"Our Share of Land": The Cherokee Nation, the Federal Government and the Citizenship Status of the Freedpeople, 1866-1907

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Abstract

This thesis explores the debates surrounding the status of Cherokee freedpeople in the final four decades of the nineteenth century. Despite being granted full citizenship in the 1866 Reconstruction Treaty signed by the United States and the Cherokee Nation in 1866, the nature of these rights remained constantly under debate as the Cherokee Nation attempted to limit their obligation to freedpeople. In contrast, the federal government insisted freedpeople and their descendants be awarded the full rights of Cherokee citizens. Repeated federal intervention on behalf of Cherokee freedpeople led to jurisdictional disputes and tensions between the two nations as the Cherokee Nation insisted that they held final authority over the boundaries of its citizenry and the nature of citizenship awarded to freedpeople. Scholars have questioned the apparent polarity between the equal rights of freedmen and Cherokee sovereignty and, in 2013, Barbara Krauthamer identified the necessity of exploring how these two concerns became constructed as oppositional. In the twenty-first century, high profile legal battles over the exclusion of individuals descended from freedpeople from the Cherokee Nation have highlighted the lasting importance of this issue.

This thesis builds on previous research by reconsidering how Cherokee freedpeople pushed for full and equal inclusion in the forty years following their emancipation. It argues that Cherokee freedpeople were not pawns in the disputes between the Cherokee Nation and the United States. Instead, freedpeople were active agents who exploited the differing interpretations of citizenship held by Cherokee and federal officials to secure their own interests. Furthermore, this thesis argues that the federal government only supported Cherokee freedpeople when it served their larger agenda of damaging the sovereignty of the Cherokee Nation.

(74304 words)

List of Contents

List of Illustrations

Acknowledgements

Unlike some people I grew up with, I was never sure what I wanted to do. On the basis of an inspiring speaker in an A-level English Literature class, I impulsively applied to do a 4 year degree in American Studies at UEA (complete with a year abroad I hadn't mentioned to my mum as I sat filling in my UCAS form). I not only loved my undergraduate degree from start to finish, I ended up staying for a Masters (in American History, I didn't even take history at GCSE level!) and a PhD. My PhD has been wonderful, difficult, fascinating, bewildering and anxiety-inducing. Its completion was only possible with the unwavering and complete support of the people around me and I am incredibly grateful. I would like to thank, in no particular order:

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Chapter One: Race, Sovereignty, and Silence - The Cherokee Nation and its Freedpeople, an Introduction

Chattel slavery, and its legacy within the Cherokee Nation, has proven itself to be a controversial and emotionally charged topic since the institution was formally abolished in 1866. One of the central questions has focused on the extent to which black former slaves should be incorporated within the Cherokee citizenry. Cherokee freedpeople, with the support of the federal government, have pursued their demand for full inclusion within the Nation, whilst the Cherokee leadership has attempted to either maintain a distinction between former slaves and the rest of the population in their citizenship privileges or exclude them entirely.[1] Twenty-first century legal battles over the status of individuals claiming Cherokee citizenship through their descent from Cherokee freedpeople illustrate the longevity of this dispute.[2] Scholarly interest in the connections between Native Americans and African Americans is relatively recent, however, with Black Indian Studies only emerging as a distinct area of research in the final decade of the twentieth century. As a result, the history of Cherokee slavery and freedpeople has received limited attention within academia, with few scholars writing in-depth studies until the turn of this century. The absence of the history of Cherokee slavery and freedpeople in scholarship mirrored their disappearance

[1] In a departure from previous scholarship, this thesis will use the term 'freedpeople' to refer to former slaves within the Cherokee Nation, as well as their descendants, rather than 'freedmen.' Although the use of 'freedpeople' has been considered unwieldy or awkward, it is a more accurate term since it does not carry implications regarding the gender of the subject. 'Freedman' or 'freedmen' will therefore only be used to describe male former slaves or male descendants of slaves, unless quoting a contemporary source in which 'freedmen' was used to describe former slaves of either gender. See C. Sturm, 'Blood Politics, Racial Classification, and Cherokee National Identity: The Trials and Tribulations of the Cherokee Freedmen,' in *Confounding the Color Line: The Indian-Black Experience in North America,* J. F. Brooks, 253 (Lincoln and London: University of Nebraska Press, 2002). Footnote 1. Sturm uses 'freedmen' for expediency despite conceding its gender bias.

[2] For a good overview of these contemporary issues see M. Barbery, 'Slave descendants seek equal rights from Cherokee Nation,' *Salon*, May 21 2013, accessed 10/12/14, http://www.salon.com/2013/05/21/slave_descendants_seek_equal_rights_from_cherokee_nation_partner/. Twenty-first century legal cases are considered more closely later in this chapter and in the epilogue.

from Cherokee collective memory, made evident by the twenty-first century legal battles that see freedpeople struggling to be included and recognised as Cherokees.

In order to reach a closer understanding of the long-term consequences of racial slavery and its aftermath within the Cherokee Nation, this project explores the tensions between federal officials, the Cherokee government, and Cherokee freedpeople themselves over the status of freedpeople within the Nation in the second half of the nineteenth century. Importantly, it considers how freedpeople became seen as a threat to Cherokee sovereignty from the end of the Civil War to the dissolution of the Cherokee Nation government in 1907. The Cherokee Nation attempted to tightly regulate the rules that determined who was considered Cherokee as a means of maintaining their sovereignty and control over their domestic affairs in the face of increasing pressure from the United States after the American Civil War. Cherokee freedpeople, with the support of the federal government, insisted that freedpeople be treated in the same manner as full Cherokee citizens. A series of clashes proceeded between the two nations in the latter half of the nineteenth century as both claimed jurisdiction over the matter. The Cherokee leadership therefore came to associate awarding freedpeople equal rights with federal encroachment on the autonomy of the Nation. In re-envisioning this power struggle as being between freedpeople as well as the Cherokee and United States government, rather than just between officials of those two nations, this research explores how the actions of freedpeople affected their position within Cherokee society and the terms of the political debate within the Cherokee Nation. The determination of freedpeople to claim equal rights made their status within the Cherokee citizenry an inflammatory point of disagreement between the United States and the Cherokee Nation after the Civil War. Furthermore, the response of the Cherokee Nation must be considered alongside its increasingly defensive relationship with the United States. Debates surrounding the rights of freedpeople within the Cherokee Nation need to be assessed within this triangular framework to achieve a full and complete analysis.

This thesis establishes that the actions of Cherokee freedpeople in relation to their own citizenship made them active agents rather than pawns in the disputes between the Cherokee Nation and the United States over their status. This thesis will therefore bridge the gap between two threads of scholarship pertaining to freedpeople in the Cherokee Nation: twentieth century research that stressed the contest between the federal government and the Nation over the status of freedpeople, and twenty-first century research that focuses on the lived experiences of the enslaved and freedpeople. In the four decades covered by this thesis, freedpeople exploited the differing interpretations of citizenship held by the United States and the Cherokee Nation to further their own goal of attaining full rights. Furthermore, the selective nature by which the United States and its officials protected the rights of Cherokee freedpeople, most vigorously enforcing those that would damage the sovereignty and autonomy of the Cherokee Nation, indicated that it was primarily interested in fracturing the Cherokee Nation rather than improving the lived experience of its freedpeople.

The citizenship status of freedpeople was politically complicated, and remains so, since it was caught between differing interpretations of sovereignty, citizenship, and identity held by the Cherokee Nation, the federal government and freedpeople themselves. Freedpeople appealed to the United States in increasingly organised ways in the four decades following their emancipation, and this thesis analyses and explains the changing nature of the interactions between Cherokee freedpeople, Cherokee officials, the federal government and its officials. In order to facilitate this line of enquiry, this thesis is organised thematically. It will explore how freedpeople sought to achieve certain rights within the Cherokee Nation: legal citizenship and the right to remain within the Nation; equal access to services provided by the Nation, specifically in regard to education; an equal share in the distribution of national funds; and an equal share in Cherokee land upon allotment. Isolating goals within the freedpeople's broader fight for equal rights within the Cherokee Nation

makes it possible to identify the nuances between how and why freedpeople attempted to secure each of these rights. Since claims to land operated as an essential expression of Cherokee citizenship in the nineteenth century, freedpeople prioritised pursuing rights that established they had a legitimate claim on national land. When the Cherokee Nation denied freedpeople a share of money obtained through the sale of national lands in 1883, for example - on the basis that freedpeople were entitled to use national land but were not communal land owners in the same manner as citizens 'by blood' - freedpeople spent five years lobbying to be awarded an equal share of national funds.[3] When the Cherokee Nation failed to provide adequate schooling for the children of freedpeople, however, freedpeople spent less energy pushing for equal access to national services and instead resolved the problem themselves by creating subscription schools to meet the shortfall.[4]

This first chapter gives a brief historical background to slavery and freedpeople in the Cherokee Nation, from the establishment of racial slavery in the eighteenth century through to present day legal battles over whether the descendants of former slaves are entitled to Cherokee citizenship in the twenty-first century. Exploring the historiography of slavery and emancipation within the Cherokee Nation will then provide a research context for this thesis, paying particular attention to the political sensitivity of writing about freedpeople and citizenship as well as the importance of the inclusion of the voices of freedpeople.

The second chapter of this thesis considers how freedpeople who were legally classed as intruders by the Cherokee Nation solicited support from the federal government in the fifteen years following emancipation. United States agents to the Cherokee Nation made the first federal intervention on behalf of these individuals through failing to remove

[3] C. E. Naylor, *African Cherokees in Indian Territory*: *From Chattel to Citizens* (Chapel Hill: University of North Carolina Press, 2008), 169.
[4] Ibid. 164.

those they judged to hold a legitimate claim to Cherokee citizenship and, in 1875, issuing them with certificates that protected them from eviction.[5] Freedpeople who cooperated with federal officials and convinced them of their right to stay within the Nation therefore gained a sort of pseudo-citizenship in the sense that they were allowed to remain within the Nation. This did not translate to official Cherokee citizenship, however, as although the Cherokee Nation agreed to implement standardised methods to evaluate whether freedpeople were legally entitled to citizenship, in the form of various citizenship commissions, they refused to lift the January 1867 deadline for having returned to the Nation that the Cherokee had imposed following the American Civil War. Through examining the dialogue between freedpeople, Cherokee officials and federal officials, this chapter will establish that the federal and Cherokee governments became increasingly oppositional after 1866, with both governments claiming final authority over the citizenship status of freedpeople by 1880.

The third chapter examines freedpeople's attempts to secure support from the federal government as they tried to gain equal access to the Cherokee national school system and orphan asylum. Freedpeople citizens sought to remedy their exclusion from Cherokee schools by complaining to the Cherokee Nation Council from 1872 and - when they received no response - writing a letter directly to the President of the United States requesting his help.[6] Whereas in the previous chapter freedpeople negotiated with local federal officials, here we can see an attempt to reach a higher authority in the United States government. Federal officials demanded an explanation from Principal Chief William Ross but no further action was taken to redress the situation by either the Cherokee government or the federal

[5] W. G. McLoughlin, *After the Trail of Tears: The Cherokees' Struggle for Sovereignty, 1839-1880* (Chapel Hill and London: University of North Carolina Press, 1993), 252, 253, 281, 282, 284, 293, 294.
[6] D. Littlefield, Jr., *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport and London: Greenwood Press, 1978), 52-55.

government. In contrast to the action taken by federal officials in regard to the legal citizenship of Cherokee freedpeople, here we see federal inaction over the exclusion of the Cherokee freedpeople from services provided by the Cherokee Nation.

The fourth chapter considers how freedpeople pursued their right to share in the distribution of Cherokee national funds in the 1880s and 1890s. This represents their most formal pursuit of equal rights within the Cherokee Nation, with freedpeople first organising petitions and conventions, then visiting Washington in an attempt to gain the support of Congress. Five years after being excluded from the initial 1883 payment to Native Cherokee citizens, Congress awarded freedpeople a sum of money, taken from Cherokee Nation funds held in trust by the United States, equivalent to their share. Freedpeople then went on to win a suit against the Cherokee Nation in the U. S. Court of Claims in 1895 which affirmed their right to an equal share in the economic resources of the Cherokee Nation. This victory was only made possible through the support of the federal government and its officials and the insistence of Cherokee freedpeople.

The fifth chapter explores the passage of the Curtis Act in 1898, which brought about the denationalisation and allotment of the Cherokee Nation, and Oklahoma statehood in 1907. This represents the moment at which the federal government claimed complete authority over the Indian Territory and its inhabitants. Rolls created by the Dawes Commission – which brought about and managed the allotment of the Five Tribes in Indian Territory - defined who was entitled to allotments of land reserved for citizens of the Cherokee Nation, providing a definitive list of who was and who was not a Cherokee citizen. This chapter concludes that freedpeople gained certain victories in their pursuit of full and equal rights after their emancipation through utilising the support of the federal government but that their position remained precarious.

Finally, an epilogue will consider the legacy of this period in Cherokee history by exploring current legal cases and public debates surrounding the citizenship status of freedpeople. Following continued attacks on the rights of Cherokee freedpeople throughout the twentieth century, freedpeople have renewed their struggle for inclusion within the Nation in recent years. It will therefore argue that the oppositions solidified in the time period covered by this thesis continue to affect the Cherokee Nation and Cherokee freedpeople today.

"They have been eliminating us:" the Cherokee Nation and its freedpeople

Until the end of the twentieth century, historians of slavery and emancipation focussed almost entirely on the experiences of people held by white slaveholders, leaving little space for discussions of enslavement that fall outside of these parameters. Non-traditional slaveholders, such as women, free blacks, and Native Americans, have therefore been overshadowed in the historiography of slavery and emancipation. Furthermore, the Indian Territory and its residents have often been overlooked by scholars in relation to these issues. This has allowed a singular vision of slavery to develop in which slavery was a static institution only practiced by white male slaveholders in the south-eastern United States. Slavery was not homogenous, even amongst white male slaveholders, and a more nuanced understanding of the institution will only be achieved by incorporating settings and relationships outside the perceived norm into our historical analysis. Celia Naylor has argued that broadening examinations of the institution, and the everyday reality for those enslaved within it, to include accounts that challenge the typical vision of the white male slaveholder raises new questions surrounding the operations of race, gender, class, culture and slavery in the nineteenth century.[7] Differences between how the racial hierarchy was constructed

[7] Naylor, *African Cherokees in Indian Territory*, 22.

in the Cherokee Nation in comparison to South Carolina, for example, may bring previously hidden processes to light that enhance our understanding of racial prejudice more generally.

Scholars have made new attempts to consider slavery and emancipation within Native nations in response to high profile legal battles in the first decade of the twenty-first century. Furthermore, the acceptance of ex-slave narratives as viable historical sources has enabled scholars to include the voices of the enslaved, in the form of first-hand accounts, in this research. This allows scholars to consider their perspective, providing new insight and meaning rather than just the views of their Cherokee enslavers. Recent research that emphasises the subjective experience of Cherokee slaves and freedpeople, in accordance with broader trends in the study of slavery and emancipation, therefore pushes the discipline into new areas of study which further enhance our understanding of the dynamics of power and privilege in the multi-vocal histories of the United States.[8]

Today, historians recognise the importance of including slavery and the enslaved in any investigation of the Five Tribes of Indian Territory. Each nation had its own understanding of slavery and its own particular relationship with its enslaved people. Scholars therefore need to be careful of making generalizations about how slavery was practiced within Native nations.[9] Racial slavery had become an "integral aspect of life" within the Cherokee Nation by the end of the eighteenth century but Cherokees did not uncritically adopt the practice of racial slavery as seen in neighbouring states.[10] Scholars

[8] E. E. Baptist and S. M. H. Camp, 'Introduction: A History of the History of Slavery in the Americas' in *New Studies in the History of American Slavery,* E. E. Baptist and S. M. H. Camp, eds., 4-5 (Athens and London: University of Georgia Press, 2006).

[9] The Five Tribes include the Cherokee, Choctaw, Chickasaw, Creek & Seminole Nations. Refer to the following works for further information: D. Chang, *The Color of the Land: Race, Nation, and the Politics of Landownership in Oklahoma, 1832-1929* (Chapel Hill: University of North Carolina Press, 2010); B. Krauthamer, *Black Slaves, Indian Masters: Slavery, Emancipation, and Citizenship in the Native American South* (Chapel Hill: University of North Carolina Press, 2013); D. Littlefield, Jr., *Africans and Seminoles: From Removal to Emancipation* (Westport and London: Greenwood Press, 1977).

[10] C. E. Naylor, *African Cherokees in Indian Territory*: *From Chattel to Citizens* (Chapel Hill: University of North Carolina Press, 2008), 13. See 'Introduction' and 'Slavery' in T. Miles, *Ties That Bind: The*

have drawn connections between the 'slow' adoption of chattel slavery by some Cherokees and the Cherokee practice of captive taking. Celia Naylor argues that Cherokees did not simply replace war captives with African slaves (the unfree status of captives was not hereditary and could be lifted by adoption into one of the seven clans that comprised Cherokee society) but that Cherokee notions of ownership provided a "context and foundation" for defining Africans as outside of Cherokee society.[11] In order to secure their own dominance during the colonial era, the British had "worked to foment apathy" between the enslaved and Cherokees by encouraging distrust and violence between the two groups.[12] Tiya Miles has argued that over the course of the eighteenth century Cherokees "begun to associate dark skin with low status" and that this was evident in their relationships with enslaved people within the Nation.[13] The attitudes Cherokees held towards people of African descent were ambiguous, however, as although some acted as slave traders or began keeping enslaved peoples for themselves, others aided fugitive slaves in their flight. For example, in 1767 the British superintendent of Southern Indian Affairs voiced his concern that Cherokees were deliberately failing to return fugitive slaves to their British masters despite a 1730 treaty agreement that they would do so.[14] In contrast, a federal agent travelling the Cherokee and Creek nations in 1796 described one Cherokee slaveholder as owning 61 slaves.[15]

Upon its formation at the end of the eighteenth century, the United States pursued a 'civilization' policy that put the Cherokee Nation under pressure to adopt characteristics of American society in order to ultimately assimilate within American society. European Americans saw utilising enslaved labour as a means for Cherokees to demonstrate that they

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Story of an Afro-Cherokee Family in Slavery and Freedom (Los Angeles and London: University of California Press, 2006).

[11] Miles, *Ties That Bind*, 33. Naylor, *African Cherokees in Indian Territory*, 8-10.

[12] Miles, *Ties That Bind*, 32-33.

[13] Ibid, 30.

[14] Ibid, 32.

[15] Ibid, 36.

were not only capable of being productive participants in the southern slave economy but that they could also follow the patriarchal social structures of the antebellum order which defined men as heads of their households with women, children and slaves as dependents. The 'civilization' policy also defined Native men as planters and Native women as homemakers.[16] Enslaved people figured as a source of "property and wealth" for Cherokees who could not own land given the Cherokee practice of communal landownership.[17] Given the "loose and flexible" practice of Cherokee slavery in the eighteenth century (which saw the enslaved retain some autonomy and work alongside Cherokees), Cherokee slaveholders did not simply replicate slavery as it was practised by their white neighbours in the antebellum era but instead acted according to their own understandings of labour and unfree people.[18]

Slavery had been sanctioned in the 1827 Cherokee Constitution and the upheaval of forced removal from Georgia to the Indian Territory - known as the Trail of Tears - in 1838 consolidated slavery within the Cherokee Nation. The number of Slave Codes and laws that discriminated against individuals of African descent multiplied following removal as slaveholders became increasingly invested in the institution and as a reaction to the 1842 Cherokee Slave Revolt (which saw between 21 and 200 slaves run away from the Cherokee Nation as well as the death of one white man and one Delaware man who tried to capture them).[19] Although in his 1849 slave narrative former slave Henry Bibb described his Cherokee master as "the most reasonable, most humane" slaveholder he had ever belonged to, scholars have largely dismissed the idea that Cherokee slaveholders were kinder than their Southern counterparts.[20] Constituting 15% of the Cherokee Nation population at the

[16] Ibid, 14-15.
[17] Naylor, *African Cherokees in Indian Territory*, 16.
[18] Miles, *Ties That Bind*, 34.
[19] McLoughlin, *After the Trail of Tears*, 134.
[20] H. Bibb, 'Narrative of the Life and Adventures of Henry Bibb, an American Slave' in *I was Born a Slave: An Anthology of Classic Slave Narratives*, Y. Taylor (ed.), 76 (Chicago: Lawrence Hill Books, 1999).

beginning of the Civil War, enslaved black labourers formed a sizeable minority within Cherokee society and continued to figure as such after their emancipation.[21]

Just as in the United States, slavery became a source of contention within the Cherokee Nation as the nineteenth century progressed. Factionalism and violence had exploded within the Cherokee Nation following the controversial Treaty of New Echota – which saw the minority Treaty party sign away Cherokee lands without the approval of Principal Chief John Ross and the majority of the Cherokee citizenry - and the subsequent removal to Indian Territory but seemed resolved, at least to some extent, when the Treaty of 1846 formally reconciled the Treaty and Ross parties.[22] Increasingly, however, the Cherokee Nation began to divide over the place of Euro-American institutions such as slavery in Cherokee society. The Cherokee slaveholding elite held a disproportionate amount of political and economic power in the Cherokee Nation and understood their engagement with slavery and the plantation economy to be evidence of progressive attitudes and behaviours.[23] The more traditional majority, on the other hand, deemed the accumulation of wealth and the ownership of slaves to be contrary to their social and cultural values.[24] Since the Cherokee elite largely comprised of children of marriages between Cherokees and Euro-Americans, the divide between such individuals and the wider Cherokee population was often (but not always) racial as well as economic.[25]

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[21] Naylor, *African Cherokees in Indian Territory*, 19.
[22] McLoughlin, *After the Trail of Tears*, 58. See Chapter 2, 'Stalemate and Terrorism, 1841-1846.'
[23] T. Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: University of Tennessee Press, 1979) 70. 90% of Cherokee slaveholders were of mixed ancestry in 1842. McLoughlin argued that these distinctions continued in the years following. McLoughlin, *After the Trail of Tears*, 39.
[24] Perdue, *Slavery and the Evolution of Cherokee Society*, 70.
[25] I have avoided terms such as 'mixed blood' and 'full blood' throughout this thesis, with the exception of quotes. According to David Chang, "Scholars and activists correctly denounce these terms as racist, nonindigenous in derivation, and part of a political project that limits Indianness and tribal membership to biological categories instead of recognising that they are cultural categories." D. A. Chang, *The Color of the Land: Race, Nation, and the Politics of Landownership in Oklahoma, 1832-1839* (Chapel Hill: The University of North Carolina Press, 2010), 13. Use of such terms runs the risk of essentialising its subjects.

When civil war broke out in the United States in 1861, the longstanding factionalism within the Cherokee Nation escalated. Principal Chief John Ross had pledged neutrality at the outset of the conflict but the Nation eventually split along pro-Confederate and pro-Union lines. Lincoln's 1863 Emancipation Proclamation changed the nature of the Civil War and, with the defeat of the Confederacy in 1865, slavery was abolished throughout the United States. Although the pro-Union portion of the Cherokee Nation had voluntarily abolished slavery in 1863, Cherokee slaveholders who allied themselves with the Confederacy continued to own slaves until 1866. During the process of reconciliation, the United States forced the Cherokee Nation to award Cherokee citizenship to individuals who had formerly been enslaved within the Nation. Like their newly free counterparts throughout the American South, Cherokee freedpeople were able to choose whether or not to stay in the vicinity in which they had been enslaved. Those who did choose to remain within the bounds of the Cherokee Nation, effectively choosing Cherokee citizenship over United States citizenship, are the subject of this study.

The 1866 Reconstruction Treaty that formally reconciled the Cherokee Nation and United States government after the Civil War delineated the abolition of slavery within the Nation and the incorporation of former slaves within the Cherokee citizenry. Despite having pledged to afford them "all the rights of native Cherokees" within this treaty, the Cherokee Nation repeatedly denied any obligation to its freedpeople and endeavoured to limit their rights in the years that followed emancipation.[26] Federal attempts to secure equal rights for freedpeople interfered with the domestic affairs of the Nation, representing challenges to the sovereignty of the Cherokee Nation and its ability to govern itself. Struggling to maintain sole discretion over the citizenship status of freedpeople and claiming jurisdiction over the boundaries of its citizenry was therefore one way the Cherokee Nation resisted the federal

[26] Naylor, *African Cherokees in Indian Territory*, 225.

government's growing power within the Indian Territory after the Civil War.[27] Interactions between the Cherokee Nation and the United States in the fifty years following the American Civil War were ostensibly between two nations. Scholars of nationalism have struggled to agree on a single definition of 'nation' but they do concur that a nation is a socially constructed group of people, an "imagined political community," and that modern nations began forming from the end of the eighteenth century.[28] In *Cherokee Renascence in the New Republic*, William McLoughlin charted the creation of the Cherokee Nation state, arguing that although the Cherokees did not see themselves as a single nation in the colonial era, the creation of the United States necessitated adaptation and by the 1820s they had adopted Euro-American ideologies of nationhood and reorganised as a single nation.[29]

The Cherokee Nation's status as a distinct entity had been under threat since before its removal to Indian Territory. Although in 1831 the United States Supreme Court had declared it to be a "domestic, dependent nation," the Cherokee Nation continued to present itself as a separate and autonomous nation and repeatedly denied any dependence on the United States outside of its treaty obligations.[30] The American Civil War revealed the vulnerable nature of Cherokee national unity and the Cherokee Nation's short alliance with the Confederacy provided the United States with an opportunity to escalate its attacks on the Cherokee Nation's legitimacy as a separate, self-governing body. The Cherokee Nation therefore occupied an increasingly ambiguous and precarious position in the latter half of the nineteenth century since, although it declared itself to be a nation, the United States gradually stripped the Cherokee Nation of the rights associated with that nation status.[31]

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[27] Ibid. McLoughlin, *After the Trail of Tears*, 28, 292-294.
[28] B. Anderson, *Imagined Communities* (London: Verso, 1983, 2006 edition), 6.
[29] W. G. McLoughlin, *Cherokee Renascence in the New Republic* (Princeton, New Jersey: Princeton University Press, 1986), xvii.
[30] McLoughlin, *After the Trail of Tears*, xi.
[31] Mark Rifkin, scholar of Native American writing and politics, argues that although using the term 'nation' rather than tribe offers "a generic way of marking the sovereignty of indigenous peoples," it is problematic since it privileges "U.S. political norms." I use the term 'nation' to describe the

Federal Indian policy in the years following the Civil War gradually transitioned away from removal and reservation policies (that had seen the Cherokees and other Native nations confined to reservations outside of the states) and towards an assimilationist agenda that denied Native nationhood and forcibly incorporated Native peoples in to American society. In doing so, Congress attempted to move away from the "crisis" created by the war and balance the demands of a citizenry that wanted to expand on to Native land against concerns held by reformists regarding the poor living conditions and violence faced by Native Americans in the nineteenth century.[32] The Indian Appropriations Act of 1871 ended the practice of making treaties with Native nations, reflecting American assumptions of Native dependence and making a "paternalistic relationship" between the United States and Native nations federal policy.[33] Given the legal power of treaty-making, this limited the ability of Native nations to make binding agreements and highlights the new federal goal of absorbing Native nations in to the United States. By the 1880s, reformers and expansionists alike agreed that the involuntary allotment of land owned communally by Native nations would accelerate assimilation and Congress passed the 1887 General Allotment Act.[34] Allotment saw the dispossession and exploitation of Native nations throughout United States territories and is the focus of the fifth chapter of this thesis. In 1903, the United States Supreme Court decision on *Lone Wolf v. Hitchcock* officially enabled Congress to abrogate treaties made with Native nations and "underscored federal dominance" over Native peoples.[35] In the forty years covered by this thesis, then, Federal Indian Policy redefined the relationship between

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Cherokee nation throughout this thesis, however, precisely because it insisted on being recognised as such in the period covered by this thesis. M. Rifkin, 'Representing the Cherokee Nation: Subaltern Studies and Native American Agency,' *boundary 2*, 32:3 (2005): 48.

[32] F. P. Prucha, *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900* (Norman: University of Oklahoma Press, 1976), 3.

[33] G. Treglia, 'American Indian Issues During Reconstruction,' in *Reconstruction: People and Perspectives*, J. M. Campbell & R. J. Fraser, eds., 94 (Oxford, England: ABC-CLIO, 2008).

[34] K. Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893-1914* (Ancestry.com Inc., 1999), 1. A. Debo, *And Still The Waters Run* (New York: Gordian Press, Inc. 1966), 21-22.

[35] B. Clark, *Lone Wolf v Hitchcock: Treaty Rights and Indian Law at the End of the Nineteenth Century* (Lincoln and London: University of Nebraska Press, 1999), ix.

the United States and Native nations by denationalising Native nations and separating them from their land base.

The Cherokee Nation's claim to political legitimacy (and therefore continued existence) as a nation depended on its assertion of sovereignty. According to Joanne Barker, 'sovereignty' is the claim to the "absolute power to govern."[36] Sovereignty can originate from a variety of sources depending on the context, whether majority support within a democratic community, the divine right of a monarch or the "unique identity or culture of peoples."[37] Amanda Cobb argues that 'sovereignty' is a "contested term, carrying with it multiple meanings and multiple implications for Native nations" and raises concerns about writings that use the term without interrogating its meaning.[38] Where today we might simply use 'sovereignty' to refer to a nation's government, Jack Forbes further specifies that self-government requires "freedom from external control" and points to the relational nature of sovereignty as a complicating factor in its expression.[39] Scott Richard Lyons expands on Forbes' qualification of sovereignty and argues that "while definitions have evolved, at the base of every definition is power."[40] According to Lyons, sovereignty requires external recognition and respect from other nations since no nation exists in a vacuum. Power imbalances between parties can enable one to assert control over another, effectively nullifying their ability to function as a sovereign nation. In the case of the United States, its dominance has made its claim to sovereignty seem natural and inevitable: "the American

[36] J. Barker, 'For Whom Sovereignty Matters,' in *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination,* J. Barker, ed., 2 (Lincoln and London: University of Nebraska Press, 2005).
[37] Barker, 'For Whom Sovereignty Matters,' 3.
[38] A. J. Cobb, 'Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations,' *American Studies*, 46:3/4 (2005): 115.
[39] Ibid, 117.
[40] Ibid, 118.

nation-state is so powerful, so hegemonic, that its cloak of sovereignty seems almost invisible."[41]

As is evident over the course of this thesis, however, Cherokees did not give up their claim to sovereignty and concede to the authority of the United States. Cherokee insistence on retaining control over the citizenry (defining it as a domestic matter that should remain under their jurisdiction) illustrates their understanding of sovereignty as the right to govern their own affairs without external control. Principal Chief Oochalata, for example, wrote in 1877 that Cherokees had a "natural right" to make their own decisions regarding citizenship rights and rejected arguments made by United States officials to the contrary.[42] As well as utilising the notion of sovereignty as freedom from outside influence, the Cherokee Nation offered its own definition of sovereignty that stressed collectivity and the preservation of their culture. In his research on the Cherokee Nation, William McLoughlin defined sovereignty as "a word that does not simply mean self-government or autonomy but something of far deeper cultural significance, in some respects equivalent to ethnic and political separatism."[43] Within this definition, sovereignty is less the act(s) of self-government but rather the right to do so. For example, Principal Chief Colonel Johnson Harris wrote in 1894 of "one loyal citizenship, with common interest and a common destiny" when describing the necessity of Cherokee loyalty and nationalism in the face of pressure to give up their nation status.[44] The Cherokee Nation therefore did not articulate a single understanding of sovereignty as they defended themselves against the encroachments of the United States but deftly gave it multiple meanings.

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[41] Ibid, 120

[42] 'Reply of Chief Thompson to J. Q. Smith, Commissioner of Indian Affairs, in Regard to Intruders, January 1877' 1. Oochalata (Charles Thompson) Collection, Box 020, Folder 21. Western History Collections, University of Oklahoma Libraries, Norman, Oklahoma.

[43] McLoughlin, *After the Trail of Tears*, xiii.

[44] 'Message of C. J. Harris, published in *Indian Chieftain* April 26, 1894,' Colonel Johnson Harris Collection, Box H56, Folder 6, 7. Western History Collections, University of Oklahoma Libraries, Norman, Oklahoma.

Nations comprise of citizens. According to Geraint Parry, "the most basic definition of a citizen is that he or she is a member of some determinate and determinable society."[45] Legal scholar Kirsty Gover asserts that a nation defines itself through the use of citizenship rules which create "human boundaries" and the ability to control these rules is a key expression of sovereignty: the "first-order question of tribal self-governance."[46] Delineating who is and who is not a citizen or member of a nation is therefore the most basic means by which that nation exerts its authority as an autonomous entity. In questioning the Cherokee Nation's authority to delineate which freedpeople were entitled to Cherokee citizenship and the nature of that citizenship, the United States challenged the Nation's right to govern its own population and therefore its sovereignty. Gover further argues that citizenship rules are a "legal manifestation of cultural production," revealing how a community defines itself against other groups and "emerging from political processes of debate and contestation."[47] Importantly, the processes by which a nation decides on its citizenship rules are *internal* and based on agreements and disagreements made within its own community: not imposed by outsiders. The processes of debate and contestation within the Cherokee Nation, and the manner in which Cherokee freedpeople attempted to influence them, form the focus of this thesis.

The Cherokee Nation tried to limit the citizenship status of freedpeople in a number of ways. First, the Nation denied citizenship to all former slaves who failed to return within six-months of the Reconstruction Treaty that secured their rights. This minimised the number of individuals who could claim citizenship to those who returned to the Nation by January 1867. As non-citizens, these 'too lates' were legally classed as intruders, regardless of the

[45] G. Parry, 'Conclusion: Paths to Citizenship,' in *The Frontiers of Citizenship*, ed. U. Vogel and M. Moran (Basingstoke: Macmillan, 1991), 166.
[46] K. Gover, *Tribal Constitutionalism: States, Tribes, and the Governance of Membership* (Oxford and New York: Oxford University Press, 2010), 2. K. Gover 'Comparative Tribal Constitutionalism: Membership Governance in Australia, Canada, New Zealand and the United States,' *Law & Social Inquiry*, 35:3 (2010), 690.
[47] Gover, *Tribal Constitutionalism*, 21 & 11.

circumstances in which they missed the deadline, and therefore risked eviction and expulsion by remaining within the Nation. Second, the form of citizenship awarded to freedpeople did not meet the expectations of freedpeople or the federal government. Freedpeople who were recognised as citizens were granted access to communal land which allowed them to build homes and farm any land they could manage. Unlike full Cherokee citizens, however, freedpeople were excluded from the distribution of the Nation's funds and had limited access to services provided by the Nation, such as free education. The status of freedpeople therefore became contentious within the Cherokee Nation, as both freedpeople and the federal government pressured the Cherokee Nation to award equal rights to those who qualified under the 1866 treaty. As the United States continued to threaten the very existence of the Cherokee Nation, eventually dissolving its government in 1907, freedpeople figured as a marginalised minority within a disempowered nation.

Citizenship within the Cherokee Nation did afford former slaves and their descendants certain advantages that were not available to their counterparts throughout the United States, however. The most immediate of these advantages was their access to national land, since freedpeople in the United States struggled against private landownership practices that enabled the social and economic elite to retain control of the land. The Freedmen's Bureau was created in March 1865 to further the concerns of freedpeople in the United States and was specifically given the power to rent confiscated and abandoned land to former slaves.[48] Following President Andrew Johnson's amnesty proclamation of May 19th 1865, however, property rights were restored to the vast majority of Confederates, signalling the end of land reform experiments.[49] Since the majority of freedpeople could not afford to purchase land in the United States, many became tenant farmers and sharecroppers,

[48] E. Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Perennial, 2002), 158.
[49] Ibid, 159.

effectively working the land for a 'share' of the crop once the landholder had charged rent and hire for tools. Sharecropping then ultimately left many freedpeople and their families in a cycle of debt and desperation that many failed to escape from. This differed greatly to the experiences of freedpeople within the Cherokee Nation who were able to farm and live on communal land freely, placing them in a much more stable and advantageous position. Alongside land, the Cherokee Nation also provided services such as free education and orphanages to its citizens. Few freedpeople benefitted from this service, however, as they were only allowed to use a handful of segregated schools within the Cherokee Nation and, despite making complaints to the Cherokee and federal governments, many started their own subscription schools to meet the shortfall. In the United States, however, education for freedpeople was not the responsibility of the federal government and instead it fell to the Freedmen's Bureau to coordinate the efforts of Northern missionary societies and freedpeople who established their own schools.[50]

It is evident over the course of this thesis that Cherokee freedpeople closely watched the United States and its relationship to its own freedpeople. As detailed above, there were key differences in the opportunities available for freedpeople in the Cherokee Nation and the United States. These differences undoubtedly influenced the willingness of Cherokee freedpeople to stay within the Nation rather than seeking opportunities elsewhere. Furthermore, the broader racial politics of the United States informed the decisions made by Cherokee freedpeople as they sought to attain equal rights within the Cherokee Nation. For example, in an 1873 letter regarding the care of orphans, a group of petitioners expressed their desire "to avoid the possibility of such indignities being offered to their children as are suffered by colored students attending white institutions in the states."[51] Their knowledge

[50] Ibid, *Reconstruction*, 144-146.
[51] 'John B. Jones to G. A. Walker, February 10, 1873,' CHN Microfilm 81, frame 1176. Cherokee Nation Records, Indian Archives Collection. Archives and Manuscript Division, Oklahoma Historical Society.

of the discriminatory treatment of African American orphans in institutions in the United States therefore encouraged them to request a separate institution for the orphaned children of Cherokee freedpeople. Post-emancipation racial politics in the United States (which saw the promises of the Reconstruction Amendments rolled back with the end of Reconstruction in 1877, Redemption of the South and implementation of Jim Crow laws) are therefore key to contextualising the actions of Cherokee freedpeople and are elaborated on at various points in this thesis.

Although freedpeople within the Cherokee Nation already held an advantageous position in comparison to their counterparts in the United States, the federal government and its officials supported their attempts to gain full rights as Cherokee citizens. The federal government defended the freedpeople's rights to legal citizenship, national economic resources and national land. When the Cherokee Nation denied former slaves citizenship on the basis of the January 1867 deadline, for example, federal officials refused to remove them from the Nation and even supplied certificates of protection to those they felt had legitimate claims to citizenship.[52] The federal government interceded again in 1883 when freedpeople protested they had not been afforded a share of national funds distributed after the sale of lands, eventually securing them their payment in 1888.[53] When Cherokee officials proposed awarding freedpeople smaller plots during negotiations regarding the allotment of Cherokee land, federal officials again enforced the full and equal rights of Cherokee freedpeople.[54] In all three instances, the federal government over-rode the decisions of the Cherokee Nation and awarded freedpeople what they had claimed to be their due. The Cherokee Nation vehemently argued that they held sole jurisdiction over decisions regarding which

[52] McLoughlin, *After the Trail of Tears*, 253, 281-283, 294.
[53] Naylor, *African Cherokees in Indian Territory*, 167-169.
[54] 'Joint Session, December 23rd 1898' in 'Proceedings. Joint Sessions of United States and Cherokee Commissions' Box 3, Folder 1. Cherokee Nation Correspondence, December 1898 – March 1899. Dawes Commission Records. Indian Archives Collection, Oklahoma Historical Society Research Division.

freedpeople were entitled to citizenship and the nature of that citizenship, but found the United States increasingly determined to question their authority towards the final decades of the nineteenth century.[55]

The Cherokee Nation and the United States continued to clash over freedpeople and their status within the Nation until the federal government passed the Curtis Act in 1898, making allotment of Cherokee land possible without the consent of its government and including provisions for the dissolution of the Nation's government in 1907. This was a catastrophe for the Cherokee Nation. The Act divided formerly communal land amongst individual Cherokee citizens and in order to do so the Dawes Commission created rolls that classified citizens as being either 'Cherokee by Blood,' 'intermarried White,' or 'Freedmen.' The racial hierarchy within the Cherokee Nation was codified in these documents through the use of blood quantum, expressed in fractions, used to record an individual's degree of 'Cherokee blood.'[56] Individuals listed on the Freedmen Roll of the Dawes Rolls were allotted the same size plot as those listed on the Cherokee by Blood Rolls but were assumed to have no Cherokee ancestry and therefore had no blood quantum recorded on the roll. Most freedpeople, at least those who were phenotypically African, were therefore classified as separate and racially distinct from Cherokees, regardless of their actual heritage.[57] As historians Tiya Miles and Fay Yarbrough have illustrated, however, marriages and sexual relationships between Cherokee citizens and individuals of African descent, whether before or after the abolition of slavery, did produce children with a dual ancestry.[58] Yarbrough does not provide definitive figures as to how many freedpeople were likely to have had Cherokee

[55] Littlefield, *Cherokee Freedmen*, 110.
[56] Naylor, *African Cherokees in Indian Territory*, 181.
[57] Sturm, 'Blood Politics,' 226-232.
[58] Miles, *Ties That Bind*. Miles traces the descendants of Shoeboots, a Cherokee war hero, and his enslaved partner, Doll, in to the twentieth century. F. A. Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2008). Yarbrough explores how the regulation of inter-racial marriage allowed the Cherokee leadership to control who could attain tribal citizenship.

ancestry but asserts that those enslaved within the Nation were "often culturally Cherokee, and sometimes descended from Cherokees, but unacknowledged as Cherokees legally or racially."[59] The administrative distinction made between freedpeople and citizens 'by Blood' in the Dawes Rolls would become central to arguments surrounding the citizenship status of freedpeople in the twenty-first century, since it seemed to prove that freedpeople were always understood to be separate and racially distinct from other citizens of the Cherokee Nation.

The Curtis Act had dismantled the government of the Cherokee Nation but its people endured, despite no longer being recognised as a sovereign nation by the federal government. According to Circe Sturm, the Nation continued on "its quest to limit their extent of their [freedpeople] citizenship" after its government was dissolved.[60] In doing so, the Cherokee Nation ensured that the status of freedpeople remained contentious through the twentieth century. Now living on privately owned land, allotted by the Dawes Commission, all Cherokee citizens struggled to hold on to their formerly sovereign territory and maintain a sense of themselves as a distinct political community. Congress passed a series of laws in 1908 that renegotiated the terms of allotments awarded to citizens on the Freedmen Roll of the Dawes Rolls, charging tax when they had not previously and, through giving landowners the authority to sell their land, making them vulnerable to speculators.[61] This stood in contrast to 'full blood' Cherokee citizens whose properties continued to be held in trust by the federal government. Furthermore, the Cherokee Nation continued to challenge the validity of decisions made by the federal government regarding Cherokee freedpeople. In 1912 the Cherokee Nation successfully appealed a 1909 Court of Claims decision that had decided the Dawes Commission should have allowed freedpeople on the

[59] Yarbrough, *Race and the Cherokee Nation*, 72.
[60] Sturm, 'Blood Politics,' 230.
[61] B. Obermeyer, *Delaware Tribe in a Cherokee Nation* (Lincoln and London: University of Nebraska Press, 2009) 123. Sturm, 'Blood Politics,' 229.

Kern-Clifton Roll (the roll of citizens made following the 1895 Court of Claims decisions in favour of Cherokee freedpeople rather than the authenticated 1880 census) to enrol.[62] In 1924, Congress passed legislation allowing the Cherokee Nation to recover the money paid to such citizen claimants from the United States.[63] The Cherokee Freedmen's Association organised in the early 1940s in order to secure rights, including access to national funds, for members who had been denied them by Cherokee or federal officials in the first decades of the twentieth century.[64] The Association folded in the 1960s after failing to gain any success. In 1971, the Cherokee Nation government was restored in alignment with federal policies of self-determination and the first democratic election of a Chief was held. Citizenship in the Nation had remained open to any individual that could trace their ancestry to the Dawes Rolls discussed above and, since private land ownership had replaced the use of communal land, the ability to vote became the primary advantage of citizenship.

In 1984, Reverend Roger Nero filed a class action suit against the Cherokee Nation in Tulsa District Court after being denied the right to vote since he was descended from the Freedmen Roll. Nero feared that if the status of freedpeople was not clarified later generations would lose their claim to citizenship. Nero had voted in previous elections but policies passed in 1977 and 1978 had limited the right to those who could prove they were descended from the Cherokee by Blood Roll, therefore excluding citizens who traced their ancestry to the Freedmen Roll alone. Public positions were also limited to Cherokees by Blood, preventing freedpeople from attaining public office. As Nero and others pursued full inclusion within the Nation, he argued that "over the years they have been eliminating us gradually. When the older ones die out, and the young ones come on, they won't know their

[62] C. Sturm, *Blood Politics: Race, Culture and Identity in the Cherokee Nation of Oklahoma* (Berkeley, Los Angeles & London: University of California Press, 2002), 175
[63] Ibid, 176.
[64] Sturm, 'Blood Politics', 231-232.

rights."[65] Nero's case was dismissed as being outside the jurisdiction of the U.S. District Court and an appeal garnered the same result, allowing the Cherokee Nation to continue excluding individuals who could only trace their ancestry to the Freedmen Roll.

They Do Know Their Rights: Cherokee Freedpeople in the Twenty-First Century

Circe Sturm, writing in 2002, considered Nero's prediction, that the meaning of being descended from former Cherokee slaves would be lost for future generations, to be accurate but subsequent events have since proved otherwise.[66] Descendants of freedpeople have vigorously asserted their claim to equal rights within the Cherokee Nation in the twenty-first century. These rights represent considerable advantages and include not only the ability to vote in Cherokee elections but also access to free healthcare, and the ability to apply for certain education scholarships reserved solely for tribal citizens (these may be specific to Cherokees or open to citizens of other recognised Native nations). In 2004, Lucy Allen filed a lawsuit with the Cherokee Nation Supreme Court charging that policies preventing her and other freedpeople from attaining full citizenship rights (particularly the ability to vote) conflicted with the Cherokee Constitution. Two years later, the Cherokee Nation Supreme Court ruled in Allen's favour and opened enrolment to individuals who could prove they had ancestors on the Freedmen Roll.

The Allen case exposed the ongoing conflict within the Nation over the status of the descendants of freedpeople and marked the beginning of a series of legal clashes over the issue that would attract wide media attention and allegations of racism.[67] In 2006, five freedpeople led by Marilyn Vann (president of the Descendants of Freedmen of the Five

[65] Sturm, 'Blood Politics,' 236 & 244.
[66] Sturm, 'Blood Politics,' 244.
[67] Yarbrough, *Race and the Cherokee Nation,* 130.

Civilised Tribes organisation) filed a case with the United States Federal Court against the Cherokee Nation over their disfranchisement. Far from losing their connection to the Cherokee Nation, then, current generations of freedpeople seem determined to preserve it. A year after Marilyn Vann filed her case, the Cherokee Constitution was amended to limit membership to individuals who could prove they were Cherokee by blood. This overturned Lucy Allen's success in the Cherokee Nation Supreme Court, and rescinded the citizenship of freedpeople within the Cherokee Nation. Although plagued by jurisdictional questions and attempts by the Cherokee Nation to have the case dismissed, Marilyn Vann's federal case remains unresolved at this time and the status of Cherokee freedpeople therefore remains under question.[68]

In July 2014, a further class action suit was made on behalf of the descendants of Cherokee freedpeople against the Secretary of the Interior and Assistant Secretary of Indian Affairs. The claim demanded the "accounting of money collected from the allotted lands" and accused the United States government of deliberately and illegally retaining revenue made from the lease of properties allotted to freedpeople minors at the beginning of the twentieth century.[69] This is a notable divergence from the narrative traced within this thesis since it shows Cherokee freedpeople challenging the federal government rather than being allied with them and suggests a new assertiveness regarding the rights of freedpeople in the twenty-first century. This case complicates the notion that the federal government operated as a supporter of Cherokee freedpeople and their rights, suggesting instead that the federal government and its officials were willing to exploit freedpeople in a similar manner to how it had exploited the Cherokee Nation. The case can therefore be considered further evidence

[68] Yarbrough, *Race and the Cherokee Nation*, 130.
[69] R. Abbott, 'Descendants of Freedmen sue U.S. government,' *Cherokee Phoenix*, July 7 2014, accessed 8 July 2014 http://cherokeephoenix.org/Article?Index/8334.

that the federal government prioritised its own interests, and those of its citizens, in its dealings with the Cherokee Nation and Cherokee freedpeople.

Media coverage of these legal cases, and the 2007 constitutional amendment in particular, brought the history of slavery and racial discrimination within the Cherokee Nation to national and international attention.[70] Prior to this point, questions over the status of freedpeople had remained largely within the bounds of the Nation and the central part slavery had played in Cherokee history remained unrecognised. In *Silencing the Past*, Michel-Rolph Trouillot theorised that history is constructed, subject to the workings of power, and therefore straddles "knowledge and narrative."[71] According to Trouillot, silences are not passive absences but instead occur as the result of active processes shaping the narrative: they are themselves "constitutive of the process of historical production."[72] Silences may enter a narrative at four points: the creation of sources, the collection of sources in an archive, the creation of a narrative, and the evaluation of a history and its significance.[73] In the case of Cherokee slavery, we can see this process occurring at each stage. Not only were freedpeople largely invisible in historical sources, but sources such as first-hand accounts collected in the 1930s were deemed unimportant and as such were neglected and ultimately forgotten, left in local archives rather than being sent to Washington, DC.[74] Furthermore,

[70] P. Harris, 'US government warns Cherokee nation not to exclude black freedmen,' *The Guardian*, September 13 2011, accessed 19 June 2014, http://www.theguardian.com/world/2011/sep/13/us-government-cherokee-nation-freedmen. C. Casteel, 'Cherokee Nation, freedmen seek legal answer to long-running dispute,' *The Oklahoman*, September 17 2011, accessed 19 June 2014, http://newsok.com/cherokee-nation-freedmen-seek-legal-answer-to-long-running-dispute/article/3883619/?page=1. C. Milloy, 'The Cherokees: One nation, divisible? Judge will decide if black members can be expelled,' *The Washington Post*, May 6 2014, accessed 20 June 2014, http://www.washingtonpost.com/local/the-cherokees-one-nation-divisible-judge-will-decide-if-black-members-can-be-expelled/2014/05/06/8690e56c-d55e-11e3-aae8-c2d44bd79778_story.html.
[71] M-R. Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon Press, 1995), 28, 23.
[72] Ibid, 49.
[73] Ibid, *Silencing the Past*, 26.
[74] T. Baker and J. Baker, eds., *The WPA Oklahoma Slave Narratives* (Norman: University of Oklahoma Press, 1996), 4 & 10.

slavery and freedpeople were excluded from the historical narrative of the Cherokee Nation until the beginning of the twenty-first century.

The silencing of a specific memory can be understood as an attempt to "set the limits on what is speakable or unspeakable about the past."[75] The prolonged media coverage of the disenfranchisement of Cherokee freedpeople in the twenty-first century has, however, made ignoring the history of slavery in the Cherokee Nation an impossibility. In their exploration of silences in historical memory, Vered Vinitzky-Seroussi and Chana Teeger distinguish between overt silences (a complete lack of recognition, aimed at forgetting) and covert silences (in which silences are obscured by a proliferation of discussion but no actual content).[76] Covert silences therefore appear to address sensitive historical issues but actually set the limits of discussion to avoid certain political implications. Acknowledging the practice of slavery whilst simultaneously asserting that slaves and freedpeople lived apart from Cherokee society deflects criticism that the Cherokee Nation censors its past yet continues to sidestep the difficult aspects of that history. When Cherokee Principal Chief Chad Smith asserted that modifying the constitution to disenfranchise freedpeople was simply a question of self-government, for example, some freedpeople argued that he was simply trying to evade the more serious issue of racial discrimination with the Cherokee Nation.[77]

As of September 2016, local and national American papers continue to cover the Cherokee freedpeople controversy and still focus on the two key issues of tribal sovereignty and racial discrimination. Although there are notable exceptions, such as Marcos Barbery's piece for *Salon*, such coverage rarely places the current debate over freedpeople within its

[75] V. Vinitzky-Seroussi & C Teeger, 'Unpacking the Unspoken: Silence in Collective Memory and Forgetting,' *Social Forces*, 88:3 (2010), 1107.
[76] Ibid, 1104.
[77] E. Knickmeyer, 'Cherokee Nation To Vote On Expelling Slaves' Descendants,' *The Washington Post*, 3 March 2007, accessed 27 July 2014, http://www.washingtonpost.com/wp-dyn/content/article/2007/03/02/AR2007030201647.html.

broader historical context or does so with little nuance.[78] After a disputed election in 2011, in which freedpeople were allowed to vote due to the pending nature of the Marilyn Vann case, Cherokee author Steve Russell attacked the Nation in an article on the *Indian Country Today Media Network* website. Entitled 'Tsunami Warning From the Cherokee Nation,' Russell's article implied that the constitutional amendment of 2007 was racially motivated: "I cannot venture an opinion on whether most Cherokees are racists or the racists are simply more motivated to cast a ballot in a special election."[79] Furthermore, Russell suggested that poor handling of the controversies surrounding the 2011 election, and freedpeople more generally, could have negative consequences for other Native Nations in the United States: it may invite federal intervention in domestic affairs and weaken arguments for tribal self-government.[80] It is implicit throughout Russell's article that he believes the actions of the Cherokee leadership regarding freedpeople, combined with oversimplified media coverage, are more likely to encourage enthusiasm for federal action than provoke meaningful conversations about tribal sovereignty and self-government. The concerns voiced by Russell imply the destructive potential the silences surrounding the Cherokee freedpeople and their history of marginalisation hold for certain interest groups.

Painful Pasts: Confronting the Silence

As underlined above, the marginalisation of Cherokee freedpeople and their history has roots extending back more than 150 years. Academics writing about racial slavery and its lasting impact within the Cherokee Nation, or connections between Native Americans and African Americans more broadly, have met with opposition from individuals who prefer to

[78] Barbery, 'Slave descendants seek equal rights from Cherokee Nation.'
[79] S. Russell, 'Tsunami Warning From The Cherokee Nation,' *Indian Country Today Media Network*, 14 September 2011, accessed 28/4/14. http://indiancountrytodaymedianetwork.com/2011/09/14/tsunami-warning-cherokee-nation
[80] Russell, 'Tsunami Warning.'

maintain these silences and declare such histories to be irrelevant, false, or even dangerous. Tiya Miles, for example, recounted such an incident in the preface to her 2006 publication *Ties That Bind*:

> Recently when I was speaking in a public forum about black and American Indian relations in colonial and early America, a respected Indian elder from a Great Plains tribe impressed on me her strong desire that I cease speaking about this topic. [...] At the end of a private conversation following the session, the woman said, "Don't write your book; it will destroy us." I was pained by her words, just as she had been pained by mine.[81]

The emotive nature of this exchange is revealing for two reasons. First, the urge to let the political implications of Native American involvement in chattel slavery fade into obscurity is strong enough for an individual to speak about it candidly and passionately. Second, the unnamed woman articulated the potential danger that such a revelation could 'destroy' her community today. Miles goes on to explain that the woman feared the federal government would use this knowledge to discredit Native peoples and further attack their sovereignty.[82] The current position of Native nations and citizens is predicated on the recognition of an indigenous claim rooted before the arrival of the settler society (i.e. the United States) but has to meet certain criteria, including "distinctiveness."[83] The sovereignty of Native nations therefore remains fragile and vulnerable to allegations of illegitimacy. In this case, the shared history of slaveholding by Native and white Americans could be utilised as evidence that Native American nations were not that far removed from the United States in the nineteenth century, and should not be entitled to a special status in America today. This means that the past is therefore inextricably tied to the present in regard to the history of

[81] Miles, *Ties That Bind*, xv.
[82] Ibid, xv.
[83] Gover, *Tribal Constitutionalism,* 16.

slavery within Native nations, with contemporary tensions being exacerbated by its contentious nature.

In contrast to Tiya Miles's experience, the anthropologist Circe Sturm was struck by how deeply the descendants of freedpeople wanted their history to be told. When researching Cherokee identity, Sturm asked a descendant of former Cherokee slaves what he thought she should write about and received an "impassioned" response:

> I think you should write about the racism [...] It is ridiculous to allow white people to take advantage of Indian programs because they have blood on a tribal roll 100 years ago, when a black person who suffers infinitely more discrimination and needs the aid more, is denied it because his Indian ancestry is overshadowed by his African ancestry.[84]

Sturm's interviewee then went on to detail how freedpeople had been subject to consistent discrimination since their emancipation and argued that racism continued to inform contemporary policies within the Cherokee Nation. In the same manner as Miles's anonymous Indian elder, the interviewee saw the history of racial prejudice within the Cherokee Nation through the prism of his contemporary concerns: in this case, exclusion from Indian programs. Sturm's interviewee suggested that citizenship and its benefits within the Nation are more accessible for individuals with white ancestry than African ancestry, despite there being no minimum blood quantum requirement. Sturm's work revealed her sympathy for freedpeople in light of this marginalisation: "At the center of this story is an absence, an exclusion, a silence where the Cherokee freedmen might have been."[85] For Sturm and her interviewee, then, revealing the hidden history of slavery and racism within the Cherokee Nation restores a voice to people who had been silenced.

[84] Sturm, 'Blood Politics,' 223.
[85] Ibid, 224.

Although Miles and Sturm identified conflicting interests from the perspective of academics, a short essay by Valerie Phillips reflected on her experience as an audience member at the "Eating Out of the Same Pot" Black Indian Conference held at Dartmouth College in 2000. Phillips's highly personal piece was included as the epilogue to a collection of essays exploring Black Indian experiences in the United States and considered how "politics, oppression, academics, too much selective silence, and personal pain mesh in the real world."[86] Although Phillips was optimistic in some respects, claiming that "people seemed on the verge of seeing each other through our own eyes," she also argued that a number of presentations were "infuriating" or "perhaps even intellectually dishonest."[87] This would suggest that, as much as there were potential opportunities for sharing ideas and information, this was not consistent amongst all presenters and participants. Furthermore, Phillips described a confrontation between two participants at the conference that "threatened to spin out of control:" beginning as a disagreement over the details of a presentation given by Theda Perdue, their conversation quickly became heated and ended with shouting and tears as both left the room.[88] Phillips considered this episode to be emblematic of enduring racial and gender attitudes within Native American communities, which is undoubtedly true, but it also acts as a reminder that these are sensitive subjects and there are tensions even amongst those who claim to share an interest in African-Native experiences. For Phillips, talking through shared histories of discrimination offers a way of "seeing the past clearly," moving forward and allowing people to create a future with a "solid, indigenous foundation."[89]

[86] V. J. Phillips, 'Seeing Each Other Through The White Man's Eyes: Reflections and Commentary on the "Eating Out of the Same Pot" Black Indian Conference at Dartmouth College' in *Confounding the Color Line: The Indian-Black Experience in North America,* J. F. Brooks, 371 (Lincoln and London: University of Nebraska Press, 2002).
[87] Ibid, 372.
[88] Ibid, 381-2.
[89] Ibid, 383.

The writings of Miles, Sturm and Phillips raise a number of questions for those researching slavery and its legacy within Native nations. Scholars of Native American slavery are caught in contemporary conflicts over how such histories should be remembered, if at all: do you continue your research knowing that certain people fear you publishing it? How can you be sensitive to such people without allowing your research to be skewed in favour of their political agenda? Should a historian bear these issues in mind at all? For members of both these disadvantaged groups, whether descendants of freedpeople hoping to secure equal citizenship rights within Native nations or Native Americans fearing the federal usurpation of tribal sovereignty, conversations surrounding slavery and citizenship in Native America involve high stakes. The polarisation of these groups' concerns gives the lie to the idea that disempowered people would be sympathetic to or inclusive of each other no matter what the consequences or future implications. This thesis will work within the collective memories of both the Cherokee Nation and freedpeople claiming citizenship within that Nation in order to develop a broader understanding of what was at stake for each and how the federal government operated to exert economic and political control over each at various moments in the period between the abolition of slavery within the Cherokee Nation (1866) and the dissolution of the Cherokee Nation government with Oklahoma statehood (1907).

"American History rightly proportioned"? The Historiography of Cherokee Slavery and Emancipation

Histories of slavery, the Civil War, and Reconstruction written in the twentieth century have largely ignored the residents of the Indian Territory, whose lived experience differed greatly to traditional narratives framed around black-white, north-south binaries. In doing so, academics have maintained the silences evident within particular Native nations around this

issue. Notable exceptions to this scholarly trend include Daniel Littlefield, Jr. (1978), William McLoughlin (1974, 1993), and Theda Perdue (1979), whose work repositioned the practise of slavery as being central to Cherokee society in the nineteenth century.[90] Although such scholars can be seen as anomalies, they represent the roots of Black Indian Studies as it stands today. This section traces the historiography of slavery and freedpeople in the Cherokee Nation from McLoughlin, Perdue, and Littlefield, Jr., to the present day. A growing interest in slavery in the Indian Territory was amplified by the court cases of the twenty-first century, prompting a new wave of research that has made considerable steps forward in its emphasis on the perspective of freedpeople. This work has broadened to explore the subjective experience of such individuals, the construction of a racial hierarchy within the Cherokee Nation, and how freedpeople articulated their uniquely African and Cherokee identity.

With little consideration of the practice of racial slavery among Native nations, it is unsurprising that the formerly enslaved do not feature heavily in historical scholarship pertaining to the post-Civil War era in Native histories. In her publication of 1925, however, Annie Heloise Abel was the first to identify the enfranchisement of freedpeople as a key concern during treaty negotiations between the Cherokee Nation and the federal government after the Civil War.[91] Abel closely considered the reconciliation of the federal and Indian governments, criticising the coercive manner in which federal officials furthered the concerns of the United States to the detriment of the Native nations. Through her use of racist terms and assumptions, however, Abel adhered to the language and ideas of the

[90] Littlefield, *Cherokee Freedmen.* W. G. McLoughlin, 'Red Indians, Black Slavery and White Racism: America's Slaveholding Indians,' *American Quarterly*, 26:4 (1974): 367-385. McLoughlin, *After the Trail of Tears*. T. Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: University of Tennessee Press, 1979) and T. Perdue, *"Mixed Blood" Indians: Racial Construction in the Early South* (Athens: University of Georgia Press, 2003). 2005 paperback edition.

[91] A. H. Abel, *The American Indian and the End of the Confederacy, 1863-1866 Re. Ed.* (Lincoln and London: University of Nebraska Press, 1993). This book is the third and final in her series on American Indians and the Civil War.

early twentieth century despite arguing that her work endeavoured to further an "American History rightly proportioned."[92] In her preface, for example, Abel described the "pitiful racial deterioration of the Creeks due to unchecked mixture with the negroes" as a negative outcome of the reconstruction treaties in the Indian Territory[93] Freedpeople do not figure in Abel's work as agents but rather as pawns between the federal and Cherokee governments. This is arguably due to her focus on the process of reconciliation between the two nations, but Abel's lack of attention to the enslaved themselves is characteristic of slavery scholarship produced at this time.[94]

For the fifty years following Abel's publication, little research touched on slavery or emancipation in the Cherokee Nation. Edward Baptist and Stephanie Camp have pinpointed the 1970s and 1980s as the decades in which the study of slavery "boomed."[95] Mirroring wider trends in the historical investigation of slavery and the Civil War, scholarship has expanded to consider the practice of racial slavery by Native nations and the impact of the Civil War in the Indian Territory. Through their emphasis on the experiences of "ordinary people," social and cultural historians made space for perspectives that had previously been omitted, including those of Native Americans and the enslaved.[96] Scholarship on Cherokee slavery and freedpeople that grew out of this broader historiographical trend includes research by William McLoughlin, Daniel Littlefield, Jr. and Theda Perdue. In *Red Indians, Black Slavery and White Racism: America's Slaveholding Indians* (1974), William McLoughlin emphasised that the study of slaveholding within Native American nations, and of the relationships between Native Americans and people of African descent in general, was in its infancy.[97] McLoughlin argued that "far too little evidence" was available to make conclusions

[92] Ibid, 10.
[93] Ibid, 9.
[94] Baptist and Camp, 'Introduction,' 2.
[95] Ibid.
[96] Ibid.
[97] McLoughlin, 'Red Indians, Black Slavery,' 365.

about the practice of slavery within Native nations at the time of publication, raising instead a number of questions that complicated assumptions held regarding Native Americans and slavery.[98] Through pointing to accounts of violence and rebellion, for example, McLoughlin challenged the belief that Native American slaveholders were kinder than their white counterparts, before going on to highlight the impossibility of generalising Native American attitudes towards people of African descent by identifying the Seminoles as practicing a markedly different form of slavery to that in the Cherokee Nation.[99] McLoughlin's article therefore operated as an important rallying call for academics to pay attention to this widely neglected area of study.

The first extensive study to place Cherokee freedpeople at the centre of its historical narrative, *The Cherokee Freedmen: From Emancipation to Citizenship* (1978) by Daniel Littlefield, Jr., asserted that the legal status of former slaves was "the most complex problem the tribe had to deal with from the end of the Civil War until the dissolution of the nation in 1907."[100] Littlefield framed the freedpeople in relation to tribal sovereignty in his political history of the Nation and concluded that, through inviting federal intervention to secure their rights as full citizens, freedpeople inadvertently damaged Cherokee attempts to preserve their autonomy as a distinct nation.[101] As a result of self-determination policies, the Cherokee Nation was formally reconstituted and recognised by the federal government in 1976. At the time of writing, then, the enduring questions surrounding the status of freedpeople were unlikely to have been evident to Littlefield and he instead stressed the "great" role the dispute over freedpeople paid in the "destruction" of the Nation.[102] Although Littlefield occasionally describes freedpeople as "pawns," his work stands in stark contrast to Abel who

[98] Ibid, 368.
[99] Ibid, 368 and 370.
[100] Littlefield, *Cherokee Freedmen*, 11.
[101] Ibid. See chapter 10, 'Retrospection.'
[102] Ibid. 249.

considered the tension over freedpeople to be symptomatic of larger power struggles rather than a genuine concern.[103]

Like Littlefield, Jr., William McLoughlin largely considered Cherokee slavery and freedpeople in relation to Cherokee sovereignty and described them as "pawns in a much bigger game."[104] In *After the Trail of Tears: the Cherokees' Struggle for Sovereignty, 1839-1880* (1993), McLoughlin traced the decline of the Cherokee Nation's ability to govern itself in the face of the United States' massive expansion at this time. He identified the status of freedpeople as a key concern, arguing that chattel slavery and the demands of freedpeople after their emancipation were central facets of nineteenth century Cherokee society and therefore a key means of exploring the workings of the Cherokee Nation.[105] By showing Cherokee anxieties over tribal sovereignty and the expansion of the United States to be inseparable from their concerns regarding slavery and the status of freedpeople, McLoughlin illustrated how integral slavery and the corresponding racial hierarchy were to the Cherokee Nation.

Although McLoughlin and Littlefield were primarily concerned with the relationship of Cherokee freedpeople and their descendants to issues of citizenship and sovereignty, Theda Perdue explored the construction of the racial hierarchy within the Cherokee Nation in her two influential texts, *Slavery and the Evolution of Cherokee Society* (1979) and *Mixed Blood Indians: Racial Construction in the Early South* (2003). In these texts, Perdue shifts attention to the subjective experience and perspective of freedpeople and the enslaved which corresponds with the social turn in historical study.[106] Perdue theorised the development of racial prejudice amongst citizens of the Nation as being the result of engagement with American capitalist practices and a means of self-preservation in the face

[103] Ibid. 251.
[104] McLoughlin, *After the Trail of Tears*, 354.
[105] Ibid. The citizenship status of former slaves features from chapter 6 onwards.
[106] Baptist and Camp, 'Introduction: A History of the History of Slavery in the Americas,' 2.

of a Euro-American hierarchy that privileged lighter skin.[107] Perdue also pointed to Cherokee involvement in the slave trade as playing a role in the creation of the class divisions and the political factionalism that characterised the Cherokee Nation in the nineteenth century.[108] Although Perdue's work was primarily focused before the Civil War, the racial dynamics she explored were central to how former slaves were viewed within the Cherokee Nation and are therefore essential to understanding their struggles for inclusion after emancipation.

"The Most Comprehensive View:" The Use of Twentieth Century Ex-Slave Narratives

For much of the twentieth century, sources regarding Cherokee slavery and freedpeople were limited to newspaper articles, government documents (of both the Cherokee Nation and the United States), and court testimony.[109] The sole newspaper published within the Cherokee Nation, *The Cherokee Advocate*, is helpful in considering the public debate surrounding the status of freedpeople but does not provide the voices of any freedpeople directly. Similarly, government and court documents have proven to be revealing of what the Cherokee legislature, for example, thought about freedpeople, but not the opinion of freedpeople themselves. The most important development in the historiography of slavery within the Cherokee Nation, and in the United States more generally, then, was the reassessment of ex-slave narratives as rich and legitimate sources starting in the 1970s.

The ex-slave narratives were first-hand accounts collected through interviews with former slaves conducted by fieldworkers from the Federal Writer's Project, which was part of the Works Progress Administration (WPA). The WPA was created as part of the New Deal and the Federal Writer's Project, formed in 1935, and aimed to provide employment for

[107] Perdue, *Slavery and the Evolution of Cherokee Society*, 19, 38. Perdue, *"Mixed Blood" Indians*.
[108] Perdue, *Slavery and the Evolution of Cherokee Society*, 19.
[109] Littlefield and McLoughlin make extensive use of government documents in their research.

writers. Obtained in 1937, for the most part, reporters located and interviewed elderly former slaves and then sent the edited accounts (with the interviewer's questions removed) to Washington D.C. to be preserved. Although fieldworkers were meant to forward all narratives, some were never sent and remained in state and local archives.[110] In 1990, fifty-five slave narratives that had not been sent to Washington were discovered in the Archives and Manuscripts Division of the Oklahoma Historical Society.[111] A portion of the narratives collected in Oklahoma were those of individuals who had been held in slavery by Native Americans, including Cherokees, rather than white elites. These narratives therefore provide a vision of slavery that differs to those collected throughout the rest of the American South.

Ex-slave narratives are widely cited in histories of slavery and emancipation: in 1995 historian Donna Spindel asserted that the bulk of major revisionist studies of slavery, which now form an "essential component" of current understandings of the institution, "rely heavily" on ex-slave narratives.[112] Examples of these influential works include *Roll Jordan Roll* by Eugene Genovese (1974), *The Black Family in Slavery and Freedom* by Herbert Gutman (1976), and *'Arn't I am Woman?' Female Slaves in the Plantation South* by Deborah Gray White (1985), which explore enslaved societies, families, and women respectively.[113] Ex-slave narratives have therefore been used to consider the perspective of individuals held in slavery rather than just that of slaveholders and continue to be essential in twenty-first century scholarship.[114] Despite their frequent use, however, the validity of using slave

[110] S. A. Musher, 'Contesting "The Way The Almighty Wants It": Crafting Memories of Ex-Slaves in the Slave Narrative Collection,' *American Quarterly*, 53:1 (2001), 3.
[111] Baker and Baker, *Oklahoma Slave Narratives*, xiii.
[112] D. J. Spindel, 'Assessing Memory: Twentieth-Century Slave Narratives Reconsidered,' *The Journal Of Interdisciplinary History*, 27:2 (1996), 248.
[113] E. Genovese, *Roll Jordan Roll: The World The Slaves Made* (New York: Random House, 1974). H. Gutman, *The Black Family in Slavery and Freedom, 1750-1925* (New York: Random House, 1976). D. G. White, *'Arn't I a Woman?' Female Slaves in the Plantation South* (New York: W. W. Norton, Co., 1985).
[114] Examples of scholars using ex-slave narratives include: E. E. Baptist, '"Stol' and Fetched Here": Enslaved Migration, Ex-Slave Narratives, and Vernacular History,' in *New Studies in the History of American Slavery,* E. E. Baptist and S. M. H. Camp, eds., 243-274 (Athens and London: University of Georgia Press, 2006). S. M. H. Camp, 'The Pleasures of Resistance: Enslaved Women and Body

narratives collected in the twentieth century is often questioned. For example, in his 1984 article Norman Yetman identified a number of potential problems that need to be kept in mind when approaching ex-slave narratives. These problems included the age of the interviewee, the power dynamic between the interviewee and the interviewer, and accuracy problems in the recording and editing of transcripts, amongst others.[115] Despite these reservations, Yetman concluded that research into enslaved life is "enhanced immeasurably" through the use of ex-slave narratives.[116] Donna Spindel and historian Sharon Ann Musher both argued that Yetman's article is typical of evaluations of ex-slave narratives: the problematic qualities of the sources are acknowledged but, rather than attempt to combat these drawbacks, the author instead praises their richness.[117]

Given how widely ex-slave narratives are used in the twenty-first century, scholars should continue to be critical of their potential weaknesses in the same manner they approach other sources. Spindel and Musher proposed different means of approaching the problems of ex-slave narratives that attempt to open new areas of investigation. Spindel suggested using current psychological research on long-term memory to evaluate the narratives and attempt to ascertain their accuracy.[118] Although Spindel failed to reach a definite conclusion, her article emphasised how the inclusion of psychological studies added further questions surrounding the problems of memory. Musher, on the other hand, used discrepancies between unedited and edited narratives to consider how ex-slave narratives collected in Texas and Mississippi were modified to provide readability, 'authenticity,' and a

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Politics in the Plantation South, 1830-1861,' in *New Studies in the History of American Slavery,* E. E. Baptist and S. M. H. Camp, eds., 87-124 (Athens and London: University of Georgia Press, 2006). R. J. Fraser, *Courtship and Love Among the Enslaved in North Carolina* (Jackson: University Press of Mississippi, 2007). T. Miles, 'Uncle Tom Was an Indian: Tracing the Red in Black Slavery,' in *Confounding the Color Line: The Indian-Black Experience in North America*, J. F. Brooks, eds., 137-160 (Lincoln and London: University of Nebraska Press, 2002).

[115] N. R. Yetman, 'Ex-Slave Interviews and the Historiography of Slavery,' *American Quarterly*, 36:2 (1984), 187, 188 & 187.

[116] Ibid, 196.

[117] Musher, 'Contesting "The Way The Almighty Wants It",' 1. Spindel, 'Assessing Memory,' 249.

[118] Spindel, 'Assessing Memory,' 253, 255.

paternalistic vision of slavery and emancipation.[119] Through considering the weaknesses of the ex-slave narratives as sources, Musher therefore revealed how twentieth century racism operated. The most successful uses of ex-slave narratives in the twenty-first century have likewise turned their potential flaws into a subject of investigation. Edward Baptist, for example, argued that the ex-slave narratives were the "most important sources" for his research on how the formerly enslaved remember the domestic slave trade.[120] In "Stol' and Fetched Here," Baptist analysed the use of language in the narratives and isolated the verb 'to steal.'[121] Through considering memory and storytelling, the subjective nature of the ex-slave narratives becomes the point of interest rather than a weakness. Baptist's approach enabled him to explore the recurring metaphor of theft in regard to the domestic slave trade: the criminal connotation of 'steal' carried a moral judgement that "belied any myths about paternalistic planters and kindly masters."[122] The implications of this conclusion are that former slaves understood the domestic slave trade to be morally wrong and a terrible crime.

Theda Perdue's work differed markedly from that of Littlefield, Jr. and McLoughlin in its inclusion of enslaved voices. Her monograph, *Slavery and the Evolution of Cherokee Society* (1979), was the first instance in which such narratives were used extensively in regard to slavery within the Cherokee Nation and Perdue deemed them "the most comprehensive view of the everyday lives of African slaves owned by the Cherokees."[123] In response to the work of scholars such as Perdue, Littlefield and McLoughlin, as well as the attention bought by the media coverage of recent legal battles, scholarship considering Cherokee slavery and freedpeople has proliferated as academics grapple with the issues tied to Cherokee slavery and its legacy. The increasing use of ex-slave narratives in such scholarship corresponded

[119] Musher, 'Contesting "The Way The Almighty Wants It,"' 5.
[120] Baptist, '"Stol' and Fetched Here," 246.
[121] Ibid, 243.
[122] Ibid, 243.
[123] Perdue, *Slavery and the Evolution of Cherokee Society*, 180.

with the turn towards social and cultural histories that began in the 1970s and the twenty-first century emphasis on subjective experience was made possible through the use of such first-hand accounts.

Narratives of individuals enslaved within the Indian Territory have been used extensively in twenty-first century research on Cherokee slavery and emancipation. The publication of the first complete collection of Oklahoma WPA narratives in 1996 made these personal accounts more easily available to researchers. With the exception of Theda Perdue's work, most research written on Cherokee slavery and emancipation prior to this point used primary sources that had been produced by government officials rather than freedpeople. Use of the narratives has allowed cultural historians, such as Celia Naylor, to analyse the food and clothing practises of those enslaved by the Cherokees before and after emancipation.[124] In her use of ex-slave narratives as a means of exploring the day-to-day life of those enslaved within the Cherokee Nation, Naylor "lifts the veil" on the "seemingly implausible reality" of racial slavery within a Native nation.[125] Through tracing the transition from enslaved to emancipation and citizenship, Naylor explores the vulnerable position of Cherokee freedpeople whilst simultaneously revealing their cultural and social links with citizens of the Cherokee Nation. Cherokee freedpeople therefore do not figure as silent pawns between the Cherokee Nation and the United States but as individuals with a "unique African Cherokee cultural identity."[126] Naylor therefore emphasises the agency of freedpeople within the Cherokee Nation and challenges the argument that freedpeople did not have a share in the Cherokee culture and lived experience. Such a route of enquiry would have been impossible without using firsthand accounts of enslaved life and emancipation within the Cherokee Nation.

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[124] Naylor, *African Cherokees in Indian Territory.* See chapter three, 'Conceptualizing and Constructing African Indian Racial and Cultural Identities in Antebellum Indian Territory.'
[125] Ibid, 3.
[126] Ibid, 21.

The use of ex-slave narratives within recent scholarship on the Cherokee Nation represents a marked attempt to combat the enduring silences regarding slavery and its legacy within Native nations. Fay Yarbrough's research on the processes of racial construction and national identity within the Cherokee Nation uses first-hand accounts to reveal how individuals negotiated these notions in the nineteenth century. Slavery, emancipation and the status of freedpeople figure strongly in Yarbrough's work, revealing the new importance awarded to these issues in broader histories of the Cherokee Nation. The scope of her research also allows Yarbrough to compare the position of Cherokee freedpeople within the Cherokee Nation to that of intermarried white men and individuals classed as intruders, further complicating their status within the Nation. Yarbrough uses ex-slave narratives alongside marriage records to further her analysis of how miscegenation laws regulated concepts of Cherokee identity and created a racial hierarchy within the Cherokee Nation that specifically targeted people of African descent as being unfit for citizenship.[127] Furthermore, in using WPA narratives to explore how the enslaved understood interracial relationships to be more desirable with Cherokee rather than white partners, Yarbrough offers a rare glimpse of how the enslaved understood race and sex from their viewpoint.[128] By envisioning Cherokee legislators as the creators of this hierarchy, Yarbrough returns to, and challenges, Theda Perdue's vision of the Cherokee Nation as absorbing and emulating Euro-American prejudices and instead paints its citizens as active and aware participants in the process.

Ties that Bind: the Story of an Afro-Cherokee Family in Slavery and Freedom by Tiya Miles is perhaps the most insightful consideration of slavery and emancipation in the Cherokee Nation written in the twenty-first century. Although Miles utilises ex-slave narratives in her other work, in *Ties That Bind* she uses the history of the Shoeboots family

[127] Yarborough, *Race and the Cherokee Nation*. See chapter five, 'The Cherokee Freedmen's Story.'
[128] Ibid. See chapter six, 'Indian Slavery and Memory: Inter-racial Sex from the Slaves' Perspective.'

as a case study to explore the gradual hardening of racial lines described in Perdue's work.[129] By their very nature, family histories place the lived experience of their subjects at the centre of the discussion rather than tangential to wider historical context: in this case, the descendants of Shoeboots and his enslaved partner Doll. Family history has proven a fruitful way of approaching the complex issues surrounding race and citizenship within formerly slaveholding Native Nations and, in the case of *Ties that Bind*, reveal that "Cherokee" and "of African descent" were not always distinct categories.[130] Miles employs the transition from enslaved to free among the enslaved within the Cherokee Nation to explore the processes of racial categorisation made evident by Perdue, tracing how one side of a family can attain citizenship whilst their relatives remain unable to prove their connection to the Nation.[131]

As detailed above, scholars have pushed the study of Cherokee slavery and freedpeople in new directions in the twenty-first century. In *Black Slaves, Indian Masters* (2013), however, historian Barbara Krauthamer identified the necessity of exploring how the inclusion of freedpeople and Native sovereignty became constructed as oppositional.[132] Krauthamer suggested paying closer attention to the "complexity and inconsistency" of Reconstruction within Native nations to analyse how the rights of freedpeople and the sovereignty of Native nations became understood as antithetical within these nations.[133] This thesis is a response to Krauthamer's observation, and will make a marked contribution to the emerging field of Black Indian Studies by attempting to understand the questions

[129] See T. Miles, 'Uncle Tom Was an Indian: Tracing the Red in Black Slavery,' in *New Studies in the History of American Slavery,* E. E. Baptist and S. M. H. Camp, eds., 137- 160 (Athens and London: University of Georgia Press, 2006). Miles, *Ties that Bind*.
[130] Saunt, C. *Black, White, and Indian: Race and the Unmaking of an American Family* (Oxford: Oxford University Press, 2005). Saunt's history of the Grayson family in the Creek Nation touches on similar issues to those explored in *Ties That Bind*.
[131] Miles, *Ties that Bind*. See 'Epilogue: Citizenship' and 'Coda: The Shoeboots Family Today.'
[132] B. Krauthamer, *Black Slaves, Indian Masters: Slavery, Emancipation, and Citizenship in the Native American South* (Chapel Hill: University of North Carolina Press, 2013), 12. Krauthamer's monograph is particularly focused on slavery and emancipation within the Choctaw and Chickasaw nations but her argument is useful here.
[133] Ibid.

surrounding decisions taken on the rights of Cherokee freedpeople through the voices and actions of freedpeople themselves. This thesis utilises material collected through archival research to revisit the four decades following emancipation. Cherokee national records held by the Oklahoma Historical Society and in the Western History Collection at the University of Oklahoma will be used to explore the position of the Cherokee Nation in regards to freedpeople and citizenship whilst federal records held by the National Archives and Records Administration in Fort Worth, TX, and Washington, DC, will be used to consider the position held by the United States. The actions and perspectives of freedpeople will be explored through material collected within the Cherokee and federal archives (largely in the form of letters received by officials of those nations) and in published ex-slave narratives. In doing so, this thesis re-examines the clashes over the status of freedpeople and challenges their classification as pawns in work by scholars such as Littlefield and McLoughlin.

Exploring how much influence Cherokee freedpeople had over the debates surrounding their citizenship requires clarification of the term 'agency' as it is used within the thesis. In his 2003 essay, 'On Agency', slavery historian Walter Johnson critiqued how scholars utilised 'agency,' which he described as the "master trope" of New Social History.[134] According to Johnson, the term has been used in two ways: as a synonym for "humanity" and to describe "self-directed action" or free will.[135] Using agency as a synonym for humanity is problematic since it erases the meaning of actions (whether political, cultural or otherwise), limiting them to being evidence that the subject is human and in doing so reproducing the white supremacist question of whether enslaved people lacked humanity. Stressing free will, on the other hand, overemphasises liberal ideas of independence and assumes their universality across time and space, leading to the assumption that any action

[134] W. Johnson, 'On Agency,' *Journal of Social History*, 37:1 (2003), 113.
[135] Ibid, 115.

reveals resistance.[136] Johnson therefore cautions that the trope of agency needs to be used carefully since humanity should be the "simple predicate" of all historical investigation and any individuals' lived experiences are "powerfully conditioned" by the circumstances or structures in which they find themselves: a more appropriate scholarly question would consider the *condition* of the subject's humanity.[137] Lynn Thomas, writing in 2016, suggested that the concerns Johnson raised in his essay remain pertinent today and urged scholars to avoid using agency as a conclusion rather than as a "conceptual tool or starting point."[138] This thesis therefore does not conclude that Cherokee freedpeople had humanity but instead assumes that this is a given and historicises their actions. It is made evident over the course of this thesis that Cherokee freedpeople acted to secure their own interests but their ability to affect change was circumscribed by the Cherokee Nation and the United States. The agency of Cherokee freedpeople was therefore qualified by the structures within which they lived and the comparative power of the Cherokee Nation and the United States. This is not, however, to say that Cherokee freedpeople lacked agency or free will and this thesis argues instead that Cherokee freedpeople gained some successes, albeit limited, through particular interventions and interruptions in the master narratives of both the United States and the Cherokee Nation.

Conclusion

The historic marginalisation of freedpeople within the Cherokee Nation facilitated a lasting silence around histories of slavery and racial discrimination within the Nation. The contested incorporation of freedpeople within the Cherokee citizenry after the Civil War, and the

[136] Ibid, 114-115.
[137] Ibid. One of the key debates in the social sciences has been whether agency (ability to make own choices) or structures (which limit those choices) is the predominant factor in human behaviour. L. M. Thomas, 'Historicising Agency,' *Gender & History*, 28:2 (2016), 325.
[138] Thomas, 'Historicising Agency,' 324.

coercive role the federal government played in defending their rights, have figured as uncomfortable elements of Cherokee Nation history until the present day. For much of the twentieth century, this silence was mirrored in historical scholarship. Beginning in the 1970s, however, scholars have made distinct efforts to recognise the centrality of slavery and its legacy to Cherokee society, both in the past and the present. Although hindered by a scarcity of sources, the renewed interest sparked by controversial legal battles and availability of ex-slave narratives have prompted new and innovative research that questions and advances ideas first published in the 1970s. In the same vein as research focused on slavery in the United States, recognising the important role played by the enslaved and freedpeople in the social fabric of the Nation has led to a better understanding of the Cherokee Nation and its interactions with the United States. As freedpeople continue to pursue their inclusion within the Cherokee Nation and researchers continue to analyse the significance of slavery within Native nations in the twenty-first century, then, these silences seem less impenetrable.

Chapter Two: Seeking Legal Citizenship in the Cherokee Nation

> They [Cherokee Nation] further agree that all freedmen who have been liberated by voluntary act of their former owners by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees.[139]
>
> *Treaty with the Cherokee Nation, 1866*

The immediate challenge for freedpeople who chose to remain within the Cherokee Nation after their emancipation was having their claim to do so recognised by the Cherokee authorities. Although the Loyal National Council had voluntarily abolished slavery from the Nation, they refused to offer citizenship to freedpeople until forced to do so during treaty negotiations with the United States. The 1866 Reconstruction Treaty that awarded citizenship to former Cherokee slaves, cited above, also reiterated the duty of the United States to remove all non-citizens or intruders, meaning that everyone residing within the boundaries of the Nation had to prove their citizenship or be forcibly removed by the United States military. In the face of this threat, freedpeople acted to claim the legal citizenship for themselves and their families which would protect them from removal.

Interactions between Cherokee and federal officials regarding freedpeople have been characterised by disagreement and tension from the end of the Civil War through to the present day, but the terms of this dispute were set within fifteen years of Cherokee emancipation as freedpeople initially sought to claim legal citizenship within the Nation. Those who were denied such rights, whether in court or by Cherokee census takers, sought

[139] 'Treaty with the Cherokee Nation, 1866,' in *African Cherokees in Indian Territory: from Chattel to Citizens*, C. E. Naylor, 225 (Chapel Hill: The University of North Carolina Press, 2008).

the support of federal officials who they hoped would pressure the Cherokee Nation to fairly assess their claims to citizenship. Although freedpeople first acted alone to secure the rights for themselves and their families, by the 1870s they were appealing to federal officials both individually (in the form of personal letters) and collectively (by petition).[140] Through defending their right to remain within the Cherokee Nations as citizens, freedpeople inadvertently created a jurisdictional dispute between the Cherokee Nation and the United States, both of whom claimed final authority over questions of who was and was not a Cherokee. The triangular nature of this dispute is key to understanding the power dynamics it made evident. Whilst the jurisdictional dispute was ostensibly between the *two* nations, it was the actions of freedpeople in the wake of claiming their emancipation and asserting their right to citizenship (whether as individuals or as a group) that fuelled longstanding tensions and distrust between federal and Cherokee officials.

Immediately following the passage of the Reconstruction Treaty, federal officials respected the rights of the Cherokee authorities to determine who was and was not Cherokee and their obligation to remove non-citizens. However, repeated pleas from freedpeople who feared removal prompted these same officials to challenge whether the Cherokee Nation held final authority over the issue and, by doing so, questioned the sovereignty and autonomy of the Cherokee Nation. Federal officials expressed concerns, both amongst themselves and with the Cherokee leadership, over the justice of a deadline limiting citizenship only to those who returned to the Nation by January 1867. The disagreements between Cherokee and federal officials over freedpeople encouraged Cherokee resentment of freedpeople, and several accused them of acting for their own

[140] 'John N. Craig to Commissioner of Indian Affairs, July 27, 1870.' *Letters Received by the Office of Indian Affairs, 1824-1880* (National Archives Microfilm Publication M234, roll 103, frame 286). Record Group 75; National Archives Building, Washington, DC. 'William S. Madden et al. to John B. Jones, February 1872,' (*NARA Microfilm M234*-105, frames 292-294).

interests and against the authority of the Nation.[141] Although the citizenship status of former Cherokee slaves remained under debate for the entire period covered by this thesis (1866-1907), this chapter considers the first 15 years following the Civil War. This chapter therefore considers the dispute over freedpeople from when citizenship was awarded to former Cherokee slaves within the 1866 Reconstruction Treaty through to the creation of the 1880 census, which the Nation hoped would finally resolve questions surrounding which individuals did and did not hold Cherokee citizenship. During this short period, the position of the Cherokee Nation and the United States on the issue of freedpeople and their citizenship would become increasingly combative and, by 1880, a compromise appeared impossible. Recognised citizenship was, and remains, the foundation upon which all other rights were accessed in the Cherokee Nation. Although freedpeople may have been primarily concerned with the right to remain within the Nation in the immediate aftermath of the Civil War, the importance of recognised citizenship became further apparent as freedpeople struggled to gain access to the rights associated with Cherokee citizenship (including nationally-funded education and their share of national funds) in later years. Furthermore, it was through these early attempts to gain recognised citizenship that freedpeople became familiar with the institutions they would use to pursue access to the other rights considered by this thesis (education, national funds and land).

Given the increasingly vulnerable position of the Cherokee Nation in relation to the United States as the nineteenth century progressed, retaining control over citizenship was a matter of supreme importance to the Cherokee Nation. As discussed in the introductory chapter of this thesis, the ability to control citizenship rules is a crucial means by which a nation defines itself and is therefore a key component of sovereignty: what Kirsty Gover

[141] 'Charles Thompson to Cherokee National Council, November 14, 1877.' University of Oklahoma Libraries, Western History Collections, Cherokee Nation Papers (CNP) Microfilm Edition, Roll 3, Folder 213.

described as the "first order of tribal self-governance."[142] The Cherokee Nation resisted the federal government's growing power within the Indian Territory after the Civil War through attempting to maintain sole discretion over the citizenship status of freedpeople and claiming jurisdiction over the boundaries of its citizenry.[143] In doing so, the Cherokee Nation asserted itself as a separate nation.[144] The United States challenged the Nation's right to govern its own population and therefore its sovereignty, however, by questioning the Cherokee Nation's authority to delineate which freedpeople were entitled to citizenship and the nature of that citizenship in the years following the Civil War. Gover further argues that citizenship rules are a "legal manifestation of cultural production," revealing how a community defines itself against other groups and representing an "expression of a provisional consensus within a tribal community, emerging from political processes of debate and contestation."[145] Importantly, the processes by which a nation or tribe decides on its citizenship rules are *internal* and based on disagreements and agreements made within its community: not imposed by outsiders.

Recognition or acceptance as a citizen is the fundamental component of citizenship to which all other rights are attached, whether such rights are political or social in nature. In his seminal work on citizenship in Europe, sociologist T. H. Marshall offered the following concise definition of citizenship: a "status bestowed on those who are full members of a

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[142] K. Gover, 'Comparative Tribal Constitutionalism: Membership Governance in Australia, Canada, New Zealand and the United States,' *Law & Social Inquiry*, 35:3 (2010), 690.

[143] McLoughlin, *After the Trail of Tears,* xiii.

[144] This was not the sole means by which the Cherokee Nation asserted itself as a separate and sovereign nation. The Nation continued to maintain its own legal system and light horse policemen, for example. The Cherokee Nation was also a leading member of the international councils that comprised of the over 30 Native nations located in Indian Territory. These councils fostered a sense of pan-Indian identity and McLoughlin attributes the long time span between the Civil War and territorialisation to the cooperation and successes of these councils (*After the Trail of Tears*, 303-307, 78 & 275).

[145] K. Gover, *Tribal Constitutionalism: States, Tribes, and the Governance of Membership* (Oxford and New York: Oxford University Press, 2010), 21 & 11. Gover is primarily concerned with how tribal governments attempted to reconcile conflicting definitions of indigeneity in the twentieth and twenty-first centuries but her claims regarding the importance of membership governance are relevant here.

community. All who possess the status are equal with respect to the rights and duties with which the status is endowed."[146] Awarding or denying citizenship therefore operates as a means of including or excluding individuals from any given community. Furthermore, citizenship is the manifestation of a relationship between the said community and its members, in which both have obligations to the other. A citizen may be expected to participate in political processes and pay taxes, for example, whilst the institutions of their community may protect the rights of citizens through guaranteeing equality before the law.

Being awarded citizenship was a necessity for freedpeople who chose to remain within the Cherokee Nation as without it they would be marked as outsiders and denied access to the rights shared by Cherokee citizens. Although their skin colour and status as former slaves seemed to preclude Cherokee citizenship, by insisting on their rights freedpeople put forward a claim on Cherokee identity (and citizenship) that prioritised political and cultural affiliation over race. As Fay Yarbrough has illustrated, over the course of the nineteenth century the notion of Cherokee identity had moved away from kinship or clan affiliation and towards a racial definition (and specifically the exclusion of individuals with African ancestry).[147]

The rights associated with Cherokee citizenship differed in various respects to the rights held by citizens of the United States. At the beginning of the nineteenth century the Cherokees "wrestled with the question of their own identity and future" and moved away from self-governing towns and the clan kinship system, slowly and controversially

[146] T. H. Marshall, *Citizenship and Social Class: and other essays* (Cambridge and New York: University of Cambridge Press, 1950), 18.

[147] F. Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2008), 8, 9, 11. The development of Cherokee racial prejudice against individuals of African descent is outside the parameters of this thesis. See Yarbrough, *Race and Nation* as well as T. Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: University of Tennessee Press, 1979) and T. Perdue, *"Mixed Blood" Indians: Racial Construction in the Early South* (Athens and London: University of Georgia Press, 2003.) 2005 Paperback edition.

introducing the idea of a Cherokee nation.[148] The Cherokee Nation modelled its 1827 constitution on that of the United States, creating notions of legal citizenship that often conflicted with more traditional ideas of kinship and clan membership: it modified the document to meet its own needs.[149] The Constitution guaranteed various rights to citizens: access to education; due process under the law; the right to vote (confined to male citizens over the age of eighteen); and a share in public national funds, amongst others. These rights were reaffirmed after removal to Indian Territory in the 1839 Cherokee Constitution. Of most significance for this chapter, citizens were entitled to build on or farm any national land that was not being used by another citizen. Furthermore, although citizens may not own the land they could lay claim to any buildings they erected on it: any "improvements made thereon [on Cherokee land], and in the possession the citizens respectively who made, or may rightly be in possession of them."[150] The Cherokee Constitution therefore protected the idea of "common property" rather than private property practices as seen in the United States. A Cherokee citizen lost any claim to their improved land or built improvements if they took United States citizenship or removed from within the boundaries of the Cherokee Nation to reside elsewhere. In doing so, an individual effectively rescinded their Cherokee citizenship and it could only be restored through making a memorial to the National Council.

Cherokee citizenship therefore offered significant advantages for freedpeople after the abolition of slavery. Land was an essential resource for freedpeople who endeavoured to build a new life outside of slavery, since farming offered a means of producing necessary food items and generating an income. In the United States, freedpeople and their allies who advocated land reform ultimately failed to secure their goals which left many freedpeople

[148] W. G. McLoughlin, *Cherokee Renascence in the New Republic* (Princeton, New Jersey: Princeton University Press, 1986), xvii, 11.
[149] 'The 1827 Cherokee Constitution,' Available from http://www.digitalhistory.uh.edu/active_learning/explorations/indian_removal/cherokee_constitution.cfm (31/8/16).
[150] 'The 1839 Cherokee Constitution,' Available from http://www.cherokeeobserver.org/Issues/1839constitution.html (31/8/16)

landless and impoverished. The Freedmen's Bureau was created in March 1865 to further the concerns of freedpeople in the United States and was specifically given the power to rent confiscated and abandoned land to former slaves. Although Radical Republicans advocated huge land reform that would provide freedpeople with their own land on a permanent basis, schemes such as William T. Sherman's Field Order 15, which made provisions for parcels of forty acres of land down the Atlantic seaboard of South Carolina, Georgia, and Florida to be settled by families of former slaves, proved to be temporary and the vast majority of freedpeople were landless.[151] In 1865, 40,000 freedpeople occupied land as a result of Sherman's Field Order 15. By the end of 1866, only 1565 still had possession of the land.[152] Since the majority of freedpeople could not afford to purchase land in the United States, many became tenant farmers and sharecroppers, effectively working the land for a 'share' of the crop once the landholder had charged rent and hire for tools. Sharecropping afforded little opportunity for labourers to escape their " dire poverty," especially since bad harvests or economic depressions drove them further into debt.[153] Members of the Young Men's Progressive Association, a black organisation based in South Carolina asserted that sharecropping ensured that freedpeople remained dependent: "so long as the labor of the working rural people is controlled by their employer, just so long must the people be in a state of squalid, wretched poverty."[154] In contrast, freedpeople within the Cherokee Nation were able to farm and live on communal land freely since they did not need to rent or purchase it, placing them in a much more stable and advantageous position.[155] The ability to immediately settle on and farm unused land in the Cherokee Nation following the passage

[151] E. Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Perennial, 2002), 68 -70.
[152] J. D. Smith, *Black Voices From Reconstruction, 1865-1877* (Miami: University Press of Florida, 1997), 78.
[153] Foner, *Reconstruction*, 86, 142,
[154] Smith, *Black Voices from Reconstruction*, 83.
[155] Naylor, *African Cherokee in Indian Territory,* 160.

of the 1866 Reconstruction Treaty therefore gave Cherokee freedpeople markedly different opportunities than those available to freedpeople throughout the United States.

Although scholars are in agreement that the land practices of the Cherokee Nation afforded its freedpeople certain advantages in comparison to former slaves in the United States, Celia Naylor offers an important warning against overstating their situation. Before the passage of the 1866 treaty that guaranteed their citizenship, Cherokee freedpeople struggled alongside Cherokees to recover but "had the additional burden of carving a free life out of the rubble and despair with *no material resources at all*."[156] During this time, freedpeople worked as tenant farmers and sharecroppers in the same manner as their counterparts in the United States and faced the same difficulties. Once citizenship had been granted and freedpeople could claim land to improve for themselves, they may not have had to pay rent but they still had to find the necessary resources to begin their new life outside of slavery. Furthermore, although freedpeople did not experience the same violence as freedpeople in the United States, much of the Cherokee population shared similar racial prejudices against people of African descent.[157] Anti-miscegenation laws remained in place following the Civil War outlawing marriage and sexual relations between African Americans and the Cherokee. Fay Yarbrough argues that this law highlights the Cherokee desire to keep people of African descent separate from the larger population and that they did not consider them to be appropriate citizens or marriage partners.[158]

[156] Ibid. Emphasis added.
[157] McLoughlin, *After the Trail of Tears*, 291. See also Perdue, *Slavery and the Evolution of Cherokee Society* and Perdue, *"Mixed Blood" Indians.* Both texts explore the creation of a racial hierarchy within the Cherokee Nation that presumed Indian and white racial superiority.
[158] F. Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2008), 76.

Crossroads: Emancipation in the Cherokee Nation

The Civil War had decimated the Cherokee Nation, leaving "an air of ruin and desolation through the whole country" and deep divisions amongst its people.[159] Historian Mary Jane Warde has described the loss of population throughout the Indian Territory as "staggering," estimating that the Cherokees lost four thousand people during the conflict.[160] In spite of this devastation, former slaves, made "forever free" by the Loyal Cherokee National Council on February 12st 1863 (effective June 25th 1863), could look forward knowing that their freedom was assured in the post-war Cherokee Nation.[161] The exact terms of this freedom remained unclear, however, since the 1863 emancipation proclamation made no mention of whether former slaves of Cherokees were entitled to Cherokee citizenship. From the moment they were granted their freedom, then, Cherokee freedpeople occupied a marginal space within the Cherokee population: neither slaves nor citizens. Although the 1866 Reconstruction Treaty between the Cherokee Nation and the United States appeared to resolve this question by awarding citizenship to freedpeople and their descendants, the nature of this citizenship and exactly who qualified for it has remained contentious ever since.

The abolition of slavery came within a broader period of drastic transformations that greatly affected the lived experiences of the Cherokee population at large, not just those who had been enslaved within its borders.[162] Fay Yarbrough described the emancipation of

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[159] Agent Justin Harlan, Report Number 99, *The Annual Report of the Commissioner of Indian Affairs to the Department of the Interior for the Year 1865* (Washington, D.C.: Government Printing Office, 1865), 292 quoted in M. J. Warde, *When The Wolf Came: The Civil War and the Indian Territory* (Fayetteville: The University of Arkansas Press, 2013), 264.

[160] M. J. Warde, *When The Wolf Came: The Civil War and the Indian Territory* (Fayetteville: The University of Arkansas Press, 2013), 264.

[161] 'An Act Providing for the Abolition of Slavery in the Cherokee Nation' (February 18, 1863). Available from http://www.blackpast.org/primarywest/cherokee-emancipation-proclamation-1863 (24/6/15)

[162] See W. G. McLoughlin, *After the Trail of Tears: The Cherokees' Struggle for Sovereignty, 1839-1880* (Chapel Hill and London: University of Chapel Hill Press, 1993). McLoughlin charts the political, economic and social upheavals seen in the Cherokee Nation in the forty years following its removal

Cherokee slaves as "a moment pregnant with possibility" and a "crossroads" for the Nation.[163] By the outbreak of the Civil War, slavery was entrenched as an institution in the Nation and resembled its counterpart as practiced throughout the slaveholding states. Cherokee society was organised around concepts of race that firmly placed people of African descent at the bottom of the social order.[164] The abolition of slavery opened a window in which change was possible and the Cherokee Nation could choose to accept freedpeople as valued members of their community, therefore separating questions of citizenship from notions of race. By adopting freedpeople as full and equal citizens, the Cherokee Nation could have heralded a new era of racial equality within its territory. As is evident throughout this thesis, however, the Cherokee Nation refused to rethink its understanding of Cherokee identity and instead attempted to both limit the number of freedpeople it would incorporate within its citizenry and the rights these individuals would be entitled to. It is important to note here that there was considerable disagreement amongst the Cherokee leadership over the status of freedpeople. Vocal advocates of their full incorporation included Principal Chiefs Lewis Downing and Dennis Bushyhead, while the Cherokee National Council and population at large were not unanimous in their views on the issue. However, policies enacted by the Cherokee National Council and implemented by Cherokee officials served to minimise the rights afforded to freedpeople after the Civil War.[165]

Emancipation was a confused process in the Cherokee Nation, as it was in the United States. First-hand accounts collected from ex-slaves reveal the diverse experiences of

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to the Indian Territory with a particular focus on how the United States challenged the Nation's sovereign status. McLoughlin argues that the devastation of the Civil War necessitated rebuilding on the same scale as seen after removal (xiii).

[163] Yarbrough, *Race and the Cherokee Nation*, 74.

[164] The development of slavery as an institution and racial prejudice as practiced by Cherokees is not the particular focus of this thesis. Please see: Yarbrough, *Race and the Cherokee* Nation; T. Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: University of Tennessee Press, 1979); and Naylor, *African Cherokees in Indian Territory*.

[165] For example, freedpeople were not able to confer citizenship to spouses through marriage, and were excluded from annuity fund payouts. Yarbrough, *Race and the Cherokee Nation*, 95-99, 89.

Cherokee freedpeople as they gained their freedom at varying points during the American Civil War, offering a means of more closely considering the chaotic nature of this process. The transition from enslaved to free was complicated by the haphazard nature in which the enslaved were liberated by their Cherokee masters. Whilst some Cherokee slaves were liberated by the February 1863 Emancipation Proclamation, others continued to be held in slavery until after the end of the war in April 1865 and beyond. Slaveholding Cherokees who supported the Confederacy refused to accept the authority of the Loyal National Council over any issue, including the abolition of slavery, and therefore continued to practice the institution until the ratification of the Reconstruction Treaty in 1866. Many Confederate Cherokees had also left the Cherokee Nation, fleeing to Texas or other Indian nations and taking their slaves with them. Leaving served dual purposes: avoiding conflict with Loyal Cherokees as factionalism exploded throughout the Nation, and affording better protection of their enslaved labourers by moving them away from Union forces. Sarah Wilson, for example, was smuggled to Texas from the Nation in covered wagons after "Yankee soldiers got too close by in the first part of the War."[166] Although some of the men travelling with Wilson, including her uncle, were able to use the confusion created during this removal to "slip off to the north" and claim their freedom, Sarah and others continued to be held in slavery outside the borders of the Cherokee Nation.[167]

Unlike their counterparts held by Loyal Cherokees, individuals owned by Confederate Cherokees continued to be enslaved until their owners chose to free them (or until the passage of the 1866 Reconstruction Treaty). Sarah Wilson continued to be held in slavery until after the Civil War, at which point her master received a letter from Fort Smith detailing the abolition of slavery. After his daughter read the letter to him, Wilson's master

[166] 'Sarah Wilson' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 497 (Norman: University of Oklahoma Press, 1996).
[167] Ibid.

"went wild and jumped on her and beat the devil out of her. Said she was lying to him."[168] This extreme reaction underscores the casual manner in which Wilson's master, and other Cherokee slaveholders, could use violence within his household and the power he wielded as a patriarch over his dependents. In particular, his disbelief and 'wild' response illustrates the investment Cherokee slaveholders had in the institution of slavery. Upon his recovery, Wilson's master offered to assist his former slaves in returning to the Indian Territory, an offer rejected by Wilson's mother who preferred to find her own way back. As Celia Naylor argues, this was an extraordinary expression of independence by Wilson's mother that encompassed not only her own freedom but also an assertion of her authority as a mother.[169] Other enslaved people who had been removed from the Nation forced their former owners to take responsibility for them. When Patsy Perryman's mistress freed her slaves, for example, she attempted to abandon them in Texas. After Perryman's mother "cried so hard she couldn't stand it," however, Perryman's mistress allowed them to ride back to the Nation with her on an ox wagon which saved them a long and difficult journey.[170] Unlike Wilson and Perryman, Chaney Richardson was informed about her emancipation by Union soldiers. Richardson told a field worker from the Oklahoma Writers' Project that after soldiers raided her home, her master and mistress removed outside the Cherokee Nation, taking their enslaved workforce with them: "All the slaves was piled in together and some of the grown ones walking, and they took us way down across the big river and kept us in the bottoms a long time until the War was over."[171] It was only as they passed through Fort Gibson on their way home that Richardson and other slaves she was travelling with learnt of the abolition of slavery from Union soldiers. The Civil War concluded two summers after the Loyal National

[168] Ibid.
[169] Naylor, *African Cherokees in Indian Territory*, 157-8.
[170] 'Patsy Perryman' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 315 (Norman: University of Oklahoma Press, 1996).
[171] 'Chaney Richardson' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 350 (Norman: University of Oklahoma Press, 1996). Richardson appears to have been taken deeper in to the Indian Territory (towards the border with Texas).

Council had abolished slavery, meaning it is likely that Richardson and her companions had been held in slavery for two years longer than individuals enslaved by Loyal Cherokees.

Individuals freed as a result of the Loyal National Council's 1863 Emancipation Proclamation may have been awarded their liberty earlier than those cited above, but claiming this freedom in the midst of war was no easy task. Betty Robertson lived at the Vann plantation for the duration of the war until "Young Master Joe come to the cabins and say we all free and can't stay there less'n we want to go on working for him just like we'd been, for our feed and clothes."[172] Robertson and her family journeyed for days to Fort Gibson, by the south-west border of the Cherokee Nation, rather than stay under those terms and found that "there was lots of negroes there."[173] Switching between Union and Confederate control throughout the war, freedpeople and Cherokees alike flocked to Fort Gibson and sought protection against local guerrilla fighters and thieves. Fort Gibson therefore repeatedly figures as a refuge in ex-slave narratives recounted by Cherokee freedpeople: for example, having heard that rations were being handed out, Sarah Wilson and her mother endured a journey that was "hell on earth" to make it to Fort Gibson.[174] Rochelle Ward describes “negroes piled in from everywhere” and Phyllis Petite found her “own grand mammy was cooking for the soldiers at the garrison.”[175] By the end of the Civil War in 1865, many Cherokees and freedpeople were miles from their former homes, having spread throughout the Indian Territory and the United States depending on their individual circumstances. Some freedpeople had ventured even further afield to escape the turmoil of war, travelling huge distances and bearing the consequences of hunger and disease once emancipated. When Lucinda Vann's master and mistress told their slaves they were free to

[172] ‘Betty Robertson’ in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 356 (Norman: University of Oklahoma Press, 1996).
[173] Ibid.
[174] ‘Sarah Wilson’ in *The WPA Oklahoma Slave Narratives*, 498.
[175] ‘Rochelle Allred Ward’ in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 447 (Norman: University of Oklahoma Press, 1996). ‘Phyllis Petite’ in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 319 (Norman: University of Oklahoma Press, 1996).

leave, a group who were "part Indian and part colored" left the Indian Territory and headed for Mexico, only to return after the War to discover that "Nothing was left" and their "Marster and Missus was dead."[176] Vann's narrative emphasises the physical and social destruction wrought by the Civil War in the Cherokee Nation. Vann and her fellow travellers chose to leave the Nation, seeking their fortune in Mexico again, returning to the Cherokee Nation years later once "everything quiet down and everything just right."[177]

Cherokee freedpeople were non-citizens for three years, from their emancipation in June 1863 to the agreement of the Reconstruction Treaty between the Cherokee Nation and the United States in June 1866. Cherokee slaves may have been liberated by the 1863 emancipation proclamation but that did not guarantee their inclusion within the larger Cherokee population. An act passed by the Loyal National Council on November 14th 1863, nine months after the body first abolished slavery, attempted to clarify the status of freedpeople and asserted that "liberated slaves not having rights and privileges as the Citizens of the Cherokee Nation, shall be viewed and treated as other persons, members of other Nations or communities, possessing no rights to citizenship."[178] William McLoughlin has interpreted this Act as convincing evidence that, although they voluntarily abolished slavery, it would be misleading to represent Cherokees as abolitionists of the "radical Garrisonian variety;" the Cherokee leadership were not interested in inclusion or racial equality.[179] Despite striking down any laws specifically targeting people of African descent (such as being prohibited from learning to read) when they abolished slavery, the Cherokee National Council chose to retain its anti-miscegenation laws.[180] By deliberately excluding

[176] 'Lucinda Vann' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 440 (Norman: University of Oklahoma Press, 1996).
[177] Ibid.
[178] Quoted in McLoughlin, *After the Trail of Tears*, 208.
[179] McLoughlin, *After the Trail of Tears*, 209.
[180] Quoted in McLoughlin, *After the Trail of Tears*, 209. Fay Yarbrough discusses Cherokee anti-miscegenation laws in detail in *Race and the Cherokee Nation* and argues that the continuance of laws specifically preventing white and Cherokee citizens from marrying individuals of African descent

freedpeople from the Cherokee citizenry at this time (but allowing them to stay if they obtained work permits), Loyal Cherokees revealed that the only value they saw in freedpeople was their capacity as labourers. As a direct result of the November 14th 1863 Act, then, Cherokee freedpeople were classed as outsiders in both the Cherokee Nation and the United States after their emancipation, technically noncitizens in both.

The inclusion of former Cherokee slaves was a crucial component of talks to formally reconcile the Cherokee Nation and the United States after the Civil War. The 1866 Reconstruction Treaty was the result of lengthy and difficult negotiations between federal officials and representatives of both the pro-Union "Loyal" majority and pro-Confederacy "Southern" minority. The Civil War had reignited older tensions rooted in the decades before the war and the leaders of each faction denied the legitimacy of the other's right to lead the Nation. Furthermore, both Cherokee factions had their own visions of their post-war relationship with the United States and each other.[181] Annie Heloise Abel provided the first sustained examination of the negotiations between the United States and the nations of the Indian Territory in her 1925 monograph *The American Indian and the End of the Confederacy*. Abel questioned the strategy of federal officials as they negotiated with Cherokee delegates, suggesting that they exploited the divisions between Southern and Loyal Cherokees to further their own objectives, namely the erosion of Cherokee sovereignty and territory.[182] The Reconstruction Treaty that resulted from these negotiations contained a number of

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reveal the Cherokee reluctance to incorporate freedpeople within their citizenry. Yarbrough, *Race and the Cherokee Nation*. See pages 74-76.

[181] During the Civil War the Cherokees divided down the same lines as they had during the Removal Crisis of the 1830s: the Ridge-Watie families led the Confederate or Southern Cherokee minority whilst Principal Chief John Ross led the Loyal Cherokee majority. John Ross advocated reunion after the war but Southern Confederates wanted their own separate nation and therefore their own treaty with the United States. Please see McLoughlin, *After the Trail of Tears*, chapters 6 ('The Start of the Keetoowah Revolt, 1858-1861'), 7 ('The Cherokees Abandon Neutrality for Unity, 1861') & 8 ('The Civil War in the Cherokee Nation, 1862-1865').

[182] A. H. Abel, *The American Indian and the End of the Confederacy, 1863-1866 Re. Ed*. (Lincoln and London: University of Nebraska Press, 1993). See Chapter 10, 'Negotiations with the Cherokees,' pages 345-362.

clauses detrimental to the autonomy of the Cherokee Nation, including but not limited to: the creation of a United States District Court within the Nation; making land available for the construction of a railroad through the Cherokee Nation; and allowing the United States to settle other Indian nations on Cherokee land, subject to a financial settlement.[183] The treaty also contained certain clauses beneficial to the Cherokee Nation, including the right to appoint an agent to examine Cherokee accounts with the United States government and protection from intruders, although these are few in comparison to clauses that favour the United States.[184] The Reconstruction treaties made with the nations of the Indian Territory therefore enabled the federal government to expand its power within the Indian Territory and represent a key moment on the path to US absorption of the Indian Territory and Oklahoma statehood.

As the first legal document to guarantee citizenship for freedpeople and their descendants, the Reconstruction Treaty became the lynchpin around which arguments for and against the rights of former Cherokee slaves revolved. Debate has largely centred on the coercive nature of the treaty negotiations and the ambiguous language of Article 9 which granted "all the rights of native Cherokees" to "all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees."[185] There is a clear gap between the National Council's rejection of freedpeople as citizens on November 14th 1863 and the wording of the treaty, which afforded the same 'all the rights of native Cherokees.' Delegates of the United States asserted that awarding citizenship to freedpeople was an essential and non-negotiable component of any

[183] 'Treaty with the Cherokee Nation, 1866,' in *African Cherokees in Indian Territory,* Naylor, 221-237.
[184] Ibid, 233, 234.
[185] Ibid, 225.

reconciliation between the Cherokee Nation and the United States, leading to the addition of Article 9 to the treaty over great reluctance on the part of the Cherokee delegates.[186] Furthermore, whilst the Cherokee Nation was forced to award citizenship to its former slaves, Confederate states were not subject to the same conditions: they also had to abolish slavery but were not expected to award full citizenship to freedpeople.[187] The United States insisted that the Cherokee Nation awarded its freedpeople citizenship two years before they did the same with the passage of the Fourteenth Amendment in 1868, giving credence to the argument that the Nation was penalised more severely than states that seceded from the Union. Arguably, the treaty negotiations represented an opportunity for the United States to further its own agenda and assert its dominance in Indian Territory. Proponents of the disenfranchisement of freedpeople have argued both then and now that the clause was included at the insistence of federal officials and at the expense of Cherokee autonomy. Furthermore, they argue that the ambiguity of Article 9 indicates that it was not intended to confer full citizenship on freedpeople in perpetuity.[188] Proponents of their inclusion have argued, in turn, that the phrasing explicitly gives freedpeople full and equal rights and that the coercive nature of the treaty negotiations does not affect the justice of awarding freedpeople citizenship: the Cherokee Nation can choose to accept the validity of Article 9 because they are in agreement with its principle.[189]

As a result of the new attention being paid to how Native Nations both participated in and were affected by the American Civil War, scholars have reassessed the Reconstruction Treaties and the delegates which made them. In 1925, Abel attributed the "confiscation of

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[186] Yarbrough, *Race and the Cherokee Nation*, 76.
[187] C. W. Confer, *The Cherokee Nation in the Civil War* (Norman: University of Oklahoma Press, 2007), 149 & 156.
[188] S. Russell, 'Tsunami Warning From The Cherokee Nation,' *Indian Country Today Media Network*, 14 September 2011, accessed 28/4/14. http://indiancountrytodaymedianetwork.com/2011/09/14/tsunami-warning-cherokee-nation. Twentieth and twenty-first century debates over the status of Cherokee freedpeople will be considered in the Epilogue.
[189] Ibid.

rights," made binding in the treaty, to the "ignorance" of Cherokee delegates and "their refusal to profit by experience."[190] Abel's unforgiving depiction of the Cherokee delegates as unintelligent and stubborn firmly locates her work within early twentieth century scholarship. In the twenty-first century, scholars of Native history do not share Abel's racist assumptions but instead recognise both the precarious position of the Cherokee Nation (and the other nations located in the Indian Territory) at this historical moment and the successes of the Cherokee delegates. The Cherokee Nation was relatively robust before the Civil War, having largely recovered both socially and economically from forced removal to the Indian Territory. However, the Civil War had reduced it to a state of disarray akin to that seen during the first years in their new home. During their negotiations, federal officials questioned the loyalty of both the Cherokee leadership and its citizenry, using Cherokee actions during the Civil War to compound their relatively weak position. Federal officials used the brief alliance between the Cherokee Nation and the Confederacy as a justification to overturn previous treaties that could have been invoked to protect Cherokee interests.[191] Deliberately overemphasising the Cherokee relationship with the Confederacy ignored the loyalty and military service of thousands of Cherokees to the Union and afforded the federal officials huge leverage with which to pressure the Cherokee delegates. The lingering divisions within the Cherokee Nation made presenting a united front against these tactics impossible. Scholars such as William McLoughlin asserted that early on in the discussions the "negotiating strength lay with [Commissioner Dennis N.] Cooley" (who led the United States delegates). [192] McLoughlin depicts Cooley as an opportunist who capitalised on the rivalry between the two Cherokee factions to "squeeze[d] out of them as many concessions as he could."[193] Clarissa Confer agrees with McLoughlin and argues that the post-war treaty

[190] Abel, *American Indian and the End of the Confederacy*, 363.
[191] Confer, *Cherokee Nation in the Civil War*, 149. Abel*, American Indian and the Confederacy*, 346 & 351.
[192] McLoughlin, *After the Trail of Tears*, 224.
[193] Ibid.

negotiations left "an embarrassing record of greed, bullying and a lack of understanding of Indian culture on the part of the United States commissioners."[194] Despite these significant obstacles, the Cherokee delegates won certain successes: Principal Chief John Ross, described as a "formidable adversary" by Confer, fought to ensure Cherokee unity and protect Cherokee interests.[195] Mary Jane Warde argues that Ross's negotiation tactics "saved millions of acres that would have been sold to non-Cherokees."[196] These scholarly findings stand in stark contrast to Abel's assessment of the Cherokee delegates which belittled their attempts to resist the United States and present a much more complex picture of the Cherokee Nation in the period of emancipation.

The questions surrounding the passage of the Reconstruction Treaty are emblematic of freedpeople's longer struggle for inclusion in the Cherokee Nation. Article 9 can arguably be considered the first intervention by the federal government on behalf of freedpeople and their rights. The treaty ensured that Cherokee freedpeople would never be returned to slavery and that they would be entitled to 'all the rights of native Cherokees.' The motivations of the federal government in this instance remain questionable however: was their protection of freedpeople due to a sense of human justice, a means of diluting Cherokee resources amongst a greater number of people, or a combination of both these concerns? Whatever the motivation, the negotiations were carried out in an unscrupulous manner and provisions contained within the resulting treaty struck a serious blow against the sovereignty and autonomy of the Cherokee Nation. Clarissa Confer describes the reconstruction treaties forged with the nations of the Indian Territory as "driving a deep wedge into the armor of Native sovereignty," suggesting that they worked to usher in the dissolution of these nations and Oklahoma statehood within four decades.[197] Federal

[194] Confer, *Cherokee Nation in the Civil War*, 148.
[195] Ibid, 154.
[196] Warde, *When the Wolf Came*, 277.
[197] Confer, *Cherokee Nation in the Civil War*, 156.

support for the rights of freedpeople must be considered in this context to fully appreciate Cherokee resistance to awarding them equal status within their citizenry.

The 1866 Reconstruction Treaty was signed on the 19th of July 1866 and ratified by the United States Senate on the 27th of the same month. In October 1866, Principal Chief William P. Ross, John Ross's successor, began amending the Cherokee Constitution to reflect the provisions of the treaty and, in doing so, enshrined the citizenship rights of former Cherokee slaves in to Cherokee law. Almost immediately, the citizenship status of freedpeople was complicated when January 17th 1867 was delineated as the deadline by which freedpeople had to return to the Cherokee Nation in order to be entitled to citizenship. This provision, the first limit placed on freedpeople who sought to claim Cherokee citizenship, was enforced rigorously on the part of Cherokee officials and widely debated in the decades following its implementation. The tight timescale imposed by the deadline created an odd situation. In theory, there was a relatively small window in which freedpeople could enter the Cherokee Nation and claim citizenship. As we have seen, according to the November 1863 Act that defined their status, freedpeople who remained in the Nation after their emancipation were 'viewed and treated as other persons... possessing no rights to citizenship.' Although the chaos of war made enforcing this act impossible (as non-citizens, former slaves would only be permitted within the bounds of the Nation if they held a permit), many freedpeople remained in the Nation prior to the ratification of the Reconstruction Treaty. Regardless of whether they had remained within the borders of the Cherokee Nation or had removed (and the nature of their exit from the Nation) during the war, freedpeople had to have returned to the Nation before January 1867 to qualify for citizenship. This arbitrary date became hugely important in the decades following the Civil War as whether freedpeople met this stipulation became the crux of many citizenship cases. Freedpeople denied citizenship due to having returned after the deadline became known as

'too-lates' and their status in the Nation, specifically whether they should be adopted as citizens or expelled as intruders, became a point of significant contention.[198]

"One who enters where he has no right or is not welcome": Claiming Citizenship in the Face of Forced Removal from the Nation[199]

Initially, having their claim to citizenship recognised by the Cherokee authorities was less important to freedpeople than the ability to return to their home and start building a life for themselves and their families outside the confines of slavery.[200] Quickly, however, questions surrounding the citizenship status of individuals residing in the Cherokee Nation became urgent as federal authorities began removing non-citizens or intruders as per the provisions of the Reconstruction Treaty. Although questions surrounding citizenship were theoretically domestic in nature, United States involvement in enforcing the distinction between citizen and non-citizen complicated the issue. As in previous treaties, the Reconstruction Treaty affirmed the United States' obligation to protect Cherokee borders by forcibly removing all non-citizens:

> And all persons not in the military service of the United States, not citizens of the Cherokee Nation, are to be prohibited from coming into the Cherokee Nation, or remaining in the same, except as herein provided; and it is the duty of the United States Indian agent for the Cherokee Nation to have such persons, not lawfully residing or sojourning therein, removed from the nation, as they

[198] Naylor, *African Cherokees in Indian Territory*, 162.
[199] 'Reply of Chief Thompson to J. Q. Smith, Commissioner of Indian Affairs, in Regard to Intruders' written January 1877, published in *Cherokee Advocate* September 12, 1877,' Oochalata (Charles Thompson) Collection, Box 020, Folder 21, 2. Western History Collections, University of Oklahoma Libraries, Norman, Oklahoma.
[200] Numerous ex-slave narratives describe 'settling down' after the Civil War, with many choosing to settle near other freedpeople. See 'Phyllis Petite' (pages 316-320) and 'Sarah Wilson' (pages 492-499) in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds.

> now are, or hereafter may be, required by the Indian Intercourse laws of the United States.[201]

No formal procedures for establishing whether an individual freedperson was entitled to citizenship had been outlined in either the Reconstruction Treaty or the constitutional amendments that made its provisions law. When the status of a freedperson came under question, then, there were no clear avenues through which their claim to citizenship could be assessed and either affirmed or rejected. Freedwoman Chaney McNair described having to "prove up; tell where you come from, who you belong to, you know, so we get our share of land."[202] Article 9 of the treaty established two key criteria through which freedpeople were entitled to citizenship: having been enslaved within the boundaries of the Cherokee Nation by a Cherokee citizen (which prevented freedpeople from the United States from attempting to gain citizenship) and having returned by January 1867. Freedpeople had to meet both these criteria to avoid being classed as a non-citizen but proving they had done so could be difficult. Freedpeople therefore feared being misclassified as intruders and being expelled from the Nation, causing them to express "alarm," "uneasiness," and "great distress."[203]

In the face of huge migration following the Civil War, Cherokee anxieties over noncitizens trespassing within the Nation and illegally using its resources reached new heights. This placed additional pressure on freedpeople to prove the legitimacy of their claim to citizenship. Many United States citizens did not respect the various laws and treaties that forbade them from entering the Indian Territory without express permission from the nations located within its boundary. The Cherokee Nation directly bordered the state of

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[201] 'Treaty with the Cherokee Nation,' in Naylor, *African Cherokees in Indian Territory,* 235.
[202] 'C. McNair' in *Black Indian Slave Narratives*, P. Minges, ed., 45 (Winston-Salem, North Carolina: John F. Blair, Publisher, 2004).
[203]'William S. Madden et al. to John B. Jones, February 1872,' National Archives Microfilm Publication M234, roll 105, frame 292.

Kansas and American citizens unashamedly entered the Nation to either remove timber or squat on land in anticipation of it being opened to white settlement.[204] These non-citizens were not legally entitled to the resources of the Nation, whether using its land to farm or taking timber for sale in the United States, and essentially committed theft in doing so. William McLoughlin suggested that the failure of the United States Army to remove such "dangerous" intruders worked to the advantage of the United States: "it seemed that intruders were tolerated by the bureau as a means of destabilizing the Cherokee Nation and thus justifying detribalization."[205]

The actions of settlers, both illegal in the form of intrusion, and legal in the form of westward migration, facilitated rapid acquisition of Native lands. According to historian Stuart Banner, Native land across the West was acquired by the federal government at "unprecedented speeds" between the 1850s and 1880s as the federal government followed a reservation policy that necessitated land cessions in order to secure a designated area of land for protected use.[206] These land cessions were often coerced through violence and fuelled by the actions of settlers. For example, the discovery of gold in the Black Hills and the subsequent rush of Euro-Americans prompted the Great Sioux War of 1875-6. The Black Hills were a sacred site located within the Sioux reservation and when they refused to cede it to the federal government the U.S Army attacked, eventually starving the Sioux as a means of forcing them to give up their land.[207] Eric Foner has argued that such federal Indian policies made possible the "economic exploitation of the west" during Reconstruction, which saw the destruction of buffalo, huge expansion of the railroad and an explosion of capitalism and industry.[208]

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[204] McLoughlin, *After the Trail of Tears*, 284.
[205] Ibid, 285.
[206] S. Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, MA and London: The Belknap Press of Harvard University Press, 2005), 235.
[207] Ibid, 239.
[208] Foner, *Reconstruction*, 463.

In Indian Territory, whether the failure to remove intruders was intentional or not, allowing these noncitizens to remain in the Nation placed additional pressure on Cherokee resources and created a number of jurisdictional questions for the Cherokee Nation and the United States. Most significant, in relation to the status of freedpeople at this time, was whether the Cherokee Nation or the United States held the final authority over who was and who was not a Cherokee citizen. The Cherokee Nation consistently claimed this authority for itself but the United States increasingly questioned their right and ability to do so through the 1870s. Although United States officials recognised that white intruders had entered the Cherokee Nation illegally, they were sympathetic to former Cherokee slaves and expressed concern over their removal. Freedpeople who had been denied citizenship by Cherokee officials therefore often found federal officials more receptive. The uncertainty surrounding the status of freedpeople created a space for federal officials to increase their influence over questions of Cherokee citizenship and, although they had initially respected the decisions of Cherokee officials, by 1876 they were openly disregarding their authority.

With no clear processes by which citizenship was being regulated, knowing which freedpeople were and which were not entitled to citizenship became increasingly difficult to ascertain. Federal officials began to question Cherokee requests to remove intruders as early as November 1867, sending lists of non-citizens they deemed entitled to Cherokee citizenship.[209] This, combined with pressure from federal officials to implement clear procedures, forced the Cherokee Nation to empower its Supreme Court to examine citizenship cases in 1869. The Supreme Court was supposed to settle disputes created during census-taking for the 1870 census, since the census-takers were given the authority to decide whether a freedperson was entitled to citizenship and had the power to decide adversely

[209] 'E. A. Hayt to W. P. Ross & H. L. Landrum, November 7, 1867,' Cherokee Nation Records (CHN) Microfilm 58, frame 261. Cherokee Nation Records, Indian Archives Collection. Archives and Manuscript Division, Oklahoma Historical Society.

based on their own judgement.[210] Prior to this moment, whether freedpeople could stay within a community depended on common consent: an informal process by which freedpeople were either accepted or rejected by other residents or citizens rather than Cherokee officials or lawmakers.[211] For example, freedman Cornelius Neely Nave described moving in to a log house with his family in a predominantly Cherokee neighbourhood following the war, "the real colored settlement was four mile from us."[212] Nave claims he was never afraid of his Cherokee neighbours because his father claimed to be the son of his master and he lived comfortably in that home for many years. Since a community could choose to accept a former slave who had been known to them regardless of whether they met the criteria adhered to by Cherokee officials (such as the January 1867 deadline), individuals who had lived undisturbed following the Civil War often found their right to do so under question from officials in later years. Petitioners writing to President Ulysses S. Grant in 1872, for example, described finding what they "fondly hoped was our lawful home" under threat, having spent years living and farming in the Cherokee Nation following the Civil War.[213] The absence of a governing body until 1869 amounted to a complete lack of regulation for the first four years following emancipation and historian Daniel Littlefield asserts that later difficulties in making accurate assessments of citizenship claims were largely due to the Nation's failure to quickly react to this problem.[214]

The challenges of determining citizenship were evident immediately. Questions such as how many witnesses had to affirm a freedperson had returned to the Nation by January 1867 before that criterion was deemed met were apparent but unanswered.

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[210] McLoughlin, *After the Trail of Tears*, 282.
[211] D. Littlefield, Jr., *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport and London: Greenwood Press, 1978) 40.
[212] 'Cornelius Neely Nave' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker eds., 301 (Norman: University of Oklahoma Press, 1996).
[213] '[memorialists] to President Ulysses S. Grant and the United States Congress, February 1872,' National Archives Microfilm Publication M234, roll 105, frame 289.
[214] Littlefield, *Cherokee Freedmen*, 46.

Similarly, if a freedperson's former owners were deceased or unavailable, the possibility of a freedperson proving they had been enslaved might become difficult. The Supreme Court avoided these nuances by denying citizenship to all claimants except freedpeople who claimed citizenship through marriage to a Cherokee.[215] This obviously excluded freedpeople who were entitled to citizenship under Article 9 of the Reconstruction Treaty. Assessment of the July 1871 session is conflicting (Littlefield claims 5 families were admitted and 131 were rejected, whereas Morris Wardell claims that 77 individuals were admitted and 131 rejected) but it is readily apparent that the Supreme Court was not disposed to be lenient towards freedpeople.[216] The Supreme Court had a record of acting harshly: of the 177 cases assessed by the Supreme Court in the winter of 1869, only 47 were approved.[217] With no clear guidelines about how cases should be assessed, decisions were made at the discretion of the Supreme Court Justices. The bias of the Supreme Court operated in direct conflict with the Cherokee Constitution but reflected the Cherokee reluctance to incorporate freedpeople. Criticism surrounding how the Supreme Court and its successors handled its cases led to a series of almost continual reforms over the next decade, with the National Council taking responsibility for citizenship cases in 1871, the creation of a special commission in 1877 and the reform of this commission in 1879.

The National Council and first Citizenship Commission were both characterised by unfair decision-making and practices. In an 1883 report on disputed citizenship throughout the Indian Territory, U.S. Indian Inspector Henry Ward and Special Indian Agent Cyrus Bede detailed concerns that the successor to the Supreme Court, the Cherokee National Council, "in some cases acted arbitrarily and unjustly."[218] There was a clear pattern of freedpeople

[215] McLoughlin, *After the Trail of Tears*, 282.
[216] Ibid, 422 (footnote 61).
[217] McLoughlin, *After the Trail of Tears*, 253. McLoughlin clarifies that each case referred to a family rather than an individual, so the number of freedpeople affected by these decisions were significantly higher than the figures given.
[218] 'H. Ward & C. Bede to H. M. Teller, June 2 1883' CNP Microfilm Roll 3, Folder 240, page 4.

who claimed to be entitled to citizenship being rejected by the Supreme Court and the National Council, suggesting a bias against awarding citizenship to freedpeople. Ward and Bede also questioned the actions of the Cherokee National Council in 1873, in which they alleged some former successful applicants had committed fraud, although "no special act of fraud appears to have been charged," and forced them to disprove the accusation.[219] If the claimant could not prove that the charges against them were false their citizenship was rescinded, they were classified as intruders, and they became subject to removal. This unfair insistence on proof placed a considerable burden on freedpeople who already struggled to meet the demands for evidence. The 1877 Citizenship Commission of three Cherokee officials, which replaced the National Council, echoed this practice by summoning persons classified as 'doubtful' by census-takers to prove why they should not be declared an intruder. Individuals that did not attend their summons were declared non-citizens by default. According to Ward and Bede, many such individuals had previously been granted citizenship. Of the 487 freedpeople cases assessed by the Commission, only 93 were decided favourably (181 freedpeople were declared intruders by default).[220] In response to "severe criticism", in 1879 the Commission was amended to only consider applications (ie. no longer permitted to issue summons) and was subsequently widely understood to be "generally fair and just."[221]

Despite the improvements the amended Commission represented, in terms of fairness and process, the Commissioners still adhered closely to the restrictions of Article 9. Individual freedpeople sought relief from local federal officials after being classified as non-citizens by virtue of either not having returned to the Cherokee Nation by January 1867 or being unable to prove that they had done so. A letter sent from Agent to the Cherokees,

[219] Ibid.
[220] Ibid, 5-6.
[221] Ibid, 4, 7.

John N. Craig, to the Commissioner of Indian Affairs in 1870, reveals his uncertainty as to how he should respond to these freedpeople. Craig described freedpeople approaching him after being denied citizenship by Cherokee census takers and then requesting legal advice as to whether they were entitled to citizenship and how they could protect themselves from removal. This placed Craig in a difficult position, since the January 1867 deadline had been agreed between the United States and the Cherokee Nation. Craig interpreted the Reconstruction Treaty as being intended to award citizenship to *all* former Cherokee slaves and argued that the deadline operated in direct conflict with this aim, since "very few were likely to be made aware of what had been provided for their benefit."[222] By questioning whether he was obligated to remove freedpeople he suspected should be granted citizenship, Craig challenged whether the Nation was the sole authority on who was and who was not Cherokee. The Commissioner upheld the treaty and its implementation ("This provision is very explicit and unmistakeable in its language") but he conceded that "while it may work serious hardship in many cases, this Dept is powerless to afford any relief."[223] The Commissioner clearly considered his department to be legally bound to act on the instruction of Cherokee officials regarding decisions of citizenship. Although Craig's unwillingness to remove freedpeople was curtailed by the Commissioner in this instance, over the next decades their departmental successors would increasingly dispute decisions made by Cherokee officials.

[222] 'John N. Craig to Commissioner of Indian Affairs, July 27, 1870,' National Archives Microfilm Publication M234, roll 103, frame 286.
[223] 'Acting Commissioner of Indian Affairs to John N. Craig, September 8, 1870,' *Letters Sent from the Office of Indian Affairs, 1824-1881* (National Archives Microfilm Publication M21, roll 98, frame 55). Record Group 75; National Archives Building, Washington, DC.

Collective Action: Freedpeople Organise to Secure their Rights

By 1872, just six years after they had been granted citizenship, some freedpeople were frustrated with what they saw as the failures of the Cherokee government to adequately respond to their entreaties regarding their citizenship status. In response to a notice posted by John B. Jones, U.S. Indian Agent for the Cherokees, on February 2nd 1872, giving non-citizens thirty days to leave the Nation, a group of forty petitioners circumvented Cherokee officials and sent a memorial directly to Jones. They asked Jones to forward their memorial to the United States Congress, President, and General O. O. Howard of the Freedmen's Bureau.[224] This memorial represents a pivotal moment in how freedpeople sought to secure their rights to citizenship: where they had previously contacted federal officials individually, and in relation to private concerns, this was the first instance of collective action aimed at the highest powers within the United States federal government. It was also the first of numerous similar petitions that requested relief from what freedpeople saw as overzealous enforcement of the January 1867 deadline.[225] The stated goal of this five-page memorial was to persuade these United States officials to intervene on behalf of Cherokee freedpeople, specifically those who had been denied citizenship by the Cherokee authorities. Whilst the President and Congress are perhaps to be expected, the inclusion of General Howard indicates that the petitioners had been monitoring the Freedmen's Bureau and its attempts to secure various rights for freedpeople in the United States. Howard had been Commissioner of the Bureau from its creation and championed equal citizenship for freedpeople.[226] The petitioners clearly recognised him as an ally of their counterparts in the United States who may be sympathetic to their own cause. In the petitioners' letter,

[224]'William S. Madden et al. to John B. Jones, February 1872,' National Archives Microfilm Publication M234, roll 105, frames 292-294.
[225] Petitions were also sent to the Cherokee Nation government bodies at this time requesting that they removed the January 1867 deadline. '[Petitioners] to the Cherokee Senate and National Council, October 13st 1874,' CHN Microfilm 81, frames 260-261.
[226] Foner, *Reconstruction*, 148. Howard served as Commissioner until 1874.

addressed to Jones, the author stressed the urgency of their situation and the fear that the petitioners will be removed from the Cherokee Nation before the legitimacy of their claim to citizenship could be fairly reassessed: "Your Notice... has caused us much alarm, and uneasiness."[227] In addition, they emphasised their vulnerability and claimed that military removal would "cause great distress and suffering to [their] families, and great loss to [themselves]."[228] By using emotive language to elicit sympathy from Jones, the petitioners hoped to enlist him as an ally to their cause which would give them access to the key powers in Washington, DC, of which he was a local representative.

The five page memorial the forty petitioners signed and sent to Jones is a tightly structured letter that methodically outlines "facts" that the petitioners hoped would persuade United States officials to defend the rights of freedpeople being denied Cherokee citizenship.[229] By quoting Article 9 of the 1866 Reconstruction Treaty in its entirety, the petitioners revealed that they were aware of the legal origins of the citizenship rights awarded to Cherokee freedpeople and grounded their argument in legal documents. The body of the memorial then went on to detail four means by which the petitioners had been unreasonably denied the rights of citizenship guaranteed by the treaty: strict enforcement of the January 1867 deadline when many freedpeople were either unable to return to the Nation within the timeframe or were unaware of the Reconstruction Treaty and its provisions; not being able to provide the evidence demanded by Cherokee officials to prove that they were enslaved within the Cherokee Nation at the beginning of the Civil War; men who married Cherokee freedwomen being denied citizenship through intermarriage/adoption; and the political power of former slaveowners who resisted the inclusion of freedpeople and used their influence to overpower the majority of the Cherokee

[227] 'William S. Madden et al. to John B. Jones, February 1872,' 292.
[228] Ibid, 292.
[229] Ibid, 292.

population in this respect. When concluding the discussions of each of these issues, the petitioners repeat the phrase "… we are to be driven out of the Nation, as intruders." [230] This refrain worked to emphasise the unjust nature of their position and the outcome if the United States accepted their classification as intruders.

The largest portion of the memorial asserted that the January 1867 deadline was unjust and illegitimate. The deadline is awarded considerable prominence in the memorial, exposing it as the most substantial obstacle faced by freedpeople who hoped to claim citizenship. First, the memorialists insisted that they were not made aware of the deadline and were unable to meet it due to circumstances beyond their control: "Some of us had fled North to get away from slavers, or to take our families away from the horrors and sufferings of the War, while we ourselves enlisted in the Union army."[231] As discussed previously, freedpeople may have missed the 1867 deadline for a variety of reasons including long distances or being unaware of the Reconstruction Treaty and its provisions. By emphasising how little freedom freedpeople had over their movements (whether due to their fear of slavers in particular or the violence of war more generally), the petitioners clearly hoped to illustrate that the six-month deadline was almost impossible to meet and therefore should be reconsidered as a means of assessing whether an individual was entitled to citizenship. The petitioners compounded this argument by reminding the United States officials of their loyalty to the Union during the war and casting themselves as being victim to the acts of Confederates or Confederate sympathisers. This served to encourage sympathy and leniency from the intended readers of the memorial. First, by referring to their service in the Union Army the petitioners implied a reciprocal relationship between themselves and the United States. Second, the petitioners describe a violent clash with “rebel desperadoes” in

[230] ‘[memorialists] to President Ulysses S. Grant and the United States Congress, February 1872,’ National Archives Microfilm Publication M234, roll 105, frames 288-290. Emphasis in original.
[231] Ibid, 287.

which freedpeople were killed and wounded as they attempted to return to the Cherokee Nation.[232] As a result of this "massacre," the petitioners claim that they failed to return by the January 1867 deadline "for fear of being killed, and robbed by the returning southern men."[233] By attributing their failure to meet the January 1867 deadline to the actions of Confederates, the petitioners deflect the responsibility from themselves and in doing so again attempt to show that strict enforcement of the deadline would be unreasonable.

The petitioners did not consider the January 1867 deadline to be the sole obstacle to their inclusion within the Cherokee Nation. When outlining their other complaints, the petitioners charged that they had been subject to specific and targeted obstacles to attaining citizenship. First, they claimed that freedpeople who did meet the qualifications for citizenship had been denied it on the basis that "they had not been able to prove the fact to the satisfaction of the Supreme Court of the Cherokee Nation."[234] The frustration of the petitioners implied that this was due to a bias on the part of the Citizenship Commissioners, who demanded considerable evidence to attain citizenship. As seen above, the Supreme Court did fail to fairly assess claimants. Second, the petitioners disputed that men who married Cherokee freedwomen could be denied citizenship through intermarriage. They asserted that the laws of the Nation should be applied equally, "without regard to complexion," and argued that 'all the rights of native Cherokees' include the right to confer citizenship on a spouse.[235] By claiming that "a different construction is put on the marriage law," the petitioners suggest that it has been distorted at their particular expense due to the colour of their skin.[236] The petitioners therefore charged the Cherokee Nation with racial discrimination. Third, the petitioners argued that the former slaveholding elite wielded

[232] Ibid, 288.
[233] Ibid.
[234] Ibid.
[235] '[memorialists] to President Ulysses S. Grant and the United States Congress, February 1872,' 288.
[236] Ibid, 289.

disproportionate political power to prevent freedpeople being treated fairly by the Cherokee National Council, leading to their petitions to that body being dismissed. The petitioners reminded their readers that these "enemies" of freedpeople in the Cherokee Nation were "also generally the enemies of the United States & who fought to break down the United States."[237] This served to simultaneously discredit members of the National Council that had worked against the citizenship of freedpeople and encourage federal action against them.

Littered throughout the memorial are vivid expressions of Cherokee nationalism that illustrated the intense attachment the petitioners felt for the Cherokee Nation and their community. This, reinforced by the repetition of 'home' throughout the piece, attempted to legitimise the petitioners' claims to citizenship. These moments are juxtaposed with descriptions of forced removal which seem callous and cruel in comparison. The following passage, which opens the paragraph in which the petitioners accuse former Confederate Cherokees of conspiring to turn public opinion and national policy against freedpeople, is a particularly poignant example:

> We have spent years in hard work, and have built houses, and opened farms, and have made property at what we fondly hoped was our lawful home as well as the home of our choice. Here in the Cherokee Nation, we were born. Here in times past we toiled for our old masters without pay. Here live our kindred, those we love. We have no other home than this. Yet we are to be driven out as intruders, to leave our property, the homes, and comforts for which we worked so hard, so long, and under many difficulties. We are to be driven out, to leave

[237] Ibid, 289.

> our kindred, and all that we hold dear, and this, at the instigation of those we believe are our enemies...[238]

This passage emphasised that the petitioners were connected to the Cherokee Nation in a number of ways: by place of birth; through personal relationships; and through labour on its land both before and after emancipation. By crafting multiple connections to the Cherokee Nation, the petitioners implied that although they may not have Cherokee ancestry, they *were* Cherokee and should be entitled to citizenship. This rejects the notion that only those of Cherokee ancestry or 'blood' can claim a Cherokee identity and, by extension, Cherokee citizenship. The petition closes with an emotive appeal for support ("In this our last resort we cry to <u>you</u> for help!") that again uses the image of freedpeople being driven from their homes to reiterate their plight.[239]

The petition proved successful in eliciting sympathy from Agent John B. Jones and the Commissioner of Indian Affairs, prompting their refusal to remove freedpeople who did not hold Cherokee citizenship. Although this is a moment of inaction rather than action, the Commissioner's decision to postpone the removal of noncitizens until their position could be renegotiated with the Cherokees should be understood as an escalation in the jurisdictional dispute over Cherokee citizenship. In Jones' letter to the Commissioner of Indian Affairs, in which he enclosed the petition, he requested clarification of the subject of freedpeople being denied citizenship and whether he should act on instructions to remove them. As U.S Indian Agent to the Cherokees, and therefore having a closer working relationship with its people than the Commissioner, Jones concluded that the petition provides "a very correct view of the matter."[240] He did, however, question the petitioners' claim that opposition to their adoption as citizens is limited to the former slaveholding minority: "if that would be the case

[238] Ibid.
[239] Ibid, 291. Emphasis in original.
[240] 'John B. Jones to F. A. Walker, Commissioner of Indian Affairs, February 21, 1872,' National Archives Microfilm Publication M234, roll 105, frame 284.

they [the former slaveholding elite] would be in a powerless minority. Many of the full blood Cherokees share their sentiments."[241] Jones alluded to ongoing debate within the Nation "as to what course justice, humanity & expediency require the Cherokees to take with regard to these [freed]people."[242] Like his predecessor, John N. Craig, Jones advocated the incorporation of all freedpeople and argues on their behalf: "They [Cherokees] do not take in to account the fact that these colored people & their ancestors have labored for Cherokees unpaid, for many years, & that the fruits of such unpaid toil have afforded the means of defraying the expense of educating many of the most highly cultivated Cherokees."[243] In his response to Jones's letter and the petition, the Commissioner concluded that his office "does not deem it expedient that its provisions [removal] should be pressed upon the colored citizens referred to at present, as it is hoped some arrangement may be made by which they will be allowed to remain in the Indian Territory."[244] This represents a significant departure from the orders his office had issued in 1870: whereas the provisions of the 1866 treaty were affirmed in the 1870 letter to Craig (albeit reluctantly), here it is evident that federal officials were attempting to insert themselves in to the decision making process.

Throughout the 1870s, freedpeople refused to accept their classification as intruders by Cherokee officials and continued to send letters and petitions seeking "advise [*sic*] and protection" and "fair play" from the Cherokee Indian Agency in relation to their citizenship status.[245] In response, federal officials took an increasingly active position against the removal of freedpeople declared non-citizens by the Cherokee National Council. In an 1873

[241] Ibid, 285.
[242] Ibid, 284.
[243] Ibid, 284.
[244] 'F. A. Walker to John B. Jones, March 9, 1872,' National Archives Microfilm Publication M21 roll 106, frame 206.
[245] 'Woodson Lowe Parker to Secretary of the Interior, February 5, 1873,' National Archives Microfilm Publication M234, roll 106, frames 703-706. 'Nelson Webber et al to the Cherokee Indian Agency, February 10, 1873' National Archives Microfilm Publication M234, roll 106, frame 974. Also see 'Lewis Daniels et al to the Senate and Council of the Cherokee Nation, October 31, 1874, CHN Microfilm 81, frames 85-86.

letter to the Secretary of the Interior, freedman Woodson Parker Lowe claimed that the attention of the Secretary of the Interior to the issue of unrecognised Cherokee freedpeople would "greatly relieve our distressed people as well myself."[246] Lowe described a functioning community of freedpeople who had established homes, livelihood and a local school, the loss of which "would crush us, almost if not quite hopelessly."[247] Although Lowe's letter was primarily focused on the concerns of his immediate community, he positioned himself within a broader struggle for inclusion being waged by other freedpeople in the Nation.

Freedpeople continued to come forward with citizenship claims until the end of the nineteenth century, having previously escaped the attention of Cherokee officials. Such freedpeople often did so when it became apparent that they could not access the rights available to recognised citizens. One key instance which prompted many freedpeople to place claims with the National Council was their exclusion from the 1875 'bread money' payouts, paid in response to the 1873-1874 famine.[248] Without fail, freedpeople making these claims referenced their exclusion from these payouts as one of the rights of which they had been "unjustly and unlawfully debarred."[249] Andrew Daugherty's deposition is fairly typical of those recorded by the Citizenship Commission in 1875. Having previously been denied a hearing by the Supreme Court and the Cherokee Nation, Daugherty applied to the commission on behalf of himself, his wife and his daughter after travelling to Tahlequah to collect their payments and being turned away.[250] Daugherty and others like him requested that their claims to citizenship be recognised and that action be taken to secure the "equal

[246] 'Woodson Lowe Parker to Secretary of the Interior,' 706.
[247] Ibid, 705.
[248] McLoughlin, *After the Trail of Tears*, 313.
[249] 'Deposition of Andrew Daugherty, recorded October 12, 1875,' CHN Microfilm 58, frame 344.
[250] Ibid, frames 343-344.

rights, privileges and immunities enjoyed by other citizens of the Cherokee Nation and the proportional amount due him and his family be paid him and his family that was withheld."[251]

Continued appeals from freedpeople such as Woodson Parker Lowe and Andrew Daugherty prompted George Ingalls, who replaced John B. Jones as Agent to the Cherokees in 1874, to actively work to protect freedpeople from expulsion throughout his tenure. Horrified by his discovery of "evidence of marked partiality" and deliberate legal manoeuvring against freedpeople by the National Council, Ingalls quickly advocated federal intervention with the declaration that this "matter of citizenship calls for Congressional action!"[252] Upon his arrival in 1874, Ingalls requested that he would not be personally required to expel such intruders. Then, with the approval of the Commissioner of Indian Affairs, Ingalls began investigating non-citizens who claimed to have been misclassified and giving certificates of protection to those he deemed held a legitimate right to citizenship.[253] Freedpeople who cooperated with federal officials and convinced them of their right to stay within the Nation therefore gained a sort of pseudo-citizenship in the sense that they were allowed to remain within the Nation. However, this did not translate to legally recognised Cherokee citizenship and the Cherokee leadership were infuriated that federal officials would override decisions made within the Nation.

Their insistence on staying in the Cherokee Nation and persistence in seeking recognition as citizens kept the status of former slaves at the attention of federal officials. Cherokee citizens and officials remained equally determined to have non-citizens removed from the Nation, however, and wrote petitions of their own requesting that the United States

[251] 'Deposition of Joseph Ross, recorded June 25, 1875,' CHN Microfilm 58, 821. I have been unable to ascertain the outcome of Daugherty's appeal.
[252] 'G. W. Ingalls to J. Q. Smith, August 25, 1875,' 5, Folder 1877-I348/I1131; Box No. P1-163; Letters Received Relating to Cherokee Citizenship, 1875-89; Land Division; Record Group 75; National Archives Building, Washington, DC.
[253] McLoughlin, *After the Trail of Tears*, 292.

met its treaty obligations.[254] The dispute over intruders claiming citizenship through Article 9 of the Reconstruction Treaty escalated as the Cherokee Nation and the United States continued to disagree over who held ultimate authority: the Cherokee Nation or the United States, whose military was obligated to remove them. An exchange between the Cherokee Principal Chief Oochalata (also known as Charles Thompson) and John Q. Smith, the Commissioner of Indian Affairs, exemplifies the stalemate in which the Nation and the United States found themselves over this issue. In an 1876 letter to Oochalata, Commissioner Smith refused to remove any freedpeople classed as non-citizens until the Nation implemented uniform and defined procedures by which citizenship could be established. At this point, the Cherokee National Council was empowered to assess claims to citizenship, having replaced the Supreme Court. Commissioner Smith questioned the competency of Cherokee officials and lawmakers and suggested that "the failure of the National Council to protect the rights of individuals by a just and equitable system of laws, impartially enforced," could be considered "evidence of the inability to properly govern the people within its national limits."[255] Smith went on to insist that the Cherokee Nation instated new processes for determining citizenship, subject to the approval of the Secretary of the Interior, which represented an effort to influence internal processes within the Cherokee Nation. The necessity of obtaining the approval of the Secretary of the Interior suggested that the federal government held final authority over questions of citizenship. Recognising this as an attack on the sovereignty of the Cherokee Nation, Oochalata authored a 125 page reply, in which he rejected the intervention of United States officials, asserted the rights of the Cherokee Nation to self-government and clarified the treaty obligations of the United States. A portion of Oochalata's reply was published in the *Cherokee Advocate* and therefore made visible to the Cherokee population.

[254] 'J. Q. Smith to C. Thompson, December 8, 1876', CHN Microfilm 58, frame 450.
[255] Ibid, 457.

In his letter, Oochalata vigorously defended the right of the Cherokee Nation to make their own decisions regarding who was and who was not entitled to Cherokee citizenship, eloquently arguing that the Nation held final authority. First, Oochalata denied the right of the United States to interfere in questions of Cherokee citizenship and explicitly limited his arguments to the topic of intruders in the Cherokee Nation: which he claimed was the real concern, not the citizenship status of said intruders or the justice of the January 1867 deadline by which freedpeople could be excluded. Oochalata described the growing number of intruders in the Cherokee Nation as "a source of annoyance" and "an alarming intolerable evil," asserting that the United States failure to remove them amounts to "virtually suspending the operation of existing treaties."[256] Through this letter, then, Oochalata articulated the anxiety and urgency with which the Cherokee Nation viewed the intruder problem. By simply refusing to engage with Smith over who was entitled to citizenship, Oochalata attempted to keep the topic of intruder removal at the forefront of their interaction and confine debate surrounding who was entitled to citizenship to within the Cherokee Nation. Furthermore, Oochalata dismissively rejected Smith's legal grounds for interfering with how the Cherokees award citizenship on the basis of the Reconstruction Treaty, describing Smith's argument as a "strained construction that will not stand the test of proof."[257] In doing so, Oochalata framed any attempt to encroach on Cherokee jurisdiction as being outside of the law.

Second, Oochalata argued that the Cherokee Nation was the sole authority on deciding who was and who was not entitled to remain within the Cherokee Nation due to its nation status, ultimately claiming it is an essential expression of sovereignty and nationhood. Through charting the use of the term 'intruder' in previous treaties made between the

[256] 'C. Thompson to J. Q. Smith, January 1877,' CNP Microfilm 18, Folder 1527, pages 2,3,4.
[257] 'Reply of Chief Thompson to J. Q. Smith, Commissioner of Indian Affairs, in Regard to Intruders, January 1877' 1. Oochalata Collection, Box 020, Folder 21.

Cherokee Nation and the United States, Oochalata established the long history of the commitment of the United States to removing intruders and the Cherokee right "to be the judges of who were intruders."[258] Oochalata argued that since this "power" had never been expressly denied the Cherokee Nation by treaty, it cannot be claimed by the United States.[259] He also asserted that since the 1866 Reconstruction Treaty was written in the language of the United States it should be interpreted through its own definitions. Using the Webster Dictionary, Oochalata referenced the American definition of an intruder ("one who intrudes, one who thrusts himself in or enters where he has no right or is not welcome").[260] This definition served to buttress Oochalata's argument as it is implicit that the community which is intruded upon gets to determine who is not welcome. Furthermore, Oochalata argued that it was "the natural right of the Cherokee as a separate and distinct people, to judge and determine who are of their own race and nation, and entitled to the right and benefits of membership among them."[261] By claiming that the Cherokee Nation held the right to determine its citizenry through its treaties with the United States as well as its sovereign status, Oochalata clearly hoped to make the matter indisputable.

By the end of 1870s, federal and Cherokee officials alike were frustrated by their inability to resolve the dispute over Cherokee intruders and citizenship. Their anger is evident in their communications. Although federal officials hoped to renegotiate the status of freedpeople, the Cherokee Nation repeatedly argued that it held sole jurisdiction over questions of citizenship. There was notable internal debate over whether all freedpeople should be awarded citizenship, regardless of when they returned to the Nation, but Cherokee officials continued to rigorously enforce the January 1867 deadline and request the removal of individuals who claimed citizenship through Article 9 of the Reconstruction Treaty but had

[258] Ibid, 3-4.
[259] Ibid, 4.
[260] Ibid, 2.
[261] Ibid, 8.

not returned by the deadline.[262] In response, freedpeople continued to seek recognition as citizens and enlist federal officials in their attempts to do so. This enraged Cherokee leaders, further exacerbating existing tensions between the Nation and the freedpeople seeking citizneship:

> ...the fault lay with them [freedpeople], and not with the Cherokee authorities, and their appeal to the US Government must be regarded as disrespectful to our government and an act of contumacy. The effect of this is to place us in a false position before the United States, and bring upon us undeserved censure and consequent disrepute as a nation of which we should clear ourselves.[263]

In the above message to the National Council, Oochalata depicted freedpeople as rebellious liars that refused to accept the authority of the Cherokee Nation. He therefore discredited their attempts to secure citizenship and instead reinforced the legitimacy of the Cherokee Nation and its actions. Similarly outraged, the Commissioner of Indian Affairs railed against the Cherokee Nation's refusal to concede authority to the United States in a letter to the Secretary of the Interior:

> Have the Cherokee National Council such "original right of sovereignty over their country and people" as to vest in them the exclusive jurisdiction of all questions of citizenship in that Nation, without reference to the paramount authority of the United States?
>
> [...]

[262] Principal chiefs proposed scrapping the January 1867 deadline but were overruled by the National Council (Lewis Downing in 1867, 1869, 1871; William Potter Ross in 1873; Oochalata "year after year") McLoughlin, *After the Trail of Tears*, 252, 253, 282, 291.
[263] 'Charles Thompson to Cherokee National Council, November 14, 1877.' CNP Microfilm 3, Folder 213.

> If [freedpeople] are not recognised as citizens by the Cherokee authorities, it must certainly follow that the United States in its sovereign capacity as a party to the treaties and having the Cherokees under its guardianship, has the right, and in justice must intervene and secure a recognition of such rights to each member of the tribe.[264]

Commissioner Hayt's letter completely dismissed Cherokee sovereignty and their right to self-government in the face of 'the paramount authority of the United States.' Within the body of the letter, Hayt described overwhelming evidence that the Cherokee Nation had been denying citizenship hearings, classing legitimate citizens as intruders and rejecting claimants that provide adequate evidence "in direct conflict with the treaties and laws."[265] His insistence that the United States should intervene reads less like an assurance of inclusion for freedpeople than a deliberate extension of federal power in to the Cherokee Nation, however. Although Hayt refers to a 1878 petition from freedpeople requesting his protection, his letter was preoccupied with the 'paramount authority' of the United States and repeatedly ignored the sovereignty of the Cherokee Nation. By returning to notions of 'guardianship' and the Nation being a "domestic, dependent people" placed upon the Cherokee Nation by the United States Supreme Court, Hayt insisted upon Cherokee deference to the power of the United States.[266]

[264] 'E. A. Hayt to Secretary of the Interior, April 4, 1879,' 2, 30. CNP Microfilm 3, Folder 223.
[265] Ibid, 4, 10.
[266] Ibid, 24. McLoughlin, *After the Trail of Tears*, xi.

Irreconcilable: Failed Attempts to Resolve the Jurisdictional Dispute

As has been illustrated above, although federal officials initially respected the right of the Cherokee Nation to assess the citizenship status of freedpeople, by the end of the 1870s the Cherokee Nation and the federal government were at a stalemate regarding who could claim jurisdiction over Cherokee citizenship. The Cherokee Nation refused to concede any authority to the United States and continued to insist that the United States military remove any individuals deemed intruders by Cherokee officials. Federal officials argued the opposite: they would not remove individuals from within the Cherokee Nation who they felt held a valid claim to Cherokee citizenship. Daniel Littlefield has argued that the belligerence of federal officials in refusing to honour treaty obligations and respect the jurisdiction of the Cherokee Nation represented "the most profound inroad on Cherokee autonomy in the post-Civil War period."[267] The high stakes of this dispute, which could have considerable implications for the relationship between the Cherokee Nation and the United States, encouraged the two parties to seek its conclusion.

In an attempt to end this disagreement between the Cherokee Nation and the Department of the Interior, both agreed to resolve the "existing difficulties and embarrassments" over the status of Cherokee freedpeople.[268] After his suggestion of a joint citizenship commission (which would deny the Cherokee Nation final authority) was firmly rejected, however, Carl Schurz, the Secretary of the Interior, sought the advice of the Attorney General of the United States in relation to the dispute.[269] With the permission of Principal Chief Dennis Bushyhead, Schurz reiterated that both parties hoped to reach a final decision. In his letter, within which questions were also asked on behalf of Bushyhead, Schurz

[267] Littlefield, *Cherokee Freedmen*, 103.
[268] 'An Act instructing and empowering the (Cherokee) Delegation to Washington, D.C. appointed under the Act approved November 25th 1879, approved December 6 1879,' National Archives Microfilm Publication M234, roll 873, frame 713.
[269] Littlefield, *Cherokee Freedmen*, 96.

depicted his own officials as diligent and reasonable in opposition to the demands of Cherokee officials who were cast as presumptuous and erroneous:

> The whole question may be said lie in the enquiry whether, in carrying out in good faith the provisions of the executor treaties named, the United States are bound to regard simply the Cherokee law and its construction by the Council of the Nation, and answer the call the officers of that Nation for the removal of all persons whom they may pronounce intruders or on the contrary whether being called on to effect the forcible removal of such alleged intruders, the facts upon which the allegation rests may not with propriety, both by virtue of superior and paramount jurisdiction and in obedience to National obligation be inquired into and determined by our very own National tribunal.[270]

In presenting his question in this manner, Schurz implied that his office should be afforded the authority to independently consider whether individuals were entitled to Cherokee citizenship or not, rather than being subservient to officers that were often unable to provide evidence to support their decision. The image of federal officials having to act at the behest of incompetent Cherokee officials seems ridiculous or even dangerous in Schurz's vision of these exchanges (especially given the 'superior and paramount jurisdiction' of the United States) since it implied Cherokee authority. In his reply, also forwarded to Bushyhead, Attorney General Charles Devens concurred with Schurz, arguing that "it is quite plain" the Department of the Interior should be able to "determine for itself, under the general law of the land, the existence and extent of the exigency upon which such requisition is founded."[271]

[270] 'C. Devins to C. Schurz, December 12, 1879,' CHN Microfilm 83, frames 965-696.
[271] Ibid. 'E. A. Hayt to D. W. Bushyhead, December 16, 1879,' CHN Microfilm 83, frame 963.

This came as a blow to the Cherokee Nation, which had expected to receive an opinion recognising it as the ultimate authority over citizenship.[272] McLoughlin argues that, instead, Devens' opinion had wider repercussions and "served as a coffin nail in the concept of Cherokee sovereignty and self-determination."[273] Although Devens did not comment on the capabilities of Cherokee officials or the validity of Cherokee citizenship rules, he effectively awarded federal officials the final decision regarding claims to citizenship. The criteria upon which such officials would make this decision remained unclear, however, since "under the general law of the land" is incredibly ambiguous as to whether officials would follow their interpretations of laws made by the Cherokee Nation or the United States.

Refusing to accept the judgement of the Attorney General, the Cherokee Nation hoped the creation of their 1880 census would resolve the disputes over citizenship that had characterised the fifteen years following the Civil War. Although they had sought to negotiate an agreement with the United States, Charles Devins' 1879 opinion revealed that the United States still claimed absolute authority over citizenship and the removal of intruders. Having rejected federal offers of collaboration, the census was carried out solely by Cherokee officials and the Nation envisaged their census as accurate, complete and final.

The census recognised 1976 freedpeople as citizens in a population of 20,086, making freedpeople approximately ten percent of the citizenry.[274] These freedpeople were found in disproportionately high numbers in the Cooweescoowee, Tahlequah and Illinois districts of the Nation. Importantly, these figures do not take in to account unrecognised non-citizens who claimed their citizenship though Article 9 of the 1866 Treaty. Figures indicate there were almost 2000 non-citizens located within the bounds of the Cherokee Nation when the census was taken, 757 of whom were of African descent.[275]

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[272] Littlefield, *Cherokee Freedmen*, 97.
[273] McLoughlin, *After the Trail of Tears*, 360.
[274] 'Summary of the Census of the Cherokee Nation 1880 – Table A,' CNP Microfilm 2, Folder 96.
[275] Littlefield, *Cherokee Freedmen*, 114.

Conclusion

Although the Cherokee Nation considered the 1880 census to be the complete list of all individuals entitled to Cherokee citizenship, freedpeople and others left off the census continued to dispute their classification as non-citizens until the end of the nineteenth century. Rather than resolving the issue of citizenship, then, the 1880 census became yet another arena around which battles for recognition were fought. 757 freedpeople remained at risk of removal when the census rolls were closed, almost a third of the total number of freedpeople residing within the Cherokee Nation. As this chapter has documented, by the end of the 1870s the positions of the Cherokee Nation and the United States in regard to the citizenship status of freedpeople seemed irreconcilable. Whilst the Cherokee Nation had firmly asserted its authority over questions of citizenship following the passage of the 1866 Reconstruction Treaty, and largely expressed them by limiting the number of freedpeople it awarded citizenship to through various means, the appeals of freedpeople increasingly encouraged support from federal officials. Whereas previously the Commissioner of Indian Affairs had respected the treaty obligations of his department, in terms of removing intruders, by 1876 Commissioner John Q. Smith openly denied the Cherokee Nation sole jurisdiction over Cherokee citizenship. The Attorney General's 1879 opinion represented the absolute refusal of the United States to concede any authority to the Cherokee Nation in respect to defining who was and who was not Cherokee. Although questions of citizenship continued to plague freedpeople and the Cherokee Nation until the beginning of the twentieth century, we can therefore see the terms of this dispute being set in the first fifteen years following emancipation.

Citizenship within the Cherokee Nation afforded individuals with access to national services and resources as well as the right to reside within and improve the land of the Cherokee Nation discussed within this chapter. Freedpeople who managed to claim

citizenship in the years following their emancipation hoped to gain access to these services, particularly in relation to the free education provided by the Nation and the orphan fund. Cherokee reluctance to extend these services, offering freedpeople only a limited number of segregated schools and denying them any access at all to the Orphan Asylum constructed in 1872, encouraged freedpeople to protest to both Cherokee and federal officials that their rights had been abrogated. Federal officials took little action to secure these rights for freedpeople, however, leaving freedpeople with little leverage against the Cherokee Nation. Although this chapter has detailed how federal officials took an increasingly strong position against what they saw as treaty violations in regard to the classification of 'too lates' as intruders, then, the next chapter highlights how unreliable the federal government was as an ally to freedpeople.

Chapter Three: "Didn't get much learning" - Freedpeople and their Attempts to Secure Education after Emancipation[276]

> the Cherykees is down on the darkeys the Cherykees say they ainte in favour of the blake man havin any classes that they had rather any body else have a rite than us pore blakies… we donte thinke it rite we have made them rich and bulte his land doo you thinke it rite[277]
>
> *Freedman Louis Rough writing to President Ulysses Grant in 1872*

Supposedly all Cherokee citizens were entitled to certain social rights unique to the Cherokee Nation, including access to its public education system and nationally funded care for orphans (both managed by the Cherokee Board of Education). Since the 1866 Treaty secured freedpeople "all the rights of native Cherokees," they pushed to be afforded access to Cherokee schools and the national orphan fund rather than accept a lesser form of citizenship that did not include the services made available to other citizens.[278] Freedpeople such as Louis Rough, cited in the opening vignette to this chapter, therefore insisted that they were afforded all the rights attached to Cherokee citizenship. Rather than allowing freedpeople to attend the already established public schools, however, the Cherokee Nation adopted a system of segregation and opened the first schools solely for use by the children of freedpeople in 1869. The segregation of freedpeople's schools placed them at a considerable disadvantage within the Nation as the schools were limited in number and freedpeople struggled to meet the attendance requirements set by the Board of Education

[276] 'Johnson Thompson' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 421 (Norman: University of Oklahoma Press, 1996).
[277] 'Louis Rough to President Grant, 1872,' quoted in M. R. Wickett, *Contested Territory: Whites, Native Americans and African Americans in Oklahoma, 1865-1907* (Baton Rouge: Louisiana State University Press, 2000) 80. Reproduced as appears in Wickett.
[278] 'Treaty with the Cherokee Nation, 1866,' in *African Cherokees in Indian Territory: from Chattel to Citizens*, C. E. Naylor, 225 (Chapel Hill: The University of North Carolina Press, 2008).

to ensure the continuance of such schools. Similarly, orphans of freedpeople were denied access to the national orphanage.

Frustrated at being excluded, freedpeople made protests to both the Cherokee National Council and the federal government which yielded small victories but little real change. Subsequently, Cherokee freedpeople still had fewer opportunities for education than those living in the former Confederacy. Federal officials did not demonstrate the same level of support for the education or welfare of freedpeople as they did in relation to legal citizenship and the right to reside within the Cherokee Nation, suggesting that they saw the education of Cherokee freedpeople to be unimportant. It is likely that federal officials did not appreciate that access to education had been established as a distinct right in the Cherokee Nation since before the Civil War. No national public education system was established in the United States at this time and freedpeople were instead educated through the combined efforts of the Freedmen's Bureau, northern benevolent associations and the former slaves themselves. Free education may have been considered an admirable goal in the United States but was not considered an essential right or state responsibility. The lack of interest federal officials displayed in the social rights of Cherokee freedpeople is therefore likely to be due to a misunderstanding of the role education played in Cherokee citizenship and their attitude to educating those thought to be inferior in intelligence and reason. Scholars have not, however, explored the motivations of federal officials over this issue despite how it deviates from the more zealous manner in which the federal government protected the rights of Cherokee freedpeople that were attached to landownership and national resources.[279] This chapter makes evident that the federal government was unwilling to support freedpeople over issues that did not further the federal agenda.

[279] C. E. Naylor, *African Cherokees in Indian Territory: from Chattel to Citizens* (Chapel Hill: University of North Carolina Press, 2008), 162-165. Chapter Four, 'Freedman Life Among the Cherokees,' in D. Littlefield, Jr., *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport and London: Greenwood Press, 1978).

The Education of Freedpeople in the United States

It is likely that the inaction of the federal government in relation to the exclusion of Cherokee freedpeople from national education and orphan care was due to how such services were understood in the United States. The Cherokee Nation saw access to education to be a national responsibility whereas the United States had no national education system. Furthermore, the Cherokee Nation did not legislate against teaching the enslaved how to read and write until 1841 - later than many of the slaveholding states had done so - and therefore had a shorter history of denying the enslaved an education.[280] Doing so served to legitimate slavery since it denied the enslaved a medium with which they could assert and demonstrate that they were people rather than property. Heather Andrea Williams has argued that anti-literacy laws were implemented as part of the greater control and surveillance of the enslaved and in response to growing abolitionist sentiment in the 1830s, since "the presence of literate slaves threatened to give lie to the entire system."[281] Despite the efforts of slaveholders and legislators, some of the enslaved did learn to read and write, albeit covertly. Most famously, the abolitionist Frederick Douglass considered illiteracy to be "the white man's power to enslave the black man" and credited learning to read with sparking his determination to escape slavery.[282] Upon the abolition of slavery with the 13th Amendment in 1865, the formerly enslaved immediately sought education throughout the former Confederacy. In his 1901 autobiography *Up From Slavery*, Booker T. Washington described "a whole race beginning to go to school" and his own "determination to secure an

[280] Perdue, *Slavery and the Evolution of Cherokee Society*, 88.
[281] H. A. Williams, *Self-taught: African American Education in Slavery and Freedom* (Chapel Hill: The Univeristy of North Carolina Press, 2005) 7, 15.
[282] F. Douglass, 'Narrative of the Life of Frederick Douglass, an American Slave, Written by Himself,' in *The Norton Anthology of American Literature, Volume B, 6th Edition*, by Nina Baym, ed. New York and London: W. W. Norton & Company, 2003. Pages 2054, 2057.

education at any cost."[283] Washington therefore situates his own account within a collective drive for education expressed by all freedpeople. Ronald Butchart has argued that "there is no historical precedent to the African American demand for access to knowledge or historical equivalent to the black effort to ensure that access."[284]

Whereas older scholarship largely focused on the actions of white northern teachers in reference to the education of former slaves, more recent research has stressed the central role played by freedpeople in attaining this right. Williams has argued that it is "overwhelmingly clear, for example, that freedpeople, not northern whites, initiated the education movement in the south while the Civil War was being fought."[285] Freedpeople were not the beneficiaries of white northern action, then, but seized opportunities for education themselves. In Eric Foner's groundbreaking *Reconstruction: America's Unfinished Business*, he describes schools established by freedpeople as early as 1861 and 1862.[286] In some instances, such as in the case of a school taught by a black cabinetmaker in the Sea Islands, teachers who had previously taught covertly were now simply able to do so without fear of repercussions.[287] As freedpeople looked to their future outside of slavery, education represented a means of securing freedom and equality. Ronald Butchart has argued that education was widely seen as providing preparation for franchise and "freedpeople understood that if the full promise of emancipation was to be realized, they needed the skills to engage in a variety of enterprises and needed information to protect themselves against fraud."[288] Freedpeople therefore took advantage of the first opportunities they came upon to claim the education they had previously been denied and this determination to gain an

[283] B. T. Washington, *Up From Slavery* (London: Penguin Books, 1986), 29 & 37. First published 1901.
[284] R. Butchart, *Schooling the Freed People: Teaching, Learning, and the Struggle for Black Freedom, 1861-1876* (Chapel Hill: The University of North Carolina Press, 2010), xvi.
[285] Williams, *Self-taught*, 5.
[286] E. Foner, *Reconstruction: America's Unfinished Business, 1863-1877* (New York: Perennial, 2002), 97.
[287] Ibid.
[288] Butchart, *Schooling the Freed People*, 11.

education characterised the actions of freedpeople for the rest of the nineteenth century. Freedpeople went to great lengths to gain an education. Freedwoman Alice Alexander, for example, travelled widely in pursuit of education. Leaving Louisiana after the conclusion of the Civil War as an adult, Alexander began her education in Memphis then travelled to Oklahoma: "I got a pretty fair education down there but didn't take care of it."[289] Alexander's inability to 'take care' of her education highlights the difficulty some freedpeople had in retaining their new knowledge: "what little I learned I quit taking care of it and seeing after it and lost it."[290] Freedman J. L. Pugh, who was still learning basic mathematical skills from classmates at the age of 20, described having "died twice, physically, also mentally" in his pursuit of an education.[291] After teaching in Oklahoma and Colorado, Pugh went on to complete a degree at Langston University in 1915. He also spoke proudly of the accomplishments made by his daughter, commenting that: "whatever is thoroughly worked out in the parent is an inheritance to the child."[292]

Whereas the Cherokee Nation had an established system for providing free education for its citizens, the United States did not. Many of the schools established for freedpeople were therefore subscription schools and charged their students tuition. Scholars are in agreement that the enthusiasm with which freedpeople pursued education quickly outstripped the available resources to provide it, leading to collaboration with northern benevolent societies and the Freedmen's Bureau.[293] The Freedmen's Bureau, within its broader remit of assisting former slaves in the transition from slavery to freedom, was directed to encourage and distribute funds to schools for freedpeople. The Bureau's Commissioner, General O. O. Howard, was convinced that education was the "foundation

[289] 'Alice Alexander,' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 24 & 25 (Norman: University of Oklahoma Press, 1996).
[290] Ibid.
[291] 'J. L. Pugh,' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 327 (Norman: University of Oklahoma Press, 1996).
[292] Ibid.
[293] Butchart, *Schooling the Freed people*, 3. Williams, *Self-taught*, 81.

upon which all efforts to assist freedmen rested."[294] The Bureau did not establish schools itself but operated alongside northern benevolent societies (often religious in nature) to make education as widely available as possible: by 1869 schools reporting to the Bureau taught over 150,000 students.[295] This often led to conflict and the compromise of African American control over their own education and that of their children. For example, the Savannah Educational Association, established by freedpeople in January 1865, raised $730 from local people and was teaching 600 students by the middle of 1865.[296] Although this represented an incredible achievement, officials from the American Missionary Association and the Freedmen's Bureau refused to provide additional support since they believed the school system to be inferior to that which they could provide. Encountering financial difficulties, the Savannah Educational System handed management of their schools to the American Missionary Association in exchange for relief.

As the experiences of the Savannah Educational Association suggests, the involvement of the Freedmen's Bureau and northern benevolent associations complicated the operation of schools for freedpeople in the United States. Freedpeople found it difficult to balance their desire for self-sufficiency with the necessity of seeking resources. It thus made their relative powerlessness painfully apparent.[297] Furthermore, the leadership of such organisations often viewed African American efforts to manage their own schools to be inherently inferior to their own and many white teachers refused to interact with or share quarters with black teachers.[298] The problems of education organisation and management were compounded by hostile white Southerners who recognised that educating freedpeople had the potential to challenge the racial order. Ronald Butchart describes acts of

[294] Foner, *Reconstruction*, 144.
[295] Ibid, 144.
[296] Ibid, 99. Williams, *Self-taught*, 88.
[297] Williams, *Self-taught*, 81.
[298] Foner, *Reconstruction*, 145.

"harassment and obstruction," as well as more violent acts such as arson, being committed against schools and teachers, especially in areas of limited federal influence and becoming more common in the years following Reconstruction.[299] Williams has attributed the struggles of black schools after Reconstruction to losing the support of federal and local governments and the waning financial support of benevolent associations, as well as the rise of racial hostilities and Jim Crow.[300] Butchart points to the race riots in Memphis (1865) and New Orleans (1866), however, to indicate that later violence was not new but rather old hostilities becoming visible again.[301] Despite the problems made apparent in the attempts to provide education for freedpeople in the former slaveholding states, the system established by the United States is considered to have been a qualified success. The huge effort to educate freedpeople "lay the foundation for Southern public education" and led to education being increasingly considered the responsibility of the state by 1880s.[302]

"The means of education shall always be encouraged in this nation": Education in the Cherokee Nation before the Civil War[303]

Unlike the federal government, the Cherokee Nation could claim a proud tradition of providing public education for its citizens. As part of a wider attempt to assert sovereignty and autonomy after its removal to Indian Territory, the Nation had established their own school system in 1840 rather than continue relying on those provided by white missionaries from the United States. Although the majority of Cherokees had shown an interest in learning to read and write English when missionary schools first appeared at the beginning

[299] Butchart, *Schooling the Freed People*, 164.
[300] Williams, *Self-taught*, 199.
[301] Butchart, *Schooling the Freed People*, 170.
[302] Foner, *Reconstruction*, 368.
[303] *Compiled Laws of the Cherokee Nation* (Tahlequah: National Advocate Print, 1881) 25. Sourced from https://archive.org/stream/compiledlawsche00adaigoog#page/n30/mode/2up 30/10/15

of the nineteenth century, attendance began to decline by the 1820s. Traditional Cherokees were ambivalent at best in regard to the religious agenda of the various missionaries and preferred that their children were only given an academic education and parents of English-speaking children who could already read and write could see little advantage in allowing their children to attend.[304] This conflicted with the goals of missionaries who often conflated teaching and preaching. Missionaries also inadvertently encouraged social division between those Cherokees who favoured acculturation and Christianisation, and the traditional majority that endeavoured to retain Cherokee cultural practices. By showing a preference for English-speaking (and in their minds 'progressive') Cherokees and differentiating individuals and their capabilities by skin colour, missionaries alienated the majority of the Cherokee population.[305] William McLoughlin described the creation of the Cherokee public education system as "a major effort to restore national pride" that would provide evidence of self-reliance and restore cohesion to a Cherokee citizenry torn apart by the sectional violence of the 1830s.[306]

The importance of education was enshrined in the 1839 Cherokee Constitution which stated that: "Religion, morality and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools and the means of education shall forever be encouraged in this Nation."[307] The clause made explicit the notion that education makes better citizens who were capable of enlightened and 'good'

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[304] W. G. McLoughlin, *Cherokee Renascence in the New Republic* (Princeton: Princeton University Press, 1986) 357. D. A. Mihesuah, *Cultivating the Rosebuds: The Education of Women at the Cherokee Female Seminary, 1851-1909* (Chicago: University of Illinois Press, 1998) 8.
[305] McLoughlin, *Cherokee Renascence*, 362-363. T. Perdue, '*Mixed Blood' Indians: Racial Construction in the Early South* (Athens and London: University of Georgia Press, 2003) 89.
[306] W. G. McLoughlin, *After the Trail of Tears: The Cherokees' Struggle for Sovereignty, 1839-1880* (Chapel Hill and London: University of Chapel Hill Press, 1993), 86. The Treaty Party and the Ross Party struggled for power upon arrival in the Indian Territory, with members of the Treaty Party forming gangs and exacting violent retribution against Ross supporters (who figured as the majority of the population). For details of the violence within the Nation see Chapter 2, 'Stalemate and Terrorism, 1841-1846' pages 34-58.
[307] *Compiled Laws of the Cherokee Nation,* 25.

government, whether through holding office or through engagement with the democratic processes of the Cherokee Nation in a more general sense. By taking control of the education available to its citizens, the Cherokee Nation would be able to further its own national interests rather than those of missionaries and other outsiders. This was incredibly important in regard to interactions between the Cherokee Nation and the United States. Forced removal made the power of the United States to enact its expansionist agenda painfully evident. For some Cherokees, an education in English held the potential to act as a "form of self-protection against the menace of white aggression," a tool that would enable them to more effectively communicate and respond to federal officials in the United States.[308] Others rejected the Euro-American language and customs, preferring to raise their children in a more traditional Cherokee manner and therefore showed little interest in learning English at all.[309] Sequoyah's syllabary, created in 1821, offered a means of communicating the Cherokee language in written form and was embraced by the traditional or 'full blood' majority who were largely unable to speak or read English. At this time, education was available in both Cherokee and English. Relatively easy to master, the majority of the Cherokee population could read and write in Cherokee by 1825 and, by 1828, all laws passed by the Cherokee Nation and its national newspaper were published in both English and Cherokee.[310] Much of the Cherokee leadership was comprised of progressive men who championed the advantages of a formal, Anglo-American education so reforming Cherokee schooling was a priority as the Cherokee Nation reorganised itself in the Indian Territory.

[308] M. R. Wickett, *Contested Territory: Whites, Native Americans and African Americans in Oklahoma, 1865-1907* (Baton Rouge: Louisiana State University Press, 2000) 74.
[309] Mihesuah, *Cultivating the Rosebuds*, 8, 10.
[310] McLoughlin, *Cherokee Renascence*, 351-353.

The plan approved by the National Council in 1840 was a departure from previous educational practices within the Nation in its scale and ambitions.[311] The Act Relating to Education established a Board of Education consisting of three persons, nominated by the Principal Chief then confirmed by the Senate, who would govern an enlarged Cherokee school system. As well as dealing with the larger organisation of the school system (distributing funds, for example), the Board of Education was responsible for monitoring the quality of education received by students and was therefore tasked with visiting the national schools on an annual basis to ensure they were meeting their obligations. Whereas the Old Settlers (Cherokees who had voluntarily relocated to Indian Territory in the years before forced removal) had established four schools in 1832, this new plan made provisions to establish eight schools in the first year and further expand as funds and resources became available. To avoid the tensions exacerbated by missionary schools, Cherokee schools established by the Board of Education were ostensibly secular and other institutions of education were only permitted to operate within the Nation with the express approval of the National Council.[312] The public schools would therefore be complemented by a small number of missionary schools but only at the discretion of the National Council. The national schools would be funded entirely by the National Treasury and, despite being limited by financial considerations, the Council clearly hoped to eventually provide a free education to all children of Cherokee citizens who wished to attend school (non-citizens were allowed to attend the missionary schools but not the national schools). Students were therefore not charged tuition but school buildings were built and maintained by the local community. Furthermore, if a school did not have an average attendance of at least twenty-five students it would be relocated to an area with higher demand for education. These measures served to minimise costs and ensure that the education system remained a viable long-term

[311] *Compiled Laws of the Cherokee Nation*, 'Act Relating to Education' (230-240).
[312] Mihesuah, *Cultivating the Rosebuds*, 18.

investment. The education provided by these schools was aimed at students aged from six to sixteen, provided in English, and included "reading, writing, and spelling in English as well as geography, arithmetic, and history."[313] The decision to solely teach in English is telling as it reveals the importance that the Cherokee leadership placed on the ability to speak and read English after removal. This was made explicit in Section 1 of The Act Relating to Education which stated the goal of providing an education for all Cherokee children, with a particular emphasis on "enabling those who speak only the Cherokee language, to acquire more readily a practical knowledge and use of the English language."[314] In practice, this meant that although the four schools established by the Old Settlers had taught both English and Sequoyah's syllabary, Cherokee schools did not teach their students how to write Cherokee and taught all subjects in English after 1840.

William McLoughlin has argued that the 1840 plan to establish a public education system was "very effective" but in reality consolidated the division between Cherokee-speaking and English-speaking Cherokees rather than encouraging unity.[315] The removal of the Sequoyah syllabary from the curriculum, compounded by the difficulty of learning English from teachers who largely spoke no Cherokee, discouraged Cherokee-speaking students from attending their local school. According to McLoughlin, such children often stopped attending after becoming "frustrated" with the problems of communicating with and learning from their teachers, as well as having been "subject to ridicule by children of English-speaking mixed-blood parents."[316] Furthermore, traditional Cherokee-speaking families tended to be poorer and often required the assistance of their children, whether for household duties (girls) or on the farm (boys).[317] The ability to learn written and spoken

[313] McLoughlin, *After the Trail of Tears*, 88
[314] *Compiled Laws of the Cherokee Nation*, 'Act Relating to Education,' 230
[315] McLoughlin, *After the Trail of Tears*, 89.
[316] Ibid, 89.
[317] Ibid, 91.

English therefore continued to operate as a marker of wealth and social status after removal, a problem which the schools often highlighted rather than combatted. Rather than being an institution for all Cherokees, then, the studentships of public schools quickly became dominated by English-speaking children, who tended to have "mixed" ancestry and often came from wealthier backgrounds than their Cherokee-speaking counterparts.

The plan put into effect by the 1840 National Council may have been ambitious but it was starting to bear fruit as the American Civil War loomed. There were twenty-one primary schools in the Nation in 1846. By 1860, this had risen to thirty schools which served 1,500 students out of a total population of 17,048, a number which dwarfed the 200-250 students being taught when missionary schools were at their most popular.[318] The establishment and fast expansion of the school system led to a high demand for teachers. In order to produce Cherokee teachers rather than continue hiring teachers from New England, and in doing so counter accusations that the education system did not benefit Cherokee-speaking children, two seminaries opened in 1851 (one for either sex).[319] The establishment of these institutions of higher education created a platform for the Cherokee elite to demonstrate to their critics throughout the United States that they, and by extension Cherokees more generally, were capable of intellectual ambition and achievement. The seminaries educated their students to high school level and encouraged them to conform to the gender ideals prized in the United States, attempting to develop young boys into gentlemen and young girls into "pious homemakers" that would prove the potential of Cherokees to acculturate.[320] Work by Theda Perdue on Cherokee women and Greg O'Brien on Choctaw men illustrates that this was not a new phenomenon and that interactions between Native peoples and Euro-Americans had brought about significant changes in

[318] Ibid, 89. McLoughlin, *Cherokee Renascence*, 355. Naylor, *African Cherokees in Indian Territory*.
[319] McLoughlin, *After the Trail of Tears*, 92-93.
[320] Mihesuah, *Cultivating the Rosebuds*, 21.

gender roles from the eighteenth century.[321] Like the primary schools, however, the seminaries were quickly understood to primarily benefit the wealthy elite and the high cost of running them led to temporary closures before the Civil War.[322] Despite the problems attached to the Cherokee education system, it "flourished until Oklahoma achieved statehood" leading to relatively high literacy rates within the Cherokee citizenry.[323] The advantages of the Cherokee education system were only felt by Cherokee citizens, however, as non-citizens were not permitted to attend. This included individuals held in slavery by Cherokees who were not only non-citizens but were also explicitly prohibited from learning to read or write.

Reserving Literacy for Cherokee Citizens Only: An Act prohibiting the Teaching of Negroes to Read and Write

> There was no way to learn reading and writing; I was a big girl when I learn the letters and how to write, and tried to teach mammy but she didn't learn, so all the writing about allotments had to be done by me. I have written many letters to Washington when they gave the Indian lands to the native Indians and their Negroes.[324]
>
> *Patsy Perryman, WPA Interview*

[321] T. Perdue, *Cherokee Women: Gender and Culture Change, 1700-1835* (Lincoln: Nebraska University Press, 1998). G. O'Brien, 'Let Us Look Like Men: Changing Notions of Masculinity among Choctaw Elite in the Early Republic' in *Southern Manhood: Perspectives in Masculinity in the Old South*, by C. Thompson Friend & L. Glover, eds. (Athens and London: University of Georgia Press, 2004), 49-70.
[322] McLoughlin, *After the Trail of Tears*, 94-95.
[323] Mihesuah, *Cultivating the Rosebuds*, 17.
[324] 'Patsy Perryman' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 315 (Norman: University of Oklahoma Press, 1996).

As this quote from Cherokee freedwoman Patsy Perryman underscores, people enslaved within the Cherokee Nation were expressly prohibited from acquiring any literacy skills in the same manner as their counterparts throughout the slaveholding states. They had no access to the national school system established by the Cherokee Nation in Indian Territory. The Cherokee Nation did legislate to prohibit the education of their enslaved population relatively late, however, having previously allowed them to attend missionary schools with Cherokee children prior to removal. Georgia, for example, legislated against teaching anyone of African heritage how to read and write in 1829.[325] The presence of enslaved children in missionary schools at this time became a source of conflict as the state of Georgia attempted to force the Cherokee Nation to concede to their authority. Historian Duane King described an incident which illustrates how vehemently the Georgian authorities opposed the teaching of enslaved children. In 1832 the Georgia state guard interrupted a class, informed the teacher that she was breaking the law by allowing two enslaved children to attend and threatened to prosecute her if she continued to teach them.[326] After removal to Indian Territory the Cherokee Nation limited the freedoms it had previously afforded to its enslaved population. Previously, Cherokee slaves had been able to attend mission schools and were encouraged to teach their masters how to read and write in English, despite being subject to laws that defined them as property, denied them the right to own property and prevented them from marrying Cherokee citizens.[327] Tiya Miles has argued that these prohibitive laws were rooted in the slaves' lack of clan affiliation rather than notions of racial inferiority.[328] As Cherokees increasingly defined themselves against blackness, and after the 1842 Cherokee Slave Revolt suggested their limited power over their enslaved population, the

[325] H. C. Frazier, *Runaway and Freed Missouri Slaves and Those who Helped Them, 1763-1865* (London and Jefferson, NC: McFarland & Company, Inc., Publishers, 2004) 8.
[326] D. King, *The Cherokee Indian Nation: A Troubled History* (Knoxville: University of Tennessee Press, 1979) 123.
[327] T. Miles, *Ties That Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (Los Angeles and London: University of California Press, 2006), 93, 94
[328] Ibid, 51.

Nation passed a number of laws that resembled those seen throughout the slaveholding states.[329] Academics widely consider this post-removal period to be the moment at which Cherokee slavery and racial prejudice against individuals with African ancestry were consolidated, as blackness and slave status became synonymous where they had previously been more fluid.[330] Laws passed at this time therefore attempted to more tightly control the enslaved population *and* any free black residents. For example, the marriage law was expanded to prevent Cherokee citizens from marrying anyone of African heritage not just slaves and the Cherokee rape law was amended to make the rape of any *free* woman by a black man (enslaved or free) punishable by death.[331]

In 1841, as part of this larger effort to more closely regulate slavery and residents of African descent, the Cherokee Nation prohibited the teaching of all enslaved and free black residents for the first time:

> *Be it enacted by the National Council*, That from and after the passage of this act, it shall not be lawful for any person or persons whatever, to teach any free negro or negroes not of Cherokee blood, or any slave belonging to any citizen or citizens of the Nation, to read or write.
>
> *Be it further enacted*, That any person or persons violating this act, and sufficient proof being made thereof, before any of the Courts, in this Nation, such person or persons upon conviction, shall pay a fine for every such offence

[329] Ibid, 166, 167. 170-172. T. Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: University of Tennessee Press, 1979) 58, 88. Perdue describes the 1841 act prohibiting the teaching of any individual with African heritage to be a "major departure" (p. 88) from former Cherokee attitudes and evidence of growing racism against people with darker skin.
[330] McLoughlin, *After the Trail of Tears*, 128
[331] Ibid, 128. Miles, *Ties That Bind*, 167.

in a sum not less than one, nor over five hundred dollars, at the discretion of the Court, the same to be applied to National purposes.[332]

An Act prohibiting the Teaching of Negroes to Read and Write

This brought the Cherokee Nation into alignment with slaveholdings states throughout the American South, such as Georgia. Heather Andrea Williams has described anti-literacy laws as a component within the larger attempt by slaveholders to "control their captives' thoughts and imaginations, indeed their hearts and minds."[333] Literacy had the potential to enable the enslaved to claim intellectual liberation and actual freedoms in the form of forged passes and documents. Literacy could also give the enslaved access to materials or information that slaveholders viewed as dangerous, "subvert[ing] the master-slave relationship" and therefore acting as "a weapon of resistance and liberation."[334] Denying the enslaved literacy was therefore an attempt to retain power and consolidate the institution of slavery. As we can see above, the penalties delineated within this Act were considerable and, in an interview with the Federal Writers' Project in the late 1930s, Betty Robertson remembered how carefully Cherokees observed the law: "we couldn't learn to read or have a book, and the Cherokee folks were afraid to tell us about the letters and figgers because they have a law you go to jail and a big fine if you show a slave about letters."[335]

Betsy Robertson was not alone in highlighting the exclusion of Cherokee freedpeople from the Nation's school system within the course of these interviews. Many others felt aggrieved at the consequences of this exclusion, particularly in relation to the illiteracy

[332] *The Constitution and the Laws of the Cherokee Nation: Passed at Tahlequah, Cherokee Nation, 1839-51* (Tahlequah: National Advocate Print, 1852) 55-56. Sourced from http://www.loc.gov/law/help/american-indian-consts/PDF/28014182.pdf 30/10/15
[333] Williams, *Self-taught*, 8.
[334] Ibid, 7, 8.
[335] 'Betty Robertson' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 356 (Norman: University of Oklahoma Press, 1996).

imposed on them as a result. Patsy Perryman was careful to attribute her lack of education as a child to the laws of the Cherokee Nation, recounting that "there was no way to learn reading and writing."[336] Illiteracy was widespread and Chaney Richardson, like Betty Robertson, was frank about her lack of education: "The negroes didn't have no school and so I can't read and write, but they did have a school after the War, I hear."[337] A young teenager when the Civil War broke out, Richardson was not permitted an education when she was enslaved and was too old to attend any of the primary schools later established for freedpeople. Within these interviews it is apparent that the freedpeople understood prohibitions against teaching the enslaved to be a means of controlling the entire enslaved population. Morris Sheppard, for example, recognised the Cherokee law regarding slave literacy as an attempt to subjugate everyone with African ancestry: "We never had no school in slavery and it was agin the law for anybody to even show a negro de letters and figgers, so no Cherokee slave could read."[338] Celia Naylor has subsequently argued that the space freedpeople afforded the issue of education in these interviews, collected seventy years after the abolition of slavery, reveals the lasting injustice freedpeople felt at being denied an education.[339]

Interviews such as Sheppard's also reveal that being denied an education felt deeply personal and had wider implications beyond the inability to read or write. After the war Sheppard married Nancy Hildebrand, a former Cherokee slave and devout Christian, and he suggests that his illiteracy limited his ability to share in her churchgoing ways. Sheppard's wife and eleven children attended church but Sheppard did not. Despite believing that "all should look after saving their souls," Sheppard connected his lack of formal churchgoing to

[336] 'Patsy Perryman' in *The WPA Oklahoma Slave Narratives*, 315.
[337] 'Chaney Richardson' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 351 (Norman: University of Oklahoma Press, 1996).
[338] 'Morris Sheppard' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 380 (Norman: University of Oklahoma Press, 1996).
[339] Naylor, *African Cherokees in the Indian Territory*, 162.

not being taught to read when he was enslaved: "We never had no church in slavery, and no schooling, and you had better not be caught wid a book in your hand even, so I never did go to church hardly any."[340] In Sheppard's experience then, exclusion from one institution brought about a lasting exclusion from the other. Throughout the WPA interviews discussions of schooling and churchgoing appear together, connected by the act of reading or being read to. Given the widespread use of the Sequoyan Syllabary at this time, there was no guarantee that the Bible would be read in English and unable to read herself, Chaney Richardson shared fond memories of hearing Cherokee read: "[I] love to hear songs and parts of the Bible in it, because it make me think about the time I was a little girl before my mammy and pappy leave me."[341] The loss of her parents - Richardson's mother was a casualty in the sectional violence preceding the Civil War and her father was killed serving with the Union Army in Arkansas - represent pivotal traumas in Richardson's narrative and explain the nostalgia she felt for a time when the Cherokee language was more widely spoken. Although Sheppard felt unable to participate in the churchgoing experience due to his illiteracy, then, Richardson remembers being read to as a moment of inclusion and comfort.

Sheppard's comment about being caught with a book ('you had better not be caught wid a book even') highlights that Cherokee slaves were not just excluded from formal education, the law also made it a crime for anyone to teach a slave even rudimentary reading and writing. Even just holding a book, no matter if you were able to read it or not, was subversive enough to elicit punishment from masters or mistresses. Sarah Wilson remembered the danger of doing so, for both the enslaved and any Cherokee who was willing to teach them: "you better not let them catch you pick up a book even to look at the pictures, for it was against a Cherokee law to have a Negro read and write or to teach a Negro."[342] The

[340] 'Morris Sheppard' in *The WPA Oklahoma Slave Narratives*, 381.
[341] 'Chaney Richardson' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 351 (Norman: University of Oklahoma Press, 1996).
[342] 'Sarah Wilson' in *The WPA Oklahoma Slave Narratives*, 497.

desire for education is evident throughout the ex-slave interviews discussed here, however, and despite the criminalisation of teaching the enslaved to read and write it was possible for some keen prospective students to find opportunities to become literate. When the children of R. C. Smith's former master came home from school, for example, they would try to "learn us everything they learned at school."[343] Although Smith conceded that he "couldn't be still enough to learn anything," both his parents learnt to read and write from the children and Smith later learned to do so as an adult.[344] Accounts such as Smith's, alongside others that may not directly discuss schools or education but reveal an ability to send and receive letters prior to the end of the Civil War, indicate that a small minority of Cherokee slaves did manage to become literate of their own accord.[345]

After the abolition of slavery, freedpeople throughout the Indian Territory and the United States would actively pursue education in an attempt to redress the illiteracy imposed upon them under the institution of slavery. Attaining literacy was often difficult but rewarding. For example, the empowering nature of literacy is made evident in Perryman's narrative, cited above, since she describes being able to write letters to federal officials on behalf of herself and her mother regarding the allotment of Cherokee land.[346] Education therefore enabled Perryman to pursue her own interests and defend her citizenship rights herself, rather than relying on a third-party. Not all freedpeople attained literacy after slavery, however, on account of the limited opportunities made available by the Cherokee Nation who proved reluctant to give the formerly enslaved equal access to the services of the Nation in the years following emancipation.

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[343] 'R. C. Smith' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 399 (Norman: University of Oklahoma Press, 1996).
[344] Ibid, 399.
[345] 'Lucinda Vann' in *The WPA Oklahoma Slave Narratives*, T. L. Baker and J. P. Baker, eds., 440 (Norman: University of Oklahoma Press, 1996). Vann describes receiving letters from the Indian Territory during the War.
[346] 'Patsy Perryman' in *The Oklahoma Slave Narratives*, 315.

"We hav bin deprived": Freedpeople and the Cherokee National Schools

As outlined in the previous chapter, the Loyal National Council struck down any laws that specifically targeted people of African descent, including the 'Act prohibiting the Teaching of Negroes to Read and Write,' when they abolished slavery in 1863. The passage of the 1866 Reconstruction Treaty that afforded freedpeople citizenship and 'all the rights of native Cherokees' therefore theoretically gave freedpeople access to the national schools. However, freedpeople quickly found that their access to this component of citizenship was limited in much the same way as recognition of their citizenship status was in the years following emancipation. Reluctant to provide freedpeople with the same standards of education as the larger Cherokee population, the Nation placed considerable obstacles in the way of freedpeople and their children. They did so by unofficially implementing a segregated school system yet insisting that schools open to freedpeople met the same attendance figures as demanded from schools reserved for Cherokee and white students. Celia Naylor has argued that the actions of the National Council and the Board of Education "speak[s] directly to Cherokee leaders' unwillingness to accept freedpeople as citizens with legitimate rights to the same services provided to other Cherokees."[347] Denying freedpeople the same standard of education therefore operated as one of the means by which the Cherokee Nation attempted to implement a lesser form of citizenship for freedpeople. Since the Cherokee public schools were only accessible to citizens, the debates surrounding citizenship and education went hand in hand: if a freedperson could not prove they were the child of recognised citizens they would not be admitted to their local school (if they were fortunate enough to have one within a reasonable proximity). Gaining a public education in the Cherokee Nation was therefore an impossibility for children of the 'too-lates' discussed

[347] Naylor, *African Cherokees in Indian Territory*, 165.

in the previous chapter and difficult even for those whose citizenship had been affirmed by the Cherokee authorities.

Records detailing the Cherokee school system are incomplete but it is fair to argue that it did not meet the hopes of freedpeople.[348] The Cherokee Nation reinstated its public school system after the Civil War but did not allow freedpeople to attend schools alongside Cherokee and white children. Instead, the Nation unofficially adopted a policy of segregation that educated children with African heritage separately. Although Cherokee children with white ancestry were admitted to the national schools, children with African ancestry were not (regardless of whether they could claim Cherokee ancestry). Interestingly, other citizens could attend the schools established for freedpeople if they chose to (although the number that did so was small and some schools only recorded children of freedpeople as students).[349] The first two schools for children of freedpeople, known as 'Colored schools,' opened in 1869 and three were in operation by 1871. Celia Naylor notes that not only did the Cherokee Nation respond more slowly to the demands freedpeople made for education than the United States did but they also provided fewer opportunities for freedpeople to attend schools: 56 schools admitted Cherokees "exclusively" in 1871.[350] Out of a total of 59 public schools in 1871, then, the entire freedpeople population of the Cherokee Nation, numbering 1500 recognised citizens, was served by only three schools.[351] This gave freedpeople access to a disproportionately small number of national schools.

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[348] Littlefield, *The Cherokee Freedmen*, 53. Few records are available and often include fragments rather than complete documents. Records can be found in the Cherokee Nation Records held in the Archives and Manuscript Division of the Oklahoma Historical Society and the Cherokee Nation Papers held in the Western History Collections of University of Oklahoma Libraries.

[349] 'Fort Gibson Colored Primary School Attendance Record, September to December 1894,' Cherokee Nation Records (CHN) Microfilm 102, frame 552. Cherokee Nation Records, Indian Archives Collection. Archives and Manuscript Division, Oklahoma Historical Society. 3 Cherokees, 87 freedpeople. 'Lightning Creek Primary School Attendance Record, September to December 1894,' CHN Microfilm 102, frame 562. 1 Cherokee, 52 freedpeople.

[350] Naylor, *African Cherokees in Indian Territory,* 163.

[351] Q. Taylor, *In Search of the Racial Frontier: African Americans in the Frontier West, 1528-1990* (New York and London: W. W. Norton & Company, 1998) 118.

The rules regarding average attendance represented an additional pressure for Cherokee freedpeople who struggled to meet the same standards as the rest of the population. According to Daniel Littlefield, schools established for freedpeople were often unable to maintain an average of twenty-five attendees, leading to instability and constant changes in the number and location of schools.[352] Historians such as Littlefield and Celia Naylor have attributed the low attendance of schools for freedpeople to the largely rural nature of the Cherokee Nation since freedpeople often had to travel long distances to reach the nearest school that would admit them.[353] For many children of freedpeople this would have required travelling past national schools in which they were not welcome, especially given the scarcity of coloured schools in comparison to the total number in operation. Since many freedpeople families lived a subsistence lifestyle through necessity, the effort of getting their children to school and the necessity of using their labour on the farm often led to many parents keeping their children at home, regardless of how highly they valued education.[354] Fluctuating numbers of children therefore led to school closures. By continuing to segregate schools and enforce the twenty-five student average, the Cherokee Nation therefore put freedpeople at a considerable disadvantage.

It was apparent almost immediately that the Cherokee Nation were unlikely to offer freedpeople the same access to education afforded to the rest of the Cherokee citizenry without action by freedpeople to secure it for themselves. Some communities established their own subscription schools when the Cherokee Nation failed to do so. Such schools were limited by the scarcity of funds and resources but were often a source of pride. Academics largely agree that subscription schools could not match the quality of the public schools, using Johnson Thompson as an example of a subscription school student who "didn't get

[352] Littlefield, *The Cherokee Freedmen*, 53.
[353] Naylor, *African Cherokees in Indian Territory*, 163.
[354] Naylor, *African Cherokees in Indian Territory*, 164.

much learning."[355] In his 1873 letter to the Secretary of the Interior, however, Woodson Lowe Parker described a subscription school established by himself and other freedpeople in which they "are seeking enlightenment and the elevation which arises from and follows thorough education."[356] As discussed in the previous chapter, the goal of Parker's letter was to encourage federal intervention to secure citizenship for himself and other local freedpeople: Parker described the subscription school in glowing terms, using it as evidence of how well his community was established and their commitment to the intellectual advancement of their children. In Parker's eyes, then, the school represented positive action and success rather than an inferior counterpart to the national schools. In depicting his community in this manner, Parker attempted to signal to the federal government that, now free, himself and others were capable of flourishing within the Cherokee Nation as its citizens.

Some freedpeople refused to accept that it was their own responsibility to establish subscription schools and instead pressured the Cherokee Nation to fulfil its obligation to provide the same educational opportunities as those available to other citizens. In the opening vignette to this chapter, Cherokee freedman Louis Rough wrote directly to President Ulysses Grant in 1872 to protest the lack of education provided to freedpeople by the Cherokee Nation:

> Pleas give me a little information what the dark popution is to doo about that school funds to have our children educated are we to stay here and rais them like up lik hethens we have bin deprived of five years school the rebels took our books and een acordin to the sixty six trety we want u say so what to doo if it is lefte to the Cherykees we never will have nothing done… the Cherykees is down

[355] Littlefield, *The Cherokee Freedmen*, 54. Naylor, *African Cherokees in Indian Territory*, 164. 'Johnson Thompson' in *The WPA Oklahoma Slave Narratives*, 421.
[356] 'Woodson Lowe Parker to Secretary of the Interior, February 5, 1873,' *Letters Received by the Office of Indian Affairs, 1824-1880* (National Archives Microfilm Publication M234, roll 106, frame 705). Record Group 75; National Archives Building, Washington, DC.

> on the darkeys the Cherykees say they ainte in favour of the blake man havin any classes that they had rather any body else have a rite than us pore blakies… we donte thinke it rite we have made them rich and bulte his land doo you thinke it rite[357]

Rough may have been limited by his own levels of literacy but he encouraged Grant to intervene and secure education for freedpeople in two interesting ways. Firstly he cast the education of freedpeople as important, whether to prevent the next generation from growing up as 'hethens' or simply as a matter of human justice since "We have made them rich." It was widely held at this time that the acculturation and assimilation of Native Americans into white American society could be achieved through effective and prescriptive education, which would act as "the great emancipator."[358] In his use of 'hethen,' Rough therefore drew a connection between the larger civilising project being undertaken by the United States and the education of Cherokee freedpeople. Rough explicitly states that the wealth of the Cherokees was largely made possible through enslaved labour and lays a claim to the advantages of citizenship made possible by that wealth. Second, Rough stressed that through denying education to freedpeople, the Cherokee Nation was abrogating the terms of the 1866 treaty which afforded them full citizenship rights. This would suggest that the United States could justify any intervention on behalf of freedpeople through the 1866 treaty to which they had been party. Having already been deprived of an education for five years, Rough claimed that the Cherokee Nation would continue to deny freedpeople an education unless the United States government pressured them to fulfil their obligation.

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[357] 'Louis Rough to President Grant, 1872' quoted in Wickett, *Contested Territory*, 80. Reproduced as appears in Wickett.

[358] Wickett, *Contested Territory*, 68. It is during this period that boarding schools, such as Carlisle Indian Industrial School (1879-1918) and Chilocco Indian Agricultural School (1884-1980), were established.

In his letter, Rough attributed the actions of the Cherokee leadership regarding the education of freedpeople to the racial prejudices held by Cherokees who were 'down on the darkeys.' Principal Chief William P. Ross passionately argued that there was no discrimination in the Cherokee Nation, however, and that nowhere "had so little trouble occurred since the war in relation to color."[359] Although scholars are in agreement that there was considerably less violence against freedpeople in the Cherokee Nation than seen in the former slaveholding states, boundless evidence refutes Ross's claim that there was no prejudice at all.[360] Murray Wickett, for example, recounted an incident that occurred before the establishment of the Colored High School in 1889: Chief Bushyhead intervened after a freedman was admitted to the School and "it was found later that the Indian students had procured one hundred feet of one-inch rope and stashed it in the attic, admitting freely that they would have lynched any blacks attempting to attend their school."[361] Teachers of African descent, whether Cherokee freedpeople or African Americans from the United States, were also subject to racial prejudice from their Cherokee colleagues. Emma Dunbar, a teacher at the Orphan Asylum, attended the Cherokee Teachers' Institute and asserted that Cherokee teachers considered black teachers to be inferior: they would often refuse to engage with black teachers and would walk out if black teachers spoke within their classes.[362] The racial prejudices held by certain portions of the Cherokee Nation therefore pervaded its school system, affecting both students and teachers.

[359] Littlefield, *Cherokee Freedmen*, 56.
[360] Littlefield, *Cherokee Freedmen*, 68, 69. Naylor, *African Cherokees in Indian Territory*, 175.
[361] Wickett, *Contested Territories*, 81.
[362] J. L. Reed, 'Family and Nation: Cherokee Orphan Care, 1835-1903,' *American Indian Quarterly*, 34:3 (2010), 334.

Freedpeople and the Orphan Asylum

The frustration freedpeople felt at being offered only limited access to education was compounded by their exclusion from the national orphan fund and asylum. The national orphan fund, established as part of the 1841 Act Relating to Education, initially awarded schools with 200 dollars to place orphans with acceptable families and pay for their board. Orphans had previously been cared for by kin but in creating the orphan fund the National government assumed that responsibility as it expanded its power in the nineteenth century.[363] Whereas Cherokee society had previously been organised around clan membership and kinship ties, the notion of citizenship slowly replaced these as the government formalised who was and who was not Cherokee. Traditionally, individuals enslaved by Cherokees had no clan membership and could not claim its advantages. Julie Reed argues that although 'citizen' came to replace 'clan member,' the exclusion of children of freedpeople revealed that although the Cherokee Nation may have recognised them as citizens they did not see them as *kin* and were unwilling to extend to them its associated benefits.[364]

At its pre-Civil War peak the fund provided for 120 orphans but the conflict left 1,200 Cherokee children without parents.[365] This was an unmanageable increase and in order to more effectively provide care for so many orphans, the Nation established an Orphan Asylum in 1872. The asylum provided board, a primary school education, encouraged industry, family values and nationalism and was modelled on the ideal Cherokee home.[366] The subject of great public interest, the asylum quickly gained a reputation for providing both excellent care and a good education.[367] By 1873, there were ninety residents at the Orphan Asylum,

[363] Ibid, 314. The creation of the Cherokee Nation as a nation state is detailed in *Cherokee Renascence* by W. G. McLoughlin.
[364] Reed, *Family and Nation*.
[365] Ibid, 319.
[366] Ibid, 322.
[367]Ibid, 326.

none of which were freedpeople.[368] Having previously been given a share in the Orphan fund following emancipation, freedpeople were also cut off from the fund after the establishment of the Orphan Asylum and therefore assumed the responsibility of caring for orphaned children themselves. They did, however, voice their discontent at this exclusion. In 1873, after receiving no response from the Orphan Asylum or the National Council, a group of freedpeople petitioned Agent John B. Jones to seek the support of the United States as a "last resort."[369] Although he did not forward their petition, citing "blunders and defects" for this oversight, Jones outlined their arguments in a letter to the Commissioner of Indian Affairs.[370] According to Jones, the petitioners argued that as citizens by virtue of the treaty of 1866 they are entitled to share in "the very important privilege of having their orphan children participate in the benefits of Orphan Funds of this Nation."[371] Although the original text of the petition has since been lost, it is possible to draw certain conclusions based on Jones's letter. The petition echoed Louis Rough's letter to President Grant in two key ways. First, these freedpeople have also concluded that their own actions are unlikely to affect change and hope that pressure from the United States will force the Cherokee Nation to reconsider their position. Second, the freedpeople considered racial prejudice to be a factor in their exclusion from the Orphan Asylum and would therefore prefer that the orphaned children of freedpeople be cared for through other means:

> They further state: That owing to the prejudice existing in the minds of many of the Cherokees against associating with people of African blood they do not urge or even request, that their orphans be taken into the Cherokee Asylum, for they do not wish to obtrude any portion of their people on those who dislike to associate them.

[368] Ibid, 320.
[369] 'John B. Jones to G. A. Walker, February 10, 1873,' CHN Microfilm 81, frame 1176.
[370] Ibid, 1177.
[371] Ibid, 1175.

[…]

…they wish to avoid any unpleasant feelings among the Cherokees which the presence of colored children in the Asylum might cause, and also to avoid the possibility of such indignities being offered to their children as are suffered by colored students attending white institutions in the states.[372]

In this passage, Jones's letter reveals that the petitioners fear those who 'dislike to associate' with freedpeople may react negatively if forced to open the asylum to orphaned children of freedpeople. Doing so may have ramifications for both freedpeople generally (who might have been subject to resentment or 'unpleasant feelings') and the children themselves who may become victim to 'indignities' within the asylum. Already vulnerable by virtue of their orphan status, then, such children would be made more so by the colour of their skin. Interestingly, the petitioners reveal an awareness of how orphaned children of freedpeople were treated outside of the Cherokee Nation by referring to 'white institutions in the states'. This suggests that Cherokee freedpeople themselves were actively monitoring policies towards freedpeople in the United States and were concerned about being subject to the same conditions.

Jones's letter and the petition he described appear to have affected no response on the part of the Cherokee Nation. In October 1874, another petition was sent by twenty-four freedpeople from Four Mile Branch to the General Council seeking relief. Within the letter the petitioners again protested the exclusion of their children from the Orphan Asylum and demanded it as their right: "By the treaty of 1866 provision was made for us to enjoy all the rights and privileges of Cherokee citizens."[373] In doing so, the petitioners insisted on equal treatment and refused to accept the inaction of the Cherokee elite. Despite repeated

[372] Ibid, 1175-1176.
[373] 'Petition for the education of Afro-American Orphans, October 31st, 1874,' University of Oklahoma Libraries, Western History Collections, Cherokee Nation Papers (CNP) Microfilm Edition, Roll 6, Folder 634, page 2.

attempts to secure support for the orphaned children of freedpeople, however, such children were never permitted to enter the Orphan Asylum. Reed has argued that the Cherokee leadership may have been unwilling to recognise freedpeople as kin, only citizens, but compromised by meeting "the minimal needs of freedmen."[374] Although pressured by the United States to admit that they had excluded freedpeople from the asylum, the Nation instead claimed that they could not care for all orphans and in 1895 established a residential primary department in the Colored High School that was open to orphaned children of freedpeople.[375] Over twenty years after the Orphan Asylum opened, then, the Nation met its obligations under the 1866 Treaty but did not admit people to the Cherokee family writ large.

Like Cherokee freedpeople, freedpeople throughout the United States struggled to gain access to orphanages. Unlike the Cherokee Nation, however, the federal government did not claim responsibility for the care of orphaned children and this responsibility fell to families and communities. The first orphanage in the United States was established by Ursuline (Catholic) nuns in New Orleans in 1798 and was intended to address the hardships faced by children growing up in poor houses.[376] Orphanages were established slowly between 1800 and 1830, then rapidly from the 1830s as they gained a reputation for being "ideal institutions," and were placed under huge strain by the carnage of the Civil War.[377] According to historian Geraldine Youcha, African Americans struggled to gain access to orphanages or support more generally from charitable organisations that assisted the poor since they were largely set up by white Americans to care for white Americans. Girard College orphanage - established in Philadelphia in 1848 - only began admitting boys of colour

[374]Reed, 'Family and Nation,' 334.
[375] Ibid.
[376] G. Youcha, *Minding the Children: Child Care in America from Colonial Times to the Present* (New York and London: Scribner, 1995) 173-174.
[377] Ibid. 174

in 1967, for example.[378] Although some orphanages were set up specifically to cater for the needs of African American children, they were often vulnerable to the racial tensions of their locality. The first students of the Colored Orphan Asylum in New York, for example, walked across the city to move in when it opened in 1836 because coach drivers would not allow them to board the coach.[379] During the Civil War Draft Riots of July 1863, rioters burnt down the orphanage after anger at the Conscription Act became directed at the black residents of the city.[380] In the years following the Civil War the number of orphanages open to the children of freedpeople remained few and the care of orphans remained a local or a private matter rather than the responsibility of the federal government. This is likely to have informed the indifference of federal officials towards the exclusion of Cherokee freedpeople from the Cherokee Orphan Asylum: there was no corresponding rights or service provided for citizens of the United States.

'Your Humble Petitioners': Seeking Relief from the Federal Government

By 1872, United States officials were aware that freedpeople were struggling to gain access to the same services open to other Cherokees. That year, federal officials wrote to Principal Chief William Potter Ross demanding an explanation of the exclusion of freedpeople from the Orphan Asylum and the lack of schools providing for freedpeople.[381] There is no record of a reply. The next year, within his report on intruders and the citizenship status of freedpeople in the Cherokee and Creek nations, Superintendent W. N. Nicholson of the Central Superintendency included a list of 290 children of freedpeople who claimed to have been "deprived of school privileges and of the benefits of the school fund by the Cherokee

[378]Ibid. 177.
[379] Ibid. 186.
[380] Ibid. 191.
[381] Littlefield, *Cherokee Freedmen*, 56.

authorities."[382] As well as being concerned about the broader implications of freedpeople being denied access to education, United States officials also became involved in questions over individual schools. In May 1877, U. S. Indian Agent S. W. Marston from the Union Agency wrote to Principal Chief Charles Thompson (Oochalata) requesting information about a school operating in Lightning Creek on behalf of the Department of the Interior. The teacher at the school, Edward Derrick, had sought the assistance of the United States in operating the school which he said served "freedmen who were slaves of the Cherokees and many of them are doubtless mixed bloods of that nation."[383] It is implicit in Derrick and Marston's comment on ancestry that the likelihood of Cherokee 'blood' legitimated the children's right to education. Interestingly, in October of the same year, fourteen freedpeople from Lightning Creek sent a petition to the Cherokee National Council in which they claimed to be "destitute of public schools" and pledged to be capable of meeting the minimum attendance requirements.[384] They therefore entreated the establishment of a school at Lightning Creek and met with success as the National Council must have approved their request: fragmentary attendance records reveal that in the winter term of 1894 (September to December) an average of forty students attended the Lightning Creek Primary School.[385]

The victories won by freedpeople in relation to education were small, however. Freedpeople, with some support from federal officials, continued to pressure the Cherokee Nation to meet their obligations to freedpeople, though they received limited results. For example, freedpeople protested only being taught by white or Cherokee teachers and, although there were still none in 1883 the Nation did hire fourteen black teachers over the next five years: nine of whom were "black native."[386] Since freedpeople preferred being

[382] 'J. Q. Smith to Secretary of the Interior, February 6, 1877,' CHN Microfilm 83, frame 606.
[383] 'S. W. Marston to C. Thompson, May 22, 1877,' CHN Microfilm 101, frame 1090.
[384] 'Petitioners to the National Council, October 20, 1877,' CHN Microfilm 101, frame 1097. I assume that either the petition was misdated or that the school taught by Edward Derrick closed briefly.
[385]'Lightning Creek Primary School Attendance Record, September to December 1894,' CHN Microfilm 102, frame 562.
[386] Littlefield, *Cherokee Freedmen*, 55.

taught by teachers of their own race, this represented an improvement in employment practices. The number of schools established for the children of Cherokee freedpeople also slowly increased throughout the next decades, reaching twelve out of a total of 100 in 1887 and peaking at fourteen in 1892. An 1898 list of school age citizens reveals that these schools served a potential 1523 freedpeople of school age out of a total of 11,538 children who met this criteria.[387] Freedpeople were therefore underrepresented in terms of the number of schools they had access to, especially since other Cherokee citizens could still theoretically attend the schools established for freedpeople. Coloured schools that did operate during this time were therefore heavily oversubscribed and struggled to provide the quality of education seen in other Cherokee schools. A petition sent to the National Council and Board of Education in 1895, requesting an Assistant Teacher, illustrates the strain this placed on Coloured Schools: over 104 students attended Four Mile Branch Colored Primary School, with a daily average attendance of seventy to eighty. The single teacher employed at the school understandably expressed concern at the prospect of teaching such huge classes on his own.[388]

Furthermore, although the Cherokee Nation bowed to pressure from freedpeople to open a Colored High School in 1889 it did not fulfil the same functions as the Male and Female Seminaries. Rather than suggesting the inclusion of freedpeople within the Cherokee high schools, however, the problems of the Colored High School highlight how reluctant the Nation was about providing services to freedpeople. The Cherokee Nation provided the bare minimum rather than embrace freedpeople in the same manner as kin, in much the same way Julie Reed described in relation to the orphan fund. Like its counterparts, the Colored High School was intended to provide a higher education for fifty students (although in this

[387] 'List of Children of School Age, 1898,' CHN Microfilm 102, frame 894-895.
[388] 'Petitioners to the National Council and Board of Education, December 2, 1895,' CHN Microfilm 102, frame 678.

case the institution would accommodate both male and female students) and although tuition would be free, board was charged at $5 per month. The Colored High School received less funding than its counterparts, reflected in the wages of the Principal Teacher ($500 rather than $900 for each of the Seminaries) and the budget afforded for expenses ($3000 rather than the $7000 afforded for each of the Seminaries). This was a considerable difference and clearly illustrates the lack of investment that the Cherokee Nation was willing to make to the higher education of freedpeople.[389] The condition of the Colored High School quickly became a source of concern for its Principal Teacher, Nelson Lowery. In 1892, Lowery wrote to the Superintendent of Education requesting that the cook range be replaced because "the present range is liable to set the building on fire."[390] Writing again in 1894, Lowery requested that the National Council provide a "badly needed" wash house.[391] In 1897, although proud of strong attendance figures, his successor asserted that the building "needs repairs badly" and described significant damage to the roof amongst other necessary repairs.[392] These were not requests made merely to improve the outward appearance of the school, but serve to confirm that at various points the Colored High School was an unsafe environment. Plagued by low attendance, largely attributable to the $5 board which remained outside the means of most freedpeople families, the Colored High School continued under constant threat of closure. In the eyes of some Cherokees, the struggle of the Colored High School validated their notions of black inferiority.[393] In the 1891 Annual Report of the Superintendent of Education, W. W. Hastings asserted that only six scholars were in permanent attendance and that "this is too great an expense for the education of so few."[394] He therefore recommended the high school be either temporarily closed or

[389] 'Senate Bill 28,' CHN Microfilm 102, frame 444.
[390] 'N. H. Jackson to C. J. Harris, January 5, 1892,' CHN Microfilm 97, frame 731.
[391] 'N. Lowery to C. J. Harris,' CNP Microfilm 12, folder 1032.
[392] 'Annual Report of the Negro High School,' CHN Microfilm 97, 746.
[393] Wickett, *Contested Territories*, 83.
[394] 'Annual Report of the Superintendent of Education, 1891,' CNP Microfilm 11, folder 962.

permanently discontinued. Daniel Littlefield has argued that, owing to the poor investment in and lack of a defined curriculum provided for the Colored High School, it provided such a poor education that "it was, for all practical purposes, a primary school."[395] In 1895, the National Council added a primary department to the Colored High School and by 1901 only twelve of the thirty-four students at the institution were studying at high school level.[396]

Cherokee freedpeople struggled, then, to gain access to the schools provided by the Cherokee Nation to its citizens and those that did were likely to have received a comparatively poor education. Although the Cherokee Nation may have surpassed its neighbours in the antebellum period, with its establishment of a nationally funded public school system, there was arguably much greater access for education to its freedpeople available in the United States in the decades following the Civil War. Celia Naylor has therefore argued that the education received by Cherokee freedpeople was "limited" in comparison to the opportunities available to freedpeople in the United States. Without the full support of the United States, freedpeople had little power with which to pressure the Cherokee Nation to treat them as equal citizens with the attached rights to services provided by the Nation. Although the federal government was made aware of the exclusion of freedpeople by the actions of freedpeople themselves, federal officials took limited action. Rather than enforcing the Treaty of 1866 and using it as a legal basis for intervening on behalf of freedpeople, federal officials collected information from freedpeople and the Cherokee Nation but showed little interest in the issue. Scholars such as Naylor do not offer an explanation as to why freedpeople received minimal support in regard to securing their education. This stands in stark contrast to the unwavering commitment of the United States to defend the citizenship status of Cherokee freedpeople seen in the previous chapter. Agent John B. Jones, for example, had advocated the intervention of the United States on behalf of

[395] Littlefield, *Cherokee Freedmen*, 57.
[396] Ibid, 58.

freedpeople when he forwarded the 1872 petition to the Commissioner of Indian Affairs but made no comment on the exclusion of freedpeople citizens from the Orphan Fund in 1873. The federal government then proceeded to enter a stalemate with the Cherokee Nation over the rights of freedpeople to education and the orphan fund where they collected information pertaining to the exclusion of freedpeople from the services of the nation but took no action. In hearings conducted by the federal government in 1885, Julie Reed describes Cherokee officials feigning ignorance that there were any orphaned freedpeople at all or that it was necessary that provision be made for such children.[397] Despite this flagrant violation of the 1866 treaty, the federal government subsequently took no action to secure the rights of freedpeople to access the services provided by the Cherokee Nation.

Conclusion

Whereas public education, or at least access to it, was an established component of Cherokee citizenship throughout the post-Civil War period, the education of freedpeople in the United States was not viewed in the same way. Although the Freedmen's Bureau did distribute funds in aid of the education of freedpeople this did not equate to a national public school system: the education of the formerly enslaved in the aftermath of the Civil War represented an anomaly since education was not considered a state responsibility. The involvement of northern benevolent societies, that were private organisations that existed independently to the federal and state governments, further indicates that providing education was not considered the responsibility of the national government and not a right of citizenship. In continuing to hold to that principle in relation to Cherokee freedpeople,

[397] Reed, 'Family and Nation,' 333, 334.

federal officials that oversaw the status of freedpeople in the Cherokee Nation denied them a key component of their Cherokee citizenship.

Without the support of the federal government, freedpeople struggled to gain equal access to the social services associated with Cherokee citizenship and achieved only small victories in their pursuit of these rights. As illustrated in the previous chapter, the federal government had been willing to support freedpeople as they pursued legal citizenship, entering into disputes with the Nation over the six-month deadline and who held final authority over who was and who was not a Cherokee citizen. Federal officials only tentatively pursued the matter of Cherokee freedpeople's rights to access the national schools and orphan fund, however, and did not enter into a similar jurisdictional disagreement. They therefore proved themselves more willing to enforce some rights of Cherokee citizenship than others. Enforcing the rights of freedpeople to claim legal citizenship and residency within the Nation allowed the United States to gain influence over decisions made regarding the protection of the Cherokee border (and claim sole control over the actions of their own military, despite treaty assurances they would remove intruders on behalf of the Cherokee Nation). On the other hand, enforcing the right of Cherokee freedpeople to services that had no parallel in the United States was more likely to prove costly than act as a meaningful inroad on the sovereignty of the Cherokee Nation. The relative indifference of the federal officials therefore allowed the Cherokee Nation to continue providing its freedpeople with limited access to the services it provided to its citizens. As will be made evident in the next chapter of this thesis, however, freedpeople did manage to secure the support of federal officials as they pursued an equal share in the economic resources of the Cherokee Nation.

Chapter Four: Securing a Share in the Economic Resources of the Cherokee Nation

> Under their respective pleas of interest and obligation, concession and agreement are undoubtedly necessary, on the part of both, to a final settlement of the troublesome question…. Some body has to back down, and who shall it be?[398]
>
> *'Citizenship: Some Facts Not Generally Known In Reference to the Question'* (1882)

The Cherokee National Council approved the 1880 national census in the hope that this would resolve the contentious issue of who was and who was not entitled to Cherokee citizenship. As discussed in the second chapter of this thesis, the Nation had been plagued by this problem since the Civil War and it had caused considerable friction both within the boundaries of the Nation and between the Cherokee Nation and the United States. Creating a definitive list of citizens would theoretically end debate over the status of individuals at that particular time as well as in the future (descendants would have to trace their ancestry to a name on the 1880 census in order to prove their claim to citizenship).[399] In the two decades following the creation of the 1880 census, however, the issue of citizenship remained controversial. Individual freedpeople continued to struggle to be recognised as citizens rather than intruders and, as discussed in the third chapter of this thesis, even those freedpeople accepted as citizens did not have equal access to national services such as free education in the final decades of the nineteenth century. The Cherokee Nation and the United States both continued to claim final authority over who was and who was not a Cherokee citizen, which in turn prompted commentators within the Nation to question who would be the first to 'back down.'

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[398] A. 'Citizenship: Some Facts Not Generally Known In Reference to the Question.' *Cherokee Advocate*, June 30th, 1882. Sourced from *19th Century U.S. Newspapers.* Infotrac. Galegroup. http://callisto10.ggimg.com/imgsrv/FastPDF/NCNP/WrapPDF=contentSet=NCNP=recordID=5AJD-1882-JUN30-001-F.pdf (16/1/16)

[399] The final nature of the census can be seen in the provisions established for appeal: the citizenship commission would cease to exist but individuals who disputed the decisions made during the process of creating said census would be able to apply directly to the Principal Chief for reassessment. Evidently, the national council did not anticipate spending much time or resources addressing claims to citizenship after this point. D. Littlefield, Jr., *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport and London: Greenwood Press, 1978), 114-5.

The ongoing dispute over Cherokee freedpeople and their rights came to a head over Cherokee national economic resources. At the beginning of 1883, the Cherokee Nation requested that the United States paid the balance of funds it owed the Nation for land used to relocate other Native nations after the Civil War. Given to the National Council to use as they saw fit, the Council proposed that the money be evenly distributed to citizens who were 'Cherokee by blood' as a per-capita payment in the spring of the same year. Cherokee freedpeople, as well as other adopted citizens, were therefore denied a share of this payment. Their exclusion from the 1883 distribution of Cherokee national funds prompted freedpeople to act collectively to secure their interests. In response to this payment, Cherokee freedpeople organised and successfully navigated the United States legislature and courts to ensure they received an equal share in national resources and had their claim to do so validated by the United States legal system. In doing so, Cherokee freedpeople exploited the different interpretations of Cherokee citizenship held by the Cherokee and United States governments to secure their own interests. Daniel Littlefield has argued that prior to this moment, freedpeople had been unable to "directly" fight for their rights (having previously relied on the actions of federal and Cherokee officials). Now they had identified a significant issue where their rights could be clearly tracked and "they had found a champion in the federal government."[400] The federal government was slow to offer their support, however, taking five years to pass the bill appropriating the $75000 necessary to provide freedpeople with an equal payment to that received by Cherokees by blood. Furthermore, Cherokee freedpeople may have used familiar techniques to attempt to influence officials around them (petitions, for example) but they also acted independently to secure their own legal counsel and submit their suit to the Court of Claims. In doing so, freedpeople utilised the knowledge of Cherokee and federal institutions (including the National Council, the Department of the Interior and Congress) they had amassed in previous attempts to gain full rights as well as taking their struggle in to the American judicial system. The actions of freedpeople themselves therefore kept the issue of their rights at the forefront of interactions between the Cherokee Nation and the United States. Although the federal government did express willingness to support freedpeople as they worked to secure an equal share in the resources of the Cherokee Nation, the growing hostility displayed towards freedpeople within its own borders - compounded by its goal of territorialisation of Indian Territory - suggests that they did so to further their own expansionist agenda.

[400] Littlefield, *Cherokee Freedmen*, 111.

The Most Dangerous Question: Cherokee Citizenship in the 1880s

The 1880 Cherokee census did not provide a foundation for resolving the dispute over freedpeople and their citizenship. The National Council's 1883 payment (to citizens by blood only) was therefore made in the context of ongoing debate and growing frustration between Cherokee and federal officials as well as within the Cherokee citizenry. At this time, the United States and the Cherokee Nation both continued to claim final authority over questions of citizenship and the lingering nature of this dispute was a cause for concern within the Cherokee Nation. Articles considering citizenship featured heavily in the national newspaper, the *Cherokee Advocate*, reflecting its prominence as a political issue. A series of three opinion pieces, written by an anonymous author ('A') in 1882, attempted to make sense of the problem for readers of the *Cherokee Advocate*. 'A', most likely an educated Cherokee man, laid out a brief summary of the interactions between Cherokee and federal officials over citizenship and intruders, criticised the refusal of Cherokee officials to work with federal officials to reach a mutually beneficial agreement, and advocated compromise to resolve the questions surrounding Cherokee citizenship. 'A' incorporated extensive quotations from letters sent between Cherokee and federal officials as evidence for his argument. In structuring the pieces in such a manner, the author endeavoured to share the 'facts not generally known' with the residents of the Cherokee Nation and establish the history of how the issue had been handled, exactly what had been said and by whom.[401] 'A' also shared his own opinion and opened the series with a scathing indictment of how the dispute had been handled by Cherokee officials prior to 1882:

> …those in authority at the time, under the plea of absolute autonomy as they were pleased to call it, ignored the recommendation [of the Commissioner of Indian Affairs] and tacitly denied, by non-compliance, the right of the Government of the United States to interfere in any matter involving any of the rights of self-government. As a consequence the question remains and the same conditions exist today just as they did when the demand was made, complicated by the lapse of years and augmented by hundreds more exercising

[401] A. 'Citizenship: Some Facts Not Generally Known In Reference to the Question.' *Cherokee Advocate*, June 16th, 1882. Sourced from *19th Century U.S. Newspapers.* http://callisto10.ggimg.com/imgsrv/FastPDF/NCNP/WrapPDF=contentSet=NCNP=recordID=5AJD-1882-JUN16-002-F.pdf (16/1/16)

> all the rights of citizenship except representation, but enjoying instead, which is better, a complete exemption from the operation of our laws.[402]

'A', called in to question the efficacy of "those in authority" by suggesting that their refusal to cooperate with federal officials, led to a deepening of the problem rather than its resolution.[403] 'A' therefore depicted the actions of the Cherokee leadership as rash, stemming from a desire to reject cooperation with the United States at the expense of negotiating a fairer and more equitable agreement in regards to managing Cherokee citizenship. Furthermore, 'A' suggested that by allowing the debate over jurisdiction to continue unresolved it actually presented a larger threat to the autonomy of the Nation as citizenship cases became increasingly difficult to adjudicate (given the time since emancipation, in the case of freedpeople) and the growing number of intruders entering the Nation. These intruders, according to 'A', were able to live within the Cherokee Nation but operate outside of Cherokee law, which worked to the detriment of the Nation and its legitimate citizens.

The urgency with which 'A' viewed the question of citizenship can be seen in the concluding line of the first piece, in which he referred to an 1876 letter sent by the Commissioner of Indian Affairs: "Though his letter was written nearly six years ago, it is evident in the present condition of this, now the most dangerous, question to the peace of our government, that there is no let-up in the conditions he prescribed, and the disposition to see how long we will "kick against the pricks.""[404] The evocative image of 'kicking against the pricks' likely refers to the tireless needling of Cherokee autonomy and authority by the federal government and its officials and Cherokee attempts to resist. Evidently, the Commissioner anticipated that the Cherokee Nation would eventually concede to the authority of the United States. 'A' returns to this notion in his second piece, published two weeks after the first, in which he claims that "the screws have been put to us and will be tightened until we yell 'enough.'"[405] Whereas 'A' discussed citizenship and intruders in a more general sense in his first piece, the status of Cherokee freedpeople featured prominently in 'A's second piece. This reflects the central position freedpeople held in the disagreement over citizenship. 'A' quoted an 1879 letter from Indian Inspector Watkins to the Commissioner which described a large number of freedpeople being rejected as citizens,

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[402] Ibid.

[403] Ibid. Emphasis added.

[404] Ibid.

[405] A. 'Citizenship: Some Facts Not Generally Known In Reference to the Question.' *Cherokee Advocate*, June 30th, 1882.

despite Watkins believing them to be "equitably entitled to citizenship," and his subsequent recommendation that extending the January 1867 deadline by five years would make deciding these cases easier and fairer.[406] 'A' therefore illustrated that federal officials were generally sympathetic to the position of freedpeople who struggled to prove they had returned to the Nation by January 1867 and that the same officials were sceptical of the deadline. By suggesting that Watkins' letter reveals the aims of the federal government to force the Cherokee Nation to accept freedpeople outside of the parameters established by the Reconstruction Treaty, 'A' warned readers that enabling the federal government to claim jurisdiction over citizenship would allow them to implement policies that were not in accordance with Cherokee notions of who was and was not entitled to citizenship.

The solution 'A' proposed was put forward most explicitly in the second piece in which he argued that although the autonomy of the Cherokee Nation should be protected, compromise was necessary:

> Under their respective pleas of interest and obligation, concession and agreement are undoubtedly necessary, on the part of both [the Cherokee Nation and the United States], to a final settlement of the troublesome question…. Some body has to back down, and who shall it be?[407]

It is implicit throughout 'A's pieces that, in the face of the federal government's tireless determination to claim final authority over Cherokee citizenship, 'backing down' might represent the only course for the Cherokee Nation to protect its sovereignty and the best answer to the 'troublesome question.' Cooperation and negotiation between federal and Cherokee officials had the potential to protect the role of the Cherokee Nation in determining the citizenship status of residents as well as resolving a longstanding dispute that represented a 'most dangerous' threat to the Nation. Daniel Littlefield, who described 'A's series as a "long and informative campaign," concluded that "there were few signs of its effects," however, and the disagreement continued.[408] Whereas 'A' counselled negotiation and compromise throughout his series, other features within the *Cherokee Advocate* reiterated that the Cherokee Nation was the ultimate authority over Cherokee citizenship. The *Advocate* published a letter from Principal Chief Dennis Bushyhead and the Cherokee delegation in Washington to the Secretary of the Interior, for example, that argued against

[406] Ibid.

[407] Ibid.

[408] Littlefield, *The Cherokee Freedmen*, 119.

federal interference in decisions of citizenship. Evidently, disagreements between federal and Cherokee officials were ongoing in 1882. Over the course of the letter, Bushyhead and the delegates claimed jurisdiction over the Cherokee population and argued that federal officials violated treaties made between the Cherokee Nation and the United States when they failed to remove intruders: "You can understand the dangers that would threaten the Cherokee Government, if a United States officer, but little familiar with the subject, could subvert the Constitution of the Cherokee Nation, and declare who were and who were not her citizens."[409] The publication of 'A's opinion pieces and Bushyhead's letter reveal the continued attention residents of the Cherokee Nation paid to the dispute over citizenship and that the creation of the 1880 census had not brought the 'troublesome question' to an end: instead it was being debated just as fiercely.

A 'Wrong so Unexpectedly Wrought': Exclusion from the 1883 Per-Capita Payment

At the beginning of 1883, the Cherokee Nation requested that the United States paid the balance of funds it owed the Nation for land used to relocate other Native nations after the Civil War. The National Council received the first instalment of $300,000 of the agreed $678,655.55 payment which the Council was empowered to use as they saw fit. The Council proposed that the money be evenly distributed to citizens who were 'Cherokee by blood' as a per-capita payment in the spring of the same year. Freedpeople, as well as adopted citizens, were therefore denied a share of this payment.[410] Daniel Littlefield has argued that the exclusion of freedpeople from the per-capita payment led to a "serious problem in Cherokee-freedmen relations," as it prompted freedpeople to challenge the right of the Cherokee Nation to treat them as anything less than full citizens.[411] The exclusion of freedpeople from the per-capita payment presented a "cause they [freedpeople] could rally behind" since it affected them all.[412] The passage of the bill and subsequent payment to Cherokee citizens by blood only prompted freedpeople to act together to secure their right to a share in national funds and, in the process, affirm that they were entitled to full and equal citizenship. After success in lobbying Congress to affirm that Cherokee freedpeople were entitled to a share of the 1883 payment, Congress made an appropriation from

[409] 'Letter of D.W. Bushyhead and Cherokee Delegation to H. M. Teller, August 9th 1882, Copy received by Cherokee Advocate,' 5-6. Dennis Bushyhead Collection, Box 1, Folder 63. Western History Collections, University of Oklahoma Libraries, Norman, Oklahoma.
[410] Littlefield, *Cherokee Freedmen*, 119.
[411] Ibid.
[412] Ibid, 129.

Cherokee Nation funds held in trust to remedy their exclusion from the per-capita payments. Deciding exactly who was entitled to receive a payment proved controversial, however, since the Cherokee Nation insisted on using the 1880 census and federal officials deemed that census to be inaccurate. The successful pursuit of the 1883 payment marked the beginning of a longer struggle for a share in national economic resources that concluded in 1897 with the dissolution of the Nation on the horizon. After being awarded their share by Congress, Cherokee freedpeople placed a suit with the United States Court of Claims that would render judgement on whether the Cherokee Nation could exclude freedpeople from payments made to its citizenry. Again, freedpeople were successful. Carrying out these payments to freedpeople proved difficult, however, since the Cherokee Nation and the United States continued to dispute the accuracy of the census information regarding Cherokee freedpeople and therefore which individuals were entitled to a payment and which were not.

Freedpeople had paid close attention to the Council's plan to distribute the funds amongst Cherokees by blood only and were quick to react. William Brown, a freedman from the Canadian District, wrote to Principal Chief Dennis Bushyhead in April 1883 enquiring after his position on their rights. Brown's letter is friendly and polite, "I take pleasure in wrighting (sic) you a few lines hoping they will find you well… I want to know if you will give us sitizens (sic) the same rights the treaty calls for."[413] Brown's tone makes the dynamic between the two correspondents evident: Brown's initial deference to Bushyhead illustrates his awareness that Bushyhead's position gives him status and power. Brown is clear about his objective in writing to Bushyhead, however, following his polite opening with a challenge for Bushyhead to meet the treaty obligations regarding freedpeople. Throughout the course of the letter Brown requests an audience with Bushyhead and pledges between 50 and 80 votes in Bushyhead's favour (presumably from other freedmen) if he defends the right of freedpeople citizens to share in the payout. Brown therefore reminded Bushyhead of the voting power freedpeople held in the Nation in the hope that he would cater to their concerns. Dennis Bushyhead had served as national treasurer from 1871 and was elected Principal Chief with a clear majority in 1879: since the Principal Chief served four year terms, however, Bushyhead was up for re-election in 1883. According to the 1880 census,

[413] 'William Brown to Principal Chief Dennis Bushyhead, April 27th 1883.' Cherokee Nation Records (CHN) Microfilm 81, frame 1263. Cherokee Nation Records, Indian Archives Collection. Archives and Manuscript Division, Oklahoma Historical Society.

freedpeople formed approximately ten per cent of the Cherokee population and would therefore have been valuable political allies.[414]

Dennis Bushyhead was the son of respected Cherokee Chief Justice Jesse Bushyhead and returned to the Cherokee Nation after his father's death in 1844.[415] Dennis Bushyhead quickly earnt "high esteem as a Cherokee leader and personage" and, although William McLoughlin has argued that the dissolution of the Cherokee Nation was inevitable regardless of who acted as Principal Chief, was a fervent defender of Cherokee sovereignty and autonomy during his tenure.[416] As Principal Chief, Bushyhead had advocated equal rights for freedpeople (including removing the January 1867 deadline that was such an obstacle for many freedpeople seeking citizenship in the Nation) and appealed to the National Council to adopt all former slaves of Cherokees. Bushyhead therefore argued that restricting the 1883 payment to Cherokees by blood only was unconstitutional and vetoed the council's bill to do so.[417] Although it is difficult to ascertain how much influence Brown's letter had on Bushyhead, they were at least in agreement that freedpeople should have a share in the per-capita payment and Bushyhead acted accordingly. Unfortunately, on May 19 1883 the council voted to overrule Bushyhead and passed a bill distributing the money to citizens by blood only over his objections. Overruling Bushyhead's veto required votes to do so from two-thirds of Council members, revealing that a clear majority of the National Council members were in favour of excluding freedpeople from the per-capita payments. The disagreement between Bushyhead and the Council indicates that although the Cherokee leadership did not necessarily share the same views regarding freedpeople and other adopted citizens, with the majority continuing to reject freedpeople as full and equal Cherokee citizens despite the Treaty of 1866 made between the Cherokee Nation and the federal government.

Whereas the first chapter of this thesis illustrated how freedpeople had largely acted to protect their *own* claims to citizenship, over the course of the 1880s it is evident that freedpeople were organising collectively to determine the nature of that citizenship: were freedpeople only entitled to a lesser form of citizenship or did the 1866 treaty that awarded

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[414] F. Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2008), 87.
[415] S. Hoig, *The Cherokees and Their Chiefs: In the Wake of Empire* (Fayetteville: University of Arkansas Press, 1998), 248. W. G. McLoughlin, *After the Trail of Tears: The Cherokees' Struggle For Sovereignty, 1939-1880* (Chapel Hill and London: University of North Carolina Press, 1993), 365.
[416] Hoig, *Cherokees and Their Chiefs*, 249.
[417] Littlefield, *Cherokee Freedmen*, 111.

them citizenship secure them 'all the rights of native Cherokees'?[418] In direct response to the bill authorising the per-capita payment, freedpeople met in conventions throughout the Cherokee Nation in order to react as a collective (or collectives) rather than individuals. On November 14th 1883, for example, a convention of freedpeople that met at Four Mile Branch forwarded a petition to the National Council that claimed to represent "the colored citizens of the Cherokee Nation."[419] Over the course of the petition, the authors succinctly argued that the exclusion of freedpeople from the per-capita payments violated the 1866 Treaty made with the United States that secured their rights and, by extension, the Cherokee Constitution which declared treaties to be the "supreme law of the land."[420] Through their references to the Cherokee Constitution and the 1866 Treaty, the petitioners challenged the legality of the Council's decision and charged it was "a violation" of both.[421] Signed by thirteen freedmen representing freedpeople from four districts in the Nation, the petition requested that the Council overturn its May decision and give "each citizen debarred of said funds his due portion."[422]

After gaining little success petitioning the Cherokee National Council, freedpeople attempted to utilise support from the United States government to secure their share of national funds and have their status as full and equal citizens affirmed. A letter published in the *Cherokee Advocate* described the U.S. Congress as having received three petitions from Cherokee freedpeople (one of which was signed by more than 1200 individuals) by February 1884, much to the consternation of its author. The author disparaged "these (as they would have it appear) much abused citizens," suggesting that their claims did not reflect reality in the Cherokee Nation.[423] Conventions of freedpeople continued to meet and, following a meeting between freedmen and James Milton Turner (an African American politician-turned-lawyer from Missouri) at the Lightning Creek School in Cooweescoowee District, freedpeople's representatives from all over the Cherokee Nation met in Fort Gibson to create a single body that would pursue their interests in regard to the per-capita payment. At the

[418] 'Treaty with the Cherokee Nation, 1866,' in *African Cherokees in Indian Territory: from Chattel to Citizens*, C. E. Naylor, 225 (Chapel Hill: The University of North Carolina Press, 2008).
[419] 'Berry Mayes et al to the Cherokee National Council, November 14th 1883' CHN Microfilm 81, frame 1272.
[420] Ibid, 1272-3.
[421] Ibid. 1273.
[422] Ibid. 1273.
[423] 'Washington Letter, Washington, February 2 1884.' *Cherokee Advocate*, March 14th[th], 1884. Sourced from *19th Century U.S. Newspapers*. http://callisto10.ggimg.com/imgsrv/FastPDF/NCNP/WrapPDF=contentSet=NCNP=recordID=5AJD-1884-MAR14-002-F.pdf (16/1/16).

subsequent meeting (held on December 21st 1883) the attendees selected Turner as their attorney and elected a committee of five people, specifically selecting two to travel to Washington, DC, and raise awareness of their exclusion.[424] Having travelled to the Indian Territory as he sought a place for disillusioned African Americans to move to, Turner was familiar with the position of Cherokee freedpeople and encouraged them to pursue their interests.[425] Turner had previously acted as a foreign diplomat during Rutherford B. Hayes's presidency and, although he had lost influence by the 1880s, he had numerous contacts in Washington, DC. Turner proved to be a controversial appointment and his biographer, Gary Kremer, has argued that the harder Turner worked on behalf of the freedpeople, the more frequently he was charged with being "an opportunist, a manipulator, and even a fraud."[426] Under Turner's guidance, however, the Cherokee freedpeople gained considerable success. The Fort Gibson meeting and his appointment marked the formal beginning of a long struggle to claim a share in national funds for freedpeople that would ultimately culminate in their suit in the Court of Claims being found in favour of the freedpeople.

Following the meeting at Fort Gibson, the freedpeople and Turner created and sent a petition to the United States Congress, the Cherokee National Council and U.S. Indian Agent Ingalls.[427] On March 16th 1884, both the Senate and House of Representatives received formally printed copies of the petition that detailed the exclusion of freedpeople from the per-capita payment of the previous year and proposed that the United States withheld money from the Cherokee Nation until the petitioners received equal payment. Over the course of the petition, its authors encouraged the federal government to intervene in the domestic affairs of the Cherokee Nation on their behalf. The authors stressed that the actions of the National Council were an "open and flagrant violation of the ninth article of the treaty of 1866" that guaranteed them equal rights and would establish an "unjust precedent" which would enable the Cherokee leadership to give freedpeople a lesser form of citizenship or exclude them entirely.[428] In doing so, the petitioners encouraged the United States Congress to see the exclusion of Cherokee freedpeople from national funds as being within the jurisdiction of the federal government (as a party to the 1866 treaty) rather than as a purely domestic concern of the Cherokee Nation. According to the wording of the 1866

[424] Littlefield, *Cherokee Freedmen*, 132-3.
[425] G. R. Kremer, *James Milton Turner and the Promise of America: the Public Life of a Post-Civil War Black Leader* (Columbia and London: University of Missouri Press, 1991),
[426] *Ibid*, 132.
[427] Littlefield, *Cherokee Freedmen*, 133.
[428] 'PETITION: To the Honorable, the Senate and House of Representatives of the United States in Congress Assembled, March 16th 1884' CHN Microfilm 81, frame 1288.

treaty, Cherokee freedpeople and their descendants should be entitled to "all the rights of native Cherokees."[429] As such, freedpeople argued, they were not just entitled to use national land but they had a stake in the communal ownership of national land in the same manner as citizens of Cherokee ancestry. Furthermore, the authors stressed that their history of enslaved labour and their commitment to citizenship after emancipation rendered their exclusion particularly unjust:

> the unrequited toil of your petitioners went toward up-building the millions of Cherokee National wealth, and to the uplifting of the Cherokees themselves to a higher plane of civilization, while your petitioners and their ancestors were totally denied reward… that your petitioners have accepted in perfectly good faith the boon of freedom and citizenship as guaranteeing them in "all the rights of Native-born Cherokees" through the treaty of 1866. They have entered upon pastoral life, and have tilled the soil… therefore, to endure this wrong so unexpectedly wrought would indeed prove a dire and discouraging circumstance.[430]

In depicting themselves as virtuous citizens, with a legitimate claim on the resources of the Cherokee Nation, the petitioners aimed to illicit the support of members of Congress to protect the interests of Cherokee freedpeople, in a similar manner to that seen in the letters and petitions discussed in previous chapters. The opposition of the Cherokee Nation leadership to awarding freedpeople their rights after emancipation (whether legal citizenship and the right to remain within the Nation, or access to the national education system) had made it evident to freedpeople that federal support would be necessary to pressure the National Council into awarding freedpeople a share in the payment. However, the proposal included within the petition, that the United States should withhold Cherokee national funds until the Cherokee freedpeople were afforded their share of the per-capita payment, differentiates it from those that came before. The petitioners therefore explicitly encouraged the federal government to exploit their position as trustee to influence domestic affairs within the Cherokee Nation. The proposal therefore rested on the specific grievance of the petitioners, the nature of the relationship between the Cherokee Nation and the United States (which held Cherokee funds in trust) as well as the potential willingness of the United States to intervene as party to the 1866 Treaty.

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[429] 'Treaty with the Cherokee Nation, 1866,' in *African Cherokees* by Naylor, 225.
[430] Ibid.

Initially, the actions of Turner and the freedpeople appeared to illicit little response beyond continued debate and only the determination of the freedpeople to secure their rights kept the per-capita payment on the national agenda. Opinion pieces debating the merit of the claim made by freedpeople appeared regularly in the *Cherokee Advocate*, often taking a similarly informative tone to the one taken by 'A' in 1883. For example, in 'Mistaken Notions in Regard to Cherokee Citizenship', a 'voter' stressed that the citizenship rights of freedpeople resulted from the 1866 treaty and that the nature of that agreement therefore limited the autonomy of the Cherokee Nation in regard to defining the status of freedpeople.[431] Furthermore, the author emphasised that only the National Council had the constitutional right to negotiate with the United States. Other articles, which similarly considered and attempted to clarify the question of who was and who was not entitled to a share of national funds, criticised freedpeople for inviting the United States to intervene. Such articles reveal the bias against Cherokee freedpeople within the Cherokee Nation and the resentment some Cherokees felt in response to their determined pursuit of equal rights. One article published in December 1885, for example, argued that since the per-capita payments were a domestic matter, any disputes should be handled internally (ie. by the Cherokee Supreme Court). At the conclusion of the article, the author reveals resentment of the freedpeople that was grounded in their actions and the author's belief that their claim to the payment was illegitimate: "…they ought not go whining to the Department at Washington to force the Cherokees by blood to divide money with them which they never paid a cent for."[432] In depicting freedpeople as 'whining' cowards that would not accept the judgement of the Cherokee National Council, the author endeavoured to persuade readers that the complaints made by freedpeople had little merit. Such depictions of Cherokee freedpeople echo Oochalata's assertion, cited in chapter two, that freedpeople who sought protection from eviction from federal officials were "disrespectful."[433] Despite the vehement protests of Cherokee freedpeople and Cherokees who believed they were entitled to full

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[431] 'Mistaken Notions in Regard to Cherokee Citizenship' *Cherokee Advocate*, 26th June 1885. Sourced from *19th Century U.S. Newspapers* http://callisto10.ggimg.com/imgsrv/FastPDF/NCNP/WrapPDF=contentSet=NCNP=recordID=5AJD-1885-JUN26-002-F.pdf (16/1/16).

[432] 'The Per Capita – Chief's Veto.' *Cherokee Advocate*, 11th December 1885. Sourced from *19th Century U.S. Newspapers* http://callisto10.ggimg.com/imgsrv/FastPDF/NCNP/WrapPDF=contentSet=NCNP=recordID=5AJD-1885-DEC11-002-F.pdf (16/1/16).

[433]'Charles Thompson to Cherokee National Council, November 14, 1877.' University of Oklahoma Libraries, Western History Collections, Cherokee Nation Papers (CNP) Microfilm Edition, Roll 3, Folder 213.

rights, the Cherokee National Council continued to insist that only Cherokees by blood were entitled to a share in funds derived from the sale of national lands. At Principal Chief Bushyhead's request, the Council issued a statement in April 1886 clarifying that, under their understanding of the law, Cherokees by blood had always owned Cherokee land in common and since adopted citizens, such as freedpeople or intermarried whites, had not they could only claim 'political rights' (such as residing in the Nation or the right to vote).[434] This statement therefore affirmed the Council's decision to limit the per-capita payments to Cherokees by blood only and appeared to offer a final judgement on the matter. Fay Yarbrough has argued that the decision of the National Council disproportionately affected freedpeople and placed them "in the least tenable position of all adopted citizens," since intermarried whites could share in payments received by their spouses and adopted Native Americans, such as the Shawnee, could negotiate a share in national resources.[435] As a result of their unique position in relation to Cherokee land, freedpeople therefore held "the bare minimum" of rights to be considered citizens of the Cherokee Nation.[436]

Although the Cherokee National Council remained steadfast in its exclusion of freedpeople from the per-capita payment, federal officials proved receptive to the arguments made by and for Cherokee freedpeople. Turner agitated on the behalf of Cherokee freedpeople in Washington, DC., for five years from his appointment in December 1883. Although the efforts of Turner and the freedpeople did not appear fruitful at first, Turner used his contacts in Washington to build support for congressional intervention and won President Grover Cleveland's recommendation with an eighteen-page petition.[437] In March 1886, Senator Dawes introduced a bill to the Senate that would have seen Congress implement legislation to secure freedpeople their share of the per-capita payments. The bill, which did not pass until October 1888, proposed appropriating funds from the United States treasury to distribute payments to freedpeople and charging said funds against the Cherokee Nation.[438] The passage of *An Act to secure to the Cherokee Freedmen and others their proportion of certain proceeds of lands* secured $75000 to provide Cherokee freedpeople with equal payments to those received by Cherokees by blood ($15.50 per person) and cover

[434] Littlefield, *Cherokee Freedmen*, 135.
[435] Yarbrough, *Race and the Cherokee Nation*, 89.
[436] Ibid, 90.
[437] Kremer, *James Milton Turner*, 139, 154.
[438] 'A Bill to secure the Cherokee freedmen and others their proportion of certain proceeds of lands, under the act of March third, eighteen hundred and eighty-three, March 8th 1886.' CHN Microfilm 81, frame1315. Although the Congressional debates would be enlightening regarding the rationale behind this act, according to the National Archives and Records Administration they were not published.

the costs of organising the distribution of those funds to freedpeople.[439] In the preamble of the act, federal lawmakers asserted that Article 9 of the Reconstruction Treaty ensured that freedpeople would be "incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect with native Cherokees" and that Article 6 of the same treaty guaranteed that "all laws of the Cherokee Nation shall be uniform throughout said nation."[440] As encouraged to do so by Cherokee freedpeople, then, the federal government claimed authority through the Reconstruction Treaty. This was a considerable victory for freedpeople that validated their claims to a share in national funds derived from the sale of lands owned in common, affirmed their full and equal citizenship, and illustrated the willingness of the federal government to act on their behalf.

The actions of Congress (and the subsequent $75000 bill) prompted wildly contrasting responses within the Cherokee Nation. In his 1889 report to the Commissioner of Indian Affairs, U.S. Indian Agent Leo Bennett described Cherokee freedpeople as being "greatly elated to learn that Congress had recognised their rights" whilst "the Cherokee authorities are quite wrathful at this interference on the part of the United States."[441] Bennett's use of 'wrathful' is striking since it is unclear as to whether the wrath of the Cherokee leadership is directed at the federal government or the Cherokee freedpeople. Both the Cherokee freedpeople and the Cherokee authorities had much at stake in this issue: federal action on behalf of freedpeople in this instance may have secured freedpeople their right to a share in tribal resources but it also again challenged the right of the Cherokee Nation to govern itself. Congress essentially overrode the decision of the Cherokee National Council in putting through payments of Cherokee national funds to Cherokee freedpeople. The belligerence of the Cherokee Nation government in relation to this matter expressed itself in an outright refusal to cooperate with federal officials attempting to make the payments to freedpeople. Expressing concerns about the accuracy of the 1880 census, the

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[439] 'A Bill to secure the Cherokee freedmen and others their proportion of certain proceeds of lands, under the act of March third, eighteen hundred and eighty-three, January 16th 1888.' CHN Microfilm 81, frame 1341. Littlefield, *Cherokee Freedmen*, 157.

[440] 'An Act to secure to the Cherokee Freedmen and others their proportion of certain proceeds of lands,' *Statutes at Large of the United States of America, from December, 1887, to March 1889, and Recent Treaties, Postal Conventions, and Executive Proclamations. Volume XXV.* (Washington, D.C.: Government Printing Office, 1889), 608. Sourced from the Library of Congress web site, https://www.loc.gov/law/help/statutes-at-large/50th-congress/session-1/c50s1ch1211.pdf (15/8/16)

[441] *Fifty-eighth Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior, 1889* (Washington, D.C.: Government Printing Office, 1889), 211. Sourced from http://digicoll.library.wisc.edu/cgi-bin/History/History-idx?type=turn&entity=History.AnnRep89.p0217&id=History.AnnRep89&isize=M (19/02/16)

federal government appointed Special Agent John Wallace to create a new roll of freedpeople entitled to the per-capita payment. Although Wallace intended to cooperate with Cherokee officials to create a fair list of freedpeople citizens, the Cherokee Nation refused to work with him and instead only provided a copy of the 1880 census for Wallace to work with.[442] In petitions to the Principal Chief, the President of the United States and Congress, however, freedpeople expressed their appreciation of Wallace's dedication and thoroughness. In the face of opposition from the Cherokee Nation, over 6000 applications, and accusations of fraud and impropriety, the Wallace Roll took four years to complete and was rejected by the Cherokee Nation as hugely inaccurate. After beginning the payments of $15.50 to freedmen on the roll revealed inconsistencies, the Wallace Roll was re-evaluated by a joint U.S and Cherokee court comprising of eight officials and finally closed in July 1893 with 3524 names.[443] Daniel Littlefield has described the refusal of the Cherokee Nation to work with Wallace as a "costly mistake" as it embroiled the Nation in lengthy disputes over which freedpeople were entitled to citizenship and which would stretch through to the beginning of the twentieth century.[444]

"The just rights in law and equity of the freedmen of the Cherokee Nation": Bringing a Successful Suit to the Court of Claims[445]

Although the 1888 Congressional act did ensure that freedpeople received their share of the 1883 per-capita payments, it did not prevent the Cherokee Nation from excluding freedpeople from later payments. In April 1886, the Cherokee National Council had received a payment of $300,000 in grazing rights from the Cherokee Strip Livestock Association which it again directed to be shared amongst Cherokees by blood only. The ongoing controversy surrounding the exclusion of Cherokee freedpeople from per-capita payments led Congress to pass an act on October 1st 1890 empowering the U.S. Court of Claims power to adjudicate the dispute over this second payment. As the Nation continued to receive and share funds (it received another $300,000 from the Cherokee Strip Livestock Association on October 25th 1890 as well as $295,736 and an additional $8,595,736 in trust from the sale of the Cherokee

[442] Littlefield, *Cherokee Freedmen*, 141, 148.
[443] Ibid, 153, 156, 157.
[444] Ibid. 141.
[445] 'Decree Made 8th May 1895 re: Moses Whitmire, Trustee of the Freedmen of the Cherokee Nation, Complainant vs. The Cherokee Nation and the United States, Respondents' CHN Microfilm 81, 1397.

Strip to the United States in 1893), resolving whether freedpeople were entitled to per-capita payments became increasingly urgent.[446]

In March 1890, representatives of freedpeople held a series of meetings in which they began organizing themselves for the battle to secure their rights and ensure that the successful outcome in relation to the 1883 payment, which affirmed their full and equal citizenship, became the rule for all future per-capita payments rather than an exception. They first elected an executive committee comprising of freedmen who would lead the call for freedpeople's rights in regard to per-capita payments. They also organised a convention of freedmen at Fort Gibson over the 27th to 29th of October of the same year and began considering means by which they could secure their share of per-capita payments in the future. In response to the 1890 act that empowered the U.S. Court of Claims to hear a suit between Cherokee freedpeople and the Cherokee Nation, the executive committee moved to make a claim. At the Fort Gibson convention, the committee elected Moses Whitmire, an elderly and illiterate freedman, as the trustee for the freedmen in the U.S. Court of Claims and James Milton Turner was again appointed attorney.[447] Turner was quickly replaced by Robert Kern after several freedpeople expressed concerns over his suitability for the role.[448] The dissent amongst attendees of the convention reveal the importance which freedpeople placed on their choice: an adverse decision in the Court of Claims or accusations of fraud and impropriety in securing a decision in their favour could permanently damage the status of freedpeople within the Cherokee Nation.

In 1895, five years after the suit was first made, the Court of Claims reached a verdict in favour of the Cherokee freedpeople. In accordance with the earlier Congressional decision that awarded the $75000 payment to freedpeople, the U.S. Court of Claims cited the constitutional and treaty obligations of the Cherokee Nation as making the exclusion of freedpeople from per-capita payments unlawful:

> And it appearing to the Court that under the provisions of Article 9 of the treaty of July 19th, 1866, made by and between the Cherokee Nation and the United States, the said freedmen… were admitted into and became a part of the Cherokee Nation and entitled to equal rights and immunities, and to participate

[446] Littlefield, *Cherokee Freedmen*, 162-173.
[447] Ibid. 164-5.
[448] Ibid. 168.

> in the Cherokee National funds and common property in the same manner and to the same extent as Cherokee citizens of Cherokee blood.[449]

The decision "held and decreed void and contrary to and in derogation of the Constitution of the Cherokee Nation" the previous acts made by the Cherokee National Council in which they excluded freedpeople from per-capita payments and affirmed the right of Cherokee freedpeople to share in the common property of the Cherokee Nation.[450] The decision therefore included payments made after the claim was filed (such as the 1893 payment from sale of Cherokee land to the United States), capping the payments to be made to freedpeople at $256.34 per-capita.[451] With its ruling, the U.S. Court of Claims prevented the Cherokee Nation from establishing a tiered system of citizenship in which freedpeople would not hold rights connected to the ownership of communal land, insisting instead that the Cherokee Nation be "prohibited from making any discrimination between the Cherokee citizens of Cherokee blood or parentage and Cherokee citizens who are or were freedmen."[452] Under this judgement, then, the Cherokee National Council would not be able to pass any more acts excluding freedpeople from per-capita payments. This incredible victory, the result of the determined and organised actions of freedpeople over more than a decade, therefore protected the rights of Cherokee freedpeople to a share in national economic resources where they had previously been excluded.

Although the Court of Claims found in favour of Cherokee freedpeople, implementing the ruling of the Court proved to be difficult since the decree defined the Wallace Roll as the definitive list of freedpeople entitled to payment and the Cherokee Nation refused to recognise it as such. Anticipating the response of the Cherokee Nation authorities, the decree argued that since the Cherokee Nation had elected not to take part in its creation, despite "ample opportunity" to do so, their complaints were illegitimate.[453] The previous refusal of Cherokee officials to cooperate with Wallace therefore had wider implications as the roll would be used again for this much larger payment. The payment of the freedpeople had been closely covered in the *Cherokee Advocate* throughout the 1880s and 1890s, making it an important political issue. Samuel H. Mayes and Robert B. Ross, the two nominees in the election for Principal Chief in 1896, published a 'joint protest' in response to the decree of the Court of Claims in June 1895. Interestingly, the two authors

[449] 'Decree Made 8th May 1895 re: Moses Whitmire,' 1397.
[450] Ibid. 1399.
[451] Ibid. 1403.
[452] Ibid. 1400.
[453] Ibid. 1402.

did not argue against the larger decision but instead disputed using the Wallace Roll to determine which freedpeople were entitled to a payment. Mayes and Ross both questioned the accuracy of the Wallace Roll, suggesting that a number of the freedpeople on it were not entitled to citizenship. They therefore urged an appeal to the Supreme Court so that "those not so recognized as citizens may be stricken from the roll."[454] The joint action of the two political hopefuls suggests that concerns over the Wallace Roll were held by members of both political parties and that their position held wide appeal for the Cherokee citizenry. Appealing against the use of the Wallace Roll represented a savvy political move for the two nominees as it would both illustrate a willingness to defend the sovereignty of the Cherokee Nation and assuage concerns over intruders posing as citizens and reaping the rewards of Cherokee citizenship.

Repeated appeals on the part of the Cherokee Nation forced negotiations between the Cherokee freedpeople and the Nation to facilitate an end to the dispute and bring about the payment of freedpeople. The Cherokee freedpeople proposed using the 1880 census as the payment roll rather than the Wallace Roll and bringing the per-capita payments to $295.65 under the agreement that both the Cherokee Nation and its freedpeople would agree to abide by that final decision. The Cherokee Nation agreed to the proposal and authorised a three-person commission comprising of William Clifton, Robert Kern and William Thompson to modify the 1880 census to reflect births and deaths since its creation, therefore using the Cherokee's preferred roll to make the payment decreed by the Court of Claims.[455] The commissioners met between May and August of 1896 to assess claimants and were instructed to make no challenge to individuals who were either listed on the 1880 census themselves or had a parent on the census. The Commissioner of Indian Affairs, Daniel M. Browning, also included a list of recommended questions that would confirm whether claimants met the criteria established in the 1866 Treaty (whether the claimant or their ancestor was held in slavery by a Cherokee and if they were in the Nation when the Treaty was agreed, for example).[456] Like John Wallace before them, both Kern and Clifton were subject to accusations of fraud and struggled to complete their task. The Cherokees proved difficult to convince of citizenship and extensively questioned claimants, creating an

[454] 'A Joint Protest.' *Cherokee Advocate*, 26th June 1895. Sourced from *Nineteenth Century Newspapers* http://callisto10.ggimg.com/imgsrv/FastPDF/NCNP/WrapPDF=contentSet=NCNP=recordID=5AJD-1895-JUN26-002-F.pdf (16/1/16).
[455] Littlefield, *Cherokee Freedmen*, 170-173.
[456] 'Commissioner Daniel M. Browning to William Clifton, Robert Kern and William Thompson, February 20, 1896' CHN Microfilm 81, 1433-1434.

unanticipated workload whilst simultaneously accusing Kern and Clifton of adding freedpeople to the list that were not entitled to citizenship. After missing a series of deadlines, the Kern-Clifton Roll was completed and the payments were paid by the August of 1897. The payment totalled $400,000. The Cherokees expressed their dissatisfaction at the huge payout by levelling accusations of misconduct at Kern and Clifton. Daniel Littlefield has argued that although the lack of evidence may make it impossible to ascertain the validity of these accusations (although he does suggest that there was "some evidence corruption did exist"), the vehemence with which the Cherokees attacked the Kern-Clifton roll reflects the suspicion with which they viewed freedpeople as well as their own frustration with the hugely expensive compromise.[457] The decision of the Court of Claims may have protected the right of freedpeople to be included within per-capita payments but it re-enflamed older disputes over exactly which freedpeople were entitled to citizenship and who held final authority over that question.

The Federal Government and Freedpeople in the United States

The exclusion of freedpeople from the 1883 per-capita payment brought a longstanding dispute to a head as freedpeople refused to accept that they were not entitled to a share in national economic resources. Their success in Congress and the U. S. Court of Claims revealed the United States to be a powerful ally of freedpeople, securing them a tangible marker of their inclusion in the form of payments equal to that received by Cherokee citizens of Cherokee ancestry. The inconsistency between how the federal government supported Cherokee freedpeople and the increasingly vulnerable position of freedpeople in the United States raises a key question about their decision to intervene on behalf of Cherokee freedpeople: *Why* did the federal government defend the rights of Cherokee freedpeople? In securing equal rights for Cherokee freedpeople, the federal government deviated from its own domestic policies that failed to do the same for African Americans. Importantly, although the federal government ensured that Cherokee freedpeople received a share of national funds, these were Cherokee Nation funds not United States funds. This was made most evident in the 1888 Congressional act in which Congress decided to appropriate $75000 against the Cherokee Nation seemingly without input from the Nation. This figure was dwarfed by the later costs following the triumph of freedpeople in the U.S. Court of Claims

[457] Littlefield, *Cherokee Freedmen*, 189.

which at least afforded the Cherokee Nation with the opportunity to put forward its own argument and appeal the result.

As Cherokee freedpeople struggled to secure their right to a share in national economic resources through the 1880s and into the 1890s, the relationship between the federal government and former slaves throughout the United States was undergoing a profound transformation. Whereas the federal government had previously acted to protect the rights of African Americans under Radical Reconstruction, the end of Reconstruction and Redemption of the South - with the attendant erosion of protections established in the decade following emancipation - ushered in the rise of Jim Crow and racial segregation. There was therefore a clear disparity between how the federal government treated freedpeople residing within the United States and its actions to secure full rights for Cherokee freedpeople: the federal government consistently held that former slaves of Cherokees (as well as their descendants) were entitled to equal citizenship and all the rights attached to that citizenship (including their share of national economic resources) whilst failing to protect the citizenship rights of former slaves in the United States. In the decade following the Civil War, considerable achievements were made as the Radical Republicans that comprised the majority of Congress worked to ensure the protection of the newly emancipated freedpeople. Radical Republicans, having largely pushed the abolitionist agenda before and during the war, stressed that Reconstruction represented an opportunity for transformation. Historian Eric Foner has described them as holding a "utopian vision of a nation whose citizens enjoyed equality of political and social rights."[458] In doing so, the federal government continued to act on the notion of itself as a "powerful national state protecting the fundamental rights of American citizens," as established during the Civil War.[459] The Three Reconstruction Amendments passed between 1865 and 1870 endeavoured to define the status of these freedpeople and incorporate them as United States citizens. The Thirteenth Amendment, ratified in 1865, abolished the institution of slavery and ensured that it could not be legally reintroduced. The Fourteenth Amendment to the United States, ratified in 1868, affirmed the citizenship of freedpeople and stated that all citizens should be equal before the law. The Fifteenth Amendment, ratified in 1870, prohibited discrimination of a citizen's voting rights on the basis of their "race, color, or

[458] E. Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Perennial, 2002), 230.
[459] Ibid, 582.

previous position of servitude."[460] These amendments represented an important reimagining of the position, or potential position, of African Americans in American society. Although imperfect in many respects (freedpeople in the United States did not gain access to land in the same manner as Cherokee freedpeople, for example) Reconstruction afforded freedpeople opportunities that would have been unthinkable a decade previous: paid labour, access to education and a political voice. Historian Eric Foner has argued that "black participation in Southern public life after 1867 was the most radical development of the Reconstruction years."[461]

The Compromise of 1877, in which Rutherford B. Hayes was awarded the presidency of the United States and 'home rule' returned to the former Confederate states, is typically considered to mark the end of Reconstruction. In his seminal work, *The Strange Career of Jim Crow* (1955), historian C. Vann Woodward argued that, in the years following Reconstruction, white Southerners came together at the expense of African Americans, the federal government abandoned freedpeople as "ward[s] of the nation," and the nation conceded to Southern demands that race relations should be left for white Southerners to determine.[462] Amongst others, these circumstances enabled the disfranchisement of African American men, the rise of Jim Crow segregation and racial violence. The 1896 *Plessy v. Ferguson* decision gave racial segregation the sanction of the United States Supreme Court and enabled the larger system of Jim Crow laws that would come to characterise race relations in the first half of the twentieth century to flourish. Woodward argued against the assumption that Jim Crow America immediately and inevitably followed Reconstruction, suggesting instead that there was an "unstable interlude" in which race relations were varied and poorly defined.[463] The processes of reconciliation between the former Confederate states and the northern states, however, facilitated the re-emergence of racial discrimination and white supremacy. The Lost Cause, a selection of arguments proffered by former Confederates, argued for "the relatively benign nature of slavery, the states' rights origins of the Civil War, the ruthlessness of Reconstruction and the necessity for keeping the races

[460] The text of all three Reconstruction amendments can be found in 'The Constitution of the United States' in *Give Me Liberty! An American History*, E. Foner, A-51 (New York and London: W. W. Norton & Company, 2014. Seagull Fourth Edition).
[461] Foner, *Reconstruction*, xxiii.
[462] C. V. Woodward, *The Strange Career of Jim Crow* (Oxford: Oxford University Press, 1955. Fourth edition, published 2002.), 6.
[463] Ibid, 32. See Chapter Two, 'Forgotten Alternatives' (pages 31-66)

separate."[464] In the ground-breaking *Race and Reunion* (2001), David Blight concluded that public recognition of the role played by African Americans and the importance of the emancipation of the enslaved was overwhelmed by white supremacist and reconciliationist interpretations of the war.[465] According to *Race and Reunion*, the white supremacist narrative that spread throughout the post-war South preserved the racial hierarchy and became increasingly indistinguishable from reconciliationist narratives that stressed the brotherhood and shared sacrifice of white Civil War veterans. Post-war and post-Reconstruction rhetoric therefore encouraged white Northerners to ally themselves with white Southerners rather than African Americans on the basis of their shared skin colour.

The alliance between white Americans enabled their government to enact legislation that disfranchised African American men and codified racial segregation in the years following Reconstruction. Beginning with the 1883 Supreme Court decision in *United States v. Stanley*, which placed acts of discrimination by private persons under state authority, and culminating with *Plessy v. Ferguson* in 1896, the federal government first eroded the protections against discrimination and then sanctioned segregation with the doctrine "separate but equal."[466] States throughout the South employed 'grandfather clauses' and poll taxes as obstacles to African American voters in the 1890s, making it incredibly difficult to exercise the rights of franchise granted during Reconstruction and eroding the political power of African Americans. The number of registered African American voters in Louisiana declined from 130,344 in 1896 to 1,342 in 1904, for example: a drop of 90% in less than a decade.[467] The disfranchisement of African Americans coincided with the legalisation of segregation practices that had previously been extra-legal. *Plessy v. Ferguson* affirmed state laws that required segregation in public spaces (such as railway cars) since separate facilities did not necessitate discrimination if they were equal, allowing a flood of segregation laws to pass in the first decade of the twentieth century. Such laws controlled African Americans in all aspects of public life, affecting their employment as well as recreation activities. The South Carolina code of 1915 prohibited labourers of different races from sharing a work space or using the same entrances, for example, and Woodward argues that many employers simply stopped hiring African Americans to avoid the complications of a racially diverse

[464] M. Tyler-McGraw, 'Southern Comfort Levels: Race, Heritage Tourism, and the Civil War in Richmond' in *Slavery and Public History: The Tough Stuff of American History*, J. Horton & L. Horton, (eds.), 153 (Chapel Hill: University of North Carolina Press, 2006.)
[465] D. Blight, *Race and Reunion: The Civil War in American Memory*, (Cambridge MA & London: Harvard University Press, 2001), 2-3.
[466] Ibid. 309, 343.
[467] Woodward, *Strange Career of Jim Crow*, 85.

workforce.[468] The Separate Park Law of Georgia (1905) implemented the same ideas of separation in relation to recreational spaces (whether indoor and outdoor) and insisted that African Americans kept twenty-five feet from white Americans whilst using separate entrances and ticket windows.[469] African Americans resisted the restrictions of Jim Crow and the rise of consumerism in the early twentieth century offered a space in which segregation could be "tested" as African Americans exercised their right to make purchases and buy services.[470] In refusing to allow the marketplace to "join the ballot box as an era of racial exclusion," African Americans challenged the larger system of segregation but Jim Crow would continue to legally operate until the Supreme Court declared segregation to be inherently discriminatory and unconstitutional in *Brown v. Board of Education* in 1954.[471]

The regressive nature of race relations in the 1880s and 1890s was made painfully evident in the lived experience of African Americans. Woodward has argued that evidence of "violence, brutality and exploitation in this period is overwhelming."[472] Racial violence took a variety of forms in the post-Reconstruction South but lynching came to represent such violence at its most extreme. Lynching, the execution of an individual without sanction of the law, peaked in the 1880s and 1890s.[473] Bruce Baker has argued that the nature of lynching shifted in the early 1890s to become "the most extreme means of enforcing the laws and customs of segregation against African American victims."[474] Merlin Jones, who grew up in Mississippi, described numerous acts of violence made against African Americans in his town, including witnessing a mob seeking a man accused of theft as a child. Jones and his neighbours were intensely afraid and hid within their homes: "Everybody had the lights off; everybody was quiet."[475] Jones later highlighted the vulnerability of black men to the lynch mob, recounting the death of a Mr. Fields: "You will never guess why he was killed. One of his dogs jumped on this white man's dog and beat him up. They killed him because he should have been able to control his dogs. They killed him because "my dog beat your dog.""[476]

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[468] Ibid. 98.
[469] Ibid. 99-100.
[470] G. E. Hale, '"For Colored" and "For White": Segregating Consumption in the South' in *Jumpin' Jim Crow: Southern Politics from Civil War to Civil Rights*, J. Dailey, G. E. Gilmore & B. Simon (eds.), 163 (Princeton and Oxford: Princeton University Press, 2000).
[471] Woodward, *Strange Career of Jim Crow*, 147.
[472]Woodward, *Strange Career of Jim Crow*, 43.
[473] Ibid. 43, 87
[474] B. E. Baker, 'Lynch Law Reversed: The Rape of Lula Sherman, the Lynching of Manse Waldrop, and the Debate Over Lynching in the 1880s,' *American Nineteenth Century History*, 6:3 (2005): 275.
[475] 'Merlin Jones' in *Remembering Jim Crow: African Americans Tell About Life in the Segregated South*, edited by W. H. Chafe et al, 18 (New York: The New Press, 2002).
[476] Ibid.

Jones's repetition indicates his disbelief at the vulnerability of men such as Mr. Fields to the whim of their white neighbours.

The complicity of the federal government in the disfranchisement and segregation of African Americans, as well as its failure to adequately protect African Americans from racial violence, stands in stark contrast to the manner in which the federal government supported the struggle of Cherokee freedpeople to secure economic rights in the Cherokee Nation. The comparatively good quality of life experienced by freedpeople in the Cherokee Nation as opposed to those in the United States was evident to Cherokee commentators in the *Cherokee Advocate* who gloated that Cherokee freedpeople "showed more improvement since the war than any other community of the same race in the United States." [477] Such commentators attributed their 'improvement' to the advantages of communal land ownership and highlighted the gap between United States rhetoric and reality: "Every one must have a fair and equal chance in the Cherokee Nation while he remains a Cherokee citizen – which is no theory here, as it is in the States. It is a fact."[478] The article was published after the 1888 Congressional response to the 1883 per-capita payment and, although it is self-congratulatory and sidestepped Cherokee attempts to exclude freedpeople from such payments, it serves to emphasise the disparity between the United States' attempts to secure equal rights for Cherokee freedpeople and its own domestic situation. It may be impossible to definitively answer whether the United States acted out of a sense of justice towards Cherokee freedpeople or for its own interests (or, most likely, a combination of the two). Certainly, in relation to ensuring freedpeople were included in per-capita payments, federal officials consistently argued that their exclusion violated the 1866 Treaty and the Cherokee Constitution and was therefore unjust. Furthermore, the 1888 payment authorised by Congress and the subsequent suit in the U. S. Court of Claims was made possible through Congressional action when Congress could have chosen to let the matter remain a domestic issue of the Cherokee Nation. This indicates a willingness to intervene despite not being obligated to do so. The United States did not spend any of its own funds on behalf of Cherokee freedpeople, however, since it used its position as trustee to distribute Cherokee funds in 1888 and the judgement of the U.S. Court of Claims did the same. On the other hand, in making the per-capita payments to its freedpeople and covering the costs of doing so, the Cherokee Nation spent over $475,000. The adverse decisions against the Nation were expensive and struck a blow against the sovereignty of the Nation

[477] 'Cherokee Freedmen,' *Cherokee Advocate*, 10th April 1889.
[478] Ibid.

as the United States government more aggressively pursued its agenda to dissolve the Cherokee Nation and incorporate the Indian Territory in to the United States in the final decades of the nineteenth century. The 1895 Court of Claims decision in favour of Cherokee freedpeople was issued eight years after the Dawes Act signalled the intent of the federal government to denationalise Native nations and allot their land, and three years before the Curtis Act made the Cherokee Nation subject to the same without their consent. It therefore seems likely that the federal government used the dispute over Cherokee freedpeople as a means of eroding the sovereignty of the Cherokee Nation and to illustrate its growing power in Indian Territory.

Conclusion

The victories Cherokee freedpeople found in defending their right to an equal share of national funds were made possible through enlisting the support of the federal government. Although freedpeople had cooperated with federal officials in pursuit of their citizenship rights in the 1870s, their exclusion from the 1883 per-capita payment prompted them to organise in formal conventions that endeavoured to secure equal rights for all Cherokee freedpeople. The appeals these freedpeople sent to federal officials and Congress encouraged Congress to award them with the 1888 $75000 payment and enabled them to successfully file suit against the Cherokee Nation in the U. S. Court of Claims. The process of securing and distributing these payments laid bare the hostilities between the Cherokee Nation, freedpeople and the United States in the 1880s and 1890s. Not only did the Cherokee National Council refuse the assistance of federal officials in this endeavour, even charging them with fraud and corruption, it also expressed distaste for the actions of freedpeople in seeking relief. Meanwhile, federal officials repeatedly rejected Cherokee arguments for sovereignty and self-government, and Cherokee freedpeople argued that their claims to citizenship (and therefore a payment) were not being assessed fairly.

As seen in the previous chapter, the federal government and its officials were not obligated to support freedpeople. They did, however, vigorously defend Cherokee freedpeople's right to share in national funds. Given the abandonment of African Americans to a Jim Crow racial order in the years following Reconstruction, it is probable that federal officials did not necessarily see themselves as striking a blow against injustice. Instead, defending the rights of freedpeople on this issue served to further weaken the sovereignty of the Cherokee Nation as the federal government moved to bring about its

denationalisation and absorb its lands into the United States. The actions of the federal government following the passage of the 1897 Curtis Act and subsequent allotment of Cherokee land further support the argument that any alliance between Cherokee freedpeople and the United States was vulnerable to the larger goal of expansion. Although federal officials did secure an equal sized allotment for Cherokee freedpeople, they quickly abandoned them to a hostile racial order that proved them to be only temporary allies.

Chapter Five: Freedpeople and the Allotment of the Cherokee Nation

> The orgy of exploitation that resulted [from allotment] is almost beyond belief. Within a generation these Indians, who had owned and governed a region greater in area and potential wealth than many an American state, were almost stripped of their holdings, and were rescued from starvation only through public charity.[479]
>
> (Angie Debo, *And Still the Waters Run*)

In the final decades of the nineteenth century the federal government implemented a policy of allotment that dramatically transformed the relationship between the United States, Native nations and Native peoples. As the Whitmire case for a share in the Cherokee economic resources made its way through the federal court system, the Nation struggled to resist the expansionist agenda of the United States; where the federal government had previously removed individuals who trespassed on Indian land, from the 1880s it began openly working to achieve its ultimate goal of opening the Indian Territory to white settlers. The federal government did so despite treaty assurances that the lands held by the Five Tribes in the Indian Territory would remain theirs in perpetuity. Although initially exempt from the 1887 Dawes Act, which brought about the involuntary allotment of Native lands held in the reservation system across the United States, the federal government ended its negotiations on this issue with the Cherokee Nation through the passage of the Curtis Act in 1898 and began the process of breaking down the Cherokee land base into individual, private plots and dismantling the Cherokee government. A clearly defined and communally owned land base was integral to maintaining the Cherokee Nation as a distinct community in the

[479] A. Debo, *And Still The Waters Run* (New York: Gordian Press, Inc., 1966), viii.

face of aggressive federal policies of assimilation and integration. The division of national lands held in common by its citizens therefore represented a threat to the survival of the Cherokee Nation. Both the Dawes and Curtis Acts were implemented without the consent of the Native nations they targeted and brought about a catastrophe for these peoples.

As the Dawes Commission worked to determine who was entitled to an allotment, the Cherokee Nation again challenged the right of freedpeople to share in the national land in 1898. Cherokee Nation representatives lobbied the Dawes Commission to give freedpeople an allotment smaller than that received by those who claimed Cherokee citizenship through blood, reiterating the argument that they had made in relation to the per capita payments detailed in the previous chapter (that the 1866 treaty only gave freedpeople political rights and did not award them a share of the Cherokee land base). On July 1st 1902, Congress directed that every Cherokee citizen would receive 110 acres of land of average value (or its equivalent in cash), forty of which would be designated as a homestead.[480] Within the same act, the homestead was declared both non-taxable and inalienable "during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of the allotment," whilst the 'surplus' land was inalienable for five years from the passage of the act (so sale was restricted until July 1907).[481] Despite strong opposition from the Cherokee delegates at negotiations with the Dawes Commission, freedpeople pushed to be fully included in the process of allotment. With the support of federal government officials, freedpeople and their advocates ensured that those who could prove their citizenship before the Dawes Commission gained an allotment of Cherokee land equal in value to that received by other citizens.

[480] 'An act to provide for the allotment of the lands of the Cherokee Nation, for the disposition of townsites therein, and for other purposes' in *INDIAN AFFAIRS: LAWS AND TREATIES, Volume 1, Laws*, C. J. Kappler (ed.) (Washington: Government Printing Office, 1904), 789. Sourced from http://digital.library.okstate.edu/kappler/Vol1/HTML_files/SES0787.html#p788 (21/5/16)
[481] Ibid.

Historians such as Celia Naylor and Daniel Littlefield have considered securing allotments to be a victory for freedpeople (albeit a "jaded" one) given that their counterparts in the United States received nothing of the sort.[482] Yet, as Daniel Littlefield points out, the processes of enrolment and its aftermath reveal the federal government to have been an unreliable and inconsistent ally of freedpeople since the declaration of Cherokee emancipation in 1863.[483] The swift abandonment of Cherokee freedpeople to land speculators and the Jim Crow racial order that came with Oklahoma statehood suggests that the federal government utilised debates over the position of freedpeople within the Cherokee Nation as an arena in which they could illustrate their dominance over the Cherokee Nation rather than out of concern for freedpeople. The federal government therefore exploited the vulnerable position of freedpeople in much the same way it exploited the larger Cherokee Nation to gain control of its land.

The Dawes Commission created new and final rolls of Cherokee citizens and listed freedpeople separately to other Cherokee citizens. Freedmen made a single application on behalf of their families but individual freedmen and freedwomen could also apply for citizenship (guardians or responsible adults made applications on behalf of orphaned minors). As a result of negotiations with the Cherokee Nation, the Dawes Commission agreed to use the 1880 authenticated Cherokee census as the base roll for freedpeople so applicants had to either identify themselves or an ancestor on that roll to secure their enrolment. Federal officials pushed for a more expansive reading of their directions, however, and allowed freedpeople to apply even if they were not on the 1880 authenticated

[482] D. Littlefield, *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport and London: Greenwood Press, 1978), 256. Celia Naylor argues that the unique position of Cherokee freedpeople enabled them to gain the 'forty acres and a mule' their counterparts in the United States longed for but did not receive. C. E. Naylor, *African Cherokees: from chattel to citizens* (Chapel Hill: University of North Carolina Press, 2008), 181.

[483] D. Littlefield, *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport and London: Greenwood Press, 1978), 254-5. See Chapter 10 'Retrospective.'

census in the name of "justice."[484] In doing so, these federal officials rejected the qualifications for citizenship established by the Cherokee Nation. Their actions make the triangular relationship between Cherokee freedpeople, the Cherokee Nation and the United States evident: the Cherokee Nation and the United States both vied for authority in this matter whilst freedpeople attempted to protect and secure their equal rights as Cherokees. The differing interpretations of who was entitled to citizenship held by Cherokee and federal officials enabled many freedpeople who claimed to be unjustly excluded from said roll to make new applications, infuriating the Cherokee Nation which insisted that the authenticated roll was the most accurate.[485] Many freedpeople struggled to prove that they met the provisions of the treaty, however, given the lapse of four decades between the January 1867 deadline and their application for enrolment on the Dawes Rolls. The inconsistency of previous rolls compounded this problem since they often figured as contradictory evidence in the hearings (an applicant may have appeared on one roll but not another). If applicants could prove their right to citizenship they were awarded an allotment of land but this did not prevent freedpeople from being dispossessed of the rights or lands they claimed during allotment.

Unlike the 'Cherokee by Blood' roll, the 'Freedmen' roll did not record blood quantum and is evidence of the assumption made by federal officials that Cherokee citizens who were phenotypically black did not have Cherokee ancestry. This administrative detail seems insignificant but almost immediately began to affect the lived experience of Cherokee freedpeople. First, the restrictions placed on the property of Cherokee citizens to ensure that they would remain in the hands of Cherokee citizens were quickly lifted as opportunists scrambled to gain control over the lands that formerly comprised the Cherokee Nation. As a result of the Appropriations Act of 1904, freedpeople were amongst the first to have these

[484] T. Bixby, quoted in Littlefield, *Cherokee Freedmen*, 226.
[485]Littlefield, Cherokee Freedmen*,* 230.

restrictions lifted (the act removed the restrictions on the sale of 'surplus' lands of all citizens who did not have Cherokee blood), leaving them particularly vulnerable to grafters who dispossessed many of their land. In 1908, Congress lifted the restrictions on all land owned by freedpeople and intermarried white citizens. As Daniel Littlefield has stressed, some freedpeople lost the legal protections afforded them by the restrictions of their land before they had even received their allotment since their rolls did not close until 1907.[486] Second, the lack of blood quantum recorded for individuals listed on the 'freedmen roll' left the descendants of those who were enrolled as freedpeople unable to prove that they had 'Cherokee blood.' Since the Cherokee Nation continues to use the Dawes Rolls as the means by which they assess claims to citizenship, applicants who claim citizenship through an ancestor on the 'freedmen roll' have been made vulnerable to expulsion from the Cherokee Nation in the twentieth and twenty-first centuries.

The Dawes Act and subsequent allotment of Native lands effectively legislated the Native nations of Indian Territory out of existence, breaking apart their land bases and imposing United States citizenship on their citizens. Furthermore, the transfer of Indian Territory lands in to private hands made the merger of Indian Territory and Oklahoma Territory into a single state possible. Oklahoma Territory comprised of land formerly owned by the Native nations of Indian Territory which had been ceded to the federal government as part of the treaty negotiations following the Civil War. Pressure from persistent intruders and squatters, known as 'boomers,' led to the federal government opening up these 'unassigned lands' to United States citizens from 1889 but did not lessen the demand for more land.[487] The actions of these largely white settler intruders violated various treaties made with the nations of Indian Territory and, in their study of Oklahoma, historians W.

[486] Ibid, 236.
[487] Debo, *And Still The Waters Run,* 6. D. Chang, *The Color of the Land: Race, Nation, and the Politics of Landownership in Oklahoma, 1832-1929* (Chapel Hill: University of North Carolina Press, 2010), 3.

David Baird and Danney Goble have concluded that "Tribal land ownership and tribal government meant nothing to them [settlers] – nothing, that is, except as barriers to what they believed were their rights as American citizens."[488] Oklahoma entered the Union in November 1907, incorporating the citizens of the Cherokee Nation into a racial hierarchy that compounded freedpeople's problems in relation to claiming the rights of their Cherokee citizenship. The creation of Oklahoma as a state privileged whiteness and placed those with African ancestry – regardless of whether they claimed Cherokee rights and privileges or were migrants from the United States - firmly at the bottom of the social order. Freedpeople and Cherokees alike scrambled to protect themselves within this new environment and, whilst many Cherokees attempted to align themselves with white society, Cherokee freedpeople stressed their Cherokee citizenship to differentiate themselves from the African Americans that had relocated to Oklahoma. Under the authority of the United States rather than the Cherokee Nation, however, Cherokee freedpeople quickly found themselves subject to the racial discrimination seen throughout the American South.[489] Settlers and the new state government made no distinction between Cherokee freedpeople and African Americans, subjecting both to Jim Crow laws and social practices. Ultimately, then, both the larger Cherokee citizenry and Cherokee freedpeople were left devastated by allotment and the subsequent dismantling of their tribal government.

'Oklahoma Fever': The Cherokee Nation and Forced Allotment

Although the removal treaties signed by the Cherokee Nation and its neighbours in the Indian Territory had guaranteed they would own these lands in perpetuity, legislation had been

[488] W. D. Baird and D. Goble, *Oklahoma: A History* (Norman: University of Oklahoma Press, 2008), 15. I use the term 'settler intruder' to differentiate these largely white intruders, who hoped to establish new lives in Indian Territory, from those freedpeople who claimed citizenship in the Cherokee Nation but were denied it by the authorities ('too lates'). These 'intruders' are the subject of chapter two.

[489] Naylor, *African Cherokees*, 197-199.

introduced in every Congress from 1870 proposing statehood of some form for the Indian Territory.[490] The pressure to incorporate Cherokee land and citizens into the United States increased throughout these decades and challenged previous federal policies that kept Native peoples separate and apart from the United States. The federal government had guaranteed the Cherokee Nation title to its land in perpetuity, however. The controversial 1835 Treaty of New Echota, which formed the legal basis for the removal of the Cherokee Nation and its citizens to the Indian Territory, contained the following provision: "the land ceded to the Cherokee nation in the forgoing article shall, in no future time without their consent, be included within the territorial limits or jurisdiction of any State or Territory."[491] The treaty also ensured the continued existence of the Cherokee government in its new home and its ability to set its own laws, as long as said laws did not conflict with the United States Constitution, and that the United States would protect the Cherokee Nation from intruders.

The Treaty of New Echota guaranteed the protection of Cherokee lands but the federal government indicated its desire to eventually absorb the land of the Cherokee Nation and transfer it into private hands in Article 20 of the 1866 Reconstruction Treaty: "Whenever the Cherokee national council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them, at the expense of the United States."[492] The Reconstruction Treaty contained a series of provisions that extended the power of the federal government into the Cherokee Nation, such as the establishment of a United States court to adjudicate cases involving American citizens, the freedom to construct military posts and the construction of a railroad through the Cherokee

[490] K. Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893-1914* (Ancestry.com Inc., 1999), 2.
[491] 'Treaty of New Echota.' Sourced from http://www.cherokee.org/AboutTheNation/History/TrailofTears/TreatyofNewEchota.aspx (2/4/16).
[492] 'Treaty with the Cherokee Nation, 1866,' in *African Cherokees in Indian Territory: from Chattel to Citizens*, C. E. Naylor, 233 (Chapel Hill: The University of North Carolina Press, 2008).

Nation.[493] Article 20 of the Reconstruction Treaty, if enacted, would have ended Cherokee national control over their land base and provided a means by which Cherokee land could be transferred to citizens of the United States. Importantly, whereas the Dawes and Curtis Act brought about the transition from communal to private landownership without the consent of Native nations, Article 20 relied on the Cherokee Nation voluntarily requesting the allotment of its own land. In 1866, then, the federal government hoped to gain access to Cherokee land but was unwilling to forcibly take it from the Cherokee Nation. The language of Article 20 implied that allotting Cherokee land would be a service or 'request' carried out by the federal government, indicating that the federal government was hoping to *persuade* the Nation to allot its land of its own accord. The Cherokee Nation did not elect at any time to put Article 20 in to effect, however, and continued to hold Cherokee land in common until the Nation was allotted under the 1898 Curtis Act.

Federal encroachment on the sovereignty and land base of the Cherokee Nation occurred within a wider context of growing aggression on the part of the federal government towards Native nations. As the nineteenth century progressed, the federal government shifted away from its policy of relocation (exemplified by the Cherokees' removal to the Indian Territory) and began to consider the means by which Native people and their land could be absorbed within the United States. After the American Civil War, the federal government used military force to confine Native peoples to reservations and therefore open lands for white settlement and facilitate the westward expansion of United States. Many historians consider the infamous 1890 massacre of Lakota Sioux at Wounded Knee to represent the "symbolic end of Indian freedom" and the inevitable conclusion of this violent and deliberate policy.[494] In his study of the acquisition of Native American land, historian

[493] Ibid, 224-235

[494] D. Brown, *Bury My Heart at Wounded Knee* (London: Vintage Books, 1991), 12. See chapter 19 'Wounded Knee.' A. R. Graybill, *The Red and the White: A Family Saga of the American West* (New York and London: Liveright Publishing Corporation, 2013), 110. More recent work has shifted to

Stuart Banner argues that it was no coincidence that huge amounts of land were being ceded to the United States at the same time as the Indian Wars of the nineteenth century since "the fighting was about land."[495] With the majority of Native American tribes confined to reservations, the Superintendent of the Census for 1890 declared the frontier to be closed that year.[496] Frederick Jackson Turner's frontier thesis, first delivered in 1893, celebrated the role that westward expansion and the frontier had played in the creation of a national American character. Turner's thesis prioritised the perspective of white American citizens and paid little attention to the effect of westward expansion on Native peoples, asserting that maintaining the frontier had united colonists and then American citizens, providing a space in which American citizens kept alive "the power of resistance to aggression."[497] Importantly, in Turner's vision of the frontier it is the Native Americans who figure as the aggressor and not the United States government or its citizens. The vast majority of Native peoples were confined to reservations by the 1880s and the federal government began to question whether the reservation system provided a protected space within which Native society and culture would endure rather than encouraging progress and its ultimate goal of assimilation within the United States. In his study of Indian Territory, historian Murray Wickett described this shift in federal attitudes, to viewing reservations as being obstacles to civilization rather than a site of survival, as a "profound transformation" which would have huge ramifications for Native peoples.[498] Ending the reservation system therefore became a

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consider how the Wounded Knee Massacre figures in collective historical memory. C. Klein, '"Everything of Interest in the Late Pine Ridge War Are Held by Us for Sale": Popular Culture and Wounded Knee,' *Western Historical Quarterly*, 25:1 (1994): 45. D. W. Grua, *Surviving Wounded Knee: The Lakotas and the Politics of Memory* (Oxford: Oxford University Press, 2016). Sourced as an ebook from http://www.oxfordscholarship.com.ueaezproxy.uea.ac.uk:2048/view/10.1093/acprof:oso/9780190249038.001.0001/acprof-9780190249038 (14/05/16).

[495] S. Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, MA and London: The Belknap Press of Harvard University Press, 2005), 229.

[496] F. J. Turner, *The Frontier in American History* (New York: Henry Holt and Company, 1921), 2. Sourced from http://www.gutenberg.org/files/22994/22994-h/22994-h.htm (17/05/16)

[497] Ibid. 16.

[498] M. R. Wickett, *Contested Territory: Whites, Native Americans and African Americans in Oklahoma, 1856-1907* (Baton Rouge, Louisiana State University Press, 2000),49.

cornerstone of federal policy towards Native nations in the final decades of the nineteenth century and this new resolve culminated in the passage of the Dawes Act in 1887.

Both reformists and opportunists were impressed by the potential benefits of forcing Native peoples to adopt private rather than communal landownership and their shared vision placed the federal government under pressure to bring about the allotment of tribal lands. Reformists considered private landownership to be "one of the most powerful tools that could be used to bring about assimilation" since they viewed owning and managing land as an exercise through which Native Americans would learn the capitalist and individualist values of the United States.[499] Senator Henry L. Dawes, who became synonymous with the allotment of Native lands, was a highly regarded reformist who considered himself to be a friend of Native Americans. In her classic monograph, *And Still The Waters Run*, Oklahoman historian Angie Debo recounts an 1883 speech given by Dawes at Lake Mohonk in which he asserted that Native nations will not be able to 'progress' until they abolish their system of communal landownership:

> The head chief told us that there was not a family in that whole nation that had not a home of its own. There was not a pauper in that nation, and the nation did not owe a dollar. […] They have got as far as they can go, because they own their land in common […] and under that there is no enterprise to make your home any better than that of your neighbours. There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivates, they will not make much more progress.[500]

[499] Carter, *The Dawes Commission*, 1.
[500] Debo, *And Still The Waters Run*, 22. Debo speculates that Dawes is referring to the Cherokee Nation.

On the one hand, Dawes described an idyllic society in which there was no national financial debt or individuals living in poverty, while on the other he argued that Native Americans would not 'progress' without adopting individualist and capitalist ideals. Debo describes this "illogical" position as being the result of ethnocentrism, in which white reformists placed their own values above the cultural practices and lived experiences of the peoples they claimed to extend their friendship to.[501] Reformists such as Dawes believed that absorbing Native people within the United States' economic system would force Native people to learn the necessary skills and ambitions that would bring about their 'civilization' and assimilation within the United States.[502]

Opportunists and expansionists shared the reformists' goal of absorbing Native peoples into the United States economy but did so with the agenda of gaining access to tribal resources (i.e. land) rather than with regard to the welfare of Native people. United States citizens and settler intruders in the Indian Territory grew frustrated that the communal land ownership practices of the Native nations prevented them from gaining possession of land.[503] Furthermore, interested parties argued that Native people did not make best use of the land, since they did not cultivate it for crops, and that they should therefore not be allowed to retain it. This reflected the racialized agrarianism of the time: *white* farmers could achieve independence through owning land whilst Native land practices of communal landownership corrupted that goal.[504] Throughout the 1880s, boomers such as David L. Payne agitated for the right to claim 'unused' lands and were repeatedly removed from the

[501] Ibid, 21-22.
[502] This goal is evident in the text of the Dawes Act. Under the act, funds raised from the sale of 'surplus' land to "actual and bona fide settlers" would be distributed "for the education and civilization" of the Indian citizenry from which it had been purchased. The Act also made these Indians subject to the laws "of the State or Territory in which they may reside" following their allotment. Transcript of 'An Act to Provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and no other purposes' (known as the Dawes Act) sourced from https://www.ourdocuments.gov/doc.php?flash=true&doc=50&page=transcript (24/8/16).
[503] Debo, *And Still The Waters Run,* 20.
[504] Chang, *Color of the Land*, 77.

Indian Territory whilst attempting to establish a settlement within its borders.[505] The desire boomers had for Native lands in Indian Territory therefore found expression itself in aggressive land intrusions and seizures. William Osburn, an associate of Payne's, described his own desire to settle in the Indian Territory after his crop failed as "Oklahoma fever."[506] Upon his return to Indiana following a prosperous visit to the Indian Territory, Osburn distributed Payne Oklahoma Colony Certificates "everywhere," promising that said certificates would secure a plot of land in the Indian Territory.[507] As evident in previous chapters, settler intruders were a "chronic problem" in the Indian Territory as they ignored the direction of their government and attempted to illegally claim tribal lands or resources for themselves.[508] Settler intruders also caused problems for individuals seeking recognition of their legitimacy to reside within Native nations, such as Cherokee freedpeople, because they made it difficult for Native officials to differentiate between their claims and the illegal actions of United States citizens. Such intruders entered Native lands in growing numbers as the nineteenth century progressed, however, and Murray Wickett asserted that from the 1880s "the United States seemed unwilling or unable" to prevent them from doing so.[509]

The vast majority of Native peoples resisted the pressure to introduce private landownership and enter the American free market, recognising that allotment would bring about the denationalisation of their nations. In 1878, Cherokee Principal Chief Dennis Bushyhead argued that the Cherokee Nation had a working and even superior land system to that seen in the United States: "we have a land system which we believe to be better than any you can devise for us. Cannot you leave us alone to try our plan while you are trying yours?"[510] The Cherokee Nation was not unanimous in its rejection of private landownership,

[505] Wickett, *Contested Territory*, 47.
[506] W. H. Osburn, 'Tribute to Capt. D. L. Payne,' *Oklahoma Chronicles*, 7 (December, 1929) 375. Sourced from http://digital.library.okstate.edu/Chronicles/v007/v007p375.html (14/4/16).
[507] Ibid. 387.
[508] Wickett, *Contested Territory*, 48.
[509] Ibid.
[510] D. Bushyhead quoted in Banner, *How the Indians Lost Their Land*, 264.

however, since some saw private landownership and territorial governments to be a way of surviving as a community in the nineteenth century. Most famously, Elias Cornelius Boudinot, a controversial figure both during his lifetime and today, campaigned for the dissolution of the Cherokee government and the end of communal landownership from the 1860s until his death in 1890. In 1879, Boudinot published a letter, complete with a map, in the *Chicago Times* that explicitly encouraged United States citizens to settle on the unassigned lands without the sanction of their government. Although James Parins has argued that the letter's significance has been overstated, Boudinot's letter did serve to enflame the growing desire to settle the area exemplified by David Payne and William Osburn.[511] Accused of being an opportunist (Boudinot managed many business ventures with mixed success), Boudinot argued instead that Native sovereignty was a "dead issue" and that in the face of inevitable denationalisation the Cherokees should negotiate the best position they could.[512]

Bowing to pressure from boomers and expansionists, Congress passed the General Allotment or Dawes Act in 1887 which allotted the lands of Native peoples living on reservations throughout the American west and dissolved their governments. Under the terms of the act, families were to receive 160 acres of land, individual adults and orphaned children received 80 acres of land, other children received 40 acres and any 'excess' was placed on the open market for sale.[513] The Dawes Act was passed over the objections of the Native nations it targeted and, in certain instances, without their knowledge.[514] Lands made available through the Dawes Act were quickly incorporated into the United States as new states (large portions of North and South Dakota, for example, were formerly Sioux

[511] J. W. Parins, *Elias Cornelius Boudinot: A Life on the Cherokee Border* (Lincoln and London: University of Nebraska Press, 2006), 192.
[512] Ibid, 172, 171.
[513] Debo, *And Still the Waters Run*, 23. Banner, *How the Indians Lost Their Land*, 276.
[514] Banner, *How the Indians Lost Their Land*, 278. Banner describes Alice Fletcher being met with confusion at the Nez Percé reservation since they did not know about the Dawes Act and they did not know who she was.

reservations). The allotment of these lands coincided with the opening of the Oklahoma Territory with its first land run on April 1st 1889 which saw nearly two million acres of land being claimed by homesteaders in a single day.[515] This violent entrance on to formerly Native lands has entered the national American imaginary as an "iconic moment," demonstrating the freedom and courage of American citizens.[516] David Chang has argued that, instead, settlers "used their colonial authority to enforce a rigid racial and gender inequality" in these areas.[517]

The Five Tribes and other Native nations in the Indian Territory were initially exempt from the Dawes Act since they held title to their land as a result of their removal treaties (Cherokee lands were not a part of the reservation system). Furthermore, Angie Debo has argued that the Five Tribes escaped the Dawes Act due to the "extraordinary diplomatic skill and legal ability of their leaders and the determined opposition of their entire citizenship."[518] In 1893, the Dawes Commission was created by Congress and directed to begin negotiations with the Five Tribes that would bring about the allotment of their land and dismantling of their governments. The Commission was explicitly ordered that their goal was to incorporate their lands within the United States.[519] In turn, the Cherokee Nation recognised the danger allotment represented to their existence as a nation and repeatedly rejected the Commission's proposals to discuss allotment, refusing to negotiate on the issue. In the face of strong resistance from the Five Tribes, the Commission delivered misleading reports that depicted the Five Tribes as being incapable of self-government and prone to incompetence and corruption.[520] These allegations served to justify the dissolution of the Native governments whilst similar assertions that a few elites exploited the communal land practice

[515] Wickett, *Contested Territory*, 53.
[516] Chang, *Color of the Land*, 78.
[517] Ibid.
[518] Debo, *And Still the Waters Run*, 20.
[519] Carter, *Dawes Commission*, 3.
[520] Ibid, 6.

at the expense of the larger Indian population worked to cast allotment as an act of protection rather than an attack.[521] By 1898, the Dawes Commission had made little progress with their negotiations and on June 28th a frustrated Congress passed the Curtis Act, which would end tribal land ownership and dissolve tribal governments without their consent.[522]

An 'Odious Feature': The Proposal to Award Freedpeople Only Forty Acres

With the passage of the Curtis Act, allotment shifted from threat to reality and the Cherokee Nation entered into negotiations with the federal government to define the exact terms of this process. The entitlement of freedpeople was a key point of dispute within the negotiations held in Muskogee in the winter of 1898-1899. Freedpeople were caught up in the fight between the Cherokee Nation and the federal government over the former's efforts to retain an element of sovereignty during the process of allotment. The disagreement over Cherokee freedpeople afforded the federal government with an arena in which it could demonstrate its dominance and ultimate authority. Despite the decision rendered in Moses Whitmire's suit, the Cherokee Nation continued to argue that freedpeople had no right to a share in Cherokee land and proposed that freedpeople received forty acres rather than the 110 acres proposed for other citizens. If this proposal was approved, Cherokee freedpeople would receive the same size allotment as a Native child under the distinctions established in the Dawes Act. Given their recent defeat in the U. S. Court of Claims, their insistence that freedpeople were only entitled to a lesser form of citizenship reveals the determination of the Cherokee Nation to resist federal pressures to afford freedpeople equal rights. Freedpeople were not invited to attend the meetings between the United States Commission to the Five Civilized Tribes and the Cherokee Commission, leading Daniel Littlefield to

[521] Ibid, 8.
[522] Debo, *And Still the Waters Run*, 33.

conclude that "the freedmen had little say concerning their future; once more, their destiny became a central issue of debate between Washington bureaucrats and Cherokee politicians."[523] Despite their absence from the negotiations, freedpeople did express their concerns and opinions, however, and their interests were defended before the commission by Robert H. Kern as well as Cherokee citizens who advocated full and equal rights for Cherokee freedpeople.

On December 23rd 1898, the Cherokee Commission first officially presented its "allotment feature" to the United States Commission to the Five Civilized Tribes, which contained their proposals as to how the allotment of Cherokee land should be managed. [524] Within this document, the Cherokee Commission proposed that freedpeople who were either on the authenticated 1880 Cherokee census themselves or had an ancestor on the roll would receive an allotment of forty acres "including their present residences and improvements."[525] This was substantially smaller than the 110 acres proposed as the allotment size for citizens of Cherokee ancestry. The Commission had also included a provision that would prevent freedpeople enrolees from receiving any future per capita payments. The proposals brought by the Cherokee Commission therefore worked to limit the rights of Cherokee freedpeople to tribal resources. The joint commission debated the question of freedmen on the 30th December and Tams Bixby, a commissioner for the United States, insisted that the Cherokee delegates clarified their proposal: "Do you gentlemen intend to cut the portion of the freedmen down to 40 acres?"[526] Bixby therefore framed this proposition negatively rather than as the generous offer the Cherokee commissioners

[523] Littlefield, *Cherokee Freedmen*, 215.
[524] 'Joint Session, December 23rd 1898' in 'Proceedings. Joint Sessions of United States and Cherokee Commissions' Box 3, Folder 1. Cherokee Nation Correspondence, December 1898 – March 1899. Dawes Commission Records. Indian Archives Collection, Oklahoma Historical Society Research Division.
[525] Ibid.
[526] 'Joint Session, December 30th 1898' in 'Proceedings. Joint Sessions of United States and Cherokee Commissions.'

imagined it to be, since they saw the freedmen as entirely lacking in entitlement to land regardless of the size of the allotment. Despite Bixby having previously expressed reservations about whether the U. S. Congress would ratify a treaty that contained such a provision, the Cherokee commissioner affirmed the proposal and asserted that they "intended to insist on that proposition."[527] Bixby, on the other hand, argued for an agreement that was "absolutely fair and square and equal: absolutely."[528] The two commissions quickly found themselves at an impasse over the issue of Cherokee freedpeople as the Cherokee commission reminded the United States commissioners that any agreement "has to run the gauntlet in the Cherokee Nation as well as Congress."[529] This statement not only illustrates the likely resistance of the Cherokee citizenry to allow freedpeople an equal share of the land but is also an incredible assertion of sovereignty in the face of coerced denationalisation. The commissioners refused to accept that the democratic processes of the United States held any more weight than those of the Cherokee Nation and insisted that the negotiations were considered to be between the representatives of two governments.

As the debate continued, the joint commission heard arguments both for and against the inclusion of freedpeople which revealed the conflicting interpretations of the Treaty of 1866. Although the Cherokee commission firmly argued against awarding freedpeople allotments of an equal size, the differing opinions held by two Cherokee citizen speakers, Mr Sanders and Mr Gunter, indicated that the Cherokee Nation was not unanimous on this issue even if the machinery of the Nation moved consistently to limit the rights of freedpeople. Mr Sanders, a Cherokee citizen who had served with the Union Army in the Civil War, argued that the intention of the 1866 treaty was to provide freedmen with political rights, not a share in the ownership of Cherokee land. This was in accordance with the majority opinion

[527] Ibid.
[528] Ibid.
[529] 'Joint Session, January 11th 1899' in 'Proceedings. Joint Sessions of United States and Cherokee Commissions.'

of the Cherokee Nation explored in the previous chapter. Through an interpreter, Mr Sanders described awarding freedmen equal citizenship as a betrayal of his military service since he had fought for their freedom and should not therefore have to also award them a share of Cherokee resources:

> …he was also a party to when the consideration of those rights was up; that he understood it; that [freedpeople] would be one amongst the family, enjoying the use of the soil only. He says when the cause of the rebellion arose and the southern states seceded and war was declared, and volunteers were called, he says on account of his being a ward of the great father that he shouldered his musket for that purpose. He says now at this late day to believe that he would come in and share equally in the assets and all property is very hard for him to stand; to think such is the case. And he says that he thought that in order to do equity to this class of freedpeople that he did and would favour the proposition of giving them forty acres as a home.[530]

Mr Sanders emphasised his military service with the Union to illustrate his loyalty to the United States and to encourage them to understand awarding freedpeople property rights as a betrayal of his trust and others like him. Under Mr Sanders' interpretation of the treaty, then, freedmen occupied a lesser form of citizenship in which they were a member of the Cherokee family but were entitled to the 'use of the soil only.' Sanders' use of the word 'family' is evocative since it implied personal connections yet Sanders continued to make a distinction between freedpeople and other citizens. Interestingly, his concession that providing freedmen with a small homestead would 'do equity' to them suggests that he thought the Cherokee Nation had some measure of responsibility for the welfare of freedpeople.

[530] Ibid.

In response to Mr Sanders' argument, Mr Gunter countered that the 1866 Treaty secured equal rights for Cherokee freedpeople. Professing "all the feeling and sympathy that any man of honor could have for his full blood Cherokee brother," Mr Gunter argued that the Treaty of 1866 was explicit in ensuring freedpeople attained "all the rights of 'native born Cherokees.'"[531] Gunter therefore dismissed Mr Sanders' argument that a distinction could be made between the citizenship of freedpeople and citizens of Cherokee ancestry and grounded his own interpretation in the written text of the treaty rather than the intention of its creators. Gunter viewed freedpeople as equals rather than competitors or outsiders and claimed that "when I define my rights then I define the colored man's rights."[532] Gunter concluded by declaring his readiness to press the claim of freedpeople: "I am willing to stand and defend the rights of these people."[533] Gunter's declaration reflected his understanding that the Cherokee Nation and its citizenry had a moral obligation to include freedpeople on an equal footing with themselves, even if that meant disagreeing with other Cherokee citizens.

As the negotiations between the Cherokee Nation and the United States continued, freedpeople and Cherokees alike expressed confusion and concern over enrolment and allotment. After receiving numerous queries from freedmen, Robert H. Kern offered his services to the joint commission as a representative for their interests. In a letter sent in December 1898, Kern reminded the commissioners of the 1895 Whitmire decision that had affirmed the full and equal citizenship of Cherokee freedpeople and his subsequent belief that "no treaty would be tolerated by your commission that would be prejudicial to their rights."[534] Furthermore, Kern suggested that freedmen would be more likely to vote to ratify

[531] Ibid.
[532] Ibid.
[533] Ibid.
[534] 'Robert H. Kern to Hon. A. McKennon, December 24th 1898,' Box 3, Folder 1. Cherokee Nation Correspondence, December 1898 – March 1899.

any agreement made by the joint commission "should justice be done these freedmen."[535] He therefore not only reminded the commission that catering to freedpeople's demands may help them gain their objective but that doing so would be just and fair. Kern made a brief appearance before the joint commission on December 30th 1898 to speak on behalf of Cherokee freedpeople. First Kern argued that the Court of Claims had settled the matter of whether freedpeople were entitled to a share of Cherokee land in favour of freedpeople and that therefore any decision to the contrary would conflict with that decision. Furthermore, Kern refused to debate the intentions of the Cherokee Nation delegates that agreed the 1866 Reconstruction Treaty and instead insisted on using the literal text of the treaty and the Court of Claims decision. In doing so, Kern acknowledged that interpretation of the Treaty had been "a question" within the Cherokee Nation and that he did not know "whether they thought they were giving them property rights."[536] By dismissing these questions, however, Kern made these details seem superfluous to the central issue of whether discriminating against freedpeople was legal; he argued it was not.

Paying close attention to the proceedings, freedmen contacted the Dawes Commission directly to clarify what they would be entitled to under allotment and the processes by which they would be enrolled. A letter sent from freedman W. H. Vann on January 2nd 1899 asked the commission to answer questions formulated at a mass meeting of Republican freedmen in Goose Neck, Cherokee Nation. The introduction of the letter asserted that freedpeople were entitled to full and equal citizenship through the 1866 Reconstruction Treaty but the anxiety of the freedmen, who were unsure if their rights were being considered in the ongoing negotiations, is evident and the author described the issue

[535] Ibid.
[536] 'Joint Session, December 30th 1898' in 'Proceedings. Joint Sessions of United States and Cherokee Commissions' Box 3, Folder 1. Cherokee Nation Correspondence, December 1898 – March 1899.

as being "all important to us."[537] The letter reveals the desire of freedmen to influence the negotiations in order to secure their rights. First, the letter argued that being awarded a smaller allotment was an abrogation of the 1866 Reconstruction Treaty and asked whether it is "practicable that a Treaty can be made in violation of the only obligation by which our citizen[ship] is maintained in this country."[538] This both questioned the legality of any agreement that would discriminate against freedpeople and encouraged the Dawes Commission to see that it would be creating a dangerous precedent by which all the citizenship rights of Cherokee freedpeople might be lost. Vann then asked whether an agreement which would award freedpeople only forty acres was likely to be reached and whether a delegate representing freedpeople would be heard by the Dawes Commission. The freedmen that met in Goose Neck evidently hoped that appearing before the commissioners might encourage them to champion their cause and subsequently elected Vann as their delegate.[539] On January 4th, Vann sent supplementary questions to the Dawes Commission that focused on the practical considerations of enrolment rather than its outcome and reflected the difficulties freedpeople had faced previously. For example, Vann asked whether freedpeople needed to be represented by an attorney before the Dawes Commission and if their witnesses had to be Cherokee by Blood or if freedpeople would suffice.[540] The Cherokee Nation had previously alleged that freedpeople had made fraudulent applications supported by bought testimony from Cherokee freedpeople and these freedpeople clearly anticipated that their enrolment will be closely scrutinised.[541]

[537] 'W. H. Vann to the Hon. Dawes Commission, January 2nd 1899,' Box 3, Folder 2. Cherokee Nation Correspondence, December 1898 – March 1899.
[538] Ibid.
[539] 'W. H. Vann to the Hon. Dawes Commission, January 4th 1899,' Box 3, Folder 2. Cherokee Nation Correspondence, December 1898 – March 1899.
[540] 'W. H. Vann to the Hon. Dawes Commission, January 4th 1899,' Box 3, Folder 2. Cherokee Nation Correspondence, December 1898 – March 1899.
[541] Littlefield, *Cherokee Freedmen*, 195, 198.

The final agreement reached between the Cherokee Nation and the United States awarded Cherokee freedpeople allotments the same size as those received by citizens of Cherokee ancestry: 110 acres of land of average value or its equivalent. On January 16th 1899, Robert Kern wrote to Moses Whitmire that the "odious feature" of the agreement, which would have afforded freedpeople an allotment comprising of only forty acres, was rejected.[542] In the face of the determination of the Cherokee Nation representatives, this decision represented a considerable victory for freedpeople who could now look forward to allotment knowing that they would receive the same amount of land as other Cherokee citizens. The decision also appeared to affirm the equal citizenship of Cherokee freedpeople. The final agreement instructed the Dawes Commission to create a new roll under the direction of the February 3rd Court of Claims decree, which made the authenticated 1880 Cherokee census the basis of the new roll. According to Daniel Littlefield, the decision to use the authenticated roll represented a considerable victory for the Cherokee Nation since it had long viewed the Kern-Clifton Roll as fraudulent and bloated with the names of people who did not meet their criteria for citizenship.[543] Although the Cherokee Nation had been forced to award freedpeople an equal allotment, then, it did manage to secure the use of a roll it approved of. Kern urged Whitmire to share the news and encourage freedmen to vote to ratify this agreement as it would secure them a full and equal allotment.[544] Although the agreement itself was ratified by the Cherokees but not in Congress, the provisions regarding freedpeople were carried into effect and their enrolment began in 1901.[545]

The agreement made between the Cherokee Nation and the Dawes Commission regarding freedpeople appeared to secure them equal right to land but freedpeople

[542] R. H. Kern to M. Whitmire, January 16th 1899,' Box 3, Folder 2. Cherokee Nation Correspondence, December 1898 – March 1899.
[543] Littlefield, *Cherokee Freedmen*, 221.
[544] Ibid.
[545] Littlefield, *Cherokee Freedmen*, 222.

remained sceptical that they would be treated fairly during allotment. Freedmen met in convention at Fort Gibson on December 18th 1900 and drafted a series of resolutions regarding enrolment that were sent to the Secretary of the Interior for his consideration as the Commission looked to begin enrolment. According to the Resolutions of the Freedmen Convention, a convention of Cherokees met in Tahlequah to make a "complete protest against [their] vested rights in the lands and property of the Cherokee Nation."[546] This protest, closely following the negotiations discussed above, lends credence to freedmen's fears that their rights to an allotment were vulnerable. Over the course of the resolutions, the freedmen pointed to numerous practical concerns that may have adversely impacted their attempts to gain an allotment. First, the document argued that freedpeople had "no authenticated roll" as the basis of their citizenship and that they therefore "insist" and "earnestly request" that the Commission adhere to the Whitmire Decree issued in the Court of Claims on May 8th 1895.[547] This would make the Wallace Roll the base roll for enrolment, which the freedmen considered "the most correct rolls of the Cherokee Freedmen," rather than the 1880 authenticated Cherokee census.[548] Second, all freedpeople applicants would have to appear before the Dawes Commission to prove that they met the terms of Article 9 of the 1866 Reconstruction Treaty and were listed on the base roll. This would entail all freedpeople applicants having to secure an attorney at their own expense, subjecting them to "great hardship" to secure their place on the Dawes Rolls.[549] Third, the petitioners requested that they be allowed to select a member of the commission themselves to ensure that "justice may be done."[550] Evidently, freedmen had concerns that United States and Cherokee officials may not assess their applications fairly: as seen previously, freedpeople

[546] 'Resolutions of the Freedmen Convention, Held at Fort Gibson, I.T., December 18, 1900.' Broadside. M.B. 50 - 3527.143. Gilcrease Museum, Tulsa, Oklahoma.
[547] Ibid.
[548] Ibid.
[549] Ibid.
[550] Ibid.

and federal officials had alleged that Cherokee officials were biased against awarding citizenship to freedpeople. In suggesting the addition of their own commissioner, freedmen hoped to ensure that their applications for enrolment were decided justly. The Resolutions of the Freedmen Convention represented an attempt by freedmen to influence the process of enrolment and reflect their previous problems attaining citizenship.

'It's Hard to Recall Back 40 Years': The Task of Enrolment

The Dawes Commission elected to enrol Cherokee citizens by blood before approaching the freedmen roll on April 1st 1901, anticipating that enrolling freedpeople would be a complicated and potentially lengthy task.[551] Applicants were considered by three commissioners (the Cherokee Nation, the freedpeople and the Dawes Commission having selected one each) that would either reject, accept or mark an application as 'doubtful.' A majority opinion decided each case (although rejection by the Cherokee Nation automatically got names placed on 'doubtful' cards, even if the two other commissioners deemed the application successful). The greater weight given to rejections by Cherokee officials implies that the Nation retained an element of sovereignty during this process. Applications deemed 'doubtful' were set aside for closer scrutiny at a later date. Freedpeople faced considerable obstacles in meeting the demands of the Dawes Commission, given the difficulty in providing evidence for events that happened nearly four decades previously and the inconsistency of the existing rolls. The complexities of the citizenship claims of freedpeople also represented a huge endeavour for the commission: over its first three months, the commission created forty thousand sheets of type written testimony, admitted 3150 freedmen, marked 2428 freedpeople as 'doubtful', and rejected

[551] Littlefield, *Cherokee Freedmen*, 227.

285.[552] Enrolment was placed on hold in July of the same year as the commission struggled with the unmanageable quantity of evidence it had amassed. Although enrolment did resume after a brief pause, disagreements between the Cherokee Nation and the Dawes Commission brought enrolment to a halt again as the Commission began considering cases of applicants who were not on the 1880 authenticated census but who the commissioners believed held a legitimate claim to citizenship. In October 1901, federal court upheld the protests of the Cherokee Nation, who claimed that the commission had overstepped its powers in considering applicants that were not covered by their agreement, but the injunction against enrolling such applicants was lifted in August 1903. Federal officials again enraged the Cherokee Nation by insisting that the six-month deadline specified in Article 9 of the Reconstruction Treaty should be measured from February 1867 rather than January 1867 (the date of ratification rather than signing) which led to hundreds of cases being reopened.[553] From the Cherokee perspective, then, the Dawes Commission violated the terms of their agreement and opened Cherokee citizenship to applicants the Cherokee Nation did not consider to be legitimate.

As discussed in chapter two, freedpeople faced unique obstacles in securing recognition as Cherokee citizens. In 1901, proving that they had met the January 1867 deadline for their return to the Cherokee Nation represented a particular challenge for applicants and witnesses given the amount of time that had lapsed between emancipation and enrolment. The Cherokee Nation continued to insist that the deadline was enforced despite the difficulty of both remembering and proving details from thirty-four years previously. This was made even more difficult for applicants who had been born after emancipation and secured their citizenship through a deceased parent since they relied on their parent having been accepted on the authenticated 1880 roll. Freedpeople and

[552] Ibid, 229.
[553] Carter, *Dawes Commission*, 119.

Cherokees alike struggled to provide adequate evidence for the commissioners. During her application interview, freedwoman Siney McCoy was asked to confirm who her neighbours were when the Civil War began and when she was unsure of the relationship between two local families asserted that "People growing old, their knowledge grows slim."[554] Applicants and witnesses insisted that any gaps in their knowledge did not illustrate dishonesty but were instead down to normal lapses in memory. F. H. Nash, a freedman testifying in relation to Lewis T. Brown's application to citizenship, was unable to definitively state when Bill Brown took over the management of his local barbershop, for example. Lewis Brown's claim to citizenship rested on being able to prove that his father had returned to the Cherokee Nation prior to the January 1867 deadline. Although Bill Brown was listed on the 1880 authenticated roll the commissioners still questioned Lewis Brown's claim. Nash refused to swear to an exact date in his testimony, prompting his interviewer to ask: "your memory is clear entirely on that point?"[555] Nash rejected any suggestion that his memory was particularly poor, responding that "It is as clear as any one else's I expect could be."[556] Another witness in the same case, Sallie Loving, insisted that she would not be pressured into making a definitive statement if she was not certain it was true: "I am not swearing only to what I know."[557] Despite classing Lewis Brown as 'doubtful,' the commission went on to accept his application and he was included on the final roll.[558]

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[554] 'Department of the Interior, Commission to the Five Civilized Tribes, Vinita, I.T., May 15th 1901, in the matter of the application of Siney McCoy of herself, her brother, Dempsey Wright, and her six grandchildren for enrolment as Cherokee Freedmen.' Page 2. Folder 2. Cherokee Freedmen Collection, Oklahoma Historical Society Research Division.

[555] 'Department of the Interior, Commission to the Five Civilized Tribes, Vinita, I.T., March 3rd 1901, in the matter of the application of Lewis T. Brown for enrolment as a Cherokee Freedman.' Page 4. Folder 2. Cherokee Freedmen Collection.

[556] Ibid.

[557] Ibid. Page 7.

[558] Ibid. Page 9. Dawes Rolls on *American Indian Collection: Resources for Tracing Your American Indian Ancestors* (Friends of the Oklahoma Historical Society Archives, 2013), CD-ROM. Oklahoma Historical Society Research Division.

Cherokee witnesses were subject to the same intense questioning and the same problems of memory as freedpeople. Joe Thompson, George Thompson's former master, testified on his behalf in October 1901. Thompson's ownership of George Thompson before the war was easily established but whether Thompson returned to the Cherokee Nation before the January 1867 deadline proved to be difficult to ascertain. As he was examined by the commissioners, Joe Thompson was repeatedly asked to clarify dates and locations as he recounted his own whereabouts and that of George Thompson for the years following the Civil War. Failing to provide precise answers, Joe Thompson responded that he couldn't be "positive" of exact dates as "it has been so long, nothing to keep dates for."[559] When asked to provide his "best judgement," Thompson again argued that "It's hard to recall back 40 years when there was nothing to keep the dates for."[560] The high standards of evidence demanded by the commissioners plagued the enrolment process and reflected Cherokee concerns that many freedpeople claimed citizenship fraudulently. Even when witnesses or applicants did provide a record, the commissioners challenged its accuracy. Amelia Winship, testifying in relation to the application of Lewis Gibson, told the commissioners that she based her knowledge of when she knew Gibson on the record she made of her children in her bible: her husband had given the Gibson family food to celebrate the birth of their niece. Although the commissioners first disallowed Winship from using that record within her testimony they later admitted the evidence. They did, however, question *why* the information was recorded and therefore its legitimacy:

Q. Have you got the record of it at home? A. Yes, sir.

Q. Where is it? A. In the bible.

Q. What is it doing there? A. She was my niece.

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[559] 'Department of the Interior, Commission to the Five Civilized Tribes, Vinita, I.T., October 9th 1901, in the matter of the application of George Thompson for enrolment as a Cherokee Freedman.' Page 2. Folder 2. Cherokee Freedmen Collection.
[560] Ibid. Page 3.

Q. Born at your house? A. No, sir.

Q. Did she have a father and mother? A. Yes, sir.

Q. What did you put it down in the bible for? A. Because the 16th February was a rather noted day.

Q. Why did you put it down in the Bible? A. Because I wanted to.

Q. Where is that Bible? A. At home on my table.[561]

Over the course of the interview the commissioners continued to imply that Winship's recording of her niece's birth was nonsensical and, in doing so, attempted to discredit her evidence. Importantly, whilst the commissioners lamented the lack of written evidence available, they only considered documentation produced within certain contexts (i.e. by white or Cherokee officials) to be trustworthy. This aligns with the historical dismissal of sources created by marginalised people (such as ex-slave narratives or interviews with the formerly enslaved recorded by the Works Progress Administration).[562] Lewis Gibson's application was ultimately rejected and his name was not added to the rolls.[563]

The inconsistency of former rolls further complicated the enrolment process as applicants appeared on some rolls and not others, or members of the same family even appeared on different rolls. For example, the aforementioned Siney McCoy applied on behalf of herself, her brother, and her six grandchildren. Both herself and her brother had been held in slavery within the Cherokee Nation but they had been separated before the

[561] 'Department of the Interior, Commission to the Five Civilized Tribes, Muskogee, I.T., April 3, 1902. Supplemental Testimony and Proceeding in the matter of the application of Lewis Gibson for the enrolment of himself as Cherokee Freedman.' Page 2. Folder entitled 'Lewis Gibson.' Box 9, Cherokee Citizenship Cases. John R. Thomas Collection, Oklahoma Historical Society Research Division.

[562] The WPA narratives and debates over their reception are discussed at length in the introductory chapter to this thesis. The authenticity of antebellum slave narratives was widely attacked and respected abolitionists attached their approval to such texts as evidence that the authors were trustworthy. The most famous examples of these include William Lloyd Garrison's preface to *Narrative of the Life of Frederick Douglass, an American Slave* (Frederick Douglass, 1845) and Lydia Maria Child's preface to *Incidents in the Life of a Slave Girl* (Harriet Jacobs, 1861).

[563] Dawes Rolls on *American Indian Collection: Resources for Tracing Your American Indian Ancestors*.

War. McCoy was unable to provide an exact date for her return to the Cherokee Nation from the Choctaw Nation, arguing that she worked until she could afford to bring her children back with her. McCoy also travelled the Indian Territory in the years following the Civil War attempting to locate her brother since he was "not sound in his mind."[564] McCoy answered all the commissioners' questions regarding herself and her brother, Dempsey, but her name was found only on the Kern-Clifton Roll and his was not found on any Cherokee roll. Their deceased mother was not found on any rolls and, although her deceased daughter was on the Kern-Clifton Roll, only five of her grandchildren were listed thereon.[565] All claimants in this case were therefore marked as 'doubtful,' meaning that their application was set aside for reassessment at the end of that session, but were not added to the Dawes Rolls.

If an applicant's name appeared on a roll other than the authenticated 1880 census, the discrepancies between the rolls were particularly frustrating as the Dawes Commission was directed to use the authenticated 1880 roll. Despite being instructed to only consider applicants who based their claim on the authenticated 1880 roll, however, the commission heard cases from claimants who were either listed on other rolls or who had never been officially recognised as citizens. In May 1901, Commissioner Tams Bixby defended the right of the commission to do so as a matter of fairness: "justice demanded that all freedmen claiming a share in the Cherokee Nation have a fair and impartial hearing."[566] The Commission therefore reinterpreted their instructions to include individuals on the authenticated 1880 *and* others who claimed citizenship through Article 9 of the 1866 Reconstruction Treaty or had been previously included on other rolls.[567] Rather than immediately rejecting applicants who were not on the authenticated roll, the commissioners

[564] 'Department of the Interior, Commission to the Five Civilized Tribes, Vinita, I.T., May 15th 1901, in the matter of the application of Siney McCoy of herself, her brother, Dempsey Wright, and her six grandchildren for enrolment as Cherokee Freedmen.'
[565] Ibid. Page 5.
[566] T. Bixby, quoted in Littlefield, *Cherokee Freedmen*, 226.
[567] Littlefield, *Cherokee Freedmen*, 225.

marked them as 'doubtful' citizens that needed to be more closely considered. The actions of the commission represented a considerable expansion of its powers without the consent of the Cherokee Nation and in violation of the agreement that had defined the terms of enrolment. Although a rejection by the Cherokee Nation commissioner held greater weight than one made by the commissioners for the United States or freedpeople, the Cherokee Nation was unable to prevent the applications made by those it did not deem legitimate from being kept open for review. The Cherokee Nation was outraged by the actions of the commission and, after filing a suit in the federal court at Muskogee, won an injunction in October 1901 which prevented such cases being heard.[568]

As a result of the injunction, applications such as that of freedwoman Martha Gales remained unresolved. On 18th April 1901, Gales presented a convincing case before the commission that she should be entitled to citizenship but she was only listed on the Kern-Clifton Roll, not the authenticated 1880 roll.[569] The decision regarding her application was subsequently suspended due to "the protest of the Cherokee Nation upon legal points" (i.e. she should not have been able to apply under the requirements agreed between the Cherokee Nation and the Dawes Commission).[570] Commissioner Needles noted, however, that "the Commission is fully satisfied that she is entitled to be enrolled as a Cherokee freedman."[571] Although the 1901 injunction suggested that the United States would respect its agreement with the Cherokee Nation regarding the enrolment of freedpeople, this proved to be temporary as federal officials increasingly imposed their own understandings of who was entitled to Cherokee citizenship on the enrolment process. Enrolment of Cherokee freedpeople progressed within the agreement made with the Cherokee Nation until Judge

[568] Carter, *Dawes Commission*, 115.
[569] 'Department of the Interior, Commission to the Five Civilized Tribes, Fort Gibson, I.T., April 17, 1901, in the matter of the application of Martha Gales for the enrolment of herself and two orphan children as Cherokee Freedmen.' Page 1. Folder 2. Cherokee Freedmen Collection.
[570] Ibid. Page 4.
[571] Ibid.

Charles Raymond of the Western District of the Indian Territory dissolved the injunction against the Dawes Commission in August 1903. This enabled the commission to hear applications from citizens who were not listed on the authenticated 1880 roll, such as Martha Gales, and sanctioned their expansive reading of their directions. Although applications had been closed since September 1902, applications that had been suspended as a result of the injunction were therefore added to the 'doubtful' list and reconsidered. By October 1903, the Dawes Commission had approved applications from 3320 freedpeople, rejected 381, and was yet to decide 3123 cases.[572] In January 1904, the Assistant Attorney General from the Department of the Interior further complicated the enrolment of Cherokee freedpeople by asserting that the six-month deadline specified by the Reconstruction Treaty should actually be considered the 11th of February 1867 and not the January deadline used up to this point.[573] According to historian Kent Carter, this small amendment led to "hundreds" of cases being reopened.[574] The January 1867 deadline had been a key qualification for Cherokee citizenship and, as seen in chapter two, the Cherokee Nation had enforced it consistently. Although the United States had previously pressured the Cherokee Nation to remove this deadline and offer citizenship to all former slaves of Cherokees, they had never been able to achieve that goal. The dominance of the federal government in the enrolment process did enable federal officials to amend this deadline, however, and allowed them to open Cherokee citizenship to individuals who were previously excluded. In doing so, the United States officials denied the Cherokee Nation the right to set the rules by which their own citizenry was defined and forced them to adhere to federal definitions of who was and who was not Cherokee. The federal government's actions regarding Cherokee freedpeople

[572] Littlefield, *Cherokee Freedmen*, 235.
[573] Carter, *Dawes Commission*, 119.
[574] Ibid.

during allotment illustrate both its power and its dismissal of Cherokee sovereignty at the beginning of the twentieth century.

The shifting terms by which freedpeople were entitled to citizenship prolonged their enrolment and when the Dawes Commission was dissolved in 1905 the rolls remained open. As Commissioner to the Five Tribes, Tams Bixby continued to assess applications and when he finally closed the Dawes Rolls in 1907 the Cherokee Freedmen accounted for 4919 of the 41835 Cherokee citizens listed. Freedpeople therefore represented approximately ten percent of successful applicants. The manner in which freedpeople had been recorded on the Dawes Roll differed from their Cherokee counterparts, however, since federal officials did not record the blood quantum of individuals on the Freedmen Roll. Although the Cherokee Nation had differentiated between citizens by blood and freedpeople in previous rolls they had never quantified the Cherokee ancestry of citizens. Imposing blood quantum bureaucratised identity and was a means by which federal officials attempted to measure Native ancestry mathematically (recorded as a fraction). All applicants who appeared black were enrolled as freedmen regardless of whether they had Cherokee ancestry. Some applicants made their claim solely through the Ninth Article of the 1866 Reconstruction Treaty but others were descended from Cherokees and could therefore claim citizenship as Cherokees 'by blood'. This distinction was therefore lost, as the failure to record the blood quantum of such enrolees effectively operated as zero blood quantum. The omission of blood quantum from their roll therefore imposed American notions of hypodescent – the 'one drop rule' – on Cherokee freedpeople, meaning that their African ancestry negated any possible Cherokee ancestry. In her study of the shifting legal definitions of race, Ariela Gross has argued that, through dividing freedpeople from citizens by blood in this way, the Dawes Commission imposed and fixed a binary racial order that made a 'Black Indian' or 'African

Cherokee' an impossibility.[575] This separated Cherokee freedpeople from their Cherokee identity, redefining them as black which had huge implications for Cherokee freedpeople after Oklahoma entered the Union and, by extension, the Jim Crow social order of that era.

Gaining and Retaining an Allotment

Allotments were subject to certain restrictions that prevented recipients from selling their land. These restrictions gave the racial distinctions made during enrolment "enormous import" since they were lifted according to racial classification: the protected status of an individual's land therefore depended on their blood quantum.[576] Like all Cherokee citizens, freedpeople awarded citizenship by the Dawes Commission gained an allotment of 110 acres of Cherokee land of equal value (or its equivalent), with forty acres designated as a homestead. Under the initial terms of allotment, all allottees were permitted to sell their 'surplus' land after five years of receiving it but the forty-acre homestead was non-taxable and inalienable for twenty-one years or the lifetime of the allottee.[577] The restrictions on sale were intended to protect the property rights of allottees whilst they adjusted to their new position as land holders. White Americans and Cherokees alike debated the merits of this system, with some viewing it as a patronising means of denying allottees the freedom to lease or sell the land as they saw fit whilst others saw it as a defence against fraudulent opportunists. Under pressure from settlers, Congress amended the restrictions in the years following allotment, lifting them entirely for freedpeople by 1908, and the "confused legal

[575] A. J. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge, MA and London: Harvard University Press, 2008), 141. Celia Naylor uses the term African Cherokee in her monograph to define freedpeople and their descendants who saw themselves to be Cherokee, regardless of their ancestry. Naylor, *African Cherokees*.
[576] Gross, *What Blood Won't Tell*, 160.
[577] Littlefield, *Cherokee Freedmen*, 231.

situation" of landownership in Indian Territory gave land speculators, or 'grafters,' opportunities to either lease or buy allotted land for distorted prices.[578]

The restrictions attached to Cherokee land were controversial and remain so today. Angie Debo has described the restrictions on allotted land as evidence of the irreconcilable nature of justice and the free market.[579] The clamour for the land of Oklahoma Territory had revealed that settlers were determined to claim land in the west and opponents of allotment had argued that the policy would ultimately transfer Native lands away from Native peoples and into the hands of United States citizens. The restrictions on allotted lands worked to convince reformists that Native peoples would not be taken advantage of in the years following allotment.[580] The restrictions rested on the paternalistic notion that Native peoples would be unable to manage their own property and therefore the federal government needed to protect them from unsavoury 'grafters.'[581] David Chang has argued that the restrictions were "suffused with white supremacy," which equated indigenous ancestry with incompetence and vulnerability.[582] The assumption of incompetence pervaded early scholarship on the allotment era, with Angie Debo describing the "vast helplessness and inexperience of the average Indian."[583] Later work considers the agency of Native peoples during this time, with historians such as Stuart Banner convincingly arguing that an impoverished allottee may have chosen to lease or sell their land for non-competitive rates given that it was their only asset.[584] Rather than the result of trickery or fraud, then, the decision to sell or lease lands can be a means of managing an individual or family's economic situation. Current scholarship attempts to reconcile the problems and advantages of these restrictions and historians of allotment have argued that the "paternalistic

[578] Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes*, 157.
[579] Debo, *And Still the Waters Run*, 144.
[580] Banner, *How the Indians Lost Their Land*, 272.
[581] Ibid.
[582] Chang, *The Color of the Land*, 119.
[583] Debo, *And Still the Waters Run*, 91.
[584] Banner, *How the Indians Lost Their Land*, 272.

provisions" may have been based on racialized notions of incompetence but they did offer a defence against the aggressive pursuit of Cherokee land by non-citizens.[585]

As allotment of the Cherokee Nation progressed and was eventually completed, land speculators pressured the federal government to lift the restrictions on allotted land. Grafters had been able to secure access to Indian lands through leases, often made with the allottee at very low rates and then leased to a client for a huge profit, but the restrictions limited their ability to completely wrest the lands away from its owners. Although grafters had found means to sidestep the law through suspect lease agreements, removing the restrictions would allow them to buy and sell said land at great profit and they therefore lobbied the federal government to do so.[586] Speculators were not alone in pushing for the removal of restrictions on allotted lands: some Native citizens advocated their abolition. David Chang has argued that citizens who were adept at managing business and property found the restrictions to be "meddlesome, intrusive, and patronizing."[587]

Scholarship has largely emphasised that the removal of restrictions operated against the inclination and welfare of Cherokee citizens in general and freedpeople in particular. Angie Debo, for example, has argued that freedpeople were particularly vulnerable to the removal of restrictions on their land and represented the "most unfriended" class in the Cherokee Nation, "regarded by the general populace with hate and envy while they owned their allotments, and with hate and contempt after they lost them."[588] Cherokee officials had made it evident with the Whitmire case and their longstanding resistance to giving freedpeople an equal allotment that the majority of the Cherokee citizenry did not believe that freedpeople had a right to Cherokee land. They were therefore unlikely to advocate the continued protection of the property rights of freedpeople following allotment. In his

[585] Gross, *What Blood Won't Tell*, 160. Littlefield, *Cherokee Freedmen*, 238.
[586] Wickett, *Contested Territory*, 61.
[587] Chang, *The Color of the Land*, 128.
[588] Debo, *And Still the Waters Run*, 126.

monograph, Daniel Littlefield likewise stressed the exploitation of Cherokee freedpeople at the hands of land speculators who endeavoured to "shake the freedmen loose from their land."[589] Murray Wickett argued that the lesser restrictions of the land of freedpeople from 1904 made them particular targets of speculators who were less likely to face legal obstacles in such purchases.[590] Furthermore, Wickett argued that the relative lack of education available to freedpeople made them vulnerable to deceptive contracts. Wickett concluded that freedpeople of Five Tribes lost a "staggering" amount of land through such practices (see figure 1).[591]

[589] Littlefield, *Cherokee Freedmen*, 255.
[590] Wickett, *Contested Territory*, 62.
[591] Ibid, 63.

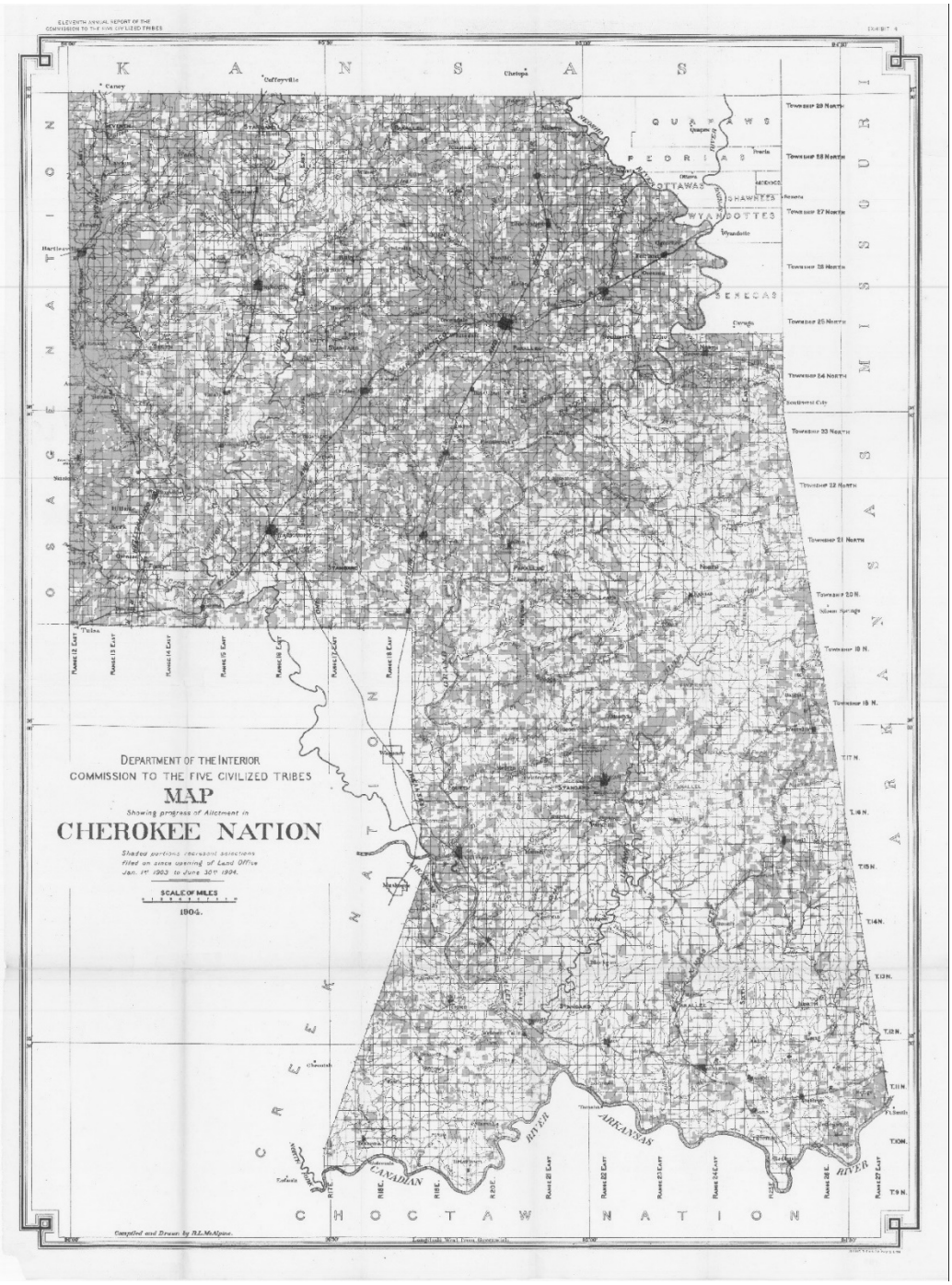

Figure 1. ***Department of the Interior Commission to the Five Civilised Tribes Map Showing Progress of Allotment in the Cherokee Nation, 1904*****. Shaded areas of land denote allotments held by Cherokee citizens in 1904. The removal of restrictions in subsequent years made these lands vulnerable to sale away from Cherokee citizens.[592]**

[592] R. L. McAlpine. *Department of the Interior Commission to the Five Civilized Tribes Map Showing Progress of Allotment in the Cherokee Nation, 1904*. Map. (Washington D.C.: The Dept., 1903)

A number of Cherokee freedpeople elected to remove the restrictions from their land for their own purposes, however, which challenges their monolithic status as victims of allotment in the historiography. The applications made by such freedpeople before their restrictions were lifted entirely in 1908 offer a record of both why and how freedpeople would choose to sell their land. Lewis Daniels, for example, applied to have restrictions on sale lifted from the area of land defined as his homestead in November 1907. Daniels, a 62 years old freedman, hoped to sell his homestead for townsite purposes since he had retired from farming and now worked in haulage in the town of Lenapah, I. T.[593] Over the course of his application, Daniels took pains to establish his competency by drawing attention to his ability to read and speak english as well as ability to manage business and money. Clerk John B. O'Neill surveyed Daniels' land and interviewed Daniels himself, concluding that he "is a bright intelligent Freedman" and "well able and capable of transacting his own business."[594] Upon O'Neill's recommendation, the Department of the Interior approved Daniels' request and allowed him to sell his land.

In the same manner as Lewis Daniels, freedman James French hoped to sell a portion of his allotment for townsite purposes in Lenapah. Unlike Daniels, however, French was subjected to extensive examination that reveals the views held by federal officials in regard to his race. French lived with his wife and child on his wife's allotment and, since he was farming those lands with success, hoped to take advantage of the demand for land by selling his own at a good price. Over the course of French's appearance before the Commissioner, French asserted that he was capable of reading and writing in English, demonstrated his understanding of land prices in Lenapah and produced evidence that his plan to sell his lands

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Sourced from the Oklahoma Historical Society web site, https://okhistory.cuadra.com/cgi-bin/starfetch.exe?!28repos=SKCA&starhost=star01&file=SKCA/000gvy.pdf&ip=212.139.100.161&starid=skcacatremote!29/000gvy.pdf (1/9/16).

[593] 'Petition of Lewis D. Daniels, Cherokee Freedman' Box 63, Folder 6. Cherokee Nation Townsites. 1903-1907. Dawes Commission Records.

[594] 'J. B. O'Neill to D. H. Kelsey, March 23rd 1908,' Box 63, Folder 6. Townsites. 1903-1907.

has been endorsed by the Lenapah mayor and town council.[595] The Commissioner raised questions about French having used money from a previous sale to pay off a debt (implying that French was unable to manage his own affairs) but French's attorney later established that these debts were accrued paying legal fees for his brother's defense in court after being accused of murder.[596] When interviewing W. H. Buffington as a character witness, French's attorney questioned whether Buffington thought French could manage his business affairs as "the ordinary man does" (i.e. is as competent as white men were perceived to be) and Buffington answered in the affirmative.[597] The Commissioner expanded on this question, first asking whether Buffington was a relative of French (he was not) and then asking if French had a reputation for "truth and veracity."[598] Buffington confirmed that French was considered trustworthy and had not been accused of any misconduct in relation to the previous sale of his surplus lands but the Commissioner's questions revealed the suspicion that freedmen such as French could be dishonest. When interviewing a later character witness, Frank Little, the Commissioner revisited this issue in relation to alcohol consumption:

> Q. Is he a sober and industrious man or not?
>
> A. Well. He drinks occasionally, but he don't make a habit of it and he works pretty near every day.
>
> Q. When he gets full, does he spend much money?
>
> A. Well I don't know, really, I have never made a practice of going with him when he has been full. I never heard of his family complaining of being in need or anything of that kind. I don't know just how much he does spend.

[595] 'Department of the Interior, Commission to the Five Civilized Tribes, Muskogee, Indian Territory, August 7, 1906. In the matter of the application of James French…' Page 2. Box 63, Folder 7. Townsites. 1903-1907.
[596] Ibid. Page 5.
[597] Ibid. Page 6.
[598] Ibid. Page 6

Q. How often does he drink too much? How often is he liable to get drunk?

A. I never saw him get real drunk in my life, so he couldn't walk, I never did see him that way.

Q. How often does he drink to excess?

A. I suppose whenever he can get to it, he will drink a little bit.[599]

The Commissioner's persistent questions about excessive drinking, despite the witness only conceding that French consumed alcohol occasionally, suggests that he associated men such as French with alcoholism and incompetence. Little clarifies, under questioning from French's attorney, that French was generally a very temperate man and that he was not likely to be "taken advantage of", as the Commissioner put it, as a result of drinking too heavily.[600] Although the Commissioner's assumptions about French did not damage his application (the removals of restrictions were ordered in November 1907), they do reveal the racial stereotyping freedmen were subjected to as they endeavoured to claim control over their property.

Although the majority of freedpeople who applied to have the restrictions removed from their allotment were men, some freedwomen did make applications. Laura Scarborough, for example, filed an application in October 1907 to have the restrictions against sale of her homestead lifted, citing her proximity to Sandtown and a rail station as evidence of its potential value. The clerk who investigated her application forwarded a series of concerns to United States Indian Agent Dana Kelsey, however, and recommended the application be denied. First, there were inaccuracies within the application: the clerk found Sandtown to be "no town" but instead a small collection of buildings centred around a post office and the rail station was not at Sandtown but was three miles away and therefore of

[599] Ibid. Page 10.
[600] Ibid. Page 11.

little consequence.[601] Second, the clerk raised concerns that Laura Scarborough was being exploited by her husband, a non-citizen who had "complete control [sic] of his wife's affairs."[602] The clerk speculated that this would explain the discrepancy between the application and his investigation. Following a conversation with Laura Scarborough, the clerk concluded that she was not competent and cautioned that "she depends absolutely on her husband, who has not used good judgement in this matter."[603] Laura Scarborough's application was rejected without the applicant appearing before the Commissioner so there is little evidence available by which the clerk's assertion that she was incompetent can be assessed. Her application does highlight the perceived dependence of wives on their husbands at this time, however: rather than being assessed purely on her own merit (as Lewis Daniels and James French were) perceptions of Laura Scarborough were considered in relation to her status as a wife (and thus a legal dependent).

In her March 1908 application for the removal of restrictions on her homestead, twenty-nine-year-old Mollie Townsend provided ample evidence of her competence to manage her own affairs, illustrating that freedwomen were not necessarily dependent on husbands. According to her petition, Townsend had attended school for eight years, managed the allotments owned by herself and her three children, and had at times been in possession of "considerable sums of money."[604] Townsend was therefore not just competent but seemed to have gained success as a businesswoman in the Indian Territory. The removal of restrictions from all property owned by freedpeople in May 1908 rendered Townsend's application unnecessary, however, and allowed her to sell her land without the consent of the Department of the Interior.

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[601] 'E. C. Backenstoce to D. H. Kelsey, December 20th 1907' Page 1. Box 70, Folder 6. Cherokee Nation Townsites. 1903-1907.
[602] Ibid. Page 2.
[603] Ibid.
[604] 'Petition of Mollie Townsend, Cherokee Freedman' Page 2. Box 60, Folder 11. Cherokee Nation Townsites. 1903-1907.

Although applicants such as Daniels, French, Scarborough and Townsend had chosen to apply for the removal of the restrictions on their property, abolishing the restrictions on lands owned by Cherokee freedpeople entirely in 1908 made them all vulnerable to the grafters and land speculators without consideration for their own preferences. The decision to lift restriction on lands attained through allotment was made by Congress and not by the individuals it would effect. Given that restrictions endured on land owned by allottees with a high degree of Indian ancestry, David Chang has emphasised how freedpeople in Indian Territory were made especially vulnerable by the "graduated level of protection" afforded by the restrictions.[605] This reflected a significant shift in federal policy towards Cherokee freedpeople. Following the Civil War, federal officials had ardently pushed for the recognition of the rights of freedpeople within the Cherokee Nation (particularly in relation to their claim on Cherokee land). As illustrated in previous chapters, the federal government repeatedly acted on behalf of Cherokee freedpeople over these decades and its officials had cast themselves as the defenders of freedpeople, stressing the 'justice' of their actions in doing so. The United States chose to strip Cherokee freedpeople of the protections of restriction, however, whilst continuing to protect the allotments of allottees with Cherokee ancestry. In doing so, the federal government exempted freedpeople from its paternalistic notions of incompetence, protection and assimilation even though interviews, such as that of James French, illustrate that freedpeople were not generally considered to be competent. As the Cherokee citizenry were incorporated into the larger United States with the advent of Oklahoma statehood in 1907, then, the processes of allotment had placed freedpeople at a particular disadvantage.

[605] Chang, *Color of the Land*, 119.

Conclusion

With the passage of the Curtis Act, the United States dismissed the sovereignty and authority of the Native nations within Indian Territory and claimed complete jurisdiction over the Territory. Oklahoma statehood entailed the dissolution of the Native governments within Indian Territory and the extension of federal authority over its residents. Although federal officials secured an equal allotment for Cherokee freedpeople, their negotiations with Cherokee officials revealed that the Nation still adhered to their argument that freedpeople had no claim on Cherokee land. The allotment of land to individual citizens necessitated the creation of rolls that delineated freedpeople separately from the larger Cherokee citizenry. The creation of these rolls again highlighted differing interpretations of who was entitled to Cherokee citizenship and federal officials challenged the authority of the Cherokee Nation by allowing freedpeople who were not listed on the agreed base roll to apply. Although this expansive reading of Cherokee citizenship appeared to indicate federal support for freedpeople and their struggles for equal citizenship, federal officials quickly abandoned them once allotment was nearing completion. The removal of restrictions on the sale of allotted land, beginning in 1904, left Cherokee freedpeople open to fraud and exploitation whilst the categorisation of Cherokee freedpeople as being racially distinct from the Cherokee citizenry afforded them little protection against the Jim Crow social order that came to power in the new state. The vulnerable position of freedpeople at the beginning of the twentieth century therefore suggests that the federal government used them as tools to encroach on the authority and sovereignty of the Cherokee Nation rather than supporting them because of a genuine belief in their full and equal rights as Cherokee citizens. Once allotment was complete and Oklahoma had attained statehood, assisting Cherokee freedpeople no longer benefitted the federal government.

Epilogue: Cherokee Freedpeople in the Twenty-first Century

> To promote, collect, and preserve Oklahoma Freedmen Genealogy, History and Artifacts and study the unique cultural diversity of Freedmen Descendants for the general benefit and good of the individual and collective Tribes and Representative Communities, in the State and Nation, and to improve the quality of life, to reinvigorate and promote cultural awareness and events relating to our heritage.
>
> (Mission of the Descendants of Freedmen of the Five Civilized Tribes Association)[606]

The ramifications of the forty years covered by this thesis continue to be felt today by Cherokee freedpeople and the Cherokee Nation through the practice of exclusionary citizenship policies. The legacies of the nineteenth century therefore continue to have real-life consequences for Cherokee freedpeople over a century later. As we have seen, federal intervention on the behalf of freedpeople led many within the Cherokee Nation to associate affording them equal rights with attacks on Cherokee sovereignty in the nineteenth century. Marginalised by the Cherokee Nation and abandoned by the federal government, freedpeople occupied an uncertain position at Oklahoma statehood. Although this thesis concludes with the enactment of the Curtis Act in 1898, which dissolved the Cherokee Nation government and brought about Oklahoma statehood in 1907, freedpeople have continued to pursue equal and full citizenship within the Cherokee Nation until the present day. This thesis therefore places the current struggles of freedpeople for inclusion within its historical context. Since the relationship between the Cherokee Nation, Cherokee freedpeople and the United States remains essentially triangular in nature, exploring this historical context may provide a clearer understanding of the positions held by the Cherokee Nation and the United States over Cherokee freedpeople.

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[606] 'Mission,' *Descendants of Freedmen of the Five Civilized Tribes*, sourced from http://www.freedmen5tribes.com/Mission.htm (10/7/16).

In the first decade of the twenty-first century, individuals such as Lucy Allen and Marilyn Vann brought the issue of Cherokee freedpeople and their exclusion from the Cherokee citizenry to national and international attention through the courts of both the Cherokee Nation and the United States. As a result of Allen's 2004 lawsuit, filed in the Judicial Appeals Tribunal of the Cherokee Nation, measures denying freedpeople citizenship were declared unconstitutional. This victory proved short-lived, however, after a 2007 amendment to the Cherokee Nation Constitution again limited citizenship to individuals who could trace their ancestry to the 'by Blood' register of the Dawes Roll.[607] Since efforts to reclaim Cherokee citizenship through the Cherokee legal system had proved ineffectual, a group of Cherokee freedpeople led by Marilyn Vann filed a case against the Cherokee Nation in the United States Federal Court in 2006. The creation of the Cherokee Freedmen's Association in the 1940s, as well as Reverend Roger Nero's failed 1984 attempt to secure voting rights for freedpeople, reveals that these contemporary legal cases do not exist in isolation but instead represent part of a longer battle for full citizenship. This battle is not limited to the courtroom, however, as organisations such as the Descendants of Freedmen of The Five Civilized Tribes lead a push to make those descended from freedpeople of the former Indian Territory more visible and more involved in their respective tribal communities. As this thesis has made clear, this larger struggle for inclusion has spanned 150 years and is deeply rooted in nineteenth century discourses surrounding nationhood, citizenship and identity. After the Civil War, the Cherokee National Council repeatedly charged that Cherokee freedpeople were not Cherokee and attempted to provide them with a lesser form of citizenship. They claimed the right do so through their nation status. In response to their exclusion from citizenship rights in the Cherokee Nation, Cherokee freedpeople encouraged the federal government to intervene on their behalf to secure them

[607] C. Naylor, *African Cherokees in Indian Territory: from Chattel to Citizens* (Chapel Hill: University of North Carolina Press, 2008), 210-214.

equal citizenship. In doing so, Cherokee freedpeople exploited the differing notions of citizenship held by the United States to further their own agenda. The United States proved to be an unreliable ally, however, and not only did the federal government selectively defend the rights of Cherokee freedpeople but they also used this contentious issue as an opportunity to display their growing power in the Cherokee Nation and the larger Indian Territory.

As of September 2016, the federal case to determine whether the descendants of slaves held within the Cherokee Nation can be denied Cherokee citizenship remains unresolved. The complex issues surrounding Cherokee freedpeople have proved difficult to disentangle: it is a decade since Marilyn Vann first filed her case against the Cherokee Nation over the disenfranchisement of herself and other freedpeople and no decision has been made. Opinion pieces and editorials frequently point to the uncertain future of Cherokee freedpeople, describing them in terms such as "waiting," "still waiting" and "in limbo."[608] Through temporary injunctions, freedpeople who trace their Cherokee ancestry to the Freedmen Roll only retain their status as full citizens of the Cherokee Nation (with all the rights associated with that citizenship) until a decision is made regarding their status by the United States federal court.[609] Coverage in *The Oklahoman* described this court case as being the result of an "unusual agreement" that condensed all questions connected to freedpeople and their status within the Cherokee Nation in to a single case.[610] The Cherokee Nation,

[608] A. Meier, 'The Freedmen Fight for Tribal Citizenship in a New Documentary,' *Hyperallergic*, June 18 2015, sourced from http://hyperallergic.com/214618/the-freedmen-fight-for-tribal-citizenship-in-a-new-documentary/ (12/06/16). K. T. Mays, 'Still Waiting: Cherokee Freedmen Say They're Not Going Anywhere,' *Indian Country Today Media Network*, July 20 2015, sourced from http://indiancountrytodaymedianetwork.com/2015/07/20/still-waiting-cherokee-freedman-say-theyre-not-going-anywhere-161132 (12/06/16). A. Herrera, 'In Limbo: Descendants of Cherokee Freedmen Seek Recognition,' *kosu.org,* February 23 2016, sourced from http://kosu.org/post/limbo-descendants-cherokee-freedmen-seek-recognition#stream/0 (12/06/16).

[609] Naylor, *African Cherokees in Indian Territory*, 214.

[610] C. Casteel, 'Federal judge promises quick decision in Cherokee freedmen case,' *The Oklahoman*, May 6 2014, sourced from http://newsok.com/federal-judge-promises-quick-decision-in-cherokee-freedmen-case/article/4746440/?page=2 (10/10/14).

freedpeople, and the Department of the Interior hope to reach a final decision on various disagreements by limiting the discussions to one issue: whether the 1866 Reconstruction Treaty prevents the Cherokee Nation from amending its constitution to rescind the citizenship of freedpeople. The federal court case, and the citizenship status of freedpeople in the twenty-first century, therefore rests on how Senior U.S. District Judge Thomas F. Hogan interprets that agreement between the United States and the Cherokee Nation.

In regards to Native American law, Judge Hogan is most renowned for presiding over the landmark *Cobell vs Salazar* class-action lawsuit in 2011 and finding in favour of the Native American plaintiffs. Judge Hogan's ruling, that the U.S. government had mismanaged the income of trust assets, represents the largest settlement against the United States in its history, totalling $3.4 billion.[611] With his reputation as a likeable and competent judge, as well as having previously defended the rights of Native Americans against the federal government, it seems fair to assume that Judge Hogan will be received more readily by citizens of the Cherokee Nation than a judge who has proven themselves to be hostile to the sovereignty of Native peoples and nations.[612] Judge Hogan announced in May 2014 that he expected to reach a decision in the near future. In her coverage of the case, Jenni Monet describes Judge Hogan as being "poised to make a landmark decision for Indian country – one that legal observers say will be discussed for many years to come."[613] In much the same way as in the decades following the Civil War, the federal government has relatively low stakes in this legal battle: an adverse decision for Cherokee freedpeople and the Cherokee Nation will mean a collective loss of tribal citizenship or a devastating blow to Cherokee

[611] J. Monet, 'Honor the Treaties: Cherokee Freedmen Complicate Native Rights Mantra,' *Indian Country Today Media Network*, May 13 2014, sourced from http://indiancountrytodaymedianetwork.com/2014/05/13/honor-treaties-cherokee-freedmen-complicate-native-rights-mantra-154848?page=0%2C2 (10/10/14).
[612] C. Leonnig, 'U.S. District Chief Judge Calls a Career Recess,' *The Washington Post*, January 4 2008, sourced from http://www.washingtonpost.com/wp-dyn/content/article/2008/01/03/AR2008010304216.html (7/01/15).
[613] Monet, 'Honor the Treaties.'

sovereignty respectively, however. Despite assurances that resolution is near, Judge Hogan is yet to proffer judgement on this case and given its contentious nature, it seems likely that his decision will be appealed to the Supreme Court by either the Cherokee freedpeople claimants or the Cherokee Nation. The issue may therefore prove painfully slow or even impossible to resolve.

As discussed in Chapter One, media coverage of the Cherokee freedpeople controversy has repeatedly identified tribal sovereignty and racial discrimination against freedpeople as the key points of debate. Individuals who advocate the disenfranchisement of freedpeople argue that control over citizenship is central to self-government and that therefore any attempt by an outside power to prevent the Cherokee Nation from excluding freedpeople is an attack on the sovereignty of the Nation. Chad Smith, Principal Chief of the Cherokee Nation from 1999 to 2011 and a prominent advocate of disenfranchisement, has claimed that the Cherokee Nation's ability to exclude freedpeople "was a fundamental right of sovereignty... to not only determine your own future, but to determine your own identity."[614] In Smith's vision of the conflict over Cherokee freedpeople, then, the federal government acts as an aggressor by preventing those who are Cherokee 'by blood' from freely deciding whether to recognise freedpeople as Cherokee citizens. Like other advocates of Cherokee disenfranchisement, Smith does not expand on the rationale behind excluding freedpeople from the Cherokee citizenry but rather affirms the right to do so.

For many observers, resisting federal pressure to incorporate freedpeople does not represent an expression of sovereignty but rather a situation which could enable the United States government to exert its authority over Native nations. Like the unnamed Indian elder who feared the implications of Tiya Miles's work on Cherokee slavery, Jenni Monet situates

[614] A. Geller, 'Past and future collide in fight over Cherokee identity,' *USA Today*, February 10 2007, accessed 10/10/2014, http://usatoday30.usatoday.com/news/nation/2007-02-10-cherokeefight_x.htm

the conflict over Cherokee freedpeople within a broader context of relationships between the United States and all Native tribes, remarking that "the weight of the issue boils down to treaty rights, and not just for the Cherokee or freedmen, but in essence for all of Indian country." [615] According to Monet, allowing the Cherokee Nation to exclude its freedpeople citizens would release it from its commitment to incorporate former slaves and their descendants, sending "the wrong message; that tribes undervalue their treaty obligations much in the same way the United States has woefully cast aside these agreements over time." [616] The controversy over Cherokee freedpeople may therefore establish a dangerous precedent: that a federally recognised tribe can disregard its treaty obligations. This would challenge the unique position Native nations hold within the United States, and in turn suggest that the United States could disregard its own treaty obligations to Native people. The outcome of the federal court case therefore holds implications beyond the status of freedpeople: at the least an adverse decision could redefine what citizenship means for citizens of all Native nations in the United States, at most it could threaten all treaty protections afforded to Native nations and citizens.

Much of the mainstream media coverage of the Cherokee freedpeople controversy in the United States considers racial prejudice rather than tribal sovereignty to be the most pressing issue in the debate over Cherokee freedpeople. Although coverage has become more nuanced in recent years, by recognising that matters of sovereignty and self-government complicate any decision made by the federal government, national newspapers have been quick to explicitly accuse advocates of disenfranchisement as being motivated by racism. In doing so, such observers risk underplaying the question of sovereignty and ignore the history of federal aggression towards the Cherokee Nation and Native nations more

[615] T. Miles, *Ties That Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (Los Angeles and London: University of California Press, 2006), xv. Monet, 'Honor the Treaties.'
[616] Monet, 'Honor the Treaties.'

generally. A columnist in the *Washington Post*, for example, has drawn parallels between attempts to exclude Cherokee freedpeople and racist questions surrounding Barack Obama's citizenship, attributing both to the "enduring nastiness of slavery."[617] An article for a local Tulsa radio station sympathetically profiles two Cherokee freedpeople whilst failing entirely to explore the history of the dispute, leaving readers to conclude that this is simply twenty-first century racial prejudice.[618] Similarly, an editorial by Marcos Barbery in *Salon* magazine champions the cause of Cherokee freedpeople. The editorial quotes David Cornsilk (the lay advocate who represented Lucy Allen) extensively: "The Freedmen died a long time ago. You are not Freedmen. You are Cherokee, and it is time you begin to recognize who you are."[619] The author's sympathies are further demonstrated through numerous case studies of Cherokee freedmen who both hold citizenship currently or whose claims will not be processed until the court case is resolved. For example, Barbery's description of a single black family taking part in the Cherokee Holiday Parade, and the mixed reactions they received from other attendees, highlights the human cost of rejection and disenfranchisement to his readers.[620]

In the twenty-first century, then, Cherokee self-government and the equal rights of the descendants of Cherokee freedpeople still appear irreconcilable. In her 2014 article 'Race, Sovereignty, and Civil Rights: Understanding the Cherokee Freedmen Controversy,' Circe Sturm argues that race and tribal sovereignty should be considered together instead of

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[617] C. Milloy, 'The Cherokees: One nation, divisible? Judge will decide if black members can be expelled,' *The Washington Post*, May 6 2014, sourced from http://www.washingtonpost.com/local/the-cherokees-one-nation-divisible-judge-will-decide-if-black-members-can-be-expelled/2014/05/06/8690e56c-d55e-11e3-aae8-c2d44bd79778_story.html (10/12/14).

[618] A. Herrera, 'Some Cherokee Freemen are Citizens, while Others are Left Out,' *KOSU*, August 10 2016, sourced from http://kosu.org/post/some-cherokee-freedmen-are-citizens-while-others-are-left-out#stream/0 (3/9/16).

[619] M. Barbery, 'Slave descendants seek equal rights from Cherokee Nation,' *Salon*, May 21 2013, sourced from http://www.salon.com/2013/05/21/slave_descendants_seek_equal_rights_from_cherokee_nation_partner/ (10/12/14).

[620] Barbery, 'Slave descendants seek equal rights from Cherokee Nation'

separately, however, since "that is in fact how they function in the world" and that "racial dynamics can both empower and undermine tribal sovereignty."[621] Sturm traces the ways in which race has affected the ability of the Cherokee Nation to exercise its sovereignty in relation to the citizenship of freedpeople and identifies three examples: outside observers who classified racist Cherokees as 'white' in acting so and therefore not 'authentic' Indians; the Cherokee Nation's use of propaganda that cast freedpeople as 'non-Indians' and framed the vote on the constitutional amendment as a decision on whether the Nation should remain Indian or not; and "historical amnesia" surrounding the historic connections between the Cherokee Nation and Cherokee freedpeople which encouraged the larger Cherokee citizenry to simply view them as black (and therefore not Cherokee).[622] Notions of sovereignty and race therefore operate together rather than separately and, at the conclusion of the article, Sturm argues that greater attention to the interaction between these ideas is necessary: "only then will our work empower tribes to act as moral sovereigns committed to protecting the civil rights of their own citizenry."[623]

Sturm's conclusion, that challenging the established wisdom that the rights of freedpeople and the sovereignty of the Cherokee Nation is necessary and productive, is echoed by the actions of freedpeople today who are engaged in campaigns to increase the visibility of Cherokee freedpeople and illustrate that they are a part of the wider Cherokee community. According to Kyle Mays, Cherokee freedpeople are not "sitting idly by" whilst their future is decided in a courtroom.[624] Instead, freedpeople are attending Cherokee classes, meetings and holidays in an effort to establish connections amongst themselves and with other Cherokee citizens. According to Marilyn Vann, actively participating in Cherokee

[621] C. Sturm, 'Race, Sovereignty, and Civil Rights: Understanding the Cherokee Freedmen Controversy,' *Cultural Anthropology*, 29:3 (2014), 577.
[622] Ibid. Pages 592-3.
[623] Ibid. Page 595.
[624] Mays, 'Still Waiting: Cherokee Freedmen Say They're Not Going Anywhere.'

community activities will encourage all citizens (regardless of which roll their ancestors can be found on) to feel "more comfortable" with each other.[625] This corresponds directly with the stated objectives of the Descendants of Freedmen of the Five Civilized Tribes Association, headed by Vann and formed in response to various attempts by native Nations to disenfranchise their freedpeople descendants. In their mission statement, alongside securing citizenship rights, the Association pledges to "improve the quality of life, to reinvigorate and promote cultural awareness and events relating to our heritage" for "the general benefit and good of the individual and collective Tribes and Representative Communities."[626] Rather than rely on victories in the courtroom, which have historically only facilitated temporary and fragile protections for freedpeople, the Association looks to a more inclusive future made possible through engagement between citizens and a relationship based on a shared history and "unique cultural diversity" rather than a combative present.

[625] Ibid.
[626] 'Mission,' *Descendants of Freedmen of the Five Civilized Tribes.*

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