

**DISSENTION IN THE CHEROKEE NATION 1860 TO 1866**

**by**

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**DEDICATION**

**To My Friends and Relatives  
In the Cherokee Nation**

## ACKNOWLEDGEMENTS:

One evening my son Timothy asked me what side the Indians fought on during the American Civil War. That question caused me to do some general research that eventually resulted in this thesis. I am extremely grateful to Timothy for directing my research toward the Native Americans who are largely absent from history books.

I am also indebted to the Native American Student Association (NASA) which introduced me to the annual symposiums on Native Americans in Tahlequah, Oklahoma and helped finance my first research trip. I have benefitted substantially from the support of my fellow Native Americans who continually encourage my research efforts.

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**ABSTRACT**

**DISSENTION IN THE CHEROKEE NATION 1860 TO 1866.**

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**This thesis examines the factional conflict in the Cherokee Nation prior to and during the American Civil War (1861 - 1865) and the disastrous consequences Cherokee factionalism had on treaty negotiations with the United States government in 1866.**

## TABLE OF CONTENTS

Title Page.....	i
Signature Page.....	ii
Dedication.....	iii
Acknowledgements.....	iv
Abstract.....	v
Table of Contents.....	vi
Chapter 1 INTRODUCTION .....	1
Chapter 2 WESTERN MIGRATION .....	29
Chapter 3 CIVIL WAR .....	57
Chapter 4 CONCLUSION .....	78
BIBLIOGRAPHY .....	93

## CHAPTER 1

### INTRODUCTION

When the American Civil War erupted in 1861, the Cherokee Nation occupied Indian Territory in present day Oklahoma. The Cherokee Nation was not able to view the Civil War dispassionately because they were involved in a parallel conflict all their own. This thesis will discuss the roots of the Cherokee factionalism that erupted into their own civil war between 1861 and 1866, and the effect this dissention had on treaty negotiations with the United States in 1866.

The Cherokee Indians were indigenous to the Allegheny and Appalachian mountain regions of North America and occupied land from the headwaters of the Kanawaha and Tennessee Rivers, south to the site of Atlanta, Georgia and from the Blue Ridge mountains on the east to the Cumberland mountain range on the west, a territory of 40,000 square miles. At the time of

European contact (1540), the tribe consisted of numerous permanent villages of substantial log houses and a population of approximately 50,000 people. The Cherokees lived in the river valleys of what are now the states of Virginia, western North Carolina, Tennessee, Georgia and Alabama; they subsisted by hunting and farming. Each village was an autonomous, democratic unit with villagers debating an issue until they reached a consensus. Their common language, their matrilineal kinship system and their religious beliefs made the Cherokees one people.

The chroniclers of Hernando de Soto's 1540 expedition described a native institution which the Spaniards called slavery and reported the presence of masters and slaves in Cherokee society.<sup>1</sup> Early European observers assumed that aboriginal Cherokee bondage mirrored their own slavery system. Europeans were familiar with slavery as a social institution that was sanctioned and defined by law as the most absolute and involuntary form of human servitude. Europeans obtained their slaves by force and each slave became the property of his or her master. Cherokee bondsmen, however, bore little resemblance to European slaves. Aboriginal Cherokees had an egalitarian social system and a subsistence economy that defied any explanation or rationale for slaves and slave-holding that would be comprehensible to the Europeans.<sup>2</sup>

The Cherokee term for slaves was *atsi nahsa'i* or "one who is owned".<sup>3</sup> Tribe members obtained their slaves through



warfare exclusively. According to European observers, the Cherokees were nearly always at war with other Native American tribes such as the Creeks, Shawnees, and Senecas. The primary object of war was that "crying blood is quenched with equal blood."<sup>4</sup> Small war parties ranging in size from 20 to 40 warriors participated in ambushes on the enemies and the victors generally killed and dismembered enemies in the field. The death of the enemy was far more important than the capture of slaves. However, the Cherokees captured some of the enemy; most captives were adult males who were ultimately tortured to death as vengeance for the death of a fellow clansman. When women and children became *atsi nahsa'i*, they were spared such treatment. Observers indicated that "in all their wars they [the Cherokees] never destroy women or children, but carefully preserve them." <sup>5</sup>

When the Cherokees returned from battle, they delivered their captives to their women. Most prisoners faced torture and death which the women exacted as vengeance for a war-related death. The Cherokees could not allow such a death to go unavenged. According to Cherokee legend, bears were descendants of a Cherokee clan called the *Ani-Tsa-guhi* that preferred to live in the woods and consequently grew long hair and claws. Humans began to use bears as game. When the bears foolishly neglected to avenge the deaths of their own kind, hunters obtained the right to kill the bear with impunity.<sup>6</sup> If Cherokees did not avenge their dead, they too, would become

hunted like the bear.

Occasionally Cherokees and other tribes held their prisoners as diplomatic pawns. When the Creeks wanted the Cherokees to enter into an alliance with them against the English in 1725, they offered to release all Cherokee captives as a token of their sincerity. They also used a captive Cherokee woman known as Slave Woman to negotiate the truce.<sup>7</sup> European observers indicated that this was a common use of female and young captives among southeastern Indians. Any captive that was not ransomed, exchanged, or tortured to death was either adopted by the tribe or permitted to live with the tribe outside the kinship system until a clan adopted them or they died.<sup>8</sup> Slaves had little economic value. If a warrior took a captive for whom he had no use, he generally would offer to give or sell the prisoner to the kinsman of a fallen warrior. When the Frenchman Antoine Bonnefoy (1720-1764) was captured by the Cherokees in December 1741, his Cherokee captor had no use for him. The Frenchman was traded, for some leather, to another Cherokee warrior who had lost his brother in the battle. Bonnefoy recorded in his journal that after the exchange, he was treated like a brother and adopted into the clan. Although he was free, Bonnefoy remained with his captors several months of his own accord.<sup>9</sup>

The Cherokee religion was based on the individual and tribal goal of maintaining harmony in the world. Consequently, Cherokees killed game and harvested crops only

when and as they needed food. Anything that the *atsi nahsa'i* produced beyond what could be consumed was useless to the tribe. Therefore, war captives were not exploited for their labor. Annually the Cherokees held a Green Corn Ceremony, a festival which commemorated the harvest and marked the end of the old year and the beginning of the new in both personal relationships and material possessions. Any surplus an owner of an *atsi nahsa'i* accumulated through the labor of their bondsman was consumed at this ceremony. Nor was there any incentive among the tribal members to accumulate wealth to bequeath to their heirs. Personal property of those who died was destroyed and interred with them.<sup>10</sup> Thus slave holding as an economic institution or a means to wealth had no relevance to the Cherokee.

Early European observers noted that the Cherokee had a sexual division of labor. Farming was considered women's work and hunting was men's work. Unfree laborers both male and female worked along side their owners and performed many of the same tasks. Although bondsmen were considered individual property, any benefit derived from their use was accrued primarily to the tribe as a whole. It was not until the late eighteenth century that Cherokees began to use bondsmen exclusively in the cultivation of the soil.<sup>11</sup>

The economic system that Europeans brought to North America caused the Cherokees to view *atsi nahsa'i* in an entirely different way. Early traders found a ready market

among the Indians for European goods such as knives and hatchets to replace stone tools, and muskets to replace bows and arrows. The Cherokees had only two commodities to exchange for these goods, deerskins and war captives. Through the introduction of European goods, the Cherokees made themselves dependent on European traders and subject to the dictates of white men. A colonial historian commented in 1775 that "the Indians, by reason of our supplying them so cheap with every sort of goods, have forgotten a chief part of their mechanical skill, so as not to be well able now, at least for some years, to live independent of us." <sup>12</sup>

The whole concept of Indian warfare gradually altered during the eighteenth century once the purpose of waging war was shifted from an act of revenge to a method to obtain *atsi nahsa'i* to use for barter for European goods. Consequently there was a dramatic increase in intertribal conflicts. White politicians encouraged Indian warfare because they realized that extermination of the indigenous population through intertribal conflicts would facilitate western expansion.<sup>13</sup>

As the Cherokee concept of war changed, the status of the warrior changed. Before the advent of the Indian slave trade, the warrior had an equal right with others to participate in Cherokee government. All tribal decisions were the result of a consensus; there was no formal government. However, Europeans were unable to deal with the aboriginal government. In 1730 an English emissary to the Cherokee

"nominated Moytoy [a warrior] commander in chief of the Cherokee Nation, and enjoined all the warriors of the different tribes acknowledge him for King, to whom they were responsible for their conduct." <sup>14</sup> The British official probably chose a warrior because Europeans associated wealth with power. Superior warriors exhibited the first inequity of wealth in the Cherokee society by supplying the market with slaves and reaping high returns through this exchange. Furthermore, a warrior had the ability to police Cherokee society and prevent attacks on whites.<sup>15</sup> By the middle of the eighteenth century, the Cherokee warrior clearly recognized both economic and political advantage in making a profit and hoarding rather than sharing their wealth with their clan.

Aboriginal Cherokee lands were owned by lineages. The Cherokee had a matrilineal kinship system - each child belonged to the mother's clan; all kinsmen were traced through the mother. Cherokee women held title to the house and the fields. They generally practiced serial monogamy. A rejected husband simply returned to the residence of his lineage until he married again; his children remained with their mother and kinsmen. Slaves were the only individual property that warriors owned, therefore the warrior who captured slaves brought wealth to himself, not to the tribe or to his clan.<sup>16</sup>

Once there was a market for war captives, the European system of slavery as the exploitation of labor came into

existence in the Cherokee economy. As long as there was a market for Indian war captives, the Cherokee warriors sold slaves. The Indian slave trade in the south reached its peak in the Yamassee war of 1715 - 1717 and declined steadily thereafter.<sup>17</sup> By the middle of the eighteenth century black Africans became the slave of choice for the colonists probably because Africans, unlike Native Americans, were easily identifiable and had no opportunity to escape to their homeland.<sup>18</sup> However, as the market for war captives declined, Cherokee warriors discovered that the capture and return of escaped black slaves was profitable. The Cherokees also stole slaves from plantations and resold them to other plantations owners.<sup>19</sup>

By early in the eighteenth century, European slave traders started living in Cherokee country and married Cherokee women. According to the matrilineal kinship system, the children of Cherokee mothers were considered Cherokees regardless of the race of the father. This intermarriage upset traditional Cherokee social organization because the women frequently left their clan and resided with their husbands. Mixed blood children took their mother's clan affiliation, their father's name and inherited their father's houses and goods. Their children often spoke English as well as Cherokee, received some education and adopted many of the beliefs and values of the Europeans.

The eighteenth century also brought prominence to

successful hunters and warriors. European demand for animal skins increased and Cherokee hunters, eager to obtain European goods, abandoned their traditional attitude towards killing animals and keeping their world in balance. The hunters and warriors became the sole providers of European trade goods to their society and Cherokee women became dependent on men for their farming implements, cooking utensils and clothing. As the economic power of men increased, so did their political power. The opinions of warriors and hunters began to carry more weight in council meetings.<sup>20</sup>

By the middle eighteenth century the Cherokees faced a severe economic depression. Game was scarce so wealthy Cherokees, primarily those of mixed parentage and European values, began to buy African bondsmen and till large tracts of land in order to produce cash crops. As warriors and hunters became less valued in society, these mixed bloods as they were called began to emerge as political leaders.<sup>21</sup>

Tribal acceptance of the economic institution of chattel slavery undermined the political power of women. The matrilineal kinship system was viewed by the mixed bloods and the whites as part of the "savage" system that needed to be "civilized". Consequently, when the leadership of the Cherokee Nation who were primarily of mixed blood, drew up their constitution in 1827, they modeled their government on the United States government. This tribal constitution restricted women's property rights and denied them a voice in

the Cherokee government.<sup>22</sup>

The development of plantation slavery and the adoption of the 1827 constitution helped create, for the first time, two distinct classes within Cherokee society. The members of these groups not only differed in economic status but also in their world view and values. Most of the Cherokee leaders were mixed bloods who embraced slavery and the new government, owned slaves and sought the values of white southern planters. However, the rapid strides of European civilization alarmed the conservative fullblood Cherokees. In 1828 White-path [Nun na tsune ga] (d. 1839), an influential full blood that lived in Gilmer County, Georgia, headed a rebellion against the new code of laws and the white man's way.<sup>23</sup> White-path preached rejection of the white civilization and soon he attracted a large group of followers known as Red-sticks who tried to violently overthrow the new government.

White-path was eventually persuaded by John Ross (1790-1866) to give up the rebellion. Soon thereafter, John Ross was elected principal chief of the Nation. Although Ross was a mixed blood and wealthy slave owner, he drew support from the conservative fullbloods because he verbalized and defended the traditional values which bound the Cherokees to their lands. In time, John Ross and the full bloods would view slavery as one aspect of the white southern "civilization" that forced them from their homeland.<sup>24</sup>

After the American Revolution, the United States



continued the British policy to "civilize" the Cherokees. In 1791 the Treaty of Holston was negotiated by the new federal government in an effort to end white-Cherokee conflicts. The treaty defined territorial boundaries between the United States and the Cherokees in Georgia, North Carolina and Tennessee and affirmed perpetual peace between the nations. The treaty also promised the Cherokees federal protection and forbade inhabitants of the United States to hunt on Cherokee lands or to pass over Cherokee lands without a passport. Article XVI of the treaty paved the way for the nineteenth century "civilization" program. In this article, the United States promised to assist the Cherokee to obtain a "greater degree of civilization".<sup>25</sup> The federal government promised to help the Cherokees to become herdsmen and cultivators instead of hunters.

Stimulated by the Treaty of Holston, the Cherokees became farmers and transformed their society. This shift to agriculture was accompanied by the arrival of missionaries. In 1801 the Moravians established a school near Springplace, Georgia. The Cherokee council insisted that the white man's religious teachings were not welcome unless they were accompanied by instructions in reading, writing, and arithmetic.<sup>26</sup> In 1803 the Presbyterians also established a mission school in the Cherokee Nation near Tellico, Tennessee. The missionaries greatest influence was on the mixed bloods, who numbered one-fourth of the population in 1809.<sup>27</sup> The

missionaries and agents of the federal government were remarkably successful in transforming the Cherokee culture because many Cherokees had decided that these changes were in their own best interest.<sup>28</sup> The Cherokee Nation co-operated with the "civilization" program because Cherokee leaders believed that if their people were culturally indistinguishable from whites, the white people would permit them to remain in peace in their homeland.<sup>29</sup> Cherokee officials actually sought to further educational opportunities for their citizens. With the assistance of missionaries, in 1827 the Nation purchased a printing press and type faces in both English and in Cherokee syllabary.

The 1821 invention of the Cherokee syllabary by George Guess, [Sequoyah] (1770?-1843) virtually eliminated illiteracy among the Cherokees.<sup>30</sup> Once a person who spoke Cherokee learned the syllabary, they could read and write the language after approximately one week of study.<sup>31</sup> The syllabary was feasible because the Cherokee language was composed mostly of unclosed syllables. Within months of Guess's invention, it was common for travelers in Cherokee lands to see directions for different paths inscribed on trees in the new syllabary.<sup>32</sup>

The establishment of mission schools, the development of commercial agriculture, and the adoption of the new syllabary initiated profound changes that forever altered the fabric of Cherokee life. This transformation however caused something

other than the destruction of traditional Cherokee society. Although the schools, churches and the new constitution (1827) were adapted from Anglo-Americans, the Cherokees harnessed these advances to serve their own purposes and maintain their own identity.<sup>33</sup> These advances caused a cultural revitalization within the nation that produced intense pride in being Cherokee and a sense of Cherokee nationalism.<sup>34</sup> These advancements both infuriated and pleased their white neighbors.

The federal government also encouraged and supported missionaries among the Cherokees. Agents and missionaries both believed that "civilization" and Christianity were inseparable. A person could not be Christian without being "civilized", nor "civilized" without becoming Christian.<sup>35</sup> The Moravians established outposts to perform their work among the Indians. The missionaries were amazed at how diligently the Cherokee parents sent their children to school, even with the understanding that they might become estranged from them, because they wanted their children to be able to deal more effectively with whites. The Cherokee equated education with survival.<sup>36</sup>

The missionaries and the federal officials were quite gratified by Cherokee progress. Government agent appointees resided among the Cherokees and engaged carpenters, wheelwrights, smiths and weavers to apprentice Cherokees in European crafts, and also instructed them in modern

agricultural techniques and animal husbandry. Colonel Thomas L. McKenney (1768-1851), the first Commissioner of Indian Affairs, wrote in 1825 that "The Cherokees on this side of the Mississippi are in advance of all other tribes. They may be considered a civilized people".<sup>37</sup> This statement was reinforced by the 1826 census that listed 22,000 cattle, 7,600 horses, 46,000 swine, 2,500 sheep, 762 looms, 172 wagons, 2,943 plows, 10 sawmills, 31 gristmills, 62 blacksmith shops, 8 cotton machines, 18 ferries and "a number of good roads".<sup>38</sup>

Presidents George Washington (1732-1799) and Thomas Jefferson (1743-1826) both encouraged the Cherokees to adopt a new system of laws patterned after those of the white men. Jefferson even sent agents to help the Cherokees construct a new centralized government.<sup>39</sup> Ironically, the 1827 Cherokee constitution created a crisis for the United States government. The State of Georgia claimed that the Cherokee republic violated state sovereignty as set forth in the United States Constitution. Article IV, Section 3 stated "... no new State shall be formed or erected within the jurisdiction of any other State..."<sup>40</sup> By formally asserting their right to their tribal lands, the Cherokees created a state within a state, a violation of the Constitution.<sup>41</sup> Consequently, the Cherokees had given state governments an opportunity to challenge the Indian's right to the land and promote their removal to territory west of the Mississippi.

In the treaties of 1810 and 1817, the United States

government advocated removal to the west for those Cherokees who lost their land and who wished to maintain their old ways of life. By 1827 there were approximately 3,000 Cherokees who had exchanged their eastern land for land located in the west. Few of the Cherokees who moved west however were traditionalists. A large number of this group went west to escape political enemies within the tribe who held treaty signers responsible for the loss of land in the East. Some sought to distance themselves from the increasingly racist Anglo-American society, while others went west in search of greater economic opportunities.<sup>42</sup> This early group of Western Cherokees came to be known as the Old Settlers.<sup>43</sup>

Traditional Cherokees refused to move west under any circumstances. Although they were literate and practiced Christianity, they still respected the traditions of their elders. According to aboriginal folktales, the Cherokees were the *Ani'-Yun'-wiya*, the principal people. They believed that their homeland was at the center of the earth and they thought their world was an island suspended by four cords from a solid rock sky. Although these traditional Cherokees were aware that some had migrated to the west and others had gone west to hunt and returned, the west remained largely unknown land at the edge of the island.<sup>44</sup>

According to Cherokee tradition, west was the direction that the spirits of the dead travelled and was considered a place of darkness, uncertainty and doom. The Cherokees

considered their homeland in the Appalachian Mountains a holy place that was created for them, the *Ani'-Yun'-Wiya*, the principal people. Their homeland provided sacred plants that they used for medicines to cure psychological and physical ills. They were deeply concerned that these plants might not grow in the west. Besides, the elders told them that the spirits of the deceased lived in the west. Therefore the idea of removal was an anathema to the traditional Cherokee.<sup>45</sup>

As Cherokee resolve to stay in their homeland strengthened, southerners became more determined than ever that the Indians move west. In 1819, Georgia the southern state with the largest Cherokee population, insisted that the United States government live up to terms of the Compact of 1802. In this agreement Georgia had ceded territory which eventually became Alabama and Mississippi, on the condition that the federal government would eventually extinguish Indian title to lands within the state. Georgia appealed unsuccessfully to the government to remove the Indians in 1819; when that effort failed, attempts were made to purchase Cherokee lands. The Cherokee Nation retaliated to these efforts by passing the blood law: any Cherokee who signed a treaty selling land to whites would be executed. The Cherokee Nation Council also served notice to the United States government that the Nation would cede no more land.<sup>46</sup>

Georgians were becoming increasingly frustrated at their inability to remove the Cherokees. They felt the federal

government was delaying enforcement of the Compact of 1802. The Cherokees contended that the wording of the 1802 Compact was conditional and could not be carried out without their consent. The actual wording was "as early as the same can be peaceably obtained on reasonable terms." "Therefore, by refusing to cede lands, the Cherokees could block fulfillment of the Compact of 1802. The Georgians became incensed when President James Monroe (1758-1831) in 1823 interpreted the Compact of 1802 to allow the Cherokees the right to refuse any more land cessions and stated that the Compact did not provide for the Cherokee's removal by use of force."<sup>48</sup>

About 1828 gold was discovered at Ward's Creek, near present day Dahlonega, Georgia. Aware of the gold and the Cherokee 1827 Constitution, Georgia's governor sent a document signed by the state legislators that protested the Cherokee's continued occupancy of their ancient homelands. This document demanded the removal of the Cherokees as provided in the 1802 Compact. President John Quincy Adams (1767-1848) tried to pacify the Georgia governor by sending a delegation to discuss removal with the Cherokees, but the Cherokees received them in stony silence."<sup>49</sup>

John Ross became principal chief of the Cherokee Nation a month before Andrew Jackson (1767-1845) won the election for the United States presidency in 1828. During Jackson's first address to the Congress (December 8, 1829), he stated his intention to introduce legislation to provide for the removal

of Southeastern Indian Tribes to lands west of the Mississippi. The Georgia legislature inspired by Jackson's message, met eleven days later and passed a series of laws that confiscated a large section of Cherokee land, nullified Cherokee laws within the confiscated area and prohibited further meetings of the Cherokee Legislative Council and all other Cherokee assemblies within the limits of Georgia.<sup>50</sup>

The Georgia legislature struck at the Cherokee Nation with a vengeance. They passed laws that provided for the arrest and imprisonment of Cherokees who influenced fellow tribesmen to reject emigration west. All contracts between Indians and whites were null and void, unless witnessed by two whites; it was made illegal for an Indian to testify against a white man in Georgia's courts. As a final blow, the new laws forbade Cherokees to dig for gold in their newly discovered gold fields near Dahlonega and Dalton, Georgia.<sup>51</sup>

The Cherokees were outraged. They took it upon themselves to annihilate white trespassers. Federal troops and the Georgia Guard were sent to quell the disturbances. Many Cherokees were arrested, jailed and received harsh sentences.<sup>52</sup>

The Cherokee leadership realized that their only hope to save their nation from removal was internal unity and public support. Cherokee leaders preached the doctrine of unity through their lands while other leaders were sent to lobby in Washington, D.C. Major Ridge (1770-1839), president of the



Cherokee National Committee, went on a lecture tour of northern cities (1828-29) to arouse public sentiment in favor of the Cherokees. He and his nephew Elias Boudinot (1803-1839) spoke in Philadelphia, New York City, New Haven, Hartford, and Boston. The Cherokee Nation also retained the legal firm of Underwood and Harris.<sup>53</sup>

The Cherokees had success with the legal system. In Worcester v. Georgia (1832), the United States Supreme Court ruled that Georgia law did not extend over the Cherokee Nation. Ridge and Boudinot were overjoyed when they heard the decision. However, they soon heard rumors that President Jackson had no intention of enforcing the decision. Boudinot and Ridge traveled to Washington, D.C. to secure an audience with the president.

Ridge asked Jackson if the power of the United States would be used to enforce the Supreme Court decision. Jackson essentially said no and instructed him to go home and advise his people that their only hope of relief was in abandoning their country and removing to the west.<sup>54</sup> When Ridge left his discussion with President Jackson, he was visibly upset.<sup>55</sup>

Sometime during April, 1832, Ridge and Boudinot reversed their opinion on removal. They began to believe that if the Cherokee remained in Georgia they would be destroyed, and that any further efforts to remain in Georgia would be futile. When the delegation returned to the Cherokee Nation on May 15,

1832, Ridge announced that the Cherokees could not expect help from the federal government and that they would be crushed by racial oppression if they remained in Georgia. The Cherokees only hope was to make the best terms possible with the federal government and emigrate to the west. Ridge formally called for a special council to consider treaty proposals on July 23, 1832.<sup>56</sup>

The council considered a seventeen-point proposal presented by members of the Ridge delegation. The proposals were rejected by the majority of council members. Ridge and Boudinot put a high value on Cherokee unity and were convinced that eventually Principal Chief John Ross would change his mind and declare himself in favor of a treaty. They accepted the council's decision. After the council's recess, Ridge and Boudinot began a speaking tour in the Cherokee Nation to educate the Cherokees on the futility of their position.

Meanwhile, Georgia sent 550 surveyors into the Nation to carve the land into 160 acre plots to be distributed by lottery. On October 22, 1832 the Georgia lottery started allocating Cherokee lands; immediately the fortunate winners began to descend on the Nation. Some simply investigated their newly acquired property; others evicted the Indians from their land. These intruders killed and maimed many Cherokees with impunity because no Indian could testify against them in court.<sup>57</sup>

The harassment of the Cherokees by the Georgians

strengthened Ridge's conviction that removal was the only solution to the Cherokee dilemma. Over the next two years the pro-treaty faction grew within the Nation and claimed one thousand members. In December of 1833, Andrew Ross (1799-1834), the brother of Principal Chief John Ross, joined the Treaty Party. In the spring of 1834, Andrew Ross went to explore the western land for his people. On his return to Georgia, he was murdered by those who opposed removal.<sup>58</sup>

In July 1835, the Treaty Party headed by Ridge arranged a meeting near John Ridge's (1803-1839) property to choose delegates to negotiate a treaty with the United States government. A thirteen-member delegation was chosen. Over the next few months the delegation arranged a treaty that relinquished all lands possessed by the Cherokee Nation east of the Mississippi River. The United States was to pay the Cherokee Nation five-million dollars and assign land west of the Mississippi River. The new land could never be annexed by another state or territory without Cherokee consent.<sup>59</sup> A small committee signed the treaty on December 29, 1835.

The treaty gave the Cherokees two years to arrange for their travel west. However, the majority of the Cherokees, still led by John Ross, were confident that the federal government would not enforce the minority treaty. Therefore, they made no provisions to move. They protested the treaty by sending a petition to the Congress which stated that the document was signed by an unauthorized minority. This protest

petition was signed by 15,000 Cherokees, almost the entire population of the Nation.<sup>60</sup> However, the Congress ratified the minority treaty anyway. In the summer of 1838, federal troops entered the Cherokee Nation, rounded up the Cherokees, and imprisoned them in stockades. The soldiers burned the Cherokee's crops and houses to discourage them from escaping and returning home.

Once they were imprisoned, the Cherokees were not given sufficient food and water. In the winter of 1838 - 1839, the ill-prepared Cherokees began their forced migration to the west. Their march West became known as the Trail of Tears, mostly because between one-fourth and one-half of the Cherokees died before reaching their new home in the West. Quatie (1800-1838), John Ross's wife, was among the dead. A white soldier reported that she gave her only blanket to a sick child during a blinding sleet and snow storm.<sup>61</sup>

The political factions that were created over the Cherokee forced removal to Indian Territory in 1838 - 1839 exploded in 1861 and caused the Cherokees to have a civil war all their own. The dissention within the Cherokee Nation from 1861 to 1866 can best be described as the enduring tension between John Ross, who led those known as the Ross Party, and Stand Watie (1806-1871), whose followers constituted the Treaty Party. Their rivalry for leadership of the Nation as a whole was aggravated by the moral issue of slavery and the policies of the United States and the Confederate governments.

**This thesis will chronicle the events and the consequences of this conflict.**

## NOTES

1. Edward Gaylord Bourne, ed., Narratives of the Career of Hernando de Soto (New York: C. Scribner & Sons, 1922), Vol. II: 65-72, 78.

2. Theda Perdue, Slavery and the Evolution of Cherokee Society (Knoxville: University of Tennessee Press, 1989), 8-11. Hereafter referred to as Perdue, Slavery.

3. Ibid., 4.

4. Samuel Cole Williams, ed., Lieutenant Henry Timberlake's Memoirs, 1756 - 1765 (Johnson City, Tenn., 1927), 24. Hereafter referred to as Williams, Timberlake. The statement meant that any death that was the result of warfare would be avenged in warfare.

5. Samuel Cole Williams, ed., Adair's History of the American Indians (New York: Promotory Press, 1930), 420. Hereafter referred to as Williams, Adair's History. James Adair (1709?-83?) was a colonial trader and writer that lived for almost forty years among the southern Indians, primarily the Cherokees and Chickasaw tribes. His book, The History of the American Indians (1775), was one of the best first hand accounts of the habits and character of the southern Indian tribes in the eighteenth century.

6. James Mooney, Myths of the Cherokees (Washington: Government Printing Office, 1900), 250, 327-328. Hereafter referred to as Mooney, Myths.

7. The account of Slave Woman was documented by Newton D. Mereness, ed., Travels in the American Colonies (New York: Neale Publishing Company, 1916), 115-21. Hereafter referred to as Mereness, Travels.

8. Perdue, Slavery, 3.

9. Samuel Cole Williams, ed., Early Travels in the Tennessee Country, 1540-1800 (Johnson City, Tennessee: Watuga Press, 1920), 150-155.

10. Williams, Adair's History, 80, 105.

11. Perdue, Slavery, 15.

12. Williams, Adair's History, 456.

13. For a representative work on the role Indian trade played in the economy of South Carolina, see John P. Reid, A Better Kind of Hatchet (University Park, Pa.: University Press, 1976).

14. Williams, Timberlake, 107.

15. This was the thesis of Frederick O. Gearing, Priests and Warriors: Social Structure for Cherokee Politics in the 18th Century (Menasha, Wisconsin: American Anthropological Association, 1962).

16. Perdue, Slavery, 34-35.

17. The Yamassee (sometimes spelled, "Yemassee") moved from northern Florida to coastal Carolina in order to trade with the English. In 1715 English creditors seized the wives and children of debtor Yamassees to sell as slaves for payment of the Yamassee debts. The Yamassee recruited Creek and Apalachee Indians and rebelled against the English traders. The Indians were unable to maintain a united front. Consequently, the war ended in 1717 with the English position strengthened in the colonies. For further information see Alice B. Kehoe, North American Indians, 2d. ed., (Englewood Cliffs, New Jersey: Prentice - Hall, 1992), 191. Hereafter referred to as Kehoe, Indians.

18. Ibid., 37.

19. Ibid., 39. The most notorious Cherokee kidnapper of slaves was Chief Bengé. See Luther F. Addington "Chief Bengé's Last Raid," Historical Society of Southwest Virginia 2(1966): 124-133.

20. Rennard Strickland, Fire and Spirits: Cherokee Law from Clan to Court (Norman: University of Oklahoma Press, 1990) 49. Hereafter referred to as Strickland, Fire.

21. Ibid., 50.

22. Cherokee Nation, Constitution of the Cherokee Nation (Milledgeville, Ga.: Office of the Statesman and Patriot, 1827), 3. For commentary on the constitution and laws of the Cherokee Nation, see Rennard Strickland, Fire and the Spirits: Cherokee Law from Clan to Court (Norman: University of Oklahoma Press, 1975).

23. Mooney, Myths, 113-114.

24. Perdue, Slavery, 69.

25. The text of the treaty can be found in Charles J. Kappler, ed., Indian Affairs: Laws and Treaties (Washington, D.C.: Government Printing Office, 1904), Vol. II: 29-31. Hereafter referred to as Kappler, Indian Affairs.

26. Grace Steele Woodward, The Cherokees (Norman: University of Oklahoma Press, 1936), 123. Hereafter referred to as Woodward, Cherokees.

27. Russel Thorton, The Cherokees: A Population Study (Lincoln: University of Nebraska Press, 1990), 47. Hereafter referred to as Thorton, Population.

28. The Cherokees were devastated in the late seventeenth and early eighteenth centuries by European diseases that their priests could not cure. Consequently they began to question some of their traditional beliefs when the tribal priests were unable to control the new ailments. Ibid., 28-31.

29. Theda Perdue, The Cherokee (New York: Chelsea House Publishers, 1989), 43. Hereafter referred to as Perdue, Cherokee.

30. Much is unknown or questionable about Sequoyah. His birthdate is given as 1760, 1766 and 1790 in Emmet Starr, History of the Cherokee Indians and Their Legends and Folk Lore. (Muskogee, Oklahoma: Hoffman Printing Company, 1921; reprint, Muskogee, Motter Bookbinding Company, 1984), 3; Grant Foreman, Indian Removal: The Emigration of the Five Civilized Tribes (Norman: University of Oklahoma Press, 1932), 212. and Thurman Wilkins, Cherokee Tragedy: The Ridge Family and the Decimation of a People (Norman: University of Oklahoma Press, 1983), 4, 215-219. Hereafter referred to as Starr, History; Foreman, Removal; and Wilkins, Tragedy respectively. The first date would make him too old and the final date too young if he fought in the Creek war (1813-1814). His English name is also in question. He is referred to as George Guess, Gist or Guest. Sequoyah did sign the treaty of 1816 and moved west sometime between 1818 and 1823. He died in Mexico in 1843 while searching for a missing band of Cherokees. For further information see Mooney, Myths, 99-102, 130, 145-146 and 227-228.

31. Mooney, Myths, 110.

32. Ibid.

33. Strickland, Fire, 51-53. Strickland stated that the Cherokees identified the adoption and the enforcement of the new legal system with the goal of preserving their tribal lands.



34. Perdue, Cherokee, 47.

35. Perdue, Cherokee, 41.

36. Ibid., 43.

37. America State Papers, Letter Book II, 300 - 301.

38. Ibid.

39. James D Richardson (ed.) A Compilation of Messages and Papers of the Presidents, 1789-1897 (Washington, D.C.: Government Printing Office, 1896-99), I: 80; Thomas Jefferson, The Writings of Thomas Jefferson (Washington, D.C.: Century Company, 1904) XVI: 455-58.

40. U.S. Constitution, in Richard Hofstadter, ed., Great Issues in American History: From the Revolution to the Civil War, 1765 - 1865 (New York: Random House, 1958), 100. Hereafter referred to as Hofstadter, Issues.

41. Cherokee lands were located in Georgia, Alabama, Tennessee and North Carolina.

42. Perdue, Cherokees, 53.

43. Perdue, Slavery, 61.

44. Mooney, Myths, 240, 253-254, 436.

45. Ibid., 246-247.

46. Perdue, Cherokee, 53-55.

47. American State Papers, Letter Book II, 103.

48. William L. Anderson, ed. Cherokee Removal: Before and After (Athens: University of Georgia Press, 1991), xi. Hereafter referred to as Anderson, Removal.

49. Woodward, Cherokees, 154.

50. Ibid., 158-159.

51. Ibid.

52. Ibid.

53. Thurman Wilkins, Cherokee Tragedy: The Ridge Family and the Decimation of a People (Norman: University of Oklahoma Press, 1983), 4, 215-219. Hereafter referred to as Wilkins, Tragedy. Ridge considered himself a full-blooded

Cherokee; however, both of his parents were mixed bloods.

54. Andrew Jackson, Correspondence of Andrew Jackson (Washington: Government Printing Office, 1826), 430. Hereafter referred to as Jackson, Correspondence.

55. Ibid.

56. Wilkins, Tragedy, 240-242.

57. Ibid., 251.

58. Grant Foreman, Indian Removal: The Emigration of the Five Civilized Tribes of Indians (Norman: University of Oklahoma Press, 1932), 265. Hereafter referred to as Foreman, Removal.

59. Kappler, Indian Affairs, 324-333.

60. Perdue, Cherokees, 58.

61. Ibid. This was a reprint of a U.S. Army private's recollection of the Trail of Tears.

## **CHAPTER 2**

### **WESTERN MIGRATION**

In the late eighteenth and early nineteenth centuries, the United States government convinced individual settlements of Cherokees to exchange their land in the East for land west of the Mississippi River. The Cherokees that participated in the 1790-1819 land exchanges went west for a variety of reasons. Some were traditionalists who wanted to preserve their old way of life; others sought to distance themselves from the racist Anglo society; the majority of the early settlers went west in search of greater economic opportunity. The first western migrants became known as the Old Settlers.<sup>1</sup>

When the 1790-1819 land cessions took place, the Cherokees were not a centralized nation although they did meet annually in a National Council to discuss various topics. The majority of the Cherokees did not want to relocate to the west and were upset about the land cessions and the white

encroachment on their land. When the National Council met in 1820, the representatives from the traditional towns decided it was time to adopt drastic measures against possible betrayal of the nation and discussed establishing a centralized government. They also proposed the Blood Law - a law that prescribed death for anyone who sold lands in a treaty without authority of the nation. Major Ridge was credited for placing this law before the national council for a vote.<sup>2</sup>

By the time the Blood Law was passed the Old Settlers had moved to the St. Francis River region in northeastern Arkansas and cleared land for new farms. They intended to make this region their permanent home. In December, 1811, violent earthquakes shook the St. Francis River region where most of the Cherokee migrants settled and then secondary tremors continued for several years. The seismic activity convinced the Old Settlers that the Great Spirit did not approve of the area and so they migrated further west and settled between the Arkansas and White Rivers in western Arkansas.<sup>3</sup>

When the Old Settlers abandoned the St. Francis River region and migrated further west, they resettled on land that was ceded in 1808 by the Osage Tribe to the United States government. Within a few months of their arrival, the Old Settlers and the Osages were in open conflict. The Osages complained about Cherokee parties hunting on the White River

without their permission. The Osages stated that their land cession "did not give to the Cherokees all the Beaver, Bear, Buffaloe [sic], and Deer on our lands - we sold land but not the game on our land."<sup>4</sup>

The United States government expressed little interest in the Cherokee - Osage conflict until white settlers began to settle along the Arkansas River. When intertribal warfare produced white victims, the United States government sent agents to the area to protect whites by ending hostility between the tribes. A shaky truce was negotiated in 1813 but the peace was of short duration. Open conflict erupted by 1815. There were multiple conflicts and peace negotiations between 1813 and 1826 but peace was never established between the Osages and the Cherokees.<sup>5</sup> In 1828 the United States government convince the Old Settlers that their only hope for peace was to move further west. By the Treaty of 1828, the Old Settlers were given a seven million acre tract of land just beyond the western border of the Arkansas Territory. This treaty also provided that those Cherokees who lived in the states east of the Mississippi River were also free to inhabit this land. Reluctantly the Old Settlers abandoned the farms they had cleared only a decade earlier and moved west once again. Within a few years, the Treaty Party joined the Old Settlers in northeastern Indian Territory.<sup>6</sup>

Fearing reprisals for ceding land without the consent of the tribe, most members of the Treaty Party left the Cherokee

Nation promptly after signing the Treaty of New Echota in 1835. These Cherokees took advantage of the provisions in the New Echota Treaty authorizing Cherokees to emigrate themselves. Members of the Treaty Party were able to secure payment for their homes, property and improvements before they left for the West. Major Ridge received \$24,127 for his land, plus six dollars a day travel allowance, while others in his group received four dollars a day travel allowance.<sup>7</sup> They traveled overland through Kentucky, Illinois, Missouri and Arkansas to their new homes in time to plant their spring crops. White residents of the country through which they journeyed commented on the fact that the Cherokees looked like aristocrats accompanied by black slaves, saddle horses, droves of fat oxen, well mounted, well dressed and obviously well fed.<sup>8</sup>

The masses of Cherokees that were removed in 1838-1839 did not receive such generous advance compensation for their land nor did they receive travel allowances or time to pack their belongings. As a result, the forced migrants were scantily clad, ill fed and suffered many hardships on their journey to the West. The exact number of lives lost in the 1838-1839 emigration was not determined, although Cherokee authorities estimated that out of the 18,000 that went west after the treaty of New Echota (1835) about 4,000 perished - either in stockades prior to removal or on the journey west.<sup>9</sup>

In the spring of 1839 the Cherokees who survived the

Trail of Tears, the 1,000 members of the Treaty Party and the 3,000 Old Settlers were united in the west.<sup>10</sup> The economic, political, and cultural differences between the three groups produced considerable conflict in the new Cherokee Nation in the west. Old Settlers resented the newcomers, particularly the Ross Party, as those who opposed removal and who followed John Ross were called. The Old Settlers were upset about the influx of the thousands of Eastern Cherokees and did not wish to come under the rule of these far more numerous newcomers.

There was an even more severe conflict between the Ross Party and the Treaty Party. Since the Treaty Party arrived before the forced migrants, they forged an alliance with the Old Settlers prior to the arrival of Chief John Ross and the majority of the Cherokees. The Old Settlers found valuable allies among the Treaty Party whose members did not want to become subjects of a Ross Party that considered them traitors. The relative prosperity of Treaty Party members already settled on the best land also ignited resentment among the impoverished Cherokees who had suffered on the Trail of Tears.

Although the Eastern Cherokees and the Old Settlers had been separated only a few decades, the environment of the Old Settlers had effected and changed their habits. Since they had relocated twice after they left their eastern homeland, their lifestyle was much more rustic and informal than the newcomers. The Old Settlers had had little time to debate and write laws and put little emphasis on education or religion.

The Old Settlers were neither statesmen nor politicians. Their government did not have a written constitution and had few written laws. They were governed by three chiefs and a council of elders that met semi-annually in *Tahlonteskee*, their capital. Their government resembled the government of the Eastern Cherokee Nation at the beginning of the nineteenth century. The Old Settlers farmed, owned and operated gristmills and saltworks and saw little need for government. According to the newcomers, the Old Settlers were also inordinately fond of dancing and gaming.<sup>11</sup>

At first Chief John Ross was hopeful of painlessly uniting the Old Settlers government with the Eastern Cherokee government. On June 10, 1839 he accepted an invitation offered to his people by Western chiefs to assemble at Double Springs to receive the Western's hand in friendship. For the first few days harmony between the Old Settlers and the newcomers prevailed. On the third day Chief John Ross was asked to submit his views in writing concerning the future government of the vastly expanded Cherokee Nation. Ross suggested that a select committee be chosen containing both Old Settlers and newcomers. This committee was to revise and draft a code of laws for the Cherokee Nation. The new code of laws was then to be presented to the people for their approval. Ross also suggested that the laws of both Eastern and Western Cherokees remain in force until repealed and a new government organized.<sup>12</sup>



After receiving Ross's suggestions the Old Settlers chiefs moved their people to another site on the council grounds and excluded Ross from their council. The Old Settlers debated Ross's proposal among themselves for several days and decided to reject it. On June 21, 1839 the Western chiefs declared that since the Eastern Cherokees had accepted the hospitality of the Westerners, union had already been achieved and all eighteen-thousand Cherokees in the west were to live under the Old Settlers form of government. Then the Old Settlers chiefs dissolved the council.<sup>13</sup>

The Eastern Cherokees were outraged by the arrogance of the Western chiefs. Sequoyah (George Guess) and John Ross managed to reassemble both factions before they left the camp grounds. Plans were made for another council on July 1, 1839 for the purpose of founding a new government. This time the people, not the chiefs, voted to adjourn the meeting. As the crowd dispersed, Thomas Carmichael Hindman (1818?-1868), a white military observer overheard that the Eastern Cherokees suspected that the Ridges and Boudinot had influenced the Western chiefs to dissolve the council without settling on a plan of government.<sup>14</sup>

A group of Eastern Cherokees held a private meeting immediately after the second council adjourned. According to all accounts, John Ross was unaware of the secret conclave. The cause of the meeting "was a sudden breaking forth of long smoldering resentment - an ebullition of rage and

disappointment occasioned by the Ridges' supposed intrigue and management in defeating the object of the general council."<sup>15</sup> At this meeting the leader read the Blood Law that required death for the unsanctioned sale of Cherokee land.

Those accused of violating the Blood Law were Major Ridge, John Ridge, Elias Boudinot, Stand Watie, James S. Starr (1796-1845), and George W. Adair (1806-1862). Three men from each of the defendant's clans were called to sit in judgement of their fellow clansmen. All of the accused were found guilty and sentenced to death. To determine the executioners, numbers were placed in a hat; twelve of the numbers had an X mark after the numeral that indicated the executioners. Each man present was asked to draw a number from the hat.<sup>16</sup>

A committee was appointed to arrange the executions. Early the next morning, Saturday, June 22, 1839 a group of twenty-five men arrived at the house of John Ridge. Three dismounted, forced Ridge's door open and quietly entered the house. They grabbed Ridge from his bed and dragged him screaming into his yard. His wife and children were awakened by the noise and stood in the doorway watching as the assassins stabbed Ridge twenty-six times and then "they [the assassins] marched over it [Ridge] by single file."<sup>17</sup>

That same morning a second group of thirty executioners went to Park Hill and waited in a thick stand of trees near the house Elias Boudinot was building. Around nine o'clock Boudinot arrived at the scene. Four Cherokees approached

Boudinot and asked him where they could get some medicine for a sick family member. Boudinot offered to show the way. As they walked towards the mission one of the men dropped behind and put a knife in Boudinot's back. The other Cherokees then swung tomahawks at Boudinot's head. His skull was broken into six pieces.<sup>18</sup>

A carpenter that worked for Boudinot saw the murder but was unable to help him. The carpenter realized that the assassins were members of the Ross party and rode to Stand Watie's store to warn him. Watie left the store through the back door and escaped his death sentence.<sup>19</sup> The carpenter also tried to warn Major Ridge but he was too late. Major Ridge was shot and killed about 10 o'clock in the morning in an ambush on a country road in Arkansas, a mile outside the Cherokee Nation.<sup>20</sup>

Stand Watie immediately gathered a band of fifteen heavily armed Treaty men around him to protect himself and to avenge his kinsmen's deaths.<sup>21</sup> They roamed the countryside in search of the assassins. Late on the evening of June 22, 1839 Watie went to the house of Dr. Samuel Austin Worcester (1798-1859) where Boudinot's body lay. After pulling back the sheet that covered Boudinot's gashed and broken skull, Watie announced that he would give a reward for the names of those who had killed Boudinot.<sup>22</sup>

Chief John Ross and the Eastern National Committee were at Ross's home the morning of the murders. They were involved

with reports, master rolls, correspondence with the war department and the paperwork involved in trying to receive payment for the emigrants expenses in relocation to the West. A messenger was sent to Ross to tell him of Boudinot's murder. Ross sent his brother-in-law, John Golden Ross (1787-1858), to verify the tragedy. When his brother-in-law returned, he brought word that Stand Watie held the Chief responsible for the murders.<sup>23</sup>

After confirmation of the murders, Chief Ross dispatched a message to General Matthew Arbuckle (1776-1851), the Commander of nearby Fort Gibson. Ross requested that Arbuckle conduct an unbiased investigation of the murders. Unfortunately Arbuckle was not an unbiased observer. The Treaty Party had arrived several years before the Ross Party and had purposely tried to discredit Ross as dishonest and greedy and characterized his followers as drunkards that routinely committed crimes such as murder and arson.<sup>24</sup>

Arbuckle's response to Ross indicated that he thought that if Ross himself was not directly involved in the assassinations, he was sheltering the murderers in his home. In a series of messages dated from June 22 to June 28, 1839, Arbuckle asked Ross to meet with him and three Old Settler chiefs at Ft. Gibson on June 28. Ross agreed to the meeting and requested permission to bring bodyguards because of threats made against his life. Arbuckle rejected Ross's request and sent a company of armed men to Ross's home to

escort Ross to Ft. Gibson and arrest the murderers which were reported to be there. While Ross never denied that some of the murderers were in his body guard, Ross claimed that the murderers were unknown to him.<sup>25</sup> Ross refused to accompany Arbuckle's men to Ft. Gibson without his own body guards. Ross then sent word that he, the Old Settlers and the Treaty Party should meet at the council that was scheduled for July 1.<sup>26</sup>

Frustrated by Ross's refusal to come to Ft. Gibson, Arbuckle sent several companies of men to patrol the Cherokee's land. Arbuckle was oblivious to the fact that crimes committed by Cherokees in the Nation were not under the jurisdiction of the United States government. The presence of the military questioning the new immigrants increased the furor in an already tense Cherokee Nation. Nevertheless, on July 1, two-thousand Cherokees assembled at the Illinois Camp Ground to organize a new government that would provide for the establishment of courts, schools and churches.

The Western chiefs were notably absent from the conference. The chiefs of the Old Settlers -- John Brown,<sup>27</sup> John Looney (1782?-1846) and Thomas Lewis Rogers (1811-1870?) -- called the meeting "altogether irregular" and stated that they would protest against all its acts."<sup>28</sup> Sequoyah, an Old Settler, collaborated with Chief Ross in the composition of a special invitation to Brown, Looney and Rogers. They managed to convince Looney to attend the conference but both Brown and

Rogers stubbornly stayed away.

Brown and Rogers joined members of the Treaty Party and arranged a council meeting at the capital on July 12, 1839. Ross appeared at Tahlonteskee to tell the Western chiefs that the July 1 convention had adopted an Act of Union under which the two governments were considered one body. The council also granted amnesty to the murderers of John Ridge, Major Ridge and Elias Boudinot. A general pardon was also offered to the members of the Treaty Party, if they would disavow their threats to avenge the deaths of their kinsmen and pledged "to conduct themselves as good and peaceable members of the community."<sup>29</sup> Members of the Treaty Party were to appear at the Illinois Camp grounds by September 7, 1839 and confess their sorrow for having signed the Treaty of New Echota. After that they would be permitted to live peaceably in the Nation but were to be excluded from holding office in the Cherokee government for five years.<sup>30</sup>

Arbuckle had heard rumors that the Ross Party intended to disturb the Old Settlers and the Treaty Party members council with violence. Therefore Arbuckle distributed government arms and ammunition to the Old Settlers and Treaty Party adherents. When Ross and his committee arrived at the council, there was no chance for reconciliation. The committee members lives were threatened and they fled the council grounds shortly after their arrival. The Old Settlers and Treaty Party then adopted a resolution to expel from the

Nation any white men that were sympathetic to Ross, increased the number of light-horsemen<sup>31</sup> to enforce the laws of the Western government and made plans to meet again in October to elect new chiefs.

After the July 12, 1839 meeting at Tahlonteskee, the Cherokee Nation teetered on the brink of civil war. Chief Looney and several other prominent Old Settler leaders decided to meet with John Ross and his followers on September 6, 1839. This meeting was held at Tahlequah, the Ross Party's new capital, situated in the center of the Nation. The new constitution, based on the old Eastern constitution, was formally adopted at this time. Chief John Ross was re-elected principal chief and Joseph Vann (1798-1877), a member of the Treaty Party was elected assistant or second chief. The benches of the supreme, circuit and district courts were filled by both Western and Eastern Cherokees with the Western Cherokees obtaining the majority of the positions available. The Tahlequah council stayed in session until October 10, 1839.<sup>32</sup>

Shortly after, the council adjourned, Ross and his nephew William Shorey Cody (1806-1849) left for Washington D.C. to discuss with federal officials the unrest in the Cherokee Nation and the need for prompt payment of Cherokee removal claims due from the United States government. When they arrived at the Capital, President Van Buren (1782-1862) and his Secretary of War Joel Roberts Poinsett (1779-1851)

told Ross that they were welcome as representatives of their portion of the Cherokees, but that no communication would be held with Ross until the murderers of the Ridges and Boudinot were apprehended, because they suspected Ross of being the "...instigator and abettor of the foul murders."<sup>33</sup>

Stand Watie and members of the Treaty Party received a much more cordial welcome from the Secretary of War in Washington, D.C. Watie submitted a request in late January to Poinsett that advocated a division of the Cherokee Nation. Watie wanted the Treaty Party to be granted a tract of land and a government separate from that of the Ross Party. Although Poinsett did not agree to split the tribe, he sided with Watie and directed Arbuckle to take military control of the Cherokee Nation. The suggestion of military control outraged the Ross supporters. Aware that he was badly outnumbered, Arbuckle was hesitant to take any action and requested reinforcements. Although Arbuckle planned a thorough sweep of the Cherokee Nation, he was forced to abandon his plan because additional troops were never sent and he had a limited number of men at his disposal.<sup>34</sup>

Most of the Ross Party's difficulty in Washington was due to the correspondence between Arbuckle and Poinsett. On the same day the Tahlequah council adjourned (October 10, 1839), Arbuckle wrote to Poinsett that the Old Settlers government was the only lawful government in the Cherokee Nation and Arbuckle also requested instructions on how to stop



the "ambitious and selfish career of John Ross."<sup>35</sup> Consequently Poinsett was probably unaware that four-fifths of the Cherokee Nation backed John Ross.

The internal schism was not the only problem in the winter of 1839-1840. On arrival in the West, the Cherokees were promised rations through civilian contractors in the Indian Territory. The meat delivered to the Cherokees was generally "not considered wholesome."<sup>36</sup> Crops, if sown in the summer of 1839, died unattended in the fields as the Cherokees, fearful of reprisals by opposing factions, tossed aside their farming implements and abandoned their land to find safety. So when winter came there was little food and the Cherokees were in desperate need of the \$800,000 due them for removal to the West; but the federal government decided to withhold payment until the murderers of the Ridges and Boudinot were captured and the Cherokees "abandon the government recently set up by them and acknowledge the rule of the Old Settlers as the only valid government in the Cherokee Nation."<sup>37</sup>

United States officials perpetuated and aggravated the situation by continuing to recognize three distinct groups of Cherokees, although the vast majority of the Cherokees supported the constitution of 1839. The Old Settlers and the Treaty Party comprised less than twenty per cent of the population. Most Old Settlers were in alliance with Ross, but Arbuckle continued to recognize the few Old Settlers that

aligned themselves with members of the Treaty Party as the official governing body of the Nation. In the first six months of 1840, there were thirty-three murders due to the factionalism in the Nation.<sup>38</sup>

In June 1840, there was a third council called by the Ross Party in Tahlequah that ended with another Act of Union - the third in one year. In an effort to end the violence and bloodshed, the council declared that the murders of the Ridges and Boudinot were extralegal and unsanctioned by the Ross government; and the members of the Treaty Party were granted political equality with the immigrants and were no longer required to take an oath at the Illinois camp ground that stated their sorrow for signing the Treaty of New Echota. For the summer of 1840, the national difficulties appeared over and the Cherokees accepted the political settlement, built homes and tilled their soil.<sup>39</sup>

The minority faction's acceptance of the 1840 Act of Union did not mean that they accepted John Ross as their leader. As the January 1841 elections for Principal Chief approached, the Treaty Party and Old Settlers effectively campaigned against Ross on the issue of tribal monies. Ross was accused of misappropriation of Cherokee funds and the federal government was asked to investigate the charges. Within weeks the federal government sent an agent who started an investigation which found no evidence that implicated Ross. Ross was an excellent politician and managed to deflect the

accusations made against him; he promised the Cherokees that if he were reelected, he would be able to renegotiate the financial terms of the Treaty of New Echota. Ross was reelected in January 1841, but he still had many enemies.<sup>40</sup> The Old Settlers remained upset because they had lost virtually all their land and their political power with no compensation. Treaty Party agitators blamed Ross for the Nation's problems.

Ironically, one of the casualties of the government investigation was Arbuckle. In 1828 the general had arrived at his post twenty-thousand dollars in debt but was worth over forty-thousand dollars in 1841. Since the U.S. Army paid only fifteen-hundred dollars a year, the majority of the Cherokees believed that he had somehow cheated them out of their rations and allowances.<sup>41</sup> Arbuckle was transferred after the investigation in June 1841 to Baton Rouge where no "single officer of the line of the Army or a soldier except for ordinance sergts [sic]"<sup>42</sup> were assigned. No formal charges were ever pressed on Arbuckle but his military career ended shortly after the transfer.

After the election, the Cherokee Nation calmed down for a brief period of time. The Cherokee National Council voted to allow the Old Settlers and the members of the Treaty Party to share equally on a per capita basis in the relocation monies due from the federal government.<sup>43</sup> Ross's reelection forced the United States government to recognize him as a

bonafide leader of the Cherokees. In February 1841 Chief Ross went to Washington to keep his campaign promise and renegotiate the Treaty of New Echota. President John Tyler (1790-1862) seemed sympathetic and promised the Cherokees a new treaty that would include "full indemnity for all wrongs... and... to guaranty their lands."<sup>44</sup> However, the President proved to be ineffectual and never did deliver the promised treaty.

While Ross was in Washington, an incident occurred just outside Indian Territory that disturbed the uneasy peace in the Nation. On March 17, 1841 Stand Watie entered one of the frontier stores between Arkansas and Indian Territory sat down at the counter and ordered some whiskey. As Watie sat there drinking, Johnson Foreman (1808-1841) a Ross supporter and an alleged assassin of John Ridge came to the counter. Watie offered him a drink. After a brief discussion, a fight broke out. Foreman attempted to strike Watie with a whip. A scuffle ensued and Foreman was stabbed. Foreman bled to death from the wound inflicted by Watie.<sup>45</sup>

Watie and his supporters vanished into the forrest and prepared to do battle with Ross supporters.<sup>46</sup> Foreman's brothers circulated through the Nation and inflamed the war fever of the anti-Watie men. Rumors spread through the land about murders and atrocities that may never have occurred. Most people got their news from partisan gossip that helped fuel the flames of civil war.<sup>47</sup> Between the years 1841 and

1846, a number of Cherokees reverted to the ancient tribal justice. If a clan member had been murdered by an enemy, the accused was killed by relatives of the deceased before he could be brought to trial. Not all of the violence was a direct result of the political problems between the Ross Party, the Treaty Party and the Old Settlers. There was also a notorious outlaw band, the Starr Gang, who roamed the countryside and burned houses, stole horses and murdered people.<sup>48</sup>

By September, 1845, eleven Old Settler and forty-three Treaty Party families decided to leave Indian Territory and look for homes in Texas. Other members of the minority faction made a forceful appeal to President James Knox Polk (1795-1849) to introduce legislation that divided the Cherokee Nation so that one portion of the Cherokee lands would be occupied solely by Old Settler and Treaty families. The House Committee on Indian Affairs followed the recommendation of Polk and introduced the legislation to Congress on April 13, 1846.<sup>49</sup>

John Ross opposed the proposition and used all the political strategy at his command to bring about the defeat of the legislation. In the wake of the defeat of the proposed division of the Cherokees, the federal government sent a commission to untangle the complex controversy in the Nation. George Lowery (1770-1852), acting principal chief while Ross was in Washington, was credited with rendering assistance to

the commission and composing a treaty that finally united the Cherokees and once again brought peace to the Nation.

On August 6, 1846, John Ross and the leaders of the minority factions signed a treaty that decreed the lands in the Cherokee Nation were for all Cherokees, thus settling the Old Settlers claim that the land belonged to them alone. A general amnesty was declared for the fugitives accused of major and minor offenses, provided they return to the Nation by December 1, 1846. All armed police, light-horse and local military organizations, were abolished and the laws were to be enforced by civil authority alone. The federal government also promised the per capita payments that Ross demanded for removal of the tribe. A special allowance was established for members of the Treaty Party and the Old Settlers for their losses and suffering during the civil unrest. The heirs of Major Ridge, John Ridge and Elias Boudinot were allocated an additional allowance of five thousand dollars each. The government promised to pay the Cherokees over five-million dollars in the Treaty of 1846.<sup>50</sup> After the signing of the document, it was rumored that John Ross and Stand Watie shook hands.<sup>51</sup>

The years between 1846 and 1859 were marked by prosperity and progress in the Cherokee Nation that was unequaled by the other inhabitants in Indian Territory. There were occasional factional disputes but for the most part after the Treaty of 1846 education, building projects, agriculture,

animal husbandry and domestic arts were the focus of the Nation. By 1859 there were twenty-one elementary schools in operation and nine secondary schools. The schools were attended by fifteen-hundred students that were taught primarily by Cherokee instructors.<sup>52</sup> The schools were entirely financed by the Cherokee Nation.

In the 1850's individuals progressed economically and socially, obtained a partial treaty settlement from the United States<sup>53</sup> and disbanded their political factions. Stand Watie was elected to the Cherokee National Council from the Delaware District from 1853-1861 and served as speaker of that body from 1855-1859. John Ross was easily reelected principal chief in 1849, 1853, 1857, and 1861. The National Council placidly debated education, judicial affairs, sale of the neutral lands and revision of the criminal code.<sup>54</sup> The Cherokees projected a facade of unity after the 1846 agreement.

George Butler (1823-1875?), the Cherokee agent, reported to the commissioner of Indian Affairs in 1859 that the population of the Cherokee Nation was 21,000 people. Living among the Cherokees were 4,000 black slaves and 1,000 whites. The Cherokees owned 240,000 head of cattle, 20,000 horses and mules, 16,000 hogs and 5,000 sheep. The Nation had 102,500 acres of land in cultivation averaging 35 bushels of corn to the acre, 30 of oats and 12 of wheat.<sup>55</sup> Thus, by the end of the 1850's the Cherokee Nation was once again relatively

prosperous.

Despite the outward signs of prosperity and the harmonious operation of the Cherokee government, some grudge-filled Cherokees refused to forget past wrongs and a new controversy developed that began to fracture the nation along the same old factional lines, the Treaty Party versus the Ross Party. White missionaries became involved in the moral issue of slavery. In 1855, Evan Jones, a highly respected Baptist missionary, who had walked the Trail of Tears with the Cherokees, denied church membership to slave owners. American Board missionaries like Samuel Worcester who at one time went to jail to protest Cherokee removal from the East also took a decidedly abolitionist stance in their sermons and newspaper articles. In 1860, John Jones (1824-1876), the son of Evan Jones, was expelled by U.S. agent George Butler because of his uncompromising devotion to the cause of abolition. Some Cherokees accused anti-slave missionaries of neglecting their religious work and agitating the Nation, but on the surface Cherokees tried to stay uninvolved in the slavery issue.<sup>56</sup> Generally the Cherokees respected the missionaries and were grateful both for the schools and churches that they had established as well as the support that they had given the Cherokees during removal. The Cherokees regarded slavery not necessarily as a moral wrong but as a particularly unsavory feature of Anglo culture.<sup>57</sup>

In 1859 the Cherokees did not seriously think that the



United States would actually become involved in a civil war.

The Cherokees believed that

"... there is too much patriotism in the Union, to permit such a noble edifice as this glorious Union, having for its corners one love of liberty - its materials, patriotism - and cemented by the blood of '76' to be ruthlessly torn asunder."<sup>58</sup>

Furthermore, Chief Ross and the Cherokee Council in 1859 did not think that if a civil war broke out in the United States it would touch the Cherokee Nation.<sup>59</sup> Unfortunately, they were badly mistaken.

# NOTES

1.Sources for land cessions of the Cherokee are Kappler, Indian Affairs,II: 119-200, and Mooney, Myths, 34, 45-46, 53-54, 60, 61, 68-85, 97-102, 106, and 123.

2.The Text of the Blood Law can be found in Wilkins, Tragedy, 209.

3.Brad Agnew. Fort Gibson: Terminal on the Trail of Tears (Norman: University of Oklahoma Press, 1980), 10. Hereafter referred to as Agnew, Fort Gibson.

4.Speech to an Osage Council, September 15, 1821. Indian Agency Collection, Five Civilized Tribes Museum, Muskogee, Oklahoma.

5.See Agnew, Fort Gibson, 10-61, for a detailed account of the Osage - Cherokee conflict.

6.Indian Territory was a name given to the region west of the Mississippi River that was set aside in the nineteenth century by the Federal government for occupation by the Five Civilized Tribes (the Cherokee, Creek, Seminole, Choctaw and Chickasaw). The region, part of the Louisiana Purchase, was ceded in 1834 to the five southeastern tribes and later to many other additional tribes. In 1889 the remaining unoccupied portions were opened to white settlement and in 1893 Indian tribal titles to lands in the Territory were transferred to individual allotments. For further information see Kehoe, Indians, 199-200, 280.

7.Wilkins, Tragedy, 298-301.

8.Woodward, Cherokee, 195.

9.Emmet Starr, History of the Cherokee Indians and Their Legends and Folk Lore (Muskogee, Oklahoma: Hoffman Printing Company, 1921; reprint, Muskogee, Motter Bookbinding Co., 1984), 103. Hereafter referred to as Starr, History.

10.Woodward, Cherokees, 200.

11.Woodward, Cherokees, 225.

12.Ibid., 108.

13. John Ross. The Papers of Chief John Ross, Edited by Gary E. Moulton (Norman: University of Oklahoma Press, 1985), Vol. II: 713-715. Hereafter to be called Ross, Papers.

14. Testimony of Thomas C. Hindman at Ft. Gibson (1840), Ross Papers, Northeastern State University, Tahlequah, Oklahoma.

15. Cherokee Advocate, March 5, 1846.

16. Deposition of Allen Ross (1817-1891) in Grant Foreman, ed., "The Murder of Elias Boudinot," Chronicles of Oklahoma XII (March, 1934): 23. According to Allen Ross's testimony, he was not permitted to draw from the hat. He was told his function was to go home and make sure his father, Principal Chief John Ross, did not discover the plan.

17. Starr, History, 113.

18. Wilkins, Tragedy, 336.

19. Ibid.

20. Ibid.

21. Watie and Elias Boudinot were brothers, the sons of David and Susanna Reese Oowatie. Boudinot took the name of a missionary that helped him with his education. Watie simply Americanized his Cherokee name, Degadoga which meant "he stands". Ross, Papers, Vol. II, 717, 738-739.

22. Morris L. Wardell. A Political History of the Cherokee Nation (Norman: University of Oklahoma Press, 1936), 19, hereafter referred to as Wardell, Political, Kenny A. Franks, Stand Watie and the Agony of the Cherokee Nation (Memphis: State University Press, 1979), 127, hereafter referred to as Franks, Watie. Although both authors agree Watie offered a reward, they disagree on the amount of the reward. Wardell cites \$1,000 as the amount offered while Franks, a biographer of Watie, states that \$10,000 was offered.

23. Ross, Papers, Vol. I, 717.

24. In April, 1839 the Treaty Party fabricated a story that Situwakee (1790?-1860?), a Ross supporter, was investigating an attack and massacre of Treaty Party members who lived around Camp Illinois. Arbuckle dispatched a company of men to the area but they saw no evidence of the massacre. This, however did not arouse Arbuckle's suspicions concerning the falsehoods told him by the Treaty Party. Other evidence of

Arbuckle's prejudice against Ross can be found in Agnew, Ft. Gibson, 185-205.

25. Ross, Papers, Vol. I: 717-726.

26. Ibid.

27. John Brown's dates are unknown. He emigrated to the west in 1829 and became the Old Settlers second chief in 1836. In December 1839 he emigrated to Mexico and never returned to the Cherokee Nation. Ross, Papers, Vol. II, 718.

28. Ibid., Vol. I, 720.

29. Starr, History, 119.

30. Ibid.

31. A light-horseman was a lightly-armed cavalry officer. The Light-horse Guard was the Western Cherokee's police force. Prior to this council meeting, there were only eight light-horsemen to police the entire seven-million acres of Cherokee land. See Perdue, Cherokees, 63.

32. Woodward, Cherokees, 231.

33. Ross, Papers, Vol. II: 3.

34. Arbuckle had approximately 125 men to keep the peace in all of Indian Territory. See Agnew, Ft. Gibson, 185-204, for details on Fort Gibson from 1838-1841.

35. Agnew, Ft. Gibson, 197.

36. Ross, Papers, Vol. I, 704.

37. U.S. House Document No. 129, Twenty-sixth Congress, First Session.

38. Ibid.

39. Cherokee Nation Papers, 143.

40. Carolyn Thomas Foreman, ed. "Journal of a Tour in Indian Territory," Chronicles of Oklahoma, 10 (Spring, 1932) 34. This article was written by Ethan Allen Hitchcock (dates unknown), a Major in the U.S. Army and chief government investigator of the accusations against Ross in 1841.

41. Ibid., 84.

42. Agnew, Ft. Gibson, 204.

43. Cherokee Nation Papers, 221.

44. Ross, Papers, Vol. II: 105.

45. Ibid., 126-127.

46. Watie later turned himself in to the Arkansas officials and was tried for murder. He was acquitted on the grounds of self-defense. See Grant Foreman, ed., "The Trial of Stand Watie," Chronicles of Oklahoma, XVI (June 1938): 163-170.

47. The Cherokee Advocate, the newspaper published in Cherokee and English, which had suspended publication during removal had insufficient funding to renew publication until September 26, 1844. Woodward, Cherokees, 264, 311.

48. The Starr brothers, Tom (1815-1848), Ellis (1817-1848) and Bean (1818?-1844) were the sons of James Starr (1796-1845), a signer of the Treaty of New Echota. All factions of the Cherokees considered these men outlaws. See Foreman, Removal, 327, 328, 338-361.

49. Woodward, Cherokees, 335-336.

50. Foreman, Removal, 350.

51. Woodward, Cherokees, 336.

52. Ibid., 252. There were two white teachers in the entire Cherokee public school system. For detailed information on the schools, see Grant Foreman, The Five Civilized Tribes (Norman: University of Oklahoma Press, 1934) 360, 367, 393, 395, 401, 414. Hereafter referred to as Foreman, Tribes.

53. Cherokees received \$1,324,000 of the \$5,000,000 promised. See Cherokee Advocate, 27 March 1852, 20 April 1852, 30 March 1853.

54. Indian Archives Division, Oklahoma Historical Society, Oklahoma City, Oklahoma. Cherokee Tribal Records, 1849-1861.

55. George Butler to Elias Rector, 10 September 1859, Report of the Commissioner of Indian Affairs, 1859, 172-173.

56. Perdue, Slavery, 119-125.

57. Perdue, Cherokees, 74.

58. Cherokee Advocate, 18 March 1850, 8 April 1850, 15 April 1850, 20 May 1850, 28 October 1859.

59. Woodward, Cherokees, 252.

## CHAPTER 3

### CIVIL WAR

By 1859 the Cherokee tended to divide into just two groups as the Old Settlers lost their identity and merged into either the conservative Ross Party or the more progressive Treaty Party. In microcosm Stand Watie and John Ross personified the contrasting social attitudes between the two parties. Watie was an entrepreneur, always willing, to take a chance and to try new ideas or methods to improve his situation. John Ross and his followers refused to abandon tribal folkways and customs and wanted to preserve their Cherokee heritage and way of life.

Stand Watie, a highly acculturated slave owner, organized the Knights of the Golden Circle late in the 1850's. Although the stated purpose of Watie's organization was to bring the Cherokees into the Southern fold, the leaders also acknowledged that they had seized this issue to oust Ross and

his party from power and establish themselves "on an honorable equality with this old Dominant Party that for years has had its foot upon our necks."<sup>1</sup> In order to mask the true motives of the organization, the Knights used Southern proslavery rhetoric and predicted the immediate subjugation of the Cherokees to the rule of abolitionists if the Cherokees did not align themselves with the South.

As the United States agonized over the issue of slavery, the conservative Cherokees were drawn into the issue. The Cherokee government avoided discussing slavery in the 1850's but religious leaders actively encouraged abolition of slavery in both the United States and the Cherokee Nation. Reverend Evan Jones and his son were alarmed by the activities of wealthy mixed blood, slave owning planters and businessmen who formed the Knights of the Golden Circle. In order to counteract the Southern sympathizers, the Joneses organized the conservative, full blood Cherokees to support the abolitionist cause under the name *Keetoowahs* taking as their insignia two common pins worn in the form of a cross. Members of the *Keetoowahs* were frequently called "Pins". The *Keetoowahs* protested the Cherokee acceptance of slavery as well as other aspects of the white man's "civilization," and favored neutrality if a civil war occurred in the United States. The *Keetoowahs* looked to John Ross for leadership; thus, the bitter factionalism that developed during removal was revived in 1859 under a new banner.



As early as October, 1860 the Cherokee council discussed the implications on the Indian Territory of the possible armed conflict between the North and South. Chief John Ross became the main proponent for Cherokee neutrality if a civil war did in fact develop. During the winter and spring of 1860-1861, while the Southern states one after another were seceding from the Union, Chief John Ross wrote to other tribes in the Indian Territory advising neutrality.

The Indian Territory, like the states in the larger conflict, were influenced by their location in their decision to take sides in the United States Civil War. The Choctaws in the southeastern corner of the Indian Territory joined the Confederacy voluntarily and never wavered seriously in their support. The Chickasaws, to the west of the Choctaws, had a strong minority of United States Federal supporters, but their government remained staunchly Southern. The Chickasaws and Choctaws joined the Confederacy on February 7, 1861, two days before Jefferson Davis (1808 - 1889) was elected president of the Confederacy. By the summer of 1861 the Creeks and Seminoles joined the Choctaws and Chickasaws in the creation of an Indian Confederacy which was organized through a Grand Council of member tribes in order to resist the "invading forces of abolition under Abraham Lincoln".<sup>2</sup> Then all the member tribes of the Indian Confederacy signed treaties with the Confederate government which were more favorable than any treaty they had ever made with the government of the United

States. The Confederates assumed all the financial obligations of the old treaties with the United States government and made explicit guarantees against interference in the Indian Territories and gave the tribes the privilege of sending delegates to the Confederate Congress.<sup>3</sup>

Despite the other tribes' allegiance to the Confederacy, Chief John Ross tried to keep the Cherokee Nation neutral. Ross realized that the Cherokees had a dual heritage. In an address to the Cherokee Nation he pointed out the dilemma facing the Cherokees:

Our locality and situation ally us to the South, while to the North we are indebted for a defense of our rights in the past and that enlarged benevolence to which we owe our progress in civilization.<sup>4</sup>

Chief John Ross believed that the rights of the Cherokees to their property was spelled out in treaties with the United States. These rights included slave property and therefore the institution of slavery within the Cherokee Nation could not be altered by an act of the United States Congress. In John Ross's opinion the Cherokees had no reason to become involved in the white man's war.<sup>5</sup>

Pressure on Chief John Ross to have the Cherokees join the Confederacy came from many prominent southerners.<sup>6</sup> President Jefferson Davis and other officials of the Confederate Government were keenly aware of the importance of securing an alliance with the Cherokee Nation. The Cherokee Nation and Chief John Ross were respectively the most powerful tribe and the most influential individual in the Indian

Territory.<sup>7</sup> The Confederacy was interested in the area for practical reasons. The Indian Territory could serve as a storehouse for provisions that could be shipped to the Eastern theater of war, or as a secure passage from the Southern States to Texas where a part of the Confederate horses were located and as a place to launch a northern assault through Kansas.

On March 5, 1861 Albert Pike (1809 - 1891) was appointed by the Confederacy as commissioner to the Indian tribes west of Arkansas to negotiate treaties of alliance with them. Pike proceeded to Fort Smith and from that point he and General Benjamin McCulloch (1811 - 1862), the Confederate commander of the Arkansas district including the Indian Territory, went to the residence of Chief Ross. Before their arrival, the Chief had issued a proclamation of neutrality calling upon all people of the Cherokee Nation to remain strictly neutral and to avoid discussion among themselves of the events that were transpiring in the States. Ross, nevertheless, courteously received Pike and McCulloch in his home. Pike and McCulloch attempted to sway the leader, but Ross remained firm in his determination to keep the Cherokees neutral.<sup>8</sup>

Pike was aware that some of the Cherokees were sympathetic to the South. He knew a number of young braves crossed the Arkansas line to join McCulloch's army. He was also aware that Stand Watie was urged by his friends in Arkansas to raise troops to defend the Cherokee lands against

possible invasion from Kansas. General McCulloch wrote to Ross in June, 1861 and implored that those Cherokees who favored the Confederacy must be allowed to organize military companies of home guards for defense in case of invasion from the North. To this the Chief replied that to allow organization of military companies would be a violation of neutrality and could stir up intense internal difficulties among the Cherokees.<sup>9</sup>

As the Confederate officials continued to press Ross to join the Confederacy, Southern sympathizers within the Cherokee Nation earnestly sought to convince Ross to abandon neutrality. However, the executive council of the Cherokee Nation in a meeting held from June 27 to July 2, 1861 unanimously approved of Ross's policy. The situation in the Cherokee lands deteriorated in late July when some of the "Knights" attempted to raise the Confederate flag in the public square at Tahlequah and approximately 150 armed and painted "Pins" prevented them from accomplishing their goal. In reaction to this event, Ross called for the Cherokees to assemble at Tahlequah <sup>10</sup> in August to discuss conditions and to determine further action.<sup>11</sup>

The meeting was held on August 21, 1861 and was attended by over four thousand Cherokees. Eight resolutions were adopted by acclamation. These Cherokee resolutions approved of the action of Chief Ross with respect to neutrality, expressed friendship for all the states and all the

neighboring Native American tribes, declared that the property in black slaves was guaranteed by their constitution and laws, and denounced all those people who had represented Cherokees as abolitionists or hostile to the South. Finally, they expressed full confidence in the regularly constituted authority of the Cherokee Nation and said:

We submit to their wisdom the management of all questions which affect our interests growing out of the exigencies of the relations between the United and the Confederate States of America and which may render an alliance on our part with the latter States expedient and desireable.<sup>12</sup>

Thus the resolution of August 21 clearly predisposed the Cherokee Nation to an alliance with the Confederacy.

While the Confederacy actively pursued an alliance with the various Indian tribes, the Federal government was being administered by Northern men who did not understand the Native American problem. In previous administrations the important positions in the administration of Indian Affairs were almost always held by Southern men. These men left federal service at the beginning of the Civil War to return to their homes in the South. Therefore, the Cherokee and the other tribes of the Southwest were left to go their own way during 1861.

Several things happened in the summer of 1861 that forced Chief John Ross and the Cherokee Nation to abandon the policy of neutrality. Federal troops vacated the forts protecting Indian Territory.<sup>13</sup> Moreover, Confederate troops had repelled an invasion at Bull Run, Virginia and the Confederacy had defeated Union soldiers at nearby Wilson's

Creek, Missouri. Cherokees under the command of Stand Watie had participated in the battle at Wilson's Creek and had thus signified their intent to ignore Ross's policy of neutrality.<sup>14</sup> Therefore, Ross concluded that he had to take a side in the conflict.

Chief John Ross feared that Watie would sign a treaty with the Confederacy and be able to establish a minority government over the Cherokees with the support of Confederate troops. To the Cherokees, it seemed a Confederate invasion of Indian Territory was imminent. Ross sent for Albert Pike in August 1861 in order to establish a treaty with the Confederacy. Principal Chief John Ross commissioned John Drew (1796 - 1865) in August, 1861 to raise a regiment of 1200 men for the defense of the Nation and ultimately for service to the Confederacy. Following the signing of the treaty with the South in October, Ross recognized the troops that Stand Watie had organized while the Cherokees were officially neutral but did not merge Watie's soldiers with John Drew's regiment. This action kept Principal Chief John Ross in control and avoided a Southern invasion.

In Colonel John Drew's regiment, the enlisted men were primarily full bloods and the officers were mixed bloods; both the officers and enlisted personnel were affiliated with the Ross Party. Most of the enlisted men were members of the Keetoowah Society. The stated purpose of Drew's regiment was to protect the Indian nations from Unionists and disloyal

elements. The regiment was also to protect Ross and his followers from Stand Watie and his troops. The formation of two separate Cherokee regiments with loyalty to two different political parties and social movements kept the Cherokee Nation divided.<sup>15</sup>

On October 28, 1861 the Cherokees in council adopted a declaration of independence which was written by Albert Pike.<sup>16</sup> The first part of the document was a list of the facts relative to the Cherokees and their grievances against the United States. Then the declaration stated that the Cherokee exercising "the inalienable right of self-defense declared themselves a free people, independent of the Northern States of America and at war with them by their own act."<sup>17</sup>

The treaty Chief Ross made with Albert Pike was pronounced by Ross as "the very best we have ever made in many particulars."<sup>18</sup> An analysis of the treaty justifies this statement. The treaty specifically provided that the Cherokee Nation and the Confederate States enter into a bilateral offensive and defensive alliance. The Confederacy assumed all debts of the Cherokees, guaranteed them the continued possession of their lands, and promised adequate arms and ammunition in order for the Cherokees to protect themselves against any enemy invasion. A section of the treaty promised that they would never be called upon to fight outside their own boundaries unless they volunteered, a promise that was broken many times. They were to be given a delegate in the

Confederate Congress, who was to have virtually the same rights in that body as other delegates from the Confederate States and whose salary would be paid by the Confederate treasury. The complete jurisdiction of the Cherokee Nation over its own citizens was guaranteed, except that the Nation could not make treaties or enter into alliances with other countries; thus it remained virtually an independent republic under the protection of the Confederate States of America. Had the South won the war, the Cherokees would have occupied an outstanding position in the Confederacy.

Once the Cherokees signed with the Confederacy, Chief John Ross tried to align all territorial tribes on the side of the Confederacy. To this end, Ross urged Opothleyohola (1798? - 1862), a Creek Chief who had used his influence to keep the Creeks neutral, to join with the Confederacy.<sup>19</sup> However, Opothleyohola told Ross that he simply wanted to live in peace and had no desire to make war on anyone. After the Cherokees signed with the South, Opothleyohola saw that his cause was lost and called his followers together and mobilized them to move to the free state of Kansas and safety.<sup>20</sup>

The Confederate army officers thought that they would move to stop Opothleyohola as a show of strength to their new Indian allies. The acting commander of the Military Department of Indian Territory, Douglas H. Cooper (1815 - 1879),<sup>21</sup> commanded John Drew's regiment to attack Opothleyohola's camp at Red Fork on November 19, 1861. The



conservative Cherokees in Drew's regiment refused to fight against fellow Indians and they deserted their camp the night before the battle was to take place. Many of the defectors sought refuge with Opotheyohola while others simply returned to their homes determined not to fight for the Confederacy any longer. A few of the Cherokees remained with the Creeks and were defeated in the three battles against Cooper.<sup>22</sup>

Opotheyohola, 2000 ill-equipped warriors and a large number of women and children were attacked and harassed all the way to Le Roy, Kansas. At the request of United States Indian Commissioner W.P. Dole (1811 - 1889), Reverend Evan Jones made a survey of Opotheyohola's camp and thus encountered Cherokee refugees who gave the news of Chief John Ross's capitulation to the Confederacy. Although Dole had heard rumors that the Cherokees had signed with the Confederacy, this was the first actual confirmation that he received of the alliance.<sup>23</sup>

Approximately sixty of Drew's original force of five-hundred men remained with the Confederate forces after the battles with Opotheyohola. Ross later granted amnesty on December 16, 1861 to those Cherokees in Drew's regiment that deserted. Many Confederate sympathizers, especially members of Watie's regiment, were unforgiving and enraged by Ross's leniency to the deserters. By the rules of warfare Drew's deserters should have been shot. Ross's compassion for the Cherokees that refused to fight Opotheyohola widened the gap

between Ross's and Watie's factions and even caused dissent within the Ross Party.<sup>24</sup>

Hatred intensified between the Drew and Watie regiments in the Winter of 1862. On February 19, 1862 two of Watie's men apprehended a member of Drew's regiment. While escorting the man back to camp, several men from Drew's regiment ambushed the patrol of Watie's men. Drew's men killed the entire patrol. A few days later Watie's men captured a member of Drew's regiment and killed and scalped him. These incidents served to increase old hatreds in the Nation and kept the two Indian regiments from cooperating. Drew's troops had two enemies, the Union and Watie's men.<sup>25</sup>

The Confederacy remained in control of the Indian Territory until March, 1862 when the South lost a major battle at Pea Ridge, Arkansas. The Northern victory at Pea Ridge opened a way for a Union drive into Indian Territory from Kansas. Pike and his troops retreated to a point far south in Choctaw country along the Red River. Stand Watie and John Drew remained in northern Oklahoma to constitute an advanced guard. Their orders from Pike read that they were

to give notice of the approach of the enemy, harass his flanks and rear and stampede his animals, destroy his small foraging parties, and at last, if he still advances, gaining his front, join me within my lines and aid in utterly defeating him there.<sup>26</sup>

The Cherokees under Drew and Watie soon had ample opportunity to do as Pike ordered. The Federal officials in Kansas recruited two Native American regiments from the

refugee camps and ordered them, with two regiments of white troops, to invade the Indian Territory. The Union Native American troops consisted of Creeks, Seminoles, Delawares, Osages and Cherokees. The expedition headed south on June 28, 1862 under the command of Colonel William Weir (f.1861 - 1867).<sup>27</sup>

As the Indian expedition advanced into the Cherokee lands, Stand Watie and Drew retreated before such an overwhelming force. Skirmishes were fought in which the Southern Cherokees were defeated, their supplies captured and some men were taken prisoner. A substantial number from Drew's regiment deserted to Federal lines, nearly 1,000 in all. Though the Cherokee signed a treaty with the South, it was now obvious that the tribe was not unified in its support of the alliance.<sup>28</sup>

Colonel Weir continued to advance south to Tahlequah. Encouraged by the missionary Evan Jones, who insisted that Ross had unwillingly entered into a Confederate alliance, the United States decided to attempt a rescue of the Chief. When Weir's forces arrived at Tahlequah in July 1862, they tried to get Ross to defect to the Union. Ross refused and sent copies of his treaties to Weir in order to explain his position. However, a few days later Weir's troops took captive the men guarding Ross and the Chief himself. The expedition then retreated back into Kansas taking their prize prisoner, his family, the records and the treasury of the Cherokee Nation

with them. Ross was escorted out of the Indian Territory by Federal troops and went to Washington for an interview with President Lincoln. Afterwards Ross stayed in Philadelphia until the end of the war.

Stand Watie promptly declared the office of principal chief vacant and assumed the position himself. Any Cherokee office holder who had allegiance to the Union was removed and replaced with one of Watie's men. The new government immediately passed a law that required all men from sixteen to thirty-five to enter the Confederate army. Watie's troops enforced this act by searching for, arresting and imprisoning offenders. This conscription law, continued harassment of civilians and the alternating Union and Confederate invasions prompted other Union sympathizers to flee to Kansas, where many of the young men joined the Indian Brigade of the Union Army.<sup>29</sup>

From the summer of 1862 until the end of the Civil War, the situation in the Cherokee lands was chaotic. Stand Watie and his troops continued to carry on raids along the border and there were clashes with various Indian tribes and white troops. Both the "Pins" and the "Knights" engaged in guerilla warfare against each other. In the general confusion the Cherokee Nation was plundered by the groups of armed men from both sides. Various lawless bands that had no allegiance to anyone joined in the destruction of property and the murder of helpless people.<sup>30</sup>

The majority of the Cherokees refused to recognize the government headed by Stand Watie. Thomas Pegg (1802 - 1866), president of the Cherokee National Council, was made acting principal chief of the Cherokee Nation in the absence of John Ross. Pegg called a meeting of the National Council on Cowskin Prairie<sup>31</sup> in February 1863 and the council formally abrogated their treaty of alliance with the Confederacy. All Cherokee officials who remained loyal to the South were deposed, slavery in the Cherokee Nation was abolished and a delegation to visit Washington was authorized.<sup>32</sup> After February 1863 two Cherokee governments were in operation - the Northern one with Ross in exile as chief and the Southern one headed by Stand Watie. Each claimed to be the real Cherokee government and asserted that the other was only a rebellious faction.

The Union Cherokees maintained close relations with the federal government through delegations to Washington. As early as February, 1864 Chief John Ross and Evan Jones submitted to President Lincoln a plan of operations for the Cherokee Nation to hasten social, political and economic reconstruction for the Cherokees. Lincoln was sympathetic to the Cherokee plight and pledged to Ross that the Confederate treaty of alliance "... should never rise up in judgement against the Cherokees, nor stand in the way of perfect justice being done them under their treaties with the United States."<sup>33</sup>

The Union victory at the battle of Honey Springs (July 17, 1863) marked the end of Confederate Supremacy in the Nation. Confederate power in Indian Territory steadily declined after Union troops captured Fort Smith in September, 1863 and a large part of Indian Territory fell into the hands of Federal troops. Alarmed at the Confederate losses, families of Southern Indians were forced to flee the Nation and seek camps in the Chickasaw and Choctaw Nations. Among the refugees were Watie's wife and four children.

Colonel Drew and his forty remaining men surrendered in Tahlequah on April 2, 1863. Stand Watie remained loyal to the Confederacy and made raids against the Federal troops; he terrorized and killed any Union Cherokees that he encountered. In October, 1864 he led an offensive against Tahlequah, killed several people, and burned the council house as well as the home of Chief John Ross near Park Hill.<sup>34</sup> Watie troops stayed in the western part of Indian Territory. Twenty-two months after the Union captured Fort Smith, Stand Watie surrendered to two authorized officers of the United States Army on June 23, 1865.<sup>35</sup> Stand Watie was the last Confederate general to surrender.<sup>36</sup>

At the close of the Civil War, the Cherokee Nation was desolate. The fields were untended, stock ran loose, most homes were burned, and the Nation had two governments, one Confederate and one Union. As in any war, the innocent as well as the guilty suffered from the effects of military

activity. The end of the war left more than one third of the adult women widows and an equal proportion of the children orphans.<sup>37</sup> The 1859 census stated there were 22,000 Cherokees in the Indian Territory; the 1867 census showed the Cherokees to number only 13,500.<sup>38</sup>

The vast majority of the Cherokees were refugees in 1865. The Union refugees had a difficult time from the beginning. Expecting food and shelter upon reaching sanctuary in Kansas, these people found only impatience, hatred and inadequate food. During the Civil War the exiles in Kansas were moved around frequently by the Bureau of Indian Affairs; thus their ranks were thinned by death due to starvation, disease and exposure. The refugees who had supported the cause of the Confederacy suffered as much as their Northern counterparts. They, too, had inadequate food and shelter, and were forced into hostile regions in Texas. Those refugees who returned to their homes at the end of the war found nothing there. So bitter was the factionalism in the Nation, Southern Cherokees did not dare to return. In 1865 the Cherokee Nation was almost hopelessly divided as it faced a difficult and uncertain future.<sup>39</sup>

# NOTES

1.W.P. Adair to Stand Watie, 29 August 1861, Cherokee Nation Papers. Northeastern State University, Tahlequah, Oklahoma. Hereafter referred to as Cherokee Nation Papers.

2.Angie Debo, A History of the Indians of the United States (Knoxville, Tennessee: University of Tennessee Press, 1970), 170.

3.For text of treaties see Kenny A. Franks, "Confederate Treaties with the Five Civilized Tribes," Chronicles of Oklahoma L (Winter, 1972-73): 458-73.

4.Perdue, Slavery, 127.

5.Ibid., 127-128.

6.Henry H. Rector, governor of Arkansas, wrote to Ross on January 29, 1861 concerning a Cherokee alliance with the Confederacy. Woodward, Cherokees, 255.

7.Donald L. and Lary C. Rampp, The Civil War in Indian Territory (Austin, Texas, Presidial Press, 1975), 2. Hereafter referred to as Rampp, The Civil War in Indian Territory.

8.Edward Everett Dale, "The Cherokees in the Confederacy," Journal of Southern History XIII (May 1947): 162-163.

9.Edward Everett Dale, ed. "Some letters of General Stand Watie," Chronicles of Oklahoma I (January 1921): 34.

10.The Cherokee capital city, Tahlequah, was named after a famous town the Cherokees had in the East. C.W. "Dub" West's book Tahlequah and the Cherokee Nation (Muskogee, Oklahoma: Muskogee Publishing Company, 1978) contained numerous stories taken from newspaper accounts, interviews with historians and personal reminiscences that illustrate the significance of Tahlequah to the Cherokees.

11.The War of the Rebellion. A Compilation of Official Records of the Union and Confederate Armies. (Washington D.C., Government Printing Office, 1890): Ser. I, Vol. I, 597. Hereafter referred to as Official Records.

12.Official Records, Ser. I, Vol. XIII, 499-500.



13. There were three active military posts within Indian Territory in 1860: Fort Washita, Fort Arbuckle and Fort Cobb. Fort Gibson was abandoned in 1857. Le Roy H. Fischer and William L. Murray, "Confederate Refugees in Indian Territory," Chronicles of Oklahoma LVII (Winter 1979-80): 451.

14. Stand Watie and the "Knights" were supplied with ammunition from General McCulloch for guerrilla warfare against the North as early as May, 1861. Officially Stand Watie was commissioned by Major Douglas H. Cooper to raise an army for the Confederacy in July, 1861. Frank Cunningham, General Stand Watie's Confederate Indians (San Antonio, Texas: The Naylor Company, 1959) 38, 60.

15. W. Craig Gaines, Confederate Cherokees: John Drew's Regiment of Mounted Rifles (Baton Rouge: Louisiana State University Press, 1989), 33.

16. This document appears in full in Official Orders Ser. I, Vol. XIII, 503-5, and was modeled on the South Carolina Ordinance of Secession of December 24, 1860.

17. Ibid.

18. Treaty and comments located in Official Records, Ser. IV, Vol. I, 669-87.

19. The date of birth for Opothleyohola's, also known as Hopoeithleyohola, is uncertain. Wardell, in Political History, 130, stated he was born in 1778, while Perdue claimed in Slavery, 266, that he was born in 1798.

20. Wardell, Political History, 270.

21. Albert Pike was appointed the official military commander of Indian Territory for the Confederacy in November 1861, but did not reach his post to take command until February 26, 1862.

22. Perdue, Slavery, 134.

23. Rampp, The Civil War in Indian Territory, 8.

24. Official Orders, Ser. I, Vol. VIII, 11.

25. Edward Everett Dale, ed., Cherokee Cavaliers: Forty Years of Cherokee History as Told in the Correspondence of the Ridge-Watie-Boudinot Family (Norman: University of Oklahoma Press, 1939), 113.

26. For Pike's report on the battle of Pea Ridge, see Official Records, Ser. I, Vol. VIII, 286-92.

27. Ibid., some accounts spell his name Weer, but Official Records refers to him as Weir.

28. Rampp, The Civil War in Indian Territory, 17.

29. Wiley Britton, Memoirs of the Rebellion on the Border (New York: G.P. Putnam & Sons, n.d.), 130-133. Hereafter referred to as Britton, Memoirs.

30. Ibid., 135.

31. Cowskin Prairie was located 22 miles Southwest of Neosho, Missouri.

32. Wardell, Political History, 145.

33. Phillips Collection, University of Oklahoma, Norman, Oklahoma, 15.

34. Stand Watie Letters, X, 11, Phillips Collection.

35. Official Records, Ser. I, Vol. LXVIII, Part II, 1284.

36. Traditionally, the end of the Civil War has been dated by the surrender of General Robert E. Lee (1807 - 1870), at Appomattox on April 9, 1865.

37. Perdue, Slavery, 376.

38. Rampp, The Civil War in Indian Territory, 125.

39. Britton, Memoirs, 175.

## **CHAPTER 4**

### **CONCLUSION**

With the end of the Civil War, President Andrew Johnson (1808 - 1875) sent five United States commissioners to Fort Smith to negotiate treaties with the nations and tribes of Indian Territory. The United States sent two army officers and three civilian representatives as negotiators. Prior to the Civil War the military generally negotiated treaties with Native Americans; the composition of the Fort Smith commission was important because it marked the beginning of a new Indian policy. Two of the United States commissioners, General William Selby Harney (1800 - 1889) and Colonel Ely S. Parker (1837 - 1902),<sup>1</sup> wanted to terminate the policy of making treaties with Indian Tribes entirely.<sup>2</sup>

James Harlan (1820 - 1899), Secretary of the Interior, was unable to attend the conference. He appointed Dennis Nelson Cooley (1825 - 1892) as the chairman of the commission.

Harlan gave Cooley a set of orders that were calculated to break down any resistance to provisions contained in the treaties offered the Indian delegates. The general terms of the treaties were to include permanent peace among all tribes and with the federal government; the abolition of slavery; freedmen were to be incorporated into the tribes on equal footing with tribal members; portions of Indian lands were to be ceded to the federal government; and, finally all Indian nations were to be formed into one consolidated government within one territory.<sup>3</sup>

Chief John Ross was in Philadelphia when the plans for the Fort Smith council were announced. The seventy-five year-old chief thought that he needed to be at the council, so he traveled to Indian Territory. However, chief Ross became ill during the journey and was forced to abandon his plan to attend the opening sessions of the council. Ross sent Lewis Downing (1823 - 1872), the assistant principal chief, to head the Loyal Cherokee delegation at the Fort Smith Council. Ross stayed with relatives at Park Hill to recover from his illness before going to Fort Smith on September 15, 1865.

When Assistant Chief Downing and his delegation arrived at Fort Smith, they were informed that Stand Watie and his Southern Cherokee delegates would not attend the opening session of the council because they were in conference with the Southern Creeks, Seminoles, Chickasaws and Choctaws at Armstrong Academy in the Choctaw Nation. Despite the absence

of the Southern delegations, the commissioners decided to open the Fort Smith council on schedule. In his opening address Cooley charged the Union delegates with crimes of secession and accused them of being traitors to the Union cause. Due to their defection, the Indians were to be required to forfeit tribal lands and tribal annuities.<sup>4</sup> Thus, Cooley immediately forced the loyal Indians to assume the defensive.

The Cherokees were stung by Cooley's accusations. In the afternoon the Cherokees were permitted to air their grievances against Cooley's pronouncements. The Cherokees reminded Cooley that they made a necessitous treaty with the Confederacy on October 7, 1861 and had abrogated that Treaty in February, 1863. Therefore from January 1863 until the end of the war, they supplied troops to the Union. The Cherokees also asked why the accusations of treason were not reserved for the Southern Indians due to arrive at the council in a few days.

Cooley was unmoved by the Cherokee argument. After they finished, Cooley attacked Chief Ross accusing him of being an enemy of the United States and unworthy of consideration or pardon by the President. Cooley then went on to indict Ross as "... still at heart an enemy of the United States" and refused "... to recognise said Ross as chief of the Cherokee Nation."<sup>5</sup> Cooley intended to rid the council of any input or interference by Ross, who was known to oppose railroads, land cessions and a unified territorial government.<sup>6</sup>

On September 14, the Southern Cherokee delegates together with the Southern Creek, Choctaw, Chickasaw and Seminole delegates arrived. The spokesman for the Southern Cherokees was Elias Cornelius Boudinot (1834 - 1890?), son of the slain Elias Boudinot. Boudinot served as a Major in the Confederacy and as the Cherokee delegate in the Confederate Congress. Boudinot and other members of the Southern Cherokees delivered to the commission a document disclaiming any coercion in signing the treaty with Albert Pike in 1861. They fully acknowledged that they had entered the Confederacy of their own free will for the cardinal principle of republican liberty and the right of self government.<sup>7</sup> At this point, Cooley left the way open to treat with both factions - Union and Southern Cherokees. Instead of aiding reconciliation, the commission became agents to intensify the separation between the two parties.

Cooley had each Cherokee delegation appoint a committee of five to meet, confer and reach an understanding on domestic differences. The committee was appointed and met in a joint session with one of the commissioners. A few days later, the commissioner reported that no agreement could be reached and that it would be impossible for the Southern Cherokees to reside in their former homes. Cooley responded that the Fort Smith Council could not authorize a separation of the Cherokee Nation but this matter could be considered at later negotiations.<sup>8</sup>

Meanwhile Chief Ross recovered sufficiently from his illness and was able to attend the last few days of the council. Chief Ross requested permission to address the conference and was given permission to do so. Ross denied that he was an enemy of the Union and told the council that he had three sons, three grandsons and four nephews who fought for the Union cause. He reminded the council that he had spent the past three years in Washington and maintained constant communication with the Department of the Interior, President Lincoln and President Johnson.<sup>9</sup> Cooley was unmoved by Ross's defense of his character.

Ross and his delegation were snubbed by Cooley for the remainder of the council. The Ross delegation refused to sign Cooley's treaty unless the commissioners incorporated into the records the delegates' statement explaining the Cherokee's treaty with the Confederacy. Boudinot's Southern delegation stated that, for the most part, they would cheerfully accept the commission's treaty but they were opposed to two provisions. Boudinot presented the council a document stating that they objected to the proposal to incorporate the emancipated slaves into the Nation and that they could not accept the proposition to consolidate all the Indians into one territory. Then Boudinot and his delegation signed the treaty.<sup>10</sup>

On the last day of the council, Cooley reluctantly permitted the Union Cherokees to incorporate into the treaty

their reasons for joining the Confederacy. However, Cooley refused to withdraw any of the accusations made against Chief Ross. The council was then adjourned on September 20, 1865.

The Fort Smith treaties were general and non-specific. Each Indian Nation was to travel to Washington, D.C. to negotiate more definitive treaties when they were summoned by President Johnson and the Department of the Interior. Aware of this, Union Cherokees called for a National Council meeting in Tahlequah to elect delegates to the Washington council and to draft a memorial on behalf of Chief John Ross. They felt Ross was shamefully humiliated and insulted by Cooley and the Commissioners.<sup>11</sup>

The rival Cherokee delegations arrived in Washington in January of 1866. Chief John Ross and his delegation sought and received an interview with President Johnson shortly after their arrival in the capitol. At the interview assistant principal chief Thomas Pegg delivered to the President a lengthy hand written memorial that was prepared by the Cherokee National Council "... in behalf of the Honorable John Ross now and for over forty years principal chief of the Cherokee Nation."<sup>12</sup> President Johnson promised that the United States government would act justly toward the Cherokees and that he would read the papers submitted for his consideration.

Both Secretaries Harlan and Cooley were present at the Cherokees' interview with President Johnson. Cooley denied



that he had insulted Ross's character and stated that the commissioners had decided not to recognize Ross as the Cherokees' chief on that particular occasion. Ross refuted Cooley's statement and then urged that Secretary Harlan conduct the negotiations with the Cherokees because Ross felt Cooley was prejudiced to the Rebel Cherokees. President Johnson granted Ross both recognition as Chief of the Cherokees and instructed Harlan to conduct the negotiations with the Loyal Cherokees himself.<sup>13</sup>

The Southern delegation arrived in Washington prior to the arrival of the Ross delegation. The Southern delegation was represented by Stand Watie, his son Salidin Watie (1847 - 1868), W.P. Adair (1812 - 1891), Richard Fields (1803 - 1870) and John Rollin Ridge (1827 - 1867), son of the slain John Ridge. Cooley dealt with the Southern Cherokees with the assistance of Albert Pike while Secretary Harlan dealt with the Northern delegation. These separate negotiations tended to keep the Cherokees divided and complicate matters. In March both delegations prepared treaties; the Southern delegation sought to divide the Nation while the Loyal Cherokees attempted to embody Secretary Harlan's requirements for a treaty. The negotiations dragged on through March, April and into May, 1866.

Finally in May, the Northern delegation was empowered by the Southern delegation to make a treaty to reestablish relations with the federal government and to sell the neutral

lands to either the United States government or a railroad company. Then Cooley and Harlan prepared specific points that had to be incorporated into any treaty. The government required general amnesty for all Cherokees, restoration of any confiscated property to the rightful owner, civil rights and political privileges to disloyal Cherokees, sale of the Neutral lands and the reception as citizens of all Cherokees in North Carolina. The treaties were also supposed to include tribal citizenship and liberal terms for freed slaves. Moreover, railroads east, west, north and south were to be granted right-of-way with liberal grants of land, meaning "alternate sections five miles on each side of the tracks with further grants to meet certain deficiencies."<sup>14</sup>

In May the Southern delegation made a public address to the Southern Cherokees in the Nation. They itemized the federal government's requirements and announced that they had come to terms with the Department of the Interior. They clearly stated that the separation of the Cherokee Nation was assured. Harlan and Cooley had submitted the treaty duly signed and witnessed to President Johnson, and therefore the Southern Cherokees could have their own separate government.<sup>15</sup>

For some unknown reason, President Johnson retained the treaty in his possession and never was sent it to the Senate. A few weeks later Harlan submitted a treaty made with the Northern delegation which President Johnson did send to the

Senate. That treaty was ratified on 17 July 1866. Nevertheless, the Southern Cherokees managed to get the Northern Cherokees to accept some amendments to the treaty on 31 July and the treaty was promulgated on 11 August 1866.<sup>16</sup>

The Treaty of 1866 was a series of compromises on the part of the Northern and Southern Cherokees and the Department of the Interior. Summarized, the Treaty of 1866 abrogated the treaty with the Confederacy (7 October 1861) and amnesty was declared for all crimes prior to 4 July 1866. The confiscation laws of the Cherokee Nation were repealed and the former owners of the property were permitted to reoccupy their homes. Purchasers of confiscated property were to be paid out of the Cherokee National Treasury. Slavery was abolished and freedmen were given the right to settle in the Canadian District of Indian Territory and the area between the Grand and Verdigris Rivers. Moreover, the Canadian District was given temporary and conditional autonomy in order to avoid conflict between Northern and Southern sympathizers. A general Indian council and United States courts were established within the territory. Provisions were made for the settlement of other friendly Indians within Cherokee lands and their eventual incorporation into the Nation. The Neutral Lands and the Cherokee Strip were ceded to the United States. Rights-of-way were granted to railroad companies and the United States was allowed to erect military posts within the Nation.<sup>17</sup>

Article four of the treaty truly angered the Southern  
Cherokees.<sup>18</sup> All Cherokees and freed blacks who were  
formally slaves in the Cherokee Nation were given 160 acres of  
land in either the Canadian District or on land northwest of  
the Grand River.<sup>19</sup> Stand Watie and other members of the  
Southern delegation called the Treaty of 1866 the "Dark  
Treaty" because it gave freedmen the right to Cherokee  
citizenship, suffrage and the right to Cherokee lands before  
the Southern Cherokees felt safe to return to their own  
Nation.<sup>20</sup> The Treaty of 1866 provided a legal basis for the  
rights of Cherokee freedmen to Cherokee citizenship although  
the freedmen had to return to the Nation within six months of  
August 11, 1866.

Many Cherokee freedmen were not able to return to the  
Nation within the six month time limit established by the  
treaty. Some freedmen were unaware of the treaty; others did  
not have the means to return in time to claim their rights;  
others were prevented by violence from returning to the  
Nation.<sup>21</sup> For the next forty years, the rights of freedmen  
were a constant source of conflict between the Cherokees and  
United States officials. Cherokees wanted strict enforcement  
of the treaty stipulations and time limits, while federal  
officials insisted on a more flexible interpretation. Federal  
officials insistence on freedmen's rights made serious inroads  
into Cherokee autonomy because they undermined the Indians  
right to determine who were citizens of the Cherokee Nation.

On lands set aside for freedmen, the civil government of the United States was extended.<sup>22</sup>

Chief John Ross had bitterly opposed the extension of railroads into Indian Territory. However, the Southern delegation was quite willing to grant American railroads rights-of-way and therefore federal officials were able to force this concession out of the Northern delegation. In order to secure railroad privileges, the federal government threatened to divide the Cherokee Nation in such a way that the tracks could be laid on land controlled by the Southern Cherokees. John Ross thought it ironic that a government that waged a war to preserve the United States would permit the secession of the Southern Cherokee from the Nation.<sup>23</sup>

The railroads were eager to enter Indian Territory. Article eleven of the Treaty of 1866 permitted right-of-way to "... any railroad from any point north to any point south, and from any point east to any point west of, and which may pass through the Cherokee Nation."<sup>24</sup> Charters were issued by the United States government for railroads on July 25, 26 and 27, before the treaty was promulgated. The railroads caused the eventual end of the Cherokee Nation. Whites poured into the Nation to work on the railroads and in businesses to support railroad operations. The influx of the white people created a chaotic situation in the Nation because whites were not subject to the laws of the Cherokee. The turmoil made the Nation a haven for outlaws and caused many people, both white

and Indian, to support extension of United States laws over Indian Territory.

The Treaty of 1866 was a bitter defeat for the Cherokee Nation which had primarily supported the Union during the Civil War. The Cherokees who lost homes, livestock and property through acts of Confederate or Union forces were not compensated in any way. The unified delegations of Creeks, Seminoles, Choctaws and Chickasaws were able to obtain compensation for their property damaged by the Civil War. The Choctaws and Chickasaws were also able to negotiate less generous terms for their former slaves, allowing only forty acres per head of household instead of the 160 acres for former slaves and their posterity that the Cherokees were forced to concede. Additionally, the other tribes were not forced to make such generous concessions to the railroad interests as the Cherokee Nation, and were only forced to grant two-hundred foot right-of-ways on either side of the tracks.<sup>25</sup>

The Cherokee Nation was first betrayed by a handful of signers of the Treaty of New Echota in 1835 which was repudiated by nine-tenths of the Cherokee population. The civil war in the Nation from 1841 to 1846 and the disastrous effects of the American Civil War on the Cherokees was a direct result of the federal government's base dealings with the Indians.

The bitter factionalism created by removal to the West

in 1838 prevented the Cherokees from sending a united delegation to the peace negotiations after the Civil War. The internal strife, coupled with the white man's war, cost the Cherokee Nation one-third of their population, over 8,000,000 acres of land and their sovereignty over the land that they did retain. thus in 1866 the impoverished Cherokees faced an uncertain future in their ravished and plundered homeland. The factionalism between the Southern and Northern Cherokees remained so bitter that the Southern Cherokees dared not return to their homes for another decade.<sup>26</sup>

Chief John Ross died on 1 August 1866 and did not live to see the chaos that resulted from the Treaty of 1866. The factionalism and difficult reconstruction problems became the burdens of his successors who struggled to keep the Nation alive until 16 November 1907 when Oklahoma became a state.<sup>27</sup>

# NOTES

1. Ely S. Parker was a mixed blood Seneca, a member of the staff of General Ulysses Simpson Grant (1822 - 1885), during the Civil War, and later the commissioner of Indian Affairs from 1869 to 1871. Arthur Coswell Parker, in The Life of General Ely S. Parker, Last Grand Sachem of the Iroquois and General Grant's Military Secretary (New York: G.P. Putnam & Sons, 1919), provides a good account of Indian Affairs as observed by an acculturated Seneca. Parker had two major goals: to make the Indians useful members of society and see that the Federal government provided a fair and honest Indian administration.

2. Wardell, Political History, 184.

3. See text and discussion of the Fort Smith conference in Charles C. Royce, The Cherokee Nation of Indians (Chicago: Aldine Publishing Co., 1975) 376-90. Hereafter referred to as Royce, Nation.

4. Wardell, Political History, 185.

5. Cherokee Tribal Papers, Oklahoma Historical Society, Bundle A 993-W1240, 1865.

6. Wardell, Political History, 188.

7. Ibid., 193.

8. Ibid., 192 - 193.

9. New York Times, 18 September 1865.

10. Wardell, Political History, 193 - 195.

11. Woodward, Cherokees, 298.

12. Ross Papers, January 31, 1866, Division of Manuscripts, University of Oklahoma. This memorial also contains the promise made Ross by President Lincoln not to hold the Cherokee treaty with the South against the Nation.

13. Ross, Papers, 662.

14. Wardell, Political History, 197 - 200.

15. Miscellaneous Papers, XI, 167, Phillips Collection, University of Oklahoma, Norman, Oklahoma.



16. Kappler, Indian Affairs, II, 942 - 950.
17. For the text of the Treaty of 1866 see Ibid., 942 - 950.
18. For a discussion of the Southern Cherokee opinion of the Civil War and the Treaty of 1866, see Mabel Washburn Anderson, The Life of General Stand Watie (Pryor, Oklahoma: By the Author, 1931), 46 - 49.
19. Kappler, Indian Affairs.
20. Wardell, Political History, 207.
21. Daniel F. Littlefield, Jr., The Cherokee Freedman From Emancipation to American Citizenship (Westport, Connecticut: Greenwood Press, 1978) 21.
22. Ibid., 22.
23. Perdue, Cherokees, 77.
24. Kappler, Indian Affairs, II, 945.
25. For specific Indian treaties see Kappler, Indian Affairs, II, 800 - 944.
26. Woodward, Cherokees, 304.
27. For information on how statehood affected the Cherokee Nation see Angie Debo, And Still the Waters Run (Norman: University of Oklahoma Press, 1984), 159 - 181.

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