

APPLYING FOR CHEROKEE CITIZENSHIP: CONSTRUCTING RACE, NATION,
AND IDENTITY, 1900-1906.

by

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(Under the Direction of Claudio Saunt)

ABSTRACT

This thesis examines the Dawes enrollment period between 1900 and 1906. It is unique in that it recaptures the history from the perspective of the applicants for Cherokee citizenship. In looking at the various ways that applicants attempted to present themselves as qualified for Cherokee citizenship, it reveals that race had a significant role in defining the contours of Cherokee-ness and nation at these hearings. Race was contingent at the Dawes hearings. It excluded many applicants from citizenship and helped define the rights and social statuses of those accepted.

INDEX WORDS: Dawes Enrollment; Cherokee Indians; Cherokee Freedmen; Citizenship; Identity; Race; Nation; Land; Native American history; Southeastern American Indians; The Five Civilized Tribes

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DEDICATION

To my mom, who should finish her thesis when she retires! To my dad too.

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Introduction:

“Sir,” wrote Sarah Nero to the Dawes Commission on September 14, 1905,

I notice advertised in ... the Phoenix a list of names as I understand [not listed for enrollment] ... in the midst of that number I saw my name. Now do I understand you to say that you have not as of yet recognized that number to be citizens of the Cherokee Nation? And do I further understand you to say that we must come before the Commission with proof to identify ourselves as the proper person?¹

Like many applying to the Dawes Commission for Cherokee citizenship, Sarah Nero was puzzled by the process. She had already applied once for Freedmen citizenship—the status conferred upon African Cherokees—and had “filed and received” both her certificate for homestead and her Freedmen card. Yet still the Commission failed to recognize her as a citizen of the Cherokee Nation. What other “proof” did she need? To receive citizenship, Sarah Nero needed to identify herself on a census of the Cherokee Nation, explain her relation to a former Cherokee Indian slave master, and document her residency.

In many ways, the story of Sarah Nero encapsulates the experiences of all individuals applying for Cherokee citizenship in the early 1900s, even if they were not African Cherokee. Aside from Freedmen citizenship, individuals could also apply for By-blood and adopted statuses. Typically, Cherokee Indians applied for Cherokee by-blood citizenship and intermarried whites and non-Cherokee Indians applied for adopted citizenship. While By-blood and Adopted applicants had different qualifications for

¹ Sarah Nero, jacket 501, roll 287, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

citizenship than African Cherokees like Sarah Nero, they had the same objective.

Between 1900 and 1906 all applicants sought Cherokee citizenship from the Dawes Commission because it entitled them to a land allotment in the former Cherokee Nation. In 1898 the U.S. government had taken control of Cherokee communal lands with the intent of distributing parcels of it to the individual members of the Nation. To accomplish this goal, it assigned the Dawes Commission the task of determining who deserved those land allotments.²

In order to present themselves as qualified for citizenship and, thus, a land allotment, applicants explained to the Commission their connections to the Cherokee Nation, its land, and the Cherokee Indians. Hence the reason Sarah Nero and all other applicants presented “proof to identify ourselves as the proper person” to the Dawes Commission. What citizenship status an applicant sought determined what evidence he or she provided. For each status, the Commissioners envisioned an ideal citizen and expected applicants to present themselves accordingly. Doing so required an applicant to create connections between him or herself and the Cherokee Nation’s land and the Cherokee Indian people. Cherokee Indians connected themselves to the Cherokee people through their Indian bloodline, intermarried whites through their marriage to a Cherokee Indian, and blacks through their relationship to their former Cherokee slave owner, or official Cherokee recognition of their right to citizenship. All individuals made claims to the Nation and its lands by documenting their residency in the Cherokee Nation. What

² Kent Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893-1914*. (Orem: Ancestry.com Inc., 1999), 37-38.

residency requirements an applicant had depended on the citizenship status he or she sought.

While some applicants fell short of the Commissioners' standards, they still attempted to portray themselves as deserving of citizenship. For instance, at least one person in Sara Nero's application had neglected to provide the Commission with the necessary credentials for Freedman citizenship. To obtain the status, this applicant would either have to meet the criteria, or justify his or her right to citizenship on some other basis. The Commission would then decide whether the applicant's presentations was convincing. If so, he or she would receive citizenship, if not the Commission would categorize him or her as doubtful or rejected. Doubtful applicants had another chance to present themselves as qualified, while rejected applicants received no citizenship or a land allotment.

As an applicant labeled doubtful, Sara Nero was trapped in citizenship purgatory. Further hearings would determine whether she deserved citizenship, or fell outside its contours. To receive it, she had to persuade the Commission that she was an African Cherokee. Since the Dawes Commission envisioned citizenship and race, nation, and land as interrelated, Nero needed to construct an identity for herself that took this into account. This meant depicting herself as a black person seeking Freedman status—one who could document her residency in the Cherokee Nation and demonstrate that she had been enslaved by a Cherokee Indian. While not all applicants had to provide the same credentials as Sarah Nero, they certainly had to construct a Cherokee identity for themselves based on their race and connection to the Cherokee Nation and its land.

Black, white, and Indian applicants all dealt with this situation in different ways. Their race and contingent factors affected how they presented themselves as individuals deserving of Cherokee citizenship.

Central to understanding how applicants presented themselves in terms of nation, race, and land is an understanding of each separate term. In *Imagined Communities*, Benedict Anderson offers a widely accepted explanation of nations.³ He posits that nation-states developed rapidly in the late eighteenth and nineteenth centuries because of the rise of print culture. By reading newspapers and other forms of written communication individuals imagined themselves as part of a larger culture and nation, no matter where they were. This, Anderson explains, encouraged individuals to not only conceptualize how they fit into a nation, but how others might not. While certainly humans had thought of themselves as part of cultural groups in the past, Anderson explains that the developments he looks at were different in that people began defining themselves as part of political states with geographic borders, histories, and unique cultures.

Scholars of southeastern American Indian history have cited Anderson's definitions of nation and nation-state. David Chang's manuscript on the history of Oklahoma and the Creek Nation between 1866 and 1920 refers to Anderson's book in order to explain relationships among race, land, and citizenship.⁴ This thesis uses Anderson's ideas similarly. It considers how applicants constructed Cherokee identities

³ Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (London and New York: Verso, 1983).

⁴ David A. Chang, *The Color of the Land: Race, Nation, and the Politics of Land Ownership in Oklahoma, 1866-1929* (Forthcoming).

by imagining themselves as part of a larger Cherokee community and nation. Unlike the individuals Anderson explores, applicants for Cherokee citizenship did not necessarily imagine their connection to the new Cherokee Nation through print culture. Instead, they imagined themselves as part of the Cherokee Nation mostly according to the terms of citizenship that the former Cherokee government, U.S. courts, and the Dawes Commission set forth. Some applicants, however, also constructed their own imagining of the Cherokee Nation. These individuals connected themselves to the Cherokee Nation on their terms. Like Chang's work on the Creek Nation, this thesis also explores how race, land, and citizenship were central to all the imaginings of nation and identity presented at these hearings. Race excluded some applicants from citizenship and granted it to others, giving them rights to Cherokee land and tribal funds. Applicants like Sara Nero constructed identities for themselves that they hoped would include them in the Cherokee Nation. How they presented themselves as belonging to the Cherokee Nation determined whether the Commission granted them citizenship.

As Sarah Nero undoubtedly discovered, another important factor in claiming Cherokee citizenship was race. The stories from these hearings support Barbara C. Fields's assertion that race is a social construction, but with an important twist.⁵ In saying that people construct race to serve a particular social purpose, Fields suggests that society understands and internalizes race in the same way. Her argument, which draws on a Marxist understanding of power relations, fails to account for the fact that non-elites

⁵ Barbara C. Fields, "Ideology and Race in American History," Ed. J. Morgan Kousser and James M. McPherson, *Region, Race, and Reconstruction: Essays in Honor of C. Vann Woodward* (New York and Oxford: Oxford University Press, 1982), 143-177. This study will follow Fields' premise that race is a socially constructed category. Because race is socially constructed, it varies over time, region. Thus, I will not attempt to universally define race, but instead explore how the historical actors I study understood it in various situations.

could shape the contours of race and citizenship at these hearings. Historians Claudio Saunt and Tiya Miles have demonstrated in their studies of nineteenth-century southeastern Indians that race was a more complicated force among the Five Tribes than Fields envisioned in her groundbreaking essay.⁶ Individuals at every level of society participated in its creation. Moreover, race was a slippery concept, one which people could contest. This argument applies to the Dawes enrollment period of the early twentieth century as well. During it, race helped determine who deserved access to citizenship, nation, and land. It also created a social hierarchy in the Cherokee Nation that was based on citizenship status and still exists today.

At these hearings, race helped define the contours of the Cherokee Nation and citizenship in a few important ways. First, an applicant's race determined what citizenship status he or she could obtain. If an applicant looked black or had known African ancestry, then he or she generally had to apply for Freedmen citizenship. If an applicant looked white and had no known Indian ancestry, then he or she generally could only apply as an intermarried white. If an applicant had Cherokee Indian heritage and no black blood, then he or she applied as an Indian By-blood. Categorizing applicants by race mattered, because not all Cherokee citizenship statuses were equal. By-blood Indians could more easily obtain citizenship, but, after enrollment, they could not easily sell their land allotments. This was because the U.S. government placed restrictions on their right to sell them, believing Indians incapable of managing their own financial

⁶ Tiya Miles, *Ties that Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (Berkeley: University of California Press, 2005). Creek historians have also contributed to this methodology by looking at how race affects on-ground interactions. See Claudio Saunt, *Black, White, and Indian: Race and the Unmaking of an American Family* (New York: Oxford University Press, 2005); and Gary Zellar, *African Creeks: Estvste and the Creek Nation* (Norman: University of Oklahoma, 2007).

affairs. In contrast, whites and blacks encountered more legal hurdles when applying for citizenship, but did not have a twelve year hold on their allotments like Indians. Also, Indians and intermarried whites generally had greater social and economic standing in the Nation than blacks. Unsurprisingly, this remained true after the Cherokee Nation became part of the United States in 1907.⁷

Physical appearance, lineage, official paperwork, witness testimony, and the opinions of applicants could all influence how the Commission labeled an applicant's race. The various ways participants of the hearings interpreted this evidence when constructing racial identities for applicants revealed that not everyone viewed race in the same light. Common understandings of race existed, but they sometimes contradicted each other. This gave some applicants room to construct their own racial identities and contest portrayals of them that might damage their cases for citizenship.

While racial discourse created multiple avenues through which applicants could claim or contest their racial identities, it also restricted access to citizenship. For instance, if an applicant's community labeled him or her black, then he or she only qualified for Freedmen citizenship. Likewise, the Commission might have deemed an applicant white and, thus, only consider him or her qualified for adopted citizenship. In both of these examples, assumptions about the applicant's racial identity restricted what citizenship status he or she could obtain. Ultimately, this way of categorizing applicants divided the Cherokee citizenry along racial lines. This trend fits with Claudio Saunt's argument that race was a "pervasive" and "destructive" force among the Five Civilized

⁷ The Cherokee Nation became part of the United States during the era of Jim Crow. To read about how race relations changed in America during this era see C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1955).

Tribes that “divided” its people. But while race divided these people into social and citizenship categories, a sense of community sometimes drew them together. For instance, at the hearings some Indians testified on behalf of blacks and whites from their local community. Indeed, in almost every situation, contingent factors influenced how race affected individuals, though not always positively as in the aforementioned example. While a sense of community overrode racial divisions in some instances, more so than not, drawing the boundaries of citizenship along racial lines promoted tension between and among whites, blacks, and Indians.

Like race and nation, land had an important place at the enrollment hearings, both as an idea and a tangible benefit of citizenship. As an idea, land connected applicants to the Cherokee Nation. The Commission used residency as a criteria for determining whether applicants qualified for citizenship. What requirements an applicant had depended on the status he or she sought and his or her race. For instance, blacks had to prove they had lived continuously in the Cherokee Nation since 1867, while whites had to document that they had lived with an Indian spouse in the Nation since 1877. Indians needed only demonstrate that they had lived in the Cherokee Nation since 1898, when the proceedings officially began. Applicants addressed these requirements by presenting themselves as connected to the Cherokee land. Those who could, imagined themselves in terms of the Commission’s criteria. Those who could not, drew connections between themselves and the Cherokee land that they hoped would persuade the Commission that they deserved citizenship. In these ways, an applicant discussed land as a criterion for citizenship.

More than just an idea, land was also a tangible object at these hearings. In demonstrating their residency, applicants discussed the physical space in the Cherokee Nation in which they claimed to live. Typically, they accomplished this by referring to legal documents and witness testimony. In most cases, their allotment requests were for land located in their communities. Sometimes, however, applicants sought more than this. They might apply for their children and spouses in order to secure more land than they had occupied under the Cherokee government. Others might simply use their Cherokee heritage in an attempt to secure a land allotment, even if they had not previously lived in the Cherokee Nation. Whether these applicants succeeded in obtaining citizenship and land allotments depended on whether they presented their cases in a way that appealed to the Commission.

Race, nation, and land were interrelated ideas and tangible realities that applicants faced and discussed when enrolling for citizenship. While nation and land were significant parts of the citizenship equation, race defined the contours of both nation and land in a few important ways. An applicant's race was a topic of discussion at his or hearing, as well as a determinant of what citizenship status, if any, he or she could obtain. As such, race included and excluded people from citizenship, decided the legal contours of a citizen's rights to participate in the Nation, and his or her rights to land. Ultimately, this also meant race had the greatest impact on how applicants presented themselves as citizens.

Understood in different ways by the hearings' participants, affecting the enrollment process in a variety of ways, and assuming many forms— both as an idea and

a tangible reality— race made its presence known. How race affected each applicant’s claim to citizenship, nation, and land depended on circumstance, for not everyone had the same background. Contingent factors determined the way or ways race affected an individual’s application. Because of this, no single declarative statement about the relationship between race and citizenship adequately encompasses the complexities of all the applicants’ stories. Looking for a single explanation ignores the intricacies of each applicant’s story—what historian Edward L. Ayer’s refers to as the “deep contingencies”— and misses how the historical actors imagined race.⁸

A number of scholars have studied the importance of race at these hearings by looking at it from a legal angle and from the perspectives of U.S. policy makers and Cherokee elites.⁹ This story contributes to the current historiography by examining the hearings from the vantage point of the applicants. It reveals that race was contingent at these hearings and affected the ways applicants presented themselves as connected to the Cherokee Nation and its lands. Race included and excluded applicants from citizenship and forced them to present themselves as black, white, or Indian. While applicants constructed racial identities for themselves, the Commission had the final say. It determined the racial identities of all applicants and, thus, their rights to citizenship. This meant that how applicants portrayed themselves at the hearings was incredibly important.

⁸ To get a feel for Edward L. Ayers’ methodology see Edward L. Ayers, *In the Presence of Mine Enemies: War in the Heart of America, 1859-1863* (New York: W.W. Norton & Co., Inc., 2003); Edward L. Ayers, *The Promise of the New South: Life After Reconstruction* (New York and Oxford: Oxford University Press, 1992); and Edward L. Ayers, “Narrating the New South,” *The Journal of Southern History*, Vol. 61, No. 3 (Aug., 1995), 555-566. Dr. Ayers also directed me to the following: Edward L. Ayers, “What Caused the Civil War?” in *What Caused the Civil War?: Reflections on the South and Southern History* (New York: Norton, 2005).

⁹ See Carter, *The Dawes Commission*; and Angie Debo, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes* (Princeton: Princeton University Press, 1940).

It could influence whether the Commission enrolled them for citizenship. If enrolled, an applicant's presentation might also help determine what citizenship status he or she received. This was important because not all citizenship statuses were equal. Hence the reason Sara Nero intended to learn what "proof" the Commission sought from her. With this "proof" she would establish a Cherokee identity for herself that she hoped the Commission would like. By addressing these issues, this thesis not only explores how applicants perceived of the hearings and constructed race during them, but also elucidates a broader relationship between cultural identity and race, nation, citizenship, and land.

The application jackets of those granted Cherokee Indian, Cherokee Freedmen, and Intermarried citizenship, as well as those the Commission labeled "doubtful" and "rejected" recover the applicants' perspectives.¹⁰ For the Cherokee tribe, alone, over **BLANK** applications exist. Each jacket contains the information the Dawes Commission compiled about an applicant, including witness testimony from the applicant's hearing or hearings for citizenship, personal information about the applicant and his or her family, and correspondences from the Dawes Commission and Bureau of the Interior. A handful of application jackets also have other useful information, such as letters written by the applicants to the Dawes Commission, relevant laws, and newspaper clippings concerning the enrollment process. The information most useful for recovering the applicants' perspectives is the testimonies. They detail how applicants and witnesses responded to the Commission's questions regarding race, residency, and citizenship.

¹⁰ Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301 NA.

I have organized this thesis by application type with the exception of chapter one. Chapter one describes the story of Cherokee citizenship from 1866 to the beginning of Dawes enrollment in 1900. It provides the necessary background information for understanding the context in which individuals applied for Cherokee citizenship in 1900. The next three chapters look at the history of Dawes enrollment from the perspective of the applicants and consider how they addressed issues of race, land, and nation. Each chapter is an in-depth study of a particular type of application. Chapter two looks at those the federal government categorized as “accepted By-blood” applications for Cherokee citizenship. This grouping of applications covered Indians as well as intermarried whites. The Commission included intermarried white applicants in the By-blood hearings and records, because they had to have an Indian spouse to receive citizenship. Chapter three deals with accepted applications for Freedmen citizenship. Four is a comprehensive chapter that focuses on doubtful and rejected applications for Freedmen, By-blood, and adopted statuses. Looking at the stories of accepted, doubtful, and rejected applicants reveals the full contours of citizenship. It also highlights how all applicants experienced the hearings and claimed citizenship.

The way applicants presented themselves to the Commission mattered. If they had all the necessary qualifications for citizenship then they needed to demonstrate it. If they lacked certain criteria, then they needed to explain why and offer a comparable substitute. For those missing a particular qualification, presentation was incredibly important: it could mean the difference between receiving citizenship and rejection. While applicants had little control over much of the Dawes enrollment process and U.S.

Indian policy, they could construct Cherokee identities for themselves that the Commission might find convincing. To do this, they needed to consider how the Commission viewed citizenship as an idea connected to race, nation, and land. Ultimately, the Commission determined the qualifications for citizenship and who received it. Applicants, however, could use the hearings as a forum in which to present themselves as deserving of citizenship. As Sara Nero and other applicants discovered, more than any other factor, race helped define the contours of this process.

Chapter 1: The Coming of Enrollment and Allotment in the Cherokee Nation, 1866-1900.

The Cherokee enrollment period is part of a larger history concerning the encroachment of the U.S. government on tribal autonomy. Since the administration of Thomas Jefferson, the federal government had sought to expand the borders of the United States by procuring indigenous lands. Initially, Jefferson followed this policy in order to acquire lands for the agrarian American republic of self-sustaining farmers that he envisioned. His plan called for the Native Americans who once inhabited the lands to become future farmers as well. By including Indians in the Agrarian Republic, Jefferson believed the United States could avoid conflicts over the land and, thus, more easily expand its territorial borders west.¹¹ When Andrew Jackson became president in 1828 he changed American Indian policy, because he believed that Indians were too primitive to yet assimilate to Anglo-American society. He argued that Indians should move west away from U.S. society where they could “civilize” at their own pace.¹² As white settlers continued to expand west and encroached on indigenous lands, they inevitably pushed American Indian populations farther and farther west. For the Cherokee, this historical development translated into removal from the states of Georgia, North Carolina, and

¹¹ Bernard W. Sheehan, *Seeds of Extinction: Jeffersonian Philanthropy and the American Indian* (New York: W.W. Norton & Company, 1973), 119.

¹² Anthony Wallace, *Jefferson and the Indians: The Tragic Fate of the First Americans* (Cambridge: Belknap Press of Harvard University Press, 1999), 48.

Tennessee to areas now in Arkansas and Oklahoma. There, the majority of Cherokee people lived relatively undisturbed by U.S. Indian policy makers until the Civil War.

In 1866 Indian policy shifted dramatically, assuming the form that characterized it through the end of Cherokee enrollment in 1906. While the U.S. government had readily involved itself in the affairs of the Cherokee Nation before the Civil War, it took intervention to new levels afterward.¹³ Increased U.S. government involvement in the affairs of the Cherokee and other tribes also coincided with the development of a new ideology concerning American Indians. This ideology claimed that Indians were incapable of running their own affairs and, thus, encouraged the U.S. government to encroach on tribal sovereignty in more direct ways. For instance, instead of simply pushing Indians farther west, as Jackson and his predecessors had, governmental officials returned to a more Jeffersonian strategy of assimilating American Indians to white society. However, this new policy differed from Jefferson's in that it suggested the U.S. government should divide Indian communal lands into allotments that Native Americans could own individually.

The Treaty of 1866, which formally ended Civil War-related conflicts between the Five Civilized Tribes and the United States, encapsulated these changes in U.S. Indian policy and racial ideology. In it, the United States deemed the Cherokee Nation an ally of the Confederacy and dictated harsh terms of surrender. For one, the United States granted former Cherokee slaves citizenship in the Cherokee Nation. Second, the treaty allowed

¹³ Jeffrey Burton, *Indian Territory and the United States, 1866-1906* (Norman: University of Oklahoma Press, 1995) Burton argues that the U.S. court system brought about by the Treaty of 1866, more than any other developments in the Cherokee Nation, led to its demise.; The reader should also be aware of an earlier work that attributes the end of tribal autonomy in the 1890s to the creation of the Freedmen status and other stipulations in the 1866 treaty. This book is Daniel F. Littlefield, Jr. *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport: Greenwood Press, 1978).

the U.S. government to grant railroad companies right of ways within the territory. In doing so, the U.S. government hoped to connect the eastern United States with federal territories surrounding Cherokee Territory. Third, despite protestation from Cherokee officials during the negotiations, the treaty also stipulated that the Nation sell certain tracts of its lands to the United States. Lastly, a section of the treaty called for the establishment of U.S. Federal district courts within the boundaries of the Indian territory. These courts would address disputes arising within the Cherokee Nation concerning any non-Cherokee citizen. While the treaty had many other stipulations that affected the Nation, these measures, above all, diminished Cherokee sovereignty significantly.¹⁴ Between 1866 and 1900, the developments resulting from these stipulations led to the dissolution of the Cherokee Nation, the Dawes enrollment process, and the federal allotment of tribal lands.

The United States' expectations of how the Cherokee government should treat former Cherokee slaves affected tribal autonomy in a number of ways. The most obvious was that the treaty granted former slaves freedom and citizenship in the Cherokee Nation. This maneuver essentially usurped the right of the Cherokee government to define the contours of its nation's citizenry. But the federal government's assault on the Nation's right to determine its citizenry did not stop there. Article IV of the treaty also granted

¹⁴ Explanations for causation of the demise of the Cherokee Nation have been attributed to a number of factors, including the U.S. Court system, the creation of the Freedmen status, the growth of industrialization, and U.S. military intervention. See the following books: Burton, *Indian Territory*; Littlefield, Jr., *The Cherokee Freedmen*; and H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907* (Columbia: University of Missouri Press, 1976).

former slaves “the right to settle and occupy designated lands” in the Cherokee Nation.¹⁵ The article also promised “160 acres” to each recognized Freedmen who opted to settle there.¹⁶ In doing this, the U.S. government had also asserted its right to determine what the Cherokee government did with its land and former slaves.

Disgruntled, the Cherokee government eventually responded to this attack on its autonomy. If the U.S. government granted citizenship to former slaves, then the Cherokee government would define the contours of that citizenship. Accordingly, in 1886 Cherokee lawmakers passed laws and amended their Constitution to limit the citizenship rights of freedmen. For one, lawmakers reiterated in their amended constitution that the Treaty of 1866 stipulated that Freedmen seeking citizenship had to have returned to the Nation “within six months of the nineteenth of July [1866].”¹⁷ This clause greatly reduced the number of qualified applicants for Freedmen citizenship, because many Cherokee masters had taken their slaves outside the Nation during the war to nearby states like Kansas and Texas.¹⁸ To limit the rights of those blacks who this clause did not affect, Cherokee officials amended their Constitution. In it, they now explained that Freedmen rights were equivalent to those of “white adopted citizens ... before and at the making of said Treaty....”¹⁹ In other words, the Cherokee Freedmen status afforded all rights of citizenship except “title to Cherokee Domain, or ... the

¹⁵ Treaty With Cherokee, 1866, 943, available online at The Oklahoma State University Digital Library: <http://digital.library.okstate.edu/KAPPLER/VOL2/treaties/che0942.htm>.

¹⁶ Ibid.

¹⁷ The Cherokee National Council, *The Constitution and Laws of the Cherokee Nation, 1892* (Wilmington: Scholarly Resources Inc., 1973), 34.

¹⁸ Littlefield, Jr., *The Cherokee Freedmen*, 11.

¹⁹ The Cherokee National Council, *The Constitution and Laws*, 371.

proceed thereof.”²⁰ By conferring on freedmen a status similar to that of adopted whites, Cherokee officials had excluded them from rights to tribal lands and payments from tribal land sales.

Even prior to these amendments, Cherokee officials had restricted Cherokee Freedmen citizenship rights by excluding some qualified blacks from censuses that determined who deserved payments from tribal land sales. In fact, with the exception of an 1867 census, no comprehensive roll of Cherokee Freedmen citizens existed until the U.S. government undertook efforts in the late 1880s. The U.S. government used the 1867 census to determine who in the Nation deserved the newly created Freedmen status, which the 1866 Treaty had promised ex-slaves of Cherokee Indians. This does not mean that no Freedmen showed up on payment censuses other than the 1867 roll, but that many blacks complained that the Cherokee government had unfairly excluded them from censuses.²¹ By creating the Cherokee Freedmen status, the U.S. government ushered in a new era of race relations in the Cherokee Nation. No longer allowed to conflate blackness with slave status, the Cherokee government limited the rights of Cherokee Freedmen in order to raise the status of By-blood citizens.²²

The United States government also used the Treaty of 1866 to secure rights for railroad companies hoping to lay tracks through the Cherokee Nation. Article XI

²⁰ Ibid., 372.

²¹ For example see Eliza Ratcliffe, Jacket 723, Roll 353, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA; Andy Webber, Jacket 1547, Roll 399, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA; Carter, *The Dawes Commission*, 7, 110-111.

²² Fay Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2008), 107-108.

explained how the process would work, saying that “the Cherokee Nation ... grant a right of way ... to any company or corporation which shall be duly authorized by Congress to construct a railroad ... which may pass through, the Cherokee Nation.”²³ By granting railroads these right of ways, the United States government sought to encourage economic development in the areas of the United States surrounding the Cherokee Nation. Essentially, the railroad would connect struggling western American territories, specifically the Oklahoma region, to the prosperous eastern economy of the United States.²⁴

On the surface this seemed harmless, but it undermined the autonomy of the Cherokee government in an important way. It ignored the sovereign right of the Cherokee government to decide whether a railroad company could construct railways within the Nation’s borders. Instead, the U.S. Congress decided those matters. In the immediate course of events, the article diminished tribal autonomy and reflected the belief of many U.S. policy makers that the U.S. government could better serve the Cherokee people than could the Cherokee government.²⁵ Perhaps even more devastating, however, was the long-term result. Construction of large railroads like the MKT (Missouri-Kansas-Texas Railroad), which entered Indian territory in 1870, demanded copious amounts of laborers, many of whom came from outside the Cherokee Nation. After completing their work in the Indian territory, many of these migrant workers never

²³ Treaty With Cherokee, 1866, XI, 945.

²⁴ Carter, *The Dawes Commission*, 2; Andrew Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture 1830-1900* (Lincoln and London: University of Nebraska Press, 2004), 195.

²⁵ See Denson, *Demanding the Cherokee Nation*; Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920*. (Lincoln: The University of Nebraska Press, 1984), 12-39. Hoxie looks at Indians more broadly.

left, staying as legal or illegal non-citizens.²⁶ By the time the railroad had reached Texas in 1872, this development had facilitated the growth of “multicultural” towns along the railway tracks, inhabited primarily by non-indian peoples.²⁷ As historian Angie Debo has noted, most of the people living in these towns were not citizens of the Cherokee Nation, but, nevertheless, ran the businesses that profited from proximity to the railroad.

Responding to this development, the Cherokee government passed legislation requiring non-citizens to purchase a right to hold a business or work in the Cherokee Nation.

Despite this effort, however, many non-citizens continued to live and work in the Nation without having an official license. By the 1880s, the consequence of building railroads in the Nation appeared on national censuses: more people officially categorized as white lived in the Cherokee Nation than did Indians.²⁸

Unfortunately, the Treaty of 1866 made it impossible for the Cherokee government to remove non-citizens from the Nation on its own. Articles VII and XIII allowed the United States government to set up federal courts within the boundaries of the Nation for handling cases except “civil and criminal cases arising within ... in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation.”²⁹ This meant non-citizens could lobby for their right to stay in the Cherokee Nation in a U.S. federal court, instead of a Cherokee one. Indeed, the U.S. government now shared the power to determine who

²⁶ Denson, *Demanding the Cherokee Nation*, 152-154.

²⁷ *Ibid.*, 154.

²⁸ Angie Debo, *And Still the Waters Run*, 12-14.

²⁹ Treaty With Cherokee, 1866, XIII, 946.

could stay within the borders of the Cherokee Nation. More impressively, the treaty granted the U.S. military the responsibility of enforcing the removal of non-citizens from the Cherokee Nation. Therefore, even if the Cherokee government successfully lobbied to have non-citizens removed from the Nation, it still depended on the power of the U.S. government to execute the order. A number of historians have noted that the U.S. government favored allowing non-citizen businessmen along the railroads to stay in the Nation.³⁰ Indeed, those the government saw as improving economic development in the Indian territory or supporting the railway usually received stay in the Nation. In general, the U.S. government was ineffective at removing non-citizens from the Cherokee Nation.³¹

Lastly, the federal government also used the Treaty of 1866 to continue its long history of attempting to control tribal lands. It continued this pattern by designating lands within the Cherokee Nation for displaced Indian groups, such as the Delaware, Osage, Peoria, and Shawnee.³² Throughout the latter half of the nineteenth-century, many Indians from these tribes migrated to the Cherokee Nation in search of a place to live. This measure, U.S. policy makers claimed, encouraged these more “savage” Indian groups to assimilate faster to white society by living amongst their more “civilized” Indian brethren, the Cherokee. Indeed, the rationale discouraged any contemplation in

³⁰ Among those who support this are Debo, *And Still the Waters Run*. Burton, *Indian Territory* refutes this to some extent. He suggests that it probably was not a master plan set up by the U.S. government to make the Cherokee Nation look incompetent. This does not rule out the possibility, however, that they may have encouraged population growth along the railroads to promote economic growth.

³¹ Debo, *And Still the Waters Run*, 12-14; Burton, *Indian Territory*, 120-121. Burton suggests this was not a purposeful plot by the U.S. government to make the Indians look inept at running their government.

³² Carter, *The Dawes Commission*, 110.

Congress over whether U.S. policy makers should use U.S. territory to create a reservation for these groups.³³ The Treaty of 1866 also laid ground rules for land sales in the Cherokee Nation. Included in the articles concerning land sales was the stipulation that the Cherokee Nation cede to the United States lands in what is today Kansas.”³⁴ The assault on the Cherokee government’s right to manage its Nation’s land did not stop there. Article XVIII of the treaty placed restrictions on the Cherokee Nation’s power to sell its lands “in the State of Arkansas and in States east of the Mississippi river.”³⁵ Only with permission from the Secretary of Interior could the Cherokee Nation now sell lands in these regions. Probably more detrimental to tribal autonomy in the long-run was article XX, which proposed “Whenever the Cherokee national council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them, at the expense of the United States.”³⁶ Though not forcing allotment on the Cherokee Nation, this clause officially sowed the seeds for it as a future possibility.

By interfering in matters of Cherokee citizenship, infrastructural planning, judicial disputes, immigration, and land and border policies, the United States government, inadvertently or not, ensured that the authority of the Cherokee government diminished. Because the Treaty of 1866 limited the power of the Cherokee government in these particular faculties, Cherokee officials could not easily act when problems arose

³³Denson, *Demanding the Cherokee Nation*, 138.

³⁴ Treaty With Cherokee, 1866, XVII, 947.

³⁵ Treaty With Cherokee, 1866, XVIII, 948.

³⁶ Treaty With Cherokee, 1866, XX, 948.

concerning them. Hence, U.S. officials viewed crises that arose in the Cherokee Nation not as evidence of the federal government's failure in implementing Indian policy, but as proof that the Cherokee Indians could not run their own affairs. Historians have noted that this condescending view of Indians, which arose in the 1870s and 1880s, was not isolated to one specific tribe.³⁷ This ideology about Indians eventually supported the call for the allotment of Indian territories in general and the Cherokee, specifically.

In the 1870s and 1880s Indian reformers like Senator Henry Dawes began questioning longstanding Jacksonian Indian policy. Dawes and other policy makers claimed that under the removal policy, the Indian would regress into "a tramp and beggar with all the evil passions of a savage, a homeless and lawless poacher upon civilization, and a terror to the peaceful citizen."³⁸ To avoid this, Dawes proposed a new strategy that sought "to fit the Indian for [white] civilization and to absorb him into it."³⁹ In many ways, this new philosophy borrowed from Jefferson's earlier policy by emphasizing that Indians be "taught in the requirements of a successful farmer."⁴⁰ Indeed, as long as "the Indian's own willingness to adopt civilized life [remained strong,] he could become part of that [white] life."⁴¹ For Dawes, Anglo-American culture and society was the pinnacle

³⁷ Hoxie, *A Final Promise*, 15; Denson, *Demanding the Cherokee Nation*, 202, 211.

³⁸ Henry L. Dawes "Have We Failed with the Indian?" *The Atlantic Monthly*, Volume 84, 1899, 281. From The University of Virginia Online Collections. PDF, <http://etext.lib.virginia.edu/etcbin/toccer-new2?id=DawHave.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&part=al> (accessed April 2, 2008).

³⁹ *Ibid.*

⁴⁰ *Ibid.* 283.

⁴¹ *Ibid.* 285, 281.

of “civilization.”⁴² He, like Jefferson and Jackson, believed Indians could achieve civilization, but he disagreed with them over how they could attain it. Unlike Jackson, Dawes believed the government had to help Indians assimilate to white society by including them in it. Thinking from a Jeffersonian standpoint, Dawes and his colleagues lobbied for this policy throughout much of the 1870s and by 1883 their supporters had formed the Society of the Friends of the Indian, which met at Lake Mohonk, New York.⁴³ This group discussed many of the policies that U.S. policy makers eventually implemented to deal with Indians. Among the things they promoted was teaching Indians how to farm in the Anglo-American manner.⁴⁴

While these beliefs about Indians mirrored those of Jefferson’s, the actual policy implemented did not. Instead of simply educating Indians to uplift themselves, Indian reformers such as Hendry Dawes introduced the Dawes Bill in the late 1880s, which “provided for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.”⁴⁵ Essentially, the U.S. government proposed dividing Indian communal lands up into individual land allotments— a move Jefferson never attempted. This, they hoped, would encourage Indians to cultivate the land “advantageous for agricultural and grazing purposes.”⁴⁶ By inducing them to become

⁴² Ibid. 285, 281.

⁴³ Hoxie, *A Final Promise*, 12

⁴⁴ Dawes, “Have We Failed the Indian?,” 283.

⁴⁵ The United States Congress. *Transcript of the Dawes Act of 1887*, 49th Cong., 2nd sess., (December 6, 1886), 1. From *Historical Documents in United States History*. PDF, <http://www.historicaldocuments.com/DawesAct.htm>.

⁴⁶ Ibid.

farmers, U.S. officials sought to transform Indians into individual participants in “white” American society.⁴⁷ This could only happen, however, if communal Indian lands were dissolved. Leaving the land communally owned would discourage Indians from participating in the larger American society, while parceling it out would encourage economic growth in the region. The bill passed Congress in 1887.⁴⁸

Despite having its autonomy greatly diminished by the Treaty of 1866 and the events of the 1870s and 1880s, the Cherokee government successfully lobbied to have the Cherokee Nation excluded from allotment in the 1887 act. Historians have generally attributed this to the Nation’s unique position as one of the “Five Civilized Tribes” from the southeastern United States.⁴⁹ This seems like a reasonable explanation, as the U.S. government excluded all the Five Civilized Tribes from the act. From the perspective of the Cherokee officials this argument also makes sense, for they often presented themselves to the federal government as “civilized” Indians capable of uplifting their less civilized brethren.⁵⁰ Cherokee officials persuaded U.S. policy makers of this latter point and, as a result, staved off allotment for the time being.

In the long-run, however, having the Cherokee Nation excluded from allotment in the Dawes act proved to be a temporary victory for the Cherokee government. On other political fronts, the U.S. government kept encroaching on tribal autonomy, especially in

⁴⁷ Ibid.

⁴⁸ Hoxie, *A Final Promise*, 70-81.

⁴⁹ Denson, *Demanding the Cherokee Nation*, 138.

⁵⁰ Ibid.; Kathleen DuVal, *The Native Ground: Indians and Colonists in the Heart of the Continent* (Philadelphia: University of Pennsylvania Press, 2006), 196. DuVal notes that the U.S. government had long viewed the Cherokee as a “Civilized” Indian group that others could learn from.

matters concerning Cherokee citizenship rights. Despite the fact that the Cherokee Constitution explicitly stated that Freedmen and adopted citizens had no right to strip payments— payment to the Nation for land sales to the U.S.— or land, the federal government went about granting them these things. In 1889 the U.S. government had special agent John W. Wallace compile a list of Freedmen and adopted Indians who would receive a portion of a special strip payment of \$75,000 from the United States government.⁵¹ Between 1889 and 1890 Wallace worked industriously on the census, interviewing thousands of potential candidates for rights to the strip money.⁵² From the standpoint of Freedmen applicants, getting one's name on this census meant more than just access to money. It also guaranteed them official recognition by the U.S. government that they were citizens of the Cherokee Nation and, perhaps, even offered rights to Cherokee land. Unsurprisingly then, many Cherokee government officials vehemently opposed the Wallace roll, especially those who considered themselves “full-blooded” Indians. “Full-blooded” Indians, or those who believed their blood-lines to contain a very high percentage of Indian heritage, typically supported limiting the citizenship rights of non-Cherokees to ensure only “true” Cherokees had rights to the communal lands. Of course, not all “Full-bloods” felt this way. But a strong correlation existed between being a full-blood and opposing enrollment.⁵³ Whether “Full Bloods” or not, opponents of the Wallace roll lodged accusations that Wallace and his colleagues had accepted bribes and

⁵¹ Carter, *The Dawes Commission*, 110.

⁵² *Ibid.*

⁵³ *Ibid.*, 113-116.

that other Freedmen had gotten their name on the roll by presenting false information.⁵⁴ Despite the efforts of opponents, in 1895 the U.S. Court of Claims dealt a significant blow to Cherokee tribal autonomy by reaffirming the Wallace Roll and the right of Freedmen to participate in any distribution of common property in the Nation. This ruling essentially countered earlier efforts by the Cherokee government to limit the citizenship rights of Freedmen.⁵⁵ Indeed, the U.S. government had taken more control over what defined the citizenship rights of Cherokee Freedmen.

Disappointed by the court's decision, the Cherokee government attempted to reach a more suitable arrangement by negotiating with U.S. policy makers. Though unwilling to budge on the court's decision to include Freedmen in the distribution of common property, U.S. policy makers did agree to scrap the supposedly fraudulent Wallace roll and create a new census of Cherokee Freedmen. The making of this new roll, known as the Kerns-Clifton, began in 1896 under the supervision of Senators William Clifton of Georgia and Robert H. Kerns of St. Louis. Upon its completion in 1897, the roll came under scrutiny from Cherokee government officials just as the Wallace roll had. Once again, opponents claimed that haphazard reviews of applications had led to unqualified blacks receiving Cherokee citizenship. Claims that employees of Kern and Clifton had taken bribes from potential applicants also surfaced. The end result, again, was the refusal of the Cherokee government to accept a U.S.-made roll as a legitimate census of Cherokee Freedmen.⁵⁶

⁵⁴ Ibid., 112.

⁵⁵ Carter, *The Dawes Commission*, 112; Yarbrough, *Race and the Cherokee Nation*, 93.

⁵⁶ Carter, *The Dawes Commission*, 114; Littlefield, Jr., *The Cherokee Freedmen*, 198.

An earlier development in federal Indian policy had made refusal of the Kern-Clifton a futile effort at protecting tribal autonomy. In 1893 Congress passed the Indian Office Appropriation Act with the support of President Benjamin Harrison. The act called for the creation of an independent, three-member commission appointed by the President to address issues of citizenship in the Cherokee Nation and the other Five Civilized Tribes. By creating this commission, Harrison and his supporters hoped to avoid including the Bureau of Indian Affairs Union Agency in the decision-making process, which they vehemently opposed.⁵⁷ While Harrison had invested a great deal of time into creating the commission, he never actually appointed anyone to it, because he left office before the plan came into fruition. Harrison's departure from office left President Grover Cleveland in charge of selecting the three commissioners. The most obvious choice was Senator Henry Dawes of Massachusetts, whom Cleveland appointed head commissioner. The other two men picked were Meredith Helm Kidd of Indiana and Archibald S. McKennon of Arkansas.⁵⁸ In general, historians have surmised that of the three commissioners, only Dawes worked sincerely to help Indians. The other two probably viewed their position as commissioner as a way of pushing the political and economic interests of themselves and their colleagues. For instance, many governmental officials who supported the Commission hoped it would begin allotting the lands of the Cherokee Nation to its citizens. This, they believed, would integrate the Cherokee Nation into the United States and, thus, open trade between states east and west of the Indian territory. Potential white settlers had motives separate from U.S. governmental officials

⁵⁷ Carter, *The Dawes Commission*, 16.

⁵⁸ *Ibid.*

for the allotment of Indian territory. They believed that the process would open up land for them on which they could live.⁵⁹ In these ways, the Commission had the potential to undermine tribal autonomy and, ultimately, dissolve the Cherokee Nation.

The Dawes Commission had both supporters and opponents within the Cherokee government. Generally, historians have tried to divide support for allotment along the lines of race, arguing that “full-bloods” opposed it, while Cherokee Freedmen, adopted citizens, and “half-breeds” supported it. While this serves as a useful model for thinking about the issue as one that divided the Nation into rigid political factions based on race, the reader should be aware that this is an oversimplification. Studying the Creek Nation, historian David Chang has demonstrated that self-proclaimed “Full-bloods,” Freedmen, adopted citizens and “half-breeds” crossed lines over this issue at various times throughout history based on class and other factors.⁶⁰ To win support for itself within the Cherokee Nation, the Commission first tried to elicit support from the Cherokee government. Under the leadership of Chief Harris, however, the Cherokee government rejected allotment as a criminal attempt to steal the lands of the Nation and usurp tribal autonomy. In response, the Commissioners took the issue directly to the people by traveling from town to town, and delivering stump speeches for allotment throughout the mid 1890s.⁶¹

⁵⁹ Debo, *And Still the Waters Run*, 92.

⁶⁰ Chang, *The Color of the Land*. Chang explains that the typical narrative of allotment history has to clearly assigned political motivations to participants based on their defined race. Looking at the Creek Nation, he suggests that in actuality races united and polarized over a number of issues. Moreover, race did not always determine a person’s political position on allotment. Other historians of the Five Civilized Tribes have also noted that race relations were much more fluid during the latter half of the nineteenth-century than most political narratives have suggested. See Saunt, *Black, White, and Indian*; Miles, *Ties that Bind*.

⁶¹ Carter, *The Dawes Commission*, 6.

Arguing for allotment, the Commissioners blamed the Cherokee government for rampant lawlessness and corruption within the Nation. What they failed to mention, however, was that much of the lawlessness and corruption they described stemmed from the fact that U.S. policy makers had usurped the Cherokee government's right to deal with the situations arising. For instance, the U.S. government's railroad policies had led to the growth of a non-citizen population in the Nation. In response to this migration of non-citizens, the Cherokee government established a citizenship court, but, because of stipulations in the Treaty of 1866, those it rejected were only removed if the U.S. military enforced the decision.⁶²

No longer as concerned with whether it had the backing of the Cherokee government and its people, the Commission began enrolling individuals for allotment in 1896. Support for this decision initially started in the U.S. Senate, where Orville Platte introduced an amendment that allowed the Commission to hear applications for those individuals interested in citizenship and enrollment. The amendment stipulated that the Commission enroll citizens on censuses approved by the Cherokee government and then hear applications from those not enrolled on them.⁶³ Under no circumstances, however, was the Commission to make an entirely new census roll. The Friends of the Indian at the Mohonk Conference supported this idea. Problems in the Cherokee Nation, which the Commission attributed to the failures of the Cherokee government, confirmed for the Friends that the Cherokee Indians needed to assimilate to American society. From their

⁶² Burton, *Indian Territory, 120-122*; Strickland, Rennard Strickland, *Fire and Spirits: Cherokee Law From Clan to Courts* (Norman: University of Oklahoma Press, 1975), PAGE.

⁶³ Carter, *The Dawes Commission*, 12.

point of view, allotment would end chaos in the Cherokee Nation and civilize the Indians by incorporating them and their lands into the United States.⁶⁴ Indeed, they believed the Platte Amendment was a step in the right direction toward answering the Indian question.

Backed by Congress, the President, and the Friends of the Indian, the Commission began accepting applications from Cherokee citizens registered on the Cherokee-approved census rolls of 1880 and 1896. But when the Commission started looking at applications of those not listed on these rolls, particularly Freedmen applicants, many Cherokee citizens complained. The criteria the Commission used to determine citizenship eligibility seemed unacceptable. For instance, applicants could use as evidence the fact that their name showed up on either the Wallace roll of 1880 or the Kern-Clifton roll of 1896, even though Cherokee officials had rejected both and negotiated with the U.S. government to have them deemed fraudulent.⁶⁵

In response, U.S. officials became increasingly impatient with the defiant Cherokee government. Consequently, congressmen whose states supposedly suffered economically from the existence of Indian territory became emboldened and pushed for forced allotment. Among the most outspoken of these men was a representative from Kansas named Charles Curtis. Unappeased by the numerous land cessions the Five Civilized Tribes had made to the state of Kansas, including one stipulated in the 1893 Indian Office Appropriation Act, Curtis called for the U.S. government to speed up the allotment process in order to improve the economic situation of the Midwest. He and his

⁶⁴ Ibid., 13.

⁶⁵ These are trends that I noticed particularly in the Freedmen applications (both doubtful and accepted). see Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301 NA.

followers believed that the economic situation would improve if Indian land was enveloped by the American economic infrastructure. Curtis successfully lobbied for his request when in 1898 the Curtis Act passed. The act expedited allotment and provided for protection of non-white and Indian citizens.⁶⁶ Combined, these demands dissolved what little authority the Cherokee government had left over its people. The U.S. government now not only protected non-citizen whites in the territory, but Indians and blacks as well.

At the same time, factionalism over the issue of allotment slowly began contributing to the decline of the Cherokee government. While Cherokee Chief Mayes ardently rejected the concept, other major leaders within the Cherokee government gave their support to the United States for various reasons. Some had economic stakes in the matter, while others simply believed that allotment was inevitable and that the Nation would receive a better deal if it cooperated with the U.S. federal government sooner than later. Those opposed to allotment had refused to send to the Dawes Commission the official tribal rolls of the Cherokee Nation when asked to in the mid-1890s. After the passage of the Curtis Act in 1898, the Cherokee government attempted to broker a deal with the U.S. government that would protect their sovereignty, but Congress rejected the request. Realizing the futility of its efforts, in 1900 the Cherokee government finally sent their official tribal rolls to the Dawes Commission. From the standpoint of Cherokee officials, it finally made more sense to collaborate in the allotment project and, thus, have some say in the matter.

⁶⁶ Carter, *The Dawes Commission*, 34.

In 1900 the Dawes Commission, now led by Tams Bixby of Minnesota and Thomas Needles of Illinois, began accepting applications for the enrollment of potential Cherokee citizens. When the Dawes Commission granted an applicant citizenship, they conferred on him or her the right to later select a land allotment within the boundaries of what was then the Cherokee Nation. After enrollment, however, these lands officially became U.S. territory.⁶⁷ Indeed, enrollment meant the end of the Cherokee government's control of Cherokee communal land and its right to govern the Cherokee people. By distributing this communal land to individuals laying claim to citizenship, the Dawes Commission essentially dissolved the Cherokee Nation: its land and citizens fell completely under the protection and authority of the United States government.⁶⁸ After years of chipping away at the autonomy of the Cherokee government, the U.S. government had finally destroyed it.

The Commission dealt with enrollment much differently than other U.S. policy makers had in the past. Instead of merely having potential citizens send in applications to them for review, the Commissioners held hearings on a regular basis between 1900 and 1907. These hearings took place at various times and locations throughout the Indian territory and were advertised heavily in newspapers in order to encourage people to apply. Depending on the accommodations of the town, the Commission held the hearings in either public buildings or tents. Typically, the site of the hearings contained two areas for enrollment, one for freedmen applicants and another for citizen By-blood applicants. What site an applicant for adopted citizenship went to depended on whom they claimed

⁶⁷ Hoxie, *A Final Promise*, 70-81.

⁶⁸ *Ibid.*

citizenship through. For example, if their spouse was a Cherokee By-blood, then they went to the citizenship By-blood tent.⁶⁹ To support their claims, the Commission encouraged adopted citizens to bring official documentation of their status to the hearing: a marriage license, citizenship certificate, or similar documents. Many of those who failed to bring documentation had witnesses testify about their marriage. After the 1906 case *Daniel Redbird v. The United States*, qualifying for adopted citizenship became even more difficult. In its decision, the U.S. court ruled in favor of having the Commission acknowledge an 1877 Cherokee law that prevented adopted white citizens from gaining rights to land and payments.⁷⁰

Regardless of what citizenship a person applied for, the Commission always asked if his or her name appeared on any census rolls. If the applicant's name appeared on the 1880 or 1896 censuses taken by the Cherokee Nation, the Commission generally accepted the application with few questions. Other censuses, while they helped an applicant's case for citizenship, did not guarantee citizenship. To build their cases for citizenship, Freedmen applicants often referred to the Wallace Roll and the Kern-Clifton roll, even though the United States had earlier deemed them inaccurate. During the enrollment of Freedmen applicants, these rolls were key pieces of evidence, however, because so many Cherokee blacks did not show up on the roll of 1880.⁷¹ Another

⁶⁹ Carter, *The Dawes Commission*, 55.

⁷⁰ *Daniel Red Bird v. The United States*, 203 U.S. 76 (1906). From Multiracial Activist Legal Center: <http://www.multiracial.com/government/redbird.html> (accessed December 10, 2008).

⁷¹ Littlefield, Jr., *The Cherokee Freedmen*, 221.

popularly referred to roll was the census of 1894.⁷² Unsurprisingly, this roll did not favor Freedmen applicants either.

If an African Cherokee's name failed to show up on the roll of 1880 or 1896, he or she needed more evidence than inclusion on another roll to prove his or her citizenship. And, even then, citizenship was no guarantee. For one, a Freedman applicant had to prove that he or she had once had a master whom the Cherokee government had deemed a Cherokee By-blood. Just to demonstrate this point, the applicant had to go through a lengthy process of introducing witnesses who testified on his or her behalf. While this information might support his or her claim of being a slave in the Cherokee Nation before the Civil War, it did not guarantee him or her citizenship.⁷³ Freedmen also had to offer evidence that they had lived in the Nation since 1867. This citizenship qualification stemmed from the stipulation in the treaty of 1866, which stated that all former Cherokee blacks seeking citizenship in the Cherokee Nation should return to it within six months after the finalization of the treaty. For many applicants this proved a damning qualification, because their masters had taken them out of the Nation during the war, and they had not received word of the treaty until it was too late to return to the Nation and apply for citizenship.⁷⁴

⁷² Carter, *The Dawes Commission*, 111.

⁷³ I have come to this conclusion based on my own research of the Dawes applications. See M1301. But also see Carter, *The Dawes Commission*. 114-115.

⁷⁴ I drew this conclusion based on looking at doubtful applications. A number of Freedmen applications I looked at were denied because the applicant could not prove they had reentered the nation in the time frame stipulated by the Treaty of 1866. Daniel Littlefield, Jr. also makes this observation in his work Littlefield, Jr., *The Cherokee Freedmen*, 11.

Applicants for citizenship By-blood also required extensive evidence to demonstrate their right to citizenship if their name did not show up on the rolls of 1880 or 1896. Like Freedmen applicants, having their name on another roll not officially recognized by the Cherokee government improved their chance of enrollment, but did not guarantee it. Somehow the applicant needed to prove his or her Indian heritage to the Commission. As in the case of Freedmen applicants, this often required the By-blood applicant to introduce witnesses at the hearing who could testify about his or her heritage, or link him or her to a relative whose name showed up on the roll of 1880.⁷⁵ Occasionally, the proceedings also resulted in the Commissioners asking the applicant to state his or her blood quantum to them. When asking this, the Commissioners wanted to know how much Indian blood made up the applicant's bloodline: 3/4, 1/2? The rationale for this question stemmed from a newly emerging pseudo-scientific understanding of race, which defined it as a biological reality that could be measured in terms of one's blood.⁷⁶ Because of the low position blacks held in the American racial hierarchy, Freedmen applicants were less frequently asked questions about their blood quantum. As other historians have rightly pointed out, a "one-drop rule" governed blackness. In other words, if a person appeared to have even a drop of African blood in their veins, society defined them as black.⁷⁷ Hence, blackness did not need to be quantified.

⁷⁵ Again, this is a standard trend that I noticed in applications for citizens By-blood, while conducting my own research on m1301.

⁷⁶ Circe Sturm, *Blood Politics: Race, Culture and Identity in the Cherokee Nation of Oklahoma* (Berkeley and Los Angeles: University of California Press, 2002), 53.

⁷⁷ Ibid., 52-54; Angela Gonzalez, "Racial Legibility: The Federal Census and the (Trans)Formation of 'Black' and 'Indian' Identity." Paper presentation, Native American and Indigenous Studies Conference, Athens, GA, 2008.

The enrollment period was the culmination of a number of assaults on Cherokee governmental autonomy and Indianness more broadly. Since the treaty of 1866, the U.S. government had planned and implemented Indian policies that proved detrimental to the sovereignty of the Cherokee Nation. The construction of U.S.-sponsored railroads had led to an influx of illegal aliens in the Nation. The United States controlling judicial matters and enforcement of immigration in the Nation had made the Cherokee government anemic in its ability to deal with matters of immigration. By meddling in the affairs of Cherokee Freedmen citizenship as far back as 1866, the United States began a trend of usurping from the Cherokee government the right to determine the contours of its Nation's citizenship. The result of this long struggle, driven by treaties, legislation, census rolls, court decisions, and citizenship hearings was the dissolution of the Cherokee Nation and the subsequent enrollment of applicants for Cherokee citizenship and allotment. From the perspective of U.S. policy makers, problems in the Cherokee Nation resulted from the Cherokee Nation losing control, not from federal Indian policy. Undoubtedly, their belief that Indians lagged behind the progress of white Americans informed their perception of the situation. By breaking up Indian communal lands, U.S. policy makers believed they could integrate Indians into American society as individual property owners. This would assimilate them into white American society and help improve the economy of the United States in regions surrounding the Indian territory of the Five Civilized Tribes. Under these auspices, enrollment began.

Chapter 2: I am Indian, I am White: Race and By-Blood and Intermarried

Applications.

Between 1900 and 1906 the Dawes Commission held hearings throughout the Cherokee Nation to enroll applicants for “By-blood” citizenship. Generally speaking, the Commission controlled the direction of these hearings, but other groups also played a role in the process. One of these participants was the Cherokee government, which had lobbied the U.S. government to have legal representatives present. Cherokee representatives had the right to cross-examine applicants, but only the Commission voted on an applicant’s right to citizenship. By questioning applicants, the former Cherokee government hoped to prevent undeserving persons from receiving land allotments in the former communal lands of the Cherokee Nation. This meant that the Cherokee officials spent most of their efforts questioning applicants for adopted citizenship.

An applicant, of course, was also an integral part of every hearing. Unlike the other participants, he or she typically had little control over the direction of the proceedings. Instead, he or she simply answered the questions the Commissioners and Cherokee representatives asked. But just because the applicant had little control over the terms of his hearing, does not mean he or she had no objective in mind when applying. Applicants sought either one of two statuses: citizenship By-blood, or Adopted citizenship. Accepted citizens By-blood were any persons who successfully convinced

the Commission that they had a legitimate claim to Cherokee Indian ancestry. Most could not have black blood as well, because Cherokee laws prohibited blacks from having By Blood citizenship. Accepted adopted citizens, in contrast, could claim citizenship either through intermarriage or tribal adoption. They too rarely had black blood. Those claiming through marriage had to produce evidence that their spouse was a Cherokee By-blood, while those claiming citizenship through tribal adoption had to prove that they belonged to one of the Indian tribes that the Cherokee Nation had officially adopted.⁷⁸ These tribes consisted of the Peoria, Shawnee, Delaware, and Osage. Throughout the nineteenth century, the U.S. government, through treaty, had placed these tribes within the Cherokee Nation's land.

The easiest way an applicant could procure citizenship By-blood or adoption was to identify him or herself on one or more of the census rolls of 1880 or 1896. For the majority of accepted applicants By-blood, this posed no problem, but for some it did. Those lacking this evidence had to claim Cherokee citizenship in other ways: some pointed out that they showed up on other census rolls not deemed official by the Cherokee government, while others depended on witness testimony to reconstruct their connection to Cherokee heritage. Regardless of what questions an applicant faced, they attempted to construct identities for themselves that elucidated why they deserved citizenship. Thus, whether they could prove they were on the roll of 1880, showed up on another roll, or relied solely on witness testimony, applicants presented themselves to the

⁷⁸ The reader should be aware that the legal definition of intermarriage shifted throughout the hearings. This will be explained in the chapter.

Commission in ways that they thought highlighted their connections to the Cherokee Nation, Cherokee Indians, and Cherokee land.

The unique ways in which accepted applicants for By-blood citizenship imagined themselves as Cherokee is the focus of this chapter. In making claims to Cherokee-ness, these applicants attempted to present themselves as having the characteristics of what the Commission imagined was the ideal citizen By-blood. To do this, they inevitably discussed censuses, race, blood, land, nation, heritage, and whatever other qualifications they thought tied them to Cherokee-ness. Of course, the issues applicants chose to address depended on how well they fit the mold of the Commission's ideal citizen: a person who showed up on the roll of 1880 or 1896. Those who fit the mold well generally spent less time addressing issues of race, blood, and nation, while those who did not elaborated on the topics in order to make claims to Cherokee-ness. By establishing Cherokee identities for themselves that accounted for their relationships to the Cherokee Nation's land and the Cherokee Indian race, these less qualified applicants convinced the Commission that although they were not "ideal citizens," they still had a right to citizenship.

For the majority of those granted citizenship in the early 1900s, the enrollment process went relatively smoothly. The only real inconvenience was the hearing itself. Unlike enrollment in the 1890s, when applicants only submitted a written application, the new Dawes proceedings required individuals to appear before the Commissioners. While not a major issue, these hearings forced many attending to travel long distances. To mitigate this problem, the Commission held hearings at locations throughout the Nation.

Once at a designated site, most applicants for citizenship By-blood found themselves herded into a line before a single tent, where all the hearings took place. Some, however, as the story of the Choctaw Lula Seitz demonstrates, found themselves placed in the line for Freedmen citizenship, because of the color of their skin.⁷⁹ Here in the lines, applicants waited for their turn to enroll.

Once at their hearing, the majority of accepted applicants had a very quick interview with the Commission, because the two official Cherokee census rolls listed their names. For example, Henry C. Lowery's hearing went smoothly because his name showed up on both the rolls of 1880 and 1896, but other factors contributed as well.⁸⁰ For one, Lowery was a 53 year-old single male applying for only himself. With no children or wife, Lowery had less to prove to the Commission than applicants with a family. Moreover, because he was older, his name likely appeared on the roll of 1880. This meant that he did not have to take extra time proving a relationship to a parent listed on that census. Taken together, these factors made Lowery's application for enrollment simple. By presenting himself as officially recognized on the censuses of '80 and '96, Lowery convinced the Commission that he had Cherokee Indian ancestry and lived in the Cherokee Nation.

Many applicants like Lowery were aware of the significant role the censuses of 1880 and 1896 played in determining their right to citizenship. For this reason, they chose to cite their inclusion on those rolls, whether prompted by the Commission or not.

⁷⁹ Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2008), 155-157.

⁸⁰ Henry C. Lowery, Jacket 12, Roll 174, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

When Jim Cobb was asked whether his name appeared “on the authenticated tribal roll of 1880,” he replied “Yes, sir” and then, on his own accord, added “every roll that the Cherokees made and also on the 1896, and 1896 up to date.”⁸¹ Cobb, undoubtedly, felt quite confident in his reply. His willingness to offer additional information concerning his status on the official censuses indicated that he knew that the key criteria in determining citizenship was whether an applicant’s name showed up on them. By presenting himself in this manner, Cobb highlighted that his application mirrored that of the Commission’s ideal citizen. Indeed, Jim Cobb constructed for himself a Cherokee identity using the criteria most valued by the Commission. And, unlike Lowery, he aggressively sought to establish his connection to the Cherokee Indian race, Nation, and land.

At least concerning simple applications, the Commission treated female applicants no differently than males when asking for census information. Applying the same day in 1900 as Henry C. Lowery— actually, a few slots ahead of him— Mary E. Anspach had little trouble enrolling herself as a single female after she had proven to the Commission that her name was on the roll of 1880.⁸² Similarly, Savannah McMackin, applying directly after Mary, attempted to enroll herself and her numerous children. While she easily procured citizenship for herself, she had difficulty when applying for her children because the Commission questioned their ages. If they were over the age of 18 than they should apply for themselves. Since citizenship entitled a person to land rights, the

⁸¹ Ida Still, Jacket 22, Roll 174, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA

⁸² Mary E. Anspach, Jacket 3, Roll 174, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

Commission could not risk the possibility that Savannah McMackin might apply for these children only to procure more land for herself. Initially unable to enroll them, McMackin returned in 1902 to protest the Commission's ruling. Ultimately, the Commission determined what qualities the ideal By-blood citizen had, even for those listed on the rolls of 1880 and 1896. For this reason, accepted applicants typically obtained citizenship by presenting themselves and their family as fitting the Commission's perception of the ideal citizen. This entailed imagining a relationship between one's identity and their right to Cherokee citizenship. Applicants needed to describe themselves as Cherokee Indian and residing in the Nation in order to fulfill this vision. Without presenting her children before the Commission or legally documenting their ages, McMackin could not obtain citizenship for them. This evidence would prove they were Cherokee Indians living in the Nation.

That the Commission reserved the right to make the final determination in enrollment was a blessing for some applicants not listed on the official Cherokee census rolls. The hearings allowed these individuals a chance to present themselves as Cherokee, even if they did not fit the mold of the Commission's ideal citizen. For instance, when applying for citizenship on July 11, 1900, Thomas Jones admitted that his name did not show up on the roll of 1880, but then presented the Commission with "a certificate of admission to Cherokee Citizenship, issued by the [Cherokee] Commission on Citizenship on the 13th day of June 1886."⁸³ To further bolster his case, Jones also added that his name appeared on the roll of 1896. Although Jones was not a mirror

⁸³ Thomas Jones, Jacket 130, Roll 175, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

image of the ideal citizen By-blood, he obtained citizenship by documenting that the Cherokee government had officially recognized his citizenship, though not on the roll of 1880. This demonstrated his residency and Indian ancestry. In procuring citizenship, Jones next created connections to the Nation for his children still living with him; for if he deserved citizenship By-blood, then logically, he contended, so did his biological children. This argument fit well with the Commission's belief that parents genetically transmitted their race to their offspring. Legally, it worked out well too, because the Cherokee government maintained that Indian parents could confer citizenship on their children. Thus, on July 11, 1900, the Commission approved "James", "Joel", and "Arbila" for citizenship based on this reasoning and that their names showed up on the census of 1896.⁸⁴ Their father's documented Cherokee Indian ancestry connected them to the Cherokee Nation and its land.

While Thomas Jones had a relatively easy experience with enrollment, many other applicants not listed on the roll of 1880 had a difficult time obtaining citizenship. At his hearing on May 11, 1900, the Commission declared that Joshua Ross presented "meager information" to support his claim to citizenship. Ross returned before the Commission on February 16, 1901, to give additional testimony concerning his application. This time, Ross constructed a Cherokee identity for himself by explaining that his parents "Andrew" and "Susan Ross" had lived in the Nation, and that his family's name "was on the roll of '35."⁸⁵ When questioned again as to whether his named showed

⁸⁴ Ibid.

⁸⁵ Joshua Ross Jacket 36, Roll 174, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

up on the roll of 1880, Ross replied “No,” but that he “applied to be on the roll of 1880, and the census takers did not put it down.”⁸⁶ Ross also mentioned that the Cherokee government had “readmitted” him to the Nation in ’87 or ’88, and that “the well known Chief Ross ... “was an uncle of mine.”⁸⁷ Like Thomas Jones, Joshua Ross did not fit the profile of the ideal citizen, but he attempted to connect himself to the Cherokee Nation in a number of ways that obviously appealed to the Commission for they eventually granted him citizenship. For one, Ross responded to not being on the 1880 roll by telling the Commission that he had applied for it, and did not know why the Cherokee government had not listed his name. Furthermore, he explained that his motive for enrolling himself was not to receive benefits from the Nation, but “simply ... to be on the roll,” because he “wanted to be on all the rolls.”⁸⁸ Indeed, although Ross had not lived in the Nation since “’71,” he purported himself to be proud of his Cherokee heritage.⁸⁹ He did this by not only explaining to the Commission his family’s longstanding connection to the Nation—which he illustrated by finding his surname on the census roll of 1835— but by detailing his continuous efforts to have the family name on “all the rolls.” Joshua Ross made this presentation especially plausible by claiming to have received official citizenship recognition from the Cherokee government in the late 1880s and explaining his familial relation to his famous “uncle,” Chief John Ross. This probably convinced the Commission of Ross’ “authentic” Indianess, for in their questioning they seemed

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

infatuated with this familial connection.⁹⁰ By first explaining why his name did not show up on the 1880 census, and then creating a Cherokee identity for himself based on legal documentation and a description of his lineage, Ross convinced the Commission of his ties to the Cherokee Nation as an Indian deserving of land rights.

The Commission dealt with applications concerning children not listed on census rolls differently than those of grown-ups like Ross and Jones. When providing supplemental testimony for the application of herself and children on January 10, 1902, Alice Downing also took the time to enroll her niece, Alice Allen.⁹¹ Alice Allen's mother, Maggie Blandz, had died before the enrollment period, and although both she and Alice Downing's names showed up on the census of 1880, Alice Allen's name did not.⁹² To address this situation, Alice Downing explained to the Commission that Alice Allen had not been born before the Cherokee government had taken the 1880 census. Therefore, if Maggie Blandz showed up on it, Downing argued, then Alice Allen deserved citizenship because she was a descendent. Though Alice Downing could not present her niece as the ideal citizen the Commission sought, she could do the next best thing: demonstrate that she had a parent listed on the roll of 1880. This demonstrated she had the Indian ancestry necessary for claiming citizenship and land rights in the Cherokee Nation. Only those born before 1880 could reasonably construct a Cherokee identity for themselves based on

⁹⁰ Cultural historians have argued that in the late nineteenth-century whites romanticized Indians. As John Ross was—in the words of the Commissioners—a very “famous Indian Chief,” they may have felt this authenticated Joshua Ross’ Indianess, and, thus, solidified his case for citizenship. For further reading on American Indians and discourse see Paige Raibmon, *Authentic Indians: Episodes of Encounter from the Late-Nineteenth-Century Northwest Coast* (Durham and London: Duke University Press, 2005); and Philip J. Deloria, *Indians in Unexpected Places* (Lawrence: University of Kansas Press, 2004).

⁹¹ Alice Downing, Jacket 29, Roll 174, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

⁹² *Ibid.*

this information. For this reason, Alice Downing could tie Alice Allen to the roll of 1880, while Joshua Ross and Thomas Jones had to document their right to citizenship in other ways. Downing connected Allen to the Cherokee Nation through Blandz's Indian bloodline and the fact that she had lived there all her life.

These stories demonstrate the significant role the censuses of '80 and '96 played in the enrollment proceedings for accepted applicants. But regardless of whether the censuses listed an applicant, he or she still usually faced other questions from the Commission concerning his or her Cherokee heritage. One common inquiry involved a discussion of the racial heritage of the applicant's parents. Were they Cherokee Indians? Was one white, or perhaps of another Indian tribe? Applying on January 7, 1902, Minnie Shay recreated her interesting array of familial bloodlines for the Commission. According to her testimony, her father "Jim Bowles" was Cherokee, as was her mother.⁹³ However, her first husband "E.H. Lerblance" was "a French," and, therefore, her children had French as well as Cherokee heritage.⁹⁴ As a resident of the "Creek Nation," Minnie Shay needed to explain why she made application for citizenship in the Cherokee Nation — hence the reason she probably emphasized that her parents were Cherokee, and her name appeared on both official census rolls.⁹⁵ The Commission's suspicions about Shay's ties to the Creek Nation dissipated when it realized that her name appeared on the

⁹³ Minnie Shay, Jacket 30, Roll 174, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

⁹⁴ Ibid.

⁹⁵ Ibid.

1880 census, and that she had remarried with an adopted citizen of the Creek Nation named Orlando Shay, with whom she now lived.⁹⁶

To present herself and children as qualified applicants, Minnie Shay had answered all the questions the Commission had asked about her family, including those concerning her residence and Indian heritage. In the end, she probably hoped that if she answered their inquiries honestly, they would refocus their attention on the fact that she fit the profile of an ideal By-blood citizen: one who showed up on both census rolls. While her inclusion on both rolls impressed the Commission, it still needed her to create an identity for herself that clearly connected her to the Cherokee Indian race, the Nation and its Land. In the process of doing so, she constructed her Cherokee heritage for the Commission and explained her reason for living in the Creek Nation.

During the hearings, discussions of Cherokee heritage often digressed into pseudoscientific dialogue about blood quantum. When using the term blood, or blood quantum the Dawes Commission had a particular definition in mind. Specifically, they drew on an understanding of race that had emerged in the latter part of the nineteenth-century, which linked a person's lifestyle and actions to his biological makeup.⁹⁷ In other words, a person's genetic makeup determined how he or she lived.⁹⁸ For example, a Social Darwinist from this period would claim that a person was poor, because he or she was biologically inferior to those with wealth. While the Commissioners may not have vehemently adhered to this understanding of biological determinism when

⁹⁶ Ibid.

⁹⁷ Sturm, *Blood Politics*, 78-81.

⁹⁸ Ibid., 78

interviewing applicants, consciously or not, they certainly drew on a number of its basic tenets. For one, they assumed that a person's heritage was quantifiable, otherwise why ask applicants "What proportion of Cherokee blood does he claim?"⁹⁹ Secondly, if they accepted this first idea, then they also believed that, above all, a person's bloodline, not his or her culture, determined one's identity.¹⁰⁰ This may partially explain the Commissioners' fascination with having applicants reconstruct their family trees for them when unsure if they deserved citizenship. Indeed, the Commissioners believed a person's biological makeup could be quantified, and, that from that information, his or her race could then be determined. Essentially, blood quantum was a way for Indian applicants to demonstrate their "Indianness" to the Commission.

The Commission's understanding of race and blood were familiar to many applicants, because the Cherokee people and Anglo-Americans had been sharing ideas

⁹⁹ Stonewall Jackson Carey, Jacket 66, Roll 174, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹⁰⁰ Sturm, *Blood Politics*, 78-81.

with each other as early as the nineteenth-century.¹⁰¹ Anthropologist Circe Sturm has demonstrated in her research that Anglo-American conceptions of blood and race, while changing over time, continued to permeate Cherokee society throughout the nineteenth-century, and even up until the present day.¹⁰² Historian Claudio Saunt has drawn a similar conclusion, claiming that race has been a “pervasive” and “destructive” force throughout the histories of the Five Civilized Tribes.¹⁰³

¹⁰¹ Theda Purdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville: The University of Tennessee Press, 1979), 53. Theda Purdue posits that as a result of contact with Europeans, Cherokee society developed an economically wealthy warrior class. This does not mean that the rest of the Nation considered themselves in class terms. As Purdue explains in *Cherokee Women: Gender and Culture Change, 1700-1835* (Lincoln: University of Nebraska Press, 1998), most of the Nation continued to socially organize itself by matrilineal practices.

Similar trends occurred in the Creek Nation among “mestizo” Indians, who descended from parents of both Anglo-American and Creek culture. See Claudio Saunt, *A New Order of Things: Property, Power, and the Transformation of the Creek Indians, 1733-1816* (Cambridge: Cambridge University Press, 2003).

Cherokee historian Theda Purdue has questioned a number of Southeastern Indian historians for using racial terminology in their works. She has proposed that historians should focus on more than race when studying Indians, so as to avoid essentializing them, see Theda Purdue, “Race and Culture: Writing The Ethnohistory of the Early South,” *Ethnohistory* 51:4 (Fall 2004); and Theda Purdue, *“Mixed Blood” Indians: Racial Construction in the Early South* (Athens: The University of Georgia Press, 2003). For this study, I will quote the language that the historical actors used to define themselves and others in order to explore how they understood race. In some cases this language will, in fact, be racist, but the reader should realize that the views and words of those I study are not my own. Furthermore, Purdue would probably have no trouble with my use of racial language: she is more concerned with historical works on earlier periods that explain race among Southeastern Indians by employing racial language not actually used by the historical actors. See for example Saunt, *A New Order of Things*. Those historians who Purdue attacked have responded, claiming that racial interactions in Indian societies were a reality during the early nineteenth-century that should not be denied. See Claudio Saunt, Barbara Krauthamer, Tiya Miles, Celia E. Naylor and Circe Sturm, “Rethinking Race and Culture in the Early South,” *Ethnohistory* 53:2 (Spring 2006). Particularly, they criticized Purdue for suggesting that they focus their studies on gender and not race. They rightly pointed out, with the same evidence Purdue used to criticize them, that race and gender issues are inextricably linked in the history of early nineteenth-century Southeastern Indian societies, and, therefore, both should be studied. Without the use of racial language, they further claim, it becomes nearly impossible to describe how the historical actors understood and experienced race. I agree with these historians— that the benefits of employing commonly understood racial terminology to explain race relations outweigh the costs. Ultimately, doing so will help more people understand that race is a social construct that has horribly affected many peoples.

¹⁰² Sturm, *Blood Politics*. Sturm has even noted that the Cherokee had conceptualized blood and heritage as linked as early as the eighteenth-century.

¹⁰³ See Saunt, *Black, White, and Indian*; and Purdue, *“Mixed Blood” Indians*.

That racial tensions created by enrollment threatened to divide the Cherokee people probably mattered little to most applicants, who, at the time, were preoccupied with obtaining citizenship. In fact, in many instances the applicant appealed to the Commission's racial understandings in order to construct a Cherokee identity for him or herself. Responding to questioning under the application of Stealer Simmons, John Hully told the Commission that his father was "1/2 Creek and 1/2 Cherokee."¹⁰⁴ Similarly, Berley E. Geny claimed "1/16" Cherokee blood before the Commission.¹⁰⁵ In each of these instances, the witness had definitively responded to the Commission's question concerning blood quantum. Their actions limited the Commission's ability to arbitrarily construct blood quantum for them. Though neither applicant could avoid the Commission assigning him a blood ratio, he could participate in its creation. This allowed both of them to help determine their Indian ancestry and, thus, make a case for inclusion in the Cherokee Nation and rights to its lands.

Other applicants had a more difficult time addressing questions about their blood quantum than Hully and Geny. While these applicants might have conceptualized race and heritage as something transferred from parents to their biological offspring, they did not conceptualize their bloodline as quantifiable. For example, the process of determining a legal "proportion" of Cherokee blood perplexed Lousia Privat.¹⁰⁶ She could not tell the Commission "what proportion of blood" she had, but willingly offered information she

¹⁰⁴ Stealer Simmons, jacket 10914, roll 263, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA

¹⁰⁵ Berley E. Geny, jacket 10931, roll 263, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA

¹⁰⁶ Lousia Privat, jacket 40, roll 175, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

knew to be true: her father “was full blood” Cherokee and her mother “1/4.”¹⁰⁷ Luckily for Louisa— though she likely had never conceptualized herself in terms of blood quantum— she knew how officials recognized her parents. This information proved useful, because it allowed the Commission to estimate her blood quantum. Indeed, Louisa’s ingenuity served her well. Even if she did not identify herself By-blood quantum, she understood that the Commission prized it as a qualification for citizenship. Hence, she chose to imagine a Cherokee identity for herself based on the Commission’s understanding of blood quantum, imperfect as it may have been. Because, unlike Hully and Geny, Privat did not give an exact blood fraction in her testimony, she left its final determination up to the Dawes Commission. Nevertheless, she still managed to portray herself as having Cherokee “blood,” a necessity for claiming a Cherokee Indian identity and obtaining citizenship.

Some applicants, like Lucy A. Head, were even more unlucky than Louisa Privat, for they could not quantify their parents’ blood at all. When asked on May 11, 1900, if “her mother was a citizen,” Lucy Head had to respond “No Sir, she was a white woman.”¹⁰⁸ To salvage her application, Lucy immediately added, “my father was Indian,” but then failed to quantify his blood. During this examination, the Commission never afforded Lucy an opportunity to state her blood quantum.¹⁰⁹ As a result, she had to make claims to Cherokee-ness based on imprecise information concerning her bloodline,

¹⁰⁷ Ibid.

¹⁰⁸ Lucy A. Head, jacket 24, roll 185, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA

¹⁰⁹ Ibid.

which she hoped the Commission would accept. Likely, because Head failed to elaborate as to what her or her parents blood quantum were, the Commission probably viewed her application as an imperfect attempt at reconstructing lineage. By not providing the Commissioners with a blood ratio for herself or her parents, she allowed them to completely determine it for her. While Lucy imagined herself as part of the Cherokee Nation through her father's bloodline, the Commission wanted to quantify this connection. Whether or not she eventually offered this information, the Commission assigned her a quantum, and, in doing so, reshaped her and her immediate family's Cherokee identity, as well as their rights to citizenship and land.¹¹⁰

The Commissioner's use of blood quantum as a qualification for citizenship By-blood undoubtedly frustrated many applicants, though few overtly expressed their concerns. As one of those few who did, George M. Ward felt no qualms about making his opinions known. Upon identifying himself as a Cherokee By-blood, Ward informed the Commission that he claimed "about 1/16" Cherokee blood, but "it is just guess work."¹¹¹ His frankness, though uncharacteristic of most applicants, revealed the same doubt and uncertainty about blood quantum that applicants Lucy Head and Louisa Privat displayed more subtly. In all three cases, blood quantum appeared as an unfamiliar and

¹¹⁰ Sturm, *Blood Politics*, 81. Referring to the historical works of others in making her argument about the blood politics in the Cherokee Nation, Sturm explains how allotment racialized property rights. Using blood quantum as a measure of Cherokee-ness, the U.S. government "set-up fictive racial divisions" among Indians that last even to this day. By creating these divisions—the historiography suggests—the U.S. government "disciplined Native Americans according to white standards [of race]." See Sarah H. Hill, *Weaving New Worlds: Southeastern Cherokee Women and Their Basketry* (Chapel Hill: The University of North Carolina Press, 1997); and Pauline Strong and Barrik Van Winkle, "Tribe and Nation: American Indians and American Nationalism." *Social Analysis* 33 (I): 9-26. For understanding the relationship between power and discipline that these scholars envision see Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1977).

¹¹¹ George M. Ward, jacket 70, roll 185, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA

arbitrary concept to the applicants. In some cases, like Ward's, the applicant still chose to give a blood ratio to the Commission, while in others, like those of Lucy Head and Louisa Privat, the applicants gave information that they thought proved they had Cherokee blood, even if they could not quantify it themselves. Whereas Privat and Head were flustered over their inability to provide an exact blood quantum, they never explained why. Two possibilities seem most plausible: that they could not figure out their blood quantum, or because they thought, like Ward, that the process was "guesswork." Perhaps a combination of these factors motivated them as well. What is known is that Ward's outburst demonstrates that some applicants did not consider blood quantum an accurate measure of tribal identity. His story provides a rare window into the ways in which some applicants actually imagined themselves as Cherokee. While Ward understood that in order to achieve citizenship, he had to present himself as "1/16" Cherokee to the Commission, this was clearly not a way that he actually imagined himself as connected to the Cherokee Nation. For the sake of the hearings, however, he constructed a Cherokee identity for himself based on blood quantum, so as to fit the mold of the Commission's conception of the ideal citizen By-blood. An applicant showed the Commission that he or she had a blood quantum in order to demonstrate a right to citizenship and the Nation's land.

Some applicants avoided the frustrations experienced by those like Ward, Head and Privat by having an interpreter assign them a blood quantum. Unable to speak English well, Lorinda Micco had an interpreter apply for her at the citizen By-blood hearings. When asked by the Commission what percentage Cherokee blood Micco had,

her interpreter replied that she “appears to have 1/2 blood.”¹¹² Unsatisfied with this vague response, the Commission asked again, at which time the translator boldly stated that “she does pass for a 1/2 blood,” which fit with his claim that “her father looks to be 1/2 blood.”¹¹³ Despite the fact that the Commission had set a precedent for explaining blood quantum in terms of lineage, Micco’s interpreter chose to construct hers based on physical appearance. Because her father “looked to be 1/2” and she “appeared ... 1/2,” he argued that she was at least one-half Cherokee.¹¹⁴ Indeed, he imagined Lorinda Micco as a member of the Cherokee Nation, because she physically looked like an Indian and was listed on the Cherokee census of 1880. From the Commissioners’ perspective, this was probably a very persuasive argument, for it connected her racially to the Cherokee Nation and demonstrated her residency. In doing so, it accounted for the Commission’s belief that the ideal citizen should show up on the census of 1880 and reaffirmed the commonly-held Anglo-American view that one could tell another’s race by their physical appearance.¹¹⁵ By imagining Lorinda Micco as an Indian based on her physical appearance and a Cherokee based on the roll of 1880, the interpreter obtained citizenship for her. This evidence constructed a Cherokee Indian racial identity for her and proved she had lived in the Cherokee Nation.

¹¹² Lorinda Micco, jacket 10951, roll 264, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Winthrop Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812*. (Chapel Hill: The University of North Carolina Press, 1968). In Jordan’s search for the origins of American racism, he mentions that physical appearance played a significant role in the construction of race. His work, though primarily focused on African Americans, also deals with Indians and their racial constructions.

Micco imagined herself as having a different blood quantum than what the interpreter claimed, even though his estimate would have procured her citizenship. When asked by the Commission to say what she thought her blood quantum was, Micco responded “full blood,” unlike her husband, whom she labeled “a half breed ... [of] Creek and Cherokee.”¹¹⁶ Lorinda’s comments suggest that either she believed that she could quantify bloodlines, or thought there were only two types of Indians: full bloods, and half breeds. As a self-proclaimed member of the “full blood resistance,” she likely saw race in terms of the latter option: that a person’s physical appearance, coupled with how the community perceived them, determined their race. Moreover, by referring to her husband as a “half-breed,” Micco suggested that she did not conflate Indian and Cherokee identity. In her mind, both she and her husband had an equal claim to Indian identity, but only she had “full” Cherokee heritage. Like George M. Ward’s story, Lorinda Micco’s sheds light on how some applicants truly imagined themselves as Cherokee. If Micco only sought to obtain citizenship when defining her Cherokee-ness, than she could have easily accepted her translator’s portrayal of her as a half breed listed on the roll of 1880. Instead, she chose to construct her own identity, one that acknowledged her participation in the “resistance” and labeled her as a “full blood” Cherokee Indian. In doing so, she created her own connection between Cherokee identity and race, nation, and land, one that differed from the Commission’s.

Constructing a “Cherokee Indian” racial identity based on physical appearance could be a difficult task for applicants like Lorinda Micco, especially when witnesses

¹¹⁶ The Application of Lorinda Micco.

gave opposing testimony. In making her application in 1900, Martha Hamilton told the Commission that she claimed “1/2” Cherokee blood.¹¹⁷ At a later date, Edward Crowell inadvertently contradicted Martha’s earlier statements by judging that “She [Martha Hamilton] is dark enough to be nearly full blood.”¹¹⁸ While Crowell likely attributed a high quantum to Hamilton in order to benefit her, his action might have actually damaged her application. If Hamilton’s application did not present a consistent blood ratio, than the Commission determined it. Moreover, whereas Hamilton based her blood quantum on her family heritage, Crowell constructed it based on her physical appearance. From this, he concluded that because her skin was “dark,” she must have very little white blood in her veins. This racial portrayal of Hamilton probably afforded her a great deal of “authenticity” in the eyes of the Commission, as much of white America during this period stereotyped American Indians as having certain physical appearances, including a darker complexion than whites.¹¹⁹ How Crowell portrayed Hamilton’s skin complexion helped her application by giving her the racial identity necessary for By-blood citizenship.

While Crowell viewed Hamilton’s “dark” complexion as qualifying her for citizenship applicant, other witnesses interpreted it in hopes of disqualifying her. For example, the witness Caty Smith suggested that Hamilton might have descended from black blood. Specifically, Smith said that “Jim Simmon’s family [Hamilton’s relatives]

¹¹⁷ Martha Hamilton, jacket 10959, roll 264, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹¹⁸ Ibid.

¹¹⁹ Deloria, *Indians in Unexpected Places*. Deloria argues that the turn of the nineteenth-century saw the creation of a new discourse concerning Indians by non-Indians. Specifically, non-Indians stereotyped Indians as acting and looking in certain ways.

was Cherokee, but he was considered a negro.”¹²⁰ This accusation threatened Martha Hamilton’s citizenship status, because if her bloodline had a trace of black blood in it, then she would have difficulty receiving By-blood citizenship. According to law, people with African descent could only seek Freedmen citizenship. Furthermore, it also meant that she might face social stigmatization from some of the community, for enrollment had heightened racial tensions within the Cherokee Nation between those designated Cherokee Freedmen and Cherokee By-blood.¹²¹

To counter this attack on her race and claim to citizenship, Hamilton had to construct an identity for herself that opposed Smith’s testimony. Further witness testimony would grant her this opportunity. Luckily for Martha, the Commission was interested in the validity of Smith’s statements, and decided to call more witnesses to clarify her racial status. Once again, Edward Crowell came to Hamilton’s rescue, saying that “Simmon’s was a Cherokee.”¹²² The Commission likely found Crowell’s testimony more persuasive than Smith’s, because they ultimately granted Hamilton citizenship. Though the Commission ruled in favor of Hamilton, Smith’s comments elucidate the potentially devastating effects an accusation of having “negro” blood could have on the status of a By-blood application. Caty Smith, as well as everyone else at the hearings knew the Commission routinely rejected applicants By-blood for supposedly having

¹²⁰ The Application of Martha Hamilton.

¹²¹ Katja May, *African Americans and Native Americans in the Creek and Cherokee Nations, 1830s to 1920s: Collision and Collusion* (New York and London: Garland Publishing, Inc., 1996). Katja May argues that Freedmen and Cherokee Indians “Colluded and Collided” with each other from the Nation’s founding until allotment. During allotment, she argues that they collided over rights to land ownership in the Cherokee territory.

¹²² The Application of Martha Hamilton.

“negro” blood.¹²³ Regardless of whether these proclaimed black applicants had Indian ancestry, the Commission sent them to apply as Freedmen, for it did not imagine the ideal Cherokee By-blood citizen as having even one drop of “negro” blood. Blackness limited an applicant’s access to citizenship and inclusion in the Cherokee Nation. Only Indian heritage untouched by African ancestry could assure By-blood status and full inclusion in the Cherokee Nation.

While the ideal citizen By-blood could not have any African ancestry, he could have non-Cherokee Indian blood. In fact, some accepted applicants had only non-Cherokee Indian blood in their veins. This was because the Cherokee Nation had adopted a number of other Indian tribes throughout its history. Unlike adopted whites or Freedmen, Cherokee law afforded adopted Indians the same rights as true Cherokee By-blood citizens.¹²⁴ Applicant Richard Cooley fell under this category as a Shawnee, a tribal group that the Cherokee had incorporated into their nation earlier in the nineteenth-century.¹²⁵ To convince the Commission he deserved citizenship, Cooley constructed an Indian racial identity for himself based on his Shawnee bloodline. His story illustrates that for some applicants, presenting oneself as Cherokee was less important than presenting oneself as racially Indian. An Indian racial identity void of Cherokee heritage could still secure an applicant both citizenship and land.

¹²³ Emily Weaver, jacket 1553, roll 399, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA. Weaver’s application was rejected for blood citizenship because of claims that she had black blood. She eventually received Freedmen citizenship.

¹²⁴ Richard, Cooley, jacket 114, roll 186, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA

¹²⁵ Carter, *The Dawes Commission*, 105.

Discussions of race, lineage, and blood quantum did not highlight the strengths of everyone's applications. Those lacking an easily documented Indian racial connection to the Nation hoped to explain their right to citizenship by other means. Instead of focusing on their race and lineage, they emphasized their association with the Nation's land. Since they had lived and owned property in the Cherokee Nation for an extended period of time, these applicants reasoned, they were Cherokee. Essentially, evidence of having lived in the Cherokee Nation substituted for a well-documented Cherokee racial identity. For the most part, applicants who used this argument were whites who had married a Cherokee Indian listed on the rolls of 1880 and 1896. Some of them, however, were on the rolls. For them, explaining the time they spent in the Cherokee Nation was simply another avenue through which they could imagine themselves as connected to the Cherokee Nation. Both of these types of applicants suggested a strong connection between Cherokee identity and land ownership in the Nation in order to convince the Commission that they deserved citizenship.

One of the most basic ways these applicants highlighted their Cherokee-ness was by mentioning how long they had lived in the Cherokee Nation. In testifying on behalf of himself on May 11, 1900, Milton Thompson informed the Commission that he had lived in the Nation "ever since I got out of school" in "ninety-three ... or ninety-four."¹²⁶ Not impressed by Thompson's relatively short stay in the Nation, the Commission pressed further in its inquiry, asking if he owned property. To purport himself as having longstanding connections to Cherokee land, Thompson responded that his "father has had

¹²⁶ Milton Thompson, jacket 17, roll 174, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

property ever since 1883, and I have had property ever since— in fact before— I became of age.”¹²⁷ Thompson’s testimony demonstrates that he likely knew the Commission viewed his initial claims as tenuous. By stating that his father had owned property since 1883, Thompson impressed upon the Commissioners that not just himself, but his entire family resided in the Cherokee Nation, regardless of whether the censuses documented it. Furthermore, informing them that he also had property in the Nation before he “became of age” allowed Thompson to extend his own claims to residence farther back.

In making claims to the Nation through ties to its land, Milton Thompson also inevitably presented himself as a participant in the Cherokee Nation-state and community. When asked by the Commission to divulge what sort of property he owned, Thompson responded that he had “real estate” and “stock” for the past “seven to eight years,” and then, unprompted, added

I have been here ever since I was of age practically and wanted it understood that I have never voted anywhere else in my life, I have always voted here and have been recognized here in the Cherokee Nation all the time; I have voted in the Canadian district although I am enrolled in Coowescoowee.¹²⁸

Whether or not Thompson considered himself racially connected to the Cherokee land is unknown from this testimony. However, he certainly imagined that his participation in the Nation’s community and political institutions warranted citizenship rights from the Commission. Furthermore, he believed that others from the community “recognized” his connection to the Cherokee Nation and, thus, his right to citizenship. In making this claim, Thompson presented himself as a deserving candidate for Cherokee citizenship,

¹²⁷ Ibid.

¹²⁸ Ibid.

because he had participated in the political process of the Nation and members of his community recognized him as such. This fit well with the Commission's understanding of the relationship between citizenship and nation, land, and race. In their mind, Thompson deserved citizenship because the community recognized him as racially Indian and he had proven his longstanding participation and residency in the Cherokee Nation.

Applicants could further bolster these types of claims to citizenship by having witnesses testify on their behalf. For instance, when asked if the community accepted Bert Davidson as a Cherokee By-blood, John Black responded "No one ever disputed it."¹²⁹ Black's comments painted a picture of Davidson as an accepted Cherokee Indian in the community in which he lived. This was extremely important in the case of Bert Davidson, because the Commission had challenged his race, and thus his right to citizenship, by asking if "he was white?"¹³⁰ Even more devastating to his application, Cherokee officials had not officially recognized his citizenship. To overcome these stigmas, Davidson chose to present himself as a longstanding member of the Cherokee community. Doing so challenged the perception that he was unqualified for citizenship. At the same point in time, having fellow community members label him a "recognized" Cherokee Indian presented Davidson as racially Indian and, thus, countered beliefs that he was white. Though clearly Bert Davidson did not fit the Commission's mold of the ideal citizen, he constructed a Cherokee identity for himself based on how members of his community perceived him. Davidson's story reveals how applicants could present

¹²⁹ Bert Davidson, jacket 10949, roll 264, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹³⁰ Ibid.

themselves as worthy of citizenship— by using witness testimony to tie themselves to the Cherokee Nation, land, and Indian race, even, if they were not listed on the census rolls and physically appeared “white.” Although Thompson lacked important legal documentation, witness testimony created for him the connections between his right to citizenship and nation, race, and land that the Commission imagined a qualified applicant as having.

White intermarried applicants, of course, could not claim Cherokee blood or land, except through their spouses. The Commission believed their connection to the Cherokee Nation and its land depended on two things: whether they appeared on the official Cherokee censuses and the race and nationality of their spouses. Following the ruling in the 1906 case *Daniel Redbird v. The United States*, the Commission added another important qualification to this list. It no longer conferred citizenship on whites who had married Cherokee Indians after 1877.¹³¹ This decision stemmed from legislation the Cherokee Nation had passed in 1876 and 1877. The first piece of legislation required intermarried citizens to pay a special tax in the Nation in order to have land rights, while the second one, written in 1877, denied land and payment rights to whites marrying after 1877 all together.¹³² The Redbird case redrew the boundaries of citizenship for intermarried whites: the ideal intermarried citizen still showed up on the accepted censuses and had married a Cherokee Indian, but now he had to have also married before 1877. The development signaled that the connection between having Indian ancestry and deserving Cherokee citizenship and land had become more important. Now intermarried

¹³¹ *Daniel Red Bird v. U.S.*, 203 U.S. 76 (1906)

¹³² *Ibid.*

whites found it more difficult to present themselves as having Cherokee identities, since their strongest ties to the Nation were residency and marriage, not their race.

Because whites were notorious for living illegally in the Cherokee Nation, the Commission strictly abided by the criteria it set forth when enrolling intermarried citizens. George and Anne Elliot found themselves among the lucky group of such couples. Anne, a Cherokee citizen By-blood, had married George, a “white man,” in 1865.¹³³ Since they had married well before 1877, Anne Elliot only had to prove her marriage to the Commission through testimony and possession of a marriage certificate. Following her examination, George Elliot answered similar questions.¹³⁴ Indeed, for white spouses like George Elliot, the process was not cumbersome. He merely proved he had married Anne before 1877 by use of legal documents: the censuses, and a marriage certificate. Based on this information, testimony, and the fact that he was still happily married, George Elliot constructed a plausible identity for himself as an intermarried citizen. In doing so, Elliot presented himself as the exact opposite of the stereotypical illegal white migrant squatter, who used marriage to obtain land rights in the Nation. Instead, Elliot mirrored the Commission’s ideal citizen for intermarriage. Racially, the Commission viewed him as connected to Cherokee Nation because he had married a Cherokee Indian before 1877. Aside from this, he had lived in the Nation with his wife since the marriage. According to the Commission’s standards, this qualified him for citizenship and a land allotment in the Nation.

¹³³ Anne Elliot, Jacket 34, Roll 175, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹³⁴ Ibid.

Cherokee representatives questioned white applicants frequently. The majority of their inquiries involved the applicant's marriage and residency statuses. For instance, the official W.W. Hastings cross examined Thomas Davis about his frequent trips back and forth to Kansas and his supposed farm in the Cherokee Nation.¹³⁵ Jones responded to this questioning by stating that he traveled to Kansas to bring his children to school and owned a house there, but "did not [live there] all the time."¹³⁶ Before this line of questioning both Hastings and the Commission had grilled Davis about his marriage to Artelia Davis. Like Elliot, Davis needed to present himself to the Commission as the ideal adopted citizen. This meant he could prove his marriage and lived permanently in the Cherokee Nation. Unfortunately for Davis, he lacked the second qualification and the Commission could not overlook this point. Accepted or not, all adopted applicants faced tough questioning from Cherokee representatives. These representatives imagined a strong connection between land rights and Indianness. Their main objective was preventing unqualified adopted applicants from stealing land from the Cherokee people. An applicant's whiteness made him or her a suspected land thief, because the representatives associated Indianness with Cherokee-ness. Although the majority of applications suggest that the Cherokee representatives and Commission both presumed white males more likely to be thieves than white women.

This meant few intermarried whites accepted on the By-blood roll could present themselves much differently than George Elliot had. The Commission strictly adhered to

¹³⁵ Artelia Davis 122, Roll 175, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹³⁶ Ibid., The Commission interrupted Hastings' questioning and asked Jones "Do you not live in Kansas," to which he responded "No Sir, not all the time." Hastings then proceeded with the cross examination.

its criteria for intermarried whites to ensure that vagabonds would not secure citizenship and, thus, an allotment. Cherokee representatives served as another line of defense, questioning these applicants closely. White women, like men, had to demonstrate that their names showed up on census rolls, and their marriages to Indian men. Reviewing the applications, however, I found that fewer white women married Indian men than vice-versa, suggesting a gender dynamic. Martha Hodes' research on late nineteenth-century Southern perceptions of sexual relations between white women and black men may help explain this oddity.¹³⁷ Perhaps a similar belief about sexual relations between white women and Indian men existed in Anglo-American Southern culture, which ultimately discouraged this type of a marriage. Another possibility is that Cherokee men simply preferred to marry Cherokee women. Originally, Cherokee society was matrilineal and historian Theda Purdue, as well as anthropologist Circe Sturm, has demonstrated that the Cherokee people retained elements of this cultural practice, despite contact with Anglo-Americans. In this view, women, not men passed on Cherokee lineage. Hence, the reason Cherokee men might have preferred to marry Cherokee women, so as to give their offspring Cherokee heritage. Indeed, land and citizenship were primarily meant for Indians. Thus, intermarried whites, like African Cherokees, had to struggle through a maze of racial legal restrictions when applying for citizenship.

While many whites attempted to access tribal lands by applying for intermarried citizenship, many Cherokee Indians refused to apply at all. As with the case of the previously mentioned Lorinda Micco, these Indians belonged to movements that opposed

¹³⁷ Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth Century South* (New Haven and London: Yale University Press, 1997).

the enrollment process.¹³⁸ Because of their political beliefs, many of them avoided applying for citizenship as long as possible, or never at all. On June 30, 1902, however, Emmet Starr, a prominent Cherokee official and lawyer, applied for 2,269 people on the rolls of 1880 and 1896 who had not enrolled themselves.¹³⁹ Among those he applied for were members of the resistance who had purposely not enrolled in order to protest. Most likely, Starr had no intention of undermining those resisting enrollment, but instead wanted to ensure that everyone on the accepted rolls eligible for a land allotment received one, especially those of the Indian race. This was important to him, because he knew the U.S. government would acquire Cherokee territory not distributed to the Cherokee people.¹⁴⁰ Starr understood that since the censuses listed these people as By-blood, the Commission would accept them if he could prove them living.

By not attending these hearings, those actively participating in the resistance constructed a Cherokee identity for themselves that they knew would not secure them citizenship. Instead, their actions protested the right of the Commission to determine Cherokee citizenship and carve up the Nation's land into individual allotments. In their opinion, the Cherokee community should decide who has rights to the Cherokee Nation and its land. They too believed Indian race and community participation included a person in the Nation, but their vision had a cultural element too. This cultural element excluded non-Cherokees from determining what and who was Cherokee. By boycotting the hearings and vocally opposing the Dawes Commission in this way, these protestors

¹³⁸ Anne Elliot, Jacket 10946, Roll 264, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹³⁹ Carter, *The Dawes Commission*, 117.

¹⁴⁰ *Ibid.*

presented themselves as self-defined, autonomous Cherokee Indians. They implicitly questioned the racial and cultural authenticity of those Cherokee Indians who applied for citizenship. If truly Cherokee, why let someone else define the contours of your race and culture? The answer, of course, was simple. By the beginning of enrollment in 1900, most had realized the grim reality that the U.S. government, whether they liked it or not, controlled the destiny of the Cherokee Nation. Having already dissolved the Cherokee government, the United States had sovereignty over Cherokee Indian territory. To procure an allotment in the former Cherokee lands, applicants understood they had to appease the Dawes Commission—not themselves, the former Cherokee government, or their communities.

The enrollment period forced those who considered themselves Cherokee By-blood to imagine themselves as connected to the Cherokee Nation in a variety of ways. Applicants imagined themselves as Cherokee on the Commission's terms: through being listed on official censuses, having Cherokee Indian blood, and living on Cherokee land. Indeed, the Commission believed a Cherokee who deserved citizenship could connect himself or herself to the Cherokee Nation through his or her race as well as living on the Nation's land. Therefore, applicants constructed identities for themselves that emphasized a relationship between the ideas of citizenship and nation, race, and land. Even applicants for adopted citizenship followed this pattern when enrolling. Adopted Indians emphasized their residency in the Nation as well as their Indianness. Likewise, accepted intermarried whites documented their residency in the Nation, as well as a connection to the Cherokee Indian race through marriage. While not all of these

applicants could present themselves as fitting the mold of the ideal citizen, they did have one thing in common that assured them citizenship. They constructed Cherokee identities for themselves that convinced the Commission that they were tied to the Cherokee Nation, the Cherokee Indian race, and Cherokee land.

Those refusing to apply identified themselves as Cherokee by denouncing the right of the U.S. Federal government to confer citizenship on Cherokee people and allot Cherokee land. Like applicants, they constructed Cherokee identities by connecting themselves to the Cherokee Indian race and Cherokee lands. Unlike, applicants, however, they refused to let the Commission decide what was Cherokee. They determined what defined them as racially and culturally Cherokee, believing only Cherokees should decide what happened to Cherokee lands and the Cherokee Nation. The ideas of nation, race, and land were at the center of their imagination of a Cherokee identity as well. They, however, contested the Commission's right to determine Cherokee citizenship and identity, define the Nation's contours, and redistribute its land.

While debate over whether the Commission's could determine Indian citizenship sparked great controversy within the Cherokee community, it was not the most hotly contested issue of enrollment. The Commission also promised to honor the stipulations of the Treaty of 1866, which ensured all qualified blacks living in the Cherokee Nation Freedmen citizenship. What relationship between citizenship and nation, race, and land did the Commission envision for African Cherokees? How did Freedmen applicants present themselves in response?

Chapter 3: Black Blood and Citizenship: African Cherokees, Race, and the Freedmen Status.

Blacks first encountered the Cherokee during European contact. From 1670 to 1717, interactions between Indians and Africans primarily occurred in a slave trade that extended throughout the entire southeastern region of North America. Initially, this trade system included blacks, Europeans, and Native Americans. Africans were slaves, while Indians participated as slave captors, traders, and slaves.¹⁴¹ After the Yamassee War of 1715, though, Europeans realized the myriad downfalls to having Indian slaves. For one, Indians held a military advantage over the underdeveloped European colonies, hence leaders in Charleston wanted to avoid future conflicts like the Yamassee War. Aside from that, Indians made poor slaves. When running away, they were more likely to escape than an African slave, because they knew the country's geography and surrounding peoples. Moreover, Indians could not handle European diseases as well as Africans, nor the hardships of working long hours in the sun. For these reasons, after the Yamassee war, Native Americans only worked in the trade as captors of black runaways.¹⁴² While the Cherokee culturally adopted some of these runaways, they returned most to their masters in exchange for rewards.¹⁴³ This contact with Anglo-white America eventually

¹⁴¹ Alan Gally, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717* (Binghamton: Vail-Ballou Press, 2002), 7-8.

¹⁴² Perdue, *Slavery*, 36-37.

¹⁴³ *Ibid.*, 38.

led to a cultural transformation among a particular group of Cherokee Indians whom historian Theda Perdue has referred to as “the Warrior class.” Having accumulated wealth by participating in the colonial fur and slave trades of the southeast, these Cherokees began modeling themselves after Southern plantation owners.

By the early nineteenth-century, the new Warrior class practiced a modified version of the Southern plantation economy that included the enslavement of Africans.¹⁴⁴ Most Indian masters had far fewer slaves than the Southern plantation owners. They also used the slaves’ services differently. Slaves worked side by side with their Indian masters, helping with every day chores and subsistence production. Living in the same small house together, the master and slave sometimes even developed mutually accepted sexual and familial relations, as in the case of the Shoeboot family Tiya Miles has studied.¹⁴⁵ This, of course, occurred, rarely, in the Southern chattel system. Relations between master were much more hierarchal, masters never worked with their slaves, and never treated them like family members. Only a select few Indian masters practiced chattel slavery like this, most adhered to the previously described system, which blended Anglo-American conceptions of slavery with Cherokee ideas concerning slavery and cultural adoption.¹⁴⁶ Those few who did, however, greatly influenced the direction of Cherokee law and government.

¹⁴⁴Ibid., 53.

¹⁴⁵ For a description of the kin-based form of slavery many Cherokee slave masters practiced see Miles, *Ties that Bind*.

¹⁴⁶ Perdue mentions that a few Cherokee slave owners like the Vanns practiced chattel slavery. See Perdue, *Slavery and the Cherokee Nation*; for a description of the cultural ideas that influenced Cherokee Kinship slavery see Perdue *Slavery and the Cherokee Nation*, Perdue, *Cherokee Women*, and Miles, *Ties that Bind*.

Race developed in the Cherokee Nation in unison with chattel slavery.¹⁴⁷ The Cherokee elites who practiced chattel slavery used it to justify their use of blacks as slaves and solidify their own position at the top of the Cherokee socioeconomic hierarchy. To impose these views on the rest of society, elites conflated blackness with slave status in both their daily practices and Cherokee law. Of course, as previously mentioned, not all Cherokees accepted this social construction at face value. The Cherokee people had older conceptions of kinship slavery that often guided how they understood Africans, race, and slavery.¹⁴⁸ Moreover, free blacks, though fewer in number than the slave population, lived in the Cherokee Nation, and their existence undoubtedly shaped how some understood race and blackness.¹⁴⁹ Some Cherokees practiced a form of chattel slavery incredibly similar to Southern whites. Others, however, still practiced kinship-based slavery. In the middle fell individuals who blended Cherokee notions of kinship slavery with the white chattel system. Though Southern white conceptions of race surely influenced slavery and racial interactions in the Cherokee Nation, so did Cherokee values and the existence of a visible free black community.

¹⁴⁷ Ibid.

¹⁴⁸ See Perdue, *Cherokee Women*. Theda Perdue first argued in *Slavery and the Evolution of Cherokee Society* that the Warrior class helped introduce slavery and race into Cherokee society. But in *Cherokee Women*, Perdue complicates the argument, saying that European values did not permeate all of Cherokee Society. Enduring Cherokee values, especially the matrilineal clan system, continued to dictate the majority of social relations among the Cherokee.

¹⁴⁹ See Saunt, Black, *White and Indian*, which looks at Creeks during this period through the stories of the Grayson family, and Miles, *Ties that Bind*, which looks at the Cherokee by following the lives of the Shoeboot family throughout the nineteenth-century.

After the Civil War, African Cherokees became citizens of the Nation, albeit unequal citizens.¹⁵⁰ Blacks, like intermarried whites, had no claims to the communal lands of the Cherokee Nation, and, therefore, no right to the strip payments that resulted from Cherokee land sales. Until 1907, when the Cherokee Nation ceased to exist, these citizenship restrictions, along with the sentiments surrounding them, divided Cherokee Indians and African Cherokees along racial and economic lines.¹⁵¹ Many Cherokee Indians resented the fact that African Cherokees could obtain citizenship, while most black Cherokees detested the unfair treatment they received. Overall, Cherokee law treated Cherokee blacks as inferior, although detailed studies of on-ground interactions between the two groups demonstrate that the story was more complex than a legal history can reveal.¹⁵²

While throughout the nineteenth century whites and Cherokee Indians imagined blackness and race in a variety of ways, this mattered little during the Dawes enrollment process. The Commission primarily used Cherokee law to determine who deserved Freedmen citizenship, including legislation, treaties, and censuses of the Nation. Therefore, the most important views of race at these hearings were those of the Commission and the former Cherokee government. How could their racial outlooks impact an applicant's citizenship status? The most obvious example was the "one drop" rule. If applicants looked black, or legal evidence demonstrated that they were, then they

¹⁵⁰ Yarbrough, *Race and the Cherokee Nation*, 93-111; The Cherokee National Council, *The Constitution and Laws*, 371-372.

¹⁵¹ May, *Collision and Collusion*, 19, 26.

¹⁵² For a more legally oriented study of the period see Yarbrough, *Race and the Cherokee Nation*. For one more concerned with on-ground interactions, see Miles, *Ties that Bind*.

likely had to enroll for Freedmen status, even if they had significant Indian heritage. For instance, when applying for citizenship in the Choctaw Nation, Lula Seitz found herself removed from the line for By-blood hearings and put in the Freedmen one, because a Commission staff member thought she looked “negro.”¹⁵³ A black applicant’s race not only limited them to Freedmen status, but also affected their treatment at the hearings. Cherokee representatives typically badgered black applicants more readily, asking aggressive questions and openly challenging the truthfulness of their testimony.¹⁵⁴ Also, the Commission allowed many witnesses to testify who were openly hostile to Freedmen applicants.¹⁵⁵

Amidst this background of racial discrimination, African Cherokees claimed citizenship. Like By-blood applicants, they presented themselves in terms of the Commission’s criteria. By the Commission’s rules, Freedman citizens were to appear on official Cherokee census rolls, have had a former Cherokee master, and have returned to the Cherokee Nation within the time period stipulated by the Treaty of 1866. While not every accepted applicant fit this mold, all managed to construct an identity for themselves that convinced the Commission they deserved citizenship. How did these applicants manage this? Like all accepted By-blood and intermarried applicants, these blacks identified themselves by discussing their connection to the Indian race and Cherokee land. This required them to describe their relationship to their former Indian slave master

¹⁵³ Gross, *What Blood Won’t Tell*, 155-157.

¹⁵⁴ For example see the application of Katie Adams, Jacket 1548, Roll 399, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹⁵⁵ For example see the application of John Johnson, Jacket 586, Roll 287, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

and their residency in the Cherokee Nation. In one way or another, race played a pivotal role in how these applicants constructed these identities. Depending on the circumstances, “blackness” could both limit and expand the ways African Cherokees could claim citizenship.

In most cases, accepted applicants identified themselves on the census of 1880 or 1896. For instance, when asked at his hearing on May 11, 1900, if his name appeared “on the roll of 1880,” Robert Smith, Jr. ensured the Commission that, “yes,” it did.¹⁵⁶ In replying affirmatively, Smith likely knew that the Commission would accept his application if they found his name, for this was the most significant piece of evidence a Freedmen applicant could produce. For those applicants like Frank Vann, who “didn’t think” his name “appear[ed] upon the roll of 1880,” showing up on the census of 1896 could serve a similar purpose.¹⁵⁷ In his case, he had “lived out[side]” the Nation when the Cherokee government took the census of 1880.¹⁵⁸ Thus, in order for Vann to establish himself as a deserving candidate for citizenship, he needed to demonstrate to the Commission that he had lived in the Nation for an extended period. Doing so would prove he had a residential connection to the Cherokee homeland. Vann accomplished this by proving the official census of 1896 listed him; for if the Cherokee government had recognized him as a citizen, then surely the Commission would too.

¹⁵⁶ Robert Smith, Jr., Jacket 2, Roll 285, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹⁵⁷ Frank Vann, Jacket 8, Roll 285, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹⁵⁸ Ibid.

Those listed on the official rolls, but enrolling an entire family typically experienced more complications. At her hearing on April 2, 1901, Polly Young undertook the burden of applying for herself and her three underage children, Peggy, Ross, and Frank.¹⁵⁹ While her name showed up on the roll of 1880, none of her children did, because they were too young. Even more problematic, Polly could only “guess” that the 1896 census listed her name.¹⁶⁰ If in fact it did not, it likely excluded her three children as well. This mattered, because at the time Polly applied, the Commission had not decided whether accepted black Cherokees could confer citizenship on family members. Cherokee law appeared to limit Freedmen citizenship in this respect, but some attorneys had argued that those with Freedmen status could pass on their citizenship to immediate family members, just as By-blood citizens could. Later the Commission sided against this, interpreting the law as purposely limiting the number of black citizens and, hence, their claims to Cherokee land. Regardless, the controversy restricted how Polly Young could present herself and her family to the Commission. Because the Cherokee government had labeled Polly a “Freedmen,” her children could not necessarily lay claims to citizenship through her bloodline alone.¹⁶¹ Her race prevented her from easily passing on citizenship and land to her offspring and husband. Had she been listed on the census as a Cherokee By-blood, the Commission would have accepted her children and at least considered her husband for intermarried citizenship, as long as he was not black.

Indeed, because Polly Young and her family were black, they had limited options when

¹⁵⁹ Polly Young, Jacket 11, Roll 285, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

applying for citizenship. Thus, at her initial hearing, Polly Young could only present herself as qualified for Cherokee Freedmen citizenship. Her unlisted black children remained doubtful, and her “United States Citizen” husband received no citizenship, and, thus, no rights to Cherokee land.

Official census requirements caused applicants like Polly Young a great deal of aggravation, though, in most cases, their testimony did not reveal it. However a few Freedmen applicants, like Lucinda Cravens boldly displayed disdain for the censuses and the enrollment process. On April 17, 1901, Cravens easily proved that the roll of 1880 listed her name, but when asked whether she or her children were on the roll of 1896, she had to respond that “I don’t think we is. I couldn’t tell you why, I was knocked off like the rest of ‘em.”¹⁶² Lucinda’s comments suggest that a constituent of the African Cherokee community believed that the Cherokee government had unfairly removed their names from the census of 1896, in order to deny them the right to “draw strip money.”¹⁶³ Her allegation implies that she considered herself a member of the Cherokee Nation, despite the fact that the government had not recognized her. Furthermore, it reveals that Cravens understood that her blackness placed her on the margins of Cherokee society. Lucinda Cravens’ statements also suggest that she actually viewed herself as a participant in the Cherokee Nation. Because her and her children’s names did not show up on the census of 1896, Lucinda, like Polly Young, could not easily enroll her children. Had she been Indian, she would have had an easier path in applying for her family. She could, and

¹⁶² Lucinda Cravens, Jacket 542, Roll 287, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹⁶³ Ibid.

did, however, construct a Cherokee identity for herself based on her inclusion on the roll of 1880.

When not listed on the censuses of 1880 or 1896, many applicants referred to other rolls to prove their connection to the Cherokee Nation. As previously mentioned, the United States government had conducted a number of Freedmen censuses between the late 1880s and 1896. Unsurprisingly, the Cherokee government had rejected these U.S. made censuses as “fraudulent,” because they expanded the officially recognized Cherokee Freedmen population. In an effort to avoid further conflict with the Cherokee government, the United States agreed to scrap these rolls after making them, but only if the Cherokee government allowed the Dawes Commission to create a new census for allotment.¹⁶⁴ Reluctantly, the Cherokee government agreed and in 1900 the Dawes hearings began. While the older rolls— most specifically the Wallace and Kerns-Clifton — remained unofficially recognized by the Cherokee Nation, the Dawes Commission still viewed an applicant’s inclusion on them as evidence that they might deserve citizenship. Race played an important role in the Commission’s rationale. It believed that Cherokee officials had unfairly excluded many African Cherokees from Freedmen citizenship because they did not believe blacks should receive citizenship in the Cherokee Nation. Showing up on those censuses, however, was not as convincing as showing up on the censuses of 1880 and 1896.¹⁶⁵ In other words, the Commission recognized these rolls as evidence but not a qualification.

¹⁶⁴ Carter, *The Dawes Commission*, 113.

¹⁶⁵ Gross, *What Blood Won't Tell*, 155.

Some applicants had no other option but to mention that their names showed up on unofficially recognized censuses. When applying for citizenship in 1900, Andy Webber explained to the Commission that his name showed up on both the Wallace and Kern-Clifton Rolls.¹⁶⁶ While the Cherokee government officially recognized neither, the fact that his name showed up on both probably helped his case for citizenship. It demonstrated to the Commission that U.S. officials had twice viewed his application for citizenship and both times considered it convincing. Unlike Robert Smith, Jr. and Frank Vann— applicants who were listed on the official censuses of the Cherokee Nation— Andy Webber experienced a cumbersome enrollment process, because he did not fit the Commission’s mold of the ideal Freedmen applicant. Comparing these applications highlights this point, as Andy Webber’s spans many more pages, encompasses more witnesses, and reveals that Webber had to return before the Commission on several occasions. Put simply, Webber had to provide more evidence that he had connections to the Cherokee Nation than an applicant who the official censuses listed. This included extensive witness testimony that proved his father was a “negro,” his family had lived at “the negro place at the church [in the Cherokee Nation,” and that his mother was a “former slave” who “drew strip money.”¹⁶⁷ Essentially, this proved he had connections to the Cherokee Indian race as a former slave and the Cherokee land as a longtime resident. Only after demonstrating to the Commission that the census takers of the Wallace and Kerns-Clifton rolls had rightfully declared him a Cherokee Freedmen did Andy Webber

¹⁶⁶ The Application of Andy Webber.

¹⁶⁷ Ibid.

secure citizenship. Webber went to great lengths to provide corroborating testimony and evidence for his claim to citizenship.

Recognition on an unofficial roll could help an applicant buttress his or her claim of being on an official roll. For instance, on April 18, 1901 Mary E. Sheppard informed the Commission that her name was “down [as] Sheppard” on the roll of 1880.¹⁶⁸ After finding her name there, but not on the roll of 1896, the Commission asked Sheppard to give her middle name. Sheppard responded “Net”.¹⁶⁹ Net does not begin with an E, so perhaps the transcriber heard Sheppard incorrectly. But if so, the Commissioners did as well, because they responded to Sheppard’s answer by replying that it was “very hard to get Net out of E.”¹⁷⁰ Convinced that the Mary Sheppard on the census of 1880 might not be the one before them, the Commission continued its investigation. Mary responded to their concerns by explaining that the Kerns-Clifton roll listed her as living in the Canadian District of the Cherokee Nation in 1896. To further bolster this claim, Sheppard also had a neighbor named Rose Rogers testify that she had known her “ever since she was a child.”¹⁷¹ This seemed convincing, especially since the witness had lived in the Cherokee Nation “all my [her] days.”¹⁷² Using the Kerns-Clifton roll and supplemental testimony as her evidence, Mary Net Sheppard persuaded the Commission that she was likely the Mary E. Sheppard listed on the official census of 1880. This

¹⁶⁸ Mary E. Sheppard, Jacket 547, Roll 287, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

demonstrated that she had longstanding connections to the Cherokee Nation, its lands, and an Indian slave master.

When trying to construct a Cherokee identity for themselves and others based on the unofficial census rolls, many African Cherokees became frustrated. Testifying on behalf of Joseph and Andy Webber in 1900, the Reverend Steven Ridge provided insight into how some blacks viewed their treatment by both the Commission and Cherokee government. Asked by the Commission if he was a “Freedmen”, Ridge angrily replied “I am a freedman, but I’ve just about give it up, because you have took such a stand here against us freedmen.”¹⁷³ By “you,” the preacher meant all those currently and formerly involved with determining the status of blacks in the Cherokee Nation. His anger resulted specifically from an instance in which he “spent 100 bucks” to get his name on the Wallace roll.¹⁷⁴ Like Lucinda Cravens, Ridge’s name had mysteriously disappeared from the census when he later enrolled.¹⁷⁵ Ridge’s story reveals how race could negatively affect the application process for blacks. His comment suggests that governmental officials sometimes demanded bribes from African Cherokees for census enlistment. Officials likely targeted them because of their race; for the Cherokee government had already fostered a racial hierarchy within the Nation that made it near impossible for a black man to receive legal justice.¹⁷⁶ Therefore, it was highly unlikely that an African Cherokee would accuse and then successfully prosecute a governmental

¹⁷³ The Application of Andy Webber.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Yarbrough, *Race and the Cherokee Nation*, 111.

official for blackmail. Doing so would only hurt the applicant's chance at receiving citizenship, by making it look as if he or she had needed to offer a bribe in order to qualify for the census. In these ways, blackness limited a person's claim to nation, citizenship, and land.

Through his testimony, Reverend Ridge constructed an identity for himself that exposed enrollment as charade. He clearly believed that even the unofficial census rolls did not include all rightful members of the African Cherokee community. Those in control of determining citizenship, he claimed, pushed blacks like himself to the margins of society, or, worse yet, outside them. While Ridge did not elaborate as to why officials might have done this, one can assume that they wanted to deny blacks Cherokee land rights. Indeed, Ridge struggled to have himself identified as a Cherokee Freedman simply because the Cherokee government saw him as a "negro."¹⁷⁷ His "colored" status forced him to acknowledge that his race— though a social construct— had a real impact on his life.¹⁷⁸ Even Ridge considered blackness a crucial part of his Cherokee identity, for he knew it limited his inclusion in the Nation.

While race prevented some blacks from receiving citizenship, it also helped many others obtain it. African Cherokees needed to promote their blackness in order to obtain Freedmen citizenship. Indeed, race excluded them from By-blood status and sometimes made their attempts at receiving Freedmen citizenship cumbersome, but, ultimately, it defined the one citizenship they could have. Consequently, the Dawes Commission frequently asked Freedmen applicants to elaborate about their racial heritage beyond the

¹⁷⁷ The Application of Andy Webber.

¹⁷⁸ Ibid.

fact that a census listed them as “colored.” Typically this meant explaining the relationship between themselves and their former masters. With this information, the Commission determined if a recognized Cherokee By-blood had owned the applicant before the Civil War. If one had, the applicant had a legitimate claim to citizenship and land in the Cherokee Nation. Of course, not all Cherokee Freedmen had been enslaved. Some blacks had lived freely in the Nation prior to the Civil War. In order to connect themselves to the Nation, these blacks had to prove that the Cherokee government had officially recognized them as citizens. Doing this demonstrated that Cherokee Indians accepted them as community members. How an applicant made claims to enslavement or previous citizenship depended on his or her particular circumstances. Though the particular circumstances differed from case to case, each applicant, whether free or an ex-slave, had to connect him or herself to the Cherokee Nation through a relationship to Indianness, either with a slave master or the Cherokee government, otherwise they would not receive citizenship or land.

For some applicants, their testimony alone sufficed to prove they had been enslaved. On April 17, 1901, after identifying Fannie Walker on the roll of 1880, the Commission asked her to tell them whether she “were [once] a slave.” She replied, “yes.”¹⁷⁹ The Commission then inquired about her former owner and she Walker identified a named the Cherokee citizen John Drew.¹⁸⁰ Walker never offered information about her past freely and responded to each of the questions in a very succinct manner.

¹⁷⁹ Fannie Walker, Jacket 510, Roll 287, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹⁸⁰ Ibid.

Why did Walker do this? An evaluation of her application reveals that she fit the mold of the Commission's ideal citizen. For one, Fannie Walker could prove her name showed up on both the censuses of 1880 and 1896. Simply based on this fact, the Commission likely believed her testimony. This meant the Cherokee government recognized her relationship to a former Indian slave master and residency in the Nation. Combined, these facts demonstrated that Walker had the connections to the Cherokee Indian race and land that were necessary for a black applicant seeking citizenship. It also helped that she only applied for herself. Fewer applicants per application meant less paper work and, thus, typically, a quicker enrollment decision. Because the Commission already viewed Fannie Walker as a solid candidate for citizenship, she had no reason to elaborate on her past. Direct, concise answers to the Commission's questions were the safest way for her to achieve citizenship.

Families underwent more questioning about their slave lineage than single applicants. In making application for his family on April 2, 1901, Rab Brewer had to list the former owners of both himself and his wife. Like Fannie Walker, Brewer allowed the Commission to direct the conversation about his enslavement. In his case, this led to a more revealing discussion. For one, the Commission asked questions about his father, a former "slave" named "Russell Vann," who the Cherokee government recognized as a "freedmen."¹⁸¹ By discussing his father's connections to the Nation, Brewer demonstrated that he could trace his family's enslavement at least two generations back. This proved he had longstanding interactions with the Cherokee Indian race, something

¹⁸¹ Rab Brewer, Jacket 14, Roll 285, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

for which the Commission looked. His response also showed that his family had lived in the Cherokee Nation for an extended period of time, which, of course, only helped to buttress his claim to a Cherokee identity. But what about his wife's ties to Cherokee-ness? Indeed, the most interesting moment of Brewer's application came when he constructed a Cherokee identity for her. In recounting her lineage, Brewer mentioned that her former owner "Glass" was "a full blood Cherokee"—information the Commission had not asked for, but certainly reacted to, for they asked Brewer to repeat the statement.¹⁸² The idea of a "full blood" master piqued the interest of the Commission; there were few "full blood" chattel slave owners. As historian Theda Perdue has pointed out, by 1835 78% of Cherokee Indian slave holders were "half-breeds."¹⁸³ Regardless, in making cases for both he and his wife, Brewer had persuaded the Commission they deserved citizenship by elucidating their relationships to the Cherokee Indian race as ex-slaves and their longstanding residency in the Cherokee Nation.

Brewer's story also demonstrates that applicants could have family members construct histories of enslavement for them. Rab Brewer did so for his wife, suggesting that perhaps patriarchal gender norms influenced who made application for families. However examining a large sample of Freedmen applications reveals that patriarchal gender norms did not always determine who applied for the family. In some instances, slave lineage played the most significant role, as it did for Polly Young. She applied

¹⁸² Ibid.

¹⁸³ Perdue, *Slavery*, 60.

instead of her husband Jacob Young, because he was a “United States Citizen.”¹⁸⁴ As such, Jacob Young had no definitive claim to Cherokee Freedmen status, even though he had lived in the Cherokee Nation for a very long time. Thus, having him enroll the family made little sense. It would have highlighted the weakest portion of the family’s application instead of its strength, that Polly Young appeared on both censuses and could trace her ownership to a Cherokee By-blood. The Commission accepted few applications in which an intermarried black enrolled the family. In most of these cases, the intermarried applicant excluded him or herself from the application.¹⁸⁵ Indeed, gender conventions, race, and other cultural factors sometimes played a role in determining who applied for the family, but they were not decisive factors. As the story of Polly Young reveals, most often, the family’s particular circumstances decided who applied for it. In other words, the significance of race and gender in these particular circumstances depended on the contingent factors of each individual application.

Having been owned and recognized on an official Cherokee census greatly improved one’s chance at receiving citizenship. Both these criteria held one important thing in common: they defined the candidate as black. The census listed all formerly recognized Freedmen citizens of the Cherokee Nation as “colored” people and slave lineage detailed an applicant’s former relationship to his or her master. Cherokee officials had conflated blackness with two statuses: slave, before 1865, and Freedmen citizenship after that date. The Commissioners thought no differently. Because of this, Freedmen

¹⁸⁴ Polly Young, Jacket 11, Roll 285, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹⁸⁵ I noticed this trend when reviewing the applications.

applicants needed to construct a Cherokee identity for themselves based on this criterion. This forced them to formally recognize that blackness afforded them access to citizenship, but only through a connection to the Cherokee Indian race as an ex-slave or a formerly acknowledged citizen by the Cherokee government.

While acknowledging their blackness, some Freedmen applicants still imagined their family and themselves as more racially complex. For instance, Ben Grimmet Jr. chose to discuss his in-laws “mixed” racial background at his hearing on April 19, 1901. There, he informed Commissioner Breckinridge that his father in-law had a mixture of “darkey” and “white ... looks like it,” as did his wife.¹⁸⁶ Taking interest in Grimmet’s testimony, the Commission asked if his wife was also “white.”¹⁸⁷ For someone who the Commission had just indirectly accused of intermarriage, a crime under Cherokee law, Grimmet responded with remarkable ease.¹⁸⁸

I guess so; that’s what they [the community] all say. She don’t look like white folks to me; she may be white, I can’t say, but then white folks looks— you can tell white folks when you see them.¹⁸⁹

In replying, Grimmett supported his earlier position that his wife Maggie was undoubtedly mixed, for he refused to label her white. He constructed her racial identity based on how he perceived her to “look,” which, he contended, was not white. Whether Grimmett truly believed these comments, or said them only to protect her is uncertain.

One might conjecture from his subsequent testimony that perhaps he honestly thought her

¹⁸⁶ Ben Grimmett, Jr., Jacket 580, Roll 287, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹⁸⁷ Ibid.

¹⁸⁸ Yarbrough, *Race and the Cherokee Nation*, 76.

¹⁸⁹ The Application of Ben Grimmett, Jr.

mixed. Grimmitt indicated this his own physical appearance demonstrated that he had Indian heritage as well as black; for he imagined Africans were “black as a tea pot,” but he was only “most as black as a pot.”¹⁹⁰ These statements, while interesting, gained Grimmitt nothing. Whether part Indian or not, the Commission would likely only grant him Freedmen citizenship because his skin color and the Cherokee government defined him as black. At the hearings, blacks could only connect themselves to the Indian race through U.S. or Cherokee governmental recognition of them as a community member or a slave master relationship. With the exception of a very few cases, claims to Indian ancestry held no weight for blacks during enrollment. While true, Grimmitt had nothing to lose in presenting to the Commission what he considered his full racial identity, for he his credentials guaranteed him Freedmen citizenship regardless. His story offers a rare window into how some African Cherokees might have imagined their racial heritage outside of the hearings.

Some applicants, like Joseph Glass, outlined their family lineage in order to elucidate their claim to Indian heritage. When asked by the Commission on April 22, 1901 whether his mother was a Freedman, Glass responded “yes,” as most applicants listed on the official censuses did.¹⁹¹ But when questioned whether his father was an Indian, Glass gave a detailed response:

“No,” he explained. “It was my father’s colored people; my mother’s father was part Cherokee and part colored.”¹⁹² Like Grimmitt, Glass used words that describe physical

¹⁹⁰ Ibid.

¹⁹¹ Joseph Glass, Jacket 606, Roll 287, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

¹⁹² Ibid.

appearance when he referred to his African heritage. He spoke of his Indian heritage, however, in terms of ethnicity, labeling it “Cherokee.” This suggests that Glass imagined multiple types of “Indian” heritages, whereas only one type of African descent. Indeed, anyone that had African blood was “colored,” but in comparison to whom? Glass’ comments indicate that he believed blacks were colored in comparison to both whites and Indians; for he used the word to distinguish between his Cherokee Indian and African heritage. Ben Grimmett had also done this, but he had placed more emphasis on constructing an Indian identity for himself— even taking the initiative to offer proof of his Indian heritage. Glass, on the other hand, explained his claim to Cherokee Indian heritage by discussing his family tree, but only when asked by the Commission. Like Grimmett, Glass likely understood that his African blood limited him to only obtaining Freedmen status. His race also determined how he could claim it. Like the others, Glass could only claim the necessary connection the Cherokee Indian race through census recognition and a slave-master relationship. Listed on both official censuses as a “colored,” Glass chose to highlight his blackness, discussing his “Indian” bloodline only at the request of the Commission.

Emily Weaver chose a bolder approach to claiming Indian heritage than both Glass and Grimmett. On September 11, 1901, Emily Weaver applied for both herself and child as citizens By-blood.¹⁹³ While Weaver openly admitted that her mother Nellie Cole was a Cherokee Freedman, she contended that she had a right to By-blood

¹⁹³ Emily Weaver, Jacket 1553, Roll 399, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

citizenship through her father's lineage.¹⁹⁴ This right, she claimed, the Cherokee Council had once "recognized", but it had "lost" her papers since then.¹⁹⁵ To further bolster her case, Weaver informed the Commission that the man she lived with, Joe Weaver, was "a Cherokee." While not officially recognized as such, Emily referred to Joe as her "husband."¹⁹⁶ This was how she portrayed herself to the Commission as a deserving candidate for By-blood citizenship. Her presentation combined the ways Ben Grimmett and Joseph Glass identified themselves as part Cherokee Indian. First, like Glass, she created for herself a connection to Indianness through a parent. Unlike Glass, however, Emily demonstrated that others in her community recognized her as Indian. She accomplished this by mentioning that she had an Indian husband. This argument, moreover, utilized Grimmett's approach as well. She assumed too assumed that if members of her community recognized her visually and socially as Indian, than she must be. While the three applicants used similar methods their claims were different. Grimmett Jr. and Glass only presented themselves as having Indian heritage, but Emily Weaver identified herself as Indian. By claiming Indianness, she hoped to convince the Commission that she deserved By-blood citizenship, despite the fact neither official census listed her as such.

Legally speaking, Weaver had no case for By-blood citizenship. Neither official census listed her as a By-blood citizen, the Commission had rejected her application as such in 1896 and a host of Cherokee Indian witnesses testified in 1902 that "she is not

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

recognized ... she is a freedman.”¹⁹⁷ In response to these problems, Weaver constructed entirely new racial backgrounds for her parents in 1903. Her father she now claimed as “half Cherokee .. and half ... white,” and her mother as “pretty nearly all Cherokee ... with a little of that,” referring to the Commission asking if she had “black blood?”¹⁹⁸ To convince the Commissioners how little black blood her mother had, Weaver pointed to what must have been an Indian-looking girl at the hearing, and said “She [her mother] was about the color of that girl there.”¹⁹⁹ In a matter of two years, Weaver had reinvented her lineage to have two parents with Cherokee blood, and one with hardly a trace of black blood.

In seeking citizenship, Emily Weaver had provided the Commission with multiple explanations for her racial heritage, some which even contradicted each other. Though this might appear as though she lied to them one should remember that, for all intensive purposes, a Cherokee Indian was her husband. Moreover, her daughter Charlotte, married a recognized citizen by the name of Jim Downing.²⁰⁰ This suggests that either some community members had no problem with Indian men having relations with women labeled black, or they recognized Emily and her daughter as Indian. Obviously, Emily Weaver hoped that the Commission would interpret the evidence as pointing toward the latter. Her persistence over the last “35 years [of] trying to be admitted to citizenship in the Cherokee Nation” demonstrates that she probably believed she

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

deserved citizenship because of her racial heritage. Interesting as her story might have seemed to the Commission, her claims to a Cherokee Indian identity held little weight legally— she had admitted having a slave lineage, black blood, and was not listed as Indian on the rolls of 1880 or 1896. While Emily Weaver claimed a Cherokee Indian identity, the legal evidence she presented to the Commission constructed one for an ideal Freedman applicant. After nearly four years of protesting the Commission to enroll her as a Cherokee By-blood, the Commission granted Emily Weaver Cherokee Freedmen citizenship instead. Her African racial heritage had made it impossible for her to legally claim a connection to the Cherokee Indian race and Nation through her Cherokee bloodline.

Emily Weaver's application offers a rare glimpse into the complex ways that some people imagined themselves and others as racially connected to local communities and the Cherokee Nation. For one, it demonstrates that the lines between the racial categories of white, black, and Indian were not always clear. While some community members identified Weaver as Indian, others viewed her as black. Indeed, the racial fluidity within local communities convinced Weaver that she could legitimately claim herself an "Indian," despite the fact that legally she fit the mold of the ideal Freedmen citizen. Her application also elucidates that those legally defined as black and Indian had intimate relations with one another. In my research, I only came across evidence that women with African descent had relations with Indian men, not vice-versa. On the surface this appears as though Martha Hodes' argument about black men, white women sexual

relationships in the Jim Crow American South might help explain this trend.²⁰¹ Perhaps whites also feared Indian men marrying white women. However, other historians of Southeast Indian history have uncovered evidence that refutes this point.²⁰² This means that gender did not play a significant role in the construction of her Indian racial identity. Certainly, Cherokee society discouraged black, Indian marriage, the government even deemed it illegal. However, these marriages still occurred and punishment for them was minimal, usually social ostracization. If Weaver intended to hide anything at this hearing it was her African heritage, not her marriage. Black men would do the same.

In general, Emily Weaver was an exception, not a rule. Most applicants did not overtly challenge how the Commission determined racial identity, because they realized the futility of the endeavor. Typically, if an applicant or one of the family members did not fit the Commission's definition of citizenship, he or she simply chose not to apply or were rejected. For instance, Joseph Glass applied for Freedmen status in the Cherokee Nation, because he knew he could not legally obtain By-blood citizenship.²⁰³ Likewise, Cherokee Freedmen applicants like Richard Parlar and Cynthia Tucker did not enroll their spouses because they were "Creek" blacks.²⁰⁴ Their decisions demonstrated that they understood blacks from another nation would not likely to receive Cherokee citizenship through intermarriage. As such, they could not establish a direct connection

²⁰¹ Hodes, *White Women, Black Men*. Hodes demonstrates how whites in the U.S. South maintained a racial hierarchy after emancipation in part by presenting black males as sexual predators.

²⁰² See Saunt, *Black, White and Indian*.

²⁰³ The Application of Joseph Glass.

²⁰⁴ Richard Parlar, Jacket 547, Roll 287, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.; Cynthia Tucker, Jacket 639, Roll 287, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

between themselves and the Cherokee Indian race, land, and Nation. Intermarried whites could because their spouses were Indian. This afforded them a direct connection to the Cherokee Indian race unavailable to blacks from other nations.

In addition to providing information concerning their status on the censuses and their slave lineage, Freedmen applicants also had to document their residency. African Cherokees had little choice in the matter, because the Commission interpreted Cherokee law as placing strict residency requirements on them. As previously mentioned, the Treaty of 1866 between the United States and the Cherokee Nation stipulated that Cherokee Freedmen had to return to the Nation “within six months of the nineteenth of July [1866]” in order to receive citizenship.²⁰⁵ During the Dawes enrollment hearings for Freedmen, Commissioners and Cherokee representatives commonly referred to this law when examining applicants. In a sense, it became a third major criteria for Freedmen citizenship. To prove their connection to the Cherokee Nation, black Cherokees, additionally, had to document their ties to the land. This was simply another way that blackness limited an African Cherokee’s access to Cherokee citizenship and land.

The majority of applicants demonstrated their ties to the Cherokee land by simply testifying on their own behalf. To address this issue, they recounted when they had started living in the Cherokee Nation and for how long. Applicants like Samuel Butler answered the question succinctly, by stating “been here all my life,” while others like Henry Buffington presented evidence that they had “always voted here [The Cherokee

²⁰⁵ The Cherokee National Council, *The Constitution and Laws*, 34.

Nation].”²⁰⁶ Since the censuses listed these applicants, the Commission felt no need to question their testimony, for the Cherokee government recognized that the applicant’s ties to the Nation. Hence, the reason these applicants probably chose to respond simply about their residency.

Applicants listed on the censuses, but with questionable residential ties to the Cherokee Nation, had to thoroughly explain the circumstances. The Commission typically discovered living irregularities through witness testimony, though, the applicant might inadvertently present the information as well. In either case, the applicant had to provide further evidence to support his claims to residency. Usually, this meant having more witnesses testify as to his or her whereabouts. For instance, to quell doubt about his residency before enrollment, Daniel Roach had his wife Nancy Hill testify that “he is a citizen: they say he is. Been here ever since I can remember.”²⁰⁷ Hill’s testimony highlighted two important things about Roach that tied him to the land. One, the Cherokee government had recognized him as a citizen, and, two, he had consistently lived in the Nation as a Freedmen citizen. Persuaded by Roach’s presentation, the Commission granted him citizenship.

While applicants like Roach could depend on loyal family members to testify on their behalf, they were probably the least convincing witnesses. This was because the Commission assumed that loved ones would defend the applicant’s residency, regardless of the truth. Consequently many applicants had community members testify on their

²⁰⁶ Samuel Butler, Jacket 16, Roll 285, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.; Henry Buffington, Jacket 9, Roll 285, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²⁰⁷ Daniel Roach, Jacket 40, Roll 285, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

behalf as well. When called as a witness for Andy Webber, John Brown testified that Webber's father had lived in a village he used to visit.²⁰⁸ Brown's testimony portrayed Webber's father as a resident of the Cherokee Nation since before the time period specified by the Treaty of 1866. This, of course, meant that Webber met the criteria for residency. The Commission and Cherokee representatives likely trusted Brown more than other witnesses, because he was an "Indian" testifying for a black.²⁰⁹ In their view, Indians gained nothing from testifying for a black, whereas other African Cherokees or family members had a stake in ensuring that the applicant received citizenship. In choosing Brown to present their claims about residency, Webber and Ward had made a good decision. It demonstrated their tie to the Indian community as well as supported the idea that the Cherokee government legally recognized their residency.

Some Indians testified against Freedmen applicants when discussing issues of residency. For example, Cherokees Charles McLellan and George W. Clark attempted to sabotage Katie Adams' application, in part, because they thought blacks should not receive Cherokee citizenship.²¹⁰ Both men could not understand why non-Indians should be included in the Cherokee Nation as citizens and live on its land. While the Commission learned that the two witnesses probably had ulterior motives— because the applicant's lawyer asked them if they "have prejudice against person's claiming citizenship as former slaves"— their testimony could have proven detrimental to Adams' application. Luckily for Adams, her attorney produced substantial evidence that the

²⁰⁸ The Application of Andy Webber.

²⁰⁹ Ibid.

²¹⁰ The Application of Katie Adams.

Cherokee Indians testifying against her aimed to sabotage her application for citizenship, even suggesting that the witness L. Daniels had been coached in how to testify by “Beanie Burgis during a conversation in the hallway before the hearing.”²¹¹ With help from her lawyer, Adams presented her accusers as “biggots,” who wished to exclude her from citizenship simply because of her race. While race, initially, almost destroyed her chance at citizenship, in the end, it helped. The racial motives of her accusers made her story seem more plausible.

That Freedmen applicants could find Indians willing to testify for them suggests that on-ground interactions between blacks and Indians were not always as racially divisive as Cherokee citizenship laws. Indeed, citizenship laws separated applicants into white, black, and Indian, but a sense of community sometimes brought these groups together. This is not to say that forms of segregation did not exist in the Cherokee Nation — applicants like Andy Carter even mentioned that their district had “a colored school.”²¹² But, as these applications demonstrate, non-racially charged intermingling among Indians and blacks occurred in the Nation in many forms. Intimacy, friendship, and racially diverse neighborhoods all promoted peaceful relations among these racial groups.²¹³ The way blacks, whites, and Indians interacted with each other on a daily basis affected how many black applicants claimed citizenship. It inspired some to pursue

²¹¹ Ibid.

²¹² Andy Carter, Jacket 557 Roll 287, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA

²¹³ An example of intimacy between different racial groups can be found in the applications of Ben Grimmett and Emily Weaver, both which I discussed. I have also discussed a number of instances in which Indians testify on behalf of blacks, suggesting friendship and camaraderie existed across racial lines. Lastly the application of William Tucker has a Cherokee named Louis T. Brown stating that he lived near African Cherokees. See William Tucker, Jacket 1549, Roll 399, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA

By-blood citizenship and discourage others from enrolling those they thought unqualified. Racial interactions within communities also inevitably led to Indian witnesses supporting or contesting black applicants claims to citizenship at the hearings, especially with respect to residency requirements. Ironically, even supportive testimony worked to divide blacks and Indians; for it differentiated the applicant from the Indian witness by labeling him a black Cherokee citizen.

When making application for citizenship, accepted Freedmen presented themselves to the Commission in a variety of ways. The majority of applicants constructed a Cherokee identity for themselves that they hoped mirrored that of the ideal Freedmen citizen. Of course, not all applicants had the necessary qualifications for doing this. Those lacking one or more of the criteria used their ingenuity to explain their connections to the Cherokee Nation. In the process, they discovered that their race could both inhibit and improve their chance at receiving citizenship. Their blackness afforded them the right to enroll as a Freedman, but it also restricted them from claiming By-blood status, even if they had Indian heritage. With a long history of legal racial discrimination in their review mirror, most applicants for Freedmen status enrolled accordingly, representing their Cherokee identity in terms of the Commissions criteria: recognition on an official census, presentation of a slave lineage, and proof of having lived in the Cherokee Nation consistently since 1867. Those who lacked an important qualification still managed to present an identity for themselves that convinced the Commission that they had a connection to the Cherokee Indian people, Cherokee lands, and the Cherokee

Nation. Indeed, racial perceptions and laws restricted blacks from Cherokee citizenship and land in ways unfamiliar to By-blood applicants.

What happened to the Freedmen applicants not accepted by the Commission? For that matter, what happened to intermarried whites and Indians who failed to make successful applications? The next chapter examines the contours of citizenship by exploring the stories of those applicants who fell outside its margins.

Chapter 4: Standing Outside the Margins of Citizenship: Race and Rejected and Doubtful Applicants.

Not everyone who applied for Cherokee citizenship received it. Between 1900 and 1906 the Dawes Commission rejected applicants for Freedmen, By-blood, and Intermarried citizenship. These stories are as important to understanding the enrollment process as are those of accepted applicants. They helped define the boundaries of citizenship by elucidating what individuals fell outside them. What prevented applicants from receiving citizenship varied, depending on the status they sought and their particular circumstances. This makes it difficult to generalize about why the Commission rejected applicants. However, a few factors led to a majority of black Cherokees having their claims denied. For one, a number of these applicants lacked the proper legal documentation of their right to citizenship. This usually meant that either the official censuses of the Cherokee Nation did not list their names, or Cherokee law excluded them from citizenship. The Commission also denied black Cherokees who could not satisfactorily prove their residence in the Cherokee Nation. These applicants failed to demonstrate that, after the Civil War, they had returned to the Cherokee Nation by February 1866. In addition, the Commission routinely rejected black applicants who sought By-blood citizenship.

The Commission denied many By-blood applicants as well. Like those seeking Freedmen status, these applicants could not legally document their right to Cherokee

citizenship. In most cases, they were not listed on the official censuses or had no certificate of citizenship. However, an applicant's blood quantum could also determine whether he or she received citizenship. For instance, sometimes witnesses and Cherokee representatives accused applicants of having black or white blood. Lastly, the Commission denied some By-blood applicants for not sufficiently demonstrating that they lived in the Cherokee Nation. Residency requirements for By-blood citizenship were more lenient than for Freedmen citizenship. Indians only needed to prove that they had resided in the Nation in 1898, when enrollment began.²¹⁴

The Commission rejected intermarried whites for different reasons than those applying as Indians. Yet, a lack of legal documentation was still the principal reason these applicants were denied citizenship. If an intermarried applicant could not find his or her name on one of the official census rolls, present a certificate of marriage, or prove he or she violated no Cherokee marriage laws, then the Commission might reject his or her application. The Commission also rejected intermarried applicants if they suspected them of leading a transient life. To overcome this accusation, the applicant had to prove he or she had lived consistently in the Cherokee Nation. This requirement prevented vagrant whites from stealing Cherokee land.

While the Commission could deny an applicant citizenship based on any of these circumstances, it did not always do so. Some managed to obtain citizenship despite having any number of problems with their applications, including poor legal documentation of their citizenship, damning witness testimony against them, residency

²¹⁴ Carter, *The Dawes Commission*, 119.

issues, or concerns about their race. What separated these applicants from those denied citizenship? A comparison of these two groups reveals that the boundary between citizenship and non-citizenship was often blurry, and, at times, arbitrary. The fact that some of these applicants received citizenship, while others did not suggests that how an applicant presented him or herself before the Commission mattered tremendously. If an applicant lacked criteria for citizenship, then he or she had to construct a less than ideal Cherokee identity for himself or herself, one which he or she hoped the Commission would accept. Unable to establish connections between themselves and the Cherokee Nation, its land, and the Cherokee Indian race that satisfied the Commission, these applicants were denied citizenship. To receive it, they needed to have imagined themselves as Cherokee on the Commission's terms. Helping to define the borders of the Commission's imagination of the Cherokee citizenry was race. In limiting the scope of citizenship, it ultimately helped decide what applicants fell outside its margins.

African Cherokees experienced the greatest difficulty of any racial group applying for citizenship. Both the Cherokee Nation and the Dawes Commission had strictly defined the contours of Cherokee citizenship in ways that limited a black person's access to it. For one, an applicant with black blood could not legally obtain By-blood citizenship, even if he or she had Indian heritage as well. Today, historians refer to this as the "one drop rule", because it labeled all persons with African ancestry black, regardless of their other heritage. Its usage was prevalent in U.S. society as well.²¹⁵ Two, U.S. and Cherokee lawmakers also limited how many blacks received citizenship. Before

²¹⁵ Gonzalez, "Racial Legibility."

enrollment, some black Cherokees accused Cherokee officials of unfairly excluding them from the official censuses of the Nation. Among those complaining were ex-slaves, whose whereabouts after the Civil War could not be determined.²¹⁶ Exclusion from these rolls mattered tremendously to these individuals, because the Dawes Commission used the censuses as the main criteria for determining citizenship. While important, being listed on an official census did not guarantee citizenship. Regardless of whether a black applicant was listed, Cherokee representatives or the Commission might question him or her about his or her whereabouts after the Civil War, or residency in general. Indeed, African Cherokees faced many legal hurdles in their quest for citizenship.

The most common reason the Dawes Commission rejected a black applicant was that the official Cherokee censuses did not list his or her name. In making application in June of 1901, March Vann sought to enroll his entire family, which included an intermarried wife, children, and himself.²¹⁷ Unfortunately for Vann, his name did not show up on the roll of 1880. Worse yet, the unofficial Kerns-Clifton roll excluded him as well.²¹⁸ Without having his name on a single major census roll, Vann could not build a very convincing case for citizenship. Had the Commission at least found his name on an unofficial census, Vann might have had a chance at citizenship. When coupled with supporting witness testimony, appearing on either the Wallace or Kerns-Clifton roll could improve an applicant's chance at receiving citizenship. Vann failed to produce such evidence. Not only was Vann's name not listed on any Cherokee censuses, but multiple

²¹⁶ Carter, *The Dawes Commission*, 109-110.

²¹⁷ March Vann, Jacket D688, Roll 353, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²¹⁸ *Ibid.*

witnesses placed him living in Kansas.²¹⁹ Moreover, he described his wife as an intermarried U.S. citizen, which probably damaged his case as well. This in conjunction with witness testimony placing him in Kansas, strengthened the argument that he had more connections to the United States than the Cherokee Nation. Not just the evidence, but also the way Vann presented it, convinced the Commission to reject him.

Black applicants listed on the official censuses usually failed in their attempts to confer citizenship on their relatives. Mary Shields learned this when attempting to apply for herself and some of her relatives. At her enrollment hearing, the Commission denied her relatives citizenship because they were not listed on the official censuses, not present, and not all of them directly descended from her.²²⁰ As a black, Shield was less likely than an Indian to show up on the official census. Moreover, she was more likely to experience trouble when applying for relatives. In fact, on November 22, 1904 U.S. court officials ruled that Cherokee Freedmen could not confer citizenship on intermarried spouses.²²¹ While at the time Shield's first applied this was not the case, U.S. officials had been struggling with the issue. Indeed, her race restricted the ways she could present herself and her relatives as qualified for citizenship. It limited the ways she could connect herself to the Cherokee Nation and its land.

Shields' inability to establish her own residence in the Cherokee Nation also damaged the application. Witness testimony placed Shields in Kansas during the period in which she claimed to have lived in the Cherokee Nation. Shields countered these

²¹⁹ Ibid.

²²⁰ Mary Shields, Jacket D719, Roll 353, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²²¹ Carter, *The Dawes Commission*, 119.

accusation by admitting to spending time in Kansas, but argued that she only “went to people’s houses” to visit.²²² While her story was plausible, she had no witnesses to support it. Thus, it likely appeared to the Commission that Shields had lived in Kansas and had lied in an attempt to obtain citizenship for herself and her family. Regardless of whether Shield’s name showed up on the censuses, the Commission now believed she had questionable residential ties to the Cherokee Nation and, thus, viewed her blood relatives as doubtful. With the little evidence Shield’s had, she failed to craft an application that portrayed herself and her family members as deserving of citizenship.

Applicants for Freedmen status also had difficulty convincing the Commission that their intermarried spouses deserved citizenship. Early on in the hearings, the Commission had not determined whether Cherokee blacks could confer citizenship on their intermarried spouses. Later, however, the U.S. Federal Court ruled that intermarried blacks had no right to Cherokee citizenship.²²³ When Emanuel Taylor applied on June 10, 1901, the Court had not yet ruled on the status of intermarried blacks. At that time, Taylor presented the Commission with an official Cherokee marriage certificate and a note from his doctor confirming his marriage.²²⁴ This evidence demonstrated that both the government and members of Taylor’s community recognized his marriage. Indeed, Taylor had done virtually all he could to ensure his wife’s citizenship. The rest was up to fate. Unfortunately for Taylor, the U.S. court eventually ruled against allowing intermarried Freedmen citizenship rights. Unlike Vann and Shields, Taylor had actually

²²² Ibid.

²²³ Emanuel Taylor, Jacket D699, Roll 353, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²²⁴ Ibid.

presented his application to the Commission in a convincing manner, but a later legal ruling affected the outcome of his wife's citizenship application. Had the Court ruled that Cherokee laws concerning intermarried whites applied to intermarried blacks, Taylor's wife would have received citizenship if they had married before 1877.²²⁵ Unfortunately for him, he could not escape the fact that race and citizenship were inextricably linked at these hearings. Blacks faced legal challenges during enrollment that no other applicants did. This inevitably affected the ways they could present themselves as qualified applicants.

Having an intermarried spouse posed serious problems for many women applicants. For instance, Frances Anderson experienced difficulty when applying for her grandchildren and herself on June 7, 1901 because of her husband Thomas Mayfield. Witness testimony placed Mayfield, an ex-slave from the United States, outside the Cherokee Nation. Although Anderson showed up on the appropriate census lists, the Commission questioned whether she lived in the Cherokee Nation.²²⁶ Clearly, the Commission must have believed Anderson went where her husband did. Why else deny her citizenship when every other piece of evidence suggested she deserved it? Moreover, why did the Commission not assume similar things about male African Cherokee applicants? The Commission's contemporary understanding of gender norms probably influenced its decisions in both instances. This seems plausible, especially since the term

²²⁵ In the 1906 case *Daniel Red Bird v. The United States* (1906), the Federal Court decided that the Dawes Commission had to honor Cherokee laws from 1876 and 1877, which limited the inclusion of intermarried whites in the Cherokee Nation. Only whites intermarrying before 1877 could receive citizenship in the Cherokee Nation after the ruling.

²²⁶ Frances Anderson, Jacket D687, Roll 353, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

“Freedmen citizenship” suggests that Cherokee and U.S. officials imagined the ideal black applicant to be a male, ex-slave. As it had with racial ideology, the Cherokee Nation incorporated elements of Anglo-American gender norms into its culture.²²⁷ In fact, many groups opposing enrollment, like the Protective Citizenship Association, only had “men ... to do our business.”²²⁸ With patriarchal conceptions influencing how both Cherokees and Anglo-Americans understood gender roles, Frances Anderson doomed her application by presenting herself as married to a transient “statesmen.” This meant the Commission and Cherokee representatives would likely view her as following in her husband’s footsteps. As a black applicant, this was extremely damaging to her case, for African Cherokees had stricter residency requirements than anyone else.

The Dawes Commission also made applicants for Freedmen citizenship demonstrate their residency in the Cherokee Nation. Doing so, required black Cherokees to prove that they had returned to the Cherokee Nation by February of 1867— within six months after the signing of the Treaty of 1866.²²⁹ The Commission adhered to this criteria because the treaty enumerated it as a necessary qualification for all Cherokee Freedmen citizens. Moreover, Cherokee officials had approved this criteria not only by signing the Treaty of 1866, but also by incorporating it into the Cherokee Constitution of 1866.²³⁰ While an applicant might have returned to the Cherokee Nation by 1867, they

²²⁷ See Perdue, *Slavery and the Cherokee Nation*; and Perdue, *Cherokee Women*. In the first book, Perdue argues that Anglo-American ideas and culture permeated Cherokee Society in the early nineteenth-century. In the latter book, Perdue argues that while these ideas may have permeated Cherokee society, traditional Cherokee culture did not simply disappear.

²²⁸ Eli Graves, Jacket D729, Roll 353, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²²⁹ Carter, *The Dawes Commission*, 7.

²³⁰ The Cherokee National Council, *The Constitution and Laws*, 34.

could have left it soon after. For this reason, the Commission often asked the applicant to prove that he or she had lived consistently in the Nation for an extended period.

Applicants also needed to have been living in the Nation in 1898. To prove these things, applicants had witnesses identify them as community members. How an individual portrayed himself or herself with regard to these concerns could determine whether he or she received citizenship.

The residential stipulation for Freedmen in the Treaty of 1866 mostly affected ex-slaves, since Cherokee slave owners had taken many of them out of the Nation during the Civil War.²³¹ Unsurprisingly, Indian masters had no similar restriction placed upon their citizenship requirements. This demonstrates another way that race created unequal citizenship boundaries for blacks and Indians. Cherokee representatives encouraged the Commission to follow this law because they feared that non-Cherokee ex-slaves, especially from Texas, had migrated to the Cherokee Nation after the Civil War and illegally settled. In an effort to prevent these individuals from receiving citizenship, the Commission consistently rejected applications like those of Jef Rowe and James W. Robinson, former slaves who had “returned to the Nation too late.”²³² As enrollment progressed, applicants became increasingly aware that they needed to tell the Commission when they had returned to the Nation after the Civil War. For instance, Otto Martin actually feared discussing his residency with the Commission during his hearing

²³¹ The Treaty had no stipulation on when Cherokee Indian masters had to have returned to the Cherokee Nation in order to receive citizenship. In fact, there were no stipulations for Indian citizens and residency in the treaty.

²³² Jeff Rowe, Jacket D690, Roll 353, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.; and James W. Robinson, Jacket D695, Roll 264, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

on October 16th 1901. This was because a witness named Nathan Cormicle had testified that Martin had told him that he had “come too late [to the Nation].”²³³ While Cormicle’s testimony did not doom Martin’s claim to citizenship, it presented him as undeserving. Making matters worse, neither Martin nor his representative produced a witness countering Cormicle’s claim. Instead, they questioned its validity. The attorney accused Cormicle of testifying against Martin in order “to get Otto Martin’s place.”²³⁴ In the context of Dawes enrollment, this seemed highly plausible. What better time to settle a land dispute with a foe than during his hearing for citizenship? Despite this counteraccusation, the Commission listed him as doubtful for citizenship, because Martin failed to prove when he returned to the Nation.

The Commission might also reject an applicant if he or she led a transient lifestyle. For example, Tecumseh Holt had his residency questioned, because he said he married his wife in “Oswego [Kansas].”²³⁵ Curious about Holt’s connection to Kansas, the Commission inquired further. In the process, Holt admitted to having worked on “the M.K.&T. [railroad]” in the States, drifting outside of the Nation on other occasions and living “in Fort Scott, Kansas during the war.”²³⁶ Essentially, Holt presented himself as spending substantial time outside the Nation, which made the Commission question his Cherokee residency. To counter this image of himself, Holt explained that although he

²³³ Otto Martin Jacket D692, Roll 353, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²³⁴ Ibid.

²³⁵ Tecumseh Holt, Jacket D694, Roll 353, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²³⁶ Ibid.

“had been out ... several times ..., I have never lived outside of the [Cherokee] Territory; have never owned anything out of the Territory.”²³⁷ In fact, Holt argued, “[I have] nothing but a farm on the Public [Cherokee] Domain.”²³⁸

While Holt’s statements seemed plausible, he needed a witness to corroborate them, hence the reason his family member William Holt testified. During William Holt’s examination, both the attending Commissioner and Cherokee Representative inquired about the community of Vinita, where the Holts claimed to live. For instance, Representative Davenport asked him “where the public school building for the colored children is,” and “where the colored churches are,” and the Commission inquired “how large a town is Vinita?” and “how many churches are there?”²³⁹ While Holt “judge[d] about 2500 or 2000” lived in Vinita, he failed to answer any of the other questions specifically, simply saying, “I dont know.”²⁴⁰ In doing so, he presented himself as unknowledgeable of the Vinita community. This damaged Tecumseh Holt’s application for citizenship. Holt’s race had forced him to defend his residency, but, ultimately, how he presented himself ruined his application. Having provided the Commission with insufficient evidence concerning his residency, Tecumseh Holt was denied citizenship.

Free blacks also dealt with problems concerning their residency. Although listed on neither of the official censuses, Tobe Johnson probably thought he had a reasonable case for citizenship because his name showed up on both the Kerns-Clifton and Wallace

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

rolls. In addition, his wife Lizzie Robinson and children all showed up on the official 1896 roll.²⁴¹ Indeed, the evidence demonstrated that the Cherokee government recognized his wife and children's rights to citizenship and the U.S. government thought he deserved it as well. If the U.S. government twice accepted Johnson as a qualified Freedmen, why had the Cherokee government not? One reason might be that Johnson identified himself as a "free person." When writing the Treaty of 1866, Cherokee and U.S. officials had imagined those deserving of Freedmen status as ex-slaves of Cherokee Indians. As a free black, Johnson certainly did not fit this mold. Without having a former slave master he could not easily tie himself to the Cherokee Nation and, thus, prove he had previously resided in the Nation. Unfortunately for Robinson, the Commission questioned his residency in the Cherokee Nation as well, not only because he was not on the official censuses, but also because he had lived at "Fort Scott, Kansas" during the Civil War. If Johnson could not prove that he had returned to the Cherokee Nation before February of 1867, then he did not deserve citizenship. Furthermore, if he could not prove he had lived in the Nation prior to the Civil War, he also had no claim to citizenship.

Witnesses testified to support Johnson, including a white woman named Mrs. Renyon. In her testimony, Renyon recalled living in the Cherokee Nation as a young girl, where she played with the Robinson children regularly.²⁴² Robinson likely hoped that Renyon would convince the Commission that his family had resided in the Cherokee Nation prior to the War. While Renyon might have accomplished this, her testimony

²⁴¹ Tobe Johnson, Jacket D686, Roll 353, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²⁴² The Application of Tobe Johnson.

never addressed whether Robinson returned to the Cherokee Nation before February of 1867. Nor did the testimony of Lewis Whitmire and Filmore Hicks, who specifically testified about the whereabouts of Johnson after the Civil War. To their best knowledge, they placed him in Kansas directly after the War, and his family at “cabbin creek” Cherokee Nation later on in ’66, but one “didn’t know if I saw Tobe in particular.”²⁴³ Unable to present himself in any other way, Johnson offered what he could. This testimony coupled with the fact that no official Cherokee census rolls listed Johnson, led the Commission to rule against him. Race restricted Johnson’s access to citizenship. Had he not been black, he would have had adequate proof of his residency in the Cherokee Nation.

All the rejected applicants described so far portrayed themselves as black Cherokees worthy of Freedmen citizenship. But what about African Cherokees who recognized themselves as having Indian ancestry as well? How did they apply for citizenship? While a majority of these people probably never disclosed their Indian ancestry to the Commission, the records show that at least a few did. In some instances, these applicants chose to claim citizenship By-blood. Historian Tiya Miles has noted that some applicants like Shoeboots’ former slave and sexual partner even received an allotment because fellow Indian community members testified that she had married Shoeboots, even though she never had.²⁴⁴ Like Miles’ study, mine also demonstrates that multiracial interaction among blacks, whites, and Indians occurred in the Cherokee Nation. While citizenship status divided these groups along racial lines, a sense of

²⁴³ Ibid.

²⁴⁴ Miles, *Ties that Bind*, 184-185.

community sometimes brought them together.²⁴⁵ Nevertheless, stories like those of the Shoeboots were very rare at the hearings. In most cases, even if the applicant had proper documentation— official census recognition and proof of residency— the Commission rejected his or her By-blood claim and relegated him or her to Freedmen citizenship. Black blood defined citizenship status.

Blacks applying for Indian citizenship found themselves in an even worse position than Freedmen applicants if they lacked some of the Commission's qualifications for citizenship. In applying for herself on June 12, 1901, Eliza Ratcliffe identified herself to the Commission as a Cherokee By-blood. First, she demonstrated that her named showed up on the roll of 1880 and assured the Commission that she could “prove it by 100 people.”²⁴⁶ Of course, this effort improved Ratcliffe's chances at receiving Freedmen status, but not citizenship By-blood. To procure the latter, she needed to address her black complexion and refute Nelson Lowery's claim that she was “a colored woman, lived and raised with the Cherokees.”²⁴⁷ This meant that eventually

²⁴⁵ A number of excellent historical works take the time to look at on ground multiracial interactions in the Indian territory. The historians who wrote these books present race relations as complex. Instead of presuming that racial divides were never crossed, they look at instances when people from different races intermingled. In doing so, they also demonstrate that race could, at times, be fluid. See Miles, *Ties that Bind*, Saunt, *Black, White, and Indian*, and Chang, *The Color of the Land*. My study aims to reveal similar trends in history.

I should also mention that historian Ed Ayers has influenced me. Like these historians, Ayers shows that issues and historical events are more complicated than scholars sometimes present them. For instance, Ayers shatters assumptions historians make about the existence of monolithic North and South regions during the Civil War in *In the Presence of Mine Enemies*. More related to the study of race, Ayers addresses the complex social interactions of blacks and whites in the nineteenth-century rural South in *Vengeance and Justice: Crime and Punishment in the Nineteenth Century American South* (New York: Oxford University Press, 1984), and *The Promise of the New South*. Again, he demonstrates that our assumptions about stark black, white racial divides in the late nineteenth-century South are not entirely correct.

²⁴⁶ The Application of Eliza Ratcliffe.

²⁴⁷ Ibid.

she would have to present herself as more than a black woman adopted by an Indian family.

In constructing an Indian identity for herself, Ratcliffe called a number of witnesses to testify on her behalf. The first witness, John McCarty, described Ratcliffe as a woman who “spoke good Cherokee, as good as I speak.” He also mentioned that not only did she speak Cherokee as well as a full-blooded Indian, but in the community “she was known by Iyosta [her name in Cherokee].”²⁴⁸ McCarty’s testimony presented Ratcliffe as an accepted member of the Indian community in which she lived. In virtually every way, Ratcliffe appeared culturally Cherokee: she could speak Cherokee, was known by a Cherokee name, and Cherokee Indians like McCarty recognized her as such. McCarty, however, would not identify her as racially Indian, telling the Commission that “I can’t state to that, she was very black.”²⁴⁹ Indeed, McCarty imagined a multiracial Cherokee society that accepted Eliza Ratcliffe as a member, but never considered her an Indian, because she looked black. Without Cherokee officials and members of her community identifying her as racially Indian, Ratcliffe could not receive By-blood citizenship. This was because common racial perceptions and law restricted the ways she could present herself as Indian and claim By-blood citizenship.

While in the majority of cases black applicants did not receive citizenship By-blood, the Commission enrolled at least a few. One such man was W.B. Lynch, who freely identified himself as both “a citizen By-blood” and “a freedmen” when enrolling

²⁴⁸ Ibid.

²⁴⁹ Ibid.

his daughter.²⁵⁰ Not only did he claim himself a citizen By-blood, but the Commission and Cherokee officials recognized him as such. This created a controversy over how the Commission should enroll Alice. While her father was a Cherokee By-blood, the Commission had granted her mother Laura Lynch Freedmen citizenship. During W.B. Lynch's application on September 29, 1900, "the attorneys, or Commissioners ... discussed the matter ... and said that her mother was entitled to enroll her."²⁵¹ Why they decided this is unclear from Lynch's testimony and official statements. The Commissioners listening to W.B. Lynch's story had difficulty understanding it as well and decided to prolong her application until May 18, 1905. Lynch had no objection. While he saw no "material difference" in Alice receiving citizenship By-blood— with either she procured an allotment— he "want[ed] her to be enrolled the same as I am."²⁵² Likely, he sought citizenship By-blood for her because it would elevate her social status in the eyes of Cherokee officials and some community members. Also, although Lynch clearly did not realize it, Freedmen citizens could only select forty acres of land, whereas a By-blood citizens received "land worth \$325.00 and a homestead equal to forty acres of average-value land."²⁵³ The Lynchs' enrollment story reveals that how the Commission determined a person's race could be quite arbitrary. Indeed, two people of mixed African and Indian descent could receive two different decisions on the status of their applications, even if they were father and daughter. Lynch established himself as

²⁵⁰ Alice Lynch, Jacket D701, Roll 353, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Carter, *The Dawes Commission*, 141.

connected to the Cherokee Nation and its land through his Indian bloodline, whereas his daughter could not.

Although filed as doubtful Freedmen applicants, the aforementioned black Cherokees were also rejected applicants for By-blood citizenship. Their stories reveal that blood and race played a significant role in determining who deserved Indian citizenship and rights to Cherokee land. If an applicant appeared black, or could not disprove witness testimony linking them to an African heritage, they likely could only obtain Freedmen citizenship. Other factors also contributed to the Commission rejecting By-blood applicants. For one, not showing up on the official censuses greatly diminished an applicant's chance at citizenship, but did not destroy it. In these instances, applicants needed to provide other legal documentation that they belonged to the Cherokee Nation. This could range from citizenship certificates to proof of blood quantum and residency in the Nation. While the Commission had no exact formula for determining citizenship, most accepted applicants were listed on one of the official censuses and could prove their blood status and residency. Essentially they failed to present themselves as fitting the Commission's definition of Cherokee Indianness.

Since the official censuses did not list Alice P. Ross, she had to imagine herself as connected to the Cherokee Nation in other ways. For one, she told the Commission that she had received "strip payments" from the Nation.²⁵⁴ By mentioning this, Ross hoped to demonstrate that the Cherokee government had recognized her right to citizenship, even if it had not listed her on the official census of '80. This information, of course, did not

²⁵⁴ Alice P. Ross, Jacket D95, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

explain her Indian heritage. To address this issue, Ross told the Commission that she claimed Cherokee heritage through her mother.²⁵⁵ In addition, she had Oscar P. Adair testify that she “was always considered a Cherokee By-blood.”²⁵⁶ Adair’s comment not only portrayed Ross as a Cherokee By-blood, but as an established member of the local community. In constructing this case, Ross had presented herself as a Cherokee By-blood in multiple ways. Regardless, the Commission still refused to overlook the fact that her name did not show up on an official census. It believed she had failed to legally document her Indian bloodline.

Ross’ denied application reveals that while the Commission had a method for determining citizenship, ultimately, the process could still be quite arbitrary. Why did the Commission accept some applicants whose names were not on the official censuses, but not others? For example, the Commission accepted Bert Davidson for citizenship, even though the Cherokee government had never officially recognized him.²⁵⁷ Like Ross, Davidson showed up on neither of the official censuses and constructed a Cherokee identity for himself through witness testimony and a discussion of his blood quantum. Using similar means, Ross and Davidson achieved opposite results. The information provided in both applications offers no insight into what differentiated these two applicants. At best, one can only speculate on the large range of possibilities. One plausible explanation is that at some point during the application process Davidson proved to the Commission that the Cherokee government had recognized his citizenship.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Bert Davidson, Jacket 10949, roll 264, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA

Perhaps the attending Cherokee representative spoke on his behalf or the Commission found his name on a census roll. In contrast, Ross failed to persuade the Commission that he had a claim to Cherokee Indian heritage. Indeed, race was contingent at these hearings. How the Commission interpreted it by application determined whether and how it would affect an applicant's chance at citizenship.

A comparison of Davidson and Ross' applications suggests the arbitrary nature of the enrollment process. Despite the lengths the Commission undertook to make status determination an exact science on paper, it often acted pragmatically at the actual hearings. Doing so, enabled applicants like Ross and Davidson to claim citizenship, even if they did not fit the mold of the ideal citizen. Whether the Commission granted these applicants citizenship then depended on a number of possible contingent factors. While applicants could not control many of them, they could play a part in constructing their own Cherokee racial identities. How they prepared their applications for the Commission helped determine whether they would receive citizenship. As the cases of Bert Davidson and Alice Ross demonstrate, presentation mattered. It could determine whether the applicant convinced the Commission of his or her blood connection to the Cherokee Nation.

William H Smith learned how important it was to present the Commission with a believable application during his hearing. On August 6, 1900 Smith appeared before the Commission to apply for himself as an "adoptee" and his wife as a citizen By-blood.²⁵⁸ Unfortunately for Smith, his wife had no official proof that the Cherokee government had

²⁵⁸ The Application of Alice P. Ross.

recognized her as a citizen. Smith, however, had a certificate from 1899 that proved his right to citizenship as an adopted citizen. To bolster his wife's claim, Smith told the Commission that the Cherokee government had made an "error" in making the 1899 citizenship certificate.²⁵⁹ In actuality, he argued, the certificate should have listed his wife's name, not his.²⁶⁰ Why would Smith say this? Most likely he saw it as the only way he could procure citizenship for both himself and his wife. If the Commission recognized her citizenship, he might receive intermarried citizenship, regardless of whether he had a certificate. The Commission foiled Smith's plan by rejecting both him and his wife. Indeed, he had presented his wife and himself as qualified for citizenship in a way that did not appeal to the Commission. While the Commissioners were willing to accept alternative definitions of citizenship, they obviously thought Smith's story stretched the boundaries too far. They did not believe he had adequately documented his or her connections to the Cherokee Indian people and Nation.

The Commission certainly reworked the contours of citizenship for a number of accepted applicants, but this should not imply that the law did not apply in most circumstances. The application of Dennis Hood and his family reveals how rigidly the Commission could follow its rules for citizenship. Hood first applied for his wife Zoe, his daughter Lizzie, and himself on August 9, 1900. At the hearing, he described himself as a citizen By-blood with at least "1/8," since his father had "1/4."²⁶¹ The official census listed Hood on it and Martha Vann, who had "nursed him since he was a baby" said he

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Dennis Hood, Jacket D98, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

had “1/4” blood.²⁶² Overall, his application appeared strong: his name showed up on the census, he claimed to have two Cherokee parents, and his wet nurse supported his statements. The applications for his wife and daughter, however, were an entirely different story. Hood could not document his wife’s Cherokee heritage. This not only meant that she would have to apply for citizenship by intermarriage, but that Hood needed to prove that he was legally her husband. Zoe’s problems had implications for Lizzie as well. If Zoe had no Indian blood, then Lizzie had to claim her right to citizenship through her father’s bloodline. To do this, Hood would have to convince the Commission that Lizzie was his biological child.

Dennis Hood returned before the Commission on February 11, 1901 to deal with these matters. Before he addressed these issues, however, a number of witnesses appeared before the Commission to complicate his story. While Hood had claimed that both his parents were Cherokee By-blood, witnesses John Faulkner and John W. Breedlove disagreed. Faulkner described Hood’s father as a Cherokee, but insisted his mother “was white.”²⁶³ Breedlove concurred, reasoning that she was “red headed.”²⁶⁴ Although others imagined Hood’s mother as white because of her physical appearance, in the long-run, their opinions did not affect his chance at citizenship. They might have damaged Zoe and Lizzie’s, however, by presenting Hood as a teller of half-truths. Based on this, could the Commission trust Hood to testify honestly about his family? To support Zoe and Lizzie’s claims to citizenship, the Commission asked Hood to present

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

two certificates: one of his marriage, and one for his daughter's birth. On October 17, 1902 Hood and his family obliged to the latter, but did not produce a marriage certificate.²⁶⁵ Having legally documented their rights to citizenship, Dennis and Lizzie Hood received it. Although Zoe Hood claimed she was "a Cherokee By-blood, but could not prove it," the Commission denied her citizenship, because she provided no legal documentation that she had a connection to a Cherokee Indian and, thus, a connection to the Cherokee Nation and its land.

When doubtful applicants were not listed on the official censuses, they sometimes testified about how long they had lived in the Cherokee Nation. Zoe Hood never took this route, most likely because she assumed the Commission had reached this conclusion based on her relationship with her husband. Applying a few days after the Hoods in August of 1900, Jeremiah Martis Harris, however, utilized this strategy. Unlike, Zoe Hood, Harris was a single male who "never did prove anything about my race."²⁶⁶ The Commission likely thought Harris fit the profile of the white male settler trying to capitalize on the allotment of Cherokee lands. Since Zoe Hood was a woman married to an Indian man, she did not fit this profile, but Harris did. Hence, Harris felt the need to defend his residency in the Cherokee Nation. In doing so, he conflated his tenure in the Nation with the right to citizenship.²⁶⁷ While the Commission had residency requirements, fulfilling them did not guarantee an applicant citizenship. Applicants with questionable claims to Indian ancestry who were later accepted often highlighted their

²⁶⁵ Ibid.

²⁶⁶ Jeremiah Martis Harris, Jacket D115, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²⁶⁷ Ibid.

residency qualifications when presenting their cases for citizenship. Unlike these applicants, Harris was not listed on a census roll and had no certificate of citizenship. Moreover, his white racial identity limited his access to citizenship by placing stricter residency requirements on him. Unable to document these things, Harris failed to convince the Commission that he had legitimate connections to the Cherokee Nation and people.

Sometimes an applicant had to prove his Indian racial heritage to the Commission, even if the official censuses listed his or her name. As the aforementioned stories of Martha Hamilton, E.B. Lynch, and Eliza Ratcliffe reveal, if the Commission believed an applicant had African ancestry, he or she had virtually no chance at receiving By-blood citizenship. The Commission determined an applicant's "blackness" in a variety of ways. Foremost, it relied on the census data compiled by the Cherokee government. If one of the two official censuses listed an applicant as black or a "Freedmen" then so did the Commission. Witness testimony could also contribute to the Commission's decision to label an applicant black, but this, of course, depended on the circumstances. Lastly, an applicant's physical appearance often doomed their By-blood application. If the Commission thought the applicant appeared black, then it was more inclined to believe witness testimony affirming this.

The Commission determined a person's whiteness similarly to the way it determined blackness, using the censuses, witness testimony, and physical appearance as criteria. The one drop rule, however, did not apply to those accused of being white. Cherokee law allowed an applicant to have both white and Indian ancestry and still

receive By-blood citizenship. Only if a mixed blood applicant could not produce legal documentation of his Indian lineage did the Commission question it. For instance, Lula M. Nicholson presented her case for citizenship on August 22, 1900. When the Commission could not find her name on the official censuses, Nicholson had to explain her Cherokee ancestry. Unfortunately for her, she admitted that she “doesn’t know how much blood” she had, because there was “so little to find.”²⁶⁸ By presenting herself in this manner, Nicholson damaged her chance at obtaining citizenship. Indeed, without proper legal documentation she could not prove her Cherokee lineage. This coupled with the fact that she described herself as having “little” Indian blood depicted her as white.

Depending on Nicholson’s physical appearance, the Commission might have imagined her race in a number of ways. If she appeared physically white, as had Dennis Hood’s mother, than perhaps they thought she was lying about her heritage. If she had physical features that they stereotyped as Indian, than perhaps they found her story plausible. Regardless, the way Nicholson presented herself further damaged her already precarious application by highlighting her connection to whiteness, instead of emphasizing her Indianness. Hence the reason the Commission labeled her doubtful. Her story demonstrates that whiteness could deny an Indian applicant of citizenship rights all together. Without an established Indian bloodline, an applicant did not have the necessary racial identity to claim By-blood citizenship.

The Commission sometimes demanded a By-blood applicant prove more than just his or her Cherokee lineage. Depending on the circumstances, it asked about an

²⁶⁸ Lula M. Nicholson, Jacket D160, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

applicant's residency as well. In most cases this meant applicants only had to identify where they lived and, occasionally, for how long. If an official census did not list the applicant, the Commission might ask him or her to explain his or her living situation. It might also do so for any number of other reasons. Residency requirements for By-blood applicants differed from those of Freedmen applicants in that black Cherokees had to explain their whereabouts after the Civil War. Also, generally speaking, witnesses, Cherokee representatives, and even the Commission were more likely to accuse blacks of vagrancy. Intermarried whites received similar treatment because officials stereotyped them as land thieves.

In special cases like Nannie Murray's, the Commission doubted the residency of Indians claiming By-blood status too. Nannie Murray experienced difficulty when applying in August of 1900, because the Commission discovered she had lived a transient lifestyle. Murray explained to the Commission that her husband's service in the army forced her to move around a lot. While she lived in the Cherokee Nation, she had "been in and out" of it to see her husband, who fought "hostile Indians."²⁶⁹ Murray's story must have mattered little to the Commission, because it listed her as doubtful. To have received citizenship, she needed to have presented stronger documentation of her residence and corroborated her claims. On March 16, 1903, the U.S. court reinterpreted Cherokee law concerning residency in a way that allowed applicants with extenuating circumstances like Murray's to receive citizenship.²⁷⁰ At the time, it believed that the law

²⁶⁹ Nannie Murray, Jacket D152, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²⁷⁰ Carter, *The Dawes Commission*, 119.

unfairly excluded deserving Indians from Cherokee citizenship. Blacks, who were non-Indians received no similar treatment. Indeed, racial conceptions about Indian rights to Cherokee land and citizenship influenced the court's decision. Murray's story reveals yet another way that race affected how black, white, and Indian applicants presented themselves. Had Murray had black blood, she would not only have been listed doubtful, but rejected.

Although intermarried whites applied at By-blood hearings, their requirements for citizenship differed from Cherokee Indians. Adopted whites not only had to have their names on the official censuses, but prove that they had lived regularly in the Nation and had married a Cherokee Indian. After the 1906 ruling in *Daniel Redbird v. The United States*, adopted whites also had to prove that their marriage to a Cherokee Indian had occurred before 1877.²⁷¹ In this ruling, the Court said that the Commission had to recognize two intermarriage laws passed by the Cherokee Nation in 1876 and 1877, respectively, both which limited the access of adopted whites to Cherokee land.²⁷² To decide who deserved intermarriage citizenship, the Commission adhered to census and residency qualifications, as well as Cherokee intermarriage laws. A white person's marriage demonstrated his or her connection to a recognized Cherokee Indian, while proof of residency and appearing on the census proved their tie to the Cherokee Nation and its land. Typically, denied applicants lacked one or more of the criteria for adopted citizenship, but they constructed other connections between themselves and the Cherokee

²⁷¹ *Daniel Redbird v. The United States* (1906).

²⁷² *Ibid.*

Nation in an attempt to make up for this. These imagined connections, they hoped, would convince the Commission that they deserved citizenship.

Like all other applicants, intermarried whites had to show that the official censuses of the Cherokee Nation listed them. However, this was especially important for them, because the Commission and Cherokee representatives might otherwise suspect them of being land thieves. An adopted white applicant had even less of a chance of obtaining citizenship if his or her spouse was not listed on the official censuses. For instance, Samuel Holmes found himself in this predicament when applying in August 1900.²⁷³ To construct his case for citizenship, Holmes relied heavily on the testimony of community members who recognized his wife Sallie Fleetwood as a Cherokee. Taylor Haks informed the Commission that Fleetwood had “been raised here [in the Nation] ever since I know,” and that “we were together as children, and [even] talked Cherokee.”²⁷⁴ To some extent, the Commission must have thought this portion of Holmes’ application interesting, because it asked Haks how he “addressed her in full-blood Cherokee.”²⁷⁵ Replying, Haks said that “it’s been so long, I can’t pronounce it [her Cherokee name] in Cherokee.”²⁷⁶ Did the Commission believe his response? Based on Fleetwood’s tenuous claims to Cherokee heritage, it would not be unreasonable to assume they did not. By not building a strong case for his wife’s Cherokee Indianness, Holmes had created a weak foundation for his own. Unsubstantial as it might have been, this was the best evidence

²⁷³ Samuel Holmes, Jacket D94, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Ibid.

Holmes could present to the Commission concerning his wife's claims to Cherokee lineage.

Next, Holmes documented his marriage to Fleetwood in order to elucidate his connection to the Cherokee Nation. In these regards, Holmes proved more successful. While he never produced an actual marriage certificate from the Cherokee government or the United States, he collected from family friends a large number of affidavits confirming the marriage.²⁷⁷ It certainly helped that those signing the affidavits lived in the Cherokee Nation. Holmes had done a satisfactory job providing evidence of his marriage to Sallie Fleetwood, but he could not document her right to Cherokee citizenship. As she was not listed on the official censuses, Holmes could only present her as Cherokee through witness testimony. Unfortunately, Hak's circumstantial comments, while intimate, likely came across as fraudulent, because Fleetwood had tenuous claims to citizenship. Without a solid case for Sallie Fleetwood's By-blood citizenship, Holmes had nothing on which to base his claim to intermarriage. Indeed, establishing a believable marital connection to a Cherokee Indian was paramount for intermarried whites making claims to the Cherokee Nation, citizenship, and land.

Not all white applicants could document their marriages as easily as Holmes. Indeed, many, like Alexander B. Clapp, experienced the opposite problem Holmes had. They could prove their supposed spouses were Cherokee By-blood, but they could not prove they had married him or her. On August 7, 1900 Clapp applied for himself as an intermarried citizen. At the hearing, he claimed to have had two Cherokee wives in his

²⁷⁷ Ibid.

lifetime.²⁷⁸ For some reason not entirely clear, Clapp could not legally apply for intermarriage through his second wife. Based on a review of applications similar to his, I have surmised that either Clapp had not legally married this partner, she did not show up on the official Cherokee censuses, or he had no legal documentation of the marriage. Regardless of the reason, Clapp next applied through his first wife, which the Commission allowed. Unfortunately, Clapp had no marriage certificate with him to prove this claim and the Commission asked that he return with one at a later date.

On December 4, 1900 Clapp returned without a marriage certificate. In its place he had brought two witnesses: the governmental clerk of his district and a character witness named Hulbert Bean. The Commission first examined clerk Walker, who when asked by the Cherokee representative if the records listed Clapp as married, replied “I knew Mr. Clapp; I knew he got the license according to law, and I know that he has been living in this country.”²⁷⁹ Although the records did not list Clapp’s name, Walker believed it should be there. Bean also supported Clapp, describing him as “a man of good standing and good character in the neighborhood.”²⁸⁰ This time, the Commission granted Clapp citizenship. Though he had not provided an actual marriage license, it found his witness testimony convincing.

Clapp’s story demonstrates how fine the line between an accepted and denied application could be. During the initial hearing, the Commission had rejected Clapp’s application through his first wife and labeled his claim through his second wife

²⁷⁸ Alexander B. Clapp, Jacket D89, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

“doubtful.” In his final hearing, Clapp received citizenship despite never producing a marriage certificate. Although the Commission asked intermarried citizens to provide legal documentation of their marriage, it bent the rules for Clapp. It thought that he presented a persuasive case that he had married a Cherokee By-blood. Other applicants relied on witness testimony and received similar results, but not all were that lucky. This meant that any number of contingent factors might have convinced the Commission to accept a less than ideal application. Indeed, the applicant could play a role in the determination of his status. If he crafted his application in a way that appealed to the Commission then he improved his chance at citizenship, but if he crafted it in a way that made his claims to Cherokee-ness appear tenuous, then he hurt his case for citizenship. Only by demonstrating that he had married a Cherokee could he claim a connection to the Cherokee Indianness and, thus, the Nation and its lands.

Cherokee marriage laws could also complicate an intermarried person’s application. While the applicant might prove his or her marriage to a Cherokee By-blood, other laws might still prevent him or her from receiving citizenship. For instance, Cherokee law prohibited applicants who had divorced their spouses from receiving citizenship. It also denied it to those who had abandoned their spouses without an actual divorce. Yet, the law also allowed for some questionable characters to receive citizenship, despite their behavior. If an applicant was accused of beating his wife, and she had left him, he still had a right to citizenship.²⁸¹ After 1906, when the U.S. Courts

²⁸¹ See the application of William Rush, Jacket D146, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

ruled that the Commission should not accept whites for citizenship who had married after 1877, the contours of intermarried citizenship became less murky.

Prior to 1906, some applicants tested the boundaries of intermarried citizenship by applying through a dead spouse. John A. Wicks attempted to do so in late August of 1900. Wicks, a white man, applied for himself and three children under the auspices that his deceased wife was a Cherokee By-blood.²⁸² Since her death, Wicks had remarried, this time to a white woman. While Wicks' children by the first wife received citizenship, he did not.²⁸³ The Commission ruled that Wicks had forfeited his right to Cherokee citizenship by remarrying. Had he remarried with another Cherokee By-blood, as Alexander Clapp had, he would have been eligible for citizenship. In John Wicks' case, the Commission strictly adhered to the criteria for intermarried citizenship. This meant Wicks had little wiggle room in which to present himself as qualified for citizenship. Comparing the stories of Wicks and Clapp reveals how far the Commission would bend its rules for the applicant. Since Clapp claimed to have remarried a Cherokee, the Commission allowed him to support this with evidence other than a marriage certificate. Wicks, however, received no leniency from the Commission, suggesting that it placed more emphasis on following Cherokee remarriage laws than the criteria of producing a marriage certificate. These laws, it believed, determined how an intermarried applicant could establish themselves as connected to the Cherokee Indian community. The ability of an applicant to present himself as a qualified citizen was often contingent upon the

²⁸² John A. Wicks, Jacket D175, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²⁸³ Ibid.

judgment of the Commission. If an applicant could not persuade the Commission that he or she fit the legal definition of an intermarried citizen, then he or she was rejected.

The Commission had the same basic requirement for women intermarried applicants. Annie Nelson found this out when applying for herself and three children on August 10, 1900. While the children received citizenship, the Commission rejected Nelson, because she had remarried to a “white man.” As in Wicks’ case, the Commission followed Cherokee law, which did not discriminate between the rights of former intermarried men and women.²⁸⁴ The law intended to protect Cherokee lands from falling into the hands of unqualified whites, regardless of gender. The Commission, along with Cherokee representatives, imagined any intermarried white remarrying to a white as undeserving of citizenship, even if it more often suspected men of doing this. In this sense, adopted applicants had to establish a clear relationship between a Cherokee Indian and themselves in order to procure an allotment in the Nation. If they had remarried to a non-Indian Cherokee, then they broke this tie, even if they presented their past marriage as an enduring connection.

Intermarried applicants also could not abandon their Indian spouses and expect to receive citizenship. Hiram N. Storm’s wife was neither dead nor had left him when he applied for citizenship on August 21, 1900.²⁸⁵ During his testimony, however, the Commission discovered that Storm no longer lived with his wife. Upon hearing other witnesses discuss Storm’s marriage, the Commission determined that he had

²⁸⁴ Annie Nelson, Jacket D109, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²⁸⁵ Hiram N. Storm, Jacket D150, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

“abandoned” his wife.²⁸⁶ While Storm had attempted to present himself as inculpable for the separation, he failed. This proved detrimental to his case, because Cherokee law stated that intermarried whites forfeited their citizenship rights if they willingly left their spouses. Storm produced no credible witnesses to counter the accusations and, as a result, the Commission ruled against him. In essence, he had presented himself as legally unconnected to his Cherokee Indian wife, despite the marriage. Without such a connection he had no right to the Nation or its land, for it was only through her racial heritage that he had any claim to citizenship at all.

Even if an intermarried applicant proved he had married a Cherokee By-blood and lived happily with them, he or she still might not receive citizenship. The Commission had residency requirements for intermarried whites, just as it had for blacks and Indians. If asked, whites needed to demonstrate that they had lived in the Nation consistently since marrying their Cherokee spouses. Typically, the Commissioners only interrogated an applicant about his or her residency if there was doubt about it. When Clement George Clarke applied on August 23, 1900, he underwent cross examination concerning his residency because he had spent the majority of his adult life studying theology at Yale.²⁸⁷ His wife, a Cherokee By-blood according to the official census, had lived with him in New Haven, Connecticut during his years at school.²⁸⁸ Hence, neither he nor his wife could claim residency in the Cherokee Nation. To address this issue, Clement George Clarke explained that he intended to use his Yale education to “be a practicing

²⁸⁶ Ibid.

²⁸⁷ Clement George Clarke, Jacket D171, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

²⁸⁸ Ibid.

minister in the Nation.”²⁸⁹ Since Clarke could not make a claim to residency, he presented himself as a minister seeking to preach to a Cherokee community.²⁹⁰ He probably thought this would appeal to the Commission, because the U.S. government had long supported Christian influence among Indian populations.²⁹¹ To Clarke’s chagrin, however, he soon discovered that the Commission would not admit him, despite his intention to spread Christianity among the Cherokee. Although married to a Cherokee By-blood, Clarke had not lived consistently in the Nation, and thus, the Commission rejected his application for citizenship. His story elucidates that the Commission envisioned a relationship between citizenship and residential ties to the Cherokee Nation and its land, as well as a racial one. Clarke failed to present himself as having this necessary tie. Because he was white, he had stricter residential requirements than an Indian. Indeed, race played a factor in excluding him from the Cherokee Nation.

A number of whites applied with questionable residency statuses, but only a few attempted to enroll based on their blood lineage. Effie Denton could prove her family’s long residency in the Cherokee Nation, but had never married a Cherokee By-blood.²⁹² To present herself as qualified for citizenship, she provided the Commission with a transcript from the Cherokee Supreme Court, which stated that her grandmother had

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ See William G. McLoughlin, *Cherokees and Missionaries, 1789-1839* (New Haven: Yale University Press, 1984); and William G. McLoughlin, *Cherokee Renascence in the New Republic* (Princeton: Princeton University Press, 1986).

²⁹² Effie Denton, Jacket D79, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA.

obtained Cherokee citizenship in 1870.²⁹³ Indeed, Denton claimed citizenship through her white bloodline. Although Denton imagined herself as a Cherokee because of her relation to her white grandmother, the Commission disagreed. Initially listing her as “doubtful,” the Commission later rejected Denton based on the fact that Cherokee law stipulated that white citizens could not confer adopted citizenship onto their children. A child of a white parent could only receive Cherokee citizenship if their other parent was a Cherokee By-blood. Cherokee law, not Denton’s argument, prevailed. At the heart of this law was the idea that race defined the contours of citizenship status. Without Cherokee heritage or appearing physically Indian, Denton had no claim to By-blood status. Her whiteness made it so she could only apply for citizenship through an Indian spouse, which she did not have.

After the 1906 ruling in *Daniel Redbird v. The United States*, the number of denied intermarried applicants increased dramatically. The Commission rejected applicants placed as doubtful or enrolling late, who had married their Cherokee spouses after 1877. Ida Still fell into this category when applying for her children and herself on May 11, 1900. She had married William Still “in Texas in 1885,” but could not produce a marriage license.²⁹⁴ To prove her marriage, Still had Joseph B. Hollingsworth testify that “a Methodist Minister” had wed her and William.²⁹⁵ Unfortunately for Still, her marriage had occurred after 1877, as did her second one to applicant James Cobb. Yet, in 1902, Ida Still could not have known that the *Redbird* decision would affect her application.

²⁹³ Ibid.

²⁹⁴ The Application of Ida Still.

²⁹⁵ Ibid.

Thus, on October 8th Still returned before the Commission to claim intermarriage once again, this time through James Cobb.²⁹⁶ The Commission entertained her new application for citizenship, but still listed her as doubtful. It based the decision primarily on her inability to clarify how long she had lived in the Nation and uncertainty about Cherokee intermarriage laws.²⁹⁷ By May 5, 1905, Ida Still, now Ida Cobb, had virtually given up on obtaining citizenship for herself. When questioned by the Commission whether she claimed any rights to citizenship she replied, “I don’t know as I do, only just through adoption.”²⁹⁸ Whereas earlier Ida had actively sought citizenship for herself, the cumbersome enrollment experience had convinced her that she had little chance of receiving it. Instead, that day she “appeared before the Auxiliary Cherokee Land Office of the Commission ... to select an allotment for your [her] minor children.”²⁹⁹ Ida Still Cobb could not obtain citizenship, but she could procure a land allotment for her family thanks to her children’s bloodline. Cobb’s story was not uncommon among intermarried applicants.³⁰⁰ Although placed outside the contours of Cherokee citizenship, having qualified minor children allowed these applicants to legally secure an allotment. They

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ For example see Joel Frazier, Jacket 137, Roll 175, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA; Helen Bearsick, Jacket 7, Roll 174 Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA; Augusta L. Perry, Jacket 112, Roll 175, Applications for Enrollment of the Commission to the Five Civilized Tribes, 1898-1914, M1301, NA; Terrel Hanson, Jacket D135, Roll 308, Applications for Enrollment of the Commission to the Five Civilized Tribes, 898-1914, M1301, NA.

used their children to connect themselves to the Cherokee Indian race, its Nation, and land.

During enrollment, whites, blacks, and Indians all faced the possibility that the Commission might deny their applications. Generally speaking, the Commission rejected applicants for Freedmen, adopted, and blood statuses for three reasons: either they could not legally document that the Cherokee government had previously recognized their citizenship, Cherokee law prohibited their claim to it, or they could not prove their residency in the Nation. Of course the specifics of these generalities differed depending on the citizenship status the applicant sought. For instance, whites had to meet the requirements of Cherokee marriage laws, the Treaty of 1866 dictated residency criteria for blacks, and Indians had to speak about their blood quantum. While generally strict with its requirements, the Commission sometimes bent the rules and conferred citizenship on applicants lacking proper qualifications. However, the applicant first had to construct a Cherokee identity for him or herself that convinced the Commission that they deserved citizenship.

Rejected applicants fell into two categories: those who the Commission immediately denied based on a problem with their application and those who had a chance to explain that problem, but failed to present themselves in a positive light. Sometimes the differences between the latter of these two groups and accepted applicants lacking important citizenship qualifications blurred. In these cases, contingent factors determined whether the applicant did or did not receive citizenship. While the applicant had little control over many of these factors, he or she still had the ability to craft the

application. How one presented witnesses and evidence could sway the opinion of the Commission. Doubtful applicants later rejected citizenship failed to persuade the Commission to imagine Cherokee-ness from their perspective. Unlike accepted applicants with questionable qualifications, they never established connections between themselves and the Cherokee Indian race, Nation, and land that appealed to the Commission.

As was the case with accepted applicants, race played a central role in determining how rejected applicants presented themselves. It helped draw the boundaries of citizenship by deciding what status an applicant could seek and what evidence he or she had to present to the Commission. In doing so, it also helped determine who fell outside the contours of citizenship. Of course, race was contingent on any number of factors in an application. It also depended on how the Commission chose to evaluate the application. Because of this, how an applicant presented him or herself mattered. Applicants had the ability to connect themselves to the Cherokee Nation, Cherokee Indian ancestry, and Cherokee land in ways that the Commission would find convincing. Rejected applicants failed to do so.

Conclusion: From Race, Citizenship, and Land to Race, Citizenship, and Funding.

When determining the contours of Cherokee citizenship, the Commission imagined a relationship between an applicant's race and his or her connection to the Cherokee Nation and its lands. This imagined relationship differed from person to person, or did not exist at all, depending on the individual's race and other contingent factors. In order to receive citizenship, all applicants had to take this imagination into consideration when enrolling. Not doing so usually meant an applicant would fail to receive citizenship. Without citizenship, an applicant procured no land allotment. This defeated the purpose of applying for citizenship, for blacks, whites, and Indians alike enrolled with the Dawes Commission in hopes of eventually receiving a land allotment in the Cherokee territory.

To the chagrin of the U.S. government and applicants for Cherokee citizenship, Non-Cherokee land speculators found ways to acquire tracts of Cherokee lands without obtaining citizenship, during and after the hearings. These individuals found legal as well as illegal means of accomplishing this feat. Some chose to lease Cherokee lands from qualified applicants until they could buy it from them. Others simply took advantage of the confusion caused by enrollment and allotment, making illegal contracts with Cherokee citizens for their allotments. In the latter case, the Federal government attempted to prosecute these speculators, but could not do so in every case.³⁰¹ This meant

³⁰¹ *And Still the Waters Run*, 92-125.

that speculators could avoid establishing any connection between themselves, their race, and their rights to the Cherokee Nation and its land and still receive allotments.

Several factors gave land speculators special access to vast amounts of Cherokee land. For one, speculators were in the business of selling land, even if not in Indian territory. Through these experiences, they had developed political and social relations which allowed them to take advantage of Cherokee allotment. Like Cherokee elites, speculators also had access to capital, which they could use to lease or buy large tracts of land in the Cherokee Nation.³⁰² Moreover, speculators, more so than Cherokee elites, knew the ins and outs of land speculation, as well as how to deal with the Federal government. Commonly-held racial perceptions about Indians also justified speculators in their quest for land.³⁰³ The most important of these beliefs was the presumption that Indians could not manage their own affairs. This basic premise had convinced the Friends of the Indian, as well as Henry Dawes, to formulate and openly support the allotment of Indian lands. Speculators drew on this same presumption in order to present themselves to the Federal government as necessary for managing Indian lands. These developments demonstrate that race, class, and political connections could afford an individual access to Cherokee lands, even if he or she did not have a claim to Cherokee citizenship or the Nation. Indeed, their race, class, and political power allowed these individuals to procure Cherokee Indian lands without ever imagining themselves as connected to the Cherokee Nation and its land through their race and history.

³⁰² Ibid.

³⁰³ Hoxie, *A Final Promise*.

Most people seeking Cherokee land, however, obtained it by receiving citizenship from the Commission. They were applicants for citizenship, like those in the proceeding stories of this thesis. For them, the hearings offered a forum in which they could make a case for citizenship and land. They constructed Cherokee identities for themselves based on the Commission's criteria for citizenship. The specific qualifications for Freedmen, By-blood, and intermarried status differed, but, generally speaking, each required the applicant to prove residency and find his or her name on an official Cherokee census roll. Beyond this, the Commission might ask the applicant to discuss a range of other subjects, including marriage and lineage. Applicants who had to respond to these questions usually did not fit the Commission's mold of the citizenship status they sought. Typically, this meant they lacked documented proof of their residency, being recognized by the Cherokee government on old censuses, or their marriage to a Cherokee Indian. To still receive citizenship, these applicants could present witness testimony in lieu of official government documents or simply emphasize the importance of other criteria in proving one's citizenship. For every applicant the circumstances were different. Contingent factors determined whether and how these applicants obtained citizenship. One thing, however, stayed consistent for all applicants. Race played a significant role in determining what rights, if any, they had to citizenship and the Cherokee Nation and its land. In order for an applicant to receive citizenship, he or she had to convince the Commission that his or her connections to the Cherokee Nation, its lands, and the Indian race were genuine. Doing so meant imagining Cherokee-ness on the Commission's terms.

The application jackets from these hearings elucidate how race affected individuals enrolling for citizenship. To procure a land allotment, an applicant had to first have him or herself deemed a citizen of the Cherokee Nation. This meant identifying oneself with a particular race: black, Indian, or white. The Commission then decided whether it agreed with the applicant by looking at census rolls, the applicant's physical appearance, and witness testimony. In most cases, the Commission's decision determined what citizenship status the applicant could seek. For some, it even determined whether he or she received citizenship. Of course, things other than race factored into whether the Commission denied or accepted an applicant for citizenship. Race, however, played the most significant role in the decision-making process. Laws categorizing the Cherokee people and defining their rights, common racial ideology, or the opinions of Cherokee officials, the applicant or witnesses could all persuade the Commission to reject or restrict an applicant's access to citizenship. In doing so, race included and excluded people from the nation and its land and helped determine how individuals could participate in the Cherokee Nation.

Because race and citizenship went hand-in-hand, applicants had to present themselves to the Commission as having a racial identity. For instance, few individuals who the Cherokee government and Cherokee community deemed black applied for any status but Freedmen. Those blacks who did apply for By-blood citizenship rarely received it. This was because the Commission decided who was black, Indian, and white. It also determined the contours of Freedmen, By-blood, and intermarried citizenship. To make these decisions, it drew on Cherokee law, the opinions of witnesses and Cherokee

representatives, the applicant's viewpoint, common racial ideology. Ultimately, this meant that applicants had to persuade the Commission that they deserved citizenship. Most did this by presenting themselves as Cherokee on the Commission's terms. For blacks, this entailed applying for Freedmen citizenship as a former slave of an Indian. For most Indians, it meant applying as the offspring of at least one Cherokee Indian parent and no black parent. Whites needed to prove that they had legally married a Cherokee Indian. Everyone had to document their residency in the Cherokee Nation in some manner. Essentially, applicants appealed to the Commission's perceptions of Cherokee identity in order to receive citizenship. This resulted in applicants imagining a multitude of relationships among race, nation, and land, in which race was at the center. Contingent factors determined how an applicant dealt with race and presented themselves to the Commission as members of the Cherokee Nation and deserving of an allotment. Ultimately, how the applicant constructed his or her Cherokee identity could influence how the Commission ruled on his or her citizenship case.

By creating citizenship statuses based on race, the Commission divided the people of the Cherokee Nation along racial lines that still exist today. Since 1907, when the "law of blood" started classifying members of the Cherokee Nation based on race, a popular resistance began developing in response to the Dawes Rolls and Oklahoma statehood. At the local-level, many Cherokees have contested the legal definitions of Cherokee identity and continue to follow traditional, Cherokee matrilineal cultural practices.³⁰⁴ Indeed, like those who protested the Dawes enrollment process, these individuals believe that

³⁰⁴ Sturm, *Blood Politics*, 86, 140-141.

Cherokee culture and not just legal requirements and bloodline define a person's Cherokee identity. While these same people do blend racial beliefs into their understanding of Cherokee-ness, they envision Cherokee citizenship differently than tribal authorities and the Federal government. These two authorities still only adhere to law and the original Dawes rolls when determining Cherokee citizenship. They, however, differ on how to interpret these criteria.³⁰⁵

One of the largest legal issues separating tribal understandings of citizenship from the U.S. governments' is the status of Cherokee Freedmen. Cherokee authorities still insist that a connection to Indian race is paramount in determining whether an African Cherokee deserves citizenship. However, they have redefined what they mean by a connection to the Indian race. During the enrollment period, the Commission and Cherokee representatives both understood this to mean that a Freedmen citizen needed to be an ex-slave to a former Cherokee Indian or recognized by the Cherokee government as a free Cherokee black. Today, officials of the Cherokee Nation have denounced the Treaty of 1866, claiming it was forced upon it by the United States. It believes that it should have its own right to determine citizenship. In its opinion, Cherokee Freedmen should have at least one Indian ancestor listed on the Dawes rolls in order to receive citizenship. The United States government disagrees, thinking all those listed on the rolls are citizens of the Cherokee Nation.³⁰⁶

³⁰⁵ Ibid., 86-87; Gonzalez, "Racial Legibility."

³⁰⁶ The Cherokee Nation, *The Truth About The Freedmen Issue*, August 8, 2008. From The Cherokee Nation Online, <http://www.cherokee.org/NewsRoom/Player.aspx?WMType=high&id=454>. (accessed May 12, 2009).

Few blacks who applied for Cherokee citizenship received By-blood status. Moreover, while some blacks today can document having an Indian relative on the Dawes Rolls, this measure excludes a great deal of African Cherokees. Indeed, the Cherokee Nation has further limited the inclusion of African Cherokees by emphasizing racial heritage as the most important qualification for Freedmen citizenship. The concept of blood quantum has left an indelible mark on how the Cherokee Nation understands the relationship between race and citizenship. This is further demonstrated by the fact that Cherokee officials still refer to black Cherokees as “Freedmen citizens” even though they can prove they have Indian ancestry.

Why has the Cherokee Nation decided to limit the inclusion of African Cherokees? The Cherokee Nation’s website points out that the U.S. government offers limited funds to the tribe. With rapidly increasing membership and limited funds, the Nation has had difficulty supporting itself. On March 3, 2007 it dealt with this problem by amending its Constitution to say that only those listed on the Dawes rolls as having Cherokee Indian ancestry deserved citizenship.³⁰⁷ This left the relatives of many ex-Cherokee slaves, as well as intermarried whites, outside the margins of the Nation.

Race is at the heart of this controversy over citizenship. This, however, does not mean that Indian officials are racist. What it means is that the racial discourse surrounding the Dawes Enrollment period has affected the way everyone involved thinks about the relationship between citizenship and race. At the 1900 hearings, race, more than anything else, defined the contours of the Cherokee Nation and citizenship. Today,

³⁰⁷ Ibid.

Cherokee officials work within that framework when dealing with current issues over tribal funding. A person's blood quantum still determines his or her right to citizenship and funding, but the qualifications have changed. Ex-slaves and intermarried whites can no longer receive citizenship by drawing connections between themselves and Cherokee Indians. Now, only individuals with Cherokee Indian ancestors on the Dawes roll can obtain citizenship. Indeed, although a relationship between citizenship and nation, race, and land no longer exists, one between citizenship and race, nation, and funding has taken its place. As in the past, race drives this relationship, deciding who has rights to citizenship, who belongs to the Nation, and who deserves funding.

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