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RAILROADS AND COAL:
RESOURCE EXTRACTION IN INDIAN TERRITORY, 1866-1907

by

Robert J. Voss

A DISSERTATION

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RAILROADS AND COAL:
RESOURCE EXTRACTION IN INDIAN TERRITORY, 1866-1907

Robert J. Voss, Ph.D.

University of Nebraska, 2013

Adviser: William G. Thomas III

This dissertation examines the history of the interaction of railroads and coal during the end of the nineteenth century in what is today eastern Oklahoma. The Indian territory presented complex opportunities and challenges for railroad developers, coal operators, miners, railroad workers, and Native Americans. Using primary sources, such as published and unpublished accounts of both prominent and typical Native Americans and Euro-Americans, congressional debates, railroad company annual reports, railroad company correspondence, account books, treaties, court cases, and maps, this dissertation explores the process of railroad and coal company incursion in the region and the conflicts that resulted. All participants in the negotiations, contracts, treaties, strikes, and other legal actions between 1866 and 1907 sought to control the terms of energy production, market accessibility, and resource extraction. New approaches to the history of capitalism inform this dissertation, which stresses in particular the significance of the private contract as a tool of incursion and resistance.

Rather than living on federally dictated reservations or having only itinerant land access, the Choctaw, Cherokee, Chickasaw, and Creek (Muskogee) possessed clear title and fee simple land rights to Indian territory. Their legal right to the coal deposits and to the rights of way necessary for railroad building proved surprisingly durable and highly

contingent. In this setting Native Americans in the Indian territory used opportunities presented by railroads and coalmines to strengthen their economic and political position. Powerful Native Americans worked with and against weak railroads from a position of relative strength in the Indian territory.

This dissertation argues that railroad companies, endeavoring to build across Indian territory and gain access to its coal, faced considerable legal and political challenges. Complicated practical concerns over coal and railroads challenged managers, federal authorities, and Native American leaders attempting to balance access to coal, income from taxes and legal frameworks. This tenuous balance toppled at the end of the nineteenth century in the strike of 1894 when some Native American coal leaseholders, coal operators, and the railroads turned to the federal government to help break the strike.

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INTRODUCTION

Railroads, the most important technological development of the nineteenth century, grew at astounding rates during the second half of the nineteenth century. Stemming from the expansionist desires of settlers, pressure from the federal government, and economic activity of land speculators, railroad mileage across the country drastically increased from 1840 through the end of the nineteenth century. By 1840, railroad tracks extended for 2,818 miles throughout the United States, especially to the east of the Mississippi River. Ten years later, the tracks covered 9,021 miles and by 1860, railroad companies completed more than 30,000 miles of track. By 1866, every state had at least some track built, yet the expansion throughout the nation was uneven. For example, by 1868, the new states of Nebraska and Kansas had 555 miles and 494 miles of railroad, respectively, and Texas had over 496 miles of rail. Just to the south, Arkansas had only 38 miles of rail by the same year. Railroads were in the far west as well - even in California, Nevada and Oregon.¹

While the surrounding states contained hundreds of miles of track, the Indian territory, part of the region that would become Oklahoma, remained void of railroad tracks until 1870.² Once railroad building was introduced in the Indian territory, it grew

¹ *Manual of the Railroads of the United States* (New York: H.V. & H.W. Poor, 1868).

² This dissertation uses the less formal "Indian territory," in recognition of the people and space without precise legal standing with the federal Government. The region did not gain territorial organization and as such, the people of the region did not have any formal standing with the United States government.

The most important text regarding Native Americans, Indian Country, and its legal understanding, *The Rise and Fall of Indian Country* by William E. Unrau, considers how land area was gradually reduced for Native Americans, especially the Kansa, Osage and other tribes to

relatively slowly. In 1880, the Indian territory only had 273 miles compared to over 3000 miles of track in Texas, over 3000 miles in Kansas, and over 850 miles in Arkansas. The amount of mileage of track also reflects the number of railroad companies in the area. The Indian territory only had four railroad companies by 1882, compared to over one hundred in Kansas for the same year.

When looking at period maps of the US in the late 1800s, one finds an Oklahoma-shaped area in the middle of the map regularly labeled “unorganized territory.” Some maps make it appear this area has no population and suggest it has no formal identity. Why did this central region lack one of the most important technological advancements of the nineteenth century?

Upon further inspection, the Indian territory did gain some rail between 1870 and 1904, but a paltry amount compared to the surrounding states. By 1904, at least fifteen railroads crossed the Indian territory.³ What happened between 1873 and 1904 that permitted so many railroad companies to establish themselves within the region?

the north of the Indian territory. For Unrau, the space on maps designated as Indian Country represented a large swath of what would become Kansas and Nebraska and less what would be Oklahoma. Unrau’s text while valuable for understanding the general issues facing the region, paints with too large of a brush to cover all of the land that the government ceded to Native Americans. He suggests that “the establishment of Indian country” by the federal government was “ineffective and a failure from the beginning,” as a political process. He does not consider Native Americans’ power over their culture and identity. For Unrau, there was not enough Native American power to alter the course of white encroachment on Native land, especially the land directly west of Missouri and Iowa. In contrast, this dissertation in part describes the successful resistance by individual Native Americans to dominant white power in the Indian territory, a smaller portion of land than that described by Unrau. William E Unrau, *The Rise and Fall of Indian Country, 1825-1855* (Lawrence: University Press of Kansas, 2007).

3 “Office of Indian Affairs to George W. Scott, Treasurer of Choctaw Nation,” November 14, 1904, Choctaw Nation Collection, Indian Archives Collection, Oklahoma State Historical Society.

This area, west of the state of Arkansas and north of Texas, and part of the Louisiana Purchase had a long history in Euro-American records as part of “Indian Country,” or the Indian Territory. Before the Louisiana Purchase, this place was the middle ground between Spanish Texas and French Louisiana. Both nations claimed the land, but it was so far inland and away from other Euro-American settlements that neither the French nor the Spanish settled the land and was unintentionally reserved for Indigenous populations. The area remained separated by large distances from Euro-American settlements for much of the nineteenth century. As the United States claimed increasingly large swaths of North America, this area remained apart from white settlement.

The Indian territory, or the Indian Country, gained recognition as a separate place, yet one without clear definition. The term “Indian Territory,” using capital letters, one of several common terms used to describe the region, suggests that this place might be similar to other territories of the west, such as Nebraska Territory, yet there was no formal recognition from the federal government. Similarly, there was no unified “country” to which the name “Indian Country” might apply. The region was not originally destined to be part of the rest of the United States such as other territories. Instead, it was intended to be separate, differentiated to accommodate the people assigned to live there.⁴

One can consider the area referred to as Indian territory or the Indian Country as part of the west, what Walter Nugent defines as a “place that shares a history of conquest

⁴ For more on the types of land settlement and naming of regions, see Berlin Basil Chapman, *Federal Management and Disposition of the Lands of Oklahoma Territory, 1866-1907* (University of Wisconsin--Madison, 1931); David A. Chang, *The Color of the Land: Politics of Landownership in Oklahoma, 1832-1929* (Chapel Hill, NC: UNC Press, 2010).

and the mixing of ethnically diverse peoples in a land whose economic identity derives primarily from limited opportunities.” Yet, people of the region owned slaves, grew cotton and the Confederacy lay claim to it as a twelfth state. In these ways, the Indian territory was a southern region. Considered broadly, the Indian territory functioned in the nineteenth century as an important peripheral sub region of both the Old South and the New West.⁵

The region encompassed by this dissertation includes the history of several important European nations, Indian nations and the burgeoning American empire. People of various nationalities populated this space, often adhering to malleable national allegiances. To enter this Indian territory, people had to cross borders that separated nation-states in odd arrangements. In recognition of the ownership of the region, the nationalities represented in the region and the difficulties associated with the border, the Indian territory might usefully be considered as a “borderland.” We might treat it in the

5 For examples of the difficulties defining the West see Walter Nugent, “Where Is the American West? Report on a Survey,” *Montana: The Magazine of Western History* 42, no. 3 (July 1, 1992): 2–23; Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West*, 1st ed (New York: Norton, 1987); Patricia Nelson Limerick, Clyde A. Milner II, and Charles E. Rankin, eds., *Trails: Toward a New Western History* (University Press of Kansas, 1991); Richard White, “*It’s Your Misfortune and None of My Own*”: *A New History of the American West* (Norman, OK: University of Oklahoma Press, 1993); Clyde A. Milner II, Carol A. O’Connor, and Martha A. Sandweiss, eds., *The Oxford History of the American West* (Oxford University Press, USA, 1996).

Other historians find extreme difficulty in placing their region in the history. Regional boundaries plague those liminal areas that might be parts of several regions. The *Journal of Southern History* includes the Indian territory as part of the south, but C. Vann Woodward and Edward Ayers do not. The inclusion or exclusion of the Indian territory in the South affects regional identity today and attempts to understand the region in the past. See Edward L Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992); Edward L. Ayers, “What We Talk About When We Talk About the South,” in *All Over the Map: Rethinking American Regions*, 1st ed. (Baltimore: Johns Hopkins University Press, 1996), 61, xroads.virginia.edu/~DRBR/ayers3.html; C. Vann Woodward, *Origins of the New South, 1877-1913*, *A History of the South* (Baton Rouge: Louisiana State University Press, 1951).

way Canadian and Mexican borders are treated – as an interior borderland. The railroads acted eventually as informal agents of the growing American empire, crossing into the Indian territory with the intention to access resources and, in some cases bypassing the region. Railroads offered a tangle of contradictory possibilities--they could develop untapped energy resources, at the same time they could rearrange the temporal and spatial relationships of people and land. In Indian territory, a region that remained without a single mile of railroad until 1870, their effects were long anticipated and radically heightened.⁶

Indian territory gained unique status for the United States when the government set it aside for the resettlement of the Choctaw, Cherokee, Creek (Muskogee), Chickasaw and the Seminole, the so-called Five Civilized Tribes in 1824.⁷ The federal government promised a refuge for Native Americans persecuted by whites in the eastern United States, at least for a time. Eastern tribes in particular, forced off their land, were given land within the Indian Country and settled there from 1828-1842. The federal government forcibly resettled Choctaw, Cherokee, Chickasaw and Creek (Muskogee) peoples into the Indian territory (and later the Seminole) in exchange for their former lands east of the Mississippi. These emigrant Native Americans nations each maintained their respective governments, courts of law and schools, in addition to their cultural and

6 For more on this, see Clarence B. Davis, Kenneth E. Wilburn, and Ronald Edward Robinson, eds., *Railway Imperialism*, Contributions in Comparative Colonial Studies no. 26 (New York: Greenwood Press, 1991); Colin M. Lewis, "Britain, the Argentine and Informal Empire: Rethinking the Role of Railway Companies," *Bulletin of Latin American Research* 27, no. s1 (April 2, 2008): 99–123, doi:10.1111/j.1470-9856.2007.00246.x.

7 Grant Forman, prominent historian of Oklahoma, coined the term, which many Native Americans have now embraced as their own. See Grant Foreman, *Indian Removal: The Emigration of the Five Civilized Tribes of Indians*, 2nd ed. (University of Oklahoma Press, 1974).

social structures. The federal government recognized the legal standings of the individual Native American governments and, most importantly, gave fee simple title to the respective Indian nations for the land in the Indian Country. The legal practice of setting aside land for Native Americans, combined with large distances from Euro-American settlements and a lack of interest by Euro-Americans effectively separated Indian territory from the United States. Given the legal, social, and geographical boundaries, this dissertation seeks to answer how railroads came to cross the Indian territory and examines the interchanges they inaugurated.

The emigrant Native American governments possessed the fee simple title to the land following their forced relocation to the Indian Territory, virtually erecting a legal boundary to the region. Without strong transportation facilities, the Indian territory also remained separated from other states and territories by vast conceptual and temporal distance – it was extremely difficult to get there. Railroads crossing the Indian territory drastically altered the relationship of Euro-Americans with the region and the people who owned the title. Thus, railroad managers did not act simply out of a cause for empire or enveloping more land since the land was difficult to get to and of little monetary value, but railroads instead became multi-variant, acting both as advocates of Native American rights and simultaneously for the cause of an American empire spanning the continent.

Several important monographs have addressed the relationships of Native Americans and Euro-Americans regarding the Indian territory. H. Craig Miner's essential *The Corporation and the Indian* situates Native American power against the eventual domination of corporations.⁸ Miner portrays the Native Americans as unready for the

⁸ H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907* (Columbia: University of Missouri Press, 1976).

incorporation of their economies into the whole of the United States, and his narrative treats the absorption of the Indian territory into the United States as inevitable. Miner reveals the collaboration between some Native Americans and corporations, usually leading to loss for Native Americans. He importantly portrays the government as neutral in the negotiations of rights between Native Americans and corporations (usually railroads). Miner's most unsettling conclusion relates corporate intrusion to blood quantum, arguing, "the degree of corporate intrusion upon a tribe's land was inversely related to the percentage of Indian blood that flowed in the veins of its citizens."⁹

There are numerous moments on which the future of the Indian territory hinged and where multiple outcomes were possible. This dissertation seeks to understand Native Americans, railroads, and coal mines on their own terms without the burden of determinism and inevitability. Miner's text is valuable to understanding the relationships of the railroad and the region, yet it suggests that the largest problem facing the Native Americans was not the railroad as a physical imposition, but as a cultural imposition. Unrau's previously mentioned *The Rise and Fall of Indian Country* (see footnote #2) focuses on what would become Kansas while excluding the Indian territory to the south.¹⁰ Other monographs dealing with either the Indian Country or Indian Territory overlook the region that became the land of the emigrant tribes. All have overlooked the important analysis of Native American power over their own region in favor of a discourse of impending devastation where Native Americans were victims of whites without any

⁹ Miner, *The Corporation and the Indian*, 211.

¹⁰ Unrau, *The Rise and Fall of Indian Country*.

recourse of their own.¹¹ This project aims to situate the discussion on the Indian territory within the larger discourse on railroad history, labor history, and natural resources history, specifically asking how the railroads affected the social landscape of the region. Eventually Euro-Americans seized power over the region, but for the majority of the period considered here, notably from 1866 to 1896, Native Americans wielded limited effective power over the land and managed the industries attempting to extract resources. This dissertation also situates this approach of Native peoples in Indian territory to the presence and expansion of industrial capitalism, examining in detail the negotiations of Native peoples as they encountered industrial technology.¹²

11 Angie Debo and others also portray Native Americans without agency of their own and at the will of whites. Rather than being able to act on their own accord, Native American blood quantum constrained Indian actions to tribal alignment. For a small sampling see, Angie Debo, *The Rise and Fall of the Choctaw Republic* (Norman, Oklahoma: University of Oklahoma Press, 1961); Angie Debo, *Road to Disappearance: A History of the Creek Indians* (Norman, Oklahoma: University of Oklahoma Press, 1979); Ray Allen Billington, *Westward Expansion: A History of the American Frontier*, 5th ed (New York : London: Macmillan ; Collier Macmillan Publishers, 1982); Frederick Jackson Turner, *Rereading Frederick Jackson Turner: "The Significance of the Frontier in American History" and Other Essays* (Yale University Press, 1999).

12 Power and industrial technology harkens to the spread of "capitalism" and its uneven reach and effects. This dissertation also discusses the spread of capitalism via railroad companies and their coal subsidiaries. The spread of capitalism was quite uneven in the Indian territory as many of the time considered land ownership the foundation of capitalism and without it, there could not be progress in this front. For more on Native American economic structures, see Alexandra Harmon, *Rich Indians: Native People and the Problem of Wealth in American History* (Chapel Hill: University of North Carolina Press, 2010); William Robbins, *Colony and Empire : The Capitalist Transformation of the American West* (Lawrence Kan.: University Press of Kansas, 1994); James Taylor Carson, "Native Americans, the Market Revolution, and Culture Change: The Choctaw Cattle Economy, 1690-1830," *Agricultural History* 71, no. 1 (Winter 1997): 1–18, doi:10.2307/3744683; Terry Lee Anderson, *Property Rights and Indian Economies* (Rowman & Littlefield, 1992); Miner, *The Corporation and the Indian*; Bruce E Johansen, *The Encyclopedia of Native American Economic History* (Westport, Conn: Greenwood Press, 1999); Stephen P. van Hoak, "Untangling the Roots of Dependency: Choctaw Economics, 1700-1860," *American Indian Quarterly* 23, no. 3/4 (Summer - Autumn 1999): 113–128, doi:10.2307/1185831; Richard White, *The Roots of Dependency: Subsistence, Environment, and Social Change Among the Choctaws, Pawnees, and Navajos* (Lincoln: University of Nebraska Press, 1988); Colleen M O'Neill and William P. Clements Center for Southwest Studies, *Working*

Many have written about the importance of railroads to the United States and this dissertation fits within the framework providing the railroad history of a relatively unexamined place within the United States. Other texts cover the history of specific lines in sometimes excruciating detail. There is vast railroad history on the construction of railroads, the best of which is *Empire Express: Building the First Transcontinental Railroad* by David H. Bain, which delves deeply into the process of building the transcontinental, when many other people had already written on the process.¹³ Maury Klein's Union Pacific trilogy, *Union Pacific Volume I*, *Volume 2*, and *The Reconfiguration: America's Greatest Railroad 1969 to the Present*, details the various phases of one of the largest railroads in the United States.¹⁴ To the south, Richard J. Orsi detailed the growth of the Southern Pacific and its involvement in the west in his *Sunset Limited: The Southern Pacific Railroad and the Development of the American West, 1850-1930*.¹⁵ These histories of single companies are rich in detail and importantly inform the history of railroads in general.

Robert Fogel applied economic analysis to railroad historical development in his classic *Railroads and American Economic Growth*.¹⁶ Fogel's interest is the necessity of

the Navajo Way: Labor and Culture in the Twentieth Century (Lawrence: University Press of Kansas, 2005).

¹³ David Haward Bain, *Empire Express: Building the First Transcontinental Railroad* (New York: Penguin Books, 2000).

¹⁴ Maury Klein, *Union Pacific. Volume I, 1862-1893* (Minneapolis: University of Minnesota Press, 2006); Maury Klein, *Union Pacific. Volume II, 1894-1969* (Minneapolis: University of Minnesota Press, 2006); Maury Klein, *Union Pacific: The Reconfiguration: America's Greatest Railroad from 1969 to the Present* (New York: Oxford University Press, 2011).

¹⁵ Richard J. Orsi, *Sunset Limited: The Southern Pacific Railroad and the Development of the American West, 1850-1930* (Berkeley: University of California Press, 2005).

¹⁶ Robert William Fogel, *Railroads and American Economic Growth: Essays in Econometric History* (Baltimore: Johns Hopkins Press, 1964); Robert William Fogel, *The Union*

railroads, the technological determinism of railroads and finds that industrial and economic growth in the United States might have occurred without railroads. Albert Fishlow, in his *American Railroads and the Transformation of the Antebellum Economy*, suggests that railroads were in fact important to the development of America, , claiming, “sustained modern [economic] growth . . . seems to have occurred almost coincidentally with the introduction and diffusion of the railroad.”¹⁷ Fishlow used highly sophisticated mathematical analyses to assess the cost reduction provided by using rail to transport goods. Fishlow and Fogel come to similar conclusions that the railroad significantly reduced costs. Fishlow further calculates the “social gains” that stem from railroads including advancements in technologies related to railroads such as in the iron and coal sectors of the economy. Fishlow quantifies the economic growth due to railroad proliferation during the antebellum period. These two railroad historians set the tone for others interested in the importance of railroads.

Business historians such as Alfred Chandler also analyzed the role railroads have played in the development of American industry. Chandler text *The Visible Hand: The Managerial Revolution in American Business* makes strong claims for the transformations of industry due to railroads.¹⁸ The infrastructure and the modern forms of business enterprise invented by the railroads were necessary conditions for the development of modern business enterprise to other sectors of the economy.

Pacific Railroad: A Case in Premature Enterprise, vol. 2, The Johns Hopkins University Studies in Historical and Political Science 78 (Baltimore: Johns Hopkins Press, 1960).

¹⁷ Albert Fishlow, *American Railroads and the Transformation of the Antebellum Economy* (Cambridge: Harvard University Press, 1965), 12.

¹⁸ Alfred D. Chandler, *The Visible Hand: The Managerial Revolution in American Business* (Cambridge, Mass: Belknap Press, 1977); Alfred D. Chandler, *The Railroads, the Nation's First Big Business Source and Readings* (New York, N.Y: Harcourt, Brace & World, 1965).

New histories of capitalism balance the economic importance of railroads with their cultural impact. Taking a close look at the broad impact of railroads in the United States West, Richard White argues in his *Railroaded: The Transcontinentals and the Making of Modern America* that railroads built ahead of demand and instead of creating national wealth, created individual wealth and regional chaos.¹⁹ Similarly, William G. Thomas III in *The Iron Way: Railroads, the Civil War, and the Making of Modern America* investigates the importance of railroads to the North and to the South in the era surrounding the Civil War, revealing the vast social and economic investments in railroads and how the railroads shaped both the North and South in distinctive ways. These interpretations of railroad history come together with other texts in economic history such as Stephen Mihm's *A Nation of Counterfeiters: Capitalists, Con Men and the Making of the United States*, which explored counterfeiters of bank notes in the antebellum period and Seth Rockman's history of the "unskilled" workers in early Baltimore, *Scraping By: Wage Labor, Slavery, and Survival in Early Baltimore*, to represent a new history of capitalism. Harvard University's Program on the Study of Capitalism continues to investigate different perspectives of capitalism and economics without using the tools of the cliometrician. Railroads offer great insight into the history of capitalism, so much so that many key texts in the new history of capitalism center on the changes brought by the railroad.²⁰

¹⁹ Richard White, *Railroaded: The Transcontinentals and the Making of Modern America* (New York, N.Y.: W. W. Norton & Company, 2011).

²⁰ White, *Railroaded*; William G Thomas, *The Iron Way: Railroads, the Civil War, and the Making of Modern America* (New Haven: Yale University Press, 2011); "The Program on the Study of Capitalism," accessed July 18, 2013, <http://studyofcapitalism.harvard.edu/home>; Klein, *Union Pacific. Volume I, 1862-1893*; Klein, *Union Pacific. Volume II, 1894-1969*.

While this dissertation is a part of railroad history, it also deals with coal and its importance. The history of coal in the United States has been dominated by the anthracite region of the Appalachian Mountains, the oldest coal producing area of the United States. Sean P. Adams' *Old Dominion, Industrial Commonwealth: Coal, Politics, and Economy in Antebellum America* compares the political economies of Virginia and Pennsylvania, finding that state political culture prevented Virginia from utilizing the coal within its borders.²¹ Price Fishback studied the labor in the coal industry, analyzing competition for laborers, the legal environment and the impact of labor unions on the coal industry in his *Soft Coal, Hard Choices: The Economic Welfare of Bituminous Coal Miners, 1890-1930*.²² Recent texts also broaden the perspective of coal history. David Nye's *Consuming Power: A Social History of American Energies* argues that Americans have always sought after new sources of energy.²³ Barbara Freese, in *Coal: A Human History* suggests that humankind's quest for coal has been a balance of the costs of air pollution with the value provided by energy from coal.²⁴ Alfred Crosby, *Children of the Sun: A History of Humanity's Insatiable Appetite for Energy* examines the importance of a variety of energy sources to humankind, making a call of abandon coal.²⁵ Many texts address labor activism by miners. Austin Kevin Kenny's *Making Sense of the Molly*

21 Sean P Adams, *Old Dominion, Industrial Commonwealth: Coal, Politics, and Economy in Antebellum America*, Studies in Early American Economy and Society from the Library Company of Philadelphia (Baltimore: Johns Hopkins University Press, 2004).

22 Price Van Meter Fishback, *Soft Coal, Hard Choices: The Economic Welfare of Bituminous Coal Miners, 1890-1930* (New York: Oxford University Press, 1992).

23 David E. Nye, *Consuming Power: A Social History of American Energies* (Cambridge, Mass: MIT Press, 1998).

24 Barbara Freese, *Coal: A Human History* (Cambridge, MA: Perseus Pub, 2003).

25 Alfred W. Crosby, *Children of the Sun: A History of Humanity's Unappeasable Appetite For Energy* (W. W. Norton & Company, 2007).

Macguires establishes that the phenomenon of coal workers' protests through violence, while occurring at the same era as the Haymarket Riots, the Homestead Lockout, and the Pullman Strikes, came from the mixture of Irish ancestry and modern corporate industrial capitalism in the form of the Reading Railroad.²⁶ Harold W. Aurand's *From the Molly Maguires to the United Mine Workers: The Social Ecology of an Industrial Union, 1869-1897* demonstrates the relationships of the variety of labor organizations used to work for worker's rights.²⁷ Thomas G. Andrews' *Killing for Coal: America's Deadliest Labor War* paints a picture of coalmine life and the community the coal supported demonstrating the variety of people involved in the extraction of coal and the extent they would go to protect their livelihood.²⁸ Andrews' work on the Ludlow Massacre of 1914 is directly connected to this dissertation, as the manager of the Ludlow Mines, Edwin Ludlow was the superintendent of the Choctaw, Oklahoma and Gulf mines referred to in this dissertation.

Significant obstacles to railroad development in the Indian territory including political opposition, geographic isolation, economic irrelevance, and socio-cultural difference dissuaded and deflected efforts to build railroads within the Indian territory, and yet by the end of the century the region was fully engaged in economic and industrial systems through coal production and transportation. Railroad managers overcame these obstacles to development in a process that recognized Indian authority while working to

26 Austin Kevin Kenny, *Making Sense of the Molly Maguires* (New York: Oxford University Press, 1998).

27 Harold W. Aurand, *From the Molly Maguires to the United Mine Workers: The Social Ecology of an Industrial Union, 1869-1897* (Temple University Press, 1971).

28 Thomas G Andrews, *Killing for Coal: America's Deadliest Labor War* (Cambridge, Mass.: Harvard University Press, 2008).

subvert Native rights and land ownership once the natural resources for industrial development, especially coal, piqued outsiders' interests. This regionally oriented study of railroads and coal production considers major issues in the history of the American west especially economic control, energy production, labor history, and identity.²⁹ It emphasizes political effects in the study of North American railroad development as related to railroad growth.³⁰ Once railroads crossed the region, railroad companies competed within the Indian territory, some working with Native people and their rights while others attempted to usurp control. This power struggle included access to natural resources, relationships with tribal members, and developing viable routes through the region. This dissertation uses multiple sources including manuscripts, reports, and congressional documents to analyze the relationships of powerful entities competing for control within an essentially misunderstood locale.

Political changes dictated from the exterior of the region diminished absolute Native control over their land and assets corresponding with exterior investment and extraction of natural resources. Beginning with early crossings of the Indian territory,

29 Woodward, *Origins of the New South, 1877-1913.*, Ayers, *The Promise of the New South*. W. David Baird, "Are the Five Tribes of Oklahoma 'Real' Indians?," *The Western Historical Quarterly* 21, no. 1 (February 1990): 5–18.

30 Regarding railroads in the region, Maury Klein succinctly attributes the difficult "complex relationships" of the roads south and west of Mobile, Alabama as the reason he did not attempt to analyze the region. Maury Klein, "Southern Railroad Leaders, 1865-1893: Identities and Ideologies," *The Business History Review* 42, no. 3 (October 1, 1968): n. 1, doi:10.2307/3112502; White, *Railroaded*; Jac C. Heckelman and John Joseph Wallis, "Railroads and Property Taxes," *Explorations in Economic History* 34, no. 1 (January 1997): 77–99, doi:10.1006/exeh.1996.0664; Carye Cole Chapman, "Railroads Across Tribal Lands," *American Indian Law Review* 20, no. 2 (January 1, 1995): 489–508, doi:10.2307/20068806; William S. Greever, *Arid Domain: The Santa Fe Railway and Its Western Land Grant* (Stanford, Calif: Stanford University Press, 1954).

Europeans noted the relative value of the space. Chapter one discusses three initial and important crossings of the Indian territory by Europeans and Euro-Americans and their perception of increasing economic values of the region but limited by distance. The region's relative significance to the United States changed when transportation systems reached across the region revealing economic importance of the land due to the resources it contained.³¹

At the same time as the Plains Indian Wars to the north, the Native Americans of the Indian territory undertook endeavors to ensure economic security including attempting to build railroads connecting their land to the rest of the United States. Despite Indians' efforts, the federal government prohibited Native American initiatives to develop economic and industrial endeavors within the Indian territory. Chapter two investigates the evolution of pertinent legislation that affected the Indian territory including treaties that reveal the political and economic desires of Native Americans in the years surrounding the Civil War. While federal legislation eroded Native American power, Confederates promised political autonomy and military protection. The allegiance of the emigrant tribes to the South brought significant pressure on Indian nations in the punitive treaties following the war.

Chapter three contends that the first two railroads to cross the Indian territory used distinctly different tactics regarding Native Americans. The Missouri, Kansas and Texas Railway often worked with Native Americans, taking a pragmatic approach to

31 For more on similar transformations of places with similar environments and vast natural resources, see Daniel Yergin, *The Prize: The Epic Quest for Oil, Money, and Power* (New York: Simon and Schuster, 1991); Nicholas E. Flanders, "Native American Sovereignty and Natural Resource Management," *Human Ecology* 26, no. 3 (1998): 425–449; O'Neill and William P. Clements Center for Southwest Studies, *Working the Navajo Way*.

dealing with locals. The Atlantic and Pacific Railroad established their route based on the premise that Indian title should be extinguished in order to yield a huge bounty for the railroad. Each of these two railroads interacted with space, people and governments in subtly different, yet significant, ways.

Chapter four discusses the ways that railroad affected the region, especially the natural resources which appeared to be readily available along the railroads' right of way. While seeking profitability through cheap resource extraction, railroads sought ways to access the timber, stone and coal within the Indian territory. Keenly aware of this, Native American governments worked with and against railroad interests, resulting in an unstable relationship between Indians and railroads, while power remained entrenched in the hands of Native Americans.

This economic strength of Native American governments unsettled many Euro-Americans, especially railroad interests who had worked within the halls of Congress to secure access into and across the Indian territory. Chapter five examines the continuing interests of railroads in the region. These secondary railroads benefited from legislation coupled with new Supreme Court rulings and infringed on established Native American power. Native Americans continued to establish positive relationships with railroads, securing payments for extended access to Indian resources, culminating in the creation of coal mines owned by Native Americans, operated by railroads with Euro-American workers paying royalties (or taxes) to the coffers of Native Americans.

By the 1890s, coal was the most important fuel in North America. Coal mining proved lucrative enough for railroads to attempt to secure increasingly permanent status in the Indian territory. Native Americans also increasingly depended on royalties from

coal mines to pay for essential services, especially education. Euro-American coal miners working in the Indian territory went on strike in 1894 along with thousands of other coal miners in the United States. Chapter six argues that the strike of 1894 proved essential to establishing Federal power over the Indian territory as Native Americans needed to invite Federal troops to restore order and re-establish fiscal stability. Federal presence in the territory equated to shifting power from Native Americans to the federal government in Washington DC and reasserting federal power over the region despite legal claims lingering in the capitol. The strike of 1894 was the culmination of contests over control of natural resources, especially coal, resulting in circumscribed Indian governance and established Euro-American influence on the resources and politics of Indian territory. When the effects of the strike combined with constantly changing legal jurisdiction, Native American authority diminished, effectively removing their power.

Euro-Americans and Native Americans came together over coal deposits in the Indian territory after years of struggle over space and power. These contests resulted in unexpected cooperation between Native Americans and railroads resulting in positive experiences for both sides, at least for a while. Over time, the cooperation eroded as both Native Americans and railroad interests sought to increase their power and assumed rightful ownership over resources. Natural resources and railroads provided influence to motivate the transformation of the Indian territory into Oklahoma.

CHAPTER 1 - TRANSECTING INDIGENOUS SPACE: CROSSING THE UNKNOWN

I looked forward in my imagination to the time when, instead of a wagon road to the Pacific, we should have a railroad.
Waterman Ormsby, 1857.

Late in the summer of 1718, the French explorer Jean-Baptiste Bénard, Sieur de La Harpe, arrived at Dauphin Island, Louisiana. In this outpost near the fledgling settlement of New Orleans, La Harpe received his instructions to go to the interior of North America, farther inland than any other French settlement to establish a trading post. La Harpe traveled from Saint-Malo in northern France that summer to take a land concession in French Louisiana.¹ La Harpe's endeavor into the interior of North America exemplified the relationship between indigenous people and Euro-Americans for future generations. He expected passive people willing to trade and give in to his demands, only to find the Native Americans – in his case, the Toyvoya and Nassonite people – tactile negotiators much stronger than he imagined. To La Harpe's and others' surprise, the indigenous people of what would become Eastern Oklahoma revealed themselves capable of building and maintaining their own empires.

The French claim in North America at the beginning of the eighteenth century included several disparate locations. French settlements in Quebec and other colonial outposts in North America signaled the interest of French expansion on the continent, the

¹ Marc de Villiers du Terrage, *An Explorer of Louisiana: Jean-Baptiste Benard de La Harpe 1683-1765*, trans. Samuel Dorris Dickinson (Hope, Arkansas: Institute for Regional Studies, Ouachita Baptist University, 1934), 6.

most important of which for La Harpe was the sprawling claim of Louisiana in 1699.² Southern Louisiana quickly developed into a trading hub because of its access to the Mississippi River and its tributaries. Despite being nominally French through consistent exploration and the establishment of a French economic and cultural presence in the region, the French continually strengthened their claims within North America.³ La Harpe participated in the exploration and subsequent economic investments of the French.⁴

By the beginning of the 18th century, the French were not the only nation laying claim to the central region of North America. The Spanish, reaching up from their presence in Mexico and Texas, also claimed the region. However, both of these European nations' claims to the area could not supersede the claims of the Indigenous people who had generational claim to the region. Eventually, by the middle of the nineteenth century, the original inhabitants of what is today eastern Oklahoma would be replaced with emigrant Native Americans.

2 French claims also included parts of present-day South Carolina and Florida, but all had failed until the establishment of Acadia in what is now Nova Scotia. Louisiana was established after the exploration of the Mississippi by La Salle in 1685. La Salle's expeditionary efforts resulted in the foundation of St. Louis, New Orleans and plotting the route of the Mississippi River.

3 An elaborate look at the ways in which the colonial empires in North America claimed their territory, especially in relation to the people already there, is found in Robert J. Miller, *Native America, Discovered and Conquered: Thomas Jefferson, Lewis and Clark, and Manifest Destiny* (Lincoln, Nebraska: Bison Books, 2008).

4 The French settlements in Louisiana originated from the mouth of the Mississippi River, first at Dauphin Island and later from New Orleans. Jean-Baptiste Le Moyne de Bienville directed the placement of claims from Dauphin Island, carefully plotting French claims to maximize their effectiveness through exploration and permanence. See Robert S. Weddle, *The French Thorn: Rival Explorers in the Spanish Sea, 1682-1762*, 1st ed. (College Station: Texas A&M University Press, 1992).

While they were exploring and attempting to solidify their claim, the French did not understand the great distances and costs to control their claims that would confront them as they developed French North America. The vast distance between viable colonial French settlement and peripheral trading locations effectively limited French movement that allowed Native Americans on the continent to exist within the reaches of western Louisiana without constant European intervention. Not only the French, but also many Euro-Americans continued to mis-understand the huge distance and accompanying difficulty in travel that they faced when attempting to reach to the west, the Indian territory.⁵ Over time, the geographic isolation shrank drastically, drawing the space of the Indian territory into the sphere of influence of the United States. Understanding the experiences of the early EuroAmericans gaining access to the space leads to a greater understanding of why this space remained outside of the EuroAmerican colonial venture that continued through the Civil War.⁶

Continued political expansion brought new cultural interaction that left significant changes in the Indian territory through the technological artifacts required for the variety

5 The region that would become the Indian territory was part of western Louisiana according to the French. I argue that distance between two significant points acted as a boundary or an impediment to successful trading and economic ventures. The boundary of distance remained a significant boundary throughout the eighteenth century and the beginning of the nineteenth. Space provided enough of a boundary to assuage the desire to cross the region for many Euro-Americans. The boundary of distance however also compounded difficulties between European nations because there were few obvious landmarks with which to define borders, so imperialistic claims overlapped within the Indian Territory.

6 Colin G Calloway, *One Vast Winter Count: The Native American West Before Lewis and Clark* (Lincoln: University of Nebraska Press, 2003); White, *The Roots of Dependency*; Pekka Hamalainen, *The Comanche Empire* (New Haven, Conn: Yale University Press, 2008); Anne Farrar Hyde, *An American Vision: Far Western Landscape and National Culture, 1820-1920*, The American Social Experience Series (New York: New York University Press, 1990).

of modes of transportation.⁷ Continued political expansion by EuroAmericans increased cultural interaction with Native Americans leaving significant changes in the Indian territory.

EuroAmericans generally considered this region as autonomous and unworthy of EuroAmerican attention until the continued expansion of the United States forced the Cherokee, Choctaw, Chickasaw, and Creek people out of their homes and into the area that became the Indian territory. Whites also crossed the territory to regions beyond the borders of the Indian territory. As increasingly permanent and stable transportation networks evolved, political, social, and cultural changes took place within Indian territory. Each group crossing through the region recalled different experiences. This chapter uses four instances of people interacting with the region of the Indian territory that demonstrate the shift of Indian territory from outside of EuroAmerican settlements in the early 1700s to an internal periphery of the United States in the early 1800s and again to the hinterland of both the North and the South through the Civil War.

Rather than being a place infused with layers of meaning from continued occupancy by the same people group from generation to generation, the Indian territory's transitional occupancy affected the meaning of the space to the people who used the land for various purposes, whether trading, farming, ranching, or some other use. The Native American population of the Indian territory changed over time. La Harpe traded with the Nasonite and Taovaya people at the beginning of the eighteenth century. Yet, that group

⁷ Technological artifacts – the grade and tracks on which the locomotive engine runs – are significant markers of technology. Similarly, stagecoaches also need stations, permanent places at which to change teams of motive power. Overland trails also are a technological artifact of sorts – a residue of human action, but this residue may be unintentional while the laying of tracks or placement of stagecoach stops must be intentional.

of people was not present when Washington Irving crossed the prairies in 1832, or when Waterman Ormsby ventured by stagecoach through to California in 1854. This chapter offers four sequences of spatial narratives that provide clear glimpses into the region as offered by outsiders traveling into, and out of, the Indian territory. Each of the four narratives briefly reveals how each writer attempted to classify the region under consideration.

* * * * *

Jean-Baptiste Bénard, Sieur de La Harpe was a seasoned explorer. Born in France in 1683, he spent time under the Spanish crown in South America and possibly journeyed to China. With this past experience, La Harpe was well equipped for his concession up the Red River.⁸ While in France, La Harpe received a land concession along the Red River from the Company of the West. The Company of the West, a subsidiary company of the Company of the Indies, by 1718 was a new venture by the French to encourage settlement in their southern colonies in North America.⁹ Owned by the Scottish financier John Law, the Company of the West encouraged French colonists into the new world in

8 The best history on La Harpe's early life comes from Marc de Villiers de Terrage. His research on La Harpe exposes La Harpe's grandiose self-impression and the associated inflated ego that influenced his importance. La Harpe's flawed self-image possibly reinforced his ability through a strong drive as an explorer and cartographer. Villiers du Terrage, *An Explorer of Louisiana: Jean-Baptiste Benard de La Harpe 1683-1765*.

9 Thomas Jefferson makes a passing mention of the importance of the "West India company," which is the same as the West Indies Company and the Company of the Indies in his historical account of the settlement of Louisiana. The company became important to the history of the region even if its economic valuation declined. See Thomas Jefferson and William Dunbar, *Documents Relating to the Purchase & Exploration of Louisiana* (Boston: Houghton Mifflin & Co., 1904), 16; Thomas Freeman, *Jefferson and Southwestern Exploration: The Freeman & Custis Accounts of the Red River Expedition of 1806*, ed. Dan L. Flores (Norman, Oklahoma: University of Oklahoma Press, 1985).

an effort to regulate and expand commercial activities in the Mississippi Valley.¹⁰ The French government gave migrant settlers plots of land and encouraged them to establish themselves while founding trading posts for beaver and tobacco. Economics drove the French presence in North America.

Upon La Harpe's arrival at the company headquarters at Dauphin Island, Louisiana, the governor of the French settlement grew concerned over the assigned location of La Harpe's concession. Jean-Baptiste Le Moyne de Bienville thought the constant flooding of the lower regions of the Red River and the major logjam on the river would prevent a viable settlement.¹¹ Bienville relocated La Harpe's grant to a "post above the Natchitoches, about whom we have had yet little knowledge."¹² Bienville sent La Harpe more than one hundred and fifty leagues above the Red River settlement of Natchitoches.

La Harpe set out for his land grant on December 17, 1718. His crew of fifty people was equipped for water-travel as much as possible with a few pirogues and two flat-bottomed boats loaded with trading goods. The party headed up-stream from New Orleans, on the Mississippi and the Red Rivers over the following two months. They used the assistance of local Native American guides, but still the party lost their way on

10 Following the release of a monopoly of trade with Louisiana, Law used his working capital funded by his bank to exploit the trade of both Louisiana and Canada. Earl J. Hamilton, "Prices and Wages at Paris Under John Law's System," *The Quarterly Journal of Economics* 51, no. 1 (November 1, 1936): 46–47; George Odell, *La Harpe's Post: Tales of French-Wichita Contact on the Eastern Plains*, 1st ed. (Tuscaloosa, Alabama: University Alabama Press, 2002), 33.

11 Villiers du Terrage, *An Explorer of Louisiana: Jean-Baptiste Benard de La Harpe 1683-1765*, 19.

12 Bernard de La Harpe, "Account of the Journey of Benard de La Harpe: Discovery Made by Him of Several Nations Situated in the West," trans. Ralph A. Smith, *Southwestern Historical Quarterly* LXII, no. 1 (July 1958): 75.

several occasions.¹³ The French settlements to the west of the Mississippi River remained isolated and extremely remote. Bienville sent La Harpe even beyond these in search for the rumored wealth of North America.

La Harpe's experience in the Indian territory was emblematic of European encounters in the region: he envisioned vast resources, but was confounded by the difficulty of accessing those resources. Europeans envisioned the region as teeming with resources. Maps from the period with "timber," "gold fields," and "salt" clearly marked show the supposed resources of the area and reveal the interests of the Europeans who ventured into the region. For all of the coveted resources, the space also remained inaccessible. An occasional trading party might venture into the region, but consistent trade with significant goods exchanged was previously unfeasible.

Cartographers had previously designated the region that La Harpe ventured to as "Vast Tract of Land Unknown."¹⁴ The Vast Unknown fittingly eventually became understood as the Indian country and later the Indian territory.¹⁵ La Harpe explored the inner continent of North America, making two key discoveries for subsequent

13 Native Americans assisted the party all along the route. La Harpe made mention of the Indian guides assisting them. The guides remained important until the party reached the Natchidoches Post, where the guides did not know any route of use to La Harpe's party. La Harpe, "Account of La Harpe's Journey," July 1958, 80.

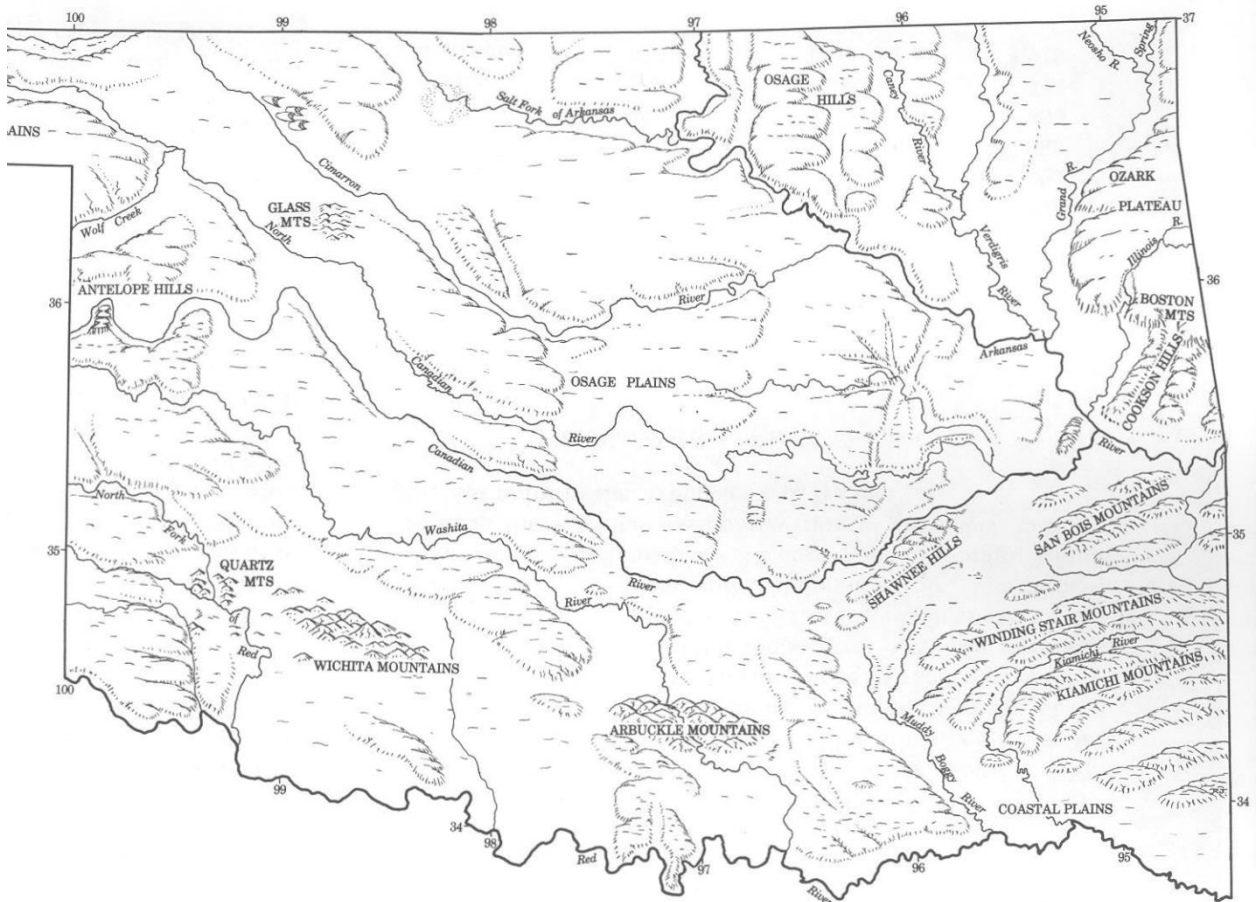
14 There are several maps with similar designations, the best of which is found through the David Rumsey Map Collection at <http://www.davidrumsey.com/luna/servlet/s/6b24if>. Thomas Jefferys, "(Composite of) An Accurate Map Of North America. Describing and distinguishing the British and Spanish Dominions on the great Continent; According to the Definitive Treaty Concluded at Paris 10th Feby. 1763. Also all the West India Islands Belonging to, and possessed by the Several European Princes and States. The whole laid down according to the latest and Most authentick Improvements, By Eman Bowen Gegr: to His Majesty and John Gibson Engraver. London. Printed for Robert Sayer No. 53 Fleet Street as the Act Directs 2d. July 1775." (London: Sayer and Bennett, 1776).

15 Unrau, *The Rise and Fall of Indian Country*.

EuroAmericans. La Harpe discovered coal in the region, and he discovered the huge distance and difficulty of travel that prevented him from ever returning to what would become eastern Oklahoma.

The space was difficult for La Harpe to travel through for several geological reasons. La Harpe departed his Nassonite Post along the Red River and traveled north overland across grassland and plains leading to the Ouachita Mountains. The Ouachita Mountains include the smaller ranges of the Kiamichi, Winding Star and San Bois Mountains within the region.¹⁶ These mountains fold onto each other, forming semi-parallel basins and ranges, crossed by streams and rivulets.

¹⁶ The Ouachita Mountains formed through a folding, faulting and uplifting motion. These mountains “curved belt of forested ridges and subparallel valleys . . . forming long sinuous mountain ridges that rise 500 to 1,500 feet above adjacent valleys.” This difficult terrain presented a significant obstacle for La Harpe and others to cross overland from the south. Kenneth Johnson, Danney Goble, and Charles Robert Goins, eds., *Historical Atlas of Oklahoma*, 4th ed. (Oklahoma City: Univ of Oklahoma Press, 2006), 6.



1: Physical Geography of the Indian Territory. From John Wesley Morris, Charles Robert Goins, and Edwin C. McReynolds, *Historical Atlas of Oklahoma*, 3rd ed. (Norman: University of Oklahoma Press, 1986).

North of the Ouachita Mountains are the Canadian and Arkansas Rivers. These rivers run generally west to east through the region. The Verdigris and Grand Rivers empty into the Arkansas at Three Forks, making a significant addition to the volume of the river. Other rivers including the Muddy River and the Kiamichi River empty into the Red River, the southern boundary of the Indian territory. Both the Red and the Arkansas rivers in the Indian territory are part of the Mississippi River system, the primary method for the French to reach into the Indian territory.

Continuing north, the Ozark Plateau reaches into the Indian territory. At similar latitude are the Osage Hills, just to the west of the Arkansas River. Between the Ozark Plateau and the Osage Hills run the Verdigris and Grand Rivers. The rivers cross broad flat plains punctuated by smaller streams that have gradually eroded the gently rolling hills so there is only a gentle undulation to the terrain between the Verdigris and Grand Rivers. It is along these two rivers that primary transportation corridors developed.

The most significant feature of the region of the Indian territory was not the rivers or the mountains, but rather the dense foliage that formed the Cross Timber. La Harpe's journey took him on a north-south corridor, which runs parallel to the general path of the Cross Timber, so he did not encounter the most difficult sections. The Cross Timber extends southward from the western plains, forming a barrier to the west. This forest was extremely difficult to cross. The best description of the Cross Timber comes from Washington Irving in 1832:

The Cross Timber is about forty miles in breadth, and stretches over a rough country of rolling hills, covered with scattered tracts of post oak and black-jack; with some intervening valleys, which, at proper seasons would afford good pasturage. . . The first made on the prairies by the Indian hunters, had frequently penetrated these forests, sweeping in light transient flames along the dry grass, scorching and calcining the lower twigs and branches . . . It was like struggling through forests of cast iron.¹⁷

This "forest of cast iron" acted not as a barrier only for Euro-Americans, but also for native people. The Apache and Comanche to the west of the region would have been

¹⁷ Irving had lived abroad and returned to the United States for a tour of the frontier in 1832. On this tour, he crossed the Indian Territory and wrote extensively, giving us some of the best information on the historic Indian Territory. Washington Irving, *A Tour on the Prairies*, ed. John Francis McDermott (Norman, Oklahoma: University of Oklahoma Press, 1956), 125.

slowed by the Cross Timber. The Cross Timber dictated the contact between the semi-horticultural people of the east and the hunting people to the west.¹⁸

La Harpe's group arrived at the Natchitoches post on February 20, 1719.¹⁹ The party was well received by the settlement, but La Harpe was unable to trade. Nearby Spanish missionaries refused the opportunity to trade with the French, a reflection of the continuous conflict between the nations.²⁰

To this point along the Red River, the Native Americans who the group encountered along the way served as guides. They occupied a few small settlements of several hundred people along the Red River and assisted French traders up to and through the locations they knew.²¹ They provided traders some food for the journey after trading,

18 In 1757, the Taovayas retreated to the west, across the Cross Timbers to escape Osage attacks, using the natural fence to keep their enemies at bay. Hamalainen, *The Comanche Empire*, 49.

19 The French established the Natchitoches post several years earlier to counter Spanish encroachment into French Louisiana. The settlement was along the border of present day Texas and Louisiana. The Spanish had a nearby post with the same intentions of countering French incursion into Spanish territory. Officially, there was no connection between the posts, but the Spanish priests offered mass for the French settlement. When La Harpe arrived at the post, Father Manuel came from the Spanish post to say mass. La Harpe attempted to trade with him but was rebuffed. No mention is made if La Harpe ever attempted again to trade with the Spanish. La Harpe, "Account of La Harpe's Journey," July 1958, 86.

20 The Spanish priest refused the opportunity to trade with the French because of religious obligations, despite an offer of two to three percent of sales for those he referred. La Harpe sought to influence the priests into an alliance with him while forcing the Spanish military to recognize his governmental responsibility. Father Marcillo to M. de la Harpe, May 24, 1719, in Benjamin Franklin French, ed., *Historical Collections of Louisiana Embracing Many Rare and Valuable Documents Relating to the Natural, Civil and Political History of That State Compiled with Historical and Biographical Notes*, vol. 3 (New York: D. Appleton & Co., 1851), 71.

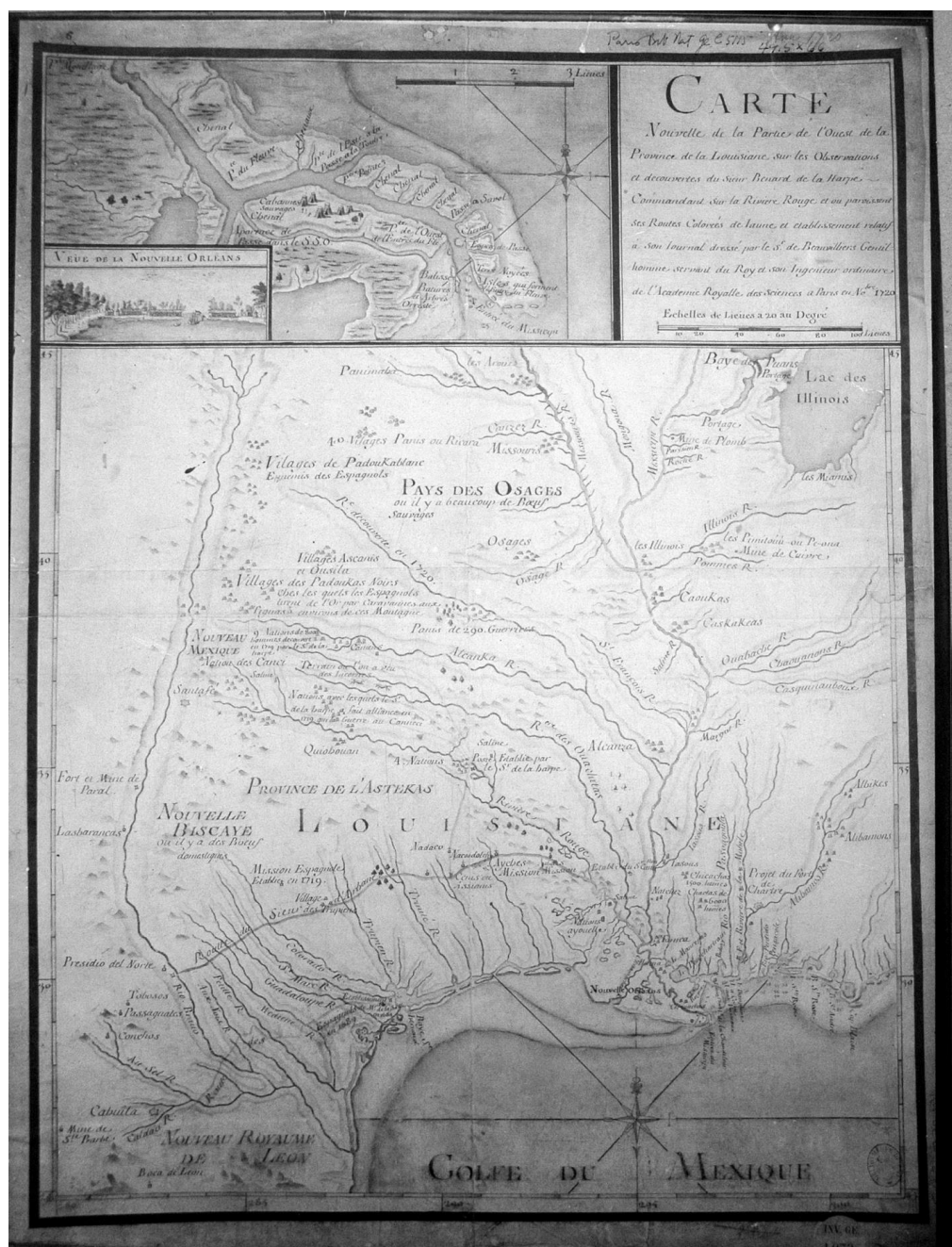
21 La Harpe's company encountered many people, identified variously as the Yazoo, Adayes, Natchitoches, and others. There had been conflict among the Native nations, including the Chickasaw and the Comanche and the Nassonites, but not in reaction to the French presence, at least according to La Harpe. Bernard de La Harpe, "Account of the Journey of Benard de La Harpe: Discovery Made by Him of Several Nations Situated in the West," trans. Ralph A. Smith, *Southwestern Historical Quarterly* LXII, no. 2 (October 1958): 254.

but their value to the expedition as permanent trading partners remained limited. French traders constantly sought new trading opportunities with Native Americans. La Harpe listened to and recorded multiple rumors of gold, settlements and the route to New Mexico.²² La Harpe established his post on April 22, 1719, among the Nassonite people. La Harpe traded 300 francs worth of goods for the right to settle with the local chief and built a cedar-trading house. While establishing a trading settlement was valuable, he eyed bigger trading opportunities like trading with the Spanish settlements in New Mexico.²³

One of the problems for La Harpe's trading venture was lack of knowledge. La Harpe did not know how far or where New Mexico was or which direction the settlements of Santa Fe were, although He believed his trading house was directly downstream from Santa Fe and "Nouveau Mexique." La Harpe relied on rumors of wealth in his search for more trading. He knew there was space to cross, but he had little idea of what getting to Santa Fe and capturing the Spanish trade might entail. He believed he could follow the rivers to Santa Fe.

22 Weston Arthur Goodspeed, ed., *The Province and the States: A History of the Province of Louisiana Under France and Spain, and of the Territories and States of the United States Formed Therefrom* (Madison, Wis: The Western Historical Association, 1904), 184.

23 He purchased the right to settle among the Nassonites for 2000 *livres* of merchandise, the equivalent of 300 *francs*. See H. Sophie Burton and Foster Todd Smith, *Colonial Natchitoches: a Creole Community on the Louisiana-Texas Frontier* (Texas A&M University Press, 2008), 172. The Nassonites were part of the Caddoan people group, which included the Wichita, Pawnee and Arikara people. "Nashoni" was the term given the Caddoan people by the Commanche. Caddoan is a popular name contracted from "Kadohadacho," the name of the Caddo proper. See William B. Glover, "History of the Caddo Indians," *Louisiana Historical Quarterly* 18, no. 4 (October 1935), <http://ops.tamu.edu/x075bb/caddo/Indians.html>.



2The map of La Harpe's exploration reveals his misunderstanding of "Nouveau Mexique" and the relationship of the region to Spain. Source: Benard de La Harpe, Jean-Baptiste de Beauvilliers, 1720b: Carte nouvelle de la partie de l'ouest de la province de la Louisiane sur les observations et découvertes du sieur Bénard de la Harpe, commandant sur la rivière Rouge, et ou paroissent ses routes colorées de jaune et établissement relatifs à son Journal / dressé par le Sr de Beauvilliers... ingénieur ordinaire, de l'Académie royale des Sciences... A Paris, en novembre 1720. Service historique de la Défense, département Marine, Cartes et plans, recueil 69, no. 7. <http://rla.unc.edu/Mapfiles/HMC3/BN%20Ge%20C%205115.HMC.3.jpg>

La Harpe continued to search for improved trading opportunities. He believed the Spanish were “working at taking a very heavy metal from the earth,” among the Apache people whom he thought were only sixty leagues away at the headwaters of the Red River.²⁴ Upon hearing of the Spanish so close and apparently mining gold, La Harpe set out again, this time overland on August 11th, 1719, “to go to the discovery of the nations, which had been made mention of in the northwestward, to the end of making an alliance with them for facilitating means of penetrating into New Mexico . . . from where the Spaniards draw considerable wealth.”²⁵ He wanted to find the Native Americans who were mining for the Spanish and to turn that wealth to himself.²⁶

La Harpe and ten men traveled overland in search of the rumored mines and the essential source of Spanish wealth.²⁷ He found neither. Instead, he recorded on September 3, another type of earthen product: “several mines abundant in pit coal.”²⁸

24 La Harpe, “Account of La Harpe’s Journey,” October 1958, 377.

25 La Harpe, “Account of La Harpe’s Journey,” October 1958, 380.

26 La Harpe, “Account of La Harpe’s Journey,” October 1958, 371.

27 The source of the Spanish wealth was close enough for the Spanish to be worried about Frenchmen flooding northern New Spain and invading its mining districts. In response to the threat of French encroachment, the Spanish reinforced their northern border and reoccupied East Texas as a buffer. Spanish and French diplomats used the border between their respective colonial holdings to their personal advantage at the beginning of the eighteenth century. For an extensive look at the dealings, see David J. Weber, *The Spanish Frontier in North America*, 1st Edition (New Haven: Yale University Press, 1992), 158–171.

28 Eventually the Missouri, Kansas and Texas Railway targeted outcroppings like those found by La Harpe as the railroad planned their route through the Indian territory. See Chapter 3ff.

The Smith translation of La Harpe’s account notes that there is no way they were along the South Canadian river, but rather were along smaller tributaries as La Harpe’s instruments were faulty. Bernard de La Harpe, “Account of the Journey of Benard de La Harpe: Discovery

This is the first written mention of coal in the region. These “mines” were probably outcroppings of coal located along creeks and interspersed within the basins and folds of the region. It is possible locals worked the outcroppings for local use. La Harpe was definitely not searching for coal, yet it was this resource that propelled later exploration and exploitation of the region.²⁹

While they did not find gold, La Harpe discovered trading opportunities. La Harpe’s party encountered the Touacara [Tawakoni] nation on the outskirts of their settlement at the confluence of the Arkansas, Grand and Verdigris Rivers.³⁰ The Touacara settlement of nearly seven thousand people was what La Harpe sought after to trade with. The people greeted him warmly with gifts including various minerals and a slave, displaying their willingness to trade. Multiple people groups were congregating together when La Harpe encountered them, apparently for a regular trading event.³¹ Thousands of people gathering for trade might have proven beneficial for La Harpe if he could have

Made by Him of Several Nations Situated in the West,” trans. Ralph A. Smith, *Southwestern Historical Quarterly* LXII, no. 4 (April 1959): 525.

29 His discovery of multiple coal outcroppings is significant for the region, especially when viewed in light of subsequent re-discoveries of coal. This natural resource proved extremely valuable to railroads seeking to benefit from the Indian territory and the individuals willing to sell to the railroads, most notably that of J.J. McAlester who was known for his promotion of coal mining in the Indian Territory and claims of discovery. Paul Nesbitt, “J. J. McAlester,” *Chronicles of Oklahoma* 11, no. 2 (June 1933): 758–764.

30 The Touacara were another part of the Wichita people group, also known as the Tawakoni or Tawehash. Frederick Webb Hodge, *Handbook of American Indians North of Mexico*, vol. 2, 2 vols. (Kessinger Publishing, 2006).

31 It is unclear if the people joined together for trading that La Harpe came, or if the Native Americans had gathered to greet La Harpe specifically. Of course, the ego-maniacal La Harpe thought it was for him. Subsequent evidence of the permanence of the location as a trading point has revealed the recurrent trading ventures in the region. See Odell, *La Harpe’s Post* for the archeological evidence of the viability and permanence of his various trading missions. The nations gathered at Three Forks, at the confluence of the Arkansas, Grand and Verdigris Rivers also included a trader from the Choctaw.

leveraged the trade for his desires. He nearly left three of his men there for a permanent settlement until he was told the entire village would be abandoned so they could go “on the hunt.”³² Despite the willingness to trade and the respect for the French, La Harpe did not want a migratory settlement for his trading post.

The Touacara remained separated from the French or Spanish settlements directly to the south. Spanish had been in the vicinity for several years as had the French, but the Touacara people maintained their isolation from the Europeans; separated by a large distance and apparently unaware of their presence. There were few obstacles to cross, but human migratory patterns did not link Spanish or French settlements to those of the Touacara. Spanish colonists stayed predominantly to the south, not crossing the Red River boundary. French traders used water-borne travel extensively, but logjams, swamps and uncharted regions prevented the French boats from getting up the Arkansas River to the point of Three Forks.³³ LaHarpe’s visit to this region revealed to the French the people lived in the area and were potentially valuable trading partners.

32 The Tawakoni settlement consisted of many nations trading together when La Harpe arrived. The Tawakoni were the most numerous, but he also met with other chiefs from the Toayas, Comanche, Ardeco, Wichita, Yscancis, Kiowa-Apache and the Waco peoples. A lone Choctaw trader also encountered LaHarpe at Three Forks. The Choctaw trader was on the outside of his trading range, but showing an economic adaptation to the region. Despite the Choctaw’s prominence in Mississippi and Alabama, there was little evidence other than LaHarpe to suggest that the Choctaw ranged across Arkansas and Louisiana to Three Forks. La Harpe, “Account of La Harpe’s Journey,” April 1959, 531.

33 French Traders used water-borne travel nearly exclusively to this point in American exploration. La Harpe’s northern expedition is the first overland expedition by a French trader. From his expedition, the Tawehash became attached through trade, to the French and openly displayed their allegiance. La Harpe left a carved post of the coat of arms of the French King, signifying the Tawehash were associated with the French and signaled French claims of trade. By 1759, the Tawehash flew the French flag. French, *Historical Collections of Louisiana*, 3:75.

He made the most of his visit, trading over fifteen hundred pounds of goods with the thousands of people gathered.³⁴ He found the region and the people fascinating and in need of a permanent post. Subsequent trading posts at Three Forks – at the confluence of the Arkansas, Grand and Verdigris Rivers – reveal the importance of the location to trade.³⁵ In addition to the prime trading location, La Harpe believed it was some of the best land in Louisiana. Beans, corn and pumpkin was readily accessible. Timber was nearby and the people of the space were friendly and willing to trade. He found, “Men of good sense, more intelligent than the tribes of the Mississippi,” with land so fantastic that it made the people lazy.³⁶ La Harpe intoned even more: “no point in all the colony of Louisiana [is] more useful for making an establishment.”³⁷ The value that La Harpe found in the land was a direct reflecting of the quantity of Native Americans he encountered and the potential trade they represented.

La Harpe ultimately did not establish a permanent post with the Touacara [Tawakoni] at Three Forks. The semi-sedentary trading opportunity was not enough to

34 The contact between the French and the Touacara people lasted at least through August, 1759 when Don Diego Ortiz Parrilla, “a Spanish soldier of renown,” marched from San Antonio to the Tawehash settlement, part of the Touacara people. Parrilla’s command of 500 men attacked the Tawehash whom were flying a French flag. The Touacara repulsed the attack. See Hodge, *Handbook of American Indians North of Mexico*.

35 Odell, *La Harpe’s Post*, 39; Johnson, Goble, and Goins, *Historical Atlas of Oklahoma*, 48.

36 La Harpe, “Account of La Harpe’s Journey,” April 1959, 531.

37 La Harpe, “Account of La Harpe’s Journey,” April 1959, 533.

sustain an immediate trading post. La Harpe eventually did attempt to return to Three Forks in 1721, but was unsuccessful.³⁸

His exploration and trading venture leads to questions about the region specifically, how to define his location to the rest of France? He did not have sufficient understanding of the place to define it, but rather depended on hearsay from locals, which was not without prejudice. Native Americans both appreciated and despised the Spanish. La Harpe saw a clear influence of Spanish culture as displayed in the styles of horses and saddles, yet the Spanish could not claim the space as their own. If the place was not Spanish and remained outside of French control, then the Native Americans retained full control of the space.

The Spanish claimed the space as did the French, but neither were able to establish a presence in the Indian territory – they simply could not get there without extraordinary time and expense. Rather, Native Americans retained control over the space.

La Harpe's ventures into the Indian territory demonstrated the immense distance needed to travel to the region. While there were considerable numbers of Native Americans in the area, their migratory behavior suggested the futility of establishing a trading post there. Despite not having gold or silver mines, the region contained important deposits of coal. The value of La Harpe's discovery increased throughout the nineteenth century.

38 Ralph A. Smith and Bernard de La Harpe, "Exploration of the Arkansas River by Benard De La Harpe, 1721-1722: Extracts from His Journal and Instructions," *The Arkansas Historical Quarterly* 10, no. 4 (Winter 1951): 362.

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In 1832, Washington Irving returned from his grand adventure in Europe in search of his place in America. He was a successful author, penning *The Legend of Sleepy Hollow* and *Rip Van Winkle* among others, before his travels to Europe in 1815 to supplement his family income in the wake of the War of 1812. Irving's overseas venture took him throughout the continent and on to England. The Europeans throughout the journey generally appreciated him. He gained favorable connections with the United States overseas contingent, earning an appointment as Secretary to the American Delegation in London. Following the recall of the American Minister to the United States, Irving also returned to the United States in September of 1832. The return to the United States gave Irving the opportunity to experience the frontier. He embarked on his western venture less than a month later, hoping to write about the unseen west. Irving promptly commenced a "Tour of the Prairies."³⁹

He published *A Tour on the Prairies* in 1835 based on his travels in the Indian territory, what he referred to as the "Prairies." His experiences and perspective reveal the changes in the Indian territory from the time of La Harpe's venture in the early 1700s through the removal era. Irving's prominence as a writer ensured that his outlook on the Indian territory would be shared and well read. While Irving was able to bring attention to the region, the territory displayed physical challenges and he was unable to cross easily. For Irving, the difficulty of crossing marked the Indian territory as the beginning of the Prairies or the frontier. When encountering the Indian territory, Irving needed to dismount and change his transportation, dramatically altering his perspective of the west.

39 Irving, *A Tour on the Prairies*.

Thus, modes of transportation marked the major difference between the frontier and the rest of the nation. The Indian territory presented significant obstacles and would not be crossed easily.

The American acquisition of Louisiana Territory in 1803 prompted American exploration and expansion in the area.⁴⁰ While Lewis and Clark were sent to the northern regions of the Louisiana Purchase, William Dunbar was sent to explore the southern portion.⁴¹ The establishment of Fort Gibson at the settlement at Three Forks solidified American claims to the region. Thomas Jefferson and subsequent presidents endeavored to place forts along the border of US territory to both secure the borders and provide protection for settlers.⁴² The continued expansion of the United States also transformed Three Forks from a trading point to a military fort by 1832. At the time of Irving's visit, Fort Gibson was the westernmost such outpost.⁴³

40 See Freeman, *Jefferson and Southwestern Exploration*; Stan Hoig, *Beyond the Frontier: Exploring the Indian Country* (Norman, Oklahoma: University of Oklahoma Press, 1998).

41 Douglas Seefeldt, "Envisaging the West: Thomas Jefferson and the Roots of Lewis and Clark," *Envisaging the West: Thomas Jefferson and the Roots of Lewis and Clark*, accessed May 14, 2009, http://jeffersonswest.unl.edu/maps/view_map.php?id=jef.gis.00003.

42 Protecting travelers eventually became one of the primary responsibilities of the army in the Indian territory. The California Gold Rush provided enough impetus to expand the role of the army beyond the original line of forts. Randolph Barnes Marcy and George Brinton McClellan, *Adventure on Red River: Report on the Exploration of the Headwaters of the Red River by Captain Randolph B. Marcy and Captain G. B. McClellan*, ed. Grant Foreman (Norman, Oklahoma: University of Oklahoma Press, 1937); Randolph Barnes Marcy, *Marcy & the Gold Seekers: The Journal of Captain R. B. Marcy, with an Account of the Gold Rush over the Southern Route*, ed. Grant Foreman (Norman, Okla: University of Oklahoma press, 1939); W. Eugene Hollon, *Beyond the Cross Timbers: The Travels of Randolph B. Marcy, 1812-1887* (Norman, Okla: University of Oklahoma Pr., 1955).

43 Fort Gibson, originally established in 1826, served as the federal outpost within the Indian Territory until about 1896 when most troops were transferred in response to the changing borders of the region. The troop presence at the fort fluctuated in response to threats from warring Indian nations, outlaws, white encroachment and other problems in the region. Brad Agnew, *Fort Gibson Terminal on the Trail of Tears* (Norman, Oklahoma: Univ of Oklahoma Press, 1980);

Several other notable American explorers previously traveled into and across the Indian territory before Irving, experiencing many of the same difficulties. James Wilkinson, as part of the Pike expedition, crossed through the region while following the Arkansas River in 1806 and became lost along the way.⁴⁴ Stephen H. Long ventured into the region twice, the first time in 1817 when he explored and founded the site for Fort Smith at the border of Arkansas and the Indian territory, and again in 1820 when he set out to find the source of the Platte, Arkansas, and Red Rivers, also getting lost along the way.⁴⁵ Wilkinson and Long's accounts, while usable, did not reach as wide of an audience as Irving's.

Irving's account of his journey is interesting for its rich descriptions from an outside perspective, of one not participating in the securing of borders, resettling Native Americans or easing military tensions. Irving's travels within the Indian territory as published in *A Tour of the Prairies* were severely edited and intended for a popular audience, yet provide an intriguing perspective of crossing the territory. More interesting for our purposes are the unpublished notebooks that provided the details for the final text.

Grant Foreman, *Fort Gibson: a Brief History* (Press of Hoffman-Speed Printing Co., 1955); Robert Frazer and Robert W. Frazer, *Forts of the West: Military Forts and Presidios and Posts Commonly Called Forts West of the Mississippi River to 1898*. (University of Oklahoma Press, 1975).

44 James B. Wilkinson, "James B. Wilkinson's Report," in *The Journals of Zebulon Montgomery Pike*, ed. Donald Dean Jackson, vol. 2 (Norman, Okla: University of Oklahoma Press, 1966), 3–19.

45 Stephen Long considered his expedition a failure since it did not achieve his primary objectives. Rather than following the Red River, he mistakenly followed the Canadian River which he realized much too late. Running low on food and plagued by insects, his party continued home. The group did succeed in creating the first quality maps of the region. Edwin James, Stephen Harriman Long, and Thomas Say, *Account of an Expedition from Pittsburgh to the Rocky Mountains Performed in the Years 1819, 1820*, vol. 1 (London: Longman, Hurst, Rees, Orme, and Brown, 1823), 101–103.

Irving apparently did not set out to correct assumptions or to dispel myths, but to sell books. Fortunately, his notebooks on the journey have been preserved.⁴⁶

Irving participated in an exploratory and expeditionary tour, but his purposes were recreational. He joined the U.S. Commissioner on Indian Affairs, Henry Leavitt Ellsworth, in addition to Charles La Trobe, Count Albert-Alexandre de Pourtales and many others as they reconnoitered the space beyond Arkansas and north of Mexico, into the West.⁴⁷ Ellsworth used the trip to acquire a first-hand account of the recently displaced Native Americans, including the Cherokee, Choctaw, Chickasaw and Creek people.⁴⁸ The others in the party used the occasion to visit the acclaimed American West and to experience frontier life.

⁴⁶When one compares Irving's notebooks to the text of *The Tour*, it is clear that Irving made selective edits. These various edits include omitting the number of people that made up their traveling group. Pierre Choteau, an important French-Indian trader accompanied the group to his place past Fort Gibson, which may have allowed the group to stray from set paths since Choteau presumably understood the route well. Washington Irving, "The Tour Through the West: Consisting of Five Note-Books," in *The Journals of Washington Irving (Hitherto Unpublished)*, ed. William P. Trent and George S. Hellman (Boston, Mass.: The Bibliophile Society, 1919), 101–186.

⁴⁷ Irving's party included numerous people, but a primary group of four people. They promptly joined a larger and more varied group setting out from Fort Gibson. Irving's group of four enlarged to eighteen and later to twenty-two, excluding Indians and African-Americans accompanying the party. Irving, "Five Note-Books," 4–18.

⁴⁸ The United States Government forcibly removed the Seminole tribe to the Indian Territory beginning with the Treaty of Payne's Landing, signed in 1832. Despite the treaty signing, the majority of the Seminole people were not in favor of its terms, which included the requirement to live within the Creek Nation in the Indian Territory and effectively lose their national identity. The Seminole actively resisted their removal to the Indian Territory through the 1850s. There was never total removal of the Seminole from their homeland in Florida. For more on the history of the Seminole as they relate to the Indian Territory, See Sean Michael O'Brien, *In Bitterness and in Tears: Andrew Jackson's Destruction of the Creeks and Seminoles* (The Lyons Press, 2005); Merwyn S. Garbarino, *The Seminole* (New York: Chelsea House Publications, 1988).

The history of the removal of the Cherokee, Choctaw, Chickasaw and Creek people is vast. Much has been written on the removal and the effects of removal. Some of the more pertinent studies of removal and their effects include: Angie Debo, *A History of the Indians of the*

Irving's journey begins with his departure from Cincinnati September 3, 1832. He traveled in a generally west to southwesterly direction, down the Ohio River and the Mississippi by riverboat.⁴⁹ Along the way there were considerable disruptions by fog, running aground on sandbars, and a collision with another steamboat, all with little or no complaint recorded. Apparently, the party accepted that there would be delays and difficulties traveling by steamboat.

After St. Louis, they loaded wagons and ventured overland "up the banks of the Missouri."⁵⁰ The group traveled by Dearborn wagon, a simple four-wheeled wagon with roof hoops and sides.⁵¹ Single horses pulled these light wagons. Wagons could carry

United States, 1st ed., Civilization of the American Indian Series v. 106 (Norman: University of Oklahoma Press, 1970); Grant Foreman, *Indians & Pioneers - The Story Of The American Southwest Before 1830*, 2nd ed. (Norman, Okla.: University of Oklahoma Press, 1936); Donna Akers, *Living in the Land of Death: The Choctaw Nation, 1830-1860 (Native American Series)* (Michigan State University Press, 2004); Francis Paul Prucha, *The Great Father: The United States Government and the American Indians*, Abridged ed (Lincoln, Nebraska: University of Nebraska Press, 1986); Ronald Wright, *Stolen Continents: The Americas Through Indian Eyes Since 1492* (Boston: Houghton Mifflin, 1992); Theda Perdue, *Nations Remembered: An Oral History of the Cherokees, Chickasaws, Choctaws, Creeks, and Seminoles in Oklahoma, 1865-1907* (University of Oklahoma Press, 1993); Theda Perdue and Michael D. Green, *The Columbia Guide to American Indians of the Southeast* (New York: Columbia University Press, 2001); Theda Perdue, *Mixed Blood Indians*, Mercer University Lamar Memorial Lectures 45 (Athens: University of Georgia Press, 2005).

49 Most of the river journey was upon the steamer *Illinois*, which Irving boarded in Louisville. Almost immediately, according to Irving, the steamboat, "run agst post break some of the machinery and have to remain all night." Irving, "Five Note-Books," 102.

50 It is interesting to note that Irving did not choose to travel further by steamboat considering that there were at least five steamboats on the lower Missouri River by 1830. On western travel and the impact of the steamboat in general, see Carroll W. Pursell, *The Machine in America: A Social History of Technology* (Baltimore: Johns Hopkins University Press, 1995), 155–177; Ruth Schwartz Cowan, *A Social History of American Technology* (New York: Oxford University Press, 1997), 95–118; Irving, *A Tour on the Prairies*, 3.

51 "Antoine drives the Dearborn William, the black boy, follows in smaller dearborn . . . heavy thunder storm on prairie put down the oil-skin sides of waggon." Irving, "Five Note-Books," 133. The history of trail wagons is best described in technical detail in Mark L. Gardner, *Wagons for the Santa Fe Trade: Wheeled Vehicles and Their Makers, 1822-1880* (University of New Mexico Press, 2000).

more than horses alone, but also needed improved roads to make the trip. The U.S. Army improved the road to Fort Gibson enough to allow all four wagons to successfully arrive at Fort Gibson at the confluence of the Arkansas, Verdigris and Grand Rivers by early October.

Various westerners knew the road to Fort Gibson from the north as the Osage Trace or Osage Trail. This trail, which I would argue, was intentionally maintained, connected St. Louis with the Indian territory, allowing traders and eventually the US military to connect with the interior of the Indian territory. The explorer and botanist, Thomas Nuttall noted the value of the trail in 1819, “which reduces the distance of those two places to about 300 miles.”⁵² Jean Pierre Chouteau established a trading post just beyond Three Forks in 1821, linking his trade in St. Louis to that within Indian territory via the Osage trace.⁵³ Despite not having a marked road for the entire route, the general directions over open country allowed many travelers to use the trail. The route from St. Louis was only designated as running along the right side up the Missouri River for some time.⁵⁴ The trail would washout with seasonal flooding, but following the course of the Missouri would take travelers in the right direction.

⁵² Thomas Nuttall, *A Journal of Travels into the Arkansas Territory: During the Year 1819. with Occasional Observations on the Manners of the Aborigines. Illustrated by a Map and Other Engravings* (Philadelphia: T. H. Palmer, 1821).

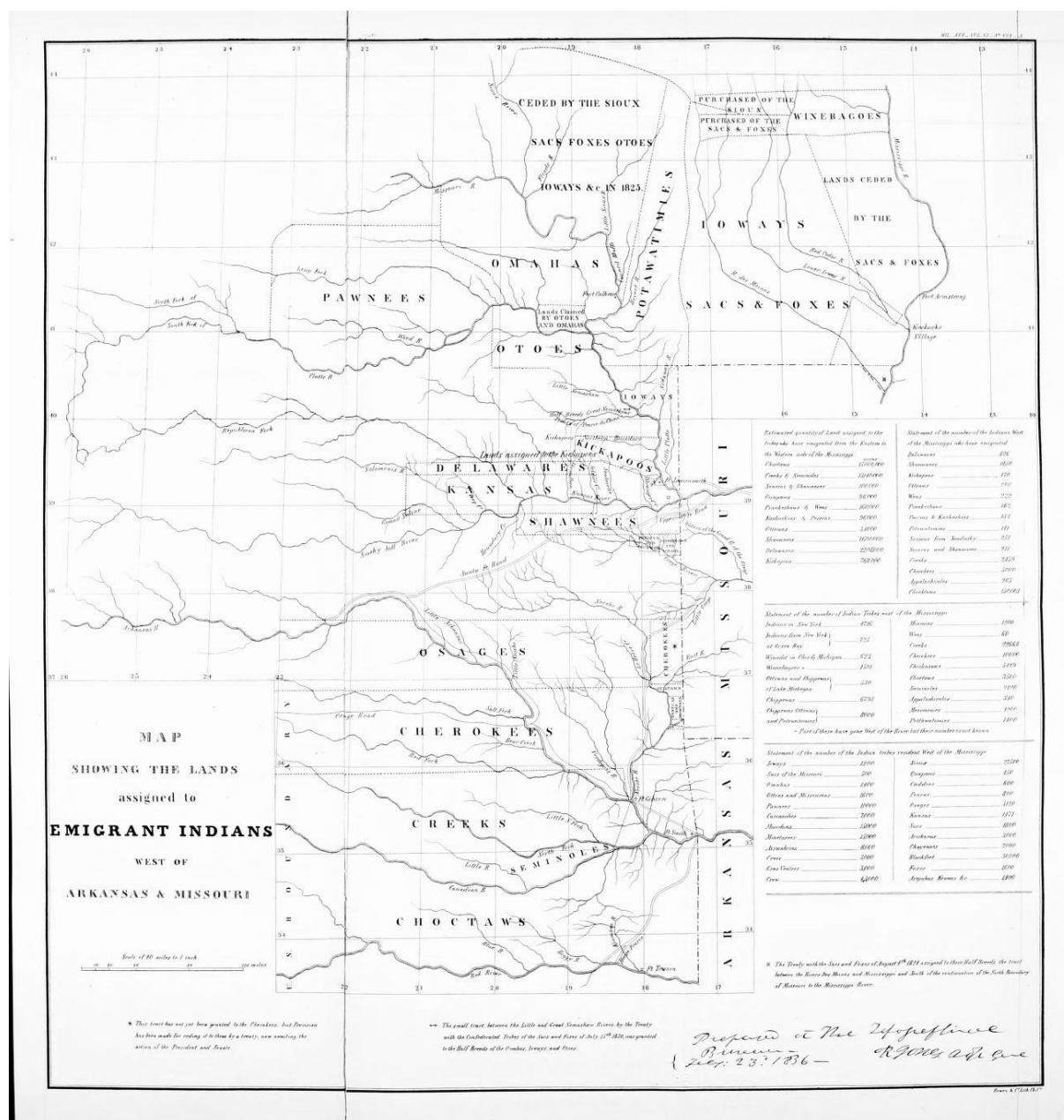
⁵³ Part of the important trading family from St. Louis, Jean Pierre Chouteau grew up with the Osage nation, from about 17 years old. Throughout his life, he traded with the various Native American communities in the West. Jean Pierre Chouteau built on his family’s trading business, expanding his fur trading operation into the field, so by 1821, he was at the confluence of the Verdigris, Grand and Arkansas Rivers. William E Foley and C David Rice, *The First Chouteaus: River Barons of Early St. Louis*, 1st ed. (Urbana: University of Illinois Press, 2000), 42–47.

⁵⁴ Commentary on the Osage Trace comes from several titles by Grant Foreman. While dated, Foreman’s writing on Oklahoma history is essential reading. Foreman, *Indians & Pioneers - The Story Of The American Southwest Before 1830*; Grant Foreman, *Down the Texas Road*,

Fort Gibson provided supplies for settlers and a sense of security for the region. The primary investment of the United States reflected a military concern in the region – a strong indicator to nearby nations of American intentions - rather than a primarily economic interest that might be reflected in a trading post. The American interest in the space depended on a strong military presence to encourage trade and further development.⁵⁵

Historic Oklahoma (Norman, Okla.: University of Oklahoma Press, 1936); Grant Foreman, *Pioneer Days in the Early Southwest* (Lincoln, Nebraska: University of Nebraska Press, 1994).

⁵⁵ Hoig, *Beyond the Frontier*.



3 Wesley's Maps - United States Congress, American State Papers: Documents, Legislative and Executive, of the Congress of the United States for the First and Second Sessions of the Twenty-Fourth Congress, Commencing January 12, 1836, and Ending February 25, 1837., vol. 6(Washington, DC: Gales and Seaton, 1861), 160.

Despite American interest in the region, the United States did not clearly define the space in the 1830s.⁵⁶ In his presidential address to Congress demanding the forced relocation of Native Americans, Andrew Jackson referred to the region as “beyond the white settlements.”⁵⁷ The language of the removal act is sufficiently vague to allow the president to exchange lands as he saw fit: “to cause so much of any territory belonging to the United States, west of the river Mississippi, not included in any state or organized territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there.”⁵⁸ The eastern boundaries were fixed, but, despite the notations on the map, there were vague boundaries to the west.

Lewis Cass, Secretary of War under Andrew Jackson, considered the region in his reports “the Indian country,” but also considered any place “west of the Mississippi” or on the right bank of the river the “frontier of white settlement,” implying the land was

56 The space had been understood from Washington DC via the cadastral mapping system to designate which portions would become which nations’ land. Assigned land was based on latitude and longitude coordinates with appropriate quantities of space as determined by the Office of Indian Affairs and appropriate as determined by the federal government. See the maps in Philip Weeks, *Farewell, My Nation: The American Indian and the United States in the Nineteenth Century*, 2nd ed. (Harlan Davidson, 2000); Johnson, Goble, and Goins, *Historical Atlas of Oklahoma*.

57 Andrew Jackson, “Transcript of President Andrew Jackson’s Message to Congress ‘On Indian Removal’ (1830),” December 6, 1830, <http://www.ourdocuments.gov/doc.php?flash=true&doc=25>.

58 *An Act to Provide for an Exchange of Lands with the Indians Residing in Any of the States or Territories, and for Their Removal West of the River Mississippi*, U.S. Statutes at Large, 1830.

not exclusively for Native Americans.⁵⁹ The United States claimed the region based on the legal premise of the Louisiana Purchase as opposed to the practical assertions of settlers' occupation or travel corridors. The Adams-Onís treaty with Mexico designated the border with Mexico at the Red River, so the United States possessed political reasons to claim the space.⁶⁰ Despite the legal viability, there were few settlers yearning to move into this border region. Indeed, Washington Irving noted with regret passing "on to house of the last settler the last trace of civilization."⁶¹ Between 1803 and 1831, there were few Euro-Americans beyond the Mississippi River and a scant population of whites in the Indian territory.

The Commissioner of Indian Affairs, Henry L. Ellsworth, had already endeavored to establish agencies in the region; places Irving called "the outposts of civilisation.[sic]"⁶² It was these isolated outposts that Irving and Ellsworth visited along the route.

While Ellsworth used the trip for business, the nature of Irving's visit was tourism, visiting "agencies and missions that extend from the Missouri to the Arkansas."⁶³ They used the Indian Agencies and Christian missions as a sort of hotel chain by making the most of the hospitality of people eager for community at the edge of

59 *On the Establishment of a Line of Posts and Military Roads for the Defense of the Western Frontier Against the Indians*, 1836. Lewis Cass, 24th Cong., 1st sess., 1836, H. Doc 659.

60 The Adams-Onís treaty set the boundary of the United States with Mexico including establishing the boundary of Florida. Weber, *The Spanish Frontier in North America*, 299–300.

61 Irving, "Five Note-Books," 135.

62 Irving, *A Tour on the Prairies*, 3.

63 Irving, *A Tour on the Prairies*, 3.

settlements in the early 1800s.⁶⁴ As such, the group was prepared for the journey the way the privileged might be – they had trunks and boxes of personal belongings with them, along with someone to cook the meals and provide for the team.

Crossing the Indian territory in 1832 proved difficult, but not impossible. Irving did not cross directly through the space with a direct route, but rather explored it. At the same time that Irving was about to explore the region with the rangers, he met Samuel Houston at Fort Gibson. Houston managed to cross the Indian territory as he traveled south for Texas.⁶⁵ Irving experienced the West, what he referred to as the Prairies and the Frontier, in an effort to understand the eroding edge of civilization. Fort Gibson and the surrounding houses were at the edge of civilization as he saw it. Beyond the line was wild and unsettled, only the land of the Osage, Pawnee and other Indians. It was an unknown land to him, but he endeavored to share the experiences in this place with others through his writing.

Upon Irving's arrival at Fort Gibson, they discovered a "company of mounted rangers, or riflemen, had departed but three days previous, to make a wide exploring tour, from the Arkansas to the Red River, including part of the Pawnee hunting-grounds,

64 While the *Tour* mentions the use of agencies and missions along their route to Fort Gibson, the *Journals* make only one mention of an agency stop and one passing reference to a mission stop at Harmony Mission. Most of the overnight stays were in the field: "Evg encamp about five o'clock on a beautiful plat of land made at the winding of a sluggish brook." Between St. Louis and Fort Gibson, the interactions of people along the road provide interesting excerpts: "Stop at log house pretty young married woman with pretty sister and find child," or "hospital reception good wife busy baking cakes gets dinner for us," revealing the desire for community. Irving, "Five Note-Books," 118, 119.

65 Samuel Houston, former governor of Tennessee and Texas promoter made several trips through the region in 1832. Irving, "Five Note-Books," 133.

where no party of white men had as yet penetrated.”⁶⁶ They eagerly jumped at the opportunity for “safeguard of a powerful escort” as they ventured farther to the west.⁶⁷

The region of the Indian territory, once part of the French and Spanish claims, was by 1832 part of the American claim. French claims to the region ended with the American purchase of Louisiana in 1803. Tenuous Spanish claims to the space also ended with the Adams-Onís Treaty of 1819, which defined the border between the United States and Spanish territory at the Red River. Mexican independence in 1821 provided opportunity for traders to open up a trail to Santa Fe, circuitously crossing the Indian territory.⁶⁸

The major people groups that La Harpe had met were the Taovaya, at the time, the most numerous and powerful people in the region. He also had met with several other native peoples, while keeping a wary eye out for any Osage that might be following him. Between the 18th century and the 19th century, Native American forces shifted the political structure of the region. Prior to Irving’s visit, the Osage chased the Taovaya people to the south across the Red River and were the dominant force in the region.⁶⁹ In addition, the Pawnee had moved into the western border region, which prompted Irving’s

⁶⁶ Irving, *A Tour on the Prairies*, 7.

⁶⁷ Irving, *A Tour on the Prairies*, 7.

⁶⁸ A.P. Chouteau attempted to trade with Santa Fe as early as 1816, but was arrested by Mexican authorities and spent time in a Mexican prison before returning to the Indian Territory in 1817. Chouteau’s family trading business in the region dated to before the establishment of a trading house and Indian Agency beyond Fort Gibson, using their French connections for a monopoly on the trade until Manuel Lisa was granted the trade in 1804. W. David Baird and Danney Goble, *Oklahoma: A History* (Norman, Oklahoma: University of Oklahoma Press, 2008), 57; Calloway, *One Vast Winter Count*, 382.

⁶⁹ Hamalainen, *The Comanche Empire*, 49; Calloway, *One Vast Winter Count*, 376–381.

group to be wary of both groups.⁷⁰ The economic relationship between the French and Taovayas dictated that France needed a healthy Taovaya nation to further their economic goals. The Spanish relationship with the Taovayas also had been largely economic and suggested a mutual need for respect. The Osage proved to be the dominant force in the region, no matter the foreign power laying claim to the region. By the time of Irving's tour in 1832, treaty making reduced the Osage power and continual population pressures. The American relationship with people of the region shifted toward strong paternalism at the time of Irving's tour, with a removalist agenda recently signed into law by Andrew Jackson.⁷¹

Irving's writings reflected the dueling interests of patriotism and patriarchy, finding Native Americans both civilized and chivalrous while being part of "savage tribes." The dissonance of past relationships between Euro-Americans and Native Americans confounded Irving who like many other nineteenth century people expected

70 Irving, "Five Note-Books," 137.

71 Jackson's removal of the Five Tribes in 1830, according to historian Robert V. Remini, was the only viable option in Jackson's perspective. Jackson maintained that it was a benevolent action in face of the encroaching whites onto the Cherokee, Choctaw, Chickasaw and Creek land. Jackson wrote that he wished for "a speedy removal to relieve them of all the evils, real or imaginary, present or prospective, with which they may be supposed to be threatened." However, Jackson also believed that the Indians only had a "possessory right to the soil, for the purpose of hunting and not the right of domain." Thus, if whites could have their property taken from them by the federal government, then so should the Native Americans. Jackson's harsh stance as president is not surprising considering his earlier experiences with war against Native Americans. When President, Jackson believed he was acting as a harsh father, but a father nonetheless, when he encouraged the forced migration of the Cherokee and others to the Indian territory. Others, of course, have portrayed this as a violent act against willing and able people. Chapter two situates the creation of an indistinct Indian territory within the political framework of the 1830s. For more on Jackson's actions, among many others, see Jackson to Monroe, March 4, 1817, John Spencer Bassett, ed., *Correspondence of Andrew Jackson*, 7 vols., First Edition. (Baltimore: Carnegie Institutions of Washington, 1926), 2:280. Robert V. Remini, *Andrew Jackson: The Course of American Empire, 1767-1821. Vol. 1* (Baltimore: The Johns Hopkins University Press, 1998); O'Brien, *In Bitterness and in Tears*; Weeks, *Farewell, My Nation*, 34-50; Prucha, *The Great Father*.

the Native Americans of the prairies to be wilder than he observed. Irving intoned that the, “Indians that I have had an opportunity of seeing in real life are quite different from those described in poetry.”⁷² Instead, he found a “native born gentleman,” and realized that the “Indian of poetical fiction is . . . a mere personification of imaginary attributes.”⁷³ Irving’s impressions of the place revealed an inverted experience to what he imagined – natives were not the savages he expected, but rather gentlemen.

The rough terrain required Irving’s party to change their form of transportation. In order to join the mounted rangers, Irving’s group needed to reduce their supply load to travel by horse and mule and be able to cross the similar terrain as the rangers. Up to this point, the party had used a light wagon to carry baggage, but that would not suffice past Fort Gibson, “where a vehicle of the kind would be a complete impediment.”⁷⁴ The trails were incompatible with the wide load on uneven ground. Instead, the party shifted what they could carry to pack horses and saddle bags, “in hunter’s style, and with as little encumbrance [sic] as possible.”⁷⁵ The terrain dictated the transportation method: it would be impossible for a wagon to pass through “untraveled country, cut up by rivers, ravines and thickets.”⁷⁶ Beyond Fort Gibson, the tour often required travel in single-file, passing over hills and gullies together. By 1832, transportation across the territory changed by granting individuals closer access to the Indian territory to shorten their journeys, yet the manner of travel remained unchanged since the times of LaHarpe. The

72 Irving, *A Tour on the Prairies*, 32.

73 Irving, *A Tour on the Prairies*, 33.

74 Irving, *A Tour on the Prairies*, 8.

75 Irving, *A Tour on the Prairies*, 8.

76 Irving, *A Tour on the Prairies*, 8.

limitations on transportation in the region also made it clear that the few routes existed to cross the space directly remained the traditional methods: horse-drawn and slow.

Irving's party accompanied the Rangers on their expedition. Protection from Native Americans was a key concern. The Army provided some protection for migrants and those crossing the area, if not physical protection, then psychological assurance.

The Indian territory was changing in 1832. The region was beginning to show the first effects of the forced migration of the Five Civilized Tribes. The Choctaw and Chickasaw were in the middle of their migration. Euro-American settlers were also moving out to the region surrounding and within the Indian territory.

The Indian territory in 1832 changed since the encounters of La Harpe at the beginnings of the 1700s and it continued to change throughout the nineteenth century. Crossing the Indian territory demanded patience and knowledge of the borders of civilizations, both that of the Native Americans and the Euro-Americans. The American government's interjection into Native American politics and culture through the removal and resettlement of the Southern Nations produced significant changes in the land and the people of the Indian territory, changes that would continue through the century and be most understood in the antebellum era.

* * * * *

The EuroAmerican excursions into the Indian country remained temporary ventures. La Harpe thought he would establish a trading post, yet even with a trading post the trader occupies it only part of the year. Washington Irving clearly only toured the prairies without seeking to establish a permanent residence. During these two excursions,

EuroAmericans explored and investigated the regions unknown to them. In the 1830s, other Native Americans moved into the region and changed the place.

The movement of Cherokee and Choctaw into the Indian territory in the 1830s did not mark the first forays by these people groups into the region. Cherokee migrations to Arkansas in 1808 and 1817 settled on lands that the Osages had sold to the United States. Despite occasional battle over the rights to determine rights to land use, the Osage sold their land in favor of land in present-day Kansas. Cherokee continued to move west from their southeastern homeland.

The Cherokee, Choctaw, Chickasaw, Creek (Muskogee) and the Seminole, the so-called “Five Civilized Tribes”, were forcibly relocated to the place. The forced relocation of the Five Tribes into the Indian territory beginning in the 1820s and continuing into the 1830s colonized the Indian territory.⁷⁷ Theda Perdue and other scholars of Native

⁷⁷ Misunderstanding of the quantity of change due to this program led to misguided conclusions. Individual response to the programs often included carefully selected attributes rather than wholesale adaptation of Anglo-American culture. The term “civilized” sets southern Indians apart from other Native peoples, wrongly implying superiority. I use this terminology not as an epithet that may be uncomfortable, especially over the meaning of civilization, but as a valued distinction and a name that is still used with pride. On the value of the term “Five Civilized Tribes,” see Perdue, *Nations Remembered*, ix; Baird, “Are the Five Tribes of Oklahoma ‘Real’ Indians?”.

There is not clear consensus to using the term “civilized.” Haag and Cotson describe the hurt feelings aroused by the inherent condescension in the term. For a counterpoint argument to not using the term “civilized,” See the introduction to Marcia Haag and F. Wayne Cotson, “Early Effects of Technology on the Oklahoma Choctaw Language Community,” *Language Learning and Technology* 6, no. 2 (May 2002): 70–82.

Colonization in this sense refers to the dispossession of land in favor of another group related to a distant entity. The Five Tribes were connected to the American government through a system of rations and sustenance disbursement through a series of outposts. These stations reflected the Native American settler’s desire for “civilization” by requiring a type of action of acknowledgement of the cultural distinctions imposed by the American government, such as constitutional government, written language and literacy and especially the individual ownership of land. The Native Americans were therefore unwilling colonists. Robbins, *Colony and Empire : The Capitalist Transformation of the American West*, 61ff.; C. Matthew Snipp suggests that different language is needed for defining Indian Colonialism in the American West to

American history point out that this now outdated term has been used for over a century when applied to the Native peoples who were forcibly moved from the Southeast. The term “civilized” referred to their response to the federal government’s “civilization program” which included instruction on commercial agriculture, republican government and English fluency. This is not to say that indigenous people were passive receptacles of Western culture. Rather, indigenous people negotiated, subverted, attacked, and accommodated outside forces for a variety of reasons.⁷⁸

The colonizers were not Euro-Americans, but rather Native Americans who acted in many ways in response to the pressure of the American government in an effort to display their acculturation and “civilization.” The Five Civilized Tribes, beginning with the Cherokee, Choctaw, Chickasaw and Creeks, moved into land once occupied by Osage, Taovayas, and others as a result of their forced migration.⁷⁹ The government decided to move these Native American tribes out of their ancestral land in the east and to an “Indian Country” or an “Indian Territory.” Removal as an idea was in part a humanitarian concept designed to protect indigenous people from unscrupulous EuroAmericans bent on taking advantage of them.⁸⁰ However, removal as an actual process was a humanitarian disaster and a cultural rupture.

differentiate it based on the unique relationship American Indians have with the federal government. C. Matthew Snipp, “The Changing Political and Economic Status of the American Indians: From Captive Nations to Internal Colonies,” *American Journal of Economics and Sociology* 45, no. 2 (April 1, 1986): 145–157.

78 Wilma A. Dunaway, *The First American Frontier: Transition to Capitalism in Southern Appalachia, 1700-1860* (Chapel Hill: Univ of North Carolina Press, 1996), 455.

79 Calloway, *One Vast Winter Count*, 362–365.

80 Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005), 224; Russell Thornton, *The Cherokees: A Population History* (University of Nebraska Press, 1992), 81–83.

These Native Americans crossed the continent to relocate to the Indian territory. Defeated people, the Federal Government confined them to the region, yet the Indian territory was not a reservation. They crossed largely on foot to exceedingly difficult situations. Despite federal assurances of well-being, the transition to the new region took hard tolls on all involved. The Cherokee split politically over the acceptance of the order to move, a split that continued to dominate Cherokee politics through the 19th century. Similarly, the Choctaw split over accepting or opposing removal with a majority opposing it.⁸¹ The Choctaw and Chickasaw, two closely culturally related nations, suffered through the dying time where huge populations succumbed to the pressures of the new region.⁸² Creek (Muskogee) people remained unorganized politically, a situation exacerbated by the pressures of relocation. This dark time for the Native Americans in the Indian territory disrupted the political and cultural norms for all concerned.

By the middle of the nineteenth century, the political situation among the Choctaw and Cherokee calmed enough for political reconstruction. In the Choctaw, the federal government ceased all rationing in 1842. That same year, President Tyler conferred the official patent for the land to the Nation, recognizing that the Choctaw held their land as property on the same terms as American citizens held title to their lands.⁸³

It was from the pains of removal that the Cherokee, Choctaw, Chickasaw, and Creek people were able to rebuild substantial political and legal structures that bolstered

81 Valerie Lambert, *Choctaw Nation: A Story of American Indian Resurgence* (Lincoln: University of Nebraska Press, 2007), 39.

82 Akers, *Living in the Land of Death*, 2004.

83 Clara Sue Kidwell, *The Choctaws in Oklahoma: From Tribe to Nation, 1855-1970*, American Indian Law and Policy Series (Norman: University of Oklahoma Press, 2007), 10.

economic development. By the time factional violence ended in 1846, the Cherokees at last had opportunity to rebuild their nation and reestablish their institutions.⁸⁴ Plantations and businesses flourished. The Cherokee government created public education system equal to or better than that of neighboring states. Similarly, the members of the Choctaw nation established themselves much as white families did in rural areas of the southeast. Schools, churches, and a government resembled that of the United States while farms raised corn, potatoes, tobacco, pumpkins, peas, melons and yams.⁸⁵ Despite a terrible process of relocation, by the 1850s Native Americans in the Indian territory displayed amazing resilience.

Tribal land ownership proved eventually to become the key issue supported by courts but opposed by outsiders. Over time, ownership of tribal lands became increasingly rooted in paternalistic arguments. EuroAmericans acting on the outside of the Indian territory believed they knew better than Native Americans occupying the region did.

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By 1858, the region changed significantly through the increased proximity of Euro-American settlements and improved transportation methods. Whites settled in enough quantities in the nearby territory to allow for the formal process of state building. Arkansas, Missouri, and Texas gained statehood while Kansas Territory undertook its

⁸⁴ Andrew Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture, 1830-1900* (Lincoln: University of Nebraska Press, 2004), 55.

⁸⁵ Kidwell, *The Choctaws in Oklahoma*, 6.

awkward transition from territory into statehood before 1858.⁸⁶ The promise of farming in the Oregon Territory and the California gold rush beckoned settlers to cross the continent. California's population warranted statehood and wanted increased eastern connections. They wanted mail service to the east. In 1856, some 75,000 Californians petitioned Congress for an overland mail route. The government responded with approval of overland mail service and the contract went to a group headed by John Butterfield of New York.⁸⁷ The government paid the company large subsidies including for bridging and grading improvements along the route that was to go to the south around the Rockies, and on to California. The Butterfield Overland Mail began its operation by September of 1858.

In late September 1858, young Waterman Lily Ormsby, Jr. crossed through the Indian territory as a reporter for the New York Herald on the first overland mail. He excitedly recorded the historic undertaking of the first overland mail through its entirety

⁸⁶ Kansas gained territorial status with the passage of the Nebraska-Kansas Bill in 1854 giving the citizens of the territory the opportunity to allow or ban slavery within their boundaries. The ensuing events of "bleeding" Kansas reveal the passion people felt about slavery and the political tension surrounding the decisions. See H. Craig Miner and William E. Unrau, *The End of Indian Kansas: A Study in Cultural Revolution, 1854-1871* (University Press of Kansas, 1990); Paul Wallace Gates, *Fifty Million Acres: Conflicts over Kansas Land Policy, 1854-1890*, First Atheling edition. (Atherton Press, 1966); Nicole Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* (Lawrence, Kansas: University Press of Kansas, 2006); Thomas Goodrich, *War to the Knife: Bleeding Kansas, 1854-1861* (Lincoln, Nebraska: Bison Books, 2004); Prof John R. Wunder and Joann M. Ross, eds., *The Nebraska-Kansas Act of 1854* (Lincoln, Nebraska: University of Nebraska Press, 2008).

⁸⁷ The "oxbow route" proposed by Butterfield followed the previous work of Marcy and others. Butterfield's proposal also included William G. Fargo, William B. Dinsmore, James V. P. Gardner, Marcus L. Kinyon and Alexander Holland as partners. Fargo would go on to establish the American Express company and the Wells Fargo company. Aaron V. Brown and United States Post Office Dept., *Annual Report of the Postmaster General* (Washington, DC: U. S. Governmental Printing Office., 1857), 987-1011.

from St. Louis to San Francisco, reporting from the route along the way.⁸⁸ Ormsby had never been west of the Mississippi River, but was ready for adventure. He had not been through the west, the Indian territory or much of the country, but clearly thought about it with eager trepidation. His youth acted as a clean slate of sorts to express to his readers the experience of long-distance overland travel all the way to California. Ormsby's experiences expose the continued changes that took place in the West, but specifically the Indian territory, through the first half of the nineteenth century. His writing includes the soon-to-be mundane the process of loading, the dirtiness of the passengers, the difficulties of sleeping and broken equipment, but also the prospective benefits of the pleasant journey. His perspective as a young man also divulges the conflicting relationship between the United States government and the people of the Indian territory, raising questions of the Native Americans within the region.

At St. Louis, he witnessed the transfer of the first mail marked "San Francisco, California Per Overland Mail" onto the cars of the Pacific Railroad Company.⁸⁹ The

⁸⁸ The Overland Mail was a significant change in the manner of carrying information between the west and the east. Regular mail suggested the importance of a place. When a spot had a post office, it often signaled further governmental interest in a place, with the implication of increased settlers and increased value to the country at large. Overland Mail proved significant in the movement of immigrants to the west as communication with the east meant longevity for settlements. Benjamin Holladay, *Claim of Benjamin Holladay Before Congress* (New York: Charles Vogt, 1872); *Pacific Railroad Memorial and Act of Incorporation* (St. Louis, Mo: Chambers & Knapp, 1850); Leroy R. Hafen and David Dary, *The Overland Mail, 1849-1869: Promoter of Settlement Precursor of Railroads* (University of Oklahoma Press, 2004); Raymond W. Settle and Mary Lund Settle, *Empire on Wheels* (Palo Alto, California: Stanford University Press, 1949).

⁸⁹ Ormsby sent his correspondence back to New York as he was traveling. The first letter back to his readers combined the events of the start of the journey with the entirety of the stage across Missouri. The second letter crossed the territory of Arkansas and Indian Territory, while he also sent subsequent letters along the route. His inexperience provided his readers in New York an understanding of the territory of the United States and a cross-country overland journey. Waterman L. Ormsby, *The Butterfield Overland Mail: Only Through Passenger on the*

Pacific Railroad Company ran from St. Louis to Tipton, Missouri in 1858.⁹⁰ Ormsby then transferred at Tipton to stagecoaches operated by the Butterfield Overland Mail, though “the change from railroad to coach travelling is marked,” possibly too much for young Ormsby to enjoy the trip.⁹¹

The Overland Mail Company provided the first reliable link between the east and the Pacific. Butterfield’s previous success as a stagecoach manager throughout the country enabled him to secure the winning bid for the overland mail. He understood that stagecoaches were a short-term investment, which railroads would eclipse. Before bidding on the mail, Butterfield joined with Wells & Company and Livingston & Fargo to form the American Express Company in 1850 and by 1857, Butterfield’s success as a freighter was well known.⁹² William G. Fargo joined Butterfield in investing in the Overland Mail Company along with William B. Dinsmore, James V. P. Gardner, Marcus L. Kinyon, Hamilton Spencer and Alexander Holland.⁹³ Together they proposed three

First Westbound Stage, ed. Lyle H. Wright and Josephine M. Bynum, 1st ed. (San Marino, Calif.: Huntington Library Press, 1942), 2.

⁹⁰ The Pacific Railroad Company of Missouri had been chartered in 1849 with the hope of either building west to the Pacific or connecting with a transcontinental railway. Federal land grants in 1852 boosted state aid already given to the railroad. Tipton, Missouri was on the route. For more on the Pacific Railroad Company of Missouri, see H. Craig Miner, *The St. Louis-San Francisco Transcontinental Railroad: The Thirty-Fifth Parallel Project, 1853-1890* (Lawrence, Kan: University Press of Kansas, 1972).

⁹¹ Ormsby did not like the Pacific Railroad. He thought there was not much change from riding on their railroad to riding on a stage, at least when compared to the Long Island Railroad. Ormsby, *The Butterfield Overland Mail*, 14.

⁹² A.C. Greene demonstrates the value of the route selection in his text, section by section. A. C Greene, *900 Miles on the Butterfield Trail*, 1st ed (Denton, Tex: University of North Texas Press, 1994), 12.

⁹³ Greene, *900 Miles on the Butterfield Trail*, n. 11; Brown and United States Post Office Dept., *Annual Report of the Postmaster General*, 987.

routes for the mail line to California; all ran southwesterly from St. Louis, from Memphis, and a “Bifurcated Route” that ran to both St. Louis and Memphis. Butterfield and his associates won the contract to supply mail twice monthly, starting at both St. Louis and Memphis, combining their cargo at Fort Smith, Arkansas to run the rest of the way to California.⁹⁴

The company secured a six-year contract with the federal government to provide semi-weekly mail service between St. Louis and San Francisco.⁹⁵ The company had to complete the line and commence service within one year of the contract signing, by September 16, 1857. Waterman Ormsby rode along with the first stage out of St. Louis with owner John Butterfield and several other passengers, but Ormsby was the sole through passenger to San Francisco.⁹⁶ The stage traveled “southwest through Missouri, to Fort Smith on the Arkansas line, thence to the Red River, the border of Texas, crossing it a few miles below Preston.”⁹⁷ Ormsby reported throughout the southwest, including territory not yet officially part of the United States, providing a new perspective of the country.

94 Butterfield won the contract over the only other long-haul stagecoach team, the firm of Russell, Majors and Waddell. Russell, Majors and Waddell operated in the northern regions of the country, traveling through the Rockies in Wyoming and Colorado. This route however was occasionally blocked by snow, a major impediment to the granting of the contract. Greene, *900 Miles on the Butterfield Trail*, 12.

95 United States Post Office Dept., *Annual Report of the Postmaster General* (U. S. Governmental Printing Office., 1857), 990.

96 Ormsby, *The Butterfield Overland Mail*, 12.

97 Ormsby, *The Butterfield Overland Mail*, 9.

Long distance stagecoach travel was new to Ormsby. He found the ride “fatiguing to a novitiate,” but also believed that “roughing it on the plains agrees with me.”⁹⁸ The stagecoaches did not stop overnight. He spent nearly all of his time onboard the rough and jittery journey, complaining of the “steep, rugged, jagged, rough and mountainous” roads.⁹⁹ The trails were new and unforgiving for young Ormsby.

His first night on the stage, he was transfixed by his imagination in the darkness. The unknown in the wilderness that they traveled through took his imagination of the west: “The stories I had read of bands of roving Indians, rambling through the forests but to kill and steal, all rushed to my mind,” yet never proved true.¹⁰⁰ Ormsby’s imagination of Native America – and the region they traveled through – took hold. From September through November 1858, his understanding of Native Americans transformed in a jarring juxtaposition to his preconceptions.

The stagecoach drivers needed guides between the stage stops. On occasion, wagon lights guided the wagons while at other times, the wagons needed to have a guide lead the team of horses or mules by hand. The process of running the stagecoach amazed Ormsby. He believed “it was a matter of the utmost astonishment to me how the driver ever found his way in the wilderness.”¹⁰¹ The route selected for this journey proved difficult many times, but not impossible.¹⁰²

98 Ormsby, *The Butterfield Overland Mail*, 16, 20.

99 Ormsby, *The Butterfield Overland Mail*, 22.

100 Ormsby, *The Butterfield Overland Mail*, 16.

101 Ormsby, *The Butterfield Overland Mail*, 2.

102 Not every stagecoach run by the Butterfield Overland Mail was as successful as Ormsby’s. In July 1860, a runaway stage almost killed Eadward Muybridge when the horses got away. The stagecoach threw him when it collided with a stump. Muybridge became known for

Many people crossed overland to California during the California gold rush of 1848 to 1850 and many more continued to make the crossing. The Euro-American diaspora across the continent began in the 1830s and often led across the Indian territory. Previous military processions had also marked a road from Fort Smith to Santa Fe.¹⁰³ Military processions from Fort Smith and Fort Gibson into the region marked the majority of the route of the Butterfield Overland Mail.

Ormsby crossed into Indian territory just beyond Fort Smith, Arkansas. He had just “crossed the Arkansas, in a flatboat much resembling a raft . . . by the aid of a guide on horseback, with a lantern (for it was night), we crossed the flats . . . at five minutes after two o’clock A.M.” to great celebration.¹⁰⁴ The town was awake and waiting for the arrival of the stage, a sure indicator of progress for Fort Smith.

The young New Yorker preferred steamboat travel to stage line, but stagecoaches remained a viable mode of transportation. They provided different benefits than the steamboat. Memphis to Fort Smith was a journey of 700 miles. If a steamboat could complete the journey, that was preferable to horseback since steamboats allowed smoother travel and larger cargo. If a stagecoach could complete a portion of the journey,

his technological advances of high-speed photography and motion pictures. The head injury he sustained profoundly affected Muybridge. Rebecca Solnit, *River of Shadows: Eadweard Muybridge and the Technological Wild West* (New York: Viking, 2003), 38–39.

¹⁰³ The most recently advertised trek across Indian Territory to that point was Randolph Marcy’s journey. See Marcy, *Marcy & the Gold Seekers: The Journal of Captain R. B. Marcy, with an Account of the Gold Rush over the Southern Route*; Randolph Barnes Marcy, *The Prairie Traveler: A Hand-Book for Overland Expeditions* (New York: Harper & Brothers, 1859); Hollon, *Beyond the Cross Timbers: The Travels of Randolph B. Marcy, 1812-1887*; Marcy and McClellan, *Adventure on Red River*.

¹⁰⁴ Ormsby, *The Butterfield Overland Mail*, 23–24.

it was easier and faster than walking or riding a horse.¹⁰⁵ Stagecoaches also allowed passengers some reprieve from the bumpy ride at stations along the route. Passengers who had little sleep and a rocky road to look forward to, like Ormsby, would understandably prefer the comfort of steamboat.

The stagecoach line significantly transformed the transportation systems of the Indian territory. The Butterfield line used stops within the Indian territory, all within the Choctaw nation. Stage stops required changes of animals and drivers. They also provided a respite from the trail. The seven stage stops, populated by whites from outside of the Indian territory represented points of contact to the Euro-American world. The various locations of stops were permanent reminders of the nearby non-Indian world lurking outside of the Indian territory. Ormsby believed that the days of the stagecoach were limited and the arrival of the railroad loomed in the horizon.¹⁰⁶

The Five Nations developed strong ties with the space, but the relationship with the space remained of a primarily economic nature. Once forcibly removed from their eastern homelands, many individuals quickly regained lost prosperity. They gained wealth and permanence while establishing political and cultural ties with the place.¹⁰⁷

105 Ormsby, *The Butterfield Overland Mail*, 24.

106 Ormsby slept in the wagon for the first time on the trip. Ormsby, *The Butterfield Overland Mail*, 25.

107 The experience in the new territory was difficult, resulting in death, especially cultural death. Donna Akers argues that the place was the Land of Death, destructive to the Choctaw people. While many did perish in the first several years after removal, the attachment to the place by people like Walker reveals the economic ties that quickly developed with the Indian Territory. Richard White also argues that while dependency on the Federal government increased after relocation, it was only for the short term. Post-removal economic development advanced at a surprising pace. Clara Sue Kidwell also argued that post-removal Choctaw experiences resulted in economic development, despite initial setbacks which forced continued cultural adaptation – a process the Choctaw had long participated in. Akers, *Living in the Land of Death*, 2004; White, *The Roots of Dependency*; Kidwell, *The Choctaws in Oklahoma*.

Cherokee, Muskogee (Creek) and Chickasaw people prospered in the Indian territory. Each of these Indian nations recovered from their forced removal to gain economic success in the years leading up to the Civil War. A primary economic concern among each nation was the definition of rights as the respective nations related to the United States. As “domestic dependent nations” defined by the United States Supreme Court, the Choctaw, Cherokee, Chickasaw and Creek people worked to situate their relationship within their region.¹⁰⁸

By the end of the 1850s, when Waterman Ormsby crossed the Indian territory, the Five Tribes had transformed their space into a bountiful and productive land. Wealthy Indians worked productive farms and raised cattle. Productive farms earned significant income for Native Americans, to the surprise of visiting Euro-Americans. Of course, not all Native Americans within the Indian territory were wealthy. The wealth of some Native Americans, exemplified by the Choctaws and publicized by people like Ormsby, drew attention to the region.

The people of Indian territory were curious to Ormsby, as they had been for Washington Irving nearly thirty years before. For example, Ormsby found at their first stop within the territory, “a large farm owned by an Indian and worked by a white man from the East.”¹⁰⁹ The white man did not own the farm, as one might expect in the East, but instead worked for the Choctaw landowner. Ormsby found the Native Americans of

108 *Cherokee Nation v. The State of Georgia* (1831) is the most important Supreme Court case, which defined the relationship between the federal government and the Native American nations. The court ruled that Georgia did not have jurisdiction over the Cherokee Nation, but rather the relationship with the United States is one of “domestic dependent nation in a state of pupillage” – or the wards of the United States government. Possibly this subservient state is what Ormsby expected to see, rather than the dominant economy.

109 Ormsby, *The Butterfield Overland Mail*, 26.

the Indian territory were quite wealthy, owning large numbers of cattle and slaves, much to his surprise. In this sense, the social relationships within the Indian territory were different from the rest of the United States. Native Americans in the Indian territory owned slaves and accumulated wealth, but did it in ways of their choosing like “letting [slaves] do pretty much as they please,” and living with their slaves – which was contrary to the norm of the United States.¹¹⁰ Despite obvious signs of wealth, they could not escape the epithets of living in “squalid misery.”¹¹¹ The manner of living in what he considered poverty in contrast to Native Americans’ apparent wealth confused Ormsby. Cultural differences between Native American lifestyles and Ormsby’s expectations betrayed Ormsby’s journalistic objectivity. Ormsby’s comfort with the stagecoach left him unable to understand the Indian territory as a place with people making similar life-choices as he had. The Indian territory was so outside of Ormsby’s frame of reference, he struggled to consider it foreign.

By 1858, the Five Tribes established both economic and physically viable enterprises such as farming and timber harvesting operations. This often meant the purchase and employment of slaves and the formation of plantations. Whites were unable to legally settle within the Indian territory. Native Americans guarded their property rights jealously. In the Indian territory, Native Americans were in places of power, living with slaves and employing whites. Ormsby’s impressions of the Indian territory revealed the inverted power relationships in comparison to the United States.

110 Ormsby, *The Butterfield Overland Mail*, 27.

111 Ormsby, *The Butterfield Overland Mail*, 27.

Ormsby gave an awkward description of the Choctaw region; at one point, he was impressed, but also held some reservations. The people he saw did not fit the descriptions he had read “of bands of roving Indians, rambling through the forests but to kill and steal,” which he had dreamt.¹¹² The president of the Choctaw senate, Tandy Walker, confused Ormsby further. To Ormsby, Walker looked “like a full-blooded white man . . . he looks like a well-to-do farmer,” but understood, “he has some Indian blood.”¹¹³ Ormsby ascribed Walker’s appearance and power to his blood quantum, common for the era’s racial understanding. Other wealthy Native Americans defied definition since they were not white but still were wealthy. Ormsby could not determine whether a person was a “real” Indian or not based on their outward appearance or actions, but he continued to attempt to make that distinction. Ormsby attempted to relegate the people he found in Indian territory into a single category – Indians – and therefore “miserable,” to use his term. However, those Indians were also wealthy and appeared to be like white people, which would definitely not make them Indians. They were not like those who inhabited his imagination as he stepped onto the stage just three days before. Again, the expectations when one entered the Indian territory conflicted with the reality of the Native Americans in the space.

As the stage proceeded across Indian territory with stops at Pusley’s, Blackburn’s, Waddell’s, Geary’s, Boggy Depot, Nail’s stations, reaching the border at Colbert’s Ferry on the Red River on September 20th.¹¹⁴ Ormsby made special notation of the wealth at

112 Ormsby, *The Butterfield Overland Mail*, 16.

113 Ormsby, *The Butterfield Overland Mail*, 16.

114 Ormsby, *The Butterfield Overland Mail*, 34.

Colbert's Ferry on the edge of the Choctaw Nation. Benjamin Franklin Colbert owned about twenty-five slaves and appeared to Ormsby to be, "a half-breed Indian of great sagacity and business tact."¹¹⁵ At Colbert's Ferry, Ormsby possibly was also looking for blood quantum to justify the wealth of Colbert, but Colbert's full-blooded Chickasaw ancestry remained hidden from Ormsby. Some of Colbert's slaves handled the ferry over the Red River. Some others were, "busily engaged in lowering the present steep grade up the banks."¹¹⁶ Again, Ormsby gave mixed assessment of the people he encountered, as Colbert was obviously "a half-breed" which would account for his tenacity at business affairs.

Ormsby reflected the difficulty that both La Harpe and Irving had in describing the place and people of the Indian territory. The people of the region each encountered did not fit his imagination. Ormsby found slavery alive and well, but Indians owning slaves and treating them much differently than elsewhere. There was great land for farming, but much of it lay dormant with the people preferring to raise cattle and lay around. Raising cattle would be a civilized occupation; yet if the people were lazing around, they would be seen as uncivilized.¹¹⁷ Continuously, Ormsby could not tell if the

¹¹⁵ Ormsby, *The Butterfield Overland Mail*, 34.

¹¹⁶ Ormsby, *The Butterfield Overland Mail*, 35.

¹¹⁷ "Civilization" was a loaded term. The Indians were instructed to be "civilized" and the whites in power over them but the Native Americans were aware of how the whites treated others as well. An oft-repeated story of Indians responding to "Father Vail's" call for industry to be happy is met with sarcasm. An Indian replied in part, "Well father, you go to our Great Father – tell him to find me one, two, three negroes to cut wood and plough for me and I'll be willing to be happy like white man." Native Americans understood the value of slaves. Stories like these must have reinforced the identity of Native Americans as slave holders, at least to themselves. Irving, "Five Note-Books," 129.

Native Americans he met were “real” Indians or white men since they acted and looked like neither.

The Overland Mail continued on to California through Texas, New Mexico and Arizona. By October 10, 1858, Waterman Ormsby was writing back to his readers in New York, assessing his journey and the viability of the Overland Mail:

Safe and sound from all the threatened dangers of Indians, tropic suns, rattlesnakes, grizzly bears, stubborn mules, mustang horses, jerked beef, terrific mountain passes, fording rivers, and all the concomitants which envy, pedantry, and ignorance had predicted for all passengers by the overland mail route over which I have just passed, . . . The journey has been by no means fatiguing to me as might be expected by a continuous ride of such duration, for I feel almost fresh enough to undertake it again.¹¹⁸

From the beginning of his travels, Ormsby understood the magnitude of his travels. He was impressed by the potential that overland mail might provide for the nation. Indeed, a permanent communication link tied the parts of the nation together. He believed that linking east and west would prove pivotal for the nation. The federal government and the Euro-American settlers understood the value of the transcontinental mail.

Ormsby also imagined a future when transportation in the United States was based on railroads rather than horse-power. Rail instead of stagecoaches provoked Ormsby’s imagination:

I looked forward in my imagination to the time when, instead of a wagon road to the Pacific, we should have a railroad; and when instead of having to wait over forty days for an answer from San Francisco, a delay of as many minutes will be looked upon as a gross imposition, and of as many seconds as ‘doing from fair to middling.’¹¹⁹

118 Ormsby, *The Butterfield Overland Mail*, 58.

119 Ormsby’s perception reflected those of many others who pushed for rail access to the Pacific directly. Ormsby, *The Butterfield Overland Mail*, 2.

Railroads were in the east and surpassed the stagecoach by the time of Ormsby's journey. Owner John Butterfield originally invested in freighting but expanded his investments to include railroad interests like the American Express Company. The railroad exceeded both the steamboat and the stagecoach in speed, reliability, and freight quantity. The stagecoach was part of the evolution of transportation systems during the nineteenth century, yielding to the railroad for major routes, yet Americans continued to use stagecoaches away from the railroads. The Butterfield Overland Mail Company represents one part of evolutionary change in transportation networks, yet many cultural and technological changes needed to take place before the railroad fully replaced the stagecoach.

* * * * *

The primary problem La Harpe faced in the early 1700s was one of identification; he did not know exactly where he was or whom he was talking with, yet he noted the potential of the region. La Harpe's crossing by boat stopped with the difficulties of river travel in the Indian territory. Washington Irving found the changing political and social landscape disrupted people from their routine lives and the region was clearly fluctuating, but also teeming with potential. Irving also found the iron wall of the Cross Timbers region difficult, but not impossible to cross. By the time Ormsby visited the region, the internal tribal strife subsided and prosperity began to return to the area. Ormsby's preconceptions of people defined the difficulties he faced at the mid-century coupled with a relatively slow method of crossing the region. Each person's preconceptions of the space and people were challenged once actually entering the Indian territory.

Transportation networks significantly changed over the century and a half between the arrival of the French in the 1700s and the middle of the 1800s, yet the Indian territory remained isolated. Early French transportation relied on human powered watercraft to extensively bolster their trading center on the Mississippi River. La Harpe demonstrated the French dependence on water travel on his way to Natchitoches and only departed the river when necessary. When La Harpe crossed overland, it was without the benefit of well-known trails.¹²⁰ By Irving's tour, transportation forms had changed so he was used to machine-powered vehicles like the steamboat. Roads had also been improved to allow wagon travel all the way to Fort Gibson. Beyond Fort Gibson, Irving needed to travel by horseback, an indicator for Irving that he was in the west. Ormsby benefitted by machine-powered railroad transportation from New York to Tipton, Missouri. From Tipton through the rest of his journey, Ormsby relied on the stagecoach network for his journey. Transportation evolved from individual action to a networked and hyper-connected activity that required more than one person's actions to complete.

The movements of La Harpe, Irving and Ormsby reflect transportation networks each more stable and permanent than the previous. Transportation networks significantly expanded and enveloped the United States throughout the nineteenth century, eventually incorporating the entirety of the continent. Transportation networks also incorporated the Indian territory, which had once been outside of the nation's borders, into a borderland region. Transportation networks developed their permanence through the ability to overlap and supplant previous systems. Steamboats like those that Irving took replaced

¹²⁰ The guides that accompanied La Harpe knew the trails he crossed, but La Harpe was effectively lost without a guide. La Harpe wanted to understand where he was, but his dependence on others limited his ability so much that he was unable to return to Three Forks.

La Harpe's man-powered boats. The Missouri Pacific Railroad, an increasingly permanent and reliable form of transportation, eventually replaced the route that Irving took from St. Louis through Missouri, the Osage Trace.¹²¹ The dominance of steamboats as the primary transportation during Irving's era was replaced by railroads during Ormsby's. Yet the Indian territory remained largely isolated from machine-powered transportation, most importantly railroads, until after the Civil War.

Eventually, as Ormsby predicted, rails superseded stagecoach lines through the Indian territory. Many desired railroads through the region, but the process of crossing the region by railroads was not simple. Multiple forces complicated crossing through Indian territory.

Transportation technology, whether boats, steamboats, stagecoaches or eventually the railroad, increasingly affected the Indian territory. Euro-Americans moved across the territory to regions beyond the borders of the Indian territory. Increasingly permanent and stable transportation networks evolved while political, social and cultural changes evolved within the Indian territory. More and more people crossed the space while Native Americans established stronger relationships with the place.

A constantly improving network of transportation systems provided access to the Indian territory. Through these transportation systems, the space was linked to the United States. People within the United States in turn, sought to extend and improve the

121 Of course, humans are naturally mobile, moving and transcending space, but transportation systems have supplanted human mobility with machine power. See Massey on the management of space as it is related to human motivation across it and in conflict over it. Transcendence of space by the humans crossing it erodes the power of the space that is being crossed. Massey argues that the space has meaning too but is often relegated to only being worthy of crossing over. Doreen B Massey, *For Space*, 1st ed. (Thousand Oaks, California: Sage Publications Ltd, 2005), 116–118.

transportation systems into and through the Indian territory. The Civil War provided just that opportunity to further situate the Indian territory in the hinterland of the nation while removing it from the periphery of settlement.

By the Civil War, the resources of the Indian territory attracted outside interest to a space once deemed a wasteland. Despite the pressure of Euro-Americans on the boundaries, the Indian territory remained politically and culturally isolated. Native Americans' space transitioned from a place separated by a great distance into a borderland, on the edge of Euro-American national interests. We will see how continued population shifts through the act of traversing the region and continued searches for natural resources greatly affected the territory and those living there.

CHAPTER 2 - TRANSPORTATION LEGISLATION TRANSFORMED:

LEGISLATING RAILROADS IN INDIAN TERRITORY

*“[The Indian territory]
forms a vast reservoir for the sustenance of industry and commerce.”*
Jules Marcou, 1853

With the acquisition of land from Mexico, the rise in California's population, and the settlement of the Oregon territory, the nation increasingly desired a cross-continent railroad by the 1850s.

While many desired that there would be a railroad built across the continent to California, Congressional debate quickly erupted over the route of the proposed railroad. Local rivalries over the route and sectional conflicts between North and South delayed selecting a route. In an attempt to impartially judge the best way to the Pacific, Congress authorized the Secretary of War, Jefferson Davis, in conjunction with the Corps of Topographical Engineers to survey the relative merits of several principal routes of a potential railroad. Eventually surveyors scouted five routes for a western transcontinental line. Among the other routes, Jefferson Davis commissioned Amos Weeks Whipple to explore the route of the 35th parallel, one of two southern routes.¹

A.W. Whipple gathered his expedition at Fort Smith, Arkansas and set out for California on July 2, 1853. The small party of Whipple, thirteen assistants (including Balduin Möllhausen as geographer), and a small company of dragoons crossed the

¹ Davis was known for his support of a southern railroad route, and his survey leaders were primarily of northern background. The selection of northerners for the role of surveyors may have been accidental, but Jefferson Davis was able to argue it was purposeful to demonstrate the importance of a southern route. See John Pitts Sherburne, *Through Indian Country to California*, ed. Mary McDougall Gordon (Palo Alto, California: Stanford University Press, 1988), 6.

southwest from Fort Smith, Arkansas to California. Over the next eleven months, they interacted with Native Americans, took barometric measurements, astrological readings, and collected zoological specimens while mapping the route. They noted the physical properties of the land, surveying when possible and noting features that may be beneficial to future railroads, completing their journey with their arrival in San Pedro on March 24, 1854.² Whipple's account and official report of the trip revealed the viability of a railroad route to the Pacific through the Indian territory and the southwest.

Whipple's expedition significantly advanced the geographic, botanical and zoological understanding of the region for the U.S. government and the general public. The expedition produced a lengthy report detailing the value of the route to railroads highlighting the importance of the southern route.³ The route awed the "Geologist and Mining Engineer" of the expedition, Jules Marcou, by the viability of a railroad based on the natural resources found along the way:

Our survey has traversed this basis from the vicinity of Little Rock to Delaware mount, a distance of more than four hundred miles, coal being found almost everywhere from Petit Jean mountain to Coal creek and the Shawnee mountains. It forms a vast reservoir for the sustenance of industry and commerce along the whole line of the Pacific railroad. This

² Balduin Möllhausen et al., *Diary of a Journey from the Mississippi to the Coasts of the Pacific with a United States Government Expedition* (London: Longman, Brown, Green, Longmans, & Roberts, 1858), xxiv.

³ Amiel Weeks Whipple and United States Army Corps of Topographical Engineers, *Report of Explorations for a Railway Route, Near the Thirty-Fifth Parallel of Latitude* (Washington, DC: Government Printing Office, 1854). Whipple also issued a second public piece on his exploration, detailing the cultural interactions and anthropological importance of Native Americans the survey team encountered. The two reports present the most extensive accounting of the southwest in 1853 and provided the foundation for future crossings. Amos W. Whipple, Thomas Ewbank, and William W. Turner, *Reports of Explorations and Surveys Upon the Indian Tribes* (Washington, DC: Governmental Printing Office, 1855), http://books.google.com/books?id=Sqdp2OwJyxMC&pg=PA54&lpg=PA54&dq=reports+of+explorations+and+surveys+whipple&source=bl&ots=Wj_G2rScAT&sig=hZ_xgM_IKFiB5uyaudQe4LuJi-Y&hl=en&ei=tWVeSq_dCJG8Nq-6va4C&sa=X&oi=book_result&ct=result&resnum=10.

carboniferous basin contains, in addition to the coal, an abundance of excellent sandstone for building bridges and embankments, good beds of limestone for the manufacture of lime, and also iron.⁴

The route appeared ideally suited for a railroad. Whipple's concluding remarks boldly state "The Choctaw territory, as far as Shawneetown [*sic*], [is] covered with wood, excellent for fuel, and also furnish an abundance of coal."⁵ Most importantly, the survey persuaded members of Congress of the value of the route – and the Indian territory – to be the first route selected for a transcontinental railroad. In addressing the Senate, Senator Polk of Missouri boldly stated, "I am convinced, Mr. President, that the route on the thirty-fifth parallel is the best route."⁶ According to the results of the preliminary survey, the 35th Parallel Route suited railroads nearly perfectly.

Yet, the 35th Parallel Route did not become the primary route for the first transcontinental railroad. The route, as mapped in 1858, never became a transcontinental route. The surveying team noted the necessary resources for a railroad along the route. The weather would cooperate along a southern route as well. The route would be expensive, but no more than the Baltimore and Ohio Railroad cost per mile at its construction.⁷ Native Americans presented the most significant and unforeseen obstacle to railroad construction along the way.

4 Whipple and United States Army Corps of Topographical Engineers, *Report of Explorations for a Railway Route, Near the Thirty-Fifth Parallel of Latitude*, 41.

5 Whipple, Ewbank, and Turner, *Reports of Explorations and Surveys Upon the Indian Tribes*, 83.

6 Senator Polk of Missouri, on value of the 35th Parallel Route to the Pacific, April 15, 1858, *Cong. Globe*, 35th Cong., 1st sess., 1599.

7 Whipple estimated that the costs to build a railroad would increase from \$49,600 per mile along the plains and prairies at the beginning of the route to \$131,000 per mile for the length from Santa Fe to the Colorado River. Whipple accordingly figured the cost of the entire 1,849 mile railroad at an astounding \$166,230,000. Whipple attempted to justify the cost by suggesting,

Comanches long-held a position as notorious warriors against railroad crews. Throughout much of the nineteenth century, the fear of Indian attacks on rail crews presented significant hazards.⁸ On the 35th Parallel Route, Native Americans did not present significant physical obstacles, but rather political obstacles to railroad expansion.

Native Americans within the Indian territory, the first region along the 35th Parallel Route, owned the land on which they lived. The so-called Five Civilized Tribes, on their forced relocation from their eastern homes to the western lands of Indian territory in the 1830s secured their title in fee simple.⁹ In 1858, an article in Harper's Monthly shockingly revealed, "Within the country ceded to the Choctaw nation, therein no white man can, in his own right, acquire a land-title or residence without permission of the

"that upon no portion of this route . . . can the difficulties exceed what was encountered upon the Baltimore and Ohio railroad." The staggering cost to build a railroad along the 35th parallel route inhibited initial investment in a line. Building along the 35th parallel route took creative financing and investors willing to take large risks. Whipple and United States Army Corps of Topographical Engineers, *Report of Explorations for a Railway Route, Near the Thirty-Fifth Parallel of Latitude*, 86.

8 Comanche soldiers constantly hampered efforts at building within the Great Plains region. Plains Indians' battles with rail crews led some to arming themselves against Native Americans. Hamalainen, *The Comanche Empire*, 325.

9 Land ownership of the Indian country dates to the era of forced migration of the respective nations to the Indian Territory. In exchange for their lands in the east, the Native Americans received the title to their land in the Indian country. This perfect fee-simple title was the same title given to any other land owners in the United States. The Treaty of 1835 conveyed to the Cherokee nation by patent an estimated seven million acres in perfect fee simple title in the Indian country west of Arkansas. See "Treaty with the Cherokee, 1835. Dec. 29, 1835", Charles Joseph Kappler, *Indian Affairs Laws and Treaties*, vol. 2 (Washington, DC: Government Printing Office, 1904), 440–441.

Similarly, the Choctaw gained their land in the Indian territory through the Treaty of 1830, which granted more than a simple possessory right to the land, but was a fee-simple title. See *Papers Reflecting the Rights and Interests of the Choctaw Nation, and Their Relations with the United States, the Chickasaws and Other Indian Tribes* (Washington: Geo. S. Gideon, 1855), 22; Harmon, *Rich Indians: Native People and the Problem of Wealth in American History*, 135ff.

Indians.”¹⁰ Cherokee, Chickasaw, Creek and Seminole nations all strictly regulated land ownership, resource use and interaction with whites within their territory.

Despite these prohibitions on white land ownership and strict restrictions on land use, railroads crossed the Indian territory by 1872. Why were railroads circumscribed in their construction efforts in the Indian territory at a time of some of the greatest railroad expansion in the United States? How were Native Americans able to resist, and later control railroad expansion? Land ownership of the Indian territory and issues of control of land provoked conflict between railroads and the Native Americans throughout the post-war era.

Railroads in the Indian territory presented conflicting perspectives of control and identity. The Choctaw and Chickasaw nations actually desired railroads during the antebellum period and throughout the Civil War while they were aligned with the Confederacy, but after the Civil War their attitude shifted toward reluctant acceptance. The tribal leadership encouraged railroad development as well in an effort to shape the route of railroads in the region. Similarly, the Cherokee nation agreed to railroads crossing their region in 1857, but the government refused access. This conflicting perspective and attitude between the Native Americans and the federal government toward railroads in the Indian territory remained until the Civil War. After the Civil War, the attitudes towards railroads switched. The federal government pushed for railroad access into the Native and the Native Americans resisted.

10 “The Tribes of the Thirty-Fifth Parallel,” *Harper’s New Monthly Magazine* XVII, no. 100 (September 1858): 448–467.

The processes of establishing railroads within Indian country were quite different from what occurred in the majority of the United States. Outside of the Indian territory, railroads often were greeted as saviors to disparate and isolated regions of the United States. Railroads had to fight to gain access to the Indian territory and continued to negotiate with Native Americans even after initial access was granted. Once given Congressional permission to build within Indian territory, railroads immediately faced financial issues, immigration disputes and resource regulation that they had not experienced anywhere else.

Indian territory, especially the land of the Cherokee, Choctaw, Chickasaw, and Creek nations, stood as an unforeseen obstacle of railroad expansion. However, once the Indian territory opened up to railroads, the railroads that crossed it shattered time and space, eliminating the distance that had allowed the place to remain separate.

Railroads crossed the Indian territory after the Civil War, yet Native Americans also were able to claim success in their negotiations over railroads. Why were railroads willing to negotiate with the Native Americans? What negotiating power did Native Americans have in the face of the juggernaut of railroad expansion?

Two railroads, the Missouri, Kansas and Texas Railroad (MKT) and the Atlantic and Pacific Railway (A&P), gained access to Indian territory following the Treaties of 1866.¹¹ These two railroads took different routes both physically through the territory

¹¹ Both railroads had inconsistent naming practices. The process of renaming railroads at the direction of their managers sometimes simply reflected a change in leadership. Other times railroads kept their name when boards changed. The two main railroads in the Indian territory reflected these trends. The Union Pacific Southern Branch (UPSB) became the Missouri, Kansas and Texas Railway when the board of directors changed in 1866. Subsequent changes to the name of the railroad included: the Missouri, Kansas and Texas Railroad; Missouri, Kansas & Texas Railroad, or Railway; or the Missouri-Kansas-Texas Railroad. Similarly, the Atlantic and Pacific Railway was sometimes the Atlantic & Pacific Railway or Railroad or even the Atchison, Topeka

and relationally with the respective Native American nations. The MKT attempted to negotiate and work with Native Americans to establish their north-south line. The A&P used its Congressional connections to legislate commerce in the Indian territory with a stated goal of eliminating Indian title to the land. While the railroads tried to manage the Indians, Native American leaders in Indian territory were not purely oppositional to railroads; rather, Native American leaders primarily sought control over their respective lands and negotiated with others in power to those ends. Land control was the primary objective of Native American leaders when dealing with railroads even if they could not totally restrict movement.

This chapter investigates the political processes that permitted railroads to cross the Indian territory, the issues each railroad faced and the attempts to surmount their legal obstacles. Investigating interactions with negotiators, this chapter reveals the eagerness of railroads to cross the Indian territory and the compensations they were willing to forego to gain routes across the region. Railroad managers altered their planned interaction with the territory as legal obstacles and social resistance proved difficult to surmount, resulting in altered routes and curtailed plans. The federal government altered the planned route of the Missouri, Kansas and Texas Railroad while the Atlantic and Pacific Railway dejectedly built its end of the line in the Indian territory. While these were not the initial plans of the railroad companies, each of these railroads drastically transformed the Indian territory.

and Santa Fe, but retained its name to secure land grants. The reasons for the name variations were usually from changes in boards of directors, ownership or to inattention to detail by the various authors of company history.

* * * * *

Some settlements of the Midwest sought the railroad as early as the 1830s.¹²

Local railroads and short lines dominated the American scene, slowly reaching out to the western expanses to link to the east. Easterners used an expanding railroad network and it was increasingly apparent the importance of long running railroads. Railroad interest throughout the United States increased as railroads grew in their reliability, speed, and frequency.

Ideas for a transcontinental railroad to the Pacific began with Asa Whitney lobbying for a cross-country route, gaining initial support in Congress as early as the 1840s.¹³ Whitney's plan for a route across the continent to the Pacific Ocean gained traction through the subsequent meetings of Congress, mostly since Whitney's promotion of his idea was unmatched at the time. Whitney fanned the flames of new railroad mania, continuously calling for the creation of a "highway for nations" and a "passage to India" to become a "source of wealth and power for the nation."¹⁴ There was no doubt that railroads were becoming increasingly appealing to the growing nation.

12 Oscar O. Winther, *The Transportation Frontier: Trans-Mississippi West 1865-1890* (New York, N.Y: Holt Rinehart Winston, 1964), 94; Fishlow, *American Railroads and the Transformation of the Antebellum Economy*.

13 Whitney proposed to route a railroad from the Great Lakes to the mouth of the Columbia River to make a gateway to the Orient. Whitney's first proposal to Congress in January 1845 produced much discussion of the merits of such a line, but also considerable doubt. Many have written about railroad promoter and world traveler Asa Whitney. For short summaries of Whitney's efforts, see John F. Stover, *American Railroads*, 2nd ed (Chicago, Ill: University of Chicago Press, 1997), 49; Winther, *The Transportation Frontier: Trans-Mississippi West 1865-1890*, 98; Asa Whitney, *A Project for a Railroad to the Pacific* (New York: G. W. Wood, 1849).

14 Henry Nash Smith's classic history discusses the importance of Whitney's efforts on the American mind, creating a psychological and mythological impact. It is also important to consider the era of Manifest Destiny and expansionism that encompassed the desire for a transcontinental railroad. While Smith's work placed the west in an important place as mythological, the reality was much more complex. Whitney's descriptions of the west as empty

Towns with railroads grew faster than those without. It was often promoted that railroad presence meant that your town would “succeed” through connections to other major cities increasing cultural aptitude as revealed through increased local prosperity. The western settlements of Quincy, Muscatine, Davenport, Chicago and St. Louis each had major town meetings to “exert a systemic attraction on local railroad schemes across the region in the 1850s.”¹⁵ This “Railroad mania,” to use a phrase from the period, swept throughout the entire nation as newly settled areas of the Midwest wanted to attract new transportation and connections to eastern markets and eastern markets did not want to be overlooked.

Railroads provided opportunity and economic incentive for economic development. Throughout the western parts of the United States, the railroad mania combined with town speculation in an unregulated explosion of boosterism. Geographer D.W. Meinig describes the western push for towns as a “decisive, dynamic, formative period in the human geography of these western regions. The strident tone of booster rhetoric betrayed a well-founded urgency and anxiety during a phase of unusual

and in need of development propelled the mis-perceptions of the region. Whitney, *A Project for a Railroad to the Pacific*, iii, 104; Henry Nash Smith, *Virgin Land: The American West As Symbol and Myth* (New York: Vintage Books, 1957).

¹⁵ Historian Timothy Mahoney includes the details the expectations of a small town, Keokuk, Iowa, that sought a railroad in the antebellum period. Mahoney placed the role of boosters on uncertain terms in relation to the history of the town. His cultural and social analysis places the middle class of an eastern Iowa town as the epitome of American boosterism and social experience. See Timothy R Mahoney, *Provincial Lives: Middle-class Experience in the Antebellum Middle West* (Cambridge, UK: Cambridge University Press, 1999), 218.

Craig Miner’s *A Most Magnificent Machine* explores the reactions to the new technology of the railroad as revealed through the press. The West prospered as much as the East from the coming railroads, but also fostered population booms and transformed settlement patterns. Settlement in the Midwest propelled railroad growth and promises of grand designs. H. Craig Miner, *A Most Magnificent Machine: America Adopts the Railroad, 1825-1862* (Lawrence, Kan: Univ Press of Kansas, 2010), 172–191.

geographic malleability and uncertainty.” He goes on to suggest that “Major investments in industrial and commercial facilities, in railroads and shipping concerns that bound these new regions firmly into national networks, were made in the established centers of economic power.”¹⁶ Railroads tied the East and the West together through economic investment and resource extraction. Railroads also were tied intimately to town development, which needed eastern capital to move forward.¹⁷

Railroad mania remained prevalent throughout the Midwest and West in the antebellum period as Euro-Americans moved across North America. Once in the West, many sought to establish or maintain connections to markets in the East. The economic allure of railroads was indisputable. It was also widely recognized that railroads would carry problems as well such as increased population pressures and providing more resources to serve the burgeoning population. Each location addressed – or ignored – these situations as they saw fit.

Among those many locations addressing railroads were the Five Civilized Nations. The Five Nations reflected a vacillating opinion of the role of railroads on their land, not united in their opposition or support of railroads. In some instances, the Choctaw and Chickasaw encouraged railroad building, while at other times the same nations staunchly opposed railroad growth. Similarly, the Cherokee opposed and

16 D. W. Meinig, *The Shaping of America: A Geographical Perspective on 500 Years of History, Vol. 2: Continental America, 1800-1867*, vol. 2 (New Haven, Conn: Yale University Press, 1995), 256–257.

17 American ideas of progress and movement forward permeate literature of the role of railroads in American history. Progress was consummate with the “frontier” line, which ultimately would be pushed back as “tides of immigrants” moved across the West. The Turner thesis serves as the foundational descriptor from which many alternate theories developed. D.W. Meinig’s visualization of the Turner thesis and alternative theories of western movement serves to elucidate the complexities of western movement. See Turner, *Rereading Frederick Jackson Turner*; Meinig, *The Shaping of America*, 2:259–264.

encouraged railroad building through their space, depending on the source of the information.¹⁸

Economic motivation for railroad access overrode Choctaw social and cultural concerns as evidenced by the Treaty of 1855. Choctaw delegate Peter Pitchlynn called for an increased speed in the civilizing actions of the government – he wanted railroads.¹⁹ The Choctaw and Chickasaw desire for railroads reflected one perspective of the course for the Indian territory – integration into the wider market world while maintaining self-determination over the space.

Crossing the Indian territory hinged on who would control the Indian territory – the railroad or the respective Indian nations, or some other force.

Two years after the Whipple expedition, the Choctaw and the Chickasaw nations signed a new treaty with the United States. The Choctaw and the Chickasaw nations sought federal negotiators to solve conflicts between the two nations.²⁰ The Chickasaw nation of almost 5,000 Chickasaw and their more than 1,150 slaves were assimilated into

18 Brad A. Bays, *Townsite Settlement and Dispossession in the Cherokee Nation, 1866-1907* (New York: Garland Pub, 1998).

19 Pitchlynn's pleas for help in the Indian territory were a high-point in Choctaw political maneuvering through the direct interaction between President Pierce and the Choctaw delegation, but also signaled a shift in Choctaw politics to an acquisitive stance. Peter Perkins Pitchlynn, "Address of P.P. Pitchlynn, of the Choctaw Delegation to President Pierce," in *Papers Reflecting the Rights and Interests of the Choctaw Nation, and Their Relations with the United States, the Chickasaws and Other Indian Tribes* (Washington: Geo. S. Gideon, 1855), 11–12.

20 The two groups spoke similar languages and shared a creation story where two brothers "Chata" and "Chicksa" led their people separately, but from the same family. See the original, but sometimes-problematic H. B. Cushman, *History of the Choctaw, Chickasaw and Natchez Indians* (Greenville, TX: Headlight Printing House, 1899). Also for a brief overview of the Choctaw and Chickasaw tribal histories, see Valerie Lambert, *Choctaw Nation: A Story of American Indian Resurgence* (Lincoln: University of Nebraska Press, 2007), 19–23.

the Choctaw Nation under the terms of the Choctaw-Chickasaw Treaty of 1837.²¹ By 1855, the Chickasaws regained their independence and control over their own finances.

The Treaty of 1855 primarily secured a peaceful relationship between the Choctaw and the Chickasaw and established a way for resolving future conflicts between the two tribes by working with the federal government. The signers of the treaty aimed for “simplification and better understanding of the relations between the United States and the Choctaw Indians, that all their subsisting treaty stipulations be embodied in one comprehensive instrument.”²² Several overlapping treaties had established the relationship between the Choctaw and the US, dating back to 1786. The most significant and problematic treaty for the Choctaw was the Treaty of Dancing Rabbit Creek. Signed in 1835, this treaty meant to finalize the claims of the Choctaw in Mississippi by compensating the Choctaw for land taken in their forced relocation to the Indian territory. By 1855, the federal government had not paid the Choctaw. The negotiators of the Treaty of 1855 meant to clarify the relationship while securing payment for the lost land.

The Choctaw delegation also included major revisions in the treaty’s in the relationships between the Choctaw and Chickasaw by granting them political autonomy and separate districts.²³ The treaty formally established the Chickasaw as one-quarter owners of the Choctaw land and gave them one quarter voting rights in Choctaw matters and vice-versa. It also imparted rights of each tribe to settle in the others’ territory.²⁴ The

21 Arrell Morgan Gibson, *The Chickasaws* (University of Oklahoma Press, 1971), 229.

22 Kappler, *Indian Affairs Laws and Treaties*, 2:706.

23 Kappler, *Indian Affairs Laws and Treaties*, 2:706.

24 Kappler, *Indian Affairs Laws and Treaties*, 2:707.

delegation was also willing to negotiate the Choctaw land west of the 100th meridian for the settlement of the Wichita Indians and smaller tribes.

The Treaty of 1855 also boldly sought railroads for the Choctaw and Chickasaw. The 18th article of the Treaty of 1855 granted that, “The United States, or any incorporated company, shall have the right of way for railroads, or lines of telegraphs, through the Choctaw and Chickasaw country.”²⁵ This blanket grant of access to any railroad that wanted the right of way clearly states the signers' intentions to gain outside connections to the east.

The treaty was not simply acquiescing railroads that were pining for access. The delegates representing the Choctaw nation wanted the economic benefits that railroads would provide. Their argument is revealing of the economic motivations of the treaty signers, using the government’s obligations for Indian civilization to justify the need for the new treaty. Choctaw delegate Peter Pitchlynn appealed to the government: “Our progress is too slow, and we are almost disheartened; but, let our affairs with the government be properly and kindly adjusted – let only simple justice be done to us.”²⁶ He wanted the most obvious sign of “progress” that was available in the form of the railroad.

While the federal government signed the treaty, there were some EuroAmericans that feared the encroaching railroads would take over the land set aside for the Native Americans, yet also saw the inevitability of railroad crossing. The federal government did not want the doors simply opened to the railroads. The Choctaw delegation wanted to

25 Kappler, *Indian Affairs Laws and Treaties*, 2:710.

26 P.P. Pitchlynn, “Address of P.P. Pitchlynn, of the Choctaw delegation, to President Pierce,” *Papers Respecting the Rights and Interests of the Choctaw Nation, and Their Relations with the United States, the Chickasaws and Other Indian Tribes* (Washington, DC: Geo. S. Gideon, 1855), 11-12.

capitalize on the greed and avarice of the railroads by allowing them to cross the land.

Crossing the region would cost the railroads money, but also give them access to new territory including Texas and a route to California. The railroads would presumably have had to pay for timber and land taken as well:

All persons licensed by the United States to trade with the Choctaws or Chickasaws shall be required to pay to the respective tribes a moderate annual compensation for the land and timber used by them; the amount of such compensation, in each case, to be assessed by the proper authorities of said tribe, subject to the approval of the United States agent.²⁷

No railroads accepted the terms of the treaty. Despite what the Native Americans thought were generous terms and an open attitude toward railroads, the Indian territory remained without railroads until after the Civil War. There were no railroads close enough to run a line to the region or to make that run profitable. Railroads could not capitalize on the generosity of the Choctaw and Chickasaw.

Meanwhile, some members of the Cherokee Nation resisted railroads. Chief John Ross proclaimed in his 1857 address the ways the Cherokee were threatened by the possibility of Kansas railroads crossing the Cherokee land. There were no railroads in the territory yet, but the territorial governor of Kansas, Robert Walker, proclaimed that railroads, “leading through this Indian territory, connecting Kansas with New Orleans, the Gulf of Mexico, and with the southern Pacific railroad . . . were essential to not only Kansas, but of Louisiana, Texas, and Arkansas, Iowa and Missouri and the whole region

²⁷ “Treaty with the Choctaw and Chickasaw, 1855,” Charles Joseph Kappler, ed., *Indian Affairs: Laws and Treaties*, vol. 2, 7 vols. (Washington, DC:U.S. Government Printing Office, 1904), 710.

west of the Mississippi.”²⁸ According to prevailing thought as espoused by Walker, the treaties signed by the Native Americans would be, “no obstacle, any more than precisely similar treaties [were] in Kansas.”²⁹ In turn, Ross warned the Cherokee to be prepared to respond to the threats posed by the railroads in Kansas or they would experience “strife, injury and political destruction.”³⁰ Ross did not want the Kansas railroads to cross the Cherokee land in the way that Robert Walker was threatening.

In 1858, a railroad applied for a right of way through the Cherokee Nation. This early version of the Union Pacific Southern Branch proposed crossing through the Indian territory while securing some payment for their line from the Native Americans. Rather than letting the Native Americans decide whether a railroad should cross their land, the Office of Indian Affairs intervened on behalf of the Cherokee, ostensibly to protect their interests.³¹

The Choctaw and Chickasaw successfully used political representatives in Washington to negotiate new treaties that granted, even encouraged, circumscribed

28 Robert Walker, territorial governor of Kansas, as quoted in the Annual Message of John Ross for 1856, Dept. of the Interior, *Annual Report of the Department of the Interior* (U.S. G.P.O, 1857), 510,
http://books.google.com/ebooks/reader?id=6HHZ0Wa48v4C&as_brr=0&printsec=frontcover&output=reader&pg=GBS.PA511.

29 Miner, *A Most Magnificent Machine*, 3; Annie Heloise Abel, *The American Indian as Slaveholder and Secessionist* (Lincoln: University of Nebraska Press, 1992), 232.

30 John Ross, “Annual Message of John Ross, Chief of the Cherokee, for 1856,” in *Annual Report of the Department of the Interior* (Washington, DC: Government Printing Office, 1857), 512,
http://books.google.com/ebooks/reader?id=6HHZ0Wa48v4C&as_brr=0&printsec=frontcover&output=reader&pg=GBS.PA511.

31 H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907* (Columbia: University of Missouri Press, 1976), 3.

railroad access in 1855.³² The Choctaw and Chickasaw were willing to negotiate with the government for railroad access and while the treaty granted access to railroads in article 18, there were no railroads seeking immediate access. Despite the willingness of the Choctaw and Chickasaw to negotiate access to their land with the federal government, no railroads acted on the permission. The market for railroads into and through the Indian territory did not yield a railroad for the region. Native Americans did not universally oppose railroads. Rather, they wanted railroads that were willing to submit to Native Americans authority. The result was a hole in the network of railroads in the west.³³

The burgeoning railroad network carried the tools of commerce and of society that used that commerce. Railroads were much more than just a method to connect two points. Rail represented the apex of American technology throughout the nineteenth century. For a settlement to be tied into the railroad line forecasted economic success. A railroad included workers and settlements, both temporary and permanent. It meant shops and facilities for the railroad company, but also jobs for locals and a stream of trade for businesses.

This generalization of railroads presupposes several important aspects of settlements. First, it assumes that all towns have the same desires of growth and

32 This treaty, which became “The Net Proceeds Act,” combined several payments of outstanding debts to the Choctaw and Chickasaw nations while resolving access disputes stemming from the forced migration from Mississippi and resultant misdeeds from Indian agents. Kidwell, *The Choctaws in Oklahoma*, 16–29.

33 John Stover suggests that the railroad system in the Antebellum Era was not a network because it lacked consistent connections throughout America despite appearances on railroad maps to the contrary. For example, differences in track gauge required changes of eight cars between Charleston to Philadelphia in 1861. Track gauge remained either four feet, eight and one half inches (the northern gauge) or a steady five feet as in the south. Smaller regional tracks were gauged differently as well. With this difference in track gauge came differences in culture and a lack of reliable connections. Stover, *American Railroads*, 45.

urbanization. Continued growth would serve the original settlers and speculators who might sell their land for a profit. Second, it also assumes that the land was available for speculation, that the occupants were owners and able to sell rights to railroads. Squatters used land that often passed from Native Americans to the government and to the public domain – in which the squatters would be the legal preemptors.³⁴ Third, generalizing railroads also belies the idea that the railroad was always welcome. It was recognized that railroads did not care the type of people it carried - the nefarious types as well as the well-intentioned workers and settlers. People in settlements, especially those in the Indian territory, were wary of the negative influence railroads might bring, so while Peter Pitchlynn spoke of the need of railroads in the Indian territory, others like John Ross were speaking against the same railroads' incursion into the region.³⁵

Three exemplary political movements set the course for the transition of railroads through the Indian territory. Railroads eventually crossed the Indian territory. The manner in which they crossed was not dictated by the railroads, but by the Native Americans wielding power over their space. Native Americans did not singularly oppose railroads, yet their acquiescence to railroads crossing the space only came under their terms. The Cherokee and Choctaw nations acted in ways largely contrary to expectations of whites. The Native Americans leveraged their space, managed their land, and used

34 This movement of land usage permeated the settlement of the western United States. Squatter rights in western lands had long been a contentious issue. In 1841, the so-called "Log Cabin Bill" granted preemption rights to all Americans if they settled on unsurveyed land. The recently validated Log Cabin Bill allowed squatting rights on land unclaimed by others, yet the Indian Territory remained outside of the region of allowed preemption because the land continued to be claimed by the Native Americans, clearly outside of the terms of the bill. *Log Cabin Bill, United States Statutes at Large*, vol. 5, 1841.

35 Bays, *Townsite Settlement and Dispossession in the Cherokee Nation, 1866-1907*.

their political influence in Washington to affect change within railroad management, which in turn affected the way railroads crossed the Indian territory.

* * * * *

The Civil War proved instrumental to railroads crossing the Indian territory. The results of the war put the Five Tribes on a defensive footing, making them susceptible to the workings of the federal government even more than they were before the war. Before the war, there were no rail lines crossing the region. Senators and governors from surrounding states wanted the resources of the Indian territory. The Civil War temporarily removed some of the spatial boundaries that kept people out of Indian territory and because people were allowed in the resources of the Indian territory were revealed to many Euro-Americans. The Civil War and the railroads that followed pulled Native Americans out of a separate region – out of isolation and separate space – into national importance.

Several events on the eve of the Civil War moved the occupants of Indian territory away from neutrality and toward alignment with the Confederacy. On October 3, 1860, Republican Senator from New York William H. Seward, while speaking in Chicago during his campaign for the presidency, suggested that “The Indian Territory, also, south of Kansas, must be vacated by the Indians.”³⁶ A strong opponent of the spread of slavery, Seward’s remarks warned Native Americans of the potential problems a Republican government might bring. Northern allegiances within Indian territory

³⁶ William Henry Seward, *The Works of William H. Seward*, ed. George E. Baker, vol. 4 (New York: Houghton, Mifflin and company, 1888), 363.

would have been strained at the suggestion that if elected, Republicans would dispossess Native Americans of their land.

The Five Nations all permitted slavery before the Civil War. Several prominent Choctaw and Chickasaw families owned large plantations and several hundred slaves.³⁷ The Cherokee owned fewer slaves than the Choctaw and Chickasaw, yet they all remained largely loyal to the Confederacy. The ties of slavery bound the interests of the Choctaw and the Chickasaw to the South.

Reaching beyond the common ties of slavery, some Southern states also attempted to further manipulate the various nations to ally with the Confederacy. Governor Henry Rector of Arkansas reminded John Ross of the Cherokee that “institutions, productions, latitude and natural sympathies, are allied to the common brotherhood of the slaveholding States” and the Cherokee should join the Confederacy.³⁸ Native Americans argued that they acted as free and independent people throughout the war. Despite acting independently, the Five Nations chose to be allied with the South.³⁹

37 The most politically connected families of the Choctaw, including the Pitchlynns, the Folsoms and the LeFlores all owned significant numbers of slaves. Robert M. Jones owned as many as five hundred slaves in the years leading to the Civil War. Sandra Faiman-Silva, *Choctaws at the Crossroads: The Political Economy of Class and Culture in the Oklahoma Timber Region* (Lincoln, Nebraska: University of Nebraska Press, 2000), 30; Lambert, *Choctaw Nation*, 42.

38 Henry Rector to John Ross, United States War Dept., *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, ed. John Sheldon Moody et al., vol. I, 1 (Washington, DC: Government Printing Office, 1881), 683.

39 Despite arguments otherwise, the respective Native American nations insisted they acted of their own accord in aligning with the Confederacy and not at the behest of outsiders inciting them to rebellion. For the speech of the Choctaw and Chickasaw delegation at the peace session in September 1865, see United States Office of Indian Affairs and United States Dept. of the Interior, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Fiscal Year Ended 1865* (Washington D.C.: Government Printing Office, 1865), 345.

The Indian Agents who acted as intermediaries between the federal government and the various Indian Nations encouraged the people of the Choctaw, Chickasaw, Creek, Cherokee and Seminole nations, to be wary of northerners. The agent for the Choctaw, Douglas H. Cooper, strongly advocated for the Choctaw to join the Confederacy.⁴⁰ After hostilities commenced, Cooper was authorized by Jefferson Davis to again negotiate with the Native Americans to join the Confederacy.⁴¹

At the outset of hostilities in the east, federal troops withdrew from the Indian territory in 1861. The Choctaw, Cherokee and other Indian nations claimed that United States abrogated its treaty obligations, which included annuities and the sustenance of the Indian nations.⁴² The Native Americans also ceased receiving their allotted food from the government. However, the political leaders of each nation understood the potential difficult issues facing the Native Americans over taking sides during the war. With that in mind, Chief John Ross of the Cherokee unsuccessfully attempted to maintain neutrality for his people, yet also allied his people to the federal government.⁴³ The Cherokee factionalized over allegiances during the war into Northern and Southern components.

Like the other nations of Indian territory, the Creek Nation also was divided over the issues facing their nation during the Civil War. One faction of the Creek nation

40 Debo, *The Rise and Fall of the Choctaw Republic*, 80.

41 Kevin Bruyneel, *The Third Space of Sovereignty : the Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007), 30.

42 "Official Report of the Proceedings of the Council with the Indians of the west and southwest, held at Fort Smith Arkansas in September 1865," United States Office of Indian Affairs and United States Dept. of the Interior, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Fiscal Year Ended 1865*, 323.

43 Minnie Thomas Bailey, *Reconstruction in Indian Territory; a Story of Avarice, Discrimination, and Opportunism* (Port Washington, N.Y: Kennikat Press, 1972), 25..

aligned with the Confederacy while others led by Opothleyahola were allied with the Union despite feelings of abandonment. Opothleyahola disavowed his name on the treaty of allegiance with the Confederate representative, Albert Pike, after initially signing.⁴⁴

Albert Pike, like the Choctaw agent Douglas H. Cooper, used his relationship with the Indian nations to influence their allegiances leading up to and during the Civil War. Pike, an attorney from Fort Smith, Arkansas, worked with the Creek nation to settle land claims and was acquainted with the land issues of the Indian territory before the outbreak of hostilities.⁴⁵ Pike also served as an attorney for the Choctaw during the Net Proceeds Act and for negotiations over the Treaty of 1855. Pike developed relationships and gained some understanding of the desires of the Native Americans in his years working with both the United States and the Native Americans. Pike built upon those understandings in his approaches to the various Native American nations. Pike offered annuities, increased rights and independence to the Five Tribes if they would align with the South.

While Pike was working to establish a formal relationship with the Confederacy's western flank, the Choctaw proclaimed independence from the Union. Choctaw Principal Chief George Hudson distanced the Choctaw people from the Confederacy. In doing so, he reveals some of the Choctaw motivation to align with the Confederacy. He did not issue his proclamation as one of the "domestic dependent nations," as the Supreme Court referred to the Native Americans.⁴⁶ Rather he proclaimed their allegiance to the

44 W. Craig Gaines, *The Confederate Cherokees* (Baton Rouge: LSU Press, 1989), 24–26.

45 Kidwell, *The Choctaws in Oklahoma*, 21.

46 *Cherokee Nation v. State of Georgia*, 30 U.S. 1 (1831).

Confederacy as “free and *independent*” nations, reasserting their once strong national status.⁴⁷ The Choctaw were allies of the Confederacy, separate and different – at least in the Choctaw perspective. Correspondingly, if the Confederacy won the war, the Choctaw, and the Five Tribes, would also secure their independence. The Indian nations saw the opportunity that a break in the national fabric of the United States offered. Despite their intentions to gain individual national independence, by aligning with the Confederacy the Native American nations committed their fate to that of the Confederacy.

The Confederacy and the respective Native American representatives signed treaties of allegiance in 1861. These treaties each officially established new relationships between the Indian nations and the Confederacy. The treaties of 1861 with the Confederacy are significant in for their display of latitude afforded to the Native Americans, their guaranteeing annuities and holding out the possibility of statehood.

These treaties each replaced the commitments that the Indian Nations had with the United States by guaranteeing the annuities and sustenance of each tribe. In many ways, the treaties are strikingly similar to those the Native Americans had with the United States. The Confederate treaties specifically state that those provisions of the former treaties with the United States not contrary to the new treaties, “shall be continued in force, as if made with the Confederate States.”⁴⁸

47 Italics in original. “Proclamation by the Principal Chief of the Choctaw Nation.” June 14 1861. United States War Dept., *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, ed. John Sheldon Moody et al., vol. III, 1 (Washington, DC: Government Printing Office, 1881), 593.

48 Charles Bernholz et al., “Treaty with the Creek Nation, July 10th 1861,” *So Long as Grass Shall Grow and Water Run: The Treaties Formed By the Confederate States of America and the Tribes in Indian Territory, 1861*, Accessed May 21, 2011, http://csaindiantreaties.unl.edu/csa_treaties.html#p289.

Each of these treaties also allow for more tribal control while giving openings for whites from the Confederacy to establish themselves in the region.

These treaties also allow for “the right of way, for railroads or telegraph lines” in every nation except the Cherokee, with tight controls over that access.⁴⁹ In the language of the treaties, the Indian nations maintained control over their lands by only granting access to railroads “only upon such terms and payment . . . as may be agreed on between it and the National Councils thereof.” The Native Americans would grant railroad access and secure control over the railroad if they could come to agreements on terms. This might appear as an obvious point of land access, but was an essential point of understanding between the Confederacy and the Native Americans. Rather than acting in an overtly paternalistic manner toward the Indians by dictating what railroads might have access, the Confederacy left that determination up to the Native Americans themselves. Just three years prior, the United States had denied access to the Indian territory by a railroad on the grounds the Office of Indian Affairs was looking out for the best interests of the Native Americans – and implying they could not know what was in their own best interests.

It is clear the treaties between the Confederacy and the Indian Nations were not imposed on the Native Americans. Albert Pike negotiated these treaties as fairly as

49 Article 18 of the Choctaw and Chickasaw Treaty, July 12th, 1861; Article 13 of the Seminole Nation Treaty August 1st, 1861; Article 29 of the Osages Treaty, October 2nd, 1861; Article 22 of the Seneca and Shawnee Treaty, October 4th, 1861; Article 21 of the Quapaws Treaty, October 4th, 1861; and Article 13 of the Creek Nation Treaty July 10th, 1861. All have similar language regarding railroads and telegraph lines. The Cherokee treaty stands out for not having any provision for railroads, reflecting the preference for independence. Charles Bernholz et al., *So Long as Grass Shall Grow and Water Run: The Treaties Formed By the Confederate States of America and the Tribes in Indian Territory, 1861*, Accessed May 21, 2011, <http://csaindiantreaties.unl.edu/>.

possible and declared: “I do not think there is a single provision in any of the treaties, granting them any right or privilege, recognizing any claim, or providing for any payment, that I would not cheerfully have inserted, if I had been treating with them in behalf of the United States ten years ago.”⁵⁰ Cherokee resistance to railroads is demonstrated by their treaty that maintains no provision for railroad access but gives significant individual autonomy over settlements and potential encroaching whites. The Choctaw and Chickasaw treaty went as far as to include provisions for eventual statehood. Similarly, the Choctaw’s desire for railroads is reflected in their treaty. Pike sought to please the Native Americans out of fear of “seventy-five hundred fighting men, who could be made our allies, might become our enemies.”⁵¹ Confederate fears of Native American enemies drew the Native Americans to Southern allegiances through generous treaties and recognition of long-claimed Native American rights.

* * * * *

The Civil War in the Indian territory brought thousands of men across the region with significant battles at Cabin Creek, Fort Gibson and Honey Springs. Indian troops fought both Union troops and other Native Americans throughout the Indian territory and into Arkansas and Missouri during the war.⁵² Despite a strong showing of Native

50 Jefferson Davis and Albert Pike, *Message of the President, and Report of Albert Pike, Commissioner of the Confederate States to the Indian Nations West of Arkansas, of the Results of His Mission: Confederate States of America. President* (Richmond, VA: Enquirer Book and Job Press, 1861), 28, <http://www.archive.org/details/messageofpreside29conf>.

51 Davis and Pike, *Message of the President, and Report of Albert Pike, Commissioner of the Confederate States to the Indian Nations West of Arkansas, of the Results of His Mission*, 17.

52 Many books to detail the events of the Civil War in the Indian territory, among which are: Laurence M. Hauptman, *Between Two Fires: American Indians in the Civil War* (Free Press,

American ability during the conflict, Confederate defeat meant the Indian nations would suffer serious consequences for their choice of sides.⁵³

In the midst of the war, the U.S. Congress enacted an appropriations bill with the proclamation that those tribes and nations who committed acts “in actual hostility to the United States” through their Confederate ties had, by so doing, forfeited their previous treaty relationship with the U.S. government.⁵⁴ Thus, at the end of the war new treaties were signed by each Indian nation to restore them into relationship with the government.⁵⁵

The federal government did not negotiate these treaties; rather the government dictated the treaty to the nations’ representatives. The Native Americans did not have full negotiating ability as they were again relegated to the position of domestic, dependent

1995); George W. Grayson, *A Creek Warrior for the Confederacy: The Autobiography of Chief G.W. Grayson*, ed. W. David Baird (Norman, Oklahoma: University of Oklahoma Press, 1991); James M McPherson, *Ordeal by Fire: The Civil War and Reconstruction*, 1st ed (New York: Knopf, 1982); LeRoy H. Fischer, ed., *The Civil War Era in Indian Territory* (Los Angeles: Lorrin L. Morrison, 1974); Annie Heloise Abel, *The American Indian in the Civil War, 1862-1865* (Lincoln, Nebraska: University of Nebraska Press, 1992); Whit Edwards, *The Prairie Was on Fire: Eyewitness Accounts of the Civil War in the Indian Territory* (Oklahoma City, Ok: Oklahoma Historical Society, 2001); Robert Marshall Utley, *The Indian Frontier, 1846-1890*, Rev. ed (Albuquerque: University of New Mexico Press, 2003).

53 Kidwell, *The Choctaws in Oklahoma*, 68.

54 July 5, 1862, U.S. Statues at Large 12:512.

55 Before these new treaties, the U.S. federal government followed a policy to place Native American nations and tribes beyond American boundaries. The treaties of 1866 mark a continuation of the transition of the U.S. government towards inclusion that began with the 32nd Congress. See Annie Heloise Abel’s trilogy on the transformation of Indian policy during the nineteenth century, Abel, *The American Indian in the Civil War, 1862-1865*; Abel, *The American Indian as Slaveholder and Secessionist*; Annie Heloise Abel, *The American Indian Under Reconstruction* (The Arthur H. Clark Company, 1925); Bruyneel, *The Third Space of Sovereignty*.

nations.⁵⁶ The Five Nations were told how the legislation would work and how the treaties would be administered, but the treaties still had to have some plausibility within the American democratic system. As part of the defeated South, the Indian Nations possessed little political capital to expend in negotiations. The Cherokee revealed internal tribal conflict, allowing the Government to claim discord among the Native Americans and justify dictating terms of settlement.⁵⁷

On June 23, 1865, Brigadier General Stand Watie signed a cease-fire at Fort Towson, Indian territory. His First Indian Brigade of the Army of the Trans-Mississippi was the last Confederate army to surrender. Watie was the last Confederate General to surrender. The federal government sought to bring peace to the region clearly disrupted by the war. Yet, Native American alignment with Confederate forces elicited a harsh response from the government.

In September of 1865, the Federal Commissioner, Dennis N. Cooley, called together representatives of all of the Native American nations within the Indian territory to meet at Fort Smith, Arkansas. Cooley intended to negotiate treaties with each of the tribes that gathered, but did not expect resistance from Native Americans to the call of the

56 Bruyneel argues that the Cherokee and other Indian Nations were both inside and outside of American political boundaries. The nations occupied an “ambiguous position of indigenous nations and tribes in relation to the United States.” It was because of this ambiguity that treaties were still signed, but not negotiated. See Bruyneel, *The Third Space of Sovereignty*, 41–43.

57 Bruyneel suggests that the Cherokee internal negotiations between the Southern and Northern factions retained some of the negotiating power that the federal government attempted to co-opt. The political experience of internal strife and discussion increased political ability of the Cherokee Nation as emblematic of the whole of Indian Territory. Bruyneel suggests Federal negotiators never really dictated what they wanted, there was always negotiation, even if the negotiation was not recognized as such by the negotiators. Bruyneel, *The Third Space of Sovereignty*, 50–51.

federal government. However, representatives of each faction were not sent in the timely manner Cooley wanted. Cooley went ahead with his planned reproach despite not having representatives of all of the factions of each side present. His opening remarks berated those in attendance by lumping them together as being “induced by the machinations” of Confederate agents “to throw off their allegiance” to the United States. Because of their allegiance with the “so-called Confederate States,” they made themselves liable to a “forfeiture of all annuities and interests in the lands in the Indian territory.”⁵⁸ Cooley presented a treaty for the tribes to sign, suggesting this was the only way to regain federal protection and restore their status with the government. Many signed the document, but those that signed did not represent the large Confederate factions of each nation.⁵⁹

Instead of submitting to the will of the Federal Government, the Confederate factions, when they did arrive to the Fort Smith assembly, declared that “when we admit that we recognize the government of the United States as exercising exclusive jurisdiction over us, we do not understand the United States as meaning to assume the control or jurisdiction over our internal, local or national affairs, except as to slavery, which is open

58 “Official Report of the Proceedings of the Council with the Indians of the west and southwest, held at Fort Smith Arkansas in September 1865,” United States Office of Indian Affairs and United States Dept. of the Interior, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Fiscal Year Ended 1865*, 314.

59 The treaty as presented was never ratified. Instead the document signed served as a basis for subsequent treaties and only acted as a preliminary document for further treaty negotiations. This document was a promise to “re-establish peace and friendship” within the Indian country. The Native Americans assembled at Fort Smith were reluctant to agree to larger all-encompassing covenants. Kappler, *Indian Affairs Laws and Treaties*, 2:1050–1052. See United States Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs* (Washington, DC: Office of Indian Affairs, 1866), 312–316. for various perspectives of this discussion.

to further negotiation.”⁶⁰ The Indian nations intended to maintain control over their local affairs. Despite the desire of Federal Commissioner Cooley, Native Americans insisted on their individual national rights. Internal Native American national discord needed to be resolved before fully restoring the relationships with the Federal Government. He declared that the Native Americans forfeited their annuities and rights to land use in the Indian territory and new treaties. Based on the strong position of the Federal government in the negotiations of 1865, it was clear there was little room for negotiation with the commissioners.

The delegations of Native Americans sent to Fort Smith in September of 1865 eventually negotiated acceptable terms for treaties. Without full authorization from their respective nations, the Native American delegations could not speak on their behalf and were not authorized to sign treaties. The negotiations of 1865 ended without official signings, but agreed that treaties would be signed soon.⁶¹

The subsequent treaties signed in 1866 reflected the desires of the commissioners as decreed at Fort Smith.

The individual Indian nations negotiated with the federal government independently, but the language within each treaty was similar. This allowed tribal autonomy and distinction between the nations. The treaties of 1866 all contained similar

60 “Official Report of the Proceedings of the Council with the Indians of the west and southwest, held at Fort Smith Arkansas in September 1865,” United States Office of Indian Affairs and United States Dept. of the Interior, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Fiscal Year Ended 1865*, 345.

61 United States Office of Indian Affairs and United States Dept. of the Interior, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Fiscal Year Ended 1865*, 353.

language, but the language also differed subtly and problematically in each treaty.⁶²

Despite the previous good-will before the war, the alliance of the five nations with the Confederacy brought harsh treaty terms. Several important issues were confronted with the treaties of 1866. The treaties restored formal relationships between the Indian Nations and the United States. Slavery was abolished.⁶³ Territorialization was avoided and the Native Americans maintained some semi-autonomy, each issues greatly feared by Native Americans.⁶⁴ Issues of national governments were managed and resolved. No treaty formally organized the Indian territory as a unified Federal territory or removed Indian governments, although each government was formally recognized.⁶⁵ White settlers were not permitted to cross into Indian territory either.

Most significantly, the treaties dictated that two railroads were to cross each nation. The railroads had pressured Congress enough to secure a right of way through

62 Prucha, *The Great Father*, 430; Kidwell, *The Choctaws in Oklahoma*, 77.

63 The treaties required the Cherokee, Creek and Seminoles to give up their slaves and to incorporate them into the respective nations, quickening a process that had already been ongoing. The Choctaw and Chickasaw were required to give land to the freedmen. Despite the official responses of the individual nations, there remained significant resistance to inclusion of freedmen into the Native American cultures. United States Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs*, 1866, 284. On the resistance of the incorporation of freedmen into the tribes, see Chang, *The Color of the Land: Politics of Landownership in Oklahoma, 1832-1929*.

64 Albert Pike observed that the nations were afraid of only two treaty issues, “that their lands will be parceled out in severalty without their consent; another that they would be compelled to receive a Territorial organization” neither of which happened with the treaty of 1866. Territorialization was one of the negotiated points of the final treaties. Davis and Pike, *Message of the President, and Report of Albert Pike, Commissioner of the Confederate States to the Indian Nations West of Arkansas, of the Results of His Mission*, 13.

65 For a perceptive analysis of the political implications of the treaties of 1866 as they relate to the Native Americans and their connections with the American federal government, see Bruyneel, *The Third Space of Sovereignty*, 28–47.

Indian territory, yet the language of railroad crossing differed between each nation.⁶⁶

Different treaties with dissimilar language had the potential to create havoc with railroad lines since the railroads would be forced to decide which treaty to follow.

The treaties granted railroad access to the Indian territory in very specific ways that also severely restricted railroad building. The railroads expected to have control over their routes, but the railroad access was circumscribed in ways the managers did not plan. For example, the Cherokee treaty of 1866, states:

The Cherokee Nation hereby grant a right of way not exceeding two hundred feet wide, except at stations, switches, waterstations, or crossing of rivers, *where more may be indispensable to the full enjoyment of the franchise herein granted*, and then only two hundred additional feet shall be taken, and only for such length as may be absolutely necessary, through all their lands, to any company or corporation which shall be duly authorized by Congress to construct a railroad from any point north to any point south, and from any point east to any point west of, and which may pass through, the Cherokee Nation. Said company or corporation, and their employés and laborers, while constructing and repairing the same, and in operating said road or roads, including all necessary agents on the line, at stations, switches, water tanks, and all others necessary to the successful operation of a railroad, shall be protected in the discharge of their duties, and at all times subject to the Indian intercourse laws, now or which may hereafter be enacted and be in force in the Cherokee Nation.⁶⁷

The Cherokee treaty allowed two railroads to cross their nation, but only two railroads, one from the east and one from the north. Railroads were provided for in a right of way for two hundred feet, except where more was needed, and then the railroad gets

66 Historian Clara Sue Kidwell argues that railroads were “the greatest blow to Choctaw and Chickasaw autonomy,” in the Reconstruction era. Sandra Faiman-Silva portrays the railroads as having farther reaching consequences than abolishing slavery or redistributing land. Railroads in the Choctaw nation were “infrastructural components of extraction,” weapons of U.S. interests. Kidwell, *The Choctaws in Oklahoma*, 88; Faiman-Silva, *Choctaws at the Crossroads*, 60.

67 “Treaty with the Cherokee, 1866,” July 19, 1866, Kappler, *Indian Affairs Laws and Treaties*, 2:944.

another two hundred feet. The treaty also protected workers from being ejected from the Cherokee nation as intruders, a constant problem for the Cherokee.⁶⁸ Workers were subject to federal laws, but would not be subject to tribal laws.⁶⁹

The treaty was vague, however, in several issues affecting railroads. It did not dictate who would decide if and when the railroads needed more land for sidings or cuts. The employees of the railroads also were able to settle in the Cherokee nation, but defining who was a valid railroad employee eventually proved difficult. The ambiguity of the finer points of the treaty led to confusion later.

Located between the Cherokee to the north and the Choctaw to the south is the Creek, or Muskogee, Nation. This nation also signed a separate treaty in 1866. The Creek treaty expressly connected their land to the Choctaw and Chickasaw nation by railroad. However, the treaty also read in part:

The Creek Nation hereby grant a right of way through their lands, to the Choctaw and Chickasaw country, to any company which shall be duly authorized by Congress, and shall, with the express consent and approbation of the Secretary of the Interior, undertake to construct a railroad from any point north of to any point in or south of the Creek country, and likewise from any point on their eastern to their western or southern boundary.⁷⁰

68 Territorial governor of Kansas, Robert J. Walker, openly declared the value of the Cherokee land to would-be settlers in his inaugural address in 1857. Since that time, there had been a noticeable increase in white intruders into the Cherokee territory. Whites were not legally tribal members and were not subject to tribal laws. Prucha, *The Great Father*, 428.

69 Each of the Five Tribes wanted jurisdiction over the people in their territory, no matter if they were Indian or white. The Confederate treaties recognized the value the Native Americans placed on jurisdiction over their space and granted it accordingly. The Choctaw and Chickasaw treaties gave not only ejectment rights but punishment authority over whites illegally residing on their land. "Treaty with the Choctaws and Chickasaws, July 12th 1861," Davis and Pike, *Message of the President, and Report of Albert Pike, Commissioner of the Confederate States to the Indian Nations West of Arkansas, of the Results of His Mission*.

70 "Treaty with the Creeks, 1866," June 14, 1866, Kappler, *Indian Affairs Laws and Treaties*, 2:934.

The treaty language for the Creek treaty also presented problems. The treaty only gave access to railroads that crossed into the Choctaw and Chickasaw lands, implying that railroads could not cross into the Cherokee or Seminole lands that also surrounded the Creek nation. Similarly, railroads were only to come into the Creek nation from the north and east, omitting any others that may come from the west or south.

The Choctaw and Chickasaw treaty was also effective for comparison. The treaty gave permission for railroads in article six:

The Choctaws and Chickasaws hereby grant a right of way . . . to construct a railroad through the Choctaw and Chickasaw Nations from the north to the south thereof, and from the east to the west side thereof, in accordance with the provisions of the 18th article of the treaty of June twenty-second, one thousand eight hundred and fifty-five, which provides that for any property taken or destroyed in the construction thereof full compensation shall be made to the party or parties injured, to be ascertained and determined in such manner as the President of the United States shall direct.⁷¹

This treaty recalls the earlier efforts of the Choctaw and Chickasaw to control the resources of their nation through compensation guidelines laid out in the treaty. The treaty also allowed the Choctaw and Chickasaw to sell their land in alternate sections to the railroads in exchange for railroad stock.⁷² Since the land of the Choctaw and Chickasaw nations had not been surveyed by the United States according to the federal land system, the treaty of 1866 with the Choctaw and Chickasaw provided for a federal land office in Boggy Depot, Choctaw Nation and to lay out the region according to the national system of metes and bounds, but only if the respective legislative councils

⁷¹ “Treaty with the Choctaw and Chickasaw, 1866” April 28, 1866, Kappler, *Indian Affairs Laws and Treaties*, 2:920.

⁷² Kappler, *Indian Affairs Laws and Treaties*, 2:920.

approved it. “Sectionizing” as the Choctaw and Chickasaw called it, raised fears of federal takeover in the subsequent years.⁷³

Each of these treaties provided access for railroads through the various nations of Indian territory. The treaties were relational to each other and to the various Indian nations. Strangely, the treaties read as if no one was consulting a map: railroads were to cross through the Creek Nation, but their direction as stipulated in the treaty makes a north to south railroad acceptable, but not a north to east railroad – exactly the route the Missouri, Kansas and Texas Railroad wanted to take.⁷⁴ The treaties of 1866 granted railroads access to the region but in ways that circumscribed the economic viability of the railroads.

The Native Americans knew their boundaries and what it would mean if a railroad were only able to cross in one direction, even if there were no connections available. There were distinct characteristics about each part of the territory that would have appealed to railroad interests. Different parts of each tribe’s land contained different resources, so a railroad might have access to good land and the wheat crop, but not other desirable natural resources such as coal and timber. The Cherokee understood the boundaries to their region. Similarly, the Choctaw, Seminole, Creek and Chickasaw all understood that their respective areas were bounded by not only the United States, but also each other. The Cherokee did not attempt to cross other’s territory without just cause as they respected other Native Americans’ political boundaries.

73 George T. Olmstead, “Report of the United States Agency for Choctaws and Chickasaws, September 15, 1870,” in United States Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs* (Washington, DC: Government Printing Office, 1870), 291.

74 G. M. Walker to N. S. Goss, November 21, 1867, Cherokee National Records, Oklahoma State Historical Society, Oklahoma City, Oklahoma, Box 95, Record 2674, 5.

The political boundaries of the individual nations in Indian territory differed significantly from the boundaries of other Native American tribes outside of the Indian territory. The people of the Indian territory worked within the political sphere, sometimes to the surprise of unfamiliar whites, establishing boundaries and passing legislation governing their land. At the same time the federal government was negotiating with the Five Tribes in the Indian territory, railroads were busy attempting to coopt the region for their own means.

The political borders of the Indian territory had been fixed for considerable time by the time railroads wanted to cross the region. When Kansas became a state in 1861, forming the border with the Cherokee Nation at the 37th parallel, the Cherokee complained that this boundary crossed into their lands as secured by the Treaty of New Echota in 1836.⁷⁵ The boundaries of the Indian territory, both the external boundaries with the United States and the internal boundaries between Indian nations, were renegotiated regularly.⁷⁶ The people of the Indian territory understood the boundaries of their land.⁷⁷

⁷⁵ This dispute was settled with the boundary survey of 1872 that revealed the Cherokee had been deprived of a strip of land 2.26 miles, amounting to 434,679.36 acres. See Johnson, Goble, and Goins, *Historical Atlas of Oklahoma*, 60–61.

⁷⁶ The eastern boundary with Arkansas was renegotiated twice in 1824 and in 1825 when the Choctaw first were granted lands in Indian Territory, but only secured in April and May of 1877 with Congressional oversight. The Cherokee sold this land as part of the Treaty of 1866 for \$1.25 an acre. Johnson, Goble, and Goins, *Historical Atlas of Oklahoma*, 40–45..

⁷⁷ “A large part of the Indian tribes holds lands to which they are only fixed by laws that define the reservations to which they shall be confined. . . .The United States agreed ‘to possess the Cherokees, and to guarantee it to them forever,’ and that guarantee ‘was solemnly pledged, of 7,000,000 acres of land’” The reports of the Office of Indian Affairs regularly remarked on the stability of the Five Tribes, sometimes to the awe of the agents. United States. United States Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs*, 1870, 288.

Yet while the political boundaries were fixed, the physical boundaries of the region remained porous as evidenced by the constant incursions of whites. Thus, the people of the Indian territory did not occupy a “borderland”, a transitional place between two nations like the southwest, but rather maintained rigid borders and worked to regulate them.⁷⁸

Those on the outside of the Indian territory envisioned the region as a contiguous political whole. There were little distinctions between Native American peoples to those unfamiliar with the place. The treaties of 1866 recognized the differences between the individual nations, but also brought problems for the federal government while recognizing Indian rights. These treaties also provided for outsiders to gain access to Indian territory – the land would still be the Native Americans’, but railroads would have a right of way. Railroads and the Indian nations contested what that right of way included, just as white settlers did whenever they encountered the railroad. What that right of way meant for Native Americans and what it meant for railroads was contested, as was much of railroad building in Indian territory.

⁷⁸ Borderland studies have largely focused on the borderlands of Mexico and the United States, but borderland studies should be applied also to the liminal spaces, those in-between regions where people cross and re-cross the space without strong recognition of political boundaries. This definition would place the Indian Territory in a borderland discussion – people of many groups wanting to use the space and often working over each other without fully recognizing the others. My perspective of the borderlands as they relate to the Indian Territory has been influenced especially by James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven [Conn.]: Yale University Press, 1998); Bruyneel, *The Third Space of Sovereignty*; Andrés Reséndez, *Changing National Identities at the Frontier: Texas and New Mexico, 1800-1850* (Cambridge, England: Cambridge University Press, 2004).

During the antebellum era, Native Americans within the Indian territory worked to gain railroads. While there were no nearby railroads with which to connect, Native American leaders revealed their intentions for economic and political development.

Railroads pushed for access to the Indian territory in the years following the Civil War. This push for access only followed the desires of the various Native American nations to grant railroad access to their land. Cherokee and Choctaw nations both actively yearned for railroads before the Civil War. Leadership of the two nations pursued railroads in bold acts of economic prowess, but railroads were not viable options before the Civil War.

During the Civil War, the Cherokee and Choctaw were willing to grant railroad access to the Confederacy. The treaty arrangements by Albert Pike, a long-time Indian agent, granted open access to the region in exchange for protection from outside forces, specifically the Union forces.

After the war, the Cherokee and Choctaw were forced to accept the terms of the treaties of 1866 which granted railroads access. A careful reading of the treaties of 1866 in comparison to each other reveals the Native Americans retained control over their space even while yielding to the will of the Federal Government.

Bringing the Indian territory into the national economy transformed the region into a borderland that included a transitional phase of providing economic access to the surrounding area. Railroad access to the region was the first phase of economic change, as the natural resources of the region proved alluring and the monetary value of those resources were too alluring for railroad managers to ignore. Railroads continued to push

for increased access while the various Native American nations worked to maintain economic and social control over their space.

CHAPTER 3 - ACCESSING THE “RESERVOIR FOR THE SUSTENANCE OF INDUSTRY AND COMMERCE”: BUILDING RAILROADS IN THE INDIAN TERRITORY

“A railroad and a wilderness are incompatible things.”

C.J. Hillyer, Counsel for the
Atlantic and Pacific Railroad, 1871

The most significant federal legislation that affected the Indian territory in the nineteenth century, the Treaties of 1866, demonstrably changed the external value of the region. Each treaty required Congressional approval of any railroad that desired to cross through tribal lands, but the government had already granted railroads charters for their routes south to Texas. Railroads quickly moved to access the region, but their charters did not align with the treaties signed during the same Congress. The disconnection between charters and treaties signaled the difficulties for railroads in securing their routes and building their tracks across the Indian territory.

The various railroads with permission to cross the region worked together to gain access and favorable legislation from Congress. Four railroads gained authorization through charters from Congress to cross through Indian territory in 1866. Despite initial approval to cross the Indian territory, only two railroads actually entered Indian territory, one from the north and one from the east, which proved important to the subsequent railroad development within Indian territory.

The railroads worked closely with Congress to dictate the terms of their agreements. Part of the wide-ranging post-Civil War railroad expansion, these railroads marshaled lawyers and lobbyists to influence Congress. Only one railroad actually

worked with the Native American nations.¹ As soon as possible, the Kansas railroads immediately petitioned Congress for access to Indian territory from the north. These railroads envisioned a connection to the south through the Indian territory, through Texas and possibly even into Mexico.²

The Union Pacific Railroad, Southern Branch (UPSB), gained an early charter to build a railroad south through Kansas and the Indian territory to Fort Smith, Arkansas, connecting eventually with New Orleans on a south-east diagonal. This original plan saw little actual track building. Congress eventually changed the charter of the UPSB to build south from Fort Riley, Kansas to Preston, Texas and on to Galveston with only a branch to Fort Smith. This route took the railroad directly south through the Indian territory.

Similarly, the Kansas and Neosho Valley Railroad Company (KNV) was also permitted to build a railroad to the same connection south to Galveston:

from the eastern terminus of the Unions Pacific Railroad, eastern division, at the line between Kansas and Missouri, at or near the mouth of the Kansas River, on the south side thereof, southwardly, through the eastern tier of counties in Kansas, with a view of its extension, so as to effect a junction at

1 The Missouri, Kansas and Texas Railroad regularly consulted with Native American councils, especially the Choctaw. For example, on October 29, 1873, Robert Stevens, the general manager of the Missouri, Kansas and Texas Railroad was invited by the Choctaw national council to make a speech to “reply to charges so frequently made against us by traders and others as to high rates, discrimination against Indians, &c.” Robert Stevens, “Robert Stevens to Levi Parsons,” October 30, 1873, Robert S. Stevens Papers, Western History Collection, University of Oklahoma, Norman, Oklahoma.

2 The Atlantic and Pacific Railroad, despite building primarily on an east-west axis, suggested that “any system of railroads hereafter constructed . . . south through those [valleys] of Mexico, which to a greater or less extent must eventually become a part of our great possessions.” The intention of the railroad to extend as far as Mexico reflects the grandiose intentions of the railroad. Edward Fitzgerald Beale and Amiel Weeks Whipple, *Atlantic and Pacific Railroad. Route to the Pacific Ocean on the 35th Parallel: Extracts from Reports of E.F. Beale Esq., and Lieut. Whipple, to the War Department, Showing the Features of This Route* (New York: Stockholder Job Printing Office, 1867), 8.

Red River with a railroad now being constructed from Galveston to Red River at or near Preston, in Texas.³

The Leavenworth, Lawrence and Fort Gibson Railroad (LLFG) gained Congressional approval as well. The LLFG planned to build from Lawrence, Kansas to Fort Gibson then, “to the northern boundary of the State of Texas, in the direction of Galveston bay.”⁴ Congress granted both the KNV and LLFG a two hundred foot of right of way. The treaties were also explicit about railroads paying for damages they accrued on Indian lands. The government granted railroads alternate sections of land that they could then sell to settlers to pay for construction costs, but it was contingent on the “extinguishment of Indian title.”

The KNV and the LLFG attempted to fulfill the perception of what American railroads were according to historian Walter Schivelbusch, “creating transportation where no natural waterways existed.”⁵ Railroads were the technological successors to the natural systems of movement. The north-south orientation of these railroads sought to replicate the routes of the Missouri and Mississippi Rivers, but the railroads were to service the people of the region – primarily the farmers and ranchers along their route. These railroads would be shipping the products of the arid interior to the exterior of America. These railroads would also then be continuing a connection between railroads. The charters of the Kansas and Neosho Valley and the Leavenworth, Lawrence and Fort

3 United States, *An Act Granting Lands to the State of Kansas to Aid in the Construction of the Kansas and Neosho Valley Railroad and Its Extension to Red River*, CCLXI, 1868, 238.

4 *A Bill Granting Lands to the Leavenworth, Lawrence and Fort Gibson Railroad Company, to Aid in Extending Their Railroad and Telegraph Line from the Southern Boundary of Kansas to the Northern Boundary of Texas, in the Direction of Galveston Bay*, *Private Laws of the Territory of Kansas*, vol. 1, 1858.

5 Wolfgang Schivelbusch, *The Railway Journey: The Industrialization of Time and Space in the 19th Century* (Berkeley, Calif.: University of California Press, 1986), 111.

Gibson Railroad required them to be connected to the Union Pacific, Eastern Branch, later known as the Kansas Pacific, which ran through Kansas along an east-west trajectory.⁶ These railroads would become part of the burgeoning railroad network, building a technological connection throughout the United States.⁷

The Atlantic and Pacific Railroad Company (A&P) was also re-chartered during July of 1866. The Atlantic and Pacific Railroad, originally chartered in 1852, desired a connection between Missouri and Arkansas and then on to the Pacific Ocean.⁸ The first corporate iteration of the A&P, the Pacific of Missouri, built its line from Springfield to Rolla, Missouri, with the intention to connect with San Francisco along the 35th parallel. The federal approval granted the railroad an enormous route connecting Springfield, Missouri with the Pacific, building southwest across Missouri to the Canadian River, then across the Indian country along the 35th parallel and onto the Pacific Ocean, with land grants to subsidize its building. The A&P directors sought to be a transcontinental railroad. The end of the Civil War allowed the railroad to continue building to the Pacific

6 United States, *Kansas and Neosho Valley Railroad Land Grant*, 238.

7 Thomas Hughes writes on systems-network theory arguing that technological innovation and inventions are linked to each other – one cannot have one technology without the other. This is especially evident in the case of mid-western railroads. Congress linked railroads to each other, forcing the Union Pacific Railroad, Eastern Branch to link with the Kansas Roads. The railroads needed connections to each other to get the most value from their initial outlay of money. The networks of railroads needed to be built for any railroads to be profitable both economically and conceptually. Networks needed to be developed, especially power sources such as timber and coal. See Thomas Parke Hughes, *Networks of Power: Electrification in Western Society, 1880-1930* (Baltimore: Johns Hopkins University Press, 1983).

8 Like many railroads in the 19th century United States, the Atlantic and Pacific went through periods of growth and regeneration. Beginning as the Pacific of Missouri, the railroad was also the Atlantic and Pacific, the Missouri Pacific and the St. Louis & San Francisco Railroad. For more information on the early years of the A&P leading up to 1866, see H. Craig Miner's extensive work on the Kansas and Missouri railroad. Miner, *The St. Louis-San Francisco Transcontinental Railroad*, 75–90.

and in light of the recently granted Pacific Railway Act, the Atlantic and Pacific might have been in as strong of a position as the Union Pacific was in 1866.⁹ The railroad planned to follow the original surveys of the route made by Amos Weeks Whipple in 1853 from the Canadian River to the Pacific, adhering as much as possible to his route, as it was “not confined exclusively to the whole route covered by the explorations of Messrs. Whipple and Beale.”¹⁰ The long history of the Atlantic and Pacific Railroad, at least compared to other railroads, put it in a strong position for continued growth. This Missouri-based railroad had established traffic and demonstrated the ability to generate profit. By 1866, it was ready to expand into the apparently open land of the Indian territory.

Whether the originators of the three Kansas-based railroads, the UPSB, KNV or the LLFG, broadly considered the potential impact of their directional choices or not is unclear. It is clear that the tenacity to build south from Kansas rather than west to the Pacific reveals the drive of those on the Great Plains to change their fortune. Resources within an easy grasp within the Indian territory proved alluring to many from Kansas.

This chapter argues that the process of railroad building allowed two railroads to monopolize access to the Indian territory and subsequently to the mineral wealth therein. While other railroads eventually crossed the region, the guise of federal protection for

9 The Union Pacific had only recently begun construction when the charters of 1866 were granted. The Pacific Railroad Act of 1862 and 1864 granted huge quantities of land and favorable financial terms to all involved. The creation of the construction company *Crédit Mobilier* allowed the investors in the Union Pacific to gain even more. This favorable financial situation propelled the creation of more transcontinentals. See White, *Railroaded*, 59–87.

10 Edward Fitzgerald Beale and Amiel Weeks Whipple, *Atlantic and Pacific Railroad: Route to the Pacific Ocean on the 35th Parallel* (New York: Stockholder Job Printing Office, 1867), 3.

Native Americans ensured monopolistic practices for the Atlantic and Pacific Railroad and the Missouri, Kansas, and Texas Railway. Access to the region did not automatically ensure ancillary benefits of railroad construction including rights to local resources, especially coal. The Missouri, Kansas and Texas Railway practiced careful negotiations with Native Americans in an effort to gain access to their mineral wealth. As we will see, Robert Stevens, the manager of the MKT regularly met with the Choctaw National Council. Instead of negotiating with Native Americans, the Atlantic and Pacific used political means in an attempt gain their full land grant by Congress eliminating Indian title.

By July 1866, four railroads were arrayed to cross the Indian territory. These lines successfully negotiated their way through Congressional approval, gaining provisional access to the Indian territory, but the railroad managers did not realize their battle over the Indian territory was only beginning. By tracing the railroad building process, including the congressional negotiations, this chapter will show the distinct differences in negotiations and outcomes with both Congress and Native American peoples over railroads.

* * * * *

In November 1866, the Union Pacific Eastern Division (later known as the Kansas Pacific) completed its track 126 miles from Kansas City, westerly to Junction City, Kansas.¹¹ Managers of the Union Pacific Southern Branch intended to meet the Eastern Division at Junction City. The construction to Junction City provided the much-

¹¹ V. V. Masterson, *The Katy Railroad and the Last Frontier*, 1st ed. (Norman: University of Oklahoma Press, 1952), 18.

needed access to the east for railroad supplies to construct the Union Pacific Southern Branch (UPSB). Through connections to suppliers in the east, the southern facing Kansas railroads gained enough rails to build into the Indian territory, apparently conquering one of the obstacles to construction. The federal government authorized treaties and charters. The railroads simply needed to generate the necessary capital to build their proposed lines.

At the time of the treaties and charters in 1866 neither the UPSB, the Kansas and Neosho Valley Railroad (KNV), nor the Leavenworth, Lawrence and Fort Gibson Railroad (LLFG) had built much track if any at all. Within the first few months of the treaty signings during 1866, the three railroads that sought to build south through Kansas and into the Indian territory realized their need to raise capital to complete their lines. Congress granted access, but permission was the only benefit granted to the dismay of the companies – there would be no governmental bonds to attract other investors.¹² The lack of governmental bonds forced the railroads to find other financial support for track building.

All railroads searched for capital with which to build their roads. Funding came in part from local interests, bankers and investors. Local funds were important at the

¹² Governmental bonds were valuable to building railroads because they provided continued capital for building the track after the initial investments had been depleted as well as a guarantee of governmental confidence in the railroads. The Union Pacific and the Central Pacific both gained large governmental bonds for their construction costs based on the terrain they were crossing. The two lines gained loans of \$16,000 per mile of gentle terrain, \$32,000 for desert wastes and hills and \$48,000 for mountains, but granted once government inspectors had verified forty mile sections. These bonds were thirty year bonds at six percent. Numerous texts on the building and financing of the transcontinental railroad exist. See John Hoyt Williams, *A Great and Shining Road: The Epic Story of the Transcontinental Railroad* (Lincoln, Nebraska: University of Nebraska Press, 1996); Augustus Veenendaal, *Slow Train to Paradise: How Dutch Investment Helped Build American Railroads* (Stanford, Calif.: Stanford University Press, 1996); Stephen E. Ambrose, *Nothing Like It In the World: The Men Who Built the Transcontinental Railroad 1863-1869*, 1st ed. (New York: Simon & Schuster, 2001).

beginning, but as the railroads expanded their companies to larger connections and longer routes, financial imperatives increased. At the founding of the Union Pacific, Southern Branch, the assembled investors understood the limitations of capital. Primarily locals with personal interests in access to the east made up the initial gathering of investors. Rather than building track with the initial funds, the limited funds at the outset often were spent on gaining more investors. Companies diversified the forms of corporate investment into bonds and stocks. Investors generally preferred bonds' regular interest and mortgage on some material to stocks, which only paid dividends on occasion.¹³ Eastern capital was increasingly available for railroads as they proved their value, especially in the west. Like the Union Pacific, Central Pacific and other major railroads, the UPSB sold stock throughout the northeast, in Boston and New York especially.¹⁴ Foreign investors, especially French and Dutch investors, eventually funded western railroads through their purchases of bonds.¹⁵

It was difficult for the Union Pacific Southern Branch to secure funding. Despite its common name, the original investors of the UPSB had no relationship to the Union

13 According to historian Augustus Veenendaal, bonds were preferable to stock to outside investors because the bonds paid a percentage yield. The bonds were usually tied to some mortgage on the line or on the land grant if available. It was necessary to gain trust of investors, so having a wide and interested board of stockholders benefited the company. Veenendaal, *Slow Train to Paradise: How Dutch Investment Helped Build American Railroads*, 50–52.

14 The railroad investor networks of the northeast used each other and their highly connected families to finance railroads, dominate the boards of directors and control western railroads. White, *Railroaded*, 32–34.

15 Veenendaal's history of the Dutch investments in American railroads details the manners by which Dutch investors interacted with and subsequently developed western railroads through their financial choices. Veenendaal argues the extensive investment by the Dutch powered the expansion of some western railroads and not others. For the UPSB and the MKT railroad, see Veenendaal, *Slow Train to Paradise: How Dutch Investment Helped Build American Railroads*, 140–147.

Pacific building across the continent. The naming selection proved ineffective when it was time to raise stocks. The initial stock was issued beginning in September 1865, but the company was only able to raise a paltry \$343.55 by the next spring.¹⁶ Despite a lack of funds, the railroad company remained optimistic and sent out G. M. Walker to survey the proposed route in 1865. Surveys ran through the summer and following year into 1866 with reports issued in 1867.

To the north of the Indian territory, some of the Kansas townships voted local bonds to entice railroad construction with the hope of securing business from rail traffic. Whole counties along the southern border of Kansas, Davis, Morris, Lyon and Coffee counties, offered bond issues to fund the UPSB totaling \$730,000 in 30-year bonds.¹⁷ Southern Kansas desperately wanted a successful railroad to connect it to the rest of the nation, especially considering the new connection of the newly created Kansas Pacific.

The surveys determined that the Union Pacific Southern Branch railroad should follow the Neosho Valley southeast from Emporia, Kansas along the Neosho River into the Indian country. From the border with the Cherokee Nation, the railroad was to aim to the southeast toward either Fort Gibson or Fort Smith and ultimately connect with the ports of New Orleans.¹⁸ This line would take the UPSB primarily through the land of the Cherokee in a south-easterly direction, only crossing the Creek Nation briefly, without crossing any other Native American lands.

16 Masterson, *The Katy Railroad and the Last Frontier*, 14.

17 Masterson, *The Katy Railroad and the Last Frontier*, 17.

18 James D Morrison, "The Union Pacific, Southern Branch," *Chronicles of Oklahoma* 14, no. 2 (June 1936): 173–187; G. M. Walker, "G. M. Walker to N. S. Goss," November 21, 1867, Box 95, Record 2674, Cherokee National Records, Indian Archives Collection, Oklahoma State Historical Society, Oklahoma City, OK.

The UPSB discovered the potential value of the Indian country during its surveys. G. M. Walker and his crew plotted the line through the Cherokee Nation; “keeping in the valleys between the mounds which are generally level,” while searching for an optimum location for a railroad line.¹⁹ His report detailed the list of resources that he thought would be usable, including “‘timber hills’ covered with oak and hickory timber some yellow pine,” and “what appeared to be outcroppings of coal.”²⁰ They tested the coal and found it burned “with a clear flame but does not turn to ashes,” indicative of high quality.²¹ The survey team found coal outcropping along various points of Cabin Creek in the Cherokee Nation and at Bull Creek in the Creek Nation. The timber that would be needed along their railroad and the coal to power their engines was sufficient motivation for the UPSB to extend its line in the Indian territory. Walker found high quality coal from three to four feet thick throughout the region, as he attempted to plot the UPSB’s railroad line with the coal outcroppings so the right-of-way would overlap. Yet he expressed regret that the coal he found was “not convenient to [a] line of Rail Road as surveyed.”²² From the first survey, the UPSB knew the coal potential within the Indian territory.

Railroads did not just run through Indian land in an act of imperialism run wild, fraudulently displacing Native Americans as the roads saw fit. Rather there was a continual interplay – a negotiation for space and rights. It was in both groups’ best

19 Walker, “G. M. Walker to N. S. Goss.”, 5.

20 Walker, “G. M. Walker to N. S. Goss,” 5.

21 Walker, “G. M. Walker to N. S. Goss.”

22 Walker, “G. M. Walker to N. S. Goss.”

interest to cooperate throughout the building process.²³ Native Americans understood the forces prevailing upon them and wanted to negotiate when possible. The UPSB leadership met with Cherokee leaders to seek cooperation.

The UPSB also negotiated directly negotiated with the Cherokee nation to secure a route. Beginning in August of 1866, the UPSB bypassed the office of Indian Affairs and negotiated directly with Chief William Ross and Assistant Principal Chief Lewis Downing. In exchange for a route, Downing and Ross were willing to pledge a grant for the railroad once it ran through the Cherokee land. The Cherokee were very successful through the negotiations, getting both a railroad and input on its route. The railroad was willing to negotiate directly with the Native Americans and the railroads would cross the territory only under conditions set by the Cherokee. In continuing with their national ideals, the Cherokee attempted to manage the railroads as they could. The negotiations finished by October 31, 1866. Ross authorized payment of \$500,000 to the UPSB to help finance the road with a bonus of the proceeds of the sale of 250,000 acres of land in the Cherokee Outlet.²⁵ This grant did not have contingency clauses, but rather acted as encouragement for future business. The Cherokee thus actively encouraged the UPSB to build to their land in exchange for apparent future benefits. The Cherokee were not being

23 This is a significant departure in the history of Indian Territory from that of the Great Plains. The Kansas Pacific bisected lands controlled by western Indians; effectively forcing natives from their land. Other groups throughout the United States suffered similar fate of removal at the will of the railroad, but in the case of those nations of Indian Territory, they attempted to control their own destiny regarding railroads and succeeded for a time. The people of the region motivated and molded the railroads in their own interests.

25 The UPSB never received the promised funding. Instead, the Cherokee National Council declared the act "null and void". W. L. Miller, "W.L. Miller, Private Secretary to the Executive Department of the Cherokee Nation, to P. B. Marson, Secretary of the U.P.R.R.S.B.," April 13, 1868, Box 95, Record 1483, Cherokee National Records, Indian Archives Collection, Oklahoma State Historical Society, Oklahoma City, OK.

taken advantage of by the railroad; rather the Cherokee sought out the UPSB in an attempt to proactively manage the crossing of their land.

The promises of the Cherokee nation, when combined with the bond issues of the Kansas counties, meant the UPSB could gain over one million dollars directly through construction of its line in addition to unknown quantities of railroad material. This money was promised with the intention of attracting railroad business and investors that might be associated with the railroad, and yet the long-term resources proved more valuable to the UPSB.

G. M. Walker met with Cherokee leadership at Fort Gibson and at Tahlequah in October 1867. Walker believed the conversations were favorable to a railroad: “Hon. H. D. Reese who expressed himself very friendly to the enterprise and gave valuable information. All with whom we conversed, either at Fort Gibson or along the route expressed themselves very friendly to this enterprise and anxious for its early completion.”²⁶ Walker’s experience with the Native Americans remained favorable.²⁷

Funding allowed the railroad to commence construction. The relatively simple course reaching south from Junction City, Kansas formally began in October of 1867. The UPSB promoted surveyor G.M. Walker to chief engineer to supervise construction. A. F. Beach and Company was contracted to build the line, but progress through the

²⁶ Walker, “G. M. Walker to N. S. Goss.”

²⁷ See Phil Deloria, *Indians in Unexpected Places*, (Lawrence: University Press of Kansas, 2004).

winter of 1867-68 was so slow that by the following summer the investors of the UPSB were looking for new leadership.³⁰

In October of 1868, the UPSB changed leadership. Possibly it was the actions of the UPSB asking for investors in New York, maybe it was the federal promises of grants for railroads in Kansas, or just the lure of a profitable railroad that attracted the investors to Emporia, Kansas, but the new investors in the railroad altered the leadership and the intentions of the railroad. Levi “Judge” Parsons, a New York lawyer and former judge with international connections to Amsterdam and beyond, and his New York associates purchased the railroad, becoming the president and members of the board.³¹ Parsons appointed several of his New York associates to manage the board, shifting the power of the company from a local, Kansas base, to New York. This move dramatically altered the position of the railroad from a regional line, to one with national importance and promise. The railroad would build north from the Kansas-Indian territory border to gain more Missouri traffic from St. Louis and Sedalia. The railroad offices were subsequently moved from Emporia, Kansas to Sedalia, Missouri.

The Union Pacific Southern Branch also changed its name, disassociating from the misnomer of its original name as it was not connected to the leadership or the

30 Masterson, *The Katy Railroad and the Last Frontier*, 19–20.

31 Parson’s association possibly came because of the Atlantic and Pacific, of which he was a board member as well. His A&P association began in 1866 and it is unclear when it ended, but the interests built while being associated with the A&P cannot be overestimated. For the A&P, see Beale and Whipple, *Route to the Pacific on the 35th Parallel*, Association of American Railroads-Bureau of Railway Economics Historical Collection, John F. Barriger III Library, St. Louis Mercantile Library, University of Missouri-St. Louis, hereafter cited as AAR Collection; for the Missouri, Kansas and Texas Railroad, see V.V. Masterson’s terrific but sensationalized account of the construction of the MKT, Masterson, *The Katy Railroad and the Last Frontier*.

construction of the Union Pacific.³² Railroad names, especially in this era, were loaded with intentions. The former Union Pacific Southern Branch did not want to be a branch line of the well-known, but beleaguered Union Pacific. Rather, the former UPSB wanted to be known for its reach into south-western states of Missouri, Kansas, Arkansas, Texas and beyond.³³ The railroad would not be a “branch,” but be a trunkline that connected the population and agricultural centers that it touched. The new Missouri, Kansas and Texas Railway Company, (MKT) reveals the investors’ renewed interest in interstate commerce.³⁴

While the leadership of the UPSB/MKT changed, so did that of the Kansas and Neosho Valley Railroad (KNV). This line was taken over by James F. Joy in 1868. A banker from the east, Joy also changed the name to reflect the new ambitious connective goals. The old KNV became the Missouri River, Fort Scott and Gulf (MRFS&G). Joy was also in control of the Leavenworth, Lawrence and Galveston (LL&G) which also maintained a major interest in the Indian territory.³⁵ The Joy lines plotted along the

32 The practice of slightly altering names of established railroads allowed numerous railroads to gain investors. Naming conventions confused foreign capitalists in their investment of the UPSB. While the UPSB officially changed its name in 1866 to the Missouri, Kansas and Texas Railway, the bonds that supported the railroad existed in Holland as UP Southern Branch for several decades. See Veenendaal, *Slow Train to Paradise: How Dutch Investment Helped Build American Railroads*, 140–147; Henry Clark Rouse, James Hagerman, and Charles Gorham Hedge, *Missouri, Kansas & Texas Railway System: Charters and Muniments of Title* (New York: Missouri, Kansas and Texas Railway Company, 1896), 4.

33 Masterson, *The Katy Railroad and the Last Frontier*, 30.

34 The Missouri, Kansas and Texas Railway Company filed paperwork with the Secretary of State of Kansas to correct the misnomer of calling the new railroad the “Missouri, Kansas and Texas Railroad Company” instead of “Railway Company” to avoid investors’ confusion. Rouse, Hagerman, and Hedge, *Missouri, Kansas & Texas Railway System: Charters and Muniments of Title*, 20.

35 Masterson, *The Katy Railroad and the Last Frontier*, 28.

border of Kansas and Missouri due south, intending to cross Indian territory along the Grand River on the eastern border of the Indian territory and Kansas.³⁶

Despite the goals of James Joy's lines and the MKT, they needed federal approval to cross through the Indian territory. Yet, the federal incorporation of three railroads with charters to cross Indian country from the north conflicted with the Treaties of 1866. Those treaties clearly stated that only one railroad was to cross the Indian territory from the north, presenting a problem for railroad management.

There are several possible reasons that emerge for the government granting the same route to three railroads. First, it may have been because of the huge number of what were known as "paper roads," railroads that only existed on paper without building any track, in this era that the government granted charters to these railroads doubtful that they would actually all be built.³⁷ Second, the government may have doubted that all three railroads would garner enough traffic to maintain viability once they were built, or that they were actually edging toward the border of Indian territory, but never planning to actually cross the space. Third, maybe it was to inspire Euro-Americans to move into the area, in both Kansas and the Indian territory, in a demonstration of American interest in the region with the intention of eliminating the Indian title to the land. It also may have

36 Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907*, 29.

37 Throughout western states especially, railroad mania followed the optimism after the Civil War. So much so that railroads attempted to build throughout the west and secured land grants to that effect, on the promise of building, only to have to return the land to the public register when the roads could not be built. Schivelbusch argues that these railroads brought value to the Great Plains, acting as "a ship on dry land." Schivelbusch, *The Railway Journey: The Industrialization of Time and Space in the 19th Century*, 111. For the extent of railroads defaulting on their debts, See John F. Stover, *American Railroads*, 2nd ed. (Chicago, Ill: University of Chicago Press, 1997), 82ff, and Miner, *The St. Louis-San Francisco Transcontinental Railroad*, 44–51.

been an internal power struggle between the Office of Indian Affairs under the Department of the Interior and Congress. The Office of Indian Affairs determined that only one of the several railroads would be able to cross the region, no matter the Congressional permission. Ultimately, it was unacceptable for all three railroads to cross the Indian territory.

After protests by the Cherokee to the federal government, the Office of the Interior decided that it should be decided by a race to the boundary line of the Indian territory which railroad should gain sole access. In a rare occurrence in the 19th century, railroad rights were to be decided by merit rather than politics. The three railroads, the Missouri River Fort Smith and Gulf Railroad, the Leavenworth, Lawrence and Galveston Railroad and the Missouri, Kansas and Texas Railroad were to build as fast as possible to the border of Kansas and the Indian territory, reaching above the Cherokee territory.³⁸ Each road employed hundreds of men, many Irish immigrants and former soldiers to grade, ballast and lay track to make the route to the Indian territory. The race to the border to gain sole access to the Indian territory reveals the importance and urgency each railroad placed on access to not just the Indian territory, but on Texas.

There was no starting point, but rather each railroad built as fast as it could to the Cherokee border. The MRFS&G reached the southern border of Kansas first, but an engineering error placed them across from the Osage lands and not in the Neosho Valley. This error allowed the MKT to complete its line first.

38 The MRFS&G actually reached the border to Indian Territory first, but it had crossed Osage Lands illegally and was declared void despite the protests of well-intentioned people along its route. Masterson, *The Katy Railroad and the Last Frontier*, 26–38.

On June 6, 1870, the Missouri, Kansas and Texas railroad laid tracks into the Cherokee Nation. The Office of the Interior awarded the president of the MKT, Levi Parsons, the right of way to cross the entire Indian territory from the north. Robert Stevens, the manager of the MKT revealed to his wife how personal the race against the other railroad was: "After all the fuss we have beat [James F.] Joy, as the Sec'y of Interior & President decides but one Co. can have right of way thro[sic] Indian territory & that is the one entering the Cherokee Country in Valley of Neosho, first with a completed road. That we do tomorrow & he is 17 miles away."³⁹

Building south from Kansas to the Indian territory gained huge opportunities for the MKT. Winning the race to the border by demonstrating the viability of the leadership ensured future investors' interest in the MKT. Opportunities abounded for the MKT as the sole north-south railroad in the Indian territory. The Missouri, Kansas and Texas railroad inspired fantastic dreams of wealth and prosperity by accessing untapped resources of the Indian territory. Robert Stevens regularly proclaimed of the bounty awaiting the MKT as they build further and further south.⁴⁰ They expected a favorable reception by the Cherokee considering the willingness of the Cherokee leadership three years before to negotiate access with the railroad. Numerous communities and counties outside of Indian territory in Kansas also pursued the railroad. Based on the previous

39 Underline in the original. Robert S. Stevens, "Robert Stevens to Mary Stevens," June 5, 1870, Robert S. Stevens Papers, Western History Collection, University of Oklahoma, Norman, Oklahoma.

40 Tuskahoma, "Letter of Tuskahoma to Editors Vindicator," *The Vindicator*, June 19, 1875, Edmund McCurtain Papers, Western History Collection, University of Oklahoma, Norman, Oklahoma.

experiences in nearby communities and with previous negotiations with the Cherokee, one may expect the residents to warmly welcome the railroad, but that was not the case.

The leaders of the UPSB met with Cherokee to negotiate crossing the region, but when the railroad changed leadership, they left out the Cherokee from planning decisions. The financial incentive to negotiate with the Cherokee, specifically the massive loan paid to the railroad, disappeared once the Cherokee national council decided to not fund the railroad. Rather, the railroad management believed that crossing the Indian territory was an issue of eminent domain. The MKT leadership endeavored to build their line as they saw fit, but the treaty of 1866 determined the route.

Confusion set in when the railroad construction started. The MKT/UPSB's survey originally planned for it to cross Cherokee lands southeastwardly to Fort Smith on the eastern border of the Indian territory. While this diagonal connection could provide an influx of cash for the financially-strapped railroad by linking to established business on the Arkansas border and on to New Orleans, there were problems with this route. As the sole railroad to gain north-south access through Indian territory, taking this direction would have put the MKT in violation of the treaties of 1866: there were no treaty provisions for a railroad to cross the Cherokee Nation from north to east, only from north to south.⁴¹ The Cherokee noticed the direction the MKT was taking through the Cherokee nation and protested to the railroad first and later to the Secretary of the Interior. The Secretary of the Interior, J. D. Cox, intervened to direct the MKT to build to the southern

41 C. N. Stanley, "C. N. Stanley to J. D. Cox," May 13, 1870, Exhibit No. 1, Senate Committee on Territories, Report to Accompany Bill S. 1802, 45th Cong., 3d Sess., 1879, S. Report No. 744, 244.

border of the Indian territory.⁴² By taking this new route, more Cherokee would be able to use the railroad. Despite strong lobbying by railroads, the Secretary of the Interior decided the merits of the case rested with the Cherokee.⁴³ After the MKT route was changed, the railroad was then forced to also reconfigure its business plan to accommodate increased track construction while conserving capital when possible.

This significant shift in direction proved important for the Missouri, Kansas and Texas Railroad. It dissuaded the railroad management from connecting to the ports of New Orleans and the rebuilding cotton trade. Instead, the railroad built south towards Texas and its cattle resources. So while the MKT won the race to the border, ensuring it a monopoly on rail traffic from the north, it effectively lost its expected cargo, cotton. Rather the MKT needed to find a viable resource to ship and maintain its profitability.

The Missouri Kansas and Texas Railroad built south, desperate for resources. It had reached Welch, Blue Jacket, Kelso and Vinita in the Cherokee nation by the fall of 1871. By 1872, the end of the line was at Big Cabin in the Cherokee Nation, 35 miles from the Kansas border.

Continuing to search for resources, and apparently ignorant of their own surveys, the company was visited by a local trader. While the railhead was at Big Cabin, James Jackson (J.J.) McAlester shipped a wagonload of coal mined from near his store 115 miles to the south in the Choctaw Nation. The railroad was so interested it forwarded some of the coal to company headquarters in Parsons, Kansas and Sedalia, Missouri to be

42 United States Dept. of the Interior and J.D. Cox, "Railroads Through the Indian Territory" (Government Printing Office, May 21, 1870), Ayer Collection, Newberry Library, Chicago.

43 Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907*, 33.

tested. McAlester was convinced the railroad would be interested in the coal. He mined it from near the junction of the Texas Road and the California Road, a place locally known as Bucklucksy.⁴⁴ This single load of coal shaped the history of the region and the railroad as well.

McAlester knew what he was doing, shipping coal to the railroad desperate for resources. After serving in the Civil War, Captain McAlester roomed with Oliver Weldon while they were both pursuing studies at Fort Smith, Arkansas. Weldon, a former engineer, had surveyed part of the Indian territory and noted a vast area of coal in the region. McAlester subsequently quit school and secured a position the trading firm of Harlan and Rooks. Later, he worked for the trading firm of J.T. Hannaford and James E. Reynolds. Reynolds and Hannaford operated several trading posts within Indian territory out of Fort Smith. McAlester advocated for a new trading post at the crossroads of the California Road and the Texas Trail, conveniently near the coal outcroppings. Reynolds and Hannaford agreed to the new venture and McAlester's store was in operation by 1869.

McAlester experienced restrictions as a white person in the Indian territory, but still sought permanence in the region. At the time, the Native American nations prohibited white residents in their respective nations. The federal government permitted licensed traders and few others to live and work within the Indian territory, which was how McAlester gained residency in the region. McAlester was a resident alien within the

44 There are several histories that detail McAlester's actions, many of which confuse the intention of McAlester and his initial endeavors. One of the most revealing is Paul Nesbitt's that was based on an interview with J.J. McAlester. Nesbitt, "J. J. McAlester"; Linda English, "McAlester's General Store," *Chronicles of Oklahoma* no. 81 (Spring 2003): 34–53; Michael Hightower, "Cattle, Coal, and Indian Land: A Tradition of Mining in Southeastern Oklahoma," *Chronicles of Oklahoma* no. 62 (Spring 1984): 4–25.

Choctaw nation. The status of whites in the Indian territory, especially after the development of both coal mines and railroads proved instrumental in dismantling Native American economic independence.

McAlester used the knowledge of coal and his status as a trader to enlarge his commercial activities in the Indian territory. McAlester settled in the town of Bucklucksy, which was in the Choctaw Nation and thus land ownership rights were restricted to members of the Choctaw or Chickasaw Nations.⁴⁵ McAlester effectively renegotiated his position with the Choctaw and Chickasaw people by marrying Rebecca Burney, a Chickasaw woman in 1872.⁴⁶ The Choctaw and Chickasaw arrangement gave both dual and full citizenship to anyone who married into either tribe.⁴⁷ McAlester gained membership in the Chickasaw nation through his marriage and rights within the Choctaw nation as well as matrilineal tribal status, which depended not on the tribal membership of the man, but of the woman, thus giving McAlester membership in the Chickasaw nation. Rebecca Burney was of moderately important family connections. Her father, Judge David Calhoun Burney maintained political connections with the Chickasaw nation. Rebecca Burney's brother, Benjamin C. Burney would later become chief of the Chickasaw Nation in 1878 and her sister, Mary, was the second wife of Chief B. F. Overton. McAlester's marriage certainly rang with political importance.

45 This peculiar arrangement also gave the Chickasaw portions of income due to the Choctaw and right of first refusal in political matters. While not dual citizenship, the Choctaw-Chickasaw arrangement recognized the long-intersecting relationship between the two peoples. Debo, *The Rise and Fall of the Choctaw Republic*, 178–179.

46 www.chickasawhistory.com/colbert/i0000053.htm#i53. Accessed October 6, 2011.

47 Jesse O. McKee and Jon A. Schlenker, *The Choctaws: Cultural Evolution of a Native American Tribe* (Univ. Press of Mississippi, 2008); Kidwell, *The Choctaws in Oklahoma*, 103.

McAlester convinced the Missouri, Kansas and Texas Railroad to build their track to his trading post through his demonstration of coal and his willingness to negotiate between the railroad's interests and his own. The MKT subsequently built its line directly to his store, reaching Bucklucksy in 1872.⁴⁸ In honor of McAlester's efforts, the railroad named the depot McAlester and the town subsequently changed its name as well.⁴⁹ The nearby towns of Bucklucksy and Perryville essentially moved wholesale to McAlester in the following years.⁵⁰

Following its building into McAlester, the MKT continued on a southerly path generally along the Texas Road, a well-worn cattle and migrant trail. The compacted trail facilitated the construction of the track. The MKT built to Atoka and on south to its crossing at Colbert's Ferry. Just over the Red River into Texas, the railroad established the city of Denison as its major depot. The cities of Denison, Texas, and Parsons, Kansas, served as the linchpins to the Indian territory section of the MKT.

The railroad line within the Indian territory served as a kind of tunnel. While other western railroads moved farm products to markets and created communities in the process, the MKT maintained a nearly connection-free line throughout the Indian territory. They did not connect to local markets in the Indian territory for several reasons. The Missouri, Kansas and Texas railroad did not encounter many farms along its route in

48 Nesbitt, "J. J. McAlester."

49 Bucklucksy and nearby Perryville both moved their small populations to the new location of the rail depot. Nesbitt, "J. J. McAlester."

50 Perryville, established in 1850, also profited from the intersection of the Texas Road and the military road between Fort Smith and Fort Arbuckle. The small settlement, about five miles south of the depot at McAlester, was too close for its own depot and subsequently, most businesses moved to McAlester. Interview with W.E. Hailey, January 25, 1937, Indian Pioneer Collection, University of Oklahoma Libraries Western History Collection, Norman, Oklahoma, Interview ID 5190 Vol. 37, 61.

the Indian territory that were not already tied to established markets via river. The Red River and the Arkansas River each penetrated into the Indian territory enough to allow for seasonal use of the river systems for shipping. In other territories, the government granted land to railroads that then sold land to farmers who in turn would use the railroad for shipping their goods. The railroads gained no land to sell to farmers within the Indian territory. A farm economy only existed if the Cherokee, Creek or Choctaw sought to establish such within their respective communities. Without local land to sell or local markets to expand, the MKT needed to develop a new model of operations for the Indian territory. The MKT needed to extend its railroad line beyond the borders and connect markets on either side of the region. The railroad instead largely treated the Indian territory as an obstacle rather than as an opportunity.

The railroad only maintained a small swath of right of way, several hundred feet on either side of the tracks. Occasionally the right of way contained usable resources of stone, coal or timber. The little land that the railroad could use for resource extraction needed to be expanded by enterprising Native Americans to include regional supplies. As the railroad developed its' connections on either side of the Indian territory, Native Americans increasingly established operations to take advantage of railroad access.⁵¹ Extending trade of natural resources found along the route of the MKT provided the railroad with valuable cash and operational material desperately needed by the railroad.

Building the railroad from the northern border of Indian territory and Kansas south to the Red River took three years, averaging about a mile per day of track

51 Kidwell, *The Choctaws in Oklahoma*, 108.

building.⁵² By the end of the initial construction phase for the railroad, the region rippled with excitement. Connecting Texas cattle to the markets of the north suggested vast opportunities for the sole railroad through the Indian territory. The transection of the Indian territory eventually proved important along a route that provided the railroad with access to coal deposits, outsiders to work the mines, and income to Native Americans.

* * * * *

The MKT gained access to Indian territory from the north while the Atlantic and Pacific Railroad (A&P) built from the east. The MKT raced to the border in a competition for land and resources, but the A&P was able to cross the territory fully confident that they would succeed. The A&P was the sole beneficiary of a lengthy process of lobbying for access to the land to their west. The Atlantic and Pacific Railroad originally was envisioned to connect St. Louis with the Pacific Ocean, in a very broadly worded charter. The original A&P articles of incorporation in 1853 designated the railroad to construct “a continuous railroad . . . from the valley of the Mississippi River, or from the Gulf of Mexico, to San Francisco in California, or such other place on the Pacific Ocean.”⁵³ While this original charter may have been grandiose in 1853, the original plans inspired the company to continue to build to the west. The Atlantic and Pacific altered its charter after the Civil War to enable development of the railroad beyond the borders of Missouri.

52 Masterson, *The Katy Railroad and the Last Frontier*, 174.

53 *Charter and By-Laws of the Atlantic and Pacific Railroad Company, Incorporated July 21, 1853 by the State of New York* (New York: John F. Trow, 1853). Microfilm.

In 1866, Congress authorized the Atlantic and Pacific Railroad to extend the previously chartered railroad to build from Springfield, Missouri “by the most eligible railroad route as shall be determined by said company to a point on the Canadian river [between the ninety-fifth and ninety-eighth meridians] . . . and thence to the Pacific.”⁵⁴ The federal government granted the railroad a right of way through public lands and could “take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof.”⁵⁵ The company would be able to determine the best route. Building the railroad the way they wanted to while taking material along the way offered a different opportunity for the A&P than that of the MKT.

The managers of the A&P believed the railroad leveraged a valuable opportunity with the congressional permission to build into Indian territory. The railroad was not a new entity, but an established operation. The A&P had already built its tracks within Missouri and was planning their route beyond the borders of the Indian territory. It was written into the articles of incorporation that the railroad would also get a significant land grant in the same fashion of the Union Pacific. The second section of the articles of incorporation dictated, “The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act.”⁵⁶ Once the

54 *An Act Granting Lands to Aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast*, *Statutes at Large*, vol. 16, 1866, 292.

55 *An Act Granting Lands to Aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast*, 16:8.

56 *An Act Granting Lands to Aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast*.

Native Americans were out of the way, the railroad would gain hundreds of square miles of land, which it could then resell to settlers.

The Missouri, Kansas and Texas never was promised a land grant. The MKT created its business around the operation of the railroad. The MKT was forced to interact with the existing population to build its business. In contrast, the Atlantic and Pacific operated under the constant expectation of a permanent large land grant. With this understanding, the A&P also interacted with Native Americans along the route in a dismissive manner.

The managers of the Atlantic and Pacific anticipated that the government would enforce the charter, which authorized it to build all the way to the Pacific Ocean, along its entire route. The managers of the A&P thought the land grants would continue along the route as well. Instead, the Indian territory proved to be the end of the line for the Atlantic and Pacific.

The land became the most decisive issue for the railroad's longevity. Railroads in general wanted land grants for the construction of their tracks and to resell to settlers.⁵⁷ The railroad would then also profit from the continued use of the land through the settlers' use of the railroad for shipping. Railroads wanted to develop land for settlers. The lawyers for the Atlantic and Pacific claimed that "railroad and a wilderness are incompatible things . . . either the wilderness will be subdued or the railroad will die of starvation."⁵⁸ The railroad based its business model on the subsequent development and

⁵⁷ The Atlantic and Pacific was but one of dozens of railroads to get land grants from both local and federal governments.

⁵⁸ Atlantic and Pacific Railroad Company, *Atlantic and Pacific Railroad and the Indian Territory* (Washington: McGill & Witherow, Printers, 1871), 5.

resale of the surrounding land. Yet, despite the business model of the Atlantic and Pacific, the federal government regulated the settlement of the Indian territory. The Interior Department overseeing Indian territory did not permit just anyone to settle there, rather the space remained separated for Native Americans and this prohibition included . To gain access to the land, railroads needed to negotiate with Native Americans.

Before the railroad reached the Indian territory, the Atlantic and Pacific Railroad laid tracks within the state of Missouri. In return for building a railroad, that state granted the railroad six sections of land per mile built in an alternating pattern. The railroad thus encouraged settlement in Missouri through reselling these sections. The Atlantic and Pacific management believed their profitability lay in increasing the local population and the settlement of the land, not just in traversing the space of Missouri or later the Indian territory. They believed that the Indian territory should be opened to settlement and, like many other regions like Illinois, Mississippi, and Alabama, railroads would be used to settle the region.⁵⁹ The railroad expected land grants to extend in a territory.

Many railroads sought profitability through land grants and their subsequent resale to settlers. The first transcontinental railroad was given a land grant of ten sections (6400 acres) in exchange for each mile of railroad built all along their route. The federal government also promised the Atlantic and Pacific a huge land grant. Instead of a uniform land grant, the A&P's charter gave "twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad

⁵⁹ Lawrence M. Friedman, *A History of American Law*, 3rd ed. (New York, N.Y.: Touchstone, 2005), 311.

whenever it passes through any State.”⁶⁰ The railroad stood to earn more land for building track in organized territories over established states. By completing its first 364 miles within Missouri the railroad was able to claim “an immense Land Grant of nearly 1,200,000 acres of the best agricultural and mineral lands on the Continent,” according to the A&P.⁶¹ The railroad used the inducements of ample land in attempts to draw settlers west.

The railroad was also to get twenty sections per mile on each side of the railroad for every mile built in the territory. The land grant promised to the Atlantic and Pacific in 1866 was double the grant of the Pacific Railroad Act of 1864 that funded the Union Pacific and Central Pacific Railroads.⁶² Forty sections, or 25,600 acres of land, for each mile of track built, reinforced the desire of the railroad to gain territorial land. The railroad intended to sell the land to settlers, which would then fund the railroad. The Atlantic and Pacific claimed, “A railroad is dependent for its success upon the population and business activity which it either finds or creates.”⁶³ The Atlantic and Pacific generated business activity outside of the Indian territory, but there was little business

60 *An Act Granting Lands to Aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast*, 16:292.

61 Atlantic and Pacific Railroad Company, *The Far West Items of General Information for Travelers and Seekers After New Homes in the Western States and Territories. Issued by the Atlantic and Pacific and Missouri Pacific R.R's* (St. Louis, Mo: Woodward & Tiernan Printing Co., 1875).

62 *Pacific Railroad Act of 1862*, 12 Stat. 489, 37th Congress, 2nd sess., (July 1, 1862), *Statutes at Large of the United States of America*, 489. Amended *Pacific Railroad Act of 1864*, 13 Stat. 356, 38th Congress, 1st sess., (June 27, 1864) *Journal of the Senate of the United States of America*, 56:652.

63 Atlantic and Pacific Railroad Company, *Atlantic and Pacific Railroad and the Indian Territory*.

within the region. The railroad managers clearly envisioned ample commerce based on the proposed grant of the promised land.

The land grants of alternating sections attracted settlers to the space. Railroads used right of ways to effectively use the land without having to purchase the land. Right-of-ways for railroads were a swath of land that the railroad was to conduct its business within by constructing various facilities such as water towers, coaling chutes, stations and sidings.

The right-of-way also tied directly to eminent domain.⁶⁴ States and territorial governments determined that when a project like a railroad was tied to the public interest, they could claim eminent domain over property owned by private individuals. States, beginning with Alabama, Illinois and Mississippi in 1850, gained land grants from the federal government, which were then transferred to railroads.

Across the United States, right-of-ways varied in size to accommodate different railroads. Some railroads claimed a four hundred foot right of way while others claimed one hundred feet.⁶⁵ The right of way, the continuous swath of land on which the railroad built, developed parallel to and in combination to the checkerboard railroad grants. Railroads claimed a swath of land that sometimes included buildings in towns they crossed and settlers on the planned roadbed as their right-of-way.

⁶⁴ Eminent domain laws varied in each region. They demanded individuals to give up their private property without the owner's consent but with monetary compensation for the common good. The government would then either use it directly or delegate it to third parties to develop.

⁶⁵ By 1875, Congress passed the General Railroad Right of Way Act of 1875, formally 43 U.S.C. §§ 934-939, which standardized the size of the right of way to 100 feet on each side of the tracks.

The federal government gave the Atlantic and Pacific a right-of-way through the Indian territory. The swath of roadbed on which to construct the tracks was not the same as the land grant that was to be resold to settlers.⁶⁶ Instead, the right-of-way was revocable and temporary, rather than absolute and permanent like the land grants.⁶⁷ As such, Native Americans received regular compensation for the land taken. In the Indian territory, Native Americans were paid fifteen cents per mile per year for the right-of-way.

In this perspective, the Indian territory appeared open and largely unused, rather than occupied, yet the railroad needed to pay for access to its roadbed. Without settlers or their income, the A&P could not build.

The Atlantic and Pacific Railroad was frustrated it could not move settlers into the Indian territory. The managers voiced their complaints that the land “must remain for an indefinite period practically a wilderness.”⁶⁸

Despite the appearance of unused land, the federal government exchanged title with the Native Americans of the region for their relocation to the Indian territory. The actual land title was given to the tribe free and clear. The Atlantic and Pacific needed clear land rights to develop the various interests it might find valuable along the route, including the development of coal and timber exports. Extinguishing the Indian title

66 *Great Northern v. U.S.* states that the rite of passage of a railroad is “only an easement, and not a fee. . . The right granted is one of use and occupancy only, rather than the land itself.” *Great Northern Ry. Co. v. United States* - 315 U.S. 262 (1942), 262, 279 (U.S. Supreme Court 1942).

67 Darwin Roberts, *The Legal History of Federally Granted Railroad Rights of Way*, SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, July 10, 2008), 7, <http://papers.ssrn.com/abstract=1157498>.

68 Atlantic and Pacific Railroad Co, *Annual Report Atlantic and Pacific Railroad Company to the Stockholders for the Fiscal Year Ending December 31st 1874* (New York: Evening Post Steam Presses, 1875).

would mean the unclaimed land would revert to the government and become available for purchase. The land would be divided up in severalty for those who already owned land in the region.

Despite the frustrations of the railroad, the right of way for the Atlantic and Pacific differed substantially from that of other railroads. The treaty of 1866 granted the A&P two hundred feet of preemption rights on each side of the tracks and a secondary provision to be able to access timber and other materials as needed for the railroad. The MKT, the LLF&G, and the MRFS&G were given one hundred foot rights on either side of the tracks. The A&P also maintained the “the right to cut and remove trees and other material that might, by falling, encumber its road-bed, though standing or being more than two hundred feet from the line of said road.”⁶⁹ The broad construction of the treaty and charter gave the railroad managers the ability to venture out and get the building material they needed for the railroad.

The same act also provided for the railroad to cross through Indian territory: “. . . the right of way through Indian territory, wherever such right is now reserved to the United States by treaty with the Indian tribes, is hereby granted to said company, to the same extent as granted by the sixth section of this act through the public lands; and in all cases where the right of way as aforesaid, through the Indian Lands, shall not be reserved to the government, the said company shall, *before constructing its road, procure the consent of the tribe or tribes interested.* [italics mine]”⁷⁰ With this treaty stipulation, the

⁶⁹ *An Act Granting Lands to Aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast*, 16:292.

⁷⁰ *An Act Granting Lands to Aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast..*

United States recognized the rights of the Indian nations to negotiate for payment and routes of the railroads to cross their land. The treaty also presumed that Native Americans would readily accept railroads crossing the region. Railroads therefore needed to appease Native Americans in order to gain their consent and land. The contradictory position meant railroads needed to change their assumed position from one of land confiscation and to negotiate -- and implicitly recognize -- Native American power over their space.

The Atlantic and Pacific charter suggested that the railroads would not have to wait long to gain full access to the territory. In the subsequent article: “grants of land through said Indian territory are hereby made . . . whenever the Indian title shall be extinguished.”⁷¹ The concept inferred by this charter is that Indians’ claim to their land would soon end and when that happened, the railroads would obtain their huge land grant and transform into economically viable ventures. The A&P charter is indicative of the larger assumptions of Native American economic independence by outsiders: they were powerless in the face of imposing railroads. Thus, railroads had strong financial incentives for the Native Americans to forfeit title to their lands – the railroads would be able to sell their alternating sections in Indian territory, and thus retain or improve their profit margins.

The Atlantic and Pacific Railroad envisioned the Indian territory land as a boon to the company. The railroad already had built through Missouri, opening farmland along

⁷¹ During much of U.S. history, Native Americans appeared to many EuroAmericans as diminishing both in culture and in population. As such, it was also assumed that Native Americans would continue this decline. Conversely, the United States was increasing in power. It was assumed that the federal government would forcibly continue the Native American decline in the face of the growing U.S. power and remove Native American land titles. This would “extinguish” Indian title to the land. *An Act Granting Lands to Aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast*, 16:296.

the way to settlers. Those settlers, mostly from Denmark and Sweden, formed agricultural colonies along the Atlantic and Pacific Route in Missouri.⁷² Railroad income came in part from the resale of the land grant for settlers, developing the land along the route. The railroad was granted ten alternate sections of land for every mile the railroad built within a state.⁷³ The railroad profited from directing land sales and traffic to certain towns along the route, forming the settlement pattern along the road.⁷⁴

Congress authorized the Atlantic and Pacific to build through the Indian territory, yet its legal status within the area remained unclear. The managers of the railroad clearly envisioned federal support of the railroad through the Indian territory. James Harlan, former senator from Iowa, served as secretary of the Interior from April 1865 to August 1866, and advocated for the creation of a formal Indian territory while he was in the Senate.⁷⁵ Harlan pushed for the incorporation of Native American land into the United States, which would have also dismissed land claims by Native Americans. Formal territorial status would have given the right to elect a legislature to formulate a code of criminal and civil law.⁷⁶ Territorial status would have clarified the railroad's legal options within the region.

⁷² Miner, *The St. Louis-San Francisco Transcontinental Railroad*, 55.

⁷³ Miner, *The St. Louis-San Francisco Transcontinental Railroad*, 9.

⁷⁴ The directors of the A&P owned most of the town of Jerome, Missouri. Traffic was encouraged to the town, bypassing nearby towns including Rolla, much to the chagrin of locals. Miner, *The St. Louis-San Francisco Transcontinental Railroad*, 56.

⁷⁵ Bruyneel, *The Third Space of Sovereignty*, 34–37.

⁷⁶ Jeffrey Burton, *Indian Territory and the United States, 1866-1906: Courts, Government, and the Movement for Oklahoma Statehood* (Norman: University of Oklahoma Press, 1995), 14.

The same attitude toward the space was expected when the A&P was seeking to fulfill its land grant. The A&P believed that “The Indian tribes which now inhabit the country lying north and south of this route, would be easily and economically controlled.”⁷⁷ With a dismissive attitude toward Native Americans, the Atlantic and Pacific established its policies. This perspective of Native Americans, led the A&P to calculate its course of action with Native Americans. The railroad company worked with Congress to develop its access to the west. It ignored the activities of the Cherokee when they asked for a railroad, rather choosing to work in Washington for access to the Indian territory.

The A&P attempted to fulfill a long-planned bifurcated route. The original plan of the A&P through Indian territory was to have two lines that ran from the eastern border and connected along the Canadian River. The first line was to run through Missouri and run south-westerly through the Cherokee and Creek Nations, to the Canadian River. The Atlantic and Pacific’s second line was to link with an unnamed railroad that would cross through Arkansas at Fort Smith and connect in the valley of the Canadian River. These two lines would then fulfill the suggestions of the 35th parallel route by connecting to Little Rock and Memphis to the east, as well as to Jefferson and St. Louis, Missouri. The proposed intersection along the Canadian River would require significant investment into a proposed town site. The railroad surveyors reported that the land between Fort Smith and the Canadian River was “covered with wood, excellent for

77 Copy of Reports of E.F. Beale, Esq. to the War Department, 1859.

fuel, and *also furnish an abundance of coal.*”⁷⁸ Subsequent surveys reported freely available coal “underlies the whole region of Fort Smith, and westward along the Canadian as far as the 97th degree – the vicinity of old Fort Arbuckle. . . an inexhaustible supply of coal.”⁷⁹ Yet, the coal they encountered remained beyond the railroad’s grasp.

At the end of 1866, President Johnson named J.D. Cox Secretary of the Interior. He enforced a regular land policy envisioned by the Native Americans. He implemented a conservative land policy that favored Indian control over Indian land, including honoring both the treaty of 1866 and the articles of incorporation of the A&P. Cox

The A&P built into the Indian territory early in 1871, but already had encountered unexpected difficulties in fulfilling its land grants. The company overlooked the inconsistencies with the treaties of 1866 and the railroad charters, preferring to interpret the railroad charters as primary to the treaties. For example, the Cherokee treaty provided a *right of way only* and specifically not a land grant.⁸⁰ The Cherokee understood that they needed to acquiesce to a railroad as stipulated in the treaty of 1866, but they also understood the potential threat that came with granting the railroad land as well as a right of way. William P. Ross, the Cherokee representative to Congress argued, “The Cherokee Nation has granted simply the *right of way*, not the title to lands . . . there

78 Italics in original, Whipple and United States Army Corps of Topographical Engineers, *Report of Explorations for a Railway Route, Near the Thirty-Fifth Parallel of Latitude*, 83. Washington, DC

79 *The Atlantic & Pacific Railroad Co.: The Route and Its Advantages; the Congressional Act of Incorporation and List of Officers* (Boston: The College Courant Printers, 1870), 9–10.

80 Charles Joseph Kappler, ed., *Indian Affairs: Laws and Treaties*, vol. 2 (Washington, DC: U.S. Government Printing Office, 1904), 945. Government Printing Office

is no grant of lands to these corporations.”⁸¹ The Cherokee were keenly aware of the importance of limiting the land usage of the railroads. Consequently, the A&P built their line as far as they could without actually gaining any land within Indian territory.

Similarly, the A&P did not invest in formal discussion with the Cherokee leadership or any other Indian Nation for land rights or access. The railroad leaders thought they would not need to discuss land with Native Americans since Congress had set the terms for the treaty. Preliminary reports of the A&P into Indian territory implied acceptance of the railroad: “None of these Indians (Cherokee, Shawnee or Wyandotte) manifested other than a friendly spirit and were fully cognizant of the purpose of the work in which we were engaged.”⁸²

However, the resultant situation for the A&P forced the railroad to negotiate for business, alter its business model, and push for Congressional intervention. The Atlantic and Pacific Railroad expended its limited resources on attempting to remove the Indians’ title to the land and fulfilling the railroad’s initial charter. While the railroad pursued legislative intervention, the company continued to construct its line into the Indian territory.

The Atlantic and Pacific built its line into the Cherokee Nation from Missouri in 1871. As the railroad actually began its construction into the Indian territory, Native Americans attempted to take advantage of the economic situation that railroads might

81 William P Ross, “Remarks of William P. Ross of the Cherokee Delegation, Before the Committee on Territories of the United States Senate” (Gibson Bros, Washington, DC, 1879), 24, Ayer Collection, Newberry Library, Chicago.

82 F.S. Hodges, “F. S. Hodges to President Hayes of the Atlantic and Pacific Railroad: Preliminary Report of the Preliminary Line,” September 20, 1870, Chicago, Rock Island and Pacific Railway Company Collection, Oklahoma Historical Society Research Division.

provide. It was apparently clear where the Atlantic and Pacific would cross the MKT. The Missouri, Kansas, and Texas Railroad had previously founded the town of Downingville on land fenced by Cherokee Colonel Elias C. Boudinot II, a “long time friend and counselor for the Katy Railroad.”⁸³ Boudinot, the son of tribal spokesman Elias Boudinot, carried on his father’s policy of negotiation with whites. Boudinot the elder had been assassinated after signing the Treaty of New Echota that called for the removal of the Cherokee to the Indian territory. Throughout his career as an attorney and investor, Boudinot the younger used his business sense to increase his personal fortune while maintaining his Cherokee identity.⁸⁴

Boudinot attempted to use the extensive cattle yard he had built for the MKT as a cause for the Atlantic and Pacific to cross over his claim, then expected to charge inflated rates for crossing. Boudinot recognized the value of the intersection of the two lines and attempted to profit from the place. Instead of giving in to the Cherokee Boudinot, the A&P chose to meet the MKT two miles south of Boudinot’s claim, thus avoiding giving in to Boudinot’s advance work. Subsequently, the town moved south and was renamed Vinita.⁸⁵

The two railroads met in the middle of the town, each claiming their two hundred foot right of way, displacing people and businesses along the route. The net effect was a swath through the center of town without any businesses. Cherokee residents also

83 O.B. Campbell, *Vinita, I.T.: The Story of a Frontier Town of the Cherokee Nation 1871-1907* (Oklahoma City, Ok: Oklahoma Publishing Co., 1969), 2.

84 Parins, James W., *Elias Cornelius Boudinot: A Life on the Cherokee Border*, (Lincoln: University of Nebraska Press, 2008).

85 Campbell, *Vinita, I.T.: The Story of a Frontier Town of the Cherokee Nation 1871-1907*, 37.

understood the potential profitability of the town as the crossroads of the two major railroads. For example, Cherokee merchant Johnson Thompson moved his general merchandise store from the nearby Military Road to near the railroads.⁸⁶ Others also relocated their businesses to take advantage of railroad business.⁸⁷ The activities in the locality signaled a significant economic shift in the region.

Within the next two years, boosters began acting in ways familiar to many in the west. Town lots in Vinita were sold at public auction by the town council in 1872, but only to Cherokee, just as the railroads were meeting in the town. Public auctions for town lots were common practice in railroad towns throughout the surrounding states and the Cherokee Nation continued this practice, albeit with a distinct difference. Those purchasing lots through town auctions actually purchased the land on the selected lots, but in Vinita, the situation was different. Those “purchasing” the lots actually were only purchasing the opportunity to use the land, effectively a lease from the Cherokee Nation. Lands within the Cherokee Nation, and all Native American lands, were held “in common” by the nation: the nation held the actual fee-simple title. No single person could therefore “own” land.⁸⁸ Despite the lack of gaining title, the auction reveals what

⁸⁶ Campbell, *Vinita, I.T.: The Story of a Frontier Town of the Cherokee Nation 1871-1907*, 37.

⁸⁷ David D. Landrum had a stage stop and store at the old ford and held “Black Sam” who would be sent to Fort Smith, Arkansas, regularly for supplies. Campbell, *Vinita, I.T.: The Story of a Frontier Town of the Cherokee Nation 1871-1907*, 37.

⁸⁸ People could fence off sections of land as land they regularly worked or lands they wanted to keep animals from, but ownership was reserved for the Cherokee nation as a whole. Masterson, *The Katy Railroad and the Last Frontier*, 104.

nineteenth-century Americans called the “enterprising spirit,” so eagerly pushed for Native Americans.⁸⁹

Building into Vinita signaled a major transition for the A&P. The Atlantic and Pacific reached a connection with the Missouri, Kansas and Texas Railroad, but not an amicable joining. From the connection in Vinita, the managers of the Atlantic and Pacific hoped that they would be able to raise enough capital to continue building beyond the region. The A&P advertised its 364 miles of track in Missouri and the Indian territory as an example of what the railroad could build. The railroad also used the promised land grant of 1.2 million acres as incentive to invest in the railroad, since the railroad would only continue to grow. Among other things, the A&P offered “superior inducements to those seeking investment of capital.”⁹⁰

However, rather than making money from the connection in Vinita, the town became the end of the line. There was not enough money in the A&P coffers to continue to build through the Indian territory and as such, there needed to be some income for the railroad. Railroad business relies on continuous traffic, goods or people to be shipped from one place to another. The town of Vinita had little of either.

The Atlantic and Pacific Railroad confronted a surprising situation as they began to cross into the Indian territory. Their original perception of Native Americans’ benign

89 For example of this ideology, see the Annual Report of the Commissioner of Indian Affairs, 1886, which marks the inability to distinguish the towns of Missouri from the Cherokee town of Vinita. United States Office of Indian Affairs and United States Dept. of the Interior, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Fiscal Year Ended 1886* (Washington D.C.: Government Printing Office, 1886), 147, <http://www.archive.org/details/annualreportcom31affagoog>.

90 Atlantic and Pacific Railroad Company, *The Far West Items of General Information for Travelers and Seekers After New Homes in the Western States and Territories. Issued by the Atlantic and Pacific and Missouri Pacific R.R.’s*.

acceptance of the railroad was grossly distorted. Instead, the reality of distrust and dislike of the Missouri-based railroad became apparent. Residents of the region resisted the existence of the railroad. Reliance on an immediate welcome (and the associated business) would be hard to come by for the Atlantic and Pacific Railroad. Many Native Americans, Cherokee and others, did not want that railroad.⁹¹

While Native Americans recognized the obligations of the treaties of 1866, they also pointed out what they felt was the clear legal situation regarding those treaties. William P. Ross, a Cherokee delegate to the Senate, reminded the Senate in a written statement that, “There is no grant of lands to these corporations; no authority for either of the roads to enter and establish a terminus within the country.”⁹² Ross wanted to force the Atlantic and Pacific either to be removed or to continue to move through the territory rather than establish a terminus. As a terminus, the town would be the location of off-loading goods and people to transfer between railroads. Ross accurately predicted the intrusion of whites into Cherokee land, permitted or not, based on the quantity of people.

A terminus within the territory meant the people of the region needed to interact with the railroad. Vinita was such a terminus. The railroad needed products to ship. The people would need to supply the products to ship and provide a market for incoming products. A terminus often meant increased population. Many people promoted their towns throughout the west and wanted their place to be a terminus town, but not those of

91 See for example, the opposition noted by Ross and Bushyhead to railroads in the Cherokee Nation.

92 Ross, “Remarks of William P. Ross of the Cherokee Delegation, Before the Committee on Territories of the United States Senate.”

Vinita. A terminus meant increased unwanted population in the territory. At a time when non-native population was already pressuring Native government's political ability, the end of the track at Vinita put additional pressure on a hostile situation. Vinita was a terminus town in an unwanted place, a place where the confrontation of the railroad erupted in dissent. Whites came in with the railroad and were reluctant to leave. The railroad was required to seek other sources of production, especially farmers and traders to provide goods for outside markets.

The Cherokee who opposed the railroad clearly understood the terms of the treaty of 1866, but how they interpreted the treaty differed from how the Secretary of the Interior interpreted it. Secretary Cox was known by his contemporaries as a friend of the Indian, that only one north-south railroad could cross the territory and only one east-west railroad would be granted access to Indian territory: "The building of but one trunk railroad through the Territory from north to south . . . and a double line from east to west, meeting in the valley of the Canadian, has been deemed sufficient."⁹³ Cox's directive settled the question regarding the number of railroads, but did not endear the Native Americans, nor the railroads. Native Americans and railroads both wanted the land and Secretary Cox forced a compromise between them that left neither satisfied. Both sides were left with questions regarding the official documents since neither had been adjusted in the official record. For the railroad to be profitable there needed to be significant traffic out of the Indian territory. Export of locally made products would have ensured viability for the A&P, but there appeared little for the A&P to export. The A&P had previously noted the extraordinary quality of the land in Indian territory. The preliminary

93 United States Dept. of the Interior and Cox, "Railroads Through the Indian Territory."

report of the Atlantic and Pacific Railroad noted the quality of the land from the Missouri border into Indian territory. The A&P resorted to a two-pronged method of viability.

In the long term, the railroad needed to lay claim to its land grant that was promised in its charter. For this to happen, the railroad sought to convince Congress that the Native American's claim to the land was erroneous and should be "extinguished." The Atlantic and Pacific arranged for congressional excursions along the A&P and Missouri Pacific Railroad during 1873 after the completion of the Missouri, Kansas and Texas into Dennison. The three railroads used congressional oversight in an attempt to sway votes to open the Indian territory to white (and railroad) settlement. The Atlantic and Pacific arranged for a delegation to travel along the Missouri Pacific to the A&P junction in Booneville, Missouri, take the A&P to Vinita then transfer to MKT trains overnight on the way to Dennison.⁹⁴ The railroad wanted to sponsor a large excursion of Congressmen that would motivate Congress enough to open Indian territory to white settlers. Despite expending time and energy on attracting a contingent from Congress, only seven members rode along with many reporters. A poor showing from Congress on the delegation was reflected in the lack of congressional response to the Atlantic and Pacific's desire for opening the land.

The A&P needed to use its lands to effectively shrink the distance between the ends of the line at St. Louis and Vinita by selling the land to settlers. Selling land would increase population along its tracks and increase the market along the way. Why the A&P waited until 1871 to begin selling its land is unclear. If that happened, it would

94 Stevens, "Robert Stevens to Levi Parsons," October 30, 1873.

follow that increased population would ensue and the railroad would increase in importance. However, the A&P faced significant opposition regarding its land grant.

The Atlantic and Pacific was held back by its own charter. The original charter granted a right of way to the railroad of one hundred feet on either side of the track, but most importantly granted “every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line.”⁹⁵ Most important was the intention of the charter that the Atlantic and Pacific stood to gain thousands if not millions of acres of land once the United States extinguished the Indian title to their lands. At the time of the railroad treaty, the Native Americans had just signed treaties severely abrogating their rights, which would point to continued reduction of Native American rights. However, the Civil War also witnessed Northern Cherokee fight on behalf of the Union, for “the integrity of the Federal Union and the Cherokee Nation.”⁹⁶ The Cherokee Nation had split into Northern and Southern factions with the Northerners adhering to the ideals of the Union (but without a state to claim) and the Southerners clinging to the hopes of independence as promised by the Confederacy. After the war, the conundrum was how to frame the Cherokee: for every attempt at placing the Cherokee as rebellious, the Cherokee responded with reminders of the loyalty of most of their people.

The other part of the A&P’s viability relied on maximizing its profits despite the limitations that it faced. The A&P determined to not build beyond Vinita without the

⁹⁵ *An Act Granting Lands to Aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast*, 16:292.

⁹⁶ Cherokee Nation, “Reply of the Delegation to the Commissioner of Indian Affairs” (Gibson Bros, Washington, DC, May 12, 1866), 10.

release of lands promised to the railroad. In the company's 1874 annual report to stockholders, the A&P put the blame squarely on Congress: "It has not been deemed wise to enter into contract for construction west of Vinita until Congress shall provide for the organization and settlement of the territory."⁹⁷ Since the town of Vinita was within the Cherokee Nation, and the railroad could not sell land as in other towns outside of Indian territory, the A&P sought out business to redirect there. The A&P recognized the bounds placed on them by Congress while working to remove those constrictions.

Railroad corporations needed people and goods to ride their lines. Passenger travel was restricted along the Atlantic and Pacific in part because of a lack of destinations. Existence of a railroad did not ensure profitability. Instead, railroads needed to develop business surrounding the line to cultivate a need for the railroad. The A&P developed the land outside of the Indian territory, but within the Indian territory, there was no recourse for the A&P. The A&P could not provide attractive destinations for its customers alone.

The railroad resorted to working with the MKT railroad, directing traffic further to the south in Texas to draw traffic along its line to Vinita. The two railroads met at Vinita, but only the A&P ended there. The Missouri, Kansas and Texas continued its route to the south, initially treating the Indian territory as a river to be crossed, or a mountain to tunnel through. The directors of the MKT understood some of the initial hostility and lack of profitability within the Indian territory and built their initial line with

⁹⁷ Atlantic and Pacific Railroad Company, *The Atlantic and Pacific Railroad Company: Report of the General Manager to the Directors, December 1873* (New York: Union Print. House, 1874), 14.

the intention of crossing quickly through Indian territory without expecting the railroad's business to increase due to activity from the territory.

* * * * *

Railroads crossed the Indian territory beginning with the ideas promoted in 1866 and ending with the actual track building through the territory. Despite an original four railroads attempting to cross into the Indian territory, only two, the Atlantic and Pacific and the Missouri, Kansas, and Texas successfully managed to secure Congressional approval and actually cross the borders into the region. The railroads' plans changed in reaction to the legal obstacles imposed by the Department of the Interior and authorized by Congress. Native Americans eventually acquiesced and released some of their land to satisfy the demands of the federal government. Native Americans partially appeased the railroads eager for access to the territory while they also attempted to preserve the integrity of their lands and prevent further encroachment from outsiders. Railroads saw the efforts of the Indian nations as hampering their efforts to create sustainable business. Native Americans attempted to exert control over their lands in the face of railroad pressure. Indian nations averted white encroachment for a while as attention shifted from the value of railroads to the region to the value of the region to the railroads.

Railroads continued their expansion in the region surrounding the Indian territory. Outside growth put pressure on the chartered railroads to complete their intended lines. The completion of the Missouri, Kansas, and Texas Railroad marked the end of overt Native American resistance to the railroad, at least for a while. The ample supply of

natural resources put increasing pressure on railroads to secure access to the territory and to the resources of the region.

CHAPTER 4 - INDUSTRIAL DEMAND AND RAILROAD SUPPLY: NEGOTIATING RESOURCE USE AND ACCESS

“more coal than we can get out within the next five years”
Robert S. Stevens to George Dennison, June 19, 1871

Railroads wanted the raw materials of the Indian territory – those that white explorers reported on years before, those that Native Americans wanted to protect. The resources of industry like timber, stone, and coal were the premium materials for new railroads. The raw materials of growing transportation networks and industrial expansion, exactly what the Indian territory contained. Railroads managed to gain access to these resources after all and within two years of actual access to the region, timber was being cut, stone was quarried, and coal was mined from within the Indian territory.

Resource use and extraction within the Indian territory raises several significant questions. Was the region simply exploited by capitalists or did resource protection keep capitalistic expansion at bay? Understanding of natural resources, their locations, and their relative value to developing industry will answer some of these questions. Why were resources taken after 1872 at increasing rates? Did efforts at resource protection fail? What form of protection did Native Americans take for their resources and by whom? How did railroads react to Native American efforts at protectionism? This chapter will explore the causes and implications of resource use from the Indian territory – what it meant for the railroad and the people who controlled the material.

Coal demand rose after the Civil War. Steel production changed with new processes after the Civil War. Iron demand increased following the war also. When these processes began to be used by Carnegie Steel, the demand for coal significantly increased and new coal fields such as these in the Indian territory were needed for continued railroad growth.

Iron and steel production changed dramatically during the years surrounding the Civil War. Henry Bessemer, Robert Mushet and William Kelly created new demand for steel and in turn, coal, through their improvements in the steel-making process. They each experimented separately beginning around 1855 with purifying and recombining carbon, sulfur and other contaminants in iron. The resulting process yielded a similar product as crucible steel.¹

Henry Bessemer created a new process for making steel by blowing air on molten metal to remove impurities, replacing the “pooling” method for purifying steel. He patented the machinery needed. Kelly held a patent on the process while Mushet patented the replacement of carbon in the iron.² The three individuals all working separately profoundly transformed the manufacturing process of the United States. What was known as the “Bessemer process” for steel manufacturing was not immediately embraced by industry, but by the end of the Civil War, and the combination of the patents, the Bessemer process revolutionized American steel.

¹ Peter Temin’s *Iron and Steel in Nineteenth Century America* is the foundational text in the technological history of steel. His original work is essential to understanding the importance of steel. Peter Temin, *Iron and Steel in Nineteenth-Century America: An Economic Inquiry* (Cambridge, MA: The MIT Press, 1964), 125–152.

² Temin, *Iron and Steel in Nineteenth-Century America*, 126.

The entire process relied on super-heating metals that would be combined into steel. Fuel for the ovens dictated the success of the Kelly-Bessemer process. Charcoal, long the preferred fuel of iron working for its purities, eventually was replaced by a variety of coal products. Specifically, charcoal was sulfur-free, as opposed to many soft coal varieties like much bituminous coal. Yet, charcoal - created by burning wood in an airless oven - was extremely expensive. It had been the primary fuel for blast furnaces since the earliest days of iron working. Fuel for iron furnaces was so difficult to ship that iron furnaces were located in the middle of forests, or “iron plantations,” near the charcoal ovens.³ High fuel prices often kept the overall price of iron high.

The Bessemer process profoundly changed the manner in which forges used fuel and by doing so, drastically reduced the amount of fuel needed. Charcoal, the long preferred fuel for iron creation, gradually became replaced by mineral coal and “coke.” In the old processes for making steel, charcoal was used for its ash-less qualities and its ability to retain heat. Anthracite coal’s most valuable quality is its density – without bituminous gasses – that allows it to burn cleanly. However, the heat point of anthracite is limited by its surface area, but coke’s texture is honeycombed which allows it to burn at a much faster rate.⁴ Coke demonstrated an improved fuel over anthracite, especially considering the abundance of bituminous coal.

Neither Kelly, Meshet, nor Bessemer capitalized on their process of creating steel. Andrew Carnegie and his Pennsylvania Railroad developed interest in the new system and applied it to his line. Andrew Carnegie’s experience with both railroads and business

³ Temin, *Iron and Steel in Nineteenth-Century America*, 85.

⁴ Temin, *Iron and Steel in Nineteenth-Century America*, 201.

organization gave him the knowledge needed to invest wisely in the improved processes of making steel. Carnegie understood the value of steel to railroad building.⁵ He had worked with and in the railroad and steel industries. He also was an owner of the Keystone Bridge Company that built iron railroad bridges to replace wooden bridges. Carnegie concerned himself with every way to keep costs down which included the processes of making iron and steel.

Carnegie was also keenly aware of the process for turning soft bituminous coal into sulfur-free coke. This fuel was produced by removing impurities and contaminants from bituminous coal, leaving a denser product approximating pure carbon.⁶ Coke was an inexpensive alternative to charcoal that reduced the cost of iron and steel production significantly. According to historian Alfred D. Chandler Jr., in the early 1850s coal cost only \$3.35 per ton compared to \$17.50 per ton for charcoal.⁷ Carnegie licensed all of the patents for creating Bessemer steel in 1868. Carnegie's first steel-producing plant came into operation in 1872, the same year the Missouri, Kansas and Texas Railroad completed their line across the Indian territory.⁸

5 Kelly and Bessemer may have had the most public battle over the usage of coke in steel manufacturing, but the first to use coke instead of charcoal in the blast furnace was Abraham Darby, a Quaker ironmaster in 1709. According to historian Peter Temin, Darby's use of coke to power a blast-furnace was to "prove a technological possibility," but the commercial feasibility needed "to wait upon further developments of technique, taking another half-century." Temin, *Iron and Steel in Nineteenth-Century America*, 14; James E. McClellan and Harold Dorn, *Science and Technology in World History: An Introduction*, 2nd ed. (The Johns Hopkins University Press, 2006), 282; Cowan, *A Social History of American Technology*, 135.

6 Temin, *Iron and Steel in Nineteenth-Century America*, 52.

7 Alfred D. Chandler, "Anthracite Coal and the Beginnings of the Industrial Revolution in the United States," *The Business History Review* 46, no. 2 (July 1, 1972): 161, doi:10.2307/3113503.

8 Alfred Dupont Chandler, *The Visible Hand: The Managerial Revolution in American Business* (Cambridge, Mass: Belknap Press, 1977), 262.

Chandler further states that by the beginning of the 1870s, Carnegie's blast furnaces were the largest and most energy consuming furnaces in the world. Even so, they continued to grow throughout the end of the 1800s. One of Carnegie's blast furnaces increased production from 13,000 tons in 1872 to 100,000 tons in the late 1890s.⁹ Between 1869 and 1899, the average output from blast furnaces rose from 5,000 to 65,000 tons of steel per year, despite reducing the number of furnaces and only slightly increasing the workforce.¹⁰ The increased speed and volume of output required an immense amount of fuel, mostly in the form of coke.

Carnegie's use of coke from coal revolutionized the U.S. steel industry and in turn U.S. coal mining. A sudden demand for coke as a fuel coincided with new uses for coal as heat sources for other industries and heating needs, the most important of which was railroads. Steel provided the basic material for increasingly larger locomotives. Railroad track growth increased at the same time, creating an even greater demand for coal.

Demand for bituminous coal increased significantly with the proliferation of the Bessemer process mills like those built by Carnegie. Industrial development as evidenced by steel production continued to expand throughout the end of the 19th century. To maintain the continued growth, industries needed coal.

9 This blast furnace, nicknamed "Lucy" in addition to "Isabella" and the E.T. Works made up the largest energy consuming furnaces. Chandler, *The Visible Hand: The Managerial Revolution in American Business*, 262..

10 From 1869 to 1899, the workforce grew from an average of 71 to 176 workers per furnace and the number of furnaces dropped from 386 to 223. Chandler, *The Visible Hand: The Managerial Revolution in American Business*, 266; Temin, *Iron and Steel in Nineteenth-Century America*, 165.

The coal in Indian territory developed in the earth some 270 to 300 million years earlier during the Middle Pennsylvanian Period.¹¹ Prehistoric swamps covered the Indian territory at the edge of a great inland sea. Organic material, tree ferns, seed ferns, calamites and lycopsids – all tropical or subtropical plants - deposited as sediment.¹² Over time layers rich in plant material accumulated in the region. Plant matter built up, becoming interspersed with layers of shale or sandstone as the seas advanced and retreated, leaving behind layers of material. Successive multiple layers of material compressed the plants and as they decomposed, they transformed as the debris loses oxygen and hydrogen, and carbon replaced the elements. Volatile matter and water content decreased while fixed carbon content and heat value increased.¹³ Beginning as peat, increased pressure and coalification transformed the peat into brown coal, and as the process continued over millions of years it then became sub-bituminous coal, then bituminous and finally anthracite – the cleanest and highest quality of all coals.¹⁴

Coal within the Indian territory is divided into two fields by the Canadian River and the Arkansas River. The northern section is part of the Oklahoma Shelf, consisting of

11 This era is part of the Carboniferous Period, which in the United States is subdivided into the earlier Mississippian Period and the later Pennsylvanian Period. Thomas Andrews Hendricks and U. S. Geological Survey, *Geology and Fuel Resources of the Southern Part of the Oklahoma Coal Field. Part I, McAlester District, Pittsburg, Atoka, and Latimer Counties*, Geological Survey Bulletin ; 874-A; (Washington, DC: Government Printing Office, 1937); Walter Robin Keasler, *Coal Geology of the Chelsea Quadrangle in Parts of Craig, Mayes, Nowata, and Rogers Counties, Oklahoma*, 1979.

12 Thomas N. Taylor, Edith L. Taylor, and Michael Krings, *Paleobotany: The Biology and Evolution of Fossil Plants* (Burlington, MA: Academic Press, 2009), 19.

13 John Wesley Morris, ed., *Drill Bits, Picks, and Shovels: A History of Mineral Resources in Oklahoma*, The Oklahoma Series (Oklahoma City, Oklahoma: Oklahoma Historical Society, 1982), 85.

14 J. G. Speight, *The Chemistry and Technology of Coal* (New York: Marcel Dekker Inc., 1994), 69–71.

Craig, Nowata, Washington, Rogers, Tulsa, Wagoner, Okmulgee, Muskogee and McIntosh counties, all part of the Cherokee and Creek nations. The southern section, running generally east-west along the Arkansas River basin is known as the Arkoma Basin.¹⁵ This field consists of Haskell, Sequoyah, LeFlore, Latimer, Pittsburg, Coal and Atoka counties.¹⁶ These southern counties were all part of the Choctaw nation and generally considered to have higher quality coal than that to the north in the Cherokee nation.

The two major coal-bearing regions contain twenty-four sub-beds of coal. The two primary deposits, the Hartshorne and the McAlester beds, have different histories of use. McAlester Coal, located in Pittsburg, Coal and Latimer counties, was the primary coal mined in the early days of Indian territory mining. The coal was found in seams ranging from one to five feet thick and was known for its quality in power generation for steam engines and later electricity generation. Hartshorne coal was found in LeFlore, Haskell, and Latimer counties. This coal was understood to have been a good coking coal for use in steel and iron manufacturing. The seams ran from two to seven feet thick, yet were primarily deep underground and separated by 30 to 100 feet of shale and sandstone.¹⁷ Each of these primary deposits revealed themselves on the surface at outcroppings.

¹⁵ “Coal and Coalbed Methane,” *Oklahoma Geological Survey*, accessed February 27, 2012, <http://www.ogs.ou.edu/level3-coal.php>.

¹⁶ Morris, *Drill Bits, Picks, and Shovels*, 85.

¹⁷ Hendricks and U. S. Geological Survey, *Fuel Resources of McAlester District*. Anthony T Iannacchione, *Methane Content and Geology of the Hartshorne Coalbed in Haskell and LeFlore Counties, Oklahoma*, Report of Investigations (Washington, DC: U.S. Dept. of the Interior, Bureau of Mines, 1979).

Coal within the Indian territory often appeared at “outcroppings,” or where the coal seams exited the topsoil. Outcroppings appeared where the terrain of the region folded over time, producing elongated hills lining to the east and northeast. These hills and ridges also coincided with the outcrop of sandstone beds. Rivers and streams cut through the hills of the region, exposing the under-layers of earth. The coal appeared between alternating layers of sandstone, shale and coal. Limestone was also prevalent in the region, trending to deeper concentrations to the north on the Oklahoma Shelf.¹⁸

The Indian territory coal was exceedingly high quality, nearly equaling the famed Pennsylvania region coal. Numerous early reports by Euro-Americans marked the quality of the coal found and the assumed promise it held for industry. Amos Whipple’s survey in the 1854s revealed the extent of coal along his proposed railroad. Washington Irving noted the coal, as did the early botanist, Thomas Nuttall.¹⁹ Just as Euro-Americans noticed the coal in the Indian territory, Native Americans recognized not only the quantity of coal in their land, but also the potential wealth that would attract Euro-American speculators.

Subsequent coal experiments confirmed the conclusions of the early Euro-Americans. Many Euro-Americans wanted to get to the coal in the Indian territory, but also recognized the restrictions on getting to it. Some whites just crossed the borders from Kansas and began shoveling from the outcroppings. Native Americans also wondered about the feasibility of commercially mining coal and asked the United States

18 Morris, *Drill Bits, Picks, and Shovels*, 86.

19 Thomas Nuttall and Savoie Lottinville, *A Journal of Travels Into the Arkansas Territory During the Year 1819* (University of Arkansas Press, 1999); Irving, *A Tour on the Prairies*; Henry Leavitt Ellsworth, *Washington Irving on the Prairie; Or, a Narrative of a Tour of the Southwest in the Year 1832* (New York: American Book Company, 1937).

Indian Service about the accompanying costs to viable mines. Cornell Rogers responded that “according to Geologists and mining men,” establishing coal mines “will require the outlaw of \$90,000 to \$100,000 before they could commence to realize any money upon the outlaw and that the Cherokee Nation will be the party chiefly benefited.”²⁰

The natural resources of the Indian territory were exactly what railroads and industry needed, even more so in the surge of railroad building in the post-war environment. Railroad management desired the timber, stone, iron, steel and coal to maintain their lines and for continued expansion. Locomotives especially needed fuel and lots of it. While other industries needed timber and coal as well, railroads were the primary consumers of timber and coal in the United States until at least 1910.²¹ The Indian territory was full of the exact resources that railroads needed in quantities and at locations that made construction through the space desirable. When combined with the possibility of land grants and increasingly favorable legislation, railroads sought land and routes through the Indian territory with increasing frequency throughout the late 1870s and 1880s.

Two major railroads, the Missouri, Kansas and Texas Railway (MKT or “Katy”) and the Atlantic and Pacific Railway (A&P) used their access to the region to bolster their lines by seeking out these natural resources. The federal government promised the railroads extensive land grants in a short time along their respective routes, the largest of

20 Cornell Rogers, “Cornell Rogers to Henry Chambers,” February 2, 1884, Cherokee National Archives Collection Box 86, Folder 4, Oklahoma State Historical Society.

21 Sherry H. Olson, *The Depletion Myth: A History of Railroad Use of Timber*, First Edition (Harvard University Press, 1971), 11.

which were to be within the Indian territory.²² The routes through the Indian territory were to cross the Cherokee, Creek, Choctaw and Chickasaw land and in turn, the railroads would be granted large portions of their land in a checkerboard pattern of alternating sections. The railroads planned on this land coming to their possession, but the space was not the federal government's to negotiate; rather the land was that of Native Americans. Each tribe possessed its own land under perfect fee-simple title.²³ What this situation implied for both railroads and Native Americans was constantly negotiated from the 1870s through the early 1900s.

The first railroads to cross the Indian territory aimed for coal. After investigating the value of the coal within the region and recognizing the potential it held, the Missouri Kansas and Texas Railroad (MKT) built its tracks toward known coal reserves. The MKT built its tracks towards the coal outcrops and laid track parallel to the outcrops. The Atlantic and Pacific built as far as it could into the region, taking the natural resources it could along the way. It also built in the direction of coal reserves.

Euro-Americans followed natural resources into the Indian territory and opened the eyes of enterprising Native Americans to the potential wealth on their lands as well as emboldened traditionalists in their opposition to outsiders. The drive for resources also invigorated some Native Americans to protect their land and their resources. The

22 See Chapter 2 for extensive discussion of the expectations of the railroads when it came to crossing the Indian Territory. Chapter 3 discusses the realities of railroad land grants when confronted with limitations of government.

23 The envisioned routes through the Indian Territory crossed tribal boundaries without much attention to land ownership. The exception to this standard is the land of the Choctaw and the Chickasaw nations that held their land in an awkward arrangement where the Chickasaw retained one quarter of the value of the Choctaw land and a comparable voting right over the said land. The Choctaw, despite their larger numbers, received the sometimes-contentious Chickasaw into their nation while the Choctaw also had voting rights over the Chickasaw land. See Kappler, *Indian Affairs*.

economic value of the resources within the Indian territory became increasingly obvious to whites outside of the region.

Native Americans became increasingly aware of the potential value of their resources and took steps to defend them. The Cherokee attempted to protect their resources, reserve them for the sole use of members of the nation. Laws prohibiting outsiders from taking specific resources from the Cherokee Nation date to 1843. The series of laws passed by the Cherokee National Council include “An Act Relative to Stone Coal” and “An Act Relating to Minerals.”²⁴ These acts declare the resources of the nation belong to the common property of the Cherokee people, in line with the Cherokee constitution, that “each Cherokee, or Citizen of the Nation, shall be equally entitled to use the same.”²⁵ Tribal membership was the key to unlocking the resources of the Cherokee Nation. It similarly prohibited the Cherokee people from reselling their resources to outsiders. The resources of their nation were explicitly reserved for members of the nation. This standard set by the Cherokee, established within a few years of their settlement within the Indian territory, signaled the stance of members of the Cherokee Nation towards protection of property and against what they considered intrusion from

24 “An Act Relative to Stone Coal,” November 2, 1843, Box 91, Folder 151., Cherokee National Records, Indian Archives Collection, Oklahoma State Historical Society, Oklahoma City, OK.

25 “An Act Relative to Stone Coal”; “An Act Relating to Minerals,” 1843, Box 91, Folder 151., Cherokee National Records, Indian Archives Collection, Oklahoma State Historical Society, Oklahoma City, OK.

outsiders.²⁶ The Cherokee National council prohibited people from taking exactly what the railroads found valuable: stone, timber and coal.

The Choctaw Nation also placed restrictions on taking natural resources within their nation. In 1847, the Choctaw passed “An Act Relative to Stone Coal,” which limited the activities of Choctaw citizens seeking to sell the nation’s coal resources.²⁷ This legislation forbade any Choctaw from selling coal from the Choctaw region to outsiders, a ban on exporting the product. It also prohibited anyone who was not Choctaw or Chickasaw from owning or operating coal mines within the nation. While protecting the natural resources of the nation, the law also restricted the entrepreneurial activities of Choctaws seeking to connect the Indian nation to the outside world. The legislative action by the Choctaw government protected the resources of the region, from their own people at least for a while. The Creek (Muskogee) and Chickasaw nations both had similar laws. The combination of laws from the Native American nations of the Indian territory banned exports from the region. The legislatures informed all who would hear that the resources were for the Indians.

In order to use the resources within the respective nations, one needed tribal membership. Tribal membership was accessible through adoption or afforded through marriage into the Indian Nations, but also required renouncement of former citizenship. Wary of intruders, the Choctaw passed a series of laws that protected women and the nation from those of “bad character” who would want to marry a Choctaw woman.

²⁶ It is no surprise they would closely manage their valuable natural resources in their new space, considering how they had been taken advantage of in their former homes. “An Act Relating to Minerals”; “An Act Relative to Stone Coal.”

²⁷ Choctaw National Records, Indian Archives Collection, Oklahoma State Historical Society, Box 96.

Intermarriage conferred all rights of Choctaw membership. Rights of those intermarried into the tribe were solidified from the perspective of outsiders, but to many Choctaw, intermarried whites remained second-class citizens, despite maintaining a tribal voice.²⁸ The Choctaw and other nations were obviously reluctant to relinquish their national status and rights to those suspected.

Native American governments fluctuated in their appreciation - and disdain - of railroads. Some Native Americans embraced railroads as economic saviors, but others rejected railroads as part of a grand scheme to capture the last vestiges of Native American structural control. The Cherokee governments sometimes embraced railroads, offering to help construct lines and offering resources as inducements for railroad construction. The Choctaw governments similarly favored railroads occasionally, but also rejected and even arrested those viewed as attempting to exploit the resources of the nation.²⁹ The dual assessments of railroads – as saviors and destroyers – by Native Americans led to confusing interactions with representatives of the U.S. government and railroads.³⁰

28 The series of laws included prohibiting white men from disposing of their wives' property, divorce without "just provocation," and forcing any white man living with a Choctaw woman to marry her. Devon Mihesuah, *Choctaw Crime and Punishment, 1884-1907* (Norman: University of Oklahoma Press, 2009), 19.

29 See Chapter 5 regarding the attempted arrest of railroad executives within the Choctaw nation.

30 Various scholars have portrayed railroads as destroyers of culture and identity, partly as a continuation of governmental policy ostensibly aimed at destruction of Native Americans. Several scholars situate the spread of white culture as perpetrated by the railroad as targeting Native Americans resulting in their demise. For examples of white cultural encroachment, see Donna Akers, *Living in the Land of Death: The Choctaw Nation, 1830-1860* (East Lansing, MI: Michigan State University Press, 2004); Brian W. Dippie, *The Vanishing American: White Attitudes and U.S. Indian Policy* (Middletown, Connecticut: Wesleyan University Press, 1982); White, *The Roots of Dependency*.

Knowledge of natural resources in the Indian territory led to railroads altering their efforts to cross the region. Despite the efforts of the railroads, the resources in the Indian territory proved increasingly difficult to secure than first imagined by railroad managers. Public and private interests worked for resources held by Indian nations. Successful access and development of natural resources by the railroads depended on the management of the resources at the railroads' disposal, but it also depended on how the railroads managed their relationships with Native Americans.

The Indian territory abounded with the raw materials of the Industrial Revolution: coal, stone, and timber. The once derided Indian territory, upon closer inspection, teemed with natural resources. Steven Long's important initial report of a western wasteland, a vast desert where there was little redeeming value, was largely incorrect.³¹ The resources of the region were vast, but also largely unusable to outsiders without considerable change to the transportation infrastructure to allow those resources to be exported. Transportation systems added value to the sentient resources while increasing risk for exploitation. Railroads acted as the impetus for usage of the natural resources as well as the market for those resources. The railroads commodified raw materials through the introduction of transportation systems.³²

Long's report received the most attention of various early records of the Indian territory, but others such as Thomas Nuttall and Washington Irving both crossed the

31 James, Long, and Say, *Account of an Expedition from Pittsburgh to the Rocky Mountains Performed in the Years 1819, 1820*, 1:147–148.

32 The activity of railroads in general to add value and to find markets for the raw materials is best exemplified in the work of William Cronon, *Nature's Metropolis: Chicago and the Great West* (New York, N.Y.: W. W. Norton & Company, 1992), 148–206.

Indian territory and noted the rich natural resources. A contemporary of Lewis and Clark and John Jacob Astor, the explorer and botanist Nuttall explored up the Arkansas and Red Rivers and noted the vast resources with which he was enamored.³³ Irving also maintained a different perspective of the region.³⁴ Rather than portraying the land as a wasteland, he crossed as tourist and marveled at the expanse and resources. Neither, however, noted the potential value the region represented for nascent mercantile-industrial economy.

Modern reports corroborate early descriptions of the region. EuroAmerican explorers in the early 1800s encountered vast quantities of stone and timber. Coal was found extensively through the region as well, but in the pre-industrial era of the United States, the resources maintained little value without a local market. Industrialization transformed the resources as demand increased, especially for coal. It would take railroad surveys crossing the land to account for the quantity and quality of the resources and make appropriate remarks to the managers.

Stone provided the foundation for permanent railroad structures including bridges and culvers. Crushed stone similarly provided valuable ballast for tracks. Railroad surveys found stone throughout the region and in an impressive quantity. The surveyors for the Union Pacific Railway, Southern Branch, recognized that, “stone for building and culverts” was plentiful along both of their proposed routes through the Cherokee nation.³⁵

33 Nuttall, *A Journal of Travels into the Arkansas Territory*.

34 Irving, *A Tour on the Prairies*; Ellsworth, *Washington Irving on the Prairie; Or, a Narrative of a Tour of the Southwest in the Year 1832*.

35 Walker, “G. M. Walker to N. S. Goss,” 5.

According to the Oklahoma Geological Survey, limestone and sandstone were abundant in the region.³⁶ The MKT actually built part of its line through “Limestone Gap.”

The quality of the stone found in the region allowed the Missouri, Kansas, and Texas Railway to easily construct quality bridges in the Choctaw nation and beyond. The railroad established quarries for stone for bridge construction and by 1873, it was pulling out “large first class rock” from the Choctaw quarries. The railroad accessed enough surplus stone or such quality to move within the individual railroads or to sell it to other railroad and bridging companies.³⁷ The railroads acquired an over-abundance of stone within the Indian territory to complete their lines with some left over.

Available extractable stone provided permanent bridge base for building over the numerous rivers within the Indian territory. Permanent bridges replaced relatively fragile trestles by requiring less scaffolding and providing increased support. While bridges were still susceptible to harsh weather, especially floods, the stone pilings and foundations increased the value of the railroad.³⁸ The MKT only ballasted the tracks after the initial tracks had been laid to improve the quality of the road for potential investors.³⁹

36 Oklahoma Geological Survey, Map 1954 accessed December 22, 2011, http://www.ogs.ou.edu/geolmapping/Geo_mapOK1954.pdf

37 The quarry for the Red River Bridge, the last of the MKT’s within the Indian Territory, produced stone in sufficient quantities to export. Robert Stevens, “Robert Stevens to Levi Parsons,” February 17, 1873, Box 1, Folder 5, Robert S. Stevens Papers, Western History Collection, University of Oklahoma, Norman, Oklahoma.

38 Missouri, Kansas and Texas Railway Company, *Annual Report of the Board of Directors of the Missouri, Kansas and Texas Railway Co.: Late Union Pacific Railway Co., Southern Branch, to the Stockholders* (New York: Evening Post Steam Presses, 1872), 13.

39 E. C. M. Rand, *Findings in the Investigation of Matters Relating to the Missouri, Kansas and Texas Railway Co* (New York: De Vinne Press, 1888).

Successful application of the stone resources for the railroads increased the longevity of the tracks in the Indian territory. Stone's durability, exactly what railroads were searching for, meant it was not consumed like other natural resources. The stone resources of the Indian territory proved valuable to railroads for their construction within the region.

* * * * *

Timber was an abundant natural resource within the Indian territory. Extensive forest lands throughout the Indian territory, notably within the Choctaw, Cherokee and Creek Nations, provided raw materials for construction. Timber remains so prevalent in the region that the southeastern corner of the Indian territory is today part of the Ouachita National Forest.⁴⁰ This timber region once referred to as the "Timber Hills" represented a portion of the approximately one billion board feet of lumber.⁴¹

Railroad surveys included the estimated value of the timber found along the proposed line. The surveys for a proposed route to the Pacific Ocean on the 35th Parallel, led by Amile Weeks Whipple and Edward Beale declared: "The Choctaw territory, as far as Shawneetown, is covered with wood, excellent for fuel."⁴² Similarly, the Atlantic and Pacific surveys included elevation and route requirements, but also the estimated usage of the timber to be found along the line: "It is the shortest, the best timbered, the best grassed, the best watered, and certainly, in point of grade, better than any other line

40 U.S. Forest Service, Ouachita National Forest, Fs.usda.gov/Ouachita, Accessed October 11, 2011.

41 Faiman-Silva, *Choctaws at the Crossroads*, 86.

42 Beale and Whipple, *Atlantic and Pacific Railroad. Route to the Pacific Ocean on the 35th Parallel: Extracts from Reports of E.F. Beale Esq., and Lieut. Whipple, to the War Department, Showing the Features of This Route*, 15.

between the two oceans.”⁴³ Based on this and other similar reports, the Atlantic and Pacific Railroad planned and secured its line from St. Louis through Missouri, the Indian territory, and on into the far west.

Likewise, when the Union Pacific Railway, Southern Branch Railroad (later the MKT) was completing its initial survey, the railroad noted the abundance of wood along the way. The initial survey, cutting south through the Cherokee land from Kansas to the Creek Nation and beyond to the border of Arkansas, surveyor G. M. Walker noted “Timber for crossties and short span bridges is abundant.” He mentions further, the “oak and hickory timber . . . yellow pine east of Grand river,” would be useful for the railroad.⁴⁴

Railroads utilized timber in a variety of ways. Lumber was shorn into usable pieces for constructing trestles and bridges. Similarly, station houses, shop buildings and support facilities used lumber in their construction. Railroads used two thousand six hundred ties per mile of railroad constructed through the Indian territory. The railroads were in substantial need of ties for continued construction.⁴⁵ Railroads also needed wood as fuel for steam engines, some of which was supplied by timber reserves along the routes.

The Bureau of Indian Affairs also recognized the value of the timber for the various railroads in the Indian territory. In 1869, Ely Parker, the Commissioner of Indian Affairs, sent clear instructions to the president of the MKT to make sure to “allow no

43 Hodges, “F. S. Hodges to President Hayes of the Atlantic and Pacific Railroad: Preliminary Report of the Preliminary Line.”

44 Walker, “G. M. Walker to N. S. Goss,” 5.

45 Masterson, *The Katy Railroad and the Last Frontier*, n. 94.

timber to be cut or removed [from Native American land] except under the Contract.”⁴⁶

From the first interactions, even before crossing the Indian territory, the railroad’s access to timber was circumscribed by federal intervention. The contract, as suggested by the Bureau of Indian Affairs, was to be between the railroad and individual Indians. The commissioner knew the value of the timber to the railroad, but also wanted to protect Native American rights to their property. The commissioner believed a legally binding contract would maintain Native American rights especially since the contract needed to have approval from the Commissioner of Indian Affairs once the railroad offered bonds sufficient to cover the liabilities of creating and operating a railroad in the Indian territory.⁴⁷ The Commissioner’s instructions aligned with Native American desires for timber cut from their land to be used within the Indian territory exclusively and not to be exported. According to Ely Parker, by containing the market for Native American timber, the demand would decrease and logging would be diminished.

The timber industry of the Indian territory began in the 1870s as railroads reached deeper into the region. Despite general disapproval by the Commissioner of Indian Affairs, logging rates increased throughout the end of the 19th century. Beginning in the 1870s, timber was cut at significant rates by a variety of people including legal and illegal residents of the Indian territory. Many of the actual loggers were Americans, very few were Native American.⁴⁸ The importance of this timber cannot be understated, both for the Native Americans and for the nearby whites. Whites entered into the Indian territory

46 Ely Parker, “Ely Parker to Enoch Hoag,” June 14, 1869, Robert S. Stevens Papers, Western History Collections, University of Oklahoma, Norman, Oklahoma.

47 Parker, “Ely Parker to Enoch Hoag.”

48 Faiman-Silva, *Choctaws at the Crossroads*, 71.

illegally to cut and haul timber outside of the region. Many dishonest whites cut timber in unlawful small operations along streams in the forest. Numerous Natives opposed intrusion by whites while others accepted Euro-Americans and their work.⁴⁹

Although few Native Americans participated in cutting trees, Native Americans did not simply oppose timber cutting on their land. Native American governments chose to regulate timber cutting through the creation of a national agent. Each of the Indian nations passed laws that both protected natural resources from encroachment by railroads and individuals while simultaneously providing compensation for the respective Native American nations. By 1873, four sawmills operated in the Choctaw Nation, cutting three million board feet of lumber.⁵⁰ Through the intervention of their governments, Native Americans sought to appease the enterprising interests of members of their tribes while restricting the actions of outside interests in their respective nations.

Lumber and ties were supplied for the various railroads by Native Americans who secured contracts through their national agents. The Cherokee passed a similar law December, 1870 requiring bonds of all Cherokee who wanted to contract with the railroad and bonds for their employees, while also charging a tax of five cents per tie.⁵¹ The Choctaw Timber Law of 1871 further restricted timber use to the construction of the

49 Debo, *The Rise and Fall of the Choctaw Republic*, 145, 136.

50 United States Commission to the Five Civilized Tribes and United States Dept. of the Interior, *Annual Report of the Commission to the Five Civilized Tribes to the United States Dept. of the Interior*, 1904, 124.

51 Robert S. Stevens, "R. S. Stevens to D. W. Bushyhead," June 1, 1881, Box 96, Folder 1, Cherokee Nation Records, Western History Collections, University of Oklahoma Libraries, Norman, Oklahoma.

railroad within the Choctaw nation.⁵² If Choctaw wanted to sell ties to the railroads, the Timber Law of 1871 also created the position of national agent, who was to “make contracts with citizens of the nation and railroad contractors for the procuring and delivery to the rail road contractors such timber and stone as may be needed to construct the railroad through the Choctaw Nation.”⁵³ Railroad managers sought to access the timber for ties and bridges as indicated on the surveys through the Indian country.⁵⁴ Many Choctaw contracted with the MKT and other railroads to supply ties, then hiring out whites as contract workers.⁵⁵ Similarly, the Cherokee National Council also passed regulations allowing members of the nation to contract with the railroad with approval of the government. Ties were purchased for between \$.25 and \$.46 by the railroads for use within the respective Indian Nations.⁵⁶ The Choctaw collected an additional five cent tax on each tie culled from the nation.

Some of the Choctaw contracted for thousands of ties and subcontracted with other laborers to supply those ties. For example, Fritz Sittel made considerable income as a tie subcontractor. Sittel contracted with at least six sub-tie contractors to supply from

52 “Instructions to National Agent,” March 2, 1881, Box 96, Folder 1, Cherokee Nation Records, Western History Collections, University of Oklahoma Libraries, Norman, Oklahoma.

53 “An Act Providing Protections for Timber and Stone in the Choctaw Nation and for Other Purposes,” 1871, Box 3, Folder 26, Choctaw Nation Records, Western History Collections, University of Oklahoma Libraries, Norman, Oklahoma; Faiman-Silva, *Choctaws at the Crossroads*, 66, 81.

54 Sandra L. Faiman-Silva, “Tribal Land to Private Land: A Century of Oklahoma Choctaw Timberland Alienation from the 1880s to the 1980s,” *Journal of Forest History* 32, no. 4 (October 1, 1988): 195, doi:10.2307/4005036.

55 Claims, Contracts and Agreements (1888-1920), Rogers-Neill Collection, Box 1, Folder 5, University of Oklahoma, Norman, OK.

56 Levi Parsons, “Levi Parsons to George Dennison,” February 15, 1873, Box 1, Robert S. Stevens Papers, Western History Collections, University of Oklahoma, Norman, Oklahoma.

2500 to 2800 crossties each to the Choctaw Coal and Railway in 1890, approximately 15,000 ties.⁵⁷ He “paid the Choctaw Government seven cents for each tie and the company paid me thirty-nine cents each tie.”⁵⁸ “Whites worked in the timber cutting wood for ties in exchange for protection by Native Americans from expulsion from the region. Bonds needed to be filed and permits secured for every white person in the Indian territory. Sittel was just one of many enterprising members of the Choctaw nation who gained substantial wealth from relationships with the railroads.

Native Americans and the Commissioner of Indian Affairs attempted to control the physical infringement on timber. With little recourse against theft by outsiders, the Cherokee and Choctaw passed laws that established systems to manage resource procurement by railroad interests while providing income and manageable restrictions on natural resources.⁵⁹ The use of national agents protected Native Americans while resource management acts protected resources and provided income for the individual tribes. The Missouri, Kansas and Texas Railway, the Atlantic and Pacific Railroad, and the Southern Kansas Railroad all paid taxes to Native Americans for ties taken from Native land. The ties were not to be used on railroad construction outside of the territory, but the Native Americans – and the Bureau of Indian Affairs -- lacked police enforcement

57 Claims, Contracts and Agreements (1888-1920), Rogers-Neill Collection, Box 1, Folder 5, University of Oklahoma, Norman, OK.

58 Fritz Sittel, “Second Interview with Fritz Sittel, McAlester, Oklahoma,” in *Indian Pioneer History*, vol. 84 (Works Progress Administration, 1937), 42.

59 Sandra Faiman-Silva suggests the Choctaw were totally vulnerable to white encroachment over tribal resources since illegal whites were not legally tribal members and were not subject to tribal laws and therefore there was no way for Native Americans to police them. Faiman-Silva, *Choctaws at the Crossroads*, 63–64.

ability. The Choctaw effectively worked with the railroads to create boundaries within which both the railroad and the Native Americans would benefit.

The timber law attempted to restrain white encroachment on Choctaw land, yet timber cutting continued nearly unabated within the Choctaw lands. Sawmills and sawyers populated the Indian territory, especially in small encampments away from major population centers. One former logger claimed there were over two hundred loggers and timber workers in the Kiamichi Valley of the Choctaw Nation, not working directly for the railroads by 1886.⁶⁰ Some sawmills were local operations using a few loggers and a portable steam-driven saw. These small operations provided a correspondingly meager income but demonstrate the difficulty of regulation of whites within the Indian territory.

One of the families that attempted to take advantage of the legal ambiguity of the Indian territory was the Riddle family. Like many others in 1867, following the Civil War, Polly Riddle and her family moved from Arkansas to the Indian territory. Her father had worked on sawmills in Arkansas and went to work for a Mr. Armstrong on his portable sawmill within the Choctaw Nation.⁶¹ Although the legality of the Riddle family's migration is uncertain, the timber resources and possibility of employment drew the family to the space.

Whites within the Indian territory were occasionally removed by tribal police, but the "lighthouse" could not maintain vigilant border patrols. They were simply unable to

⁶⁰ Debo, *The Rise and Fall of the Choctaw Republic*, 141. Also, see testimony on U.S. Congress, S. Rep. 1278, 49th Cong., 1st sess., 1886, 2363: 246.

⁶¹ "Interview with Polly Riddle," in *Indian Pioneer History*, vol. 8 (Oklahoma City, Oklahoma: Works Progress Administration, n.d.), 84.

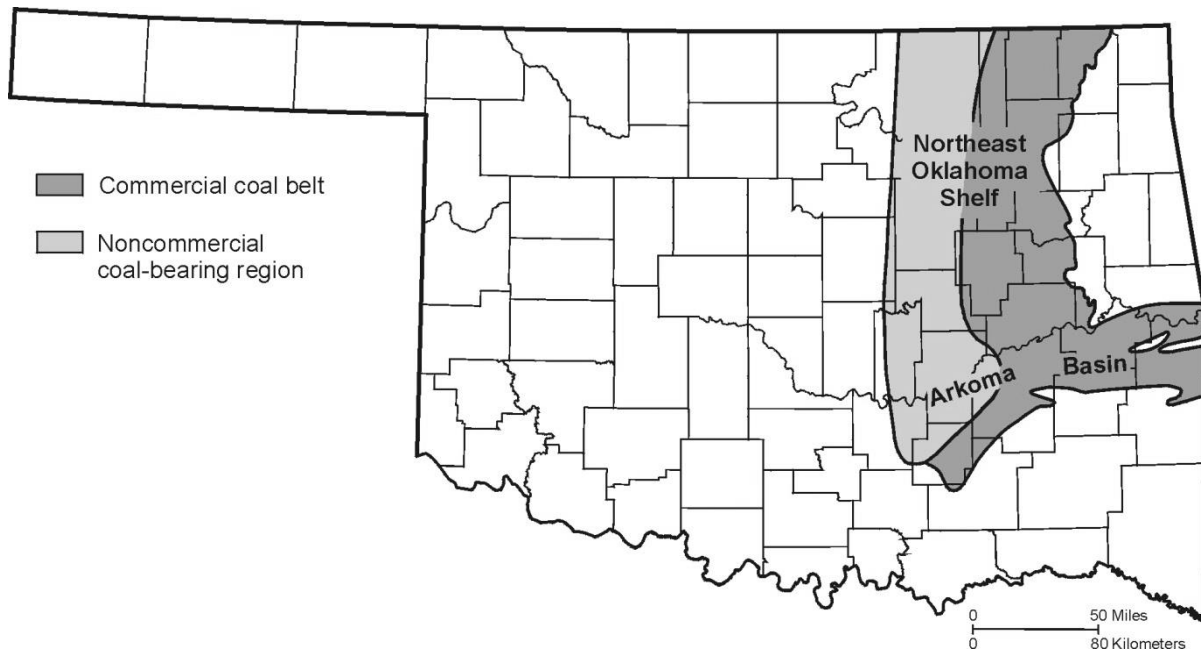
remove all intruders. Furthermore, federal laws either did not apply to the Indian territory or were unenforced against illegal timber cutting.⁶²

Timber reserves and similar natural resources proved instrumental in forging a relationship between railroads and the nations of the region. The railroads wanted the resources within the Indian territory and Native Americans were willing to negotiate with railroads to provide access, for a fee. Rather than simply opposing timber cutting, Native Americans worked with lumbermen and railroads to secure a price for timber and regulate illegal cutting activities. Policing logging by Native Americans proved difficult in light of the number of extralegal camps and the legal ambiguity whites exploited within the region. Despite the awkward political situation, Native Americans continued to work with railroads and their logging interests.

* * * * *

Early explorers and naturalists discovered coal within the Indian territory, but the Cherokee, Choctaw, Creek and Chickasaw knew about the coal within their region since before their forced migration. The Cherokee, Choctaw and Chickasaw understood the importance of the coal within their lands. Coal acted as a magnet for the western railroads, pulling railroads towards the resources readily apparent on the ground and along outcroppings. Where the railroads could, they directed their tracks so the right of way for the railroad encompassed the outcroppings, allowing the railroad to claim the coal found along the route. Several significant coal outcroppings along the MKT route reveal the importance of coal to the railroad.

62 Faiman-Silva, "Tribal Land to Private Land," 194.



4 Modern Commercial Coalfields of Oklahoma. Oklahoma Geological Survey Map
<http://www.ogs.ou.edu/coal/images/commercialcoalfield.jpg>

The Missouri, Kansas and Texas Railroad plotted its route to Texas initially based on the most economical route through the Indian territory. Avoiding major grades and extensive bridging, the railroad wanted a direct line – while keeping a view out for the potential future land grants. The intention was to connect the markets of Texas with the markets of the north. The MKT directors hoped it would be through their railroad that Texas would be opened to northern trade following the Civil War.⁶³

The initial business model of the Missouri, Kansas and Texas Railway for the Indian territory changed due to the actions of James J. (J.J.) McAlester. McAlester recognized the potential value of local coal outcroppings to the railroad. While the MKT

⁶³ *Missouri, Kansas & Texas Railway Co First Annual Report 1871* (New York: Office of Starr & Ruggles, 1871).

railroad was being surveyed and constructed in 1870, McAlester mined and shipped a wagon of coal to the railhead at Blue Jacket, several miles south of the Kansas border. McAlester presented the coal to the railroad officials there who in turn shipped it to the company operations at Sedalia, Missouri. The Missouri, Kansas and Texas Railroad determined that the coal was of a high quality. This was exactly what the railroad needed, declaring that it was even the “best steam coal west of Pennsylvania.”⁶⁴ By 1890, coal publications advertised the coal as the “best yet west of the Mississippi.”⁶⁵

Others besides McAlester wanted access to the coal in the Indian territory. In May of 1870, C.N. Stanley wrote to the Secretary of the Interior inquiring about “the Indian reservation between Arkansas and Northwestern Texas, where white men cannot now remain, if a man by taking his own risk finds, or in the past has found, mining lands, he can get a right or permit” to those lands.⁶⁶ Similar questions were posed of the Chickasaw granting lands for mines in 1871.⁶⁷ McAlester was in the enviable position for maximizing his profits.

Subsequent chemical analysis of Indian territory coal largely verified this initial claim. The majority of coal in the Indian territory was high-quality bituminous. Coal is “ranked” based on physical and chemical properties, such as heating value, moisture, carbon, ash characteristics and presence of associated minerals, especially sulfur. Lignite,

⁶⁴ Nesbitt, “J. J. McAlester.”

⁶⁵ Frederick Edward Saward and Sydney A. Hale, *The Coal Trade: The Year Book of the Coal and Coke Industry*, 1890, 33.

⁶⁶ Stanley, “C. N. Stanley to J. D. Cox,” 244.

⁶⁷ F. A. Walker, “F. A. Walker in Response to F. P. Blair,” December 27, 1871, 244, Exhibit No. 3, Senate Committee on Territories, Report to Accompany Bill S. 1802, 45th Cong., 3d Sess., 1879, S. Report No. 744, 244.

or brown coal is the lowest quality, then sub-bituminous, bituminous, semi-bituminous and finally anthracite, or stone-coal.⁶⁸ Each type of coal had a variety of uses in the late 1800s. Bituminous coal was used primarily as industrial fuel since anthracite was relatively smokeless and better suited for domestic heating. The Missouri, Kansas and Texas railroad eagerly pursued the coal deposited in the region. In the region of the Indian territory, bituminous coal for railroad engines was exactly what the Missouri, Kansas and Texas Railroad needed.⁶⁹

The coal McAlester advertised was part of a large coal field that covered most of the Indian territory. The coal in the Indian territory is part of the Western Region of the Interior Coal Province, comprising approximately 14,500 square miles. The area extends about 185 miles south of the Kansas Border and 110 miles west from the Arkansas border.⁷⁰ The vast region of coal outcrops prominently in several places in the region, notably at the intersections of the Texas and California Roads, where McAlester located his trading post.

McAlester put himself in a strong economic position following the Civil War. McAlester understood the value the railroad represented to his trading post and sought to

68 The initial prohibitions on coal exportation passed by the Cherokee Nation, the Act on Stone Coal, did not refer only to anthracite, but to all varieties of coal in the nation. Morris, *Drill Bits, Picks, and Shovels*, 85; Temin, *Iron and Steel in Nineteenth-Century America*, 200–203.

69 Joseph T. Lambie, *From Mine to Market: The History of Coal Transportation on the Norfolk and Western Railway* (New York: New York University Press, 1954), 70–73.

70 Lambie, *From Mine to Market: The History of Coal Transportation on the Norfolk and Western Railway*; L. W. Bryan, *Annual Report of the Mine Inspector for the Indian Territory to the Secretary of the Interior for the Year Ending June 30, 1895* (Washington, DC: G. P. O., 1895), 5.

encourage his trade by influencing the railroad to route their tracks to his post.⁷¹ In addition to working to secure railroad traffic, he also later acted as a cattle merchant, trader and prospector, titles all afforded to him through his status as an intermarried citizen of the Chickasaw Nation. Citizenship within the Choctaw Nation was conferred on him through his marriage to Rebecca Burney, a member of the Chickasaw nation.⁷² McAlester's wife, Rebecca Burney, secured his political connections through her family connections. In the Chickasaw matrilineal family structure Rebecca Burney carried more political and cultural power into the marriage than McAlester. His brother-in-law, Benjamin Burney, eventually became the Principal Chief of the Chickasaws from 1878 to 1880. Similarly, this powerful woman, Rebecca Burney, transferred her power to her husband through her marriage, including her identity. McAlester renounced his American citizenship to become a member of the Chickasaw nation. Through his marriage to Burney, McAlester treaded in the murky waters of tribal citizenship and white culture, attempting to profit from both.

71 McAlester's importance to the region cannot be understated. He prospected coal, ran a trading post, sold town lots and eventually served in the state legislature. Nesbitt, "J. J. McAlester," 758; Oliver Knight, "An Oklahoma Indian Trader As a Frontiersman of Commerce," *The Journal of Southern History* 23, no. 2 (May 1957): 203–219, doi:10.2307/2955314.

72 Paul Nesbit suggested that J.J. McAlester's strong personality propelled him to powerful positions. As the region surged toward national inclusion, McAlester occupied mediating positions on various boards, eventually becoming the Lieutenant Governor of Oklahoma in 1911. Nesbitt, "J. J. McAlester," 758.

Gene Aldrich argued that McAlester only served as an intermediary between coal companies and Native Americans as evidenced by his shifting positions within the Choctaw and Chickasaw Nations, but finally culminating in his Lieutenant Governorship.

Clara Sue Kidwell's recent scholarship argues that J.J. McAlester's power hinged on the political connections of his wife rather than his persona. Kidwell, *The Choctaws in Oklahoma*, 103.

McAlester, like other traders of the nineteenth century expanded his enterprise as much as possible into the region he worked. The laws of the Choctaw Nation permitted a person to operate a coalmine if they were members of the nation. McAlester promptly opened a mine near his trading post and made sure to secure the rights of several other local mines.⁷³ McAlester expected the railroad to develop an increased demand for fuel and figured out ways to secure a steady supply of coal through his mines.

McAlester enticed the railroad with a promise of longevity through the access to readily available fuel. If McAlester and the railroads' plans came to fruition, the MKT Railroad would have ready coal access while providing McAlester with the commerce associated with railroad traffic. McAlester understood the income that railroad traffic would bring, and believed in the inevitability of the railroads. He chose to operate in cooperation with the Missouri Kansas and Texas Railroad, an arrangement that proved economically profitable. This profit was at the expense of his relationship to the Choctaw Nation.

McAlester served as a bridge between the economic cultures represented by the railroad and the Choctaw nation. McAlester's interest in coal extended only as far as it was profitable. McAlester relinquished the mining operation as soon as he was able, hiring outsiders to work for him and develop his mines. McAlester provided the railroad an opportunity to expand within the Indian territory despite the treaty obligation to operate only within a regulated field. McAlester's connection effectively freed the railroad from the restrictions of a corporation acting within the laws of the nation by

⁷³ McAlester worked with D.M. Hailey, Tandy Walker and his wife, Rebecca McAlester, to lease several mines for operation by the Osage Coal and Mining Company. The leases lasted for fifteen years. "Lease," Exhibit No. 23, Senate Committee on Territories, *Report to accompany bill S. 1802*, 45th Cong., 3d Sess., 1879, S. Report No. 744, 261.

allowing his personal connection to the Choctaw coal to usurp the restrictions of the Choctaw nation.

The importance of coal in the Indian territory to the Missouri, Kansas and Texas Railroad cannot be understated. At least seven major coal producing points emerged along the railroad in the most important coal producing areas in the Indian territory.⁷⁴ Vinita, McAlester, Krebs, Cherryvale, Savanna, Atoka, Lehigh and Coalgate all became major coal producing areas along the MKT railroad. Krebs, five miles east of McAlester, gained railroad spurs as early as 1877. From its inception, the MKT aimed to acquire coal production.⁷⁵ Robert Stevens, manager of the MKT believed that at its building through the Choctaw territory, the railroad “secured just as good land . . . and more coal than we can get out within the next five years.”⁷⁶

In June 1872, the Osage Coal Company leased from Joshua Pusley his coal claim within the Choctaw Nation.⁷⁷ Pusley discovered coal and established a lease based on the Choctaw limitation of one mile in every direction. The Pusley family subsequently entered into a lease with the Osage Coal Company, managed by Robert S. Stevens, the manager of the MKT. The Pusley family was paid one-half of one cent for every eighty-five pound bushel of coal extracted and sold from the mine.⁷⁸ The holdings of this first

⁷⁴ Bryan, *Report*, 1895, 3.

⁷⁵ Sittel, “Second Interview with Fritz Sittel, McAlester, Oklahoma,” 39–40.

⁷⁶ Robert S. Stevens, “Robert S. Stevens to George Dennison,” June 19, 1871, Robert S. Stevens Papers, Western History Collection, University of Oklahoma, Norman, Oklahoma.

⁷⁷ H. T. Lemist, “H. T. Lemist Superintendent Osage Coal and Mining Company to G.W. Ingalls, Indian Agent,” November 16, 1875, 267, Senate Committee on Territories, Report to accompany bill S. 1802, 45th Cong., 3d Sess., 1879, S. Report No. 744.

⁷⁸ Lemist, “H. T. Lemist Superintendent Osage Coal and Mining Company to G.W. Ingalls, Indian Agent,” 248.

mine might have been overlooked, since coal was only mined in small bushels. Even before the MKT was completed through to Texas, the railroad secured fuel supplies within the Indian territory.

The MKT quickly developed mines in the region through its subsidiary company. The Osage Coal and Mining Company, acquired by the Missouri, Kansas and Texas railroad by November of 1872, operated mines along the railroad at McAlester.⁷⁹ Robert Stevens noted the needs of the company to begin extracting coal in writing to the vice-president of the railroad: “a small engine (say 8 to 10 horsepower) for hauling out cars (small ones) of coal & pumping out water. Some small houses (not over three) for miners to live in, also at station, coal schutes[sic] for giving coal to Locomotives.”⁸⁰ Stevens’ small initial investment reveals the limited vision the MKT had for the coal mines of the Indian territory. Despite not having any rights to the coal or any way to get to it, Stevens wanted the coal “to prepare for the opening of road there to Texas & securing a heavy trade there.”⁸¹ The five-foot vein of coal at McAlester would be sufficient to power the railroad through to Texas.

Robert S. Stevens used his leadership of the Missouri, Kansas and Texas Railroad to seamlessly manage the coal business as directed by H.T. Lemist, superintendent of the Osage Coal & Mining Company. By the end of 1873, Lemist suggested that the MKT

79 The Osage Coal and Mining Company, like other corporations of the era, used several names in a variety of documents. The Osage Coal and Mining Company was also known as the Osage Coal Company, the Osage Mining Company and the Osage Company. All names referred to the same company that acted as a subsidiary of the MKT.

80 Robert S. Stevens, “Robert Stevens to Francis Skiddy,” November 8, 1872, Robert S. Stevens Papers, Western History Collection, University of Oklahoma, Norman, Oklahoma.

81 Stevens, “Robert Stevens to Francis Skiddy.”

could be shipping “at least 100 car loads, or 1000 tons of coal per day, outside of what is used by the Railroad Company.”⁸² The railroad swiftly transitioned from measuring its coal production in eighty-five pound bushels to two-thousand pound tons. Coal mining grew in importance to the railroad.

As soon as Stevens and Lemist recognized the potential production of the coal located along the MKT, they also realized the compounded difficulties of mining coal within the Indian territory. Two major difficulties presented themselves to the Osage Coal and Mining Company. First, the mines could not be owned directly by the railroad or the coal company. The mines were the property of the Native American nations, claimed by individual members of the said nations and subsequently leased to the mining company. There was no avenue for outside ownership of mines within the Indian territory. Secondly, the mining district was a considerable distance from other mining areas and not within a regular state or territory, leaving miners with little security for their positions. Both of these difficulties left few miners willing to relocate themselves and their families to the Indian territory for work. Those that did come faced new difficulties and were recognized for their willingness to work in a new coalfield.

* * * * *

The Choctaw government recognized that it had overlooked the potential value coal retained through allowing its citizens to lease their mines to outsiders. Leases like those of the Pusleys were receiving up to over one thousand dollars per month in lease

82 Robert S. Stevens, “Robert Stevens to Levi Parsons,” October 10, 1873, Robert S. Stevens Papers, Western History Collection, University of Oklahoma, Norman, Oklahoma.

income.⁸³ Members of the Choctaw nation began writing letters to the *Vindicator*, the Choctaw newspaper, expressing their aversion to the emerging coal situation and envy to the wealth generated. In several letters to the editor, Edmund McCurtain writing as “Tuskahoma,” complained in detail about the monopoly of the Osage Coal Mining company at McAlester. Tuskahoma claimed that Robert S. Stevens was pocketing the income due to the Choctaw people – as much as fifteen hundred dollars at a time, while he proudly “turned over \$1,500 to the Choctaw Council, with a grand display” in royalty payment.⁸⁴ Instead of protesting against the concept of outsiders taking coal from the Choctaw, Edmund McCurtain called for increased competition by introducing more mining companies into the Choctaw Nation: “Let a law be passed breaking up this Osage monopoly, and invite capitalists to open our coal mines.”⁸⁵ McCurtain, like other Native Americans, sought a profit-making enterprise based on accumulation of wealth through private or semi-private property.⁸⁶

The Principal Chief of the Choctaw, Coleman Cole, took notice and offense at the continually emerging economic situation.⁸⁷ By 1875, Coleman Cole and the General

83 At 0.005\$/bushel, one ton of coal would yield \$0.0588 or just over five cents per ton, but at 1000 tons per day (Lemist’s optimistic figure) over 20 working days per month, the payment would be \$1176.74. Lemist, “H. T. Lemist Superintendent Osage Coal and Mining Company to G.W. Ingalls, Indian Agent,”.

84 Tuskahoma, “Letter of Tuskahoma to Editors Vindicator.”

85 Tuskahoma, “Letter of Tuskahoma to Editors Vindicator.”

86 Historian Alexandra Harmon reveals the long tendency of many members of Native nations to participate in wealth-generating enterprises that Euro-Americans promoted, but aboriginal ancestors disdained. Harmon, *Rich Indians: Native People and the Problem of Wealth in American History*, 135.

87 Coleman Cole was the elected Principal Chief of the Choctaw, representing the traditionalist, conservative Shaki (Buzzard) Party. His tenure was marked by staunch refusal to

Council of the Choctaw took action to prevent any further working of the coal mines within the territory, ordering the Osage Coal and Mining Company to cease operations based on the allegation that the original leases were illegally obtained.⁸⁸ With no other action taken on the mining situation, Cole called for the arrest of J.J. McAlester, William Pusley, Tandy Walker and Robert Ream, on September 22, 1877, the primary lessees of the original Pusley mine. The arrest warrants did not contain a charge, but it is probable the arrests stemmed from the leasing coal mines without consent of the General Council, possibly as evidenced by the construction of a switch of the MKT to the coal mines to easily provide coal for the railroad.⁸⁹ Coleman Cole sent out the Choctaw Lighthorse who arrested three of the four, only to have them escape on a railroad hand cart.⁹⁰

The sentiments of Edmund McCurtain writing as “Tuskahoma” and Coleman Cole demonstrate the strong divisions within the Choctaw nation regarding the natural resources therein. McCurtain wanted the mines to not just continue producing coal, but wanted competition to raise the prices. Cole wanted to remove all Euro-American presence in the Choctaw nation, including coalmines, coal miners, railroads and

negotiate the resources of the Choctaw Nation. John B Meserve, “Chief Coleman Cole,” *Chronicles of Oklahoma* 14, no. 1 (March 1936): 9–21.

88 Senate Committee on Territories, *Report to accompany bill S. 1802*, 45th Cong., 3d Sess., 1879, S. Report No. 744, 262.

89 “An Order of Arrest by Coleman Cole,” *Star Vindicator*, September 22, 1877, McAlester, Oklahoma. Subsequent Congressional testimony suggested that the arrest was to prevent violence between Robert Ream and an unnamed assailant for a murder committed on J.J. McAlester’s property. The question was raised, but no resolution or evidence was provided to verify the charge. Senate Committee on Territories, *Report to accompany bill S. 1802*, 45th Cong., 3d Sess., 1879, S. Report No. 744, 60-95.

90 Meserve, “Chief Coleman Cole,” 13; Nesbitt, “J. J. McAlester,” 763.

railroaders. By 1878, Coleman Cole's tenure as Principal Chief expired and coal mining continued, although not at the rate Edmund McCurtain desired.

The Osage Coal Company mines supplied coal exclusively to the MKT railroad. The MKT used the Indian territory coal exclusively to power its locomotives. The entire line felt any disruption in fuel supplies for the railroad. The fuel agent for the railroad predicted future potential difficulties along the "Choctaw Line." Ira Hubbell wanted McAlister Station to have "chutes of sufficient capacity to coal eight engines at any one time. It should be also arranged so that at least 3,000 bushels of coal should be stored beneath the pockets (as at Sedalia) to provide against strikes."⁹¹ These 127 tons of coal in reserve were to allow the engines to proceed through the region and onto the next fueling stations, no matter the labor situation. Local fuel supplies carried potential importance for the town of McAlister.

Coal mines were but one component of the regulation imposed by Native Americans on their lands. In order to mine coal, Euro-Americans needed to get permits from the respective Native American nations. Railroad workers were exempt from the permit requirements.⁹² Permits were issued only with the endorsement of a known Native American and the payment of a bond for between one thousand and five thousand dollars. Hiring many men to work the mines remained financially difficult for the Osage Coal Company. It would take a significant investment to produce the required number of workers for the Osage Coal Company.

⁹¹ Ira C. Hubbell, "Report of the Fuel Agent," in *Reports and Statements for 1876* (New York: Evening Post Steam Presses, 1876), 81.

⁹² Rouse, Hagerman, and Hedge, *Missouri, Kansas & Texas Railway System: Charters and Muniments of Title*.

For ten years, from 1872 to 1882, the Missouri, Kansas and Texas Railway and the Atlantic and Pacific Railway were the sole railroads in the region. During those ten years, the MKT developed and increased its coal mining efforts while the A&P failed to secure a continued right of way through the Cherokee nation. It was during these ten years that the MKT's subsidiary companies mined coal from along their rights of way, gradually building spur lines and small branch lines to coal leases. The spur lines were relatively minor efforts, using worn rails to build to the mines, yet significant for the connections they established from the central corridor to the periphery. Railroads and their coal companies continued to develop the local mines, driving deeper and pushing farther underground.⁹³

In 1880, the Missouri, Kansas and Texas Railroad changed significantly as the railroad became part of Jay Gould's growing system. Between 1879 and 1880, Jay Gould and his associates purchased and resold the Kansas Pacific to the Union Pacific, realizing a huge profit. Gould reinvested this money into the Missouri Pacific, what historian Richard White called "another broken-down would-be transcontinental."⁹⁴ Gould then used the MKT as his lynch-pin for a new railroad system that included the Wabash, the Missouri Pacific and the Texas and Pacific. The mines of the Indian territory and those along the MKT route would supply the coal for the entirety of the new Gould system.

93 See Chapter 6 for more on mine development and its impacts.

94 White, *Railroaded*, 195–197.

Gould continued to expand his interests in the region. The Osage Coal Mining Company also became part of the Gould businesses, with Edwin Gould (Jay's son) as president.⁹⁵

By 1882, the Indian territory began attracting new outside interest. Several events coalesced to build interest in the region. In 1876, the growing St. Louis and San Francisco Railroad (Frisco) purchased the Atlantic and Pacific Railroad, but maintained the name in order to eventually profit from the promised land grants, which had been made in the name of the Atlantic and Pacific Railway.⁹⁶ Six years later, there was no new land grant secured, but the financial situation of the railroad changed. Jay Gould purchased an interest in the Frisco in January of 1882, securing his involvement in both railroads within the Indian territory.⁹⁷ Gould's continued interest in the Indian territory alarmed many people as his reputation as a shrewd manager betrayed his interests in the railroads of the region.

The Frisco acquired enough funds and began extending its line to the west beyond Vinita in 1882. The railroad hired the firm of Hobart-Gunn Construction from Oswego, Kansas to complete the grading out from Vinita.⁹⁸ Following the recognition of the continued growth of the A&P, enterprising members of the Cherokee nation worked to secure every measure of income from the wealthy railroads they could. Some worked to

95 L. W. Bryan, *Annual Report of the Mine Inspector for the Indian Territory to the Secretary of the Interior for the Year Ending June 30, 1893* (Washington, DC: G. P. O., 1893), 23.

96 Miner, *The St. Louis-San Francisco Transcontinental Railroad*, 97.

97 Maury Klein, *The Life and Legend of Jay Gould* (Baltimore: The Johns Hopkins University Press, 1986), 271.

98 W.T. Holland, "Interview with Graham E. Lowdermilk," in *Indian Pioneer History* (Oklahoma City, Oklahoma: Works Progress Administration, 1937).

secure profits from the railroad along its route beyond Vinita including potential coal mines.⁹⁹

The Cherokee nation loosed the reins on their control of the coal trade when they passed the Mineral Law of 1882. The Mineral Law reinforced the common ownership of the minerals within the Cherokee Nation, but also gave the right to mine to members of the Cherokee nation. Most importantly for the bill, it allows any citizen to associate with “any person or persons other than of this Nation with him or them for that purpose [establishing coal mines].”¹⁰⁰ This is a clear recognition of the increasing expenses associated with coal mining and mineral extraction that the Cherokee nation authorized. The Cherokee recognized within the bill the prohibitive cost of mining coal, but also the potential value the coal would have to the nation through a tax of ten cents per ton of coal mined.

Outside interest in the Cherokee nation’s coal deposits continued to grow after 1882. Individuals sought the readily apparent coal, acting as individuals and as corporations. The Cherokee national treasurer was inundated with coal mining applications. The Cherokee coal vein “running through that country is thin, being at the best 20 to 30 inches in thickness, averaging possibly 24 inches.”¹⁰¹ However, the lack of quantity was mitigated by the ease of access as, “the coal lies near the top of the ground”

99 D. W. Lipe to Chambers, Cherokee National Records, Oklahoma Historical Society, Oklahoma City, Oklahoma, Box 96, Folder 1.

100 “Mineral Law Approved December 15, 1882,” December 15, 1882, Box 86, Folder 1, Cherokee National Records, Indian Archives Collection, Oklahoma State Historical Society, Oklahoma City, OK.

101 Bryan, *Report*, 1895, 53.

and was along the railroad route.¹⁰² Compared to five-foot thick seams in the Choctaw nation, the Cherokee coal was a minor deposit, but at the height of the search for energy sources, the potential wealth of the Cherokee nation remained valuable.¹⁰³

Along with applications for coal mines came complaints. Numerous letters charge individuals with mining illegally within the Indian territory. The Solicitor of the Delaware District of the Cherokee Nation wrote to the Principal Chief, Dennis W. Bushyhead about one “Wasson who is a citizen of Kansas and who is monopolizing all the coal beds on Russell Creek in Cooweescoowee and Delaware Districts.”¹⁰⁴ Similarly, S. S. Stevens reported numerous people “all digging coal without license.”¹⁰⁵ The relative value of the Cherokee coal seams was weak compared to the Choctaw claims, however, the mere presence of coal pushed interested parties to working the land, sometimes in extra-legal manners. The Cherokee deposits developed interest in the wealth of the nation and a general concern for income.

Railroads, especially the Missouri, Kansas and Texas railway, developed coal mines to power their locomotives. For ten years, the railroad operated a near monopoly of coal mines within the Indian territory. Despite some opposition by Native American governments, the railroads operated in conjunction with many Indians to procure and

102 Bryan, *Report*, 1895, 53.

103 Morris, *Drill Bits, Picks, and Shovels*, 86.

104 Sut Beck, “Sut Beck to D. W. Bushyhead,” July 29, 1882, Box 86, Folder 3, Cherokee National Records, Indian Archives Collection, Oklahoma State Historical Society, Oklahoma City, OK.

105 S. S. Stevens, “S. S. Stevens to Henry Chambers,” October 18, 1885, Box 86, Folder 5, Cherokee National Records, Indian Archives Collection, Oklahoma State Historical Society, Oklahoma City, OK.

secure the raw materials of the Indian territory. Upon the involvement of Jay Gould in railroad affairs, national interest in the region shifted from reluctant permission for coal mines or railroad tracks, to opposition to the expansion of Jay Gould's railroad empire. Railroads developed interest in the coal deposits, no matter how small, throughout the Indian territory. The natural resources of the region transformed the interest in the region from a tunnel, to a potential corridor of industry.

CHAPTER 5 - THE EVOLUTION OF RAILROAD REGULATION IN INDIAN
TERRITORY: AN OBSTACLE TO COMMERCE OR PROTECTING THE INDIANS
IN THEIR JUST RIGHTS?

“Authority to so construct said railroad is not recognized by any existing treaty”

T. W. Willie, Treasurer for Saint Louis
and San Francisco Railway Company, 1882.

Two years after the conclusion of the Civil War, the former Confederate General Stand Watie joined his younger cousin, Elias Boudinot, in the tobacco business. Tobacco was lucrative, and in the post-bellum era, there was limited supply and a strong demand. In addition to the regular usage for tobacco, tobacco provided an easy-to-use and high-demand product for exchange in the cash-poor the area of Kansas, Missouri, Arkansas and the Indian territory following the Civil War. Both chewers and smokers wanted plug tobacco and it became a basis for exchange with a relatively stable rate.¹

Local farmers grew tobacco for “plug,” but had to ship it to factories in St. Louis or Louisville for processing. The factories returned the finished product to its area of origin. Small farmers in tobacco country often grew tobacco as a source of cash and a trade good throughout the South. Missouri and Arkansas provided a potentially lucrative market for plug-tobacco, but the shipping costs significantly inflated the price of plug.

Watie and Boudinot sought to capitalize on the market by cutting out the shipping costs and locally processing the tobacco. They established a factory to convert raw tobacco into plugs. Boudinot brought in machinery from Missouri that allowed them to

¹ David O. Whitten and Bessie E. Whitten, *The Birth of Big Business in the United States, 1860-1914: Commercial, Extractive and Industrial Enterprise* (Westport, Conn.: Praeger Publishers, 2006), 86.

process five thousand pounds of tobacco per day. The process of sweetening, compressing, weighing and packaging the tobacco employed over one hundred people. They shipped the product to various locations, including Kansas, Missouri and Arkansas. Of course, Boudinot and Watie sold the finished plug in the Indian territory as well.²

Watie and Boudinot used their family land settlement for the factory grounds. The two factory buildings were only one hundred yards west of the Arkansas boundary and four miles south of the Kansas line. Established at Wet Prairie in the Cherokee Nation, the factory was sufficiently close to the borders of Arkansas, Kansas and Missouri for easy shipment into the surrounding area. Watie and Boudinot sold their tobacco throughout the Cherokee and Creek nations, as well as into Kansas, Missouri and Arkansas.

Not content with only cutting out the shipping costs, Boudinot and Watie also attempted to avoid paying federal taxes on their product. Boudinot and Watie counted on a loophole in the tax code to avoid paying taxes. The Revenue Act of 1862 imposed excise taxes on numerous goods including alcohol and tobacco.³ To pay the excise tax, the seller needed to pay for excise stamps and attach them to each plug. The U.S. Internal Revenue Office sold stamps in the relevant taxation districts. Since the Cherokee Nation was within the Indian territory, it was also outside of any taxation district. Boudinot believed this would exempt him from paying tax.

² James W. Parins, *Elias Cornelius Boudinot: A Life on the Cherokee Border* (Lincoln, Nebraska: University of Nebraska Press, 2008), 89.

³ *An Act to Provide Internal Revenue to Support the Government and to Pay Interest on the Public Debt, Statutes at Large*, vol. XII, 1862, <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=012/llsl012.db&recNum=520>.

Boudinot also understood the relationship between the Cherokee Nation and the United States as defined by the recent Treaty of 1866. As part of the Cherokee delegation on the 1866 treaty, he clearly understood the contents of the treaty.⁴ Specifically, article 10 of the 1866 treaty provided that the Cherokee

shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying any tax thereon which is now or maybe levied by the United States on the quantity sold *outside* of the Indian territory.⁵

The treaty situated the businesses within Indian territory in a perplexing position. If they wanted to sell their products outside of the territory, they were required to buy tax stamps. However, they believed they were outside of the effective taxable zone since there was no U.S. Internal Revenue Office for the Indian territory. There was no way for the factory to purchase tax stamps since it was outside of any tax district. Watie and Boudinot were clearly within their rights to sell their products within the Cherokee Nation, but their rights to sell and obligation to pay tax for products manufactured within the Indian territory yet sold outside of it remained unclear.

To fix the loophole in the tax code, especially in light of Boudinot and Watie's factory, Congress rewrote the tax code in July 1868. The revised law, the 1868 Internal Revenue Act, stated, "That the internal revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff and cigars, shall be held and construed to extend to such articles produced anywhere within the *exterior boundaries* of the United States,

⁴ The Southern Cherokee delegation consisted of John Ridge, Saladin Watie, Elias Boudinot, and William Adair. Alexander Gardner, *A Group of Distinguished Cherokee Indians*, Negative, 1866, Negative 1063 I, National Anthropological Archives, Smithsonian Institution.

⁵ Kappler, *Indian Affairs*, 2:945.

whether the same shall be within the collection district or not.”⁶ The “exterior boundary” refers primarily to the Indian territory. Clearly, the prior tax exemption for the Indian territory did not apply since the new law incorporated the Indian territory into the legal framework. The federal government extended its domain over the exterior boundaries, which included the Indian territory, changing the relationship between indigenous people and the federal government by making the Native Americans fiscally subservient and strengthening the bonds through regular interactions between the governments.

The treaty and the legislation were in conflict with each other. The treaty clearly allowed the Cherokee to grow, process, and most importantly, sell tobacco in the Indian territory without taxation, or “restraint” to use the language of the treaty.⁷ The federal legislation taxed all tobacco, no matter where it was grown or sold. The treaty allowed Native Americans to transport and sell their products “without restraint” in the Indian territory. The legislation imposed restraints on the sale of tobacco everywhere, including the Indian territory. The resolution between the Cherokee Treaty of 1866 and the Internal Revenue Act of 1868 came from the Supreme Court in 1871. The question for the Supreme Court to decide was whether a law passed by Congress and signed by the President had precedent over a treaty signed between representatives of the federal government and Native Americans.

Because of the legal dispute, revenue agents impounded thousands of pounds of Boudinot’s tobacco for the tax revenue the tobacco would generate if sold. The revenue agents confiscated the tobacco for not having stamps to indicate tax payment. Boudinot

⁶ *Italics mine*, Cherokee Tobacco, 11 Wall. 616 (U.S. Supreme Court 1870).

⁷ Kappler, *Indian Affairs*, 2:945.

believed he previously secured the permission to transport and sell the tobacco plug based on letters from Deputy Revenue Commissioner Risley.⁸ Boudinot was willing to notify revenue agents and pay tax. However, President U.S. Grant appointed Columbus Delano the commissioner of Internal Revenue who was determined to collect taxes on all tobacco, including that manufactured in the Indian territory. Delano's action forced Boudinot to hire attorneys Albert Pike (the former Confederate commander) and Robert Johnson to defend his interests in the court system. It eventually came to the Supreme Court to decide the fate of Boudinot's tobacco and whether treaty or Congressional act superseded the other.⁹

In 1871, a deeply divided Supreme Court ruled that the Internal Revenue Act of 1868 did indeed apply to the Indian territory. The Supreme Court also determined that Congress did not intend to exclude the Indian territory in its legislation, or otherwise it would have explicitly excluded the territory. The court ruled that any legislation dealing with Native Americans needed to explicitly exclude the Indian territory if that was intended by the legislation, otherwise the law applied to all Native American land. The court ruled that the Internal Revenue Act of 1868 applied to the Indian territory because as an act of Congress, it may supersede a prior treaty. According to the ruling by Justice Swayne, a treaty has "no higher sanctity, and no greater inviolability or immunity from legislative invasion can be claimed for them," when compared to legislation.¹⁰ If indeed

⁸ Parins, *Elias Cornelius Boudinot*, 86.

⁹ Kappler, *Indian Affairs*, 2:945.

¹⁰ The majority in this case was only four judges instead of the normal five. Of the normal nine judges on the court, three judges did not participate, and two dissented. Two *Cherokee Tobacco*, 78 U. S. 621. The Court also determined that if a treaty was indeed violated by Congress, then any redress for the injury caused by the legislation must also come from

a treaty was violated by an act of Congress, then any redress for the injury caused by the legislation must also come from the Congress – the injury was a political injury and therefore non-justiciable.¹¹ The Supreme Court extended Congressional plenary power over all Native Americans.

The Cherokee Tobacco case sent reverberations through the political landscape for years to come. The Cherokee Tobacco case opened the doors for congressional action to erase treaty agreements and removed the courts from intervening by awarding damages for redress. The Supreme Court removed the judiciary branch of government from resolving treaty disputes with Native Americans. The protections granted by the treaties of 1866 no longer applied to the region if Congress could unilaterally decide new treaties since there was no redress for Native Americans. The only ways for Native Americans to

Congress. The injury was a political injury and therefore there was no recourse through the courts. The Supreme Court extended through this ruling Congressional plenary power over all Native Americans.

As a region without legal Territorial status, Indian territory had no representative in Congress for representation. The geographical location commonly called “Indian Territory” was actually not a territory, but rather an unorganized territory. The court relied on residents of the Indian territory were regarded by the court as needing the protection of the government as domestic dependent nations.

This ruling was but one in a long line of successive rulings against Native American land holding. *United States v. Cook* (1873) held that Native Americans only had a “right of occupancy” and not of land ownership. Other rulings including *United States v. Kagama* (1886) and *Lone Wolf v. Hitchcock* (1904) each reaffirmed congressional plenary power over Native Americans, which according to Professor Joseph William Singer was an absolute power. Native Americans, compared to other classes of persons, had no power. Congress had absolute power over Indians and Indian affairs. See also Joseph Singer, “Lone Wolf, Or How to Take Property by Calling It a ‘Mere Change in the Form of Investment’,” *Tulsa Law Review* 38, no. 37 (2002): 37–48.

¹¹ As a region without legal territorial status, the Indian territory had no representative in Congress to establish, but taxation of the proceeds of the territory was essential. As stated before, the geographical location commonly called “Indian Territory” was actually not a territory. The residents of the Indian territory were regarded by outsiders as needing the protection of the government as domestic dependent nations.

plead their cases to the government was through political lobby and with their Indian Agents. The ruling effectively erased restrictions on railroads and coal companies. Elias Boudinot understood the implications of this ruling, “The Supreme Court has decided the tobacco case against me. It is the death knell of the Nations.”¹²

Cherokee Tobacco represented an opening wedge in the controlling interests of the Indian territory. The Cherokee Tobacco ruling recognized the rights of the individual nations to negotiate separately without being bound together. Rights of separate nations affirmed the individuality of Native peoples in a manner that many Indians wanted including the Choctaw and Chickasaw. However, by loosing Native Americans from one other and from a form of forced collective bargaining, the ruling also relaxed the American tendency to recognize power in numbers. By allowing Native Americans to negotiate as separate entities, the American government lessened the power of Native peoples.

Most importantly, the Cherokee Tobacco case extended plenary power over the Indian territory. It affirmed for the United States that the region reserved for Native Americans but remained part of the United States. The Supreme Court ruled that the region could be governed ultimately by the federal government since there was not a unified entity controlling the space. The economic imperatives of the United States outweighed the sanctity of treaties with Native Americans. The ruling reiterated that the Indian territory was subject to the jurisdiction of the United States – even through the appeal to the Supreme Court. The Indian territory was indeed a different place, but not

12 Cited in Parins, *Elias Cornelius Boudinot*, 103.

one immune to the will of the United States. The fiscal desires of the United States outweighed the territorial boundaries of the Native Americans, a ruling echoed throughout the end of the nineteenth century.

The Cherokee Tobacco case was settled in 1871. The implications of this case reverberated within the halls of Congress. Now that Congressional action superseding the treaties of 1866 would be supported by the courts, other railroads could seek access to the Indian territory and Congress could overrule previous treaties. It would be several years before the Native Americans and the existing railroads felt the ramifications of the case. At the time of the ruling, the Missouri, Kansas and Texas Railroad (MKT) was still under construction through the region, as was the Atlantic and Pacific Railway (A&P). At about the same time, J.J. McAlester was shipping his first load of coal to the railroad. The two railroads quickly recognized the potential value of coal access and worked to secure the Indian territory for their own fuel demands. The MKT and the A&P remained the sole railroads in the Indian territory until legislation in Congress broke the domination of the two lines and opened the region to secondary railroads and coal mining operations.

Between 1881 and 1890, many more railroads crossed the Indian territory than only the MKT and A&P. These railroads approached the region as an economic advantage through gaining access to natural resources and reducing the distance of their lines. Congress did not blindly accept applications from railroads for access into the Indian territory. Congress refused many applications for crossing the region, but rather than consistently applying legal standards through treaty guidelines, it bowed to economic pressures while ignoring treaty agreements to grant railroad access.

* * * * *

The first congressional legislation regarding the direct imposition of railroads into the Indian territory charted the course for future railroad expansion in the region. In 1881, the St. Louis and San Francisco Railway Company (Frisco) approached the Choctaw national council with a plan to build a railroad through their territory in a general southwesterly direction, connecting Paris, Texas to Arkansas through the Fort Smith region. At the same time, the Chicago, Texas and Mexican Central Railway (CT&MC) company wanted to construct a line from the border with Mexico, through Texas, into the Indian territory and on to Chicago.¹³ Both railroads sought to build a road that cut through the region in a generally diagonal line through the heart of the Choctaw Nation. The Secretary of the Interior was aware of the desires of the two railroads and sent Uriah J. Baxter to the Indian territory to represent the government in negotiations for a right-of-way for another railroad with the Choctaw council.¹⁴

Upon realizing the popularity of the Frisco over the Chicago, Texas and Mexican Central, Baxter went about attempting to influence the ensuing vote in favor of the

13 The Chicago, Texas and Mexican Central railroad, based in Dallas, Texas was a small, narrow gauge line that primarily operated a mere fifty three miles of track around Dallas. While it did not have extensive track at the time of its application to cross the Indian territory, the railroad acted like many others by seeking to expand its holdings. George C. Werner, "Gulf, Colorado and Santa Fe Railway," *Handbook of Texas Online*, accessed January 21, 2012, <http://www.tshaonline.org/handbook/online/articles/eqg25>.

14 Letter from S. J. Kirkwood to U. J. Baxter, November 5, 1881, As cited in Arthur, Chester A. *Message from the President of the United States transmitting a communication from the Secretary of the Interior, with accompanying papers, in reference to the bill of Choctaw council, approved November 10, 1881 granting a right of way through the Choctaw Nation to the Saint Louis and San Francisco Railway Company, &c*, 47th Cong., 1st sess., 1882, Ex. Doc. No. 44.

railroad.¹⁵ The Choctaw upper house voted in favor of the bill by one vote, but the lower house voted nine in favor and eight against, a slim majority until the Speaker, B.F. Smallwood, voted against the bill and decided the bill defeated on the grounds that it was a tie. This obviously illegal action proceeded to involve the national attorney who declared Smallwood's vote illegal and the principal chief approved the bill.

Confusion abounded regarding this bill as presented to the Choctaw National Council. Rather than a simple right of way as was proposed, Uriah Baxter worked on behalf of the railroads to secure their right of way. Speaker Smallwood's vote against the bill, an obviously illegal action, signaled the Choctaw division over railroad access. Although the railroads attempted to negotiate with the respective Native American nations, the federal government retained authority over the actual approval for railroads operating in the Indian territory.

The strongest opposition to the bill came from the Chickasaw nation. The arrangement between the Office of Indian Affairs and the Choctaw nation secured a payment of \$750 per year to the Choctaw for access to the region. The Chickasaw nation, however, retained joint ownership over Choctaw lands and also maintained a right to an

15 "An Indian Railway Grant - the Contest Over the Choctaw Concession. an Important Question for Congress to Decide--the Manner in Which the Concession Was Granted and the Objects of the Rival Companies," *New York Times*, January 24, 1882, <http://query.nytimes.com/gst/abstract.html?res=FA0E10FE395F15738DDDAD0A94D9405B8284F0D3>. Report of U. J. Baxter to S.J. Kirkwood, October 20, 1881, As cited in Arthur, Chester A. *Message from the President of the United States transmitting a communication from the Secretary of the Interior, in reference to the Applications of the Chicago, Texas and Mexican Central, and the Saint Louis and San Francisco Railway Companies, for a right of way across the lands of the Choctaw Nation, in the Indian Territory*, 47th Cong., 1st sess., 1881, Ex. Doc. No. 15, 6.

equal vote over all property rights, a position recognized by the Choctaw and the Department of the Interior.¹⁶

Baxter acted inappropriately by supporting a railroad. Smallwood voted in a politically charged, but illegal, action. The most appropriate action in the right-of-way dispute possibly came from the railroads. The St. Louis and San Francisco Railway, in its application to the Department of the Interior, recognized that “authority to so construct said railroad is not recognized by any existing treaty, and as the purchase of the necessary right of way involved the acquisition of a property right in the lands of *said Indian nations*, it can only proceed only under the provisions of law above quoted.”¹⁷ Similarly, the Chicago, Texas and Mexican Central Railway quoted section 2116 of the Revised Statutes, which forbid any purchase from Indian nations except through treaty – something only the government could negotiate.¹⁸ The railroads could not negotiate with the Native Americans directly and asked for the Department of the Interior to act on their behalf. The government, as represented by Baxter, effectively lobbied for an additional railroad to cross the Choctaw territory, a significant part of the Indian territory.

When Senate Bill No. 60 came before Congress in December of 1881, it had already been debated and sent to the Committee on Railroads. Over the next several months, the bill was debated through the Senate. The New York Times saw the railroad

16 B.F. Overton to Chester A. Arthur, in *Message on St. Louis and San Francisco Railroad*, 47th Cong., 1st sess., 1882, Ex. Doc. No. 44, 7.

17 T. W. Willie, Treasurer for Saint Louis and San Francisco Railway Company, in *Message on St. Louis and San Francisco Railroad*, 47th Cong., 1st sess., 1882, Ex. Doc. No. 44, 6-7.

18 Dwight K. Tripp to S. J. Kirkwood, Secretary of the Interior, in *Message on Chicago, Texas and Mexican Central Railway*, 47th Cong., 1st sess., 1881, Ex. Doc. No. 15, 3.

issues as “an important one, like all questions relating to a Territory which the great railroad corporations look upon with greedy eyes, and which is surrounded by white settlers who desire that it shall be opened for settlement.”¹⁹ The New York Times scathingly portrayed the actions of Baxter and Smallwood as “pretending to ratify an action of the Choctaw council.”²⁰ The Chicago, Texas and Mexican Central withdrew their application for crossing when the St. Louis and San Francisco amended their bill to include a provision for the CTMC in case the St. Louis and San Francisco defaulted.²¹

Senator Samuel Maxey from Texas, the author of the bill recognized the opposition to the bill when it came to the Senate floor in January of 1882. He complained that the opposition to the bill from the Chickasaw and some members of the Choctaw came too late, and questioned “whether the territory of the United States around which a Chinese wall be erected to which the right of eminent domain does not apply and thereby intercommunication by railway is forbidden between the States of this Union [by] Chickasaw Indians.”²² Maxey’s intention of the bill was not to disenfranchise the Native Americans – he felt they had ample protection – but to discourage the monopoly on Texas railroad traffic connecting to St. Louis. The Iron Mountain Route and the Missouri, Kansas and Texas shared ownership, which threatened to combine their efforts. Maxey’s intoned that when “you refuse competition, you throttle commerce,” exactly what was

19 “An Indian Railway Grant - the Contest Over the Choctaw Concession. an Important Question for Congress to Decide--the Manner in Which the Concession Was Granted and the Objects of the Rival Companies.”

20 “An Indian Railway Grant - the Contest Over the Choctaw Concession. an Important Question for Congress to Decide--the Manner in Which the Concession Was Granted and the Objects of the Rival Companies.”

21 Tripp to Kirkwood, in *Message on Chicago, Texas and Mexican Central Railway*, 3

22 Senator Maxey of Texas, *Cong. Rec.*, 47th Cong., 1st Sess., 1882, 13: 503.

happening with railroads connecting into Texas from the North.²³ Maxey's argument was echoed by Senator Coke who weighed the power of Indians against the economic well-being of North Texas: "Is there anything sacred in Indian rights which elevate them above the rights of the white people of this country? We will not be obstructed by a claim of right on their part which if made by white people in this country would not be tolerated for one moment."²⁴

The final approval of the negotiated bill came only in August of 1882.²⁵ In giving his reluctant approval for the railroad line, the principal chief of the Choctaw, J. F. McCurtain clearly stated his reasoning:

Suppose we stand up and say we won't have a railroad through our country; can we enforce our purpose? Can we say and believe that Congress has not the power to authorize the construction of a road through our country? If we cannot, then let us do all we can to retain our jurisdiction as long as possible.²⁶

J. F. McCurtain, the principal chief of the Choctaw, keenly understood the fiscal pressure placed on the borders of the Indian territory and preferred to maintain his nation's economic independence. McCurtain and other Choctaw leaders sought to maintain as much as possible from the loss of territory to railroads. The Choctaw government anticipated losing further control over the region. The Principal Chief believed that if they did not acquiesce to this proposal, future legislation would be passed

23 Senator Maxey of Texas, *Cong. Rec.*, 47th Cong., 1st Sess., 1882, 13: 503.

24 Senator Coke from Texas, *Cong. Rec.*, 47th Cong., 1st Sess., 1882, 13:504.

25 U.S. Congress, House *Right of Way to Saint Louis and San Francisco Railroad through the Indian Territory*, H. R. 934, 47th Cong., 1st Sess., April 11, 1882.

26 J. F. McCurtain addresses to General Council of the Choctaw Nation, November 8, 1881, in in *Message on Chicago, Texas and Mexican Central Railway*, 47th Cong., 1st sess., 1881, Ex. Doc. No. 15, 12.

that would forcibly take their resources from them. The Choctaw retained some control over their space by negotiating directly with the railroads, but by implication and in fact, Senate Bill No. 60 reaffirmed the power of Congress over the region.

Ultimately, the issue centered on eminent domain. The Congressional debate questioned the ability of Congress and the government to take land of American citizens and from the states for a variety of purposes, but the Native Americans retained rights up to this point to deny the government the power. The House committee debating the grant of land to the railroad evoked the case of *U.S. v. Rogers* in 1846 in which Chief Justice Taney declared that the Cherokee country was “a part of the territory of the United States, and not within the limits of any particular State . . . the tribe of Cherokee Indians . . . hold and occupy it with assent of the United States and under their authority.”²⁷ In following the opinion rendered in *Rogers*, the Congressional committee argued, “No department of the government has ever agreed, or attempted to agree, to surrender [eminent domain] to the Indians . . . the right of eminent domain is a power which cannot be obliterated.”²⁸ Despite treaty agreements that gave authority over railroads, most recently the treaty of 1866, to the respective Native American nations, Congress dictated that there was no way for any entity to deny the ultimate power of eminent domain.

This specific piece of legislation gave land from the Choctaw nation to the federal government and to the St. Louis and San Francisco Railroad. Despite this generous act,

²⁷ *United States v. Rogers*, 45 U.S. 4 How. 567 567 (1846).

²⁸ Mr. Deering, from the Committee on Indian Affairs, Report to accompany bill H.R. 5666, in *Right of Way to Saint Louis and San Francisco Railroad through the Indian Territory*, 47th Cong., 1st sess., April 6, 1882, Report No. 934, 2.

the Frisco did not act on the land for several years; it was not until 1887 that the railroad actually built the line connecting Fort Smith to Paris, Texas.²⁹

Senate Bill No. 60 specifically asserted the power of the government over the Indian territory. In keeping with the gradual breakdown of Native American authority over the Indian territory following the Civil War, which continued with the Cherokee Tobacco Case, Senate Bill No. 60 clearly designated the region as part of the United States and subject to the power of eminent domain without the approval of any Native American authority. Railroads and congress could now assert eminent domain without consulting Native Americans to grant rights of way and the authority to build railroads into the region.

* * * * *

After the first two railroads made their way into the Indian territory and established the potential value of the resources, many other railroads attempted to access the region. These secondary railroads gained access to the space through political processes that began in Washington, DC, building track beginning in 1882 and continuing into and through the statehood period of 1907 and following. This second wave of railroads provides yet another perspective of accessing the Indian territory, succeeding only after the promise of the region in coal deposits was revealed by the first railroads.

Again, the rich natural resources of the region proved attractive. The St. Louis and San Francisco Railroad (Frisco), the Gulf, Colorado and Santa Fe (GC&SF), the Choctaw

²⁹ Report by Robert L. Owen, Indian Agent for Union Agency, *The Executive Documents of the House of Representatives for the Fiftieth Congress, 1st Sess.*, (Washington, DC: Government Printing Office, 1888), 201.

Coal and Railway Company (CCRW), Kansas Southern Railway (KSRW), the Denison and Washita Valley (D&WV), and the Fort Smith and Western Railroad (FS&W) all gained federal permission to build their lines in the Indian territory.³⁰

Deregulation of the railroads changed the way people related to the Indian territory. It caused significant difficulty by taking control away from the tribes in favor of well-intentioned federal causes. However, the best intentions increased Native American regulations by the Federal Government. Government essentially shifted from control by Native Americans to control by the federal government as it reached its hand of fiscal control over the Indian territory.

The removal of control by Native Americans did not mean a lack of influences. Choctaw and Cherokee maintained a strong presence in their affairs, setting rates and establishing themselves as a litigious force. They made sure their voices were heard in Congress and by the railroads. Most importantly, the Choctaw and Cherokee maintained their ability to tax the natural resources of their nations, keeping some assets and revenue streams flowing.

Following the passage of Senate Bill No. 60, which allowed the St. Louis and San Francisco to construct its tracks beginning in 1882, other railroads applied to Congress for access to the Indian territory. The ability for the Frisco to build a new line into the Choctaw nation and grasp at the timber and coal reserves must have made a significant impression on railroad managers in the surrounding regions. Additional railroads

³⁰ By statehood in 1907, there were fourteen railroads crisscrossing Oklahoma, often much to the opposition of Native Americans. The increase in railroads was not a direct relation to the expansion of railroads in the west, but more out of the perception of a region of free access. A sense of deregulation and misunderstanding permeated the leadership of railroads especially during the post-bellum era.

petitioned for and were granted access into the Indian territory in the years following the St. Louis and San Francisco's land grant: the Gulf, Colorado and Santa Fe (GCSF), the Kansas City, Fort Scott and Gulf (KCFS&G), and the Southern Kansas Railway.³¹ Each of the railroads were to link to other railroads across the territory; none were authorized build without a firm destination.

The Gulf, Colorado and Santa Fe, a Texas based road with an original charter dating from 1873, desired a northern route for its goods. The GCSF connected through Galveston and across Texas, but by 1884 was running into competition from Jay Gould's Missouri Pacific lines that occupied Arkansas and other eastern connections. The Gulf, Colorado and Santa Fe petitioned Congress to construct their line north from Dallas, Texas into the Indian territory, specifically the Chickasaw nation, thereby avoiding the Gould-controlled lines. Prior to their application, the GCSF arranged with the Atchison, Topeka and Santa Fe for each to build half way into the Indian territory and merge the lines at Purcell, Chickasaw territory.³²

The Chickasaw faced the intrusion onto their territory by a railroad for the first time and enlisted Halbert E. Paine as attorney to represent their defense to Congress. The proposed legislation gave the railroad the right to construct its line across the Indian territory beginning anywhere north of Cook County, Texas to any point on the Kansas

31 The Southern Kansas Railway's name often was mis-written as Kansas Southern in literature of the time. While that made for some confusion, the creation of the Kansas City Southern Railroad in 1887 by Charles Stilwell only added to the confusion.

32 "General Railroad News: Old and New Lines: Atchison, Topeka and Santa Fe," *Railroad Gazette*, December 30, 1887; "News of the Week: Changes and Extensions: Gulf, Colorado and Santa Fe," *Railroad Gazette*, April 29, 1887.

border.³³ It also allowed for stations at seven-mile intervals, which might “deprive the Indians of all advantages of village and town sites along the line of the railway.”³⁴ The Chickasaw argued that the railroad would gain the land in a one-hundred foot wide strip through their land and additional four hundred by three thousand foot strips at stations, granting access to “officers, agents, servants, operators, and employees and their families,” discriminating against the people the Chickasaw actually wanted in their territory.³⁵ Prior to this act, the Chickasaw territory remained exclusive to their nation and they could prohibit access to nearly anyone they wanted.

The Chickasaw recognized “that the right of eminent domain over the Indian territory is vested in the United States,” but pleaded that “the United States gave their implied promise not to exercise that right any further for the benefit of railway corporations.”³⁶ The Chickasaw delegation argued eminent domain was important for governments to hold, but should only be used when “great and urgent public interests

33 “Objections of the Choctaw and Chickasaw Nations to H.R. 3961 Entitled ‘A Bill to Grant to the Gulf, Colorado, and Santa Fe Railway Company a Right of Way Through the Indian Territory and for Other Purposes’,” n.d., B-4, Association of American Railroads-Bureau of Railway Economics Historical Collection, John W. Barriger III National Railroad Library, St. Louis Mercantile Library, University of Missouri-Saint Louis.

34 “Objections of the Choctaw and Chickasaw Nations to H.R. 3961 Entitled ‘A Bill to Grant to the Gulf, Colorado, and Santa Fe Railway Company a Right of Way Through the Indian Territory and for Other Purposes’,” 2–3.

35 “Objections of the Choctaw and Chickasaw Nations to H.R. 3961 Entitled ‘A Bill to Grant to the Gulf, Colorado, and Santa Fe Railway Company a Right of Way Through the Indian Territory and for Other Purposes’,” 2.

36 “Objections of the Choctaw and Chickasaw Nations to H.R. 3961 Entitled ‘A Bill to Grant to the Gulf, Colorado, and Santa Fe Railway Company a Right of Way Through the Indian Territory and for Other Purposes’,” 3–4.

require.”³⁷ The Chickasaw felt their lands were being taken for a private interest, definitely not the “great and urgent public interest.”

Congress heard the delegation’s argument against the bill. Despite the argument against the bill, it passed, but with modifications intended to safeguard the rights of the Native Americans. The railroad still would be able to build, but only after gaining approval of the selected route from the Secretary of the Interior.³⁸ Thus, Congress used the Secretary of the Interior to negotiate between Native Americans and the railroad, as well as governing all railroad employees. Congress intended for these concessions by the railroad to ensure “fair treatment” of the Native Americans along the route. The Department of the Interior acted as the buffer between railroad and Native American actions so railroads could not make eminent domain decisions without consulting with Native Americans who would be most affected.

The Atchison, Topeka, and Santa Fe gained a southern connection to the Gulf of Mexico by building half way across the Indian territory and connecting with the Gulf, Colorado and Santa Fe just south of present-day Oklahoma City. Congress ultimately approved the railroad after addressing many of the issues raised by the Chickasaw. The

37 “Objections of the Choctaw and Chickasaw Nations to H.R. 3961 Entitled ‘A Bill to Grant to the Gulf, Colorado, and Santa Fe Railway Company a Right of Way Through the Indian Territory and for Other Purposes’,” 3–4.

38 The Secretary of the Interior needed to approve the route selected, governed all railroad employees, and retained authority over the interactions between the Colorado, Gulf and Santa Fe Railway and the Chickasaw nation. *An Act to Grant to the Gulf, Colorado and Santa Fe Railway Company a Right of Way through the Indian Territory, and for Other Purposes*, vol. 22, 1884.

An Act to Grant to the Gulf, Colorado and Santa Fe Railway company a right of way through the Indian Territory, and for other purposes, Public Law 177, 48th Cong., 2d sess. (July 4, 1884), § 6, 7, 8.

crews completed the railroad through the Indian territory by April, 1887. Immediately following the completion, the GCSF and the Atchison, Topeka and Santa Fe merged.³⁹

The Kansas City, Fort Scott and Gulf Railway asked for Congressional authorization to construct part of its line as well. The KCFS&G wanted to cross the northern corner of the Indian territory, around 10 miles of track, then into the Cherokee nation and back to Fort Smith, Arkansas. The KCFS&G received the permission without a presidential signature.⁴⁰

Similarly, Congress granted the Kansas and Arkansas Valley Railway to cross the Indian territory from Fort Smith on the eastern border to the border of Kansas, running in a northwestern direction. The entirety of this railroad's track was located in the Cherokee nation.⁴¹ The Kansas and Arkansas Valley railroad did not encounter the same opposition as the Southern Kansas Railway by the Cherokee. – eventually became part of Iron Mountain and Southern.

This secondary wave of railroads built various lengths with a variety of reasons. All were contested by Native Americans within the halls of the federal government and only begrudgingly negotiated after the involvement of the Interior Department to act as a buffer between the parties.

39 The merger removed the need for the GCSF, but the charter through the Indian territory remained in the name of the Gulf, Colorado and Santa Fe. The Atchison, Topeka and Santa Fe was heralded by the Kansas Board of Railroad Commissioners for making a strong connection to the south and for avoiding any Gould lines. See Kansas Board of Railroad Commissioners, *Fourth Annual Report of the Board of Railroad Commissioners for the Year Ending December 1, 1886* (Topeka, KS: Kansas Publishing House, 1886), 35.

40 *An Act to Authorize the Kansas City, Fort Scott and Gulf Railway Company to Construct and Operate a Railway through the Indian Territory and for Other Purposes*, 1886.

41 *An Act to authorize the Kansas and Arkansas Valley Railway to construct and operate a railway through the Indian Territory, and for other purposes*, Public Law 80, 49th Cong., 1st sess. (June 1, 1886).

* * * * *

The Southern Kansas Railway (SKRW) was authorized to cross the Indian territory in 1884 despite strenuous opposition by the Cherokee nation. The Southern Kansas Railway however gained much more authorization than any other railroad in the Indian territory at the time. Indeed, most of its land was taken from the Cherokee Nation. The SKRW gained a branch line “Beginning at a point on the northern line of said Territory where an extension of the Southern Kansas Railway from Winfield in a southerly direction would strike said line, running thence south in the direction of Denison,[Texas].”⁴² The branch line through the Indian territory authorized the SKRW to build across the entirety of the region, cutting across the Cherokee, Creek and Choctaw land.

At first glance, the SKRW tracks would mirror other tracks in the region. However, the branch line was not as problematic as the additional authorization:

“With a branch constructed from a point at or near where said main line crosses the northern line of said Territory, westwardly along or near the northern line of said Territory, to a point at or near where Medicine Lodge Creek crosses the northern line of said territory, and from that point in a southwesterly direction, crossing Beaver Creek at or near Camp Supply, and reaching the west line of said Indian Territory at or near where Wolf Creek crosses the same.”⁴³

⁴² *An Act to grant the right of way through the Indian Territory to the Southern Kansas Railway Company and for other purposes*, Public Law 179, 48th Cong., 2d sess. (July 4, 1884).

⁴³ *An Act to grant the right of way through the Indian Territory to the Southern Kansas Railway Company and for other purposes*, Public Law 179, 48th Cong., 2d sess. (July 4, 1884).

This entire second part of the act gave the railroad access to the Cherokee lands – along what was known as the Cherokee Strip.⁴⁴ Congress required the Southern Kansas Railway to pay for the potential damages caused by its tracks before it was authorized to build as defined in sections five and six of its charter. The SKRW only was required to pay fifty dollars per mile, a much lower valuation than surrounding areas, and much lower than the potential lease arrangements.

The Cherokee nation reacted to the SKRW by protesting its passage within four days and eventually filing suit alleging that the Cherokee were given the authority over their own lands and the SKRW was illegally granted access to the region.⁴⁵ The Cherokee national council understood the probability of losing the suit. Its lawyers advised that taking the railway to court would be expensive and risky, but the national council decided the effort was necessary since there were no other recourses available. The Principal Chief, D.W. Bushyhead, appealed to the National Council that there was no other recourse than a lawsuit. If the Cherokee did not reply in this manner, the failure to

44 The Cherokee Outlet began when cattlemen from Texas began driving large herds northward through Indian territory to railheads in Kansas and Missouri. The routes they traveled developed into major cattle trails, such as the Chisholm Trail and the Great Western Trail. To gain some income from the thousands of cattle, the Cherokee charged a small fee for each cow passing through. This arrangement evolved to the Cherokee leasing the entirety of this piece of land to the Cherokee Strip Live Stock Association in June of 1883 for \$100,000 – double the amount that grazing taxes had brought the tribe the previous year. The proposed SKRW would infringe on this leasing arrangement and significantly cut into Cherokee income. Johnson, Goble, and Goins, *Historical Atlas of Oklahoma*, 120.

45 L. B. Bell and J. G. Scrimsher, “L. B. Bell and J. G. Scrimsher Cherokee Delegation, to H. M. Teller, Secretary of the Interior,” July 8, 1884, Box 86, Folder 6, Choctaw Nation Collection, Indian Archives Collection, Oklahoma State Historical Society.

respond “will be concession of the right of the Government in all of the promises of the Said act of Congress.”⁴⁶

By 1888, Judge Isaac Parker presiding over the federal court at Fort Smith, Arkansas ruled in favor of the Southern Kansas Railway.⁴⁷ The case was appealed to the Supreme Court, which ruled on it in 1890.

By the time the Supreme Court ruled on the case, six years after the original authorization was received from Congress, the Southern Kansas Railway had already built its tracks through the Cherokee Nation. The appeal called for a review of the authority of the United States to take Indian lands and place them in the hands of private parties, in this case the railroad. It also asked the court to rule on the merit of the compensation for the Cherokee in which the nation would be paid fifty dollars per mile for initial access, then fifteen dollars per year thereafter. If the Cherokee nation did not accept the payment system, it could appeal to referees who were to be “disinterested parties” appointed by the President, a concept the Cherokee deemed preposterous.⁴⁸

The Supreme Court ruled in favor of the railroad, handing down its decision May 19th, 1890. In its ruling, the Court decided that while a different type of national entity than states the Cherokee were not fully independent nations, which would be able to invalidate the railroad arrangement. The Court also ruled that while treaties had changed

46 D.W. Bushyhead to the Honorable National Council in Special Session, December 15th, 1886, in Cherokee National Records, Oklahoma Historical Society.

47 McDonald, Bright & Fay to Robert B. Ross, Esq., Treasurer of Cherokee Nation, February 28th, 1888 in Cherokee National Records, Oklahoma Historical Society.

48 *An Act to grant the right of way through the Indian Territory to the Southern Kansas Railway Company and for other purposes*, Public Law 179, 48th Cong., 2d sess. (July 4, 1884), § 3.

the relationship of the federal government to the various Indian nations, this did not include “any intention upon the part of the government to discharge them from their condition of pupillage or dependency and constitute them a separate, independent, sovereign people.”⁴⁹ Despite having treaties and independent citizenship – and not citizenship in the United States - their land continued to be “like the lands held by private owners everywhere within the geographical limits of the United States, are held subject to the authority of the general government to take them.”⁵⁰ The court ruled the case should be remanded to the court at Fort Smith to adjust the compensation due to the Cherokee. The loss on two fronts at the Supreme Court marked the final step in the sequence undoing the 1866 treaties.

When the case was sent back to the lower court, lawyers representing the Southern Kansas Railway proposed a settlement with the Cherokee nation. The lawyers suggested that the original compensation of fifty dollars per mile could be adjusted to the referee-decided ninety-three dollars per mile on the main line and thirty-six dollars per mile on the branch line, an amount the railway was willing to pay. The lawyers for the railroad recommended the Cherokee accept the payment since it was possible for the lower court at Fort Smith to reduce the payment due to the Cherokee.⁵¹ However, the lawyers for the Cherokee also included the possibility that the court might rule that the railroad would have to pay additional taxes, possibly at 5% per year, which would amount to about three hundred and fifty dollars a mile, or an aggregate sum of \$51,800 in

⁴⁹ Cherokee Nation v. Southern Kansas Ry. Co., 135 U.S. 641 (1890), 135.

⁵⁰ Cherokee Nation v. Southern Kansas Ry. Co., 135 U.S. 641 (1890), 135..

⁵¹ McDonald, Bright & Fay to D.W. Bushyhead of Cherokee Nation, July 19th, 1890 in Cherokee National Records, Oklahoma Historical Society.

addition to fifteen dollars per mile per year.⁵² The huge potential ruling was difficult to ignore, so the Cherokee proceeded to negotiate with the railway and Judge Parker.

The lawsuit fully concluded in January of 1892. Judge Isaac Parker, with the backing of the Department of the Interior, ruled that the original fifty dollars per mile was sufficient “as full compensation, payment and satisfaction for the right of way now taken by the Southern Kansas Railway Company.”⁵³ Despite the lawsuits and protests by the Native Americans, the railroad maintained its right of way, essentially guaranteeing the permanence of railroads in the Indian territory with access granted in ways set out by Congress that bypassed former treaty agreements. The railroad also was granted protection by the courts through the ruling, demonstrating to Native Americans that outright protest against railroads would not be effective even in courts of law.

* * * * *

The Missouri, Kansas and Texas Railway encountered significant opposition from the Choctaw government when the railroad wanted to expand. The Choctaw adapted to the presence of the railroad, but were rightly concerned when outside entities attempted to expand within their nations. Railroads brought in outsiders that needed to work on the line, people who would take resources from Native Americans. The various Indian nations became increasingly skeptical of railroads. The Principal Chief of the Cherokee, D. W. Bushyhead warned railroads were “a scheme expressly devised to break up and

⁵² McDonald, Bright & Fay to D.W. Bushyhead of Cherokee Nation, July 19th, 1890.

⁵³ Agreement between C.J. Harris, Principal Chief of Cherokee Nation and Southern Kansas Railway Company by Clayton, Brizzolara & Forrester, its attorneys, January 18, 1892, in Cherokee National Records, Oklahoma Historical Society.

destroy the country of the five nations. It is a scheme full of mischief and confusion to us and you; and would if consummated, destroy the government policy of the Indian Territory.”⁵⁴

Railroads indeed needed what the Indian territory contained, most notably coal. The Missouri, Kansas and Texas Railway targeted the coal deposits within the Choctaw nation when it constructed its line. As has been described above, the railroad succeeded at developing the coal industry in the region. By 1875, according to H.T. Lemist, the MKT and two other railroads, “the Houston and Texas Central and the Galveston, Houston and Henderson . . . [were] entirely dependent upon these mines for their daily supply of fuel,” operated by the Osage Coal and Mining Company, under lease from the Territorial authorities.⁵⁵ The extensive mining operation became threatened by other coal and railroad leases and permission granted after the ruling in favor of the Frisco in 1882.

The Missouri, Kansas and Texas Railway became reliant on its established connections within the Indian territory to continue its operations. The railroad enjoyed its near monopoly on the Indian territory. The St. Louis and San Francisco ruling in 1882 disrupted the comfortable arrangement of the MKT by setting a precedent on treating the Indian territory no differently than other regions of the United States, at least concerning eminent domain. The ruling offered new opportunities for railroads to enter the region based on economic prerogative, even if Native Americans objected. Despite the new

54 *Protest of D.W. Bushyhead, Principal Chief, and Other Cherokee and Creek Indians against The Passage of Senate Bill No. 50 and House bill No. 3961*, March 7, 1884, Item 36, Cherokee National Records, Oklahoma State Historical Society.

55 H.T. Lemist to Maj. G. W. Ingalls, November 16, 1875, In Testimony Taken by the Subcommittee of the Committee on Territories in *Reports of Committees of the Senate of the United States for the third session of the forty-fifth Congress, 1878-79*, Vol. 3, (Washington, DC: Office of Indian Affairs, 1878), 267-268.

rulings in favor of railroads, since the MKT already had a route through the Indian territory, it could not gain more land – it had an established charter.

The Missouri, Kansas and Texas Railway could not get another right of way through the Indian territory, but other railroads could. The commissioner of Indian Affairs derided the sheer quantity of railroads seeking access to the Indian territory by 1886: “Numerous other measures [beyond the 3 approved] granting a right of way through the Territory to various railroad companies were introduced during the last session.”⁵⁶ Congress did not just grant access to any railroad, however, many bills to authorize crossing were presented to the Forty-Ninth Congress. Various agents for railroads introduced bills in 1886 to authorize the Chicago, Fort Scott and Texas Railroad, the Chicago, Kansas City and Nebraska, the Saint Louis, Baxter Springs and Mexican, the Pacific and Great Eastern, the Rogers, Siloam and Muscogee, the Saint Joseph, Kansas City and Arkansas, the Fort Smith and El Paso Railway Company, the Chicago, Kansas and Nebraska Railway, the Winfield, Geuda Springs and Southern Railroad as well as the Fort Worth and Denver City Railway.⁵⁷ At one point, the Land Office of the Bureau of Indian Affairs reported “between thirty and forty railroads” in

⁵⁶ Annual Report of the Commissioner of United States. Office of Indian Affairs, *Annual report of the Commissioner of Indian Affairs* (Washington, DC: Office of Indian Affairs, 1886), xxxiv.

⁵⁷ *Speech of Hon. James Buchanan of New Jersey*, June 16, 1886, 49th Congress, 1st sess, Appendix to the Congressional Record, 17:335. Also 48th Congress, 2d Sess., Congressional Record, 1887, S. 3159, “*An Act to Grant to the Chicago, Fort Scott and Texas Railroad Company a right of way through the Indian Territory, and for other purposes.*”; Congressional Record, 1887, H.R. 11222 “*To Grant to the Fort Smith and El Paso Railway Company a right of way through the Indian Territory, and for other purposes.*”; C.R. 1887, S 3231, “*An Act to Grant the Right of Way through the Indian Territory to the Chicago, Kansas and Nebraska Railway, and for other purposes.*”; S. 3081, “*An Act to Grant to the Winfield, Geuda Springs and Southern Railroad Company, and for other purposes.*”

their division at various stages of gaining access – including the Denison and Washita Valley.⁵⁸

Congress granted permission to the Denison and Washita Valley Railroad to enter the Indian territory in July 1886. The Denison and Washita Valley was a new railroad company; it only began operation in January of 1886. Denison, Texas, located only a few miles from the border of the Indian territory gave the proposed railroad a distinct advantage over other roads in crossing the Indian territory. Denison was already served by the St. Louis and Iron Mountain Railway and the Missouri, Kansas and Texas, both owned by Jay Gould. People in Denison clamored for another railroad to connect their city to the north. Competition between railroads would give the people of North Texas presumably lower railroad rates on shipping and access to the coal of the Indian territory.

After reviewing the application of the Denison and Washita Valley Railway, the House Committee on Indian Affairs endorsed the Denison and Washita Valley Railway. The committee noticed the section of North Texas as having to pay “more than double the price at which coal can be profitably laid down at their doors.”⁵⁹ The proposed road would give access to “large deposits of excellent coal” within the Indian territory to the people of North Texas.⁶⁰ The road would break a relative monopoly on the region held by

58 Senate Select Committee on Methods of Business and Work in the Executive Departments and Francis Marlon Cockrell, *Report [of] the Select Committee of the United States Senate: Appointed Under Senate Resolution of March 3, 1887, to Inquire into and Examine the Methods of Business and Work in the Executive Departments, Etc., and the Causes of Delays in Transacting the Public Business, Etc.* (Washington, DC: Governmental Printing Office., 1888), 119.

59 House Committee on Indian Affairs, *Report: To accompany bill H.R. 6388, a grant to the Denison and Washita Valley Railway Company a right of way through the Indian Territory*, 49th Congress, 1st Sess., 1886, H. Rep. 769, 1-2.

60 *Report: To accompany bill H.R. 6388, a grant to the Denison and Washita Valley Railway Company a right of way through the Indian Territory.*

“but two outlets by rail to the Northern and Eastern markets, and they are both largely controlled by the same owners.”⁶¹ The House committee sought to release “the idle labor and hoarded capital of the country, and to remove all obstacles in the way of commerce between the States.”⁶² The committee’s report made no mention of the impact the railroad would have on the Native Americans on whose land the railroad would pass through. Before its approval, the city leaders of Denison claimed that the “company is ready to commence work and it will give immediate employment to thousands of idle men here who are suffering for work.”⁶³ James Buchanan of New Jersey declared that the people of north Texas “urge solely the interests of their own section . . . they say nothing about the interests of the Indians.”⁶⁴ Congressional authorization of the Denison and Washita Valley Railroad again established priority of the economic interests of the states over the territory and rights of Native Americans.

The Denison and Washita Valley was to construct its line from a point “on Red River, near Denison, in Grayson County, in the State of Texas, and running thence by the most practicable route through the Indian Territory in the direction of Fort Smith,” to the

61 *Report: To accompany bill H.R. 6388, a grant to the Denison and Washita Valley Railway Company a right of way through the Indian Territory.*

62 *Report: To accompany bill H.R. 6388, a grant to the Denison and Washita Valley Railway Company a right of way through the Indian Territory.*

63 Samuel Hanna, P. O'Donnell, B.N. Carter, H. Tone, J.A. Tuper, J.D. Yadcum, G.G. Randell, Tobias Porter, W.B. Boos to James Buchanan, June 13, 1886 in *Speech of Hon. James Buchanan of New Jersey*, June 16, 1886, 49th Congress, 1st sess, Appendix to the Congressional Record, 17:336.

64 *Speech of Hon. James Buchanan of New Jersey*, June 16, 1886, 49th Congress, 1st sess, Appendix to the Congressional Record, 17:335.

northeast.⁶⁵ Significantly, it included the right to “construct, use, and maintain such tracts, turnouts, branches, sidings, and extensions as said company may deem it to their interest to construct along and upon the right of way and depot grounds herein provided for.”⁶⁶ The railroad would be able to build where it wanted to within the Indian territory and establish depots to secure more land for the railroad. The bill gave the railroad the liberal authority to determine its specific route and which branches to construct without consulting the government.

The bill also set few parameters within which the Denison and Washita Valley needed to construct its railroad. It needed to construct fifty miles of road within three years of the original bill’s passage. It also needed to fence its road to prevent animal losses and abuse of the railroad. Of course, the railroad needed money for building, but apparently only could afford to construct ten miles by 1890.

The Denison and Washita Valley, despite the pleas of the mayor and citizens of Denison, was intimately tied to the Missouri, Kansas and Texas Railway. The president of the Denison and Washita Valley Railway, Benjamin Munson, was a longtime employee of the Missouri, Kansas and Texas Railway.⁶⁷ Benjamin Munson had worked for the MKT as a land agent during its expansion across the Indian territory in the early 1870s. The first track built by the railroad bypassed the city of Denison, instead building

65 *An Act to authorize the Denison and Washita Valley Railway Company to construct and operate a railway through the Indian Territory, and for other purposes*, Public Law 110, 48th Cong., 2d sess. (July 1, 1886), § 1.

66 *An Act to authorize the Denison and Washita Valley Railway Company to construct and operate a railway through the Indian Territory, and for other purposes*.

67 “Charter of Denison & Washita Valley Railway Company,” in Henry Clark Rouse, and Charles Gorham Hedge, *Missouri, Kansas & Texas railway system: Charters and Muniments of Title* (New York NY: Missouri, Kansas and Texas Railway Company, 1896), 146-149.

track from Lehigh to Coalgate in the Choctaw Nation. To get to this branch, the DWVR needed to use the MKT tracks connecting Denison to the tracks. He formally turned his entire company over to the MKT once the tracks to the coal mines at Coalgate were completed in 1894.⁶⁸

The Missouri, Kansas and Texas Railway Company leadership recognized the importance of the liberal permission granted to the DWVR. When the DWVR was granted access and it was without funds to build its road, the board of directors of the Missouri, Kansas and Texas Railway purchased the mortgage of the Denison and Washita Valley Railway through their wholly owned Southwest Coal and Construction Company.⁶⁹ The MKT subsequently sent Colgate Hoyt, a member of the MKT board and the Southwest Coal and Construction Company board, to the board of the Denison and Washita Valley Railway.⁷⁰ Sharing board membership allowed the MKT to coordinate the actions of the two lines and the construction and coal company.

68 The former manager of the MKT also became president of a surrounding road in 1890. Robert S. Stevens took control of the Kansas and Pacific when it was applying for a land grant across Indian Territory. The Kansas City and Pacific also became a fully owned subsidiary of the Missouri, Kansas and Texas Railroad. Kansas. Kansas Board of Railroad Commissioners, *Annual Report of the Board of Railroad Commissioners, for the Year Ending 1896* (Topeka, KS: Kansas Publishing House: T.D. Thacher, state printer, 1896).

69 The Missouri, Kansas and Texas Railway Company owned several subsidiary corporations and railroads including the Southwest Coal and Construction Company. The Southwest Coal and Construction Company's stocks were guaranteed by the land grant of the MKT held in the Indian Territory, but since the land grant was not released to the railroad, the MKT also guaranteed the stock with stock in the Denison and Washita Valley Railroad, capitalized at two million dollars. Charles B. Helffrich and J.P. Crittenden, *New York Securities: A Descriptive and Statistical Manual of the Corporations of New York City and Brooklyn, and the Railroads of the United States* (New York NY: New York Securites, 1893), 502, 915.

70 Henry Varnum Poor, "Missouri, Kansas and Texas System – Southwestern Coal and Improvement Company," *Poor's Manual of the Railroads of the United States* 33 (1901): 491–496. Comparing the board members listed between 1886 and 1892 between the two companies, Colgate Hoyt became a member of the DWVR after the purchase and guarantee of stock. See

Using the Denison and Washita Valley, the MKT could gain access to a branch line to coal mines near Coalgate. The original MKT agreement with the federal government and the Native Americans did not permit the MKT to build any spurs or branch lines, only sidings and stations. When the MKT did build a spur line to the coal mines in Krebs, three miles from McAlester, the Principal Chief of the Choctaw, Coleman Cole attempted to have the mine owners arrested.⁷¹ The opposition to railroad expansion, especially when coupled with natural resource extraction, brought the MKT to stop direct branch line construction within the Choctaw Nation. Through an arrangement with another railroad, in this case the DWVR, the Missouri, Kansas and Texas railroad would be able to bypass the original intent of its charter for a practical improvement for the railroad.

By early 1887, the DWVR was investigating expanding into the coal trade. The Railroad Gazette reported that the railroad “put engineers in the field to investigate expanding to the coal fields at Lehigh, I.T.,” clearly not in the direction of Fort Smith, but directly to the north of Denison.⁷² The Denison and Washita Valley Railroad never actually built across the entirety of the Indian territory as its charter and congressional permission allowed. Rather, the railroad initially built a paltry 5.31 miles within the territory, connecting the coal producing center of Coalgate to the Missouri, Kansas and Texas at Lehigh. The DWVR ultimately only built a total of twenty miles, all of which

Rouse and Hedge, 146 as well as Railroad Commission of Texas, *Second Annual Report of the Railroad Commission of Texas* (Austin, Texas, 1893), 56.

⁷¹ See above, Chapter 4.

⁷² “Old and New Roads: Denison and Washita Valley Railroad,” *Railroad Gazette*, October 21, 1887.

was leased to the Missouri, Kansas and Texas Railway.⁷³ By 1894, the Denison and Washita Valley became a wholly owned subsidiary of the Missouri, Kansas and Texas Railway.

The Missouri, Kansas and Texas gained access to coal in the Indian territory at first by running its tracks directly to the known coal field at what would become McAlester. Since the first tracks were laid in 1870 to the late 1880s, the coal business expanded significantly in the United States. Expansion of the neophyte industrial-techno complex meant significant pressure on potential coal producing areas. The Indian territory contained high quality coal and as the House Committee on Indian Affairs described the region, it was full of potential for the railroad but lacking in development.

* * * * *

Many railroads sought to release the torrent of energy stored in the Indian territory. Only a few actually gained access to the region. Even fewer specifically gained the access to the coal within the area. The most important of these few railroads was the Choctaw Coal and Railway Company (CCRW).

In 1884, the United States Indian Service responded to an inquiry from the Treasurer of the Cherokee Nation on the required preliminary investment on coal mines. Upon talking to “geologists and mining men” there would need to be about \$90,000 to \$100,000 invested before there would be any income from the mines. After the initial outlay, the “moneyed men” assured that the revenue from taxes for the Cherokee Nation

⁷³ Rouse and Hedge, 146. By 1900, the Denison and Washita Valley owned 20 miles of track, all of which was leased to the MKT. See Henry Varnum Poor, 491-496.

would amount to \$50,000.⁷⁴ By 1888, outside interest in the Indian territory built up enough to pursue the coal deposits within the Indian territory.

The interest by outsiders was piqued by a turkey hunt in 1885. The Missouri, Kansas, and Texas Railway operated a considerable hunting expedition in the Indian territory. Several newspaper editors on that hunt noticed the considerable coal outcropping. Edwin D. Chadick followed through on the coal outcropping with Fritz Sittel, a young son of a German immigrant who worked for the MKT as a butcher.⁷⁵ The elder Sittel, Edward, also operated the Elk Hotel in McAlester. Fritz Sittel had recently married Melvina Pitchlynn and established a farm to the south of McAlester, along the MKT railroad. Sittel and Chadick spent considerable time investigating the coal as far as thirty or forty miles to the east of McAlester.⁷⁶

Chadick then spent the next several years soliciting interest in the region. By 1888, the Lehigh Valley Railroad from Pittsburg, PA expressed interest and a willingness to invest in the Indian territory. Chadick and the other original newspaper entrepreneurs created the Choctaw, Coal and Railway Company in Minnesota in November, 1887.⁷⁷

74 Connell Rogers to Henry Chambers, February 2, 1884, Cherokee National Files, Box 86, Folder 4, Western Historical Collection, University of Oklahoma.

75 Fritz Sittel, Second Interview, Indian Pioneer Collection, Western Historical Collection, University of Oklahoma, Norman, Oklahoma, 5827:36.

76 The Rogers-Neill Collection contains significant biographical information on Fritz Sittel including correspondence about the Choctaw Trading Company, information on lawsuits and his marriage to Melvina Pitchlynn, niece of Peter Pitchlynn. All in Rogers-Neill Collection, Western History Collections, University of Oklahoma, Norman, Oklahoma.

77 The creation of the Choctaw Coal and Railway Company in Minnesota signals the interconnected aspects of railroads near the end of the nineteenth century. Globalization – of a sort – definitely affected the Indian territory. Interstate Commerce Commission, *Interstate Commerce Commission Reports: Decisions of the Interstate Commerce Commission of the United States. Valuation Reports*, vol. 24 (Washington, DC: U.S. Government Printing Office, 1929).

The officers of the railway included several people from Philadelphia who had knowledge of the quality of the coal deposits in the region, most notably Charles E. Hartshorne, Vice President of the Lehigh Railroad Company.⁷⁸

The CCRW applied for a route across the Indian territory from Congress, but this application differed from other railroads. The CCRW's route included a main line from the Red River to Arkansas, but also included a branch line "in a northwesterly direction to the leased coal veins of said Choctaw Coal and Railway Company in Tobucksey County, Choctaw Nation."⁷⁹ Several members of Congress questioned the land acquisition by a private company and despite its assertion to be a public railroad, the branch line to coal mines appeared to be for private interests. Rep. Hollman questioned the bill that "appears to be simply a bill to enable this company to build a branch road to reach a coal mine."⁸⁰ Despite questions, no serious opposition formed and by February of 1888, the railway gained Congressional permission to build through the Choctaw nation.⁸¹

The Choctaw Coal and Railway proceeded along a different financial path from previous railroads within the Indian territory. The Missouri, Kansas, and Texas Railway company built a railroad first in 1872, then branched out into coal mining through its creation of the Osage Coal and Mining Company in 1875. The CCRW instead decided to

78 Frederick Edward Seward and Sydney A. Hale, *The Coal Trade: The Year Book of the Coal and Coke Industry*, vol. 17, 1890, 32-33.

79 *An Act to Authorize the Choctaw Coal and Railway Company to construct and operate a railway through the Indian Territory, and for other purposes*, 50th Cong., 1st sess. (February 18, 1888).

80 Debate on bill S. 1346 to authorize the Choctaw Coal and Railway Company, Congressional Record, 1114. February 10, 1888.

81 Ibid.

survey the land and secure potential leases from land-users for the coal along the route of the railroad. By April 1889, the surveyors of the CCRW completed their line to the intersection of the MKT in the Choctaw Nation.⁸² At the same time the surveyors were working their line, the coal company worked with members of the Choctaw nation to secure leases of their land.

By August of 1889, the company had entered into at least fifty-eight lease agreements with members of the Choctaw nation.⁸³ Each lease covered at least four square miles in accordance with Choctaw law that allowed individual members to claim coal in one mile in every direction from the place coal was found. This amounted to approximately 232 square miles or 148,480 acres of land claimed by the railroad. Each lease was secured for 99 years, ensuring both the company access to natural materials and the Choctaw nation a steady income from the leases. The leases earned praise from the press, calling the company “exceedingly valuable” based on the security the leases offered to coal production.⁸⁴

These leases raised new questions for the Choctaw nation as well as the Federal Government. While the railroad began constructing its tracks in late 1889 and continuing

82 “Railway Projects: Choctaw Coal and Railway Company,” *Railway World* 15 (1889): 400.

83 The number of leases insured by the company and listed therein does not match the list of mines and leases given to the Committee on Indian Affairs by E. D. Chadick on July 30, 1890. “List of Leases, Choctaw Coal and Railway Company” 51st Cong., 1st Sess., Mis. Doc. No. 223, 51st Cong., 1st Sess., 16. *Indenture Between the Choctaw, Oklahoma and Gulf Railway Company and the Girard Life Insurance, Annuity and Trust Company of Philadelphia*, October 3, 1894, in Executive, Managerial and Financial Documents, Chicago Rock Island and Pacific Railway Corporate Records, Box B1-57, in John W. Barriger III Papers in the John W. Barriger III National Railroad Library, St. Louis Mercantile Library at the University of Missouri St. Louis (hereafter cited as Barriger Collection). The two lists of mines differ in the name of lessees, dates signed, and associations.

84 Saward and Hale, 33.

to secure more leases, the Choctaw government began entering complaints with the federal government against the Choctaw, Coal and Railway Company. For the Choctaw national council, more railroads in the region were only cause for problems. Up until this point, there were only two major coal mining operations within the Choctaw nation, the Atoka Coal and Mining Company and the Osage Coal Company. These two coal outfits secured a near monopoly on the coal within the Choctaw Nation. Individual Choctaw and their intermarried spouses sought more competition. Some members of the Choctaw nation, at least those with an interest in the Choctaw, Coal and Railway company, opposed the decisions of the national council to limit railroad growth in the Indian territory. A new coal mining company would disrupt the coal business and the stable profits enjoyed by many Choctaw, yet provide income for others. Breaking the monopoly meant competition and lower prices for coal. Freeing the region from monopoly also unhinged the Native Americans from the entrenched systems.

The Choctaw problems with the new railroad company were based in part on the leases secured by the railway and tied to identity. The Choctaw laws were written in a manner that benefited the members of the Choctaw nation, specifically the ability to claim mineral lands based on a right of discovery. The Choctaw Coal and Railway Company endeavored to capitalize on the generosity of the Choctaw. Fritz Sittel married Melvina Pitchlynn, a Choctaw woman, in November, 1883. Through this marriage, Sittel gained membership in the Choctaw Nation, including the right to coal discovery. Sittel proceeded to make several significant economic maneuvers after his marriage: he claimed a large piece of land just south of the town of McAlester and called it Sittel Ranch, he discovered coal and entered into leases with the Choctaw Coal and Railway

Company, conveniently along the planned route of the railway. Sittel's coal claims bordered the route selected by the CCRW and Sittel entered into many of the leases signed by the CCRW.

The Choctaw Coal and Railway Company wanted to connect to the Missouri, Kansas and Texas railway where possible. The obvious choice would have been in the town of McAlester; however, J.J. McAlester wanted four thousand dollars for the connection. Sittel, who had just secured a large ranch to the south, gave the land to the Choctaw Coal and Railway company for their depot.⁸⁵ The Choctaw Coal and Railway Company built its company headquarters at the new intersection.⁸⁶ J.J. McAlester's demand and the ensuing railroad connection encouraged the population of the town to pick up and move several miles south to the new town of South McAlester at the intersection of the two railroads.

The Secretary of the Interior, John W. Noble addressed the Committee on Indian Affairs out of concern for what authorizing the leases might do to the Indian nations. Noble remarked that instead of lifting a monopoly had by the Osage Coal and Mining Company and the Atoka Coal and Mining Company, the Choctaw Coal and Railway would "establish a gross monopoly in the interest of the railroad company, and break down competitive interests in all the adjoining territory."⁸⁷ Noble's argument inverted the

85 Sittel's action was just one of several extra-legal moves that discouraged favor with the established Choctaw community leaders. See "Interview with Fritz Sittel," May 9, 1937, in *Indian Pioneer Papers*, Western History Collection, University of Oklahoma, 5827: 42.

86 The new community was named South McAlester, but due to the wholesale relocation by the town of McAlester, the new town eventually became McAlester. Kidwell, 105.

87 John W. Noble to Henry Dawes, August 20, 1890, 51st Cong., 1st Sess., Mis. Doc. No. 223, 1.

common understanding of monopoly by claiming a new railroad in the region would restrict competition. Noble believed the extension of leases of over 99 years covering nearly 250 square miles exceeded general standards of the coal business.

The Indian Agent for the Union Agency, Leo E. Bennet, leveled several complaints against the Choctaw Coal and Railway Company in his official report of 1890. He claimed that the CCRW was taking and fencing a strip of land two hundred feet wide, siting towns, and leasing the Indian lands – all of which ran contrary to the intention of the charter for the CCRW.⁸⁸

The CCRW answered with a tactful argument that the people with whom they dealt were fully capable of knowing what they were doing in signing the leases and granting access, exactly what the Indian Department had been working toward since the department's inception. Edwin Chadick, the manager of the CCRW, declared to the Department of the Interior that the generous leases were met with generous terms from the coal company. Chadick intoned, "the best interests of the company will be served by kind and fair treatment of these Indians . . . We have maintained inviolate our obligations to these people, that we have not sought in any way to deprive them of anything justly theirs."⁸⁹ Chadick maintained the company treated the Native Americans fairly and were committed to their welfare, if one bothered to look. The company suggested that their investment in its road construction demonstrated its good will. The company spent over

⁸⁸ Leo E. Bennet, Indian Agent for Union Agency, Annual Report, in Report of the Secretary of the Interior, 1890, Vol. II, 51st Cong., 2d Sess., Ex. Doc. 1, Part 5, 96.

⁸⁹ E. D. Chadick to the Commissioner of Indian Affairs, August 1, 1890, 51st Cong., 1st Sess., Mis. Doc. No. 223, 51st Cong., 1st Sess., 14.

two million dollars on its road construction and mine development. The intention was to build a first-class road across the Indian territory, but also to open the coal mines.

The CCRW suggested that it was enabling the independence and “civilization” of the Native Americans. The long-held complaint about commonly held land in the Indian territory did not apply to the CCRW’s leases. Instead, Chadick argued, “The right to lease is with the individual; it is his coal by discovery and the constitution makes it his right and he is not prohibited from leasing it.”⁹⁰ Leasing and sub-leasing, two rights of property owners, were denied to the CCRW and the Native Americans associated with those leases. The CCRW was eventually able to proceed with its various leases; however, the length of the lease was limited to 30 years.⁹¹

While the CCRW was able to eventually build across the Indian territory, specifically the Choctaw Nation, there were increased costs. The CCRW spent millions on its track and on expenses developing the mines in order to gain access to the coal. Added to the infrastructure costs, the coal mined for the railroad was taxed at a higher rate by the Choctaw Nation than elsewhere in the United States. The president, E. D. Chadick, complained that the “royalty now paid the Indians . . . are larger in amount per bushel than paid in any other part of the United States.” The coal in Pennsylvania was taxed at 12.5 cents per ton, but the Choctaw Nation taxed the coal at twenty cents per ton.⁹² Despite a higher cost, the company was planning on opening more mines within the

90 Ibid., 15.

91 *An Act Giving, Upon conditions and limitations herein contained the assent of the United States to certain Leases of rights to mine coal in the Choctaw Nation*. October 1, 1890, 51st Cong., 2d Sess., 408.

92 E.D. Chadick testimony to T. J. Morgan, Commissioner for the Secretary of the Interior, 51st Cong., 1st Sess., Mis. Doc. No. 223, 51st Cong., 1st Sess., 11.

first year and establishing a revenue sharing association at the request of several mine owners.⁹³ By overcoming the infrastructure development costs and the increased taxation, the railroad hoped to gain enough profit to continue to expand.

The Choctaw Coal and Railway Company continued a trend between railroads and Congress of reinterpreting the meaning of treaties and renegotiating the importance of a separate Indian territory. Regional commerce swayed the opinion of Congress more than preservation of Native American economic autonomy. Obstacles to commerce eroded when facing the pressure of railroad expansion.

While there were many more railroads within the Indian territory than Native Americans preferred, throughout the evolution of railroad access to the Indian territory, Native Americans retained the ability to tax natural resource extraction for the benefit of their respective nations. Resource extraction through coal mining and logging provided income for Native Americans but at the cost of increased immigration and dependency on railroad connections. Regulating resource extraction proved to be the last edifice of regional power for any of the Five Civilized Tribes.

Marks of success were everywhere, but so were signals of failure. There were far fewer railroads in the Indian territory than any of the bordering states, both a success for Native Americans resisting railroads and a failure for enterprising Indians. However, there were more railroads than many Native Americans wanted as evidenced by the respective national councils' strong divisions over railroad development. Individual Native Americans increased their wealth by leasing their land, which can be interpreted

⁹³ The revenue sharing association was to be the Choctaw Citizens Royalty Association, which would share the profits even if coal were not mined in the specific leases. Chadick argued that the royalty association ensured even treatment of the lessees Ibid., 13.

as both an indicator of cultural shifts and economic accommodation to increasing external pressure. Native American governments also gained wealth, especially for education, through leasing lands to railroads. The mixed record of railroads and the Native American nations of the Indian territory reveals the complexity of railroad history within the Indian territory.

CHAPTER 6 - COAL, COURTS, AND DISMANTLING THE TRICHOTOMY OF POWER

“This was ‘a deliberate defiance of all law.’”

Dew Wisdom,
U.S. Indian Agent

*“Justice, as against rapacity, patience, as against ruthless force, and humanity as our
common bond, is our last request.”*

Green McCurtain,
Principal Chief, Choctaw Nation¹

By 1894, miners, railroad managers, mine lessees, and Native Americans all grew increasingly discontent with the situation within the Indian territory. Mines within the Indian territory were unregulated by the federal government and remained dangerous despite safety improvements elsewhere. Without regulation, miners were thus unprotected from disaster. Miners had no recourse against mine operators in disagreements. Similarly, white mine lessees had few recourses in the face of unscrupulous miners or when encountering conflict with others. Native Americans with interests in the mining business also had few venues for their discontent beyond drastic measures including eviction. Mine owners and mine lessees, including railroads, had few legal options to resolve differences. Considering the demands of labor, industry, and governments, it becomes increasingly clear that these forces affected the independence of the Indian territory throughout the closing decades of the nineteenth century.

¹ Green McCurtain and Choctaw Commissioners in Protest, Feb 17th, 1894, Choctaw National Collection, Western Historical Collection, University of Oklahoma, Norman, Oklahoma, Box 91, Folder 8.

Between 1894 and 1906, the Federal government dismantled the Indian territory as a separate legal entity in part to avoid continuous difficulties associated with labor, mining, and railroads. The creation of the state of Oklahoma and the termination of the Indian territory arose in part out of the political demands of two incidents in 1894 that set in motion the legal and legislative framework for the creation of the state.

First, beginning in January of 1894, the Dawes Commission met with the Choctaw council at Tushkahoma. The Dawes Commission, led by Senator Henry Dawes, sought to implement allotment of tribal lands to usher in complete civilization as they saw it. The Dawes Act allotted nearly all tribal lands in the United States with its passage in 1887 except for a few tribes in the Indian territory.² By 1894, the Dawes Commission to the Five Tribes was to negotiate “to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said Indian Territory.”³ In April of that year, the Commissioners presented the Choctaw council a list of propositions to lead to allotment. The Dawes Commission and the ensuing legislation, the Curtis Act, eventually removed the vestiges of tribal control from the Five Civilized Tribes and allotted the land to the members of the respective tribes.

In that same month, April of 1894, mineworkers throughout the United States went on strike. Tens of thousands of workers walked out of their jobs in protest to

2 Extensive work on allotment reaches across the historical spectrum. Important texts for this study include Frederick E Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln, Neb: University of Nebraska Press, 2001), 77–81; Tom Holm, “Indian Lobbyists: Cherokee Opposition to the Allotment of Tribal Lands,” *American Indian Quarterly* 5, no. 2 (May 1979): 115–134; Bradley W. Watkins and Oklahoma State University. Geography, “Reconstructing the Choctaw Nation of Oklahoma, 1894--1898: Landscape and Settlement on the Eve of Allotment” (Oklahoma State University, 2007).

3 *An Act Making Appropriations for Current and Contingent Expenses, and Fulfilling Treaty Stipulations with Indian Tribes, for Fiscal Year Ending June Thirtieth, Eighteen Hundred and Ninety-Four*, 1893.

significant wage cuts. These miners, on the cusp of replacement by automatic mining machines and unskilled workers, formed pickets and rose up in opposition to the mining corporations that determined their fate. They organized behind the United Mineworkers of America and presented a solid opposition to wage cuts. The miners across the nation marched, walked out, and sometimes fought for what they felt were decent wages.

The strike of 1894 and the Dawes Commission meetings presented two significant challenges to Native American economic control. The forces acting on the Native Americans from both the inside in the form of the strike and from the outside in the form of the Dawes Commission proved too strong to effectively resist. The actions of the Dawes Commission included transforming the legal systems of the Indian territory to effectively legislate over the region. The last efforts by the Choctaw, Cherokee, Chickasaw, and Creek people to retain economic control in the autumn of 1905 were too late to avert statehood.

This chapter argues that the labor resistance and the political efforts to incorporate the Indian territory proved too much for continued resistance and proved major factors in the statehood movement for Oklahoma. Exploring the events of the strike and the Dawes Commission efforts reveals the legal situation of the Indian territory that also played a major role in the movement toward statehood. By eroding the legal power of the tribal courts in favor of federal courts, the authority of the Five Civilized Tribes in the Indian territory diminished to the point of total federal power, even before statehood.

By 1894, strikes were not new actions yet the Bituminous Strike of 1894 retains significance especially as it relates to the Indian territory. Miners often went on strike

during the late 1800s and the effects of strikes rippled through the period. According to the Bureau of Labor Statistics, during the 1880s, the United States experienced almost ten thousand strikes and lockouts. As many as 700,000 workers went on strike during 1886, giving the year the title the “great upheaval.”⁴ Work stoppage as labor protest in the years leading up to the strike of 1894 included the Great Railroad Strike of 1877, the Southwest Railroad Strike of 1886, and the Homestead Strike of 1892, each of which had been blamed for devastating the economy of the United States.⁵ Yet the preceding work stoppages did not threaten the nation’s energy supply like the strike of 1894.

By 1894, the United States was increasingly dependent on coal. Electricity from coal power was becoming increasingly important, as were the “inter-urban” electric railways. Coal also was the dominant power source for the thousands of miles of railroads that crossed the nation. Any disruption to the power supply would be felt throughout the system.

From 125,000 to 225,000 miners went out strike on April 21 1894. The United Mine Workers of America organized the strike.⁶ The Miner’s Convention met in Columbus, Ohio in response to a national cut in coal prices. Despite increasing demand,

4 Eric Arnesen, “American Workers and the Labor Movement in the Late Nineteenth Century,” in *The Gilded Age: Perspectives on the Origins of Modern America*, ed. Charles W. Calhoun, Second Edition (New York: Rowman & Littlefield Publishers, 2006), 58.

5 For the Great Railroad Strike of 1877, see Robert V. Bruce, *1877: Year of Violence* (Ivan R Dee, 1989); Philip S. Foner, *The Great Labor Uprising of 1877*, 1st ed. (Pathfinder Press, 1977). “The Great Railway Strike of 1877 and Newspaper Coverage” at the Railroads and the Making of Modern America, http://railroads.unl.edu/views/item/strike_77. For the Great Southwest Railroad Strike of 1886, see Theresa Ann Case, *The Great Southwest Railroad Strike and Free Labor* (Texas A&M University Press, 2010).

6 “Gigantic Miner’s Strike Planned,” *New York Times*, April 12, 1894, <http://query.nytimes.com/mem/archive-free/pdf?res=9A04E0DD1630E033A25751C1A9629C94659ED7CF>.

miners' pay on average throughout the United States under the new contracts decreased from seventy cents to fifty cents per mined ton.⁷ The impact on mining communities was severe.

The mines and miners of the Indian territory were not left out of this labor movement. The colliers in the Indian territory also were on strike; two thousand miners walked out and all of the mines in the Indian territory closed, covering dozens of mines connected by many railroads.⁸ Facing a nearly thirty percent cut in wages, the miners had little incentive to continue to work. Men and their families chose to either accept the cuts and keep working or to challenge the system. Like many others throughout the nineteenth century, the colliers of the Indian territory went out on strike.

Other labor stoppages often take historical precedence over the Bituminous Strike of 1894. The Coal Mining strike of 1897, the Anthracite Strike of 1902, or the Ludlow Massacre of 1914, all are significant work stoppages and are most notable for the violence associated with the strikes yielding dramatic headlines in the press.⁹ Yet the Bituminous Strike of 1894 brought thousands of workers together to protest unfair labor

7 "May Settle the Coal Strike: Mine Owners Meet in Chicago and Favor a Compromise," *The Milwaukee Sentinel*, April 29, 1894, <http://callisto.ggsrv.com/imgsrv/Fetch?banner=4f4973d9&digest=1e815ebf6d1278e7d1628d9e0b5cdbe5&contentSet=NCNP&recordID=5KUM-1894-APR29-001-F&highlight=ff99ff+1+3082+5031+102+35+3212+5030+164+43+3072+5235+71+28+3322+5239+103+27+2924+5946+66+25+3000+5948+93+24&format=png&scale=0.330&crop=850+1647+297+945>.

8 "Thousands Idle: Latest Reports Show the Coal Miners' Strike to Be Something Immense," *Bismarck Daily Tribune*, April 24, 1894, <http://callisto.ggsrv.com/imgsrv/Fetch?banner=4f497237&digest=7bd13361fcb048345c5723ab5d4f9bd1&contentSet=NCNP&recordID=5DUS-1894-APR24-001-F&highlight=ff99ff+1+1108+835+69+27+788+878+105+27&format=png&scale=0.330&crop=208+223+238+1021>.

9 Arnesen, "American Workers and the Labor Movement in the Late Nineteenth Century," 68.

practices reaching beyond coal mining throughout the United States. The standard historical analysis of labor struggle situates “the desperate struggle between Labor and Capital over who would bear the burdens and reap the rewards of American industrialization.”¹⁰ With the bounty of American industrialization at stake, it is not surprising to find the huge volume of participants in the strike of 1894.

Yet the strike of 1894, as it related to the history of the Indian territory, was much more complex than traditional labor history would suggest because the actors involved were not just Labor and Capital. In the Indian territory, Capital could not own land, so Native Americans interacted with Capital to harvest natural resources. The complex labor situation of the Indian territory underscores the inverse power structure of the region, leading to showdowns over autonomy, which ultimately resulted in statehood for Oklahoma, and obliterating the power of Native Americans. Landowners also became involved. However, we will see that the Choctaw marginalized prospective white landowners in the Indian territory who came from the American empire as racial minorities and subjected them to lower class status.

Rather than a dichotomy of an expected one side pitted against the other, the Indian territory strike revealed the evolving trichotomy grappling for power, pitting three groups against each other: recently immigrated miners, distant Euro-American mine company owners and their related railroads leasing mines from Native Americans, and land-owning Native Americans. These three sides struggled for autonomy and power resulting in an odd long-term solution with important long-term ramifications. The strike of 1894 drastically altered the relationship of miners, mining companies and Native

10 Thomas G Andrews, *Killing for Coal: America's Deadliest Labor War* (Cambridge, Mass.: Harvard University Press, 2008), 4.

Americans within the Indian territory. The strike of 1894 revealed the multi-dimensional struggle for power within the Indian territory that emerged after decades of railroad development, Native American economic empowerment, and white exclusion.

Both the labor situation and the Dawes Commission moved people to use the tools of resistance at their disposal. In the case of the paucity of labor controls, miners used strikes to resist the powers that be, however, regarding the Dawes Commission, those of any means used the courts to resist the reallocation of assets through allotment. The courts became the arena for resistance to the Dawes Commission.

What made the region of the Indian territory so important that thousands of miners and their families would relocate across national borders to the Indian territory? Three key factors propelled movement into the region. The first key factor was the coal of the territory. Railroads promised long lasting steady employment with high wages within their coal mines provided the second impetus. Finally, the idea of an Edenic untrampled garden teeming with resources and potential, only inhabited by Native Americans brought thousands to the region.

* * * * *

The mere presence of coal in the region did not provide enough inducement for systematic extraction. Rather, initial coal use was local and private. Numerous reports of coal use by Native American blacksmiths confirmed the presence of coal, but not the quantity that might justify large investment in the region.¹¹ It was common practice to mine some coal for personal use – not sending it to wide market. John Holderman, a

¹¹ Greene, *900 Miles on the Butterfield Trail; The New American State Papers: Indian Affairs*, vol. 2 (Wilmington, Del: Scholarly Resources Inc., 1972), 344.

Cherokee farmer and “not coal mining for a living,” but his “men, when not busy with the crops do dig coal,” providing about one fourth of his household’s coal needs.¹² His hired hands usually spent their time farming, but occasionally found time to dig coal.

Private coal use remained the norm for most of the 19th century within the Indian territory. Native American laws regarding coal use dictated that coal was for the exclusive use of the respective nations. Citizens could mine and use coal for their own use, but not for export outside of the nation. When outsiders, especially from Kansas, crossed the border to mine coal from the Cherokee nation, citizens bitterly complained of the practice and considered it thievery from the nation.¹³

Coal demand in the United States undulated in the years following the Civil War. The combination of vast railroad construction projects and advancements in iron and steel production through the Bessemer process created a huge market for coal and its related product coke. Coal production in the United States transformed with the advancements of the Bessemer process for iron and steel production. Demand for coal skyrocketed correspondingly. In 1870, coal demand rose due to the advancements of the Bessemer process for steel production, which was filling the needs of building materials of growing railroads. In 1870, J.J. McAlester shipped his coal sample from the center of the Choctaw Nation at the crossroads of the California and Texas roads to the Missouri,

¹² Holderman was concerned that he would be considered a coal miner and be required to either pay taxes on his mining, or abandon the practice in favor of others who wanted to mine under his farm. John Holderman, “John Holderman to Henry Chambers,” December 27, 1884, Cherokee National Archives Collection Box 86, Folder 4, Oklahoma State Historical Society.

¹³ Henry Chambers, “Henry Chambers to D. W. Bushyhead,” November 8, 1886, Cherokee National Archives Collection Box 86 Folder 6, Oklahoma State Historical Society.

Kansas and Texas Railway.¹⁴ Three years later, the railroad and its subsidiary coal mining company, the Southwest Coal Company, signed its first coalmine lease during the summer of 1873.

By that fall, the nation sank into one of the worst depression in the nation's history, putting up to one million men out of work with unemployment reaching as high as fourteen percent.¹⁵ Coal demand shrunk accordingly.

The causes of the Panic of 1873 lay with railroad builders who in the end often benefitted from the economic panic. Jay Cooke and other railroaders began this national financial crisis through continued increases to credit lines over the preceding several years, in attempts to build their railroads in the boom years following the Civil War. The economic enthusiasm following the war could not be sustained and eventually credit was called in. By the fall of 1873, railroaders throughout the nation succumbed to what historian Richard White calls "grandiose plans, continental ambitions, secret negotiations, and financial maneuvers" that had kept them afloat after the post-war boom subsided.¹⁶ Cooke overextended his loans to the Northern Pacific, so when smaller bankers tried to withdraw their funds to finance the autumn harvest, he was unable to meet the call. Cooke's bank closed on September 18, 1873, leading to a paralyzing national depression.¹⁷

14 See Chapter 4.

15 Philip Mark Katz, *From Appomattox to Montmartre: Americans and the Paris Commune* (Cambridge, MA: Harvard University Press, 1998), 167.

16 White, *Railroaded*, 82.

17 White, *Railroaded*, 84.

The Panic of 1873 directly affected the railroads of the Indian territory. By October 24, 1873, the manager of the Missouri, Kansas, and Texas Railway, Robert Stevens, informed the president of the line Levi Parsons of the need for “a general reduction of force. . . and a decrease of expenditures.” Trackmen, section bosses and mechanics all had their wages cut.¹⁸ Over the next two years, more than one hundred railroad companies defaulted and by 1876, more than half of the nation’s railroads were in the hands of receivers.¹⁹ Coal and iron industries, intricately tied to railroads, felt the economic slump and displaced workers to such a degree that migrant workers took to the roads as “tramps,” willing to work for bread.

The resulting surge in unemployed workers benefitted the mining operations within Indian territory. The managers of the Missouri, Kansas and Texas Railway looked for miners willing to work in the Indian territory during this economic downturn. The first miners in the territory came from the British Isles through Pennsylvania on the railroad. The Missouri, Kansas and Texas Railway provided access to the mining region of the Indian territory, located near the center of the region. Without competing mines, the railroads expected the miners to work exclusively for the MKT and its mines. They were given free transportation, and an opportunity for steady work.²⁰

18 Stevens, “Robert Stevens to Levi Parsons,” October 30, 1873.

19 Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877*, The New American Nation Series (New York: Harper & Row, 1988), 512; White, *Railroaded*, 84.

20 Frederick Lynne Ryan, *The Rehabilitation of Oklahoma Coal Mining Communities* (Norman, Okla.: University of Oklahoma Press, 1935), 27; Gomer Gower, “Indian Territory Coal Mines,” in *Indian Pioneer History* (Oklahoma City, Oklahoma: Works Progress Administration, 1937).

Despite the offers of high wages and free transportation, in 1873, the Missouri, Kansas and Texas Railroad had difficulty getting miners. When the railroad cut the wages of other positions on the railroad, miners continued to receive full wages. Possibly due to the location or the scarcity of workers, Stevens complained of the lack of employees: “For with all our best efforts it is quite difficult to get Coal Miners, even at any price.”²¹ Eventually, enough miners were enticed to come to the region to create a substantial work force.

The first skilled miners to work in the Indian territory, English, Scotch, Welsh, and Irish, were induced to move to the Indian territory by the high wages offered and the promise of steady work. They were paid about twenty cents per ton more in the Indian territory than what they earned in Pennsylvania.²² Mining wages in the interior of the United States dwarfed those in the British Isles. Mines in Indiana paid more than twice the daily wage of similar mines in Britain by 1880 and the Indian territory paid even more than Indiana. High wages coupled with a strong job market provided enough inducement for miners to move across borders into the Indian territory.

Skilled miners, with previous experience provided the initial small labor force. Artisan-colliers with roots in the British Isles and subsequent experience in Pennsylvania or Illinois became the core workforce in the region.²³ In the era before long-wall and automatic miners, coal mining demanded precision and extensive training to prevent

21 Stevens, “Robert Stevens to Levi Parsons,” October 30, 1873.

22 Ryan, *Rehabilitation of Coal*, 29.

23 Gower, “Indian Territory Coal Mines,” 455; Gene Aldrich, “A History of the Coal Industry in Oklahoma to 1907” (Ph.D., University of Oklahoma, 1952), University of Oklahoma, Norman; Andrews, *Killing for Coal*, 90, 102.

major disaster and loss of life – training usually only found on the job. Artisan-colliers used hand tools and geological understanding to maximize profits, reduce personal risk and train apprentices. Artisan-colliers however were at high demand even during economic downturns.

Rather than working alone, many miners brought their families to the region, using their young sons to increase the profitability and to pass on the trade. Companies paid miners by the ton rather than per hour worked, contracting per room or primary miner. Any others that the miner took to work with him added to that miner's profitability, so artisan-miners took their young sons to work with them. Like many others, Thomas Gower, a miner from New South Wales brought his family to America to pursue coal mining including his son Gomer. After two years in Illinois, the Gower family moved to the Indian territory to work for the Southwestern Coal Company. The younger Gower helped his father in the mines, eventually learning mining himself.²⁴

After the 1880s, coal mining became increasingly less skilled. As technology replaced skill and knowledge of geology and underground work, four broad categories came to define mining jobs, all of which were necessary to successful coal production. Tonnage men, inside daymen, outside daymen, and managers all worked to extract coal.²⁵ Miners required long apprenticeships and four or more years of work in mines before they could be called "skilled." Those with shorter apprentice times were "helpers," a

24 Gower, "Indian Territory Coal Mines."

25 Price Van Meter Fishback, *Soft Coal, Hard Choices* (New York: Oxford University Press, 1992), 42–49.

semi-skilled position.²⁶ They obtained this experience through personalized on-the-job training as miners' help, often learned from family members.

Tonnage men used explosives and picks to extract coal. Making up the largest numbers of miners, these men also had the most dangerous jobs at the mines. These men were the largest group of miners. Tonnage men would undercut the coal seam, drill holes for the blast, make explosives and blast out the coal. Larger pieces of coal were better than smaller, since coal dust and small chunks of coal had little market value.²⁷

Companies paid tonnage men for the weight of coal mined each day. Output was in two varieties, screened and mine run, of which screened paid on average twenty-five percent more than mine-run.²⁸

Daymen performed a variety of ancillary tasks essential to the mining process. These jobs included firemen, topmen, trimmers, drivers, trappers, timber and track layers, shot-firers, cagers, and pushers.²⁹ The outside daymen also repaired machinery, prepared coal for shipment, and planned extractive operations for the mines. The inherent danger in mining born by those underground required skilled daymen to prevent disasters. Outside daymen were paid considerably more than the inside daymen, but both types of work required specialized work and substantial experience.

Managers included the superintendent and his helpers including the mine foreman, pit bosses and company bosses. For the mines of the Choctaw nation, managers

²⁶ Ryan, *Rehabilitation of Coal*, 37.

²⁷ Fishback, 43.

²⁸ Bryan, *Report*, 1895, 23.

²⁹ Bryan, *Report*, 1895, 23.

and owners were regularly considered the same class of worker. Many of the management in the United States by the 1870s moved to off-site locations, undermining a sense of common endeavor between labor and management that had previously characterized the industry.³⁰ Several owners of mine operations in the Indian territory remained off-site, most notably those of the Southwestern Coal and Construction Company, the Atoka Coal and Mining Company, and the Osage Coal and Mining Company whose ownership remained in New York, but much of the coal company management remained local to the Indian territory.³¹

Mining in the early 1870s in the Indian territory focused on the quick extraction of coal rather than developing the mines to extend the minable quantity of coal, as was practiced nearly everywhere else. Extractive speed developed out of necessity in reaction to the precautionary methods taken by Choctaw Chief Green McCurtain in 1875. Companies, especially the Southwestern Coal Company, not knowing the future of coal mining in the Choctaw lands, focused on rapid extraction, rather than a thorough process that may have produced more coal, but also could have left mining equipment in the field.

* * * * *

Despite many similarities of the mining process within the Indian territory to elsewhere, the relationships between the miners and the region in which they worked was dominated by their tenuous status in the area. Coal miners throughout the United States

30 John H. M Laslett, *Colliers Across the Sea: A Comparative Study of Class Formation in Scotland and the American Midwest, 1830-1924*, *The Working Class in American History* (Urbana: University of Illinois Press, 2000), 104–105.

31 Bryan, *Report*, 1895; Ryan, *Rehabilitation of Coal*, 32–33.

during the late 19th century often worked within company towns, paying rent on their homes to the company, buying food from the company stores and paying the company for their utilities.³² Mining was inherently dangerous work, possibly more dangerous in the Indian territory than elsewhere. The combination of poor relationships between miners and the land they worked on, the miners' tenuous occupancy, high frequency of accidents, and finally a cut in pay resulted in unmanageable situation for the miners.

Miners in the Indian territory were merely tenants. In the Indian territory, coal miners did not own their houses. Miners were able to rent houses and establish gardens and a type of permanence. Some miners and their families effectively owned their land in any other territory, but in the Indian territory, Native American laws reigned supreme.

In contrast to other coal mining locations, the coal companies did not own the houses either. Instead, Native Americans owned the land on which the companies operated, owned the timber from which the houses were built and the mines were reinforced, and owned the coal that was being extracted from the mines. Native Americans also owned the houses that the workers lived in – and the places in which the miners worked. Despite the ownership of the land, which included the coal bearing spaces, Native Americans generally refused to mine for coal for a variety of reasons. What the Native Americans did not have – the expertise of mining and the manpower – they arranged to get through railroads and their coal companies.

Miners were able to live in the territory, much like railroad workers were. Miners and their families gained permission to live in the Indian territory only once a bond was secured for each head of the household by a member of the tribe or the railroad associated

32 Fishback, *Soft Coal, Hard Choices*, 152–166.

with the mine. The Choctaw demanded a \$100 bond and an annual \$6 permit fee – taken out of miners’ pay.³³ The issuance of bonds was the only method used by Native Americans and the Bureau of Indian Affairs to provide any sort of residency or business within the region for Euro-Americans. Without the bond surety, occupancy and employment within the Indian territory was impossible.

In the Indian territory, the various Indian nations held the title to the land in fee simple. Other native American reservations followed the legal precedence of the various tribes; they were tenants of the land rather than owners. The Five Civilized Tribes held their land in fee simple with the rights associated with it.³⁴ Perfect fee simple title gave the respective Native American nations, among other abilities, the power to set immigration laws that the Office of Indian Affairs would enforce. Each of the five tribes of the Indian territory prohibited land ownership and hence, permanent residency of Euro-Americans within the respective regions, including railroad workers, coal miners or their families. Workers gained only a semblance of permanency on company-controlled rights-of-way or with special arrangements with the Indian nations.

Native Americans within the Indian territory remained fiercely protective of their space. However, many preferred to hire out their employees from outside of the territory. Whites were permitted to work in the Indian territory if they were under the employ of a Native American. Beginning in 1836, the Choctaw passed a law allowing members of

33 Kidwell, *The Choctaws in Oklahoma*, 107.

34 See Chapter 3 for a full recounting of the issues associated with land tenure and the Indian territory. Banner, *How the Indians Lost Their Land*; Khaled J. Bloom, “An American Tragedy of the Commons: Land and Labor in the Cherokee Nation, 1870-1900,” *Agricultural History* 76, no. 3 (Summer 2002): 497–523, doi:10.2307/3744728; Faiman-Silva, “Tribal Land to Private Land.”

their nation to employ whites. Cherokee permitted white workers to work on Cherokee farms. Choctaw granted permits for farm laborers and miners.

These permitted laborers retained no rights beyond what the permittees granted. The whites had no opportunity to own property or to vote. The respective Native American nations retained authority over their own governance and exercised it fully in regards to Euro-Americans in the region. Coal miners in particular struggled in the clearly antagonistic living situation. Miners rented their houses from the mine company which in turn rented the space from the Native Americans. Gomer Gower recalled how his parents leased their space from the Choctaw. Fritz Sittel, a Choctaw, rented his land to the Choctaw Coal and Railway Company for their employee houses.³⁵

One of the ways Native Americans regulated whites within the Indian territory was through the permit process. By 1855, the districts of the Choctaw nation were allowed to place a “moderate tax” on whites working within the region who desired permits to reside in the Indian territory. In 1867, the Choctaw nation expanded this tax to include a \$25 yearly tax on licensed traders and a \$2 permit fee on members of other professions including mechanics and blacksmiths. By 1875, the national council increased the trader tax to \$1000. “Mechanics, or artisan or professional characters” paid \$25 for a permit and had to post a \$500 bond. General laborers, including miners, were required to pay \$6 for a permit and post a \$100 bond in addition to getting the signatures of twenty or more respectable citizens to certify the “moral character” of the applicant.³⁶

35 Choctaw Oklahoma & Gulf Railroad Co. et al v. Sittel et al. (Supreme Court of Oklahoma 1908).

36 “An Act Regulating the Granting of Permits to Trade, Expose , Goods, Wares or Merchandise for Sale Within the Choctaw Nation, and to Reside Within the Same and for Other

Euro-Americans within the Indian territory experienced circumscribed land ownership rights, educational opportunities and complained about overall oppression at the hands of Native Americans. As noted before, only those with Native American citizenship were allowed to claim steady land use. No outsiders could own land within the respective Native American nations. Native Americans held their land in collective fee simple title. The entire citizenship collectively owned the title to the land. The Cherokee and Choctaw both proudly displayed this feature of their government. Cherokee Chief Bushyhead explained, "In the Cherokee nation individual property rights are fully respected. A Cherokee is entitled to all the land he can cultivate. The right is in the use; the property is in the improvements, and the land is not itself a chattel that can be speculated on whether cultivated or not."³⁷ The land could not be purchased. Ample discussion about the legality of miners in the Indian territory brought the issue of land ownership to multiple venues for discussion including newspapers, magazines, public debates and eventually the halls of Congress.

The most offensive and onerous aspect of lack of permanency came from the effects on the children of the miners. Because they had no residency rights, the children of railroad workers and miners were not allowed to attend the schools provided for the Native American children. The official annual report of the commissioner of Indian affairs revealed the concern the Indian agent, Dew Wisdom, had for those "growing up in

Purposes, Approved November 11, 1875," November 11, 1875, Box 7, Folder 14, Choctaw Nation Collection, Oklahoma Historical Society.

37 Dennis Bushyhead, "D. Bushyhead, R. B. Ross, C. V. Rogers, et. Al. to the United States Commissioners to the Five Civilized Tribes Concerning the Allotment of Lands, the Dawes Commission Agreement," October 28, 1897, Box 3, Folder 158, Dennis W. Bushyhead Collection, Cherokee Nation Manuscript Collections, Western History Collections, University of Oklahoma.

ignorance.”³⁸ Instead, children of miners had to pay to attend school, a cost few could afford.

Coal income provided public education for both Native American children and for African American children, from primary grades through high school and beyond. The school buildings for these students were “lavishly appointed” and it was clear that education held a high place of importance for the Five Civilized Tribes.³⁹ Native American children attended school for free. Early in the history of the Indian territory, the Eastern migratory tribes acknowledged the importance of free public education and allowed Quaker, Methodist and Baptist educators to teach their children. By the 1880s, the costs of public education were wholly paid for by coal royalties, which ranged from one-half to one cent per bushel, or eight cents per ton of ore mined, and permit fees from each worker in the Indian territory.⁴⁰ Since children of miners were not Indians, they were prohibited from attending these schools without paying their share.

The only others to receive free public education in the Indian territory were the former slaves of the Indian nations. These African-Americans used separate facilities from the Native Americans, but the same coal royalties and permit taxes furnished the

38 Devon Mihesuah, *Cultivating the Rosebuds: The Education of Women at the Cherokee Female Seminary, 1851-1909*. (Urbana: University of Illinois Press, 1998). *Annual Report of the Commissioner of Indian Affairs, for the Year 1894* (Washington, DC: Government Printing Office, 1894), <http://digicoll.library.wisc.edu/cgi-bin/History/History-idx?type=turn&entity=History.AnnRep94.p0148&id=History.AnnRep94&isize=L>.

39 *Annual Report of the Commissioner of Indian Affairs, for the Year 1893* (Washington, DC: Government Printing Office, 1893), 147, <http://digicoll.library.wisc.edu/cgi-bin/History/History-idx?type=article&did=History.AnnRep93.i0009&id=History.AnnRep93&isize=L>.

40 Bryan, *Report*, 1895, 34.

facilities and funded the educational process as the Indian schools.⁴¹ Native American children and African-American children gained free education while white children had to pay for their schooling. The power inversion in the Indian territory, while valid by law, remained offensive to the whites in the area including the Indian Agent who appealed to Native Americans for an “agreement between the Indians and the resident whites by which proper facilities could be furnished these children.”⁴²

In this instance like many others, Indians gained a significantly superior position over Euro-Americans in the Indian territory. The inversion of power in this area caused much consternation among coal miners, mostly on racial grounds. Native Americans and African Americans enjoyed fully funded schools in neat facilities while the children of whites were relegated to “growing up in ignorance.”⁴³ Importantly, the coal miners complained about the most difficult situations to work in especially considering their families’ lack of opportunity in the region and the difficulty this would bring future generations.

Native Americans remained protective of their resources. In order to secure their rights to their resources, leaders maintained their impressive ability to enforce the permit policy. If a white person was in the Indian territory without a permit, they could be required to leave even if they had established themselves through employment or a residence. Native Americans did not often enforce this act, but they were able to by keeping the law in the books.

41 See the annual reports of the Union Agency from 1866-1905, variously titled: *Annual Report of the Commissioner of Indian Affairs, for the Year 1893*.

42 *Annual Report of the Commissioner of Indian Affairs, for the Year 1893*, 140.

43 *Annual Report of the Commissioner of Indian Affairs, for the Year 1893*, 140.

Mine companies were extensions of the railroads that cut through the Indian territory. The Southwestern Coal Company was a wholly owned subsidiary of the Missouri, Kansas and Texas railroad.⁴⁴ Investors in the Missouri, Kansas and Texas and in the Missouri Pacific railroad owned the Osage Coal and Railroad company. The mine companies secured access to the coal of the region through long-term contracts, borne out of shared board members between the companies. Despite the long-term contracts and the similar executive boards, neither the railroads nor the mining companies owned any of the mines within the Indian territory. Neither did individual Native Americans own the land on which mines operated. Instead, individual Native Americans laid claim to the lands and the coal underground from their tribes and leased to the mining companies the ability to mine the coal.

The Choctaw nation regulated the ability to lease land by limiting it to members of their tribe. Each member could claim land in a one-mile radius – just over two thousand acres. From there, the individual member could lease coal-mining operations to other contractors including the Southwestern Coal Company, the Osage Coal and Railroad and the Choctaw Coal and Railway Company (later the Choctaw Oklahoma and Gulf Railroad). The tribe initially apparently envisioned individual tribal members mining coal. However, the arrival of railroads and the steep initial investment required to move coal to markets motivated ambitious Native Americans to lease their land to coal operators. The most active of the coal operators was the Choctaw Coal and Railway

44 P. H Carey, *Missouri, Kansas & Texas Railway: Growth 1897-1905* (New York: H.W. Poor & Co, 1906); Choctaw Nation, “An Act Granting a Charter to Extend the Lehigh Branch of the Missouri, Kansas and Texas Railroad. Passed and Approved on October 21, 1884.,” October 21, 1884, Box 16, Folder 8, Choctaw Nation Records, Western History Collections, University of Oklahoma Libraries, Norman, Oklahoma.

Company, which held eighty-six separate leases within the Choctaw nation, employing 1011 men.⁴⁵ The Choctaw Coal and Railway Company maintained an important place through the sheer quantity of coal mined by their company. By 1895, the Southwestern Coal and Improvement Company employed 800 men as did the Osage Coal and Mining Company.⁴⁶

The inequality between whites and Native Americans within the Indian territory was cause for consternation at the creation of the Indian territory, yet it was permitted to proceed. Native American economic independence, especially that of the Five Tribes, forced Euro-Americans to reconsider the implications of the Indian territory. When Native American rights collided with Euro-American desires, the indigenous people lost. By the end of the nineteenth century, two different and complimentary reactions to Native American economic independence emerged. The strike of the spring of 1894 brought active resistance to Native American authority and openly questioned the situation in the Indian territory. The Dawes Commission, which had recently forced allotment on Native Americans apart from the Five Civilized Tribes in 1887, turned its attention to the Indian territory. The result was an influx of lawsuits and legal wrangling on all sides to secure their respective places in the changing Indian territory.

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In March of 1894, the mine companies of the Indian territory, including the Choctaw Coal and Railway Company and the Atoka Coal and Mining Company

45 "Articles of Indenture for the Choctaw, Oklahoma and Gulf Railroad Company with the Girard Life Insurance, Annuity and Trust Company", 1894, St. Louis Mercantile Library, Bureau of Railroad Economics Collection, University of Missouri, St. Louis.

46 Ryan, *Rehabilitation of Coal*, 32–33.

informed their miners that a wage reduction would take place across the region effective April 1. While coal miners had previously received \$1.02 per ton of coal mined, they would now get \$0.80 per ton. The mine operators complained that their market competition stifled the relative value of the coal in the Indian territory, therefore the miners needed to take a wage cut to allow the coal companies to remain competitive. Operators also complained that while mining wages had dropped throughout the country over the previous fourteen years, the wages in the Indian territory continued to be the highest in the country and were not competitive.⁴⁷

Mine operators within the Indian territory did not compete against each other to supply coal. Instead, the mines cooperated to pay similar rates as well as to not hire miners dismissed from each other's mines. The operators – pulled together by Edwin Ludlow of the Choctaw Coal and Railway Company – worked together to present a unified front of mine owners to the miners.

The owners pointed out the longer-term detrimental significance of the high wages. Mine operators worried that continued high pay would mean higher costs passed onto consumers, which would then result in lost markets. They informed miners of the potential difficulties that would ensue if they lost markets, which would then cause the price of coal to drop, despite high quality. In the Indian territory, the mines already set idle for several days every month because of the glut in the market. Idle mines were not profitable for either the owners or the workers. To remedy the glut in the market and the potential lost consumers, the mine operators cut wages.

⁴⁷ Bryan, *Report*, 1895, 18.

Workers responded that the wages they were paid barely met subsistence levels. They “could scarcely get the necessities of life” and had no choice but to strike.⁴⁸ The miners refuted the claims of the companies. Instead of declining marketability, the quality and value of the coal mined in the territory increased over the decade preceding the strike, from an aggregate value of \$1,897,037 in 1891, \$2,043,479 in 1892 and \$2,235,209 in 1893.⁴⁹ The coal mined in the Indian territory did not decrease in value as it was mined in increasing quantities over the previous years. On the contrary, coal value was increasing as was the value of miners in the Indian territory, and yet the coal companies and their railroads cut pay.

The miners responded to the wage cut similarly to miners throughout the country in 1894. The miners of the region had already organized into a few organizations of the Knights of Labor. When the wage cuts in 1894 occurred, Peter Hanraty took charge of the local organization as he had several times before when facing labor difficulties.⁵⁰ At first, miners and mining companies agreed to meet together to resolve their differences. The two sides met at Lehigh, Indian territory on March 21, 1894. The mine management, representing the MKT railroad’s interests and that of the Choctaw Coal and Railway, bluntly told workers that if markets were lost due to a strike “you will have no employment at any price.”⁵¹

48 Quote in Don F. Badinelli, “Struggle in the Choctaw Nation: The Coal Miners Strike of 1894,” *Chronicles of Oklahoma* 92, no. 3 (1994): 294.

49 Bryan, *Report*, 1895, 22.

50 “Peter Hanraty (1864-1932),” *Chronicles of Oklahoma* 11, no. 2 (June 1933): 875.

51 “Choctaw National Records: Mines,” n.d., Oklahoma State Historical Society, accessed April 10, 2008.

Facing the difficult decision of walking out on steady work in an effort to increase wages and protest working conditions, the miners voted on April 1, 1894 to strike.

Striking miners in the Indian territory realized the difficult economic and social position they were in. Strikes often pitted the workers against owners, or to use Marxist terminology, the proletariat rises up against the capitalists to demonstrate for their wages. Anthropologist James C. Scott argued that the small people resist the powerful in minor ways even if they cannot rise up in full protest, yet the miners of the Indian territory faced a more significant and complicated obstacle to the strike than just the mine owners.⁵²

Mine owners previously worked with Native Americans to secure access to the region through leases. The miners in the Indian territory were able to reside there because of permits granted to them through their companies from the Native American nations. In turn, the Native Americans, especially the Choctaw, depended on migrant workers to mine the coal. The Native Americans only wanted the fewest number of workers within the mines to keep them profitable. Because of this, the Choctaw enforced the permit law, which established that whites needed to pay a permit fee, remain employed and in the good graces of the Choctaw Government. If any worker within the Indian territory, especially within the Choctaw nation, was an unemployed white they were an intruder and subject to removal from the territory. The miners acting as the proletariat did not just face the capitalists, but also a third part of the trichotomy – the Native American mine lessees.

Coal leases provided regular income on two levels for Native Americans, nationally and locally. The respective Native American nations charged two types of fees

⁵² James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (Yale University Press, 1987).

for their coal – a permit fee and a per-ton tax. All coal mined within the Native American nations was mined by workers who had to pay a permit fee to the respective tribes for access to the region. In addition, all mined coal was subject to a tax per ton mined. On a local level, all mines were leased from individual Native Americans who also collected either on an annual basis or per ton.

The coalmine strike was by no means universal, at least at first. The Choctaw Coal and Railway Company put the lower wage scale into effect at its mines, but many of its miners continued to work. Following pleas from the striking miners in nearby Krebs, Lehigh and Coalgate, the miners of the Choctaw Coal and Railway Company walked out on April 26. Tension continued between striking and working miners throughout that spring. The miners of the Atoka Coal and Mining Company also previously agreed to strike but resumed working on May 9 once eight to ten deputies from the Choctaw Lighthorse protected them from other strikers.⁵³

Strikers' attempts at achieving solidarity failed. So on May 10, men and women decided to march to the mines. Six hundred miners, their wives, and supporters marched from Coalgate to Mine No. 6 north of Lehigh and onto the strip pits of the Atoka Coal and Mining Company, just less than five miles away. Led by a brass band and women and accompanied by approximately 200 men carrying rifles or shotguns, the strikers were "exceedingly boisterous and threatening" according to Dew M. Wisdom, the U.S. Indian Agent.

Despite the presence of deputies protecting the miners, the force was "inadequate to meet the crisis." implying the willing use of force against strikebreakers. At Mine No.

53 Badinelli, "Struggle in the Choctaw Nation: The Coal Miners Strike of 1894," 294.

6, the group swelled to over one thousand when they were joined by another 400 men and 65 women. They arrived at the mines of the Atoka Coal and Mining Company by 8:00 A.M. Women began throwing rocks and coal. Despite the riled crowd and the armed miners, no further violence ensued. Upon the pressure of the crowd, the miners working the pits agreed to cease all work.

By May 12, the superintendent of the Choctaw Coal and Railway mines increased his opposition of the strike. Edwin Ludlow learned of another group of miners organizing near the company mines in Lehigh and Coalgate. He pleaded to Agent Wisdom to prevent the miners from starting their march. In turn, Wisdom appealed to the commissioner of Indian Affairs in Washington to send troops to protect the mining properties. Wisdom and Ludlow were rebuffed at their initial requests since the Choctaw Coal and Railway Company was in receivership and under the protection of the courts and not the Indian Agency. Wisdom later recalled that he was advised, "Railway and mining owners should apply to the court for relief and protection."⁵⁴ The commissioner decreed that the courts were the protectors of the property of whites in the Indian territory rather than the Indian Agency protectors of any property within the Indian territory.

Protecting the mines in the Indian territory became one of the contentious points raised by the strike. When Ludlow appealed to the Indian Agent, he understood the power behind the position of the Indian Agency and the options to bring in federal troops to prevent the actions of the strikers. Ludlow did not appeal to the Choctaw Nation and its meager police force despite their ownership of the mines. Ludlow and Wisdom in turn

⁵⁴ Frank Armstrong, Acting Commissioner of Indian Affairs to Secretary of the Interior, May 15 1894, Indian Division, Department of the Interior, Letters Received, 1894, File No. 3543, RG 48, NA, in Badinelli, "Struggle in the Choctaw Nation: The Coal Miners Strike of 1894," 295.

were pushed to the courts for relief, subsuming the power relationship of the Indian territory to the federal court system.

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The striking miners strained the resources of the Choctaw Coal and Railway Company and other mining operations. The Atoka Coal and Mining Company at Lehigh faced physical threats from striking miners seeking solidarity. In Krebs, the miners were also driven away from their work according to Indian Agent Dew Wisdom, in “deliberate defiance of all law and accompanied by such violent demonstrations of anger that had resistance to any great degree been offered to the raging mob, the strip men would have been assaulted even unto death.”⁵⁵

Miners organized into unions early in the mining era of the Indian territory. Beginning in Krebs, miners hailing from the east and across the Atlantic formed collective bargaining units in 1886.

The mines of the Indian territory remained extremely hazardous. Peter Hanraty, the first coalmine inspector of Oklahoma worked for years to control the dangerous explosions of the Indian territory mines. No safety measures were in place like in other territories and states. No federal safety measures covered the Indian territory and as such, many mining accidents occurred with little recompense for the mining families. In April 1887, Mine Number 2 at Savanna exploded, killing six men instantly and twelve others in the recovery operation due to high levels of methane; a disaster that could have been

⁵⁵ *Annual Report of the Commissioner of Indian Affairs, for the Year 1894*, 144.

avoided with increased safety measures.⁵⁶ Mining in the Indian territory was a desperate occupation.

Despite the hazardous conditions, miners continued to work the coal. They organized into unions to provide security when possible and comfort when grieving. The union led the strike in 1894 to provide a common leadership and a unified front to the mine owners.⁵⁷

While many miners participated in the strike, there was also a significant population of strikebreakers. Mainly African-Americans, Ludlow brought many from Texas in an effort to break the strike. African-Americans seized the opportunity for work. African-Americans in the post-reconstruction south were often willing to fill a variety of jobs, including those in the Indian territory. The presence of strikebreakers incensed the strikers – more so because of their complexion.⁵⁸ At least one hundred and fifty African-Americans came up from Thurbur, Texas at the request of the Choctaw Coal Company.

Native American landowners also sought solutions to the mining problems. They widely considered the leadership of the unions as inciting the strike and without the leaders, the strike would end and work would continue. Chief Wilson N. Jones of the Choctaw invoked a long-established but seldom used treaty provision that required the United States to protect the Choctaw and Chickasaw from domestic strife. The Treaty of 1855 established that the government would protect the Choctaw and Chickasaw people from “domestic strife, from hostile invasions, and from aggressions from other Indians

56 Gomer Gower, “Interview with Gomer Gower,” in *Indian Pioneer History* (Oklahoma City, Oklahoma: Works Progress Administration, 1938), 443.

57 Aldrich, “A History of the Coal Industry in Oklahoma to 1907,” 76.

58 Aldrich, “A History of the Coal Industry in Oklahoma to 1907,” 77.

and white persons not subject to their jurisdiction and laws.”⁵⁹ Rather than relying on their tribal police to effect change in their nation, the Choctaw chief recognized the power of the U.S. government to reestablish authority in the region.⁶⁰ Chief Wilson relied on a separate entity to reestablish order when his authority was insufficient.

In communication with the Union Agent, Dew Wisdom, he sent a letter to the Commissioner of Indian Affairs demanding the removal of the most notorious and boisterous strikers. Jones obtained a list of two hundred striking miners, the supposed leadership of the strike, according to the Choctaw Coal and Railway Company, and declared them “intruders” and subject to removal. Agent Dew Wisdom consulted with Chief Wilson, insisting that the only way to preserve peace was the strong arm of the military.⁶¹ Wisdom fully supported Wilsons’ actions and considered the miners “foreigners and they either did not understand or did not respect American law and American institutions, and preferred anarchy rather than a reign of law and order.”⁶² For Wisdom and Wilson, the only reason anyone would strike was being a foreign element.

One way for miners to deal with the situation they faced was to strike. This pushed the issues facing the miners, including income, education for families, and land ownership into the forefront. Another significant manner to resist the negative situation they faced in the Indian territory was for individuals file suit in court. Lawsuits remained

⁵⁹ Treaty with the Choctaw and Chickasaw, June 22, 1855 in Kappler, *Indian Affairs*, 2:710.

⁶⁰ *Annual Report of the Commissioner of Indian Affairs, for the Year 1894*, 144.

⁶¹ *Annual Report of the Commissioner of Indian Affairs, for the Year 1894*, 144.

⁶² *Annual Report of the Commissioner of Indian Affairs, for the Year 1894*, 144.

the most important method to deal with difficult situations in nineteenth century, even in the Indian territory, yet in the Indian territory jurisdictional issues caused many potential cases to remain unresolved. In a series of laws passed, Congress progressively closed the loopholes in jurisdiction that solved court issues at the cost of Native American legal control.

The original version of the court system in the Indian territory appeared much different from that of the 1894 courts. At the beginning of the Indian territory era, the legal system recognized Native American legal authority over their own citizens. The thrust of the legal arrangements for Native Americans were for them to govern their own affairs, including their legal structures. Tribal governments and courts maintained their governance over the region and as such, jurisdiction over court cases depended on citizenship. Specifically, each tribe maintained their own courts, judges, and juries to try cases from their own nations. Choctaw were tried in Choctaw courts and Cherokee in Cherokee courts. Cases concerning members of different tribes were a matter for the nation in which the offense had occurred. Criminal cases regarding intermarried EuroAmericans fell to the jurisdiction of the United States. Over time, this configuration revealed its weaknesses, especially as increasing numbers of EuroAmericans entered the region and became involved in legal disputes.

An increasing population of whites in the Indian territory led to a similar increase in criminal cases, yet since Native Americans only had jurisdiction over their own citizens, it fell to the United States to prosecute these crimes. The establishment of the United States District Court for the Western District of Arkansas in March 1851 superseded the previous legal situation in the region established by the 1844 Trade Act by

the Western District of Arkansas.⁶³ The Western District of Arkansas extended its reach from nine western counties of Arkansas and over all of Indian territory. Van Buren, Arkansas served as the court town for this enormous district, up to three hundred miles away from where crimes were committed.

The jurisdictional coverage of the Western District extended over criminal cases, yet civil cases were another matter altogether. The onus for civil cases involving traders or other whites in the region fell to the Indian agent. The agent represented the United States regarding Native American issues. The Indian agent ensured that both sides honored treaty stipulations, including licensing traders and limiting liquor. Agents also ordered intruders to leave, although they had no legal power to enforce their own order. This power came from the United States Army, which could be called upon in such instances.

The agent acted as a mediator in disputes over contracts, debts, and other matters, which would normally have been subject to the proceedings of civil law. Yet, in the Indian territory there was no governing civil law. The agent's success depended on his power of persuasion and wherewithal to intercede in civil disputes. The agent in 1877, S. W. Marston complained: "If a white man sees fit, in his depravity, to infringe upon the rights of an Indian, or to violate his pledge or contract with him, he has no redress whatever, as there is no tribunal to which he can appeal for justice."⁶⁴ Marston went on to argue for justice for the Native American through the establishment of a Federal Court over the Indian territory so justice could be meted out through the civil court system.

⁶³ *Statutes at Large for the United States*, vol. 9, n.d., 594–95.

⁶⁴ S. W. Marston in United States Dept. of the Interior, *Annual Report of the Department of the Interior* (Washington D.C.: U.S. Government Printing Office, 1877), 503.

Native American economic independence rested in part in the ability to regulate the territory and the people within it. The original court system in the Indian territory protected Indian legal authority, but mostly by relying on populations of whites to remain disinterested in the place. The Major Crimes Act of 1893 placed federal judges in authority over seven major crimes, no matter the perpetrator. By 1894, so many EuroAmericans had entered the Indian territory that the court system obviously could not manage the caseload and mete out justice as required.

In January of 1894, as members of the Dawes Commission visited the Indian territory, a crime spree hit the region and more importantly, the press. Newspapers proclaimed “Territory Terrorism: A Little Rock Attorney Describes Conditions Prevailing in the Territory”, and “The Rogers Gang Corralled by Officers in the Indian Territory.”⁶⁵ Despite the crime committed during this outbreak during 1894 being done primarily by the so-called Cook Gang, the press and Congress used the supposed lawlessness as a precursor to extend federal court jurisdiction over the entire Indian territory.

It was during the discontent of the court system in the Indian territory that several important civil matters arose. The first of which came from Fritz Sittel, an intermarried member of the Choctaw Nation and Edwin Chaddick, the manager of the Choctaw Oklahoma and Gulf Railway, formerly known as the Choctaw Coal and Railway Company. Sittel borrowed \$45,000 from Chaddick and the Choctaw, Oklahoma, and Gulf for the construction of several houses. These houses were for miners working the

65 “Territory Terrorism: A Little Rock Attorney Describes Conditions Prevailing in the Territory,” *The Galveston Daily News*, November 17, 1894; “The Rogers Gang Corralled by Officers in the Indian Territory,” *The Daily Picayune*, January 24, 1894.

claims on his land subsequently leased to the Choctaw Coal and Railway Company.

According to the lawsuit, the miners were to pay rent to the Choctaw Coal and Railway Company, which would apply the income to the cost of the houses.

The difficulty lay in where these houses were and whom they belonged to. If the houses belonged to the railroad, they were in violation of Choctaw law since the railroad only had claims to their right of way. If the houses were for coal miners, the railroad had no claim to them. The houses were on Sittel's land – a private Choctaw citizen who did business with the railroad and coal mines. The Choctaw authorities were set to investigate.⁶⁶

Rather than acquiesce that the houses should not have been erected, Sittel and Chaddick created a mortgage document so the money loaned for the houses was secured by mortgage and therefore acceptable. The mortgage however went to the president and treasurer of the railroad, without their apparent knowledge. Chaddick effectively used railroad money to build houses for coal miners on Choctaw land without the knowledge of the president and treasurer of the railroad.

Sittel sued for the original \$45,000 he was promised. The court in the Indian territory found in favor of Sittel, however, the defendants appealed.

In 1894, the issue complicated even further. The railroad had declared insolvency in 1891 and went into receivership. Since receivership meant the federal courts regulated the actions of the company through a receiver, the company was effectively under the protection of the federal courts. It was during this time that the company was under receivership that the strike took place. Later in 1894, the company was sold to a group of

⁶⁶ Choctaw Oklahoma & Gulf Railroad Co. et al v. Sittel et al. (Supreme Court of Oklahoma 1908).

investors led by Francis Gowen who had been the court appointed receiver.⁶⁷ The company reorganized into the Choctaw, Oklahoma and Gulf Railroad Company under the laws of Pennsylvania.

The new railroad decided that its original route might not be the most effective route. Instead, it planned to abandon part of the initial survey and build in an entirely new direction, at least according to Fritz Sittel. He had arranged with the Choctaw Coal and Railway Company to build across his land and near his coal mines, so that the railroad would serve his mines directly. He signed leases with the Choctaw Coal and Railway Company in 1890 for that company to mine his coal claims in exchange for a percentage of the income.⁶⁸ The new railroad threatened the investments of Sittel by rerouting their line away from his coalmines. Sittel threatened to sue the railroad because the railroad was a federally chartered line and by rerouting, it would break its charter and “forfeit all its rights under the lease.”⁶⁹ Sittel needed the railroad to fulfill his economic expectations.

Lawsuits involving coalmines and railroads extended beyond the limits established by the federal judicial system. In recognition of the limitations of the courts over the Indian territory, Congress and the President passed the 1895 Courts Bill.⁷⁰ This

67 Choctaw, Oklahoma and Gulf Railroad Company, *Report of the Operations of the Company for the Year Ending 1894* (Little Rock, Ar.: Choctaw, Oklahoma and Gulf Railroad Company, n.d.).

68 “Articles of Indenture for the Choctaw, Oklahoma and Gulf Railroad Company with the Girard Life Insurance, Annuity and Trust Company,” 1894, St. Louis Mercantile Library, Bureau of Railroad Economics Collection, University of Missouri, St. Louis.

69 “NEWS OF THE RAILROADS.; Suit Against the Choctaw Oklahoma and Gulf Railroad.,” *The New York Times*, May 5, 1895, <http://query.nytimes.com/gst/abstract.html?res=F40B16F8385911738DDDAC0894DD405B8585F0D3>.

70 The Morgan courts bill was an amendment to the Indian Appropriations Act for 1895-

bill was an act of compromise that took some of the previous features of district courts and melded them with new moves toward regulation. Specifically, outside courts like the Western District of Arkansas, retained superior jurisdiction for eighteen months, until August 31, 1896, however, new district courts split the Indian territory into three jurisdictions to adjudicate in matters regarding others besides Native Americans. This bill especially aimed at tribal legal independence.

Indian courts retained the ability to try members of their own tribes, but following this bill, if there was any suggestion of outside involvement beyond the five tribes, the federal courts intervened. For example, in 1894, Jackson Billy, the sheriff of Cedar County, Choctaw Nation and his posse went out to arrest a fellow Choctaw, Eli Baldwin, for the rape of Nancy Wesley. In his resistance of arrest, Baldwin was killed. However, Baldwin had occasionally worked as posse for the deputy marshal of the Southern District Court. Based on this, the grand jury of Paris, Texas, indicted Billy and twenty-six others for murder. This action incensed the Choctaw National Council to appropriate funds for Billy's defense and to investigate the matter.⁷¹

The legal systems presiding over the Indian territory transformed from the establishment of the boundaries through 1895. The limitations initially placed on Native American courts to maintain jurisdiction over indigenous people served the beginning era very well. As the population of the region increased through railroads and coal mining, the legal systems changed as well. Federal courts wielded increasing power so that by 1895, overlapping courts presided over the region. The federal courts transformed the region by standardizing the legal system. Despite the intentions of the 1895 court bill,

⁷¹ Author, *A Resolution Authorizing the Principal Chief to Investigate the Case of Baxton Jones et Al., at Paris, Texas*, 1900.

former judges continued to call for further standardization through statehood: “the strong judicial arm of the Government, as it has been wielded by what are sometimes called outside courts, should remain extended over the Indian country . . . until that country is able to place its star on our flag.”⁷²

* * * * *

In a near panic, agent Wisdom telegraphed the Office of Indian affairs in Washington DC:

In order to avoid bloodshed and protect miners who are at work, I ask the company of soldiers be ordered to Alderson I.T., to keep the peace. There are 2,000 miners who have struck, and they are exceedingly boisterous and threatening. My police force, supported by a squad of marshals, is inadequate to meet the crisis. I regard the presence of the military as absolutely essential. Prompt action alone will prevent serious trouble.⁷³

The secretary of the Interior in turn asked the Secretary of War order a company of troops to be sent to Alderson, IT. Troops began arriving from Fort Leavenworth, Kansas and from Fort Reno, Indian territory on May 22 under the command of Lieutenant John N. Andrews by rail with the instructions to protect lives and property and to remove the striking “intruders.” The arrival of three companies of infantry only escalated the miners’ resolve. The union in Coalgate organized a relief organization to provide for those suffering the most due to the strike. Strikers appealed to railroad

⁷² Judge Isaac Parker, Eli Parker, *Eli Parker to Department of Justice*, 1896.

⁷³ United States Dept. of the Interior, *Annual Report of the Secretary of the Interior*, vol. 2 (Washington, DC: U.S. Government Printing Office, 1894), 74.

workers over the Texas line in Denison to not handle any of the coal from the Indian territory, receiving positive responses.⁷⁴

Tensions continued to rise into June. On June 8, the Choctaw nation was told it had exhausted its entire national treasury. There was no more money for any operations of the government. Striking miners were told they were to return to work or they would be removed from the territory along with their families. The Choctaw government reminded the miners that they were not on their own land, but rather tenants at the will of the Indians. The Choctaw did not give either the coal companies or their workers the land itself. Rather, both were tenants, but the companies benefitted the Indians while the striking miners did not. For the Choctaw leadership, the decision to evict striking miners was surprisingly simple.

Beginning on June 14, soldiers asked miners a series of simple questions to verify their identity before evicting them. The soldiers worked to evict the miners from Hartshorne, the mines of the Choctaw Coal and Railway Company. Officers of the U.S. Indian police were on hand to assist identifying striking miners. The soldiers, acting on the courts' behalf sent about eighty-five miners on the Choctaw Coal and Railway Company's cars out of the area. At Wister, Indian territory, they were then transferred to the Saint Louis and San Francisco Railroad which took them over the line at Jenson, Arkansas.⁷⁵ Most miners then took the train to Fort Smith, Arkansas.

Conflicting reports of brutality by the army followed the ejections. One newspaper portrayed the army's actions as brutal assaults on innocent miners: "Many of

⁷⁴ Badinelli, "Struggle in the Choctaw Nation: The Coal Miners Strike of 1894," 297.

⁷⁵ *Annual Report of the Commissioner of Indian Affairs, for the Year 1894*, 144.

the men were thrown bodily from their homes, their wives and children beaten and bruised and their furniture and personal effects destroyed after which they were loaded into box cars like cattle and shipped out of the territory.”⁷⁶ The official report however commended Col. Andrews for his restraint “that no life was lost, no blood shed, and no undue cruelty inflicted upon the parties who were removed.”⁷⁷

Miners and the sympathetic Euro-American population in the Indian territory complained that the ejections were arbitrary proceedings. Some miners who were not American citizens appealed to their respective ambassadors. The State Department heard from the Italian, French, Belgian and British delegations who expressed concern for their citizens not receiving fair treatment. The Department of the Interior responded with explanations of the treaty obligations of the United States and the status of the Choctaw Nation as an independent entity, passing responsibility for the ejections to the Native Americans.⁷⁸ While their power was diminishing, the Choctaw remained officially a separate entity.

Having evicted the miners from Hartshorne, by the end of June there were no lists of miners from other locations for the soldiers to act on. By the middle of July, the Choctaw Nation was ready to begin new evictions, including at Krebs, the most populous mining center of the region. Miners met again to attempt to resolve the differences with the owners. They resolved to return to work pending arbitration. Rather than accept the miners back, the owners, including those of the Osage Coal and Mining Company

76 “A Second Siberia,” *Waterloo Daily Courier*, June 22, 1894.

77 *Annual Report of the Commissioner of Indian Affairs, for the Year 1894*, 145.

78 Badinelli, “Struggle in the Choctaw Nation: The Coal Miners Strike of 1894,” 300.

announced they would only hire back a portion of the workers and exclude the strike leaders.⁷⁹

This announcement split the strikers. Those at Coalgate decided to return to work. Their families suffered for several months without income with little prospect of winning the strike. However, the miners at Krebs intensified their resistance. When the Osage Coal and Mining Company attempted to reopen their mines on July 9, they were met with 400-600 armed men who beat the strike breakers. The imported black strikebreakers fled at the approach of the strikers. Bold and brash, the strikers threatened to dissolve any semblance of order and revert the territory to lawlessness and anarchy like other strikes happening at the same time.⁸⁰ Strikes in Chicago, California and other parts of Oklahoma led the Guthrie Daily Leader to proclaim, “Strikers Begin a Guerilla War” and “Oklahoma Militia May be Ordered Out!”⁸¹

The Choctaw leadership intensified their resolve to reestablish order. Federal troops, including cavalry, returned to Krebs with a detachment at Alderson. The assaults on miners broke the public’s support of the strikers. The Southwestern Coal and Improvement Company, the primary mines of the Missouri, Kansas and Texas Railroad, announced on Friday, July 13, that unless work resumed by Monday morning, the mines would be closed for six months, possibly as long as eighteen months. Strikers refused to return to work.

79 Badinelli, “Struggle in the Choctaw Nation: The Coal Miners Strike of 1894,” 306.

80 Badinelli, “Struggle in the Choctaw Nation: The Coal Miners Strike of 1894,” 304.

81 “State Troops Killed,” *The Guthrie Daily Leader*, July 13, 1894, Extra edition, Gateway to Oklahoma History, <http://gateway.okhistory.org/ark:/67531/metadc73084/m1/1/zoom/>.

Dew Wisdom called twenty-five strike leaders to a meeting on Tuesday, July 17th. The leaders were instructed to show why they should not be removed from the region. On the advice of their attorney, they remained silent. With that response, Wisdom declared forty-four of the miners at Krebs as intruders and instructed the army to remove them. Forty three were eventually found and evicted across the state line.

By July 25, most of the striking miners had returned to work. The last of the holdouts returned by the end of July. By mid-August, Wisdom reported, “all the miners who were evicted from Krebs have returned and propose to remain there permanently,” and despite a liability of each miner of a penalty of \$1,000 each, “I have been content to leave it here for further action.”⁸²

The strike resolution revealed continuous problems within the Indian territory to those looking for issues. The primary group looking for problems was the Dawes Commission. To their probing eyes, the strike was another instance of discord within the region. The Dawes Commissions reports called for the dissolution of Indian rule over the Indian territory with the acquiescence of the respective Native American nations. After meeting with all of the Five Civilized Tribes, absolutely no agreement could be reached to diminish tribal power. The Cherokee went so far as to refuse to meet with the commission.⁸³

The Dawes Commission believed that tribal governments abused their power and that the dissolution of tribal governments would benefit the indigenous population. In the

82 *Annual Report of the Commissioner of Indian Affairs, for the Year 1894*, 145.

83 G. M. McCain, *Denial of Indians to Charges of Dawes Commission* (Washington, DC: Gibson Bros., 1894).

1896 Indian Appropriation Bill, the Dawes Commission was granted quasi-judicial power. Specifically, Congress granted the Dawes Commission the power to determine tribal membership. The 1895 Court Bill combined with the new powers of the Dawes Commission meant that any trial could take place in a federal courthouse, no matter the origin of the case.

By 1897, Congress and President McKinley removed all judicial authority from the Five Civilized Tribes. The 1897-98 Indian Appropriation Bill contained two significant amendments that stripped legal power from the respective Nations.⁸⁴ The first shifted power over civil and criminal cases from the respective Native Americans to the Federal Court system. The second required the President of the United States to approve all Native laws. Combined, these two amendments neutered the governments of the Five Civilized Tribes. Without the legal backing to enforce their laws, the individual indigenous governments retained no power of government.

* * * * *

The strike of 1894 raised serious concerns over the power of the Indian territory. By this era, the mining population reached over five thousand men and their families. The support personnel for these miners also reached into the thousands. The white population in the territory had skyrocketed to

The three principal groups of actors in the strike of 1894, the Native American owners, the miners, and the mine operators were mediated by the Indian Agent, Dew Wisdom. At the commencement of the strike, it was clear that the trichotomy of power was unstable. Miners had little negotiating power considering the ability of the operators

84 CR 30, 735.

and the Choctaw to ask for reinforcements, whether workers or troops. The Choctaw also had little negotiating power since they were so dependent on mining income for their national treasury. The mine operators also had little power to negotiate, other than through the use of Choctaw protection and federal forces.

Dew Wisdom cooperated with the Choctaw Nation's need to get the mines working again. Wisdom and Chief Wilson worked together to get federal forces to coerce miners back to work, or in some cases, to evict them. Wisdom's appeal to Washington on behalf of the Choctaw brought the focus of the strike away from the plight of the miners to the plight of the Choctaw who were suffering because of the miners' actions.

The Choctaw Nation revealed its willingness to work with the federal government to handle its own affairs, however, there was a major setback to the strike of 1894. The federal troop presence that protected the mines and property of the mine operators and the land of the Choctaw continued to be needed after the strike ended. Federal troops in the Indian territory established an increased federal presence in an area that previously had little need for widespread policing. Lieutenant Colonel Andrews who oversaw the removals suggested, "this intruder business was only a pretext to get troops in this country."⁸⁵

Federal troops in the country did not leave once the mining troubles ended. Instead, troops increased in number.

Thus, miners came into the region on trains provided by railroad companies to power the locomotives. Some of the same miners were evicted after protesting the inverted power arrangement compared to everywhere else in the United States. Railroad

⁸⁵ Cited in Badinelli, "Struggle in the Choctaw Nation: The Coal Miners Strike of 1894," 307–308.

companies in turn worked with Native Americans to evict white miners in favor of African American replacement miners. Striking miners were removed on the same railroad lines that they powered through their coal mining. Whites owned no land. They only leased the very mines themselves, but the mine operators were able to furnish income for the Native Americans. Miners mis-believed that they were the ones providing income. They were not. Instead, the mine operators brought in new workers to fill the mine needs. The power relationships were best displayed through the education system. Native American and blacks attended school free and dictated the rules to the white tenants and miners. Native American power was distasteful to the extent that miners went on strike to protest the relative lack of power. The result was a power shift – not to the workers, but to the federal government who would eventually decide against the Indian territory.

The strike of 1894 proved essential to establishing Federal power over the Indian territory as Native Americans needed to invite Federal troops to restore order and re-establish fiscal stability. Federal presence in the territory equated to shifting power from Native Americans to the federal government in Washington DC and reasserting federal power over the region.

The year of the strike signaled the culmination of contests over control of natural resources, especially coal, resulting in circumscribed Indian governance and established Euro-American influence on the resources and politics of Indian territory. The arrival of the Dawes Commission coincided with strikes and a spike in crime for the individual nations. Since that fateful year, the federal government chipped away at the foundations of tribal government.

In 1898, Charles Curtis of Kansas introduced H.R. 8581, also known as the Curtis Bill. The Curtis Bill did for the Five Civilized Tribes what the Dawes Act did for the rest of the indigenous population of the United States; it allotted the tribal land in severalty, assigning individual plots of land for registered members of the tribes. The Curtis Bill was set to take effect on March 4, 1906, the date by which the Dawes Commissioners should have finished their work.

Coalmine operations and railroads eagerly anticipated the completion of the Dawes and Curtis Acts. The coalmine companies sought out more minerals to tap while the railroads believed they would gain their land grants. Mining companies gained the right to bid on mineral land set aside from allotment. Companies then proceeded to underbid each other, guaranteeing an exceedingly low price for coal lands.⁸⁶ The St. Louis and San Francisco Railway expected a huge windfall of land as did the Missouri, Kansas and Texas Railway. Despite their eager expectations, no railroad gained any land grants through the Indian territory because the land never became part of the public domain. Rather, the extension of the tribal governments over the land maintained nominal tribal control over the land and prevented the fulfillment of the railroad land grants.

Native American economic authority and independence changed throughout the nineteenth century. Prior to the Civil War, the Cherokee and Choctaw nations wanted railroads and connections to the east. Following the Civil War, Native American nations

⁸⁶ Joseph Taff, a USGS geologist and three assistants were assigned to locate and appraise almost half a million acres of segregated coal and asphalt land. During two auctions of the unallotted land, no land was sold because no acceptable bids were recorded. Kent Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes, 1893-1914* (Ancestry Publishing, 1999), 190.

rebounded from their suffering by prospering through coalmines and railroads. By the end of the century, tribal authority had worn down enough so the indigenous authorities required US Army forces to quell violence caused by striking miners. At the same time, federal courts increased their jurisdictional reach to gradually include all people of the Indian territory while edging out tribal courts.

Railroads and resources, the forces of the second industrial revolution, exerted unforeseen forces on the people of the Indian territory, resulting in the eventual dissolution of tribal governments and the creation of the state of Oklahoma.

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