

THE FEDERAL GOVERNMENT AND THE FIVE
CIVILIZED TRIBES DURING
RECONSTRUCTION

By

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PREFACE

The period immediately following the Civil War is a neglected period in the history of what is now the state of Oklahoma. The author has experienced much disappointment in locating sources which adequately cover this period.

This thesis deals with one phase of the developments during this era--the relations of the federal government with the Five Civilized Tribes during reconstruction. The policies evolved during this period were to have much significance for the future movement for a territorial government and establishment of a state. This thesis was written for the purpose of creating an interest in this phase of our history and stimulating more extensive research concerning reconstruction among the Five Civilized Tribes.

The advice and direction of Dr. Norbert R. Mahnken has been greatly appreciated by the author. This direction has helped the author bring forth a degree of orderly presentation for such a disorderly period. The author wishes to express his appreciation to Dr. George E. Lewis for his many suggestions and careful manuscript direction, and Dr. Leroy H. Fischer for invaluable proof-reading services. The author is grateful to the Library Staff of Oklahoma State University for the aid given him in preparing this thesis.

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INTRODUCTION

This study is an attempt to show the importance and complexities of the federal relations with the Five Civilized Tribes in the immediate years following the Civil War. This period, known as the period of reconstruction in those states which had in 1860 and 1861 cast aside their allegiance to the United States Government, witnessed serious stress and strain, and the same seems to apply equally to the Five Civilized Tribes. The severity of the treaties which the Five Civilized Tribes were compelled to sign in 1866 as a result of their participation in the war, would serve to illustrate this statement.

The conditions of the Indians of the Five Civilized Tribes following the Civil War will be noted in order to give the reader some idea of the handicaps under which these Indians labored in their attempt to rebuild their nations. The internal problem of most of the tribes, that of friction between the loyal faction (those remaining loyal to the Union during the war) and the disloyal faction (those aiding the Confederacy) will be discussed only as evidence of an even more difficult situation with which the Indians had to cope in comparison to the other areas under reconstruction.

The Treaties of 1866 between the Five Civilized Tribes and the United States Government will receive the major attention of this thesis. A major portion of the relations of these Indians with the federal government during this period was centered around the provisions of these treaties. The actual provisions of each treaty will not be given as such, but those portions affecting the Indians in the period under consideration will be analyzed in full.

The land surrendered by each of the Five Civilized Tribes, something no other area under reconstruction was forced to do, will receive attention. The amount of land given up, the payment received, and the purpose for which this land was surrendered will be discussed.

The position of the freedmen in the Indian Territory at the close of the war will receive special attention. The number of freedmen, the action taken by the Indian governments in regard to their freedom, and the results of this action will be discussed for each of the tribes.

The railroads provided for under the Treaties of 1866 will be discussed. This will include a survey of the charters granted by the government, the practices of the railroads, the Indian attitude toward these railroads, and a final summation of railroad activity in the Indian Territory.

In the chapter dealing with the Indian Council, an attempt will be made to show the work of the organization, some general aspects of the council, and why the council

was unsuccessful. In the conclusion, some attempt will be made to show the final impact and heritage of reconstruction on the Indian Territory. Since federal relations under reconstruction is the only subject under consideration in this thesis, those remarks which do not pertain to this are used only as incidental to the main purpose.

CHAPTER I

THE AFTERMATH OF DEFEAT

The conditions which existed among the Indians in the Indian Territory in 1865 in comparison with those in 1860, whether we refer to either Union or Confederate factions, were sad indeed. By 1860 most of these tribes had made rapid advancement in civilization. Their schools and academies in some cases were far in advance of those of the whites in the surrounding states. There had been considerable wealth and prosperity among the tribes as a whole. This was especially true of the slaveholding Indians, who were usually of mixed-blood. The members of this group had accumulated much wealth before the war. They lived in a style of luxury to which a majority of the northern and southern white farmers and planters alike were unaccustomed.

Their crops of corn and cotton had been abundant, but the chief basis of their prosperity had been stock raising, and sizeable herds of horses and cattle were owned by the more prosperous Indians. There were no fences to hold back the ever expanding herds. The climate was such that little or no feed was required for the winter season.

After four years of war, the change was dramatic and conditions were pitiful. One observer summed up the

conditions in this manner: "Their land had been desolated by the demon of war till it laid bare and scathed, with only ruins to show that men had ever dwelt there."¹ In many areas the land which had been so productive before the war was overgrown with underbrush.

The conditions within the Five Civilized Tribes were similar in many respects, but each of the tribes had distinctive problems which had to be overcome. A short summary of the individual tribes will give the reader a clearer view of these particular problems.

The Cherokee Nation before the Civil War had probably been the most advanced of the Five Civilized Tribes. By 1860 the Cherokees had made great progress in many fields of endeavor. The nation was best characterized by the well-organized system of government in operation at this time. Their agricultural pursuits were featured by rich prairie pasturage, covered with immense herds of fine cattle and ponies.

At the end of the war, however, this nation was no longer advancing.² The scene was one of utter desolation. The contending armies had moved to and fro across the nation. Foraging parties had gone at will, sparing neither

¹House Executive Documents, 39 Cong., 1 sess., 1865 (17 vols., Washington: Government Printing Press, 1865), II (1248), 205.

²Annual Report of the Commissioner of Indian Affairs (60 vols., Washington: Government Printing Press, 1849-1909), 1865, 253.

friend or foe. Those Cherokees in the service of the Confederacy were determined that no trace of the homesteads of their Union brethren should remain for their return. The cattle thieves, eagerly pursuing their ill-gotten gains, had during the last two years of the war depleted the herds of cattle belonging to the Cherokees.³

Factionalism was still bitter in the Cherokee Nation. This factionalism had existed since the removal of the tribe from Georgia.⁴ At this time a small segment of mixed-bloods, led by the Ridge-Boudinot faction, had made a treaty for their removal to the Indian Territory. The United States had considered this a valid treaty. It might have been that John Ross, principal chief of the Cherokees, who in 1861 had originally urged a policy of neutrality, feared that General Albert Pike of the Confederacy would sign a treaty with the still existing mixed-blood faction headed by Stand Watie, and consider it as binding upon the Cherokees, as the United States had done earlier. Watie was the leader of the Confederate faction in the Cherokee Nation. Whatever the reason, the tribe in convention had agreed to join the Confederacy in October, 1861.

The tribal factionalism and the nature of the fighting in the Indian Territory had divided the Cherokees in the

³House Executive Documents, 39 Cong., 1 sess., 1865, II (1248), 205.

⁴Edward E. Dale and Jesse L. Rader, Readings in Oklahoma History (Evanston, Illinois: Row, Peterson, and Company, 1930), 319.

early part of the war. By 1864, some 9,000 Cherokees had come back to their allegiance to the Union. About 6,500 of the more wealthy Cherokees continued to co-operate with the Confederacy until the close of the War.⁵

As a result of the war the total population of the Cherokee Nation declined to an estimated 14,000. The great majority of the 9,000 Cherokees who had reaffirmed their loyalty to the Union were receiving rations from the United States Government. With the domestic feud between the two factions, there was not much hope of their coming together for mutual discussion and solution of their manifold troubles. All of the Cherokees needed food, clothing, tools, everything in fact, to begin life anew. Their condition would be that of extreme destitution until they could again realize the fruits of their labor upon their own soil.

To a lesser extent these same conditions characterized parts of the Creek, Seminole, Chickasaw, and Choctaw Nations.⁶ The Seminoles numbered before the war nearly 2,500, of whom more than half joined with the loyal Creeks and returned to the Union before the war was over. These Indians took refuge in Kansas. Many of their able-bodied men enlisted in the Union Army. The Seminoles numbered approximately 2,000 in 1866, of which about half were drawing

⁵House Executive Documents, 39 Cong., 1 sess., 1865, II (1248), 205.

⁶Grant Foreman, A History of Oklahoma (Norman: University of Oklahoma Press, 1942), 131.

rations from the United States Government. The Seminoles were very poor and destitute as a result of their flight from their homes, and they had to be fed and clothed by the United States Government, or they would have suffered extreme hardships.⁷

The Creeks were nearly evenly divided in sentiment at the opening of the war, but their agent, William H. Garrett, was an ardent secessionist with much influence in the Creek Government. Garrett was successful in getting the mixed-blood leaders to sign a treaty with the Confederacy. Shortly after the war commenced, some 6,500 Creeks, under the leadership of the brave old Opothleyoholo, returned to the Union. They, like the Seminoles, were forced to take refuge in Kansas. Approximately 6,500 remained with the Confederacy throughout the struggle. The Creeks, like the Cherokees, had for years been divided into bitter factions as a result of earlier removal treaties. The wartime experiences merely intensified this factionalism.

The Creeks remaining loyal to the Union had lost everything which had been left behind in the Indian Territory. Many had joined the Union Army. While refugees in Kansas, a large number had been furnished scant subsistence by the government. A portion of the Creeks returned to the Indian Territory early in 1865. A government agent reported they had undergone many difficulties, but some had raised crops.

⁷House Executive Documents, 39 Cong., 1 sess., 1865, II (1248), 207.

About half of this group would have enough corn to carry them through the winter. The agent was of the opinion that it would require much assistance on the part of the United States Government to provide for the remainder. During the fall of 1865 an estimated 5,000 Creeks were receiving rations from the government.⁸

The Choctaws and Chickasaws had not been divided so badly by the war. These tribes were fortunate in that they had been able to remain in control of the most of their land throughout the war. They were, however, forced to make homes for many refugees of the Confederate factions of the other tribes after the invasion of the northern part of the Indian Territory by Union forces.

The Choctaws and Chickasaws were able to raise sufficient crops for their subsistence in 1865, but they were unable to care for the refugees from the other tribes who numbered nearly 2,000. The refugees were being supplied by the United States agents at this time. Unless there was continued support these Indians would suffer from lack of food and clothing during the coming winter.⁹

The Choctaws and Chickasaws were exceedingly anxious to resume their agricultural pursuits in earnest. To do so, they had to be provided with agricultural implements and seeds. These problems and handicaps, however, were

⁸Ibid., 207.

⁹Annual Report of the Commissioner of Indian Affairs, 1865, 257.

exceedingly small compared with those which faced the Creeks and Cherokees.

A problem which was the concern of all the tribes had grown out of the war during the absence of state, civil, and military authority. Guerrilla bands from both sides had ravaged the Indian Territory, taking everything of value. Citizens of Kansas had made an organized business of driving cattle belonging to the Indians out of the territory and selling them to army contractors.¹⁰

In 1865 the United States Government sent a special agent to investigate this irregularity. The agent investigating this system of plunder made this report:¹¹

I think it is not doing violence to the truth to say that since the commencement of the Rebellion three hundred thousand head of cattle have been driven from the Indian country without the consent of the owners and without remuneration, which at an average of fifteen dollars per head will amount to the enormous sum of four million five hundred thousand dollars.

These cattle brokers had built up a large business from this illegal practice during the war. It was well organized in all respects, with sentinels and scouts, together with their numerous employees as drivers, to a degree that they were able to drive off all the herds of cattle coming within the range of their field of operation.¹²

¹⁰Angie Debo, Oklahoma: Foot-loose and Fancy-free (Norman: University of Oklahoma Press, 1949), 21.

¹¹Annual Report of the Commissioner of Indian Affairs, 1865, 253.

¹²House Executive Documents, 39 Cong., 1 sess., 1865, II (1248), 206.

This pillaging was on such a large scale that it was necessary to call in a special force of federal troops that had not been demoralized by association with the cattle thieves. This force was put under the command of Major George A. Reynolds. He succeeded in recovering many Indian cattle in the hands of the "cattle brokers," and arresting the persons in charge. Reynolds reported near the end of the year that he had been especially active in efforts to stop plundering of the Indian stock, and thought that his effort had been successful.¹³ It will be well to remember, as mentioned earlier in the chapter, that these cattle had been one of the chief sources of wealth for the Indians before the war. The depletion of their herds was to retard their progress in the early years of reconstruction.

Also near the close of the war there was trouble from Negroes of bordering states. These Negroes were especially active in the Choctaw and Chickasaw Nations along the Red River. They have been described as generally a shiftless crowd with a few desperate characters in the lead, and since they had no work, they depended upon stealing for a living.¹⁴ Some of these Negroes might possibly have been fleeing from Texas, seeking freedom and protection within the Union lines to the north.

Due to the many lawless groups operating in the

¹³Ibid.

¹⁴Muriel H. Wright, The Story of Oklahoma (Oklahoma City: Webb Publishing Company, 1930), 162.

territory at the close of the war, the Indians were forced to initiate some additional patterns of law enforcement for the protection of property. This took the form of vigilance groups. These included some 500 Indians whose duty it was to patrol the territory, stopping all strangers not authorized to enter the territory. The Negroes were often seized and whipped, and told never to be found again where they were not known.¹⁵ The problem of the freedmen as an issue in reconstruction will be discussed in a later chapter.

To relieve these existing conditions in the Indian Territory, the Commissioner of Indian Affairs recommended prompt and liberal action on the part of the United States Government. In his opinion, by giving aid to the many destitute Indians of all the tribes, there would be a chance of immediate recovery from the war.¹⁶

The government did give considerable assistance to these Indians. This aid was sufficient to enable a complete recovery in a shorter period of time than would have otherwise been required.

¹⁵Ibid.

¹⁶House Executive Documents, 39 Cong., 1 sess., 1865, II (1248), 209.

CHAPTER II

THE RE-ESTABLISHMENT OF RELATIONS

At the close of the war the Indians of the Five Civilized Tribes were very much disturbed as to their future. As a result of their participation as allies of the Confederate States of America, all treaties between them and the United States Government had been abrogated. They must now make new treaties with the latter which would re-establish relations upon a legal basis.

An indication as to what the Five Civilized Tribes could expect in the way of treatment at the hands of the United States Government was given in a bill introduced in January of 1863, by Senator James H. Lane of Kansas. The bill provided for the extinction of Indian title to land in Kansas and the removal of the Indians from that state.¹

When asked for some explanation for this bill, Senator Lane pointed out that the white settlements had completely surrounded the Indians on the small reservations in Kansas, making their conditions pitiable.² The Indians were anxious to be removed to alleviate these conditions. Lane then

¹Congressional Globe (46 vols., Washington: The Congressional Globe Office, 1834-1874), 37 Cong., 3 sess., 1863, XXXVII, Pt. 1, 305.

²Ibid.

pointed out that south of Kansas there were seventy-eight thousand square miles of Indian Territory which was far in excess of the needs of those tribes living there at that time.³ This was enough land to concentrate all the Indians west of the Rockies upon. Lane, and others, were of the opinion that this land should be used for this exact purpose. Needless to add, Lane did not point out that the land the Indians in Kansas were occupying was some of the richest land in the state.

The passage of the bill was secured by attaching it as a rider to the appropriations bill of 1863. The bill authorized the president to negotiate treaties with the several tribes of Indians living in Kansas, whereby they should be removed to the Indian Territory.⁴ This became law before the Indians of the Five Civilized Tribes had given up any part of their land; thus, it should have been indicative of demands to be pressed once the war ended.

The passage of this bill brought agitation from many other sections of the country for the concentration of all Indians in the Indian Territory after the war. Commissioner W. P. Dole put forth a plan to this effect in 1864. Dole pointed out that experience had proven that a policy of segregation was the only method by which the great defects incident to the Indian policy at that time could be

³Ibid.

⁴Statutes at Large (70 vols., to date, Boston: Little, Brown, and Company, 1845-----), XII, 793.

eliminated. He urged that there be no delay in setting apart, by suitable legislation, portions of the public domain for the exclusive use of the Indians.⁵

The land of the Five Civilized Tribes was ideal for this plan. The Indian Territory contained the necessary amount of land. In addition, the latter was not occupied to any appreciable extent by white settlers; therefore, segregation was feasible. Commissioner Dole favored requiring the Five Civilized Tribes to receive within the limits of their country other tribes with whom they were on friendly terms.

A bill was introduced February 20, 1865, by Senator James B. Harlan of Iowa, which included those features outlined by Dole. It also contained provisions for the consolidation of the Indian tribes, and the establishment of territorial government in the Indian Territory.⁶ Although this bill did not become law, it was noteworthy in that Senator Harlan was soon thereafter appointed Secretary of the Interior, and as Indian affairs were supervised by this office, he was to play an important role in the conduct of Indian policy. Another significant point was the suggestion by Senator Lane, in debating the bill, that this land might become the future home of the freedmen. This did not mean only those Negroes who had been held as slaves by the

⁵House Executive Documents, 38 Cong., 2 sess., 1865 (15 vols., Washington: Government Printing Press, 1865), V (1220), 177.

⁶Congressional Globe, 37 Cong., 3 sess., 1863, XXVII, Pt. 1, 915.

Indians, but all the Negroes held by either Indians or whites.⁷ This proposal received some discussion later on, but was never considered by any large number of legislators as being feasible.

The members of the Five Civilized Tribes were not unaware of these developments in the nation's capital. For this reason they were particularly anxious to settle their difficulties with the federal government. Shortly after the close of the war, a grand council of Indians was held at Camp Napoleon, Chattatomba, near what is now the town of Verden, in the Washita Valley, on May 24, 1865. The Five Civilized Tribes and other lesser tribes were said to have been represented. These tribes entered into a solemn league of peace and friendship, and resolutions were passed, expressive of their purposes and wishes. The tribes appointed commissioners, not to exceed five in number from each tribe, to visit Washington for conferences with the heads of departments concerned with Indian relations.⁸

It was later decided by the Indian Commissioner that the council should be held in the west. This would make it possible for not only the Five Civilized Tribes but also the Plains Indians to be present. At first it seemed that Fort Gibson was the preferred location, but Fort Smith was finally picked as the site for the council.

⁷Ibid., 1307.

⁸Annual Report of the Commissioner of Indian Affairs (60 vols., Washington: Government Printing Press, 1849-1909), 1865, 296.

The conference was called and met September 8, 1865. The United States Government was represented by five Commissioners. D. N. Cooley, Commissioner of Indian Affairs, presided. The others were Elijah Sells, the Indian Superintendent for the Southern Superintendency at Fort Smith; Brigadier-General W. S. Harney; Colonel E. S. Parker, a military aide, and the only Indian on the commission; and Thomas Wister, of the Society of Friends.⁹

The Secretary of the Interior, James B. Harlan, had selected the men who were to treat with the Indians. The instructions which Harlan gave to Cooley on his departure from Washington were to prove the basis of the whole reconstruction policy of the United States Government towards the Five Civilized Tribes.¹⁰

Each of the Five Civilized Tribes sent two sets of delegates to the conference at Fort Smith. One group, representing the Union faction in each of the tribes, was present when the conference opened. The other group, representing the Confederate faction, did not arrive until September 16.

The presiding officer, Commissioner D. N. Cooley, opened the council, and gave a short explanation of its purpose. He explained it was the position of the Indian Department that the action of portions of the several Indian tribes and nations in throwing off their allegiance to the United

⁹Ibid., 296.

¹⁰Annie H. Abel, The American Indian Under Reconstruction (Cleveland: The Arthur H. Clark Company, 1925), 219.

States had abrogated all of their treaties with the United States. The tribes would now need to make new treaties with the United States Government. The commission was authorized to negotiate such agreements on behalf of the federal government.¹¹

On the second day the terms on which the United States would treat with the Indians were laid down by the presiding officer of the commission. These terms were as follows:¹²

1. Each tribe must enter into a treaty for permanent peace and amity with themselves, each nation and tribe, and with the United States.
2. Those settled in the Indian Territory must bind themselves, when called upon by the government, to aid in compelling the Indians of the plains to maintain peaceful relations with each other, with the Indians in the territory, and with the United States.
3. The institution of slavery which had existed among several of the tribes must be forthwith abolished, and measures taken for the unconditional emancipation of all persons held in bondage, and for their incorporation into the tribes on an equal footing with the original members, or suitably provided for.
4. A stipulation in the treaties that slavery, or involuntary servitude shall never exist in the tribe or nation, except in punishment of crime.
5. A portion of the lands hitherto owned and occupied by The Indians must be set apart for the friendly tribes now in Kansas, and elsewhere, on such terms as may be agreed upon by the parties, and approved by the government, or such as may be fixed by the government.
6. It is the policy of the government, unless other arrangement be made, that all the nations and tribes in the Indian

¹¹House Executive Documents, 39 Cong., 1 sess., 1865 (17 vols., Washington: Government Printing Press, 1865), II (1248), 481.

¹²Annual Report of the Commissioner of Indian Affairs, 1865, 319.

Territory be formed into one consolidated government, after the plan proposed by the Senate of the United States, in a bill organizing the Indian Territory.

7. No white person, except officers, agents, and employees of the government, or of any internal improvement authorized by the government, will be permitted to reside in the territory unless formally incorporated with some tribe, according to the usages of the band.

In these proposals for the basis of the new treaties, the features of the bill introduced by Senator Harlan, now Secretary of the Interior, could be easily recognized. Also, the bill Senator Lane had pushed through Congress providing for the removal of the Indians from Kansas, and Commissioner Dole's plan for the concentration of all Indians in the territory occupied exclusively by the Five Civilized Tribes were contained in the terms stipulated by the federal government.

In reply to the demands of the United States Government, most of the Indian delegates asserted they had no authority to make or conclude treaties with the United States Government. Most of them contended they were not informed before coming to Fort Smith as to the purpose for which the council was called.¹³ The delegates maintained the attitude of being only a small portion of the different tribes, and therefore felt it would be necessary to submit the treaties as proposed to the nations as a whole for acceptance or rejection.

In the days remaining, individual members of the delegations from each of the tribes made formal explanations as

¹³Ibid., 320.

to the position of each of the tribes. The Creeks and Cherokees put forth strong arguments in stating their positions and in supporting their refusal to agree to the treaties. They based their claims to a more generous treaty than was offered the other tribes, and with some justification, on the large number of Creeks and Cherokees who had kept faith with the Union during the Civil War.

The domestic feuds within at least three of the tribes made it impossible for them to sign a treaty at this time. The Union faction of the tribes, mainly the Creek and Cherokee Nations, thought the treaties too harsh and unjust for reasons which were pointed out above.

The Indians who attended the conference at Fort Smith refused to accept the provisions of the proposed treaties, but did sign preliminary treaties re-establishing their relationship with the United States Government. The Five Civilized Tribes also agreed to send delegates to Washington the following year to make treaties based upon the general terms laid down at Fort Smith.¹⁴

The following spring and summer, 1866, delegates from the Five Civilized Tribes were sent to Washington. This time a new method of procedure was followed by the commission. Instead of dealing with the five tribes as a group, the method used at the Council of Fort Smith, each tribe was

¹⁴Edward E. Dale and Jesse L. Rader, Readings in Oklahoma History (Evanston, Illinois: Row, Peterson, and Company, 1930), 339.

now dealt with separately. The reason for such a move was that the members of the commission had found they could deal with one tribe more advantageously than they could by negotiating with the Indians as a whole.

There were double delegations in some cases, representing the two factions in each nation--those so-called loyal Indians who had remained in the Union and true to their treaty stipulations, and those who had taken part in the Rebellion. The negotiations were carried on by the Commissioner of Indian Affairs D. N. Cooley, Colonel E. S. Parker, and Superintendent Elijah Sells. All three men had participated in the Fort Smith conference the preceding year.¹⁵

Five principal points were discussed and agreed upon as questions which must be solved at this meeting. They were as follows:¹⁶

1. The proper relations which the freedmen should hereafter hold toward the remainder of the people.
2. A fair compensation for losses of property occasioned to those who remained loyal /Union/ by the disloyal /Confederate/ party.
3. Cession of lands by the several tribes to be used for the settlement thereon of Indians whom it was contemplated to remove from Kansas.
4. The proper and just method of adjusting affairs between the loyal /Union faction/ and disloyal /Confederate faction/ this point applying especially to the Cherokees, where confiscation laws, passed by the national council, had taken effect upon the property of those who were disloyal.

¹⁵Annual Report of the Commissioner of Indian Affairs, 1866, 8.

¹⁶Ibid.

5. Granting of right of ways for railroads through each of the nations.

It would be impossible to discuss each treaty in detail. Therefore, an attempt will be made to discuss the five main principles outlined above as they were applied to the individual tribes of Indians.

The first tribe with which arrangements were completed was the Seminole Nation. The treaty was concluded March 21, 1866; ratified July 19, 1866; proclaimed August 16, 1866. By this treaty renewed pledges of peace and friendship were made, and a complete amnesty for all offenses arising from the Rebellion was ordered in effect.

The Seminoles agreed to abolish slavery in its entirety. The freedmen were to be placed upon an equal footing with the remainder of the people. The former slaves were to be given all the rights, immunities, and privileges as the Indians who were native to the tribe. This provision was readily agreed to by the Seminoles. There had been a considerable intermingling of the races before the tribe removed from Florida; therefore, this provision was virtually in existence at this time.¹⁷

The next provisions ceded to the United States the entire domain of the Seminole Nation secured to them by the Treaty of 1856. The Seminoles were to receive \$325,362 for their land, which amounted to an estimated 2,169,080 acres. In return, the Seminoles were to receive a new reservation of

¹⁷Ibid., 9.

200,000 acres at the junction of the Canadian River with its north fork. They were to pay the United States \$100,000 for this land. The purchase price of the new reservation was to be deducted from money received from their ceded domain. The balance resulting from this exchange was to be spent in re-locating the Seminoles upon their new reservation, and in paying for the losses of the loyal Union faction Seminoles. These losses were to be ascertained by a board of commissioners appointed by the Office of Indian Affairs.¹⁸ These provisions were agreed to only after much discussion.

Other provisions of the Seminole Treaty included a right of way for a railroad through the new reservation. Also, the Seminoles agreed to the establishment of a general council in the Indian country. This council was to be convened annually as the United States Congress might provide. It would consist of delegates from all the tribes in proportion to their numbers. The council was to have the power to legislate upon matters relating to the intercourse and relations of the several tribes residing in the Indian country. The laws passed by this council had to be consistent with treaty stipulations and with the Constitution of the United States. The president of the council was to be the Superintendent of Indian Affairs.¹⁹

The next treaty in this series was made with the confederated nations of Choctaw and Chickasaws. This treaty

¹⁸Ibid.

¹⁹Ibid.

was concluded April 28, 1866; ratified July 2, 1866; proclaimed July 10, 1866. It contained the general provisions for the re-establishment of peace and friendship, amnesty, and the abolition of slavery.²⁰

The treaty with the Choctaws and Chickasaws was the most detailed of the series. The Choctaws and Chickasaws ceded to the United States the whole tract of land known as the "leased lands." This area contained an estimated 6,800,000 acres for which the government was to pay \$300,000. The government was to hold this money in trust until laws were passed by the Choctaws and Chickasaws providing for full rights, privileges, and immunities, and grants of land for each of their freedmen. These laws were to be passed within two years after ratification of this treaty by the Choctaws and Chickasaws.²¹ This provision will receive special attention in a later chapter.

The Choctaws and Chickasaws agreed to a provision granting the right of way for two railroads through their reservation. One railroad was to run north and south, and one east and west. This will be discussed in full in a later chapter dealing with railroads.²²

A treaty stipulation similar to that made with the Seminoles for the establishment of the general council was

²⁰Ibid.

²¹Ibid.

²²Ibid.

also accepted by the Choctaws and Chickasaws. The two tribes were able to get provisions made for a secretary of the council, and pay to the members. Also added was a clause looking to the establishment of an upper house of legislature consisting of one member from each tribe. A federal marshal for the territory of the Choctaws and Chickasaws was included.²³

There were other minor provisions included in the treaty. The first set apart land for county buildings and for religious and educational purposes. In the second, criminals taking refuge in the Choctaw and Chickasaw Nations were to be returned upon the request of proper authorities. The establishment of Post Offices in the Choctaw and Chickasaw Nations was the final provision of the treaty.

The treaty with the Creek Nation was concluded June 14, 1866; ratified July 23, 1866; proclaimed August 11, 1866. This treaty was similar to the two above in regard to peace and friendship, and amnesty. The Creeks, however, granted the freedmen equal rights and privileges. They also gave the freedmen a share in the national soil and funds.²⁴ This question caused much disagreement between the Confederate faction and the Union faction. It seemed for a time that negotiations might fail. The Union faction maintained this was the paramount question settled as a result of the war.

²³Ibid., 10.

²⁴Ibid.

Rather than abandon this point, the Union faction would rather fight the war over again. Cooler heads prevailed, and after much discussion the provision for granting all freedmen equal rights was written into the treaty.²⁵

The Creeks ceded to the United States the western half of their country in the Indian Territory. The latter contained an estimated 3,250,560 acres of land, for which the government was to pay \$915,168. Part of this fund was to be used to restore the farms of the Creeks and make improvements upon them. Another provision called for \$100,000 to be paid to those Creeks who had enlisted in the Union Army and others remaining loyal to the Union. These groups had sustained heavy losses as a result of their participation in the war on the side of the Union.²⁶ Provisions were also made for repairing mission schools, and paying the salary of the delegates to Washington. The final treaty stipulations included a right of way for two railroads through the Creek reservation, and called for a general council similar to that included in the Seminole Treaty.

The last of the four treaties was made with the Cherokees. This treaty was concluded July 19, 1866; ratified July 21, 1866; proclaimed August 11, 1866.

There was more difficulty experienced in arriving at a settlement with the Cherokees than with any of the other

²⁵Ibid.

²⁶Ibid.

Indian nations. This was the result of the extreme hatred which one faction within the Cherokee Nation felt for the other. Conference after conference was held in Washington between the two different factions which had sent delegates. Draft after draft of the treaty was made, and several were apparently agreed upon, when some new difference would arise. These differences would overturn all the arrangements.²⁷

The chief difference arose over a proposal by the disloyal delegation (Confederate faction) asking to be separated from the remainder of the nation. This faction stated that it could not live with the other group so long as the loyal (Union faction) had control of the tribes' governmental organization.²⁸ Finally, as a last resort, the United States made a treaty with the Union faction. However, the treaty did provide that a certain part of territory might be set aside for the exclusive use and occupancy of the Confederate faction.

The Cherokees repudiated their treaty with the Confederacy, and the United States granted an amnesty for all past offenses. The Cherokees of the Union faction agreed to repeal their confiscation laws. These laws had been passed near the end of the war by the Union faction providing for the seizure of all property and land of those Cherokees then fighting for the Confederacy. In addition, the "Canadian

²⁷Ibid., 12.

²⁸Ibid.

district" was set aside as a home for the disloyal faction in keeping with the agreement made with the federal government. In this district any freedman could also locate and claim 160 acres of land.²⁹

Slavery was abolished by the Cherokees and the full rights of the freedmen acknowledged. The right of way for two railroads through the Cherokee reservation was provided. The Cherokees made the same general agreement as the Creeks and Seminoles in regard to the establishment of the general council.

The tract of land known as the "neutral lands," comprising 800,000 acres in southern Kansas, was ceded to the government in trust, to be sold for the benefit of the Cherokees. The proceeds were to be used for the Cherokee Nation as a whole.³⁰

Now that the Five Civilized Tribes had re-established relations with the federal government, their attention could be directed to other problems, namely the rebuilding of their nations. Many of the Indians, Cherokees and Creeks especially, felt the treaties had been very harsh. The Choctaws and Chickasaws were relieved by the generous character of the treaty which they had obtained.

²⁹Ibid.

³⁰Ibid.

CHAPTER III

THE FREEDMEN IN THE INDIAN TERRITORY

Before the Civil War the Cherokees held 2,504 slaves; the Creeks 1,651; the Choctaws 2,297; and the Chickasaws 917. Because of the intermingling of Negroes and Indians in the Seminole Nation, no accurate estimate as to the number of slaves could be made.¹

The situation in which the freedmen of the Indian Territory were placed as a result of the war was identical to that of their brethren elsewhere in the South. The ex-slaves were socially and economically stranded.² No aspect of reconstruction was more perplexing.

The Fort Smith peace council did nothing to mend matters. If anything, it made them worse when it became evident that the United States Government expected each of the Five Civilized Tribes to accept their slaves on an equal basis, and to make provisions for adopting the freedmen into their tribes. No official action was taken concerning the freedmen at the Fort Smith council.

Following the adjournment of the council of Fort Smith

¹The Eighth Census, 1860 (Washington: Government Printing Press, 1864), Book I, xv.

²Annie H. Abel, The American Indian Under Reconstruction (Cleveland: The Arthur H. Clark Company, 1925), 272.

in the fall of 1865, and before the meeting of the Five Civilized Tribes at the peace council of Washington in 1866, an investigation of the relations between the freedmen in the Indian Territory and their former masters was authorized. General John B. Sanborn was appointed as special agent for this purpose. General Sanborn was an experienced administrator in dealing with Indians. At the time of this appointment he had just recently finished successful negotiations with several tribes of Plains Indians.

Sanborn was considered by many as being an unwise choice for a task of this nature. He had always been of the opinion that slavery was illegal, and in his official reports to the Secretary of the Interior a pro-Negro attitude was evident. Nevertheless, Secretary of the Interior James B. Harlan instructed Sanborn to visit the Five Civilized Tribes to determine their attitude toward the freedmen in their tribes.

In his first report to Secretary Harlan, Sanborn assured the Secretary that the freedmen were the most industrious, economical, and, in many respects, the most intelligent portion of the population of the Indian Territory.³ How this could have been possible is difficult to understand. The freedmen had not been given the opportunity for education and other improvement as had the Indians. With the exception of the Seminole Nation, all the tribes had treated their

³Annual Report of the Commissioner of Indian Affairs (60 vols. Washington: Government Printing Press, 1849-1909), 1866, 283.

slaves in much the same manner as had the whites on southern plantations in the period before the Civil War. 2

A canvass of the Negro freedmen in the tribes indicated that they desired to remain in the Indian Territory. Most important of all, they wished to settle upon land which would be set apart for their own exclusive use. Those Indians who were willing that the freedmen should remain in the territory at all also preferred they should be segregated, and located upon a separate tract of land.⁴ Sanborn advised Harlan that this action should be taken, and if lands were to be set apart it should be done at once for the benefit of those freedmen who wished to raise crops.⁵

The sentiment and prejudices among the different tribes with regard to the future status of the freedmen was neither uniform or united. Many members of the Creek Nation were inclined to consider the freedmen as their equals. The Creeks were in favor of incorporating them in their tribe, with all the rights and privileges of the native members.⁶ The Seminole Nation as a general rule also entertained the same sentiments. 3

The Cherokees were divided in sentiment. One group, primarily the Confederate faction, thought the United States Government should move the Negroes from the Cherokee country

⁴Ibid., 284.

⁵Ibid.

⁶Ibid.

at its expense. Another portion, the Union faction, led by the principal chief, Lewis Downing, was in favor of having them retained in the nation. These Cherokees preferred that the freedmen be located upon some tract of land set apart for their exclusive use. Downing in particular hoped this policy would prevail in the Cherokee Nation.⁷

The members of the Choctaw Nation also held differing views as to the future status of the freedmen in the nation. The preponderance of sentiment was strongly against the freedmen. Strong anti-Negro prejudices existed which time alone would overcome. Many Choctaws would not change their relations with the freedmen, and the treatment of the freedmen was much the same as it formerly had been. The public officials and the council did acknowledge that changes in the relations with the freedmen must take place, though like most Southerners, they hoped to hold these changes to an absolute minimum.⁸

An example which will illustrate the attitude of the Choctaws was reported by General Sanborn. He said, "One freedman has been killed at Boggy Depot by his former master, and there have been rumors of several other cases. The Choctaw Nation has not taken action against the former slave holders committing these acts."⁹ It was the conclusion of

⁷Ibid.

⁸Ibid.

⁹Ibid.

agent Sanborn that the public sentiment of this nation in regard to the freedmen was radically wrong.

Former slaveowners in the Chickasaw Nation were still holding most of their Negroes in conditions approximating slavery. They also entertained a bitter prejudice against them.¹⁰ At the close of the war the Chickasaw Nation had passed a law providing for the gradual and compensated emancipation of their slaves, and excluded all from the nation who had left during the war. This included all those freedmen who had joined the Union army.

Sanborn reported that Winchester Colbert, Governor of the Chickasaw Nation, had stated publicly that the Chickasaws would hold their slaves until officials in Washington would determine whether or not the slaveowners would receive compensation for them under the gradual emancipation plan the Chickasaws had passed earlier. Sanborn reported Colbert had stated that if compensation was not granted, the Chickasaws would strip the freedmen naked and drive them either south to Texas, or north to Fort Gibson. Sanborn reported that many Negroes had been shot down by their masters in this nation, and the Chickasaw Government did not take steps to punish the guilty.¹¹

Sanborn recommended that the government take action at once to protect the freedmen of the Choctaw and Chickasaw

¹⁰Ibid.

¹¹Ibid.

Nations. The freedmen should be established upon tracts of land set apart for their own exclusive use. This should be included in the treaty stipulations with the two nations in the treaties which would be concluded at Washington in 1866.¹² The suggested amount of land for each freedman was 120 acres.

Spokesmen for the freedmen of the Seminole and the Creek Nations believed that the national laws and customs of these tribes were adequate for their protection. These views, in Sanborn's opinion, were correct. He believed that the personal security and rights of the Negroes in these tribes would be protected adequately under existing law.¹³

Sanborn had also suggested that a territorial government be established for the protection of the freedmen living in the Indian Territory. The Five Civilized Tribes were unanimous in their opposition to the erection of a territorial government. Sanborn could not understand how the Indians could expect the United States Government to leave ten or twelve thousand of its citizens, the freedmen of the Indian Territory, without any government, or without the full protection and benefits of its own laws and institutions for any period of time.¹⁴

This concluded the first report by General Sanborn.

¹²Ibid., 285.

¹³Ibid.

¹⁴Ibid.

Undoubtedly much of this report was based on rumor and hearsay. The reason for this conclusion is the tone of his second report submitted January 27, 1866. In view of the short passage of time, there is no basis for assuming the conditions had changed to any appreciable extent. The probable reason for this was that Sanborn had been able to make a personal observation of conditions by this time.

In his second report Sanborn stated that the prejudice of the Indians against the freedmen was rapidly passing away. Their treatment was no longer as harsh and cruel as might have been inferred from many of his former reports and letters, although there was still much that was wrong and inhumane.¹⁵

The slave codes in existence during and before the Civil War were still considered to be in effect by the slaveholding Indians, because they had not yet signed treaties to the contrary. Sanborn recommended a treaty embodying clauses to correct this evil.¹⁶

The conclusions which Sanborn submitted in his second report and his suggestions for policies which should be enacted by Congress to accomplish the greatest good for the freedmen, Indians, and all parties interested in the territory were in part included in the Treaties of 1866.¹⁷

¹⁵Ibid., 286.

¹⁶Ibid.

¹⁷Ibid.

Sanborn recommended the formation of a territorial government. The reader will recall this was not one of the provisions of the Treaties of 1866.

He suggested that each of the Indian tribes should be located on some limited reservation. This land should then be surveyed and divided into sections, and each Indian be allowed to occupy some sub-division, say eight acres, without power of alienation. If any Indian had occupied and improved land which was not given to him as a result of the survey, he would be compensated for any improvements he might be forced to surrender.

The freedmen of each nation should be provided for by setting apart certain areas within the reservations for their exclusive use. Each male over twenty-one years of age, and each single woman who had a child living with her, would be allowed to claim one hundred and sixty acres as a homestead. Why it would require twice as much land for the well-being of the Negro as it would for the Indians was not explained, but here again we see the pro-Negro sentiments of Sanborn being exerted on behalf of the freedmen. The Negro, like the Indian, would have no power to alienate sections of land received.

Repeating a wish voiced earlier by the Secretary of the Interior, James Harlan and Congressman James H. Lane, Sanborn recommended that a large tract of land be retained by the government for use as reservations for other tribes of Indians that could be removed into the territory. This land

was to be the future home of the Plains Indians, and of the small tribes located on diminished reserves in eastern Kansas.

Another suggestion by Sanborn that was adopted by the Indians pertained to railroads. He suggested that liberal grants of land should be made to railroad companies to build a road through the Indian Territory north and south and for a railroad east and west. The land grants received by these railroads would be resold to the government which in turn would sell them to bonafide settlers, white or otherwise. The latter part of this suggestion was not included in the Treaties of 1866.

Sanborn's final recommendation in his second report was that any remaining land, after the above suggestions were complied with, be subject to settlement and entry by any class of people in the United States under the jurisdiction of Congress. This, too, was not to be included in the Treaties of 1866.¹⁸

The reader will see from the discussion in Chapter II, along with the above comments, that part of Sanborn's recommendations were incorporated in the Treaties of 1866. The more extreme sections were not forced upon the Indians at that time.

In his last report to the Secretary of the Interior, dated April 13, 1866, Sanborn reported that relations

¹⁸Ibid.

between the freedmen of the Indian territory and their former masters were now generally satisfactory. The rights of the freedmen were acknowledged by all. Fair compensation for labor was being paid, and nearly all the freedmen were self-supporting.¹⁹

It is difficult to understand the basis of such a conclusion by General Sanborn. The latter reported that only one hundred and fifty Negroes had applied for assistance in April, 1866. Most of these were freedmen who had been taken south during the war, and were just returning to their old homes. Sanborn also recommended that the commission be terminated. He felt that future stability depended on the treaties which were to be concluded in Washington in the near future.

Sanborn's recommendations were complied with in regard to the termination of the work of the commission. It was the opinion of the Commissioner of Indian Affairs, D. N. Cooley, that properly informed agents could perform all the duties associated with the direction of Indian affairs in the future.

The permanent solution of relations between the freedmen and the five Civilized Tribes was not accomplished by the Treaties of 1866. The provisions--freedom, adoption into the tribes, access to the tribal land--were written into the treaties, but the enforcement of these clauses

¹⁹Ibid., 287.

was a far more difficult task. Only a short outline of the more detailed story can be presented below.

It will be recalled that the Choctaw and Chickasaw Treaty of 1866 provided that these tribes must either adopt persons of African descent into their tribes on an equal basis, or that these persons be removed by the United States Government from their territory. The \$300,000 which these tribes had received for lands relinquished in the Treaty of 1866 [The Leased District] was to be retained by the United States Government until the Choctaws and Chickasaws adopted the freedmen into their tribes. If they failed to do this, the \$300,000 was to be used for the removal of the freedmen elsewhere.

The two nations were allowed two years from the ratification of the Treaty of 1866 to take such action. In 1869, the agent for the Choctaw and Chickasaw Nations reported that no steps had been taken toward the adoption of the freedmen. Resentment over the conferring of citizenship upon the blacks, a result of the Treaty of 1866, was growing in the minds of the Indians of these two tribes. The agent felt this might be manifested, sooner or later, in acts of hostility against members of the colored race.²⁰

In 1870 the vexing problem of the status of the freedmen still remained unsolved in the Choctaw and Chickasaw Nations. The Negroes were not being mistreated by the

²⁰Annual Report of the Commissioner of Indian Affairs, 1869, 399.

Indians of the two nations, but the unsettled conditions and the uncertainty created much dissatisfaction among the freedmen. It was impossible for these freedmen to claim any land as their own, which was a source of great discouragement to them.²¹

Agent T. D. Griffith reported in 1872, that the conditions of the freedmen among the Choctaws and Chickasaws remained the same. There was some uneasiness among the freedmen at this time arising from the report of measures brought up in Congress providing for their removal from the Choctaw and Chickasaw country.²² Nothing, however, was to come of the proposal, and conditions remained unchanged in the Choctaw and Chickasaw Nations for the time being.

In 1874, the conditions of the freedmen were again brought to the attention of the Commissioner of Indian Affairs by the agent to the Choctaw and Chickasaw Nations, George W. Ingalls. The report submitted by Ingalls stated that the Negroes formerly owned by these tribes were in an anomalous condition. They had freedom, but were without equal rights and privileges. One of the most flagrant injustices was that children of freedmen were not allowed to attend the fine schools these two tribes possessed. These children were growing up in ignorance despite the presence

²¹Annual Report of the Commissioner of Indian Affairs, 1870, 289.

²²Annual Report of the Commissioner of Indian Affairs, 1874, 71.

of these outstanding schools.²³

The first action taken as a result of the many reports of the unsatisfactory condition of the freedmen in these two nations was in 1875. J. P. C. Shank was appointed special commissioner to visit the Indian Territory for the purpose of determining the status of persons of African descent in the Choctaw and Chickasaw Nations.²⁴ No report was received from this commissioner, thus the author assumes no action was taken at this time.

The situation continued to remain much the same for the next five years. The situation in 1881 was confused. Congress had advanced the Choctaws and Chickasaws \$200,000 of the \$300,000 allowed for the territory given up by the two tribes in the Treaty of 1866, before any action had been taken by the two tribes in fulfilling their obligations to the freedmen [Incorporation into their tribes as citizens within a two year period from the time of ratification of the Treaty of 1866]. Also, the government did not carry out the alternate program suggested in the treaty, namely, that the United States Government was to remove the freedmen from the two nations ninety days after the two year period had elapsed if no action had been taken by the Choctaws and Chickasaws. The Commissioner of Indian Affairs was of the

²³Annual Report of the Commissioner of Indian Affairs, 1874, 71.

²⁴Annual Report of the Commissioner of Indian Affairs, 1875, 40.

opinion that the Indians of these two tribes were in no hurry to take this action having already received a majority of the money due them under this agreement. The government on the other hand expected the Choctaws and Chickasaws to live up to their agreement.²⁵

One of the embarrassments in the settlement of this matter was that both nations, Choctaw and Chickasaw, had to concur in the adoption of the freedmen into their nations under the provisions of the original treaty. The Chickasaws desiring the removal of all freedmen from their country, persistently refused to approve the passage of such a measure. Finally, the Choctaws resolved to take independent action. The Choctaws wished to settle this question so as to fulfill their obligations by the Treaty of 1866. In the fall of 1880, the Choctaw Council adopted a resolution indicating to the United States Government its willingness to adopt the freedmen according to the lapsed provisions of the treaty if Congress would concur in this policy. Congress took no action at this time, and the Choctaws were unable to act in absence of legislation to this effect.²⁶

The Choctaws passed an act in 1883, appropriating \$10,000 for educational purposes for their freedmen. Early in the same year they also passed an act providing for the

²⁵Annual Report of the Commissioner of Indian Affairs, 1881, iii.

²⁶Angie Debo, The Rise and Fall of the Choctaw Republic (Norman: University of Oklahoma Press, 1934), 105.

adoption of their freedmen. However, this act did not give the freedmen all the rights to which they were entitled under the Treaty of 1866. The Indian Commissioner would not recommend the approval of this act, as framed, by Congress.²⁷

Finally on May 21, 1883, the Choctaws passed a law acceptable to Congress and the former slaves alike providing for the adoption of their freedmen. All former slaves of the Choctaw and Chickasaw Nations residing in the Choctaw Nation at the date of the preliminary treaty signed at Fort Smith September 13, 1865, together with their descendants, were granted all "the rights, privileges, and immunities, including the right of suffrage of citizens of the Choctaw Nation, except in the annuities, moneys, and the public domain of the Nation." They were limited to forty-acre shares in the public domain under the same title as was held by the Choctaws.²⁸ The settlement of the freedmen in the Choctaw Nation had been accomplished after seventeen years of continued agitation.

In the meantime, the Creeks had made much progress toward determining the position which the freedmen would be given in their nation. The northern Creeks were in control of the tribal government at the close of the war. This group had passed a law before the council of Fort Smith in

²⁷Annual Report of the Commissioner of Indian Affairs, 1883, liii.

²⁸Angie Debo, The Rise and Fall of the Choctaw Republic, 105.

1865, recognizing the freedmen as members of the tribe. This was included in the Treaty of 1866 after much debate, described in Chapter II, and reaffirmed by the Creek Nation by ratification of the Treaty of 1866.

In 1869, however, the question did arise as to the validity of freedmen claims for a share of the money given the Creeks, a result of the Treaty of 1866, which was to be used to restore the farms of the Creeks, and to compensate those Indians remaining loyal for damages suffered during the period they had taken refuge in Kansas. Three acting authorities had decided this treaty provision did not apply to the freedmen who had gained their freedom as a result of the Treaty of 1866. However, Congress took steps directing that such persons be paid on the same basis as native Creeks. This was done in the summer of 1869 ending for a time the freedmen question in the Creek Nation.²⁹

The position occupied by the freedmen among the Seminoles in this period was exceptionally high. As has been mentioned previously, this was due primarily to the intermingling of the Seminoles and Negroes before they moved to the Indian Territory some years before this time. Another explanation was the somewhat unique economic status the Negroes had occupied among the Seminoles during the period before the war. The Seminoles adhered to the provisions of the Treaty of 1866 in good faith.

²⁹Annual Report of the Commissioner of Indian Affairs, 1869, 398.

The conditions of the freedmen in the Cherokee Nation in 1869 was not encouraging. The Cherokees made no move toward the settlement of freedmen families upon separate plots or of incorporating the freedmen into their tribe with equal privileges. The Treaty of 1866 provided that either of these two alternatives would be acceptable to the United States Government.³⁰

The report submitted by the agent from the Cherokee Nation for 1870, made note of the dissatisfaction of the colored people residing in the Cherokee Nation. The Cherokees had a considerable number of former slaves; therefore, the problem was more acute in this nation. The Cherokees did not want to break up their community of interest in land, but if the colored people desired, it was felt the Cherokee Government would set aside a portion of land sufficient to give each head of a freedman family one hundred and sixty acres of the Cherokee domain. The council of the Cherokee Nation was to meet in November, 1870, to discuss this question.³¹ The council met, but no action was taken at this time in regard to the freedmen.

In his report for 1871 the agent for the Cherokees, John B. Jones, made reference to the special problem of those Negroes who had not returned to the Cherokee Nation within the six months period allowed for their return if

³⁰Ibid., 397.

³¹Annual Report of the Commissioner of Indian Affairs, 1870, 289.

they were to be considered citizens of the Cherokee Nation. A provision of the Treaty of 1866 with the Cherokees required the former slaves of this tribe who had left the Cherokee Nation as a result of the war to return within six months of the ratification of this treaty to be eligible for citizenship. This period had ended before many could re-enter the nation, either because they had not heard of the limitation, or were unable to reach the nation in the time specified. The Supreme Court of the Cherokee Nation had decided these freedmen must leave. This decision threatened to cause much hardship for many former slaves.³² This law, however, was not enforced due to the excess of land in the Cherokee Nation. Most of the freedmen in this class continued to remain for the time being in the Cherokee country.

The report from the Cherokee Nation in 1872 indicated that the conditions of the freedmen were continuing in somewhat the same manner as the previous year. However, the principal chief, Lewis Downing, had recommended that these freedmen be adopted as citizens. The measure failed to pass at both sessions of the national council. Legally the freedmen had no homes, and if the law had been enforced, these freedmen would have been forced to leave. Again, as in the previous year, no action was taken to remove the

³²Annual Report of the Commissioner of Indian Affairs, 1871, 568.

freedmen.³³

No change in policy was attempted until 1881. In this year the Cherokee Council appointed delegates to meet with John Q. Tufts, United States Indian agent, for the purpose of drafting an article which would bring about the final settlement of the status of the freedmen in the Cherokee Nation. Agent Tufts soon discovered that the delegates would not grant the rights to which the freedmen were entitled. It was unpopular, politically, to advocate such a measure in the Cherokee Nation.³⁴

It had become imperative that this matter be settled in the near future. Some United States Senators and Representatives exerted pressure upon the Indians for the adoption of freedmen into the two tribes which had not as yet taken this action. This pressure had been in the form of reduced appropriations and other benefits which the Indians had been receiving from the United States Government. However, five years were to pass before the Cherokees were to take such action. On October 19, 1888, the Cherokee Council passed an act which provided that their freedmen would become citizens of the Cherokee Nation, and have all the rights of native Cherokees. However, the Cherokees excluded those Negroes who did not return within the six months' period after

³³Annual Report of the Commissioner of Indian Affairs, 1872, 233.

³⁴Annual Report of the Commissioner of Indian Affairs, 1883, lviii.

ratification of the Treaty of 1866. This action caused much hardship for a number of freedmen.³⁵

As for the Chickasaws, the attempts in 1866, 1876, and still again in 1885, were to be of no avail in regard to the adoption of freedmen into the Chickasaw Nation. The Chickasaw tribe had always been hesitant to adopt any person into the tribe. The Chickasaw tribe wished to keep their bloodline pure. As a result, the freedmen were never admitted into this tribe. The United States Supreme Court dismissed a case in 1904 which had been brought in behalf of the freedmen for the purpose of acquiring citizenship in the Chickasaw Nation. The fight was taken to the floors of the United States Congress, where the controversy raged for some years with no action being taken.³⁶

The freedman question lasted for twenty-two years in the Choctaw, Cherokee, Creek, and Seminole Nations. The Chickasaws never settled the issue. On the other hand, among the more civilized people, the whites, the issue is not settled as of this writing. Thus, it is the opinion of the author, that again the Indians had adjusted in a more satisfactory manner than their more civilized brethren.

³⁵Annual Report of the Commissioner of Indian Affairs, 1888, 346.

³⁶James H. Malone, The Chickasaw Nation (Louisville, Kentucky: John P. Morton and Company, 1922), 416-417.

CHAPTER IV

THE COMING OF THE RAILROADS TO INDIAN TERRITORY

In each of the treaties concluded with the Cherokees, the Creeks, and the Choctaws and Chickasaws, in 1866, a right of way was granted for one railroad, authorized by Congress, running north and south, and one running east and west. The Seminoles granted the right of way for one railroad east to west across their reservation.

Although the last of the Treaties of 1866 with the Five Civilized Tribes was not ratified by the Cherokees until July 27, 1866, Congress on July 25, 1866, passed an act granting a charter to a railroad which might possibly use the right of way through the Indian Territory. This grant was made to the Kansas and Neosho Valley Railroad Company. The Charter granted to the railroad company for its use and benefit every alternate section of land, designated by odd numbers, to the extent of ten sections per mile on each side of the road, to be selected within twenty miles of the road.¹ These grants were to be made to the railroad whenever the Indian title was extinguished by treaty or otherwise. So long as the Indians continued to

¹Statutes at Large (71 vols. to date. Boston: Little, Brown, and Company, 1845----), XIV, 238.

hold their land as separate nations, no grants could be made by the United States Congress. However, the Kansas and Neosho Valley Railroad Company had the right to negotiate with and acquire lands from any Indian nation or tribe authorized by the United States in treaty provision to dispose of lands for railroad purposes. The railroads could also negotiate with any other nation or tribe of Indians through whose lands the railroad would pass, subject to the approval of the President of the United States.²

Under these provisions the company began the construction of a railroad across Kansas toward the Indian Territory. The Kansas and Neosho Valley Railroad Company reached the northern boundary of the Indian Territory fifteen miles east of Neosho on April 30, 1870, but at the border of the Quapaw Nation through which no right of way had been granted.

Congress, on July 26, 1866, had also granted a charter to the Southern Branch of the Union Pacific Railway and Telegraph for a line running from Fort Riley, Kansas, to Fort Smith, Arkansas.³ As the reader will recall, only one line running north and south was allowed through the Indian Territory by the Treaties of 1866. Therefore, the government decided that the first of these two lines to reach the northern boundary of the Indian Territory would be allowed to enter the territory.

²Ibid.

³Ibid., 289.

The Southern Branch of the Union Pacific Railway and Telegraph was reorganized in Kansas in February of 1870, and renamed the Missouri, Kansas, and Texas Railway. This Company began construction of a line across Kansas toward the Indian Territory.

The race to the border between these two lines was won by the Kansas and Neosho Valley Railroad Company. However, as mentioned above, this line had reached the border at an unauthorized point of entrance. Approximately one month later, the Missouri, Kansas, and Texas Railway completed its line to the border of the Indian Territory touching on Cherokee country.

To settle the issue of which of the two railroads should be allowed to continue construction, the Secretary of the Interior, James D. Cox, appointed two commissioners, General William B. Hazen, Indian Superintendent, and Enoch Hoag, to investigate the claims of both railroads. The commissioners reported to the Secretary of the Interior that the Kansas and Neosho Company had reached the border first, but at an unauthorized point on the border of the Quapaw Nation. The Secretary of the Interior then reported to President U. S. Grant that the Missouri, Kansas, and Texas, as a result of the default of the Kansas and Neosho Valley Company, was the first railroad qualified to enter the Indian Territory from the north.⁴

⁴Grant Foreman, A History of Oklahoma (Norman: University of Oklahoma Press, 1942), 177.

On May 21, 1870, the Secretary of the Interior, James D. Cox, authorized the Missouri, Kansas, and Texas Railway to build a road from north to south through the Indian Territory. With this authorization the company began its construction across the Indian Territory.⁵

In the meantime, the Atlantic and Pacific Railroad had received a charter to build the line running east and west through the Indian Territory. This act was passed on July 27, 1866, and contained the same provisions in relation to grants of land as the two discussed above.⁶

Early in 1870, the Atlantic and Pacific Railroad Company began construction of its line, and by September 1, 1871, had reached Vinita, Cherokee Nation. The road was extended no farther, as it had become obvious that the meager population of the country would not return sufficient revenues to operate the road. It was decided to wait until Congress should provide for the organization and settlement of the territory. The railroad promoters thought this would be a matter of only a few years.

It is important to note at this point that the Missouri, Kansas, and Texas Railroad fulfilled the provisions of the Treaties of 1866 in regard to allowing one railroad north and south through the Indian Territory since it crossed

⁵Annual Report of the Commissioner of Indian Affairs (60 vols., Washington: Government Printing Press, 1849-1909), 1876, 76.

⁶Statutes at Large, XIV, 299.

Cherokee, Creek, and Choctaw lands. The Atlantic and Pacific, the line running east and west, had entered only one nation, the Cherokee. This will be important to remember in later discussion of charters to railroads granted by Congress.

In the meantime, reports from Indian agents were showing the concern of the Indians over the construction of railroads through their reservations. The United States agent for the Cherokees, John B. Jones, reported in 1871, that the Missouri, Kansas, and Texas Railroad had entered the Cherokee country on the north, and the Atlantic and Pacific Railroad had entered from the east. These two lines came together at Vinita, giving the Cherokee Nation railroad communication with the states north and east.⁷

This road should have been of much benefit to the Cherokees, but the great majority of the Indians regarded the roads as the authors of calamities rather than of blessings.⁸ The agent expressed the conviction that had the Cherokees been equal to the people of the states in civilization and enterprise, and held their lands in severalty or wished to sell them, the railroads would have enhanced the value of the lands. The Cherokees wished only to maintain their nationality and hold their land. However, the exaggerated reports of the excellence of the country which were sent to the people of the states by the railroads and their employees

⁷Annual Report of the Commissioner of Indian Affairs, 1871, 566.

⁸Ibid.

made the frontier farmer more desirous than ever of obtaining Indian land. This situation, together with the fact that at each session of Congress bills were introduced and pressed for establishing a territorial government for the Indians, and for the opening up of their country to settlement by the whites, caused a deep feeling of insecurity among the Cherokees.⁹

The practices of the railroads in the Cherokee Nation brought a formal protest to Congress from a Cherokee delegation headed by Lewis Downing, principal chief. In the protest the Cherokee delegates pointed out that they were concerned only with the grants of land which the railroad companies were demanding. Also, the Cherokees felt they were able to build their own connecting links for the railroads within their territory. The delegation charged also that the railroad men did not respect Indian title to the land in question, and did not hesitate to proclaim they had sufficient power to force their roads through the Cherokee country on such terms as they pleased.¹⁰

The situation in the Creek Nation was of a similar nature. The United States agent for the Creeks, F. S. Lyon, reported in the same year that much apprehension had arisen from the construction of the railroad through the Creek

⁹Ibid.

¹⁰Senate Miscellaneous Document, 41 Cong., 2 sess., 1870 (Washington: Government Printing Press, 1870) (1408), Report No. 83, 3.

country. The great number of white men necessary for the building of the road had caused much agitation throughout the nation. The Creeks were even more fearful, however, of another class of whites who believed that the white men had to respect few if any rights that the Indians might claim. This class was covetous, speculative, and unscrupulous. Representatives of this class thought that the railroad monopolies would force Congress to yield to this outward pressure and take possession of the Indian territory.¹¹ The Creeks, like the Cherokees, were more interested in maintaining their separate nationality than in any improvements the railroads would bring.

The United States agent for the Choctaws and Chickasaws, A. Parsons, reported in 1873, that much dissatisfaction had been expressed by the Choctaw Nation because the contractors with the Missouri, Kansas, and Texas Railroad had been cutting ties and timber and shipping them out of the territory without any authority or license from these two nations. The railway company claimed its charter and the Treaty of 1866 sanctioned the purchase and use of ties and timber necessary to build the railroad across Indian territory. Since no provisions had been made for the method to be followed in these purchases by the charter giving the railroad the right to build the line, the company had been forced to buy as best it could from the individuals of the

¹¹Annual Report of the Commissioner of Indian Affairs, 1871, 575.

nations.¹²

The majority of the Indians of the Five Civilized Tribes had come to the conclusion that the railroads and territorial organization were synonymous. The land grants in the charters of the railroads, as will be recalled, were dependent on the extinguishment of the Indian title. Legally the Indians could give grants to the railroads by means of a treaty, but there is no question that the Indians would never surrender lands to the railroads by a treaty. As a result, anything pertaining to railroads was viewed with suspicion. The railroads were regarded by the tribes as forerunners of white settlement with the establishment of a territorial government the ultimate goal.

The Indians were not without allies in their efforts to restrain the practices of the railroads. A bill was introduced, January 22, 1872, by Representative J. P. C. Shanks of Iowa, providing for the repeal of acts and parts of acts granting lands and certain privileges in the Indian Territory to railroad companies.¹³ Shanks was later to serve as a special agent to the Indians and was evidently sympathetic toward their cause. The bill was given the full support of the General Indian Council of the Indian Territory in a special memorial on December 5, 1873. The council appealed

¹²Annual Report of the Commissioner of Indian Affairs, 1873, 209.

¹³Congressional Globe (46 vols. Washington: Government Printing Press, 1833-1873), XLV, Pt. 1, 499.

to Congress to repeal all acts of Congress which provided for grants of land situated in the Indian Territory to aid in the construction of railroads.¹⁴ This bill offered nothing to the railroads; thus the strong railroad lobby easily defeated it. An effort at compromise was made in 1877 when the House Committee on Territories recommended a bill setting up a territorial government in Indian Territory, and at the same time repealing the land grants provisions in the charters to the railroads. The Indians would not accept anything that had mention of a territorial government.¹⁵

In the meantime, the Panic of 1873 had brought a recession in the construction of railroads on a grandiose scale in the entire United States, and this was especially true in an unprofitable area like the Indian Territory. The Missouri, Kansas, and Texas Railroad, after its completion in 1872 to Denison, Texas, transported a large number of cattle from Texas and the Indian Territory to the north. In addition some coal and lumber was transported from the Indian Territory, but this did not make the road profitable. The financial condition of the Atlantic and Pacific Railroad was even more unfavorable.¹⁶

¹⁴House Miscellaneous Documents, 43 Cong., 1 sess., 1873 (6 vols., Washington: Government Printing Press, 1874), II (1618), Report No. 85, 2.

¹⁵House Reports, 44 Cong., 2 sess., 1877 (2 vols., Washington: Government Printing Press, 1877), I (1769), Report No. 82, 4.

¹⁶Grant Foreman, A History of Oklahoma, 207.

These two lines covered approximately 250 miles through a territory barren of towns, with little business, trade and commerce, and only small amounts of agricultural produce. This situation would not return a revenue sufficient in amount to make these railroads paying concerns. These two railroads had been built on a speculative basis, and the hopes of acquiring great quantities of Indian land had not materialized. The only way these roads could be made profitable was to secure the opening of the territory to white settlement. This in turn would bring settlers, towns, and other aspects of civilization which would require the services of the railroads.¹⁷

Due to the hard times of the 1870's, the unprofitableness of railroads in the Indian Territory, and the inability of the railroads to obtain the land grants which their charters had specified with certain reservations, it was not until 1882 that any revival of railroad construction was attempted in the Indian Territory. True, there had been some agitation during the period of inactivity for the opening of the Indian Territory for settlement by the whites. This had been done primarily by Elias C. Boudinot, a mixed-blood Cherokee, in an article written for the Chicago Times on February 17, 1879. It should be noted that Boudinot has always been suspected as being on the payroll of the railroads. Certainly he did not speak for the majority of the

¹⁷Ibid.

Indians. During this period, the Indians continued to voice their disapproval of railroads in their council meetings, and in their courses of action toward the federal government as shown above in respect to their attitude toward territorial government.

With the return of prosperity, the railroad companies began anew. The Missouri, Kansas, and Texas Railroad made an unauthorized attempt, in April of 1881, to survey a branch line to Fort Smith, Arkansas.¹⁸ This line would have been through the Cherokee Nation. As mentioned previously, the Treaty of 1866 had only authorized two lines through the Cherokee Nation. Both the Missouri, Kansas, and Texas and the Atlantic and Pacific had built lines through the Cherokee Nation. As a result, upon the complaint of the Cherokee Nation to the Indian Department, the local agent was directed to stop the survey and remove the intruders, which was done. The company claimed the right under statutory provisions, and the matter was submitted to the Indian Department for settlement. In the period under consideration in this thesis no decision was rendered.

In 1882, the construction of the Atlantic and Pacific Railroad westward from Vinita, Cherokee Nation, through the Indian Territory, which had been suspended for some years, was resumed.¹⁹ To avoid misunderstandings of the type the

¹⁸Annual Report of the Commissioner of Indian Affairs, 1881, xxviii.

¹⁹Annual Report of the Commissioner of Indian Affairs, 1882, xxv.

Missouri, Kansas, and Texas had incurred earlier with the Choctaws, the company entered into an agreement with the Cherokee Nation for the purchase of materials required for the construction and repairs of the railroad in the Cherokee country. At the same time, the Atlantic and Pacific asked and was given permission by the Indian Department to alter the route of its lines, subject to the consent of the Creek, Sac and Fox, and Cheyenne and Arapahoe tribes through whose reservations it was to pass.²⁰ During the period under consideration in this thesis, this line was never completed.

On August 2, 1882, Congress passed an act granting a right of way to the Saint Louis and San Francisco Railway Company for a railroad and telegraph line through the lands of the Choctaw and Chickasaw Nations.²¹ This grant did not violate the Treaty of 1866 with the Choctaw and Chickasaw Nations since the Atlantic and Pacific Railroad did not go through these two nations. Only one line, the Missouri, Kansas, and Texas had been built, whereas two lines had been authorized by this treaty.

The previously mentioned grants fulfilled the provisions for railroads in the Indian Territory under the Treaties of 1866 with the Five Civilized Tribes. This, however, was not to be the end of the controversy over the conditional grants of land in Indian Territory.

²⁰Ibid., xxvi.

²¹Statutes at Large, XXII, 181-183.

The power of the United States Government to continue to charter railroads to build their lines through Indian Territory came about as a result of a seemingly unimportant clause attached to the Appropriations Bill of 1871. The clause stipulated: "That hereafter no Indian Nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty."²²

Congress construed this to mean that the legislative body could legislate for this territory without the consent of the Indians. In 1884, Congress passed acts granting charters to the Gulf, Colorado, and Santa Fe Railway and the Southern Kansas Railroad based on the right of eminent domain derived under this act.²³ President Chester A. Arthur signed these acts on July 4, 1884. It is significant to note, however, that these charters did not provide for land in the excess of actual needs for the right of way used in construction of the railroads.²⁴

With the assumption of this power by the federal government, the Indians of the Five Civilized Tribes were powerless to prevent the chartering of railways through their country. That these acts were in violation of the

²²Statutes at Large, XVI, 566.

²³Charles J. Kappler, editor, Indian Affairs, Laws and Treaties (6 vols. Washington: Government Printing Press, 1904-1940), I, 206.

²⁴Ibid.

Treaties of 1866 with the Five Civilized Tribes was not a fault of the Indians, but of their more civilized brethren, the whites.

Following the act in 1884, railroads were begun by the Atchison, Topeka, and Santa Fe in 1886, and the Chicago, Rock Island, and Pacific. From 1886 to 1888, four other railroad companies began operation in the Indian Territory. These lines included the Choctaw Coal and Railway Company, the Kansas and Arkansas Valley, the Denison and Washita Valley, and the Saint Louis and San Francisco. With the construction of the last mentioned lines, there were eight railroad companies in operation or projection in the Indian Territory, and a new era had begun in its history.²⁵

A final word needs to be said concerning those companies whose charters had provided for grants of land if and when the tribal title was extinguished. When the Dawes Commission was authorized the railroads claimed that if the Indians in the Indian Territory gave up their land as a result of this commission, then the railroads would be entitled to grants promised by the charters given in 1866. This applied specifically to the Missouri, Kansas and Texas, and the Atlantic and Pacific.

In May, 1897, the Missouri, Kansas, and Texas Railway Company served notice on the Dawes Commission and on the Cherokee Nation that the Indian title to land in the

²⁵Muriel H. Wright, The Story of Oklahoma (Oklahoma City: Webb Publishing Company, 1929-1930), 227.

territory would be held to be extinguished by allotments of land therein, and therefore eight hundred thousand acres of Cherokee land would be claimed by the railroad company under their original charter of 1866.

Having received permission to do so, the Missouri, Kansas, and Texas on May 17, 1907, filed a suit in the Court of Claims of the United States for the recovery of \$67,287,800 from the government for the damages claimed by it in lieu of land covered by its grants in the Indian Territory. The case was decided against the company by the Court of Claims, and was appealed to the United States Supreme Court, where on November 9, 1914, the judgement of the lower court was affirmed.²⁶

²⁶Grant Foreman, A History of Oklahoma, 292-293.

CHAPTER V

THE INTER-TRIBAL COUNCIL

The Treaties of 1866 required that each of the Five Civilized Tribes participate in a General Council in the Indian Territory. This Council was to be convened annually if the United States Congress should so provide. The Council was to consist of delegates from all the tribes in proportion to their numbers.¹

Although the provisions were altered slightly in some of the treaties, notably the Choctaw and Chickasaw, the Five Tribes agreed essentially to the creation of this Council which was to legislate upon matters relating to the intercourse and relations of the several tribes residing in the Indian country. These laws, however, had to be consistent with treaty stipulations and the Constitution of the United States. The Superintendent of Indian Affairs would act as president of the Council.²

Largely due to delaying tactics on the part of the Indians the first inter-tribal Council was not convened until 1870, even though the Commissioner of Indian Affairs

¹Annual Report of the Commissioner of Indian Affairs (60 vols. Washington: Government Printing Press, 1849-1909), 1866, 8.

²Ibid.

had been recommending meetings since the close of the Civil War. The Council met in September of that year at Okmulgee, the capital of the Creek Nation. ✓ As neither the Choctaws or Chickasaws were present at this time, the Council adjourned to meet again the following December. However, before adjourning, the members present passed a resolution stating that all tribes signing the Treaties of 1866 whether present or not were bound by the acts which the Council might pass.³

Before the meeting of the session called for December, Congress appointed a committee consisting of Robert Campbell, John D. Lang, and John V. Farwell to attend the Grand Council. The committee was primarily interested in the advancement in civilization these tribes were making.

The committee reported delegations in attendance at the December meeting from the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Ottawas, Eastern Shawnees, Quapaws, Senecas, Wyandottes, Confederates, Peorias, Sacs and Foxes, Great and Little Osages, and the absentee Shawnee.⁴ The committee attached far greater importance to the Council than was justified. The white representatives thought this Council would serve to unite the several civilized tribes and achieve united co-operation with the government. Also, the committee was of the opinion that the Five Civilized Tribes could aid

³Angie Debo, The Rise and Fall of the Choctaw Republic (Norman: University of Oklahoma Press, 1923), 214.

⁴House Miscellaneous Documents, 41 Cong., 3 sess., 1871 (2 vols. Washington: Government Printing Press, 1871), I (1462), Rept. No. 49, 2.

the permanent settlement of the wild tribes on the western reservations. This Council was viewed by the committee as a beginning in the epoch in the history of the red man.⁵

The optimism of this report will be shown to be completely unwarranted by the later ineffectiveness of this Council.

On December 7, 1870, the second session of the Council was convened. On December 10th a committee of ten was appointed to draft a constitution, republican in form, with due regard for the rights of each tribe under existing treaties. The committee immediately began its labors, and six days later submitted the document to the Council for ratification. The results of the vote on adoption of the constitution was fifty-two "ayes" and three "nays."⁶

The constitution was based largely on the Constitution of the United States. It contained a bill of rights and other basic rights and privileges included in the United States Constitution. More specific articles of the constitution provided for a General Assembly, elected by the different tribes according to population. This Assembly would legislate only upon matters of inter-tribal concern. A governor elected by the combined members of the tribes, and a system of courts having jurisdiction over trade and intercourse of all the nations, were also recommended.⁷

⁵Ibid.

⁶"Okmulgee Constitution," Chronicles of Oklahoma (34 vols. to date. Oklahoma City: Oklahoma Historical Society, 1923----), II, 218.

⁷Ibid., 220-228.

The Indians at no time had a free opportunity to put the constitution into effect in its original form. President U. S. Grant immediately transmitted it to Congress with the recommendation that it be amended so that Congress would have a veto over all legislation, and that executive and judicial officers would be appointed by the President.⁸

Senator James B. Harlan, former Secretary of the Interior who was so influential in the negotiations preceding the Treaties of 1866, was again in the Senate and hailed this opportunity to bring the Indians under the control of white men. Senator Harlan introduced an amended version of the constitution as the basis of another of his territorial schemes. At the same time the dangers of the Indians' plan for self-government was given much consideration by the public as a whole.⁹

The delegates from the Five Civilized Tribes submitted the document in its original form to their tribes. The keen and cautious Cherokees refused, under the circumstances, to touch it, and the Seminoles followed their example. The small Chickasaw Nation rejected it because it was jealous of the representation given the larger tribes in the Assembly. The Creeks ratified it at once even though they feared the territorial schemes as much as the Cherokees, but the Creeks believed the Indians could oppose white entry more

⁸Angie Debo, The Road to Disappearance (Norman: University of Oklahoma Press, 1941), 206.

⁹Ibid., 207.

effectively through a union of their own. By the end of 1873 the Choctaws and several small tribes had taken favorable action, but the combined population of the ratifying tribes was still 12,243 short of the required two-thirds majority. In 1875 the Okmulgee Council prepared another constitution similar to the first, but by this time only the Creeks were seriously interested.¹⁰

The principal contribution of the Council was the settlement of problems between the Plains Indians and the United States Government. This involved raids made by the Plains Indians on white settlements, and the inability of the federal government to induce these Indians to take reservations. Meetings were arranged in several instances by the Council between representatives of the two groups. Some arrangements for settling the Plains Indians on reservations were accomplished in some instances. This in no way, however, eliminated the conditions as had been the hope of the Congressional committee.

The Council sent several protests to the United States Government as a result of the government policy toward the railroads. In 1871 a resolution was unanimously adopted to memorialize President Grant against changing the pattern of government and land tenure of the Indians in favor of the railroads and other private interests, including the land

¹⁰Ibid.

seekers.¹¹

Another memorial was submitted by the Council in 1872. It reviewed the Indians' titles to their lands as guaranteed by treaties, and showed how the provisional grants in the railroad charters had created such powerful inducements to destroy such titles. In 1874 and 1875 the Council sent similar memorials to the federal government.¹² These memorials served only as delaying tactics.

It must have become evident by this time that a united Indian state owning lands in severalty would never develop from the Okmulgee Council. Early in 1876 the executives of the various tribes were notified by the Indian office that the Council would not be convened again until further notice. It had made no progress in the direction of territorial government so greatly desired by the United States. Ironically enough, it had served only as a convenient agency for voicing the protests of the Indians against the territorial bills sponsored by the railroads and land seekers.¹³

¹¹Angie Debo, The Rise and Fall of the Choctaw Republic, 216.

¹²Ibid.

¹³Ibid.

CONCLUSION

The Five Civilized Tribes were able to make a rapid economic recovery from the devastation which resulted from the Civil War. To illustrate, in 1872 the Cherokees raised 2,925,000 bushels of corn, 97,500 bushels of wheat, about the same quantity of oats, and 80,000 bushels of potatoes. Their livestock included 16,000 horses, 75,000 cattle, 160,000 hogs, and 9,000 sheep. Their individual property was estimated at \$5,000,000. This compared favorably with the economic standing of the tribe before the war.¹ It is true the other tribes were not nearly as prosperous in 1872, but this condition was also true for the period before the war.

The relations of the Five Civilized Tribes with the United States Government was far less successful. Although the Five Civilized Tribes as a whole did settle their freedmen issue far easier than did the rest of the areas under reconstruction, the settlement, in part, was brought about by the coercive policy of the federal government. The other states under reconstruction were able to resist this sort of pressure, but the treaties the Indians signed in 1866 were specific on this matter. Thus, independent

¹Victor E. Harlow, Oklahoma: Its Origins and Development (Oklahoma City: Harlow Publishing Corporation, 1935), 221.

action was no longer the rule in the Five Civilized Tribes.

The Five Civilized Tribes were further reduced in power as a result of lands given up by the Treaties of 1866. No longer was this land the stronghold of the Five Civilized Tribes exclusively, but the Indian Territory. A portion of this land surrendered in 1866 was later to provide the occasion for agitation for the opening of public domain to settlement.

The policy of the United States Government toward railroad companies which wished to enter the Indian Territory represented another defeat in diplomacy for the Five Civilized Tribes. Though the Indians managed to avoid the making of land grants, the action of the federal government toward railroads after 1883 was to hasten the downfall of the Indian Territory.

The failure of the inter-tribal Council to produce a united front, composed of all the Indians in the territory, was the final blow to Indian independence. As a result of this failure, the United States was able to deal with each tribe separately, to a large extent, and bring about submission to the federal government.

The result of the relations of the Five Civilized Tribes with the United States Government during this period was the granting of one concession after another until the Five Civilized Tribes were completely dependent on the federal government. The civilization of the Five Civilized Tribes seemed doomed in any event. The final result of the federal relations with the tribes only hastened the process.

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Abel, Annie H., The American Indian Under Reconstruction. Cleveland: The Arthur H. Clark Company, 1925.

This work is the standard text on this particular phase of Indian history. It was especially helpful in obtaining background information necessary for the writing of this thesis. Also, this book had an exceptionally fine bibliography which was valuable for source material.

Annual Report of the Commissioner of Indian Affairs. 60 vols. Washington: Government Printing Office, 1849-1909.

The Annual Report of the Commissioner of Indian Affairs for the years 1865, 1866, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1881, 1882, 1884, 1888, and 1889 were used in the writing of this paper. The bulk of the material contained in this thesis was secured from this source. These reports contained all the official business conducted between the United States Government and the Five Civilized Tribes. Also, these reports were excellent in obtaining the views of the Indians in many cases which were expressed in the reports from the individual agents for each tribe.

Chronicles of Oklahoma. 36 vols. to date, Oklahoma City: The Oklahoma Historical Society, 1923----

Volume II of this series was very useful in regard to the inter-tribal Council. The complete constitution as formulated at the Okmulgee Council was reprinted in this volume. This constitution was cited by the author in the attempted unification by the Five Civilized Tribes.

Dale, Edward E. and Jesse L. Rader, Readings in Oklahoma History. Evanston, Illinois: Row, Peterson, and Company, 1930.

This work was used primarily for background material. In this work many references to the earlier history of the Five Civilized Tribes which was to have some influence on the period under consideration were located.

Debo, Angie, Oklahoma: Foot-loose and Fancy-free. Norman: University of Oklahoma Press, 1949.

_____, The Road to Disappearance. Norman: University of Oklahoma Press, 1923.

_____, The Rise and Fall of the Choctaw Republic. Norman: University of Oklahoma Press, 1941.

These three works were used with excellent results. The latter two were especially helpful since one is a history of the Creeks and the other a history of the Choctaws. The information in the first named book was of a general nature, and was used as such by the author. The excellent bibliographies of the three works were used to a great extent. The high standard of the writing in these three works made it far more simple for the author of this thesis to comprehend the subject being considered in this study.

Foreman, Grant. A History of Oklahoma. Norman: University of Oklahoma Press, 1942.

This work was especially good on matters of a technical nature. The clear explanation of the material dealing with the railroads in Foreman's book made it much easier to explain that phase of this study.

Harlow, Victor E., Oklahoma: Its Origins and Development. Oklahoma City: Harlow Publishing Corporation, 1935.

This work was used primarily for data contained which was not available in any other source. It was very helpful in this respect.

Kappler, Charles J., editor, Indian Affairs, Laws and Treaties. 6 vols. Washington: Government Printing Office, 1904-1940.

These documents cover all phases of Indian history. They are reprints of the original documents which other sources of material used covered in most instances. The material on some of the grants to the railroads was found in Volume I of this work. This series is a must for anyone dealing with any phase of Indian history.

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 Washington: Congressional Globe Office, 1834-1874.
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_____, House Executive Documents. 38
 Cong., 2 sess., 1865. 15 vols. Washington: Government Printing Office, 1865.
 Volume II was used extensively in the first chapter of this study dealing with the conditions in the Five Civilized Tribes following the Civil War. This background material was best presented by the reports of the agents in the Indian Territory as submitted and printed in the Commissioner of Indian Affairs Annual Report which in part was included in this document.

_____, House Executive Documents. 39
 Cong., 1 sess., 1865. 17 vols. Washington: Government Printing Office, 1865.
 Volume II was used for the report of Commissioner W. D. Dole in which he put forth his ideas as to the future policy for the Indians in this year. This was used effectively in putting forth the idea that sooner or later the Indian Territory was bound to be used as a concentration land for all the Indians. This plan was later to be incorporated into the Treaties of 1866.

_____, House Miscellaneous Documents.
 41 Cong., 3 sess., 1871. 2 vols. Washington: Government Printing Office, 1872.
 Found in Volume I is the report of an investigating committee visiting the inter-tribal Council of the Five Civilized Tribes. This report shows the importance attached to the formation of a co-operating union of the Five Civilized Tribes with the United States Government.

_____, House Miscellaneous Documents.
 43 Cong., 1 sess., 1873. 6 vols. Washington: Government Printing Office, 1874.
 Volume IV contained a report made on the attempt by Congress to induce the Five Civilized Tribes to accept a territorial government. The refusal is made a necessity by the Indians of these tribes by the terms shown in this report.

_____, House Reports. 44 Cong., 2 sess., 1877. 2 vols. Washington: Government Printing Office, 1877.

Volume I was the source of a report of action taken by Congress in an effort to bring about a compromise with the Indians of the Five Civilized Tribes in an effort to secure territorial government for the Indian Territory. This is used to illustrate the pressure of the railroad interest to secure the passage of such an act.

_____, Senate Miscellaneous Documents. 41 Cong., 2 sess., 1870. Washington: Government Printing Office, 1870.

A memorial sent to the Senate of the United States by the Five Civilized Tribes is found in this single volume document. This memorial was used to illustrate the Indians' complaint of unfair practices which the railroads used in the construction of their lines through the Indian Territory during this period.

_____, Statutes at Large. 70 vols. to date. Boston: Little, Brown, and Company, 1845-----.

Volumes XII and XIV were used extensively in the writing of this thesis. These volumes contained laws passed which concerned the Indians. These included railroad charters, removal of treaty making power, and passage of laws providing for the removal of Indians from other parts of the country to the Indian Territory. These many laws were used intermittently throughout this study.

Wright, Muriel, The Story of Oklahoma. Oklahoma City: Webb Publishing Company, 1930.

This work was used primarily for background material. It was helpful in regard to general information concerning the period of reconstruction. It was especially useful in the period immediately following the war.

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