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A STUDY IN FEDERAL-INDIAN RELATIONS.

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THE UNIVERSITY OF OKLAHOMA

GRADUATE COLLEGE

# THE CIVIL WAR AND THE FIVE CIVILIZED TRIBES - A STUDY IN FEDERAL-INDIAN RELATIONS

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THE CIVIL WAR AND THE FIVE CIVILIZED TRIBES -

A STUDY IN FEDERAL-INDIAN RELATIONS

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## PREFACE

Innumerable scholars have examined virtually every phase of this country's Civil War. One facet of that momentous struggle which has received relatively little attention, however, is the way in which this conflict affected and altered the Federal government's relations with the Five Civilized Tribes of the Indian Territory. As the tide of war swept across the country and the United States abdicated all authority in the Indian Territory, the people of the Cherokee, Choctaw, Chickasaw, Creek and Seminole tribes had little choice except to break their ties with the Federal government and join forces with the South. Gradually this realignment was accomplished, and by the end of 1861 the Five Civilized Tribes, along with a number of smaller tribes, had established treaty relations with the new Confederate government. In the case of the Civilized Tribes, in no instance was total unity beneath the Confederate banner achieved, and by early 1862 the Federal government was faced with the task of sustaining an ever growing number of loyal tribesmen driven from their homes into Kansas by their rebel brethren and white secessionists.

In the long months and years following this exodus, all too often the interests of the loyal Indians were ignored as

politicians and military men connived and fought to advance their own interests and those of their supporters. When hostilities ceased in 1865 the tribesmen of the Indian Territory had sustained losses probably as great as those inflicted on any people during the war. Nonetheless, all--both the loyal and the disloyal alike--were forced to do penance for their "traitorous" behavior by yielding to stringent Federal demands.

The history of this chain of events is as complex as it is unfortunate. If this study sheds some new light on those confusing years, years of great import for the Five Civilized Tribes, it will have fulfilled its purpose.

Any historical work reflects the combined efforts and talents of many people. To my ever patient directing professor, Dr. Donald J. Berthrong, I wish to express appreciation for the invaluable contribution he has made in guiding this study to its completion. I am also indebted to the other members of my committee, Dr. Arrell M. Gibson, Dr. Norman L. Crockett, Dr. Robert E. Shalhope and Dr. Joseph C. Pray, for their services in reading the text and making suggestions designed to make the finished product more worthy.

A special word of thanks must be extended to Mr. Jack Haley, assistant curator of the Western History Collections, University of Oklahoma, for the indispensable assistance which he has provided on numerous occasions. In addition, I owe a great debt of gratitude to the staffs of the following institutions: the Oklahoma Historical Society, Oklahoma City,

the Thomas Gilcrease Institute of American History and Art, Tulsa, Oklahoma, the Kansas State Historical Society, Topeka, and the National Archives, Washington, D. C.

To the following ladies, Mrs. Portia Stokes, Mrs. Ruth F. Shoap, Mrs. Barbara Kirkland and Mrs. Cora Byers, all staff members of the Prescott Library, Louisiana Polytechnic Institute, I express my appreciation for assistance rendered in ferreting out much-needed research materials.

Finally, a few personal words. To my mother-in-law, Mrs. Helen Hill, I wish to extend my deepest gratitude for moral and financial support without which this project could not have been sustained. To two young gentlemen, David and Brooks, I express thanks for their long-suffering patience in putting up with only half a father for over a year. And to my devoted helpmate and wife, Evelyn, I owe a debt for which mere words are a totally inadequate recompense. Her always strong and courageous arm of support guided me through numerous tribulations which alone I never could have overcome.

S.D.B.

# THE CIVIL WAR AND THE FIVE CIVILIZED TRIBES - A STUDY IN FEDERAL-INDIAN RELATIONS

## CHAPTER I

## INTRODUCTION: WHITE MAN AND INDIAN

The problems facing the white man when he reached North America were legion. Foremost among these was the necessity of resolving conflicting European claims to the continent. Arriving first the Spanish claimed all of North America, an assertion based upon Alexander VI's bull of May, 1493. But as Sir Walter Raleigh later observed, papal bulls could not gore nearly so well as they could bellow. Refusing to respect the sanctity of the Pope's decree, other European powers eventually staked out footholds in the Spanish domain. Spain's inability to repulse the intruders necessitated the formulation of some principle whereby conflicting claims could be resolved and perpetual war avoided.[1]

In terms of strict legal niceties, this problem was

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[1]Wilcomb E. Washburn, "The Moral and Legal Justifications for Dispossessing the Indians," Seventeenth Century America, ed. James Morton Smith (Chapel Hill: University of North Carolina Press, 1959), pp. 17-18.

never resolved. A principle gradually emerged which held that discovery gave title to the government by whose subjects or by whose authority it was made. To this principle the British added a corollary, known as the doctrine of effective occupation which argued that areas not actually colonized were open to anyone for the taking. Still, the question of conflicting claims remained unresolved, and the maritime powers thus resorted to Machiavellian tactics, settling their rivalries as often as not through force of arms rather than jurisprudence.[2]

A problem of equal perplexity and magnitude was that of living with the Indian inhabitants of North America, and none of the powers dealt with this problem in exactly the same manner. While it is extremely difficult to make accurate generalizations on early European-Indian relations, it appears that the English colonists soon concluded that the Indian had a title to his lands based on actual use, a claim that could not be summarily dismissed if constant warfare was to be avoided. While English colonists were by no means always scrupulous in observing this right, the colonial period is not without examples of English attempts to deal

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[2]Opinion of John Marshall in Johnson and Graham's Lessee vs. McIntosh, 8 Wheaton, p. 573; Max Savelle, The Origins of American Diplomacy: The International History of Anglo-America, 1492-1763 (New York: The Macmillan Co., 1967), pp. 27-28.

fairly with the Indians. Contrary to popular myth, the settlers of New England made attempts to treat the area's native inhabitants justly, and the crown on its part did not as a rule interfere with the internal affairs of the tribes. Actions such as these, however, produced no era of permanent peace between Englishmen and Indian. The greed of white colonists, the clash of alien cultures and, on occasion, Indian militancy combined to produce decades of intermittant conflict throughout the English colonies.[3]

After the outbreak of revolution in 1775, the Continental Congress quickly attempted to assume control over the Indians living east of the Mississippi River. Recognizing the military necessity of maintaining the friendship of these tribes, the Continental Congress on June 16, 1775 established a five member committee of Indian affairs. The following month Congress established three Indian departments--the northern, middle and southern departments--and provided that commissioners were to be appointed to superintend the affairs of each.[4] These initial efforts were followed by the negotiation of a treaty with the Delawares

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[3]Alden T. Vaughn, New England Frontier Puritans and Indians 1620-1675 (Boston: Little, Brown, 1965), pp. 93-154, passim; William T. Hagan, American Indians (Chicago: University of Chicago Press, 1961), p. 8; opinion of John Marshall in Worchester vs. the State of Georgia, 6 Peters, p. 547.

[4]Journals of the Continental Congress, (Washington: Government Printing Office, 1904), II, pp. 93, 174-75.

in 1778 and the signing of similar agreements with the Wyandots, Chippewas, Cherokees, Choctaws and Creeks, to name a few, in the immediate post-war period. In these pacts the Indians generally acknowledged themselves to be under the protection of the United States, tribal domains were delineated in great detail, and United States citizens were prohibited from settling on those lands reserved for the tribes. The Indians on their part relinquished all claims to those lands not within the boundaries spelled out in their respective treaties.[5]

Unfortunately, pledges of protection and friendship and the circumscription of tribal domains did not bring lasting peace between the white man and the red. The Americans, like their British predecessors, were plagued by numerous disputes, quarrels and conflicts, and in the face of these troubles some individuals began searching for a way in which the Indian and his white neighbors might peacefully occupy the same continent.

In 1803 a possible solution to the Indian question presented itself when the United States acquired the Territory of Louisiana from France. Perhaps part of this vast trackless

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[5]Charles J. Kappler (ed.), Indian Affairs, Laws and Treaties. (Washington: Government Printing Office, 1903), II, pp. 1-12, 19-25 (hereafter cited as Kappler, Laws and Treaties, II).

wilderness might be set aside for the resettlement of the Indian, leaving the area east of the Mississippi for the white man. In trying to reconcile the purchase of Louisiana with his strict constructionist views, President Thomas Jefferson sketched a proposed amendment to the Constitution defining the newly acquired territory's status. The provisions of this amendment clearly reveal that Jefferson envisioned using at least some of this new domain as an Indian reserve, for it granted Congress the authority "to exchange the right of occupancy in portions where the U. S. have full right for lands possessed by the Indians . . . on the East side of the Mississippi. . . ."[6]

This amendment never became part of the Constitution. Jefferson's ideas on the Indian question must have carried weight, however, for the Louisiana Territorial Act of 1804 contained a provision empowering the President to begin removal negotiations. Subsequent treaty talks were held on the question of resettlement, and as early as 1808, tribes from both north and south of the Ohio River had begun emigrating to the West. There they settled in a rather vaguely defined area known as the "Indian Country" encompassing

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[6]Quoted in Everett S. Brown, The Constitutional History of the Louisiana Purchase 1803-1812 (Berkeley: University of California Press, 1920), pp. 38-39.

much of present day Missouri, Arkansas, Kansas and Oklahoma.[7]

At best this early removal program was a haphazard, poorly coordinated affair. Still, to national leaders it seemed that the best solution to the Indian question would be the resettlement of the Eastern tribes in areas west of the Mississippi uninhabited by the white man. President James Monroe in a message to Congress in January, 1825, voiced unqualified support of the proposal, an opinion concurred in by Secretary of War John C. Calhoun. But it was not until the administration of Andrew Jackson that the program of Indian removal and resettlement began in earnest.[8]

In his inaugural address of March 4, 1829 Jackson promised to deal fairly and liberally with the Indians. Jackson's position, however, as a strong supporter of the states that desired removal was already well known, and in his first annual message in December, 1829 he asked Congress

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[7]Walter Lowrie and Walter S. Franklin (eds.), American State Papers. Class II: Indian Affairs, II, pp. 124-25 (hereafter cited as American State Papers, II); A. M. Gibson, Oklahoma A History of Five Centuries (Norman: Harlow Publishing Corp., 1965), p. 71 (hereafter cited as Gibson, Oklahoma); Luther B. Hill, A History of the State of Oklahoma (Chicago and New York: The Lewis Publishing Co., 1908), I, pp. 23-36 (hereafter cited as Hill, State of Oklahoma, I).

[8]Grant Foreman, Indian Removal The Emigration of the Five Civilized Tribes of Indians (Norman: University of Oklahoma Press, 1953), p. 7 (hereafter cited as Foreman, Indian Removal); American State Papers, II, pp. 541-44.

to consider the propriety of setting aside an ample district west of the Mississippi for the occupancy of the Eastern tribes. In keeping with Jackson's views Congress, after a bitter debate, in May, 1830 enacted the Indian Removal Act, placing in the President's hands the authority to proceed with the removal of the Eastern Indians from their ancestral domains. Agents of the administration quickly fanned out through the country from the Gulf to the Great Lakes calling Indian leaders into special councils where they were gorged with pork and beef, plied with whiskey and promises and urged to move west. The weaker and more primitive tribes of the North yielded with relatively little resistance to the blandishments of the whites, but the Jackson administration encountered more difficulty in dealing with the Cherokee, Choctaw, Chickasaw, Creek and Seminole tribes of the South.[9]

In part, the trouble which the Federal government had in negotiating with these tribes was of its own making. Since Jefferson's administration the government had tried periodically to persuade these people to emigrate across the Mississippi. At the same time, however, it had paid agents and subsidized missionaries who encouraged the Indian to adopt the white man's ways. With the exception of the fierce and relatively isolated Seminoles, the major Southern tribes

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[9]Foreman, Indian Removal, pp. 21-22; James D. Richardson (ed.) A Compilation of the Message and Papers of the Presidents (Washington: Bureau of National Literature and Art, 1909), II, pp. 438, 458.

proved receptive to these inducements. From the missionaries of various Protestant denominations, hundreds of Indian children in the decade following the end of the War of 1812 received training in the agricultural, mechanical and household arts. Schools and Christian churches were established, constitutions and legal codes drafted, some Indian farmers began fencing off their lands, and a number of the more affluent acquired that ultimate accouterment of Southern civilization, Negro slaves.[10]

This advancement in the arts of civilization proved embarrassing to the Jackson administration in more than one way. Jackson and his contemporaries usually attempted to justify Indian removal by trumpeting the alleged superiority of a farming to a hunting culture. This rationalization might have some ring of authenticity as long as those Indians being displaced were wandering nomads, but its authority was substantially reduced when applied to the tribes of the South. By 1830 these people were agriculturists as well as hunters and could not be classified as nomadic savages. In addition, their growing sophistication and familarity with the white man's institutions made it possible for the leaders of these

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[10]Mary E. Young, "Indian Removal and Land Allotment: The Civilized Tribes and Jacksonian Justice," American Historical Review, LXIV (October, 1958), pp. 32-33 (hereafter cited as Young, "Removal and Allotment," AHR, LXIV); Angie Debo, And Still the Waters Run (New York: Gordian Press, 1966), pp. 3-4 (hereafter cited as Debo, And Still); Edwin C. McReynolds, The Seminoles (Norman: University of Oklahoma Press, 1957), p. ix.

tribes to parry effectively with Federal negotiators.[11]

The process whereby the Jackson administration ultimately secured the removal of the five Southern tribes is a topic of enormous complexity beyond the scope of this study. Suffice it to say that through a combination of cajolery and threats these Indians gradually signed removal treaties, beginning with the Choctaws in September, 1830 and concluding with the Cherokees in December, 1835.[12]

The subsequent trek to the West was not without its costs, the most obvious of which were the miseries and deprivations which the migrants endured. In the removal of the Southern Indians, the magnitude of the undertaking was never fully comprehended by either Congress or the Jackson administration. Thus, the careful planning and genuine compassion which the adoption of such a novel enterprise should have elicited were rarely, if ever, in evidence. Inadequate preparation by the government combined with the appointment of a horde of political incompetents to posts of

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[11]Young, "Removal and Allotment," AHR, LXIV, pp. 30-34; Debo, And Still, pp. 4-5.

[12]Kappler, Laws and Treaties, II, pp. 221, 247, 249, 259, 264, 290, 324. The best general study of the removal of the Southern tribes is Grant Foreman's Indian Removal. For a more specialized account of certain facets of the removal question, especially the role played by white land speculators, see Young's "Removal and Allotment," AHR, LXIV, pp. 31-45 and the same author's article "The Creek Frauds: A Study in Conscience and Corruption," Mississippi Valley Historical Review, XLII (December, 1955), pp. 411-437.

authority resulted in woeful mismanagement and cruel and unnecessary suffering by the emigrants. As one historian of the five Southern tribes has observed, much suffering was perhaps inevitable, but much could have been avoided by considerate and skillful preparation.[13]

The Southern migrants who survived the horrors of removal settled within the confines of present day Oklahoma. In this new land of great beauty and vast potential wealth the former tribes of the South re-couped their fortunes and made such remarkable social and political progress that in the years preceding the Civil War they became known as the Five Civilized Tribes. After the organization of the Kansas and Nebraska territories, in the turbulent 1850's, the area which they occupied acquired the title of the Indian Territory. The area inhabited by the Civilized Tribes was a territory only in an informal sense, however, for while numerous bills were introduced in Congress in the ante bellum period providing for the establishment of a formal territorial government for these people, none passed.[14]

The existence of the Civilized Tribes in the West was not completely devoid of hazards and difficulties. Amicable relations had to be established with the indigenous tribes of the area such as the Osages, Kiowas and Comanches,

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[13]Foreman, Indian Removal, p. 8.

[14]Debo, And Still, p. 5; Hill, State of Oklahoma, I, p. 21; Ira G. Clark, "Attempts to Form an Indian Confederation in Oklahoma" (Unpublished M.A. thesis, University of Oklahoma, 1937), pp. 1-14.

some of whom had threatened to exterminate the newcomers. Boundary lines separating the lands of the former Southern tribes had to be agreed upon and lands set aside for some of the smaller non-indigenous tribes settled in the area.[15]

Perhaps the greatest of the problems to be faced was intra-tribal friction growing out of the dichotomy of interests and outlook of the full-blood and half-blood Indians. Long before the Civilized Tribes were forced from their ancestral homes in the East, with the exception of the Seminoles, intermarriage with the whites had become quite common. The children of these mixed marriages as a rule more willingly accepted the white man's ways while the conservative full-bloods generally wanted to preserve their ancient tribal customs.[16]

The removal controversy exacerbated these opposing viewpoints. The mixed-bloods, with some exceptions,[17] were generally more willing to abandon their traditional homes than were the full-bloods. The mixed-blood, full-blood controversy was evident to some extent in all the tribes, but it was especially acute in the Creek and Cherokee tribes. Before the Creeks at last agreed to removal full-scale civil war very nearly developed between the conservative, full-blood Upper Creeks led by Opothleyahola and the

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[15]Gibson, Oklahoma, pp. 92-101.

[16]Ibid., pp. 167-69.

[17]Young, "Removal and Allotment," AHR, LXIV, pp. 32-33.

progressive, mixed-blood Lower Creeks led by William McIntosh.[18]

The removal crisis among the Cherokees closely paralleled that of the Creeks. After the full-blood majority, led by John Ross, refused to accede to Federal demands, a treaty was signed in 1835 with the Cherokee mixed-blood faction led by Major Ridge. When at last the embittered full-bloods were induced to migrate at bayonet point in 1838, they quickly extracted revenge by assassinating Major Ridge and two of his closest followers, his son John Ridge and Elias Boudinot in June, 1839. Following these murders, Boudinot's younger brother Stand Watie became the acknowledged leader of the Ridge or Treaty Party.[19]

The elimination of some of the most prominent mixed-blood leaders doubtless helped John Ross maintain his leadership of the Cherokees. Quite obviously, however, the events of 1839 did nothing to promote a spirit of tribal unity. As the Cherokee Nation grew and prospered under the benevolent despotism of Ross, the partisans of each faction conducted a private civil war until 1846 when a treaty of peace was signed by the leaders of both parties. Thereafter a surface unity of sorts prevailed among the Cherokees with John Ross the perennial candidate for the office of principal

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[18]Gibson, Oklahoma, pp. 86-90.

[19]Ibid., p. 116; Mabel W. Anderson, "General Stand Watie," Chronicles of Oklahoma, X (1932), p. 543.

chief winning every election until his death in 1866.[20]

Still, the seeds of discord, distrust and hostility were present not only among the Cherokees but among the other Civilized Tribes as well. And like elements in a delicate chemical formula, they needed only the stimulation of the proper catalyst to again come alive. That catalyst--in the form of war between North and South--was provided in 1861.

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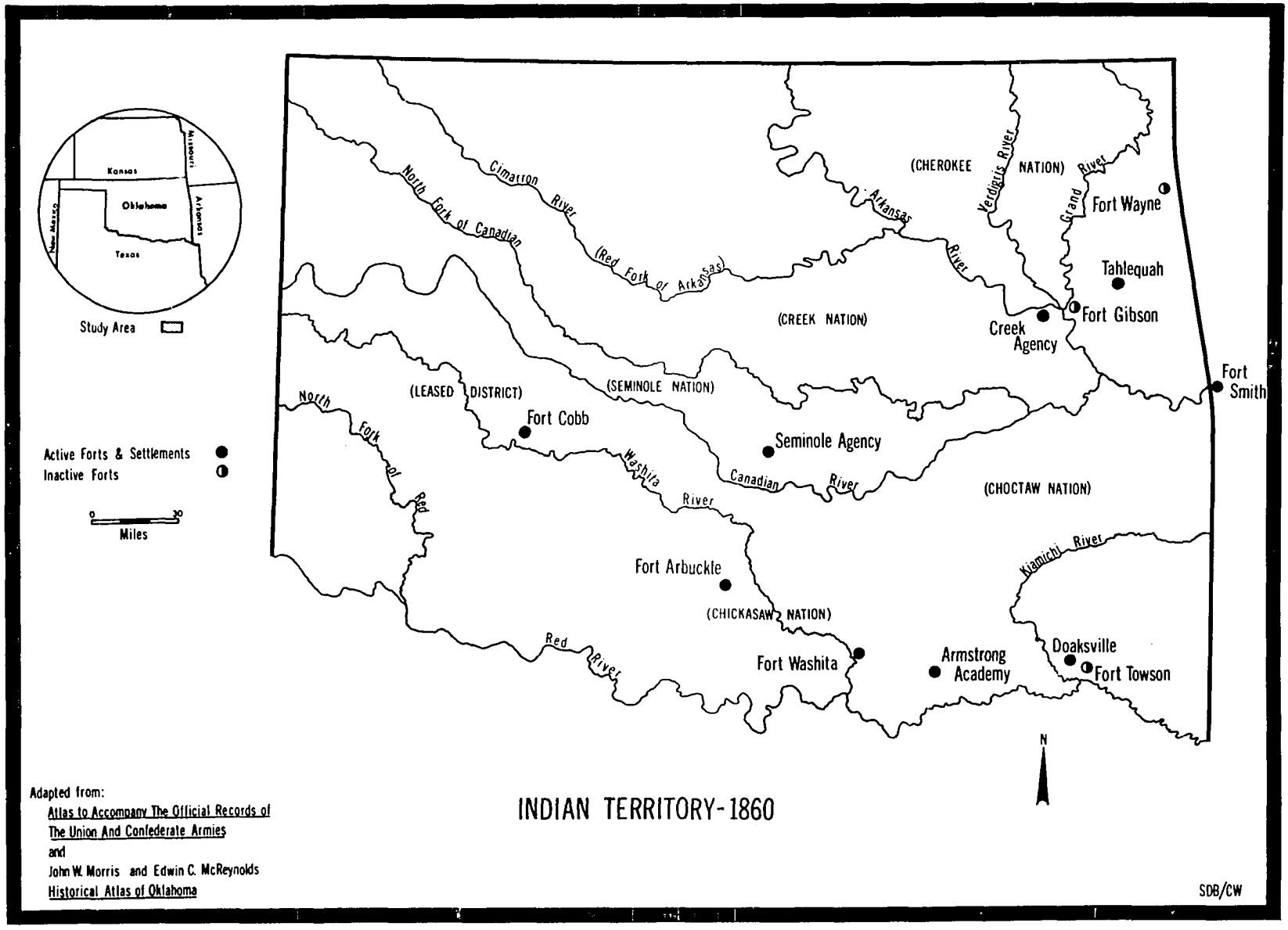
[20]Gibson, Oklahoma, p. 140. For a thorough study of ante-bellum Cherokee factionalism see Gerard A. Reed, "The Ross-Watie Conflict: Factionalism in the Cherokee Nation, 1839-1865," (Unpublished Ph.D. dissertation, University of Oklahoma, 1967).


Kansas
Missouri
Oklahoma
Arkansas
New Mexico
Texas
Study Area
Active Forts & Settlements
Inactive Forts
0
30
Miles
Cimarron River
North Fork of Canadian
(Red Fork of Arkansas)
Arkansas River
Verdigris River
Grand River
(CHEROKEE NATION)
Fort Wayne
Tahlequah
Fort Gibson
Creek Agency
(CREEK NATION)
Fort Smith
(SEMINOLE NATION)
(LEASED DISTRICT)
North Fork of Red
Fort Cobb
Seminole Agency
Washita River
Canadian River
(CHOCTAW NATION)
Kiamichi River
Fort Arbuckle
(CHICKASAW NATION)
Red River
Fort Washita
Armstrong Academy
Doaksville
Fort Towson
N
INDIAN TERRITORY-1860
Adapted from:
Atlas to Accompany The Official Records of The Union And Confederate Armies
and
John W. Morris and Edwin C. McReynolds
Historical Atlas of Oklahoma
SDB/CW

## CHAPTER II

## THE PIKE TREATIES

The Indians of the Five Civilized Tribes probably never understood the origins and significance of the American Civil War. Nonetheless the location of their country made it virtually impossible for these people to avoid involvement in the conflict. While possession of the Indian Territory could not in itself determine the outcome of the war, its control carried with it certain advantages. Situated adjacent to the states of Arkansas and Texas, the Territory in the hands of Union forces would pose a grave threat to the security of both these secessionist centers. Confederate domination of the area, on the other hand, would open southern Kansas to rebel attack. The Indian Territory in addition formed a natural bridge over which communications might be maintained with the far western territories. The side which controlled the Territory might also draw upon the area's natural resources and agricultural products to support its armies.[1]

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[1]A. M. Gibson, Oklahoma A History of Five Centuries (Norman: Harlow Publishing Corporation, 1965), pp. 194-95 (hereafter cited as Gibson, Oklahoma).

Long before the outbreak of hostilities in 1861, some perceived the potential value of the Indian Territory. Indeed, much more attention was paid to the area before and immediately after the outbreak of hostilities than at any other time. Once the momentous conflict was fully underway, both sides seem to have given the Indian Territory only secondary consideration, concentrating their attention and their resources in what appeared to be more strategic theaters.

While residents of the newly established Kansas Territory frequently looked upon the Territory as some sort of dumping ground to which their own tribes might be removed, the slaveholders of Arkansas and Texas held a slightly more humane though no less selfish position. Rather than desiring to deprive the Indians of their lands, the main goal of these people was to suppress abolitionist propaganda and keep the area loyal to the South. In achieving these closely related goals Arkansas and Texas slaveholders could generally count on the support of the mixed-blood Indians, many of whom were slaveholders themselves.[2] They likewise could count on the support of Federal employees in the Indian Territory. From the 1830's onward almost all of the Indian

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[2]Annie Abel, The Slaveholding Indians, Vol. I: The American Indian as Slaveholder and Secessionist (Cleveland: The Arthur H. Clark Co., 1915), pp. 36-37, 67 (hereafter cited as Abel, Slaveholding Indians, I); Lois E. Forde, "Elias Cornelius Boudinot" (Unpublished Ph.D. dissertation, Columbia University, 1951), p. 77 (hereafter cited as Forde, "Boudinot").

superintendents and agents in the area were Southern pro-slavery men, and in the years leading up to the Civil War these superintendents and agents considered the appointment of civil servants, the granting of licenses to traders and even the hiring of agency employees, such as blacksmiths, in the light of whether the applicants were pro or anti-slavery.[3]

When the sectional crisis reached its climax in the dark days following Abraham Lincoln's election, Western secessionists went all out to convince the tribes of the Indian Territory that they must join forces with the South.[4] One of the most active of these individuals was Arkansas' new governor, Henry M. Rector. Elected and inaugurated in the fall of 1860, Rector worked in favor of secession from the outset of his administration.[5] In one of his first actions in office Rector appointed an aide, Lieutenant Colonel J. J. Gaines, to visit the tribes west of Arkansas in an effort to win their support.[6] Realizing that winning the allegiance of the powerful and influential Cherokees would be a masterful stroke Rector on January 29, 1861

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[3]Forde, "Boudinot," pp. 77, 80.

[4]Ibid., p. 80.

[5]Abel, Slaveholding Indians, I, p. 103.

[6]Article in the Van Buren Press, January 4, 1861 (typescript copy in the Grant Foreman Papers, Indian Records Division, Oklahoma Historical Society, Oklahoma City).

addressed a letter to Principal Chief John Ross. The incoming administration, claimed Rector, looked upon the Indian country as a fruitful field for the harvest of abolitionists, freesoilers and Northern charlatans. By contrast the Indian Territory and the slave states were linked in a "common brotherhood" based on their attitudes and institutions as well as the contiguity of their territories. Now that the secession of the slaveholding states was almost certain Rector expressed the hope that the tribes of the Territory would cooperate with the South in defending her "institutions, honor and firesides. . . ."[7]

Texas was not to be outdone in the effort to win Indian support. Despite the opposition of Governor Sam Houston a secession convention convened on January 28, 1861. Before adjourning on February 5, the delegates at this convention appointed a three member commission to proceed to the Indian Territory and urge the tribes of the area to join forces with the emerging Confederacy.[8]

At first glance it would appear that emissaries from the Southern states would stand little chance of winning Indian support. States such as Georgia, Alabama and

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[7]Henry M. Rector to John Ross, January 29, 1861, John Ross Papers, Thomas Gilcrease Institute of American History and Art, Tulsa, Oklahoma.

[8]Rupert N. Richardson, Texas The Lone Star State (Englewood Cliffs, N. J.: Prentice Hall, 1958), pp. 184-85; Abel, Slaveholding Indians, I, p. 82.

Mississippi had been responsible for the brutal expulsion of the Five Civilized Tribes from their native homes, and while time had probably dimmed some memories of past wrongs, they had not been entirely forgotten. Despite this legacy of heartache, the South in 1861 had a number of factors working in its favor.

One of the most obvious of these was the fact that every agent in the Indian Territory in early 1861 was a Southerner.[9] So was Elias Rector, superintendent of the Southern Superintendency. Men such as these were of great assistance to the South in fanning the flames of secessionist sentiment in the Indian Territory. The efforts of Federal employees were on occasion backed by the activities of Christian missionaries in the Territory. One of the most ardent supporters of secession among the Indians, for example, was Dr. Cyrus Kingsbury, the oldest missionary in the Choctaw Nation.[10]

Another factor of great importance was tribal dissatisfaction over the Federal government's reluctance to meet its treaty obligations. At the very time that secessionists were striving to obtain Indian allegiance to

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[9]Abel, Slaveholding Indians, I, p. 82.

[10]Orlando Lee to William P. Dole, March 15, 1862, Letters Received by the Office of Indian Affairs, Southern Superintendency, National Archives, Microcopy 234, Roll 834.

the Confederacy several of the tribes were striving to secure the settlement of long pending issues.

One of the most complex of these matters was the Choctaw Net Proceeds Claim. By the terms of the Treaty of Dancing Rabbit Creek of 1830, the Choctaws were forced to exchange their remaining lands in Mississippi for a new domain west of Arkansas. After selling the old Choctaw lands in Mississippi, amounting to about ten mission acres, and after the deduction of administrative expenses, the Federal government had reaped a huge profit. The Choctaws subsequently claimed that these proceeds should be turned over to the tribe, for prior to the signing of the treaty of 1830 the United States commissioners had assured them that the Federal government had no desire to profit from the sale of Choctaw lands. Accordingly, on November 9, 1853 the Choctaw National Council appointed a four member commission composed of Peter P. Pitchlynn, Israel Folsom, Dixon W. Lewis and Samuel Garland to settle all claims which the Choctaw people had against the Federal government.[11]

After their arrival in Washington the Choctaw delegates employed attorney Albert Pike, a New Englander who had lived for many years in Arkansas and was well known among the Indians. Pike's task was to assist the delegation in

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[11]David Baird, "Peter Pitchlynn: Choctaw Delegate" (Unpublished Ph.D. dissertation, University of Oklahoma, 1968), pp. 123-62 passim (hereafter cited as Baird, "Pitchlynn").

securing the hoped for indemnification. After a lengthy series of negotiations with Federal officials a new treaty was signed by the Choctaw delegates on June 22, 1855. Among its provisions this agreement provided that the United States Senate would determine whether the Choctaws were entitled to the Net Proceeds of their land or a gross sum in satisfaction of their claims against the United States. The decision of the Senate was to be final.[12]

A complicated series of legal maneuvers and Congressional hearings followed. After strenuous exertions on the part of Pitchlynn a measure of success was achieved in 1861. On March 2, 1861 Congress appropriated $500,000 to meet the Net Proceeds Claim, one-half to be paid in cash and the other half in bonds. Quite possibly, however, this victory simply reinforced old images of Federal indifference to Indian interests, for while the $250,000 in cash was paid to the Choctaws on April 18, 1861 the $250,000 in bonds was not delivered. Furthermore, this $500,000 settlement was far short of the almost $3,000,000 which Secretary of the Interior Jacob Thompson had said the Choctaws were entitled to.[13]

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[12]Ibid.; Charles J. Kappler (ed.), Indian Affairs. Laws and Treaties (Washington: Government Printing Office, 1903), II, pp. 533-34 (hereafter cited as Kappler, Laws and Treaties, II).

[13]Baird, "Pitchlynn," pp. 123-62 passim.

The Chickasaws, like the Choctaws, had long-standing grievances against the United States. One of these was their desire to secure a reduction in the size of United States military reservations in the Chickasaw country.[14] Of more importance was their claim growing out of the treaty of 1852. Since removal days the Chickasaws had maintained that their tribal funds accruing from their treaties of 1832 and 1834 had been mismanaged by Federal officials. Accordingly a new treaty was negotiated in 1852. Under the fourth article of this agreement the Interior Department was to compile an account "exhibiting in detail all the moneys which . . . have been placed in the Treasury to the credit of the Chickasaw Nation, resulting from the treaties of 1832 and 1834, and all the disbursements made therefrom."[15]

As of 1861 the Interior Department had not fulfilled its treaty commitment. Not surprisingly, in a letter to the Commissioner of Indian Affairs in March, 1861 Chickasaw delegates Edmund Pickens, James Gamble and Sampson Folsom expressed bewilderment at the Federal government's tardiness in this matter. They confessed that they were about ready

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[14]Cyrus Harris to James Buchanan, October 20, 1860, Records of the Office of the Secretary of the Interior, Indian Division, Record Group 48, National Archives, Letters Received.

[15]If the Chickasaws took exception to any portion of this account, their objections would be referred to the secretary of the interior for adjudication. Kappler, Laws and Treaties, II, p. 443.

to conclude that the delay arose from an "indisposition" on the part of the Federal government to treat them justly.[16]

The Cherokees likewise had cause to complain. Among these people dissatisfaction grew out of uncertainty concerning the final disposition of the Cherokee Neutral Lands, an 800,000 acre tract added to the Cherokee domain in the West in the tribe's final removal treaty of December 29, 1835.[17] Despite treaty provisions specifically prohibiting such actions, this area had been incorporated into the Kansas Territory, and by 1860 at least 700 white families were living on these lands. Cherokee officials recognized the futility of trying to maintain control of the area, and attempts were made prior to the outbreak of the Civil War to retrocede these lands to the United States. Disagreements concerning the financial arrangments, however, prevented a settlement of the matter, a fact duly noted by officials of the Confederate states.[18]

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[16]Edmund Pickens et al to William P. Dole, March 16, 1861, Letters Received by the Office of Indian Affairs, Chickasaw Agency, N.A., Microcopy 234, Roll 142.

As late as April 3, 1861 the Chickasaw delegates submitted to the Indian Office a proposal to place the entire national fund under the control of the Chickasaw legislature. No action seems to have been taken on the proposal, however.

[17]Kappler, Laws and Treaties, II, pp. 325-26.

[18]John Ross et al to A. B. Greenwood, nd, John Ross Papers, Division of Manuscripts, Bizzell Library, University of Oklahoma, Norman; Grace Steele Woodward, The Cherokees (Norman: University of Oklahoma Press, 1963), p. 260 (hereafter cited as Woodward, Cherokees).

Among the Seminoles, Federal failure to make annuity payments had created discontent by 1860. The United States government's lack of promptness in paying annuities seems to have been a perpetual Indian complaint, but the failure to make these payments became an especially crucial matter immediately before the outbreak of the Civil War. Faced by the worst drought in thirty years, a drought which caused widespread crop failures in the Indian Territory, the tribes desperately needed their money in order to buy food for their needy citizens. In the crucial months immediately before and after the outbreak of war, more than one agent in the Indian Territory urged the immediate payment of annuity funds to relieve the immense suffering brought on by the drought. Even the forces of nature it appears were conspiring to create a sense of malaise among the tribes of the Indian Territory.[19]

Perhaps even more crucial than any sense of wrong growing out of unfulfilled treaty stipulations was the Indians' desire to maintain their territorial integrity. With regard to this crucial matter the South, from the

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[19]Elias Rector to A. B. Greenwood, August 9, 1860, Letters Received, O.I.A., Seminole Agency, N.A., Microcopy 234, Roll 803; John Crawford to the Commissioner of Indian Affairs, May 20, 1861, Letters Received, O.I.A., Cherokee Agency, N.A., Microcopy 234, Roll 99; A. B. Greenwood to Moses Kelly, January 20, 1861, R.G. 48, N.A., Letters Received; Abel, Slaveholding Indians, I, pp. 57-58.

Indians' point of view, clearly had the upper hand as of 1861. To the tribes of the Territory it doubtless appeared that the policy of the Federal government had by this time become almost completely identified with the interests of land-hungry Westerners. No less a person than Robert J. Walker, governor of the Kansas Territory, had stated in 1857 that the Indian Territory should soon become a state in the Union, adding pointedly that the Indian treaties would pose no obstacle to the accomplishment of this goal. At the Republican national convention of 1860 in what was surely one of the most impolitic statements of his career, William H. Seward had said that the Indian Territory south of Kansas must be vacated by the Indians.[20] When to the anxieties which statements such as these must have created among the Indians are added considerations such as the fear of financial loss resulting from the possible emancipation of the slaves, the investment of tribal funds in Southern state bonds, blood ties between mixed-blood Indians and Southern white families as well as commerical ties due to the southward flow of the territory's rivers and streams, it is easy to understand why the Indians were receptive to Southern advances.[21]

The Confederate government wasted little time in

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[20]Abel, Slaveholding Indians, I, pp. 58-59; Forde, "Boudinot," pp. 72-73.

[21]Gibson, Oklahoma, p. 194; Abel, Slaveholding Indians, I, p. 61.

exploiting its advantages. As early as February, 1861, the provisional Confederate Congress adopted a resolution to look into the expediency of opening negotiations with the western Indian tribes. On March 4, 1861, the Congress passed a resolution authorizing President Jefferson Davis to send a special agent to the Indian tribes west of Arkansas, and on the fifteenth of that same month a law was enacted establishing a Bureau of Indian Affairs under the supervision of the Confederate War Department. The following day, President Davis appointed David Hubbard, an Alabamian totally unfamiliar with Indian affairs, commissioner of the new bureau.[22] Here, probably because of the pressing nature of other questions, matters stood for a while.

In May, 1861, the executive branch of the Confederate government finally invoked the authority granted in the resolution of March 4. Sometime in early May, Secretary of State Robert Toombs forwarded a somewhat ambiguous commission to Albert Pike, the same individual who had aided the Choctaws in the Net Proceeds litigation. Under the terms of this commission Pike was instructed to visit the Indian tribes west of Arkansas, assure them of the friendship of the Confederate states and induce them to join forces with the Confederacy. Much to Pike's disappointment, however, Toombs

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[22]Abel, Slaveholding Indians, I, pp. 127-29; Walter Lee Brown, "Albert Pike 1809-1891" (Unpublished Ph.D. dissertation, University of Texas, 1955), pp. 539-40 (hereafter cited as Brown, "Pike").

had not specifically authorized the negotiation of formal treaties with the Indians.[23]

Pike was convinced that Indian allegiance could never be achieved without the negotiation of treaties guaranteeing the tribes the same rights that they enjoyed in their treaties with the United States. In a letter of reply written to Toombs on May 20, he freely expressed his own views. In this communique Pike expressed regrets that he had received neither arms, money, supplies nor authority to guarantee Indian treaty rights. At least 1,000 rifles and $60,000 should be sent immediately, to be followed by another 1,000 rifles and perhaps an additional $40,000 as soon as possible. Finally, Pike informed the secretary of state that since he had been directed to act at his discretion and since he had not been forbidden to give the Indians ample guarantees that their previous treaty rights would be maintained, he would give such guarantees, if possible, through the negotiation of treaties.[24]

While Pike and Toombs were ironing out these difficulties, Secretary of War Leroy P. Walker adopted a separate line of action. On May 13, the secretary assigned Brigadier General Benjamin McCulloch to the command of the military district embracing the Indian Territory. Without waiting for the

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[23]Brown, "Pike," pp. 540-41; Gibson, Oklahoma, p. 196.

[24]Brown, "Pike," pp. 541-42.

establishment of formal alliances, on that same day Walker dispatched a letter to Douglas H. Cooper who technically was still serving as United States agent to the Choctaw and Chickasaw tribes. Cooper was empowered to raise a mounted regiment among these two tribes. Once organized and enlisted, if possible for a twelve month period, the regiment was to be received into the Confederate service and supplied with arms. Finally on May 14, the secretary ordered Commissioner of Indian Affairs Hubbard to proceed immediately to the Indian Territory where he was to strive to bring the tribes of the area under the protection of the Confederate government. Walker, like Toombs, made no mention of negotiating actual treaties, and he specifically instructed Hubbard not to commit the Confederacy to any financial obligations to the Indians.[25]

The provisional Congress of the Confederacy simultaneously pursued still another course. In an act passed on May 17 and approved by President Davis four days later, Congress annexed the Indian Territory to the Confederate states and placed all its tribes under the protection of the Confederacy. This enactment conceded that Confederate control over the Territory would be subject to the rights and privileges guaranteed to the Indians under United States treaties and statutes. But the enactment stipulated that

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[25] Ibid., pp. 542-43; Leroy P. Walker to D. H. Cooper, May 13, 1861, Cherokee Nation Papers--Civil War Letters, 1861-1874, Division of Manuscripts, University of Oklahoma.

this concession would not commit the Confederacy to the expenditure of money for financial obligations contracted by the Federal government. Under the terms of this statute, however, the Confederate government assumed full power of trustee over all Indian funds invested by the United States in bonds of the Confederate states.[26]

Of the various individuals commissioned to treat with the Indians, Albert Pike by far played the most important role. Poor health sharply curtailed Commissioner Hubbard's activities in the West, and the emissaries sent out by Texas and Arkansas probably did about as much harm as good for the Confederate cause through their indiscriminate use of

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[26]Brown, "Pike," p. 544.

The eighth section of this act required the commissioner of Indian affairs to publish at an early date a summary statement of the bonds of the states of the Confederacy held in trust by the United States government for the tribes of the Indian Territory. Acting Commissioner of Indian Affairs S. S. Scott presented the required abstract on January 17, 1862. This summation revealed that tribal funds were invested in bonds of the secessionist states of Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, Virginia and Arkansas, as well as in bonds of Missouri and Kentucky, states which technically never seceded. In addition portions of the Chickasaw national fund were invested in bonds of the Richmond and Danville Rail Road and the Nashville and Chattanooga Rail Road, guaranteed by the states of Virginia and Tennessee, respectively.

In a supplementary act of January 10, 1862, the Confederate Congress instructed its constituent states to deposit in the Confederate treasury "all sums of money, bonds or securities of any kind belonging to the Indian tribes" with whom the Confederacy had relations. See Letter of the Acting Commissioner of Indian Affairs . . . in Regard to Certain Indian Trust Funds, January 17, 1862, (Richmond: Ritchie and Dunnavant, 1862). Copy in the John Ross MSS, Gilcrease Institute, Tulsa.

scare tactics.[27] Through the use of diplomacy, with a slight sprinkling of coercion, Pike, aided by General McCulloch, negotiated the treaties making the Indians formal allies of the Confederacy.

Before entering the Indian Territory, Pike made rather extensive preparations. He consulted with General McCulloch, after the latter's arrival in Little Rock, and explained the general terms which he was going to offer the Indians. After receiving a $500 appropriation from the Arkansas secession convention, Pike traveled by steamer to Fort Smith, arriving there Saturday, May 25, 1861.

At Fort Smith additional preparations were made. Meetings were held with Southern Superintendent Elias Rector and Seminole Agent Samuel M. Rutherford, and both agreed to continue their duties under the Confederacy. A similar agreement was reached with Choctaw and Chickasaw Agent Douglas H. Cooper. Perhaps most importantly, at Fort Smith Pike met with a delegation representing the anti-Ross Cherokees. Pike assured these individuals that the Confederacy would protect them if they took up arms for the South, and, preparing for all contingencies, he dispatched letters to the leaders of the anti-Ross group asking them to meet him at the Creek Agency two days after his talk with the Cherokee chief. After

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[27]The Arkansas ordinance of secession passed on May 6, 1861, followed four days later by the passage of a resolution authorizing the president of the secession convention to appoint a three member delegation to visit the Indian Territory. Abel, Slaveholding Indians, I, p. 119.

sending off another letter to Secretary of War Toombs complaining about the absence of definite treaty-making authority, Pike departed Fort Smith for the Indian country on May 29.[28]

While the Confederacy pushed ahead persistently with its plans, the Federal government was thrashing in a sea of confusion. Adherence to the traditions of the spoils system would undoubtedly have prompted the incoming Lincoln administration to make changes in the Indian service, even if normal conditions had prevailed. The fact that the appointees of the Buchanan administration were openly working for the Confederacy now made such changes imperative if the new administration hoped to maintain ties with the Indians.

Lincoln, the political pragmatist, at first attempted to fill vacated positions with Southern Unionists. Undoubtedly he hoped that such appointments would boost the spirits of Union sympathizers--both Indian and white--in the area and help the Federal government maintain some semblance of influence in the Indian country. His efforts were less than successful. On April 5, 1861, Secretary of the Interior Caleb Smith telegraphed Arkansan Samuel L. Griffith notifying

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[28]Brown, "Pike," pp. 547-52; Albert Pike to Robert Toombs, May 29, 1861, The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (Washington: Government Printing Office, 1902) Series IV, i, pp. 580-81 (hereafter cited as OR, with series number given in upper-case numerals and the volume number given in lower-case numerals).

him of his appointment as Southern Superintendent. Griffith at first accepted the position, saying that his appointment greatly pleased his fellow Unionists in Arkansas and the Indian Territory, but quickly lost his courage and declined the offer. The position was accepted the following month by William G. Coffin of Indiana. Meanwhile, William Quesenbury of Arkansas declined Lincoln's offer to serve as Creek agent, preferring instead to serve the Confederacy in the same capacity. Quesenbury's fellow Arkansan John Crawford accepted an appointment from the administration as Cherokee agent and then used his position to promote the Confederate cause. Not until late 1862, long after the Civilized Tribes had aligned with the Confederacy, did the vexed administration succeed in filling all the vacated agency positions.[29] This difficulty, combined with the withdrawal of United States troops left the tribes of the Indian Territory bereft of practically all Federal protection.

At the outbreak of hostilities in 1861, there were four active military posts in and near the Indian Territory. Poised at its eastern edge on the Arkansas River was Fort Smith, the "mother post of the Southwest," one of the most

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[29]Samuel L. Griffith to Caleb Smith, April 10 and April 20, 1861, and Smith to William P. Dole, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834; John Crawford to Dole, April 23 and June 13, 1861, Letters Received, O.I.A., Cherokee Agency, N.A., Microcopy 234, Roll 99; Brown, "Pike," p. 547.

important supply depots west of the Mississippi. In the Territory itself there was Fort Washita located near present day Tishimingo, Oklahoma, Fort Arbuckle located sixty miles northwest of Fort Washita, and Fort Cobb. This particular post was situated 160 miles northwest of Fort Washita in the Leased District, an area leased by the United States in 1855 from the Choctaws and Chickasaws for the settlement of remnants of certain Texas tribes such as the Wichitas and Caddoes and certain Comanche bands. Altogether in 1861, these posts contained only about 700 men.[30]

As the omnious cloud of secession grew darker, Federal commanders in these outlying areas turned to Washington for instructions. In December, 1860, Major General David E. Twiggs, a native of Georgia who commanded Federal forces in Texas, sent off two anxious inquiries to the commanding general of the army, Winfield Scott. What should be done with Federal property in the state if Texas seceded? Correctly perceiving the serious political implications of the situation, General Scott concluded that policy decisions of such great importance should be made by the President. In a note of reply written by one of his aides, General Scott, therefore, declined to issue any special instructions to

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[30]W. H. Emory to E. D. Townsend, May 19, 1861, and Townsend to the Secretary of War, March 27, 1861, OR, I, i, pp. 648-49, 659-60; Abel, Slaveholding Indians, pp. 51-52; Edwin C. Bearss and A. M. Gibson, Fort Smith: Little Gibraltar on the Arkansas (Norman: University of Oklahoma Press, 1969), p. 214.

Twiggs. Instead he attempted to console Twiggs by predicting that the Buchanan administration would reach some decision on this question before any crisis developed in Texas.[31]

Predictions such as this were a poor substitute for definite instructions. As President Buchanan frittered away precious time, secessionist sentiment swept across the South. In desperation General Twiggs, who had not yet been advised upon a plan of action if Texas seceded, on January 15, 1861 asked to be relieved of his command. His request was approved, and orders were issued on January 28 placing Colonel Carlos A. Waite in charge of the Federal forces in Texas. Orders were subsequently issued by General Winfield Scott on February 15, 1861 instructing Waite to march all the troops in his command northward to Fort Leavenworth, Kansas, without unnecessary delay if Texas left the Union.[32]

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[31]David E. Twiggs to Winfield Scott, December 13, 1860, OR, I, i, p. 579; David E. Twiggs to Lorenzo Thomas, December 27, 1860, ibid.; George W. Lay to David E. Twiggs, December 28, 1860, ibid., pp. 579-80.

[32]David E. Twiggs to Winfield Scott, January 15, 1861, ibid., p. 581; Special Orders No. 22, January 28, 1861, ibid., p. 584; Lorenzo Thomas to C. A. Waite, February 15, 1861, ibid., pp. 589-90.

The role played by President Buchanan in the decision to abandon the Texas outposts appears to have been minimal. One of Scott's biographers indicates that Federal military policy during the early months of 1861 was formulated by Scott and Joseph Holt, a Kentucky Unionist recently appointed secretary of war. During this crucial period Scott was fully converted to the policy advocated by William H. Seward, Lincoln's secretary of state designate. Seward favored conciliation of the South if possible and an avoidance of armed coercion so long as there remained the faintest hope of peaceful adjustment. Charles W. Homer, Winfield Scott The Soldier and the Man (New York: The Macmillan Co., 1937), pp. 684-96.

Before these instructions reached Texas, indeed, before Waite could assume his new command, events in the state reached the crisis point. On February 16, 1861 representatives of the Texas secession convention demanded that Twiggs surrender all Federal installations in the state. On February 18, 1861 Twiggs agreed to capitulate and the Texans promised to grant the Federal troops safe passage out of the state by way of the Gulf Coast. When Waite assumed command on February 19 he quickly approved this arrangement, seeing that his forces were badly outnumbered.[33]

The situation of the Federal facilities in Arkansas was as precarious as those in Texas. As secessionist sentiment increased, Arkansans became more restive with the maintenance of Federal military outposts in their state. On January 29, 1861 Captain James Totten, commander of the Little Rock Arsenal, warning the Buchanan administration that trouble lay ahead for his command, pleaded for instructions as to what course of action to follow.[34] There was no immediate response

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[33]Thomas J. Devine et al to David E. Twiggs, February 16, 1861, OR, I, i, p. 513; Twiggs to Devine, February 18, 1861, ibid., pp. 515-16; C. A. Waite to Lorenzo Thomas, February 26, 1861, ibid., pp. 521-22.

Twiggs received the orders relieving him on February 15, 1861 but Waite's absence from Federal headquarters at San Antonio prevented the general from turning over the command to Waite until February 19. In the meantime, the pressure of circumstances had forced the surrender of the Federal positions. David E. Twiggs to Lorenzo Thomas, February 18, 1861, ibid., p. 590; General Orders No. 7, February 19, 1861, ibid., p. 591.

[34]James Totten to Samuel Cooper, ibid., p. 638.

from Washington. Suddenly on February 6, as bands of armed citizens poured into Little Rock from all over the state, Governor Rector demanded the surrender of the arsenal. This demand was followed by a series of exchanges between the Governor and Totten. Substantially outnumbered, and by his own admission absolutely uninformed regarding the wishes of the Buchanan administration, Totten surrendered the arsenal on February 8, 1861 after receiving assurances that his men would be given safe passage out of the state. A few days later, Totten's command departed for St. Louis by steamer.[35]

Arkansas secessionists next began operations against Fort Smith by seizing at Napoleon, Arkansas, a consignment of supplies bound for that outpost. The exact date of the seizure is not known, but officials at the headquarters of the Department of the West in St. Louis learned of it on February 12. The information was apparently relayed by telegraph to Washington, for on February 13, 1861, General Scott ordered the abandonment of Fort Smith. At the insistence of Arkansas Unionists, however, this order was retracted on February 22.[36] Here matters stood for the remainder of

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[35]James Totten to Samuel Cooper, February 6, 1861, ibid., pp. 639-40; Henry M. Rector to Totten, February 6, 1861, ibid., p. 643; Henry M. Rector to James Totten, February 7, 1861, ibid., p. 644; Surrender Agreement, February 8, 1861, ibid., pp. 644-45; Orders No. 6, February 12, 1861, ibid., p. 646.

[36]Justus McKinstry to Seth Williams, February 12, 1861, ibid., p. 646; Lorenzo Thomas to Brigadier General William S. Harney, February 13, 1861, ibid., p. 654; Francis H. Wolfe and James M. Ward to the Secretary of War, February 22, 1861, ibid., p. 655; Winfield Scott to William S. Harney, February 22, 1861, ibid., p. 656.

the Buchanan administration.

One of the first problems faced by the Lincoln administration was the disposition of the Federal outposts located on the periphery of the Confederate States. In the prolonged, agonizing debate over Fort Sumter, the focal point and symbol of Southern defiance of Federal authority, the fate of the Western outposts received only secondary consideration. But on March 18, 1861, the War Department issued somewhat imprecise orders dealing with the Indian Territory. Forts Washita, Arbuckle and Cobb were placed under the command of Lieutenant Colonel William H. Emory, a native of Maryland who at the time was in the nation's capital. Emory was instructed to station himself at Fort Washita, and concentrate the troops at Fort Arbuckle and Fort Cobb in the Fort Washita area unless, in his judgment the safety of the troops and the interests of the United States demanded a different disposition.[37]

Emory felt uncomfortable with the discretionary powers he had been given and asked for more specific instructions. In particular he wanted to know what should be done about defending Fort Smith, the supply depot for the Indian Territory forts. Answering through one of his aides, Assistant Adjutant-General E. D. Townsend, General Scott

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[37]E. D. Townsend to William H. Emory, March 18, 1861, OR, I, i, p. 656.

declined to give more precise instructions with regard to the Indian Territory. He did say, however, that Emory should provide assistance in guarding Fort Smith if the post commander asked for it. And if Arkansas seceded, the Federal troops were to withdraw from the state immediately.[38]

Following the receipt of this communique, Emory left Washington for his assignment. While enroute Emory sent word to the post commander at Fort Arbuckle, telling him to begin moving his troops to Fort Washita. Arriving at Fort Smith in early April, he sent word on April 6 to Fort Cobb ordering about half its troops likewise to repair to Fort Washita. Under the original orders of April 6, the Leased District Indians living in the Fort Cobb area were to be permitted to accompany the troops if they desired, but when Emory learned that the Choctaws and Chickasaws might object to these Indians entering their own domains, this portion of the order was suspended.[39] After the issuance of this suspension, Emory seems to have given Indian affairs no further consideration. Never, apparently, did he consider trying to use his force to stiffen Indian resistance to Confederate entreaties. Never, apparently, did he consider trying to join forces with

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[38]E. D. Townsend to William H. Emory, March 21, 1861, ibid., p. 659.

[39]William H. Emory to E. D. Townsend, April 2, 1861, and William H. Emory to the Commanding Officer at Fort Cobb, April 6 and 10, 1861, ibid., pp. 660-64.

any of the pro-Union Indians. His own consideration was the safety of his troops, and if their welfare meant the abandonment of the Indian Territory, the tribes therein must simply shift for themselves.

Before leaving Fort Smith for Fort Washita, Emory had already become impressed with the precariousness of the Federal positions he commanded. On April 13, 1861 he asked Washington to consider the position of the Federal troops in the Indian Territory if Arkansas seceded, thus closing off the best and most direct lines of communication and supply. While on the road to Fort Washita on April 18 he dispatched a similar message to departmental headquarters in St. Louis.[40]

Following Emory's departure from Fort Smith, important events occurred in rapid succession. On April 18 or 19--the exact date is not clear--a large consignment of supplies bound for Fort Smith and the Indian Territory forts was seized at Pine Bluff, Arkansas. By the time these goods were captured, Governor Rector was planning to use state troops to attack Fort Smith itself. Learning that a force equipped with artillery had been dispatched by the governor for that purpose, Captain Samuel Sturgis abandoned the post on the evening of April 23. Retreating southwestward, Sturgis

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[40]William H. Emory to E. D. Townsend, April 13, 1861, and William H. Emory to Seth Williams, April 18, 1861, ibid., pp. 665-66, 668.

reached Fort Washita on April 30. Emory, realizing that his command was now almost completely isolated and rapidly running out of supplies, began an immediate retreat toward Kansas. With the loss of only two deserters he reached Fort Leavenworth on May 31, 1861.[41]

Unwittingly, in undertaking this movement, Emory had obeyed to the letter orders issued by General Scott. On April 17, five days after South Carolina's attack on Fort Sumter, Scott instructed Emory to retreat with his men to Fort Leavenworth. Emory, however, did not receive these orders until he had started his retreat on his own initiative.[42]

In the light of the Federal withdrawal, Albert Pike, in theory, should have had an easy time in his negotiations. But he did not. While some of the Indians willingly embraced the Confederate cause others refused to do so with a tenacity that imperiled both life and limb.

The spectre of secession and disunion prompted the Chickasaws to act as early as January, 1861. On January 5, the Chickasaw legislature passed an act calling on the Cherokee, Creek, Seminole and Choctaw tribes to join with them in

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[41]William Burns to Joseph P. Taylor, April 21, 1861, ibid., p. 647; William H. Emory to E. D. Townsend, May 10 and May 31, 1861, ibid., pp. 648-49; R. C. Gatlin to Lorenzo Thomas, April 24, 1861, ibid., p. 650; Samuel D. Sturgis to Seth Williams, May 21, 1861, ibid., pp. 650-51; Alexander Montgomery to Seth Williams, April 24, 1861, ibid., p. 651.

[42]E. D. Townsend to William H. Emory, April 17, 1861, and William H. Emory to E. D. Townsend, May 19, 1861, ibid., pp. 648-49, 667.

holding an intertribal council. The stated purpose of this council was to persuade the tribes to adopt some common policy designed to protect both tribal and individual rights in the event that the union of states was dissolved.[43]

Possibly because of its fairly convenient location at the junction of the North Fork and the Canadian, the Creek Agency was chosen as the site of the proposed council. Centrality of location, however, did not promote large attendance. Prior to the convening of the council, the Choctaws staked out their own independent course of action. On February 7, the Choctaw General Council passed a set of resolutions decrying the present crisis in national affairs while voicing the determination of the tribe to join its destiny with that of the Southern states if disunion occurred.[44] After taking this rather emphatic stand the Choctaws apparently felt no need to attend any policy formulating council. Strangely enough, the Chickasaws likewise did not attend the conclave which they themselves had proposed.

Of the three remaining Civilized Tribes that sent delegates, the Cherokees appear to have had the dominant voice. And under Cherokee influence, the intertribal council decided upon a policy which a later generation would call watchful

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[43]Typescript copy of the law found in John Ross MSS, Division of Manuscripts, University of Oklahoma.

[44]Abel, Slaveholding Indians, I, pp. 71-72. For a copy of the Choctaw resolutions see OR, I, i, p. 682.

waiting, a policy favored by Chief John Ross. In addressing the Cherokee National Council in October, 1860, Ross had urged his people not to take sides in the bitterly contested political campaign being waged in the United States. The duty of the Cherokees, he said, was to stand by their rights, allow no interference in their internal affairs and comply with all their obligations. In a similar vein, in issuing instructions to the Cherokee delegates to the intertribal council, Ross again urged firm adherence to already existing treaties, sagely pointing out that no measures which the council had the power to adopt could add anything to the Indians' security. When the Cherokee delegates met with their Seminole and Creek counterparts on February 17, they had a free and friendly exchange of views after which the delegates agreed that their best policy was to do nothing, keep quiet and comply with their treaties.[45]

Not everyone in the Indian Territory, however, was willing to keep quiet. Worming through the area, Texas and Arkansas secessionists, aided by intermarried whites and mixed-blood slaveholders, spread the wildest of tales among

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[45]Address of John Ross to Cherokee National Council, October 4, 1861, John Ross MSS, Division of Manuscripts, University of Oklahoma; Jacob Derrysaw to John Ross, February 4, 1861, John ross to William P. Ross, Thomas Pegg, John Spears and Lewis Downing, February 12, 1862, and William P. Ross et al to John Ross, March 15, 1861, John Ross MSS, Gilcrease Institute, Tulsa; Abel, Slaveholding Indians, I, pp. 70-71.

the Indians. The Union was permanently dissolved! All the free states except New England would soon join with the South! European aid for the Confederate cause was expected momentarily! Land-hungry abolitionists were about to seize all Indian lands! Twenty thousand Southerners were poised and ready to attack if the tribes did not join arms with the Confederacy! So said the apostles of secession.[46]

As a result of this agitation, the Cherokee nation fragmented internally. Led by the Baptist missionary Evan Jones, the conservative full-bloods joined ranks under the banner of the Keetoowah Society, an ancient Cherokee organization whose origins are shrouded in the misty past when the Cherokees were still a wild and warlike tribe. Known as the "Pin Indians" because of the crossed pins worn on their hunting shirts, the members of the society voiced abolitionist slogans, but their real goal was the preservation of ancient tribal traditions and culture. In response, and in imitation of their Southern kinsmen, the pro-slavery mixed-bloods formed an organization known as the Knights of the Golden Circle, dedicated to the propagation of secessionist sentiments. The clashes between these two groups produced a period of turmoil almost as chaotic as that following the murders of the Ridges

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[46]Charles B. Keith to H. B. Branch, August 24, 1861, William G. Coffin to William P. Dole, June 3, 1861 and Orlando Lee to Dole, March 15, 1862, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834.

and Elias Boudinot in 1835. In the other Civilized Tribes similar conditions prevailed, though in none of the others do they appear to have been as acute.[47]

Upon entering the Indian Territory, Albert Pike called first upon the Cherokees. His reasons for doing so are obvious. The tribe was the most powerful and influential in the Territory, and its lands lay immediately adjacent to Arkansas. Doubtless the desire to end civil strife and gain the support of a unified tribe before continued conflict made such support impossible was another factor prompting Pike's decision to see the Cherokees first.[48]

Long before Pike's arrival, Chief John Ross had been bombarded with letters from the high and the lowly demanding to know his position and sentiments. Dispatches arrived from such notables as Governor Rector and his cousin Elias, from Lieutenant Colonel J. R. Kannady, the new Confederate commander of Fort Smith, and from a group of concerned secessionists in Boonsboro, Arkansas.[49] Patiently Ross

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[47]Evan Jones to William P. Dole, January 21, 1862, ibid.; "The Keetoowah Society," The Reporter (Chelsea, Cherokee Nation) March 12, 1903 (typescript copy in the John Ross MSS, Division of Manuscripts, University of Oklahoma; Forde, "Boudinot," p. 71; Gerard Reed, "The Ross-Watie Conflict: Factionalism in the Cherokee Nation, 1839-1865," (Unpublished Ph.D. dissertation, University of Oklahoma, 1967), p. 274 (hereafter cited as Reed, "Ross-Watie Conflict").

[48]Brown, "Pike," p. 550.

[49]Henry M. Rector to Ross, January 21, 1861, Elias Rector to Ross, February 14, 1861, J. R. Kannady to Ross, May 15, 1861, John Ross MSS, Gilcrease Institute, Tulsa.

answered these people, stating basically the same thing in each reply. The Cherokees, he said, were bound to the people of Arkansas by their locality, similar institutions and natural sympathies and certainly harbored no desire to wage war on their white neighbors. Yet the Cherokees had no wish to become involved in the current sectional feud. They would, therefore, adhere to already existing treaties and follow a course of neutrality even if full-scale civil war between the sections occurred.[50] These statements agreed with a proclamation issued by Ross to the Cherokee people on May 17, 1861 which advised tribal members to abide faithfully by all treaty obligations and avoid any acts of partisanship. Such a course, he concluded, could give no just cause for aggression or invasion from any quarter and would place the Cherokees in a position to claim and retain all their rights whatever the outcome of the sectional crisis.[51] Not all Cherokees abided by this advice, as is shown by the factional strife within the tribe, but at least the principal chief's position had been stated clearly by the time Pike arrived.

Pike, accompanied by General McCulloch, entered the Cherokee Nation early in June, and on the sixth of the month

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[50]John Ross to Henry M. Rector, February 22, 1861, John Ross to citizens of Boonsboro, Arkansas, May 18, 1861, and John Ross to J. R. Kannady, May 17, 1861, ibid.

[51]Proclamation of John Ross to the Cherokee People, May 17, 1861, John Ross MSS, Division of Manuscripts, University of Oklahoma.

submitted a written set of treaty proposals to Ross. Among other things the defense of the Cherokee country "at all hazards" was promised as well as Confederate assumption of all annuities and other moneys due the Cherokees under existing treaties with the United States. A Cherokee delegate was to be given a seat in the Confederacy's House of Representatives, a Confederate court established in the Cherokee Nation and if for any reason the Neutral Lands were lost, the tribe would receive $500,000 with interest from the date of purchase in 1835. Pike concluded by requesting that Ross grant him the privilege of appearing before the Cherokee Executive Council later in the month to explain his proposals. Cooly, Ross replied that his intention was to maintain Cherokee neutrality. Later in the month he called the executive council into session, but did not request Pike's presence. The council gave its endorsement of the Principal Chief's neutrality policy.[52]

Following the Cherokee rebuff, Pike and McCulloch separated. McCulloch returned to Fort Smith, and Pike made his way to the Creek Agency. Arriving on June 12, Pike immediately sent out messages to the chiefs, headmen and leaders of the

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[52]Albert Pike to John Ross, June 6, 1861, Cherokee Nation Papers--Civil War Letters 1861-1874, Division of Manuscripts, University of Oklahoma; Minutes of the Executive Council of the Cherokee Nation, June 27-July 2, 1861, John Ross MSS, Gilcrease Institute, Tulsa; Brown, "Pike," pp. 552-53.

Creek, Choctaw and Chickasaw tribes to meet him at North Fork Town, a village situated twenty-five miles southeast of the Creek Agency.[53]

The situation that awaited Pike upon his arrival was probably more complicated than anticipated. As in the Cherokee Nation, the secession crisis had revived tribal enmities dating back to the embittered removal days. The Upper Creeks, with some exceptions, were anti-slavery and favored the maintenance of ties with the United States while the mixed-blood Lower Creeks espoused the Southern cause. At the time of Pike's arrival, some of the Upper Creeks, led by Opothleyaholo, were on their way to a meeting to be held in the Antelope Hills at the western edge of the Leased District. This conclave began on June 22 and was attended by anti-slavery dissidents from the Creek, Cherokee and Seminole tribes, as well as delegates from several of the tribes of the Leased District. Before adjournment on June 24 a general declaration of neutrality was drafted by those in attendance.[54]

Shortly after his arrival at the Creek Agency, Pike received a communication from Secretary of War Walker. The secretary forwarded a copy of the Act of May 21, 1861 forbidding the expenditure of money for financial obligations contracted by the Federal government in its Indian treaties. The statute

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[53]Brown, "Pike," pp. 553, 556-57.

[54]Ibid., p. 555.

was accompanied by a letter from Walker which still did not give Pike any specific authority to negotiate treaties. According to Walker's letter Pike was to inform the Indians that the Confederacy's intention was to advance the tribes toward a system of landholding in severalty through the establishment of a territorial government.[55]

Pike quickly perceived the disastrous consequences which would follow obedience to such instructions. The Indians, he knew, feared and opposed territorial organization and the division of lands in severalty. He was also cognizant of the fact that any failure to extend adequate financial guarantees and any failure to incorporate these guarantees into treaties would foredoom his efforts to failure. Pike therefore must either ask Richmond for new and more realistic instructions or deliberately disobey those he had already received. Knowing the value of immediate action, he chose the latter course. After learning that the anti-Ross Cherokees were afraid to keep their pre-arranged rendezvous with him for fear of being murdered by their full-blood opponents, Pike moved on to North Fork Town.[56]

Here Pike carried all before him. With Opothleyaholo's

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[55]Ibid., pp. 557-58.

[56]Message of the President, and Report of Albert Pike, Commissioner of the Confederate States to the Indian Nations West of Arkansas, of the Results of his Mission (Richmond: Enquirer Book and Job Press, 1861), pp. 13-17. A microfilm copy of this document can be found in the Division of Manuscripts, University of Oklahoma.

followers away at the Antelope Hills conference, and with all Northern-leaning white teachers and missionaries expelled, there was virtually no one to stop the Southern sympathizers from carrying out their plans. Some time after Pike's arrival, a group of wealthy mixed-blood Choctaws, Chickasaws, Creeks and Seminoles met and drew up a constitution creating an Indian confederacy. The confederacy was to be known as the United Nations of the Indian Territory, and a constitution was drawn up providing for annual meetings of a Grand Council composed of six delegates from each member tribe. The Council, under the terms of the constitution, had the authority to call on the member tribes for troops to aid the Southern cause. Following the drafting of this plan of union, Grand Council sessions were held sporadically throughout the duration of the war.[57]

The drafting of this constitution was followed by the signing of a treaty between Pike and Creek delegates on July 10. Signed by such individuals as Principal Chief Motey Canard and Echo Harjo, principal chief of the Upper Creeks, this treaty was more favorable than any which the tribe had ever negotiated with the United States. Its meticulous detail indicates that

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[57]W. S. Robertson to "Sir" [Commissioner of Indian Affairs?], September 30, 1861, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834; Brown, "Pike," p. 560; Angie Debo, The Road to Disappearance (Norman: University of Oklahoma Press, 1941), pp. 144-45 (hereafter cited as Debo, Road).

those signing were well informed on past treaties and Indian grievances. Slavery received legal recognition, the Creek tribe was to hold its lands perpetually in fee simple, and these lands were never to be incorporated into any territory, nor would any attempt be made to establish a territorial government over them, except "upon the free, voluntary, and unsolicited application" of the Creek Nation. Most importantly the Confederate government bound itself to meet all annuity payments due the Creeks under former treaties with the United States and guaranteed the tribe "the final settlement and full payment" of all moneys owed by the United States, including the capital and interest on any bonds of the Northern states purchased with Creek funds. The Creeks and Seminoles were to be jointly entitled to a delegate in the Confederate House of Representatives. The Creek Nation, either by itself or in conjunction with the Seminoles, would furnish a mounted regiment for the Confederate service as well as any additional troops requisitioned by the Confederate president for the defense of the Indian Country. The Richmond government was granted authority to build and maintain military posts in the Creek domain, each post occupying a tract one mile square. Finally the Confederate government, or any company chartered by it, received the right of way for the construction of railroads or telegraph lines through the Creek country.[58]

Two days later a similar pact was signed jointly with

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[58] OR, IV, i, pp. 426-39; Debo, Road, p. 145.

the Choctaws and Chickasaws. Before leaving Fort Smith, Pike had predicted that no difficulties would be encountered in negotiating with these two tribes, and he was correct. After the abandonment of the Indian Territory by United States forces and the defection to the Confederacy of their trusted agent, D. H. Cooper, secessionist sentiment rapidly crystallized among these two tribes. A few exceptionally brave individuals, such as Peter Pitchlynn, continued to advocate neutrality but these people were soon coerced into silence, and Southern sympathizers pushed ahead with their plan. The treaty which they eventually signed with Pike was identical in most respects to the Creek treaty, with two exceptions. First the treaty outlined the process whereby the two tribes might gain joint Confederate statehood, and second it provided for the establishment of a Confederate States court at Boggy Depot, a small community in the southwestern portion of the Choctaw domain. As in the case of the Creek treaty, all annuities, trust funds, debts and claims that the two nations had against the United States and the states of the Confederacy were guaranteed.[59]

Pike next attempted negotiations with the Seminoles. Accompanied by individuals such as Elias Rector and former

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[59]OR, IV, i, pp. 445-66; see also Albert Pike to Robert Toombs, May 29, 1861, ibid., pp. 359-61; Orlando Lee to William P. Dole, March 15, 1862, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834; Brown, "Pike," pp. 562-66.

United States Indian Agent Samuel Rutherford, Pike moved southwestward from North Fork Town to the Seminole Agency. Immediately he attempted to induce Principal Chief John Jumper into signing a pact with the Confederacy. Jumper, somewhat disingenuously, professed astonishment upon learning of the reason for Pike's visit, a maneuver probably designed to give the chief time to seek advice and sample the opinions of his people. Told by his councilors to adhere to already existing treaties and seeing that sentiment in the nation was running strongly in favor of neutrality, Jumper at first refused to negotiate. Thereupon, Pike resorted to mild intimidation, telling the chief that the "cold" people from the North would soon take the Seminole's lands unless the tribe fought. Such threats, supported by similar ones from Rector and Rutherford, at last brought success. On August 1, 1861, Jumper and a dozen town chiefs, representing about half the tribe signed a treaty of alliance, which the non-signers ignored. With the exception of the omission of any references to statehood and the establishment of a Confederate court, the Seminole agreement in all essential details was identical to those already signed.[60]

Before leaving Fort Smith in May, Pike corresponded with Matthew Leeper, agent of the Leased District tribes, and

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[60] OR, IV, i, pp. 513-25; Pas Ko ja to the President of the United States, nd, Letters Received, O.I.A., Seminole Agency, N.A., Microcopy 234, Roll 803; Brown, "Pike," pp. 568-71.

had enlisted his support. Under his original plans, Pike hoped to meet with representatives of these tribes at the Seminole Agency. By early August no delegates had appeared, so, with some misgivings Pike and his party, accompanied by a body of armed Seminoles and Creeks, began the potentially perilous trip to the distant Leased District. Word was sent informing Leeper of their coming, and upon arrival at the Wichita Agency Pike and his party found representatives of the Caddo and Wichita tribes waiting for them, along with delegates from several Comanche bands. After the exchange of greetings and views treaties were signed on August 12. Under the terms of these agreements the tribes and bands of the Leased District placed themselves under Confederate protection and pledged to refrain from attacking their Indian neighbors or any of the states of the Confederacy. These tribes, however, were not to contribute troops to the Confederate cause. Friendship was all that was asked of them.[61]

While still at the Seminole Agency, Pike, on August 1, had fired off a rather tartly worded dispatch to John Ross. Pike knew that since his departure from the Cherokee Nation other Confederate notables, such as General McCulloch and Commissioner of Indian Affairs David Hubbard, had corresponded with Ross in an effort to elicit his support for the Confederate cause. All efforts had failed. Ross still persisted in his

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[61] OR, IV, i, pp. 542-54; Albert Pike to Robert Toombs, May 29, 1861, ibid., pp. 359-61; Brown, "Pike," pp. 572-77; Gibson, Oklahoma, p. 198.

course of neutrality. In an effort to tighten the screws on Ross, Pike, in his letter, warned the Cherokee chief that the Confederate government was under no obligation to renew the generous terms offered in June. In particular, Pike wanted it clearly understood that the states of the Confederacy would never again feel themselves obligated to pay the Cherokees anything for the Neutral Lands. In choosing to follow a course of neutrality, Pike concluded, the Cherokees were in reality allying themselves with Northerners who had already defrauded them of their lands, and to the North they should look for payment. If the Confederate states ever paid out any portion of the monetary value of these lands, that money would be paid only to those Cherokees who had declared themselves the friends of the South.[62] Clearly Pike was not only threatening the withdrawal of the proposed terms. He was also threatening in only a slightly veiled manner to deal with the anti-Ross Cherokees, a consideration never long out of Ross's mind.

As Pike penned his letter, the force of circumstances was rapidly drawing the Cherokees into the Confederate fold. One such circumstance was the negotiation of the Pike treaties. While the Cherokees had not been induced to sign a treaty, the negotiation of treaties with neighboring tribes had forestalled the establishment of any effective neutral Indian Confederation

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[62]Albert Pike to John Ross, August 1, 1861, David Hubbard to John Ross, June 12, 1861, and Ben McCulloch to John Ross, June 12, 1861, John Ross MSS, Gilcrease Institute, Tulsa.

as had been hoped for by individuals such as Ross and Opothleyahola. The negotiation of these treaties, combined with the secession of Texas and Arkansas made it possible for General McCulloch to surround the Cherokee Nation with both white and Indian troops, a maneuver deliberately designed to convince the Cherokees that they had no choice except to join the Confederacy. And always there was the spectre of a secession movement within the Cherokee Nation itself. The Watie-Boudinot faction was as bitterly resentful as ever of the Ross Party's control over Cherokee affairs, a fact which the astute Ross could not help but perceive. If Ross did not cater to their desires, they might usurp his authority and establish relations of their own with the Confederacy.[63] The meeting which representatives of this faction had with Pike at Fort Smith would indicate that they were not above resorting to such tactics when the opportune time arrived.

Such circumstances as these caused the Ross faction to waver in its determination to remain neutral. On August 1, the same day that Pike sent his missive, the Cherokee Executive Council met again. Taking cognizance of the restiveness and turmoil in the Nation, the Council voted to call the Cherokee people into a general meeting at Tahlequah on August 20. The stated purpose of this assembly was to harmonize the views of

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[63]Benjamin McCulloch to Leroy P. Walker, June 22 and June 29, 1861, OR, I, iii, pp. 595-96, 600; Brown, "Pike," pp. 581-82; Forde, "Boudinot," p. 70.

the Cherokees for the common good of all members of the tribe.[64]

The meeting of the Executive Council was followed by the Confederate victory at Wilson's Creek, Missouri, on August 10. Whether any of the Watie-Boudinot Cherokees fought with the Confederate forces in this battle is not clear, but certainly they benefitted from its outcome. Combined with the Confederate victory at Bull Run in the East, Wilson's Creek created an illusion of Confederate invincibility, an invincibility that would put Ross in prison and Watie at the head of the Cherokee Nation unless the principal chief mended his ways.[65]

By the time the Cherokees convened in general meeting Ross had made his decision. In addressing the assemblage Ross briefly outlined his previous policy of neutrality and discussed the altered circumstances that made a change of course advisable. Pointing to such considerations as the probable permanent disruption of the Union and the Cherokee Nation's increasingly isolated position, he reminded his fellow tribesmen that the preservation of their rights and their tribal existence stood above every other consideration. Thus, he concluded, the time had come when the Cherokees should

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[64]Minutes of the Executive Council of the Cherokee Nation, August 1, 1866, John Ross MSS, Gilcrease Institute, Tulsa.

[65]Reed, "Ross-Watie Conflict," pp. 281-82; Woodward, Cherokees, p. 265.

signify their consent for their national authorities to enter into an alliance with the Confederacy.[66]

Consent was quickly granted. Resolutions granting the requested authority were passed, and word was sent to Pike at Fort Arbuckle telling him of the Cherokee's new position. Delighted with the news, Pike immediately sent a dispatch to Ross agreeing to open treaty talks and retracting his statements of August 1. Pike in addition requested that Ross invite the Osages, Quapaws, Shawnees, and Senecas, small tribes located north of the Cherokees, to send representatives to the talks to be held in the Cherokee Nation.[67]

Pike's arrival at Park Hill in late September or early October was followed quickly by the negotiation of several new treaties. On October 2 a pact was signed with the Great Osage, followed on October 4 by the signing of similar agreements with the Quapaws, Senecas and Shawnees. Under the terms of the treaties these tribes occupied a position in the Confederate hierachy higher than that of the Leased District tribes but lower than that of the Five Nations, for while they agreed, if requested, to furnish troops to the Confederacy, they were not given the privilege of sending a delegate to the Confederate

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[66]Address of John Ross to the Cherokee People, August 21, 1861, OR, I, iii, pp. 673-75.

[67]John Ross to James Brown, September 10, 1861, John Ross MSS, Gilcrease Institute, Tulsa; Brown, "Pike," pp. 581-85.

Congress nor was any prospect held out that they would become part of any Indian state.[68]

Three days later the last link in the Indian treaty chain was completed. After several days of preliminary talks Pike and Ross signed a treaty on October 7, 1861 formally allying the Cherokees with the Confederate states. The provisions of this pact were in harmony with the terms first offered by Pike in June. Furthermore, in an effort to ease the anxieties of the principal chief, the Confederacy promised to deal in the future with no one but the constitutional authorities of the Cherokee Nation. The treaty signing ceremony was followed by a brief meeting between Watie and Ross in which the two shook hands in a show of tribal unity much more symbolic than real.[69]

By late November, 1861 Pike was in Richmond to secure the ratification of his treaties. Once in the Confederate capital Pike generally succeeded in convincing his superiors of the wisdom of departing from his official instructions. President Jefferson Davis, however, objected to those portions of the treaties providing for tribal representation in Congress and Indian statehood. Davis believed such stipulations were not only impolitic but unconstitutional. The admission of new

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[68]OR, IV, i, pp. 636-46, 647-58; Brown, "Pike," p. 587.

[69]Brown, "Pike," pp. 590-91; OR, IV, i, pp. 669-87.

states and the seating of representatives in the House, he maintained, could not be controlled through the negotiation of treaties. In agreement with the President's views changes were made in these areas in the Pike treaties, and by early January, 1862 all were ratified.[70]

Formally the tribes of the Indian Territory were now all aligned with the Confederacy. Indian unity beneath the Confederate banner, however, was the flimsiest of mirages, for even before the ratification process was completed the forces of disintegration had shattered and scattered these bewildered people.

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[70]Allan Nevins and James D. Richardson (eds.), The Messages and Papers of Jefferson Davis and the Confederacy Including Diplomatic Correspondence (New York: Chelsea House-Robert Hector, 1966), pp. 149-51; Brown, "Pike," pp. 596-604.

## CHAPTER III

## THE GREAT SOUTHERN EXPEDITION

Not the least of the problems facing President-elect Abraham Lincoln was the task of choosing his official family. Few, if any, American presidents have had a completely free hand in choosing those individuals who would serve with them during their administrations. Certainly Lincoln did not. In keeping with emerging American political traditions, those individuals who had cooperated with the Republican party in 1860 expected to reap their share of the spoils of public office, and political considerations undoubtedly weighed heavily on Lincoln's mind as he attempted to organize his administration.

One of the groups which had played a vital role in Lincoln's nomination at Chicago's Wigwam in 1860 was the Republican delegation from Indiana. In gratitude for past assistance, Caleb B. Smith of the Hoosier state was named Lincoln's secretary of the interior. Upon the recommendation of John P. Usher, an Indianian who would later succeed Smith as secretary of the interior, William P. Dole of Paris,

Illinois, was appointed commissioner of Indian affairs.[1]

Upon assuming his duties as head of the Indian Office, Dole, not surprisingly, devoted much of his time to the task of maintaining the loyalty of the tribes of the Indian Territory. His efforts in this direction were hampered by the defection to the Confederate cause of the former Indian agents, and the difficulties encountered by the Lincoln administration in securing replacements. When the administration induced William G. Coffin to become Superintendent of the Southern Superintendency, Dole quickly dispatched a letter via Coffin to the chiefs of the Five Civilized Tribes. Dated May 11, 1861, this letter informed the recipients that the intentions of President Lincoln had been misrepresented by his opponents. While the policy of the administration was to maintain the Union, Dole assured the tribal leaders that under no circumstances would any effort be made to interfere with the Indians' domestic institutions and affairs. The commissioner concluded his dispatch with a statement to the effect that the War Department had been requested to furnish troops and munitions for the Indian Territory.[2]

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[1]Clarence E. Macartney, Lincoln and His Cabinet (New York: Charles Scribner's Sons, 1931), pp. 49-56; John P. Usher to Abraham Lincoln, December 19, 1860, Abraham Lincoln Papers, Library of Congress (microfilm copy), Series I, Roll 12.

[2]Report of the Commissioner of Indian Affairs for the Year 1861, Sen. Ex. Doc. No. 1, 37 Cong., 2 Sess., 1862 (Serial 1117), pp. 650-51.

Unfortunately all requests of this sort fell on deaf ears. On April 30, 1861, Dole, in communicating to the secretary of the interior, asked if the Federal government had any intention of keeping a force in the Indian Territory sufficient to defend the tribes against enemy incursions. At the very least, Dole believed that an arms depot should be established in the Southern Superintendency which would permit the tribes of the area to defend themselves.[3] Caleb Smith, in turn, addressed an inquiry to the War Department on May 4, to which Secretary of War Simon Cameron sent a tartly worded reply six days later. Cameron informed Smith that orders for the evacuation of the garrisons of the Indian Territory were issued on April 17, and present necessities made any change in these orders impossible.[4] Undaunted, Dole renewed his requests on May 30 after receiving definite information that Confederate emissaries were operating among the Indians. A military force of two to three thousand men, he believed, would suffice to secure the neutrality of the tribes of the Indian Territory. If the Federal government failed to provide this force, he warned, it would soon find it impossible to maintain its agencies among the tribes

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[3]William P. Dole to Caleb Smith, April 30, 1861, Records of the Office of the Secretary of the Interior, Indian Division, Record Group 48, National Archives, Letters Received.

[4]Simon Cameron to Caleb Smith, May 10, 1861, ibid., Letters Received--War Department.

along the Southern border.[5] Dole's entreaties and warnings were ignored. With rumors circulating that efforts were to be made to capture Washington itself, the hard-pressed War Department made no effort to provide either arms or troops for the Territory.

By early June, 1861 Southern Superintendent Coffin was in Kansas. Commissioner Dole had suggested to the superintendent that if it could be done with safety he should establish his office at some point in the Indian Territory. After meeting at Fort Leavenworth with some of the troops who had recently abandoned the Territory, Coffin decided to proceed to the Neosho Agency and from there feel his way gingerly into the Cherokee country. By the middle of June, Coffin had reached a place called Crawford Seminary at which point he made an effort to meet with Cherokee Chief John Ross. This effort ended in failure due largely, Coffin believed, to the dangers by which Ross was surrounded. By the middle of July, 1861 the superintendent had returned to Leavenworth. In a letter to the commissioner, Coffin informed Dole that he would maintain his headquarters at Leavenworth until the latter part of the month. By that time he felt confident that the actions of Federal forces would have made it safe for him to establish his headquarters as far south as Humboldt, Kansas.[6]

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[5]William P. Dole to Caleb Smith, May 30, 1861, ibid., Letters Received.

[6]Coffin to Dole, June 3, 1861, Letters Received by the Office of Indian Affairs, Southern Superintendency, National Archives, Microcopy 234, Roll 834.

In the light of the difficulties that Federal forces would have in subduing and controlling any large portion of the southwestern border area, Coffin's confidence appears extremely optimistic. His faith, however, was not without some foundation, for at least one person, Senator James Henry Lane of Kansas, was busily engaged in organizing an expedition to invade the Indian Territory.

Tall, cadaverous, vulgar, tempestuous, of fluctuating courage and utterly unscrupulous, Lane was without doubt one of the most controversial figures whose path ever crossed that of the Five Civilized Tribes. Born in Lawrencebury, Indiana, in 1814, Lane, despite his mother's desire that he become a minister, decided to follow in the footsteps of his politician father. During the Mexican War, Lane served as a colonel in an Indiana volunteer regiment and participated creditably in several battles. Using his military record as a springboard into politics, Lane was elected lieutenant governor of Indiana and later served as a congressman from his native state. His vote in favor of the Kansas-Nebraska bill, however, wrecked his career in Indiana, and in 1855 he came to Kansas to repair it.[7]

At the time of his arrival in Kansas, Lane was a Democrat. But sensing the winds of change, and piqued by the

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[7]Albert Castel, A Frontier State at War: Kansas, 1861-1865 (Ithaca: Cornell University Press, 1958), pp. 19-20 (hereafter cited as Castel, Frontier State).

refusal of the pro-slavery legislature to grant him a divorce, Lane switched his allegiance to the Free State Party and became a major general of the Free State militia. During Kansas' time of deepest turmoil in 1856 and 1857, he participated in a number of largely sham battles and campaigns against the pro-slavery forces. These endeavors were largely devoid of practical results, but the flamboyant publicity which accompanied these actions made Lane a hero to thousands of Kansans. In addition to his military activities Lane established a law practice and engaged in petty land speculation. Through all of this, Lane never lost sight of his primary goal, election to the United States Senate. According to one authority, Lane was a senatorial candidate from the day he set foot on Kansas soil. Decked out in his customary costume of overalls, calfskin vest and bearskin overcoat and armed with a magnetic and persuasive speaking voice, Lane constantly stumped the territory seeking endorsements for his senatorial candidacy. Despite, or perhaps, because of his grotesque appearance, he built up a substantial following, and became a local folk hero. Even individuals who were fully aware of his faults sometimes gave him their support.[8]

Not all Kansans, however, rallied beneath the Lane banner. Foremost among those who refused to be taken in by Lane's demagogic antics was Charles Robinson. Born in

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[8]Ibid., pp. 19-23.

Massachusetts in 1818, Robinson as a young man practiced medicine in New England and later emigrated to California where he had the dubious distinction at various times of being shot, imprisoned and elected to the California legislature. In 1854 he became an agent of the New England Emigrant Aid Company and conducted the initial settlement of Lawrence, Kansas. Tall, quiet and dignified, Robinson was in many respects the very antithesis of Lane and was called the George Washington of Kansas by his followers.[9]

From the beginning, Lane and Robinson clashed. Robinson regarded crude, vulgar Jim Lane with suspicion and contempt. Lane, in turn, loathed Robinson as the main obstacle blocking his ambitions to control Kansas politics. Although their rivalry was essentially a struggle for personal power, it involved also a conflict between the radical and conservative factions of the Free State Party. The radicals, led by Lane, advocated a program of terrorism against so-called pro-slavery settlers while Robinson's conservatives favored the exercise of patience and the use of moderate tactics in wresting the control of local government out of the hands of the pro-slavery party.[10]

The Lane-Robinson feud reached a fever pitch in the tense weeks preceding the election of the first Kansas senators in April, 1861. After winning election to the governorship,

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[9]Ibid., pp. 18-19.

[10]Ibid., pp. 21-22.

Robinson used every power at his command to block Lane's election to the United States Senate, but to no avail. Amidst a scene of uproarious confusion the Kansas legislature on April 2, 1861 elected Lane to the Senate. Chosen along with Lane was Samuel Pomeroy of Atchison, a short, pudgy man of forty-five with a bland smile and sanctimonious air that led Kansans to call him "Pom the Pious."[11]

When Lane reached Washington to assume his senatorial duties, the capital seethed with frantic rumors. Rebels were preparing to seize the Federal arsenal at Harpers' Ferry; the White House was to be burned and the President assassinated! Quickly perceiving the opportunities such an atmosphere presented, Lane seized the initiative. Forming his fellow Kansans in Washington into an outfit known as the Frontier Guards, Lane offered the President the unit's aid in defending the capital city. The proposal was accepted, and for several days the Guards bivouacked in the White House itself. After serving a total of about two weeks Lane's unit was mustered out of the service at a White House ceremony attended by President Lincoln.[12]

The most significant aspect of the Frontier Guards episode was the effect which it had on Lane's relationship with

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[11] Ibid., pp. 24-32.

[12] Ibid., p. 34; Jay Monaghan, Civil War on the Western Border 1854-1865 (Boston: Little, Brown and Co., 1955), p. 128 (hereafter cited as Monaghan, Western Border).

the President. For years Lane had been cultivating Lincoln's friendship and had campaigned in his behalf in Indiana and Illinois in 1860. By raising and commanding the Frontier Guards, Lane increased his esteem in the eyes of Lincoln and henceforth commanded remarkable influence with the President. By the end of April, 1861 Lane was handing applications for appointments to Federal positions to Lincoln, who in turn endorsed them without even reading them. Pomeroy and Martin Conway, the sole Kansan in the House of Representatives, in contrast, obtained only a minor share of the patronage.[13]

Not yet content, Lane tried to gain still greater influence. Through allies in the Kansas legislature, an attempt was made to deprive Governor Robinson of the right to select general officers of the state militia. When the move failed, the irrepressible senator on June 20, 1861 secured from the War Department a brigadier general's commission and permission to recruit two regiments in Kansas. When Robinson learned of this action, the governor declared Lane's Senate seat vacant and appointed one of his own close associates, Frederick P. Stanton, to fill the vacated position. Stanton left immediately for Washington and following his arrival the Judiciary Committee of the Senate considered the merits of his case and recommended the passage of a resolution awarding Lane's seat to Stanton. Lane's friends in the upper house, however,

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[13]Castel, Frontier State, pp. 34-35.

prevented the resolution from coming to a vote, and Stanton had to content himself with receiving nothing more than traveling expenses.[14]

Robinson's attack, however, was not a total failure. By attempting to drive Lane out of the Senate, on the grounds that under the Constitution no man could serve as United States senator and general simultaneously, Robinson had forced his adversary to drop all claims to being a regularly commissioned general. Undaunted, Lane, who by this time apparently harbored presidential ambitions, secured a brigadier's commission from Governor Oliver P. Morton of Indiana and returned to Kansas in August.[15]

Once back in his adopted state, Lane harangued fellow Kansans to join his brigade. On the surface, the goal of Lane's Brigade, as the unit became known, was to launch forays against rebel forces in Missouri. In reality, however, it appears that Lane had already hatched in his own mind a grandiose scheme to drive with his men all the way to the Gulf of Mexico, stirring up slave insurrections along the way. Anti-slavery zealots in the North could not help but be impressed by such a foray, if it ever materialized, and it was not inconceivable that an expedition of this sort might go a long way toward placing Jim Lane in the White House.[16]

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[14] Ibid., pp. 46-48; Senate Report No. 1, 37 Cong., 1 Sess., 1861 (Serial 1112), pp. 1-6.

[15] Castel, Frontier State, pp. 48-49.

[16] Ibid., pp. 49-50.

After enlisting the support of both ruffians and men of esteem, Lane proceeded southward from Leavenworth to Fort Scott. At this outpost, located only a few miles from the western border of Missouri, he took charge of the 1,200 troops there who were members of the Third, Fourth and Fifth Kansas regiments. After assuming command of these forces, he decided that Fort Scott would be difficult to hold because of the surrounding hills. Thus, the bulk of the troops were moved to a new hastily constructed outpost known as Fort Lincoln.[17]

By the latter part of August Lane had concluded that the Southern Indians could be of some assistance in his planned drive to the Gulf. On August 30, 1861 E. H. Carruth, a former national clerk of the Seminole Nation, was commissioned to arrange a meeting between Lane and the leaders of the tribes of the Indian Territory. After receiving his commission, Carruth on September 11 dispatched messages to the Five Civilized Tribes. These letters invited tribal leaders to attend a proposed conference to be held in the vicinity of Fort Lincoln, promised them the protection of both their pensions and property and gave them assurances that the Federal commissioners would inform them when and where their tribal moneys would be paid.[18]

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[17] Ibid., pp. 50-51; Monaghan, Western Border, p. 182.

[18] E. H. Carruth to William G. Coffin, July 11, 1861, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834; also Carruth to John Ross, to the Loyal Choctaws and Chickasaws, to the Chiefs and Headmen of the Seminoles and to Opothleyaholo, September 11, 1861, ibid.

Certainly there were individuals in the Indian Territory who were anxious to meet Federal representatives. By the time that Carruth wrote his letters to the tribes of the Territory, Albert Pike had nearly completed the negotiation of his treaties. Nevertheless within each of the Civilized Tribes there were individuals dissatisfied for one reason or another with the Confederate alliance. Dissention and dissatisfaction were particularly widespread among the Creeks.

From the very first a significant number of Creeks, led by Opothleyaholo, favored the preservation of treaty relations with the United States and the steering of a course of neutrality. Unswayed by either the arguments of Pike or the actions of some of their leaders in treating with the Confederacy, these people held a council on August 5, 1861 and declared the Confederate treaty illegal. Apparently before the dispatch of Carruth's letters, the Creek dissidents decided to send delegates northward to Kansas. Chosen to make the trip were White Chief and Bob Deer, accompanied by interpreter Joseph Ellis. Their desire was to meet with Federal representatives in an attempt to get some promise of support from the United States government.[19]

Traveling northeastward, the delegates reached the Shawnee reservation on the Kansas-Missouri border around the middle of September. Here it appears they met with Carruth and

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[19]Angie Debo, The Road to Disappearance (Norman: University of Oklahoma Press, 1941), p. 148 (hereafter cited as Debo, Road).

made tentative plans to hold a general intertribal conference at Humboldt, Kansas, in November, but this meeting never materialized. Eventually the Creek emissaries made contact with their newly appointed agent, George Cutler, and together they traveled to Washington where a meeting was held with Lincoln in December, 1861. Agent Cutler favored the formation of a brigade of loyal Indians in order to restore tribal confidence in Federal intentions. Lincoln's exact response to this proposal is not known, but at the December meeting he apparently promised nothing more specific than to send help as soon as possible. By late December Agent Cutler and his charges were back in Kansas where they met with Superintendent Coffin at Leavenworth on the twenty-eighth of the month. The Creeks had hoped that the superintendent would have some funds which they might carry back to their people. Coffin, however, could give them nothing except a few pipes, along with some tobacco and sugar. After receiving these meager presents the Indians started back toward their homes in the Indian Territory.[20]

Events transpiring within the Territory prevented the Creek delegates from reaching their destination. As malcontents from other tribes began joining Opothleyaholo's band of

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[20]George Cutler to William P. Dole, October 21, 1861, Abraham Lincoln MSS, L.C., Series 1, Roll 28; White Chief et al to Abraham Lincoln, September 18, 1861 and May 16, 1863, Letters Received, O.I.A., Creek Agency, N.A., Microcopy 234, Roll 230; William G. Coffin to Dole, March 29, 1862, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834; Debo, Road, p. 149.

dissident Creeks, Principal Chief Motey Canard grew increasingly uneasy. Learning that the dissidents had been told that the majority of the Cherokees opposed alignment with the Confederacy, Canard dashed off a letter to John Ross on October 1. The Creek chief asked Ross to send some sort of delegation to Opothleyaholo's camp to inform those there of the true conditions within the Cherokee nation. Otherwise, Canard warned, civil war would soon break out within the Creek Nation. Two days later Canard sent off a more frantic message to Ross informing the Cherokee chief that Opothleyaholo's followers were planning an attack within five days on the regiment organized under the Pike Treaty.[21]

Ross responded to these near frantic appeals by sending a delegation headed by Joseph Vann to Opothleyaholo's camp. With them the Cherokees carried an invitation to attend their National Council, which was in session at Tahlequah, and letters from Pike granting Opothleyaholo and his friends safe passage to the Cherokee capital. Ross, meanwhile, sent a letter to Canard inviting him also to come to Tahlequah. By getting the feuding Creeks to meet together, Ross hoped to harmonize relations between the contending factions.[22]

His efforts to mediate the Creek difficulties failed.

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[21]Canard to Ross, October 1 and 3, 1861, John Ross Papers, Thomas Gilcrease Institute of American History and Art, Tulsa, Oklahoma; Debo, Road, p. 150.

[22]Ross to Canard, October 8, 1861, John Ross MSS, Gilcrease Institute, Tulsa.

In a letter of October 18, Canard thanked Ross for his efforts but expressed the opinion that there was now no hope for a friendly adjustment to the current difficulties within the tribe. Aware that the dissident Creeks had sent a delegation northward in search of assistance and obviously alarmed by the number of people, including runaway slaves, attracted to Opothleyaholo, Canard had decided to resort to force. And force was applied, despite the strenuous objections of John Ross.[23]

Gathering a force of about 1,400 troops, Douglas H. Cooper, now a full-fledged Confederate colonel, moved in mid-November against Opothleyaholo's main encampment near present day Eufaula, Oklahoma. For a while the dissident tribesmen held their own against the Confederate attackers, but on December 26, 1861, Cooper's force, with the aid of Arkansas reinforcements, inflicted a crushing defeat on Opothleyaholo at the Battle of Chustenahlah in the Osage Hills. Following this disaster all discipline broke down in the ranks of the Union sympathizers, and Opothleyaholo's followers began a pell-mell retreat toward Kansas. Food, livestock and sometimes even children were lost as the survivors of Chustenahlah dashed as best they could northward across snow covered prairies in the dead of winter. How many died before reaching

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[23]Canard to Ross, October 18, 1861, and Ross and Joseph Vann to Canard, and Echo Harjo, October 20, 1861, ibid.

Kansas will probably never be known, but doubtless hundreds, perhaps even thousands, failed to survive the ordeal of their forced march.[24]

The arrival of these refugees in Kansas threw an entirely new element into the already complex situation in that state. Officials of the Indian Bureau were unprepared for the arrival of these Indians, and their relief efforts were at best grossly inadequate. Suffering from scanty and sometimes putrid provisions and smarting from the defeat suffered at the hands of their enemies, the refugees themselves were anxious to return home. Late in January, 1862, for example, Opothleyaholo wrote Lincoln begging the President to permit "the great war chief" James Lane to lead an expedition into the Indian country.[25]

Lane had long since made clear to Washington officials his desire to lead a military expedition southward out of

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[24]Edwin C. McReynolds, The Seminoles (Norman: University of Oklahoma Press, 1957), pp. 293-301; Debo, Road, pp. 149-51; Dean Banks, "Civil War Refugees from Indian Territory in the North, 1861-1864," Chronicles of Oklahoma XLI (1963), pp. 288-89 (hereafter cited as Banks, "Refugees," CO, XLI).

[25]Report of the Commissioner of Indian Affairs for the Year 1862, S. Ex. Doc. No. 1, 37 Cong., 2 Sess., 1862 (Serial 1117), p. 181; Ho-po-EITH-LE-YO-HO-LA [Opothleyaholo] and A-LUK-TUS-TE-NU-KE to Lincoln, January 28, 1862, War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (Washington: Government Printing Office, 1883), Series I, viii, p. 534 (hereafter cited as OR, with series number in upper-case numerals and volume number in lower-case numerals).

Kansas toward the Gulf. Returning to the nation's capital from Kansas in November, 1861 the senator immediately resorted to what one historian has called his "infectious enthusiasm" in attempting to persuade the administration to launch a southern expedition.[26] The targets of Lane's palaver were Lincoln, Lincoln's new secretary of war, Edwin M. Stanton, and General George B. McClellan, who had recently superceded Winfield Scott as commanding general of the Union armies.

There were others in addition to Senator Lane who for various reasons wanted to see an attack launched against the Confederate held areas south of Kansas. One of these was Postmaster General Montgomery Blair who thought that a Federal movement against Texas would forestall what he believed was one of the Confederacy's great aims, the conquest of Mexico. Another was Edward Atkinson, a New Englander prominent in abolitionist circles. In a pamphlet published in 1861 entitled "Cheap Cotton by Free Labor" Atkinson argued convincingly that the reconquest of Texas and the colonization of the area by Northern free labor would be an important first step in the reconstruction of Southern agriculture and society. Late in 1861 he began trying to promote a military expedition into Texas, corresponding with individuals such as Dwight Foster, the attorney general of Massachusetts, and Senator

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[26]Annie Abel, The Slaveholding Indians, Vol. II: The American Indian as a Participant in the Civil War (Cleveland: The Arthur H. Clark Co., 1919), p. 37 (hereafter cited as Abel, Slaveholding Indians, II); Castel, Frontier State, p. 78.

Charles Sumner. To those voices urging a Federal offensive in the West was added that of Massachusetts' politician and general Benjamin F. Butler, no less an egomaniac than Lane. In correspondence and in personal meetings with Stanton and McClellan, Major General Butler, who at that time commanded the Department of New England, asked permission to land on the Texas coast with a force of 15,000 men. Yielding to these assorted pressures, the administration began drawing up plans for a two-pronged attack designed, among other things, to detach Texas from the Confederacy. The intention was to permit Butler to land on the Texas coast near Indianola while a second Federal column advanced southward from Kansas.[27]

The precise role which Lane would play in this operation was the source of great confusion. In his conversations with administration leaders, the senator insisted that all of his own plans had been approved by Major General David Hunter, commander of the Department of Kansas. These statements were patently false. Hunter, in fact, had no knowledge of any plans to launch an expedition out of Kansas until late November, 1861. On the twenty-sixth of the month Adjutant General Lorenzo Thomas addressed a letter to Hunter informing him that General McClellan thought that a successful movement might be launched from his department against northeastern

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[27]Ludwell H. Johnson, Red River Campaign: Politics and Cotton in the Civil War (Baltimore: The Johns Hopkins Press, 1958), pp. 5-11.

Texas. Hunter was asked to report to Washington the "troops and means" which he had at his disposal which might be used in the venture.[28]

Hunter responded by branding the proposed expedition "altogether impracticable." To give validity to this assertion he pointed out that to the south Federal forces faced an estimated ten thousand hostile Indians while to the east Confederate General Sterling Price was believed to have about twenty thousand men in Missouri. To counter these forces he had only about three thousand troops in his department, and under these circumstances he would be doing good, he said, to hold on to the territory within his lines. Fort Leavenworth, Hunter maintained, could be taken by the enemy at will.[29]

Irritated by the department commander's skepticism, General McClellan sent an immediate reply. In this dispatch Hunter learned for the first time that the proposed expedition launched from his department against northern Texas would work in conjunction with a second expedition to strike at the western part of the state from the Gulf of Mexico. McClellan urged Hunter to give further consideration to the planned attack and assured him that a sufficient force would be placed at his disposal as soon as Hunter's wants were known and circumstances permitted.[30] In response, Hunter informed the commanding

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[28]Thomas To Hunter, November 26, 1861, OR, I, viii, p. 379.

[29]Hunter to Thomas, December 11, 1861, ibid., p. 428.

[30]McClellan to Hunter, December 11, 1861, ibid., pp. 428-29.

general that as he now had an idea of what specifically was expected and planned he would lose no time in preparing and forwarding exact estimates of the forces required for the expedition. As though to again remind McClellan of the difficulties of the proposed campaign, he estimated offhand that at least twenty thousand additional men would be needed, along with a transportation train large enough to transport supplies from Fort Leavenworth to Texas.[31]

Hunter soon received another message from Washington, this one from Lane. On January 3, 1862, the senator informed the department commander that he had been instructed to report to Hunter for "an active winter's campaign." The government, added Lane, had ordered eight regiments of cavalry, three regiments of infantry and three batteries to report to Hunter. Lane concluded by informing Hunter that as department commander he would be expected to organize four thousand Indians to aid in the forthcoming expedition.[32] Lane's letter was followed by a somewhat contradictory one from Adjutant General Lorenzo Thomas on January 24, 1862. Thomas' letter informed Hunter that the outlines of the plan which Lane had urged upon the President and the secretary of war were in accordance with Hunter's own views. Thomas also informed him that Lane had been given authority to raise eight to ten thousand

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[31]Hunter to McClellan, December 19, 1861, ibid., pp. 450-51.

[32]Lane to Hunter, January 3, 1862, ibid., p. 482.

Kansas troops and organize four thousand Indians. Finally, the adjutant general emphasized the fact that General McClellan had not given Lane a command independent of Hunter. Lane was to operate under Hunter's supervision and if Hunter deemed it proper, he might command the expedition himself.[33]

By the time that Thomas dispatched his communique, the plans for the proposed southern expedition had become hopelessly confused. In southern Kansas the refugee Indians were clamoring to be returned to their homes, and in response plans had been laid to organize the warriors into military units to aid in the reconquest of their territory, but it was not clear whether Hunter or Lane was to handle this task. In Kansas, officers reported daily to Hunter requesting formal permission to be assigned to the staff of General Lane, and perhaps most galling of all from Hunter's point of view was the fact that Lorenzo Thomas' letter of January 24 revealed that Lane was still telling Washington authorities that his proposed expedition was a joint design drawn up by Hunter and himself working together. In reality, Lane had never consulted with Hunter on any southern expedition, and as of late January, 1862 Hunter was still in the dark as to the exact details of Lane's plans. Washington authorities had done nothing to enlighten the department commander on the subject as they labored

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[33]Thomas to Hunter, January 24, 1862, ibid., pp. 525-26.

under the impression that the plans presented by the senator were a Lane-Hunter concoction.[34]

In exasperation and anger Hunter issued General Order No. 11 on January 27, 1862. From his headquarters at Fort Leavenworth, Hunter informed all interested parties that the departmental commander intended to personally command the operation which the newspapers were now calling General Lane's expedition. He said that since transportation had not been provided, the expedition must go forward without it. Therefore, all tents, chests, camp tables and stools must be abandoned or stored. The general commanding the expedition would take in his valise one shirt, one pair of drawers, one pair of socks and one handkerchief, and no officer or soldier was to carry any more. Through the issuance of this order, Hunter was trying to make a burlesque out of the southern expedition, and he succeeded. The idea of Union forces driving through the Indian Territory and Texas to the Gulf with only one change of underwear was, after all, ludicrous.[35]

By the time Hunter issued this order, Lane was back in Kansas. Infuriated over Hunter's assuming command of his project, Lane immediately fired off a letter to one of his allies in the House of Representatives, John Covode of

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[34]David Hunter to Henry W. Halleck, February 8, 1862, ibid., pp. 829-31.

[35]James H. Lane to John Covode, January 27, 1862, ibid., pp. 529-30; Castel, Frontier State, p. 80.

Pennsylvania. Lane instructed Covode to see the President, the Secretary of War and General McClellan and then let him know what he should do. By telegram Covode soon replied that he had followed Lane's instructions and that Hunter would not get the money or men he needed. "His command," Covode stated confidently, "cannot go forward."[36]

In an effort to render some order out of the growing confusion, Lincoln finally intervened. On January 31, 1862 the President addressed a letter to Secretary of War Stanton informing the secretary that he had never intended the so-called Lane Expedition to be "a great, exhausting affair," merely a snug, sober column of 10-15,000 men.[37] Lincoln next wrote a joint letter to Hunter and Lane dated February 10. The President stated that his intention was to avail the government of the services of both men and, if possible, to satisfy both. If General Hunter could, consistent with the public interest, oblige General Lane he would also oblige the President. If an amicable accord could not be worked out, however, Lane must report to Hunter for duty according to accepted rules or decline to serve. After the reception of Lincoln's letter, Lane gave up his attempt to personally lead an expedition, and he returned to Washington.

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[36]Lane to Covode, January 27, 1862, OR, I, viii, pp. 529-30; David Hunter to Henry W. Halleck, February 8, 1862, ibid., pp. 829-31.

[37]Lincoln to the Secretary of War, January 31, 1862, ibid., p. 538. The underlining is Lincoln's.

But during the course of his return trip to the nation's capital, he reportedly denounced the President in bitter terms, calling him, among other things, a demagogue and scoundrel who broke his promises.[38]

The ensuing weeks witnessed the continuation of plans to launch a military expedition out of Kansas. The impetus, however, was different. Now the major stimulus for a campaign came from officials of the Indian office. Faced with a growing number of refugees from the Indian Territory and unable to provide adequate shelter and provisions in Kansas, Commissioner Dole and his associates concluded that a return of the Union Indians to their homes would be the best solution to the refugee problem. On March 13, 1862 the commissioner corresponded with Secretary of the Interior Smith and voiced the opinion that the refugee Indians now in southern Kansas might best be cared for by returning them under adequate protection to their home territory. If this action were taken the Indians could raise the food needed for their subsistence. If the refugees remained in Kansas, on the other hand, Dole estimated that it would cost the Federal government $500,000 to support them during the coming year.[39]

By the time Dole wrote to Smith about the refugee problem, 8,000 Indians had made the trek northward to

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[38]Lincoln to Hunter and Lane, February 10, 1862, ibid., p. 551; Castel, Frontier State, pp. 80-81.

[39]Dole to Smith, March 13, 1862, R.G. 48, N.A., Letters Received.

Kansas. Gradually Union agents had channeled the flood of refugees and had settled most of them on largely uninhabited Indian lands on the Verdigris River west of Humboldt. Despite the efforts of Superintendent Coffin and his agents to aid these people, the plight of the refugees once they reached Kansas was not much better than it had been on the trails leading from the Indian Territory. Little money was available with which to procure needed supplies and shelter, and the harsh winter weather, combined with diseases such as measles and diptheria, took a fearsome toll of those who had fled their homes. With the ground frozen and few tools available, burial of the deal refugees was difficult, and the disposal of deal livestock nearly impossible. Realizing the putrid conditions which warmer weather would bring, Indian officials decided to move their charges eastward to an area near Leroy, Kansas, in the Neosho River Valley.[40]

The move to the Neosho began early in March, 1862 and with it the spirits of the refugees buoyed. Wood for fires and shelter was available in abundance, and a vast improvement in living conditions seemed imminent to the Indians. But these hopes were premature. The supplies which reached the refugee camp on the Neosho were scanty and inferior in quality, and white settlers in the area bitterly complained

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[40]Banks, "Refugees," CO, XLI, pp. 288-90; William G. Coffin to William P. Dole, March 24, 1862, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834.

about the Indian consumption of their timber. When the Indians expressed dissatisfaction with these conditions the Indian office appointed George W. Collamore to investigate conditions in the refugee camp. Collamore made his report to Commissioner Dole on April 21, 1862 pointing out that inadequate food and shelter along with an unusually severe winter had all contributed to the Indians' miseries. He also noted that representatives of the Confederacy in the Indian Territory told the Indians prior to their flight that their so-called friends in the North would not provide for them, and the fulfillment of this warning had contributed to the restlessness and suspicion so prevalent in the refugee camp. In Collamore's opinion, a speedy return of the refugees to their homes was the wisest and most humane policy for the Federal government to follow.[41]

The Indians themselves concurred in this view, and the warriors willingly joined an Indian Brigade hastily formed at Leroy, Kansas. On June 14, the Brigade divided into two regiments and consisting of about 1,000 Creeks and Seminoles, sixty Quapaws, sixty Cherokees and a scattering of Delawares, Keches, Caddoes, Osages and Kickapoos, left Leroy to join the white troops at Humboldt. Rumors drifting up from the Indian Territory indicated that an additional 2,000 loyal Cherokees

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[41]Banks, "Refugees," CO, XLI, p. 291; Collamore to Dole, April 21, 1862, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834.

would join the expedition once it reached their country.[42]

The white troops gathered at Humboldt were commanded by Colonel William Weer, a Wyandotte, Kansas, lawyer with military ambitions and a fondness for drink. In addition to the Indian troops, Weer's force consisted of cavalry and infantry regiments from Kansas, Wisconsin and Ohio along with two batteries from Indiana. Altogether, the white and Indian troops combined numbered about 6,000, and with this force it was hoped that Federal authority could be reasserted in the Indian Territory, the loyal refugees restored to their homes and the southern borders of Kansas and Missouri made more secure. On June 25, 1862, Weer's mixed column of Indian and white troops moved southward out of Humboldt.[43]

Several civilian emissaries accompanied the expedition. One of these was E. H. Carruth, appointed by Superintendent Coffin to negotiate informally with the loyal Indians still in the Territory. The superintendent instructed Carruth to assure the Indians that the Federal government had no disposition to shrink its treaty obligations to any of the tribes that "have been, are now and remain loyal." Rather, at the "earliest practicable period" the government would restore to these people all the rights, privileges and immunities enjoyed before the rebellion. Appointed by Coffin to serve along with

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[42]William G. Coffin to William P. Dole, June 15, 1862, ibid.

[43]Ibid.; Castel, Frontier State, pp. 97-98.

Carruth was H. W. Martin, who was given the task of inquiring into the loyalty of the various tribal chiefs and headmen. Coffin believed that this information would be of assistance in the formulation of future Federal policy. Finally, Baptist missionary Evan Jones accompanied the expedition carrying a letter from Coffin addressed to John Ross. In this message Coffin assured the Cherokee chief that the Weer expedition was designed to protect the Indian Territory and expressed the hope that the day was not distant when all those Indians who had remained loyal might regain unimpaired all their former rights and privileges.[44]

Predictions that the Federal advance into the Indian Territory would be accompanied by numerous defections to the Union side were well founded. As early as December 25, 1861 Albert Pike had informed Confederate Secretary of War Judah P. Benjamin that emissaries from Kansas, including some Indians, had circulated among the tribes of the Indian Territory stirring up discontent. Their predictions of the inability of the Confederacy to meet its obligations combined with the talks which certain tribesmen held in Kansas with Federal officials threatened, he said, to overturn all that the Confederates had accomplished in recent months.[45]

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[44]Coffin to Carruth, June 16, 1862, Coffin to Martin, June 23, 1862, and Coffin to John Ross, June 16, 1862, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834.

[45]Pike to Benjamin, December 25, 1861, OR, I, viii, pp. 720-21.

Shortly after Pike wrote to Benjamin, the threat of intra-tribal civil war and defection to the Union side within the Cherokee tribe became so great that Confederate Colonel James McIntosh made a special trip to Fort Gibson early in January, 1862. McIntosh came away from his meeting with Cherokee leaders convinced of John Ross' unswerving fidelity to the Confederate cause. Trouble, he predicted, might continue to crop up between full and mixed-blood Cherokees, but with a little determination all such disturbances might "be nipped in the bud" by Southern officials.[46]

Others, however, did not share this fairly optimistic appraisal. Douglas H. Cooper in February, 1862, warned his Confederate superiors that the Cherokees were on the verge of civil war, and in May he predicted that if a Federal force advanced into the Cherokee domain most of the members of the tribe would defect to the Union side.[47]

Cooper's appraisal proved to be more nearly correct than that of McIntosh. Confederate forces in the Indian Territory provided no serious opposition to Weer's column, and on July 3, 1862 at Locust Grove in the Cherokee Nation, Weer inflicted a decisive defeat on a force of Missouri rebels led by Colonel J. J. Clarkson. Following this reversal about 1,500 Cherokees deserted and joined forces with the

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[46]James McIntosh to Stanley Cooper, January 4, 1862, ibid., p. 732.

[47]Douglas H. Cooper to Albert Pike, February 10, 1862, and Cooper to Earl Van Dorn, May 6, 1862, ibid., xiii, pp. 823-24, 896.

Federals necessitating the formation of a third Indian regiment which was placed under the command of William A. Phillips.[48]

Weer now concluded that the time to approach John Ross had arrived. From his camp on Wolf Creek, Weer sent a message to the Cherokee chief on July 7, 1862 under a flag of truce. Playing somewhat loosely with the facts, the Union commander informed Ross that a portion of his tribe had been "seduced" by designing men into revolting against the Federal government, a government "whose administration has been so parental as to well deserve the name 'Great Father.'" Weer asked to meet with Ross at the Union camp on Wolf Creek "to effect a restoration of good feeling" in the Cherokee country and devise a plan by which the unfaithful portion of the Cherokees might place themselves under the protection of Federal forces. Ross answered the following day by denying Weer's request for a meeting.[49]

The actions of the Cherokee chief during this period can only be classified as extremely ambivalent. In complaining to President Jefferson Davis the preceding May about the small number of Confederate troops assigned to protect the Indian Territory, Ross had emphasized Cherokee fidelity to the

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[48]William Weer to Thomas Moonlight, July 12, 1862, ibid., pp. 487-88; Abel, Slaveholding Indians, II, pp. 126-32.

[49]Weer to Ross, July 7, 1862, and Ross to Weer, July 8, 1862, OR, I, xiii, pp. 464, 486-87.

Confederate cause. The Cherokees, he wrote, had allied with the Confederacy in good faith and expected "to abide the issue of the great struggle in which they are now engaged."[50] His quick rejection of Weer's request for a parley would seem to lend credence to the assumption that the Cherokee chief devoutly supported the South in its fight for independence.

Yet Ross' adherence to the Confederate cause was not as steadfast as it first appeared to be. In the spring of 1862 Brigadier General James G. Blunt, who had recently succeeded Hunter as commander of the Department of Kansas, sent Indian scouts out into the Indian Territory. In reporting on these actions to Secretary of War Stanton, Blunt claimed that his scouts returned from the Indian Territory with verbal messages from Ross indicating that the chief really sympathized with the Union cause. On the basis of these reports, Blunt expressed confidence that Ross would cooperate with the United States as soon as he was convinced that Federal forces could hold the Cherokee country.[51]

Ross' inconsistent behavior during this period strongly indicates that the Cherokee chief was first and foremost a sage politician bent on maintaining Cherokee unity and his own position of leadership. In order to attain these twin goals he would deal with the side that appeared to be ascendent at

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[50]Ross to Jefferson Davis, May 10, 1862, ibid., pp. 824-25.

[51]Blunt to Stanton, July 21, 1862, ibid., p. 486.

a given moment, and if neither appeared dominant he would treat with both simultaneously until the situation crystallized.

Following his rebuff by Ross, Colonel Weer sent out two reconnitering parties. One of these, led by Major William T. Campbell, was to inspect enemy positions south of the Arkansas River, while a second party, commanded by Captain Harris S. Greeno was dispatched to the Tahlequah area. Around July 14, Campbell's party occupied Fort Gibson without resistance, and the interrogation of local inhabitants revealed that the Confederates allegedly had about 6-7,000 men in the area of Fort Davis, an outpost recently constructed on the south side of the Arkansas River in the Creek Nation.[52]

Greeno with equal ease meanwhile surrounded and occupied the Cherokee capital on July 14. He then established a camp two and one-half miles south of Tahlequah and was informed by a Negro straggler that about 2-300 friendly Indians were near John Ross' home in the Park Hill area. On the morning of July 15, Greeno advanced to Park Hill where he found about 200 Cherokees, including several who were officers in the Confederate service. The officers had just received instructions from Confederate officials to issue a proclamation calling on all Cherokee males eighteen to thirty-five to take up arms to repel the Federal invasion. All, from

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[52]William T. Campbell to William Weer, July 14, 1862, ibid., p. 162; Abel, Slaveholding Indians, II, p. 136.

the chief down, were unsure what to do. Greeno quickly settled the issue by making them all prisoners of war, but Chief Ross was immediately paroled and permitted to remain at his home.[53]

After receiving reports on the activities of Campbell and Greeno, Weer began planning an attack on Fort Davis.[54] A rapid chain of events, however, prevented these plans from being carried out. From the first, the Federal forces operating under Weer in the Indian Territory were bothered by the searing heat of the drought plagued country and the shortage of potable water. These uncomfortable conditions, along with Weer's imperious, short-tempered treatment of his fellow officers--who feared that the expedition's supply lines were over-extended--produced seething discontent and eventually open mutiny. On the evening of July 18, 1862 Colonel Frederick Salomon placed Weer under arrest and issued a statement to the troops justifying his actions on the basis of Weer's alleged incompetence and unfitness for a position of command. Orders were issued instructing the entire command, with the exception of the Indian regiments, to begin a northward march at 2:00 a.m., on July 19. The Indian troops were to occupy a position around the junction of the Verdigris and

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[53]Harris S. Greeno to William Weer, July 17, 1862, OR, I, xiii, pp. 161-62.

[54]William Weer to James G. Blunt, July 16, 1862, ibid., pp. 160-61.

Grand rivers and act as a "corps of observation."[55]

Salomon's actions produced considerable consternation in some quarters. Superintendent Coffin's emissaries, E. H. Carruth and H. W. Martin, protested vehemently against the abandonment of the recaptured territory. A retreat, they maintained, would leave those Indians who had recently defected to the Union side exposed to the ravages of their enemies. Valid as these arguments were, Salomon simply brushed them aside and continued his retreat all the way to Fort Scott. Brigadier General Blunt, angered by this turn of events, convened a court martial at Fort Scott to investigate Salomon's actions, but when he found that a large number of the expedition's officers were involved in the mutiny he simply adjourned the court and took no further action.[56]

One of those individuals who traveled northward with Colonel Salomon was Cherokee Chief John Ross. Fearing death at the hands of Confederate supporters, the chief and his family accompanied the retreating column to Fort Scott, and

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[55]Address of Frederick Salomon to the troops of the Indian Expedition, and General Orders No. 1, July 18, 1862, ibid., pp. 475-77; Salomon to James G. Blunt, July 20, 1862, ibid., pp. 484-85; Abel, Slaveholding Indians, II, p. 138; Castel, Frontier State, p. 98.

[56]E. H. Carruth and H. W. Martin to James G. Blunt, July 19, 1862 and Blunt to Frederick Salomon, August 3, 1862, OR, I, xiii, pp. 478, 531-32; James G. Blunt, "General Blunt's Account of His Civil War Experiences," The Kansas Historical Quarterly, I (1932), p. 224 (hereafter cited as Blunt, "Experiences," KHQ, I).

on August 13, 1862 he departed for Washington with a letter of introduction from General Blunt.[57] Ahead of him and his people there lay a long and difficult path.

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[57]Blunt, "Experiences," KHQ, I, p. 224; Blunt to Abraham Lincoln, August 13, 1862, OR, I, xiii, pp. 565-66.

## CHAPTER IV

## CONGRESS, KANSAS AND THE INDIAN QUESTION

In the early months of the Civil War, Federal officials expressed great sympathy for the plight of the Five Civilized Tribes. Among observers near the scene of hostilities one general view prevailed: Federal abandonment of the Indian Territory left the people of the area with little choice except to cast their lot with the South.[1] Those officers of the Lincoln administration most directly concerned with Indian affairs shared this view least at first. In his first annual report in 1861 to the secretary of the interior, Commissioner of Indian Affairs Dole for example, stated that after having been plied with promises, threats and lies by the rebels and after witnessing the treason of Federal officials, he was frankly surprised that the tribes of the Indian Territory had not more readily espoused the Southern

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[1]Evan Jones to William P. Dole, January 21, 1861, Letters Received by the Office of Indian Affairs, Cherokee Agency, National Archives, Microcopy 234, Roll 99; E. H. Carruth to William G. Coffin, July 11, 1861, and Charles B. Keith to H. B. Branch, August 24, 1861, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834.

cause. Dole added the opinion that the degree of loyalty to the Union found among these Indians was far greater than that of the whites of the rebellious states.[2] Dole's superior, Secretary of the Interior Caleb Smith, expressed virtually identical views in his first annual report to the President, and stated his conviction that the tribes aligned with the Confederacy would renounce these ties as soon as the United States sent a military force to their country large enough to protect them.[3]

Congress, likewise, at first showed little inclination to wreak vengeance upon the defecting tribes. The Indian Appropriations Act for the fiscal year 1861-1862, signed on March 2, 1861 made the usual appropriations for the tribes of the Indian Territory, a not too surprising event as the tribes had not yet entered into formal relations with the Confederate government.[4] And in its special session held in the summer of 1861, Congress was too preoccupied with other war measures to be concerned with Indian affairs.

Congress, however, did not long maintain this attitude

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[2]Annual Report of the Commissioner of Indian Affairs for the Year 1861, Sen. Ex. Doc. No. 1, 37 Cong., 2 Sess., 1862 (Serial 1117), p. 627 (hereafter cited as Commissioner's Report 1861).

[3]Congressional Globe, 37 Cong., 2 Sess., 1862, Appendix, p. 12.

[4]Statutes at Large, XII, pp. 224-25, 230, 238.

of indifference. In response to the demands and interests of land-hungry Westerners, Congress during the course of the war examined almost every facet of the Federal government's relationship with the Five Civilized Tribes. And out of this examination would emerge new policies having a profound impact upon the people of the Indian Territory.

American frontiersmen always maintained great interest in the Indian, usually viewing the red man as a barrier to the fulfillment of their aspirations. As one region after another fell to the white man's civilization, interest in Indian affairs receded, only to become a matter of critical concern in emerging frontier areas. As of the late 1850's and early 1860's probably no area of the United States had a keener interest in the Indians than the emerging state of Kansas.

From its inception, the destiny of Kansas was closely interwoven with the fate of the red man. The area later to become the Sunflower State was originally part of that ill-defined domain known as the Indian Country in which the Indians living east of the Mississippi were settled. As early as 1818 the Federal government began divesting the indigenous tribes--such as the Osage, Kansas, Pawnee and Otoe--of some of their holdings to provide an area in which the Eastern tribes might be colonized. By the early 1850's, slightly over 10,000 Indians whose ancestral homes ranged from Pennsylvania and New York to Wisconsin, Iowa and Missouri had been re-located on

reserves lying near the future Kansas-Missouri border. In those transactions, the resettled Indians were assured that no further moves were to be required. Their new homes were to remain theirs forever.[5]

The rapid expansion of white settlement from old established areas westward and from the Pacific coast eastward foredoomed all such promises. The faith of the United States was in fact broken on March 3, 1853 when Congress appropriated $50,000 for negotiations with the Indians west of Iowa and Missouri. In order to open new areas to avaricious whites, Congress hoped that these tribes would cede their domains either "in whole or in part" to the United States.[6]

The task of carrying on these negotiations fell on the shoulders of Commissioner of Indian Affairs George W. Manypenny. Genuinely determined to protect and, if possible, improve the welfare of his Indian wards, Manypenny concluded that instead of making further removals to more distant and less hospitable areas, the tribes should be given smaller reserves in their present locations. Here tribal members might receive individual land allotments and with encouragement learn to cultivate these plots like their white neighbors.[7]

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[5]Paul Gates, Fifty Million Acres: Conflicts over Kansas Land Policy, 1854-1890 (Ithaca: Cornell University Press, 1954), pp. 14-15 (hereafter cited as Gates, Fifty Million Acres).

[6]Ibid., pp. 16-17; Statutes at Large, X, pp. 238, 277.

[7]Gates, Fifty Million Acres, pp. 17-18.

Manypenny's idea of advancing the status of the Indian by surrounding him with whites proved to be quixotic. From the beginning restless Westerners had little sympathy for the commissioner's insistence on dealing honorably with his wards. His hopes of protecting the Indians were complicated by fact that before any of the new Manypenny treaties were ratified, indeed, before two of the most important of them were even completed, Congress on May 30, 1854 opened the newly created Kansas Territory to white settlement. Ignoring the fact that whites technically did not yet have the legal right to settle on one acre of land in the new territory, would-be land speculators and railroad promoters, frontier ruffians, pro and anti-slavery fanatics and a few genuine farmers flocked into Kansas. The sudden admixture of this odd assortment, with their conflicting views and goals, along with the great uncertainties as to which lands would and would not be opend to white settlement combined to produce several years of turmoil and profound confusion. Had the slavery controversy not even existed, it seems not unreasonable to conclude that the mad scramble for lands in the territory alone would have produced enough bloodshed to make Kansas somewhat unique in the annals of the American frontier.[8]

Out of the chaos of Kansas' formative years there gradually emerged one theme upon which all Kansans could agree,

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[8]Ibid., pp. 1-152, passim.

Indian removal. The dichotomous points of view separating railroad promoters from squatters, pro-slavery men from their anti-slavery opponents tended to blur with the passage of time as an increasing number of Kansans concluded that the Indians must be completely removed from their diminished domains.[9]

It is not especially difficult to account for the degree of unanimity which Kansans achieved on the question of Indian removal. Among the greatest hardships faced by early Kansas settlers was the scarcity of adequate transportation and communication facilities. Except for the Missouri, the rivers of the state were unnavigable, only a few miles of railroad track had been laid by 1860, and Leavenworth was the only town with direct telegraphic connections with the East. Residents of the area realized that this primitive status could not long be maintained. If Kansas was to prosper economically, improved methods of transportation must be established linking local communities to one another and providing Kansans with access to markets lying north, east and south. The obvious solution to this need was railroad construction. More miles of track would bind the area together and provide its people with avenues to out-of-state markets. Fully aware of these facts, Kansans looked forward to the coming of the railroads with an eagerness which one of the state's historians has said was little short of desperate.[10]

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[9]Ibid., pp. 106-07.

[10]Albert Castel, A Frontier State at War: Kansas, 1861-1865 (Ithaca: Cornell University Press, 1958), p. 7.

Railroad construction, however, was an expensive venture requiring large sums of capital and a rather substantial population to make operations profitable. In an effort to provide both the capital and the needed population the people of sparsely settled Kansas began to cast covetous eyes on the remaining Indian holdings in their state. If the Indian inhabitants were completely removed, some of the best lands in the state could then be thrown open to white exploitation. This development would go a long way toward providing Kansas with the capital to expand its railroad system and the population needed to make its operation profitable.[11]

Throughout the war years James Lane and Samuel Pomeroy represented Kansas in the United States Senate. Although the relationship between the two became increasingly strained, both were engaged in various railroad ventures and both were equally sensitive and responsive to the anti-Indian sentiments of their constituents. And it seems only logical to conclude that other Western members of Congress whose states were not too far removed from the primitive rawness of the frontier shared these views.

Possibly because Lane was so engrossed in his military schemes Pomeroy at first took the lead in dealing with the Indian question. On January 22, 1862, for example, Pomeroy presented a petition drawn up by certain citizens of Kansas

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[11] Ibid., p. 218.

calling for the negotiation of treaties with the Osage and Cherokee tribes opening their lands in Kansas to white settlement. Referred to the Senate Committee on Public Lands, the petition was eventually discharged from the committee without any action being taken.[12] Undiscouraged, Pomeroy next drew up a proposed bill providing for the consolidation of the Indian tribes of Kansas. Precisely what type of consolidation the senator had in mind, and exactly where the tribes would be consolidated is not known, but almost certainly he favored consolidation somewhere outside the confines of Kansas. A draft of this bill was submitted to Secretary of the Interior Smith who concluded that with a few alterations the bill would, if consumated, greatly improve conditions of the Indians and reduce the expenses of the Indian service.[13] The same day that this letter was written, March 24, Pomeroy presented his proposed Indian consolidation bill to the Senate only to see the bill eventually discharged without action by the Committee on Indian Affairs.[14]

Never one to ignore a potentially profitable issue, Lane meanwhile began submitting proposals of his own. Apparently thinking in terms of bringing the potentially rich

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[12]Journal of the Senate of the United States of America, 37 Cong., 2 Sess., 1862, pp. 132, 191 (hereafter cited as Senate Journal).

[13]Caleb Smith to Samuel Pomeroy, March 24, 1862, Letters Sent by the Indian Division of the Office of the Secretary of the Interior, National Archives, Microcopy 606, Roll 4.

[14]Senate Journal, 37 Cong., 2 Sess., 1862, pp. 332, 707.

farm and grazing lands of the Indian Territory under Kansas' control, Lane on March 17, 1862, submitted a resolution to the Senate. Lane's proposal called upon the Senate Committee on Indian Affairs to examine the "propriety and expediency" of extending the southern boundary of Kansas down to the northern boundary of Texas, thus making the Indian Territory part of Lane's adopted state.[15]

Long before the introduction of the Lane resolution, officials of the Interior Department had considered extending some sort of centralized governmental authority over the tribes of the Indian Territory. On December 23, 1861, Congressman William Vandever of Iowa introduced a resolution calling upon the House Committee on Territories to inquire into the "legality and expediency" of establishing territorial governments within the states or districts disloyal to the United States.[16] If carried out, this proposal might well result in the establishment of a territorial government over the Indian Territory, if, of course, Congress adopted the view that its inhabitants had revolted against the Federal government. In pondering the wisdom of such a move, Congressman J. M. Ashley, chairman of the Committee on Territories, asked for the views of Secretary of the Interior Smith. The secretary, in turn, sought the counsel of the commissioner of Indian affairs early in March, 1862.

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[15] Ibid., pp. 309-10.

[16] Journal of the House of Representatives, 37 Cong., 2 Sess., 1862, p. 115.

The secretary's request for advice gave Commissioner Dole an opportunity to spell out his views on the Five Civilized Tribes in some detail. In a rather lengthy letter to Smith, written on March 17, 1862 Dole expressed grave reservations about the propriety of establishing a territorial government over the Indian Territory. Rather bluntly he informed the secretary that he was unable to perceive any advantage to be derived from the adoption of such a program.

> By such a measure we should consequently gain nothing in the ability of the government to enforce its authority and secure a compliance on the part of the Indians to their treaty stipulations and should introduce a system at variance with out long established Indian policy from which I apprehend great confusion and embarassment [sic] would arise in the execution of its details.

Continuing, Dole stated that to him the proposal to erect a territorial government presupposed that "at no distant day the country mentioned will be opened for the settlement of the white man," a move which could only be disastrous to the Indians. All past experience, he argued, taught that the Indian suffered both morally and physically from contact with the white man. The lands encompassed by the Indian Territory, he believed, ought to be retained for the habitation of the Indians alone, and any surplus lands not needed by the tribes already there should be reserved for tribes living further north who "may wish to remove from their present locations." Finally in assessing the impact of recent events upon relations with the Five Civilized Tribes, Dole expressed the view that

whatever opinions might be held toward those Indians that had revolted against Federal authority, there could be no doubt that the Federal government's legislative and treaty obligations remained intact "as to those who have remained loyal. . . ." And looking toward the end of the war the commissioner somewhat grandiloquently visualized the eventual establishment of some sort of Indian state.

> I look forward hopefully . . . to that day when these children of the wilderness once more under the benign sway of our benificent [sic] laws and institutions, will be so far reclaimed and civilized that of their own volition they will seek to add another star to the flag of our country. . . .[17]

On March 26, the secretary of the interior forwarded a copy of Dole's letter to Chairman Ashley. By this time, however, the Committee on Territories on March 12 had reported a bill for the establishment of provisional governments over those districts in revolt against the United States, but the measure was immediately tabled.[18]

Five days after Dole addressed his letter to the secretary of the interior, Senator James A. Doolittle, chairman of the Senate Committee on Indian Affairs, asked for Smith's views on Lane's proposal to incorporate the Indian Territory

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[17]Dole to Smith, March 17, 1862, Records of the Office of the Secretary of the Interior, Indian Division, Record Group 48, National Archives, Letters Received.

[18]Smith to Ashley, March 26, 1862, Letters Sent, Indian Division, Secretary of the Interior, N.A., Microcopy 606, Roll 4; Congressional Globe, 37 Cong., 2 Sess., 1862, p. 1193.

within the boundaries of Kansas. Again Smith turned to Dole, and again the commissioner urged restraint. In a letter of reply dated April 2, 1862, Dole reiterated many of the views expressed in his letter of March 17. Taking cognizance of the fact that the extension of the state's boundaries over the Indian Territory would not necessarily authorize its settlement by white men, the end result he maintained, would be the same. The white population of Kansas, concluding that the surplus lands of the newly annexed area would soon be opened to sale and settlement, would rush in and despoil the Indians of their lands. To forestall this possibility, Dole persisted in his contention that the area must be reserved for its present occupants as well as other Indians who might be induced to settle there. By maintaining the Indians in fertile areas far removed from white settlement they might in time become self-sustaining citizens. Secretary Smith forwarded a copy of Dole's letter to Doolittle on April 4, and voiced his own approval of the views expressed by the commissioner. After another exchange of letters between Doolittle and Smith, in which the secretary again expressed approval of the idea of preserving the Indian Territory as a home for the red man, the Senate Committee on Indian Affairs on June 25 dropped the Lane resolution from further consideration.[19]

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[19]Dole to Smith, April 2, 1862, R.G. 48, N.A., Letters Received; Smith to Doolittle, April 4 and May 23, 1862, Letters Sent, Indian Division, Secretary of the Interior, N.A., Microcopy 606, Roll 4; Senate Journal, 37 Cong., 2 Sess., p. 707.

Still another proposal submitted by Pomeroy met an identical fate. While the merits of Lane's proposal were being discussed, Pomeroy on April 16, 1862 introduced a bill to incorporate the Indian Territory under a territorial government. Under the Pomeroy bill the area was to become known as the Territory of Laniwa. Referred to the Committee on Indian Affairs, it too was discharged on June 25 as the committee cleared house prior to adjournment.[20]

At the same time that this complex but largely behind-the-scenes activity took place, the pressure of circumstances forced Congress to begin a review of past and future policy toward the Five Civilized Tribes. These circumstances centered around the pro-Union refugee Indians in southern Kansas. Despite the fact that officials of the Lincoln administration, from the President down, knew of the renewed factionalism within the tribes, brought to the surface by the secession crisis, the flight of Opothleyaholo's followers northward came as a surprise to the Indian Office. With typical lack of foresight, no preparations had been made to meet any such emergency, and the refugees initially depended upon army-issued rations to stay alive. The sustenance provided by the army, however, was not only inadequate, it was also limited. On February 6, 1862 Major General David Hunter informed Commissioner Dole that the army could not continue feeding the refugees after

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[20]Senate Journal, 37 Cong., 2 Sess., pp. 401, 707.

the fifteenth of the month. Obviously something must be done quickly to avoid mass starvation.[21]

One possible means to meet the crisis was the annuities due the Five Civilized Tribes under their various treaties with the United States. Even though Congress in 1861 appropriated funds to fulfill its treaty agreements with the tribes of the Indian Territory, Commissioner Dole withheld the annuities, fearing that they would fall into rebel hands.[22] Faced with a dwindling supply of army rations, Dole might use these unpaid tribal annuities to purchase badly needed supplies for the refugees. Yet legally the commissioner had no right to spend these funds in this manner. When this impasse developed, Dole was in Kansas where he had gone to inspect conditions among the refugees, and on February 10 he sent a telegram to Secretary Smith seeking advice. The secretary quickly applied to Congress for financial assistance, at the same time authorizing Dole to purchase on credit the supplies required to meet the most pressing needs of the refugees. Congress, he told the commissioner, would provide the means.[23]

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[21] Annual Report of the Commissioner of Indian Affairs for the Year 1862, H. Ex. Doc. No. 1, 37 Cong., 3 Sess., 1863 (Serial 1156), pp. 180-81 (hereafter cited as Commissioner's Report, 1862); William P. Dole to Caleb Smith, February 10, 1862, R.G. 48, N.A., Letters Received.

[22] Commissioner's Report, 1861, p. 628.

[23] Commissioner's Report, 1862, p. 181; "Relief to Southern Refugees in Kansas," H. Ex. Doc. No. 132, 37 Cong., 2 Sess., 1862 (Serial 1138), pp. 1-6; Caleb Smith to William P. Dole, February 10 and 14, 1862, and Smith to Cyrus Aldrich, February 12, 1862, Letters Sent, Indian Division, Secretary of the Interior, N.A., Microcopy 606, Roll 4.

Secretary Smith's plea for assistance forced Congress to deal squarely with two questions. The first of these was, should Congress authorize the expenditure of already appropriated but withheld tribal funds to meet the current, critical needs of the refugees? Second, should Congress continue to appropriate funds to meet the stipulations of the treaties with the tribes which had joined forces with the South?

The first question was quickly answered. On February 14, 1862 Senator Morton S. Wilkinson of Minnesota presented a joint resolution empowering the Secretary of the Interior to spend the withheld annuities of the Seminole, Creek, Choctaw and Chickasaw tribes for refugee relief. Passage was rapidly secured, and on February 22, 1862 President Lincoln affixed his signature to the resolution.[24]

The second question facing Congress--whether to continue to appropriate funds to fulfill treaty obligations with the rebellious tribes--provoked a much more lengthy debate. The outcome of this debate hinged on whether or not the members of Congress believed that in linking arms with the South, the tribes of the Indian Territory had abrogated their treaties with the United States.

Consideration of this second and very important question came during the discussions on the Indian Appropriations Act for the fiscal year 1862-1863. Upon returning to Washington from

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[24]Senate Journal, 37 Cong., 2 Sess., pp. 208, 216, 238.

Kansas, Commissioner Dole conferred with Secretary Smith after which the secretary asked for a congressional appropriation of $200,000 to meet the future expenses of the refugees. Instead of specifically filling this request the House version of Indian Appropriations Bill contained a statement providing that all the appropriations, past and future, made to carry out treaty provisions with the tribes hostile to the United States might be suspended entirely or in part at the discretion of the President. In short, appropriations would continue to be made for the tribes that had joined the South, but the President might suspend payment of these funds if he considered such action appropriate.[25] But the House made no specific allocation for continued support of the refugees.

Recognizing this shortcoming, the Senate Committee on Indian Affairs proposed an amendment to the House bill on May 13, 1862. This change authorized the secretary of the interior to spend for the continued relief of the refugees the interest on various bonds owned by the rebellious tribes and held in trust for them by the Federal government.[26] Senator Morton S. Wilkinson, however, quickly challenged this proposal. Taking the Senate floor the Minnesota senator argued that all five of the Civilized Tribes had fought against Federal forces at the Battle of Pea Ridge, Arkansas, on March 6. Thus, he contended

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[25]Congressional Globe, 37 Cong., 2 Sess., May 13-14, 1862, pp. 2090, 2121-22.

[26]Ibid., May 14, 1862, pp. 2121-22.

that these Indians should not be paid one dollar until their allegiance and fidelity to the Union was fully settled. After listening to this broadside, the Senate immediately rejected the amendment proposed by the Committee on Indian Affairs.[27]

Later that same day, Senator Doolittle presented still another amendment to the House bill. It gave the secretary of the interior the discretionary power to use for the support of the loyal refugees in southern Kansas the annuities due the rebellious tribes under their old treaties with the United States. The Wisconsin senator pointed out that this proposal would place about $179,000 at the secretary's disposal. The Senate, acting as a committee of the whole, passed the amendment with no debate.[28]

Certain members of the Senate, however, later had second thoughts about this amendment. Consequently, it too was challenged on the Senate floor the following day, May 14. This time senators William Pitt Fessenden of Maine and John Sherman of Ohio led the opposition. The crux of their argument was that the secretary of the interior should not have the authority to spend tribal annuities as long as the original treaties with these tribes remained in effect. The senators argued that if tribal funds were spent on refugee relief, once the hostilities ceased the Federal government might be forced to pay out all this money a second time to fulfill its

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[27]Ibid., May 13, 1862, pp. 2093-94.

[28]Ibid., May 13, 1862, p. 2093.

legitimate treaty obligations. Senator Sherman, in contrast, advocated a complete abrogation of the treaties with the tribes aligned with the South. Once this step was taken, he said, the moneys normally due the tribes under the old pacts might legitimately be used for the support of the loyal members of these tribes.[29]

In rebuttal to Fessenden's statements, Doolittle maintained that mere concurrence in the House proposal would only give the President the authority to suspend tribal annuities. And it would not give him the power to use these funds for the relief of the loyal Indians. Nevertheless, Doolittle consented to the Senate's rejection of his amendment approved by the committee of the whole the preceding day. In return, Senator Fessenden promised to draw up some additional amendments to the House appropriations bill authorizing the use of withheld annuities for refugee relief.[30]

The Senate next spent time discussing the revamping of the Indian service in California, and then reopened the debate on the Five Civilized Tribes. Senator Sherman of Ohio submitted a proposal authorizing the President to issue a proclamation abrogating all treaties with any hostile tribe. After taking this step, the President might spend appropriated funds for refugee relief. Doolittle opposed this amendment, arguing that

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[29]Ibid., May 14, 1862, pp. 2121-23.

[30]Ibid.

the Indians were induced by disloyal Federal Indian agents to support the South in the first place. Therefore, he believed that a provision requiring the abrogation of treaties by the President was unjustified. In the place of Sherman's proposal, Doolittle favored adding a provision to the pending appropriations bill permitting the chief executive to abrogate existing treaties if he believed the public interest required such action. Sherman, after repeating some of his earlier arguments on the necessity of abrogating already existing treaties, finally agreed to modify his proposed amendment to the extent of authorizing rather than requiring the President to do away with the pacts. In this form, the amendment passed.[31]

Still, the issue was far from settled. Senator James Harlan of Iowa pointed out that as the appropriations bill now stood, if the President did not choose to abrogate existing treaties, the Interior Department would have no funds to relieve the destitute refugees. He submitted an amendment to the Sherman amendment which he believed would remedy the situation. But by this time the issue had become so confused that an agreement was reached to postpone further consideration until the following day.[32] Perhaps in the intervening time, the situation might crystallize.

On May 15, Senator Fessenden submitted yet another

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[31] Ibid., pp. 2124-25.

[32] Ibid.

change in the appropriations bill in an effort to reconcile conflicting views. Fessenden's proposal in essence authorized the President to spend appropriated funds for refugee relief regardless of whether he declared existing treaties void or not. Senator Sherman replied that this alteration would accomplish Harlan's purpose but not his own. With candor rare for a politician, especially one discussing Indian policy, the Ohio senator now admitted that his aim was to make the Indians suffer for waging war against the Federal government and force the abrogation of treaties which he believed were not beneficial to the United States. Without making any particular effort to be specific, Sherman contended that existing Indian treaties contained provisions which would arouse the opposition of two-thirds of the members of the Senate if read aloud before that body. But he claimed, again avoiding specifics, that the new treaties which he contemplated would prove more beneficial to both the Indians and the whites of the United States. With Sherman unwilling to acquiesce in Fessenden's latest proposal, and with members becoming increasingly confused by the plethora of amendments and counteramendments, the Senate found it impossible to reach any agreement and passed on to other business.[33]

The night of May 15 must have been a busy one for those senators interested in the Indian question. Unfortunately the

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[33]Ibid., May 15, 1862, pp. 2148-49.

remaining records of the Senate Committee on Indian Affairs give no clue as to what maneuvers and manipulations occurred during the night. At any rate, when debate was reopened on May 16, both Sherman and Harlan acquiesced in the consideration of one final amendment drawn up by the Indian Affairs Committee.[34] This rather lengthy proposal was adopted with no debate, and after the appointment of two separate sets of conference committees to iron out other changes made in the original House appropriations bill, the altered measure received the President's signature on July 5, 1862.[35]

As finally adopted, the Indian Appropriations Act for the fiscal year 1862-1863 placed a great deal of discretionary authority in the hands of the President. The chief executive could, at his discretion, suspend, wholly or in part, appropriations made for the tribes hostile to the United States, including the Cherokees, Choctaws, Chickasaws, Creeks and Seminoles as well as the Wichitas and other affiliated tribes. He might use whatever portion of these funds that he chose for the support of the refugee Indians. Finally, and most importantly, in cases where the governmental organization of

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[34]To clear away parliamentary obstacles to the consideration of this proposal the Senate, with Sherman's approval, reconsidered and rejected the Ohio senator's amendment, after which Harlan simply withdrew his particular proposal. Ibid., May 16, 1862, p. 2162.

[35]Ibid., May 16, 1862, p. 2162; June 5, 1862, p. 2590; June 20, 1862, p. 2842; July 1, 1862, p. 3049; July 2, 1862, p. 3062; July 9, 1862, p. 3195.

any tribe stood in actual hostility to the United States, the law authorized--but did not require--the President, by proclamation, to declare all treaties with that tribe abrogated if, in his opinion, this action could be taken consistent with the nation's good faith and its legal and national obligations.[36]

In a sense it was quite immaterial whether or not the President enforced this latter provision. The important fact was that it was on the statute books, and as part of the law of the land this provision might be and indeed was used to wring concessions from the tribes of the Indian Territory when the conditions were propitious. Before that time arrived, however, the Confederacy had to be hammered to its knees.

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[36]Statutes at Large, XII, p. 528.

## CHAPTER V

## A PROCLAMATION UNISSUED, A PEOPLE UNPROTECTED

The abortive Weer Expedition of 1862 did not permanently restore any significant portion of the Indian Territory to Union control. It did, however, provide those Cherokees dissatisfied with the Confederate alliance an opportunity to express support for the Federal cause. Believing that the United States would use the force needed to hold their country, many Cherokee males volunteered for service in the Union Army. When Colonel Salomon's mutiny cut short the expedition, the families of these Cherokee volunteers had little choice except to follow the retreating expedition northward. To remain in their country would mean certain intimidation and possible death at the hands of those Indians who remained loyal to the South.[1]

Among those Cherokees who fled their nation was Chief John Ross. Traveling with an entourage of thirty-three relatives and friends, Ross first made his way to Fort Scott,

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[1]Riley Keys et al to James G. Blunt, November 11, 1862, John Ross Papers, Thomas Gilcrease Institute of American History and Art, Tulsa, Oklahoma; Annual Report of the Commissioner of Indian Affairs for the Year 1863, H. Ex. Doc. No. 1, 38 Cong., 1 Sess., 1864 (Serial 1182), p. 292 (hereafter cited as Commissioner's Report, 1863).

Kansas. Later he and his party left for Washington, and on September 12, 1862 the Cherokee chief met with President Lincoln at the White House. No record was kept of this encounter, but from remarks made later by Ross it seems that he attempted to impress upon the President the difficulties the Cherokees experienced as a result of the Federal government's failure to protect them. Furthermore, he urged that a sufficient military force be sent to the Indian Territory to protect the area's inhabitants. Without specifically committing himself, Lincoln expressed a desire to extend all the protection in his power to those Indians loyal to the Union. In addition he asked Ross to present in writing his own detailed views and ideas.[2]

Ross responded to this request on September 16 by addressing a letter to Lincoln from Lawrenceville, New Jersey. In it he discussed some of the ideas he had briefly mentioned four days earlier, ideas which various Indian leaders would expound repeatedly in the years ahead in an effort to excuse their people's actions in negotiating with the Confederacy. The relations existing between the Cherokees and the United States, Ross pointed out, had been defined in numerous treaties.

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[2]John Ross to Abraham Lincoln, Abraham Lincoln Papers, Library of Congress (microfilm copy), Series 1, Roll 41; Ross to William P. Dole, October 13, 1862, Letters Received by the Office of Indian Affairs, Cherokee Agency, National Archives, Microcopy 234, Roll 99; Ross to White Catcher et al, January 13, 1863, John Ross MSS, Gilcrease Institute, Tulsa.

Under the terms of these compacts, the Cherokees, as the weaker party, had placed themselves under the guardianship of the United States in return for solemn promises of protection against both foreign and domestic enemies. These promises had not been fulfilled. At the outbreak of hostilities in 1861, all Federal protection had been withdrawn, and the overwhelming pressure subsequently placed on the Cherokees left them no choice except to negotiate with the South. The advance of Union troops into their nation had given the Cherokees an opportunity to express support for the United States, and many had done so by fleeing to the Union lines, only to see their protectors again abandon the country to the Confederates. What the Cherokees now desired, said Ross, was ample military protection for their lives and property and a willingness on the part of the United States government to recognize the validity of all treaties negotiated before the war. Finally Ross concluded by suggesting that President Lincoln issue a proclamation to the Cherokee people enumerating his own ideas and future course of action toward them. A statement from the President, he said, would give encouragement and satisfaction to the Cherokees and would aid him in reassuring those members of his tribe suspicious of the future intentions of the Federal government.[3]

Lincoln sent a note of reply on September 25. This

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[3]Ross to Lincoln, Lincoln MSS, L.C., Series 1, Roll 41.

letter contained an admission on the part of the President that he had formulated no definite views toward the Cherokee Nation. The "multitude of cares" claiming his attention, he admitted, had simply prevented him from examining past treaty relations between the United States and the Cherokees. Neither had he been able to examine the validity of Ross' assertion that the actions of the United States in effect excused the Cherokees from any responsibility for negotiating with the South. Therefore his letter, insisted Lincoln, must not be understood to decide anything on these questions. Lincoln assured Ross, however, that he would cause a careful investigation to be made of the matter. In the meantime, those Cherokees who remained "practically" loyal to the United States would receive all the protection which could be given them consistent with the duty of the government to protect the entire nation.[4]

That same day, Lincoln sent an inquiry to Secretary of Interior Caleb Smith seeking information on past treaty relations between the United States and the Cherokee Nation. This letter revealed that Lincoln possessed very little detailed knowledge of the Federal government's past dealings with the Indian Territory tribes. Specifically, the President asked for information on the government's financial obligations to the Cherokee Nation. In addition he wanted to know what

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[4]Lincoln to Ross, September 25, 1862, Lincoln MSS, L.C., Series 1, Roll 42.

protection the United States owed the Cherokees at the outbreak of the war and whether or not this obligation had been fulfilled. In replying to Lincoln on September 29, Smith stated that the Federal government's basic obligations to the Cherokees were found in articles V, VI and VII of the treaty of December 29, 1835. The secretary pointed out that in these articles the United States had promised to protect the Cherokees from all enemies, and he conceded that in 1861 the United States had not lived up to this pledge of protection. In terms of financial, as opposed to political, obligations Smith told the President that no annuities were payable to the Cherokees under the pre-war treaties. But he added that the United States held in trust for the Cherokees various securities nominally valued at slightly over $760,000, the interest upon them payable annually to the tribe.[5]

During this exchange of letters between Lincoln, Ross and Smith, the President took pen in hand and began synthesizing his views toward the tribes of the Indian Territory. In the process he composed a rough draft of a letter to Ross as well as a proclamation to be issued to the people of the Five Civilized Tribes, and these documents, rough and incomplete as they are, contain the only remaining clues to Lincoln's feelings toward the Indians who had entered into alliances with the

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[5]Smith to Lincoln, September 29, 1862, Letters Sent by the Indian Division of the Office of the Secretary of the Interior, National Archives, Microcopy 606, Roll 4.

Confederate states. Unfortunately neither document bears any date, but both were filed in the records of the Interior Department on December 5, 1862. Similarly neither the letter nor the proclamation actually bears the President's signature, but the wording of both clearly indicates that the writer was indeed Lincoln. The proclamation, for example, mentions the calamitous events following the writer's election to the presidency. The letter written to accompany the proclamation bears no salutation other than "Sir," but at one point mention was made that the person to whom it was written was the "Governor" of the Cherokee tribe, leaving little doubt that the missive was intended for Chief Ross.

The underlying tone of both documents is one of stern but understanding reproach. In the Ross letter Lincoln stated that he was gratified to learn from their recent exchange of views of the strong spirit of loyalty toward the United States found among the Five Civilized Tribes. The government of the United States, he assured Ross, entertained no feelings of resentment and revenge toward these tribes. If the people of the Territory, Lincoln continued, used the powers at their command to demonstrate their loyalty and affection for the Federal government their actions would go far toward maintaining a spirit of forgiveness for any mistakes which these tribes might have made. Lincoln then added that since Ross expected to return soon to his people he was to inform the inhabitants of the Territory of Lincoln's feeling

of friendship for those "who faithfully . . . exert themselves to the utmost of their ability for the suppression of the present rebellion. . . ."[6]

The proclamation addressed "To the People of the Cherokee, Chickasaw, Creek, Seminole and Choctaw Nations" was a five and one-half page address which outlined in greater detail the views expressed in the Ross letter. After briefly recounting the events that led to the settlement of these tribes west of the Mississippi, Lincoln argued that the men who drove the Indians from the places of their origin were the same individuals who had taken up arms against the United States. Taking substantial liberty with the facts, Lincoln maintained that, in contrast, the men who now governed the United States "faithfully resisted" all efforts to remove them from their ancestral homes. Then the President warned:

> If you tie yourselves to the rebels and they succeed, you have no security, that they will not covet your lands and take them too, and drive you forth into the desert of the West. But suppose you link your fate to the rebels and they should fail,--suppose the six millions prove too weak for the twenty millions,--in that event, you cannot reasonably hope that the United States will still feel bound to protect you and comply with the Treaties, which you yourselves have despised and abandoned. . . .
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> Ask yourselves, then, my friends what it is you are bound to do, by your Treaties with the United States, and show yourselves ready

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[6]A copy of this undated, unsigned letter can be found in the Records of the Office of the Secretary of the Interior, Indian Division, Record Group 48, National Archives, Letters Received Miscellaneous.

> and willing to keep your promises, and assure yourselves that this fidelity will be rewarded according to its desert.

Finally, in effect admitting that the United States had not lived up to its obligation to protect these people, Lincoln stated:

> If at present, the United States have found themselves unable to secure you[r] rights, ascribe it not to want of the will, but to the sudden outbreak of a gigantic insurrection, not anticipated to be possible in the natural order of human affairs.[7]

Apparently, neither the Ross letter nor the proclamation was ever issued. A vast quantity of Ross' wartime correspondence has been preserved, but no mention is made of either document. Nor does the correspondence of other tribal leaders contain any reference to any presidential proclamation issued specifically to the people of the Indian Territory. Lincoln evidently quashed both documents, relegating them to the obscurity of the Interior Department's files.

Why this occurred is not at all clear. John Ross, who was to convey Lincoln's message to the Five Civilized Tribes, did not return to the Indian Territory. Instead, the Cherokee chief remained for the duration of the war in Philadelphia, but this fact does not explain why Lincoln did not issue the two documents which he had composed. Someone other than Ross

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[7]A copy of this proclamation accompanies the above mentioned letter in Record Group 48, Letters Received Miscellaneous.

could certainly have served as the bearer of the President's message. A more realistic view is that the pressures exerted by his white constituents prevented Lincoln from expressing his views publicly. The year 1862 witnessed the tragic uprising of the Minnesota Sioux, and on October 20 Minnesota Governor Alexander Ramsey addressed a letter to Lincoln calling for the removal of these people as well as the Winnebagoes and Chippewas from the state.[8] Meanwhile, the senators from Kansas persisted in their efforts to secure the removal of their state's Indian inhabitants. In the face of these demands made by his Western supporters, the President found himself in a difficult situation. His own and Secretary Smith's analysis of recent events led him to the conclusion that the Federal government had not lived up to its obligation to protect the tribes of the Indian Territory. Yet, public admission of this fact could prove cumbersome if and when the government decided to use the negotiation of the Pike treaties as a lever to force the tribes to relinquish part of their domains for the settlement of other Indians. Perhaps better then to say nothing at this time, leaving room to maneuver in the future.[9]

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[8]Alexander Ramsey to Abraham Lincoon, October 20, 1862, R.G. 48, N.A., Letters Received Miscellaneous.

[9]In writing to Superintendent Coffin in July, 1861, E. H. Carruth noted that he had heard of rejoicing among people of the North over the fact that the tribes of the Territory were joining forces with the South, because such actions would result in the loss of their lands. Carruth to Coffin, July 11, 1861, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834.

Shortly after his encounter with Ross, Lincoln in effect passed on to Congress the task of formulating future Indian policy. In his State of the Union Message on December 1, 1862 the President observed that during the past year the western Indian tribes had exhibited "a spirit of insubordination," with those south of Kansas renouncing their allegiance to the United States. He added, however, that the chief of the Cherokees claimed that the tribes of the Indian Territory had been forced to adopt this course of action due to pressure exerted by the Confederacy. The President concluded his brief resume of Indian affairs by urging the member of Congress to consider the question of remodeling the "Indian system." He gave no clue as to what changes should be made, stating only that a number of "wise and good men" had impressed him with the belief that this could be "profitably done."[10]

If Lincoln hesitated to disclose publicly and specifically his views of on Indian affairs, he did at least consider the possibility of sending another military expedition to the Indian Territory. Following the collapse of the Weer Expedition, the officers of the Indian regiments left behind by Colonel Frederick Salomon in the Cherokee country consolidated their troops into an Indian Brigade. Colonel R. W. Furnas was chosen brigade commander, and at first the colonel and his fellow officers vowed to hold the Cherokee country at all costs. But

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[10]James D. Richardson (ed.), A Compilation of the Messages and Papers of the Presidents 1789-1908 (Washington: The Bureau of National Literature and Art, 1909), VI, p. 132.

faced with a dwindling supply of rations, and fearing that the supply lines of his force might be severed, Furnas soon retreated to the periphery of the Cherokee country, sending out occasional scouting parties in the direction of the Arkansas River. The wives and children of those Cherokees who had joined the Union Army, meanwhile, settled in southeastern Kansas on the Cherokee Neutral Lands a few miles south of Fort Scott.[11]

During the time that the Cherokee refugees occupied the Neutral Lands a conflict between civilian and military authorities came to the surface that inhibited Federal handling of Indian affairs throughout the war. After learning of the failure of the Weer Expedition, General Blunt began making preparations to personally lead another advance into the Indian country. Hopefully his activities would make it possible for all the Indian refugees in Kansas to return to their homes, and, without consulting with Superintendent Coffin, Blunt announced that he would permit the families of the Indian troops to accompany the expedition. Around the middle of September Blunt slightly altered his plans and began ordering the Indian

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[11] Annual Report of the Commissioner of Indian Affairs for the Year 1862, Sen. Ex. Doc. No. 1, 37 Cong., 2 Sess., 1863 (Serial 1156), pp. 304-08, 311 (hereafter cited as Commissioner's Report, 1862); R. W. Furnas to James G. Blunt, July 25, 1862, The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (Washington: Government Printing Office: 1885), Series I, xiii, pp. 511-12 (hereafter cited as OR with series number in upper-case numerals and volume number in lower-case numberals).

agents to make preparations to return all their wards to the Indian Territory.[12]

These presumptive moves by Blunt aroused the ire of Superintendent Coffin. While he had given general support to the earlier move to return the refugees to their homes, the superintendent was not agreeable to another such scheme at this time. Humanitarian, military and economic considerations, he believed, militated against such a move. Coffin was convinced that at least 20,000 troops would be needed to protect the refugees once they were restored to their homes, and he did not believe that the Federal government could spare a force of this size to serve in the Indian Territory. Furthermore, until the Arkansas River was opened to Union shipping, supplies for the returned refugees must be hauled overland at least 3-400 miles, a costly and dangerous venture. Therefore, rather than replant these people once more in enemy infested territory and run the risk of again abandoning them to the "barbarities of the heartless foe" Coffin believed it far wiser to keep the refugees in Kansas. A delegation of chiefs from the Sac and Fox tribe recently had offered to permit the refugees to settle on their lands, and Coffin favored accepting this overture. Quickly he wrote two letters expressing his views to his Washington superiors, followed on September 28,

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[12]William G. Coffin to Charles E. Mix, August 30, 1862, and James G. Blunt to George A. Cutler, September 13, 1862, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834.

1862 by a letter to General Blunt in which he diplomatically told the general to mind his own business.[13]

Secretary of the Interior Smith believed that Coffin's arguments in favor of retaining the Indians temporarily in Kansas were valid. With the backing of the secretary, Coffin in October and November began the task of moving the refugees northward to the general vicinity of the Sac and Fox reservation. Here he hoped supplies could be more easily procured than in drought plagued southern Kansas. Late in October the superintendent visited the 1,900 Cherokee refugees on the Neutral Lands in an effort to induce them to undertake the trek to the Sac and Fox domain, but they refused. Extremely anxious to return to their own homes, these people had no desire to place any more distance than necessary between themselves and their country. When the Cherokees resisted his entreaties, Coffin began preparing to supply them at their present location. Again, however, his activities conflicted with those of General Blunt. Without consulting Coffin, Blunt in December started moving the Cherokee refugees to the area of Neosho, Missouri, where he planned to keep them only until their country could be cleared of enemy forces. Unable to stop this movement, Coffin dispatched Cherokee Agent Justin Harlan and a special agent, A. G. Proctor, to Neosho to look after the Indians'

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[13]Coffin to Charles E. Mix, August 30 and September 13, 1862, and Coffin to Blunt, September 28, 1862, ibid.

interests. Until the spring of 1863, Coffin and his agents worked in an uneasy alliance with military officials providing subsistence for the Cherokees in Missouri.[14]

Late in 1862 the Federal military service in the West was reorganized and a number of campaigns staged which touched and affected the Indian Territory. The revamping began on September 24, 1862 when Kansas became part of the Department of the Frontier commanded by Major General Samuel R. Curtis. General Blunt remained in charge of the District of Kansas, and on October 1, 1862 his troops, including the Indian regiments, joined the forces of Brigadier General John M. Schofield in southwestern Missouri in a campaign to prevent a Confederate invasion of Kansas.[15]

At this juncture Lincoln on October 10, 1862 telegraphed General Curtis. The President stated that he and John Ross wanted to know if it would be possible for the Indian regiments serving in Curtis' command, with some white assistance, to occupy the Cherokee country. By return wire Curtis answered that

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[14]William G. Coffin to Charles E. Mix, September 13, 1862, and Caleb Smith to Mix, September 22, 1862, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834; H. W. Martin to William G. Coffin, December 20, 1862, and Coffin to B. S. Henning, December 28, 1862, ibid., Cherokee Agency, N.A., Microcopy 234, Roll 99; Commissioner's Report, 1862, p. 313; Commissioner's Report, 1863, pp. 292, 309-10.

[15]James G. Blunt, "General Blunt's Account of His Civil War Experiences," The Kansas Historical Quarterly, I (1932), p. 225; Albert Castel, A Frontier State at War: Kansas, 1861-1865 (Ithaca: Cornell University Press, 1958), p. 99 (hereafter cited as Castel, Frontier State).

while his troops might soon drive the enemy out of northwest Arkansas into the Indian Territory, he personally doubted the expediency of his forces occupying ground so remote from any source of supplies. Four days later, Schofield sent a message from Cassville, Missouri, to Curtis expressing confidence that he would soon be able to drive the enemy out of northwest Arkansas and march into the Indian Territory. In reply Curtis expressed the hope that Schofield would be able to operate in the Indian Territory as the President wanted to see Ross re-established in the Cherokee country.[16]

This exchange of messages was followed by a rapid series of Union victories. Marching in advance of the rest of Schofield's forces Blunt pushed into northwest Arkansas and on October 22, defeated a group of Confederates commanded by Douglas H. Cooper at old Fort Wayne on the Indian Territory's eastern border. On November 29 at Cane Hill, Arkansas, about twenty miles southwest of Fayetteville, he inflicted a similar defeat on a rebel force about 8,000 strong which had been preparing to advance into Missouri.[17]

In a desperate attempt to prevent all of Arkansas from being overrun by Union forces Confederate Major General T. C.

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[16]Lincoln to Curtis, and Curtis to Lincoln, October 10, 1862, Schofield to Curtis and Curtis to Schofield, October 14, 1862, OR, I, xiii, pp. 723, 736.

[17]D. H. Cooper to R. C. Newton, October 25, 1862, ibid., p. 232; James G. Blunt to Samuel R. Curtis, November 29, 1862, ibid., xxii, part 1, pp. 41-42; Castel, Frontier State, p. 99.

Hindman hastily formed an army in hopes of striking a crippling blow against either Blunt or Brigadier General Francis J. Herron, commander of the other wing of Schofield's army. Expecting to receive the brunt of this attack and cocksure that he could whip at least 25,000 of the enemy, Blunt remained at Cane Hill, Arkansas, only to be fooled by Hindman. The Confederate general slipped around the left flank of Blunt's army and attacked Herron at Prairie Grove. Hearing the sound of firing, Blunt rushed to Herron's assistance and together at the Battle of Prairie Grove on December 7, they battered Hindman's army, forcing the Confederates to retreat.[18]

After a lapse of almost three weeks, Blunt and Herron met together on Christmas night, 1862 to work out the details of an attack on Van Buren, Arkansas. Operations began on December 27, and the town was easily captured. After plundering, burning and conducting an artillery duel with Confederates on the south side of the Arkansas River the Union forces moved back to Cane Hill where they dispersed to their winter quarters.[19]

Prior to the Christmas day meeting with Herron, Blunt dispatched a force of 1,200 men commanded by Colonel William A. Phillips into the Cherokee country. Despite hard, driving rains, Phillips advanced steadily westward, and on December 27,

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[18]Castel, Frontier State, pp. 99-100; OR, I, xxii, part 1, p. 1; James G. Blunt to Samuel R. Curtis, December 2, 1862, ibid., pp. 42-43.

[19]F. J. Herron to Samuel R. Curtis, December 31, 1862, ibid., pp. 169-70; Castel, Frontier State, p. 100.

captured Fort Gibson after driving across the Arkansas River. Next, Phillips himself crossed the Arkansas, taking Fort Davis and reducing the encampment to ashes.

While engaged in the capture of these various points, Phillips opened negotiations with certain Confederate Indian leaders. Perceiving that some tribal members were growing weary of the war, a weariness enhanced by the Confederacy's inability to provide supplies for its Indian allies, Phillips hoped that these negotiations might, as he put it, "open the Indian Nation and clear the way to Texas through a country of friends. . . ."[20]

The time for such actions certainly was opportune. By August, 1862 rumors had reached Richmond that the Confederacy's Indian allies were growing restive. In September the Confederate War Department ordered Commissioner of Indian Affairs S. S. Scott to proceed to the Indian country and impress upon the people there the Confederacy's determination to fulfill its legitimate obligations to them. Scott reached the Indian Territory in the middle of October, 1862 and remained until December 1. Meetings were held between Scott and tribal leaders such as Samuel Garland of the Choctaws, Winchester Colbert of the Chickasaws, John Jumper of the Seminoles, and Ross' antagonist Stand Watie. In his report to his superiors, Scott expressed

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[20]James G. Blunt to T. J. Weed, December 30, 1862, OR, I, xxii, part 1, p. 16; William A. Phillips to Samuel R. Curtis, January 19, 1863, ibid., part 2, pp. 61-65.

confidence that his activities had largely smothered the flames of discontent among the tribes of the Territory. The events which occurred during the Phillips expedition, however, indicate that the commissioner's appraisal was overly optimistic.[21]

During his foray into the Indian country Phillips opened negotiations with Colonel D. N. McIntosh of the Creeks through two of McIntosh's close friends. According to Phillips' account of events, plans were worked out for a direct meeting between himself and McIntosh, but the meeting fell through when Blunt on December 27 ordered Phillips to move back down the Arkansas to guard Blunt's right flank during the operations against Van Buren. Following Phillips' withdrawal, possibly to protect himself from a possible charge of treason if his actions were discovered, McIntosh sent Brigadier General D. H. Cooper a copy of a communication received from Phillips. In reporting the affair to General Hindman, Cooper admitted that unless a substantial number of white forces were sent into the Indian Territory soon, its inhabitants would readily surrender to the Federals if a full-scale invasion occurred in the spring.[22]

Following the operations in the Indian Territory and

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[21]Report of the [Confederate] Commissioner of Indian Affairs, January 12, 1863 (typescript copy in the Indian Records Division, Oklahoma Historical Society, Oklahoma City).

[22]William A. Phillips to James G. Blunt, December 28, 1862, OR, I, xxii, part 1, p. 881; Phillips to Samuel R. Curtis, January 19, 1863; ibid., part 2, pp. 61-62; Cooper to T. C. Hindman, January 8, 1863, ibid., p. 770.

the Van Buren area, Blunt left the scene of hostilities to take care of official but unspecified business in Kansas. During his absence, Schofield slightly reorganized the troops serving in southwest Missouri and northwest Arkansas. The Third Brigade of Blunt's Kansas Division, commanded by Colonel William A. Phillips and consisting primarily of the three Indian regiments, was detached from the remainder of the division for separate service. In a personal meeting with Phillips on January 8, 1863 Schofield instructed the colonel to occupy the line of the Arkansas River and that portion of the Indian Territory northeast of the river. Phillips was to give as much protection as possible to the loyal Indians in the area so that they might prepare for the spring planting of crops. He was also to make peace with the rebel Indians, when in Phillips' judgment this could be done "with propriety," offering them the same terms accorded repentant rebels in other areas. Finally, Phillips was to keep his force as concentrated as possible, to avoid being overpowered by the enemy, and in a constant state of readiness to provide assistance if needed in Arkansas and Missouri. On January 13, Major General Curtis issued orders placing Phillips in command of the Eighth and Ninth Districts of the Department of the Missouri, encompassing western Arkansas and the Indian Territory. Phillips was instructed to make his future reports directly to Curtis. Later Curtis incorporated Phillips' command into the District of Kansas and instructed the colonel to report to Blunt as well

as to departmental headquarters in St. Louis if the lines of communication to the city were "convenient."[23]

In the weeks following the establishment of his command over western Arkansas and the Indian Territory, Phillips found himself confronted with a variety of problems. Refugees from the Cherokee country continued fleeing northward, and the task of feeding these people as well as those Indians remaining in their homes north of the Arkansas plus his own troops was no small one. Snow, sleet and rain made roads in the area nearly impassable and the transportation of supplies exceedingly difficult, a problem complicated by the fact that the supply train placed at Phillips' disposal consisted of only thirty uncovered wagons each drawn by four weatherbeaten mules.

Phillips, however, persevered. The main body of his troops moved from camp to camp in northwestern Arkansas as the necessities of battle and the need for supplies dictated. A small mill in the Cherokee Nation near the Arkansas boundary was commandeered, and Phillips managed to grind out a scanty supply of flour barely adequate to meet the needs of his troops and the Indian families depending upon him for subsistence. Scouting parties were sent out periodically to distribute part of the flour to loyal Indians in the Cherokee country and to

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[23]John M. Schofield to Samuel R. Curtis, January 1 and 6, 1863, OR, I, xxii, part 2, pp. 6, 22; Schofield to William A. Phillips, January 11, 1863, ibid., p. 33; General Orders No. 6, January 13, 1863, ibid., p. 40; Phillips to Curtis, January 19, 1863, ibid., pp. 55-56; Curtis to Phillips, February 17, 1863, ibid., pp. 113-14.

drive any rebel parties that might venture north of the Arkansas back across the river. Special orders were issued by Phillips requiring all captured livestock to be turned over to the brigade quartermaster. The senior white officer in each Indian company was now to be held responsible for the prompt performance of duties assigned his troops, and efforts were made to stop the sale of liquor to the troops of the Third Brigade.

During this period Phillips also made slight progress in putting the Indian regiments in better fighting condition. Of the troops at his disposal, Phillips reported that the third regiment, recruited during the Weer Expedition of 1862 was by far the most competent, but even its members frequently absented themselves without leave, a practice described by Phillips as a chronic Indian weakness. The second regiment, made up originally of fragments from a variety of tribes, showed some improvement after its Osage members were mustered out during one of their frequent desertions, but the first regiment, made up of Creeks, remained on the verge of disintegration. Its officers, with a few exceptions, he claimed, were useless individuals who made little effort to drill their troops or obey his orders. All in all, Phillips was not overly impressed with his Indian troops. "They are brave as death," he wrote, "active to fight, but lazy." If they were to be utilized at all, he added, they must be mounted, as they made

very poor infantry.[24]

Possibly the most significant event which took place at this time was the holding of a special session of the Cherokee National Council. A quorum of this body was present in the second and third Indian regiments, and by late January, 1863 plans were being discussed to meet in special session to repudiate the Pike Treaty. These plans received Phillips' enthusiastic endorsement as he believed that any pro-Union demonstration on the part of the Council might have a beneficial influence on the other tribes of the Territory, especially since this was the same body that had approved the Confederate alliance. Accordingly, Acting Principal Chief Thomas Pegg issued a proclamation on January 31, 1863 ordering the National Council into special session on February 4. The Cowskin Prairie located north of Fort Wayne was designated as the meeting place, and to provide needed protection Phillips stationed the main body of his force at a hastily established cantonment appropriately named Camp John Ross.[25]

Several days were spent in organizing the Council, and not until after the middle of February was anything of substance

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[24]William A. Phillips to Samuel R. Curtis, January 19, 1863, and January 29, 1863, ibid., pp. 55, 86; General Orders Nos. 6, 12 and 19, ibid., pp. 58-60.

[25]William A. Phillips to Samuel R. Curtis, January 29, 1863, February 4, 1863, and February 6, 1863, ibid., pp. 85, 96-97, 100-101; Laws of the Cherokee Nation, Vol. 251, np, nd, p. 1, Indian Records Division, Oklahoma Historical Society, Oklahoma City (hereafter cited as Cherokee Laws, Vol. 251).

accomplished. On February 17, Acting Chief Pegg delivered an address repeating the arguments which, while none the less true, were already becoming rather timeworn. Faced with the abandonment of their country by Union forces in 1861, the leading men of the Cherokee Nation were perplexed over what course to follow. To avoid the complete ruin of their nation they had no alternative except an alliance with the South, hoping that deliverance might soon come from their friends in the North. Pegg concluded his address by recommending the abrogation of the Confederate alliance and the appointment of a delegation to represent the Nation's interests in Washington. He also called the Council's attention to the slavery question and urged that such steps be taken as the council members' wisdom might dictate.[26]

Next came the passage of several important resolutions and pieces of legislation. A resolution of February 18 declared the Pike Treaty of October 7, 1861 abrogated, and that same day an act was passed authorizing the appointment of a Cherokee delegation to assure the President of the Nation's desire to abolish slavery and to ask compensation for those slaveowners not disloyal to the United States. February 19 witnessed the passage of a law empowering Cherokee authorities to use tribal funds to purchase supplies for the most destitute families in the Nation as well as an enactment naming the members of the

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[26]Cherokee Laws, Vol. 251, pp. 1-2.

tribe's delegation to Washington. Those chosen were John Ross, Lewis Downing, James McDaniel and Evan Jones. On February 20, still another law removed from public office all Cherokee officeholders disloyal to the United States, and on February 21, apparently feeling that its earlier actions were not entirely sufficient, the National Council formally abolished slavery in the Cherokee Nation. Anyone found guilty of holding any person in bondage after June 25, 1863 would be fined not less than $1,000 nor more than $5,000.[27] Chief John Ross in exile in Philadelphia was informed of the actions of the Council, and in a letter of April 2, Ross duly informed Commissioner Dole of the actions consumated at Cowskin Prairie, urging at the same time that appropriate steps be taken to return his people to their homes.[28]

Long before this letter reached the commissioner, the initial steps had been taken to restore the Cherokee refugees to their country. General Blunt's efforts late in the summer of 1862 had run into the opposition of Superintendent Coffin. Angered by the superintendent's obstinancy, Blunt fired off a steaming letter to Secretary of the Interior Smith on November 21, 1862 in which he attempted to justify his efforts to return the refugees on the grounds of military necessity. Those Indians serving in the Federal Army, he said, would not undertake

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[27]Ibid., pp. 3-9.

[28]Ross to Dole, April 2, 1863, Letters Received, O.I.A., Cherokee Agency, N.A., Microcopy 234, Roll 99.

another expedition to the Territory unless assured that their families could return with them. In addition, Blunt expressed concern that the refugees were being victimized by "mercenary and unscrupulous speculators." The general did not mention the names of those individuals whom he felt were dealing dishonestly with the Indians, but when he said that they were "superintendents and agents" serving the Federal government, he could hardly have meant anyone other than Coffin and his associates.[29]

Several weeks after the receipt of this letter, Smith asked Dole to look into and make a report on Blunt's charges of corruption. If Dole made a report, no record of it was preserved in the records of the Interior Department. Seeing that his complaints had accomplished nothing, Blunt arranged a meeting with Coffin though the date of this meeting is not known. Blunt came away, however, convinced that he and Coffin could work together in the future, and he so informed Lincoln's new Secretary of the Interior John P. Usher on January 25, 1863. Blunt also stated unconvincingly that in his letter of November 21, 1862 he had not meant to attack Coffin but the "peculators" found around every department of the government.[30]

Phillips, like Blunt, favored the restoration of the

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[29]Blunt to Smith, November 21, 1862, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834.

[30]Smith to Dole, December 27, 1862, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 834; Blunt to the Secretary of the Interior, January 25, 1863, R.G. 48, N.A., Letters Received Miscellaneous.

Cherokee refugees to their homes at the earliest possible date. From his vantage point in northwest Arkansas he quickly concluded that his responsibilities might be lessened and the plight of the loyal Cherokees improved if Union military forces advanced into the Cherokee country making it possible for Union sympathizers to plant a crop and become more self-sufficient the coming spring. Late in January, 1863 without waiting for the consent of his superiors, Phillips had begun planning an advance into the Cherokee Nation scheduled for late February. Some 2-300 wagons, he believed, would be required to transport the supplies needed by his troops and the Union Cherokees. Recognizing that a venture of this size would necessitate the cooperation of the Indian Office, Phillips approached agents Harlan and Proctor at Neosho, Missouri, early in February and enlisted their support. Proctor, in turn, traveled to Leavenworth, Kansas, in an effort to convince Coffin of the wisdom of the venture. With some misgivings, the superintendent gave his approval, but in an economy move, Coffin agreed to provide fifty wagons to haul provisions for the returning refugees. Agent Harlan had requested 100 but Coffin believed that by making two trips each, fifty could do the job more cheaply. Even so, he believed that $21,000 would be needed to finance the return of the Cherokee refugees to their homes.[31]

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[31]William A. Phillips to Samuel R. Curtis, January 19, 1863, OR, I, xxii, part 2, pp. 60-61; Phillips to A. G. Proctor, February 1, 1863, and William G. Coffin to William P. Dole, February 24, 1863, Letters Received, O.I.A. Cherokee Agency, N.A., Microcopy 234, Roll 99.

While the Cherokee National Council deliberated at Cowskin Prairie in February, Phillips pushed ahead with his plans. His appetite for action was whetted by news and rumors drifting up from the Indian country. Early in February he learned that a "long line of persons" was heading his way from the Creek Nation. These people reportedly wore on the right side of their hats a white piece of cloth, a sign which Phillips claimed had been worked out with McIntosh's two friends in December to identify Union sympathizers among the Creeks. At the same time he also learned that 2-300 mixed-blood and adopted white rebel Cherokees, disillusioned and dispirited by the war, had crossed over to the north side of the Arkansas near Fort Smith. Mid-February brought word that some of the officers in Stand Watie's command were planning to mutiny against their superiors. The news of all of these events combined to make Phillips unjustifiably optimistic. That portion of the Indian country north of the Arkansas seemed ripe for the taking.[32]

To date, Phillips had received no word of sanction from either Blunt or Curtis, but on February 17 Curtis finally sent a message from his St. Louis headquarters saying that he and Blunt concurred in the colonel's plans. The department commander added that Phillips' proposals had been forwarded

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[32]William A. Phillips to Samuel R. Curtis, February 6, 11, and 15, 1863, OR, I, xxii, part 2, pp. 101-02, 108-09, 111-12.

to army headquarters in Washington. Blunt sent a more specific message to Phillips on February 23. From Fort Leavenworth he instructed Phillips to keep his force in the best possible condition and be prepared for active service as soon as there was grass enough to support the animals needed to move a large body of troops. In the meantime, Phillips should destroy all guerrillas in western Arkansas and the Indian Territory, send out scouting parties as far south as practical and carry on negotiations if possible with the rebel Indians, promising them pardon and protection if they would abandon the South. Blunt pointed out that he was still determined to return the refugees to their homes "at the earliest period practicable." The entire Indian country, he said, must be occupied by the summer of 1863.[33]

By early March, Phillips had completed the plans for advance into the Cherokee country. In the meantime, however, Major General Curtis received a communique from Henry W. Halleck, commanding general of the army, instructing him to use all available forces to aid in capturing that portion of the Mississippi River still in Confederate hands. Victories on the southwestern frontier, in Halleck's opinion, were of minimal importance. " . . . we may," he wrote, "defeat the enemy a dozen times on the western border . . . and our

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[33]Curtis to Phillips, February 17, 1863, and Blunt to Phillips, February 23, 1863, ibid., pp. 113-14, 121-22.

victories, like those of Pea Ridge and Prairie Grove, be without important results." After receiving these instructions, Curtis ordered Phillips to hold up his advance.[34]

As March, the best month for planting of crops in the Territory, slipped by, Phillips grew increasingly restive. His Indian regiments, including the troublesome tattered first regiment, were drilling more diligently than in the past and were beginning to acquire some of the precision and discipline of more experienced white units. Phillips constantly reminded both Blunt and Curtis that he was finding it increasingly difficult to explain to the Indian troops and their families why no expedition had been launched to recapture their country. Information received from the area south of the Arkansas indicated that Confederate officials were striving to placate their disillusioned Indian allies through the distribution of food and the payment of moneys due under the Pike treaties. Phillips was firmly convinced that any further delay in moving into the Indian country would irreparably damage the Federal government's chances of winning over these malcontents. "A small amount of means used now," he wrote Curtis, "would save a Creek and Choctaw regiment (one of each), which we may otherwise have to fight this summer."[35]

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[34]Halleck to Curtis, February 17, 1863, ibid., p. 113; William A. Phillips to Halleck, March 2, 1863, ibid., pp. 137-38.

[35]Phillips to Curtis, March 3, 20 and 27, ibid., pp. 141-42, 165-67, 181-72 (Phillips' parentheses); Phillips to Blunt, March 19 and 21, 1863, ibid., pp. 162, 168-69.

By some means Blunt was able to pry from the army's upper eschelons permission for Phillips to carry out his advance, and by April 2, the colonel's troops had reached the Park Hill area. This movement was followed closely by the arrival of about 12-1,300 Cherokee refugees from Neosho, Missouri, accompanied by agents Justin Harlan and A. G. Proctor. Much to the disappointment of Harlan, who wanted these people to settle in a compact area east of the Grand River, Phillips sent out a dispatch designating at least six different areas where the returning Cherokees might settle in safety. No amount of pleading by Harlan could prevent the delighted Indians from scattering.[36]

Phillips' first report to Blunt upon re-entering the Cherokee country was almost euphoric in tone. All was going splendidly, and he believed that the reported concentration of rebel troops south of the Arkansas posed no problem; concentration would simply make the task of locating and destroying the enemy that much easier. But the hard facts of reality soon intruded.

Not the least of Phillips' concerns was the inability of Blunt and Curtis to agree on the tactics to be employed in the Indian country. Curtis was beginning to question the wisdom of Phillips' advance, and in communications to Blunt

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[36]William A. Phillips to James G. Blunt, April 2 and 24, 1863, ibid., pp. 190-91, 247-48; Commissioner's Report, 1863, pp. 320-22.

and Phillips he strongly implied that he now favored the withdrawal of Federal forces back into Arkansas. Blunt, in contrast, believed that control must be maintained over the reoccupied territory if humanly possible. He also favored making quick dashes across the Arkansas to break up enemy concentrations, a policy Curtis opposed.[37]

While this divided counsel left Phillips perplexed, carelessness and logistical problems left his command hungry. With typical inattention to detail, Coffin and his agents had not taken adequate steps to support their wards until a crop could be harvested. Rather than the fifty wagons originally promised by Coffin, only about half that number were provided to transport supplies for the refugees. Most of the provisions carried by these vehicles were consumed on the trip from Neosho, Missouri. The shortage of troops to be used as supply train escorts made the shipment of added supplies from the north difficult, and Phillips was soon forced to begin distributing among the loyal Cherokees flour intended originally for his troops. By mid-May, the daily ration of flour had dwindled to two ounces per person.[38]

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[37]Phillips to Blunt, April 2, 1863, OR, I, xxii, part 2, pp. 190-91; Curtis to Phillips, April 20, 1863 and Curtis to Blunt, April 23, 1863, ibid., pp. 230, 244-45.

[38]William A. Phillips to the Secretary of the Interior, April 15, 1863, John Ross MSS, Gilcrease Institute, Tulsa; Phillips to James G. Blunt, April 15, 1863, OR, I, xxii, part 2, pp. 283-84; Blunt to Samuel R. Curtis, April 29, 1863, ibid., pp. 260-61.

Not surprisingly when the Cherokee National Council met at Kee Too Wah in May, an act was passed critical of Agent Harlan and his assistant, Proctor. This enactment of May 14, 1863 authorized the principal chief to appoint an agent or agents to forward to the Cherokee delegation a full statement of the failure of the Federal agents to furnish the Cherokees an adequate supply of foodstuffs. The law also extended the thanks of the National Council to Phillips for his "untiring" efforts to relieve the Cherokee people.[39]

Despite the hardships faced by his command, Phillips remained convinced that militarily his position was strong. The men of his command, despite the short rations, were in good spirits and Fort Gibson, after its recapture in early April, had been rebuilt on "scientific principles" and was in Phillips' view impregnable. This illusion of military strength was shattered on May 21 when a force of rebel Indians dashed suddenly into the country north of the Arkansas. Horses, cattle, wagons, farm implements and anything else of value that could be moved were seized. In panic, the Union Cherokees, mostly women and children, working near-by lands, dashed to Fort Gibson. With the military still unable to provide them the protection needed to work their fields they had no choice except to remain within the protective confines of the fort,

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[39]Cherokee Laws, Vol. 251, p. 5.

and there they languished for the remainder of the year, helpless refugees in their own land.[40]

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[40]William A. Phillips to James G. Blunt, April 27, May 1 and 9, 1863, OR, I, xxii, part 2, pp. 256, 266, 276-77; J. M. Bell to Mrs. J. M. Bell, May 29, 1865, Cherokee Nation Papers--Civil War Letters 1861-1874, Division of Manuscripts, Bizzell Library, University of Oklahoma, Norman; Commissioner's Report, 1863, p. 297.

## CHAPTER VI

## EARLY TREATY NEGOTIATIONS AND THE KANSAS IMBROGLIO

While General Blunt and Colonel Phillips grappled with the task of returning the Cherokee refugees to their homes, Washington politicians continued to debate the Federal government's future course in dealing with the Five Civilized Tribes. The two senators from Kansas, Lane and Pomeroy, played prominent roles in this discussion. On November 13, 1862 Pomeroy addressed a letter to Caleb Smith who was completing his last two months as secretary of the interior.[1] The senator reminded Smith that Kansans had long been interested in treaty negotiations leading to the removal of the tribes from their state and added significantly that he himself had recently met with one of the members of the Ross family to discuss the idea of resettling the Kansas tribes

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[1]Because of a heart condition, Smith resigned from the Lincoln cabinet on December 31, 1862. The President subsequently appointed him to a Federal district judgship in Indiana, and John P. Usher, who had served as assistant secretary since November, 1862 became secretary. Caleb Smith to Abraham Lincoln, November 12 and December 31, 1862, Abraham Lincoln Papers, Library of Congress (microfilm copy), Series 1, Roll 54; Burton K. Hendrick, Lincoln's War Cabinet (Boston: Little, Brown, 1946), pp. 347-48.

in the Indian Territory. Pomeroy maintained that from all he could learn the idea was "entirely feasible," and he urged that immediate steps be taken to negotiate removal treaties.[2]

Pomeroy followed up this letter with a memorial submitted jointly to the commissioner of Indian affairs and the Interior Department on November 15. In this document, he listed the advantages to be derived from the removal of the tribes from the frontier states and their resettlement and consolidation in the Indian Territory. In an apparent effort to give his arguments a non-political ring, Pomeroy discarded the use of official Senate stationary and referred to himself merely as "a citizen of the state of Kansas" rather than a United States Senator. The thrust of his argument--an argument to be repeated many times in the near future--was quite simple: the surrounding of small, defenseless tribes by whites demoralized the Indian and led to his extermination, while his consolidation in a domain of his own would not only halt the process of decline but would contribute significantly to the improvement of the red man by making it possible for him to govern himself and preserve the best of his heritage. Citizen Pomeroy candidly admitted that removal and consolidation would "stimulate and facilitate the settlement and wealth" of those

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[2]Pomeroy to Smith, November 13, 1862, Records of the Office of the Secretary of the Interior, Indian Division, Record Group 48, National Archives, Letters Received Miscellaneous.

states vacated by the Indians. He confessed as well that his desire to negotiate removal treaties was heightened by the Sioux outbreak in Minnesota and the recognition that his own state contained "the same combustible material. . . ."[3]

On November 22, Commissioner Dole submitted to Secretary Smith a reply to Pomeroy's memorial. Since the beginning of his tenure as commissioner, Dole had been considering how the Federal government might best conduct its future affairs with the tribes west of the Mississippi, particularly those tribes in the Kansas-Nebraska-Indian Territory area. As early as the summer of 1861, Dole instructed one of the special agents employed by the Indian office, a man by the name of Augustus Wattles, to discuss with the tribes in the Kansas area the idea of removing to the Indian Territory. In reporting on his activities in March, 1862 Wattles asserted his firm conviction that most of the Indians desired to move south, a step which he believed would not only reduce the administrative expenses of the Indian service by one-half but would open an estimated thirty million acres in Kansas and Nebraska to white settlement.[4]

In keeping with the report of Special Agent Wattles, Dole did not question the idea of attempting to remove the

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[3]Pomeroy to the Commissioner of Indian Affairs and the Department of the Interior, November 15, 1862, ibid., Letters Received.

[4]Wattles to Caleb Smith, March 4, 1862, ibid., Letters Received Miscellaneous.

tribes to the Indian Territory. Instead, he merely challenged the wisdom of attempting such an undertaking under existing conditions. Writing to Secretary Smith on November 22, 1862 he stated:

> No one who has carefully observed the present condition of the tribes in Kansas and those elsewhere similarly situated . . . can fail to appreciate the magnitude of the evils of their present situation. . . . I have long believed . . . that the civilization of the Indian and the perpetuation of his race depend upon his isolation from the whites.

The proposal to remove to the Indian Territory those tribes living in places such as Kansas and Nebraska, he continued, offered "more of hope and promise for the future welfare, development, civilization, and perpetuation of the Indian race than any as yet devised." Yet the time for such a move was not right. If the country were at peace, and the tribes could be guaranteed possession of new homes in the Indian Territory, Dole was confident that many of the tribes would gladly consent to removal. Until that time arrived, he could see no sense in appointing a special commissioner, as had been suggested by Pomeroy, to negotiate with the tribes concerned. The regular agents, Dole asserted, could present the idea of removal to the tribes in their charge, "and thus they will be prepared to act so soon as order and security to person and property are again established in the 'Indian Country.'"[5]

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[5]Dole to Smith, November 22, 1862, ibid., Letters Received.

Dole's argument against immediate negotiations did not prevent Pomeroy's colleague Lane from introducing a bill to facilitate the removal of the Kansas tribes. On December 8, 1862 Lane announced in the Senate that he planned to introduce a measure authorizing the secretary of the interior to negotiate removal treaties with the Indian tribes of Kansas. On December 15 he submitted his proposal, and the measure was immediately referred to the Senate Committee on Indian Affairs.[6]

The Lane Bill remained in the committee slightly over one month. During this time the original measure was substantially altered. In its modified form the proposed law authorized the President, rather than the secretary of the interior, to negotiate with the tribes in Kansas in order to extinguish their title to lands in that state and secure their removal to some area not lying within the boundaries of any other state. The measure also authorized the chief executive to carry on simultaneous negotiations with the loyal tribes of the Indian Territory, or loyal portions of those tribes, to secure new homes for the Indians who were to be uprooted in Kansas.[7]

The amended bill was reported from the Indian Affairs Committee by Lane himself on January 20, 1863 and debate on the proposal began six days later. Lane remarked at the outset

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[6]Congressional Globe, 37 Cong., 3 Sess., December 8 and 15, 1862, pp. 16, 84.

[7]Ibid., January 26, 1863, p. 505.

that the measure would excite no discussion, a statement which proved that he was not a particularly gifted prophet. Rather than slipping quickly and quietly through Congress, Lane's modified bill was quickly challenged by a number of Senate skeptics. The first of these was William Pitt Fessenden of Maine. Doubtless thinking of the Manypenny treaties, Fessenden demanded an explanation of the measure, remarking that it did not seem to be in harmony with the government's recent efforts to promote Indian-white co-existence. In a disjointed and not overly convincing reply, Lane argued that the Indians of Kansas were anxious to leave the state, that the Indian Territory lying south of Kansas could accomodate every Indian east of the Rocky Mountains, and that all treaties with the tribes of the Territory were void as a result of the course adopted by these Indians after the outbreak of war. For good measure he added that by settling upon and improving the lands adjacent to the Kansas reservations, whites had increased the value and price of the Indian lands, a circumstance which Lane claimed was highly unsatisfactory to his constituents. In short, better to move the Indians out immediately before the advance of white settlement increased the prices that Kansans must pay for Indian lands![8]

Two of Lane's senate associates quickly came to his assistance. James Harlan of Iowa pointed out that any expenses

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[8]Ibid., January 20 and 26, 1863, pp. 413, 505.

incurred in removing the tribes from Kansas could be defrayed through the sale of the vacated tribal lands, while Pomeroy repeated assertions earlier made in correspondence with the Interior Department that removal and consolidation would halt the wasting away of a once proud people.[9]

Several members of the Senate were unmoved by these statements. Henry M. Rice of Minnesota claimed that there was no need for legislation of this sort as the President already had the power to negotiate treaties. Pomeroy quickly responded to this criticism by claiming that the secretary of the interior and the commissioner of Indian affairs would not undertake the responsibility of inaugurating a new Indian policy without some authority from Congress. Lane then added that the alterations incorporated into his original bill had been drawn up by the Interior Department, a statement which indicates that the proponents of removal had collaborated with officials of that department during the time that the Lane Bill was in committee.[10] Apparently during this period those individuals within the Interior Department charged with the conduct of Indian affairs had agreed to begin removal negotiations if this policy first received Congressional endorsement.

After Harlan, Pomeroy and Lane each had their say, Senator Fessenden again took the floor. The Maine senator admitted that he still hoped that the white and red man could

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[9] Ibid., p. 506.

[10] Ibid.

live peacefully side by side and that the Indian would eventually become a bona fide, landowning citizen. Could anything be gained, he asked, in again moving the Indians one step away from the whites, and addressing Pomeroy, he demanded to know how long it would be before whites began encroaching on the proposed new domains within the Indian Territory. Pomeroy asserted that the bill under consideration would reserve the Indian country "forever" for its occupants. This statement prompted Fessenden to retort that at best forever would mean about fifteen years, and then the timeworn practice of removing the Indians to a slightly more inaccessible area would again be repeated. Arguing for some departure from the monotony and tragedy of the past, Fessenden stated that he could not see the "justice or the propriety of yielding day after day, month after month, and year after year, to the repetition of the same arguments" when the end result was always the same.[11]

In an effort to effect a compromise on the question of Indian removal, Iowan James Harlan proposed an amendment to the Lane Bill. Harlan's proposal authorized the President "to enter into treaties with the several tribes of Indians . . . now residing in the State of Kansas, providing for the extinction of their titles to lands held in common, and for the removal of such Indians of said tribes as hold their lands in

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[11] Ibid.

common to suitable localities elsewhere . . . outside the limits of any state." In theory, this proposition would result in the removal of those Indians in Kansas who refused to adopt pastoral pursuits while allowing their more peaceful, sedentary kinsmen to remain in the state.[12]

With a minimum of discussion the Senate accepted the Harlan amendment. One apparent reason for its easy passage was that the proponents of Indian removal believed--as Lane himself stated on the Senate floor--that in operation the measure would actually result in the removal of all Indians from Kansas, both those that had and those that had not made progress in attaining the white man's type of civilization. By voice vote on January 27, 1863 the Lane Bill, as amended by Harlan, passed the Senate without further discussion.[13]

Once through the upper chamber, the measure was submitted to the House Committee on Indian Affairs on February 18.[14] Here the bill died, never reaching the House floor for debate. Refusing to accept defeat, the supporters of Indian removal and consolidation adopted a different tact. On February 25, 1863 James R. Doolittle of Wisconsin, chairman of the Senate Committee on Indian Affairs, proposed two amendments to the

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[12] Ibid., p. 507.

[13] Ibid., p. 507, and January 27, 1862, p. 527.

[14] Ibid., February 18, 1863, p. 1056.

Indian Appropriations Bill, recently passed by the House of Representatives. Together these amendments embodied the essential features of the Lane Bill which had become bogged down in the lower chamber. The first authorized the President to enter into treaties with the Indians in Kansas providing for the extinction of their titles to lands held in common and their removal elsewhere, while the second authorized the chief executive to secure through negotiations with the tribes of the Indian Territory new homes for the Kansas tribes. After a short discussion the amendments were approved that same day by a vote of twenty to fifteen. Despite the opposition of the House Ways and Means Committee, the House of Representatives concurred in the Senate amendments on February 28, 1863 and on March 3, President Lincoln signed the appropriations bill into law.[15] Technically, the way was now clear to remove the tribes of Kansas to the Indian Territory.

In a very real sense, the extensive debate in Congress over the negotiation of removal treaties was purely academic. Whatever their other differences, Kansans appear to have been unanimous in their desire to rid their state of its Indian inhabitants, and long before Lincoln affixed his signature to the Indian Appropriations Act in March, 1863 negotiations looking toward removal to the Indian Territory had begun. The first victims of these maneuvers were the members of the Kickapoo tribe.

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[15] Ibid., February 25, 1862, p. 1282; ibid., February 28, 1863, p. 1392; ibid., March 2, 1863, p. 1361.

As the historian of this tribe has written, the effort of frontier railroad promoters, bankers and businessmen to deprive the Kickapoos of their lands in Kansas in the 1860's comprises a sordid chronicle of man's inhumanity to man.[16] A fiercely independent and proud people, the Kickapoos, since the coming of the first Europeans to North America, had refused to accept the economic, political and religious doctrines which the white man sought to impose on them. Like their other red kinsmen, however, the tribe eventually yielded to the avarice of the frontiersman and moved gradually westward. In July, 1819 United States officials negotiated a treaty whereby the bulk of the tribe moved to Missouri from the original tribal domain south and west of Lake Michigan. In a later treaty negotiated in October, 1832 the Kickapoos surrendered their title to their Missouri lands in exchange for a new home over 700,000 acres in size located still further west on the Missouri River near Fort Leavenworth. Still another treaty was signed in 1854 in which the tribe ceded 618,000 acres of this tract to the Federal government, reserving 150,000 for its own use.

This westward movement and the diminution of the Kickapoo domain was accompanied by the splintering of the tribe. By the 1830's small parties of the tribe had of their own

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[16]A. M. Gibson, The Kickapoos: Lords of the Middle Border (Norman: University of Oklahoma Press, 1963), p. 124 (hereafter cited as Gibson, The Kickapoos).

volition begun migrating in a southwesterly direction. Generally the most restive and recalcitrant of the tribe, these maraunders became known as the Southern Kickapoos, and their wanderings covered an area ranging from the Indian Territory down through Texas and into northern Mexico. Their more sedentary brethren, the Northern Kickapoos, remained on the diminished reserve near Fort Leavenworth adopting peaceful agricultural and pastoral pursuits.[17]

Unfortunately for the Northern Kickapoos, their lands were situated on some of the major western highways, and whites bound for places such as New Mexico, California and Oregon crossed the tribe's domain. Worse still, the eastern portion of the projected trans-continental railroad line was expected to traverse their reservation. Drooling over the profits to be reaped from the commerical traffic of this line, as well as from the sale of homesteads to incoming settlers, railroad promoters and land speculators began pressing for the negotiation of a treaty in which the Kickapoos would accept individual allotments and surrender their claim to the rest of the tribe's land. Talks were opened during the Buchanan administration, and after the Republican accession in 1861 they were continued by the Lincoln-appointed Kickapoo agent, Charles B. Keith. In this endeavor Keith received the assistance

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[17]Ibid., pp. 1-126, passim.

of Senator Pomeroy who served simultaneously as president of the Atchison and Pike's Peak Railroad.[18]

By June, 1862 Keith had succeeded in drawing up a proposed treaty. When the agreement was submitted to the commissioner of Indian affairs in the latter part of that month, Keith stated that it had been properly approved by the tribe. The pact provided that the Kickapoo domain near Fort Leavenworth was to be surveyed by the secretary of the interior, and each person whose name appeared on the tribal roll was to receive an allotment: 320 acres to each chief; 160 acres each to the heads of families, and forty acres to all other persons. All land remaining after the granting of these allotments was to be sold to the Atchison and Pike's Peak Railroad for $1.25 per acre. Those members of the tribe who still wished to hold their lands in common would remain on a diminished reserve. If a majority of the adult males in this group agreed to remove from the state the Kansas reserve would be sold and the proceeds used to purchase a new tract for these people in the Indian Territory. Finally, the wandering Southern Kickapoos were required to return to Kansas within one year in order to be eligible to receive allotments.[19]

The ratification of this treaty by the United States

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[18] Ibid., pp. 120-28.

[19] Ibid., pp. 128-29; Charles J. Kappler (ed.), Indian Affairs. Laws and Treaties. (Washington: Government Printing Office, 1903), II, pp. 637-41.

Senate in March, 1863 was followed by a rising crescendo of protest from Kansans who claimed to be duty bound to protect the Kickapoos from injustice and exploitation. In reality, those who complained the loudest were rival railroad entrepreneurs who resented the coup scored by the Atchison and Pike's Peak Railroad in securing the residue of the valuable Kickapoo domain. The naive Northern Kickapoos appear not to have fully realized what they had agreed to until the treaty was ratified, and they, too, joined the protesters.[20]

Chief among those complaining about the Kickapoo pact was W. W. Guthrie, the attorney general of Kansas who undertook an extended campaign to have the treaty negated. In the spring of 1863 Gutherie convened a grand jury in Topeka to investigate the events surrounding the treaty negotiations. After becoming convinced that there was indeed evidence of fraud in the tactics employed by Agent Keith, Gutherie attempted to bring these abuses to the attention of the commissioner of Indian affairs, the secretary of the United States House of Representatives, the president of the Senate and President Lincoln. In these endeavors, the Kansas attorney general had the active support of James Henry Lane who was closely affiliated with railroad promoters who were rivals of the Atchison and Pike's Peak line. In the light of the evidence

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[20]Gibson, The Kickapoos, p. 129.

uncovered in Gutherie's investigation, Lane wanted the treaty to be submitted a second time to the Senate, confident that the pact could not again muster a two-thirds majority before that body.[21]

This widespread opposition forced the suspension of the treaty while Commissioner Dole investigated the charges of fraud. Traveling to Kansas the commissioner established headquarters at the Kickapoo Agency, and during the late summer and early fall of 1863, listened to the testimony of the conflicting parties. Apparently working in close collusion with the Atchison and Pike's Peak interests, Dole submitted a written report favorable to the treaty. The suspension was subsequently lifted, and the Kickapoo treaty was allowed to stand as negotiated.[22]

Before the Kickapoos or any other tribe could relocate in the area south of Kansas, new treaties must be negotiated with the tribes of the Indian Territory. A first effort in this direction came in 1863. Early in April, 1862 the loyal

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[21]Ibid., pp. 130-31; James H. Lane to John P. Usher, September 1, 1863, R.G. 48, N.A., Letters Received Miscellaneous.

[22]Gibson, The Kickapoos, pp. 131-35; evidence of collusion is seen in a letter written by Pomeroy to Dole on September 19, 1863 in which Pomeroy cryptically noted that the Kickapoo treaty was being "fixed up" just as they both agreed it should be and that "all will soon be satisfied." It should also be noted that the Atchison and Pike's Peak later sold 640 acres of land to Dole's wife for the munificent sum of one dollar. Pomeroy to Dole, September 19, 1863, Abraham Lincoln MSS, L.C., Series 1, Roll 59; Paul W. Gates, Fifty Million Acres: Conflicts over Kansas Land Policy, 1854-1890 (Ithaca: Cornell University Press, 1954), p. 139.

Creeks in exile in Kansas organized a tribal government of their own, choosing Oktarsas Harjo--commonly known as Sands--principal chief. In a letter of April 5, 1862 the new chief informed Commissioner Dole that the loyal Creeks were fully prepared to do business "in every respect" with the United States government. Sands asked to have tribal annuities paid to his people, just as if no portion of the tribe had rebelled against Federal authority, and voiced the opinion that the disloyal Creeks had forfeited all claims to the property and annuities of the Creek Nation.[23]

Whether or not Sands had the negotiation of a new treaty in mind when he wrote to Dole is debatable. Almost one year later, however, in March, 1863 Superintendent William G. Coffin informed Dole that the leaders of the refugee Creeks in Kansas were unanimous in their desire to negotiate a new pact with the United States. Coffin suggested that the commissioner and the secretary of the interior draw up a tentative treaty to be submitted to tribal leaders for their consideration. The superintendent expressed the hope that this treaty would serve as a model for the later ones to be negotiated with the other tribes of the Indian Territory.[24]

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[23]Sands et al to Dole, April 5, 1862, Letters Received by the Office of Indian Affairs, Creek Agency, National Archives, Microcopy 234, Roll 230.

[24]Coffin to Dole, March 22, 1863, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835.

But Coffin and Dole disagreed on one essential point. Coffin favored the old Manypenny approach; consolidate the tribes west of the Kansas-Nebraska area in the Indian Territory, grant individual allotments to each Indian and throw the remaining lands open to the whites in the belief that the contiguity of the white and red man would result in the latter's improvement. Dole's correspondence with the secretary of the interior, on the other hand, clearly indicated that he favored reserving the Territory exclusively for the Indian.[25]

Not surprisingly, the views of the commissioner prevailed. In the spring of 1863 Dole sent a letter to the leaders of the Creek refugees dealing with the negotiation of a new treaty. The bearer of this missive was Major Perry Fuller, a peripatetic Kansan deeply involved in the business of supplying goods to the refugee Indians. In addition, Fuller had recently secured appointments to act as attorney for the loyal Creeks and for the handful of Choctaw, Chickasaw and Quapaw refugees who refused to support the Confederate cause.[26] After Fuller's arrival, Creek Agent George A. Cutler and Superintendent Coffin held a series of meetings with tribal leaders at the Sac and Fox Agency during which Sands and his followers agreed to

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[25]William G. Coffin to Charles E. Mix, September 1, 1862, ibid., Roll 834.

[26]Perry Fuller to William P. Dole, April 15, 1863, ibid., Roll 835; Fuller to Dole, March 21, 1863, Letters Received, O.I.A., Creek Agency, N.A., Microcopy 234, Roll 230.

cede a fifty by seventy mile portion of their territory to the United States. In return for this cession, which reportedly included some of the best of their lands, the Creeks insisted on a number of stipulations. They wanted their new treaty to be in basic harmony with the pre-war treaties. More stringent safeguards to prevent white encroachments on their lands and a voice in the selection of those individuals allowed to trade with the tribe were also desired. Most importantly, the refugee Creeks vociferously opposed the idea of sectionalizing and granting individual land allotments, and they wished to be consulted as to which Indians would be located on the ceded Creek lands. In this way Creek leaders hoped to promote tribal tranquility by seeing that only peaceful, industrious Indians were resettled in proximity to their tribe. If possible, tribal leaders hoped to hold their treaty negotiations in Washington where they might meet with Lincoln and effect some plan whereby the Creeks themselves might clear the enemy forces out of their country. According to Agent Cutler, by this time they had lost all hope of anything being accomplished by Federal military forces.[27]

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[27]George A. Cutler to William P. Dole, May 1863, and June 6, 1863, Letters Received, O.I.A., Creek Agency, N.A., Microcopy 234, Roll 230; William G. Coffin to Dole, May 23, 1853, ibid., Southern Superintendency, N.A., Microcopy 234, Roll 835.

Commissioner Dole fully realized the importance of establishing military control in the Indian Territory. No plan to return the refugees remaining in Kansas to their homes or to resettle Kansas Indians in the Territory could hope to succeed until the supremacy of Federal arms in the area was firmly established. The commissioner, therefore, on July 29, 1863 sent a letter to the secretary of the interior requesting that steps be taken to reinforce General James G. Blunt who at that time was campaigning in the Indian country. Dole was convinced that the number of troops at Blunt's command was totally insufficient to repossess the area. Usher, in turn, suggested to the Secretary of War Edwin M. Stanton that reinforcements be provided Blunt by mustering into the Federal service as many of the able-bodied Indians of Kansas as possible. This proposal worked its way down the military's chain of command, and on August 10, 1863 Major General John M. Schofield issued instructions to Blunt authorizing the general to augument his forces by organizing as quickly as possible those Kansas Indians willing to join the Federal military service. Blunt thought this idea totally impractical and made no effort to undertake the task of organizing the Kansas tribes. Among his reasons for doing nothing was the great amount of time which such an effort would consume combined with his dim view of the usefulness of Indian troops. He would not, he wrote Schofield, exchange one regiment of Negro troops

for ten regiments of Indians.[28]

Meanwhile, Dole himself traveled to Kansas to investigate the Kickapoo treaty and to supervise negotiations with the Creeks. By early September, 1863 the task was largely completed and the negotiators placed their signatures on the finished document on the third day of that month. Signing as representatives of the United States were Dole, Coffin, Cutler, Pomeroy, H. W. Martin, who served at various times as a special agent for Coffin, and J. M. Winchell, a person whose official status is not known.

The Creek treaty of 1863 began with a statement to the effect that the current treaties between the tribe and the United States were insufficient to meet their mutual necessities. From that point, Article I of the agreement promised perpetual peace and friendship between the contracting parties with the Creeks pledging themselves to remain "firm allies and lieges" of the United States forever. The United States, on its part, promised the tribe the quiet possession of its country after the close of the war. And to insure this possession the tribe acknowledged the right of the Federal government to station

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[28]Dole to Usher, July 29, 1863, R.G. 48, N.A., Letters Received; Usher to Stanton, July 29, 1863, Letters Sent by the Indian Division of the Office of the Secretary of the Interior, N.A., Microcopy 606, Roll 4; Schofield to Blunt, August 10, 1863, and Blunt to Schofield, August 22, 1863, The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (Washington: Government Printing Office, 1888), Series I, xxii, part 2, pp. 440, 465 (hereafter cited as OR, with series number in upper-case numerals and volume number in lower-case numerals).

troops within its territory at any time, with the stipulation that the expense of maintining these forces be met by the United States.

In the second article the tribe recognized the necessity, justice and humanity of Lincoln's Emancipation Proclamation issued the preceding January. The right of persons of African descent to occupy tribal lands was granted, and the laws of the Creek Nation were to be equally binding on all persons, regardless of their color. The consolidation scheme found expression in Article III. The tribe agreed to cede to the United States a parcel of land in the northeastern corner of its domain where tribes from outside the Indian Territory could resettle. The United States would pay $200,000 for this tract, but the purchase money was to remain in the United States Treasury as a perpetual tribal trust fund. The secretary of the interior could either pay the annual five percent interest accruing on this fund directly to the tribe or use it to pay for "mechanical labor or useful articles" needed by the Creeks.

What proved to be the most controversial provisions of the treaty were found in Article IV. Here the United States acknowledged the validity of all previously existing treaty stipulations with the Creek Nation that were not inconsistent with the new compact. Further, the United States agreed to reimburse the loyal members of the tribe for all losses--other than slaves--sustained during the war through the actions of either Union or Confederate forces. To carry out this promise

of repayment, Article IV stipulated that immediately upon ratification of the treaty the Creek agent would make out a complete roll of all the loyal members of the tribe. The exact amount to be paid these persons would then be determined by a three member commission appointed by the President of the United States.

In Article V the United States agreed to furnish the Creeks $1,000 worth of farm implements when the refugees returned home, while Article VI stipulated that no person would receive a license to trade in the Creek Nation unless recommended by a majority of the tribal chiefs. Article VII dealt primarily with the payment of salaries to the chiefs of the tribe and provided for the per capita payment of future tribal annuities. The eighth article provided for the sale of a Creek school house located on the ceded lands.

Finally, the ninth article dealt with those Creeks who had joined forces with the Confederacy. This last article provided that nothing in the treaty was to prevent the Creek chiefs and council from receiving back into the tribe those persons participating in the rebellion against the United States. None of these individuals, however, were to be entitled to compensation for damages under the provisions of the treaty nor could they hold any public office in the Creek Nation unless they could prove to the secretary of the interior that they had always remained loyal to the United States. All in all, the terms of this treaty were pleasing to loyal Creek

leaders, and they were anxious to see it carried out. But it never was.[29]

While Dole and his associates wrestled with the tasks of fixing and negotiating treaties, Federal military commanders in all theaters continued their efforts to suppress the foe. In the Indian Territory and its environs, however, Federal authorities frequently seemed more determined to destroy one another than the enemy. Here the struggle against the Confederacy throughout much of 1863 became something of a sideshow affair played out in some obscure back lot, while in the main arena, Federal officials, military and civilian, squabbled over the spoils of war like caged lions fighting for a solitary loin of beef. And only on rare occasions did these individuals take into consideration the needs of the loyal refugee Indians.

Trouble began in the Southwest in May, 1863. On the thirteenth of that month, Secretary of War Stanton, at the behest of President Lincoln, instructed Major General John M. Schofield to assume command of the Department of the Missouri, relieving Major General Samuel R. Curtis. Established in September, 1862 the department encompassed the states of Missouri, Arkansas and Kansas as well as the Indian Territory.

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[29]The ratification question will be discussed in Chapter VIII. Copies of the Creek treaty can be found in the Unratified Indian Treaty File, N.A., Microcopy T-494, Roll 8 and in the Creek National Papers, Federal Relations, Section A, Indian Records Division, Oklahoma Historical Society, Oklahoma City.

Lincoln appointed Curtis commander hoping that the general could steer a neutral path between the radicals and the moderates in this department, the former favoring a severe treatment of Confederate sympathizers, while the latter advocated more leniency. In the months following his appointment, much to the displeasure of the moderates, Curtis followed military and administrative policies highly favorable to the radicals in Missouri and Kansas. By May, 1863 criticism of Curtis had become so intense that Lincoln decided that he must be removed, and Schofield, a professional no-nonsense soldier, was named as Curtis' successor.[30]

Relations between James G. Blunt and the new department commander had never been overly cordial. Friction between the two dated back to the campaign waged under Schofield's supervision in northwestern Arkansas late in 1862. Following the Battle of Prairie Grove, displaying the envy which the professional frequently has for the successful novice, Schofield characterized Blunt's operations against General T. C. Hindman's forces as "a series of blunders" and recommended to General Curtis that Blunt be relieved of his field command.[31]

With a past relationship of this type, future conflict

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[30]Abraham Lincoln to William R. Curtis, January 5, 1863, OR, I, xxii, part 2, pp. 17-18; Lincoln to the Secretary of War, May 11, 1863, and Henry W. Halleck to John M. Schofield, May 13, 1863, ibid., p. 277; Albert Castel, A Frontier State at War: Kansas, 1861-1865 (Ithaca: Cornell University Press, 1958), p. 110 (hereafter cited as Castel, Frontier State).

[31]Schofield to Curtis, January 1, 1863, OR, I, xxii, part 2, p. 6.

between the district and departmental commanders was all but inevitable. And it soon came. On June 9, 1863 Schofield issued orders dividing the District of Kansas into two sections. One of the two, the District of the Frontier, was to consist of that portion of Kansas below the thirty-eighth parallel as well as the Indian Territory and the western tier of counties in Missouri and Arkansas below the same parallel. Blunt was placed in charge of this district with headquarters at Fort Scott, Kansas. The other section, the District of the Border, was placed under the command of Brigadier General Thomas Ewing, Jr., with headquarters at Kansas City. Ewing's command included Kansas north of the thirty-eighth parallel plus the two western tiers of counties in Missouri north of that parallel and south of the Missouri River.[32]

For a variety of reasons, Blunt was incensed by Schofield's actions. First and obviously, his pride was hurt by having his command reduced by a hated rival. But more than sentimentality was involved. As long as he had command of the entire state of Kansas, Blunt--and his close friend James H. Lane--stood to make a great deal of money off the contracts let at Fort Leavenworth, a strategic Western supply depot. The individuals favored with contracts at the post were expected to cut Blunt and Lane in on their profits, but now that Blunt's command no longer included Fort Leavenworth, this source of plunder was gone.[33]

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[32]General Orders No. 48, June 9, 1863, ibid., p. 315.

[33]Castel, Frontier State, pp. 84, 110.

Determined to maintain some semblance of authority and control at Fort Leavenworth, Blunt claimed the right to give orders to Major L. C. Easton, the fort's chief quartermaster, on the grounds that the orders issued by Schofield on June 9 made Easton quartermaster of several districts, including the District of the Frontier. Easton denied Blunt's claim of authority and was sutained by Schofield. In discussing the case in a letter of July 5, 1863 written to Henry W. Halleck, commanding general of the Union armies, Schofield stated that he was trying to correct the "irregularities and abuses" which previously existed in the department. He further noted that if Blunt could not submit to proper restrictions he saw no way of preventing the recurrence of these abuses except by relieving Blunt of his command. Halleck concurred in this opinion. Blunt, on the other hand, did not concur, but for the time being events in the Indian Territory prevented him from pressing his case.[34]

In a letter of May 22, 1863 Colonel William A. Phillips informed Blunt of the Confederate attack of May 20 which had forced the refugee Indians to flee to Fort Gibson. Sorely pressed for troops himself, Blunt could do nothing to aid Phillips except to promise to give him all the support possible and to appeal to Schofield for reinforcements. Because of the

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[34]Schofield to Halleck, July 5, 1863, OR, I, xxii, part 2, p. 327; Castel, Frontier State, pp. 154-55.

exigencies of the Vicksburg campaign, Schofield was unable to provide additional troops for use in the Indian Territory, and he warned Blunt on June 10 that if Phillips could not maintain his position at Fort Gibson without too great a risk he must simply fall back. Three days later on June 4, Blunt moved his headquarters from Fort Leavenworth to Fort Scott.[35]

Early in June the troops in Phillips' command fought a series of skirmishes with Confederate forces led by, among others, Stand Watie. The rebels hoped to cut off all supply lines leading to Fort Gibson, but a sudden rise in the Virdigris and Grand rivers which inhibited troop movements prevented them from accomplishing this goal. On the other hand, Phillips was not able to appreciably expand the area under his control, and he still exercised sway only over that area within range of the guns at Fort Gibson.[36]

Late in the month Blunt was at last able to provide Phillips some assistance, sending 1,600 troops to reinforce the garrison at Fort Gibson. Soon after their departure Blunt learned that the enemy was planning an attack on the Arkansas River outpost, and this disclosure prompted the general to

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[35]Blunt to Phillips, May 30, 1863, and Schofield to Blunt, June 10, 1863, OR, I, xxii, part 2, pp. 297-98, 315; James G. Blunt, "General Blunt's Account of His Civil War Experiences," The Kansas Historical Quarterly, I (1932), p. 242 (hereafter cited as Blunt, "Experiences," KHQ, I).

[36]William A. Phillips to James G. Blunt, June 20, 1863, OR, I, xxii, part 1, pp. 348-50; William Steele to W. R. Boggs, July 7, 1863, ibid., part 2, pp. 909-11.

take to the field again. On the evening of July 5 he left Fort Scott for Fort Gibson accompanied by four companies of the Sixth Kansas Cavalry, one section of the Second Kansas Battery, one company of the Fourteenth Kansas Cavalry and one company of the Third Wisconsin Cavalry. By the morning of July 11, Blunt and his force had reached Fort Gibson.[37]

The scene that awaited the general was none too pleasant. The area held by Phillips' troops was about one and one-half miles square and within this space, in addition to the soldiers, about 6,000 refugee Indians from the Cherokee, Creek, Seminole and Euchee tribes were crowded. A recent smallpox epidemic had caused a number of deaths, and the survivors within the confines of the fort were half naked and many suffered from dysentery. On the south side of the Arkansas, according to Blunt's account, 6,000 Confederates were preparing for an attack against the fort, while rebel spies enjoying the full confidence of Colonel Phillips moved freely within the compound.[38]

Displaying considerable courage, Blunt mustered a force of about 3,000 men and on July 17, attacked and defeated a

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[37]James G. Blunt to John R. Schofield, June 26, 1863, and C. W. Marsh to H. Z. Curtis, July 6, 1863, ibid., part 2, pp. 337-38, 354; Blunt, "Experiences," KHQ, I, pp. 243-44.

[38]Blunt, "Experiences," KHQ, I, p. 244; Henry Smith to William G. Coffin, July 16, 1863, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835.

rebel force led by Douglas H. Cooper at Honey Springs near the Creek Agency. Suffering from some unnamed malady, and fearful of being overwhelmed by what he believed to be a superior Confederate force at Fort Smith, Blunt fell back to Fort Gibson on July 19.[39]

Schofield remained singularly unimpressed with Blunt's performance as district commander. In point of fact, in corresponding with Army headquarters in Washington on July 15, Schofield reported that information had reached him from both official and unofficial sources concerning fraud, corruption and maladministration in the Department and District of Kansas while under Blunt's command. These allegations did not contain enough substance to permit Schofield to frame specific charges against Blunt, but he did feel that they warranted the convening of a court of inquiry for the purpose of "ascertaining the facts and bringing the guilty to punishment."[40]

Schofield was not the only person interested in securing Blunt's removal. In November, 1862 Kansans went to the polls and chose a new governor, Thomas Carney, a wealthy Leavenworth merchant. Carney won election with Senator Lane's backing, but soon after his inauguration the new governor came to a parting

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[39]Blunt, "Experiences," KHQ, I, pp. 244-45; Castel, Frontier State, p. 155.

[40]John R. Schofield to E. D. Townsend, July 15, 1863, OR, I, xxii, part 2, p. 319.

of the ways with Lane, and Lane's cohort Blunt, when he opposed the senator's efforts to dictate the choice of officers in the military units organized in Kansas. In July, 1863 Carney met with Secretary of the Interior John P. Usher in Washington and asked that Blunt be removed from his command and that General Ewing's district be extended to include all of Kansas. In forwarding these requests to Lincoln, without saying exactly how, Usher voiced the opinion that Blunt's activities in Kansas had adversely affected Indian affairs in that state.[41]

Learning of these machinations, Blunt turned his attention from the Confederate forces in the Indian Territory to what he called the "traitors and secret assassins" at his rear. In a searing letter sent to Secretary of War Stanton on July 26, 1863 Blunt exalted his own record and excoriated practically everyone else with whom he had come in contact since the beginning of his military service. Major L. C. Easton, the quartermaster at Fort Leavenworth, was branded a traitor, while Governor Carney and Southern Superintendent William G. Coffin were common thieves whose "wholesale robbery of those poor, unfortunate refugee Indians is so gross and outrageous that their names are a stench in the nostrils of every loyal Indian. . . ." In reality, said the general, Carney and Coffin were the ones responsible for the efforts to secure his removal as district commander as they realized that he was

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[41]Usher to Lincoln, July 16, 1863, and Lincoln to James H. Lane, July 17, 1863, Lincoln MSS, L.C., Series 1, Roll 55.

"on their track." Claiming that he had borne past insults as long as could be reasonably expected, Blunt expressed the view that the President should convene a court of inquiry so that he might have a direct confrontation with his accusers. In an embittered missive sent to Lincoln five days later Blunt employed a dazzling array of vitriolic language in describing his adversaries. General Schofield, for instance, was an individual who enjoyed "a reputation among the soldiers of the west for cowardice and imbecility. . . ." Blunt asked for a full investigation of all charges lodged against him by his opponents, and in an obvious play for presidential sympathy recounted his recent victory over General Cooper while emphasizing the precariousness of his own advanced position.[42]

If Secretary Stanton replied to Blunt's letter of July 26, there is no record of it. Lincoln, however, did send a note of reply dated August 18. With characteristic temperance--and with some degree of evasiveness--Lincoln stated that Governor Carney of Kansas had left some papers with him dealing with Blunt, but these had made no great impression on him. The President further expressed regret that Blunt saw fit to denounce so many people as liars, scoundrels, fools and thieves. And with regard to Blunt's precarious position in the Indian Territory, Lincoln simply asked whether anyone had forced him

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[42]Blunt to Stanton, July 26, 1863, OR, I, xxii, part 2, pp. 398-99; Blunt to Lincoln, July 31, 1863, ibid., liii, pp. 565-67.

to get into such a predicament, doubtless knowing that no one had.[43]

Because of his renewed activities against the enemy Blunt did not receive Lincoln's letter until late September. After his campaign against Cooper in the middle of July, Blunt remained at Fort Gibson until the latter part of August calling on Schofield for reinforcements that would permit him to resume his activities against the rebel forces south of the Arkansas River. Eventually, 1,500 additional troops commanded by Colonel William F. Cloud were placed at Blunt's disposal. These troops reached Fort Gibson on August 22, 1863 and shortly thereafter Blunt crossed the Arkansas with the intention of attacking a Confederate force encamped near Perryville in the Choctaw Nation. Before an engagement could be fought, however, the main body of the rebel troops, commanded by Brigadier General William Steele, retreated southward toward the Red River whereupon Blunt turned his force to the east and captured Fort Smith, Arkansas, without opposition on September 1. Never one to understate his own accomplishments, on September 11 he reported to Schofield that "the entire Indian Territory and western Arkansas" were in his possession and that the area was now open to the settlement of the Kansas Indians.[44]

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[43]Lincoln to Blunt, August 18, 1863, ibid., liii, p. 567; Castel, Frontier State, p. 157.

[44]James G. Blunt to John M. Schofield, August 27, and September 3, 1863, OR, I, xxii, part 1, pp. 597, 601-02; William Steele to Thomas L. Snead, August 28, 1863, ibid., pp. 599-600; W. T. Cloud to Schofield, September 8, 1863, ibid., pp. 598-99; Blunt to Schofield, September 11, 1863, ibid., part 2, pp. 525-26.

This statement was, to say the least, a gross exaggeration. The declining military fortunes of the Confederacy--especially after the fall of Vicksburg and Port Hudson, the last Confederate strongholds on the Mississippi, in July, 1863--made it increasingly difficult for the Richmond government to maintain a cohesive force in the Indian Territory. Confederate leaders in the area, however, were doggedly tenacious, and the continued resistance of their scattered, poorly equipped and oftimes discouraged troops made the resettlement of any of the Kansas tribes impossible.

Schofield was still unimpressed by either Blunt's accomplishments or his bravado. In reporting the capture of Fort Smith to Major General Halleck in Washington, Schofield gave the credit to Colonel Cloud rather than Blunt. By the latter part of September an investigation of affairs in Kansas and the Indian Territory by officers appointed by Schofield had been completed. The reports submitted by Schofield's inspectors convinced the department commander that Blunt had allowed the troops in his command to fall into a shameful state of inefficiency and had failed to protect the interests of the United States against individuals bent on defrauding the government. Schofield thus concluded that he had no choice except to relieve Blunt and place Brigadier General John McNeil in command of the District of the Frontier. On October 1, 1863 he informed Halleck of his decision, and on the nineteenth of the month orders were issued relieving Blunt of his command.

These same orders expanded Ewing's District of the Border to embrace the entire state of Kansas, and Blunt was instructed to proceed to Leavenworth, Kansas, to await further orders.[45]

While Union leaders exchanged embittered denunciations, the refugees in the Fort Gibson area fared none too well. Despite Blunt's recent impressive victories, the Indian Territory outside the Fort Gibson area remained a no-man's land, criss-crossed sporadically by rebel raiding parties that shot Union sympathizers and helped themselves to the livestock and scanty crops of the refugees around the fort. Foragers, supply contractors and wagoners in the employ of the Federal service often took what the rebels left behind, thus leaving the refugees almost totally dependent on the rations doled out at Fort Gibson. Because of the difficulties encountered in supplying this outpost, these rations were not especially plentiful, and more than once the idea of sending the refugees back to Kansas was discussed, although no movement was actually undertaken.

The plight of the refugees was undoubtedly worsened by the petty bickering among civil and military authorities in the Indian Territory. Relations at Fort Gibson between military officers and agents of the Indian Bureau were at best strained, each blaming the other for the miseries of the Union Indians in and around Fort Gibson. When, for instance, military authorities

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[45]Schofield to Halleck, September 12, and October 1, 1863, ibid., part 2, pp. 527, 586; Schofield to E. D. Townsend, November 3, 1863, ibid., pp. 595-97; General Orders No. 118, ibid., p. 666; Blunt, "Experiences," KHQ, I, pp. 251-64.

accused the Indian agents of sloppy administration and connivance with the dishonest supply contractors, the agents criticized the military for allegedly trying to undermine Indian confidence in the Indian Bureau and for failing to cooperate in the transportation of badly needed supplies. Cherokee Agent Justin Harlan in December, 1863 wrote in disgust that the Federal troops at Fort Gibson spent most of their time drinking, dancing, carousing and recovering from "sundry diseases not brought on by any particular piety." Unfortunately, these charges were rarely documented, but there was probably some measure of truth in the accusations leveled by both sides.[46]

To the north the 7,000 refugees in Kansas were not much better off. Diseases such as pneumonia, gastritis and smallpox brought on by poor food, inadequate clothing and shelter and the shortage of medical supplies and doctors, took a heavy toll. And those who somehow avoided death were often debilitated mentally by their prolonged sufferings.[47] Their stay in this land of suffering, however, was nearing its end, for as the fall of 1863 darkened into winter, forces were conspiring to push them back into the Indian Territory.

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[46]Justin Harlan to William G. Coffin, August 8, 1863, and Coffin to William P. Dole, August 10, 1863, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835; Coffin to Charles E. Mix, August 31, 1863, ibid.; Milo Gookins to Coffin, October 17, 1863, ibid.; A. G. Proctor to Coffin, November 20, 1863, ibid.; James G. Blunt to John P. Usher, August 1, 1863, ibid.; Justin Harlan to "Dear Sir" [William G. Coffin?] December 7, 1863, ibid., Cherokee Agency, N.A., Microcopy 234, Roll 99.

[47]Dean Bank, "Civil-War Refugees From Indian Territory in the North, 1861-1864," Chronicles of Oklahoma, XLI (1963), pp. 294-95.

# CHAPTER VII

## RETURN OF THE REFUGEES

The confusing array of events which occurred in the Southwest in 1863 was climaxed by yet another military departmental change at the end of the year. James G. Blunt's removal as commander of the District of the Frontier, accompanied by the incorporation of all of Kansas into the District of the Border, commanded by Thomas Ewing, Jr., was a severe blow to James H. Lane. These moves deprived the senator of the last semblance of control that he previously had exercised through Blunt over army contracts and the organization of troops in Kansas.

In desperation the senator turned to Lincoln and successfully urged upon the President the idea of again converting Kansas into a separate department under the command of another of his friends, Samuel R. Curtis. By this time Lincoln had already reached the conclusion that it was impossible for one commander, like Schofield, either to satisfy the people of both Missouri and Kansas or reconcile their differences. Therefore, when Lane submitted his request Lincoln on December

31, 1863 sent instructions to Secretary of War Edwin M. Stanton telling him to take care of the Kansas matter. The following day, January 1, the War Department issued orders again establishing a Department of Kansas which embraced not only that state but Colorado and Nebraska territories, Indian Territory and the military post at Fort Smith. As requested by Lane, these orders designated Major General Curtis departmental commander.[1]

Shortly after this change occurred, Brigadier General John McNeil, in command at Fort Smith, ordered Colonel William A. Phillips to launch a campaign southward from Fort Gibson toward the Red River with his Indian regiments.[2] Although the exact purpose of this expedition was never spelled out, one of its obvious goals was to distribute in enemy held territory copies of Lincoln's Amnesty Proclamation issued December 8, 1863. Hopefully, its non-vindictive spirit might spread dissension among the Confederate Indians. In addition, this campaign would provide Phillips' troops with an opportunity to forage for supplies such as corn and cattle badly needed at Fort Gibson.

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[1]Albert Castel, A Frontier State at War: Kansas, 1861-1865 (Ithaca: Cornell University Press, 1958), pp. 162-63; The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (Washington: Government Printing Office, 1891), Series I, xxxiv, part 2, p. 7 (hereafter cited as OR with series number in upper-case numerals and volume number in lower-case numerals).

[2]William A. Phillips to Samuel R. Curtis, February 16, 1864, OR, I, xxxiv, pt. 1, pp. 106-08.

The time was certainly propitious for such a move. The continued occupation of a substantial portion of their country by Federal troops, the non-payment of annuities, the scarcity of arms, clothing, and food had all combined to create a sense of malaise and discontent among the rebel Indians not at all unlike the feelings they had toward the United States in 1861. Ruefully aware of these sentiments, Confederate field commanders in the Indian Territory pleaded with their superiors to get the Confederate government to give evidence of good faith and intention to meet its treaty obligations.[3]

The delegates who met in Grand Council in November, 1863 under the terms of the North Fork Agreement of 1861 were cognizant of the needs of their people and the failure of the Richmond government to meet its treaty obligations. The principal address at this council, held at Armstrong Academy deep in the southwestern corner of the Choctaw Nation, was delivered by Stand Watie. While admitting that it appeared that they had been temporarily abandoned by their white allies, Watie urged his listeners to remain steadfast. Honor and self-interest, he asserted, both dictated that the Confederacy would meet its legitimate obligations, and history would justly

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[3]J. M. Bell to Caroline Bell, September 2, 1863, Cherokee Nation Papers--Civil War Letters, 1861-1874, Division of Manuscripts, Bizzell Library, University of Oklahoma, Norman; Stand Watie to S. S. Scott, August 8, 1863, OR, I, xxii, part 2, pp. 1104-05; S. B. Maxey to E. Kirby Smith, February 26, 1864, ibid., xxxiv, part 2, pp. 994-97; R. W. Lee to S. B. Maxey, February 26, 1864, ibid., pp. 997-98.

condemn those who abandoned the struggle during this moment of crisis. Following this speech, which doubtless had a mollifying effect upon the assembled delegates, an appeal to President Jefferson Davis was drawn up on November 24, calling for the establishment of both an Indian brigade and a separate military department in the Indian Territory. Davis eventually sent a cordial letter of reply, but conditions remained unchanged among the Confederate Indians.[4]

This November meeting was followed by a similar session held at Armstrong Academy in early February, 1864. Here plans were to be laid for the establishment of an alliance with the plains Indians and the launching of an expedition into Kansas. Both these ideas seem to have originated with the rebel Indians, and nothing came of either of them at this time, but the proposals were not forgotten. In point of fact, the highlight of this meeting was an address by the Confederate commander in the Indian Territory, Brigadier General Samuel B. Maxey. The general promised to place a force between Fort Gibson and the Canadian River to protect the Confederacy's

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[4]Ira G. Clark, "Attempts to Form an Indian Confederation in Oklahoma," (Unpublished M.A. thesis, University of Oklahoma, 1937), p. 39 (hereafter cited as Clark, "Confederation"); Jefferson Davis to Israel Folsom et al, February 22, 1864, Allan Nevins and James D. Richardson (eds.), The Messages and Papers of Jefferson Davis and the Confederacy Including Diplomatic Correspondence 1861-1865 (New York: Chelsea House-Robert Hector, 1966), I, pp. 477-79; Address of Stand Watie, as Principal Chief, to the Assembled Grand Council, November 12, 1863, Cherokee Nation Papers--Civil War Letters, Division of Manuscripts, University of Oklahoma.

allies, and he urged the Indians to remain at their homes and raise crops for the coming year. Eye witnesses reported that these remarks had an excellent effect on the flagging spirits of the delegates, but this buoyant spirit did not last long as Maxey himself soon fled across the Red River.[5]

The beginning of Phillips' dash southward from Fort Gibson coincided with the opening of this latest session of the Grant Council. Moving in a southwesterly direction, Phillips' force cut across the southeastern edge of the Creek Nation. Minor skirmishes were fought with small enemy units on February 5, 6, and 8, and by February 11 the entire force had reached the Little River. Here the expedition paused for three days waiting to be reinforced by the Fourteenth Kansas Cavalry. When these troops failed to appear, Phillips resumed his march on the fourteenth moving on toward the Wichita Mountains. As Phillips approached, the troops commanded by Generals Maxey and D. H. Cooper fled across the Red River into Texas. Had he received the cavalry reinforcements he had been promised before leaving Fort Gibson, Phillips was confident that he could have pushed into northern Texas himself and brought out a number of Union sympathizers and recruits. As it was, he contented himself with dispatching copies of the President's Amnesty Proclamation to the Choctaw Council, to

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[5]I. G. Vore to S. B. Maxey, January 29, 1864, OR, I, xxxiv, pt. 2, p. 928; D. H. Cooper to S. B. Maxey, February, 1864, ibid., p. 959; Clark, "Confederation," pp. 40-41.

Chief John Jumper of the Seminoles and Chickasaw Governor Winchester Colbert. These copies of the proclamation were accompanied by personal letters in which Phillips urged tribal leaders to persuade their people to take advantage of the generous terms offered by the President and renew their allegiance to the United States. With his ammunition running critically low and with forces numerically superior to his massing south of the Red River, Phillips began his return movement on February 17 after reaching a point 165 miles southwest of Fort Gibson. By the twenty-fourth the expedition had returned to its point of origin, having killed an estimated 250 of the enemy.[6]

Upon his return to Fort Gibson, the colonel found a letter from Major General Curtis who had reconnoitered the northeastern corner of the Indian Territory during Phillips' absence. In this dispatch Curtis raised an important point--the rights to be guaranteed those rebel Indians who might want to renew their allegiance to the United States. Lincoln's Amnesty Proclamation, copies of which had been distributed by Phillips, offered a full pardon and restoration of all property rights, except property in slaves, to those individuals who would take the prescribed oath of allegiance to the United States. And while the proclamation did not say specifically

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[6]William A. Phillips to Samuel R. Curtis, February 16 and 24, 1864, OR, I, xxxiv, pt. 1, pp. 106-09; itenary of the of the expedition in ibid., pp. 111-12.

that these terms applied to the rebel Indians, there likewise was nothing in the document specifically exempting these people from its generous terms. Aware of this ambiguity, Curtis cautioned Phillips that it would be unwise to offer terms of peace to the rebel Indians that implied a relinquishment of legitimate forfeitures. As a department commander he wished "to avoid any and all conclusions against our Government as to future rights of Indians who have made war upon [the United States] in their national capacity." What these Indians received, he wanted it clearly understood, they received "on the score of humanity and generosity." He was especially concerned with the Choctaws who had supported the Confederacy with almost complete unanimity. "The Choctaw Nation," he asserted, "has clearly forfeited all right of property . . . and I trust the President's terms of amnesty will not disregard belligerent rights so clearly acquired or so vast in value to our Government."[7]

In a letter of reply dated February 29, 1864 Phillips concurred in the views of the department commander. The Chickasaws and Seminoles, he pointed out, had largely fled from their tribal lands, and few were expected to return. As to the Choctaws, who apparently were still present in significant numbers on their lands, Phillips did not expect them nor did he want them as a nation to make peace.

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[7]Curtis to Phillips, February 11, 1864, ibid., pt. 2, pp. 301-02.

> I fully agree with what I conceive to be the spirit of your letter to me that it is not now desirable to get back the Choctaws with their rights as a people. They have rebelled so grievously and so wickedly, and would be so troublesome, that I am satisfied that the true policy is to sweep their nation with fire and sword. . . .

Some individual Choctaws, he noted, might want peace, and it was in an effort to "shake the best of them" that he forwarded his letter to the Choctaw Council along with a copy of the Amnesty Proclamation.

In addition to expressing a degree of vindictiveness toward the Confederate Indians, Phillips also discussed another idea in this letter. Despite wartime damages, the Indian Territory, blessed with an abundance of natural resources, was still a country of vast potential wealth, a fact duly noted by Curtis during his brief tour. The Cherokee lands south of the Arkansas, along with the Choctaw, Chickasaw and Seminole nations could make "a fair State." The establishment of such a state, he observed, "lying where it does, filled with a loyal population, is a consideration the Government in the settlement of the questions for the future in the Southwest cannot overlook." Phillips conceded, however, that since he had no white troops at his disposal, he dared not discuss this proposal openly, thus admitting that the idea of statehood was unpopular among the Indians and would have a demoralizing effect on his regiments.[8]

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[8]Phillips to Curtis, February 29, 1864, ibid., pp. 467-68.

At the same time that Curtis and Phillips were exchanging views, Washington officials discussed a closely related matter, the return of the refugee Indians to their homes. On January 27, 1864 James R. Doolittle, chairman of the Senate Committee on Indian Affairs, by letter requested Secretary of the Interior John P. Usher's opinion as to whether conditions in the Indian Territory would permit such a move. Before answering, the secretary asked for the opinion of Commissioner William P. Dole who, in turn, sought the advice of James G. Blunt.[9]

After his removal as commander of the District of the Frontier, Blunt had threatened to resign his commission unless assigned to an active field command. At the request of Senator Lane and Kansas Congressman Abel C. Wilder, the general was summoned to Washington for consultations on the removal of both the refugees and the indigenous tribes from Kansas. On February 5, Dole asked for Blunt's views on the wisdom of attempting to return the refugees to their homes. In particular, he wanted to know if Federal forces were present in sufficient numbers to make reasonably certain that the refugees could cultivate their fields without fear of being

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[9]Doolittle to Usher, January 27, 1864, Records of the Office of the Secretary of the Interior, Indian Division, Record Group 48, National Archives, Letters Received Miscellaneous.

forced by enemy raiding parties to flee to some military post.[10]

Blunt penned a generally optimistic note of reply that same day. After briefly recounting Federal victories in the Territory in 1863 he asserted that the best interests of the government and the refugees required that these people be returned to their homes as early as possible. He conceded, however, that the recent departmental reorganization in the Southwest presented a problem. Since the re-establishment of the Department of Kansas, all the troops that previously served in the District of the Frontier, with the exception of the three regiments of Indian Home Guards, were now reporting to Major General Frederick Steele, commander of the Department of Arkansas.[11] This situation left General Curtis with very few troops with which to defend the Indian Territory, and to remedy this situation, Blunt recommended that Curtis' forces

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[10]James G. Blunt to Edwin M. Stanton, December 9, 1863, OR, I, xxii, pt. 2, pp. 735-36; James G. Blunt, "General Blunt's Account of His Civil War Experiences," Kansas Historical Quarterly, I (1932), pp. 249-50; Abraham Lincoln to Edwin M. Stanton, January 9, 1864, Roy P. Basler (ed.), The Collected Works of Abraham Lincoln (New Brunswick: Rutgers University Press, 1953), VII, p. 119; William P. Dole to James G. Blunt, February 5, 1864, Letters Sent by the Office of Indian Affairs, National Archives, Microcopy 21, Roll 73.

[11]In this letter Blunt actually referred to Steele as commander of the Department of Missouri, but he meant to say the Department of Arkansas. The constant shifting of department lines left even the participants confused. Blunt to Dole, February 5, 1864, Letters Received, O.I.A., Southern Superintendency, Microcopy 234, Roll 835.

be augmented by adding to his department the two western tiers of counties in Arkansas. If this change occurred and authority was granted to organize both white and Negro troops in northern Texas, Blunt felt confident that the refugees could be safely returned to their homes. Two days after making these remarks Blunt left Washington for Kansas, and on February 27 Curtis issued orders placing him back in command of that portion of the old District of the Frontier included within the boundaries of the Department of Kansas.[12]

Unfortunately, one can only surmise what Dole's views were regarding the immediate return of the refugees. After receiving Blunt's statement he forwarded a letter of his own to Usher on February 9, and the secretary forwarded this missive to Doolittle with his endorsement.[13] No copy of the Dole letter of February 9 remains in the records of the commissioner's office, but at least one circumstance points to the conclusion that the commissioner and Secretary Usher were less than optimistic about the prospects of an immediate return of the refugees. On Thursday, March 3, 1864 Jim Lane introduced in the Senate a resolution authorizing the President to take the steps necessary for the return of the refugee Indians to their homes. Following its introduction Lane admitted to his Senate colleagues that the Interior and War departments had different

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[12]Ibid.; OR, I, xxxiv, pt. 2, p. 447.

[13]Usher to Doolittle, February 13, 1864, Letters Sent by the Indian Division of the Office of the Secretary of the Interior, N.A., Microcopy 606, Roll 4.

views on the wisdom of returning the Indians at this time, and to settle the matter a statement of opinion from Congress was needed.[14]

This resolution was referred to the Committee on Indian Affairs, but Dole himself soon obviated the need for its passage. Whatever his earlier doubts, the commissioner on March 21, 1864 wrote a letter to Usher urging the immediate return of the refugees. Two things seem to have prompted Dole's apparent reversal. First, in an exchange of letters with the Interior Department, General Curtis, while admitting that his department was undermanned, promised to use his best efforts to protect both Indians and whites within his command. Second, information had reached Washington that Major General Nathaniel P. Banks was planning to launch an expedition from his base in Southern Louisiana up the Red River, and Dole believed that Confederate efforts to stop this drive would drain the Indian Territory of all organized rebel troops, leaving behind nothing but a few scattered guerrilla forces to attack the returning refugees.[15]

Events, in Congress at least, now moved with unaccustomed rapidity. On March 25, Senator Doolittle introduced Senate

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[14]Congressional Globe, 38 Cong., 1 Sess., March 3, 1864, p. 921.

[15]John P. Usher to Samuel R. Curtis, February 17, 1864, Letters Sent, Indian Division, Secretary of the Interior, N.A., Microcopy 606, Roll 4; Curtis to Usher, March 9, 1864, and Dole to Usher, March 21, 1864, R.G. 48, N.A., Letters Received.

Bill Number 198 to aid the refugee Indians to return to their homes. Referred to the Committee on Indian Affairs, the measure was reported favorably to the Senate on April 4. In its final form the bill appropriated $223,000 to be used to shift the refugees back to the Indian Territory and to support them and their kinsmen already there until June 30, the end of the current fiscal year.

On April 7, the Senate, sitting as a committee of the whole, began deliberation on the proposal, and Chairman Doolittle tried to explain the optimistic rationale upon which it was based. Officials in the Indian Bureau and the Interior Department, he said, had estimated that it would cost about $473,000 to remove the refugees, provide them necessary agricultural implements and support them and the refugees already in the Territory for the duration of the calendar year. Doolittle explained, however, that his committee decided to recommend the appropriation of about one-half that amount. This sum would suffice to transport the refugees to their homes, provide them with agricultural implements and subsist all the refugees--those to be returned and those already in the Territory--for ninety days. Beyond that point, no assistance other than the regular annuity payments would be required as the Indians could produce their own food.

To any individual familiar with conditions in the Territory such an explanation would have seemed grossly sanguine. Few members of the Senate, however, possessed knowledge in

depth on affairs in the Indian Territory and after the presentation of Doolittle's simplistic explanation the bill passed without further debate. On April 21 it was introduced in the House and referred to that body's Indian Committee. Favorably reported from the committee, the measure passed the House with no debate on May 2 and received the President's signature two days later.[16]

In a haphazard fashion, plans for the return of the refugees had nearly been completed by the time this measure reached the President's desk. After Senate passage of Bill Number 198, Dole sent a letter to Superintendent Coffin on April 13 ordering him to take the steps required to remove the refugees from Kansas to their homes. The commissioner admitted that technically there were no funds available to finance the move, but he expressed confidence that the Senate measure would soon receive House approval. Therefore, he had decided to instruct Coffin to make the necessary preparations so that the Indians might arrive at their homes in time to put in a crop during the current growing season.[17]

The task assigned Coffin was no small one. Not the

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[16]Congressional Globe, 38 Cong., 1 Sess., March 25, 1864, p. 1274; ibid., April 4, 1864, p. 1402; ibid., April 7, 1864, pp. 1455-56; ibid., April 21, 1864, p. 1792; ibid., May 2, 1864, p. 2031; ibid., May 4, 1864, p. 2117.

[17]William P. Dole to William G. Coffin, April 13, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835.

least of his worries was the uncertainty of obtaining escort troops to protect the refugee train during its movement southward to Fort Gibson. At precisely this time, Union military commanders in the West were involved in a complex dispute over whether Fort Smith and the area immediately surrounding it were under the jurisdiction of the Department of Kansas or the Department of Arkansas. After prolonged wrangling the controversy was submitted for settlement to Lieutenant General Ulysses S. Grant who had recently been asked by the secretary of war to investigate the affairs of the Western military departments. In a report addressed to Union Army commander Henry W. Halleck on April 16, 1864 Grant voiced the opinion that the state of Arkansas and the Indian Territory should be under one man, and he requested that the President be asked to transfer both the Territory and Fort Smith to the Department of Arkansas. An order complying with Grant's request was issued at the direction of the President the following day. This same dictate also instructed James G. Blunt to return to Fort Leavenworth and report to Major General Curtis.[18]

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[17]William P. Dole to William G. Coffin, April 13, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835.

[18]Samuel R. Curtis to Edwin M. Stanton, February 10, 1864, OR, I, xxxiv, pt. 2, pp. 292-93; E. R. S. Canby to Curtis, February 17, 1864, ibid., p. 356; James G. Blunt to Curtis, March 9, 1864, ibid., p. 537; Grant to Halleck, April 17, 1864, ibid., pt. 3, p. 178; General Orders No. 164, ibid., p. 196.

In addition to revealing the obtuseness and pettiness that afflicted the Union high command, this confusing array of events left Superintendent Coffin in the lurch. Because of the scarcity of troops and the dispute among the generals of the Southwest over departmental boundaries, Coffin had no guarantee that his refugees would receive a military escort back to their homes or adequate protection once they arrived. The issuance of the order of April 17 attaching the Indian Territory to the Department of Arkansas, if anything, made the superintendents' position more precarious, for now General Curtis had no authority whatever to provide an escort for the returning refugees beyond the border of Kansas. On the other hand, the planned participation of General Steele's forces in General Bank's Red River campaign in Louisiana meant that the Department of Arkansas probably could provide little protection.[19] And protection might be sorely needed if the campaign in north Louisiana failed and the Confederates in the West turned their attention suddenly from their southeastern flank toward the Indian Territory.

The assistance which Coffin received from his Washington superiors was minimal. When he informed Dole by wire on April 22 of the need for troops to protect his charges, the commissioner

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[19]In reality, logistical problems prevented Steele's forces from leaving Arkansas, but Indian Bureau officials had no way of foreseeing that these troops would remain nearby rather than advancing into Louisiana to aid Banks as originally planned. Ludwell H. Johnson, Red River Campaign: Politics and Cotton in the Civil War (Baltimore: The Johns Hopkins Press, 1958), pp. 190-205.

in a two line telegram of reply, simply acknowledged receipt of Coffin's dispatch and instructed him to proceed to carry out the instructions of April 13.[20] Obviously Dole at this point was not overly impressed with the problems confronting the superintendent, but events soon caused him to have second thoughts about the wisdom of returning the refugees.

By early May, Bank's Red River campaign was on the verge of collapse, and on the seventh of the month Dole addressed one of his typically rambling and poorly organized letters to Coffin. He told the superintendent that a requisition for $45,000 had been issued in his favor for the removal of the refugees and their temporary subsistence after their arrival in the Territory. The original intention, said Dole, was to send more money, but because of the lateness of the season and the apparent failure of the Red River campaign he and Secretary Usher had decided to send only $45,000. From their vantage point in Washington it now appeared, he admitted, that it would be "unsafe and impolitic" to remove the refugees, but the final decision was to be Coffin's. If upon receipt of this letter everything appeared auspicious for the undertaking he should proceed with the return movement, and more funds would be forwarded. On the other hand if Coffin decided that

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[20]Coffin to Dole, April 22, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835; Dole to Coffin, April 28, 1864, Letters Sent, O.I.A., N.A., Microcopy 21, Roll 74.

a removal would end disastrously he could use the $45,000 to maintain the refugees in Kansas. But no more of the recent Congressional appropriation could be used for that purpose as Congress intended for this money to be used primarily for removing the refugees from the state rather than maintaining them there.[21]

Before this letter reached Kansas, Coffin telegraphed Dole on May 10 informing the commissioner that he would leave in a matter of days with the refugees from the Indian Territory. General Curtis would furnish an escort to the Kansas border, and Coffin asked Dole to request that the Department of Arkansas furnish protection from that point onward. Acting on instructions from Secretary Usher, Dole sent a return wire to Coffin the following day telling him to do nothing until he received the letter of May 7 and then act on his own responsibility. If Coffin decided to proceed, an escort would be requested from the War Department.[22]

It is impossible to say precisely how the Indians themselves felt about returning home, as tribal leaders were amazingly reticent on the subject. Presumably, most were more than anxious to return after spending three miserable winters

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[21]Dole to Coffin, May 7, 1864, Letters Sent, O.I.A., N.A., Microcopy 21, Roll 74.

[22]Coffin to Dole, May 10, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835; undated note of instructions to Dole signed by John P. Usher, ibid.; Dole to Coffin, May 11, 1864, Letters Sent, O.I.A., N.A., Microcopy 21, Roll 74.

in Kansas, shifting from one locale to another as necessity dictated.

Understandably, Superintendent Coffin had serious misgivings about assuming the responsibility for making the final decision on leaving Kansas. Despite the miseries endured, the refugees at least had not been subjected to enemy attack since their arrival in the state, and reports from the south made it abundantly clear that this type of immunity could not be expected in the Indian Territory. Special Agent Milo Gookins reported from Fort Gibson on May 9 that conditions in the Territory were still very unsettled. Bands of bushwackers infesting the country made weekly raids in the vicinity of the fort, and in a recent attack eight Union sympathizers had been killed. Also weighing heavily on the superintendent's mind was the question of money; removal to the Indian Territory would greatly increase the expense of maintaining the Union Indians because of the added distance between them and the sources of supply in Kansas.[23]

Ironically enough, it was the shortage of funds available for refugee support that finally induced Coffin to begin the return trek to the Indian Territory. A provision was incorporated into the Indian Appropriation Act for the fiscal year

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[23]Gookins to George A. Cutler, May 9, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835; William G. Coffin to Charles E. Mix, September 18, 1863, ibid.; Coffin to William P. Dole, January 6, 1864, ibid.

1863-1864, identical to the proviso in the act for the previous year, authorizing the use of the annuities of the rebellious tribes for refugee relief. This action placed $362,410 at the disposal of the Indian Bureau, but as early as mid-September, 1863 Coffin warned Washington officials that this amount would not be enough to carry him through the fiscal year. If the refugees were to be properly cared for Congress would have to appropriate at least $200,000 more. No special appropriation was made, however, and the money appropriated in the act for the fiscal year 1864-1865 would not become available until after June 30, 1864. With his funds fast dwindling away, the only money readily available to Coffin in the crucial spring of 1864 was the $223,000 appropriated in April, yet this money could be used only for removal purposes. Thus, the refugees were faced with the stark alternative of leaving Kansas or starving. Well aware of this fact, Coffin, with grave misgivings, made the only choice which he could under the circumstances, and on Monday, May 16, 1864 the refugees started home.[24]

Prior to their departure those making the trip had been assembled by Coffin and his agents at the Sac and Fox Agency, and it was from this point that the refugee train departed. Approximately 5,000 Indians, mostly Creeks, Cherokees, Euchees, Chickasaws, with a scattering of Seminoles, made the southward

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[24]William G. Coffin to Charles E. Mix, September 14, 1863, ibid.; Coffin to William P. Dole, May 14, 1864, ibid.; Charles E. Mix to John P. Usher, February 22, 1864, R.G. 48, N.A., Letters Received.

trek. Left behind at Neosho Falls on the Neosho River in charge of Agent George C. Snow, was the bulk of the Seminole refugees, numbering about 550. A recent smallpox epidemic had compounded their miseries and made it dangerous for these people to mix with the other refugees.

The refugee train, made up of about 300 wagons, and stretching six miles from end to end, moved at an average pace of eight to twelve miles per day. By June 1, Coffin and his wards had advanced as far south as the Osage Catholic Mission, about forty miles north of the Kansas-Indian Territory boundary, where they waited for a military escort from Steele's Department of Arkansas to meet them. On May 26, Secretary of War Stanton informed the Interior Department that Steele had been ordered to provide an escort. After a short delay the troops appeared, the refugees then resumed their march, and on June 15 they reached Fort Gibson.

All things considered, the return movement was accomplished with relative ease. The only event approaching a serious incident was the theft of thirty head of cattle by a roving band of brigands never apprehended. Only six people died on the trail, four of them from lightning, and there were sixteen births. The presence of the escorting troops provided by Curtis and Steele doubtless discouraged the rebels from trying to disrupt the train, and for once even Coffin had something nice to say about the military. The troops accompanying

the refugees he characterized as "vigilant, active and accomodating."[25]

This spirit of rapport did not last long. Before the year was out Indian Bureau officials, with justification, would again blame the military for the difficulties encountered in maintaining the Union Indians.

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[25]Edwin M. Stanton to John P. Usher, May 26, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835; Henry Smith to William P. Dole, June 6, 1864, ibid.; William G. Coffin to Dole, June 3, 7, and 16, 1864, ibid.

## CHAPTER VIII

## LATER TREATY NEGOTIATIONS

Early in 1864 the Creek treaty of September, 1863 met an ignominious fate. After being submitted by President Lincoln to the United States Senate on December 15, 1863 the pact was altered so drastically that in its final, ratified form it was no longer acceptable to the Creeks.[1] The fate of this treaty, in a sense, was symptomatic of the difficulty encountered by the Federal government in negotiating with the tribes of the Southwest. The Civil War generated a congeries of complex issues for the tribes of the Indian Territory, and all wartime efforts to negotiate solutions to these problems, as well as those pending at the outbreak of the hostilities, failed.

The Senate practice of considering treaties in closed, executive sessions makes it virtually impossible to retrace the process by which the Creek treaty was defaced. Once in the hands of the Senate, it was referred to the Committee on

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[1]Lincoln to the United States Senate, December 15, 1863, Roy Basler (ed.), The Collected Works of Abraham Lincoln (New Brunswick: Rutgers University Press, 1953), VII, p. 69 (hereafter cited as Basler (ed.), Collected Works).

Indian Affairs. The committee, in turn, asked two of its members, Oregon's James W. Nesmith and James H. Lane of Kansas, to examine closely the treaty's provisions. On January 22, 1864 Lane addressed a letter to Commissioner William P. Dole asking for an explanation of the treaty's fourth article in which the United States acknowledged the validity of all existing treaty stipulations with the Creeks and agreed to remunerate the loyal members of the tribe for all losses, other than slaves, sustained during the war.[2] But the events that occurred from this point onward are still shrouded in obscurity. If Dole submitted a written reply to Lane's letter, no record of it was preserved in the records of the commissioner's office. In a similar vein, the existent records of the Department of the Interior and the published correspondence of President Lincoln are strangely quiet on the topic, and neither gives any clue as to what transpired behind the Senate's closed doors.

A quick examination of the final draft of the treaty, however, reveals that changes of great importance occurred behind those portals. As amended, the treaty received the Senate's approval on March 8, 1864 and in its final form it offered to the Creek tribe terms considerably less generous than those found in the original document. Under the agreement of September 3, the tribe in Article III agreed to cede to the

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[2]Lane to Dole, January 22, 1864, Letters Received by the Office of Indian Affairs, Creek Agency, National Archives, Microcopy 234, Roll 231.

United States a tract of land in the northeastern corner of its domain for the resettlement of Indians from outside the Indian Territory. In return the United States had agreed to establish a tribal trust fund of $200,000, and in Article IV acknowledged the validity of previous treaty stipulations and promised to repay the tribe for most damages growing out of the war. In the draft that emerged from the Senate, Article III remained essentially unchanged, but the original Article IV with its important guarantee of past treaty stipulations was discarded. In its place the Senate inserted a totally new article, containing no recognition whatever of earlier treaty provisions, which required the tribe to cede additional territory to the United States. The new article stated that those Creeks--constituting about one-half of the nation--who had united with the Confederacy had "absolutely forfeited forever" all rights and claims to the lands of the Creek tribe. Their portion of the tribal domain, making up, as the Senate awkwardly phrased it, "the one undivided half of all the lands and territory remaining . . . to the said Creek nation," was ceded in fee simple to the United States. The United States, in turn, would hold this land in trust, reserving it for the use of those hostile Creeks who re-established amicable relations with the Federal government, as well as "such other friendly tribes and persons" who might be settled there" with the assent of the council of said Creek nation. . . ." It was expressly stated, however, that the terms of this article in no way gave

the United States the authority to settle or to permit the settlement of whites on any portion of the Creek domain.

For this added cession the Federal government was to deliver to the Creek Nation over a five-year period a total of $120,000 worth of stock, horses, sheep, clothing and "such other articles as the secretary of the Interior, [sic] with the assent of the council of said nation, may direct." But the Creeks could look forward to no further recompense of any kind. Article IV as rewritten by the Senate stipulated that in consideration of the payment of the sums provided for in the treaty, plus the large amounts of money over and above the regular annuities already spent in supporting the Creek refugees in Kansas, and in consideration of the United States' relinquishing all further claims for damages inflicted by the hostile Creeks, the treaty would be considered "a friendly settlement of all claims for indemnity by either party."[3]

Over a month passed before Superintendent William G. Coffin received a copy of the revamped treaty. In a letter of April 16, 1864 Assistant Commissioner of Indian Affairs Charles E. Mix forwarded a duplicate of the document to the superintendent and instructed him at the earliest possible

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[3]Unratified Indian Treaty File, National Archives, Microcopy T-494, Roll 8. In addition to these major changes the Senate struck out all of Article V, in which the United States agreed to provide the tribe with $1,000 worth of farm implements, as well as that portion of Article VII providing for per capita payment of all future Creek annuities.

date to submit it to the Creeks, explaining to them the reasons that induced the Senate to make changes in the original treaty. Two months earlier Coffin had traveled to Washington for consultations on the proposed removal of the refugee Indians from Kansas and while there met with the members of the Indian committees of both houses of Congress. Presumably while in the capital city he must have learned of the contemplated changes in the treaty as well as the reasons, whatever they were, that prompted the alterations.[4]

In the midst of the preparations for the return to the Indian Territory, Coffin held a council with Creek leaders at the Sac and Fox Agency early in May, 1864. No official record of this session was preserved, but within days unofficial accounts appeared in various western newspapers such as the St. Louis Democrat and the Leavenworth Daily Times which made it clear that the Creeks had no intention of meekly acquiescing in the Senate version of the treaty. According to these news stories the leaders of the loyal Creeks rejected the treaty, contending that any lands forfeited by their rebel bretheren should remain under the control of the loyal portion of the tribe instead of being ceded in trust to the United States.

Coffin quickly challenged the accuracy of these reports.

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[4]Mix to Coffin, April 16, 1864, Letters Sent by the Office of Indian Affairs, National Archives, Microcopy 21, Roll 73; Annual Report of the Commissioner of Indian Affairs for the Year 1864, H. Ex., Doc. No. 1, 38 Cong., 2 Sess., 1865 (Serial 1220), p. 451 (hereafter cited as Commissioner's Report, 1864).

In a letter to the editor of the Daily Times dated May 12, the superintendent adamantly denied that the tribe had rejected the treaty. Coffin insisted that he neither expected nor attempted to get a final decision from the Indians at the recent meeting. The council, he said, was held merely to explain to the Creeks the changes made by the Senate, and once these were fully understood he expressed confidence that the treaty would "be willingly and cordially ratified."[5]

This prediction went unfulfilled. On June 23, 1864 Coffin held a second meeting with the Creeks, this one at Fort Gibson. On this occasion the leaders of the tribe clearly and indignantly refused to accept their amended treaty. After meeting with Chief Sands the following day, Colonel William A. Phillips wrote to Secretary of the Interior John P. Usher suggesting that the lands desired for the settlement of other tribes could best be acquired from the Creeks by recognizing their former treaty rights and purchasing a portion of their lands for a fair price rather than, in effect, confiscating them for the paltry sum of $120,000. Later in the year, on December 9, Chief Sands sent a letter to Commissioner Dole expressing disapproval with the changes made by the "Great Council" in Washington and asking that tribal delegates be summoned to the capital for the negotiation of a new compact. Either because of lingering hopes that the Creeks would yet

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[5]Commissioner's Report, 1864, p. 482.

accept the amended treaty or because of a feeling of hopelessness over negotiating a new agreement satisfactory to all, the chief's request was ignored. Thus, for the duration of the war official treaty relations between the Federal government and the loyal Creeks remained in a state of limbo.[6]

In addition to muddling the Creek treaty, the Senate in the first half of 1864 briefly considered the possibilities of negotiating with the Choctaws. Contemporary observers generally agreed that of the tribes of the Indian Territory the Choctaws most solidly supported the Confederacy. Yet even among these people the voices of dissent could be heard, albeit faintly. Early in 1864 a faction of about 300 malcontents, most, perhaps all, of whom were adopted white citizens of the Choctaw Nation, began making plans to hold a pro-Union convention. Their original plans called for the meeting to be held at Doaksville, deep in the southern portion of the nation, but for safety's sake the site was transferred to Scullyville, about twenty miles southwest of Fort Smith. There on March 14 a small convention met and established a provisional government headed by an adopted white, Thomas Edwards. That same day the convention appointed Edward P. Perkins, another

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[6]Phillips to Usher, June 24, 1864, Records of the Office of the Secretary of the Interior, Indian Division, Record Group 48, National Archives, Letters Received Miscellaneous; Sands to Dole, December 9, 1864, Letters Received, O.I.A., Creek Agency, N.A., Microcopy 234, Roll 231.

adopted citizen, to act as the government's delegate in Washington.[7]

At Fort Gibson, Colonel Phillips learned of these events and hastily dispatched a letter to Commissioner Dole giving his own appraisal of affairs in the Choctaw Nation. In a missive dated March 22, 1864 the colonel pointed out to Dole that the Scullyville government represented a mere handful of the Choctaws, while the majority of the tribe was still in a state of revolt. He also made it quite clear in this letter that he believed the best interests of the United States could be served in the Southwest after the war through the establishment of a state, open to whites, embracing the Choctaw domain. In time, possibly even the Creeks and Cherokees might be persuaded to "vote for a more secure organization and community." Phillips pointed out that he had been very cautious in making promises to the rebel Indians, and, in an effort to keep all avenues of future action open, he urged Dole to act in a similar manner in dealing with Perkins. No promises should be made which might only have to be broken once hostilities ceased. In a reply dated April 6, Dole assured Phillips that he was unwilling to renew treaty relations with either the Choctaws or the Chickasaws without securing a portion of their lands for the resettlement of other tribes. He asserted

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[7]Edward P. Perkins to John P. Usher, April, 1864, R.G. 48, N.A., Letters Received Miscellaneous; Commissioner's Report, 1864, p. 457; Angie Debo, The Rise and Fall of the Choctaw Republic (Norman: University of Oklahoma Press, 1961), p. 84.

his own belief, however, that these ceded areas must be reserved exclusively for the use of the Indian.[8]

Early in April, Perkins reached Washington, and his presence in the capital soon became a topic of discussion in the Senate. Learning of the desire of the Scullyville government to enter into relations with the United States, the Senate on April 20 passed a resolutuion instructing the Committee on Indian Affairs to determine if any sort of legislation was needed to aid in bringing the Choctaws back under Federal protection. In a letter of April 28 committee chairman James R. Doolittle asked Usher for any information the secretary might have on the subject.[9]

As was his custom when questioned about Indian policy, Usher turned to Commissioner Dole for advice. Together the two decided to let the Choctaw issue ride for the time being. On May 5 the commissioner wrote to Usher saying that so far as he could determine no considerable number of the Choctaws had as yet decided to support the United States, although he believed most would give their support as soon as the government could offer them permanent protection. Thus, no congressional action of any type was needed at present. On the eleventh of

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[8]Phillips to Dole, March 22, 1864, Letters Received, O.I.A., Choctaw Agency, N.A., Microcopy 234, Roll 176; Dole to Phillips, April 6, 1864, Letters Sent, O.I.A., N.A., Microcopy 21, Roll 73.

[9]Doolittle to Usher, April 28, 1864, R.G. 48, N.A., Letters Received Miscellaneous.

the month, Usher sent to Doolittle a copy of Dole's letter along with his own endorsement of the commissioner's views, and on May 16 Doolittle's committee, with the Senate's approval, quietly dropped the resolution of April 20.[10]

During his stay in Washington, Perkins communicated with Secretary Usher on at least one occasion. In a letter received at the Interior Department on April 18, the Scullyville delegate briefly summarized the recent occurrences in the Choctaw Nation, pointing out that his compatriots were anxious "to prove to the Government their loyalty by such a course of conduct as shall meet with your entire approbation." He then closed his brief message by expressing the hope that his government would receive Washington's recognition. From all indications, it appears that Usher never answered this letter, and after suffering a rebuff both from Congress and the Interior Department, Perkins presumably rejoined the Union Choctaws huddled in the Scullyville-Fort Smith area.[11]

Washington's almost indifferent response to the overtures of the Choctaw provisional government revealed at least two things of importance. The events which transpired in Washington in the spring of 1864 first foreshadowed the

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[10]Dole to Usher, May 5, 1864, ibid.; Usher to Doolittle, May 11, 1864, Letters Sent by the Indian Division of the Office of the Secretary of the Interior, N.A., Microcopy 606, Roll 4; Congressional Globe, 38 Cong., 1 Sess., May 16, 1864, p. 2274.

[11]Perkins to Usher, April, 1864, R.G. 48, N.A., Letters Received Miscellaneous.

relatively minor role that the President played in the settlement of the issues growing out of the Civil War in the Indian Territory. There is no indication that Lincoln was consulted on the Choctaw question in the spring of 1864 nor is there any indication that Lincoln felt slighted by his failure to be consulted. Burdened by what appeared to be far more omnious issues, Lincoln, after the drafting of his unissued proclamation of 1862, willingly relegated to the Interior Department and to Congress the task of settling affairs with the tribes of the Indian Territory. To a great extent, this same course of action was followed by his successor Andrew Johnson. Second, the response in Washington to the Choctaw overtures reveals that the officials charged with the settlement of issues in the Indian Territory did not approach these problems with the same openmindedness with which Lincoln approached the question of Southern reconstruction. The President's plan of reconstruction outlined in the Amnesty Proclamation of December, 1863 demonstrated that Lincoln was willing to deal with loyal minorities in reasserting Federal authority in the South. The Interior Department, in contrast, committed to a policy of Indian resettlement, was determined to deal only with dominant tribal groups, believing that minority factions, such as the Scullyville government, could not make the desired territorial cessions. Thus no promises or concessions were extended to the Union Choctaws, for seemingly nothing could be gained by such a course of action. Only later,

when it became apparent that there was strong opposition to Washington's proposed policies in the Indian Territory, would the Interior Department deal with any faction willing to do its bidding.

If little could be gained through negotiations with the Scullyville Choctaws, much conceivably could be accomplished through talks with John Ross' Union Cherokees, who unquestionably constituted a large portion of their tribe. Perhaps the most attractive prize to be gained was that tract of land in Kansas known as the Cherokee Neutral Lands. Despite treaty provisions prohibiting white intrusion, approximately 2,000 Kansans had settled on this tract by the outbreak of the Civil War. Recognizing the futility of attempting to hold on to this territory the Cherokees, through their delegation in Washington, had indicated their willingness to cede these lands as early as May, 1860 but negotiations on this question were delayed until late 1863. And even then no final solution was reached on this or any other issue at stake between the Cherokees and the United States.[12]

The Indian Bureau made overtures to the Cherokees in November, 1863. Commissioner Dole on the third of the month addressed a letter to John Ross in exile in Pennsylvania asking the principal chief to come to Washington to discuss a number

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[12]Sen. Mis. Doc. No. 61, 36 Cong., 1 Sess., 1861 (Serial 1038); House Mis. Doc. No. 75, 37 Cong., 2d Sess., 1862 (Serial 1141); Paul W. Gates, Fifty Million Acres: Conflicts over Kansas Land Policy, 1854-1890 (Ithaca, New York: Cornell University Press, 1954), p. 154.

of items including the possible resettlement of the Delaware tribe on the Cherokee domain in the Indian Territory. The chief and the other members of his tribe's delegation, Lewis Downing, James McDaniel and Evan Jones, responded by assembling in Washington within a matter of days. On November 19 Assistant Commissioner Charles E. Mix sent an inquiry asking if the Cherokees were willing to retrocede the Neutral Lands to the United States, and, if so, whether or not the delegation felt it had the authority to enter into negotiations. Ross and his companions answered both questions in the affirmitive.[13]

It was not just the impossibility of controlling these lands that prompted the tribe's desire to dispose of them. Weighing heavily on the minds of the tribe's leaders was the need for money with which to ease the plight of the loyal Cherokees huddled in the Fort Gibson area. The condition of these people was summarized in a petition to President Lincoln drawn up by Union Cherokee leaders in January, 1864. Carried to Washington by the tribe's treasurer, Lewis Ross, the document pleaded with the President not to turn a deaf ear to the Cherokees' anguished cry for assistance. Among other things, tribal leaders in this missive asked that their people be provided with more adequate military protection in order

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[13]Dole to Ross, November 3, 1863, John Ross Papers, Thomas Gilcrease Institute of American History and Art, Tulsa, Oklahoma; Ross to Dole, November 11, 1863, ibid.; Mix to John Ross et al, November 19, 1863, ibid.; Ross et al to Dole, November 21, 1863, ibid.

that adequate crops might be planted in the spring of the year. They also requested that the interest arising from the tribe's invested funds be turned over to their leaders to aid in caring for the more than 1,000 orphaned Cherokee children. When this document reached the President on February 18, Lincoln quickly forwarded it to Commissioner Dole with a request for a report on the case.[14]

Well aware of their people's impoverished condition, the Cherokee delegation had earlier submitted a request to Dole. On January 19, 1864 the delegates sent a letter to the commissioner asking for a statement on the condition of the Cherokee funds invested by the United States for the tribe's benefit under the pre-war treaties. When the commissioner replied that the interest due the Cherokees arising from the investment of their tribal funds amounted, as of January 1, 1864 to $153,403.04, Ross and his associates asked that this amount be turned over to treasurer Lewis Ross. They carefully explained that this money was to be used to ease the financial plight of their fellow tribesmen as well as to re-establish their national institutions.[15]

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[14]Thomas Pegg et al to Lincoln, January 20, 1864, Cherokee Nation Papers--Civil War Letters 1861-1874, Division of Manuscripts, Bizzell Library, University of Oklahoma, Norman; Lincoln to Dole, February 22, 1864, Basler (ed.), Collected Works, VII, p. 196.

[15]John Ross et al to Dole, January 19, 1864, and February 23, 1864, Letters Received, O.I.A., Cherokee Agency, N.A., Microcopy 234, Roll 99.

At least one circumstance made difficult the payment of this accrued interest. The tribal funds had been invested by Federal authorities in the bonds of states that had seceded from the Union, and those states had paid no interest on these bonds since the outbreak of hostilities. If the Cherokees were, therefore, to receive the interest to which they were entitled, Congress would have to appropriate funds directly out of the Federal treasury. By contrast, had the war never occurred, Southern state officials would simply have turned over the accrued interest to Federal officials who in turn would have given this money to tribal officials at no expense to the United States government. Cognizant of these facts, Dole, on February 27, forwarded a communication to Secretary Usher requesting in behalf of the Cherokees a special appropriation for the amount due the tribe. On March 1, Usher sent identical letters to Thaddeus Stevens and William Pitt Fessenden, the respective chairmen of the House Ways and Means Committee and the Senate Finance Committee. The Cherokee claim, he said, appeared reasonable and just, and he asked for Congress's favorable consideration in the matter.[16]

The Cherokee's request was approved by the House. As passed in mid-May, 1864 the Indian Appropriations Bill for the fiscal year 1864-1865 contained an omnibus provision appropriating a total of $350,220.50 to meet the interest on

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[16]Usher to Stevens and Fessenden, March 1, 1864, Letters Sent, Indian Division, Secretary of the Interior, N.A., Microcopy 606, Roll 4.

$1,704,300 worth of Indian funds invested in bonds of the Confederate States. This amount covered not only interest due the Cherokees but the Chickasaw, Choctaw, Creek and assorted Kansas tribes as well.[17]

In the Senate this provision ran into rather determined opposition. As was the usual practice with House passed appropriations measures, the bill was turned over to Fessenden's Finance Committee where the omnibus interest provision became a topic of discussion. Eventually the committee concluded first that a proposal of such importance should be striken without a full examination of its merits and second, that the Finance Committee had neither the time nor was it the proper body to undertake such an investigation. Thus, Fessenden's committee left the interest appropriation in the bill but called the proposal to the attention of Doolittle's committee in order that it might rule on the legality of that portion of the Indian Appropriations Bill.[18]

When the bill came before the Senate on June 10 and 11, Doolittle's Indian Affairs Committee quickly made known its decision on the omnibus provision. On the latter date Doolittle himself moved that the proposal be striken entirely from the bill. This motion was followed by a meandering discussion during which the Wisconsin senator spoke several

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[17] Congressional Globe, 38 Cong., 1 Sess., May 21, 1864, p. 2392; ibid., June 11, 1864, p. 2869.

[18] Ibid., June 11, 1864, p. 2871.

times in defense of the position taken by his committee. The relationship between the United States and the tribes in question, he asserted, was similar to that of a trustee and a ward. If the trustee acts in good faith in making an investment for his ward, his responsibility ends at that point. The trustee is under no obligation to replace the money invested if, by some unforseen accident, the investment should be depreciated or destroyed. Looking to the future, the Wisconsin senator remarked to his colleagues that when the current hostilities ceased new treaties must be made with those tribes at war with the United States, adding pointedly that "this very pending claim might be one of the means which could be used in making proper negotiations with those Indian tribes. . . ."[19]

Among those challenging Doolittle's position was Reverdy Johnson of Maryland. The thrust of Johnson's argument was that after having invested Indian funds in bonds that subsequently became worthless the United States was morally and legally bound to pay the tribes the interest they had expected to receive from the states. In the name of "humanity and Christian civilization" the Maryland senator pleaded with his fellow senators to leave the proposal in question in the appropriations bill. This emotional harange earned Johnson a letter of thanks from John Ross, but most of the members of the Senate were unswayed by his argument. Shortly after Johnson concluded his remarks the Senate eliminated by a voice

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[19] Ibid., June 11, 1864, pp. 2869, 2873.

vote that portion of the appropriations bill providing for the payment of the back interest due the Cherokees and the other tribes named in the measure.[20]

During the argument over the payment of back interest the negotiations on the Neutral Lands question came to a complete standstill. To break the impasse John Ross and his cohorts sent an inquiry to Commissioner Dole on May 23. Reminding the commissioner that they had convened in Washington at his summons, they asked to be informed as to whether the government intended to take any further action at this time on the Neutral Lands issue and other questions troubling the Cherokees. In replying the following day Dole stated that the current military struggle had placed such a heavy burden on the United States' financial resources that Federal authorities were now hesitant to enter into negotiations that might further tax the national treasury. To the extent that any desire now existed to acquire the Neutral Lands, that desire was due to the well-known wishes of the people of Kansas to have all the lands within their state thrown open to white settlement. He suggested, however, that a treaty might be made in which the United States would become a trustee, handling for the Cherokees the sale of these lands. Dole concluded his letter by voicing his conviction that the Cherokees had in the Indian Territory more land than they needed and that everyone's best interest

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[20] Ibid., June 11, 1864, pp. 2872-73, 2878; Ross to Johnson, June 18, 1864, John Ross MSS, Gilcrease Institute, Tulsa.

would be served if the tribe would permit the settlement of some of the Kansas Indians on its surplus lands.[21]

The delegation's response to these assertions and suggestions was less than enthusiastic. As the tribe's need for money was pressing, a trustee type of arrangement with no promise of immediate recompense for the Neutral Lands was not attractive. Neither was the idea of making Cherokee lands in the Indian Territory available for the resettlement of large numbers of Kansas Indians, and the delegation made its position on these points clear in corresponding with the commissioner on May 25. But they did express a willingness to allow the Delawares to settle among the Cherokees on just and liberal terms and asked that a commissioner be appointed to negotiate on this question as well as on "other subjects of interest and importance to the Cherokee Nation." In response Dole designated James Steele--an individual whose origin and past record is unknown--to open talke with a Delaware delegation then in Washington and the Ross delegation for the purpose of securing a home for the former tribe in the Indian Territory.[22]

The talks between Steele and the Cherokees got nowhere.

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[21]John Ross et al to Dole, May 23, 1864, John Ross MSS, Gilcrease Institute, Tulsa: Dole to Ross, May 24, 1864, Letters Sent, O.I.A., N.A., Microcopy 21, Roll 74.

[22]Ross et al to Dole, May 25, 1864, Letters Received, O.I.A., Cherokee Agency, N.A., Microcopy 234, Roll 99; Dole to Ross, May 26, 1864 and Dole to James Steele, May 26, 1864, Letters Sent, O.I.A., N.A., Microcopy 21, Roll 74.

In letters of May 27 and June 7 Steele bluntly informed the delegation that the primary purpose of their talks was to secure a home for the Delawares within the Cherokee Nation. If no agreement could be reached on this point he said, "our negotiations may be considered at an end." In reply Ross and his colleagues asserted that while they were willing to discuss the resettlement of the Delawares on the Cherokee domain, to them this topic was at best a secondary issue. Their primary aim still was to negotiate an agreement whereby the tribe would receive an immediate payment for the retrocession of the Neutral Lands to the United States.[23] The absence of any further correspondence between Steele and the Cherokees indicates that after this exchange of discordant views, the abortive talks ended.

The negotiations with the Delawares were somewhat more fruitful, but not much. On June 15 a treaty was signed with the tribe, and Lincoln soon transmitted a copy to the Senate. After almost two years the Senate on May 4, 1866 passed a resolution whereby it refused to consent to the ratification of this document. Again the Senate practice of considering treaty matters in executive sessions makes it impossible to tell why the document was rejected. Nor is it known what its terms were at the time of its signing, for no copy was preserved

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[23]Steele to John Ross et al, May 27, 1864, and Ross et al to Steele, June 8, 1864, John Ross MSS, Gilcrease Institute, Tulsa.

in the Unratified Indian Treaty File maintained by the Federal government. There can be little doubt, however, that it provided for the removal of the Delawares to the Indian Territory.[24]

Nearly as insoluble as the task of negotiating satisfactory removal treaties, was the duty assigned Superintendent Coffin of adequately caring for the refugees in the Fort Gibson area. After his arrival with the refugees in early June, 1864 a quick examination of current conditions convinced the superintendent that the coming months would be difficult. The Indians transported to Fort Gibson from Kansas had arrived too late to plant a crop, and even if they had reached their destination earlier, the inability of the military to prevent attacks by rebel guerrilla bands made the cultivation of crops nearly impossible. Further complicating matters was the shortage of funds which could be used for refugee support, a circumstance which the superintendent did not hesitate to complain about. In a tartly worded letter written to Commissioner Dole from Fort Gibson on June 16, Coffin argued that had he been

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[24]Abraham Lincoln to the U. S. Senate, June 21, 1864, Basler (ed.), Collected Works, VII, p. 403.

A copy of the resolution in which the Senate refused to consent to the ratification of the Delaware treaty was preserved in the Unratified Indian Treaty File in the National Archives, (Microcopy T-494, Roll 8) but strangely no copy of the treaty accompanies this document. Presumably during subsequent negotiations with the Delaware tribe in the late 1860's Federal negotiators took the copy of the unratified treaty out of the files for reference purposes and neglected to return it.

given the $473,000 originally requested for the return and subsistence of the refugee Indians, the sum, along with the funds made available under the appropriations act for the coming fiscal year, would have seen the refugees safely through the winter. As matters stood, however, all the money now at his disposal would be insufficient to provide the 16,000 refugees in the Fort Gibson area with quarter rations of corn, flour and beef until next spring.[25]

Shortly after dispatching this message, Coffin returned to his headquarters at Leavenworth, Kansas. After spending several weeks handling the miscellaneous affairs of his office, the superintendent left for Washington near the middle of July, and while in the capital city he and Dole hit upon a scheme which they hoped would assist them in meeting the expenses of the Southern Superintendency.[26] Coffin and Dole hoped to use the unexpended portion of the Choctaw Net Proceeds settlement of 1861 for refugee support. By an act of March 4, 1861 Congress awarded the Choctaw tribe $500,000 in settlement of the Net Proceeds Claim arising from the sale of former tribal lands east of the Mississippi River. According to this enactment, half the settlement was to be paid in cash, the remainder in bonds. On April 18, 1861 the tribe received the cash portion of the award. The $250,000 in bonds, on the other

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[25]Coffin to Dole, June 16, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835.

[26]William G. Coffin to William P. Dole, July 9, 1864, ibid.

hand, was not delivered prior to the tribe's alignment with the Confederacy, and it was this amount that Coffin and Dole hoped to use in getting the refugees around Fort Gibson through the winter of 1864-1865.

Secretary Usher readily sanctioned this proposal. In letters to President Lincoln and William Pitt Fessenden, recently appointed secretary of the treasury following the resignation of Salmon P. Chase, Usher explained the rationale behind the proposed use of the Choctaw funds. The secretary pointed out the fact that the Indian Appropriations Act for the fiscal year 1862-1863 contained a provision granting to the President the discretionary authority to use for the support of the loyal refugees all sums appropriated to fulfill treaty obligations with the rebellious tribes. The $500,000 award of 1861 amounted to nothing more than an appropriation, and the President was fully empowered by the subsequent act of 1862 to use the unexpended portion of this appropriation to meet the needs of the loyal Indians huddled in the Fort Gibson area.

In reaching a decision on this particular question Lincoln deferred to the Treasury Department. When the proposal first came up, Secretary Fessenden was not in Washington, but upon his return, after consulting with other members of his department, he declined to authorize the use of the Choctaw bonds for refugee relief. The reasoning behind his decision is not known, but apparently he concurred in the view expressed

earlier in the month by the assistant secretary that under the act of March, 1861 the bonds in question could only be issued to authorities of the Choctaw tribe.[27]

With this avenue of assistance closed, Commissioner Dole next proposed a simple expedient, the purchase of refugee supplies on credit. In a letter of October 1 to the Interior Department, Dole asked that his office be authorized to buy on credit about $200,000 worth of goods needed to sustain the refugee Indians through the coming winter. That same day this request was forwarded to Lincoln, and the President immediately endorsed the proposal, noting that he would "most cheerfully" recommend to Congress that the claims of those persons extending credit to the government be recognized and paid. By the end of the day Dole had been informed of the President's favorable decision and was told to begin purchasing the needed supplies of food and clothing.[28]

This move by no means ended the problems facing the officials charged with maintaining the loyal Indian refugees. Equally as vexing as the task of obtaining the badly needed

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[27]Usher to Fessenden, August 15 and 20, 1864, Letters Sent, Indian Division, Secretary of Interior, N.A., Microcopy 606, Roll 5; Usher to Lincoln, August 15, 1864, ibid.; W. T. Otto to John P. Usher, September 1, 1864, ibid.

[28]Dole to W. T. Otto, October 1, 1864 and Otto to Lincoln, October 1, 1864, R.G. 48, N.A., Letters Received; Otto to Dole, October 1, 1864, Letters Sent, Indian Division, Secretary of Interior, N.A., Microcopy 606, Roll 5.

Lincoln's endorsement is on the back of the letter which the President received from Otto, the assistant secretary of the interior.

funds was the problem of transporting the supplies, once purchased, to Fort Gibson. The perplexing nature of this task was graphically illustrated on September 19, 1864 when a rebel force led by Stand Watie attacked a supply train bound for Fort Gibson at Cabin Creek, about fifty miles north of the post. This move, which seems to have taken all the Federal forces in the area completely by surprise, resulted in the loss of $60-100,000 worth of badly needed goods.[29]

Adding to the difficulty of transporting supplies to Fort Gibson was the rapacity of the troops assigned to escort the trains southward from Kansas. If the word of Superintendent Coffin and Cherokee Agent Justin Harlan can be accepted, the troops furnished for this duty systematically plundered the trains they were assigned to protect. In some cases the depredations began even before the wagons left Fort Scott, Kansas, for the trek to the Indian country. Complaints to the War Department about this situation went unheeded, and by the end of the year the situation had become so bad that some teamsters, fearing their Federal protectors far more than rebel

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[29]Perry Fuller to William P. Dole, September 20, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835; S. B. Maxey to W. R. Boggs, September 20, 1864, The War of the Rebellion: A Compilation of the Records of the Union and Confederate Armies (Washington: Government Printing Office, 1893), Series I, xli, part 1, p. 778; Stand Watie to D. H. Cooper, September 21, 1864, ibid., p. 783.

bushwackers, preferred to travel without an escort.[30]

All things considered, however, Superintendent Coffin in submitting his annual report to the commissioner's office late in the year, concluded that the policy of returning the refugees to the Indian Territory was not as unfortunate as he had originally thought it to be. If nothing else the loyal Indians were now in a position to reach their homes in one or two days once the spring growing season arrived, provided of course they received adequate military protection.[31]

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[30]Coffin to William P. Dole, October 5 and December 1, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835; Harlan to Coffin, January 2, 1865, R.G. 48, N.A., Letters Received.

[31]Commissioner's Report, 1864, p. 448.

## CHAPTER IX

## CONTRACTORS AND CATTLE THIEVES

The decision made late in 1864 to supply the Indian refugees on credit had unforseen consequences. This move contributed to the outbreak of a forenisic battle, and William A. Phillips was the chief protagonist in this encounter. As commander of the three Union Indian regiments the colonel made himself guardian of the welfare of both his troops and the refugees huddled in the Fort Gibson area. As early as mid-May, 1863 he reported to Major General James G. Blunt in Kansas that he had prevented gamblers and assorted loafers from entering his command and had punished the liquor dealers who were trying to corrupt his troops. Phillips hinted rather darkly that "certain parties" offended by his actions were now trying to hinder his operations by interrupting the normal flow of supplies from Kansas to Fort Gibson.[1]

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[1]Phillips to Blunt, May 15, 1863, The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies, (Washington: Government Printing Office, 1896), I, xxii, part 2, pp. 283-84 (hereafter cited as OR with series number in upper-case numerals and volume number in lower-case numerals).

Phillips' statements were at best vague. The colonel did not name either the persons in the Fort Gibson area whom he had chastised or those in Kansas offended by his actions. But this reticence did not last. Events occurred in the spring of 1864 that prompted Phillips to make more specific accusations.

In mid-March, 1864 Southern Superintendent William G. Coffin wrote Washington recommending that the mercantile firm owned by Alexander McDonald of Fort Smith, Arkansas, and Perry Fuller of Douglas County, Kansas, be awarded a contract to supply goods to the refugee Indians at Fort Gibson. This recommendation received the approval of Commissioner of Indian Affairs William P. Dole and Secretary of the Interior John P. Usher. On April 16, 1864 just before his removal as commander of the District of the Frontier, General Blunt issued General Order No. 7 making the licensed traders and army disbursing officers the sole purchasers of stock in the Indian Territory.[2]

It is an understatement to say that this order, which forced the Indians to deal with licensed traders McDonald and Fuller in disposing of their cattle, was highly unpopular. One of the first to voice a protest was W. L. G. Miller, an adopted Cherokee, who submitted a complaint to Secretary Usher on April 23. Order No. 7, issued for the benefit of speculators

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[2]William G. Coffin to William P. Dole, March 16, 1864, Letters Received by the Office of Indian Affairs, Southern Superintendency, National Archives, Microcopy 234, Roll 835; Dole to John P. Usher, March 19, 1864, Records of the Office of the Secretary of the Interior, Indian Division, Record Group 48, National Archives, Letters Received.

"notorious for their heartlessness," violated the spirit of Lincoln's Amnesty Proclamation by denying the Indians the right to dispose of their stock as they wished, and he asked that it be rescinded immediately. Smith Christie, acting principal chief of the Cherokees, also asked that the order be set aside while from Fort Gibson Daniel Ross, nephew of long-time Cherokee chieftan John Ross, informed his uncle that employees of McDonald and Fuller had boasted that Blunt received $50,000 for the issuance of Order No. 7. The younger Ross also asserted that thieves were rapidly stripping the Cherokee country of its remaining cattle and horses. Some of those participating in this traffic, he said, were Federal troops stationed at Fort Scott, Kansas.[3]

Those individuals driving Indian stock out of the Territory did not go unchallenged by Colonel Phillips. On July 10, 1864 the Fort Gibson commander reported the arrest of nine Kansans with a herd of stolen cattle on the Verdigris River north of Fort Gibson, but such captures were relatively rare. In pursuing cattle thieves, Phillips' troops were at a distinct disadvantage because they had few mounts; after two to three years of hard service, the ponies these men brought with them when they joined the army were simply worn out. In an effort to alleviate this situtation Phillips in July requested

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[3]Miller to Usher, April 23, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Roll 835; Smith Christie to Frederick Steele, John Ross Papers, Thomas Gilcrease Institute of American History and Art, Tulsa, Oklahoma; Daniel Ross to John Ross, July 7, 1864, ibid.

that at least half his men be provided with government remounts.[4]

The proposal was spurned by Phillips' immediate superiors. In rejecting Phillips' request Brigadier General John M. Thayer, commander of the District of the Frontier, and Major General Frederick Steele, who commanded the Department of Arkansas, argued that it would cost $160,000 to remount the colonel's troops. In the brief time remaining before the mustering out of the Indian regiments the generals insisted these troops could not render any service which would justify the outlay of that sum.[5]

On the surface this explanation might seem plausible. But further reflection arouses doubts as to the candor and honesty of Thayer and Steele. If these men themselves were somehow involved in the profits derived from the sale of stolen Indian cattle they would not be especially anxious to see the Indian regiments remounted. Mounted troops, after all, would be far more effective than foot soldiers in pursuing cattle thieves.

The events that followed the rejection of Phillips' request lend credence to this suspicion. On July 30, 1864 orders were issued by Brigadier General Thayer instructing

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[4]Phillips to John M. Thayer, July 10, 1864, OR, I, xli, part 2, pp. 107-08; Phillips to Frederick Steele, July 11, 1864, ibid., pp. 123-24.

[5]The comments of Thayer and Steele are found with Phillips' letter of July 11 to Steele, ibid., pp. 123-24.

Phillips to turn over his command to Colonel Stephen H. Wattles and to report immediately to Thayer's headquarters at Fort Smith. Before these orders could reach Phillips, the colonel fired off a scorching letter to Secretary Usher on August 2 requesting the cancellation of the license of McDonald and Fuller and the ordering of the firm's employees out of the Indian country. He charged that the company, taking advantage of the monopoly it enjoyed under Order No. 7, purchased beef from the Indians at one and one-half to two and one-half cents per pound. This meat was then re-sold to the government, for distribution among the refugees, for ten cents per pound. Phillips said that through one of its employees, Henry McKee, the company had attempted to bribe him and had threatened to secure his removal if he did not cooperate with their schemes. Three days after writing this letter to Usher, when he received Thayer's order of July 30, Phillips quickly concluded that McDonald and Fuller were behind his removal.[6]

Others shared this opinion. One of these was Smith Christie who wrote to John Ross on August 19, 1864 complaining of the miserable conditions which prevailed at Fort Gibson. Despite the monopolistic privileges enjoyed under Order No. 7, Christie insisted that McDonald and Fuller had failed miserably in fulfilling the terms of their contract to supply the refugee

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[6]Special Orders No. 117, July 30, 1864, ibid., p. 476; Phillips to Usher, August 2, 1864, R.G. 48, N.A., Letters Received Miscellaneous; Phillips to Thomas Ewing, Jr., August 17, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835.

Indians. In his opinion the primary objective of the company was to make money at the expense of the Indians and the government rather than to meet adequately the needs of the loyal refugees. Christie maintained that Phillips had been removed because he was not corrupt or subservient enough to suit the purposes of the licensed traders. Since his departure from Fort Gibson a number of individuals whom the colonel had arrested for cattle theft had been released, and the stealing of Indian cattle was now being carried on with reckless abandon, with military officers and civilian thieves sharing in the profits of this traffic.[7]

Another who expressed sympathy and support for Phillips was Major General Francis J. Herron. In the fall of 1864 Herron received instructions from E. R. S. Canby, the major general commanding the Division of West Mississippi, to conduct an inspection tour of Arkansas and the Indian Territory. During the course of his mission Herron consulted with Phillips at Fort Smith where the latter had been assigned to court-martial duty. A subsequent report filed at Fort Gibson on November 18 indicated that Herron was fully convinced of the correctness of Phillips' accusations. The removal of the former commander of the Indian regiments he ascribed to the influence wielded by "McDonald & Co.," a firm which he believed was responsible for the theft of no less than 6-10,000 of an

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[7]Christie to Ross, August 19, 1864, Cherokee Nation Papers--Civil War Letters, 1861-1874, Division of Manuscripts, Bizzell Library, University of Oklahoma, Norman.

estimated 25,000 head of Indian cattle driven from the Territory.[8]

The end result of these complaints was not exactly what Phillips expected. Through appeals submitted by his friends Phillips hoped to receive a summons to Washington so that he could present evidence to Interior Department officials supporting his charges of malfeasance in the Indian Territory. But orders to proceed to Washington never arrived. While Secretary Usher was willing to write to Secretary of War Edwin M. Stanton complaining of the theft of Indian cattle and crops by army officials and men, he refused to ask the War Department to order Phillips to Washington. The Interior Department, he insisted, could not with propriety request the issuance of a special order of this sort.[9]

On the local level, however, complaints about conditions in the Fort Gibson area became so intense that Brigadier General Thayer was forced to act. With no advance warning, Phillips was summoned to Thayer's headquarters one December evening and in a strained, tight-lipped meeting with the district commander, the colonel was ordered to resume command

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[8]Herron to C. T. Christensen, November 18, 1864, OR, I, xli, part 4, pp. 605-06; William A. Phillips to Herron, January 16, 1865, ibid., xlviii, part 1, pp. 542-43.

[9]Phillips to Herron, January 16, 1865, ibid.; Usher to Stanton, June 15 and 22, 1864, Letters Sent by the Indian Division of the Office of the Secretary of the Interior, N.A., Microcopy 606, Roll 4; Usher to William P. Dole, November 11, 1864, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 835.

at Fort Gibson. Phillips was also told that Order No. 7 had been revoked, and he was instructed to make "needful rules" to protect the rights of the Indians. Thayer and his aides offered no explanation for these sudden actions, and Phillips asked for none. After receiving his orders he quickly gathered a small escort and hurried by horseback to Fort Gibson, reaching the post on December 29, 1864.[10]

Phillips' actions after his return to Fort Gibson demonstrated that he had not been chastened in the least by his recent experiences. Still determined to impede the activities of those individuals responsible for the plundering of the Indian Territory, Phillips issued General Orders No. 4 from his Fort Gibson headquarters on January 14, 1865. This order decreed that all parties having any lawful authority to purchase stock in the Indian Territory were now to report to the headquarters of the Union Indian Brigade at Fort Gibson. The business transactions of all these individuals were to receive the approval of both the tribal authorities and the post's provost-marshal, Lieutenant Houston Benge. Under the terms of this order, Benge was to keep an open, "perfect record" of all cattle butchered, transferred, driven or sold at the fort, and only actual citizens of the Indian Territory were to be allowed to drive stock to outside markets. Except in cases of dire necessity, cattle belonging to persons in arms against the United States were to be used only for the

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[10]William A. Phillips to F. J. Herron, January 16, 1865, OR, I, xlviii,

feeding of Federal troops, and this property was to be "as carefully and fully accounted for as other property." In the event that any rebel-owned cattle was distributed among the refugee Indians, records were to be made out in triplicate showing the amount of stock distributed. Phillips' Order No. 4 instructed the commanders of Federal detachments operating in or passing through the Territory to prevent the indiscriminate slaughtering of Indian stock by their troops, and warned all persons not to purchase stock driven illegally into surrounding states. Phillips also asked all officers, men and attaches of his command "to furnish all facilities within their power . . . to the agents or representatives of the Indian Department . . . in the exercise of their legitimate functions."[11]

In attempting to prevent the theft of Indian cattle Phillips received assistance from an unexpected source--the legislature of Kansas. If, as Phillips believed, McDonald and Fuller were driving stolen cattle from the Indian Territory, they clearly were not the only ones involved in the traffic. With the connivance of military post commanders in Kansas, armed bands of ruffians engaged in the theft of Indian cattle had turned the southern portion of that state into a no-man's land where honest people ventured only at extreme peril. Conditions in the southwestern portion of Kansas, where whites

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[11]General Orders No. 4, January 14, 1865, ibid., pp. 516-19.

often enlisted the aid of the plains Indians in stealing cattle, were espedially bad, and from that area a group of Kansas legislators addressed a petition to Governor Samuel J. Crawford on January 16. The document solicited the governor's immediate aid in rectifying the conditions along Kansas' southern border. The drafting of this petition was followed late in the month by the passage of a resolution in the state senate condemning the driving of stolen stock out of the Indian Territory, and this action, in turn, was followed by the enactment of a measure designed to stop this traffic. In a measure signed into law by Crawford on February 11, 1865 the Kansas legislature decreed that any individual convicted of driving stolen stock into Kansas was to be fined not less than $1,000 and imprisoned for not less than one year.[12]

Although his order of January 14 urged military cooperation with the civilian agents of the Indian Bureau, Phillips greatly distrusted some of those in the bureau's employ. Among those especially suspect in his eyes was William G. Coffin, and in an attempt to thwart the superintendent's suspected illegal schemes, Phillips again took pen in hand on January 17, 1865. Once more his recipient was Secretary of

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[12]R. H. Abraham et al to Crawford, January 16, 1865, ibid., pp. 1133-34; Senate Journal of the Legislative Assembly Commenced at the City of Topeka, January 10, and Concluded March 3, 1865 (Topeka: S. D. Macdonald and Co., 1865), pp. 44-45; The Laws of the State of Kansas Passed at the Fifth Session of the Legislature, Commenced at the State Capital, on Tuesday, January 10, 1865 (Topeka: S. D. Macdonald and Co., 1865), Chapter LXXIV, pp. 159-60.

the Interior Usher.

Unfortunately, clarity of expression was not one of Phillips' great abilities. In a rather tortuously worded fashion what he seemed to say in this letter was that after the President had authorized the purchase of $200,000 worth of goods on credit, Coffin and his agents, working in conjunction with McDonald and Fuller, had fanned out through the Cherokee country. Their alleged purpose was to buy corn from loyal Cherokees which, in turn, was to be distributed among those refugees who were unable to reach their homes to raise crops. In numerous instances, however, false papers were drawn up stating that the licensed traders had purchased corn when in reality none had been bought at all. And in the end the firm in question had demanded payment from the government for much more corn than had actually been purchased and distributed among the loyal refugees. Phillips also charged that McDonald and Fuller had not paid for more than one-eighth of the cattle which they furnished the government. The vast majority of the cattle used to fulfill its contracts the firm acquired by sending renegade blacks and whites out into the Territory to steal all the stock they could lay their hands on. But the contractors, he said, demanded payment from the government for all the stock furnished, no matter how it was acquired. In subsequent letters addressed to the secretary on February 3 and 4, Phillips repeated the same basic accusations, with the addition of a new one to the effect that an effort

would be made by a "corrupt money corporation to get its agents and creatures appointed as Indian Agents. . . ." Perry Fuller himself, said Phillips, hoped to secure an appointment as the Creek Agent.[13]

Usher responded promptly to these charges. On February 10, the secretary sent a letter to Commissioner Dole stating that the complaints of Colonel Phillips should be the subject of a "rigid inquiry," especially the allegation that employees of the Indian Bureau were aiding in the theft of Indian cattle. Usher asked that Superintendent Coffin and his agents be called upon for statements in answer to these charges. Next, on February 20, the secretary addressed a letter directly to McDonald and Fuller, who were in Washington hoping to expedite the payment of the money which they claimed was owed them by the Federal government. From the contractors Usher asked for a statement showing the total quantity of the goods they had shipped to the Indian country.[14]

McDonald and Fuller began building their defense even before Usher sent out his letters of February 10 and 20. In two separate dispatches sent to the secretary on February 6, the contractors stated that they were aware of the charges made

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[13]Phillips to Usher, January 17, and February 2 and 4, 1865, R.G. 48, N.A., Letters Received Miscellaneous.

[14]Usher to Dole, February 10, 1865, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 836; Usher to McDonald and Fuller, February 20, 1865, Letters Sent, Indian Division, Secretary of Interior, N.A., Microcopy 606, Roll 5.

by Phillips against their firm, but they insisted that their business affairs were completely proper. Phillips' statements dealing with the purchase of corn for distribution among the other refugees were "simply untrue" as their firm and its agents had played no direct role in this activity. Both the purchase and the distribution of this corn was carried out by committees appointed for that purpose by the acting Cherokee principal chief and the Cherokee National Council. The persons from whom corn was purchased received certificates of sale and were paid in cash when they presented these certificates for redemption to the licensed contractors.[15]

They maintained that Phillips' statements dealing with Indian cattle were equally false. As early as the spring of 1864 Colonel Phillips began establishing rules governing the acquisition and sale of Indian-owned stock, and their agent, Henry McKee, had followed these rules to the letter. On the other hand, the individual who most flagerantly violated these regulations was Phillips himself. The colonel, they charged, had given papers authorizing various parties to take cattle out of the Indian Territory with the stipulation that a certain portion of these animals would be driven to Phillips' Kansas farm. And McDonald and Fuller charged that on at least one occasion Alexander Foreman, a special detective employed by

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[15]McDonald and Fuller to Usher, February 6, 1865, Letters Received, O.I.A., Southern Superintendency, Microcopy 234, Roll 836.

Phillips, had entered Kansas and seized a large number of cattle allegedly stolen from the Indian Territory. Foreman then sold these animals to private citizens in Kansas and had never filed with the authorities at Fort Gibson any record of his transactions.[16]

In attempting to account for Phillips' attack, McDonald and Fuller concluded that the colonel's accusations sprang from "a malicious, spiteful and revengeful spirit. . . ." Phillips, they said, had hoped to receive the Republican gubernatorial nomination in Kansas in 1864 and attributed his failure to secure that honor to the fact that McDonald and Fuller had supported a rival candidate. Now he was trying to extract revenge by hurling unfounded accusations at their firm. All in all, they considered his performance "pitiable" and asserted that his account of affairs in the Territory, whether true or false, demonstrated his unfitness for the position he held. If the account were true, and conditions at Fort Gibson had reached the scandalous level that Phillips said they had, this would be a disgraceful commentary on his leadership abilities. And if false, his willingness to make untrue statements for spiteful reasons likewise proved Phillips "unworthy of the high trust reposed in him."[17]

After the receipt of Usher's letter of February 20, the contractors filed additional statements with the secretary on

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[16] Ibid.

[17] Ibid.

February 21 and 23. In these, the two provided general information on the quantity of goods sent to the Indian Territory by their firm and disclaimed any desire to secure appointments within the Indian Bureau.[18]

Superintendent Coffin backed McDonald and Fuller's claims of complete honesty and uprightness. The superintendent, who apparently came to Washington along with the contractors to aid them in settling their accounts with the government, submitted a brief statement to Commissioner Dole on February 10. He maintained that in spite of the hardships the contractors labored under in transporting goods to Fort Gibson through guerrilla infested territory, their firm had fulfilled its contracts to his entire satisfaction.[19]

Somewhat later Coffin also provided more elaborate details on recent events in the Indian Territory. In two additional letters written to Commissioner Dole the following month, the superintendent asserted that after receiving permission in the fall of 1864 to purchase refugee goods on credit he had approached a number of Kansas mercantile houses which at various times had engaged in the Indian supply business. These included the firms Stettaner and Brothers, Carney and Stevens, and McDonald and Fuller. In the process

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[18]McDonald and Fuller to Usher, February 21 and 23, 1865, R.G. 48, N.A., Letters Received Miscellaneous.

[19]Coffin to Dole, February 10, 1865, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 836.

of bargaining with these firms Coffin insisted that he had exerted pressure on McDonald and Fuller, pointing out to them that since they had received the last supply contract, their integrity would be compromised if the Indians were left to starve. After repeated appeals of this sort, McDonald and Fuller and Carney and Stevens jointly offered to provide on credit the supplies needed at Fort Gibson. When Carney and Stevens later declined to participate, McDonald and Fuller "with great reluctance" agreed to carry on the supply effort alone. In supplying the refugees during the winter of 1864-1865, Coffin claimed that the profits of the contractors amounted to less than twenty percent, which to the superintendent was not at all unreasonable considering the company's risks. In accounting for Phillips' criticism of McDonald and Fuller, Coffin claimed that it was a well-known fact that the colonel was a partner in trading ventures carried on in the Fort Gibson-Fort Smith area by the Ross family. Thus this attack amounted to nothing more than "a desperate and dastardly effort" on the part of Phillips and the Ross family to drive their competitors out of the Indian country. Coffin concluded his explanations by asking in his letter of March 24 whether he would be allowed to pay the contractors the sum to which they were entitled, or was payment to be withheld because of the "vindictive passions of outside and irresponsible parties? . . ."[20]

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[20]Coffin to Dole, March 13 and 24, 1865, ibid.

As the testimony gradually reached the desks of Usher and Dole, Congress began its annual consideration of Indian appropriations. On February 23, 1865 the House of Representatives passed H.R. 682 appropriating funds for the fiscal year 1865-1866. The measure reached the upper chamber the following day and was immediately referred to the Committee on Finance.[21]

Two things of importance occurred after the referral of the appropriations bill. First on February 25 Senator Samuel C. Pomeroy introduced and secured the passage of a resolution requesting the secretary of the interior to furnish the Senate with copies of all orders, permits, licenses and correspondence in any way relating to the activities of licensed traders in the Indian Territory. Second on February 27 Secretary Usher sent similarly worded letters to House Ways and Means Committee Chairman Thaddeus Stevens and John Sherman of the Senate Finance Committee. These men were informed that in addition to the usual sums appropriated to fulfill the government's treaty obligations to the tribes of the Southern Superintendency another $447,000 would be needed "to supply to certain tribes . . . the quantity of goods and provisions they have been accustomed to receive . . . under their respective

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[21]Congressional Globe, 38 Cong., 2 Sess., February 23 and 24, 1865, pp. 1045, 1048.

treaties." In an oblique manner what the secretary was saying was that while the Interior Department had received presidential permission to purchase $200,000 worth of goods on credit for the refugee Indians, actual expenditures had run to more than twice that amount.[22]

Both these topics--trading activities and the need for additional funds--received attention on March 2 when the appropriations bill reached the Senate floor. Of the two, however, the money question received by far the greater amount of attention. Usher had addressed his appeal for added funds to Stevens and Sherman. But as had occurred in 1864 Sherman's Finance Committee deferred to the Senate Indian Affairs Committee in handling the complex financial arrangements of the Southern Superintendency. Thus on March 2, Indian Affairs Committee Chairman James R. Doolittle proposed an amendment identical to that found in the previous year's legislation authorizing the secretary of the interior to use for the support of the loyal refugees the sums appropriated to meet the government's treaty obligations with the rebellious tribes. The proposal was adopted without discussion.[23]

The Wisconsin senator next proposed that the secretary of the treasury be authorized to issue to the secretary of the

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[22]Ibid., February 25, 1865, p. 1088; Usher to Stevens and Sherman, February 27, 1865, Letters Sent, Indian Division, Secretary of Interior, N.A., Microcopy 606, Roll 5; William P. Dole to Usher, March 10, 1865, R.G. 48, N.A., Letters Received.

[23]Congressional Globe, 38 Cong., 2 Sess., March 2, 1865, p. 1298.

interior $250,000 in cash in lieu of the $250,000 in bonds due the Choctaw tribe under the Net Proceeds Claim. This amendment, which stipulated that these funds were to be used for refugee support, also received approval without discussion, but some of Doolittle's colleagues quickly challenged his next two proposals. The first of these provided for an additional appropriation of $500,000 to meet refugee expenses during the first half of 1865 while the second called for a similar special appropriation of $250,000 to aid in meeting the same type of expenses during the fiscal year 1865-1866.[24]

Missouri's B. Grantz Brown objected to this proposed largess. At a time when the nation was stripping itself to the girth to finance the war, he could see no reason for spending almost one million dollars supporting people who, in his view, were as able as anyone else to care for themselves. Such an outlay was especially outrageous when, as Brown maintained, three-fourths of the proposed appropriations would go into fraudulent contracts.[25]

These remarks elicited an immediate rebuttal from Doolittle. After Brown surrendered the floor, the Wisconsinite launched into a lengthy discourse on the privations suffered by the loyal Indians since the outbreak of hostilities in 1861. He concluded his statement by asserting that the basic question

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[24]Ibid., p. 1299.

[25]Ibid.

at stake was whether these long-suffering, loyal people were going to be adequately cared for or allowed to starve.[26]

The length of Doolittle's remarks gave Brown ample time in which to draft an amendment to the appropriations bill, replacing the last two proposed by the Indian Affairs Committee chairman. The Missourian's proposal authorized the secretary of war to furnish the "so-called refugee Indians . . . such temporary relief as may be absolutely necessary, including provisions and clothing during the residue of the fiscal year. . . ." Doolittle immediately challenged the Brown amendment declaring that of all the extravagant modes of providing for the Indians the attempt to do so through the commissary and quartermaster departments of the army was the most expensive by far. In the end, Brown's proposal would cost the government three times as much as his own.[27]

Senators Lane and Pomeroy backed Doolittle's assertion of army wastefulness. Pomeroy insisted that three million dollars in the hands of the War Department would not go as far as the $750,000 the Indian Affairs Committee wanted to place at the disposal of the Interior Department. Brown immediately regained the floor and claimed that if his amendment passed not more than $50,000 would have to be expended for refugee relief

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[26] Ibid.

[27] Ibid., p. 1300.

as the War Department would see to it that the Indians were protected from attack and that their cattle were used for their own support.[28]

This assertion, absurd though it was, proved to be convincing to a Senate concerned over burgeoning war costs. Ignoring the fact that on more than one occasion the army had failed conspicuously in protecting the Indians against attack and in supervising the proper use of their cattle, the Senate adopted the Brown amendment by a vote of sixteen to fourteen. But Doolittle, still distrustful of the War Department, then proposed and secured the passage of a proviso requiring the secretary of war to submit to Congress at its next session a detailed report of all funds expended under his supervision for refugee relief.[29]

After a fashion, the Senate next briefly considered the question of trading activities in the Indian Territory. Upon receiving a copy of the Senate resolution of February 25 Secretary Usher forwarded to Hannibal Hamlin, president of the Senate, copies of the correspondence in his possession dealing with trade in the Southern Superintendency. This material included the accusatory letters of Colonel Phillips, the rebuttals of McDonald and Fuller, and Superintendent Coffin's letter of February 10 supporting the contractors.[30]

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[28]Ibid., p. 1301.

[29]Ibid., pp. 1301-02.

[30]Usher to Hamlin, February 28, 1865, Letters Sent, Indian Division, Secretary of Interior, N.A., Microcopy 606, Roll 5.

It is impossible to say how many senators actually looked at these documents, but in all probability examination was confined to the members of the Indian Affairs Committee. If this is the case, the senators on the committee were probably as puzzled by the welter of conflicting testimony as Usher and Dole must have been, and the action finally taken by the Senate amounted to something of a dodge. After the adoption of B. Gratz Brown's proposal authorizing the secretary of war to aid the Indian refugees, James Harlan of Iowa, a member of the Indian Affairs Committee, offered an amendment to H.R. 682. Harlan's proposition, adopted immediately and without debate, declared that persons convicted of stealing Indian livestock could be fined up to $5,000 or imprisoned for up to three years. The amendment also authorized Indian agents to sell surplus Indian livestock for the benefit of their wards under regulations issued by the secretary of the interior. But no provision was made for any type of Senate action, such as a committee investigation, on the charges of past wrongs committed by licensed contractors. Clearly, in the case of McDonald and Fuller, Secretary Usher was given discretion to determine the justness of their claims.[31]

The House of Representatives acquiesced in the amendments, and Lincoln affixed his signature to the Indian Appropriations

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[31] Congressional Globe, 38 Cong., 2 Sess., March 2, 1865, p. 1302.

Bill on March 3. Almost three weeks later on March 20, Secretary Usher issued specific instructions to Commissioner Dole with regard to the theft of Indian cattle. Usher ordered the agents of the Southern Superintendency to collect and keep "well under control" the stock belonging to their Indian wards. They were also to file statements with the Interior Department showing the number of cattle owned by the Indians of their respective agencies. In those cases where there was surplus cattle which could be sold for the Indians' benefit the agent handling the sale was to give adequate public notice, in order to attract the greatest number of potential buyers. Sales were to be to the highest bidder, and the agent could refuse to sell if in his opinion a fair price was not offered by the would-be buyers. In cases where transactions were carried out, bills of sale were to be made out in triplicate, with one copy being forwarded to the commissioner of Indian affairs. Interior Department employees, including the agents, could not purchase Indian livestock without special permission from the commissioner. In those cases where Indian stock was needed by the military, the agents were to turn the animals over to quartermaster or commissary officers, and the army would be expected to pay the full market price which the animals then commanded at the place of purchase. On March 24, Dole forwarded a copy of these regulations to Coffin and instructed the superintendent to distribute duplicate copies to his agents who were expected to carry out the letter and the spirit of

the law "to their utmost ability."[32]

As these instructions gradually filtered down to the agents in the field, the McDonald and Fuller case drew to a close. Although the official correspondence of Interior Department officials is not entirely clear on this point, it appears that of the amount expended in supporting the refugees during the winter of 1864-1865 the McDonald and Fuller firm had claims against the government totaling about $371,000.[33] If the secretary granted the payment of this sum from the amounts made available under the recent appropriations act, his action would, in effect, exonerate the firm from any charges of wrongdoing.

Usher did not suffer from any lack of advice on the subject. McDonald and Fuller, still in Washington, were clamoring for their money, and as early as March 10, Commissioner Dole advised the payment of the full sum to the contractors "in consideration of the good faith they have held towards the Government, and their prompt action to enable it to extend aid . . . to its suffering wards. . . ." On the other hand, the Cherokee delegation of John and Daniel Ross and Evan Jones in behalf of all the loyal Indians protested

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[32]Statutes at Large, XIII, pp. 562-63; Usher to Dole, March 20, 1865, Letters Sent, Indian Division, Secretary of Interior, N.A., Microcopy 606, Roll 5; Dole to Coffin, March 24, 1865, Letters Sent By the Office of Indian Affairs, N.A., Microcopy 21, Roll 76.

[33]William P. Dole to John P. Usher, March 10, 1865, R.G. 48, N.A., Letters Received.

against payment on the grounds that the claims submitted to the Interior Department were largely fictitious or fraudulent. Moreover, they maintained that the funds appropriated in the act of March 3 were to be used in meeting future, not past, expenses.[34]

After a prolonged period of indecision Usher reached a decision early in April. In a communique to Commissioner Dole on April 7 the secretary insisted that not one of the persons making accusations against McDonald and Fuller had the slightest personal knowledge of the matter, and most had not been within 1,000 miles of the transactions they had denounced. To him the basic question at stake was whether the slanders of "meddlesome and pestiferous persons" were to be regarded and justice denied the "faithful contractors." Usher pronounced himself entirely satisfied with the explanations submitted by and in support of McDonald and Fuller. The contract with the firm, he concluded, was the best that could have been made under the circumstances, and the twenty percent profits were not unreasonable considering the extraordinary risks taken. Thus, the contractors should be compensated in full for the performance of their contract, and he ordered the payment to be made.[35]

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[34]Dole to Usher, March 10, 1865, ibid.; McDonald and Fuller to William G. Coffin, March 24, 1865, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 836; John Ross et al to Usher, March 17, 1865, R.G. 48, N.A., Letters Received Miscellaneous.

[35]Usher to Dole, April 7, 1865, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 836.

The rendering of this decision was among the last of Usher's official actions as secretary of the interior. By late 1864 rumors were circulating in Washington that Lincoln had become dissatisfied with Usher's administration of the Interior Department and was looking for a successor. In response to these tidings numerous applicants for the position presented themselves to the President, including one of Lincoln's old Whig associates, Illinoisan Jesse K. Dubois. Uncle Jesse, as he was known to his friends, performed yeoman's service in garnering the Republican nomination for Lincoln in 1860, and the President was pressured by important party luminaries to repay this debt by offering Dubois the Interior Department appointment.

Lincoln, with deep regrets, spurned this proposal. Recognizing the inevitable, Usher submitted his resignation, effective May 15, on March 8, 1865. The following day Lincoln proposed to the Senate that Iowan James Harlan assume the interior portfolio, and in keeping with the traditional practice where cabinet nominees were members of the Senate, the nomination received immediate and unanimous approval.[36]

Harlan's appointment is generally ascribed to personal

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[36]Usher to Lincoln, March 8, 1865, Abraham Lincoln Papers, Library of Congress (microfilm copy), Series 1, Roll 93; Reinhard H. Luthin, The Real Abraham Lincoln: A Complete One Volume History of His Life and Times (Englewood Cliffs, N. J.: Prentice-Hall, 1960), p. 556 (hereafter cited as Luthin, Lincoln); H. J. Carman and Reinhard H. Luthin, Lincoln and the Patronage (New York: Columbia University Press, 1943), pp. 311-12 (hereafter cited as Carman and Luthin, Patronage).

considerations, and undoubtedly these did play a role in Lincoln's decision. Harlan and the President did not meet until after Lincoln's election in 1860, but thereafter a firm friendship rapidly developed. On gala social occasions the Iowa senator was usually found in the President's party, and at the second inaugural Harlan served as Mrs. Lincoln's escort while her husband was sworn in for a second term. The senator's daughter was often escorted by Lincoln's son Robert, and in 1868, Mary Harlan became Mrs. Robert Todd Lincoln.[37]

Personal considerations alone, however, did not dictate this important decision. Equally as decisive were the political considerations. Any wartime president, especially one confronted with a civil war, must carefully cultivate public support. Among those groups whose favor Lincoln especially valued and sought to cultivate was the Methodist Episcopal Church. One of Lincoln's closest unofficial advisors was Methodist Episcopal Bishop Matthew Simpson who was called to Washington on numerous occasions for consultations with the President. In a brief address of May 18, 1864 delivered at the White House to a group of delegates from the church's General Conference meeting in Philadelphia, Lincoln conceded that the Methodists sent more soldiers to the field, more nurses to the hospitals and more

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[37]Carman and Luthin, Patronage, p. 312; Johnson Brigham, James Harlan (Iowa City: The State Historical Society of Iowa, 1913), p. 238.

prayers to heaven than any other denomination.[38] As the war drew to a close and the problem of reconstruction loomed ominously on the horizon it is not unreasonable to conclude that Lincoln hoped to continue to enjoy the cooperation and goodwill of this important group. The appointment of James Harlan, a prominent Methodist layman, to the cabinet would go far toward insuring Lincoln that support. In contrast, Uncle Jesse Dubois had nothing to recommend him but past services rendered. At a less critical time, that alone might have sufficed to secure the desired appointment, but in this instance it was not enough.

By the time that Harlan assumed his duties in the cabinet, Lincoln was dead, Andrew Johnson occupied the White House, and a turnover had occurred in the Southern Superintendent's office. Late in April, William G. Coffin resigned the office he had held since 1861 and the new chief executive immediately appointed Iowan Elijah Sells to the vacated position.[39] The fact that Sells and Harlan came from the same state was probably no mere coincidence. With Usher's

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[38]George R. Crooks, The Life and Times of Bishop Matthew Simpson of the Methodist Episcopal Church (New York: Harper and Brothers, 1890), pp. 370, 395; Luthin, Lincoln, p. 557.

[39]George C. Whiting to the Commissioner of Indian Affairs, April 28, 1865, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 836; Charles E. Mix to William G. Coffin, May 2, 1865, Letters Sent, O.I.A., N.A., Microcopy 21, Roll 77.

tenure nearing its end, Johnson undoubtedly turned to the secretary designate for advice in choosing Coffin's successor.

Sells wasted no time in assuming his duties. Late May found the new superintendent in Kansas where he held interviews with Major General Grenville M. Dodge and Brigadier General R. B. Mitchell. Dodge commanded the Department of the Missouri, while Mitchell had charge of the District of North Kansas. Both promised to aid Sells in stopping the theft of Indian cattle, and Mitchell backed up his statement by placing a force of Illinois troops, uncorrupted by any past association with cattle thieves, at the superintendent's disposal. On June 7 this force left Fort Scott accompanied by Seminole Agent George A. Reynolds on what Sells called "an expedition of discovery." Reynolds and his military escort were to scour the southern Kansas countryside arresting all persons who were found in possession of stock suspected of being stolen from the Indian Territory.[40]

The superintendent returned to Washington in August for consultations with Harlan, and Dennis N. Cooley, recently appointed commissioner of Indian affairs.[41] While in the capital city, he, along with his two immediate superiors, listened to testimony provided by First Lieutenant George

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[40]Elijah Sells to William P. Dole, June 7, 1865, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 836; Sells to George A. Reynolds, May 30, 1865, ibid.

[41]For a discussion of Cooley's appointment to the commissioner's office see Chapter X.

Williams of the Sixth Kentucky Cavalry. Williams, former provost-marshal for the District of Kansas, talked in great detail to Interior Department officials about his investigations of the activities of Kansas cattle thieves. Impressed by these disclosures, Sells suggested that an order be procured from the War Department detailing the lieutenant to work with him and his agents in looking further into the illegal cattle trade. Secretary Harlan secured the desired order, and Lieutenant Williams accompanied the Federal commissioners who traveled to Fort Smith in September to negotiate with the Confederacy's former Indian allies.[42]

Williams' investigation ended in a complete, though not necessarily deserved exoneration for McDonald and Fuller. Surrounded at Fort Smith by friends of the contractors, all of whom willingly submitted sworn affadavits attesting to the firm's honesty, the lieutenant stated in his report of October 10 that they were guilty of no transgressions whatever. Upon receipt of Williams' report, and after examining similar statements submitted by agents of the Southern Superintendency, Cooley and Secretary Harlan in January, 1866 quietly decided not to pursue the McDonald, Fuller and Coffin

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[42]Elijah Sells to D. N. Cooley, August 5, 1865, R.G. 48, N.A., Letters Received; Sells to Cooley, August 10, 1865, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 836; Special Orders No. 433 (War Department), August 11, 1865, ibid.; George Williams to Cooley, October 10, 1865, ibid.

matter any further.[43]

The hindsight of over 100 years unfortunately yields little insight into the legality of the trading activities carried on by McDonald and Fuller under the auspices of Superintendent Coffin. The participants in the trade controversy for the most part based their cases on invective rather than solid evidence, and in all probability the truth lies somewhere between the extreme statements made by both sides. On the one hand, it is difficult to believe that the McDonald and Fuller firm was as blameless as its supporters maintained. In the midst of wartime turmoil, extravagance and profiteering it is simply inconceivable that the firm turned its back on all opportunities to increase its profits at the expense of the individuals whose needs it was committed to supply. But conditions were probably not as bad as Phillips said they were. For all his sincerity, the colonel seems to have been a highly impressionable man influenced by the innuendoes of those who for one reason or another had some grievance against the licensed contractors.

During the height of the trade controversy President Lincoln received a letter from Mikko Hutkey, a loyal Creek who had followed Opothleyaholo into Kansas in 1861. Hutkey's

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[43]Williams to Cooley, October 10, 1865, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 836; Cooley to Harlan, January 17, 1866, R.G. 48, N.A., Letters Received; Harlan to Cooley, January 29, 1866, Letters Sent, Indian Division, Secretary of the Interior, Microcopy 606, Roll 6.

account of affairs in the Indian Territory indicated that the flour and beef provided the loyal Indians was distributed in the sloppiest of ways, by guess rather than by weight, while the clothes and shoes they received were made of the flimsiest of materials. Poignantly he added:

> The goods look as if they were the remnants of stocks from which the best articles had been sold to other people, as if anything was thought to be good enough for the Indians, who are good enough to be plundered of all they have but not good enough to be treated as people who have bodies, and Souls and human feelings and Sentiments.

Hutkey conceded that the President's time and thoughts were engrossed "by the great affairs of your own Government that rise up like mountains around you." Yet the Indians were a part, however small, of those affairs, and he pleaded with Lincoln to "stop the depredations and impositions heaped upon us."[44]

The depth of the Federal government's concern for the people of the Indian Territory was revealed in the way Hutkey's entreaty was handled. When the loyal Creek's appeal reached his desk in mid-February, 1865 Lincoln without comment passed it on to Secretary Usher. Without comment the secretary passed the letter on to Commissioner Dole, and without comment the commissioner filed the document away in the archives of the Indian Bureau.

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[44]Hutkey to Lincoln, December 23, 1864, ibid.; John Ross to Lincoln, February 15, 1865, ibid.

# CHAPTER X

## WAR'S END

Militarily, the closing months of the Civil War in the Indian Territory were rather uneventful. Commanders on both sides talked a great deal about proposed movements, but their frenetic discussions produced little activity. Late in June, 1864 Brigadier General Douglas H. Cooper proposed an attack on Fort Smith only to be thwarted by Samuel B. Maxey, the Confederate major general commanding the Indian Territory. Maxey believed that the Federals in and around Fort Smith were both more numerous and much better armed than any attacking force the Confederates could muster. Later, when the Confederate military commander in Arkansas, Major General John B. Magruder, proposed a similar campaign in November and asked for assistance from the Indian Territory, Maxey again dissented. Nevertheless, Magruder at first determined to push ahead with his plans, but later abandoned the Fort Smith campaign when he received a report--which proved to be

false--that the post had received 4,000 reinforcements.[1]

In reality, the most important events occuring in the Indian Territory at this time were diplomatic rather than military. On December 20, 1864 Union Cherokee leaders at Fort Gibson addressed a petition to President Lincoln urging that immediate steps be taken to offset the activities of rebel emissaries who were attempting to enlist the assistance of the wild tribes of the plains. The loyal Cherokees maintained that the long continuation of the war, together with the lies and machinations of the rebels, had shaken the confidence of the plains tribes in the United States government and had somehow convinced the people that the loyal Indians were their enemies. To alleviate this situation and to protect loyal whites and redmen against future outrages, the Cherokees proposed that a general convention be held attended by delegates from all the tribes of the Southwest. Hopefully, this assemblage would lead to the establishment of a "league of amity" in which all the Indians would pledge to maintain peace among themselves and reaffirm their allegiance

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[1]S. B. Maxey to D. H. Cooper, June 28, 1864, The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (Washington: Government Printing Office, 1902), Series I, xxxiv, part 4, pp. 697-98 (hereafter cited as OR with series number in upper-case numerals and volume number in lower-case numerals); Edward P. Turner to Maxey, November 1, 1864, ibid., xli, part 4, p. 1024; John B. Magruder to John A. Wharton, November 8, 1864, ibid., p. 1034; Maxey to E. Kirby Smith, November 8, 1864, ibid., pp. 1035-37; Magruder to Maxey, November 16, 1864, ibid., p. 1072.

to the Federal government. Farsighted though it was, the proposal was ignored by the Lincoln administration.[2]

The Cherokees were correct when they asserted that the Confederates were courting the tribes of the plains. In February, 1864 the rebel Indians meeting in their annual Grand Council discussed the idea of an alliance with the wild tribes, and while this early talk produced nothing tangible, the idea was not forgotten. On December 22, 1864 Colonel James E. Harrison of the Texas Fifteenth Volunteer Infantry Regiment sent a communication to Confederate Secretary of War James A. Seddon suggesting the possibility of forming an alliance with the Comanches. The Texas colonel pointed out that if this bond was affected, the Confederacy could use these people in attacking Federal wagon trains bound for New Mexico, possibly cutting off all communications with that distant territory. The establishment of peaceful relations with the Comanches would also make it possible to transfer to some other theater of the war the Texas troops no longer needed to defend the state's northern frontier. Seddon immediately endorsed this proposition, and on December 23 the secretary sent instructions to General E. Kirby Smith, the Confederacy's chief military officer in the West. Kirby Smith, commander of the Trans-Mississippi Department, was told to take the steps needed to

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[2]Lewis Downing et al to Lincoln, December 20, 1864, Records of the Office of the Secretary of the Interior, Indian Division, Record Group 48, National Archives, Letters Received.

complete the proposed alliance.[3]

Steps looking toward the establishment of closer ties with the plains tribes had already been taken by the time Seddon's dispatch reached Smith at his Shreveport, Louisiana, headquarters. On January 21, 1865 L. P. Chouteau, a Confederate sympathizer trading in the western part of the Indian Territory, informed rebel Cherokee leaders that certain Comanche and Kiowa leaders encamped in the Antelope Hills wanted to join with the Confederacy in fighting the Federals. When this news reached Major General Maxey, the Indian Territory commander appointed the Confederate Creek Agent, Major I. G. Vore, to meet the Comanche and Kiowa representatives, and learn their intentions and the reasons for their desire to join arms with the South. The original plans called for a parley along the banks of the False Washita River, but before Vore could reach the designated point, the nomadic plains tribesmen had come and gone. Southern supporters in the area, however, assured the major that the Indians from the plains were sincere in their desire to join arms with the Confederacy. Accordingly, Vore sent out messages urging these people to meet with representatives of the Confederate States and its Indian allies in mid-May at Council Grove on the North

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[3]E. Kirby Smith to Albert Pike, April 8, 1865, OR, I, xlviii, part 2, pp. 1266-69.

Canadian River.[4]

Secretary Seddon's instructions and the news of Vore's activities both reached General Kirby Smith at about the same time in mid-February, 1865. In carrying out the secretary's orders, Smith acquiesced in the plans already set in motion by Major Vore and appointed Brigadier General James W. Throckmorton and Colonel W. D. Reagan to represent the Confederate States at the May council. From Vore, Kirby Smith had learned that the plains tribes wanted extended to them the same type of pledge that Albert Pike had extended to the Osages in Article XXVII of their treaty of August, 1861. He thus authorized Throckmorton and Reagan to assure the delegates from the wild tribes that in its dealings with them the Confederacy would faithfully execute the terms of this article. In addition, both men were instructed to meet with Brigadier General D. H. Cooper, who had recently succeeded Maxey as commander of the District of the Indian Territory, at Cooper's headquarters at Fort Washita. Here the Confederate

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[4]Smith to Pike, April 8, 1865, ibid.; L. P. Chouteau to J. M. Bell, January 21, 1865, Cherokee Nation Papers--Letters to J. M. Bell, 1839-1907, Division of Manuscripts, Bizzell Library, University of Oklahoma, Norman; Stand Watie to Tuckabatchee Muceo, March 19, 1865, Cherokee Nation Papers--Civil War Letters, 1861-1874, Division of Manuscripts, University of Oklahoma; undated, unsigned notation in the Peter P. Pitchlynn Collection, 1865, Folder 18, Thomas Gilcrease Institute of American History and Art, Tulsa, Oklahoma.

representatives would plan their strategy for the upcoming council.[5]

As the time for the appointed meeting approached, conditions in the Indian Territory bordered on the chaotic. Recognizing the inevitable, and desiring to avoid the useless spilling of blood, General Robert E. Lee surrendered his forces to General Ulysses S. Grant at the Virginia village of Appomattox Courthouse on April 9, and his capitulation was followed on April 26 by that of General Joseph E. Johnston at Durham Station, North Carolina. Rumors of these actions, along with accounts of general lawless in the southern portion of the Indian Territory and friction between the rebel Creeks and Chickasaws, gradually reached General Cooper's headquarters at Fort Washita. News also circulated that Major General James G. Blunt with 15,000 cavalrymen would lead a raid out of Fort Smith through the Indian Territory into Texas. Perplexed over the rash of rumors and ill-tidings, Cooper advised all the commissioners and delegates to the Council Grove meeting to proceed just as if no bad news had been received. He also pleaded with quartermaster and commissary officers in the area

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[5]E. Kirby Smith to Pendleton Murrah, March 21, 1865, OR, I, xlviii, part 1, pp. 1439-40; Smith to Albert Pike, April 8, 1865, ibid., part 2, pp. 1266-69; C. S. West to W. D. Reagan, April 15, 1865, ibid., pp. 1279-80. Article XXVII of the Osage treaty of 1861 provided that a white man who married an Osage woman would be considered an Osage even after the death of his wife. Ibid., OR, IV, i, p. 641.

to "keep everything rocking along just as usual. . . ."[6]

At the preliminary meeting held with Cooper, Throckmorton, Reagan and representatives of the tribes of the Indian Territory agreed upon a proceedural plan. During the early stages of the Council Grove assembly the Confederate emissaries would remain discreetly in the background while the redmen in attendance swapped greetings and expressions of goodwill. Once these preliminary but important exchanges were concluded, Throckmorton and Reagan would be introduced, and hopefully their addresses to the council would lead to the signing of a tripartite treaty uniting the Confederate States and its Indian allies with the plains tribes in opposition to the United States. Possibly plans could then be formulated for the launching of an attack against Federal forces in Kansas.[7]

Information reached Fort Washita shortly after the departure of the Council Grove delegates that Federal commissioners had opened talks with E. Kirby Smith. Cooper decided that until the outcome of this parley was known any plans for launching an expedition into Kansas should be

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[6]D. H. Cooper to Stand Watie, April 6, 1865, Cherokee Nation Papers--Civil War Letters, 1861-1864, Division of Manuscripts, University of Oklahoma; Robert Pierce to J. M. Scott, May 9, 1865, ibid.; Cooper to Scott, May 10, 1865, OR I, xlviii, part 2, p. 1297; James G. Randall and David Donald, The Civil War and Reconstruction (Boston: D. C. Heath and Company, 1961), pp. 526, 528.

[7]D. H. Cooper to S. S. Anderson, May 15, 1865, OR, I, xlviii, part 2, p. 1306.

deferred, and he so informed Throckmorton. While advancing toward Council Grove, the Texas general received letters from Cooper dated May 16 and 22 telling him to confine the talks with the plains Indians merely to the establishment of friendly relations. More ambitious projects would have to await the completion of Kirby Smith's conference with the Union emissaries. In addition to corresponding with Throckmorton, Cooper on May 22 sent a letter to Stand Watie suggesting that the Confederacy's Indian allies hold a grand council after the Council Grove session to hear reports on the talks conducted with the plains Indians. In the light of what he termed the "thousands of rumors afloat," this grand council could also "take into consideration the present condition of affairs and determine the policy to be pursued in the Indian Territory."[8]

The meeting with the plains Indians proceeded just about as planned, with one exception.[9] As the delegates from the various tribes began gathering at a spot called Cherokee Town near the designated meeting place, some concern was expressed over the safety of meeting at Council Grove. The question was finally settled on May 20 when those present

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[8]Cooper to Throckmorton, May 16 and 22, 1865, ibid., pp. 1307, 1317; Cooper to Watie, May 22, 1865, ibid., p. 1318.

[9]The following account is based on information found in undated, unsigned notations in the Peter P. Pitchlynn MSS, 1865, folders 18 and 19, Gilcrease Institute, Tulsa.

decided to move the assembly to the south to some point on the Washita River where the chances of Federal interference were less.

The once-removed council finally opened at Camp Napoleon, a place near present-day Verden, Oklahoma, on May 25, 1865. Among those present were representatives from the Five Civilized Tribes as well as the Reserve Caddoes, Reserve Osages, Kiowas, Cheyennes, Arapahoes, Lipans and several bands of the Comanches. By this time presumably, the tribesmen had already exchanged greetings. Thus little time was lost in getting to the main business at hand, the establishment of closer ties between the tribes represented. On the opening day General Throckmorton delivered a very general, perfunctory address in behalf of the Confederacy, and on May 26, Colonel William P. Adair, a rebel Cherokee, submitted to the council the terms of a proposed compact.[10]

This agreement provided for the establishment of an Indian Confederacy, similar to the one of 1861, linking the plains tribes with those of the Indian Territory. The Confederacy's motto was to be "An Indian shall not spill an Indian's blood," and in keeping with this expressed spirit of harmony, the party's signing the document pledged to settle all their future disputes peacefully and to work together for "the peace, the happiness, and the protection of all alike,

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[10] Ibid.

and the preservation of [the Indian] race." After these terms were read and interpreted, several plains delegates spoke in support of the proposed Confederacy, and the document was then signed by the assembled delegates.[11]

The following day, May 27, Throckmorton and Reagan concluded on behalf of the Confederate States and the state of Texas a treaty of peace with the plains tribes. Some closing remarks were then made by Captain Jonathan Spears, another rebel Cherokee, after which the council hastily adjourned sine die. Obviously with countless rumors and counter-rumors circulating through the area, those present were anxious to return to their homes or stations of duty as quickly as possible. But at some time before the final adjournment--the sketchy records do not indicate when--the tribes allied with the Confederacy since 1861 agreed to hold another of their periodic grand councils at Armstrong Academy in the Choctaw Nation to hear reports on the Camp Napoleon meeting and plot their future course of action.[12]

The Camp Napoleon meeting was accompanied and followed by a dizzying array of events. While the tribesmen of the Indian Territory and the plains were parleying on the banks of the Washita, to the south E. Kirby Smith was parrying with the two top Union commanders in the West, Major General John Pope, chief of the Division of the Missouri, and Major General

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[11] Ibid.

[12] Ibid.

E. R. S. Canby, who headed the Division of West Mississippi. After prolonged and involved wrangling, Kirby Smith accepted the terms offered by Canby, and on May 26 in New Orleans representatives of the two generals signed a surrender convention which provided that the troops of the Confederacy's Trans-Mississippi Department would immediately cease all acts of war and resistance against the United States.[13] Shortly thereafter, without having any particular authority to do so, Major General Francis J. Herron assumed responsibility for the negotiation of preliminary treaties of peace between the United States and the Confederacy's Indian Allies. Herron, commander of the Northern Division of Louisiana, met on June 8, 1865 with E. Kirby Smith's chief of staff, Lieutenant General Simon B. Buckner. Buckner, not realizing that the events he was discussing had already transpired, informed Herron that General Throckmorton and Colonel Reagan, along with delegates from the tribes of the Indian Territory, were about to undertake negotiations with the plains Indians. Herron, equally ignorant of the fact that these talks had already occurred, immediately decided to appoint two commissioners of his own to travel to the Indian Territory to meet with the Confederate commissioners and the Indian leaders of the area. Fearing the loss of valuable

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[13]John Pope to Ulysses S. Grant, May 1 and 27, 1865, OR, I, xlviii, part 2, pp. 283, 626; Pope to J. T. Sprague, May 19, 1865, ibid., p. 507; Surrender Agreement of May 26, 1865, found in ibid., pp. 600-01.

time and an opportunity to negotiate with the Indians with the assistance of Confederate commissioners, Herron did not bother to clear his actions with his superiors.[14]

Herron designated Lieutenant Colonel A. C. Matthews of the 99th Illinois Volunteer Infantry to act as his chief representative, while Captain W. H. Vance of the 47th Indiana Volunteer Infantry served as Matthews' assistant. In a letter of June 9, 1865 the major general from his Shreveport headquarters instructed Matthews to proceed with as little delay as possible to Council Grove where he was to work with commissioners Throckmorton and Reagan in accomplishing the chief object of his mission, the negotiation of a temporary treaty or alliance between the Indians and the United States. Matthews was to impress upon the Indians the fact that the armies of the South had surrendered, thus bringing their country back under the control of the Federal government. He was to tell them that Washington's desire was to be on terms of friendship with all the Indians, an object which could be accomplished by their returning quietly to their homes without interferring with either the whites or the redmen who had supported the United States. Finally, in addition to entering into some sort of temporary pact, Matthews was to suggest another general council to be held at some point in the Territory around August 1 attended by commissioners from Washington

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[14]F. J. Herron to Nathaniel P. Banks, June 8, 1865, ibid., p. 818; Simon B. Buckner to D. H. Cooper, June 8, 1865, ibid., pp. 818-19.

who would draw up "a full and complete treaty." In sum, Herron not only assumed responsibility for the negotiation of a temporary peace treaty; he also more or less designated the place and the manner whereby permanent relations would be re-established with the tribes of the Indian Territory. Upon receiving these instructions, Matthews and Vance gathered a fifty man escort and left for the Indian Territory traveling by way of northeastern Texas.[15]

Herron's commissioners made their way northward not knowing that the council they were to attend had long since adjourned. The delegates of the tribes of the Indian Territory assembled at Armstrong Academy equally oblivious of the fact that the war was over. The actions taken by the assembled delegates, however, revealed that they realized that the Confederacy was in its death throes. In a set of resolutions adopted on June 15, 1865 the Grand Council of the United Nations of the Indian Territory established a special committee made up of the principal chiefs and governors of the nations represented at the council. This committee was instructed to extend "the hand of fellowship" to all nations of Indians, including those allied with the United States. All, stated the resolutions, were to be invited to become a party to the Indian Confederation and to cooperate with it in its efforts

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[15]Herron to Matthews, June 9, 1865, ibid., pp. 830-31; Matthews to Herron, June 30, 1865, R.G. 48, N.A., Letters Received.

"to contract anew" friendly relations with the United States. Clearly, the assembled delegates hoped that the Indians of the area could present a united front to Federal authorities in the negotiations that were certain to come.

In addition to contacting all nearby tribes, under the June 15 resolutions the governors and principal chiefs of the tribes of the Territory were to appoint from one to five commissioners each. These men, chosen with the consent of their tribal councils, were to contact Union military authorities in the area in affecting a cessation of hostilities in the area. After obtaining the proper passes, they were to proceed to Washington where they would negotiate "such treaties as the exigencies of affairs may seem to demand." No treaty was to be binding, however, until ratified by the national council of each Indian nation. On June 16, representatives of the rebel Cherokees, Creeks, Seminoles, Choctaws and Chickasaws, as well as the Black Dog band of the Osages, signed the resolutions, after which the Armstrong Academy council adjourned.[16]

When Matthews and his party reached the vicinity of Doaksville in the Choctaw Nation, informants told them of the events recently transpired. The Council Grove meeting--adjourned to Camp Napoleon--had long since been concluded,

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[16]A copy of the resolutions can be found with Matthews' letter of June 30 to Herron, R.G. 48, N.A., Letters Received; undated, unsigned notation, Peter P. Pitchlynn MSS, 1865, folder 19, Gilcrease Institute, Tulsa.

but delegates from the tribes aligned with the South were at the moment huddling nearby. Upon learning these facts, Matthews hurriedly dispatched to Armstrong Academy a courier carrying a message requesting that the Grand Council remain in session until the Federal commissioners arrived. But by the time that Matthews' envoy reached the designated point, the council had passed its resolutions and adjourned.[17]

Disappointed, yet encouraged by the friendly reception they had encountered, Matthews and Vance decided to make the best of the situation in carrying out their instructions. A letter was sent to Choctaw Governor Peter P. Pitchlynn informing him of the purpose of the Federal commissioners' mission and requesting a meeting at Doaksville with the governor at his earliest convenience. Pitchlynn quickly complied with this request, and after a short but pleasant meeting at Doaksville on June 18, the terms of a temporary treaty of peace were worked out. In these brief articles, the Choctaws promised to return to their homes and refrain from committing any hostile acts against the United States and its allies, white or Indian. The United States pledged to protect the Choctaws "in their persons and property" against encroachments committed either by whites or Union Indians, and the two parties agreed that this compact would remain in effect until permanent treaties were negotiated and ratified by the proper authorities. The

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[17]Matthews to Herron, June 30, 1865, R.G. 48, N.A., Letters Received.

agreement designated September 1, 1865 and Armstrong Academy as the time and place for the convening of a grand council where Federal and Indian commissioners would attempt to re-establish permanent relations. The provisions of this pact met with the hardy approval of a number of Choctaw national councilmen present, and the same day that these terms were agreed to, Pitchlynn issued a proclamation calling upon his brothers of the Indian Territory to choose delegates to the forthcoming conference.[18]

The Choctaw pact signed, Matthews and Vance on June 19 sent out letters to other rebel tribal leaders and then repaired to the plantation home of Colonel R. M. Jones, twelve miles west of Doaksville. John Jumper, Samuel Checote and Stand Watie, the respective chiefs of the rebel Seminoles, Creeks and Cherokees, and Chickasaw Governor Winchester Colbert were informed of the events at Doaksville, and were invited to enter into agreements like the one signed by Pitchlynn. Watie responded promptly to this call, reaching Doaksville on June 21. Two days later the rebel Cherokee leader signed an agreement identical to that signed earlier by Pitchlynn. When the Seminole, Creek and Seminole chiefs, for reasons unexplained, failed to appear Watie on his own initiative assumed the authority to enter into a similar pact in their behalf with Matthews and Vance. After these dealings

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[18] OR, I, xlviii, part 2, pp. 1105-06; Matthews to Herron, June 30 , 1865, R.G. 48, N.A., Letters Received.

with the South's solitary Indian general, the Federal commissioners left for Shreveport, and on June 30 Matthews submitted a complete report on his actions to Major General Herron.[19]

Before news of these affairs reached the nation's capital, a significant change occurred within the Indian Bureau. While Matthews and Vance negotiated in the Indian Territory, Secretary of the Interior James Harlan and President Andrew Johnson began discussing the course of action to be taken in dealing with the nomadic tribes of the West. Sporadic outbreaks of violence, sparked by the greed and intemperance of gold-hungry whites, had kept the Great Plains area in a state of turmoil throughout the Civil War years. With victory over the South achieved Harlan and Johnson together decided that the time had arrived to come to terms with the wandering plains tribesmen. Accordingly on June 22, 1865 the secretary of the interior instructed Commissioner of Indian Affairs William P. Dole to proceed "with all convenient dispatch" to visit the Indians of the Dakota, Iowa, Montana and Colorado territories. During the course of his expedition the commissioner was to impress upon the tribes of the area the idea that the only alternative to permanent peace with the United States was annihilating war. He was, in addition, to enter

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[19]Matthews to Herron, June 30, 1865, ibid.; Matthews and Vance to Stand Watie, June 19, 1865, Cherokee Nation Papers--Civil War Letters 1861-1874, Division of Manuscripts, University of Oklahoma. A copy of the Cherokee treaty can be found in OR, I, xlviii, part 2, pp. 1100-01.

into treaty arrangements in which the plains Indians agreed to abandon their nomadic existence in favor of, as Harlan expressed it, "the more peaceful and industrial arts of civilized life." Not at all enraptured by the prospect of abandoning the comforts of Washington for the semi-civilized barreness of the Far West, Dole tendered his resignation as commissioner of Indian affairs on July 5.[20]

Harlan quickly found a successor for Dole in the person of Dennis N. Cooley of Dubuque, Iowa. During the election campaign of 1864 Cooley gained a certain notoriety among the higher echelons of the Republican Party for the services he rendered as secretary of Union Executive Congressional Committee. Made up of three Republican members from each of the two houses of Congress, the committee raised part of the funds needed to finance Lincoln's second presidential campaign by collecting contributions from local United States post-masters. Immediately after the election, Senator Harlan, a member of the fund-raising committee, wrote Cooley a warm personal letter of thanks for his "herculean efforts," at the same time assuring him that if fortune made it possible for him to do so Harlan would gladly aid his fellow Iowan in "the attainment of the gratification of [his] wishes. . . ."

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[20]Harlan to Dole, June 22, 1865, Letters Sent by the Indian Division of the Office of the Secretary of the Interior, N.A., Microcopy 606, Roll 5; Dole to Harlan, July 6, 1865, R.G. 48, N.A., Letters Received; Dole to Andrew Johnson, July 6, 1865, Andrew Johnson Papers, Library of Congress (microfilm copy), Series I, Roll 16.

Before the end of the war, Cooley acquired an appointment as Federal tax commissioner in the conquered regions of South Carolina. Apparently feeling that this rather obscure position was not adequate recompense for the services rendered, Harlan on June 14, 1865 wrote Secretary of the Navy Giddeon Wells soliciting a position for Cooley in the Navy Department. No opening materialized, but after Dole's resignation Harlan persuaded President Johnson to acquiesce in appointing Cooley to the vacated position, and before the end of July the former tax commissioner had assumed his new duties as commissioner of Indian affairs.[21]

Gradually during the month of July, 1865, from reports submitted by officers in the field, Washington officials learned of the recent events in the Indian Territory. When Ulysses S. Grant learned of the terms of the Matthews-Vance treaties, he immediately endorsed the idea of holding a grand council attended by Federal and Indian delegates, but he suggested to the War Department that the site be changed from Armstrong Academy to Fort Gibson, a site more accessible to Washington's commissioners. The Johnson cabinet discussed

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[21]Harlan to Cooley, November 11, 1864 and Harlan to Wells, June 14, 1865, Records of the United States Congress, Appointment Papers, National Archives, 38 Cong.--Sen. 38B-A4; Harlan to Andrew Johnson, July 7, 1865, Andrew Johnson MSS, L.C., Series I, Roll 14; H. J. Carman and R. H. Luthin, Lincoln and the Patronage (New York: Columbia University Press, 1943), p. 292; Johnson Brigham, James Harlan (Iowa City: The State Historical Society of Iowa, 1913), p. 207 (hereafter referred to as Brigham, Harlan).

Indian affairs at a meeting held on July 25, and it was agreed that the secretary of the interior would appoint the Federal representatives.[22]

The slate of commissioners was quickly filled. In addition to Cooley and Southern Superintendent Elijah Sells, Harlan singled out Ely Parker, Thomas Wister and Brigadier General William S. Harney to represent and defend the Federal government's interests at the forthcoming conference. Parker, a Seneca Indian who would himself later become commissioner of Indian affairs, was appointed on the recommendation of Ulysses S. Grant after serving as a member of Grant's staff throughout the war. Wister, a prominent member of the Society of Friends, was recommended to Harlan by Thomas Evans of Philadelphia, a Quaker leader of national renown, while Harney was singled out for service by the secretary of the interior at the request of Henry S. Wilson of Massachusetts, chairman of the Senate Committee on Military Affairs. Major General Francis J. Herron and James M. Edmunds, commissioner of the general land office, were also asked to serve but declined.[23]

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[22]Francis J. Herron to James Harlan, June 30, 1865, R.G. 48, N.A., Letters Received; J. J. Reynolds to Harlan, June 28, 1865, ibid., Letters Received Miscellaneous; Edwin M. Stanton to James R. Doolittle, July 24 and 25, 1865, OR, I, xlviii, part 2, pp. 1117-18, 1122.

[23]James Harlan to Elijah Sells, August 4, 1865, Letters Sent, Indian Division, Secretary of Interior, N.A., Microcopy 606, Roll 5; Harlan to Thomas Evans, August 12, 1865, ibid.; Harlan to William H. Goode, August 12, 1865, ibid.; Congressional Globe, 38 Cong., 2 Sess., December 8, 1864, p. 8; Annual Report of the Commissioner of Indian Affairs for the Year 1865, H. Ex. Doc. No. 1, 39 Cong., 1 Sess., 1866 (Serial 1248), p. 480 (hereafter referred to as Commissioner's Report, 1865).

Shortly after the naming of the Federal commission, the site of the upcoming conference was changed once again. As late as August 7 Secretary Harlan's correspondence indicated that the grand council would convene at Fort Gibson as had been agreed upon in the cabinet meeting of July 25. Beginning on August 12, however, the letters written by the secretary indicated that the confrontation with the tribes of the Indian Territory would take place instead at Fort Smith.[24] Exactly when and by whom this decision was made is not clear, but in all probability Harlan and Cooley, with the concurrence of military officials and the President, made the choice, with convenience and accessibility quite possibly being the determining factors. Fort Smith, Arkansas, was not exactly a cosmopolitan center, but it could better accomodate the throngs planning to attend the grand council than could a crude frontier post such as Fort Gibson. Unlike the fort located in the Cherokee country, Fort Smith was linked by telegraph to the nation's capital, making it possible for Cooley and his associates to keep in constant touch with Secretary Harlan. These telegraphic ties would greatly assist the Federal representatives in handling any contingencies that might arise during the negotiations. Still, all things considered, the decision to transfer the grand council to

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[24]James Harlan to Edwin M. Stanton, August 7, 1865, Letters Sent, Indian Division, Secretary of Interior, N.A., Microcopy 606, Roll 5; Harlan to Thomas Evans, August 12, 1865, ibid.

Fort Smith was of minor significance. What was important was not where the conference met or even who served on the team of Federal negotiators. The factor of crucial significance was the terms and concessions the United States would demand from those tribes who had negotiated treaties of alliance with the South.

In setting those terms, President Johnson deferred to Harlan, and long before the end of the war the Iowan had reached some definite conclusions concerning the Indians' future. Unlike more rabid and irresponsible Westerners, Harlan deplored all talk of annihilating the redman. A policy of total destruction he believed to be both financially prohibitive and morally indefensible.[25] Indian concentration coupled with isolation from the vices of white society was vastly preferable.

The future secretary of the interior first stated his views on the Indian question in Congress early in 1863. In mid-December, 1862 Harlan's Senate colleague James H. Lane introduced a measure, subsequently enacted into law, providing for the extinction of Indian land titles in Kansas and the removal of all Indians from the state. Harlan voiced general support for the measure on the Senate floor, but his remarks indicated that while he believed that the wild, nomadic tribes should be removed to some distant area outside the boundaries of Kansas, those Indians who had taken lands in severalty and

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[25]Brigham, Harlan, p. 203.

adopted agricultural pursuits might be allowed to remain where they were.[26] He later changed his mind, concluding that the Indian Territory should become a resettlement area for the bulk of the Indians of the West, both the nomadic and the more sedentary.

In reality the terms outlined by the secretary for the Fort Smith commissioners were based on legislation introduced by Harlan early in 1865. On February 4, 1865 Senator Lane secured the passage of a resolution instructing the Committee on Indian Affairs to look into the expediency of establishing a territorial government for the Indian Territory. Harlan, a member of the Indian Affairs Committee, submitted a measure on February 20 providing for the organization of a territorial government for the area in question. The bill was referred immediately to the Committee on Indian Affairs whose members apparently had worked with Harlan in its drafting. Back in committee, and later on the floor of the Senate, a number of changes were made and in its final form the measure authorized the establishment of a territorial government composed of a governor, a general council, a supreme court and one district court for each resident tribe of the Territory. The President of the United States, with the consent of the Senate, would appoint the governor. The individual members of the general council would be elected by their fellow tribesmen, with each tribe's representation being based on its total

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[26] Congressional Globe, 37 Cong., 3 Sess., December 15, 1862, p. 84; ibid., January 26, 1863, pp. 506-07.

population. The council could enact general legislation affecting the tribes of the Territory, and it could send a non-voting delegate to Congress to represent the Territory's interests in Washington. Finally, Senate Number 459--as the bill was officially designated--abolished slavery in the Territory.[27]

The members of the Senate debated the merits and wisdom of this measure on two different occasions, first on February 23 and then on March 2. During the course of the discussions the bill's most consistent supporters based their arguments for passage on the alleged benefits which the tribes concerned might derive from a territorial government. Wisconsin's Senator James R. Doolittle contended that passage of the bill was required if order was to be brought out of the anarchy and chaos which the Civil War had inflicted on the Indian Territory. Harlan stated that this legislation was designed to make it possible for the tribes of the area to protect themselves from the aggression of the white man before they wasted away like "the snows before a morning's sun." He provided no details, however, explaining how this measure would afford the desired protection. In response to an inquiry addressed by Alexander Ramsey of Minnesota on February 23, Senator Doolittle stated that while there was nothing in the

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[27] Journal of the Senate of the United States of America, 38 Cong., 2 Sess., 1865, p. 133; Congressional Globe, 38 Cong., 2 Sess., February 20 and 22, 1865, pp. 915, 981.

measure specifically calling for such action, he hoped that tribes from outside the Indian Territory could be persuaded to resettle in the area. But he conceded that the tribes living in states such as Michigan, Wisconsin and Minnesota would probably not be asked to go to the Indian Territory as their habits and customs differed so much from the tribes already there.[28]

Among those least swayed by the statements of the bill's supporters was Senator LaFayette S. Foster of Connecticut. The clause providing for tribal consent for the proposed territorial government he labeled a "transparent humbug." Of course, he said, the Indians would give their consent to the proposed territorial government; through the passage of the proposed measure Congress would have in effect set a pre-condition for the re-establishment of peaceful relations which the tribes would have no power to resist. With prophetic insight he added:

> As it will be managed, it seems to me that this whole matter of consent is an outrage; it will be obtained to a certainty. . . . Those who say no will be disloyal, will be unfaithful, and any chief who attempts to stand in the way of this legislation will be a rebel!

Had the Connecticut senator been blessed with the gift of clairvoyance, he could not have better predicted the Federal government's eventual course of action.[29]

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[28]Congressional Globe, 38 Cong., 2 Sess., February 23 and March 2, 1865, pp. 1023-24, 1305.

[29]Ibid., March 2, 1865, pp. 1309-10.

Despite the cogency of Foster's statements, the Senate by a vote of seventeen to nine approved the Harlan Bill on the evening of March 2. The measure was then submitted to the House of Representatives but was ignored as the lower chamber raced to wrap up other last minute business before Congress' adjournment. While Senate supporters of the bill were probably disappointed by this turn of events, the House's failure to act was not a great setback. As one historian has noted, what was needed was an expression of opinion on the part of the Senate, the body that would be called upon to ratify future Indian treaties. Through the passage of this bill the Senate had approved the idea of consolidating the Indian Territory under a formal territorial government.[30]

Outside Congress, John Ross stood in the front ranks of those who opposed the Harlan-sponsored territorial bill. Through an officer in the internal revenue service, Ross obtained an interview with Harlan while Senate Number 459 was pending before the upper house and undoubtedly told the Iowa senator of his opposition to the legislation. Along with his fellow Cherokee delegates, Ross, in behalf of all the tribes of the Indian Territory, submitted a formal protest to to Congress charging that the passage of the Harlan Bill

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[30]Ibid., March 2, 1865, pp. 1310, 1420; Annie Abel, The Slaveholding Indians, Vol. III: The American Indian Under Reconstruction (Cleveland: The Arthur H. Clark Co., 1925), p. 143.

would violate their treaty rights.[31]

Secretary Harlan was thus well aware of the Cherokee chieftan's past opposition to a territorial form of government. Also cognizant of what one contemporary referred to as Ross' "talismatic" influence throughout the Indian Territory, the secretary made careful preparations before sending the Federal commissioners off to Fort Smith.[32] On August 15, 1865 Harlan forwarded to Commissioner Cooley copies of two letters written by and a speech delivered by John Ross in the fall of 1861. In the two letters Ross allegedly urged Opothleyaholo and his followers to join forces with the South, and in the speech Ross was quoted as saying that the Pike treaty was the best agreement ever entered into by the Cherokee Nation. Harlan instructed Cooley to take copies of these documents with him to Fort Smith, and while he did not specifically say what they were to be used for, the implication was clear. If John Ross in any way tried to block the fulfillment of the Federal government's objectives for the Indian Territory, these materials could be used to discredit the Cherokee chief.[33]

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[31]Joseph J. Lewis to James Harlan, March 2, 1865, John Ross Papers, Gilcrease Institute, Tulsa; H. Mis. Doc. No. 56, 38 Cong., 2 Sess., 1865 (Serial 1232).

[32]J. W. Stapler to John P. Usher, February 21, 1865, R.G. 48, N.A., Letters Received Miscellaneous.

[33]Harlan to Cooley, August 15, 1865, Letters Sent, Indian Division, Secretary of Interior, N.A., Microcopy 606, Roll 5.

The following day, through Commissioner Cooley, Harlan addressed a lengthy, loosely organized letter of instruction to the Federal commissioners. Two themes stood out in this missive: the establishment of a formal territorial government for the Indian Territory and the resettlement within the Territory of tribes not then residing there. Under the directions issued by the secretary, the Federal commissioners were to induce the tribes of the Territory to accept the establishment of a centralized, territorial government composed of a presidentially appointed governor and a general council. For reference purposes Harlan sent along a copy of Senate Number 459 which the commissioners were to use as a guide in their negotiations on the territorial question.

So far as the resettlement issue was concerned the Federal representatives were to determine the population of each tribe currently residing in the Territory and demand from each the cession of unneeded, surplus lands. In impelling the tribes of the Territory to grant the desired consessions, the commissioners should indicate that all such actions would give evidence of good will toward the United States. If this line of persuasion was not sufficient these people might be warned that the statute of July 5, 1862 authorized the President to abrogate all treaties with those tribes who had aligned themselves with the South, a not too subtle warning that refusal to cooperate might have unpleasant consequences. In the ceded areas to be acquired, both nomadic and non-nomadic tribes

from other areas were to be placed, but special care was to be taken to prevent the resettlement of those who were hostile to the indigenous tribes of the Territory. The wandering tribes were to be lodged in areas as remote as possible from the white thoroughfares crossing the region, as their transition "to the more quiet and confining pursuits of civilization" must be a gradual one. By contrast, if possible, the more civilized Indians from outside the Indian Territory were to be persuaded to merge their funds and live as one people with the tribes whose lands they occupied. Finally, any agreements signed must contain stipulations prohibiting white persons from settling in the Territory, with the exception of the officers, agents and employees of the United States government as well as those whites adopted by the resident tribes.

Harlan's set of instructions also dealt with problems growing out of the war, such as tribal factionalism. In a statement which revealed his own lack of knowledge of pre-war conditions, the secretary pointed out that the recent conflict might have brought about the formation of contending parties within the tribes. The commissioners should inform these people that the President was anxious for all past differences to be buried in oblivion, but if a reconciliation could not be worked out within a given tribe or tribes a division of tribal lands, funds and annuities between contending factions might be agreed to. Consent should not be given to any such division, however, until all efforts to restore harmony had proved

utterly unavailing. Slavery should also be abolished and steps taken to incorporate the former slaves of the Territory into the tribes on a completely equal footing. The Indians were also to be informed that the sums expended on refugee relief would not be refunded, and those tribes with funds invested in Southern state bonds should consent to the sale of this paper and the reinvestment of the proceeds in United States bonds.

As to the number of treaties to be negotiated the secretary granted the commissioners substantial latitude. If they found it necessary to make a general treaty with all the tribes at the council, they were authorized to do so. If, on the other hand, circumstances dictated that they treat separately with one or more tribes, they might do that also. But Harlan did insist on one thing:

> In every treaty which you may negotiate, the Indian parties thereto should expressly agree that any amendment thereof, which the Senate of the United States may make, shall be taken and held to be a part of the same, and as binding in every respect as if it had, after being made, been formally submitted to and ratified by such parties.[34]

Shortly after the receipt of this rambling document, the Federal commissioners, with the exception of General Harney, left Washington. Harney at the time of his appointment was at home in St. Louis, and he traveled to Fort Smith independently of the others. Within a few days Cooley and his

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[34]Harlan to Cooley, August 16, 1865, ibid.

companions reached Leavenworth, Kansas, from which point a telegram was sent to Harlan on August 24. The commissioners asked the secretary of the interior whether they should make the opening statements at the upcoming council, or were they merely to state that they were there to hear what the Indian delegates had to say. That same day by return wire Harlan informed his emissaries that they were to be governed by the circumstances they encountered. He suggested, however, that they begin by making an opening statement to the effect that the President was willing to grant the Indians of the Territory peace, but he wanted land for the settlement of other Indians and a civil government for the entire Territory.[35]

With the secretary's communication in hand the commissioners moved on to Fort Scott, then to Fort Gibson and finally Fort Smith, reaching the latter point on September 5. In traveling from Leavenworth to the council site, Cooley and his associates rode in wagons and ambulances provided by army officials in the West and were accompanied by a 100 man cavalry escort.[36]

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[35]Fort Smith New Era, September 2, 1865, p. 2; W. S. Harney to James Harlan, August 14, 1865, R.G. 48, N.A., Letters Received Miscellaneous; D. N. Cooley to Harlan, August 24, 1865, ibid., Letters Received; Harlan to Cooley, August 24, 1865, Letters Sent, Indian Division, Secretary of Interior, N.A., Microcopy 606, Roll 5.

[36]Cyrus Busey to D. N. Cooley, August 25, 1865, and undated, unsigned notation in Documents Relating to the Negotiation of an Unratified Treaty of September 13, 1865, with the Cherokee, Creek, Choctaw, Chickasaw, Osage, Seminole, Seneca, Shawnee, and Quapaw Indians, Unratified Treaty File, N.A., Microcopy T-494, Roll 8.

The Federal government's representatives were not the only ones making the sojourn from Kansas to Fort Smith. News of the government's coming confrontation with the tribes of the Indian Territory, a confrontation aimed at reducing the Indian population of Kansas, had spread rapidly, creating excitement in all areas of the state, especially in fledgling railroad centers such as Leavenworth and Lawrence. Chief among the rumor mongers were Kansas newspapers, some of which claimed that 50,000 Indians were expected at the council. One Kansan, William Weer, leader of the abortive raid of 1862 wrote his congressman saying: "Treaties will be made--railroad grants fixed up and things done generally." Spurred on by the lure of new lands and easy profits, prospective entrepreneurs along with assorted charlatans and camp followers preceded, followed and quite possibly even accompanied the Federal representatives bound for Fort Smith. By the time the conference opened, the local press reported that the town was a teeming conglomeration of red, white and black humanity.[37]

The first session of the Fort Smith council began at 10:30 on the morning of Friday, September 8. Sitting in the

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[37]Weer to Sidney Clark, July 26, 1865, Letters Received By the Office of Indian Affairs, Southern Superintendency, N.A., Microcopy 234, Roll 836; Fort Smith New Era, September 9, 1865, p. 2. Whenever possible, the following account of the Fort Smith meeting will be based on notes compiled by Charles E. Mix, Chief Clerk of the Indian Bureau who acted as the council's secretary. This unorganized, oftimes illegible material is found with the copies of the Fort Smith treaty in the Unratified Treaty Files of the National Archives and will be cited as Daily Proceedings, Documents, U.T.F., N.A., Microcopy T-494, Roll 8.

presiding officer's chair, in a council room provided by army officials at the military post, Commissioner Cooley confronted representatives from the loyal Cherokees, Creeks, Seminoles, Choctaws and Chickasaws as well as delegates from the Osages Cowskin Senecas, Senecas and Shawnees, Wyandotts and Quapaws. Also present were agents G. C. Snow of the Osages, George A. Reynolds of the Seminoles, Isaac Coleman of the Choctaws and Chickasaws, Justin Harlan of the Cherokees, J. W. Dunn of the Creeks, Milo Gookins of the Wichitas and J. B. Abbott of the Shawnees. To the south, representatives from the rebel factions of the tribes of the Indian Territory had assembled briefly on September 6 at Armstrong Academy, only to adjourn immediately, but none had as yet reached Fort Smith.[38]

Following a prayer in the Cherokee tongue by that tribe's acting principal chief Lewis Downing, Commissioner Cooley delivered his opening remarks. As if any reminder were needed, Cooley pointed out that portions of several tribes had aligned with the government's enemies and had waged war on the United States and its loyal Indian allies. "All such," he said, "have rightfully forfeited all annuities and interests in the lands in the Indian Territory." The President, he added, was "deeply pained" by the actions of those who had "violated their plighted faith and treaty obligations. . . ." But after

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[38]Daily Proceedings, September 8, 1865, Documents, U.T.F., N.A., Microcopy T-494, Roll 8; Ira G. Clark, "Attempts to Form an Indian Confederation in Oklahoma--1860-1890," (Unpublished M.A. thesis, University of Oklahoma, 1937), p. 56.

subduing in battle those who had caused the rebellion he was now willing "to hear his erring children in extenuation of their great crime." Upon learning of the Indians' desire to renew their allegiance to the United States the President had authorized his commissioners to make new treaties with the tribes who wanted peace among themselves and with the Federal government. And further:

> He directs us to say to those who remain true, and who have aided him in punishing the rebels, he is well pleased with you, and your rights and interests will be protected by the United States.[39]

His discourse concluded, Cooley threw the floor open to replies from the Indian delegates. The spokesmen of those present asserted that since they had learned of the exact purpose of this council only since their arrival at Fort Smith they needed time for the preparation of answers to the commissioner's remarks. The decision was then made to adjourn until 4:30 that afternoon, by which time Cooley asked that the delegates be prepared to show their credentials. He also requested that each delegation, before the beginning of the afternoon session, choose a number, not exceeding five, authorized to speak for their tribe and sign treaties.[40]

The afternoon's activities began with a brief address by Smith Christie of the loyal Cherokees. Christie expressed

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[39]Daily Proceeding, September 8, 1865, Documents, U.T.F., N.A., Microcopy T-494, Roll 8.

[40]Ibid.

pleasure at having the opportunity to meet with the Federal commissioners and gratitude for the kind words expressed earlier toward the Indians who had remained loyal to the United States. He insisted, however, that he and his fellow Cherokee delegates had no authority to make a treaty or enter into any arrangement of any kind with the United States or any other tribe of Indians. They were told by their principal chief, John Ross, that a grand council would convene at Fort Smith, but since they received no information concerning the object of this meeting they had arrived without specific instructions from their people. But they would gladly report to their National Council whatever subjects the Federal commissioners laid before them.[41]

The spokesmen of the other tribes of the Indian Territory expressed similar sentiments. Mikko Hutkey of the Creeks declared that his people believed that the council was called for the sole purpose of re-establishing ties with their brothers who had joined the South. Hutkey's remarks were seconded by Pascota of the Seminoles who declared that he and his fellow delegates had come for the same purpose and were not prepared to do business as their "friends of the South" were not present. Robert B. Patton insisted that the only aim of the 212 loyal Choctaws whom he represented was to get possession of their former homes, while Robert Lewis of the loyal Chickasaws

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[41] Ibid.

stated simply that his people would be willing "to do whatever the rest do." After the conclusion of these rather cursory, non-committal responses, Cooley adjourned the council for the day promising to make on Saturday a complete statement of the wishes and intentions of the government.[42]

By the time the council reconvened at 10:45 the next morning, Cooley had distilled Harlan's rambling set of instructions into seven basic demands. The commissioner began his discourse by reeling off the names of the tribes that had aligned with the South and the dates of the treaties signed with Albert Pike. These actions, he said, along with the suppression of the rebellion left these tribes without any treaties or guarantee of protection by the United States. Furthermore, under the terms of the law of July 5, 1862 those who had joined the South could lose all their rights to annuities and lands if the President chose to exercise the authority delegated to him. But the President was not anxious to enforce these penalties; he desired instead to renew the relations which existed at the outbreak of the war, and his commissioners were now prepared to propose definite terms upon which normal ties could be re-established. Each tribe must enter into a treaty for permanent peace and amity amongst themselves and "with each nation and tribe" and the United States; the tribes of the Indian Territory must pledge to aid

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[42] Ibid.

the United States when called upon in compelling the plains Indians to maintain peace with each other, the tribes of the Territory and the Federal government; slavery must be abolished immediately and steps taken for the adequate care of the former slaves, preferably by their incorporation into the tribes on a basis of complete quality; the treaties must stipulate specifically that slavery or involuntary servitude would never again exist in any tribe except in punishment of crime; lands must be set aside for the resettlement of friendly tribes from Kansas and elsewhere on terms to be set by the parties concerned or by the United States; the tribes of the Territory must be formed into a consolidated government similar to the one outlined in the recently passed Harlan Bill; finally no white persons except officers, agents and employees of the United States, and employees of internal improvements authorized by the Federal government, could reside in the Territory unless they were incorporated into some tribe according to that tribe's normal usages.

His terms enunciated, Cooley again assured the tribesmen present that those who had always been loyal to the United States would receive liberal treatment even though their governments might have joined the enemy. After Mikko Hutkey stated that he and his brothers would have replies ready by Monday, the council adjourned at 1:15 in the afternoon.[43]

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[43] Ibid.

The Southern delegates, contrary to expectations, had not arrived by Monday. Thus the third and fourth days of the council, Monday and Tuesday, September 11 and 12, were devoted to the tribal replies to Cooley's seven demands. The high point of these two days was the exchange between the Cherokee delegation and the commissioner of Indian affairs, the council's first bloodletting. On Monday, H. D. Reese of the Cherokee delegation read a lengthy paper defending the tribe's course in 1861. The thing that bothered them most was Cooley's assertion that the tribes that had aligned themselves with the South had forfeited all lands, annuities and protection. To any charges of treason, said Reese, his people pleaded not guilty, and he attempted to shift the onus of their action on to the United States.

> . . . if, through the dire necessities of the times, we were compelled to commit an overt act, in which our only object was to gain time and to save the lives of ourselves and families, the sin does not lie at our door.

Every treaty, he continued, signed by the Cherokees since the Treaty of Hopewell in 1785 contained guarantees of United States' protection. With this protection withdrawn in 1861 the Cherokees were forced to join the South to avoid annihilation. But they took this step with the firm intention of flying to "their Father's home" at the first opportunity.[44]

Cooley, in behalf of the Federal commissioners, read

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[44]Commissioner's Report, 1865, pp. 506-07.

a tart statement of reply on Tuesday. The commissioner of Indian affairs denied that he had said that the forfeitures provided for in the act of July 5, 1862 were an accomplished fact. The Federal government's representatives had only stated what were the legitimate, legal consequences of treason, consequences which the President did not desire to enforce. Then quoting at length from the documents provided by Secretary Harlan, he asserted that John Ross' statements and actions in 1861 seemed to indicate that a Confederate alliance was something much desired by the principal chief, and voluntarily entered into by the Cherokee people. That hundreds, perhaps thousands of the Cherokees never assented in their hearts to the Pike treaty, the Federal commissioners believed, and their deeds of valor in defense of "the old flag" merited praise and honor.

> But while John Ross is the principal chief of the Cherokee nation, and the treaty made by him and the nation with those in rebellion . . . is not repudiated and a new treaty made with the United States . . . you, as a nation, are legally, morally, and of right ought to be, as you are, subject to the will and pleasure of the President. . . .[45]

The remaining records of the Fort Smith Council do not indicate if Cooley's statement had to be translated into the Cherokee tongue. If so, probably nothing was lost in the translation. The meaning was clear. While other Cherokees might legitimately claim to have acted under duress in 1861,

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[45]Daily Proceedings, September 12, 1865, Documents, U.T.F., N.A., Microcopy T-494, Roll 8.

Ross, the living symbol of the solidarity of the conservative, full-blood Cherokees and their opposition to Federal goals, was an unrepentant rebel. And if the Cherokees hoped to escape the dire consequences of their past actions, Ross' leadership, along with the Pike treaty, must be repudiated.

Wednesday, September 13, the fifth day of the conference, witnessed the introduction of a proposed treaty of peace and amity which the Federal commissioners had begun drafting the preceding weekend. Under its provisions the Five Civilized Tribes along with the Osages, Senecas, Senecas and Shawnees, and Quapaws were to acknowledge the United States' exclusive jurisdiction over them, promise not to enter into any alliance with any other sovereign power and repudiate any past actions in which they renounced their allegiance to the Federal government. In return the United States promised to re-establish peace and friendship with all tribes within "the so-called Indian country," provide them ample protection and "arrange and settle all questions relating and growing out of former treaties" either at this council or some future one.[46] This last proviso, implying the need for a future council, reflected the Federal commissioners' growing awareness of the apparent impossibility of settling all pending questions at Fort Smith.

Cooley and his associates affixed their signatures to this document on Tuesday the fourteenth. With two exceptions,

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[46]Daily Proceedings, September 13, 1865, ibid.

the delegations from the tribes of the Territory followed suit. The loyal Choctaws, for reasons not explained, did not sign at this time but did so before the final adjournment on September 21. The Cherokees likewise abstained. In behalf of his charges, Agent Justin Harlan submitted a statement to the effect that illness prevented the attendance of part of the delegation at this session, and those Cherokees present in the council room did not choose to sign without their brothers.[47]

The Cherokee delegation appeared on Friday, September 15 with a concise, emphatic note of protest. Quite possibly this statement was the handiwork of John Ross; certainly its spirit was in harmony with his. Early in August the aging, enfeebled principal chief made his way westward through Arkansas to his wartorn country. For several weeks he stayed with old friends before wearily making his way to Fort Smith, arriving several days after the council opened. He seems not to have been an official delegate, but he was the backbone of loyal Cherokee resistance to Federal demands.[48]

The Cherokee statement was presented to the council by H. D. Reese. He prefaced his reading of this declaration by stating that his people were prepared to sign the treaty of peace and amity, but they were not willing to concede any

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[47]Daily Proceedings, September 14, 1865, ibid.

[48]John Ross to Sister Sarah, August 3, 1865, John Ross MSS, Gilcrease Institute, Tulsa; Grace S. Woodward, The Cherokees (Norman: University of Oklahoma Press, 1963), p. 291.

forfeiture of any treaty rights, for they were not guilty of treason. Reese then read the statement in which the loyal Cherokees acknowledged the execution of the Pike treaty of October 7, 1861 but declared that the agreement was procured through the coercion of the rebel army. Commissioner Cooley next mumbled something about not wanting any name signed in protest, but after a brief consultation the Federal representatives agreed to permit the Cherokees to add their signatures to the document. This task done, an adjournment was called until two that afternoon when some of the Southern delegates from Armstrong Academy were expected to appear.[49]

One of the first of the Armstrong Academy coterie to reach Fort Smith was Governor Winchester Colbert of the Chickasaws who arrived on September 13. The governor told Cooley and his associates that a large group representing those Indians who had fought with the South was on its way, and on the fifteenth several hundred delegates and hangers-on from Armstrong Academy reached the council site.[50]

For the Cherokees, the arrival of these people marked the second time that wartime adversaries had encountered one another since the May surrender. In mid-July, at the suggestion of the Southern Cherokees, delegates from the two factions met each other near Fort Gibson in an effort to re-establish some

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[49]Commissioner's Report, 1865, p. 519.

[50]John B. Garrett to James Harlan, September 13, 1865, R.G. 48, N.A., Letters Received Miscellaneous; Fort Smith Weekly News, September 16, 1865, p. 2.

semblance of tribal unity.[51] The meeting ended in failure, however, apparently because the Union Cherokees would not promise an immediate repeal of laws passed in 1863 by the National Council confiscating the property of those tribesmen fighting for the Confederacy. Thus the Southern Cherokee delegates reached Fort Smith convinced that their people's welfare could be protected only by dividing the Cherokee domain between the hostile parties.

As had occurred so often in the past, Indian dissensions worked to the advantage of the white man. Cooley was determined to break Cherokee resistance to his demands by deposing Ross, for as he admitted in a wire to Secretary Harlan, the Cherokee chieftan was "in our way."[52] The rebel Cherokees, their memories of their embittered past undimmed, willingly cooperated in this endeavor, making possible the establishment of a strange alliance between the commissioner of Indian affairs and those individuals who had fought with the South throughout the war. The rebel Cherokees worked with Cooley in trying to discredit Ross, and the commissioner aided the rebels in regaining a foothold in their country.

The Federal commissioners' open denunciation of Ross came at the afternoon session of the council on Friday,

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[51] Laws of the Cherokee Nation, Vol. 251, np, nd, p. 36, Indian Records Division, Oklahoma Historical Society, Oklahoma City.

[52] Cooley to Harlan, September 16, [?] 1865, R.G. 48, N.A., Letters Received Miscellaneous.

September 15. In a formal statement read to the assembled delegates by Cooley, the United States' representatives bitterly attacked Ross for alleged sins of both the past and present. He had, by means of "his superior education and ability . . . induced many of his people to abjure their allegiance to the United States and to join the states in rebellion. . . ." Now by virture of his position as "pretended first chief of the Cherokees" he was exercising "an influence in his nation and at this council adverse to the wishes and interests of all loyal and true Indians. . . ." Therefore, the Federal commissioners, convinced that Ross was not the choice of "any considerable portion" of his tribe and did not in fact legally hold the position of principal chief, announced their refusal "in any way or manner" to recognize the long-time Cherokee leader as chief of his nation. John Ross was present in the council room for the reading of this document, and after what the official secretary of the proceedings called "a short calloquy" involving Ross, Cooley and rebel Cherokee leader E. C. Boudinot, the council adjourned.[53]

The eighth day of the proceedings, Saturday, September 16 revealed that the views of Cooley and his Southern Cherokee allies were not completely harmonious. In the early stages of the council, the loyal Indians had expressed serious misgivings

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[53]The original handwritten copy of this statement can be found in Documents, U.T.F., N.A., Microcopy T-494, Roll 8; Also see Commissioner's Report, 1865, p. 519.

about the Negro question. They indicated their readiness to make adequate provisions for their former slaves and free persons of color living in their tribes at the outbreak of the war. But they did not want the Indian Territory to become a dumping ground for former slaves from surrounding Southern states. Similarly, the Southern Cherokees in their statement presented by E. C. Boudinot stated their desire to deal fairly with their former slaves but protested against their incorporation into the tribe on a basis of complete equality. In addition serious objections were expressed to the establishment of a consolidated territorial government. In the light of the different tastes, customs and levels of development that prevailed in the Territory, such a step might produce "inexplicable confusion." They announced their willingness, however, to study the plan recently proposed in the United States Senate. Finally, the Southern Cherokees confessed that they could see no way in which future peace could be maintained in the land other than through an equitable division of the Cherokee domain between the tribe's rival factions.[54]

The delivery of these remarks was followed by another exchange between the rival Cherokees. In this instance Boudinot was arrayed against John Ross and his nephew William P. Ross. The official records of the proceedings give no

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[54]Daily Proceedings, September 9 and 16, 1865, Documents, U.T.F., N.A., Microcopy T-494, Roll 8.

clue as to what was said but the words undoubtedly were barbed. Cooley intervened and brought the discussion to a close when he announced that the Ross faction would be permitted to submit a statement to the council on Monday morning.[55]

In the final four sessions of the Fort Smith Council, Monday through Thursday, September 18 through 21, there was much activity, but nothing of any real substance was accomplished. The loyal Cherokees on Monday presented an elaborate defense of John Ross, asserting that he was chief both in law and in fact, having been elected for a four-year term by his compatriots in August, 1863. But their rhetoric was for naught. Having received a telegram from Washington stating that both Harlan and President Johnson approved their stand with regard to Ross, the Federal commissioners refused to recede from the position taken the preceding Friday. This exchange of views was accompanied by the appointment of two, five-man committees representing the rival Cherokee factions. Their goal was to settle the tribe's domestic affairs, but on the question of property confiscation their talks again faltered and collapsed. Meanwhile, outside the council room Ely Parker met with the rebel Choctaws and Chickasaws, who represented the overwhelming majorities in both their tribes, in an effort to draft a treaty settling all questions growing out of the war. The complex issues to be resolved, however, defied

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[55]Daily Proceedings, September 16, 1865, ibid.

an immediate solution, and these talks, too, foundered.[56]

When this effort to negotiate a final treaty with the most united of the tribes failed, the seemingly endless council was brought to an end on the afternoon of September 21. Commissioner Cooley made some final perfunctory, congratulatory remarks, after which he adjourned the council to meet again at the call of the secretary of the interior.[57]

The Fort Smith proceedings concluded, the delegates of the Indian Territory tribes scattered to their homes to grapple with their domestic problems and prepare for their future talks with the United States. Cooley, on the other hand, headed eastward in high spirits carrying the treaty of peace and amity signed by all factions of the tribes of the Territory.[58] He had not achieved all that he had hoped for at Fort Smith, but that mattered little. Knowing that the tribesmen he had faced at the conference table were both powerless and divided, the commissioner realized that the United States would soon get everything that it wanted from the inhabitants of the Indian Territory.

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[56]D. N. Cooley et al to James Harlan, September 16, 1865, and Harlan to Cooley et al, September 17, 1865, R.G. 48, N.A., Letters Received Miscellaneous; Commissioner's Report, 1865, pp. 525-37.

[57]Ibid., p. 537.

[58]D. N. Cooley to James Harlan, September 21, 1865, R.G. 48, N.A., Letters Received Miscellaneous.

## CHAPTER XI

## THE TREATIES OF 1866

Other than familiarizing the tribes present with the demands and expectations of the United States, the Fort Smith Council accomplished nothing important. The treaty of peace and amity, in which the Indian delegates reaffirmed their tribes' allegiance and subservience to the United States, was so unimportant that the Johnson administration never submitted it to the Senate for ratification.[1] Much more was expected by the United States than vows of friendship and goodwill, yet clearly the questions and issues at stake were of such magnitude that they could not be finalized at a hastily convened frontier council. Thus, before the final adjournment at Fort Smith on September 21, an unwritten agreement was reached that the tribes of the Indian Territory would send delegates to Washington to negotiate treaties settling all questions growing out of the war as well as those

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[1]This conclusion is based on the fact that in all the papers of the Fort Smith Council found with this treaty in the Unratified Treaty File in the National Archives, there is no indication that the Senate ever took any sort of action on this pact.

pending at the outbreak of the conflict.[2]

This decision, in turn, created another problem--that of deciding who would represent the tribes at the Washington negotiations. Would the delegations be made up solely of those Indians who had fought with the United States, or would they be composed of representatives of both the loyal and rebel Indians? Or would each faction within each tribe send a separate delegation?

The United States did nothing to clarify this particular issue. Indeed, the treatment meted out to the Cherokees at Fort Smith by Cooley and his associates had the effect of blurring the distinction between loyal and disloyal tribesmen. Left to their own devices, therefore, the Civilized Tribes of the Indian Territory wrestled with this question, with mixed results.

With the exception of a mere handful of people, the Choctaws and Chickasaws to a man supported the Confederate war effort. After the conclusion of hostilities in 1865, the rebel majorities in both these tribes dominated the re-establishment of treaty relations with the United States, with no real opposition from the loyal tribesmen. At the Fort Smith Council the loyal Choctaw and Chickasaw delegates never claimed to represent the dominant factions of their tribes. They

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[2]Annual Report of the Commissioner of Indian Affairs for the Year 1866, H. Ex. Doc. No. 1, 39 Cong., 2 Sess., 1867 (Serial 1284), p. 8 (hereafter cited as Commissioner's Report, 1866).

admitted that they were present only to protect the property interests of their people, and in the later negotiations in Washington they asked only that these interests not be forgotten.[3]

The other tribes spoke with less unanimity in Washington. Despite their past differences the rival Creek factions managed to reoccupy their country with a minimum amount of dissension. Families and friends long separated by the war embraced one another and wasted little energy in recriminations, and at the beginning of 1866 Agent J. W. Dunn reported that all was quiet and orderly in the Creek Nation. This orderliness, however, did not extend into the political arena. The loyal Creeks sent a delegation to Washington composed of Chief Sands, Coweta Micco, and Cotchoche, while the Southern faction, fearing that their rivals might make inordinate concessions to the Federal government, sent D. N. McIntosh and James M. C. Smith to the capital city. But in issuing instructions to these two men, rebel Creek Chief Samuel Checote urged them to lay past differences aside and cooperate if possible with the Union delegates in promoting the best interests of all the Creek people.[4]

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[3]Robert B. Patton et al to The Treaty Commissioners of the United States, January 8, 1866 and Susan Cooper et al to James Harlan, April 10, 1866, Letters Received by the Office of Indian Affairs, Choctaw Agency, National Archives, Microcopy 234, Roll 176.

[4]J. W. Dunn to Elijah Sells, January 5, 1866, and Samuel Checote to D. N. McIntosh and James M. C. Smith, January 18, 1866, Letters Received, O.I.A., Creek Agency, N.A., Microcopy 234, Roll 231; Angie Debo, The Road to Disappearance (Norman: The University of Oklahoma Press, 1941), pp. 170-71.

Far less harmonious were the affairs of the Cherokees. Four years of internecine war had done nothing to heal the cleavages within the tribe, and the one feeble attempt in July, 1865 to establish some sort of tribal unity failed over the issue of confiscation. On October 24, 1863 the National Council enacted a measure barring rebel Cherokees from collecting debts owed to them either by the tribal government or the loyal members of the tribe. The law in addition provided that loyal Cherokees having financial claims against rebel tribesmen could satisfy their claims by selling the property of those from whom debts were owed. On July 13, 1865 the National Council passed a further enactment providing a full pardon, with some listed exceptions, to those rebel Cherokees who would take an oath of allegiance to support and defend the tribe's constitution, but nothing was said about repealing the Confiscation Act of 1863.[5]

At the July meeting, the loyal Cherokee representatives refused to make any specific promises about the confiscation issue beyond agreeing to bring the question to the attention of the National Council. To the rebel Cherokees who wanted a definite pledge that the noxious measure of 1863 would be repealed, this was not enough. Thus the two rival factions,

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[5] Laws of the Cherokee Nation, Vol. 251, np, nd, p. 19; Indian Records Division, Oklahoma Historical Society, Oklahoma City (hereafter cited as Cherokee Laws, Vol 251); see also the Proclamation of July 14, 1865 issued by Acting Principal Chief Lewis Downing, Letters Received, O.I.A., Cherokee Agency, N.A., Microcopy 234, Roll 100.

as bitterly divided as ever, were represented by separate delegations at Fort Smith and later at Washington. On November 3, 1865 the National Council designated Smith Christie, White Catcher, Daniel H. Ross, Houston Benge, John B. Jones, James McDaniel and Thomas Pegg as the individuals who would represent the tribe in the coming negotiations in Washington. In a companion measure passed four days later, the Council requested and authorized John Ross to cooperate with the delegation. The Southern Cherokee delegation was appointed by Stand Watie, the principal chief of the rebel faction, and was made up of Watie and his son Saladin, William Penn Adair, J. A. Scales, E. C. Boudinot and John Rollin Ridge.[6]

Among the Seminoles, the situation was similar, but the feelings of antipathy were not as extreme. Following the conclusion of the Fort Smith Council, the rebel and loyal Seminole leaders met together on several occasions, but they settled nothing. The rebels, on their part, claimed that their signing of the treaty of peace and amity had absolved them of all wrongdoing and restored them to all their former rights. In contrast, the Union Seminoles maintained that their disloyal bretheren must assume a subservient position by,

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[6]Cherokee Laws, Vol. 251, pp. 43-44; Annual Report of the Commissioner of Indian Affairs for the Year 1865, H. Ex. Doc. No. 1, 39 Cong., 1 Sess., 1866 (Serial 1248), p. 523; Lois E. Forde, "Elias Cornelius Boudinot" (Unpublished Ph.D. dissertation, Columbia University, 1951), p. 121; Gaston L. Litton, "The Principal Chiefs of the Cherokee Nation," Chronicles of Oklahoma, XV (1937), p. 264.

among other things, recognizing the loyal leader John Chupco as chief. Unwilling to accept these terms, the rebels sent one of their Fort Smith representatives, John Brown, to Washington to defend their interests while the Union faction was represented by Chupco, Cho-cote-harjo and Fos-har-jo.[7]

Typically, the United States did not wait to finalize its relations with the Civilized Tribes before negotiating treaties with other tribes affecting the future of the Indian Territory. In response to the demands of land-hungry Westerners several pacts were concluded in the fall of 1865 looking toward the removal and resettlement of a number of the nomadic tribes within the confines of the Indian Territory.

The first to come to terms were the Osages. While Cooley and his fellow commissioners labored at Fort Smith, Brevet Major General John B. Sanborn held a series of talks with Osage leaders at the tribe's council ground in Kansas near present-day Wichita. Southern Superintendent Elijah Sells appeared on the scene on September 28, after the breakup of the Fort Smith Council, and on September 29 the tribe came to terms with the Federal negotiators. Under the provisions of the September treaty, the Osages sold outright or ceded in trust to the United States a total of almost four million acres

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[7]George A. Reynolds to Sir [Elijah Sells?], December 5, 1865, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 836; John Chupco et al to the Commissioner of Indian Affairs, January 30, 1866, and statement signed by John Jumper et al, December 19, 1865, ibid., Seminole Agency, Microcopy 234, Roll 803.

of land in Kansas. Within six months after the signing of this agreement the tribe was to abandon the relinquished lands and concentrate itself on its diminished reservation. If at some future time the tribe agreed to leave the state entirely, this diminished reserve, too, would be sold, with one-half the proceeds being used to purchase a new tribal home within the Indian Territory.[8]

The following month additional pacts were negotiated, beginning with a treaty with the Cheyenne and Arapaho signed on October 14 at a parley held near the mouth of the Little Arkansas River. Under the terms of this agreement the two tribes relinquished their lands in the Colorado Territory and agreed to settle on a new reservation located between the Arkansas and Cimarron rivers, lands lying within the western portion of the Cherokee domain. The United States' commissioners who negotiated this agreement--John B. Sanborn, William S. Harney, Thomas Murphy, Kit Carson, William W. Bent, Jesse H. Leavenworth and James Steele--affixed their signatures four days later to a similar pact with the Comanche and Kiowas. In this instance these tribes agreed to confine their wanderings to an extensive reservation lying between the Red and Cimarron rivers and running westward from the ninety-eighth meridian to

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[8]Elijah Sells to D. N. Cooley, October 2, 1865, R.G. 48, N.A., Letters Received; Commissioner's Report, 1866, p. 4; Charles J. Kappler (ed.), Indian Affairs. Laws and Treaties. (Washington: Government Printing Office, 1903), II, pp. 673-76 (hereafter cited as Kappler, Laws and Treaties, II).

the eastern boundary of the New Mexico Territory.[9]

The execution of these treaties proved to be no simple task, but their negotiation was a relatively easy, uncomplicated matter compared to the Federal government's effort to come to terms with the Civilized Tribes of the Indian Territory. As the new year 1866 began, delegates from these tribes began arriving in Washington, and for several months the corridors of the Interior Department building echoed the comings and goings of these people as they anxiously tried to re-establish normal treaty ties with the United States.

In addition to the seven points delineated by Cooley at Fort Smith, there were other issues at stake which needed to be settled at the Washington negotiations. For example, relations between the loyal and disloyal Cherokees and Seminoles, if possible, must be made more harmonious. At the same time those individuals in all tribes who had remained loyal to the United States must be compensated in some manner for property destroyed by hostile forces during the war. And finally, there was the railroad question.

This particular issue had been mentioned at Fort Smith, but only obliquely. In listing his demands, Commissioner Cooley stipulated in his seventh point that:

> No white person except officers, agents and employees of the government, or of any internal improvement authorized by the government will

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[9]Commissioner's Report, 1866, pp. 2-3; Kappler, Laws and Treaties, II, pp. 679-85.

be permitted to reside in the territory. . . .[10]

In the tumultuous, confusing and lengthy proceedings which followed, the railroad question was ignored and was not discussed within the confines of the council room. Indeed, in the light of what appeared to be vastly more pressing issues, the assembled Indian delegates possibly did not grasp the implications of Cooley's seventh point. Nonetheless, his passing, inferential reference to the topic indicated that the Federal government was thinking in terms stitching the trackless expanses of the Indian Territory with iron rails.

Certainly the idea was not new. In 1853-54 Lieutenant A. W. Whipple, at the behest of Secretary of War Jefferson Davis, explored the possibilities of constructing a trans-continental railroad line along the thirty-fifth parallel from Fort Smith to the Pacific, a route that bisected the Indian Territory. Slightly later Kansas settlers and politicians began talking in terms of promoting the wealth of their state-to-be through the construction of a north-south railroad linking the farmlands of the Kansas-Missouri area with the seaport markets of the Gulf Coast. A line of this type, too, almost inevitably would cross the Indian Territory, and Article XVIII of the Choctaw-Chickasaw treaty of 1855 provided for the construction of railroad and telegraph lines through the Choctaw and Chickasaw domains either by the United States

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[10]Commissioner's Report, 1865, p. 483 (italics added).

or private corporations.[11]

Nothing was done before the outbreak of the Civil War to bring an Indian Territory railroad into fruition, but the scheme was not forgotten. In point of fact, the hostilities quite possibly increased interest in the construction of a more extensive railroad network in the Southwest by demonstrating the need for a more efficient and rapid method of transporting troops and supplies. During the course of the war, James H. Lane engineered the passage of a measure in March, 1863 granting Federal lands to his adopted state to aid in the construction of two lines. One of these was to run westward from Topeka toward Sante Fe, New Mexico, while the other was to be a north-south line originating in Leavenworth and extending southward toward Galveston Bay. In an act passed by the Kansas legislature on February 9, 1864 these Federal grants were formally accepted and the construction rights conferred. The Atchison, Topeka and Sante Fe Company was awarded the east-west grant, and the Leavenworth, Lawrence and Fort Gibson Company, a firm in which Senator Lane had a financial stake, received authorization to begin the process

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[11]James D. Morrison, "Social History of the Choctaw" (Unpublished Ph.D. dissertation, University of Oklahoma, 1951), p. 103; V. V. Masterson, The Katy Railroad and the Last Frontier (Norman: University of Oklahoma Press, 1952), p. 3; W. Eugene Hollon, The Southwest Old and New (New York: Alfred A. Knopf, 1961), p. 199; Kappler, Laws and Treaties, II, p. 535.

of linking Kansas to the markets lying to the south.[12]

This measure was something of an anomoly. Congress had long since abandoned the practice of granting lands to the states to aid in railroad construction, preferring instead to make the grants directly to the companies involved. Yet Kansans were not satified by the measure. On numerous occasions their legislature appealed to Congress for additional and more generous assistance in expanding the state's railroad network, and the first session of the Thirty-Ninth Congress witnessed the introduction of four measures looking toward the extension of the Kansas railroad system across the Indian Territory. Also introduced was a bill to authorize the construction of a southern trans-continental line from Missouri and Arkansas to the Pacific Coast via the Territory. Obviously with this much railroad-sponsored activity taking place in Congress, the railroad question would be an important part of the Washington negotiations of 1866.[13]

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[12] Statutes at Large, XII, pp. 772-74; Walter A. Johnson, "Brief History of the Missouri-Kansas-Texas Railroad Lines," Chronicles of Oklahoma, XXIV (1946), p. 342; Wendall H. Stephenson, "The Political Career of General James H. Lane," Publications of the Kansas State Historical Society, III (1930), p. 150 (hereafter cited as Stephenson, "Lane," P.K.S.H.S., III).

[13] Stephenson, "Lane," P.K.S.H.S., III, p. 150; H. Mis. Doc. No. 51, 38 Cong., 1 Sess., 1864 (Serial 1200); S. Mis. Docs. Nos. 29, 30, 63, 38 Cong., 1 Sess., 1864 (Serial 1177); S. Mis. Doc. No. 25, 38 Cong., 2 Sess., 1865 (Serial 1210).

The Seminoles were the first of the tribes of the Indian Territory to come to terms with Federal negotiators D. N. Cooley, Elijah Sells and Ely Parker.[14] A weak, badly divided people living on poor, unproductive lands which they were anxious to abandon, the Seminoles were incapable of effectively resisting Federal demands. When the Northern Seminole delegation reached Washington in January, in child-like simplicity and faith they addressed a letter to Cooley expressing their desire to enter into the new treaty relations and their confidence that their Great Father would deal with them justly. Exactly when Southern Seminole delegate John Brown reached the capital city is as unclear as the role he played in the talks. But in all probability his part was minimal. Because of the compliance of the regular delegation there was no need for the Federal commissioners to shuttle back and forth playing them off against Brown.[15]

The Seminole treaty signed on March 21 by the loyal Seminole and Federal negotiators was a concise, uncluttered document of eleven articles. With the exception of the sharp real estate bargain driven by the United States, its provisions

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[14]D. N. Cooley to James Harlan, February 22, 1866, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 837.

[15]John Chupco et al to the Commissioner of Indian Affairs, January 30, 1866, Letters Received, O.I.A., Seminole Agency, N.A., Microcopy 234, Roll 803; George A. Reynolds to "Sir" [Elijah Sells], December 5, 1865, Letters Received, O.I.A., Southern Superintendency, N.A., Microcopy 234, Roll 837.

generally foreshadowed and paralleled those negotiated in 1866 with the other Civilized Tribes. Beginning with the usual profession of peace and perpetual friendship between the contracting parties, the agreement granted amnesty to all individuals for any past offenses committed against either the Seminole or United States governments. In Article II slavery was formally abolished, and former slaves of the tribe and their descendants "and such other of the same race as shall be permitted by [the Seminole] nation to settle there" were granted all the rights of native citizens.

The most controversial portion by far of the treaty was Article III in which the tribe surrendered its former domain for one of vastly diminished size. The Seminoles agreed to cede to the United States the entire two million acre reservation acquired under their treaty of 1856. In return, they were to resettle to the east on a 200,000 acre tract lying between the Canadian River and its north fork in what had been the western portion of the Creek domain. The questionable feature of this transaction was the prices involved. The old Seminole reservation was to be sold to the United States for fifteen cents per acre. The Seminoles were to pay, however, fifty cents per acre for their new tract, land which the United States was in the process of buying from the Creeks for only thirty cents per acre. The purchase price of $100,000 for the new reservation was to be deducted from the $325,000 the tribe received for the sale of the old. An

additional $50,000 would be taken out to compensate the loyal Seminoles for losses sustained during the war. For several years to come, this article of the treaty would cause much controversy, and for all their efforts United States officials were never able to satisfactorily explain why their government should turn a rather tidy profit in a land transaction negotiated with a defenseless people.

Provision was made for the expansion of the Southwest's transportation system in that portion of the pact in which the Seminoles granted a right of way through its lands to any railroad company duly authorized by Congress to construct a track from the eastern boundary of the tribe's domain to any point on either its southern or western boundary. In addition the Seminoles agreed to sell to the United States, or to the appropriately authorized company, land on each side of the track. The belt of lands sold on each side was not to exceed three miles in width, and the land was not to be reconveyed in any manner to any person not a member of the Seminole tribe.

In Article VII, the Seminoles consented to the establishment of a general council made up of delegates elected from each tribe residing within the Indian Territory. The council would have the authority to legislate "upon all rightful subjects and matters pertaining to the intercourse and relations of the Indian tribes . . . resident in said Territory. . . ." Any of the council's enactments might be suspended either by the President or the secretary of the

interior, and no measures were to be passed inconsistent with the laws or Constitution of the United States or existing treaty stipulations between the tribes concerned and the United States. Council members were to receive four dollars per diem from the United States during council sessions, and the superintendent of the Southern Superintendency would preside over all such assemblies.

In the closing articles of the agreement the tribe accepted the stipulations of the treaty as a full settlement for all damages and losses incurred during the war and approved the wartime diversion of their tribal funds for refugee support. The United States, in turn, reassumed all past treaty obligations except those inconsistent with the pact of March 21.[16]

The signing of this proposed treaty prompted Southern Seminole delegate John Brown to take decisive steps. On March 23 he entered into an agreement with one E. B. Grayson whereby the latter promised to work to prevent the ratification of the treaty. As compensation Grayson was to receive fifteen percent of whatever amount of money the Southern Seminoles might get under a new treaty. That same day Brown addressed a letter of protest to President Andrew Johnson complaining of the provisions of the proposed treaty signed two days earlier. Among other things he insisted that the price received by the Seminoles for their ceded lands was too low while the amount

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[16]Kappler, Laws and Treaties, II, pp. 694-99.

paid for the new reservation to be acquired--a reservation in his opinion too small to meet the tribe's needs--was too high. The placing of former Seminole slaves on a basis of equality within the tribe and the use of the tribe's own funds to indemnify the loyal Seminoles for their wartime losses were points which also met with his disapproval.[17]

Over a month passed before Superintendent Elijah Sells and Seminole Agent George A. Reynolds submitted a joint rebuttal to Brown's protest. In a statement dated April 26, the two replied point-by-point to each complaint leveled by the Southern Seminole representative. The tribe was receiving a small amount--fifteen cents per acre--for its ceded lands because they were among the worst in the Indian Territory. On the other hand, they saw nothing at all wrong with the fact that fifty cents per acre was to be paid for the new domain to be occupied by the tribe as these were the very best lands ceded by the Creeks in the treaty which they were presently negotiating. As to the Negro question, Sells and Reynolds insisted that the vast majority of the tribe's members favored equal rights for their former slaves. Furthermore the blacks were the most enterprising people in the Seminole Nation, and

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[17]John Brown to Andrew Johnson, March 23, 1866, Records of the Office of the Secretary of the Interior, Indian Division, Record Group 48, National Archives, Letters Received. An undated copy of Brown's agreement with Grayson can be found in the Miscellaneous Indian Documents Collection--Seminole, Division of Manuscripts, Bizzell Library, University of Oklahoma, Norman.

if placed in a position of equality, they could be of great assistance to the Indian in his "march toward civilization." Finally, the Southern Superintendent and the Seminole agent defended that portion of the treaty which authorized the use of tribal funds to reimburse the loyal Seminoles for the wartime destruction of their property. Not seeing, or perhaps ignoring, the irony of paying a man for his losses with his own money, they justified this feature of the treaty on the grounds that the Southern Seminoles had grabbed almost $30,000 in tribal annuities at the outbreak of the war and, with the assistance of other rebels, had destroyed much of the property of their brother Seminoles.[18]

It is virtually impossible to shed any light on the events which followed the drafting of this rebuttal. It is certain that there were other exchanges between Brown and Indian Bureau officials, but they must have been oral. The records of the commissioner of Indian affairs and the secretary of the interior contain no further letters from Brown after his protest of March 23, nor did either Cooley or Harlan send any missives to the Southern Seminole delegate. All that is known is that the United States Senate ratified the Seminole treaty on July 19, and sometime before that, Brown added his signature to those already on the document.[19]

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[18]Elijah Sells and George A. Reynolds to D. N. Cooley, April 26, 1866, R.G. 48, N.A., Letters Received.

[19]Commissioner's Report, 1866, p. 9.

Almost one year later, Brown's Washington colleague E. B. Grayson charged that the sinister influences secured this reversal. In a letter written in May, 1867 Grayson, without being overly specific, claimed that certain speculators interested in the ratification of the original treaty pressured Brown into signing the document just as Grayson and his associates were about to consumate a new and more favorable pact.[20]

Perhaps this assertion is true. Bribery and intimidation had often played a role in Indian negotiations in the past, and it is not inconceivable that they were used in this instance. On the other hand, Grayson, angered by his failure to collect any recompense, might have exaggerated the results of his labors. In reality, perhaps the Federal negotiators simply held firmly to the original treaty stipulations and Brown, recognizing the inevitable, just gave up the struggle.

In contrast to the Seminole agreement, the Choctaw-Chickasaw treaty was, by Commissioner Cooley's own admission, the most complete of the series.[21] In many respects it was also the most generous. In the earlier Choctaw-Chickasaw negotiations at Fort Smith the United States commissioners

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[20]E. B. Grayson to E. B. Johnson, May 10, 1867, Miscellaneous Indian Documents--Seminole, Division of Manuscripts, University of Oklahoma.

[21]Commissioner's Report, 1866, p. 9.

attempted to extract rather harsh terms from the tribe's representatives. As "a matter of humanity," the Federal negotiators had not demanded the surrender of all tribal rights and privileges. Instead they asked for the cession, without compensation, of the Leased District, plus one-third of the territory possessed by the two tribes east of the ninety-eighth meridian. For this cession, the United States' representatives offered an unspecified sum which tribal leaders believed was "very inadequate." Also demanded was the emancipation of all slaves and the making of suitable provision for the welfare of these people, plus the forfeiture of all funds accruing to the two tribes over the past five years.[22]

The Choctaw and Chickasaw delegates reached Washington in January, 1866 prepared, if necessary, to yield to most of these exacting terms. They were not willing to cede one-third of their lands east of the ninety-eighth meridian, nor were they anxious to accept a new demand made after their arrival in the capital city--the placing of their former slaves on a footing of complete equality with native and adopted tribal citizens. In the end, they made neither of these two concessions. By early April, most of the points of disagreement had

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[22]Address by P. P. Pitchlynn, Principal Chief of the Choctaw Nation, and Winchester Colbert, Governor of the Chickasaw Nation, to the Choctaws and Chickasaws. . . . (Washington: Joseph L. Pearson, 1866), pp. 1-2. A copy of this document can be found in the Choctaw Nation Papers, Choctaw-Federal Relations, Section A, Indian Records Division, Oklahoma Historical Society.

been ironed out, and on the twenty-eighth of the month, a proposed treaty was signed.[23]

As in the case of the Seminoles, the Choctaw-Chickasaw treaty contained pledges of perpetual friendship between the contracting parties and amnesty was granted for all wartime offenses. The details for the establishment of an intertribal council were spelled out, and the two tribes agreed to allow any railroad company or companies properly authorized by Congress to construct both a north-south and an east-west line across their territories. As in the Seminole treaty, the United States reaffirmed all previous treaty stipulations except those inconsistent with the current agreement, but unlike the Seminoles, nowhere in their treaty did the Choctaws and Chickasaws specifically approve the diversion of tribal funds for the support of the refugee Indians. Elaborate provisions were contained providing, if the two tribes so desired, for the survey and division of tribal lands in severalty, with the United States paying the costs of the survey. While the tribes surrendered none of their lands east of the ninety-eighth meridian, they did agree to allow civilized Indians living north of the Indian Territory to settle in this area. But no more than 10,000 were to be resettled, one-fourth in the Chickasaw domain and three-fourths with the Choctaws.

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[23]Ibid.; John H. B. Latrobe to D. N. Cooley, April 4, 1866, Letters Received, O.I.A., Choctaw Agency, N.A., Microcopy 234, Roll 176; Commissioner's Report, 1866, p. 9.

During the course of the negotiations the Leased District and Negro questions became intertwined, and they remained joined in the treaty of April 28. It was agreed that the two tribes would cede the Leased District to the United States for the sum of $300,000. If within two years their legislatures enacted measures placing the former slaves on a footing of complete equality, this money would be paid directly to the tribes, the Choctaws receiving three-fourths of the sum and the Chickasaws the balance. If, on the other hand, appropriate legislation was not enacted the United States would use the $300,000 to resettle the former Choctaw and Chickasaw slaves outside the Indian Territory. In the meantime, the freedmen of the two tribes were to enjoy the equal protection of the laws of the Choctaw and Chickasaw tribes and "a fair renumeration . . . for their labor. . . ."

In Article XXXIX, provision was made for the recompense of the few members of the two tribes who remained loyal to the Union. The President of the United States was to appoint a commission, not exceeding three in number, to consider the claims of loyal Choctaws and Chickasaws for wartime losses. When the secretary of the interior approved the commission's report, payment would be made out of Choctaw and Chickasaw funds in the hands of the United States government.[24]

All things considered, the terms of this treaty were

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[24]Kappler, Laws and Treaties, II, pp. 702-14.

very salutary. Ironically, the near unanimity with which both tribes supported the Confederacy seems to have aided them in at least two ways in re-establishing these favorable treaty ties with the United States. First, tribal solidarity made it impossible for Federal negotiators to twist concessions from them by threatening to deal with rival delegations. In the case of the Choctaws and Chickasaws, rival delegations did not exist. Second, solidarity aided tribal leaders in planning the course of action to be followed in Washington. Knowing perfectly the wishes and desires of their people, and confident of their people's united support, the Choctaw and Chickasaw delegates reached Washington better prepared than any other delegates from the Indian Territory to negotiate with the United States.

How much of the credit for these favorable terms should be given to the delegates themselves is still a matter of debate. A recent student of the Choctaws, for example, seems to feel that Principal Chief Peter Pitchlynn and Governor Winchester Colbert in their joint report to their people exaggerated the importance of the delegates' actions in an effort to make their shady financial transactions in Washington with attorney John H. B. Latrobe more palatable.[25] Certainly criticism of the way in which the Choctaw delegates enriched

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[25]See David Baird, "Peter Pitchlynn: Choctaw Delegate," (Unpublished Ph.D. dissertation, University of Oklahoma, 1968), pp. 197-204.

themselves at the expense of their own people--by secretly receiving one-half of the $100,000 fee charged by Latrobe for his legal council and assistance--is well taken. Yet to leave Washington with a treaty better than that negotiated by any other tribe, the men who represented the Choctaws and Chickasaws must have been adroit individuals of above average ability.

The talks conducted with the Creeks were far more complicated than those with the Seminoles, Choctaws and Chickasaws. The Northern Creek delegates reached Washington early in January. Their Southern counterparts did not arrive until mid-February, and by that time the talks being conducted by Chief Sands and his associates were far advanced. On March 3, the Northern Creek delegation signed a proposed treaty, and two days later Southern delegates D. N. McIntosh and James M. C. Smith asked for copies. McIntosh and Smith quickly found much of the agreement unacceptable, and through Creek Agent J. W. Dunn they arranged to meet the loyal Creek delegates at their quarters at the Union Hotel.[26]

The atmosphere that prevailed at this meeting was frigid at best. The Union delegates refused to consider the idea of permitting McIntosh and Smith to serve along with them as official Creek delegates. They insisted that they alone were authorized to treat with the United States. Furthermore

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[26]D. N. McIntosh and James M. C. Smith to D. N. Cooley, March 5, 1866, J. W. Dunn to Cooley, March 15, 1866, and Dunn to Elijah Sells, May 10, 1866, Letters Received, O.I.A., Creek Agency, N.A., Microcopy 234, Roll 231; Commissioner's Report, 1866, p. 10.

they steadfastly maintained that the terms of their proposed treaty were the best that could be hoped for, and they bluntly informed the Southern delegates that interference on their part would be regarded as both unkind and without authority. On this sour note, the encounter ended.[27]

Next, McIntosh and Smith filed a lengthy report with the Federal negotiators in which they discussed in detail their objections to the treaty signed by their Northern bretheren. They believed, among other things that the loyal Creeks had agreed to cede an excessive amount of territory for an inadequate sum. Like John Brown they bemoaned the fact that tribal funds, allegedly the common property of all, were to be used to reimburse the loyal Creeks for wartime losses. The provisions granting equality to the tribe's former slaves were also unacceptable, and they complained about the absence of any stipulation preventing the confiscation of rebel Creek property by their Northern counterparts. For good measure, they faulted the officials of the Indian Bureau for their failure to treat them as official delegates, equal in every respect to Chief Sands and his associates.[28]

These events of early and mid-March were followed by a lengthy series of talks and maneuvers during which Federal

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[27]J. W. Dunn to D. N. Cooley, March 15, 1866, Letters Received, O.I.A., Creek Agency, N.A., Microcopy 234, Roll 231.

[28]D. N. McIntosh and James M. C. Smith to D. N. Cooley et al, May 9, 1866, ibid.

officials tried to reconcile the differences of the two Creek factions. On May 9 a second proposed treaty was signed, copies of which were forwarded to McIntosh and Smith in the hopes that it would meet with their approval. But it did not. It appears that in this agreement the amount to be paid the loyal Indians out of tribal funds was reduced, but there was no provision for aid to destitute Southern Creeks. McIntosh and Smith believed that if their wartime adversaries received assistance out of tribal funds, their own indigent people should receive out of the cession money at least $200,000. Equally as objectionable was that part of the treaty providing for the equality of the former slaves.[29]

Undaunted, Secretary of the Interior James Harlan instructed his negotiators to continue their reconciliation efforts. Continued they were, and a compromise treaty entirely satisfactory to neither Creek faction, but generally acceptable to both, was signed on June 14.[30]

As in the earlier agreements with the other tribes, amnesty was granted in Article I for all past offences committed by any Creeks against their own government or that of the United States. In Article III, the Creeks formally agreed to cede to the United States the western half of their

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[29]D. N. McIntosh to James M. C. Smith to D. N. Cooley, May 9, 1866, ibid.; Cooley to James Harlan, May 18, 1866, and Charles E. Mix to Harlan, May 25, 1866, R.G. 48, N.A., Letters Received; Commissioner's Report, 1866, p. 10.

[30]D. N. Cooley to W. T. Otto, June 14, 1866, R.G. 48, N.A., Letters Received; Commissioner's Report, 1866, p. 10.

domain, about 3,250,000 acres for thirty cents per acre. Of the $975,000 arising from this cession, it was agreed that $200,000 would be distributed per capita "to enable the Creeks to occupy, restore, and improve their farms. . . ." Nothing was said about limiting these funds to the loyal Creeks, thus in the end the rebel members of the tribe, like the loyal, were permitted to use tribal funds to overcome war-inflicted poverty.

On the other hand, Article III did stipulate that $100,000 of the cession money would be used specifically to reimburse loyal Creek soldiers and refugees for their losses, but here again the forces of compromise were evident. Earlier drafts of the Creek treaty had set aside $300,000 as recompense for the loyal members of the tribe.

On one point--the Negro question--the Union Creeks would not compromise, and ultimately they prevailed. In the prolonged three-sided negotiations between the two Creek delegations and the United States commissioners, the representatives of the loyal faction stated that Opothleyaholo had promised equality to all slaves who stood faithfully by his side, and they insisted that they must remain true to this "sacred pledge." As signed on June 14, the final Creek treaty not only formally abolished slavery within the tribe; it stipulated in addition that the Creek freedmen would "enjoy all the rights of native citizens, including an equal interest in the soil and national funds. . . ." Finally the treaty

granted north-south and east-west railroad right of ways and contained the now usual provisions dealing with the intertribal council. As the Seminoles before them, the tribe accepted the United States' wartime use of their funds for refugee relief.[31]

The most prolonged and involved of the negotiations of 1866 were those conducted with the Cherokees. In January, 1866 the tribe's two delegations, as bitterly divided as ever, reached Washington. In the ensuing months, their disagreements took the rival delegates on more than one occasion to the office of President Andrew Johnson. Characteristically, Johnson seems to have said little at these encounters, and the representatives of both factions often came away from these meetings believing that the President's views were in harmony with their own. Washington politicians, at that very moment struggling with the task of Southern reconstruction, often had this same experience. In May the dissensions within the Cherokee tribe were given widespread display when John Ross and one of the leaders of the opposing delegation, John Rollin Ridge, exchanged embittered denunciations in the pages of Horace Greeley's New York Tribune.[32]

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[31]Kappler, Laws and Treaties, II, pp. 714-19; Commissioner's Report, 1866, p. 10; D. N. Cooley to James Harlan, May 18, 1866, R.G. 48, N.A., Letters Received.

[32]John Ross to Sister Sarah, January 19 and February 22, 1866, John Ross Papers, Thomas Gilcrease Institute of American History and Art, Tulsa, Oklahoma; J. W. Washbourne to J. A. Scales, June 1, 1866, Cherokee Nation Papers--Civil War Letters 1861-1874, Division of Manuscripts, University of Oklahoma.

The Cherokee discussions were so lengthy and complex as to defy concise summation. Among the questions of greatest controversy was the cession of Cherokee lands for the resettlement of other tribes. The Northern Cherokees did not want to dispose of any territory lying east of the ninety-seventh meridian while their Southern counterparts would cede lands lying as far east as 95° 30'. The rebel delegates also favored the making of liberal land grants to railroad companies interested in extending their tracks through the Cherokee domain. E. C. Boudinot, in particular, was an enthusiastic railroad advocate, and as early as October, 1865 he had traveled to Washington with a letter of introduction from S. N. Coleman, a Missouri promoter interested in the construction of a line from St. Louis to Galveston, Texas, via the Indian Territory. The Northern delegates, in contrast, recognized the inevitability of railroad construction in the Territory, but wanted only to grant right of ways about 200 feet in width to the companies concerned.[33]

Most importantly, there was the question of Cherokee factionalism. Could the two feuding parties possibly live together as a united people? Surveying the scene, Cherokee

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[33]D. N. Cooley to Andrew Johnson, June 15, 1866, quoted in Joseph B. Thoburn (ed.), "The Cherokee Question," Chronicles of Oklahoma, II (1924), pp. 146-67 (hereafter cited as Thoburn, "Cherokee Question," CO, II); S. N. Coleman to James Harlan, October 20, 1865, R.G. 48, N.A., Letters Received Miscellaneous.

Agent Justin Harlan concluded that they could not. In a letter to Southern Superintendent Elijah Sells on March 28, Harlan set forth the opinion that nothing had occurred during his three years as Cherokee agent to convince him that the rival factions could live together in peace and harmony. If reunited at this time he believed that bloody scenes reminiscent of the period immediately following the Cherokee removal would be repeated. The Southern Cherokees concurred in this opinion. Substantially outnumbered, they believed that their persons and property could be adequately protected only if their people were given a certain measure of autonomy. Specifically, they believed that a portion of the tribal domain must be set aside for the exclusive use of the Southern Cherokees, and they must have the authority to enact their own laws. Insisting always on tribal unity, in fact if not in spirit, the Northern Cherokees flatly rejected this proposal.[34]

In an attempt to conclude the seemingly interminable talks, Secretary of the Interior Harlan early in June went so far as to propose that the Southern Cherokees resettle, for the time being at least, on a portion of the Choctaw domain. This idea came to naught, however, when the former rebel Cherokees insisted on being given the right to enact their own laws, a proposal unacceptable to the Choctaws. When this effort to

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[34]Justin Harlan to Elijah Sells, March 28, 1866, Letters Received, O.I.A., Cherokee Agency, N.A., Microcopy 234, Roll 100; Richard Fields to Smith Christie, April 4, 1866, R.G. 48, N.A., Letters Received Miscellaneous; D. N. Cooley to Andrew Johnson, June 15, 1866, quoted in Thoburn, "Cherokee Question," CO, II, pp. 146-67

settle the Cherokee question failed, the disgruntled Federal negotiators entered into a treaty on June 13 with the Southern delegation, in effect recognizing the Cherokees who most consistently supported the Confederacy as the leaders of the tribe.[35]

Quite possibly this move was a gambit designed to bring the proud, uncompromising Ross party to terms. If so, it worked. Faced again with the spectre of tribal disunity and displacement from their traditional positions of leadership, the Northern Cherokees, acting as the sole representatives of their tribe, placed their signatures on a treaty of peace on July 19. Understandably, this chain of events infuriated the Southern Cherokees who acquiesced in this treaty only reluctantly and under protest.[36]

As it appears that they were used as pawns, the pique of the Southern Cherokees is understandable. But the terms meted out to them under the treaty were not all that bad. As in the other treaties of 1866, complete amnesty for all past actions was granted, and the Cherokee confiscation acts were

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[35]James Harlan to the Choctaw Delegation, June 4, 1866, and Harlan to Andrew Johnson, June 14, 1866, Letters Sent by the Indian Division of the Office of the Secretary of the Interior, N.A., Microcopy 606, Roll 6.

[36]An undated document signed by the Southern Cherokee delegates giving their objections to the treaty signed by the Union delegates can be found in Letters Received, O.I.A., Cherokee Agency, N.A., Microcopy 234, Roll 100.

specifically repealed. Further, all Cherokees and Cherokee freedmen who so desired might settle in reserved areas lying southwest of the Arkansas River and northwest of the Grand River. Here they could elect their own local officials and delegates to the Cherokee National Council and proposed intertribal council. They could also enact any police regulations that were not contrary to the Cherokee constitution or the laws of the United States.

Again there were elaborate details dealing with the intertribal council. North-south and east-west railroad right of ways, not exceeding a width of 200 feet, except at specified points such as stations, were granted, and Cherokee freedmen received all the rights of native Cherokees. In Article XV, it was agreed that "civilized" Indians from outside the Territory might be settled on unoccupied Cherokee lands east of the ninety-sixth meridian, and Article XVI stipulated that "friendly" (i.e. non-hostile nomadic) Indians were to be settled west of that line. The Neutral Lands in Kansas were ceded in trust to the United States to be sold by the secretary of the interior either in their entirely to some "responsible party" or in small, individual allotments.[37]

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[37]Kappler, Laws and Treaties, II, pp. 724-31. The Cherokee treaty contained no statement whereby the tribe accepted the use of its funds for refugee relief, for in the case of the Cherokees no such acknowledgment was necessary. As the tribe did not receive any annuities under its treaties with the United States, no Cherokee funds had been spent during the war to maintain the Union refugees.

Within days after the signing of the Cherokee treaty of July 19, Congress completed action on the various railroad measures affecting the Indian Territory introduced since December, 1865. Of the five such bills introduced, three were enacted into law. In 1865 James H. Lane was elected president of the Leavenworth, Lawrence and Fort Gibson Railroad, and on January 31, 1866 the senator-president introduced a bill to grant additional lands, over and above those received under the act of March 2, 1863 to his railroad. But the measure died in committee.[38]

Another bill which met its demise in committee was a measure introduced by Missouri's B. Gratz Brown to aid in the construction of the Kansas and Neosho Valley Railroad connecting the Great Lakes with Galveston Bay.[39] But the supporters of this particular project refused to give up. On April 25 Samuel Pomeroy introduced a similar bill, and after lengthy debate in June and July, it made its way through both houses of Congress and was signed by President Johnson on July 25.[40]

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[38]Congressional Globe, 39 Cong., 1 Sess., January 31, 1866, p. 520; March 9, 1866, p. 1273; May 10, 1866, p. 2547; Stephenson, "Lane," P.K.S.H.S., III, p. 150.

[39]Congressional Globe, March 21, 1866, p. 1537 and April p. 1799.

[40]Ibid., April 25, 1866, p. 2163; ibid., May 17, 1866, p. 2635; ibid., May 31, 1866, pp. 2913-14; ibid., June 7, 1866, p. 3009; ibid., June 13, 1866, p. 3124; ibid., June 20, 1866, pp. 3279-80; ibid., June 22, 1866, pp. 3334-36; ibid., July 24, 1866, pp. 4064-65.

Also passed were a second Pomeroy-sponsored bill to assist in the construction of a Southern Branch of the Union Pacific Railroad from Fort Riley, Kansas, to Fort Smith, Arkansas,[41] and legislation introduced by B. Gratz Brown granting lands for the construction of a transcontinental line via the southern route from Missouri and Arkansas to the Pacific Coast. These were signed into law by the President on July 26 and 27, respectively.[42]

This plenthora of legislation is somewhat misleading. Combined with the law of March 2, 1863 it would appear at first glance that no less than four railroads had been authorized by Congress to traverse the Indian Territory, one from east to west and three--the Kansas and Neosho Valley, the Union Pacific, Southern Branch, and the Leavenworth, Lawrence and Fort Gibson--from the north to south. But that was not the case. Section eleven of the act of July 25, 1866 granting lands to the Kansas and Neosho Valley Railroad provided that only one of the north-south lines would actually enter the Indian Territory. This right would be conferred on

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[41] Ibid., March 23, 1866, p. 1588; ibid., April 3, 1866, p. 1729; ibid., May 18, 1866, p. 2664; ibid., May 21, 1866, p. 2706; ibid., June 30, 1866, pp. 3504-05; ibid., July 24, 1866, p. 4078.

[42] Ibid., December 11, 1865, p. 17; ibid., February 13, 1866, p. 806; ibid., February 28, 1866, p. 1069; ibid., March 1, 1866, pp. 1100-03; ibid., March 2, 1866, p. 1132; ibid., July 27, 1866, p. 4230.

the company which first extended its track to the Southern boundary of Kansas.[43] In future years this feature of the law was the subject of much controversy, but the United States, much to the disappointment of railroad entrepreneurs, held to the letter of the law. In a decision rendered in 1870, Secretary of the Interior Jacob D. Cox insisted that the true intent of Congress was to permit the entry of only one north-south line into the Indian Territory, a decision concurred in by President Ulysses S. Grant.[44] But all of that was a question for the future.

It is impossible to know what passed through the minds of the delegates of the Five Civilized Tribes as they made their way home from Washington. Those with a sharp eye for profits possibly looked forward to the coming of the railroad to the Indian Territory and the creation of new business opportunities. Perhaps the Choctaw delegates thought smugly of the favorable terms extracted from the United States and the $50,000 they were about to extract from their own people. For most, however, the long trip westward was doubtless a time of quiet meditation. Watching the countryside slip by from the windows of their railroad coaches, they must have tried to make some sense out of the confusing events of the past

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[43] Statutes at Large, XIV, pp. 238-39.

[44] Railroads Through the Indian Territory, Miscellaneous Indian Documents Collection, Volume I, Document No. 20, Division of Manuscripts, University of Oklahoma.

five years. They had never really understood this war between North and South. They only knew that this conflict had reopened old fissures within their tribes and had brought much intense suffering. Yet, even though many had stood by the Union in its time of deepest travail, in the end all were treated as traitors, and faced with the prospect of Federal forfeiture of their traditional rights and privileges, all were forced to yield to the demands of the United States. After wrestling briefly and wearily with this bewildering array of events, as best they could, the Indian delegates probably put them out of mind and thought of their families and the prospect of restoring some semblance of order out of the chaos imposed on their people by the Civil War.

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