

CIVIL WARRIOR  
CHEROKEE CHIEF JOHN ROSS'S DEFENSE OF U.S. CONSTITUTIONAL  
LAW AND INDIAN SOVEREIGNTY DURING THE AMERICAN CIVIL WAR

A Dissertation

by

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## ABSTRACT

During the nineteenth century, the United States frequently abrogated Senate-ratified treaties with Indian nations on its westward march across the continent, seizing tribal lands for its own use in the process. Perhaps no Indian nation understood the cruelties of this land grab better than the Cherokees who lost as much as a quarter of its population on the infamous “Trail of Tears” in the 1830s, and another third during the horrors of the 1860s. The Cherokees of the nineteenth century were a highly modernized people, possessing a constitution, an organized government, and their own alphabet and newspaper. Their constitutionally elected principal chief, a man named John Ross, was educated in the workings of constitutional government, and became the staunchest defender of indigenous rights in American history. As the United States erupted into Civil War in 1861, Ross and the Cherokees found themselves in the middle of a struggle between two white governments, both demanding the loyalty of the Indian nations. Ross’s decision to align with the Confederacy in response to the withdrawal of Federal troops from Indian Territory has been misunderstood – until now. His defense of constitutional law in the face of constant abrogation by the United States found an ally in President Abraham Lincoln, who was poised to reinstate the supremacy of the treaty-making process until his assassination ushered in a new era of attack on indigenous sovereignty. The punitive postwar treaty of 1866 began the process

of dismantling that sovereignty. Moreover, the United States began a campaign to dismantle the entire process of treaty-making with Indian nations, depriving the tribes of the constitutional protections provided by Senate-ratified treaties. Ross's efforts to adhere to the Cherokees' treaties with the United States and his courageous defense of the process of U.S. constitutional law, even on his death bed, makes this Cherokee Indian a true American patriot and hero.

## DEDICATION

To Merri Jo, whose encouragement and support have enabled me to complete this daunting task. I not only dedicate this dissertation to her, but I also dedicate myself to being the man she believes me to be.

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## CONTRIBUTORS AND FUNDING SOURCES

### **Contributors**

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Outside of timely suggestions and poignant critique from the members of the dissertation committee, all work conducted for this dissertation was completed by the student independently.

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## CHAPTER I

### INTRODUCTION

The late spring day was growing steadily warmer as the young warrior hid among the brush overlooking the winding river below. His hiding place, a place called Pleasant Bluff, was carefully chosen for its commanding view of the river. The dilapidated house nearby reminded him how important this place had once been to his people in the years after their arrival from their ancestral homes in the East. He was glad when the leader, a warrior from the tribe across the river, looked on his hiding spot with approval. The young warrior and his men waited for almost seven days when word came that the enemy was approaching. His heart pounded as he watched a boat round a distant bend and slowly ply its way upstream towards them. As it approached, the young warrior waited patiently while the vessel slowed, preparing to navigate the sharp bend in the river below his hiding place. Waiting silently for the boat to reach a spot directly in front of him, the young warrior jumped to his feet and shouted, setting the attack in motion.<sup>1</sup>

The first cannon fired a warning shot over the bow of the steamboat, hoping to encourage a surrender. When that did not come, a second shot struck the stack, sending the men on deck scurrying. A perfectly aimed third

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<sup>1</sup> W. David Baird, ed., *A Creek Warrior for the Confederacy: The Autobiography of Chief G. W. Grayson* (Norman: University of Oklahoma Press, 1985), 81-84.

shot destroyed the pilot house only moments before a final blast took out the boiler, sending a cloud of steam spewing into the air. By this time, the crew had abandoned the boat which had run aground along the opposite bank of the river. Quickly a group of Indians boarded the boat and towed it to the south bank where they unloaded what they could of its cargo. Carrying over \$120,000 worth of supplies for the Federal post upriver, the boat, the *J. R. Williams*, had left Fort Smith, Arkansas, bound for Fort Gibson in the Cherokee Nation.<sup>2</sup> The Indians, fighting as allies of the Confederate States during the American Civil War, quickly unloaded about 150 barrels of flour and eight tons of bacon, packing it onto their horses and scurrying away with the bounty to feed their starving families.<sup>3</sup> Other Indians confiscated the abundance of tin ware on board, lashing it to their horses, and clunking away with their spoils. The young warrior, a Creek Indian named George Washington Grayson, served with a band of pro-Confederate Indians led by a Cherokee named Stand Watie. Watie and Grayson remained with the boat, hoping to salvage the remainder of the cargo until their allies returned. However, approaching Union troops drove them away. Before they departed, however, they set the wreck ablaze, releasing it to drift downstream for nearly a mile as it burned.<sup>4</sup>

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<sup>2</sup> Ibid.

<sup>3</sup> Mary Jane Warde, *When the Wolf Came: The Civil War and the Indian Territory* (Fayetteville: The University of Arkansas Press, 2013), 204.

<sup>4</sup> Baird, *A Creek Warrior for the Confederacy*, 81-84; Kenny A. Franks, *Stand Watie and the Agony of the Cherokee Nation* (Memphis: Memphis State University, 1979), 162-163.

Tales of Confederate victory and Union defeat at Pleasant Bluff fill the pages of the historiography of the Civil War in Indian Territory. The attack, which took place on June 15, 1864, near the present-day town of Tamaha, Oklahoma, has been celebrated by historians. Clarissa W. Confer calls it “a story of daring in the annals of Indian Territory warfare.”<sup>5</sup> LeRoy H. Fischer asserts that the victory “cheered the despondent Confederates.”<sup>6</sup> Mary Jane Warde argues that the capture “came at a particularly inopportune time for the Union occupation of Fort Gibson.”<sup>7</sup> Wilfred Knight would agree. He claims the capture crushed Federal plans for an invasion of North Texas through southern Indian Territory.<sup>8</sup>

Although historians view the attack as an important victory for Confederate forces, at least one white Confederate officer at the time questioned its success. Major Rhesa Walker Read, regimental surgeon for the Twenty-Ninth Texas Cavalry, claimed that the supplies could have fed the entire Confederate department for two months “if Watie’s Indians would have staid [*sic*] with their commander.”<sup>9</sup> This was not the first time, however, that Read ranted about Watie’s forces and their apparent lack of commitment to the

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<sup>5</sup> Clarissa W. Confer, *The Cherokee Nation in the Civil War* (Norman: University of Oklahoma Press, 2007), 90.

<sup>6</sup> LeRoy H. Fischer, “Introduction,” in *The Civil War Era in Indian Territory* (Los Angeles: Lorrin L. Morrison Publishing, 1974), 23.

<sup>7</sup> Warde, *When the Wolf Came*, 205.

<sup>8</sup> Wilfred Knight, *Red Fox: Stand Watie and the Confederate Indian Nations during the Civil War Years in Indian Territory* (Glendale: Arthur H. Clark, Co., 1988), 208.

<sup>9</sup> Rhesa Walker Read to his wife, June 25, 1864, Rhesa Walker Read Letters, Williams House Museum. Dekalb, Texas (hereafter cited as WHM).

Confederate cause. Following the defeat at the First Battle of Cabin Creek in July 1863, in present-day Mayes County, Oklahoma, Read bemoaned the fact that Watie was unable to hold the line against a much larger Federal advance across the creek. Watie was forced to defend the road with his small force without the help of two regiments of Texans who had been unable to join them due to high water. Regardless, Read told his wife that “our Indians stampeded again.”<sup>10</sup> Five months later he celebrated the segregation of Confederate troops in Indian Territory in a vituperative letter to his wife. He wrote, “I hope I don’t see another Indian this side of H\_\_!”<sup>11</sup>

Read’s displeasure with the pro-Confederate Indians was more commonplace than historians have imagined. Also in November 1863, seven months before the attack on the *J. R. Williams*, Brigadier General William Steele who commanded Confederate forces in Indian Territory, denounced plans to raise a brigade of Indians by accusing Watie of leading an imaginary force that always seemed to be scattered around the country, rendering themselves useless as an organized body. He even claimed they always managed to take more than their share of provisions whenever the opportunity presented itself.<sup>12</sup> Yet, many Confederate leaders openly praised Watie for his

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<sup>10</sup> Rhesa Walker Read to his wife, July 15, 1863, WHM.

<sup>11</sup> Rhesa Walker Read to his wife, November 9, 1863, Rhesa Walker Read Collection, Texarkana Museum of Regional History (Hereafter cited as TMS).

<sup>12</sup> William Steele to S. S. Anderson, November 9, 1863, *War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, 128 vols, (Washington, DC: Government Printing Office, 1881 – 1901), Ser. I, Vol. XXII, Part 2, 1065 (Hereafter cited as *OR*).

gallantry, even promoting him to brigadier general a month prior to the capture of the Federal steamboat. This contradiction raises some important questions. Why would Confederate leaders shower so much praise on Watie if his force seemed so uncommitted to the Southern Cause? And why were many white Confederates on the ground in Indian Territory so unconvinced that Watie and his men deserved any praise? Finally, if Watie was so pro-Confederate, why did he and his men so frequently disappoint white leadership in Indian Territory because of their apathy for the cause? These questions rise from a sense of dissonance that often fills large portions of the historiography of the Civil War in Indian Territory and are unanswerable if historians continue to interpret the events only through the lens of the Civil War.

In 2015, historian Brian DeLay published an article in *Diplomatic History* calling for historians to consider a new perspective for better understanding Indian relations prior to the twentieth century. "What might be gained," he asked, "by including, even centering Indians in our narratives of eighteenth and nineteenth-century U. S. foreign relations?"<sup>13</sup> It is not enough simply to include the perspectives of the American Indian. We must accept DeLay's challenge and allow the Indian to occupy the center stage of our narratives of the Civil War in Indian Territory. Consequently, the following narrative is about the Cherokee Indians, not the Civil War.

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<sup>13</sup> Brian DeLay, "Indian Politics, Empire, and the History of American Foreign Relations," *Diplomatic History* 39, no. 5 (2015), 928.

In 2016, Megan Kate Nelson employed this methodology by rewriting the narratives of the Civil War in New Mexico and Arizona. By examining the era from the perspective of men like Cochise and Mangas Coloradas of the Chiricahua Apaches, Nelson claims that standing in Apache Pass and viewing the war from a new perspective helps “reorient your vision.”<sup>14</sup> This dissertation views the Civil War from the Cherokee capital at Tahlequah in Indian Territory. I merely use the Civil War as a prop to expedite our understanding of the Cherokee Nation; and, in so doing, I remove the constraints that have previously hindered the historiography. By allowing the Cherokees to tell us their story, we learn that many of the events that took place in Indian Territory between 1861 and 1865 had little to do with the Civil War. As a result, this, much like Nelson’s story of westward expansion, becomes a story of Indian policy, of failed foreign relations, of the white man’s conquest of the American West.

Here, I argue that the historiography of the Civil War in Indian Territory has been constrained by the North-South binary, forcing all the events into the same, familiar storyline of the Civil War. Perhaps the most glaring example of this is the story of the venerable Creek Indian headman, Opothle Yahola, who had no desire to participate in the white man’s war. He chose instead to remain loyal to the tribe’s treaties with the United States. Moreover, when he petitioned

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<sup>14</sup> Megan Kate Nelson, “The Civil War from Apache Pass,” *The Journal of the Civil War Era* 6, no. 4 (December 2016), 511.

President Abraham Lincoln for relief, the president encouraged him to remain neutral in a fight that was not his.<sup>15</sup> Within months of the war's outbreak, as many as 6,000 Indians from the various tribes of Indian Territory gathered at the headman's farm seeking to join him in that neutrality. Even though the Creek national government had signed a treaty of alliance with the Confederate States, Opothle Yahola and his followers wanted nothing to do with war. Confederate and Creek leaders felt threatened by such a large gathering of Indians who did not share the same political opinions as the Creek national government. They quickly assumed that if Opothle Yahola was against the Confederate alliance, he must have been pro-Union. In a series of three attacks, Confederate forces – both white and Indian – chased Opothle Yahola and his followers from Indian Territory in November and December of 1861, killing many and leaving the remainder to fight starvation, frostbite, and death in refugee camps in southern Kansas. These attacks are commonly referred to as the first “battles” of the Civil War in Indian Territory.

The idea that Opothle Yahola and his followers were pro-Union emerged from the perspective of many Confederates who resented the fact that the neutral Indians opposed them. In the turbulent political climate of the day, Confederates were not willing to accept the idea that they could really be neutral. If an Indian was not pro-Confederate, did he have to be pro-Union? Historians seem to think so. Annie Heloise Abel, Angie Debo, and even

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<sup>15</sup> Warde, *When the Wolf Came*, 66.



Thomas W. Cutrer refer to Opothle Yahola and his followers as “loyal Creeks,” signifying their presumed loyalty to the Union.<sup>16</sup> Cutrer even calls the group a danger to the peace of Indian Territory.<sup>17</sup> Kenny A. Franks calls them “Federal Indians” and “pro-Northern Indians,” Clarissa W. Confer calls them “pro-Union,” and Warde calls them “pro-Unionist.”<sup>18</sup> Their use of the word “Union” is of particular interest in that it is a construct of white society. When viewed from the Indian perspective, the discourse was of loyalty to the treaties, not to the Union. Obviously, the North-South binary has heavily influenced, if not hindered, the historiography in this case. If we continue to force our narratives to follow the constraints of that binary, then every Indian is forced to take one side or the other. If our narratives view the war the same way as white soldiers on the ground, perhaps it is because we are viewing the events through their eyes, from their perspective. But, what about the Indians? What about their perspectives? Unless we seek to match the discourse in our narratives with that of the Indian perspective, we can never fully comprehend the stories they wish to tell us.

The problem is not that historians have failed to include Indian perspectives. In fact, they have sought increasingly to include Native voices in

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<sup>16</sup> Annie Heloise Abel, *The American Indian as Slaveholder and Secessionist* (Lincoln: University of Nebraska Press, 1992), 194-195; Angie Debo, *The Road to Disappearance: A History of the Creek Indians* (Norman: University of Oklahoma Press, 1941), 147; Thomas W. Cutrer, *Theater of a Separate War: The Civil War West of the Mississippi River, 1861-1865* (Chapel Hill: University of North Carolina Press, 2017), 76.

<sup>17</sup> Cutrer, *Theater*, 76.

<sup>18</sup> Franks, *Stand Watie*, 120-121; Confer, *The Cherokee Nation*, 61, Warde, *When the Wolf Came*, 56.

their narratives and, in doing so, have made great strides in removing much of the savagery and barbarianism that once dominated the historiographical impression of the American Indian. In the 1930s, Angie Debo refuted the claim of Frederick Jackson Turner that the conquest of the American frontier had been a tale of westward expansion and settlement. Debo claims that, instead, the frontier had been obliterated on the back of the exploitation of the American Indian.<sup>19</sup> Debo's willingness to include the perspectives of Indian participants inspired subsequent historians to do the same. By the early twenty-first century, historians like Confer and Warde had rewritten the narratives of the Civil War in Indian Territory by building their works primarily on the voices and perspectives of Indian participants. Unfortunately, their efforts fall short in one important way. While they both champion indigenous voices, their narratives still force those voices into the same old context of the white man's Civil War.

The Cherokee Indians traditionally made their home in the Southeastern United States in parts of present-day Georgia, Alabama, Tennessee, and the western Carolinas. The Cherokee Nation was divided into "towns" or villages, each comprised of descendants of the seven primary matrilineal clans of the Cherokee people. These towns were bastions of communal living where all worked to provide for the entire population.<sup>20</sup> European settlers referred to these towns by their geographic location. The "Upper Towns" were situated in

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<sup>19</sup> Shirley A. Leckie, *Angie Debo: Pioneering Historian* (Norman: University of Oklahoma Press, 2000), 198-199.

<sup>20</sup> Grace Steele Woodward, *The Cherokees* (Norman: University of Oklahoma Press, 1963), 42.

the hills and mountains of Tennessee and Georgia. The “Lower Towns” were located to the southeast, along the headwaters of the Savannah River in South Carolina, while the “Middle Towns” were simply those in between the two.<sup>21</sup> “Towns” were traditionally ruled by two chieftains: the Red Chief presided over warfare while the White Chief ruled during peacetime. In treaty negotiations with white governments, both chiefs joined with those from other towns to conduct negotiations concerning the entire Cherokee Nation. The communal ideology behind the structure of the towns dominated Cherokee society. An indifference to material wealth and personal property led to a communal holding of tribal lands. While women tilled the ground and raised the crops, men participated in the hunt, bringing home small game. All members of the town benefitted from the labor of others.<sup>22</sup>

Prior to European contact, the Cherokees, who prided themselves in their expertise in warfare, practiced a form of kinship slavery by capturing enemy warriors during battle and incorporating them into the Cherokee community.<sup>23</sup> These captives occupied an important place in Cherokee society. Many were simply adopted into a clan in order to replace those lost during battle. Others—the extras—were not adopted yet still had a role to play within the tribe. These “extra” slaves were never granted membership in the clan yet

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<sup>21</sup> Ibid., 62.

<sup>22</sup> Woodward, *The Cherokees*, 43.

<sup>23</sup> Theda Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: University of Tennessee Press, 1979), 4; Claudio Saunt, *Black, White, and Indian: Race and the Unmaking of an American Family* (New York: Oxford University Press, 2005), 16.

worked alongside its members to provide for the welfare of the entire town.<sup>24</sup>

However, the Cherokees quickly learned that these extra slaves had value with European settlers who desired slave labor and readily traded for them.

Through these trades, the Cherokees acquired modern tools to replace their aboriginal stone implements and guns to replace their traditional bow and arrow. According to historian Theda Perdue, by the early eighteenth century, captive slaves became less of a by-product of war and more its primary objective.<sup>25</sup>

Repeated contact between the Cherokees and South Carolina settlers in the early eighteenth century led to warfare between the two. Warfare with white Southerners also led to a new type of prisoner-of-war: enslaved Africans belonging to South Carolina planters. These new captives, however, disrupted the tradition of formal adoption as Indians began to recognize racial differences between themselves and their African captives.<sup>26</sup> Moreover, the Indians quickly learned that planters elsewhere so valued African slaves that they would trade a gun and as many as three blankets for one. Individual Cherokees, enamored by their heroic successes in battle, soon developed a fondness for the personal glory of repeated trades with white settlers and the accumulation of bounty that came to be looked upon as “wealth.” Many Cherokees spent much of their time searching for escaped slaves and trying to capture slaves from neighboring

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<sup>24</sup> Perdue, *Slavery*, 3, 19.

<sup>25</sup> *Ibid.*, 23.

<sup>26</sup> *Ibid.*, 51.

plantations. According to Perdue, this fondness for personal gain laid the foundation for the development of capitalism within tribal borders as Indians sought to capture more and more black slaves to trade for the much-desired bounty.<sup>27</sup>

Increased interaction between the colonists and the Indians also led to the development of colonial Indian policies. These policies were most often created by the colonies themselves independent of royal interference. The foundations of U.S. Indian policy can be found in the basic policies of the British colonies who negotiated treaties of peace with the often larger and militarily superior Indian tribes on their borders. The goal of these early treaties was to simply negotiate peaceful relations between the whites and Indians. It did not take the Cherokees long, however, to learn that they could force their demands, through these treaties, on the people of the young Carolina colonies.<sup>28</sup> But as the strength of the colonies grew, and that of the Indians diminished, the roles in the treaty-making process reversed. Following the American Revolution, a new white government emerged and sought to exert its own influence over the Indians. The markedly superior United States could impose its own demands on the Indian tribes. The growing white government would promise to “protect” the increasingly weaker tribes in exchange for the tribe’s loyalty.

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<sup>27</sup> *Ibid.*, xiii.

<sup>28</sup> Gary B. Nash, *Red, White, and Black: The Peoples of Early America* (Englewood Cliffs: Prentice-Hall, Inc., 1974), 234.

In 1785, the Cherokee Nation signed its first such treaty with the fledgling United States government at Hopewell, Georgia. The Treaty of Hopewell was designed to put a stop to conflict between the Cherokees and white settlers. Signed by 36 Cherokee chieftains, the treaty ceded no tribal land. However, it placed the Cherokees under the protection of the United States, making the confederated governments responsible for protecting the tribe from white intruders. As an added inducement, the treaty also guaranteed the Cherokees the right to send “a deputy of its own choosing” to Congress to intercede on behalf of the tribe whenever it felt its rights had been violated. This article was included so that “the Indians may have full confidence in the justice of the United States respecting their rights.”<sup>29</sup> This added incentive became a linchpin of Cherokee political ideology in the nineteenth century as the Cherokee Nation sent nearly two dozen delegations to Washington between the years 1816 and 1866 alone.<sup>30</sup>

Indian policy in the United States evolved quickly over time as the nation expanded and contact with Indian peoples increased. The bureaucratic arm of the federal government designed to implement that policy evolved almost as quickly. The Continental Congress, working under the Articles of Confederation, established an “Indian department” in 1786, to be divided into

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<sup>29</sup> “Article Twelve,” The Treaty of Hopewell, November 28, 1785. Documents Relating to the Negotiation of Ratified and Unratified Treaties with Various Indian Tribes, University of Wisconsin Libraries online (Hereafter cited as UW).

<sup>30</sup> The number of delegations to Washington has been estimated by the author, taken solely from the letters contained in Gary E. Moulton, ed., *The Papers of Chief John Ross*, 2 vols. (Norman: University of Oklahoma Press, 1985).

three districts, each under the supervision of a superintendent. The superintendent had the primary responsibility of overseeing trade with the Indian nations as directed by Congress. The superintendents were asked to communicate regularly with the general superintendent of Indian trade, who reported directly to the Secretary of War, who was then to communicate directly with Congress concerning all matters of Indian trade.<sup>31</sup> By the early nineteenth century, the Indian department had expanded to as many as 27 agents and subagents scattered throughout the territory of the United States.<sup>32</sup> This system created hardship for the secretary of war who now had the difficult responsibility of reporting to Congress on matters of trade with Indians, and to the president on matters relating to treaties and Indian relations

When Tennessee citizens invaded Cherokee lands in 1788, the confederated states realized that the new central government under the Articles of Confederation lacked the authority to enforce that protection clause. Congress could address Indian trade, while the president oversaw Indian relations with the central government as defined by treaty. However, the national government did not possess the authority to intercede in matters pertaining to the individual states. The resulting conflict between the whites and the Indians led to the murder of an Indian named "Old Tassel," by white

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<sup>31</sup> *Journal of the Continental Congress*, Vol. 31, Page 546, Library of Congress (Hereafter cited as LOC).

<sup>32</sup> John Niven, *John C. Calhoun and the Price of Union: A Biography* (Baton Rouge: Louisiana State University Press, 1988), 73.

Tennesseans. The killing, which occurred under a flag of truce, angered many Cherokees, including Old Tassel's brother, Doublehead, who vowed revenge.<sup>33</sup>

Following the ratification of the new U.S. Constitution in 1789, the United States sought a new treaty with the Cherokees to update the one signed under the Articles of Confederation. The new treaty, signed in Holston, Tennessee in 1791, amended the Hopewell treaty but did not replace it. It declared the sovereignty of the United States by adding a line to the protection clause of the Hopewell treaty. The new stipulation forbade the Cherokees from signing treaties of any kind with any other governmental entity, including any state government, or individual other than the United States. Moreover, in an effort to eliminate conflict between the Cherokees and white settlers, the treaty sought to transform the Cherokees into sedentary subsistence farmers by promising to provide them with the necessary tools and training. The hope was that the tribe would embrace a more sedentary lifestyle and abandon the hunt, restricting the Cherokees to a pre-prescribed territory, therefore, limiting the frequency of Indian-white interaction.<sup>34</sup>

While peace was the goal of the Hopewell Treaty, the primary goal of the Treaty of Holston was the acculturation of the Cherokee Nation. Acculturation sought to change many of the habits of indigenous society, while allowing that society to retain much of its "Indianness," as long as it did not

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<sup>33</sup> Woodward, *The Cherokees*, 109.

<sup>34</sup> Woodward, *The Cherokees*, 113.



interfere with an advancing white population. Many Americans believed that the process of acculturation, as long as the proper tools and support were provided, would enable the Indians to learn to behave like “civilized” white people.<sup>35</sup> Within four years, the Cherokees had so adopted the tenets of European-style agriculture that they had abandoned their tradition of warfare for good.<sup>36</sup> By the start of the nineteenth century, the process of acculturation was well underway.

In 1801, the general superintendent of Indian trade appointed Colonel Return Jonathan Meigs, Sr., to the post of Cherokee agent to oversee all trade involving the Cherokee people. Meigs already served as the military agent to the Cherokees under the direction of the secretary of war, charged with teaching the tribe how to be successful subsistence farmers, according to the dictates of the Holston Treaty. His experience with Indians in Ohio, where he had settled and helped establish a territorial government, prepared him for his position among the Cherokees. His interest in Cherokee success endeared him to tribal leadership who often sought his counsel on matters of national importance. He regularly encouraged the tribe to embrace the tenets of “civilization” in order to perpetuate the nation’s existence among the rapidly encroaching white horde.<sup>37</sup>

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<sup>35</sup> Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 10.

<sup>36</sup> Carl J. Vipperman, “The ‘Particular Mission’ of Wilson Lumpkin,” *The Georgia Historical Quarterly* 66, no. 3 (Fall 1982), 298.

<sup>37</sup> Woodward, *The Cherokees*, 128.

Under Meigs's supervision, the Cherokees readily adopted European-style agriculture which accelerated the acculturation process in two significant ways. First, the adoption of an agrarian lifestyle allowed for the further development of African chattel slavery within the Cherokee Nation. As a result, the traditional redistributive economic model evolved into a capitalistic free-for-all for many Cherokees.<sup>38</sup> Slaveholders took advantage of the tribe's communal landholdings by improving larger tracts of land for personal gain. Cherokee land could be used at will as long as it was occupied by its user and did not interfere with that used by other Cherokees. Needless to say, slavery grew quickly among the Cherokee people as readily-available land encouraged larger and larger plantations.<sup>39</sup>

It is difficult, if not Impractical, to compare slavery in the Cherokee Nation to that of Southern white society. Slavery among the Cherokee Indians appears to have been less harsh than it was among Southern whites. Cherokee slaves were sufficiently clothed and fed, and the housing provided to them by their Indian masters was usually adequate.<sup>40</sup> By the time of removal, 207 Cherokee households owned slaves; and of those, 168, or 83 percent, owned ten or less. Only three individuals owned fifty or more. One of those men owned a hundred slaves and yet lived in a tiny log cabin himself, no doubt

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<sup>38</sup> Perdue, *Slavery*, 68-69.

<sup>39</sup> *Ibid.*, 60.

<sup>40</sup> *Ibid.*, 115-117.

shunning the trappings of the material wealth usually associated with slaveholding.<sup>41</sup>

Second, intermarriage between Cherokees and white settlers created conflict between traditional Cherokee social norms and the social values espoused by European societies.<sup>42</sup> Interracial marriages produced a growing population of mixed-blooded Cherokees, complicating the issue as many mixed-bloods adopted much of the dress and culture of their white ancestors. By the early nineteenth century, many Cherokees had become Christian and had learned to read and write English, further driving the wedge between the traditional full-blood Cherokees and the semi-acculturated mixed-bloods of the tribe. It is important to note that the mixed-blood portion of the tribe constituted a small segment of Cherokee society as only seventeen percent of the 16,000 or so living in the Cherokee Nation prior to removal had white ancestors. Moreover, less than eight percent of the tribe owned slaves yet, 78 percent of those slaveholders were of mixed descent.<sup>43</sup> In short, the small segment of mixed-blooded Cherokees held a disproportionate amount of the personal wealth in the nation prior to removal.

The wealthy class of Cherokees, dominated by the mixed-bloods, also held a disproportionate share of power within the tribal government. As many as 92 percent of the men who would later sign the Cherokee constitution

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<sup>41</sup> *Ibid.*, 58.

<sup>42</sup> *Ibid.*, 50-51.

<sup>43</sup> *Ibid.*, 60.

owned slaves. In fact, twelve of the signers owned nearly a quarter of all the slaves in the Cherokee Nation.<sup>44</sup> In the first election held after its adoption, the Cherokee people elected one of those twelve, a thirty-eight-year-old mixed-blood named John Ross to be the tribe's first principal chief. Ross, a slaveholder, had served for twenty-years as clerk of the National Committee and gained favor with the full-blood majority by staunchly defending traditional Cherokee culture.<sup>45</sup> He also managed to appease many of the mixed-blood progressives of the tribe with his emphasis on advancing education among the masses and his defense of slavery within the nation.<sup>46</sup> In Ross's mind, the primary benefit of Cherokee autonomy was the right of the tribe to decide for itself its own traditions and laws. Moreover, Ross also believed that tribal autonomy guaranteed each Cherokee the right to determine his own way of life. Forever the optimist, Ross believed the two could not only coexist within the nation, he believed they could work together to make the Cherokee Nation stronger.<sup>47</sup>

By 1802, the Cherokee Nation had become a largely sedentary tribe of subsistence farmers, occupying large tracts of land in the Southeastern United States. This began to concern the state of Georgia who watched as one of the

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<sup>44</sup> Ibid., 57.

<sup>45</sup> Georgia Rae Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma* (New York: Peter Lang Publishing, 1996), 5-6.

<sup>46</sup> Theda Perdue, "Cherokee Planters: The Development of Plantation Slavery Before Removal," in *The Cherokee Indian Nation: A Troubled History*, ed. by Duane H. King. (Knoxville: The University of Tennessee Press, 1979), 117.

<sup>47</sup> John Ross to Lewis Cass, February 14, 1833, in Gary E. Moulton, ed. *The Papers of Chief John Ross* 2 vols. (Norman: University of Oklahoma Press, 1985), 1:261.

largest, most organized Indian tribes in the nation occupied and claimed ownership of over 7,200 square miles of land within the state's borders.<sup>48</sup> Consequently, Georgia demanded that the federal government extinguish the tribe's ownership of state lands. In exchange, Georgia ceded its westernmost territory – soon to become Mississippi Territory – to the federal government. Known as the Georgia Compact of 1802, the agreement portended doom for the Cherokee Nation in the East.<sup>49</sup>

The Cherokee Nation was not the only institution undergoing change at the start of the nineteenth century. Indian policy in the United States also evolved according to the changing needs of the federal government. Initially, the goal of federal policy was to ensure peace between the Indians and white settlers. As the United States grew in power, the policy transitioned to one of acculturation and the eventual assimilation of all Indians into white society. Following the purchase of Louisiana in 1803, however, the stated policy changed to one of dispossession and removal.<sup>50</sup> Indian tribes found themselves in the path of a growing white population and calls for their relocation increased. The process of acculturation was too slow for many Americans who wanted the Indians separated from white settlements so that the process could proceed at its own pace elsewhere. Georgia increased the

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<sup>48</sup> William G. McLoughlin, "Georgia's Role in Instigating Compulsory Indian Removal," *The Georgia Historical Society* 70, no. 4 (Winter 1986), p. 608.

<sup>49</sup> *Ibid.*

<sup>50</sup> Thomas Jefferson, "State of the Nation Message to Congress," November 8, 1804. Inaugural Addresses, University of Groningen online (Hereafter cited as UG).

intensity of her demands to remove the Cherokees from within the state's borders. The addition of Louisiana provided the nation with excess land west of the Mississippi River onto which to place the many tribes who lived east of it. The question was how to compel the tribes to agree to this new policy.

By the second decade of the nineteenth century, operation of the Indian department had "evolved in piecemeal fashion," leading to calls within the government for tighter controls over the nation's system of Indian trade.<sup>51</sup> The oversight of Congress's Indian trade and the enforcement of the president's Indian relations created a broad bailiwick for the Department of War, especially as the nation expanded its infrastructure and society further into Indian territory. In 1824, Secretary of War John C. Calhoun, of South Carolina, recommended the establishment of an Indian bureau within the War Department in order to address this growing concern. This more streamlined bureau would allow the president more direct oversight of all matters of Indian affairs, placing the U.S. Army at the forefront of the nation's Indian policy; a place it would ignominiously remain throughout the remainder of the nineteenth century.

In 1830, Congress reinserted itself into the Indian discussion by giving the president the authority to exchange land in the newly acquired region west of the Mississippi River for ancestral homelands in the eastern United States. The president was to continue using the treaty-making process in order to

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<sup>51</sup> Niven, *Calhoun*, 74.

accomplish this objective. Conducted under the guise of foreign relations, these Senate-ratified treaties did more than just satisfy an immediate need. They helped create two important legacies that came to define the treaty-making process with Indian nations. First, they elevated Indian tribes – even tiny ones – to nation status, granting them a certain level of autonomy and independence. Second, they placed constitutional restrictions and limitations on how the United States could deal with these nations. An existing treaty could only be honorably replaced with a new one. This process gave the Indians a heightened sense of control over their own fortunes and came under heavy criticism from some in the federal government over the years because of the Indians' unwillingness to alter their treaties every time the changing needs of the federal government required them to do so.

In 1832, Congress informally approved Calhoun's Indian bureau by granting the president the authority to appoint a commissioner to head the nation's Indian affairs and work beneath the auspices of the secretary of war. The new commissioner was simply directed to carry out the Indian policies of the president.<sup>52</sup> The president's sole control over Indian affairs, and the enforcement of such by the U.S. military, became the *modus operandi* of U.S. Indian policy during the remainder of the nineteenth century. However, the enforcement of Indian policy was not always an easy matter. Each president

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<sup>52</sup> Robert M Kvasnicka and Herman J. Viola, eds., *The Commissioners of Indian Affairs, 1827-1977* (Lincoln: University of Nebraska, 1979), xv-xvi.

had his own idea of how the nation should interact with indigenous people. For the most part, Indian policy was not included in the written legal codes of the nineteenth century, leaving each administration to devise its own policy as it saw fit. The problems with this system are obvious. Promises made to Indians by one president did not obligate future presidents to action; future presidents who usually had their own opinions and plans for the nation's Indians. When Andrew Jackson carried out his policy of forced removal in the 1830s, he promised to protect the Indians in their new homes as an inducement for their quiet submission. However, future presidents were then left to fulfill a promise they did not make, and, perhaps, did not support. In the wake of this ever-shifting policy were the Indian tribes of the nation who could only hope that each successive president would simply fulfill the promises of the ones before him.

The failure of the U.S. government to codify its Indian policy in the mid-nineteenth century unexpectedly frustrated U.S. – Indian relations, as each presidential administration was left to formulate its own policy. An analysis of Ross's years as principal chief of the Cherokees reveals the struggle encountered by the American Indians during this period. Between 1828 and 1866, Ross's thirty-eight years as chief, the United States had eleven different presidents, and only one of them, Andrew Jackson and his anti-Indian policies served for two full terms. Moreover, five of the remaining ten held office for less than four years. Following Jackson's departure in 1837, Ross, on average,



over the next twenty-nine years encountered a new president every 2.9 years, a new secretary (department of war or department of interior) every two years, and a new Indian commissioner every two-and-a-half years. Ross's desire to interact directly with the executive leadership in Washington met with crippling inconsistency as U.S. Indian policy was in a constant state of change.

The ever-changing federal government stood in stark contrast to the consistent and stable leadership of the Cherokee Nation. Not only did Ross serve 38 consecutive years as the constitutionally elected principal chief, but he led his nation with a consistent ideology unmatched in Washington. Ross's undying, unchanging faith in the process of U.S. constitutional law relied, sadly, on the ethics of the president in office at any given moment in time. During Ross's lengthy tenure as chief, only two presidents won reelection for a second four-year term. The first, Andrew Jackson in 1832, led the most consistent Indian policy in the first half of the nineteenth century. He was able to initiate and implement his policy of forced removal without interference or disruption. The second was Abraham Lincoln who won reelection in 1864, only to be assassinated six months later. Historians can only surmise how a consistent second administration would have addressed the nation's Indian affairs in the postwar years. Lincoln reportedly told one Indian advocate in 1864, "you may rest assured that as soon as the present matter of this war is settled the Indian shall have my first care and I will not rest until Justice is done to their ...

satisfaction.”<sup>53</sup> In this context, the American Indian should lament Lincoln’s assassination as the most significant event in the history of nineteenth-century U.S.–Indian relations.

By the third decade of the nineteenth century, the Georgia state government had grown weary of waiting for the federal government to fulfill its obligations to the Compact of 1802, initiating the most infamous saga of Indian removal in United State history. The Cherokee government, led by the wealthy mixed–blood, John Ross, refused to cower to the demands of the federal government that the tribe sign a new treaty and trade their ancestral lands for a new home west of the Mississippi River. Feeling pressure from the Georgia government, President Andrew Jackson sought out a small group of wealthy, acculturated mixed–blood Cherokees, led by Major Ridge and his son John Ridge, to sign the new treaty on behalf of the entire Cherokee Nation, bypassing the tribe’s elected government. While Ross protested the validity of this new treaty, the U.S. Army enforced it, driving the Cherokees out of Georgia and Tennessee along the infamous “Trail of Tears.” The fracture within the Cherokee Nation that arose between the angry full–blood majority, led by Ross, and the small group of mixed–blood traitors, led by John Ridge—and later led by Ridge’s cousin, Stand Watie in the 1860s—has dominated the historiography of the Cherokee Indians of the nineteenth century. However, this

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<sup>53</sup> Quote cited in David A. Nichols, *Lincoln and the Indians: Civil War Policy and Politics* (Columbia: University of Missouri Press, 1978), 158.

dissertation places that division in proper perspective and demonstrates how Ross's leadership during the tumultuous nineteenth century was rarely, if ever, challenged.

As the American frontier pressed continually westward, the government's relationship with the Indians grew increasingly more complex. Calhoun's Office of Indian Affairs grew to meet the ever-changing needs of the federal government.<sup>54</sup> Regional superintendence offices were established to assist in carrying out the nation's policy. These offices were directed by a superintendent who reported directly to the secretary of war. Within each superintendency were local offices, or agencies, operating within the bounds of each tribe of Indians (Figure 1). Local agents acted as emissaries for the federal government, negotiated treaties, distributed federal aid to the Indians, helped monitor Indian-white interactions, and oversaw all trade between licensed traders and Indian people.<sup>55</sup> These positions were highly sought after and often filled with greedy men who thought little of their responsibilities to the Indians.<sup>56</sup> Waste and corruption within local agencies often hindered U.S.-Indian relations as federal aid or allotment payments, promised to the tribes as reimbursement for ceded lands, often found their way into the pockets

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<sup>54</sup> During the nineteenth century, the Office of Indian Affairs informally went by many names: the Indian department, the Indian office, the Office of Indian Affairs, the Indian bureau, and even the Bureau of Indian Affairs, although it was not officially named such until 1947.

<sup>55</sup> Prucha, *American Indian Treaties*, 209.

<sup>56</sup> "Annual Report of the Commissioner of Indian Affairs," December 23, 1869, Annual Reports of the Commissioners of Indian Affairs, 1826-1932, University of Wisconsin Libraries online (Hereafter cited as ARCIA), 5.

of white bureaucrats instead of into tribal coffers. Many of the bitter feelings harbored by the Indians toward federal Indian policy was the result of graft and corruption within these local agencies as the Indians often realized little, if any, of the resources promised them by the federal government during treaty negotiations.<sup>57</sup>

In 1849, following Andrew Jackson's era of Indian removal, the Bureau of Indian Affairs was transferred from the Department of War to the newly established Department of the Interior. This placed Indian policy under the watchful eye of a different cabinet member. The secretary of the Interior worked directly with the White House to formulate and implement the president's Indian policy. However, the military continued to be used as the enforcer of U.S.-Indian relations. Historian Francis Paul Prucha refers to the U.S. Army as "a child of the frontier" because much of its development occurred while protecting citizens from Indians and while enforcing U.S. Indian policy.<sup>58</sup> Moreover, superintendents and agents merely acted as the eyes and ears of the Indian commissioner who reported directly to the new secretary. Often these men made suggestions to the commissioner, but the burden of Indian policy remained firmly with the president in Washington.

Ross also recognized that Indian policy originated in Washington and, therefore, wasted little time communicating with agents, superintendents, or

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<sup>57</sup> *Congressional Globe*, 41<sup>st</sup> Cong., 3<sup>rd</sup> Sess. (1871), 1811, LOC.

<sup>58</sup> Quoted in Robert Wooster, *The Military and United States Indian Policy, 1865-1903* (New Haven: Yale University Press, 1988), 5.

even the commissioner of Indian affairs, during much of his time as principal chief. An evaluation of the primary collection of Ross's written communication reveals his strong faith in the process of constitutional law in that he interacted most often with the federal government in Washington.<sup>59</sup> Prior to the Supreme Court's landmark decision in *Worcester v. Georgia* (1832), in which the Court upheld the sovereignty of Cherokee land ownership, Ross communicated frequently with the Cherokee agent in Tennessee, Hugh Lawson Montgomery on matters concerning U.S–Cherokee relations. However, he spent four months in Washington in 1829, three years before the ruling, presenting the Cherokee grievances before Congress in the wake of Georgia's attack on Cherokee sovereignty, visiting primarily with the House of Representatives and the Secretary of War, John Eaton, a Jacksonian from Tennessee. Following the Court's affirmation of Cherokee sovereignty, Ross turned away from the agents in the field and returned to Washington where he visited directly with President Jackson and Secretary of War Lewis Cass, seeking enforcement of the Court's decision. After the Court's affirmation of Cherokee sovereignty, Ross rarely interacted formally with the Indian bureau. Instead, he took his concerns directly to Washington.

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<sup>59</sup> The bulk of Ross's personal papers are housed at the Helmerich Center for American Research at the Thomas Gilcrease Museum in Tulsa, Oklahoma. Gary E. Moulton has edited and published most of Ross's correspondence in a two-volume set entitled, *The Papers of Chief John Ross* (Norman: University of Oklahoma Press, 1985). The author's estimates were derived from Moulton's publication.

Ross's predilection for direct interaction with Washington instead of with the agents and superintendents demonstrates an important aspect of the chief's political ideology. Ross believed the Cherokee tribe was an independent nation with political autonomy and a strategic military alliance with the United States; therefore, he rarely communicated with agents and superintendents about treaty concerns. He relied on the lower level of the Indian bureau to simply satisfy the government's treaty requirements. From his election in 1828 to the forced removal in 1838, Ross made seven trips to Washington and presented his arguments before Congress no less than fifteen separate times. Moreover, he wrote formal letters to the president twelve times and the secretary of war thirty-eight times. However, during that same span, he only wrote to the commissioner of Indian affairs twice. His insistence on dealing directly with top officials in Washington rather than with the Indian bureau is a practice he continued throughout his career as principal chief.

Ross did, for a season, correspond more frequently with lower-level officials of the Indian bureau upon arriving in Indian Territory at the terminus of the "Trail of Tears." His object was to secure the provisions, tools, and monies promised the tribe so that the people could make the transition to a new home with as little difficulty as possible. Between 1839 and 1846, he penned no less than forty-three official letters to the agents in Tahlequah (32), the superintendents in Fort Smith, Arkansas, (11), and the commissioners of Indian affairs in Washington (5) (Figure 2). However, in matters of national

importance, he still interacted directly with the highest levels of the federal government. In the tribe's first eight years in Indian Territory, Ross made the 1,200-mile journey to Washington five times to visit with presidents Martin Van Buren, John Tyler, and James K. Polk and their respective secretaries of war. Moreover, he presented the Cherokee grievances before Congress three additional times during those visits.

As the Cherokee people settled into their new homes in Indian Territory, Ross's greatest concern was the need to establish the protection protocols of the U.S. Army as outlined in the New Echota treaty of 1835. In this regard, he communicated most often with General Matthew Arbuckle who was in command at Fort Gibson in the Cherokee Nation and who was most responsible for providing that protection. The relationship between Ross and Arbuckle is best-described as strained as the general struggled to keep the peace between the newly arrived Cherokee emigrants and the "Old Settlers" who emigrated as many as twenty years earlier and had an established tribal leadership.<sup>60</sup> Nonetheless, in a letter dated May 14, 1839, Ross reminded Arbuckle of his obligation. "The peaceful inhabitants of this Nation can only call upon your military authority for protection. And I trust you will take proper steps to prevent all unlawful acts of violence from being perpetuated upon the property & persons of the Cherokees . . . by citizens of the U. States."<sup>61</sup> The

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<sup>60</sup> Gary E. Moulton, *John Ross: Cherokee Chief* (Athens: University of Georgia Press, 198), 125.

<sup>61</sup> John Ross to Mathew Arbuckle, May 14, 1839, in Moulton, *Papers of Chief John Ross*, 1:710.

fact that the removal saga had arisen because of the intrusions of Georgia's citizens, prompted Ross to immediately issue the demand for the military protection promised in their new home.

While the Cherokees were making the difficult transition to Indian Territory, the United States embarked on an era of unprecedented military expansion. The annexation of Texas in 1846 brought U.S. citizens to the southern border of Indian Territory. In addition, the vast Mexican land cession at the end of the Mexican–American War in 1848, expanded the nation's border all the way to the Pacific Ocean. The new opportunities brought a wave of white settlers into the West looking for fortune in land or gold in California. Moreover, the Kansas-Nebraska Act of 1854 invited settlers to the very border of Indian Territory as the nation placed a priority on answering its “slave question” rather than on solving its “Indian problem.”

During this same period, from 1847 to 1856, Ross had virtually no contact with Washington as he led the Cherokee Nation in a period of peace and increasing prosperity.<sup>62</sup> However, as the tribe established roots in Indian Territory, the region around them was undergoing great change. The aggregate white population of Texas, Arkansas, and Kansas immediately prior to the forced removal hovered around 100,000. By 1860, however, that population had increased over twelve-fold, to 1.2 million.<sup>63</sup> The population of

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<sup>62</sup> Moulton, *John Ross*, 153.

<sup>63</sup> Numbers taken from the United States Census Bureau records; Texas population totals taken from the Texas State Historical Association website, [www.tshaonline.org](http://www.tshaonline.org), accessed July 31, 2020.



Kansas alone grew from 8,500 as late as 1855 to over 100,000 five years later as white citizens from the northern and southern states converged on the territory to influence the slavery vote.<sup>64</sup> No longer could the Cherokee Nation enjoy the peace and prosperity of their new home in solitude. The growing mass of white citizens on their borders created a dark and ominous cloud that hung over the Cherokee Nation as white America had converged, once again, on Indian Territory.

By the start of the Civil War in 1861, the Office of Indian Affairs found itself incapable of administering the nation's Indian policy as this wave of white settlers put added pressure on federal treaty obligations.<sup>65</sup> Unfortunately, the Civil War years saw the United States government turn the bulk of its attention toward the Southern states in rebellion and all but abandon its obligations to the Indians in the West. Moreover, the rapid secession of Southern states between December 1860 and May 1861 nearly incapacitated large portions of the Indian bureau as many of its agents and superintendents resigned their posts and joined the Confederacy along with their home states. Elias Rector, the Southern superintendent since 1857 resigned to join his home state of Arkansas where his cousin, Henry, was the governor.<sup>66</sup> Rector was immediately named Confederate superintendent of Indian affairs in Indian

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<sup>64</sup> Population numbers taken from the Kansas State Historical Society website; [www.kshs.org](http://www.kshs.org), accessed July 31, 2020.

<sup>65</sup> Edmund Jefferson Danziger, Jr., *Indians and Bureaucrats: Administering the Reservation Policy during the Civil War* (Urbana: University of Illinois Press, 1974), 1-2.

<sup>66</sup> William G. McLoughlin, "Cherokee Slaveholders and Baptist Missionaries," *The Historian* 45, no. 2 (February 1983), 163.

Territory. Robert J. Cowart, the Cherokee agent and a slaveowner from Georgia, also resigned leaving the Cherokee Nation without a federal agent outside of Washington.<sup>67</sup>

The withdrawal of Federal troops from Indian Territory in the spring of 1861 precipitated the Cherokees' involvement in the war as Confederate Texans moved in to occupy Indian country, completely severing the tribe's communication with the federal government. The agent to the Choctaw Indians, an Arkansan named Albert Pike, also resigned, and became a special Confederate commissioner to Indian Territory, charged with securing the cooperation of the various tribes. Pike immediately began a vigorous campaign to lure the Indians into an alliance with the new Confederacy. Ross's desire to remain loyal to the tribe's treaties with the United States and avoid an alliance with the Confederacy set the stage for an epic showdown with Pike in the spring and summer of 1861. However, the inability of the United States to protect the Cherokees in accordance with their treaty obligations forced Ross to reconsider that neutrality and succumb to an alliance with Pike and the Confederate States.

During the war, Ross would have no contact with Rector's replacement, William G. Coffin. Moreover, the first two replacements for Cowart, John Crawford and Charles W. Chatterton, resigned almost immediately when presented with the daunting task of having to care for the growing number of

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<sup>67</sup> *Ibid.*, 164.

Indian refugees leaving the horrors of the war in Indian Territory. The next choice, Justin Harlan of Iowa, whose brother, James would serve as secretary of the Interior at the end of the war, spent the remainder of the war in Kansas helping Coffin provide as much aid as possible to the refugee Indians.

One year into the war, Lincoln ordered Union troops to return to Indian Territory and reestablish the prewar treaties with the loyal Indians who had been victimized by the Federal withdrawal the previous year. Although Ross had since led the Cherokee Nation into an alliance with the Confederacy, he travelled to Washington to try to convince Lincoln that the alliance had been unavoidable because of the troop withdrawal. Ross spent the remainder of the war with his wife's family in Philadelphia and made the trip to the nation's capital a half-dozen times where he had at least two face-to-face meetings with Lincoln. The first took place in September 1862 when Ross asked the president to consider the circumstances behind the Cherokee-Confederate alliance and to include his people on the list of tribes who had remained loyal to their treaties. The request came at a time when Lincoln's attention was greatly divided between the Emancipation Proclamation, Indian violence in Minnesota, and the changing landscape of the war itself. The second meeting took place in 1863, after Lincoln had had some time to consider Ross's request and investigate the nation's treaty relationship with the Cherokees. The commissioner of Indian affairs, William Palmer Dole of Illinois accompanied Ross to the second meeting. Both men came away convinced that Lincoln had

admitted that the United States had abrogated their treaty obligations by abandoning Indian Territory, had forgiven the Cherokees for the unavoidable alliance with the Confederacy, and had promised to reinstate the tribe to its prewar status as soon as control of Indian Territory could be secured.

However, the United States failed to commit the necessary manpower to regain control in 1862 and again in 1863. Union forces trying to secure control of Indian Territory after 1862 were comprised primarily of Indian troops. In fact, the federal government rarely used regular troops outside of the main theaters of war. Volunteer soldiers administered the nation's Indian policy in the West while regular troops fought Confederates. These volunteers often worked with little to no oversight from Washington, and with even less training and discipline.<sup>68</sup> Perhaps the most important example occurred in late 1864 at Sand Creek, Colorado when Colonel John Chivington led a force of volunteer soldiers in a massacre of peaceful Indians, sparking an Indian uprising across the Plains. The treaty-making process proved to be inadequate to handle the issues that arose among the Plains tribes, mostly because the United States continued its tradition of abrogating those treaties whenever it saw fit. The Cherokee Nation had always responded to abrogation in the halls of justice. Somehow, the United States expected the less-aculturated tribes of the Plains to be just as passive.

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<sup>68</sup> Robert M Utley, *The Indian Frontier, 1846-1890* (Albuquerque: University of New Mexico Press, 1984), 92.

The government's attempts to force rapid acculturation on the Sioux, Cheyennes, Arapahoes, and others following the Civil War proved to be futile, if not incendiary. The government could, in a sense, bully the Cherokees into a new treaty whenever necessary without fear of violent reprisal, but these Plains Indians were not so diplomatic. They responded to abrogation with violence. The process of treaty-making with the Sioux, Cheyenne, Arapaho, Kiowa, Apache, and Comanche tribes would only work if the United States adhered to its obligations with what Prucha calls honor and dignity.<sup>69</sup> Unfortunately, honor and dignity, although implicated as part of the treaty-making process, somehow, rarely found their way into the actual dispensation of U.S. Indian policy.

This dissertation shows how the United States government used the Cherokee Nation's involvement in the Civil War as justification for dismantling the country's prewar Indian policy of treaty-making and replacing it with a less-defined policy of impatience and violence. Before his death, Abraham Lincoln affirmed the nation's Indian policy by acknowledging the government's treaty responsibilities to the Indians, in particular the Cherokees. His willingness to admit that the nation had abrogated its treaty obligations by abandoning Indian Territory in 1861 paved the way for the restoration of the prewar treaties with the Cherokee Nation, reaffirming the policy of treaty-making. His assassination, however, brought immediate change to Indian policy as Andrew Johnson

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<sup>69</sup> Prucha, *American Indian Treaties*, 16.

seized the opportunity to ignore the actions of his predecessor, declare the Cherokees disloyal, nullify the prewar treaties, confiscate tribal lands once protected by those treaties, and establish reservations on Cherokee lands for the removal of many of the Plains Indians.

The Indian policy that emerged in the years immediately following the Civil War has been described as being “radically reformist” in nature.<sup>70</sup> Many within the federal government believed that the practice of treaty-making would never prove successful with the tribes in the American West. However, that practice was all they had. The postwar process for dismantling Indian policy consisted of two important steps. First, the United States needed to reacquire land from the tribes in Indian Territory as a home for some of the Plains tribes to be relocated out of the path of white progress. Second, the process of treaty-making, dating back to before the American Revolution, had to be formally abolished so that the government could compel Indians to follow the commands of the federal government. The primary agent of change for Indian policy in the postwar years was a Seneca Indian named Ely S. Parker. Parker served as adjutant on the staff of General Ulysses S. Grant during the Civil War and became heavily involved in Indian policy in the postwar years. His interactions with Ross and the Cherokee Nation at the Fort Smith Council in September 1865 steeled him to the need for changing the prewar policy. By 1871, Congress, largely on Parker’s recommendation, formally ended the

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<sup>70</sup> Prucha, *American Indian Treaties*, 279.

practice of treaty-making. However, to the detriment of U.S.-Indian relations, they failed to proffer any reliable alternative.<sup>71</sup>

Parker's suggested new Indian policy found strong support in Washington, especially from Grant, and helped directly alter U.S.-Indian relations as a result of the Fort Smith Council. This new policy was greatly influenced by Parker's negative impression of Ross and his influence on the Cherokee Nation and led to the abolition of the treaty-making process because Parker believed it filled the Indians with a false idea of independence. He and the other commissioners watched the independent spirit of Ross and the Cherokees resist the dictates of the council at Fort Smith. The last thing the United States needed, in his opinion, was the Indians of the Plains, primarily the Sioux, Cheyenne, and Arapaho, believing that they, too, had autonomy and, therefore, were not required to follow the mandates forced upon them by anyone other than their treaties. Parker believed the prewar Indian policy had to change. In his mind, Indians were not independent nations; rather they simply were wards of the government and should be compelled to do whatever the government commanded, behaviors Ross and the Cherokees did not demonstrate.

While politicians argued over how best to approach Indian relations on the Plains in the absence of a formal plan, the United States Army asserted itself as the enforcer of U.S. Indian policy in the post-Civil War years. Robert

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<sup>71</sup> *Ibid.*, 311.

Wooster argues that the military busied itself with trying to construct its own policy for dealing with the Indians once the rebellion in the South was thwarted.<sup>72</sup> The new, less-defined government policy helped confuse the line between the jurisdiction of the war department and that of the Department of the Interior, and the Indians were left to suffer the consequences. Parker's influence on Indian policy reached its height during the immediate postwar years as he sought to eliminate any sense of autonomy on the part of the American Indian. The Peace Commission of 1867, as well as the Board of Indian Commissioners that arose later, helped advance Parker's policies of forced acculturation on reservation lands held only with possessory rights. The conflicts that emerged during this period of confusion dominate the historical memory of U.S. Indian relations. The failed attack at Little Bighorn and the massacre at Wounded Knee Creek occurred because the United States opted not to define the role of the military in the last quarter of the nineteenth century, allowing the policy of confusion to rule the day.

In this dissertation, I follow the perspective of Ross and the Cherokee Nation, and, by so doing, produce a clearer narrative of the events in Indian Territory during the Civil War and their effect on postwar Indian policy. Removing the events that occurred between 1861 and 1865 from the context of the Civil War allows for a clarity not yet seen in the narratives of Indian Territory. While the theme of the Civil War rightly dominates the narratives of

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<sup>72</sup> Wooster, *The Military*, 3.



the era in Arkansas, Missouri, and much of Texas, the events in Indian Territory have a much broader connection to larger themes of American history. Taking the perspective of Ross and the Cherokees allows us to see how the events were more about Indian policy, about U.S. foreign relations, about westward expansion, and about the constant narrative of dispossession.

I argue that the Civil War Era in Indian Territory—more specifically, the Cherokee Nation’s position in the war—is more a narrative of U.S. Indian policy than one of the Civil War. The government, unwilling after the war to continue its prewar Indian policy, sought to change that policy so that it could better deal with the nomadic tribes of the Plains. I also argue that the administration of Andrew Johnson manipulated the postwar treaty negotiations at the Fort Smith Council in order to undo the prewar treaties, allowing the subsequent administration of Ulysses S. Grant to abolish the policy of treaty-making as part of a wider dismantling of U.S. Indian policy. And, finally, I argue that the assassination of Abraham Lincoln at the close of the war was the pivotal moment—the tipping point—at which this dismantling began. The assassination did not cause the change in policy; rather it allowed the Johnson administration to undo the prewar treaties on the grounds that the tribes had been disloyal to the United States by signing new treaties with the Confederacy at the outset of the war. Chief John Ross and the Cherokees rightly claimed that the United States had already abrogated the treaties by abandoning three forts in Indian Territory in 1861. This withdrawal left the defenseless Indians without the ability

to resist Confederate pressure to either align or declare themselves the enemy of the Southern Confederacy. Lincoln admitted to the abrogation and declared his intent to restore Ross and the Cherokee Nation to their prewar treaty relationship with the United States, despite the tribe's alliance with the Confederates. Unfortunately, the bullet that killed the president at Ford's Theatre, also killed his plans for that restoration as the new administration began the process of deconstructing U.S. Indian policy, changing it from one of a treaty-making process of dispossession to a policy of forced assimilation at the hands of the United States Army.

In this narrative, I connect Abraham Lincoln more directly to U.S. Indian policy beyond Minnesota, than has been previously imagined. His intervention on behalf of Ross and the Cherokee Nation is indicative of his belief in the supremacy of constitutional law. His willingness to accept Ross's explanation for the Cherokee-Confederate alliance, and his plans to restore the prewar treaties, provided an endorsement for the policy of treaty-making. However, his assassination removed the final—if not only—obstacle to the dismantling of U.S. Indian policy as it opened the door for the Johnson administration to void the prewar treaties by rejecting Ross's claims. Lincoln represented the Cherokee Nation's best hope for a full restoration to its prewar treaty-relationship with the United States as the president openly acknowledged the nation's abrogation of its treaty responsibilities to the tribes of Indian Territory. This acknowledgment meant that the Cherokee-Confederate alliance only occurred because the

United States had failed to protect the Indians as promised in their many treaties.

Following Lincoln's assassination, the new presidential administration refused to make the same concessions, opting instead to ignore the federal government's abrogation. This blatant disregard for the nation's responsibility and its willingness to act devoid of honor and dignity fulfilled a historical theme that has been interlaced throughout U.S.-Indian relations, at least with Lincoln as the exception. The assertion that Lincoln's support of Ross and the Cherokees was merely a wartime measure, similar to his actions in Louisiana with the Ten-Percent Plan, has no merit in that the United States had no wartime objective in Indian Territory.<sup>73</sup> The activities of the Union Army in Indian Territory were simply a matter of Indian policy and not a matter of the Civil War. Historians can only guess how different Indian policy might have looked in the late 1860s and 1870s had Lincoln been its primary author.

This dissertation tells the story of how the United States government used the Cherokee Nation to first erect federal Indian policy in the 1830s, and then to dismantle the same at the end of the Civil War. The following three chapters help lay the foundation for the development of U.S. Indian policy prior to the Civil War, while the remaining two chapters describe its deconstruction afterwards. Chapter Two begins with the Removal Era of the 1820s and 1830s

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<sup>73</sup> James M. McPherson, *Tried By War: Abraham Lincoln as Commander in Chief* (New York: Penguin Books, 2008), 207.

for three reasons. First, we learn how far the United States was willing to go to sidestep its treaty obligations and act as a bully in its negotiations with Indian nations. In what has been described merely as a policy of removal, the federal government instituted a policy of oppression, tyranny, and racism which it tried to disguise through the diplomatic process of treaty-making. By ratifying many fraudulently-acquired treaties, often with tiny factions of Indian tribes, the United States government propped its “policy of removal” behind the veil of constitutional law. When principal chief John Ross and the Cherokee Nation protested this very policy on the same constitutional grounds, the Indians quickly discovered that constitutional law was only as good as the ethics of the white men administering it.

The second reason for beginning this study with the Removal Era is what can be learned about the development of Ross’s political ideology. He quickly realized that white governments were too often duplicitous in their interactions with indigenous people. However, when the Supreme Court ruled in the tribe’s favor in *Worcester v. Georgia* (1832), he learned that constitutional law supported the autonomy granted the Cherokees through the treaty-making process. It was white politicians who could not be trusted to uphold that law when it came to Indian policy. In Ross’s mind, all the Cherokees needed was a U.S. president who was willing to uphold the Constitution and treat the tribe in the manner prescribed by their treaties with the federal government.

Finally, the Removal Era allows us to understand how historians have long overplayed the significance of the small Cherokee faction led by John Ridge in the 1830s and Stand Watie in the Civil War Era. Ridge led a tiny group of less than eighty Cherokees who supported the Treaty of New Echota in 1835. The group represented less than one-half of one-percent of the tribe's total population. Even though Ridge tried for weeks to raise support for immediate removal, he did not have enough influence within the tribe to garner more than the fraction who voted in favor of the treaty. Somehow, historians have referred to Ross as the leader of the other "faction" of the Cherokee Nation. Use of the word "faction" here delegitimizes the political acumen of the Cherokee people who adopted a national constitution and then elected Ross as their principal chief. Ross never led a faction. He led the constitutionally-elected Cherokee government with the approval and support of the Cherokee people who elected him principal chief for ten consecutive terms beginning in 1828 until his death in 1866. Moreover, the inclination of historians to overplay the significance of Ridge has translated to Indian Territory and found its way into narratives of the Civil War. Ridge's cousin, Watie, who was never able to raise more than 300 men himself (and many of those were not even Cherokees), held far less political influence than historians have granted him. In fact, his true position in Cherokee history has been misunderstood until now. Watie's incessant raids against pro-Ross Cherokees during the Civil War led to more deaths and destruction than occurred at the hands of Andrew Jackson

during the horrific “Trail of Tears.” Stand Watie will now assume his place as the biggest enemy faced by the Cherokee Nation during the Civil War, if not the entire nineteenth century.

Chapter Three defines Indian sovereignty in early nineteenth-century American politics. As Ross and the Cherokee Nation interacted with the federal government, they soon realized that tribal sovereignty actually had two definitions, one denoted by the Constitution and the other intended by white politicians. The U.S. Constitution as the supreme law of the land held Indian treaties on the same plane as treaties with foreign sovereigns. However, many white politicians had no intentions of allowing Indian nations to retain the same sovereignty as those foreign powers. Consequently, white politicians developed a system of granting their unequivocal promises to indigenous peoples through treaties in order to attain the objectives of the day in a peaceful manner, only to unashamedly renege on those promises whenever those objectives changed. The result was a nation full of Indian tribes who believed they held a level of autonomy and hoped the federal government would one day honor the promise to protect that belief. Ross and the Cherokee Nation had to learn their place within these competing definitions and how to navigate the grievance process when the tribe believed its rights were infringed. This chapter also discusses how Ross used what he learned about the federal government’s ideas of Indian sovereignty in order to navigate the Cherokee Nation through the frightening process of secession in the days

following the withdrawal of U.S. forces from Indian Territory in April 1861 and the consequent invasion of the territory by Confederate troops from Texas. His idea of tribal autonomy was built on the solid foundation of constitutional law, yet he struggled with the fear that white governments would most likely not honor Indian self-rule. The intense pressure applied by white Confederates placed Ross on tenuous ground as he had to negotiate the idea of not only protecting his people from the Civil War but also protecting them from a new white government that had no intention of being as loyal to the Cherokees as they expected the Cherokees to be to them.

Chapter Four discusses how Ross came to believe that the best way to protect the Cherokee people from the Civil War was by joining the Civil War. However, the decision to align with the Confederate States was not an easy one. Ross not only struggled with how best to protect the Cherokee people, he also believed that all Indians would be better protected if standing in unity in either camp, North or South. As the war began, Ross's allegiance to the Confederacy was quickly tested when rebel forces, both white and Indian, attacked Opothle Yahola, as he and his followers sought to simply remain neutral in the coming war. The unmitigated attacks on innocent men, women, and children, repeatedly referred to (although not in this dissertation) as the first battles of the Civil War in Indian Territory, alerted Ross to two realities: that war in Indian Territory was going to be a bloody affair and that neutrality was not a safe option. Moreover, this chapter discusses the apparent reluctance

Watie displayed to become involved during the political debates over secession; yet once he entered the war, he and his small force of followers did so with a vengeance.

Chapter Five introduces Abraham Lincoln into the narrative and places him in the context of Indian policy rather than the Civil War. His decisions to acknowledge the prewar treaty abrogation by the United States and to return troops to Indian Territory have largely gone unnoticed by historians who continue to evaluate the events through the narrower lens of the war. The broader interpretation through the lens of U.S. Indian policy allows the examination of the Indian Expedition of 1862 as an attempt to restore the Cherokee Nation to its prewar diplomatic status according to the tribe's treaties with the United States. Lincoln's efforts to return Federal troops to Indian Territory marked a pivotal moment in the history of U.S. Indian policy as he sought to acknowledge the nation's treaty relationship and responsibilities to its indigenous people by admitting that the United States had abrogated its treaty obligations to the tribes of Indian Territory with the withdrawal of Federal troops. His decision was in line with the opinions of many within his administration who frequently encouraged the President to do just that. The Indian Expedition was not a maneuver of military objective. It was a movement of Indian policy and treated as such by the United States Army. The initial Expedition failed due to Ross's reluctance to openly welcome the Federal advance with distrustful Confederates censoring his communication. The story



of the Indian Expedition has been widely misinterpreted as part of the Civil War when in reality it has very little to do with the war at all.

Finally, Chapter Six discusses the unexpected, transition from one administration to another following the assassination of Abraham Lincoln as the Civil War drew to a close in April 1865. The new administration had little sympathy for the tribes in Indian Territory, completely ignoring the attempts by the now-slain president to reestablish the prewar Indian treaties. The Johnson administration's inability—or unwillingness—to follow its predecessor and admit to the prewar abrogation led to a series of punitive postwar treaties between the victorious United States and what Johnson believed were the disloyal nations of Indian Territory. However, Ross and the Cherokees refused to accept such a notion of disloyalty and resisted the new arrangement, claiming that the prewar treaties should remain in place because the United States abrogated them in the first place. Lincoln had understood; why could Johnson not do so as well? Ross's aloofness towards the presidentially-appointed commissioners at the Fort Smith Council in September 1865 angered many within the administration who viewed Ross as a hindrance to Cherokee loyalty and therefore U.S. Indian policy. The Commission's unprecedented decision to depose Ross as principal chief found strong support from one of its members, who would go on to have great influence on Indian policy in the years after the war. Ely S. Parker was appalled by Ross's attitude and soon helped rewrite U.S. Indian policy using Ross's intransigence as a motivation. Parker's

campaign to abolish the process of treaty-making gained support in Washington and in 1871, Congress voted to do just that.

Historians of postwar U.S. Indian policy have treated the Fort Smith Council with disdain, and in so doing, have amputated the Civil War in Indian Territory from the broader narratives of the American West, crippling our understanding of postwar Indian policy in the United States. Historians place a black hole at the end of the “Trail of Tears” where U.S. Indian policy vanishes, only to reappear on the Great Plains, ignoring the Civil War in Indian Territory and the Fort Smith Council.<sup>74</sup> Although legal historian Stuart Banner includes a brief discussion of two Civil War Era Indian events—the Santee Sioux attack on white settlers at New Ulm, Minnesota in 1862, and Colonel John Chivington’s massacre of peaceful Cheyenne and Arapaho Indians at Sand Creek, Colorado in 1864—his exclusion of the events in Indian Territory leading up to the Fort Smith Council indicates his dismissal of their relevance to postwar U.S. Indian policy.<sup>75</sup> Moreover, his omission of Parker from the formation of postwar policy allows him to assert that Congress took the lead in the abolition of treaty-making with Indian nations in 1871. Having already appropriated several million dollars in additional funds for the rash of treaties signed immediately following the Civil War, Banner argues that the House of Representatives—with support from many in the Senate—agreed to end the

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<sup>74</sup> David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System*, 3<sup>rd</sup>. ed. (Lanham: Rowman and Littlefield Publishers, 2010).

<sup>75</sup> Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge: Harvard University Press, 2005), 236-239.

process of treaty-making simply as a money saving gesture.<sup>76</sup> Francis Paul Prucha argues that anti-treaty fervor in the United States was nothing new in 1871, pointing to Parker's tirade in his first annual report as Indian commissioner two years earlier as evidence. Even though he acknowledged Parker's activism, Prucha still claims that jealousy in the House of Representatives over its continual exclusion from the administration of Indian affairs is what finally brought about the change.<sup>77</sup>

The fact that the measure to abolish treaty-making was attached as a rider—a proviso—to the Indian appropriations legislation of 1871 indicates that there was no such widespread support in either chamber, much less the House of Representatives. Scholars of U.S. Indian policy, Vine DeLoria, Jr., and Raymond J. DeMallie, argue that historians constantly make the vague assumption that Congress had thoroughly debated the proposition in each house.<sup>78</sup> Such a debate never occurred. The addendum had been written and developed in a conference committee, away from open debate on either floor. Weeks of work in the House and, eventually in the Senate, over the appropriations bill led to the need for the committee to hammer out the differences between the two versions. The addendum was added only after the extended debate over Indian appropriations had occurred. To reject the

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<sup>76</sup> *Ibid.*, 251.

<sup>77</sup> Prucha, *American Indian Treaties*, 292.

<sup>78</sup> Vine DeLoria, Jr., and Raymond J. DeMallie, *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979*, 2 vols. (Norman: University of Oklahoma Press, 1999), 233.

addendum at this point would be to reject the entire appropriations act. This late proviso angered some legislators who saw it as a “threat to transparent legislating.”<sup>79</sup> DeLoria and DeMallie assert that many legislators acted as if they were entirely unaware that a change had actually been made.<sup>80</sup> Clearly, Congress as a body cannot be credited – or blamed – with having led the charge to end the process of treaty-making with Indian tribes in the United States. There were, no doubt, enough supporters within Washington to push the bill through. However, a full analysis of the historical record, beginning with the Civil War in Indian Territory—not exclusive of it—indicates that no one pushed harder or with more influence than Ely Parker.

Although he does not trace the origin of the matter to the Fort Smith Council, historian C. Joseph Genetin–Pilawa would agree that Parker held great influence on the development of postwar Indian policy. Genetin–Pilawa paints Parker as the champion of native communities for his work to provide “less disruptive methods” to encourage assimilation.<sup>81</sup> Parker believed that the Indians would “choose to assimilate into mainstream culture and society,” indicating just how much he misunderstood the desires of the Indians. It is clear that Parker’s first priority was to abolish the treaty–making process with all Indians, crushing their hopes of retaining tribal sovereignty, and then to encourage them to assimilate by providing them “the right tools, incentives, and

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<sup>79</sup> C. Joseph Genetin–Pilawa, *Crooked Paths to Allotment: The Fight over Federal Indian Policy after the Civil War* (Chapel Hill: The University of North Carolina Press, 2012), 87.

<sup>80</sup> Prucha, *American Indian Treaties*, 292.

<sup>81</sup> *Ibid.*, 161.

opportunities” to do so.<sup>82</sup> Genetin–Pilawa, citing DeLoria and DeMallie, argues that the end of treaty–making occurred as the result of a power play between the House and the Senate, ignoring the fact that the very work he cited had aggressively downplayed the likelihood of that very argument.<sup>83</sup> He accused the House of having grown weary of providing appropriations for Indian treaties debated and ratified only in the chambers of the Senate.<sup>84</sup> Although Genetin–Pilawa mentions the Fort Smith Council, he does so simply as a way to introduce Parker into the field of Indian policy.<sup>85</sup> Moreover, he fails to include the proceedings of the council in his analysis of the end of treaty–making, assigning Parker to an ancillary role in the process. DeLoria and DeMallie make no reference to Parker or the council, even though they recognize that Congress was not the primary instigator behind the attack on treaty–making. Jill St. Germain, who compares U.S. Indian policy with Canadian policy, places responsibility for the end of treaty–making with government bureaucrats. However, she does not even begin her analysis until 1867, two years after Parker’s interactions with Ross at Fort Smith, therefore, Parker plays virtually no role in her narrative.<sup>86</sup>

The Civil War Era in Indian Territory is where histories converge. It is where narratives of the Civil War connect with broader themes of Native

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<sup>82</sup> *Ibid.*

<sup>83</sup> DeLoria and DeMallie, *Documents*, 233.

<sup>84</sup> *Ibid.*, 87.

<sup>85</sup> *Ibid.*, 20, 51-53.

<sup>86</sup> Jill St. Germain, *Indian Treaty–Making Policy in the United States and Canada, 1867–1877* (Lincoln: University of Nebraska Press, 2001), 151.

American history, of the history of U.S. foreign relations, and of westward expansion and Indian removal. It tells a tale of empire, of the vanishing frontier, and of contested borderlands. If we are to understand how the events in Indian Territory are interconnected with these broader themes, we must first resist the temptation to view them only through the lens of the Civil War simply because of the timeframe in which they occurred. By restricting our perspective to just that one theme, we suppress all others. But, by placing Ross and the Cherokee Nation at the center of our story, as suggested by DeLay, then each of these themes become lucid. We find that the Civil War Era in Indian Territory represents the place of intersection—the point of transition—between colonial America and the American West, between the Civil War and the Indian Wars, between the Louisiana Purchase and the disaster at Little Bighorn, and between Indian Removal and the massacre at Wounded Knee. Moreover, the story of U.S. Indian policy becomes a traceable timeline that runs directly through the Cherokee capitol at Tahlequah and through Ford's Theatre on a spring evening in 1865.

By viewing the events that occurred in Indian Territory between 1861 and 1865 from the perspective of Ross and the Cherokee Nation, I provide a new understanding of the Civil War Era in Indian Territory. Removing the events from the context of the war allows the war itself to become more visible. The Civil War in Indian Territory now becomes a narrative of perspectives. The Union Army, who previously abandoned Indian Territory because it did not fit in

its objectives, returned to occupy space in the Cherokee Nation simply as a matter of Indian policy. White Confederates from Texas viewed that occupation as a stepping-stone to a possible invasion across the Red River and placed themselves in a defensive posture within the Creek Nation. Ultimately, these two forces engaged each other on the field of battle. Arkansas Confederates hoped to secure help from the Indians in driving Unionists from the state while Missouri Confederates sought simply to regain control of their home. Kansas politicians and military officers most often concerned themselves with the increasing number of Indian refugees who sought to escape the horrors of Indian Territory due to the incessant raids of Stand Watie and his pro-Confederate Indians. These competing and conflicting perspectives fill the pages of the abundant records of the Civil War. Historians have had to shuffle through these records, sort the various perspectives, and determine the proper order of their narratives. Add to them the growing number of Indian sources, which provide still other perspectives, and these narratives become increasingly more difficult to write. However, removing the narratives of the Civil War Era in Indian Territory from the context of the Civil War actually brings a sense of consonance to the story.

What Major Read perceived to be gross insubordination and disloyalty on the part of Watie and his Indians that warm spring day at Pleasant Bluff, in reality, had nothing to do with the war he and the other North Texans were fighting. The Indians had waged their own war against racism, oppression, and

abrogation. Regardless how brave and gallant the Indian soldier was during the American Civil War, the enemy was hardly ever whom it most appeared to be. Efforts to expel white soldiers from Indian Territory and retain control of tribal lands proved to be futile. The enemy was not dressed in blue or gray. He was dressed in racism and oppression and fought from every corner. While Ross and the Cherokee Nation took solace in the fact that Lincoln joined their side, they were not prepared to defend themselves from the biggest attack that came only after the fighting had stopped.



## CHAPTER II

### REMOVAL AND THE STRUGGLE FOR SOVEREIGNTY

His large frame filled the door as he stepped inside the dimly lit schoolhouse. His piercing eyes, slowly adjusting to the filtered light streaming through the lone window, surveyed the scene before him. The schoolroom carved out of an old blockhouse had become the hiding place of his old friend, now a fugitive from Cherokee justice. Low muffled groans from above, alerted the man, known only as “the Ridge,” to the hiding place of his injured prey. He quickly climbed the ladder to the loft above, looked sadly at the wounded man crouched before him, and with one vicious swing of his hatchet, finished the job.<sup>1</sup> “The Ridge” was part of a squad of executioners charged with carrying out the traditional law of blood revenge on a tribal chief named Doublehead. In 1806, Doublehead had ceded Cherokee lands in Tennessee and Kentucky to the United States by signing a treaty without the consent of the National Council. Traditional Cherokee law required the council’s consent on any land cession, and the punishment for such a crime was death.<sup>2</sup> “The Ridge” had helped revitalize the law after it found new relevance in the first decade of the nineteenth century.<sup>3</sup>

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<sup>1</sup> Grace Steele Woodward, *The Cherokees* (Norman: University of Oklahoma Press, 1963), 129-130.

<sup>2</sup> *Ibid.*; W. Craig Gaines, *The Confederate Cherokees: John Drew's Regiment of Mounted Rifles* (Baton Rouge: Louisiana State University Press, 1989), 3.

<sup>3</sup> Gaines, *The Confederate Cherokees*, 3; John Phillip Reid, *A Law of Blood: The Primitive Law of the Cherokee Nation* (DeKalb: Northern Illinois University Press, 2006), 58-59.

Following the Revolutionary War, white Americans turned their faces toward the interior of the continent and, in unprecedented waves, set out to explore the hinterlands of the new nation. However, these frontiersmen soon found their path to the great frontier obstructed by the presence of indigenous peoples. With an ethnic arrogance, these intruders disregarded the political boundaries established by the new U.S. government, and blatantly encroached on tribal lands. Following the murder of Doublehead's brother, Old Tassel, in 1788, by white intruders from Tennessee, the United States admitted, with embarrassment, its failure to protect the Cherokee people according to the dictates of the Treaty of Hopewell. Secretary of War Henry Know wrote to George Washington, following the latter's inauguration as the first president of the new constitutional government, expressing his concern. "The disgraceful violation of the Treaty of Hopewell with the Cherokees requires the serious consideration of Congress. If so direct and manifest contempt of the authority of the United States be suffered with impunity, it will be vain to attempt to extend the arm of government to the frontiers."<sup>4</sup> The letter helped induce the president to invite the Cherokees to reenter negotiations for a new treaty with the now, more powerful, federal government under the Constitution. In the new treaty, signed at Holston, Tennessee on July 2, 1791, the United States formally declared its sovereignty over the states in matters of Indian policy by amending the protection clause of the Hopewell treaty. In Article Two of the

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<sup>4</sup> Woodward, 110-112.

Holston treaty, the Cherokees again acknowledged that they were under the protection of the United States alone. However, the article concluded with the new amendment: “and they [the signers] also stipulate that the said Cherokee nation will not hold any treaty with any foreign power, individual state, or with individuals of any state.”<sup>5</sup>

The declaration of sovereignty contained within the Treaty of Holston was as much a message to the states as it was to the Indians. No longer would the United States sit by idly and watch individual states abrogate federally–negotiated treaties with impunity. Article Eight made it quite clear. “If any citizen of the United States shall settle on any of the Cherokees’ lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not, as they please.”<sup>6</sup> If the states would not honor the sovereignty of the federal government, then the federal government would ask the Indians to do it for them. This new restriction of white behavior was not included in the Hopewell treaty, and its inclusion here implies a significant shift in U.S.–Indian relations. The federal government had declared its sovereignty over the nation’s Indian affairs, and it had persuaded—if not bribed—the Cherokees to formally recognize it.

The Treaty of Holston ceded something to the Cherokees that they had not previously had: a guarantee from the United States of perpetual land

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<sup>5</sup> Article II, “Treaty of Holston,” July 2, 1791, Documents Relating to the Negotiation of Ratified and Unratified Treaties with Various Indian Tribes, online University of Wisconsin (Hereafter cited as *Treaties UW*).

<sup>6</sup> Article VIII, *ibid.*

ownership. Article Seven states, “The United States solemnly guarantee to the Cherokee Nation, all their lands not hereby ceded.”<sup>7</sup> The Creek Indians, who lived primarily south of the Cherokees, had received a similar guarantee in their new treaty with the constitutional government as well, negotiated at the capital in New York in 1790.<sup>8</sup> However, the Creeks did not surrender their right to treat with foreign nations due to their proximity to Spanish-owned Florida.<sup>9</sup> The new treaties with the Creeks and Cherokees became necessary because of the encroachments made on Indian land by white Southerners. While the new constitutional government was extending its own sovereignty over the nation’s Indian affairs through these new treaties, the Indians were being granted something they held to be of equal value. The new treaties provided the Indians with what Prucha calls a “protected existence.” In short, the Indians had been formally granted control over their own borders to go along with the political autonomy they held within them. Prucha asserts, “This recognition of independence meant more to Indian groups than did their lands, and tribes eagerly sought treaties in order to gain political recognition.”<sup>10</sup> With the Treaty of Holston, the Cherokees secured this recognition in exchange for an

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<sup>7</sup> Article VII, *Ibid.*

<sup>8</sup> The Creek treaty was signed before the Cherokee treaty because the Washington administration wanted to secure North Carolina’s adoption of the Constitution before signing a treaty with its neighbors, the Cherokees, who had filed formal complaints against intruders from that state, see Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 85.

<sup>9</sup> This oversight by the United States perhaps came back to haunt them when the Creeks aligned with Britain during the War of 1812.

<sup>10</sup> Prucha, *American Indian Treaties*, 2-3.

acknowledgement of federal sovereignty over Indian matters. Now, all the Cherokees needed to do in order to enjoy the benefits and privileges of this newly found independence was to trust the United States government to protect them from the numerous state governments staring greedily at the land across their borders.

It took hardly more than a decade for the United States to begin to show signs of wavering in its commitment to the Cherokee people, forcing the tribe to reevaluate how it interacted with the federal government. In 1802, the state of Georgia formally asked the United States government to extinguish the title to Indian-held land within the state's borders, hoping to satisfy the land needs of a growing population. Georgia agreed to cede its claim to its western lands—soon to become Mississippi Territory—to the United States in return for a promise to remove the Indians from Georgia lands as soon as it could be peacefully and practicably arranged.<sup>11</sup> The Georgia Compact of 1802, as it has come to be known, was never a legally binding document, yet it frequently drove state and, sometimes, federal policy over the next three decades. Georgia and the United States had agreed to grant each other title to lands that neither of them had the moral right to grant. Carl J. Vipperman argued that “neither party owned clear title to the princely domains they bargained away, for all of it was still in Indian possession.”<sup>12</sup>

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<sup>11</sup> William G. McLoughlin, “Georgia’s Role in Instigating Compulsory Indian Removal,” *The Georgia Historical Quarterly* 70, no. 4 (Winter 1986): 605.

<sup>12</sup> Carl J. Vipperman, “The Particular Mission’ of Wilson Lumpkin,” *The Georgia Historical Quarterly* 66, no. 3 (Fall 1982): 286.

In the early nineteenth century, the United States asserted itself as the self-proclaimed brokers of indigenous homelands by using Senate-ratified treaties to entice Indian tribes to “cede” lands to the white government in exchange for political recognition and protection. However, this process often achieved the government’s early objectives, but stymied future plans by blocking federal access to tribal lands now secured by federal treaties. If the government was to accomplish its later objectives, it would need to either persuade the tribes to sign a new treaty or devise a way to side-step the existing one.

This chapter discusses how the United States government, under the leadership of Andrew Jackson in the 1820s and 1830s, laid a foundation of manipulating the American legal system in order to side-step the existing treaties with the Cherokee Nation, negotiate a new treaty with only a few men, and compel the rest of the tribe to comply with its requirement to migrate west of the Mississippi River along the infamous “Trail of Tears.” As Principal Chief John Ross navigated the tribe through this gauntlet of duplicitous attacks on tribal sovereignty, he developed an understanding of nineteenth-century white American politics and racism, quickly learning that the promise of the former would often be undone by the premise of the latter. Moreover, Ross’s approach to the Confederate and United States governments during the American Civil War has its roots in the harsh lessons of the Removal Era. What he learned about traditional Cherokee law and U.S. Constitutional law during his

negotiations with federal and state governments helped shape his political views and prepared him to lead the Cherokee Nation into the maelstrom of the 1860s. Ross attempted to keep the tribe united because Cherokee political thought evolved from the traditional tribal custom of consensus, and Ross had grown to rely heavily on the authority of tribal unity. Unfortunately, that unity would not be realized in either era. Doublehead would not be the last to give account to the law of blood revenge.

Previously, town chiefs handled local issues and crises with autonomy, increased pressure from white America caused the Cherokees to reconsider their political organization. Chiefs from Towns across the Cherokee Nation gathered collectively in council to discuss the growing concern.<sup>13</sup> Acting in this manner, the Cherokees ceded small tracts of land over the next few years, hoping to satisfy the white man's hunger for Indian lands. However, in 1817, acting Secretary of War George Graham commissioned Tennessee governor Joseph McMinn, General David Meriwether, and Andrew Jackson, commander of the Tennessee militia, to negotiate a large-scale land exchange with the Cherokee people.<sup>14</sup> A small group of Cherokee headmen agreed to trade tribal lands in Tennessee, Alabama, and Georgia for lands along the Arkansas and White rivers in Arkansas Territory, west of the Mississippi River. Perhaps as

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<sup>13</sup> Theda Perdue, "The Conflict Within: The Cherokee Power Structure and Removal," *The Georgia Historical Quarterly* 73, no. 3, (Fall 1989): 468-470.

<sup>14</sup> Robert W. McCluggage, "The Senate and Indian Land Titles, 1800-1825," *Western Historical Quarterly* 1, no. 4, (October 1970): 419.

many as three thousand out of the twenty thousand or so Cherokees emigrated to Arkansas and established themselves in the west.

This significant cession alerted the Cherokee people to the need to become a more unified body, organized enough to fend off future attempts to acquire tribal land.<sup>15</sup> That same year, 1817, the tribe organized its first standing committee, designed to “manage the affairs of the nation.” By 1820, the Cherokee Nation had been divided into districts from which elected officials would serve on a National Council, and in 1822, the Cherokee Supreme Court was established.<sup>16</sup> The increasing threat of government intervention prompted the Cherokees to formally adopt a constitution in 1827. Under this new government organization, the tribe elected thirty-eight-year-old John Ross as principal chief and established a bicameral legislature based on the model of the United States. Ross was a mixed-blood Cherokee of Irish descent who had found favor with both full and mixed-blood segments of the tribe. Undoubtedly, the Cherokee people had acknowledged the need to unite in defense of their homeland. The United States had guaranteed the tribe ownership of their land in the Holston treaty and had promised to protect their right to enjoy it. The Cherokees were prepared to hold them to it. Within a year, the tribe had announced a “fixed and unalterable determination . . . never again to cede one foot more of land.”<sup>17</sup>

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<sup>15</sup> Woodward, *The Cherokees*, 137.

<sup>16</sup> Perdue, “The Conflict Within,” 473.

<sup>17</sup> Viperman, “The Particular Mission,” 301.



In response to the increasingly organized Cherokee Nation, many Georgia citizens became uneasy with the idea of such an “organized Indian republic” living within the borders of their own state. As the Cherokees became more organized politically, increasing cries for the United States to fulfill the Georgia Compact echoed throughout Georgia and the surrounding states.<sup>18</sup> A group of Cherokee leaders from Turkey Town, of the Upper Towns, argued that the tribe had abandoned, at the encouragement of President Washington, the hunt and the “pursuit of vagrant habits,” and had adopted a better life as “cultivators of the soil.” They went on to claim that “we are now assaulted with menaces of expulsion because we have unexpectedly become civilized and because we have formed and organized a constitutional government.”<sup>19</sup>

By the mid-1820s, the topic of Indian removal hit the floor of the United States House of Representatives when that body instructed the House Committee on Indian Affairs “to inquire into the expediency of organizing all the Territories of the United States, lying west of the State of Missouri and Territories of Arkansas and Michigan, into a separate Territory to be occupied exclusively by the Indians; and of authorizing the President of the United States to adopt such measures as he may think best, to colonize all the Indians of the

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<sup>18</sup> Kenneth Penn Davis, “Chaos in the Indian Country: The Cherokee Nation, 1828-35,” in *The Cherokee Nation: A Troubled History*, Duane H. King, ed., (Knoxville: Tennessee University Press, 1979), 129; Francis Paul Prucha, “Protest by Petition: Jeremiah Evarts and the Cherokee Indians,” *Proceedings of the Massachusetts Historical Society*, Third Series 97 (1985): 45.

<sup>19</sup> “Citizens of Turkey Town to the Cherokee People, February 9, 1829,” printed in *Cherokee Phoenix and Indians’ Advocate*, March 4, 1829, *The Cherokee Phoenix*, Western Carolina University, Digital Collections online (Hereafter cited as WCU).

present States and Territories permanently within the same.”<sup>20</sup> The next January, President James Monroe told the House that the object of his Indian policy was the removal of all tribes to the new territory west of the Mississippi River, under terms that “would be satisfactory to themselves and honorable to the United States.”<sup>21</sup>

In response to the increased efforts to force the Cherokees to cede the remainder of their lands, Ross exhibited three fundamental political beliefs that became the foundation for his response to the arrival of the Civil War in Indian Territory in the 1860s. These three beliefs coincided with three significant events that took place in 1828, prior to removal.

First, the discovery of gold on Cherokee land in July 1828 brought a flood of white treasure seekers into the territory, causing Ross to call on the federal government to honor its promise to protect the tribe from just such an intrusion.<sup>22</sup> The gold was discovered on that portion of Cherokee lands lying within the borders of the state of Georgia. Title to the land had been granted to the Cherokee nation via Senate-ratified treaties; therefore, the Cherokee Nation believed the gold belonged solely to them. Ross quickly called on Washington to provide the protection promised in the tribe’s treaties with the United States and remove the intruders from the nation.<sup>23</sup> In compliance with

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<sup>20</sup> Annual Report of the Commissioner of Indian Affairs, December 1, 1836, ARCIA, 7.

<sup>21</sup> James Monroe to the House of Representatives, quoted in *Ibid*, 7.

<sup>22</sup> Davis, “Chaos in the Indian Country, 131.

<sup>23</sup> John Ross to David Crockett, January 13, 1831, in Gary E. Moulton, ed., *The Papers of Chief John Ross*, 2 vols. (Norman: University of Oklahoma Press, 1985), 1:210-212.

treaty obligations to protect the Cherokee from just such intrusions, the war department dispatched troops to the area to drive out the prospectors. However, Georgia's governor, George R. Gilmer protested the intrusion of federal troops on state soil. President Andrew Jackson responded quickly, removing the troops and issuing Gilmer a promise he would not interfere with state law.<sup>24</sup> Georgia had waited—impatiently at best—for the United States to fulfill their obligation under the Compact of 1802. The discovery of gold in the Cherokee nation escalated the tensions between the Cherokees and the state of Georgia. It intensified the state's desire to drive the Cherokees from the state, and amplified Ross's cries for the federal government to uphold its treaty obligations and protect the tribe from intrusion.<sup>25</sup> Ross's insistence that the government provide the promised protection, the first of his fundamental beliefs, became a recurring theme in Cherokee-U.S. relations during the nineteenth century. While the need for protection would change from one decade to the next, Ross's demand that the federal government provide it never wavered.

With Jackson's promise of nonintervention in hand, Gilmer had carte blanche. He admitted to Senator J. M. Berrian that "the state considers itself entitled to all the valuable minerals within the soil of the Cherokee Territory,"

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<sup>24</sup> Vipperman, "The Particular Mission," 303; Grant Foreman, *Indian Removal: The Emigration of the Five Civilized Tribes of Indians* (Norman: university of Oklahoma Press, 1952), 229-230.

<sup>25</sup> Davis, "Chaos in the Indian Country," 129; Ross to John Ridge, et al, December 1, 1831, in Moulton, *Papers of Chief John Ross*, 1:232-233.

regardless who holds the title to the land.<sup>26</sup> He claimed, “it may become necessary for the State to protect its property by taking possession of the gold country.”

The second event, which occurred on December 20, 1828, involved Georgia’s legislature passing a series of laws extending its jurisdiction over the lands held by the Cherokee Nation. In response, Ross called on the Cherokee Nation to remain united in defense. This need for unity became the second of Ross’s fundamental political beliefs. Set to take effect on June 1, 1830, the extension initiated an all-out attack on Cherokee sovereignty.<sup>27</sup> Gilmer planned to prevent everyone, not just the Indians, from plundering Georgia’s gold.<sup>28</sup> No longer could Georgia sit back and wait on the federal government to uphold the Compact of 1802. As Robert W. McCluggage asserts, it became “clear that the interest of the Indians was being subordinated to the politics of expediency.”<sup>29</sup> The longer the state of Georgia delayed, the more gold was taken from the mines.<sup>30</sup> The extension of Georgia law into parts of the Cherokee Nation prohibited Cherokees from mining gold, speaking against removal, and conducting the business of tribal government.<sup>31</sup> Gilmer especially warned the

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<sup>26</sup> H. David Williams, “Gambling Away the Inheritance,” *The Cherokee Nation and Georgia’s Gold and Land Lotteries of 1832-33*, *The Georgia Historical Quarterly* 73, no. 3 (Fall 1989): 524.

<sup>27</sup> Williams, “Gambling Away the Inheritance,” 519.

<sup>28</sup> Fletcher M. Green, “Georgia’s Forgotten Industry: Gold Mining, Part I,” *The Georgia Historical Quarterly* 19, no. 2 (June 1935): 103-104.

<sup>29</sup> McCluggage, “The Senate and Indian Land Titles,” 420.

<sup>30</sup> *Ibid.*

<sup>31</sup> Theda Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: The University of Tennessee Press, 1979), 62.

Cherokees to “cease operating the mines.”<sup>32</sup> The Georgia law also declared all Cherokee laws were to become null and void on June 1, 1830. The following December, the Georgia legislature authorized the organization of a mounted guard unit consisting of sixty men to enforce the laws of the state, and, most importantly, to protect the state’s claim on the Cherokee goldmines.<sup>33</sup> The Georgia Guard immediately began driving Cherokee Indians from their own minefields.<sup>34</sup>

During his annual message in 1829, Ross warned his people of the need for unity. “A crisis seems to be fast approaching,” he told them, “. . . much, therefore, depends on our unity of sentiment and firmness of action.”<sup>35</sup> Despite the rising pressure for the Cherokees to emigrate to the west, tribal leaders remained united in their defense of tribal land and sovereignty. Even Major Ridge, who later seemed to turn his back on Ross and the National Council, initially supported Ross in his stand against removal. Ridge travelled throughout the Cherokee Nation encouraging citizens to support the chief and to cling to their homelands.<sup>36</sup> Following the arrest of eleven missionaries by Georgia authorities for living and working among the Cherokees without a state license, John Ross and the Cherokees appealed to the United States Supreme

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<sup>32</sup> Foreman, *Indian Removal*, 229-230.

<sup>33</sup> Green, “Georgia’s Forgotten Industry,” 104; Williams, “Gambling Away the Inheritance,” 521.

<sup>34</sup> Woodward, *The Cherokees*, 159.

<sup>35</sup> Annual Message, October 14, 1829, in Moulton, *Papers of Chief John Ross*, 1:169-172.

<sup>36</sup> Citizens of Turkey Town to the Cherokee People, February 9, 1829, printed in *Cherokee Phoenix and Indian Advocate*, March 4, 1829, WCU.

Court for relief. While the Court listened to arguments on whether Georgia law should be allowed to supersede Cherokee law within state boundaries, John Ridge and his articulate cousin, Elias Boudinot, travelled through the northern states, drumming up moral, and even financial, support for the Cherokee plight. On January 12, 1832, Ridge wrote angrily from Philadelphia, “General Jackson is bad and the people are willing to maintain him, not for the love of him, but the love of their party.”<sup>37</sup> Neither Ridge nor Ross trusted Jackson. As long as the President refused to comply with the treaty obligations to protect the Cherokees from intrusion, the Cherokees faced constant pressure from the state of Georgia to cede their lands and emigrate west. Ridge did share encouraging news, however. “It affords me pleasure to state,” he wrote, “that the prospects of a great and vigorous expression of indignation from this city [Philadelphia] against the cruelties of Georgia and the policy of the U.S. is now flattering.” He also told Ross of having met with Matthew Cary, a prominent lawyer and publisher, proclaiming him to be “as strong a friend as we have.”<sup>38</sup> The need for unity became a fundamental belief for Ross as he led the Cherokee Nation through the crises with the governments of Georgia and the United States. During the Civil War Era, Ross’s cries for unity would resonate throughout Indian Territory and, ironically, would help usher in the dismantling of Cherokee sovereignty in the postwar years.

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<sup>37</sup> John Ridge to John Ross, January 12, 1832, in Moulton, *Papers of Chief John Ross*, 1:235.

<sup>38</sup> *Ibid.*

Finally, the third event in 1828 that helped develop Ross's political beliefs was the election of Andrew Jackson to the presidency in November, bringing to the White House Jackson's disdain for Indian ownership of state land. It is here that Ross exhibited, perhaps, his strongest fundamental political belief: an undying faith in the process of constitutional law. In a letter to the Cherokee agent, Ross referred to the tribe's treaties with the United States as proof of Cherokee land ownership.<sup>39</sup> Ross knew that the Constitution referred to the Senate-ratified treaty as "the supreme law of the land." When Jackson, who resented having to deal with what he called "half-breeds and renegade white men" when dealing with Indians, recalled the federal troops from the Georgia mines, thus denying the tribe the protection promised in the treaties, Ross pointed back to the treaties as evidence of Cherokee sovereignty over its land.<sup>40</sup> Jackson refused to hear and continued to buoy the Georgia claims. Ross then turned his energy to Congress.<sup>41</sup> The basis for Ross's faith in the legal process was founded in the tribe's first treaty with the fledgling United States government in 1785. Article Twelve of the Treaty of Hopewell states, "That the Indians may have full confidence in the justice of the U. States, respecting their interests, they shall have the right to send a deputy of their

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<sup>39</sup> Ross to Hugh Montgomery, July 20, 1830, in Moulton, *Papers*, 1:193-195.

<sup>40</sup> Theda Perdue, *"Mixed Blood" Indians: Racial Construction in the Early South* (Athens: The University of Georgia Press, 2003), 70; Ross to Montgomery, July 20, 1830, in Moulton, *Papers*, 1:193-195.

<sup>41</sup> Ross to David L. Child, February 11, 1831, in Moulton, *Papers of Chief John Ross*, 1:214.

choice, whenever they think fit, to Congress.”<sup>42</sup> For Ross, the ability to share his grievances directly with Washington represented his strongest fundamental political belief. Whenever he felt that Cherokee rights were under attack, he asked the Cherokee National Council to invoke Article Twelve and authorize a delegation – usually led by himself – to travel to Washington and seek redress. While some might question Ross’s absence from the nation during the most trying times for the Cherokee nation, he was actually interceding for his people in accordance with the tribe’s treaties with the United States.

In slightly more than a year following the adoption of their constitution, the political climate had grown cold and ominous for the Cherokees. The Cherokee Indians, long known to historians as a politically-fractured tribe, torn between traditionalists and assimilationists, pro-removal and anti-treaty factions, presented a united front. Principal Chief John Ross stood at the head of a unified nation, supported by his future enemies, “The Ridge,” now known as Major Ridge; Ridge’s son, John; and his nephews, Elias Boudinot and Stand Watie. The division within the tribe that would come to dominate the narratives of the Cherokee Nation during the Civil War years would not appear for another two years and, even then, would not be nearly as significant as historians have believed.

The case of the missionaries imprisoned under Georgia law in October 1831 made its way to the United States Supreme Court. The ruling in

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<sup>42</sup> “Article XII,” Treaty of Hopewell, 1785, Treaties UW.



*Worcester v. Georgia* came down in March 1832 in favor of the sovereignty of Cherokee law. The decision declared that the extension of Georgia law into the sovereign Cherokee Nation was unconstitutional and demanded the missionaries be released. Ross declared a celebration throughout the nation. To him the victory did not come in the form of a rebuke of Georgia intrusion, but rather in the proclamation of Cherokee sovereignty.<sup>43</sup> Boudinot called it “glorious news,” while John Ridge claimed the decision “acknowledged every right for which we have contended.”<sup>44</sup>

While on tour through the northern states, Ridge stopped in Washington to discuss the Court’s decision with the President. Jackson told him that he had no intention of interfering with Georgia law despite the Court’s ruling.<sup>45</sup> Ridge, later, expressed his disgust with Jackson, whom he called a “chicken snake.”<sup>46</sup> At this point, Ridge joined Ross in his strong belief in the process of constitutional law, although he realized that Jackson would most likely try to sabotage the Court’s favorable ruling. Both men expressed a belief that the Senate would never ratify a treaty not duly authorized by the proper Cherokee authorities.<sup>47</sup> Ridge asked Ross to remain vigilant, “to keep up the hearts of our

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<sup>43</sup> Ross to Cherokee Delegation, March 30, 1832, in Moulton, *Papers of Chief John Ross*, 1:241.

<sup>44</sup> Woodward, *The Cherokees*, 171; John Ridge to John Ross, April 3, 1832, in Moulton, *Papers of Chief John Ross*, 1:241.

<sup>45</sup> John Ehle, *Trail of Tears: The Rise and Fall of the Cherokee Nation* (New York: Anchor, 1988), 255.

<sup>46</sup> John Ridge to Stand Watie, April 6, 1832, Edward Everett Dale and Gaston Litton, *Cherokee Cavaliers: Forty Years of Cherokee History as Told in the Correspondence of the Ridge-Watie-Boudinot Family* (Norman: University of Oklahoma, 1995), 8.

<sup>47</sup> *Ibid.*, 9.

people.”<sup>48</sup> Ridge believed the Supreme Court’s decision would motivate the Senate to honor the nation’s treaties with the Cherokees.<sup>49</sup> He also said that the Secretary of War told him that the government planned to negotiate a treaty with any group of Cherokees calling themselves a majority. In response to Jackson’s noninterference confession, Ridge called on Ross to encourage the people to remain united in defense of their home.

Historian Theda Perdue suggests that the division between the traditionalists and the progressives was growing and that the issue of removal only magnified that division.<sup>50</sup> However true that may be, at the time of the Supreme Court’s ruling in *Worcester*, Ridge appeared to be one of Ross’s staunchest supporters, and Ross continued to utilize Ridge as a voice for the National Council. Whatever caused the split between the two leaders had not yet occurred.

After visiting with Jackson at the White House following the Supreme Court’s favorable ruling, John Ridge began entertaining the possibility that the Cherokees might be forced to emigrate. In a letter dated April 6, 1832, less than one month after the Court’s ruling, Ridge confessed to his cousin, Stand Watie, that he believed the only way for the Supreme Court’s decision to be upheld was to cut off the “snake’s” [Jackson] head and “throw it down in the

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<sup>48</sup> John Ridge to John Ross, April 3, 1832, in Moulton, *Papers of Chief John Ross*, 1:241.

<sup>49</sup> *Ibid.*, 1:241

<sup>50</sup> Perdue, *Slavery and the Evolution of Cherokee Society*, 70.

dust.”<sup>51</sup> His pen was filled with anger when he wrote, “I feel disgusted at an administration who have trampled our rights under foot to offer new pledges from their rotten hearts.”<sup>52</sup> When discussing the Secretary of War’s suggestion that the government would sign a treaty with any “faction or fraction of our nation,” Ridge wrote, “we shall live to tread on the necks of traitors.”<sup>53</sup> Ridge was so adamant about honoring the tribe’s constitutional authority, that three years earlier, he had helped write a new law, passed by the National Council and based on the traditional law of blood revenge.<sup>54</sup> He made it clear that anyone who signed a treaty ceding away tribal lands without the Council’s authorization was guilty of treason and should be punished by execution. The law was passed by the National Council in October 1829.<sup>55</sup>

In his letter to Ross dated April 3, 1832, Ridge bemoaned the possibilities of Jackson’s success in the November election, claiming that if Congress does not get involved and coerce him to uphold the Court’s decision, then reelection was almost assured; and if true, “then he will be above control.”<sup>56</sup> Historian Grant Foreman argues that, prior to the 1832 election, both Ross and Ridge exerted such a strong influence against removal that it was

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<sup>51</sup> John Ridge to Stand Watie, April 6, 1832, Dale and Litton, *Cherokee Cavaliers*, 8.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> Woodward, *The Cherokees*, 170.

<sup>55</sup> Morris Wardell, *A Political History of the Cherokee Nation* (Norman: University of Oklahoma Press, 1977), 18.

<sup>56</sup> John Ridge to John Ross, April 3, 1832, in Moulton, *Papers of Chief John Ross*, 1:241.

“too powerful to overcome.”<sup>57</sup> If John Ridge was so magnanimously opposed to a removal treaty with the United States during the spring of 1832, what would persuade him to change his discourse only a few weeks later? During Ridge’s visit in the days after the Supreme Court’s historic ruling, Jackson claimed to have noticed a wavering in his once committed foe.<sup>58</sup> Jackson’s perception must have been quite accurate, for Ridge immediately sought the advice of Associate Justice John McLean, who doubted that the President would ever support any plan short of removal. McLean offered the Cherokees two suggestions. First, he suggested the Cherokees apply for statehood and avoid such conflicts in the future, or simply read the handwriting on the wall and agree to a removal treaty.<sup>59</sup> Rumors floated around Washington that Ridge had begun capitulating and was on the brink of agreeing to remove. Word got back to Ross who flew into a rage. Of course, Ridge denied the accusations on the ground of his years of loyal service to the Cherokee National Council and people.<sup>60</sup> However, Ridge’s cousin, Elias Boudinot came to believe that removal was the only thing standing between the Cherokee nation and collapse. As editor of the *Cherokee Phoenix*, the tribe’s newspaper, Boudinot thought it appropriate to offer both opinions in the pages of the paper in order to allow the widely literate Cherokee population to choose for themselves which side of the issue to take. For Ross, this prevented consensus and,

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<sup>57</sup> Foreman, *Indian Removal*, 246

<sup>58</sup> Ehle, *Trail of Tears*, 256.

<sup>59</sup> Williams, “Gambling Away the Inheritance,” 522; Ehle, *Trail of Tears*, 256.

<sup>60</sup> Ehle, *Trail of Tears*, 258-259.

therefore, was inappropriate. Boudinot, who had expressed his divergent opinion, resigned his position.<sup>61</sup>

Following Jackson's successful reelection in November, Ridge seemed to have succumbed to the inevitable. He knew he might appear to be contradictory, but he saw no other recourse for the nation. In a letter to John Ross dated February 2, 1833, written while Ross and an authorized delegation were in Washington invoking Article Twelve of the Treaty of Hopewell, Ridge invoked the traditional Cherokee right to question the council's direction. "But sir," he began, "I have the right to address you as the chief of the whole Cherokee Nation." He asked Ross to consider the possibility that removal might be inevitable. Upon the realization "that we cant [*sic*] be a Nation here," he continued, "I hope we shall attempt to establish it somewhere else!"<sup>62</sup> While Ross adhered to his unwavering faith in the honor of the United States government, Ridge adopted a more practical approach to the problem. Ross believed that Cherokee sovereignty was directly tied to tribal land ownership and that the two were inseparable; to give up the land would be akin to surrendering tribal autonomy.<sup>63</sup> Ridge, on the other hand, believed that the two could exist independently. He began to argue that protecting tribal sovereignty

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<sup>61</sup> Theda Perdue, *Cherokee Editor: The Writings of Elias Boudinot* (Athens: University of Georgia, 1996), 25-26.

<sup>62</sup> John Ridge to John Ross, February 2, 1833, in Moulton, *Papers of Chief John Ross*, 1:260.

<sup>63</sup> *Ibid.*, 1:260.

was the highest priority and that the nation could exist as an autonomous body west of the Mississippi River.<sup>64</sup>

These antonymic viewpoints brought both men to Washington in February 1835: Ridge to investigate the possibilities of securing a favorable treaty on behalf of the Cherokee people, and Ross to formally remind the government that the Cherokee council had not authorized Ridge to negotiate such a treaty. While there, Ross responded to Jackson's offer of \$5 million for Cherokee lands in the east with a counteroffer of \$20 million.<sup>65</sup> Moreover, he proposed ceding tribal lands only if he could acquire permission from Mexico to relocate the tribe outside of the United States.<sup>66</sup> Ridge believed that Ross was merely trying to delay constructive negotiations until after the election of 1836 when Jackson might be replaced with a more Indian-friendly president.<sup>67</sup> In late February, Jackson and Ridge held a private meeting at the White House. Included were the Reverend John F. Schermerhorn, whom Jackson had commissioned to secure a treaty from the Cherokees, and Benjamin F. Currey, who was commissioned to enroll Cherokees for voluntary emigration west. During the meeting, Jackson began attacking Ross and his motivations, declaring that he no longer had any intention of communicating with the chief.<sup>68</sup>

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<sup>64</sup> *Ibid.*, 1:260.

<sup>65</sup> Vipperman, "The Particular Mission," 311.

<sup>66</sup> John Ross to Friedrich Ludwig von Roenne, March 5, 1835.

<sup>67</sup> John Ridge to Wilson Lumpkin, May 18, 1835, in Theda Perdue, *Cherokee Editor*, 183.

<sup>68</sup> John Ridge to Major Ridge, et al., March 10, 1835, Dale and Litton, *Cherokee Cavaliers*, 12-14.

Ross, unable to negotiate with Jackson, submitted his proposal of \$20 million directly to the Senate. The offer came one day after the Chair of the Senate Committee on Indian Affairs, Hugh Lawson White of Tennessee, recommended that the Senate do whatever necessary to secure a treaty with the Cherokees. Ross's offer was deemed so outrageous that the Senate amended White's proposal and set a limit of \$5 million.<sup>69</sup> Schermerhorn convinced the Ridge delegation to accept the offer.

On March 7, Secretary of War Lewis Cass wrote to Ross informing him he would no longer engage in written discourse with the chief.<sup>70</sup> Jackson had long believed that Ridge was more willing to negotiate with Cherokee lands than Ross would ever be, and now that Ridge had proven him correct, he refused to recognize Ross as an official diplomat from the Cherokee Nation. Historian Gary Moulton argues that the federal government recognized the "internal disruptions" within the Cherokee Nation and used them to obtain the removal treaty.<sup>71</sup> Theda Perdue asserts that the Jackson administration identified as early as 1830 those within the Cherokee nation "most likely to negotiate a removal treaty."<sup>72</sup> Jackson realized that ignoring the authorized delegation from the Cherokee Nation would be another violation of the treaties with the tribe. However, he also believed he had enough support in the Senate

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<sup>69</sup> Moulton, *John Ross*, 60.

<sup>70</sup> John Ross to Lewis Cass, March 9, 1835, in Moulton, *Papers of Chief John Ross*, 1:332.

<sup>71</sup> *Ibid.*, 54.

<sup>72</sup> Perdue, "The Conflict Within," 483.

to ratify even a treaty with a minority faction.<sup>73</sup> The President had been battling Cherokee unity since taking office, and now he had the opportunity to defeat it by isolating Ridge and using him to finally obtain the coveted treaty.<sup>74</sup> Ridge hoped to secure the treaty for the protection of Cherokee sovereignty, even if it meant ceding tribal lands in the eastern United States. He planned to present it to the National Council for official approval. Jackson did not care who approved it so long as he secured a signed treaty; and now that he had Ridge in one pocket and potential ratification in the other, he knew that a treaty of removal would soon cross his desk.

On March 14, Ridge and his delegation agreed to take a preliminary treaty back to the Cherokee Nation in hopes of getting it ratified by the National Council.<sup>75</sup> Jackson, having grown weary of dealing with Ross, sent the treaty with Ridge as a final ultimatum for the Cherokee Nation. He informed the tribe through Ridge that there would be no other treaty offered than the one now presented.<sup>76</sup> Ridge called a meeting at his home in April to discuss the terms. However, no more than a hundred Cherokees showed, far too few to take any formal action. Ridge, who had expected over a thousand, was, no doubt,

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<sup>73</sup> Twenty-seven of the fifty sitting members of the United States Senate were avowed Jacksonians. Jackson also knew that Congress had approved the Indian Removal Act in 1830, and, no doubt, were weary of dealing with the Cherokee problem.

<sup>74</sup> LaVere, David, *Contrary Neighbors: Southern Plains and Removed Indians in Indian Territory* (Norman: University of Oklahoma Press, 2000), 15; Gary E. Moulton, *John Ross: Cherokee Chief* (Athens: The University of Georgia Press, 1978), 54.

<sup>75</sup> Dale and Litton, *Cherokee Cavaliers*, 12-14; Vipperman, "The Particular Mission," 311.

<sup>76</sup> Woodward, *The Cherokees*, 183.



disappointed.<sup>77</sup> Hoping to attract a larger crowd, Schermerhorn announced his own plans to discuss distribution of the annual annuity payments at a special meeting three months later. He suggested dividing the funds equally among the citizens as opposed to delivering the entirety of the payment to Ross for use in the national treasury. Ross promised a large attendance if he could obtain a promise that the issue would be placed before the people for a vote.<sup>78</sup> Ultimately, the Cherokees voted overwhelmingly to allow Ross to distribute the funds as he saw fit through the National Council and treasury.<sup>79</sup> The Cherokee people had elected Ross to be their principal chief, and the vote simply affirmed their trust in his leadership.<sup>80</sup>

Seizing the opportunity to broach the subject before a larger crowd, Ridge presented the treaty to those gathered for the annuity vote. However, there was little, if any, willingness among those gathered to accept its provisions. Moreover, when he later presented it at the national assembly in October, the Cherokees once again rejected it. When Schermerhorn announced the date for the official treaty council to convene at New Echota in December, he did so with the realization that he had not added a single Cherokee to the ranks of the treaty party.<sup>81</sup> This lack of support for the treaty

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<sup>77</sup> Ehle, *Trail of Tears*, 280.

<sup>78</sup> John Ross to John Schermerhorn, July 7, 1835, in Moulton, *Papers of Chief John Ross*, 1:339.

<sup>79</sup> The vote was 2,225 in favor of a lump sum payment to the national treasury to 114 votes for individual distribution; Woodward, *The Cherokees*, 183.

<sup>80</sup> Woodward, *The Cherokees*, 182; Vipperman, "The Particular Mission," 307.

<sup>81</sup> Moulton, *John Ross*, 72.

proved to be a systemic condition as most Cherokees continued to follow Ross's leadership and resisted removal entirely.

Although historians assign a certain political influence to John Ridge and his pro-treaty faction, in reality, he was politically impotent without the white governments in Georgia and the United States propping him up. Even with the support and encouragement of the United States, only about two percent of the Cherokee people attended the council at New Echota in December 1835, and less than one-half-of-one percent of the population voted in favor of the treaty.<sup>82</sup> The Cherokee people were against the Treaty of New Echota, and John Ridge did not possess the political clout to change their minds. The fateful treaty, signed on December 29, 1835, has been heralded by historians as the wedge that divided the Cherokee Nation into two rival political factions. Use of the word "faction" – which connotes a small group – in reference to Ross and his supporters, delegitimizes the political acumen of the Cherokee Nation and assigns a more significant political prominence to a very small group of rivals than actually existed .

Historians propel Ridge to a position of influence equal to that of John Ross, and while doing so, ignore the political authority of the voting Cherokee public. Wilfred Knight refers to Ross's followers as a "faction," while calling Ridge's followers the "Treaty Party" (notice his use of capitalization). Rampp

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<sup>82</sup> Clarissa Confer, *The Cherokee Nation in the Civil War* (Norman: University of Oklahoma Press, 2007), 20.

and Rampp, LeRoy H. Fischer, and Barbara Cloud refer to both groups as “factions.” Although Clarissa Confer calls the treaty “fraudulent,” she also refers to Ross’s followers as a “faction,” denoting a small group. Theda Perdue posits that the treaty was signed by a “resentful middle class” exerting its influence on the “aristocracy” of the Cherokee Nation.<sup>83</sup> The truth is, the United States used John Ridge and a hand full of Cherokee people to accomplish what Andrew Jackson and many white officials wanted done. By assigning labels to the two groups of Cherokees and by distributing power, influence, and authority between them, historians have produced a much tidier narrative than the historical record supports. The groups have been granted a level of equality that never existed, and the influence assigned to Ridge and his tiny band of supporters has been imagined. In reality, Ridge’s significance rests solely in Andrew Jackson’s manipulation of the so-called Treaty Party. Ridge was simply a puppet of white supremacists.

The Cherokee people, in compliance with their own constitution, elected Ross principal chief. Moreover, the Cherokee National Council, duly elected in accordance with the same constitution, authorized Ross to act as the nation’s representative in negotiations with the government in Washington. Clearly,

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<sup>83</sup> Wilfred Knight, *Red Fox: Stand Watie and the Confederate Indian Nations during the Civil War Years in Indian Territory* (Glendale: Arthur H. Clark, Co., 1988), 26; Lary C. Rampp and Donald L. Rampp, *The Civil War in the Indian Territory* (Austin: Presidial Press, 1975), vii; James Anderson Slover, *Minister to the Cherokees: A Civil War Autobiography*, edited by Barbara Cloud (Lincoln: The University of Nebraska Press, 2001), xxiii; LeRoy H. Fischer, *The Civil War Era in Indian Territory* (Los Angeles: Lorrin L. Morrison, 1974), 48; Confer, *The Cherokee Nation*, 20-22; Perdue, “The Conflict Within,” 483.

Ross possessed influence and authority that Ridge did not. While historians recognize the Treaty of New Echota as a fraudulent document and acknowledge the small size of the Ridge-led faction who signed it, they delegitimize the Cherokee Nation by elevating Ridge and his followers to a position of political influence they did not possess. Moreover, by elevating Ridge and his tiny faction to political prominence, historians also delegitimize the opinion and will of the Cherokee people. This delegitimization plays out again in narratives of the Cherokee Nation during the 1860s. Stand Watie has received much the same historical treatment for his actions during the Civil War and, just as with the Ridge family in the 1830s, has been granted a political influence that he did not possess. The backing of the Confederate government provided Watie with the only real influence he had. However, he used that influence to wreak havoc on anyone who supported the Ross-led government.

The governments of Georgia and the United States ignored Cherokee sovereignty as they exerted pressure on the Indians to relinquish their homelands, and by doing so, they also delegitimized the Cherokee Nation as an autonomous political body. Major William M. Davis, an enrolling officer assigned to encourage individual Indians to agree to emigrate, accused Schermerhorn of purposely trying to divide the Cherokees so that he could more easily obtain a removal treaty.<sup>84</sup> Georgia governor Wilson Lumpkin had promised Ridge, Boudinot, and “their friends” state protection “under any

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<sup>84</sup> Moulton, *John Ross*, 76.

circumstance,” as they sought to secure a removal treaty.<sup>85</sup> Three months prior to the signing of the treaty at New Echota, Ridge thanked Lumpkin for this protection under the Georgia Guard. “I do sincerely believe,” he wrote, “that this Guard is necessary to be continued in this country until the treaty is consummated.”<sup>86</sup> Elias Boudinot, writing to his brother Stand Watie, confessed that the federal government had promised to protect their rights as long as they agreed to a treaty. Jackson’s decision to limit his diplomatic interaction to Ridge and his followers reveals the limits to which the administration would go to obtain a signed treaty of removal from the Cherokee Nation. Ridge cheerfully wrote to his father that “the United States will never have anything more to do with John Ross.”<sup>87</sup> Though overstated, Ridge became the only remaining point of contact between Andrew Jackson and the Cherokee Indians east of the Mississippi River.

Jackson’s delegitimization of the Cherokee Nation manifested itself in his disregard for tribal sovereignty. The treaties between the Cherokee Nation and the United States provided specific safeguards for that sovereignty; and, even though the Supreme Court upheld the authority of those treaties, Jackson chose to ignore the constitutional mandate to honor the federal government’s responsibility toward the Cherokee Nation. Yet, Jackson succeeded in

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<sup>85</sup> Perdue, *Slavery and the Evolution of Cherokee Society*, 67.

<sup>86</sup> John Ridge to Wilson Lumpkin, September 22, 1835, Cherokee Removal and the Trail of Tears Collection, Digital Public Library of America online (Hereafter cited as DPLA).

<sup>87</sup> John Ridge to Major Ridge, et al., March 10, 1835, Dale and Litton, *Cherokee Cavaliers*, 13.

manipulating constitutional law by calling on supporters in the Senate to ratify the fraudulent treaty of New Echota, even in the face of wide public opposition. Historians trumpet the narrowness with which the treaty passed the Senate's scrutiny by emphasizing the one-vote margin achieved for ratification.<sup>88</sup> However, the fact that ratification requires a two-thirds majority of those Senators voting exposes the widespread treachery in the Upper House. The Senate, therefore, shares the villainous responsibility for the "Trail of Tears" that history has readily bestowed on Jackson alone.

If a Senate-ratified treaty becomes the "supreme law of the land," according to the United States Constitution, did the ratification of the fraudulent treaty of New Echota remove the fraudulence?<sup>89</sup> Jackson believed it did. He believed that once it was ratified, it became law. Ross argued vehemently against it, although he feared that the government would enforce a ratified treaty, whether fraudulent or not. He contended that the treaty was unauthorized and, therefore, should not be ratified.<sup>90</sup> To the federal government, there was no question about its authenticity. Once the treaty was ratified, the United States enforced it.<sup>91</sup> In 1838, President Martin Van Buren, Jackson's successor, dispatched General Winfield Scott to oversee the forced

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<sup>88</sup> Vipperman, "The Particular Mission," 313; Confer, *The Cherokee Nation*, 20; Foreman, *Indian Removal*, 269.

<sup>89</sup> LeRoy H. Fischer argues that the treaty became law despite the signatures of unauthorized persons; Fischer, *The Civil War Era*, 47.

<sup>90</sup> John Ross to the Senate, March 8, 1836, in Moulton, *Papers of Chief John Ross*, 1:412.

<sup>91</sup> Grant Foreman, ed., "The Murder of Elias Boudinot," *Chronicles of Oklahoma* 12, no. 1 (March 1934): 19.

removal of the Cherokee people. Ross's argument that the treaty was worthless became moot when the army arrived to enforce it.

In a scathing letter to the secretary of war, Major Davis assigned to Schermerhorn full responsibility for the fraudulence of the treaty. He accused the commissioner of attempting to mislead the president by presenting the treaty as having been "made with the *whole Cherokee nation*" (italics original). Davis believed that, if the Senate ratified the treaty, it would become law. He attempted to warn Cass, who had already ceased communication with Ross, that the only way the federal government could enforce such a treaty would be by "the strong arm of force."<sup>92</sup> Davis deplored the fact that there were less than one hundred voters representing the near seventeen-thousand Cherokee citizens, and that none of those voting on Schermerhorn's treaty had been authorized to do so by the National Council.<sup>93</sup> He also accused Schermerhorn of trying to conceal the fraudulence by taking the treaty to other towns to gather additional signatures. Schermerhorn announced a meeting in North Carolina, near the Valley towns, and prepared a feast for the more than five-thousand Cherokees who lived in the vicinity. No one came.<sup>94</sup>

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<sup>92</sup> William M. Davis to Lewis Cass, March 5, 1836, *House Documents*, 24 Cong., 1 Sess., No. 286, pp. 148-154, LOC.

<sup>93</sup> Foreman, *Indian Removal*, 269; Woodward, *The Cherokees*, 190; Moulton, *John Ross*, 76.

<sup>94</sup> *Ibid.*; Ehle, *Trail of Tears*, 300; Vipperman, "The Particular Mission," 307; William G. McLoughlin, *Champions of the Cherokees: Evan and John B. Jones* (Princeton: Princeton University Press, 1990), 136; Moulton, *John Ross*, 76.

Davis was not present at the signing of the Treaty of New Echota, but he had inferior grade officers who were; and they quickly reported the irregularities to Davis. Lieutenant M. W. Bateman, of the 6<sup>th</sup> United States Infantry, reported first-hand that there were only seventy to eighty Cherokees voting. He claimed to have counted only 203 people present during the final session, including women and children. Lieutenant Jonathan L. Hooper, of the 4<sup>th</sup> United States Infantry, and commandant of federal troops in the Cherokee Nation, agreed with Bateman as to the overall attendance of the crowd. He claimed that there was never more than 300 Cherokees present at any one time during the week. Dr. C. M. Hitchcock and Mr. James C. Price concurred.<sup>95</sup> James J. Trott, an observer of the events at New Echota, later told Ross that there were only about one hundred Cherokee men present who favored the treaty.<sup>96</sup> Unbeknownst to Davis, Schermerhorn was not alone in the collection of the simulated treaty; therefore, his charges fell on deaf ears in Washington. The duplicitous Jackson presented the treaty to the Senate on March 5, the day Davis penned his missive to Secretary of War Lewis Cass. However, breaking with tradition, Jackson failed to send a copy to the House of Representatives. This gesture usually occurred as a way of informing the house that certain appropriations might be needed in order to carry out the stipulations should

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<sup>95</sup> Jonathan Hooper to M. W. Bateman, February 5, 1836; C. M. Hitchcock to M. W. Bateman, February 5, 1836; James C. Price to M. W. Bateman, February 4, 1836, *House Documents*, 24 Cong., 1 Sess., No. 286, pp. 164-165.

<sup>96</sup> Dan B. Wimberly, *Cherokees in Controversy: The Life of Jesse Bushyhead* (Macon: Mercer University Press, 2017), 67-68.



ratification occur. Jackson opted to limit the treaty's visibility, at least until he could get it through the Senate. He believed that even a fraudulent treaty, once ratified, became law.<sup>97</sup> He just needed to disguise the fraudulence as long as possible.

Instead of surrendering to the vulgarity of Jackson's Indian policy and removing quietly westward, Ross amped up his appeals to Washington for redress. In the months following the treaty, he collected 15,665 signatures on a petition presented to the Senate.<sup>98</sup> Despite his efforts, the Senate ratified the treaty on March 18, 1836. Jackson signed it into law on March 23.<sup>99</sup> The Treaty of New Echota allowed the Cherokees two years to prepare to emigrate. Ridge and his family did not wait that long, avoiding the tragedy of the infamous "Trail of Tears" by emigrating early.<sup>100</sup> Because of their utility in securing the treaty, they were allowed more "leisure and facilities" in gathering their belongings, were protected along the route, and arrived in Indian Territory with a considerable bit of wealth.<sup>101</sup> Moreover, the members of the Ridge faction were reimbursed for their expenses in negotiating the treaty, while Ross and the authorized delegation, who traveled to Washington on multiple occasions, were denied the same courtesy.<sup>102</sup> Vipperman asserts that the failure of the

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<sup>97</sup> Foreman, "The Murder of Elias Boudinot," 19.

<sup>98</sup> Perdue, *Slavery and the Evolution of Cherokee Society*, 67; McLoughlin, *Champions of the Cherokees*, 136; Confer, *The Cherokee Nation*, 20; Foreman, *Indian Removal*, 269.

<sup>99</sup> Moulton, *John Ross*, 77.

<sup>100</sup> Perdue, *Slavery and the Evolution of Cherokee Society*, 67.

<sup>101</sup> *Ibid.*, 19-20.

<sup>102</sup> Moulton, *John Ross*, 76.

Cherokees to meet the removal deadline is what led to the tragedy of the forced march to Indian Territory.<sup>103</sup> Ross and the Cherokees would, no doubt, disagree.<sup>104</sup> Had the authorized delegation negotiated the treaty, the bulk of the tribe would not have resisted emigration as they did. Of the twelve thousand Cherokees who were forced along the “Trail of Tears” in the winter of 1838-1839, as many as four thousand died, including Ross’s wife, who was buried one morning in a shallow grave in Central Arkansas.<sup>105</sup>

The transition of the Cherokee government to Indian Territory was slowed by the reluctance of the “Old Settlers,” those Cherokees who had voluntarily emigrated prior to the Treaty of New Echota, to acknowledge the new tribal authority above their own established leadership. Many of the recent emigrants blamed Ridge and his followers for working against Ross and preventing the tribe from achieving consensus. For about 300 newly arrived Cherokee emigrants, Ridge had gone too far. Apparently, prior to emigration, Ross blocked a plan to execute John Ridge, Major Ridge, and Elias Boudinot, under the blood-revenge law John Ridge himself helped revive.<sup>106</sup> However, this time the chief would not be able to stop it. The three were executed on the

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<sup>103</sup> Carl J. Vipperman, “The Bungled Treaty of New Echota: The Failure of Cherokee Removal, 1836-1838,” *The Georgia Historical Quarterly* 73, no. 3 (Fall 1989): 540.

<sup>104</sup> Dale and Gaston, *Cherokee Cavaliers*, 4.

<sup>105</sup> Mary Jane Warde, *When the Wolf Came: The Civil War and the Indian Territory* (Fayetteville: University of Arkansas Press, 2013), 19.

<sup>106</sup> Foreman, “The Murder of Elias Boudinot,” 23.

morning of June 22, 1839, while Ross's son, Allen, stayed with the chief to prevent him from discovering the plot.<sup>107</sup>

According to Allen Ross, the three hundred plotters passed sentence on only three men: John Ridge, Major Ridge, and Elias Boudinot.<sup>108</sup> Even though Stand Watie initially feared for his own life, there is no evidence that he was ever one of the intended targets.<sup>109</sup> Watie would seek retribution for the executions of his family and, over the next few years, several Cherokees died in an undeclared civil war.<sup>110</sup> Historians have surmised the origin of the Ross-Watie conflict, one that has come to define the narratives of the Cherokee Nation in the mid-nineteenth century, was the Treaty of New Echota. Again, history has accused Watie of playing a large role in the negotiations of the fraudulent treaty of 1835; however, other than the fact his signature appears on the treaty, there is little evidence he participated in the negotiations. As late as November 25, 1835, only five weeks before the signing of the Treaty of New Echota, Elias Boudinot wrote to John Ross and suggested his younger brother, Stand Watie, as a potential substitute to accompany the chief to Washington. Boudinot had decided to stay behind and attend Schermerhorn's meeting at New Echota in December. He wrote of Watie, "Though probably not particularly known to you, from his modesty, yet he is a man of sterling sense and integrity,

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<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Dale and Gaston, *Cherokee Cavaliers*, 4.

<sup>110</sup> Foreman, "The Murder of Elias Boudinot," 22.

and you will be pleased to find him so.”<sup>111</sup> The twenty-eight-year-old Watie accompanied Ross to Washington. His signature was added to the treaty on March 1, 1836, in Washington, after the United States Senate made a few minor alterations to the original agreement.

The events surrounding the signing of the Treaty of New Echota laid the foundation for the narratives of the Cherokee Nation during the Civil War Era. However, unless we understand how those events helped develop Ross’s political motivations, our narratives of the Cherokee Nation during the Civil War Era will be incomplete. In fact, the development of Ross’s political beliefs was one of the most significant occurrences for the Cherokee Nation during the 1830s. His vociferous demands that the federal government provide the protection promised to the tribe would change over time and would drive Cherokee-white relations on numerous occasions throughout the nineteenth century. Initially, the white intruders in Georgia brought Ross to Washington to demand the protection promised in the tribe’s treaties. Upon the Cherokees’ arrival in Indian Territory, the proximity to nomadic raiders of the plains created a new concern for the tribe.<sup>112</sup> Finally, with the start of the Civil War in 1861, the need for protection would force Ross to make a difficult decision as the invading Confederate army became, perhaps, the Cherokees’ most dangerous intruders to date.

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<sup>111</sup> Elias Boudinot to John Ross, November 25, 1835, in Moulton, *Papers of Chief John Ross*, 1:376.

<sup>112</sup> LaVere, *Contrary Neighbors*, 24-25.

Ross's belief in the need for tribal unity would also be a major theme of Cherokee policy during the Civil War. As external forces threatened tribal sovereignty, Ross encouraged his people to remain united in defense of their way of life. The need for unity would become paramount as the Civil War arrived in Indian Territory, leading Ross to extend his appeal to the other tribes in the vicinity. The arrival of the Confederate Army posed a threat to all the tribes, and Ross tried to keep them together. Even after making the decision to align with the Confederacy, Ross reached out to his Indian brothers and asked them to consider the same course "that the united Brotherhood of the Indian Nations might be preserved and perpetuated."<sup>113</sup> However, this cry for unity would be misinterpreted by officials of the United States in the months after the war, and the fate of the Cherokee Nation would be altered as a result.

The most important of Ross's political beliefs to develop during the removal crisis was his faith in the process of constitutional law. Even though the federal government often refused to extend due process to the Indians, Ross continued to rely on the system, nonetheless. The Supreme Court decision to uphold the authority of the Cherokees' treaties with the federal government only strengthened Ross's resolve. In addition, the Treaty of Hopewell guaranteed the Cherokees the right to petition Congress for redress in the event tribal interests were encroached upon, and Ross utilized this

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<sup>113</sup> John Ross to the Chiefs of the Shawnees, Senecas, and Quapaws, September 10, 1861, in Moulton, *Papers of Chief John Ross*, 2:487.

option readily. His frequent trips to Washington during the removal crisis revealed his belief that Congress would ultimately do the right thing and uphold the government's responsibilities to the Cherokee people. All he needed to do was remain vigilant on behalf of his people. The onset of the Civil War and the invasion of Indian Territory by the Confederate Army prevented Ross from petitioning Washington for assistance for the first year of the war. However, as soon as he had the opportunity to travel to the White House, he visited with President Abraham Lincoln and entreated him for relief. Ross's faith in the process of constitutional law seemed finally to pay off as Lincoln expressed his interest in honoring the government's treaties with the Cherokee Nation. However, an assassin's bullet in the Spring of 1865 did more than just disappoint the Cherokee Nation. It radically altered U.S. Indian policy in the years following the Civil War.

Ross and Ridge appear to be on opposite sides of the major issue facing the Cherokee people during the Removal Era of the 1820s and 1830s. Long political rivals, the two men came together in unity at the head of the nation as the governments of Georgia and the United States commenced an attack on tribal sovereignty. President Jackson, noticing a weakening in the resolve of Ridge, successfully drove a wedge between the two men, isolating Ridge politically from Ross and the remainder of the tribe. Ridge's involvement in the fraudulent Treaty of New Echota cemented his fate as he, his father, and his nephew were executed in 1839, in accordance with Cherokee law. The

political division between Stand Watie and John Ross was not so clearly tied to New Echota. Watie had little involvement in the treaty, and his hatred for Ross stemmed more from his belief that the chief was somehow responsible for the execution of his family members. Even though the two men came together in peace in 1846, the relationship remained strained until the start of the Civil War, when it once again turned to violence and murder.

Finally, a new analysis of the events surrounding New Echota reveals that John Ridge was politically impotent on his own. As a cog in the wheel of Cherokee government, Ridge was a successful contributor to tribal leadership as he authored laws and helped bring growth and unity to the Cherokee Nation. However, on his own, he proved to be less influential than historians have assumed. Without the backing and support of the two white governments, Ridge would have remained impotent. He was more a marionet of Jackson's political whims than an influencer of Cherokee history. Stand Watie would find himself in a similar position during the Civil War. Until the Confederate Army arrived and propped him behind a colonel's commission, Watie remained quietly in the background of Cherokee influence. Watie and his followers would bemoan the Cherokee-Confederate alliance as a threat to this newfound power; and once Ross became noncommittal in his allegiance to the Confederates, Watie increased the ferocity with which he attacked members of

his own tribe for supporting the chief.<sup>114</sup> The influence of the Ridge-Boudinot-Watie faction, as it has been called, has been misunderstood. Once again, by elevating this minority to a level of unrealistic and illegitimate influence, historians delegitimize the strength and resolve of the Cherokee Nation under the leadership of John Ross. That strength and resolve would be most crucial if the Cherokee Nation hoped to survive the horrors of the Civil War.

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<sup>114</sup> William P. Adair and James M. Bell to Stand Watie, August 29, 1861, in Edward Everett Dale, "Some Letters of General Stand Watie," *Chronicles of Oklahoma* 1 no. 1 (January 1921): 36-38.



### CHAPTER III

#### SECESSION AND THE PRESERVATION OF A NATION

On August 1, 1838, after the Treaty of New Echota and prior to the forced removal west, the Cherokee National Council drew a line in the Georgia sand, refusing to be held accountable for a treaty they viewed as fraudulent, despite its ratification. The council passed a resolution that declared the treaty null and void and reaffirmed the tribe's outright title to the land. The "Resolutions of 1838" also declared the Cherokee Nation to be a "distinct national community," possessing all the "attributes of sovereignty." It also asserted that this political position existed in perpetuity. In short, the Cherokees wished to remain where they were.<sup>1</sup> However, their claims of unmitigated sovereignty and outright defiance did not reach Washington in time to prevent, or even delay, the arrival of Winfield Scott and the United States Army to compel the emigration to the west along the "Trail of Tears." However, had the resolutions reached Washington in time, the federal government was in no way prepared to recognize Cherokee sovereignty. In fact, the Supreme Court was still searching for a sense of consonance with its own definition of tribal sovereignty. This judicial struggle has left a legacy that helps historians better

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<sup>1</sup> "Annual Report of the Commissioner of Indian Affairs," November 25, 1839, Annual Reports of the Commissioners of Indian Affairs, 1826-1932, University of Wisconsin Libraries online (Hereafter cited as ARCIA).

understand nineteenth-century Indian relations in ways John Ross and his contemporaries never could.

In his 1839 annual report, Thomas Hartley Crawford, who served as commissioner of Indian affairs through the Van Buren, Harrison, and Tyler administrations from 1838 to 1844, acknowledged having received a copy of the Resolutions only after the completion of the forced march. Nonetheless, he chose to address the question of tribal sovereignty. “The Government exerts control over all within the territorial limits of the United States,” he wrote. “It is an attribute of sovereignty which cannot be controverted and could not be yielded without destroying the vital principal.”<sup>2</sup> Tribal sovereignty in the United States exists only at the discretion of the federal government. The Constitution serves as the “supreme law of the land,” defining relationships and responsibilities within the nation. A treaty, also legally binding on the United States, relinquishes a portion of that sovereignty, granting it to another entity, in a sense, weakening the United States proportionally.<sup>3</sup> In theory, a treaty stipulation requiring the United States to protect the interests of the Cherokee Nation requires the action of the government to do so. The government must act in obligation to the treaty or be guilty of abrogation. However, the sovereignty of the United States is supreme, and allows the nation to change the treaty relationship at its own discretion. When John Ross and the Cherokee

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<sup>2</sup> Ibid.

<sup>3</sup> “Annual Report of the Commissioner of Indian Affairs,” December 1, 1836, ARCIA.

Nation repudiated the Treaty of New Echota on the grounds that the Cherokee National Council had not approved it, the United States invoked its sovereignty by ratifying and enforcing the treaty anyway. As part of its sovereign rule, the United States had granted the Cherokees the right to govern themselves under their own constitution; however, that constitution did not obligate the United States to either action or inaction. In other words, it did not need the approval of the Cherokee Nation Council to secure a treaty with a minority faction. The United States claimed the right to do so because of its position of supreme sovereignty.

From Commissioner Crawford's perspective, sovereign power belonged solely to the United States, and any authority retained by the Cherokee Nation existed only at the discretion of the federal government. John Ross, on the other hand, believed, at least prior to removal, that the Cherokee Nation retained full sovereignty, and was only limited by those rights it had voluntarily ceded to the United States. As was the case with *Worcester v. Georgia* (1832), the question of tribal sovereignty echoed in the halls of America's court system throughout the nineteenth and into the twentieth and even into the twenty-first centuries. Chief Justice John Marshall laid out his doctrine of first discovery in *Johnson v. McIntosh* (1823) in which he argued that title to the land belonged to the European discoverer. In short, sovereignty is a European right only. However, Marshall appeared to undo his own opinion less than a decade later, when the Court, in *Worcester*, recognized Cherokee sovereignty over land

shared with the state of Georgia.<sup>4</sup> Georgia claimed the land under the discovery doctrine, while the Cherokee claim came from its treaty with the United States. The seemingly contradictory rulings indicate how much difficulty the Supreme Court has had in defining Indian sovereignty, even into the twenty-first century, as discussed in Chapter Seven.<sup>5</sup> However, instead of overturning the discovery doctrine, the ruling served to validate the nation's treaty-making process with Indian tribes.

Prior to removal, Ross viewed the relationship between the Cherokee Nation and the United States as a contest between dueling sovereigns, each vying for a larger chunk of the political pie.<sup>6</sup> The Supreme Court's ruling in *Worcester* supported this opinion by endorsing Cherokee sovereignty over Georgia land, reaffirming the federal government's treaty-making process with Native Americans. However, when Congress and the Supreme Court refused to question Andrew Jackson's inaction following the case, the president quickly recognized the gift of political impunity. With neither branch of government stepping up to intercede on behalf of the Cherokees, the executive office would continue unabated, no doubt, in its quest to drive the American Indian across

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<sup>4</sup> Lindsay G. Robertson, *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands* (Oxford: Oxford University Press, 2005), 99, 143-144; Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 6.

<sup>5</sup> Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln: University of Nebraska Press, 1984), 155.

<sup>6</sup> David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System*, third ed. (Lanham: Rowman and Littlefield, 2011), 72.

the Mississippi River.<sup>7</sup> The fact that the United States acted with impunity in its creation, ratification, and consummation of the fraudulent Treaty of New Echota helped the Supreme Court redefine Indian sovereignty at the turn of the twentieth century when it recognized the federal government's adverse-possessory right, in *Lone Wolf v. Hitchcock* (1903), to abrogate Indian treaties at will.<sup>8</sup> The fact that no oversight existed in U.S.-Indian relations gave the United States the right to define the relationship itself. In short, the government could freely abrogate an Indian treaty so long as no one stopped them from doing so. Clearly, the United States had full sovereignty in its relations with the Cherokees.

By signing the Treaty of New Echota, John Ridge and his small faction surrendered the Cherokee claim to sovereignty by implicitly admitting to the United States that the tribe was incapable of securing it on their own.<sup>9</sup> The Resolutions of 1838 represented a last-minute attempt by Ross and the National Council to hold that sovereignty. However, the enforcement of the treaty at the hands of the United States Army nullified the resolutions and brought major change to Cherokee-U.S. relations. No longer could the Cherokee people hope to be counted among the sovereign nations of North America. The forced removal did more than just carry the tribe away from their

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<sup>7</sup> Matthew L. Sundquist, "Worcester v. Georgia: A Breakdown in the Separation of Powers," *American Indian Law Review* 35, no. 1 (2010-2011): 250.

<sup>8</sup> Hoxie, *A Final Promise*, 155.

<sup>9</sup> Prucha, *American Indian Treaties*, 7.

roots as an autonomous, independent nation; it forced them to recognize their suzerain relationship with the federal government.<sup>10</sup> Ross's idea of dueling sovereigns died somewhere along the "Trail of Tears."

The Treaty of New Echota changed U.S.-Cherokee relations because it ceded away lands promised to the tribe in perpetuity through a ratified treaty with the United States. In short, it showed Ross and the Cherokee people what the Supreme Court would see in *Lone Wolf*, that guaranteed ownership of tribal lands was never fully guaranteed. A treaty relationship with the United States was tenuous if the federal government could abrogate those treaties at will. Ross realized that this shaky treaty relationship was all the tribe had remaining. He also realized that any remnant of Cherokee sovereignty existed only in the pages of the tribe's treaties with the United States; and, if the Cherokee Nation wanted to retain its last vestige of autonomy, it must do whatever necessary to protect that treaty relationship.

Although a treaty with the United States often meant an extinction of rights, Francis Paul Prucha has identified three benefits provided by Indian treaties, benefits that Ross would deem extremely valuable as the Civil War years approached. First, the treaties provided an outright political recognition for an Indian nation. Prucha argues that many tribes valued this recognition above any other concession, often trading for less land just to acquire it.<sup>11</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> Prucha, *American Indian Treaties*, 2-3.

Second, tribes were given a level of autonomy over their own land.<sup>12</sup> Ross viewed this as a key component of the treaties, retaining a level of sovereignty in the tribe's ability to rule its own land holdings. He believed that Cherokee land ownership was critical to retaining tribal identity and nationality.<sup>13</sup>

The third benefit of having a treaty with the United States was the protected existence that came with it.<sup>14</sup> For the Cherokee Nation, the idea of federal protection had already proven to be trivial because of the government's refusal to uphold that particular part of the tribe's treaties in their interactions with Georgia citizens in the 1820s. "Georgia struck at the heart of the treaty system," claims Prucha, "for it denied the Indians' title to the land, their sovereign jurisdiction over the territory they claimed."<sup>15</sup> Unfortunately, the need for protection increased with removal to Indian Territory as a new predator sought to harass the Cherokee people. The Comanche, Apache, and Kiowa tribes of the Southern Plains posed the greatest perceived threat to the Cherokees and other tribes of Indian Territory in the years immediately following removal, especially since there was no large-scale white encroachment. The southern agrarian lifestyle of the Southeast tribes

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<sup>12</sup> *Ibid.*, 157.

<sup>13</sup> "Address to the Cherokees," August 21, 1861, in Gary E. Moulton, ed., *The Papers of Chief John Ross*, 2 vols. (Norman: University of Oklahoma Press, 1985), 2:481.

<sup>14</sup> Prucha, *American Indian Treaties*, 2-3.

<sup>15</sup> *Ibid.*, 157.

contrasted with that of the Plains Indians, putting the more placid Southeast Indians at greater risk of attack from their more aggressive neighbors.<sup>16</sup>

As the Cherokees were making their way west, President Martin Van Buren, Jackson's successor, announced the next phase of federal Indian policy. If the nation's Indians were to be transplanted west of the Mississippi, the United States would have to extend its military arm into the Plains in order to provide the protection promised in most treaties. For many of the tribes, particularly the Cherokees, the fear that the president would do no more to protect them in their new homes than he did when they were in their original ones caused tension among the Indians as they emigrated into lands already occupied by other, more hostile, tribes.<sup>17</sup> Fort Smith, in western Arkansas, built in 1817 to protect the early Cherokee emigrants, was closed in 1824 with the construction of Fort Gibson in the Cherokee Nation and Fort Towson in the Choctaw Nation to the south. Van Buren ordered Fort Smith to be reopened with the removal of the main Cherokee population. These posts quickly became the center of government activity in the territory as Indian agents moved in to join federal troops in the implementation of Indian policy. In 1841, Van Buren's successor, John Tyler, suggested a series of new forts be built throughout the southern Plains, designed to protect white traders, travelers, and settlers, as well as the Indians. Fort Scott in Southeast Kansas and Fort

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<sup>16</sup> David La Vere, *Contrary Neighbors: Southern Plains and Removed Indians in Indian Territory* (Norman: University of Oklahoma Press, 2000), 25-27.

<sup>17</sup> "Annual Report of the Commissioner of Indian Affairs," December 1, 1836, ARCIA.



Washita in south central Indian Territory were constructed in 1842. Fort Arbuckle, built in 1850, would be added eight years later to protect the stream of travelers headed to California.

Although he was most immediately concerned with the threat emanating from the Plains, Ross kept a cautious eye on two developing situations closer to home. First, at the time of the New Echota treaty on December 29, 1835, Indian Territory lay somewhat isolated from white society. However, within six months of the treaty's signing, Texas won its independence from Mexico and Arkansas achieved statehood, bringing a fresh flood of white Americans to the very borders of Indian Territory just as the Cherokees were shaking off the dust from the "Trail of Tears." Ross's experiences in Georgia reminded him of the constant threat posed by a proximal white society. On May 14, 1839, Ross wrote to General Matthew Arbuckle, the officer in charge of protecting the Cherokee Nation. "The peaceful inhabitants of this Nation can only call upon your military authority for protection," he wrote, "and I trust you will take proper steps to prevent all unlawful acts of violence from being perpetrated upon the property & persons of the Cherokees...by Citizens of the U. States."<sup>18</sup>

The second growing threat had arisen within the Cherokee Nation in response to the execution of Major Ridge, John Ridge, and Elias Boudinot in June 1839, hardly three months after the tribe's arrival in Indian Territory. Ross

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<sup>18</sup> John Ross to Matthew Arbuckle, May 14, 1839, in Moulton, *Papers of Chief John Ross*, 1:710.

feared that the federal government would continue to show favoritism to those who had agreed to removal at New Echota. A few weeks after the killings, Ross wrote again to Arbuckle, calling for impartiality. He reminded the general that the United States government presented the fraudulent treaty as if it applied to all Cherokees. If the treaty applied to all Cherokees, he argued, then the promise “to protect the Cherokees from domestic strife” also applies to all, not just those who signed the treaty.<sup>19</sup> Ross hoped the federal government would do in Indian Territory what it had refused to do in Georgia. President Jackson had proven to be duplicitous. Perhaps, Ross hoped, future presidents would acknowledge the nation’s duplicity and vigilantly protect the tribe’s right to self-government.

As the Cherokees were settling into their new homes, Ross did have a moderate amount of formal communication with the Indian bureau, including agent Montfort Stokes. Although Stokes had been the governor of North Carolina from 1830 to 1832, during the height of the Georgia controversy, there is no evidence of extended interaction between him and Ross prior to removal. However, his presence as Cherokee agent in Indian Territory did not encourage Ross. Stokes, a Jacksonian Democrat who had supported removal, had become Cherokee agent in Indian Territory at the conclusion of Jackson’s presidency. The idea that a former governor and U.S. senator would accept an

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<sup>19</sup> John Ross to Matthew Arbuckle, November 4, 1839, in Moulton, *Papers of Chief John Ross*, 1:770.

appointment as Indian agent a thousand miles from his home is, perhaps, indicative of how much these positions were coveted by white politicians who often became wealthy in the process. Ross's attitude toward the former governor in regard to provisions indicates his dislike, if not distrust, of Stokes's position as agent.

Upon arrival in Indian Territory, the emigrants found that the provisions promised by the government were being held at depots conveniently located for the white traders, but inconvenient for the Cherokees. Moreover, much of the beef that awaited them had already begun to rot. Although filled with the diplomatic platitudes of the day, Ross's letter to Stokes betrays his anger. "I deem it my duty," he began, "to request that you as the agent of the United States (*to whom we should apply*) will cause Provisions to be immediately furnished to this portion of the Emigrants at some convenient place" (italics added; parentheses original).<sup>20</sup> It is safe to say that the only reason Ross wrote to Stokes in this matter is because the former governor was the one with control of the provisions and the responsibility to distribute the same. He then asked Stokes to replace the beef with fresh bacon. "Fresh Beef that poor...is unhealthy and unfit for use." He concluded, "I cannot suffer myself to believe the Government of the United States will require the Cherokees to be subsisted on provisions of such description."<sup>21</sup>

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<sup>20</sup> John Ross to Montfort Stokes, April 5, 1839, in Moulton, *Papers of Chief John Ross*, 1:702.

<sup>21</sup> *Ibid.*

By 1851, the string of forts seemed to have secured the peace along the southern plains, and the tribes in Indian Territory were progressing rapidly toward civilization, at least according to Luke Lea, the commissioner of Indian affairs from 1850 to 1853 with the Millard Fillmore administration.<sup>22</sup> The bureau, confident that its Indian policy was working, now turned its attention to the upper plains and the Sioux and Chippewa tribes. The plan was to replicate the success in Indian Territory among the more nomadic tribes of the West. The burgeoning success of the plan to civilize the Southeast Indians, now in Indian Territory, convinced the United States that its decision to remove the Indians had been the correct one. Attempts to remove the Indians from the onslaught of white settlement and the jurisdictional dissent between white state and federal governments had come under heavy attack from all corners of the country. However, the federal government's offer to cover the costs of removal, to subsist the tribes for the first year upon arrival, and to provide generous annuity payments moving forward seemed to satisfy most critics. Coupled with the apparent success of the federal policy, the latter half of the 1840s became one of relative quiet in terms of U.S.-Indian relations, outside of regional conflicts.<sup>23</sup>

However, the mid-1850s disrupted the peace and quiet in Indian Territory as the United States rumbled toward Civil War. The Kansas-Nebraska

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<sup>22</sup> "Annual Report of the Commissioner of Indian Affairs," November 27, 1851, ARCIA.

<sup>23</sup> Prucha, *Indian Policy*, 153-154.

Act of 1854 brought a violent political contest to the very border of the Cherokee Nation, creating an issue for the Cherokees akin to the struggle with Georgia twenty-five years earlier. While historians have discussed the significance of the Kansas-Nebraska Act in the context of the Civil War, it had even broader implications for Ross and the Indians of the region. The opening of the territory to white settlement had caused the United States to secure treaties with the Indians of the region in order to clear the land for white emigrants.<sup>24</sup> The tribes involved were quickly removed to new homes in southwestern Indian Territory. The idea of another round of Indian removal to satiate an expanding white population did not sit well with those tribes already there. Moreover, white settlers often crossed the border into Cherokee-held territory, creating uncertainty among the tribe as memories of Georgia still haunted those old enough to remember. On October 28, 1854, the Cherokee National Council authorized a delegation to Washington to petition the government to acknowledge the rights of the Cherokees and to reaffirm the tribe's ownership of its current land.<sup>25</sup> The quiet of the 1840s had been disrupted by the aggression of the 1850s, and the situation in Kansas would soon erupt in violence, dragging the United States into Civil War.

The new governor of the Kansas Territory, Andrew H. Reeder, did little to keep the peace. Slavery supporters and abolitionists were already taking

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<sup>24</sup> "Annual Report of the Commissioner of Indian Affairs," November 26, 1853, ARCIA.

<sup>25</sup> John Ross to John Thorn, et al., November 22, 1854, in Moulton, *Papers of Chief John Ross*, 2:390.

sides when he arrived; yet he quickly turned his attention away from the major issue of the day and became embroiled in land speculation, trying to establish the new capital on land that he had recently purchased. In the summer of 1855, the Kansas territorial legislature petitioned President Franklin Pierce to remove Reeder from office. The president fired Reeder on August 16.<sup>26</sup> However, the political climate had already soured to the point of bloodshed. In May 1856, an antislavery sheriff was shot in the back in Lawrence by proslavery men.<sup>27</sup> The abolitionist, John Brown and his men arrived too late to assist the anti-slavery faction but took revenge a few days later on Pottawatomie Creek, killing as many as five proslavery men.<sup>28</sup> The fact that Americans had proven their willingness to kill other Americans over the issue of slavery alarmed the nation. In October 1859, Brown led a group of abolitionists in the seizure of the federal armory at Harper's Ferry, Virginia, hoping to arm area slaves and incite an insurrection.<sup>29</sup> Nine months later, abolitionists were accused of burning the town squares in Dallas and Denton counties in North Texas on the same sultry July afternoon, leading to a series of vigilante hangings across the region.<sup>30</sup> The fear of Kansas "Jayhawkers" crossing the Red River and inciting a slave

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<sup>26</sup> Nicole Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* (Lawrence: University of Kansas Press, 2004), 66-67.

<sup>27</sup> *Ibid.*, 101.

<sup>28</sup> *Ibid.*, 109-110.

<sup>29</sup> Michael Fellman, Lesley J. Gordon, and Daniel E. Sutherland, *This Terrible War: The Civil War and Its Aftermath* (New York: Longman, 2003), 1.

<sup>30</sup> Richard B. McCaslin, *Tainted Breeze: The Great Hanging at Gainesville, Texas 1862* (Baton Rouge: Louisiana State University Press, 1994), 22-23.

revolt in North Texas, like the one attempted by Brown, spread as quickly as the fires.<sup>31</sup> The only thing sitting between the home of the “Texas Troubles” and “Bleeding Kansas” was Indian Territory. Civil war was coming to the United States, and the Cherokee Nation found itself caught in the middle of the conflict.

The passage of the Kansas-Nebraska Act has long been heralded as an instigator of the American Civil War because it brought proslavery and antislavery extremists together in the same territory and asked them to decide the political fate of the region. However, the legislation had significant impact on the Indian population just south of the Kansas border in two ways. First, the opening of the Kansas Territory brought white Americans once again to the very border of the Cherokee Nation. A main inducement in the negotiations of the Treaty of New Echota was the withdrawal of the Cherokee people from the onslaught of white Americans. Now three decades later, new settlers who did not recognize the physical limitations of the Kansas border invaded the neutral lands that were controlled by the Cherokee Nation via the 1835 treaty. These intrusions prompted the delegation to Washington to remind the government, once again, of its responsibility to protect the Indians from just such an invasion.<sup>32</sup> Second, many of these new arrivals in Southeast Kansas were avid

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<sup>31</sup> Rhesa Walker Read to his, February 10, 1863. Letters of Rhesa Walker Read, Williams House Museum, DeKalb, Texas (Hereafter cited as WHM).

<sup>32</sup> John Ross to The National Council, November 19, 1857, in Moulton, *Papers of Chief John Ross*, 2:411.

abolitionists and the fear of an attack on Cherokee property rights—which allowed them to own slaves—swept over Ross and the National Council. The presence of slavery had never been the political issue among the Cherokees to the extent it had among white Americans; yet, the thought of outside agitators dictating Cherokee policy angered Ross who demanded the United States honor its obligation to protect the tribes' right to slavery.<sup>33</sup>

As Ross understood the treaties, the United States was obligated to protect the Cherokees in at least four aspects of political and personal rights. First, the federal government had granted the Cherokee Nation fee simple title to the land and had promised to protect their right to possess it. Moreover, the United States was obligated to prevent or remove any and all intruders from the tribe's territory. Based on Cherokee experiences in Georgia, this had the potential of becoming a major issue for the tribe. The second political right promised to the Cherokees was the right to govern themselves, both individually and as a national body, and the federal government had agreed to protect that right. The threat of abolitionists crossing the border from Kansas and interfering with the Cherokee right to formulate and institute their own political agenda prompted Ross to lead another delegation to Washington in 1860.<sup>34</sup>

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<sup>33</sup> John Ross to William P. Ross, June 1860, in Moulton, *Papers of Chief John Ross*, 2:448.

<sup>34</sup> John Ross to Alfred B. Greenwood, April 2, 1860, in Moulton, *Papers of Chief John Ross.*, 2:437.



The Kansas controversy began in 1854, during the administration of President Franklin Pierce. However, the Cherokee delegation sought redress from the James Buchanan administration six years later. During that span, there had been four Indian commissioners, one of whom served in an interim capacity. Ross demanded that Buchanan's secretary of the Interior, Jacob Thompson, promise to protect the Cherokee right to decide for themselves the fate of slavery in their own territory. Thompson, from North Carolina, and Indian commissioner, Alfred B. Greenwood, from Arkansas, were both "disposed to protect the Cherokees against the abolitionists."<sup>35</sup> The pair of proslavery Southerners ordered new Cherokee agent Robert Cowart of Virginia to enforce the treaty as soon as he could reach Indian Territory and assume his post. However, within a few months, all three men, including the Southern Superintendent, Elias Rector of Arkansas, would resign their positions and join their home states in secession. In short, the secretary of the Interior, the commissioner of Indian affairs, the southern superintendent, and the Cherokee agent – the entire hierarchy of the Indian bureau from the Cherokee perspective – resigned in early 1861 and joined the Confederacy. Once again, Ross would have to plead his case before an entirely new administration.

In Ross's evaluation of the Cherokee treaties, the federal government was also bound by the promise to protect Cherokee rights as individuals.

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<sup>35</sup> John Ross to William P. Ross, June 1860, in Moulton, *Papers of Chief John Ross*, 2:448.

Personal safety, from both internal and external enemies, had become crucial to the Cherokee people in the early years after emigration. However, the relative solace of the previous decade had helped the Indians turn their attention to other matters. Finally, the United States had obligated itself to protect the Cherokee people's right to personal property. Ross interjected that this stipulation meant that the federal government must aggressively work to protect the Cherokee people's right to own slaves. The growing abolitionist controversy on the northern border of the Cherokee Nation caused many Cherokees to feel that their slaves might be taken or, worse, incited to rebellion. Ross secured a promise from Secretary Thompson to protect their slave property as well.<sup>36</sup>

While Ross was calling for the United States to honor its treaty obligations to the Cherokee Nation, he also reminded the Cherokee people of their own duties. He called for all the tribes in Indian Territory, not only the Cherokees, to remember their obligations. "Our duty is very plain," he wrote, "We have only to adhere firmly to our respective treaties."<sup>37</sup> Even before the presidential election of 1860, he spelled out what he called the three responsibilities of the Cherokee Nation. First, they were to remain firm in the defense of Cherokee rights as defined by the tribe's constitution and protected

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<sup>36</sup> Ibid.; Theda Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: University of Tennessee Press, 1979), 127.

<sup>37</sup> John Ross to William P. Ross, et al, February 12, 1861, in Moulton *Papers of Chief Joh Ross*, 2:462.

by their treaties with the United States. Second, he called on his fellow Cherokees to resist any interference in the internal affairs of their nation. Any instigation from any source, be it from white or Indian intruder, would endanger the tribe's standing with the federal government. Finally, he urged the Cherokee people to join him in clinging to the treaties with the United States, trusting the government to provide the security and protection promised in those treaties.<sup>38</sup> In a letter to David Hubbard, a former congressman from North Carolina and future Confederate commissioner of Indian affairs, written two months after the attack on Fort Sumter, Ross presented a summation of the tribe's responsibilities. "It is their duty to keep themselves if possible disentangled and afford no grounds to either party to interfere with their rights." To Ross, the most important responsibility of the Cherokee Nation was to protect their limited sovereignty by remaining loyal to the treaties with the United States and staying out of the white man's war.<sup>39</sup>

As much as the events in Kansas pointed Americans toward the possibility of civil war, the election of Abraham Lincoln in November 1860 did so much more, as it became a metaphoric Rubicon for many Southern states. Fearful that the free-soil platform of the newly elected Republican party meant the end of slavery in the United States, South Carolina kicked over the first domino when on December 20, 1860, the state voted to secede from the

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<sup>38</sup> "Annual Message," October 4, 1860, in Moulton, *Papers of Chief John Ross*, 2:450.

<sup>39</sup> John Ross to David Hubbard, June 17, 1861, in Moulton, *Papers of Chief John Ross*, 2:473.

Union. Before the second domino could fall, Cyrus Harris, governor of the Chickasaw Nation, informed Ross that the Chickasaw legislature had formally requested a meeting of the leaders of the Chickasaws, Choctaws, Creeks, and Cherokees, to be held on the seventeenth day of January at the General Council grounds in the Creek Nation, to consider a formal alliance, either in neutrality or in support of secession.<sup>40</sup> In Ross's reply, he warned Harris about the importance of refraining from any action that could be misconstrued as a treaty between the tribes.<sup>41</sup> Such an act would be in direct violation of one of the oldest stipulations of the tribes' treaties with the federal government. Added to the Holston Treaty in 1791, the stipulation prohibited the Cherokee from entering any treaty, even with another tribe of Indians.<sup>42</sup> Ross explained,

Our relations to the United States, as defined by our Treaties, are clear and definite. And the obligations growing out of them easily ascertained. And it will ever be our wisdom and our interest, to adhere strictly to those obligations, and carefully to guard against being drawn into any complications which may prove prejudicial to the interests of our people, or imperil the security we now enjoy under the protection of the Government of the United States as guaranteed by our Treaties.<sup>43</sup>

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<sup>40</sup> Jacob Derrysaw to John Ross, February 4, 1861, in Moulton, *Papers of Chief John Ross*, 2:459; John Ross to Cyrus Harris, February 9, 1861, in Moulton, *Papers of Chief John Ross*, 2:459..

<sup>41</sup> John Ross to Cyrus Harris, February 9, 1861, in Moulton, *Papers of Chief John Ross*, 2:460.

<sup>42</sup> Article II, Treaty of Holston, November 11, 1791, Documents Relating to the Negotiation of Ratified and Unratified Treaties with Various Indian Tribes, online University of Wisconsin (Hereafter cited as *Treaties UW*).

<sup>43</sup> Jon Ross to Cyrus Harris, February 9, 1861, in Moulton, *Papers of Chief John Ross*, 2:460.

By the time of Ross's reply to Governor Harris, five states had joined South Carolina in secession, and the three states bordering Indian Territory were debating their course of action. Arkansas and Missouri called secession conventions to meet in the coming weeks, while Texas passed a declaration of secession and was awaiting a statewide referendum on the matter.<sup>44</sup> The growing tension between North and South caused Ross to shy away from even a resolution in regard to unity with the other tribes of Indian Territory. "Should any action of the Council be thought desirable," he wrote, "a resolution might be adopted, to the effect, that we will in all contingencies rest our interests on the pledged faith of the United States, for the fulfilment of their obligations." Moreover, he added a stern warning, "We ought to entertain no apprehension of any change, that will endanger our interests." He argued that if the other tribes would simply remain loyal to their own treaty responsibilities to the United States, then all of them would be united through *nudum pactum*, a bare promise, an agreement without consideration.<sup>45</sup>

While Arkansas voters were considering whom to send to the secession convention, and less than one week after Ross's reply to Governor Harris, Ross received a letter from Arkansas Governor Henry Rector.<sup>46</sup> Rector, the

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<sup>44</sup> Texas voters approved secession on February 23, 1861. The Arkansas voters called for a secession convention to be held on March 4, while the Missouri convention would meet on February 28.

<sup>45</sup> John Ross to William P. Ross, et al, February 12, 1861, in Moulton, *Papers of Chief John Ross*, 2:463.

<sup>46</sup> The letter was delivered to Ross by Colonel J. J. Gaines, aide-de-camp to Arkansas Governor Henry Rector. Gaines was accompanied by a letter of introduction from Elias Rector, the Confederate Superintendent of Indians Affairs for Indian Territory, Elias Rector to John

cousin of former southern superintendent Elias Rector, warned Ross of the intent of the newly elected president to turn the “fruitful fields” of the Cherokee Nation into a land filled with “abolitionism, free-soilers, and Northern mountebanks.” He reminded Ross of the commonalities between the Cherokee Nation and the other slaveholding states of the South. Rector predicted that by March 4 there would be no less than thirteen states separated from the federal government and that the Cherokee Nation should join them in defense of the slave institution.<sup>47</sup> On the same day he penned the letter to Ross, Congress granted statehood to Kansas as a free state. In his reply, Ross reiterated his stance of loyalty to the tribe’s treaties with the United States and asserted a strong faith in the federal government’s pledge to protect the political and personal rights of the Cherokee people. Moreover, Ross rebuked the governor for his insinuation that the Cherokee people would ever permit the rise of an abolitionist spirit within the Cherokee Nation.<sup>48</sup> To Ross, the fear of abolitionism was never about slavery. It was always about the ability of the tribe to make their own decision concerning the future of the institution.

On February 23, the day following Ross’s reply to Rector, Texas voters approved a secession declaration, joining South Carolina, Mississippi, Alabama, Georgia, Florida, and Louisiana in leaving the Union. However, on

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Ross, February 14, 1861, *War of the Rebellion: Official Records of the Union and Confederate Armies* (Washington, D.C.: Government Printing Office), Ser. I, Vol. I, 683 Hereafter cited as *OR*).

<sup>47</sup> Henry Rector to John Ross, January 29, 1861, *OR*, Ser. I, Vol. I, 683.

<sup>48</sup> John Ross to Henry Rector, February 22, 1861, *OR*, Ser. I, Vol I, 687.

March 21, the Arkansas convention adjourned without having agreed on a secession decree. Governor Rector's prophetic epistle seemed to have overestimated the support for secession in his own state. Moreover, the State of Missouri met in convention to discuss secession; and voted to remain in the Union instead. For a moment, the crisis in the Cherokee Nation seemed to have abated as their nearest neighbors, Arkansas and Missouri, opted to remain loyal to the United States, or at least delayed the decision for a while. The Cherokee Nation could almost exhale as Indian Territory entered a placid, three-week-long interlude.

In the meantime, the Indian convention suggested by Governor Harris had taken place at the Creek Agency without representatives from either the Chickasaw or Choctaw tribes. Apparently, Ross's temporizing spirit in response to Harris's invitation angered the Chickasaw leader who had hoped that the tribes would take formal action in response to the growing controversy around them. Ross encouraged unity, patience, and neutrality and convinced the Creeks and Seminoles to join him. Ross bluntly refused to endorse any agreement that might jeopardize the tribe's treaty relationship with the United States. Instead, the Cherokees, Creeks, and Seminoles agreed "to do nothing, to keep [quiet] and to comply with" their respective treaties. To Ross, perhaps the most significant outcome of the meeting, however, was the decision to "be

found acting in concert and sharing Common destiny.”<sup>49</sup> In the face of uncertainty, Ross believed that the unity of all Indian - not just within the tribes, but between them as well - was vital to the survival and perpetuation of indigenous nationality in Indian Territory. He argued that unity and harmony, though without a formal treaty which would have been illegal, were the only means by which Cherokee rights might be maintained in the current political climate, and he worked diligently over the next few months to keep the tribes of Indian Territory united in defense of their collective homes only to have that call for unity used against him at the end of the war.<sup>50</sup>

The interlude enjoyed by Ross and the Cherokee Nation ended abruptly before dawn on April 12, 1861, when Confederate forces opened fire on the federal garrison at Fort Sumter, South Carolina, launching the American Civil War. In response, Abraham Lincoln issued a call for 75,000 volunteers from the states to help put down the rebellion. Within days, Virginia joined the parade of secession, refusing to go to war against her southern neighbors. On the same day as Virginia’s secession, the U.S. War Department issued a simple order that would resonate throughout Indian Territory and the American West for the next thirty years. On April 17, 1861, the Army ordered Lieutenant Colonel William H. Emory, in command of federal forces in Indian Territory to march “with all the troops in the Indian country west of Arkansas” to Fort Leavenworth,

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<sup>49</sup> William P. Ross, et al to John Ross, March 15, 1861, in Moulton, *Papers of Chief John Ross*, 2:467.

<sup>50</sup> “Proclamation,” May 17, 1861, in Moulton, *Papers of Chief John Ross*, 2:470.



Kansas.<sup>51</sup> The decision had been made to concentrate regular troops for distribution to more important theaters across the nation. On the surface, the order was simple and within the realm of routine military operation. However, the order to withdraw the troops from Indian Territory could never be a simple or routine decision.

Historians have underestimated the impact of the abandonment of the forts in Indian Territory by placing the event into one of three categories. First, some historians argue implicitly - by exclusion - that the withdrawal of federal troops had no connection whatsoever to the events in Indian Territory, and that the abrogation of federal treaty obligations had no impact whatsoever. Annie Heloise Abel, writing in the early twentieth century, penned her narrative of American Indians largely from the perspective of white Confederates and does not mention the withdrawal of federal troops, nor does Ross biographer, Gary E. Moulton.<sup>52</sup> Neither Kenny A. Franks, writing about Stand Watie, nor Theda Perdue, writing about slavery in Cherokee society, mention the withdrawal. Although Christine Schultz White and Benton R. White wrote about the Civil War in the Creek Nation, they omit the event from their work as well.<sup>53</sup>

The second category in which historians discuss the abandonment of the federal forts suggests that the troop withdrawal occurred yet was simply

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<sup>51</sup> E. D. Townsend to William H. Emory, April 17, 1861, *OR*, Ser. I, Vol. I, 648.

<sup>52</sup> Annie Heloise Abel, *The American Indian as Slaveholder and Secessionist* (Lincoln: University of Nebraska Press, 1992); Moulton, *John Ross*.

<sup>53</sup> Christine Schultz White and Benton R. White, *Now the Wolf Has Come: The Creek Nation in the Civil War* (College Station: Texas A&M University Press, 1996).

prefatory to the broader events to come. Historians seem to agree that the abandonment of Indian Territory had little, if any, lasting effect on the inhabitants. Frank Cunningham, who also writes about Stand Watie, only mentions the withdrawal, but mistakenly places it in July 1861 instead of in April where it belongs.<sup>54</sup> Rampp and Rampp claim that the Union troops lost possession of the forts to an aggressively advancing Confederate army, and then retreated to the safety of Fort Leavenworth, Kansas, having willingly surrendered the posts.<sup>55</sup> Wilfred A. Knight, another Watie biographer, and David La Vere mention the withdrawal, but neither historian makes any connection to the broader events that followed.<sup>56</sup>

The third category of historiography makes a connection between the troop withdrawal and the Confederate-Indian alliances that occurred in the subsequent months, yet underestimates the significance of the abrogation. Prominent historians -such as LeRoy H. Fischer, W. Craig Gaines, William G. McLoughlin, and Clarissa W. Confer - recognize the connection of the abandonment and the subsequent Confederate alliances, but none of them addresses it as an abrogation of federal treaty obligations.<sup>57</sup> David A. Nichols

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<sup>54</sup> Frank Cunningham, *General Stand Watie's Confederate Indians* (Norman: University of Oklahoma Press, 1998), 44.

<sup>55</sup> Lary C. Rampp and Donald L. Rampp, *The Civil War in the Indian Territory* (Austin, TX: Presidial Press, 1975), 3-5.

<sup>56</sup> Wilfred Knight, *Red Fox: Stand Watie and the Confederate Indian Nations during the Civil War Years in Indian Territory* (Glendale, CA: Arthur H. Clark, Co., 1988), 59; La Vere, *Contrary Neighbors*, 169.

<sup>57</sup> LeRoy H. Fischer, *The Civil War Era in Indian Territory* (Los Angeles, CA: Lorrin L. Morrison, 1974), 20-21; W. Craig Gaines, *The Confederate Cherokees: John Drew's Regiment of Mounted Rifles* (Baton Rouge: Louisiana State University Press, 1989), 9; William G.

recognizes the troop withdrawal as an abandonment of the treaty requirements to protect the Indians; however, he argues that the abrogation was the final blow to the waffling tribes who no longer had any option but join the Southern cause.<sup>58</sup> Thomas W. Cutrer argues that the Indians saw the abandonment of the forts not only as an abrogation but also as evidence that the United States believed they “could not hold the territory against Confederate incursion.” This motivated the Indians to enter alliances with their southern neighbors.<sup>59</sup> Lela J. McBride, contends that the abrogation “strengthened the South’s campaign to undermine the Indians [*sic*] trust” in the United States government. Although she also recognizes the troop withdrawal as a blatant violation of treaty stipulations, she stops short of identifying just how significant the Indians thought it was.<sup>60</sup> Mary Jane Warde acknowledges the abandonment as “a serious breach of faith and violation” of the government’s treaties with the Indians. However, she remains noncommittal as to Ross’s motivation for agreeing to the Confederate alliance.<sup>61</sup>

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McLoughlin, *Champions of the Cherokees: Evan and John B. Jones* (Princeton: Princeton University, 1990), 388; Clarissa W. Confer, *The Cherokee Nation in the Civil War* (Norman: University of Oklahoma Press, 2007), 46.

<sup>58</sup> David A. Nichols, *Lincoln and the Indians: Civil War Policy and Politics* (Columbia: University of Missouri Press, 1978), 26-28.

<sup>59</sup> Thomas W. Cutrer, *Theater of a Separate War: The Civil War West of the Mississippi River, 1861 – 1865* (Chapel Hill: The University of North Carolina Press, 2017), 72-73.

<sup>60</sup> Lela J. McBride, *Opothleyaholo and the Loyal Muskogee: Their Flight to Kansas in the Civil War* (Jefferson, NC: McFarland and Company, 2000), 131, 147-148.

<sup>61</sup> Mary Jane Warde, *When the Wolf Came: The Civil War and the Indian Territory* (Fayetteville: The University of Arkansas Press, 2013), 51-59.

A closer examination of the event reveals just how much historians have underestimated its significance. First, the fact that the order to abandon the forts in Indian Territory was issued by the General-in-Chief of the Army, Winfield Scott, who enforced Cherokee compliance with the Treaty of New Echota in 1838, has been overlooked by historians.<sup>62</sup> Scott, who developed a strong dislike for the “miscreants” as the Cherokees refused to comply with federal demands to prepare for emigration, grew increasingly frustrated by the tribe’s resistance to what they believed was a fraudulent treaty in the 1830s. This no doubt alerted him over two decades later to the potential of an uprising in response to the evacuation of the federal forts in 1861.<sup>63</sup> At the outset of the Civil War, Scott felt he had larger concerns than Indian Territory. He sought to strengthen the defenses in and around the nation’s capital with as strong an army of regulars as possible, particularly with a growing Confederate Army in Virginia.<sup>64</sup> Second, the manner in which the order was delivered offers strong evidence of Scott’s concern. Instead of sending the order through normal channels - as he did similar orders for other troop evacuations - he had the order hand delivered by Lieutenant William W. Averell, who traveled in civilian clothing and carried an assumed name.<sup>65</sup> Averell’s mission was to deliver the

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<sup>62</sup> E. D. Townsend to William W. Averell, April 17, 1861, *OR*, Ser. I, Vol. LIII, 493.

<sup>63</sup> Allan Peskin, *Winfield Scott and the Profession of Arms*, (Kent: Kent State University Press, 2003), 108; John S. D. Eisenhower, *Agent of Destiny: The Life and Times of General Winfield Scott* (New York: Free Press, 1997), 185-187.

<sup>64</sup> Arthur D. Howden Smith, *Old Fuss and Feathers: The Life and Exploits of Lt. General Winfield Scott* (New York: Greystone Press, 1937), 368; Peskin, *Winfield Scott*, 247.

<sup>65</sup> Special Order #102, June 12, 1861, *OR*, Ser. I, Vol. LIII, 496; E. D. William W. Averell to L. Thomas, May 31, 1861, *OR*, Ser. I, Vol. LIII, 494.

communicate directly to Emory at Fort Arbuckle in the Chickasaw Nation and then return immediately to Washington.<sup>66</sup> As the troop withdrawal occurred in numerous locations throughout the West, the forts in Indian Territory were not the only ones affected.<sup>67</sup> However, the manner in which these orders were delivered indicates a level of significance that the others did not have. The secrecy of Averell's mission lends credence to the possibility that Scott felt some concern for how the nations in Indian Territory would respond to the withdrawal. It is possible that he thought removing the forces quietly would not garner as much attention and, therefore, allow him to make the move with little backlash from the Indians.

Perhaps the biggest motivation behind the secrecy of the troop withdrawal was General Scott's penchant for making controversial decisions without seeking the appropriate permission. In October 1860, as rumors of secession spread in the weeks before the presidential election, Scott had been blocked by President James Buchanan from ordering troops into the South to reinforce a half dozen Southern forts. However, following the secession of seven states in response to the election of Abraham Lincoln, Scott ordered the troops at Fort Moultrie to move across the harbor in Charleston to occupy what he believed to be the more impregnable location of Fort Sumter, without consulting the new president. The move was viewed by many South

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<sup>66</sup> *Ibid.* 493.

<sup>67</sup> LeRoy R. Hafen and Francis Marion Young, *Fort Laramie and the Pageant of the West, 1834-1890* (Lincoln: University of Nebraska Press, 1984), 303.

Carolínians as an act in preparation for war.<sup>68</sup> Scott's decision to relocate the troops in Indian Territory to Fort Leavenworth occurred in a similar manner. Not only did Scott wish to avoid the protests of the tribes being abandoned, he hoped to remove the troops without the interference of Lincoln's Secretary of the Interior, Caleb B. Smith, or his Commissioner of Indian Affairs, William P. Dole. Immediately upon learning of the withdrawal, Dole fired off a letter to the War Department requesting that the troops be returned to prevent an abrogation of the federal treaties.<sup>69</sup> However, by the time the letter reached Washington, it was too late. Confederate forces already occupied the abandoned forts.

Averell placed the order in Emory's hands on Thursday, May 2, just east of Fort Arbuckle. The troops spent the next day making preparations and then marched out of the post on Saturday, May 4, headed for Fort Leavenworth.<sup>70</sup> The following Monday, Arkansas formally seceded from the Union, prompting Ross to call a meeting of the Cherokee Executive Committee to discuss the new developments. He wrote to his nephew-in-law, John Drew, requesting his attendance.<sup>71</sup> The meeting was to convene at Ross's home at Park Hill, south of Tahlequah on Tuesday morning, May 14, 1861.

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<sup>68</sup> John S.D. Eisenhower, *Agent of Destiny: The Life and Times of General Winfield Scott* (New York: Free Press, 1988), 348-349.

<sup>69</sup> Annual Report of the Commission of Indian Affairs, November 27, 1861, 34. ARCIA.

<sup>70</sup> William W. Averell to L. Thomas, May 31, 1861, *OR Ser. I*, Vol. LIII, 496.

<sup>71</sup> John Ross to John Drew, May 9, 1861, in Moulton, *Papers of Chief John Ross*, 2:468.

On May 9, a group of citizens from Washington County, Arkansas, wrote to Ross, asking him to clarify his stance on the impending conflict. "Not knowing your political status in this present contest as the head of the Cherokee Nation," they wrote, "we request you to inform us by letter . . . whether you will co-operate with the Northern or Southern section."<sup>72</sup> Ross did not answer their letter for over a week. No doubt he hesitated to respond to the citizens from Washington County about his stance before discussing it with his Executive Council. On May 11, one week after Emory marched out of Fort Arbuckle, Dole wrote a letter of introduction, addressed to the chiefs of the Five Tribes, for the newly appointed federal Superintendent of the Southern District William G. Coffin. In it, he informed the tribes of his letter to Washington requesting that troops be returned to Indian Territory as soon as possible to protect the Indians from outside agitation. However, Confederate Texas troops had already occupied the vacated forts, cutting off all communication between the Indians and the federal government. Dole's letter of encouragement never arrived.

On Monday, May 13, Douglas H. Cooper, a former Indian agent, was asked by the Confederate War Department to raise a mounted regiment of Choctaw and Chickasaw Indians and to cooperate with General Benjamin McCulloch, who had command of Confederate forces in Arkansas and Indian Territory. Confederate Secretary of War L. P. Walker promised Cooper that

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<sup>72</sup> Mark Bean, et al., to John Ross, May 9, 1861, *OR Ser. I. Vol. XIII*, 494.

weapons would be sent to Fort Smith as soon as they could be acquired and that he could apply for them as soon as the regiment was full.<sup>73</sup> The Choctaws and Chickasaws had been openly supportive of the Confederacy, unlike the Creeks and Cherokees to the north. Ross had earlier informed Governor Rector of his desire to stay out of the war; but now that the situation had changed, there were those who wondered if Ross would lead the Cherokee Nation into secession along with their white neighbors. On May 15, Colonel J. R. Kannady, commanding officer at Fort Smith, wrote to Ross and warned him of ongoing efforts to gather abolitionists in Kansas and storm the borderlands between Arkansas and the Cherokee Nation. Kannady claimed that U.S. Senator James Lane, an ardent abolitionist, was at the head of the planned invasion. The commander asked Ross if he intended “to adhere to the United States Government during the pending conflict,” or if he meant “to support the Government of the Southern Confederacy.”<sup>74</sup> Ross would not reply to Kannady until he had consulted with the Cherokee Executive Council. After doing so, he issued his formal Proclamation of Neutrality on Friday, May 17, 1861.<sup>75</sup> However, it was actually something more than just a proclamation for neutrality.

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<sup>73</sup> L. P. Walker to Douglas H. Cooper, May 13, 1861, *OR*, Ser. I, Vol. III, 574.

<sup>74</sup> J. R. Kannady to John Ross, May 15, 1861, Ross Papers, Helmerich Center for American Research, Thomas Gilcrease Library and Archive, Tulsa, Oklahoma (Hereafter cited as HC).

<sup>75</sup> Proclamation, May 17, 1861, in Moulton, *Papers of Chief John Ross*, 2:469-470.



Ross used the Proclamation to advise his people how to respond to the growing crisis in the United States. He began by admonishing them to remember “the obligations arising under their Treaties with the United States,” and urged them to remain faithful to those treaties.<sup>76</sup> He then instructed them to adhere to no less than seven propositions that Ross believed must be upheld in order to eliminate any chance for accusations of abrogation on the part of the Cherokees. If the Cherokee Indians wished to retain their treaty relationship with the United States, they must first maintain peace with all the states; those Northern states that wished to end slavery, as well as the Southern states that had already invaded Indian Territory. Second, he urged his people to attend to their “ordinary avocations.”<sup>77</sup> Ross believed that the Cherokee Indians needed to go about their daily lives as if nothing had changed. This would demonstrate a level of trust in the protection promised by the treaties with the federal government.

Holding firmly to a position of neutrality served as an overarching objective of the remaining propositions. The third proposition Ross issued to his people was for them to avoid the temptation to take sides in the political debates of the day. He feared any engagement in “unprofitable discussions” or participation in “partisan demonstrations” could be misconstrued as anything but neutrality. Fourth, Ross encouraged his people to be wary of those in their

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<sup>76</sup> *Ibid.*, 2:469.

<sup>77</sup> *Ibid.*

midst who might seek to persuade them with false, or glorified, reports of the political climate in, and around, the Cherokee Nation. The fifth proposition was for his people to seek to cultivate harmonious attitudes within the tribe. Any dissension in the Cherokees Nation threatened to undermine tribal autonomy as the United States would most likely intervene to bring about peace, as the Polk administration had done fifteen years earlier. Ross feared that a repeat in the current climate would prove fatal for Cherokee nationality and autonomy. Finally, Ross urged his people to follow him in a public show of neutrality, as this was the only way, he believed, the Cherokee people could truly demonstrate their loyalty to the treaties with the United States.<sup>78</sup>

Ross's letter to Kannady, written the same day as his Proclamation, set forth his reasoning for deciding on neutrality. He claimed that Cherokee rights of soil, property, and personal welfare, as well as the tribe's relationship to the federal government and individual states, "were defined by Treaties with the U.S. government prior to the present condition of affairs," and that those treaties were in place long before any of the states voted to secede. He argued, "Those relations still exist." The secession of Arkansas did not obligate Ross and the Cherokee Nation to join in the rebellion. He wrote, "We do not wish to forfeit our rights."<sup>79</sup> Ross further reminded his people that there had yet to be a formal declaration of war and that hope existed for a peaceful solution

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<sup>78</sup> Ibid.

<sup>79</sup> John Ross to J. R. Kannady, May 17, 1861, in Moulton, *Papers of Chief John Ross*, 2:468.

to the matter. If that occurred, he did not want the Cherokees to have committed themselves one way or the other.<sup>80</sup>

The day following his Proclamation, Ross penned his response to the citizens of Washington County, in which he enclosed a copy of his reply to Kannady as evidence of his stance. Ross refused to take sides, especially without a formal declaration of war. "What will then be our situation," he wrote, "if we now abrogate our rights, when no one else is, or can just now be bound for them?"<sup>81</sup> Again, Ross knew that Cherokee autonomy only existed within the pages of the tribe's treaties with the United States government. If he were to walk away from those treaties now, who would guarantee their rights for them? They could not walk away from one treaty without another to take its place.

Ross's home at Park Hill was less than thirty miles from the Arkansas state line and his response to the citizens in Washington County could reasonably have been delivered within one day. Therefore, it is conceivable that the disappointing news from the Cherokee leader prompted the Arkansans to turn to another option. Written the same day as Ross's response, two Arkansans, perhaps members of the group who inquired of Ross, sent a letter to Stand Watie, informing him of Lane's rumored attack. They asked him to organize a regiment and help defend the borderland between Arkansas and

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<sup>80</sup> "Proclamation," May 17, 1861, in Moulton, *Papers of Chief John Ross*, 2:469.

<sup>81</sup> *Ibid.*

the Cherokee Nation.<sup>82</sup> It is unclear if this letter helped motivate the fifty-five-year-old Watie to join the Confederate war effort; but within eight weeks, Watie received a colonel's commission from the Confederate War Department. His presence in the war destroyed any hope Ross entertained of keeping the peace within the Cherokee Nation.

The story of Stand Watie has drawn the majority of the historiographical attention given to the Cherokee Nation during the Civil War Era. The number of Watie biographies outnumber the total of all other Cherokees—including Principal Chief John Ross—by more than two to one. However, a closer examination of the historical evidence suggests that this overabundance of attention is, perhaps, unmerited. As mentioned previously, Watie's involvement in the negotiations for the Treaty of New Echota have been conjured from his kinship with the Ridges. Even those Cherokees who sought to execute the leaders of the treaty faction in 1839 recognized Watie's nonparticipation and excluded him from the list of those condemned. Historians, however, continue to place Watie among a crowd of influencers with which he only had a spectator's role. Further evidence of Watie's lesser influence on tribal affairs is visible at the outset of the Civil War when both he and Ross organized cavalry regiments to defend the Cherokee Nation. By October 1861, Ross had enlisted over 900 men for his regiment, a force that would quickly swell to 1,200 on its

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<sup>82</sup> Edward Everett Dale, "Some Letters of General Stand Watie," *Chronicles of Oklahoma* 1, No. 1 (January 1921), 34-36.

way to over 2,000. Watie, on the other hand, could only muster some 300 men for his force, and many of those were not even Cherokees.<sup>83</sup> By the end of 1863, Watie's force had not grown at all, but his reputation had become overblown. Beginning that summer, Union officers regularly reported having heard rumors of Watie being in command of a force between 500 and 1,000 strong.<sup>84</sup> Moreover, a rebel deserter falsely claimed that Watie's force consisted of about 3,000 men in late November.<sup>85</sup> However, Union Colonel M. LaRue Harrison encountered what he believed to be Watie's entire force near Cane Hill, Arkansas, on December 21, 1863. The small size of the force, about 300 Cherokees, came as a surprise to Harrison, who reported to headquarters, "I believe Stand Watie's force has been greatly exaggerated."<sup>86</sup> Moreover, in his testimony before the Department of Indian Affairs following the war, Albert Pike downplayed the size and significance of Watie's small band of followers. In his estimation, the Ross-led Cherokees always had the strength and numbers to destroy Watie and his pro-Confederate followers.<sup>87</sup> It is fair to state that Pike may have been attempting to understate Watie's influence as a way

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<sup>83</sup> Kenny A. Franks, *Stand Watie and the Agony of the Cherokee Nation* (Memphis: Memphis State University Press, 1979), 117-119.

<sup>84</sup> James Blunt to Samuel Curtis, June 6, 1863, *OR*, Ser. I, Vol. XXII, Part 2, 151; W. A. Phillips to James Blunt, June 6, 1863, *Ibid.*, 311; Jonathon Edwards to John Schofield, June 19, 1863, *OR*, Ser. I, Vol. XXII, Part 2, 329-330; John B. Sanborn to James Totten, December 26, 1863, *OR*, Ser. I, Vol. XXII, Part 2, 752.

<sup>85</sup> Jonathan C. Burnett to Thomas Ewing, Jr., November 28, 1863, *OR*, Ser. I, Vol. XXII, Part 2, 722-723.

<sup>86</sup> M. LaRue Harrison to James Totten, December 1, 1863, *OR*, Ser. I, Vol. XXXIV, 747.

<sup>87</sup> Albert Pike to the Commissioner of Indian Affairs, February 17, 1866, printed in the footnotes, Abel, *The Indian as Slaveholder*, 134-140.

of laying the primary responsibility for the Cherokee rebellion at the feet of Ross. Pike also claimed that instead of Watie's men "overawing" Ross and his followers, Watie was actually "afraid" of Ross's much larger force.<sup>88</sup>

This escalation of Watie's legendary status also was buttressed by the attention given to him in Confederate records and correspondence. Confederate leaders believed that Watie volunteered quickly, and that he unwaveringly supported the Southern war effort. They also believed he could use his influence with the Cherokee people to raise troops for the Confederate Army. On July 12, 1861, Watie was commissioned a colonel in the Confederate Army and was immediately authorized to raise a force of Cherokee soldiers to help defend the Cherokee Nation and Arkansas borderlands from abolitionist invasion. Even though most Cherokees undoubtedly supported the idea of protecting their homes, Watie could only muster a force.<sup>89</sup> Early in the war, Watie often fought alongside white troops, and his forces were respected enough to be placed within the ranks of white brigades. Because of this, Watie was routinely credited with leading a large force to which he only offered his assistance. Historian Kenny A. Franks, a Watie biographer, asserts that Watie led 1,500 men against Union Colonel Charles Doubleday in a skirmish along the Grand River near the Kansas border in June 1862.<sup>90</sup> However, the Official Records of the event, the same one cited by Franks, describe the force as

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<sup>88</sup> *Ibid.*, 140.

<sup>89</sup> Franks, *Stand Watie*, 117-118.

<sup>90</sup> *Ibid.*, 128.

being led by multiple commanders, not just Watie, who led only a small force.<sup>91</sup> This type of historical exaggeration has contributed to the unmerited legend of Stand Watie.

Confederate leaders called on Watie to raise additional Cherokee troops, overestimating his influence in the Cherokee Nation, after his men attempted to declare him principal chief in late summer of 1862.<sup>92</sup> By the end of 1863, Confederate General William Steele doubted “the propriety of organizing a brigade for Colonel Watie.” He complained that Watie had been operating around Fort Gibson with an imaginary force that seemed to be scattered around the territory. He argued that Watie’s men were allowed to roam freely and that they often took more than their share of rations from Confederate stores.<sup>93</sup> Watie was never able to increase the size of his command, even after being asked to raise additional troops. He did not possess enough influence within the Cherokee Nation. His legendary status within the historiography of the Civil War in Indian Territory has usurped the scholarly attention that should be focused more often on John Ross to better understand the involvement of the Cherokee Nation in the war.

In early June 1861, three men, all envoys of the new Confederate government, turned their attention to Ross, in an attempt to convince him to

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<sup>91</sup> Charles Doubleday to William Weer, June 8, 1862, *OR*, Ser. I, Vol. XIII, 102.

<sup>92</sup> Knight, *Red Fox*, 146.

<sup>93</sup> William Steele to S. S. Anderson, November 9, 1863, *OR*, Ser. I, Vol. XXII, Part 2, 1065.

bring the Cherokee Nation into the Confederacy. The efforts of Albert Pike, commissioner to the Indians west of Arkansas, of David Hubbard, who would become the Confederate Commissioner of Indian Affairs in 1863, and of Benjamin McCulloch, military commander of Arkansas and Indian Territory, have been well documented in historical monographs. Yet, those narratives tell the same tale of how the Southern gentlemen tried to convince Ross to join their ranks only to have Ross politely refuse their overtures, claiming to be neutral. It is as if the correspondence between Ross and the men is obligatory to any narrative of the Civil War in Indian Territory; and, of course, it is. However, a deeper look at the letters between the men reveals an ideological difference between Ross and the trio of Southerners that might be implicitly understood by historians but has not been explicated by the historiographical analysis. While Hubbard and McCulloch made strong arguments for the perpetuation of slavery, Pike understood the Indian political mind better than most other nineteenth-century Americans. The former did little to convince Ross to abandon his stand of neutrality. However, the latter constructed an argument so sound that it might actually have helped compel Ross to take the risk and sign a treaty of alliance with the Confederate States.

In their letters, both written on June 12, 1861, Hubbard and McCulloch warned Ross of the dangers of remaining neutral. Hubbard claimed that Northern aggressors would sweep in and take Cherokee land for white settlers



while the Cherokees sat by defenseless.<sup>94</sup> Perhaps no man in American history better understood the possibilities of the government taking land from Native Americans than did Ross. Therefore, Hubbard's warning had little effect on the Cherokee chief. McCulloch argued that the Arkansans and Cherokees shared a "common cause against a people who are endeavoring to deprive us of our rights."<sup>95</sup> They both admonished Ross to join the fight to protect the rights of his people, just as other Southerners were fighting to protect theirs. Neither Hubbard nor McCulloch understood Ross's concerns. They believed that the only way to protect Southern rights was to go to war and fight for them. However, Ross knew that for the Cherokees to protect their own rights, they had to do exactly the opposite. Going to war against the United States would abrogate their treaties and place their rights in jeopardy. While the Cherokees and Arkansans shared similar institutions, they differed ideologically. McCulloch's threat to enter the Cherokee Nation and defend his people from any approaching attack did nothing to push Ross toward an alliance. In fact, it further solidified his belief that war of any kind in the Cherokee Nation would not end well for his people.<sup>96</sup>

On the other hand, Albert Pike, who worked as an agent for the Choctaw and Chickasaw Indians prior to the war, understood the ideological difference between the Indians and the Arkansans. He realized that

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<sup>94</sup> David Hubbard to John Ross, June 12, 1861, *OR*, Ser. I, Vol. XIII, 498.

<sup>95</sup> *Ibid.*

<sup>96</sup> Benjamin McCulloch to John Ross, June 12, 1861, *OR*, Ser. I, Vol. III, 591-592.

Southerners would take up arms to defend their rights and institutions. He also recognized that the tribes of Indian Territory viewed their treaties with the United States as the sole protector of theirs. In order to get the Indians to align with the Southern states, the Confederacy would have to be willing to guarantee them their rights of land ownership, personal safety, and personal property; and they would have to do it through a treaty. In short, the Confederate States would have to replace the United States as the benefactor of Indian sovereignty. On May 20, just three days after Ross's Proclamation of Neutrality, Pike wrote to Acting Confederate Commissioner of Indian Affairs Robert Tombs and informed him of his plan to do more than just seek treaties of alliance with the Indians. "I very much regret," wrote Pike, "that I have not received distinct authority to give the Indians guarantees of all their legal and just rights under treaties." He reiterated the fact that "it cannot be expected they will join us without them." He continued, "As I am not directed not to give the guarantees, I shall give them, formal, full, and ample by treaty."<sup>97</sup> Pike encouraged Tombs to oversee the ratification of any treaty he secured. Pike had recognized a key component of Ross's political posture: the fact that his loyalties lie with the treaties with the United States that guaranteed the tribe some level of autonomy and protected their rights of land ownership and personal security and property. Ross had never been loyal to the Union. After all, it had been the United States that treated the Cherokees with contempt and

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<sup>97</sup> Albert Pike to Robert Tombs, May 20, 1861, *OR*, Ser. I, Vol. III, 580-581.

racial hatred in the 1830s. Pike believed the Cherokee Nation would only come to an alliance with the Confederacy if that government promised to provide the same securities to the Indians through a similar treaty.

Although much of the historiography recognizes Pike's intention to seek treaties of alliance with the Indians, it misses the significance of what Pike really sought to accomplish. Pike was so convinced that his offer for a treaty of protection would sweep the Cherokee Nation into the Confederacy that he asked Ross to allow him to present it directly to the Cherokee National Council.<sup>98</sup> Instead, on June 27, Ross convened his Executive Council and showed them the letters from Kannady, Hubbard, McCulloch, and Pike, as well as his response to each. Moreover, he showed them a copy of his Proclamation of Neutrality from May 17 and asked the Council to approve his neutral stance.<sup>99</sup> The Council did just that. In his response to Pike, he sent copies of his correspondence with Hubbard, to "show the position which I have felt constrained to assume." He concluded by telling Pike that the tribe did not feel at liberty to enter into a new treaty with anyone, much less the Confederate States. Ross politely and diplomatically declined Pike's invitation.<sup>100</sup>

Pike had recognized what many historians have missed. He believed that Ross's claim of neutrality was merely a way to disguise his loyalty to the

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<sup>98</sup> Albert Pike to John Ross, August 1, 1861, Ross Papers, HC.

<sup>99</sup> "Minutes of the Cherokee Executive Council," July 2, 181, in Moulton, *Papers of Chief John Ross*, 2:476-477.

<sup>100</sup> John Ross to Albert Pike, July 1, 1861, in Moulton, *Papers of Chief John Ross*, 2:476.

treaties with the United States. Even though many prominent historians have discussed Ross's stance of neutrality, they have often downplayed, or even missed the contradiction altogether. Fischer argues that Ross "managed . . . to keep his tribe officially neutral."<sup>101</sup> Moulton describes how Ross transitioned from being, first, a unionist, then a neutralist, and finally a Confederate ally.<sup>102</sup> Perdue asserts that only a policy of neutrality could protect tribal "independence and territorial integrity," while McLoughlin contends that "the only way Ross could preserve neutrality . . . was to obtain military help from Lincoln."<sup>103</sup> Confer argues that Ross spent the spring and summer of 1861 "asserting the neutral position of his nation," in the face of Watie's Confederate alliance and his anti-Ross stance.<sup>104</sup> At first, Ross did not believe he was being contradictory in his position; he thought that proclaiming his neutrality was the only way for the Cherokee people to safeguard their rights. In his eyes he could have remained loyal to the treaties and still maintained neutrality at the same time, at least, until Pike confronted him on it.

When Theda Perdue wrote "a policy of neutrality meant that the treaties with the United States . . . would continue to be honored," she only described the opinion of the Cherokee Nation and the United States. The Confederates saw things differently. Pike told Commissioner Tombs that, if he could not

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<sup>101</sup> Fischer, *The Civil War*, 21.

<sup>102</sup> Moulton, *John Ross*, 171-172.

<sup>103</sup> Perdue, *Slavery and the Evolution of Cherokee Society*, 126; McLoughlin, *Champions of the Cherokees*, 388.

<sup>104</sup> Confer, *The Cherokee Nation*, 49.

secure a treaty with Ross, he would turn to a minority faction in order to accomplish his goals.<sup>105</sup> He knew that Ross's façade of neutrality would crumble if those tribes around him traded their treaties with the United States for new ones with the Southern government. Coupled with McCulloch's promise to force his way into the Cherokee Nation if the enemy breached the northern boundary, Pike's treaties with the mixed-blood factions of the Plains tribes alerted Ross to the growing dangers of his claims of neutrality.<sup>106</sup> Pike's pressure on Ross began to chip away at the façade that Ross worked so diligently to construct; and when the political posturing turned to actual conflict in the summer of 1861, Ross was faced with, arguably, the most difficult decision of his life.

While Pike was waiting for Ross's response, he visited with and obtained treaties from the leaders of the Creeks (July 10) and the Choctaws and Chickasaws (July 12). While securing a treaty with the Seminoles on August 1, Pike fired off an incandescent letter in response to Ross's refusal to allow him to speak before the National Council. "I do not propose now," he retorted, "to enter upon any further argument . . . nor to seek to open any further negotiation with the Cherokee Authorities." Pike was angry that his efforts to replace the tribe's treaty with one he considered to be better for the Cherokees had been rejected. In his letter, he took the opportunity to remind

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<sup>105</sup> Moulton, *John Ross*, 168.

<sup>106</sup> *Ibid.*, 169.

Ross that he had offered, on behalf of the Confederate government, “ample protection by their troops, and that at any cost and at all hazards they would maintain the Cherokees in the possession of their country.” He also reminded him that he had offered the tribe a promise of “perpetual possession” of their land in fee simple title. He even promised to pay the tribe any and all annuity money still owed them by the United States government.<sup>107</sup> Pike’s reasoning was sound. He implied that the new Confederate States had been ancillary participants in the treaties with the United States as part of the Union. Therefore, they felt obligated to uphold their stipulations under them. In short, the Cherokees had not agreed to those treaties only with the Northern states. The Southern states had a responsibility to them as well. Pike hoped his show of allegiance to the Cherokees would convince Ross that the Confederate States government would never treat the tribe the way the United States government had.

In a brilliant maneuver, Pike called into question the sincerity of Ross’s stance of neutrality by referencing the chief’s letter to McCulloch on June 17. In it, Ross told the general that the Cherokee people would never assume “an attitude of hostility toward the Government of the United States.”<sup>108</sup> Conversely, Ross added that the presence of Confederate troops would be unwelcomed in their nation because it would “place in our midst organized companies not

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<sup>107</sup> Albert Pike to John Ross, August 1, 1861, Ross Papers, HC.

<sup>108</sup> John Ross to Benjamin McCulloch, June 17, 1861, Ser. I, Vol. XIII, 495.

authorized by our laws, but in violation of treaty.”<sup>109</sup> Pike pounced on this, accusing Ross of having set a double standard. If the United States Army was welcome in the Cherokee Nation, but the Confederate Army was not, then how could Ross rightfully claim to be neutral? Pike had identified the chink in Ross’s armor. The chief was not neutral at all. He was loyal to the treaties with the United States. Pike believed that if the Confederacy could convince Ross that the treaties would be guaranteed by, and secure in, the Confederate government, then Ross would turn to an alliance with his Southern neighbors.<sup>110</sup>

As Ross mulled over his waning options, the nations around him prepared for war. The decision on the part of General Scott to abandon the forts in Indian Territory seemed routine to the United States. However, to the Indians it represented the initial push to the first domino. The resulting chain reaction of events came quickly; and no matter how diligently Ross worked to halt the flow, the Cherokee Nation found itself in a valley awaiting an avalanche. Despite Scott’s efforts at secrecy, the impact of the removal of Federal troops was felt immediately by the tribes in Indian Territory who viewed the move as an abrogation of treaty stipulations once again on the part of the United States. The abandonment of Indian Territory left the Indians without the protection promised them, protection they cherished now more than ever.

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<sup>109</sup> Ibid.

<sup>110</sup> Confer, *The Cherokee Nation*, 49.

Furthermore, without that protection, the Indians were left to defend themselves from the onrush of Confederate forces as Texas troops quickly swept in and occupied the vacated forts, prompting many of the Indians to align themselves with the Southerners. Although the U.S. War Department believed there might be an uproar from the Indians over the withdrawal, they never assumed that the Indians would align themselves against the United States. The government believed that the Indians would remain loyal to their treaties and stay out of the war altogether.<sup>111</sup>

Despite the rapid alliances between Pike and the other tribes of Indian Territory, John Ross and the Cherokee Nation refused to disregard their treaty obligations to the United States, even though the United States had abrogated their promises to the Cherokees. The withdrawal of federal troops from Indian Territory placed Ross in a difficult position as he had to decide the best way to protect his tribe's existence. Ross realized that Cherokee sovereignty existed only in the pages of the tribe's treaties with the United States, and the evacuation of the forts left the chief with little hope of securing that autonomy. The days and weeks that followed were among the most difficult of Ross's life as he had to navigate the approaching storm of war as it descended upon his people. The decisions he made in the subsequent months were calculated to preserve Cherokee identity, and the risks involved made choosing his course difficult. Between April 1861 and September 1862, Ross held firm to the belief

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<sup>111</sup> Warde, *When the Wolf Came*, 66.



that the Cherokee people would be rewarded for their loyalty to the tribe's treaties with the United States, even if that loyalty was often disguised as rebellion.

## CHAPTER IV

### AUTONOMY AND THE CONFEDERATE ALLIANCE

As John Ross watched the last member of the Executive Council ride away from his home at Park Hill on the first weekend of August 1861, his thoughts turned once again to the latest letter he received from Confederate commissioner Albert Pike.<sup>1</sup> He took the time for a quick reading when it first arrived, but now he hoped to devote his full attention to its important lines. Over the years, Ross won the admiration and respect of the Cherokee people for his steadfast adherence to the tribe's treaty responsibilities to the United States, as well for his tireless efforts to demand that the federal government honor their own obligations. The previous April, however, the United States Army abandoned Indian Territory, abrogating its primary treaty responsibility to protect the tribes, and the Cherokee Nation had had no contact with any agent or representative of the federal government since, preventing Ross from seeking redress. Since January, representatives of Southern governments actively solicited Ross's cooperation; yet, so far, he had resisted their overtures, outlining his firm stance of neutrality, even after Confederate forces marched in and occupied the forts vacated by the United States. Pike wrote to Ross earlier, asking permission to speak before the Cherokee National Council

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<sup>1</sup> The Executive Council adjourned their meeting on August 1, 1861, see Gary E. Moulton, ed., *The Papers of Chief John Ross*, 2 vols. (Norman: University of Oklahoma Press, 1985), 2:479.

and offering the tribe generous terms of alliance. Ross refused to allow the meeting, leading to this latest epistle. However, this letter was different. Pike saw through Ross's veil of neutrality and recognized his loyalty to the tribe's federal treaties; therefore, he withdrew his offer for a treaty of protection with the Cherokees. As Ross returned to his study to give the letter the full attention it required, he wondered if his first impression had been correct. Had Pike, by implication, really issued an ultimatum to the Cherokee people? Did his letter of August 1, 1861, set in motion the events that led to Ross's treaty with the Confederate States? Or, did it simply ignite the combustible climate that already existed in the Cherokee Nation? In actuality, the letter merely redirected Ross's thinking. His goal of securing tribal autonomy would never change. His decision in response to the letter would be calculated to benefit the Cherokee Nation, and, it set in motion a series of events that would have profound and lasting impact on not just the Cherokee Nation, but on all of Indian Territory.

Ross convened the Executive Council on July 31 to discuss the growing concerns surrounding the Cherokee Nation.<sup>2</sup> His wish for unity among the tribes of Indian Territory disintegrated before his eyes as one by one, the tribes aligned themselves with Pike and the Confederate government. The Seminoles were the most recent to capitulate, agreeing to a treaty on August 1, no doubt,

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<sup>2</sup> John Ross to Joseph Vann, July 28, 1861, in Moulton, *Papers of Chief John Ross*, 2:478.

prompting Pike's letter to Ross. With the Creeks, Choctaws, Chickasaws, and now the Seminoles in alliance, Pike turned his attention elsewhere. Apparently, he was serious about terminating all negotiations with the Cherokees as he headed for the Wichita Agency at Fort Cobb to seek alliances with the Comanches, Wichitas, Caddos, and other tribes, leaving the Arkansas River valley behind.

The alliances with the neighboring tribes placed Ross in a difficult position. The Executive Council agreed, having authorized a mass meeting of the Cherokee Nation at Tahlequah, set to begin on August 21, 1861. Ross hoped to unite the Cherokee people in defense of their rights and privileges as a nation under the treaties with the United States.<sup>3</sup> However, the changing political climate around him and Pike's threatening letter in front of him caused the chief to question the wisdom of continued resistance. Pike engaged Ross in what could be described as a contest of game theory, where both men must weigh the cost and benefit of each calculated decision, based solely on the potential response of the other party. Ross first defined the tribe's position in the contest. He believed that cooler heads might prevail and war between the sections might be avoided. However, on a Sunday afternoon in mid-July, North and South met on the battlefield just north of Manassas, Virginia, along a small river named Bull Run. Not only had war been realized, but the unthinkable happened. The Confederates under Pierre G. T. Beauregard defeated Irvin

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<sup>3</sup> Ibid.

McDowell's Union Army, causing Ross to consider a new concern: what if the Confederate States won the war?

The initial reading of Pike's letter revealed three things explicitly stated. First, Pike acknowledged Ross's formal proclamation of neutrality. However, Pike also knew that neutrality for the Cherokees really meant allegiance to the treaties with the United States. Second, in consequence of Ross's claim of neutrality, Pike formally withdrew the offer of protection from the Confederate government. If Ross was going to use neutrality as a smoke screen, then Pike was going to stoke the fire. Third, Pike suggested the two men sign a treaty of neutrality, formally declaring the Cherokees' intention to support neither side during the war. Knowing that the federal treaties prohibited such an agreement, Pike successfully called Ross's bluff. If Ross signed such an agreement, he would have abrogated the tribe's treaties with the United States. However, if he refused, it would reveal his true loyalty.

Ross's concerns with the letter stemmed less from what Pike's words said, and more from what they implied. The two most alarming implications concerned Stand Watie. Using the context of federal annuities, Pike declared that his informal offer to pay the tribe what the United States owed them was no longer available. In doing so, however, he promised that the money would be made available, on a prorated basis, to "those of your people who have

declared themselves the friends of the South.”<sup>4</sup> His recognition of Watie and his followers, no doubt, concerned Ross. If the Confederates were to provide Watie with the protection once promised to the Cherokee people, then Ross’s rival might be free to wage war on those Cherokees not loyal to the South. The second alarming implication furthered this concern. Pike warned Ross that the only two reasons the Confederates would advance in to the Cherokee Nation was to repel a Union invasion or to protect those Cherokees loyal to the Confederacy. Ross understood the implication. The Cherokees would have to allow Watie to roam the Nation without resistance. If the tribe or any of its members confronted him, the Confederates would move in to defend him.

As Ross studied the letter, the political climate around the Cherokee Nation continued to change. Not only was Indian Territory bordered on two sides by Confederate States, but the tribes within signed treaties of alliance with Pike. Pike’s trip to the Wichita Agency at Fort Cobb portended further gloom as the Plains tribes were soon to meet with the Confederate commissioner to consider their own fate. Beauregard’s victory in Virginia at Manassas greatly compounded the difficulty on two fronts: first, cooler heads were not going to prevail; and, second, the unexpected victory by the infantile Confederacy further confused the Cherokee chief who continued to place great trust in the treaties with the United States. The mass meeting of the Nation

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<sup>4</sup> Albert Pike to John Ross, August 1, 1861, Ross Papers, Helmerich Center for American Research, Thomas Gilcrease Library and Archive, Tulsa, Oklahoma (Hereafter cited as HC).

would be upon him soon, and he pondered how best to keep his people united when he, himself, began to doubt the practicability of remaining aloof to the Southern Confederacy. Ross hoped that the tribes of Indian Territory could remain united in order to multiply their collective strength in defense of their homes. Now, all the other tribal leaders aligned their people with Pike and the Confederacy, leaving Ross as the lone holdout.

The Creek Indians had been the first to sign with Pike on July 10, yet their tribe remained largely split over the issue. An elderly headman named Opothle Yahola openly advocated for neutrality in the war and loyalty to the treaties with the United States, much like Ross. Opothle Yahola was not the head of the Creek government and could not prevent his tribe from aligning with Pike. However, he quickly became the leader of a large group of Indians, many from other tribes, who also wanted to remain out of the impending war. The group gathered unceremoniously near Opothle Yahola's home and continued to grow in numbers during the late summer of 1861. By early autumn, the group's large size caused consternation within the Creek tribal government who reached out to Ross for assistance.<sup>5</sup> Ross and Opothle Yahola would correspond frequently as the war closed in on Indian Territory.

Unbeknownst to Ross at the time of Pike's letter, Union and Confederate troops skirmished in Southwest Missouri, in an encounter that

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<sup>5</sup> Motey Kennard to John Ross, October 1, 1861, in Moulton, *Papers of Chief John Ross*, 2:489.

would culminate in battle along Wilson's Creek on August 10.<sup>6</sup> The battle, which included a small group of Cherokee Indians, resulted in another resounding Confederate victory and seemed to convince Ross that the South would, in all probability, win the war.<sup>7</sup> He now found himself with the biggest decision of his life. The mass meeting of the Cherokee Nation was to begin on the August 21<sup>st</sup>, and it appeared the Confederate States might win their independence. How should the latter affect the former? Was his stand of neutrality still the wisest option for his nation, or should he consider abrogating the treaties with the United States and signing a new one with the Confederacy?

Ross had two options, both of which offered multiple scenarios. The tribe could either remain neutral or sign a treaty of alliance with the Confederacy. If the Cherokee Nation remained neutral, it would run the risk of being overrun by the Confederate Army during the war, possibly without any protection from the United States, and Stand Watie would be free to harass the Cherokee people at will, without any recourse. Moreover, a neutral position would not allow Ross to protect the tribe from Watie's advances. If he resisted, the Confederates would most likely interpret it as an act of aggression and consider the Cherokees an ally of the United States. Also, if the tribe remained

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<sup>6</sup> Jeffrey L. Patrick, *Campaign for Wilson's Creek: The Fight for Missouri Begins* (Buffalo Gap: McWhiney Foundation Press, 2011), 96-99.

<sup>7</sup> William Garrett Piston and Richard W. Hatcher, III, *Wilson's Creek: The Second Battle of the Civil War and the Men Who Fought It* (Chapel Hill: The University of North Carolina Press, 2000), 92, 160.



neutral and could endure that position throughout the duration of the war, a Confederate victory would render them the only nation south of Kansas not aligned with the new Southern government. Pike's letter explicitly stated, "If your treaties are with the North alone on one side, they are so on the other side also." It further warned, "If you owe to them alone allegiance, loyalty, and friendship, they alone can owe you moneys and protection."<sup>8</sup> In short, John Ross could not expect to remain "neutral" through the war and then depend on treaties with the Confederate government afterward. Pike closed the letter with a tacit warning. "Sincerely wishing that the policy of the Cherokee people may not prove disastrous to them," he wrote, "nor a cause of regret to their rulers hereafter."<sup>9</sup> If Ross wanted a treaty with the Confederate States, he had to agree to it now, or face the consequences if the South were to win the war.

However, if the Cherokee Nation remained neutral and the North won the war, the tribe would be in a great position, having just proven their undying loyalty to their treaty relationship with the United States. If the tribe could simply hold out long enough for the United States to return to Indian Territory, then the Cherokees could join the war effort to secure that relationship, once again, proving their loyalty to their treaties with the federal government. However, with no contact with federal agents since the Confederate occupation, Ross questioned the federal government's intentions toward the

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<sup>8</sup> Albert Pike to John Ross, August 1, 1861, Papers of John Ross, HC.

<sup>9</sup> Ibid.

Cherokees. Many questions remained, however. Could the Cherokee Nation endure the war as a neutral with Stand Watie and his men roaming the territory? How probable was it for the United States to win the war? The first two battles were decisive Confederate victories. How likely was it for the United States to return to Indian Territory? Since they abandoned it once, why would they be motivated to return?

Ross's second option was for an alliance with the Confederate States. In this scenario, a Southern victory in the war would simply mean that the treaties of the Cherokee Nation would now be guaranteed by a different white government. There would, in a sense, be no change. However, if the United States won the war, would Ross ever be able to convince the federal government that he desired loyalty all along, but chose an alliance with the South merely out of self-preservation of the Cherokee people? Also, if the United States were to recapture Indian Territory, would the Cherokees be able to prove their allegiance merely by abandoning the Confederacy and joining the United States upon reentry?

Which option gave the Cherokee Nation the best hope for perpetuating tribal autonomy? Had the United States not abandoned Indian Territory, the decision would be a simple one. The tribe, no doubt, would have remained loyal to the treaties, and most likely, would have helped fight the Confederacy. Now, it appeared that Missouri would be joining their Southern brethren in secession, increasing the danger on the Cherokee border. Moreover, it looked

as if the South would prove victorious, and Pike's letter implied disaster for a "neutral" Cherokee Nation if that scenario were to be realized. To Ross, the best option seemed to be an alliance with the Confederacy. If the South were to win, the Cherokee Nation would be protected. If the United States were to win, Ross would have to convince the federal government that the abandonment left them no other option. Either option proved more palatable to Ross than attempting to endure the war without the protection of neither North or South, and it appeared that the United States was not offering their protection any time soon. It is not known exactly when Ross made the decision to negotiate a treaty of alliance with the Confederate States. Speculation easily places it between the Battle of Wilson's Creek on August 10, and the date of the mass meeting of the Cherokee Nation on the 21st. Regardless when it was made, he faced the task of convincing the Cherokee people that the decision to abandon neutrality and align with the Confederacy was best for the Cherokee Nation.

The shift from neutrality to an alliance with the Confederacy should not be considered a reversal for Ross, as many historians suggest, but rather a simple lane change as the chief sought to navigate the tribe through the horrors of the Civil War. Grace Steele Woodward calls it a "complete capitulation" on the part of Ross and the Cherokees, implying that Ross turned

his back on the United States during the process.<sup>10</sup> Rampp and Rampp claim that Ross “bowed to the will” of the executive council and formed “immediate ties with the Confederacy.”<sup>11</sup> Kenny A. Franks, a Watie biographer, argues that Ross decided to join the Confederacy hoping “to usurp some of Watie’s growing power.” His use of the word “usurp” again delegitimizes the ability of the Cherokee people to select and follow their own leaders (i.e., Chief John Ross and the Executive Council).<sup>12</sup> William G. McLoughlin considers the decision simply a struggle with Watie “over who would control the destiny of the nation,” again disregarding the political agency of the Cherokee people.<sup>13</sup> Clarissa W. Confer implies that Ross may have decided on the switch prior to the meeting of the executive council at the end of July, omitting Pike’s important letter entirely. She does recognize the “lane change” theory, however. It is the “why” he changed to which she is unwilling to commit.<sup>14</sup> Her indecision is perhaps due to the fact that she does not mention Pike’s letter in her narrative, nor do Rampp and Rampp, Franks, or McLoughlin. In fact, most historians have neglected the letter, missing, perhaps, the most important clue as to what motivated Ross to make the change. Woodward includes the letter,

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<sup>10</sup> Grace Steele Woodward, *The Cherokees* (Norman: University of Oklahoma Press, 1963), 265.

<sup>11</sup> Lary C. Rampp and Donald L. Rampp, *The Civil War in the Indian Territory* (Austin, TX: Presidial Press, 1975), 5.

<sup>12</sup> Kenny A. Franks, *Stand Watie and the Agony of the Cherokee Nation* (Memphis: Memphis State University, 1979), 119.

<sup>13</sup> William G. McLoughlin, *After the Trail of Tears: The Cherokees’ Struggle for Sovereignty, 1839-1880* (Chapel Hill: University of North Carolina Press, 1993), 184.

<sup>14</sup> Clarissa W. Confer, *The Cherokee Nation in the Civil War* (Norman: University of Oklahoma Press, 2007), 49-50.

and even somewhat captures its significance to Ross's decision. However, she views the switch in allegiance as being just that: a switch from loyalty to the United States to loyalty to the Confederate States.

The significance of Ross's decision is readily understood through an analysis of his wartime actions. However, his actions cannot be understood if evaluated in the context of his alliance with Pike and the Confederacy. Few, if any, decisions he made during the war were indicative of a loyalty to the Southern cause. To understand his actions, we must examine them from the perspective of his long-term goals for the Cherokee Nation. Why did he abandon neutrality for a Confederate alliance? Why would he quickly abrogate that treaty at the return of the United States Army? Pike's letter provides the framework through which we can consider Ross's actions. As Confer accurately notes, Ross's long-standing goal was always "to preserve the existence of the Cherokee tribe with as much self-government as possible"; he just needed to decide the best route to take to accomplish that goal.<sup>15</sup> His first choice was to remain neutral out of loyalty to the treaties. However, when the lane of neutrality was blocked by Pike's ultimatum, he chose the next best available lane, an alliance with the Confederate States; and, if a better option presented itself before the war ended, Ross would not hesitate to take it.

On Wednesday, August 21, about 4,000 Cherokees descended on the council grounds at Tahlequah at the bidding of their principal chief. Ross hired

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<sup>15</sup> Ibid.

cooks and purchased enough beef at five cents per pound to feed the crowds, hoping to make the stay as comfortable as possible.<sup>16</sup> Ross's address, delivered in the town square, consisted of two parts. He spent the first half explaining why he had initially settled on a position of neutrality. He explained that the United States had never asked the Cherokees to enter the war, and that the tribe had no reason to go to war against them now. He declared that Cherokee soil had not been invaded, nor their peace molested, and that the treaty relationship with the United States was still in place.<sup>17</sup> However, in the second part of the address, he expressed his concern that there was growing unrest within the Nation; and that the tribe must have unity in order to survive. "Union is strength, dissension weakness," he claimed. "In time of peace together! In time of war, if war must come, fight together! As Brothers live, as Brothers die!" He then called on the Cherokee people to remember what he considered the most important thing: Cherokee autonomy allowed the tribe to enjoy laws and rights of their own choosing. "Here they must be enjoyed or nowhere else," he exclaimed. "When our nationality ceases here, it will live nowhere else. When these homes are lost, you will find no others like them." He publicly acknowledged that he believed the South might win the war; and if so, the permanent disruption of the United States into two separate

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<sup>16</sup> "Minutes of the Cherokee Executive Council," August 1, 161, in Moulton, *Papers of Chief John Ross*, 2:479.

<sup>17</sup> The Confederate forces then in Indian Territory had not yet invaded the Cherokee Nation. The three forts, abandoned by the United States and occupied by the Confederates, were located in the Chickasaw Nation and the Wichita Agency in Southwest Indian Territory.

governments “is now probable,” he argued. Without expressing the various scenarios at play within his decision, he asked permission to “adopt preliminary steps for an alliance with the Confederate States.”<sup>18</sup> The 4,000 Cherokee men in attendance approved his request.<sup>19</sup>

Although there is no evidence that the Council members voted unanimately to join the Confederacy, Ross publicly claimed that they had done so. It is no surprise that Ross declared the Council in consensus on the matter for two reasons. First, Cherokee traditional law required final consensus on any matter, regardless the intensity of dissension during debate. Second, with Stand Watie and his men roaming the hills around Tahlequah looking for dissenters, Ross no doubt sought to protect the Council members from harassment, or worse.

A missionary from the Creek Nation, who was present at the mass meeting, suggested that the people in attendance were not as united in their support of a Confederate alliance as Ross claimed.<sup>20</sup> W. S. Robertson, in his report to the Presbyterian Church, stated that there were only 1,800 Cherokee men at the meeting, and that they left thinking the nation reaffirmed its stance of neutrality. It is true that the convention voted to approve Ross’s stance of neutrality, yet they also passed another resolution authorizing the chief to seek

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<sup>18</sup> “Address to the Cherokees,” August 21, 1861, in Moulton, *Papers of Chief John Ross*, 2:479-481.

<sup>19</sup> John Ross to the Chiefs and Headmen of the Creek Nation, August 24, 1861, in Moulton, *Papers of Chief John Ross*, 2:482.

<sup>20</sup> McLoughlin, *After the Trail of Tears*, 184.

an alliance with the Confederacy if a favorable agreement could be reached.<sup>21</sup> Once again, the Cherokee people demonstrated great faith in their elected leaders. Ross feared that Watie and his men might intercept his letters and instigate an internal civil war. If the United States government were to step in to protect any Cherokee from internal strife, Ross planned for it to be him and those loyal to the Cherokee national government.

Ross's first act following the meeting was to authorize his son-in-law, John Drew, to raise a regiment of mounted men to defend the Cherokee Nation from internal and external threats. Many, if not most, of the men enlisted into Drew's regiment belonged to the Keetoowah Society, a group of full-blood Cherokees who sought to remain loyal to tribal traditions and to honor the tribe's treaties with the United States because those treaties allowed them the autonomy to adhere to the traditional Cherokee way of life.<sup>22</sup> The Keetoowah Society was based on Cherokee tradition and arose within the tribe in opposition to the assimilationist mindset of the pro-removal faction led by the Ridges in the 1830s.<sup>23</sup> The society's desire to adhere to tribal tradition helped endear the Keetoowahs to the leadership of John Ross who also sought to protect tribal autonomy and tradition by honoring the federal treaties. His opposition to removal in the 1830s, and his marriage to a full-blood Cherokee,

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<sup>21</sup> Ibid.

<sup>22</sup> Georgia Rae Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma* (New York: Peter Lang Publishing, 1996), 5.

<sup>23</sup> Ibid.



allowed him to hold the loyalty of the society.<sup>24</sup> During the war, this group would gain an unfair reputation for disloyalty to the Confederate cause - unfair, because they never intended to be loyal to the Confederate cause. Their only intention was to remain loyal to Ross and the Cherokee government while they sought to protect the tribe's treaty relationship with the United States - or Confederate - government. Members of the Keetoowah Society wore crossed pins on their lapels as an identifier, leading Watie's followers to refer to them as "Pins."

Following the endorsement of the National Council, Ross turned his attention to the treaty negotiations, penning letters to Pike and McCulloch, informing them of the official resolution to seek an alliance with the Confederate States. He dispatched George W. Clark to McCulloch's camp with a letter addressed to the general.<sup>25</sup> At the same time, he sent C. R. Hicks and Joshua Ross with a note addressed to the chiefs and headmen of the Creek Nation. The men carried a letter for Pike and hoped to have a Creek guide escort them to his camp.<sup>26</sup> No doubt, the letter to the Creek leaders came as a surprise. It informed them that Ross had backed away from his stance of neutrality in order to seek an alliance with Pike and the Confederacy. When the note was shown to Opothle Yahola, the headman incredulously scribbled a

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<sup>24</sup> *Ibid.*, 5-6.

<sup>25</sup> John Ross to George W. Clark, in Moulton, *Papers of Chief John Ross*, 2:482.

<sup>26</sup> John Ross to The Chiefs and Headmen of the Creek Nation, August 24, 1861, in Moulton, *Papers of Chief John Ross*, 2:482.

note on the back of Ross's letter asking if the original was really from his own hand. "We don't know wether [sic] this is the truth or no," he wrote.<sup>27</sup>

In the meantime, two men, William P. Adair and James M. Bell, were alarmed by the results of the mass meeting, and wrote an intriguing letter to Stand Watie. The letter, dated August 29, reveals, perhaps, more about Watie than historians have realized.<sup>28</sup> With almost unanimity, historians describe Watie's entry into Confederate service as quick and decisive. However, the Adair-Bell letter appears to betray this traditional image in at least three ways. First, the letter makes no mention of any loyalty on the part of Watie and his followers to the Southern cause. It only mentions a concern for their position within the Cherokee Nation. The bulk of Watie's followers during the war belonged to a secret society known as the Knights of the Golden Circle.<sup>29</sup> The Knights was a proslavery group based in Cincinnati, Ohio, that found its way into the Cherokee Nation when the issue of slavery among the Cherokees was threatened by abolitionists from Kansas. General Ben McCulloch, a prominent member of the Knights, helped encourage the development of the society among the half-bloods of the tribe and tried to buttress the group by authorizing Watie to raise a force in disdain of Ross and the tribal government. The Knights rose in opposition to Ross and the Keetoowahs and presented a

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<sup>27</sup> Ibid.

<sup>28</sup> William P. Adair and James M. Bell to Stand Watie, August 29, 1861, in Edward Everett Dale, "Some Letters of General Stand Watie," *Chronicles of Oklahoma* 1 no. 1 (January 1921): 30-59.

<sup>29</sup> Franks, *Stand Watie*, 114.

credible threat to the traditional leanings of mainstream Cherokee society. However, any alliance with Pike would place Ross and the full-bloods in a position of favor with the Confederate government. The Knights, led by Adair and Bell, scampered to retain their fleeting influence with the Confederate States by imploring Watie to join them. If there was any loyalty to the Southern cause within the ranks of the Cherokee Knights of the Golden Circle, it took a backseat to the groups' concern for their own position of power within the Cherokee Nation.

The second way the letter betrays the traditional image of Stand Watie is that it appears that Watie's influence within the Cherokee Nation, like that of his cousin John Ridge in the 1830s, has been overstated. The letter makes it appear as if his only influence was with Pike and the Confederate government, and only then if Ross remained neutral. If Ross and his followers became "the Treaty making power," the two men wrote, "you know our destiny will be inalterably sealed."<sup>30</sup> This seems to invalidate the influence attributed to Watie in the historiography. The men asked Watie to consider a face-to-face meeting with Pike in order to lobby for the security of their position of influence with the Confederate States, "to the end that we may have justice done us," they wrote, "and our rights provided for and place us if possible at least on an honorable equity with this old Dominant party that has for years had its foot upon our

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<sup>30</sup> William P. Adair and James M. Bell to Stand Watie, August 29, 1861, Dale, "Some Letters," 36-38.

necks.” Why would the men ask Pike and not Watie to protect their influence within the Cherokee Nation? Most likely, it is because they realized that Watie had limited personal influence within the tribe and that, without the support of the Confederate government, they had little hope of gaining any.

Finally, the most significant way the Adair-Bell letter betrays the traditional image of Stand Watie is that it gives the appearance that the authors themselves, perhaps, on behalf of the Knights of the Golden Circle, were the ones looking for power and influence, and that they simply chose Watie to be the face of their movement. “We have selected you,” they wrote, “for . . . the well known [*sic*] fact that you have had an honorable reputation abroad in the South for years and are well known by A. Pike.” If Stand Watie was already the outspoken leader of the group, why were the men attempting to persuade him to intervene with Pike on their behalf? “If you will go, please come right away,” they added. “If you can’t go, please to send us a note and let us know but if possible you must go.”<sup>31</sup> In an endorsement to the letter, Bell strongly encouraged Watie to consider their request. If the men did not act promptly, he argued, then “we are done up. All of our work will have been in vain, our prospects destroyed, our rights disregarded, and we will be slaves to Ross’s tyranny.” He concluded with one final plea. “It wont [*sic*] do for you to hold back,” he implored, “Declare yourself ready to serve your country in what ever

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<sup>31</sup> Ibid.

[sic] capacity *we may want you*" (italics added).<sup>32</sup> No doubt, the Knights of the Golden Circle tried to recruit Watie to be their front man.

Both Adair and Bell were members of Watie's regiment, showing an enlistment date of July 12, 1861, over six weeks prior to having written the letter. Thirty-year-old William P. Adair enlisted as the assistant quarter master of the regiment, with the rank of captain. Thirty-three-year-old James M. Bell was the captain of Company D. Why would the men write such a letter to the colonel of their own regiment? Had Watie not fulfilled the responsibilities as leader of the troops? The newspapers of the day lauded Watie and his actions at the Battle of Wilson's Creek. However, two prominent Watie biographers admit that, even though some of his men participated in the engagement, Watie was not even present at the battle.<sup>33</sup> Moreover, Watie's force participated in the largest battle of the Civil War in Indian Territory at Honey Springs Depot in July 1863; and, once again, Watie was not present. He was "on detached services at Webber's Falls" at the time.<sup>34</sup> Why was Watie not at either engagement if his men were? Has the historical record credited Watie with more than he deserves? Perhaps the Adair-Bell letter reveals a side of Watie that historians previously failed to see. It is possible that Watie was not as committed to the Southern Cause as the historiography has imagined.

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<sup>32</sup> Ibid.

<sup>33</sup> Wilfred Knight, *Red Fox: Stand Watie and the Confederate Indian Nations during the Civil War Years in Indian Territory* (Glendale: Arthur H. Clark, Co., 1988), 66; Franks, *Stand Watie*, 118.

<sup>34</sup> Douglas H. Cooper to Charles DeMorse, Clarksville, Texas *Standard*, September 24, 1863.

Without question, his activities during the war have been proclaimed as heroic by contemporaries and historians alike; yet, maybe the praise has been too adulatory. It appears that Adair and Bell knew a different Stand Watie than the one presented in the historiography. Apparently, he was not even the leader of his own group, at least at the outset of the war.

As Watie was reading the letter from Adair and Bell, two Cherokee messengers were trying to locate Pike and deliver the letter from Ross informing the commissioner of the chief's desire to enter treaty negotiations. Once located, Pike received the news with satisfaction. The messengers returned to Park Hill with a note, written on September 3, expressing Pike's "liveliest gratification," and, most importantly, his willingness to "consider as not written my letter of the 1<sup>st</sup> August to the Principal Chief."<sup>35</sup> Pike's willingness to disregard his ultimatum to the Cherokees no doubt pleased Ross, who heartily agreed to send messengers to invite the chiefs of the Osages, Shawnees, Senecas, and Quapaws to the negotiations, at the request of Pike. Ross invited the leaders of the other tribes because he valued the unanimity and cooperation of all Indians. Regardless which side he, himself, chose, he believed the Indians were stronger as a united people. Pike planned to arrive two weeks later, on the evening of the 24th, to begin the negotiations. In

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<sup>35</sup> John Ross to Joseph Vann, September 10, 1861, in Moulton, *Papers of Chief John Ross*, 2:484-485; John Ross to Albert Pike, September 25, 1861, in Moulton, *Papers of Chief John Ross*, 2:488.

preparations, Ross called a meeting of the Executive Council to convene on the morning of September 23, the day before Pike's expected arrival.<sup>36</sup>

On September 19, Ross wrote to the Chiefs of the Osage Indians, declaring that "a dark black cloud . . . is lowering o'er our bright Southern sky, and it threatens to disturb and overwhelm the redman's peaceful Homes." He continued, "If you love your people, your Land and your Country, I beseech you not to fail to meet us around our great Council fire at Tahlequah to smoke the pipe of peace and shake the right hand of Friendship."<sup>37</sup> Ross asked them to arrive no later than September 25, if possible, because the negotiations needed to be wrapped up quickly so that the Cherokee people could formally approve a possible treaty at their National Council already scheduled to convene on October 7.<sup>38</sup> He wrote a similar letter to the chiefs of the Shawnee, Seneca, and Quapaw nations.<sup>39</sup>

On the same day he wrote the letter to the other tribes, Ross received the note from Opothle Yahola, written on the back of his own missive of August 24, inquiring whether or not Ross was, in fact, the author. Opothle Yahola had difficulty believing that his friend would abandon neutrality and turn to the Confederacy in such haste. "Brothers," Ross responded, "if it is your wish to

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<sup>36</sup> John Ross to James Brown, September 10, 1861, in Moulton, *Papers of Chief John Ross*, 2:484; John Ross to Joseph Vann, September 10, 1861, in Moulton, *Papers of Chief John Ross*, 2:484-485.

<sup>37</sup> John Ross to the Chiefs of the Osage Nation, September 19, 1861, in Moulton, *Papers of Chief John Ross*, 2:485-486.

<sup>38</sup> *Ibid.*

<sup>39</sup> John Ross to the Chiefs of the Shawnees, Senecas, and Quapaws, in Moulton, *Papers of Chief John Ross*, 2:486-487.

know whether I had written the above note, or not – I will tell you that I did!”<sup>40</sup> He sent them copies of his address to the Cherokee people, dated August 21, in which he explained his reasoning for the shift. “My advice and desire,” he continued, “under the present extraordinary crisis, is, for all the red Brethren to be united among themselves in the support of our common rights and interest by forming an alliance of peace and friendship with the Confederate States of America.” Ross’s insistence on Indian unity had nothing to do with loyalty to the Confederate cause, or, inversely, disloyalty to the United States. It was simply based on his belief that unity was in the best interest of all Indians. However, the United States would not interpret it the same way after the war.

The Quapaw delegation was the first to arrive at Tahlequah on the evening of September 24. The next morning, Ross received a letter from his brother-in-law, John W. Stapler, informing him of the arrival of James M. Bell (of the Adair–Bell letter) and his company of Cherokees, who had been distributing information suggesting that the Cherokee Nation was divided in their support of an alliance with the Confederacy.<sup>41</sup> No doubt, Bell was attempting to discredit Ross’s leadership, hoping to prevent an alliance between the chief executive and the Confederate government. Stapler informed Ross that Watie was expected to arrive on the evening of the 25<sup>th</sup>. Bell’s efforts to thwart the Ross–Pike alliance before Watie even arrived in

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<sup>40</sup> John Ross to Opothle Yahola and Other Chiefs and Headmen of the Creek Nation, September 19, 1861, in Moulton, *Papers of Chief John Ross*, 2:487-488.

<sup>41</sup> John W. Stapler to John Ross, September 25, 1861, in Moulton, *Papers of Chief John Ross*, 2:488-489.



Tahlequah further supports the argument that he and Adair were the leaders of the early Keetoowah movement. Stapler further accused Bell of trying to incite a civil war among Cherokees supporting the Confederacy. He asked, "Does Ben McCulloch *tolerate* the above in Soldiers of *his army*?"<sup>42</sup> However, he acknowledged that he overheard one of Bell's men justify the disruption by claiming that no official treaty had yet been signed by Ross and the Cherokees. There is no evidence that Watie was privy to the attempted disruption of the treaty negotiations by Bell and his men. Once the treaty was finalized, it is reported that Watie shook Ross's hand as a sign of unity.<sup>43</sup> It is interesting to note that from all appearances, Watie may have waited until his tribe officially signed the treaty with the Confederacy before taking an active role in the war.

Ross and the Creek headman, Opothle Yahola, shared a similar political ideology at the outset of the war and, therefore, developed somewhat of a kindred spirit. The fact that the principal chief of the Cherokee Nation was also determined to remain neutral out of an intense loyalty to the treaties with the United States gave Opothle Yahola a sense of legitimacy, if not a boldness to stand firm in the face of increasingly difficult circumstances. The headman's reputation in the Creek Nation caused many disaffected Indians from various tribes to gather at his farm, hoping to escape the growing unrest, just as Opothle Yahola desired to do. Creek chief Motey Kennard already viewed the

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<sup>42</sup> John W. Stapler to John Ross, September 25, 1861, in Moulton, *Papers of Chief John Ross*, 2:488-489.

<sup>43</sup> Robert J. Conley, *The Cherokee Nation: A History* (Albuquerque: University of New Mexico, 2005), 175.

elderly headman as a political adversary dating back to the days of removal. Having Ross as an ally in neutrality provided a sense of protection for Opothle Yahola and his growing band of followers. However, Ross's decision to lead the Cherokee Nation into an alliance with the Confederate States left thousands of neutral Indians, including those with Opothle Yahola, without any protection other than what could be provided in unity on the chief's farm. Ross's apparent defection also resulted in two unintended situations. First, it yanked Opothle Yahola out of a supporting role and thrust him unwillingly into the forefront of the neutral movement in Indian Territory. Second, the number of asylum seekers gathering at his farm increased daily, forcing him to assume some level of responsibility for the mass of peaceful Indians. Opothle Yahola claimed to have selected the location for the farm because its seclusion would allow him and his family to "live in peace and quiet away from the scene of strife and confusion."<sup>44</sup> The number of peaceful people seeking to join Opothle Yahola in that solitude climbed to an estimated 6,000 to 8,000 Indians and blacks.<sup>45</sup> Opothle Yahola's hope of being "at peace with all the red and white people" diminished more and more with each additional exile who arrived.<sup>46</sup>

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<sup>44</sup> John Ross to Motey Kennard and Echo Harjo, October 20, 1861, in Moulton, *The Papers of Chief John Ross*, 2:497-499.

<sup>45</sup> Richard Lowe, *A Texas Cavalry Officer's Civil War: The Diary and Letters of James C. Bates* (Baton Rouge: Louisiana State University Press, 1999), 19; McBride, *Opothleyoholo*, 8.

<sup>46</sup> John Ross to Motey Kennard and Echo Harjo, October 20, 1861, in Moulton, *The Papers of Chief John Ross*, 2:497-499.

Just like the Cherokees, the Creek Nation was also divided over removal and that division started to concern Kennard who, in light of the swelling masses of people around Opothle Yahola, considered the headman to be a dangerous threat to the political stability of the Creek Nation.<sup>47</sup> On October 1, 1861, Kennard sent a letter to Ross seeking help with the growing concern. Kennard believed Ross's wisdom and influence would help persuade Opothle Yahola to abandon neutrality, as Ross had done, and to join the other Indians in defense of their homes. He told Ross that Opothle Yahola believed that most Cherokees were against a Confederate alliance and that the Cherokee Nation would not be joining the chief in that declaration. Kennard went as far as to blame the misconception on a Creek named Track Stimson, who allegedly spread the rumor of Cherokee disunity. He asked Ross to consider sending "wise delegates" to meet with Opothle Yahola and "give them a true statement of the condition of your people." The Creek leader warned that, if no remedy could be found, "it will and must end in civil war."<sup>48</sup> Two days later, Kennard shot another letter to Ross, this one urgently calling on the Cherokee chief to intervene and stop a rumored attack by Opothle Yahola and his followers on the Creek regiment "in five days."<sup>49</sup> Ross responded immediately with plans to dispatch a delegation to Opothle Yahola, and invited

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<sup>47</sup> Motey Kennard to John Ross, October 1, 1861, in Moulton, *Papers of Chief John Ross*, 2:489.

<sup>48</sup> *Ibid.*

<sup>49</sup> Motey Kennard to John Ross, October 3, 1861, in Moulton, *Papers of Chief John Ross*, 2:489.

him to attend the National Council of the Cherokee people scheduled to take place three days later, on October 7. "In the meantime," he wrote, "let me ask you and your friends to exercise prudence and forbearance and to avoid any collision unless it be forced upon you."<sup>50</sup> Ross believed strongly in the need for unity among the people of Indian Territory. He recognized the impatience in Albert Pike's letter of August 1 and did not wish for the Creeks to fall prey to the Confederate commissioner's ultimatum either.

While Ross concerned himself with the tension in the Creek Nation, Pike negotiated treaties of alliance with the Osage Indians (October 2), the Quapaw Indians (October 4), and the Seneca and Shawnee Indians (October 4).<sup>51</sup> The Cherokee-Confederate treaty, signed on October 7, did more than simply replace the tribe's treaties with the United States; it offered the Indians a path to eventual statehood, should they choose it - and should the Confederate States honor it.<sup>52</sup> The next day, October 8, Ross sent his assistant chief, Joseph Vann, as the head of a delegation to visit with Opothle Yahola and express to him the importance of communication and cooperation among the tribes of Indian Territory.<sup>53</sup> Even though the treaty negotiations were over, Vann had orders to invite Opothle Yahola to Tahlequah under promise of safe

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<sup>50</sup> John Ross to Motey Kennard, October 4, 1861, in Moulton, *Papers of Chief John Ross*, 2:490.

<sup>51</sup> Vine Deloria, Jr. and Raymond J. DeMallie, *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979* (Norman: University of Oklahoma Press, 1999), 2:1511.

<sup>52</sup> *Ibid.*, 1:666-680.

<sup>53</sup> John Ross to Motey Kennard, October 8, 1861, in Moulton, *Papers of Chief John Ross*, 2:490-491.

passage from Pike. Ross hoped the Creek headman could arrive in time to meet with Pike and Kennard and learn firsthand the truth about the Cherokee and Creek alliances.<sup>54</sup>

On October 11, three days after Vann's departure, Ross received a note from Opothle Yahola expressing his concern about rumors of Texas troops crossing the Red River headed into Indian Territory. Ross's reply reveals his frustration. "It makes my heart sad," he wrote, "to find the whole Country filled with false alarms." He proceeded to tell Opothle Yahola that the five regiments of Texas soldiers who crossed the Arkansas River near Fort Gibson were headed to Missouri when they heard rumors that the Creek headman and his crowd of followers were planning to attack Motey Kennard's Creek regiment, the rumor mentioned in Kennard's letter to Ross on October 3. When the force realized the rumors were false, they continued their journey to Arkansas.<sup>55</sup> Ross took the opportunity to express his hopes that Opothle Yahola would receive Vann and the Cherokee delegation as soon as they arrived and return to Tahlequah with them.<sup>56</sup> However, Opothle Yahola was still distrustful of Kennard and the Creek government and refused to risk the journey. After failing to convince the headman to attend the meeting, Vann returned by way of the Creek Nation where he met with Kennard and shared Opothle Yahola's

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<sup>54</sup> John Ross to Opothle Yahola, October 8, 1861, in Moulton, *Papers of Chief John Ross*, 2:491-492.

<sup>55</sup> John Ross to Opothle Yahola, October 11, 1861, in Moulton, *Papers of Chief John Ross*, 2:495-496.

<sup>56</sup> *Ibid.*

refusal to entertain Confederate overtures, even if they were delivered by his friend John Ross. Opothle Yahola remained loyal to the treaties with the United States and was surprised and disappointed when his friend Ross traded his tribe's own treaty responsibilities for Confederate protection.

Kennard wrote to Ross, thanking him for his efforts to bring peace to the Creek Nation. The Creeks learned that Opothle Yahola wrote to President Lincoln asking him to return federal troops to Indian Territory.<sup>57</sup> When they learned that the headman rejected Ross's invitation, the Creek leadership expressed grave concern. "If they get aid from the North," Kennard wrote to Ross, "they will be our most formidable enemy." He declared that it has become "necessary for them to be put down at any cost." He continued, "Therefore so soon as we are reinforced . . . we shall proceed without further delay and put an end to the affair."<sup>58</sup> Ross was indignant. "Brothers," he retorted in a letter, "We are shocked with amazement at the fearful import of your words! Are we to understand that you have determined to make a Military demonstration, by force of Arms, upon Opothle Yahola and his followers, at the cost of civil war among your own People . . . ?"<sup>59</sup> Ross's dream of a united Indian Territory was coming unraveled. He urged Kennard to exude patience,

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<sup>57</sup> Angie Debo, *Road to Disappearance: A History of the Creek Indians* (Norman: University of Oklahoma Press, 1941), 149-150; Lela J. McBride, *Opothleyahola and the Loyal Muskogee: Their Flight to Kansas in the Civil War* (Jefferson: McFarland and Company, 2000), 150.

<sup>58</sup> Motey Kennard and Echo Harjo to John Ross, October 18, 1861, in Moulton, *Papers of Chief John Ross*, 2:496-497.

<sup>59</sup> John Ross to Motey Kennard and Echo Harjo, October 20, 1861, in Moulton, *Papers of Chief John Ross*, 2:497-499.

claiming that the cost of such a movement on Opothle Yahola and his followers “would be lamentable.”<sup>60</sup> He sought to placate Kennard and the Creek leadership by expressing his faith in common sense. “We have no good reasons,” he argued, “to consider the Mission of the Asst. Chief and his associates to Opothle Yahola as a hopeless failure.”<sup>61</sup> Hoping to avoid any undue confrontation, Ross sent the letter to Drew at Fort Gibson, asking him to deliver it to Kennard. He wanted his forces to be aware of the situation in case there was a movement against the peaceful Indians. He also asked Drew to show the letter to Colonel Douglas H. Cooper who was in command of Pike’s forces while the commissioner was in Richmond seeking the ratification of the newly signed treaties. “I most sincerely regret,” he wrote to Drew, “the state of confusion and excitement growing out of the Creek affair, which might have been amicably adjusted, without all the trouble it has created if a prudent and wise course had been pursued by the Creek authorities.”<sup>62</sup> Ross feared that if the Creek Nation did not unite in cooperation with the other tribes, then Cherokee forces would be left alone to defend the northern border of Indian Territory from invasion. Ross hoped to secure Opothle Yahola’s alliance and then turn his attention away from the Creek situation and focus the nation’s resources on protecting his own country.<sup>63</sup>

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<sup>60</sup> *Ibid.*, 497.

<sup>61</sup> *Ibid.*, 497.

<sup>62</sup> John Ross to John Drew and William P. Ross, October 20, 1861, in Moulton, *Papers of Chief John Ross*, 2:499-500.

<sup>63</sup> *Ibid.*

Ross's attempt to mollify Kennard had little effect. By the end of October, the Creeks grew weary of waiting. Kennard wrote to Cooper, informing him that the Creek general council decided to go ahead with the attack on Opothle Yahola on Friday, November 8, "to put down if possible the hostile movements" of Opothle Yahola and his "Party."<sup>64</sup> Kennard further advised Cooper of the tribe's intentions to capture any free blacks who might be part of Opothle Yahola's followers and to sell them for the benefit of the Creek Nation. Cooper's response reveals his interpretation of the political situation. He told Kennard that he would not be prepared to move by the date suggested, as he hoped to be reinforced from Texas or Arkansas. Moreover, he informed the Creeks that he was not willing to call any engagement with Opothle Yahola a tribal war. He argued that the forces involved were being paid by the Confederate government, therefore "all captured property or property of person found in arms against the Confederate States and confiscated in consequence thereof, will be deemed and held as the property of said states."<sup>65</sup> Cooper's view of the situation was blinded by the North-South binary, while Kennard simply saw it as a matter of Creek politics. In reality, neither was correct. It was a matter of Indian sovereignty and failed U.S. Indian policy. Opothle Yahola sought the protection of the United States government

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<sup>64</sup> Motey Kennard and Echo Harjo, et al, to Douglas H. Cooper, October 31, 1861, Papers of the Creek Nation, Oklahoma Historical Society, Oklahoma City (Hereafter cited as OHS).

<sup>65</sup> Douglas H. Cooper to Motey Kennard and Echo Harjo, et al., October 31, 1861, Papers of the Creek Nation, OHS.



as a requirement of the tribe's treaties. He took no side at all. Kennard and Cooper could not see that. They were both blinded by their own perspectives.

In order to understand the story of Opothle Yahola, his followers, and the tragedy that befell them, we must view the events from the perspective of John Ross. Ross's initial stand of neutrality attracted Opothle Yahola and secured a line of communication between the two men. By allowing their correspondence to drive the narrative, we see a much different story develop than the one presented in modern scholarship.<sup>66</sup> Without Ross's perspective, we see the events only through the eyes of Kennard, who was blinded by fear, and the Confederates, who were blinded by the North-South binary. Cooper instigated an attack on Opothle Yahola to force the group to comply with the Creek-Confederate alliance. The only other alternative in his mind was to drive them out of Indian Territory toward their Union allies in Kansas.<sup>67</sup> Opothle Yahola wanted neither. His lone aim was to remain loyal to the treaties with the United States and await the return of Federal troops. Sadly, neither Kennard nor Cooper were willing to allow that. They believed that Opothle Yahola and his following represented a growing military opposition to the Creek-

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<sup>66</sup> Annie H. Abel (1915), Angie Debo (1925), Kenny A. Franks (1979), W. Craig Gaines (1989), Lela J. McBride (2000), Clarissa Confer (2007), Mary Jane Warde (2013), and Thomas W. Cutrer (2017) all cite only Creek and Confederate sources in their narratives of Opothle Yahola's flight to Kansas and treat the events as the first battles of the Civil War in Indian Territory.

<sup>67</sup> Report of Douglas H. Cooper, January 20, 1862, *OR*, Ser. I, Vol. VIII, 5.

Confederate alliance; and the quicker that resistance could be put down, the safer they would be.<sup>68</sup>

By Monday, November 11, 1861, the waiting game ended. Cooper's Confederate Indians were reinforced by Lieutenant Colonel William Quayle and a detachment of the Fourth Texas Cavalry that left North Texas on October 29 en route to Northwest Arkansas.<sup>69</sup> The regiment was ordered to assist Cooper against Opothle Yahola and promptly departed, moving at a rapid pace and in complete silence toward Cooper's camp, fearing a proximal enemy motivated the order. The men arrived in camp on the north fork of the Canadian River about midnight and found themselves surrounded by painted Confederate Indians who entertained their guests with a rousing war dance.<sup>70</sup>

After allowing the Texans a couple of days to rest, the regiment prepared to initiate the attack on Opothle Yahola's neutral Indians. Drew's regiment of Cherokees received orders to proceed to Coodey's Bluff on the west side of the Verdigris River, about forty miles east-northeast of present-day Tulsa, and to await further orders. Drew marched out of Fort Gibson on Thursday, November 14 with 500 Cherokees, leaving the remainder under the command of Ross's nephew, Lieutenant Colonel William P. Ross. William wrote a letter to his uncle informing him of the movement of Drew's forces.

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<sup>68</sup> Motey Kennard and Echo Harjo to John Ross, October 18, 1861, in Moulton, *The Papers of Chief John Ross*, 496-497.

<sup>69</sup> The 4<sup>th</sup> Texas Cavalry was commanded by Colonel William B. Sims and would later become the 9<sup>th</sup> Texas Cavalry, Lowe, *A Texas Cavalry Officer's Civil War*, 21.

<sup>70</sup> *Ibid.*

Believing that the approach of winter made an engagement with Union forces unlikely, William hypothesized that the movement was against Opothle Yahola.<sup>71</sup> The chief responded with exasperation: “The steps taken by me for restoring confidence and reconciliation among the Creeks, in all probability may be defeated by the counteracting course since pursued by the chiefs and military authorities of the Creek nation!” Ross continued by declaring his opposition to placing Cherokee troops in the middle of an internal Creek affair.

If we cannot exercise a salutary influence as mediators between the opposing parties – we should by all means avoid taking part in any measure calculated to widen the breach and bring about a conflict between them – let us therefore look closely to our Treaty and to do our duty that nothing short of open rebellion or resistance to the Govt. of the Confederate States or, the invasion of our Territory by any of our red allies, should ever induce us to apply the forces of arms against them!<sup>72</sup>

Ross was angered, and saddened, by the idea of using Cherokee troops to attack Opothle Yahola and his neutral Indians; yet he was quick to reassure his nephew that his disappointment was not aimed at Drew or the regiment. He expressed frustration over the idea of a white government getting in the way, causing his efforts to fail, as happened to Cherokee efforts at “mediation between the U.S. Govt. and the Seminoles in Florida [in 1837]”<sup>73</sup>

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<sup>71</sup> John Ross to William P. Ross, November 16, 1861, in Moulton, *The Papers of Chief John Ross*, 2:502-503.

<sup>72</sup> John Ross to William P. Ross, November 16, 1861, in Moulton, *The Papers of Chief John Ross*, 503-504.

<sup>73</sup> *Ibid.*, 504.

The next morning, November 15, Cooper's forces crossed the river and headed toward Opothle Yahola's camp. The force consisted of six companies of Pike's First Choctaw and Chickasaw Mounted Rifles; D. N. McIntosh's Creek regiment; Chilly McIntosh's Creek and Seminole battalion; John Jumper's Seminoles; and a detachment of Sims's Fourth Texas Cavalry under the command of Lieutenant Colonel William Quayle.<sup>74</sup> The entire Confederate command numbered about 1,400.<sup>75</sup>

As soon as Opothle Yahola's scouts detected the approaching force, the entire group of women, children, and aged Indians fled toward the Cherokee Nation with Opothle Yahola leading the caravan. The able-bodied men of the group provided a screen of protection in the front and rear of the retreating column.<sup>76</sup> The Indians set fire to the dried grass around them, burning everything in sight and creating a screen of smoke to veil their escape. When the attacking Confederates entered Opothle Yahola's camp on the 18<sup>th</sup>, they found it had been so hurriedly abandoned that campfires were still burning.<sup>77</sup>

On that very day, November 18, while fleeing the approaching Confederates, Opothle Yahola sent an important message to Ross that has

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<sup>74</sup> Douglas H. Cooper to Judah P. Benjamin, January 20, 1862, *OR*, Ser. I, Vol. XIII, 5; Quayle's detachment of the Fourth Texas Cavalry is from William B. Sims's regiment that later became the Ninth Texas Cavalry; Lowe, *A Texas Cavalry Officer's Civil War*, 21.

<sup>75</sup> John Ross to William P. Ross, November 16, 1861, in Moulton, *The Papers of Chief John Ross*, 2:503-504.

<sup>76</sup> McBride, *Opothleyaholo*, 165.

<sup>77</sup> Lowe, *A Texas Cavalry Officer's Civil War*, 23-24.

been excluded from much of the historiography.<sup>78</sup> While Lela J. McBride suggests that the retreat was simply a tactic to lure the Confederates into a trap, other historians argue that the movement was a premeditated attempt to flee into Kansas where the “pro-Union” Indians could find solace among their allies in the North.<sup>79</sup> However, Opothle Yahola’s message reveals his true intentions.<sup>80</sup> The message was delivered to James McDaniel, a captain in Drew’s regiment at Coodey’s Bluff, who immediately sent two men to Fort Gibson with a note. The men, Captain Porum Davis and Lieutenant Crab Grass (Cabbin) Smith, delivered the note to Ross’s brother, Lewis, who carried it to the chief.<sup>81</sup> The message was simply a cry for help. With Cooper bearing down on him, Opothle Yahola abandoned his camp and headed for safety, declaring his desire to accept Ross’s invitation to discuss peace among the Creek people, while asking for sanctuary in the Cherokee Nation.<sup>82</sup> On November 20, Ross replied, “I am happy to hear this.” He ordered McDaniel, Davis, and Smith to find Opothle Yahola and escort him safely into the Cherokee Nation “where I

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<sup>78</sup> Gaines mentions the message but implies that it is simply an ongoing desire for peace within Indian Territory, W. Craig Gaines, *Confederate Cherokees: John Drew’s Regiment of Mounted Rifles* (Baton Rouge: Louisiana State University Press, 1989), 38.

<sup>79</sup> Lowe, *A Texas Cavalry Officer’s Civil War*, 19; Confer, *The Cherokee Nation*, 59; Thomas W. Cutrer, *Theater of a Separate War: The Civil War West of the Mississippi River, 1861-1865* (Chapel Hill: University of North Carolina Press, 2017), 77; W. David Baird, ed., *A Creek Warrior for the Confederacy: The Autobiography of Chief G. W. Grayson* (Norman: University of Oklahoma Press, 1988), 59.

<sup>80</sup> *Ibid.*

<sup>81</sup> Gaines, *The Confederate Cherokees*, 38.

<sup>82</sup> The original message has not been found, however, a handwritten note among Ross’s papers, references the Opothle Yahola’s message, see “Notes,” in Moulton, *The Papers of Chief John Ross*, 2:506.

will meet him in view of holding a meeting with the proper authorities for an amicable adjustment to his difficulties.”<sup>83</sup>

The timing and logistics of delivering the messages between Ross and Opothle Yahola were more than the Indians could overcome as neither message reached its target in time to prevent, perhaps, the most unfortunate event of the Civil War west of the Mississippi. The next day, November 19, one day before Ross received the message from Opothle Yahola, Cooper’s forces located his new camp and attacked them at Round Mountain, while Drew’s regiment waited at Coodey’s Bluff nearly eighty miles away. Throughout the afternoon hours of November 19, the Confederates positioned themselves for what they believed was to be a strong counterattack by Opothle Yahola’s forces. However, once engaged, the skirmish lasted only fifteen minutes before the neutral Indians abandoned the field and retreated toward the Cherokee Nation, seeking refuge in the cliffs along Bird Creek. The retreat was not in the direction of Kansas to the north as much of the historiography would have readers believe, but rather toward the east-northeast and Drew’s regiment in the Cherokee Nation.<sup>84</sup> Even Cooper realized that Opothle Yahola’s flight took him in the direction of the Cherokee Nation where Cooper believed he had “taken refuge . . . by invitation of a leading disaffected Cherokee” (Ross).<sup>85</sup>

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<sup>83</sup> John Ross to James McDaniel, Porum, and Cabbin Smith, November 20, 1861, in Moulton, *Papers of Chief John Ross*, 2:504-505.

<sup>84</sup> McBride, *Opothleyaholo*, 165-166. See the map in Lowe, *A Texas Cavalry Officer's Civil War*, 20.

<sup>85</sup> Report of Douglas H. Cooper, January 20, 1862, *OR*, Ser. I, Vol. VIII, 7.

Proclaimed by an overabundance of the historiography as the first “battle” of the Civil War in Indian Territory, the event can hardly be described as an engagement between two military forces. As many as three-fourths of Opothle Yahola’s followers were women, children, and elderly Indians. Moreover, the group travelled with wagons, carts, buggies, oxen, sheep, cattle, and crated chickens, hardly the composition of a military force.<sup>86</sup> Plus, McBride claims that Opothle Yahola had no intention of using his warriors as a military force. His primary aim was “the protection of the children, women, and the aged.”<sup>87</sup> Mary Jane Warde asserts that when the warriors’ task was complete, they “simply disengaged, disappeared from the battlefield, and left it to the Confederate allies.”<sup>88</sup> This does not sound much like a fighting force. However, most historians, by viewing the event solely from the Creek and Confederate perspectives, refer to the engagements as battles.<sup>89</sup> Some historians might claim that the simple act of engaging in military action, even in defense of noncombatants, constitutes a battle; and this has merit. However, by omitting Opothle Yahola’s correspondence with Ross, the story is incomplete, and the reader is left with a sense of dissonance, the feeling that there is something more to the story.

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<sup>86</sup> Cutrer, *Theater of a Separate War*, 77.

<sup>87</sup> McBride, *Opothleyaholo*, 166.

<sup>88</sup> Warde, *When the Wolf Came*, 78.

<sup>89</sup> *Ibid.*, 71; Even Confer, who includes the Indian perspective in her narrative, refers to the events as “military activity” and “running battles.” She makes no clear assertion that the events were not Civil War battles. Confer, *The Cherokee Nation*, 58.

By excluding Ross's participation in the events at Round Mountain, historians misinterpret the remainder of the story as well. While Opothle Yahola and his followers were seeking refuge on Bird Creek in the Cherokee Nation, Cooper received orders from General McCulloch to proceed to Maysville on the Arkansas border. McCulloch received intelligence that John C. Fremont was preparing to invade Northwest Arkansas with about 20,000 men, and McCulloch gathered forces for a defense.<sup>90</sup> Cooper quickly returned to his trains on the south bank of the Arkansas River at Concharty - or Concharta as reported by Cooper - just south of present-day Broken Arrow, arriving on November 24.<sup>91</sup> While there, he received an update from McCulloch informing him that the feared Union advance had not materialized and that he should return his attention to the Creeks. The fact that Opothle Yahola entered the Cherokee Nation concerned Cooper.<sup>92</sup>

After allowing his men and animals to rest and gain nourishment, Cooper ordered his force, consisting of 780 Indians, to Tulsey Town on November 29. At the same time, he ordered Colonel Sims and all available men of the Fourth Texas Cavalry, who proceeded toward Missouri, to join Drew's detachment at Coodey's Bluff. On arriving at Tulsey Town, Cooper received information that Opothle Yahola was preparing an attack with more

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<sup>90</sup> Steve Cottrell, *Civil War in the Indian Territory* (Gretna: Pelican Publishing, 1995), 25-27.

<sup>91</sup> Douglas H. Cooper to Judah P. Benjamin, January 29, 1862, *OR*, Ser. I, Vol. VIII, 5-14.

<sup>92</sup> *Ibid.*



than 2,000 Indians. Cooper quickly ordered Drew to march south and meet him. He ordered Sims to join them in the vicinity. Somehow, Drew misinterpreted the order and instead of marching south, he marched with 480 men to the southwest, directly toward Opothle Yahola's camp, stopping about six miles away on December 7. When Cooper arrived the next day, his first encounter with Drew's regiment, he learned of the message Opothle Yahola had sent two weeks earlier asking for peace. Cooper ordered Drew to send a messenger to the headman to inform him that the Confederates did not wish to shed any more blood either and that Opothle Yahola should meet with him the next day. Drew dispatched Major Thomas Pegg and some others to deliver the message.<sup>93</sup>

In Warde's narrative, Opothle Yahola's reaction is confusing. When Pegg and the others returned, they reported that Opothle Yahola refused to greet them and that the Creeks were wearing war paint and were preparing for an attack.<sup>94</sup> These seem to be contrary actions for someone who wanted peace. Clarissa Confer offers a fair treatment of Opothle Yahola's predicament; yet, she depicts the action without even a mention of the hurried message to Ross.<sup>95</sup> If Opothle Yahola desired peace as vehemently as it appeared, why would he not welcome this opportunity to have it? The answer is easily found within the context of the correspondence with Ross. By the time Cooper

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<sup>93</sup> *Ibid.*

<sup>94</sup> Warde, *When the Wolf Came*, 75.

<sup>95</sup> Confer, *Cherokee Nation*, 61-62.

arrived, however, Opothle Yahola had given up on help arriving from Ross; and with another Confederate force bearing down on him, he had no choice but prepare for battle. When Pegg and the others arrived at his camp, they saw him preparing for another attack he believed to be coming. Opothle Yahola had every reason to believe that Ross was not coming and that another attack by the Confederates was imminent. He simply prepared to defend himself and his followers.

The next day, December 9, Cooper went on the offensive at Bird Creek, attacking Opothle Yahola and his band of neutral Indians.<sup>96</sup> Opothle Yahola hid himself among the bluffs surrounding Bird Creek hoping to receive word from Ross that danger was averted. After four hours of heavy fighting, the neutral Indians retreated deeper into the mountains along with their noncombatants. Based on reports, Cooper claimed to have killed 500 of the neutral Indians while only losing a handful of his own men.<sup>97</sup> Opothle Yahola's beleaguered followers retreated into the hills, unsure when the next attack would come. They were running out of ammunition, and the freezing cold temperatures began to take its toll on the women and children. The group left much of their belongings behind as they fled the initial attack at Round Mountain. Their leader led them to the northeast, toward the Cherokee Nation, hoping to contact Ross and put an end to the nightmare that befell them. However,

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<sup>96</sup> *Ibid.* 77.

<sup>97</sup> McBride, *Opothleyaholo*, 168-169.

circumstances prevented Ross from responding to Opothle Yahola's cry for peace before belligerents arrived and attacked the neutral Indians again. Douglas Cooper was unable - or unwilling - to see the event as anything less than a battle between opposing forces aligned along the North-South binary, and the peaceful Indians with Opothle Yahola were expected to answer for Cooper's nearsightedness.

Not all Confederate-aligned forces, however, missed the reality of the situation at Bird Creek. The Cherokee regiment under John Drew knew of Opothle Yahola's attempt to seek peace in the Cherokee Nation, and before Cooper could initiate his attack on December 9, about 420 of the 480 men of Drew's First Cherokee Mounted Rifle regiment deserted their command. McBride's treatment of Opothle Yahola is striking in that he is depicted as a Union sympathizer who utilized "psychological warfare" against the Confederates by constantly threatening to attack in order to keep them off guard.<sup>98</sup> In McBride's insinuation, Drew's Cherokees folded under the pressure of Opothle Yahola's mind games. Abel and Warde assert that the Cherokees deserted because they had no desire to fight against other Indians.<sup>99</sup> Of the 420 deserters, however, an estimated 300 crossed into Opothle Yahola's camp to join the neutral Indians and fight against the Confederate Indians.<sup>100</sup> This

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<sup>98</sup> McBride, *Opothleyaholo*, 168.

<sup>99</sup> Annie Heloise Abel, *The American Indian as Slaveholder and Secessionist* (Lincoln: University of Nebraska Press, 1992), 256; Warde, *When the Wolf Came*, 75.

<sup>100</sup> John Drew to John Ross, December 16, 1861, in Moulton, *The Papers of Chief John Ross*, 2:507.

contradicts the explanation offered by Abel and Warde. Confer claims that the Cherokees simply had no desire to get involved in an intratribal fight.<sup>101</sup> Again, defecting to the other side seems to go against this interpretation. Fighting alongside Opothle Yahola's men put them right in the middle of that fight. Moreover, Cooper was adamant about the fact that the engagement was not merely an intratribal matter, but a Confederate concern.

Perhaps the most interesting interpretation of the event, however, comes from Gaines, who asserts that the defections and desertions were planned in advance. He suggests that Pegg's attempt to deliver Cooper's message to Opothle Yahola was a ruse to get all of the pro-Ross Cherokees out of camp so the remainder "could desert to the Union Indians' camp without a fight."<sup>102</sup> Again, the North-South binary confuses the story. Moreover, one of those reported to have been among the defectors was Captain James Vann, a staunch Ross supporter.<sup>103</sup> The better explanation is that many of Drew's Cherokees, mostly members of the Keetoowah Society, felt sympathetic for Opothle Yahola's followers after the call for peace failed to halt the aggression, and they switched to his side to help defend the peaceful Indians from an unnecessary attack. It is important to remember that Keetoowah loyalty lied with Ross and the tribe's treaties, not with the Confederate nor the United States governments. Were the men of Drew's regiment told of Ross's diatribe

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<sup>101</sup> Confer, *The Cherokee Nation*, 62-64.

<sup>102</sup> Gaines, *Confederate Cherokees*, 47.

<sup>103</sup> John Drew to John Ross, December 16, 1861, in Moulton, *The Papers of Chief John Ross*, 2:507.

against using Cherokees to attack Opothle Yahola and his followers? Did they believe they would be able to get away with such a treasonous move?

Following Cooper's attack on December 9, many of the men returned to Drew's camp as if they had done nothing wrong.<sup>104</sup>

On December 9, the day after the attack at Bird Creek, William P. Ross and the remainder of Drew's regiment marched out of Fort Gibson to unite with Drew's main force. About twenty miles from the fort, the force encountered some men from Captain Pickens M. Benge's company who told him of the mass desertions. William Ross stopped and wrote a hasty letter to his uncle, the principal chief, informing him of the "rupture" of the regiment.<sup>105</sup> William Ross seemed shocked by what he heard. However, much of the initial report came from unreliable sources. He was told that some high-ranking Cherokee officers were being held captive by Opothle Yahola's forces, at the same time that numerous Cherokees switched sides in the middle of the fight. No doubt, this pleased Ross who bemoaned the idea of Cherokee warriors being deployed against other Indians. Even though Ross was called on by Pike and Cooper to account for the climate in the Cherokee Nation in light of the desertions, Ross refused to punish any of the deserters. Gaines asserts that "by all the rules of warfare they should have been shot, but Chief Ross did not have it in his heart to punish those of his followers who had acted on their

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<sup>104</sup> Ibid.

<sup>105</sup> William P. Ross to John Ross, December 9, 1861, Ross Papers, HC.

convictions and sided with Opothle Yahola.”<sup>106</sup> Of course he did not have it in his heart to punish them. Were he part of the regiment, he likely would have joined them. Ross did not align with the Confederacy to protect the Confederacy from neutral Indians. He joined the Confederacy to protect the Cherokee people from the Civil War.

Perhaps the biggest impact of the desertions and defections was the fact that the Confederate government came to believe that Drew’s regiment was useless as a fighting force. Ross would now have to demonstrate his loyalty to the Confederates once again. Moreover, Stand Watie became enraged that the Cherokee regiment acted so poorly, and that the chief acted so leniently in his punishment of the treasonous Indians.<sup>107</sup> It is unclear how much Drew empathized with the deserters from his regiment following the attack at Bird Creek. His correspondence with Cooper and Ross in the days following the desertions was understandably guarded. However, Cooper doubted Drew’s sincerity. Although he acknowledged that Drew “suppressed” any visible signs of sympathy toward the deserters, he refused to trust the Cherokee leadership further. By December 10, two days after the attack, Cooper placed the Cherokee regiment under his own command and ordered them to Fort Gibson. His goal was to separate the Cherokees from Opothle Yahola and his followers as soon as possible in order to prevent any further

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<sup>106</sup> Gaines, *The Confederate Cherokees*, 56-57.

<sup>107</sup> *Ibid.*

cooperation. Moreover, he demanded a face-to-face meeting with Ross and Drew to be held at Fort Gibson, to address the issue of loyalty within the Cherokee Nation. On the evening of December 20, Cooper crossed the Grand River and headed to the fort to confront the Cherokee leaders.<sup>108</sup>

Due to the disintegration of Drew's regiment, Confederate commanders sent Colonel James McIntosh, Benjamin McCulloch's cavalry commander, and about 1,400 Texans and Arkansans to Fort Gibson to help Cooper finish the attack. Uncertainty over whether Drew's men had permanently joined forces with Opothle Yahola led to the decision to continue the attack immediately. McIntosh arrived at Fort Gibson on the evening of December 20 and planned to march again in the early morning hours of the 22<sup>nd</sup>. Cooper was to proceed up the Arkansas River, as soon as his ammunition arrived from Fort Smith, to position his forces to the west of Opothle Yahola. McIntosh was to travel up the Verdigris River, placing the peaceful Indians between the two Confederate forces. McIntosh rode out on the morning of the 22<sup>nd</sup>, as planned. However, Cooper's ammunition was not expected to arrive until the next evening. Moreover, the lack of forage in the field discouraged the Confederates from delaying the attack, so Cooper ordered Watie and his men to join McIntosh by the 25<sup>th</sup> in his stead. McIntosh discovered Opothle Yahola's guards before Watie's arrival and decided to proceed with the attack without any support.<sup>109</sup>

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<sup>108</sup> Douglas H. Cooper to Judah P. Benjamin, January 29, 1862, *OR*, Ser. I, Vol. VIII, 5-14.

<sup>109</sup> James McIntosh to S. Cooper, January 1, 1862, *OR*, Ser. I, Vol. VIII, 22-26; James McIntosh to S. Cooper, January 10, 1862, *OR*, Ser. I, Vol. VIII, 31.

Opothle Yahola's guards were comprised mostly of Seminole warriors, who occupied a rocky, tree-lined ridge beyond Shoal Creek, a tributary of the Verdigris. At the top of the ridge, commanding the right of the crossing, was the main body of Opothle Yahola's mounted defenders, about 1,700 men in all. The force acted as protection for the main body of peaceful Indians encamped in the hills beyond the ridge, hoping to prevent any further hardship on the women and children. McIntosh lined his forces for battle as if confronting Union troops.<sup>110</sup> The events that followed have been most often, if not always, viewed from the perspective of the Confederate commanders who reported their activities to their superiors in the following days, a perspective that has distorted the historiography of the events. Gaines, writing from the perspective of white Confederates, went as far as to call the women and children "pro-Union Indians."<sup>111</sup> Confer, relying solely on Cooper's detailed report to Confederate Secretary of War, Judah P. Benjamin, describes the events as part of "the first military campaign in Indian Territory."<sup>112</sup> Cutrer argues that with the victory at Shoal Creek, "all Federal resistance had been stamped out, and the Indian nation would remain, for the time being, firmly a part of the Confederacy," as if Opothle Yahola's followers, mostly women, children, and aged Indians, constituted a threat to Indian Territory.<sup>113</sup> Cutrer also relies solely on records from white Confederates.

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<sup>110</sup> Ibid.

<sup>111</sup> Gaines, *The Confederate Cherokees*, 59.

<sup>112</sup> Confer, *The Cherokee Nation*, 66.

<sup>113</sup> Cutrer, *Theater of a Separate War*, 80.



After dislodging Opothle Yahola's guards from the tree-lined hillside, McIntosh sent the Eleventh Texas Cavalry to cut-off the protectors from the main body, separating them from the women and children in camp.<sup>114</sup> In the following melee, McIntosh ordered the Sixth Texas Cavalry to pursue those trying to escape. The Texans charged into camp, where they proceeded to ride up and down for as many as three hours, destroying everything and chasing everyone in sight. When the dust settled, McIntosh reported as many as 230 killed with 160 women and children taken captive in the name of the Confederate States. Moreover, the group captured thirty wagons, seventy yoke of oxen, 500 horses, nearly 200 sheep, hundreds of cattle, and all the personal property that the fleeing Indians were unable to carry away. In his report, McIntosh bragged that "the strong hold of Hopoeithleyohola [sic] was completely broken up and his force scattered in every direction destitute of the simplest elements of subsistence."<sup>115</sup> Even if the Confederates misjudged the intentions of the neutral Indians, received erroneous reports, or were simply blinded by the North/South binary, in reality, the attack on Opothle Yahola and his followers at Shoal Creek on December 26, 1861, was nothing short of a massacre of peaceful Indians.

The next day, December 27, McIntosh ordered Watie and his small force to pursue the fleeing Indians and clean up any stragglers. Watie rode

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<sup>114</sup> Allen G. Hatley, *Reluctant Rebels: The Eleventh Texas Cavalry Regiment* (Hillsboro: Hill College Press, 2006), 12.

<sup>115</sup> Report of Colonel James McIntosh, January 1, 1862, *OR*, Ser. I, Vol. VIII, 24.

more than twenty miles continuing to harass Opothle Yahola's beleaguered followers, capturing an additional seventy-five prisoners, along with 250 horses and more than 800 additional head of cattle. Watie admitted to killing another dozen of the peaceful Indians.<sup>116</sup> While Opothle Yahola and his starving and frost-bitten followers staggered into southern Kansas, with various Confederate soldiers nipping at their heels, Watie initiated a reign of terror north of the Arkansas River. Over the next few months, he would be applauded by Southerners for his ruthless attacks on non-Confederate whites in Southeast Kansas, Southwest Missouri, and Northwest Arkansas, as well as on non-Confederate Cherokees in the Cherokee Nation. During the Civil War, Watie's brutal attacks created hardship for his numerous victims. Sadly, many of his victims were members of his own tribe, and for most of them, their only crime was a patriotic support of their elected chief and tribal government.

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<sup>116</sup> Stand Watie to James McIntosh, December 28, 1861, *OR*, Ser. I, Vol. VIII, 32.

## CHAPTER V

### ABRAHAM LINCOLN AND THE INDIAN EXPEDITION

As 1861 drew to a close, Americans came to realize that the Civil War was not going to be a hurried affair. The new year saw violent clashes across the American landscape as armies reorganized and repositioned themselves for a bloody, protracted war. West of the Mississippi River, smaller less cohesive units struggled to establish the ground rules for war as many state units hoped only to defend their own homes, often resisting orders to cross state lines to participate in larger conflicts to protect someone else's home. In early 1862, the largest battle of the war west of the Mississippi took place in Northwest Arkansas, just south of the Missouri line. The Battle of Pea Ridge, which took place between March 6 and 8, 1862, secured Union control of the state of Missouri. From that moment on, armies in the Trans-Mississippi skirmished for control of small tracts of land at best, positioning themselves for grand battles that never came.

In Indian Territory, the objective was less about defeating the enemy than it was about simple survival. The Cherokee Nation only reluctantly entered the fracas as an ally of the Confederate States, and, as the war progressed, that alliance became more and more tenuous. When Abraham Lincoln finally acceded to the urgings of many within his administration and announced plans to return to Indian Territory and reestablish the prewar treaties with the Indian

nations, the Cherokees found themselves on shaky ground. The Indian Expedition of 1862, too often depicted as a military maneuver within the objectives of the Civil War, sought to reestablish the federal relations with the Indians. However, the attempts by the federal government to reestablish the Cherokee Nation in their own territory were met with staunch resistance; and that resistance did not come from the Confederate States. When provided the opportunity, the Union army had little difficulty defeating white Confederate forces that stood in the way of their objective in Indian Territory. In reality, the resistance to the Indian Expedition and the United States government's attempt to restore the Cherokee Nation to their prewar treaty relationship came from an unlikely source. The trouble came from a Cherokee Indian. Stand Watie presented himself as the most violent enemy of the Cherokee Nation during the year 1862 as he and his small band of forces prevented the Cherokee people from escaping horrendous conditions in refugee camps to return home. Those who made the trip often found themselves in Watie's crosshairs as his forces raided anyone loyal to Cherokee principal chief John Ross. While Ross intervened in Washington on behalf of the Cherokee Nation, Watie continued his guerilla war against any Cherokee who refused to side with him. At war's end, the Cherokee people were in desperate poverty, their principal chief a thousand miles away, and control of Cherokee territory lay in the hands of a renegade warrior.

The ink on the Cherokee-Confederate treaty had hardly dried before the alliance began to crumble. The desertions and defections from John Drew's regiment forced Ross to have to prove his loyalty to Douglas H. Cooper; and over the next few weeks, that loyalty would be tested by Watie's wanton attacks on non-Confederate Cherokee citizens. Watie and his force of no more than 300 mixed-bloods and whites began a campaign to punish tribal members for their refusal to commit to the Southern cause, even before the disintegration of Drew's regiment in early December.<sup>1</sup> By the first week of January 1862, Ross had written to Cooper for a second time, asking for protection for Cherokee citizens from "the reckless proceedings" of Watie and his men.<sup>2</sup> Ross hoped that the Cherokee people would present a united front following their alliance with the Confederate States; however, he knew he could not realistically expect every citizen to do so. Watie's vicious attempts to compel unanimity among the common Cherokees was more than Ross could take. He even appealed to Colonel James McIntosh for help.<sup>3</sup> Moreover, Watie's rising favor with Confederate leaders, coupled with the duplicitous actions of Drew's regiment at Bird Creek, only rendered the stability of Ross and the Cherokee government more tenuous. However, before the first quarter of 1862 ended, the Lincoln administration would initiate plans to return to Indian Territory and

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<sup>1</sup> Stand Watie to John Drew, December 4, 1861, Papers of John Drew, Helmerich Center for American Research, Gilcrease Museum, Tulsa, Oklahoma (Hereafter cited as HC).

<sup>2</sup> John Ross to Douglas H. Cooper, January 7, 1862, in Gary E. Moulton, *The Papers of Chief John Ross* (Norman: University of Oklahoma Press, 1985), 2:508.

<sup>3</sup> *Ibid.*

reestablish itself as the protector of the loyal Indians. For Ross, the challenge would become more difficult. He would now have to prove his loyalty to two governments at the same time.

On February 25, 1862, as Drew's regiment marched to Fayetteville, Arkansas, to meet an expected Union advance out of Missouri, Ross wrote to Albert Pike, who commanded all Confederate forces in Indian Territory, and explained why he would not be accompanying his regiment. The activities of Watie's men caused Ross's advisors to insist that he return to Tahlequah for protection.<sup>4</sup> Ross informed General McCulloch in June of 1861 that he would, even at the advanced age of seventy, assist in the defense of any foreign invasion of Cherokee soil.<sup>5</sup> However, the dangers posed by Watie and his men rendered that impractical now. Ross could not afford to appear to waver on his commitment to the Confederacy. The desertions damaged the reputation of the Cherokee leadership and now Ross needed to repair it, especially with Watie and his men roaming the hills of the Cherokee Nation looking for any signs of disloyalty.

As Ross returned to Tahlequah, Drew and his regiment marched to Arkansas to take part in the most significant battle west of the Mississippi during the early months of the Civil War, a battle that would take place in

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<sup>4</sup> John Ross to Albert Pike, February 25, 1862, in Moulton, *Papers of Chief John Ross*, 2: 509-510; Clarissa W. Confer, *The Cherokee Nation in the Civil War* (Norman: University of Oklahoma Press, 2007), 68.

<sup>5</sup> John Ross to Benjamin McCulloch, June 17, 1861, in Moulton, *Papers of Chief John Ross*, 2:474-475.

Benton County at a place called Pea Vine Ridge, or simply, Pea Ridge. Confederate president Jefferson Davis placed General Earl Van Dorn in command of all forces in the Trans-Mississippi theater, and Van Dorn quickly went to work to reinstate Confederate control over the state of Missouri. He combined McCulloch's Arkansas troops with the Missouri forces of General Sterling Price and added the Indians from Indian Territory under newly commissioned Brigadier General Albert Pike. On March 3, Pike's brigade, consisting of Drew's and Watie's Cherokees, as well as a squadron of North Texans under the command of Captain Otis G. Welch, received orders to proceed toward Fayetteville and to report to newly promoted Brigadier General James McIntosh near Elm Springs, Arkansas.<sup>6</sup> When Van Dorn learned that Union General Samuel R. Curtis was still more than fifty miles away from Fort Smith awaiting reinforcements, the decision was made to advance the next morning, hoping to catch the Federals before support arrived. Pike, proceeding to Arkansas without the Choctaws, Chickasaws, or Creeks, as they refused to leave their territories to fight the Federals, overtook Watie's Cherokees at the Arkansas state line on Tuesday, March 4, and the next day overtook Drew and his men about midday. As the Cherokees had more at stake with the Union troops already occupying portions of extreme Northwest Arkansas, they were willing to leave Indian Territory to help drive the Federals from the Cherokee

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<sup>6</sup> D. H. Maury to Colonels Drew, McIntosh, and Stand Watie, March 3, 1862, *War of the Rebellion: The Official Records of the Union and Confederate Armies*, 128 vols. (Washington, D.C.: Government Printing Office, 1881-1901), Ser. I, Vol. VIII, 764-765 (Hereafter cited as *OR*).

border. The Indians set up camp near McCulloch's division at Elm Springs in the early evening of March 6, with plans to march again at midnight. As the calendar turned to Friday, March 7, 1862, McCulloch marched first, heading north toward Bentonville, taking the road out of town to the east in the early morning hours. As was typical, the infantry, commanded by Colonel Louis Hebert, took the head of the line, followed by McIntosh and the cavalry. Pike's Indians crossed the Little Sugar Creek bridge at dawn, following closely on the heels of McIntosh's Arkansans. They quickly marched to Bentonville, turned east, and took the Bentonville Detour around the north side of Pea Vine Ridge to join forces with General Sterling Price and his Missouri troops between Curtis and the Missouri state line.<sup>7</sup>

Just before reaching Pea Ridge, McCulloch ordered his force into the woods on the south of the road. They were to continue their line of march toward Leetown, about four-and-a-half miles to the south, where the Federals had set up fortifications. Pike's Cherokees followed closely behind Colonel William B. Sims and the Sixth Texas Cavalry who were bringing up the rear of McIntosh's force. Meanwhile, Price marched toward Elkhorn Tavern on the eastern edge of Pea Ridge, hoping to attack Curtis around both ends of the rock formation.

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<sup>7</sup> Albert Pike to D. H. Maury, March 14, 1862, *OR*, Ser. I, Vol. VIII, 286-292; Earl Van Dorn to Braxton Bragg, March 27, 1862, *OR*, Ser. I, Vol. VIII, 283-286.



About a mile into the woods, Pike discovered a Federal battery, consisting of three guns, in a clearing to the right of the road, less than a quarter mile away, protected by about five companies of Iowa and Missouri cavalry. Pike formed his force into a battle line behind a fence in the edge of the woods, ordering Sims's regiment to form the right of his line followed by Welch's squadron. The two Cherokee forces came next with Drew occupying the extreme left. The Federal guns were trained on the head of McCulloch's line as they were crossing a field near the base of Pea Ridge. When the Federals detected Pike's forces gathering within the tree line, they opened fire with small guns, sending the Cherokees into an impassioned charge through the fence and into the clearing toward the guns. Their loud war whoop drove the Federals into a panic, allowing the two Cherokee regiments to drive them easily from the field, capturing the guns. Union reports of the attack make no mention of the fact that Indians were involved, nor do they mention the "war whoop." Moreover, Federal officers described a running fight between Confederate and Union cavalry forces that resulted in significant loss for Pike's forces.<sup>8</sup> Pike's efforts to reorganize his troops proved futile as the Cherokees engaged the enemy. Soon, Watie's men detected a second Federal battery hidden in the opposite tree line. Before Pike could order the captured guns to be turned on the second battery, the Federals fired two shells into the clearing

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<sup>8</sup> Report of Colonel Cyrus Bussey, Third Iowa Cavalry, March 14, 1862, *OR*, Ser. I, Vol. VIII, 233-234.

among the Indians, sending them retreating back into the woods from whence they came. The guns kept the Indians pinned among the trees for two-and-a-half hours while McCulloch advanced toward the Federal fortifications near Leetown without much of his cavalry support. Pike found consolation in the fact that the guns, at least, were not being used against McCulloch's main force.<sup>9</sup>

While Pike struggled to regain control of his Cherokees, McCulloch's artillery began firing toward Leetown, from the base of the Pea Ridge. Leaving Drew's Indians in the woods, Pike, Watie, and the Texans returned to the road on the left and proceeded in the direction of the artillery. Shortly thereafter, Drew came up with his regiment and took a position behind the remainder of Pike's cavalry. At that moment, Union Colonel Nicholas Greusel of the Thirty-Sixth Illinois Infantry arrived on the scene from the direction of Leetown and formed his troops across the road on the edge of a clearing in front of Pike's forces. Troops of the Third Iowa Cavalry rushed past Greusel's men in a wild retreat following the attack at the hands of the Cherokees. Some of the lowans reportedly adjured the infantrymen to "Turn back! Turn back! They'll give you hell!"<sup>10</sup> Greusel's force consisted of about 1,600 men from Illinois, Missouri, and Indiana who positioned themselves behind a rail fence on the southern edge of a farm. He also had a small detachment of artillery positioned just inside the fence.<sup>11</sup>

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<sup>9</sup> Albert Pike to D. H. Maury, March 14, 1862, *OR*, Ser. I, Vol. VIII, 286-292.

<sup>10</sup> William L. Shea and Earl J. Hess, *Pea Ridge: Civil War Campaign in the West* (Chapel Hill: The University of North Carolina Press, 1992), 103.

<sup>11</sup> *Ibid.*, 104.

As the Federal force waited for an appearance by the enemy, the men grew increasingly uneasy. When rebel scouts were spotted on the crest of a small mountain, Greusel redirected his artillery and fired. The exploding shells, once again, sent Drew's Cherokees scurrying for the safety of the woods.<sup>12</sup> Having received no orders or communication from McCulloch since leaving the road, Pike hoped to reestablish contact with his superiors. He soon learned that McCulloch and McIntosh had both been killed, and Hebert was missing and presumed to be dead as well.<sup>13</sup> Moreover, Greusel's forces presented a new problem. Pike sent Welch's squadron and Watie's Indians beyond a fence to the left of the road, at the base of a small ridge, and sent orders for Drew's regiment to join him. Drew never responded to the order. Instead, after remaining in the woods for a while, he led his men back to the Bentonville Detour and headed back toward Elm Springs. Drew's refusal to obey the order reveals much more about the Cherokee mindset than previously imagined.

In his report of the battle, Pike claimed that the orders must not have ever reached Drew, or he would have responded<sup>14</sup> Federal reports suggest that Pike's forces simply left their position in the woods "and retired."<sup>15</sup> Not

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<sup>12</sup> *Ibid.*, 107.

<sup>13</sup> Hebert was thought to be dead in initial Confederate reports; however, he had only been captured. Earl Van Dorn to Albert Sidney Johnston, March 10, 1862, *OR*, Ser. I, Vol. VIII, 281.

<sup>14</sup> *Ibid.*, 290.

<sup>15</sup> Report of Captain Louis Hoffmann, Fourth Independent Battery of Ohio Light Artillery, March 14, 1862, *OR*, Ser. I., Vol. VIII, 237.

surprisingly, two Pike biographers agree with him.<sup>16</sup> Other historians are more doubting. Richard B. McCaslin asserts that Drew's men simply "left for home," rather than stay and face continued shelling.<sup>17</sup> Confer is more expressive in her description. She claims the shelling was not what the Cherokees expected, so "many simply threw down their arms and went home."<sup>18</sup> Gaines argues that the men "beat a hasty retreat toward Bentonville."<sup>19</sup> Shea and Hess simply assert that "the Indians were of little use to the Confederate cause for the rest of the battle."<sup>20</sup>

Much of the historiography of Pea Ridge focuses on the atrocities committed during the capture of the federal battery by the Confederates. William J. Shea and Earl J. Hess assert that the bedlam of the initial attack grew worse when the Cherokees celebrated their victory by going "on a rampage of murder and mutilation."<sup>21</sup> According to Union reports, at least eight Union soldiers were scalped after falling on the field. Moreover, the accusations also stated that many of the men had been stabbed in the throat.<sup>22</sup> Van Dorn, upon learning of the accusations, sent Curtis a letter, expressing his

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<sup>16</sup> Robert Lipscomb Duncan, *Reluctant General: The Life and Times of Albert Pike* (New York: E. P. Dutton and Co., 1961), 217; Walter Lee Brown, *A Life of Albert Pike* (Fayetteville: University of Arkansas Press, 1997), 391.

<sup>17</sup> Richard B. McCaslin, "Bitter Legacy: The Battle Front," in *The Civil War and Reconstruction in Indian Territory*, edited by Bradley R. Clampitt, (Lincoln: The University of Nebraska Press, 2015), 23.

<sup>18</sup> Confer, *The Cherokee Nation*, 70.

<sup>19</sup> Gaines, *Confederate Cherokees*, 86.

<sup>20</sup> Shea and Hess, *Pea Ridge*, 107.

<sup>21</sup> Shea and Hess, *Pea Ridge*, 102.

<sup>22</sup> Samuel R. Curtis to J. C. Kelton, March 13, 1862, *OR*, Ser. I, Vol. VIII, 195; Report of Colonel Cyrus Bussey, Third Iowa Cavalry, March 14, 1862, *OR*, Ser. I, Vol. VIII, 237.

support in condemning the murders. However, he also accused Federal soldiers of German descent of murdering Confederates who surrendered their arms.<sup>23</sup> Pike defended his Indians further, handing some of the blame to McCulloch, who he had believed “understood...their mode of fighting and would not dream of using them as part of an army in the open field.”<sup>24</sup>

However, historians writing about the Battle of Pea Ridge miss an important piece of evidence from after the war. In September 1865, when federal commissioners were in Fort Smith, Arkansas, addressing the Indian–Confederate alliances, H. D. Reese of the Cherokee delegation made an incredible admission. On September 11, 1865, the third day of the council, Reese read a printed statement to the commissioners. He claimed that the Cherokee Nation entered the war looking for the first opportunity to “return to what we claimed to be our true allegiance, return to the waving of the stars and stripes.” He admitted that their first attempt to return, made when most of Drew’s regiment defected prior to Cooper’s attack at Bird Creek, was not very well conceived and, ultimately, failed. He added that the second opportunity to return, at Pea Ridge, never fully materialized.<sup>25</sup> At least two contemporary sources questioned at whom Drew’s Cherokees were even shooting. One claimed they shot at anyone wearing blue, even if they were Confederates,

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<sup>23</sup> Dabney H. Maury to Samuel R. Curtis, March 14, 1862, *OR*, Ser. I, Vol. VIII, 237..

<sup>24</sup> Albert Pike to Headquarters, May 4, 1862, *OR*, Ser. I, Vol. XIII, 819.

<sup>25</sup> “Annual Report of the Commissioner of Indian Affairs,” October 31, 1865, 323, *Annual Reports of the Commissioners of Indian Affairs, 1826-1932*, University of Wisconsin Libraries online (Hereafter cited as ARCIA).

while the other claimed they intentionally planned, prior to the engagement, to shoot only Confederates.<sup>26</sup> Five months later, General James G. Blunt claimed that about 150 men of Drew's regiment were at Pea Ridge and killed white rebel soldiers in a premeditated attack.<sup>27</sup> Most likely, Drew hid out in the woods ignoring Pike's order to advance, hoping the Federals would arrive so they could join them. When it became clear that there would be no Federal advance toward their position, they simply left the field and returned home.

It is unclear from official reports whether the Indians guilty of the scalplings belonged to Watie's force, Drew's regiment, or both. Some of Watie's troops would be accused of committing similar atrocities against fellow Cherokees in the coming months, while Drew's men appeared to be less dedicated to killing anyone. Regardless of the guilty party, the Cherokee Nation acquired a reputation for savagery throughout the North, while Watie's men continued to build on a growing fame in Southern newspapers.<sup>28</sup>

Unbeknownst to the Cherokee Nation at the time, however, the Union victory at Pea Ridge opened the door for the United States to take steps to reenter over Indian Territory, and, in turn, to restore the loyal tribes to their prewar treaty status. The planned return of Federal troops to the Cherokee Nation would provide Ross with the opportunity to renounce the tribe's alliance

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<sup>26</sup> Shea and Hess, *Pea Ridge: Civil War*, 143; Frank Cunningham, *General Stand Watie's Confederate Indians* (Norman: University of Oklahoma Press, 1998), 62.

<sup>27</sup> James G. Blunt to Edwin M. Stanton, July 21, 1862, *OR*, Ser. I, Vol. XIII, 486.

<sup>28</sup> W. Craig Gaines, *The Confederate Cherokees: John Drew's Regiment of Mounted Rifles* (Baton Rouge: Louisiana State University Press, 1989), 90.

with the Confederate States and renew his claim of allegiance to the tribe's treaties with the United States. The only question was whether the federal government would welcome the Cherokees as one of those loyal tribes. Had the tribe done enough to demonstrate its loyalty to their federal treaties prior to the alliance with the Confederacy? Had Ross's followers acted in such a way following the Confederate alliance as to convince the federal government of their reluctance to enter the treasonous relationship in the first place? Ross and the Cherokees could only hope that the federal government was willing to overlook their Confederate alliance and include them among the list of Indians who remained loyal to their treaties with the United States.

In November 1861, United States Secretary of the Interior Caleb B. Smith, who had replaced Jacob Thompson following his secession, sent his annual report to President Abraham Lincoln which included a section on the unrest in Indian Territory. Lincoln, who was inaugurated as the sixteenth president two weeks after Jefferson Davis was inaugurated as the president of the new Southern Confederacy, took office at the height of the secession crisis, and had little time to discuss a detailed Indian policy. It appeared that he preferred to allow the existing policy to work as it was designed by honoring the nation's treaty responsibilities to the various tribes. Although he would take a hands-on approach to Indian matters when they presented themselves, he sought the advice and counsel of those within his administration who had their fingers on the pulse of the nation's Indian relations. One of those advisors,

Secretary Smith, delivered an acerbic indictment which placed the blame for the unrest in Indian Territory squarely on the shoulders of the United States. “The hostile attitude assumed by portions of the tribes referred to, has resulted from . . . the withdrawal from their vicinity of the troops of the United States, whose presence would have afforded a guarantee of protection.” And as if that statement was not piercing enough, he offered Lincoln an apparent solution. “It is unfortunate,” he continued, “that the War Department has been unable to send to that region such a body of troops as would be adequate to the protection of those tribes, and revive their confidence in the ability as well as the will of the United States *to comply with their treaty stipulations* [italics added].” Smith also denounced the War Department’s inability, or its unwillingness, to restore peace to Indian Territory. “We have reason to believe,” he wrote, this time with more frankness, “that as soon as the United States shall re-establish their authority in the Indian country, and shall send there a sufficient force for the protection of the tribes, they will renounce all connexion with the rebel government and resume their former relations with the United States.”<sup>29</sup>

Smith’s scathing report included one from new Commissioner of Indian Affairs William Palmer Dole, who had replaced Alfred Greenwood, when Greenwood resigned to go with the South. Dole also sympathized with the

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<sup>29</sup> “Annual Report of the Secretary of the Interior,” Department of the Interior, November 30, 1861, 447, Annual Reports of the Department of the Interior, 1850-1963, online, Hathi Trust Digital Library (Hereafter cited as ARSOI).



plight of the Cherokees. With the withdrawal of the United States forces from Indian Territory, "it is not surprising," he wrote, "that many of the Indians have thrown off their allegiance and espoused the cause of the rebellion."<sup>30</sup> Smith and Dole agreed with the sentiment of Reverend Evan Jones, a long-time missionary among the tribe, who called on the government to look graciously toward the Cherokees. "And in consideration of the unfavorable circumstances in which the Cherokees were placed," Jones wrote, "I have no doubt the President will be disposed, on their return, to treat them with a generous lenity and forbearance."<sup>31</sup> On March 13, 1862, following the Union victory at Pea Ridge, Dole once again petitioned Smith to ask for troops to return to Indian Territory and reinstate the Indians.<sup>32</sup> At first, the War Department refused to arm Indians out of concern the armaments would be used against white Southerners, feeling, perhaps, that the move would be akin to instigating an Indian uprising.<sup>33</sup> The matter remained closed until Lincoln got involved.

In a series of events that have been widely misconstrued by historians, Lincoln acceded to the demands of Smith and Dole. On March 19, 1862, less than two weeks after the United States secured control of Missouri at Pea Ridge, Edwin M. Stanton, Lincoln's Secretary of War, issued an order to Major

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<sup>30</sup> "Annual Report of the Commissioner of Indian Affairs," November 27, 1861, 10, ARCIA.

<sup>31</sup> *Ibid.*

<sup>32</sup> "Annual Report of the Commissioner of Indian Affairs," November 26, 1862, 147-149, ARCIA.

<sup>33</sup> James G. Blunt, "General Blunt's Account of His Civil War Experiences," *Kansas Historical Quarterly* 1, no. 3 (May 1932): 222-223.

General Henry W. Halleck, who then commanded the Department of the Mississippi.

GENERAL: It is the desire of the President, on the application of the Secretary of the Interior and the Commissioner of Indian Affairs, that you should detail two regiments to act in the Indian country, with a view to open the way for the friendly Indians who are now refugees in Southern Kansas to return to their homes and to protect them there. Five thousand friendly Indians will also be armed to aid in their own protection, and you will please furnish them with necessary subsistence.<sup>34</sup>

The order from the President authorized the return of Federal forces to Indian Territory to provide the protection promised the tribes in the various treaties.

This move on the part of the United States government is one of the most important, if not the most important, decisions concerning Indian Territory during the Civil War. With the return of Federal protection, the United States implicitly admitted to abrogating the treaties in April 1861 and assumed responsibility for the Indian–Confederate alliances. The pleadings of Smith and Dole in their official reports the previous November made it quite plain. The United States caused the Indians to turn to the Confederacy by withdrawing their troops from the Territory. Both reports called for the government to return the protection and restore the relationships with the Indians. The order issued on March 19 sought to do just that.

The tendency of historical narratives to follow the perspective of non–Indian sources proves to be problematic here. Historians have missed the

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<sup>34</sup> L. Thomas to Henry W. Halleck, March 19, 1862, *OR*, Ser. I, Ch. XIII, 626.

significance of the return of Federal protection to Indian Territory, mostly because they downplayed the significance of it having been withdrawn in the first place. Warde references the above order, but interprets it, instead, as merely an attempt on the part of the United States to enlist Indian troops for service.<sup>35</sup> A closer examination of the order shows that arming Indian troops was secondary to the main directive to return the protection to Indian Territory. Confer refers to it as an attempt to invade the Indian Territory using refugee troops from Kansas.<sup>36</sup> Wiley Britton, who served as a member of the Sixth Kansas Cavalry in Indian Territory during the war, understood the order was not about Indian troops. “The federal authorities determined to restore to their homes in the Indian country, on the opening of spring, the refugee Indian families in Southern Kansas,” he wrote sixty years later.<sup>37</sup> Britton would not have been privy to the reason for the order, but he did understand the objective. Rampp and Rampp attribute the invasion to Kansas Senator James H. Lane who wanted to separate Indian Territory from Texas. They assert that Lincoln even approved the mission in response to the senator’s request. While Lane advocated for an invasion of Indian Territory, clearly, Lincoln issued the order “on the application of the Secretary of the Interior and the Commissioner of Indian Affairs,” not in response to Senator Lane. Lane wanted to pursue a

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<sup>35</sup> Mary Jane Warde, *When the Wolf Came: The Civil War in the Indian Territory* (Fayetteville: University of Arkansas Press, 2013), 103.

<sup>36</sup> Confer, *Cherokee Nation*, 74.

<sup>37</sup> Wiley Britton, *The Union Indian Brigade in the Civil War* (Kansas City: Franklin Hudson Publishing, 1922), 61.

military occupation of the Territory as a base to launch offensive raids toward Texas. Cutrer does not mention the order or the invasion in his broad synthesis of the Civil War in the Trans-Mississippi Department; and he is correct for having omitted them. Lincoln's order to send federal troops into Indian Territory in March 1862 was not a strategy of war. It was simply a move of Indian relations.

The order to return to Indian Territory came at about the same time as the promotion of Samuel D. Sturgis to the rank of brigadier general. Sturgis, a Mexican War veteran and former Indian fighter, took command of Union forces at Wilson's Creek following the death of General Nathaniel Lyon. Now he was given the responsibility of carrying out Lincoln's important diplomatic order.<sup>38</sup> He refused. He did not believe in fighting "Southern gentlemen" with savage Indians, particularly in the aftermath of the allegations following the Battle of Pea Ridge.<sup>39</sup> Sturgis's refusal was emblematic of a broader resistance to the new objective in Indian Territory, one that would continue to hamper the progress of the mission in the coming months. Instead of disciplining such a veteran officer, the War Department transferred him to Washington to help defend the capital. Leaders in Washington were well aware of the alleged atrocities of Pea Ridge, yet Lincoln issued his order only eleven days later

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<sup>38</sup> Albert Castel, *Civil War Kansas: Reaping the Whirlwind* (Lawrence: University of Kansas, 1997), 81-82; Henry W. Halleck to S. D. Sturgis, April 6, 1862, *OR*, Ser. I, Vol. VIII, 665.

<sup>39</sup> Blunt, "General Blunt's Account," 222-223.

anyway.<sup>40</sup> On April 4, 1862, Secretary Stanton, ordered Colonels Robert W. Furnas and John Ritchey to commence enlisting troops among the refugee Indians in Southern Kansas.<sup>41</sup> Four days later, the War Department promoted James G. Blunt, a physician and abolitionist from Maine, to the rank of brigadier general and assigned him to carry out Lincoln's order. However, on May 2, the War Department established the Department of Kansas and placed Blunt in overall command. Blunt quickly turned to Colonel William Weer, a Kansas lawyer, as his replacement in command of the Indian Expedition.<sup>42</sup>

Lincoln's order of March 19, 1862 had only one objective: to reinstate U.S. treaty obligations in Indian Territory, primarily the requirement to protect the Indians from internal and external aggressions. The order to return troops to Indian Territory had no military objective at all. The army was simply the vehicle through which Lincoln's diplomatic strategy was to be delivered. Historian W. Craig Gaines provides the most detailed and accurate account of the military movements of the expedition, yet he omits the entire diplomatic purpose of the mission. He asserts that the reason for the expedition was "to cut off and destroy Watie's troops and to march on Confederate-held Fort Gibson in the Cherokee Nation."<sup>43</sup> The fact that the president of the United

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<sup>40</sup> M. Jane Johansson argues that the atrocities at Pea Ridge caused a delay in the organization of the Indian Expedition, M. Jane Johansson, ed., *Albert C. Ellithorpe: The First Indian Home Guard and the Civil War on the Trans-Mississippi Frontier* (Baton Rouge: Louisiana State University Press, 2016), 15.

<sup>41</sup> L. Thomas to Henry W. Halleck, April 4, 1862, *OR*, Ser. I, Vol. VIII, 664.

<sup>42</sup> Castel, *Civil War Kansas*, 82; Blunt, "General Blunt's Account," 218.

<sup>43</sup> Gaines, *The Confederate Cherokees*, 95.

States would even be concerned with the movements of two small regiments on the western frontier should alert historians as to the added significance of the order. Moreover, the order implicated the secretary of the Interior, the commissioner of Indian affairs, and even included the secretary of war in the discourse. The mission to return to Indian Territory held great significance for the Lincoln administration, and yet had nothing to do with military strategy. The mission was unnecessary and would not have happened without Lincoln's desire to reinstate the federal treaties with the Indians.

Within the first two months following Lincoln's order, command of the proposed expedition changed multiple times. Varying opinions about the enlistment of Indian troops and competing personalities among officers of all levels delayed the enlistment of refugee Indians and ultimately threatened to derail the expedition before its inception.<sup>44</sup> Responsibility for the mission ultimately fell on Blunt and Weer, while Colonels Furnas and Ritchie enlisted troops from among the refugee Indians, many of whom had fled Indian Territory with Opothle Yahola. By May 22, Furnas's First Indian Home Guard Regiment, consisting mostly of Creek and Seminole refugees, was full, and Ritchie's Second Indian Home Guard Regiment, comprised of refugee Cherokees, was partially filled.<sup>45</sup> Blunt devised a strategy to enter the

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<sup>44</sup> For a detailed description of the politics behind the assigning of command, see Robert Collins, *General James G. Blunt: Tarnished Glory* (Gretna: Pelican Publishing, 2005).

<sup>45</sup> Chris Rein, "The U.S. Army, Indian Agency, and the Path to Assimilation: The First Indian Home Guards in the American Civil War," *Kansas History: A Journal of the Central Plains* 36, no. 1 (Spring 2013): 7.

Cherokee Nation to eliminate any Confederate resistance and to secure Fort Gibson as a base for protecting the Indians in their homes. Moreover, the new Indian recruits were trained to act as protectors of their homes once the Territory was securely in Federal control. Lincoln's order proved to be difficult. The implementation proved to be even more problematic.

Blunt realized his objective was to organize a military expedition to Indian Territory that would fulfill the diplomatic requirements of the mission. He knew that the mission to reinstate the treaty relationship with the Indians was his priority. He also knew that in order to carry out the diplomatic mission, he would need to organize, and control, an army of white and Indian soldiers, supply them adequately, and care for hundreds of refugee Indians along the route. In his preparation and planning, he identified his top three priorities. First, there was no significant presence of Confederate strength in Indian Territory during the spring of 1862. Therefore, he planned to initially operate against only small forces of resistance. Unfortunately, Blunt underestimated the tenacity with which Watie would resist the movement. Moreover, the likelihood of an invasion of this caliber drawing Confederate attention to the area was high, so he needed to devise a plan that allowed him to monitor the region for any increased Confederate resistance. Second, he needed to restore civilian refugee Indians to their homes and protect them as they resumed their everyday lives. To do so required the successful completion of his first objective. Third, he hoped to establish a military presence at Fort Gibson that

was large enough and mobile enough to remain a useful force in Missouri and Arkansas if necessary.<sup>46</sup>

Although the stated purpose of the Indian Expedition was to restore the prewar treaty relationship with all the tribes in Indian Territory, it quickly became obvious that the objective was to be satisfied by liberating the Cherokee Nation. Blunt planned to advance as far as Fort Gibson, and from there, to liberate any other tribe wishing to return to its prewar status. On paper, the mission sounded simple. However, Union leaders were unsure as to what to expect once the force crossed into the Cherokee Nation. Blunt believed that resistance, at least initially, would be limited to small guerilla bands of pro-Confederate Indians but that those should be eradicated with minimal effort.<sup>47</sup> Halleck thought the Expedition would find its most difficult obstacle to be the newly enlisted Federal Indian troops.<sup>48</sup> Federal opinion held that minority troops should be led by white commanders, ensuring the maintenance of military discipline and routine military procedures.<sup>49</sup> This also provided Union commanders with more control over Indian, and later, black forces. Confederate Indian units were led by Indian officers at the regimental level, often creating disunity within ethnically diverse brigades, as Indian commanders usually cared little for white objectives and preferred traditional native techniques of warfare. To this end, Halleck saw the need for strong

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<sup>46</sup> Blunt, "General Blunt's Account," 223.

<sup>47</sup> *Ibid.*; Collins, *General James G. Blunt*, 61.

<sup>48</sup> H. W. Halleck to S. D. Sturgis, April 6, 1862, *OR*, Ser. I, Vol. VIII, 665.

<sup>49</sup> Rein, "The U.S. Army," 7.



leadership within the Expedition.<sup>50</sup> What he did not expect was trouble from his white commanders instead of the Indian troops. Colonel Weer made his preparations with the belief that the Cherokee people would return en masse to Federal protection as soon as the opportunity presented itself. Moreover, he received intelligence that more than 2,000 Keetoowah warriors were waiting to join the ranks of the Indian troops once he crossed the border.<sup>51</sup>

For Union commanders the biggest unknown was the disposition of Principal Chief John Ross. Ross's sudden shift from neutrality to the Confederate alliance created doubt in the minds of many in the Union leadership. Halleck was one who doubted Ross's loyalty. He believed that Ross helped influence some of the minor tribes in Indian Territory "to take up arms against the United States," and was sincere in his allegiance to the South.<sup>52</sup> Even after the Confederate alliance, missionary Evan Jones denounced the accusations that Ross was a traitor. He assured Blunt and Weer that Ross would return to the United States at the first opportunity. No doubt Jones's arguments on behalf of the principal chief found a believer in Colonel Weer. "John Ross is undoubtedly with us," he informed Blunt in a letter, "and will come out openly when we reach there."<sup>53</sup> Weer's mission was clear cut: return to Indian Territory, eradicate Watie's resistance, and welcome

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<sup>50</sup> H. W. Halleck to S. D. Sturgis, April 6, 1862, *OR*, Ser. I, Vol. VIII, 665.

<sup>51</sup> William Weer to Thomas Moonlight, June 13, 1862, *OR*, Ser. I, Vol. XIII, 430-431.

<sup>52</sup> H. W. Halleck to S. D. Sturgis, *OR*, Ser. I, Vol. VIII, 665.

<sup>53</sup> William Weer to Thomas Moonlight, June 13, 1862, *OR*, Ser. I, Vol. XIII, 430-431.

any tribe ready to return to their prewar treaty relationship with the United States. He believed that Ross would lead the way.

On June 25, 1862, Weer left Fort Scott to join the bulk of his force at Baxter Springs, Kansas, near the border of Indian Territory.<sup>54</sup> The Indian Expedition, consisting of about 6,000 men, was in motion. James A. Phillips, Weer's adjutant, sent a letter to Ross at Park Hill, on the 26<sup>th</sup>, informing him that the Indian Expedition was "now approaching your country with a strong military force."<sup>55</sup> The force was escorting Indians back to their homes and was coming to afford the tribe the protection promised them in their treaties. This simple half-page letter provides an important clue as to the mindset of Federal leaders at the time. Lincoln's order demanded that Federal forces return protection to the "friendly" Indians in Indian Territory. Phillips's letter indicates that Union leadership considered Ross to be among those "friendly" Indians, despite the Confederate alliance, and that he had no other choice but sign with Pike. This letter is important for another reason as well. The invitation to Ross and the Cherokee Nation to return to its prewar treaty relationship with the United States is evidence that Lincoln believed the reports of Smith and Dole and that the federal government implicitly admitted responsibility for the Cherokee-Confederate alliance.

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<sup>54</sup> Johansson, *Albert C. Ellithorpe*, 21-22.

<sup>55</sup> James A. Phillips to John Ross, June 26, 1862, *OR*, Ser. I, Vol. XIII, 451.

As he approached Baxter Springs, Weer wrote letters to his two brigade commanders, Colonel Frederick Salomon, a German immigrant from Wisconsin, on June 27, and Colonel William R. Judson, a lumberman from New York, on the 28<sup>th</sup>. The brigades were to depart on consecutive days and scout the area south of the border for Confederate troops, and then rendezvous at a point south of Spring River. Both commanders received the same warning. "I would invite your careful attention to the delicate position your command will occupy in its relation to the Indians. The evident desire of the Government is to restore friendly intercourse with the tribes and restore loyal Indians with us to their homes."<sup>56</sup> He further urged them to be mindful of how they might treat pro-Confederate Indians. "Our policy toward the rebel portion of them," he warned, "must be a subject of anxious consideration." Clearly, this was much more than a simple military invasion of the Cherokee Nation. Weer's order was to carry out the diplomatic wishes of the Lincoln administration. The order would prove to be more difficult than Weer could have imagined.

Shortly after crossing the border, the expeditionary force encountered Watie's Cherokees and chased them from the field. In a series of small skirmishes, the Federal soldiers captured a number of Indian and white rebels and drove Watie across the Grand River toward the Arkansas state line.<sup>57</sup>

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<sup>56</sup> James A. Phillips to Frederick Salomon, June 27, 1862, *OR*, Ser. I, Vol. XIII, 452; James A. Phillips to William R. Judson, June 28, 1862, *OR*, Ser. I, Vol. XIII, 453.

<sup>57</sup> Kenny A. Franks, *Stand Watie and the Agony of the Cherokee Nation* (Memphis: Memphis State University Press, 1979), 129; Frederick Salomon to William Weer, June 30, 1862, Record Group 393, U.S. Army Continental Commands, Part 2, no. 3149, letter 19, National Archives and Records Administration, Washington, D.C. (Hereafter cited as NARA).

Watie's resistance to the Indian Expedition can be difficult to interpret without understanding his perspective. Did he realize the objective of the mission was to restore relations with his own people when he positioned himself to attack? Did he believe he was simply resisting an enemy invasion? Regardless, by positioning himself to resist the advance of the Indian Expedition, Watie was acting as an enemy of the Cherokee Nation. He might have been acting on behalf of pro-Confederate Cherokees, but he sought to prevent the return of the federal government and the reinstatement of the prewar treaty relationship between his own people and the United States. Moreover, he attempted to block the return of many refugee Indian families to their homes as they tried to escape the horrors of refugee camps in Southern Kansas. On June 30, 1862, Salomon, camped on Cowskin Prairie, reported that Watie's Indians were reinforced by a sizable detachment of white troops from Arkansas and that they were encamped only eight miles away, on Honey Creek. Unwilling to leave his supply trains exposed, Salomon opted to delay an attack until the remainder of his brigade reached his camp.<sup>58</sup>

Hoping to demonstrate Federal strength and determination to his new Indian allies, Weer left Baxter Springs to join his forces at Cowskin Prairie and attack the Confederate force gathering at Honey Creek. It was here that Weer's expectations began to unwind. On July 2, he wrote to Blunt to apprise him of the situation, relating that Watie's Confederates seemed unwilling to make a

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<sup>58</sup> Ibid.

stand against the much larger expeditionary force.<sup>59</sup> The Federal plan was to eradicate the limited Confederate presence, clearing the way for the refugee Indians to return safely to their homes. Watie's unwillingness to stand and fight prevented Weer from eliminating a major concern for the refugee families. Moreover, as Weer marched south with a force that included nearly two regiments of Indians, many of the citizens who remained in the Cherokee Nation fled south of the Arkansas River, concerned that the approaching Creeks and Seminoles of Opothle Yahola's following would seek to extract some measure of revenge on the other tribes who participated in the wanton attacks. Weer expected the masses of Cherokee citizens to welcome him openly on his arrival. Yet, the Indians' unexpected evacuation introduced concerns of potential civil war among the Indian populations, especially if they were to be so distrusting of each other.<sup>60</sup>

Weer became uneasy as his expectations went unfulfilled, as demonstrated by his growing proclivity to refer to the diplomatic mission as "this Indian business." He realized that the War Department had no jurisdiction with Indian matters. Therefore, if the military expectations of the Expedition did not materialize, he would have to resort to Plan B, a plan that did not exist. He expressed his frustration to Blunt, "As the management of this Indian business is more properly the province of the Indian Department, I regret the absence of

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<sup>59</sup> William Weer to Thomas Moonlight, July 2, 1862, *OR*, Ser. I, Vol. XIII, 459-461.

<sup>60</sup> *Ibid.*

an officer accredited to represent it.” Weer’s next sentence offers a foreshadowing of how the Indian Expedition would play out over the next two weeks. He told Blunt, “I hope the general commanding will furnish me instruction on this subject.” Weer was unwilling to act decisively if the plans did not materialize as laid out. He was afraid to make the wrong decision and create trouble between the War Department and the Indian department. “I shall in the meantime,” he declared, “do nothing but what will be stipulated to be subject to [Blunt’s] approval.”<sup>61</sup> In other words, Weer had no intention of acting on his own. If the expectations for the Expedition went unfulfilled, he would wait on orders from Blunt before moving. Weer recognized the importance of the diplomatic mission to return the Indians to their prewar treaty relationship, and the last thing he wanted to do was be responsible for its failure.

Unfortunately for Weer, Blunt appeared to have no immediate answer either. The next day, he sent a reply. “Instructions relative to the treatment of the rebel Indians,” he wrote, “and the disposition of those that are loyal, including the refugees now in Kansas, will be forwarded you in a few days.” The letter was dated July 3, 1862.<sup>62</sup> His response did not come for another nine days; and then, it did not arrive in time to inform Weer’s decision-making. Also, on July 3, the Expeditionary force caught a band of rebels under the command of Colonel James J. Clarkson, of Missouri, about twenty miles south

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<sup>61</sup> *Ibid.*

<sup>62</sup> James G. Blunt to William Weer, July 3, 1862, *OR*, Ser. I, Vol. XIII, 461.

of Cowskin Prairie on the east side of the Grand River. The rebels were easily defeated, and Clarkson was captured.<sup>63</sup> The one-sided affair was more along the lines of what Weer expected; and, as if on cue, enough Cherokees from Drew's regiment joined the Federal force that Ritchie's Second Indian Home Guard unit now had a full complement of soldiers. Moreover, the colonel was told that as many as 2,000 more Cherokees would be joining in a few days.<sup>64</sup> The quick victory reaffirmed Weer's confidence in the success of the Expedition. On July 6, he announced that "I consider the Cherokee country as virtually conquered." He continued, "Our movements are so rapid and unexpected by the enemy that they are completely bewildered."<sup>65</sup> He reported to Blunt that no enemy force of consequence existed north of the Arkansas River; "They are, however, endeavoring to concentrate south of it."<sup>66</sup>

Weer's renewed confidence prompted an important letter to Ross. "I am here with an armed force of regularly enlisted soldiers," he announced in the letter, "instructed and prepared to enforce the observance of treaty obligations by the Cherokee people." He continued, "I am here to injure no one who is disposed to do what treaties made by his nation bind him to do; but am here to protect all faithful members of the tribe."<sup>67</sup> These were the words Ross had hoped to hear since the United States abandoned Indian Territory in the spring

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<sup>63</sup> William Weer to Thomas Moonlight, July 4, 1862, *OR*, Ser. I, Vol. XIII, 463.

<sup>64</sup> John Ritchie to James G. Blunt, July 5, 1862, *OR*, Ser. I, Vol. XIII, 463-464.

<sup>65</sup> William Weer to Thomas Moonlight, July 6, 1862, *OR*, Ser. I, Vol. XIII, 464-465.

<sup>66</sup> William Weer to Thomas Moonlight, July 12, 1862, *OR*, Ser. I, Vol. XIII, 487-488.

<sup>67</sup> William Weer to John Ross, July 7, 1862, *OR*, Ser. I, Vol. XIII, 486.

of 1861, some fourteen months earlier. All signs pointed to a quick return for Ross and the Cherokee Nation. Confident that the chief would gladly accept the invitation, Weer requested a formal meeting with Ross at the Federal camp on Wolf Creek to discuss a plan “satisfactory to all parties.”<sup>68</sup> Although Weer advanced deeply into the Cherokee Nation, stretching his supply and communication line with Fort Leavenworth, the diplomatic objective of the mission seemed finally to be falling into place. It now appeared he no longer needed the general’s advice.

That changed the next day when Weer received Ross’s reply. Ross began by acknowledging the invitation. He reminded Weer that the Cherokee Nation had a treaty with the Confederate States, “entered into on the 7<sup>th</sup> day of October 1861.” He continued, “There is no nation of Indians, I venture to say, that has ever been more scrupulous in the faithful observance of their treaty obligations than the Cherokees.” He expressed his hope that Weer and the Expeditionary force would observe the “strict principles of civilized and honorable warfare.” He then declined the invitation to meet at Wolf Creek. “I cannot, under existing circumstances, entertain the proposition for an official interview between us at your camp.”<sup>69</sup> He did not describe the *existing circumstances* that prevented him from accepting the offer at that time. Weer reported the situation to Blunt who understood Ross’s predicament. In a letter

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<sup>68</sup> Ibid.

<sup>69</sup> John Ross to William Weer, July 7, 1862, *OR*, Ser. I, Vol. XIII, 486-487.



to Secretary Stanton two weeks later, Blunt reported, "The verbal reports from Ross, by Indian scouts whom I sent to communicate with him, are much more favorable than his letter to Colonel Weer. He is evidently very cautious in committing himself on paper until he is assured of our ability to hold that country."<sup>70</sup> Ross was understandably hesitant to sign his name to a letter admitting any disloyalty to the Confederacy for two reasons. First, as the Cherokee Nation had signed a treaty with the Confederate States, any such letter would be considered treasonous. Second, if Watie and his men got their hands on that letter, he would have to pay for that treason immediately, just as Major Ridge, John Ridge, and Elias Boudinot had in 1839.

Weer did not know how to respond. He had received no orders nor communications from Blunt for nearly a week. Now he could not move forward without more knowledge of Ross's disposition towards the Expedition. Ross included copies of his own correspondence with Pike, McCulloch, and Rector from the spring and summer of 1861 in his response to Weer's letter. Apparently, Ross wanted the Federal leaders to understand how vigilantly he tried to remain neutral before capitulating to Confederate pressure. Still, Weer hoped for orders on how to proceed. He expressed great frustration in a letter to Blunt dated July 12, 1862. "John Ross refused to come see me," he wrote. "I am much embarrassed for want of instructions as to the Indians." While Weer understood the military orders to restore the Indians to their prewar treaty

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<sup>70</sup> James G. Blunt to Edwin M. Stanton, July 21, 1862, *OR*, Ser. I, Vol. XIII, 486.

relationship, there were no contingency orders for what to do in case Ross and the Cherokee Nation refused to return. Because he was a military officer and this was a matter of Indian policy, Weer had no authorization to consider Ross an enemy of the Union Army and was not willing to take such action without orders from his superiors, or without direction from the appropriate authorities of the Indian department. He bemoaned his situation. "The superintendent [new Southern Superintendent William G. Coffin] should be with me," he complained. In a colorful metaphor of frustration, Weer expressed his uncertainty. "I may be ground between the millstones of the War and Indian Departments . . . in short, I would like to turn this Indian business over to its own department."<sup>71</sup> Weer recognized the dilemma. Were the Expedition strictly a military mission, he would be free to act as an officer of the War Department. However, the mission was more diplomatic and under the watchful eyes of the Indian department. Ross's refusal to meet with Weer placed the colonel directly between the two offices, and he knew he would have to pay the price for his indecision.

Weer's "millstone statement" has been omitted, unexplainably, from the historiography of the Indian Expedition. Journalist Frank Cunningham, writing on the eve of the war's centennial, makes no mention of either the exchange of letters between Weer and Ross or the "millstone statement."<sup>72</sup> However,

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<sup>71</sup> William Weer to Thomas J. Moonlight, July 12, 1862, *OR*, Ser. I, Vol. XIII, 487-488.

<sup>72</sup> Cunningham, *General Stand Watie*, 70-71.

neither do historians Gary E. Moulton, Robert Collins, Richard B. McCaslin, or M. Jane Johansson.<sup>73</sup> Clarissa W. Confer mentions a letter from Superintendent Coffin addressed to Ross and delivered at the same time as Weer's letter, but does not mention the correspondence between Weer and Ross.<sup>74</sup> She omits the "millstone statement" as well. Although Kenny A. Franks, Wilfred Knight, W. Craig Gaines, and William G. McLoughlin make mention of the exchange of letters, none of them mention the "millstone statement"; although Gaines includes quotations from the same letter.<sup>75</sup> No doubt, the proclivity to place the Indian Expedition into the context of the American Civil War has blinded the historiography to the significance of the diplomatic mission, a significance that Weer obviously recognized.

While Weer awaited orders from Blunt, the Expedition fell victim to a pair of unexpected enemies: the summer climate in Indian Territory and the lack of supplies from Kansas. The region had suffered from an extended drought, and the excessive heat took its toll on the Expeditionary force. One soldier wrote, "Only one spring could be found for the entire army, but even this was all red

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<sup>73</sup> Gary E. Moulton, *John Ross: Cherokee Chief* (Athens: University of Georgia Press, 1978), 174; Collins, *General James G. Blunt*, 61-63; McCaslin, "Bitter Legacy," 25; Johansson, *Albert C. Ellithorpe*, 24.

<sup>74</sup> Confer, *The Cherokee Nation*, 79.

<sup>75</sup> Franks, *Stand Watie*, 129; Wilfred Knight, *Red Fox: Stand Watie and the Confederate Indian Nations during the Civil War Years in Indian Territory* (Glendale: Arthur H. Clark, Co., 1988), 116; Gaines, *The Confederate Cherokees*, 105-106; William G. McLoughlin, *Champions of the Cherokees: Evan and John B. Jones* (Princeton: Princeton University Press, 1990), 403.

and really unfit to drink . . . Many were glad to suck wet sand.”<sup>76</sup> Moreover, the disruption of life in the Cherokee Nation prevented the acquisition of supplies through confiscation. Weer pleaded for the development of an organized supply base at Fort Scott before the force ever left Kansas, yet his demands went unheeded. Blunt originally sent the supplies for the mission to Humboldt, further west, causing Weer to redirect his initial movements.<sup>77</sup>

The lack of a suitable depot facility in Southeast Kansas forced Weer to store his initial supplies in wagons, exposing them to possible attack.<sup>78</sup> Confederates, like Watie in the Cherokee Nation and William Clarke Quantrill, a pro-Confederate guerilla in Missouri, posed a constant threat to federal supply trains and outposts in the region. Watie’s incessant raids on trains bound for Fort Gibson have been glorified in much of the historiography.<sup>79</sup> In 1864, Watie captured a train at Cabin Creek that held a contemporary value of about \$1.5 million.<sup>80</sup> The supplies were intended for the garrison at Fort Gibson and the Cherokee citizens in the vicinity. While Confederate sympathizers lauded Watie as a hero for the Southern cause, the historiography should view

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<sup>76</sup> Mark K. Christ, ed., *“This Day We Marched Again:” A Union Soldier’s Account of War in Arkansas and the Trans-Mississippi, The Civil War Diary of Jacob Haas* (Little Rock: Butler Center Books, 2014), 33-34.

<sup>77</sup> William Weer to Thomas J. Moonlight, June 13, 1862, *OR*, Ser. I, Vol. XIII, 430-431.

<sup>78</sup> *Ibid.*

<sup>79</sup> Franks, *Stand Watie*, 139-140; Knight, *Red Fox*, 156; Cunningham, *The Confederate Cherokees*, 99-100.

<sup>80</sup> Brad Agnew, “Our Doom as a Nation is Sealed: The Five Nations in the Civil War,” in *The Civil War and Reconstruction in Indian Territory*, edited by Bradley R. Clampitt (Lincoln: University of Nebraska Press, 2015), 77.

his actions as malicious and destructive as well as merciless toward the Cherokee Nation.

The need for a supply organization in support of the Expedition did not improve as the troops entered Indian Territory at the end of June. Weer ordered his men to seize any mill or subsistence store they encountered on the march.<sup>81</sup> On July 2, he complained to Blunt. "My only drawback is the want of supplies from my rear."<sup>82</sup> Weer not only had to concern himself with the men marching with the Expedition, he had to plan for the many refugees and recruits who were expected to join him as he proceeded deeper into Indian Territory.<sup>83</sup> On July 3, Blunt ordered Weer to establish a temporary receiving depot where supplies could be sent.<sup>84</sup> Weer did so, near a place called Grand Saline. He then set up his camp on Wolf Creek and awaited orders.<sup>85</sup> None came.

While Weer was unsure how to respond to Ross's refusal to meet, he was in no way ready to abandon the Expedition. Buoyed by the arrival of as many as 1,500 Cherokee troops, Weer now had enough men to fill the Second Indian Home Guard and authorized the formation of a third regiment, under the command of Major William A. Phillips. While awaiting communication from Blunt, he suggested inviting all pro-Confederate Cherokees to lay down their

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<sup>81</sup> James A. Phillips to Frederick Salomon, June 27, 1862, *OR*, Ser. I, Vol. XIII, 452; James A. Phillips to William R. Judson, June 28, 1862, *OR*, Ser. I, Vol. XIII, 453.

<sup>82</sup> William Weer to Thomas J. Moonlight, July 2, 1862, *OR*, Ser. I, Vol. XIII, 459-461.

<sup>83</sup> William Weer to Thomas J. Moonlight, June 13, 1862, *OR*, Ser. I, Vol. XIII, 430-431.

<sup>84</sup> James G. Blunt to William Weer, July 3, 1862, *OR*, Ser. I, Vol. XIII, 461.

<sup>85</sup> William Weer to Thomas Moonlight, July 6, 1862, *OR*, Ser. I, Vol. XIII, 464-465.

arms and return to their homes under the protection of the Indian Expeditionary Force. He also suggested asking the Cherokee Nation to abolish slavery so that suitable arrangements could be made to care for and control Cherokee slaves who were running free. He asked Blunt to order the establishment of a mail route between Kansas and Fort Gibson so that the Expedition could be better connected to headquarters.<sup>86</sup> Moreover, he asked for a few howitzers and informed Blunt that he was sending spies into the Creek and Choctaw Nations.<sup>87</sup>

However, by July 14, Weer still had received no communication from headquarters and his need for supplies grew desperate. He dispatched Captain Harris S. Greeno with a company of white soldiers and about fifty Cherokees to travel to Tahlequah to ascertain the disposition of Ross and the Cherokee government. When Greeno arrived in Tahlequah about 5 pm on the evening of the 14<sup>th</sup>, he found it all but abandoned. The next morning, he proceeded to Park Hill, about three miles to the south, and found the place guarded by about 200 Cherokees who were looking for an opportunity to join the Federal force. Watie's men were reportedly active in the area, spreading terror among those Cherokees not committed to the Southern cause. Greeno found Ross at his home surrounded by his closest advisors. The men were under ordered by General Cooper to report to Confederate headquarters at

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<sup>86</sup> William Weer to Thomas Moonlight, July 12, 1862, *OR*, Ser. I, Vol. XIII, 487-488.

<sup>87</sup> *Ibid.*

Fort Davis on the south side of the Arkansas River to help defend the nation from the Federal invasion, according to their treaty with the Confederacy. As the men had no desire to take up arms against the United States, Greeno placed Ross under arrest and then immediately paroled him so that he could legally resist Cooper's orders. Ross was hopeful that the Expedition could secure possession of the Cherokee Nation and provide the people protection from Watie and his men. However, Greeno left Park Hill on the morning of July 16 and rode twenty-six miles to Weer's camp with about 200 additional Cherokee refugees, leaving Ross and his family unprotected.<sup>88</sup>

On July 18, 1862, the Indian Expedition fell apart. Colonel Salomon, Weer's second in command, arrested Weer and assumed command of the Expedition, immediately ordering a march towards the Kansas border to shorten the overstretched line of communication with headquarters. In a letter to Blunt, written two days after the arrest, he blamed Weer for the lack of communication, claiming that "it seemed he desired none." He also accused Weer of placing the Expedition in danger by not moving from the camp on Wolf Creek for more than ten days. The need for supplies was now serious and no movement was made in either direction. When advised by his inferior officers to fall back toward Kansas and restore communications, Weer refused to move, placing the men on half rations instead.<sup>89</sup>

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<sup>88</sup> H. S. Greeno to William Weer, July 17, 1862, *OR*, Ser. I, Vol. XIII, 161-162; H. S. Greeno to William Weer, July 15, 1862, *OR*, Ser. I, Vol. XIII, 473.

<sup>89</sup> Frederick Salomon to James G. Blunt, July 20, 1862, *OR*, Ser. I, Vol. XIII, 484-485.

Weer's arrest created confusion. The fourth new Cherokee agent within a year, Edwin H. Carruth of Kansas wrote a letter to Blunt, claiming that "our whole camp was thrown into confusion by the arrest." Carruth, who accompanied the refugee Indians on the advance, reported that all the white regiments immediately began a retreat, leaving the three Indian brigades behind.<sup>90</sup> In fact, the retreat was ordered to begin at 2 am on the morning of July 19.<sup>91</sup> The Indian brigades that were at detached locations, knew of the retreat but did not learn of the arrest for three days.<sup>92</sup> Carruth argued that the retreat of the white forces left all the Indians remaining in the Cherokee Nation in grave danger. He considered the arrest nothing short of a mutiny.<sup>93</sup> Albert C. Ellithorpe, an officer with the First Indian Home Guard, assumed command of the Indian regiments still in the field and called for a council of the three commanders to be held that evening.<sup>94</sup> The commanders decided to unite their commands and fall back to Pryor Creek, on the west side of the Grand River, where water and forage could be found more readily. The confusion of the arrest caused a number of Indians in the First and Second Home Guards to desert. The Indian brigade requested an artillery battery and a squadron of white infantry be assigned to their ranks to help better secure the Nation.<sup>95</sup>

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<sup>90</sup> E. H. Carruth to James G. Blunt, July 19, 1862, *OR*, Ser. I, Vol. XIII, 476.

<sup>91</sup> General Orders No. 1, July 18, 1862, *OR*, Ser. I, Vol. XIII, 476-477.

<sup>92</sup> R. W. Furnas to James G. Blunt, July 25, 1862, *OR*, Ser. I, Vol. XIII, 511-512.

<sup>93</sup> E. H. Carruth to James G. Blunt, July 19, 1862, *OR*, Ser. I, Vol. XIII, 476.

<sup>94</sup> General Orders No. 1, A. C. Ellithorpe, July 19, 1862, *OR*, Ser. I, Vol. XIII, 476.

<sup>95</sup> R. W. Furnas to James G. Blunt, July 25, 1862, *OR*, Ser. I, Vol. XIII, 511-512.



Blunt was also confused by the arrest. He was unaware that his letters of July 12 and July 14 were not yet received and operated under the belief that the Expedition, although facing uncertainty, was progressing according to plan. In his letters, Blunt advised Weer to “endeavor to hold the ground that you have obtained occupancy of,” and to use “every vigilance that your communication with Fort Scott is not cut off.” He did receive Weer’s letter informing him of Ross’s refusal to comply with a request for an interview, yet was not concerned.<sup>96</sup> Moreover, on July 20, he declared that the Indian Expedition succeeded in clearing the Cherokee Nation of Confederate resistance and restoring harmony.<sup>97</sup> Unaware of the disintegration of the expeditionary force, Blunt sent copies of Ross’s 1861 correspondence with Confederate officials to the War Department and declared that the diplomatic mission would be a complete success as soon as control of the Cherokee Nation was secured.<sup>98</sup>

With the retreat of the white forces, the Federal control of Indian Territory became more tenuous. On July 27, Major William A. Phillips sought to remedy that. He was ordered by Colonel Furnas to move with a force of Indians on Tahlequah and Park Hill to determine, once again, the temperament of the Cherokee leadership. He encountered Watie’s men on Bayou Maynard, about seven miles from Fort Gibson, and attacked, sending them running for

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<sup>96</sup> James G. Blunt to William Weer, July 19, 1862, *OR*, Ser. I, Vol. XIII, 476.

<sup>97</sup> James G. Blunt to Edwin M. Stanton, July 20, 1862, *OR*, Ser. I, Vol. XIII, 482-483.

<sup>98</sup> James G. Blunt to Edwin M. Stanton, July 21, 1862, *OR*, Ser. I, Vol. XIII, 486.

cover toward Fort Davis, a Confederate fort south of the Arkansas River. He reported that his presence may have saved the residents of Park Hill from an attack by Watie's rebels. Out of provisions, Phillips refused to retreat. "As we have important work to do which we can do, please send us down two or three loads of rations for the force from the different regiments," he pleaded. Phillips did not wish to leave because "I had not time to close my diplomatic business."<sup>99</sup> He did not divulge the nature of his "diplomatic business," but his lack of provisions forced him to withdraw to the camp on Wolf Creek. On the way, he met Colonel William Cloud, who was dispatched by Salomon to Park Hill to arrest Ross, and offered him his services. Cloud declined but took about 250 or 300 of the Indians with him.<sup>100</sup>

Cloud proceeded to Park Hill and placed Ross in custody. On the morning of August 3, 1862, Ross and his family left Park Hill under the protection of Cloud and the Federal soldiers.<sup>101</sup> On August 7, the procession arrived at Salomon's camp, where Salomon left Cloud in command, and proceeded to escort Ross and his delegation to Fort Scott to visit with Blunt, arriving on August 9, 1862. Blunt, who came to Fort Scott to ascertain the particulars of the Weer arrest, heard the story of how Ross and the Cherokee Nation resisted Confederate overtures as long as possible before succumbing

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<sup>99</sup> William A. Phillips to Colonel Furnas, July 27, 1862, *OR*, Ser. I, Vol. XIII, 182.

<sup>100</sup> William A. Phillips to R. W. Furnas, August 6, 1862, *Ib OR*, Ser. I, Vol. XIII, 183-184.

<sup>101</sup> Frederick Salomon to James G. Blunt, August 9, 1862, *OR*, Ser. I, Vol. XIII, 551-552; Moulton, *John Ross*, 175.

to the alliance with Pike. Convinced that Ross was sincere in his allegations, Blunt suggested the chief travel to Washington and appeal directly to President Lincoln on behalf of the Cherokee people. Blunt wrote a letter of introduction to Lincoln on Ross's behalf stating, "I have no doubt as to the loyalty of the Ross family and three-fourths of the Cherokee people."<sup>102</sup>

Lincoln issued the order to return to Indian Territory on the application of Smith and Dole, and now he would have the opportunity to hear the story firsthand from Ross and make an informed decision about how to proceed moving forward. His experience with Indian nations was greatly limited due to his preoccupation with the Civil War; but in September 1862, he dealt with two of the largest Indian-related issues of his administration.

While Ross travelled to Washington to visit the President, Santee Sioux warriors in Minnesota waged a war against white citizens in retaliation for constant encroachments on tribal lands and failed promises from the federal government. On Sunday, August 17, 1862, four young Santee men, in a display of manhood and bravado, killed five white citizens in Meeker County, Minnesota. Under the leadership of Little Crow, the Sioux initiated a preemptive war against the settlers of Southwest Minnesota the next day, killing between 500 and 800 white settlers.<sup>103</sup> The climax of the war occurred between August 19 and 23, when Santee warriors attacked the town of New Ulm, Minnesota.

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<sup>102</sup> James G. Blunt to Abraham Lincoln, August 13, 1862, *OR*, Ser. I, Vol. XIII, 565-566.

<sup>103</sup> Thomas D. Phillips and Reuben D. Rieke, *Fire in the North: The Minnesota Uprising and the Sioux War in Dakota Territory* (Ashland: Hellgate Press, 2018), 3-5.

The initial onslaught was repelled by the townspeople who feared another attack would prove disastrous. Four days later, under the leadership of Charles E. Flandrau, an attorney from a nearby town, the citizens once again repelled a massive attack, but not before many people, both white and Indian, lay dead on the Minnesota soil.<sup>104</sup> The attacks captured the imagination of a nation already at war and provided a timely juxtaposition to the struggles of the Cherokees in Indian Territory. Over the next five weeks, U.S. troops, under the command of General Henry H. Sibley, successfully crushed the Santee attackers. Those he could not kill were brought to trial and the courts of Minnesota convicted 303 of them, sentencing them all to die.<sup>105</sup>

The Santee Sioux response to the repeated abrogation of treaty obligations by the federal government, no doubt, pressed on Lincoln's mind as Ross arrived at the White House to ask for leniency for the Cherokee Nation. Buoyed by the testimonies of Commissioner Dole, Secretary Smith, Reverend Jones, and General Blunt, Ross described how faithfully the Cherokee Nation held out for neutrality, hoping for the opportunity to demonstrate its loyalty to the tribe's treaty relationship with the federal government. He described how Confederate leaders intimidated the tribe into an alliance with their Southern neighbors, arguing that the inability to even communicate with U.S. officials left them little option but to accede to the pressure of the rebel emissaries. The

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<sup>104</sup> Ibid., 29-34; 75-80.

<sup>105</sup> Utley, *The Indian Frontier*, 79-80.

meeting, which took place on September 12, 1862, left Ross optimistic about the president's plans for the tribe.<sup>106</sup>

Ross's optimism is evidenced in a written transcript of the meeting, submitted at the president's request. After restating the narrative of Cherokee secession, Ross laid his request before the president. "What the Cherokee People now desire," he wrote, "is ample military Protection, for life and property; and a recognition by the Government of the obligations of existing Treaties and a willingness and determination to carry out the policy *indicated by your Excellency* of enforcing the laws and extending to those who are loyal all the protection in your Power" (italics added). What exactly Lincoln indicated is not known. However, Ross believed that he demonstrated a willingness to return to Indian Territory and protect the Cherokees as promised in their existing prewar treaties.

The president, no doubt, requested the written transcript so that he could give Ross's claims a thorough investigation. Ross's visit must have weighed heavily on Lincoln's mind because, two days after receiving the transcript, he wrote Ross a somewhat apologetic note as he had not yet had time to investigate Ross's claims. "In the multitude of cares claiming my constant attention I have been unable to examine and determine the exact treaty relations between the United States and the Cherokee Nation."<sup>107</sup> To say

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<sup>106</sup> John Ross to Abraham Lincoln, September 16, 1862, in Moulton, *Papers of Chief John Ross*, 2:516-518.

<sup>107</sup> Abraham Lincoln to John Ross, September 25, 1862, "Papers of Abraham Lincoln," Library of Congress (Hereafter cited as LOC).

that Lincoln had more pressing matters would be understating the facts. During September 1862, the President was dealing with the aftermath of the attacks on New Ulm, Minnesota, by the Santee Sioux.<sup>108</sup> Also, he promoted Halleck to General-in-Chief of the Union Army only two months previously, following the failed Peninsular Campaign in Virginia. Moreover, the Battle of Antietam, which occurred on September 17, brought Robert E. Lee's Army of Northern Virginia dangerously close to Washington, D.C.; and five days later, he issued the preliminary Emancipation Proclamation, which would take effect with the new year.<sup>109</sup> Lincoln's desire to understand the government's relationship—and responsibilities—to the Cherokee Nation would have to wait. Besides, the delay would give the tribe time to further demonstrate their loyalty to their own treaty obligations with the United States.

The Cherokees would not have to wait long for that opportunity. On September 30, 1862, the Third Indian Home Guard, under the command of William A. Phillips, participated in a skirmish at Newtonia, Missouri. Phillips wrote a letter to Ross describing the actions of the Cherokee troops. "The Regiment behaved very gallantly," he wrote, "I dismounted the men and stationed them behind a fence with their rifles, and there for two hours & a half withstood seven charges of the enemy, repulsing them, and only left under a

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<sup>108</sup> Abraham Lincoln, "State of the Union," December 1, 1862, State of the Union Address online, University of Groningen (Hereafter cited as UG).

<sup>109</sup> James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Ballantine Books, 1988), 545; E.B. Long, *Civil War Day by Day: An Almanac 1861-1865*, (Garden City: Doubleday, 1971), 267.

positive order from General Salomon.”<sup>110</sup> Ross showed the letter to Commissioner Dole, who asked permission to show it to Lincoln.<sup>111</sup> Whether the letter immediately effected the president is not clear. Dole later admitted to Ross, however, that he and the secretary of Interior were authorized to raise additional regiments from among the loyal Indians.<sup>112</sup> Apparently, the loyalty of the Cherokee troops was welcomed by the Lincoln administration. Moreover, on October 10, Lincoln sent a dispatch to General Curtis in Missouri, inquiring as to the ability of the Indian regiments to hold the Cherokee Nation with the help of white troops.<sup>113</sup> Curtis’s response was less than encouraging. “I doubt the expediency of occupying ground so remote from supplies,” he admitted.<sup>114</sup> However, Curtis understood the message. Four days later, in a letter to General John M. Schofield in command of the Army of the Frontier, Curtis asked that the general send his main force to “operate in the Indian Territory.” The reason was clear. “The President also desires Ross re-established in the Cherokee country,” he wrote.<sup>115</sup> The following January, the fifth Cherokee agent to serve within a year-and-a-half, Justin Harlan, a judge from Illinois, told some of the Cherokee leadership in Tahlequah that President Lincoln regrets

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<sup>110</sup> John Ross to Edwin M. Stanton, November 8, 1862, *OR*, Ser. I, Vol. XXII, 520-521.

<sup>111</sup> John Ross to William A. Phillips, January 4, 1863, , Ser. I, Vol. XXII, 525.

<sup>112</sup> *Ibid.*

<sup>113</sup> Abraham Lincoln to Samuel R. Curtis, October 10, 1862, *OR*, Ser. I, Vol. XIII, 723.

<sup>114</sup> Samuel R. Curtis to Abraham Lincoln, October 10, 1862, *OR*, Ser. I, Vol. XIII, 723..

<sup>115</sup> Samuel R. Curtis to John M. Schofield, October 14, 1862, , Ser. I, Vol. XIII, 736.

how badly the Cherokees were treated in the past, and had sent him “with special instructions to see that every thing was done for them which can be.”<sup>116</sup>

The difficulties that existed with supplying the Indian Expedition had not yet been overcome. The distance from Fort Leavenworth to Fort Gibson rendered a supply train impractical, especially with guerilla-like Confederates patrolling the region. Stand Watie and his men roamed the hills of the Cherokee Nation and needed to be dealt with before sending supply trains safely to Fort Gibson. Moreover, the previous summer, Blunt relocated his headquarters from Fort Leavenworth to Fort Scott, 110 miles closer to the Cherokee border, making resupplying Fort Gibson possible from that location. On November 9, Blunt claimed, “My arrangements are now ample to subsist my command as far south as Fort Smith.” He added, “The loyal Indians are in fine spirits as to their future prospects.” In Blunt’s opinion, “It is all-important to occupy the Indian country as far south as the Arkansas River.”<sup>117</sup> Whether Blunt acted on his own, or restated a policy of the Lincoln administration, is not known. However, he admitted that the United States was responsible for the suffering of the Cherokee people; and, in a letter to Secretary Smith, Blunt argued that because of that responsibility, the United States must assume the burden of restoring the tribe to their prewar condition.<sup>118</sup>

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<sup>116</sup> Huckleberry Downing and Tahlalah to John Ross, January 12, 1863, in Moulton, *Papers of Chief John Ross*, 2:530.

<sup>117</sup> James G. Blunt to John M. Schofield, November 9, 1862, , Ser. I, Vol. XIII, 785.

<sup>118</sup> James G. Blunt to Caleb B. Smith, November 21, 1862, referenced in Moulton, *The Papers of Chief John Ross*, 522.



As winter set in, however, the prospects for immediate relief for the Cherokee people grew slim. Refugee camps in Southeast Kansas were unable to protect the starving families from the bitter cold, and the prospects of yet another season in the mud and squalor only exacerbated their suffering. The inability to return to their homes was due to the constant attacks made by pro-Confederate Indians on civilians loyal to the Ross-led Cherokee government. Those who tried to remain in their homes suffered immensely as well. In early December, Ross's nephew, Daniel, wrote a heartbreaking letter to the chief, "We have lost all at home, nothing left." He blamed Watie's men for forcibly taking property from loyal Cherokee citizens. "Our houses have been pillaged and we are left very destitute," he added. "Our little Johnie is dead. This with other misfortunes tries our Souls—yet we hope it will all be well in the end. I can not say any more now."<sup>119</sup> In an astounding statement, Southern Superintendent William G. Coffin reported that the rebel Indians under Watie's leadership "now form a large portion of the rebel army in the Indian territory." He continued, "They have committed nearly all the mischief that has been done in the Cherokee country, and have driven therefrom all the loyal Indians of any prominence."<sup>120</sup> If the Cherokee Nation and its loyal citizens were suffering from starvation and exposure during that miserable winter of 1862–63, it was almost certainly due to the work of Stand Watie and his men. The proclivity to

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<sup>119</sup> Daniel H. Ross to John Ross, December 2, 1862, in Moulton, *Papers of Chief John Ross.*, 523-524.

<sup>120</sup> "Annual Report of the Commissioner of Indian Affairs," October 31, 1863, 175, ARCIA.

frame the events in the context of the Civil War causes the historiography to paint Watie in a similar light as other venerated Confederate leaders. However, by placing the Cherokee people at the center of the narrative, Watie and his band of followers become little more than villains and enemies of the Cherokee people.

On January 8, 1863, Major-General John A. Schofield, commander of the Army of the Frontier, met with Phillips and informed him that he was being promoted to colonel and that his brigade was being detached from the First Division of the Army of the Frontier and placed in command of the Indian Territory. In a follow-up letter, Schofield wrote, "It is impossible for me to give you very definite instructions for your guidance. Much must be left to your discretion." Phillips's objective was to carry out Lincoln's plan of reinstating the Cherokees to their homes, providing them with the necessary protection. His instructions were to assist the Indians in planting crops as soon as the weather allowed and to encourage them to help each other with subsistence. He was further instructed to remove to Kansas any families he felt he would be unable to save from starvation. "You will draw your supplies from Fort Scott independently of the rest of the army," Schofield told him, "for which purpose a train has been placed at your disposal."<sup>121</sup> The Department of the Interior committed its resources to providing food and necessary supplies for the Indians, while the Indian commissioner was to provide all the seeds needed for

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<sup>121</sup> John M. Schofield to William A. Phillips, January 11, 1863, *OR*, Ser. I, Vol. XXII, 33.

growing crops.<sup>122</sup> This was not a military operation. The Lincoln administration made it clear that the Cherokee people be reinstated in the Cherokee Nation and that the United States provide them the protection promised in the prewar treaties.

On January 13, 1863, Phillips was placed in command of the newly formed District of Western Arkansas and Indian Territory. On the 19<sup>th</sup>, he wrote a series of letters to Curtis describing the difficulties he faced with his new assignment. "The Nation is little short of a desert," he lamented. There was no forage and little food for the 2,500 or so Cherokees remaining in the Territory, and the harsh weather made the task even more difficult. Severe drought during the summer, followed by snow and below-zero temperatures in the winter, brought more suffering to the destitute people. Phillips planned to occupy the Cherokee Nation in the early spring. The snow and rain of winter made travel next to impossible until then.<sup>123</sup> Phillips claimed not to have half the food necessary to feed the starving families. He requested that a supply train consisting of 200 or 300 wagons be loaded and ready to depart by the end of February in case the weather allowed. His plan was to escort the nearly 7,000 refugee Indians back into the Cherokee Nation and occupy Fort Gibson

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<sup>122</sup> William A. Phillips to James G. Blunt, April 2, 1863, *OR*, Ser. I, Vol. XXII, 190-191; James G. Blunt to William A. Phillips, February 22, 1863, *OR*, Ser. I, Vol. XXII, 121-122.

<sup>123</sup> William A. Phillips to Samuel R. Curtis, January 19, 1863, *OR*, Ser. I, Vol. XXII, 55-56.

before the spring equinox, so that the people could begin planting crops and resume their lives in their old homes.<sup>124</sup>

In preparation for the return of Federal troops, Acting Principal Chief Thomas Pegg, a major in Drew's regiment and a staunch supporter of Ross, convened the National Council at Cowskin Prairie, under the proximal protection of Federal troops in Kansas and Missouri. The council met on February 4, 1863, and quickly voted to formally abrogate the treaty with the Confederacy. It also reaffirmed John Ross as the principal chief and authorized him to continue to act on behalf of the Cherokee Nation in his negotiations in Washington. The Council also formally abolished slavery within the Cherokee Nation. There was no going back. The Cherokee government expressed its enmity with the Confederate States and would now cast its lot with the United States as soon as the opportunity presented itself.<sup>125</sup>

As spring approached, the Union army expedited plans to restore the Indians to Indian Territory. Blunt expressed his satisfaction with Phillips. "I am highly gratified at the result of your efforts," he wrote, "to provide, as far as in your power, for the unfortunate loyal Indian families that have been dependent upon the Government for sustenance." He offered the Colonel some advice as the Indian Brigade prepared to reenter the Cherokee Nation. "The country to the Arkansas River must be occupied at the earliest day practicable," he urged,

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<sup>124</sup> William A. Phillips to Samuel R. Curtis, January 19, 1863, *OR*, Ser. I, Vol. XXII, 60-61.

<sup>125</sup> "Annual Report of the Commission of Indian Affairs," October 31, 1863, ARCIA; Cherokee National Papers, OHS.

“which will be as soon as grass is sufficiently raised to sustain animals.”

Lincoln, who was pleased with the service of the Cherokee troops, authorized two additional regiments to be raised among the Indians still in Indian Territory. Blunt promised to dispatch the appropriate officers to assist Phillips with the enlistment of those forces. Blunt suggested that Phillips unload all supply trains as quickly as possible and return the wagons to Fort Scott before the enemy could attack them. Superintendent Coffin already provided the refugee Cherokees in Kansas with seeds and farming implements and planned to escort the Indians home as soon as Phillips declared the region secure. Blunt suggested the Indians establish close-knit colonies at first, making it easier for Federal troops to protect them than if they were scattered throughout the Nation. He told Phillips to rely on his own instincts in directing the operation, promising to do all he could to help him with his monumental task.<sup>126</sup>

By mid-March 1863, Phillips and his Indian Brigade started to move toward Indian Territory. Reports that the Confederates began feeding and clothing the Indians south of the Arkansas River concerned Phillips, who feared a shift in loyalty if the United States did not enter the Cherokee Nation soon. Besides, he told Curtis that “March is the planting month in the Indian Nation, and no crops are secure planted after that time.” His plan was to convince the people of Indian Territory of the magnanimity of the United States. He believed that if the people of Indian Territory could feel the security offered by the

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<sup>126</sup> James G. Blunt to William A. Phillips, March 9, 1863, *OR*, Ser. I, Vol. XXII, 147-148.

federal government, the path to Texas would be wide open through a country of friendly Indians.<sup>127</sup> Phillips was prepared to enter the Cherokee Nation with an active force of 3,269 men and six artillery pieces. His forces consisted of the three Indian Home Guard Regiments, the First Arkansas Cavalry, four companies of the Sixth Kansas Cavalry, and the Third Kansas Battery.<sup>128</sup>

As the brigade crossed into the Cherokee Nation from its winter quarters along the Arkansas–Missouri line, Phillips reported excitement among his Indian troops. Arriving at Park Hill, he sent a large portion of the command on to Fort Gibson to secure it. On March 31, the refugee Indians arrived from Kansas, amid a celebration. One white soldier described the scene.

Some of the Indian soldiers went out several miles to meet their families, but many waited until the train had approached near our camp. I watched them with a good deal of interest. Such manifestations of joy on the meeting of husbands and wives and children, I have never before witnessed. There were, perhaps, nearly a thousand families brought down, and in many instances husbands have been separated from their wives and children for nearly a year. Their joy was, no doubt, increased with the thought of being able to meet one another in their own country and near their own capital.<sup>129</sup>

A white officer of the First Indian Home Guard described the enthusiasm. “They are determined to never leave their country again,” he wrote, “and woe be to the rebel army that shall attempt to invade their homes.”<sup>130</sup> Phillips simply

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<sup>127</sup> William A. Phillips to Samuel R. Curtis, March 20, 1863, *OR*, Ser. I, Vol. XXII, 165-166.

<sup>128</sup> *Ibid.*, 131.

<sup>129</sup> Wiley Britton, *Memoirs of the Rebellion on the Border, 1863* (Lincoln: University of Nebraska Press, 1993), 204.

<sup>130</sup> Johansson, *Albert C. Ellithorpe*, 159.

reported to Blunt, that “the Cherokees are greatly rejoiced.”<sup>131</sup> The Cherokees immediately began tilling the ground and planting the seeds provided by the Indian Department.<sup>132</sup>

The occupation of Fort Gibson by the Federal Indian Brigade alerted Confederate commanders to the possibility of further Union advancement toward the Red River and North Texas.<sup>133</sup> Two cavalry regiments of North Texans hurried north to join Douglas Cooper’s Choctaw, Chickasaw, and Creek regiments on Butler Creek, two miles from Fort Gibson across the Arkansas River. Union military presence in Indian Territory was always a matter of Indian relations and policy and was administrated under the watchful eye of the Indian Bureau and under the direction of the White House. However, for the first time, white troops in Phillips’s brigade and white troops in Cooper’s brigade positioned themselves in defiance of each other across the Arkansas River. Even then, the Confederates were called on to act in support of Watie’s destructive raids in the Cherokee Nation.

The presence of Phillips’s brigade only increased the tenacity with which Watie attacked. His frequent raids on federal foraging parties became such a nuisance that Phillips limited the maneuvers in order to save his animals. Watie’s raids on Cherokee refugee families soon drove them into the safety of Fort Gibson, forcing them to abandon their freshly planted crops. The raids

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<sup>131</sup> William A. Phillips to James G. Blunt, April 2, 1863, *OR*, Ser. I, Vol. XXII, 190-191.

<sup>132</sup> James G. Blunt to Samuel R. Curtis, April 17, 1863, *OR*, Ser. I, Vol. XXII, 223-224.

<sup>133</sup> William Steele to A. M. Alexander, March 30, 1863, *OR*, Ser. I, Vol. XXII, 804-805.

increased with such ferocity that Superintendent Coffin suggested removing the refugees and returning them to Kansas.<sup>134</sup>

On June 26, Blunt acknowledged that the Indian Brigade at Fort Gibson was becoming discouraged by the constant raids and promised to send them additional troops to buoy their spirits. "I have sent with the train now en route to Fort Gibson," he wrote to General Schofield, "about 1,600 re-enforcements, including the First Kansas Colored Volunteers."<sup>135</sup> The First Kansas, raised in 1862 by Colonel James M. Williams, a Kansas Jayhawker, became the first all-black unit to engage the Confederates in battle and the first to win.<sup>136</sup> He promised additional reinforcements with the next train. Moreover, Blunt planned to march with the second train and join Phillips at Fort Gibson and lead the assault on the gathering Confederates. As the train entered Indian Territory at the end of June, Watie's men placed themselves in defense along the south bank of Cabin Creek. Watie's attempt to capture the train failed because Cooper's Texans could not cross the swollen Verdigris River and support him. The demoralized Texans fell back across the Arkansas River and regrouped as Blunt took the opportunity to press the attack. In mid-July, Blunt and the force at Fort Gibson caught Cooper's Brigade on Elk Creek, about

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<sup>134</sup> "Annual Report of the Commissioner of Indian Affairs," October 31, 1863, 176, ARCIA.

<sup>135</sup> James G. Blunt to John M. Schofield, June 26, 1863, *OR*, Ser. I, Vol. XXII, 337-338.

<sup>136</sup> For a detailed look at the First Kansas Colored Infantry and their commander, see Robert W. Lull, *Civil War General and Indian Fighter James M. Williams: Leader of the First Kansas Colored Volunteer Infantry and the 8<sup>th</sup> U.S. Cavalry* (Denton: University of North Texas Press, 2013).



twenty miles south of the Arkansas River. The Union Brigade easily drove the Confederates from the field, chasing them toward the Red River. After burning the town of Perryville in the Choctaw Nation, Blunt returned to Fort Gibson, while Cooper set up a defensive line north of the Red River, believing the Federals were headed to North Texas.<sup>137</sup>

The retreat by the Texans angered Watie. He wrote to the governor of the Choctaw and Chickasaw Nations asking him to join him in trying to chase Phillips from the Indian Territory.<sup>138</sup> The white Confederates abandoned Cherokee territory, and Watie took it out on the citizens of his own nation. He was named “principal chief” by his men the previous August and supported a Confederate ban on any non-Confederate Cherokees who remained in the nation.<sup>139</sup> In late October 1863, Watie rode into Tahlequah, killed “a few loyal Indians,” and burned the Cherokee Council House in defiance of the Cherokee government. He then turned south toward Park Hill and set fire to Rose Cottage, John Ross’s home.<sup>140</sup> His constant raiding kept the Indian Brigade confined to the safety of Fort Gibson for the remainder of the war. In 1864, he gained widespread fame for capturing two separate Federal supply vessels headed for Fort Gibson. In June, his men captured and burned the steamboat *J. R. Williams* on the Arkansas River between Fort Smith and Fort Gibson. The

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<sup>137</sup> Confer, *Cherokee Nation*, 77-89; William Steele to W.B. Blair, August 7, 1863, *OR*, Ser. I, Vol. XXII, 956.

<sup>138</sup> Stand Watie to His Excellency the Governor of the Choctaw and Chickasaw Nations, August 9, 1863, *OR*, Ser. I, Vol. XXII, 961-962.

<sup>139</sup> Franks, *Stand Watie*, 129-131.

<sup>140</sup> *Ibid.*, 148.

boat was carrying flour and bacon, which Watie and his men took to their own families. In September, Watie led a second attack on a train at Cabin Creek. The rebels successfully captured the train loaded with supplies for the refugee Indians at Fort Gibson. The train was estimated to be carrying \$1.5 million worth of supplies, sent by the Department of the Interior for the suffering Cherokee people.<sup>141</sup>

By the time the war ended, the Cherokee Nation was devastated.<sup>142</sup> Elijah Sells, the new Southern superintendent, described it as “one vast scene of desolation.”<sup>143</sup> The Indian Bureau estimated that the population of the tribe declined by one-third during the war. Even though there were few battles between Federal and Confederate forces, as many as 7,000 Cherokees are believed to have perished.<sup>144</sup> Superintendent Coffin attributed most of the death and destruction to Watie and his men.<sup>145</sup> The destitution among the Cherokee people was greater following the Civil War than it had been following the forced removal along the “Trail of Tears” in the 1830s, when as many as 4,000 out of an estimated 18,000 Cherokees died.<sup>146</sup> Incredibly,

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<sup>141</sup> Rhesa Walker Read to Lizzie Read, June 25, 1864, Rhesa W. Read Letters, William House Museum.

<sup>142</sup> Patricia Adkins-Rochette, *Bourland in North Texas and Indian Territory During the Civil War: Fort Cobb, Fort Arbuckle and the Wichita Mountains* (Broken Arrow, OK: bourlandcivilwar.com, 2004), 333;

<sup>143</sup> Knight, *Red Fox*, 278.

<sup>144</sup> Confer, *The Cherokee Nation*, 145.

<sup>145</sup> “Annual Report of the Commissioner of Indian Affairs,” October 31, 1863, 175, ARCIA.

<sup>146</sup> Adkins-Rochette, *Bourland in North Texas*, 333; Warde, *When the Wolf Came*, 19.

seldom-maligned Stand Watie brought more suffering to the Cherokee people than did the much-maligned Andrew Jackson.

The end of the Civil War did not bring immediate relief to the devastated Cherokee Nation. For over six weeks following the surrender of Confederate forces in the Trans-Mississippi theater, Watie continued his war on disloyalty in Indian Territory. He finally capitulated in late June to Federal forces in the Choctaw Nation. He immediately sent representatives to the Cherokee government hoping to “restore harmony in the tribe,” but those efforts were quickly rejected. Watie’s brutality would not be easily forgotten. Only when the National Council—mandated by a federal treaty—passed an act granting pardon and amnesty to any Cherokee who fought against the United States did Watie return home. However, he refused to sign an oath of allegiance to the Cherokee government and was never pardoned.<sup>147</sup> Despite Watie’s belligerence and brutality, it would be Ross who faced the harshest criticism from U.S. officials after the war. Confident that the magnanimity shown by President Lincoln toward Ross and the Cherokee people would result in a formal reinstatement of the prewar treaty relationship, the beleaguered chief prepared to return his people to their prewar position as one of the most prosperous and “civilized” Indian nations in the United States. However, the bullet that took the life of President Lincoln in mid-April caused residual

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<sup>147</sup> Franks, *Stand Watie*, 182-183.

damage to Indian relations, especially with the Cherokee Nation, on a scale never before understood by historians.

CHAPTER VI  
THE FORT SMITH COUNCIL AND THE DECONSTRUCTION OF U.S.  
INDIAN POLICY

Abraham Lincoln stepped out on the balcony to acknowledge the jubilant crowd below. The city erupted in celebration with the news of Robert E. Lee's surrender to Ulysses S. Grant near Appomattox Courthouse in Virginia; and now, many of those celebrants made their way to the White House to rejoice with the President. Lincoln spoke briefly from the balcony, declaring the difficult road that still lay ahead. He reminded the crowd that there was no legitimate Southern government, or "authorized organ," with which to treat. Reconstruction would be a contentious and arduous process, he told them, because "no one man has the authority to give up the rebellion for any other man."<sup>1</sup> With that mindset, Lincoln issued his Proclamation of Amnesty and Reconstruction fifteen months earlier. The Proclamation, known as the "Ten-Percent Plan," opened the door for Southerners to declare their loyalty to the United States on an individual basis. When ten percent of a state's voters took the oath, they would be allowed to organize a loyal government and return to the Union. Louisiana became the first state to do so.<sup>2</sup>

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<sup>1</sup> Lincoln's Final Speech, April 11, 1865, Presidential Speeches online University of Groningen (Hereafter cited as UG).

<sup>2</sup> James M. McPherson, *Tried By War: Abraham Lincoln as Commander in Chief* (New York: Penguin, 2008), 207-208.

Indian nations were different. The existence of tribal governments provided an “authorized organ” with which the federal government could treat in the postwar years. However, the Cherokee people openly declared their loyalty to the tribe’s relationship with the United States as early as July 1862. Was the Lincoln administration prepared to accept Cherokee claims of loyalty and reestablish the relationship on the same basis as the Ten-Percent Plan? Would Lincoln go as far as to negotiate a new treaty with the tribe, even before the war ended? There is evidence that John Ross believed he would. Ross believed that Lincoln expressed his willingness to restore the tribe to its prewar treaty relationship, especially after the National Council had voted to abrogate the Confederate treaty in February 1863 at Cowskin Prairie and many Cherokee men joined the ranks of the Federal Indian Brigade. However, the President would never get the opportunity to carry out any plan of restoration of the Cherokee Nation for two reasons. First, during the war, Stand Watie’s resistance to Federal reoccupation efforts prevented the physical restoration. Second, three days after Lincoln’s impromptu speech from the White House balcony, an assassin’s bullet at Ford’s Theatre cut short any postwar plans for the political restoration of the tribe. The new administration had little interest in treating the Indians with fairness and magnanimity as the Lincoln administration tried to do. Andrew Johnson viewed the alliances between the Indians and the Confederates as treason, and therefore an opportunity to undo the prewar treaties in ways Lincoln appeared unwilling to do. In the weeks

following the assassination, the Johnson administration put plans in motion that would bring about a new U.S.–Indian relationship in the post-Civil War American West.

Despite Lincoln's assassination, John Ross entered the postwar era convinced that the Cherokees proved their loyalty to their relationship with the United States and that the federal government was prepared to treat them accordingly. Ross argued that the Cherokee treaty with the Confederacy was unavoidable and should not be held against them. The Secretary of the Interior Caleb B. Smith and the Commissioner of Indian Affairs William P. Dole concurred. No doubt, President Lincoln acknowledged the fact that the United States abrogated its treaty obligations to the tribes of Indian Territory and sought to return troops to the territory to resume those obligations and restore the broken relationships with those tribes who remained loyal. Moreover, the Lincoln administration included Ross and the Cherokees on that list of loyalty. However, the two attempts to reoccupy Indian Territory failed for at least two reasons. First, the United States Army was either unable or unwilling—or both—to commit the necessary manpower to either attempt. Second, Stand Watie was very committed to resisting both efforts at reoccupation and at the restoration of his nation's own government.

Although the physical restoration of the Cherokee Nation was an abject failure, Ross believed the political restoration was absolute. His meetings with Lincoln left him convinced that the president was not only willing to restore the

Cherokees to their lands but was also willing to forgive the Cherokee Nation for the Confederate treaty. Moreover, during the winter of 1862-1863, the tribe more than successfully demonstrated its loyalty to their treaties with the United States by its service in the Federal Indian Brigade. As much as twenty percent of the tribe's entire population joined Federal forces when they entered the Cherokee Nation in the summer of 1862. Ross had at least one additional meeting with Lincoln during the summer of 1863. He came away even more convinced that the president had promised to restore the tribe to its prewar treaty status. Ross told his Executive Council that Lincoln said that the Confederate treaty "should never rise up in judgment against the Cherokees, nor stand in the way of perfect justice being done them under their Treaties with the United States."<sup>3</sup> Commissioner Dole agreed. In a postwar affidavit, written on Ross's behalf, Dole claimed to have been in that 1863 meeting and believed the President accepted Ross's explanation for the treaty and "appeared to be satisfied" that those who returned their allegiance to the United States "were excusable for the steps . . . taken."<sup>4</sup>

Much of Ross's confidence stemmed from the knowledge that the decision as to how to respond to the Cherokees belonged solely to the president. On July 5, 1862, Congress passed legislation granting the president the sole authority to repudiate any treaty held with an Indian nation "in actual

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<sup>3</sup> Smith Christie, et al., to His Excellency Andrew Johnson, January 31, 1866, Folder 1298, John Ross Papers, Helmerich Center for Historical Research, Thomas Gilcrease Library and Archive, Tulsa, Oklahoma (Hereafter cited as HC).

<sup>4</sup> William P. Dole to John Ross, January 26, 1866, *ibid.* John Ross Papers, HC.



hostility to the United States.” Ross spent the latter months of 1862 and much of 1863 trying to convince Lincoln that the Cherokees were never in actual hostility to the federal government and, therefore, eligible for full restoration under the prewar treaties. Although Lincoln relied on his advisors within the Department of the Interior, especially Commissioner Dole, he maintained a hands-on approach to his administration’s Indian policy. In the weeks following the Sioux uprising in Minnesota, Lincoln ordered “that no executions be made without his sanction.” Following a thorough investigation of the evidence, the president reduced the number of Sioux Indians executed from 303 to only 38.<sup>5</sup> Moreover, his decision to return Federal troops to Indian Territory in 1862 and 1863 ended months of debate within the government. Lincoln’s apparent sympathy with the Indian condition in the United States indicates a willingness on his part to at least somewhat reverse the political trend of U.S. presidents who routinely ignored the civil rights of American Indians. Lincoln reportedly admitted such to famed Indian advocate John Beeson in 1864. Lincoln told him “to rest assured that as soon as the pressing matters of this war is settled the Indians shall have my first care and I will not rest untill [*sic*] Justice is done their and your Sattisfaction [*sic*].”<sup>6</sup> Ross believed that the president of the United States would finally adhere to the nation’s constitutional responsibilities to the Cherokee Nation by restoring the prewar treaties that were abrogated by the

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<sup>5</sup> Scott Berg, *38 Nooses: Lincoln, Little Crow, and the Beginning of the Frontier’s End* (New York: Pantheon, 2012), 219-220.

<sup>6</sup> David A. Nichols, *Lincoln and the Indians: Civil War Policy and Politics* (Columbia: University of Missouri Press, 1978), 158.

federal government in 1861. Ross's long-standing faith in U.S. constitutional law appeared to be paying off. Lincoln listened to the plight of the Cherokee Nation and responded with justice. Ross's meetings with Lincoln left the chief completely convinced that the Cherokee Nation was to be restored, both politically and physically, as soon as conditions allowed.

Included among Ross's personal papers is folder number 1385, which contains three handwritten pages, each bearing an "article" of a would-be treaty (Appendix 1). The pages are unsigned and undated but strongly suggest Ross's belief in a full restoration by the United States. The first article called for Ross to assume control of the Cherokee regiments during the war, just as any state governor would control his own state troops. The second sought to establish a commission to investigate damages in the Cherokee Nation caused by the "noncompliance of said stipulations by the United States." The commission was to determine all just claims against the government and report its findings to Congress. The third article stipulated that all persons within the Cherokee borders would be subject to Cherokee law unless that law interfered with an "agent of the army of the United States."<sup>7</sup> Most likely, the articles were written in response to the resolutions passed by the National Council at Cowskin Prairie in February 1863. The Council, acting under the protection of Colonel William A. Phillips, formally abrogated the Cherokee-Confederate treaty and authorized Ross to seek control of the Cherokee regiments. It also

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<sup>7</sup> The "Three Articles" are in Folder 1385, John Ross Papers, HC.

called for the emancipation of all Cherokee slaves. The articles were, no doubt, anticipatory of the reestablishment of full Federal control of the Cherokee Nation. Moreover, the articles suggested a wartime treaty between the Cherokee Nation and the United States. Such a treaty never materialized. How close it came to realization—if at all—is not known.

The idea of a wartime treaty with the tribes of Indian Territory was not out of the question. On September 3, 1863, Commissioner Dole and Superintendent Coffin agreed to a new treaty with the non-Confederate portion of the Creek Indians in exile in Kansas, many of whom left Indian Territory with Opothle Yahola in late 1861. The U.S. Senate ratified the treaty contingent on the addition of amendments, the foremost of which proclaimed the Creek national government to be in abrogation of its treaty with the United States by willfully entering an alliance with the Confederacy and thus forfeiting all rights to its lands and annuities.<sup>8</sup> The idea of a wartime treaty with the Cherokee Nation is intriguing in that Dole did not immediately believe the Cherokee Nation had forfeited its rights. In his annual report for 1863, he referred to the resolutions passed at Cowskin Prairie by “the only portion of the nation whose rights have not been clearly forfeited by treason.”<sup>9</sup> Once again, Dole interceded

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<sup>8</sup> “Documents Relating to the Negotiations of an Unratified Treaty of September 3, 1863, with the Creek Indians,” <http://images.library.wisc.edu/History/EFacs/IndianTreatiesMicro/Unrat1863no34/reference/history.unrat1863no34.i0001.pdf>, accessed February 12, 2020, University of Wisconsin Libraries (Hereafter cited as UW).

<sup>9</sup> “Annual Report of the Commissioner of Indian Affairs,” October 31, 1863, 23, Annual Reports of the Commissioners of Indian Affairs, 1826-1932 online (Hereafter cited as ARCIA).

for leniency on behalf of Ross and the Cherokee Nation.<sup>10</sup> Clearly, Ross had reason to believe in the possibility of a new treaty with the United States, or at least three amendments to the existing treaty. His confidence in the tribe's security is evident in the historical record.

Even Lincoln's assassination did not deter Ross's faith in a full restoration. The president's administration appeared to have supported his Indian policies, and Ross had no reason to expect any change following the assassination. Ross claimed to have visited with President Andrew Johnson in the summer following Lincoln's death and received no indication that the new administration had any plans contrary to Lincoln's.<sup>11</sup> United States Indian policy was a topic of heated debate for many years prior to the Civil War, especially its practicality in dealing with the tribes of the Great Plains. Continued unrest caused many in the government to question the validity of the nation's plan to "civilize" the "savage" Indians of the region.

The debate over U.S. Indian policy in the 1850s and 1860s can be best understood through the opinions of the various Indian commissioners of the same period. From the transfer of the Indian bureau to the Department of the Interior in 1849 to the end of treaty-making in 1871, a period of about twenty-two years, U.S. Indian policy made little progress toward solving the nation's

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<sup>10</sup> Ibid.

<sup>11</sup> "Dialogue Between John Ross and Dennis N. Cooley," September 15, 1865, in Gary E. Moulton, *The Papers of Chief John Ross* (Norman: University of Oklahoma Press, 1985), 2:676-678.

“Indian problem,” perhaps due to the crippling inconsistency that regularly plagued the bureau’s leadership.

Between 1849 and 1871, there were twelve different Indian commissioners, on average a new commissioner every twenty-three months during, perhaps, the most critical era for the development of the nation’s post-Civil War Indian policy. Instead of developing a consistent and functional policy for directing the interactions of the federal government with the nomadic Plains tribes, the various administrations disagreed as to how to best manage the nation’s Indian affairs, and in the process, left each successive administration with no real direction on which to work. In short, each successive Indian commissioner held his own opinions as to how to manage U.S.–Indian relations, and with the United States barreling toward Civil War, the nation failed to focus enough attention on its “Indian problem.” The one consistent aspect of U.S. Indian policy—the practice of treaty-making with Indian nations—surprisingly came under attack during the period. Instead of building off of the consistency, the United States opted to abolish it, leaving the nation with an even less-defined, more inconsistent policy.

James W. Denver, President Buchanan’s commissioner from 1857 to 1859, admitted the need to reevaluate the nation’s policy. “I concur fully with those of my predecessors,” he wrote, “who had stated that there have been too

great and radical mistakes in our system of Indian policy.”<sup>12</sup> Perhaps Acting Commissioner Charles E. Mix best summarized the problem the next year: “At least three serious and, to the Indians fatal errors, have from the beginning marked our policy towards them.”<sup>13</sup> First, the constant removal from one “permanent” reservation to another cultivated a culture of distrust among the Indians. Nathaniel G. Taylor, commissioner during the Andrew Johnson administration from 1867 to 1869, asserted that the United States treated the Indians “as pilgrims, resting a year or two on this reservation, and then removing them to a new one, on the outer verge of civilization, there to linger awhile in sad suspense till the remorseless rapacity of our race requires them to move further back into darkness again.”<sup>14</sup>

George W. Manypenny, commissioner during the Franklin Pierce administration from 1853 to 1857, wrote, “without a fixed, permanent and settled home, in my opinion, all efforts to domesticate and civilize the aboriginal race will hereafter, as they have heretofore, prove of but little benefit or advantage.”<sup>15</sup> Manypenny claimed that the Indians would “be trampled under the feet of a rapidly advancing civilization” if permanent homes were not given

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<sup>12</sup> “Annual Report of the Commissioner of Indian Affairs,” November 30, 1857, 11, ARCIA.

<sup>13</sup> “Annual Report of the Commissioner of Indian Affairs,” November 6, 1858, 6, ARCIA.

<sup>14</sup> “Annual Report of the Commissioner of Indian Affairs,” November 23, 1868, 18, ARCIA.

<sup>15</sup> “Annual Report of the Commissioner of Indian Affairs,” November 26, 1855, 17, ARCIA.

to them.<sup>16</sup> Alfred B. Greenwood, James Buchanan's second commissioner from 1859 to 1861, concurred. "It is surprising to see the growing disposition on the part of our citizens with Indian tribes within our borders," he wrote in 1860, "and it is to be hoped that in future [*sic*] their rights will be held more sacred or that the government will in every instance promptly see that they are observed and respected."<sup>17</sup> "It is beyond question," wrote Taylor in 1868, "our most solemn duty to protect and care for, to elevate and civilize them. We have taken their heritage, and it is a grand and magnificent heritage. Now is it too much that we carve for them liberal reservations out of their own lands and guarantee them homes forever?"<sup>18</sup>

In Commissioner Mix's view, the second error of U.S. Indian policy was that Indians were given far too much land as part of their reservations. Denver agreed. Greenwood also argued, "It has become the policy to locate a tribe within such limits as would not at first, or, or too suddenly, change the modes and manners of hunter life for purely agricultural."<sup>19</sup> All three commissioners believed that the Indians had to abandon the chase in order to accept the benefits of subsistence agriculture. If the government continued to give them

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<sup>16</sup> "Annual Report of the Commissioner of Indian Affairs," November 22, 1856, 23, ARCIA.

<sup>17</sup> "Annual Report of the Commissioner of Indian Affairs," November 30, 1860, 17, ARCIA.

<sup>18</sup> "Annual Report of the Commissioner of Indian Affairs," November 23, 1868, 19, ARCIA.

<sup>19</sup> "Annual Report of the Commissioner of Indian Affairs," November 30, 1857, 4, ARCIA; "Annual Report of the Commissioner of Indian Affairs," November 30, 1860, 25, ARCIA.

too much land, there would be no motivation for them to adopt a new way of life.

Third, Mix believed that the practice of trading lands for large annuities was detrimental to overall U.S.–relations. Manypenny claimed that the “money-annuity system” did more to “cripple and thwart” the government’s efforts at civilization than it helped.<sup>20</sup> “So long as an Indian remains in expectation of money from the government,” he wrote, “it is next to impossible to induce him to take the first step towards civilization.”<sup>21</sup> Denver argued that the large annuities should be turned over to the chief instead of being held in trust, enabling “them to punish the lawless and unruly by withholding it from them, and giving it to the more orderly and meritorious.”<sup>22</sup>

Taylor believed that U.S. Indian policy had an obvious answer. “Unless history is a fable,” he wrote, “and the observation and the experience of living men a delusion or a lie,” the Cherokee Indians “demonstrated that an Indian tribe may become civilized.”<sup>23</sup> He claimed that what made the Cherokees such a successful example of acculturation was the fact that they lived in close proximity to white settlers in pre-removal Georgia, Alabama, South Carolina, and Tennessee. As whites encroached, the Cherokees were not completely

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<sup>20</sup> “Annual Report of the Commissioner of Indian Affairs,” November 26, 1853, 20, ARCIA.

<sup>21</sup> *Ibid.*, 21.

<sup>22</sup> “Annual Report of the Commissioner of Indian Affairs,” November 30, 1857, 7, ARCIA.

<sup>23</sup> “Annual Report of the Commissioner of Indian Affairs,” November 23, 1868, 18, ARCIA.



removed—at least, not initially—but were further concentrated in their own homes as the circumscribed boundary of tribal lands grew slowly smaller. This resulted in the eventual abandonment of the chase as Indian lands decreased more and more. The need for stock-raising and agriculture in order to survive slowly took hold; and then the very tenets of capitalism set in among the tribes, impelling them to accept the ideology of African chattel slavery.<sup>24</sup> Historian Theda Perdue and others would argue here that the widespread intermarriage of whites and Indians greatly aided the acculturation process of the Cherokee Indians.<sup>25</sup>

Taylor then made the startling claim that the Cherokees “are not only civilized and self-supporting, but before the fearful disasters of the great rebellion fell upon them, were perhaps the richest people, per capita, in the world.”<sup>26</sup> The Cherokees were the prewar example of the successes of U.S. Indian policy, and apparently, they retained that title after the war. “If the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles, are civilized and advancing in development,” Taylor hypothesized, “so will be the Cheyennes, Arapahoes, Apaches, Kiowas, Comanches, Sioux, and all our other tribes if we

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<sup>24</sup> Ibid.

<sup>25</sup> Theda Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: University of Tennessee Press, 1979), 60; see also Claudio Saunt, *Black, White, and Indian: Race and the Unmaking of an American Family* (New York: Oxford University Press, 2005), and W. David Baird, *A Creek Warrior for the Confederacy: The Autobiography of Chief G.W. Grayson* (Norman: University of Oklahoma Press, 1988).

<sup>26</sup> There is no evidence that Taylor knew about the large oil reserves in the Cherokee Nation at the time. Most likely, he based his estimation solely on their widespread capital wealth. “Annual Report of the Commissioner of Indian Affairs,” November 23, 1868, 18, ARCIA.

will only use the means in their cases that have been so wonderfully successful in the first named tribe," (i.e., the Cherokees).<sup>27</sup> However, Taylor ignored another key component of Cherokee acculturation. From the time of the Cherokees' first treaty with European settlers to the establishment of the Cherokee constitution, a period of nearly 150 years elapsed. The acculturation of the Cherokee people was a slow, arduous process. Taylor and the rest of the United States Indian bureau, along with the succeeding president Ulysses S. Grant, had no intention of replicating that level of patience.<sup>28</sup> The Cheyennes, Arapahoes, Apaches, Kiowas, Comanches, and Sioux were expected to accept a shortened, more hurried version of acculturation.

Ultimately, members of the Indian bureau argued for three specific changes to Indian policy that they believed would simplify the process of Indian relocation and escalate the process of acculturation among the more nomadic tribes of the Great Plains. First was the need for a uniform Indian policy in order to eliminate confusion within the Indian bureau. Treaties "have been made from time to time," argued Luke Lea, President Fillmore's commissioner from 1850 to 1853, "to meet the emergency of particular occasions and without reference to system or general principles."<sup>29</sup> During the Civil War, Commissioner William P. Dole of the Lincoln administration from 1861 to 1865,

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<sup>27</sup> Ibid.,

<sup>28</sup> Robert M. Kvasnicka and Herman J. Viola, eds., *The Commissioners of Indian Affairs, 1824-1977* (Lincoln: University of Nebraska Press, 1979), 100; Ron Chernow, *Grant* (New York: Penguin Books, 2017), 658.

<sup>29</sup> "Annual Report of the Commissioner of Indian Affairs," November 27, 1851, 11, ARCIA.

explained the reason for much of the lack of uniformity: “The longer experience I have in dealing with the Indians the greater difficulty do I find in laying down general rules applicable to all cases. That which may be successfully applied to one tribe will prove ruinous to another.”<sup>30</sup> As early as 1851, a full decade before the start of the Civil War, Lea suggested that there were too many varying opinions from agents on the ground. He went as far as to recommend the nation transition to an Indian commission to negotiate all treaties, setting a standard for U.S. Indian policy.<sup>31</sup>

Second, commissioners over the years argued for the establishment of civil government in the majority of Indian territory, especially in the Great Plains. Lea wrote, “In my judgment the interests of the Indians require that a civil government be immediately organized in the territory” of the Great Plains.<sup>32</sup> He further lamented the fact that there was no government or civilized system of laws anywhere north of the Cherokee Nation. He did, however, praise the “more enlightened tribes” of Indian Territory, more specifically, the Cherokees and Creeks, for attempting to impress upon their less-peaceful neighbors the importance of acquiescing to the power of the United States.<sup>33</sup> Even so, some argued for the establishment of federal courts in Indian Territory, so that the Indians could enjoy an increased sense of security in that

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<sup>30</sup> “Annual Report of the Commissioner of Indian Affairs,” November 15, 1864, 41, ARCIA.

<sup>31</sup> “Annual Report of the Commissioner of Indian Affairs,” November 26, 1853, 20, ARCIA.

<sup>32</sup> *Ibid.*, 11.

<sup>33</sup> *Ibid.*, 13.

their personal rights of property and production would be more secure in the federal government than they were in a tribal government. Elias Rector, the Southern superintendent from 1857 to 1861 during the Buchanan administration, also argued that this would serve to “strengthen their desire for the full benefit of citizenship and a different form of government” altogether.<sup>34</sup>

The third suggested policy change had to do with the treaty-making process itself. Near the end of the Civil War, Dole served as a staunch advocate for retaining the process. He believed that the practice was outdated and that a better option should be developed. However, he saw it as the best option for the present time. “The policy of negotiating treaties with Indian tribes has recently attracted a large share of public attention,” he confessed in 1864, “and it may not, therefore, be considered inappropriate to again allude to the subject.”<sup>35</sup> Military leaders grew weary of using soldiers to enforce treaties negotiated by politically-motivated bureaucrats and began calling for the abandonment of the treaty process entirely, calling for full military authority to compel compliance, rather than beg for it.<sup>36</sup> Dole disagreed. He claimed that the one true advantage gained from signing a treaty with an Indian tribe was that the Indians “have been recognized as a separate and distinct people, possessing in a restricted sense the peculiarities and characteristics of distinct

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<sup>34</sup> “Annual Report of the Commissioner of Indian Affairs,” November 30, 1857, 197, ARCIA.

<sup>35</sup> “Annual Report of the Commissioner of Indian Affairs,” November 15, 1864, 5, ARCIA.

<sup>36</sup> Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 273.

nations.”<sup>37</sup> Ross understood that “restricted sense” and the limitations of a suzerain relationship with the United States. However, he also understood the benefits. The ability to self-govern, even if on a limited basis, was vital, as Ross believed, to the perpetuation of Cherokee nationality and identity. The treaties with the United States, though somewhat restrictive in nature, gave the tribe just that feeling. That is why Ross fought so long and hard to protect the Cherokee Nation’s treaty relationship with the United States.

Although he believed a better system should eventually be implemented, Dole was a key figure in protecting the treaty-making process during the Civil War years. He asserted that there were those in the government who wished to use the nation’s “overwhelming superiority” against the Indians and force compliance with U.S. expectations. However, he believed that the same result could be attained by retaining the treaty-making process. He claimed that the tribes could enjoy that sense of nationality and independence provided them through the pages of a Senate-ratified treaty. This feeling of independence would create a loyalty to the United States that a forced compliance could never do. Dole asserted, “To my mind, the advantages of the latter over the former policy seem so apparent that I can hardly realize that the former is seriously advocated.”<sup>38</sup> Although not an outspoken proponent of the treaty-making process, Dennis N. Cooley, Indian

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<sup>37</sup> *Ibid.*, 3.

<sup>38</sup> *Ibid.*, 5-6.

commissioner from 1865 to 1866 during the first half of the Johnson administration, advocated for a number of new treaties with various tribes in 1866.<sup>39</sup> Moreover, the Lincoln administration sought to enter new treaties with many of the rebellious tribes even before the war's end. Although the treaty-making process came under fire from various corners of the Indian bureau, the system remained in place throughout the Civil War.

While treaties may have “restricted” the sovereignty of the Indian nations, the United States found that treaties also restricted the Indian policy of the federal government. Wholesale changes could never be made to U.S. Indian policy as long as Indian tribes enjoyed the perpetual “independence” and land ownership granted them by Senate-ratified treaties. How could the United States relocate thousands of Plains Indians away from a rapidly-expanding white society if there was no land on which to place them? And how could they utilize the land in the territory already set aside for that purpose if it belonged solely to so few tribes? The bureau already identified the need to relocate the Plains Indians onto reservations that could be permanently guaranteed to them. Moving them farther away from white society became increasingly more difficult as the ever-expanding nation closed in on the indigenous people of the United States. Commissioners argued that Indian Territory was plenty large enough to hold every Indian west of the Mississippi River and east of the Rocky Mountains and that it was set aside for that very

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<sup>39</sup> “Annual Report of the Commissioner of Indian Affairs,” October 22, 1866, ARCIA.

purpose. The federal government, with very little foresight, gave most of the territory's lands to the Five Tribes as an inducement for removal in the 1820s and 1830s. Now, the Indian bureau needed access to that land as homes for other tribes. To overcome this, Luke Lea argued for the elimination of existing treaties. "If a large number of existing treaties were swept away," he asserted, "and others substituted in their stead . . . the day would not be distant when the whole subject of our Indian affairs would assume a far more consistent and systematic form."<sup>40</sup> However, the national honor was at stake. Could the United States abrogate another treaty with the Cherokees and other tribes of Indian Territory without repercussions? Abraham Lincoln recognized the constitutionality of the treaties with the Cherokees and was positioned to restore the tribe to its prewar status, thus denying the federal government access to Cherokee land without the tribe's consent. By admitting to the abrogation of 1861, the Lincoln administration committed the United States to restoring the tribe to that prewar relationship and securing the tribe's perpetual ownership of tribal lands. Unfortunately for the Cherokees, and all of the nation's Indians, Lincoln's assassination removed their strongest advocate for retaining the prewar treaties and their definitions of tribal land ownership.

When the Johnson administration summoned the tribes of Indian Territory to a council at Fort Smith in September 1865 to reestablish peaceful

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<sup>40</sup> "Annual Report of the Commissioner of Indian Affairs," November 27, 1851, 12, ARCIA.

relations between the tribes and the federal government following the Civil War, the presidentially–appointed commissioners were given two specific objectives: land and a civil government. Johnson stumbled on the perfect opportunity to begin the process of unifying the nation’s Indian policy by establishing civil government in Indian Territory and eradicating the existing prewar Senate–ratified treaties of the Five Tribes in order to obtain land for other Indians. New Secretary of the Interior James Harlan, a Republican and former Senator from Iowa, wrote to Commissioner Cooley, as Cooley made the journey to Arkansas for the council: “The President is willing to grant them peace, but wants land for other Indians (and) a civil Gov’t for the whole territory.”<sup>41</sup> Ross slowly made the journey from the East to the Cherokee Nation in support of his people but felt no need to attend the council. He spent the past three years interceding for his nation before the federal government and was convinced that the tribe proved its loyalty. Instead, the Executive Council sent thirteen delegates, headed by Assistant Principal Chief Lewis Downing, who had been the acting chief in Ross’s absence. Ross considered the meetings at Fort Smith with the board of commissioners merely a formality.

The council convened on Friday, September 8, 1865, with Cooley presiding. Cooley was chosen as commissioner by Secretary Harlan upon the

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<sup>41</sup> James Harlan to D. N. Cooley, August 4, 1865, “*Documents Relating to the Negotiations of an Unratified Treaty on September 13, 1865*,” Documents Relating to the Negotiations of Ratified and Unratified Treaties with Various Indian Tribes online, UW.



resignation of William P. Dole.<sup>42</sup> Lincoln selected Harlan for the post about the time their children started seeing each other romantically. Robert Todd Lincoln and Mary Harlan attended the second inaugural ball as a couple and married three years later.<sup>43</sup> While Lincoln's approach to the Indians was more hands-on, often refusing to let his subordinates make important decisions without his approval—as was the case with the Indians convicted in the New Ulm, Minnesota, attack—Johnson opted to focus his attention on reconstructing the Union, allowing his underlings in the Interior Department to address the Indian situation with less oversight. Harlan and Cooley, Johnson's "underlings," held a different opinion about Indian disloyalty than did Smith and Dole of Lincoln's administration, and their unwillingness to accede to Cherokee claims of innocence was the most glaring difference. No doubt, the transition from Dole to Cooley brought hardship to the Cherokee Nation.<sup>44</sup> Although significant, the loss of Dole, however, had little to do with Lincoln's assassination. Lincoln himself appointed Harlan to the head of the Interior Department, and Harlan replaced Dole with Cooley.<sup>45</sup> It is unclear, however, whether Dole would have even resigned had Lincoln still been president.

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<sup>42</sup> Gary L. Roberts, "Dennis Nelson Cooley, in *The Commissioners of Indian Affairs, 1824-1977*, edited by Robert M. Kvasnicka and Herman J. Viola (Lincoln: University of Nebraska Press, 1979), 99.

<sup>43</sup> Katherine Helm, *Mary, Wife of Lincoln* (Springfield: The Lincoln Family Home, 2007), 274-275.

<sup>44</sup> Gary E. Mouton, "Chief John Ross and William P. Dole: A Case Study of Lincoln's Indian Policy," in *The Civil War Era in Indian Territory*, edited by LeRoy H. Fischer (Los Angeles: Lorrin L. Morrission, 1974), 93.

<sup>45</sup> Kvasnicka and Viola, *The Commissioners of Indian Affairs*, 99.

Lincoln's assassination silenced a much more important Cherokee advocate than Commissioner Dole; it silenced Lincoln himself. His successor, Andrew Johnson, was tangentially different in his policy toward the Indians. While Lincoln was intent on investigating Indian grievances, Johnson was more dismissive of their claims and had little interest in the grievances of Indians. Johnson's commissioners were given explicit instructions for what to do and a general leniency for how to do it. Moreover, the new treaty stipulations were to apply to both Confederate and non-Confederate Indians, regardless of their position in the previous administration. The transition from the Lincoln administration to the Johnson administration brought ideological change to Indian policy, and that new policy would confound the non-Confederate Indians at Fort Smith.<sup>46</sup>

Aside from Cooley, the Fort Smith Commission consisted of Brigadier General William S. Harney, Thomas Wistar of the Society of Friends, Colonel Ely S. Parker from General Grant's staff, and Southern Superintendent of Indian Affairs, Elijah Sells. When Cooley opened the meeting, the only Indians present were those who did not fight on the side of the Confederacy, except for the Cherokee Nation which maintained its innocence. The Confederate Indians gathered at the Armstrong Academy in the Choctaw Nation as a show of solidarity and would not arrive at Fort Smith for another week. Even though the

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<sup>46</sup> Mary Jane Warde, *When the Wolf Came: The Civil War in the Indian Territory* (Fayetteville: University of Arkansas Press, 2013), 257.

openly rebellious portions of the tribes were not present, Cooley still addressed the delegations as if they were.

After calling the council to order, Cooley bluntly informed the loyal delegates, "Portions of several tribes and nations have attempted to throw off their allegiance to the United States and have made treaty stipulations with the enemies of the government." He continued, "All such have rightfully forfeited all annuities and interests in the lands in the Indian territory." He did say, however, that the President was willing to hear the extenuating circumstances behind each of the rebellious treaties.<sup>47</sup> In concluding his opening remarks, Cooley addressed "those who remained true, and who have aided [the President] in punishing the rebels . . . he is well please [*sic*] with you, and your rights and interests will be protected by the United States."<sup>48</sup> In response, the delegates, who hoped to avoid any forfeiture, requested a recess until the afternoon to discuss the matter amongst themselves before replying to the commission. The request was granted, and the meeting adjourned. However, Cooley instructed them "to exhibit the authority by which they come to the council." He also instructed them to choose from amongst themselves, a small group of no more than five who would be authorized to negotiate and sign treaties on behalf of the tribe.<sup>49</sup> None of the delegations had such authority. None of them knew

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<sup>47</sup> "Annual Report of the Commissioner of Indian Affairs," October 31, 1865, 314, ARCIA.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, 315.

they would be asked to sign a new treaty. None of them believed they needed to.

Four hours later, the council reconvened with Cooley asking for remarks from the various delegations present. Smith Christie of the Cherokees was first to respond. "We are thankful," he said, "for the kind words expressed this morning for those of the tribes who have been loyal, and for the assurances of continued protection." He informed the commissioners that the Cherokee delegation was not authorized by the National Council to negotiate treaties. "We beg leave to say," he requested, "that our constitution prescribes the mode of making treaties."<sup>50</sup> The Cherokee delegation arrived at the council unprepared to sign a new treaty. They were convinced that they proved their loyalty and that their prewar treaties would, most likely, be confirmed. Besides, Cherokee law prohibited the signing of a treaty without the approval of their National Council. Following similar claims from other tribes, Cooley agreed to adjourn the council until 10 am the next morning. He encouraged the delegates to be prepared to hear "the wishes and intentions of the government of the United States respecting their future relations with the Indians." He also warned them that additional requests for delay would not be tolerated.<sup>51</sup>

On Saturday, September 9, day two of the council, Cooley wasted no time in getting to the purpose of the commission. He told the delegates that the

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<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*, 317.

commissioners were instructed by the president to negotiate new treaties with the tribes of Indians in Indian Territory and Kansas. He then read a list of those nations involved: "The following named nations and tribes have by their own acts, by making treaties with the enemies of the United States . . . forfeited all right to annuities, lands and protection by the United States." He began by stating that the Creek Nation entered a treasonous treaty when on July 10, 1861, they formally entered an alliance with the Confederacy. After announcing the names of eleven other tribes and the dates of their alliance treaties, he ended the list with the lone remaining nation: "The Cherokees, October 7, 1861." The Johnson administration included Ross and the Cherokee Nation on their list of disloyalty, shocking the delegates and angering the absent Ross, who learned for the first time that Lincoln's plan to reestablish the tribe did not make the transition to the new administration.

Under the authority given to him by the law of July 5, 1862, President Johnson did what Abraham Lincoln resisted doing: he declared that John Ross and the Cherokee Nation abrogated their treaties with the United States by aligning themselves with the Confederacy in 1861. He further declared that they, and the other tribes in Indian Territory, were "left without any treaty whatever, or treaty obligation for protection by the United States."<sup>52</sup> While the Lincoln administration so clearly argued that the Cherokee-Confederate alliance happened only because the federal government abrogated its own

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<sup>52</sup> *Ibid.*, 318.

treaty responsibilities, Johnson's administration was appalled by that idea. Johnson claimed to hold the mantra that "treason is a crime; and crime must be punished." He announced in the weeks following the assassination that "treason must be made infamous and traitors punished."<sup>53</sup> Ironically, Johnson demonstrated great leniency to white Confederates in the South following the war.

Secretary Harlan claimed in his annual report three months after the council that the prewar treaties "had been observed by us with scrupulous good faith, and in the absence of any just ground of complaint, these confederated Indians entered into an alliance with the rebel authorities."<sup>54</sup> He was in no way willing to admit that the United States abrogated its treaty responsibilities by abandoning Indian Territory in 1861. Cooley was taken aback when H. D. Reese of the Cherokee delegation addressed the commission on the second morning of the council, by declaring that his tribe, under the leadership of John Ross, was "not guilty" of the stated charges.<sup>55</sup> In his annual report, Cooley scornfully claimed that the Cherokees "attempted to charge the causes of their secession upon the United States, as having violated its treaty obligations, in failing to give the tribe protection."<sup>56</sup> Clearly, the transition from Lincoln's administration to Johnson's brought a different

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<sup>53</sup> Hans Trefousse, *Andrew Johnson: A Biography* (New York: W.W. Norton, 1989), 197-198.

<sup>54</sup> "Annual Report of the Commissioner of Indian Affairs," October 31, 1865, 322, ARCIA.

<sup>55</sup> "Annual Report of the Secretary of the Interior," December 4, 1865, 7. ARSOI.

<sup>56</sup> *Ibid.*, 35.

perspective to bear on the subject of Indian policy, and the Cherokee Nation found itself uncomfortably sitting in the crosshairs of those seeking to reform it.

After listing the guilty nations, Cooley tried to appease the delegates by informing them that the president had no real desire to punish any of them.<sup>57</sup> All he wanted was for each tribe to acknowledge its disloyalty and agree to a new treaty.<sup>58</sup> He then enumerated seven stipulations to be included in those new treaties. The first two called for the tribes to live in peace with themselves, each other, and the United States, and to encourage the tribes of the Plains to adopt a peaceful existence as well. The next two required the tribes to abolish and permanently prohibit slavery within their nations. The fifth and sixth stipulations came directly from Johnson and would prove to be the most significant. The former would require the tribes to cede land to the United States to allow the relocation of Indians from Kansas to Indian Territory. The latter advocated for the formation of one civil government to rule all the tribes of Indian Territory. The final stipulation limited white intrusion of Indian land only to that which was authorized by the federal government.<sup>59</sup> In short, the Indians lost control of their own borders. The only Indians present to hear the new stipulations were those who believed they remained loyal to the United States. They were dumbfounded to learn that they, too, were to be counted among the guilty of their tribe. Cooley then provided each agent with copies of his address

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<sup>57</sup> *Ibid.*, 318.

<sup>58</sup> *Ibid.*, 327.

<sup>59</sup> *Ibid.*, 318.

and adjourned the council until the following Monday morning, at which time each tribe would be required to answer the charges and agree to the new treaty.

The new treaty represented an attack on Indian autonomy, and the Cherokees were not ready to concede to its demands. Ross arrived from the East and met with the delegation on Sunday to discuss the Cherokee response. The confidence that grew out of the policy of the Lincoln administration was shaken to its core by Cooley's indictment of the Cherokee Nation on Saturday morning. Now, the tribal leaders had to craft a response to what they believed were inaccurate and unjust charges. Moreover, if the Cherokees were found guilty, the council was prepared to inflict more political damage on the nation than Andrew Jackson had in the 1830s. The loss of land would be a harsh, but bearable, consequence of the treaty. Indians proved willing to relinquish some tribal land in exchange for retaining autonomy. However, the consolidation of tribal governments into one territorial rule and the loss of border control would be an affront to Indian self-rule. In Abraham Lincoln, Ross's faith in the process of constitutional law finally found a friend. Now, the delegation was placing that faith in a new administration and hope that Johnson, too, would prove friendly to the Cherokee plight. The delegation decided to stand firm and demand that the United States recognize its responsibility for the Cherokee-Confederate alliance and act with leniency toward the Cherokee Nation. The immutability of the Cherokee story indicates



the level of confidence the delegates had in their principal chief. However, some on the board of commissioners at Fort Smith would take great exception to that immutability, Cooley and Parker in particular.

Most of the Cherokee delegation did not attempt to cross the Arkansas River on Monday morning, September 11, to attend the council, including Ross, who, for some unknown reason, decided to stay away from the proceedings.<sup>60</sup> Two men, however, made the journey; and one of them, H. D. Reese, delivered the Cherokee response to the council. He began by reminding the commissioners that the Cherokee National Council would have to be consulted prior to signing any treaty. Ross strongly discouraged the delegates from signing a new agreement with the commissioners because doing so would be admitting guilt.<sup>61</sup> In fact, Reese stood before the council and declared that the Cherokee Nation and its people “earnestly plead ‘not guilty’” to all charges of abrogation. Reese then shared the Cherokee secession story, hoping to convince a second presidential administration of the unavoidability of the Cherokee–Confederate alliance. He told how the tribe attempted to return to the Union during the attack on Opothle Yahola at Bird Creek and again at the Battle of Pea Ridge. He outlined how quickly the tribe repudiated its Confederate alliance at the first sign of the Indian Expedition, and how thoroughly the nation embraced its alliance with the United States since. Reese

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<sup>60</sup> *Ibid.*

<sup>61</sup> Dialogue Between Ross and Dennis N. Cooley, September 15, 1865, in Moulton, *Papers of Chief John Ross*, 2:646-648.

closed his remarks by stating his belief that the law of July 5, 1862, which authorized the president to declare the tribe in abrogation of their treaty responsibilities and therefore, in forfeiture of its provisions, included a caveat of leniency and forbearance. He argued that if the Cherokee Nation did not meet the qualifications for that caveat, then the United States had not progressed any past the brutish and unfeeling legacy of the Medes and Persians.<sup>62</sup>

Following brief remarks by the delegates from the Osage and Wichita nations, the council adjourned until 11 am Wednesday, September 13, no doubt so the commissioners could discuss at length the Cherokee response. On Wednesday morning, the commission announced that the Cherokee misinterpreted the intention of the law of July 5, 1862. Cooley attempted to clarify the confusion by telling the delegates that, if the tribe simply admitted its disloyalty and signed the new treaty with the United States, the president would happily “waive the forfeiture and reinstate the nation.”<sup>63</sup> However, the delegates knew that signing the new treaty meant agreeing to all the new stipulations and relinquishing key components of tribal autonomy. Only six months earlier, the Cherokee Nation filed a formal protest against the passage of Senate Bill 459, which “provided for the consolidation of the Indian tribes” in Indian Territory, calling the bill “a measure fraught with trouble and wrong and ruin to our people and our institutions.”<sup>64</sup> Yet, Cooley informed the delegates that “we are

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<sup>62</sup> “Annual Report of the Commissioner of Indian Affairs,” October 31, 1865, 323, ARCIA.

<sup>63</sup> *Ibid.*, 325-326.

<sup>64</sup> H. R. Misc. Doc. No. 56, 38<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (1865), Library of Congress.

surprised to know that any nation or tribe which assumes to be loyal should object to the signing of the treaty, inasmuch as there is nothing in it to which any truly loyal person may take exception."<sup>65</sup> Just as Albert Pike did with his letter of August 1, 1861, the council gave the Cherokee Nation an ultimatum: prove their loyalty by signing the new treaty, or risk the consequences of continued devotion to their idealistic faith in Abraham Lincoln and John Ross.

Reese and the other delegates had claimed that the Cherokee Nation already repudiated the Confederate treaty by "escaping to a place of safety" at Cowskin Prairie in February 1863.<sup>66</sup> The commissioners, however, did not recognize the act as a full repudiation. They insisted that the treaty could only be repudiated by signing a new one with the United States and that new one would require the tribe to accede to the new stipulations as well. The Cherokee delegation refused to sign the treaty without first consulting with Ross.<sup>67</sup> The commissioners believed that the delegation would readily sign except for Ross's influence and interference. Moreover, his refusal to attend the council meetings sparked outrage among the commissioners, prompting them to issue a harsh edict.

While John Ross is the principal chief of the Cherokee nation, and the treaty made by him and the nation with those in rebellion against the United States is not repudiated, *and a new treaty made with the United States . . .* you, as a nation, are legally morally, and of right ought to be, as you are, subject to the will

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<sup>65</sup> "Annual Report of the Commissioner of Indian Affairs," October 31, 1865, 333, ARCIA.

<sup>66</sup> "Annual Report of the Commissioner of Indian Affairs," October 31, 1865, 323, ARCIA.

<sup>67</sup> *Ibid.*, 331.

and pleasure of the President of the United States touching your interests under any former treaty or treaties with the United States affecting annuities or titles to land in the Indian territory” (italics added).<sup>68</sup>

Until Ross was willing to admit his disloyalty and support the new treaty, the Cherokee Nation would be completely at the mercy of the United States government. Cooley ordered copies of the treaty be made and distributed to each agent present. His instructions were simple and clear: “We want it signed by *all* the loyal Indians present; and if signed at all, it must be at the opening of the session to morrow [*sic*] (italics original).”<sup>69</sup>

The next morning, Thursday, September 14, 1865, the Cherokee agent, Justin Harlan, announced to the commission that the Cherokee delegation was unable to hold the consultation with Ross due to illness and that the tribe wished to postpone signing the treaty. Harlan realized the frustration felt by the commissioners and encouraged the delegates to sign this provisional treaty and take their chances negotiating a final treaty in Washington later. In the meantime, the delegates from the Creek Nation began to hesitate, leading the commissioners to suspect Ross’s influence there as well. The Creeks previously agreed to sign the treaty, but only under formal protest, causing the commission to question the tribe’s loyalty.<sup>70</sup> While many of the smaller tribes signed the treaty, Creek agent J. W. Dunn encouraged his delegation to sign

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<sup>68</sup> *Ibid.*, 327.

<sup>69</sup> *Ibid.*, 331-332.

<sup>70</sup> *Ibid.*

and prevent any further repercussions from the commission. The Creek delegation signed the treaty shortly before the council was adjourned for the day, but not before expressing their displeasure.<sup>71</sup>

On Friday morning, September 15, agent Harlan announced that the Cherokee delegates were ready to sign the treaty. Before doing so, however, Reese read a prepared statement of protest. "The Cherokee delegation are willing to sign the treaty," he announced, "but in so doing do not acknowledge that they have forfeited their rights and privileges to annuities and lands, for the loyal Cherokees are not guilty."<sup>72</sup> After consultation, the commissioners agreed to allow the delegation to sign under the following protest, "We, the loyal Cherokee delegation, acknowledge the execution of the treaty of October 7, 1861; but we solemnly declare that the execution of the treaty was procured by the coercion of the rebel army." The commission reluctantly accepted the protest just to get the Cherokees' signatures on the document. Five Cherokee delegates signed the provisional treaty of 1865.

Ross's pragmatic faith in constitutional law was always a guiding principle; but, in response to the Fort Smith Council, it became much more an unwavering mission. His unquestioned leadership among the members of the delegation caused them to remain steadfast in their defiance of the punitive demands of the proposed treaty. Ross's refusal to accede to the wishes of the

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<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*, 336.

council angered the commissioners who took an unprecedented step in U.S.-Indian relations on the afternoon of Friday, September 15, 1865. At 3 pm, the council reconvened with only one order of business on the agenda. Having heard the attack on his character, Ross decided to attend this session of the council. He was present when Cooley called the council to order and read a proclamation signed by the members of the commission deposing Ross as principal chief of the Cherokee Nation.<sup>73</sup>

Ross immediately rose to defend himself. He reminded the council that he had been principal chief of the Cherokee Nation for nearly forty years, having been elected on ten different occasions, most recently while he was in Washington interceding in behalf of his people. He told them that he personally shared his story with many in the Interior Department, including the Commissioner of Indian Affairs, and both President Lincoln and President Johnson, and was “never charged with being an enemy” of the United States by any of them.<sup>74</sup> However, Cooley was not as understanding. Where Cooley and Secretary Harlan differed in their analysis of Cherokee loyalty was with the abandonment of Indian Territory in 1861. While the Lincoln administration readily admitted that the move constituted an abrogation of treaty stipulations on the part of the federal government, Cooley and Harlan refused to do so. Identifying the move as an abrogation would justify the Cherokee response to

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<sup>73</sup> *Ibid.*

<sup>74</sup> Dialogue Between Ross and Dennis N. Cooley, September 15, 1865, in Moulton, *Papers of Chief John Ross*, 2:646-648.

align with the Confederacy out of self-preservation. On the other hand, refusing to acknowledge the abrogation cast doubt on Ross's motives, allowing the commission to view the chief with contempt and to publicly refuse to recognize his authority.

In a published report of the Fort Smith proceedings titled, *The Cherokee Question*, Cooley outlined the charges against Ross that led to his deposition.<sup>75</sup> He retraced Ross's prewar correspondence with Confederate officials as they tried to convince the chief of the benefit and necessity of a Southern alliance. Cooley admitted that Ross's earlier correspondence supported his claims by "reiterating his firm purpose to remain neutral."<sup>76</sup> However, when Ross made the decision to align with the Confederacy, he demonstrated his sincerity to Confederate officials, and his subsequent correspondence also convinced Cooley and the other commissioners of the same. Cooley included in the report an affidavit, signed by Albert Pike on February 17, 1866, in support of Ross's loyalty to the Confederacy. Pike claimed he was fully convinced of Ross's loyalty and downplayed any fears the chief claimed to have had of Watie and his men. "There never was a time," Pike wrote, "when the 'loyal' Cherokees had not the power to destroy the southern ones."<sup>77</sup> Moreover, his refusal to

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<sup>75</sup> *The Cherokee Question. Report of the Commissioner of Indian Affairs to the President of the United States, June 15, 1866. Supplementary to the Report of the Commissioners Appointed by the President to Treat with the Indians South of Kansas, and Which Assembled at Fort Smith, Ark., in September 1865* (Washington: Government Printing Office, 1866), Ely Samuel Parker Papers, Newberry Library, Chicago, Illinois (Hereafter cited as NL).

<sup>76</sup> *Ibid.*, 28.

<sup>77</sup> *Ibid.*

publicly submit to Colonel Weer and the Indian Expedition brought further incrimination upon the chief. Cooley and the other commissioners became convinced that Ross fully demonstrated his allegiance to the Confederacy.

The commission elected to depose Ross as principal chief of the Cherokee Nation for two reasons. First, the commissioners believed Ross's claims that the Cherokee people were loyal. The efforts of Cherokee soldiers to defect at Bird Creek, and again at Pea Ridge, coupled with the successful mass defections at the arrival of the Indian Expedition had convinced them. Secondly, however, Ross was unable to prove his own loyalty. They accused him of having used "his superior education and ability" to force the nation into an alliance with the Confederacy and of trying to encourage the neighboring tribes to join them.<sup>78</sup> Moreover, he showed an aloofness during the council meetings at Fort Smith, leading the commission to accuse him of standing in the way of a new treaty with the loyal Cherokee people. They also reminded the delegation that he even tried to persuade "that true patriot," Opothle Yahola, to join his Cherokee brothers in rebellion. They noted that Ross raised troops to fight against the United States; and, when the Indian Expedition announced its arrival, Ross refused to join them.<sup>79</sup> In their estimation, Ross stood in the way—and was still standing in the way—of true Cherokee loyalty.

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<sup>78</sup> *Ibid.*

<sup>79</sup> "Annual Report of the Commissioner of Indian Affairs," October 31, 1865, 325-326, ARCIA.



In this single decision, the Fort Smith Commission most clearly demonstrated the significance of Lincoln's assassination. By refusing to follow the precedent set by the Lincoln administration and admitting the nation's treaty abrogation in 1861, they could place all the blame for the Cherokee-Confederate alliance on Ross's shoulders. Consequently, the Cherokee Nation found itself listed among the disloyal tribes of Indian Territory, resulting in the abrogation of the tribe's treaties with the United States and a new punitive treaty signed in Washington in June 1866.

The postwar treaties were grossly inconsistent with the level of loyalty demonstrated by each of the Five Tribes. The Seminoles were first to sign, doing so on March 21, 1866, trading their entire territory for less land farther to the east.<sup>80</sup> The Choctaws and Chickasaws were next, signing on April 28, 1866. They were offered \$300,000 for the Leased District in Western Indian Territory on which to settle their freedmen. If accepted, the freedmen were to be given forty acres of land each. However, the Choctaws and Chickasaws were given the option to accept the offer or not. There was no requirement to give tribal citizenship to any of the freedmen. The next to sign were the Creeks, who did so on June 14, 1866. The treaty cost the nation considerable land holdings. Creek and Seminole freedmen were given no land but were given full

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<sup>80</sup> Prucha, *American Indian Treaties*, 267.

tribal citizenship, extending to their descendants. The Creeks were given limited control over tribal citizenship.<sup>81</sup>

The Cherokees were the last to sign on July 19, 1866. Besides losing much of their land, the Cherokees were required to give each freedman full tribal citizenship and representation. In fact, Article 9 of the treaty proved to be among the most significant requirements: “They further agree that all freedmen . . . *and their descendants* shall have all the rights of native Cherokees” (italics added). This article extended full citizenship and representation to all Cherokee freedmen. Moreover, any and all land privileges were to be extended to all freedmen and their descendants.<sup>82</sup> This is of particular interest in that this article has been debated in the United States courts even into the twenty-first century as descendants of Cherokee freedmen still seek compensation from the tribe as part of this agreement.<sup>83</sup> The treaties brought an end to the Civil War Era in Indian Territory and introduced a much-misunderstood period of deconstruction, rather than reconstruction, for the native tribes. However, the Cherokees would have to navigate this unprecedented time without their beloved leader. John Ross died on August 1, 1866, at the age of seventy-five,

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<sup>81</sup> Marion Ray McCullar, “The Choctaw-Chickasaw Reconstruction Treaty of 1866,” in *The Civil War Era in Indian Territory*, edited by LeRoy H. Fischer (Los Angeles: Lorrin L. Morrission, 1974), 138.

<sup>82</sup> “Treaty with the Cherokee, 1866,” July 19, 1866, RG 75, Documents Related to Ratified and Unratified Treaties with the Various Indian Tribes, National Archives and Records Administration, Washington, D.C. (Hereafter cited as NARA).

<sup>83</sup> See *Cherokee Nation v. Nash* (2017) and *Vann v. Zinke* (2017).

less than two weeks after the consummation of the final postwar treaty, and ten days before its formal proclamation.<sup>84</sup>

It is of interest to note how historians interpret the final series of post-Civil War “peace” treaties with the rebellious tribes of Indian Territory. Christopher B. Bean claims that of the Five Tribes, “the Seminoles and Creeks, most stricken by the war, received the least favorable terms,” a claim that likely surprises the Cherokee people. Bean based his analysis solely on tribal land forfeiture.<sup>85</sup> Clarissa W. Confer, however, viewing the treaties more broadly, asserts that the Cherokees “suffered the worst reconstruction experience.”<sup>86</sup>

Surprisingly, the Choctaws and Chickasaws, who were the first to align with the Confederacy in 1861, with virtually no pro-Federal presence during the war, and who fought solely on the side of the Confederates, received the most lenient of all the postwar treaties. The Cherokees, on the other hand, held out for neutrality for months after the start of the war, had a sizable pro-Federal footprint within the tribe during the war, and abrogated their Confederate treaty in the middle of the war, returning to fight on the side of the United States; yet they received the most punitive treaty. The Choctaws received their lenient treaty simply because they came humbly before the Fort Smith Commission, admitted their guilt, and readily signed the new treaty;

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<sup>84</sup> Prucha, *American Indian Treaties*, 268.

<sup>85</sup> Christopher B. Bean, “Who Defines a Nation? Reconstruction in Indian Territory,” in *The Civil War and Reconstruction in Indian Territory*, edited by Bradley R. Clampitt (Lincoln: University of Nebraska Press, 2015), 113.

<sup>86</sup> Clarissa W. Confer, *The Cherokee Nation in the Civil War* (Norman: University of Oklahoma Press, 2007), 153.

whereas the Cherokees never admitted guilt, resisted signing for multiple days, and when they did sign, did so under protest, and as a result, received the most punitive treaty of all the Five Tribes. Clearly, the Johnson administration had no intention of investigating guilt or innocence in the postwar Indian treaties. Johnson simply wanted two things: a civil government and land for other tribes. He got both.

While the Cherokees were negotiating the permanent treaty in Washington, repercussions from Lincoln's assassination continued to evolve and would far transcend the borders of Indian Territory. Another member of the punitive commission that voted to depose Ross rose to prominence in the months following Fort Smith, and the impressions left on him by Ross's aloofness helped define a new Indian policy that would change the way the United States related to the indigenous people of the continent. Ely Samuel Parker was a Seneca Indian and sachem of the Iroquois Confederacy. Prior to the war he befriended Ulysses S. Grant and, as a result, served as Grant's adjutant during much of the war. Parker would later gain fame for having written in his own hand the surrender terms signed by Robert E. Lee. Few, if any, historians recognize the significance of Parker's involvement with the Fort Smith Commission, often treating his presence as nothing more than a novelty.<sup>87</sup> However, his greatest legacy comes from his involvement in Indian

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<sup>87</sup> For example, Confer and Frank Cunningham simply mention Parker as being a member of the Fort Smith Commission, without elaborating on his role. Knight and Bean do not even mention him in regard to the commission. Confer, *The Cherokee Nation*; 148; Frank Cunningham, *General Stand Watie's Confederate Indians* (Norman: University of Oklahoma

matters in the years following the war, beginning with his participation on the Fort Smith Commission.

Parker and Ross represent contrasting examples of the search for indigenous identity in the latter half of the nineteenth century. Parker was three-fourths Indian and raised in a deeply traditional Seneca home, steeped in native language and culture.<sup>88</sup> Ross, in contrast, was only one-eighth Cherokee and lived a highly assimilated life, embracing the culture and economy of white society. However, both men held a deep appreciation for their Indian heritage. They also both embraced the advantages given them by a formal education. While the escalation of the Indian Wars in the American West has dominated the historiography of post-Civil War Indian relations, the juxtaposition of indigenous identity represented by Parker and Ross actually worked to lay the foundation for much of U.S. Indian policy during that turbulent era in American history.<sup>89</sup>

Even though Parker was himself an Indian who supported the idea of tribal identity, Ross's actions went against what he believed to be the actions of a true Indian. He watched as Ross thwarted the work of the Fort Smith Commission by "exercising his powerful influence to prevent an amicable

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Press, 1998), 204; Wilfred Knight, *Red Fox: Stand Watie and the Confederate Indian Nations during the Civil War Years in Indian Territory* (Glendale: Arthur H. Clark, Co, 1988), 277-280; Bean, "Who Defines a Nation?" 119-120.

<sup>88</sup> William H. Armstrong, *Warrior in Two Camps: Ely S. Parker Union General and Seneca Chief*, (Syracuse: Syracuse University Press, 1978), 10.

<sup>89</sup> Jill St. Germain, *Indian Treaty-Making Policy in the United States and Canada, 1867-1877* (Lincoln: University of Nebraska Press, 2001), 27.

settlement” between all parties of the disloyal Cherokee Nation.<sup>90</sup> Cooley noted how Ross kept “aloof from the council,” discouraging the Cherokee delegation from signing the new treaty.<sup>91</sup> The powerful influence that Ross displayed both angered and puzzled Parker, who gladly threw his support behind a vote to remove him from office as principal chief of the Cherokee Nation.

Parker would later tell an academic audience that, among the many things that separated an Indian from the whites, two things stood out. First, he claimed that “such a thing as a rich North American Indian I do not think was ever known.” He asserted that “Indians are always poor.” The fact that Ross and many other Indians in Indian Territory owned slaves and lived in wealth and luxury, while the bulk of their populations lived as poor subsistence farmers, alerted Parker to the idea the Ross was not really an Indian. Second, Parker decried the idea that the Cherokee Nation had a republican form of government because of their having an obvious elite class in perpetual leadership. He argued that Indians did not have systematic forms of government but had organizational structures of “the most liberal democratic kind.”<sup>92</sup> In short, all Indians were equal. In Parker’s eyes, Ross was not an Indian, in that he ruled the Cherokee people like a white man. For Parker, this was not acceptable. He also believed that U.S. Indian policy was to blame.

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<sup>90</sup> “Lecture,” n.d., Ely Samuel Parker Papers, Ayers MS 674, NL.

<sup>91</sup> “Annual Report of the Commissioner of Indian Affairs,” October 31, 1865, 35, ARCIA.

<sup>92</sup> “Lecture,” n.d., Ely Samuel Parker Papers, Ayers MS 674, NL.

In a report filed at the request of General Ulysses S. Grant, Parker offered his suggestions for how U.S. Indian policy should be revamped. Submitted on January 27, 1867, the report included four primary proposals. The first suggested that the Bureau of Indian Affairs be transferred away from the bureaucracy of the Department of the Interior and returned to the Department of War where it originated. The second proposed that a permanent territorial government be established in Indian Territory as was sought by President Johnson and the Fort Smith Commission the previous year. Parker argued that the concentration of Indian tribes under a territorial government would eliminate much of the waste and inefficiency that plagued the Indian bureau. Even though the tribes begrudgingly signed the new treaties outlining the establishment of a territorial government, the institution held no significance for the tribes and was not enforced by federal authorities. Parker's third proposal was for a temporary board of inspectors to oversee the transition of the Indian bureau to the War Department.<sup>93</sup>

Parker's fourth proposal was the most significant. It suggested the appointment of an Indian Commission to handle the negotiations with Indian tribes moving forward. He suggested that the commission work to convince the Indians of the benefits of peace with the United States and of learning an agricultural lifestyle. He also suggested that the commission demonstrate to

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<sup>93</sup> E. S. Parker to U. S. Grant, January 24, 1867, *Reports of the Secretaries of War and Interior in Answer to Resolutions of the Senate and House of Representatives in Relation to the Massacre at Fort Phil. Kearney, on December 21, 1866*, (Washington: Government Printing Office, 1867), 47-56, Ely Samuel Parker Papers, NL.

the Indians the strength and endless numbers of the white population and remind them that all those tribes who sought to resist the advances of the wave of white settlers met with extermination. However, the commission would reassure the Indians of the federal government's desire to protect them and secure their perpetuation as a nation. Parker warned of what he considered the biggest roadblock to the work of such a commission: tribes who were under "the influence and control of interested, unprincipled, and crafty individuals" who sought power at the expense of unsuspecting and faithful Indians. He asserted that the common Indian had an unrealistic desire for liberty and independence, and that those unprincipled men often fed that desire "in order to retain their influence and power."<sup>94</sup>

No doubt, one of those "unprincipled" men Parker had in mind was Ross. He believed that Ross used his "superior education and ability" to induce "many of his people to abjure their allegiance to the United States and to join the States in rebellion."<sup>95</sup> He also agreed with the sentiment that Ross set up a false "claim to the office of principal chief, and by his subtle influence is at work poisoning the minds of those who are truly loyal."<sup>96</sup> Parker was angered by the notion that Ross used his position to tell the Cherokee people what they wanted to hear: that they were still an autonomous nation and that the United States promised to protect their right to govern themselves. The fact that Ross

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<sup>94</sup> *Ibid.*, 53.

<sup>95</sup> "Annual Report of the Commissioner of Indian Affairs," October 31, 1865, 304, ARCIA.

<sup>96</sup> *Ibid.*



blamed the federal government for the Cherokee-Confederate alliance angered the Fort Smith Commission. The only recourse was to remove him as principal chief so that the United States could have open and honest negotiations with the loyal Cherokee people. However, if the commission was so anxious to treat with the “loyal” portion of the Cherokee Nation without Ross’s influence and if they really believed that Ross was the only reason the Cherokees aligned with the Confederacy, why did they still force the “truly loyal” Cherokees to sign the punitive treaty at Fort Smith? The answer is clear. The Johnson administration was not concerned with guilt or innocence. In fact, the commission forced the loyal segments of the tribes to sign the treaty before the pro-Confederate segments even arrived at Fort Smith. They were not looking to determine which Indians were loyal and which were not. Johnson simply wanted Indian lands and a consolidated government in Indian Territory. The only true reason they removed Ross as chief was because he instructed the delegates not to sign the treaty as long as the preamble asserted a “forfeiture of money and lands.”<sup>97</sup> Parker, who adopted Johnson’s approach to Indian relations at Fort Smith, proposed sweeping changes to the nation’s policy. Indeed, the assassination of Abraham Lincoln brought a new Indian policy to bear on all the tribes of Indian Territory, even those whom Lincoln appeared to forgive.

Parker’s proposed changes to U.S. Indian policy were well received in Washington. On the day after the report to Grant was submitted, Senator

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<sup>97</sup> *The Cherokee Question*, 4.

Henry Wilson from Massachusetts sent Parker a quickly penned note requesting that he “write, draw up, and send me a bill for presentation to Congress, embodying the ideas and propositions embraced in your report.”<sup>98</sup> Wilson was part of a group of senators who believed that emancipation and civil rights were given to one race in the South and that it was now “time to take care of the Indians” as well.<sup>99</sup> Wilson supported a more “liberal and generous, humane and civilizing” Indian policy and thought Parker’s proposed plan “covers all the ground.”<sup>100</sup> Secretary of War Edwin M. Stanton also introduced Parker’s proposals into both Senate and House Committees on Military Affairs. Even though Parker’s suggestions as a whole were not approved by Congress, the spirit of his ideas took root in the halls of Washington.<sup>101</sup> Less than six months after Parker’s initial report, a bill emerged from the Senate Committee on Indian Affairs for the establishment of a commission “to make peace” with the Indians on the Plains.<sup>102</sup> The bill was presented on the Senate floor by Senator John B. Henderson of Missouri who bemoaned the high cost of the escalating Indian wars. “If we can make peace with the Indians,” he told his Senate colleagues, “we had better do it.”<sup>103</sup>

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<sup>98</sup> H. Wilson to Colonel E. S. Parker, January 28, 1867, Ayer MS 109, Ely Samuel Parker Papers, NL.

<sup>99</sup> John L. Myers, *Henry Wilson and the Era of Reconstruction* (Lanham, MD: University Press of America, 2009), 130.

<sup>100</sup> H. Wilson to Colonel E. S. Parker, January 28, 1867, Ayer MS 1009, Ely Samuel Parker Papers, NL.

<sup>101</sup> Armstrong, *Warrior in Two Camps*, 120-121.

<sup>102</sup> *Congressional Globe*, 40<sup>th</sup> Cong., 1<sup>st</sup> sess., 1867, 668, LOC

<sup>103</sup> *Ibid.*, 667.

The bill would empower the commission to concentrate the Indians of the Plains on one of two reservations: the first, to be established north of Nebraska, and the second to be south of Kansas and west of Arkansas, “including the present Indian Territory.”<sup>104</sup> Johnson’s plan to take land from the tribes of Indian Territory as part of his punitive postwar treaty set the stage for this new round of removal in the post–Civil War years. In his introduction of the bill, Henderson referenced the Treaty of Fort Laramie, Wyoming, of 1851, which granted the Sioux Indians ownership of the land they presently occupied, leaving for the United States an east-west route through the North Platte River Valley—the Platte Road—for white citizens to chase their gold fever in California. Although, the treaty gave the United States the right “to establish roads, military and other posts” within Sioux territory, the understanding was that any necessary infrastructure be confined to the primary east-west throughway. However, the United States soon demonstrated, once again, its reputation for duplicity by announcing plans to erect three forts along the Bozeman Trail, which diverged from the overland road at Fort Laramie and cut a path to the northwest through the Powder River Valley and the heart of Sioux territory (Figure 3). This move interrupted negotiations between federal authorities and Cheyenne and Arapaho Indians and their allies, who had grown hostile in the wake of Chivington’s massacre at Sand Creek two years earlier. The leader of the hostile Indians, Red Cloud, promised retaliation if the forts were built.

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<sup>104</sup> Ibid.

Regardless, the army went forward with plans to build the forts—Fort Reno, Fort Phil. Kearney, and Fort C. F. Smith—instigating further hostility. When the Indians lured Captain William J. Fetterman and about eighty men into an ambush on December 21, 1866, the government launched a full-scale investigation to determine responsibility. It was in response to the Fetterman incident that Grant asked Parker to issue his own proposals for revamping U.S. Indian policy. That report, published with the findings on the Fetterman incident, led to Senator Henderson’s Peace Commission of 1867.

The duty of the Peace Commission was to “remove, if possible, the causes of war” and to secure the safety of the frontier settlements and railroad buildings along the route to the Pacific Ocean. Moreover, the commission was to “suggest or inaugurate some plan for the civilization of the Indians.” That plan, according to the commission’s report, was to begin with kindness.<sup>105</sup> “Promises have been so often broken by those with whom they usually come in contact,” stated the report, “that to obtain their confidence our promises must be scrupulously fulfilled and our professions of friendship divested of all appearance of selfishness and duplicity.”<sup>106</sup> In September 1867, the commission opted to give guns and ammunition to the starving Indians in the vicinity of Fort Laramie, preparing them as best as possible for the approaching

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<sup>105</sup> “Report to the President by the Indian Peace Commission,” January 7, 1868. RG 75 NARA.

<sup>106</sup> *Ibid.*

winter hunt. This move caused intense debate throughout the nation amid fears that those very weapons would be used against white soldiers and citizens.

After attending a council with the Cheyennes, Arapahoes, Kiowas, Comanches, and Apaches at Medicine Lodge Creek, south of the Arkansas River in October 1867, the commission returned to Fort Laramie to meet with the bulk of the hostile Sioux. They were met there by a delegation of Crow warriors; however, Red Cloud, the formidable leader of the hostile Indians, did not attend. Instead, he sent word that the reason for the hostility was to protect their vanishing hunting grounds along the Powder River, endangered by the presence of the three forts along the Bozeman Trail. He promised the commissioners that as soon as the forts were abandoned, the hostility would cease. Within a year, the government decided to close all three of the forts, hoping to appease the recalcitrant chief.<sup>107</sup> General William Tecumseh Sherman warned that abandoning the forts would convince the Indians that the United States had given in, and “would invite the whole Sioux nation down to the main Platte road,” reversing any gains the army achieved in the region.<sup>108</sup>

The frantic search for the most effective and efficient method for pacifying the Indians of the Great Plains dominated U.S. Indian policy in the 1850s and 1860s. Indian policy of the nineteenth century was built on two major fallacies: that Indians wanted to assimilate and that whites would keep

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<sup>107</sup> “Annual Report of the Commissioner of Indian Affairs,” November 23, 1868, 4, ARCIA.

<sup>108</sup> Robert M. Utley, *The Indian Frontier 1846-1890* (Albuquerque: University of New Mexico Press, 1984), 109-110.

their word. Prior to the Civil War, most treaties signed with indigenous tribes were about land acquisition with little concern for whether or not the Indians became civilized, just as long as they remained peaceful and out of the way. However, the Indians soon learned that the white government could not be trusted to keep its treaty promises. After the war, the treaties focused more on securing peace, particularly after Indians had grown weary of the white man's constant abrogation and intrusion. Failed efforts to secure peace through acculturation quickly turned into plans to accomplish the same goal using forced compliance. If the United States resorted to military tactics to put down a rebellion among its Southern citizens and restore peace to the nation, it would not think twice about employing the army to bring peace to the American West.

In 1868, General Grant was elected President of the United States and upon taking office, named Ely S. Parker as his Commissioner of Indian Affairs. Even though the new president often found himself being implored to provide arms to many of the western states to battle the resistant Indians, he promoted the nation's policy as being built on a foundation of peace.<sup>109</sup> Parker's job was to devise a policy that brought about a peaceful solution to the nation's Indian question. Parker's plan was simple: abolish the practice of treaty-making with Indians and treat them as wards of the state. The reasons for abandoning the treaty-making process were debated throughout the 1850s and 1860s; but, in the months and years following the Civil War, the debate escalated. General

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<sup>109</sup> Chernow, *Grant*, 658.

Pope publicly advocated for the end of diplomatic negotiations with recalcitrant tribes of the American West, urging the government to place the matter solely in the hands of the United States Army “to deal with them without treaties and without the use of Indian agents.”<sup>110</sup>

Parker’s reasons for supporting an end to the practice of treaty-making were spelled out in his reports to his superiors. First, he argued that tribal governments or organizations were not powerful enough to compel individuals to comply with treaty requirements.<sup>111</sup> On this point, Pope agreed with him. He believed that the Indians could only be subdued if treated as individuals, not a communal tribe.<sup>112</sup> Parker’s second reason for opposing the continuation of treaties was that the process often prevented its very objective. By signing treaties with the Indians, Parker argued, the United States encouraged tribes to retain vestiges of their tribal identity which often inhibited assimilation.<sup>113</sup> As long as the Indians sought to retain “their separate creation, nationality, and customs,” they would never accept acculturation.<sup>114</sup> Finally, Parker argued that signing treaties with tribal leaders helped create an elitist class of Indians, like John Ross, that stood in the way of acculturation. These elites would oppose consolidation and assimilation “because now they are something, while under

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<sup>110</sup> Prucha, *American Indian Treaties*, 273.

<sup>111</sup> “Annual Report of the Commissioner of Indian Affairs”, December 23, 1869, 6, ARCIA.

<sup>112</sup> Prucha, *American Indian Treaties*, 273.

<sup>113</sup>, *Ibid.*, 287.

<sup>114</sup> “Annual Report of the Commissioner of Indian Affairs,” December 23, 1869, 6, ARCIA.

the new order of things,” Parker wrote, “they might be nothing.”<sup>115</sup> The Fort Smith Commission accused Ross of being one of those elites, and Parker no doubt had him in mind when he supported abolishing the treaty-making process.

Consequently, in 1871, Congress listened to Parker’s reasonings and added a clause to its Indian Appropriations Act, formally abolishing the practice of treaty-making with Indian nations.<sup>116</sup> In the years following the Civil War, the United States established a new “radical reformist” Indian policy that sought to expedite and compel the acculturation process of the American Indian.<sup>117</sup> President Grant’s attempt to pacify the Indians using humanitarianism and philanthropy did little to convince the Indians of the need to assimilate.

Prior to the Civil War, Indian tribes were treated as independent nations, having been granted a certain level of autonomy within a suzerain relationship. Abraham Lincoln tried to understand the travails of the Indians as they dealt with an ever-expanding white society. Moreover, his determination to deal with them in accordance with the constitutional parameters of the treaty-making process allowed him to do what his predecessors could or would not do: admit to the nation’s treaty abrogation in the spring of 1861. In his final public speech before his assassination, Lincoln stood on a White House balcony and informed the people below that “no one man has the authority to give up the

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<sup>115</sup> E. S. Parker to U. S. Grant, January 24, 1867, *Reports of the Secretaries of War and Interior*, 52-53, Ely Samuel Parker Papers, NL.

<sup>116</sup> Bean, “Who Defines a Nation?” 120.

<sup>117</sup> Prucha, *American Indian Treaties*, 279.



rebellion for any other man.”<sup>118</sup> Of the rebellious governments that swelled the ranks of the Confederate Army with their men, only one, the Cherokee Nation, returned to the United States before the war’s end. John Ross may have led the Cherokee Nation into an ill-advised treaty of alliance with the Confederate government in October 1861, but they returned en masse within a year’s time.

Even if John Ross had stood in the way of Cherokee loyalty at Fort Smith, the individual members of the tribe deserved better than the punitive treaties of 1865 and 1866 because they willingly gave up the rebellion for themselves, as nearly twenty percent of the tribe’s entire population joined the Union Army in the summer of 1862, more than satisfying the requirements for Lincoln’s “Ten-Percent Plan.” However, Lincoln’s desire to reinstate the Cherokee Nation—including its principal chief, John Ross—was cut down that night at Ford’s Theatre. Had Lincoln not been assassinated, the postwar treaties for the loyal Indians in Indian Territory would have, no doubt, looked much different. Moreover, the reestablishment of the Cherokee Nation to its prewar treaty status may have helped continue the process of treaty-making in the United States, at least a while longer. The Cherokees served as prewar and postwar examples of how effective U.S. Indian policy could be. At least Lincoln understood. The problem with U.S. Indian policy was not due to an unwillingness on the part of the Indians to become acculturated. The problem as Lincoln and leaders of his administration saw it was in the fact that the

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<sup>118</sup> Lincoln’s Final Speech, April 11, 1865, UG.

United States too often failed to honor its treaty obligations to the Indians and then blamed the Indians for how they responded. Lincoln's willingness to honor the nation's obligations and restore the Cherokees to their rightful status was an attempt to right an egregious wrong. With time to implement his policy, the way the United States dealt with the Indians of the Great Plains in the years following the war may well be different than what history rendered.

Unfortunately for the indigenous people of the United States, the restoration of the Cherokee Nation and the penitent stance of the chief executive were both buried with the body of the beloved president in a quiet grave in Illinois.

## CHAPTER VII

### CONCLUSION

The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.

Chief Justice John Marshall,  
*Worcester v. Georgia (1832)*

In 1997, Jimcy McGirt, a member of the Seminole Nation of Indians, was convicted in district court in Wagoner County, Oklahoma, of three serious sex crimes against a minor and sentenced to 500 years in prison without the possibility of parole. Two decades later, McGirt's attorneys filed a motion in federal court to have the convictions thrown out and a new trial granted in federal court. McGirt claims that the alleged crimes occurred on the "Creek Reservation," outside of the jurisdiction of the State of Oklahoma, even though they occurred within the state's boundaries, reminiscent of Cherokee claims in *Worcester v. Georgia (1832)*. The case made it all the way to the U.S. Supreme Court, appearing on the docket during the October 2019 term. Oklahoma attorneys argued that the so-called "Creek Reservation" no longer existed because the United States dismantled it during the Allotment Era by parceling out the land to individual members of the tribe at the turn of the twentieth century. The Court disagreed, and in a 5-4 vote, granted McGirt's

petition, overturned the convictions, and, after more than a hundred years, reaffirmed Creek Indian sovereignty in the former Indian Territory.<sup>1</sup>

Delivering the opinion of the Court, Justice Neil Gorsuch admitted that the United States has the right to “break its own promises and treaties” with Native Americans whenever it desires, citing the precedent found in *Lone Wolf v. Hitchcock* (1903). The supreme sovereignty of the United States over Indian matters secures this right. If the federal government abrogates a treaty by refusing to provide protection, monies, or privileges promised in a treaty, then no entity can force them to do so. However, Gorsuch did acknowledge that a reservation was a tangible object and was not the same as a written promise. Congress still has the sole authority to diminish or disestablish a reservation; however, the only way it can do so is by explicit legislation. Gorsuch opined that “if Congress wishes to break the promise of a reservation, it must say so.”<sup>2</sup> He further added, “under our Constitution, states have no authority to reduce federal reservations lying within their borders.”<sup>3</sup> For the State of Oklahoma, trying to extend its jurisdiction over Indian land—even though it had done so for over a century without resistance—was repugnant to the Constitution. The preliminary treaty signed at Fort Smith in 1865 formally acknowledged the “exclusive jurisdiction” of the United States over the Indian nations who signed the treaty, including the Creeks.

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<sup>1</sup> *McGirt v. Oklahoma*, 591 U.S. \_\_\_\_\_ (2020).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

The limits of the Creek Reservation in Oklahoma were first delineated by the removal treaty of 1833 and amended for the final time by the post-Civil War treaty of 1866. Prior to 1871, whenever the United States wished to modify or revamp a treaty with an Indian nation, they did so by negotiating a new treaty, either by force or inducement. These new treaties, according to the U.S. Constitution, became the “supreme Law of the Land” upon ratification and its stipulations superseded those of all previous treaties.<sup>4</sup> However, in 1871, Congress, on the recommendation of Ely S. Parker, ended the practice of treaty-making with Native nations, thus eliminating its primary method of undoing existing treaties. Moreover, by failing to replace the practice of treaty-making with a clearly defined and functional policy, Congress inadvertently christened the postwar treaties of 1866 the perpetual “Law of the Land.” When Congress believed it was dismantling the Creek Reservation by allotting the land to individual Indians in the late-nineteenth century, it failed to “clearly express its intent to do so.”<sup>5</sup> In short, the paradigm-shifting decision in *McGirt v. Oklahoma* (2020) has its roots in the decision to abolish the practice of treaty-making with Indian nations in the United States.

The dismantling of U.S. Indian policy in the post-Civil War years was not an immediate-nor accidental-occurrence. It was essentially a two-step process, each deliberately done, that began almost immediately at the Fort

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

Smith Council in 1865. Andrew Johnson, armed with legislative authority, invalidated the prewar treaties of the Five Tribes in Indian Territory. He felt justified doing so because he believed that the tribes proved their disloyalty by signing new treaties with the Confederacy in 1861. John Ross and the Cherokees were surprised to learn that they, too, were included on that list of disloyalty. Johnson gave the commissioners at Fort Smith explicit instructions as to the desired terms to be negotiated. More importantly, he wanted land on which to relocate the Plains Indians. Prior to the Civil War, the nation envisioned a permanent separation of white and Indian societies. However, territorial expansion in the mid-1800s precluded this idea, forcing the nation once again to confront the Indian question.<sup>6</sup> In order to acquire the desired land from the Five Tribes, Johnson would have to use an 1862 law, passed during Lincoln's presidency, to declare their prewar treaties null and void, and to compel tribal leaders to sign new treaties relinquishing much of their tribal autonomy and landholdings. Even with the passage of the law, the Cherokees convinced Lincoln of their innocence, citing federal abrogation of the prewar treaties. Lincoln's efforts to reinstate the tribe were eradicated with his assassination, allowing Johnson to undo the prewar treaties and seize the desired tribal lands.

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<sup>6</sup> Frederick Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln: University of Nebraska, 1984), 2.

The first step of the two-step process of undoing Indian policy was the seizure of land in Indian Territory following the Civil War, opening the door for the relocation of additional tribes into the territory and away from white society. However, this new round of treaties did not provide the same level of separation as did the prewar treaties of removal, nor did they grant the Indians fee simple title to newly obtained lands. Tribes were granted mere possessory rights to the land and what Charles F. Wilkinson calls a “measured separatism.”<sup>7</sup> The punitive postwar treaties with the Five Tribes, especially the Cherokees, altered the spirit of U.S. Indian policy by removing much of the suzerain autonomy held in the prewar years. Between 1865 and 1868, the nation introduced what Francis Paul Prucha calls a “radical reformist” policy that gave Indians only limited control of tribal lands and forced them into a more hurried plan for acculturation.<sup>8</sup> Unless a respective nation could eradicate any semblance of traditional tribalism, “there was little chance that the Indians as individuals could be completely absorbed into mainstream America,” or assimilated.<sup>9</sup> Many, if not most, of the tribes who signed treaties during this “reformist” period had no understanding of the expectations thrust upon them.<sup>10</sup> Often, Indians resisted these new expectations, leading many Americans to question the feasibility of continued treaty making with the more nomadic and

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<sup>7</sup> Charles F. Wilkinson, *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy* (New Haven: Yale University Press, 1987), 14.

<sup>8</sup> Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 279.

<sup>9</sup> *Ibid.*, 334.

<sup>10</sup> *Ibid.*, 282-283.

recalcitrant tribes of the Plains. However, the end of the Civil War also provided the U.S. military the opportunity to shift its focus toward the West and the final pacification of the American Indian.<sup>11</sup> Their increased role as the enforcers of U.S. Indian policy only added to the unrest.

By 1871, the nation instituted the second stage of the dismantling process by formally abolishing the practice of treaty-making with Indian nations. In the immediate postwar years, however, not everyone advocated for ending that process. Between 1865 and 1869 there were four different Indian commissioners and one acting commissioner; and only one of them, Ely S. Parker, the last in succession, denounced the practice as counterproductive to the goals of U. S. Indian policy. Even Dennis N. Cooley, who voted to depose John Ross at Fort Smith because he stood in the way of a new treaty with the Cherokee people, supported the practice. In his annual report for 1866, Cooley declared the utility of treaty-making by proclaiming that many tribes still desired a treaty relationship with the federal government.<sup>12</sup> If that was an inducement for many Indians to enter a peaceful relationship with the United States government, then Cooley was all for it. In his mind, the problem was not with the tribes who embraced the treaty relationship, it was with those who rejected it. He correctly identified the potential for trouble along the Bozeman Trail in the

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<sup>11</sup> Robert Wooster, *The Military and United States Indian Policy, 1865-1903* (Lincoln: University of Nebraska Press, 1995), 112.

<sup>12</sup> "Annual Report of the Commissioner of Indian Affairs," October 22, 1866, 41, Annual Reports of the Commissioners of Indian Affairs, 1826-1932 online, University of Wisconsin Libraries (Hereafter cited as ARCIA).



weeks before the Fetterman incident. "A small portion of the Sioux resolutely refuse to treat," he claimed, "and propose to resist, at all hazards, the use of a route to Montana."<sup>13</sup> Cooley believed that, while the treaty-making process worked well for some tribes, it was not the answer for all of them. He argued that the United States had over 300,000 Indians in 1866, scattered over the continent, representing as many as 200 different tribes, "varying from the Civilized and educated Cherokees and Choctaws to the miserable lizard-eaters of Arizona," perhaps in reference to some of the Pueblo Indians who reportedly ate the horned toad in times of famine.<sup>14</sup> He advocated for the rights of all of them to be protected "whether under treaty stipulations or roaming at will over his wild hunting-grounds."<sup>15</sup> In his first two years as commissioner, Cooley oversaw the negotiations of as many as twenty-eight treaties with tribes west of the Mississippi River, some of them well-aculturated, and others hardly so.

Nathaniel G. Taylor, who served as commissioner from 1867 to early 1869, believed that even the less-civilized Indians started to see the need for peace. The flood of white settlers into the west and the diminishing buffalo herds, in his opinion, alerted many tribes to the necessity of peaceful relations with the United States government. While some bureaucrats criticized the slow pace of acculturation with many tribes, Taylor opted to see it more optimistically. He believed that any progress was good progress, even if it was

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<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, 1-2.

<sup>15</sup> *Ibid.*, 2.

numbingly slow. He believed that acculturation was a process, not a decision. “A civilization of any account with them,” he argued, “must be a work of time.”<sup>16</sup> The Cherokees were the perfect example. “Agriculture and stock-breeding brought with them the important idea of individual rights or of personal property,” he argued of the Cherokees, “and the notion of fixed local habitations, of sale and barter, profit and loss.” He continued, “Contact with the white settlements all around confirmed and fastened this new class of ideas upon them, and soon resulted in a corresponding change of habits, customs, and manners.”<sup>17</sup> He asserted that the process proved to be a tremendous success. He praised the Cherokee Nation as the prime example of how successful the process would be, if given the appropriate time. Until acculturation could be realized, faithful observance of all treaty obligations would be required in order to see the same successes among the other tribes. “If others have not achieved the same status as the Cherokees,” he pronounced, “it can only be the fault of the white government.”<sup>18</sup> In other words, if the treaty-making process was not working, it was not the fault of the Indians.

In 1867, Acting Commissioner of Indian Affairs Charles E. Mix, serving in place of Taylor while the latter presided over the Peace Commission, argued for separate treaties with hostile Indians in an effort to remove any “just cause

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<sup>16</sup> “Annual Report of the Commissioner of Indian Affairs,” November 23, 1868, 1, ARCIA.

<sup>17</sup> *Ibid.*, 17.

<sup>18</sup> *Ibid.*, 18.

of complaint” in their behalf.<sup>19</sup> He also believed that the white population was at the root of the problem with many of the Plains tribes, calling them the greatest hindrance “to the consummation of ends so much desired.”<sup>20</sup> Their continuous exploitation of the people and the seizure of tribal lands left the Indians with “no certainty as to the permanent possession of the land.”<sup>21</sup> He called for the granting of permanent homes to the Indians with no white contact and for the faithful observance of all treaty stipulations on the part of the federal government.<sup>22</sup> Like Cooley, Mix believed that the treaty-making process worked for some tribes. He asserted that the Cherokees, despite the widespread devastation during the war, would soon “attain to more than their former prosperous condition.”<sup>23</sup> However, he argued for the need of a new policy when dealing with those Indians less compelled to abide by a diplomatic agreement. He also argued that the inhumane treatment at the hands of an intruding white population was unavoidable. As did most Americans of the day, Mix surrendered to the idea of Manifest Destiny, calling the negative influences of the wave of white settlers inevitable.<sup>24</sup> In discussing the objective of the commission sent to investigate the Fetterman incident, he stated their purpose to be three-fold: to identify the perpetrators, to distinguish the friendly Indians

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<sup>19</sup> “Annual Report of the Commissioner of Indian Affairs,” November 15, 1867, 4, ARCIA.

<sup>20</sup> *Ibid.*, 1.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, 2.

<sup>23</sup> *Ibid.*, 22.

<sup>24</sup> *Ibid.*, 27.

from the hostile ones, and then to separate the two. Even though the acculturation process was slower than the nation had hoped it would be, Mix did not recommend undoing the treaty-making process with all Indians, only those who refused to accept the policy. He asked the commissioners to recommend their different opinions as to the best policy for dealing with the hostile Indians.<sup>25</sup> One of those commissioners, Ely S. Parker, had plenty to suggest.

Unlike his immediate predecessors, Parker stood against the process of treaty-making with any tribe, claiming that “great injury has been done by the government in deluding this people into the belief of their being independent sovereignties.” He witnessed Ross’s resistance to the wishes of the federal government at the Fort Smith Council in September 1865 and identified the treaty-making process as the culprit. Because Ross believed that the treaties gave the Cherokees a certain autonomy, even within a suzerain relationship, the commissioners at Fort Smith had no authority to override them. He even questioned whether Congress had the right to grant authority to the president to nullify the treaties. In Ross’s mind, Lincoln already restored the prewar treaties, and the only way they could ever be nullified was with a new treaty. That is why Ross resisted the commissioners so vehemently.

Ross and Parker occupy important spaces within the struggle for, and with, indigenous identity in the nineteenth and twentieth centuries. Parker was

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<sup>25</sup> *Ibid.*, 2-3.

three-fourths Indian, highly educated, and profoundly conscious of his Seneca heritage. He was an enigmatic representative of indigenous society in that he compartmentalized his native bloodline and his position in white society. He detested Ross and those he perceived to be like him because Parker believed they used their Indianness to gain advantage within indigenous society. Ross was only one-eighth Cherokee and, even though he fit society's definition of Indian blood, in Parker's mind, he was still a white man. At Fort Smith, Parker watched Ross stand in the way of the Cherokee Nation's fullblood Indians and their negotiations of a relationship of peace and friendship with the United States. Parker did not accept the idea that the nation of fullblood Cherokees elected Ross to be their principal chief at every election since 1828, the same year Parker was born. He claimed that Ross deluded the Cherokees into believing that they were autonomous and that he was the only one who could secure that position for them before the United States government. Parker, living as a white man, and Ross, claiming to be an Indian, occupy antonymic positions of Indianness.

Most importantly, perhaps, each man thought he knew how best to approach U.S.–Indian relations. Ross's unwavering adherence to the supremacy of constitutional law led him to believe that the federal government had a responsibility to protect the Indians' position within a suzerain relationship. Parker, on the other hand, believed that the Indian was responsible for recognizing his true position within the nation, that of a ward.

Ross believed the government should stay out of Indian affairs and allow the Indians to govern themselves. Parker believed that the government had the authority and responsibility to dictate Indian affairs and to govern them with a strong hand. President Lincoln agreed with Ross. However, Johnson and Grant agreed with Parker.

When Parker became commissioner of Indian affairs in April 1869, he immediately began calling for the total abolition of treaty making with all Indians. If any tribe wished to enter a reservation and live in peace, he argued, the arrangements “should not be of a treaty nature.”<sup>26</sup> Parker believed the Indians should recognize their inferior position within their relationship with the United States and do as the government instructed them. Within two months of taking office, he distributed a circular to all agents and superintendents, defining the government’s new policy for interacting with the Indians. The message was clear: the Indians were to be placed on reservations and acculturated. Any Indian who resisted would soon encounter the strength of the United States military.<sup>27</sup>

In the post-Civil War years, the military took a more active role in U.S. Indian policy. Robert Utley suggests that much of the wartime violence between Indians and volunteer soldiers occurred because the regular army

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<sup>26</sup> “Annual Report of the Commissioner of Indian Affairs,” December 23, 1869, 6, ARCIA.

<sup>27</sup> *Ibid.*, 5.

was distracted fighting a war.<sup>28</sup> Following the surrender at Appomattox, this was no longer the case. Regular soldiers returned to the West in large numbers as the United States could, once again, turn much of its attention to bringing peace to the Plains. Soldiers not only accompanied and protected white government negotiators, they often assisted in the negotiations themselves. The army was so actively involved in U.S.–Indian relations during the postwar years that some historians credit them with having the authority to develop much of the nation’s Indian policy itself.<sup>29</sup> Following the implementation of President Grant’s “Peace Policy,” which empowered the military to compel compliance, the army assumed an even greater role in the process. Often referred to as the “Rifle and Peace Pipe Policy,” Grant’s system took on a paradoxical attitude as the military threatened violence to enforce peace.<sup>30</sup> This military posture assumed by the United States did not achieve the desired results.

The two most infamous clashes of U.S.–Indian relations occurred during this period of forced acculturation and assimilation between 1871 and 1890. In 1876, General George A. Custer rode into an ambush at the hands of Sioux Indians at Little Bighorn Creek, just as the nation was gearing up to celebrate its one-hundredth birthday. The violence that followed and the shift to a new policy of forced assimilation brought increased attacks on Indian autonomy and

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<sup>28</sup> Robert M. Utley, *The Indian Frontier, 1846-1890* (Albuquerque: University of New Mexico Press, 1984), 98.

<sup>29</sup> Wooster, *The Military and United States Indian Policy*, 3.

<sup>30</sup> Utley, *The Indian Frontier*, 101.

identity. The period came to a bloody climax in 1890 along another creek in South Dakota. Soldiers rode into the Pine Ridge Agency and attacked a group of Lakota Sioux dancers along Wounded Knee Creek in an effort to stop the practice of an indigenous ceremony known as the “Ghost Dance” and to compel assimilation.

If the assassination of Abraham Lincoln did not cause the change in Indian policy, it most certainly allowed it to happen. Lincoln’s determination to reinstate the prewar treaties with the Cherokee Nation portended a continuation of the existing Indian policy in the immediate postwar years. Moreover, his willingness to acknowledge the nation’s abrogation of 1861 demonstrated a tendency to honor the government’s treaty obligations with the other tribes as well, a decision Johnson made no apparent effort to duplicate. The impracticality of a postfactual analysis prevents further speculation as to Lincoln’s Reconstruction–Era Indian policy. However, his wartime actions toward the Cherokee Nation provide suitable evidence to suggest that his postwar relationship with the tribes in Indian Territory would have differed greatly from that of his successor’s, if for no other reason than the simple acknowledgement of the government’s abrogation.

While John Ross lay dying at a rented house in Washington in the summer of 1866, he asked for paper and a pen with which to write. What he scribbled provided insight into the frustration and heartbreak that, no doubt, describe his interaction with the United States as he led the Cherokee Nation



through its most difficult era. The frustrations of dealing with a duplicitous white government took its toll on the aging chief as he collapsed during the final days of the Fort Smith Commission in 1865. He spent his final year of life interceding with the administration of Andrew Johnson in behalf of his own reputation as principal chief of the Cherokee Nation. Accusations of elitism and disloyalty contradicted what Ross believed he demonstrated in his nearly forty years as leader of the most advanced Indian nation in the United States. The notes written on his death bed betrayed that frustration and most sincerely revealed the faith in the process of constitutional law that defined his relationship with the United States.

Why Ross wrote what he did is unclear. Most likely he wanted to remind his successors of what he considered the most important aspects of the tribe's treaties. He simply quoted four articles from the tribe's two oldest treaties with the United States, the Treaty of Hopewell of 1785 and the Treaty of Holston of 1791. The first article, Article Twelve of the Hopewell treaty, revealed Ross's faith in the process of constitutional law. It guaranteed the Cherokees the right to send delegates to Washington to lay the tribe's grievances before Congress so that they "may have full Confidence in the justice of the U. States, respecting their interests" (Appendix B). Ross must have felt a sickening irony when he thought about the United States' commitment to protect the Cherokee's rights and interests. Instead, he watched as the federal government swept away tribal autonomy in the months after the Civil War.

Now, as he lie dying, the U.S. Senate ratified the postwar treaty and the president prepared to proclaim it law.

The next two articles written by Ross, number Two and Eight of the Holston treaty, depicted the nation's responsibility to protect the Cherokee Nation. Again, Ross watched the United States fail on multiple occasions to protect the Cherokees from white intruders, first in Georgia and most recently at the start of the Civil War when Confederates from Texas invaded Indian Territory following the withdrawal of Federal troops.

Finally, he wrote the Seventh article of the Holston treaty, which declared that "the U.S. solemnly guarantees to the Cherokee Nation, all their land." Whether through Andrew Jackson or Andrew Johnson, the United States repeatedly ignored its own treaty abrogation in order to seize land rightfully belonging to the Cherokee Nation according to the tribe's treaties.

The four articles reflect the frustration Ross felt during two of the most important eras in Cherokee history. The Removal Era of the 1830s and the Civil War Era of the 1860s form heartbreaking bookends to Ross's career as principal chief of the Cherokee Nation, yet he never lost faith in the justice of the U.S. treaty system.

Ross died on August 1, 1866, ten days before the postwar treaty was proclaimed by Andrew Johnson. He was seventy-five years old. Ross died believing the duplicity at Fort Smith was simply an attack on himself and the Cherokee Nation. He had no idea how much his life was to impact U.S. Indian

policy in the years immediately following the Civil War. His faithful reliance in the process of constitutional law, as demonstrated by his life and his death-bed note, angered Ely S. Parker, who set out to insure that no other tribe of Indians would have the arrogance to claim autonomy and refuse to cower to the dictates of the United States government.

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APPENDIX A

FIGURES

FIGURE 1

MAP OF THE CIVIL WAR IN INDIAN TERRITORY

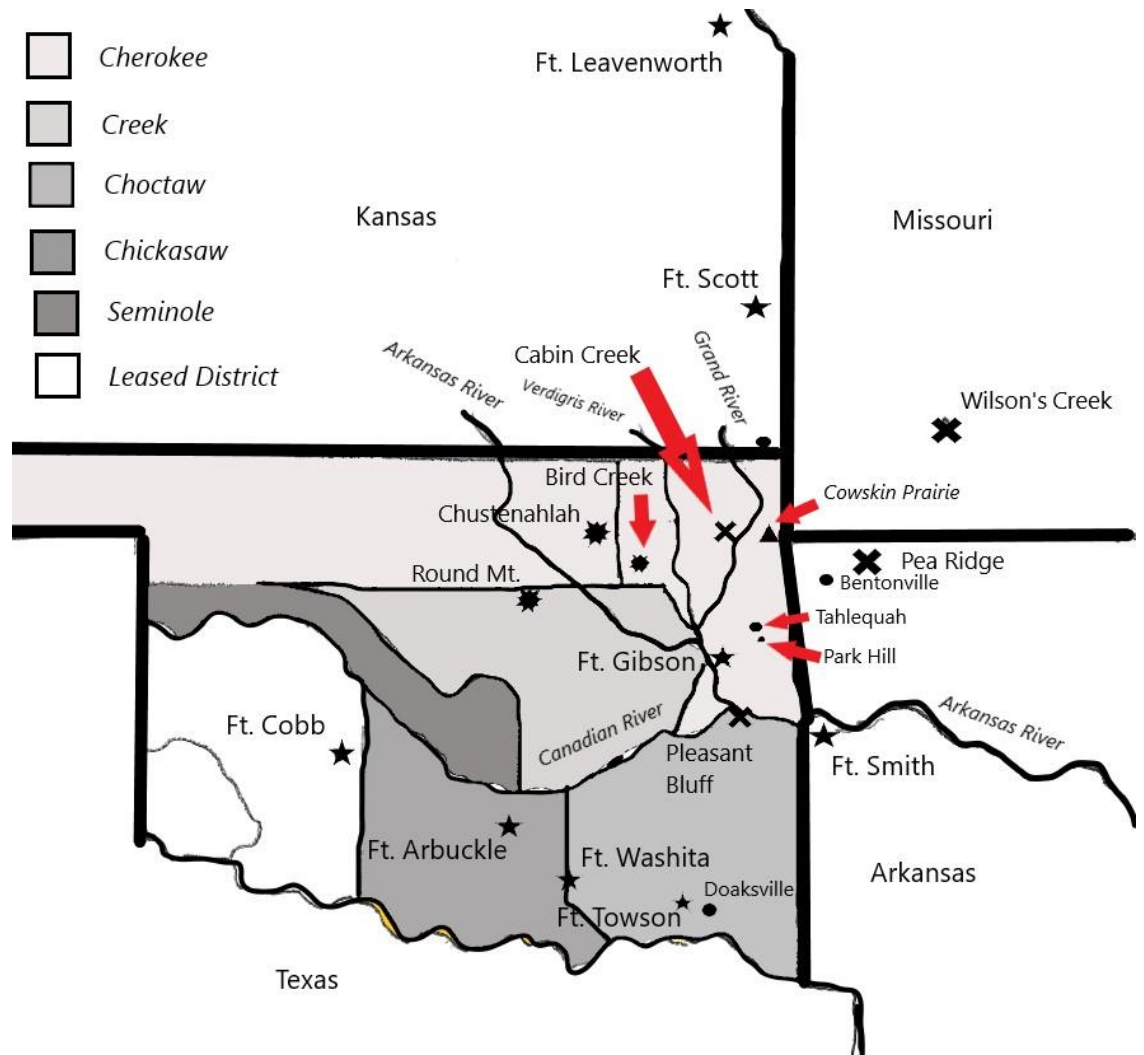
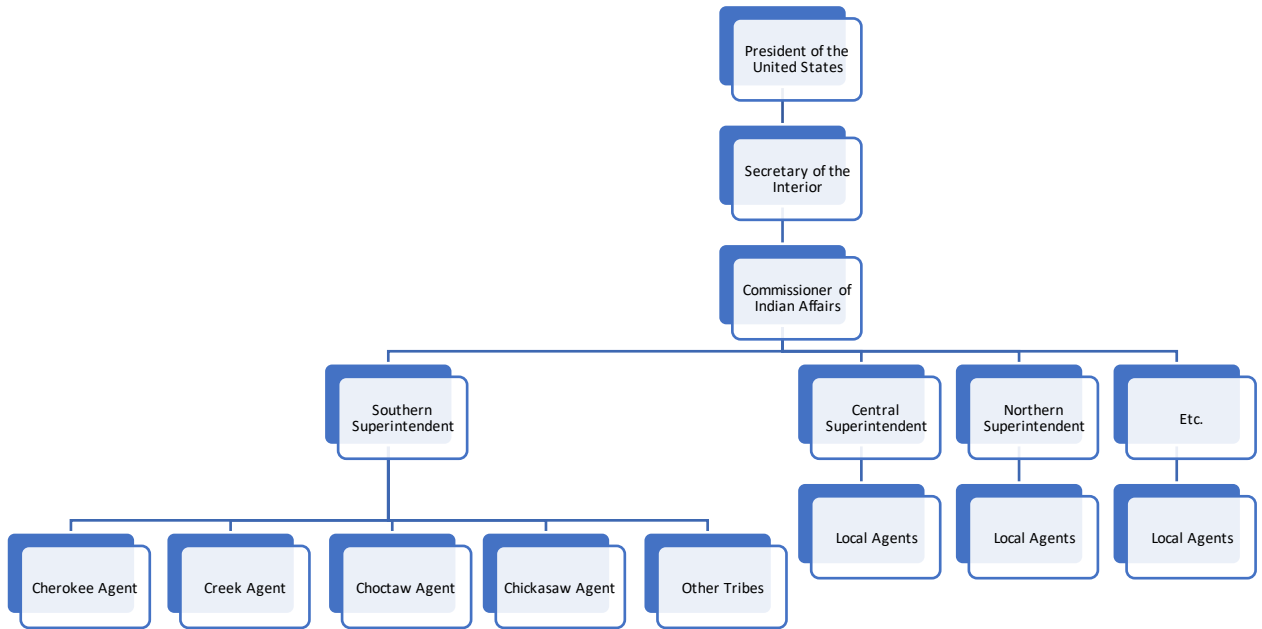


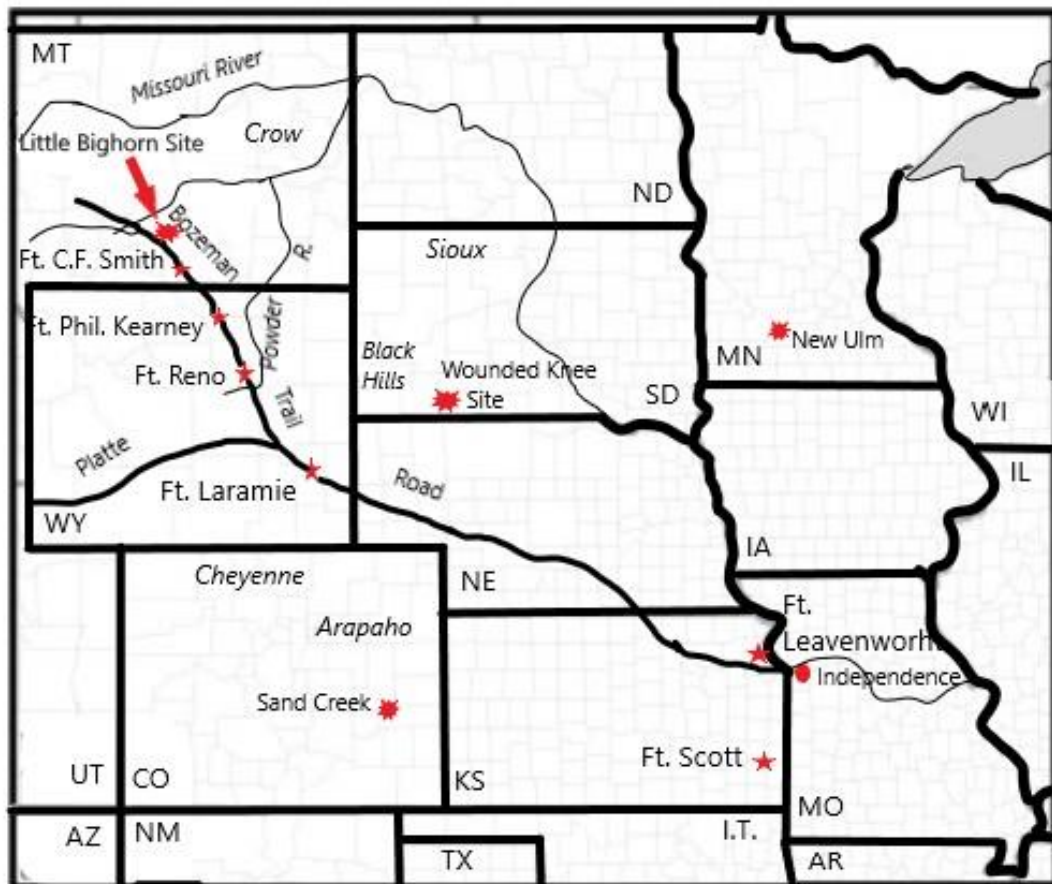
FIGURE 2  
STRUCTURE OF THE BUREAU OF INDIAN AFFAIRS, 1849-1871



The Cherokee Indians were part of the Southern Superintendency, along with the Creeks, Choctaws, Chickasaws, Seminoles, and other tribes of Indian Territory. Each tribe had its own agent. Other Superintendencies included the Northern and Central, etc. As the nation expanded westward, additional superintendencies were added as the need arose. Each year, each agent submitted a written report to their respective superintendent, who then compiled the same into a report to the Commissioner of Indian Affairs. The commissioner included each superintendent's report with a final report to the secretary of the Interior, who included that in his formal annual report to the

president. The president then summarized each report from each cabinet-level department into a final yearly message to Congress. We know this message as the State of the Union Address

FIGURE 3



MAP OF THE PLAINS, 1865

## APPENDIX B

### THE THREE ARTICLES

*Each article was written on a separate sheet of paper in large print and double-spaced.*

Article –

Whereas – The Cherokee Nation has furnished two regiments of troops to the United States in the present war, it is agreed that the executive authority of said Cherokee Nation shall have the same rights, privileges and authority, over all such troops as now are or may hereafter enter the Army of the United States from the said Cherokee Nation as is, or may be possessed by the Governor of any State of the Union over the troops of the State of which he is the Governor.

Article –

Whereas – By the 6<sup>th</sup> article of the Treaty of A.D. 1855 between the United States and the Cherokee nation – “The United States agrees to protect the Cherokees from internal strife and foreign enemies.” For the purpose of ascertaining the damages sustained by the Cherokee Nation and by the individual persons thereof for the non-compliance with said stipulations by the United States, it is agreed that two Commissioners shall be appointed by the President of the United States and one by the Cherokee Nation who shall proceed to the Cherokee country hear and determine all such claims, and

report all the evidence and their decision thereon to the Congress of the United States.

Article –

All persons in the Cherokee country residing there permanently or not shall be liable for any violation of the laws of the Cherokee nation, in the same manner and form as if he, she, or they, were resident citizens of the country, and native Cherokees. Provided, that this article shall not authorize any interference with the agent or army of the United States (in the legitimate discharge of its duties).<sup>1</sup>

*John Ross Papers, Folder 1285, Gilcrease Museum*

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<sup>1</sup> Folder 1385, John Ross Papers, Gilcrease Museum, Tulsa, Oklahoma

## APPENDIX C

### THE DEATH-BED NOTE

Hopewell Treaty 28 Nov. 1785

12 Article "That the Indian (Cherokee) may have full Confidence in the justice of the U. States, respecting their interests, they shall have the right to send a Deputy of their Choice, whenever they think fit, to Congress." –

Holstein Treaty 22 July 1791

2<sup>nd</sup> Article – the Cherokee Nation to be under the protection of the U.S. of America and of no other sovereign whosoever, and that it will not hold any treaty with any foreign Power, individual State, or with individual of an State.

7<sup>th</sup> Art. – The U. S. solemnly guarantees to the Cherokee Nation, all their land not hereby ceded. –

8<sup>th</sup> – If any citizen of the U.S. or other person not being an Indian, shall settle on any of the Cherokee lands, such person shall forfeit the protection of the U.S. and the Cherokee may punish him or not, as they please.

*Written in pencil at bottom of page –*

The above notes, no doubt were made by Grand Father, while on his death bed, - 1866:

*John Ross Papers, Folder 1309, Gilcrease Museum.*