

DEVELOPMENT OF LAW AND LEGAL
INSTITUTIONS AMONG THE CREEK INDIANS

OKLAHOMA
AGRICULTURAL & MECHANICAL COLLEGE

DEVELOPMENT OF LAW AND LEGAL INSTITUTIONS AMONG THE CREEK INDIANS

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PREFACE

Reader, you are one of the few who have chosen to view this work. I invite you to examine it thoroughly and tell me your reaction.

If you are the average person, you do not fully appreciate your social heritage. I know you have heard thousands of allusions made to the great accomplishments of famous leaders in the realm of law and government; so many, in fact, that perhaps such remarks have become trite and convey very little meaning to you. If you gain a fuller appreciation of our present institutions, as I have from this study, I think my efforts will not have been in vain.

As you will find, I have not blamed our Government for its action toward these Indians, nor have I criticized the Indians for their measures taken in self-preservation. I have drawn my conclusions, as far as possible, from facts available without prejudice to either side.

Laws and legal institutions are the direct results of social and political customs. The social level of every race presents the outgrowth of morality which has gradually hardened into accepted rules of conduct. Legal institutions or governments represent the sovereign authority which is empowered to enact, interpret and execute rules of conduct. Well ordered societies are not so much a result of the inventive genius of a few as the gradual adoption of customs and conventions by many, so as to regulate their natural instincts in the interests of their combined social welfare.

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In this study I have attempted to reveal how the mores of the Creek Indians changed, how they learned the value of laws, and established institutions for the promulgation of laws. In presenting their laws, I attempt to show the forces which led to their enactment.

I mention in the introduction certain customs peculiar to their barbarous life and attempt to show the affects of the white man's culture and the change in the Creeks' mode of making a living which led them to adopt certain political institutions similar to those of the United States.

I am indebted to Professor George C. Anderson for encouraging me to make this study and for his helpful suggestions and kindly advice.

Eugene Vaughn Allen

Stillwater, Oklahoma
July 2, 1939

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INTRODUCTION

According to tradition the Creeks (Muskoquis as they were earlier known) migrated from Mexico to what is now Georgia and Alabama after the Spaniards conquered Mexico. This tribe was at the time of Montezuma's death a powerful independent nation living in the northwestern part of Mexico. After a war with the Spaniards in which they lost many of their chiefs and warriors, the tribe decided to move toward the north in search of a dwelling where they could be free from slavery. Their first stop was in the region of the Red River where they dwelt for a number of years.¹

When the Muskoquis had thus performed the first labors connected with their new settlement, they marked out a field, as large as was necessary for the common needs of the colony, and they surrounded it with old pieces of wood and stakes planted in the earth, in order to guard against the incursions of bison and other wild animals, which are very fond of corn. They allotted to the families the ground contained in this enclosure, and sowed it for their sustenance.

They migrated eastward because of war with the Alibamons. In the war they learned the value of a strong organization. Having such an organization, they were joined by other tribes, many of whom intermarried and became a part of the Creek Tribe. The Tuket-Patchet (Tukabatchee), the Alibamons, the Okchai, the Tasquiguy, the Yuchi, the Natchez, and a part of the Chickasaw Nation were members of the old Creek Confederacy in what is

1. Bureau of American Ethnology, Bulletin 42, p. 42

now Georgia and Alabama.

This migration had taken place and the confederacy was established by 1540 as was related from the narration of De Soto's expedition. The head chiefs then presided over the towns much as they did until after the Civil War. There were then fifty towns in which were spoken six distinct languages: Muskogee, Hitchi, Koasati, Yuchi, Natchez, and Shawnee. Of these six, the first three were Muskogean, others being alien. The Confederacy was divided into what was known as the Upper and Lower Creeks. The former were grouped on the Coosa and Tallapoosa Rivers and the latter on the middle and lower Chatahoochee River along the Alabama and Georgia border.²

The clan represented the strongest link in the social and political organization of the early Creeks. Nearly all local matters in the sixteenth and seventeenth century were controlled by this unit. Big families served to make for unity among the people since every family had some relatives in all the other clans. Descent was from the mother in the clan and all the members were recognized by the name of the mother. The father and his clan represented only the father family to the children and he and his clan had no legal interest in the children's family concerns. This system represented the early status. Later, it seems, clans were linked into larger groups, called by some writers, phraties. A number of such phraties, varying in importance, would be organized into a town.³

2. Ibid., Bulletin 30, p. 363

3. Ibid., Bulletin 42, pp. 114-21

Certain customs of the clan had a definite relation to the political organization so it is well that we consider some of them at length. Marriage into the mother's clan was absolutely prohibited no matter in what town the persons lived. The Creeks also looked upon a marriage into the father's clan with disfavor, however, later this prohibition applied only to the blood relatives of the father.⁴

The rights and privileges of each clan included: (1) The right to the common clan name; (2) Representation in tribe council; (3) To share in common property of the tribe; (4) The right to elect its chiefs and subchiefs and have them installed in the tribe council; (5) The right to be protected by the tribe; (6) The right to songs and rituals of its own creation; (7) The right to hold clan council; (8) The right to bestow personal names upon its members; (9) The right to adopt aliens; (10) The right to a common burying ground; and, (11) The right to share in the religious ceremonies of the tribe. On the other hand, members of the clan had certain duties or obligations, among which were the following: (1) Not to marry within the clan, (2) to help purchase the life of a member of the clan who was held forfeit for the murder of another clan member, (3) and to aid and defend fellow members.⁵

The busk or green-corn dance was the most important and serious of any observed by the Creek Indians. It was an occasion of amnesty, forgiveness and absolution of crime, and

4. Ibid., p. 166

5. Ibid., Bulletin 30, p. 304

hatred and a time of rejoicing over the first fruits of the year. One authority describes it as follows:⁶

When a town celebrates the busk, having previously provided themselves with new clothes, new pots, pans, and other household utensils and furniture, they collect all their worn-out clothes and other despicable things, sweep and cleanse their houses, square, and the whole town of their filth, which with all the remaining grain and other provisions, they cast together into a common heap and consume it with fire. After having taken medicine, and fasted for three days, all the fires in the town are extinguished. During this fast they abstain from the gratification of every appetite and passion whatever. A general amnesty is proclaimed, all malefactors may return to their own town, and they are absolved from their crimes, which are now forgotten, and they are restored to favor.

According to the old tribal customs courtship was begun by proxy. The man, if he wished, sent the lady of his choice his talk (an old Indian term). If the girl desired the union, the proxy made further inquiries as to the consent of her uncles, aunts, and brothers, which being obtained, the woman went to him, and they lived together during pleasure or convenience. Other modes were practiced by various clans which were considered more binding and freedom with other persons was considered adultery and was punished by the relatives of the offended party, by whipping and cutting of the hair and ears close to the head.⁷

If a separation was desired by either the man or his wife, it was accomplished by common consent, but each person so separated must wait until the next busk in order to re-marry.

6. Ibid., pp. 166-7

7. H. R. Schoolcraft, Indian tribes in the United States, V, pp. 268-9

men were allowed to have more than one wife. A large portion of the old and middle-aged men, as a result of changing, had many wives, and their children were scattered around the country, unknown to them. Not many women had more than two children by the same father, so for this reason the heritage of the chiefs and other officials were given to the issue of the female line. Another peculiar custom was that of throwing away old wives and taking new ones. This is said to have come about in meeting the exigencies of the barbarous and uncivilized life. Such a practice helped to keep up the population which was even then declining because of war, famine, and disease.

8. Ibid., 212-13.

CHAPTER I

CAUCASIAN INFLUENCE IN
ALABAMA AND GEORGIA

As I mentioned in the introduction, some of the Spaniards had made exploratory trips among the Creeks, but after 1565 they became constant neighbors and were the only caucasians in contact with them for a century or more. The English influence did not start until the founding of Charleston, 1670. Because of their inland position, the Creeks were less subject to the raids of the Spanish, English, and French who came to the coast from the West Indies. This gave them an opportunity to carry on trade in hides with the Spanish traders without being disturbed. They gained in this trade some knowledge of Europe and its culture.¹

The Creeks had neither national polity or law until they were introduced by the agents from the white man's governments. The towns were held to be independent of one another except in time of war. There is evidence to show that the Upper Creeks never laid claim to the right of hunting upon the grounds of the Lower Creeks, until about the year 1783 when McGillivray became influential.²

Before 1783 each town had a separate government and customs which each thought came as an inherent right. In control of their foreign and domestic concerns they were directed by those whom they called chiefs. In civil affairs

1. J. W. Caughey, McGillivray of the Creeks, pp. 18-19

2. American State Papers, II, p. 785

the principal was the "micco" of the Creeks, whom the white man referred to as king. In the event of war the "great warrior" was supreme. The micco conducted all public and domestic affairs; received all public characters, heard their talks, laid them before the town, and, in return, delivered talks. He was always chosen from the same family. After a micco was chosen, he was placed on his seat and remained for life. At his death one of his nephews was allowed to succeed him or the next of his kin in the female line. The micco was assisted by counsellors who were beloved men because they had been conspicuous in war or had served in some public capacity. In many ways these counsellors resembled the Executive Council as it was in the beginning of our Government. The second micco, selected by the town council, had the power of determining whether or not war should be declared. If the people were not in favor of war, but this official wished, then he would set up a war whoop and march off with those who were willing to follow. It was seldom that any town was unanimous in taking the war talk and the Nation never was.³

Since very early times white people had been drifting into the tribe and each clan had adopted a number of citizens. As the usual rule a white man would come in as a trader, marry one or more of the Indian girls and be adopted as a member of the mother's clan. In McGillivray's time there resided among the Creeks nearly three hundred such persons. Nearly every town by 1890 was under the influence of white

3. Ibid.

men residing in it. Most of these white men had had a connection with Great Britain before the Revolutionary war and from the loss of property and friends had no friendly feeling toward the United States. For this reason many raids were made upon the frontier settlements.⁴

During this period the Creeks were bounded by the Seminoles on the southeast, the Choctaws and Chickasaws to the west and the Cherokees on the north. Farther to the south and southeast in Florida, the Spanish were established and had been trading with them through agents for many years. The principal Spanish trading center for the Creeks was Pensacola after 1781.⁵

Having lost England's trade and influence during the American Revolution, the Creeks were forced with the problem of preserving their independence. The Americans in Carolina and Georgia were anxious to acquire their lands, they were aware. The Spanish were friendly and traded with them, but such trade as they got with them proved inadequate considering the capacity which had been built up under the English alliance. It was necessary, then, for them, (1) to make treaties securing their independence and territorial security, and (2) to secure and retain adequate trade for the tribe. Such problems fell the lot of Alexander McGillivray.⁶

Many authors are of the opinion that the first government among the Creeks was brought about by Alexander McGillivray. His efforts as leader were responsible for Creek unity

4. Schoolcraft, op. cit., p. 263
5. Caughey, op. cit., pp. 6-7
6. Caughey, op. cit., pp. 20-21

from the time he became a leading chief until his death in 1793. As we shall see later, he played the part of an emperor for the Confederacy, making laws, executing them and rendering justice. Because of his importance in this regard, considerable attention will be given to the events of his life.

Lachlan McGillivray, Alexander's father, as a boy of 16 became interested in America and came from his home in Scotland to Charleston. From a small beginning he was able to start fur trading with the Indians and became financially independent. During one of his trading journeys, Lachlan met Sehoj Marchand and decided to marry her. Sehoj's father had been captain of the French fort at Toulouse and her mother was a member of the ruling Wind Clan. After marrying Sehoj, Lachlan started a trading establishment at Little Tallassie on the Coose River. Here, by the help of his alliance with the Wind Clan, he gained wealth and influence.⁷

In 1759 Alexander was born to Lachlan and Sehoj. He was almost entirely under the supervision of his mother during his childhood. Little Alex was schooled in the Indian lore and trained by his maternal uncles to meet the vicissitudes of Indian life.⁸

In his fourteenth year Alexander was sent to school at Charleston where he was tutored by his cousin, Reverend

7. C. T. Foreman, "Alexander McGillivray, Emperor of the Creeks", *Chronicles of Oklahoma*, VII, pp. 106-7

8. Caughey, *Op. cit.*, p. 13

Farquhar McGillivray of the Presbyterian Church. His education was cut short by the Revolutionary War and he returned to the land of the Creeks. At the same time his father, who was a loyal Briton, made arrangements and left for Scotland. At home, young Alexander was given his place as one of the lesser chiefs in the powerful Wind Clan. Probably because of his command of the English language plus his influence in the tribe, the British saw in him a useful tool. They commissioned him colonel and appointed him agent to maintain the loyalty of his people. Nor, was this a disagreeable task for him in view of the fact that the Americans had taken his father's property and killed many of his friends. The experience Alexander got during the Revolutionary War was a prelude to his career which lasted until his death in 1793.⁹

In 1783 it was apparent that McGillivray must gain the protection of the Spanish for reasons referred to before. Due to the changing conditions in the American Government nothing constant could be expected from the Americans. Also, McGillivray hesitated to make a treaty with the Americans because he doubted that the "Republic" would endure.¹⁰

When McGillivray began to look around for friends whom he thought might help him get the protection of the Spanish, he came across William Panton. Panton had been an English trader in Georgia and South Carolina before the Revolution. When the Americans confiscated his properties in those two

9. Ibid., pp. 14-17

10. Caughey, op. cit., pp. 23

states, he went to his trading house in Pensacola and secured a commercial treaty with the Spanish who had taken over that town in 1781. As they both realized, Panton and McGillivray could be of the greatest help to each other. Panton gained Spanish protection and a commercial treaty for the Creeks and Alexander was to let Panton's trading house handle all their transactions.¹¹

After the signing of this treaty, the Spanish gave McGillivray an appointment as commissary for the Creeks with a salary of fifty dollars a month. Within the Confederacy there was a growing fear that the Americans would deprive them of their lands and properties, so McGillivray, in his correspondence with the Spanish, requested them to enter into no agreements with the Americans which would tend to strengthen the latter's claims. Colonel McGillivray, as he was referred to, was at this time (1785) fastly gaining in power and influence in the Confederacy as well as with the Spaniards.¹²

In 1785 the Congress of the United States sent commissioners among the Creeks to attempt to make a commercial treaty with them. These men were unsuccessful because of the skillful management of McGillivray who wished no interference with his Spanish relations.¹³

These commissioners reported that they had gone to a certain appointed place for the council and had met a delegation from only two towns which they were unwilling to treat

11. C. T. Foreman, op. cit., pp. 109-10

12. Caughey, op. cit., pp. 25-6

13. Ibid., pp. 27-32

with. The agents from Georgia, on the other hand, made a treaty with this delegation which ceded to Georgia quite a large quantity of land and re-affirmed a treaty which these towns had made in 1783. The report also stated that McGillivray appeared to be forming a dangerous confederacy between his Indians, the Spaniards and British agents.¹⁴

An extract from the minutes of the United States Congress in 1786 repudiated this treaty that was made by Georgia on the grounds that the State of Georgia had no power to make treaties. Congress also recognized the damage which would be done by such an arrangement and set about to restore the confidence of the Creek Indians. Their faith in the United States Government was somewhat restored later, but they always hated Georgia and received her envoys in the most brutal manner.¹⁵

A note included in one of the letters of McGillivray shows his relation to the Nation in 1785. This was evidently written in answer to a request on the part of one Brandon. He writes:¹⁶

I should be sorry that your interest should suffer in the hands of Brandon, but he had committed so many thefts in horses, that to satisfy the people we have given him up to be made an example of, and I imagine his goods are gone for satisfaction. He is a very unfit person for a trader; as I have pretty well cleared the Nation of such kind of people, he must not look for indulgence in these parts.

In a report to Congress on July 6, 1689, Henry Knox, the United States Secretary of War, reported the Conditions in the

14. American State Papers, I, p. 16

15. Ibid., pp. 17-18

16. Ibid., p. 18

Creek country. He wrote the following:¹⁷

This Nation is divided into districts, the Upper and the Lower Creeks. --- The Creeks are principally within the limits of the United States, but some of the most southern towns of the Lower Creeks, or Seminoles, are within the territory of Spain, stretching towards the point to Florida. The gunmen, or warriors of the whole Nation, are estimated at six thousand. Besides the chiefs of the respective towns, the Creeks appear, at present, to be much under the influence and direction of Alexander McGillivray. - - - He had an English education; his abilities and ambitions appear to be great; his resentments are probably unbounded against the State of Georgia for confiscating his father's estate, and the estates of his other friends, refugees from Georgia, several of whom reside with him among the Creeks. - - The State of Georgia is engaged in a serious war with the Creeks; and as the same may be so extended and combined, as to require the interference with the United States, it will be highly proper that the causes thereof should be stated and examined.

The United States Government tried to make a treaty with McGillivray and other head chiefs in September 1789, but were unable to make boundary agreements. The chiefs met the commissioners on the banks of the Oconee River and during the deliberations McGillivray found some excuse to leave. With McGillivray gone, the remainder of the chiefs refused to conduct the treaty.¹⁸

On November 20, 1789 the Secretary of War was able to report that all attempts had failed and that it was necessary to make arrangements for the protection of the frontier. From the intelligence that had come to him about their conditions, he wrote:¹⁹

The number of towns in each district could not be ascertained, probably about eighty in the whole,

17. Ibid., p. 15

18. Ibid., pp. 65-76

19. Ibid., pp. 78-9

of which about forty-five are in the upper country. The towns are very different in magnitude; and a few of what are called the mother towns, have the principal direction of national affairs; that is to say, the war towns in war, and the white towns in peace. Mr. McGillivray, of the half breed, is the most influential of the chiefs throughout the nation. - - - Their kinds of government approach the qualified monarchy. In the towns they have headmen, who are much respected, and have authority, both in peace and war, in their respective towns; in the districts, they have kings or chiefs, and warriors; the former have influence in time of peace, and the latter in time of war. Upon all important occasions they meet in great council and deliberate with freedom, particularly once a year, at the ceremony of the "first fruits", called the "busking", when they punish great delinquents, regulate internal policy, and form plans for hunting or war the ensuing season.

By August of the next year the United States Government was able to bring this war to a close and negotiate a treaty. McGillivray with twenty-three chiefs and warriors came to New York for that purpose. By this treaty perpetual peace was to exist between the United States and the Creeks. It set the boundary line and declared that the Creeks were under the protection of the United States Government. Arrangements were made for the exportation of whites and runaway slaves that were residing in the Nation. Perhaps the most effective provision was that which bound the Creek Nation to deliver up any person, whether Indian or otherwise, who should take refuge in their Nation from a capital crime, including robbery and murder, committed against the United States citizens. Another important article set forth plans of the United States in regard to the Creek Nation, stating that the people would be encouraged to become herdsmen and cultivators instead of remaining hunters. To carry out this provision, the United States agreed to furnish

gratuitously to the Creeks useful domestic animals and tools.²⁰

In 1791 we saw a few changes in the form of government of the Creek Nation. McGillivray had effected a revolution in the customs by placing the warriors in all cases over the miccos or kings, whose counsel he no longer considered. All this had come about because of necessity during the war when McGillivray found factions easy to suppress.²¹

The various clans enforced laws which were nothing more than customs. If an Indian were caught stealing a horse, he must return him or another of the same value and pay a fine of thirty "chalks" (\$15); or, being unable to pay such fine he was, in some cases, tied and whipped thirty lashes by the injured party. The relative strength of the various injured clans determined what punishment the criminal would receive. For instance, if the injured clan were few in numbers, the criminal might escape with only the replacement by another horse. When the inhabitants of any of the towns became notorious for horse-stealing, McGillivray would punish them collectively by depriving them of trade and taking away the white agent who helped them manage their affairs. As a result the town would set things aright because they knew that trade was indispensable to their existence.²²

McGillivray always had some kind of complaint of accusation to determine, some times between the Indians and at other times between the Indians and white traders. In each case

20. Ibid., pp. 81-2

21. Schoolcraft, op. cit., pp. 279-81

22. Ibid., pp. 281-2

his method was to hear the evidence of both sides and never decide the issue. By postponing the trial, he gave the parties an opportunity to ponder and many times they settled their dispute between themselves. By using this system McGillivray avoided the resentment of himself for adverse decisions which he might have to render. McGillivray kept about him a number of active warriors whom he used as a body guard, and, at times, sent out into the Nation to carry out his orders. These men corresponded to our police, except that they were empowered to aren't, punish, and execute such persons as their chief would direct.²³

In 1793 McGillivray died and was burried in Mr. Panton's garden at Pensacola.²⁴ He had been a success in his positon as long as his services were indespensible, but when peace was declared he had to cope with very strong factors.

After McGillivray died the United States agent to the Creeks recommended that the Chiefs assemble and adopt some kind of general regulations for the Confederacy. This the Chiefs were disposed to do because they wished to preserve their trade. They had nothing to lose because they had been under the protection of the United States ever since the Treaty of New York. Accordingly, on November 27, 1799 the chiefs came together at Tuchabatchee Town under the supervision of the agent Colonel Benjamin Hawkins. His report was as follows:²⁵

23. Schoolcraft, loc. cit.

24. American State Papers, I, p. 382

25. Ibid., II, p. 785

The creeks never had till this year (1799) a national government and law. Everything of a general tendency was left to the care and managements of the public agents, who heretofore used temporary expedients only; and also amongst the most powerful and persuasive were the pressure of fear from without and presents. The agent for Indian affairs convened the national council, and made a report on the state of the Nation to them, accompanied with his opinion of the plan indispensably necessary to carry the laws of the nation into effect. The council, after mature deliberation, determined that the safety of the nation was at stake; that, having the firm reliance on the justice of the President of the United States, and the friendly attention of his agent for Indian affairs, they would adopt this plan: 1st. To class the towns, and appoint a warrior over each class, denominated the warrior of the nation, to superintend the execution of the law. 2d. To declare as law that, when a man is punished by the law of the nation, and dies, it is the law that killed him; that it is the nation who killed him; and that no man or family is to be held accountable for this act of the nation. 3d. That all mischief makers and thieves, of any country of white people, shall be under the government of the agent for Indian affairs; and that he may introduce the troops of the United States to any part of the Creek country to punish such persons; and that, when he calls in the troops of the United States, he is to call such number of warriors as he may deem proper to accompany them, to be under pay. That, in apprehending or punishing any white person, if Indians should interpose, the red warriors are to order them to desist; and, if they refuse, the agent may order them to fire, at the same time ordering the troops of the United States to make common cause.

The ideas of the Indian agent were carried out from this year. Annually, the various towns were asked to send delegations to compose a national council. The agent, in the presence of the council, would select a day for the next meeting which was generally in the month of May. The agent made a report on the state of the nation to this council and suggested what he thought proper for them to do. There was no set number of delegates from each town, but usually no town would send more than five or six. Gradually the chiefs became accustomed to the system and skillfully handled affairs. Later

the council appointed a speaker who remained in office for life. All questions were debated until an agreement could be reached or until the question was postponed. An agreement on any question was the will of the nation. An agreement was stated by the speaker when before the general council and the agent for Indian affairs recorded it for the benefit of the whites as well as the Indians. The United States Government paid, fed, and cared for the delegation from all the towns while they were at the general council. Ordinarily each council would cost the Federal Government about four hundred dollars. It was the belief of the Creek agent in 1801 that the national council could be developed into a useful instrument by which the United States could control the nation and bring about a more civilized condition.²⁶

Justice was rendered in a peculiar manner. All the white men in the tribe were asked to meet a certain day when the national council was in session. The agent selected three of these white men to determine cases between white persons, with the right to appeal to him. In all cases between an Indian and a white man the agent decided himself. Suits between the Indians were decided by the council. There were no civil officers but the decisions were carried out effectually in most cases.²⁷

The United States Government began a policy of progressive encroachment upon the Creek Indians with the help of their

26. American State Papers, I, p. 647

27. Ibid., p. 648

agent, Benjamin Hawkins. The Creeks could find no one to replace McGillivray and so they naturally fell in line with the agent. Hawkins was paid by the Federal Government and wished to further its interests as far as possible. Treaties which he sponsored in 1796, 1802, and 1805 served the purpose of the United States because it was allowed to build forts on the frontier.²⁸

By 1812 the advice of the agent had become the initiative for justice. When a crime was committed, the complaint would come to him and he in turn would call the chiefs together and cause justice to be done. If the chiefs were unable to bring criminals to justice by their own means, the agent would provide officers from the United States soldiers garrisoned at the agency. This year the chiefs voted Hawkins absolute authority over all white people and Negroes in the Creek Nation.²⁹

Part of the Creeks were involved in the war against the United States from 1812 to 1814. And so, when General Andrew Jackson dictated a treaty to the Creeks as he was ordered by the War Department, he took away from a large portion of their lands in Georgia. The State of Georgia resented the fact that the United States Government had not taken all the Creek lands within its boundary.³⁰

The outstanding Indian chief of this period was William McIntosh who had led the loyal faction during the War of 1812.

28. Ibid., pp. 587-698

29. Ibid., pp. 809-10

30. Ibid., II, p. 461

In order to get a picture of this man, we must consider the relation of the Creek Indians to Georgia. The United States had entered into a compact with Georgia in 1802 by which it agreed to extinguish the Indian title to all the lands within Georgia as early as possible by the use of peaceable means and reasonable terms. In carrying out this compact the United States in its efforts alarmed the Creeks. They felt the shortage of hunting grounds, feared the total loss of their land and as a result passed a law in great council in 1811 which provided, under penalty of death, the sale of any more lands, except by the chiefs of the whole nation, ratified in general council. Again in 1824, this law was revived by the general council. It is reported that William McIntosh introduced the motion which was responsible for the passage of this law.³¹

Incessantly from 1802 Georgia had been making overtures to the United States Government until, at length, their patience grew unbearable. Some satisfaction had been accorded Georgia by a treaty made at Indian Springs in 1821, but since that time there had been no successes. As chief of the Coweta Towns and Speaker for the Nation, McIntosh, in signing the treaty of Indian Springs, had been strongly influenced by three considerations, namely; (1) That the Coweta Towns, since they were the oldest in the nation, were at one time sole owners of the country, and, as such, by the custom of the nation, possessed absolute authority with regard to selling the land. (2) Each town retained its original rights with regard to

31. T. L. McKenney, History of the Indian Tribes of North America, I, p. 309

territory, and since they never surrendered their lands to the national council, they had full authority to dispose of their own domain. (3) The upper towns had already forfeited their rights, if they ever had any, by treason during the War of 1812, which had caused the cession or surrender of certain lands at Fort Jackson in 1814. Many of the chiefs of the other faction discredited these considerations and, as I have mentioned before, passed the prohibitive law of 1811 and 1824.³²

Even before 1821, McIntosh had been in favor of emigrating westward of the Mississippi and forming one consolidated government with the Chickasaws, Choctaws, and Cherokees. Then, McIntosh had married a Cherokee woman and was considered a member of that tribe. All of which caused his political enemies to form a faction against him.³³

After a number of unsuccessful attempts to bring about a treaty for the remainder of the Creek lands in Georgia, the United States commissioners talked with McIntosh and wrote the President, asking if a treaty with the McIntosh faction alone would be approved. J. C. Calhoun, then Secretary of War, replied with a letter, dated January 18, 1825, to the effect that a treaty with McIntosh alone would not be authorized by the President. While this letter was in the mail, the commissioners were planning a meeting with McIntosh and his faction. Accordingly, they called a meeting to deliberate. During the discussion the head chief from Tuckabatchee Town re-

32. American State Papers, II, p. 793

33. Ibid.

refused to agree, saying:³⁴

We meet you at Broken Arrow, and then told you we had no land to sell; I then heard of no claims against the nation, nor have I since. We have met you here at very short notice, and do not think that the chiefs who are here have any authority to treat. General McIntosh knows that we are bound by our laws, and that what is not done in the public square, in general council, is not binding on the nation. I am, therefore, under the necessity of repeating the same answer as given at Broken Arrow, that we have no land to sell. I know that there are but few from the Upper Towns here, and many are absent from the Lower Towns.

The Tuckabatchee delegation, after this protest was delivered, left the meeting and the treaty was concluded on February 12, 1825 with the small group composed of McIntosh, and his adherents. John Crowell, the Creek Agent, wrote his opinion of the treaty one day after it was concluded. He was convinced that it was not valid and that there had been no proper representation present. He also stated that, with the exception of about three, the signatures to the treaty were of chiefs of low grade or not chiefs at all.³⁵

The protests of the agent seemed not to have amounted to much. The report to the commissioners was accepted instead and the treaty was ratified by Congress on March 7, 1825.³⁶

Because of the great concern which this treaty excited, McIntosh sought the protection of Georgia. Before Georgia could effectually defend him, the Upper Towns had assembled and passed his death sentence. They commissioned Menawa to

34. Ibid., pp. 578-83

35. Ibid., pp. 583-4

36. Ibid., p. 584

raise a party, to march to Indian Springs, and execute the judgement of their law upon McIntosh. They also instructed him to slay any of the other chiefs who had signed the treaty. With one hundred braves Menawa surrounded McIntosh's home on May 1, 1825. The white people, women, and children were allowed to leave the house. McIntosh and one other chief remained and the house was fired. These two were shot and instantly killed when they attempted to escape the flames.³⁷

The followers of McIntosh kept up the agitation to move west of the Mississippi and finally the Federal Government arranged the treaty of Washington in January 1826. This treaty provided for an examination of the lands west of the Mississippi and a sum of money to be paid in installments so that the McIntosh faction could establish themselves in their new homes.³⁸

Other treaties were made with the remaining portion of the Creeks and eventually they were all moved west of the Mississippi.

37. McKenney, op. cit., p. 311

38. American State Papers, II, p. 613

CHAPTER II

THE PERIOD OF TRANSITION FROM
THE REMOVAL TO THE YEAR 1867

After the removal (1827 - 1838) the Creeks remained divided as they had been in Georgia and Alabama. In Indian territory the Upper Towns settled on the Canadian River and the Lower Towns settled along the Arkansas. The Upper Towns were led by Tuckabathhe (Tommarthle) Micco who served as their principal chief after the removal until 1858. The principal chief of the Lower Towns was Roly McIntosh who served after the removal to 1858 also. Because of the killing of William McIntosh (before mentioned) the division between these parties became greater and it was not until after the Civil War that both were united under one constitution.¹

In 1841 Roly McIntosh was considered the head of the nation in view of the fact that when the two divisions came together in general council he was allowed to sit on the right and preside with Micco.²

At this time the general council met once a year to revise laws and pass others that would affect the interests of the nation as a whole. Before the council came people who had claims to present or grievances to redress. This body represented the supreme justice court whose decisions were imperative and from which there was no appeal.

1. Grant Foreman, A Travelor in Indian Territory, p. 121

2. Ibid., p. 122

Such laws as were passed by the general council remained in force for a year. If they were considered good they remained and were re-enacted; if bad they were abolished.³

This general council was made up of a representation from the whole nation (i.e. 45 to 47 towns), every one-hundred being allowed to elect a chief who represented them.⁴

Previous to 1858 all the chiefs were permanently in power when elected, unless they resigned or were deposed for misconduct. The mode of filling a vacancy was an election by the people in the town concerned, which in nearly every case accepted the nomination of the general council.⁵ There was little change in this mode of filling vacancies until 1867. What change there was seems to be toward giving the council more power. The council later made the selection without reference to the people in most instances. If the vacancy was filled by the town, it had to receive the sanction of the general council before becoming valid.⁶

The general council for business consisted of the two principal chiefs and the Kings from the towns. There was also another branch of the general council which acted as a committee composed of one or two persons elected by each town from among the "lawyers" with one judge from the upper

3. Report of the Commissioner of Indian Affairs, 1841.

4. H. R. Schoolcraft, History, Conditions, and Prospects of the Indian Tribes, I, p. 175.

5. Foreman, loc. cit.

6. Schoolcraft, op. cit., p. 276.

and one from the Lower Creeks. Contrasted to the general council for business, the Committee was the popular branch of the government. A law would generally start in the committee; and, upon approval was sent to the principal chiefs. If it was approved by the principal chiefs it became a law of the nation. The chiefs had the power to make and repeal all laws, the approval of the Committee notwithstanding.⁷ It seems that the Committee had the privilege of introducing a bill but that any bill was subject to absolute veto by the chiefs.

Schoolcraft gives an interesting account of the way business was conducted in the general council at this time:⁸

The public of general councils are opened with a good deal of ceremony. The principal chiefs first enter and take their seats. The next in order then enter, and addressing themselves to the whole body, ask: "Are you all present, my friends?" They then take their seats. The principal chief, rising from his seat, presents to the second chief, his tobacco; and this interchange takes place throughout the whole assembly. These interchanges having been done, they next speak about domestic affairs. Then local matters; after which they proceed to business. This business is conducted irregularly, daily, and generally, by the position of the sun. The principal chief adjourns the council to the appointed time next day. Before the close of the deliberations, the two bodies agree upon a day of adjournment. At the appointed time for adjournment, the two bodies come together. The second chiefs rising first, address themselves to the first chiefs, telling them "they are going to leave them." They seat themselves, the whole council following in regular order, according to their grades. The principal chiefs, then rising, say, "We return home." There is still some respect paid to the ancient ceremonies. Regard is paid to the weather in their deliberations. They have two national clerks; and one United States, and one

7. Foreman, op. cit., p. 123

8. Schoolcraft, loc. cit.

national interpreter. All questions are considered with more or less deliberation. Decisions are sometimes made upon the principles of majorities, and sometimes forced by the opinions of the leading chiefs. There are no cases that require unanimity. There may be cases in which the voice of the leading chief might be taken as the will of the tribe.

During this period previous to 1859 the principal and second chief were chosen by the council. They were selected for civil and popular qualifications rather than for renowned deeds, and held office during good behavior. These chiefs had great powers, however, the disapproval of the body of the people was an effective bar to the exercise of such powers and functions as they possessed.⁹ The fact that the disapproval of the people was allowed to intervene explains somewhat the outbreaks which later occurred. The Creeks recognized the need of a principal chief, but it seems that the conditions of the country and life in the nation made for individualism much like that of the typical American farmer of today. Gradually, as living conditions became better and the people were educated into the ways of the white man, the Creeks acquired the conception of a central government and a willingness to follow the principal chief.

The local government of each of the two divisions, Canadian and Arkansas, was organized to take care of strictly local matters. The laws which had been passed in the general council were enforced in each division by its own officials. Previous to 1859 there was a great amount of

9. Ibid., p. 275

independence between the two divisions, each having a first and second chief who interpreted laws and enforced them to suit local conditions. The two districts were divided into towns with a chief and a sub-chief for each. The number of towns varied during this period between forty-five and fifty. In each town there were a number of "lawyers" (number varied with population) who represented the will of the Head Chiefs of the Nation and whose duty it was to execute such laws as had been passed at the general council.¹⁰

The lower Creeks had two persons in authority who were called Light Horse. It was their duty to collect debts and attend to other civil matters for which each was paid a salary to the amount of \$150 per year. The "lawyers" were only prominent men of the tribe who were better informed as to the customs and usages of the people. We find no evidence that they were a fixed class in the community.¹¹

The laws had been compiled (digested) in 1826 before the removal and were approved in 1840. We have evidence that there were written laws among the Creeks in 1817. Most of these related to the punishment of the most prominent crimes, recognized as wrongs to the peace of the nation and the regulation of property rights. These laws did not regulate the social institutions but left them to the ancient customs and usages which were still extant.

10. Bureau of American Ethnology, Bulletin 42, p. 316

11. Ibid., pp. 316-317

Some practices, however, had been prohibited; as, for instance, infanticide which had before been a common practice. In 1840 the general council tried to abolish a custom which allowed the relations of a husband on his death the power of keeping the widow secluded and forbidding her a second marriage for four years. Public opinion was so strong that the council had to allow this custom to remain in force.¹²

The evil of intoxicating liquor was early recognized and laws were enacted by the general council which sought to prevent the sale and use of such spirits. Reports of the Indian agents, however, give us evidence that the use of whiskey was not abolished by these laws but conditions were improved. In 1844 Logan, Creek agent, reported:¹³

I find this portion of the nation flooded with whiskey -- probably double the quantity of this article is now among them, to what I have known at any time previous. In attending it (general council) I shall not fail to make an attempt to impress upon the minds of the chiefs the necessity of their bringing into operation the law passed by the council some years ago, making the sale of ardent spirits a capital offense among their people.

In 1845 Logan reported that many of the chiefs were opposed to religion and education and tenaciously clung to the old customs of the tribe which would preserve their authority. They had, for this reason, passed a law exacting a fine of from two dollars to three and a half dollars a head upon all non-attendants at their busks or who did not drink the physic, a most nauseous emetic. The author-

12. Ibid., p. 334.

13. Report of the Commissioner of Indian Affairs, 1844.

ity, Logan reports, was exerted arbitrarily and that many of their laws were unjust and too severe. One law in particular was very severe:¹⁴

If any person preach or hold religious meetings, whether white or red, he shall for the first offense receive fifty lashes on his bare back, and for the second offense one hundred lashes.

As game became increasingly scarce in the nation the Creeks recognized the need of education and manual training. They turned to agricultural pursuits and became a sober, steady and industrious people. But this process did not take place without difficulties, because as yet many in the nation wanted to evade most of the laws of civilized life.

The chiefs had been paid annuities by the Federal Government. An attempt was made in 1848 by the agent to get the general council to distribute such annuities on a per capita basis, since the Department was desirous of preventing frauds. It was a known fact that many of the chiefs, since they were allowed to take charge of the funds, took the larger share and the ordinary tribesman got very small benefit from them. It was thought that a majority of the people resented such treatment, but, as the agent discovered later, most of the tribe approved it and believed that the Chiefs were getting only their share. It was a recognized fact that whatever of progress toward civilization, peace and harmony, and internal improvements, were due largely to the chiefs. For these reasons it was thought best not

14. Ibid., 1845.

to require that the annuities be distributed on a per capita basis.¹⁵

By 1849 the factions had been quieted and the law makers were abolishing many of their old barbarous customs by enacting in their stead civilized laws.¹⁶

The Creeks did not advance as quickly in the elements of civilization as did their neighbors because they were not established west of the Mississippi until later. There was a growing discontent with the way the annuities were distributed. As referred to above, this was a fault of the form of the government which allowed the Chiefs to control moneys due the tribe from the Federal Government. By 1851 the number of Chiefs had increased to 800 as a result of this system. Little of the common funds were left for the masses. This system created a demand for a different form which would have a written constitution and provide reasonable salaries for the legislators and other officials. The agent suggested that orders be given him to call a general convention to enact and organize a different form of government.¹⁷

The communication should advise and recommend that a fixed sum be set apart out of the national funds, annually, for governmental expenses, for beneficial objects of a national character, and a moderate amount for benevolent purposes, such as medicines and medical attendance for the indigent sick, and a small fund for the poor suffering in times of scarcity and adversity; and it should be provided for that the amounts for salaries and other general expenses, and for the

15. Ibid., 1848

16. Ibid., 1849

17. Ibid., 1851

purposes above named, should not be increased, except with the assent of the Department upon the recommendation of the agent for the tribe. The remainder of the annuity and national funds left, after deducting the amounts for the above purposes should be provided to be paid per capita to all alike, which is the most equitable, fair, and just mode of paying Indian annuities that can be adopted; and there would be enough left to give the Indians generally a much larger share than they now receive.

A new agent, W. H. Garrett, was appointed in July 1853, who was of a different opinion than the one above expressed by P. H. Raiford. According to Garrett, the Creeks were not prepared to adapt themselves to a constitutional form of government which should be patterned after the United States. He did, however, express the belief that some change was necessary in order to allow them to develop comparably with surrounding tribes. Mr. Garrett's report for this year includes a letter from R. M. Loughbridge which states:¹⁸

The "Maine Law", which was in operation here before it was enacted by the State of Maine, is more faithfully enforced than formerly; and the people, from principle, are becoming more temperate.

I have made some mention of the position of the Chiefs but their relation to the "common Indians" is peculiar to this tribe. When in Georgia and Alabama, as the Indians began to abandon the chase and take to agricultural pursuits as a means of subsistence, the institution of slavery shaped their industrial and social life. Chiefs, who preferred other activities, employed slaves to do the work which at this early time formed the planter and slave

18. Ibid., 1853.

relationship. The chiefs formed the intelligensia, so ^{OKLAHOMA} speak, had better education, dress, manners, and income ^{AGRICULTURAL & MECHANICAL COLLEGE} than the "common Indians."¹⁹

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The Chiefs, however, were for the most part, honest and efficient men. They exerted their influence in 1855 to improve the laws and make them suitable to the wants of the people. At this time some changes had been made in the laws. A treasurer had been appointed for the nation and the number of Chiefs had been reduced from 800 to 500. This reduction did much to relieve the evil, but 500 still proved to be a surplus which tended to prevent harmony and slowed down the business of the councils. The nation had advanced so far in moral culture and the science of government that the agent expressed the opinion that in a few years they would be able to establish a simple and economical government.²⁰

The laws of the general council had, since the year 1845, governed the Seminoles who resided in the southwestern part of the Creek Nation. This condition was found to be unsatisfactory and the Indian agent sponsored a treaty which was concluded on August 7, 1856, between these tribes. This treaty provided the Seminoles with a separate country, independent jurisdiction, and the right of self government. This was a good move on the part of the Federal Government because the Creeks had disregarded their convention made in

19. Grant Foreman, The Five Civilized Tribes, pp. 207-8.

20. Report of the Commissioner of Indian Affairs, 1855.

1845. The Seminoles had begun to resent the ill treatment on the part of the Creeks, and so the treaty was advantageous for both.²¹

This treaty also defined the relation of the Federal Government to the Creeks. The Article 18 provided that the Creeks should be protected from domestic strife, invasion, and aggression, by other Indians and white persons not subject to the laws of the Creek Nation. It also provided that in case of such invasions or aggressions the Federal Government shall pay indemnities. Article 14 gave the United States Government jurisdiction over all persons (and their property) who were not members of the tribe.²²

Mr. Garrett thought that the Creeks were nearly ready to establish a form of government similar to that of the States in 1858. He felt that in as much as a feeling had developed conducive to education and association with the white man that they were ready for a more complicated form of government. Religion had become of much interest to the tribe. Baptists and Methodists had missionaries in nearly every community. Intemperance was being fought. The officials of the tribe were doing their best to surpress the trade in whiskey.²³

The light horse are instructed to destroy all spirituous liquors, and a law had been enacted inflicting a penalty of four dollars a gallon

21. Ibid., 1856.

22. Charles J. Kappler, Indian Affairs, Laws and Treaties, pp. 750-63.

23. Report of the Commissioner of Indian Affairs, 1858.

upon all liquors introduced by the natives into the nation, which is strictly enforced, and is effectual to a great extent in suppressing the traffic, which considering the absence of any military force on this²⁴ frontier, is much less than might be expected.

An undated manuscript, which seems to describe conditions about this time, presents the organization and laws. According to it the Creek Nation was divided into districts with a principal and second chief for each. The districts were referred to as the Arkansas and the Canadian districts. The chiefs of these districts were elected and served only four years unless they were re-elected by popular voice of the office holders that were present. A criminal code provided for the punishment of murder after a trial and conviction of a jury of twelve men. In the event a Negro was killed by an Indian, the Indian had to pay the owner his value or suffer death, but if a Negro killed an Indian, the former met death without further ado. If one slave should kill another, the murderer should receive 100 lashes on the bare back and the owner of such murderer should pay the other owner one-half the value of such murdered slave. If a person were killed in a ball game, no one was held responsible. In the event a person were caught stealing a horse, mule, jack, jinny, or a cow, he should receive 50 lashes for the first offense, for the second 100 lashes and have one ear cut off, and for the third suffer death.²⁵

24. The military post at Fort Gibson had been broken up one year previous.

25. Foreman, op. cit., p. 213.

The manuscript shows that the laws were made from time to time and that some to the slaves were freed. No Indian should take a Negro woman for a wife and a fifty dollar fine and 100 lashes for harboring runaway slaves were provided. No man could collect for damages done his crops by the stock of another if he didn't have a fence around his field nine rails high. In the event he had such a fence and the animals broke through, damages would be awarded by two disinterested persons. In case a man would not pay his debts, the light horse were empowered to levy on his property; but if a Creek owed a person of another nation no provision was made for collection.²⁶

Grant Foreman further relates from this manuscript:²⁷

The making and proving of wills were provided for; and if one died without a will, provision was made for the distribution of the property of the decedent. Traders in the Nation were to be licensed. A citizen of the Nation could employ a white mechanic who might reside in the Nation only while engaged in the performance of his contract. No slaveholder should be held responsible for the debts of his slave. If two persons should swap horses and within five days one should prove that he was drunk when the trade was made, it might be rescinded. Provision was made for requiring citizens to work on the public works of his town, after due notice. There being as yet no courts, suits were brought before the general council, of which twenty days notice to the defendants were required. In case of default against one failing to appear he might show to one of the principal chiefs good reason for setting aside the default and a new trial should be had before the council. Incest was outlawed and punishment of fifty lashes provided for. The "ball play" was serious business with the Creeks, so it was "enacted that if two Towns agree to play ball and it is afterwards found out that either had taken in the playmen from other Towns they shall forfeit a fine of fifty dollars."

26. Ibid., pp. 213-14

27. Ibid., p. 214

Later a "committee" composed of six men from each of the districts was organized as a court of the first instance. This "committee" was not a part of the committee of the general council, but a separate body trying cases of a difficult nature. In some cases it was provided that there should be no appeal from this "committee."²⁸

The custom, mentioned before, of keeping the woman in widowhood for four years was repealed, according to the manuscript, and the period was reduced from four years to twelve months and in the case of a man two months. Property of the deceased was to be divided among the nearest relatives of the deceased. Slaves could not own horses, cattle, or guns. A treasurer was appointed in each district to collect moneys due the Creek Nation. No funds should be spent except after appropriation by the general council and upon a warrant signed by the principal chief and clerk of the district in which the treasurer served.²⁹

If a person should find a stray horse, he should report the same to the "light horse" and tell everyone whom he might meet for the next two years. If the horse was not claimed within such time, the district council had the right to sell it and turn one-half of the proceeds to the Nation and the rest to the finders. Education was provided for by the general council. Each district was to have seven schools and a general superintendent. The superintendent in

28. Foreman, loc. cit.

29. Ibid., p. 215

each district was given the duty of selecting a school board for each school, directing the building of schoolhouses, hiring teachers, determining books to be used and visiting each school for four times a year.³⁰

In 1859 provisions were made for determining who should be citizens of the nation. Free born persons, except Negroes, were acknowledged as citizens, and children of a Creek woman by a Negro man when not more than half Negro. Other laws with reference to the Negroes provided that slaves should not be found away from home at night; that Negroes should not preach to Indian people; and (March 1, 1861) that free persons of the Negro race should choose masters among the Creek Nation during the next ten days or be sold to the highest Creek bidder.³¹

1859 saw the election of principal and second chiefs for each of the two districts. It was said that these elections were conducted in a civilized and democratic manner for the first time in the history of the Creeks. For the lower Creeks, Motey Kinnard was elected principal chief, with Duerryson, second. Echo Harjo was elected principal and Oaktarsars Harjo second chief of the Upper Creeks.³²

The agent noted a slackening in the strength and moral force of the laws which he blamed upon the abandonment of the military post at Fort Gibson, (referred to before). It

30. Ibid.,

31. Ibid., pp. 215-16

32. Report of the Commissioner of Indian Affairs, 1859

seemed to have been the opinion of many of the chiefs that troops stationed at Fort Gibson were necessary to uphold law, restrain the vicious, and prevent disturbances between the Creeks and Cherokees which were beginning to break out.³³

By 1860 some important changes were made in the government:³⁴

During the last session of the general council a constitution was adopted which provides for the election by the people of one principal and one second chief and the division of the country into four districts; also, for the appointment of as many judges for the same, together with five supreme judges for the entire nation, who will take cognizance of all offenses committed within their jurisdiction. This instrument makes many other minor and unimportant changes, which, nevertheless, are evidence of progress. It is certainly more satisfactory than the old form of government. More ample authority is also conferred upon their police, termed "Light Horse", whose duty it is made to destroy all spirituous liquors brought into the nation, and to levy a fine or inflict a penalty upon all persons found guilty of introducing it, or of the commission of other offenses.

Very little progress was made in the improvement of law during the Civil War, in fact, what they had accomplished was somewhat wrecked by divisions over the question of loyalty and disloyalty to the Union. In order to give the reader a foundation for the next chapter, it is necessary to summarize the conditions during the war.

By October 2, 1861 the Indian Territory was bounded on three sides by states in rebellion and so it was that the Confederacy had the advantage. Also, a great majority of the

33. Ibid.

34. Ibid., 1860

Creeks held slaves and were Southern sympathizers.³⁵

In 1861 representatives from the Confederacy were sent among the Indians to secure their friendship and cooperation. April 8 was set as the date on which a convention of the five nations was to be called by Kinnard in order to discuss alliance with the Confederacy. This convention decided to postpone matters since they could not very well declare themselves until they were placed in a defensible position.³⁶

Since these commissioners were only fairly successful, and since the Confederacy was desirous of concluding an alliance with the Indians at the very earliest date, Albert Pike was appointed to conduct the negotiations. Coming from Fort Smith by way of Tahlequah, Pike arrived in the Creek Nation in June, where he arranged for a council.³⁷

The well known Pike Treaty he concluded on July 10. By this treaty the Creeks were allied with the Confederacy, accepted its protection and agreed to furnish a regiment of ten companies to the Southern cause. It was signed by some of the leaders of the Creek Nation; Motey Kinnard as Principal Chief, Echo Harjo as Principal Chief of the Upper Creeks, Chilly McIntosh, Louis McIntosh, W. F. McIntosh and Samuel Checote participating.³⁸

As a result of negotiations by both the Union and the Confederacy there occurred a division. Under the leadership of Opothle Yohola over 4,000 of the Creeks refused to accept

35. Ibid., 1861.

36. War of the Rebellion, Series IV, I, pp. 322-4.

37. Ibid., II, pp. 359-61.

38. Ibid., pp. 426-43.

the Pike Treaty. These Indians were driven from their homes and fled to the Verdigris River Camp for protection. Their retreat was marked by several battles with the rebels, which left them in very poor circumstances. From the Verdigris this group was moved north near to the town of Le Roy, Kansas, and were cared for in connection with the Sax and Fox Agency in Kansas.³⁹

Here in 1863, Opothle Yohola died of old age after having served his tribe nearly 50 years. His death served to help bring about harmony among the people in Kansas. They assembled in council, made mutual acknowledgements and lived together as one family.⁴⁰

The Federal Government began to move the refugee Creeks back toward their homes about the middle of May, 1864. For a time they were kept in the Cherokee country which proved disappointing to them.⁴¹

Finally in 1865 they were returned to their homes and began to repair the damages suffered during the war.⁴²

39. Report of the Commissioner of Indian Affairs, 1862.

40. Ibid., 1863.

41. Ibid., 1864.

42. Ibid., 1865

CHAPTER III

NATIONAL AFFAIRS FROM 1868 TO 1888

After the Civil War the Creeks sent their delegation to Fort Smith as they were instructed. The delegation could not agree because it represented both loyal and disloyal Creeks. The loyal Creeks refused to enter an agreement with the United States if it included the disloyal group and so the disloyal portion signed the agreement by themselves. This agreement did no more than establish friendly relation between the various tribes and the United States. Another agreement which was signed by both factions, allowed the United States to use the western portion of the Creek country for settlement of certain Indian tribes then in Kansas.¹

The above named agreement was only a prelude to the treaty of June 14, 1866 which is very important to the purpose of this study as it gives us a good picture of the influence and supervision of the United States Government until, of course, later treaties were concluded. As we shall see, it even described an international government for all the tribes. Because of its importance I shall summarize certain points of interest.

This treaty re-established peace and friendship, declared amnesty for past offenses, and established the freedmen in full equality of rights and privileges of sharing the national soils and funds. The adjustments occupied a long

1. Report of the Commissioner of Indian Affairs, 1865
pp. 203-4.

time in the peace council. One delegation of the Creeks had appeared before the rest, and with them a treaty was made which recognized the rights of the freedmen to full equality; but, at about the time this treaty was made, other delegates came, representing the southern or "disloyal" Creeks. They represented the other half of the Creeks who were opposed to the treaty on account of that provision. They engaged able counsel, and, as a result of their opposition, the treaty came back from the President for revision. It seemed at one time as if all negotiations would fail, so the commissioners decided to yield this point for the time being and ask the loyal delegation to do likewise. The loyal faction, on the other hand, insisted that the freedmen be given full equality and absolutely refused to sign the treaty without such provision, whereupon they were finally successful. Provisions were made for the cession of lands to the west and the granting of right of way for railroads.²

The most important portion, as far as the Federal supervision of the Creek Nation was concerned, was article X which provided for an international council and defined its relation to the government of the United States. The article X reads as follows:³

The Creeks agree to such legislation as Congress may deem necessary for the better administration of justice and the protection of the rights of persons and property within Indian Territory: Provided, however, that said legislation shall not in any manner interfere with or annul their present tribal

2. Ibid., 1866, p. 10.

3. Kappler, op. cit., II, p. 935.

organization, rights, laws, privileges, and customs. They also agree that a general council, consisting of delegates elected by each nation or tribe lawfully resident within Indian Territory, may be annually convened in said territory, which council shall be organized in such manner and possess such powers as are hereinafter described.

Article X continues with extended provisions made for the general council as to its regulation of intercourse between tribes, supervision by the Superintendent of Indian Affairs, appointment of a secretary and the salary of the delegates. The final paragraph is especially important to our study. It states:⁴

The Creeks also agree that a court or courts may be established in said territory with such jurisdiction and organized in such manner as Congress may by law provide.

Doubtlessly an international council would have prevented many of the troubles between tribes which later occurred. Various attempts were made to carry this provision into effect, but such efforts proved in vain as the legislatures of the various tribes would not ratify the constitution.⁵

After the heat of the various factions had cooled, the Creeks began to talk seriously about a new government and a new code of laws. As their government was then organized, it required too many officials and the cost was excessive. Even then, such officials as served were dissatisfied with their small salaries and insignificant positions. No official knew for certain what he was supposed to do or when he

4. Ibid.

5. Report of the Commissioner of Indian Affairs, 1874, p. 11.

had exceeded his authority.⁶

At the suggestion of their agent, the Creeks met in tribe council and organized a new form of government under what is known as the constitution of 1867. They published this constitution and laws enacted in both Creek and English in order that each officer could have a copy. They felt that by doing this equal and uniform decisions would be made and a judge would have something besides his own discretion to guide him in his judgements.⁷

Anyone, upon examining the constitution of 1867, would marvel at its brevity, but it proved suitable for the needs of the Creeks. I quote some of the sections:⁸

Article I. (not quoted) This provided for a national council to consist of the House of Kings (Senate) and the House of Warriors (Representatives). The members of the former were to be elected one from each town for a term of four years. The members of the latter body were to be chosen in the same manner with additional representation for each additional two hundred persons in each town. Salaries were to be determined by law of the council and a majority was considered a quorum. Each house was given the right to determine the qualifications of its members and elect its own presiding officer and secretary.

Article II. (not quoted) The principal chief of the Muskogee Nation was to be elected for a term of four years by a majority of male voters over eighteen years of age. A second chief, chosen in the same manner, was to fill the vacancy if left by the Principal Chief. The duties of the Principal Chief included execution of the laws, reporting to the council, and making recommendations. He was empowered to veto bills, pardon criminals, and appoint his private secretary.

6. Ibid., 1867, p. 319.

7. Ibid., 1868.

8. A. P. McKellop, Constitution and Laws of the Muskogee Nation, pp. 13-17.

Article III. (quoted) The supreme law defining power in this Nation shall be lodged in a High Court, to be composed of five (5) competent recognized citizens of the Muskogee Nation, who shall have attained the age of twenty-five years (25). They shall be chosen for a term of four years, by the National Council, and shall be paid as provided by law. This court shall meet on the first Monday in October in each year, and shall have power to try all cases where the issue is for more than one hundred dollars (\$100). Three members shall constitute a quorum.

Article IV. (not quoted) The Nation was divided into six districts with a judge, prosecuting attorney, and company of light horsemen for each. District judges were chosen by the council for a term of two years and had jurisdiction over civil and criminal cases where the issue involved one hundred dollars or less. In criminal cases the judge was to call twenty-four men and select twelve as a jury. The civil jury was to consist of only nine men. The Prosecuting Attorney was appointed by the Principal Chief with the consent of the Council. A light horse company consisted of a captain and four privates, chosen by the vote of the people and were subject to the orders of the district judge.

Article V. (not quoted) Provision was made for a National treasurer, his bond and manner of making disbursements.

Article VI. (not quoted) Provision was made for a National Interpreter.

Article VII. (quoted) All officers of this Government shall be liable to impeachment, trial, and removal from office for neglect of duty. All bills of impeachment shall originate in the House of Warriors.

Article VIII. (quoted) No laws impairing contracts shall be passed. No laws taking effect upon things that occurred before the enactment of the law shall be passed.

Article IX. (quoted) All cases shall be tried according to the provisions of the respective laws under which they originated. All persons shall be allowed the right of counsel.

Article X. (quoted) All treaties shall be made by delegates, duly recommended by the Principal Chief, and approved by the National Council, and such treaties shall be subject to the ratification of the

National Council. The treaties shall be the supreme law of the land.

The election of the first and second chiefs and members of the council were held on the first Monday in September every four years. All the citizens in each town would gather on this day, the members of the National Council being present as judges. The votes were taken viva voce and were entered upon the rolls by the election officials. A duplicate copy of the roll was made in each case and presented to the town chief. The original was then sealed and forwarded to the President of the House of Kings. When the National Council met, a committee was selected to examine the rolls and compare them with the duplicates in the hands of the town chiefs. All valid "ballots" were accepted and the votes counted. The committee reported the finding to the Principal Chief who announced the successful candidates.⁹

There was quite a lot of trouble in the Nation after the first election. One faction under the leadership of Oktahsars Harjo, consisting of about one-half the people, refused to come to the National Council. Harjo contended that the loyal Creeks, of which he was the leader, had not received their share of the funds which were distributed in 1867. Because of this and a non-progressive tendency of many there was much discontent within the nation.¹⁰

As you will remember, even before 1867 the Creek Nation had been divided into Upper and Lower Creeks. When in 1867

9. Ibid., p. 78.

10. House Executive Document, No. 1366, p. 743.

a large number of offices had been abolished, there was not enough to go around. Those who were left without offices became dissatisfied. They joined the party with Oktahsars Harjo (called sands by the whites) for he himself had been an unsuccessful candidate for Principal Chief of the Nation.¹¹

Among the laws enacted in 1867 were many which had been long in use. Some of the criminal laws enacted this year provided: (1) that all cases of murder should be punishable by death, upon conviction, (2) that the accused should have a fair and impartial trial, and that no one should sit on any case where he was related to either of the parties by blood or marriage, unless by the consent of both parties, (3) that should he be convicted of rape, he should for the first offense receive fifty lashes; for the second offense he must suffer death, (4) that should any person steal property from another, the party thus aggrieved shall recover damages in full, and (5) that it shall be unlawful for any woman to use medicine to cause infanticide; and any woman violating this law should receive fifty lashes on the bare back.¹²

Contrasted with the criminal laws mentioned on pages 37 and 38 of this paper, the above laws show a decided change toward civilization. They are not as severe as before, for instance, in the case of theft the punishment by 100 lashes and cutting off of one ear was abolished.

11. Thoburn and Wright, A History of Oklahoma and its People, I, p. 461.

12. Senate Reports, No. 2363, Appendix, p. 254.

In this year also a number of civil laws were passed. It was enacted, as before, that the light-horse should collect debts by levying on the property of those in default. Provision was made for the probate of wills and for the distribution of the property of those dying intestate. Setting fire to woods or prairies which resulted in the damage to the person or property of another was considered a tort and damages could be assessed by two disinterested persons.¹³

Supplementary laws were made to the constitution which defined in detail the duties of each official, specified his salary and conditions for holding his office. To the principal Chief was given the power to convene the National Council, to suspend judicial and executive officials, to issue commissions and to conduct foreign affairs. He was paid a salary of \$1000 a year and was allowed \$300 a year for a private secretary. Like any other of the executive officials, he was subject to impeachment by the National Council. Provision was made for a National Auditor and a Superintendent of Public Instruction with annual salaries of \$400 and \$600 respectively.¹⁴

Also there were enacted supplementary laws regulating the organization of the legislative bodies. These laws described the examination of elected members, arranged the committees and provided for the privileges of the members. Each member of the National Council was to receive \$3 per day during the sessions and twenty cents per mile for traveling al-

13. Ibid.

14. Ibid., pp. 216-17.

lowance.¹⁵

District Courts were organized in each of the six districts, namely: Okmulgee, Deep Fork, Wewoka, Eufaula, Muskogee, and Coweta. A judge was provided for each by the National Council and dates were set for two sessions annually in each district. Regular sessions were held for civil cases but criminal cases were decided upon the arrest of the prisoner. If a witness should swear falsely, upon conviction, he received fifty lashes and was debarred from holding any office of trust or profit in the Nation.¹⁶

The Harjo (or Sands) party were continually giving trouble to the Creek government. Negotiations were made for a treaty and delegates were sent to Washington during the latter part of 1868. Not to be outdone, the Harjo party got together a delegation of their own which they sent to Washington to oppose the treaty. This issue served to make the factions more pronounced. The Harjo faction was largely responsible for an increase in the number of violations of the law. More murders were committed in 1868 than in 1866 and 1867 put together. Night meetings were not held because of the fear of serious disturbances. Late in 1869 Captain F. A. Field was appointed agent to replace J. W. Dunn. A detachment from the sixth infantry was ordered to the Creek Nation (evidently upon the request of the National Council.) This detachment quieted the excitement and remained at the agency to

15. Ibid., pp. 217-18.

16. Ibid., pp. 221-2.

insure peace.¹⁷

Many times the chiefs called upon their agents for help in putting down dissension. In these cases the army was used to save bloodshed. In spite of all their efforts, the Sands party kept going to Washington with their complaints and returning to stir up dissension and strife.¹⁸

Finally, by 1871, when the national election occurred, the Sands faction had become a political party. In summary of this situation, I quote F. S. Lyon, Creek agent:¹⁹

The real issue has all the time been on the one hand constitutional law and order, education, Christianity, and advancement in the arts and sciences, and, on the other, the restoration of the old laws, manners, and customs drifting back toward the dark past. Thus, during the past four years, this disturbing element, like smoldering embers, has been waiting for another election, that it might be fanned into flame which should consume everything that opposed its progress. Knowing that this faction was strong and numerous against the present Creek government, standing aloof from its laws, and thus, at times, producing derangement and disorder in its machinery, some weeks previous to the election I wrote its leaders, giving advice and directions, so that everything might pass off peacefully and in quietude. - - - I then foresaw the trouble, being almost sure that Sand and Catchuchee were determined to make a desperate effort to seize the government and reinstate the old Creek laws.

This determination became more fully apparent when, three days previous to the meeting of the Creek Council, parties which had been quietly gathering in their respective neighborhoods began to appear in arms around Okmulgee. On Monday morning, October 2, the day before the council was to assemble, three hundred of the faction

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17. Report of the Commissioner of Indian Affairs, 1869, pp. 413-15.
 18. House Executive Document, No. 1449, pp. 761-2.
 19. Report of the Commissioner of Indian Affairs, House Executive Document, No. 1505, pp. 990-1.

marched into Okmulgee, drove out those who had charge of the council-house, took possession, announced Catchuchee as principal chief, and proceeded with initiatory steps to organize their newly constituted government, keeping possession nearly the whole day. The Chief Checote meanwhile had ordered the stores to close, and non-combatants, with women and children, to leave town. I had previously sent a message to him to use no force except as a last resort. I left Creek Agency on Monday morning, and when eight or ten miles away, was met by special messengers from both sides with the assurance that my presence alone could prevent bloodshed. I arrived about 6 o'clock in the evening, and found both factions in camp, with men armed, horses saddled, and pickets set. There were about 700 for the defense of the government, and about 300 in opposition. I drove into each camp, and found a wish for peace, but a determination to maintain at all hazards, what each considered its rights. Pledges were taken from the leaders that neither party should fire the first hostile gun; and these pledges were faithfully kept. The stores were opened the next morning, and during the day the regular council of the Nation met and organized, a quorum being present, without interruption. Six or eight from each party gathered for a peace conference, which assembled each half day for several days; and, by working outside all the time the conference was not in session, I finally succeeded in laying the foundation, it is generally believed, of a lasting peace. - - - I think the affair has been managed to the satisfaction of both parties, and trust that there will be hereafter more unanimity in feeling and action. - - By special act of council, granting discretionary power to the committee appointed to count the votes cast, a majority result was attained, and the leaders of the disturbing element, who had fancied that a majority held with them, were fully satisfied that justice was done, though Checote was declared to be elected as a principal chief, and Micco-Hut-Kee as second chief, for the next four years.

In 1872 this flame of discord was rekindled by two white men who came into the nation. The faction which gathered as a result of their efforts was quickly dispersed, however, because a larger group gathered to defend the government. The

Department of Interior sent an Investigating Committee to the Creek Nation to learn the causes of the insurrections and recommend measures to prevent them.²⁰

In retaliation of the conditions of the times a number of laws were passed when the council met in 1872. One prohibited meetings and conventions, and secret movements, having for their object the prevention of the execution of law. For which violation one hundred lashes were to be given on the bare back of the offender. Another provided fifty lashes for any person who should petition a foreign power to overthrow the constitutional government. Provision was made for the protection of the lives of the officials of the nation; setting a fine of \$100 or one hundred lashes for anyone who should be found guilty of threatening or attempting to take an officer's life. Besides these, there were a number of civil laws pertaining to property which are important. No individual held land in fee simple. The only claim the Creeks had to tribal lands was established by improvements. One law enacted this year provided that places which had been vacated without fencing, or houses, for a term of five years, should be liable to settlement and improvement by any citizen of the nation. And later, any citizen who might settle upon such places should have all the rights to them as though they never had been settled before.²¹

In 1870 there had been an attempt to adopt an interne-

20. Ibid., 1872, pp. 239-40.

21. Senate Reports, No. 2363, p. 255.

ional constitution for all the Indian tribes in the Territory. The general council had met at Okmulgee and had formed a constitution, but the legislatures of the various tribes in the territory could not be prevailed upon to ratify it. The Creeks had ratified it and were in favor of union with the other tribes because they were of the opinion that it would result in better conditions for them. It was recommended that the Federal Government establish some kind of court for the regulation of their international affairs. The United States district court at Fort Smith, Arkansas had jurisdiction of intercourse regulations, but it was so far away that many criminals escaped punishment. The protection of the Indians from the white thieves and buffalo-hunters was very ineffective. This condition was leading to irritation and retaliation among every Indian tribe.²²

Locer Harjo was elected principal chief in 1875 but was impeached and replaced by Ward Coe, second chief, the next year. It is said that this impeachment was brought about by the Checote party which had been unsuccessful in the election. Personalities seem to have controlled the politics after this date.²³

In 1876 the United States Senate arranged for a committee to investigate the condition of the Indians in the Indian Territory. This report reveals some very interesting facts. Three questions were asked to everyone interviewed.

22. Report of the Commissioner of Indian Affairs, 1874, P. 11.

23. Ibid., 1877, p. 110.

They were as follows: (1) Are the people in favor of allotting the Creeks lands in severalty so each one can hold lands in fee simple? (2) Are the Creeks in favor of changes in government making the Creek Nation a part of a territory? (3) Are the Creeks ready to become citizens of the United States? Including those examined were farmers, members of the National Council, and other officials of the Nation. The unqualified opinion of nearly everyone was that the Creeks did not wish to have the lands allotted in severalty because they felt that most of the Indians were not educated well enough to prevent their being taken advantage of by the land sharpers. There was also a general distrust of such procedure because they had experienced the land allotment system in Alabama and had been deprived of their lands by unscrupulous white men. The people seemed to be satisfied with their mode of government and wished to remain as they were. The laws were well administered and there was harmony in the Nation. The Creeks expressed a strong loyalty to the United States, but they did not feel as though they were prepared to become citizens of the United States. Besides these three topics, the investigation revealed a number of other facts. The House of Kings then consisted of 49 members and the members of the House of Warriors numbered 97. The salaries of the members of the National Council had been raised to \$4 per day while in session. The sessions usually lasted about a month and approximately \$20,000 was expended for governmental functions each year. This sum did not include money expended for education. The expenditure for this item varied from

twenty to thirty thousand dollars annually. The treasurer, George Crayson, kept account of only the money on hand. Disbursements were proven by presenting vouchers to the National Council once each year. All claims were presented in the form of warrants which, when paid, became vouchers for showing how the money was spent. The auditor took these cancelled drafts, checked the balance, and reported his audit to the National Council. A number of the members of the council were Negroes and a Negro occupied one of the seats of the High Court.²⁴

The High Court judges met once a year at Okmulgee to hear both criminal and civil cases where the issue was over one hundred dollars. Each judge then received a salary of five dollars per day while in session. The punishment in crime or criminal cases was nearly always fifty lashes for the first offense, one hundred for the second offense, and death for the third. Larceny was punished in this manner and the death penalty was inflicted by rifle. There were no jails, prisoners were put in chains or locks and guarded by the light horse until trial could be arranged. The usual capital offense was murder. The district judges were paid a salary of two hundred dollars a year and were subject to criminal duty any time anyone should be arrested by the light horse. In civil matters, of course, they awaited the regular scheduled date which occurred twice a year as provided by law. If a jury of twelve found that a prisoner was guilty of a crime, the judge had no discretion to exercise in regard to the sentence. The law was carried out to the let-

24. Senate Reports, No. 1839, pp. 672-734.

ter.²⁵

Ward Coachman, Principal Chief, lived about thirty-five miles from Okmulgee. When a council was not in session, he would visit the capital only once a week. His private secretary remained at the capital full time in order to transact the routine business. According to the constitution no cabinet was provided the principal chief, but Ward Coachman made it a rule to call together prominent men of the Nation for consultation upon matters which affected the whole people. He usually took the advice of this group before he made a decision upon any important question.²⁶

The council adopted sixty-seven persons into the tribe in 1878 and made rules for further adoptions. Most of these adopted were freedmen, as, by treaty, they were not allowed to adopt white persons.

At this date the practice of law was not a well founded profession. Licenses were issued by the judges upon the payment of fees. It was the duty of the judges to determine and pass on the qualifications of persons before issuing them commissions. There were no law books such as Blackstone and Kent. The Creek law was published in English and Creek for those who wished to study it. Sometimes a judge would be chosen who had never read the laws. Upon his appointment, he was given a copy of them and so began his study.²⁷

25. Ibid.

26. Ibid.

27. Ibid.

By a previous treaty the Creeks had an income from the Federal Government to support their institutions. Also, there was revenue from licenses and rentals. Traders were required to pay a license fee of one hundred dollars each. Laborers used in a Nation were required to pay a fee of one dollar per month, also others who held rentals (non-citizens.) With the advent of the railroads, the Council passed a tax of five cents on each cross-tie taken for construction. This act was amended by 1878 and provided a tax of ten cents on each cross-tie and fifteen cents on each telegraph pole in order to abate the taking of excessive quantities of timber.²⁸

In 1881 additional funds were provided for the Creeks. The United States Government enacted a law authorizing the payment of \$175,000 for the Creek land occupied by the Seminoles and a like sum for 175,000 acres of land upon which the Sac and Fox Indians were to reside.²⁹

Perhaps the most spectacular rebellion against constitutional authority was that which is known as the Green Peach War. An account by the Indian agent, Tufts, reads:³⁰

In July last a mob of Creeks attempted to rescue a prisoner from an officer of the Creek Nation, and in the melee two Creek officials were killed. The Chief ordered the murderers arrested. The arrest was resisted by the friends of the criminals who collected quite a large body. The Chief called out about 1,200 citizens to aid in enforcing the law. Most of the criminals were arrested and the rest left the nation. Nobody was killed during the "war", but little excitement existed except among

28. Ibid.

29. Report of the Commissioner of Indian Affairs, 1882, p. 54.

30. Ibid., p. 90.

the newspaper correspondents.

The Creek agent's report seemed to pass this incident off as of little importance, but it proved to be otherwise. With the arrest of many more, the disturbances continued until on January 8, 1883, the Creek government appealed to the Department of Interior for protection from domestic strife as was provided by the treaty.³¹

The leader of this rebellion was recognized as Chief Isparhecher (called by the Indian, Spiechee) who had long been a member of the non-progressive element, opposing constitutional government seemingly because of the lack of success in political campaigns.

The National Council had passed a general amnesty act by October 16, 1882 which provided as follows:³²

That to receive the benefit of this amnesty it shall only be necessary for the parties charged with violation of law or guilty of political offense to appear before the judge of the District Court for the District in which he resides and take an oath to support the Constitution and obey the laws of the Muskogee Nation.

Three days later the Council appropriated funds to pay 1,200 men who had served eight days as a special force to abate the insurrection.³³

The Creek agent was able to report, during September of 1883, that the rebellion, which had lasted about a year, had ceased, and that Isparhecher and his men were again quiet cit-

31. J. B. Meserve, Chief Isparhecher, Oklahoma Chronicles, X, pp. 60-1.

32. Ibid., p. 63.

33. Ibid.

izens of the nation. The Department of Interior had sent a delegation to treat with the Isparhecher faction, and in accordance with the act of amnesty, before mentioned, it had succeeded in bringing about a settlement for all crimes and offenses which had grown out of the rebellion.³⁴

In the election of 1883 there were three men for the position of Principal Chief. The two highest were J. M. Peryman, of the Constitutional party, and Isparhecher of the opposition. Neither of these two received a clear majority and so they dissatisfied, both thinking he had won. In the heat of the argument, instructions were sent from the Department of Interior, which had sponsored an investigation, that Peryman should be recognized as Principal Chief of the Muskogee Nation. The Department had reached this conclusion because it appeared that Peryman had received a plurality of the votes cast, which plurality was taken to mean the same as a majority in the Creek language. Secondly, Peryman had been recognized by the Council and sworn in the prescribed manner. Isparhecher had been sworn in by the council at a later meeting, but the Department considered his holding the office as without authority. Nevertheless, the Council showed its regard for Isparhecher by voting him \$1,227.25 for his troubles.³⁵

By 1885 the supreme court had, by practice, quit conducting criminal trials. The district courts took care of

34. Report of the Commissioner of Indian Affairs, 1883, p. 88.

35. J. B. Meserve, Chief Isparhecher, Oklahoma Chronicles, X, pp. 69-70.

all criminal cases. As a result of its unimportance the salaries of the supreme judges were cut from \$5 to \$3 per day while in session. The general opinion of the people was that the tribal courts should be supplemented by a United States court located in Indian Territory. Such a court, they thought, would provide for and prevent many whites from taking advantage of ignorant Creeks. Non-citizen whites were not subject to the jurisdiction of the Creek courts, whereas, the same whites could bring suits in the tribal courts to collect debts and even enter complaints against the Indians. The Creeks believed that if a court similar to the United States district court at Fort Smith were established in the Indian Territory to take care of the whites that a great deal of the crime committed could be prevented.³⁶

Even by 1885, there was no provision made in the law of the Creeks in regard to the marriage ceremony. If a white man should come into the nation and desire to marry a Creek woman and she consented, there was no law to prohibit the union. The only regulation the Creek government made was that the white man should first have a certificate or character. This regulation was not strictly held to, however, and marriages were made without the consent of any authority. If a non-citizen white man married an Indian woman, he was entitled to joint occupancy of the lands in the Creek Nation. Such a man (or woman) enjoyed all the privileges of other citizens except participation in the annuities, voting

36. Senate Reports, No 2363, pp. 168-210.

or holding office, and final participation in the lands. In case a non-citizen, so married, moved out of the nation he had no right to sell the improvements which he had made on any property. The issue of such a marriage were considered citizens of the Creek Nation. And further, if any person claimed to be a child of a deceased male citizen, he would have to prove that he had been recognized by the deceased in order to be entitled to any share in the estate of the deceased.³⁷

A majority of the probate matters were left to the district courts. It was the duty of the judge of the district wherein a deceased person had resided to appoint administrators and require bonds of such persons. The estate was appraised by the judge and two persons having no interest in the estate. The judge required reports of the administrator from time to time in order that justice should be done. The acknowledged wife of a deceased husband was entitled to one-half of the estate, if there were no other heirs, and an heir's part, if there were other heirs, in all cases where there was no will. A like provision was made for the husband surviving a deceased wife.³⁸

Probably the greatest marital development of this period was that which prevented incestuous marriages. It was provided that no intermarriages of blood relations among the citizens of the Muskogee Nation should be considered legal.

37. Ibid., Appendix, pp. 213-237.

38. Ibid., pp. 235-6.

Also, any citizen of the Creek Nation who should marry such as were related to him by blood, should, upon conviction, receive fifty lashes upon the bare back.³⁹

The relation between an officer and a prisoner was provided for in an equal manner. Persons who should resist, abuse, or injure any officer of the nation when in the legal discharge of his duty, were to receive not less than twenty-five or more than one hundred lashes upon the bare back. On the other hand, it was provided that any officer who should exceed his duty by abusing a citizen should, upon conviction, be removed from office and compelled to pay the injured party not less than twenty-five dollars or more than one hundred dollars. We note here a development in regard to the courts. The judge, in each case was allowed the freedom to use his discretion in determining the severity of the punishment.⁴⁰

The Creek delegation, which met at Eufaula to consider negotiations of the United States Government in regard to opening Oklahoma Territory and the Cherokee Strip, expressed a favorable attitude but wanted more definite provisions made as to the status of that territory. The Creeks had opposed for some time the settlement of this territory by the white people, and, because of their alliance with the Seminoles, were reluctant to act upon proposals made by the United States Government.⁴¹

39. Ibid., p. 223.

40. Ibid.

41. Report of the Commissioner of Indian Affairs, 1886, pp. 159-60.

By 1886 a police force had been established which consisted of 43 Indians living throughout Indian Territory. The Federal Government paid each member of this force \$8 per month. Each man had to furnish his own horse and expenses out of his salary. This force proved to be a help in hunting refugees from justice and arresting men who would otherwise escape. The Creeks profited by this organization along with the other tribes.⁴²

The general election of 1887 in the Creek Nation reflected the change of feeling among the Creeks. There were three main parties, namely; the Muskogee Party, the Union Party, and the Independent Party. The Muskogee Party which was in power upheld its policy in regard to previous legislation and relations with the United States. The third named party expressed as its platform a retrenchment policy, inviting both factions to join hands for peace and prosperity. The Union Party won the race upon a platform advocating an international compact of the tribes, prompt removal of intruders, and a demand that the United States Government strictly observe the terms of the treaty of 1866 in regard to the "Oklahoma Land." Their candidate, L. C. Peryman, took the position of Principal Chief of the Muskogee Nation.⁴³

42. Ibid., p. 160.

43. Ibid., 1887, pp. 103-5.

CHAPTER IV

THE EXTINCTION OF TRIBAL GOVERNMENT

In 1889 a new era began. Congress passed a law establishing a United States Court at Muskogee. The move that the Creeks had long contemplated had been made. The act, as passed March 1, declared:¹

That the court hereby established shall have exclusive original jurisdiction over all offenses against the law of the United States committed within the Indian Territory. - - - in civil cases between citizens of the United States who are residents of the Indian Territory, or between citizens of the United States, or any state or Territory therein, and any citizen of or person or persons residing or found in the Indian Territory, - - -.

This act left the tribal courts only jurisdiction to decide cases between persons of Indian blood. The wedge had been started; and now, Congress could pass laws to follow up and get efficient results.

Because of intense opposition, little had been done by the Federal Government to have the lands allotted in severalty. When the Creeks were questioned, they avoided the issue and would not discuss the matter. The greatest opposition to this policy was born from the apprehension that allotment would mean the dissolution of tribal autonomy.²

An example of the effectiveness of the United States court at Muskogee was seen in the handling of the Wesley Barnett gang. Barnett had gathered about him several young

1. Kappler, op. cit., I, pp. 39-43.

2. Report of the Commissioner of Indian Affairs, 1889, p. 204.

Creek Indians who led them to whiskey-selling, robberies and murders. This band took possession of the National Council House, at Okmulgee and broke up a religious meeting in progress there. When they were at last expelled, a guard was provided to protect the capital from another invasion. A posse was organized to hunt down these outlaws. At first, this group had many sympathizers, but as their killings continued there grew an extreme pressure against them. Barnett was killed in an attempted arrest. Four of the gang were convicted in the United States court and received long prison terms.³

The question of land Allotment was ever at issue. The Creeks realized that each year they postponed the matter they would have less land when the allotments were made. A bill was discussed in the National Council in 1891, which would provide homesteads for the citizens of the nation. It was an urgent matter, in view of the fact that intruders were occupying the land. The Indian agent reported in 1892 as follows:⁴

Numerous gatherings of the Indians have been held in different parts of the nation during the past summer, protesting against the monopolizing of lands for pasturage by a few as against the interest of the many and will bear fruit in legislation for their relief, and the initiatory action taken by their last council would indicate that such legislation will be a further advance in the right direction.

The National Council approved an act for the revision

3. Ibid.

4. Ibid., 1892, p. 250.

and codification of the laws of the nation on October 15, 1892. The Principal Chief was authorized to appoint a citizen for this purpose. One thousand copies were to be printed. Each officer of the Nation and each Town King were to receive one volume free of cost.⁵

The constitution had not been amended but a number of supplementary laws had been added. The salary of the Principal Chief had been raised to twelve hundred dollars and that of his secretary to four hundred dollars. Provision had been made for a license tax collector who was allowed 15% of all fees collected. A unique way of handling protests against admission of persons supposed to be elected was provided. Any protest, to be accepted, must be accompanied by fifty dollars. If the protest proved unsuccessful, the money was forfeited to the treasury. On the other hand, if the protest proved valid, the money was returned to the protestor.⁶

A number of civil laws showed revision. There was an employer's liability act, which provided that employers of laborers should not be liable for injuries of his employees while at work. Borrowers were to be held liable for damages and losses of property while in their possession. An elaborate list of licenses was provided. Taxes were required only of non-citizens in business in the Creek Nation. Hotels, printing shops, mills, livery stables, blacksmith

5. McKellop, op. cit., pp. 1-23.

6. Ibid., pp. 23-33.

shops and etc. were charged an annual tax.⁷

The criminal code listed misdemeanors and crimes, the principal difference being the seriousness of the offense and the mode of punishment. In high crimes the lashes were administered, whereas, for misdemeanors only fines were levied. The destroying of pecan trees was considered a misdemeanor and was punishable by fine of twenty-five dollars. It was provided that if anyone should cut timber or sell it for the purpose of removing it from the nation, such person should be guilty of a misdemeanor and was subject to a fine of not less than one thousand dollars or more than five thousand dollars. Persons owning or renting gins were supposed to keep them fenced off during the ginning season or be fined fifty dollars. Gambling was prohibited by a provision which set a fine of from fifty to one hundred dollars.⁸

On October 22, 1891 a law had been promulgated which provided for marriage and divorce. It was the first law which placed governmental regulation upon these subjects. Previous marriages were recognized, but new marriages had to be performed by judges or ministers. Bigamy was prohibited and incest voided the contract. Contracts of marriages were signed by two witnesses. The district courts were to adjudge divorce upon the grounds of adultery, willful desertion and neglect for a term of one year, and extreme cruelty. Minor children were taken care of at the dis-

7. Ibid., pp. 56-89.

8. Ibid., pp. 59-63.

cretion of the court.⁹

By 1895, the land situation in the Creek Nation was aggravated by a monopoly. The nation then owned over three million acres of land, and of this 1,040,200 acres were held under fence for the use of various corporations, made up of some sixty-one persons. This condition had been permitted by the "contract pasture law" of the Creek Nation. This law provided that any citizen or company of citizens would have the right to build pastures larger than one mile square by securing the consent of the citizens residing within such inclosure. And, all parties entering into contracts with the principal chief for the building of such pastures should pay an annual tax of five cents on every acre. There was no limit to the size or area of such pastures. The persons holding such contracts would sublet or lease them to foreign corporations or individuals. A number of Texas ranchers drove their herds to pasture in the virgin grasses of the Creek lands.¹⁰

The Creek national election of 1895 was the first general election to be held by ballot. Isparhecher was elected principal chief by a large plurality. Nearly all the Indians voted for him because he opposed allotment, large pastures, and was recognized as able and extreme in his views; he had long opposed liberalism and advancement, and so, was feared

9. Ibid., pp. 108-9.

10. Report of the Secretary of the Interior, 1895, II, p. 159.

by the progressives.¹¹

By July 15, 1896, the Dawes Commission had spent one year of fruitless labor, trying to negotiate with the Five Civilized Tribes. It was the conclusion of the Commission that Congress should assume at once political control of the Indian Territory. The Commission recommended legislation as follows:¹²

(1) A territorial government over the Five Civilized Tribes, adopted to their peculiarly anomalous conditions, so framed as to secure all rights of residents in the same, and without impairing the vested rights of the citizen Indians or other persons not intruders.

(2) The extension of the jurisdiction of the United States courts in the Territory, both in law and equity, to hear and determine all controversies and suits of any nature concerning any right in or use and occupation of the tribal Indian or other person, or tribal government of any nation, is or may be a party plaintiff or defendant.

The recommendations of the Commission were eventually carried out by Congress. The courts of Indian Territory were invested with full and exclusive jurisdiction over all crimes committed therein. The Dawes Commission, thus encouraged, continued its work. It had been empowered to hear and determine the applications of all persons who applied to them for citizenship in any of the nations; and, after hearing such cases, they determined the rights of such persons and made up the rolls.¹³

11. Ibid., p. 164.

12. Ibid., pp. 988-9.

13. Ibid., 1896, pp. 151-2.

An act of June 28, 1898, provided for the allotment of the lands, surveys, appraisals, and town sites. Section 28 provided that all the tribal courts in Indian Territory should be abolished by July 1898. In the case of the Creeks and two other tribes, provision was made which allowed their courts to continue until October of the same year.¹⁴

The Dawes Commission was given the duty of getting the acquiescence of the various tribes. The Creeks had gotten together a delegation which met with the Commission and concluded an agreement. Ratification by the popular vote was desired and Chief Isparhecher consented to make this move. He wanted to wait, however, until after the National Council had convened, so that it would have a chance to prescribe rules and regulations. He also desired that the questions involved should be fully discussed by his people before the final vote.¹⁵

On May 25, 1901, a majority of the Creek National Council ratified and confirmed an agreement with the United States Government. This agreement provided for the general allotment of lands and confirmed selections of citizens before made and who held certificates of such selections issued by the Commission of the Five Civilized Tribes. It also provided for the laying out and plotting of town sites of all towns having a population of 200 or more.

14. Kappler, *op. cit.*, I, p. 100.

15. Reports of the Department of Interior, 1898, pp. 159-66.

The titles to lands were conveyed by deeds issued by the Principal chief and approved by the Secretary of the Interior. These deeds served as a relinquishment to the grantee of all right, title, and interest of the United States in and to the lands described to them. Such deeds were filed in the office of the Commission to the Five Civilized Tribes when they had been properly executed and approved.

A number of acres were set aside for the boarding schools of the Creek Nation and other missions, one acre each for six court houses with improvements thereon, one acre each for all churches and schools outside of towns not regularly used for such.

Municipal corporations were permitted by this act and were made subject to the laws of the United States in regard to organized territories.

Creek citizens were permitted to rent their allotments for a term of one year when they had made their selection. After receiving a title, they were permitted to rent them without restriction if adjoining allotments were not injured thereby. Cattle grazing upon such allotments was not subject to a tribal tax. A Creek citizen was given the right to sell timber from his allotment, but he had no right to make another selection.

Strict laws were to be maintained by the United States against the introduction, sale, barter, or giving away of liquors or intoxicants of any kind whatsoever. The tribal government of the Creek Nation was not to continue longer than March 4, 1906, subject to further legislation by the

Congress of the United States.¹⁶

The last Creek uprising was led by Chitto Harjo (Crazy Snake.) After the Green Peach War had failed and Isparhecher had retired from public affairs, he became leader of the non-progressive faction. This group of Indians who joined Crazy Snake was greatly reduced from what it had been previous to the allotment act. The fact that they were a small minority of the total Creeks did not lessen their determination to recapture and resume primitive conditions. They thought that they had been wronged by the Government in that it had not kept the treaties of the past. In 1901, Crazy Snake attempted to set up a separate tribal government, but failed. A meeting was held for this purpose at the Old Hickory Stomp Grounds southeast of Okmulgee. This meeting was an absolute failure because Crazy Snake and his companions were arrested, indicted, tried, and convicted in the Federal Court. They were later released on parole.¹⁶

When the commission allotted lands to the Creeks, these "Snakes" Indians refused to make selections. The Commission, therefore, provided each with an arbitrary allotment.¹⁷

16. Meserve, "The Plea of Crazy Snake,"
Chronicles of Oklahoma, XI, pp. 890-911.

17. Ibid.

CONCLUSIONS

The United States Government showed a progressive change in its designs upon the Creek Indians. The successive steps may be outlined as follows:

- (1) Before the Revolutionary War attempts were made to secure their trade.
- (2) During the Revolutionary War their alliance was sought.
- (3) From 1802 to the removal the objective of the United States Government was to extinguish the Creek holdings in the States of Georgia and Alabama.
- (4) After the removal the Federal Government desired to bring to bear all the civilizing forces available to the Creek Nation.
- (5) When intruders became more numerous, the Federal Government sought to bring about the allotment of lands in severalty.
- (6) After allotments were made, settlement and statehood were the main objectives.

The main forces which molded and reshaped the laws and legal institutions of the Creek Indians were:

- (1) Fur traders, who carried the caucasian polity to the Creeks in Georgia and Alabama.
- (2) Caucasians, who went into the tribes, intermarried, and became a political influence.
- (3) Missionaries, whose efforts were jointly sponsored by the church and Federal Government.
- (4) Intruders, necessitating the vigilance of the Federal Government as well as the tribe.
- (5) United States Indian agents, whose leadership introduced the first law and polity.

- (6) The United States Army, which later protected the Creeks from invasion and put down domestic strife.
- (7) The United States courts, that held jurisdiction over Indian Territory.
- (8) Government annuities granted by treaties, which financed Creek political institutions and functions.
- (9) Treaty stipulations, which ultimately led to the extinction of the tribal government.

Four eras present themselves when we consider the change of intent and form of government of the Creeks. They are as follows:

- (1) The era dominated by Alexander McGillivray, in which he represented the legislature, executive, and judiciary for the Confederacy. During this era each town regulated its own affairs, where local in nature.
- (2) The era in which a council of the nation was formed under the leadership of the Indian agent. This era which began in 1799 ushered in the first national law and polity shown to the Creeks.
- (3) The period of transition, in which the influence of the white man's institutions gained a hold upon their political order.
- (4) The constitutional era, which is characterized by the organization of a government similar to the United States Government

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