Definition Based on Cherokee History.” *Ethnohistory*, Vol. 37, No. 1 (Winter, 1990), p.28.

Sampson Folsom discussed with his uncle, future principal chief Peter Pitchlynn, the need for their people to be reminded of the importance of the nation, lest they lose their sense of nationality.¹⁴⁵ The Five Nations' respective senses of nationality were displayed during antebellum discussions about statehood for Indian Territory.

The U.S. Government began to consider the possibility of admitting Indian Territory as a new state immediately after Removal. The prospect was discussed by politicians in Congress and by citizens in the press throughout the 1840s. One of the biggest obstacles to such an agreement was the resistance of individual Indian governments. The Choctaws, certainly, did not want to become part of the U.S. as an amalgamation with their neighboring tribes; their own nationality was paramount. Peter Pitchlynn spoke in opposition of the idea before Congress in 1849. "My country, my people, my home and my children," he said, "all that can stimulate a man, are at stake in this matter."¹⁴⁶ Some editorialists suspected that there was more to the proposal than a "legitimate effort to elevate the Indians" –that it was, in fact, an effort to bring Indian Territory in as another slave state and thus strengthen slavery even more. "We have plenty of white masters already in the South," one writer said, "without bringing in an Indian reinforcement."¹⁴⁷ The fact that observers linked the Five Nations with both slavery and the South as early as 1845 shows the direction that Choctaws and their neighbors were headed. Like the future Confederate states, the Choctaws were developing a sense of nationalism centered on their status as slaveholders. What made

¹⁴⁵The Western Heritage Collection; Peter Pitchlynn Collection, Box 3, Folder 2, letter dated December 9, 1857.

¹⁴⁶*House Misc. Docs.*, 30 Cong., 2 Sess., No. 35. See also Debo, 67.

¹⁴⁷*The Cincinnati Weekly Herald and Philanthropist*, Sept. 17, 1845, p. 1.

them different was that they were doing so around a political approach that was relatively new to them, an adjusted view of race, and a traditional cultural framework.

Race and the Law

As the Five Tribes gradually progressed toward an identity centered on national citizenship during the nineteenth century, a parallel transition was taking place and being reflected in the new system of written laws: race was becoming more important, even as nation was doing the same. The status of blacks was becoming more sharply defined in a legal sense, as an increasingly oppressive series of racial laws were implemented by the various Tribes. For example, Fay Yarbrough has pointed out that “Cherokee officials were redefining Cherokee Indians racially and used marriage laws to write and reinforce this new definition.”¹⁴⁸ An 1824 Cherokee law made it illegal for any citizen, white or Indian, to marry a “negro slave.” The penalty was 59 stripes for men marrying female slaves and 25 stripes for women marrying male slaves (similar laws were instituted by the Creeks.) The distinction of “slave” was modified in an 1839 law designed to “prevent Amalgamation with Colored Persons.” This law illegalized marriage between “between a free male or female citizen with any slave or person of color not entitled to the rights of citizenship under the laws of the Cherokee Nation.”

Race laws may have also been influenced by a desire on the part of Indians to differentiate themselves from blacks in the eyes of their white neighbors, in order to protect their sovereignty. The U.S. government and a large number of its citizens expected Creeks and other Southeastern tribes to become “civilized,” adopting the white man’s culture and religion, and many Creeks made significant strides in that direction;

¹⁴⁸Fay Yarbrough, “Legislating Women’s Sexuality: Cherokee Marriage Laws in the Nineteenth Century.” *Journal of Social History* 38.2 (2004): 386.

still, they were not unaware that their most immediate white neighbors would never be mollified by such overtures. As one missionary put it, no matter how many “improvements” Indians made they would still “be viewed as a colored population.” Georgia governor George M. Troupe acknowledged their precipitous situation as well, in a letter to Secretary of War John Calhoun:

...If such a scheme were practicable at all, the utmost rights and privileges which public opinion would concede to the Indians would fix them in a middle situation between the negro and the white man, and that as long as they survived this degradation, without the possibility of attaining the elevation of the latter, they would gradually sink to the condition of the former—a point of degeneracy below which they could not fall...¹⁴⁹

In order to avoid that “point of degeneracy,” Creeks—like the other members of the Five Tribes during the same period—sought to clearly distinguish themselves from blacks living within their borders, a distinction that in previous generations had not been so clearly demarcated. Such distinction was framed primarily in the written laws they had begun to create. One such law, written in 1825, stated that “if any of our people have children and Negros and either of the children should take a Negro as husband or wife, and should said child have a property given to it by his parent the property shall be taken from them and divided among the rest of the children ... It is a disgrace to our *Nation* (*italics mine*) for our people to marry a Negro.”¹⁵⁰

Within two decades of Removal, laws concerning blacks in Indian Territory generally included free blacks as well as slaves.¹⁵¹ An 1838 law forbade intermarriage

¹⁴⁹ Saunt, *Black, White and Indian*, 34-35; McLoughlin, “Red Indians, Black Slavery,” 377.

¹⁵⁰ Saunt, 33.

¹⁵¹ *Ibid.*; Gibson, 33. It is helpful to compare the number and treatment of free blacks and slaves among the Choctaws with those in the other Five Civilized Nations. The Choctaw nation had 512 slaves and 11 free blacks on the eve of Removal. Nearly five hundred blacks, slave and free, removed with the Seminole tribe; a large proportion were free, whether via manumission by owners or through service to the U.S. military. Both free and enslaved blacks among the Seminoles could own property, bear weapons, farm and herd stock. The Creek tribe included 502 slaves in 1832, and a significant number of free blacks; the free blacks

and teaching slaves to read and write. The latter especially frustrated missionaries, as they had more success converting slaves than their masters.¹⁵² The same law stipulated that blacks could not claim any share of annuities. Creeks at this time allowed their free black citizens to claim a portion of the annuities they received, even though the U.S. Government did not require them to do so. This may have led some Choctaw blacks to desire the same rights, as this law was repeated later.¹⁵³ By 1854 the Choctaw government was once more forbidding what it considered to be “abolitionist acts” by whites in their Nation¹⁵⁴; these acts included educating blacks or even eating at the same table with one.¹⁵⁵ An 1840 law required all free blacks to leave the Nation by the following year; any remaining at that time would be subject to seizure and sale into slavery, with the proceeds going to the national treasury. Some free blacks sought passage to Liberia –“there seems to be no resting place for them in this part of the world,” Cyrus Kingsbury wrote -while others risked staying at the only home they knew.¹⁵⁶

Some were abducted and enslaved, either by the Choctaws or by whites from neighboring states who knew they were easy prey. “De nigger-stealers done stole me and

could initially own property, even operate businesses, but the Creeks followed the Choctaw pattern of passing increasingly restrictive laws regarding free blacks. The Cherokees owned 1,592 slaves on the eve of their removal in 1835, and over 4,000 by the Civil War, and they also passed increasingly stricter laws regarding free people of color –they did admit as citizens the offspring of black men and Cherokee mothers, though not the offspring of Cherokee men and black mothers. Chickasaws had smaller numbers of blacks in general, but followed the pattern of legislation after Removal. Only Seminoles did not enact laws against intermarriage. Daniel F. Littlefield, Jr., and Mary Ann Littlefield. “The Beams Family: Free Blacks in Indian Territory.” *Journal of Negro History* 61(Jan. 1976), p. 18-21.

¹⁵²The Creeks passed similar laws at about the same time. One missionary, who had to sign a bond promising not to instruct slaves, recounts with anguish how slave children would beg him to teach them to read the New Testament, only to be reluctantly turned away because “they were *negro slaves* and must not know how to read the blessed Bible.” *Christian Register*, March 29, 1839, p. 52.

¹⁵³Annie Heloise Abel, *The American Indian as Slaveholder and Secessionist* (Cleveland, The Arthur H. Clark Company, 1915), 23, footnote 14.

¹⁵⁴A similar law was passed in the Creek Nation in 1856; whites applying for teaching jobs had to be interviewed to determine if they had abolitionist tendencies, and if so they could not legally be hired. Gibson, p. 33.

¹⁵⁵*Friends’ Review*, Dec. 23, 1848, p. 213; *Christian Observer*, Sept. 30, 1854, p. 154

¹⁵⁶*The Missionary Herald*, May 1841, p. 210; *African Repository and Colonial*, Feb. 15, 1841, p. 55.

my mammy out'n de Choctaw Nation, up in de Indian Territory, when I was 'bout three years old," Spence Johnson recalled in 1937. His mother was washing clothes at the river when several men lured her children close to their wagon with candy, then grabbed them. The mother tried to rescue them, but she was captured as well; they were carried across the Red River and into Louisiana, where the children began their lives of slavery.¹⁵⁷ Some free blacks banded together for protection. A large group, joined by some Indians, fortified themselves near the Boggy Creek headwaters and resisted efforts to flush them out.¹⁵⁸

The status of blacks, both slave and free, had been changing throughout the Five Nations over the first half of the nineteenth century; Indian leaders introduced legislation and propounded the idea that intermarriage with blacks was debasing and that blacks had fewer rights than other races. It was a gradual transition. In 1828 –the same year that some Creek warriors brutally whipped three women of their tribe for living with white men, and that others disrupted a black church service to whip the attendees and even rape a 12-yr-old girl –a prominent chief attended the funeral of a black Creek. He stood apart from the blacks, but was present nevertheless. "Creeks were drawn toward their black friends and relatives but were hesitant to embrace them," Claudio Saunt says.¹⁵⁹ Choctaws, too, seemed at times to be of two minds about the blacks in their midst; if intermarriage were not a problem, the Choctaw leaders would not have seen fit to mention it so often in their laws. The group of independent free blacks at the headwaters of the Boggy had Indians in their midst although it is unclear what tribe they were.

¹⁵⁷W.P.A. *Slave Narrative Project, Texas Narratives, Volume 16, Part 2.*

¹⁵⁸Abel, 23-26.

¹⁵⁹Saunt, *Black, White, and Indian*, 36.

The elites opposed such behavior, though, and gradually they won out. All the Five Nations were undergoing a cultural transformation, if not in fact an identity crisis: first there had been an influx of whites into their kinship circles, then the post-Revolutionary era necessitated drastic changes in economy and government, leading to conflict between traditionalists and progressives, and finally they had been removed from their ancestral homes and placed together into relatively close quarters in a new land. Southeastern Indians had used kinship slavery to help define themselves during the time they were coalescing into new forms from the remnants of other groups; now they were using chattel slavery for self-definition during a similar time of identity adjustment.¹⁶⁰ The Seminoles came slowly to that transformation; Creeks and Cherokees more quickly, but both groups continued to show at least some ambivalence where blacks were concerned. Choctaws and Chickasaws internalized slavery and racism more effectively than those other tribes. The Choctaws led the way in the alliance with the Chickasaws, and the growth of their government paralleled their solidified racial views.¹⁶¹

Some of the new laws about race had traces of traditional behavior. For example, Choctaws forbade any citizen from eating with a slave –sharing food from the same bowl had long been a ritual of kinship inclusion, and it was clear by the 1840s that blacks were no longer to be admitted into the Choctaw kinship system.¹⁶² The “anti-abolition” laws were aimed, not at Choctaws who might entertain notions of abolition, but at white missionaries. There was never any significant abolitionist movement among Choctaw

¹⁶⁰ Thus, according to Yarbrough, “Cherokee law invoked a common identity for Indians and white socially as free and racially as not black.” Yarbrough, 386.

¹⁶¹ It is interesting to note that the same spectrum of racial responses found among the Five Tribes – Seminoles on one end, followed closely by Creeks, with Choctaws and Chickasaws on the other end and Cherokees in the middle –can be applied, in the same order, to members’ responses to their own police forces; Choctaw citizens almost never resisted their light-horsemen or the execution of justice upon them, whereas the Seminoles did not even get around to creating such a force until after the Civil War.

¹⁶² Carson, 112.

Indians; this was not true of the Cherokees, for example. A group of Confederate commissioners from Texas, traveling through the Indian Territory in the spring of 1861 to gauge Indian support for their cause, reported that a significant minority of Cherokees were abolitionists. They blamed this on the influence of missionaries. Choctaws and Chickasaws, on the other hand, “are entirely Southern and are determined to adhere to the fortunes of the South.”¹⁶³ There had long been friction between Choctaws and missionaries where slaves were concerned; Choctaw leaders insisted that only Choctaw children could be instructed at mission schools, and when they learned that some missionaries were teaching slave children on their own time they endeavored to put a stop to it. Missionaries were loathe to abandon slaves and free blacks, not only out of a sense of inclusiveness, but because blacks were much more likely to convert than Choctaws. The universality of the Christian message would naturally sound appealing to people who lived in a society where kinship was everything and in which they were excluded from those connections.¹⁶⁴ Conversely, it also makes sense that Choctaws would become irritated with people who were attempting to circumvent their kinship bonds and give aid to slaves instead of only to those with official Choctaw kinship.

This friction became increasingly evident in the years leading up to the Civil War. Missionaries were very reluctant to endanger their position. If they rocked the boat on the slavery issue, they could well be expelled from the Choctaw nation and then not be in a position to save anyone at all. They were under pressure from church members in the North who increasingly demanded that the American Board of Commissioners of Foreign

¹⁶³*The War of the Rebellion, a Compilation of the Official Records of the Union and Confederate Armies* (Washington, 1880-1901), Fourth Series, I, 322-325. See also Abel, 91-96, and E. C. Routh, “Early Missionaries to the Cherokees,” *Chronicles of Oklahoma* vol.15 no.4 (Dec. 1937), 462-464.

¹⁶⁴See also Saunt, *Black, White, and Indian*, 35.

Mission take some sort of stand on the issue. When it became known that some missionaries not only held back from condemning slavery but even rented slave labor to perform work at the mission, a full-fledged controversy erupted that dragged on for years. The subject was a matter of heated debate in editorial pages of religious journals and newspapers and at the Commissioners' annual meetings. When the American Board discussed dissolving their connection with the mission schools over the issue of teaching slaves, Choctaw leader George Harkins was incensed.

What are we to infer from this, but that they have their secret designs, and a greater feeling for the welfare of the slave among us, than for the Indian? There is no State in the South that would be willing for the Abolitionists to teach their slaves; and in fact they dare not attempt it; and it is because we are *Indians* that they suppose they can have this privilege among us. If the Abolitionists are not satisfied to teach our children alone, then I say for once, let the connection between us and the American Board be dissolved and every Abolitionist be driven out of the nation at once ... it was our money that brought them hither, and surely our money can again bring us as good if not better teachers.¹⁶⁵

An editorial in the *Boston Atlas*, reprinted in *The Liberator*, responded to Harkins. The author criticized Harkins for making a line of demarcation for salvation and for suggesting that “gospel advantages would be quite thrown away upon anybody under ‘Ingins’,” and that Jesus could surely not have come “into the world to save ‘niggers’.” The editorial opined that one oppressed people oppressing another is no way to gain sympathy and that they might as well consider “the revival of scalping, burning at the stake, and other agreeable Indian diversions.”¹⁶⁶

Resistance to the Racial Laws

¹⁶⁵*New York Observer and Chronicle*, Dec. 14, 1854, p. 398.

¹⁶⁶*The Liberator*, Dec. 29, 1854, p. 206.

The governments of the Five Tribes, and the social elites who formed those governments, engaged in a specific campaign in the nineteenth century to replace the old kinship identity marker with newer national and racial ones. They did this by enacting and enforcing an increasingly strict set of laws designed to place blacks outside the community, figuratively and sometimes, particularly with free blacks, literally. This was a significant shift from the identity markers of previous centuries, as all five Indian nations had at one time displayed little or no attention to what Europeans considered “race.”

Citizens of the Five Nations, in the years leading up to Removal and afterward, were being asked to define themselves, and others, in a more “modern” way; this would necessitate those citizens making radical departures from their traditionally established views and practices. Many of those requisite changes gradually took place from the mid-eighteenth century onward: the tribes shifted, to a significant degree, their gender norms, developing a more patriarchal social system; traditional spiritual leaders, practices, and attitudes lost sway; economic concerns shifted away from a traditional communal, subsistence norm and toward a European-style commercialism; new survival tactics were adopted, as the tribes moved away from hunting and developed a more “civilized” model, of the sort that made Thomas Jefferson proud –they moved toward commercial agriculture, and then a republican form of government, made possible by a new appreciation for education and written laws; and, finally, they used those laws to cement an attitudinal change toward blacks, forming a racial hierarchy with blacks as the permanent debased point from which positive identity was established. In order for the

latter to work, all citizens of the Five Tribes had to forego traditional approaches and *treat blacks differently than their grandparents would have.*

While the overall trend in the Five Tribes—although at different speeds, from nation to nation—was to do just that, there was still a significant element in every tribe who did not cooperate with their governments’ agenda for racial stratification, but held to the older view that Cherokees, for example, were Cherokees no matter what color they were. Often these traditionalists were “full bloods”; often they were the people who lived in “the bush” rather than in the more fertile, more settled areas of Indian Territory. Traditional racial –or, perhaps more accurately, non-racial –attitudes persisted as stubbornly as did certain aspects of blood feud law. Tradition did not die easily, at least not with everyone.

David Chang has argued that, in the Creek Nation, attitudes about land as well as race divided traditionalists (many of whom were small farmers) from the elites.

Traditionalists often adhered to long-honored customs about land ownership, such as communal ownership and “equal interest in the soil.” For them, those customs took precedence over race in defining their nation: historically composite groups of Creeks (racially diverse and identified by kinship) defending their communal property.

Modernist elites had a different approach, with both race and land. They “forwarded a racialized Creek nationalism and amassed vast expanses of land as privately owned pastures.” The accumulation of individual property was paramount, as was defending the imagined concept of nation; these were available to “full blood” Creeks and Creeks with

some white ancestry, but denied to anyone of African ancestry, Creek or not (the denial being via legislation.)¹⁶⁷

The fact that all the Five Nations (except the Seminoles) passed laws forbidding interracial marriage, at least with blacks –and then periodically framed those same laws *again* –shows that a noteworthy portion of the populace was ignoring those laws. Indians and free blacks formed a community near Boggy Creek. Intermarriage persisted. In 1867, a fifty-two-year-old full blood Choctaw named William Krush, who had fought in a Choctaw regiment on the side of the Confederacy, met the Louisiana born ex-slave Charlotte Rogers in a refugee camp near Skullyville that was comprised of “Choctaws and half breeds.” As their daughter would later report to WPA interviewers, “they were married and soon moved to a little farm and started life together,” teaching their children both Choctaw and African American customs. Evidently, decades of legal indoctrination had not taken hold on William Krush and convinced him that miscegenation was a national disgrace.¹⁶⁸

In 1853, Lieutenant Amiel Weeks Whipple reported on the surveying expedition that led him to the borders of the Choctaw Nation:

At Napoleon were the first Choctaws seen. They had been to Little Rock as they said to draw their annuities and were returning to their homes in Mississippi. They had money & were nearly all intoxicated but were jovial good humored & happy. Their money was stolen from them but they laughed at it & said Indian a fool to get drunk. It appears that some imposition had been practiced on government by them in going to Arkansas or the Choctaw Nation to draw annuities as a reward for emigration from Mississippi and then returning to their old homes with

¹⁶⁷ David A. Chang, *The Color of the Land: Race, Nation, and the Politics of Land Ownership in Oklahoma, 1832-1929* (Chapel Hill: University of North Carolina Press, 2010), 39-42.

¹⁶⁸ Indian-Pioneer papers, Lucy Cherry.

their money. One of these fellows was nearly white, one almost a negro. It appears that the mother alone decides the nationality of the individual.¹⁶⁹

Weeks encountered several “jovial good humored & happy” Choctaws. They ranged from full blood to mixed blood (white and Choctaw) and mixed blood (white and black), but they had traveled together to collect their annuities, drink alcohol, and then return home. The man who was “almost a negro” was probably the result of an illegal union, his parents having violated anti-miscegenation laws (although it is impossible to say for certain, since his age is not given and if he was old enough he could have been born before such laws were passed.) No evidence of discord is recorded among him and his companions. It is worth noting that Weeks uses the terms “race” and “nationality”: the travelers are of the “Choctaw race,” even though they possess different phenotypes, yet it is apparently the mother who is the source of their nationality. In other words, even though the Choctaw travelers were a mixture of white, black, and red, they all had Choctaw mothers who conferred citizenship on them.

Elites, of course, tended to have more “modern” views of intermarriage and racial mixing. As a young man, Peter Pitchlynn had received a shock when he visited the Creek Nation (whose racial attitudes, although regulated by laws much like the Choctaws’ and Cherokees’, were generally less strict in the 1820s than those nations’ were.) The following is an excerpt from his diary, written in 1828:

November 28th- Spent the day principally in writing. In the evening I visited the Creek camps and saw them dance. I am extremely sorry to find people of my own color (Indians) so full of vice as I have found the Creeks are. There is no distinction between them and the Negroes within themselves. They mingle together in society upon terms of equality. There

¹⁶⁹Diary of Amiel Weeks Whipple, August 2, 1853. Reprinted in Muriel H. Wright and George H. Shirk, eds, “The Journal of A. W. Whipple,” *The Chronicles of Oklahoma* 28 (Fall 1950): 251-252.

are among them a great many mixed breeds and some of them are influential characters. The Negro men, it seemed to me, were the head managers of the dance. In fact, I have seen no Indian men dancing. They were Negro men and Indian women... The women of the Creeks are very lewd.¹⁷⁰

After Removal, when all the Five Tribes were in much closer proximity, members of the other nations would sometimes express condescending views toward Creeks because of their perceived tendency to mix more freely with blacks. Mose Wiley remembered being teased as a child: “The Cherokee especially were cruel to us. They teased us about being negroes and for some reason thought that we were part negro but we were just as pure blooded Indians as they were. It really hurt our feelings.”¹⁷¹

Clearly, some tribes delineated race more sharply than others. In all the Five Tribes, though, the governments sought to exclude blacks from participation in political identity; in all Five Tribes, too, a minority (more sizable in some tribes than others) resisted the government’s project and maintained more traditional views about race. Whether Cherokee or Creek, traditional or progressive, planter or small farmer, after Removal citizens of the Five Tribes found themselves living in a new land, with new environmental, commercial, and domestic circumstances. And their slaves lived there with them. What were the dynamics of racial interaction in Indian Territory? What factors were involved in the growth of slavery and plantation agriculture, and how were they connected to the further refinement of race and nationality?

¹⁷⁰ Peter Pitchlynn, “A Man Between Nations: The Choctaw Removal Diary of Peter Pitchlynn,” Speer Morgan and Greg Michaelson, eds. *The Missouri Review* 14.3 (Winter 1991.)
<http://www.missourireview.org/content/dynamic/view_text.php?text_id=1942> April 12, 2010.

¹⁷¹ Indian Pioneer-Papers, Mose Wiley.

CHAPTER 4

ESTABLISHING SOCIAL HIERARCHY IN INDIAN TERRITORY

One by one, the Five Tribes made the exodus from their ancestral Southern homes to the new lands set aside for them in Indian Territory. Some groups made the move willingly, and early, while others were gathered at gunpoint and forcibly marched westward. A few holdouts from all five managed to remain in the Southeast, but in each case these were small minorities. The Seminoles resisted, and engaged the United States in a costly war. Regardless of the time period or manner, the end result was the same: the overwhelming majority of Southeastern Indians were removed from the lands east of the Mississippi and relocated to new homes in Indian Territory.

The upheaval was not only geographic; it was cultural and spiritual. The Five Tribes all had to reformat their identities, previously based in part on proximity to ancestral lands. This identity reconstitution had already been underway for a generation or more prior to Removal, but relocation accelerated the process and intensified the need for it. By 1860 the eastern half of Indian Territory was home to five established nations, albeit in different degrees of organization and cohesion, structured around legal principles and racial and social hierarchies that had been vague if existent at all in the previous century.

These changes were neither easy nor immediate. It was a gradual process. Each tribe had an element of traditionalists who continued to adhere to former social behaviors despite consistent pressure by their own governmental systems to conform to a more modern model. Social tension is evident in the laws and regulations set forth by the Five

Tribes' governments, as well as by the lifestyles of the various subgroups that made up each nation: wealthy elites (often, but not always, of mixed heritage), middle class and poor Indians, white citizens, free blacks and slaves. For all those subgroups, and for all five Indian nations, the journey did not end with their arrival in the West. It began there.

After the trauma of Removal, the new arrivals were initially on relatively equal footing in their new home. Gradually, however, a class hierarchy was re-established—with many wealthy Indians (biracial or not) pursuing a modernist agenda, and small farmers often retaining their traditionalist attitudes. The wealthy grew richer, buying increasingly more slaves with money they earned selling horses, cotton, and salt to neighboring states. By the eve of the Civil War, it was clear to travelers that there were distinct classes among the Five Tribes in Indian Territory.

A New Home in the West

The Creeks were among the first to arrive. A group of 2500 migrated in 1828, settling mainly at the convergence of the Arkansas and Verdigris rivers.¹ They moved south soon afterwards, the previous area having been given to the Cherokees, and rested in the region between the Arkansas and Canadian Rivers² (although a later contingent of Cherokee settlers occupied land at the fork of those rivers in 1830, see *fig. 2*).³ The

¹ Norman Arthur Graebner, "Pioneer Indian Agriculture in Oklahoma," *Chronicles of Oklahoma*, vol. 23, no. 3 (Fall 1945), 233.

² The Upper Creeks tended to settle south along the Canadian, while the Lower Creeks gravitated north to the three forks of the Arkansas. Forced removal of the Creeks occurred in 1836 and 1837; Upper and Lower Creeks united in a common national government in 1840.

³ Some Cherokee groups had actually started migrating west of the Mississippi River much earlier. These moves were initially spurred by dissension within the tribe, often over accommodations given to Britain and the United States. Small Cherokee communities were established in present day northeastern Arkansas and southeastern Missouri as early as 1694, with new arrivals continuing into the early eighteenth century. In 1782 a group of eastern Cherokees petitioned the governor of Louisiana to let them move into Spanish Territory, and they settled on the Arkansas and White rivers in Arkansas. In following decades other Cherokees from the east joined them; in 1828 the state of Arkansas renegotiated their borders with the Western Cherokees, necessitating the Cherokees' move into western Indian Territory and the newly arrived Creeks' subsequent move westward from their initial settlement areas. See Gaston L. Litton, "The

countryside may have been different from their lost homelands, but the Creeks, and indeed all five tribes, did not find it completely untenable. The western two-thirds of the Territory was mostly prairie, made inhospitable by the roving bands of Kiowas and Comanches who inhabited it as much as by the topography. The eastern third, where the Five Tribes were mostly relocated, proved agreeable to agriculture. George Catlin reported that “There is scarcely a finer country on earth than that owned by the Creeks.”⁴

Other travelers in the Territory concurred. Josiah Gregg described the region as “an unbroken succession of grassy plains and fertile glades, intersected here and there with woody belts and numerous rivulets, most of which, however, are generally dry except during the rainy season.”⁵ Randolph B. Marcy called it a “gently undulating district, sustaining a heavy growth of excellent timber, but occasionally interspersed with prairie lands, affording luxuriant grass for eight months in the year, and intersected with numerous small streams flowing over a highly productive soil, thus embracing the elements of a rich and beautiful pastoral and agricultural locality.”⁶

Historian Norman Arthur Graebner wrote the following about Indian Territory:

The western home of the Indian nations far exceeded their expectations. The uplands and river valleys were extremely fertile. The grass on the prairies afforded luxurious pasturage on which livestock thrive with little care and expense. Hogs could roam the woods and fatten on the mast. There was a heavy growth of fine timber. On the alluvial soil of the large river valleys cottonwood, white, black, and red oak, hackberry, walnut, ash, mulberry, hickory, and pecan groves abounded. The uplands were thick with blackjack, pine, and small hickory; here and there was a dense

Principal Chiefs of the Cherokee Nation,” *Chronicles of Oklahoma*, Vol. 15, No. 3 (September, 1937), 253-254.

⁴ George Catlin, *North American Indians*, II, (Carlisle, MA: Applewood Books, 2010), 122.

⁵ Josiah Gregg, *Commerce of the Prairies*, in Reuben Gold Thwaite’s *Early Western Travels*, Vol. 20, 107.

⁶ Randolph B. Marcy, *Exploration of the Red River of Louisiana in the Year 1852*, (Washington: Beverley Tucker, Printer, 1854), 111.

stand of red cedar. In addition, there was an ample supply of wild fruit and berries. Flowing streams furnished water for livestock.⁷

The fact is that, despite the hyperbolic descriptions of outsiders, the Five Tribes' agricultural options were somewhat limited and dependent on where settlers located. The eastern region of the Territory that the Five Tribes inhabited was composed of the Ouachita Mountains and the heavily-forested hills and valleys of the Ozark Plateau. The woodlands of the Ozark Plateau were broken up intermittently by patches of prairie.⁸ That area's soil was, according to a surveyor in 1832, "poor, bearing in [its] natural state a thin coat of grass, but wholly unfit for cultivation or continued pasturage."⁹ It was the rich bottomlands of the Arkansas, Canadian and Red Rivers that enchanted visitors, and that attracted Indian settlers (see *fig. 4.2*). The further west one traveled, the less rainfall was encountered, so that the western prairies had less variety of flora. It was dominated by grasses, usually at least knee-high and sometimes, as one former resident later recalled, "belly deep to a horse."¹⁰

Indians recently forced from their eastern homes might not necessarily have described the region in such glowing terms as white travelers used, especially in comparison with the areas they had left, but they certainly began to make their imprint on the land immediately.¹¹ By 1837 Creek farmers were able to sell a portion of their corn

⁷ Graebner, "Indian Agriculture," p. 237, citing the Report of Lieutenant James L Dawson in October, 1831, from Grant Foreman, *Advancing the Frontier*, 21.

⁸ Doran, 50-51.

⁹ William H. Goode, *Outposts of Zion, With Limnings of Mission Life* (Poe & Hitchcock, Cincinnati Ohio, 1864), 40.

¹⁰ Doran, 51; J.B. Wright, "Ranching in the Choctaw and Chickasaw Nations," *Chronicles of Oklahoma*, vol. 37 No. 3 (Fall, 1959), p. 294.

¹¹ Jake Simmons, whose mother was born in the Creek Nation after Removal and whose grandparents were Cherokee and Creek, told a WPA interviewer that "They [the Creeks] finally reached the land of the Indian Territory, but it was much unlike the promised land spoken of in the Bible, for it was not one of milk and

surplus, mostly to new arrivals from east of the Mississippi, at a value of \$40,000. Large wheat crops and herds of livestock were also common.¹²

By 1837 there were around eight thousand Cherokees living in Indian Territory. These “old settlers” were soon joined by an influx of Cherokees driven from their Georgia homes and arriving via the “Trail of Tears” in 1838-39. Cherokee territory was located north of the Arkansas River. Many Cherokees settled along the fertile banks of the Arkansas and Canadian rivers, but many also spread across the Ozark hill country east of the Grand River. This may well have been because the topography there was reminiscent of the Appalachian hills and valleys from which they had been driven.¹³

The Choctaws began their exodus to the west after the signing of the Treaty of Dancing Rabbit Creek in 1830. They made their way by the thousands to the banks of the Mississippi River, near Memphis, where they were carried across by boat and removed by wagon to their new land. A cholera epidemic swept through the closely crowded Indians awaiting their time of transport, killing many.¹⁴ French writer Alexis de Tocqueville watched the tragic scene. “The sight will never fade from my memory,” he wrote. “All the Indians had already got into the boat that was to carry them across; their dogs were still on the bank; as soon as the animals finally realized that they were being left behind forever, they all together raised a terrible howl and plunged into the icy waters of the Mississippi to swim after their masters.”¹⁵

honey, nor did it rain manna from heaven.” Interview with Jake Simmons, Indian Pioneer Papers, vol. 83, p. 196. Interview #5142. University of Oklahoma Western History Collections.

¹² Graebner, “Indian Agriculture,” 234.

¹³ Doran, 51.

¹⁴ *Niles' Weekly Register*, Dec. 1, 1832, p. 225.

¹⁵ Alexis de Tocqueville, *Democracy in America* (New York: Harper and Row, 1966), pp. 298-299.

The Choctaws' situation did not significantly improve upon their arrival in their new home between the Canadian and Red rivers. The farming tools that the United States had promised them arrived too late to be of help for the planting season in 1832, and the same thing happened the following year. This was followed, in the summer of 1833, by terrible floods that destroyed many of their homes and killed much of their livestock. Their situation stabilized after those setbacks, and gradually improved. By the end of the decade the Choctaw Nation could boast of several large farms, three grist-mills, and three cotton gins. In 1836 they exported some five hundred bales of cotton down the Red River.¹⁶

The Choctaws ceded the western part of their territory to the Chickasaws, who in 1837 were incorporated into the Choctaw Nation as a fourth division (Choctaw territory was separated into three divisions: the Mushulatubbee, Apukshunnubbee, and Pushmataha.)¹⁷ This arrangement was in effect until the nations separated once more in 1855, and the Chickasaws received the territory they had previously inhabited as a district, the western half of the previous Choctaw holdings. Chickasaws were eligible to hold office in the Choctaw government, and Choctaws and Chickasaws were equally free

¹⁶ Graebner, "Indian Agriculture," 236.

¹⁷ The Chickasaws purchased the right to form the fourth Choctaw district in the 1837 Treaty of Doaksville, for \$530,000. The eastern boundary of the Chickasaw district was specified as follows:

Beginning on the north bank of Red River, at the mouth of Island Bayou, about eight or ten miles below the mouth of False Wachitta; thence running north along the main channel of said Bayou to its source; thence along the dividing ridge between the Wachitta and Low Blue Rivers *to the road leading from Fort Gibson to Fort Wachitta*; thence along said road to the line dividing Musha-latubbee and Push-meta-haw districts; thence eastwardly along said district line to the source of Brushy Creek; thence down said creek to where it flows into the Canadian River, ten or twelve miles above the mouth of the south fork of the Canadian River. — Treaty with the Choctaw and Chickasaw, 1837.—*Kappler's Laws and Treaties (Indian Affairs)*, Vol. II, pp. 486-88.

to live in whichever of the four national districts they chose.¹⁸ The Chickasaws were hesitant, especially in their early years in their new home, to live in the district allotted them, due to their fear of the plains Indians who often raided their settlements. For many years, therefore, their homes and farms were located mostly along the confluence of the Red and Washita rivers, or scattered among the Choctaws. As Ida Cunnetubby explained to a WPA interviewer:

Comanche raids were much dreaded by the Chickasaws. When the Choctaws and Chickasaws separated, after coming to the Territory, the Choctaws gave the western part of the land allotted them to the Chickasaws, because they were afraid of the Comanches who were their neighbors on the West. The Chickasaws received better land, but the Choctaws didn't have to fear the Comanches. They are too far away to be bothered by them.¹⁹

By 1840, “hardly a dozen Chickasaw families” had settled on the western prairies. In 1842 the U.S. built Fort Washita, that provided enough security to encourage Chickasaws to venture into the “fertile valleys of the Blue, Boggy, and Washita.” Chickasaw volunteer militias, sometimes joined by Choctaw militias, engaged in many skirmishes with the Comanches; settler-colonists were fighting indigenous tribes, and almost everyone involved was an American Indian.

Soon the Chickasaws were producing large amounts of corn, and enough cotton to necessitate three cotton gins of their own. Unfortunately, they found the Red River less navigable than it was in Choctaw territory, and their efforts to trade at Fort Washita were hampered by Texan competitors who were protected by a twenty-cent tariff that

¹⁸ Chickasaws were able to vote in and run in Choctaw national elections. However, former slave Edmond Flint pointed out in a WPA interview that “They [the Chickasaws] became dissatisfied politically. The Chickasaws were out-numbered and out-voted because of political tribal lines. This arrangement gave the Choctaws full control of the tribal government and also only Choctaws were elected to national positions.” Pioneer-Indian papers, interview with Edmond Flint, p. 313.

¹⁹ Interview with Ida Cunnetubby. Indian Pioneer Papers, vol. 22, p. 387. Interview #9352. University of Oklahoma Western History Collection.

effectively closed the Texas market off to Indian goods.²⁰ Nevertheless, many Chickasaw planters prospered. This was, at least in part, because by 1851 one-third of Chickasaws, including many wealthy planters, still lived in the Choctaw districts.²¹

The first Seminoles started to arrive in Indian Territory in 1836, shortly after the beginning of the Second Seminole War (1835-1842). The Treaty of Payne's Landing, signed in 1832 and ratified in 1834, had called for the Seminoles to relinquish their lands in central Florida and remove to Creek territory west of the Mississippi. Seminoles were therefore transported to live among the Creeks, beginning with a band led by Holata Amathla and Foke Luste Hajo (Black Dirt), proponents of the treaty, in the summer of 1836. As other chiefs surrendered over the course of the next several years, they and their followers were transported as well. The Seminoles, many of whom had been reluctant to reside among the Creeks, insisted that they be given the lands stipulated in the Treaty of Payne's Landing. The situation was resolved in 1845, in a new treaty signed by representatives of the U.S., the Creeks, and the Cherokees. The U.S. agreed to give the Creeks an increased annuity to compensate for the fact the Creeks were being asked to accommodate the Seminoles within their boundaries without receiving extra land to do so.²²

²⁰ Graebner, "Indian Agriculture", 233-234.

²¹ Muriel H. Wright, "Brief Outline of the Choctaw and the Chickasaw Nations in the Indian Territory, 1820 to 1860." *Chronicles of Oklahoma*, vol. 7, no. 4 (Dec. 1929): 401.

²² Treaty with the Creeks and Seminoles, 1845, in Kappler, vol. II. WHEREAS it was stipulated, in the fourth article of the Creek treaty of 1833, that the Seminoles should thence forward be considered a constituent part of the Creek nation, and that a permanent and comfortable home should be secured for them on the lands set apart I said treaty as the country of the Creeks; and whereas many of the Seminoles have settled and are now living in the Creek country, while others, constituting a large portion of the tribe, have effused to make their homes in any part thereof, assigning as a reason that they are unwilling to submit to Creek laws and government, and that they are apprehensive of being deprived, by the Creek authorities, of their property; and whereas repeated complaints have been made to the United States government, that those of the Seminoles who refused to go into the Creek country have, without authority or right, settled upon lands secured to other tribes, and that they have committed numerous and expensive depredations upon the property of those upon whose lands they have intruded:

Thus, by 1845 the vast majority of Five Tribes members from the Southeast had been relocated to Indian Territory. In most cases only a few hundred tribal members managed to remain in their homelands east of the Mississippi (the Choctaws were an exception, with several thousand remaining in Mississippi and becoming citizens of that state.) Many of the new arrivals clustered in small towns; several such Creek towns sprang up, often maintaining the traditional practice of holding common fields and dividing the produce. It has been noted that it was generally the “lower class” Creeks who followed that pattern.²³ Others, of all tribes, scattered into the countryside and founded individual farms.

Living in Indian Territory

In the antebellum period, all Five Tribes considered the land within their boundaries to be common or tribally-owned. Settlers were encouraged to spread out into the territory, but only the improvements they made on the land were their individual property, not the land itself.²⁴ This meant that anyone was free to build anywhere they pleased, as long as they were not impinging on a previous claim. Any improvements that were abandoned reverted to tribal control, and any lands that remained unfenced were considered in common use. The fact that enclosures

Now, therefore, in order to reconcile all difficulties respecting location and jurisdiction, to settle all disputed questions which have arisen, or may hereafter arise, in regard to rights of property, and especially to preserve the peace of the frontier, seriously endangered by the restless and warlike spirit of the intruding Seminoles, the parties to this treaty have agreed to the following stipulations: ...The Creeks agree that the Seminoles shall be entitled to settle in a body or separately, as they please, in any part of the Creek country; that they shall make their own town regulations, subject, however, to the general control of the Creek council, in which they shall be represented; and, in short, that no distinctions shall be made between the two tribes in any respect, except in the management of their pecuniary affairs, in which neither shall interfere with the other.

²³ Graebner, “Indian Agriculture,” 233.

²⁴ Chang, 27-28.

were primary markers of “improvement” shows how far the Five Tribes had come from the communal farming they had practiced in previous generations.

An 1839 Cherokee law disallowed any citizen’s improvements to come within a quarter-mile of another’s; many wealthy citizens took advantage of this law to build numerous “improvements” roughly half a mile from one another, effectively locking up large tracts of land for their own use.²⁵ Historian David Chang has pointed out that similar practices among wealthy Creeks, which resulted in an increase in large landholding, correlates with the increase of slavery in the Creek Nation. The more land the elites accumulated, the more slaves they imported to develop and maintain it.²⁶

A visitor to Creek territory in 1832 noted that farms tended to be, on the average, about five miles apart, whereas the Choctaw and Chickasaw lands were more populated; settlement patterns grew more compact in later years, but on the whole the majority of people in Indian Territory lived a rural lifestyle.²⁷ This was in contrast with their farming practices before Removal; Creeks, for example, were more likely to venture away from the communal town farms in Indian Territory and establish small farms than they had been in Alabama. Even so, as Chang points out, the similarity of those farms to the small family plots that Creek women had been accustomed to planting in their Alabama towns; this continuity may have contributed to the general trend of small Creek farmers to hold to traditional

²⁵ Graebner, “Indian Agriculture,” 237-238.

²⁶ Chang, 29.

²⁷ Carolyn Thomas Foreman, ed., “Journal of a Tour in the Indian Territory.” *Chronicles of Oklahoma*, vol. 10, no. 2 (June, 1932): 241.

attitudes, whereas the wealthier Creeks who now “followed the American plantation model.”²⁸

Improvements usually began with a house. Most settled areas had plentiful timber, and new arrivals constructed simple log cabins. Wealthy slave-holding families were able to build larger houses, reminiscent of the plantation homes they had left behind in the South, once they had established themselves and had a few successful growing seasons. In the early years after Removal, there was little class distinction evident in Indian settlers’ homes.²⁹

Jake Simmons, speaking of his Creek and Cherokee grandparents, told a WPA interviewer that “with their ax they set about cutting down trees and building log cabins and clearing land for cultivation... The roofs were thatched (built of limbs and grass), some of the roofs were made of clap boards split out with the ax. They had no nails and these shingles or clapboards were held on by laying logs at intervals to hold them.”³⁰ These cabins usually had only one or two rooms, with a fireplace “built of native stone” in each room.³¹

The domestic lives of poorer Indians changed little over time. Well into the twentieth century, Harry Kernal (born in 1903 of a Creek father and Seminole mother, and raised in the Seminole Nation) described growing up in a house not that different from those built in the 1830s and 1840s.³² James R. Carselowey, a Cherokee, told WPA interviewers that his parents “did not have a bought piece of furniture in the house... their

²⁸ Chang, 29-30.

²⁹ Graebner, “Provincial Indian Society,” *Chronicles of Oklahoma*, vol. 23 no.3 (Fall 1945), 324.

³⁰ Interview with Jake Simmons, p. 196.

³¹ *Ibid.*, p. 199.

³² Interview with Harry Kernal. Indian Pioneer Papers, Vol. 50, p. 360. Interview #1246. University of Oklahoma Western History Collection.

bed was made of poles nailed to the wall, the chairs were made of slabs from the saw mill, with holes bored in them to hold the legs and the table was hand-made.”³³

Clothing was as simple as housing in the early days after Removal. Many members of the Five Tribes had adopted a Western style of dress in their Southern homes –although some conservatives maintained more traditional tastes in apparel –but the financial hardships attendant upon their new beginning required a more primitive approach, at least at first. Coarse, homemade cotton garments were the norm. “Mother and Grandmother McCoy both spun and wove,” Emma Sixkiller, Cherokee, told an interviewer. “I could spin and grandmother taught me to make sewing thread and the cotton bats... Mother used to weave our riding skirts. The tops were of dark blue and the bottoms were stripped [sic] and checked with different bright colors.”³⁴ While men wore cotton garments, often supplemented by leather leggings, moccasins, and coats, women sported frocks and dresses made from homespun cloth and other materials when they could get it.

White travelers’ encounters with prominent Choctaw and Creek leaders in Indian Territory during the late 1830s, only shortly after Removal, demonstrate that those Indians’ traditional style of dress was clearly a matter of choice. George Catlin met two distinguished Creek brothers, Ben and Sam Perryman, and painted their portraits. While he noted that their raiment was made of “cloths of civilized manufacture,” he added that they were “tasselled and fringed off by themselves in the most fantastic way,” using “a vast many beads, and other trinkets, to hang about their necks, and ornament their

³³ Interview with James R. Carselowey. Indian Pioneer Papers, Vol. 102, p. 524. Interview #5887. University of Oklahoma Western History Collection

³⁴ Interview with Emma J. Sixkiller. Indian Pioneer Papers, Vol. 84, pp. 51-52. Interview #6468. University of Oklahoma Western History Collection.

moccasins and beautiful belts.”³⁵ Catlin also produced a portrait of Peter Pitchlynn, sometimes known as Snapping Turtle, who would become principal chief of the Choctaw Nation three decades later; Pitchlynn wore a ceremonial sash and feathers in his hair. In 1837 the missionary Henry Clark Benson met Nat Folsom, a Choctaw district chief who spoke little English. He noted that Folsom’s attire was somewhat plain for a leader of his position:

He wore cloth pants, calico shirt, coarse brogans, linen hunting shirt, and was without a vest or cravat. He wore a bandana handkerchief tied around his head as a turban, and a red sash around his body. Under his belt he carried his tomahawk, which was an ingenious and novel instrument.³⁶

Most citizens of the five tribes had adopted modern dress by the Civil War. Much as in the states around them, attire became a mark of social class. While poorer Indians continued to wear simple, homespun garments, wealthier individuals were able to showcase their status by wearing “rich dresses and mantillas of yellow, black, and red,” “costly shawls and jewelry,” handkerchiefs, and parasols (but lacking the “civilized head-dress” of white women, according to one observer.)³⁷

Increasing Class Distinctions

The 1830s (and, for many Seminoles, the 1840s) was a terribly trying time for the Five Tribes. Uprooted from their familiar homelands, many of them forced to travel under lethal conditions, orientation to a new land and the difficult initial efforts to procure enough food –these were experiences that most Cherokees, Choctaws, Creeks,

³⁵ Catlin, p. 122.

³⁶ Henry Clark Benson, *Life Among the Choctaw Indians and Sketches of the South-West* (Cincinnati: L. Swormstedt & A. Poe, 1860), p. 101.

³⁷ Benson, p. 55; John Hanson Beadle, *The Undeveloped West, or Five Years in the Territories* (Philadelphia: National Publishing Company, 1873), p. 357. Cited in Graebner, “Provincial Indian Society,” 333.

Chickasaws, and Seminoles suffered together. In many cases, although not all, the rich and powerful suffered along with the poor and anonymous (for example, Cherokee leader John Ross's wife died on the Trail of Tears.) Gradually, the social class system that had begun to appear before Removal re-established, and further entrenched, itself. Clothing was one indicator of class division, but there were many others. As time went on those indicators became increasingly evident, even to outsiders.

Travelers in Indian Territory in the early 1840s would still mostly see small one or two room cabins, but there were an increasing number of larger homes. For example, one would encounter many double houses. These "consisted usually of two rooms connected by a covered passage of ten to twelve feet wide that served as a hall or a court." They had porches in the front and back, polished wooden floors, stone chimneys, glass windows, and furniture and utensils shipped from neighboring states. While these might seem the lap of luxury compared to poorer people's rough-hewn cabins, they paled beside the homes that were already appearing on the plantations of the elite. Stately white manors to match those of Georgia, two stories high or taller, lined with shade trees and shrubbery –they evoked images of Southern slaveholders. Indeed, as Graebner put it (in the spirit of his times), the Five Tribes "had already in their old homeland adopted the charming plantation life of the Deep South with its spacious mansions. They succeeded at the time of their migration in reestablishing this culture in the West."³⁸ John Ross, who had quartered his surviving family in a crude log cabin upon first arriving in the Territory, had replaced that structure by the mid-1840s with a yellow mansion, complete with columned porch and a carriage (with slaves as driver and footman) that would blend

³⁸ Graebner, "Provincial Indian Society", pp. 324-325.

in on any Eastern street. His brother, Lewis Ross, entertained guests with mahogany furniture, rocking chairs from Boston, and “a very superior Chickering piano.”³⁹

Another prominent Cherokee slaveholder, William Vann, built a pine home with four brick chimneys, “the labor all being done by his slaves.”⁴⁰ Slaves were not only becoming more common (the number of Choctaw slaves, for example, increased from 512 in 1830 to 2,284 in 1860), to many wealthy Indians they were becoming indispensable. One Chickasaw woman born after the war recalled her mother telling her that “each girl in a family whose father owned slaves, had a slave girl of her own to wait on her.”⁴¹ That was the case with Caroline Romine, whose father was a white planter and whose mother was Cherokee (in fact, the great-granddaughter of Doublehead.) The family had been “with the first colony of Cherokees known as the ‘old settlers’ in 1834.” Wright Romine brought his slaves west with him, and upon arriving at their new home, “with the help of the negroes they erected comfortable log houses in which to live and house the negroes.” Caroline was a member of the first class to attend the Cherokee Female Seminary, and –perhaps due to the death of her father, her mother having died when Caroline was quite small –she eventually lived with her uncle on his plantation. She was eighteen when the Civil War started, and was immediately discomfited because of that conflict, as her daughter would later explain: “At the beginning of the Civil War, all of the slaves owned by her uncle ran away one night and as that left them entirely without

³⁹ Ethan Hitchcock, *Fifty Years in Camp and Field*, W.A. Croffut, Ph.D., ed. (New York: G. P. Putnam’s Sons, 1909), 139.

⁴⁰ “History of Elm Grove Cemetery.” Indian Pioneer Papers, Vol. 112, p. 25. Interview #0000. University of Oklahoma Western History Collection.

⁴¹ Interview with Celeste Caby Leal. Indian Pioneer Papers, Vol. 53, p. 16. Interview #8345. University of Oklahoma Western History Collection.

servants much of the heavy work devolved upon her. As she was not accustomed to it, it was very distasteful.”⁴²

If Caroline Romine had been a young woman at the time her family first arrived in Indian Territory, by all accounts she would have been subjected to some degree of hardship and physical toil while they settled, no matter how many servants her family had. By 1861, a wealthy young Cherokee woman –suddenly faced with the prospect of life without slaves –would be in danger of encountering that unaccustomed and distasteful concept known as “heavy work.” In this her experience was much like her those of her contemporaries on the plantations of the Deep South, and very unlike those of most Cherokees in her own time and place. A significant disconnect had developed between the lives of elite planter families and those of everyone else in Indian Territory.

Henry Clark Benson noted the beginnings of that disconnect within a few years of Indian Removal, in the description of his journey through Cherokee territory:

All day long we were permitted to witness the varied evidences of Cherokee civilization. We saw many proofs of progress in their practical business operations and pursuits of life. There were occasional farms, with comfortable family dwellings, and with barns or chards, wagons, carts, plows, harrows, and other implements of husbandry –all giving indication of intelligence, thrift, enterprise, and comparative wealth. But in the immediate vicinity of those comfortable homesteads we would see the smoky hovel and the little irregular patch of corn and pumpkins; and every object we saw would indicate degradation and squalid poverty. There did not seem to be an equal distribution of the comforts of life among the people. The contrasts and differences were more marked than among the Choctaws. The better classes were more refined and wealthy, while the lower classes were more destitute and thriftless.⁴³

⁴² Interview with Elizabeth Ballard Sanders. Indian Pioneer Papers, Vol. 80, pp. 105-107. Interview #12693. University of Oklahoma Western History Collection.

⁴³ Benson, 127-128.

Benson, in his appraisal of poorer Cherokees, betrayed a prejudice and misunderstanding of Native American culture that was common in his day and persisted until the recent past. Anyone not engaged in a production-oriented enterprise, as were the wealthier Indians whom Benson encountered, was often viewed as intrinsically lazy by white society. Earlier in his travels Benson had noted, about the Choctaws, that those farms that utilized slave labor were productive and “good.” He pointed out that even the poorest Choctaws would try to gain one or two slaves to help with daily tasks, as “Indians are known to cherish an invincible disgust for manual labor.”⁴⁴ As recently as 1978, geographer Michael Doran commented that, whereas most mixed bloods in Indian Territory used slave labor effectively, “to augment their capacity to produce surpluses for sale,” most full bloods were content to live in “endemic poverty” with no ambition or thoughts for the future. In a comment reminiscent of Benjamin Hawkins’ eighteenth century complaints about Creeks’ inability to use slaves “properly,” Doran remarked that full bloods from all Five Tribes “lived in ‘squalid misery’ with their slaves, simply because they did not exert themselves even to direct the work energy of the negroes.”⁴⁵ The “full bloods” in question were simply following their tribes’ traditional, non-commercial agricultural practices, and treating the “one or two” slaves who lived with them as kinship slaves had been treated for generations. Progressives, many of whom

⁴⁴ *Ibid.*, 33-34. A US military officer made a similar observation:

The full-blood Indian rarely works himself and but few of them make their slaves work. Proceeding from this condition, more service is required from the slave until among the half-breeds and the whites who have married natives, they become slaves indeed in all manner of work. -Grant Foreman, “The California Overland Mail Route Through Oklahoma,” *The Chronicles of Oklahoma*. Vol. 9 (1931), footnote 6, p. 187.

⁴⁵ Doran, “Negro Slaves,” 337-338.

were wealthy and / or mixed blood, were adopting a modern approach in both agriculture and slavery.⁴⁶

As demonstrated in the map in *fig. 4.2*, most citizens of the Five Tribes settled in the fertile river valleys. There were many who did not, choosing rather to live in the woods, hills and mountains. Such Indian settlers tended to be spread out widely, were more likely to have traditional practices and views, and engaged in subsistence farming. Graebner was particularly condescending in his description of them in a 1945 *Chronicles of Oklahoma* article: “Especially backward was a small group known as Mountain Indians, who might be compared to the poor whites of the southern hills. These people still lived in ignorance and had made little advancement in morals and intellectual attainment.”⁴⁷

By 1860, the Choctaw Nation was divided into three districts (Pushmataha, Moshulatubbee, and Apukshunnubbee), each of which was further subdivided into counties. Most large slave holders lived in the Red River Valley, in the counties of Red River, Towson, Kiamichi, and Tiger Spring (or Blue.) The fertile Mountain Fork Valley of Eagle County, north of Red River County, also attracted a couple of large farming operations. In the north, near the Arkansas River, the town of Skullyville (in the county of the same name) became one of the most important Choctaw settlements, due in part to being on the California Road and a stop on the Butterfield Overland Mail, but in larger part to the Choctaw Indian Agency, from which annuity payments were distributed for

⁴⁶ Another traveler made a similar report on class distinctions when he visited the Cherokee Nation in 1836 noting:

The contrast between an occasional stately dwelling, with an extensive farm attached, and the miserable hovels of the indigent, sometimes not ten feet square, with a little patch of corn, scarce enough for a family garden. —Reuben Gold Thwaites, *Early Western Travels, 1748-1846* (Cleveland: The A. H. Clark Company, 1904-1907, 32 volumes), Vol. 20, p. 303.

⁴⁷ Graebner, “Provincial Indian Society”, 337.

the Moshulatubbee district and all U.S. financial exchanges with the Choctaw Nation took place. The name of the town, in fact, came from *iskuli*, the Choctaw word for money. Skullyville County was home to 48 slave holders in 1860, with 198 slaves; only two people had more than ten slaves (James Boyd, with twenty-six, and Tandy Walker, with sixteen.) Most Skullyville slaveholders had only one or two, and the relatively high number of slaves in the county was more indicative of Skullyville's concentrated population than of an abundance of plantations. In fact, Oklahoma historian Grant Foreman observed in a footnote in the archived *Indian-Pioneer Papers* that Skullyville County had two settled areas; the north, in the Arkansas river valley, "was settled and occupied by slave owners... while the southern half of the county was given over to those who were not so plentifully supplied with wealth."⁴⁸

The southernmost Choctaw counties, those along the Red River, were home to several large agricultural operations. In Red River County, eight slaveholders owned a total of 230 slaves. Most of those slaves were owned by the mixed blood Choctaw planter Robert M. Jones. At one point Jones owned more than two dozen trading posts, six plantations in Indian Territory and a sugar plantation in Louisiana, and two steamboats. He was the largest slaveholder in Indian Territory, owning more than two hundred slaves at any given time; in 1860 most of them were on his three plantations in Red River County.⁴⁹ Towson and Kiamichi Counties had many plantations along the Red River to the south, and several others along the Kiamichi River that formed the boundary between

⁴⁸ Grant Foreman, ed., *Indian-Pioneer History* (Oklahoma City: Oklahoma Historical Society, Indian Archives, 1937, footnote 7, Vol. 64, 107.

⁴⁹ Michael L. Bruce, "Our Best Men Are Fast Leaving Us; the Life and Times of Robert M. Jones." *Chronicles of Oklahoma*, vol. 66, no. 3 (Fall 1988): 294.

them; Kiamichi River plantations extended north into Jacks Fork County.⁵⁰ In Towson, fifty-five slaveholders owned 289 slaves, and in Kiamichi fifty-three owners held 412. In Jacks Fork fifteen owners held sixty-three slaves: Anthony Reed owned thirty-seven, Alexander McKinney owned six, and all other slaveholders owned three or less. Finally, in Tiger Spring County, sixty-six slaveholders owned 364 slaves. Forty-five of them worked Robert M. Jones' 5,000-acre Lake West farm, where he kept a two-story winter house.⁵¹ In Eagle County, six owners had a total of 183 slaves. George Hudson owned two, and a Mrs. Goins owned one, while the rest were spread among four farms in the Mountain Fork Valley, in the southernmost part of the county. One of the larger slaveholders of Eagle County was Peter Pitchlynn, who possessed eighty-one slaves.

It is worth noting that, of the 203 slaveholders listed in the six counties discussed above, only sixteen had traditional Choctaw names. The remainder had English names. This does not necessarily indicate that the former were all full bloods and the latter were all mixed bloods, but it does indicate that the overwhelming majority of slaveholders in the Red River Valley were biracial. The sixteen traditionally named slave owners possessed a total of thirty-six slaves. The latter number is inflated significantly by the fact that a handful of the sixteen owners in question had several slaves (one, Jackson ne lock ache, possessed nine slaves, only a couple of others had more than five); most owned only one or two. In Jacks Fork, for instance, Lechah owned three slaves, No ubbee owned

⁵⁰ One of the northernmost large plantations along the Kiamichi was owned by Sam Colbert, in a sparsely populated section near Jacks Fork County. One of his slaves, Anna Colbert, born in 1856, claimed that he owned over a hundred slaves, but the 1860 census records him as possessing thirty. Since, in addition to raising cotton and corn, "He also bought and sold slaves," the number may have fluctuated significantly. Anna noted that "Colbert's was the only plantation in that part of the country. The other Indians lived in huts and tents and made their living by hunting and fishing." Interview with Anna Colbert, Indian Pioneer Papers, Vol. 19, p 78. Interview #6049. University of Oklahoma Western History Collection.

⁵¹ Graebner, "Provincial Indian Society," 226.

two, and Gi cochee, Pissah Mukentubbee, James Homah, and the widow Eah Tubbee owned one apiece. The following statistics were compiled by Iwasaki Yoshitaka:

The numbers of slaves owned by a minority of “mixed bloods” rose, whilst the number of slaves owned by the “full blood” members diminished both in proportion and in total, so that by 1860 only 2.7% of the total population of both the Choctaw and Chickasaw nations owned Afro American slaves, and the ratio between “full blood” and “mixed blood” slave masters was 1: 17 in the Choctaw and 1: 6 in the Chickasaw. Furthermore, “mixed blood” slave masters of each nation owned about 88.9% of the total number of black slaves, with some individuals owning as many as 100 slaves or more.⁵²

Not surprisingly, the heavily wooded and mountainous areas held fewer slave owners, and the average number of slaves owned per individual was far smaller. In Nashoba County, four slaveholders possessed a total of twelve slaves. In Bok Tuklo County, five owners had a total of thirteen slaves. In Sans Bois County, eighteen slaves were held by ten owners: Joseph Krebs had eight, Edward Moore had two, and the other eight owners had one apiece. In Sugar Loaf County, eighteen owners possessed fifty-one slaves. One person owned eleven slaves, another nine, two owned five, a widow owned three, and the remainder owned one or two each. The other Choctaw counties ranged between the extremes of those in the productive river valleys and those in areas that were hard to access, each of them having a few dozen slaves.

The poorer individuals –especially the “Mountain Indians” –were not unaware of the social distinctions between themselves and the planters. Peter Garland and his wife Margaret moved from Mississippi to Arkansas, and then to Indian Territory, where he

⁵² Iwasaki Yoshitaka, “Freedmen in the Indian Territory after the Civil War: The Dual Approaches of the Choctaw and Chickasaw Nations.” *Nanzan Review of American Studies*, vol. 30 (2008), p. 93.

eventually settled in the mountainous Sans Bois County and later fought in a Choctaw Confederate regiment. His son Josiah Garland recalled:

My parents were just poor Indian farmers who had been moved from state to state and then to the Indian Territory, and then Father had to go to the white man's war, and at the time I was born, and by the time I was large enough to go to school, my chances of getting an education were very poor.⁵³

The younger Garland explained that the simple log school he attended, that had no grade level distinctions like "my daughter talks about these days," taught only rudimentary reading skills. Once students were able to read their history book, there was a possibility that the Superintendent of the Choctaw tribe would "send them back east to the states to College." However, Garland noted, "just children of the better to do people got to go and get an education. I never went to any other school and not to that one much because Father died and Mother and we kids had to work to make a living."⁵⁴

Garland also addressed the differences in domestic life between classes.

People with money and an education lived better than we did. They had nice board houses, cook stoves, store bought clothes that were the best, lots of horses and cattle but we had a log cabin with a fireplace... sometimes we had pans to eat out of and sometimes we just ate out of the pots and skillets.⁵⁵

Garland mused on the ironies of his father fighting in a war instigated by white men, and implicitly to protect the interests of "well to do" Choctaws who had slaves, all focused on whether or not blacks should be free. The slaves were indeed freed, but due to the fact that his economic circumstances and social class prevented him from getting the

⁵³ Interview with Josiah Garland. Indian Pioneer Papers, Vol. 33, pp. 178-179. Interview #1283. University of Oklahoma Western History Collection.

⁵⁴ *Ibid.*, 179-180.

⁵⁵ *Ibid.*

same kind of education wealthier Choctaws gave their children, “I am here on this reservation and I am a slave instead of the negroes.”⁵⁶

Plantation Agriculture and the Five Tribes

Examinations of social class in antebellum Indian Territory, as in the southeastern United States, must eventually address plantation slavery, which in turn leads one to the primary crop of those plantations –King Cotton. As we have seen, cotton was not a king in any sense among the Five Tribes before the nineteenth century. That position was held by corn, that was both a dietary staple and a religious and cultural marker. Some version of the Green Corn Festival was the central event of each year among many southeastern tribes.

By the early nineteenth century, after several years of the U.S. government urging Indians to take on a completely agricultural lifestyle, cotton was making inroads among at least four of the tribes under consideration in this work. While the Seminoles made no significant effort to add cotton agriculture to their repertoire, Cherokees, Creeks, Choctaws and Chickasaws did. By 1801 the Creek agent could report that “cotton is raised in several places, but in small quantities, by the Indians; it does well throughout the agency.” In the same year, the Choctaw agent could state that “a very few families have commenced the culture of cotton.”⁵⁷ Before long all four tribes were sending requests to the U.S. government for cotton cards and spinning wheels. There were some early instances of Indians selling the cotton they produced: in 1802 a trader named Abram Mordecai set up a cotton gin in south-central Alabama, buying cotton from local

⁵⁶ *Ibid.*, 179.

⁵⁷ *American State Papers, Indian Affairs* (2 vols., Washington, 1832-34), I, 647, 659. Also see Gilbert C. Fite, “Development of the Cotton Industry by the Five Civilized Tribes in Indian Territory,” *The Journal of Southern History*, Vol. 15, No. 3 (Aug., 1949), 342-343.

Creek Indians, then ginning and selling it in Augusta, Georgia. By 1826, Cherokees were ginning and shipping their cotton down the Mississippi and Tennessee rivers to U.S. markets. For the most part, though, in each tribe families were growing and processing cotton for their own immediate clothing needs. By the time of Removal quite a few individuals had become established in plantation agriculture, and they took their slaves with them to their new home (in fact, quite a few Indians in leadership positions used money gained from the sale of tribal lands to buy more slaves.)⁵⁸

The rich, fertile Red River Valley was an ideal place to grow cotton. As previously noted, many Choctaws and quite a few Chickasaws took advantage of that fact. Chickasaw planter Levi Colbert cultivated up to five hundred acres of cotton, and the Choctaw entrepreneur Robert M. Jones shipped seven hundred bales to market in 1851. The land watered by the Arkansas was very productive as well, although as a rule cotton did not do as well as it did along the more southerly Red River. The Creeks, who lived in the uplands, produced little cotton, and that for their own use. Corn was also produced in great quantities by all tribes, with excess being sold. In addition to farming, herding was a significant part of Indian Territory economy, with many slaves being utilized as cowboys.⁵⁹ The many salt mines, also typically worked by slaves, provided another source of income for elites; one of the greatest concentrations of slaves in the Cherokee Nation was along the Grand River, near the plentiful salt works there.⁶⁰

⁵⁸ Fite, 343-344.

⁵⁹ Henry Henderson, born into slavery in 1840, recalled that Cherokee planter Martin Vann (who was both Henderson's owner and his father) "also owned about three thousand sheep which he turned loose in the hills, and he had hundreds of hogs and cattle out on the range." Interview with Henry Henderson, Indian Pioneer Papers, Vol. 41, p 104. Interview #12314. University of Oklahoma Western History Collection. An ex-slave from the Creek Nation noted that while he'd lived "on the *plantation*, perhaps one should say the *ranch*, for they raised principally livestock and corn." L. W. Wilson, "Reminiscences of Jim Tomm," *The Chronicles of Oklahoma*, Vol. 44 (1966), p. 292.

⁶⁰ Fite, 347; Doran, "Negro Slaves," 342.

From Indian Removal to the Civil War, the number of slaves in Indian Territory steadily increased. Choctaws in the east owned 512 slaves before Removal; by 1860 the number was 2,349. For Cherokees, the pre-Removal number of slaves was 1,592, by 1860 it was 2,511. The increase was due in part to new slave purchases, but natural increase played a greater role.⁶¹ Most plantations were owned by mixed blood Indians, and the actual number of slave holders compared to the general population was quite small in each tribe. For example, among the Choctaws only 2.5% of the Indian citizens owned slaves, and among the Cherokees that number was 2.4%. Among all Indian slaveholders in the territory, 63.2% owned five or less.

“The pattern of slave ownership emphasizes once again the extremely unbalanced distribution of affluence and property that was the case for the Indian Territory before 1860,” Doran wrote. “As we have seen, they [slave owners] were predominately the mixed bloods. The masses of citizenry held few or no slaves, and the same socioeconomic perspectives that created this situation also defined the social segment least impacted by cultural change.”⁶²

In 1860 4% of the overall population of Indian Territory was white.⁶³ Many of those individuals were missionaries, traders, and teachers, some of whom had lived among the Indians since before Removal. Others had intermarried with Indian women. A substantial number were small farmers and hired laborers, the latter arriving in the

⁶¹ Doran, “Negro Slaves,” 347.

⁶² *Ibid.*

⁶³ Former slave Jefferson Cole, born in 1849 in Eagle County, Choctaw Nation, noted that “there were very few white men in that country when I was growing up. I can’t remember any of their names.” Jordan Folsom, son of Choctaw slaves, remarked that Indians and Negroes had to buy liquor in Texas since it was illegal in Indian Territory. “I mention negroes and Indians only,” he added, “because there were only a few white people here then.”

Interview with Jefferson L. Cole, Indian Pioneer Papers, Vol. 19, p 187. Interview #12440. University of Oklahoma Western History Collection; Interview with Jordan D. Folsom, Indian Pioneer Papers, Vol. 31, p 69. Interview #12967. University of Oklahoma Western History Collection.

territory in large numbers in the late 1850s to supplement the slave labor force in working the plantations and salt mines.⁶⁴ There is no record of the Indian planters making a concerted effort to recruit white workers, so it can be assumed a large number of them were part of the westward movement who decided to go no further than Indian Territory for work. Among white aliens, as among their Indian neighbors, the number of slaveholders was proportionately small, only 4.9%. This supports Doran's supposition that most of them were from the poorer classes, that would be in keeping with the theory that they were hired workers. Only about a tenth of the more than 300 Tennesseans (who made up the largest percentage of aliens) owned slaves; of 175 whites from Alabama, there were only four slave owners, and only three of the sixty-seven Mississippians held slaves. Georgia, like Tennessee, had a higher proportion, with fifteen slaveholders out of 164. 235 of the 2,264 white aliens were from Northern states, and twelve (or 5.1%) of those owned slaves.⁶⁵

Although the Barnes family moved to Indian Territory immediately after the war, their experiences were similar to those of white aliens a decade earlier. James Robert Barnes, a child at the time, recalled how his father "went down to this side of Red River into an Indian Settlement and traded his two six shooters for five cows... We leased land from Bill Page, a full-blood Choctaw Indian. We agreed to build a house, clear the land, dig a well, and fence with a rail fence for payment of the fee for the lease."⁶⁶

Between 1830 and 1860, the identities of the Five Tribes in Indian Territory were refined. In part this was accomplished by progressively complex legal structures, and in

⁶⁴ Before that time, "agricultural laborers from the United States were carefully prohibited from entering the territory as employees." Doran, "Negro Slaves," 340.

⁶⁵ Doran, "Negro Slaves of the Five Civilized Tribes, 347.

⁶⁶ Interview with James Robert Barnes. Indian Pioneer Papers, Vol. 5, p 284. Interview #5357. University of Oklahoma Western History Collection.

part by the growing distinctions in socio-economic strata that have been outlined above. Even among conservative full bloods living in the least accessible areas of the Territory, old indicators like traditional dress, while not disappearing, were becoming far less common by 1860. Sharp divisions between the lifestyles of common citizens and wealthy elites, unheard of in the previous century, marked the nations of Indian Territory as increasingly modern. The process of identity definition is even more pronounced in the dynamics between Indians and the group whose daily lives we have not yet examined – blacks, both slave and free.

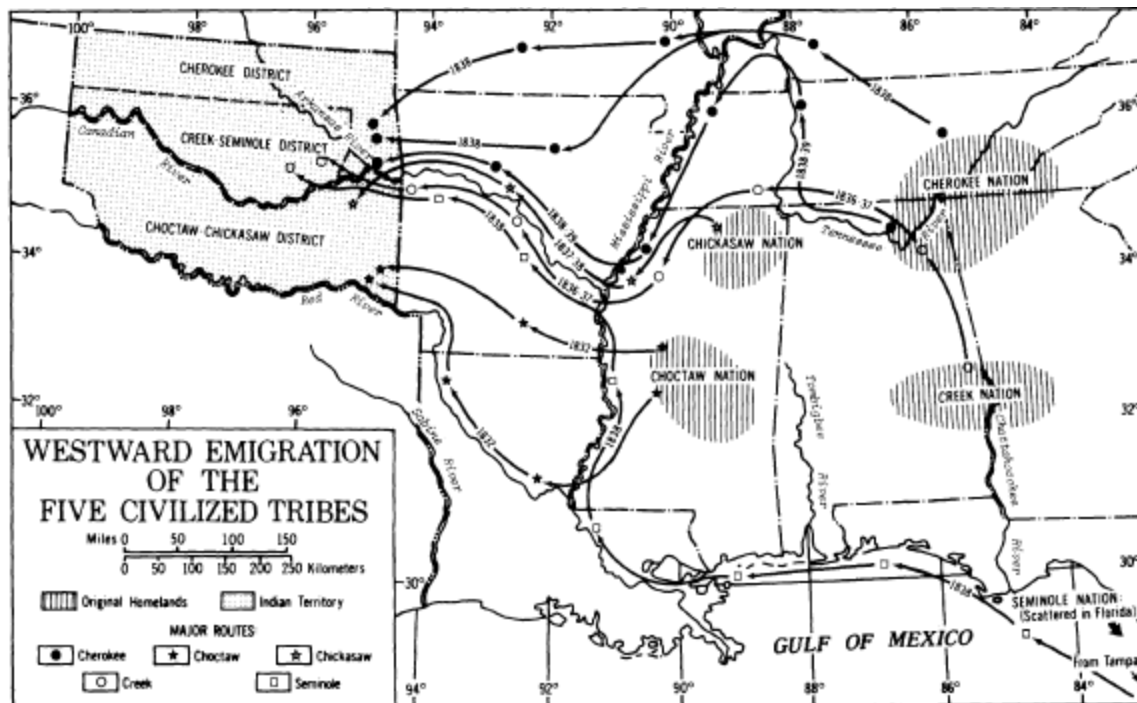


Fig. 4.1 Original Locations of the Five Tribes. Source: Michael F. Doran, "Antebellum Cattle Herding in the Indian Country," *Geographical Review*, Vol. 66 No. 1 (Jan, 1976), p. 50.

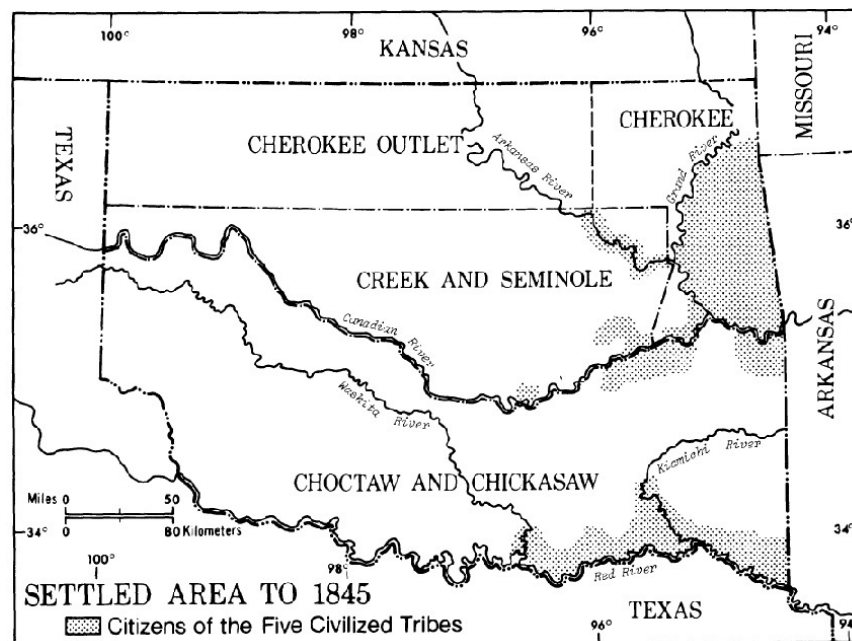


Fig. 4.2 Settlement Patterns in the Early Years After Removal. Source: Michael F. Doran, "Antebellum Cattle Herding in the Indian Territory," *Geographical Review*, Vol. 66 No. 1 (Jan, 1976), p. 52.

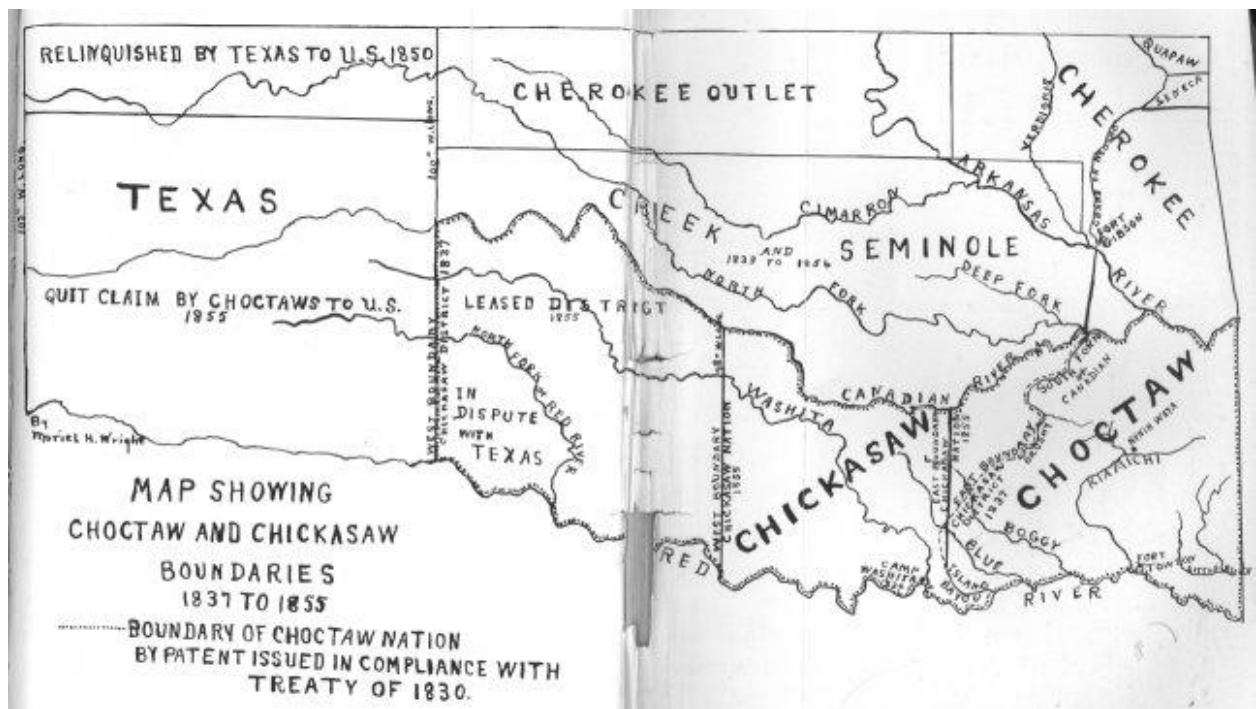


Fig. 4.3. The Boundaries of the Five Tribes in Antebellum Indian Territory. The area in the west, labeled "Leased Territory," was held in reserve to accommodate eventually population increases. In the antebellum period it was occupied by Comanches and Kiowas, who sometimes raided Chickasaw settlements. Source: Muriel H. Wright, "Brief Outline of the Choctaw and the Chickasaw Nations in the Indian Territory, 1820 to 1860." *Chronicles of Oklahoma*, vol. 7, no. 4 (Dec. 1929), p. 412.

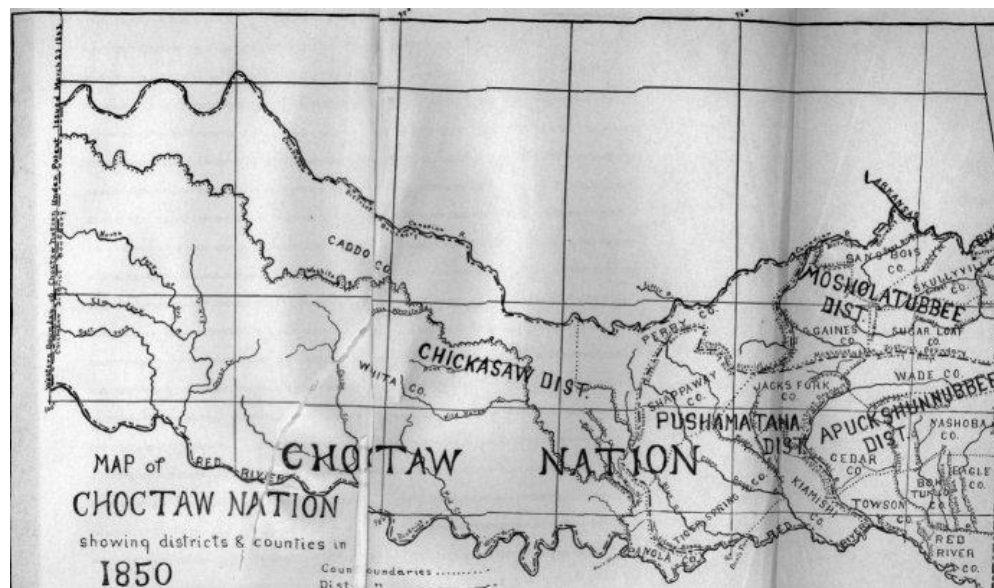


Fig. 4.4. Detailed Map of the Three Districts and Various Counties of the Choctaw Nation. Muriel H. Wright, "Brief Outline of the Choctaw and the Chickasaw Nations in the Indian Territory, 1820 to 1860." *Chronicles of Oklahoma*, vol. 7, no. 4 (Dec. 1929), p. 412.

A Map Showing Agriculture and Slave Distribution in Indian Territory. Not surprisingly, most cotton production, and most slaveholders, were located in the rich river valleys.

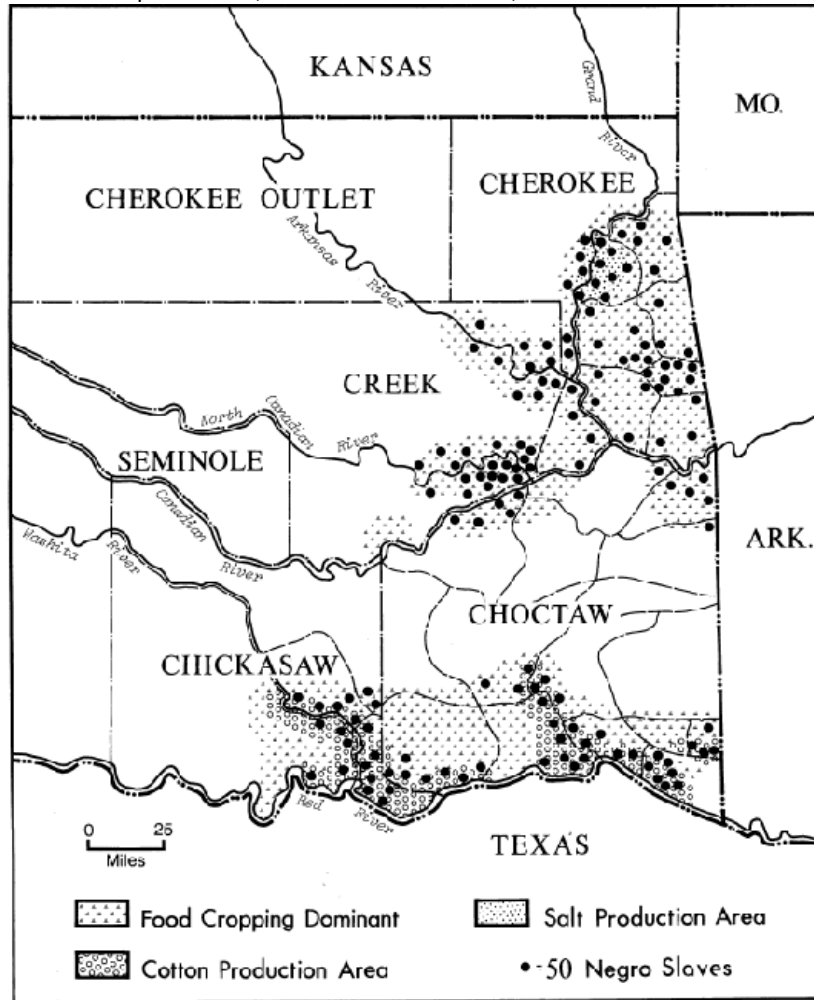


Fig. 4.5. A Map Showing Agriculture and Slave Distribution in Indian Territory. Not surprisingly, most cotton production, and most slaveholders, were located in the rich river valleys. Source: Michael F. Doran. "Negro Slaves of the Five Civilized Tribes." *Annals of the Association of American Geographers*, Vol. 68, No. 3 (Sep., 1978), 343.

	Eastern group	Western group	Total
Cherokee Nation	16,542 ¹	+3,500 ²	20,042
Choctaw Nation	17,963 ³	±1,000 ⁴	18,963
Chickasaw Nation	5,224 ⁵	—	5,224
Creek Nation	21,762 ⁶	+2,400 ⁷	24,162
Seminole Nation	4,883 ⁸	—	4,883
	66,374	6,900	73,274

+ = probably more ± = approximate

¹ J. F. Schermerhorn to Lewis Cass, March 3, 1836, *United States Senate Document No. 120*, 25th Congress, 2nd Session, p. 535. Recorded about 1835.

² Charles C. Royce, "The Cherokee Nation of Indians," *Fifth Annual Report of the Bureau of American Ethnology* (1887), footnote on p. 218. Recorded about 1816.

³ Register accompanying letter of William Ward to Lewis Cass, January 20, 1832, *United States Senate Document No. 512*, 23rd Congress, 1st Session, Vol. 3, pp. 26–124. Recorded about 1831.

⁴ William Ward to John H. Eaton, December 8, 1830, *United States Senate Document No. 512*, 23rd Congress, 1st Session, Vol. 2, p. 197. Recorded about 1830. Most of these people were scattered along the Red River in Arkansas for a number of years.

⁵ "Removal of Chickasaw Indians," read March 17, 1842 (12 pp.), *United States House Report No. 454*, 27th Congress, 2nd Session, Recorded about 1837.

⁶ Register accompanying letter of Thomas J. Abbott to Lewis Cass, May, 1833, *United States Senate Document No. 512*, 23rd Congress, 1st Session, Vol. 4, pp. 235–394. Recorded about 1832.

⁷ Samuel S. Hamilton to John Campbell, November 18, 1830, *United States Senate Document No. 512*, 23rd Congress, 1st Session, Vol. 2, pp. 43–44.

⁸ *American State Papers*, "Indian Affairs," Vol. 2, p. 439.

Fig. 4.6. Total Populations of the Five Tribes at the Time of Removal. The "Western Groups" are those who voluntarily moved West before the majority of their tribe. Source: Doran, "Negro Slaves of the Five Civilized Tribes, 346.

	Indian citizens	Percentage	Whites	Percentage	Slaves	Percentage	Total population
Cherokee Nation ¹	16,542	90	201	1	1,592	9	18,335
Choctaw Nation ²	17,963	96	151	1	512	3	18,626
Chickasaw Nation	5,224 ³	82	—†	0	1,156 ⁴	18	6,380
Creek Nation ⁵	21,762	96	—†	0	902	4	22,664
Seminole Nation ⁶	4,883	100	—†	0	—‡	0	4,883
	66,374	94	352*	0	4,162*	6	70,888*

† Not recorded, but presumably small number.

‡ Not clearly separated from Indian population.

* Summary figures inferior to actual († unknown) total, due especially to Seminole refusal to assist enumeration.

¹ J. F. Schermerhorn to Lewis Cass, op. cit., Table 1, footnote 1.

² William Ward to Lewis Cass, January 20, 1832, *United States Senate Document No. 512*, 23rd Congress, 1st Session, Vol. 3, pp. 26–124.

³ "Removal of Chickasaw Indians," op. cit., Table 1, footnote 5.

⁴ Joseph B. Thoburn and Muriel H. Wright, *Oklahoma. A History of the State and Its People* (4 vols.) (New York: Lewis Historical Publishing Co., Inc., 1929); Vol. 1, p. 297.

⁵ Thomas J. Abbott to Lewis Cass, May, 1833, *United States Senate Document No. 512*, 23rd Congress, 1st Session, Vol. 4, pp. 235–394.

⁶ *American State Papers*, op. cit., Table 1, footnote 8.

Fig. 4.7. Citizens and Noncitizens in the East, 1830. Source: Doran, "Negro Slaves of the Five Civilized Tribes, 346.

	Indian citizens	Percentage	Whites	Percentage	Slaves	Percentage	Total population
Cherokee Nation	13,821	81	716	4	2,511	15	17,048
Choctaw Nation	13,666	81	804	5	2,349	14	16,814
Chickasaw Nation	4,260	79	148	3	975	18	5,384
Creek Nation	13,550	86	596	4	1,532	10	15,678
Seminole Nation	2,253	71	35	—	1,000	29	3,665
	47,550	82	2,299	4	8,376	14	58,594

SOURCES: Indian citizen populations derived from: Federal Records Center, Southwest (Fort Worth), "Drennen Role of Cherokees of 1852"; Indian Archives Division, Oklahoma Historical Society, "Choctaw National Census of 1867"; Henry R. Schoolcraft, *Information Respecting the History, Conditions, and Prospects of the Indian Tribes of the United States* (5 vols., Philadelphia: Lippincott, Grambo and Company, 1853–1856), Vol. 1, pp. 439–524; Commissioner of Indian Affairs, *Report* (Washington, D. C.: Government Printing Office, 1860), p. 125; Commissioner of Indian Affairs, *Report* (Washington, D. C.: Government Printing Office, 1859), p. 183. White and slave populations hand tabulated from the *Eighth Census of the United States, 1860*, manuscript schedules entitled "Territories to the West of Arkansas," except for the Seminole slave number, taken from N. Sayer Harris, *Journal of a Tour in Indian Territory* (New York: Daniel Dana, 1844), p. 16.

Fig. 4.8 Total Populations of the Five Tribes in 1860. Source: Doran, "Negro Slaves of the Five Civilized Tribes, 347.

	Citizen owners			Alien owners		
	Tribal citizens	Slave owners	Owners as a percentage of citizens	Alien residents	Slave owners	Owners as a percentage of aliens
Cherokee Nation	13,821	330	2.4	716	55	7.7
Choctaw Nation	13,666	344	2.5	804	43	5.3
Chickasaw Nation	4,260	112	2.6	148	7	4.7
Creek Nation	13,550	261	1.9	596	7	1.2
	45,297	1,047		2,264	112	4.9

Figure 4.9. Slave Owners in Indian Territory, 1860. Source: Doran, "Negro Slaves of the Five Civilized Tribes, 348.

Number of Slaves Per Owner in Indian Territory, 1860.

Number of slaves held	Citizen slaveholders		Alien slaveholders	
	Percentage	Percentage	Percentage	Percentage
1– 5	662	63.2	72	64.3
6–10	219	20.9	23	20.5
11–20	113	10.8	9	8.0
21–30	27	2.6	5	4.5
31–40	12	1.1	0	0.0
41–50	4	.4	2	1.8
51–75	6	.6	1	.9
76+	4	.4	0	0.0
	1,047	100.0	112	100.0

Fig. 4.10. Number of Slaves Per Owner in Indian Territory, 1860. Source: Doran, "Negro Slaves of the Five Civilized Tribes, 348.

State of Birth of Alien Residents in Indian Territory, 1860

	All Aliens		Slaveholding Aliens	
	State of birth	Percentage of all aliens	State of birth	Percentage of alien slaveholders
Alabama	175	7.7	4	3.6
Georgia	164	7.2	15	13.4
Mississippi	67	3.0	7	6.2
Kentucky	96	4.2	7	6.2
Tennessee	307	13.6	31	27.7
Virginia	96	4.2	6	5.4
North Carolina	89	3.9	15	13.4
South Carolina	59	2.6	8	7.2
Texas	80	3.5	1	.9
New England	68	3.0	7	6.2
New York	63	2.8	3	2.6
Pennsylvania	62	2.7	1	.9
Ohio	42	2.0	1	.9
Other (includes children born in the Indian Territory)	896	39.6	6	5.4
	2,264	100.0	112	100.0

Fig. 4.11. State of Birth of Alien Residents in Indian Territory, 1860. Source: Doran, "Negro Slaves of the Five Civilized Tribes, 349.

CHAPTER 5

SLAVES AND FREE BLACKS IN INDIAN TERRITORY

In December, 1846, a small group of Cherokee slave catchers tracked several runaway slaves to their hiding place, and moved to surround them. One of the fugitives, who was not identified by name but who belonged to Dennis Biggs, heard his pursuers and attempted to escape their grasp. His final bid for freedom failed. The slave catchers overtook him and ordered him to surrender. The *Cherokee Advocate* reported that, “Presenting a large knife in one hand and a club in the other, he refused—bidding them at the same time in language of defiance, to approach. With guns presented they insisted on his submitting. He then attempted to run. They fired—and he was killed.”¹

The previous chapter discussed daily life in Indian Territory from the Indian perspective; what about the experience of black individuals, whether slave or free? The story of Dennis Biggs’ slave provides a vantage point from which to begin shedding light on that question. Obviously, existing as a free citizen would be more desirable to almost anyone than living in bondage. To the runaway slave described above, however, even death was preferable to living as chattel. The same was true of many slaves in the South. The fact that the Cherokee slave in question was willing to risk death, and even ultimately to embrace it, and that (as we shall see) many other slaves in Indian Territory shared the same attitude, calls into question some fundamental beliefs about slavery as practiced by the Five Tribes. Further, the very name

¹ *Cherokee Advocate*, December 17, 1846, cited in Celia E. Naylor, *African Cherokees in Indian Territory: From Chattel to Citizens*, (Chapel Hill: University of North Carolina Press, 2008), p. 34, 249 note 26.

“Oklahoma” is derived from a Choctaw phrase, *oklah humma*, that literally means “red people”; where did black people fit in?²

Outsiders at the time, and historians for generations afterwards, described the lived experiences of slaves in Indian Territory as relatively mild. The fact that some traditionalists, often small farmers with few slaves, may have treated their slaves differently than did wealthy elites who ran large plantations may have helped create the impression that slaves in general had an easy life among the Five Tribes.

In the early years of the nineteenth century, many traditionalist slave owners tended to interact with their slaves as if they were still working under the kinship slavery system. Benjamin Hawkins noted that Efau Harjo was using his slaves ineffectively in the late 18th century by not governing them properly. Travelers described the poorer Indians, who were usually full bloods, as living in squalor with their one or two slaves, whom they did not oversee efficiently. Wealthier slave owners, usually mixed bloods, tended to be described in more positive terms by Euro-American visitors, and were acknowledged as more productive in their execution of slavery,³ but even they were often described as lax in comparison with their white Southern neighbors. In fact, white slavers from neighboring states were “loathe to buy the few Indian negroes that were offered them for sale. The recurrent rumor was that these slaves had been spoiled by the leniency shown them in the Indian Territory, and that their purchase was a poor investment.”

² See Muriel H. Wright, “Contributions of the Indian People to Oklahoma,” *Chronicles of Oklahoma*, Vol. 14, No. 2 (June 1936), p. 156.

³ The minister William Goode noted that the Indian planters could be “hard masters, exacting labor with vigor and punishing with severity.” William H. Goode, *Outposts of Zion, with Limnings of Mission Life* (Cincinnati: Poe and Hitchcock, 1864), footnote 2, p. 160.

Perceptions of “mild slavery” were bolstered in part by the recollection of some former slaves.⁴ One former Chickasaw slave stated that “I never did know that I was a slave, ‘cause I couldn’t tell that I wasn’t free. I always had a good time, didn’t have to work much, and allus [sic] had something to eat and wear.” Another ex-slave believed his master treated him mildly because Indians were “just naturally kind anyway.”⁵ Daniel Webster Burton, born into slavery in the Choctaw Nation, fondly recalled the Englishman Alfred Murray whose Choctaw wife owned him and his family. Murray died just after the Civil War ended. “Alfred Murray died and we slaves were free but were like a bunch of lost sheep, we knew not where to go or what to do. Not until then did we fully realize what a wonderful master we had had and how much he had done for us all.”⁶

Geographer Michael Doran concluded as late as 1978 that “the available primary evidence is strong that the Indian slaves enjoyed fairly mild conditions of servitude.”⁷ Doran’s opinion had been shared for decades by other scholars, especially concerning Seminole slaves. Historian Kenneth Wiggins Porter wrote several books and articles about the Five Tribes and slavery, beginning in the 1940s and continuing into the 1970s.⁸ Porter suggested that Seminoles

⁴ Cherokee freedman Chaney McNair described his servitude, and compared it to stories he had heard about slaves in Texas: “We ha plenty to eat, good horses to ride and plenty of good whiskey to drink. Our masters were kind to us here in the Indian country and there were no restrictions set as to how much work we should do in a day. I was told that down in Texas the slave owners set a rule that each slave was to do so much work each day and any who failed to come up to their rule received so many lashes when night came.” Interview with Chaney McNair, Indian Pioneer Papers, vol. 59, pp. 265-266. Interview #5680. University of Oklahoma Western History Collection.

⁵ George P. Rawick, ed., *The American Slave: A Composite Autobiography* (Westport, Connecticut: Greenwood Publishing Company, 1972, 2nd edition, 19 volumes), vol. 7, footnote 8, p. 244, and footnote 8, p. 34.

⁶ Interview with Daniel Webster Burton, Indian Pioneer Papers, vol. 13, p. 395. Interview #7147. University of Oklahoma Western History Collection.

⁷ Doran, 144. Theda Perdue concurred in her classic 1979 work on the subject, concluding that “relative leniency on the part of masters seems to have been characteristic of Cherokee slavery before and after removal.” Theda Perdue, *Slavery and the Evolution of Cherokee Society*, 98.

⁸ Kenneth Wiggins Porter, “Florida Slaves and Free Negroes in the Seminole War, 1835-1842, *The Journal of Negro History*, Vol. 28, No. 4 (Oct., 1943), pp. 390-421 ; “Negroes ad the East Florida Annexation Plot, 1811-1813, *The Journal of Negro History*, Vol. 30, No. 1 (Jan., 1945), pp. 9-29; “Negroes on the Southern Frontier, 1670-1763,” *The Journal of Negro History*, Vol. 33, No. 1 (Jan., 1948), pp. 53-78; “Negroes in the Seminole War, 1817-1818, *The Journal of Negro History*, Vol. 36, No. 3 (Jul., 1951), pp. 249-280 ; “Negroes and Indians on the Texas Frontier,” *The Journal of Negro History*, Vol. 41, No. 4 (Oct., 1956), pp. 285-310 ; “Negroes and the Seminole War,

were “at first impressed enough with the prestige attached to the ownership of Africans to exchange livestock for them but, not subscribing to the economics of the white, were at a loss as to what to do with them.”⁹ Therefore, they treated them as tenant farmers, allowing them a great deal of freedom.¹⁰ Several of the accounts examined in the previous chapters of this work have also pointed toward such a conclusion, indicating that many Indian traditionalists treated their slaves in a manner similar to that with which their ancestors had treated kinship slaves, continuing to do so long after their governments had begun pointing them to racialization.

The runaway slave belonging to Dennis Biggs, and others like him, indicate meanwhile that there is more to the story. Is it really possible to “enjoy,” as Doran put it, “fairly mild conditions of servitude”? The fact that some (by no means all, nor can it be proven to be a majority) Indian slave owners treated their charges more humanely than did most of their white neighbors does not change the fact that those charges were slaves. Celia E. Naylor is one of many recent scholars who challenges the “romanticized tale of black refuge in Indian country” that historians of previous generations espoused.¹¹ She notes that even kinship captivity was cruel and demeaning. To her, even Porter’s theory that Seminoles, not sharing the whites’ economic system, obtained black slaves and treated them as kinship slaves or even as sharecroppers is by no means a noble approach. After all, “The fact that Cherokee owners did not exploit *dig e tsi na tla i* (the “owned thing”, or Cherokee kinship slave, referred to in Perdue’s work as *atsi nahsa ’i*) in order to produce wealth for themselves or for Cherokee society in

1835-1842,” *The Journal of Southern History*, Vol. 30, No. 4 (Nov., 1964), pp. 427-450; *The Negro on the American Frontier* (New York: Arno Press, 1971.)

⁹ Daniel F. Littlefield, Jr., *Africans and Seminoles: From Removal to Emancipation* (Westport, Connecticut: Greenwood Press, 1977), p. 5. Littlefield is describing Porter’s theories.

¹⁰ Porter, *The Negro on the American Frontier*, p. 186-187.

¹¹ Celia E. Naylor, *African Cherokees in Indian Territory: From Chattel to Citizens* (Chapel Hill: The University of North Carolina Press, 2008), p. 4. It bears noting that several scholars in the 1970s also challenged the traditional view of “mild slavery,” including William G. McLoughlin and R. Halliburton, Jr.

general does not alleviate the state of bondage of the *dig e tsi na tla i*.”¹² Despite the fact that some individual slaves could later recount happy stories of their life in bondage (as, indeed, could some slaves of white Southerners), and despite outside observers who described a “milder” existence for those owned by Indians, slaves were still slaves. Their status was driven home to them every day, from their general living conditions to their treatment at the hands of those who owned their bodies.

The Life of a Slave

If most Indians of the Five Tribes lived simply, slaves lived simpler still. Their clothing, like that of the poorer Indians, was crude and utilitarian. Shoes were sewn together from rough leather, when it was made available to them, and many slaves were forced to go without. Thick, homespun cotton was the basis of their garments, “stitched by the slave women into simple shifts for themselves and their children, and into irregular shirts and pants for the men.” Resultant garments were heavy and uncomfortable, but, as in most areas of life, owners gave little consideration to providing anything more than the basic necessities of survival for their slaves. The same pattern shows through in housing. While only the wealthiest plantation owners inhabited elaborate Southern-style houses, most planters at least had neat, well-constructed log homes, often with second stories, whitewashed exteriors, and attached outbuildings. Slave quarters, on the other hand, were roughly made, windowless log pens with inferior chimneys that provided incomplete egress for smoke produced by winter heating fires.¹³

Two slaves owned by Jackson Kemp, a white man with a Choctaw wife whom he accompanied westward from Mississippi, later recalled the living conditions of their childhood. Adeline Collins, neé Kemp, born in 1850, recalled that “We kids didn’t have shoes then to wear,

¹² *Ibid.*, p.11.

¹³ Doran, “Negro Slaves of the Five Civilized Tribes,” 344.

not even in the winter time... my brother was the first one of us children to wear a pair of shoes. He helped a white man make some lumber for about a week and this white man bought him a pair of shoes [note: this would have been several years after the war.] I was a grown girl before I got any shoes.”¹⁴ Her younger brother, Ebnezer Cutnezer Kemp, born in slavery in 1863, recalled that for most of his childhood he “only had shirts made out of striped cloth called, Hickory shirts, they were long like a dress.”¹⁵

Some slaves, often the very young or the very old, lived and worked in close proximity to their owners even on the larger plantations. Emma Sixkiller, a Cherokee, had fond memories of her grandparents’ slave, “an old colored woman... who we all called Aunt Nervie.” Aunt Nervie was so devoted to the family that she found them among the chaos that marked the end of the Civil War and stayed with them even in her freedom. “She lived many years with us,” Emma Sixkiller recalled, “and was a great help in caring for grandmother, and I think I loved her.”¹⁶ A former Choctaw slave, Elsie Pryor, had a very different view of servitude than Aunt Nervie evidently had.

When ole Miss’s daughter got married, ole Miss give her a little nigger girl. That was me an’ when I was a little thing, too. I don’t remember who young Miss married. They didn’t tell little niggers nothin’, we just found out what we could and didn’t pay much ‘tention to that. An’ not much ‘tention to what we saw. We wuz jes like little varmints. They’d cut arm and head holes in croker sacks and tell us to put them on and go along to work and we did, too. That was the only garment we would wear. We’d go ‘long totin’ in chips, and wood and just anything they had for us to do... They said I was nine years old when the niggers were freed. I din’t know ‘cause I couldn’t read not spell nor nothing. I only knew

¹⁴ Interview with Adeline Collins, Indian Pioneer Papers, Vol. 19, p 348. Interview #4872. University of Oklahoma Western History Collection.

¹⁵ Interview with Ebnezer Cutnezer Kemp, Indian Pioneer Papers, Vol. 50, p 255. Interview #1035. University of Oklahoma Western History Collection.

¹⁶ Interview with Emma J. Sixkiller. Indian Pioneer Papers, Vol. 84, p. 54. Interview #6468. University of Oklahoma Western History Collection.

what they told me and they didn't tell us little niggers much and they'd give us a whack up the side of the head if we asked too many questions.¹⁷

Some slaves, guilty of more serious infractions than asking too many questions, received punishments considerably more cruel than a “whack up the side of the head.” Those infractions usually involved the exercise of resistance in some form.

Passive Slave Resistance and Punishment

Incidents of slave resistance in Indian Territory were very similar to such incidents in the South, and could be passive as well as active. The most common form of passive resistance was minimizing one's labor on behalf of one's owner. This was done in various ways: feigning illness, slowing down one's work pace, disappearing for short periods, and generally acting the part of a layabout. Masters, especially the owners of large operations, were not always tolerant of such work ethics. Former slave Henry Henderson recalled that Cherokee masters “always treated their slaves good, only whipped the mean ones who didn't work.” Some owners “built log pens on their place for keeping a negro should he get mean or do something wrong. They called it the bull ring... The master put that slave in the bull ring and lay on with the lash. When the whipping is over the master say: ‘Now go do that again!’ Most always the man didn't do it again.”¹⁸ While the whip may have been used as punishment for a variety of offenses, Henderson (no doubt echoing his former owners) equated being “mean” with not working.

Adeline Collins, owned by a white master and his Choctaw wife, gave a vivid account of a punishment visited upon her father for reasons unknown to her, other than he “had done something wrong”:

¹⁷ Interview with Elsie Pryor. Indian Pioneer Papers, Vol. 73, pp. 209-210. Interview #13527. University of Oklahoma Western History Collection.

¹⁸ Rawick, 12:179-180, cited in Naylor, 53-54.

I remember one evening seeing my father whipped. Master Kemp had a big post out in front of the house. This was where those who didn't mind were tied and whipped. There was a big negro man who did the whipping. My father had done something wrong. This big negro tied my father's hands around the post and tied his feet, they pulled his shirt off before they tied him up. After he was tied to this post, the negro who did the whipping had a long black snake whip, and he stood off about five feet from the post, and when his whip would wrap around my father, the blood would run down his back. The old master would have all the slaves sit down around the whipping post and watch the whipping take place. The master's wife was a kind hearted woman and she loved all of us children, she wouldn't let Master Kemp whip us girls, she would say we belonged to her.¹⁹

Freedwoman Sarah Wilson lived under similar circumstances in her childhood, in that she was owned by a white man with a Cherokee wife. Recalling her childhood at age 87 for a WPA interviewer, it was quickly clear that she was none too fond of either of them. Her owner was a Tennessean named Ben Johnson, "and he was a devil on this earth. I don't want to talk about him none." Johnson owned a hundred acres of bottomland, and worked his slaves long hours. According to Sarah, they all hated him and his overseer. Her uncle tried to escape once, to the Creek Nation, but was caught by Cherokees and returned; during the war he ran away and joined the Union Army and "they never got him back." Sarah explained that "My name is Sarah now but it was Annie until I was eight years old. My old Mistress' name was Annie and she name me that, and Mammy was afraid to change it until old Mistress died, and then she change it. She hate old Mistress and that name too." The Cherokee mistress made Sarah's mother name her other daughter Annie as well. "Mammy changed it in her own mind but she was afraid to say it out loud, a-feared she would get a whipping. When sister was sold off Mammy tell her to call herself Annie when she was leaving but call herself Lottie when she git over to the Starrs."²⁰

¹⁹ Interview with Adeline Collins, Indian Pioneer Papers, Vol. 19, p 345-346. Interview #4872. University of Oklahoma Western History Collection.

²⁰ Rawick, 7:346-347.

Johnson would often take one or two slaves with him to Fort Smith to witness hangings, in order to frighten them into good behavior. Sarah recalled one time when Johnson had several of his male slaves whipped for fighting in the slave quarters, including her uncle Nick who would eventually escape and fight for the Union. After the whipping Johnson took the lot of them to Fort Smith to view an intimidating execution.

He tied them all in the wagon, and when they had seen the hanging he asked them if they was scared of the dead men hanging up there. They all said yes, of course, but my old uncle Nick was a bad Negro and he said, “No I aint a-feared of them nor nothing else in this world”, and old Master jumped on him while he was tied and beat him with a rope, and then when they got home he tied old Nick to a tree and took his shirt off and poured the cat-o-nine-tails to him until he fainted away and fell over like he was dead. I never forget seeing all that blood all over my uncle, and if I could hate that old Indian any more I guess I would, but I hated him all I could already I reckon.²¹

It is noteworthy that Sarah refers to her hated white master as “that old Indian.” Identifying him in that manner could be an indicator that, having married a Cherokee woman, he had assimilated to Cherokee culture to some extent; it could also indicate that, despite his origins, he was considered a viable part of the Cherokee community. Most likely, however, Sarah’s appellation of her master as Indian demonstrates that, from a slave’s perspective, whites and Indians were not that different from one another in Indian Territory. That certainly seemed to hold true for the Johnsons. As Sarah explained, “Old Master wasn’t the only hellion neither. Old Mistress just as bad, and she took most of her wrath out hitting us children all the time. She was afraid of the grown Negroes. Afraid of what they might do while old Master was away, but she beat us children all the time.” Annie Johnson, apparently, did not trust in the passivity of her slaves unless they were smaller than her.²²

²¹ *Ibid.*

²² *Ibid.*

Sometimes slaves feigned illness to avoid work; sometimes they were truly sick, and their masters interpreted it as laziness. Another former slave from the Johnson plantation, Charlotte Johnson White, recalled the treatment her mother received from Ben Johnson when he suspected her of slacking. When the woman was too sick to rise and go to work, “de old master come around to see about it, and he yelled, ‘Get out of dere and get yourself in the fields.’ She tried to go but was too sick to work. She got to the door alright; couldn’t hurry fast enough for de old master though, so he pushed her in a little ditch dat was by the cabin and whipped her back wid the lash, den he reached down and rolled her over so’s he could beat her face and neck.” Charlotte Johnson White noted that her mother “didn’t live long after dat and I guess de whippin’s helped to kill her, but she better off dead than jest livin’ for the whip.”²³ Celia Naylor suggests that the death of White’s mother sent a message to any potentially malingering slaves, “a message louder than the sound of Johnson’s orders or the whip against her skin.”²⁴

Charlotte herself would also feel Johnson’s wrath. When she was twelve, and “tendin’ the master’s children like what dey tell me to do,” she dropped an infant in the yard near the spot where Johnson was burning brush. (Naylor suggests this may have been an intentional act, and a case of Charlotte “vent[ing] her anger about her mother’s death in acts of resistance cloaked in negligence,” but White’s account only says that she “somehow drop[ped] one of dem.”) Ben Johnson, predictably, flew into a rage, but even young Charlotte was unprepared for what he did next. “While I was stoopin’ to pick up de baby he grabbed me and shoved me into de fire! I sent into dat fire headfirst, but I never know how I got out. See this old drawn, scarred face? Dat’s what I got from de fire, and inside my lips is burned off, and my back is scarred wid lashings dat’ll be wid me when I meet my Jesus!” Charlotte eventually tried to escape, and made her way

²³ Lindsay T. Baker and Julie P. Baker, eds., *The WPA Oklahoma Slave Narratives* (Norman: University of Oklahoma Press, 1996), 465.

²⁴ Naylor, 57.

south to Scullyville, but “de old master track me down and dere I is back at de ol’ farm for more whippin’s.” She was eventually given away to “Aunt Easter Johnson,” who was “a mean woman—mean to everybody.”²⁵

Sometimes slaves went to further extremes than simple feigned illness to deprive their masters of labor. Former Cherokee slave Nancy Rogers Bean told interviewers about her aunt, a “mean, fighting woman. She was to be sold and when the bidding started she grabbed a hatchet, laid her hand on a log and chopped it off. Then she throwed the bleeding hand right in her master’s face.”²⁶ While self-mutilation as an act of individual resistance to slavery was not commonplace, in the South or in Indian Territory, neither was it unheard of.²⁷

Another form of resistance was petty theft. In some cases it was as much a case of necessity as of rebellion, for as Sarah Wilson explained, each family was given a ration at the beginning of the week that was estimated to barely cover their necessity, with no more food forthcoming until the following week. “We all know the overseer steal some of it for his own self but we can’t do anything, so we get it from the old Master some other way.” Once, when she was carrying water from the spring, young Sarah stumbled upon her grandmother and her Uncle Nick skinning a cow. “What you-all doing?” she asked, probably somewhat loudly, for they told her to keep her mouth shut. They had killed one of the master’s beeves to “piece out” with other families at the slave quarters. “Old Master had so many cows he never Did count the difference.”²⁸

Another incident of petty theft on the Johnson plantation did not end so well. This one involved Sarah’s aunt.

²⁵ Baker and Baker, 465; cited in Naylor, 57.

²⁶ Rawick, 7:13.

²⁷ Darold D. Wax, “Negro Resistance to the Early American Slave Trade.” *The Journal of Negro History*, Vol. 51, No. 1 (Jan., 1966), p. 1.

²⁸ Rawick, 7:348.

She was always pestering around trying to get something for herself, and one day she was cleaning the yard he seen her pick up something and put it inside her apron. He flew at her and cussed her, and started like he was going to hit her but she just stood right up to him and never budged, and when he come close she just screamed out loud and run at him with her fingers stuck out straight and jabbed him in the belly. He had a big, soft belly, too, and it hurt him. He seen she wasn't going to be afraid, and he set out to sell her. He went off on his horse to get some men to come and bid on her and her boy, and all us children was mighty scared about it.²⁹

For many slaves, like Sarah and the other children on the Johnson plantation, the threat of being sold away was even more frightening than the lash (and considering the tempers of Ben and Annie Johnson, physical punishment must have been a terrifying prospect indeed.) Unlike the whip, the auction block could destroy whole families.

The Auction Block

Perhaps nothing could demonstrate slaves' status as property, both to them and to their owners, with more cold efficiency than the auction block. Some slaves were sold by their Indian masters to neighbors or relatives in an informal fashion, or given away as gifts, while others had to endure the indignities of examination by potential buyers as if they were livestock. Most slaves in Indian Territory had either been bought in the Southeast before Removal, or were descended from parents or grandparents who were; a smaller number were bought in the years between Removal and the Civil War and were transported to a new (yet in many ways familiar) life in Indian Territory.

Sylvia Folsom was a member of the latter group. Sometime during the 1830s she and her young child were placed, along with several other slaves, on an auction block in Alabama. Sylvia and her son, as well as a young couple, were sold to a slave trader "who was bringing slaves to the Indian Territory and selling them to wealthy Indians." Sylvia's mother was present at the

²⁹ *Ibid.*, 346.

auction, and wept piteously for her daughter and grandchild, “but it did no good,” Sylvia’s own grandson would later relate: “they were just chattels and were sold, regardless of what any of the relatives said or did ...it did not matter to the dealers... if they didn’t happen to want them all they didn’t mind separating families.” Sylvia never saw or heard from her mother again.³⁰

The newly purchased slaves were added to the slave trader’s collection, and began the long walk to Indian Territory. They were all tied together, and walked under the supervision of white drivers with whips who “drove them along the road just like cattle.” The slave trader who had bought them rode in a carriage, driven by a slave. The slaves were undernourished and suffered from cold, not only due to their insufficient clothing and the chilly weather, but because they were forced to wade across streams. Sylvia was ultimately sold to the Choctaw Henry Folsom; her young son died shortly afterwards, no doubt due to the arduous journey.³¹

Once in Indian Territory, whether by import or by birth, slaves still did not have personal or family security. There, as in the South, slaves did not have recognized marriages. Choctaw freedman Jack Campbell recalled his (Alabama-born) mother explaining to him that “there were no marriages in the negro race during slavery days. They just coupled off together and if there were any children born to any of these couples, they were then children and slaves of the master who owned the mother.”³² Former Choctaw slave Charlotte Kursh explained to a WPA interviewer that children born to a slave mother were automatically slaves, with no standing in the Choctaw Nation, due to traditional Choctaw matrilineal customs.³³ Slave parents could be

³⁰ Interview with Jordan Folsom, Indian Pioneer Papers, vol. 31, pp. 63-65. Interview #12967. University of Oklahoma Western History Collection.

³¹ *Ibid.*

³² Interview with Jack Campbell, Indian Pioneer Papers, vol. 15, p. 233. Interview #6449. University of Oklahoma Western History Collection.

³³ Interview with Charlotte Kursh, Indian Pioneer Papers, vol. 51, p. 456. Interview #5971. University of Oklahoma Western History Collection.

separated from their children, and from one another, at any time. In cases where one parent was sold away, both could immediately be assigned new “spouses” by their owners.³⁴

All the accounts described above differ little, if at all, from the experiences of slaves with white owners in the South. Even if one were to accept the premise that slaves in Indian Territory were generally treated better physically, and forced to work less, than those in neighboring Southern states, it is doubtful that individuals living in fear of permanent separation from their loved ones could be said to enjoy a mild condition of servitude, much less an idyllic co-existence with their owners. The fragility of their family structure is further exposed by the fact that, in many cases, the children being taken away from slave mothers had been fathered by the Indian masters who were selling them.

“He Did Not Hesitate to Bring Half-Breed Children into the World”

Slaves in Indian Territory existed in a nebulous social position that in some ways was similar to that of captives/kinship slaves in previous generations: living in the midst of Indian communities, often speaking the languages of and sharing many cultural characteristics with their captors. They were within the broader Indian community yet still not part of it; insider-outsiders, as it were. This tenuous and ill-defined condition was even more pronounced among those slaves whose owners were also their fathers. Sometimes they were treated almost like family; more often they were just another slave. Sharing both biological and cultural antecedents with the Cherokees, Choctaws, et al., that they lived among, they nevertheless experienced none of the benefits of those relationships that Indian-African individuals living decades earlier in the Southeast might have known. The offspring of, for example, an 18th century Cherokee man and a captive woman might or might not be liable for inclusion in the kinship circle (considering his

³⁴ Interview with Anna Colbert, Indian Pioneer Papers, vol. 19, p. 78. Interview #6049. University of Oklahoma Western History Collection.

mother was not), but neither would he or she be condemned to a life of slavery. By the time the Five Tribes were settled into Indian Territory, though, written laws had begun to clearly delineate the differences between indigenous citizens and blacks, whether slave or free.

Peggy McKinney Brown was born in the Choctaw Nation, in Doaksville. Her owner, Jesse McKinney, owned a sizeable tract of land on Jack Fork Creek, where he raised a large number of livestock. Peggy was one of about twenty slaves he owned, and she recalled later that he was “a very hard master.” A WPA interviewer reported in 1937 that “She [Peggy] told me personally herself that her master, Jesse McKinney, was her father and also her master... He had no regard for himself or any of the negro slave women, especially if they were of pleasant looks. He did not hesitate to bring half-breed children into the world.” It was not until McKinney freed his slaves, “a year or more after the war was over,” that he informed Peggy he was her father.

On the surface, it would seem that freedman Milton Starr’s antebellum situation was significantly different than Peggy McKinney Brown’s. Starr was born in 1858, in the Flint District of the Cherokee Nation. Milton was owned by a mixed blood Cherokee named Jerry Starr, whom Milton acknowledged to be both “my master and my father.”³⁵ His mother was a slave named Jane Coursey, originally from Tennessee but “picked up by the Starrs when they left that country with the rest of the Cherokee Indians. My mother wasn’t bought, just stole by them Indians.” Milton Starr recalled that he “was not treated like other slaves and my folks never told me anything about slavery”; they “never whipped me, always treat[ed me] like I was one of the family, because I was.”³⁶ After the Civil War, Milton’s mother left Indian Territory and returned to Tennessee, perhaps to search for lost relatives, leaving her son behind on the Starr farm. It is possible Milton was not disposed to leave, nor his father/master to let him go. On one hand,

³⁵ Rawick, 12:293.

³⁶ *Ibid.*, 295.

Milton's description of his life seems a far cry from that of Peggy McKinney Brown. He felt that he was a member of the Starr family, and as a child did not even know that he was a slave. This does not change the fact that, according to the laws of the Cherokee Nation, he *was* a slave. If Milton had considered his situation idyllic, his mother Jane apparently did not, for she wasted no time in leaving it when the opportunity arose. Celia Naylor has posited that this difference in perception may have been generational; not only Milton Starr, but also Peggy McKinney Brown's son Charley Brown seemed to have a more favorable view of both Indians in general and his own Indian heritage than his mother apparently had.³⁷ Perhaps it required enough age and experience, while still a slave, to recognize the true constraints of that condition.

Murder as Slave Resistance

On December 28, 1858, Richard Harkins rode away from his plantation in Indian Territory to search for a strayed ox and was never seen alive again. Harkins' family was prominent in Choctaw politics –his brother George was chief of Apukshunnubbee district, and his father-in-law Peter Pitchlynn, who in 1860 would become Principal Chief of the Nation, had been active in tribal government for decades. Pitchlynn's daughter Lavinia was frantic when her husband did not return home that evening, and called for her relatives to help look for him. He was nowhere to be found. Lavinia feared foul play from the Harkins' slaves. Harkins, apparently known as a harsh master, had refused to give the slaves the gifts and rest from work that were traditional on Christmas.

Suspicion turned toward one slave in particular, a man named Prince. Under torture, he confessed to the crime: Harkins had stopped along the road to help the slave, who was making fence rails, and when the Choctaw planter bent over to move a log Prince killed him with an ax. He then weighted the corpse with a rock and sunk it in the Little River. Prince claimed that his

³⁷ Naylor, 263, footnote 16.

aunt Lucy had instigated the murder and supplied the rope used to tie the body to the heavy stone. Lavinia's kinsmen led Prince to the scene of the crime, and he showed them where the corpse was hidden. Prince then broke away from his captors, jumped into the river, and drowned himself.

Lucy was not so fortunate. The mother of eight was tortured for an extended period of time.³⁸ Little detail of this torture exists, although one account mentions that, among other things, Lucy was "three times hung up to extort confession of guilt."³⁹ She steadfastly proclaimed her innocence. The crowd did not agree. They placed her on a pyre, along with Prince's corpse, and burned her alive. Lavinia Harkins, and several other witnesses to and perhaps participants in the killing, then went to the Mission Church and took communion.

As previously discussed, anyone from outside the tribe who killed a tribal member –or whose community killed one, making every community-member equally responsible –was subject to torture and execution, often by being burned alive. Since immolation as an execution technique was adopted fairly late by the Five Nations –as opposed to, for example, the Iroquois, who had practiced it for a long time and had developed elaborate rituals associated with it –there were relatively few ritual elements in Choctaw captive-burnings. The two elements that *were* usually present were community involvement and supervision/authorization from the women of the tribe.

³⁸ *The Independent*, Dec. 6, 1860, p. 1. Akers, 136-138, footnote 1 p. 170-171; William G. McLoughlin, "The Choctaw Slave Burning: A Crisis in Mission Work Among the Indians", *Journal of the West*, 13 (1), Jan. 1974, 113-119. Akers' account, based on letters Peter Pitchlynn received from Choctaw relatives, differs from that of McLoughlin, based on letters exchanged by missionaries –Akers dates the event 1856, and questions both Lucy's innocence and the extent of her torture. See Lycurgus Pitchlynn to Peter P. Pitchlynn, Eagletown, 3 Jan. 1858 [*sic*]; Box 3, File 39; L. S. W. Folsom to Peter P. Pitchlynn, Jan. 1859, Box 3 File 38, Peter Pitchlynn Collection, Western History Collection, University of Oklahoma, Norman; Presbyterian Historical Society, Philadelphia, Record Group 31, Presbyterian Board of Foreign Missions, Box 10, Volume I, pp.56-57; Cyrus Byington Family Letters, Thomas Gilcrease Institute, Tulsa, Oklahoma, March 30, 1861, April 13, 1861, and July 29, 1861. See also *The Liberator*, Dec. 31, 1860 p. 1.

³⁹ Professor Samuel Bartlett, of the Chicago Theological Seminary, in *The Independent*, Dec. 6, 1860, p. 627.

These elements are clearly visible in the torture and burning of Lucy for complicity in the murder of Richard Harkins. Lavinia Harkins was present for the whole affair, and was the primary object of inquiries at the mission. “I do not deem it proper to give details of what she said and did while under the excitement occasioned by the murder of her husband,” missionary Cyrus Byington later wrote to his superiors. The whole Choctaw community near Harkins’ home was involved in the event. Lavinia’s role, the other Choctaws’ participation, and the manner of Lucy’s death are all reminiscent of eighteenth-century captive executions –and suggests that black slaves were clearly *not* considered in any sense part of the community and were, in fact, viewed as outsiders and potential enemies. Like kinship slaves, their lives were subject to their master’s whims.

Nor was the burning of Lucy the only such example. In 1832 a 20-year-old slave, while chopping wood with his master James Davis, split Davis’ skull with an ax and burned the body. Davis, a white man, was the son-in-law of a prominent “mixed blood” Choctaw named James Perry. A search of the area revealed human bone fragments; the slave tried to implicate an “old negro” for coming up with the plan. Perhaps, like Prince, this young man was tortured and wished to shorten his ordeal by shifting the blame to an accomplice, real or imagined. The Choctaws burned the young slave alive.⁴⁰ We do not know to what extent, if any, Davis’ widow was involved in the procedure –but it was Davis’ matrilineal kinship bonds that made him part of the community.

Of course, Choctaws were not the only people who burned blacks at the stake –there are ample cases of white mobs doing so. In 1843 two men –one black, the other Indian –murdered the Cox family near the Poteau River, on the border between the Choctaw Nation and Arkansas. The Indian (no tribe specified) shot the family head, a blacksmith, and the black (apparently free,

⁴⁰ *Trumpet and Universalist Magazine*, April 28, 1832, p. 175.

since he is not specified as a slave) killed the man's wife and little daughter with an ax. They fled deeper into Indian Territory, but were captured and brought back to Scott County, Arkansas to await trial. A mob broke into the jail and –leaving the Indian unmolested –tied the black to a stake and burned him to death. This seems to have been a white mob, but considering the location and circumstances there may have been Indians present.⁴¹ The difference is in the echoes of matrilineal kinship and execution of enemies that show in the Choctaw examples – especially that of Lucy.

A similar situation occurred decades earlier in Georgia, when four of Cherokee planter James Vann's slave plotted to ambush and kill him. Vann had a reputation as a harsh slave-owner and a violent man—it was the same James Vann who had murdered his own uncle to avoid being the victim of a revenge killing by another clan—so it is not surprising that his slaves might find life under his command unbearable. The group had first burglarized his home; unfortunately for them, their assassination attempt failed and three of them were captured. Missionaries recorded that “Mr. Vann wants to burn alive his Negro Isaac, who robbed him. He is out for his blood; he called all the Negroes together to watch it and learn an example from it as well.”⁴² The fourth fugitive was later caught and hanged.

Cherokee citizen Grover C. Hanna provided another example of a slave committing murder, and facing Indian justice. Hanna's uncle, Henry Barton, lived on the Illinois River with his wife Cynthia and a slave they called “Nigger Smoot”—“whom they had had many years and

⁴¹ *The Liberator*, June 9, 1843, p. 91. In Georgia, in 1825 –one of countless examples –a black man was “burnt alive” by whites for killing a white man. –*The Friendly Visitor*, Aug 12, 1825, p. 264.

⁴² Tiya Miles, *The House on Diamond Hill: A Cherokee Plantation Story* (Chapel Hill: University of North Carolina Press, 2010), 117-119.

trusted.” Their trust, it would seem, was misplaced, and Smoot was not as content as they assumed.⁴³

“One night, Uncle Henry expecting to go turkey hunting the next morning, had Smoot help him mould bullets to use. That day, Uncle had sold a good horse and had the money in the house. That night after they had gone to sleep, Smoot took an ax, killed Uncle Henry and pounded Aunt Cynthia until he thought she was dead. Then taking the money, a good horse, and an old rifle he left the place.”⁴⁴

The couple was found a day-and-a-half later by Cynthia’s half-brother Zeke Proctor. Cynthia was still alive, “but never recovered and was an invalid afterwards.” Proctor, who would later become something of a folk figure for his involvement in a courtroom shootout in which eleven people were killed, began trailing the fugitive slave.⁴⁵ He found Smoot hiding in a smokehouse in Fredonia, Kansas. Proctor surprised the man in his sleep, tied him to the stolen horse, and returned him to the Cherokee Nation where he was hanged from a tree in the very yard where he had killed his owner.⁴⁶

Slaves murdered their masters, from time to time, throughout the South, and it should therefore come as no great surprise that the same thing occurred in Indian Territory. The preceding accounts tell us two things. First, at least in some of the Choctaw examples, there is an element of “othering” in the treatment of slaves guilty of murder, similar in many ways to the traditional treatment of tribal enemies. This is particularly evident when one compares the treatment of black murderers with that of Choctaw murderers in traditional kinship practices. Second, these accounts call into question the longstanding assumption that Indians practiced a

⁴³ Interview with Grover C. Hanna and his wife. Indian Pioneer Papers, vol. 38, p. 207-208. Interview #7130. University of Oklahoma Western History Collection.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, 209

⁴⁶ *Ibid.*, 208.

form of chattel slavery that was significantly “milder” than their white neighbors. Prince was perhaps angry over what he considered unfair harshness by Richard Harkins, who in effect canceled Christmas; Smoot, meanwhile, was a servant of long standing who had earned the trust of his masters. In both cases, the temptation of a handy ax led the slaves to risk everything, and to pay the ultimate price. These were not the actions of someone who considers his servitude “mild”; nor were the community’s reactions those of people who considered the offender a part of their group. Both of these points are even more evident when the fugitives are not independent actors but themselves part of a larger group, as demonstrated in the 1842 Cherokee slave revolt.

The 1842 Cherokee Slave Revolt and Its Repercussions

Joseph Vann was one of the largest slaveholders in Indian Territory. He was the son of James Vann, the Cherokee leader who had killed his own maternal uncle in his youth in order to assuage a blood feud, and the grandson of a Scottish fur trader who had married a Cherokee woman in the late 18th century. He was the former owner of the lavish Georgia manor Diamond Hill, in which he had installed an expensive suspended staircase that Tiya Miles speculates was a signal to the world “that he had risen to heights of wealth that others in the region, Cherokee or white, could only view with wonder.”⁴⁷ His extensive holdings earned him the nickname “Rich Joe;” Miles writes that, like his father, Vann was “shrewd, ambitious, avaricious, and often uneeling when property was at stake.”⁴⁸ Vann owned a public ferry, as well as two steamboats that regularly delivered freight to the Arkansas River port of Webbers Falls, near Fort Gibson. He possessed three hundred slaves; some of them worked on his boats, but most were located on his large plantation near Webbers Falls.⁴⁹ He had a reputation as an especially hard master; at his

⁴⁷ Miles, 169.

⁴⁸ Ibid., 164.

⁴⁹ Interview with Jesse Doyle. Indian Pioneer Papers, vol. 25, p. 418. Interview #13140. University of Oklahoma Western History Collection.

Georgia plantation he had banned dancing parties and taken away the slaves' permission not to work on Saturdays.⁵⁰

Early in the morning of November 15, 1842, several slaves from Vann's plantation locked their masters and overseers in their houses while they slept and made their way to a rendezvous point near the river town, taking several of Vann's prized racehorses with them. There they were joined by other runaways, from the plantations of Joseph Tally, William Mackey, and others, more than two dozen in all. The slaves broke into a store and stole weapons, ammunition and supplies, and loaded them onto stolen horses and mules. By dawn they were on their way south, headed to Mexico, where there was no slavery. While traveling southwest through the Creek Nation they were joined by runaways owned by Creek planters named Bruner and Marshall. This swelled their numbers to about thirty-five, including women and children.⁵¹

Upon discovering the escape, a group of about forty Cherokees organized, collected hounds and horses, and started the task of tracking the runaways. In Creek territory they encountered another, smaller group of Creek men in pursuit of their own fugitives, and they joined forces. Within a few days they overtook the slaves in the Choctaw Nation, about ten miles south of the Canadian River. The slaves entrenched themselves in a gully and prepared to defend themselves. In the protracted battle that followed, the Cherokees and Creeks managed to kill two of the slaves and capture a dozen others. This still left a significant force that they were unable to

⁵⁰ Miles, *House on Diamond Hill*, 165.

⁵¹ Statement of John Drew, January 3, 1843, National Archives Microfilm Publications, Microcopy M234-87 (hereafter cited as M234, followed by the roll number), S3322-43; *Arkansas State Gazette*, December 21, 1842; *Fort Smith Elevator*, February 12, 1897; Captain J. Brown to Captain W. W. S. Bliss, November 20, 1842, National Archives Record Group 393 (Records of the United States Army Continental Commands, 1821-1920), Second and Seventh Military Departments, Letters Received, Box 4; All cited in Daniel F. Littlefield and Lonnie E. Underhill, "Slave 'Revolt' in the Cherokee Nation, 1842," *American Indian Quarterly*, Vol. 3, No. 2 (Summer, 1977), pp. 121-122. R. Halliburton, Jr., gave the number as "two hundred or more" in 1975, but that figure is unsubstantiated and unlikely. R. Halliburton, Jr., "Black Slave Control in the Cherokee Nation," *The Journal of Ethnic Studies*, 3 (Summer, 1975), p. 29.

dislodge, so they returned home for reinforcements. The surviving slaves continued their southward journey.

Fifteen miles south of the battle site, the slaves chanced upon another group of travelers. That group was led by a white man named James Edwards and a Delaware Indian named Billy Wilson, both of whom were fugitive slave catchers. They had eight escaped slaves in their custody –a man named Hardy, two women, and five children. Those fugitives had run away from their owner, a white man named Thompson, who was married to a Choctaw woman and was therefore a Choctaw citizen. Thompson's slaves had escaped to the western part of Indian Territory, outside the Five Tribes, and been recaptured there. Their captors were returning them to their owners. Unfortunately for Edwards and Wilson, they wound up with more fugitive slaves than they had bargained for, and several of them were armed. According to one account, Moses, a Tally slave, shot and killed Edwards, and a Vann slave named Russell shot the man again when he fell off his horse. John, a Mackey slave, then killed Wilson. The eight Choctaw slaves, no doubt delighted by their change of fortune, joined the original runaways in their southward trek.⁵²

Two days after the initial escape, on November 17, 1842, the Cherokee National Council at Tahlequah drafted a resolution, approved by Chief John Ross, empowering an official force to pursue the fugitives. The resolution authorized Captain John Drew to raise a body of as many as one hundred men, who would be paid and equipped at the expense of the Nation, so long as the affair was not “unnecessarily protracted, and no needless expenses thereby incurred.” The commandant of U.S. forces at Fort Gibson and the Creek and Choctaw chiefs, were informed of the action and the Cherokee Nation absolved itself of any responsibility if the blacks resisted and

⁵² Statement of John Drew, January 3, 1845, and John Ross to P. M. Butler, December 11, 1842, M234-87, S3322-43 and B1645-43; *Arkansas State Gazette*, January 4, 1843; cited in Littlefield and Eller, p. 130, footnote 3.

were killed. By November 21, Drew had raised 87 men and secured the loan of twenty-five pounds of gunpowder from Fort Gibson. He led his force south after the runaways.⁵³

On November 26, Drew and his men found the decomposing bodies of Edwards and Wilson. Two days later they found their quarry, seven miles north of the Red River and almost three hundred miles from their starting point. This time the slaves, starving and exhausted, offered no resistance. Thirty-one slaves were recovered; two escaped due to the fact they were out hunting when Drew's company arrived. Drew returned his captives to Webbers Falls on December 7. Five of them were retained to be tried for the murders of Edwards and Wilson, and the rest were returned to their masters. Joseph Vann, who owned most of the runaways, chose to put them to work in his steamships rather than return them to his plantation.⁵⁴

Historian William McLoughlin, in his 1974 article "Red Indians, Black Slavery, and White Racism," suggested that the 1842 incident was caused by the increasing legal restrictions on blacks in the Cherokee Nation, which led to a situation that the slaves found unendurable. McLoughlin pointed out that, despite the fact that "it is generally argued that the Cherokees treated their slaves very leniently," there were cases of individual Cherokee slave owners being cruel to their human property, and that the relative severity of the institution varied from case to case.⁵⁵ In that same year, R. Halliburton asserted that slavery was little different in Indian Territory than it was in the South, and that the slaves of Cherokees "had no increased freedoms" under that ownership.⁵⁶ "What is more," McLoughlin pointed out, "it can be shown very easily that the status of black slaves and black freemen among the Cherokees declined steadily over the years." This can be demonstrated by examining Cherokee laws relating to slaves and free blacks

⁵³ Naylor, 45. Littlefield and Eller, 122.

⁵⁴ *Ibid.*, 122-123.

⁵⁵ William G. McLoughlin, "Red Indians, Black Slavery," 381.

⁵⁶ Halliburton, "Origins of Black Slavery Among the Cherokees," *Chronicles of Oklahoma*, 52 (Winter, 1974-75), p. 496.

from 1819 to 1860. He concluded that “it is not surprising that under the increasing severity of the Cherokee slave system there should have been several slave rebellions (in 1841, 1842, 1850) in which large numbers of blacks escaped to Mexico.” He also argued that the Cherokees adopted, over time, “all the worst features of Southern black codes (including the mounted, armed patrols to enforce them).”⁵⁷

Daniel F. Littlefield and Lonnie Underhill argued, in a 1977 *American Indian Quarterly* article, that both McLoughlin and Halliburton had misinterpreted the evidence. They asserted that there was little difference between the Cherokee slave code of 1840 and related laws passed by the Cherokees before Removal, therefore denying McLoughlin’s claim that those laws became increasingly restrictive over time; the only significant additions were the prohibition against slaves owning weapons or livestock and several regulations about what they called “foreign” free blacks. For example, one of the laws passed by the 1840 Council forbade “any free negro or mulatto, not of Cherokee blood” to build and hold the rights to improvements on Cherokee land. Another prescribed thirty-nine lashes for any slave, free black, or mulatto “not of Cherokee blood” that was caught stealing liquor; an 1841 law called for the same punishment to be applied to “any negro not entitled to Cherokee privileges” whom slave patrollers found carrying any sort of weapon. Another 1841 regulation imposed a large fine on anyone teaching a slave or a free black “not of Cherokee blood” to read.⁵⁸

These laws were not indiscriminately applied to all freemen, just those “not of Cherokee blood;” Littlefield and Underhill asserted that recognizing the identity of those “foreign”

⁵⁷ McLoughlin, “Red Indians, Black Slavery,” 381.

⁵⁸ Littlefield and Underhill, p. 125. Interestingly, in an article published a year previously Littlefield had acknowledged that “McLoughlin demonstrates in that article and elsewhere, however, that as time passed and the Indians were drawn into the national debate on slavery, principally through their agents and missionaries, slave codes among some of the tribes became more severe.” Littlefield seems to be claiming, in his article with Underhill, that the increasing severity came after the 1842 revolt and was influenced by the “national debate” and reactions to abolitionists. Daniel F. Littlefield and Mary Ann Littlefield, “The Beams Family: Free Blacks in Indian Territory,” *The Journal of Negro History*, Vol. 61, No. 1 (Jan. 1976), p. 18.

freemen, and the reasoning behind the laws, would help explain the atmosphere that fostered the 1842 revolt and the resultant repercussions.⁵⁹ An objective examination of laws passed by the Five Tribes in the nineteenth century does, in fact, prove McLoughlin's assertion that they were increasingly restrictive toward blacks in general, although they do not support his claim that it was done merely in imitation of white Southerners. Littlefield and Underhill's examination of the "foreign" freemen does help illuminate at least one of the root causes of the Five Tribes' legal approach to blacks within their territory.

Seminoles who surrendered during and after the Second Seminole War were assigned lands within the Creek Nation, an arrangement that the Seminoles resisted. Instead, many of them relocated elsewhere. Most of them (specifically, the Alligator, Holatooche, Wildcat, and Concharte Micco bands) settled in Cherokee territory, near Fort Gibson. The majority of removed Seminoles, in fact, had arrived in Indian Territory by steamboat, and had disembarked at Webbers Falls. By 1839, two thousand Seminoles lived in the Illinois River bottoms near the fort. As many as five hundred blacks arrived with them, both slave and free—many of them allies in the Seminole war against the United States.

Unlike the other Five Tribes, the Seminoles had no slave codes, nor written codes of any kind. While they had not been as universally accepting of blacks as previous generations of scholars have asserted, nor had they been engaged in large-scale plantation enterprises or regulated efforts to tightly control the behavior of their slaves. In fact, slaves and free blacks had lived in separate communities from the Seminoles in Florida, the slaves paying tribute to their owners and serving as military allies. Upon arrival in Indian Territory, therefore, many of those slaves were accustomed to carrying weapons and traveling freely on horseback. A large number of them had been promised freedom in return for their surrender, and upon Removal served as

⁵⁹ *Ibid.*, p. 126.

advisors and interpreters for U.S. forces based at Fort Gibson. These Seminole blacks were frequently seen at the fort and the nearby river town of Webbers Falls. “How Vann’s slaves must have been impressed with the blacks, dressed in Seminole fashion and carrying rifles and knives!”⁶⁰ Historian Celia Naylor asserts that the Cherokee slaves’ collective escape attempt “represents how their interactions with enslaved people of other Indian nations might have engendered and reinforced new possibilities and dreams of a free life.”⁶¹

It is impossible to gauge how much, if at all, Vann’s slaves and their companions were influenced by the highly visible relative freedoms of Seminole slaves. It is clear, though, that Cherokee slave owners and their Creek neighbors on the south side of the Arkansas River became very concerned about the effects of such possible influence within a short time of the Seminoles’ arrival. That arrival began in earnest in 1838. In 1840, both the Creek and Cherokee nations produced legislation outlawing the possession of horses and guns by slaves. As previously noted, the Cherokee Council passed several laws restricting the behavior of free blacks “not of Cherokee blood”; it is reasonable to assume that the large numbers of independently minded free Seminole blacks, considered a bad influence at best and dangerous at worst, were the primary targets of such legislation in the early 1840s.

The implied culpability, in Cherokee opinion, of Seminole blacks is further indicated in the Council’s action just weeks after the 1842 “revolt” (that could more accurately be described, according to Celia Naylor, as a collective escape attempt.)⁶² On December 2, 1842, they produced “An Act in regard to Free Negroes.” This act required all free blacks who had not been emancipated by Cherokee citizens to leave the boundaries of the Cherokee Nation by January 1, 1843; those who did not leave voluntarily would be forcibly expelled. The act further stipulated

⁶⁰ *Ibid.*, p. 127.

⁶¹ Naylor, 47.

⁶² Naylor, 43.

that any Cherokee citizen who freed his slaves would be held responsible for their subsequent behavior, and if the former master died or left the Nation his freed slaves would have to provide “satisfactory security” for their future conduct to a circuit judge. The law also called for a hundred lashes and expulsion from the Nation of any free black who aided, or encouraged, the escape of Cherokee slaves. These measures were evidently not successful, as not only Cherokees and Creeks but their white Arkansas neighbors repeatedly complained about the influence of Seminole slaves throughout most of the decade. At one point several free Seminole blacks too refuge on the reservation at Fort Gibson, where they were occasionally joined by runaway slaves from the Cherokee and Creek nations; once the Seminoles received part of the western Creek lands for their own in 1845, the U.S. returned the black refugees to them as slaves. However, “the slaves defied the Seminoles, armed themselves, and settled in villages for their own protection.” These villages were regularly raided by Seminoles, Creeks, and whites from neighboring Arkansas in attempts to disperse the renegade slaves. A large group of Seminole blacks left Indian Territory in 1848 and successfully found freedom in Mexico, under the leadership of a former military advisor to Osceola and interpreter for the U.S. named John Horse, sometimes called Gopher John.⁶³

The 1842 Cherokee slave revolt intensified Indian slave owners’ and elites’ negative attitudes toward both free blacks and slaves, much as similar events influenced white Southerners and resulted in more restrictive slave codes in the U.S. The incident also seemed to validate slave owners’ fears (whether white or Indian) that the barely-controlled Seminole blacks were bad influences, and presented a continuing danger that other blacks in Indian Territory would desire to imitate them. It would be a mistake to assume that concerns about the Seminoles’ treatment of their blacks were only a reflection of economic or property concerns.

⁶³ *Ibid.*, p. 127-128.

The “wildness” of the Seminole blacks no doubt made both them and their Seminole masters seem very “uncivilized” to their white Southern neighbors, and thus a danger not just to Arkansans’ property but to their collective sense of propriety. Much as Indian agent Benjamin Hawkins expressed concerns about some Creek slave owners (such as Efau Harjo) in the late eighteenth century for being too lax and non-productive with their slaves, white Southerners must have felt that Seminole slaves “were under no government.”

The same was true of the Cherokees and Creeks. Both tribes, like the Choctaws and Chickasaws, had long before embarked on an endeavor to become modern nations, which required socio-economic as well as political changes in their approach to problems. It was one thing for many Seminoles to adhere to traditional kinship-based paradigms in the treatment of their slaves when they were in Florida; now they were in Indian Territory, in close proximity (and initially inside) the Creek and Cherokee nations. Seminoles were largely new arrivals; leaders (both official and *de facto*) of the other four tribes had been framing their new identity in part by using laws to encourage resistant traditionalist elements within their own nations to abandon old racial and national paradigms, and to embrace not just the economic benefits of slavery but the strict racial stratification that would underpin their nation-building project. The potential influence of Seminole blacks was a threat to that project, not just by encouraging other slaves to desire more freedom and mobility but by reinforcing more traditional-minded Indians in their tendency to give it to them.

It would also be a mistake to argue that the post-Removal laws of Cherokees, Choctaws, and the other tribes were not progressively strict, or that they only became so because leaders feared the influence of Seminole blacks or, later, abolitionists. There was no Seminole influx into the territories of Choctaws and Chickasaws; in fact, there were initially very few free blacks in

those nations at all. Those two nations also gradually restricted the rights of free blacks within their territories. In fact, the Choctaws also passed a law in 1840 that ordered free blacks to leave the nation; instead of a whipping and expulsion, free blacks ignoring the order were to be sold into slavery, with the money going to the national treasury.⁶⁴ An influx of Seminole blacks and the Cherokee slave revolt were factors, but not the ultimate cause, for the slaveholding Indian nations legislating restrictions on free blacks as well as slaves.

Free blacks who did remain in Indian Territory were in frequent danger from white slave catchers who viewed them as easy prey. Sometimes free blacks who were blood relatives of Indian citizens received some protection from the law, although they did not have the same rights as those citizens, such as the ability to hold public office or marry whoever they chose. However, as Daniel Littlefield pointed out, “those not related by blood were tolerated but legislated against, and for the most part, the Indians would rather have been rid of them.”⁶⁵ Even those free blacks who were related to their former masters were not necessarily safe. As racialized hierarchies and the national laws supporting them became more well-established in Indian Territory, even black individuals who once felt secure in their relations with Indian relatives found themselves in untenable situations.

. The Decreasing Security of Free Blacks in Indian Territory

The Beams family provides a perfect example of the difficulties facing free blacks in Indian Territory. William Beams, a white man living among the Choctaws in Mississippi, had fathered four children with his Choctaw wife. After her death, he fathered eight children by his slave Nelly. In 1823 he took his mistress, with their children and grandchildren, to Pope County, Illinois and freed them. He provided each with a document of emancipation. They all then

⁶⁴ *The Missionary Herald*, May 1841, p. 210; *African Repository and Colonial*, Feb. 15, 1841, p. 55.

⁶⁵ Littlefield and Littlefield, p. 21.

returned to Mississippi, where Beams told his neighbors what he had done. He ultimately divided his property among all his children. He returned to Illinois with his black family and died there; after a short time, Nelly Beams and her family returned to their old home in Mississippi. They were the eleven free blacks in the 1831 Choctaw census. William Beams' two surviving Choctaw children, Jesse and Bettie, signed a deal with two white men to seize their black relatives and sell them, giving the Choctaws half the money. William Beams' black family was seized and held for over a year before Greenwood LeFlore interceded in their behalf and restored their liberty. Jesse and Bettie continued their efforts to enslave and profit by their relatives after all involved had removed to Indian Territory. White slave catchers at one point attacked the Beams home and killed one of Nelly's sons –they managed to make off with three women and a child whom they sold in Texas and were never recovered. According to the *New York Evangelist*, Nelly Beams pleaded for her children and grand-children's safety, "but those worse than savage demons, like Vandal spirits, coming up from the bottomless pit and let loose to war upon liberty, gave her no other comfort than to tell her if she did not cease her entreaties and begone, she should share the same fate as her bleeding son."⁶⁶

This continued for over twenty years, with white slave catchers making periodic attacks on the ever-growing Beams clan –some of whom had by then married Choctaw husbands and wives –with the Choctaws offering little if any protection. The Beams' freedom was eventually established in U.S. courts after their appeals for help from the Bureau of Indian Affairs –but only after years of hardship and suffering, and most of the family's eventual relocation to Creek and

⁶⁶ According to the *New York Evangelist*, Nelly Beams pleaded for her children and grand-children's safety, "but those worse than savage demons, like Vandal spirits, coming up from the bottomless pit and let loose to war upon liberty, gave her no other comfort than to tell her if she did not cease her entreaties and begone, she should share the same fate as her bleeding son." - *New York Evangelist*, July 11, 1840, p. 1.

Seminole territory.⁶⁷ Perhaps the Choctaw Beams and their supporters refused to acknowledge a manumission that occurred outside their Nation; perhaps, according to their matrilineal tradition, they viewed the blacks' status as dependent on the mother rather than the father; overall, though, their readiness to sell their own relatives despite their late father's wishes demonstrates the untenable position that blacks in general faced in the new Choctaw nation.

The missionary Cyrus Kingsbury wrote of several similar examples in an 1847 letter describing slavery in Indian Territory. After first describing the travails of the Beams family, he told the history of a mulatto woman he knew. This unnamed woman, born in slavery around 1812 in the Chickasaw Nation, had been freed by her owner James Gunn when she was two years and nine months old. Considering the tender age at which she was emancipated, one could surmise she was the daughter of the man who freed her, but if so Kingsbury did not mention it. She grew up and married a male slave by whom she had eleven children; the family later accompanied the father's owners to the Choctaw Nation after Removal. Although the husband was a slave, all who knew them acknowledged that the rest of his family was free. Eventually, the white daughter of James Gunn came to Choctaw country with her own husband; the couple claimed that the mulatto woman was rightfully their slave, which would mean that her children were as well. Gunn's daughter and son-in-law brought the matter before the Choctaw court. The mother was arrested by the lighthorse and brought to trial. The judge found in the mulatto mother's favor and declared her free; he then reminded her that all free blacks had been ordered out of the Choctaw Nation, and she and her children must leave for Arkansas at once or be sold into slavery. While traveling toward Arkansas in obedience of the judge's order, the entire family

⁶⁷ Littlefield and Littlefield, 16-35.

(sans the enslaved father) was attacked by white slave hunters, kidnapped, and sold into slavery in Texas.⁶⁸

Kingsbury told of another free black woman, a very pious member of his congregation, who had approached the same daughter and son-in-law of James Gunn to buy her son out of slavery when he came of age. Gunn's daughter gave the woman a bill of sale. Not long afterward, the mother died and the receipt was left in the possession of her husband Abram. Gunn's son-in-law came to Abram's home and asked to see the bill of sale; when it was produced, he destroyed it before the hapless freeman's eyes, and demanded that his slave be returned. At the time the letter was written, Kingsbury was trying to help the nineteen-year-old son, whose "liberty is in continual jeopardy," escape to Liberia.⁶⁹ Kingsbury had earlier written of free blacks moving to Liberia, "there seems to be no resting place for them in this part of the world."⁷⁰ It is worth noting that Kingsbury, in enumerating the various examples of unjust treatment of blacks in Indian Territory, was arguing against emancipation of the Indians' slaves; he asserted that they were far safer as slaves than they would be if freed. Free blacks were endangered, he wrote, for two principal reasons: avarice, for slaves were valuable and free blacks could easily be captured and sold, and slave owners' fear that being able to see free blacks would make their own slaves "jealous" and yearn for freedom. Kingsbury himself had freed three slaves: one left the territory immediately, and the other two were far too old to tempt slavers.⁷¹

The situation for blacks, slave and free, worsened considerably with the onset of the Civil War. Ben C. Williams, a quarter blood Cherokee who fought for the Confederacy (and later served for years as a Texas Ranger) recalled the low regard that some Choctaws had for blacks.

⁶⁸ Folder 3, File #8, Cyrus Kingsbury Collection, Western History Collection, University of Oklahoma, Norman.

⁶⁹ *Ibid.*

⁷⁰ *African Repository and Colonial*, Feb. 15, 1841, p. 55.

⁷¹ Folder 3, File #8, Cyrus Kingsbury Collection, Western History Collection, University of Oklahoma, Norman.

Williams was temporarily stationed at Doaksville, and was disturbed by events he witnessed there:

I seriously thought of marrying an Indian girl at Doaksville. She was a fine girl, but I backed out because her daddy and brothers were so mean. Always drinking, carousing and shooting somebody... They would shoot at a 'nigger' just to see him jump and run. Once I saw a bunch of negroes out on the prairie horse hunting and these drunken Indians [sic] boys came along and went to shooting among them and killed one and crippled two others and rode off laughing and thought it was funny... They thought no more of shooting a negro than of shooting at a target.⁷²

Kingsbury echoed Williams' assessment. In 1865 he wrote: "I fear there are many who will no more hesitate to take the life of a negroe, than of a dog. It is sickening to contemplate the prospect that is (I hope but for a little season) with us."⁷³

This, then, was the ultimate endpoint for the status of blacks in Indian Territory by the time of the Civil War. After decades of working toward it, Indian leaders had, for the most part, managed to convince their citizens to embrace a new model of nationalism and race. Blacks, whose status had gradually deteriorated over the course of the nineteenth century, had become a demeaned and defining other. Their lives, at least in some quarters, were worth less than an animal's.

While the governments of all Five Tribes ultimately supported the Confederacy in the brewing conflict, the citizens of all five did not react in the same way. There was a wide range, from tribe to tribe, in unified support for their government's project. Nor was the defense of slavery those governments' only motives in supporting the South. Events in the years leading up

⁷²Interview with Ben C. Williams, Indian Pioneer Papers, vol. 98, p. 162-163. Interview #6730. University of Oklahoma Western History Collection.

⁷³Reverend Cyrus Kingsbury to Reverend S.B. Treat, Dec. 4, 1865. Folder 5, File #4, Cyrus Kingsbury Collection, Western History Collection, University of Oklahoma, Norman.

to the war, and events during it, would affect both the position of blacks and the success of the Five Tribes' efforts at cohesive nationalism.

CHAPTER 6

NATIONS COLLIDING: THE CIVIL WAR COMES TO INDIAN TERRITORY

Opothleyahola had fought against the United States in the first two Seminole wars, and as a youth had reportedly first seen combat against whites in the War of 1812 and the Creek War of 1813-1814. In 1861, however, the 63-year-old Upper Creek leader was not ready to ally with the Confederates at the behest of his nation's government and fight the U.S. again. Many of his old comrades, including Cherokee principal chief John Ross, had done so, but Opothleyahola could not be convinced. Learning that the United States might offer him sanctuary in Kansas, Opothleyahola gathered a force of neutral and pro-Union Indians at his plantation. These included individuals from all Five Tribes, slaves and free blacks, and a small number of Indians from western Indian Territory. Some of Opothleyahola's followers feared that they would be subject to conscription, and others simply feared an attack by their pro-Confederate tribesmen on the basis of their loyalties. Despite Opothleyahola's declaration of neutrality, many of his followers were firm in their support of the Union. The Seminole Su-nuk-mik-ko announced that he would "go North to the President" and "Suffer whatever he Suffers," and rumors circulated among the group that Lincoln might send soldiers from Kansas to safeguard them.⁷⁴

As many as ten thousand people joined Opothleyahola in his northward trek to Kansas and the protection of the Union, that carried them through Cherokee territory. A large Confederate force followed them, comprised of Creek and Cherokee regiments, with some Choctaws, as well as the 9th Texas Cavalry. The refugees set fire to the prairie in their

⁷⁴ Mark A. Lause, *Race and Radicalism in the Union Army* (Urbana: University of Illinois Press, 2003), 57.

wake to deny their pursuers forage. A series of running battles took place, beginning at Round Mountain on November 19.

A rumor spread through the Cherokee ranks that Opothleyahola, an accomplished Red Stick warrior in his youth, planned a counter-attack against his pursuers. The mostly Keetowah, or “Pin,” Cherokees found the prospect of fighting their former allies disturbing (Opothleyahola was a leader of the Creeks’ version of the “Pins.”) Six hundred Cherokee soldiers deserted from their regiment and joined themselves to Opothleyahola; most of these would later join the Union army.⁷⁵ Like Opothleyahola’s initial followers, these Keetowahs deemed their own traditions (and the defense of them) more important than the commands of their government. They joined fifteen hundred Creek warriors and seven hundred armed blacks in Opothleyahola’s camp. War had come to Indian Territory.

Indian Nations in Transition

By the time they had been relocated west of the Mississippi, the lives of Southeastern Indians had already changed significantly from their pre-European contact existence. Their reaction to those changes, and the role they played in generating the decisions they made in the Removal Era, reflect their adaptability. After all, social groups, like individual organisms, must weather environmental and existential shifts in order to survive. Despite the intrusion of chauvinistic European attitudes, enthusiasm for “progress” was not forced on the Five Tribes, nor was it a product of U.S. paternalism. Instead, the distinctive view of progress and nationalism evident among the tribes reflected conscious choices political and cultural leaders made in their effort to maintain their people’s sovereignty and cultural

⁷⁵ W. Craig Gaines, *The Confederate Cherokees: John Drew’s Regiment of Mounted Rifles* (Baton Rouge: The Louisiana State University Press, 1989), 46-47.

integrity. They maneuvered through these new realities because they refused to become “Vanishing Americans.”

In the first three decades of the nineteenth century, Southeastern Indian leaders had concluded that sustaining their sovereignty required adopting a national identity similar to that which other groups around the world were doing at that time. Fundamental to that shift in consciousness was a change in the new Indian nations would view race and national identity. In the decades following Removal, Southeastern Indians continued to refine their national identities and indigenous leaders embarked on a campaign to bring their people –citizens now, as well as kin –to a new way of thinking. This campaign produced racialized laws, and attendant violence toward slaves and freedmen. By 1860, the Five Tribes’ campaign had achieved varying degrees of success. Like the Confederacy itself, the indigenous leadership in Indian Territory was on a course to anchor their unique nationalism in racial hierarchy and slavery and to face the contradictions and divisions that strategy created.

Rumors of War

In 1861, several nationalist projects converged in the territory set aside as the homeland of the Five Tribes. The United States government sought to protect their Union while their opponents the Confederate States sought to establish a new Confederate state. Meanwhile, the Five Tribes were trying to bolster their own individual national institutions, even as traditionalist elements resisted official efforts to reframe their people’s identities with those institutions.

The Confederacy focused on Indian Territory for several reasons. In the years leading up to secession, Southern leaders had stressed the need for new western territories that could enable the spread of slavery. In the 1840s they launched a thinly veiled effort to bring Indian Territory into the U.S. as a slave state; this effort came to naught, and the South was equally frustrated by

legislation that prevented the “peculiar institution” from making a westward trek.⁷⁶ Now that the South had its own government, unencumbered by U.S. laws or the “crusades of abolitionists,” westward expansion was once more a possibility. Historian Arrell Morgan Gibson noted:

Confederate planners developed a bold and broad design for the West. As a tributary area, its primary purpose was to provide a continuous land corridor across Texas, Indian Territory, New Mexico, and California to the Pacific Shore. The gold and silver mines of Colorado and Nevada and the transportation and communication routes crossing Utah and connecting with California also made these intermediate territories attractive to Southerners.⁷⁷

The Confederacy had a “bold and broad design” for, not only the West, but their new nation. The eleven Confederate states, plus any others who might wish to join later, would be a loose confederation of slave states rather than a monolithic nation, a confederation that could potentially one day stretch across the southern part of North America all the way to the Pacific, perhaps even including territory in the Caribbean and Central America. The Five Tribes could theoretically be a part of that; the Confederacy approached them as potential allies, and offered them tribal representation in the Confederate Congress. The Five Tribes were a potential link to the Confederacy’s interests in the West.

But Indian Territory was more than just a conduit for this proposed land corridor. The region was rich in resources the Confederacy needed. Indian farms could provide grain, cattle and horse herds could provide food, hides, and transportation. Perhaps most importantly, the mines in northeastern Indian Territory could provide salt and lead. One Confederate official estimated that the Cherokee mines could produce “sufficient lead to supply the total small arms needs for all the Confederate armies in the field.” In addition, the Five Tribes (who had a combined population of almost 100,000) could be invaluable allies, who might be charged with

⁷⁶ *The Cincinnati Weekly Herald and Philanthropist*, Sept. 17, 1845, p. 1.

⁷⁷ Arrell Morgan Gibson, “Native Americans and the Civil War.” *American Indian Quarterly*, Vol. 9, No. 4 (Autumn, 1985), pp. 386-387.

guarding the Confederacy's western border. Texas and Arkansas officials were particularly concerned about the possibility of Union troops occupying Indian Territory and using it as a base for the invasion of their states, or at least hampering the Confederacy's "bold vision" of having access to the West for expansion.⁷⁸

Although the leaders in Indian Territory initially had no direct stake in the hostilities, they had been closely watching the controversies that ultimately led to war and had been drawn increasingly to the Southern perspective. United States territorial expansion was particularly a concern for tribal leaders; on the eve of Indian Removal, Choctaw leader David Folsom had stated that "the red people are of the opinion, that, in a few years the Americans will also wish to possess the land west of the Mississippi."⁷⁹ Time had done more to modify such fears than to alleviate them. Many Indian slave owners believed that Lincoln intended to abolish the institution, and would attempt to do so within their borders as well; there was also fear that Kansas abolitionists might attack Indian Territory in force if the Five Tribes gave their support to the Confederacy. Still, the Five Tribes were bound to the U.S. by treaty, and those treaties included an obligation for the U.S. to provide annuities and armed protection of the Indian nations if they were threatened. Many tribal leaders were reluctant to take sides and risk severing of those treaty obligations. There were other political considerations, as well. Choctaw politician Peter Pitchlynn felt his nation should remain neutral because he feared an alliance with the South would hurt his campaign to get Washington to settle claims that originated with Removal in the 1830s. Allying with the Confederacy could end any chance at settlement.⁸⁰

⁷⁸ Gibson, "Native Americans and the Civil War," 387.

⁷⁹ *The Missionary Herald, Containing the Proceedings of the American Board of Commissioners for Foreign Missions*. Mar 1830. Vol. 26, Iss. 3; p. 82-3.

⁸⁰ David W. Baird, *Peter Pitchlynn: Chief of the Choctaws* (Norman: University of Oklahoma Press, 1972), pp. 126-127.

The Five Nations also had ties to the South. Their economies were closely linked through trade and banking. Many wealthy Indians had invested considerable money in Southern business ventures, and the river systems by which the Five Tribes transported their cotton naturally led them to Southern markets.⁸¹ A Choctaw official pointed out that his nation considered the “States of the South as more intimately connected with us in interests as well as by geographical position.”⁸² There were ties in political ideology, as well. The Confederacy was a coalition of slave states. The preamble to their Constitution began: “We, the People of the Confederate States, each State acting in its sovereign and independent character... do ordain and establish this Constitution for the Confederate States of America.” The sovereignty and independence of individual Confederate states were similar to each of the Five Tribes’ desire for, and conception of, itself.

Cultural ties were as strong as economic ones. The South was the Five Tribes’ native region, and their journeys toward political nationhood had begun there. Many tribal members, particularly biracial citizens, thought of themselves as Southern, and often had blood relatives who were white Southerners. A traveler passing by many Cherokee and Choctaw plantations might easily imagine they were in Georgia or Mississippi. Cultural connections, and in some cases affinity, had continued between the Five Tribes and the South despite the fact that it was citizens and politicians from Southern states who had pushed for Indian Removal. “Possibly,” as Gibson speculated, “time had healed old wounds and eased painful memories.”⁸³ It is more likely that Southeastern Indians blamed Andrew Jackson and the federal government for Removal at least as much, if not more, than they did Southern states. Despite Indian affinity for Southern

⁸¹ Whit Edwards, *“The Prairie Was on Fire”: Eyewitness Accounts of the Civil War in the Indian Territory* (Oklahoma City: Oklahoma Historical Society, 2001), p. xii.

⁸² *The Friend; a Religious and Literary Journal* (June 2, 1866, p. 39-40.)

⁸³ Gibson, “Native Americans and the Civil War,” 387.

culture or treaty considerations with the Union, the Five Tribes' support for either side was not intrinsic. The ultimate decision lay with the governments of each indigenous nation, for whom their own sovereignty was a paramount issue. The side that appealed to that sovereignty the most would be the likeliest to gain their support.

In the first months of the war, the South made a much more concerted effort than did the North to "earn the allegiance" of the Five Tribes. They did so by appealing to them as Indian "nations," who potentially had a place in the Confederacy's vision, while the U.S. continued to see them as only "tribes." On February 27, 1861, after the state of Texas passed "An ordinance to secure the friendship and co-operation of the Choctaw, Cherokee, Chickasaw, Creek, and Seminole Nations of Indians," three commissioners from that state embarked on a two-month journey through Indian Territory, testing the waters with the leaders of all Five Tribes to see how supportive they would be of a Confederate alliance. On May 15 they sent a report to Jefferson Davis. They judged that "The Choctaws and Chickasaws are entirely Southern and are determined to adhere to the fortunes of the South." The Creeks, too, they found to be "Southern and sound to a man."⁸⁴

Their meeting with Cherokee chief John Ross was less encouraging. They described him as "diplomatic and cautious," but noted that he held similar views to those expressed by Abraham Lincoln and Sam Houston; to wit, like Lincoln in his inaugural address he "declares the Union not dissolved; ignores the Southern Government." The commissioners heard from "good authorities" that a large segment of the Cherokee population disagreed with their leader. Nevertheless, Ross "frequently avowed his sympathy for the South" and that he would support the Confederacy "if Virginia and the other Border States seceded from the Government of the

⁸⁴ *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, Series IV, Vol. 1, pp. 322-324. Hereafter referred to as *Official Records*.

United States.” The Texas commissioners speculated about the cause of Ross’s hesitation; they noted that “the fact is not to be denied or disguised that among the common Indians of the Cherokees there exists a considerable abolition influence” fostered by Evan Jones, a Northern missionary “who has been among them for many years, and who is said to exert no small influence with John Ross himself.”⁸⁵ Ross received pressure from several other Confederate officials that spring to declare support for the Southern cause, but preferred not to commit his nation to such a course. His own reasoning, outlined in a letter to a Confederate officer, showed that his thinking was influenced by issues far deeper than the theoretical influence of a Northern missionary: “We do not wish our soil to become the battleground between the states and our homes to be rendered desolate and miserable by the horrors of war.”⁸⁶

The Texas commissioners urged Davis to make an alliance with the Five Tribes as quickly as possible, estimating that 20,000 troops could potentially be raised from their ranks. One Creek leader promised them that “Lincoln may haul his big guns about over our prairies in the daytime, but we will swoop down upon him at night from our mountains and forests, dealing death and destruction to his army.” The report also pointed out that the Union was concentrating its forces, and that in the event of war the Confederacy needed allies who could help them secure their borders.⁸⁷

Pressure for a Confederate Alliance

The United States government did not seem as eager to secure the Five Tribes’ fealty in the months leading up to the war. Many people in Indian Territory were already dubious about the North’s intentions; slaveholders there, like their counterparts in the South, were suspicious

⁸⁵ *Ibid.*

⁸⁶ John Ross to J. R. Kannady, May 17, 1861, frame 392, Reel 100, M234, RG75, National Archives; cited in Confer, 43.

⁸⁷ *Official Records*, pp. 324-325.

about the Republican administration's perceived abolitionist leanings. The fact that some of Lincoln's campaigners had called for the appropriation of Indian Territory for white settlement did not help soothe Indian fears.⁸⁸ Native apprehension heightened when the U.S. halted annuity payments in 1861, "citing security concerns in transporting the money to Indian Territory."⁸⁹ In April the federal government recalled its troops from Indian Territory and abandoned Forts Arbuckle, Cobb, and Washita. The former action left the Five Tribes' governments on the verge of bankruptcy, while the latter seemed to many Indians a violation of the U.S. treaty agreement to protect them. Depriving them of funds and protection did not, in the Five Tribes' eyes, demonstrate much U.S. concern or respect for their status as nations.

The Union "proved to be its own enemy" in its mishandling of Indian Territory. U.S. Commissioner of Indian Affairs William P. Dole acknowledged on Nov. 27, 1861 that, considering the withdrawal of federal troops and the "general erroneous impression prevailing amongst that class of persons [Indian slaveholders] as to the views of the present administration and its intended policy in relation to slavery," that is, that the Lincoln administration intended to pursue abolition as a policy, "it is not surprising that many of the Indians have thrown off their allegiance and espoused the cause of the rebellion; and that many others, finding themselves entirely without support from the government... have quietly submitted to the condition of affairs by which they were surrounded."⁹⁰

The South was quick to take advantage of the United States' loss of political capital with the Five Tribes. The Confederacy chose Albert Pike to be their emissary to the Five Tribes. Pike was a lawyer, editor, and poet originally from Massachusetts but for nearly three decades a

⁸⁸ William H. Seward, "Speech at Chicago, October 3, 1860," in *Senator Seward's Western Tour* (n.p., [1860]), available at Newberry Library, Chicago, Illinois; Clara Sue Kidwell, *The Choctaws in Oklahoma: From Tribe to Nation: 1855-1970* (Norman: University of Oklahoma Press, 2007), 57.

⁸⁹ Clarissa W. Confer, *The Cherokee Nation in the Civil War* (Norman: University of Oklahoma Press, 2007), 46.

⁹⁰ *Report of Secretary of Interior*, 1861, p. 627.

fixture in Arkansas. He was a prominent member of the Freemasons, and his poetry appeared often in literary journals. Many of his Northern friends and readers denounced him when he cast his lot with Arkansas and the Confederacy; he later offered them an ambiguous defense of secession and slavery, comparing the latter to injustices such as overcrowded cities, abused laborers, and the suppression of individuality in the military:

I have owned only such slaves as I needed for household servants. I am not one of those who believe slavery a blessing. I know it is an evil... as in this world *everything* is mixed of evil and good. Such is the rule of God's providence, and the mode by which He has chosen to arrange the affairs of the world.⁹¹

Pike was well-known to Indian leaders. The Creek Nation had hired him in 1852 to represent them in a claim against the United States, and he had ultimately helped them secure a \$140,000 settlement. He later lobbied in behalf of the Choctaws in a similar case.⁹² Pike, acting on behalf of Arkansas, had already begun taking steps to secure an alliance with the Five Tribes before he was given the assignment by the Confederate government. On May 11, 1861, less than a week after the Union forts had been abandoned, Pike had urged Arkansas officials to take action by sending troops to occupy them before volunteer Union units from neighboring states did so, thus reassuring the Five Tribes that the C.S.A. was willing to take on the U.S. obligation to protect Indian Territory: "We must guarantee them their lands, annuities, and other rights under treaties, furnish them arms... and send a respectable force there, as evidence that they will be efficiently seconded by us."⁹³

In late May Pike embarked on a tour of Indian Territory, meeting with Indian political leaders and trying to woo them for the Confederacy. His first stop was Tahlequah, and John

⁹¹ Letter of January 5, 1865, quoted in Fred W. Allsopp, *Albert Pike: A Biography* (White Fish, Montana: Kessinger Publishing, 1992), 181.

⁹² Walter Lee Brown, *A Life of Albert Pike* (Fayetteville: The University of Arkansas Press, 1997), 293-318.

⁹³ *Official Records*, Series I, Vol. 3, p. 572.

Ross. He had several good reasons for beginning there: the Cherokees were the largest of the Five Tribes, they were just below the Arkansas line, and (perhaps most importantly) they were divided in their sympathies between the Civil War belligerents.⁹⁴

Divisions Among the Cherokee

The Cherokees had been deeply divided since before Removal. Pike was not only well aware of the polarized political situation; he was prepared to use it to the Confederacy's advantage. Pike summarized the situation in the Cherokee Nation in a report sent to the Confederate Secretary of State, Robert Toombs, before he met with Ross. Pike noted that, despite Ross's declarations for neutrality, "it has all along been supposed, or at least suspected, that Mr. Ross would side with the North." Pike suspected that Ross was merely following the reasonable policy of not committing his people to anything "until he has formal guarantees from an authorized agent of the Confederate States." His awareness of the political divisions made the Confederate representative confident he could gain Cherokee support no matter what Ross ultimately decided; if Ross assented to Pike's requests, Pike would "have nearly the whole nation with us, and those who are not will be unimportant." If Ross refused the Confederate overtures, on the other hand, Pike planned to negotiate instead with the Cherokees who opposed Ross and use their help to occupy the country.⁹⁵

Pike and Brigadier General Benjamin McCullough had already met with representatives of the anti-Ross (sometimes called Ridge Party or Treaty Party) group leaders, Stand Watie and his nephew Elias Cornelius Boudinot. The latter was only four years old when his father, the elder Elias Boudinot (who was Stand Watie's brother) had been assassinated, along with his uncle Major Ridge and cousin John Ridge, for signing the Treaty of New Echota in 1835 and

⁹⁴ Brown, 357.

⁹⁵ *Official Records*, Series IV, Vol. 1, 359.

thus giving the U.S. ownership of Cherokee tribal lands. The Treaty Party leaders had willingly migrated to Indian Territory shortly after the treaty was signed, and well in advance of John Ross and the many other Cherokees who were forcibly removed. Pike was willing to give the Confederacy's support to the Treaty Party faction as a last resort if Ross refused to cooperate at all. Perhaps in anticipation of such a contingency, McCulloch commissioned Stand Watie a colonel in the Confederate Army and authorized him to raise the troops who would eventually comprise the First Regiment of Cherokee Volunteers.

Two opposing political organizations had arisen among the Cherokees in the years leading up to the Civil War, divided along lines of Northern and Southern sympathies, full blood and mixed blood, traditional and progressive, slaveholder and non-slaveholder, and whether members had supported or opposed the treaty resulting in Removal. Southern sympathizers and slaveholders, most of them members of the Ridge Party, were active in the Knights of the Golden Circle; their antagonists were known as the Keetowah Society.⁹⁶ A paramilitary branch of the Keetowah was known as "Pin Indians" or the "Pins" due to the distinctive lapel markers they wore, in the shape of two crossed pins. Historian William McLoughlin described the Keetowah as "a syncretic religious-political society." They were traditionalists; they took their name (also spelled Kituhwa) from the former principal Cherokee town in the East where their sacred mound was located. They distrusted the Southern states who had expelled the Cherokees from the land of their fathers and any Cherokees who allied with them, especially if they were in positions of

⁹⁶ "Of course the Ridge party was perfectly willing to join the South as many of them were large slave owners and knew if the South did not win, they would lose their slaves. They also induced many of the young Cherokees to join the Southern army." Interview with Josephine Pennington. Indian Pioneer Papers, Vol. 70, p. 379. Interview #7783. University of Oklahoma Western History Collection.

power. They distrusted the growing disparity of wealth and power between small farmers and wealthy planters.⁹⁷ They also distrusted the institution of chattel slavery.

There was, and long had been, a significant abolitionist movement among the Cherokee people. Cherokees were exposed to abolitionist ideas by their association with Northern missionaries, such as Evan Jones (whom McCulloch had accused of unduly influencing John Ross.) Some Cherokees believed that Indian Removal had been God's punishment on them for the sin of slavery.⁹⁸ In fact, as historian Patrick Minges points out, the powerful Keetowah Society (who combined religion with national patriotism) "believed that the more the Cherokee Nation disestablished its ties with the institution of slavery, the better it could sustain its own national identity and control its own sovereignty."⁹⁹

The Keetowah were more than a secret society; they were a movement. Most members had been in the Ross Party, many were full-bloods, and a significant number were from the poorer elements of Cherokee society, who were fearful and resentful that they had been minimized by the new power brokers of the Cherokee nation, the merchants and planters. They envisioned a reframing of Cherokee nationhood, one that hearkened back to the "Kituhwa Spirit," with a return to traditional views of race and nation. The populist political movement drafted its own constitution, noting in it that their ancestors "loved and lived as free people who never surrendered to anybody. They loved one another for they were just like one family."¹⁰⁰ The Cherokee ancestors had been primarily connected by kinship. There had been no divisions due to class or race. Hierarchies are by definition a construction of inequalities; hence the hierarchically

⁹⁷ Wickett, Murray R. *Contested Territory: Whites, Native Americans and African Americans in Oklahoma, 1865-1907* (Baton Rouge: Louisiana State University Press, 2000), 6.

⁹⁸ Robert Walker, *Torchlights to the Cherokees: The Brainerd Mission* (New York: 1931), 298-299.

⁹⁹ Patrick Minges, *Slavery in the Cherokee Nation: The Keetowah Society and the Defining of a People, 1855-1867* (New York: Routledge, 2003), 84.

¹⁰⁰ Minges, 82-84.

defined nationalism promoted by pro-Southern Cherokee leaders, and the institution of slavery that provided the bricks for their social pyramid, were a violation of the “Kituhwa Spirit.”¹⁰¹ Still, some Keetowah members were, in fact, slaveholders (as was John Ross, whom the Keetowah supported.) Keetowah delegates to Washington in 1866 explained this apparent paradox: “While some members of the Society were pro-slavery in their sentiments, yet they loved their country more than slavery—while the majority of its members were positive and strong anti-slavery men.”¹⁰²

The Keetowah and their opponents were engaged in a struggle to determine the definition of the Cherokee Nation. One Keetowah leader noted that “our government is being destroyed. We must resort to bravery to stop it.”¹⁰³ It was not completely a new conflict, but was in many ways an extension of intra-tribal conflicts that were three decades old. In 1866, delegates representing the “Southern Cherokees” told U.S. officials that “the bitter feuds now distracting the Cherokees are of no recent date; they are as old as the treaty of 1835.”¹⁰⁴ It is not surprising that tribal factions who had fought one another over the issue of Removal should eventually take opposite sides in the Civil War, nor is it surprising that the party that had opposed removal from their ancestral homeland should be the one that favored a more traditional form of nationhood.

Pike’s only concern was whether the Cherokee government would support the Confederacy, and he was not willing to take no for an answer. The citizens of Tahlequah must have had some inkling of the lengths to which Pike might go to secure an alliance with the Cherokee; a rumor preceded his arrival that he was coming at the head of two thousand soldiers

¹⁰¹ *Ibid.*

¹⁰² Cherokee Nation, *Memorial of the Delegates of the Cherokee Nation to the President of the United States and the Senate and House of Representatives in Congress* (Washington, D.C.: Washington Chronicle Print, 1866), 7.

¹⁰³ “Keetoowah Laws - April 29, 1859” in Howard Tyner, *The Keetoowah Society in Cherokee History*. (MA, University of Tulsa, 1949), 102.

¹⁰⁴ Official Report of the Proceedings of the Council with the Indians of the West and Southwest, September 8-21, 1865, 39th Cong., 1st sess., H. Doc. 1 (Serial 1248), 498, 502-03.

to put Ross in irons if he did not join in the Southern cause.¹⁰⁵ Pike and McCulloch brought no army, though, and their interview with the Cherokee chief was a polite one. Nevertheless, Ross was firm that his nation would remain neutral, and would neither join the Confederates nor allow troops from either side onto their territory. He offered to confer with his executive council and inform them of the Confederate offer.¹⁰⁶ McCulloch, in particular, was unsatisfied by Ross's claim of neutrality. In a letter written to a superior on June 22, the general said he was "satisfied from my interview with John Ross and from his communication that he is only waiting for some favorable opportunity to put himself with the north. His neutrality is only a pretext to await the issue of events."¹⁰⁷

Division Among the Creeks

Pike next visited the Creeks. If he had expected them to be more unified than the Cherokees he was disappointed, for he found a situation similar to that in Tahlequah. Although the Creek nation was theoretically united, in reality there was still division between the Upper and Lower Creeks that went back decades. Much like the Cherokees, they were embroiled in a longstanding feud that had resulted in the assassination of Lower Creek leader William McIntosh, who had signed a treaty ceding tribal land prior to Removal. The principal leaders of both factions were slaveholders; the Lower Creeks, who were two-thirds of the nation's population, supported the Confederacy, but "a large segment of the Upper Creeks were, however, opposed to an alliance with the South."¹⁰⁸ Opothleyahola (sometimes called "Old Gouge"), rumored to have participated in the killing of McIntosh in 1825, was the chief spokesman of those dissenters. Opothleyahola, like most of his supporters, retained many

¹⁰⁵ Brown, 357.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Official Records*, Series I, Vol. 3, p. 595.

¹⁰⁸ Brown, 358.

traditionalist views and resisted the new national consciousness that McIntosh's successors promoted.

Opothleyahola had strongly opposed the cession of traditional Creek lands to the United States. In late 1824 and early 1825 he had served as spokesman for the ill Upper Creek chief Big Warrior during debates over the second Treaty of Indian Springs, arguing against Lower Creek spokesman William McIntosh. In the first meeting, at the Broken Arrow home of Lower Creek chief Little Prince in December, 1824, U.S. negotiators offered to buy all remaining Creek lands in Georgia and Alabama, with the understanding that the Creeks would be removed to the west. Opothleyahola told them Big Warrior "would not take a housefull of money" for his land. The U.S. agents focused their attention on McIntosh and the Lower Creeks.¹⁰⁹

McIntosh was the son of a Loyalist Georgian and a Creek woman. During the Creek War he had led Indian troops allied with the U.S. against the traditionalist Red Sticks; he fought the Red Sticks again in the First Seminole War. He and Opothleyahola were both at the Battle of Horseshoe Bend on March 27, 1814, on different sides. McIntosh was one of the Lower Creeks who had signed away Creek holdings east of the Flint River at the First Treaty of Indian Springs in 1821 (having ceded two smaller tracts in 1818), an event that angered the National Creek Council so much they forbade any further transfer of Creek lands on penalty of death. By 1825 McIntosh owned a successful plantation called Lockchau Talofau, a ferry, a tavern, and a hotel that served white tourists attracted by the local hot springs. He was chief of the Coweta Creeks, and Speaker of the Creek Nation. Ninety-year-old Little Prince was the leader of the Lower Creeks, and Big Warrior of Tuckabatchee was leader of the Upper Creeks, making McIntosh the third most powerful man in the nation.

¹⁰⁹ Sean Michael O'Brien, *In Bitterness and in Tears: Andrew Jackson's Destruction of the Creeks and the Seminoles* (Westport, CT: Praeger Publishers, 2003), 226.

When it became known that McIntosh was meeting privately with the commissioners in the final days of the Broken Arrow negotiations, some other Creek leaders were concerned. Many Creeks viewed the financial gains McIntosh received for brokering the first Treaty of Indian Springs as bribery, and his fellow chiefs may have been aware of the facilitator role he played in the 1823 attempt to bribe John Ross for the cession of Cherokee lands. The council received reports that McIntosh had been soliciting bribes from the Commissioners for his support on this occasion, as well. He was relieved of his position as Speaker of the Nation.¹¹⁰

McIntosh, retaining his position as chief, decided to accept the U.S. offer, and began to seek allies among the other Lower Creek leaders. He managed to secure the support of about forty, most of whom were not very influential and the majority of whom were not chiefs. Federal commissioners called a second meeting on February 12, 1825, at McIntosh's tavern at Indian Springs, attended by 400 Creek chiefs. The aged Little Prince and the ailing Big Warrior did not attend; the young speaker Opothleyahola provided McIntosh's principal opposition. McIntosh argued passionately that removal would benefit the Creek people; Opothleyahola jumped onto a boulder and railed against him, reminding the Lower Creek that it was illegal for any tribal member to sell land without the whole nation's approval. When McIntosh and his supporters signed the agreement anyhow, Opothleyahola gave him a powerful warning. "I have told you your fate if you sign that paper. I once more say, beware."¹¹¹ McIntosh received at least \$200,000 for his part in the proceedings. Georgia governor George Troup –McIntosh's first cousin –assured his safety.

¹¹⁰ James C. Bonner, "William McIntosh," in *Georgians in Profile: Historical Essays in Honor of Ellis Merton Coulter*, Horace Montgomery, ed. (Athens: University of Georgia Press, 1958), 133-136.

¹¹¹ Angie Debo, *Road to Disappearance: A History of the Creek Indians* (Norman: University of Oklahoma Press, 1941), 89; O'Brien, 227.

The Creek National Council summoned McIntosh to appear before them in April to answer a charge of treason. He declined to appear. He was sentenced in absentia to death. On April 29, 1825, two hundred Creek men descended on McIntosh's plantation and set fire to his house. McIntosh and an elderly Coweta chief who had also signed the treaty, Etome Tustunnuggee, were killed in a hail of bullets. The Council appealed to Washington, claiming that McIntosh and his followers did not have the authority to sign a treaty; Opothleyahola traveled to the capital to present their claim, and was successful. The treaty's terms were abrogated and a new treaty was signed in Washington, which allowed the Creeks to keep their Alabama lands in return for the Georgia ones.

Chilly McIntosh, the eldest son of William McIntosh, had also signed the Treaty of Indian Springs. He escaped his father's fate, and in 1828 led the first group of Lower Creek settlers (sometimes called the McIntosh Faction) to Indian Territory. He and his brother Daniel were among the most vocal supporters of an alliance with the Confederacy, and both men served as officers in Creek Confederate units.

In June, Opothleyahola and Ross coordinated a council in the Antelope Hills with their followers and the Seminoles, along with several western tribes, "for the purpose of maintaining their neutrality and independence."¹¹² While Opothleyahola and his supporters were thus occupied, Pike met with the pro-Confederate Creeks and reached an agreement with them with little opposition. Chilly and Daniel McIntosh were among those who signed the accord.

The Common Bond of Slavery

The Confederacy's offers to the Five Tribes, principally due to Pike's influence, were extremely attractive; they demonstrated recognition of the Indians' sovereignty, and treated them like independent nations instead of dependent tribes. In return for supporting the Confederacy

¹¹² *Ibid.*, p. 358.

militarily and becoming a “protectorate and annex of the Confederate States,” the Five Tribes won recognition of their perpetual right to their lands. The South would also assume the U.S. responsibilities to pay annuities to the tribes. Each of the Five Tribes would be given representation in the Confederate Congress. In addition, the Indian nations would have control over determining their citizenship. Whereas the U.S., under the precedent of *U.S. v. Rogers*, claimed that whites adopted by the Five Tribes could still be tried in federal courts, the C.S.A. agreed to accede to the Indian claims of jurisdiction in such cases.¹¹³ Indian nations who entered into an alliance with the Confederacy agreed to raise troops, but the treaties stipulated that those Indian troops would not be ordered outside Indian Territory without their respective governments’ permission.¹¹⁴

The status of slavery was succinctly defined in Article 32 of the treaty. “It is hereby declared and agreed that the institution of slavery in the said nation is legal and has existed from time immemorial; that slaves are taken and deemed to be personal property.”¹¹⁵ This clause at once recognized the legality of slavery, promised the protection of property rights for Creeks who had invested in slaves, and established the signatories’ mutual view of the institution and its morality. Slavery not only existed in the Creek Nation, the treaty states, it “has existed from time immemorial.” The economically-framed chattel slavery that the treaty refers to most certainly had not existed forever among the Creeks, but was a relatively recent phenomenon; the leaders of the Creek Nation and the Confederacy were reframing traditional kinship-based, captivity-centered bondage and equating it with plantation slavery. By conflating the two very different phenomena, they conferred on chattel slavery an aura of propriety, semantically rooting it with culture, tradition, and the natural order of things. The treaty also establishes the signatories’

¹¹³ *Official Records*, Series IV, Vol. 1, pp. 428-429.

¹¹⁴ Brown, 361; Confer, 46.

¹¹⁵ *Official Records*, Series IV, Vol. 1, p. 433.

mutual responsibilities where fugitive slaves were concerned: runaways who escaped from any Confederate state or any of the Indian nations were to be returned, “the obligation upon each such nation or State... as complete as if they had escaped from another State, and the mode of procedure the same.”¹¹⁶

The treaty between the Confederate States of America and the Creek Nation signed at North Fork Village on July 10, 1861, was clearly an agreement between two slaveholding nations. The Confederacy offered to protect the Creeks’ national interests, specifically including slavery, and the Creeks reciprocated. Pike made comparable offers to the other four tribes.

The Chickasaws and Choctaws had already taken steps toward a Confederate alliance before Pike’s arrival. Both houses of the Chickasaw legislature released a joint resolution on May 25, 1861, which clearly demonstrated their sympathies as well as their fears about U.S. intentions. The resolution stated that “withdrawing from our country the protection of the Federal troops,” coupled with “unjustly and unlawfully” withholding the funds intended for the benefit of the Chickasaw Nation, proved that the United States had no regard whatsoever for its treaty obligations. It further proclaimed that the South, on the other hand, was a natural beneficiary of Chickasaw sympathies:

[W]hereas our geographical position, our social and domestic institutions, our feelings and sympathies, all attach us to our Southern friends, against whom is about to be waged a war of subjugation or extermination, of conquest and confiscation, a war which, if we can judge from the declarations of the political partisans of the Lincoln Government, will surpass the French revolution in scenes of blood and that of San Domingo in atrocious horrors.¹¹⁷

This language no doubt referred to the most significant such institution that the Chickasaw Nation shared with the South but not the North: slavery. In the same sentence, the authors

¹¹⁶ *Ibid.*

¹¹⁷ *Official Records*, Series I, Vol. 3, p. 585.

mentioned that the South were objects of an aggressive Northern war of “conquest and confiscation,” that might prove to be worse than the slave revolution in San Domingo (Haiti.) The Chickasaw legislature thus revealed its true fears; the Abolitionist Kansans were intent on confiscating the Southern states’ slave property, and would do the same in Indian Territory. The authors chose very specific hyperbolic images to inflame the fears of Chickasaw citizens. They compared the Union army to uprising Haitian slaves slaughtering their masters, a deep-seated fear among North American slaveholders for half-a-century. The legislators further resolved:

[T]hat our neighboring Indian nations... who are similarly situated with ourselves, be invited to co-operate, in order to secure the independence of the Indian nations and the defense of the territory they inhabit from Northern invasion by the Lincoln hordes and Kansas robbers... who doubtless would extend towards us the protection which the wolf gives to the lamb should they succeed in overrunning our country. ¹¹⁸

The independence of the Indian nations, in their view, was closely connected to their slave property (that they believed the “Lincolnites” were intent on confiscating), and the security of their nation depended on not only defending their borders against abolitionists, but in preventing Northerners from inciting an uprising by blacks, slave or free, in Indian Territory.

The Resolution concluded that, since the federal union with whom they had earlier treated was now dissolved, the Chickasaw Nation was no longer legally beholden to honor their previous agreements with the United States and were thus free to deal with the Confederacy. This was in their interest because, in addition to the Resolution’s hyperbolic description of the dangerous “Lincoln horde” and the belief that the Confederacy would be much more likely to honor the Chickasaws’ national rights, “as a Southern people we consider their cause our own.”¹¹⁹

¹¹⁸ *Official Records*, Series I, Vol. 3, p. 585.

¹¹⁹ *Ibid.*

Prominent Choctaws Peter Pitchlynn and Principal Chief George Hudson favored neutrality in May, perhaps in fear of losing the Removal settlement they had been fighting for in Washington. Realizing they were in a hopeless minority, with most influential Choctaws favoring an alliance with the Confederacy, they reversed their positions quickly. Hudson was swayed, at least in part, by the arguments of mixed blood Choctaw entrepreneur Robert M. Jones, “a slave owner and ardent secessionist.”¹²⁰ Jones was one of the largest slaveholders in Indian Territory, with two hundred slaves on six plantations. If Hudson, himself a slaveholder, had doubts about whether his nation was meant to be a racially hierarchic slave state like those of the Confederacy, Jones had the influence to convince him otherwise—which demonstrates the power held by a small minority of slave holders in the modern nation Choctaws had constructed.

Pitchlynn yielded to the majority view as well. Perhaps he was reminded of his nephew Sampson Folsom’s words to him in 1857, when progressive and conservative Choctaw factions presented two separate new constitutions and the nation was in danger of fracturing:

The present state of affairs in the Choctaw Nation are tremblingly whittled down to its lowest ebb of existence—Choctaw nationality is almost gone out of sight, never to regain its former vigor and health, and standing, among the nations of the Earth... it’s awful grievous to describe the falling down of a nation. Why [are the Choctaws] yielding up their nationality? Because they will not submit “to the powers that be.”¹²¹

The Choctaw Nation must be preserved; its people must not yield up their nationality because of political division. Unity must be preserved by submission to “the powers that be,” the Choctaw national state. The Choctaws had resolved their differences and adopted a new constitution in 1860. Perhaps, only one year later, Pitchlynn was willing to submit to the majority in order to protect his people’s nationality.

¹²⁰ Ohland Morton, “Confederate Government Relations with the Five Civilized Tribes (part 2),” *Chronicles of Oklahoma*, vol. 31, no. 3 (1953), p. 300.

¹²¹ The Western History Collection; Peter Pitchlynn Collection, Box 3, Folder 2, letter dated December 9, 1857.

The Choctaw legislature met in general council on June 10 and declared their support of the Southern Cause, maintaining that, like the Chickasaws, the secession of eleven Southern States dissolved the Union and nullified its treaties with the Indian nations.¹²² When Pike met with them in July, both the Choctaw and Chickasaw Nations signed treaties similar to that offered the Creeks.

Shortly afterward, Pike met with Seminole leaders, including Principal Chief John Jumper. He discovered that a large number of Seminole representatives had favored neutrality at the Antelope Hills conference, and heard reports that fifty to seventy-five percent of the Seminole population opposed an alliance with the Confederacy. Nevertheless, Jumper and twelve of his town chiefs signed Pike's treaty; another dozen town chiefs refused to do so, including the prominent leader Sonuk Mikko, also known as Billy Bowlegs. The original Billy Bowlegs, Holato Mikko, was a leader in the Third Seminole War (1855-1858) and had died shortly after being removed to Indian Territory, and Sonuk Mikko adopted his name to honor him. It is unclear whether Sonuk Mikko was also a new arrival from Florida, but the fact that he re-named himself in honor of a traditionalist leader only recently removed from the east offers a hint at his loyalties. The original Bowlegs and Jumper were cousins, both nephews of Micanopy, but Jumper had been in Indian Territory since 1842 and helped set up the new Seminole government in 1856. Whereas Sonuk Mikko would later side with Opothleyahola and serve as major in a pro-Union Seminole unit, Jumper would serve as a Confederate colonel. Confederate Commissioner of Indian Affairs noted in a report that Jumper had "ever exhibited unshaken fidelity to the Confederate cause."¹²³

¹²² *Official Records*, Series I, Vol. 3, pp. 593-594.

¹²³ *Official Records*, Series IV, Vol. 2, pp. 353.

The differing loyalties of the Seminole leaders indicated their differing approaches to the nation-building projects taking place in Indian Territory. Newly arrived Seminoles had until recently been fighting the United States to preserve their ancestral lands and kinship traditions. Those who had been in Indian Territory longer had become invested in the creation of a government framed by national ideology rather than location or tradition. The Seminole government in place in 1861 was not as complex as the other Five Tribes', but it was moving in that direction; Jumper had been one of its principal architects. He was faithful to the government he had helped create, not the traditions he had left behind.

“When your nationality ceases here, it will live nowhere else”

As he had promised Pike, Ross met with his executive council in June. They gave him their support in his efforts to maintain neutrality. Ross realized that the combined criticisms of Watie and Boudinot and their numerous supporters, coupled with the fact that the Confederate General McCulloch had white and Indian troops (including Watie's regiment) massed near the Cherokee borders in an attempt to “force the conviction on the Cherokees that they have but one course to pursue—that is, to join the Confederacy,” meant that he would need a clear mandate from the people.¹²⁴ The Cherokee government therefore called for a national assembly on August 20.

Pike did not relent in the meantime. The Confederate victory at Bull Run on July 21 encouraged the South, but the Union blockade of Southern ports indicated that the war might be longer than most had expected; the west would not be untouched, and Indian support for the Confederacy was an urgent need. Pike issued a public letter to Ross on August 1 that was widely circulated. In it, he said that the Confederacy would allow the Cherokees to test their “supposed neutrality,” but that Ross must understand that, as a result, the Confederate States would not

¹²⁴ *Official Records*, Series I, Vol. 3, p. 595.

“hold themselves bound by, or bound to renew any of the guarantees or any of the propositions” offered to the other members of the Five Tribes, and that had been offered to Ross in their June meeting. It would be unfair for the Cherokees to let the Confederacy take all the risks, and then expect the Confederate government to take over the annuity payments that the United States owed them (and had not paid.) “If you owe to *them*, alone, allegiance, loyalty, or friendship, *they*, alone, can owe you money and protection.” Pike ended the letter by expressing his hope that Ross’s decisions “would not prove at once disastrous to the Cherokee people and regrettable to their leaders.” A few days after the letter was circulated, news came of the Union loss at Wilson’s Creek, Missouri, on August 10; the combination of events may have led Ross to reconsider further resistance.¹²⁵

When the national assembly convened, with four thousand adult male Cherokees present, Ross delivered a speech that expressed the stakes of their collective decision for the Cherokee nation and its institutions, including slavery. He called on his audience to be united –“union is strength; dissension is weakness, misery, ruin.” In order to be united, the Cherokee people would have to honor their own constitution, and the rights guaranteed therein, including rights of property. Ross was not vague about what property rights he was discussing, adding “particularly including that of slavery.” To preserve their unity, their laws, and their rights, Cherokees must not “abolish or interfere” with slavery in the Cherokee Nation.¹²⁶

Why was it important to be unified, especially in regard to slavery? Because, in Ross’s words, “when your nationality ceases here, it will live nowhere else.” The Cherokee Nation was surrounded by Confederate states and Confederate-allied Indian nations; if the Cherokees remained loyal to the Union under such circumstances they risked losing everything for them and

¹²⁵ Pike to Ross, Seminole Agency, Aug. 1, 1861, in *Van Buren Press*, Aug. 28, 1861; Brown, 368-369.

¹²⁶ *Official Records*, Series I, Vol. 3, pp. 674-675.

their children. Their descendants might be denied their nationality, an outcome Ross expressed as the direst imaginable. Ross's initial qualms about taking sides were not an indication that he had misgivings about the institution of slavery. He was a slave owner himself, and had approved Cherokee laws governing the treatment of slaves, free blacks, and runaways. His hesitation to commit to Pike was due to his fear that the Cherokees would be caught up in a conflict that would be damaging to the nation. Now, however, the die was cast. The preservation of Cherokee nationality hinged on a unified will to support and protect the institution of slavery. John Ross made the same decision as Peter Pitchlynn. Divided as they were politically, the Cherokees were in the same situation as their Indian (as well as their Southern) neighbors: their nationalism was intertwined with slavery and racial hierarchy.

The assembly, with assistant principal chief Joseph Vann serving as president, accepted Ross's recommendations without dissent. Ross, who had always shown respect for the majority opinion, had set aside his own misgivings and done what seemed best for his nation.¹²⁷ He even appealed to his Creek counterpart (at least where resistance to the Confederacy was concerned) Opathleyahola to change his mind, as well, although to no avail.¹²⁸ The Creek leader and his supporters were sorely disappointed in their longtime ally's reversal, and at first refused to believe it.¹²⁹

¹²⁷ John Ross's great-granddaughter Josephine Pennington described the Chief's thought process: "Chief Ross watched every turn in the road and it was learned that most of the Creeks, Seminoles, Choctaws and Chickasaws had joined the South and Chief Ross, true to form, wanting to serve the masses and not sets of individuals, called mass meetings over the Cherokee Nation and at these meetings, he learned that the people felt if the rest of the five tribes joined the South, they too wanted to remain true and loyal to those who suffered as they in years past, and then they felt that the Cherokees should make a similar treaty; and so the treaty was made, although Chief Ross felt in his heart they should not do so. It is possible, too, that back of it all was the opposition he had met with the Treaty party which made him so firm in declining at first to sign with Albert Pike."

Interview with Josephine Pennington. Indian Pioneer Papers, Vol. 70, p. 379. Interview #7783. University of Oklahoma Western History Collection.

¹²⁸ Confer, 50.

¹²⁹ Moty Kennard and Echo Harjo to John Ross, October 18, 1861, in Gary E. Moulton, *The Papers of John Ross* (Norman: University of Oklahoma Press, 1985), Vol.2, pp. 496-497.

May 1861	Pike and McColloch meet with representatives of Watie and Boudinot
May 1861	Pike and McCulloch sign treaties with several Comanche bands
June 5 1861	Pike and McCulloch meet with Cherokee leader John Ross
June 22-24 1861	Creek chief Opothleyahola meets with several western tribes, at Ross's suggestion, and convinces them to sign a joint statement of neutrality
July 10 1861	Pike signs treaty with the Creeks before Opothleyahola returns
July 12 1861	Pike signs treaty with Choctaws and Chickasaws
Aug 1 1861	Pike issues an open letter to Ross, warning him that if the Cherokees do not sign they will not be included in the benefits the other tribes receive from an alliance with the Confederacy
Aug 1 1861	Pike signs treaty with the Seminoles
Aug 12 1861	Pike signs treaty with remaining Comanche bands (the Comanche treaties were not alliances, but rather were guarantees of neutrality so the Comanches would not raid Confederate territory while Confederate armies were otherwise occupied.)
Aug 20 1861	Cherokee National Assembly votes to ally with the Confederacy
Oct 7 1861	Pike signs treaty with the Cherokees.

Fig. 6.1. Time-Line of Confederate Diplomatic Efforts in Indian Territory, 1861.

Support of slavery as an institution was not enough to compel the Five Nations' leaders, including Ross, to side with the South; it was, however, an important part of the nationhood that they sought to protect. When Ross enumerated the questions facing his people at the general assembly of August 20, 1861, he capped the list by asking his citizens "whether you are faithful to the constitution and laws of your country." This included the rights "of person and property," particularly slavery, and Ross implied that faithfulness to the law meant not trying to "abolish or interfere" with it. A guarantee for mutual return of fugitive slaves was a point in the Confederacy's treaties with the Five Tribes. The Confederate States of America and the Cherokee, Choctaw, Chickasaw, Creek and Seminole Nations all framed themselves as slaveholding autonomous nations. For all of them, slavery was the cornerstone of a racial hierarchy that helped define what their nations were. Ross called for unity among his people in the face of changing circumstances; unity would require traditionalist, full-blood, anti-slavery

Cherokees to conform to the laws on which their government predicated itself, including those regarding slavery and race.

“We don’t wish to be divided like other Nations”

The governments of all Five Tribes officially allied with the Confederate States of America. Although a relative handful of Choctaws and Chickasaws were reluctant to do so, a large majority entered into the alliance without hesitation. They were not as politically divided as the Cherokees, and unlike the Creeks and Seminoles few of their citizens still held to traditionalist, and more inclusive, views of race (as late as the 1880s, young full-blood Creeks like Mose Wiley were being teased by other Indians for being “part negro”; “It really hurt our feelings.”)¹³⁰ One pro-Union Choctaw, speaking to a U.S. official after the war, said that only 212 Choctaws had gone to fight for the Union. “We represent only a minority—a very small minority,” he said. “We come to seek justice for the few that are loyal.”¹³¹ Another Choctaw, this one in the Confederate majority, explained his people’s unity to a Union general later in the war, when the Confederacy was doing badly and there was some talk of the Choctaws making a separate peace with the U.S. “We don’t wish to be divided like other Nations if we can be saved any other way. As we all come out [of the Union] together and we should all like to come in together.”¹³² Confederate Commissioner of Indian Affairs S. S. Scott, in a report to his Secretary of War, claimed that only one of the Five Tribes could be considered completely reliable: “The Choctaws alone, of all the Indian nations, have remained perfectly united in their loyalty, to this

¹³⁰ Interview with Mose Wiley. Indian Pioneer Papers, vol. 98, p. 15. Interview #12261. University of Oklahoma Western History Collection.

¹³¹ *Chicago Tribune* (Sept. 26, 1865, p. 2).

¹³² Letter from Jackson McCurtain to Union General McNeil, December 16, 1863, quoted in Debo, 83.

Government.”¹³³ Scott added that many “influential and reliable” Choctaws assured him that not a single person from their nation had sided with the Union.¹³⁴

Scott’s Choctaw contacts were hyperbolic in their assessment of their nation’s loyalty, as over two hundred Choctaws did take arms for the Union, but that small number still made the Choctaws relatively uniform in their Southern support. Scott next listed the Chickasaws as “scarcely less” loyal than the Choctaws, noting that about forty families sided with the Union at the beginning of the conflict but that “with this exception, no instance of disaffection have been known amongst them.”¹³⁵ The unity of the Choctaws and Chickasaws demonstrates that more was at stake than the enmities of former factions related to Removal, for they too had faced such division; opposed loyalties in the Civil War were spurred by differing conceptions about what an Indian nation should be. Most Choctaws and Chickasaws had reached an agreement on that question.

“Loyal” Indians

Cherokees, Creeks, and Seminoles were not nearly so cohesive in their corporate view of the war or of their nations. Scott estimated that “of the Seminoles at least one half have proved disloyal and have deserted their country.” He claimed that almost as large a percentage of Creeks and Cherokees eventually supported the Union.¹³⁶ Scott noted that almost all the Creek “disloyal deserters” were among the group who fled northward with Opothleyahola (many Seminoles, and some Cherokees, joined that group as well.) Opothleyahola’s tribal followers referred to themselves as “loyal Creeks”; they were loyal to the Union and their people’s agreements with it, and to their own traditions. They were not loyal to the government of the Creek Nation.

¹³³ *Official Records*, Series IV, Vol. 2, 353.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*, 353-354.

“Disloyal” individuals among the other nations had similar attitudes. Tradition, for them, trumped the dictates of their official leadership.

Opothleyahola and his followers were proof that not all Indians conformed to the political leaders’ vision of race and nation. The seven to ten thousand Indians who eventually gathered around Opothleyahola were a diverse group. Some were opposed, not only to an alliance with the Confederacy, but to the institution of slavery. Others were slaveholders, who brought their slaves with them in order to protect their property. There were also a large number of free blacks. The Creek General Council had passed a law in March ordering all free blacks in the nation to declare a master or risk being seized and sold to the highest bidder. Many proclaimed Opothleyahola as their “master” and joined his followers in order to gain protection in numbers. Some of the free blacks had been influential voices in the argument against the Creeks allying with the Confederacy.¹³⁷

Opothleyahola and his followers refused to recognize the Creeks’ treaty with the Confederacy. The treaty had been signed while most of the pro-neutrality Creek leaders had been away at the Antelope Hills council, and some of those absent Creek leaders found their names forged on the document.¹³⁸ Opothleyahola and his followers found themselves in an untenable situation that resembled that which had confronted Ross when Stand Watie was commissioned by the Confederacy. The Confederate Creek forces were commanded by the McIntosh brothers, Daniel and Chilly, who had long blamed Opothleyahola for the assassination of their father. Sensing their potential danger, Opothleyahola’s followers gathered together physically for security. Dissenters from the other four nations came to join them, including a large number of

¹³⁷Gaines, 24-25.

¹³⁸ Annie Heloise Abel, *American Indian as Slaveholder and Secessionist* (Lincoln: University of Nebraska Press, 1992), 244; Carter Blue Clark, “Opothleyahola and the Creeks during the Civil War” *Indian Leaders: Oklahoma's First Statesmen*, ed. H. Glenn Jordan and Thomas M. Holm (Oklahoma City: Oklahoma Historical Society, 1979); Confer, 165; Report of Charles Mix, *Annual Report of the Commissioner of Indian Affairs, 1865*, 328-330.

Seminoles as well as Cherokees, a few Choctaws, and the forty Chickasaw families that S. S. Scott had identified as the core of anti-Confederate resistance among their tribe. A small number of Delawares, Shawnees, Kickapoos, and Comanches from western Indian Territory joined the dissenters as well.

Creek leader David McIntosh (another son of the slain William McIntosh) wrote to Cherokee Colonel John Drew about his concerns regarding Opothleyahola:

It is now certain that he has combined with his party all the surrounding wild tribes and has openly declared himself the enemy of the South. Negroes are fleeing to him from all quarters—not less than 150 have left within the last three days.¹³⁹

Opothleyahola's assemblage included two groups that were problematic for the political entities that the pro-Southern governments of the Five Tribes were trying to create: wild Indians and Negroes. The "wild Indians" in question were from western Indian Territory (Comanches, Kickapoos, and et cetera) and did not have "modern" national structures. McIntosh could just as well have been talking about those members of the Five Tribes who had joined Opothleyahola, for they had not made a "civilized" choice.

Despite the presence of some slaveholders among Opothleyahola's group, including Opothleyahola himself, the assemblage of Indians and blacks represented a rejection of the Five Tribes' governments and their goals concerning nation, race, and slavery. The official native leadership had constructed nations in which there was no place for free blacks; they were either to be slaves or leave, with no option of inclusion or citizenship. Blacks who lived as members of the community, and Indians who accepted them as such, were a threat to the racial hierarchy that

¹³⁹ David McIntosh to John Drew, September 11, 1861, in Drew Papers, Gilchrease Institute, Tulsa, Oklahoma.

defined the Five Tribes' nationhood. So, too, were any Indians who identified primarily with their clan leaders and supported them in their dissent rather than adhere to their national citizenship above all else. The prospect of thousands of Indians who refused to conform to their nation's requirements for loyalty and obedience, and who were willing, in Scott's words when he described the pro-Union Seminoles, to "have proved disloyal and have deserted their country," was bad enough. Those numbers were augmented by a large group of blacks whose status as "slaves" existed in name only, and whose open rebellion against the Creek government could inspire other blacks throughout the territory to also defect from their legally assigned role in the Indian Nations. The resultant combination of rebellious Indian citizens and black non-citizens was a frightening prospect for the Indian governments. Even more frightening was the prospect that they might ally with the Kansas Jayhawkers.

Confederate Indians

Regardless of individuals' loyalties, the governments of all five nations were in accord. They gave their official support to the Confederate States of America. It would be overly simplistic to say that the Five Tribes' leaders allied with the Confederate States solely in order to protect the institution of slavery, even though many of them had an individual as well as a national economic stake in doing so. John Ross and George Hudson were both plantation owners and slaveholders, yet they initially hesitated to take the South's side. It could be argued that Hudson changed his stance because an overwhelming number of his constituents favored the Confederacy, but that was not true in Ross's case. The Cherokee pro-Confederacy numbers were not an overwhelming majority in the nation as a whole, but did constitute a large majority of the

most influential class; this was ultimately enough for Ross, who wanted foremost to preserve his people's unity.¹⁴⁰

It is more logical therefore, and more factual, to state that Ross and Hudson, like the leadership of the other three tribes, sought to protect and maintain their national institutions. The war placed them, ideologically and geographically, in a tenuous situation. There was a danger, in Ross's words, of losing their nationality. Most economic and political leaders of the Five Nations were confident that supporting their national institutions included support for the institution of slavery and a racialized hierarchy. Some, like Ross, Hudson and Pitchlynn, initially feared that an alliance with the Confederacy –and thereby an opposition to the United States –would threaten their national security, but they were eventually convinced that the reverse was true. From that point, they worked to convince their nations' citizens that their national identity could only be preserved by protecting slavery, as Ross outlined in his speech at the Cherokee national assembly.

Open hostilities between the North and the South put the Five Nations between the proverbial Scylla and Charybdis. As accommodating as the Confederacy seemed to be, Indian leaders had no misconceptions about what would happen if they refused the South's advances; with Arkansas to the east and Texas to the south, Indian Territory's resources would be at risk if the Confederacy decided to take a martial approach instead of a diplomatic one. Texas had, in its republican period and afterward, shown its willingness to invade its Mexican neighbors, and it must have seemed likely they would do the same with the Indian nations if aroused. The United States, meanwhile, had withdrawn its protective forces. The closest Union presence now was in Kansas, in the form of volunteer state militia who had previously demonstrated a volatility that

¹⁴⁰ Morton, 303.

required little provocation. To inflame the aggression of either side, without the assistance of the other, would be to risk extinction as an autonomous nation.

The Confederacy offered an alliance that seemed more respectful of the Five Tribes' sovereignty than the United States had ever been, conceding several sovereign rights that the tribes had contended with the federal government to recognize for decades, even as Pike and McCulloch made it clear that military force was an option if diplomacy failed to win their goals. A Confederate alliance seemed at the time like the best course for all five nations to take, particularly to slaveholding elites, in order to safeguard the modern nationhood each had worked toward throughout the first half of the nineteenth century.

Resisting the Modern Nation

Official policy of the Five Tribes' governments did not necessarily guarantee the full support of their people. Popular support for the Southern cause was overwhelming among the Choctaws and Chickasaws, in large part because those nations had been most successful in establishing a racialized hierarchy that was accepted and internalized by their citizens. The situation in the other nations was more complex. There was significant pro-Union and anti-slavery sentiment among the Creeks and Seminoles, although never a majority. A similar situation existed in the Cherokee Nation.

The pro-Ross Keetowah Cherokees and the Upper Creeks tended to favor either neutrality or outright support of the Union; the Pro-Treaty Cherokees and "McIntosh Faction" Lower Creeks ardently supported an alliance with the Confederacy. In fact, among the Cherokees, Creeks, and Seminoles, the factions who had opposed Removal generally opposed a Confederate alliance, while those factions that had been willing to accept treaty terms and voluntarily cede (or sell) land in the Removal period generally gave strong support to the

Confederacy. The Choctaws and Chickasaws were far more unified in their Confederate support than the other tribes, but they had a history of maintaining cohesion despite several divisive periods. In the Choctaws' case, that sense of unity may have been created by the unpleasant experience of their own disastrous civil war of 1747-1750, when they were torn in different directions by the English and French. It is worth noting that, like William McIntosh and most Lower Creeks, the Choctaws and Chickasaws had always been staunch allies of the U.S. before Removal. Groups that had previously opposed the U.S. militarily, such as the Seminoles and the Upper Creek (many of whom had been Red Sticks), were the most reluctant to join the Confederacy against the Union and had the largest pro-Union segments. These are generalities, of course, and there were plenty of exceptions. Still, there are enough similarities to suggest a common theme; and, in fact, there is one.

Factions who refused to accept Removal, and were ultimately forced from their ancestral homes only at gunpoint, displayed a profound attachment to their traditional tribal identities. For them, nation was defined by place. Factions who were ready to compromise on Removal, and who were prepared to support the U.S. against their own or neighboring tribes, displayed a willingness to reframe their identities and to adapt to modernity. Members of those factions usually benefited financially, that showed a move on their part from communalism to individualism, but in many cases they believed they also had the best interests of their people at heart, and that their nations' only hope of survival was to adjust to the new, modern world. They could leave Georgia and Alabama and still be part of a Cherokee or Creek Nation, a nation whose boundaries were ideological and defined by citizenship and racial hierarchy rather than to ancestral homelands (which really was a kinship attachment to one's ancestors and the soil where their bones rested.)

In most cases such groups arrived in Indian Territory years in advance of their anti-Removal counterparts, and were already well-advanced in their efforts to construct a racialized political identity when the traditionalists finally appeared. Those traditionalists had not yet completely reframed their identities; they were not prepared, even when they owned slaves, to categorize people within their own nation by skin color instead of kinship bonds. They were not prepared to give their allegiance to a State that was defined by ideology, as the Pro-Confederate governments of the Five Tribes wished their states to be. In short, they were not completely civilized. Hence, like the newly-arrived Seminoles and the followers of Opothleyahola who came from all five tribes (although in varying numbers), the “civilized” Indians considered them “wild.” The American Civil War, initially a conflict between two American factions fought to settle their differing views of nation, thereby became an Indian Civil War that did the same thing.

Indian Civil War

Despite the massive Cherokee defection, the skirmishes between the Confederates and Opothleyahola’s fleeing followers continued into December. The latter group included a large number of women and children. One such child, Phoebe Banks, later recalled the fighting:

The Creek Indians and the slaves with them tried to fight off them soldiers like they did before, but they get scattered around and seperated [sic] so they lose the battle. Lost their horses and wagons, and the soldiers killed lots of Creeks and Negroes, and some of the slaves were captured and carried back to their masters.... Dead all over the hills when we get away; some of the Negroes shot and wounded so bad the blood run down the saddle skirts, and some fell off their horses miles from the battle ground, and lay still on the ground.¹⁴¹

Opothleyahola and his surviving, half-starved stragglers reached safety in Kansas, and Indian Territory was firmly in Confederate control. However, “the sympathizers, friends, and

¹⁴¹ Oklahoma Writers Project, Interview with Phoebe Banks, October 10, 1938, 2-3, cited in Minges.

family members of Opoethleyahola who had remained in Indian Territory would face persecution in the months to come.”¹⁴² Confederate Indians throughout the nations raided Pins and their sympathizers as the war progressed, and atrocities were often committed on both sides. Although the wheels of the Union moved slowly where enlisting non-whites was concerned, by 1863 two regiments of Native American soldiers had been raised in Kansas, many of them veterans of Opothleyahola’s trek. The First Indian Home Guard was comprised of Seminoles and Creeks; the Second Indian Home Guard consisted of Creeks, Cherokees, Chickasaws, Choctaws and Osages. Another regiment, the Third Indian Home Guard, was formed later and was filled largely by pro-Union Cherokees who had not fled with Opothleyahola. Many former slaves and freemen from Indian Territory joined the Kansas 1st and 2nd Colored Volunteers Infantry Regiments.

In the summer of 1862 Cherokee principal chief John Ross was once more forced to a decision. He had led his people into the Confederacy reluctantly, and once hostilities began he often expressed concern that the Confederate States was not meeting its obligations to the Cherokees. On July 15 Union forces captured Tahlequah; Union officials sent a letter to Ross via the missionary Evan Jones (who became chaplain of the Third Indian Home Guard) expressing a willingness to still uphold U.S. treaty obligations with the Cherokees. Again with reluctance, Ross decided to spurn the Confederacy and align with the Union. “His ultimate loyalty,” Confer writes, “was to the Cherokee people, who now seemed better served by the strengthening Union forces on their doorstep.”¹⁴³ Ross was arrested and paroled by the Union army. He left his headquarters at Park Hill and relocated to Philadelphia, where his wife had relatives, and devoted

¹⁴² Edwards, 14.

¹⁴³ Confer, 79.

himself to pursuing Cherokee interests in Washington. Three of his sons, three grandsons, and three nephews joined the Union army.¹⁴⁴

The Cherokees still loyal to the Confederacy disowned Ross and set up their own government, with Stand Watie as principal chief. Two opposing governments existed at the head of the Cherokees for the rest of the war. On February 21, 1863, the “Northern” Cherokee government announced that all slaves were emancipated in the Cherokee Nation and that slavery was abolished forever. Emancipation was a moot point with the Confederate Cherokees still present in force. Federal troops, including Indian units, had reclaimed part of northern Indian Territory in 1862 but had withdrawn once again, leaving the “loyal” Indians who had returned at the mercy of the Confederates. Later in 1863, Stand Watie burned the Cherokee Council House and the plantation that Ross had left behind, and captured one of Ross’s sons.¹⁴⁵

As federal forces gained a foothold in Indian Territory, individuals from all Five Tribes wavered in their support for the Confederacy.¹⁴⁶ The Confederacy was failing in the West. The leaders and citizens of other tribes were not as quick as Ross to reconsider their loyalties to the Confederate States, but as the war continued and Southern lights dimmed, many Indians found a reassessment in order. After all, one of the chief reasons for supporting the Confederacy was that the Union, in the early days of the war, failed to uphold their treaty obligations to protect Indian Territory; now it seemed that the Confederacy was unable to do so either.

Even the Choctaws began to falter in their support for the Confederacy, although with some caveats. They were not prepared to switch sides and ally with “Abolitionists and Black

¹⁴⁴ Laurence M. Hauptman, *Between Two Fires: American Indians in the Civil War* (New York, Simon & Schuster, Inc., 1995), 49.

¹⁴⁵ Confer, 109; Hauptman, 50; John Bartlett Meserve, “Chief Lewis Downing and Chief Charles Thompson (Oochalata.)” *Chronicles of Oklahoma* Vol. 16, No. 3 (September, 1938), 318-319.

¹⁴⁶ Annie Heloise Abel, *The American Indian and the End of the Confederacy, 1863-1866* (Lincoln: University of Nebraska Press, 1993, first published in 1925), 11.

Republicans.” Historian Annie Heloise Abel pointed out that “race prejudice was strong among them as was also repugnance to any race mixture that entailed their own assimilation with inferior blood.” This was in stark contrast, according to Abel, to the Creeks, “who mingled Indian blood and African freely.”¹⁴⁷

The Choctaws hesitated to abandon their Southern allies and enter into an agreement with the United States, therefore, not just because of a general sense of loyalty, but because of race. The Confederate States of America subscribed to the same formula on which the Choctaws, and most elites in all the Five Nations, had built their governments: national identity defined by racial hierarchy. The Union might have the upper hand and seem to offer the more promising prospects for peace and security, but the potential price was too high. That price was evident from the actions of the Cherokees. John Ross may have been a planter and a slaveholder, but his government, once allied with the Union, embarked on a course of emancipation and abolition. Those Cherokee laws largely reflected the views of the Keetowahs who dominated the Northern Cherokee Nation, but the Choctaws may also have viewed them as a pre-emptive appeasement of the United States, an appeasement that was anathema to the Choctaws.

The Choctaws briefly toyed with the idea of a third option: forming an independent Indian confederacy. This could potentially return the Five Tribes to the circumstances they had enjoyed before the American Revolution, giving them the opportunity once more to be independent actors who were not beholden to either side. It would also be the ultimate fruition of their efforts to establish themselves as autonomous legal entities. “The principle of self-determination... was dominant throughout the South,” Abel wrote. “It lay back of all secessionist action and ought logically, reasoned the Choctaws, to work as well for red men as for white.”¹⁴⁸

¹⁴⁷ *Ibid.*, 14.

¹⁴⁸ *Ibid.*

Despite the development of a party in opposition to the pro-Confederate Choctaw government, there was ultimately no severing of ties with the South.

The Confederate States eventually surrendered, of course, and so did their Indian allies. Stand Watie, by then a brigadier general and highest-ranking Native American in either army, had the distinction of being the last Confederate general officer to surrender, on June 23, 1865. U.S. officials met with representatives from all Five Tribes, and other tribes from western Indian Territory, at Fort Smith, Arkansas, in September. Commissioner of Indian Affairs Dennis N. Cooley delivered an address to the Indian delegates in which he stated that, as a result of their alliance with the Confederacy, the Indian nations were “left without any treaty whatever” and the U.S. was “empowered to enter into new treaties.” One stipulation of the new treaty called for the permanent abolition of slavery and the emancipation of all slaves, “and for their incorporation in the tribes on an equal footing with the original members, or suitably provided for.” Another required that involuntary servitude “shall never exist in the tribe or nation, except in punishment of crime.”¹⁴⁹

Many delegates resented the fact that all blame for their nations’ defection was placed on the Indians, with the U.S. not acknowledging their own shortcomings in honoring the earlier treaty agreements. Some, too, were angry that all Indian nations were being punished equally, when several had hosted large pro-Union segments. The bitterest pill, though, was the emancipation of slaves and the implication that they should be made citizens. Anger at the blacks within their nations, simmering through the latter part of the war, boiled over in the months after the Fort Smith council.¹⁵⁰

¹⁴⁹ *Ibid.*, 188-189.

¹⁵⁰ *Ibid.*, 273.

Violence Against Blacks

Slaves had suffered with their masters during the war, and in some ways their situation was far worse. Pin attacks on pro-slavery farmers sometimes resulted in African Indians dying in the crossfire. Slaves suffered privation along with the families who owned them. A large number of slaveholders uprooted their slaves, sometimes separating families, and sent them (under supervision) to Texas where they would be beyond the reach of Union forces. Other slaves were taken into the military with their masters, continuing as their owners' personal servants on the battlefield. General violence against blacks became commonplace, as both Union and Confederate Indian individuals blamed the war and its resultant suffering on abolitionists—and, by extension, slaves.¹⁵¹

Missionary Cyrus Kingsbury realized the dangers blacks faced. In 1865 he wrote: "I fear there are many who will no more hesitate to take the life of a negroe, than of a dog. It is sickening to contemplate the prospect that is (I hope but for a little season) with us."¹⁵²

One federal soldier reported a conversation he had with the survivors of a group of blacks who had been attacked by Chickasaws after the war's conclusion.

They state that these tribes have the bitterest feeling toward the blacks, and are determined that they shall not pass through their country; nor leave it, and that they hold on to their slaves with the greatest tenacity, swearing in their enmity to the blacks that if it had not been for them (the blacks) the federals could never have whipped the south—that they (the Indians) are not whipped and that they are going to manage and control things in their country to suit themselves. I am satisfied that many of them [the Indians] are as disloyal as ever; and that the blacks are suffering a reign of terror.¹⁵³

¹⁵¹ Interview with Josiah Garland. Indian Pioneer Papers, Vol. 33, pp. 178-180. Interview #1283. University of Oklahoma Western History Collection.

¹⁵² Reverend Cyrus Kingsbury to Reverend S.B.Treat, Dec. 4, 1865. Folder 5, File #4, Cyrus Kingsbury Collection, Western History Collection, University of Oklahoma, Norman.

¹⁵³ *Ibid.*, footnote 518.

Violence against blacks was not isolated to Choctaw and Chickasaw territory. It was repeated throughout the nations. The treaty that was finally signed between the Five Tribes and the U.S. in 1866, that required the Indian nations to free their slaves and either incorporate them into the tribe or make sure they are “suitably provided for,” was introduced into an atmosphere of Indian anger at both the United States and the black people within their own borders. Leaders, and individual citizens, of all Five Tribes resented being told who to “incorporate” into their nations, viewing it as an infringement on their autonomy. Indian bitterness over both the race and sovereignty implications of the Treaty of 1866 did not die easily, and still manifests itself in surprising ways.

This, then, was the ultimate endpoint for the status of blacks in Indian Territory by the conclusion of the Civil War. After decades of working toward it, Indian leaders had, for the most part, managed to convince their citizens to embrace a new model of nationalism and race. Blacks, whose status had gradually deteriorated over the course of the nineteenth century, had become a demeaned and defining other. Their lives, at least in some quarters, were worth less than an animal’s.

Conclusion

At the beginning of the Civil War, the Five Tribes allied with the Confederacy with varying degrees of national unity. Some of that disunity was the residual effect of Removal-era political feuds, but not all. In large part, national unity was dependent on the success of the Five Tribes’ governments in convincing their followers to abandon traditional racial views and invest in a modern racially hierarchical political state. Choctaws and Chickasaws were successful in that endeavor: only 2.5% of Choctaws, and 2.6% of Chickasaws, owned slaves, yet both nations were overwhelmingly pro-Confederate. The vast majority viewed a racial state as being in their

best interests even though they owned no slaves. 2.4% of Cherokees and 1.9% of Creeks were slaveholders, yet large minorities of each nation resisted both the Confederacy and the institution of slavery. Seminoles were at the extreme end of the spectrum, and in the years leading up to the war were still occasionally allowing their slaves to go armed and treating them as allies.¹⁵⁴

By 1866, Indian desires for nationhood and sovereignty were as strong as ever. If anything, they were stronger; slavery was gone, and peace was made with the Union, but the Five Tribes were determined to hold onto their own identities. There was still infighting among wartime foes, sometimes erupting into violence, but not enough to ignite a new civil war. The Five Tribes' collective efforts to maintain, not just their cultures, but their nationhood, continued until the end of the century and were resumed, after an interruption forced by the U.S. government, in the twentieth century.

However, the tribal variation in relation to racial hierarchy was not the same in 1866 as it had been in 1861. Slaves had been emancipated, and lived freely among their Indian neighbors, but were the objects of distrust and sometimes violence. Indigenous voices speaking in their defense were much rarer. Even the Seminoles eventually became virtually indistinguishable from the other nineteenth-century tribes in their treatment of black citizens. The solidification of racial hierarchy that had eluded some of the tribes in the years between Removal and the Civil War was finally achieved.

¹⁵⁴ Doran, 347.

EPILOGUE

“Ultimately,” Choctaw historian Clara Sue Kidwell writes, “The Treaty of 1866 was not as punitive as it might have been.”¹⁵⁵ The Five Tribes retained their sovereignty; the nation-states they had worked to build were intact, if somewhat battered. There was, of course, the complicated issue of the freedmen—what would their status within the nations be? The U.S. government had insisted they be, not only freed, but incorporated into the Five Tribes as citizens. The Creeks and Seminoles complied with the directive quickly; the Choctaws managed to delay giving citizenship rights to their freedmen until 1885, and the Chickasaws never did so at all.

The Cherokee Nation’s relationship with its freedmen was especially complicated, and has grown more so over time. The Cherokee Constitution was amended to give them citizenship on November 26, 1866. The amendment stated that all emancipated freedmen and any “free colored persons” who lived in the nation at the beginning of the Civil War “and are now residents therein, or who may return within six months of the 19th day of July, and their descendants, who reside within the limits of the Cherokee Nation, shall be taken and deemed to be, citizens of the Cherokee Nation.” In 1880, when a census was ordered by the Cherokee government to facilitate the disbursement of funds from land sales, freedmen were left off on the justification that the constitutional amendment only gave them political and civil rights, not shares in tribal assets. A group of freedmen successfully sued both the Cherokee and U.S. governments to recover their share of the funds, but the Cherokees had already distributed the money and the U.S. government was obliged to pay the freedmen.

In 1887 the U.S. Congress passed the Dawes Act, which was designed to divide Indian land into individual allotments rather than let it continue under tribal ownership, in an attempt to

¹⁵⁵ Kidwell, *Choctaws in Oklahoma*, 85.

further the acculturation process of Indian peoples. The law required that registrations be conducted in each tribe.

Commissioners divided those who registered into three categories: Indians by blood, intermarried whites, and freedmen. Many black Cherokees were put on the freedmen rolls even though they had a Cherokee parent or grandparent; further, the freedmen rolls did not quantify Indian blood whereas the Indian roll did. This would become problematic for black Cherokees; the 1975 Cherokee constitution specified as a condition of citizenship having an ancestor on the Daws roll, and in the 1980s this was further restricted by the added requirement of obtaining an official card specifying one's blood quantum, or percentage of Cherokee blood. Since many of the nineteenth century freedmen did not have Cherokee parents, and many of those who did were given no record of it in the rolls, black Cherokees were effectively disenfranchised.

The Cherokee Supreme Court ruled that disenfranchisement unconstitutional in 2006, since the blood quantum requirement was not specifically stipulated in the 1975 constitution. A successful petition drive called for a national referendum on amending the constitution to include the blood requirements, thereby excluding black Cherokees from citizenship. In the ensuing ballot, on March 3, 2007, 77% of voters chose the amendment.

The Cherokee government and its supporters have answered criticism of this development by arguing their actions were not racist, but a protection of Cherokee sovereignty. They claim that no outsider should have the right to dictate to the Cherokee Nation who can or cannot be a citizen. Some Cherokee supporters question the validity of the Treaty of 1866, in which the U.S. government did just that.

The racialized power structure which the Cherokees and the other Five Tribes co-opted from the United States two hundred years ago, and which David Theo Goldberg and others have

argued goes hand-in-hand with the creation of modern nation-states, still manifests itself in the present. The Cherokees' modern national identity was founded on it, as was that of the U.S., and in both cases that foundation has a way of making itself apparent no matter how hard those who constructed it try to ignore or forget it. Such structures are powerfully effective, looming over succeeding generations like a sphinx, and the only hope their engineers' descendents have of deconstructing them is to first acknowledge their existence.

APPENDIX A:
**“YOU ARE NOT MY FAVORITE”: NEAMATHLA’S SPEECH AS
REPRESENTED OVER TIME**

In 1823, just five years after the end of the First Seminole War, Florida’s new military governor William P. Du Val led the delegation which negotiated with the Seminoles at Moultrie Creek, near St. Augustine. Neamathla was the principal representative of the Seminoles. The United States government hoped to convince the recalcitrant Seminoles to take up a purely agricultural lifestyle and agree to surrender all claims to land in Florida. Neamathla delivered a speech which expressed Seminole affection for both their autonomy and their traditional lifestyle. His speech included a story about the creation of the three races, Indian, white, and black, and the distinctive abilities of each –pointing out that the Indians did not *want* to live like whites, for it was not their nature. Neamathla’s story –and variations on it –appeared in print often during the nineteenth century (especially in the years 1840-1865.) Washington Irving produced the most popular version, first appearing in 1840 and based on an interview with Du Val.¹

A century and a half later the story again began to circulate, this time in academia. Alan Dundes and William Sturtevant each wrote articles in the journal *Ethnohistory* in the early 1960s, comparing the various versions of the story and noting its common recurrence among 20th century Seminoles in oral history interviews. They both questioned the accuracy of Irving’s version, in particular.² It was over a decade later, though, that historian William McLoughlin

¹ Alan Dundes, “Washington Irving’s Version of the Seminole Origin of Races.” *Ethnohistory* vol. 9, No. 3, (Summer 1962): 257.

² Dundes, 258; William C. Sturtevant, “Seminole Myths of the Origin of Races.” *Ethnohistory* vol. 10, No. 1 (Winter 1963), 81.

revisited the tale in an article that would be heavily referenced by future historians, and which moved from the arena of folklore and into a cultural discussion of the meaning of race.

McLoughlin's 1974 article "Red Indians, Black Slavery and White Racism: America's Slaveholding Indians" appeared in *American Quarterly*. His argument was that whites had intentionally attempted to divide blacks and Indians –fearful of the consequences if they united – in ways that led to racism among Indians. He concluded by saying that "a large chapter has yet to be written about America as a multiracial nation –red, white and black –and how the white man, unable to accept his own myth of equality, forced inequality on the others."³ McLoughlin referred briefly in the text to a mid-nineteenth century Shawnee story about racial genesis; in a footnote to that story, and at length in the article's appendix, he discussed Neamathla's story. In McLoughlin's context, both the Shawnee and the Seminole stories indicated that Indians had re-ordered their cosmogony in order to accommodate the new realities of racial hierarchy which whites had brought to them. This was due to a profound need on the Indians' part to understand why the Great Spirit had upset their universe, and implied a new spiritual outlook which incorporated that racial hierarchy.⁴

McLoughlin expounded on this theme two years later, in the pages of *The Journal of American Folklore*, when he specifically compared the Neamathla story with several African stories of racial genesis, all of which attempted to explain the white-black racial binary. The African stories, he argued, served the same cultural purpose as those Indian tales which demonstrated God creating all the races at once, with specific destinies in mind for each, and seeking "their own explanations for these differences in the mysterious designs of their Great Spirit." However, as McLoughlin points out, none of these stories –African or Native American

³ William G. McLoughlin "Red Indians, Black Slavery," 384.

⁴ *Ibid.*, 374.

–give a satisfactory explanation as to why the Creator allowed whites to “attain those technological skills which he used to dominate other people.”⁵

It is not the purpose of this paper to question McLoughlin’s overall arguments about racialization, nor even to question whether new circumstances in the Southeast led many Indian groups there to develop new attitudes about race. The questions raised here, rather, revolve around the “racial origin stories” of the Seminoles, and whether they should be construed as evidence that Seminoles in particular had changed their cosmogony and cosmology in order to explain white hegemony. Dundes questioned the accuracy of Irving’s version of the story in the early 1960s –perhaps it is time to question McLoughlin’s use of it to support his thesis. Ethnohistory, ideally, is an approach which incorporates the best aspects of both history and anthropology in order to attain an understanding of groups which have little or no voice in traditional “Western” archives. If McLoughlin’s use of the Neamathla story should prove to be inaccurate or misleading, it would be problematic in two ways. First, it would provide a cautionary tale for historians who use oral tradition without considering cultural context. Second, and by far most disturbing for all ethnohistorians, such a misuse would be an example of the inadvertent exercise of the very sort of cultural imperialism that McLoughlin was so passionately decrying in his articles.

Before going into detail about the significance of the Seminole stories’ use among 20th century academics, it would be appropriate –and helpful –to look at the 19th century history of the story’s various print incarnations. Irving’s version was not the first, but is the most well-known; the story itself is included below in full. Other versions under discussion can be examined in light of their differences from Irving’s, without necessarily reprinting each in full.

⁵ McLoughlin “A Note on African Sources of American Indian Racial Myths.” *The Journal of American Folklore*, vol. 89, no. 353 (July-Sept. 1976): 332, 335.

“A Seminole Tradition”- Washington Irving’s version

When the Floridas were erected into a territory of the United States, one of the earliest cares of the Governor, William P. Duval, was directed to the instruction and civilization of the natives. For this purpose he called a meeting of the chiefs, in which he informed them of the wish of their Great Father at Washington that they should have schools and teachers among them, and that their children should be instructed like the children of white men. The chiefs listened with their customary silence and decorum to a long speech, setting forth the advantages that would accrue to them from this measure, and when he had concluded, begged the interval of a day to deliberate on it.

On the following day a solemn convocation was held, at which one of the chiefs addressed the governor in the name of all the rest. "My brother," said he, "we have been thinking over the proposition of our Great Father at Washington, to send teachers and set up schools among us. We are very thankful for the interest he takes in our welfare; but after much deliberation have concluded to decline his offer. What will do very well for white men will not do for red men. I know you white men say we all come from the same father and mother, but you are mistaken. We have a tradition handed down from our forefathers, and we believe it, that the Great Spirit, when he undertook to make men, made the black man; it was his first attempt, and pretty well for a beginning; but he soon saw he had bungled; so he determined to try his hand again. He did so, and made the red man. He liked him much better than the black man, but still he was not exactly what he wanted. So he tried once more, and made the white man; and then he was satisfied. You see, therefore, that you were made last, and that is the reason I call you my youngest brother.

"When the Great Spirit had made the three men, he called them together and showed them three boxes. The first was filled with books, and maps, and papers; the second with bows and arrows, knives and tomahawks; the third with spades, axes, hoes, and hammers. 'These, my sons,' said he, 'are the means by which you are to live: choose among them according to your fancy.'

"The white man, being the favorite, had the first choice. He passed by the box of working-tools without notice; but when he came to the weapons for war and hunting, he stopped and looked hard at them. The red man trembled, for he had set his heart upon that box. The white man, however, after looking upon it for a moment, passed on, and chose the box of books and papers. The red man's turn came next; and you may be sure he seized with joy upon the bows and arrows and tomahawks. As to the black man, he had no choice left but to put up with the box of tools.

"From this it is clear that the Great Spirit intended the white man should learn to read and write; to understand all about the moon and stars; and to make everything, even rum and whisky. That the red man should be a first-rate hunter, and a mighty warrior, but he was not to learn anything from books, as the Great Spirit had not given him any: nor was he to make rum and whisky, lest he should kill himself with drinking. As to the black man, as he had nothing but working-tools, it was clear he was to work for the white and red man, which he has continued to do.

"We must go according to the wishes of the Great Spirit, or we shall get into trouble. To know how to read and write is very good for white men, but very bad for red men. It makes white men better, but red men worse. Some of the Creeks and Cherokees learned to read and write, and they are the greatest rascals among all the Indians. They went on to Washington, and

said they were going to see their Great Father, to talk about the good of the nation. And when they got there, they all wrote upon a little piece of paper, without the nation at home knowing anything about it. And the first thing the nation at home knew of the matter, they were called together by the Indian agent, who showed them a little piece of paper, which he told them was a treaty, which their brethren had made in their name, with their Great Father at Washington. And as they knew not what a treaty was, he held up the little piece of paper, and they looked under it, and lo! it covered a great extent of country, and they found that their brethren, by knowing how to read and write, had sold their houses and their lands and the graves of their fathers; and that the white man, by knowing how to read and write, had gained them. Tell our Great Father at Washington, therefore, that we are very sorry we cannot receive teachers among us; for reading and writing, though very good for white men, is very bad for the Indians."⁶

Other Versions

A slightly different version had appeared in print in 1819, in the anonymously authored book *Narrative of a Voyage to the Spanish Main in the Ship 'Two Friends.'* Whereas the Irving story merely states that the Creator made three men and each turned out a different color, this version tells us that the Great Spirit had made them of clay and then proceeded to bake them. The first was overdone, "black and crusty"; the next was half-baked and thus white; the final attempt was just right "both in shape and color", the progenitor of American Indians. The boxes of utensils do not enter into this story.⁷

In 1825 James Pierce published an article in *American Journal of Science* which he claimed to have heard from a Seminole in northern Florida the previous year. Pierce's

⁶ Washington Irving, "A Seminole Tradition." *The Knickerbocker; or New York Monthly Magazine* (Oct. 1840): 16.

⁷ Anonymous, *Narrative of a Voyage to the Spanish Main in the Ship 'The Two Friends'; The Occupation of Amelia Island, by M'Groggor, &c. -Sketches of the Province of East Florida; and Anecdotes Illustrative of the Habits and Manners of the Seminole Indians; With an Appendix, Containing a Detail of the Seminole War, and the Execution of Arbuthnot and Ambrister* (London, 1819.) Quoted in Dundes, 260.

description is very brief. The Creator made three men –red, white, and black –and told each one to “select their employments.” The Indian chose a bow, the white man a book, and the black man a spade.⁸ Pierce does not specify the order of the men’s creation or the order in which they choose their implements, but the Indian is listed first both times when the races are named.

Another version appeared in 1842, in Thomas McKenney and James Hall’s *History of the Indian Tribes of North America*.⁹ This time, the Great Spirit creates white people first, and is quite disappointed in the result, as the man is pale and weak. He is even more disappointed by his next attempt, which results in a black man –whom he promptly shoves aside. Only his third creation, a red man, pleases him. In this story, too, the boxes of implements play a part. As in Irving’s version, the white man goes first –but not because he is the Great Spirit’s favorite. Rather, it is just because he was created first. The Great Spirit does not stick with the chronological basis of choosing, however, and tells the black man to stand aside in favor of the Indian. As in Irving, whites end up with pens, ink and paper, Indians with weapons, and blacks with work-tools.

Irving’s original story, word for word, was reprinted twice in the 1840s. The first instance was in 1841, in *The Family Magazine*.¹⁰ The second was in 1849, in *The Western Miscellany*.¹¹ This is in addition to appearing in various Washington Irving story and essay collections.

The version which McLoughlin included in the appendix to “Red Indians, Black Slavery, and White Racism” was originally published in 1847.¹² The Great Spirit creates three men from

⁸ James Pierce, “Notices of the Agriculture, Scenery, Geology, and Animal, Vegetable, and Mineral Productions of the Floridas, and of the Indian Tribes, Made during a recent Tour of These Countries.” *American Journal of Science* (January 1, 1825): 9.

⁹ Thomas McKenney and James Hall, *History of the Indian Tribes of North America*, (Philadelphia, 1842), vol. 2, 145-147, quoted in Dundes, 259.

¹⁰ Irving, “A Seminole Tradition.” *The Family Magazine; or, Monthly Abstract of General Knowledge* (May 1, 1841): 8.

¹¹ Irving, “A Seminole Tradition.” *The Western Miscellany* (May 1849): 11.

¹² “Indian Legends.” *Indian Advocate* (Oct. 1847): 6, quoted in McLoughlin, “Red Indians, Black Slavery”, 384.

dust, and when he blows the dust dry they each appear a different color. As in the McKenney / Hall version, the white man is created first and only allowed to live on because of the Great Spirit's magnanimity. The red man comes last, and "the Great Spirit smiled." Also as in McKenney / Hall, the white man is allowed to go first, but the Creator makes it clear that "you are not my favorite, but I made you first"; also similarly, the black man, created second, is brushed aside. The choices of implements were the same. In this version Neamathla points out that it is contrary to the Great Spirit's will for one race to use the implements assigned perpetually to one of the others.¹³

A different variation of racial origin appeared in print after mid-century, first in 1856 and then, reprinted, in 1865. In this story all three men are fair-complexioned, and the Great Spirit directs them to jump into a lake and wash. The first comes out whiter than ever; the second, because the water had been somewhat soiled by the first bather, comes out copper-colored; the third, because he went last and the water by then was muddy, comes out black. Once more there are the boxes of implements to choose from; this time, in pity, the Great Spirit lets the black man choose first. The black man picks the heaviest box, the red man the next heaviest, and the white man is left with the lightest. The unfortunate black man discovers that his box was so heavy because it was full of spades and hoes. The Indian, as always, has tools for hunting and warfare, while the white man –according to the anonymous author of the article –discovers "pens, ink and paper, the engine of the mind –the means of mutual, mental improvement, the social link of humanity, the foundation of the white man's superiority." One wonders if the Seminole who informed said author of the story concluded it with such lofty praise for whites.¹⁴

¹³ *Ibid.*

¹⁴ "A Singular Tradition." *Ballou's Pictorial Drawing-Room Companion* (March 29, 1856): 10; "A Singular Tradition." *Christian Advocate and Journal* (Jan. 5, 1865): 40.

John Swanton included two similar tales, this time attributed to Creeks (Seminoles had separated from the Creek nation in the late 18th century), in his 1929 book *Myths and Tales of the Southeastern Indians*. The first story is identical to the one just discussed –bathing in the lake – except there were no tools distributed. In the second version three Indians jump one by one into a pool, with the same results, becoming the progenitors of all three races. The bathing is followed by choosing from among three boxes. This time, however, the book chosen by the white man informs him that the loose rock he had felt at the bottom of the pool was, in fact, gold, and very valuable. He shows the book to his red companion, but the Indian is unable to read it –so that only the white man receives the important knowledge. And, as Swanton’s informant pointed out, whites “were terrible people to take the lead.”¹⁵

One might almost be tempted to wonder whether all these printed stories are incestuous replications of one another, and suspect that the stories they report either never existed in Seminole or Creek folklore or else were just the imaginings of a couple of native individuals who happened to talk to white authors. This is not likely the case, however. Variants of the story existed throughout the 20th century among Seminoles, who attributed it (persuasively) to tradition rather than to having read up on Washington Irving. Dundes and Sturventant, between them, name half-a-dozen specific 20th century oral history appearances of the stories, and there is every indication there are many more –that the story is, in fact, fairly commonly repeated.¹⁶

What, though, does it all mean? Was McLoughlin right –do such stories prove that Indians were re-adjusting their spiritual world and their viewpoints of their own origins?

It is worth pointing out that there were –and are –other stories about how humans were created. Like many other Southeastern native groups, both Creeks and Seminoles have

¹⁵ John Swanton, *Myths and Tales of the Southeastern Indians*. Washington: Smithsonian Institution (1929): 74-75.

¹⁶ Dundes, 261-263; Sturvetant, 81-84.

“emergence” genesis stories. These tales involve the first people, and various tribal and clan progenitors, coming forth from the earth, as from a womb.¹⁷ These stories have never ceased to be repeated, and by no means have they come close to being supplanted by the sort of racial hierarchy stories we have discussed here. They certainly do not seem to indicate the sort of spiritual identity crisis which McLoughlin claims beset Southern Indians.

In fact, Dundes and Sturtevant both called Irving’s story into question because it is the only one which claims whites as the Creator’s “favorite” instead of the Indians. (Admittedly, blacks got the short end of the stick every time, even when they received first choice.) This aberration indicated to both authors that either Irving or DuVal had misheard, misconstrued, or simply put their own spin on Neamathla’s story, which could arguably be a surer sign of cultural neurosis than McLoughlin’s arguments about Indians would be. The fact that the story was reprinted or told anew so many times by white authors in the two decades leading up to the Civil War –certainly a time when race was on everyone’s mind –and that, romantically, whites came off looking brilliant, and being acknowledged as such not only by the Great Spirit but by the noble red men repeating the stories, make one wonder if the stories and their reception might not tell us more about the psyches of nineteenth century whites than Indians.

Whereas genesis stories (such as the aforementioned emergence tales) were and are considered sacred by native peoples, storytelling in general was, in many ways, a work ever in progress. By 1823, whites had for centuries remarked about the metaphors employed in Native American rhetoric –nor were these metaphors static things. One is reminded of the old Delta blues singers, who never sang a song the exact same way twice. Historian Claudio Saunt tells us the following about oral tradition:

¹⁷ Bill Grantham, *Creation Myths and Legends of the Creek Indians*. (Gainesville: University Press of Florida, 2002), pp. 108-109; Robert F. Greenlee “Folktales of the Florida Seminole” (*The Journal of American Folklore*, vol. 58, no. 228, April-June 1945), p. 141.

Unlike the stories written in history books, spoken stories are performed before responsive audiences. The storyteller can emphasize certain themes and even alter content according to the reactions of listeners. When political circumstances change rapidly, overnight or even during the course of a narration, storytellers can adapt immediately. Storytelling consequently allowed Creeks to maintain order through persuasion and negotiation.¹⁸

In another article, Saunt also points out that Southeastern Indians in the 19th century strategically used myths to “substantiate their authenticity,” noting that “changes in European understandings of Indian origin stories might be useful to them.” Indians, he argues, often used their own stories to turn the tables on their adversaries.¹⁹

Saunt’s description is apt for what Neamathla was doing in 1823. McKenney and Hale speculated that he made his story to DuVal up from whole-cloth; since the “bathing” version of the racial creation story had been in print for several years, it is unlikely (though not impossible) that the Seminole leader’s story came completely from his own imagination.²⁰ But whether he was repeating a familiar tale or putting a new twist on a genre, Neamathla’s aims were the same: not to express deep-seated spiritual unease, but to make the best deal possible for his people. He was making it clear to Du Val that the Seminoles were *not* to be notched down on the white man’s hegemonic scale, nor would they be content to live like whites. And he did so with humor, poetic language, and by finding common ground with his negotiating partner (they were both blessed by the Great Spirit in certain ways), by no means unusual in Native American diplomacy. Playing to the whites’ hierarchical system in such a fashion might indicate diplomatic shrewdness, an astute and practical observation of a change in political reality, or even a shift in

¹⁸ Claudio Saunt “‘The English Has Now a Mind to Make Slaves of Them All’: Creeks, Seminoles, and the Problem of Slavery” (*American Indian Quarterly*, vol. 22, no. ½, Winter-Spring 1998), 160.

¹⁹ Saunt, “Telling Stories: The Political Uses of Myth and History in the Cherokee and Creek Nations” (*The Journal of American History*, vol. 93, no. 3, Dec. 2006), pp. 675, 695-697.

²⁰ Dundes, 262.

cultural concepts of race and identity, but not a cosmic sense of confusion and abandonment by the Great Spirit.

As previously noted, it was white audiences –both the literal audiences of Indian storytellers, and the print audiences of the journals and books which reported on those stories – who seem to have jumped hardest on the bandwagon of separate destinies for the races as described in Seminole stories. Such concepts reinforced their own feelings of superiority, and justified their imperialism. However, in making a case –from a couple of stories –that Indians were morally and spiritually thrown off-balance by white hegemony to such a point that an entire restructuring of their cosmogony became necessary, and that part of that cosmogony involved placing themselves below whites, McLoughlin overplayed his hand. Claiming such stories as evidence without the proper contextualization was, in fact, a misappropriation, however well-intentioned. His arguments have much merit, and even the spiritual disorientation aspects of them may be valid; however, Neamathla’s story as McLoughlin uses it is not an appropriate indicator.

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