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Contested Nation

Freedmen and the Cherokee Nation

Dave Watt

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The Freedmen are, most simply, those individuals that have been freed from bondage. In the United States this term is often used in reference to legally emancipated slaves and consequently, their descendants. The term "Cherokee Freedmen" refers to those freed slaves who joined with the Cherokee Nation, or, men and women who were formerly held in servitude within the Cherokee Nation. This term has also been given to the descendants of marriages involving freed Africans and Cherokee spouses, thus making the network of people labeled Freedmen an expansive group of people. Totalling roughly 3000 people in the present day, Cherokee Freedmen have had a history of a strongly contested citizenship and relationship to the Cherokee Nation. At first held as slaves and then forcibly freed at the hands of the United States government, the Cherokee Freedmen are today trying to regain and cement their acceptance into the Nation and no longer be relegated to a position of secondary citizens or not members at all.

Cherokee Citizenship Defined

The idea of Cherokee Nation citizenship is heavily based upon enrollment, or, who is listed on tribal rolls. Enrollment into the Nation is ultimately up to the Cherokee Nation's council and tribal government. Most importantly is providing a proof of ancestry by virtue of blood quantum. Blood quantum is the amount of Indian blood an individual possesses as determined by the number of generations of Native people he/she descends from, and it is the process that the federal government uses to say whether they consider you a Native American or not. Between approximately 1885 and 1940, census rolls, the 1900 special Indian census, and the Dawes Rolls were taken. If ancestors were listed on those rolls, then their descendants may

be able to receive a Certificate of Indian Blood (first issued in 1983), provided by the Federal Government and begrudgingly accepted by the Cherokees themselves. “For example, if your great-grandmother was 100% Indian and your great-grandfather was non-Indian, their child (your grandmother or grandfather) would be $\frac{1}{2}$ Indian blood. If your $\frac{1}{2}$ Indian grandparent married a non-Indian, your mother or father would be $\frac{1}{4}$ Indian blood. If your mother or father married a non-Indian, then you would be $\frac{1}{8}$.”¹ According to the above excerpt from the Association on American Indian Affairs (AAIA), we can see the denominator gets larger as blood quantum decreases; this becomes the issue that many Freedmen deal with today. AAIA is a national Indian organization working at the grassroots level to provide legal assistance and work in local to national government and community activism.²

Citizenship for the Cherokee nation is primarily about the blood quantum today as well as the duality of the social sphere and that of the political arena. It is on this political stage that the Freedmen continue to fight for their ancestral rights. This battle for rights within Cherokee society began long ago when African slavery began to be more prominent within the Cherokee Nation.

Slavery and the Nation

The peculiar institution was anything but unorthodox in Cherokee society. The Cherokee Nation has always incorporated slavery into their day to day lives as a result of warfare and conquests of territory. What makes slavery amongst the Cherokee Nation distinct

¹ Association on American Indian Affairs. <http://www.indian-affairs.org/> last modified 1999–2012 Association on American Indian Affairs.

² Association on American Indian Affairs. <http://www.indian-affairs.org/> last modified 1999–2012 Association on American Indian Affairs.

from that of Europeans early on, however, is the notion of it being something temporary or of semi-permanence; in effect slaves were able to eventually attain citizenship within the Cherokee Nation and officially become listed as tribal members, as dictated by the Cherokee Tribal government. The adoption of slaves into Cherokee society was far from unheard of and remained a practice until the end of the Civil War.

It was only from the late 1700s to the mid-1800s that the Cherokee were actively involved with the African slave trade with Europeans. These newly acquired African slaves often worked in the field and performed domestic work, and other various trades.³ In the early 1800s these African slaves numbered less than one thousand. A census taken in 1835 recorded that number to have increased to roughly 1500, with more than five percent of Cherokee families claiming slaves.⁴ This number gives the Cherokee tribe the dubious title of the tribe that owned the most Africans and African Americans, this becoming even more cemented after the Cherokee relocation to Indian Territory following the Trail of Tears in which many African slaves accompanied the Cherokee slave owners.⁵

On December 2, 1842, the Cherokee National Council passed "An Act in regard to Free Negroes" banning all freedmen from the limits of the Cherokee Nation by January 1843, except those freed by Cherokee slave owners. In 1846, an estimated number of 130-150 African slaves

³ Circe Sturm, *Blood politics: race, culture, and identity in the Cherokee Nation of Oklahoma*. (Berkeley : University of California Press, c2002., 2002) Milner Library, 231

⁴ Mcloughlin, WG. "The Cherokees in Transition: a Statistical Analysis of the Federal Cherokee Census of 1835", *Journal of American History*, Vol. 64, 3 (1977): 678

⁵ Littlefield, Daniel F. Jr. *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport, CT: Greenwood Press, 1978)

escaped from several plantations in Cherokee territory.⁶ These revolts and escapes were far from unique and also shadowed similar events in Southern plantation life. Escapes were also treated with similar aggression by the Cherokees in recapturing escaped slaves and reinstating them to life on plantations.

By adopting a new style of slavery in the fashion of Europeans, Cherokee peoples also felt the new and readily apparent social stigmas that accompany the institution of slavery. The Cherokee instituted their own slave code and laws that were lenient towards Cherokee and whites, but discriminated against slaves and freedmen. By getting involved in the trade and use of slaves out of Africa, the nature of Cherokee citizenship would soon change.

Of Marriage and Lineage

Citizenship for people of the Cherokee Nation is historically defined by ancestry and Clan, matrilineal (through the mother) ancestry. By tracing descent of an individual through the mother's bloodline he/she acquired a position into the mother's clan and right to be a citizen of the Cherokee Nation. Conversely, without these ties to a clan, one could not attain membership. Cherokee citizenship was defined by tribal laws and customs prior to the Treaty of 1866, discussed later, and Cherokee citizenship was very much defined, in a legal sense, as a "genealogical connection to the Nation" through the mother.⁷

This genealogy was soon controlled by a network of social "laws" and norms which would develop into formal law with the rise in European and African slave contact. In order to

⁶ Mcloughlin, WG. "The Cherokees in Transition: a Statistical Analysis of the Federal Cherokee Census of 1835", *Journal of American History*, Vol. 64, 3 (1977): 135

⁷ Fay A. Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania, 2008), 7

differentiate themselves from the latter (African slaves), the Cherokees developed marital laws in 1855 which could be used to elevate their position in a broadening and more diversified society. As Theda Purdue points out in her analysis of slavery within Cherokee society, “by 1830, the Cherokees had come to view themselves as radically different from the Africans.”⁸ This fact is unsurprising given the United States preoccupation with slavery and the position of Africans in relation to Whites. No doubt the Cherokees wanted to elevate their position in the social hierarchy. And this social elevation came through the strict regulation of marriages between Cherokee men and women and their African slaves or Freedmen counterparts.

There was, in the Cherokee marital legislation, certain prohibitions. White men could marry Cherokee women given a rigorous character examination and a renunciation of all affiliation to the United States (i.e. renounce citizenship to the U.S. in order to gain citizenship by marriage into the Cherokee Nation). But, Africans and slaves were forbidden to be married by the mid 1830s. This was a clear demarcation that implied only one thing; Africans and people of African descent were not suitable for admission to the Cherokee Nation as citizens.⁹ This became the final culmination in a few hundred year period involving the trade and use of African slaves within Cherokee society. It was a legal realization of a history of racism and slavery stating that “intermarriage shall not be lawful between a free male or female citizen with any person of color, and the same is hereby prohibited, under the penalty of such corporal punishment as the courts may deem it necessary and proper to inflict, and which shall not

⁸ Theda Purdue, *Slavery and the Evolution of Cherokee Society, 1540-1866*. (Knoxville: University of Tennessee, 1979), 49

⁹ Fay A. Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania, 2008), 4

exceed fifty stripes for every such offense.”¹⁰ Despite these legalities, inter-marriage, and offspring of Cherokees and African Americans did occur.

Those children born to a mixed parent family in the Cherokee Nation were more often than not treated as part of the family rather than as slaves. These children often expressed affinity with the Cherokee people and set themselves apart from other African slaves. As such, they were seen as member of the tribe rather than slaves. The children followed Cherokee citizen customs, wore Cherokee clothing and dress, ate and prepared Native foods, and adopted the Cherokee language. A combination of these elements accented by blood relations accentuated their Native affinity.¹¹ For many of those that embraced Cherokee attire this represented an association with the tribe. It was a deeper connection that signified more than simply subservience and bondage, but a commonality and in many cases birthright. And yet stigma remained, regardless of how well these mixed race individuals were treated like family, biological roots could not strip the label of slave from them in the antebellum Cherokee Nation.¹² African slaves and African-Indian slaves would have to inevitably wait until the close of the Civil War to be truly set free.

In 1825, the Cherokee National Council extended citizenship to the children of Cherokee men married to white women. These ideas were incorporated into the 1827 Cherokee

¹⁰ John Ross. “An Act to prevent Amalgamation with Colored Persons,” *Tahlequah Press*, September 19, 1839. <http://digital.library.okstate.edu/Chronicles/v006/v006p178.html>

¹¹ Celia E. Naylor, *African Cherokees in Indian Territory: From Chattel to Citizens* (Chapel Hill: University of North Carolina, 2008), 109

¹² Celia E. Naylor, *African Cherokees in Indian Territory: From Chattel to Citizens* (Chapel Hill: University of North Carolina, 2008), 80

constitution.¹³ The constitution stated that "No person who is of negro or mulatto parentage, either by the father or mother side, shall be eligible to hold any office of profit, honor or trust under this Government," this included the caveat, "negroes and descendants of white and Indian men by negro women who may have been set free."¹⁴ This 1825 Constitution would stand unaltered until the end of the Civil War and United States intervention into Tribal governments, effectively ending their claims to sovereignty and easing regulations on membership and aid to the Freedmen.

The Post-Bellum Cherokee and the Treaty that Changed the Nation

Following the Civil War and the Cherokee Tribe's subsequent loss, having allied with the Confederacy, the reconstruction era Treaty of 1866 was enacted. The treaty itself became a hotbed for political activism within the Cherokee Nation in the same way as Reconstruction was for both Confederate and union sympathizers in the Southern states. Confederate leaning Cherokees wanted to opt for the removal and relocation of the Freedmen out of the Nation and off of Tribal lands. The Unionist Cherokee politicians and representatives at the signing of the Treaty of 1866 sought adoption of the Freedmen and even an allocation of land allotments for them.¹⁵

The treaty dictated the abolition of slavery within the Cherokee Nation. This also would be included later as an amendment in the Cherokee Constitution. Given the dissent from a

¹³ Theda Purdue, *Slavery and the Evolution of Cherokee Society, 1540-1866*. (Knoxville: University of Tennessee, 1979), 526

¹⁴ Theda Purdue, *Slavery and the Evolution of Cherokee Society, 1540-1866*. (Knoxville: University of Tennessee, 1979), 564-565

¹⁵ Charles J. Kappler, *Indian Affairs: Laws and Treaties., Vol. II, Treaties: Treaty with the Cherokees, 1866. July 19, 1866. | 14 Stats., 799. | Ratified July 27, 1866. | Proclaimed Aug. 11, 1866.* (Government Printing Office, 1904).

large portion of ex-Confederate and anti-Freedmen Cherokee citizens, the government soon tasked the Freedmen's bureau with a division to oversee the enforcement of the treaty provisions dealing with Freedmen and the Indian Territory. This forced the inclusion of the Freedmen into the Cherokee Nation as citizens and has been argued over and controversial within the Cherokee Nation ever since.

Notable historian, Andrew Denson, wrote of the post war atmosphere within the Cherokee Nation in regards to the inclusion of the Freedmen. Many Cherokees "...Balked at the notion that freed people should receive the same rights and benefits as Indian citizens. They accepted the treaty's freedom articles as a condition of resuming relations with the United States but never fully accepted black peoples as equal members of the tribe."¹⁶ This would become a stark irony for the United States government who would enforce this treaty soon after its signing. In fact, the United States military assured that the Freedmen would receive land holdings, monetary allowances, and education as befitted members of the Cherokee Nation. Of course, freed African Americans living in Southern States did not receive the same guarantees.

John B. Sanborn, a representative of the U.S. military operating in Indian Territory on Cherokee lands in Arkansas, reported that the Freedmen were "the most industrious, economical, and in many respects the more intelligent portion of the population of the Indian Territory. They all desire to remain in the territory on lands set apart for their own exclusive use. The Indians who are willing that the Freedmen should remain in the territory at all, also

¹⁶ Andrew Denson, *Demanding the Cherokee nation: Indian Autonomy and American Culture, 1830-1900* (Lincoln: University of Nebraska Press, 2004), 84.

prefer that they should be located upon a tract of country by themselves.”¹⁷ The Cherokee, he reported, were divided in their collective opinions on what to do with the Freedmen in regards to land and citizenship. A large portion of the Southern Cherokee population felt that the United States government should move the Freedmen from their Tribal Lands, as the Government has freed them and they were no longer tied to the land. Another sizeable portion of the population, including the principal Chief Downing, were in favor of having them retained within the lands held by the Cherokee Nation, and to relocate them upon some tract of land set apart from the Cherokee (implicating their lack of direct inclusion or citizenship within the tribe) for their exclusive use.¹⁸ The United States, while dictating the terms of the Treaty of 1866, sided with the inclusion of the Freedmen and assured them their civil rights to the Freedmen with more veracity than they had even given to other Freedmen outside of Cherokee lands.

The irony with this policy being the United States stark contrast between the treatment of freed slaves in the continental United States and the mandated treatment of Cherokee Freedmen. Where the U.S. government subjected freed slaves to a future of Jim Crow laws, lack of support during reconstruction, and a feeble Freedmen’s Bureau, the Cherokee Nation was required to give Freedmen all rights including land (an obvious reminder of the fabled 40 acres and a mule that was so short lived in the post-Civil War South). It was proposed by military officials on Cherokee lands and reservations West of the Mississippi that lands set apart for the Freedmen should be located east of the 97th degree of longitude as the drought is

¹⁷ John B. Sanborn Bvt. Maj. General and Commissioner, *Hd. Qrs. Commission for regulating relations between Freedmen in the Indian Territory and their former masters*. (Ft. Smith, Ark. Jany. 5th, 1866)
<http://freedmensbureau.com/arkansas/indianterritory.htm>

¹⁸ John B. Sanborn Bvt. Maj. General and Commissioner, *Hd. Qrs. Commission for regulating relations between Freedmen in the Indian Territory and their former masters*. (Ft. Smith, Ark. Jany. 5th, 1866)
<http://freedmensbureau.com/arkansas/indianterritory.htm>

usually so severe west of that as to render the maturity of the crops very uncertain. These lands, which also served as the location of many reservations for tribes such as the Cherokee, were divided up initially to provide and care for the Freedmen who in many cases received lands that were more suitable for crop growth. This no doubt fueled ill will toward the Freedmen who were seen as beneficiaries of government aid that was steadfastly refused to Native American citizens.

The demand for land appropriations for Freedmen were challenged in Cherokee Tribal Councils. Many members were vehemently opposed to these appropriations on the grounds of both race and political autonomy. However, these councils also exhibited some instances of acceptance and compromise with the Freedmen and the demands of the Federal government. For example, in 1880, Principal Chief Dennis Wolf Bushyhead supported an effort to distribute land to the Freedmen as a share of Tribal Assets (around 300,000 dollars). This executive order, which was built upon a veto of earlier legislation denying Freedmen the right to Tribal land, was overturned by the Tribal Council in favor of giving land only to, in the council's terms, "full bloods."¹⁹

Rather than embrace this newfound, if forced, recognition of the Freedmen and herald in a new age of racial acceptance, again, a very real hypocrisy advocated by the United States in the post reconstruction era, the Cherokee people fell into old ways despite these mandates. Faced with their own version of post-Civil War reconstruction, and effectively a foreign power controlling their government, the Cherokee Nation was approached with changing political

¹⁹ Dennis Wolfe Bushyhead Collection, University of Oklahoma Libraries Western History Collections. "Bushyhead to National Council concerning the patent on Cherokee lands." (April 19, 1886)

autonomy and with that, power to determine who could or could not be citizens. This was to develop a sort of racial hierarchy of legal citizenship.²⁰ This would soon produce a dearth of legal cases in which the rights of Freedmen and their ancestors would be hard fought on both sides of the issue.

Freed slaves, African-Indians, and African Americans saw the issue from a different perspective, however. Many saw Native Americans as potential allies, as they had a good deal in common with one another when compared to the White-European majority. Numerous novels and firsthand accounts by former and freed slaves depict a commonality with the Cherokee and other indigenous tribes. One such example is the novel by Martin Delany entitled, *Blake; or, the Huts of America*. In this novel, the main character (a Freedman) is welcomed by the tribe and symbolically joins the Indian Nation. The Freedmen follow him in joining the Nation as the Cherokees refuse to subject African-Indian peoples to slavery, and to fight against a common enemy in the Europeans.²¹ This prose presents an alternative idea of citizenship to that of the Cherokee Nation. Freedmen clearly saw it as something more sublime; larger than themselves. This identification was based on past experiences among the Cherokee and what was seen as an understanding given similar social circumstances.

W.E.B Dubois postulated that African Americans and freed slaves exhibited a duality of experiences and associations; African-ness and American-ness.²² But, Freedmen associated with Cherokees did not exhibit this stark differentiation of separate spheres. Given their

²⁰ Fay A. Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania, 2008.), 74

²¹ Martin Robinson Delany. and Floyd J. Miller. *Blake or the Huts of America*. (Boston: Beacon Pr.: n.p., 1970)

²² Dubois, W.E.B. *The Souls of Black Folk* (New York: Vintage /Library of America, 1990).

intense cultural interaction, it is no surprise that many Freedmen post-Civil War decided and were determined to remain in and be accepted into the Cherokee Nation. Their connection to Indian Territory and the Cherokee Nation was not simply terminated with their emancipation. They became committed to the Cherokee Nation and were so inclined to remain and contribute to it.

The Legacy of the Dawes Rolls

In 1887, the Dawes Act (or more formally the General Allotment Act), a bill authorizing the United States government to survey and divide up Native American lands into allotments for individual tribal members, was passed by congress that would have rippling effects through time for both Cherokees and Freedmen. Intended to promote Native American assimilation to the United States, the act removed tribal governments and enforced land shares and communal lands for those families who were part of the tribal registry. These land allotments did two things simultaneously within Cherokee society. The first change for the Cherokees was a profound removal of tribal land from the Cherokee Nation. The second coincides with the first, being the land given to Freedmen and African Americans was representative of their assimilation and equal status in the culture in the eyes of the United States government.

The Dawes rolls, currently regarded by some Cherokee citizens as validation of Cherokee identity, used misperceptions of Cherokee families and gender rolls to record versions of families “that never existed at all.”²³ The Dawes Rolls consisted of three categories. Indian by blood, whites (who intermarried), and Freedmen. Freedmen, many of whom were of

²³ Rose Stremmlau. *Sustaining the Cherokee Family: Kinship and the Allotment of an Indigenous Nation* (Chapel Hill: University of North Carolina Press, 2011). xiii + 320.

direct Cherokee descent, were none-the-less relegated to the Freedmen roll rather than the Indian by blood, to be listed as Cherokee. This became a major distinction for Cherokee tribal members who now had a governmental document to challenge Freedmen's status as Cherokees. These Dawes Rolls neglected to list any genealogy or percentage of Native American "blood" for the Freedmen, hindering their ability to claim membership into the Cherokee Nation or listed on federal records as of Native American descent. Thanks to the Dawes Rolls, percentage of blood rather than matrilineal ties now bonds the members of the Cherokee Nation.

Filled with numerous inaccuracies, the Dawes Rolls can hardly be considered a reliable source for any type of proof of descent.²⁴ With limited, if any, ability to speak Native American languages, the United States' government representatives sent to conduct and add people to the rolls often simply used guess work. Stereotypes were used in place of genealogy, ignorance and expedience was favored over accurate census taking. Simply "looking Indian" was enough to pass for being on the Rolls, while an outward appearance of being Caucasian or African American relegated an individual to the Freedmen's rolls or discounted. Many people today have lost matrilineal and genealogical ties to the Cherokee Nation as a result of such negligible categorization by federal agents in the late 1800s to the degree that even siblings of the same parents were placed on separate Rolls. And it is this blatant loss of heritage and written correlation between Freedmen descendants and the Cherokee Nation today, creating a

²⁴ Circe Sturm, *Blood politics: race, culture, and identity in the Cherokee Nation of Oklahoma* (Berkeley : University of California Press, c2002., 2002)

number of controversial court cases suing for the admittance of Freedmen to the Cherokee Nation.

Lucy Allen and the Legal War

The Constitution of the Cherokee Nation of Oklahoma in 1975 brought changes to the constitution in many ways, most importantly to the issue of citizenship. Prior to this adoption of their own Constitutional government, the United States held sway over the Cherokee government. This oversight entailed appointment of chiefs and review of governmental activities. It was only under the Nixon administration in 1975 that the Cherokee Nation was able to draft and ratify their own constitution in an effort to exercise some form of sovereignty. Article three of the Constitution defines tribal membership eligibility as being very open to interpretation. "All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls...and/or their descendants."²⁵ Of note in this passage is the lack of mention of blood, the plurality of 'Dawes Rolls', and the lack of limitations to membership. It was a restructuring of the text that would later plague tribal councils and the Supreme Court for years to come.

In 2004, a lawsuit was filed with the Supreme Court by Lucy Allen, an Afro-Cherokee, who accused the Cherokee Nation of refusing her tribal membership. The case was based on the fact that the Cherokee Nation defined citizenship in 1975 as not being limited to those with Cherokee 'blood' but rather those whose relatives had been listed on the Dawes Rolls. The Tribal constitution did not allow for them to deny her entry, without redefining citizenship

²⁵ J. B. Davis. Oklahoma Historical Society. "Cherokee Constitution of 1975, Article III, Section 1." Last updated 2001.

formally in the Constitution. The Cherokee Nation, prior to her case, opted for a more clandestine denial of entry with limited precedence.

Two years later the Cherokee Judicial Appeals Tribunal ruled in Allen's favor; descendants of the Cherokee Freedmen were to indeed be considered Cherokee citizens and allowed enrollment into the Nation. The ruling came under the influence of the Dawes Act which originally did not exclude citizen rights based on race or blood requirements. The justices concluded that if the Cherokee Freedmen were citizens at the time the Dawes Rolls were compiled, then, under the terms of the current (at the time) constitution, then they are to be "expressly included and citizenship is extended to Freedmen and their descendants and the 1975 Constitution affirms this."²⁶ Under this judicial review, nearly 800 plus Freedmen descendants have been admitted into the Cherokee Nation.²⁷ It was a harkening back to the days of the Dawes Rolls, as well as a little political oversight, that allowed for the ruling in Allen's favor. Memory at the end of the trial heavily backed her case, whether contemporary tribal politicians were on her side or not, the documents and remembrances served to benefit the Freedmen and set a hopeful precedence that unfortunately would not come with later cases.

Constitutional Concerns

The Lucy Allen case brings up other questions directly related to the idea of Cherokee citizenship and the tenuous future potential designations for citizenship may face. In the very

²⁶ Justice Stacy L. Leeds, Chief Justice Darell Matlock, Jr., *"In the Judicial Appeals Tribunal of the Cherokee Nation. Cherokee Nation Tribal Council, Lela Ummersteskee, Registrar, and Registration Commission"* (March 7 2006).

²⁷ Justice Stacy L. Leeds, Chief Justice Darell Matlock, Jr., *"In the Judicial Appeals Tribunal of the Cherokee Nation. Cherokee Nation Tribal Council, Lela Ummersteskee, Registrar, and Registration Commission"* (March 7 2006).

real reality of a Cherokee Nation with less and less full blooded individuals able to claim membership given the rise of inter-racial marriage with whites, African Americans, and others, a new definition must be met in addressing what makes Cherokee identity and citizenship. For instance, Russel Thornton in "The Demography of Colonialism and 'Old' and 'New' Native Americans", notes that in the 21st Century, "the percentage of American Indians of one-half or more blood will decline to only eight percent of the American Indian population" while those with less than one fourth to increase to roughly 60 percent.²⁸

With a thinning of the population able to claim ancestry through a strong bloodline, the fate of Freedmen seeking citizenship grows stronger. Memory and ancestry, perhaps can take greater precedence. It may be that cultural practices and a remembered history and desire to seek cultural practices will supersede blood quantum and Freedmen will have a greater chance of gaining citizenship. This of course is simply speculative, but the issue is apparent. Legal justification of blood will eventually nullify itself when full blooded Native Americans become so scarce as to require admittance of others with a weaker genetic lineage or face the potential loss of heritage and Tribal membership. Until this time though, court cases will remain the relevant vehicle of argument and debate over the acceptance of Freedmen descendants into the Cherokee Nation.

In a direct response to the Lucy Allen case of 2004, the Cherokee nation sought an amendment to their Constitution; a change to the weakly defined article III. In 2007, the Cherokee citizens voted on an amendment to their Constitution to require proof of ancestry.

²⁸ Russell Thornton, *The Demography of Colonialism and 'Old' and 'New' native Americans*, (Madison: University of Wisconsin Press, 1998). 30-32

This proof would be based upon the Dawes Rolls, with a caveat. Any ancestors listed on the Rolls as a Freedman and their descendants, "would not count." The activation of this particular clause regarding the Dawes Roll would effectively remove roughly 3000 Freedmen from the Cherokee Nation and tribal registry.²⁹ No longer thinly veiled behind honeyed words and a clever use of constitutional interpretation, the formal Constitution now came out to openly disown the Freedmen.

In response to this change, numerous court cases began to arise. Many of these not surprisingly were undertaken by disgruntled and now disenfranchised Freedmen descendants who were stripped of Tribal affiliation. Many district court cases such as Raymond Nash, et al. addressed these issues and ruled on the side of the Freedmen. In Raymond Nash, et al. the court determined that the Cherokee Nation's entry into the treaty of 1866 was an agreement that had not been modified nor changed since its entry into tribal legal canon. And the nation was still ultimately bound and responsible to uphold its terms.³⁰ Thus, the provisions it set forth, i.e. the acceptance and provision of care for Freedmen are still active and any previous constitutional alterations saying otherwise are null and void. The terms made in 2007 were stricken from the books and the Freedmen again were allowed entry and to apply for citizenship status. It is interesting to note that for such a determined initiative to remove Freedmen from the Tribal registries, and altogether from the Cherokee Nation, the law has, by and large, been in favor of the Freedmen both in Federal and Tribal courts.

²⁹ S. Alan Ray, "A Race or A Nation? Cherokee National Identity and the Status of Freedmen's Descendants." *Michigan Journal of Race & Law* 12, (April 1, 2007). 134, 387

³⁰ Raymond Nash, et al. Cherokee District Court order (January 14, 2011).

http://www.fox23.com/media/lib/13/c/f/b/cfb22757-81cf-461f-a469-4b90e74268fe/cherokee_order_2.pdf

The Cherokee Nation Supreme Court reversed the January 14th decision of the Cherokee District Court resulting in the disenrollment of the Freedmen descendants. The Chief Justice ruled that the Cherokee people had “the sovereign right to amend the Cherokee Nation constitution and to set citizenship requirements.”³¹ The decision was four to one in favor of removal of the Freedmen. This blatant deprivation of citizenship to peoples whose ancestors were married into, adopted, or born into the Cherokee Nation could be considered little more than a modernized Dred Scott decision. The Cherokee Supreme Court, as of 2011, effectively removed the Freedmen from the Nation as recognized citizens. Whether by ignorance or of a forgotten past alongside the Freedmen, the descendants of the Freedmen no longer are citizens of the Cherokee Nation. Much of their past together has been pushed to the wayside.

A Hope Filled Future

The Cherokee Freedmen have long been a part of the Cherokee Nation. Only comparatively recently have these issues been tainted by racial prejudices. In progressing with more lawsuits and cases filed against the Cherokee Nation, the descendants of the Freedmen can better hope to have a stake within the Nation. This may indeed be a minority for the Cherokee people, but no less important. Africans and their descendants have been a part of the Cherokee Nation since the early importation of slaves to the American frontier by European powers. They have intermarried, joined the Cherokee Tribe in both blood and history, and are fighting for their rights afforded to all other tribal members. It is a battle reminiscent of the Civil Rights movement of the 1950s and 60s; the memory of this fuels the heated debate among both sides of the issue of citizenship.

³¹ Matthew L.M. Fletcher. “A Weak Sovereign,” *New York Times* (September 15, 2011).

Memory is ultimately at the heart of this issue. The Freedmen descendants, who have at their disposal, a collective memory of a long standing history with their Cherokee brethren strive for equality and acceptance. The current Cherokee citizens armed with a tenuous argument backed by historical documents in the Dawes Rolls and a Tribal government and Supreme Court hostile to the idea of admission of Freedmen ancestors. These current tribal members have, by and large, forsaken memory in favor of these documents in order to establish some form of sovereignty and exercise their citizenship qualifications. This being an odd route to take to determine citizenship and establish sovereignty when many of their evidentiary documents are those provided by, or imposed upon them, by the United States. Both sides of the issue are waging an intellectual, moral, and legal battle over terms imposed upon them such as the Dawes Rolls or Treaty of 1866.

This entire conflict between the Cherokee Nation and the Freedmen and their descendants resonates strongly with the United States government. The U.S. has long had a heavy hand in Native American affairs and the General Allotment Act, Treaty of 1866, and Constitutional Amendments are evidence of that intimate involvement both culturally and in government and citizenship roles. In many ways, because of this etic influence of the United States, the Cherokee Culture has been in a sense almost co-opted by the U.S. model of citizenship acceptance and membership. The Cherokee Nation for better or worse now resembles the United States while it has ample reason to despise it. Not only is there a stark resemblance, but, the Cherokees are using the documents that were/ are mandated and imposed upon them by the U.S. as a way of trying to separate themselves to determine sovereignty and right to determine citizenship.

Given this scenario, Cherokee memory comes across as unimportant for them in this issue. Their memory has been superseded by the United States 19th Century definition of race up to the present day. When the U.S. interpretation of African Americans began to shift rapidly in the 20th and 21st Century, the Cherokee Nation was expected to change as well. It is as if these race relations morays would filter cross culturally simply due to proximity. The Cherokee Nation is now left with an antiquated government imposed upon them, held in check by the United States, all the while trying to exercise some form of sovereignty. Memories have largely been negated, the people forgot, or, have not appropriately and effectively used their history of oppression and now operate within that U.S. system to try to change things to go their way. The Freedmen in this manner are lucky. Though they too utilize governmental documents in favor of oral histories and memory, they have a progressive attitude and strong backings in both the U.S. and Cherokee Tribal governments and courts.

This issue has a long history and Freedmen can trace ill memories over this fight to the bitter end of the Civil War for the Cherokee people. As time goes it seems that the memories have not faded and that the fight for citizenship for the Freedmen will no doubt be fought into the future. But, hopefully, the Freedmen's descendants will see a definitive outcome from future court cases that will lie in their favor in order for them to join as part of the Cherokee Nation as their ancestors once did. And perhaps this time, as equals. One drop of African blood should not delegitimize a lengthy history of Cherokee blood and cultural affinity. Citizenship and culture should be far more representative of the memory, the history, and the lives of ancestors than an arbitrary document imposed upon them by a conquering people.

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