Blood Politics, Racial Classification, and Cherokee National Identity: The Trials and Tribulations of the Cherokee Freedmen

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The Trials and Tribulations of the Cherokee Freedmen

Circe Sturm

In the spring of 1996, in Tahlequah, Oklahoma, the heart of the Cherokee Nation, I interviewed a Cherokee freedman, one of many phenotypically Black descendants of Cherokee slave owners and their African American slaves.[1] Of the questions that arose in the course of our conversation, the one that elicited the most impassioned response was, "What do you think I should write about?" He responded:

> I think you should write about the racism that permeates these Indian programs [re: tribal benefits and who qualifies for them], and point out that many of the so-called Indians running the Oklahoma tribes are exclusive if the hyphenated Indian is Black, and inclusive if the hyphenated Indian is White. I think you should go back to the Dawes process and point out how degree of Indian blood was ignored among black people just as degree of European blood did not and does not today affect one's status if one is Black. I think you need to argue that these programs need to be made realistic. . . . It is ridiculous to allow White people to take advantage of Indian programs because they have blood on a tribal roll a hundred years ago, when a Black person who suffers infinitely more discrimination and needs the aid more is denied it because his Indian ancestry is overshadowed by his African ancestry. Few Blacks are 100 percent African, and to be frank about it, few Europeans whose ancestors come from the South are 100 percent European. . . . Either the descendants of freedmen should be allowed to take advantage of benefits, or the federal government, not these cliquish tribes, should set new standards for who is an Indian—and save [themselves] some money.[2]

While this statement might be considered angry or even inflammatory in Cherokee County, Oklahoma, it is also supported by the historical record and by my own ethnographic observations.

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The Cherokee freedmen continue to be one of the most marginalized groups in Native North America, and their story has never received the attention it deserves, in part because many people would prefer that it remain buried. To understand how this came to be, I have sought to unearth contemporary freedman perspectives like the one above, and to situate them within the local political dynamics of the Cherokee Nation. Only then can we begin to examine how Cherokee identity is socially and politically constructed around hegemonic notions of blood, color, race, and culture that permeate discourses of social belonging in the United States. In this essay I explore how racial ideologies have filtered from the national to the local level, where they have been internalized, manipulated, and resisted in different ways by Cherokee citizens and Cherokee freedmen. I argue that as a result of this continuing dialectic between the national and the local, many Cherokees express contradictory consciousness, because they resent discrimination on the basis of race and yet use racially hegemonic concepts to legitimize their social identities and police their political boundaries.

At the center of this story is an absence, an exclusion, a silence where the Cherokee freedmen might have been. The reason for this absence is clear: When Cherokee citizens conflate blood, color, race, and culture to demarcate their sociopolitical community, they often exclude multiracial individuals of Cherokee and African ancestry, who are treated in both discourse and practice in qualitatively different ways from multiracial individuals with Cherokee and White ancestry. This bias against African ancestry has a long history that took root with the advent of plantation slavery among certain sectors of the Cherokee population in the early 1800s.[3] Several centuries of social, political and economic relations with Euro-Americans engendered Cherokee color prejudice, the legacy of which means, among other things, that Cherokee identity politics has never been simply a question of blood or culture. Cherokee freedmen and other multiracial individuals who choose to identify as both Indian and Black challenge the prevailing racial ideologies, which ask us to "choose one" racial or ethnic identity, often at the expense of another.[4]

To understand how racial ideologies constrain various multiracial identities, it is necessary to examine the historical process of what Omi and Winant call "racial formation," and the ways in which historically situated "racial projects" give rise to local interpretations of racial hegemony.[5] To that end, I have used a variety of sources, including contemporary interviews, field notes, tribal and federal court documents, and other archival records to trace the legal and political struggles of the Cherokee freedmen over the past century and a half in their efforts to gain recognition as Cherokee citizens. Interweaving ethnohistory, legal history, and ethnography, I follow this largely untold story into the present, focusing on how ideologies of race and culture affect the identity formation and the social and legal classification of multiracial Native and African American people.

Historical Origins of the Freedmen Controversy

Cherokee expressions of contradictory consciousness and racial hegemony reveal the human side of a painful history of racial irresolution, originating in the Cherokee adoption of African slavery. The nature of this slavery continues to be a matter of dispute. Some scholars and many contemporary Cherokees argue that the relationship of Cherokee masters to their Black slaves was more lenient than that of White Southerners to their slaves. One reason for this interpretation is that Cherokees did not indulge in mob violence as Southern Whites often did: There is no record of mass lynching in the Cherokee Nation, and one historian suggests that Cherokee slaves did not fear for their personal safety as much as their bonded counterparts in Alabama or Mississippi (Littlefield 1978, 68). But the fact remains that "the Cherokees held a greater number of slaves than any other tribe in Indian Territory" (Littlefield 1978, 8), and despite claims to the contrary, most "historians agree that slavery among the Cherokee was little different from that in the white South" (Littlefield 1978, 9).

By the middle of nineteenth century, Black slavery was one of many issues dividing Cherokee citizens along the lines of race and class. Just as in Euro-American society, class divisions among Cherokees tended to fall along racial lines, but not according to separate racial groupings ("White" vs. "Black") as much as degree of racial mixture ("fuller-blood" vs. "lesser-blood").[6] Slaveholding and non-slaveholding Cherokees were divided "not only in an economic sense but also in terms of values and world views" (Perdue 1979, 68). Complicating these cultural and racial divisions was the growing hostility in the United States between the North and the South, which exacerbated tribal factionalism between slaveholding and non-slaveholding Cherokees.[7] Despite these conflicting pressure groups, the majority of Cherokees remained sympathetic to the Confederacy for the duration of the war (Perdue 1979, 131).

After a series of Confederate victories, Cherokee Chief John Ross signed a treaty with the Confederacy in 1861, but repudiated this alliance two years later in 1863 (McLoughlin 1974, 383). Chief Ross's shifting loyalties reflected his confused response to the growing antagonism among his own people. The Cherokee national leadership was divided between pro-Confederate and pro-Union factions, and when Ross was captured by federal forces in 1862, Thomas Pegg became acting principal chief of the pro-Union Cherokees. Pegg decided to follow the precedent of President Lincoln's emancipation proclamation of January 1, 1863, calling "an extraordinary session of the Cherokee National Council. . . . On February 19, 1863 the body passed an act to become effective on June 25, 1863, emancipating all slaves within the limits of the Cherokee Nation" (Littlefield 1978, 16). Although this was two years before the U.S. formally ended slavery with the Thirteenth Amendment,

most of these "freed" Cherokee slaves belonged to masters who were still a part of the Confederacy (McLoughlin 1974, 383).

Even though slavery no longer existed after 1863 as a legal institution within the Cherokee Nation, its legacy of social and economic inequality endured along with political division (Perdue 1979, 140). After the end of the Civil War in 1865, the factionalism that existed among the Cherokees was ignored by federal officials, who made no distinction between Union and Confederate Cherokees in the reconstruction process. In negotiations, the southern faction "thought the United States government should remove the freedmen from the Cherokee Country at its own expense. The northern Cherokees . . . wanted them adopted into the tribe and given an area of land for their exclusive use" (Wilson 1971, 233). But federal officials went even further: They offered a plan for the adoption of the Cherokee freedmen into the tribe, granting them citizenship, land, and annuities in the same amount as Indian tribal members (Halliburton 1977, 134). On July 19, 1866, the Cherokee Nation signed a treaty with the United States extending Cherokee citizenship to the freedmen and their descendants. Article 4 of the treaty set aside the Canadian District, a large tract of land extending southwest of the Cherokee Nation proper, for those freedmen who desired to settle there; Article 5 entitled them to citizenship, to elect their own officials and to enact their own laws as long as they were not inconsistent with those of the Cherokee Nation. But Article 9 was the crucial point, for it stated, "They [Cherokee Indians] further agree that all freedmen . . . and their descendants, shall have all the rights of native Cherokees." This important clause would become the cause of much legal, political and social controversy for many years to come (Wardell 1977, 225).

"A Judicial Jungle": The Legal Struggles and Political Resistance of the Cherokee Freedmen

Despite the promises of the 1866 treaty, the freedmen were never fully accepted as citizens of the Cherokee Nation. In 1876, Cherokee Chief Rev. Charles Thompson (1875–79) identified the status of freedmen as a pressing concern in his annual address to the Cherokee Nation. But the national council struggled with the issue and eventually decided to create a citizenship court to hear claims on a case-by-case basis (Wardell 1977, 228). The political atmosphere in which this occurred was revealed by John Q. Tufts, the federal agent who negotiated in 1880 with Cherokee officials on the status of Blacks in their nation. Tufts stated that the question of citizenship eluded resolution and was so unpopular that no Cherokee politician was willing to jeopardize his position by advocating equal rights for the Cherokee freedmen (Wardell 1977; 229–30).

The Cherokee Nation's resistance to incorporating the freedmen was

motivated largely by economic factors. In the 1870s the Cherokee Nation had sold a large tract of land in the Cherokee Outlet, an area extending west from the northern perimeter of the Cherokee Nation.[8] In 1880 the nation compiled a census for making a per capita distribution of the communal funds received from the sale (Sampson 1972, 125). In the same year, the Cherokee senate voted to deny citizenship to freedmen who had failed to return to the Cherokee Nation within a six month period specified by the 1866 treaty (Wardell 1977, 229–31). But even those freedmen who had always resided within the Cherokee Nation were passed over for citizenship. The resulting Cherokee census of 1880 did not include a single Cherokee freedman, "it being the position of those of Cherokee blood that the Treaty of 1866 had granted freedmen civil and political rights but not the right to share in tribal assets" (Sampson 1972, 125–26).

Cherokee Chief Dennis Wolf Bushyhead (1879–87) felt that the provisions of the Treaty of 1866 were violated by these actions, and he protested vigorously on behalf of the freedmen in the early 1880s. In 1883 the Cherokee Tribal Council overrode his veto, passing an act authorizing per capita payments only to citizens of the Cherokee Nation by blood (Wardell 1977, 233). This act also excluded approximately a thousand Delawares and an even smaller band of Shawnees who had been adopted into the tribe between 1860 and 1867. At this point the federal government became involved in the controversy. Congress passed a bill in 1888, mandating that the freedmen and other adopted citizens share in tribal assets equally (25 Stat. at L. 608–9). In an effort to identify the freedmen, Congress sent out a federal agent, John W. Wallace, to create a roll to be used in a per capita distribution of federal moneys to the tribe (Littlefield 1978, 148). That document was known as the Wallace roll, and listed 3,524 enrolled freedmen by 1889 (Sampson 1972, 126; 25 Stat. at L. 980, 994 [1889]).

The Cherokee Nation continued to contest the freedmen's legitimacy, and in October of 1890 Congress passed a jurisdictional act authorizing the Court of Claims to hear and determine once and for all "the just rights of the Cherokee freedmen" (26 Stat. at L. 636). In the case that followed, *Whitmire v. Cherokee Nation and United States,* the Court of Claims decided in favor of the freedmen [30 Ct. Clms. 138 (1895)]. The court held that the sovereign power of the Cherokee Nation could not be exercised in a way that breached the treaty obligations of the Cherokee Nation to the United States. Thus, when the tribal council liquidated the common property of the tribe, as in the case of the Cherokee Outlet, the monetary payments could not be restricted to a particular class of Cherokee citizens, such as those by blood (*Nero,* Plaintiff's Statement 1984). The court also held that freedmen had the right to recover $903,365 as their portion of the $7,240,000 in question.

But the Cherokee Nation had already distributed the money to Cherokees by blood, which left its co-defendant, the U.S. government, standing with

the bill (Sampson 1972, 126). Before the U.S. could pay the freedmen, the Federal Court of Claims decreed that the Secretary of the Interior must first compile a list of freedmen eligible for the distribution of the award. For reasons that are vague at best, the court made no mention of the previous Wallace roll, and a new freedmen roll was completed in 1896 (Sampson 1972, 126). The Kern-Clifton roll, as the second roll came to be known, was named for Robert H. Kern and William Clifton, the bureaucrats in charge of compiling it (Littlefield 1978, 148). The roll listed 5,600 freedmen who received their portion of the tribal funds in the following decade (*Nero v. Cerokee Nation,* Draft No. 1, Plantiff's Statement of Facts 198a, 9–10).[9] The freedmen were finally, if temporarily, able to secure their treaty rights, but only after the judicial machinery of the federal government came to their aid in the late 1880s and early 1890s (Littlefield 1978, 250–51).

During this same period, the groundwork was laid for what would amount to a political coup against Native sovereignty. In the Dawes Act of 1887, Congress adopted a policy of converting tribal lands to individual ownership, hoping this would assimilate Native Americans, diminish their land base and free the residual land for White settlement. If Indian Territory were to become an American state filled with "civilized" citizens, as many White settlers hoped, then the allotment of tribal land to individual Indians was the logical first step. For six years, the Cherokee Nation and the other Five Civilized Tribes within Indian Territory were not subject to the Dawes Act[10]—until the Indian Appropriations Act was passed on March 3, 1893. In that same year, the Dawes Commission was created to negotiate with the Five Tribes for the purpose of extinguishing tribal title to their lands (10 Ind. Cl. Comm. 117–18 [1961]).

For this purpose the Dawes Commission required yet another roll, and after three years of political resistance on the part of the tribal governments (1893–96), it began taking oral and written testimony from applicants to its rolls. The final rolls of the Five Tribes were to list newborns, minors, and adults in three racial categories—freedmen, intermarried Whites, and Indians by blood, with the latter including an Indian blood quantum.[11] The Cherokee Nation responded with an attempt to frustrate the enrollment of the freedmen who were citizens by law but not in the minds of the majority of Cherokees (Wardell 1977, 237). Nevertheless, over 53,000 people applied for enrollment in the Cherokee tribe. "When the decisions were finally made, there were 41,798 enrolled citizens of the Cherokee Nation, 4,924 of them freedmen" (Littlefield 1978, 238). Many of these freedmen enrollees had appeared on the Kern-Clifton roll six years earlier. However, 1,659 Cherokee freedmen listed on the Kern-Clifton roll of 1896 were not included on the Dawes roll of 1902 for reasons that will be explained below. These excluded individuals would later bring their case to court and seek the benefits of Cherokee citizenship (*Cherokee Freedmen v. United States and Cherokee Nation,* Reply Brief of United States 1a71, 4–5).

But in 1898, before the Dawes rolls were completed, Congress enacted the Curtis Act, which further complicated matters by authorizing the Dawes Commission to proceed with allotment without the consent of the tribal governments. The Curtis Act dealt one horrible blow after another to tribal sovereignty by extending the jurisdiction of the federal courts over Indian Territory, abolishing the tribal courts, authorizing the incorporation of towns and town lots for survey and sale, and allowing the federal government to assume the collection of taxes from White citizens of the Indian Nations in the territory (10 Ind. Cl. Comm. 10a [1961]; 161 C. Clms. 787 [1963]; 13 Ind. Cl. Comm. 33 [1964]). Soon after the passage of the Curtis Act, the Dawes Commission completed its work, and in 1902 the final rolls of the Cherokee Nation were closed.

Many, though far from all, Cherokee freedmen were listed on the Dawes rolls. By 1907, the same year the Cherokee Nation was officially dissolved and Oklahoma became a state, 4,208 Cherokee freedmen had received allotments (Littlefield 1978, 238). But allotment often brought a new slate of troubles. In an interview in 1996, Idella Ball, a 99-year-old original Dawes roll freedmen enrollee explained the situation to me:

IB: When Black people started to own property and land, then the Whites undermined them, too. I had got property in Fort Gibson and a small piece of oil land in Nowata County, about fifteen acres. But the taxes were about to eat it up. So I was gonna sell five acres to clear up the taxes, and this White man he bought it and beat me out of all fifteen.

CS: *You mean you thought you were selling off five and he took the whole thing?*

IB: Yes! He put on the paper fifteen instead of five and I signed.

CS: *But you could read; you didn't see it?*

IB: That's how they got me, sure I can read, but I didn't know nothing about business and all. I just signed the papers and that was it.

What Ball describes is well documented in the work of Angie Debo, *And Still the Waters Run* (1940). In her book she demonstrates how those who received allotments were subject to the manipulations of White "grafters," whose greed led them to take advantage of the ignorance of freedmen and Native Americans regarding the rapidly shifting system of land title in Oklahoma. The "grafters" were so successful that by 1930 the Five Tribes Indians owned less than two million acres of restricted land (Debo 1940, 379), down from a total of 19,525,966 acres in 1890 (Strickland and Strickland

1991, 124).[12] But on the whole, these new freedman citizens fared better than they had in the antebellum Cherokee Nation. Now they were able to access the courts, sit on juries, serve as elected officials, have some security in their improvements, and enjoy some limited school facilities (Littlefield 1978, 249).

But what happened to those Cherokee freedmen who never received allotments, who had been on the Kern-Clifton roll but were excluded from the Dawes roll? It appears that the majority of these 1,659 individuals did not meet the residency requirements set forth by the Dawes Commission. They either were no longer citizens because they had not been in the Indian Territory during the Civil War, or they were "too lates" who had not returned to the Cherokee Nation within the six month period set forth by the Treaty of 1866 (Sampson 1972, 128). In 1909 these disgruntled Cherokee freedmen, most of whom lived just outside the boundaries of the Cherokee Nation, filed a supplemental petition in *Whitmire v. United States* to test the right of the Dawes Commission to deny them enrollment (44 Ct. Clms. 453). The United States was the only defendant, because the Cherokee Nation was not held responsible for the actions of the Dawes Commission (Sampson 1972, 129). In the same year, the U.S. Court of Claims ruled in favor of the freedmen, but by 1912 the Cherokee Nation joined the U.S. in an appeal to the Supreme Court that reversed the decision (Sampson 1972, 129; *Cherokee Nation v. Whitmire,* 223 US 108).

The Cherokee Nation continued its quest to restrict the freedmen's property rights and to limit the extent of their citizenship. In 1924, using the Supreme Court's decision as a precedent, Congress passed a jurisdictional act allowing the Cherokees to file suit against the United States to recover money that had been paid to the Kern-Clifton freedmen. The Cherokee Nation alleged that the United States had diverted settlement money belonging to the tribe to non-Indians and non–tribal members (Sampson 1972, 130). It was not until 1937 that the Court of Claims reached a decision denying recovery by the Cherokee Nation. The Court held that the Kern-Clifton roll was a one-time-only distribution roll that had served its purpose, and that its validity had ceased with the 1894 distribution. Thus it would not affect future rolls or distributions of the Cherokee Nation in any way (Sampson 1972, 130; *Cherokee Nation v. United States,* 85 Ct. Clms. 76 [1937]).

But this did not settle the matter of the Kern-Clifton applicants who were denied Dawes enrollment. Many years later, in 1946, the Indian Claims Commission Act was passed, stirring activity among people claiming to be descendants of the 1,659 Kern-Clifton freedmen who were *denied* tribal citizenship. In Kansas and Oklahoma sometime in the late 1940s, an organization called the Cherokee Freedmen's Association (CFA) came into being. Inspired by the fate of the denied Kern-Clifton enrollees, the CFA membership included a diverse gathering of about 110 African Americans who could show they were descended from the Wallace, Kern-Clifton, or Dawes

Commission rolls. Its goals were to secure political and economic rights that had been erroneously denied to members by federal and tribal governments. They collected dues, gathered documentation, and hired a lawyer. They filed their first petition with the Indian Claims Commission (ICC) on June 13, 1951, in Tulsa, Oklahoma (Docket 123). The commission did not actually begin to hear the case until early November 1960. Even then, the commissioners had to make numerous inquiries regarding past litigation to get a grasp on the "judicial jungle," as one writer described it in the *Tulsa Tribune* on November 12, 1960. While the case was still in litigation in 1961, the Cherokee Nation received a $14.7 million settlement from the United States as payment for the Cherokee Outlet nonreservation lands in north central Oklahoma. The members of the CFA took notice but their hopes were dashed when the ICC denied their collective claim to tribal citizenship on December 28, 1961 (Sampson 1972, 131). The commission decided that the freedmen's claims were individual in nature and that it had no jurisdiction over them.

The CFA appealed the decision in the U.S. Court of Claims, contending that they were entitled to share in the funds paid to the Cherokee Nation because of the citizenship rights granted them in the 1866 treaty. They asserted that their treaty rights superseded the Dawes rolls, which were created for the sole purpose of allotment. The Court of Claims affirmed the findings of the ICC on two grounds. First, the freedmen's claims were individual and would require a case-by-case examination; second, the claims were no longer subject to consideration, since they had already been adjudicated before the Supreme Court in the 1912 Whitmire case (Sampson 1972, 132). However, the Court of Claims realized that some new considerations had been raised, and suggested that the freedmen intervene in the remaining portion of the Cherokee Outlet case before the ICC (Sampson 1972, 131–32).

On November 12, 1964, the Indian Claims Commission granted the CFA's request, allowing them to intervene in Docket No. 173-A. But the outcome was the same as it had been in 1961; ultimately, the ICC determined that it did not have jurisdiction over the freedman matter at hand, but this time for different reasons. First, the distribution of an award was a political question that needed to be settled by Congress and not by the commission. Second, membership in a tribe was a political controversy to be resolved by the tribe as a fundamental attribute of sovereignty. Finally, the commission had no jurisdiction over intertribal disputes, whether they be between two separate tribes or between two factions within a single tribe (Sampson 1972, 133; 22 Ind. Cl. Comm. 417–20 [1971]). The freedmen made a last-ditch appeal to the Court of Claims in 1971, but the court quickly affirmed the decision of the ICC. After twenty years of legal struggle and few victories, the Cherokee Freedmen's Association finally laid their case to rest with nothing to show for their efforts.

From the beginning, the CFA's claims to citizenship in the Cherokee Nation were challenged on the grounds that most CFA members were not

Dawes enrollees. Even before 1951, the Dawes rolls were accepted as the final authority on who was and was not legally and politically Cherokee, regardless of race. And yet, ironically, the ICC ruled in part that it had no jurisdiction over the freedmen case because the conflict was an intertribal matter. This assertion seems to assume that the freedmen had some legitimate claim or were seen in the eyes of the court as possibly falling within the margins of Cherokee citizenship. In fact, thirteen years later, a group of elderly freedmen, most of them Dawes roll original enrollees, would bring the question of their citizenship rights to trial again. This time the legal arguments would change dramatically, sometimes in complete opposition to statements made in earlier cases, and charges of racial discrimination would become a central focus of the litigation. There was no question that these people were legitimate Cherokee freedmen listed on the Dawes rolls, but did the freedmen and their descendants continue to have "all the rights of native Cherokees," as they had been promised in the Treaty of 1866?

Breaching the Dawes Rolls: The Strange Case of Reverend Roger Nero

On June 18, 1983, Rev. Roger H. Nero and four other Cherokee freedmen went to the Muskogee Courthouse to cast their vote in the Cherokee Nation's elections for principal chief. These Dawes enrollees had received allotments and shares in at least two cash land settlements over the past twenty years. When the tribe was finally given back its right to elect its own officials by Congress in 1970, these descendants of Black Cherokee slaves voted in the first tribal elections (*Baltimore Sun,* July 29, 1984). Cherokee freedmen occasionally received certain educational and housing bene-fits, but had not been allowed health care and most federal benefits granted to other tribal members. Although their treatment by the tribe had been inconsistent, Nero and his companions were shocked when Cherokee election officials turned them away from the polls, saying freedmen no longer had the right to vote.

The justification for this denial was based on blood. In an unpublished interview, Ross Swimmer, chief of the Cherokee Nation (1975–85), stated that five years earlier, in 1977–78, the Cherokee election registration committee had established new rules. These declared that according to the new Cherokee Constitution of 1976, an individual must have a certificate degree of Indian blood (CDIB) to be registered as a tribal member or voter (interview by D. Goodwin, 1984).[13] However, the 1976 Cherokee Constitution specifies in Section 1 of Article III, "All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls." As mentioned earlier, the Dawes rolls were divided into separate categories for Cherokees by blood, freedmen, and intermarried Whites. Presumably, a descendent of any of these three groups would be eligible for tribal citizenship, since the

1976 Cherokee Constitution only refers to the Dawes rolls and does not limit tribal membership to Cherokees by blood.

This would seem to open the door to the Cherokee freedmen, but in practice the Cherokee Nation only grants citizenship to lineal descendants of Cherokees by blood listed on the Dawes rolls. When applying for tribal membership, an individual must simultaneously apply for a CDIB. If an individual is able to document through state and federal records that they are the direct descendent of a "Cherokee by blood" on the Dawes roll, then Cherokee blood quantum is assigned and tribal membership is automatic. Unlike many other tribes in the United States, the Cherokee Nation has no blood quantum limitation, and the blood quantum of tribal members ranges from "full blood" to $^{1}/_{2048}$. Indeed, out of a total tribal enrollment of 175,326 in February 1996, only 37,420, or 21 percent, had one-quarter Cherokee blood or more (Cherokee Nation, Registration Department).

This strictly racial definition of Cherokee identity has many precedents. Not only were the Dawes rolls divided along racial lines, but Indian blood quantum was used by the federal government to determine the trust status of land allotments. Following the Dawes Act, if an allottee was one-half Indian or more, their allotment was held in federal trust and restricted from sale and taxation; if an allottee was less than half Native American, including freedmen and intermarried Whites, they had to pay taxes but were free to sell their allotments if they so desired, a mixed blessing that created both greater autonomy and the possibility of land loss. The justification for this division between "fuller bloods" and "lesser bloods" was based on notions of competency assumed to be in direct correlation with degrees of race mixture.

Today, working through the Bureau of Indian Affairs (BIA), the federal government continues to use similar racial criteria to administer to Native Americans. The CDIB is the primary document used by the BIA to determine tribal enrollments and eligibility for federal social services. After the 1934 Indian Reorganization Act, many tribes took steps towards self-government; but considering their long history of bureaucratic relations with the federal government, it is not surprising that many Native American tribes adopted the exact criteria that had been used by the federal government. Thus, the vast majority of tribes have a blood quantum requirement, often set at one-fourth, which must be verified with reference to a federally approved roll.

The Cherokee's more open policy regarding blood has helped define it as the second largest tribe in the United States, which continues to grow at a rapid pace—over fifteen hundred applications for tribal citizenship arriving every month (Cherokee Nation, Registration Dept. 1996). Blood connections have been stretched to the point of "Whitening the tribe" to a controversial level. Because of the sociopolitical implications of Cherokee blood, most Cherokees assign it an ideological meaning. During the course of my fieldwork, the issue of blood quantum was raised numerous times in regards to

who was and was not a "real" Cherokee. While opinions varied a great deal, the vast majority of tribal members I interviewed mentioned "Cherokee blood" as a potent symbolic medium that connected all Cherokees to one another. People claimed to feel their "Cherokeeness" in the blood, which caused them and other Cherokees to behave in a similar fashion.

To most contemporary Cherokees, anyone without Cherokee blood would automatically fall outside the boundaries of the Cherokee community. For this reason, Cherokee tribal leaders deny freedmen claims to Cherokee citizenship. For example, in 1984 Wilma Mankiller, then Deputy Chief to Ross Swimmer, said that the freedmen "should not be given membership in the Cherokee tribe. That is for people with Cherokee blood." And tribal member Jimmy Phillips said, "Whether they are white, black or red, if they've got the blood then they are tribal members. Without it . . . no" (*Baltimore Sun,* July 29, 1984). When the Cherokee Nation reorganized its government between 1970 and 1976, the resulting changes in blood legislation had important implications for the freedmen and for race relations within the tribe. During that period, the freedmen were quietly disenfranchised and denied their rights to citizenship, at the same time these rights were extended to tribal members with minimal Cherokee blood. In December of 1977, the one-fourth blood quantum limitation for Indian Health Services was successfully challenged by the tribe. New economic incentives, such as free health care, lured many people to return to the tribal fold, particularly those who through a gradual process of acculturation and intermarriage had long since passed into the surrounding communities of Oklahoma. As a result, in the decade between 1970 and 1980 the Cherokee Nation became progressively "Whiter" at the same time that it rejected most of its Black citizens.

These changes occurred without the knowledge or input of the Cherokee freedmen. When Rev. Nero and his companions went to vote in the Cherokee elections in 1983, they found that the definition of a Cherokee citizen had been changed to exclude them, which came as a surprise, since Nero had voted in the last tribal election in 1979. What happened between 1979 and 1983? According to Chief Ross Swimmer, the tribal election committee attempted to use the CDIB to determine eligibility to vote as early as 1975. But the committee had soon realized that the CDIBs were unreliable because the whole process of application had been mishandled under the BIA. Many people had simply purchased membership within the Cherokee Nation or had provided a Dawes roll number that was not verified through any other documentation. In 1975 the tribe began to purge its rolls and to take control of the certification process. Still struggling to straighten out the mess, the tribe decided the election of 1979 would be the last in which people with old registration cards could vote. Ostensibly, this is why Nero voted in 1979 but was turned away in 1983.

This heightened sense of blood as the primary basis of Cherokee National

identity began to take hold as early as 1975. Yet, only a year before, on October 8, 1974, Chief Swimmer wrote a letter regarding freedmen's eligibility for Public Health Service benefits to Jack Ellison, Area Director of the BIA in Muskogee. The letter stated:

> I have been advised by the local Health Service unit that the BIA does not recognize enrolled Freedmen for benefits and that this is carried over to IHS [Indian Health Service]. . . . The IHS says they cannot participate . . . because the people are Freedmen instead of Indians. It would appear that since the government had us include Freedmen on our rolls they should be entitled to similar benefits of other enrolled Indians. I can understand the blood-quantum problem, but again it would appear that the Freedmen would be taken as a class and would have the same status as 1/4 blood.

This letter demonstrates that in 1974 the Cherokee Nation considered the freedmen its citizens and argued that freedmen were eligible for the same benefits given other enrolled Cherokees. But federal benefits come with strings attached to federally imposed, racially discriminatory policies. Between 1975 and 1983, the Cherokee Nation increasingly began to administer to its own members. However, when the Cherokee Nation began processing applications for CDIBs and tribal membership, it had to conform to federal standards. Thus, in its own blood-based policies of administration, the Cherokee Nation reproduced many of the racial ideologies that were the basis of federal Indian policy.

These administrative changes did not come into being without struggle. The Cherokee Nation shifted its stance back and forth, contradicting its own newly derived policies. In 1983 the Cherokee election committee decided to waive the CDIB requirement for any original enrollee, including freedmen and intermarried Whites (Ross Swimmer, interview by David Goodwin, 1984). In a similar vein, federal administrators debated whether the freedmen were eligible to participate in Cherokee elections. On April 21, 1983, the Muskogee area director of the BIA wrote a memorandum to the deputy assistant secretary of Indian Affairs stating that according to his interpretation of the Cherokee Constitution, "the Freedmen, who have rights of Cherokee citizenship, but who do not possess any degree of Cherokee blood, would not be eligible to participate as candidates, but would be eligible to vote." Therefore, according to the Cherokee election committee's new policy regarding original enrollees and federal interpretations of the Cherokee Constitution, Nero and any other Cherokee freedmen listed on the Dawes Commission rolls should have been permitted to vote in the 1983 elections.

Regardless, the fact remains that Nero and other freedmen were turned away at the polls because of the race-based assumption that they had no Cherokee blood. This set the stage for freedman resistance, as the freedmen

could not believe that blood had become the main criteria for Cherokee citizenship. As Nero put it, "We weren't allowed to vote because we were freedmen. They said that we didn't have Cherokee blood, but when I was born my birth certificate said that I was declared a citizen of the Cherokee Nation" (*Tahlequah Daily Press,* June 21, 1984). He also said, "We had a guarantee we'd have the same rights as the Indian as long as the water flowed and the grass growed. Well, it's still flowing and growing" (*Baltimore Sun,* July 29, 1984). Angered by the delegitimation of his lifelong identification as a Black Cherokee citizen, Nero began to stir up resistance among freedmen who were original enrollees, and their descendants, living in the Fort Gibson area near Muskogee, Oklahoma. His cause was aided by his calling: He was a prominent Baptist preacher who spent much of his time traveling from congregation to congregation.

On July 7, 1983, Rev. Nero and five other original enrollees filed a letter of complaint with the civil rights division of the Department of Justice. It stated that because they had been denied the right to vote their civil rights had been violated and that it was "humiliating, embarrassing, and degrading of Freedmen, such as ourselves, to be treated as second class tribal citizens." And then one year from the date they were denied the right to vote, on June 18, 1984, Rev. Nero and sixteen other freedman plaintiffs filed a class action suit against Chief Swimmer, the tribal registrar, a tribal council member, the tribal election committee, the United States, the Office of the President, the Department of the Interior, the Office of the Secretary, the Bureau of Indian Affairs, and three BIA employees. They complained that they had been denied the right to vote and the right to tribal benefits from federal funds because their lack of verifiable Cherokee blood prevented them from obtaining registration cards. Because the Cherokee Constitution also restricts officeholding to members of the tribe with Cherokee blood, the freedmen alleged that the tribe had systematically discriminated against them on the basis of race.

These legal actions were the culmination of the long-term frustration of the freedmen, who had been treated as an invisible faction within the Cherokee Nation for decades. At one point Nero said, "We are not using any hatred or trying to put the Council in misery by our actions. All we are trying to do is fight for our rights. We want them to see us" (*The Oklahoma Eagle,* July 5, 1984). The freedmen sought almost $750 million in compensatory and punitive damages, and wanted the Cherokee election to be declared null and void. This last request seems to suggest in part that, consciously or not, the freedmen may have been political pawns in an ongoing conflict between Ross Swimmer and Perry Wheeler, another candidate for chief. In the 1983 election for principal chief and deputy chief, Ross Swimmer and Wilma Mankiller ran on a ticket against Perry Wheeler and Agnes Cowen. At the polls, Wheeler received 3,300 votes to Swimmer's 2,437, but, on the strength of a large absentee vote, Swimmer came back to win the election by

fewer than 500 votes (*The Washington Post,* December 2, 1983). The race was so close that Wheeler and Cowen demanded a recount, stoking the fires of controversy. The subsequent recount prompted Cowen to say, "I have never seen such a farce. They had ballots strewn all over the world. They had them open. They didn't know which came from which county. It looked like a bunch of kids playing mudpies" (*The Washington Post,* December 2, 1983). Wheeler, Cowen and their attorney, L. V. Watkins, brought their case before the Cherokee Judicial Appeals Tribunal and the U.S. District Court. They alleged that the election proceedings were corrupt on several counts, and that the freedmen were disenfranchised from voting because they were Wheeler party allies. Although their case was defeated in both venues, the freedmen continued to fight, and Watkins brought the situation to the attention of Tulsa attorney Jim Goodwin, a prominent African American leader in the city. Goodwin became the attorney for the freedmen and used their case as an opportunity to raise the charges of election fraud again.

When the Nero case came under public scrutiny, Ross Swimmer was particularly sensitive to the allegation that he and the tribe had discriminated against the freedmen on the basis of race. In self-defense, he stated that according to the Cherokee Constitution:

> To run for office you must be a Cherokee by blood. I can't argue with that. I think it means what it says. The President of the U.S. must be a natural born citizen. Even a German immigrant or Spanish immigrant . . . who goes before the judge and is naturalized as an American citizen and has all the rights of an American citizen can never be the President of the U.S., because the Constitution specifically requires that the President of the U.S. must be an American by blood. . . . The Cherokee Nation, good, bad or otherwise, specifically says that to be an elected official you must be a Cherokee by blood. . . . The best evidence . . . has been a Certificate of Degree of Indian Blood. . . . We provide services from the federal government using the federal government's guidelines . . . Every program we get comes from the federal government and it comes with strings attached (Goodwin interview, 1984).

This statement is a good example of contradictory consciousness. Here Ross Swimmer conflates place of birth and nationality with blood, and uses this argument to buttress his political stance. In this case, racial hegemony is consciously manipulated, becoming political ideology.

On July 10, 1984, the Cherokee Nation filed a motion to dismiss the Nero suit, arguing that the court had no jurisdiction over the matter at hand without Congressional authorization, and that they were immune from suit according to the Indian Civil Rights Act, premised in part on sovereign immunity, a keystone of American Indian law. They asserted that their right

to determine tribal membership was a fundamental attribute of sovereignty, even if the basis of exclusion or inclusion was deemed unconstitutionally discriminatory. The Cherokee Nation maintained that the only hope was for the freedmen to bring their case before the Cherokee Judicial Appeals Tribunal in Tahlequah, Oklahoma. Furthermore, they argued that the case at hand was an intratribal political dispute and not a question for the courts. Congress might deem at some future date that the freedmen had legal rights to some tribal assets because of the Treaty of 1866, but the Cherokee Nation continued to assert that they had no political rights as tribal members (892 F. 2d. 1457–60, 1463 [10th Cir. 1989]; *Nero v. Cherokee Nation,* Defandant's Reply Brief 1986b, 8–12).

The freedmen countered these claims, arguing that to bring their case before the Cherokee Tribunal would be an exercise in futility. In the earlier Wheeler controversy, Watkins had brought the freedman issue before the tribal court, where the charges had been summarily dismissed. The freedmen believed that the entire machinery of the Cherokee elections had been compromised, and under the influence of the current Cherokee administration they could not get a fair hearing. Since their civil rights had been violated, the freedmen argued that their case belonged in the federal courts. They also alleged that the Cherokee Nation was subject to federal law because of two clauses in its 1976 Constitution, which arguably waived the tribe's rights to sovereign immunity.[14] Finally, the freedmen asserted that since federal treaties are the supreme law of the land, their 1866 treaty rights superseded the Cherokee Nation's claims to sovereign immunity.

After hearing the arguments from both sides, the district court in Oklahoma decided that the plaintiffs had failed to establish a claim against the tribe and granted a motion to dismiss. The Cherokee freedmen quickly filed an appeal before the Tenth Circuit Court of Appeals. The final decision on the Nero case came down on December 12, 1989; the court of appeals affirmed the decision of the district court, holding that the dispute between the freedmen and the Cherokee Nation was an intratribal affair over which it had no jurisdiction. The decision followed the arguments of the Cherokee Nation closely, but added that the Cherokee Nation had a right to stay a culturally and politically distinct entity (892 F. 2d. 1463 [10th Cir. 1989]).

In doing so, the court ignored the freedmen's long history of cultural and political association with the tribe by conflating race with culture and politics. The more accurate statement on their part would have been that the Cherokees had a sovereign right to remain a *racially* distinct community, but the court skirted this controversial issue.[15] However, from the beginning, the tapestry of Cherokee culture had been woven with efforts of "White, Black, and Red" Cherokee citizens. While racial self-definition may be a sovereign right upheld by the federal courts, in practice the Cherokee are a multicultural and multiracial people; these characteristics, often misunderstood

as in the case of the freedmen, have had dramatic effects on the political trajectory of their nation. This reality is reflected by the ongoing litigation between the Cherokee freedmen and the Cherokee Nation between 1889 and 1989.

Racial Politics in the Cherokee Nation: A Question of Blood?

Through a century of trials, the Cherokee Nation resisted the incorporation of the freedmen by progressively narrowing their definition of Cherokee identity. In the 1890s, the Cherokee Nation argued that the only legitimate class of Cherokee freedmen were those listed on the Dawes rolls. But by the Nero case, the Cherokee Nation had shifted its position, claiming that Dawes enrollment was no longer sufficient. Now, a Cherokee citizen had to be a Cherokee by blood, and that excluded the freedmen, who generally lacked the requisite documentation to prove blood descent. But ironically, there is good evidence that many of the freedmen listed on the Dawes rolls did in fact have Cherokee ancestry. At the turn of the century, the Dawes Commission rolls enumerated 4,208 adult Cherokee freedmen. Of that number, approximately 300 had some degree of Indian heritage, as the census cards indicate in various ways. Some cards say they are "colored" or "Cherokee-Black." Others state that the person is "Cherokee by blood," "part Indian," or "mixed."[16] This means that as many as 7 percent of the Cherokee freedmen who were original enrollees had Cherokee blood but were classified solely on the basis of their Black phenotype.

Further evidence for racial "misclassification" is found in the testimony of members of the Cherokee Freedmen's Association before the ICC on November 14, 1960. On that day Gladys Lannagan, a descendent of a freedman and a freedwoman, took the stand. "I was born in 1896 and my father died August 5, 1897," she testified before the court. "But he didn't get my name on the roll. I have two brothers on the roll by blood—one on the roll by blood and one other by Cherokee freedman children's allottees." Not only was Lannagan not listed on the Dawes roll, even though her siblings were included, but her brothers were enrolled separately in different racial categories—one as a Cherokee by blood and the other as a Cherokee freedman minor. She also stated that one of her grandparents was Cherokee and the other was Black, and that she was seeking whatever rights she was entitled to from them. Lannagan was not alone among the freedmen in her claim to Cherokee ancestry. During a century of litigation many of the freedmen asserted that they were of Cherokee descent, implying that if blood was to be the primary criteria, then they had enough biological collateral to be legitimate citizens of the Cherokee Nation.

The Nero case offers numerous examples of this sentiment; almost all the

plaintiffs in the case claimed that they had some Indian ancestry. Curtis Vann said that his grandfather was a Cherokee by blood, and Cornelius Nave stated that his father was three-fourths Indian. Although I was unable to verify their statements in the Dawes records, I was able to locate Berry Niven's birth affidavit of October 16, 1903, which provided further clues to a confused system of racial classification. The affidavit showed that Niven's father and mother were both citizens of the Cherokee Nation. The mother was a citizen *by marriage* and the father *by blood,* but the father was enrolled as a freedman. Normally (as in the case of Reverend Nero's birth affidavit), if a Cherokee citizen was listed on the freedman roll, then he or she was a citizen by adoption and not by blood.

People with mixed ancestry fell between the cracks of the triracial system of classification that existed in Indian Territory at the turn of the century. This system pushed individuals into categories that did not reflect their personal experiences or their familial connections. The rules of hypodescent played out in such a way that people with any degree of African American blood were usually classified exclusively as Black. For example, three out of four possible multiracial ancestries would result in an individual with a "Black" social classification:

Black-White——————> "Black"
Black-Indian——————> "Black"
Black-Indian-White———> "Black"
Indian-White——————> "Indian"

Based on this generalized chart, multiracial individuals with Black ancestry were always "Black" and those with White ancestry were never "White." As one Cherokee freedman descendent put it, "This is America, where being to any degree Black is the same thing as being to any degree pregnant" (Sam Ford, March 14, 1996). In a similar vein, those with Native American and White ancestry were often classified as "Indian," in part because "Whiteness" was seen as an empty cultural and racial category (Frankenberg 1993, Ware 1992). Whiteness was a "taken for granted," hegemonic identity that was no longer "marked" in any particular way. Using the analogy of mixing paint, a little red paint in a can of white will turn the whole thing pink, implying that one's Whiteness is no longer culturally "blank" or racially "pure." At the same time, pink is not red and to some degree a fourth racial category developed in Oklahoma. People of mixed European and Indian ancestry, who were phenotypically and culturally ambiguous, were usually classified as "mixed-bloods." But this was the exception rather than the rule, and the majority of individuals with multiracial identities were pushed into a single-ancestry classification. The critical point here is that the social and often political reaction to hybridity varied according to the components of each individual identity. Multiracial individuals with African American ancestry

were treated in qualitatively different ways from those without it.

This difference was the result of a number of factors. Some were economic, as seen in the 1960 testimony of freedwoman Tessie Claggett Payne before the Indian Claims Commission:

> My grandfather and grandmother are on the full blood Cherokee roll, the 1880 roll. . . . All of the children, there was six of them, got allotments, and my mother, and it happened to be in the Nowata oil pool, and they changed us to freedmens, from the blood roll to the freedmen roll, and that give them access to handle or change the land or dispose of it, or we could dispose of it, but none of us ever sold it. It wasn't supposed to be taxable but they sold it for taxes.

In this instance, the racial classification of this multiracial family changed between the 1880 rolls and the Dawes Commission rolls, to open up their allotted land for "grafter" manipulations.

But the motivations for "misclassifying" Red-Black Cherokees went beyond economic greed. For instance, in a recent interview a Cherokee man described a one-time Cherokee citizen named Mary Walker, who was supposedly one-eighth Black, three-eighths Cherokee, and one-half White:

> When she went to the Cherokee citizenship commission [Dawes] to enroll, they looked at her face and they saw a Cherokee woman and said, "through whom do you claim," you know, what are your parents' names and what is your degree of Indian blood. They put it all down, and then someone comes in and says, "She ain't no Cherokee. She's a nigger. That woman is a nigger and you are going to put her down as a nigger." . . . So the Dawes Commission had to go back and research her family and get all the documentation and tell this poor woman that not only are you going to be on the freedman rolls but so are your children.

The vocal denial of Walker's Cherokee and White ancestry and the concerted effort to push her into a solely "Black" racial category reflects the level of emotion in controversies over racial classification. After all, multiracial offspring were the undeniable result of a broken taboo, interracial sex. The mere existence of multiracial individuals like Mary Walker demonstrated the widespread practice of illegal sexual unions despite community norms and the Cherokee Nation's own anti-miscegenation laws.

Consider the background of Mary Walker: She had Black, Cherokee and White ancestry as a result of three generations of illicit sexual relations between prominent "mixed-blood" Cherokee masters and their Black slaves. These men were married to Cherokee women, who rarely turned a blind eye to their husbands' dalliances. At the time of the Dawes enrollment, Mary Walker

was also having a love affair with a wealthy Cherokee man named James French, with whom she had several children. Their offspring might have been considered a threat to the French family fortune if French's paternity could be established. But because Mary Walker was socially categorized as a freedwoman, the kinship connections between her, her children, and other Cherokees and Whites were probably severed. Emotions ran high when Mary Walker came before the Dawes Commission, because this one individual brought to mind all the issues of illicit sex, matrimonial betrayal, denied love, fatherless children, and economic greed.

But the responses above were specific to multiracial individuals with African American ancestry. In general, Native American and White unions were more readily accepted by the Cherokee community. One reason for this differential treatment may have been a long-held Cherokee bias against dark skin. In an interview, one Cherokee man explained this in the following manner:

> My wife's grandmother was born in 1897, and she talked about her childhood, which was a long time after slavery, but she talked about Black people in terms of them being culturally similar to us, that they were community-type people. You know she didn't have any prejudice against them as far as their behavior. Her prejudice all came from the fact that they were Black. Skin color, it was just skin color. And this was a full-blood Cherokee woman who didn't speak any English. She was a very traditional type person.

This implies that in spite of cultural commonalities, a Cherokee bias against Black skin maintained the social distance between Cherokees and their ex-slaves. Another, more recent story that he told concerned a pregnant Cherokee woman who used Indian medicine to lighten the child she was carrying. When I asked the same man whether this color bias existed among Cherokees today, he said that in his opinion, "Cherokees have always prided themselves in being a light-skinned people." A Cherokee bias against dark skin, resulting from their adoption of a system of African racial slavery, provides the simplest and most direct explanation for their social treatment and racial classification of multiracial individuals with Black ancestry.

The adoption of plantation slavery and several centuries of social, political, and economic relations with Euro-Americans engendered Cherokee color prejudice, the legacy of which means, among other things, that Cherokee identity has never been simply a question of blood. Multiracial individuals who choose to identify as both Indian and Black challenge the prevailing racial ideologies of hypodescent. Freedmen with Cherokee ancestry are confronted with questions of racial belonging influenced by ideas associated with blood, color, money, and sex. These symbolically laden objects of repulsion and desire weigh heavily on most systems of racial classification.

To negotiate these at the cost of being named a "race traitor" is almost too much to bear. Thus, it is not surprising that today of the over four thousand multiracial individuals of Cherokee and Black ancestry (Thornton 1990, 169), relatively few seek recognition as Cherokee citizens.

The Cherokee Freedmen Today

Regardless of their blood ancestry, most Cherokee freedmen identified as Cherokee citizens on the principle that they had been formally adopted by the tribe in the Treaty of 1866. Tribal citizenship meant social and political continuity and economic security for the Cherokee freedmen, and when this citizenship was challenged, the freedmen were willing to fight for full recognition of their treaty rights in the federal courts. While these battles were mostly unsuccessful, they continued to resist because they knew the stakes involved: The older generation of original enrollees feared that if they were not successful, the younger generation would grow up not knowing their rights, and their real history would be lost. As Nero said with uncanny prescience in 1984, "Over the years they have been eliminating us gradually. When the older ones die out, and the young ones come on, they won't know their rights. If we can't get this suit, they will not be able to get anything" (*The Oklahoma Eagle,* July 5, 1984). With the death of Nero in 1994 and the passing of the older generation of freedmen, this is exactly what happened. Today, the descendants of Cherokee freedmen rarely identify as Cherokee in any fashion. They may have a dim awareness that their ancestors were enslaved by Cherokee masters, but the details of this relationship are often confused. For example, one descendent said:

> Honestly, I don't know much other than we had a link to the Cherokees because both my parents and my maternal grandmother in the mid-1960s received what they called their Indian money. I sort of assumed we were part Indian.

Other than vague memories, contemporary descendants of Cherokee freedmen have retained little knowledge of their specific, historical rights to Cherokee citizenship.

During the course of my fieldwork in the Cherokee Nation, I struggled to find freedman descendants who were willing to talk with me about their "Cherokee heritage." In Tahlequah, where I was based, I asked around to see if anyone knew of freedman families living in the area. Usually my questions were met with suspicion about to why I would be interested in such a thing, but many people chalked it up to the unaccountable eccentricities of the outsider. Again and again I was told that there were no freedmen in Tahlequah and that those families had long since moved the twenty miles or

so to Muskogee and Fort Gibson, both of which have large populations of African Americans. Eventually, I got a helpful response and was directed to a section of town locally known as "Nigger Hill." Although the name made me bristle, it was the only neighborhood in Tahlequah where I could locate men and women who appeared to be African American.[17]

Residential communities are de facto segregated along racial lines in northeastern Oklahoma, and it was difficult for me as a "White" woman to cross those boundaries. I tried to overcome this social geography with the telephone, hoping that a phone call would feel less intrusive than a knock on the door, and that I would be given the opportunity to explain my intentions. But the phone presented new obstacles. With each call, I awkwardly explained who I was and why I was interested in an interview. Too often, I was nervous about the racially sensitive nature of my questions and tried to hide this fact behind academic jargon. Most of my contacts found this confusing, but one thing was clear: As soon as I hid behind the mantle of academia, my class status shifted, creating more social distance between me and whoever I was trying to interview. Because of race and class barriers and my early bumbles on the phone, most freedmen declined an interview, saying that they were too old to get involved in any controversy with the Cherokees.

While the issues of race and class never faded, sometimes I was able to get around them with a stroke of good luck. When one freedman descendant finally consented to an interview, a whole network of freedman families and communities opened up to me. From then on, when I called people I was able to build trust by saying, "Morris, your cousin in Tahlequah, gave me your number and said that I should talk to you." Then, when I met people on a face-to-face basis, I was more comfortable and so were they. My gender and youth worked to my advantage because I was perceived as less threatening than an older, White male might have been. My own rural, southeast Texas background also weighed heavily in my favor, since my accent and bearing were familiar and reminded people that we had a rural, Southern culture in common. As I shared pictures of my family's small farm, with its own outhouse and cypress siding, and as we exchanged stories about milk cows, roosters, winter gardens, buttermilk cornbread, and poke salad greens, the social barriers between us began to crumble.

Once I got to know several freedman families, I was surprised to find that very few cared whether or not they were recognized by the Cherokee Nation. Adults between the ages of thirty and fifty recalled freedman elders who spoke Cherokee as children, and who later sat around talking about the "glory days" of the Cherokee Nation. Many remembered the court battles against the Cherokee Nation and the important role that Rev. Nero played in their community, but the current generation was frustrated with Nero's lack of success and did not see the point in continuing the fight. However, some sought the occasional concession from the tribal government. One of their

most recent efforts had been to take their children, nieces, and nephews to the Cherokee Nation's registration department, hoping to get them enrolled so they would be eligible for educational scholarships. Not only were they denied enrollment, but they claimed they were "snubbed" and "snickered at" when they applied for tribal membership.

Wary of such slights, younger freedman descendants were often unwilling to seek tribal membership, even if they were eligible by virtue of their documented blood descent. Another factor was a sense of disconnection from their Cherokee past. As one freedman descendent said:

> I live in this American society, and my view of myself is as an African American. The Cherokee history is interesting, but since I have no familial or social links to the Cherokee Indians, I look at them as a people who are admirable, but they're not me. I view them and Oklahoma Indians in general as people who share many of the prejudices of Europeans about Black people. However, that's my view. . . . Several years ago, I asked Seminole tribal council member, the late Lawrence Cudjoe, why as a Black man he wanted to be a Seminole. He replied that it wasn't a question of wanting or not wanting, it was just who he was. Were I like him . . . I'd probably feel as he did.[18]

Like the Cherokees, the freedmen have adopted dominant Euro-American racial ideologies that negate multiracial identities. Although my informant's identity is constituted in multiple ways, it is difficult for him to see himself as anything but African American, thereby negating his potential racial, legal, and political identity as a Cherokee citizen.

But some Cherokees are working to change this situation, with the belief that the freedmen's claims are historically valid and politically potent in the present. One current tribal council member stated, "If we don't have to keep our treaty, then why should the U.S. government keep theirs. A promise is a promise." One Cherokee who sees the contemporary political impact of honoring such promises is David Cornsilk, editor of *The Cherokee Observer*, a local independent newspaper. Cornsilk is also one of the founders of the Cherokee National Party, a new grassroots political organization that uses *The Cherokee Observer* to reach a large audience of Cherokee voters. Cornsilk believes that in order for the Cherokee Nation to be successful, it needs to honor its 1866 treaty by recognizing the freedmen as tribal citizens. When I asked Cornsilk why he was interested in raising the issue, he said:

> I don't really have a very deep moral drive to give citizenship to the freedmen. I believe that we have a moral obligation to them, but that's not the driving force. My driving force is that the Cherokee Nation has to realize that it has jurisdiction there, and that in order to protect that

> jurisdiction, it must exert that jurisdiction over as many of the people who reside here as possible, including the freedmen. Whether they are Black or not, whether they have Cherokee blood or not, if we can control their destiny basically by being their government, then they are not going to agitate against us. They are not going to be our enemy (taped interview, April 12, 1996).

Cornsilk's motivation is primarily political: If the freedmen were recognized as tribal citizens, then the Cherokee Nation would extend its power base and placate, if not silence, some of its most persistent critics.

Cornsilk's realpolitik vision also takes the issue of race into account. Given the current political climate of this country, Cornsilk believes that the Cherokee Nation cannot continue to identify its citizenry on a strictly racial basis; he fears that tribal citizens who are more White than Indian are in danger of being reclassified as non-Indian, thereby diminishing the size and power of the Cherokee Nation:

> That's why I think the freedmen are so important to bring them in, because then it's a nonracial issue. We are a nation and we have become a nation that is big enough and moral enough to realize its responsibilities to the people that it held as slaves. It's like what Charlie Gourd [a tribal official] said, "Great nations like great men keep their word." . . . It's to our advantage to separate ourselves as far as possible from the fact that we are an ethnic and racial group, and just stand behind our identity as a political entity. Then we have strength and power beyond any other ethnic group. . . . We can't be sifted out. . . . We have to be dealt with on that level (taped interview, April 12, 1996).

Cornsilk understands how racial identities can be manipulated for political purposes, and believes the Cherokee Nation must beat the federal government to the punch. The potential exists for the Cherokee Nation to lose over half its citizens if a more conservative definition of "Indianness" were imposed by the federal government. For this reason, Cornsilk sees freedman recognition as critical to the Cherokee Nation's self-preservation.

But Cornsilk has encountered a great deal of resistance among the Cherokees, in part because nationalism of any sort is always tied to ideologies about race and culture. Cherokee national identity is based on a unique sense of "peoplehood" that is intertwined with primordial notions about blood and cultural belonging that seems to exclude the freedmen in the minds of most Cherokees. This is a misperception, since the freedmen in many cases possess as much if not more Cherokee culture as many "White" Cherokees already enrolled in the tribe.[19] But even if a move from race to a

legal and political self-definition would not necessarily threaten the cultural identity of the Cherokee Nation, it is precisely because the tribe has a reputation for cultural and racial dilution that most Cherokees find the possibility of freedman citizenship so threatening.

Cherokees like Cornsilk are exceptional in their desire to put political self-preservation before race or culture. Cornsilk has spent the past several years trying to find a freedman descendent who would work with him to seek tribal recognition, with the following scenario in mind. First, a freedman descendant of a Dawes enrollee would apply for tribal membership, which would be denied because of the lack of Cherokee blood. Then Cornsilk and the rejected applicant would take the case before the Cherokee Judicial Appeals Tribunal, where Cornsilk believes they could use the Cherokee Constitution of 1976 to win their case.

Like me, Cornsilk had little luck in finding a contemporary freedman descendant who thought tribal recognition was worth the trouble. A few years ago, one man agreed to work with Cornsilk but backed out, saying that he received threatening phone calls and feared for his life. Now Cornsilk says that he is talking to a 21-year-old man who is "real gung-ho," and that he hopes he will be able to convince the young man to go through with the process. Cornsilk feels a great deal of pressure to get the issue settled quickly. The Cherokee Nation was scheduled to have a constitutional convention in 1996, fulfilling a promise to the Cherokee people that twenty-five years after its initial passage in 1971 their constitution would be subject to revision. However, recent political turmoil in the Cherokee Nation have undermined and slowed this process. Nonetheless, Cornsilk contends that powerful people in the Cherokee Nation are already agitating to add a clause to the constitution that would specifically restrict tribal membership to Cherokees by blood. With the simple addition of these two words—"by blood"—the issue would be settled, and the vast majority of freedmen (approximately 93 percent) would be eliminated forever from Cherokee citizenship.

As a result of political turmoil that has erupted in the Cherokee Nation in the two years preceding June 1998, the Cherokee Constitutional Convention has yet to take place. During this time, the judicial branch of the Cherokee Nation has been adversely affected; nonetheless, the Cherokee freedmen case has finally been heard in tribal court, and an opinion is pending. I will provide an update on this case in a subsequent issue of *American Indian Quarterly*.

It is unclear where the future of the Cherokee freedmen will lead. Cornsilk might be successful, or the Cherokee Nation might deny freedmen their claims to citizenship once and for all. Either way, the decision will be made with little input from the freedmen themselves, whose views are neither offered nor solicited. Their collective silence can be interpreted a refusal to struggle against barriers of racial discrimination, or as a dignified acceptance

that where they find themselves located is perfectly comfortable, even happy. While it might cost the freedmen in an economic sense, they will no longer be buffeted by the political whimsy and prejudice of others; no longer will they have to fight for a place at a table that does not welcome them. Yet the group with the most at stake in this contest is not the freedmen but the citizens of the Cherokee Nation, who shape their own fate as they decide the freedmen's. If they formally choose to exclude the freedmen, then their own blood policies might be turned against them at some future date, giving the Cherokee Nation a painful lesson in racial politics—the same one they have been teaching the freedmen for over a century.

Notes

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1. Although the term "freedmen" is gender biased, I have chosen to use it to maintain historical continuity and to avoid the awkwardness of phrases such as "freedmen and freedwomen," or "freedpeople," which might jeopardize meaning. However, when referring specifically to the female gender, I use the term "freedwoman."

2. I have frequently chosen to protect the anonymity of my informants. Many offered to waive that right, preferring to have their name included. But in some cases the material is particularly sensitive and reveals confidential information about other individuals. I have exercised my own discretion in these instances. All quotes are taken from taped interviews during the course of my fieldwork conducted in the Cherokee Nation, northeastern Oklahoma, between the fall of 1995 and the summer of 1996, when I researched Cherokee identity politics (the subject of my 1997 doctoral dissertation in cultural anthropology at the University of California, Davis).

3. For an excellent historical account of Cherokee slavery see Theda Perdue's 1979 book, *Slavery and the Evolution of Cherokee Society, 1549–1866,* which provides, among other things, a rare perspective on pre-Contact slavery practices among the Cherokees. For a broader perspective on the Cherokee freedmen, see the cited works by Halliburton and Littlefield. The secondary literature on post-1866 developments is very limited with the important exceptions of Littlefield, Wilson and Wardell. However, their work only extends through the first decades of the twentieth century.

4. Throughout this paper I will alternate between the term "Indian" and "Native American." I believe that of the two, "Native American' is more accurate, but many argue that any native-born citizen is a "Native American," whereas "Indian" is Columbus's misnomer. During my period of fieldwork in Tahlequah, Oklahoma, if I used the term "Native American" I was immediately marked as an outsider. Only then did I realize how completely Cherokee people have adopted the term "Indian" as their own.

5. Omi and Winant define racial projects as hegemonic explanations of racial dynamics linked to efforts to redistribute resources along particular racial lines. In the U.S., we are all subject to these racial projects, since everyone learns the rules of racial classification without any obvious conscious inculcation (1994, 55–61).

6. For instance, in 1835 only 17 percent of Cherokees had any degree of White ancestry, but in the slave-owning class, 78 percent claimed White descent (Perdue 1979, 60). Indeed, only one percent of all full-bloods owned slaves (Thornton 1990, 53).

7. One group of Cherokees, the Knights of the Golden Circle, or, as they later became known, the Southern Rights Party (Perdue 1979, 129), used Southern pro-slavery rhetoric in an effort to bring the Cherokee Nation into the Confederate fold, and to oust Cherokee Chief John Ross and his more neutral National Party. Opposing the pro-Confederate Cherokees was a smaller group, the *Keetoowahs,* who "protested the Cherokees' acceptance of slavery as well as other aspects of white man's 'civilization' and who favored Ross's policy of neutrality" (Perdue 1979, 130). In this passage from Perdue, she says "the Keetoowahs, or Pin Indians" (130). It is a common error to equate the Keetoowahs with the Pins, since they were both "full-blood," culturally conservative factions within the Cherokee Nation. But the Pins, who wore crossed straight pins on their lapels, "were a separate organization of activists that started among the Goingsnake District, and while most of them were Keetoowahs it was not a requirement and there were many Keetoowahs who were not Pins" (Thornton 1990, 209, chap. 4, n. 4; also see Hendrix 1983, 24).

8. The Cherokee Nation's historical boundaries lie in the northeastern corner of modern-day Oklahoma, and comprise approximately one-eighth of the state's area.

9. I was able to locate a complete legal record of *Cherokee Freedmen and Cherokee Freedmen's Association, et al. v. United States,* 10 Ind. Cl. Comm. 109 (1961), Dockets 173-a and 123, in the Earl Boyd Pierce Collection, archival box 75, at the Cherokee National Historical Society, Park Hill, Oklahoma. Earl Boyd Pierce was the Cherokee tribal attorney during that period, and the CNHS has his complete papers, which are well-indexed and underutilized.

10. The Cherokee, Choctaw, Chickasaw, Seminole, and Creek Nations are commonly refereed to as the "Five Civilized Tribes," which usually has much to do with assumptions about their degrees of assimilation. I will refer to them as the "Five Tribes."

11. As I understand it, the calculation of Indian blood quantum during the Dawes enrollment process was a purely subjective process based in part on earlier tribal rolls and on oral testimony from enrollees and their supporting witnesses.

12. For a fictional treatment of this phenomenon in Oklahoma, see Linda Hogan's 1990 novel, *Mean Spirit.*

13. Virtually all of my information on the Nero case comes from the files of Jim Goodwin, attorney at law, of Goodwin and Goodwin, Tulsa, Oklahoma. Mr. Goodwin was the attorney for the freedmen in the Nero case, and he and his staff were very helpful to me during the course of my fieldwork. Mr. Goodwin has two sons, Jerry (who runs *The Oklahoma Eagle,* the only newspaper written for the African American community in Tulsa) and David (who has been a contributor to the paper). David and his father conducted a series of important taped interviews with Ross Swimmer, R. H. Nero, and Agnes Cowen in 1984. The tapes and transcripts are located in Jim Goodwin's files.

14. The clauses in the 1975 Cherokee Constitution are as follows: "The Cherokee Nation is an inseparable part of the State of Oklahoma and the Federal Union; therefore the Constitution of the United States is the supreme law of the land" (Article I, Section 1), and "The Cherokee Nation shall never enact any law which is in conflict with any State or Federal law" (Article I, Section 2).

15. My analysis of the freedmen controversy employs the same theoretical bridge linking critical race theory to the progressive Critical Legal Studies (CLS) movement of the early 1980s. Today, CLS challenges ahistoricism and insists on a contextual-historical analysis of the law. Critical race theory, in a similar vein, focuses on race as a social and political construction,

arguing that critiques of human rights legislation are flawed by inattention to race.

16. David Cornsilk, taped interview with author, April 12, 1996, Tahlequah, Oklahoma. Cornsilk worked for several years in the Cherokee Nation's registration department and has an extensive genealogical knowledge of the Cherokee community. On his own, he undertook the project to determine which Cherokee families had African American ancestry.

17. Virtually all the families who resided in this neighborhood had prominent "mixed-blood" Cherokee surnames such as Vann, Ross, Nivens, and Downing, marking their unique history and identity.

18. This quote points to the fact that multiracial identity is not a homogeneous experience. Different groups of Native American–African American people, here Black Seminoles and Cherokee freedmen, have very different experiences of "racial formation" and social incorporation.

19. Many Cherokees admit that contemporary freedmen descendants share Cherokee food ways, as well as some economic and religious practices. A case in point is that freedmen community churches are usually Southern Baptist, like the sizable Cherokee Baptist community, and these churches hold socioreligious observances on the same days as Cherokee "traditional" holidays. Several Cherokees that I interviewed said they could relate more easily with freedmen than Whites, because the freedmen were also a "community" people.

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